2014-237

14/000920

BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA

RESOLUTION APPROVING AND AUTHORIZING CHAIRMAN TO SIGN CONFIDENTIALITY AGREEMENT WITH BIORESOURCE DEVELOPMENT, LLC

WHEREAS, pursuant to Neb. Rev. Stat. § 23-104 (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;

WHEREAS, pursuant to Neb. Rev. Stat. § 23-103 (Reissue 2012), the powers of the County as a body are exercised by the County Board of Commissioners;

WHEREAS, Bioresource Development, LLC and Sarpy County desire to exchange certain mutual confidential and proprietary information in order to investigate possible commercial opportunities and arrangements regarding the collection, processing, and distribution of landfill gas; and

WHEREAS, the parties desire to enter into a Confidentiality Agreement ("Agreement") regarding the exchange and disclosure of that information.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT the attached Agreement between Sarpy County and Bioresource Development, LLC is hereby approved.

BE IT FURTHER RESOLVED that the Chairman of the Board, together with the County Clerk, are hereby authorized to sign on behalf of this Board, the Agreement 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 24th day of June 2014.

Attest

COUNTY CLERK SEAL SARPY COUNTY NEBRASKA

SEAL

Sarpy County Board Chairman

County Clerk Chief Deputy

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT ("**Agreement**") is made and entered into as of the 7th day of June, 2014 by and between BIORESOURCE DEVELOPMENT, LLC, a Nebraska limited liability company with its principal offices at 5062 S. 108th Street, #113, Omaha, Nebraska 68137, and Sarpy County, a political subdivision of the State of Nebraska having its principal offices at 1210 Golden Gate Drive, Suite 1126 Papillion, NE 68046-2845 (each a "**Party**" and collectively, the "**Parties**").

WHEREAS the Parties wish to exchange certain mutual confidential and proprietary information in order to investigate possible commercial opportunities and arrangements between the Parties or their Affiliates (as hereinafter defined) which will involve the collection, processing and distribution of landfill gas (or any materials derived therefrom) (the "**Project**").

NOW THEREFORE in consideration of the disclosure of Confidential Information (as hereinafter defined) and the mutual covenants contained herein, the Parties agree with each other as follows:

1. Definitions.

a. "**Affiliate**" means, with respect to any Person, any other Person which is affiliated with such Person, and for the purposes hereof:

i. two Persons will be considered to be affiliated with one another if one of them controls the other, or if both of them are controlled by a common third Person; and

ii. one Person will be considered to control another Person if it has the power to direct or cause the direction of the management and policies of the other Person, whether directly or indirectly, through one or more intermediaries or otherwise, and whether by virtue of the ownership of shares or other equity interests, the holding of voting rights or contractual rights, or otherwise.

b. "**Confidential Information**" means all information of a commercial, proprietary, intellectual or similar nature, relating to possible commercial opportunities between the Parties and/or their Affiliates involving the Project disclosed directly or indirectly, or acquired and exchanged between the Parties and their Affiliates, in written, oral, visual or electronic form. Each Party maintains exclusive ownership in the Confidential Information which it discloses hereunder and shall have the sole and absolute discretion to determine what, if any, information it will disclose to the other Party. "Confidential Information" shall not include information which:

i. is in the public domain at the date of disclosure to the Receiving Party or which thereafter enters the public domain other than by any act or failure to act on the part of the Receiving Party (but only to the extent such Confidential Information is or becomes part of the public domain);

ii. is already known to the Receiving Party (as evidenced by the Receiving Party's written records) at the time of disclosure;

iii. was lawfully acquired by the Receiving Party from a third party (as evidenced in the Receiving Party's written records) if such third party is not known by the Receiving Party to be subject to

any agreement with Disclosing Party prohibiting such disclosure to Receiving Party; or

iv. is developed independently at any time by the Receiving Party without the use of Confidential Information, alone or in conjunction with a third party if such third party is not known by Receiving Party to be subject to any agreement with Disclosing Party prohibiting such disclosure to Receiving Party.

c. **"Disclosing Party"** means a Party and/or such Party's Representatives disclosing information pursuant to the terms of this Agreement.

d. **"Person"** means an individual, firm, partnership, body corporate or other legal entity, a government or any department or agency thereof, a trustee, any unincorporated organization or the heirs, executors, administrators or other legal representatives of an individual, as the case may be.

e. **"Receiving Party"** means a Party and/or such Party's Representatives receiving information pursuant to terms of this Agreement.

f. **"Representatives"** means, with respect to a Party, such Party's directors, officers, employees, Affiliates and the directors, officers and employees of such Affiliates, professional consultants, advisors, attorneys, and lenders of such Party or its Affiliates.

2. **Nondisclosure.** The Confidential Information shall be kept in strict confidence by the Parties and shall only be disclosed to such Parties Representatives on a "need-to-know" basis for the sole purpose of evaluating and/ or implementing the Project and not for any other purpose whatsoever. The Parties shall require that all Representatives and any other Persons having access to the Confidential Information comply with the provisions of this Confidentiality Agreement. The Receiving Party shall take all reasonable measures to restrain its Representatives from unauthorized disclosure or use of the Confidential Information in breach of the terms of this Agreement. Except as expressly set forth herein, the Receiving Party shall not use any of the Disclosing Party's Confidential Information other than to evaluate and/or implement the Project. If the Receiving Party becomes aware of any breach of this Confidentiality Agreement any Representative, the Receiving Party will promptly notify the Disclosing Party.

3. **Exception to Nondisclosure.** Except as provided in Section 2 and this Section 3, the Confidential Information received by the Receiving Party shall not be disclosed to any third party by the Receiving Party without the express written consent of the Disclosing Party. If the Receiving Party or any of its Representatives concludes that it is legally compelled, by oral questions, interrogatories, requests for information, subpoena of documents, civil investigative demand or similar process or otherwise pursuant to applicable law, rule, or regulation, to disclose any Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt notice of each such request so that the Disclosing Party may seek an appropriate protective order, at the Disclosing Party's sole cost and expense, and/or waive the Receiving Party's obligation to comply with the provisions of this Agreement. However, the Receiving Party shall not be obligated to delay a legally compelled disclosure so that the Receiving Party may seek an appropriate protective order. Any Confidential Information required to be disclosed in accordance with this Section 3 shall be disclosed only to the extent and for the purposes of such required disclosure.

4. **Damages for Breach.** The Parties agree that unauthorized disclosure or use of Confidential Information could cause irreparable harm and/or significant injury to the Disclosing Party. If Confidential Information is

disclosed in breach of this Agreement, the Disclosing Party shall be entitled to seek injunctive relief against a threatened breach or continuance of such breach and, in the event of such breach, shall be entitled to seek a court award of damages.

5. **Disclaimer of Representations and Warranties.** Neither Party nor its respective Representatives make any express or implied representations, warranties or covenants as to the accuracy or completeness of the Confidential Information. Neither the Disclosing Party nor its Representatives shall have any liability whatsoever to the Receiving Party or its Representatives for any use made by the Receiving Party or its Representatives of the Confidential Information, or any errors therein or omissions therefrom. The Receiving Party and its Representatives shall rely solely upon their own independent estimates, computations, evaluations, reports, studies, examinations, and knowledge with respect to the evaluation of the Project. Each Party shall be entitled to rely only on representations or warranties made to it by the other Party in any final agreement duly executed by the Parties.

6. **Term.** This Confidentiality Agreement shall commence on the date hereof and shall continue in full force and effect for a term of two (2) years, unless the Parties enter into a written agreement for the Project, in which case this Confidentiality Agreement shall terminate upon the date such agreement is executed by the Sarpy County Board of Commissioners.

7. **No Exclusivity or Partnership.** By entering into this Agreement, the Parties have not established a contractual or any other form of duty to deal exclusively with each other. This Agreement does not create and shall not be construed to create any partnership, distributorship relationship, agency relationship, employer-employee relationship, joint venture, or any similar relationship or entity between the Parties. Further, neither Party shall, based upon the terms of this Agreement, have the authority to act as an agent, representative, trustee, or fiduciary of the other Party or bind or legally obligate the other Party in any manner whatsoever.

8. **No Offer.** Except for obligations specifically set forth herein, this Agreement does not create any obligations, rights, or duties between the Parties with regard to the Project and the Parties shall incur no such obligations, rights, or duties unless and until the Parties enter into complete definitive agreement(s) that fully set forth any such obligations, rights, and duties. For purposes of this Agreement, "definitive agreement" does not include a negotiated term sheet, an executed letter of intent, or any other non-binding written agreement or offer (whether or not signed by either of the Parties), unless specifically stated in writing to be a definitive agreement and executed by the Parties. Each Party waives the right to, and will not assert, any claim regarding the Project or any failure to enter into the Project or further agreement regarding the Project until a definitive agreement is executed by the Parties. This Agreement or any exchange of information or discussion hereunder shall not obligate either Party to enter into any additional discussions or agreements with the other Party. Each Party may reject all proposals and terminate discussions at any time at its election and without liability to the other Party or explanation of the reason for the termination. A Party shall be entitled to cease disclosure of Confidential Information hereunder and any Party may depart from negotiations at any time for any reason or no reason without liability to the other Party. However, such departure from negotiations shall not extinguish any rights or obligations which the Parties may have under this Agreement.

9. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska, and each Party submits to the jurisdiction of the state and federal courts of Nebraska seated in Douglas County, Nebraska for the interpretation and enforcement of this Agreement.

10. **Amendments.** No amendments, changes or modification to this Agreement shall be valid unless the same are in writing and signed by a fully authorized officer or agent of each Party. No failure or delay by a Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise thereof or exercise of any right, power or privilege hereunder.

11. **Entire Agreement.** This Agreement comprises the full and complete agreement of the Parties hereto with respect to the disclosure of the Confidential Information and supersedes and cancels all prior communications, understandings and agreements between the Parties and/or their Affiliates, whether written or oral, express or implied.

12. **Severability.** If any provision of this Agreement is wholly or partially unenforceable for any reason, such enforceability shall not affect the enforceability of the balance of this Agreement.

13. **Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. This Agreement may not be assigned by a Party hereto without the written consent of the other Party, which shall not be unreasonably withheld or delayed.

14. **Notices.** Any and all notices or other communication permitted or required to be given hereunder shall be validly given or made if in writing if: (a) personally delivered; (b) delivered and confirmed by telecopier or like instantaneous transmission device; (c) delivered by a reputable overnight delivery service; or (d) deposited in the United States mail, first class, postage paid, certified or registered, return receipt requested, to the address for each Party as set forth above in the preamble to this Agreement.

15. **Headings.** Section headings used in this Agreement are for convenience of reference only, are not part of this Agreement, and are not to affect the construction of, or be taken into consideration in interpreting, this Agreement.

16. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original and together shall be one and the same instrument.

IN WITNESS WHEREOF the Parties hereunto have executed this Confidentiality Agreement as of the date and year first written above.

BioResource Development, LLC

Signature _____

Print Greg MacLean

Title: President

Date: 7/7/14

Sarpy County, Nebraska

Signature _____

Print Jim Thompson

Title: Chairman, Sarpy County Board

Date: 6-24-14

Approved as to form:

_____

Deputy Sarpy County Attorney