

**AMENDED AND RESTATED
LANDFILL GAS SALES AGREEMENT**

This AMENDED AND RESTATED LANDFILL GAS SALES AGREEMENT (“Agreement”), dated as of _____, 2021, is by and between the City of Billings (“City”), a Montana municipal corporation, and **Montana-Dakota Utilities Co.**, a corporation organized under the laws of Delaware (“MDU”).

WITNESSETH:

WHEREAS the City owns a landfill site that contains methane gas located at Sections 29 and 30, Township 1 South, Range 26 East, Yellowstone County, Montana (“Landfill”).

WHEREAS MDU wants to, if economically feasible, extract, condition, transport and purchase the methane gas for commercial use; and

WHEREAS the City is willing to allow MDU to extract, condition, transport and purchase such methane gas on the terms and conditions hereinafter set forth.

WHEREAS such binding agreement was previously executed in the form of a certain Landfill Gas Sales Agreement between the parties and dated and effective August 25, 2008, as previously amended (the “Prior Agreement”), and the Parties now desire to amend and restate the Prior Agreement to reflect the terms stated in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

SECTION 1 - DEFINITIONS

1.1 Certain Definitions. For purposes of this Agreement, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

1.1.1 “Active Gas Collection System” shall mean all Mitigation Wells, the Mitigation Collection System, Perimeter Wells, RNG Production Wells, and the RNG Collection System that are not located within the RNG Production Facility or the Compliance Flare. Exhibit 3 of this Agreement contains a list of equipment included in the Active Gas Collection System.

1.1.2 “Compliance Flare” shall mean all equipment and piping located on the Compliance Flare site location. Exhibit 3 of this Agreement contains a list of equipment included in the Compliance Flare.

1.1.3 “Landfill” shall mean the Billings Regional Landfill owned by the City located at Sections 29 and 30, Township 1 South, Range 26 East, Yellowstone County, Montana.

1.1.4 “Facilities Easement Agreement” means the easement agreement between the City and MDU dated August 25, 2008, and attached hereto as Exhibit 2.

1.1.5 “Facilities” shall mean the Active Gas Collection System, RNG Productions Facility, and Compliance Flare installed by MDU or the City at the Landfill required for the extraction, conditioning, recovery, metering, transportation of methane gas, and compliance activities in accordance with this Agreement. The Facilities are more particularly described in Exhibit 3.

- 1.1.6 **“Force Majeure”** shall have the meaning set forth in Section 13.2.
- 1.1.7 **“MDU Indemnities”** shall have the meaning set forth in Section 12.3.
- 1.1.8 **“MDU Personnel”** shall have the meaning set forth in Section 11.2.
- 1.1.9 **“RNG Production Facility”** shall mean all equipment and piping contained within the RNG production site location. Exhibit 3 of this agreement contains a list of equipment included in the RNG Production Facility.
- 1.1.10 **“Prudent Practice”** shall mean the exercising of the same degree of care and control considered reasonable in similar circumstances by other entities of a size comparable to the City or MDU as the case may be, when confronting the same or similar circumstances. In applying the standard of Prudent Practice, equitable consideration should be given to the circumstances, the complexity of the equipment or the tasks involved, the facts known by the Parties at the time, the fact that neither Party is in a position or in the business of being an insurer or guarantor, the then current state of technology, and with respect to MDU’s Facilities at the Landfill, recognizing that the equipment will not always operate as designed and that construction and erection of equipment will not always be performed perfectly with the result that modifications and improvements may have to be made and sometimes at substantial cost to MDU.
- 1.1.11 **“Methane Gas Payment”** shall have the meaning set forth in Section 4.1.1.
- 1.1.12 **“Mitigation Collection System”** shall be all installed gas collection piping by the City of Billings for the purpose of compliance and will be connected to the Compliance Flare. Exhibit 3 of this Agreement contains a list of equipment included in the Mitigation Collection System.
- 1.1.13 **“Mitigation Wells”** shall be temporary horizontal wells that are installed in active areas of the landfill by the City for the purpose of Compliance. The Mitigation Wells will initially be connected to the Mitigation Collection System and the Compliance Flare for the purpose of the City’s emission compliance control but may be individually connected to the RNG Collection System if the quality of gas being produced by the Mitigation Well is sufficient. Exhibit 3 of this Agreement contains a list of equipment included in Mitigation Wells.
- 1.1.14 **“Perimeter Wells”** shall be vertical wells that are installed by the City for the purpose of controlling migration of methane from the landfill. The Perimeter Wells shall be connected to the Mitigation Collection System and the Compliance Flare. Exhibit 3 of this Agreement contains a list of equipment included in Perimeter Wells.
- 1.1.15 **“RNG Production Wells”** shall typically be vertical wells that are installed after a phase is capped or near complete and/or existing horizontal wells previously installed by MDU during waste filling. The RNG Production Wells will be typically connected to the RNG Collection System and the RNG Production Facility. Exhibit 3 of this Agreement contains a list of equipment included in RNG Production Wells.

1.1.16 “RNG Collection System” shall be all installed gas collection piping by MDU for the purpose of collecting methane for the purpose of RNG production and will be connected to the RNG Production Facility. Exhibit 3 of this Agreement contains a list of equipment included in the RNG Collection System.

1.2 **Other Terms.** References herein to Exhibits are to the Exhibits attached to this Agreement which are incorporated into this Agreement by this reference. Other terms used in this Agreement are defined in the context in which they are used and shall have the meaning therein indicated.

SECTION 2 - TERM

2.1 **Initial Term.** The Initial Term of this Agreement shall commence on the Effective Date, and shall terminate ten (10) years thereafter, unless earlier terminated as provided herein.

2.2 **Extension.** The Agreement shall automatically renew at the end of the Initial Term for successive ten-year terms unless either party shall provide not less than six (6) months written notice of nonrenewal or the Agreement is otherwise terminated as provided herein. Upon renewal, all applicable terms of the Agreement will apply.

SECTION 3 - FACILITIES

3.1 **Design and Construction.** The Parties shall be responsible for the design and construction of the Facilities as follows:

3.1.1 **Compliance Flare.** The City, in consultation with MDU, will engage and secure a consultant to design and install a backup Compliance Flare to be integrated with MDU’s existing RNG Production Facility. The City shall own the Compliance Flare and be solely responsible for the cost of its design and construction.

3.1.2 **RNG Production Facility.** MDU has constructed and shall continue to own, operate, and expand the RNG Production Facility as necessary in its discretion, except pursuant to the terms set forth in 8.2.1.

3.1.3 **Active Gas Collection System.** The Parties shall jointly coordinate Active Gas Collection System planning and shall split the costs of the Active Gas Collection System as follows:

3.1.3.1 **RNG Production Wells and RNG Collection System.** MDU shall install and pay for all costs of the design and installation of RNG Production Wells and the RNG Collection System. MDU shall own the RNG Production Wells and the RNG Collection System.

3.1.3.2 **Mitigation Wells, Perimeter Wells, and Mitigation Collection System.** The City shall coordinate and pay for all costs of the design, construction, and installation of Mitigation Wells, Perimeter Wells, and Mitigation Collection System. The City shall own Mitigation Wells, Perimeter Wells, and the Mitigation Collection System.

- 3.2 **Facilities and Site Easement.** The City and MDU have executed the Facilities Easement Agreement so as to allow MDU to locate and construct the Facilities on the Landfill and such other area as described in the Facilities Easement Agreement.

SECTION 4 - METHANE GAS PURCHASE TERMS

4.1 **Rates and Payments.**

4.1.1 **Methane Gas Payment.** Beginning with the Effective Date of the Agreement, MDU will pay to the City a payment monthly for methane gas ("Methane Gas Payment") extracted, transported, and sold from the Landfill, , equal to fifteen percent (15%) of the Colorado Interstate Gas Co. Index ("CIG Index") per MMBtu, as reported in the first issue of the month of delivery of Inside FERC's Gas Market Report in the table "Prices of Spot Gas delivered to Pipelines" or another mutually agreed upon pricing mechanism. The measurement of the total recovered methane gas extracted, transported, and sold from the Landfill shall be the meter readings at the meter located at the interconnection point between the Facilities and MDU's natural gas distribution system or other commercial use transportation system. Such meter shall be calibrated, tested, and maintained in accordance with Prudent Practice. Measurement and payment shall be on a net MMBtu basis after conditioning of the methane gas to remove impurities to meet MDU's natural gas specifications for commercial use.

4.1.2 **Title Transfer of Methane Gas.** This Agreement shall not be deemed to grant to MDU any rights to or interests in any oil or natural gas located under the Landfill which is not produced by the Landfill. Title transfer of the Landfill-produced methane gas between the parties shall occur at the MDU measurement facilities identified in section 4.1.1.

4.2 **Environmental Attributes.** The Parties agree that 15% of all carbon credits, renewable energy credits, emission credits, or other certification of emission reduction or carbon methane destruction or displacement attributable to the extraction of methane gas from the Landfill (hereinafter "Credits") shall inure to the benefit of and be the property of the City or its assignee or designee and 85% of all such credits shall inure to the benefit of and be the property of MDU or its assignee or designee. The City agrees to execute any assignment, or other document reasonably requested by MDU transferring any right of the City in the Credits or acknowledging MDU's interest and ownership in the Credits.

4.3 **Taxes.** The Parties' respective responsibilities for taxes arising under or in connection with this Agreement shall be as follows:

4.3.1 **Personal, Property and Income Taxes.** Each Party shall be responsible for any personal or real property taxes on property it owns or leases, and taxes on its share of any proceeds received pursuant to this Agreement.

4.3.2 Sales, Use, Excise and Value-Added Taxes. The Parties shall be responsible for any sales, use, excise, value-added, services, consumption, and other taxes and duties payable by that Party on any goods or services used or consumed by that Party in the methane gas extraction process where the tax is imposed on that Party's acquisition or use of such goods or services and the amount of tax is measured by that Party's costs of acquiring such goods or services.

4.3.3 Production Taxes. MDU and the City acknowledge that the Montana Department of Revenue has issued a declaratory ruling that the methane gas extracted from the Landfill under this Agreement is not natural gas for purposes of taxation under the Montana Oil and Gas Production Tax. If at a future date it is determined that the methane gas extracted from the Landfill under this Agreement is subject to any existing or future local, state or federal tax on production, severance, extraction, or similar tax, each Party respectively shall pay or bear any such tax or taxes imposed by a taxing authority attributable to the proportional share of extracted methane or proceeds from extracted methane received by such Party under this Agreement to the extent the proportional share of extracted methane or proceeds from extracted methane received by such party are not exempt from taxation.

4.4 Payments, Billings, and Statements.

Beginning the month following the Effective Date, MDU will prepare and deliver each month to the City a written statement for the preceding month prepared in accordance with, and subject to the terms and conditions in the Agreement. Such statement shall be dated and delivered to the City on or before the 10th day of the month in which it is prepared (e.g., the month following the delivery of the methane gas reflected therein) and shall set forth the total amount due by MDU under Section 4.1.1. Amounts due and owed shall be paid by MDU not later than fifteen (15) days after the date of such statement. Amounts not paid when due under this section, shall accrue interest at one hundred five percent (105%) of the Federal Reserve Prime Rate of interest, as quoted in the *Wall Street Journal*. Such interest due shall accrue from the due date to the date of payment.

In the event any portion of any statement submitted is disputed, the undisputed amount shown to be due shall be paid by the due date. Any additional amount subsequently determined to be due shall be paid with interest at the rate stated above upon determination of the correct amount due. Any amount of an invoice determined to have been overpaid shall be refunded with interest at the rate stated above.

The Parties shall have two (2) years after receipt or delivery of any statement to question the correctness thereof. If a statement has not been challenged in writing by either Party during such one-year period, then such statement shall become final for all purposes and no longer subject to challenge or adjustment.

SECTION 5 - OPERATION OF FACILITIES

5.1 Operational Responsibilities.

5.1.1 Operation and Maintenance. All operation and maintenance of the Facilities shall be performed in accordance with Prudent Practice and in accordance with the modified Title V Permit to be procured by the City, including the operating, monitoring, and recordkeeping requirements included therein. Operational responsibilities with respect to the Facilities shall be split as follows:

5.1.1.1 Compliance Flare. MDU hereby agrees to perform the day-to-day operation of the Compliance Flare, as outlined on Exhibit 5 hereto. The City shall be solely responsible for the cost of operation and maintenance of the Compliance Flare, including but not limited to, the cost of any and all supplemental gas appurtenances and on-going capital costs, and shall reimburse the same to MDU as necessary. The City hereby reserves the option to take over operation of the Compliance Flare in the future. The City shall provide at least six (6) months' written notice to MDU prior to exercise of this option.

5.1.1.2 RNG Production Facility. MDU shall operate the RNG Production Facility and shall be solely responsible for all operational and capital costs for the RNG Production Facility.

5.1.1.3 Active Gas Collection System. Operation of the Active Gas Collection System shall be as follows:

- A. MDU shall be responsible for general operation of the Active Gas Collection System, including measuring gauge pressure and temperature in the gas collection header monthly and monitoring static pressure, dynamic pressure, temperature, CH₄, CO₂, N₂, and O₂ gas monthly in the Mitigation, Perimeter and RNG production well heads.
- B. The City shall perform surface emissions monitoring as required by any applicable regulation and provide the report to MDU within 10 business days of receiving the results.
- C. The City shall be entitled to access Active Gas Collection System maps maintained by MDU. Upon request of the City, MDU shall also provide the City with planning records and gas monitoring data from the Active Gas Collection System. All such records shall remain the property of MDU.
- D. MDU shall provide locating assistance for the Active Gas Collection System. MDU shall use reasonable efforts to accurately locate and mark underground facilities in places where no locate wire was used, and the City acknowledges that there are areas where locates will be difficult for the Active Gas Collection System.

E. The City shall be responsible for the cost of any repairs to the Active Gas Collection System related to or caused by the City, its employees, agents, contractors, invitees, or any other parties under the direction or control of the City. The City shall use reasonable care when working in areas where underground Facilities are located.

- 5.1.2 Personnel.** MDU shall ensure that all of its own operational personnel working on the Facilities are trained and experienced in the operation of gas facilities. The City shall ensure that any of its personnel or contractors working on the Facilities are appropriately trained.
- 5.1.3 Utility Expense.** MDU shall be responsible for arranging direct utility hook-ups (electricity, water, leachate, communications, etc.) needed for the RNG Production Facility and for paying any utility expenses associated with the operation of the RNG Production Facility directly to utility suppliers. The City shall be responsible for arranging direct utility hook-ups (electricity, water, leachate, communications, etc.) needed for the Compliance Flare and for paying any utility expenses associated with the operation of the Compliance Flare directly to utility suppliers. Upon mutual agreement of the Parties utility expense can be prorated when mutually beneficial.
- 5.1.4 O&M Expense Reimbursement.** MDU will bill the City quarterly for the cost of its actual time and materials expended in operation or maintenance of any City owned Facilities. It shall not include operational costs related to mutually beneficial operations. The City shall pay said invoice within thirty (30) days of the invoice date. Amounts not paid when due pursuant to this Section will accrue interest at the rate set forth in Section 4.4 herein.
- 5.1.5 Curtailments.** MDU, in its sole discretion, may determine that regulatory requirements, market conditions, flow conditions or other operational considerations require the curtailment or the shutdown of any of the RNG Production Facility for any period of time. Further, industry and market conditions may require MDU to curtail or shutdown the RNG Production Facility for equipment upgrades and replacement. Such curtailments and shut-downs shall not be considered a breach or event of default under this Agreement. MDU agrees to provide notification to the City for any curtailment greater than fourteen (14) days.
- 5.1.6 Operational Plans.** MDU has developed a Startup, Shutdown, and Malfunction Plan, which will be updated to include the future Compliance Flare, a Monthly Monitoring Plan, and a Treatment System Monitoring Plan.
- 5.1.7 Operational Emergency.** If, in MDU's reasonable judgment, it determines that any of the operations of the Facilities is creating an emergency or safety concern, endangering the Facilities or MDU's gas transportation or distribution system, or other equipment or personnel, then MDU may cease operations until the emergency or safety concern ceases to exist. To the extent necessary to comply with environmental or other regulatory requirements, the City will be permitted to flare gas from the landfill during the period of suspended operations.

5.2 Permits and Approvals.

5.2.1 Permits.

5.2.1.1 Title V Operating Permit. The Parties hereby agree to pursue a common source permit under Title V Operating Permit #OP5176-00 issued to the City. The City shall take the lead on the effort of securing a modified Title V Operating Permit that includes the applicable requirements of MDU's Montana Air Quality Permit (MAQP #4479-00). Montana Air Quality Permit (MAQP) #4479-00. The modified Title V Operating Permit issued to the City will be further broken out by operational responsibilities via separate permitting requirements to both MDU and the City. However, per New Source Performance Standards (NSPS) the City will have overall responsibility to comply with the landfill gas collection and control system including the Compliance Flare permit requirements. The City shall be responsible for all ongoing Title V reporting requirements. MDU will provide the City with the raw data from its monthly readings of the Active Gas Collection System to facilitate this reporting.

5.2.1.2 Other Permits. The City shall be responsible for obtaining any permits and clearances associated with the construction and operation of the Compliance Flare, Perimeter Wells, Mitigation Wells, and Mitigation Collection System from the appropriate governmental agencies. MDU shall be responsible for obtaining any permits and clearances associated with the construction and operation of the RNG Production Facility, RNG Collection System, and RNG Production Wells from the appropriate governmental agencies. MDU and the City will reasonably work together to obtain any permits required for the Facilities.

5.2.2 Regulatory Approval and Treatment. This Agreement may be subject to review and/or approval by the state regulatory commissions for the states in which MDU operates its natural gas distribution system. If a regulatory commission disapproves this Agreement for any reason, or at any time determines the capital and operational costs of the Facilities and extracted gas are not fully recoverable by MDU through its retail rates, MDU may terminate this Agreement upon written notice to the City.

5.2.3 Landfill Compliance. The City is responsible for all compliance under any applicable regulation related to the operation of the Landfill, including landfill gas management. Said regulations expressly include, but are not limited to, NESHAP-Subpart AAAA, NSPS-Subpart WWW and Subpart OOO. MDU shall operate the Facilities in good faith in order to assist the City in complying with said regulations.

5.2.4 Additional Compliance. The Parties agree that additional compliance related activities may be required in the future. The provision of any such activities by the Parties shall be subject to the mutual agreement of both Parties and shall be added by written amendment to this Agreement.

SECTION 6 - INSURANCE

- 6.1 **Delivery of Certificates of Insurance.** MDU shall insure that all of its employees as well as its contractors, subcontractors and their employees performing services in accordance with this Agreement have in effect Commercial General Liability Insurance, Workers' Compensation Insurance, Automobile Liability Insurance and Excess Liability Insurance with the coverage limits set forth in Exhibit 4. The liability coverages required by this section shall contain the following clauses: (i) "It is agreed that this policy shall not be canceled, non-renewed, or reduced in scope of coverage until after thirty (30) days written notice has been given to the City." (ii) "The City of Billings, Montana is an additional insured under insurance policies evidenced by this certificate, as respects work done by the named insured for the City of Billings." (iii) "Insurance evidenced by this certificate is primary insurance for claims arising out of the named insured's operations". Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve MDU for liability in excess of such coverage.
- 6.2 **Proof of Insurance.** Upon request of the City, MDU shall provide certification of insurance for coverage in types and amounts set forth in Exhibit 4 respectively for itself and any contractor or subcontractors engaged by it at the Landfill.
- 6.3 **Insurance Requirement – City.** The City shall maintain a General Liability insurance, endorsed to provide coverage for explosion, collapse and underground damage hazards to property of others, with limits of \$1,500,000 (one million five hundred thousand).

SECTION 7 - PERIODIC REVIEWS; AUDIT RIGHTS

- 7.1 **Annual Reviews.** MDU agrees to maintain its books and records in accordance with generally accepted accounting principles. The City shall have the right, upon reasonable notice to MDU and at City expense, to inspect and audit those books and records and other supporting evidence of MDU that the City deems necessary to verify: the quantity and quality of methane gas extracted, conditioned, and transported from the Landfill, and (ii) that MDU is in compliance with the terms of this Agreement, regulatory authorities, or other laws and regulations that govern the operation of the Facilities.

SECTION 8 - TERMINATION

- 8.1 **Termination for Cause.** In the event that MDU or the City commits a material breach of this Agreement, which breach is not cured within thirty (30) days after notice of breach, the other Party may terminate this Agreement in whole or in part, as of the date specified in the notice of breach. If it is determined by a final order of a court of competent jurisdiction, that the City does not have title to all or a portion of the methane gas extracted from the Landfill, MDU may terminate this Agreement upon one hundred eighty (180) days written notice unless the City shall acquire such title prior to the date of the termination set forth in the written notice.
- 8.2 **Effect of Termination.**
- 8.2.1 **Reimbursement for RNG Production Facility.** In the event this Agreement is terminated less than thirty (30) years from the Effective Date of this agreement, the City shall pay MDU the greater of (1) the appraised fair market value of the RNG Production Facility, or (2) the net book value of the RNG Production Facility at the time of termination. This sum shall be calculated less the net salvage value of any equipment removed from the RNG Production Facility by MDU.

8.2.2 Reimbursement for Active Gas Collection System. Upon termination of this Agreement, the City shall pay MDU the remaining book value of the Production Wells and RNG Collection System.

8.2.3 Removal of Facilities. Unless the City is required to pay for the Facilities pursuant to Paragraph 8.2.1 or 8.2.2, upon termination of this Agreement, MDU shall have the right to remove the MDU owned Facilities from the Landfill and shall have the obligation, upon the written request of the City within six months of the termination date, to plug MDU methane wells, remove any above ground MDU Facilities from the Landfill and restore the surface of the Landfill where above ground MDU Facilities were located to a condition consistent with surrounding undisturbed areas of the Landfill. MDU buried pipe may be abandoned in place upon termination.

SECTION 9 - RELATIONSHIP OF THE PARTIES

Nothing in this Agreement will imply a joint venture, partnership, or principal-agent relationship between the Parties. Neither Party will have any right, power, or authority to act or create any obligation, express or implied, on behalf of the other Party, pursuant to this Agreement.

SECTION 10- REPRESENTATIONS AND WARRANTIES

10.1 Work Standards. The Parties represent and warrant that design, construction and operation of the Facilities for which they are responsible pursuant to this Agreement shall be performed with promptness and diligence and shall be executed in a workmanlike manner, in accordance with the practices and high professional standards used in methane gas extraction and recovery operations performing similar services. The Parties represent and warrant that an adequate number of qualified individuals with suitable training, education, experience, and skill shall be utilized to perform such services.

10.2 Compliance with Laws and Regulations. The Parties shall construct and operate the Facilities in accordance with all laws, rules, regulations, certificates, orders, ordinances, codes, and directives of all applicable authorities with jurisdiction over the Landfill or the Facilities.

10.3 Title. It is understood and agreed that this Agreement is issued only under such title as the City may now have or hereafter acquire, and that the City shall not be liable for any damages sustained by MDU in the event that it is determined that the City does not have title to all or some portion of the methane gas in the Landfill except that MDU shall be entitled to receive and the City shall be obligated to refund any part of the Methane Gas Payment theretofore paid to the City attributable to extracted methane gas for which it is determined the City did not have title. Any such refund by the City shall be limited to, and shall be no greater than, any amounts the City has received under the terms of this Agreement. If the City owns a lesser interest in the methane gas in the Landfill than the entire and undivided estate in such methane gas for which the Methane Gas Payments are payable under the terms hereof, then the Methane Gas Payments herein provided shall be paid to the City only in the proportion which its interest bears to the whole and undivided estate in the methane gas in the Landfill for which Methane Gas Payments are payable.

SECTION 11 - INDEMNIFICATION

- 11.1 MDU shall defend, protect, indemnify, and hold harmless the City, its officers, and employees, (collectively the “City Indemnitees”) from and against all liabilities, claims, costs, expenses, demands, suits and causes of action of every kind and character arising in favor of any person, corporation, or other entity, on account of personal injuries or death or damages to property to the extent caused by the acts or omission of MDU, its employees, contractors, subcontractors, or agents.
- 11.2 MDU further agrees, except as may be otherwise specifically provided herein, that the obligation of indemnification hereunder shall include, but not be limited to, expenses, claims, fines, and penalties or other enforcement charges, resulting from the failure of MDU to abide by any and all valid and applicable laws, rules or regulations of any governmental or regulatory authority with jurisdiction.
- 11.3 The City shall defend, protect, indemnify, and hold harmless MDU and its directors, officers, and employees (herein referred to as the “MDU indemnitees”) from and against all liability, claims, costs, expenses, demands, suits and causes of action of every kind and character arising in favor of any person, corporation or other entity, on account of personal injuries or death or damages to property to the extent caused by acts or omission of the City, its employees, contractors, subcontractors or agents.
- 11.4 The City further agrees, except as may be otherwise specifically provided herein, that the obligation of indemnification hereunder shall include, but not be limited to, expenses, claims, fines, and penalties or other enforcement charges, resulting from the failure of the City to abide by any and all valid and applicable laws, rules or regulations of any governmental or regulatory authority with jurisdiction.
- 11.5 In connection with any claim or action described in this Section 11, the Party seeking indemnification will (a) give the indemnifying Party prompt written notice of the claim, (b) cooperate with the indemnifying Party (at the indemnifying Party’s expense) in connection with the defense and settlement of the claim, and (c) permit the indemnifying Party to control the defense and settlement of the claim, provided that the indemnifying Party must diligently defend the claim and may not settle the claim without the indemnified Party’s prior written consent (which will not be unreasonably withheld or delayed). Further, the indemnified Party (at its cost) may participate in the defense and settlement of the claim.

SECTION 12 - LIABILITY

- 12.1 **Liability Restrictions. IN NO EVENT, WHETHER IN CONTRACT OR IN TORT (INCLUDING BREACH OF WARRANTY, NEGLIGENCE AND STRICT LIABILITY IN TORT), SHALL A PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, ARISING OUT OF OR IN CONJUNCTION WITH THIS AGREEMENT.**

12.2 Force Majeure and Other Events Excusing Performance.

12.2.1 No Party shall be liable for any default or delay in the performance of its obligations under this Agreement (i) if and to the extent such default or delay is caused, directly or indirectly by: fire, flood, earthquake, elements of nature or acts of God, pandemic or epidemic, riots, civil disorders, explosions, breakage, accident or repairs to machinery, equipment or lines of pipe, inability to obtain or unavoidable delay in obtaining pipe, materials, equipment for Facilities, or compliance with any order or request of any governmental authority, or any other cause, whether similar or dissimilar to any above enumerated beyond the reasonable control of such Party (a Force Majeure event), (ii) provided the non-performing Party is without fault in causing such default or delay, and (iii) such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaroud plans or other means.

12.2.2 In such event, the non-performing Party shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances detailed above prevail and such Party continues to use its reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any Party so delayed in its performance shall promptly as reasonably possible notify the Party to whom performance is due and describe at a reasonable level of detail the circumstances causing such delay.

SECTION 13 - CONTINUATION DURING DISPUTES

13.1 Continuation of Service. Pending final resolution of any dispute, whether or not submitted to arbitration hereunder, the City and MDU shall continue to fulfill their respective obligations under this Agreement.

SECTION 14 - MISCELLANEOUS

14.1 Notices under this Agreement shall be sufficient only if personally delivered by a commercial prepaid delivery or courier service or mailed by certified or registered mail, return receipt requested to a Party at its address set forth below or as amended by notice pursuant to this Section 14.1. If not received sooner, notice by mail shall be deemed received five (5) business days after deposit in the U.S. mail. All notices shall be delivered as follows:

If to the City:

Office of the City Attorney
City of Billings
210 North 27th Street Billings, Montana 59103

If to MDU:

Montana-Dakota Utilities Co.
400 North 4th Street Bismarck, ND 58501
Attention: EVP Business Development and Gas Supply

- 14.2 **Binding Nature; Entire Agreement.** The City and MDU acknowledge (i) that each has read and understands the terms and conditions of this Agreement and agrees to be bound by such terms and conditions, (ii) that this Agreement is the complete and conclusive statement of the agreement between the Parties, and (iii) that this Agreement sets forth the entire agreement and understanding between the Parties relating to the subject matter hereof, including, but not limited to, the Prior Agreement. All understandings and agreements, oral and written, heretofore made between the City and MDU relating to the subject matter hereof is merged in this Agreement which alone, fully and completely expresses their agreement on the subject matter.
- 14.3 **Amendment.** No modification or additions to or waiver of this Agreement shall be binding upon the City or MDU unless such modification is in writing and signed by an authorized representative of each Party.
- 14.4 **Severability.** If any term or provision of this Agreement shall to any extent be held by a court or other tribunal to be invalid, void or unenforceable, then that term or provision shall be inoperative and void insofar as it is in conflict with law, but the remaining terms and provisions of this Agreement shall nevertheless continue in full force and effect and the rights and obligations of the Parties shall be deemed to be restated to reflect nearly as possible the original intentions of the Parties in accordance with applicable law.
- 14.5 **Headings.** Headings used in this Agreement are for reference and convenience only and are not to be deemed or construed to be part of this Agreement.
- 14.6 **Compliance with Laws and Regulations.** Each Party shall perform its obligations in a manner that complies with the laws, rules, certificates, regulations, ordinances codes, orders and directives of all applicable authorities with jurisdiction over the Landfill or the Facilities. If a Party is charged with a failure to comply from any such applicable authority, the Party charged with such non-compliance shall promptly notify the other Party of such charges in writing.
- 14.7 **Governing Law and Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of Montana, and not, by the application of choice of law principles, the laws of any other state. Venue for any suit between the parties arising out of this Agreement shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County.
- 14.8 **Nondiscrimination.** MDU agrees that all hiring of persons performing work pursuant to this Agreement or any sub-agreements by MDU and/or its contractors and subcontractors will be on the basis of merit and qualification and MDU will not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

- 14.9 Binding Nature and Assignment.** This Agreement shall be binding on the Parties hereto and their respective successors and assigns. Neither Party may or shall have the power to assign this Agreement without the prior written consent of the other party which consent will not be unreasonably withheld, except that MDU may assign its rights and obligations under this Agreement without the approval of the City to an entity which acquires all or substantially all of its assets of MDU, or to any subsidiary or affiliate or successor in a merger or acquisition of MDU. In no event shall any assignment or partial assignment hereunder relieve the assigning Party of its obligations under this Agreement without the written consent of the other Party and any assignment or partial assignment hereunder is subject to the written assumption by the assignee of the obligations of the assigning Party.
- 14.10 No Waivers.** Failure or delay on the part of the City or MDU to exercise any right, power or privilege under this Agreement shall not constitute a waiver of any right, power or privilege of this Agreement.
- 14.11 Survival.** Any provision of this Agreement which contemplates performance or observance subsequent to any terminations or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.

IN WITNESS WHEREOF, the City and MDU have caused this Agreement to be executed effective as of the date first written above.

City of Billings

Montana-Dakota Utilities Co.

By: _____
 Name: _____
 Title: _____

By: _____
 Name: _____
 Title: _____

Exhibits:

- Exhibit 1: Landfill Description
- Exhibit 2: Compressor Site Easement Agreement
- Exhibit 3: The Facilities
- Exhibit 4: Minimum Insurance Requirements
- Exhibit 5: Compliance Flare Operations

Exhibit 1

Landfill Description

C/S 1098 Tract 1 Amended in the south $\frac{1}{2}$ of Section 30, 1 South, 26 East

C/S 796 Tract 1 in the west $\frac{1}{2}$ of Section 29, 1 South, 26 East

C/S 1130 in the south $\frac{1}{2}$ of the southwest corner of Section 29, 1 South, 26 East

Exhibit 2

FACILITIES EASEMENT AGREEMENT

The Facilities Easement Agreement ("Agreement") dated as of August 25, 2008 is by and between the City of Billings ("City"), a Montana municipal corporation, and Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., a corporation organized under the laws of Delaware ("MDU").

WITNESSETH:

WHEREAS, MDU and the City entered into a Landfill Gas Sales Agreement dated as of August 25, 2008, the ("Landfill Gas Agreement") pursuant to which the City granted MDU the right to extract, condition, transport and purchase methane gas from a Landfill owned by the City, and

WHEREAS, the Landfill Gas Agreement requires that the City grant an easement to MDU in the form of this Agreement. Any capitalized term used in this Agreement and not defined herein shall have the meaning assigned to such term in the Landfill Gas Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein the Parties agree as follows:

1. Subject to the terms and conditions hereinafter set forth, the City hereby grants to MDU the right, privilege and easement, hereinafter referred to as "Easement," to use, operate, construct, reconstruct, repair, maintain and have access for the Facilities on, over, under and across that real property as described in Exhibit A, attached hereto and incorporated herein, to as the "Landfill Site" including the right of ingress and egress from the real property.

2. The Easement hereby granted shall be non-exclusive, and the City, its successors and assigns, shall reserve the right to use and to grant to others, subject to the terms hereof, the right to use the property encumbered by the Easement for any and all purposes, including the right to cross over or under the Easement for any purposes, provided that the exercise by City or others of such rights to use, and the use of the land encumbered by the Easement shall not be for the purpose of constructing or operating methane gas recovery facilities and shall not be inconsistent with the grant of the Easement to MDU. Subject to the limitations set forth in the foregoing sentence, but without otherwise limiting the foregoing, the City shall have the right to use the property encumbered by the Easement and to cross over the Easement for the operation and maintenance of its Landfill consistent with the terms and conditions of the Landfill Gas Agreement.

3. MDU covenants and agrees that it will not permit or suffer any lien to be put upon or to arise on or accrue against the Easement in favor of any person or persons, individual or corporate, furnishing either labor or material in connection with any work done or permitted to be done by MDU on the Facilities, and MDU further covenants and agrees to hold the City harmless against and to keep the Easement free from any and all liens or claims of liens which may or might arise or accrue or be based upon any mechanic's lien law of the State of Montana, now in force or hereinafter

enacted, by reason of MDU's exercise of the rights and privileges granted hereunder, and in the event any such lien shall arise or accrue against the Landfill Site, MDU agrees to promptly cause the release of same.

4. Provided that MDU is in full compliance with the terms and conditions of the Landfill Gas Agreement and this Agreement, the City agrees that MDU may enforce this Agreement by a suit for specific performance.

5. In the event of damage to or destruction of the Facilities, MDU agrees to promptly repair and restore the same. MDU shall keep the Facilities and the Easement free of any trash or debris.

6. Notwithstanding the grant of the Easement, but subject to the provisions of the Landfill Gas Agreement, MDU shall at all times and at its sole cost and expense keep the Facilities in good repair and in compliance with all applicable governmental rules and regulations. MDU shall procure, at its sole cost and expense, any permits or licenses necessary for the use and operation of the Facilities and will pay any and all taxes assessed thereon or attributable thereto.

7. The Easement hereby granted shall cease and terminate in its entirety (except as to any indemnities or warranties herein contained) upon the first to occur of the following:

- a. the mutual agreement of the City and MDU,
- b. non-use of the Facilities for a period of two consecutive years, or
- c. the date which is twelve months after the expiration or termination of the Landfill Gas Agreement.

8. Upon any such termination, MDU agrees to: (i) execute such waivers, releases or other instruments in recordable form as may be necessary to evidence such termination, (ii) release any interest which MDU may have in and to the Easement by reason of this Agreement, and (iii) remove the Facilities from the Landfill Site and restore the Landfill Site to its pre-construction condition.

9. This Agreement and the covenants and conditions herein contained shall run with the land and shall be binding upon the successors and assigns of the parties hereto.

10. Except as otherwise provided in this Agreement, neither party shall assign this Easement or any of its rights or obligations hereunder except with the consent of the other party, which consent shall not be unreasonably withheld. Any such assignment is subject to the written assumption by the assignee of the obligations of such party hereunder. Any company or other entity succeeding by purchase, merger or consolidation to the properties, substantially as an entity, of MDU shall be entitled to the rights and be subject to the obligations of its predecessor under this Agreement without the necessity of obtaining the consent of the City.

11. Any notice, demand or election under this Agreement shall be deemed properly given if sent by United States mail and addressed as follows:

If to the City: Office of the City Attorney
 City of Billings
 210 North 27th Street
 Billings, Montana 59101

If to MDU: Montana-Dakota Utilities Co.
400 North 4th Street
Bismarck, ND 58501
Attention:
Fax No.: (701) 222-7606

or as otherwise provided by notice given as herein provided.

12. This Agreement may not be modified or amended except by written agreement of the parties.

13. This Agreement and the rights and obligations of the Parties shall be governed by and interpreted in accordance with the laws of the State of Montana and not, by the application of choice of law principles, the laws of any other state.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed and delivered as of the date first above written.

CITY OF BILLINGS

By: [Signature]
Name: Ron Tussing
Title: Mayor

Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc.

By: [Signature]
Name: DAVID L. GOODIN
Title: PRESIDENT & CEO

State of Montana)
County of Yellowstone)

On the 25th day of August, 2008, before me personally appeared Ron Tussing to me personally known, who, having been by me first duly did say: is the Mayor of City of Billings, the municipality described in and which executed the foregoing instrument and that said instrument was signed and sealed in behalf of said by authority of its governing body as the free act and deed of said municipality.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and the year in this certificate first above written



Cari Martin (Signature)
Cari Martin (Printed Name)
Notary Public for the State of Montana
Residing in Billings, Montana
My Commission Expires: 4/19/2011

State of North Dakota)
)
County of Burleigh)

On the 2nd day of Sept., 2008, before me personally appeared David L. Goodin to me personally known, who, having been by me first duly sworn, did say: That he/~~she~~ is the President & CEO of Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., the corporation described in and which executed the foregoing instrument and that said instrument was signed and sealed in behalf of said corporation as the free act and deed of said municipality.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and the year in this certificate first above written.

Norma E. Eslinger

Notary Public

My Commission Expires 8-30-2011

(Seal)

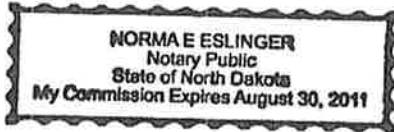


Exhibit 3

FACILITIES

Active Gas Collection System

RNG Production Wells

- Vertical gas wells
- Condensate Tanks

RNG Collection System

- All gas piping, valves, controls, and fittings connected to the RNG Production Facility

Mitigation Wells

- Horizontal and vertical wells
- Condensate Tanks

Mitigation Collection System

- All gas piping, valves, controls, and fittings connected to the Compliance Flare

Perimeter wells.

- Typically, vertical wells
- Condensate Tanks

RNG Productions Facilities – Enclosed within the fence of the RNG Production Facility

- Building to house equipment
- Gas piping
- Blower and flare
- Compressor (s)
- Gas treatment System
- Concrete foundation for equipment
- Control System
- Gathering pipeline and equipment to interconnect to MDU natural gas distributions system

Compliance Flare – Enclosed with the fence of the Compliance Flare

- Blower and flare
- Gas piping
- Compressor
- Gathering pipeline and equipment to interconnect with MDU RNG Production Facilities
- Controls
- Condensate Tank
- Building to house equipment

Exhibit 4

MINIMUM INSURANCE REQUIREMENTS

Workers Compensation and Employers Liability Insurance

MDU agrees to comply with Workers Compensation laws of the state where any work or services are performed, and to maintain a Workers Compensation and Employers Liability policy.

Workers Compensation	Statutory
Employer's Liability	\$1,000,000 Each Accident (Minimum) \$1,000,000 Disease Each Employee

General Liability

MDU shall maintain a General Liability insurance, endorsed to provide coverage for explosion, collapse and underground damage hazards to property of others; Contractual Liability (particularly the applicable provisions of the "General Indemnity" section of this Agreement):

Bodily Injury	\$1,500,000 Each Occurrence (Minimum)
Property Damage	\$1,500,000 Each Occurrence (Minimum)

or

Bodily Injury and Property Damage	\$1,500,000 Combined Single Limit Each Occurrence
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Automobile Liability Insurance

MDU shall also maintain Automobile Liability Insurance which shall include coverage for all owned, non-owned and hired vehicles.

Bodily Injury	\$1,000,000 Each Person (Minimum) \$1,000,000 Each Occurrence (Minimum)
Property Damage	\$1,000,000 Each Occurrence (Minimum)

Or

Bodily Injury and Property Damage (Minimum)	\$1,000,000 Combined Single Limit Each Occurrence
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Excess Umbrella Liability Coverage

Bodily Injury and Property Damage (Minimum)	\$1,000,000 Combined Single Limit Each Occurrence
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Additional Requirements

Upon request at the time this Agreement is executed, MDU shall submit a Certificate of Insurance, evidencing that satisfactory coverages of the type and limits set forth hereinabove are in effect. Policies providing such coverages shall contain provisions that no cancellation or material changes in the policies shall become effective except on thirty (30) days advance written notice thereof to the other Party. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of the Party, the failure of any insurance company to pay claims accruing, or the inadequacy of the limits of the insurance, shall not affect, negate, or waive any to the provisions of this Agreement including, without exception, the indemnity obligations of the Parties.

MDU agrees to require any policies of insurance, except Workers Compensation coverages, which are in any way related to the Facility and that are secured and maintained by MDU to include the City, its officers, employees, and agents, as Additional Insured.

EXHIBIT 5

Compliance Flare Operations

The compliance flare will be operated by MDU for the City. The City and its consultant will design it to meet or exceed all required regulations and its operations will be agreed upon by MDU. At this time the flare is not designed or installed and will require this section to be updated when the design and construction is complete.