

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Environmental Services

AGENDA DATE: December 9, 2014

CONTACT PERSON NAME AND PHONE NUMBER: Ellen A. Smyth, P.E., Director (915) 212-6060

DISTRICT(S) AFFECTED: All

SUBJECT:

That the City Manager be authorized to sign a Temporary Right of Entry between the CITY OF EL PASO and EMERALD INFRASTRUCTURE, LLC JOINT VENTURE WITH URIEL RENEWABLES, INC., the owner of the properties located approximately twenty-six (26) miles from downtown El Paso and immediately east of the intersection of Darrington Road and Interstate Highway 10 (IH-10), operated as an active Municipal Solid Waste site known as the Greater El Paso Landfill, and 13600 McCombs Street, operated as an inactive Municipal Solid Waste site known as the McCombs Landfill, for the right to enter and evaluate the feasibility of locating a Landfill Gas (LFG) energy generation project(s) on the two City landfill properties.

BACKGROUND / DISCUSSION:

The City owns two municipal solid waste landfills. Greater El Paso Landfill (GEPLF) is located southeast of the City and is currently an active landfill that receives waste. McCombs Landfill is located in northeast El Paso and is an inactive landfill that is not currently receiving waste.

Landfill gas (LFG) is a byproduct of waste decomposition, and the LFG naturally vents out into the atmosphere. The City currently operates a limited LFG collection system at GEPLF where LFG is collected from seven wells and the gas is flared (or burned). The City is interested in evaluating the feasibility of LFG projects at the landfills in order to improve air quality, eliminate methane gas, and potentially add a revenue stream from the beneficial reuse of the LFG for energy generation. The feasibility study will include the evaluation of landfill data, site entry and evaluation, and a report documenting the activities and results from the evaluation. Future consideration of a LFG project may be considered if the evaluation determines that a LFG project is feasible.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:


N/A

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:


(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Temporary Right of Entry between the CITY OF EL PASO and EMERALD INFRASTRUCTURE, LLC JOINT VENTURE WITH URIEL RENEWABLES, INC., the owner of the properties located approximately twenty-six (26) miles from downtown El Paso and immediately east of the intersection of Darrington Road and Interstate Highway 10 (IH-10), operated as an active Municipal Solid Waste site known as the Greater El Paso Landfill, and 13600 McCombs Street, operated as an inactive Municipal Solid Waste site known as the McCombs Landfill, for the right to enter and evaluate the feasibility of locating a Landfill Gas (LFG) energy generation project(s) on the two City landfill properties.

ADOPTED this _____ day of _____, 2014.

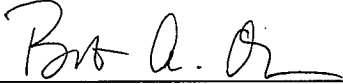
CITY OF EL PASO

ATTEST:

Oscar Leaser
Mayor


Richarda D. Momsen
City Clerk

APPROVED AS TO FORM:



Bertha A. Ontiveros
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Ellen A. Smyth, P.E., Director
Environmental Services Department

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

TEMPORARY RIGHT OF ENTRY

THIS TEMPORARY RIGHT OF ENTRY is granted on this ____ day of _____, 2014, by the **CITY OF EL PASO ("GRANTOR")** to **EMERALD INFRASTRUCTURE, LLC JOINT VENTURE WITH URIEL RENEWABLES, INC., ("GRANTEE")**.

WHEREAS, GRANTOR owns and controls that certain property approximately 26 miles from downtown El Paso and immediately east of the intersection of Darrington Road and Interstate Highway 10 (IH-10) operated as an active Municipal Solid Waste site known as the Greater El Paso Landfill ("GEPL Property"); and a site located at 13600 McCombs Street known as the McCombs Landfill ("McCombs Property") which currently an inactive Solid Waste site (collectively the two landfills are referred to herein as the "City Property"); and

WHEREAS, GRANTEE believes that the City of El Paso landfills may support LFG energy generation project(s) and is interested in developing Landfill Gas (LFG) energy generation projects at the City Property in order to improve air quality, eliminate methane gas, and potentially additional revenue streams or cost reductions for electricity.

WHEREAS, GRANTEE has requested that GRANTOR grant a temporary right of entry to on a portion of the City Property as described in Section 1 herein for GRANTEE's access to and use of the City Property in order to evaluate the feasibility of LFG projects at the City landfills, as further described herein; and

WHEREAS, GRANTOR consents to and approves of this entry onto a portion of the City Property by GRANTEE and its contractors and subcontractors, subject to the provisions noted herein, in order to complete the Work.

NOW THEREFORE, KNOW ALL BY THESE PRESENTS that GRANTOR, as the lawful owner or the lawful owner with control of the City Property, which includes the portion of the City Property depicted more fully in **ATTACHMENT 1**, which is attached hereto and incorporated herein for all purposes, for sufficient consideration as further described herein, the sufficiency of which is hereby acknowledged, hereby grants a temporary right of entry upon, over, and through a portion of the City Property described in **ATTACHMENT 1** as necessary to complete the Work.

IT IS EXPRESSLY UNDERSTOOD AND AGREED by the parties that:

1. Access to the portion of the City Property, further depicted in **ATTACHMENT 1 (GEPL Property)** and **ATTACHMENT 1-A (McCombs Property)** individually described as the "Temporary Access Area" or collectively as the "Temporary Access

Areas" to evaluate the feasibility of a landfill gas energy generation project on each of the sites.

The GRANTEE's work shall consist of a site visit and entry to each landfill to assess the landfill formation and operations, the LFG extraction system, the LFG infrastructure and current flaring system as further described in the Scope of Services, subject to the GRANTOR providing certain existing information to complete the LFG modeling prior to the site visit, all as set forth in **ATTACHMENT 2** attached hereto (collectively, the "Work"). The GRANTEE's entry is subject to the coordination with GRANTOR for each site visit and will comply with all appropriate City landfill, state and local laws, regulations and requirements, including, but not limited to, all laws, regulations and requirements of the Texas Commission of Environmental Quality laws.

GRANTEE agrees that it will conduct the Work without interfering with City landfill operations or the GRANTOR's use of the remainder of the City Property without the express written approval of the GRANTOR.

No construction or excavation on City Property is permitted through this instrument, except for the restoration of the City Property (if any) as set forth herein.

The Work shall require that GRANTEE will cooperate and coordinate with the GRANTOR's Director of Environmental Services Department (or designee GRANTOR's Representative) with regard to the Work required and provide routine updates as required, or in the event any hazardous materials are found, immediate formal notice to the GRANTOR, as provided in Section 13. GRANTEE will restore the Temporary Access Area to the same condition as existed before the Work.

GRANTOR agrees that it will provide access to the GRANTEE to the data affecting the Temporary Access Areas or the City Property set forth in **ATTACHMENT 2**, in order to facilitate GRANTEE's assessments and preparation of report(s). A copy of the completed GRANTEE Report shall be provided to the GRANTOR within 30 days from the date that the GRANTEE completes the site visits.

2. GRANTEE shall bear all costs and expenses associated with the work contemplated herein. All related work to be performed on the Temporary Access Area and the City Property shall be completed in a good, workmanlike manner and in accordance with all applicable federal, state, and local laws, rules, and regulations. GRANTEE shall obtain all applicable permits required for the completion of the Work contemplated herein.
3. As Consideration for the grant of the right to enter the Temporary Access Areas, GRANTEE shall be at no cost.
4. Following completion of the Work, GRANTEE shall restore the Temporary Access Areas and any affected portion of the City Property to substantially the same condition as found prior to commencement of said work, normal wear and tear excepted, and shall

immediately remove its equipment or other equipment from the Temporary Access Area and City Property. GRANTOR shall inspect the Temporary Access Areas at the completion of the site visits and accept the condition of the City Property and restoration work, if any.

Further, all work shall be completed in a manner to ensure that no damage shall be done to the Temporary Access Area or the City Property. Should any damage occur, GRANTEE shall be fully responsible for the repair of such damage.

4. Except for the temporary rights expressly granted by execution of this instrument and reasonable access, and/or ingress and egress to the property, GRANTOR does not convey any other right, title, or interest in the Temporary Access Area or the City Property herein.
5. Unless extended by written instrument signed by GRANTOR, the rights granted herein for a period of ninety (90) days and shall expire on February __, 2014 (the "Term"), without regard to whether the referenced related work has begun or been completed but may be extended by the City Manager for a period not to exceed an additional thirty (30) days. However, this Temporary Right of Entry may be extended or amended in writing, upon execution of both parties.
6. GRANTEE understands and agrees that in the event any federal or state regulatory agency assesses a civil penalty against the GRANTOR for any violation of applicable regulations, and such civil penalty shall be imposed as a result of any act or failure to act on the part of the GRANTEE, its agents, contractors, subcontractors, employees, invitees, or licensees, GRANTEE will immediately reimburse the GRANTOR in the amount of the civil penalty assessed.
7. In completing the referenced work, GRANTEE has represented it will use contractors and subcontractors. GRANTEE shall require that its contractors and subcontractors comply with the terms of this Right of Entry, including providing the insurance certificates as set forth in Section 6. In the event that additional contractors or subcontractors are deemed necessary by GRANTEE, GRANTEE shall provide written notice to the City Economic and International Development Director of the need for such additional contractor or subcontractor.
8. This instrument shall be governed, construed, and enforced in accordance with the laws of the State of Texas. Any controversy arising out of or connected with this Agreement or the underlying work shall be instituted and maintained in the courts of the State of Texas, County of El Paso.
9. Nothing in this Temporary Right of Entry shall be construed as creating the relationship of employer and employee or agent between any of the parties named herein.
10. GRANTOR, by granting this Temporary Right of Entry, does not warrant or represent

that any permission for any real property interest, use in the City Property, or other right shall be granted to GRANTEE. This instrument merely grants a temporary right of entry for the sole purpose of performing the Work.

The Parties expressly understand and agree that, in the event the GRANTEE's technical evaluation team determines that a LFG project is feasible and they want to pursue an LFG project on the City Property, then the GRANTEE may request and the GRANTOR's City Council may agree to enter into an exclusive bilateral negotiation period of between 4-6 months (the "Negotiation Period") to the extent permitted by law and provided that the parties can terminate negotiations earlier if there is a determination by one or both of the parties that it no longer will pursue the LFG project.

The Parties expressly understand and agree that the granting of any related easement or other such rights shall require the execution of additional instruments and/or proper legal actions, including the right to implement the LFG project.

11. All notices to be given under this Temporary Right of Entry shall be delivered by hand or given by certified or registered mail, receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

GRANTOR: CITY OF EL PASO
Attn: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

With copies to: City of El Paso
Attn: Director, Environmental Services Dept.
P.O. Box 1890
El Paso, Texas 79950-1890

City of El Paso
Economic and International Development Dept.
Attn: Real Estate Manager
P.O. Box 1890
El Paso, Texas 79950-1890

GRANTEE: Ramon Contreras, III, JD
Principal
Emerald Infrastructure
203 Jones Avenue
San Antonio, Texas 78215

Any notice so given shall be deemed properly delivered, given, served, or received on the

date shown on the return receipt for delivery, rejection, or undeliverable. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to the other in the manner set forth in this paragraph.

14. GRANTEE agrees that all information it obtains regarding the City Property and physical condition of the City Property ("Evaluation Material") will be used solely for the purpose of evaluating the feasibility of LFG projects at the City Property landfills and agrees that all such information will be kept confidential by GRANTEE except to the extent disclosure of such information (i) has been consented to by GRANTOR or (ii) is made to GRANTEE'S Representatives who need to know such information in connection with the proposed transaction. Notwithstanding anything to the contrary contained herein, GRANTOR acknowledges that GRANTEE is subject to the Public Information Act, Chapter 552, Texas Government Code (the "Act"). GRANTEE will maintain the confidentiality of the information to the extent permitted by law and agrees that, as required by the Act, it will notify GRANTOR if a request relating to such information is received. GRANTOR represents that it understands that the Act excepts disclosure of trade secret and confidential commercial information and that it will need to assert its own proprietary interest as a basis for nondisclosure.
15. GRANTEE shall not assign, sublet, sell, convey, or transfer all or any part of this Temporary Right of Entry in any way without the prior written consent of GRANTOR. Any attempt to transfer or assign without the prior written consent of GRANTOR shall be void and may result in the termination of this instrument.

(Signatures follow on next page)

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

TEMPORARY RIGHT OF ENTRY

Signature Page

EXECUTED THIS _____ DAY OF _____, 2014.

GRANTOR:
CITY OF EL PASO, TEXAS

Tomás González
City Manager

APPROVED AS TO FORM:

Bertha A. Ontiveros
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

Ellen Smyth, Director
Environmental Services Department

Cary Westin, Director
Economic & International Development

GRANTEE:
EMERALD INFRASTRUCTURE, LLC
JOINT VENTURE WITH URIEL
RENEWABLES, INC.

Ramon Contreras, III, JD
Principal

(Acknowledgments follow on next page)

ATTACHMENT 1

GEPL TEMPORARY ACCESS AREA

GRANTEE shall have temporary access to Cells 1-6 shown in the map below.

City of El Paso -- Greater El Paso Landfill

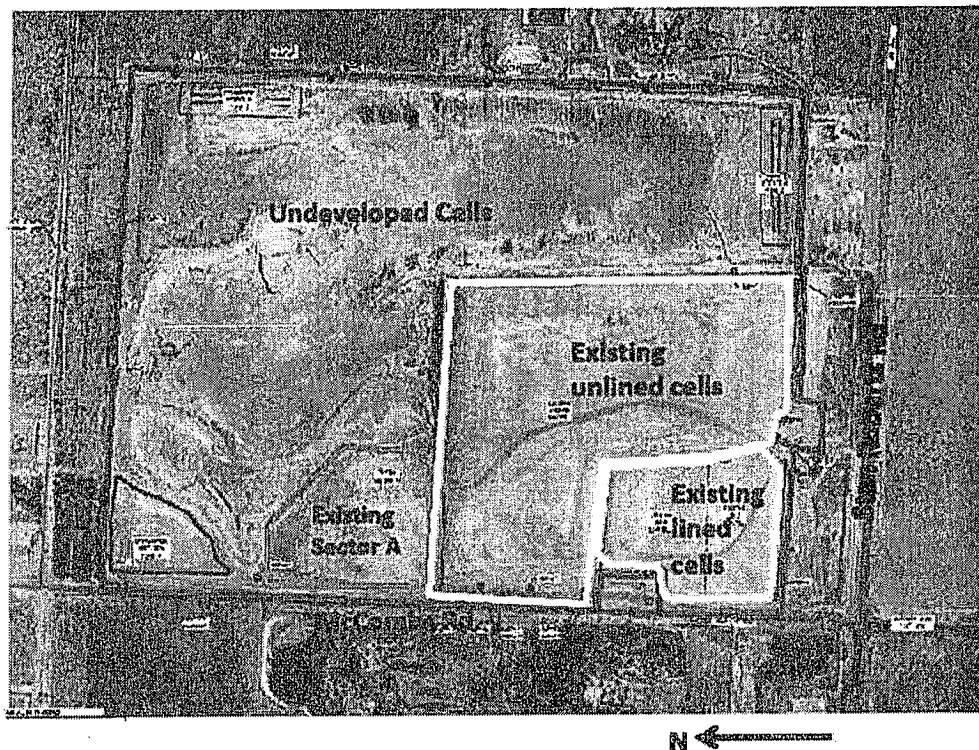


ATTACHMENT 1 - A

MCOMBS PROPERTY - TEMPORARY ACCESS AREA

GRANTEE shall have access to the areas described as Existing Unlined Cells and Existing Lined Cells below.

City of El Paso – McCombs Landfill



ATTACHMENT 2

SCOPE OF SERVICES

GRANTEE has requested a Right of Entry to the City Property to perform certain work at the Temporary Access Areas to evaluate the feasibility of landfill gas energy generation projects (the "Project") at the Temporary Access Areas.

Prior to such entry, the GRANTOR shall provide and GRANTEE shall review certain data affecting the Temporary Access Area or the City Property in order to facilitate GRANTEE's assessments and preparation of report(s).

A. RIGHT OF ENTRY TO VISIT SITE – TEMPORARY ACCESS AREAS.

GRANTEE will enter the City Property to perform the following scope of activities to evaluate the feasibility of the GRANTEE's Project at the Temporary Access Areas at the GEPL Property and McCombs Property. The GRANTEE's Site visit will assess the landfill formation and operations, the LFG extraction system, the LFG collection infrastructure and the current flaring system.

GRANTEE will schedule a site visit with the Director of the City of El Paso's Department of Environmental Services (or designee GRANTOR Representative) for entry onto GEPL Property and McCombs Property within 30 days after GRANTEE has received the data collection materials from GRANTOR. GRANTEE technical personnel will enter the City Property and Temporary Access Areas and coordinate the scheduling of the site visit with GRANTOR staff and Environmental services personnel at the landfill(s). GRANTOR will be available to meet with GRANTEE from time to time during the site visit to answer questions and be debriefed. GRANTEE personnel will not interrupt daily landfill operations.

During the visit GRANTEE technical personnel will gather data on landfill cells, cell lining, geology of the land, waste composition, waste processes and procedures and leachate levels. GRANTEE'S technical personnel will make direct field observations of the landfill cells, equipment and landfill operations as well as the existing LFG extraction system, including the current wells and pipes, collection system flaring equipment and other LFG components. In addition, GRANTEE will interview landfill personnel. After review of the data presented under Section B, if there are critical data elements that cannot be collected from existing data, then the GRANTEE technical personnel may devise additional data gathering on site to collect additional data. GRANTEE will provide a proposal for additional non-invasive site data gathering activities to GRANTOR Representative for their prior approval.

At no time will GRANTEE technical personnel excavate, drill, or disturb landfill structure as part of this initial site evaluation. GRANTEE personnel will abide by City and landfill operations safety and operations guidelines at all times.

The site visit is expected to take a total of 5-7 working days and will be carried out by GRANTEE'S team of approximately 3 to 5 technical personnel.

The GRANTEE'S primary point of contact for data collection ("GRANTEE Representative") and site visit activities shall be Ramon Contreras. The GRANTOR'S primary point of contact for data collection and site visit activities shall be John Garza ("GRANTOR Representative").

B. PRE- SITE VISIT DATA COLLECTION

Prior to entering the City Property under this Right of Entry and within 30 days from the execution date of this Agreement, the GRANTOR will provide existing information to GRANTEE to review in order for GRANTEE to complete the LFG modeling. The data collection effort will help to inform the GRANTEE technical team on the potential methane resource and focus site visit data collection activities.

The Representative for GRANTOR and GRANTEE will schedule a teleconference as necessary to discuss data collection effort and answer questions about the data and provide clarification as require. GRANTOR will notify GRANTEE if data is unavailable. If a data element is deemed critical and GRANTOR is unable to provide the information, then GRANTEE will with its own resources identify and pursue alternative means of data capture.

Specifically, the GRANTOR shall provide the following information which would be evaluated by GRANTEE:

1. General landfill operation:

- 1.1. Opening date
- 1.2. Closure date by cell (Real dates for cells already closed and projected date for cells under development)
- 1.3. Yearly amount of landfilled waste
- 1.4. Estimated projection of waste to be landfilled
- 1.5. Waste treatment previous to the landfilling (recycling, composting, etc...)

2. Landfill description:

- 2.1. Municipal Solid Waste (MSW)/other waste composition
- 2.2. Daily cover material
- 2.3. Any available local geology information.

3. Landfill cells

- 3.1. Contents
- 3.2. Location
- 3.3. Placement
- 3.4. Depth

- 3.5. Geology
- 3.6. Hydrology

4. Technical information

- 4.1. Landfill leachate (depth and concentration)
- 4.2. Geotechnical studies
- 4.3. Cell lining and closure system description.

5. LFG collecting system

- 5.1. Specification of wells and pipes
- 5.2. Chart of LFG network
- 5.3. Current state of LFG extraction network (wells, pipes)
- 5.4. Current state of leachate extraction system
- 5.5. Number and location of condensation purges

6. LFG extraction blower and flare

- 6.1. Specification, manufacturers
- 6.2. LFG flaring data
 - 6.2.1. Flaring volumes
 - 6.2.2. Gas characterization

C. LFG EVALUATION RESULTS – GRANTEE REPORT

GRANTEE will provide a written report to the GRANTOR, at no cost, documenting the activities undertaken through this Right of Entry and providing results from the evaluation. The report will be provided to the GRANTOR within 30 days after the conclusion of the site visits. Additionally, GRANTEE will brief GRANTOR personnel on the findings and recommendations of the evaluation. If additional data collection efforts are required, GRANTEE will provide a recommended scope of additional evaluation activities that are required.

