

RESOLUTION NO. 2011-574

Adopted by the Sacramento City Council

October 18, 2011

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.

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- Exhibit A: Gas Lease Termination and Settlement Agreement.

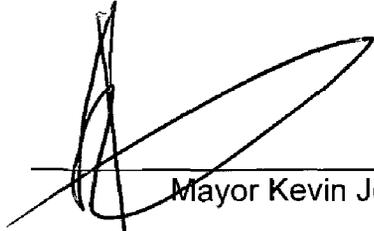
Adopted by the City of Sacramento City Council on October 18, 2011 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.



Mayor Kevin Johnson

Attest:



Shirley Concolino, City Clerk

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;

I. 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