

(O-2009-134)

MEET

52B

6/16

ORDINANCE NUMBER O- 19873 (NEW SERIES)

DATE OF FINAL PASSAGE JUN 25 2009

AN ORDINANCE OF THE CITY OF SAN DIEGO AUTHORIZING AN ASSIGNMENT OF THE SOUTH BAY WATER RECLAMATION PLANT FUEL CELL POWER PURCHASE AGREEMENT AND SITE LEASE; AUTHORIZING AN AMENDMENT TO THE AGREEMENT FOR THE PURCHASE OF POWER; AND AUTHORIZING AN AMENDMENT TO THE SITE LEASE IN CONNECTION WITH THE BENEFICIAL USE OF DIGESTER GAS AT THE SOUTH BAY WATER RECLAMATION PLANT.

WHEREAS, in April 2008 by Ordinance No. O-19731, the City entered into a twenty-year agreement with Linde Merchant Production, Inc. (formerly BOC Merchant Production) for production and purchase of fuel cell generated electricity at the South Bay Water Reclamation Plant, together with a site lease; and

WHEREAS, Linde has requested that the South Bay Water Reclamation Plant fuel cell power purchase agreement and site lease be assigned to BioFuels Energy, LLC; and

WHEREAS, BioFuels Energy has agreed to assume the assignment of said agreements under amended terms and conditions; and

WHEREAS, it is in the City's best interests to allow the assignment of the South Bay Water Reclamation Plant Fuel Cell Power Purchase Agreement and Site Lease to BioFuels Energy, subject to amended terms and conditions; and

WHEREAS, this 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 South Bay Water Reclamation Plant BUDG Project 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 Power Purchase Agreement, on file with the City Clerk as Document OO- 19873 -1.

Section 2. That the Mayor or his designee is authorized to execute, for and on behalf of the City, an amendment to the lease with BioFuels Energy, LLC, under the terms and conditions set forth in the Consent to Assignment and First Amendment to South Bay Water Reclamation Plant Fuel Cell Site Lease, on file with the City Clerk as Document OO- 19873 -2.

Section 3. 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 4. 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-2009-134

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 *Sam Richard*
Deputy City Clerk

Approved: 6.25.09
(date)

JSL
JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor