



# County of Santa Cruz

0479

## DEPARTMENT OF PUBLIC WORKS

701 OCEAN STREET, ROOM 410, SANTA CRUZ, CA 95060-4070  
(831) 454-2160 FAX (831) 454-2385 TDD (831) 454-2123

JOHN A. FANTHAM  
DIRECTOR OF PUBLIC WORKS

### AGENDA: JUNE 13, 2000

June 1, 2000

#### SANTA CRUZ COUNTY BOARD OF SUPERVISORS

701 Ocean Street  
Santa Cruz, California 95060

SUBJECT: BUENA VISTA LANDFILL GAS POWER PROJECT

Members of the Board:

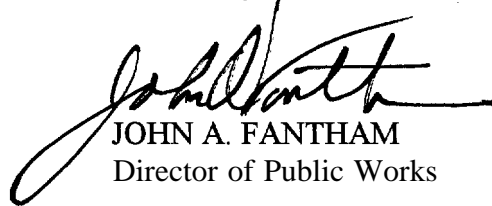
On April 11, 2000, your Board directed Public Works to return with a status report on the development of the Buena Vista Landfill Gas Power Project. We previously informed your Board that the County's development consultant, Brown, Vence and Associates (BVA) had submitted a proposal to build and operate the Buena Vista Landfill Gas Power Project as a joint venture with the County; however, the terms were not found acceptable. In addition, Public Works has contacted several other private landfill gas power project operators in California to see if there are others interested in privately or jointly developing this project. We have received a positive response from NEO Corporation, a company that is actively developing eight other landfill gas-to-electricity projects throughout northern and central California. NEO is continuing its due diligence on the project, but is not prepared to make a final offer at this time.

In our previous correspondence, we indicated that we were preparing a contract for Advanced Energy Strategies (AES), an economic consultant specializing in energy projects, to assist us with review and response to any proposals we receive and provide updates on current and future market conditions that may affect this project. The input of an expert who is able to provide an independent analysis is critical since BVA is financially involved in the projects being proposed. AES may also assist with marketing our landfill gas resource, if the County does receive acceptable proposals from BVA and NEO. Attached you will find a contract with AES to assist the County with review of any landfill gas power project proposals received from private developers.

It is therefore recommended that the Board of Supervisors take the following actions:

1. Accept and file the report on the Buena Vista Landfill Gas Power Project.
2. Approve the independent contractor agreement with Advanced Energy Strategies for a not-to-exceed amount of \$20,000.00 to assist the County with proposal review and development of the Buena Vista Landfill Gas Power Project.
3. Authorize the Director of Public Works to sign the agreement on behalf of the County.
4. Direct Public Works to return on or before September 19, 2000, with a status report on the Buena Vista Landfill Gas Power Project.

Yours truly,



JOHN A. FANTHAM  
Director of Public Works

RPM: bbs

Attachments

RECOMMENDED FOR APPROVAL:



County Administrative Officer

Copy to: Brown, Vence and Associates  
General Services  
Public Works

BUENB

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COUNTY OF SANTA CRUZ  
REQUEST FOR APPROVAL OF AGREEMENT

0481

TO: Board of Supervisors  
County Administrative Officer  
County Counsel  
Auditor-Controller

FROM: PUBLIC WORKS (Dept.)  
[Signature] (Signature) (5-31-00 e)

The Board of Supervisors is hereby requested to approve the attached agreement and authorize the execution of the same.

- Said agreement is between the COUNTY OF SANTA CRUZ (Agency)  
ADVANCED ENERGY STRATEGIES  
and 3667 Northridge Drive, Concord, CA 94518 (Name & Address)
- The agreement will provide for consultant services for the Buena Vista Landfill  
Gas Power Project
- The agreement is needed because the work can be performed most expeditiously by contract.
- Period of the agreement is from Board Approval to June 30, 2000
- Anticipated cost is \$ 20,000.00 (Fixed amount; Monthly rate; Not to exceed)
- Remarks: Contract \$20,000.00; 7% Overhead \$1,400.00; Total \$21,400.00
- Appropriations are budgeted in 6 2 5 1 1 0 ! 5 1 0 4 6 ! 6 6 1 0 ! (Index#) 6610 (Subobject)

NOTE: IF APPROPRIATIONS ARE INSUFFICIENT, ATTACH COMPLETED FORM AUD-74

Appropriations are available and have been encumbered. Contract No. C092110 Date 6/1/00  
are not available and will be encumbered.

GARY A. KNUTSON, Auditor - Controller  
By Ronald J. Silva Deputy.

Proposal reviewed and approved. It is recommended that the Board of Supervisors approve the agreement and authorize the Director of Public Works to execute the same on behalf of the Department of Public Works (Agency).  
County Administrative Officer

Remarks: \_\_\_\_\_ (Analyst)  
By [Signature] Date 6/5/00

Agreement approved as to form. Date \_\_\_\_\_

RPM:bbs

Distribution:  
Bd. of Supv. - White  
Auditor-Controller - Blue  
County Counsel - [initials]  
Co. Admin. Officer - Canary  
Auditor-Controller - Pink  
Originating Dept. - Goldenrod

\*To Orig. Dept. if rejected.

State of California )  
County of Santa Cruz ) ss  
I \_\_\_\_\_ ex-officio Clerk of the Board of Supervisors of the County of Santa Cruz,  
State of California, do hereby certify that the foregoing request for approval of agreement was approved by  
said Board of Supervisors as recommended by the County Administrative Officer by an order duly entered  
in the minutes of said Board on \_\_\_\_\_ County Administrative Officer  
\_\_\_\_\_ 1 9 - - BY \_\_\_\_\_ Deputy Clerk

INDEPENDENT CONTRACTOR AGREEMENT

THIS CONTRACT is entered into this 13th day of June, 2000, by and between the COUNTY OF SANTA CRUZ, hereinafter called COUNTY, and ADVANCED ENERGY STRATEGIES hereinafter called CONTRACTOR. The parties agree as follows:

1. DUTIES. CONTRACTOR agrees to exercise special skill to accomplish the following result: provide technical assistance to the County regarding the Buena Vista Landfill Gas Power Project, per attached Scope of Work and as directed by Public Works.

2. COMPENSATION. In consideration for CONTRACTOR accomplishing said result, COUNTY agrees to pay CONTRACTOR as follows: Not-to-exceed \$20,000.00

3. TERM. The term of this contract shall be over a 1 u n t i l completion.

4. EARLY TERMINATION. Either party hereto may terminate this contract at any time by giving 30 days written notice to the other party.

5. INDEMNIFICATION FOR DAMAGES, TAXES AND CONTRIBUTIONS. CONTRACTOR shall exonerate, indemnify, defend, and hold harmless COUNTY (which for the purpose of paragraphs 5 and 6 shall include, without limitation, its officers, agents, employees and volunteers) from and against:

A. Any and all claims, demands, losses, damages, defense costs, or liability of any kind or nature which COUNTY may sustain or incur or which may be imposed upon it for injury to or death of persons, or damage to property as a result of, arising out of, or in any manner connected with the CONTRACTOR'S performance under the terms of this Agreement, excepting any liability arising out of the sole negligence of the COUNTY. Such indemnification includes any damage to the person(s), or property(ies) of CONTRACTOR and third persons.

B. Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to CONTRACTOR and CONTRACTOR'S officers, employees and agents engaged in the performance of this Agreement (including, without limitation, unemployment insurance, social security and payroll tax withholding).

6. INSURANCE. CONTRACTOR at its sole cost and expense, for the MI term of this Agreement (and any extensions thereof), shall obtain and maintain at a minimum compliance with all of the following insurance coverage(s) and requirements. Such insurance coverage shall be primary coverage as respects COUNTY and any insurance or self-insurance maintained by County shall be excess of CONTRACTOR'S insurance coverage and shall not contribute to it.

If CONTRACTOR utilizes one or more subcontractors in the performance of this Agreement, CONTRACTOR shall obtain and maintain Independent Contractor's Insurance as to each subcontractor or otherwise provide evidence of insurance coverage for each

subcontractor equivalent to that required of CONTRACTOR in this Agreement, unless CONTRACTOR and COUNTY both initial here \_\_\_\_\_/\_\_\_\_\_.

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A. Types of Insurance and Minimum Limits

(1) Worker's Compensation in the minimum statutorily required coverage amounts. This insurance coverage shall not be required if the CONTRACTOR has no employees and certifies to this fact by initialing here DRY

(2) Automobile Liability Insurance for each of CONTRACTOR's vehicles used in the performance of this Agreement, including owned, non-owned (e.g. owned by CONTRACTOR's employees), leased or hired vehicles, in the minimum amount of \$500,000 combined single limit per occurrence for bodily injury and property damage. This insurance coverage shall not be required if vehicle use by CONTRACTOR is not a material part of performance of this Agreement and CONTRACTOR and COUNTY both certify to this fact by initialing here - \_\_\_\_\_/\_\_\_\_\_.

(3) Comprehensive or Commercial General Liability Insurance coverage in the minimum amount of \$1,000,000 combined single limit, including coverage for: (a) bodily injury, (b) personal injury, (c) broad-form property damage, (d) contractual liability, and (e) cross-liability.

(4) Professional Liability Insurance in the minimum amount of \$1,000,000.00 combined single limit, if, and only if, this Subparagraph is initialed by CONTRACTOR and COUNTY \_\_\_\_\_/\_\_\_\_\_.

B. Other Insurance Provisions

(1) If any insurance coverage required in this Agreement is provided on a "Claims Made" rather than "Occurrence" form, CONTRACTOR agrees to maintain the required coverage for a period of three (3) years after the expiration of this Agreement (hereinafter "post agreement coverage") and any extensions thereof CONTRACTOR may maintain the required post agreement coverage by renewal or purchase of prior acts or tail coverage. This provision is contingent upon post agreement coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Agreement. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement in order to purchase prior acts or tail coverage for post agreement coverage shall be deemed to be reasonable.

(2) All required Automobile and Comprehensive or Commercial General Liability Insurance shall be endorsed to contain the following clause:

"The County of Santa Cruz, its officials, employees, agents and volunteers are added as an additional insured as respects the operations and activities of, or on behalf of, the named insured performed under Agreement with the County of Santa Cruz."

(3) All required insurance policies shall be endorsed to contain the following clause:

“This insurance shall not be canceled until after thirty (30) days prior 0484  
written notice has been given to: PATRICK MATHEWS  
COUNTY OF SANTA CRUZ  
PUBLIC WORKS DEPARTMENT  
70 1 OCEAN STREET, ROOM 4 10  
SANTA CRUZ, CA 95060

(4) CONTRACTOR agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide COUNTY on or before the effective date of this Agreement with Certificates of Insurance for all required coverages. All Certificates of Insurance shall be delivered or sent to: PATRICK MATHEWS  
COUNTY OF SANTA CRUZ  
PUBLIC WORKS DEPARTMENT  
701 OCEAN STREET, ROOM 410  
SANTA CRUZ, CA 95060

7. EQUAL EMPLOYMENT OPPORTUNITY. During and in relation to the performance of this Agreement, CONTRACTOR agrees as follows:

A. The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, pregnancy, sex, sexual orientation, age (over 1 S), veteran status or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to the following: recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training (including apprenticeship), employment, upgrading, demotion, transfer. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

B. If this Agreement provides compensation in excess of \$50,000 to CONTRACTOR and if CONTRACTOR employs fifteen (15) or more employees, the following requirements shall apply:

(1) The CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, pregnancy, sex, sexual orientation, age (over 18), veteran status, or any other non-merit factor unrelated to job duties. In addition, the CONTRACTOR shall make a good faith effort to consider Minority/Women/Disabled Owned Business Enterprises in CONTRACTOR's solicitation of goods and services. Definitions for Minority/Women/Disabled Business Enterprises are available from the COUNTY General Services Purchasing Division.

(2) The CONTRACTOR shall furnish COUNTY Affirmative Action Office information and reports in the prescribed reporting format (PER 40 12) identifying the sex, race, physical or mental disability and job classification of its employees and the names, dates and methods of advertisement and direct solicitation efforts made to subcontract with Minority/Women/Disabled Business Enterprises.

(3) In the event of the CONTRACTORS non-compliance with the non-discrimination clauses of this Agreement or with any of the said rules, regulations, or orders said CONTRACTOR may be declared ineligible for further agreements with the COUNTY.

(4) The CONTRACTOR shall cause the foregoing provisions of this Subparagraph 7B. to be inserted in all subcontracts for any work covered under this Agreement by a subcontractor compensated more than \$50,000 and employing more than fifteen (15) employees, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

8. INDEPENDENT CONTRACTOR STATUS. CONTRACTOR and COUNTY have reviewed and considered the principal test and secondary factors below and agree that CONTRACTOR is an independent contractor and not an employee of COUNTY. CONTRACTOR is responsible for all insurance (workers compensation, unemployment, etc.) and all payroll related taxes. CONTRACTOR is not entitled to any employee benefits. COUNTY agrees that CONTRACTOR shall have the right to control the manner and means of accomplishing the result contracted for herein.

PRINCIPAL TEST: The CONTRACTOR rather than COUNTY has the right to control the manner and means of accomplishing the result contracted for.

SECONDARY FACTORS: (a) The extent of control which, by agreement, COUNTY may exercise over the details of the work is slight rather than substantial; (b) CONTRACTOR is engaged in a distinct occupation or business; (c) In the locality, the work to be done by CONTRACTOR is usually done by a specialist without supervision, rather than under the direction of an employer; (d) the skill required in the particular occupation is substantial rather than slight; (e) The CONTRACTOR rather than the COUNTY supplies the instrumentalities, tools and work place; (f) The length of time for which CONTRACTOR is engaged is of limited duration rather than indefinite; (g) The method of payment of CONTRACTOR is by the job rather than by the time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of COUNTY; (i) CONTRACTOR and COUNTY believe they are creating an independent contractor relationship rather than an employer-employee relationship; and (j) The COUNTY conducts public business.

It is recognized that it is not necessary that all secondary factors support creation of an independent contractor relationship, but rather that overall there are significant secondary factors which indicate that CONTRACTOR is an independent contractor.

By their signaturesto this Agreement, each of the undersigned certifies that it is his or her considered judgment that the CONTRACTOR engaged under this Agreement is in fact an independent contractor.

9. CONTRACTOR represents that its operations are in compliance with applicable County planning, environmental and other laws or regulations.

10. CONTRACTOR is responsible to pay prevailing wages and maintain records as required by Labor Code Section 1770 and following.

11. NONASSIGNMENT. CONTRACTOR shall not assign this agreement without the prior written consent of the COUNTY. 0486

12. RETENTION AND AUDIT OF RECORDS. CONTRACTOR shall retain records pertinent to this Agreement for a period of not less than five (5) years after final payment under this Agreement or until a final audit report is accepted by COUNTY, whichever occurs first. CONTRACTOR hereby agrees to be subject to the examination and audit by the Santa Cruz County Auditor-Controller, the Auditor General of the State of California, or the designee of either for a period of five (5) years after final payment under this Agreement.

13. PRESENTATION OF CLAIMS. Presentation and processing of any or all claims arising out of or related to this Agreement shall be made in accordance with the provisions contained in Chapter 1.05 of the Santa Cruz County Code, which by this reference is incorporated herein.

14. ATTACHMENTS. This Agreement includes the following attachments (identify by name or write "NONE"):

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

COUNTY OF SANTA CRUZ

CONTRACTOR  
ADVANCED ENERGY STRATEGIES

By: \_\_\_\_\_  
Director of Public Works

By: \_\_\_\_\_

Address: 3 667 Northridge Drive  
Concord, CA 945 18

APPROVED AS TO FORM:

Telephone: (925) 691-9332  
FAX: (925) 691-9920  
E-MAIL: [drtibbs@ix.netcom.com](mailto:drtibbs@ix.netcom.com)

By: D. M. Rae 6:100  
Chief Assistant County Counsel

DISTRIBUTION: Auditor-Controller  
Contractor  
Public Works



May 30, 2000

**County of Santa Cruz  
Landfill Gas Generation Project  
Scope of Work**

The following Scope of Work defines the role of Advanced Energy Strategies (“AES”) as a Consultant to the County of Santa Cruz in reviewing, assessing, and providing marketing assistance associated with a generation project currently under consideration (the “Project”). The Project is designed to be fueled by the methane gas produced as a by-product of the County’s Buena Vista landfill operations, and will displace most of the waste gases now being flared by the County. All work described by this Scope of Work will be performed by the owner of AES, Dean R. Tibbs, Ph.D. All work is to be performed subject to authorization by the County Public Works Department.

I. Scope of Work

- A. Review Project to Date – review available project materials, including pro formas, offers by potential developers/partners to the County, and discussions with knowledgeable County representatives to provide background and inputs to the Project’s status.
1. Review economic pro forma – review content, assumptions, and methodology of the economic pro forma in its current form and format. Review assumptions on price, valuations of sales, and general structure. Prepare a list of issues and concerns regarding the Project.
  2. Review Project status with County Representative, Mr. Patrick Mathews. Review assumptions used in pro forma, operating conditions, operating options, interconnection and power displacement options, and other matters relevant to the project.
  3. Prepare preliminary report of findings for this effort to the County.
- B. Prepare Modified Project Pro Forma
1. Update economic and market assumptions to be used in economic assessment of Project. Prepare a letter for the County indicating current levels of economic assumptions proposed to be used in the economic pro forma of the Project.
  2. Revise the economic pro forma to reflect a “private sector” perspective – using financing levels and cost assumptions that reflect the current market conditions for investment in merchant generation stations, equity requirements, and borrowing needs.
  3. Assess the Project’s potential cash generation and profitability in order to aid the County in assessing possible transactions with third party developer/operators of the Project. Use standard business metrics to assess the Project, including internal rates of return, debt coverage ratios, and capital at market risk measures.
  4. Assess alternative structures of Project development, including a turn-key promotion of the Project to a third party owner/operator.

- C. Assess Project Expansion Opportunities
    - 1. Review County options for self-serving the electric load of nearby County facilities.
    - 2. Assess the value of “green” energy in serving County load.
    - 3. Review/assess expansion opportunities of the project, including use of more fuel, dispatching according to economic, power market conditions and other options that may be available.
  - D. Provide Marketing and Sales Structure Assistance
    - 1. Assist the County in marketing the Project to potential third party developers/operators.
    - 2. Assist the County in negotiating an agreement with third party that implements a development/operating/purchase transaction acceptable to the County.
  - E. Assess Development Proposals
    - 1. Assist the County in assessing Project proposals from third party developers, including economic impact, profitability, risk analysis, and partnershiping terms and conditions.
    - 2. Assist the County with Project participation, energy purchase, operations, or any other agreements, as may be required or requested.
- II. Meetings and Deliverables
- A. Meetings – “Status” meeting with County representatives, including site visitation and discussion of work performed to date of meeting. Additional meetings (likely via phone) will be required to define development scenarios.
  - B. Report of Economic Pro Forma – presentation of results of base-line and development scenarios of economic pro forma. Included in the report will be an explanation of all economic and operational assumptions, general methodology, and financial results.
  - C. Hard copy of all economic scenarios developed in support of the Project
  - D. Risk assessment – report of risks and mitigations, as reviewed in support of this Scope of Work
- III. Fees for Service
- A. Basic Fee: \$175 per hour for all hours worked.
  - B. Travel
    - 1. Mileage for auto Use: \$.30 per mile
    - 2. Other Travel Expenses: Reimbursed at cost (no mark up), with receipts provided upon billing