



43 Broad Street, Unit B403
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June 23, 2023

TO: Sean Lieske, Director, Indian River County Utility Services
Himanshu Mehta, PE., SWDD Managing Director, Indian River County

FROM: Ram Natarajan, PE., Indian River Sustainability Center (IRSC)

CC: Earl Jones & David Allworth, Heartland Water Technology, Inc.
Alain Castro & Craig Gontkovic, Proximo Energy

SUBJECT: IRSC Leachate Evaporation Project – Request to Resolve Adverse Impact on IRSC of Project Permit Delays & Rate Adjustment Due to Extraordinary Inflationary Pressures

Coming off the successful ribbon-cutting event on April 11, 2023, Indian River Sustainability Center, LLC ("**IRSC**") appreciates the opportunity to provide Leachate Management Services at the Indian River County's (the "**District**") Landfill and we are excited to continue a mutually beneficial collaboration to ensure that we provide world class service to the County and its residents as contemplated in the Wastewater Treatment Services Agreement between IRSC and the District dated July 13, 2021 as amended (the "**Contract**").

Background

IRSC has been committed to working in partnership with the District since the inception of this project and has been open and flexible in meeting the District's needs and challenges along the way.

As you know, for reasons outside of IRSC's control, it took significantly longer than anticipated to secure all the required permits for the Project. See Attachment 1 to this Memo for the list of permits required to be secured by the District under the Contract. As a consequence of this delay, IRSC has been burdened by significantly higher financial costs than were contemplated at the time the parties agreed to the Contract. These include, without limitation, increases in the cost of equipment, shipping and operating costs due to inflation, and a sharp rise in interest rates that occurred during that period of delay.

In light of these circumstances, IRSC is requesting that the District agree to two remedies to address this additional unanticipated financial burden faced by IRSC. The remedies include:

- A one-time payment to IRSC under Section 3.3(a) of the Contract; and
- Increase of Service Fee for a CPI adjustment to commence effective October 2023.

Remedy under Section 3.3 of the Contract

The terms of the Contract provide a specific remedy for addressing a portion of the adverse impact on IRSC as a result of this delay, namely additional expenses incurred in delivering the Project.

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Section 3.3 of the Contract contemplates a specific remedy for this situation:

*“If the District has failed to secure the required Permits within twelve (12) months of the Effective Date, **the District will be required to start paying the Company the Services Fee on an ongoing basis**, unless such failure is caused by the Company’s failure to provide the District with requested technical assistance as contemplated in Sections 3.2(a) and 3.3(a).”*

The Effective Date of the Contract was July 13, 2021; the twelve-month anniversary of that date was July 13, 2022 (the “**Anniversary Date**”).

Please note: based on a literal reading of the Contract language cited above, the District would owe IRSC \$694,915 representing Services Fees starting on the Anniversary Date through the date on which the Evaporation Plant actually commenced commercial operations (April 25, 2023). However, under the circumstances, IRSC is willing to interpret the Contract in a way that is more favorable to the District. We propose that the District owe Services Fees only for the period starting on the Anniversary Date and ending on the date on which the District received final approval of the Site Plan (September 16, 2022). Please note: this concession by IRSC is conditioned upon the District agreeing to the CPI Adjustment terms described below.

The table below describes the financial implications of this analysis and the following contractual resolution:

Effective Date of Contract	07/13/2021
Date Permits Required (Anniversary Date)	7/13/2022
Required Site Plan Received	09/16/2022
Total Days Billable per Contract for Site Plan Delay	66
Minimum Gallons Per Day (Per Contract)	18,000
Fee Per Gallon (Per Contract)	\$0.1390 / gallon
Minimum Fee Day (Calculated)	\$2502.00
Net Amount Billable by IRSC due to the 66 Day Delay	\$165,132.00

Assuming you agree to the proposals in this Memo, a lump sum of \$165,132 will become due and payable by the District to IRSC once the District secures its required approval from its Board.

Remedy Under the CPI Adjustment Mechanism in the Contract.

As we all know, the prolonged period of securing the site plan and related permits coincided with drastic changes in the financial markets, leading to unprecedented inflation. This in turn has led to a substantial increase in ongoing operating costs for the Evaporation Plant. These increased costs pose a considerable challenge for IRSC in meeting its obligations to its lender.

IRSC has calculated that the Annual Inflation Impact on its recurring operating costs, based on the change in CPI from January 2022 through January 2023, amounts to \$34,444 (6.92%). It is important to acknowledge that this additional annual cost will have a direct and ongoing impact on the project for the next 20 years, resulting in a cumulative cash impact on IRSC.

The Contract currently provides that the CPI/inflationary adjustment should be based on seventy-five percent (75%) of the change in the CPI between the prior year's January (CPI1) and the current year's January (CPI2). This calculation equates to 5.19% which we recognize exceeds the contractual maximum adjustment of 3%.

IRSC would like to request that the District approve a CPI adjustment of 5.19% effective October 1, 2023.

The table below summarizes the Service Fee tier increase we would like the District to approve to address the above cost impacts in addition to the project permit delay costs:

Leachate Treatment Service Fee Tiers	Original Contract	Adjusted for Impact of Inflation at 5.19%
Tier 1 - Up to 18,000 gpd	\$0.1390	\$0.1462
Tier 2 - 18,001-24,000 gpd	\$0.1321	\$0.1390
Tier 3 - 24,001+ gpd	\$0.1250	\$0.1315

Reserving on Issue Relating to Leachate Chemistry

As you know, IRSC is also currently working diligently to resolve an additional contractual issue that has arisen since the start of commissioning related to the fact that the water chemistry of the leachate to be processed by the Evaporation Plant falls outside of the operating parameters agreed to in the Contract. Unless we can find a more cost-effective solution, this issue will end up causing a significant increase in IRSC's ongoing operating expenses during the Contract term well over what we originally calculated based on the original water chemistry. FYI, to date, IRSC has already incurred out-of-pocket costs for chemicals roughly equal to the amount we have currently budgeted as annual spend for such chemicals.

While we still have some work to figure out the optimal solution, our goal will be to take an approach going forward that will work for both IRSC and the District. As a result, we are not prepared at this time to present the District with a plan for addressing this situation but expect to be in a position to speak with you about it within the next 60-90 days.

Conclusion

Over the past two years, we have truly enjoyed our positive working relationship with the District's staff, and the IRSC has worked tirelessly to construct, install, commission, optimize and operate the leachate evaporation plant at the District's landfill. In light of our successful collaboration, we respectfully request that the District process this requested payment at its earliest convenience as well as approve our additional requested remedies outlined above. Please reach out to discuss any questions or concerns you may have regarding this request.

ATTACHMENT 1 – LIST OF PERMITS TO BE SECURED BY DISTRICT

REQUIRED PERMITS	NOTES
Site Plan/ Zoning or Use Approval <i>(Note: not in Contract list of required permits but included in the Contract DOR)</i>	Received on 9/16/2022
Stormwater Management Permit	Received on 9/16/2022. Permit No. 93335
Title V Air Construction Permit (New Emission Unit)	Indian River County Landfill - Air Construction Permit Application Title V Permit No. 0610015-007-AV Indian River County Landfill, Vero Beach, Florida Received on 3/24/2022
Preliminary Title V Air Operations Permit	The Title V Air Construction Permit allows the Evaporator to operate until August 31, 2024. Thereafter, the Final Title V Air Permit will cover operations. Per the Contract, the final Title V Air Operations Permit is not considered for the purpose of the Permit Receipt Date definition.
Solid Waste Permit Modification	Received on 11/30/2022. Permit No. - 0128769-022-SC and 0128769-023-SO
Modification of Landfill Operations Plan to include Residual Disposal	District has incorporated Residual disposal into the Landfill Operations & Training Plan as of August 2022.