

AMENDMENT NO. 3 TO LANDFILL GAS AGREEMENT

This Amendment No. 3 (“**Amendment**”) to that certain Landfill Gas Agreement (the “**Agreement**”) by and between the Indian River County Solid Waste Disposal District, a dependent special district of Indian River County, Florida (the “**District**”) and Nopetro Eco District, LLC, a Florida Limited Liability Company (“**Assignee**” or “**NED**”) (herein referred to as, the “**Company**”) (the District and NED each a “**Party**” and collectively the “**Parties**”) is made and entered into as of December 20, 2022 (“**Effective Date**”).

WHEREAS, the original Agreement, dated as of July 16, 2019, was made between the District and the Indian River Eco District, LLC, a Texas limited liability company (“**IRED**”); and

WHEREAS, the the District and IRED entered into the Agreement pursuant to which the District would deliver and IRED would accept, landfill gas from the District, which Agreement was amended twice by the Parties on July 14, 2020 (“**Amendment No. 1**”) and May 18, 2021 (“**Amendment No. 2**”); and

WHEREAS, the Parties entered into that certain Assignment and Assumption Agreement (the “**Assignment**”) dated as of November 29, 2021 pursuant to which IRED assigned all of its rights and obligations under the Agreement to NED; and

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

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 to modify this agreement and all prior amendments as follows:

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

The Landfill Gas Agreement and prior amendments are hereby amended as follows:

ARTICLE 1 - DEFINITIONS

Section 1.1 is amended to include and/or replace the following definition(s) (other clauses not referenced below will stay as written):

Acceptable Landfill Gas or Acceptable LFG – means landfill gas meeting the quality parameters for methane, nitrogen, oxygen and sulfur as set forth in Schedule 1 hereto.

Annual Contract Quantity - means the daily average of 1,150 standard cubic feet per minute (“SCFM”) of Acceptable LFG delivered by the District to Company at the Delivery Point over a calendar year.

Facility Capacity – means the amount of LFG that the Company is able to accept at the Delivery Point or in the case of the RNG Facility up to 1,600 SCFM.

Force Majeure – is amended to exclude delays caused by COVID-19.

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 and all Environmental Attributes net of any direct or indirect operating costs incurred in the ordinary course of business including but not limited to plant utility costs, consumables, debt service, regulatory compliance, brokerage fees, transportation costs and sales taxes by the Company and its subsidiaries in connection with the RNG facility.

Renewable Identification Numbers (RINS) – means the credits that are used for compliance, and are the “currency” of the Renewable Fuel Standard program.

Unacceptable LFG – means landfill gas not meeting the quality parameters for methane, nitrogen, oxygen and sulfur as set forth in Schedule 1 hereto.

ARTICLE 2 – TERM, RENEWAL AND MILESTONES

Section 2.1 is amended to read as follows (other clauses not referenced below will stay as written):

- 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 Parties have agreed upon a LFG Commencement Date of June 30, 2024, unless extended as provided herein (the “**LFG Commencement Date**”).

If the LFG Commencement Date has not occurred by June 30, 2024 (subject to extension by Force Majeure), Section 13.1 shall apply.

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

- a) Contracts for the purchase of the following equipment: PSA System to include the gas conditioning system and nitrogen rejection unit. Company shall provide proof of these signed contracts to the District by June 30, 2023.
- b) Air Permit, Site Plan, and Building Permit Applications submittal to Regulatory reviewers by December 31, 2023.
- c) Groundbreaking for foundations shall occur by December 31, 2023.

The above milestones shall be extended for any delays caused solely by the District in achieving such milestone acknowledged in writing by the District or by an event of Force Majeure, but only to the extent of and for the duration of any such delay.

ARTICLE 3 – THE PARTIES’ LFG FACILITIES

Section 3.1 is amended to read as follows (other clauses not referenced below will stay as written):

3.1. District Responsibilities and Obligations.

- J. The District will accept only up to a 1,000 gallons per day of Condensate generated by the Company LFG Assets.

- K. The District will install a High Pressure Skid System with chiller to provide pressurized dry gas to the Company at 8 PSIG (pounds per square inch gauge). In addition, the District will be responsible for measuring and recording the quantity and quality of LFG that is delivered to Company at the Delivery Point, which is on the District's property and this information will be used to correlate Acceptable Landfill Gas with the Company. The District will, at a minimum, factory calibrate the flow and quality metering equipment at least semiannually and provide copies of those calibrations to the Company.

Section 3.2 is amended to read as follows (other clauses not referenced below will stay as written):

3.2. Company Responsibilities and Obligations.

- I. The Company is responsible for the metering of the Condensate and providing metering records to the District on a monthly basis. The Company shall pay District lesser of \$0.22 per gallon or actual operating cost for any volume over 1,000 gallons per day. This rate is subject to annual adjustments. On a quarterly basis, the Company shall sample and analyze the condensate from its equipment to verify that it is non-hazardous and provide a copy of the laboratory results to the District. The Company to identify the sample port location on the facility site plan. If it is determined to be hazardous, then the Company shall be responsible for the proper disposal of the hazardous Condensate.
- O. The Company commits, per the letter to the County dated April 28, 2022, to issue a payment to the District for \$146,285 per Biogas Engineering's Change Order No. 1 cost related to the High Pressure Skid within 30 days of the Effective Date otherwise there will be a 5% penalty per day until it is paid.

Section 3.3 C is amended as follows:

- C. Commercial and Environmental Improvement Projects. Without limiting District's obligations under Section 3.3 within ninety (90) days after the Effective Date, and every three (3) 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, and the District has approved any District related expenditure at its highest level of government, on the scope and terms of a Commercial and Environmental Improvement projects, 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 projects, and the Parties' proposed respective responsibilities for such improvements, 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 projects as reflected in the Notice. The District may elect to jointly fund some or all of the agreed Commercial and Environmental Improvement projects 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 Improvement projects 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 projects.

ARTICLE 6 – LFG QUANTITY; MEASUREMENT

Section 6.7 is amended to read as follows (other clauses not referenced below will stay as written):

- 6.7 During the term of this Agreement, the District shall not undertake any action that would: (a) temporarily or permanently divert Acceptable LFG to any other user without first offering said LFG to the Company per Section 3.2(L); or (b) permanently reduce the production of LFG at the Landfill, unless such action is (1) required by an applicable law or (2) otherwise deemed necessary and appropriate by the District for the protection of the public health, safety and welfare. After accepting 1,150 SCFM of Acceptable LFG, the Company in its sole discretion will have the option, but not the obligation, to consume the incremental 450 SCFM of Acceptable LFG at the RNG Facility (instead of use by the County at the Landfill for processing of Leachate) and the County will utilize 225 SCFM of pipeline natural gas in lieu of 450 SCFM of Acceptable LFG. In such event, the Company will reimburse the District on a monthly basis for said 225 SCFM of pipeline natural gas consumed but in no event will this volume exceed 118,260,000 SCFM in a calendar year prorated over 12 month period.

Section 6.8 is amended to read as follows (other clauses not referenced below will stay as written):

- A. The Company shall be responsible for measuring and recording the quantity of LFG that is delivered at the Facility Location. The Company shall also measure and analyze the LFG with the Metering equipment defined in Section 6.3 at the Facility Location. The Company shall measure these parameters by using the Metering equipment and/or such other instruments as necessary and shall be solely responsible for the operation, maintenance and calibration of the meters and other equipment used to measure or test the LFG. To ensure accurate correlation of the Acceptable LFG delivered, the Company will, at a minimum, factory calibrate the flow and quality Metering equipment at least semiannually and provide copies of those calibrations to the District.
- B. The Company will test the incoming LFG at the Facility Location from the District on about an hourly basis over the course of each month in the following 5 categories:
1. Gas Flow in SCFM
 2. Methane (CH₄) % Content
 3. N₂ % Content
 4. O₂ % Content
 5. Sulfur (H₂S) % Content

If 90% or more of the readings of categories 2-5 between the District and the Company over the course of a month (ie: 30 days minimum) equal or exceed the Acceptable Landfill Gas Quality criteria in Schedule 1 of the Agreement, this will be deemed Acceptable LFG for the Month. If less than 90% of the readings equal or exceed the quality criteria, Company agrees to immediately recalibrate the specific Metering equipment of concern and then to retest the specific category that is below the quality criteria. Only then will the LFG be deemed unacceptable LFG.

- C. The Company agrees to provide all flow and chemistry data to the District so the District may use such information that is required by regulatory agencies for air permit reporting and District records.

Section 6.9 is amended to read as follows (other clauses not referenced below will stay as written):

- 6.9. If Company or the District discovers that the Metering equipment are not calibrated to within 95% accuracy, they shall promptly report this information to the other Party. In such case, the applicable Party shall have the right to request and receive an equitable adjustment of the payments hereunder reflected on the first statement or invoice after the inaccuracy is identified. It is the intent of the Parties that no one should benefit unjustly as a result of an error in the calibration of the Metering equipment. Unless there are specific factual reasons to believe otherwise, the Parties shall assume that the error in the calibration of the Metering equipment increased or decreased at a uniform rate over time.

ARTICLE 7 – LFG QUALITY; MEASUREMENT

Section 7.6 is deleted (other clauses not referenced below will stay as written):

Schedule 1 is amended as follows:

SCHEDULE 1

Acceptable Landfill Gas Quality

Constituent	Units
Minimum Methane Content	>=45%
Sulfur	<=quarterly average of 2,300 ppmv
Oxygen (O2)	<=2.0%
Nitrogen (N2)	<=12.0%

ARTICLE 8 – PRICE FOR LFG AND DISTRICT CREDITS

Section 8.1 (B) and 8.1 (C) are deleted and replaced with a new 8.1 (B) to read as follows (other clauses not referenced below will stay as written):

- 8.1. Price for LFG

- B. 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, the Company shall pay to the District a royalty payment of 12% of the Gross Receipts generated by the RNG Facility from the Acceptable LFG (“**RNG Gross Receipts**”). If the average gas flow is greater than or equal to 1,150 scfm per month of unacceptable LFG, the Company shall pay to the District a royalty payment of 10% of RNG Gross Receipts.
2. On the months whereby the average gas flows are between 800 scfm and 1,150 scfm of Acceptable LFG, the LFG Price for a Landfill Gas to RNG Facility, the Company shall pay to the District a royalty payment of 10% of the RNG Gross Receipts. If the average gas flows are between 800 scfm and 1,150 scfm per month of unacceptable LFG, the Company shall pay to the District royalty payment of 8% of RNG Gross Receipts.
3. On the months whereby the average gas flows are less than 800 scfm of Acceptable LFG, the LFG Price for a Landfill Gas to RNG Facility, the Company shall pay to the District a royalty payment of 8% of the RNG Gross Receipts. If the average gas flows are less than 800 scfm per month of unacceptable LFG, the Company shall pay to the District royalty payment of 6% of RNG Gross Receipts.

The above translated into table format is shown below where “x” is the average gas flow rate:

Average Gas Flowrate (SCFM)	Acceptable LFG	Unacceptable LFG
$x \geq 1,150$	12%	10%
$800 \leq x < 1,150$	10%	8%
$x < 800$	8%	6%

Notwithstanding the above, the District and the Company agree that royalty payments will only be subordinate to any debt service payments between Company and its financing party for the RNG Facility if the prior months’ transacted RINS price as listed on [RIN Trades and Price Information | US EPA \(https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rin-trades-and-price-information\)](https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rin-trades-and-price-information) is less than \$1.25 per RIN. If subordination occurs, the Company is still obligated to accrue any royalty payments due and will begin making payments within 30 days. On day 31, interest will accrue on the unpaid balance at a 6% annualized interest rate until paid.

ARTICLE 9 – LFG STATEMENT AND INVOICE

Section 9.1 is amended to read as follows (other clauses not referenced below will stay as written):

- A. Monthly LFG Statement. On the fifth (5th) day of each month, starting with the first full month after the LFG Commencement Date, the Company shall provide a Monthly LFG Statement to the District. The Monthly LFG Statement will be marked “Confidential” and shall identify:

- (1) the total amount of Acceptable LFG provided to the Facility (standard cubic feet);
 - (2) the total amount of Unacceptable LFG provided to the Facility (standard cubic feet);
 - (3) the daily average methane content of the Acceptable LFG and unacceptable LFG (accordingly, the Company will test the incoming LFG on approximately an hourly basis over the course of each month for methane content);
 - (4) the calculated MMBTUs of RNG produced from the Facility for injection into the natural gas pipeline; and
 - (5) the total amount owed to the District including documentation of RNG Gross Receipts.
- B. Quarterly LFG Statement. Within thirty (30) Days after the end of each Quarter, the Company shall provide a Quarterly LFG Statement to the District. The Quarterly LFG Statement shall identify:
- (1) the total amount of Acceptable LFG and unacceptable LFG provided to the Facility during the applicable Quarter and the average SCFM of Acceptable LFG delivered;
 - (2) the daily average methane content of the Acceptable LFG and unacceptable LFG (accordingly, the Company will test the incoming LFG on approximately an hourly basis over the course of each month for methane content); and
 - (3) the calculated MMBTUs of RNG produced from the Facility for injection into the natural gas pipeline; and
 - (4) the total amount owed to the District including documentation of RNG Gross Receipts.
- C. Payments / Statement Submittals. All payments, statements, etc. shall be made out to and sent to the Indian River County Landfill at 1325 74th Avenue SW, Vero Beach, FL 32968 to the attention of the SWDD Managing Director.
- D. To the extent Company believes that the information provided to District is confidential and protected per section 815.045, Florida Statutes, and is to be redacted in response to a public records request submitted to the District or Indian River County, Company shall indemnify and defend the District and Indian River County in any related litigation.

ARTICLE 13 – TERMINATION AND REMEDIES

Section 13.1 is amended to read as follows (other clauses not referenced below will stay as written):

13.1 Delay in Achieving LFG Commencement Date. If the Company has not met the LFG Commencement Date as set forth in Section 2.1, the Company will pay the District \$15,000 a month as liquidated damages and not as a penalty for each month until the LFG Commencement Date has occurred or until the Agreement has terminated.

If the LFG Commencement Date has not occurred by September 30, 2024 (subject to extension due to Force Majeure), then this Agreement shall terminate and neither Party shall have any further rights, obligations or liabilities hereunder.

- A. Delay in Meeting Milestones. If the milestones listed in Section 2.1 are not met by Company, then Company shall pay District as follows:
- i. \$15,000 per month for the first milestone not achieved (prorated for a partial month) until milestone is achieved.
 - ii. \$15,000 per month for the 2nd milestone not achieved (prorated for a partial month) until milestone is achieved.
 - iii. \$15,000 per month for the 3rd milestone not achieved (prorated for a partial month) until milestone is achieved.

Milestone Payments. The total amount of remedies are payable from Company to District within thirty (30) days of invoice from District to Company.

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. 3 as of the date first written above

Attest:

Jeffrey R. Smith, Clerk of Court and Comptroller

By:


Deputy Clerk

By Owner:

**Solid Waste Disposal District
Indian River County, Florida**


Joseph H. Earman, Chairman



Date Approved by SWDD:

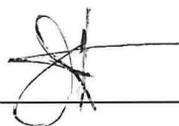
December 20, 2022

Approved By:


Jason E. Brown, County Administrator

By Company:

NOPETRO ECO DISTRICT, LLC

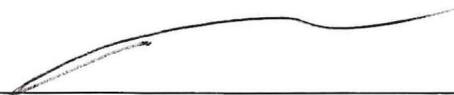


Print Name: Jorge Herrera

Print Title: CEO/Manager

Print Date: 12/19/2022

Approved as to Form and Legal Sufficiency By:


Dylan Reingold, County Attorney

