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

DEPT: Chief Executive Office

BOARD AGENDA # B-8

Urgent ☐ Routine ☒

AGENDA DATE January 10, 2012

CEO Concurs with Recommendation YES ☒ NO ☐
(Information Attached)

4/5 Vote Required YES ☐ NO ☒

SUBJECT:

Approval of Terms and Conditions to be used in the Development of a New Service Agreement with Covanta Stanislaus, Inc. for the Operation of the Waste-to-Energy Facility and Related Actions

STAFF RECOMMENDATIONS:

1. Approve the Term Sheet to be used in the development of a new Service Agreement with Covanta Stanislaus, Inc.

2. Authorize the Chairman of the Board to sign the Term Sheet.

3. Direct the Chief Executive Officer to negotiate a new Service Agreement with the City of Modesto and Covanta Stanislaus, Inc. consistent with the Term Sheet and return to the Board of Supervisors for final approval of the new Service Agreement.

- Continued on Page 2 -

FISCAL IMPACT:

There is no direct impact to the General Fund associated with this item. The Waste-to-Energy (WTE) facility, located at 4040 Fink Road, is operated by Covanta Stanislaus, Inc (Covanta) through an arrangement with a Joint Powers Agency (JPA) comprised of the City of Modesto and Stanislaus County, collectively referred to as the "Contracting Communities".

- Continued on Page 2 -

BOARD ACTION AS FOLLOWS:

No. 2012-017

On motion of Supervisor Monteith, **Seconded by Supervisor** Chiesa
and approved by the following vote,
Ayes: Supervisors: Chiesa, Withrow, Monteith, De Martini, and Chairman O'Brien
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:

Christine Ferraro

ATTEST: **CHRISTINE FERRARO TALLMAN, Clerk**

File No.

STAFF RECOMMENDATIONS (Continued):

4. Direct the Chief Executive Officer to negotiate an Amendment to the "Agreement between the City of Modesto and County of Stanislaus Relating to Administration of Service Agreement for Supply and Acceptance of Solid Waste" with the City of Modesto regarding the disposition of the Resource Recovery Account and other operating procedure changes upon commencement of a new Service Agreement and return to the Board of Supervisors for final approval of the Amendment.

5. Authorize the Chief Executive Officer to enter into a contract with Sidley Austin LLP for legal services to develop a new Service Agreement in an amount not to exceed $110,000.

FISCAL IMPACT (Continued):

Under the current Service Agreement, the Contracting Communities pay Covanta a service fee to operate the facility and are also responsible for all pass through costs associated with the facility (example: taxes, insurance, air permit fees, ash disposal, etc.). In addition, the Contracting Communities are responsible for any costs associated with unforeseen circumstances such as changes in law, major upgrades or any acts, events or conditions that have a material adverse effect on the operation of the facility. The Contracting Communities also retain 90% of the electric revenue generated by the facility, all of the disposal fees, 50% of metal recycling revenue and 30% of supplemental waste revenue.

The County acts as Treasurer for the Joint Powers Authority and has established a separate enterprise fund for the operation and maintenance of the Waste to Energy (WTE) facility, the Resource Recovery Account. Through a series of tip fee increases and the refinancing of the debt on the facility in 2000 at a favorable interest rate, the Contracting Communities built up this account to the point where they were able to completely pay off the debt on the project in 2008 and still maintain an operating reserve of over $19 million, which has been used to stabilize disposal fees at the facility.

For the fiscal year ending June 30, 2011, the Contracting Communities collected $7,030,953 in disposal fees, $5,488,362 in their share of electricity revenue, $369,498 in their share of supplemental waste revenue, and $300,352 in their share of metal recovery, for total operating revenue of $13,189,165.

For the same period, operating expenses totaled $16,689,187 with the largest expenses being $11,348,289 for the facility operations and maintenance service fee paid to Covanta and $3,397,810 in facility pass through costs. This resulted in an operating loss for the year of $3.5 million. This loss was covered through the use of the reserves in the Resource Recovery Account.

A Power Purchase Agreement (PPA), which was a contractual arrangement between Covanta and PG&E for the delivery and purchase of electricity, expired on January 1, 2010. With no long term contract commitment in place, Covanta has not negotiated a new PPA and is currently selling electricity at Short Run Avoided Cost (SRAC) rates which are considerably less at the present time than could be obtained through a new PPA. Consequently, the electricity revenue to the Contracting Communities has fallen dramatically resulting in an estimated operating loss of over $225,000 per month (average amount – varies month to month based on current electricity rates). The aggregate operating loss has resulted in a decline in reserves from a cash balance on January 1, 2010 (when the PPA expired) of $19,551,851 to a cash balance on January 4, 2012 of $13,500,851.

Under the terms proposed in the attached Term Sheet, the existing arrangement with Covanta would change dramatically. As proposed, the Contracting Communities would no longer pay Covanta a service fee to operate the facility or be responsible for any of the pass through costs, and would no longer receive any of the electricity revenue. The Contracting Communities would be required to pay Covanta $32 per ton of Acceptable Waste processed through the facility and would guarantee sending 243,300 tons to the facility annually. The tipping fee would escalate each July 1st based on the Consumer Price Index, "Urban Wage Earners and Clerical Workers, All items, West – Size B/C." This index is the same one currently used in our agreements with the franchise haulers. For the first 10,000 tons above the guaranteed minimum, the tip fee would be reduced by $2 per ton. For any acceptable waste delivered above 253,300 tons, the tip fee would be reduced by $4 per ton.

The current tip fee at the WTE facility is $28 per ton, which consists of $22 per ton for waste processing, $3 per ton for the AB939 program and another $3 per ton for the Household Hazardous Waste program. The tip fee at the WTE facility has been as high as $40.25 per ton in the past. Under the proposed terms, the tip fee at the WTE facility would need to be increased to $38-$39 per ton to cover the $32 per ton payment to Covanta, the $6 per ton for the AB939 and Household Hazardous Waste programs, and up to $1 per ton to cover any administrative costs. Although the impact to customers will vary by jurisdiction, rough projections indicate the increase in the garbage rate could range from $.50 to $1.50 per month for a typical residential customer. It is important to also note that absent an agreement with Covanta, the tip fee would still need to increase a minimum of $10-$11 per ton just to cover the current operating loss at the facility, not considering any future cap-and-trade exposure.

The current tip fee at the Fink Road Landfill is $33 per ton. Staff is evaluating a number of options to avoid creating an incentive for partner agencies and customers to use the landfill over the WTE facility. These options could include requesting the Board of Supervisors consider raising the tip fee at the landfill or to use fund balance from the Resource Recovery Account to subsidize rates at the WTE facility.

As indicated earlier, the Resource Recovery Account (RRA), a trust and agency fund of the Contracting Communities for the WTE facility, had a cash balance on January 4, 2012 of 13,500,851. It is projected that $1.5-$2 million of this cash balance may be necessary to cover the current operating losses at the WTE facility until a new Service Agreement is in force.

In summary, if approved by the Board of Supervisors and Modesto City Council, a new Service Agreement based on the negotiated terms would reduce the risk exposure of the Contracting Communities from the current level of 100% liability for any unforeseen circumstance costs to 25% liability for unforeseen circumstance costs, require an increase in tip fees of approximately $10-$11 per ton while establishing stable and predictable tipping fees for the next 15 years, assist local agencies in continuing to meet diversion requirements, preserve landfill capacity and keep the Resource Recovery Account from declining further due to continued operating losses.

Should policy makers choose not to approve the new terms, staff would most likely return to the Board with recommendations to increase the tip fee $10-$11 per ton to offset the current operating losses, while continuing to evaluate potential future costs associated with cap & trade and other unforeseen circumstance costs (while retaining 100% of the risk). The stability of future tip fees would largely be dependent upon electric rates and unforeseen circumstance costs. Upon completion of the six-year extension on December 31, 2015, the Contracting Communities would have a choice of renegotiating a new service agreement, purchasing the WTE facility at current market value or allowing the contract to expire, at which point Covanta would own the plant and have a site lease through 2021 with the option to extend the lease an additional 15 years. Covanta could then operate the plant as a "merchant" facility, and would have complete control over the tip fees charges, as well as what type of materials are processed and where these materials come from.

City and County staff have been assisted in the development and review of the Term Sheet by Eric Tashman and Martin Gold of Sidley Austin LLP. The fee for professional services rendered through October 13, 2011 was $27,710. Additional services have been provided since the last invoice and are estimated at $25,000. Should the Board of Supervisors and City of Modesto approve the proposed Term Sheet, staff is also requesting approval to enter into a contract with Sidley Austin, LLP for the development of the New Service Agreement, in an amount not to exceed $110,000 which will be paid out of the Waste-to-Energy budget.

DISCUSSION:

<u>Background</u>

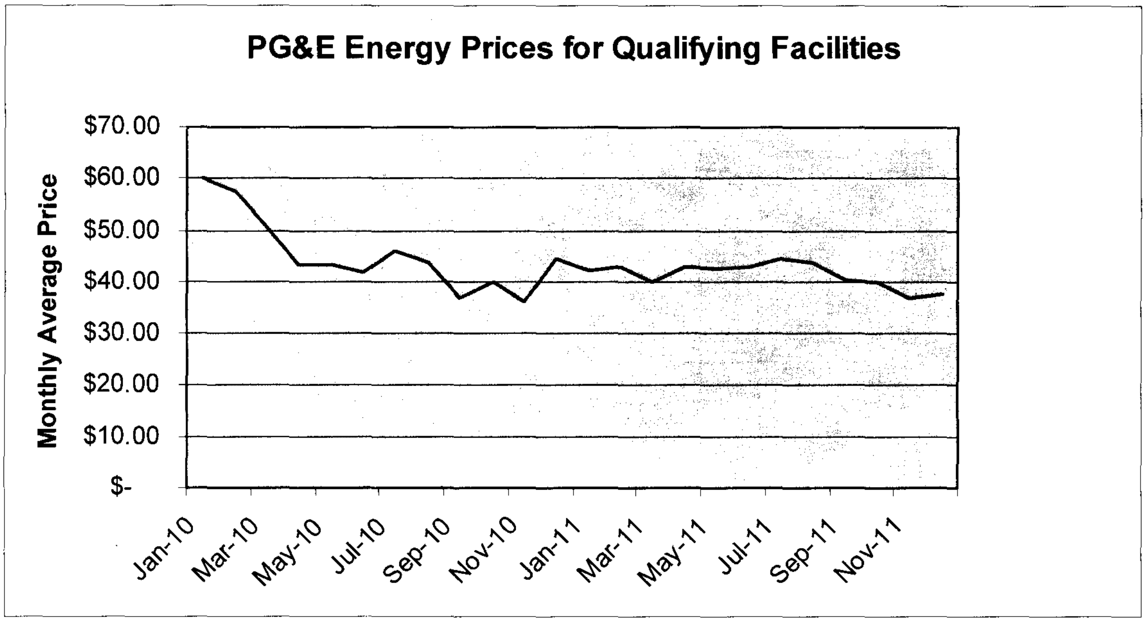
The WTE facility, co-located at the Fink Road landfill, is a mass burn, solid waste disposal, and resource recovery and electricity generation facility. The WTE facility began operation in 1989 and burns on average about 250,000 tons of municipal solid waste per year. Waste is received from all nine cities and the unincorporated area and has a gross electrical generation capacity of 22.5 megawatts (MW). The WTE facility is currently operated by Covanta Stanislaus, Inc. and is an integral part of Stanislaus County's solid waste disposal system providing an alternative to landfill disposal as a primary solid waste management method. Agencies delivering municipal solid waste to the facility receive up to 10% diversion credit towards their AB939 requirements.

The WTE facility is located on a site owned by the County and leased to Covanta through a Facility Site Lease Agreement. That Agreement was executed in 1986 and had an initial term of

35 years with an option to renew the lease for an additional 15 year period. Covanta currently pays the County $198,000 per year to lease the property.

The existing Service Agreement was set to expire on December 31, 2009. In 2007, staff from the County Department of Environmental Resources and the City of Modesto Solid Waste Division began negotiations on a new contract with Covanta. Those negotiations proved unsuccessful, with Covanta asking for more concessions than the Contracting Communities were willing to agree to, so in May 2009, the County and the City of Modesto exercised an option given in the original contract to extend the contract under the same terms for an additional six years through December 31, 2015.

When the PPA expired in January 2010, Covanta elected to extend its contract with PG&E under extension provisions pursuant to California Public Utilities Commission (CPUC) Decision No. 07-09-040. Unfortunately, those provisions caused the price paid for power to revert to the Short Run Avoided Cost, or "SRAC" rate, which has ranged from a high of $60 per MW to a low of $36 per MW. As a result, revenues from electricity generation declined sharply resulting in a significant operating deficit. Under the prior PPA, Covanta received a premium for renewable energy and a capacity payment which resulted in energy revenues of about $85 per MW.



California Senate Bill 1078, approved in 2002, created a California Renewables Portfolio Standard (RPS), which requires California electricity corporations to expand their portfolios of renewable energy sources to 20% by 2010. In 2008, Governor Arnold Schwarzenegger signed an executive order mandating an RPS of 33% by 2020, in addition to the 20% by 2010 requirement. The WTE facility is considered a qualified facility for RPS credit and, as such, the sale of electricity from this facility should draw a premium over conventional electricity rates. Per discussions with a local utility provider, a mid-range estimate of the value of this "green" power premium would be an additional $30-$40 per megawatt over conventional power. The quality and location of the WTE facility power would most likely place it at the higher end of the range.

Both the Contracting Communities and Covanta recognized that it would be in the best interest of both parties to return to the negotiating table and secure a long term commitment that would allow Covanta to negotiate a new PPA at much more favorable rates than current SRAC rates.

Negotiation Process

In December 2010, a new negotiating team was formed composed of:

Monica Nino, Assistant Executive Officer
Stan Risen, Assistant Executive Officer
Sonya Harrigfeld, Director of Environmental Resources
Dee Williams Ridley, Deputy City Manager, City of Modesto
Julie Hannon, Director of Parks, Recreation and Neighborhoods, City of Modesto
Gloriette Genereux, City Finance Director, City of Modesto

The negotiating team for the Contracting Communities chose an objective-based approach to the new negotiations with the following objectives identified:

1. Preserve the current RRA balance
2. Stable and predictable tipping fee
3. Commitment to no increased importation of waste
4. Meet diversion requirements and preserve landfill capacity
5. Reduce City/County risk exposure:
    a. Change-in-law risk
    b. Public perception risk
    c. Change in science/technology risk

The Contracting Communities negotiating team has met on a regular basis over the past year and has provided periodic updates on the status of negotiations to the Solid Waste-to-Energy Executive Committee and the City-County Liaison Committee. Covanta has been represented in the negotiating process by Chris Baker, Vice-President and Regional Business Manager – West Division, and Karen Wilhelm, Business and Accounting Manager. Major deal points from the negotiations have been agreed upon by the team and Covanta and are outlined in the attached Term Sheet (Attachment A). This Term Sheet, upon approval by both the Board of Supervisors and Modesto City Council, will provide the foundation for development of an Amended and Restated Service Agreement (New Service Agreement).

Eric Tashman and Martin Gold of Sidley Austin, LLP provided an independent review of the proposed Term Sheet on behalf of the Contracting Communities and provided valuable feedback and insights. Upon approval of the Term Sheet, staff is recommending that the Chief Executive

Officer be authorized to enter into a contract with Sidley Austin, LLP, for the development of the New Service Agreement. Since the major business points have already been negotiated and outlined in the Term Sheet, staff is hoping to expedite the development of the New Service Agreement and return to the Board of Supervisors for final approval in March 2012 with an effective date of April 1, 2012.

In addition to drafting the New Service Agreement, the negotiating team will continue to meet to prepare an Amendment to the existing JPA Agreement between the County and the City of Modesto regarding the disposition of the Resource Recovery Account upon commencement of a new Service Agreement. Staff anticipates returning to the Board of Supervisors for approval of the Amendment concurrent with the New Service Agreement.

The Terms

As indicated in the Fiscal Impact section of this item, the terms proposed in the attached Term Sheet would change dramatically from those found in the existing agreement with Covanta. A brief discussion of each of the key deal points is outlined below:

1. Tipping Fee

   The new Service Agreement would be for a 15 year period, commencing on April 1, 2012 and continuing until April 1, 2027. As proposed, the Contracting Communities would no longer pay Covanta a service fee to operate the facility or be responsible for any of the pass through costs, would no longer receive any of the electricity revenue and would be required to pay Covanta $32 per ton of Acceptable Waste processed through the facility. The tipping fee would escalate each July 1st based on the Consumer Price Index (CPI), "Urban Wage Earners and Clerical Workers, All items, West – Size B/C." This index is the same one currently used in our agreements with the franchise haulers. For the first 10,000 tons above the guaranteed minimum, the tip fee would be reduced by $2 per ton. For any acceptable waste delivered above 243,300 tons, the tip fee would be reduced by $4 per ton.

   In order to ensure that the tip fee remains competitive and reasonable compared to rates charged by surrounding agencies, the automatic annual CPI escalation will not be able to cause the tip fee to exceed 120% of the average of the posted gate rates per ton for landfills within a 50 mile radius.

2. Electric Revenues

   Covanta shall have the right to receive all electric revenues generated by the project, including any capacity or ancillary service payments.

3. Unforeseen Circumstance Cost

Currently, the Contracting Communities have full responsibility for risk exposures associated with operating the WTE facility. These risk exposures are referred to in the Original Service Agreement as "Unforeseen Circumstance Costs" and include risks such as changes in law, acts of God, court actions, failure of suppliers, licensing issues, etc. Under the proposed Term Sheet, Covanta will assume 75% of the risk exposure associated with unforeseen circumstance costs through the end of the contract while the Contracting Communities would retain 25% of the risk.

One of the more significant risks facing the Contracting Communities under the current agreement relates to "changes in law". On October 20, 2011, the California Air Resources Board (CARB) gave final approval to the State's cap-and-trade program, an element for achieving gas emissions targets under AB32, California's greenhouse gas legislation. Cap-and-trade is a program whereby CARB sets a *cap* on the emissions a facility can generate and facilities are required to hold permits (or credits) equivalent to their emissions. If a facility will exceed the permitted emissions limit(s), they must buy emissions credits from other facilities that have obtained them by voluntarily implementing early emissions reduction strategies. The transfer of these credits is referred to as a *trade*. Since the cap-and-trade program in California is still in its infancy, it is difficult to quantify the future fiscal impact to the Contracting Communities for this program. Current estimates place the negative fiscal impact in the $1 million - $4 million per year range once the program is fully implemented. As indicated, under the current contract, this would be an additional cost to the Contracting Communities, further increasing the operating loss.

Under the proposed terms, Covanta would also agree to set-aside all revenues from the sale of electricity in excess of $82.50 per megawatt hour (MWH) through January 1, 2016 to address any cap-and-trade financial exposure on behalf of both Covanta and the Contracting Communities. From January 2, 2016 through the end of the contract, all revenues from the sale of electricity in excess of $92.50 per MWH would be set aside to address <u>any</u> unforeseen circumstances costs (including cap-and-trade) on behalf of both Covanta and the Contracting Communities. The Term Sheet caps the total cumulative financial risk exposure at $15 million for Covanta and the Contracting Communities collectively, with the Contracting Communities 25% share representing $3.75 million. Should the cap be exceeded, either party would have the right to provide a written notification of termination of the contract. This section also contains special provisions that would allow either Covanta or the Contracting Communities to void a termination notice by covering the costs the other party incurred above the cap.

4. Waste Delivery and Disposal Obligations

Under the current service agreement, the Contracting Communities are obligated to deliver 243,300 tons of Acceptable Waste to the facility each year. This "guaranteed tonnage" requirement would continue under the new proposal. The Contracting Communities can also deliver additional waste to the facility, with the tip fee reduced by $2 per ton for the first 10,000 tons above the guaranteed tonnage, and $4 per ton for any waste delivered above 253,300 tons. Covanta will coordinate with the Contracting Communities on delivery schedules and full or partial outages.

5. Landfill Disposal

The County currently charges $16 per ton to landfill the ash (process residue) generated by the WTE facility, the cost of which becomes a pass through charge to the Contracting Communities. A portion of this charge is used to help address post-closure mitigation obligations of the County and City of Modesto at the Geer Road Landfill.
Under the proposed Term Sheet, Covanta has agreed to pay the County $26 per ton for landfill disposal of process residue, subject to the same CPI escalation as the tip fee. This increase will allow the County to better cover the costs of new cell development and the increasing costs of mitigation at the Geer Road site.

This section also contains provisions of how Unacceptable Waste delivered to the facility will be handled. Essentially, Covanta will be reimbursed substantiated incremental costs for handling, removal and transport of Unacceptable Waste to the landfill delivered to the facility by the Contracting Communities.

6. Recovered Resources

In addition to the electricity generation, the WTE facility can generate revenue from the recycling of various materials, the most significant of which is currently ferrous (i.e. "containing iron") and non-ferrous metals. These materials are referred to as "Recovered Resources." Recovered resources could also include steam, ash or any other byproducts of the facility as well as the value of tax credits or other entitlement benefits.

Under the existing agreement, revenue from recovered resources is shared 50/50, with the Contracting Communities share of this revenue over the past 5 years ranging from a low of $79,773 to a high of $300,352. Under the proposed Term Sheet, Covanta would keep all revenue related to these recovered resources.

7. Costs of the Facility

Unlike the current agreement where the Contracting Communities bear the vast majority of the costs and all the risks associated with the operation of the facility, under the proposed terms, Covanta shall solely bear all costs and risks (except as defined in Section 3 above), as well as have all benefits of ownership, operation and maintenance of the plant. This section also contains a provision that would limit the County and/or City of Modesto from establishing any special tax, assessment or fee that directly targets Covanta or the WTE facility.

8. Site Lease

In June 1986, the Stanislaus Waste Energy Company entered into a Facility Site Lease Agreement with the County that leased the facility for 35 years upon completion of construction, with an option for an additional 15 years. The rights to this site lease were acquired by Covanta. The current land lease is $198,000 per year.

The Term Sheet would extend the initial term of the site lease at the current lease rate of $198,000 to coincide with the termination or expiration of the new service agreement, April 1, 2027. Covanta would retain one 15-year option.

9. Waste Capacity

Under this proposal, the Contracting Communities would retain the right of first use of all the processing capacity of the WTE facility, defined in this Agreement as 310,000 tons per year. If the Contracting Communities have difficulty in utilizing the full capacity, Covanta would retain the right to market this additional capacity for the benefit of Covanta and the Contracting Communities. This section outlines various provisions for marketing this capacity and the revenue sharing arrangements for each provision:

A. If the Contracting Communities are not supplying sufficient waste to meet the guaranteed tonnage, Covanta could market this capacity and retain 100% of the revenues received. If the revenue from the procured waste was less than the then current tipping fee ($32 per ton + CPI adjustments), then the Contracting Communities would be required to make up the difference.

B. If the Contracting Communities are on track to meet the guaranteed tonnage, then Covanta could market any excess capacity and the revenue from the procured waste would be shared 60% Covanta and 40% Contracting Communities after deducting the applicable reduced tipping fee.

C. Covanta currently handles a small percentage of waste that requires special handling, such as the destruction of confidential records, firearms, confiscated drugs, etc. This type of waste is referred to as "Special waste". Under the terms of the Agreement, Covanta would be able to procure up to 7,300 tons of special waste per year (3%) during the first few years of the contract and up to 12,200 tons per year commencing January 2, 2016. Covanta would be entitled to keep all revenues derived from the disposal of special waste. Processing of special waste for law enforcement agencies in Stanislaus County would continue to be provided at no cost.

10. Default & Termination

Events of default would be similar to those contained in the original Service Agreement. In addition, this section contains special provisions that would prohibit either Covanta from defaulting just to pursue more lucrative contracts with other agencies or the Contracting Communities from defaulting just to pursue more cost effective alternative forms of disposal.

11. Limit of Liability

This section establishes a limit of $25 million on the amount of damages either party could be subject to in the event of a breach or default. Excluded from this limit are tort claims for injury to persons or damage to property. If either party reaches this limit, the other may terminate the agreement.

12. Right of First Refusal

This provision would allow the Contracting Communities a right of first refusal to purchase the facility on the same terms, conditions and price as set forth in an offer to purchase from a third party which Covanta is willing to accept.

13. Purchase Option

The Contracting Communities shall have the option to purchase the facility at its fair market value upon the completion of the new Service Agreement.

14. Parent Guaranty

This last provision provides guarantees that Covanta's parent company, Covanta Holding Corporation, will meet all of the obligations of Covanta Stanislaus, Inc. contained in the new Service Agreement. In the event of a substitution of guarantors, the Contracting Communities would have the right to approve a new guarantor or require a letter of credit in the amount of the limit of liability.

Amendment to the JPA Agreement with the City of Modesto

The City and County operate the project as a Joint Powers Agency. As the Contracting Communities enter into a new contractual arrangement with Covanta, it will also be important to discuss and clarify a number of areas relative to the ongoing working relationship between the County and City, such as the disposition of the Resource Recovery Account (RRA), guaranteed tonnage obligations, gate processing, notifications, etc. These issues will be memorialized through the negotiation of an Amendment to the existing "Agreement between City of Modesto and County of Stanislaus Relating to Administration of Service Agreement for Supply and Acceptance of Solid Waste" which was originally entered into on December 17, 1985.

The negotiating team has discussed a number of these issues, especially as it relates to the disposition of the RRA and is recommending that $1.5-$2 million of the current cash balance be set aside to cover projected operating losses at the WTE facility until a new Service Agreement is in force, $3.75 million be set-aside and assigned to address the future financial risk exposure of the Contracting Communities and $2 million be assigned for future contingencies. It is recommended that the remaining balance be apportioned 58% to the City of Modesto and 42% to the County. These percentages were developed based on an examination of historical data of waste brought to the facility as well as the level of commitment that each entity has agreed to be bound to in meeting the future guaranteed tonnage obligation in the new Service Agreement.

Staff would anticipate returning to the Board of Supervisors and the Modesto City Council for approval of the Amendment to the JPA Agreement concurrent with the request for approval of the new Service Agreement.

POLICY ISSUES:

The Board of Supervisors is asked to consider whether the proposed agreement is consistent with their priorities of A Healthy Community, A Well Planned Infrastructure and the Efficient Delivery of Public Services.

STAFFING IMPACTS:

Existing staff from the Chief Executive Office, County Counsel and the Department of Environmental Resources have been involved in the negotiation of the new Term Sheet. Currently the Waste-to-Energy budget covers approximately $170,000-$185,000 per year of salaries and benefits costs for staff from the Department of Environmental Resources for administrative services. Upon implementation of this agreement, it is anticipated that these staff costs will be reduced to approximately $100,000-$110,000 per year.

CONTACT PERSON: Stan Risen, Chief Executive Office, (209) 342-1731

TERM SHEET
among Covanta Stanislaus, Inc. ("Covanta"),
the City of Modesto, CA (the "City") and
the County of Stanislaus, CA (the "County");
the City and the County, collectively
(the "Contracting Communities")

The Contracting Communities and Covanta are parties to that certain Amended and Restated Service Agreement for the Supply and Acceptance of Solid Waste dated as of June 1986, as amended through the date hereof (the "**Original Service Agreement**"). The term of the Original Service Agreement, as previously extended, is scheduled to expire January 1, 2016. Covanta and the Contracting Communities wish to amend and restate in its entirety the Original Service Agreement in accordance with this Term Sheet. The Original Service Agreement as so amended and restated is hereinafter referred to as the "**New Service Agreement**". The term of the New Service Agreement shall commence on April 1, 2012 and continue until April 1, 2027. This Term Sheet is not intended and shall not be construed as a binding contract between the parties but shall serve solely to memorialize the understanding between the parties on the issues addressed herein. Capitalized terms used but not defined in this Term Sheet, if defined in the Original Service Agreement, shall have the meaning ascribed to such terms in the Original Service Agreement.

1. **Tipping Fee.** The tipping fee shall be $32 per ton of Acceptable Waste, escalated annually on July 1st of each year, beginning July 1, 2013, by the increase as of January 1st of the then current year compared to January 1st of the immediately preceding year, in the Consumer Price Index, "Urban Wage Earners and Clerical Workers, All items, West – Size B/C (1996 = 100, not seasonally adjusted)". At the time of each annual escalation, the as-escalated tip fee shall be (a) no greater than 120% of the average of the posted gate rates per ton for the landfills (whether or not owned by the County) within fifty miles of the Facility; and (b) no less than $32 per ton; and if 120% of such average is less than $32 per ton, then the tip fee for such year shall nevertheless be $32 per ton (the "**Tipping Fee**").

2. **Electric Revenues**. Subject to Sections 3(a)(ii) and 3(b)(ii) below, Covanta shall have the right to receive and retain all electric revenues generated by the Project. Electric revenues shall mean all revenues derived from the sale of electrical energy, capacity or ancillary services from the Facility, including any benefit of environmental attributes reflected in the price of the foregoing. (the "**Electric Revenues**").

3. **Unforeseen Circumstance Cost**.

(a) From April 1, 2012 until January 1, 2016:

(i) Covanta shall bear 75% of Unforeseen Circumstance Costs (including Cap and Trade Costs as defined below) and the Contracting Communities shall bear 25% of such Unforeseen Circumstance Costs, subject to Cost Substantiation.

(ii) Covanta shall separately account for the portion of Electric Revenues in excess of $82.50/MWH (the "**Excess Electric Revenues**"). Excess Electric Revenues shall be deemed to reduce the costs of complying with legislation or regulations imposing a cap and trade program on greenhouse gas emissions ("**Cap & Trade Costs**"), including without limitation, regulations promulgated pursuant to the Global Warming Solutions Act of 2006, if any, before the allocation between the parties described in Section 3(a)(i) above is applied, and the Contracting Communities shall have no responsibility for Cap & Trade Costs in excess of 25% of the net amount remaining after such deemed reduction. If on January 2, 2016, the New Service Agreement remains in effect and there are any Excess Electric Revenues which have not been applied as contemplated by the immediately preceding sentence, then any such balance of Excess Electric Revenues shall be added to the amounts provided under Section 3(b)(ii) below and applied as provided therein. However, if there is a termination of the New Service Agreement before January 2, 2016, and there is any such balance of Excess Electric Revenues remaining, then such balance shall be for the account of Covanta.

(b) From January 2, 2016 until the termination of the New Service Agreement:

(i) Covanta shall bear 75% of Unforeseen Circumstance Costs and the Contracting Communities shall bear 25% of Unforeseen Circumstance Costs, subject to Cost Substantiation.

(ii) Covanta shall separately account for Excess Electric Revenues from Electric Revenues in excess of $92.50/MWH. Such Excess Electric Revenues, together with any balance transferred in accordance with Section 3(a)(ii) above, shall be deemed to reduce any and all Unforeseen Circumstance Costs before the allocation between the parties described in Section 3(b)(i) above is applied, and the Contracting Communities shall have no responsibility for Unforeseen Circumstance Costs in excess of 25% of the net amount remaining after such deemed reduction. If upon expiration or termination of the New Service Agreement after January 2, 2016 there is any balance of such Excess Electric Revenues remaining, then such balance shall be for the account of Covanta.

(c) The Contracting Communities shall have the right to cause an independent third party to audit the books and records of Covanta relating to the accounting of all revenues, costs, liabilities or expenditures that affect the rights, obligations or liabilities of the Contracting Communities under the New Service Agreement, by providing to Covanta written notice of exercise of such audit right within three years after the closing of the books for any period to be audited. The independent third party shall enter into a confidentiality agreement reasonably acceptable to Covanta and the Contracting Communities before accessing such books and records of Covanta. Following execution of such confidentiality agreement, Covanta shall cooperate in all reasonable respects with the audit. The parties shall reconcile any discrepancy revealed by the audit within 60 days after the conclusion thereof, subject to the dispute resolution provisions of the New Service Agreement for any good faith disputes arising from the conclusion of the audit.

(d) If the cumulative total Unforeseen Circumstance Costs incurred from the date of commencement of the New Service Agreement collectively by Covanta and by the Contracting Communities exceeds $15,000,000, excluding amounts reimbursed by proceeds of insurance and excluding Excess Electric Revenues applied pursuant to Section 3(a)(ii) or Section 3(b)(ii) above (such net amount being the "**Initial UCC Termination Threshold**"), then each of Covanta, on the one hand, and the Contracting Communities, acting jointly on the other hand, shall have the right to terminate the New Service Agreement (a "**UCC Termination**") by providing written notice thereof to the other within 90 days after receiving notice or other written confirmation that such Initial UCC Termination Threshold has been reached. The party to whom such notice of termination is given shall have the right to avoid the UCC Termination by paying to the party giving the notice, within 30 days after receipt of the notice, the amount incurred in excess of $3.75 million in the case of the Contracting Communities, and the amount in excess of $11.25 million in the case of Covanta (each a "**Termination Avoidance Amount**"). If neither party timely exercises the UCC Termination when the Initial UCC Termination Threshold is reached, or if a party avoids the UCC Termination pursuant to the immediately preceding sentence, then the New Service Agreement shall continue uninterrupted and in full force and effect, unless and until additional Unforeseen Circumstance Costs, in excess of the Initial UCC Termination Threshold, incurred collectively by Covanta and by the Contracting Communities exceed a cumulative total of $1,500,000 (a "**Subsequent UCC Termination Threshold**"), at which time a UCC Termination right shall arise for each party again in accordance with the foregoing provisions of this Section 3(d), based on a Subsequent UCC Termination Threshold amount of $1,500,000 (rather than $15,000,000) and including the termination avoidance provisions with Termination Avoidance Amounts of $375,000 for the Contracting Communities and $1,125,000 for Covanta If neither party timely exercises the UCC Termination when the Subsequent UCC Termination Threshold is reached, or if a party avoids the UCC Termination pursuant to the immediately preceding sentence, then this same process shall apply each time a new Subsequent UCC Termination Threshold is reached during the term of the New Service Agreement.

4. **Waste Delivery and Disposal Obligations**.

(a) Quantity of Waste. The Contracting Communities shall deliver or cause to be delivered to the Facility, on a put-or-pay basis, and the Company shall accept, for Processing or, subject to Section 9(e) below, disposal, 243,300 tons of Acceptable Waste per year during the term of the New Service Agreement ("**Guaranteed Tonnage**"). Acceptable Waste delivered or tendered for delivery to the Facility by or on behalf of the Contracting Communities and rejected by Covanta due to one or more scheduled maintenance outages during any calendar year which aggregate more than 672 hours shall count towards the put-or-pay obligation of the Contracting Communities, in addition to other remedies if any applicable to such rejection under the New Service Agreement,. In addition, the Contracting Communities may tender for delivery, and if so tendered and if Processing Capacity (hereinafter defined) at the Facility is available, the Company shall accept, additional Acceptable Waste (originating within the territorial limits of the Contracting Communities) in excess of 243,300 tons per year up to the Processing Capacity of the Facility as set forth in Section 9 below ("**Excess Waste**"). The tipping fee for the first 10,000 tons per year of Excess Waste shall be $2 per ton less than the then applicable Tipping Fee, and the Tipping Fee for all further Excess Waste shall be $4 per ton less than the then applicable Tipping Fee. The Contracting Communities acknowledge that waste that requires special handling or secure destruction "**Special Waste**" will have priority over the processing of Excess Waste, as provided in Section 9(e) below.

(b) Quality of Waste. The Contracting Communities shall deliver Acceptable Waste to the Facility. Any inadvertent delivery of Hazardous Waste and/or Unacceptable Waste to the Facility by the Contracting Communities shall not constitute a breach of the Contracting Communities, and the New Service Agreement shall contain provisions similar to the Original Service Agreement governing the procedures, costs and liabilities associated with the delivery of Hazardous Waste and/or Unacceptable Waste to the Facility. If Hazardous Waste and/or Unacceptable Waste are delivered to the Facility by or on behalf of third parties, the Contracting Communities' share of the cost incurred to remedy such delivery shall be in accordance with their share of the tipping fee benefit from the delivery of such Waste to the Facility had it been Acceptable Waste.

(c) Delivery Schedule. The New Service Agreement shall contain a delivery schedule which is negotiated between Covanta and the Contracting Communities. The delivery schedule will set forth the hours for waste deliveries to the Facility and the daily and monthly tonnage maximums. Also, the New Service Agreement will outline terms for notifying Contracting Communities when the Facility is unable to accept and Process Acceptable Waste.

(d) Weight. The tonnage of waste delivered to the Facility shall be weighed at the scales owned by Covanta, but operated by the County of Stanislaus at the Facility. The New Service Agreement shall contain provisions similar to the Original Service Agreement for addressing periods when the scales become inoperative, for maintaining the accuracy of the scales, resolving discrepancies, observing testing and other procedures.

5. **Landfill Disposal**. The Contracting Communities shall provide disposal capacity throughout the term of the New Service Agreement at the Fink Road Landfill (the "**Landfill**") for Covanta's disposal of all Process Residue, Unacceptable Waste and By-Pass Waste from the Facility. Covanta may dispose of all Process Residue, Unacceptable Waste and By-Pass Waste from the Facility at the Landfill and shall pay to the Contracting Communities (i) a tipping fee of $26 for each ton of Process Residue, and (ii) the then-posted gate rate at the Landfill for By-Pass Waste, delivered to the Landfill. Such tipping fee for Process Residue shall escalate annually at the same time and by the same percentage as the tipping fee for Acceptable Waste escalates, after giving effect to the limiting parameters described in Section 1(a) and (b) above. Covanta may dispose of Unacceptable Waste delivered to the Facility by or on behalf of the Contracting Communities at the Landfill free of charge. The Contracting Communities shall not be obligated to pay to Covanta the tipping fee for Unacceptable Waste delivered to the Facility by or on behalf of the Contracting Communities but shall only pay to Covanta substantiated incremental handling, removal and transport costs for removing such Unacceptable Waste from the Facility, provided that the Contracting Communities make the Landfill available to Covanta for disposal of such Unacceptable Waste free of charge. The New Service Agreement shall otherwise contain provisions similar to the provisions in Article VII of the Original Service Agreement.

6. **Recovered Resources**. Subject to Section 3 above, Covanta shall have the sole and absolute right, at Covanta's option, and pursuant to such terms and conditions as Covanta determines in its sole and absolute discretion, to sell, trade, donate or otherwise alienate any and

all Recovered Resources, solely for the account of Covanta. "**Recovered Resources**" means (i) steam, electric energy, capacity, ancillary services, ferrous and non-ferrous metals, ash and such other materials of whatever nature or description as the Company may from time-to-time recover from Solid Waste, Process Residue or any other material, whether at the Facility or elsewhere, as determined by the Company in its sole and absolute discretion, and (ii) offsets, credits or benefits of whatever nature or description, for emissions, pollution, green house gas, renewable energy generation, investment, production, taxes or any certificate, grant or intangible entitlement relating to the Facility or its operation, exclusive of diversion credits from the State for wastes processed by the Facility.

7. **Costs of Facility**.

(a) Except as provided in Section 3 above and clause (b) below in this Section, or as is expressly provided in the Facility Site Lease or the New Service Agreement, Covanta shall solely bear all costs and risks and have all benefits of ownership, operation and maintenance of the Facility including casualties and liability.

(b) Notwithstanding the immediately preceding sentence, Covanta shall have a right to reimbursement from the Contracting Communities for any taxes, assessments or fees imposed by the County, the City, or any special taxing district or authority under the control of the County or City, that are imposed on Covanta, the Facility, its operation or the solid waste industry and that are not generally applicable throughout the entire County (collectively, "**Discriminatory Taxes**"). Except for Discriminatory Taxes, Covanta will be responsible for the payment of any ad valorem, personal or business property and possessory interest lease or property taxes.

8. **Site Lease**. The Facility Site Lease Agreement dated as of June 1, 1986 between the County and Covanta shall be amended as follows:

(a) The initial term thereof shall be extended to expire on April 1, 2027. One fifteen-year renewal option shall remain in effect; and

(b) The rental provision shall be amended to provide for a fixed annual base rent of $198,000 per year until the earlier of (i) the termination of the New Service Agreement or (ii) April 1, 2027.

9. **Waste Capacity**.

(a) The Contracting Communities shall have a right of first use of all Processing Capacity (as such term is defined in Section 9(d) below) at the Facility, subject to the following procedures. If at any time and from time to time the Contracting Communities have not delivered sufficient waste to fill the Processing Capacity of the Facility, then within 24 hours of Covanta's notice to the Contracting Communities of the existence of excess Processing Capacity at the Facility, Covanta shall have the right to market, for the benefit of both the Contracting Communities and Covanta as provided in Section 9(c) below, the difference between the Processing Capacity and the total of Acceptable Waste being delivered by the Contracting Communities.

(b) If Covanta procures waste from third parties to mitigate a shortfall in the Contracting Communities meeting their scheduled Guaranteed Tonnage (a "**Waste Delivery Shortfall**"), then Covanta shall be entitled to, and the Contracting Communities shall owe, a procurement fee of 15% (the "**Procurement Commission**") of the tipping fee paid by such third parties (the "**Third Party Tipping Fee**") for the procurement of such waste. In addition, if the Third Party Tipping Fee is less than the Tipping Fee then, in addition to the Procurement Commission, (a) the Contracting Communities will pay the difference between the Third Party Tipping Fee and the then current Tipping Fee ("**Shortfall Payment**"), but (b) the Contracting Communities shall have the right, upon 48 hours notice, to terminate any such supply arrangement which results in net payments by the Contracting Communities and direct Covanta to accept waste from alternative sources procured by the Contracting Communities in order to reduce the Waste Delivery Shortfall. If the Third Party Tipping Fee is greater than the then current Tipping Fee, the "**excess revenues**" derived therefrom shall be separately accounted for and used as a credit to satisfy past, present and/or future Shortfall Payments. For the purposes of this calculation, it is assumed that the Procurement Commission, in such cases will be paid separately by the Contracting Communities to Covanta, and the Contracting Communities may permit such excess revenues to be applied toward such purpose. Any such excess revenues remaining at the expiration or termination of the New Service Agreement shall be entirely for Covanta's account.

(c) If Covanta is procuring Excess Waste (other than Special Waste) from third parties, (i) Covanta shall retain for its own account the portion of the tipping fee for such Excess Waste up to the then applicable reduced Tipping Fee (under Section 4(a)), and (ii) the portion of such tipping fee in excess of the then applicable reduced Tipping Fee shall be split 60% to Covanta and 40% to Contracting Communities. Covanta shall retain for its own account the entire tipping fee for Special Waste. Covanta agrees that the Contracting Communities may dispose at the Facility, free of charge, Special Waste arising out of governmental activities occurring within Stanislaus County, such as illegal drugs confiscated by law enforcement agencies.

(d) "**Processing Capacity**" shall mean the actual Processing Capacity of the Facility but not more than 310,000 tons per year unless the Contracting Communities consent to the establishment of a greater amount, which consent for a greater amount shall not be unreasonably withheld, conditioned or delayed if the basis for the Processing Capacity being set above 310,000 tons per year is due to the lower heating value of the waste then being Processed at the Facility. Any Cap & Trade Costs resulting from an increase in the capacity of the Facility beyond 310,000 tons shall be solely Covanta's responsibility, unless otherwise agreed to by the Contracting Communities. The definition of Processing Capacity shall not alter or diminish Covanta's obligation to accept the Guaranteed Tonnage.

(e) Acceptable Waste delivered by the Contracting Communities pursuant to this Agreement shall have priority over any waste arranged by Covanta, except that Excess Waste shall be subordinate as follows:

(i) From April 1, 2012 until January 1, 2016, up to 7,300 tons per year of Special Waste arranged by Covanta shall have priority over Excess Waste; and

(ii) From January 2, 2016 until April 1, 2027, up to 12,200 tons per year of Special Waste arranged by Covanta shall have priority over Excess Waste.

10. **Default & Termination**. Events of default similar to those set forth in the Original Service Agreement (and adjusted to remove construction related defaults), which continue following notice and an applicable cure period negotiated as part of the New Service Agreement, shall permit the non-defaulting party to pursue the defaulting party for the put-or-pay amount and/or direct damages, as applicable and subject to Section 11 below, and/or terminate the New Service Agreement. Direct damages for the Contracting Communities and for Covanta will be further described as mutually agreed in the New Service Agreement. If Covanta defaults by violating the Contracting Communities' right of first use of the Facility, as described in Section 9 above, then the Contracting Communities shall have as an additional remedy the right to seek a decree of specific performance to enforce such right of first use and to preliminary and permanent injunctive relief in connection therewith and/or similar remedies in equity. If the Contracting Communities default in their delivery obligations by delivering Acceptable Waste to locations other than the Facility while failing to meet their obligation to deliver the Guaranteed Tonnage, then Covanta shall have as an additional remedy the right to seek a decree of specific performance to enforce such delivery obligations and to preliminary and permanent injunctive relief in connection therewith and/or similar remedies in equity. The remedies described in this Section 10 shall be the sole and exclusive remedies of the parties.

11. **Limit of Liability**. Notwithstanding any other provision of the New Service Agreement, in no event shall Covanta, on the one hand, or the Contracting Communities, on the other hand, be obligated to pay damages to the other for any and all breaches and events of default from the beginning of the New Service Agreement and thereunder, in a cumulative amount in excess of $25 million. Excluded from such limit of liability are tort claims for injury to persons or damage to property, even if pursued under a provision of contractual indemnity. And if either party reaches the $25 million limit, the other party shall have the right to terminate the New Service Agreement. The defaulting party's obligation to make payment, up to the limit of liability, shall survive such termination of the New Service Agreement.

12. **Right of First Refusal**. During the term of the New Service Agreement, the Contracting Communities shall have a right of first refusal to purchase the Facility, on the same terms and conditions and for the same price, as set forth in an offer to purchase from a third party which Covanta is willing to accept. The New Service Agreement will contain notice provisions and procedures for exercising such right of first refusal. The right of first refusal will not be triggered by one or more sales of equity interests in Covanta or its direct or indirect parent companies.

13. **Purchase Option**. At the expiration of the term of the New Service Agreement(2027), and at the end of the term of the Site Lease if extended (2042) by Covanta exercising its renewal option, or upon earlier termination of the Site Lease as result of a Covanta default thereunder, the Contracting Communities shall have the option to purchase the Facility for its fair market value. The option to purchase will contain notice provisions and exercise and valuation procedures similar to those set forth Sections 11.19 and 11.20 of the Original Service Agreement.

14. **Parent Guaranty**. Covanta Holding Corporation ("**CHC**") shall provide a financial guaranty of the obligations of Covanta under the New Service Agreement. The guaranty agreement will contain provisions permitting substitution of guarantors (i) without the approval of the Contracting Communities if the substituted guarantor assumes CHC's obligations under the guaranty and posts for the benefit of the Contracting Communities a letter of credit in the amount of the limit of liability, or (ii) with the approval of the Contracting Communities, which approval shall not be unreasonably withheld.

[Signatures appear on the next page]

IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has authorized the execution of this agreement in triplicat by its City Manager, and the Vice President of Covanta Stanislaus, Inc. and County of Stanislaus in triplicate by their authorized officers as indicated on the next page. Approved by the City Council and attested by the City Clerk on January 10, 2012 by Resolution No. 2012-21.

Executed as of the date set forth below.

Dated: Jan 10, 2012

COVANTA STANISLAUS, INC.

By: ______________________

Name: Christopher J. Baker

Title: Vice President

CITY OF MODESTO

By: ______________________

Name: GREG NYHOFF

Title: CITY MANAGER

COUNTY OF STANISLAUS

By: ______________________

Name: WILLIAM OBRIEN

Title: CHAIRMAN

APPROVED AS TO FORM

Roland R. Stevens
Assistant City Attorney

ATTEST: ______________________
Stephanie Lopez, City Clerk

NY1 7979177v.5

City of Modesto & Stanislaus County Waste to Energy (WTE) Contract

January 10, 2012

Presented by:
Stan Risen, Assistant Executive Officer, Stanislaus County
Dee Williams-Ridley, Deputy City Manager, City of Modesto




City of Modesto
Water • Wealth • Contentment • Health

Stanislaus County
Striving to be the Best

BACKGROUND

- WTE facility – coordinated through a Joint Powers Agency (JPA) with the City of Modesto and the County of Stanislaus (Contracting Communities)
- Solid Waste to Energy Committee (SWEC)-Governing body
- JPA (SWEC) consist of (2) members of the Board of Supervisors and (2) City Councilmembers
- 1986 Covanta Stanislaus, Inc., (formerly Ogden Martin) awarded contract for operations – 20 year term

City of Modesto
Water • Wealth • Contentment • Health

Stanislaus County
Striving to be the Best

BACKGROUND

- 2007 Contract negotiations stalled
- 2009 contractual options invoked, agreement extended through January 1, 2016
- Contract negotiations reset in 2009
- To date, staff from the represented parties have successfully negotiated terms for a new 15-year fixed term agreement with Covanta Stanislaus Inc.

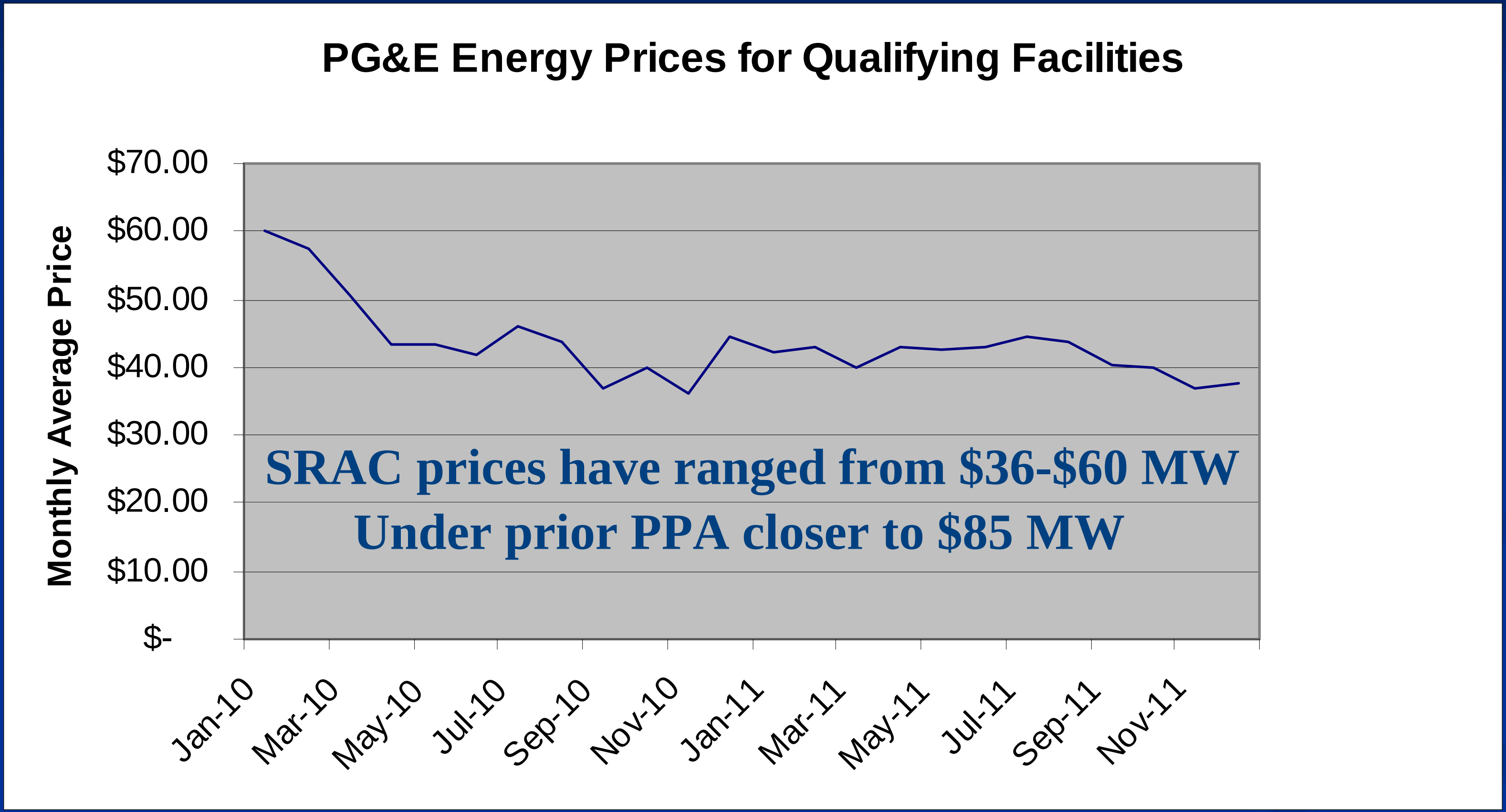
City of Modesto
Water • Wealth • Contentment • Health

Stanislaus County
Striving to be the Best

Current Contract - Highlights

- Energy revenue is split – 90% Contracting Communities (City/County)
- Covanta is paid a service fee for operations and maintenance
- Communities assume ALL RISK (including change-in-law and unforeseen circumstances)
- Currently responsible for 100% major maintenance/repairs
- Tipping fee $22/ton + $6/ton for AB939 & household hazardous waste
- Communities guarantee 243,300 tons of waste annually
- Power Purchase Agreement (PPA) with PG&E expired – resulting in decreased electric revenue

Electricity Rates since January 2010



City of Modesto
Water • Wealth • Contentment • Health

Stanislaus County
Striving to be the Best

Fiscal Overview

Fiscal Year Ending June 30, 2011	Revenue
Disposal Fees	$7,030,953
Electricity Revenues	$5,488,362
Supplemental Waste Revenue	$369,498
Metal Recovery	$300,352
Total Revenue	$13,189,165
Total Operating Expenses	$16,689,187
Operating Loss	**($3,500,022)**

Objective Based Approach

- Preserve current Resource Recovery account (PRA) balance
- Maintain a stable and predictable tipping fee
- Commitment to no increased importation of waste
- Meet diversion requirements and preserve landfill capacity
- Reduce City/County risk exposure
  1. Change-in-law risk
  2. Public perception risk
  3. Change in science/technology

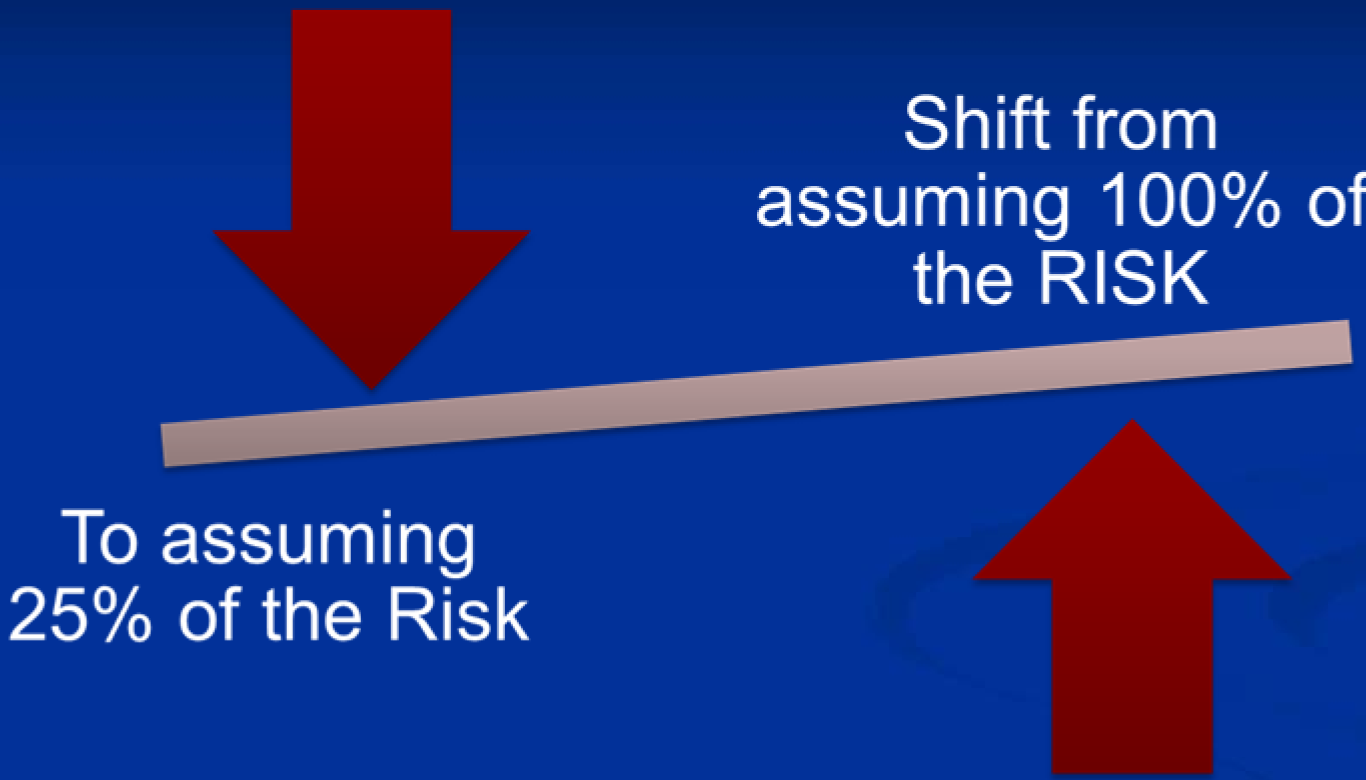
Risk Exposure in Dollars & Cents

- AB32 – In 2013 the WTE facility will be required to purchase emissions credits for gas emissions (currently produce approx. 80,000 tons of carbon dioxide and nitrogen oxides – projected cost: $10 to $40/ton)
- Cap & Trade financial exposure once it is in full force is currently projected at $800,000 to $3.2 Million/year
- With our current operating losses, reserves are diminishing at the rate of approximately $225,000/month before factoring in any cap and trade costs

City of Modesto
Water • Wealth • Contentment • Health

Stanislaus County
Striving to be the Best

Paradigm Shift



City of Modesto
Water • Wealth • Contentment • Health

Stanislaus County
Striving to be the Best

Proposed Contract - Highlights

- 15 year fixed term with no renewal options
- Contracting Communities agree to pay Covanta $32/ton; annual CPI escalator (not to exceed 20% of rolling 5 year average of all landfills within 50 mile radius)
- Tipping Fees would need to increase from current level of $28/ton to $38/ton (includes $6/ton for AB939 and Household Hazardous Waste
- Covanta would assume all electric, recycling and supplemental waste revenues & 75% of the risk
- Contracting communities retain 25% of the risk

City of Modesto
Water • Wealth • Contentment • Health

Stanislaus County
Striving to be the Best

Proposed Contract - Highlights

- Electric revenue above agreed upon amounts will be used to address Cap & Trade financial exposures of both parties
- Contracting Communities commit to delivering 243,000 tons of acceptable waste (currently averaging 250,000 tons/year)
- Covanta will pay County $26/ton for ash disposal with CPI escalator
- Covanta will bear all costs with the operation of the facility and will have all the benefits of ownership
- County agrees to extend current lease rate of $198,000/year through life of the new Service Agreement; initial term extended to coincide with expiration of new Service Agreement

Proposed Contract - Highlights

- Revenue sharing arrangement for excess capacity – after tip fee, revenues are shared 60% Covanta/40% Contracting Communities
- Limit of liability for either party of $25 million
- Contracting Communities will have an option to purchase facility at the end of the Service Agreement (2027) and the Site Lease if extended (2042)
- Covanta parent company to provide guarantees that obligations of Covanta Stanislaus, Inc. will be met

FACTORS CONSIDERED

- Legal review of term sheet – Sidley Austin
- Changes in Cap & Trade (2013 emissions obligation)
- State has established a new 75% diversion goal
- Stable & predicable tipping fees in the future
- Ability to meet committed tonnage/maximizing waste processing capacity
- Unforeseen circumstances costs
- Risk avoidance worth loss of revenue

Stakeholder Input

- Solid Waste Executive Committee and City-County Liaison Committee briefings
- 8 Cities (Ceres, Hughson, Newman, Oakdale, Patterson, Riverbank, Turlock, Waterford)
- City Managers
- Haulers
- Covanta

Next Steps

- Develop actual language for the new Service Agreement consistent with the Term Sheet
- Work on an amendment to the existing Agreement between the City of Modesto and the County of Stanislaus to address the disposition of the Resource Recovery Account and other operating procedure changes
- Return to the Board of Supervisors and Modesto City Council for final approval of those two documents

City of Modesto
Water • Wealth • Contentment • Health

Stanislaus County
Striving to be the Best

Recommendation

- Approve the Term Sheet to be used in the development of a new Service Agreement with Covanta Stanislaus, Inc.
- Authorize the Chairman of the Board to sign the Term Sheet.
- Direct the Chief Executive Officer to negotiate a new Service Agreement with Covanta Stanislaus, Inc. consistent with the Term Sheet and return to the Board of Supervisors for final approval of the new Service Agreement.

Recommendations

- Direct the Chief Executive Officer to negotiate an Amendment to the JPA Agreement between the City of Modesto/Stanislaus County regarding the disposition of the Resource Recovery Account and other operating procedures upon commencement of a new Service Agreement and return for final approval of the Amendment.
- Authorize the Chief Executive Officer to enter into a contract with Sidley Austin LLP for legal services to develop a new Service Agreement in an amount not to exceed $110,000.

Thank you!

QUESTIONS

City of Modesto
Water • Wealth • Contentment • Health

Stanislaus County
Striving to be the Best