REPORT TO COUNCIL
City of Sacramento

915 I Street, Sacramento, CA 95814-2604
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Staff Report
August 26, 2008

Honorable Mayor and
Members of the City Council

Title: Matters Related to Waste-to-Energy Project

Location/Council District: Citywide

Recommendation: Adopt a **Resolution** authorizing: 1) the City Manager to execute a Principles of Agreement between the City and U.S. Science and Technology Corporation concerning development of a waste-to-energy facility; 2) an extension for an additional 90 days, of the exclusive right to negotiate period with U.S. Science and Technology; and 3) the negotiation of definitive contractual terms with U.S. Science and Technology related its development and operation of the proposed waste-to-energy project.

Contact: Tom Zeidner, Senior Development Project Manager, 808-1931

Presenters: Jim Rinehart, Citywide Economic Development Manager, Tom Zeidner, Senior Development Project Manager

Department: City Manager's Office

Division: N/A

Organization No: 0310

Description/Analysis

Issue: On February 26, 2008, the City Council adopted a resolution granting U.S. Science and Technology (USST) a 90-day, exclusive right to negotiate principles of agreement (POA) for development of a "waste-to-energy" (WTE) project. USST had earlier responded to a City request for qualifications (RFQ) to identify partners capable of constructing and operating a WTE facility to process City municipal solid waste (MSW). The WTE RFQ was issued by the City Manager's Office in August of 2007 with the intent of identifying entities with which the City could partner in developing such a facility that, once operational, could largely supplant the current practice of landfilling MSW. On May 27, 2008, the City Council approved a 90-day extension to the exclusive right to negotiate period with USST, until the end of August, 2008.

Since February 26th and in addition to negotiation of the POA, City staff and outside parties have been engaged in continued due diligence of USST and its proposed WTE method, which is plasma arc gasification (PAG). A Technical Committee was formed which included staff from the Solid Waste Division, Economic Development Department, the County's Director of Waste Management and Recycling, representatives of the Sacramento Metropolitan Air Quality Management District, CSUS faculty and the California Energy Commission. The Committee met frequently to consider technical information pertaining to PAG and other technologies, with the intent of ultimately rendering an opinion as to the commercial viability of a WTE facility in Sacramento.

A "Working Group" comprised of three Councilmembers was also formed to further review PAG and alternate WTE technologies. The Group, consisting of Councilmembers Hammond, Waters and Fong has met on 3 occasions for briefings by third-party WTE experts. Several of those experts testified before the Council on April 29, 2008 for a WTE Technology Workshop explaining the relative attributes of the various WTE methods and technologies.

Two separate City delegations have traveled to Japan for purposes of observing WTE facilities in operation. In May of 2008, Councilmember Hammond and Edison Hicks, the City's Integrated Waste General Manager, traveled to Utashinai, Japan to observe in operation a WTE plant utilizing a PAG system similar to that proposed by USST in the Sacramento area. In July 2008, Councilmember Waters was accompanied by seven City staff, Sacramento County officials, and representatives of the private business community in visiting the Utashinai facility. The latter delegation also visited a facility outside of Tokyo utilizing a different WTE gasification method. Travel to Japan by City elected officials and staff was authorized in Resolutions adopted by the City Council on April 15th and June 24th of 2008 which also authorized the City to accept reimbursement from USST for related expenses.

Concurrent with the activities outlined above, staff has been negotiating with USST the terms of the POA, which are intended to guide negotiation and drafting of future "Definitive Agreements" between the City and USST concerning the location and operation of a WTE facility. The final POA document included as Exhibit A to this report is non-binding and subject to modification in the course of planned negotiations towards the Definitive Agreements. The key principles outlined in the POA include that USST will represent that it has the financial and technical capacity to construct and operate the WTE facility at no cost or liability to the City. The POA goes on to state: 1) that USST will bear sole responsibility for obtaining all required licenses and permits necessary to build and operate the facility; 2) USST's acknowledgement that the City currently has in place a service agreement with BLT Enterprises governing handling of the City's MSW; and 3) that the City will require guarantees from USST that it will provide, at a minimum, service levels currently enjoyed by the City through the existing service agreement.

As outlined above, much has occurred since the Council's original action on February 26, 2008 related to the USST WTE proposal to the City, resulting now in presentation of the POA for the Council's consideration. Despite these efforts, staff requires additional time to: 1) complete the work of the Technical

Committee in providing the City an opinion as to the commercial viability of a proposed WTE facility; 2) review data necessary to determine the financial capability of USST to complete a WTE facility, absent any cost or liability to the City; and 3) negotiate business terms under which the City and USST would proceed with the project. Thus, the attached Resolution authorizes: 1) the City Manager to execute the POA on behalf of the City; 2) an extension for an additional 90 days (until the end of November, 2008) of the exclusive right to negotiate period with USST originally approved by the Council on February 26, 2008 and extended on May 27, 2008; and 3) the negotiation of contractual terms governing USST's development and operation of a WTE facility, and present such terms for Council approval within the proposed, extended exclusive right to negotiate period.

Policy Considerations: The actions recommended in this report are consistent with Council actions specific to the USST proposal described above on February 26, April 15, May 27 and June 24 of 2008.

Environmental Considerations:

California Environmental Quality Act (CEQA): The specific actions recommended in this report are exempt from California Environmental Quality Act (CEQA) Guidelines Section 15262 as a planning activity for defining the project for possible future action. Environmental review will be performed as required in connection with specific projects that may result from the requested actions.

Sustainability Considerations: The WTE plant concept described in this report is consistent with the City's Sustainability Master Plan adopted by the City Council on December 18, 2007.

Commission/Committee Action: N/A

Rationale for Recommendation: The actions recommended in this report are consistent with earlier Council actions related to the USST WTE project on February 26, April 15, May 27 and June 24 of 2008.

Financial Considerations: The particular actions recommended in this report will have no direct financial impact upon the City. Financial ramifications of actually proceeding with development of a WTE facility will be discussed in future reports to the Council.

Emerging Small Business Development (ESBD): The specific actions recommended in this report do not entail purchase of goods and services. ESBD considerations thus do not apply.

Respectfully Submitted by: _____
James R. Rinehart
Citywide Development Manager

Recommendation Approved:

_____
Ray Kerridge
City Manager

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RESOLUTION NO.

Adopted by the Sacramento City Council

APPROVAL OF PRINCIPLES OF AGREEMENT AND 90-DAY EXTENSION OF EXCLUSIVE RIGHT TO NEGOTIATE PERIOD WITH U. S. SCIENCE AND TECHNOLOGY CORPORATION TO DEVELOP A WASTE-TO-ENERGY FACILITY

BACKGROUND

A. On February 26, 2008, the City Council adopted Resolution no. 2008-117 granting U.S. Science and Technology (USST) up to three months, an exclusive right to negotiate (ERN), through the City Manager's Office principles of agreement (POA) for development of a waste-to-energy (WTE) project

B. On May 27, 2008, the City Council adopted Resolution no. 2008-339 extending the ERN with USST for an additional 90 days, until the end of August, 2008.

C. The POA, included as Exhibit A, is now finalized and presented to the City Council for approval.

D. City of Sacramento (City) staff sees a need for an extended exclusive right to negotiate period with USST to conduct further technical and financial due diligence in connection with the proposed WTE project and negotiate contractual terms under which the City and USST would proceed with the WTE project.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The POA presented at this meeting is approved and the City Manager is authorized to execute the POA on behalf of the City of Sacramento.

Section 2. The 90-day ERN originally granted to USST on February 26, 2008, and extended on May 27, 2008 is hereby extended for an additional 90 days, until the end of November, 2008.

Section 3. Staff is directed to negotiate contractual terms under which the City and USST will proceed with the WTE project and present the proposed contractual terms to the Council for consideration within the extended term of the ERN.

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Exhibit A

Exhibit A

Principles of Agreement between the City of Sacramento (the "City") and U. S. Science & Technology Corporation ("USST") Concerning Development of a Waste-to-Energy Facility

The City and USST (each a "party" and collectively, the "parties") recognize the potential mutual benefits to locating and operating a waste-to-energy facility utilizing plasma arc gasification technology (a "Facility") within the City of Sacramento and/or the County of Sacramento. The Facility could potentially produce energy and provide a location for disposal of municipal solid waste thereby reducing the need for disposal of solid waste in landfills and transfer of solid waste out of state. The Facility could reduce the release of greenhouse gases and toxics into the atmosphere as well as enhance the City's diversion efforts. Further, the Facility may position the City as a global leader in the development of renewable sources of energy and may create new jobs within the City. With these objectives in mind, and subject to applicable land use approvals by the City and compliance with the California Environmental Quality Act ("CEQA"), the parties wish to execute this Principles of Agreement with the intent to memorialize certain Principles intended to help govern the negotiation and drafting of future agreements between the parties relative to the location and operation of the Facility (the "Definitive Agreements"). The parties acknowledge that the terms contained herein are non-binding and are subject to addition, deletion and modification in the course of the planned negotiations toward the Definitive Agreements. Either party may discontinue negotiations toward that Definitive Agreements at any time by written notice to the other for any reason whatsoever. Neither party will have any liability whatsoever to the other party for such party's discontinuance of such negotiations or its decision for any reason not to enter into such Definitive Agreement nor is this Principles of Agreement intended to be an "agreement negotiate a contract." Any proposed Definitive Agreements will be subject to all required governmental and corporate approvals of the parties.

The key principles are as follows:

1. In the Definitive Agreements, USST will represent that (i) it has the financial and technological capability to construct and operate the Facility for the purpose of disposing of municipal solid waste, (ii) USST will be responsible for obtaining all necessary licenses and permits and will be responsible for siting, constructing and operating the Facility and (iii) the City will bear no responsibility for licensing, permitting, siting, constructing or operating the Facility, other than in its capacity as a municipality that regulates land use planning and development.

2. USST understands and acknowledges that the City is continuing its due diligence in review of the USST proposal concerning the viability of the plasma arc gasification technology and USST's ability to obtain any necessary licenses and permits, and to site, construct and operate the Facility, including its financial ability to do so. USST has provided documentation to the City to assist the City in making a determination as to the viability of plasma arc gasification technology for the disposal of City municipal waste and USST's financial ability to obtain licenses, site, construct and operate a plasma arc gasification facility and USST will continue to provide such necessary documentation to the City.

3. The parties' strong preference is that the Facility will be located within the city limits of the City or within the County of Sacramento. Additionally, the corporate headquarters for USST will be located within the city limits of the City. Any siting decision will be subject to appropriate environmental review.

4. The parties agree that USST will bear sole responsibility for the costs of obtaining licenses, permitting, constructing and operating a Facility and that the City is not responsible for any costs necessary to obtain licenses or permits, or any costs of constructing and operating the Facility. The term "all costs" is to be broadly construed. USST further agrees it will reimburse the City for certain City costs as provided for in the Reimbursement Agreement Regarding USST Waste to Energy Project.

5. USST acknowledges that the City currently has in place a service agreement concerning municipal solid waste which provides certain performance guarantees to the City regarding the transfer and disposal of municipal solid waste ("Service Agreement"). USST acknowledges and understands that in order for the City to bring municipal solid waste to USST for disposal through the plasma arc gasification process, the City will need guarantees from USST to provide the City with performance levels that meet or exceed the performance levels the City currently enjoys through its current Service Agreement. Such performance guarantees will include verifiable assurance that USST has the financial ability to fulfill all performance obligations.

6. USST will be required to defend and indemnify the City from any and all liability related to the construction and operation of the Facility and will be required to demonstrate, to the City's satisfaction, the financial ability to defend and indemnify the City as provided for in this paragraph.

7. The City acknowledges that the Facility will require a stream of municipal solid waste in order to operate. The parties acknowledge that the City's current Service Agreement may need to be modified in some manner in order to provide for transfer of a sufficient amount of municipal solid waste to the Facility. The parties agree that any such modification will need to be done in a manner permitted by the Service Agreement.

8. The cost to the City to deliver City municipal solid waste to the Facility operated by USST will be no greater than the cost the City incurs to deliver and dispose of municipal

solid waste under the City's current Service Agreement.

9. USST anticipates that the Facility will create energy that can be sold. USST and City intend that any profits generated by the sale of renewable forms of energy created through the Facility will be divided between USST and the City in percentages determined in the Definitive Agreements.

10. The parties anticipate the Facility will be able to process at least 500 tons of municipal solid waste daily.

11. The construction and operation of the Facility will be a "project" within the meaning of CEQA and will require a full Environmental Impact Report ("EIR") to be completed in accordance with all applicable legal requirements, including but not limited to an extensive alternatives analysis.

12. This Principles of Agreement does not commit the City to permit, site, approve, or cause the construction and/or operation of a plasma arc gasification facility. Rather, as set forth above, this Principles of Agreement is designed to set forth agreed to Principles as the parties further explore the possibility of negotiating and drafting Definitive Agreements and subsequently approving, permitting, siting, constructing and operating the Facility. As such, and because the action of approving this Principles of Agreement will have no effect upon the environment, this Principles of Agreement is not a "project" requiring environmental review pursuant to Section 21065 of the Public Resources Code and/or CEQA Guidelines Section 15378.

CITY OF SACRAMENTO:

By: _____
Ray Kerridge, City Manager

USST:

By: _____
William J. Ludwig
Chief Executive Officer

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Deputy City Attorney