

## AMENDMENT NO. 2 TO LANDFILL GAS AGREEMENT

This Amendment No. 2 (“**Amendment**”) to that certain Landfill Gas Agreement (the “**Agreement**”) dated as of July 16, 2019 by and between the Indian River County Solid Waste Disposal District, a dependent special district of Indian River County, Florida (the “**District**”) and the Indian River Eco District, LLC, a Texas limited liability company (the “**Company**”) (each a “**Party**” and collectively the “**Parties**” is made and entered into as of \_\_\_\_\_, 2021 (“**Effective Date**”).

**WHEREAS**, the Parties entered into the Agreement pursuant to which the District would sell and deliver, and Company would purchase and accept, landfill gas from the District, which Agreement was amended by the Parties as of July 1, 2020; and

**WHEREAS**, the Parties acknowledge that the overall success of this Agreement is contingent upon both Parties working together to ensure that the target goals for the quantity and quality of landfill gas are optimized, to the financial benefit of the District and the Company; and

**WHEREAS**, due to unforeseeable delays in conjunction with COVID-19, the Company’s intent to switch from power generation to renewable natural gas, and based on discussions between the Parties, the Parties desire to amend the agreement as set forth herein.

**NOW, THEREFORE**, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Each capitalized term used, but not defined, in this Amendment shall have the meaning given it in the Agreement.

### ARTICLE 1 - DEFINITIONS

Section 1.1 of the Agreement is amended to include and/or replace the following definitions:

*Acceptable Landfill Gas* or “*Acceptable LFG*” – means Landfill Gas meeting the specifications set forth on Schedule 1 hereto.

*Annual LFG Quantity* - means the total quantity of Acceptable LFG, measured in SCFM, delivered by the District to the Delivery Point over a given calendar year.

*Commercial and Environmental Improvements* - means capital improvements to the District LFG Assets that are intended to increase the quantity and quality of the Acceptable LFG.

*Gathering Facilities* – any capital improvements and equipment added by the Company to the District LFG Assets at the Delivery Point to transport reliable Acceptable LFG to the Facility for Company’s beneficial use.

*Facility Capacity* – means the amount of Acceptable LFG that the Company is able to accept at the Delivery Point.

*Effective Date* – means the date on which the last of the Parties has executed this Amendment.

*Environmental Attributes* – means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the production, delivery and destruction of LFG during the Term. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides

(SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) and other greenhouse gases; (3) displacement or avoidance of any amount of conventional gas or fossil energy generation resources; and (4) the reporting rights to these avoided emissions. Environmental Attributes include revenue from renewable identification numbers (RIN's) as defined by the Federal Renewable Fuel Standard and low carbon emission credits as may vary from state to state.

*Gross Receipts* – means the gross receipts received by the Company or its subsidiaries during the Term from the sale of RNG from the Facility, including any Environmental Attributes net of any brokerage fees, transportation costs, sales taxes and other expenses incurred directly or indirectly by the Company and its subsidiaries in connection with such sales from the RNG facility.

*RNG Price* - means the price for RNG and associated Environmental Attributes sold by the Company to a customer and converted into \$/MMBtu units.

*SCF* – *Standard Cubic Feet*.

*Target Annual Contract Quantity* - means 604,440,000 standard cubic feet (“SCF”) of Acceptable LFG delivered by the District to Company at the Delivery Point over a calendar year.

## ARTICLE 2 – TERM, RENEWAL AND MILESTONES

Section 2.1 is amended to read as follows:

2.1. This Agreement shall take effect on the Effective Date and continue for a period of twenty (20) years following the LFG Commencement Date (the “**Initial Term**”), unless terminated earlier or extended as provided herein. The LFG Commencement Date shall occur on the later of the following two dates:

- within eighteen (18) months of the Effective Date, or
- within fifteen (15) months of the date when the Landfill achieves an average flowrate of at least 900 SCFM of Acceptable LFG, over a period of at least 1 full week (7 days), as reasonably verified by engineers providing Landfill O&M support to the District.

If the LFG Commencement Date has not occurred by June 30, 2023, Section 13.1 shall apply.

Company shall meet the following milestones as a demonstration of their progress toward LFG Commencement Date:

- a) Air Permit Application Submittal to Regulatory reviewers nine (9) months before LFG Commencement Date.
- b) Contracts for the purchase of the following equipment: compressor(s) to inject RNG into the natural gas pipeline, Gas conditioning system, nitrogen rejection unit. Company shall provide proof of these signed contracts to the District nine (9) months before LFG Commencement Date.
- c) Groundbreaking for foundations shall occur four (4) months before LFG Commencement Date.

The above milestones shall be extended for any delays caused by the District in achieving such milestone, but only to the extent of and for the duration of any such delay. Those delays could include the issuance of any waiver, permit or approval necessary for the Company to achieve the milestone, and in the event of Force Majeure, but only to the extent of and for the duration of any delay caused by such Force Majeure event.

### ARTICLE 3 - THE PARTIES' LFG FACILITIES

Section 3.2 of the Agreement is amended to read as follows:

- B. The Company shall be responsible, at its own cost, for the design, permitting, construction, installation, connection, operation, maintenance, repair, and replacement of any capital improvements and equipment required to be added to the District's existing LFG collection and flare system to (i) enable the Company to divert LFG from the District's flare and transport such gas via pipeline to the Facility, (ii) enable reliable destruction of excess LFG and/or non-Acceptable LFG simultaneous with the Company's beneficial use of Acceptable LFG and (iii) enable the reliable delivery of the Acceptable LFG for the Company's use. The exact location of the such equipment and improvements, and any other Company improvements on the District's property, including the general components of any necessary interconnection equipment and facilities (individually or collectively referred to as the "**Gathering Facilities**"), shall be mutually agreed upon by Company and District prior to the commencement of construction. For clarification, the Gathering Facilities do not include existing and future installed District LFG Assets (including, but not limited to the flare skid, gas extraction wells, liquids management system, air compressors, LFG control and containment system). District shall provide the Company with the necessary access, including easements, as necessary to install, own, maintain and operate the Gathering Facilities and other LFG system equipment to be located on the District's property in order to allow the Company to perform its obligations under this Agreement.

Section 3.3 of the Agreement is amended to add Sections 3.3(A), 3.3(B) and 3.3(C) to read as follows:

- A. Expansion of the District LFG Assets at Company's Request. Company may propose an expansion of the District LFG Assets to enable the delivery of additional available Acceptable Landfill Gas to the Delivery Point. District shall consider all such proposals from Company; provided, however, that only the District shall have the right, but have no obligation, to expand the District LFG Assets.
- B. Annual Escrow Fund. The District shall continue to fund its annual gas system escrow funding requirements in accordance with Florida statutes.
- C. Commercial and Environmental Improvements. Without limiting District's obligations under Section 3.3 (B), within ninety (90) days after the Effective Date, and every six (6) months thereafter, the Company and District shall meet to discuss and agree upon a recommended scope of Commercial and Environmental Improvement projects. The Parties shall work in good faith to reach a consensus plan. When and if an agreement

is reached on the scope and terms of a Commercial and Environmental Improvement project, the Company shall confirm the Parties' agreement by issuing a notice to District including the terms of the agreement of the Parties as to the Commercial and Environmental Improvement, and the Parties' proposed respective responsibilities for such improvement, which notice shall be subject to District's written acknowledgment. As of District's confirmation of the notice provided by Company, Company shall be obligated to pay for the cost of the Commercial and Environmental Improvement as reflected in the Notice. The District may elect to jointly fund some or all of the agreed Commercial and Environmental Improvement up to the amount agreed to be paid by the Company, but shall have no obligation to do so. Unless otherwise agreed, title to, and ownership of, the Commercial and Environmental Improvements shall be vested in District, and the parties shall execute such documentation as required to evidence the respective ownership of such Commercial and Environmental Improvement.

#### **ARTICLE 4 - LFG GENERAL PROVISIONS**

Article 4 is amended to add new Sections 4.7 and 4.8 as follows:

##### **4.7. Gas Targets Expenditure Fund.**

- A. Each year, the District may request that the Board of County Commissioners fund immediate repairs or improvements to specific parts of the District's LFG Assets identified by Company for inhibiting the quality or the flowrates of the LFG and emergency repairs from time to time as agreed by District ("Gas Targets Expenditure Fund").
- B. If approved, the Company shall match 100% of the Gas Targets Expenditure Fund up to \$125,000 as a reimbursement grant and provide proof of such matching funding in writing within 30 days.
- C. If Company identifies repairs or improvements to the District's LFG Assets that require immediate attention, Company shall notify District in writing of the required repairs and improvements, with supporting documentation. The Parties shall meet within ten (10) days following delivery of such notice to agree on any repairs to be made to the District's LFG Assets and the costs of such repairs. Once such expenditures are agreed, the District shall proceed with the design and, if necessary, bidding and procurement services to engage by contract a third party contractor to begin the corrective work in accordance with the County Purchasing Manual. The costs of such work shall be billed to and timely paid by the District. The Company shall reimburse the District 50% of the invoice paid by the District to the third party contractor.
- D. Expenditures from the Gas Targets Expenditure Fund shall be described in the Monthly LFG Statement and shall contain a description of the repair or maintenance work performed, or capital improvements made, and the cost of such work incurred in such month.
- E. In no event shall either Party be responsible for funding such repairs or improvements directly in an amount that is in excess of fifty percent (50%) of the then current amount required to be in its Gas Targets Expenditure Fund. The aggregate amounts credited to the Gas Targets Expenditure Fund of both Parties shall not be required to exceed two hundred fifty thousand dollars (\$250,000) in any year.
- F. Notwithstanding the above, Company's obligation to make payments into the Gas

Target Expenditure Fund shall be excused during any year in which the annual volume of Acceptable LFG Gas falls below the Target Annual Contract Quantity, provided that the Company shall have the right in its sole discretion, but not the obligation, to pay up to \$125,000 into the Gas Targets Expenditure Fund in any such year.

4.8. Operations and Maintenance. The Company shall have the right to make routine O&M site visits to the Landfill upon 48-hour notice to District to inspect, maintain and repair Company LFG purchased equipment (referred to as the Gathering Facilities), which shall not be unreasonably withheld. To be clear, the District is responsible for operating and maintaining the District's LFG Assets prior to the Delivery Point and the Company's involvement with the District's LFG Assets is solely as an advisor.

#### **ARTICLE 6 - LFG QUANTITY; MEASUREMENT**

Article 6 of the Agreement is amended to add new Sections 6.11 to read as follows:

6.11. Notwithstanding Section 6.7 of the Agreement, and for avoidance of any doubt, the District shall have the obligation to deliver and sell, and the Company shall have the exclusive right to receive and buy, all Acceptable LFG produced from the Landfill on an annual basis until the Company has received the Target Annual Contract Quantity.

#### **ARTICLE 7 - LFG QUALITY**

Article 7 is amended to add a new Section 7.6 as follows:

7.6. Notwithstanding any other provision in this Agreement, the Company in its sole discretion may accept non-Acceptable LFG from the District in lieu of refusing to accept or rejecting such non-Acceptable LFG. In the event the Company in its discretion accepts such LFG, the price for such LFG shall be set at five percent (5%) of the RNG Gross Receipts.

#### **ARTICLE 8 - PRICE FOR LFG AND DISTRICT CREDITS**

Section 8.1(C) of the Agreement related to the "LFG Price for a Landfill Gas to RNG Facility" is amended and replaced to read as follows:

The LFG Price for a Landfill Gas to RNG Facility shall be as follows:

1. On the months whereby the District provides an average gas flow greater than or equal to 1,150 scfm per month, the LFG Price for a Landfill Gas to RNG Facility shall equal a royalty payment of 12% of the Gross Receipts generated by the RNG Facility from the Acceptable LFG ("**RNG Gross Receipts**").
2. On the months whereby the average gas flows are between 800 scfm and 1,150 scfm, the LFG Price for a Landfill Gas to RNG Facility shall equal a royalty payment of 9% of the RNG Gross Receipts.
3. On the months whereby the average gas flows are less than 800 scfm, the LFG Price for a Landfill Gas to RNG Facility shall equal a royalty payment of 5% of the RNG Gross Receipts.

Section 8.3 of the Agreement is amended to replace the incentive payments for a Landfill Gas to RNG Facility as follows:

8.3 Incentive Payment

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For a Landfill Gas to RNG Facility, and only on the months where a minimum of 1,150 of Acceptable LFG is delivered, Company will pay the following additional gas quality-based incentive payments to the District:

<b>Average Methane Content in the Company Used LFG</b>	<b>Incentive Payment ( % of RNG Gross Receipts)</b>
>57.01%	3.0%
54.01 to 57.0%	2.0%
51.01 to 54.0%	1.5%
48.01 to 51.0%	1.0%
45.01 to 48.0%	0.5%
< 45.0%	zero

**ARTICLE 9 – LFG STATEMENT, INVOICE AND ANNUAL ADJUSTMENT**

Article 9 of the Agreement is amended to revise Section 9.4 and add Section 9.5 to read as follows:

9.4 Annual Adjustment. The annual adjustment to the LFG Price is no longer applicable to the RNG project.

9.5. Audit. The District and the Company agree to grant the District the right to audit or be provided with verification of “brokerage fees, transportation costs, sales taxes and other expenses incurred directly or indirectly by the Company and its subsidiaries” in determination of Gross Receipts.

**ARTICLE 13 - TERMINATION AND REMEDIES**

Section 13.1 of the Agreement is amended to read as follows:

13.1 Delay in Achieving LFG Commencement Date. If the LFG Commencement Date has not occurred as set forth in Section 2.1, the District may issue a written notice to Company electing to terminate this Agreement three (3) months following the date such written notice is issued. If the LFG Commencement Date occurs within three (3) months after Company receives such written notice, then this Agreement will not terminate and shall continue in full force and effect. If the LFG Commencement Date does not occur within three (3) months after Company receives such written notice, then this Agreement shall

terminate and neither Party shall have any further rights, obligations or liabilities hereunder.

A. Delay in Meeting Milestones. If milestone listed in Section 2.1 are not met by Company, then Company shall pay District as follows:

- i. \$5,000 per month for the first milestone not achieved (prorated for a partial month) until milestone is achieved.
- ii. \$5,000 per month for the 2<sup>nd</sup> milestone not achieved (prorated for a partial month) until milestone is achieved.
- iii. Options that the Parties may consider for the 3<sup>rd</sup> milestone not achieved are limited to 1) \$10,000 per month or 2) termination of this Agreement.

B. Milestone Payments. The total amount of remedies are payable from Company to District within the first ninety (90) days after commencement of commercial operations.

All other sections and contents of the Agreement shall remain the same.

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IN WITNESS WHEREOF, District and Company hereto have executed this Amendment No. 1 as of the date first written above

ATTEST: Jeffrey R. Smith, Clerk of Courts  
And Comptroller

SOLID WASTE DISPOSAL DISTRICT  
INDIAN RIVER COUNTY, FLORIDA

By: \_\_\_\_\_

By: \_\_\_\_\_

Deputy Clerk

Joseph E. Flescher, Chairman

Approved:

Approved by BCC: \_\_\_\_\_

\_\_\_\_\_  
Jason E. Brown, County Administrator

Approved as to form and legal sufficiency:

\_\_\_\_\_  
Dylan Reingold, County Attorney

COMPANY:  
**INDIAN RIVER ECO DISTRICT, LLC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated \_\_\_\_\_



## SCHEDULE 1

### Landfill Gas Quantity and Quality Mutual Target Specifications

<b>Constituent</b>	<b>Units</b>
Target Annual Contract Quantity	604,440,000 standard cubic feet
Minimum Methane Content	>=45%
Sulfur	<=quarterly average of 2,000 ppmv
Oxygen (O2)	<=2.0%
Nitrogen (N2)	<=8.0%