Memorandum

MIAMI-DADE COUNTY

Date:	January 23, 2013
To:	Honorable Chairwoman Rebeca Sosa and Members, Board of County Commissioners
From:	Carlos A. Gimenez Mayor
Subject:	Landfill Gas Utilization Systems at North Dade and South Dade Landfills – Supplemental Agreement No. 1

Agenda Item No. 8(L)(7)

Recommendation

It is recommended that the Board of County Commissioners approve the attached Resolution authorizing approval of the Landfill Gas Utilization Systems Supplemental Agreement No. 1 to increase Public Works and Waste Management Department (PWWM) revenues by selling landfill gas from the South Dade Landfill to the Water and Sewer Department (WASD) rather than to the Industrial Generating Company, LLC as originally envisioned.

Scope

The item has a county-wide impact benefiting both PWWM and WASD. The North Dade facility is located in Commission District 1, while the South Dade facility is located in Commission District 8.

Fiscal Impact/Funding Source

This is a revenue-producing contract generating funds for the Solid Waste Disposal Operating Fund. Approving the Supplemental Agreement will have a beneficial effect on PWWM by increasing the ability to generate approximately twice the revenue it would receive from the Industrial Generating Company, LLC (INGENCO) for the landfill gas (LFG). It will also benefit WASD by supplying more gas to produce electricity for its operations, as opposed to purchasing electricity from the utility. WASD can produce the electricity for approximately half the cost of purchasing it.

Track Record/Monitor

The contract manager is Lee Casey, Division Director for PWWM Technical Services & Environmental Affairs. INGENCO is an electricity producer specializing in developing landfill gas-to-energy projects and has 14 projects in operation. The company did not have previous contracts with Miami-Dade County.

Background

As an outcome of the County's Invitation to Bid, the County awarded Contract 8578 to INGENCO to design, build, operate, and maintain a landfill gas utilization system (LFGUS) at both the South Dade and North Dade Landfills. The LFGUS converts LFG into electrical energy for sale to the electric power grid. Control of LFG, which contains the potent greenhouse gas methane, is required by federal and state law and the operating permits for the landfills. The usual method of control is to combust or "flare" the gas to convert methane to carbon dioxide, a less potent greenhouse gas.

The South Dade Landfill project contained two options for reuse of LFG: 1) use by WASD of up to 900 cubic feet per minute (CFM) in its electric generators to supplement digester gas, and 2) require bidders to accept a minimum of 400 CFM of LFG with any remaining LFG being directed to and purchased by the successful bidder, in this case INGENCO. The estimate of LFG production at South Dade indicated that there was sufficient LFG to supply both WASD and INGENCO. WASD received a federal grant to construct a pipeline to convey LFG from the landfill to its generators at the South District Wastewater Treatment Plant, which is now complete. WASD is also expanding the generating capacity at the site, which will allow it to accept all the LFG from the South Dade Landfill.

The bid for the LFGUS allowed two (2) years for INGENCO to permit and implement the North Dade and South Dade projects. The INGENCO projects were to be operational by February 2011. The projects experienced protracted regulatory air permitting problems and were not completed by the deadline. INGENCO has been paying the County liquidated damages in an amount equal to the bid value for the 400 CFM of LFG it has been unable to accept. Payments of liquidated damages for both LFGUS projects (South Dade Landfill and North Dade Landfill) are approximately $10,000 per month and are being made timely by INGENCO. INGENCO has re-evaluated the LFGUS project at the South Dade Landfill and has requested release from its obligation for development of that site under the Agreement. The North Dade Landfill LFGUS Project is under construction with commercial operation projected for September 2013, subject to the award of an easement by the County to FPL for power connection.

Supplemental Agreement No. 1 relieves INGENCO from its obligation to construct a LFGUS facility at the South Dade Landfill. In return, INGENCO will not seek reimbursement for sunk costs, such as engineering, permitting, and equipment fabrication; relinquishes irrevocably its development rights to the South Dade Landfill to the County; and agrees that the County is entitled to retain the liquidated damages paid by INGENCO as a fair estimate of the damages encountered by the County as a result of the delays. INGENCO will provide a new Payment and Performance Bond for construction for the LFGUS at North Dade only and the County will return the bond that covers both projects. All other terms and conditions of the original contract remain in full force and effect.

The PWWM Bond Engineer evaluated the economics of the two sources of revenue from WASD and INGENCO, respectively, for the 400 CFM of LFG and concluded that the WASD option produces twice the revenue for PWWM than the INGENCO contract. WASD also benefits since it receives a less expensive fuel than natural gas, which it uses to supplement its digester gas, and will be able to generate more of its own electricity as opposed to purchasing electricity from the utility at a much higher rate. Lastly, using LFG to produce electricity reduces the overall greenhouse gas contribution of County operations. Releasing INGENCO from its obligation to construct the LFGUS at the South Dade Landfill site will be beneficial to the County and is in the County's best interest.

Alina T. Hudak
Deputy Mayor

MEMORANDUM
(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: January 23, 2013

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(L)(7)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Mayor's report for public hearing**

_____ **No committee review**

✓ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(L)(7)
1-23-13

RESOLUTION NO. _____

RESOLUTION AUTHORIZING APPROVAL OF THE LANDFILL GAS UTILIZATION SYSTEMS SUPPLEMENTAL AGREEMENT NO.1 FOR THE NORTH DADE AND SOUTH DADE LANDFILLS

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the Landfill Gas Utilization Systems Supplemental Agreement No. 1 for the North Dade and South Dade Landfill, and authorizes the Mayor or the Mayor's designee to execute same on behalf of Miami-Dade County and to exercise all provisions contained therein, including termination.

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Rebeca Sosa, Chairwoman
Lynda Bell, Vice Chair

Bruno A. Barreiro	Esteban L. Bovo, Jr.
Jose "Pepe" Diaz	Audrey M. Edmonson
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Sen. Javier D. Souto	Xavier L. Suarez
Juan C. Zapata	

The Chairperson thereupon declared the resolution duly passed and adopted this 23rd day of January, 2013. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by County Attorney as
to form and legal sufficiency.

By:_____
Deputy Clerk

Hugo Benitez

SUPPLEMENTAL AGREEMENT NO. 1

Contract Number: 8578-0/23

Contract Title: Development of Landfill Gas Utilization Systems (LFGUS) at North Dade and South Dade Landfills

Contractor: Industrial Power Generating Company, LLC
2250 Dabney Road
Richmond, VA

This supplement amends the referenced contract.

1. Miami-Dade County (the "County") and Industrial Power Generating Company, LLC ("INGENCO") hereby agree to delete from the Contract the development of the South Dade Landfill Gas Utilization System. Commencing on the effective date of this amendment, the parties are hereby released from any further obligations towards each other and any damages arising from the Contract as it relates to the development of the South Dade Landfill Gas Utilization System. INGENCO will not seek reimbursement for any expenditures arising out of any work undertaken by INGENCO in connection with the South Dade Landfill including, but not limited to, environmental permitting work, site selection, equipment manufacture and payments of liquidated damages to the County. INGENCO agrees expressly and without limitation that the County shall be entitled to retain the liquidated damages paid by INGENCO as a fair estimate of the damages encountered by the County as a result of delays to the project.

2. References to the South Dade Landfill are deleted in their entirety. This modification does not affect the North Dade Landfill portion of the contract, and the requirements in the contract for the parties regarding the North Dade Landfill shall continue to be governed by the Contract documents, as modified by this Supplement.
3. INGENCO hereby cedes irrevocably its development rights to the South Dade Landfill, located at 23707 SW 97th Avenue, Miami, Fl., to the County. Accordingly, the County shall be entitled to use the facility and the landfill gas for any lawful purpose of the County, including but not limited to the development and use currently contemplated by the Miami-Dade Water & Sewer Department.

3. The parties agree to the following changes to the text of the Contract:

a) Section 2.10 title shall read: LIQUIDATED DAMAGES FOR INCOMPLETE PROJECT (NORTH DADE LANDFILL)

b) Section 2.13.1 is amended as follows:

2.13.1 INGENCO shall duly execute and deliver to the County a Performance and Payment Bond in an amount equal to the cost the INGENCO has estimated ($555,000) for the construction of the Landfill Gas Utilization System (LFGUS) at the North Dade Landfill. Upon receipt of the bond for the North Dade Landfill, the County shall return to INGENCO the present bond that INGENCO provided to the County in the amount of $1,480,000.The bond for the North Dade Landfill shall comply with all of the Contract requirements for a Performance and Payment bond, except that it shall be in the amount of $555,000 relating only to the North Dade Landfill work.

The Performance and Payment Bond Form supplied by the County shall be the only acceptable form for these bonds. The completed form shall be delivered to the County thirty (30) days after approval of this Supplemental Agreement by the Board of County Commissioners. If INGENCO fails to deliver the payment and performance bond within this specified time, including granted extensions, the County shall retain the present bond in the amount of $1,480,000 until construction is completed at the North Dade Landfill.

c) Section 2.24 title shall read: COMPLETION OF WORK FROM DATE OF NOTICE TO PROCEED FOR THE NORTH DADE LANDFILL

4. INGENCO shall continue the Work in connection with the development of the North Dade Landfill. INGENCO shall prosecute and complete the work in accordance with the updated construction schedules attached hereto as Exhibit S and incorporated herein by this reference. INGENCO agrees to continue paying the liquidated damages provided in Section 2.10 of the Contract throughout the term of this supplemental agreement and until completion of the North Dade Facility. By exception INGENCO shall be relieved of its obligation to pay the liquidated damages to the extent that completion of the construction is delayed beyond the September 11, 2013 completion date solely by the events identified in the schedule as relating to the FPL easements and FPL utility interconnect, which events shall be deemed non compensable to the County or INGENCO.

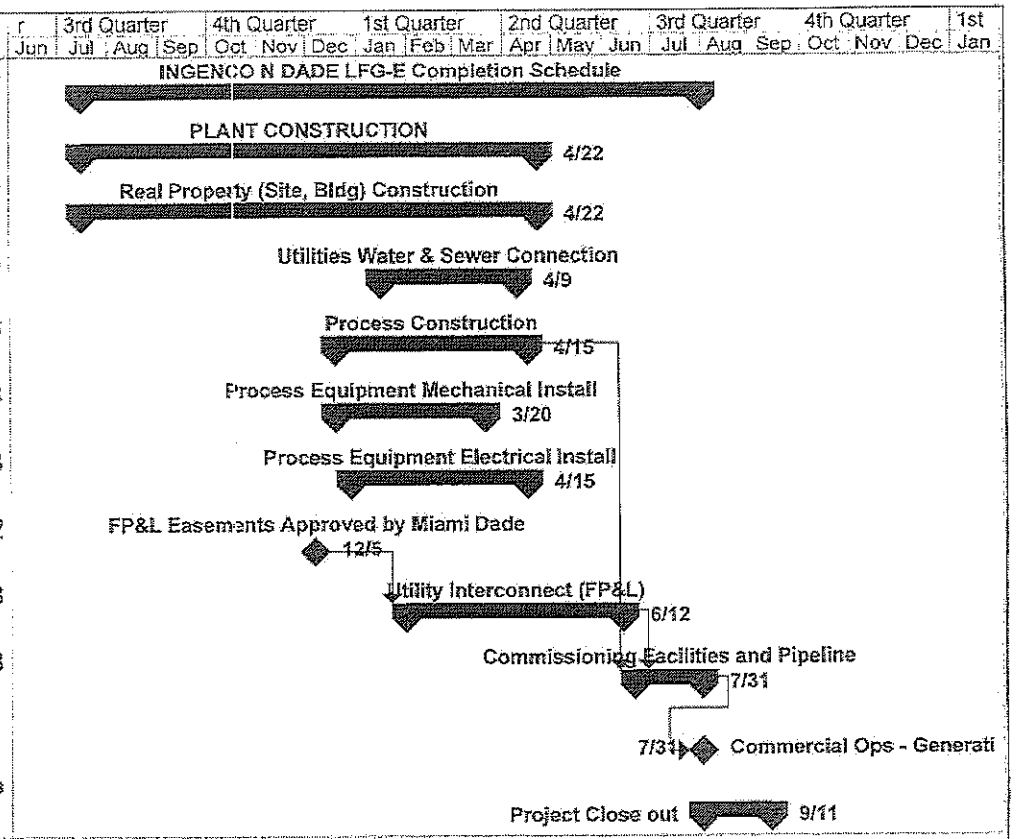
All terms, covenants and conditions of the original Contract shall remain in full force and effect, except to the extent herein amended.

IN WITNESS WHEREOF, the parties have executed this Supplemental Agreement to County Contract No. 8578-0/23.

Contractor	Miami-Dade County
By:	By:
Name: Charles Packard	Name:
Title: CEO	Title:
Date: October 26, 2012	Date:
Attest: Corporate Secretary/Notary	Attest: Clerk of the Board
Corporate Seal/Notary	Approved as to form and legal sufficiency Assistant County Attorney

EXHIBIT S

ID	Task Name	Finish
1	*INGENCO N DADE LFG-E Completion Schedule*	Jul 31 '13
2	PLANT CONSTRUCTION	Apr 22 '13
3	Real Property (Site, Bldg) Construction	Apr 22 '13
18	Utilities Water & Sewer Connection	Apr 9 '13
21	Process Construction	Apr 15 '13
22	Process Equipment Mechanical Install	Mar 20 '13
34	Process Equipment Electrical Install	Apr 15 '13
44	FP&L Easements Approved by Miami Dade	Dec 5 '12
45	Utility Interconnect (FP&L)	Jun 12 '13
54	Commissioning Facilities and Pipeline	Jul 31 '13
60	*Commercial Ops - Generating Faciltiy*	*Jul 31 '13*
61	Project Close out	Sep 11 '13



Project: N Dade Completion Schedule
Date: Oct 17 '12

Task		Milestone		External Tasks	
Split		Summary		External Milestone	
Progress		Project Summary		Deadline	