



REPORT TO COUNCIL

City of Sacramento

14

915 I Street, Sacramento, CA 95814-2604
www.CityofSacramento.org

Consent
October 26, 2010

Honorable Mayor and
Members of the City Council

Title: Agreement: Exclusive Right to Negotiate a Lease - Solar Photovoltaic Farm

Location/Council District: 20 28th Street/ Council District 3

Recommendation: Adopt a Resolution authorizing the City Manager or his designee to execute an exclusive right to negotiate agreement for a lease with Conergy Projects, Inc. for a solar photovoltaic farm on the 28th Street Landfill for a term of 120 days, with an option to extend the term for an additional three months.

Contact: Edison Hicks, Integrated Waste General Manager, 916-808-4949

Marty Strauss, Integrated Waste Planning Superintendent, 916-808-4934

Department: Utilities

Division: Solid Waste

Organization No: 14001711

Description/Analysis

Issue: The City of Sacramento's 28th Street Landfill closed in 1997 and is currently going through post closure monitoring and maintenance. The final end use of the landfill is Sutter's Landing Park. The solar photovoltaic farm will be developed to be compatible with the park's development. Post closure monitoring and maintenance will not be completed until at least 2027 at a cost of approximately one million dollars per year.

In September 2009, the Department of Utilities issued a Request for Qualifications soliciting interest in designing, permitting, constructing and operating a solar photovoltaic farm on the 28th Street Landfill. The solar farm will be an array of solar panels on the ground, roof tops and incorporated into shade structures in the parking areas and sports fields. Ten statements of qualifications were received and after reviewing the statements of qualifications, four companies were selected to respond to the Request for Proposals. Three proposals were received and Conergy Projects, Inc. was selected by the review committee as the most qualified to negotiate a lease agreement to develop a

solar photovoltaic farm on the 28th Street Landfill. Their proposal demonstrated the best compatibility with the development plans for Sutter's Landing Park and the post closure monitoring and maintenance requirements of the landfill.

Policy Considerations: Development of a solar photovoltaic farm on the 28th Street Landfill is consistent with City's goals for increasing revenue sources and creating an alternative source of energy that lowers the total tons of carbon emitted into the environment by the City of Sacramento.

Environmental Considerations: The specific action recommended in this report – authorization to negotiate a lease - will not result in a significant effect on the environment and is exempt from CEQA under CEQA Guidelines § 15061(b)(3). CEQA review will be coordinated with project design and any required CEQA documents will be completed and presented to Council before it considers whether to approve a lease agreement.

Sustainability Considerations: Proposed terms for construction and operation of a solar photovoltaic farm on the landfill will be negotiated in consideration of the City's Sustainability Master Plan adopted on December 18, 2007.

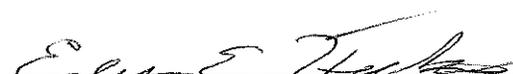
Commission/Committee Action: Not applicable

Rationale for Recommendation: Development of a solar photovoltaic farm on the 28th Street Landfill site will provide an alternative, green source of energy and provide a revenue stream through the lease of the land to the operator of the solar photovoltaic farm.

Financial Considerations: Conergy Projects, Inc. will deposit a nonrefundable fee of \$10,000. In the event a lease is negotiated, the fee will be credited against any payments that Conergy Projects, Inc. will be required to make under the negotiated lease.

Emerging Small Business Development (ESBD): The specific actions recommended in this report do not entail the purchase of goods or services therefore ESBD considerations do not apply.

Respectfully Submitted by:



Edison Hicks

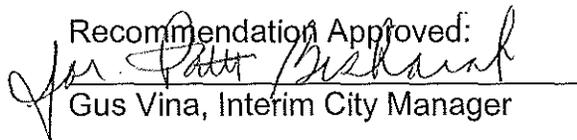
Integrated Waste General Manager

Approved by:



Marty Hanneman
Director of Utilities

Recommendation Approved:


Gus Vina, Interim City Manager
APPROVED AS TO FORM:

CITY ATTORNEY

Table of Contents:

	Report	pg. 1
Attachments		
1	Background	pg. 4
2	Evaluation Criteria Worksheet	pg. 6
3	Proposed Terms	pg. 7
4	Resolution	pg. 9

BACKGROUND

In September 2009, the Department of Utilities issued a Request for Qualifications to design, permit, build and operate a solar photovoltaic farm on the 28th Street Landfill. A total of ten Statements of Qualifications (SOQs) were received. The SOQs were reviewed by a team composed of staff from Utilities, Parks and Recreation, Economic Development and Procurement, with assistance from SMUD. After reviewing the SOQs received, four SOQs were short listed and invited to respond to the Request for Proposals (RFPs). Three proposals were received and reviewed using the scoring criteria included in the RFP and shown in Attachment 2.

The challenges in developing a solar photovoltaic farm on the 28th Street Landfill are:

1. Ongoing post closure monitoring and maintenance requirements of the 28th Street Landfill to address methane gas collection, ground water monitoring and summer maintenance to address settlement and/or gas line repair on Waste Management units A and B.
2. Compatibility with the short term and long term development plans of Sutter Landing Park.

These challenges were discussed throughout the process with those submitting SOQs and proposals. A diagram showing current and planned development of Sutter Landing Park was provided in the RFP. The diagram included both where solar photovoltaic can and cannot be developed. Those submitting proposals were encouraged to demonstrate how development of the solar photovoltaic farm can be compatible with the development of Sutter Landing Park and ongoing post closure activities.

Conergy Projects, Inc.'s proposal demonstrated knowledge of landfills and their ability to develop the solar photovoltaic farm with Sutter Landing Park. Fortistar, the parent company operating the gas collection system on the landfill is one of their partners. They have developed projects on landfills in Colorado and Pennsylvania.

The goals of the Solar Photovoltaic project are:

1. Generate a revenue stream through a land lease agreement on the 28th Street Landfill.
2. Provide interpretive/educational facilities where the public can have access to the landfill and learn about solar, energy and waste
3. Develop solar along Business 80 to show case the 28th Street Landfill Solar Photovoltaic Farm. Staff is in discussions with SMUD to seek funds for this portion of the project.

The terms of the agreement will include:

1. Term of the agreement; currently 20 year agreement minimum with options to renew in five year increments.
2. Land lease agreement and how payment shall be made.
3. Location of the solar photovoltaic farm, including shade structures and solar lighting that will benefit development of Sutter Landing Park.

Attached is a list of additional proposed terms to be included in the negotiated lease agreement (Attachment 3).

Staff is recommending a 120 day period for the Exclusive Right to Negotiate to address the following issues.

1. Provide opportunity for Conergy Projects, Inc. to negotiate a power purchase agreement (PPA). Without the PPA, Conergy Projects, Inc. will not know the price they can sell power generated through the solar photovoltaic farm, from which the land lease can be developed.
2. Complete 30 percent engineering drawings of the solar photovoltaic farm to submit to the regulatory agencies for review and comment.
3. Determine the level the environmental review of the project using 30 percent engineering drawings.

After addressing the above issues, staff will return with a draft agreement for discussion and seek direction from the City Council on how to proceed.



Attachment 2

APPENDIX B

REQUEST FOR PROPOSAL

DEVELOPMENT AND OPERATION OF A SOLAR PHOTOVOLTAIC FARM AT THE CITY OF SACRAMENTO'S 28TH STREET LANDFILL

EVALUATION CRITERIA WORKSHEET

1. Response is complete and put together in an orderly manner making it easy to review:	5
2. Timeline to complete the project.	10
3. Compatibility with Sutter Landing Park Design and Environmental Mitigation Requirements for the 28 th Street Landfill.	20
4. Type of payment offered to the City; lease only and/or revenue share.	30
5. Minimal impact to the 28 th Street Landfill environmental mitigation monitoring program.	15
6. Proposed power production of the project.	5
7. Power Purchase Agreement status.	15
8. Plans for setting up a manufacturing or assembly operations within the City of Sacramento in the event that a manufacturing or assembly facility is required as part of development of the PV farm	15
9. Plans for hiring qualified Sacramento residents and/or companies as contractors & subcontractors.	15
Total	130

Attachment 3

28th STREET LANDFILL SOLAR PHOTOVOLTAIC FARM PROPOSED TERMS

1. Conergy Projects, Inc will design, permit, construct and operate the project consisting of a solar photovoltaic (PV) farm on the 28th Street Landfill as described further in para. 8, as well as educational and park facilities on the Landfill and within Sutter's Landing Park, including but not limited to those described in para. 7. Upon completion of project construction, Fortistar or alternate City-approved investor will own the solar PV farm and Conergy Projects, Inc. will provide O&M services. The City will own the educational and park features of the project.
2. The solar photovoltaic farm design and the equipment and facilities installed will be compatible with the City's approved Sutter's Landing Park Master Plan.
3. The City of Sacramento will remain the responsible party for the environmental monitoring controls now in place as part of the post closure requirements.
4. Conergy will lease the land from the City of Sacramento on which the solar PV farm is constructed. Payment alternatives to be discussed are:
 - Option 1 – The Straight Land Lease
 - Option 2 – Revenue Sharing
 - Option 3 –Combination of Straight Land Lease and Revenue Sharing
 - Option 4 – Virtual Net Energy Metering
 - Option 5 – Energy & Gas
5. The term of the lease shall be 20 years, with mutual options to renew at the end of the term in five year increments.
6. The first phase of the project will include solar PV panels along or visible from Business 80. The City will make good faith efforts to assist with securing Solar Highway funding. The first phase will also include educational and park facilities to be mutually agreed upon between the parties
7. Contractor shall construct a raised platform on Waste Management Unit A to over look the solar photovoltaic farm. The platform will include educational information on solar energy. In addition, an educational kiosk will be constructed at a suitable location on the Park site.
8. The site has the potential to accommodate up to 20 megawatts of solar power generation. It is expected that the site will be built in 1 to 5 megawatt phases.
9. Contactor shall construct solar shade structures for parking and sports fields/courts constructed as part of Sutter's Landing Park development will be considered.

10. Solar roof mounted systems will be considered for the Bailer building and the Corp Yard.
11. Conergy will be solely responsible for the operations and maintenance of the solar panels related to the solar photovoltaic farm on the 28th Street Landfill and adjacent structures.



RESOLUTION NO.

Adopted by the Sacramento City Council

EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT FOR A LEASE WITH CONERGY PROJECTS, INC. FOR A SOLAR PHOTOVOLTAIC FARM ON THE 28th STREET LANDFILL.

BACKGROUND

- A. In September 2009, the Department of Utilities released a Request for Qualifications to design, permit, construct and operate a solar photovoltaic farm on the 28th Street Landfill.
- B. Ten Statements of Qualifications were received and reviewed by representatives from the Department of Utilities, Parks and Recreation, Economic Development, Procurement and the Sacramento Municipal Utilities District (SMUD).
- C. Four of the Statements of Qualifications were short listed to submit proposals in response to a Request for Proposals released in April 2010.
- D. Three proposals were received and Conergy Projects, Inc was selected.
- E. The goals of the solar photovoltaic farm are to 1) generate revenue for the City while the 28th Street Landfill completes the required post closure monitoring/maintenance on the landfill; 2) provide interpretive/educational facilities where the public can have access to the landfill and learn about solar, energy and waste; and 3) show case the project by funding development of a solar highway along Business 80 next to the landfill.
- F. Staff is recommending a 120 day period for the Exclusive Right to Negotiate to address the following issues: 1) provide opportunity for Conergy Projects, Inc. to negotiate a power purchase agreement (PPA); 2) complete 30 percent engineering drawings of the solar photovoltaic farm to submit to the regulatory agencies for review and comment; 3) determine the appropriate level of environmental review.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Manager or his designee is authorized to execute an exclusive right to negotiate agreement for a lease with Conergy Projects, Inc. for a solar photovoltaic farm on the 28th Street Landfill, in the form attached as Exhibit A, for a term of 120 days with an option to extend the term an additional three months.

Exhibit A: Exclusive Right to Negotiate Agreement for a Lease – Solar Photovoltaic Farm on 28th Street Landfill



City of Sacramento

Tax ID # if applicable:

Requires Council Approval: No YES Meeting: 10/26/10

Real Estate Other Party Signature Needed Recording Requested

General Information

Type: Professional Services PO Type: Formal-PROF Service	Attachment: No.:
\$ Not to Exceed:	Original Doc Number:
Other Party: Conergy	Certified Copies of Document:
Project Name: Solar Photovoltaic at 28 th Street	Deed: <input type="checkbox"/> None <input type="checkbox"/> Included <input type="checkbox"/> Separate
Project Number:	Bid Transaction #: E/SBE-DBE-MWBE:

Department Information

Department: Utilities Division: Solid Waste Division
 Project Mgr: Marty Strauss Supervisor:
 Contract Services: Date: 10/14/10 Division Mgr: Edison Hicks
 Phone Number: 916-808-4934 Org Number: 14001711
 Comment:

Review and Signature Routing

Department	Signature or Initial	Date
Project Mgr:	<i>Marty Strauss</i>	10-14-10
Contract Services:	<i>AA</i>	10/18/10
Supervisor:	<i>—</i>	<i>—</i>
Division Manager:	<i>Edison Hicks</i>	

City Attorney	Signature or Initial	Date
City Attorney:	<i>JDS</i>	10/20/10

Send Interoffice Mail TO: Annette Atkins, 13600 Notify for Pick Up

Authorization	Signature or Initial	Date
Marty Hanneman Department Director:	<i>Marty Hanneman</i>	10/15/10
City Mgr: yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		

Contract Cover/Routing Form: Must Accompany ALL Contracts; however, is not part of the contract. (01-01-09)

For City Clerk Processing

Finalized:
Initial:
Date:

Imaged:
Initial:
Date:

Received:
(City Clerk Stamp Here)

**AGREEMENT FOR EXCLUSIVE RIGHT TO NEGOTIATE A LEASE
SOLAR PHOTOVOLTAIC FARM AT 28TH STREET LANDFILL**

The CITY OF SACRAMENTO, a municipal corporation, ("CITY") and Conergy Projects, Inc., a California corporation ("Conergy"), have entered into this Agreement for the Exclusive Right to Negotiate a Ground Lease ("Agreement") as of _____, _____, CITY and DEVELOPER hereinafter may be referred to collectively as the "Parties" or in the singular as "Party," as the context requires.

RECITALS

A. CITY owns the 28th Street Landfill, located at the junction of 28th Street and A Street. The landfill has been closed since 1997. The landfill is approximately 172 acres with an asphalted area of approximately 52 acres on the west side of 28th Street now being developed into Sutter Landing Regional Park, and Waste Management Units (WMU) A and B for a total of approximately 110 acres. The remaining ten acres is the corporation yard and building housing fleet maintenance shop and the landfill office.

B. CITY issued a Request for Proposal in April 2010 to lease the landfill site, as depicted on the attached site plan illustrating current uses and acreage (the "Property"), for the development and operation of a solar photovoltaic ("SPV") farm on the landfill site ("Project"). CITY selected Conergy as the most qualified proposer.

C. Conergy Projects, Inc. is one the world's largest companies solely focused on solar energy. Conergy provides solar energy project development, financing, manufacturing, design & engineering, installation, and operation & maintenance services all within one organization. Headquartered in Hamburg, Germany, the Conergy Group has been a public company since 2005, and has been active in North America since 2004.

D. The Parties desire to investigate the financial feasibility of the Project, obtain the necessary entitlements to allow for development of the Project, conduct environmental assessment, and establish terms and conditions for a ground lease.

AGREEMENT

NOW, THEREFORE, based on the Recitals, the mutual promises and covenants of the Parties contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Exclusive Negotiation. During the term of this Agreement, the Parties shall negotiate exclusively with each other and in good faith for a ground lease on the Property for the development of the Project. The Parties acknowledge and agree that

neither Party is obligated by this Agreement or otherwise to undertake the Project or to lease the Property, and that no Party has a cause of action against the other arising under this Agreement for failure to approve or undertake the Project or to lease the Property.

2. Term. This Agreement shall be effective when both parties have signed it, as indicated by the dates in the signature blocks below. This Agreement shall terminate 120 calendar days after the effective date.

3. Term Extension: Before the term expires, and if Conergy requests, the CITY may extend the term by three months. If the CITY grants the request, then CITY will so notify Conergy, and this agreement will expire at 5:00 p.m. on the last day of the extended term..

4. Feasibility: Conergy is entitled to determine in good faith, but otherwise in its sole discretion, whether the site plan, park area, and access plan for the Property are acceptable for development of a solar farm; whether utilities of adequate capacity to serve the Project are available to the Property; whether the Property will satisfy Conergy's financial and competitive objectives in the trade area; and whether the Property is economically and otherwise feasible for the Project.

5. Studies & Tests: Conergy is entitled to perform all soils, engineering, environmental, geotechnical, biological resources, wetlands, and other studies, tests and secure permits, at its own expense, that it determines to be appropriate in connection with the Property and Project.

6. Environmental Reports: City agrees to provide Conergy with all appropriate reports associated with the closure and maintenance of the landfill.

7. Right of Entry. At any reasonable time, and upon reasonable notice to CITY, Conergy or its agents may conduct due-diligence activities. Conergy agrees to indemnify, protect, defend, and hold harmless CITY and its officers, employees, and agents from all liabilities, claims, demands, damages and costs (including reasonable attorneys' fees and litigation costs) that arise in any way from Conergy's exercise of its right under this paragraph to enter the Property. This obligation to defend and indemnify will survive the expiration or termination of this Agreement.

8. Consideration. In return for the exclusive right to negotiate described in section 1, Conergy agrees to negotiate in good faith and to pay CITY \$10,000 within five business days after the effective date of this Agreement. The \$10,000 payment is nonrefundable. If the parties successfully negotiate a ground lease, then CITY agrees to apply this payment to any rental payments or deposits Conergy must make under the ground lease.

9. No Obligation to Lease. This agreement does not obligate CITY to lease the Property to Conergy or Conergy to lease the Property from CITY, and it is not to be interpreted as imposing such an obligation.

10. Assignment. This Agreement is not assignable by either Party in whole or in part without the written consent of the other Party.

11. Notices. Any notice, delivery, or other communication under this Agreement must be in writing and will be considered properly given when delivered or mailed to the following persons:

If to CITY: Department of Utilities, Solid Waste
2812 Meadowview Road
Sacramento, CA 95832
Attn. Marty Strauss, Project Manager
Phone-(916) 808-4834
Email-MStrauss@CityofSacramento.org

If to Conergy: Conergy Projects, Inc
3550 Watt Avenue, Suite 140, #4
Sacramento, CA 95821
Attention: Dave Vincent, Project Manager
Phone-530-743-7318
Email-d.vincent@conergy.us

A Party may change its address by giving notice of the change to the other Party in the manner provided by this section.

12. Waiver. A Party's failure to insist on strict performance of this Agreement or to exercise any right or remedy upon the other Party's breach of this Agreement will not constitute a waiver of the performance, right or remedy. A Party's breach of any term or provision of this Agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other term or provision. A waiver is binding only if set forth in writing and signed by the waiving Party.

13. Interpretation and Venue. This Agreement is to be interpreted and applied in accordance with California law. Any litigation concerning this Agreement must be brought and prosecuted in the Sacramento County Superior Court.

14. No Third-Party Beneficiary. This Agreement is solely for the benefit of the Parties. Nothing contained herein is intended, nor shall this Agreement be construed, as an agreement to benefit any third parties.

15. Authority to Execute. Each person who executes this Agreement represents and warrants that he or she is duly authorized to do so for the Party he or she represents.

16. Counterparts. The Parties may execute this Agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.

17. Entire Agreement. This Agreement sets forth the Parties' entire understanding regarding the matters set forth above. It supersedes all prior or contemporaneous agreements, representations, and negotiations, whether written, oral, express or implied, and may be modified only by another written agreement signed by both Parties.

CITY OF SACRAMENTO

CONERGY PROJECTS, INC.

By: _____
Gus Vina, City Manager

By: Anthony Fotopolous
Anthony Fotopolous, President

Date: _____

Date: 13 OCT 2010

APPROVE AS TO FORM:

James Sam Keller
City Attorney's Office

By: Kurt Zwerko
Kurt Zwerko, Vice-President

Date: 13 OCT 2010

ATTEST:

City Clerk

