

THE LINDEN ROSELLE SEWERAGE AUTHORITY

RESOLUTION #69-19

WHEREAS, the Linden Roselle Sewerage Authority (“LRSA” or “Authority”) and Aries Linden, LLC (“Aries”) entered into an Option Agreement, dated December 4, 2018 (“the Option Agreement”), through which LRSA has granted to Aries Linden, LLC (“Aries”) an option to enter into a Use and Occupancy Agreement (the “U&O Agreement”) with LRSA, pursuant to which LRSA would convey to Aries an irrevocable license to use the licensed property to process biosolids in an environmentally efficient manner in connection at a new facility planned for the licensed property; and

WHEREAS, the Option Agreement was approved by the Authority pursuant to Resolution #49-18; and

WHEREAS, the LRSA and Aries have amended the U&O Agreement through an Addendum to a certain Use and Occupancy Agreement for the Licensing of Real Property (the “First Addendum”) that provides that Aries shall establish an internship program at the Licensed Property and requires that certain Annual Fees be remitted to the LRSA; and

WHEREAS, the LRSA and Aries would like to further amend the definition of Licensed Property as stated in the LRSA to include additional property at the LRSA facility for the use and occupancy of Aries pursuant to the U&O Agreement by way of a Second Addendum to Use and Occupancy Agreement for the Licensing of Real Property (the “Second Addendum”), which is annexed hereto as **Exhibit A**; and

WHEREAS, the Second Addendum has been reviewed by the Authority’s management and professionals to insure that the Authority’s interests are protected.

NOW, THEREFORE, BE IT RESOLVED, that the Second Addendum to the U&O Agreement is hereby approved substantially in the forms attached hereto as **Exhibits A**, and the Chairman and Secretary are authorized to execute the same if and when Aries exercises its option in accordance with the Option Agreement.

I certify the foregoing to be a true copy of a Resolution adopted by the Linden Roselle Sewerage Authority at a meeting held on July 9, 2019.



Derek Armstead, Secretary

EXHIBIT A

Second Addendum to Use and Occupancy Agreement for the Licensing of Real Property

**SECOND ADDENDUM TO USE AND OCCUPANCY AGREEMENT FOR THE
LICENSING OF REAL PROPERTY**

This Second Addendum to a certain Use and Occupancy Agreement for the Licensing of Real Property (this "Second Addendum"), dated as of July __, 2019 (the "Effective Date"), is entered into by and between Aries Linden, LLC ("Aries"), and the Linden Roselle Sewerage Authority ("LRSA"). Aries and LRSA hereinafter may each be referred to as a "Party," and, collectively, as the "Parties."

WHEREAS, the LRSA is a body corporate and politic organized pursuant to the New Jersey Sewerage Authorities Law, *N.J.S.A. 40:14A-1, et seq.*, to, among other things, acquire, construct, maintain, operate and improve works for the collection, treatment, purification or disposal of sewerage or other wastes, and to provide for sewerage services designed to relieve pollution of the waters at the expense of the users of such services; and

WHEREAS, the LRSA operates a sewerage disposal treatment plant at its property located at 5005 South Wood Avenue, Linden, New Jersey (the "Property"); and

WHEREAS, Aries intends to finance, construct, operate, and maintain a gasification facility (the "Facility") at the Property of the LRSA as above identified, including, in furtherance thereof, among other things its exclusive use of a long currently unused LRSA building on the Property, and the surrounding area (together the "Licensed Property"); and

WHEREAS, the Parties hereto have entered into an Option Agreement for the Licensing of Real Property, dated December 4, 2018 (the "Option Agreement"), through which LRSA has granted Aries an option to enter into a Use and Occupancy Agreement (the "U&O Agreement") with LRSA, that would convey to Aries an irrevocable license to use the Licensed Property to process biosolids in an efficient and environmentally sustainable manner in connection with the Facility contemplated on the Property; and

WHEREAS, the parties hereto have amended the U&O Agreement through an Addendum to a certain Use and Occupancy Agreement for the Licensing of Real Property (the "First Addendum") that provides that Aries shall establish an internship program at the Licensed Property and requires that certain Annual Fees be remitted to the LRSA; and

WHEREAS, now the parties hereto would like to amend the definition of Licensed Property in U&O Agreement by way of this Second Addendum; and

NOW, THEREFORE, for good and valuable consideration, including without limit that provided for pursuant to the New Jersey Sewerage Authorities Law, *N.J.S.A. 40:14A-1, et seq. (N.J.S.A. 40:14A-8.1 and N.J.S.A. 40:14A-31.1 to -31.3)*, the sufficiency of which the Parties acknowledge, the Parties, intending to be bound hereby, agree as follows:

1. **Area Licensed to Aries.** Subject to all easements and rights-of-way, the Licensed Property shall be amended to include the following areas owned by LRSA.

A. The area depicted as Construction Laydown Area (the "Construction Laydown Area") in Exhibit A annexed hereto to this Second Addendum and described in the legal description annexed hereto as Exhibit B to this Second Addendum; Nevertheless, notwithstanding anything to the contrary contained in the U&O Agreement and any addendums to the U&O Agreement, the Construction Laydown Area shall not be irrevocably licensed to Aries, and upon substantial completion of the construction of the gasification facility contained in the Building described in Schedule B to the U&O Agreement, Aries shall abandon its use and occupancy of the Construction Laydown Area and return the Construction Laydown Area to the LRSA. The Construction Laydown Area shall only be used as a staging area for construction on the Building and the LRSA Property. Prior to Aries commencing construction on the Building, the laydown area shall be cleared and heavy gravel shall be installed for use during the construction period. The area shall be used for housing construction trailers, equipment storage containers used for tools, parts, and other miscellaneous items, and heavy equipment used for excavation, rigging, and hoisting operations such as bull dozers, backhoes, cranes, and dump trucks. Upon construction completion, the heavy gravel rock will be removed and area reseeded prior to Aries abandoning the Construction Laydown Area.

B. The area depicted as the Personnel Building (the "Personnel Building") in Exhibit C annexed hereto to this Second Addendum and described in the legal description annexed hereto as Exhibit D to this Second Addendum. The Personnel Building shall be used solely to house plant administrative offices and control systems as well as electrical equipment such as electrical panel, breakers, and transformers.

The terms and obligations applying to the Licensed Property as set forth in the U&O Agreement shall apply to all Licensed Property including the areas added to the Licensed Property herein this Second Addendum.

2. **New Permanent Breakroom for LRSA.** Prior to Aries receiving use and occupancy of the Personnel Building in accordance with Section 1B of this Second Addendum and the U&O Agreement, Aries shall construct and provide at its sole cost and expense a new breakroom for LRSA personnel (the "New LRSA Personnel Building") using a permanent trailer that will be located adjacent to the LRSA headquarters and administrative building directly North of the existing Personnel Building. The location of the New LRSA Personnel Building depicted on the Construction Site Layout annexed hereto as Exhibit E.
3. **Access.** Article 2, subsection (b)(i) of the U&O Agreement shall be amended to provide LRSA access to all Licensed Property, rather than only the Building as originally stated the U&O Agreement, under the terms contained therein.

4. **No Additional Lease Payments.** The additional areas to be Licensed to Aries be included in the compensation to be paid to the LRSA as set forth in the U&O Agreement and the First Addendum.

5. **Miscellaneous.**

- a. **Assignment; Successors.** No Party may assign its rights under this Agreement without the prior written consent of the other party. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.
- b. **Termination.** This Addendum shall terminate upon the termination of the U&O Agreement.
- c. **Amendments.** This Addendum shall not be modified or amended except by a written document executed by the Parties and approved by formal action as required by applicable law.
- d. **Waiver of Provisions.** Any waiver of any terms and conditions hereof must be expressly made in writing, and signed by the Parties. The waiver of any of the terms and conditions of this Addendum shall not be construed as a waiver of any other terms and conditions hereof.
- e. **Further Assurances.** Each of the Parties will make, execute, acknowledge and deliver such other instruments and documents, and take all other actions, as such other Party may reasonably request and as may reasonably be required to effectuate the purposes of this Addendum and to carry out the terms hereof.
- f. **Parties In Interest.** Except for the City of Linden, neither this Addendum nor any other agreement contemplated hereby, shall be deemed to confer upon any person not a Party hereto or thereto, any rights or remedies hereunder or thereunder.
- g. **Entire Agreement.** The agreement reflected in this Addendum constitutes the entire agreement of the Parties regarding the subject matter hereof, and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter hereof.
- h. **Severability.** If any provision of this Addendum is held to be illegal, invalid or unenforceable under present or future laws effective during the Term hereof, such provision shall be fully severable and this Addendum, and the Option Agreement and/or the U&O Agreement, as the case may be, shall be construed and enforced as if such illegal, invalid or unenforceable provision never comprised a part hereof, and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision, or by its severance herefrom. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added as part of this Addendum, following formal action of the Parties thereon as required by applicable law, a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid

and enforceable.

- i. Captions. The captions in the agreement reflected in this Addendum are for convenience of reference only, and shall not limit or otherwise affect the interpretation, construction or meaning of any of the terms or provisions hereof.
- j. Governing Law. The agreement reflected in this Addendum and the rights and obligations of the Parties hereto shall be governed by and construed in accordance with the laws of the State of New Jersey without regard to principles of law that would require the application of the laws of another jurisdiction.
- k. Counterparts. The agreement reflected in this Addendum may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Each Party hereto agrees to be bound by its facsimile or PDF signature.

[signature page to follow]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Addendum to a certain Option Agreement for the Licensing of Real Property as of the day and year first above written.

LINDEN ROSELLE SEWERAGE AUTHORITY

By: _____

Name: David Brown, II
Title: Executive Director
Date:

ARIES LINDEN, LLC

By: _____

Name: Gregory Bafalis
Title: CEO
Date: