

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

**Date:** January 19, 2024

**To:** Solid Waste Disposal District Board of Commissioners

**Prepared By:** John A. Titkanich, Jr., ICMA-CM, AICP, County Administrator

**Subject:** Amendment No. 4 to Landfill Gas Agreement with Nopetro Eco District, LLC

**Descriptions and Conditions:**

On February 5, 2019, the Indian River County (IRC) Solid Waste Disposal District (SWDD) Board directed staff to enter negotiations with the Indian River Eco District, LLC (IRED) for their purchase of landfill gas (LFG) created at the County's landfill. The SWDD Board agreed that the landfill-generated gas, which is currently being flared off, posed a potential health and safety risk and that it could be better used for other purposes rather than flaring. On July 16, 2019, the SWDD Board approved the Landfill Gas Agreement with IRED wherein they purchase the LFG for the production of electricity and/or conversion to Renewable Natural Gas (RNG).

On July 14, 2020, the Board approved Amendment No. 1 to the Landfill Gas Agreement confirming IRED's desire to pursue an RNG project and extend the LFG commencement date to September 30, 2021, as well as to increase the landfill gas for a potential leachate project and to reduce the cure period from six months to three months for any further delay in the commencement date.

On May 18, 2021, the Board approved Amendment No. 2 to the Landfill Gas Agreement further clarifying the LFG commencement date and amended additional terms of the LFG agreement to include mutual targets to optimize the quantity and quality of the landfill gas to the financial benefit of both parties.

On October 12, 2021, a presentation was made to the Board by IRED to introduce Nopetro RNG, LLC, with whom they have formed a joint venture in order to form Nopetro Eco District, LLC, which will design, finance, build and operate the RNG facility on the IRED property. On December 7, 2021, the SWDD Board approved the Consent to Assignment of the Landfill Gas Agreement from the Indian River Eco District, LLC, to Nopetro Eco District, LLC (NED).

On December 20, 2022, the Board approved Amendment No. 3 to the LFG Agreement to grant 12 months to LFG Commencement Date from June 30, 2023 to June 30, 2024. The final LFG Termination Date was also extended from September 30, 2023 to September 30, 2024. This request was made by NED due to several factors which included the landfill producing minimum Acceptable Landfill Gas to allow them to proceed with the financing of their project as well as some change in the design of their equipment to process LFG to RNG.

In Amendment No. 3, NED had certain milestones to meet to ensure that the project was proceeding in a proactive manner. These milestones included providing evidence of certain contracts for purchase of

their major equipment and the timely submittal of their air permit, site plan permit and building permit. NED has successfully met these milestones.

However, NED has requested a contract extension based on the requirement of their project financing entity, Pathwork Bank Credit, to ensure that the termination of this agreement is beyond the project schedule for completion. There were other additional changes that were requested by NED; however, both parties have agreed to extend the agreement with a compensation of \$60,000 to SWDD and to continue discussion on the other items for a future amendment.

At the Regular Meeting on January 9, 2024, the item was tabled and staff was directed to continue working with Nopetro Eco District, LLC to address concerns regarding certain definitions and clarification of expenses and responsibility for the same. Staff met with representatives of NED on Wednesday, January 10<sup>th</sup>, and subsequently met with the staff of the County Attorney's office that day. Staff and the County Attorney's Office met with NED representatives and their attorney on Friday, January 12<sup>th</sup>. General agreement resulted on the provisions for the Amendment to the Agreement subject to the language being drafted by both parties attorneys. The final revisions on Amendment No. 4 to the Agreement was finalized late Thursday, January 18<sup>th</sup>. Both parties have negotiated in good faith to present the attached Amendment No. 4 to the Landfill Gas Agreement for approval by the SWDD Board.

**Analysis:**

The request by NED for an extension of the LFG commencement date is supported by staff.

The Parties have agreed to the change of the LFG Commencement Date from June 30, 2024 to February 28, 2025, with NED paying the SWDD a pre-start-up fee of \$60,000 upon 30 days of the Effective Date of this Amendment. The Parties have also agreed to the change of the LFG Termination Date from March 31, 2025 to May 31, 2025.

The Parties have also agreed that if the project is substantially complete, i.e., there is physical evidence showing that the plant is built and that NED is taking active steps to get the plant started, then we would allow them additional time beyond May 31, 2025 to achieve the LFG Commencement Date. However, in the event that the plant is not substantially complete by May 31, 2025, then NED has agreed to pay a \$20,000 per month fee for liquidated damages until the LFG Commencement Date is reached.

The Parties agreed to identify and clarify the associated expenses of the project subject to the agreement, see Exhibit E. The Board will note that expenses such as taxes were limited to General Fund Ad Valorem & Tangible Personal Property Taxes; the Management Fee is capped to not exceed \$700,000 per annum; Miscellaneous expenses are capped to not exceed \$25,000 per annum; and the only expense related to debt service is the interest expense. The principal debt service payment will not be deducted as part of the calculation for the County Royalty.

Additionally, the parties agreed that the expenses will be limited to this project, and that can found in the appropriate definitions for Itemized Expense and Interest Expense, as well as in Net Proceeds, which specifically refers to the Facility. NED agreed to assume responsibility of the operating expenses of the Gas Booster Pump.

Finally, the Parties agreed to a provision to reconvene to further define, clarify, and finalize the division of responsibilities and operating procedures under Sections 3.1 and 3.2, and this should shortly occur after groundbreaking and no later than June 30, 2024.

**Funding:**

No funding is requested in this agenda item, this is an amendment to an existing agreement.

**Recommendation:**

Staff recommends the SWDD Board approve Amendment No. 4 to Landfill Gas Agreement with Nopetro Eco District, LLC.

**Attachment:**

- 1) Amendment No. 4 to Landfill Gas Agreement with Nopetro Eco District, LLC
- 2) Exhibit E to Agreement