RESOLUTION AUTHORIZING CHAIR TO SIGN AGREEMENTS WITH BRD TWO, LLC TO
CONSTRUCT AND OPERATE A GAS UTILIZATION SYSTEM AT THE SARPY COUNTY
LANDFILL

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6) 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, sealed proposals to determine the feasibility, development and maintenance of a
beneficial landfill gas utilization project have been solicited, made, opened and reviewed as of November
13, 2014; and,

WHEREAS, pursuant to Resolution 2014-471, contract negotiations commenced with
BioResource Development, LLC, to develop a plan for the beneficial use of landfill gas produced by the
county’s landfill gas collection system (“LFGCS”); and,

WHEREAS, pursuant to Resolution 2016-18 a public hearing was held for the lease of various
landfill property and bids were received for the leased property; and,

WHEREAS, the County of Sarpy desires to enter into an agreement with BRD Two, LLC, a
subsidiary of BioResource Development, LLC, for the installation and operation of a landfill gas
utilization system at the Sarpy County Landfill as outlined in the agreement attached hereto; and,

WHEREAS, the County of Sarpy desires to enter into a lease agreement with BRD Two, LLC, a
subsidiary of BioResource Development, LLC, for the lease of various land in accordance to the
development and operating agreement as outlined in the agreement attached hereto; and,

WHEREAS, the attached agreements are in the best interest of the citizens of Sarpy County; and,

NOW, THEREFORE, BE IT RESOLVED by the Sarpy County Board of Commissioners that
this Board hereby approves and adopts the agreements with BRD Two, LLC for the installation and
operation of a landfill gas utilization system and lease of various land at the Sarpy County Landfill, copies
of which are attached.

BE IT FURTHER RESOLVED that the Chairman of this Board, together with the County Clerk,
is hereby authorized to sign on behalf of this Board the contracts with BRD Two, LLC, copies of which
are attached, and any other related documents, the same being approved by the Board.

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 26th day of January, 2016.

Attest

Sarpy County Board Chairman

County Clerk
To: Sarpy County Board of Commissioners  
From: Beth Garber  
Re: Gas Utilization System – Development & Operating Agreement

On November 13, 2014 the County received four (4) proposals for a gas collection and utilization system at the Landfill. The proposals were reviewed by staff members from Administration, Fiscal Administration, Landfill, Purchasing and TD2. After review, the committee recommended moving forward with an agreement with BioResource (BRD). BRD is a local firm who performs the gas management services and a utilization system at the State Street Landfill in Douglas County. When I have visited this site, it appeared the equipment was functioning, the site was clean and the relationship with Douglas County was positive.

The proposed Development and Operating Agreement sets forth the actions that BRD and Sarpy will perform to create a successful pipeline quality natural gas project. The project includes both gas management services and a gas utilization system. Generally, the major tasks outlined in the agreement include:

- Following approval of this agreement, BRD will conduct a Feasibility Study. BRD has six (6) months to complete this study and provide a summary to the County.
- Should the project be determined feasible, BRD will begin providing gas management services upon written notice of the County.
- BRD will use, operate and extend the existing landfill gas collection system (LFGCS). Upon confirmation of feasibility, BRD will extend the LFGCS to provide coverage over the entire landfill within nine (9) months of completion of the final cap. Closure of the landfill is identified as approximately July, 2016 with final cap construction soon thereafter.
- BRD will construct the gas utilization system with construction beginning upon commencement date (as set in the development and operating plan and provided to County with feasibility study summary) and completed within twelve...
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Re: Gas Utilization System – Development & Operating Agreement  
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(12) months after commencement date; however no longer than twenty one (21) months after effective date (date agreement is signed).

Compensation to the County will be an operating fee, calculated annually, of 2.5% of gross revenue received by BRD from the sale of products. The extension of the LFGCS and gas management services will be at BRD’s sole cost and expense. BRD will pay the County $24,000 annually to lease the LFGCS and site.

Should you have any questions, please feel free to contact me at bgarber@sarpy.com.

January 21, 2016

Beth Garber

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

LEASE (this "Lease"), dated as of **January 26, 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 BRD TWO, LLC, a Nebraska limited liability company with its principal office at 5062 S. 108th Street, #113, Omaha, Nebraska 68137 ("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.

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 Twelve Thousand Dollars ($12,000.00) 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 Twelve Thousand Dollars ($12,000.00) 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 Twelve Thousand Dollars ($12,000.00) for the land and Twelve Thousand Dollars ($12,000.00) 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; (iii) 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 repair the LFGCS; (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 to have 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 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 has paid 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 part, 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 BioResource Development, LLC. (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. **Expenses.** 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: BRD Two, LLC  
5062 S. 108th Street, #113  
Omaha, Nebraska 68137  
Attn: Gregory S. MacLean  
Facsimile: (402) 682-3680

Copy to: Fraser Stryker PC LLO  
500 Energy Plaza  
409 S. 17th Street  
Omaha, NE 68102  
Attn: Stephen M. Bruckner, Esq.  
Facsimile: (402) 341-8290

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.
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: [Signature]
Name: Don Kelly
Title: Chairman
Date: 11/26/16

BRD Two, LLC,
a Nebraska limited liability company

By: [Signature]
Name: Gregory S. MacLean
Title: Manager
STATE OF Nebraska

COUNTY OF Sarpy } ss.

On this 26th day of January, 2016, before me a Notary Public in and for said county and state, personally appeared Don Kelly as Chairman 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

Kathleen A. Caffe
My Comm. Exp. June 14, 2019

STATE OF Nebraska } ss.

COUNTY OF LARimer } ss.

On this 1 day of March, 2016, before me a Notary Public in and for said county and state, personally appeared Gregory S. MacLean as Manager of BRD TWO, LLC, a Nebraska limited liability company, 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

Kathleen A. Caffe
My Comm. Exp. June 14, 2019
EXHIBIT A
Legal Description of Land

TRACT NO 1
SARPY 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 S87°03'10"W for 269.70 feet; thence S87°33'19"W for 1,491.30 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 3,786,123.0 square feet or 86.92 acres, more or less.

TRACT NO 2
SARPY 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
SARPY COUNTY LANDFILL  
GAS UTILIZATION SYSTEM DEVELOPMENT AND OPERATING AGREEMENT  

THIS LANDFILL GAS UTILIZATION SYSTEM DEVELOPMENT AND OPERATING AGREEMENT ("Agreement") is made and executed this 26th day of January, 2016 (the "Effective Date"), by and between the COUNTY OF SARPY, Nebraska, a political subdivision of the State of Nebraska having its principal offices at 1210 Golden Gate Drive, Suite 1126, Papillion, Nebraska 68046 (the "County"), and BRD TWO, LLC, a Nebraska limited liability company with its principal office at 5062 S. 108th Street, #113, Omaha, Nebraska 68137 ("BRD").

WHEREAS, the County is the owner of the Sarpy County Sanitary Landfill, located at 14414 S. 156th Street, Springfield, Nebraska (the "Landfill") and is responsible for operating, monitoring and decommissioning the Landfill, including voluntary landfill gas collection and management via a Landfill Gas Collection and Control System (the LFGCS);

WHEREAS, the County has authority pursuant to the Integrated Solid Waste Management Act, Neb. Rev. Stat. §13-2001, et seq., to own and operate with any person any facility or system for the safe and sanitary disposal of solid waste generated within its solid waste jurisdiction areas and may enter into cooperative agreements as necessary and appropriate for the ownership, operation, or ownership and operation of any such facility or system;

WHEREAS, the County and BRD desire to enter in this Agreement for BRD to (1) assess the feasibility of developing a system to utilize the landfill gas collected from the Landfill by the Landfill Gas Collection and Control System, process such gas into natural gas and distribute such gas to gas suppliers (the "Gas Utilization System"), and (2) subject to the results of BRD’s feasibility study, to construct and operate the Gas Utilization System as provided herein;

WHEREAS, the Gas Utilization System shall be defined as physical items installed adjacent to or at the location of the existing flare station consisting of blower system, compressor system, dehumidification system, chiller system, heat exchange system, siloxane/ NMOC removal system, carbon dioxide removal system, nitrogen removal system, gas blending system, data collection system, monitoring / notification dialer system, power supply, communication lines, condensate system, waste gas system with odor control, valves, valve operating system(s), enclosures for systems, piping including above grade piping and system piping to process landfill gas to meet users requirements and transport gas to gas suppliers;

WHEREAS, Landfill Gas Collection System and Control System ("LFGCS") shall be defined as the landfill gas wells, valves, valve operating systems, lateral piping, header piping including above grade piping, system piping, condensate system, blower with enclosure, VFD drive, CH4 analyzer, flow meter, compressor system including dehumidification system with enclosure, data collection system, monitoring / notification dialer system, power supply, communication lines, flame arrestor, flare and flare control system;

WHEREAS, provided BRD confirms the feasibility of the Gas Utilization System and in consideration of the right to develop and operate the Gas Utilization System, BRD has agreed to provide the County with landfill gas management services ("Landfill Gas Management Services") without compensation from the County for the Term (as defined below) and pay the County an operating fee as provided for herein; and

WHEREAS, BRD and the County have, concurrently with this Agreement, negotiated and agreed the terms of a lease (the "Lease"), to lease the Landfill property and LFGCS (the "Site") to BRD.
for purposes of constructing and operating the Gas Utilization System and LFGCS and performing the Landfill Gas Management Services.

NOW, THEREFORE, the parties hereto, for themselves, their successors and permitted assigns, in and for the consideration of the performance of the mutual covenants, duties and responsibilities set forth herein, the receipt and adequacy of such consideration being hereby acknowledged, do hereby covenant and agree as follows:

1. **Feasibility Study.**

   (a) The County hereby grants BRD the right to perform a feasibility study for the Gas Utilization System (the “Feasibility Study”). The County shall provide BRD with such information in County’s possession and access to the Landfill property necessary for BRD to perform the Feasibility Study. BRD shall complete the Feasibility Study within six (6) months of the Effective Date of this Agreement. Upon the completion of the Feasibility Study, BRD shall deliver to the County (i) a copy of the results of the Feasibility Study and (ii) provided the Gas Utilization System’s feasibility has been confirmed in BRD’s sole discretion, a summary description of the Gas Utilization System development and operating plan and extension of the LFGCS (the “Development and Operating Plan”). The Development and Operating Plan must be submitted for County approval within thirty (30) days of the completion of the Feasibility Study. The Development and Operating Plan, as approved by the County, which approval shall not be unreasonably withheld, conditioned or delayed, shall set forth the commencement date for construction of the Gas Utilization System (the “Commencement Date”).

   (b) At any time during the Term hereof, BRD may, in its sole discretion, conduct such studies, including commissioning studies by third parties, as are necessary to reassess the continuing feasibility, or implementation, of the Gas Utilization System.

   (c) If the Gas Utilization System is determined by BRD, in its sole discretion, not to be, or no longer, feasible, BRD may terminate this Agreement pursuant to the terms and conditions set forth in Section 11 without any liability or penalty.

   (d) For the avoidance of any doubt, BRD shall perform the Feasibility Study at BRD’s sole expense.

2. **Grant of Rights to Construct and Operate Gas Utilization System.**

   (a) The County hereby grants to BRD for the Term, the right to construct and operate the Gas Utilization System in accordance with the terms of this Agreement. The rights granted to BRD pursuant to this Agreement are exclusive and the County hereby agrees that during the Term, BRD shall have the sole and exclusive right to perform, directly and through its subcontractors, all development and operating activities with respect to the Gas Utilization System and any and all activities contained in or consistent with the Development and Operating Plan; provided, however, each party hereby agrees to use all commercially reasonable efforts to ensure that the other party’s activities at the Site are not adversely affected, including the County’s landfill operations at the Site including other County operations or closures. The parties hereby further agree to cooperate in good faith to ensure any activities or operations of the other party are not adversely affected.

   (b) The County hereby further grants, transfers and conveys to BRD the exclusive right for the Term, to use the gases at the Landfill (the “Landfill Gases”) for the collection and processing of such Landfill Gases, and the marketing, distribution and sale of any and all products derived therefrom. Furthermore, the County hereby grants, transfers and conveys to BRD, and hereby releases any interest,
ownership rights or claims of the County to or in, all rights, title and interest in and to any and all products (the “BRD Products”) created by BRD from the Landfill Gases during the Term of this Agreement, including, but not limited to, natural gas or other gases or gas related products created by BRD as developer and operator of the Gas Utilization System.

(c) The County 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 gas production at the Landfill, whether as buyer, lessee, broker, agent or otherwise, that adversely affects BRD’s ability to develop and operate the Project without the prior written consent of BRD, which consent BRD may not unreasonably withhold or delay.

(d) The parties hereby acknowledge and agree that the exclusive rights to (i) operate the Gas Utilization System, including the LFGCS, (ii) make use of the Landfill Gases and (iii) title to the BRD Products granted by the County to BRD pursuant to this Section 2 is an essential term of this Agreement and of the bargained for benefits and obligations contained herein.

3. Rights to Use LFGCS

(a) The parties hereby acknowledge and agree that the right granted to BRD hereunder to operate the Gas Utilization System includes the right to use and operate the LFGCS and extend the LFGCS to any capped or uncapped portions of the Landfill. Subject to BRD’s confirmation of the feasibility of the Gas Utilization System and provided this Agreement has not otherwise been terminated, BRD shall extend the LFGCS to provide coverage over the entire landfill within nine (9) months of completion of final cap by the County in accordance with the terms of the Development and Operating Plan. Such extension shall be in accordance with the specifications set forth in the Development and Operating Plan, as approved by the County, which approval shall not be unreasonably withheld, conditioned or delayed. Not less than sixty (60) days prior to the start of extension of the LFGCS, BRD shall submit to the County a complete set of the construction drawings and specifications, for approval of the County, which approval shall not be unreasonably withheld, conditioned or delayed. Any subsequent material changes to the construction drawings and specifications must be approved by the County’s Party Representative appointed by the County pursuant to Section 5(h).

(b) The LFGCS shall be operated in a manner to prevent migration of odor off the landfill site.

4. Landfill Gas Management Services

(a) BRD hereby agrees to perform during the Term the Landfill Gas Management Services as specified in Exhibit A attached hereto and, where applicable, the Development and Operating Plan, which is incorporated herein by this reference. BRD’s obligation to perform the Landfill Gas Management Services hereunder shall be contingent upon BRD’s confirmation of the feasibility of the Gas Utilization System pursuant to Section 1. Following confirmation of the Feasibility Study and County approval of the Development and Operating Plan pursuant to Section 1(a), BRD shall commence the performance of the Landfill Gas Management Services upon the date stipulated by the County in a written notice to BRD instructing BRD to commence performance of the Landfill Gas Management Services; provided, however, in no event shall BRD be obligated to commence the performance of the Landfill Gas Management Services on any date prior to the Commencement Date. BRD agrees to commence performance of the Landfill Gas Management Services within thirty (30) calendar days after receipt of the County’s notice pursuant to this Section.
(b) Except for any other services for which BRD is commissioned by the County to perform and subject to the annual limitation on maintenance and repair expenses set forth in Exhibit A, BRD shall perform the Landfill Gas Management Services described in Exhibit A for the County without monetary compensation from the County.

5. Operating and Performance Requirements.

(a) Construction of the Gas Utilization System. BRD shall construct the Gas Utilization System. Any development of the Site or Landfill property hereunder, shall be in compliance with all laws, regulations and permits applicable to the Landfill and the Gas Utilization System. Such construction shall begin upon the Commencement Date, and be completed within twelve (12) months after the Commencement Date; provided, however, that BRD shall complete construction of the Gas Utilization System within twenty-one (21) months after the Effective Date. Such construction shall be in accordance with the specifications for the Gas Utilization System set forth in the Development and Operating Plan. All permit applications shall be submitted to the County for review. Not less than sixty (60) days prior to the start of construction of the Gas Utilization System, BRD shall submit to the County a complete set of the construction drawings and specifications, for approval of the County, which approval shall not be unreasonably withheld, conditioned or delayed. Any subsequent material changes to the construction drawings and specifications must be approved by the County’s Party Representative appointed by the County pursuant to Section 5(h). BRD shall construct the Gas Utilization System in accordance with the construction documents and specifications, as approved by the County. County, or its designated party, has the right to observe construction activities at the County’s sole expense. BRD will provide timely notification to County on activities the County has notified BRD in writing of its desire to observe or witness. BRD will provide timely notification to County of activities on proposed schedule.

(b) Equipment and Personnel. BRD shall supply all equipment, materials and supplies (collectively the “BRD Equipment”) necessary to (i) construct, extend and operate the LFGCS and Gas Utilization System in accordance with the Development and Operating Plan, and (ii) perform the Feasibility Study and Landfill Gas Management Services. The BRD Equipment shall be kept in good condition and working order and shall be replaced as may be necessary. BRD shall employ all personnel necessary to operate the Gas Utilization System and perform the Feasibility Study and Landfill Gas Management Services. Such personnel shall have the experience and background necessary to perform the responsibilities in a good and workmanlike manner, and in accordance with good industry standards. In the event any services are delegated to a subcontractor in accordance with the terms of this Agreement, BRD shall require all such subcontractors to provide statutory workers' compensation insurance and employer's liability insurance for all of the subcontractor's employees engaged in the work. The liability insurance required by Section 15 shall cover BRD's liability for acts of its subcontractors or each subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of Section 15. BRD shall be responsible for ensuring compliance by all subcontractors with the terms and conditions of this Agreement, and shall be liable for any failure by any subcontractor to comply with the terms and conditions of this Agreement.

(c) Operations. Once the Gas Utilization System has been constructed, BRD shall operate the LFGCS and Gas Utilization System in compliance with the Development and Operating Plan and under good engineering practices. In the event of any conflicts between this Agreement and the Development and Operating Plan, then this Agreement shall control.

(d) Cost and Expenses. BRD shall pay for all costs and expenses for constructing and operating the Gas Utilization System and LFGCS, performing the Feasibility Study and the Landfill Gas Management Services and otherwise performing its obligations under the Development and Operating Plan and under this Agreement. BRD shall be also responsible for the annual cost of all repairs and
replacements to the LFGCS up the limitation set forth in Exhibit A, in addition to those repairs and replacements caused by the negligence or intentional misconduct of BRD. BRD shall be responsible for all taxes that may be imposed upon its income or property; provided, however, the parties hereby agree to cooperate in good faith to explore and utilize any sales, excise, use or other tax exemption, refund or abatement with respect to or arising out of the extension of the LFGCS, performance of the Landfill Gas Management Services, and development and operation of the Gas Utilization System by BRD hereunder.

(e) **No Interference.** BRD's development of the Site and operations under this Agreement shall not interfere with the County's continuing obligations at the Landfill. Subject to the terms of this Agreement, the County shall not unreasonably interfere with BRD's operations under this Agreement.

(f) **Permits.** BRD shall comply with all applicable permits, licenses, or other approvals necessary to construct and operate the Gas Utilization System, and for BRD to otherwise provide the services contemplated under this Agreement. The County shall reasonably cooperate with BRD at BRD's cost and expense (excluding time of County personnel) in obtaining such permits, licenses and approvals (other than those permits, licenses and approvals which are issued by the County). The County hereby agrees to waive all County fees and expenses payable for County permits, licenses and approvals issuable to BRD hereunder.

(g) **Performance.** BRD agrees that: (i) it will perform pursuant to this Agreement and the Development and Operating Plan in accordance with the terms and conditions hereof, and in a professional manner in accordance with good industry practices and applicable industry standards, and (ii) BRD's personnel will be skilled and have adequate education and training to perform hereunder.

(h) **Party Representatives.** The parties shall appoint a representative to manage this Agreement on behalf of the parties and to act as a point of contact for the other party (each such representative, a "Party Representative"). BRD's initial Party Representative shall be Gregory S. MacLean. The County's initial Party Representative shall be a County Engineering Representative. Each party may replace its Party Representative during the Term by delivering written notice to the other party pursuant to Section 24(i).

6. **County Obligations.** At all times during the Term, the County shall:

(a) Upon request and at reasonable cost, make available to BRD documents in the County's custody or control relating to the Landfill, the Site, the Landfill property and the LFGCS relevant to the performance by BRD of its obligations under this Agreement, including, but not limited to plans, surveys, consultant or other third party reports, service plans which affect the Landfill, the Site, LFGCS, or Landfill property, soils and/or environmental reports, correspondence or memoranda, and any other agreements materially affecting the performance of BRD's obligations under this Agreement except for proprietary third party information and that what is reasonably available. BRD shall be responsible for all reasonable costs associated with copies and research requested by BRD;

(b) Assist BRD in providing or securing information from the County, the State of Nebraska, the Federal Government and any third parties to whom the County has reasonable access concerning the Landfill, the Site and Landfill property;

(c) Grant easements and rights to the Landfill, the Site and Landfill property necessary to develop and operate the Gas Utilization System pursuant to the Lease;

(d) Assist BRD to pursue and approve, within its designated authority, such public and other approvals deemed required or desirable by BRD under this Agreement and to perform its obligations
hereunder, including reasonable assistance as may be necessary for BRD to obtain environmental permits or authorizations;

(e) Be responsible for all existing and future remediation and decommissioning obligations with respect to Environmental Conditions (as defined below) at the Landfill (other than those Environmental Conditions for which BRD, its agents or employees is responsible pursuant to Section 16), including, without limitation, all laws, rules, regulations, permits or programs applicable to the Landfill, whether currently in force or subsequently enacted by any governmental authority, including, without limitation, the Nebraska Department of Environmental Quality (NDEQ) and the United States Environmental Protection Agency (EPA). For the purposes of this Agreement, “Environmental Conditions” shall mean any condition arising out of, on or with respect to the Landfill, 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; and

(f) Upon closure of the Landfill, install the final cover within six (6) months of the last receipt of waste or within the extension period, if granted by NDEQ and excluding events beyond the County’s control. The County shall take reasonable actions necessary to ensure the procurement process for the covering of the Landfill has been completed prior to the closure of the Landfill. In addition, the County and BRD shall use their best efforts to coordinate the work and personnel required to cover the Landfill and extend the LFGCS to ensure these activities are completed as soon as practicable. Closure of the Landfill is anticipated to occur by July 1, 2016.

7. **BRD Obligations.** During the Term, BRD shall:

(a) Submit the Development and Operating Plan within thirty (30) days of the completion of the Feasibility Study. The Development and Operating Plan must be approved by the County, which approval shall not be unreasonably withheld, conditioned or delayed.

(b) Submit as-built drawings for all LFGCS, utilities, grading, access, fencing, connection points, power requirements and outlines of control sand control building installations or modifications within sixty (60) days after LFGCS installation or modification as required by NDEQ;

(c) Submit documentation including raw gas flow, CH4 %, finished gas flow, gas flow to flare, gas flow to atmosphere, operating time as necessary for County to maintain all permits along with LFGCS and Gas Utilization System maintenance report as defined in Exhibit A on a quarterly basis;

(d) Operate in a manner that maintains Site security;

(e) BRD shall maintain the LFGCS flare system in existence at the Effective Date during the Term so that is may be operated in accordance with past practices. Maintenance of the existing flare system shall begin upon the date agreed by the parties pursuant to Section 4(a);

(f) Subject to BRD’s confirmation of the feasibility of the Gas Utilization System and provided this Agreement has not otherwise been terminated, BRD shall, in accordance with the Development and Operating Plan, install all necessary gas wells, lateral piping, valves, make connection of these new devices and modify controls as necessary to provide full coverage of the LFGCS within nine (9) months of completion of the final capping project by the County (capping of the permitted area). At the time of extension of the LFGCS, all components installed as additions to the LFGCS pursuant to such extension, are to immediately become property of the County; and
(g) Subject to the annual limitation on maintenance and repair expenses for the LFGCS set forth in Exhibit A, BRD shall be responsible for maintenance, and operating costs of the LFGCS and Gas Utilization System.

(h) BRD is responsible for emission costs for emissions from the Gas Utilization System (if applicable) and make payment to the County in the amount defined for said emissions as defined on the annual emissions inventory submitted to NDEQ. The amount due to County shall be based on the emission fee determined by NDEQ. All other fees to NDEQ for emissions produced at the Landfill site shall be the responsibility of the County.

8. **Removal of Project Assets.**

(a) Within six (6) months after the expiration or earlier termination of the Term, except for the LFGCS, BRD shall, at its own expense, remove all physical material pertaining to the Gas Utilization System from the Site (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 Site, at County’s discretion, such Gas System Asset shall not be subject to the Removal Obligations hereunder and thereafter become the property of the County; with the exception of any pipeline on County property which should be capped and abandoned in place under then current standard practices.

(b) The County shall grant BRD all necessary or reasonably required easements and access rights to and from the Landfill property in order for BRD 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) The County hereby acknowledges and agrees that BRD shall not be responsible in any manner for the removal from the Landfill property of the LFGCS or other Landfill assets or property currently in place at the Landfill property (the “Landfill Assets”) or for the restoration of the Landfill property arising out of the removal of the Landfill Assets by the County or any third party; provided, however, that in the event the Gas Utilization System or BRD’s Removal Obligations cause any damage to the Landfill Assets, BRD shall remedy such damage and/or restore the Landfill Assets.

9. **Operating Fee and Other Consideration.**

(a) Subject to the terms and conditions set forth herein, as consideration for the right to construct and operate the Gas Utilization System, the LFGCS and the grant of the rights to use and market the Landfill Gases granted hereunder, BRD hereby agrees:

   (i) to pay the County an operating fee (the “Operating Fee”), calculated annually, of two and one-half percent (2.5%) of the Gross Revenue received by BRD from the sale of the BRD Products

   (ii) to extend the LFGCS in accordance with the Development and Operating Plan at BRD’s sole cost and expense;

   (iii) to perform the Landfill Gas Management Services at BRD’s sole cost and expense;
to pay, pursuant to the Lease, the County an annual lease payment of $12,000 for the use of the LFGCS; and

(v) to pay, pursuant to the Lease, the County an annual lease payment of $12,000 for use of the Site.

(b) For each calendar year (or portion thereof) during the Term, BRD shall calculate the Gross Revenue payable to the County pursuant to Section 9(a)(i), and within sixty (60) days following the expiration of such calendar year, BRD shall deliver to the County a written statement showing the calculation of such amounts. BRD shall pay to the County the Operating Fee and lease payments for use of the LFGCS and landfill property within thirty (30) days of the date of each such statement, by wire transfer to the County’s designated bank account. For purposes of this Agreement, “Gross Revenue” shall mean the gross revenue received by BRD from the sale of the BRD Products, including any regulatory credits received by BRD.

10. **Term.** The initial term of this Agreement is fifteen (15) years from the date hereof (the “Initial Term”). BRD shall have the option to renew this Agreement for two (2) additional five (5) year periods (each a “Renewal Term”) upon the same terms and conditions contained herein (“Renewal Option”). BRD may exercise its Renewal Option by delivering to the County within ninety (90) days of the expiration of the then current term a written notice exercising its Renewal Option hereunder. “Term” shall be defined to include the Initial Term and any Renewal Term.

11. **Termination.**

(a) Upon the occurrence of a material default hereunder, 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 Agreement.

(b) BRD may terminate this Agreement upon ninety (90) days written notice in the event BRD determines, in its reasonable opinion, that (i) the Project is not, or no longer, feasible pursuant to Section 1, upon providing the County supporting documentation, or (ii) permits or authorizations deemed necessary or desirable by BRD with respect to the development and operation of the Gas Utilization System have not been obtained or, in BRD’s reasonable opinion, are unlikely to be obtained without undue delay or material adverse effect to the Gas Utilization System upon providing the County with supporting documentation. If BRD terminates this Agreement pursuant to this Section 11(b), BRD shall perform the Landfill Gas Management Services without compensation for the first thirty (30) days following notice of its termination, and thereafter at the County’s expense.

(c) The County may terminate this Agreement with immediate effect if BRD (i) makes an assignment or any general arrangement for the benefit of creditors, (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it, (iii) otherwise becomes bankrupt or insolvent (however evidenced), or (iv) is unable to pay its debts as they fall due.

(d) In the event of termination by the parties pursuant to this Section 9, BRD shall, with immediate effect, cease to be obligated to perform the Landfill Gas Management Services or pay any maintenance, repair or replacement costs hereunder or rental amounts due under the Lease(s) which are
incurred after the termination date and shall have no further liability or obligations to the County except as otherwise provided for in this Agreement.

(e) Notwithstanding the termination or expiration of this Agreement, and except as otherwise stated in this Agreement, 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.

12. **Representations and Warranties of the County.** The County hereby represents and warrants to BRD as follows:

(a) **Authority.** The County is a political subdivision, validly existing under the laws of the State of Nebraska, and has the power and authority to enter into this Agreement and to consummate the transactions herein contemplated, and the execution and delivery hereof and the performance by the County 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 the County is a party or by which it or the Landfill is bound;

(b) **Execution.** The execution, delivery and performance of this Agreement by the County and the consummation of the transactions contemplated hereby in the manner contemplated herein will not violate any provisions of any legal requirement to which the County or the Landfill is subject, or violate any judgment, order, writ, injunction or decree of any court applicable to the County or the Landfill;

(c) **Binding Agreement.** This Agreement is the legal, valid and binding obligation of the County, 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.

13. **Representations and Warranties of BRD.** BRD hereby represents and warrants to the County as follows:

(a) **Authority.** BRD is a limited liability company duly organized and validly existing under the laws of the State of Nebraska, and has the power and authority to enter into this Agreement and to consummate the transactions herein contemplated, and the execution and delivery hereof and the performance by BRD 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 BRD is a party or by which it is bound;

(b) **Execution.** The execution, delivery and performance of this Agreement by BRD and the consummation of the transactions contemplated hereby in the manner contemplated herein will not violate any provisions of any legal requirement to which BRD is subject, or violate any judgment, order, writ, injunction or decree of any court applicable to BRD;

(c) **Binding Agreement.** This Agreement is the legal, valid and binding obligation of BRD, 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;

14. **Indemnification.**

(a) **Indemnification by the County.** The County agrees to indemnify and hold harmless, protect and defend BRD 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 BRD or its managers, members, officers, agents, representatives and employees by reason of any act or omission of the County, 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 County or its elected and appointed officials, officers, agents, representatives and employees, and (ii) the breach by the County of any provision of this Agreement or the Lease, in each case including any and all reasonable expenses, legal or otherwise, incurred by BRD and its managers, members, officers, agents, representatives and employees in the defense of any claim or suit.

(b) **Indemnification by BRD.** BRD agrees to indemnify and hold harmless, protect and defend the County 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 County or its elected and appointed officials, officers, agents, representatives and employees by reason of any act or omission of BRD, 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 BRD or its managers, officers, agents, representatives and employees, and (iii) the breach by BRD of any provision of this Agreement or the Lease, in each case including any and all reasonable expense, legal or otherwise, incurred by the County and its elected and appointed officials, officers agents, representatives and employees in the defense of any claim or suit.

15. **Insurance.**

(a) All insurance coverages herein required of BRD 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 County, BRD shall furnish evidence that the insurance company, or companies being used by BRD meet the minimum requirements listed in this Section. BRD 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 County 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 County 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 County 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 County, 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 County in the event of cancellation of any of the coverages.

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

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

16. **Environmental.**

(a) BRD hereby covenants and agrees to abide by any and all environmental restrictions and regulations applicable to the Landfill; provided, however, that the County shall continue to perform and comply with all of its obligations under the environmental restrictions and regulations applicable to the Landfill pursuant to the terms of this Agreement.

(b) The County hereby covenants and agrees to indemnify and hold harmless BRD 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 Landfill, or any portion thereof, in connection with (i) the use, monitoring, remediation or decommissioning of the Landfill and the Landfill property, or any portion thereof, by the County or any previous owner/user/service provider (other than BRD) of the Landfill and the Landfill property, or any portion thereof, prior to BRD’s engagement hereunder; (ii) the use, monitoring, remediation or decommissioning of the Landfill and the Landfill property, or any portion thereof, by any existing or subsequent owner/occupant/user/service provider of the Landfill and the Landfill property, or any portion thereof, during the Term or after BRD’s engagement hereunder terminates; (ii) violations by any prior, existing or subsequent owner/occupant/user/service provider of the Landfill and the Landfill property, 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 Landfill and the Landfill
property, or any portion thereof, by the County or by its agents, employees or other service providers
acting on behalf of the County prior to, during or after the Term hereof; and (v) any contamination or
other Environmental Condition present on or about the Landfill and the Landfill property, or any portion
thereof, whether currently known or unknown, that existed on or prior to the Effective Date.

(c) BRD hereby covenants and agrees to indemnify and hold harmless the County 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) BRD’s use of the Landfill and the Landfill Property or services performed by BRD, its
agents or employees under this Agreement, or any portion thereof; and (ii) violations by BRD, 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 BRD, its
agents or employees at the Landfill and the Landfill property occurring during the Term of this
Agreement whether known during the Term of this Agreement or later discovered.

(d) BRD shall obtain all applicable environmental permits and authorizations required to be
held by it in connection with the development and operation of the Gas Utilization System and the
services to be performed hereunder; provided, however, if any permits are held by, or required to be held
by, the County for Landfill operations, the County shall be responsible for obtaining all such applicable
permits and complying with any applicable requirements associated or in connection with the Landfill and
the Landfill property, including any required stormwater management permits or requirements. The
parties hereby agree to provide each other assistance necessary in order to obtain such environmental
permits or authorizations.

17. **Limitation on Liability.** To the fullest extent allowable by law, and notwithstanding any other
provision of this Agreement, the parties agree that, whether as a result of breach of contract, warranty, tort
(including negligence or patent infringement), strict liability or otherwise, neither party shall be liable to
the other party for any special, consequential, incidental, indirect or exemplary damages including but not
limited to loss of profit, loss of revenue or loss of use of equipment, whether or not either party was
advised of the possibility of such damages, relating to the performance of this Agreement.

18. **Performance Bond.** On or prior to the Commencement Date, BRD shall provide the County with
a performance bond in an amount equal to Five Hundred Thousand Dollars ($500,000) to ensure faithful
performance of its obligations under this Agreement. The performance bond shall be written by a surety
licensed to do business in the State of Nebraska. Such performance bond shall be reasonably satisfactory
to the County in form and substance. The performance bond will be released after commencement of the
Gas Utilization System operations or upon the earlier termination of this Agreement by BRD pursuant to
Section 11.

19. **Protection of Proprietary Information.**

(a) Except for Proprietary Information, the County considers all information, documentation
and other materials required to be provided by BRD hereunder to be of a non-confidential and/or non-
proprietary nature and therefore shall be subject to public disclosure under Neb. Rev. Stat. § 84-
712.05(3). BRD is hereby notified that the County strictly adheres to all statutes, court decisions, and
opinions of the Nebraska Attorney General with respect to disclosure of information. Any "proprietary,
trade secret, or confidential commercial or financial" information, provided by BRD to the County
pursuant to this Agreement, must be clearly identified as such in writing from BRD to the County (such
information so designated by BRD in writing to the County being collectively referred to herein as “Proprietary Information”). The County shall maintain the confidentiality of all such Proprietary Information and protect the same from non-disclosure. BRD may seek injunctive relief or any other remedy available to BRD to prevent the disclosure of such Proprietary Information in breach of this Section and will be required to fully defend, in all forums, the County's refusal to produce such information; otherwise, the County may make, pursuant to a legal request therefor, such information public subject to its obligations set forth below in this Section. Upon receiving a written request pursuant to Neb. Rev. Stat. §84-712(3), the County agrees to provide immediate notice of said request to BRD. The County may release the requested information unless BRD notifies the County within five (5) business days of the receipt of the County notice that BRD objects to said release. Upon objection to said release by BRD, the Parties will work together in good faith to determine what, if any, information is required to be disclosed or permitted to be withheld from disclosure. In the event of disagreement by the Parties on the scope of any disclosure or permitted non-disclosure, County shall notify BRD in writing of the specific disputed information and its reasons compelling disclosure for same. BRD shall then have five (5) business days to institute legal proceedings to prevent County from releasing the information in question.

(b) Notwithstanding anything to the contrary contained herein, BRD retains ownership of all BRD Proprietary Information prepared or furnished by BRD pursuant to this Agreement. The County may retain copies of the documents for its information and reference in connection with this Agreement; however, none of these documents are intended or represented to be suitable for reuse by the County or others on this or on any other project. Any reuse without prior consent or adaptation by BRD, subject to agreed upon compensation, for the specific purpose intended will be at the County's sole risk and without liability to BRD, and the County will defend, indemnify and hold harmless BRD and its managers, members, officers, affiliates, agents, representatives and employees from all claims, damages, losses and expenses, including reasonable attorney's fees, arising or resulting therefrom.

20. **Notification of Certain Matters.** The County will give prompt notice to BRD and BRD shall give prompt notice to the County of: (a) the occurrence, or failure to occur, of any event, which occurrence or failure would be likely to cause any representation or warranty of such party contained in this agreement to be untrue or inaccurate in any material respect at or any time after the Effective Date; and (b) any material failure of the County or of BRD to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it under this Agreement.

21. **Commercially Reasonable Efforts.** The County and BRD agree to use their commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things reasonably necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement.

22. **Execution of Additional Documents.** The County and BRD will at any time, and from time to time after the Effective Date, upon written request of the other party, execute, acknowledge and deliver all such reasonable further assignments, transfers and assurances and take all such further action, as may be required to carry out the intent of this Agreement and to protect the right, title and interest in and enjoyment of the rights and transactions provided pursuant to this Agreement; provided, however, that this Agreement shall be effective regardless of whether any such additional documents are executed.

23. **Compliance with Law.** During the term of this Agreement, BRD shall, at BRD's sole cost and expense, comply promptly with all applicable statutes, laws, ordinances, regulations, and requirements in effect during the Term of this Agreement applicable to the Gas Utilization System, and BRD's obligations under this Agreement, including but not limited to, the Nebraska Environmental Protection Act and implementing regulations.
24. **Miscellaneous.**

(a) **Entire Agreement; Order of Precedence.** Except as the parties hereto may otherwise agree in writing, this 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 Agreement. Except 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 Agreement are superseded by this Agreement, the Exhibits to this Agreement, and the documents referred to or implementing the provisions of this Agreement. The following order of precedence shall be followed in resolving any inconsistencies between the terms of this Agreement and the terms of any Exhibits, scopes of work, or other documentation attached hereto or delivered hereunder: (i) First, the terms contained in the body of this Agreement; (ii) Second, the terms of the Development and Operation Plan which document will only be recognized upon County approval pursuant to Section 1 of this Agreement; (iii) Third, the terms of the remaining Exhibits or other attachments to this Agreement, provided that no order of precedence shall be applied among such Exhibits or attachments; and (iv) Fourth, any scopes of work or other documentation provided hereunder.

(b) **Applicable Law.** This Agreement 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.

(c) **CONSENT TO JURISDICTION.** THE COUNTY AND BRD 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 AGREEMENT, AND THE COUNTY AND BRD HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS INVOLVING ANY ACTIONS, MATTERS OR DISPUTES SHALL BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY WAIVE ANY OBJECTION IT MAY HAVE AS TO THE VENUE OF ANY SUCH ACTIONS, MATTERS OR DISPUTES BROUGHT IN SUCH COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM.

(d) **Interpretation.** The language in all parts of this Agreement 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 Agreement are for convenience only and shall not affect the construction or interpretation of any of the provisions of this Agreement.

(e) **Waiver and Amendment.** This Agreement 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 Agreement 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.

(f) **Assignment.** Except as specifically provided otherwise in this Agreement, neither this Agreement 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 BRD without the prior written consent of the County, which consent may be withheld in the County's sole discretion. Notwithstanding the foregoing, the restriction on assignment set forth in this Section shall not be deemed violated by virtue of a merger or change in ownership of BioResource Development, LLC. (BRD'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.

(g) Expenses. 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 Agreement 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 Agreement, 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.

(h) Successors and Assigns. Each of the terms, provisions, and obligations of this Agreement 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.

(i) 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 BRD: BRD Two, LLC 5062 S. 108th Street, #113 Omaha, Nebraska 68137 Attn: Gregory S. MacLean Facsimile: (402) 682-3680

Copy to: Fraser Stryker PC LLO 500 Energy Plaza 409 S. 17th Street Omaha, NE 68102 Attn: Stephen M. Bruckner, Esq. Facsimile: (402) 341-8290

If to County: Sarpy County Clerk’s Office 1210 Golden Gate Drive, Suite 1250 Papillion, NE 68046

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

(j) Severability. Each provision of this Agreement is intended to be severable. Should any provision of this Agreement or the application thereof be judicially declared to be or become illegal, invalid, unenforceable or void, the remainder of this Agreement 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.
(k) **Cumulative Remedies.** No remedy made available hereunder by any of the provisions of this Agreement 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.

(l) **No Third-Party Beneficiaries.** Except as specifically provided in this Agreement, nothing in this Agreement 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 Agreement or any provision hereof.

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

(n) **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 Agreement, this Agreement shall be read as if the appropriate gender had been used.

(o) **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.

(p) **Independent Contractor.** The relationship between the County and BRD shall be that of an independent contractor. This Agreement is not intended to create and shall not be construed as creating between the parties a relationship of principal and agent, joint venturers, co-partners, master and servant, franchisor and franchisee, or any other similar relationship, the existence of which is hereby expressly denied by the parties. Employees of BRD are not employees of the County. No party will have any right or authority to assume or create any binding obligations or to make any representations or warranties on behalf of the other party whether express, implied, by appearance, or otherwise.

(q) **Time is of the Essence.** In the performance of each part of this Agreement, time shall be of the essence. Each party hereto acknowledges and agrees that the periods of time set forth in this Agreement for the performance contemplated hereunder are reasonable.

(r) **No Brokers.** The County and BRD warrant that they have neither employed nor retained any company or person, other than a bona fide employee or agent working for the County or BRD, to solicit or secure this Agreement. The Parties further warrant that they have not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, BRD and the County shall have the right to annul this Agreement without liability, or in their discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

which is employed in the performance of this contract, or against any applicant for such employment, because of age, color, national origin, race, religion, creed, disability or sex.

(i) **Personal Interests.** Pursuant to Neb. Rev. Stat. §23-3113 (Reissue 2012), the parties hereto declare and affirm that no officer, member, or employee of BRD or the County, and no member of their governing bodies, and no other public official of BRD or the County who exercises any functions or responsibilities in the review or approval by the County of the undertaking described in this Agreement, or the performing of either parties' obligations pursuant to this Agreement, shall participate in any decision by the County relating to this Agreement 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 County, nor any member of its governing bodies, have any interest, direct or indirect, in this Agreement or the proceeds thereof.

(u) **Non-Solicitation.** Neither the County nor BRD shall engage the service of any person or persons presently in the employ of the other for work covered by this Agreement without the written consent of the employer of such person or persons.

(v) **Residency Verification Requirements.** BRD agrees to comply with the residency verification requirements of Neb. Rev. Stat. §4-108 through §4-114. BRD 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.

(w) **Force Majeure.** If either party is rendered unable, in whole or in part, by Force Majeure to carry out its obligations under this Agreement then such party shall give notice to the other party, in accordance with this Agreement, 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.
(x) **Counterparts.** This Agreement 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.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]
IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

County of Sarpy, Nebraska,
a Nebraska municipal corporation

By: Don Kelly
Name: Don Kelly
Title: Chairman

BRD Two, LLC,
a Nebraska limited liability company

By: 
Name: Gregory S. MacLean
Title: Manager
EXHIBIT A

Landfill Gas Management Services

GCCS MONITORING AND ROUTINE SYSTEM OPERATION & MAINTENANCE

Operation, monitoring & maintenance activities and responsibilities of BRD for the Landfill Gas Management Services, include the following:

1. **Gas Wells (Monthly)**
   A. Visual inspection and maintenance of the landfill gas well heads.
   B. Collect and record the following data at each well head and gas line header:
      - LFG Temperature
      - Well head static pressure
      - Well head system pressure
      - Methane concentration
      - Oxygen concentration
      - Carbon dioxide concentration
      - Balance gas concentration
      - LFG flow rate (as allowed)
   C. During each monitoring event, adjustments shall be performed by BRD professionals, and shall consist of varying the well's individual flow control valve as needed to maximize gas withdrawal rates and minimize air intrusion into the well.

2. **Condensate, Sumps (Weekly)**
   A. BRD will conduct condition monitoring at condensate pumps CS-1 (North), CS-1A (South), CS-2 (Tire Wash), CS-3 (Shop) to ascertain that they are operating properly and to obtain pump cycle counter readings.

3. **Blower and Flare Station (Weekly)**
   A. BRD shall be responsible for the following weekly checks of the blower and flare system. See attached weekly summary report dated 4-8-2015 for an example of collected items.
   B. BRD shall exercise the blower and flare weekly, or as mutually agreed upon in writing, to maintain operation. Frequency and duration may need to be increased and shall be determined by operation experience.
C. BRD shall be responsible for maintaining the access roads and enclosures to allow for operation of the blower and flare station.

4. **Blower and Flare Station (Monthly)**  
   A. BRD shall be responsible for the following monthly checks, including monitoring of the following systems and equipment:
      * Download and manage the monthly data from the data recorder. This data includes flame temperature, gas flow, percent methane, alarm logs, etc.
      * Control panel
      * Blower
      * In line dryer
      * Enclosure Heaters
      * Air compressors (and electric motors)
      * Observe and maintain propane tank level.
      * Observe and maintain nitrogen tank level
      * Inspect automatic dialer system (ADS) and alarm signal inputs.

   B. BRD shall be responsible for the following quarterly monitoring tasks:
      * Evaluate landfill gas extraction well performance.

5. **High BTU Gas Plant**  
   A. BRD shall be responsible for the following monthly monitoring of the following systems and equipment:
      * Download and manage the monthly raw gas and processed gas data from the plant. This data includes:
         * temperature,
         * vacuum pressure,
         * discharge pressure
         * gas flow,
         * percent methane,
         * percent carbon dioxide,
         * percent oxygen,
         * percent balance gas, and
         * gas heating value,
         * Observe condensate level/volume in sump
         * Observe temperature of glycol dehydrator
6. **Recordkeeping**
   A. Following are the specific responsibilities related to the GCCS that will be performed by BRD:

      - **Daily Checklist** - Conduct daily (five days per week) checklist inspections of the high BTU plant and flare system and maintain copies of the completed checklist for appropriate incorporation under regulatory reporting requirements. BRD will also monitor and record meteorological conditions (e.g., average barometric pressure, average ambient temperature, etc.).

      - **Weekly Checklist** - Record flare data regarding date and operating time, barometric pressure, ambient temperature, wind speed, condensate tank levels, propane tank levels, nitrogen tank levels, flare temperature, blower RPM, gas temperature, CH4 concentration, flame condition, and air compressor outlet pressure. (See attached weekly summary report dated 4-8-2015 for an example of collected items.)

      - **Monthly Checklist** - BRD will inspect automatic dialer system (ADS) and alarm signal inputs (e.g., high temperature alarm, flame failure, etc.) for proper operation and refill propane and nitrogen tanks, as required for the flare system. Any identified issues will be reported to the County for appropriate resolution.

7. **Regulatory Reporting**
   A. BRD shall prepare and submit reports detailing the data and events that took place during the month on a monthly basis. The minimum information provided in the reports shall include the following:

      - Number of operating hours per month for all systems
      - Flare inlet pressure
      - Flare temperature during operation
      - CH4 and other gas concentrations
      - High BTU Gas Plant inlet pressure and gas concentrations
      - Gas well pressure, flow rate and gas concentrations
        - Monitoring port pressure, flow rate and gas concentrations
        - Incorporate daily check sheets conducted by BRD personnel
        - Continuous flow rates and flare operating temperatures from the data logger in chart form
        - Gas well adjustments
        - Descriptions of extra work
o Chronology of shutdowns and alarm states
o Approximate volume of condensate discharged
o Gas probes monitoring results

B. Measurements of meteorological parameters, including quantities of precipitation, air temperature, wind velocity and direction and air pressure shall be taken relative to all inspection days.

C. The monthly reports shall be submitted to the County for review by the 15th day of the month following the end of the month.

Operating Maintenance, Repairs and Replacement Services

During the term of the Agreement, BRD is responsible for any and all routine and non-routine maintenance, repairs and replacements of the LFGCS and Gas Utilization System including, but not limited to, all components listed within the agreement recitals.

Should the cost of maintenance, repairs or replacements exceed $50,000 annually, all reasonable costs in excess thereof may be deducted, from the annual Operating Fees due to the County. BRD shall provide a report detailing the costs and expenses of all performed maintenance, repairs and replacements of the LFGCS, upon request.

Every five (5) years thereafter during the term of the Agreement, annual amount of $50,000 allocated for maintenance, repair and replacement costs and expenses for which BRD is responsible shall be adjusted up or down based on average annual changes to the Consumer Price Index (CPI), CUUR0200SA0, not seasonally adjusted, Midwest Urban, All Items, Base Period 1982-84=100 or the latest version of the PPI data published as of the date specified for such calculations. BRD shall perform the CPI calculations no later than six (6) months prior to each fifth (5th) year with the adjusted rate taking effect on the anniversary and subsequent anniversaries throughout the term of the Agreement. BRD shall provide CPI calculations to the County for verification in the format indicated in Attachment A.
## Attachment A
To Exhibit A

### Operating Maintenance, Repairs and Replacement Services
CPI Adjustment <DATE>

**Series ID:** CUUR02005A0 ([http://data.bls.gov/cgi-bin/surveymost?cu](http://data.bls.gov/cgi-bin/surveymost?cu))

Not Seasonally Adjusted

**Area:** Midwest Urban

**Item:** All Items

**Base Period:** 1982-1984=100

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September 6, 2016

Mr. Mark Wayne
County Administrator
Sarpy County, Nebraska
1210 Golden Gate Drive Suite 1126
Papillion, NE 68046-2845

Re: Feasibility of Landfill Gas Utilization Project at Sarpy County Landfill located near Springfield, Nebraska

Dear Mr. Wayne:

BioResource Development, LLC (BRD), dba BRD Two, LLC was engaged by Sarpy County to perform an independent feasibility study of the Sarpy County Landfill to determine the feasibility of the development of a landfill gas to high BTU natural gas pipeline project. The Agreement, dated January 26, 2016, stipulated the terms and conditions under which this study would be conducted, as well as the conditions under which the Landfill Gas Project would proceed if in the sole opinion of BRD, the study confirmed the feasibility of the Project.

BRD has completed the feasibility study of the Agreement which included an assessment of the following:

1) Gas quality and volume data from 2012 through February 2016
2) Site plans and topographic maps of the landfill and flare station areas
3) Leachate management practices
4) Condensate management practices
5) 2015 Title 132 Operating permit Application
6) Preliminary landfill gas collection and control system layout
7) Meetings with county landfill staff and their engineer to discuss preliminary concepts.
Based on the information gathered, the results of the engineering and financial analyses performed, BRD has confirmed the feasibility of the Project. Furthermore, BRD has secured preliminary project financing and is in the process of finalizing loan agreements at this time.

In accordance with Section 1.(a)(i) of the Agreement, BRD hereby provides the following results of the Feasibility Study to the County:

- The goal of the study was to determine if a "landfill gas-to-high BTU" conversion project is viable at the Sarpy County Landfill.
- BRD reviewed all available historical information provided by Sarpy County and their Engineer TD2, including the LandGEM model. The historical data was used to confirm engineering projections of current and projected landfill gas production at the site. The historical data confirmed that the original gas production projections from the LandGEM model were, and are, valid and accurate.
- BRD reviewed the original landfill design as well as the various modifications and improvements to the gas collection and control system (GCCS), to determine the current and projected performance efficiency. BRD determined that the system as currently configured, can be operated to produce a viable quality and quantity of gas. However, BRD also confirmed that modifications, improvements, and expansion of the system will increase both the quality and volume of the landfill gas collected.

With the successful completion of Section l.(a)(i)- Results of Feasibility Study of the Agreement and the confirmation of the feasibility of the Landfill Gas Project, BRD has confirmed the feasibility of the Landfill Gas Project at the Sarpy County Landfill. It is BRD’s opinion that the Landfill Gas Project at the Sarpy County Landfill will produce a marketable volume of methane for the next 10 years and possibly longer.

BRD is preparing the next set of project deliverables as described in Sections l.(a)(ii) - Summary of Gas Utilization System Development and Operating Plan and Landfill Gas Collection and Control System Extension Plan and intends to submit the deliverables by October 31st.
As discussed with the County’s Landfill Engineer (TD2), BRD will prepare the following deliverables for the County’s review:

- Site Grading Plan
- Site Development and Operating Plan
- Landfill Gas Expansion Plan
- Leachate Recirculation Plan Modification

For the Term of the Agreement, BRD will perform the Landfill Gas Management Services as specified in the Agreement.

Finally, BRD is required to set a “Commencement Date” which will initiate the remaining terms of the Agreement. However, with the uncertainty of the final closure date and some uncertainty with the timing of the pipeline, related to ongoing negotiations with Black Hills Energy, BRD is not yet ready to set the specific commencement date. The timing of these two outstanding issues will have an effect on BRD’s construction schedule and financing structure. Since we are anxious to move forward, we will continue to work on these issues and will notify the County of the Commencement Date as soon as possible.

BioResource Development, LLC appreciates this opportunity to work with the County on this project and if you have any questions, please do not hesitate to contact Gary Kuhn at (402) 657-2277 or me.

Respectfully Submitted,

BioResource Development, LLC

Greg MacLean, President