BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA

RESOLUTION DIRECTING PURCHASING TO REQUEST BIDS AND SETTING DATE OF LEASE

WHEREAS, pursuant to Neb. Rev. Stat. § 23-104, the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. § 23-103, the powers of the County as a body are exercised by the County Board; and,

WHEREAS, there is space available for lease at the Sarpy County Landfill as outlined in the proposed lease document attached hereto; and,

WHEREAS, Neb. Rev. Stat. § 23-107.01 requires the County Board to hold a public hearing to allow the public to speak for or against the proposed lease and raise any issues regarding fair market value of the property and said public hearing was on January 12, 2016, with notice published in the Suburban newspapers on December 30, 2015 and January 6, 2016; and

WHEREAS, § 23-107.01 also requires the County Board to set a date at which the Lease will be offered to the highest bidder within two months of the public hearing.

NOW THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT the County Board directs the Purchasing department to take such actions necessary to solicit bids for the attached Lease.

BE IT FURTHER RESOLVED THAT the County Board hereby sets January 26, 2016 as the date Purchasing shall report back on the bid process and the date that the attached Lease will be approved with a qualifying Lessee.

The above Resolution was approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on the 12th day of January, 2016.

[Signature]
Sarpy County Board Chairman

[Signature]
County Clerk

[ Seal ]
MEMO

To: Sarpy County Board of Commissioners

From: Beth Garber

Re: Public Hearing for Landfill Property & LFGCS

The County is currently in the process of finalizing a landfill gas collection and use system agreement. The agreement is separated into an operating agreement and lease agreement. The lease agreement will be for the use of Landfill property and the use of the landfill gas collection system (LFGCS). Per statute, the County must take proposals and hold a public hearing allowing the public to speak on the proposed lease and raise any issues regarding fair market value of the property.

Following this public hearing the Purchasing Department will release an RFP requesting proposals from potential Lessee’s. On January 26, 2016, I will come back to the Board with a recommended lease.

Please feel free to contact me with any questions at bgarber@sarpy.com.

December 11, 2015

Beth Garber

cc: Deb Houghtaling
Mark Wayne
Scott Bovick
Brian Hanson
John Reisz
LEASE

LEASE (this "Lease"), dated as of ______________, 2016 (the "Effective Date"), between the County of Sarpy, Nebraska, a body corporate and politic, whose address is 1210 Golden Gate Drive, Papillion, NE 68046 ("Lessor") and __________________________ with its principal office at ________________________ ("Lessee").

Recitals

Lessor is the owner in fee simple of certain land located in Sarpy County, consisting of approximately 2.5 acres and is legally described in Exhibit A attached hereto and incorporated by reference herein. Further, Lessor is the owner of a Landfill Gas Collection and Control System ("LFGCS") and together with the land are collectively referred to as the "Premises".

Lessor desires to lease the Premises to Lessee, and Lessee desires to lease the Premises from Lessor, for the purposes of utilizing the LFGCS and constructing, maintaining and operating a gas utilization system to process landfill gas into natural gas and distribute such gas to gas suppliers (the "Gas Utilization System"), subject to and in accordance with the provisions of this Lease and that certain Sarpy County Landfill Gas Utilization System Development and Operating Agreement executed by the parties concurrently herewith (the "Development and Operating Agreement"). The Premises also includes all Easements benefiting the Premises, including those Easements set forth in Section 12.

Agreement

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party hereto, Lessor and Lessee hereby agree as follows:

1. **Lease of Premises.** Lessor hereby leases the Premises to Lessee upon the terms and conditions contained herein and in accordance with the Development and Operating Agreement. For purposes of this Lease, the term "Premises" shall include the Sarpy County Landfill area identified in Exhibit "A" attached hereto ("Land") and the LFGCS as described in Exhibit "B" (such description to be amended and updated following Lessee’s extension thereof in accordance with the Development and Operating Agreement), the terms of which are separately specified herein.

2. **Term.** The term of this Lease shall be as follows:

   (a) **Commencement Date.** The commencement of this Lease for purposes of commencement of the parties’ rights and obligations hereunder shall be the commencement date for construction of the Gas Utilization System as notified by Lessee in accordance with the terms of the Development and Operating Agreement (the "Commencement Date").

   (b) **Primary Term.** The primary term of this Lease shall be fifteen (15) years from the Effective Date.

   (c) **Renewal Options.** Lessee shall have the option to renew and extend this Lease for two (2) additional terms of five (5) years each, upon the same terms and conditions as provided herein, by giving Lessor written notice of Lessee’s election at least ninety (90) days prior to the expiration of the then current primary or renewal term.

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3. **Rent.** Rent payable to Lessor by Lessee under this Lease shall be as follows:

   (a) **Primary Term Rent.** Lessee shall pay Lessor as rental for the land for the primary term of this Lease the sum of __________________________ per year and such other good and valuable consideration which is recognized as such by Lessor and Lessee (the "Rent"), which sum, or pro-rata portion thereof, is payable annually in advance starting on the Commencement Date and on the first day of each successive calendar year thereafter for the term of this Lease.

   (b) Lessee shall pay Lessor as rental for the LFGCS and for the primary term of this Lease the sum of __________________________ per year and such other good and valuable consideration which is recognized as such by Lessor and Lessee (the "Rent"), which sum, or pro-rata portion thereof, is payable annually in advance starting on the Commencement Date and on the first day of each successive calendar year thereafter for the term of this Lease.

   (c) **Renewal Term(s) Rent.** Lessee shall pay Lessor as annual rental for the Premises during the renewal term(s) of this Lease, for each renewal term exercised by Lessee, the sum of __________________________ for the land and __________________________ for the LFGCS for each renewal term, payable annually in advance in like manner as the Rent for the primary term.

4. **Use of Premises.** Lessee may only use the Premises for the purposes of constructing, maintaining and operating the County LFGCS and a Gas Utilization System in accordance with the terms of the Development and Operating Agreement. Such use shall not interfere with Lessor’s landfill operations. Subject to the terms of this Lease and the Development and Operating Agreement, the County shall not unreasonably interfere with Lessee’s operations at the Premises.

5. **Utilities.** Lessee shall pay for all utilities extensions to, and maintenance of and operation of utilities for operating the Gas Utilization System at the Premises, including, but not limited to, telephone, gas, water, electricity, storm sewer and sanitary sewer. The location of such utilities shall be subject to the written approval of Lessor, which approval shall not be unreasonably withheld, conditioned or delayed.

6. **Compliance with Law.**

   (a) During the term of this Lease, Lessee shall, at Lessee’s sole cost and expense, comply promptly with all applicable statutes, laws, ordinances, regulations, and requirements (collectively, "Legal Requirements") in effect during the term of this Lease applicable to the Premises, and Lessee’s activities and operations thereon, including, but not limited to, the Nebraska Environmental Protection Act and implementing regulations.

   (b) Lessee hereby covenants and agrees to abide by any and all environmental restrictions and regulations applicable to the Premises; provided, however, that the Lessor shall continue to perform and comply with all of its obligations under the environmental restrictions and regulations applicable to the Premises pursuant to the terms of this Lease.

   (c) The Lessor hereby covenants and agrees to indemnify and hold harmless Lessee and its managers, members, officers, affiliates, employees, successors, legal representatives and assigns from and against all claims, damages, liabilities,
losses, judgments, settlements and costs (including, without limitation, reasonable attorney's fees and disbursements) related to Environmental Conditions at the Premises, or any portion thereof, in connection with (i) the use, monitoring, remediation or decommissioning of the Premises, or any portion thereof, by the Lessor or any previous owner/user/service provider (other than Lessee) of the Premises, or any portion thereof, prior to Lessee's engagement under the Development and Operating Agreement; (ii) the use, monitoring, remediation or decommissioning of the Premises, or any portion thereof, by any existing or subsequent owner/occupant/user/service provider of the Premises, or any portion thereof, during the Term or after Lessee's engagement under the Development and Operating Agreement terminates; (ii) violations by any prior, existing or subsequent owner/occupant/user/service provider of the Premises, or any portion thereof, of local, state and/or federal laws and regulations, including all applicable environmental laws and regulations, as well as any liabilities, resulting from the practices of the prior, existing or subsequent owner/occupant/user/service provider whether or not such practices were or could be deemed a violation of such laws and regulations; (iv) contamination of the Premises, or any portion thereof, by the Lessor or by its agents, employees or other service providers acting on behalf of the Lessor prior to, during or after the Term hereof; and (v) any contamination or other Environmental Condition present on or about the Premises, or any portion thereof, whether currently known or unknown, that existed on or prior to the Effective Date.

(d) Lessee hereby covenants and agrees to indemnify and hold harmless the Lessor and its elected and appointed officials, officers, agents, representatives and employees from and against all claims, damages, liabilities, losses, judgments, settlements and costs (including, without limitation, reasonable attorney's fees and disbursements) in connection with Environmental Conditions caused by or resulting from (i) Lessee's use of the Premises or services performed by Lessee, its agents or employees under the Development and Operating Agreement, or any portion thereof; and (ii) violations by Lessee, its agents or employees of local, state and/or federal laws and regulations, including all applicable environmental laws and regulations, as well as any liabilities resulting from the environmental practices of Lessee, its agents or employees at the Premises occurring during the Term of this Lease whether known during the Term of this Lease or later discovered.

(e) "Environmental Conditions" shall mean any condition arising out of, on or with respect to the Premises, including any release or the presence of hazardous substances or materials, created or caused by any party, that does or may reasonably be expected to (i) require abatement or correction under any environmental law, (ii) give rise to any civil or criminal liability on the part of any party under any environmental law, or (iii) create a public or private nuisance;

7. Maintenance and Repairs. Lessor shall maintain and repair the Premises in accordance with the Development and Operating Agreement. Lessee shall keep all land, buildings and improvements herein leased in good and safe condition and repair. Additionally, Lessee shall keep the Premises free of trash, junk, derelict vehicles and derelict equipment.
8. **Indemnity.**

8.1 **Insurance Requirements.**

(a) All insurance coverages herein required of Lessee shall be written by an insurance company or companies transacting business as an admitted insurer in the State of Nebraska or under the Nebraska Surplus Lines Insurance Act. All insurance companies must possess a minimum A.M. Best Insurance Company rating of A-. Upon request by the Lessor, Lessee shall furnish evidence that the insurance company, or companies being used by Lessee meet the minimum requirements listed in this Section. Lessee shall maintain in full force and effect at all times during the Term insurance coverages meeting the requirements set forth below:

(i) **Worker’s Compensation and Employers Liability Insurance.** The minimal acceptable limits shall be the statutory limits as required by the State of Nebraska for Coverage A, Workers’ Compensation and $500,000 each accident for Coverage B, Employers Liability.

(ii) **Commercial General Liability Insurance.** Coverage should include broad form coverage written on a commercial general liability form and written on an occurrence basis. The coverage must protect against claims for damages resulting from bodily injury, including death, personal injury and property damage. The minimum acceptable limits of liability shall be $1,000,000 each occurrence. If the coverage contains a general aggregate, such limit shall not be less than $2,000,000. The products/completed operations limit shall not be less than $2,000,000. The Lessor is to be named as an additional insured on the insurance coverage required under this section.

(iii) **Automobile Liability Insurance.** Coverage shall be against claims for damages resulting from bodily injury, including death and property damage, which may arise from the operations of any owned, hired or non-owned automobile. The minimum acceptable limit of liability shall be $1,000,000 Combined Single Limit for each accident. The Lessor is to be named as an additional insured on the insurance coverage required under this section.

(iv) **Excess (Umbrella) Liability Insurance.** Coverage shall be excess coverage over the Commercial General Liability primary policy in the aggregate amount of $5,000,000 with a minimum limit of $1,000,000 per occurrence.

(v) **Pollution (Environmental) Liability Insurance.** Coverage shall be for claims for damages resulting from bodily injury, including death and property damage including cleanup costs caused by the sudden or non-sudden emission, discharge, release or escape of pollutants resulting in damage to the environment. The minimum acceptable limit of liability shall be $2,000,000 for each occurrence and in the aggregate. The Lessor is to be included as an additional insured on the insurance coverage required under this section.

(b) The foregoing insurances coverages shall be kept in force during the Term and, except for Workers’ Compensation and Employers Liability Insurance, shall be primary with respect to any insurance or self-insurance programs covering the Lessor, its commissioners, officials, agents, representatives and employees.
These insurance coverages shall specifically state, or be endorsed to state, that thirty (30) days’ notice shall be given to the Lessor in the event of cancellation of any of the coverages.

(c) Lessee shall furnish the Lessor with a certificate(s) of insurance evidencing the coverages required under this Section. Lessee shall require each and every subcontractor performing work under this Lease and the Development and Operating Agreement to maintain the same coverages required of Lessee under this Section, and upon request by the Lessor, shall furnish the Lessor with a certificate(s) evidencing the subcontractor’s insurances coverages required under this Section.

(d) Upon request by the Lessor, Lessee shall furnish the Lessor with complete and accurate copies of the insurance policies required under this Section. If at any time during the Term, Lessee’s insurance coverages and limits do not meet or exceed the minimum insurance requirements required under this Section, Lessee is required to notify the County within thirty (30) days of any deviations from the minimum requirements under this Section.

(e) For the avoidance of doubt, in no event shall Lessee be required to procure and maintain duplicative insurance for purposes of complying with its insurance obligations under the Lease and the Development and Operating Agreement.

8.2 Indemnity.

(a) Indemnification by the Lessor. The Lessor agrees to indemnify and hold harmless, protect and defend Lessee and its managers, members, officers, affiliates, agents, representatives and employees from and against any and all losses, claims, demands, suits, actions, payments and judgments arising from personal injury or property damages, or otherwise, brought or recovered against Lessee or its managers, members, officers, agents, representatives and employees by reason of any act or omission of the Lessor, its elected and appointed officials, officers, agents, representatives, servants or employees, subcontractors, guests or otherwise to the extent incident to or resulting from (i) the negligence or intentional misconduct of the Lessor or its elected and appointed officials, officers, agents, representatives and employees, and (ii) the breach by the Lessor of any provision of this Lease or the Development and Operating Agreement, in each case including any and all reasonable expenses, legal or otherwise, incurred by Lessee and its managers, members, officers, agents, representatives and employees in the defense of any claim or suit.

(b) Indemnification by Lessee. Lessee agrees to indemnify and hold harmless, protect and defend the Lessor and its elected and appointed officials, officers, agents, representatives and employees from and against any and all losses, claims, demands, suits, actions, payments and judgments arising from personal injury or property damages, or otherwise, brought or recovered against the Lessor or its elected and appointed officials, officers, agents, representatives and employees by reason of any act or omission of Lessee, its managers, officers, agents, representatives, servants or employees, subcontractors, guests or otherwise to the extent incident to or resulting from (i) the construction of and/or operation of the Gas Utilization System, (ii) the negligence or intentional misconduct of Lessee or its managers, officers, agents, representatives and
employees, and (iii) the breach by Lessee of any provision of this Lease or the Development and Operating Agreement, in each case including any and all reasonable expense, legal or otherwise, incurred by the Lessor and its elected and appointed officials, officers agents, representatives and employees in the defense of any claim or suit.

9. **Surrender.**

(a) Within six (6) months after the expiration or earlier termination of the Term, except for the LFGCS, Lessee shall, at its own expense, remove all physical material pertaining to the Gas Utilization System from the Premises (the "Gas System Assets") to a depth of twenty-four (24) inches beneath the soil surface, and restore the area formerly occupied by the Gas System Assets to substantially the same physical condition which existed immediately before the installation of the Gas System Assets (the "Removal Obligations"); provided, however, that if any Gas System Asset shall remain on the Premises, at Lessor's discretion, such Gas System Asset shall not be subject to the Removal Obligations hereunder and thereafter become the property of the Lessor; with the exception of any pipeline on the Premises which should be capped and abandoned in place under then current standard practices.

(b) Lessor shall grant Lessee all necessary or reasonably required easements and access rights to and from the Premises in order for Lessee to perform its aforesaid Removal Obligations and for the purposes of effecting or completing any required decommissioning under any permit, license or agreement issued in connection with the Gas Utilization System.

(c) Lessor hereby acknowledges and agrees that Lessee shall not be responsible in any manner for the removal from the Premises of the LFGCS or other assets or property currently in place at the Premises (the "Landfill Assets") or for the restoration of the Premises arising out of the removal of the Landfill Assets by the Lessor or any third party; provided, however, that in the event the Gas Utilization System or Lessee's Removal Obligations cause any damage to the Landfill Assets, Lessee shall remedy such damage and/or restore the Landfill Assets.

10. **Eminent Domain.** If any part of the Premises shall be taken by any public authority (other than Lessor) under the power of eminent domain, then this Lease shall terminate as to the part of the Premises taken upon the date of taking by such public authority. Lessor shall have no right to receive any portion of the condemnation award made for Lessee's buildings, fixtures and improvements on the Premises, and Lessee shall have no right to receive any portion of the condemnation award made for the Premises (including the value of any leasehold interest). Lessor hereby agrees that, during the term of this Lease, it shall not exercise any power of eminent domain with regard to the Premises.

11. **Taxes.** Lessor shall cause the County Assessor to send all tax bills and notices received by it concerning Lessee's use of the Premises to Lessee or a designee of Lessee. Premises shall include both the land and leasehold improvements. Lessee shall pay before delinquent all real and personal property taxes and ad valorem taxes that are levied against Lessee's use of the Premises, the buildings or other improvements on the Premises, and all personal property installed or located by Lessee in or about the Premises, which are assessed for any year during the term of this Lease and notified by the County Assessor or Lessor to Lessee hereunder. If any such taxes shall cover any period of time prior to or after the
expiration of the term hereof, Lessee's share of such taxes shall be equitably prorated to cover only the period of time within the tax fiscal year during which this Lease shall be in effect, and Lessor shall reimburse Lessee to the extent required. Notwithstanding any of the foregoing, the parties hereby agree to cooperate in good faith to (a) resolve any disputed tax bill attributable to any third parties' use of the Premises, and (b) explore and utilize any sales, excise, use or other tax exemption, refund or abatement with respect to or arising out of Lessee's extension of the LFGCS and development and operation of the Gas Utilization System.

12. **Grant of Easements.** Lessor hereby grants to Lessee all rights and easements necessary and required by Lessee in carrying out its activities and operations pursuant to the Development and Operating Plan approved by Lessor pursuant to the Development and Operating Agreement, including without limitation: (a) the right to construct, operate, maintain, replace, and remove the Gas Utilization System on the Premises; (b) the right to extend, maintain, replace and repair the LFGCS; (c) the right to (i) construct and/or use all underground wires and cables, for the transmission of electrical energy and/or for communication purposes, and all necessary and proper foundations, footings, and other appliances and fixtures for use in connection with said wires and cables on, along and in the Premises, and (ii) construct, use, maintain, repair and replace one or more lateral pipeline(s) on the Premises, including interconnection and/or switching facilities from which Lessee may interconnect to a utility transmission system or the transmission system of another purchaser of energy, together with the appropriate rights of way, on, along and in the Premises (said, wires, cables, pipelines, facilities and rights of way are herein collectively called the "Transmission Facilities"); and (d) the right of 24-hour access to the Premises, including ingress to and egress from the Gas Utilization System and Transmission Facilities to carry out its activities and operations as described herein and in the Development and Operating Agreement (all such rights and easements, collectively, the "Easements"). All Easements shall terminate upon the expiration or earlier termination of the term of this Lease; provided, however, all Easements required to carry out Lessee's removal obligations shall survive the term for the period of time provided herein.

13. **Temporary Operation.** In the event that Lessee is temporarily unable to perform its obligations under the Development and Operating Agreement, then Lessor, without waiving any of its rights, has the right, but not the obligation, to have access to the Premises (other than the Gas Utilization System), and any of Lessee's improvements, to provide for the general safety and preservation of Lessor's property until such time as Lessee has resumed its obligations under the Development and Operating Agreement.

14. **Default; Termination; Remedies.**

14.1 **Default by Lessee.** The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Lessee:

(a) The vacating or abandonment of the Premises by Lessee on or after the Commencement Date.

(b) The failure by Lessee to make any payment of rent or any other payment required to be made by Lessee hereunder, as and when due, where such failure shall continue for a period of thirty (30) days after the date Lessor gives Lessee written notice that the rent is past due, or the failure by Lessee to make any payment required to be made by Lessee under the Development and Operating Agreement.
(c) (i) The making by Lessee of any general assignment, or general arrangement for the benefit of creditors; (ii) the filing by or against Lessee of a petition to have Lessee adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Lessee, the same is dismissed within two (2) months); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee’s assets located at the Premises or of Lessee’s interest in this Lease, where possession is not restored to Lessee within one (1) month; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee’s assets located at the Premises or of Lessee’s interest in this Lease, where such seizure is not discharged within one (1) month.

14.2 Default by either Party. Upon the occurrence of a material default hereunder, other than Lessee’s default described in Section 14.1(b) above, which default is not cured within thirty (30) days following written notice of default, or, if such default is not reasonably capable of cure during such period, within ninety (90) days following written notice of default provided that the defaulting party is exercising good faith and due diligence to cure the default, the non-defaulting party may terminate this Lease.

14.3 Termination of Development and Operating Agreement. Upon the termination of the Development and Operating Agreement in accordance with its terms, this Lease shall terminate, without any further action on the part of the parties hereto, upon the termination date of the Development and Operating Agreement.

14.4 Effect of Termination. In the event of termination of this Lease for any reason, Lessee shall, with immediate effect, cease to be obligated to pay any rental amounts due hereunder which are incurred after the termination date and shall have no further liability or obligations to the Lessor except as otherwise provided for in this Lease.

14.5 Survival. Notwithstanding the termination or expiration of this Lease, and except as otherwise stated in this Lease, those obligations contained herein that by their terms or nature are intended to survive such termination or expiration and shall be binding upon the parties and their legal representatives, heirs, successors and assigns.

15. Lessee to Maintain Free and Clear Title. Lessee shall not mortgage or transfer its interest in the Premises as security for a debt nor allow any lien, encumbrance or restriction arising through Lessee to attach to the Premises during the entire term of this Lease; provided, however, nothing in this Section 15 shall prohibit Lessee from incurring any security interest, lien or encumbrance on its personal property located at the Premises or in any Lessee products or proceeds therefrom under the Development and Operating Agreement.

16. Quiet Enjoyment. Lessor covenants, represents and warrants that: (i) Lessor has full right and power to execute and deliver this Lease; (ii) Lessor shall do no act to disrupt Lessee’s peaceful and quiet enjoyment of the Premises, including all rights to develop and operate the Gas Utilization System, during the entire term of this Lease, except for acts by Lessor pursuant to Section 13; and (iii) Lessor shall defend Lessee’s possession of the Premises against the lawful claims of all persons arising from an act of Lessor.

17. Recording Lease or Memorandum of Lease. Lessee shall have the right to record an original of this Lease or a memorandum of this Lease, including the grant of Easements contained herein. Lessor will cooperate with Lessee in the execution and delivery of such documents (including a memorandum or short form of this Lease or comparable
documents) as may be required to effectuate the foregoing in accordance with the requirements, customs and practices governing such recordation.

18. **Subordination.**

(a) This Lease, at Lessor's option, shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation for security now or hereafter placed upon the real property of which the Premises are a part and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. Notwithstanding such subordination, Lessee's right to quiet possession and enjoyment of the Premises shall not be disturbed by any prior or subsequent third party interest in the Premises if Lessee is not in material default hereunder and which Lessee has failed to cure within the specified time for cure, and so long as Lessee shall pay the rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. Notwithstanding the foregoing, the Lessor agrees that during the Term it will not negotiate or enter into any agreement with any other person(s) to lease, sell or otherwise encumber or alienate any interest in the Premises, whether as buyer, lessee, broker, agent or otherwise, that adversely affects Lessee’s ability to develop and operate the Gas Utilization System without the prior written consent of Lessee, which consent Lessee may not unreasonably withhold or delay. If any mortgagee, trustee or ground lessor shall elect to have this Lease prior to the lien of its mortgage, deed of trust or ground lease, and shall give written notice thereof to Lessee, this Lease shall be deemed prior to such mortgage, deed of trust, or ground lease, whether this Lease is dated prior or subsequent to the date of said mortgage, deed of trust or ground lease or the date of recording thereof; provided, however that notwithstanding such subordination, Lessee’s right to quiet possession and enjoyment of the Premises shall not be disturbed by any such subsequent third party interest in the Premises.

(b) Subject to the terms and conditions of Section 18(a) above, Lessee agrees to execute any documents required to effectuate such subordination or to make this Lease prior to the lien of any mortgage, deed of trust or ground lease, as the case may be, and failing to do so within ten (10) days after written demand, does hereby make, constitute and irrevocably appoint Lessor as Lessee's attorney in fact and in Lessee's name, place and stead, to do so.

19. **Representations and Warranties.**

19.1 **Lessor's Representations and Warranties.** As an inducement to Lessee to enter into this Lease, Lessor represents and warrants to Lessee that:

(a) Lessor is a political subdivision, validly existing under the laws of the State of Nebraska, has the power and authority to enter into this Lease and to consummate the transactions herein contemplated, and the execution and delivery hereof and the performance by Lessor of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or other instrument to which Lessor is a party or by which it or the Premises is bound;
(a) the execution, delivery and performance of this Lease by Lessor and the consummation of the transaction contemplated hereby in the manner contemplated herein will not violate any provision of any laws, statutes, codes, ordinances, orders, regulations or requirements to which Lessor or the Premises is subject, or violate any judgment, order, writ, injunction or decree of any court applicable to Lessor or the Premises; and

(b) this Lease is the legal, valid and binding obligation of Lessor, enforceable in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors’ rights generally.

19.2 Limitation on Lessor's Representations, Warranties, Covenants and Agreements. Lessee acknowledges and agrees that, except as expressly set forth in this Lease, neither Lessor, nor any agent or representative of Lessor has made, and Lessor is not liable or responsible for or bound in any manner by, any express or implied representations, warranties, covenants, agreements, obligations, guarantees, statements, information or inducements pertaining to the Premises or any part thereof, title to the Premises, the physical condition thereof, the fitness and quality thereof, the value and profitability thereof, or any other matter or thing whatsoever with respect thereto. Subject to completion of its feasibility study in accordance with the Development and Operating Agreement, Lessee acknowledges, agrees, represents and warrants that it has had such access to the Premises and such other matters and to information and data relating to all of same as Lessee has considered necessary, prudent, appropriate or desirable for the purposes of this transaction and, without limiting the foregoing, that Lessee and its agents and representatives have independently inspected, examined, investigated, analyzed and appraised all of same. Without limiting the foregoing, Lessee acknowledges and agrees that, except as expressly set forth in this Lease, neither Lessor nor any director, officer, employee, agent or representative of Lessor is liable or responsible for or bound in any manner by (and Lessee has not relied upon) any oral or written or supplied representations, warranties, covenants, agreements, obligations, guarantees, statements, information or inducements pertaining to the premises or any part thereof, and any other information respecting same furnished by or obtained from Lessor or any agent or representative of Lessor. Lessee acknowledges and agrees that, except as otherwise provided in this Lease and the Development and Operating Agreement, Lessee is leasing the Premises, "AS IS".

19.3 The representations and warranties contained in Section 19.1 are true, accurate and complete and not misleading in any material respect as of the Effective Date. 19.4 Lessee's Representations and Warranties. As an inducement to Lessor to enter into this Lease, Lessee represents and warrants that:

(a) Lessee is a limited liability company duly organized and validly existing under the laws of the State of Nebraska, is qualified to do business in the State of Nebraska, and has the power and authority to enter into this Lease and to consummate the transactions herein contemplated, and the execution and delivery hereof and the performance by Lessee of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or other instrument to which Lessee is a party or by which it is bound;
(b) the execution, delivery and performance of this Lease by Lessee and the consummation of the transactions contemplated hereby in the manner contemplated herein will not violate any provisions of any legal requirement to which Lessee is subject, or violate any judgment, order, writ, injunction or decree of any court applicable to Lessee;

(c) this Lease is the legal, valid and binding obligation of Lessee, enforceable in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally; and

(d) no consent, authorization, license, permit, registration or approval of, or exemption or other action by any governmental or public body, commission or authority is required in connection with the execution and delivery by Lessee of this Lease.

19.5 The representations and warranties contained in Section 19.4 are true, accurate and complete and not misleading in any material respect as of the Effective Date.

20. Brokerage Commission and Finder's Fee. The parties agree that they have dealt exclusively with each other and not through any real estate broker, investment banker, person, firm or entity that would, by reason of such dealings, be able to claim a real estate brokerage, business opportunity brokerage or finder's fee as the procuring cause of this transaction. Each of the parties agrees to indemnify the other and hold the other harmless of and from any and all loss, cost, damage, injury or expense arising out of, or in any way related to, assertions, by any other person, firm or entity, of a claim to real estate brokerage, business opportunity brokerage of finder's fee based on alleged contacts between the claiming party and the indemnifying party which have resulted in allegedly providing a broker or finder with the right to claim such commission or finder's fee. The provisions of this Section 20 shall survive the termination of this Lease.

21. Lessor's Access. Lessor and Lessor's agents shall have the right to enter the Premises at reasonable times and upon reasonable written notice to Lessee for the purposes of inspecting the same, or for such other purposes as Lessor may reasonably require.

22. Entire Agreement. Except as the parties hereto may otherwise agree in writing, this Lease, the Development and Operating Agreement, together with the agreements referred to herein and the Exhibits hereto and thereto, constitute the full and entire agreement and understanding between the parties with regard to the subject matter of this Lease. In the event of any conflict between the terms of this Lease and the Development and Operating Agreement, the terms of the Development and Operating Agreement shall control. Except for the Development and Operating Agreement, and as the parties hereto may otherwise agree in writing, all prior and contemporaneous agreements, covenants, representations and warranties, express or implied, oral and written, of the parties with regard to the subject matter of this Lease are superseded by this Lease, the Exhibits to this Lease, and the documents referred to or implementing the provisions of this Lease.

23. Applicable Law. This Lease and the legal relations among the parties hereto shall be governed by and construed in accordance with the laws of the State of Nebraska applicable to contracts made and performed in Nebraska.
24. **CONSENT TO JURISDICTION.** LESSOR AND LESSEE HEREBY IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF NEBRASKA STATE COURT OR FEDERAL DISTRICT COURT LOCATED IN EITHER SARPY COUNTY, NEBRASKA OR DOUGLAS COUNTY, NEBRASKA, WITH RESPECT TO ANY ACTIONS, MATTERS OR DISPUTES ARISING OUT OF OR RELATING TO THIS LEASE, AND LESSOR AND LESSEE HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT TO SUCH ACTIONS, MATTERS OR DISPUTES SHALL BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY WAIVE ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH ACTIONS, MATTERS OR DISPUTES BROUGHT IN SUCH COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM.

25. **Interpretation.** The language in all parts of this Lease shall be in all cases construed simply according to its fair meaning and not strictly for or against any party. The captions and headings of the sections and subsections of this Lease are for convenience only and shall not affect the construction or interpretation of any of the provisions of this Lease.

26. **Waiver and Amendment.** This Lease may be amended, supplemented, modified and/or rescinded only through an express written instrument signed by all parties or their respective successors and permitted assigns. Any party may specifically and expressly waive in writing any portion of this Lease or any breach hereof, but only to the extent such provision is for the benefit of the waiving party, and no such waiver shall constitute a further or continuing waiver of any preceding or succeeding breach of the same or any other provision. The consent by one party to any act for which such consent was required shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or similar acts in the future, and no forbearance by a party to seek a remedy for noncompliance or breach by another party shall be construed as a waiver of any right or remedy with respect to such noncompliance or breach.

27. **Assignment.** Except as specifically provided otherwise in this Lease, neither this Lease nor any interest herein shall be subcontracted or assigned (voluntarily, involuntarily, by judicial process, operation of Law, or otherwise, including, without limitation, by any change in control or ownership), in whole or in party, by Lessee without the prior written consent of Lessor, which consent may be withheld in Lessor’s sole discretion. Notwithstanding the foregoing, the restriction on assignment set forth in this Section 27 shall not be deemed violated by virtue of a merger or changes in ownership of Lessee’s parent. However, it is understood that any future owners resulting from mergers or changes in ownership are bound by every clause of this agreement.

28. **Fees.** Except as otherwise specifically provided herein, each of the parties shall pay all costs and expenses incurred by it or on its behalf in connection with this Lease and the transactions contemplated hereby, including, without limiting the generality of the foregoing, fees and expenses of its own financial consultants, accountants and counsel. If suit is necessary to enforce any term or provision of this Lease, the prevailing party shall be entitled to recover from the losing party such attorneys’ fees and costs as may be awarded by the court. This award will include attorneys’ fees or costs awarded on any appeal.

29. **Successors and Assigns.** Each of the terms, provisions, and obligations of this Lease shall be binding upon, shall inure to the benefit of, and shall be enforceable by the parties and their respective legal representatives, successors and permitted assigns. Any sale, transfer or forfeiture of the Premises by Lessor during the term of this Lease shall be made by an instrument that expressly refers to this Lease as a burden upon the Premises.
30. **Notices.** All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been given or made if in writing and delivered personally or sent by registered or express mail (postage prepaid) or by facsimile to the parties at the following addresses and facsimile numbers:

   If to Lessee:

   If to Lessor: Sarpy County Clerk
   1210 Golden Gate Drive, Suite 1250
   Papillion, NE 68046-2894
   Facsimile #: (402) 593-4471

   Copy to: Sarpy County Environmental Control
   1210 Golden Gate Drive Papillion, NE 68046

31. **Severability.** Each provision of this Lease is intended to be severable. Should any provision of this Lease or the application thereof be judicially declared to be or become illegal, invalid, unenforceable or void, the remainder of this Lease will continue in full force and effect and the application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the parties.

32. **Cumulative Remedies; Offset.** No remedy made available hereunder by any of the provisions of this Lease is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. Without limiting any other rights or remedies available to the parties hereto, (i) Lessor may offset from amounts otherwise due to Lessee, arising under or related to this Lease or the transactions contemplated herein, any sums owed by Lessee to Lessor (whether arising under or related to this Lease or the transactions contemplated herein, or otherwise).

33. **No Third-Party Beneficiaries.** Except as specifically provided in this Lease, nothing in this Lease will be construed as giving any person, other than the parties hereto and their respective heirs, successors and permitted assigns, any right, remedy or claim under or in respect of this Lease or any provision hereof.

34. **Calendar Days, Weeks and Months.** Unless otherwise specified in this Lease, any reference to "day," "week" or "month" in this Lease will mean a calendar day, week or month.

35. **Gender; Plural and Singular.** Unless the context clearly indicates otherwise, the singular shall include the plural and vice versa. Whenever the masculine, feminine or neuter gender is used inappropriately in this Lease, this Lease shall be read as if the appropriate gender had been used.

36. **No Implied Covenants.** Each party, against the other, waives and relinquishes any right to assert, either as a claim or as a defense, that any other party is bound to perform or liable for the nonperformance of any implied covenant or implied duty or implied obligation.

37. **Counterparts.** This Lease may be executed in one or more counterparts, including counterparts by facsimile each of which shall be deemed an original, but all of which together shall constitute a single agreement.
38. **Personal Interests.** Pursuant to Neb. Rev. Stat. §23-3113 (Reissue 2012), the parties hereto declare and affirm that no officer, member, or employee of Lessee or the Lessor, and no member of their governing bodies, and no other public official of Lessee or the Lessor who exercises any functions or responsibilities in the review or approval by the Lessor of the undertaking described in this Lease, or the performing of either parties' obligations pursuant to this Lease, shall participate in any decision by the Lessor relating to this Lease which affects his or her personal interest, or any partnership, or association in which he or she is directly or indirectly interested; nor shall any employee of the Lessor, nor any member of its governing bodies, have any interest, direct or indirect, in this Lease or the proceeds thereof.

39. **Residency Verification Requirements.** Lessee agrees to comply with the residency verification requirements of Neb. Rev. Stat. §4-108 through §4-114. Lessee is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

40. **Force Majeure.** If either party is rendered unable, in whole or in part, by Force Majeure to carry out its obligations under this Lease then such party shall give notice to the other party, in accordance with this Lease, including reasonably full particulars of such Force Majeure event as soon as reasonably possible after it becomes aware of the occurrence of the Force Majeure, and the obligations of such party, insofar as they are affected by such Force Majeure, shall be suspended from the commencement of such Force Majeure through the continuance of any inability so caused, but for no longer period, and such Force Majeure shall so far as possible be remedied with all reasonable dispatch using such party's commercially reasonable efforts. Any suspension of obligation for reasons of Force Majeure shall be proportional to the effect of such Force Majeure on the particular obligation from which relief is sought. The term "Force Majeure" shall mean any event or condition or combination of events and/or conditions which prevents, or delays the performance of any obligation subject hereto, in whole or in part, which is not within the control of the party claiming suspension by reason of Force Majeure, and which the party claiming suspension is unable to prevent or overcome by the exercise of reasonable care or due diligence. For the purposes of the definition of "Force Majeure," the exercise of due diligence shall mean acting in good faith with the intention of performing contractual obligations, and the exercise of a degree of skill, diligence, prudence, and foresight that would reasonably and ordinarily be exercised by a skilled and experienced person complying with applicable law and engaged in the same type of undertaking under the same or similar circumstances and conditions. Provided that the foregoing requirements are met, such events or conditions constituting Force Majeure include but are not limited to acts of God, strikes, lockouts, acts of a public enemy, acts of sabotage, wars, blockades, riots, insurrections, epidemics, landslides, subsidence, earthquakes, fires, hurricanes, storms, tornadoes, floods, washouts, accidents, interruptions by government or court orders, present or future orders of any regulatory body having proper jurisdiction, civil disturbances, and explosions.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]
IN WITNESS WHEREOF, the parties have executed this Lease as of the date first written above.

County of Sarpy, Nebraska,
a Nebraska municipal corporation

By: ________________________________
Name: ______________________________
Title: ______________________________
STATE OF Nebraska )
          ) ss.
COUNTY OF Sarpy )

On this ______ day of _____________, 20____, before me a Notary Public in and for
said county and state, personally appeared ______________________ as
__________________________ of the County of Sarpy, Nebraska, a Nebraska municipal corporation,
known to me to be the identical person who subscribed their name to the foregoing, and
acknowledged the execution thereof to be their voluntary act and deed and the voluntary act and
deed of said corporation.

__________________________
Notary Public

STATE OF ____________________
          ) ss.
COUNTY OF ____________________

On this ______ day of _____________, 20____, before me a Notary Public in and for
said county and state, personally appeared ______________________ as
__________________________ of __________________________, known to me to be the identical
person who subscribed their name to the foregoing, and acknowledged the execution thereof to be
their voluntary act and deed and the voluntary act and deed of said corporation.

__________________________
Notary Public
EXHIBIT A

Legal Description of Land

TRACT NO 1 SARING COUNTY LANDFILL GAS COLLECTION SYSTEM

County of Sarpy, of the State of Nebraska.

OWNER’S LEGAL

The Northeast Quarter of Section 15, Township 13 North, Range 11 East of the 6th P.M., Sarpy County, Nebraska.

LEASED AREA

Lease agreement for a tract of land located in The Northeast Quarter of Section 15, Township 13 North, Range 11 East of the 6th P.M., Sarpy County, Nebraska, described as follows:

Beginning at a point 270.00 feet south of the northwest corner of the Northeast Quarter, whose east line bears S02°36'57"E (assumed bearing) and 173.36 feet normally distant east from the west line of said Quarter, thence N87°23'03"E for 2,152.54 feet; thence S01°03'10"E for 626.82 feet; thence S26°11'13"W for 153.72 feet; thence S02°18'12"E for 269.70 feet; thence S87°41'48"W for 11.57 feet; thence S07°33'19"W for 362.65 feet; thence S00°06'16"E for 776.11 feet; thence S87°55'09"W for 847.20 feet; thence N17°04'23"W for 608.60 feet; thence N88°11'36"W for 969.82 feet to a point being 157.60 feet normally distant east from the west line of said Quarter; thence N02°00'38"W for 1,491.30 feet to the Point of Beginning. Total tract contains 3,786,123.0 square feet or 86.92 acres, more or less.

TRACT NO 2 SARING COUNTY LANDFILL

County of Sarpy, Nebraska.

OWNER’S LEGAL

The North 900 feet of the East 968 feet of the Northeast Quarter of the Northwest Quarter of Section 15, Township 13 North, Range 11 East of the 6th P.M., Sarpy County, Nebraska. (Also known as Tax Lot 7)

LEASED AREA

Lease agreement for a tract of land located in the North 900 feet of the East 968 feet of the Northeast Quarter of the Northwest of Section 15, Township 13 North, Range 11 East of the 6th P.M., Sarpy County, Nebraska, described as follows:

Beginning at a point 612.80 feet south of the northeast corner of the Northwest Quarter, whose east line bears S02°36'57"E (assumed bearing) and 24.02 feet normally distant west from the east line of said Quarter, said point being 3.0 feet west of and 55.0 feet north of the northerly extension of the west face of an existing structure; thence along a line being 3.0 west of and parallel with said west face bearing, S03°50'09"E for 135.0 feet to a point being 21.14 feet normally distant west from the east line of said Quarter, thence S86°09'51"W for 90.0 feet; thence
N03°50'09"W for 80.0 feet; thence N35°27'12"E for 71.06 feet; thence N86°09'51"E for 45.0 feet to the Point of Beginning. Total tract contains 10,912.0 square feet or 0.25 acres, more or less.
EXHIBIT B

Description of LFGCS