

## County of Santa Clara Facilities And Fleet Department



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FAF03 061306

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DATE: June 13, 2006

TO: Board of Supervisors

FROM: *Larry Jenkins*  
Larry Jenkins  
Director of Facilities and Fleet Department

SUBJECT: Designate use of Williams Settlement Funds

### **RECOMMENDED ACTION**

Consider recommended actions:

- a. Approve the use of funds to proceed with competitive bid processes for consultant and vendor, and transfer \$1.38 million in Williams Settlement funds to Planar Solid Oxide Fuel Cell Project 263-EN-07001 to meet local match requirements for Department of Energy Federal Earmark, and transfer remaining Williams Settlement funds to Capital Project Energy Holding Account 263-ENHOLD to be allocated to previously unfunded energy conservation projects.

OR,

- b. Approve delegation of authority to County Executive or designee, to negotiate and execute sole source agreement with ION America who will provide \$1.38 million in funds for Planar Solid Oxide Fuel Cell Project including all costs associated with design, construction, installation, system performance and verification testing, and ongoing system maintenance expenses from June 15, 2006 through project end date of August 1, 2008 following approval by County Counsel as to form and legality; and transfer \$1.5 million in Williams Settlement funds to a FY 2007 Capital Energy Conservation Board Identified Program account 263-EN07.
- c. Approve delegation of authority to County Executive or designee, to negotiate and execute Final Agreement and budget documents with the Department of Energy (DOE) for Planar Solid Oxide Fuel Cell Project Federal Earmark following approval by County Counsel as to form and legality. Delegation of authority shall expire on August 1, 2008.

### **FISCAL IMPLICATIONS**

The County will recognize \$1.5 million in FY 2007 resulting from participation in the Williams Settlement lawsuit. These funds will be recognized in the FY 2007 Recommended budget, and then transferred based upon Board approval of one of the options listed in the recommended action.

If the Board approves recommended action "a", then \$1.38 million in Williams Settlement funds will be allocated to Capital Project 263-EN07001 Santa Clara County Planar Solid Oxide Fuel Cell project and remaining Williams Settlement funds of \$120,000 will be transferred to the Energy Holding account 263-ENHOLD. At the conclusion of the Fuel Cell project, any unused funds will be transferred to the Capital Project Energy Holding Account in accordance with the procedures set forth in Board Policy Section 4.14.2(C)(2)(b).

If the Board approves recommended action "b", then the entire \$1.5 million in Williams Settlement funds will be transferred to a FY 2007 Capital Energy Conservation Board Identified Program 263-EN07 to be administered in accordance with provisions of Board Policy Section 4.14.2. The County will enter into a sole source contract with ION America who will provide all the funds for the Planar Solid Oxide Fuel Cell project.

## **REASONS FOR RECOMMENDATION**

Information regarding the allocation of the Williams Settlement funds came after the County Executive's preparation of the FY 2007 Recommended Budget. Recommended actions will allow the County to begin work on the Fuel Cell project using either Williams Settlement funds or through a vendor contribution.

Administration recommends the Board approve Recommended Action "a". Issuing a competitive bid will enable opportunities for all vendors to respond to County defined requirements in an RFP process. A competitive RFP process will require several months to complete. If the Board approves Recommended Action "a" then Administration will return to the Board with a vendor selection recommendation in late 2007 / early 2008.

At the Finance and Government Operations Committee (FGOC), Supervisor McHugh requested further information about sole sourcing the Planar Solid Oxide Fuel Cell project to a specific vendor. During discussion at FGOC, ION America submitted a letter stating that they would contribute the entire County match required for the DOE Federal Earmark. If the Board were to approve action "b" this would alleviate the necessity of using the Williams Settlement funds for the County match. If the Board approves Recommended action "b" then Administration will execute a sole source agreement with the vendor, and proceed with the project design, construction, installation and testing.

Finally, DOE has requested that the County submit the Statement of Project Objectives, final budget documents and a final agreement by the end of June. This timeline will allow DOE internal review for approximately one month, and then provide final approval of the project. Administration is requesting delegated authority to execute the Final Agreement in order to maintain the project schedule and move as expeditiously as possible with DOE.

## **BACKGROUND**

In 2002, the County participated in litigation that resulted in a \$3.5 million settlement, commonly referred to as the Williams Settlement, that was specifically designated for alternative energy generation or energy conservation projects. The County has previously used \$1.9 million of these funds for energy conservation projects in County-wide facilities. The final payment of \$1.5 million will be received in January 2007.

The County is committed to multiple strategies to reduce the impact of increasing energy costs on operating expenses. These strategies include the adoption of the Green Building Policy, continuation of funding for capital projects focussed on energy conservation, the Santa Clara County Fuel Cell Initiative, and continued procurement of alternatively fueled vehicles. Allocation of the Williams Settlement funds will enable progress towards the broader long term goals of reducing energy costs.

During Budget Workshops the Board of Supervisors requested additional information relating to alternative uses of the Williams Settlement Funds. A response to the budget referral has been prepared by Administration. Funds are required in order to proceed with work on the Santa Clara County Fuel Cell project, and meet DOE requirements and timelines associated with the approved \$1.38 million Federal Earmark.

#### **CONSEQUENCES OF NEGATIVE ACTION**

Administration will not be able to procede with the Santa Clara County Planar Solid Oxide Fuel Cell project. Williams Settlement funds will not be recognized in the FY 2007 budget.