

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS  
OF SAN BERNARDINO COUNTY  
AND RECORD OF ACTION**

June 28, 2022

**FROM**

**BRENDON BIGGS, Director, Department of Public Works – Solid Waste Management**

**SUBJECT**

Landfill Gas Sale and Purchase Agreements and Leases with BioFuels San Bernardino Biogas, LLC for Sale of Landfill Gas Produced at the Colton Sanitary Landfill and Mid-Valley Sanitary Landfill

**RECOMMENDATION(S)**

1. Approve Amended and Restated Landfill Site **Lease No. 19-650-A1**, with BioFuels San Bernardino Biogas LLC, for the Colton Sanitary Landfill, to reflect a revised lease area and various administrative changes.
2. Approve Amended and Restated Landfill Site **Lease No. 19-651-A1**, with BioFuels San Bernardino Biogas LLC, for the Mid-Valley Sanitary Landfill, to reflect a revised lease area and various administrative changes.
3. Approve Amended and Restated Landfill Gas Sale and Purchase **Agreement No. 19-649-A1**, with BioFuels San Bernardino Biogas LLC, for the Mid-Valley Sanitary Landfill.
4. Approve Landfill Gas Sale and Purchase **Agreement No. 22-559**, with BioFuels San Bernardino Biogas LLC, for the Colton Sanitary Landfill.
5. Approve, with Notary witness, Memorandum of Lease and Landfill Gas Purchase and Sale **Agreement No. 22-560** with BioFuels San Bernardino Biogas LLC, for the Mid-Valley Sanitary Landfill.
6. Approve, with Notary witness, Memorandum of Lease and Landfill Gas Purchase and Sale **Agreement No. 22-561** with BioFuels San Bernardino Biogas LLC, for the Colton Sanitary Landfill.
7. Authorize the Director of Real Estate Services, subject to review by County Counsel, to approve Exhibit A-2 as an Amendment to Landfill Lease No. 19-650 to reflect as-built conveyance piping alignment.
8. Authorize the Director of Real Estate Services, subject to review by County Counsel, to approve Exhibit A-2 as an Amendment to Landfill Lease No. 19-651 to reflect as-built conveyance piping alignment.

(Presenter: Brendon Biggs, Director, 387-7906)

**COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

**Operate in a Fiscally-Responsible and Business-Like Manner.**

**Ensure Development of a Well-Planned, Balanced, and Sustainable County.**

**FINANCIAL IMPACT**

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost) as the Department of Public Works – Solid Waste Management Division (SWMD) is financed by fee revenue. SWMD establishes fees that are charged to the public and other

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agencies for utilization of the County's Waste Disposal System. The total revenue to be received by the County during the approximate 24-year period of the Landfill Gas Sale and Purchase Agreements and the leases is a minimum of \$12,720,000. Revenue to be received from BioFuels San Bernardino Biogas, LLC (BioFuels) will be initially comprised of lease payments. Upon commencement of the Commercial Operation Period (approximately the fourth year of the lease term) revenue will be comprised of base payments plus royalty payments, reduced by the continued lease payment. The royalty payments are based upon a tiered system providing a percentage of gross revenue received by BioFuels and gross revenue received on a unit basis. Gross revenues will include the actual commodity price realized in the sale of processed landfill gas (LFG) and the sale of associated environmental credits for use of a renewable fuel source. Combined quarterly revenue from the lease(s) and sale of LFG will be deposited in the SWMD budget (6700004250).

**BACKGROUND INFORMATION**

The SWMD operates and manages the County's solid waste disposal system, which consists of five regional active sanitary landfills, nine transfer stations and numerous closed landfills and disposal sites. The five regional active landfills provide refuse disposal for the County's Valley, Mountain, High Desert and Low Desert Regions. As waste is emplaced in the landfills, it decomposes, producing LFG, which is comprised of methane, carbon dioxide and very minor amounts of gaseous organic compounds. Current Federal, State and local regulations require the extraction, collection and treatment of the LFG to protect the surrounding environment. While LFG can be considered a pollutant requiring mitigation, it is also a potential source of renewable energy. It can be used directly, in combustion processes; or processed and converted into a renewable fuel.

On September 24, 2019 (Item No. 31), the Board of Supervisors (Board) approved a Landfill Gas Purchase and Sale Agreement (BSA) No. 19-649 and corresponding Landfill Site Leases No. 19-650 and No. 19-651, to sell LFG from the Mid-Valley Sanitary Landfill (Mid-Valley Landfill) and Colton Sanitary Landfill (Colton Landfill) to BioFuels. BioFuels initially intended to process the LFG collected at both the Mid-Valley Landfill and Colton Landfill at a facility to be constructed on the Mid-Valley Landfill premises. Solid Waste also entered into site lease agreements with BioFuels to provide area at the Mid-Valley Landfill and Colton Landfill for the purposes of constructing facilities to collect and process LFG and convey renewable fuel to an as yet to be determined end user.

Due to changes in circumstances since the initial agreement approvals, the following updates to the Landfill Gas Sale and Purchase Agreement and the leases are recommended:

- In 2021, BioFuels underwent an ownership change wherein Archea Energy, Inc. became a partner in the BioFuels consortium. Archea Energy, Inc. is the lead designer and engineering firm and will now receive all formal contract communications with BioFuels. This change is reflected in the Landfill Gas Sale and Purchase Agreements and the leases.
- With the extended duration of the COVID-19 pandemic, and the impact to staffing and regulatory approval schedules, there is a desire to extend the Option and Construction Period by one year, bringing the total time allotted for these activities to 48 months. The 20-year Commercial Operation period will remain unchanged. This change is reflected in the Landfill Gas Sale and Purchase Agreements and the leases.

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- BioFuels made a determination regarding the form of their final product and end use, affecting both the extent of premises necessary at the Colton Landfill and Mid-Valley Landfill, as well as the structure of the BSA. The LFG sold to BioFuels at the Mid-Valley Landfill will be processed to pipeline quality Renewable Natural Gas. The LFG sold to BioFuels at the Colton Landfill will be utilized in electricity generation units to power a hydrogen reformer that will process natural gas into a Renewable Hydrogen Fuel. Since each site will house a unique facility and produce different products with their own Royalty Payment Structures, SWMD is recommending revisions to the existing Landfill Gas Sale and Purchase Agreement relating to Mid-Valley Landfill through Recommendation No. 3, and the approval of a new separate Landfill Gas Sale and Purchase Agreement relating specifically to the Colton Landfill through Recommendation No. 4.
- With the final decision regarding end product and processing facility at each site completed, SWMD has determined that conveyance pipeline for the Buyer's Product(s) should be formally recognized in the lease documents (described as Exhibit A-1, Conveyance piping areas). However, the final alignment of this piping will not be ascertained until all piping has been installed, as modifications to the design may be required to accommodate landfill operations and site drainage infrastructure changes. Therefore, through Recommendations 5 and 6, SWMD requests that the Board authorize the Director of Real Estate Services to approve Exhibit A-2 of each Lease, as Amendments, at such time as the final alignment is determined and a legal description of the alignment is prepared.

**PROCUREMENT**

On May 5, 2017, the Chief Executive Officer approved the issuance of a Request for Proposals (RFP) No. PWG117-SOLID-2527 for the development of Extracted Landfill Gas to Energy projects for the SWMD's landfills and disposal sites in accordance with County Policy No. 11-04.

Received proposals were evaluated, interviews were conducted, and on September 24, 2019 (Item No. 31), the Board approved Site Lease Agreements No. 19-650 and No. 19-651 and Landfill Gas Sale and Purchase Agreement No. 19-649, for the purpose of selling raw LFG to BioFuels.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Kristina Robb, Principal Assistant County Counsel, 387-5455) on June 3, 2022; Purchasing (Jason Cloninger, Lead Buyer, 387-8258) on June 6, 2022; Finance (Carl Lofton, Administrative Analyst, 387-5404) on June 13, 2022; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on June 14, 2022.

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Record of Action of the Board of Supervisors  
San Bernardino County

**APPROVED (CONSENT CALENDAR)**

Moved: Janice Rutherford   Seconded: Col. Paul Cook (Ret.)  
Ayes: Col. Paul Cook (Ret.), Janice Rutherford, Dawn Rowe, Joe Baca, Jr.  
Absent: Curt Hagman

Lynna Monell, CLERK OF THE BOARD

BY   
DATED: June 28, 2022



cc: PW/SWM- Meeka w/agree  
Contractor- C/O PW/SWM w/agree  
File- w/agree w/map  
LA 07/13/2022