

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release is entered into between the STATE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION ("Commission"), a California state agency with its principal location at 1516 9th Street in Sacramento, CA; and ES ENGINEERING, INC. ("ESEI"), a company incorporated under the laws of the state of California and with its principal location at 12005 Lambert Street in Tustin, CA, and formerly known as ENVIRON STRATEGY CONSULTANTS, INC. or "ESCI," collectively referred to as the "Parties."

### **I. RECITALS**

- (1) On or about December 12, 2012, the Parties entered into Grant Agreement ARV-12-021 ("Grant Agreement"), whereby ESCI agreed to design and install a solid food waste processing system for use in an existing anaerobic digester to demonstrate production of biomethane, for conversion to natural gas, from solid food waste. The Commission agreed to pay ESCI \$1,211,370 in public funds for the work required by the Grant Agreement.
- (2) On or about January 23, 2014, the Parties amended the Grant Agreement to extend the term to June 30, 2016.
- (3) In or about December 2015, the Parties amended the Grant Agreement to extend the term to March 31, 2017.
- (4) In or about December 2015, the Parties amended the Grant Agreement to reflect ESCI's name change to ES Engineering, Inc. ("ESEI").
- (5) By letter dated January 26, 2017 ESEI asked the Commission to agree to termination of the Grant Agreement due to financial difficulty and difficulty negotiating with the site owner, Inland Empire Utilities Agency.
- (6) On or about February 17, 2017 a Stop Work Order was issued by Commission staff.
- (7) The Grant Agreement expired on March 31, 2017. ESEI completed some but not all of the work required by the Grant Agreement.
- (8) The Commission has paid ESEI \$711,937.78.
- (9) The Parties have now agreed to settle and resolve all disputes and claims the Parties have or may have related to the Grant Agreement ("Settled Claims").

## II. TERMS AND RELEASE

In consideration of the recitals listed above which are incorporated into this section by reference, and the mutual agreements set forth below, the Commission and ESEI agree as follows:

- (1) Settlement and Release. The Commission and ESEI hereby release and forever discharge each other, including any and all agents, officers, directors, employees, contractors, members, managers, attorneys, and their respective predecessors, successors, and assigns (known collectively as "Party's Related Personnel") from all past, present, and future claims, actions, causes of action, demands, liabilities, and obligations which are, were, or could have been asserted by any of them arising from the Grant Agreement, and which any of them has, had, or may have in the future against any of them related to the Grant Agreement.
- (2) Consideration and Performance. The Parties agree:
  - a. The Commission and the state of California have received value from upgrades ESEI performed to make an existing anaerobic digester capable of accepting waste feedstocks diverted from California landfills, and producing biogas.
  - b. ESEI accepts the \$711,937.78 that the Commission has paid it to date as payment in full.
- (3) No Admission of Liability. This Agreement represents a settlement of disputed claims and the payment, satisfaction, or performance of the consideration of this release described above shall not be deemed or construed as an admission of liability by the Commission or by ESEI or by anyone else in any way affiliated with the Parties.
- (4) Entire Agreement. This Agreement constitutes the entire agreement between the Parties. This Agreement supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties.
- (5) Controlling Law. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice of law rules. Any litigation arising out of or related to this Agreement shall be filed in the Superior Court of California, County of Sacramento.
- (6) Preparation of Agreement. This Agreement is the product of negotiation and preparation by and among the Parties and their respective attorneys. This

Agreement shall not be deemed prepared or drafted by one Party or another and should be construed accordingly.

- (7) Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect.
- (8) Enforcement of Agreement. The Parties agree that, notwithstanding any provisions of the Evidence Code to the contrary, this Agreement may only be introduced by them or their agents into a civil or administrative proceeding for the enforcement of the same.
- (9) Unknown claims. The Commission and ESCI acknowledge and agree that the release that each gives to the other Party on executing this Agreement applies to all claims for injuries, damages, or losses of every kind whatsoever, known or unknown that a Party may have against the other Party and the Party's Related Personnel arising from the Grant Agreement.

Each Party waives application of California Civil Code section 1542, as well as under any state or federal statute or common law principle of similar effect. Each Party further certifies that it has read the following provisions in Civil Code section 1542 and is aware of the meaning of its provisions and intends, by signing the release, to assume the risk of then-existing but as yet unknown claims relating to or arising from the Grant Agreement:

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.

and indicates that fact by signing its initials:

\_\_\_\_\_  
Initials on behalf of the Commission

\_\_\_\_\_  
Initials on behalf of ESCI

- (10) Modifications. No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all Parties.
- (11) Execution. This Agreement is effective upon signature by both Parties. The Parties agree that facsimile or scanned signatures and multiple signature pages are acceptable for purposes of executing this Agreement.

- (12) Warranty Of Authorized Signatories. Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the Party for whom he or she purports to sign
- (13) Counterparts and Electronic Signature. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement which shall be binding upon all Parties hereto, notwithstanding that all Parties' signatures do not appear on the same page.

**SIGNATURES OF THE PARTIES**

Signed \_\_\_\_\_

Dated: \_\_\_\_\_, 2017

STATE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION

By Drew Bohan, Executive Director

Signed \_\_\_\_\_

Dated: \_\_\_\_\_, 2017

ES ENGINEERING, INC.

By Jinghui Niu, President, Chief Executive Officer, Secretary, and Chief Financial Officer

**[END OF DOCUMENT]**

STATE OF CALIFORNIA

STATE ENERGY RESOURCES  
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION - RE: ES ENGINEERING, INC.

**RESOLVED**, that the State Energy Resources Conservation and Development Commission (Energy Commission) adopts the staff CEQA findings contained in the Agreement or Amendment Request Form (as applicable); and

**RESOLVED**, that the Energy Commission approves settlement regarding Agreement ARV-12-021, which awarded \$1,211,370 to ES Engineering, Inc. (ESEI) to demonstrate production of biomethane from solid food waste for transportation fuel; and

**FURTHER BE IT RESOLVED**, that the Executive Director or his/her designee shall execute the same on behalf of the Energy Commission.

**CERTIFICATION**

The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of a Resolution duly and regularly adopted at a meeting of the California Energy Commission held on October 11, 2017.

AYE: [List of Commissioners]

NAY: [List of Commissioners]

ABSENT: [List of Commissioners]

ABSTAIN: [List of Commissioners]

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Cody Goldthrite,  
Secretariat