



Memorandum

MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT

Reviewed by Wmm Date 2.13.09
General Manager

DATE: February 13, 2009
 TO: General Manager
 FROM: Assistant General Manager
 SUBJECT: Assignment of Sunland Garden Products Lease Agreement to Keith Day Trucking for Lease and Operation of Composting Operations at the Monterey Peninsula Landfill.

RECOMMENDATION: That the Board of Directors (1) Direct staff to terminate existing lease agreement with Sunland Garden Products (Sunland) and negotiate the balance of monies owed; and (2) Assign the lease with the same terms of the current Lease Agreement by and between the Monterey Regional Waste Management District (District) and Sunland to Keith Day Trucking (Keith Day) for an interim period concluding December 31, 2010.

BACKGROUND

At the Board meeting on December 19, 2008, the Board reviewed a letter from Sunland, dated November 19, 2008 (attached), requesting a forbearance of rent and an adjusted fee schedule for payment for composting. Staff did not recommend the request be granted and the Board agreed to not approve the request for forbearance of the rent from Sunland. The Board directed staff to "continue discussions" with Sunland for terms that may be mutually beneficial to both parties. Sunland stopped accepting compost feedstock material from the District in late October 2008 and since that time the District has made arrangements with Keith Day to have them accept a portion of the ground organic material for composting that Sunland used to accept. Sunland is currently delinquent on its lease since the transmittal of its letter to the Board in November. It is Sunland's opinion that the November 19th letter represented termination of the lease agreement, although the District received a letter, dated February 12, 2009 (attached) wherein Sunland requested termination of the current lease agreement effective March 1, 2009. Since November, staff has met several times with both Sunland and Keith Day to craft a solution that is acceptable to all parties concerned. District Counsel has been apprised of the developing situation and discussions.

DISCUSSION

Since the Board's direction in December, staff has been discussing alternatives to the current lease agreement between Sunland and the District. Sunland provided the District with an alternative that would remove itself from the current month-to-month lease agreement, bring Keith Day into the operation at the District, and allow Sunland to purchase finished compost from Keith Day. Keith Day is in fact the company who has taken all the dedicated green waste for composting from our operations since Sunland stopped accepting material. The amount outstanding owed by Sunland is approximately \$10,000. Staff will be working with Sunland to conclude negotiations on the amount owed in a timely fashion.

Assigning the operations for the short-term to Keith Day, while the District continues to pursue a regional compost Request For Proposals (RFP), would assure the compost feedstock material continues to move as part as the District's day to day operation, and it will assure that Sunland is delivered a quality compost product that it can bag and supply to Orchard Supply as it has been doing for many years. Keith Day would pay rent and would pay to purchase the compost feedstock material from the District. Staff believes this recommendation to enter into a short-term (18-22 months) lease agreement with Keith Day, would allow for Keith Day to purchase selective assets and inventory from Sunland, giving Sunland some chance to re-coup some of the current losses, and pave the way for settlement to the amount owed to the District for rent.

Additionally, it would allow for Keith Day, who is currently purchasing the green waste material and trucking it off site, to consolidate some of its operations here at the District site and potentially save on fuel and green house gas emissions from longer distance trucking. This lease assignment to Keith Day would fit within the District's adopted purchasing policies to do business "whenever possible within the District boundaries" (7/91) and also fit within the revised "Green Purchasing and Sustainable Practices Policy" adopted in December of 2006 which states, "it is the policy of the MRWMD to... reduce greenhouse gas emissions".

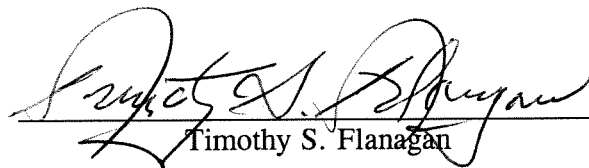
Alternatively, if Keith Day is not assigned this short-term lease agreement, District staff would most likely have to pursue some form of collection process with Sunland, draft, develop, and issue a RFP for a lease for a prohibitively short-term time frame with potentially another company that would have to mobilize and come onto the District's property. This would optimistically take several months and leave the District with no rental income during this period. Keith Day is poised to take over operations on the District's site right away under the same basic lease terms of the current Sunland agreement.

CONCLUSION

Staff therefore recommends that the Board authorize a short term lease agreement with Keith Day Trucking, for a period not to extend past December 31, 2010.

STRATEGIC PLANNING IMPACT

- A3. Evaluate effectiveness and efficiency of existing District operations and recommend changes as appropriate.
- B3a. Identify and evaluate purpose, potential uses and partners in order to develop the site master plan.


Timothy S. Flanagan



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12 February 2009

Mr. William Merry
General Manager
Monterey Regional Waste Management District
Marina, CA

Dear William,

I hope this letter finds you well. Also, thank you and your staff for meeting with me.

As you know Sun Land Garden Products has been trying to find a solution to mitigate the losses we have been sustaining from our composting business and that would provide us the high-quality compost we need for our retail business. We have found a good one and I wanted to share it with you.

Sun Land will stop daily operations of and at our composting facility on the 60 acres at the District effective March 1st, 2009. At that time, the Keith Day Company, a reputable, experienced composter, has agreed to take over the lease for the same terms starting in March through December 31st, 2010.

If you have any questions, please call at 724-6500.

Thank for your consideration.

Best wishes,

Juan C. Batista

“Life comes from the soil...”
President Wilson, 1913



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19 November 2008

William Merry
General Manager
Monterey Regional Waste Management District
Marina, CA

Dear William,

I hope this letter finds you well. Also, thank you and your staff for meeting with us yesterday.

As we discussed, economic conditions are very difficult for everyone and particularly tough for Sun Land's composting operation. Our composting operation is and has been losing money for as long as we've been running Sun Land and, therefore, we need to take steps to change that. We shared some of our ideas to take advantage of the processing green waste into compost and marketing and selling the compost. These ideas will be detailed in a plan that, in general, consists of three parts: 1) revenue sharing, 2) sharing tipping fees, and, eventually, 3) re-locating Sun Land from Watsonville to Marina.

In the meantime, we need to take some steps immediately to mitigate our losses. We are asking MRWMD to 1) forbear on our rent, the fees to purchase the raw materials (green waste), and costs for water, and 2) sharing with Sun Land \$17.50/ton of the \$22.00/ton tipping fee collected from the green waste brought to MRWMD.

I'm requesting the forbearance start with this month and the tipping fees start with December, 2008. I'm also requesting that we continue the two aforementioned steps until the MRWMD accepts a proposal from us or another vendor in response to your upcoming RFP.

If you have any questions, please call at 724-6500.

Thank for your consideration.

Best wishes,

Juan C. Batista

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