

EM SUBMISSION NO: EMA0502015

PRESENTED: 2-11-15

ADOPTED: 2-12-15

**RESOLUTION AUTHORIZING CHANGE ORDER NO. 3 TO THE OPERATING  
AGREEMENT WITH SWEDISH BIOGAS NORTH AMERICA**

**BY THE EMERGENCY MANAGER:**

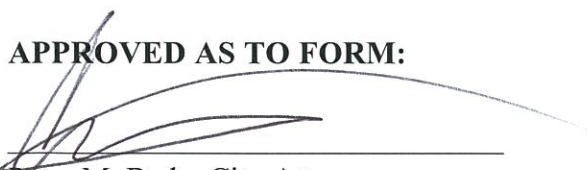
Pursuant to the authority granted the Emergency Manager by Public Act 436 of 2012, the Operating agreement (Contract 09-118) between the City of Flint (Licensee) and BioWorks Energy LLC (Licensor) shall be amended to provide language specific to assignability of payment; and

Bioworks Energy, LLC and the City of Flint are parties to (1) a Development Agreement dated July 9, 2009 (the "Development Agreement") for the development, construction, and installation of a biogas plant at the City's Water Pollution Control Plant; and (2) an Operating Agreement dated July 9, 2009 (the "Original Operating Agreement") for the establishment and operation of a biogas plant. The biogas plant was completed and commenced operations on September 12, 2011; and

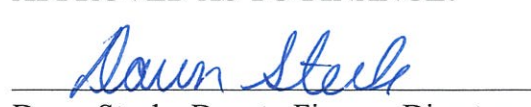
In order to acquire the financing to procure equipment critical to the installation of the Electrical Plant and its operation it is necessary to amend the Contract with Bioworks Energy LLC, Section 16 (d) of the Operating Agreement 09-118. Said amendment will allow for the assignability of payment for the purchase of such equipment provided it is agreed upon by both The City and Licensor.

IT IS RESOLVED, that the Emergency Manager does, on behalf of the City of Flint, authorize Change Order No. 3 to Contract 09-118, Biogas Production Operating Agreement. In the case of a conflict between the terms and provisions of the original Operating Agreement and the terms and provisions of this Change Order, the terms and provisions of the Change Order shall control.

**APPROVED AS TO FORM:**

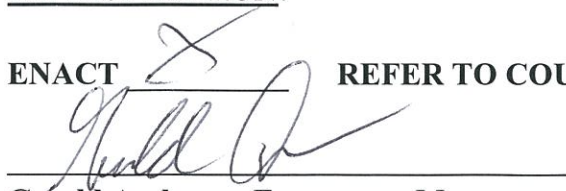
  
Peter M. Bade, City Attorney

**APPROVED AS TO FINANCE:**

  
Dawn Steele, Deputy Finance Director

**EM DISPOSITION:**

ENACT ☒ REFER TO COUNCIL \_\_\_\_\_ FAIL \_\_\_\_\_

  
Gerald Ambrose, Emergency Manager

DATED: 2/12/15

## RESOLUTION STAFF REVIEW

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February 11, 2015

**Agenda Item Title:** Swedish Biogas LLC Operating Agreement, Change Order 3

**Prepared By:** Krystal Wallace

**Background/Summary of Proposed Action:**

The Operating Agreement (Contract 09-118) between the City of Flint (Licensee) and (Licensor) Swedish Biogas LLC, (now known as **Bioworks Energy LLC**) shall be amended and restated to include revisions to Section 16 (d). Said amendment will allow for the assignability of payment for the purchase of equipment provided it is agreed upon by both The City and Licensor. Said modifications are as stated below:

- “Assignability.** No Party may assign any right or obligation under this Agreement without the consent of the other Party, which consent the other Party may not unreasonably withhold, delay, or condition. In the event that the Licensor requests assignment of all of the rights and obligations of this Agreement, the Licensee may require the Licensor to sell its rights to the Licensee pursuant to section 16 (d) in lieu of assignment to another Party.
- (i) Notwithstanding the foregoing, Licensor may assign any right to receive payment to an outside entity.
  - (ii) The Licensee acknowledges that in the event that the Licensor requests to assign a portion of the monthly net service fee (NSF) to a Third-Party (ie. Financier) for the purpose of acquiring equipment directly related to this Business Agreement and said purchase is agreed upon by both Parties, the Licensor may request that an amount of the NSF be assigned to the Debt Service Payment in accordance with the Financiers Payment Schedule. In no event shall the total incremental Debt Service Payment(s) exceed Licensor’s NSF for any billing period.
  - (iii) The Licensee also acknowledges that the Licensor assigns a portion of the monthly net service fee (NSF) to Metro Community Development, 503 S. Saginaw St Flint, MI 48503 (MCD) for the financing of the Electrical Plant as proposed to be installed in 2015. The amount of the assigned portion of the monthly NSF shall be equal to the Monthly Debt Service Payment as (MDSP) established between the Licensor and MCD as stated in the loan documents. The MDSP shall not exceed \$2,500 per month. The Licensee agrees to remit the MDSP directly to MCD. Balance of amount due to the Licensor shall be directly paid to the Licensor in accordance with the Agreement. MDSP shall be made to MCD for the life of the debt as agreed upon by the Licensor and MCD. “

Compensation for services of Bioworks Energy LLC is a fixed rate with variable components, any assignment would reduce said payment equal to the incremental debt service assignment. There is no increase in the compensation amount owed to Bioworks Energy LLC nor is there liability on the part of the City for the procurement of any equipment related to an assignment other than diverting payments directly to the Financier.

**Financial Implications:**

Please approve this Change Order, assignments will be paid from an account as determined by Finance. Bioworks Energy LLC is paid from WPC account 590-550.100-920.400 which has adequate funding for this contract Change Order.

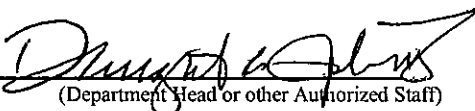
**Budgeted Expenditure?**    Yes        No        Please explain if no:

**Account No.:**                      To be Determined by Finance

**Pre-encumbered?**                Yes        No        Requisition: N/A

**Other Implications (i.e., collective bargaining):** None

**Staff Recommendation:**    Approve

**Staff Person:**   
(Department Head or other Authorized Staff)