



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:** August 25, 2020  
**Placement:** Administrative  
**Estimated Time:**  
**Continued Item:** No  
**If Yes, date from:**  
**Vote Required:** 4/5

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**TO:** Board of Supervisors  
**FROM:** Department Scott D. McGolpin, P.E., Director, (805) 586-83010  
Director  
Contact Info: Leslie Wells, Deputy Director, (805) 882-3605  
**SUBJECT:** Consider Recommendations Regarding the Fifth Amendment to the Amended Contract with MSB Investors, LLC for the Tajiguas Resource Recovery Project, Third Supervisorial District

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**County Counsel Concurrence**

As to form: Yes

**Other Concurrence:** Risk Management

As to form: Yes

**Auditor-Controller Concurrence**

As to form: Yes

**Recommended Actions:**

That the Board of Supervisors:

- a) Approve and authorize the Chair to execute the Fifth Amendment to the Amended Contract between the County of Santa Barbara and MSB Investors, LLC for Development and Operation of the Tajiguas Resource Recovery Project, which addresses changes to the costs and construction schedule of the Tajiguas Resource Recovery Project (now referred to as the ReSource Center) (Attachment A);
- b) Approve and authorize the Public Works Director or designee to approve additional increased project costs up to a contingency amount of \$2,100,000;
- c) Approve Budget Revision Request No. 0007164 increasing appropriations in the amount of \$5,760,000 in Public Works Resource Recovery & Waste Management Enterprise Fund and the TRRP Capital Fund for the increased project costs, which are funded by the release of Retained Earnings and an operating transfer, respectively (Attachment B); and
- d) Determine that the previous Final Subsequent EIR SCH #2012041068 and Subsequent EIR Revision Letter and Errata dated May 27, 2016 certified by the Board of Supervisors on July 12, 2016 and Final Subsequent EIR Addendum dated August 11, 2017 (revised October 26, 2017) considered by

the Board of Supervisors on November 14, 2017 are adequate review pursuant to California Environmental Quality Act Guidelines Section 15162, no substantial changes are proposed, and no new information of substantial importance has come to light regarding environmental effects of the project or of the sufficiency or feasibility of mitigation measures, and therefore this fifth amendment to the contract with MSB Investors, LLC is within the scope of the project covered by the prior environmental review and no subsequent Environmental Impact Report or Negative Declaration shall be prepared for this action.

**Summary Text:**

This item is on the agenda in order to consider recommendations regarding a proposed Fifth Amendment to the Amended Contract between the County of Santa Barbara and MSB Investors, LLC for Development and Operation of the Tajiguas Resource Recovery Project, now referred to as the ReSource Center. Construction of the ReSource Center began in December 2018 and now is 77 percent complete. Due to Change in Scope, Change in Law, and Force Majeure, the contractor is requesting an additional \$5,757,819 in project funding and a five-month extension to complete the project. These proposed changes are reflected in this proposed Fifth Amendment.

The increased project costs will be funded by the release of Retained Earnings in the Resource Recovery and Waste Management Enterprise Fund and by an operating transfer to the TRRP Capital Fund.

**Background:**

Your Board has previously approved the Contract (including subsequent amendments) between the County of Santa Barbara and MSB Investors, LLC for Development and Operation of the Tajiguas Resource Recovery Project, now referred to as the ReSource Center. In addition, your Board approved the public financing for the construction of the ReSource Center at a cost of \$133, 977,000, which was secured November 28, 2018.

Development of the ReSource Center includes:

1. Construction of a materials recovery facility (MRF) to process both municipal solid waste collected in waste containers as well as source-separated recyclables collected in recycling containers. Recovered recyclables will be baled and sold as reusable commodities, organics will be recovered for further processing, and remaining waste will be disposed at the landfill;
2. Construction of an anaerobic digester that will process organics recovered at the MRF as well as source-separated food waste and a portion of source-separated green waste collected separately from trash. The organics will be digested in a controlled environment that will capture biogas (or methane) that will be converted to electricity used to power the digester and surplus electricity sold on the SCE grid;
3. Construction of a composting facility to further compost material from the digester as well as other organics such as green waste to ensure the development of a marketable product. Compost will be beneficially reused; and
4. Construction of an upgraded landfill gas processing system to replace the existing system that will decrease current air emissions and beneficially reuse the collected biogas.

The contract with MSB requires them to design, build and operate (for 10 years) the ReSource Center, which shares a County site with an active landfill and greenwaste processing operation. The County

issued a Notice to Proceed with Construction effective December 3, 2018. Over the course of the last 21 months, construction has proceeded relatively smoothly. Despite this success, the project has been impacted by several factors including a change in law (increased tariffs on supplies), force majeure (rain delays, COVID-19 impacts on supply and labor availability as well as productivity rates, and market impacts due to other local construction in response to the Thomas Fire and Montecito debris flow), and change in scope (unforeseen necessary project changes as design and construction are further refined).

In response to these factors, the contractor requested an increase to the project cost of \$9,100,000 (or 6.8% of the total contract amount) and an extension of the project completion date from December 3, 2020 to May 1, 2021. Staff requested back up information for both the increased cost and the project development schedule changes, had several meetings with the contractor and their construction subcontractor seeking further clarification, and held two negotiation sessions to discuss these requests. Ultimately, County staff, the contractor and their subcontractor agreed to a project increase of \$5,757,819 (approximately 63% of the original request and 4.3% of the total project cost) for a total project cost of \$139,734,819 and the 5-month extension to the original project completion date.

The total amount of \$5,757,819 is comprised of \$3,657,819 in additional costs and a contingency of \$2,100,000 which will be available for reasons allowed in the contract provided the appropriate justification can be made in support of the claims up to the maximum contingency amount for the remainder of the project and subject to the approval of the Director of the Public Works Department. The table below provides more detail related to the recommended project cost increase.

<b>Recommended Amount</b>	<b>\$3,657,819</b>
Change in Law	\$1,553,000
Force Majeure	\$735,489
Change in Scope	\$1,369,330
<b>Contingency</b>	<b>\$2,100,000</b>
<b>Total</b>	<b>\$5,757,819</b>

The current estimated project completion date is March 5, 2021 (a three month delay from the original development schedule) but an additional two month extension is recommended to provide for a cushion due to the complexity of the project including approvals from regulatory agencies, coordination with Southern California Edison, and the general slowdown due to COVID-19. Any additional costs related to this extension are included in the recommended increase of \$5,757,819.

The attached Fifth Amendment to the Amended Contract between the County of Santa Barbara and MSB Investors, LLC for Development and Operation of the Tajiguas Resource Recovery Project contains the recommended changes in construction costs as well as updated exhibits related to project costs, construction schedule, and other required documents.

The increased project costs will be funded by releasing Retained Earnings in fiscal year 20/21 in the Resource Recovery and Waste Management Enterprise Fund, and by an operating transfer to the TRRP Capital Fund. The TRRP Capital Fund maintains the ReSource Center's project costs for full disclosure of costs incurred compared to the project's budget, and is primarily funded by the issuance of the 2018 COPs. Additional costs to the project are funded by the Resource Recovery & Waste Management Enterprise Fund's operating revenue.

Pursuant to the requirements of the California Environmental Quality Act, construction and operation of the Tajiguas Resource Recovery Project was analyzed in Subsequent EIR No. 12EIR-00000-00002, SCH #2012041068 certified by the Board of Supervisors on July 12, 2016, Subsequent EIR Revision Letter and Errata dated May 27, 2016 and Addendum dated August 11, 2017 (revised October 26, 2017). Copies of these documents are available at <https://santabarbara.legistar.com/LegislationDetail.aspx?ID=3208879&GUID=8FD06D70-FE83-4AA1-982A-2CA8EA03B506&Options=ID|Text|&Search=Tajiguas+Resource+Recovery+Project>.

**Performance Measure:**

The contract with MSB Investors contains several performance guarantees related to the contracted service to be provided.

**Fiscal and Facilities Impacts:**

Staff is recommending the release of \$5,760,000 in Retained Earnings from the Resource Recovery & Waste Management Division Enterprise Fund and transfer to the TRRP Capital Fund to pay the contractor for the increased costs. There is no impact to the General Fund.

**Key Contract Risks:**

The contract with MSB Investors contains construction and performance bonds and insurance requirements to mitigate project risk.

**Special Instructions:**

Please send a copy of the signed Fifth Amendment (Attachment A) to the Resource Recovery & Waste Management Division of the Public Works Department, attn.: Leslie Wells.

**Attachments:**

**Attachment A:** Fifth Amendment to the Amended Contract between the County of Santa Barbara and MSB Investors, LLC for Development and Operation of the Tajiguas Resource Recovery Project.

**Attachment B:** Budget Revision Request No. 0007164.

**Authored by:**

Leslie Wells, Deputy Director, Resource Recovery & Waste Management Division, ext. 23605.