

## CITY OF OBERLIN, OHIO

### ORDINANCE No. 22-03 AC CMS

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO AN AGREEMENT TO LEASE PROPERTY TO BIO ENERGY (OHIO II), LLC (“BEO”) FOR USE AS A STAGING AREA FOR THE CONSTRUCTION OF A RENEWABLE NATURAL GAS PROCESSING FACILITY AND AN ELECTRIC SUBSTATION ON HILL CREEK DRIVE AS AN EMERGENCY MEASURE

WHEREAS, BEO will construct, own, and operate a facility at 520 Hill Creek Drive, located near the Lorain County Landfill, to collect, process, and treat gas produced from the Lorain County Landfill to produce renewable natural gas (RNG); and

WHEREAS, BEO’s production facility will require certain quantities of electricity and in order to provide such electricity, a new three-breaker ring bus substation (the “Substation”) is to be constructed by BEO and then transferred to the City; and

WHEREAS, BEO requires a construction staging area for the construction of these facilities in order to park construction equipment and employee vehicles and to store construction materials close to the facility construction sites on Hill Creek Drive; and

WHEREAS, the City of Oberlin owns vacant land on Lorain County Permanent Parcel No. 0900078000032 on Hill Creek Drive immediately adjacent to and across Hill Creek Drive from the facility construction sites which can be used for a construction staging area; and

WHEREAS, the proposed RNG facility will create environmental benefits to the City and region, increased fuel diversity and security, economic development and local revenue which are cited in the Oberlin 2019 Climate Action Plan.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, Lorain County, State of Ohio:

SECTION 1. That the City Manager is hereby authorized and directed to enter into a lease agreement with Bio Energy (Ohio II), LLC, a Delaware limited liability company, substantially in the form as attached hereto as **Exhibit A**.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.


SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the citizens of the City of Oberlin, Ohio or to provide for the usual daily operation of a municipal department, to wit: to facilitate the creation of economic and environmental benefits to the City of Oberlin and provided that it is elevated to emergency status by the affirmative vote of at least five members of Council and receives the affirmative

vote of at least five members of Council upon final passage, it shall go into full force and effect from and immediately after its passage; otherwise, it shall take effect on the earliest date allowed by law.

PASSED: 1st Reading: January 18, 2022  
2nd Reading: \_\_\_\_\_  
3rd Reading: \_\_\_\_\_

ATTEST:

  
\_\_\_\_\_  
BELINDA B. ANDERSON, MMC  
CLERK OF COUNCIL

  
\_\_\_\_\_  
HEATHER ADELMAN  
PRESIDENT OF COUNCIL

POSTED: 01/19/2022

EFFECTIVE DATE: 01/18/2022

**SHORT TERM LEASE AGREEMENT  
(Construction Area)**

This Short Term Lease Agreement (this “Lease”) is entered into this 28<sup>th</sup> day of January, 2022 (the “Effective Date”), between **City of Oberlin**, an Ohio municipal corporation (which together with its successors and assigns is referred to herein as “Lessor”), and **Bio Energy (Ohio II), LLC**, a Delaware limited liability company (which together with its successors and assigns is referred to herein as “Lessee”).

**R E C I T A L S**

WHEREAS, Lessee owns a certain tract of land located on Hill Creek Drive, Oberlin, Lorain County, Ohio, on which it plans to construct a renewable natural gas processing plant (the “Plant”). In connection with the construction of the Plant, Lessee desires to lease from Lessor that certain area containing approximately two (2) acres, as depicted on Exhibit A attached hereto and hereinafter referred to as the “Premises”;

WHEREAS, Lessee desires to lease the Premises for use by Lessee and its contractors as a laydown area for storing materials and equipment during the period that the Plant is being constructed, subject to the terms and conditions set forth herein; and

WHEREAS, Lessor is willing to lease the Premises to Lessee for such use, subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Lease, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby intending to be legally bound agree as follows:

**BASIC TERMS**

Lease Date:	January 28, 2022
Lessor:	City of Oberlin
Lessor’s Address:	69 South Main Street Oberlin, OH 44074 Attn: Rob Hillard City Manager
Lessee:	Bio Energy (Ohio II), LLC
Lessee’s Address:	2501 Coolidge Rd., Suite 100 East Lansing, MI 48823

Attn: Colin Kelly  
Business Development Director

Premises: Defined in the Recitals

Term: The Effective Date through December 31, 2023 (“Termination Date”).

Gross Rent: One-time payment of Ten Thousand Dollars (\$10,000) for the entire Term, which payment shall be made within twenty (20) days after this Lease is fully executed. This Lease is intended to be a “**gross**” lease such that Lessee’s payment of Gross Rent to Lessor includes all charges and costs with respect to the Premises during the Term, except for, (a) the costs of utilities which Lessee elects to use at the Premises (which shall be paid by Lessee directly to the applicable utility), and (b) the costs of insurance required to be carried by Lessee under this Lease (which shall be paid by Lessee directly to its insurance carrier).

Security Deposit: None.

Permitted Use: Use of the Premises by Lessee and its contractors as a lay down area for equipment, supplies, and machinery to be used in the construction of the Plant, the placement of job trailers for Lessee and its contractors, and for Lessee and contractor employee parking.

## I. CLAUSES AND COVENANTS

### A. Lessee agrees to—

1. Lease the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.
2. Accept the Premises in its present “**AS IS**” condition, and acknowledges the Premises as being currently suitable for the Permitted Use and that Lessor shall have no obligation to make any improvements to the Premises before or during the Term.
3. Comply with all applicable laws relating to the Permitted Use, condition, and occupancy of the Premises.
4. Obtain and pay for utility services, if any, required by Lessee at the Premises. If Lessee, in its sole discretion, elects to contract for any such utility service for the Premises, then Lessee will punctually pay, discharge and satisfy all charges and other like payments for such service charged on, or in respect of, the Premises (“Utility Payments”), and if Lessee defaults in payment of such Utility Payments, Lessor may (but shall not be required to) pay the same and in addition to Lessor’s other rights, powers and remedies under this Lease, may recover the same from Lessee.

5. Allow Lessor to enter the Premises at reasonable times and upon reasonable advance, written notice to Lessee (except in the case of an emergency) to perform Lessor's obligations, inspect the Premises, and show the Premises to prospective purchasers or (in the last 90 days of the Term) lessees.

6. Maintain a minimum 50-foot vegetated buffer along Oberlin Road and, in areas that are cleared by Lessee for Lessee's Permitted Use, install geotextile, gravel and appropriate erosion control measures around any disturbed area.

7. Vacate the Premises on the last day of the Term. Lessee shall leave the Premises in a graveled condition and shall not restore the Premises to the condition existing as of the Lease Date.

**B. Lessee agrees not to—**

1. Use the Premises for any purpose other than the Permitted Use.
2. Dispose of any waste on the Premises.
3. Allow a lien to be placed on the Premises through actions of Lessee, provided, however, that if a lien is filed, Lessee shall have thirty (30) days in which to ensure such lien is removed.
4. Assign this Lease or sublease any portion of the Premises without Lessor's written consent; provided, however, (a) that Lessee may assign or sublease any portion of the Premises to an affiliate of Lessee without Lessor's consent, and (b) that Lessee's contractors may access and use the Premises solely for the Permitted Use, without Lessor's written consent.

**C. Lessor agrees to—**

1. Lease to Lessee the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.
2. Throughout the Term, Lessor shall be responsible for providing Lessee, its employees, contractors, invitees and agents suitable road access to the Premises Lessor shall also be solely responsible for maintaining any access roads to the Premises and otherwise keeping them clear for such suitable access.
3. Lessor warrants that Lessor owns the Premises, and that Lessor has all right and authority to make and perform this Lease. Lessor covenants that Lessee, so long as Lessee observes and keeps the covenants of this Lease on its part to be kept, shall lawfully, peaceably and exclusively hold, occupy and enjoy the Premises during the term hereof, free from any interference.
4. Lessor will promptly pay taxes and assessments against the Premises, if any, as and when they become due, except that Lessee shall reimburse Lessor for any taxes and

assessments paid by Lessor that are attributable solely to Lessee's personal property or Lessee's use of the Premises.

**E. Lessor and Lessee agree to the following:**

1. Lessee shall not be required to make any physical additions or improvements to the Premises. Lessee may, in its sole discretion, at its sole cost, and without Lessor's consent, elect to place geotextile and gravel on the surface of all or any portion of the Premises other than the vegetative buffer, and/or to install a fence around all or any portion of the perimeter of the Premises. In such event, Lessor and Lessee intend and agree that, such improvements shall be and remain the property of Lessee, and shall at no time become a fixture with respect to the Premises. Any material, equipment or other personal property that Lessee or its contractors locate at the Premises shall remain Lessee's (or the applicable contractor's) property. Lessor hereby waives any statutory, contractual or constitutional liens upon, or security interest in, any of Lessee's or its contractors' property located at the Premises.

2. Lessee shall maintain (or shall ensure its contractors maintain) in effect throughout the Term commercial general liability insurance of an "**occurrence**" type against all claims on account of liability of Lessee, with limits of not less than \$1,000,000 per occurrence and \$2,000,000 as a general aggregate. Such commercial general liability insurance shall include broad form property damage, personal injury liability insurance (with the employee's exclusion deleted) with a limit of \$1,000,000 per occurrence. Such policy shall name Lessor as an additional insured using ISO Form 2026 or its equivalent. Lessee shall also maintain (or shall ensure its contractors maintain) in effect throughout the Term, worker's compensation insurance as required by applicable law.

3. **LESSOR AND LESSEE RELEASE EACH OTHER FROM ALL CLAIMS OR LIABILITIES FOR DAMAGE TO THE PREMISES, DAMAGE TO OR LOSS OF PERSONAL PROPERTY WITHIN THE PREMISES, AND LOSS OF BUSINESS OR REVENUES THAT ARE COVERED BY THE RELEASING PARTY'S PROPERTY INSURANCE THE PARTY INCURRING THE DAMAGE OR LOSS WILL BE RESPONSIBLE FOR ANY DEDUCTIBLE OR SELF-INSURED RETENTION UNDER ITS PROPERTY INSURANCE. LESSOR AND LESSEE WILL NOTIFY THE ISSUING PROPERTY INSURANCE COMPANIES OF THE RELEASE SET FORTH IN THIS PARAGRAPH AND WILL HAVE THE PROPERTY INSURANCE POLICIES ENDORSED, IF NECESSARY, TO PREVENT INVALIDATION OF COVERAGE. THIS RELEASE WILL NOT APPLY IF IT INVALIDATES THE PROPERTY INSURANCE COVERAGE OF THE RELEASING PARTY. THE RELEASE IN THIS PARAGRAPH I.E.3. WILL APPLY EVEN IF THE DAMAGE OR LOSS IS CAUSED IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF THE RELEASED PARTY BUT WILL NOT APPLY TO THE EXTENT THE DAMAGE OR LOSS IS CAUSED BY THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE RELEASED PARTY.**

**II. CONDEMNATION**

If the Premises cannot be used for the Permitted Use as contemplated by this Lease because of condemnation, purchase in lieu of condemnation or other taking by a governmental entity, then Lessee shall have the right to terminate this Lease.

### III. DEFAULT

A. An “Event of Default” shall mean any of the following:

1. Lessee’s failure to pay when due all or any portion of the Gross Rent and such failure continues for 5 business days after written notice of such failure to Lessee.
2. Lessee’s failure (other than a failure to pay money) to comply with any covenant or breach of any warranty or representation of Lessee in this Lease, if the failure is not cured within 20 days after written notice to Lessee from Lessor; provided that if Lessee’s failure to comply cannot reasonably be cured within such 20 days, Lessee shall be allowed such additional time as is reasonably necessary to cure the failure so long as: (1) Lessee commences to cure the failure within the 20 day period following Lessor’s initial written notice, and (2) Lessee diligently pursues to completion a course of action that will cure the failure and bring Lessee back into compliance with this Lease.

B. A “Lessor Default” shall mean Lessor’s failure to comply with any covenant, warranty or representation of Lessor in this Lease, if the failure is not cured within 20 days after written notice to Lessor from Lessee; provided that if Lessor’s failure to comply cannot reasonably be cured within such 20 days, Lessor shall be allowed additional time as is reasonably necessary to cure the failure so long as: (1) Lessor commences to cure the failure within the 20 day period following Lessee’s initial written notice and (2) Lessor diligently pursues a course of action that will cure the failure and bring Lessor back into compliance with this Lease.

C. Remedies.

1. Upon the occurrence of an Event of Default by Lessee are to, (a) enter and take possession of the Premises; (b) enter the Premises and perform Lessee’s obligations; and (c) terminate this Lease by written notice and sue for damages.
2. Upon the occurrence of a Lessor Default Lessor may, (a) sue for damages, specific performance, (b) terminate this Lease, or (c) pursue any of its rights or remedies at law or in equity.

D. Default/Waiver/Mitigation. It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Lease does not preclude pursuit of other remedies in this Lease or provided by applicable law. Lessor and Lessee have a duty to mitigate damages to the extent required by applicable law.

#### **IV. HOLDOVER**

If Lessee does not vacate the Premises following the expiration or earlier termination of this Lease, Lessee will become a Lessee at will and must vacate the Premises within 30 days of written notice from Lessor. No holding over by Lessee, whether with or without the consent of Lessor, will extend the Term. Rent for any holdover will be Six Hundred Dollars (\$600) per month.

#### **V. FORCE MAJEURE**

If by reason of Force Majeure (as defined below), either Lessor or Lessee is rendered unable, wholly or in part, to carry out its obligations under this Lease, and if such party gives notice of the particulars of such Force Majeure, within 5 days after the date it acquired knowledge of the existence of such Force Majeure, the obligations of each party, so far as each such party is prevented from carrying out its obligations under this Lease by reason of such Force Majeure, shall be suspended during the continuance of any inability so caused, but for no longer period. Each of Lessee and Lessor, as applicable shall promptly mitigate any such Force Majeure to the extent possible. As used herein, the term “Force Majeure” means any act, omission, or circumstances occasioned by or in consequence of any Acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, war, blockades, insurrections, riots, epidemics, lightning, earthquakes, fires, storms or other weather conditions, floods, washouts, interruption of utilities (water, power, natural gas, etc.), arrests and restraints of governments and people, civil disturbances, explosions, breakage or accidents to rigs, equipment, machinery or lines of pipe, actions of governmental authorities or courts prohibiting performance by a party of its obligations under this Lease, and any other causes not reasonably within the control of such party and not the result of the negligence of, or caused by the party claiming suspension and which, by the exercise of due diligence, such party has not been or is unable to prevent or overcome, whether affecting a party hereto or its contractors or subcontractors.

#### **VI. MISCELLANEOUS**

A. Alternative Dispute Resolution. Lessor and Lessee agree to mediate in good faith before filing suit hereunder.

B. Governing Law; Venue and Jurisdiction. This Lease shall be governed by and construed in accordance with the internal laws of the state of Ohio. Any Dispute shall be brought exclusively in the state or federal courts located in Lorain County, Ohio. By execution and delivery of this Lease, with respect to legal actions that may arise under this Lease, each of the parties knowingly, voluntarily and irrevocably: (a) consents, for itself and in respect of its property, to the exclusive jurisdiction of these courts; (b) waives any right to trial by jury; and (c) agrees that any dispute under this Lease shall be decided by court trial without a jury.



C. Entire Agreement. This Lease, together with the attached exhibits and riders, is the entire agreement of the parties, and there are no oral representations, warranties, agreements, or promises pertaining to this Lease or to any expressly mentioned exhibits and riders not incorporated in writing in this Lease.

D. Amendment of Lease. This Lease may be amended only by an instrument in writing signed by Lessor and Lessee.

E. Notices. Any notice required or permitted under this Lease must be in writing. Any notice required by this Lease will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set forth in the Basic Terms of this Lease. Notice may also be given by regular mail, personal delivery, courier delivery, e-mail transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

F. Counterparts. This Lease may be executed in any number of counterparts with the same effect as if all signatories had signed the same document. All counterparts must be construed together to constitute one and the same instrument. This Lease may be transmitted and signed by facsimile, portable documents format (PDF), or other electronic means, and shall have the same effect as manually-signed originals and shall be binding on Lessee and Lessor, but shall, together constitute one and the same agreement.

**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease as of the Effective Date first set out above.

WITNESS:

*Shaundra Y. Phillips*  
Print Name: Shaundra Y. Phillips

LESSOR:

City of Oberlin, Ohio

*James J. Filvariz*  
Print Name: JAMES J. FILVARIZ

By: City of Oberlin  
Name: Robert Hillard  
Title: City Manager

Approved as to form:

*Jon D. Clark* 1/26/2022  
Jon D. Clark, Law Director

APPROVED:

By: *Rob Hillard*  
Rob Hillard, Oberlin City Manager

WITNESS:

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

LESSEE:

Bio Energy (Ohio II), LLC, a Delaware limited liability company

By: Bio Energy (I), LLC, its sole member

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

By: Bio Energy (US), LLC, its sole member

By: EDL Holdings (US), Inc., its sole member

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

**EXHIBIT A**

**DEPICTION OF THE PREMISES**

