

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

530A



**FROM:** Waste Management Department

**SUBMITTAL DATE:**  
June 30, 2009

**SUBJECT:** Second Amendment to the Professional Services Agreement with SCS Energy to provide Operations and Maintenance of Landfill Gas to Energy Facility

**RECOMMENDED MOTION:** That the Board of Supervisors:

- 1) Approve the Second Amendment to the Professional Services Agreement with SCS Energy, and authorize the Chairman to execute the Amendment on behalf of the Board; and
- 2) Authorize the General Manager-Chief Engineer to approve payments for future engine damage when it is no fault of SCS Energy, not to exceed 10 percent of the original contract amount.

**BACKGROUND:** On July 3, 2007, the Board approved the Professional Services Agreement between the County and SCS Energy for the Operations and Maintenance of Landfill Gas to Energy Facility in the amount of \$1,703,801. On October 28, 2008, the Board approved the First Amendment to reimburse SCS Energy in the amount of \$35,412 for unexpected additional work and repairs to the facility (lightening strike and hidden bearing defect) during the first year of the Operations and Maintenance Agreement. (continued)

*[Signature]*  
Joseph McCann, Assistant Chief Engineer for  
Hans W. Kernkamp, General Manager-Chief Engineer

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 39,404.45	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ N/A	Budget Adjustment:	No
	Annual Net County Cost:	\$ N/A	For Fiscal Year:	08-09

<b>SOURCE OF FUNDS:</b> Waste Management Department Enterprise Funds	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:** APPROVE

BY: *[Signature]*  
Michael R. Shetler

**County Executive Office Signature**

FORM APPROVED COUNTY COUNSEL  
BY: NEAL R. KIPNIS DATE  
Departmental Concurrence  
Dept't Recomm.:  
Per Exec. Ofc.:

**Prev. Agn. Ref.:** 12.2 (7/3/07) & 12.1 (10/28/08) | **District:** 5 | **Agenda Number:**

ATTACHMENTS FILED  
WITH THE CLERK OF THE BOARD

**12.2**

This Second Amendment authorizes additional work to repair the landfill gas fired internal combustion engine due to a sudden change in the quality of the supply gas caused by county personnel working on the landfill gas well field. Guidelines for larger repairs is to shut off the engine until the repair is made, verify that the methane quality has stabilized at the flare station, and then re-start the engine. It was anticipated that the small repair would not cause the methane quality at the internal combustion engine to decrease substantially and no request was made to shut off the engine. However, the methane quality did decline sufficiently such that the engine automatically compensated for this by increasing the LFG flow rate. Once the leak was repaired, the methane quality increased and the engine could not compensate quickly enough causing one of the sixteen cylinders to be damaged by excessive heat. The damage to the engine, including parts and labor, is \$39,404.45.

The Waste Management Department (Department) has implemented new policies and procedures so that this does not occur again. However, energy production associated with landfill gas is not as predictable as it is with cleaner and more reliable pipeline gas. Many variables exist within the landfill environment that may interrupt supply and quality (such as damage to extraction wells related to trash settlement, vehicular damage, weather conditions, etc.), in addition to the unforeseen wear and tear on the engine beyond normally scheduled maintenance that is called out in the current agreement. It is for that reason that staff is recommending the General Manager-Chief Engineer be allowed to approve payments for damages unrelated to SCS Energy's fault at an amount not to exceed 10 percent of the original contract amount.

Even with these ongoing operational challenges, the Department is proud to have been able to generate green energy and a modest revenue stream to help support this endeavor, resulting in a net gain of approximately \$26,800 per month to support ongoing operational costs, which is particularly needed during the current tonnage/revenue downturn.

Staff recommends approval of the Second Amendment and granting of the payment authority to the General Manager-Chief Engineer.



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2 made to shut off the engine. However, the methane quality did decline sufficiently  
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4 rate. Once the leak was repaired, the methane quality quickly increased and the  
5 engine could not compensate quickly enough causing one of the sixteen cylinders to  
6 be damaged by excessive heat. The damage to the engine, including parts and labor,  
7 is \$39,404.45.

- 8  
9 2. Except as specifically modified or amended herein, all of the terms, covenants and  
10 conditions of said agreement of July 3, 2007 shall remain in full force and effect  
11 between the parties hereto.

12 IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to  
13 Agreement to be duly executed this day and year first above written.

14 RIVERSIDE COUNTY WASTE  
15 MANAGEMENT DEPARTMENT  
16 14310 Frederick Street  
17 Moreno Valley, CA 92553

SCS Energy  
3900 Kilroy Airport Way, Suite 100  
Long Beach, CA 90806-6816

18 Dated: 6/30/09

Dated: 7/6/09

19 RECOMMENDED FOR APPROVAL

20 By [Signature] for  
Hans W. Kernkamp  
General Manager-Chief Engineer

21 By: [Signature]  
Title: SENIOR VICE PRESIDENT

22 RIVERSIDE COUNTY

23 By \_\_\_\_\_  
24 Chairman, Board of Supervisors

25 FORM APPROVED COUNTY COUNSEL  
BY: [Signature] DATE

ATTEST:

By \_\_\_\_\_  
Kecia Harper-Ihem, Clerk of the Board

**Service Agreement  
RFP #WMARC044**

**Operation and Maintenance of Landfill Gas-to-Energy Facilities  
at the Badlands Landfill**

**EXHIBIT A  
SCOPE OF CONTRACTOR SERVICES**

(SECTION 2.1.h AND SECTION 7.6.a)

single case or in the aggregate, would materially adversely affect the performance by the Contractor of its obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity of, or the ability to enforce this Agreement or any other agreement or instrument entered into by the Contractor in connection with the transactions contemplated hereby.

**2.1.g. Patents, Licenses, etc.**

To the best of the Contractor's knowledge, the use of any patent, patented article, machine or process, or a combination of any or all of the aforesaid with respect to Facilities Operation in accordance with the terms and conditions of this Agreement does not infringe upon any patent, trademark or copyright of any other third person.

**2.1.h. Contractor Investigation**

The Contractor has made an preliminary investigation to its satisfaction of matters, conditions and circumstances relating to its execution and delivery of this Agreement and its obligations hereunder.

Contractor has inspected the Site and the following documents:

- (1) Site plans, Operations Manuals and permit documents;
- (2) All current and past landfill gas quantity and quality information;
- (3) South Coast Air Quality Management District Rules, Regulations and Permits;
- (4) All other documents the Contractor deems necessary to undertake and comply with the Contractor's Obligations.

The Contractor will undertake a more thorough review of the condition of the plant during the initial 30 days of operation under this agreement. During this 30 day period, the penalty provisions of the contract will be waived. No later than 15 days after conclusion of the 30 day evaluation period, the Contractor shall submit a report, identifying plant defects, if any, that materially affect the ability of the plant to support the performance guarantees and the Contractor's avoidance penalties under the agreement. If upon mutual Agreement the defects are material, the period of penalty waiver will be extended until the defects are corrected. If such defects were not caused by the Contractor during his initial period of operation, the County will cover the cost of the repairs or improvements.

**2.2. Of the County**

The County represents and warrants as of the date hereof:

**2.2.a. Status**

The County is a political subdivision of the State, duly organized and validly existing under the Constitution and laws of the State.

The term "found guilty" shall be deemed to include any judicial determination that Contractor or any of Contractor's officers, directors or employees is guilty, and any admission of guilt by Contractor, or any of Contractor's officers, directors or employees including, but not limited to, the pleas of "guilty", "nolo contendere", "no contest" or "guilty to a lesser felony" entered as part of any plea bargain.

If the County does not terminate this Agreement, the Contractor shall dismiss or remove such officers, directors or employees and take all action necessary and appropriate to remedy any breach of Contractor's Obligations.

## **7.6. Uncontrollable Circumstances**

### **7.6.a. "Uncontrollable Circumstance(s)"**

"Uncontrollable Circumstance(s)" means any act, event or condition outside either Party's control that is not the result of willful or negligent action or inaction on the part of such Party, which materially and adversely affects the ability of either Party to perform any of its obligations hereunder, including:

(1) any Labor Action, other than a Labor Action by the employees of the Contractor or the County.

(2) the failure of any appropriate federal, State, County, or local public agency or private utility having operational jurisdiction in the area in which the Facilities is located, to provide and maintain utilities, services, water, sewer or power transmission lines to the Facilities which are required for Facilities Operation;

(3) a Change in Law other than Changes in Law excluded in item (2) below;

(4) the suspension or interruption of Facilities Operations as a result of any release, spill, contamination, migration or presence of any Hazardous Waste, petroleum and petroleum products at the Facilities or the Sites;

but excluding, without limitation, the following unless caused by an Uncontrolled Circumstance listed above:

(1) either Party's breach hereunder;

(2) adverse changes in the financial condition of either Party or any Change in Law with respect to any taxes based on or measured by net income, or any unincorporated business, payroll, franchise or employment taxes;

(3) the consequences of errors in Facilities Operation on the part of the Contractor, its employees, agents, subcontractor or affiliates, including errors in Plans and Specifications or in the Operations and Maintenance Manual that should reasonably have been identified by the Contractor, or failure to comply therewith;

(4) the failure of the Contractor to secure patents, technical licenses, trademarks, and the like necessary for Facilities Operation;

(5) the lack of fitness for use of any materials, equipment or parts constituting any portion of the Facilities or the failure to comply with the Plans and Specifications for the Facilities.

**7.6.b. Performance Excused**

Neither Party shall be in breach of its obligations hereunder in the event, and for so long as, it is impossible or extremely impracticable for it to perform such obligations due to an Uncontrollable Circumstance if such Party exerted Reasonable Business Efforts to prevent such Uncontrollable Circumstance.

Upon the occurrence of any Uncontrollable Circumstance the County shall continue to pay the Service Fee in accordance with ARTICLE 5 for a period of fourteen (14) days. The Contractor agrees to use its Reasonable Business Efforts during such period to reduce costs and expenses related to such Uncontrollable Circumstance, and the savings, if any, shall be paid by the Contractor to the County. If the Uncontrollable Circumstance continues for more than fourteen (14) days, beginning on the fifteenth (15th) day and continuing through the sixtieth (60th) day, the County can elect not to pay the Service Fee, but to pay the Contractor's Direct Cost of operating the Facilities during the continuance of such Uncontrollable Circumstance.

Insurance proceeds from policies covering any Uncontrollable Circumstance act or event shall be used to mitigate any damages caused by insurable events.

**7.6.c. Notice**

The Party experiencing an Uncontrollable Circumstance and relying thereon shall give immediate Notice thereof to the other Party, including describing performance hereunder for which it seeks to be excused.

**ARTICLE 8. TERMINATION**

**8.1. Termination for Contractor Event of Default**

In the event the County exercises its right to terminate the Agreement upon a Contractor default, as of the effective date of such termination, the County shall have the right to:

- (1) seek performance by the surety under any performance bond;
- (2) make a claim on any insurance policy or policies; and/or
- (3) draw on any retainage, letter of credit, or other instrument furnished by Contractor pursuant to ARTICLE 6.

The County's right to any amounts from any bonds, insurance policy and/or letter of credit or other instrument shall be limited in all cases to the actual amount of damages sustained by the County as a result of the Contractor default according to proof.

Notwithstanding the foregoing, in the event the County exercises its right to terminate the Agreement upon a Contractor default for

- (1) an uncured failure to meet the Facilities Operation Guaranty in accordance with ARTICLE 4.8.d, or