



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: November 18, 2008
TO: Mayor and Councilmembers
FROM: Environmental Services Division, Finance Department
SUBJECT: Status Of Conversion Technology Project

RECOMMENDATION: That Council:

- A. Hear a report from staff on the status of the joint effort between the City of Santa Barbara and the County of Santa Barbara to investigate the feasibility of siting a facility to convert residual municipal solid waste (MSW) into energy at the County-owned and -operated Tajiguas Landfill;
- B. Approve the issuance of a letter of interest, signed by the Mayor, to the Multi-Jurisdictional Solid Waste Task Group's Conversion Technology Sub-Group, conveying the City of Santa Barbara's intent to commit its residual MSW to the proposed conversion technology (CT) facility; and
- C. Approve a cost-sharing arrangement among participating jurisdictions to fund costs associated with the preparation of a request for proposals (RFP) from CT vendors, including the procurement of: (1) a waste characterization study of the MSW currently disposed at Tajiguas Landfill, (2) a geo-technical study of the potential location for a CT facility at Tajiguas, and (3) outside legal counsel to assist in the development of key terms and conditions to be included within the RFP.

EXECUTIVE SUMMARY:

Over a year ago, the City and County of Santa Barbara directed their respective solid waste staff to work jointly on a project to evaluate the feasibility of siting a conversion technology (CT) facility that would convert both jurisdictions' residual MSW into energy. This would have the primary benefit of diverting material from the County-owned and -operated Tajiguas Landfill, thereby extending its useful life. At current disposal rates, Tajiguas is estimated to run out of permitted capacity in 2022 or 2023.

With the approval of the City Council and County Board of Supervisors, City and County staff hired a consultant, Alternative Resources, Incorporated (ARI) to assist in the completion of a CT Feasibility Study (Study), development of a list of qualified vendors, and the preparation of an RFP.

The results of the Study prepared by ARI were presented to the City Council and County Board of Supervisors in May 2008. The Study identified eight vendors that were determined capable of meeting the minimum project requirements of the City and County. The project requirements contain specific project goals and evaluation criteria initially developed by the Multi-Jurisdictional Solid Waste Task Group, and recently refined and approved by the City Council and County Board of Supervisors.

In addition to completing the feasibility study and identifying qualified CT vendors, staff has been engaged in an extensive outreach effort that has included presentations to a number of business, regulatory, and environmental organizations and groups. Additional outreach will continue to be an ongoing component of this project, in particular as we move into the vendor evaluation and selection phase.

The main focus now is the preparation of an RFP, expected to be issued to the eight pre-qualified vendors in March 2009. This effort involves a number of key steps and decisions, including the completion of technical studies, identifying other agencies that may be interested in committing their waste stream to the project, deciding on the form of ownership of the facility, and determining the contractual structure and approach between the CT vendor and participating agencies.

The core project team consists of staff from the City's Environmental Services Division and the County's Resource Recovery and Waste Management Division, as well as the project consultant, ARI. However, the project team has been working closely with elected officials from the Santa Barbara City Council, the County Board of Supervisors and other jurisdictions through the City's Solid Waste Committee meetings, which have served as the forum for many of the discussions. In addition, staff from other affected jurisdictions has become increasingly engaged in this effort as we have worked on key elements of the RFP. While the forum for these meetings has been the City's Solid Waste Committee, it has now shifted to a previously created group called the Conversion Technology Sub-Group of the Multi-Jurisdictional Solid Waste Task Group.

The purpose of this report is threefold:

- (1) To provide City Council with a status of the CT project, and more importantly, to present the recommendations of the CT Sub-Group recap regarding facility ownership and contract administration. In short, the recommendations are that the vendor own, finance and operate the facility, with the participating agencies retaining the rights to take over ownership at some specified period of time. In addition, a Joint Powers Agreement between participating agencies would be created through which the contract would be administered.
- (2) Recommend the issuance of a letter, signed by the Mayor, to the Conversion Technology Sub-Group indicating a commitment of our waste stream to the project. Each prospective partner has been asked to have a similar letter

provided to the CT Sub-Group in order to demonstrate a strong commitment on the part of affected agencies to this project, thereby ensuring a strong response to the RFP;

- (3) To approve a cost sharing arrangement whereby each participating agency, including the City, will reimburse the County for a share in costs to be incurred in connection with the preparation of the RFP. These costs will be incurred in part for technical studies as well as for legal services.

DISCUSSION:

In connection with the completion of an RFP, several items must be completed prior its expected issuance in March 2009, some of which are currently underway. These items were presented and discussed at a Conversion Technology Meeting on August 18th and 20th. Attendees included elected officials and staff from the County of Santa Barbara, and the cities of Goleta, Buellton, and Santa Barbara.

The status of each of these items is discussed below.

Ownership, Financing and Operation of the Proposed CT Facility

Two basic options (models) were presented and considered by the elected officials:

1. Public Model – Public Ownership and Financing, with Public or Private Operation
2. Private Model – Private Ownership and Financing, with Private Operation

In the end, a hybrid of the two is being recommended. Under this approach, the primary elements of the private model will be used, whereby the vendor would own, finance and operate the facility; however, through strong contractual terms and conditions, some of the attributes of a public model will be added, such as ensuring safe working conditions, appropriate maintenance standards, and employee compensation. This will also include step-in rights whereby the agencies will retain the rights to assume ownership either at the end of the contract, or at some specified period prior to that date.

The advantages and disadvantages of the basic options are provided below.

Public Model: Some of the potential benefits include having more control over the operations of the facility to ensure, for example, a safe and secure working environment, appropriate compensation of employees, and proper maintenance of the facility. The potential disadvantages of this approach include a higher degree of exposure if the facility does not perform as intended. Specifically, the participating

agencies would own the facility, issue its own long-term debt to finance its construction, hire its own employees (including scientists, chemists, engineers, etc.), and operate the facility. Due to the highly complex nature of the technologies involved with these facilities, the City would be assuming a significant amount of risk in the case of operational failure, along with the large amount of long-term financing that would be required.

Private Model: Under this model, the vendor would own, finance, and operate the facility. One of the potential advantages to this model is that, in order to obtain private financing, the vendor would likely undergo a greater degree of scrutiny by the financing partner to ensure the project is financially feasible and viable. In addition, since these technologies are fairly unique to the vendor, the selected vendor would bring the required level of expertise to operate the facility – expertise that the participating agencies may have difficulty finding in the general labor market.

Contracting Approach and Administration

One of the main goals in the current phase of the CT project is to create a high-quality RFP so that the short-listed vendors are motivated to not only respond, but to prepare a correspondingly high-quality proposal. The quality of an RFP is strengthened by both a demonstrated commitment on the part of the participating agencies and the structure under which the agencies will contractually relate to one another as well as the CT vendor.

With this in mind, three basic options were presented to the elected officials

Option #1 – *Uniform Terms and Conditions and Joint Powers Agreement*

This option, recommended by the elected officials, addresses two related elements – the contractual relationship between the CT vendor and participating agencies, and the manner in which the contract would be administered.

The participating elected officials supported staff's recommendations that uniform terms and conditions applicable to the CT vendor be developed and used by all agencies. Under this approach, each partnering agency will be charged the same rate pursuant to uniform terms and conditions. However, each agency would enter into separate *waste supply agreements* specifying their respective commitments of waste to be processed by the CT facility.

The elected officials discussed the creation of a Joint Powers Authority, a separate legal entity that would contract directly with the CT vendor, thereby shielding each participating agency from the actions of others. However, the elected officials ultimately considered the creation of a separate legal entity to be unnecessarily

burdensome since it would require the creation of a board of directors and staff. They also believed that such an approach may dilute the control that individual agencies have over important decisions relating to the operation of the facility.

With regards to contract administration, elected officials supported the creation of a Joint Powers Agreement (JPA) – not to be confused with a Joint Powers *Authority* as previously discussed - that defines the roles, responsibilities and rights of each agency in relation to the CT vendor and among each other. It would also establish the mechanisms for addressing issues, and concerns and unforeseen events affecting the contractual relationship of any party with the CT vendor. Under this approach, the County would likely be assigned the day-to-day responsibility for administering the contract on behalf of all agencies; and larger issues that arise would be considered and addressed by a committee made up of representatives from participating agencies

Option #2 - *Independent Contracts with the CT Vendor*

Under this option, each agency would contract directly with the CT vendor and be responsible for administering the contract and monitoring the vendor's performance. While this shields an individual agency from the actions of other participating agencies, vendors would likely view this approach unfavorably as it potentially would require the vendor to meet disparate terms and conditions. Staff does not consider this approach advisable since it may work against a uniform, regional approach to handling its waste stream, which is one of the key objectives.

Option #3 - *One Contract Between the CT Vendor and a Designated Lead Agency*

Another option considered was to have one lead agency (for example the County of Santa Barbara) contract directly and exclusively with the CT vendor on behalf of all participating agencies. In turn, the County would enter into some type of agreement with each of the agencies to reimburse the County for each agency's share of costs for CT processing and contract administration.

Although this approach would likely be viewed favorably by CT vendors, it puts an undue legal and, potentially, financial burden on the designated lead agency. Specifically, with this option, the CT vendor would likely seek recourse and/or remedy directly from the lead (contracting) agency in the case of default or breach of contract of any participating agency.

Technical Studies

In connection with the preparation of the RFP, the County will need to conduct two technical studies. The first is a waste characterization study to determine the composition of the waste stream currently being disposed at the Tajiguas Landfill. This waste stream would become the feedstock for whatever CT facility is implemented and, therefore, its composition and energy potential must be provided to CT vendors as part of the RFP. This will allow them to calculate the anticipated energy output and revenues from the sale of recoverable materials and the energy itself.

The City of Santa Barbara and City of Goleta will be “piggy-backing” on this contract to include City-specific waste characterization studies by sector. The last waste characterization study for the City of Santa Barbara was completed in 2003. Thus, in addition to sharing in the cost of the County-wide study for the purposes of the RFP both cities will reimburse the County for their costs associated with this scope of work.

The second study is a geo-technical analysis of the 6-acre site at Tajiguas upon which the CT facility is expected to be built. The study will determine the site’s suitability and stability for such a facility.

These two technical studies are currently being scoped out and are expected to be completed by January of 2009. The results of these studies will be incorporated into the RFP.

Legal Assistance

Lastly, outside legal counsel will be hired to assist the project team in developing key terms and conditions that will not only be included in the RFP but also will be incorporated into the contract with the selected vendor. Although legal staff from participating agencies will play a significant role in this project, outside legal counsel with expertise in solid waste contracts and waste to energy facilities will be required to ensure a strong RFP and final contract are prepared.

Participating Agencies and Projected Volume of Waste Stream to be Committed

As previously indicated, there are eight CT vendors on the pre-qualified list that will receive the RFP when issued. These vendors are each expected to take 4-6 months, and incur several hundred thousand dollars in costs, to prepare a response to the RFP. While we have identified eight qualified vendors, the actual number of responses from these eight will be affected by the level of demonstrated commitment on the part of the participating agencies, as previously noted.

Staff has been advised by our consultants that this project is financially viable, and CT vendors will respond, only if there is a *demonstrated* commitment representing at least

60% of the current 210,000 tons per year of residual MSW disposed at Tajiguas. With the County and City of Santa Barbara representing over 60% of the waste stream, we believe we have met this threshold. Thus, to the extent that other agencies agree to participate up front as partners, the RFP would be that much stronger and would further ensure a good response to the RFP. As discussed below, a letter of intent will provide prospective vendors the demonstrated commitment that the participating agencies are indeed serious about this project.

In addition to strengthening the RFP, it will be important to identify other agencies beyond the City and County of Santa Barbara that are interested in committing their residual MSW so that vendors know what level of waste stream will need to be processed for the appropriate sizing of a CT facility. Since the facility is not expected to be operational until 2014, each agency will need to analyze their respective diversion and disposal trends to estimate what their waste stream volume will be in approximately six years, and the ensuing six years, through 2020. City of Santa Barbara Environmental Services staff has already begun this analysis and has presented preliminary data to the Solid Waste Committee. Projecting waste stream levels out to 2014 will be not be easy and will require a number of assumptions. However, such an analysis is nonetheless a very important exercise. City staff will be sharing their analysis with other potential partners to encourage a consistent approach to developing waste projections among participating agencies.

LETTER OF INTEREST

In order to demonstrate to potential CT vendors a commitment to this project, a Letter of Interest has been drafted; and potential partners have been encouraged to have it approved by their City Councils and signed by their respective Mayors. The letter in no way binds agencies to this project; thus, if at any time it is determined that the project fails to meet any of the approved project goals and objectives (e.g., impacts rate payers beyond the level targeted), agencies can choose not to participate.

If approved, a Letter of Interest (Attachment 1) will be signed by the City of Santa Barbara Mayor and, subject to the approval of the City Council, will be sent to the MJSWTG's Conversion Technology Sub-Group. The letter indicates the City's support for the project and its underlying goals; and the City's intent to commit its residual MSW if all of the project goals are fulfilled, including the estimated impact to ratepayers.

COST SHARING ARRANGEMENT

As previously discussed, the County will be contracting with outside firms to complete two technical studies - a waste characterization study and a geo-technical study of the proposed site. In addition, outside legal counsel with experience in related solid waste

projects will be hired to assist in the development of key terms and conditions and performance standards. Internal legal counsel of participating agencies will still have an integral role in this phase.

The costs associated with the technical studies are estimated at \$100,000. Costs for outside legal counsel are estimated at \$75,000. Thus, total costs for professional services are estimated at \$175,000. All of these costs will be shared by participating agencies under an agreed-upon formula using volume of waste stream disposed at Tajiguas. Since the City's waste stream at Tajiguas represents 43% of the total, the City's share of the costs is expected to be approximately \$75,000.

BUDGET/FINANCIAL INFORMATION:

The City will share in the costs of the two technical studies and the hiring of outside legal counsel in connection with the preparation of an RFP for the CT project. At this point, the City's share of the costs is estimated at \$75,000, plus an additional \$25,000 is estimated to expand the county-wide waste characterization to include a city-specific study. These costs may be funded from a combination of existing appropriations for CT and cost savings in other accounts. However, if these appropriations are insufficient, staff will bring this item back to the City Council with the final costs and a recommendation to increase appropriations, as necessary.

SUSTAINABILITY IMPACTS:

At this point, the project is limited to efforts associated with the preparation of an RFP. However, if the project moves forward, the end result will not only include a significant reduction in the volume of MSW going to the Tajiguas Landfill, but it will also result in the ongoing production of alternative energy created from processing the materials through a CT facility.

ATTACHMENTS: Letter of Interest
PREPARED BY: Robert Samario, Assistant Finance Director
SUBMITTED BY: Robert D. Peirson, Finance Director
APPROVED BY: City Administrator's Office

November 18, 2008

To the Conversion Technology Sub-Group:

We, the elected representatives of the City of Santa Barbara, have issued this letter of support for the Conversion Technology Sub-Group and its development of a "Request for Proposals" for a conversion technology (CT) facility to be established at the Tajiguas Landfill.

We also support the following goals of this project.

1. **Increase Diversion of Post-Recycled MSW for Affected Jurisdictions.** Any considered CT must increase the diversion of post-recycled MSW intended for landfill disposal through pre-processing (or post-processing) and/or conversion of post-recycled MSW into beneficial products such as energy, fuels, or other marketable products (e.g., compost, aggregate, metals).
2. **Reduce Environmental Impacts of Landfilling MSW.** Any considered CT must limit and/or mitigate environmental impacts of landfilling MSW, including but not limited to water quality and greenhouse gas emissions.
3. **Provide Financial Feasibility and Sustainability.** Any considered CT must have capital and operating costs that result in a feasible, cost-competitive tipping fee, with long-term financial stability that would limit financial impacts to affected ratepayers.
4. **Produce Green Energy and Other Marketable Products.** Any considered CT must include a component of green energy and/or fuel production, along with other marketable products, as applicable, such as recovered metals and compost.
5. **Provide a Humane Work Environment.** The project will be dedicated to maintaining humane working conditions, and will not consider any CT that is deemed to have an unjust or unsafe impact on workers.
6. **Result in a Long-Term Waste Disposal Plan.** Any considered CT must result in a long-term waste disposal alternative for participating jurisdictions within Southern Santa Barbara County (with a 20 year minimum lifespan required).

If all of the above goals are fulfilled then it is the intention of the City of Santa Barbara to commit our community's solid waste to this project.

Sincerely,

Marty Blum
Mayor

Cc: Jim Armstrong, City Administrator
Bob Peirson, Finance Director
City Clerk's Office