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| COUNTY OF SONOMA AGENDA ITEM SUMMARY REPORT | | Clerk of the Board Use Only | |
| | | Meeting Date | Held Until |
| | | ___/___/___ | ___/___/___ |
| | | Agenda Item No: | Agenda Item No: |
| Department: Transportation and Public Works | | <input type="checkbox"/> 4/5 Vote Required | |
| Contact: Susan Klassen | Phone: 565-2231 | Board Date: 08/05/09 | Deadline for Board Action: |
| Agenda Short Title: Potential Divestiture of Solid Waste Assets | | | |
| Requested Board Actions: It is recommended that the Board of Supervisors (Board) hold the workshop and receive comments from stakeholders and the public on the Divestiture project and the alternatives. The Board is not requested to take any action. | | | |
| CURRENT FISCAL YEAR FINANCIAL IMPACT | | | |
| <u>EXPENDITURES</u> | | <u>ADD'L FUNDS REQUIRING BOARD APPROVAL</u> | |
| Estimated Cost | \$ -0- | Contingencies (Fund Name:) | \$ |
| Amount Budgeted | \$ -0- | Unanticipated Revenue (Source:) | \$ |
| Other Avail. Approp (Explain below) | \$ _____ | Other Transfer(s) | |
| Additional Requested | \$ -0- | Add'l Funds Requested: | \$ |
| Explanation (if required): | | | |
| Prior Board Action(s): October 14, 2008: Board received proposals and gave direction to staff. June 10, 2008: Board authorized Issuance of RFP and took associated actions. May 15, 2008: Board received a status report on the Divestiture project. November 6, 2007: Board authorized Issuance of RFQ and took associated actions. May 22, 2007: Board authorized Development and Release of RFI and RFQ. April, 2006: Board accepted 2006 BVA report and gave direction to staff to pursue divestiture. | | | |
| Alternatives - Results of Non-Approval: No action is requested by the Board. | | | |

Background:

In May 2003, constituents of concern were discovered in groundwater collected immediately under the lined portion of the Central landfill. In August 2004, the Regional Water Quality Control Board adopted a revised permit prohibiting further expansion of the Central landfill. In October 2005, the Central Landfill stopped receiving waste for disposal and all waste started being transported out of county for disposal. All remedial efforts to address this issue have been completed, and no contaminated groundwater has ever left the landfill site.

In April 2006, the Board accepted the "Reassessment of Long-Term Solid Waste Management Alternatives Report" prepared by Brown, Vence & Associates (BVA). The BVA report analyzed various options for long term management of the County's solid waste. Based on the BVA report recommendations and stakeholder comments, the Board directed staff to pursue the option of divestiture ; selling of the County's solid waste assets and privatizing operations and solid waste management or, if not feasible, to close the Central landfill and continue to outhaul the County's waste.

Potential Benefits of Divestiture:

Potential benefits to be derived through divestiture of the County's solid waste assets include the following:

- Provides long term disposal for county and cities' waste;
- Provides the best opportunity to re-establish in-county disposal option;
- Eliminates truck outhaul;
- Reduces greenhouse gas emissions;
- Provides self-sufficient and sustainable system;
- Achieves competitive and stabilized pricing (tip fees) over the long-term;
- Provides increased diversion programs through establishment of a Material Recovery Facility (MRF) at the Central Landfill;
- Provides best opportunity to address closure/post-closure funding obligation and potential future liabilities for Central landfill and the other seven closed landfill sites.

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Attachments: Attachment A - Summary of the Divestiture Purchase and Sale Agreement; Attachment B - Summary of Long-term Solid Waste Management Alternatives.

On File With Clerk: RFI, RFQ, RFP, and final draft PSA and various supporting documents, BVA report, Update to BVA Report by HDR. These materials are also available on the Department's website at www.sonoma-county.org/tpw.

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| Board Action (If other than "Requested") _____ _____ _____ | Vote: |
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Process:

A Divestiture Project Team was established and a plan was developed to pursue the potential divestiture of the County's solid waste assets. The Divestiture Project Plan included the following phases:

1. Phase 1 – Request for Information (RFI)
2. Phase 2 – Request for Qualifications (RFQ)
3. Phase 3 – Industry review, public outreach, and development of Request for Proposals (RFP)
4. Phase 4 – Evaluate proposals and select winning proposal

Phase 1 - In May 2007, the Board authorized staff to develop and release a Request for Information (RFI). Consistent with Board direction, staff, working with a team including expert counsel and financial advisors, issued the RFI on July 27, 2007. Eight responses were received on August 24, 2007. The eight respondents were: USA Waste, Allied Waste, Waste Connections Inc., North Bay Corporation, Zanker Resource Management, Norcal Waste Systems Inc., Republic Services Inc., and Landfill Energy Systems. Based on the number of responses to the RFI, the County chose to go forward with an RFQ.

Phase 2 - On November 6, 2007, the Board authorized staff to issue a Request for Qualification (RFQ). The RFQ was issued and on January 8, 2008, Statements of Qualifications (SOQ) were received from seven of the eight initial responders (Landfill Energy Systems did not submit an SOQ). An SOQ was also received from Solid Waste of Willits. SOQs were evaluated based on (i) financial capacity (e.g., ability to fund and complete the purchase); (ii) technical/operational capability (e.g., ability to permit, operate and manage solid waste assets); (iii) experience owning and operating solid waste assets; (iv) approach to the divestiture. Based on an evaluation of the SOQs, the following companies were shortlisted and were allowed to continue in the process: USA Waste, Allied Waste, Waste Connections Inc., and Republic Services, Inc.

Phase 3 - In January 2008, staff began Phase 3 of the divestiture project. Phase 3 included: 1) the development and issuance of a Request for Proposal (RFP) and Purchase and Sale Agreement (PSA) and 2) Public Outreach.

1) RFP and PSA Development - The Divestiture Project Team worked closely with short-listed proposers to ensure a fair and competitive process which would ultimately result in proposals that represented the best value to the County. The process included a series of individual meetings with each short-listed proposer to:

- improve the proposer's understanding of the County's goals, and how they were reflected in the business structure contained within the RFP and PSA;
- facilitate due diligence activities conducted by the proposers;
- maximize the value and quality of the proposals;
- incorporate input and ideas from the short-listed proposers into the RFP and PSA; and
- minimize the complexity of post-selection negotiations.

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Staff received substantial input from proposers, which was incorporated in the RFP and Draft PSA. On June 10, 2008, the Board directed that the RFP and PSA be released to the short-listed proposers for their final input and consideration. Through additional industry review meetings conducted with proposers in the summer of 2008, the County continued to revise, modify and change the RFP and PSA, through the issuance of six Addenda to the RFP and PSA.

2) Public Outreach – During the spring of 2008 and concurrent with development of the RFP and PSA, the County conducted outreach to various stakeholders and the public. Meetings were held with the AB 939 Local Task Force including a special evening meeting which was noticed to a broad list of interested parties and the public. Meetings were held with the City Managers Association, the Mayors and Council Members Association, the Landfill Neighborhood group, and several local business and environmental groups. The input received from these meetings was presented to the Board at the June 10, 2008, meeting when the Board considered the issuance of the RFP and PSA.

Phase 4 – In October 2008, two divestiture proposals were received by the Board and forwarded to staff to evaluate. Proposals were received from USA Waste and Allied Waste. Allied Waste was selected by staff as having the proposal that most closely aligned with the County’s divestiture goals. Staff was directed to enter into confidential divestiture negotiations with Allied Waste in December 2008. Shortly thereafter, Allied Waste and Republic Services Inc. merged, complicating the negotiation process and lengthening the schedule. Through many months of negotiations and iterations of the RFP and PSA, a final agreement has been drafted. A copy of the negotiated PSA is on file with the Clerk of the Board. A summary of the major deal points in the negotiated PSA is attached to this report.

Divestiture Goals Adopted by the Board

Primary Goals:

- Maximize the monetary return for divestiture of the facilities;
- Reduce or eliminate exposure for past, current and future environmental, operational and closure/post-closure liabilities related to the facilities;
- Provide a location for solid waste disposal of the municipal solid waste stream at reasonable prices;
- Transfer, through a divestiture, all of the facilities;
- Assure that the facilities be operated in the future in an environmentally sound and safe manner consistent with applicable law and regulations;
- Assure facilities are operated in the future in a manner that reduces greenhouse gases, complies with the California Global Warming Solutions Act of 2006 (AB 32) and other County climate protection initiative, such as through the use of rail or other appropriate means;
- Support diversion goals consistent with AB 939 and the Countywide Integrated Waste Management Plan.

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Secondary Goals:

- Achieve an in-county Central Landfill solution, if the Divestiture terms are such that they substantially alter the findings of the BVA study, which led to the County Board of Supervisor's decision to move towards a permanent out-haul solution;
- Assist impacted employees to compete for and find employment with the successful purchaser;
- Involvement in tip rate setting process;
- Preserve capacity at the Central Landfill for the County-generated waste stream.

Terms of the Purchase and Sale Agreement:

Attachment A to this report is a summary of how the key business terms of the negotiated PSA further the divestiture goals adopted by the Board.

Under PSA, the County will transfer ownership of the Central Landfill (including the Central Transfer Station), and the Annapolis and Sonoma Transfer Stations. The Guerneville and Healdsburg Transfer Stations will be operated by Republic under the terms of a 75-year lease agreement. The primary financial consideration being paid for the facilities by Republic to the County is in the form of royalties equal to \$9 per ton (in 2009 dollars) on every ton processed at the facilities for as long as the facilities are operated. The royalties are adjusted annually based on the consumer price index. Royalties are expected to generate up to \$2.7 million per year when escrow closes. The PSA also includes an obligation for Republic to build a materials recovery facility (MRF) at the Central site by July 2012 which will process and divert commercial solid waste and construction and demolition (C&D) materials.

As part of the PSA, the County will commit its waste flow to the facilities for a 20-year period. The divestiture deal closes escrow at such time as all of the following events occur: (i) the Board of Supervisors executes the PSA, (ii) cities generating at least 590 tons per day average Monday through Friday execute similar 20-year waste flow commitment agreements (e.g., all cities with the exception of Petaluma would meet the minimum flow commitment requirement), and (iii) Republic achieves permits to resume landfill operations in previously permitted areas at the Central Landfill and (iv) County and Cities reach a resolution concerning unfunded landfill liabilities. Disposal rates are based on the amount of waste ultimately committed.

Upon the close of escrow, Republic will take full responsibility for all environmental liabilities associated with the Central Landfill with the limited exception that for the first 10 years following the close of escrow, if there is an off-site migration of contaminants from the Central Landfill property to adjacent property, then there is a risk sharing formula in the PSA. The risk sharing formula is based on Republic taking responsibility for the first \$7.5 million in costs associated with the off-site event and the County placing its existing closure funds (approximately \$10 million) into an escrow account for Republic to use for excess costs. In addition, Republic will be giving the County \$500,000 per year (for the first 10 years) for the County to either purchase a pollution insurance policy or to place the funds in the escrow account. After 10 years, if there has been no claim for off-site liabilities, then the County and committed cities will be fully released from all environmental liabilities associated with the site and any funds remaining in the escrow account will be disbursed to the County and shared with the committed cities under the terms of a settlement agreement (to be negotiated prior to September 2009).

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The PSA acknowledges that the County will complete any documentation required in order to comply with CEQA. In essence, the proposed project, if approved by the Board, is simply a transfer of assets and current permits to Republic. Under the terms of the PSA, Republic will be seeking to resume disposal operations within existing capacity at the Landfill. The County previously certified an EIR for the landfill operations in 1998. Staff is in the process of preparing an addendum to the 1998 EIR to address the proposed project, which will be brought to the Board at such time as the PSA is brought to the Board for final consideration.

Alternatives to Divestiture for Long-Term Solid Waste Management:

The 2006 BVA report assessed several long-term solid waste management alternatives, including the County re-opening the Central Landfill, the County continuing long term out-haul by truck (the status quo), and out-haul by rail to more distant landfills. In 2009, staff requested that HDR (formerly BVA) perform a limited scope update to their report to re-assess the feasibility of the four primary alternatives from the prior report using the most up to date information and cost projections available.

Since the time the 2006 BVA report was completed, several other long-term alternatives have been evaluated including contracting out for the entire operation of a County-owned out-haul system, and a proposal from North Bay Corporation for a privately owned and operated MRF/Transfer Station/Out-haul system. Attachment B is a summary of the pros and cons of divestiture as well as the various other long-term solid waste management alternatives, which was prepared by staff utilizing information provided by the HDR update and presentations made by North Bay Corporation.

Tentative Divestiture Schedule:

- August 2009 - Staff plans on bringing the final PSA to the Board for its consideration to execute later this month;
- September through November 2009 – Staff will work with the Cities to secure their commitments of flow and resolve outstanding issues concerning unfunded landfill liabilities;
- December 2009 - When City flow commitments are secured, the PSA becomes effective and escrow opens;
- Spring 2010 - Republic will submit application(s) to resume Landfill operations at Central within 6 months of the effective date of the PSA;
- December 2011 - Escrow closes if permits are achieved.

Recommendation:

It is recommended that the Board of Supervisors (Board) hold the workshop and receive comments from stakeholders and the public on the Divestiture project and the alternatives. The Board is not requested to take any action.