



Agenda Report

TO: CCCSWA BOARD OF DIRECTORS
FROM: BART CARR, SENIOR PROGRAM MANAGER
PAUL MORSEN, EXECUTIVE DIRECTOR
DATE: JANUARY 15, 2010

SUBJECT: REVIEW OF DRAFT AGREEMENT BETWEEN THE CENTRAL CONTRA COSTA
SOLID WASTE AUTHORITY AND EAST BAY MUNICIPAL UTILITY DISTRICT FOR
FOOD WASTE PROCESSING AND DISPOSAL SERVICES

SUMMARY

Based on Board approval made at your December 10th meeting, the CCCSWA plans to formalize the Commercial Food Waste Collection Program and begin expansion in September of this year. In order to support this expansion, CCCSWA staff has concluded negotiations with their counterparts at EBMUD to develop an agreement for processing commercial food waste at EBMUD's water treatment plant in Oakland. At your December meeting, the CCCSWA Board considered and authorized the major negotiating points for the draft contract. These included:

- Contract Length
- EBMUD Processing Capacity for CCCSWA Food Waste
- EBMUD Disposal Fee (Per Ton Fee)
- Definition of Acceptable Food Waste Materials and Specification for Delivered Material
- Unacceptable Materials and Contamination Control

The Board requested that staff return to negotiations with EBMUD regarding the allocation of potential revenue resulting from sales of carbon offsets and Renewable Energy Certificates. Staff acted on this direction and the results of our discussions are presented in this report.

The final draft agreement is attached for Board consideration, and comments. The final draft contains the previously approved negotiating points, and proposed resolution to the allocation of offset/REC revenue (as described later in this report). The draft agreement has undergone complete legal review and input by attorneys for both agencies.

Following your comments and questions, staff is requesting your approval to release the draft agreement to EBMUD for their Board's review and approval. Upon completion of this review, you will be asked to review the draft agreement one final time to authorize execution.

RECOMMENDED ACTION

1. Review and provide comment on Final (Draft) Agreement between the CCCSWA and EBMUD for Food Waste Processing Services and approve release of draft contract for EBMUD Board review and approval. Final EBMUD Board approved version will be returned to the CCCSWA Board at your February or March meeting for final approval.

DISCUSSION

Inclusion of CCCSWA Board Approved Negotiation “Points”. In May 2009, the CCCSWA Board of Directors authorized staff to initiate negotiations with EBMUD that would secure ongoing processing capacity and lead to a long term contract for EBMUD services supporting the commercial food waste program. CCCSWA staff began meeting with EBMUD staff in June to develop a contract framework and these negotiations resulted in an outline of terms for a contractual agreement which this Board approved at your December 10th meeting. These terms include:

1. **Contract Length.** The CCCSWA and EBMUD have agreed to a five year contract length for processing commercial food waste with the option to extend the agreement once for a two year period.
2. **Disposal Fee and Fee Escalation.** Both sides agree to a new EBMUD disposal fee of \$45 for the first year of the contract and subsequent increases to \$50 per ton for year two of the contract, and \$55 per ton for year three of the contract. Both sides agree to conduct a cost review for disposal fee re-set after Year Three for remaining two years of contract. CCCSWA has requested a \$61/ton disposal fee cap for final two years of the contract or a contract exit clause after year three if EBMUD determines a significantly higher rate is warranted after their cost review. Proposed disposal fees are based on the condition of material currently being delivered to EBMUD. The following table lists the proposed disposal fee levels by contract year:

| Period | Dates | Fee |
|------------------------------|------------------|--------------------|
| Pilot Program/Interim Period | 3/1/10 – 8/31/10 | \$45 |
| Contract Year 1 | 9/1/10 – 8/31/11 | \$45 |
| Contract Year 2 | 9/1/11 – 8/31/12 | \$50 |
| Contract Year 3 | 9/1/12 – 8/31/13 | \$55 |
| Contract Years 4-5 | 9/1/12 – 8/31/15 | TBD by Cost Review |

3. **Food Waste Specification.** The CCCSWA agrees to offer commercial food waste that will meet the 2" minus specification required by EBMUD and maintain current material condition. The condition of material currently being delivered to EBMUD, as of October 2009, is acceptable to EBMUD. Additionally, the CCCSWA will include a commitment to control contamination and unacceptable materials from delivery to EBMUD.
4. **Contamination Control.** The CCCSWA will take reasonable steps to prevent unacceptable materials from being included in Food Waste Delivered to the District, including education of Collector and Commercial Food Waste Generators, or termination of Food Waste collection service to certain Commercial Food Waste Generators. An exhibit describing actions that the training consultant and program collector will take to help reduce contamination is attached to the draft contract.

5. **Collection of Food Waste in Plastic Bags.** EBMUD acknowledges that the food waste is offered for collection in plastic bags. CCCSWA's collector picks up the bagged food waste and transports for grinding, where plastics bags are processed along with the food waste. CCCSWA acknowledges that large quantities of film plastic larger than the two inch square size can be problematic for the District's operation. The CCCSWA will seek alternatives which may control or reduce the use of plastics bags by program participants.
6. **Operating Throughput Commitment.** EBMUD acknowledges that the CCCSWA will need approximately one and a half years, beginning in September, 2010, to expand collection to those generators who qualify for inclusion in the program. The CCCSWA estimates a minimum of 15 tons per day or 75 tons per week (after grinding) once the program has been implemented. EBMUD commits to accept this minimum tonnage per day/week and will adjust the acceptance amount based on actual program performance/disposal as the program matures.

Carbon Offset and REC Revenue Sharing. The digestion of CCCSWA commercial food waste at EBMUD results in methane capture and the creation of "green" energy. This creates an opportunity to validate "Carbon Offsets" (Credits) and "Renewable Energy Certificates" (RECs) which can be sold to generate revenue. A carbon offset results from the capture or prevention of one metric ton of CO₂ (or equivalent green house gas) from release into the atmosphere, which can contribute to climate change. Once validated, the offsets can be traded on existing "voluntary" markets which will generate revenue. "Renewable Energy Credits or "RECs" differ from offsets in that they represent one megawatt hour of renewable energy that can be sold or traded by the owner of the REC. The ability to "trade" RECS is created through establishment of a "Renewable Portfolio Standard", normally done at the state level, which requires utilities in that state to purchase RECs (and the green electricity associated with them) to satisfy mandates for expansion of green energy use.

At the Dec 10th meeting, the CCCSWA Board was presented with the following allocation of potential revenue that could result from the sales of generated electricity, carbon offsets, and RECs. Because neither RECs nor Carbon credits have undergone formal certification and/or validation, their potential value is not known at this time.

- *EBMUD - 100% of revenue resulting from sale of electricity*
- *EBMUD - 100% of revenue resulting from sale of RECs*
- *CCCSWA - 100% of Carbon Offsets (Credits) from CCCSWA delivered tonnage (CCCSWA pays its share for validation of its allocation of carbon credits)*

The CCCSWA Board was not satisfied with this proposed allocation, and after questioning both CCCSWA and EBMUD staff members, requested both sides to return to negotiations to consider an allocation that would create greater equity in how revenue resulting from sales of offsets and RECs would be allocated.

CCCSWA and EBMUD negotiating sides met twice to address this request. The CCCSWA position was given the disparity between current values of offsets and RECs in existing trading markets, and the new and evolving nature of these markets suggests that an equal share of revenue from both REC and offset sales would be an equitable solution for both sides. This "equal share" allocation would be followed for the first three years of the agreement and revisited at the time of the agreement's Year Three cost review/disposal fee reset. EBMUD's position is to preserve the split between offsets and RECs because it is clean and straight forward. Apportioning the share of electricity (and therefore RECs) associated with CCCSWA food waste will be complicated. EBMUD also sees RECs as being tied directly to power generation. EBMUD needs both power sales revenue and RECs to service the \$32 million debt to be able to generate electricity from the food waste material.

Although both sides tried very hard, consensus could not be reached on how to allocate revenue from offsets and RECs, beyond what was originally presented to the Board on December 10th. Given the Boards clearly stated position on the importance of equity in this matter, CCCSWA staff proposed the following language for Article 7. “Compensation” of the agreement to address revenue share of resulting from the sales of offsets and RECs:

Agreement Section 7.03 Regarding Revenue Sharing

“The Parties acknowledge that a potential revenue stream exists in the sale of both GHG Offsets (credits) and renewable Energy certificates (REC), once validated. The District agrees to notify the CCCSWA at the time it initiates actions to validate GHG Offsets and/or RECs. At that time, the Parties will meet to:

- a. Review the validation process;*
- b. Determine revenue potential based on current market pricing for GHG Offsets and RECs;*
- c. Agree on allocation of potential revenue; and*
- d. Allocate associated costs, such as validation costs.*

At the time that these actions are completed, this Section 7.03 will be revised”

This proposed agreement language does not resolve the question of how revenues will be allocated. However, it does allow additional time for the offset and REC markets to mature permitting more accurate understanding of the true value for each. It will also allow CCCSWA and EBMUD more time to better understand how many RECs (based on megawatt energy generation from CCCSWA food digestion) and the number of offsets (based on methane generation from CCCSWA food digestion) that are directly attributable to the expanded CCCSWA commercial food waste program.

The Board has the option to adopt this proposed language or accept the original language proposed at your December 10th meeting. The language proposed here offers the possibility of an improved revenue distribution in the future but also presents the potential risk of not receiving anything at that future time when both sides return to negotiations.

Legal Review. CCCSWA attorneys Kent Alm and Jennifer Faught worked directly with their EBMUD counterpart to address the legal and structural components of agreement development. Their work included working with negotiators from both sides on development of agreement definitions, contractual agency responsibilities and performance requirements, indemnification & liability, insurance, compensation, contract breach response, and other areas important to the function of this agreement.

ATTACHMENT

- A. Draft Agreement between the Central Contra Costa Solid Waste Authority and East Bay Municipal Utility District for Food Waste Processing and Disposal Services.