

BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA

RESOLUTION APPROVING ADDENDUM TO AGREEMENT WITH BLUE SOURCE/CII FOR
LANDFILL GAS COLLECTION SYSTEM AT THE SARPY COUNTY LANDFILL

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6)(Reissue 1997), 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 (Reissue 1997), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, the County of Sarpy previously entered into an agreement with Blue Source/CII to provide for the installation and operation of a landfill gas collection system at the Sarpy County Landfill; and,

WHEREAS, the parties are desirous of amending the provisions of said Agreement by this Addendum.

NOW, THEREFORE, BE IT RESOLVED by the Sarpy County Board of Commissioners that this Board hereby approves and adopts this addendum to the agreement with Blue Source/CII for installation and operation of a landfill gas collection system at the Sarpy County Landfill, a copy of which is 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 addendum to the agreement with Blue Source/CII, a copy of which is attached, and any other related documents, the same being approved by the Board.

DATED this 28th day of April, 2009.

Moved by Rich Jansen, seconded by Tom Richards, that the above Resolution be adopted. Carried.

YEAS:

NAYS:

ABSENT:

[Signature]
Rich Jansen
[Signature]
Tom Richards
Patrick J. Thomas
[Signature]
County Clerk

none

none

ABSTAIN:

none



Approved as to form

[Signature]
Deputy County Attorney

**ADDENDUM TO AMEND AGREEMENT
WITH BLUE SOURCE/CARBON INFRASTRUCTURE INVESTMENT, LLC.**

This Addendum is entered into by and between Carbon Infrastructure Investment, LLC or an affiliate thereof (hereinafter "CII") and Sarpy County, Nebraska, a body politic and corporate (hereinafter "Sarpy").

WHEREAS, the parties have previously entered into an agreement to provide for the installation and operation of a landfill gas collection system at the Sarpy County Landfill; and,

WHEREAS, the parties are desirous of amending the provisions of said Agreement by this Addendum.

NOW, THEREFORE, it is hereby agreed by and between the parties:

I.

The prior Agreement between the parties is hereby amended by the terms of this Addendum.

II.

Section 2(c)(v) shall be amended to read, "In the event CII elects to undertake the LFG Utilization Project, CII will use commercially reasonable efforts to install the LFG Utilization Project and have it operating within twenty-four (24) months of the LFGCS Project Operational Date. CII will provide all specifications and drawings for the LFG Utilization Project to Sarpy for Sarpy's review and approval, which shall not be unreasonably withheld or delayed. Final approval of all specifications and drawings must be consented to and agreed upon by all Parties."

III.

Section 4(g) shall be amended to read, "Sarpy's share of Phase 2 EBIDTA arising from the LFG Utilization Project, if any, shall be calculated quarterly after the first full quarter that the LFG Utilization Project is in operation and every calendar quarter thereafter until the expiration or termination of this Agreement."

IV.

Section 6(d) shall be amended to read, "Throughout the Term, convey to CII (i) all rights, title and interest in and to all ERBs created by the Project or otherwise during the course of operations at the Landfill; (ii) all rights, title, and interest in all gas captured or combusted in an

LFGCS Project or any similar project developed by CII pursuant to this Agreement; and (iii) and all additional benefits specifically listed in this Agreement.”

V.

Section 10(b) shall be amended to read, “Upon termination of this Agreement pursuant to section 10(a)(ii) above (termination by CII due to Economic Unfeasibility), CII shall have the option to either (i) assign, subject to all the conditions of this Agreement, its interest in the Project to a third party subject to Sarpy’s approval which shall not be unreasonably withheld, or (ii) liquidate all Equipment, PROVIDED THAT, in the event of a proposed liquidation by CII, Sarpy shall have a right of first offer on all Equipment and shall receive all outstanding revenue and receivables, which right shall provide Sarpy with the exclusive right to negotiate with CII for the acquisition of all Equipment for a period of thirty (30) days from CII’s initial notice to Sarpy of such proposed liquidation.”

VI.

Section 13(a) shall be amended to read, “Sarpy shall indemnify and hold CII harmless from any claims or demands and any actions, suits, orders or any other form of legal proceeding brought by a third party, including any government authority or regulator, relating to: (i) any negligent act or omission or any materially untruthful or reckless representation made by Sarpy or its officers or employees in connection with the creation, use or sale of Emission Reduction Benefits subject to this Agreement; (ii) any damages incurred by CII or INGENCO arising from Sarpy’s noncompliance with its permits, licenses and other governmental approvals related to the equipment and operations of the Landfill, including but not limited to costs, claims, demands, or liabilities arising out of allegations that leachate or condensate collected by CII through operation of the Project contains or constitutes hazardous waste; or (iii) any breach of Sarpy’s warranties. In addition, throughout the Term, Sarpy shall indemnify and hold CII harmless from any costs, claims, demands, or other liabilities relating to CII’s disposal of leachate or condensate collected by CII through operation of the Project.”

VII.

The remaining terms and conditions of said prior Agreement shall remain unchanged.

IN WITNESS WHEREOF, we, the contracting parties, by our respective and duly authorized agents, hereby affix our signatures and seals as shown on the following signature pages.

CARBON INVESTMENT
INFRASTRUCTURE

Matt Harmer *alc*
By: *Matt Harmer*
Its: *Vice President + General Counsel*

SARPY COUNTY

Joni Jones *4/28/09*
By: *Joni Jones*
Its: *Chairman*

SEAL

ATTEST:

Debra J. Houghtaling
County Clerk



Approved as to form:

Mark D. ...
County Attorney/Deputy