



Office of

SWDD

03/19/2024

INDIAN RIVER COUNTY ATTORNEY

William K. DeBaal, County Attorney
Susan J. Prado, Deputy County Attorney
K. Keith Jackman, Assistant County Attorney

MEMORANDUM

TO: Indian River County Board of County Commissioners

THROUGH: John A. Titkanich, Jr., County Administrator

FROM: William K. DeBaal, County Attorney

DATE: March 14, 2024

SUBJECT: Consent and Agreement with Pathward, NA for Nopetro's Landfill Gas Construction Loan

BACKGROUND. On July 16, 2019, the Solid Waste Disposal District (SWDD) and Indian River Eco District, LLC entered into a Landfill Gas Agreement for the refinement of the gases produced at the landfill into renewable natural gas. The Agreement has been assigned to Nopetro Eco District LLC, a Florida limited liability company, and has had four amendments, the most recent being heard by the Board on January 23, 2024. At that time Nopetro represented to the Board that nothing further was needed for Nopetro to begin construction of the Landfill gas facility. Unfortunately, Nopetro's lender, Pathward, NA, a national banking association, has presented SWDD with the attached Consent and Agreement (Consent) as a condition of approving and funding Nopetro's construction loan.

DISCUSSION. The Consent is not unusual for a construction loan. It provides the lender with an additional avenue of completing construction of the project if the builder defaults on its obligations. It is uncommon for a government entity to enter into a Consent as government building projects are secured with public construction bonds pursuant to statute. In this instance, Nopetro has approached SWDD and is asking SWDD to enter into the Consent with Nopetro and Pathward. SWDD is not obligated or required to enter into this Consent. It is a requirement of Pathward for Nopetro's Landfill Gas Construction Loan.

Entering into the Consent will expose SWDD to some risk, most notably that if Nopetro defaults on its loan with Pathway, we will be named as a party to the breach of contract suit or foreclosure suit. Instead of dealing with a known entity, SWDD would be forced to deal with Pathward's successor, which would be an unknown entity. SWDD's benefit, it could be argued, would be that if Nopetro defaults, it is up to Pathward to find a qualified successor to finish the project.

You will note that the Consent refers to Operative Documents, including loan agreements between Nopetro and Pathward. Despite requests, the Operative Documents were not provided for SWDD review. During the initial negotiations of the Consent, Pathward sought to have the SWDD easement encumbered by the Pathward loan, which is contrary to law. Of further concern was the possibility of the Consent acting as a pledge of SWDD's credit, which is forbidden by the Florida Constitution. Language has been added to the Consent that addresses these two concerns.

FUNDING. There is no impact to County funding by this Consent.

RECOMMENDATION. The County Attorney's Office recommends that the Board, acting in its capacity as the Solid Waste Disposal District, discuss the Consent and Agreement, weigh the risks against the benefits of the Consent and approve the Consent and authorize the Chairman to execute the Consent and Agreement on behalf of the Solid Waste Disposal District.

Attachment: Consent and Agreement

Copies sent by email to: Sara J. Radcliffe SRadcliffe@dickinson-wright.com
Javier A. Alvarez jalvarez@tapllc.com
Michael Zito mzito@indianriver.gov
Jorge Herrera jherrera@nopetro.com
Melissa Linton mlinton@nopetro.com
Peter Sweeney psweeney@blockscarpa.com