



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Public Works
Department No.: 054
For Agenda Of: December 13, 2016
Placement: Administrative
Estimated Tme:
Continued Item:
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Scott D. McGolpin, P.E. Director, ext. 3010
Director(s)
Contact Info: Mark Schleich, P.E. Deputy Director ext. 3605

SUBJECT: Consider Recommendations Regarding the Tajiguas Resource Recovery Project
Third Supervisorial District

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: Yes

Other Concurrence: Risk Management

As to form: Yes

Recommended Actions:

That the Board of Supervisors:

- a) Approve the Material Delivery Commitment and Processing Service Agreements between the County of Santa Barbara and the cities of Goleta, Santa Barbara and Solvang as well as MarBorg Industries (for the City of Buellton) (Material Delivery Agreements);
- b) Approve the Disposal Agreement between the County of Santa Barbara and MarBorg Industries for the disposal of waste collected at their Construction and Demolition Debris Sorting Facility; and
- c) Approve the Amended Contract between the County and MSB Investors, LLC for the Development and Operation of the Tajiguas Resource Recovery Project (Waste Service Agreement)
- d) Determine that the previously certified Final Subsequent EIR (12EIR-000-00002, SCH No. 2012041068) and Final Subsequent EIR Revision Letter and Errata (dated May 2, 2016) for the Tajiguas Resource Recovery Project certified on July 12, 2016 are adequate environmental review pursuant to Section 15162 of the State Guidelines for Implementation of the California Environmental Quality Act to satisfy the California Environmental Quality Act requirement for this action, and that no subsequent Environmental Impact Report or Negative Declaration shall be prepared for this project.

Link to the Board item and its supporting attachments:

<https://santabarbara.legistar.com/LegislationDetail.aspx?ID=2761428&GUID=B9346B75-FC2B-4060-AE06-9C34D0741A17>

Summary Text:

This item is on the agenda in order to approve agreements associated with the Tajiguas Resource Recovery Project. On July 12, 2016 your Board made the required CEQA findings for approval of the Tajiguas Resource Recovery Project (Facility), certified the Final Subsequent Environmental Impact Report for the Facility, received the Debt Advisory Committee's recommendation concerning the potential use of public financing for this project, and approved the Waste Service Agreement among other action items.

In addition, your Board directed the Public Works Department to move forward with certain action items and to return to your Board with the results of negotiating proposed Material Delivery Agreements with the participating jurisdictions, and working with the Treasurer Tax Collector, Auditor- Controller, County Counsel, and County Executive Office to pursue public financing to construct the facility.

Staff also highlighted at the July 12, 2016 Board hearing that there were several Conditions Precedent contained in the Waste Service Agreement that had to either be met or waived before performance of the Waste Service Agreement started and an update on the progress of these Conditions is provided. Lastly, we advised your Board of the potential need to come back to seek approval of amendments to the Waste Service Agreement resulting from: 1) input from the County's finance team, 2) negotiations of the Material Delivery Agreements with each of the jurisdictions or entities using the Facility, and 3) as a result of applicable federal and state laws. The proposed Amended Waste Service Agreement is submitted with this Board Letter for your Board's consideration.

This Board Letter is divided into 2 sections: Material Delivery Agreements and Disposal Agreement; and Amended Waste Service Agreement and Conditions Precedent.

Project Background:

On July 12, 2016 your Board approved the Waste Services Agreement and other items related to the Facility and directed staff to move forward with final negotiations of the Material Delivery Agreements with participating and to pursue public financing to construct the Facility. The Resource Recovery & Waste Management Division (RR&WMD) recommends your Board's approval of the proposed Material Delivery Agreements with the participating jurisdictions and the Disposal Agreement with MarBorg Industries. These actions will satisfy one of the County's Conditions Precedent.

RR&WMD also recommends approval of the proposed Amended Waste Service Agreement with MSB Investors, LLC. The Amended Waste Services Agreement includes changes requested by the County's finance team and the participating jurisdictions. Public financing needed to develop and operate the facility is an additional Condition Precedent which will be discussed as a separate Board item.

Pursuant to CEQA Guidelines Section 15162, the approval of Material Delivery and Disposal Agreements and the Amended Waste Service Agreement falls within the scope of the project covered by the Final Subsequent EIR (12EIR-0000-00002, SCH No. 2012041068) and Final Subsequent EIR Revision Letter and Errata (dated May 2, 2016) and no additional CEQA review is required as discussed below.

Material Delivery Agreements and Disposal Agreement

The Facility has been designed to process waste currently buried at the Tajiguas Landfill as well as process source separated recyclables and organics. Communities currently delivering waste, through their franchised collection contractors include the cities of Buellton, Goleta, Santa Barbara, Solvang, and the unincorporated areas of the South Coast, Santa Ynez, and New Cuyama. The communities currently using the Tajiguas Landfill formed a working group in 2008 to procure a facility to meet this region's waste management needs for 20 years. The working group has collaborated in preparing an RFP, selecting a vendor, and negotiating a service contract to design, build, and operate the Facility. As mentioned above, in July 2016, your Board approved a Waste Service Agreement with the vendor, and directed staff to negotiate waste delivery agreements with the jurisdictions that choose to use the facility after its construction.

Over the summer and fall of 2016, the working group met regularly to negotiate the final Material Delivery Agreements that are before your Board for consideration. The agreements all include the same basic terms with the exception of slight variations related to the number of tons committed, designated contract representative, etc. The core of the Material Delivery Agreement is that the County will construct and operate the Facility to process and bury the participants' waste material over a 22 year period (2 years of construction and 20 years of operation), allowing the jurisdictions to meet a myriad of state and federal waste management and greenhouse gas emission reduction mandates. The participating jurisdictions will commit to deliver the material collected under their franchise agreements to the Facility at an initial service price not to exceed \$120 per ton. Over the term of the agreements, the cost per ton will be adjusted annually to ensure the County's debt service obligations are met. The long-term commitment of this material is critical to the County's ability to align the 22-year debt obligation of public financing with the generation of revenue from the Facility over this same 22 year period.

The participating cities have or are expected to approve the Material Delivery Agreements on the following dates:

- City of Goleta, November 1, 2016
- City of Solvang, November 28, 2016, and
- City of Santa Barbara, first hearing on December 6, 2016 and final approval scheduled to be heard by the City Council on December 13, 2016

The City of Buellton has requested that its franchised collection contractor, MarBorg Industries, enter into a contract with the County to commit all of the waste material collected from the City of Buellton. The contract committing Buellton's waste is therefore between the County and MarBorg Industries for a term of 11 years (the duration of MarBorg's existing contract with the City of Buellton). Buellton's waste represents 2% of the waste material to be managed by the County.

Lastly, MarBorg Industries currently operates a Construction & Demolition Recycling and Transfer Facility in the City of Santa Barbara. Material that is collected from their unscheduled hauling business as well as material that is delivered to their facility from members of the public is sorted at this facility and two types of material are ultimately delivered to the Tajiguas Landfill. First, material that is screened at the front end of their processing line considered "Fines" can be used at the Tajiguas Landfill as a material to cover trash at the end of each day. This "Fines" material is charged a discounted price. The second type of material is trash that remains after recyclables have been recovered. This residual trash is currently hauled to the Tajiguas Landfill for burial. To assist the County in documenting the long-term revenue stream to be used to pay the debt obligations for the Facility, MarBorg has agreed to

enter into a 22-year agreement to continue to bring the residual trash to the Tajiguas Landfill for disposal (Disposal Agreement).

The Board's and participating jurisdictions' approval of the Material Delivery Agreements and the Board's and MarBorg's approval of the Disposal Agreement are necessary in order to seek financing for the Facility. Approval of these agreements will also satisfy one of the Conditions Precedent to the Waste Service Agreement with MSB Investors, LLC.

Amended Waste Service Agreement and Conditions Precedent

As mentioned above, your Board approved the Waste Service Agreement with MSB Investors in July 2016 to develop and operate the Facility and it was explained at that time that the County may need to change certain terms and conditions of the Waste Service Agreement if suggested by the financing team, if needed to finalize the material Delivery Agreements or if required by state or federal law (Section 2.1A of the WSA). The proposed Amended Waste Service Agreement includes all of the changes negotiated pursuant to this provision. The more substantive changes are discussed below in categories of "financial impact" and "other".

Financial Impacts: As a part of the public financing process, a Feasibility Study was prepared to evaluate the proposed project and highlight any potential risks. To reduce potential financial risks and to enhance rate stability, the financing team recommended a reduction in the projected revenue from the sale of recyclables of 20% or \$1.4 million. It is important to note that this adjustment does not increase the amount paid to MSB to operate the facility. This change lowers the amount of revenue expected to offset operating costs, the risk of which is borne by the entities using the facility. If revenues exceed this lower projected threshold, then 100% of the surplus revenues (up to \$1.4M) will be received by the County and passed through to the entities using the facility as a reduced tip fee. The impact of this change and other smaller changes related to recyclables is an increase to the tip fee paid to MSB Investors of \$4.79 per ton.

The Waste Service Agreement approved on July 12th requires MSB Investors to finalize and execute all of its agreements with its subcontractors as Condition Precedent. This process required a more detailed analysis of the repair and maintenance budget needed to comply with all conditions of the equipment warranties. The end result of this analysis triggered a request for specific increases in the repair and maintenance budgets from the equipment providers and MSB Investors. The proposed increases to the repair and maintenance budgets are in line with similar comments made by consultants hired by the County to review the proposed Facility costs.

Another change in revenue assumptions arose from an analysis of the start-up period for the AD facility. The County and MSB Investors had previously failed to account for the anticipated 6-month lag time between when the AD facility first accepts waste and when biogas is generated. This lag time results in a total cost of \$1,465,000. This projected lag time and the associated costs have been reviewed by the County's consultant and have been deemed reasonable. Through the meet and confer process, staff has persuaded MSB Investors to absorb the added \$1.4 million to construction costs in exchange for an increase of \$146,500 per year to the operations budget for 10 years. In order to recoup this added cost, the proposed terms provide that if energy revenues from the AD facility exceed the projected amount, 100% of the first \$146,500 per year of surplus revenue will be distributed back to the County to offset this transitional cost. The total negotiated operational increase that staff is recommending is \$666,000 in Year 1, \$966,000 in Year 2, and \$1,216,000 in years 3 – 10 as described in Section 10.3 (Facility

Operations Compensation) and Exhibit H of the agreement or an increase to the Year 1 per ton tip fee paid to MSB of \$3.49.

Lastly, prior to your Board’s approval of the Waste Service Agreement in July 2016, staff and the Risk Managers from the County and the City of Santa Barbara reviewed and increased the insurance and performance bond coverage requirements for the Facility. This resulted in a cost increase of \$242,000 per year (or \$1.27 per ton) for that higher level of coverage (as represented in Section 10.3 (Facility Operations Compensation) and Exhibit H of the agreement). All of the increased costs associated with the Amended Waste Service Agreement are proper expenditures of public funds because they are part of the consideration for a contract entered into for a legitimate public purpose.

Accounting for the adjustments to the operating costs discussed above, the per ton payment to MSB Investors has increased from \$5.60 to \$15.15. It is important to note that \$4.77 of that increase is associated with reducing the recycling revenue projection (not an increase to MSB Investors and recommended by the finance team), \$1.27 related to enhanced insurance and performance bonds at the request of the County (and the participating jurisdictions), and \$3.49 due to increased operational costs requested by MSB Investors.

At this time, the following table describes the anticipated overall per ton tip fee for the Facility of \$86.45 (Contractor and debt service payments) + \$31.55 of County costs for a total of \$118.00. The increase of the projected tip fee from \$105 to \$118 per ton (\$13 per ton increase) is due to the adjustments to the Waste Service Agreement (projected recyclable revenue reduction, increased insurance coverage, and increased operational costs) of \$9.55 per ton as well as other changes at the recommendation of the finance team, the most significant of which was reducing the charge for self-haul customers in order to maintain their use of local facilities which in turn increased the cost for the TRRP by \$3 per ton.

Cost Component (per ton)	July 2016	December 2016
Facility Operations	\$5.60	\$15.15
Disposal & County Solid Waste System Costs	\$42.57	\$31.55
Debt Service & Debt Service Coverage Ratio	\$56.83	\$71.30
Total Per Ton Tip Fee	\$105.00	\$118.00

Following your Board’s approval of the Waste Service Agreement in July 2016, MSB Investors has sought permits from a variety of regulatory agencies. As a result of these interactions, the permitting agencies are requesting the inclusion of additional equipment that will increase the construction cost by \$290,000 (or less than three tenth of a percent) as described in Section 10.2 and Exhibit I of the agreement. The additional equipment (i.e., fire service standpipes, reels and hoses, particulate emission controls for dust control, MRF tip floor trench drains, stationary cranes to facilitate repairs and maintenance, and spare parts inventory) would be located within the MRF and would not result in any

new or substantially more severe impacts than previously analyzed in the Final Subsequent EIR and Revision Letter and Errata.

Other: Related to negotiations of the Material Delivery Agreements, section 10.3 of the Waste Service Agreement needs to be amended. This section addresses contractor compensation including CPI adjustments and a process to be used for extraordinary cost adjustments. The timing of the rate setting and review process in this section is proposed to be amended to align with the timing necessary for the participating jurisdictions and the County to annually set rates to be charged to waste collection service subscribers or ratepayers.

Section 2.7 of the Waste Service Agreement lists nine Conditions Precedent that must be waived or met prior to the agreement becoming effective. All of the Conditions Precedent is expected to be met by December 14, 2016 with the exception of County Financing, which will be discussed as a separate Board item. One of the Conditions Precedent (Independent Certified Public Accountant Representation (of MSB Investors)) has largely been met. In discussions with our solid waste consulting advisors, staff has learned that while not unusual in the past, accounting firms are now generally reluctant to issue such 3rd party opinions and have instead come to rely on management's representation, which has been provided by MSB Investors.

Environmental Review

A Final Subsequent EIR (12EIR-0000-00002, SCH No. 2012041068) and Final Subsequent EIR Revision Letter and Errata (dated May 2, 2016) for the Tajiguas Resource Recovery Project was certified by your Board on July 12, 2016. The potential environmental impacts of the Tajiguas Resource Recovery Project were analyzed and disclosed in the Final Subsequent EIR and Revision Letter and Errata and mitigation measures for these impacts were incorporated into a Mitigation Monitoring and Reporting Program.

Because an EIR was previously adopted, CEQA Guidelines Section 15162 states that no subsequent EIR or Negative Declaration shall be prepared for the action unless one or more of the following have occurred:

- a. *Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.*

No substantial changes to the previously approved project are proposed in association with the Board's action. Impacts identified under the previously certified EIR would remain the same. No new significant environmental effects would occur and there would be no substantial increase in the severity of previously identified significant effects.

- The Material Delivery Agreements were always anticipated to be part of the Facility and were included as part of the project as analyzed in the EIR. Therefore, execution of the Material Delivery Agreements does not involve any new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
- The Disposal Agreement formalizes the continuation of burying debris from the MarBorg sorting facility, does not constitute a change from current practice, and was included as part of the project as analyzed in the EIR. Receiving this material at the landfill complies with our existing

solid waste facility permit as well as the EIR. Therefore, execution of the Material Delivery Agreements does not involve any new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

- The Amended Waste Service Agreement has changes that are largely financial or related to record keeping and timing for providing information. Such amendments have no impact on the environment or the analysis in the EIR and Errata. The additional equipment (i.e. fire service standpipes, reels and hoses, more localized intake for dust control, MRF tip floor trench drains, stationary cranes to facilitate repairs and maintenance, and spare parts inventory) would be located within the MRF and would not result in any new or substantially more severe impacts than previously analyzed in the EIR. Therefore, execution of the Amended Waste Service Agreement does not involve any new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

b. Substantial changes will occur with respect to the circumstances under which the project is being undertaken which will require major revisions to the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

No substantial change has, or is anticipated to occur, with respect to the circumstances under which the project is being undertaken in the regional area or on the project site. The EIR identified mitigation measures designed to reduce impacts in the areas of visual resources, biological resources, hazards and hazardous materials, geologic processes, cultural resources, land use, water resources, and extension of life landfill air quality, biological resources, hazards and hazardous materials, nuisance and cultural resources. Incorporation of these mitigation measures into the Mitigation Monitoring and Reporting Program or the proposed project addressed potential environmental impacts where possible and a Statement of Overriding Consideration was adopted regarding the impacts that could not be mitigated to a less than significant level.

c. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete of the negative declaration was adopted, has become available.

No new information of substantial importance, which was not known and could not have been known at the time the previous EIR was certified, has become available. As discussed above, there have been no substantial changes to site conditions and no changes to the previously approved project are proposed that would require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

In summary, because none of the conditions in State CEQA Guidelines Section 15162 have occurred with respect to the project, no subsequent EIR or Negative Declaration shall be prepared.

Recommendations

In summary, staff recommends that the Board approve the Recommended Actions listed above. The approval of the Material Delivery Agreements with the participating jurisdictions, the Disposal Agreement with MarBorg Industries, and the Amended Waste Service Agreement with MSB Investors is the next step in implementing the Facility that will allow the County to continue to provide cost effective and environmentally sound waste management services, improve recycling and materials

recovery, extend the life of the landfill (thereby avoiding/postponing impacts and capital costs associated with a new or expanded landfill or costs and impacts of sending waste to more distant landfills), meet existing and future state waste management/recycling regulations, and significantly reduce greenhouse gas emissions. As mentioned above, the remaining action required for the development of the Facility is your Board's consideration of the financing of the Facility, which will be provided as a separate Board item.

Performance Measure:

Performance guarantees are included in the attached Amended Waste Service Agreement.

Fiscal and Facilities Impacts:

Approval of the attached agreements will ensure the revenue necessary for the Resource Recovery & Waste Management Division's Enterprise Fund to meet the debt obligations associated with publicly financing the construction and operation of this Facility. The proposed use of Revenue Bonds protects the County's General Fund from exposure to financial risks associated with this Facility. Users of the Facility will pay for the Facility either through tipping fees charged at the County's scale house for self-haul customers or through collection rates charged to residential and business customers who subscribe to waste collection services from a franchised collection contractor.

Special Instructions:

Please send a copy of the signed contracts (Attachments A – F) to the Resource Recovery & Waste Management Division of the Public Works Department, Attn: Leslie Wells. As mentioned above, the cities have either already approved or will be approving the Material Delivery Agreements. A copy of the signature pages of the approved contracts will be provided to the County by the respective City Clerks once completed.

Attachments:

Attachment A: Material Delivery Agreement between the County and the City of Goleta
Attachment B: Material Delivery Agreement between the County and the City of Santa Barbara
Attachment C: Material Delivery Agreement between the County and the City of Solvang
Attachment D: Material Delivery Agreement between the County and MarBorg Industries
Attachment E: Disposal Agreement between the County and MarBorg Industries
Attachment F: Amended Waste Service Agreement between the County and MSB Investors

Authored by:

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