



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle,
City Attorney

SUBJECT: Settlement of State Energy
Resources Conservation and
Development Commission v. City
of San Jose, J.U.M. Global L.L.C.;
City of San Jose v. J.U.M. Global
L.L.C. and related cross-claim

DATE: November 30, 2018

RECOMMENDATION

Approve a settlement with the State Energy Resources Conservation and Development Commission with a contribution from the City in the amount of \$150,000.00 and authorize the City Attorney to execute a Settlement Agreement.

OUTCOME

Two lawsuits will be settled; one brought by the City of San José against J.U.M. Global, L.L.C. ("JUM"), and one brought by the State Energy Resources Conservation and Development Commission ("CEC") against the City of San José and JUM. The total settlement is \$625,000 including a payment by the City to the State of \$150,000.00, inclusive of litigation costs.

BACKGROUND

In 2011, the City received a grant from the CEC to demonstrate the feasibility of converting wood waste and biosolids to energy as a biomethane fuel at the Regional Wastewater Facility ("RWF"). The City's Environmental Services Department ("ESD") administered the grant. The City's administrative responsibility included, among other things, ensuring compliance with the terms of the grant.

In early January 2015, JUM, a Florida corporation, signed a contract with the City to purchase a gasifier for the demonstration, and to obtain the necessary permits to install and operate the gasifier at the RWF. The goal was to obtain results reportable to the CEC. JUM was to purchase the gasifier from ICM, Inc. ("ICM"), a Kansas corporation. The grant deadline to perform these tasks was April 30, 2015. JUM was to receive no income and agreed to this arrangement because it believed a successful gasifier demonstration would position it to sell the ICM technology throughout California.

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In late January 2015, JUM submitted a request to the City for reimbursement of \$1,202,031, which represented the CEC's share of matching funds for JUM's purchase of the gasifier at a cost of \$2,404,062. The grant required the City to ensure the CEC requirements for reimbursement were met. JUM submitted an invoice from ICM showing the purchase price was \$2,404,062. It also submitted its own invoice with a full description of the components of the gasifier and a breakdown representing the amounts of JUM's and the CEC's matching contributions. The City subsequently learned that JUM had not paid the full purchase price of the gasifier, and never took possession of the gasifier. As a result, JUM never delivered the gasifier and failed to construct a foundation for the gasifier, as required under its agreement with the City. In the meantime, the City had sought extensions from the CEC to complete the project pursuant to the terms of the grant.

After attempting to negotiate with JUM to return the funds, the City sued JUM in federal court to recover the grant funds and indemnify the CEC. JUM filed a counter claim, alleging the City breached the contract by, among other things, failing to provide timely access to the project site, seeking damages from alleged lost business opportunities and because the City had filed a UCC lien in Florida asserting ownership of the gasifier.

Earlier this year, the CEC sued both JUM and the City in state court in Sacramento seeking return of its funds.

ANALYSIS

The parties to the litigation participated in a mediation with retired Santa Clara County Superior Court Judge Jamie Jacobs May to attempt to resolve both pending lawsuits. Under the proposed settlement, the CEC will receive a total of \$625,000.00; JUM has agreed to pay \$475,000 and the City will pay \$150,000. The City was obligated to pay the entire \$1.3 million claimed by the CEC under the indemnity provision of the grant, and any recovery by the City against JUM was going to pass through to the CEC. This is a negotiated settlement between the parties to avoid significant litigation expenses, including probable collection litigation in Florida and potential bankruptcy litigation also in Florida.

PUBLIC OUTREACH/INTEREST

This memorandum and the Settlement Agreement have been posted on the City's website for the December 11, 2018 agenda.

COST SUMMARY/IMPLICATIONS

The City's share of the settlement cost will come from the Non-Personal/Equipment Appropriation (0762) in the Integrated Waste Management Fund (423).

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CEQA

Not a Project; File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

RICHARD DOYLE, City Attorney

By 

ALAN R. LIPTON

Senior Deputy City Attorney

cc: David Sykes, City Manager

For questions, please contact RICHARD DOYLE, City Attorney, at (408) 535-1900