

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

Date: December 28, 2023

To: Solid Waste Disposal District Board of Commissioners

Through: John A. Titkanich, Jr., County Administrator
Sean C. Lieske, Director of Utility Services

Prepared By: Himanshu H. Mehta, PE, Managing Director, Solid Waste Disposal District

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 in part.

NED is now requesting 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. Other were requested by NED as well as the County; however, both parties have agreed to extend the agreement with a compensation of \$60,000 to SWDD and to continue discussions in good faith to address Sections 3.1 and 3.2 of the agreement as they relate to the respective responsibilities of both parties.

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 with the understanding that further discussions and agreement is necessary to address respective responsibilities.

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 NED has not achieved the LFG Commencement Date 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.

Funding:

No funding is requested in this agenda item, as this is a potential revenue project.

Recommendation:

Staff recommends that its Board approve Amendment No. 4 to Landfill Gas Agreement with Nopetro Eco District, LLC (NED) and; authorize the Chairman to execute the agreement after review and approval by the County Attorney as to form and legal sufficiency.

Attachment:

- 1) Amendment No. 4 to Landfill Gas Agreement with NED, LLC