

**CITY CLERK
ORIGINAL**

**C-8283
10/09/2012**

GROUND LEASE

THIS GROUND LEASE ("Ground Lease") is made and entered into as of the Effective Date (defined below), by and between **CITY OF GLENDALE**, a municipal corporation in the State of Arizona, ("City"), and **VIESTE SPE, LLC**, an Arizona limited liability company registered to do business in Arizona ("Vieste"). The "Effective Date" shall be the date upon which the last of City and Vieste executed this Ground Lease, as indicated on the signature page hereof.

WITNESSETH:

WHEREAS, Section 2-166 of the Glendale City Code authorizes the City Council of the City to sell, lease, exchange or otherwise dispose of City property for the best interests of City and the determination of the City Council shall be final; and

WHEREAS, the City Council of City has duly authorized and approved the lease of the Premises (as defined in Section 1 herein); and

WHEREAS, Vieste desires to use the Premises, as further described in Section 1 of the Ground Lease, to construct and operate a Public Utility Regulatory Policies Act qualified, base load, renewable energy production facility with a gross nameplate generating capability of 14.3 megawatt from municipal solid waste and an approximately two to five megawatt PV solar installation (the "Energy Facilities"), a waste recycling sorting facility (the "Waste Facilities") and an interactive learning center that provides educational experience for all technologies implemented (the "Educational Facilities") (collectively, the "Facility").

WHEREAS, contemporaneously with and as part of the consideration for this Ground Lease, City and Vieste have entered into a Waste Supply Agreement ("Waste Agreement"), which will be recorded with the Glendale City Clerk.

In consideration of the mutual covenants contained herein, and intending to be legally bound hereby, City and Vieste hereby agree as follows:

1. **PREMISES:**

(a) City hereby leases to Vieste and Vieste hereby leases from City, subject to the provisions of this Ground Lease, all of that certain tract, approximately six (6) acres in size, a part of the "City Landfill" located at 11480 West Glendale Avenue, Glendale, Arizona 85307, Maricopa County, Arizona, more particularly described on Exhibit A attached hereto (said description shall be replaced upon receipt of a surveyed description as provided in Section 14) together with all rights accruing thereto (all of foregoing being referred to herein as the "Premises") and as depicted on Exhibit B attached hereto, together with a depiction of the City Landfill.

(b) Fee title to the Premises will at all times during the Term of this Ground Lease (defined below) remain with the City, and possession of the entire Premises will be delivered to Vieste upon execution of this Ground Lease.

(c) City shall have the right at all reasonable times and upon reasonable prior notice and compliance with reasonable security requirements, to enter upon the Premises for any lawful purpose, provided such action does not unreasonably interfere with Vieste's use, occupancy or security of the Premises.

(i) Without limiting the generality of the foregoing, City and any furnisher of utilities and other services shall have the right, at its own cost, whether for its own benefit or for the benefit of others, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the Premises at all reasonable times to make such repairs, replacements or alterations thereto which may, in the opinion of City, be deemed necessary or advisable and from time to time to construct or install over, in or under the Premises such systems or parts thereof and, in connection with such maintenance, use the Premises for access to other parts of the City Landfill otherwise not conveniently accessible; provided that in the exercise of such right of access, repair, alteration or new construction, City shall not unreasonably interfere with the actual use and occupancy of the Premises by Vieste, shall not affect any buildings or other structures, and shall not result in above-ground improvements or alterations. All such work shall be scheduled with Vieste and shall be conducted in a manner that minimizes inconvenience.

(ii) If any personal property of Vieste, the location of which has not been previously approved by the City, obstructs the access of City or any utility company furnishing utility service to any of the existing utility, mechanical, electrical and other systems that serve City's Landfill or other parcels, and thus interferes with the inspection, maintenance or repair of any such system, Vieste shall upon request move such property, as reasonably directed by City or utility company, in order that access may be had to the system for inspection, maintenance or repair. If Vieste fails to move such property after direction from the City or utility company to do so, City or the utility company may move it, and Vieste shall pay the cost of such moving upon demand, and Vieste hereby waives any claim for damages as a result thereof, except for claims for damages arising from City's sole negligence.

Exercise of any or all of the foregoing rights by the City or others pursuant to the City's rights shall not constitute an eviction of Vieste, nor be made the grounds for any abatement of rent or any claim for damages.

2. **TERM:**

(a) The term of this Ground Lease shall commence on the Effective Date.

(i) Notwithstanding the provisions of Subsection (a) of this Section 2, the obligation of Vieste to pay the rent shall be as set forth in Section 3 below.

(ii) If Vieste so elects, it may, at its sole cost and expense, obtain a policy of title insurance from a title insurance company insuring Vieste's marketable title in the leasehold estate created hereunder free and clear of all liens and encumbrances whatsoever.

(b) The "Initial Term" of this Ground Lease shall be for a period commencing on the Effective Date and terminating on the date that is thirty (30) years after the Commercial Operation Date as defined in the Waste Agreement, unless sooner terminated or extended. So long as Vieste is not in default either at the time of exercise or at the commencement of any extension term, Vieste may extend the term of this Ground Lease for one (1) additional five (5) year period of time (the "Extension Term") by providing to City not less than one hundred eighty (180) days written notice of its election of the Extension Term, and at the rent set forth in Section 3 below, subject to all other terms and conditions of this Ground Lease. Notwithstanding the foregoing, Vieste's right to elect the Extension Term is contingent upon the construction of the Energy Facilities being commenced within five (5) years after the Rent Commencement Date and such Energy Facilities being completed and generating power on or before seven (7) years after the Rent Commencement Date. City and Vieste agree to execute a certificate provided by City that confirms the Commercial Operation Date.

3. **RENT:** Vieste agrees to pay rent for the Premises as set forth below commencing on the earlier of the Commercial Operation Date or January 1, 2014 (sometimes referred to as the "Rent Commencement Date") through the earlier of (i) the expiration of this Ground Lease, or (ii) termination of this Ground Lease by Vieste. Annual rent installments shall be paid on or before the Rent Commencement Date and on or before each anniversary of the Rent Commencement Date, in advance, during the term or any extended term of this Ground Lease, without deduction or setoff. Payment of rent shall be made to the City at such place as the City shall from time to time designate in writing delivered to the Vieste. If the term of the Ground Lease does not terminate on the anniversary of the Rent Commencement Date, then rent for the last year of the Ground Lease shall be prorated on a per diem basis.

Rent for the first Lease Year (defined as a consecutive twelve (12) month period commencing on the Rent Commencement Date and expiring on the last day of the calendar month twelve (12) months thereafter) shall be \$100,000. Rent for each Lease Year thereafter shall increase by two percent (2%) and shall continue throughout the Initial Term and each Extension Term, if properly exercised. In addition, Vieste shall pay to City all applicable taxes on the rent.

4. **USE OF PREMISES:**

(a) Vieste shall use the Premises for its business of sorting and recycling waste, converting municipal solid waste, yard waste, other discarded material, and other forms of waste into renewable energy, generating solar energy, and, subject to the indemnification and insurance provisions of this Lease, operating an interactive learning center providing educational experience for the foregoing technologies as well as associated uses necessary to accomplish the same (the "Permitted Use") and for no other purpose, without the prior written consent of City, which consent may be withheld in City's sole discretion. Vieste shall develop, construct, commission, start-up, operate, and maintain the Facility, and make all necessary improvements to the Premises in order to carry out the Permitted Use, and Vieste shall be obligated to continually operate the business contemplated in the Permitted Use upon completion of the improvement, all in accordance with the Waste Agreement.

(b) Vieste will comply with all federal, state, and local governmental regulations, including City's ordinances, regulations, and rules pertaining to City's landfill, that are

applicable to Vieste's use of the Premises and shall cause the Premises to comply with (i) all laws and other governmental statutes, codes, ordinances, rules, orders, permits, licenses, authorizations, directions and determinations now or hereafter enacted, whether or not presently contemplated, including without limitation all Environmental Laws (as hereinafter defined) (collectively, "*Legal Requirements*"), applicable to the Premises or the use thereof, and (ii) all contracts, agreements, insurance policies, permits, licenses and restrictions applicable to the Premises or the ownership, occupancy or use thereof, including but not limited to, all such Legal Requirements, contracts, insurance policies, agreements, permits, licenses and restrictions which (x) require structural, unforeseen or extraordinary changes or (y) relate to environmental protection or hazardous waste matters. Notwithstanding the foregoing, neither Vieste nor Vieste's Tenant shall be responsible for any violations of Environmental Law or any contamination occurring on the Premises prior to the Effective Date or arising out of Landlord's work as Ground Lessee for the development of the Premises. Landlord shall remain liable therefor.

As used herein "*Environmental Law*" shall mean any applicable law, statute or ordinance relating to public health, safety or the environment, including, without limitation, relating to releases, discharges or emissions to air, water, land or groundwater, to the withdrawal or use of groundwater, to the use and handling of polychlorinated biphenyls or asbestos, to the disposal, transportation, treatment, storage or management of solid or hazardous wastes or to exposure to toxic or hazardous materials, to the handling, transportation, discharge or release of gaseous or liquid substances and any regulation, order, notice or demand issued pursuant to such law, statute or ordinance, in each case applicable to the Premises or Vieste or the operation, construction or modification of the Premises, including without limitation the following: the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act as amended by the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act as amended by the Solid and Hazardous Waste Amendments of 1984, the Occupational Safety and Health Act, the Emergency Planning and Community Right-to-Know Act of 1986, the Solid Waste Disposal Act, and any state statutes addressing similar matters, and any state statute providing for financial responsibility for cleanup or other actions with respect to the release or threatened release of hazardous substances and any state nuisance statute.

"Hazardous Materials" means each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under any Environmental Law. Without limiting the generality of the foregoing, the term shall mean and include:

- (1) "Hazardous Substance(s)" as defined in CERCLA, the Superfund Amendments and Reauthorization Act of 1986, or Title III of the Superfund Amendment and Reauthorization Act, each as amended, and regulations promulgated thereunder including, but not limited to, asbestos or any substance containing asbestos, polychlorinated biphenyls, any explosives, radioactive materials, chemicals known or suspected to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions, infectious wastes, any petroleum or petroleum-derived waste or product or

related materials and any items defined as hazardous, special or toxic materials, substances or waste;

(2) "Hazardous Waste" as defined in the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder;

(3) "Materials" as defined as "Hazardous Materials" in the Hazardous Materials Transportation Act, as amended, and regulations promulgated thereunder; and

(4) "Chemical Substance or Mixture" as defined in the Toxic Substances Control Act, as amended, and regulations promulgated thereunder.

(5) "Governmental Authorities" means the United States, the State of Arizona and any political subdivision thereof, and any and all agencies, departments, commissions, boards, bureaus, bodies, councils, offices, authorities, or instrumentality of any of them, of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

(6) "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaching, dumping, discarding, burying, abandoning, or disposing into the environment.

(c) Vieste shall be responsible for all obligations related to, and shall comply with the terms of any reciprocal easement agreement, declaration of covenants, easements and restrictions or similar agreements recorded on or before the Effective Date against the Premises.

(d) For a period of five (5) years beginning with the Rent Commencement Date, the City hereby grants to Vieste the exclusive right to develop, construct and operate a waste to energy facility at the City Landfill where the Premises are located (the "Exclusivity Period"). Immediately following the expiration of the Exclusivity Period, the City grants to Vieste a right of first refusal to develop, construct and operate a waste to energy facility at the City Landfill ("Energy Facility ROFR"). The Energy Facility ROFR shall be in effect for the two (2) year period beginning at the expiration of the Exclusivity Period (the "Energy Facility ROFR Period").

If, during the Energy Facility ROFR Period, the City receives a bona fide offer in writing from a third party, who, in the reasonable opinion of City, is financially able to develop, construct and operate a waste to energy facility at the City Landfill (the "Facility Offer"), and if the City is willing to accept the Facility Offer, then, the City must first notify Vieste in writing of the offer (the "City's Notice"). Attached to the City's Notice shall be a statement, signed by a City official, stating the City's intent to accept the Facility Offer and setting forth the terms of the Facility Offer. Within thirty (30) days after the receipt of the City's Notice, Vieste may, at its option, elect to develop, construct and operate the waste to energy facility at the City Landfill pursuant to the terms and conditions set forth in the Facility Offer ("Vieste's Election"), **except that**, as a part of Vieste's Election, Vieste shall agree that it will commence construction of the

Energy Facility no later than six (6) months from Vieste's Election ("Energy Facility Commencement") and that the Energy Facility will be sufficiently and substantially completed for the purposes of the initial operation of the Energy Facility no later than twenty-four (24) months from Vieste's Election ("Initial Construction Completion").

If Vieste does not timely perform within the Energy Facility Commencement or the Initial Construction Completion, then Energy Facility ROFR shall, at the City's election, be deemed null and void, *ab initio*, and Vieste shall have no further rights under the Energy Facility ROFR. However, in the event that Vieste has commenced construction pursuant to its Energy Facility ROFR election but has failed to timely perform the Initial Construction Completion, City may demand that Vieste remove all partial construction of the Energy Facility from the Premises, leave the Premises in the same condition it was in prior to Vieste's commencement of the Energy Facility, cause any remediation of the Premises to be performed, and defend and hold harmless City for from and against any Claims and Environmental Claims as set forth in Section 10 below. City shall have the right, but not the obligation, to perform a Phase I Assessment (and, if necessary, a Phase II Assessment) to ensure the condition of the Premises, and Vieste shall reimburse City therefor as additional rent. The aforementioned removal of partial construction and remediation shall not affect, or apply to, Vieste's Waste Facilities or Educational Facilities.

If Vieste does not timely exercise its Energy Facility ROFR as set forth above, then Vieste's Energy Facility ROFR shall expire, and the City may accept the Offer; provided, however, that if the City does not accept the Offer or if the third party does not perform its obligation under the Offer, then Vieste will continue to have its Energy Facility ROFR set forth herein for the remainder of the Energy Facility ROFR Period, and the above procedure shall repeat.

5. **TAXES AND UTILITY EXPENSES; MAINTENANCE:**

(a) Commencing on the Rent Commencement Date, and continuing throughout the term, Vieste shall pay all utility fees and charges, including water, sewer, electricity, and gas fees or charges that are imposed with respect to the Premises or any improvements thereon.

(b) Commencing on the Rent Commencement Date, and continuing throughout the term, Vieste shall be responsible for the payment of taxes and special assessments, if any, on the Premises.

(i) Vieste shall pay any leasehold tax, possessory interest tax, sales tax, personal property tax, transaction privilege tax or other exaction assessed or assessable as a result of its occupancy of the Property or conduct of business at the Premises under authority of this Ground Lease, including any such tax assessable on the City. In the event that laws or judicial decisions result in the imposition of a real property tax on the interest of the City, such tax shall also be paid by Lessee for the period this Ground Lease is in effect.

(ii) Vieste acknowledges that it is a "prime lessee", as defined in A.R.S. § 42-6201 and that it is subject to excise tax liability under this Ground Lease pursuant to Title 42.

(c) Lessee shall, at its own cost, obtain and maintain in full force and effect during the term of this Ground Lease all licenses and permits required for the operations authorized by this Ground Lease.

(d) Any refunds or rebates of amounts paid in accordance with this Section 5 shall belong to Vieste and, with the exception of amounts assessed by City, City shall aid Vieste in obtaining any such refund or rebate, provided that the cost of obtaining the same shall be paid by Vieste. This section does not apply to any refund or rebates of assessment from a special district that incorporates the Premises.

(e) Vieste shall be responsible for maintenance of the Premises and only the Premises. If the Premises are part of a larger municipal enterprise or facility (an "City Facility"), Vieste shall have no responsibility for maintaining any other portion of the City Facility or any other parcel adjacent to the Premises, nor shall Vieste have any obligation to reimburse any party for costs in connection with such maintenance. In the event of any inconsistency between this Ground Lease and any agreement, easement or other instrument governing maintenance, operation or cost of the Premises or any other real property in the vicinity of the Premises, the provisions of this Ground Lease shall control.

6. **IMPROVEMENTS:**

(a) The improvements on the Premises shall be undertaken and completed (i) in a manner that is consistent with Arizona Revised Statutes Title 34 ("Title 34") if applicable, and as discussed in Section 7(b) below, (ii) subject to City's prior approval of the design of the Facility, and (iii) at the sole cost and expense of Vieste.

(b) Vieste shall secure all applicable building permits and approvals from City and Vieste will obtain the approval of the final plans and specifications by any and all federal, state, municipal, and other governmental authorities, offices, and departments having jurisdiction in the matter, and provide conformed copies of executed approvals to City. Upon completion of any improvements or modifications, Lessee shall furnish to City two complete sets of detailed plans and specifications of the work as completed.

(c) City shall have no liability for any structural or other defect in any plans approved by it or improvements constructed pursuant to such plans or any failure of such plans to comply with any requirements hereof or of law. Any person constructing improvements or causing improvements to be constructed on the Premises shall be solely responsible for the safety thereof and for compliance with all governmental or other requirements pertaining thereto, and approval by City shall not be deemed to satisfy or to exempt any person from the obligation to comply with any applicable governmental or other requirements.

(d) Consistent with the requirements of Title 34, as applicable, prior to the commencement of any construction on the Property, Vieste shall provide City with payment and performance bonds in amounts equal to the full amount of the written construction contract pursuant to which such construction is to be done. Each bond shall be filed with the City Clerk immediately upon execution thereof.

(e) Vieste shall begin construction of the initial building and improvements to the Property within a reasonable period of time following the issuance of a building permit and shall substantially complete such construction, subject to unavoidable delay caused by force majeure, within twenty-four (24) months after commencement of construction. In the event Vieste commences construction of the improvements for the Permitted Use but does not

complete construction of the improvements; or, if the improvements for the Permitted Use are completed but are inoperable or abandoned, such failure shall be an event of default, and Vieste shall remove the partial or completed improvements prior to surrender of the Premises. This obligation shall survive termination or expiration of this Ground Lease.

(f) During the Initial Term and any properly exercised Extension Terms, title to the improvements shall be in Vieste, and the risk of loss of the improvements shall at all times be borne by the Vieste. Subject to removal under Section 6(e) above, at the expiration or early termination of this Ground Lease, title to the Improvements shall be in City.

7. **REQUIREMENTS OF PUBLIC AUTHORITY:**

(a) Vieste shall, during the term of this Ground Lease, comply with all laws and regulations of any governmental authority with respect to the Premises ("Applicable Laws"), and nothing herein shall impede City's police powers to any extent; provided that Vieste may contest the validity of any such law or regulation (but not the City's police powers) at Vieste's sole cost. The City shall have no obligation to participate or assist Vieste.

(b) Vieste acknowledges that the City has advised Vieste that the City considers this Ground Lease and any construction related thereto subject to compliance with Title 34. City will cooperate as is reasonably necessary to assist Vieste with Title 34 compliance. Vieste will defend, indemnify and hold harmless City for, from and against any claims, damages, losses, lawsuits of any nature or kind arising out of Vieste's determination not to comply with Title 34 or that Title 34 does not apply, including, but not limited to, all attorneys' fees, expert fees and costs, penalties, interest, and any other charges assessed against the City, as more fully set forth in Section 10(b) below.

8. **LIENS:**

(a) Vieste shall take all measures necessary to prevent any type of lien or security interest being filed against the Premises and shall to be promptly discharged any mechanic's or other lien filed against the Premises by reason of any act or omission of Vieste, provided that this subsection (a) shall not be applicable to (i) the lien of any leasehold mortgage or deed of trust permitted under this Ground Lease; (ii) any statutory liens that do not interfere with the Permitted Use and are not otherwise in violation of this Ground Lease; or (iii) easements permitted by Section 12. It is understood and agreed that Vieste shall have the right to contest any lien filed against the Premises.

(b) Vieste shall not use its leasehold interest in the Premises, or any equipment installed thereupon or therein, as collateral for any financing arrangement that is not directly related to the Permitted Use and shall not allow any type of lien or security interest to be filed against the Premises, or any equipment installed thereupon or therein, that is not directly related to the Permitted Use. This subsection (b) shall govern in the event of a conflict between subsection (a) above and this subsection (b).

9. **ASSIGNMENT AND SUBLETTING:** The parties acknowledge that City is relying on Vieste's experience in the industry related to the Permitted Use, and that, therefore, Vieste may not assign or sublease this Ground Lease or any part of the Premises without obtaining the consent of City, which consent will not be unreasonably withheld. Notwithstanding the foregoing, Vieste may, upon thirty (30) days written notice to City, assign

Vieste's leasehold interest to an Affiliate (defined below); provided that such assignment shall not relieve Vieste or Parent (defined in the attached Guaranty of Ground Lease) of any of their obligations hereunder. In no way limiting the foregoing, the City's refusal to give consent to a proposed assignment by Vieste shall not be deemed unreasonable if, among other things, (i) City has knowledge that the proposed assignee or any of its Affiliates has a significant or material history of litigation or disputes involving the proposed assignee or any of its Affiliates; (ii) the proposed assignee or any of its Affiliates is in the waste disposal or waste hauling business; (iii) the proposed assignee is not considered creditworthy by the City in its reasonable judgment, which, at a minimum, means having financial capability that is not less than the financial capability of Vieste as of the Effective Date, taking into account other financial assurances provided by Vieste in this Ground Lease; or (iv) the proposed assignee does not, in the City's reasonable judgment, have the requisite technical experience relating to the assumption of Vieste's obligations hereunder. For purposes of this Ground Lease, and in no way limiting the foregoing, the sale or transfer of fifty percent (50%) or more of the direct or indirect voting, legal or equitable interest in Vieste as compared to the interests as of the date of this Ground Lease, in a single transaction or in a series of transactions, shall be deemed to be an assignment of Vieste's rights and obligations under this Agreement and subject to the provisions of this Section 9.

For purposes of an assignment or sublease, the term "Affiliate" means, when used with reference to a specified Person, any other Person that directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the specified Person. For purposes of the foregoing, "control," "controlled" and "under common control" with respect to any Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, partnership interests or other ownership interests, by contract or otherwise. The term "Person" means any individual, corporation, partnership, limited liability company, joint venture, trust, association, joint stock company, estate, unincorporated organization or other business entity, government agency or any business entity whose existence may be authorized by a government agency.

10. **INDEMNITY AND INSURANCE:**

(a) In addition to full replacement coverage for all buildings and equipment on the premises, Vieste agrees to provide and keep in force general liability insurance naming City as a named insured as required by Exhibit D.

(b) To the maximum extent permitted by applicable law, Vieste agrees to indemnify, defend and save City harmless for, from and against liability, obligations, losses, claims, damages, injury or damage to any person or property, actions, suits, proceedings, costs and expenses, including attorney's fees, arising out of, connected with, or resulting directly or indirectly from Vieste's construction and use of the Premises including, but not limited to, any claims arising out of Title 34, (provided, for purposes of indemnification, but not defense, the liability is not caused by City, its agents or employees; and, for purposes of defending City, the liability is not caused solely by City; however, it shall be deemed that City shall be fully indemnified and defended by Vieste as to all matters relating to Title 34, no liability or negligence being imputed to City as to Vieste's failure to comply with Title 34), or resulting from any acts or omissions of Vieste or anyone under its direction or control, including, but not limited to Vieste's agents or employees or anyone under its direction or control (all of the

foregoing collectively referred to in this Ground Lease as "Claims"). Notwithstanding anything contained in this Ground Lease, the indemnification arising under this subsection and all indemnification obligations of Vieste to City under this Ground Lease shall continue in full force and effect, notwithstanding the fulfillment or non-fulfillment of any obligations under the Ground Lease and survives the termination or expiration of the Ground Lease.

(c) In addition to the indemnification set forth above, Vieste will defend, indemnify and hold harmless City for, from and against any loss or Vieste incurs in connection with or as a result of this Ground Lease that directly or indirectly arises out of the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials by Vieste ("Environmental Claims"). This indemnity will apply whether the Hazardous Materials are on, under or about City's property or operations or property leased by City. The indemnity includes but is not limited to attorneys' fees, expert fees and costs (including the reasonable estimate of the allocated cost of in-house counsel and staff). The indemnity extends to City and all of its elected officials, officers, employees, agents, successors and assigns and survives the termination or expiration of this Ground Lease. For purposes of this Ground Lease:

(i) "Environmental Laws" shall mean any federal, state or local statute, regulation or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, with respect to any Hazardous Materials, drinking water, groundwater, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water runoff, waste emissions or wells. Without limiting the generality of the foregoing, the term shall encompass each of the following statutes, and regulations, orders, decrees, permits, licenses and deed restrictions now or hereafter promulgated thereunder, and amendments and successors to such statutes and regulations as may be enacted and promulgated from time to time: (i) the Comprehensive Environmental Response, Compensation and Liability Act (codified in scattered sections of 26 U.S.C., 33 U.S.C., 42 U.S.C. and 42 U.S.C. Section 9601 et seq.) ("CERCLA"); (ii) the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.) ("RCRA"); (iii) the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.); (iv) the Toxic Substances Control Act (15 U.S.C. Section 2061 et seq.); (v) the Clean Water Act (33 U.S.C. Section 1251 et seq.); (vi) the Clean Air Act (42 U.S.C. Section 7401 et seq.); (vii) the Safe Drinking Water Act (21 U.S.C. Section 349, 42 U.S.C. Section 201 and Section 300f et seq.); (viii) the National Environmental Policy Act (42 U.S.C. Section 4321 et seq.); (ix) the Superfund Amendments and Reauthorization Act of 1986 (codified in scattered sections of 10 U.S.C., 29 U.S.C., 33 U.S.C. and 42 U.S.C.); (x) Title III of the Superfund Amendment and Reauthorization Act (40 U.S.C. Section 1101 et seq.); (xi) the Uranium Mill Tailings Radiation Control Act (42 U.S.C. Section 7901 et seq.); (xii) the Occupational Safety and Health Act (29 U.S.C. Section 655 et seq.); (xiii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.); (xiv) the Noise Control Act (42 U.S.C. Section 4901 et seq.); and (xv) the Emergency Planning and Community Right to Know Act (42 U.S.C. Section 1100 et seq.).

(ii) "Hazardous Materials" means each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under any Environmental Law. Without limiting the generality of the foregoing, the term shall mean and include:

(1) "Hazardous Substance(s)" as defined in CERCLA, the Superfund Amendments and Reauthorization Act of 1986, or Title III of the Superfund Amendment and Reauthorization Act, each as amended, and regulations promulgated thereunder including, but not limited to, asbestos or any substance containing asbestos, polychlorinated biphenyls, any explosives, radioactive materials, chemicals known or suspected to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions, infectious wastes, any petroleum or petroleum-derived waste or product or related materials and any items defined as hazardous, special or toxic materials, substances or waste;

(2) "Hazardous Waste" as defined in the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder;

(3) "Materials" as defined as "Hazardous Materials" in the Hazardous Materials Transportation Act, as amended, and regulations promulgated thereunder; and

(4) "Chemical Substance or Mixture" as defined in the Toxic Substances Control Act, as amended, and regulations promulgated thereunder.

(5) "Governmental Authorities" means the United States, the State of Arizona and any political subdivision thereof, and any and all agencies, departments, commissions, boards, bureaus, bodies, councils, offices, authorities, or instrumentality of any of them, of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

(6) "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaching, dumping, discarding, burying, abandoning, or disposing into the environment.

11. **CONDEMNATION:** If the whole of the Premises shall be taken or condemned by any competent authority (other than the City) for any public use or purpose under any statute or by right of eminent domain, or by a private purchase in lieu thereof under threat of such eminent domain proceedings, then in either of such events, this Ground Lease shall expire on the date when the Premises shall be so taken and the rent shall be prorated as of that date. In the event that part of the Premises shall be taken or condemned and the part so taken shall result in (i) cutting off or severely impairing direct access from the Premises to any adjoining street or highway, or (ii) in Vieste's reasonable opinion, materially impacting Vieste's ability to do business on the Premises, then, in such event, Vieste may elect to terminate this Ground Lease as of the date possession shall be taken by such authority. Such notice of election to terminate shall be given in writing to City within ninety (90) days after official notice to Vieste of the portion to be taken. Condemnation awards shall be paid in the following priority: first, to City for the value of City's fee interest (unless City is the condemning authority, in which case City will have no award); second to Vieste for the value of Vieste's leasehold interest; and third to Vieste for the unamortized value of its improvements on the Premises, determined in accordance with Vieste's customary accounting practice.

12. **UTILITY EASEMENTS AND ROADS:** Upon prior written approval by City, which approval may be withheld in City's reasonable discretion, Vieste may agree to reasonable easements to utility providers, contractors, subcontractors representatives, invitees, permittees, agents and leasehold mortgagees and their designees as may be required to demolish, design, construct, renovate, replace, own, operate, maintain, and service the improvements on the Premises, and City will, after such approval, execute any documents reasonably necessary to evidence the same. Vieste acknowledges that a recorded, dedicated roadway easement in a certain area may not be possible, since the roads within the City Landfill change from time to time. However, City will provide reasonable access to the Premises. City will assist Vieste by providing such reasonable access to the Premises which will enable Vieste to obtain a title insurance access endorsement or similar endorsement for the Premises and to obtain the permits and licenses necessary to develop, construct and operate the Facilities on the Premises.

13. **MORTGAGES:**

(a) City recognizes that Vieste is securing outside funding for the development of the Facility. Vieste may mortgage its interest in this Lease or any part thereof under any first or other leasehold mortgage, provided that City is notified in writing of the making of any such mortgage, and the terms of such mortgage do not conflict with this Ground Lease. Any such leasehold mortgage shall be subordinate to the City's fee title to the land comprising the Premises and the city landfill.

(b) City's right to terminate this Lease pursuant to Section 17 after a default by Vieste is subject to City's first delivering to any leasehold mortgagee, simultaneously with delivery thereof to Vieste, notice of such default. In addition to any cure periods granted to Vieste set forth under Section 17, City shall afford to a leasehold mortgagee the additional time provided below (i) to cure such Event of Default, and City shall accept such performance as if the same had been done by Vieste, or (ii) to cause the leasehold mortgagee or its designee to assume this Lease and cure Vieste's Event of Default within such additional time period. City also agrees that as a result of any default there shall be no cancellation, amendment or termination of this Lease by joint action of City and Vieste without first providing a leasehold mortgagee an opportunity to satisfy said default within the same time period.

(i) In the case of an Event of Default arising from the failure of Vieste to pay any sums of money that this Lease requires (each, a "Monetary Default"), City shall afford a leasehold mortgagee whose interest has been duly noticed to the City an additional period of sixty (60) calendar days from the date of notice of default to cure such default.

(ii) In the case of an Event of Default that is not a Monetary Default, except as provided below, City shall afford a leasehold mortgagee whose interest has been duly noticed to the City an additional an additional period of ninety (90) days from the date of notice of default to cure such default, provided that City is not subject to the assessment of any penalty. If the City is subject to a Risk of Penalty (defined in Section 17(e) below), regardless of any indemnification or insurance provisions of this Ground Lease (which shall remain in effect), the right to cure shall be for a period equal to the period mandated by any applicable

regulatory authority with respect to City's obligation to cure or rectify any violations relating to is permits, licenses, or other authorizations.

(c) Intentionally Deleted.

(d) Intentionally Deleted.

(e) Intentionally Deleted.

14. **CITY'S PRELIMINARY DUTIES:** Within 30 days after the Effective Date, City, to the extent such information is in City's possession, shall provide to Vieste at the main notice address shown in Section 20 below, or shall make available at City's office, copies of (i) any existing survey and legal description of the Premises and any existing title insurance and related supporting materials for the Premises, (ii) all existing soils reports, environmental site assessments and similar materials in City's possession relating to the Premises and (iii) all existing permits, development approvals, licenses and other entitlements affecting the Premises. The City does not guarantee that the information provided is complete or accurate and provides no warranties as to the information provided under this Section 14. City shall cooperate reasonably with Vieste in connection with all due diligence, permitting and development activity at the Premises.

15. **QUIET ENJOYMENT AND PERMITTED USES:**

(a) City covenants and warrants that Vieste shall peacefully have and enjoy the sole possession of the Premises. In addition, Vieste shall peacefully have and enjoy common non-exclusive use of all common areas and common facilities of the City Landfill, if any, during the term free from the adverse claims of any persons, firms or other entities whatsoever. City will fully protect Vieste in the full, complete and absolute possession of the Premises and Vieste's rights of non-exclusive use of the common areas and common facilities, if applicable, subject, in all cases, to the terms and conditions of this Ground Lease. City agrees not to file or cause any zoning change to be made that would affect the Premises without the prior written approval of Vieste.

(b) City represents and warrants that the use of the Premises for the Permitted Use is a permitted use under the Applicable Laws applicable to the Premises, and that Vieste will be permitted without delay to obtain the building permits and authorizations necessary for the construction and operation of the facility contemplated by the Permitted Use without the imposition of charges other than charges of the type and amount which are customarily and normally charged in the locality in which the Premises are located. Subject to all then existing rights and agreements and zoning restrictions, Vieste shall have the right, during the term of this Ground Lease, to construct, operate and maintain the Facility at Vieste's sole risk, cost and expense.

(c) The City shall not file or cause any zoning change which would prohibit or materially restrict the construction or operation of the Energy Facilities for a five (5) year period after the Rent Commencement Date (the "Limitation Period") and, if the construction of the Energy Facilities has been begun within five (5) years after the Rent Commencement Date, then the Limitation Period shall be extended to seven (7) years.

16. **CITY DEFAULT:** If City shall default in the performance of any agreement or obligation in this Lease or breach any of City's representations and warranties set forth in this Lease, and shall not cure such default within one hundred eighty (180) days after notice from Vieste specifying the default, Vieste shall have all rights and remedies available to it at law and in equity, including injunctive relief.

17. **DEFAULTS:**

(a) Vieste is in default of the Ground Lease if:

(i) Vieste's failure to pay any installment of rent for a period of thirty (30) days after it is due;

(ii) The lapse or cancellation of required insurance coverage which is not remedied and corrected by Vieste within three (3) days after such lapse or cancellation;

(iii) Vieste fails to comply with any other obligation herein contained and the continuance of such failure for a period of thirty (30) days after receipt by Vieste from City of notice in writing specifying in detail the nature of such failure (unless the cure cannot reasonably be completed in thirty (30) days, in which event, so long as Vieste has commenced the cure within the thirty-day period and diligently prosecutes the same to completion, up to a maximum of ninety (90) days, Vieste shall not be in default); or

(iv) Vieste is in default under the Waste Agreement, in which event, no further cure period is to be provided under this Ground Lease.

(v) Vieste (a) is unable to pay its debts as such debts become due; (b) makes a general assignment or an arrangement or composition with or for the benefit of its creditors; (c) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against such party under any bankruptcy or similar law; or (d) takes any action for the purpose of effecting any of the foregoing.

(vi) A proceeding or case is commenced, without the application or consent of Vieste, in any court of competent jurisdiction, seeking: (a) its liquidation, reorganization of its debt, dissolution or winding up, or composition or readjustment of its debt; (b) the appointment of a receiver, custodian, liquidator or the like of Vieste or of all or any substantial part of its assets; or (c) insolvency, reorganization of its debts, winding up, composition or adjustment of debts, and such proceeding remains in effect, for a period of ninety (90) days.

(vii) Any representation made by Vieste under Section 21 below is false in any material respect when made and Vieste fails to remedy such false representation within sixty (60) days after written notice thereof by City; provided, however, that if such breach is not susceptible to cure within sixty (60) days, this such sixty (60) day cure period should be extended for an additional period (not to exceed one hundred eighty (180) days, provided Vieste is diligently pursuing such cure) to cure such breach.

(b) If Vieste is in default, City may, subject to the provisions of Section 13 hereof regarding a leasehold mortgagee, give to Vieste a notice of its election to terminate this Ground Lease upon a date (at least ten (10) days after the date of the notice) specified in such notice, and, if Vieste fails to cure the default within the thirty (30) days thereafter for any event

of default under (a)(i)-(iii) above (no further notice being required under (a)(iv)), then this Ground Lease shall terminate, Vieste will surrender the Premises in accordance with the terms of this Ground Lease (including, but not limited to, the removal of partially completed, non-operational or abandoned improvements, if required under Section 6(e) above), no further rental shall be due hereunder, and no further duties or obligations shall be due by either party, except for any provisions that survive termination. Notwithstanding the above, while the lapse or cancellation of required insurance coverage shall be a default subject to cure under this Ground Lease, such cure shall not be effective unless a new or renewed policy is issued which specifically provides the required coverage to City for any liability arising during the lapsed or previously uncovered period.

(c) Without limitation of the foregoing, City acknowledges and agrees that it shall have no right to cause any rental obligation hereunder to be accelerated, and City hereby waives the benefit of any statutory or common law which would have provided such right.

(d) City shall send a copy of any notice of default to any person to whom Vieste has requested in writing (pursuant to Section 20) such notice be sent

(e) If the City gives notice of any default which by its nature cannot be cured within the period specified in the preceding subsection, then such period shall be extended for so long as Vieste is proceeding with best efforts to cure such default as soon as reasonably possible under the circumstances, and provided that the City is not subject to the assessment of any penalty. Notwithstanding the foregoing, if any breach or default by Vieste under this Ground Lease subjects City to any risk of loss, liabilities, legal actions, penalties, fines, etc., with respect to any permits, licenses or authorization relating to the City Landfill operations ("Risk of Penalty"), Vieste's right to cure (and any leasehold mortgagee's right to cure under Section 13) shall be for a period equal to the period mandated by any applicable regulatory authority with respect to City's obligation to cure or rectify any violations relating to its permits, licenses, or other authorizations. In addition, Vieste shall immediately cease any and all activity causing the assessment of the penalty and make every effort to immediately remedy the default.

(f) City shall have all rights and remedies provided by law or in equity, subject to any specific limitations set forth above.

18. **WAIVERS:** Neither party hereto shall be deemed to have waived any right hereunder for failure to complain of any act or omission of the other party.

19. **INTENTIONALLY DELETED.**

20. **CITY REPRESENTATIONS:** City represents and warrants that:

(a) City has fee simple title to the Premises and the power and authority to execute and deliver this Ground Lease and to comply with all the provisions hereof.

(b) Intentionally Deleted.

(c) Intentionally Deleted.

(d) At all times Vieste shall have free and unobstructed access to the Premises as indicated by City. City grants to Vieste, its employees, contractors, subcontractors representatives, invitees, permittees, agents and leasehold mortgagees (collectively, the "Vieste Agents") the right to gain access to the Premises through a non-exclusive route or routes through the City Landfill to be designated by City from time to time and to use the streets, driveways, sidewalks, and walkways on and adjacent to the City Landfill for the purposes of pedestrian and vehicular ingress and egress to and from, the Premises in order to carry out the Permitted Use and to exercise the privileges granted in this Ground Lease. In the event a portion of the existing access or future access as agreed to by the parties is temporarily obstructed, alternate access shall be provided by City.

(e) The execution and entry into this Ground Lease, the execution and delivery of the documents and instruments to be executed and delivered by City hereunder, and the performance by City of City's duties and obligations under this Ground Lease and of all other acts necessary and appropriate for the full consummation of the lease of the Premises as contemplated herein, are consistent with and not in violation of, and will not create any adverse condition under, any contract, agreement or other instrument to which City is a party, any judicial order or judgment of any nature by which City is bound.

(f) To the best of City's actual knowledge, City has received no notice of, nor is City aware of, any pending, threatened or contemplated action by any governmental authority or agency having the power of eminent domain, which might result in all or any part of the Premises being taken by condemnation or conveyed in lieu thereof.

(g) To the best of City's actual knowledge, there is no action, suit or proceeding pending or, to City's knowledge, threatened by or against or affecting City or the Premises which does or will involve or affect the Property or title thereto or City's ability to perform its obligations under this Ground Lease or any documents entered into pursuant to this Ground Lease.

(h) No assessments have been made against any portion of the Premises which are unpaid (except ad valorem taxes for the current year), whether or not they have become liens; and City shall notify Vieste of any such assessments which are brought to City's attention after the execution of this Ground Lease.

(i) To the best of City's actual knowledge, there is no dispute involving or concerning the location of the lines and corners of the Premises, and, such lines and corners are clearly marked; to City's knowledge there are no encroachments on the Premises, no gaps or gores exist within the Premises and no portion of the Premises is located within any "Special Flood Hazard Area" designated by the United States Department of Housing and Urban Development and/or Federal Emergency Management Agency, or in any area similarly designated by any agency or other governmental authority; and no portion of the Premises is located within a watershed area imposing restrictions upon use of the Premises or any part thereof.

(j) To the best of City's actual knowledge, there are no violations of state or federal law, municipal or county ordinances, or other legal requirements with respect to the Premises, or any legal requirements with respect to the Premises.

(k) No prior options or rights of first refusal have been granted by City to any third parties to purchase or lease any interest in the Premises, or any part thereof, which are effective as of the Effective Date.

(l) City is not indebted to any contractor, laborer, mechanic, materialmen, architect or engineer for work, labor or services performed or rendered, or for materials supplied or furnished, in connection with the Premises for which any person could claim a lien against the Premises and has not done any work on the Premises within one hundred eighty (180) days prior to the Effective Date. City shall provide Vieste's title company with a sufficient owner's affidavit and/or indemnity agreement as required by such title insurance company so that Vieste shall be able to obtain, at its sole cost and expense, a leasehold title insurance policy in form and substance satisfactory to Vieste.

(m) During City's ownership of the Premises to date, although the Premises are located within a portion of the City Landfill, the Premises have not been operated as a municipal waste facility and landfill. City has no actual knowledge as to any inspections, audits, inquiries, or other investigations that have been or are being conducted by any Government Authority or other authorized person with respect to the presence or discharge of Hazardous Materials at the Premises or the quality of the air, or surface or subsurface conditions at the Premises. During the Term of this Lease, the City shall provide to Vieste a copy of any written notice of a governmental inspection or investigation within fifteen (15) days after receipt.

(n) City will defend, indemnify and otherwise hold Vieste harmless from any and all claims, including any and all costs, expenses, and attorneys' fees which Vieste may incur as a result of City's breach of its representations made in this Ground Lease. City will, promptly upon receiving any such notice or learning of any such contemplated or threatened action, give Vieste notice thereof.

21. **VIESTE REPRESENTATIONS:** Vieste represents and warrants that:

(a) It is an entity duly organized and validly existing under the laws of the State of Arizona.

(b) The execution, delivery and performance of this Ground Lease by Vieste has been duly authorized by all requisite company action and does not require any other company action or approval.

(c) It has the power and authority to execute and deliver this Ground Lease and to perform its obligations hereunder.

(d) The execution of this Ground Lease and the full performance and enjoyment of the rights of Vieste under this Ground Lease will not breach or in any way be inconsistent with (i) the terms and conditions of any license, contract, understanding, or agreement, whether express, implied, written, or oral between the Vieste and any third party, (ii) the provisions of its organizational documents, or (iii) any order, writ, injunction or decree of any court or governmental authority entered against it or by which any of its property is bound.

22. **NOTICES:**

(a) Any and all notices, demands or requests required or permitted hereunder shall be in writing and shall be effective upon personal delivery or two (2) business days after being deposited in the U. S. Mail, registered or certified, return receipt requested, postage prepaid, or one (1) business day after being deposited with any commercial air courier or express service, addressed as follows:

If to City:

City Manager
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

If to Vieste:

VIESTE Energy, LLC
105 West Adams Street, Suite 2700
Chicago, IL 60603
Attention: Co-Managing Member

With a copy to:

City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

With a copy to:

Ridenour, Hienton & Lewis, P.L.L.C
Attention: James R. Hienton
201 North Central Avenue, Suite 3300
Phoenix, AZ 85004

Notice shall be deemed to have been given upon receipt or refusal. The telephone numbers listed above are for purposes of providing the same to overnight delivery services and are not to be otherwise used for notice purposes. Upon agreement of the parties, notice may be provided via electronic delivery provide that in all cases notice shall be deemed to be given only upon acknowledgement of receipt by the receiving party.

23. **MISCELLANEOUS:**

(a) This Ground Lease may be simultaneously executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

(b) In the event that any provisions of this Ground Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

(c) This Ground Lease, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto, and supersedes all prior agreements and may be modified only in writing.

(d) It is expressly understood and agreed that enforcement of the terms and conditions of this Ground Lease, and all rights of action relating to such enforcement, shall be strictly reserved to the parties hereto, and nothing contained in this Ground Lease shall give or allow any such claim or right of action by any other or third person or entity on this Ground Lease. It is the express intention of the parties hereto that any person or entity, other than the parties to this Ground Lease, receiving services or benefits under this Ground Lease shall be deemed to be incidental beneficiaries only.

(e) The parties acknowledge that this Ground Lease is subject to cancellation by City pursuant to A.R.S. § 38-511, the provisions of which are incorporated herein. The parties represent that, to the best of their knowledge, no basis exists for City to cancel this Ground Lease pursuant to A.R.S. § 38-511 as of the date hereof. Vieste covenants not to employ as an employee, an agent or, with respect to the subject matter of this Ground Lease, a consultant, any person significantly involved in initiating, negotiating, securing, drafting or creating this Ground Lease on behalf of City within three (3) years from execution of this Ground Lease, unless a waiver of A.R.S. § 38-511 is provided by City

(f) Either party shall, without charge and within sixty (60) days after any request of the other, certify in writing to any person specified in such request, as to the existence, amendment, validity of this Ground Lease and the existence of any default or counterclaim hereunder. Any such certificate may be relied upon by any party requesting it and by any person to whom the same may be exhibited.

(g) This Ground Lease shall be construed under and governed by the laws of the State of Arizona.

(h) The parties shall execute a Memorandum of Ground Lease in the form set forth as Exhibit C attached hereto, setting forth the parties, term extension options, rights of first refusal and other provisions requested by Vieste.

(i) As used herein, the singular shall include the plural and the masculine gender shall include the feminine and neuter genders unless the context shall require otherwise. Section headings are for convenience and shall not be used to construe this Ground Lease. This Ground Lease may be executed in multiple counterparts each of which shall be an original. The terms "City" and "Vieste" as used herein shall mean only the owner at the time of City's or Vieste's

interest herein (or any part thereof) and upon the sale or assignment of the interest of either party hereto, their successors in interest shall be deemed to be City or Vieste, as the case may be.

(j) Unless otherwise expressly provided herein, the provisions of this Ground Lease shall bind and inure to the benefit of City and Vieste and their respective successors.

(k) City warrants that no commissions, brokerage fees, or any other similar fees arising as a result of, or because of the consummation of this Ground Lease Ground Lease have are due, and City agrees to indemnify and hold Vieste harmless from any such claim.

24. **IMMIGRATION LAW COMPLIANCE:**

(a) Vieste, for itself and on behalf any allowable subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.

(i) Any breach of warranty of this section is considered a material breach of this Ground Lease and is subject to penalties up to and including termination of this Ground Lease.

(ii) The City retains the legal right to inspect the papers of any Vieste or subcontractor employee who performs work under this Ground Lease to ensure that the Vieste or any subcontractor is compliant with the warranty under section.

(iii) The City may conduct random inspections, and upon request of the City, Vieste must provide copies of papers and records of Vieste demonstrating continued compliance with the warranty under this Section 24.

(iv) Vieste agrees to keep papers and records available for inspection by the City during normal business hours.

(v) Vieste must cooperate with the City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this Section 24.

(vi) Vieste must incorporate into any subcontract agreements that are allowable under this Ground Lease, if any, the same obligations imposed upon Vieste and expressly accrue those obligations directly to the benefit of the City.

(vii) Vieste must require any allowable subcontractor to incorporate into each of its own subcontracts under this Ground Lease the same obligations above and expressly accrue those obligations to the benefit of the City.

(viii) Vieste's warranty and obligations under this section to the City is continuing throughout the term of this Ground Lease or until such time as the City determines, in

its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.

(b) The “E-Verify Program” above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

25. **PROHIBITION ON BUSINESS WITH IRAN AND SUDAN:** Vieste certifies under A.R.S. §§ 35-391 *et seq.* and 35-393 *et seq.* that it does not have, and during the term of this Ground Lease will not have, “scrutinized” business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.

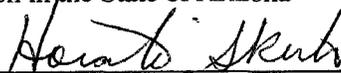
26. **GUARANTY OF GROUND LEASE:** This Ground Lease is conditioned upon receipt of the executed Guaranty of Ground Lease by Vieste Energy, LLC, an Indiana limited liability company, in form attached hereto.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Ground Lease to be executed by their duly authorized officers as of the day and year set forth below their respective signatures.

CITY:

CITY OF GLENDALE, a municipal corporation in the State of Arizona

By: 
Name: Horatio Skeete
Title: Acting City Manager

Date of Execution: 01/15/13

Approved as to form:

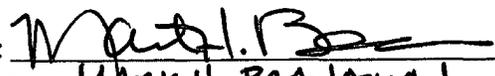

City Attorney

Attestation:

City Clerk (Seal)

VIESTE:

VIESTE SPE, LLC, an Arizona limited liability company

By: 
Name: MARK H. BRAJAMA
Title: BOARD MEMBER

Date of Execution: NOVEMBER 13, 2012

State of LOUISIANA)
County of HAMMON) ss.

The foregoing instrument was acknowledged before me this 13th day of November, 2012, by MARK BRANAMAN, the BOARD MEMBER of VIESTE SPE, LLC, an Arizona limited liability company, on behalf of the company.

(Seal and Expiration Date)



Notary Public

LIST OF EXHIBITS
and
ATTACHMENTS

Exhibit A: Description of Premises

Exhibit B: Depiction of Premises and City Landfill

Exhibit C: Form of Memorandum of Ground Lease

Exhibit D: Tenant Insurance Requirements

Guaranty of Ground Lease

EXHIBIT A

DESCRIPTION OF PREMISES

LEGAL DESCRIPTION

FOR

WTE FACILITY

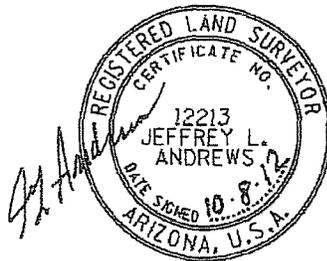
THAT PORTION OF GLO LOT 1 OF SECTION 1, TOWNSHIP 2 NORTH, RANGE 1 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA. LYING FULLY WITHIN THAT PARCEL OF LAND DESCRIBED IN DEED 1991-475093 MARICOPA COUNTY RECORDER, DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHEAST CORNER OF SAID GLO LOT 1; THENCE SOUTH ALONG THE EAST LINE OF SAID GLO LOT 1 A DISTANCE OF 1,010.00 FEET; THENCE DEPARTING SAID EAST LINE, WEST PARALLEL WITH AND 1,010.00 FEET SOUTH OF THE NORTH LINE OF SAID GLO LOT 1 A DISTANCE OF 193.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING WEST PARALLEL WITH AND 1,010.00 FEET SOUTH OF SAID NORTH LINE A DISTANCE OF 630.00 FEET; THENCE NORTH PARALLEL WITH AND 823.00 FEET WEST OF SAID EAST LINE A DISTANCE OF 415.00 FEET; THENCE EAST PARALLEL WITH AND 595.00 FEET SOUTH OF SAID NORTH LINE A DISTANCE OF 630.00 FEET; THENCE SOUTH, PARALLEL WITH AND 193.00 FEET WEST OF SAID EAST LINE A DISTANCE OF 415.00 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 261,450 SQUARE FEET MORE OR LESS.

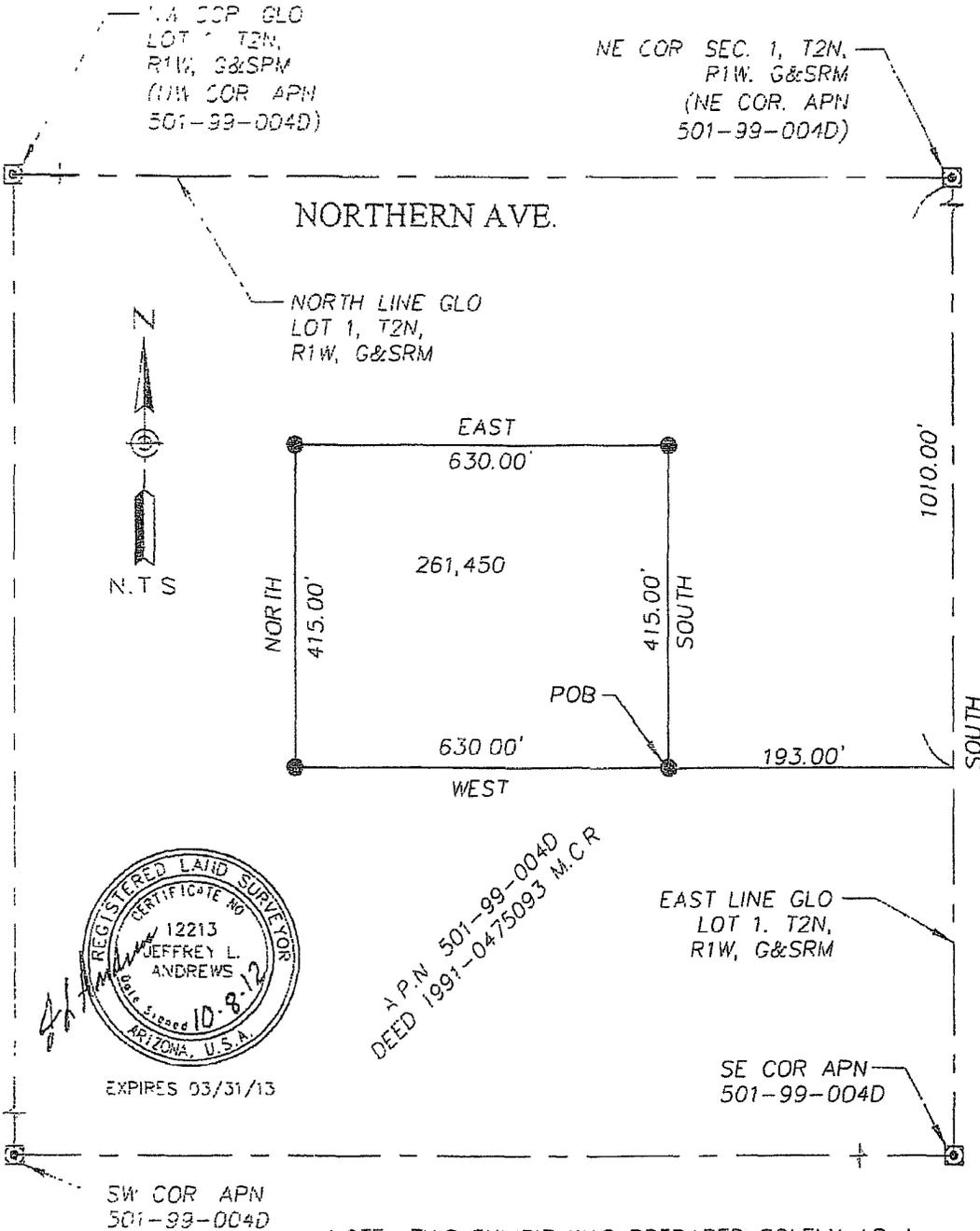
NOTE: LEGAL DESCRIPTION PREPARED WITHOUT BENEFIT OF FULL SECTIONAL SURVEY BREAKDOWN.

LEGAL DESCRIPTION SHOWN HEREON IS NOT INTENDED FOR CONVEYANCE OF REAL PROPERTY.



EXPIRES 03/31/13

EXHIBIT



EXPIRES 03/31/13

A.P.N. 501-99-004D
DEED 1991-0475093 M.C.R

EAST LINE GLO
LOT 1, T2N,
R1W, G&SRM

SE COR APN
501-99-004D

SW COR APN
501-99-004D

NOTE: THIS EXHIBIT WAS PREPARED SOLELY AS A REFERENCE FOR THE LEGAL DESCRIPTION TO WHICH IT IS ATTACHED IT IS NOT MEANT TO BE A STANDALONE DOCUMENT NOR THE RESULT OF A FIELD SURVEY.

	BY	DATE
DESIGNED	SL	OCT 2012
DRAWN	SL	OCT 2012

EXHIBIT B

DEPICTION OF PREMISES AND CITY LANDFILL

EXHIBIT C

FORM OF MEMORANDUM OF LEASE

WHEN RECORDED MAIL TO:

City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

SPACE ABOVE THIS LINE FOR RECORDER'S USE
ONLY

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE ("Memorandum") shall evidence that there is in existence a Ground Lease as described herein. The parties have executed this Memorandum for recording purposes only as to the Ground Lease hereinafter described, and it is not intended to and shall not modify, amend, supersede or otherwise affect the terms and provisions of said Lease. In the event of any conflict between this Memorandum and the Ground Lease, the Ground Lease shall control. All of the capitalized terms contained herein are defined in the Ground Lease.

1. Name of Document: Ground Lease
2. Name of Ground Lessor: **CITY OF GLENDALE**, a municipal corporation in the State of Arizona
3. Name of Ground Lessee: **VIESTE SPE, LLC**, an Arizona limited liability company registered to do business in Arizona
4. Address of Ground Lessor: City Manager
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

With a copy of notices to:

City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

5. Address of Ground Lessee: VIESTE Energy, LLC
105 West Adams Street, Suite 2700
Chicago, IL 60603
Attention: Co-Managing Member

With a copy of notices to:
Ridenour, Hienton & Lewis, P.L.L.C
Attention: James R. Hienton
201 North Central Avenue, Suite 3300
Phoenix, AZ 85004

6. Date of Lease: _____, 2012

7. Premises: Subject to the provisions of this Ground Lease, all of that certain tract, approximately six (6) acres in size, a part of the "City Landfill" located at 11480 West Glendale Avenue, Glendale, Arizona 85307, Maricopa County, Arizona, more particularly described on Exhibit A attached hereto.

8. Commencement Date: No later than January 1, 2014

9. Initial Lease Term: 30 years

Extension Term 1 5-year Extension Term if exercised pursuant to Ground Lease

10. Energy Facility Right of First Refusal: Under Section 4(d) of the Ground Lease:

"For a period of five (5) years beginning with the Rent Commencement Date, the City hereby grants to Vieste the exclusive right to develop, construct and operate a waste to energy facility at the City Landfill where the Premises are located (the "Exclusivity Period"). Immediately following the expiration of the Exclusivity Period, the City grants to Vieste a right of first refusal to develop, construct and operate a waste to energy facility at the City Landfill ("Energy Facility ROFR"). The Energy Facility ROFR shall be in effect for the two (2) year period."

This Memorandum of Ground Lease may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

A copy of the Ground Lease is on file with Ground Lessor in the City Clerk's Office and with Ground Lessee at their addresses forth above.

[Signature Pages Follow]

GROUND LESSOR:

CITY OF GLENDALE, a municipal corporation in the State of Arizona

By: Horatio Skeete
Name: Horatio Skeete
Title: Acting City Manager

Date of Execution: 01/15/13

Approved as to form:


City Attorney

Attestation:


City Clerk

GROUND LESSEE:

VIESTE SPE, LLC, an Arizona limited liability company

By: Mark H. Branaman

Name: MARK H. BRANAMAN

Title: BOARD MEMBER

Date of Execution: NOVEMBER 13, 2012

STATE OF INDIANA)
COUNTY OF HAMILTON)^{SS}

The foregoing document was acknowledged before me this 13th day of November, 2012 by MARK BRANAMAN, a BOARD MEMBER of Vieste SPE, LLC, an Arizona limited liability company, on behalf of the company.

[Signature]
Notary Public

My Commission Expires:
January 25, 2020

EXHIBIT A
To
Memorandum of Ground Lease

LEGAL DESCRIPTION OF PREMISES

LEGAL DESCRIPTION

FOR

WTE FACILITY

THAT PORTION OF GLO LOT 1 OF SECTION 1, TOWNSHIP 2 NORTH, RANGE 1 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA. LYING FULLY WITHIN THAT PARCEL OF LAND DESCRIBED IN DEED 1991-475093 MARICOPA COUNTY RECORDER, DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHEAST CORNER OF SAID GLO LOT 1; THENCE SOUTH ALONG THE EAST LINE OF SAID GLO LOT 1 A DISTANCE OF 1,010.00 FEET; THENCE DEPARTING SAID EAST LINE, WEST PARALLEL WITH AND 1,010.00 FEET SOUTH OF THE NORTH LINE OF SAID GLO LOT 1 A DISTANCE OF 193.00 FEET TO THE **POINT OF BEGINNING**; THENCE CONTINUING WEST PARALLEL WITH AND 1,010.00 FEET SOUTH OF SAID NORTH LINE A DISTANCE OF 630.00 FEET; THENCE NORTH PARALLEL WITH AND 823.00 FEET WEST OF SAID EAST LINE A DISTANCE OF 415.00 FEET; THENCE EAST PARALLEL WITH AND 595.00 FEET SOUTH OF SAID NORTH LINE A DISTANCE OF 630.00 FEET; THENCE SOUTH, PARALLEL WITH AND 193.00 FEET WEST OF SAID EAST LINE A DISTANCE OF 415.00 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 261,450 SQUARE FEET MORE OR LESS.

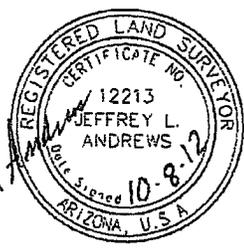
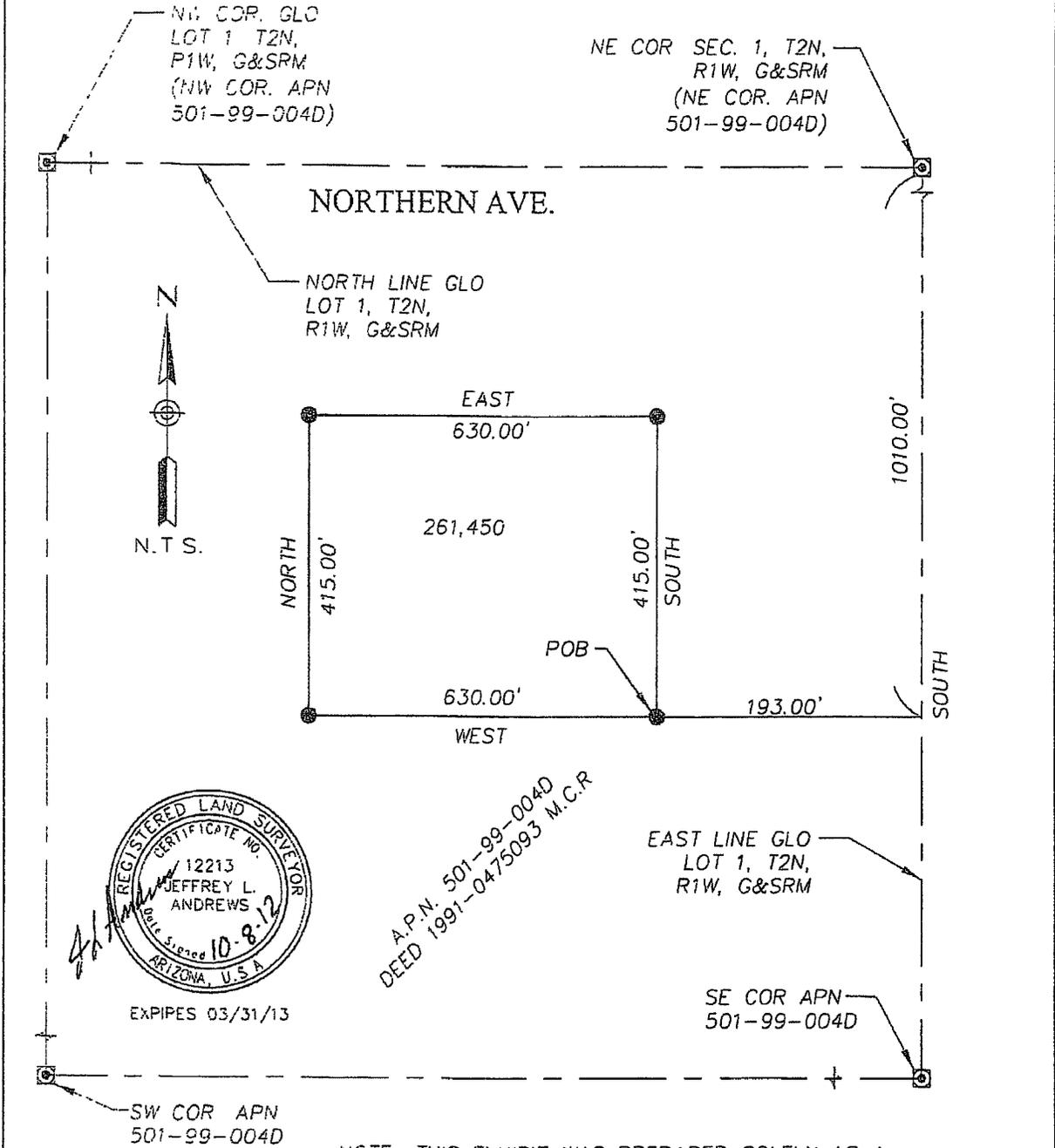
NOTE: LEGAL DESCRIPTION PREPARED WITHOUT BENEFIT OF FULL SECTIONAL SURVEY BREAKDOWN.

LEGAL DESCRIPTION SHOWN HEREON IS NOT INTENDED FOR CONVEYANCE OF REAL PROPERTY.



EXPIRES 03/31/13

EXHIBIT



A.P.N. 501-99-004D
DEED 1991-0475093 M.C.R

EXPIRES 03/31/13

NOTE: THIS EXHIBIT WAS PREPARED SOLELY AS A REFERENCE FOR THE LEGAL DESCRIPTION TO WHICH IT IS ATTACHED IT IS NOT MEANT TO BE A STANDALONE DOCUMENT NOR THE RESULT OF A FIELD SURVEY.

	BY	DATE
DESIGNED	S-T	OCT 2012
DRAWN	SAT	OCT 2012

ALPHA ENGINEERING

4845 N 12TH ST. STE 300 PHOENIX, ARIZONA 85014 PHONE (602) 266 7200 FAX (602) 266 2701

WTE FACILITY

JOB NUMBER	09015
SHEET	OF
1	1

EXHIBIT "D"

INSURANCE REQUIRED OF OPERATOR

Definitions. Capitalized terms that are used but not otherwise defined in this Exhibit "D" (this "**Exhibit**") shall have the meanings set forth in Section 10 of the Ground Lease and Waste Supply Agreement (the "**Operator Agreement**") to which this Exhibit is attached.

MINIMUM SCOPE AND LIMITS OF INSURANCE

The Operator shall procure and maintain until all their obligations have been discharged insurance against claims for injury to persons or damage to property which may arise from or in connection with the Operator Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect the Operator from liabilities that might arise. The Operator shall provide coverage with limits of liability no less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

A. **Workers' Compensation & Employers' Liability:** The Operator shall maintain statutory workers' compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over all employees of the Operator engaged in the performance of work relating to management of the Ground. Workers' Compensation insurance shall be endorsed with a waiver of subrogation in favor of the City of Glendale for all work performed by the Operator, its employees, agents and subcontractors. Workers' Compensation coverage will contain Employers' Liability with limits no less than \$1,000,000 each accident, \$1,000,000 policy limit bodily injury by disease, \$1,000,000 each employee bodily injury by disease.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Glendale.

B. **Commercial General Liability:** The Operator shall maintain coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury and liability assumed under an insured contract. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01). The policy shall contain severability of interest provisions. The liability limits shall be no less than the following:

\$5,000,000	Per occurrence
\$10,000,000	General aggregate
\$5,000,000	Products/completed operations aggregate
\$5,000,000	Personal and advertising injury

1. The policy shall be endorsed to include the following additional insured language: "The City of Glendale, its officers, officials, employees and volunteers shall be named as an additional insured with respect to liability arising out of the Operator Agreement."

2. On insurance policies where the city of Glendale is named as an additional insured, the City of Glendale shall be an additional insured to the full limits of liability purchased by the Lessee even if those limits of liability are in excess of those required by this Operator Agreement.

C. **Commercial Automobile Liability**: The Operator shall maintain coverage against claims for bodily injury and property damage which may arise from or in connection with the Operator's operation and/or use of any owned, non-owned, borrowed, leased or hired automobiles with limits no less than the following: \$2,000,000 combined single limit.

1. If hazardous materials or waste are to be transported, the policy shall be endorsed with the MCS-90 endorsement in accordance with Applicable Law.

D. **All Risk Property**: The Operator shall maintain all risk property and boiler & machinery coverage to insure against physical loss or damage to buildings and contents (including any personal property owned by the City and used in connection with the Ground) and all personal property of the Operator while at the Ground. Such coverage shall be written on a replacement cost basis, include flood and earth movement and shall not be subject to co-insurance.

E. **Contractors Pollution Liability** applicable to the work being performed, with a limit no less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one year.

1. If Contractors Pollution Liability coverage is written on a claims-made form:
 - i. The retroactive date must be shown, and must be before the date of the contract or the beginning of contract work.
 - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
 - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Operator must purchase an extended period coverage for a minimum of five (5) years after completion of contract work.

2. A copy of the claims reporting requirements must be submitted to the Entity for review.

F. Primary and Non-contributory Insurance Requirements: The coverage shall be primary insurance and the City's insurance/self-insurance shall be non-contributory for any claims arising out of the Operator Agreement's operations.

G. Notice of Cancellation: For each insurance policy required by the insurance provisions of this Agreement, the Operator must provide to the City, within 2 business days of receipt a notice if a policy is suspended, voided or cancelled for any reason. Such notice shall be mailed, emailed, hand-delivered or sent by facsimile transmission to: City of Glendale Public Works Department, 6210 W. Myrtle, Suite 111, Glendale, Arizona 85301, Attention Public Works Director. Fax number is (623) 915-3124.

H. Acceptability of Insurers: Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than A- VII. The City in no way warrants that the above required minimum insurer rating is sufficient to protect Operator from potential insolvency.

I. Verification of Coverage: Operator shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of the Agreement and must remain in effect for the duration of the Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of the Agreement.

All certificates required by this Agreement shall be sent directly to (City Department Representative's Name and Address handling the Agreement). The City project/contract/agreement number and description shall be noted on the certificate of insurance.

GUARANTY OF GROUND LEASE

In order to induce City to enter into the Ground Lease ("Ground Lease") by and between the City of Glendale, a municipal corporation in the State of Arizona ("City") and Vieste SPE, LLC, an Arizona limited liability company ("Vieste"), Vieste Energy, LLC, an Indiana limited liability company ("Parent"), as the owner of greater than fifty one percent (51%) of the voting and equity interests in Vieste, and as the managing member of Vieste, hereby unconditionally guarantees the prompt and complete performance of and compliance with all covenants, obligations and duties of Vieste arising under or relating to the Ground Lease. Parent's obligations pursuant to this paragraph are primary and not secondary, and City need not seek satisfaction of any breach from Vieste before seeking satisfaction from Parent, which waives any notice of acceptance of this Guaranty. If City, for any reason, seeks to enforce Parent's compliance with the provisions of this Guaranty, the same rights and remedies and choice of law provisions as are included in the Ground Lease shall apply. In addition, Parent hereby makes the same representations and warranties as to Parent as those made by Vieste pursuant to Section 21 of the Ground Lease, except that Parent represents that it is a limited liability company duly formed and validly existing under the laws of the State of Indiana.

Notices given to Parent shall be delivered and deemed received in the same manner as set forth in Section 22 of the Ground Lease. Parent acknowledges that it has received a copy of the Ground Lease.

This Guaranty shall continue in full force and effect until all obligations of Tenant under the Agreement have been paid or performed in full. Parent agrees that the obligations of Parent pursuant to this Guaranty shall remain in full force and effect without regard to, and shall not be released, discharged or affected in any way by any of the following (whether or not Parent shall have any knowledge thereof): any termination, amendment, modification or other change in the Ground Lease; (b) any failure, omission or delay on the part of City to conform or comply with any term of the Ground Lease; (c) any waiver, compromise, release, settlement or extension of time of performance or observance of any of the obligations or agreements contained in the Ground Lease; (d) any dissolution of Parent or any voluntary or involuntary bankruptcy, insolvency, reorganization, arrangement, readjustment, assignment for the benefit of creditors, composition, receivership, liquidation, marshalling of assets and liabilities or similar events or proceedings with respect to Tenant, Parent or any other guarantor of Tenant's obligations, as applicable, or any of their respective property or creditors, or any action taken by any trustee or receiver or by any court in any such proceeding; (e) any merger or consolidation of Tenant, Parent, or any other guarantor of Tenant's obligations into or with any person, or any sale, lease or transfer of any of the assets of Tenant, Parent or any other guarantor of Tenant's obligations to any other person; or (f) any change in the ownership of the capital stock or equity ownership of Tenant, Parent or any other guarantor of Tenant's obligations or any change in the relationship between Tenant, Parent or any other guarantor of the Ground Lease obligations, or any termination of any such relationship.

Parent waives any defense arising by reason of any disability or other defense of Tenant or by reason of the cessation from any cause whatsoever of the liability of Tenant. Tenant waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty.

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of the date of the foregoing Ground Lease.

Vieste Energy, LLC,
an Indiana Limited Liability Company

By: _____

Its: _____

TIN: _____

Address:

