

SETTLEMENT AGREEMENT AND MUTUAL RELEASES
(City of San Jose/CEC/J.U.M. Global)

This Settlement Agreement ("Settlement Agreement" or "Agreement") is made by and among the State Energy Resources Conservation and Development Commission ("CEC") the City of San José ("City") and J.U.M. Global, LLC ("J.U.M.") (collectively, the "Parties"). This Settlement Agreement is entered into following a mediation on November 13, 2018, before the Hon. Jamie Jacobs-May (Ret.) ("Mediation").

This Settlement is subject to receipt of appropriate approvals by the City Council. The City representatives who attended the mediation agree to recommend in good faith the settlement for approval and to take the steps necessary to get the matter on the Council's calendar for meeting on November 27, 2018. The City shall advise the other parties of the approval or disapproval by email no later November 28, 2018. If the City Council does not approve the Settlement Agreement, then the CEC has the right to confirm and finalize this settlement, within 21 days, to accept the settlement sums set forth below from J.U.M. and whatever settlement sums were approved by the City Council.

Recitals

- A. The California Energy Commission awarded grant number ARV-10-016, including amendments (hereinafter, as amended, the "Grant") to study ways to convert biosolids and wood waste to natural gas ("Project");
- B. J.U.M. and the City entered into a Nonexclusive License Agreement for Construction and Operation of the Gasification Demonstration Unit ("Nonexclusive Agreement");

C. J.U.M. entered into agreements with ICM, Inc., to provide the gasification unit and technology for the Project and with Decker Engineering to provide certain construction and engineering services for the Project.

ICM, Inc. subsequently built a gasification unit for the Project ("gasification unit");

D. The City filed suit in the U.S. District Court (Case No. 5:16-CV-01462-VKD) against J.U.M. to resolve a dispute between J.U.M. and the City about the Project and J.U.M. subsequently counterclaimed against the City (the "Federal Action");

E. The CEC filed suit in Sacramento County Superior Court (Case No. 34-2018-00230652) against the City and J.U.M. stating claims related to the Project (the "State Court Action");

F. The Parties wish to resolve the Federal Action and the State Court Action and all disputes arising out of or related to the Grant and the Project.

NOW THEREFORE, the Parties agree as follows:

1. Payments shall be made to the CEC as follows:
 - a. J.U.M. shall pay to the CEC the sum of \$475,000 on or before January 31, 2019.
 - b. The City shall pay to the CEC the sum of \$150,000 on or before January 31, 2019.
2. The City and the CEC, and each of them, shall have no ownership rights to the gasification unit constructed by ICM, Inc. for the Project. In the event that J.U.M. (or its past or present assigns, heirs, executors, administrators, officers, employees, agents, predecessors, successors, or

related entities, including, but not limited to, JAX Utilities Management) receives, following the date of this Settlement Agreement, any payment or other financial benefit from ICM related to the demonstration unit built for the Project, J.U.M. shall pay that sum to the CEC.

3. J.U.M. agrees to defend, indemnify, and hold harmless the City from any and all claims by ICM and Decker arising out of the Project. On or before February 10, 2019, the City agrees to file an expungement of the UCC-1 Financing Statement filed May 12, 2015 in Florida, by the City, with regard to the gasification unit.

4. The City covenants not to sue or assert any affirmative claims against ICM, arising out of the Project, the Grant, the Contract, or the Federal Action, except that the City reserves the right to assert a cross-complaint or counterclaim against ICM if ICM sues the City.

5. The CEC shall assert no claim to the return of any Grant funds expended as part of CEC Grant ARV-10-016, including amendments.

6. The Parties shall bear their own costs of suit, attorneys' fees and other expenses incurred in connection with the Federal Action and the State Court Action as well as in connection with the Project and the Grant. No Party shall be entitled to recover any attorneys' fees, costs or expenses from the other. This includes but is not limited to any unpaid invoices or retention held by CEC. The CEC shall make no further payments on the Grant.

7. This Agreement may be modified or amended only by a written instrument signed by the CEC, the City, and J.U.M., or their respective designees.

8. For the consideration set forth in this Settlement Agreement, the parties, on behalf of themselves, their past and present assigns, heirs, executors, and administrators, hereby release and forever discharge each other, their past and present officers, employees, partners, agents, predecessors, successors, consultants, attorneys, and assigns, all of whom expressly deny any liability, from any and all claims, demands, damages, actions, or suits, known and unknown, relating to, arising out of, or in any way connected with the Grant, Project, gasification unit, State Court Action, and Federal Action, and each of them.

9. The CEC, the City, and J.U.M. shall dismiss the State Court Action and the Federal Action, in their entirety, and with prejudice, promptly after the 91st day following confirmation of receipt of funds from the payment(s) described above.

10. The Parties shall cooperate in executing all documents necessary to effectuate this Settlement Agreement and to effectuate the dismissals with prejudice of the Federal Action and the State Court Action.

11. Section 1542 of the Civil Code of the State of California provides as follows:

“A General Release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the Release, which if known by him or her must have materially affected his or her settlement with the debtor.”

12. The Parties, and each of them, represent that Civil Code Section 1542 has been read and reviewed with counsel and understood, and that they each hereby waive any and all present and future rights and benefits under Section 1542, including but not limited to the extent Section 1542 would permit claims relating to or arising out of, the matters released herein based on facts found to be different from the facts believed to be true at the time this Settlement Agreement was executed.

13. The Parties understand and acknowledge that this Settlement Agreement constitutes a compromise and settlement of disputed claims. No act taken by the Parties, either previously or in connection with this Settlement Agreement, shall be deemed or construed to be an admission of the truth or falsity of any claims heretofore made or an acknowledgment or admission by any party of any fault or liability whatsoever to the other party.

14. The Parties shall bear their own costs, including attorneys' fees, and any other fees incurred in connection with this Settlement Agreement and the events underlying this Settlement Agreement.

15. The Parties represent that they have had the opportunity to consult with legal counsel and have carefully read and understand the terms of this Settlement Agreement. The terms of this Settlement Agreement are voluntarily accepted for the express purpose of compromising the Federal Action and the State Court Action.

16. This Settlement Agreement represents the entire agreement and understanding between the Parties regarding settlement of the Federal Action and State Court Action supersedes any and all prior and

contemporaneous agreements, representations, and negotiations. This Settlement Agreement may be modified or amended only by a written instrument signed by all Parties hereto.

17. Each person executing this Settlement Agreement on behalf of any other person or persons hereby warrants that they have full authority to do so. Each of the parties represent and warrant that they have not assigned any claim or claims that are the subject of this Agreement; that he is the sole and rightful owner of said claims; and that he is authorized to execute this Agreement.

18. Any effort to enforce the terms of this Settlement Agreement, pursuant to CCP 664.6 or otherwise, shall be venued in Sacramento County Superior Court, in the State Court Action if that action has yet to be dismissed.

19. This Agreement may be executed in counterparts, each of which shall be deemed an original and shall be deemed duly executed upon the signing of the counterparts by the Parties hereto.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date last set forth below.

Dated: 11/13/18

Allen E. Ward II

State Energy Resources
Conservation and Development
Commission

CITY OF SAN JOSE

Dated: 11/13/18

By: _____

Richard Doyle, City Attorney
CITY OF SAN JOSE

SETTLEMENT AGREEMENT AND RELEASE BY AND AMONG

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

Dated: 13 NOV 2018

J.U.M. Global, LLC

By: 

Charles Freshwater
President

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