

BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA

RESOLUTION AUTHORIZING PURCHASE OF LANDFILL GAS COLLECTION
SYSTEM ASSETS AND TERMINATING PRIOR AGREEMENT

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6) (Reissue 2012), 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 2012), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, the County of Sarpy is authorized to purchase and hold the real and personal estate necessary for the use of the county pursuant to Neb. Rev. Stat. §23-104(1) (Reissue 2012); and,

WHEREAS, Sarpy County entered into an agreement with Blue Source/CII for the installation and operation of a landfill gas collection system (LFGCS), see Resolution 2009-083; and,

WHEREAS, the LFGCS has been constructed and is operational according to the agreement and Sarpy County has been operating the system for Blue Source/CII since January 1, 2012; and

WHEREAS after engaging in good faith negotiations with Blue Source/CII and related entities with ownership interest, an agreement has been proposed for Sarpy County to purchase the LFGCS and all related assets of the system for the agreed purchase price of Four hundred thousand dollars (\$400,000.00) and to terminate the prior agreement as detailed in the attached purchase and termination agreement; and,

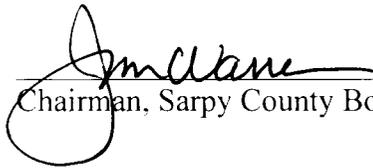
WHEREAS the purchase of the LFGCS is in the best interests of the citizens of Sarpy County.

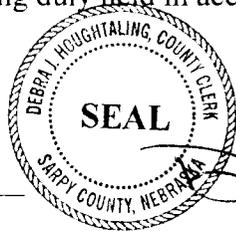
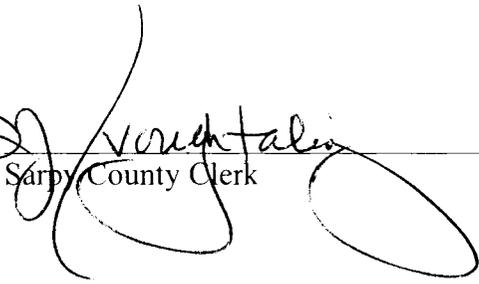
NOW, THEREFORE, BE IT RESOLVED by the Sarpy County Board of Commissioners (hereinafter "Board") that said Board hereby approves and adopts the Purchase and Termination Agreement with CII, a copy of which is attached.

BE IT FURTHER RESOLVED that the Chairman of this Board, together with the County Clerk are authorized to execute the Purchase and Termination Agreement for the LFGCS

and related assets, a copy of which is attached hereto, as well as the necessary documents to consummate said transaction, on behalf of this Board and to purchase the above-described property for the sum of Four hundred thousand dollars (\$400,000.00).

The above and foregoing Resolution was duly approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on this 10th day of December, 2013.


Chairman, Sarpy County Board

 
Sarpy County Clerk

ASSET PURCHASE AND TERMINATION AGREEMENT

This Asset Purchase and Termination Agreement is made by and between CII Methane Management II, LLC ("CII MMII"), a Delaware limited liability corporation (hereinafter referred to as "Seller"), and Sarpy County Nebraska, a body politic and corporate (hereinafter referred to as "Buyer") (collectively shall be referred to as "Parties" and individually as "Party") on December 6, 2013 (the "Effective Date") ("Asset Purchase Agreement").

RECITALS

WHEREAS, Buyer desires to purchase and Seller desires to sell, upon the terms and conditions set forth hereinafter, all of Seller's Equipment located at the Sarpy County Landfill, 14414 S. 156th Street, Springfield, Nebraska that was installed by Seller pursuant to the Agreement between Sarpy County, Nebraska ("Sarpy") and CII MMII (by the way of assignment from Carbon Infrastructure Management, LLC) dated May 1, 2009, as amended (the "Agreement"). Any terms not otherwise defined herein shall be defined as set forth in the Agreement.

NOW, THEREFORE, in consideration of the mutual promises herein contained, and intending to be legally bound, the Parties agree as follows:

AGREEMENT

1. Purchase and Sale of Assets. Subject to the terms and conditions set forth herein, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller, all of Seller's rights and interests in the Equipment (for clarification, such Equipment does not include Seller's gas meter) at the Sarpy County Landfill, the ERBs arising from the LFGCS Project after December 31, 2013 and the rights to the LFG arising from the LFGCS Project after December 31, 2013 (collectively "Assets") free and clear of any mortgage, pledge, lien, charge, security interest, claim or other encumbrance.
2. "As Is, Where Is". Buyer acknowledges that the Assets are being sold "as is, where is", without any representation or warranty regarding same except to the extent set forth in Section 8 hereof.
3. Purchase Price. The purchase price for the Assets shall be \$400,000.00 ("Purchase Price").
4. Payment of Purchase Price. Payment of the Purchase Price shall be made as follows: Buyer shall pay the Purchase Price by cashier's check to be delivered to Seller via federal express mail signature required at Seller's business address of 97 St. Marks Pl. Suite 2, New York, NY 10009, Attention: Annika Colston, to be received by Seller on or before December 30, 2013.
5. Transfer. Provided that Seller has received full payment of the Purchase Price in accordance with Paragraph 4, the transfer of Assets from Seller to Buyer (the "Closing") shall take place at 12:01 a.m. Central Time January 1, 2014 (the "Closing Date") at which time the risk of loss shall also pass from Seller to Buyer.
6. Covenants of Seller. Unless this Asset Purchase Agreement is otherwise terminated, Seller hereby covenants and agrees with Buyer that between the date of this Agreement and the Closing Date, except as otherwise permitted by the prior written consent of Buyer:

- a. All obligations under the Agreement binding upon Seller will be duly performed by Seller;
 - b. Seller shall not mortgage, pledge or encumber any of the Equipment and will use commercially reasonable efforts to preserve the goodwill of those having business relationships with Seller in connection with the Assets; and
 - c. Seller shall not make any commitments with respect to capital expenditures for the Buyer, nor will Seller dispose of any of the Equipment.
 - d. Seller shall reimburse Buyer for all non-routine, pre-approved expenses incurred by Buyer in exercising its commercially reasonable efforts to preserve the Equipment pursuant to Section 8(b) (such expenses, the "Pre-Approved Expenses").
7. Covenants of Buyer. Unless this Asset Purchase Agreement is otherwise terminated, Buyer hereby covenants and agrees with Seller that between the date of this Agreement and the transfer of Assets on the Closing Date:
- a. All obligations under the Agreement binding upon Buyer will be duly performed by Buyer; and
 - b. Buyer shall use its commercially reasonable efforts to preserve the Equipment.
8. Seller's Representations and Warranties. Seller hereby represents and warrants that:
- a. Seller is the sole owner of and has the full right and authority to sell the Assets to be transferred, all of which are free and clear of any and all debts, claims, mortgages, liens, security agreements and other encumbrances or restrictions on transfer;
 - b. The execution and delivery of this Asset Purchase Agreement by officers or representatives of Seller have been duly authorized by Seller's Board of Directors; and
 - c. With respect to the Assets, there is no litigation or other legal proceeding pending, or to the knowledge of Sellers, threatened against Seller, and Seller is not in default with respect to any order of any court or government authority which may have been issued against Sellers.
9. Buyer's Representations and Warranties. Buyer hereby represents and warrants that:
- a. The execution and delivery of this Asset Purchase Agreement by officers or representatives of Buyer have been duly authorized by Buyer's Board of Commissioners; and
 - b. There is no litigation or other legal proceeding pending, or to the knowledge of Buyer, threatened against Buyer, and Buyer is not in default with respect to any order of any court or government authority which may have been issued against Buyer.
10. Conditions. The obligation of the Parties to consummate the transaction contemplated by this Agreement is subject to each Parties satisfaction that on or prior to the Closing Date, the following

conditions have been met, which, if not satisfied, shall entitle the other Party, at its option, to terminate this Asset Purchase Agreement and all of its obligations under this Asset Purchase Agreement without relieving the other Party of its obligations hereunder.

- a. The representations and warranties of Seller made in this Agreement or any document delivered to Buyer pursuant hereto shall be true and correct on and as of the Closing Date with the force and effect as though such representations and warranties had been made on and as of the Closing Date.
- b. The representations and warranties of Buyer made in this Agreement or any document delivered to Seller pursuant hereto shall be true and correct on and as of the Closing Date with the force and effect as though such representations and warranties had been made on and as of the Closing Date.
- c. Seller shall have received in the manner set forth in Section 4 payment of the Purchase Price within the date required and such payment will represent good funds.
- d. Buyer shall have received from Seller \$8,800 for prior maintenance activities, Gretna Welding repair to be conducted and the installation of a wind screen on top of the flare and all additional reimbursements due from Seller for Pre-Approved Expenses.

In the event of a termination of this Asset Purchase Agreement for the reasons set forth in this Section 10, the terminating Party shall be entitled to pursue all remedies available at law that exist as a result of the non-terminating Party's failure to perform its obligations hereunder.

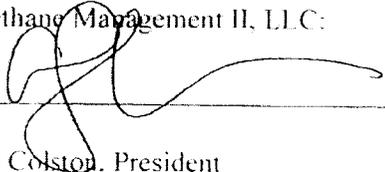
11. Termination of Agreement. The Parties agree that, notwithstanding any other provision contained therein, the Agreement shall automatically terminate upon the receipt of payment of the purchase price and the transfer of Assets pursuant to Paragraphs 4 and 5.
12. Buyer's Indemnity. Buyer agrees to indemnify and save harmless Seller, its officers, employees and agents from all third party, claims, suits or actions of every kind and character made upon or brought against Seller, its officers, employees, or agents, as a result of any liabilities or obligations of any kind or nature whatsoever, known or unknown arising out of or in connection with: (i) Buyer's operation of the Equipment from January 1, 2012 through December 31, 2013 (such indemnification shall terminate in full eighteen months after the Closing Date); or (ii) the conduct of Buyer or the ownership or use of the Assets after the Closing Date (such indemnification shall terminate in full eighteen months after the Closing Date).
13. Seller's Indemnity. Seller shall indemnify and save harmless Buyer, its officers, employees and agents from all third party, claims, suits or actions of every kind and character made upon or brought against Seller, its officers, employees, or agents, as a result of any liabilities or obligations of any kind or nature whatsoever, known or unknown, arising out of or in connection with: (i) the ownership of the Equipment prior to the Closing Date, the operation or use of the Equipment prior to January 1, 2012; or (ii) the use or ownership of the ERBs or LFG rights prior to the Closing Date. Such indemnification by Seller shall terminate in full eighteen months after the Closing Date.

14. Miscellaneous.

- a. Except as otherwise provided for herein, each of the Parties hereto shall pay its own expenses in connection with the transactions contemplated by this Agreement.
- b. This instrument contains the entire Asset Purchase Agreement between the Parties hereto with respect to the transactions contemplated herein. The Parties hereto expressly agree that this Instrument supersedes and rescinds any prior written agreement between them pertaining to the sale of the Assets. This Agreement may not be amended, modified or discharged other than in writing, executed by all the Parties hereto or the respective successors or assigns.
- c. This Asset Purchase Agreement and the transactions and other instruments provided for herein shall be governed by the laws of the State of Nebraska, and may only be judicially enforced in any court of competent jurisdiction sitting in Sarpy County, Nebraska. This Asset Purchase Agreement will be binding upon the respective successors and assigns of the Parties hereto.
- d. Nothing herein shall be construed as an agreement by Buyer to assume any contract or obligation to which Seller is a party in conjunction with the operation of the LFGCS.
- e. In the event any part, term, condition, or provision herein shall be declared to be invalid or unenforceable by any court of competent jurisdiction, the remaining parts, terms, conditions, or provisions of this Asset Purchase Agreement shall not be affected, and the rights and obligations of the Buyer and Seller shall be construed and enforceable as if the Asset Purchase Agreement did not contain the part, term, condition or provision held to be invalid.
- f. This Asset Purchase Agreement, and each of its provisions, has been reached as the result of negotiations between the Parties and their respective attorneys. Each of the Parties expressly acknowledges and agrees that this Asset Purchase Agreement shall not be deemed to have been prepared by, or drafted by, any particular Party or Parties hereto and that the normal rule of construction, to the effect that any ambiguities are to be resolved against the drafting Party or Parties, shall not be employed in the interpretation of this Asset Purchase Agreement.
- g. This Asset Purchase Agreement shall be binding on, and shall inure to the benefit of, each of the Parties and their respective past, present and future predecessors, successors, subsidiaries, affiliates, officers, directors, employees, attorneys, insurers, agents, representatives and assigns.
- h. This Asset Purchase Agreement may be executed simultaneously or in any number of counterparts, each of which shall be deemed an original, equally admissible in evidence against any Party who has signed it, all of which together shall constitute one and the same agreement. Signatures delivered by facsimile shall be deemed original signatures.

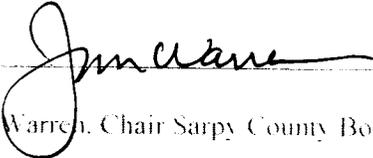
IN WITNESS WHEREOF the Parties have caused this agreement to be duly executed on this the 6th day of December, 2013

CII Methane Management II, LLC:

By: 

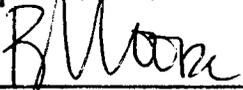
Annika Colston, President

Sarpy County:

By:  12-10-13

Jim Warren, Chair Sarpy County Board of Commissioners

Approved as to form:



County Attorney