

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Environmental Resources

BOARD AGENDA # *B-10

Urgent

Routine

AGENDA DATE April 28, 2009

CEO Concurs with Recommendation YES NO

4/5 Vote Required YES NO

(Information Attached)

SUBJECT:

Approval to Issue a Notice of Intent to Exercise the Existing Six-year Contract Extension Option with Covanta Stanislaus, Inc., and Continue Ongoing Negotiations

STAFF RECOMMENDATIONS:

1. Upon concurrence of the Modesto City Council, approve the issuance of a Notice of Intent to exercise the existing six-year contract extension with Covanta Stanislaus, Inc., and authorize staff to continue ongoing negotiations.
2. Authorize the Chief Executive Officer to sign the Notice of Intent.

FISCAL IMPACT:

The Waste-to-Energy project is an enterprise fund that is fully funded through the collection of tipping fees together with electric revenues which offset facility costs. Financial analyses of the Covanta Stanislaus, Inc., March 23, 2009, offer reflects that the Contracting Communities would be required to make significant increases to the per ton tipping fees in order to avoid a multi-million dollar shortfall for the project at the end of an additional 10-year project term. In contrast, the Contracting Communities have

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BOARD ACTION AS FOLLOWS:

No. 2009-271

On motion of Supervisor Monteith, Seconded by Supervisor Grover
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Grover, Monteith, and Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None


1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

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FISCAL IMPACT: (Continued)

proposed offers that would require a modest increase in per ton tipping fees in order to produce a positive cash balance at the end of an additional 10-year project term.

DISCUSSION:

Stanislaus County and the City of Modesto, hereinafter referred to as the "Contracting Communities," are nearing the end of a 20-year Service Agreement (contract) with Covanta Stanislaus, Inc. (Covanta), the owner and operator of the waste-to-energy facility located adjacent to the Fink Road Landfill in Crowslanding, California. The facility annually transforms approximately 243,300 tons of refuse per year into electricity which diverts significant amounts of waste from landfill disposal while providing 10% credit toward the 50% waste diversion mandate that each jurisdiction in the state is required to meet.

The existing Agreement will end on January 1, 2010, and staffs of Stanislaus County and City of Modesto have been negotiating with representatives of Covanta over the past year to discuss the possible terms of an amended Agreement. During this period, several offers and counter offers have been presented and while the concept of a 10-year extension with the possibility of two additional five-year extensions to the term has been found to be agreeable thus far by all parties, many of the contract terms requested by Covanta have not been viewed as favorable for local rate payers, and in fact, could result in significant per ton tipping fee increases. On March 23, 2009, representatives from Covanta presented yet another counter offer, however, the terms were still found to be less than favorable.

The existing Agreement contains a provision for a six-year extension (through January 1, 2016), during which all current contract provisions remain unchanged. This six-year extension option, however, must be exercised in writing on or before July 1, 2009, or six months before the end of the Agreement. Based upon this, staff recommends that it is in the best interest of local rate payers to serve the written Notice of Intent to Covanta to exercise the six-year extension now, prior to the July 1 deadline, but to also continue ongoing negotiations. Failure to provide the notice would cause this option to be forfeited by the Contracting Communities. Because this is a joint City-County project, the Modesto City Council must also concur with this recommendation and will be considering the same option on their Council agenda for April 28, 2009.

POLICY ISSUE:

The Board of Supervisors should determine if authorizing staff to issue a Notice of Intent to Covanta Stanislaus, Inc., to exercise the six-year contract extension and continue ongoing negotiations is consistent with the Board's priorities of a safe

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community, a healthy community, a well-planned infrastructure system, and the efficient delivery of public services.

STAFFING IMPACTS:

There are no staffing impacts associated with this item.

**NOTICE OF EXTENSION PURSUANT TO SECTION 11.01
OF THE SERVICE AGREEMENT**

TO: Covanta Stanislaus, Inc.
(as successor to Ogden Martin Systems of Stanislaus, Inc.)
40 Lane Road
Fairfield, New Jersey 07004
Attention: President

REFERENCE IS HEREBY MADE to the Amended and Restated Agreement for the Supply and Acceptance of Solid Waste, dated as of June 1, 1986, as amended by Amendment No. 1 to the Agreement dated September 27, 1988, Amendment No. 2 to the Agreement dated May 17, 1990, Amendment No. 3 to the Agreement dated February 2, 2000 and Amendment No. 4 to the Agreement dated May 21, 2001 (collectively the "Service Agreement"), among Ogden Martin Systems of Stanislaus, Inc. as successor to the Stanislaus Waste Energy Company (the "Company"), the County of Stanislaus (the "County") and the City of Modesto (the "City").

Pursuant to Section 11.01(b) of the Service Agreement, the City and County, being the Contracting Communities, hereby give notice that they elect to extend the term of the Service Agreement to January 1, 2016.


Date: May 18, 2009

APPROVED AS TO FORM:




Stanislaus County Counsel

COUNTY OF STANISLAUS

By: 


Richard W. Robinson,
Chief Executive Officer

ATTEST:

By: 

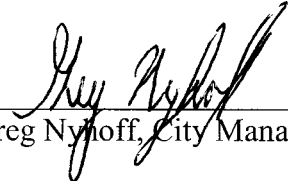
Christine Ferraro Tallman,
Clerk of Board of Supervisors

APPROVED AS TO FORM:



Susana Alcala Wood, City Attorney

CITY OF MODESTO

By: 

Greg Nymhoff, City Manager

ATTEST:

By: 

Stephanie Lopez, City Clerk

ACKNOWLEDGED:

COVANTA STANISLAUS INC.

By: 