



Deschutes County Board of Commissioners
1300 NW Wall St., Suite 200, Bend, OR 97701-1960
(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of April 13, 2016

Please see directions for completing this document on the next page.

DATE: April 6, 2016

FROM: James Lewis Property and Facilities 541-385-1414

TITLE OF AGENDA ITEM:

Consideration of Signature of Document 2016-221, an Real Estate Sale / Purchase Option Agreement between Deschutes County (Seller) and Biogreen Sustainable Energy Co., LLC (Buyer)

PUBLIC HEARING ON THIS DATE? No

BACKGROUND AND POLICY IMPLICATIONS:

On June 29, 2009 the Deschutes County Board of Commissioners (Board) signed an option agreement (DC 2009-312) giving Biogreen Sustainable Energy Co. (Biogreen) the exclusive option to purchase land in the La Pine Industrial Site to construct and operate a biomass power facility. Pursuant to that agreement, Biogreen would purchase the 19.5 acre site for a purchase price of \$1,200,000 within the timeframe established therein. Since the original agreement, the Board has granted multiple separate extension requests to the original Option Agreement (DC 2011-330, 2012-261, 2013-183 and 2014-330), with the last option extension having expired January 31, 2015. Biogreen is now seeking a new Option Agreement.

The terms of the new Option Agreement are the same as the previous agreements, except that the new agreement contains a provision that Deschutes County, the City of La Pine and Biogreen enter into a decommissioning and restoration agreement prior to closing of the sale. Although the terms of such an agreement will be decided at a later date, the intent is for Biogreen to remove and restore the site to a condition where the remaining amenities are re-usable as left on-site, and so that the property is not a burden on the community.

Since the expiration of the last agreement, Biogreen has been working with the City of La Pine to address specific development related issues related to the provision of water / wastewater service to the facility. A separate Memorandum of Understanding between the City and Biogreen will stipulate the requirements for water/wastewater services provided to the facility. It will run concurrent with the Option Agreement.

The Option Agreement Term runs three (3) years from the date of execution of the agreement, with a provision for a one time only two (2) year extension. Biogreen will pay a sum of \$10,000 for the initial Term, and \$5,000 for the extension if so needed. Pursuant to a past Intergovernmental Agreement between Deschutes County and the City of La Pine, the City negotiated the terms of the Option Agreement with Biogreen, and will equally split the Option Agreement sum of \$10,000 with Deschutes County – with \$5,000 each going to the County and City.

FISCAL IMPLICATIONS: Deschutes County will receive a non-refundable sum of \$5,000 that will count toward the purchase price of the property.

RECOMMENDATION & ACTION REQUESTED:

Staff recommends Board authorization and signature of Document 2016-221.

ATTENDANCE: James Lewis

DISTRIBUTION OF DOCUMENTS: Original to James Lewis

Biogreen Purchase Option

2210140000101



REVIEWED

LEGAL COUNSEL

OPTION AGREEMENT

THIS OPTION AGREEMENT (this "Agreement") is made and entered into by and between **DESCHUTES COUNTY**, a political subdivision of the State of Oregon ("Owner"), and **BIOGREEN SUSTAINABLE ENERGY CO., LLC**, an Oregon limited liability company ("Optionee"). Owner and Optionee are referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

- A. Owner is a party to a certain Intergovernmental Agreement with the City of La Pine ("City") dated October 29, 2014 (the "IGA").
- B. Pursuant to the IGA, the Owner vested City the full power and authority for the marketing, promotion and sale negotiations for the real property commonly known as the La Pine Industrial Park for economic development purposes. Owner retained ownership of the real property.
- C. City and Owner are interested in the development of the La Pine Industrial Park.
- D. Owner owns title to approximately nineteen and one-half (19.5) acres, located in the northeast corner of Tract E, La Pine Industrial Site, bordering Reed Road to the north and the Burlington Northern Railroad right-of-way to the east (see attached maps, marked Exhibit "A"), together with all other rights, hereditaments, and tenements appurtenant to the property (collectively referred to as the "Property") and further described as:

Lot 101, Section 14, Township 22 South, Range 10 East,
Willamette Meridian, Deschutes County, Oregon.
- E. Owner granted Optionee a two-year option to purchase the Property in an Option Agreement dated June 24, 2009 (the "First Option Agreement"). Optionee did not exercise the option to purchase the Property under that agreement and therefore the First Option Agreement expired.
- F. Since the First Option Agreement, the Deschutes County Board of Commissioners (Board) granted five separate extension requests to the First Option Agreement with the most recent extension having expired on January 31, 2015.
- G. Subject to the terms and conditions of this Agreement, Optionee desires to acquire the Property and Owner has agreed to grant Optionee an

exclusive option to purchase the Property on the terms and conditions provided in this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and obligations contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. GRANT OF OPTION

Owner, for and in consideration of the sum of ten thousand dollars (\$10,000.00) paid to Owner by Optionee (the "Option Payment"), receipt of which is acknowledged by Owner, grants to Optionee the sole and exclusive option to purchase the Property in the manner and subject to the terms and conditions stated in this Agreement (the "Option"). The acreage of the Property is an estimate only and Owner does not make any representations or warranty to Grantee regarding the exact acreage.

2. OPTION TERM

2.1 Term. The initial term of this Agreement (the "Initial Term") shall be three (3) years from and after the date this Agreement has been signed and dated by the Deschutes County Board of Commissioners indicated on the signature page of this Agreement (the "Effective Date"). If the expiration date falls on a Saturday, Sunday, or legal holiday recognized by the State of Oregon, Optionee's rights during such time period shall extend until 4:00 p.m. on the next business day. Subject to the terms and conditions contained in this Agreement, and provided that Optionee is not then in default under this Agreement, this Agreement may be extended at the written request from Optionee to Owner ("Extension Notice") for one additional period of two (2) years (the "Extension Term") upon the payment of five thousand dollars (\$5,000) to Owner prior to the expiration of the Initial Term (the "Extension Payment"). The Extension Notice shall be delivered to Owner with the Extension Payment. The terms and conditions of the Extension Term shall be identical with this Agreement except that Optionee will no longer have any Extension Term that has occurred. The Initial Term and Extension Term may be referred to collectively in this Agreement as the "Term."

2.2 Exercise of Option. The Option granted herein shall be exercised, if at all, by written notice given by Optionee to Owner (the "Exercise Notice") at any time during the Term, subject to the restrictions contained in Section 2.4 below, which notice shall state that Optionee has elected to exercise the Option. The Option may be exercised only with respect to the entirety of the Property, subject to Optionee's completion of Conditions Precedent to Owner Closing as specified in Section 7 of this Agreement, and nothing contained herein shall be construed

as permitting Optionee to purchase less than all of the Property pursuant to this Option. Upon exercise of this Option, Optionee shall be obligated to purchase the Property from Owner, and Owner shall be obligated to sell the Property to Optionee, for the price and subject to the terms and conditions set forth herein.

2.3 Failure to Exercise Option. If Optionee fails for any reason to exercise this Option in the manner set forth herein, Optionee shall have no further claim against or interest in the Property or any interest in the Option Payment or Extension Payment. In the event of the failure to exercise the Option, Optionee shall execute and deliver to Owner any recordable instrument(s) that Owner reasonably may deem necessary for the purpose of clearing title to the Property, attributable to this Agreement. For the purposes of this Agreement, "reasonable" or "reasonably" is satisfied if such person uses sound judgment, acts fairly, and sensible under the particular facts and circumstances.

2.4 Condition Precedent to Optionee Exercising Option. Prior to exercising the Option granted herein, Optionee and City shall have entered into and executed an agreement for water services and wastewater discharge (the "Services Agreement"). The Services Agreement shall be in a form and substance to be approved by the City, in its sole discretion. Any attempt by Optionee to exercise the Option or to deliver an Exercise Notice prior to the execution of the Services Agreement shall be null and void.

3. OPTION PAYMENT

In payment for Owner's grant of the Option, Optionee has paid Owner the Option Payment. No other Option Payment shall be due or payable during the Initial Term. Subject to the terms and conditions of Section 6, whether or not the Option is actually exercised, the Option Payment shall belong to Owner. If the Option is exercised and the Property is acquired by Optionee, then the Option Payment paid by Optionee shall be credited against the Purchase Price at Closing (as those terms are defined below).

4. PURCHASE PRICE

The Purchase Price of the Property shall be one million two hundred thousand dollars (\$1,200,000.00) (the "Purchase Price"), which amount is calculated at the approximate rate of \$1.41 per square foot x 851,064 square feet. If the Survey (as defined below) reveals a change (increase or decrease) to the Property the Purchase Price will not be adjusted. Optionee shall be given credit for the Option Payment and Extension Payment, if applicable, paid by Optionee to Owner. The Purchase Price shall also be reduced at Closing in an amount not to exceed six hundred thousand dollars (\$600,000.00), as described in Section 9.7 below, to reflect the value of future improvements to be constructed pursuant to the Services Agreement on a dollar for dollar basis (the "Credit").

5. REMEDIES

5.1 Optionee. In the event Owner materially breaches any term or provision of this Agreement, then Optionee, as its exclusive remedy and in lieu of any other relief, may either (a) terminate this Agreement and obtain the return of any Option Payment or Extension Payment, if applicable, previously paid to Owner under this Agreement, or (b) tender performance of the obligations of Optionee and seek to specifically enforce all obligations of Owner. Except as noted in Section 5.3 below and any specific remedies reserved elsewhere in this Agreement, Optionee waives the right to pursue any remedy in law or equity against Owner other than the remedies specified above, including, without limitation, an action for damages of any nature, in the event of a default by Owner. Notwithstanding anything to the contrary in this Agreement, prior to declaring Owner in default under this Agreement the Optionee must provide Owner thirty (30) days' prior written notice (the "Owner Default Notice") specifying with reasonable particularity all defaults under this Agreement that Optionee believes exist. Owner will have the right to cure the alleged defaults within thirty (30) days after receipt of the Owner Default Notice to avoid any breach under this Agreement.

5.2 Owner. Except as provided in Section 5.3, in the event Optionee materially breaches any term or provision of this Agreement prior to the Closing, and regardless of whether the breach occurs before or after Optionee notifies Owner of the exercise of the Option, then Owner, as its exclusive remedy and in lieu of any other relief, shall be entitled to terminate this Agreement by giving Optionee written notice of termination and to retain any Option Payment and Extension Payment paid by Optionee. Owner acknowledges (a) the adequacy of this exclusive remedy, and (b) that this limitation of remedies is an essential part of this Agreement from the perspective of Optionee. Except as noted in Section 5.3, and any specific remedies reserved elsewhere in this Agreement, Owner expressly waives the right to pursue any other right or remedy in law or equity other than the remedy specified above, including, without limitation, the right of specific performance and the right to sue for damages, in the event of a default by Optionee prior to the Closing. Notwithstanding anything to the contrary in this Agreement, prior to declaring Optionee in default under this Agreement the Owner must provide Optionee thirty (30) days' prior written notice (the "Optionee Default Notice") specifying with reasonable particularity all defaults under this Agreement that Owner believes exist. Optionee will have the right to cure the alleged defaults within thirty (30) days after receipt of the Optionee Default Notice to avoid any breach under this Agreement. Optionee and Owner have established the foregoing remedy in favor of Owner because of the difficulty and inconvenience of ascertaining the actual damages Owner may suffer as a result of a breach of this Agreement by Optionee.

5.3 Other Remedies. Notwithstanding any provision in this Section 5, the limitations of remedies set forth in this Section 5 shall not preclude either Party from seeking or obtaining injunctive relief or from seeking recovery against

the other under any contractual indemnity set forth herein or for causing physical damage or injury to persons or property, including, without limitation, any damage of Optionee to the Property.

6. CONDITIONS PRECEDENT TO OPTIONEE CLOSING

In addition to any other conditions contained in this Agreement, set forth below are certain conditions precedent for the benefit of Optionee (the "Optionee Conditions"). The Optionee Conditions are intended solely for the benefit of Optionee, and Optionee shall have the right to waive, by written notice, any of the Optionee Conditions, at its sole discretion, and giving the Exercise Notice shall not constitute such a waiver. If any Optionee Condition is not satisfied or waived on or before the deadline for satisfaction specified herein, then Optionee shall have the right to terminate this Agreement, at its sole election, by giving Owner written notice of termination ("Termination Notice") before the expiration of this Agreement. Notwithstanding anything to the contrary in this Agreement, the Option Payment and Extension Payment, if applicable, are nonrefundable except in the event of a breach of this Agreement by Owner beyond any applicable cure period. If Optionee does not give Owner a Termination Notice before the applicable deadline, then Optionee shall be deemed to have waived the termination privilege with respect to the Optionee Condition in question. The Optionee Conditions specifically delineated in this Section 6 are the following:

6.1 On the Closing Date (as defined in Section 9), the Title Company (as defined in Section 9) shall be ready, willing, and able to issue and shall issue to Optionee upon recordation of the Deed, the title insurance policy required by Section 9.

6.2 On or before the Closing Date, Owner shall have performed or Optionee shall have waived Owner's performance of all of the covenants, conditions, agreements, and promises to be performed by it under this Agreement.

6.3 Optionee has, at Optionee's sole cost and expense, obtained all federal, state, and local regulatory approvals (including, without limitation, land use and building approvals and permits) to Optionee's satisfaction necessary to commence construction of an approximately 24.9 megawatt biomass powered electricity generation plant ("Project").

6.4 On or before Closing, Optionee shall have the opportunity to obtain at Optionee's sole cost and expense, an ALTA survey of the Property (the "Survey") from a surveyor designated by Optionee, indicating to Optionee's satisfaction that (a) there are no discrepancies in the boundaries of the Property, (b) there are no material encroachments on, or protrusions from, the Property, (c) the Property has acceptable access to a dedicated public right-of-way, (d) the Property contains approximately nineteen and a half (19.5) acres, (e) the Property lies adjacent to the Midstate Electric Cooperative powerline corridor,

and (f) the Property does not lie within any area designated as wetlands by any governmental agency or any area determined by the United States Department of Housing and Urban Development to be flood-prone or subject to a flood hazard. Optionee shall provide Owner a copy of the Survey at no cost to Owner.

7. CONDITIONS PRECEDENT TO OWNER CLOSING

In addition to any other conditions contained in this Agreement, set forth below are certain conditions precedent for the benefit of Owner (the "Owner Conditions"). The Owner Conditions are intended solely for the benefit of Owner, and Owner shall have the right to waive, by written notice to Optionee, any of the Owner Conditions, at its sole discretion. If any Owner Condition is not satisfied or waived on or before the deadline for satisfaction specified herein, then Owner shall have the right to terminate this Agreement, at its sole election, by giving Optionee notice of termination before the deadline expires and shall retain the Option Payment and Extension Payment, if applicable. The Owner Conditions specifically delineated in this Section 7 are the following:

7.1 On or before the Closing, Optionee has furnished Owner with documentation indicating that Optionee has obtained, to Owner's reasonable satisfaction and at Optionee's sole cost and expense, all federal, state and local regulatory approvals (including, without limitation, land use and building approvals and permits) necessary to commence construction of the Project. Owner's consent to the sale is for Owner's sole benefit and Owner does not represent, warrant, or covenant that the Property and/or the Optionee is in compliance with any of the items contained in this Section 7.1.

7.2 On or before Closing, Optionee has provided Owner evidence, reasonably satisfactory to Owner, that Optionee has obtained construction financing or financing commitments from its construction lender which, when combined with Optionee's equity funds, will be sufficient to complete construction of the Project.

7.3 On or before Closing, Optionee has executed all necessary documents to Owner's satisfaction and suitable for recording in the real property records of Deschutes County, Oregon by which Optionee agrees to transfer clear, lien-free title to the Property back to Owner as provided in this Section 7.3. In the event construction of the Project has not Substantially Commenced (as defined below in Section 18.1) within twenty-four (24) months of the Closing Date, Owner shall have the right (at Owner's sole discretion and option) to pay Optionee the Purchase Price (less Option Payment, Extension Payment, if applicable, and less the Credit), and require Optionee to transfer the Property to Owner (the "Repurchase").

7.4 On or before Closing, Optionee has executed covenants, conditions, and restrictions to Owner's satisfaction suitable for recording with the real property records of the Deschutes County Clerk's office by which Optionee

and Optionee's heirs, successors, and assigns agree that the Property shall not be used for any purpose other than a biomass powered electricity generation plant and related uses (the "CCR's"). In addition to the reacquisition right set forth in Section 7.3 and Section 18, Owner shall have all other remedies available at law or in equity.

7.5 On or before Closing, Optionee and City have executed the Restoration Agreement and Memorandum of Agreement, as described in Section 9.8.

8. TITLE

Within fifteen (15) days following the receipt of the Exercise Notice, Owner shall request the Title Company (defined below in Section 9.1) to deliver to Optionee, at Optionee's expense, a preliminary title report (the "Title Report") covering the Property. The Title Report shall be issued by the Title Company. The Title Report shall be accompanied by legible copies of all plats and exceptions to title referenced in the Title Report (the "Exceptions"). Within forty-five (45) days of receiving the Title Report and the Exceptions, Optionee shall give written notice (the "Initial Notice") to Owner of the Exceptions that Optionee shall require Owner to remove of record at or before Closing (the "Unacceptable Exceptions"). If Optionee fails to give Owner an Initial Notice, then Optionee shall be deemed to have approved the Title Report and waived any right to require Owner to remove any Exceptions from title. Owner shall have twenty (20) days following receipt of the Initial Notice to give written notice to Optionee (the "Reply Notice") of those Unacceptable Exceptions that Owner concludes, in good faith, that Owner cannot or will not remove at or before Closing or at any time. Owner shall not have any obligation to institute litigation or spend any sum of money to cure or remove any Unacceptable Exceptions; provided, however, that Owner shall be obligated to remove, at or before Closing, any Unacceptable Exception created or suffered to be created by Owner that is security for payment of a sum of money (including mortgages, deeds of trust, tax liens, contractor's liens, and judgment liens) and any Unacceptable Exception created, or suffered to be created, by Owner after the Effective Date except for covenants, conditions, and restrictions. If one or more of the Unacceptable Exceptions cannot be removed at or before Closing and Owner so states in a duly given Reply Notice, then Optionee may exercise any of the following rights by giving written notice to Owner within fifteen (15) days of receiving the Reply Notice: (a) Optionee may terminate this Agreement and neither Party shall have any further liability; (b) Optionee may accept title to the Property subject to any such Unacceptable Exceptions; or (c) Optionee may attempt to cure the Unacceptable Exception(s) or any of them without cost or liability to Owner but Owner shall be obligated to cooperate with such cure effects and to join in the execution of any curative instruments that will operate to remove such Unacceptable Exception(s) provided that Owner shall not be required to pay any amount of money. The foregoing rights of Optionee shall not be deemed waived by giving the Exercise Notice. Exceptions that are shown on the Title Report and to which Optionee does not

provide a timely Initial Notice or to which Optionee agrees, in writing, to waive objection, are referred to herein as the "Permitted Exceptions."

Owner shall not cause, permit, or suffer any matter to be recorded with respect to the Property during the Term, except any matter that Optionee approves, in writing and at its sole discretion, before recordation, except for any covenants, conditions, or restrictions as provided in this Agreement.

9. CLOSING

9.1 Time and Place. Closing of the sale and purchase of the Property (the "Closing") shall occur on a date (the "Closing Date") selected by Optionee, but in all events the Closing shall occur within ninety (90) days after the date that the Exercise Notice, described in Section 2.2, is given. Notwithstanding anything to the contrary in this Agreement, the Closing Date must occur on or before the expiration of the Term unless approved in writing by Owner and City. The escrow for the Closing shall be established at the office of Western Title Company (the "Title Company"), whose address is 16455 William Foss Road, La Pine, Oregon 97739.

9.2 Closing Obligations. On the Closing Date, Owner and Optionee shall deposit the following documents and funds in escrow, and the Title Company shall close escrow in accordance with the instructions of Owner and Optionee.

9.2.1 Subject to the terms and conditions of this Agreement, Owner shall deposit the following:

- (a) The conveyance documents described in Section 10, below, duly executed and acknowledged;
- (b) A duly executed affidavit certifying that Owner is not a foreign person, trust, partnership, or corporation in compliance with the requirements of IRC § 1445;
- (c) Original counterparts or legible photocopies of all documents, feasibility studies, surveys, engineering reports, and other items of a similar nature in the possession of Owner that relate to the Property;
- (d) Such documents as Optionee or the Title Company may require to evidence the authority of Owner to consummate this transaction; and
- (e) Such other documents and funds, including, without limitation, escrow instructions, as are reasonably required of Owner to close the sale in accordance with this Agreement.

9.2.2 Subject to the terms and conditions of this Agreement, Optionee shall deposit the following:

- (a) The cash payment for the Purchase Price less the Credit (defined in Section 9.7 below) and the Option Payment and Extension Payment, if applicable;
- (b) Such documents as Owner or the Title Company may require to evidence the authority of Optionee to consummate the transaction contemplated;
- (c) All reasonably necessary documents suitable for recording by which Owner may reacquire the Property from Optionee in the event construction of the Project has not Substantially Commenced as described in Section 18.1, upon Owner's payment to Optionee of the Purchase Price less the Option Payment and Extension Payment, if applicable;
- (d) Documentation indicating to Owner's satisfaction that Optionee has obtained all federal, state and local regulatory approvals (including without limitation, land use and building approvals and permits) necessary to commence construction of the Project;
- (e) All necessary covenants, conditions and restrictions to Owner's reasonable satisfaction and suitable for recording with the real property records of Deschutes County, Oregon by which Optionee and Optionee's heirs, successors and assigns agree that the Property shall not be used for any other purpose than a biomass powered electricity generation plant and related uses;
- (f) The Restoration Agreement and Memorandum of Agreement; and
- (g) Such other documents and funds, including, without limitation, escrow instructions as are reasonably required of Optionee to close the sale and purchase of the Property in accordance with this Agreement.

9.3 Costs. Optionee shall pay all escrow and closing fees of the Title Company with respect to the Closing. Optionee shall pay the premium for the title insurance policy that Owner is obligated to provide to Optionee. Optionee shall pay the fee (exclusive of any conveyance or excise tax) for recording the conveyance documents, the CCR's, the Memorandum of Agreement, and all other documents referenced in this Agreement.

9.4 Prorations. All real property taxes and assessments payable with respect to the tax year in which Closing occurs shall be prorated between Owner and Optionee as of the Closing Date.

9.5 Title Insurance Policies. As soon as practicable after Closing, and in any event no later than twenty (20) days after the Closing Date, Owner shall cause the Title Company to issue its standard form Owner's ALTA Title Insurance Policy, with extended coverage, in the amount of the Purchase Price, insuring fee simple title to the Property vested in Optionee, subject only to the Permitted Exceptions and other standard pre-printed exceptions.

9.6 Effect of Closing on Conditions. Closing and conveyance of Title to the Property to Optionee shall conclusively establish satisfaction or waiver of respective conditions precedent for Optionee and Owner to close unless expressly stated otherwise in writing at the time of conveyance.

9.7 Purchase Price Reduction for Future Improvements. At Closing, the Purchase Price shall be reduced by an amount not to exceed six hundred thousand dollars (\$600,000.00) to reflect the value of future improvements constructed for the provision of wastewater and water services from City on a dollar for dollar basis. The terms and conditions of these future improvements shall be addressed in the Services Agreement, which shall be approved by City and Optionee, in each of their sole discretion.

9.8 Decommission and Restoration Agreement. At or prior to the Closing, Optionee, City, and Owner will enter into a certain Decommission and Restoration Agreement containing terms and conditions acceptable to Optionee, City, and Owner (the "Restoration Agreement"). The Restoration Agreement will require the parties' execution of a Memorandum of the Restoration Agreement (the "Memorandum"), which Memorandum will be recorded at or prior to the Closing in the Deschutes County Official Records. The parties' execution of the Restoration Agreement and recording of the Memorandum are express conditions of Closing. The obligations set forth in this Section 9.8 will survive the expiration or earlier termination of this Agreement.

10. CONVEYANCE

At the Closing, Owner shall execute, acknowledge, and deliver to Optionee a Bargain and Sale Deed (the "Deed") conveying the Property to Optionee, subject only to the Permitted Exceptions and the restrictions set forth in Section 18.

11. POSSESSION

Optionee shall be entitled to exclusive possession of the Property on and after the Closing Date subject to the Permitted Exceptions.

12. COVENANTS OF OWNER

Owner acknowledges that the covenants of Owner contained in this Agreement, including the covenants contained in this Section 12 (the "Covenants"), are

material inducements to Optionee to enter into this Agreement. The Covenants specifically delineated in this Section 12 are the following:

12.1 Information. Owner agrees to deliver to Optionee, within twenty (20) days after the receipt of the Exercise Notice, photocopies of all documents related to the use or ownership of the Property that Owner possesses, including and without limitation, all studies, reports, aerial photographs, and other documents of a like nature.

12.2 Maintenance. During the Term, Owner shall maintain the Property in the same condition existing on the Effective Date, ordinary wear and tear excepted, and shall not cause or permit any waste.

12.3 Ownership. During the Term, Owner shall not sell, contract to sell, assign, lease, or otherwise transfer the Property or any part of it, nor grant an option to any third party to acquire all or any portion of the Property.

13. REPRESENTATIONS OF OWNER

13.1 Hazardous Substances. Owner represents that Owner has disclosed to Optionee the environmental reports and studies in Owner's possession relating to any generation, manufacture, refinement, transportation, treatment, storage, handling, disposal, transfer, or production of hazardous substances, or other dangerous or toxic substances or solid wastes and except as contained or referred to in said reports and studies, Owner's representative signing below solely in their capacity as Owner's representative has no actual notice without further investigation or inquiring regarding the release of any hazardous substances on the Property.

13.2 Property Condition. Owner represents that, to Owner's actual knowledge, without further investigation or inquiry, (a) the Property will be in substantially its present condition at the time Optionee is entitled to possession, (b) except as disclosed in writing, Owner has no notice of any liens to be assessed against the Property, (c) Owner has no notice that there is any condemnation, environmental, or similar proceeding, existing or planned which could detrimentally affect the use, development, or value of the Property, (d) Owner has no notice from any governmental entity of any violation of law relating to the Property, and (e) Owner is not a "foreign person" under the Foreign Investment in Real Property Tax Act ("FIRPTA").

13.3 Changed Conditions. If Owner discovers that one or more of the representations or one of the conditions referred to in this Section 13 has changed after this Agreement is executed, through no fault of Owner, Owner shall as soon as reasonably practicable inform Optionee, in writing, of such discovery. If the changed condition cannot be cured within ten (10) days of the date Owner discovers the change, then Optionee may terminate this Agreement and its exercise of the Option, if any, by giving written notice of termination to

Owner within fifteen (15) days after receiving the notice from Owner, and in such event any Option Payment previously paid by Optionee pursuant to this Agreement shall be returned to Optionee. If the changed condition can be corrected within thirty (30) days after discovery by Owner, Optionee shall not have the right to terminate this Option Agreement pursuant to this Section 13. If Owner is unable to correct the changed condition, Optionee's sole and exclusive remedy is to terminate this Agreement and receive a refund of the Option Payment and Extension Payment, if applicable.

13.4 Zoning. The Property is currently subject to City of La Pine zoning regulations which restrict the development and use of Property pursuant to all applicable City of La Pine adopted zoning and development regulations now existing or hereinafter enacted or promulgated. During the Term, Owner shall sign any consents reasonably requested by Optionee in order to secure any permits and regulatory approvals pertaining to the Property related to the Project; provided, however, that such assistance shall not be construed as Owner's governmental approval of any land use, site development or building construction approvals necessary for the Project and further provided that Owner shall not be required to pay any sums associated with obtaining such consents and approval. On the expiration of the Term, Optionee shall terminate any filings, permits, or pending regulatory approvals or applications related to any of the foregoing.

13.5 Access to Property. Owner grants to Optionee and its agents non-exclusive, revocable access to Property for the purposes of conducting necessary tests, inspections, and surveys at any reasonable time following delivery of the Exercise Notice. Such tests, inspections, and surveys will be undertaken at Optionee's expense and without charge or obligation to Owner. Optionee shall defend, indemnify, and hold Owner and Owner's Agents (as defined below) harmless from and against any liability, action, or claim arising out of Optionee's exercise of the rights granted by this Section 13. If Optionee conducts any tests on the Property it shall restore the Property to its original condition after the completion of the tests and shall provide Owner with proof of insurance in a form and in amounts reasonably approved by Owner prior to entering the Property.

13.6 AS-IS. Except for Owner's express written agreements and written representations contained herein, Owner makes no representations or warranties as to the condition of the Property or any improvement on the Property. Owner expressly excludes all warranties with respect to the Property, express and implied, including, without limitation, the warranty of merchantability, the warranty of fitness for a particular purpose, and any warranties that may have arisen from course of dealing or usage of trade. Owner expressly excludes any representations or warranties regarding the accuracy of any information or documents provided to Optionee related to the Property pursuant to Section 12.1. If Optionee exercises Optionee's right to purchase, then Optionee is purchasing the Property in its "AS IS" present condition and with all defects, apparent or not apparent. Optionee represents and warrants to Owner that

Optionee has conducted its own due diligence regarding the Property and Optionee's use of the Property for the Project.

14. RECORDING

If Optionee fails to exercise the Option before the Term expires, Optionee shall within five (5) days of written demand, execute, acknowledge and deliver to Owner a statutory quitclaim deed or other appropriate recordable instrument to Owner's satisfaction releasing Optionee's interest in the Property.

15. WAIVER

Failure by Owner or Optionee to enforce any right under this Agreement shall not be deemed to be a waiver of that right or of any other right.

16. LIMITED ASSIGNMENT

Subject to the limitations on Owner's right to convey the Property set forth in this Agreement, the terms, covenants, and conditions contained in this Agreement shall be binding on and inure to the benefit of the heirs, successors, and assigns of Owner and Optionee. Optionee may assign its interest in the Option granted under this Agreement and the Property to any person or entity, with the prior written consent of Owner and City, which consent shall not be unreasonably denied or delayed.

17. NOTICES

All notices required or permitted to be given shall be in writing and shall be deemed given and received on personal service or deposit in the United States Mail, certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To Owner: Deschutes County
Attn: Susan Ross,
Property and Facilities Director
14 NW Kearney Avenue
Bend, Oregon 97701

With a copy to: City of La Pine
Attn: Rick Allen, Interim City Manager
PO Box 2460
La Pine, Oregon 97739

To Optionee: Biogreen Sustainable Energy Co., LLC
Attn: Rob Broberg, President
2525 West Firestone Lane
Vancouver, Washington 98660

With a copy to: Modoc Capital, LLC
 Attn: Jason B. Joner
 Post Office Box 820687
 Vancouver, Washington 98682

The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than the manner set forth above shall be effective when received by the Party for whom it is intended.

18. OWNER'S OPTION TO REACQUIRE THE PROPERTY

18.1 Duty to Construct/Occupy. Within twenty-four (24) months after Closing of the Property, Optionee shall have Substantially Commenced construction of the Project. The construction of the Project will be deemed "Substantially Commenced" when Optionee has (a) obtained all federal, state, and local regulatory approvals (including, without limitation, to land use and building approvals and permits) necessary to commence construction of a biomass powered electricity generation plant, and (b) commenced site preparation including, without limitation, excavation and/or grading. After Substantially Commencing construction of the Project, Optionee shall diligently prosecute the construction of the Project to completion. To that end, no structure shall remain in a partially finished condition any longer than reasonably necessary for completion thereof. The construction will be performed in a good and commercially workmanlike manner and will comply with all applicable governmental permits, laws, ordinances and regulations, including, without limitation, any applicable Legal Requirements. The requirements of this Section 18 will survive the Closing until Substantial Commencement of the construction of the Project. For purposes of this Agreement, the term "Legal Requirement(s)" means any and all rules, regulations, covenants, conditions, restrictions, easements, declarations, laws, statutes, liens, ordinances, orders, codes, rules, and regulations directly or indirectly affecting the Property and/or Optionee's business, including, without limitation, the Americans with Disabilities Act of 1990 (and the rules and regulations promulgated thereunder), all as now in force and/or which may hereafter be amended, modified, enacted, or promulgated.

18.2 Failure to Substantially Commence Construction. Optionee acknowledges that a substantial part of the consideration of Owner for entering into this Agreement including the Option is the construction of the Project on the Property related to the biomass electricity plant. Owner would not have entered into this Agreement without the agreement by Optionee to develop and use the Property on the terms and conditions provided in this Agreement and that any failure by Optionee to commence construction of the Project in form and substance to be approved by Owner on the Property and to occupy and use the Property for the construction and operation of a biomass electricity plant will result in damage to Owner in an amount which would be very difficult to ascertain. If Optionee fails to have Substantially Commenced construction according to Section 18.1 within twenty-four (24) months of Closing on the

Property (the "Repurchase Period"), Optionee shall be in default and Owner reserves the right to repurchase the Property for the Purchase Price (less Option Payment, Extension Payment, if applicable, and any Credit under Section 9.7); provided, however, that Owner has complied with all required default notices to Optionee in accordance with Section 5 of this Agreement. The rights and obligations imposed by this Section 18.2 and this right to repurchase the Property by Owner shall survive Closing and the recording of the Deed until Optionee has Substantially Commenced construction in accordance with Section 18.1 of this Agreement.

18.3 Hazardous Substances During Repurchase Period. During Owner's Repurchase Period, Optionee shall: (a) comply fully with all federal, state, and local laws pertaining to the protection of human health and the environment, including, without limitation, employee and community right-to-know laws and all laws regarding the use, generation, storage, transportation, treatment, disposal, or other handling of hazardous substances; (b) promptly advise Owner in writing of any hazardous substances regulated by such laws that are used, generated, manufactured, stored, transported, or otherwise handled on the Property (except for reasonable quantities of hazardous materials, including, without limitation, to petroleum products, that are customarily used in the ordinary course of construction and operation of a biomass powered electricity plant such as Optionee's Project); and (c) Optionee shall exercise due care that is commercially reasonable and customary for handling any hazardous substances and shall not cause or permit hazardous substances to be spilled, leaked, disposed of, or otherwise released on the Property.

19. INDEMNIFICATION

Optionee shall indemnify, defend, and hold Owner and Owner's current and future officers, employees, contractors, and agents (collectively, "Owner's Agents") and City and City's current and future officers, employees, contractors, and agents (collectively, "City's Agents"), harmless for, from, and against any and all claims, losses, damages, and/or liabilities arising out of or related to, whether directly or indirectly, the following: (a) any and all activity of Optionee and/or Optionee's members, managers, officers, employees, agents, and/or contractors (collectively, "Optionee's Agents") on or at the Property; (b) damages to the Property or any portion thereof to the extent that such damage is caused by Optionee and/or Optionee's Agents; (c) injuries to or death of any person or persons caused by Optionee and/or Optionee's Agents (including, without limitation, Owner's Agents or City's Agents, except for such injuries or death as a result of the negligence or wrongful acts or omissions of Owner's Agents and/or City's Agents); (d) any condition of the Property including, without limitation, any improvements constructed thereon, that is caused by Optionee and/or Optionee's Agents while the Property is in the possession or under the control of Optionee; (e) Optionee's breach and/or failure to perform any Optionee obligation, covenant, representation, and/or warranty under this Agreement; (f) any and all claims, demands, workers' compensation claims in any way resulting from the

negligent or wrongful acts or omissions of Optionee and/or Optionee's Agents while the Property is in the possession or under the control of Optionee, except for any such damage or injury as a result of the negligence or wrongful acts or omissions of Owner and/or Owner's Agents; (g) any claims, demands or liens involving labor, services or materials furnished to or on account of the Property preliminary to substantial commencement of construction of the Project; (h) and/or Optionee and/or Optionee's Agents' access to the Property prior to the Closing in accordance with Section 13.5; and/or (i) Optionee's ownership, use, maintenance, and operation of the Property from and after the Closing Date.

Owner shall indemnify, defend and hold Optionee and Optionee's current and future officers, employees, contractors, and agents (collectively, "Optionee's Agents"), harmless for, from, and against any and all claims, losses, damages, and/or liabilities arising out of or related to Owner's respective breach and/or failure to perform any Owner obligation, covenant, representation, and/or warranty under this Agreement, except for any such damage or injury as a result of the negligence or wrongful acts or omissions of Optionee and/or Optionee's Agents.

20. INTEGRATION; MODIFICATION; SEVERABILITY

This Agreement and attached Exhibits, if any, constitute the entire agreement of the Parties with respect to the Property and supersedes all prior written and oral negotiations and agreements with respect to the Property. This Agreement may not be modified or amended except by a writing signed by all Parties to the Agreement. The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be void, invalid or unenforceable, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be void, invalid or unenforceable.

21. REPRESENTATION BY LEGAL COUNSEL

Owner and Optionee have each been represented by separate legal counsel of choice with respect to this transaction. Each Party shall be responsible for all attorney fees incurred by it with respect to the preparation of this Agreement.

22. GOVERNING LAW; VENUE; INTERPRETATION

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Oregon without regard to its conflict-of-laws provisions. If any dispute arises regarding this Agreement, the Parties agree that the sole and exclusive venue for resolution of such dispute will be in Deschutes County, Oregon. All Parties submit to the jurisdiction of courts located in Deschutes County, Oregon for any such disputes.

23. TIME IS OF THE ESSENCE; WAIVER; FURTHER ASSURANCES

Time is of the essence with respect to each and every obligation of the Parties to this Agreement. The Parties will sign other documents and take all other actions reasonably necessary to further effect and evidence this Agreement. No waiver will be binding on a Party unless it is in writing and signed by the Party making the waiver. A Party's waiver of a breach of a provision in this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision.

24. AUTHORITY TO EXECUTE

Each person executing this Agreement on behalf of Owner and Optionee, respectively, covenants that the person signing below possesses the legal authority to bind its principals to the terms, provisions and obligations contained within this Agreement.

25. INTERPRETATION

All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. The titles, captions, or headings of the sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

26. LITIGATION FEES AND EXPENSES

If any arbitration or litigation is instituted to interpret, enforce, or rescind this Agreement, including, without limitation, any proceeding brought under the United States Bankruptcy Code, the prevailing Party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing Party's reasonable attorney's fees and other fees, costs, and expenses of every kind, including, without limitation, the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

27. SURVIVAL

All provisions of this Agreement that would reasonably be expected to survive the Closing and recording of the Deed will do so, including, without limitation, (a)

Optionee's restoration obligations under Section 9.8, (b) the indemnification provisions provided under Section 18 and Section 19, and (c) the repurchase right under Section 18.

28. STATUTORY DISCLAIMER

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

(Signature pages follow)

REVIEWED

LEGAL COUNSEL

IN WITNESS WHEREOF, the Parties have caused this Agreement to be effective for all purposes as of the Effective Date.

OWNER:

DATED this ____ day of _____

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ALAN UNGER, Chair

ATTEST:

TAMMY BANEY, Vice-Chair

Recording Secretary

ANTHONY DEBONE, Commissioner

STATE OF OREGON)
) ss.
County of Deschutes)

Before me, a Notary Public, personally appeared ALAN UNGER, TAMMY BANEY and ANTHONY DEBONE, the above-named Board of County Commissioners of Deschutes County, Oregon and acknowledged the foregoing instrument on behalf of Deschutes County, Oregon.

DATED this ____ day of _____

Notary Public for Oregon

My Commission Expires: _____

OPTIONEE:

DATED this ____ day of _____, 2016

BIOGREEN SUSTAINABLE ENERGY CO., LLC,
an Oregon limited liability company

ROB R. BROBERG, President

STATE OF OREGON)
) ss.
County of _____)

Before me, a Notary Public, personally appeared ROB R. BROBERG, the above-named President of Biogreen Sustainable Energy Co., LLC, an Oregon limited liability company, and acknowledged the foregoing instrument on behalf of Biogreen Sustainable Energy Co., LLC.

DATED this ____ day of _____, 2016

My Commission Expires: _____
Notary Public for Oregon

CITY OF LA PINE:

In accordance with that certain Intergovernmental Agreement between City and County dated October 29, 2014, City hereby acknowledges receipt and acceptance of this Option Agreement.

DATED this ___ day of _____, 2016

CITY OF LA PINE

RICHARD ALLEN, Interim City Manager

STATE OF OREGON)
) ss.
County of Deschutes)

Before me, a Notary Public, personally appeared RICHARD ALLEN, the above-named Interim City Manager of La Pine, Oregon and acknowledged the foregoing instrument on behalf of La Pine, Oregon.

DATED this ___ day of _____, 2016

My Commission Expires: _____
Notary Public for Oregon

EXHIBIT A

(attached)



