

(O-2009-133)

MEET

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6/16

ORDINANCE NUMBER O- 19872 (NEW SERIES)

DATE OF FINAL PASSAGE JUN 25 2009

AN ORDINANCE OF THE CITY OF SAN DIEGO AUTHORIZING AN ASSIGNMENT OF THE AGREEMENT AND SITE LEASE FOR THE BENEFICIAL USE OF DIGESTER GAS TO BIOFUELS ENERGY, LLC; AUTHORIZING AN AMENDMENT TO THE AGREEMENT FOR THE PURCHASE AND SALE OF BIOGAS; AUTHORIZING AN AMENDMENT TO THE SITE LEASE; AND AUTHORIZING THE WITHDRAWAL AND SUBSTITUTION OF THE PROJECT GUARANTEE IN CONNECTION WITH THE BENEFICIAL USE OF DIGESTER GAS AT THE POINT LOMA WASTEWATER TREATMENT PLANT.

WHEREAS, in September 2007 by Ordinance No. O-19662, the City entered into a ten-year agreement with Linde Merchant Production, Inc. [Linde] (formerly BOC Merchant Production) for the purchase and sale of excess biogas produced at the Point Loma Wastewater Treatment Plant, together with a Site Lease agreement for the Beneficial Use of Digester Gas [BUDG] Project; and

WHEREAS, Linde has requested that these agreements be assigned to BioFuels Energy, LLC; and

WHEREAS, BioFuels Energy has agreed to the assignment of the BUDG agreements and is willing and able to perform the BUDG Project under amended terms and conditions; and

WHEREAS, BioFuels Energy will contract with Stearns, Conrad & Schmitt [SCS] Consulting Engineers, Inc. for the development of the BUDG Project, and SCS Engineers will agree to guarantee to City the performance of the BUDG Project obligations; and

WHEREAS, it is in the City's best interests to allow the assignment subject to amendments in the agreements and subject to SCS Engineers providing a project guarantee; and

WHEREAS, the above activity is not a project and therefore is not subject to the California Environmental Quality Act pursuant to CEQA Guidelines section 15060(c)(3); NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the Mayor or his designee is authorized to approve the assignment of the Point Loma Wastewater Treatment Plant BUDG Project Agreement from Linde Merchant Production, Inc. (formerly BOC Merchant Production, Inc.) to BioFuels Energy, LLC, and to execute a first amendment to the agreement, for and on behalf of the City, under the terms and conditions set forth in the Consent to Assignment and First Amendment to Agreement for Purchase and Sale of Biogas, on file with the City Clerk as Document OO- 19872 -1.

Section 2. That the Mayor or his designee is authorized to approve the withdrawal of the Linde Group from the Parent Guarantee for the Point Loma BUDG Project; and to accept the guarantee of Stearns, Conrad & Schmitt Consulting Engineers, Inc., for the performance of BUDG Project obligations; and to execute, for and on behalf of the City, a Project Guarantee Agreement, on file with the City Clerk as Document OO- 19872 -2.

Section 3. That the Mayor or his designee is further authorized to execute, for and on behalf of the City, a first amendment to the lease at the Point Loma Wastewater Treatment Plant with BioFuels Energy, LLC, under the terms and conditions set forth in the Consent to Assignment and First Amendment to BUDG Site Lease, on file with the City Clerk as Document OO - 19872 -3.

Section 4. That a full reading of this ordinance is dispensed with prior to passage, since a written copy was made available to the City Council and the public prior to the day of passage.

Section 5. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Frederick M. Ortlieb  
Frederick M. Ortlieb  
Deputy City Attorney

FMO:mb  
05/12/09  
Or.Dept:MWWD  
MWD-9051  
O-2009-133

I hereby certify that the foregoing Ordinance was passed by the Council of the City of Diego, at its meeting of JUN 16 2009.

ELIZABETH S. MALAND, City Clerk

By Arun Richardson  
Deputy City Clerk

Approved: 6.25.09  
(date)

JSL  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

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JERRY SANDERS, Mayor