



City of Sacramento City Council

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

Meeting Date: 10/18/2011

Report Type: Consent

Title: Gas Lease Termination and Settlement Agreement

Report ID: 2011-00717

Location: District 3

Recommendation: Adopt Resolution authorizing City Manager or his designee to execute the Gas Lease Termination Agreement and Settlement Agreement with Gas Recovery Systems, LLC.

Contact: Steve Harriman, Integrated Waste General Manager - 808-4949, Marty Strauss, Superintendent - 808-4934 - Department of Utilities

Presenter: None

Department: Department Of Utilities

Division: Solid Waste Administrative Svc

Dept ID: 14001711

Attachments:

1-Description/Analysis
3- Contract Status
4-Exhibit Draft Gas Lease Termination and Settlement Agreement
5-Resolution
Delete Me

City Attorney Review

Approved as to Form
Janeth D. San Pedro
10/12/2011 12:00:31 PM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
10/3/2011 3:18:29 PM

Approvals/Acknowledgements

Department Director or Designee: Dave Brent - 10/10/2011 11:41:11 AM

Description/Analysis

Issue: In 1987, the City entered into a Gas Lease Agreement, City Agreement No. 85176, with Genstar Gas Recovery Systems, as modified by City Agreement No. 90-034 dated May 1, 1990, pursuant to which the City leased to Genstar a portion of the City's 28th Street Landfill for Genstar to construct and operate a landfill gas extraction system. Gas Recovery Systems ("GRS") is the successor to Genstar. The methane gas was sold to Blue Diamond Growers. The Gas Lease Agreement had a twenty year term which ended on January 21 2007, and automatically renewed to January 21, 2012 pursuant to the terms of the agreement.

The Gas Lease Agreement was mutually terminated effective June 30, 2011, because it was determined that the gas collection field was no longer economically viable for GRS to operate. Since February 2010, Blue Diamond stopped taking any methane gas and GRS has been unable to find another buyer. Pursuant to a separate development agreement between the City and Blue Diamond Growers, City Agreement No. 96-027, if the Gas Lease Agreement is terminated, the City and Blue Diamond are obligated to negotiate in good faith an agreement for Blue Diamond Grower's use of the methane gas. Blue Diamond Growers has confirmed to the City that they no longer intend to use the methane gas from the 28th Street Landfill.

Policy Considerations: The City will assume responsibility for the methane gas collection system. The City's Climate Action Plan identifies the reduction of methane gas released into the atmosphere as a priority to conform to the State's Green House Gas Regulations and reduce the City's carbon foot print. Staff is analyzing potential alternative uses for the methane gas.

Environmental Considerations: The recommendations in this report are considered administrative activities by a governmental agency and therefore, not subject to CEQA per Section 15378 of the CEQA Guidelines.

Sustainability: The reduction and prevention of methane gas released into the environment is identified as a high priority in the State's Green House Gas regulations.

Commission/Committee Action: None

Rationale for Recommendation: The City is required to maintain the methane gas collection system as part of the landfill's post closure environmental mitigation measures, and the retention of the above ground improvements is beneficial to the City. Termination of the Gas Lease Agreement will also allow the City to find a better use of the methane gas than flaring it, as is presently being done.

Financial Considerations: As of the date of termination of the Gas Lease Agreement, GRS owes the City \$42,500 of royalty payments, while the City owes GRS \$34,735 for reimbursement of their engineering design costs. Also upon termination of the Gas Lease

Agreement, GRS has an obligation to remove all above-ground property, fixtures, and improvements, including the gas processing plant, which GRS placed on the premises. Under the Termination and Settlement Agreement, GRS will sell all of the improvements to the City for the nominal cost of \$1.00, and the unpaid royalty payments and unpaid reimbursement costs will be deemed paid in full and satisfied.

When Blue Diamond Growers purchased the methane gas from GRS, the City received a royalty payment of approximately \$150,000 per year, almost of which was returned to Blue Diamond Growers pursuant to the agreement between the City and Blue Diamond Growers minus any expense by the City to maintain the gas field, an average of \$3,000 per quarter.

Emerging Small Business Development (ESBD): None

RESOLUTION NO.

Adopted by the Sacramento City Council

GAS LEASE TERMINATION AGREEMENT AND SETTLEMENT AGREEMENT

BACKGROUND

- A. In 1987, the City entered into a Gas Lease Agreement, City Agreement No. 85176, with Genstar Gas Recovery Systems, as modified by City Agreement No. 90-034 dated May 1, 1990, pursuant to which the City leased to Genstar a portion of the City's 28th Street Landfill for Genstar to construct and operate a landfill gas extraction system. Gas Recovery Systems LLC ("GRS"), a subsidiary of Fortistar Methane Group LLC, is the successor to Genstar.
- B. The Gas Lease Agreement had an initial twenty year term, with an automatic five-year renewal period. The Gas Lease Agreement was mutually terminated effective June 30, 2011, because it was determined that the gas collection field was no longer economically viable for GRS to operate. The methane gas was sold to Blue Diamond Growers. Since February 2010, Blue Diamond stopped taking any methane gas and GRS has been unable to find another buyer.
- C. Pursuant to a separate development agreement between the City and Blue Diamond Growers, City Agreement No. 96-027, if the Gas Lease Agreement is terminated, the City and Blue Diamond are obligated to negotiate in good faith an agreement for Blue Diamond's use of the methane gas. Blue Diamond has confirmed to the City that they no longer intend to use the methane gas from the 28th Street Landfill.
- D. As of the date of termination of the Gas Lease Agreement, GRS owes the City royalty payments, while the City owes GRS for reimbursement of their engineering design costs. The parties wish to resolve these claims.

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 the Gas Lease Termination and Settlement Agreement with Gas Recovery Systems, LLC for settlement of amounts owed, attached hereto as Exhibit A.

Exhibit A: Gas Lease Termination and Settlement Agreement.

Unexecuted Contract/Agreements

- The Unexecuted Contract/Agreement is signed by the other party, is attached as an exhibit to the resolution, and is approved as to form by the City Attorney.
- The Unexecuted Contract/Agreement (Public Project) is NOT signed by the other party, is attached as an exhibit to the resolution, and is approved as to form by the City Attorney.
- The Unexecuted Contract is NOT included as an exhibit to the Resolution because the Agreement(s) is with other another governmental agency and it is not feasible to obtain the other agency's signature prior to Council action (be they denominated Agreements, MOUs, MOAs, etc.); however, the City Attorney approves the forwarding of the report to Council even though the signed agreement is not in hand yet.
- The Unexecuted Contract is NOT included as an exhibit to the resolution because, due to special circumstances, and the City Attorney confirms in writing that it is okay to proceed with Council action even though the signed agreement is not in hand yet.

All unexecuted contracts/agreements which are signed by the other parties are in the Office of the City Clerk before agenda publication.

GAS LEASE TERMINATION AND SETTLEMENT AGREEMENT

This Gas Lease Termination and Settlement Agreement (the “Agreement”) is made as of _____, 2011 between the City of Sacramento, a municipal corporation (“City”) and Gas Recovery Systems, LLC, a subsidiary of Fortistar Methane Group, LLC (“GRS/Fortistar”). For purposes of this Agreement, the City and GRS/Fortistar may be referred to collectively as the “parties.”

RECITALS

- A. The City of Sacramento and Genstar Gas Recovery Systems (“Genstar”) entered into a Gas Lease Agreement, City Agreement No. 85176, dated January 21, 1987 (the “Lease Agreement”), as modified by City Agreement No. 90-034, dated May 1, 1990 (the “Modification Agreement”), pursuant to which City leased to Genstar a portion of the 28th Street Landfill as more particularly described therein (“Premises”), for purposes of constructing and operating a landfill gas extraction system.
- B. GRS/Fortistar is the authorized successor to Genstar for all rights, liabilities, and claims related to the Lease Agreement and Modification Agreement.
- C. The Lease Agreement was terminated effective June 30, 2011. As of the date of termination, GRS/Fortistar owes City \$42,500 of royalty payments pursuant to Section 4.1 of the Lease Agreement, while City owes GRS/Fortistar \$34,735 of reimbursement costs pursuant to Section H of the Modification Agreement.
- D. Pursuant to Section 8.1 of the Lease Agreement, upon termination of the Lease Agreement, GRS/Fortistar has an obligation to remove all above-ground property, fixtures, and improvements including the gas processing plant which GRS/Fortistar has placed on or adjacent to the Premises.
- D. By entering into this Agreement, and in consideration thereof, it is the intention of the parties to settle and resolve all outstanding billed and unbilled amounts between them, on the terms conditions set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual obligations set forth herein, the parties agree as follows;

1. GRS/Fortistar conveys to City ownership and title to all above-ground personal property, fixtures, and improvement located on the Premises (collectively referred herein as “Equipment”) for the purchase price of One Dollar (\$1.00). GRS/Fortistar warrants it has full ownership and title to the Equipment and there are no amounts owing or liens or encumbrances of any kind on the Equipment. To the extent that any liens are asserted against the Equipment, GRS/Fortistar agrees to defend and indemnify the City from any claims asserted against the City as a result of GRS/Fortistar’s failure to directly pay any such lien. GRS/Fortistar provides no representation or warranty as to the condition of the Equipment and the City’s purchase of the Equipment is on an “as is, where is” basis.

2. The City waives its rights to collect the above specified outstanding royalty payments due from GRS/Fortistar and GRS/Fortistar waives its right to collect the above specified reimbursement amount due from the City.

3. It is understood and agreed that this Agreement is a full and final general release of all known, unknown and unanticipated claims arising out of the above specified outstanding billed and unbilled amounts between the parties.

4. Each individual executing this Agreement on behalf of the parties represents and warrants that he or she has been authorized to do so by the entity on whose behalf he or she executes this Agreement and that said entity will thereby be obligated to perform the terms of this Agreement.

Executed as of the day and year first stated above.

CITY OF SACRAMENTO,
A Municipal Corporation

GAS RECOVERY SYSTEMS, LLC
A Limited Liability Company

By: _____

By: _____

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk