



Memorandum

MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT

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Reviewed by: DA Date: 12/13/21
General Manager

DATE: December 13, 2021
TO: General Manager
FROM: Director of Engineering & Compliance
SUBJECT: Authorize the General Manager to Execute the Second Amendment to Design, Build, Own, Operate, and Transfer Agreement between Monterey Regional Waste Management District and Integrys Transportation Fuels, LLC. Subject to Approval of Form by District Legal Counsel.

RECOMMENDATION: Authorize the General Manager to Execute the Second Amendment to Design, Build, Own, Operate, and Transfer Agreement between Monterey Regional Waste Management District and Integrys Transportation Fuels, LLC. Subject to Approval of Form by District Legal Counsel.

BACKGROUND

As part of the District's Franchise Truck Yard development in 2015-2016, a CNG Fueling facility with both time-filled and fast-fill dispensers was envisioned to fuel the franchise trash collection trucks. The supply of natural gas to the CNG Fueling facility was envisioned to initially be from the utility transmission network and, possibly at a later date, from a District natural gas supply. To construct the CNG Fueling facility, the District entered into a Design, Build, Own, Operate, and Transfer contract agreement with Integrys Transportation Fuels, LLC (aka "Trillium") for the CNG Fueling facility. Trillium, as part of their operations of the CNG Fueling facility, purchases a Renewable Natural Gas (RNG) from a third-party supplier that is delivered to the District via the utility transmission network. As part of that activity, Trillium manages the RNG monetary attributes, namely the Low Carbon Fuel Standard (LCFS) Credit and the Renewable Identification Number (RIN's) credit. In addition to the monthly billing of fuel usage, Trillium provides the District with periodic reporting during the year on the accounting and distribution of these monetary attributes. Trillium is compensated for their services by receiving an even share of these monetary attributes.

DISCUSSION

In 2018 the District received a grant from the California Energy Commission (CEC) for a Biogas to RNG Conditioning System that would process and treat a small amount of landfill gas (LFG) to create a bio-methane (natural gas from biogas) for supply to the CNG Fueling facility onsite. The Biogas Conditioning System process takes a 50% methane content LFG and converts it to a ~97% methane content process gas that will be delivered to a storage tank that is connect to the CNG Fueling facility. With the District's Biogas Conditioning System going into full scale operation in 2022 for the production of RNG from the District's landfill gas, there is a need for the registration and management services of the LCFS and RIN's monetary attributes that are associated with the District's RNG supply.

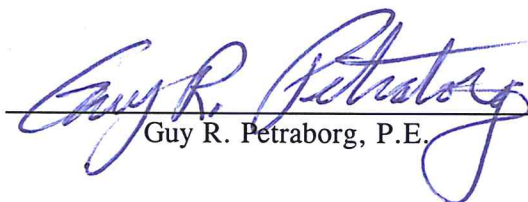
This Second Amendment of the Trillium DBOOT agreement will accomplish the RNG management services associated with the District's RNG production and supply to the onsite CNG Fueling facility. Trillium's purchase of the District's RNG supply is a separate billing item than the LCFS and RIN's credits and is governed by the fuel purchase terms of the DBOOT agreement.

FINANCIAL IMPACT

The Board's approval of the Second Amendment to the Trillium DBOOT agreement will define that Trillium is to perform the requisite RNG management services of the LCFS and RIN's credits that are associated with the District's production and supply of RNG to the onsite CNG Fueling facility. Separate from the RNG fuel sales, the RNG management services associated with this Second Amendment to the Trillium DBOOT agreement are estimated to bring revenues to the District of on the order of \$75,000 per year.

CONCLUSION

To accomplish the necessary RNG management services associated with the District's production and supply of RNG to the onsite CNG Fueling facility, staff recommends that the Board authorize the General Manager to execute the Second Amendment to Design, Build, Own, Operate, and Transfer Agreement between Monterey Regional Waste Management District and Integrys Transportation Fuels, LLC. subject to approval of form by District Legal Counsel.



Guy R. Petrabor, P.E.

Attachment:

1. "Second Amendment to Design, Build, Own, Operate, and Transfer Agreement between Monterey Regional Waste Management District and Integrys Transportation Fuels, LLC. (dated December __XX, 2021"

**SECOND AMENDMENT TO
DESIGN, BUILD, OWN, OPERATE, AND TRANSFER AGREEMENT BETWEEN
MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT
AND INTEGRYS TRANSPORTATION FUELS, LLC**

THIS SECOND AMENDMENT (this "Amendment") to that certain Design, Build, Own, Operate, and Transfer Agreement dated January 15, 2015 (the "Agreement") by and between Trillium USA Company, LLC, a Delaware limited liability company ("TRILLIUM"), and Monterey Regional Waste Management District, ("MRWMD") is entered into on December XX, 2021.

RECITAL

Trillium and MRWMD are parties to the Agreement and now desire to further amend the Agreement to adjust certain aspects of the scope of service for gas procurement and renewable attribute administration.

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, the Parties hereto agree as follows:

1. Definitions. Terms defined in the Agreement which are used herein shall have the same meanings as are set forth in the Agreement for such terms unless otherwise defined herein.

2. Amendment to Agreement. The Agreement is amended as follows:

2.1 Article 1.2 the additional Definitions are added as follows:

"RNG Regulatory Event" means a change in law the non-occurrence of which is a basic assumption on which the a transaction hereunder has been made, and which has a material adverse effect on such transaction, or that otherwise renders performance by a Party of its obligations under the transaction illegal or impossible. RNG Regulatory Events include, but are not limited to, the repeal of the Renewable Fuel Standards ("RFS"), the disqualification of Renewable Natural Gas ("RNG") from eligibility to generate RFS Renewable Identification Numbers ("RINs"), prohibitions on the use of RNG as a motor vehicle fuel in California, or any such event that makes the production or sale of RNG, or environmental attributes illegal or impossible. RNG Regulatory Events shall not include (i) a governmental authority disallowing, in whole or in part, the pass through of costs in a transaction, (ii) the imposition of new taxes, (iii) any requirement to procure a new permit, license or other governmental authorizations (unless a Party is ineligible and cannot procure the same within a reasonable period of time using best efforts), (iv) the imposition of regulatory requirements that increase the costs of one or both Parties' performance of their obligations under this Agreement, (v) any Environmental Protection Agency ("EPA") rulemaking relating to the setting of renewable fuel volume obligations or standards under the RFS, including by way of a reset of renewable fuel volume obligations by EPA, or any delay of an EPA rulemaking relating to the setting of renewable fuel volume obligations or standards, (vi) any revision to the pricing formula for cellulosic waiver credits under the RFS, (vii) any change in the point of obligation under the RFS program, (viii) any EPA rulemaking relating to the rules for RIN carry forwards, or (ix) any change in compliance procedures in respect of the generation, trading or retirement of RINs.

"RNG Regulatory Event Notice to Terminate" has the meaning set forth in Section 2.13(i).

2.2 Article 2.11 Gas Supply and Renewable Attribute Administration is struck in its entirety and replaced with the following:

- (i) TRILLIUM shall be responsible for gas procurement and billing MRWMD the cost of gas incurred with zero markup. The natural gas utility account will be in TRILLIUM's name and TRILLIUM reserves the right to select the natural gas provider, provided, however, that when MRWMD's Renewable Natural Gas Production Facility located at 14201 Del Monte Boulevard, Monterey County (Salinas), CA 93908 ("MRWMD's Renewable Gas Facility") is complete and all pathways for both CARB and EPA have been established, TRILLIUM will accept supply for the Fueling Station from MRWMD. Supply from MRWMD's Renewable Gas Facility shall be prioritized over external sources of Renewable Natural Gas so long as such RNG is operationally available from MRWMD's Renewable Gas Facility. If MRWMD's Renewable Gas Facility is unable to meet the full demand of the on-site CNG Fueling Station, Trillium shall make best efforts to provide external sources of renewable natural gas to fill the remainder of demand.
- (ii) TRILLIUM shall provide services related to LCFS credit and federal RFS RIN transactions, reporting, and registration for MRWMD's Renewable Gas Facility and all external sources of RNG, and shall be fully responsible for credit generation and monetization. TRILLIUM shall register the CNG Fueling Station and MRWMD Renewable Gas Facility with the California Air Resources Board ("CARB") and the EPA. The registration process shall include full documentation of initial physical pathway and determination of carbon intensity of fuel based on greenhouse gas ("GHG") lifecycle assessment. Registration shall be deemed established when the MRWMD Renewable Gas Facility receives approval of a Temporary Fuel Pathway Carbon Intensity Value, Fuel Pathway Code and Physical Pathway Code from CARB and once the facility has obtained a completed engineering review from third-party professional engineer (PE) and has a registered facility ID under Title 40 CFR Part 80 with the EPA. The aforementioned RNG-related services will be supplied at TRILLIUM's expense, however, such expenses are recoverable on an annual basis in an event of default or if MRWMD's annual CNG fuel dispensing falls below 125,000 GGE in any given year of the Term. As part of these services:
 - (a) TRILLIUM shall facilitate LCFS recordkeeping and reporting services and provide, as needed, applicable reports to MRWMD. MRWMD shall provide reasonable assistance to TRILLIUM in acquiring all CARE-mandated LCFS program information regarding the CNG Fueling Station and LCFS transactions.
 - (b) For all RNG supplied by MRWMD's Renewable Gas Facility TRILLIUM will share fifty percent (50%) of the LCFS credit value by providing a rebate to MRWMD within sixty (60) days of LCFS credit generation.

- (c) For all RNG supplied by TRILLIUM from external sources, TRILLIUM will share fifty percent (50%) of the LCFS credit revenue received from such transactions within sixty (60) days of credit generation and monetization net of all real costs associated with such supply.
- (d) TRILLIUM shall seek to monetize environmental attribute value from the federal RFS RIN program through gas supplied by either MRWMD's Renewable Gas Facility or external RNG sources.
- (e) For all RNG supplied by MRWMD's Renewable Gas Facility TRILLIUM will share fifty percent (50%) of the RIN credit value by providing a rebate to MRWMD within sixty (60) days of credit generation.
- (f) For all RNG supplied by TRILLIUM from external sources, TRILLIUM will share fifty percent (50%) of the RIN credit revenue received from such transactions within sixty (60) days of credit generation and monetization net of all real costs associated with such supply.

2.3 Article 2.13 RNG Regulatory Event is added to the agreement as the following:

- (i) RNG Regulatory Event Notice to Terminate; Reformation. If an RNG Regulatory Event occurs, a Party affected by the RNG Regulatory Event may provide the other Party with no less than ninety (90) business days' notice of its intent to terminate the services provided pursuant to Article 2.11 of this Agreement (the "RNG Services") , along with detailed rationale of the basis for asserting that an RNG Regulatory Event has occurred (the "RNG Regulatory Event Notice to Terminate"). Following receipt of the RNG Regulatory Event Notice to Terminate, during such ninety (90) business day period, the Parties shall use their best efforts to attempt to resolve the impact of the RNG Regulatory Event on either or both Parties' ability to perform their obligations under this Agreement or to reform the relevant portions of this Agreement so that the impact of the RNG Regulatory Event is mitigated or eliminated while preserving, to the greatest extent practicable, the economic assumptions of the Parties as of the Effective Date.
- (ii) Failure to Reach Agreement. If a mutual agreement is not reached on how the RNG Regulatory Event can be mitigated or eliminated, or on reformation of the relevant provisions of this Agreement within the ninety (90) business day notice period, and provided the Party receiving the RNG Regulatory Event Notice to Terminate did not dispute whether an RNG Regulatory Event has occurred by providing notice to the other Party within fifteen (15) business days after receipt of the RNG Regulatory Event Notice to Terminate, all obligations related to RNG services will terminate immediately following the ninety (90) business day period except obligations incurred prior to the termination date.

3. Effect of the Amendment. Except as specifically amended above, the Agreement shall remain in full force and effect.

4. Headings. Section headings in this Amendment are included herein for convenience of reference only

and shall not constitute a part of this Amendment for any other purpose.

5. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument. Counterparts may be executed in either original or electronically transmitted form (e.g., faxed or emailed portable document format (PDF) form), and the parties hereby adopt as original any signatures received via electronically transmitted form.

6. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the jurisdiction specified in the Agreement.

IN WITNESS WHEREOF, this Amendment has been duly executed as of the day and year first above written.

Trillium USA Company, LLC

Monterey Regional Waste Management District

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____