

# Attachment B

FIRST 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

This First Amendment dated February 14, 2017 ("First Amendment") is made by and between the County of Santa Barbara, California ("County"), and MSB Investors, LLC, ("Contractor"), parties to the Amended Contract between the County of Santa Barbara and MSB Investors, LLC for Development and Operation of the Tajiguas Resource Recovery Project dated November 15, 2016 ("Contract").

This First Amendment amends the Contract as follows:

1. The definition of "Effective Date" in Section 1.51 (lines 344-346) is replaced in its entirety by the following:

"Effective Date" means the date the Contract is fully executed by the Parties thereto, and the Conditions Precedent contained in Section 2.7 have been satisfied, following which the County may issue the Notice to Proceed with Initial Development Activities as provided in Section 4.4."

2. The definition of "Initial Development Activities" in Section 1.71 (lines 452-454) is replaced in its entirety by the following:

"Initial Development Activities" means any pre-Construction activity remaining as of the Effective Date to be completed if in process, or still to be conducted, including but not limited to CEQA compliance, Permit acquisition, and design, as provided in Article 4.

3. The definitions of "Materials Recovery Facility Operator," "MRF Facility Operator," and "MRF Operator" in Section 1.81 (lines 490 – 493) are replaced in their entirety by the following:

"Materials Recovery Facility Operator" or "MRF Facility Operator" or "MRF Operator" means MarBorg Recovery LP, the entity selected by Contractor and approved by the County, relied upon by Contractor to provide daily Operation of the MRF. The MRF Operator is a Primary Subcontractor."

4. The second sentence of Section 2.6.I "No Approvals" (lines 966-972) is replaced in its entirety by the following:

"Contractor has obtained all licenses, Permits, business license, qualifications and approvals of whatsoever nature which are legally required for Contractor to begin construction of the Facility to provide services hereunder and meet Contractor's Obligations (with the exception of the solid waste facility permit issued by CalRecycle,

which the County is responsible for obtaining). Contractor further warrants that it shall, at its sole cost and expense, keep in effect or obtain at all times during the Term all licenses, Permits, and approvals which are legally required for Contractor to provide such services and meet Contractor's Obligations."

5. Section 4.2.F "Extent of Contractor Liability" (lines 1391-1396) is replaced in its entirety by the following:

"In the event Contractor performs any Initial Development Activities , Development activities or Construction activities prior to the Effective Date of the Contract or prior to receiving a Notice to Proceed with Initial Development Activities or a Notice to Proceed with Construction pursuant to Section 4.3.B, as applicable, Contractor will bear all costs for such activities and Contractor shall not be entitled to reimbursement from County for such costs unless all Conditions Precedent have been satisfied or waived by all Parties and the County issues the applicable Notice to Proceed to Contractor."

6. Section 4.7.B "Satisfaction of Preconditions" (lines 1656 – 1659) is replaced in its entirety with the following:

**"B. Notice to Proceed With Construction – Satisfaction of Preconditions"**

"Prior to requesting that County issue the Notice to Proceed with Construction, Contractor shall warrant to the County in writing that the following Conditions Precedent have been met:"

7. Section 4.7.B.1 "Initial Development Activities" (lines 1660-1662) is replaced in its entirety with the following:

"1. Initial Development Activities. Contractor has substantially completed Initial Development Activities, including but not limited to those related to Project design."

8. Section 4.7.B.3 "Construction Bond" (lines 1665 – 1666) is replaced in its entirety with the following:

"3. Construction Bonds. Contractor has provided the Construction performance and payment bonds as required in Section 13.2.B."

9. Section 13.2.B "Construction Performance Bond" (lines 3742-3754) is replaced in its entirety with the following:

**"B. Construction Performance and Payment Bonds"**

"Contractor and/or its Primary Subcontractors shall provide one or more performance and payment bond(s), or other surety devices as may be reasonably required by the County in the aggregate amount of \$97,606,000, the estimated full cost of Construction of the Project of \$99,890,000 exclusive of the costs of the SoCal Edison

Interconnection, Construction & Start-up Insurance, Start-up & Acceptance and Contract Administration (i.e., \$2,284,000 in the aggregate), to secure the Construction of the Project and to ensure that the Primary Subcontractors and all persons providing labor and materials for the Construction of the Facility receive full payment for the services and materials provided, and in a form acceptable to the County as dual-obligee. Such bonds shall be issued by a surety company or companies rated "A" or better pursuant to current AM. Best Company ratings and listed in the United States Treasury Department's Circular 570. Such surety shall be an admitted surety in California. Contractor may discontinue maintaining this performance bond upon written County approval, which shall be provided within ten (10) Week Days of issuance of the Notice to Proceed with Full Operations as provided in Section 4.9.B."

10. "Exhibit G - Primary Subcontractors" is replaced in its entirety with the attached "Exhibit G - Primary Subcontractors [Revised 2-14-17]." (Attachment A)
11. "Exhibit U - Performance Bond" is replaced in its entirety with the attached "Exhibit U - Performance and Payment Bond Forms [Revised 2-14-17]." (Attachment B)
12. "Exhibit AA - Progress Payment Provisions" is replaced in its entirety with the attached "Exhibit AA - Progress Payment Provisions [Revised 2-14-17]." (Attachment C)
13. "Exhibit V – Indemnification and Insurance Requirements" is replaced in its entirety with the attached Exhibit V – Indemnification and Insurance Requirements [Revised 2-14-17]. (Attachment E)
14. Except as set forth in this First Amendment, the Contract is unaffected and shall continue in full force and effect in accordance with its terms. If there is conflict between this First Amendment and the Contract, the terms of this First Amendment will prevail.

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IN WITNESS WHEREOF, the parties have executed this First Amendment to Contract to be effective on the date executed by the COUNTY.

**ATTEST:**

Mona Miyasato  
County Executive Officer  
Clerk of the Board

**COUNTY OF SANTA BARBARA:**

By: \_\_\_\_\_  
Deputy Clerk


By: \_\_\_\_\_  
Joan Hartmann, Chair,  
Board of Supervisors

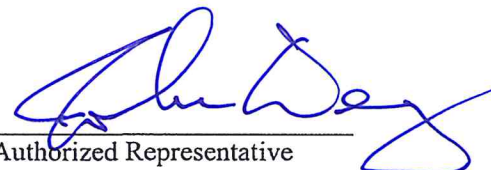
Date: \_\_\_\_\_

**RECOMMENDED FOR APPROVAL:**

Santa Barbara County Public Works  
Department

**CONTRACTOR**  
MSB INVESTORS, LLC

By:   
Scott D. McGolpin Department  
Head, Public Works Director


By:   
Authorized Representative  
Name: John Dewey  
Title: CEO & Managing Member

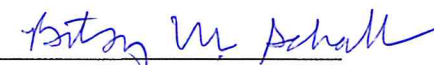
**APPROVED AS TO FORM:**

Michael C. Ghizzoni  
County Counsel

**APPROVED AS TO ACCOUNTING FORM:**

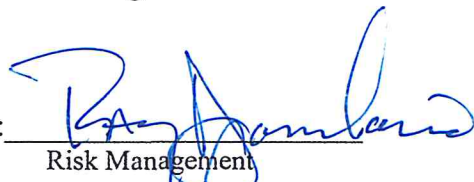
Theodore A. Fallati, CPA  
Auditor-Controller

By:   
Deputy County Counsel

By:   
Deputy

**APPROVED AS TO FORM:**

Risk Management

By:   
Risk Management

Attachment A

Revised Exhibit G - Primary Subcontractors

Attachment A

Revised Exhibit G – Primary Subcontractors

- 1     **Construction Contractor**  
Diani Building Corporation  
Attn: Mike Diani, President  
351 North Blosser Road  
Santa Maria, CA 93458  
Email: [miked@diani.com](mailto:miked@diani.com)  
Off: (805) 925-9533  
Cell: (805) 621-2800
  
- 2     **MRF Vendor**  
Van Dyk Baler Corporation dba  
Van Dyk Recycling Solutions  
Attn: Wilfred Poiesz, Senior Vice-President  
23960 Madison St.  
Torrance, CA 90505  
Email: [wpoiesz@vdrs.com](mailto:wpoiesz@vdrs.com)  
Off: (310) 378-7065  
Cell: (310) 567-9716
  
- 3     **AD Facility Vendor & Operator**  
Bekon Energy Technologies, Inc.  
Attn: Tobias Ziereis, Manager, North America  
FeringastraÙe 9  
D- 85774 Unterföhring  
Germany  
Email: [tobias.ziereis@bekon.eu](mailto:tobias.ziereis@bekon.eu)  
Cell: +49 (173) 719 9723
  
- 4     **MRF Operator**  
MarBorg Recovery, LP  
Attn: Brian Borgatello  
Attn: Derek Carlson  
728 E. Yanonali  
Santa Barbara, CA 93103  
Email: [BBorgatello@marborg.com](mailto:BBorgatello@marborg.com)  
Email: [derek@marborg.com](mailto:derek@marborg.com)  
Off: (805) 963-1852  
Cell: (805) 331-8170, Brian  
Cell: (805) 680-8687, Derek
  
- 5     **AD Facility Operator**  
Mustang Renewable Power Ventures, LLC  
Attn: John Dewey, CEO  
750 Pismo Street  
San Luis Obispo, CA 93401  
Email: [john@deweygroup.com](mailto:john@deweygroup.com)  
Cell: (805) 259-9499

## **Attachment B**

### **Exhibit U - Performance & Payment Bond Forms [Revised 2-14-17]**

- \* The final Performance and Payment Bonds issued for the TRRP must substantially comply with the following County Form Bonds.**



BOND #  
Premium:

PERFORMANCE BOND - DUAL OBLIGEE

KNOW ALL MEN BY THESE PRESENTS:

That the Board of Supervisors of the County of Santa Barbara of the State of California (hereinafter referred to as the "County") and MSB Investors LLC (hereinafter referred to as "MSB") have entered into a Development and Operation Agreement for the Tajiguas Resource Recovery Project (hereinafter referred to as the "Development Agreement") dated November 15, 2016.

That the Development Agreement requires MSB and/or its primary subcontractors to provide one or more performance bonds as may be reasonably required by the County securing construction of the project.

That the Principal has entered into a \_\_\_\_\_ Agreement with MSB, dated \_\_\_\_\_, to equip and construct and cause to be tested and accepted a portion of the work required to be performed by MSB under the Development Agreement (hereinafter referred to as the "Subcontract") and incorporated herein by reference; and pursuant to law and the terms and conditions of said Subcontract, the Principal is required to furnish a bond for the faithful performance of the Subcontract.

That the Principal, MSB and the County intend that this bond satisfy in part the obligations of MSB to provide security for performance of the Development Agreement set forth above.

That the Payment Provisions contained in the Development Agreement and the Subcontract require the County to make payments for the construction of the Project directly to the primary subcontractors, including \_\_\_\_\_ (hereinafter referred to as the "Principal") and the County desires protection as its interest appears, in the event of default by the Principal under the Subcontract.

As used herein, "Obligees" shall mean County, MSB and the additional obligee(s), if any, identified in a Rider to this Bond and "Obligee" shall mean any of the Obligees.

NOW, THEREFORE, \_\_\_\_\_, a \_\_\_\_\_ corporation (hereinafter referred to as the "Surety"), is held and firmly bound unto the Obligees, in the sum of \_\_\_\_\_ Dollars (\$) for the payment of which Principal and Surety bind themselves, jointly and severally. Surety shall be and hereby warrants that it is listed in the Insurance Organizations Authorized by the Insurance Commissioner to Transact Business of Insurance in the State of California during 1995 (including changes effective January 1, 1996) published by the Department of Insurance, State of California or successor publications.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal, his/her heirs, executors, administrators, successors, or assigns, shall perform all of the covenants, conditions and provisions in said Subcontract and any alteration thereof made as therein provided, including but not limited to provisions regarding contract duration and liquidated damages, all within the time and in the manner therein specified, and shall indemnify and save harmless the Obligees, and their respective officers, agents, and employees as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force, virtue and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by

County in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Subcontract or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Subcontract or to the work or to the specifications.

All payments made by Surety under this Bond will be made jointly to both Obligees and no amounts paid by Surety solely to MSB without the written consent of County shall reduce the liability of Surety to County under this Bond.

Surety agrees that any rights that MSB may have as an Obligee under this Bond may be assigned to the County, without the consent of Principal or Surety.

Death, illness, bankruptcy, receivership, disability or disqualification of the Principal shall not relieve Surety of its obligations hereunder.

IN WITNESS WHEREOF this instrument has been duly executed by the Principal and Surety above named on the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

PRINCIPAL:

SURETY:

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
City, State & Zip Code \_\_\_\_\_  
Dated \_\_\_\_\_

Signature by Attorney-In-Fact \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
City, State & Zip Code \_\_\_\_\_  
Dated \_\_\_\_\_

Surety's Agent for Service of Process (located within the State of California):

Name of Agent \_\_\_\_\_  
Address \_\_\_\_\_  
City, State & Zip Code \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
FAX Number \_\_\_\_\_

NOTE: Corporate seals of Principal and Surety must be attached and signature of those executing for Surety must be properly acknowledged.

**NOTARY:**

STATE OF CALIFORNIA                    )  
COUNTY OF SANTA BARBARA) ss.

On \_\_\_\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

(SEAL)

**WITNESS MY HAND AND OFFICIAL SEAL:**

\_\_\_\_\_  
Notary Public for the State of California

BOND #  
Premium:

PAYMENT BOND - DUAL OBLIGEE

KNOW ALL MEN BY THESE PRESENTS:

That the Board of Supervisors of the County of Santa Barbara of the State of California (hereinafter referred to as the "County") and MSB Investors LLC (hereinafter referred to as "MSB") have entered into a Development and Operation Agreement for the Tajiguas Resource Recovery Project (hereinafter referred to as the "Development Agreement") dated November 15, 2016.

That the Development Agreement requires MSB and/or its primary subcontractors to provide one or more payment bonds as may be reasonably required by the County to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code.

That the Principal has entered into a \_\_\_\_\_ Agreement with MSB, dated \_\_\_\_\_, to equip and construct and cause to be tested and accepted a portion of the work required to be performed by MSB under the Development Agreement (hereinafter referred to as the "Subcontract") and incorporated herein by reference; and pursuant to law and the terms and conditions of said Subcontract, the Principal is required to furnish a bond to secure the payment of labor and materials claims for the faithful performance of the Subcontract.

That the Principal, MSB and the County intend that this bond satisfy in part the obligations of MSB to provide security for performance of the Development Agreement set forth above.

That the Payment Provisions contained in the Development Agreement and the Subcontract require the County to make payments for the construction of the Project directly to the primary subcontractors, including \_\_\_\_\_ (hereinafter referred to as the "Principal") and the County desires protection as its interest appears, in the event of default by the Principal under the Subcontract.

As used herein, "Obligees" shall mean County and MSB and "Obligee" shall mean any of the Obligees.

NOW, THEREFORE, \_\_\_\_\_, a \_\_\_\_\_ corporation (hereinafter referred to as the "Surety"), is held and firmly bound unto the Obligees, in the sum of \_\_\_\_\_ Dollars (\$) for the payment of which Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns both jointly and severally. Surety shall be and hereby warrants that it is listed in the Insurance Organizations Authorized by the Insurance Commissioner to Transact Business of Insurance in the State of California during 1995 (including changes effective January 1, 1996) published by the Department of Insurance, State of California or successor publications.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his/her or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay any of the contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the Subcontract and referred to in Section 9100 of the California Civil Code for materials or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to this work or labor, or any prevailing wages due and penalties incurred pursuant to Sections 1774, 1775, 1813 and 1815 of the California Labor Code, or any amounts required to be deducted or withheld from the wages of employees of the Principal and its subcontractors for payment to the United States Government and/or to the State Franchise Tax Board with respect to such work and labor, then said Surety will pay for the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by Obligees in successfully

enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

This bond shall insure to the benefit of any and all persons, entities, companies and corporations named or referred to in Section 9100 of the California Civil Code, so as to give a right of action to them or their assign in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, deletion, or addition to the terms of the Subcontract, or to the work to be performed thereunder, or the specifications accompanying the same shall in anywise affect its obligations on this Bond, and it does hereby waive notice of any such change, extension of time, alteration, deletion, or additions to the terms of the Subcontract or to the work or to the specifications.

Surety agrees that any rights that MSB may have as an Obligee under this Payment Bond may be assigned to the County, without the consent of Principal or Surety.

Death, illness, bankruptcy, receivership, disability or disqualification of the Principal shall not relieve Surety of its obligations hereunder.

**IN WITNESS WHEREOF** this instrument has been duly executed by the Principal and Surety above named on the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**PRINCIPAL:**

**SURETY:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature by Attorney-In-Fact

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State & Zip Code

\_\_\_\_\_  
City, State & Zip Code

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Dated

Surety's Agent for Service of Process (located within the State of California):

\_\_\_\_\_  
Name of Agent

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State & Zip Code

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
FAX Number

**NOTE:** Corporate seals of Principal and Surety must be attached and signature of those executing for Surety must be properly acknowledged.

**NOTARY:**

STATE OF CALIFORNIA                    )  
COUNTY OF SANTA BARBARA) ss.

On \_\_\_\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

(SEAL)

**WITNESS MY HAND AND OFFICIAL SEAL:**

\_\_\_\_\_  
Notary Public for the State of California

Attachment C

Revised Exhibit AA - Progress Payment Provisions

**REVISED EXHIBIT AA  
PROGRESS PAYMENT PROVISIONS**

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Owner: County of Santa Barbara  
Developer: MSB Investors, LLC  
Primary Subcontractors: Diani Building Corporation  
Van Dyk Baler Corporation dba Van Dyk Recycling Solutions

These amended Progress Payment Provisions govern all payments by the County of Santa Barbara ("County") for Pre-Construction, Development and Construction of the above-referenced TRRP Property to the Developer MSB Investors, LLC ("MSB") and to the County approved and duly licensed Primary Subcontractors identified above as provided in the Amended Development and Operating Agreement dated November 15, 2016 between the County and MSB (Amended Development Agreement).

The County will, from time to time, deposit portions of the Bond Proceeds secured for the TRRP as well as additional available funds ("County Funds"), if needed, for the cost of County approved additions or change orders for the TRRP (collectively referred to as "TRRP Funds"), into the Solid Waste Enterprise Fund. The TRRP Funds shall be disbursed in accordance with the terms and conditions of these Progress Payment Provisions ("Provisions").

Developer MSB, acting as the County's authorized representative, is charged with planning, designing, and constructing the TRRP and pursuant to Business & Professions Code Section 7040, Developer will oversee and coordinate all requests for progress payments for all construction work as follows:

1. Prior to First Draw: Prior to the first disbursement of TRRP Funds by the County Treasurer, the following requirements shall be satisfied:
  - a. Developer shall furnish or cause to be furnished to the Director of the Department of Public Works for the County ("DPW Director") a Sworn Developer's Statement ("Sworn Developer's Statement") which shall provide the names and addresses of such persons furnishing labor, services and materials for the Pre-Construction, Development and Construction of the TRRP, the kind of labor, services or material to be furnished, and the amounts to be paid pursuant to these Provisions.
  - b. The DPW Director, or his designee, shall review, certify and then forward the Sworn Developer's Statement to the County Treasurer and the County Auditor to confirm the names and addresses of such persons furnishing labor, services and materials for the Pre-Construction, Development and Construction of the TRRP, the kind of labor, services or material to be furnished, and the amounts to be paid pursuant to these Provisions.
  - c. The DPW Director shall also furnish or cause to be furnished to the County Auditor, W-9 forms from all identified payees (Developer and Primary Subcontractors). **ALL W-9'S MUST BE SUBMITTED PRIOR TO DISBURSEMENT OF FUNDS.**



2. Disbursement/Draw Documents. Prior to each disbursement of the TRRP Funds ("Disbursement" or "Draw"), the following requirements shall be satisfied:

On or about the tenth (10th) Calendar Day of each month, Developer will provide DPW Director with the following:

- a. An updated Sworn Developer's Statement and all current Disbursement and/or Draw Requests requesting direct payments to the Developer and Primary Subcontractors identified in the Developer's Sworn Statement.
- b. A progress report covering the previous month (the "Payment Period") containing at a minimum the following information (the "Progress Report"):
  - (i) a description of the Work performed during the Payment Period and all direct payments due to Developer and each Primary Subcontractor;
  - (ii) payments due to Developer and Primary Subcontractors categorized by location and type of cost (i.e. Anaerobic Digester/Design & Engineering) as indicated by guidelines provided by DPW prior to start of work;
  - (iii) conditional lien waivers from Developer and Subcontractors for Work performed during the Payment Period;
  - (iv) timely unconditional lien waivers from Developer and Subcontractors for paid Work performed during the preceding pay periods;
  - (v) a description of the Work not yet performed;
  - (vi) a statement of all sums previously paid to Developer and Primary Subcontractors categorized by location and type;
  - (vii) an updated Project Schedule showing progress to date;
  - (viii) any other information reasonably requested in writing by County; and
  - (ix) if requested by County, a summary of contract payments coming due for the next monthly Payment Due Date.

DPW Director will review all of the documentation provided by the Developer pursuant to sections 1a and 1b above ("Developer's Payment Documentation") and forward these documents, along with its written authorization or disapproval for each requested Disbursement or Draw, to the County Treasurer ("DPW's Authorization") **on or about fifteen (15) Calendar days after receiving Developer's Payment Documentation**. DPW's Authorization shall document whether:

- (i) the Work performed and costs invoiced are consistent with the approved TRRP scope and the applicable cost allocations;
- (ii) the Work performed is consistent with TRRP design and specifications;
- (iii) the Work performed satisfies the construction schedule deadlines provided in Exhibit C to the Amended Development Agreement; and
- (iv) any applicable offsets or payments due to the County from the Developer or Primary Subcontractors (e.g. Failure to meet the Project Development Schedule or Failure to Pass Acceptance Test).

3. Disbursement. On or about eight (8) Calendar days after the County Treasurer receives the Developer's Payment Documentation and DPW's Authorization, unless Treasurer disapproves DPW's Authorization in whole or in part, the Treasurer shall:
  - a. Request a transfer of funds from the TRRP Fund Trustee to the County sufficient to cover the Disbursements and Draws included in DPW's Authorization; and
  - b. Direct the DPW Director or designee to prepare the required claims and forward such claims to the County Auditor for direct individual payments to the Developer and Primary Subcontractors.

For each monthly payment, other than amounts properly withheld, the County shall pay the authorized amount for each month within **thirty (30) Calendar days** after receiving the Developer's Payment Documentation as set forth in Section 2a and 2b above (the "Payment Due Date").

4. Final Draw. Prior to the final disbursement of TRRP Funds by the County to the Developer, and each Primary Subcontractor, the Developer will furnish the DPW Director with a Final Progress Report containing all the information listed in Section 2b above, an Engineer's Certificate of Completion, and Final Lien Releases from the Developer and each Primary Subcontractor.
5. Deficiencies in Documents. If County discovers a misstatement or deficiency in any of the documents provided under these Provisions, it may elect not to proceed until the misstatement or deficiency has been corrected or cured.
6. Project Cost Increases. The County Treasurer shall have no liability to determine whether the TRRP cost exceeds the undisbursed portion of the TRRP Funds. However, if a Disbursement or Draw Request is delivered to the Treasurer in an amount which the Treasurer believes exceeds the remaining TRRP Funds, the Treasurer will notify the DPW Director of the possible deficiency. The DPW Director may then authorize a draw less than the entire Draw Request amount.
7. No Interest on Escrowed Funds. All parties acknowledge that no interest will be paid on any TRRP Funds while held by the TRRP Fund Trustee or the Treasurer pursuant to these Provisions.
8. Retentions and Deductions
  - a. County will retain progress payments to Developer as provided in Section 10.2.b of the Amended Development Agreement and the County approved subcontracts between MSB and the above-mentioned Primary Subcontractors as follows:
    - i. 50% of the Developer (MSB) Development Fee (\$1,545,000),
    - ii. 3% of Subcontractor (Diani) EPC Holdback (\$2,110,000),
    - iii. 5% of Subcontractor (VDRS) Holdback (\$1,340,000).
  - b. County may also withhold an amount equal to the value of the Payment for work not completed by the Developer or a Primary Subcontractor until such work is completed. In the event of any such withholding, the County shall deliver to the Developer or Primary Subcontractor, not later than the Payment Due Date for the direct payment from which such withholding is being made, a written Notice specifying the basis for the withholding.

- c. Developer and Primary Subcontractors shall be paid such withheld amount on succeeding Payment Date(s) when and to the extent it has been demonstrated and the County reasonably agrees that the previously unjustified payment has become justified. If the disputing County and Developer or Primary Subcontractor agree before the next Payment Due Date that any Payment was wrongly withheld, then the County shall pay the outstanding amount on the next Payment Due Date. In the event of any withholding dispute that is not resolved by the next Payment Due Date, Developer or Primary Subcontractor shall have the right to review the County's reasons for withholding payment and to meet and confer with the County to attempt to resolve the dispute.
  - d. In the event the Developer or a Primary Subcontractor owes the County any amount under these Provisions and such amount remains unpaid thirty (30) days after Notice thereof, County may offset such amount from any direct payment to that party.
  - e. Developer and Primary Subcontractors shall not cease or reduce the rate of their performance on account of any withholding under these Provisions.
9. Payment Provisions Amend Contract. All parties acknowledge that these Payment Provisions are intended to replace and supersede any inconsistent payment provisions contained in the Amended Development Agreement.

Attachment D

**Redlined First Amendment**

Attachment D

Attachment D

Redlined Version of Changes Made by First Amendment to the Amended Contract  
between the COUNTY of SANTA BARBARA and MSB INVESTORS, LLC  
for Development and Operation of the Tajigaus Resource Recovery Project

The First Amendment to the Amended Contract between the County of Santa Barbara and MSB Investors, LLC for Development and Operation of the Tajigaus Resource Recovery Project dated November 15, 2016 ("Contract") amend the Contract by the following additions (indicated by underlining) and deletions (indicated by ~~strikethroughs~~):

1. The definition of "Effective Date" in Section 1.51 (lines 344-346) is amended as follows:

"Effective Date" means the date the Contract is fully executed by the Parties thereto, and the Conditions Precedent contained in section 2.7 have been satisfied, following which the County may issue the Notice to Proceed with Initial Development Activities as provided in Section 4.4."

Amended Section 1.51 now provides:

"Effective Date" means the date the Contract is fully executed by the Parties thereto, and the Conditions Precedent contained in section 2.7 have been satisfied, following which the County may issue the Notice to Proceed with Initial Development Activities as provided in Section 4.4."

2. The definition of "Initial Development Activities" in Section 1.71 (lines 452-454) is amended as follows:

"Initial Development Activities" means any pre-Construction activity remaining as of the Effective Date to be completed if in process, or still to be conducted, including but not limited to CEQA compliance, Permit acquisition, ~~financing~~ and design, as provided in Article 4.

Amended Section 1.71 now provides:

"Initial Development Activities" means any pre-Construction activity remaining as of the Effective Date to be completed if in process, or still to be conducted, including but not limited to CEQA compliance, Permit acquisition, and design, as provided in Article 4.

3. The definitions of "Materials Recovery Facility Operator," "MRF Facility Operator," and "MRF Operator" in Section 1.81 (lines 490 – 493) are amended as follows:

"Materials Recovery Facility Operator" or "MRF Facility Operator" or "MRF Operator" means MarBorg Recovery Management, ~~LLC~~LP, the entity selected by Contractor and approved by the County, relied upon by Contractor to provide daily Operation of the MRF. The MRF Operator is a Primary Subcontractor."

Amended Section 1.81 now provides:

"Materials Recovery Facility Operator" or "MRF Facility Operator" or "MRF Operator" means MarBorg Recovery LP, the entity selected by Contractor and approved by the County, relied upon by Contractor to provide daily Operation of the MRF. The MRF Operator is a Primary Subcontractor."

4. The second sentence of Section 2.6.I "No Approvals" (lines 966-972) is amended as follows:

"Contractor has obtained all licenses, Permits, business license, qualifications and approvals of whatsoever nature which are legally required for Contractor to begin construction of the Facility to provide services hereunder and meet Contractor's Obligations (with the exception of the solid waste facility permit issued by CalRecycle, which the County is responsible for obtaining), ~~and~~. Contractor further warrants that it shall, at its sole cost and expense, keep in effect or obtain at all times during the Term all licenses, Permits, and approvals which are legally required for Contractor to provide such services and meet Contractor's Obligations."

Amended second sentence of Section 2.6I "No Approvals" now provides:

"Contractor has obtained all licenses, Permits, business license, qualifications and approvals of whatsoever nature which are legally required for Contractor to begin construction of the Facility to provide services hereunder and meet Contractor's Obligations (with the exception of the solid waste facility permit issued by CalRecycle, which the County is responsible for obtaining). Contractor further warrants that it shall, at its sole cost and expense, keep in effect or obtain at all times during the Term all licenses, Permits, and approvals which are legally required for Contractor to provide such services and meet Contractor's Obligations."

5. Section 4.2.F "Extent of Contractor Liability" (lines 1391-1396) is amended as follows:

~~"In the event Contractor commences with performs any of the Initial Development Activities, Development activities or Construction activities prior to the Effective Date of the Contract or prior to receiving County approval to do so, and through no fault of Contractor (and assuming Contractor is not in default) the approval for such activity is not issued due to a CEQA challenge or action or by action of the County Board of Supervisors, a Notice to Proceed with Initial Development Activities or a Notice to Proceed with Construction pursuant to Section 4.3.B, as applicable, Contractor will bear all costs for Development such activities performed before issuance of the required approval, and acknowledges that and Contractor shall not be entitled to reimbursement from County for such costs unless all Conditions Precedent have been satisfied or waived by all Parties and the County issues the applicable Notice to Proceed to Contractor."~~

Amended Section 4.2F now provides:

"In the event Contractor performs any Initial Development Activities, Development activities or Construction activities prior to the Effective Date of the Contract or prior to receiving a Notice to Proceed with Initial Development Activities or a Notice to Proceed with Construction pursuant to Section 4.3.B, as applicable, Contractor will bear all costs for such activities and Contractor shall not be entitled to reimbursement from County for such costs unless all Conditions Precedent have been satisfied or waived by all Parties and the County issues the applicable Notice to Proceed to Contractor."

6. Section 4.7.B "Satisfaction of Preconditions" (lines 1656 – 1659) is amended as follows:

**"B. Notice to Proceed With Construction – Satisfaction of Preconditions"**

~~"Prior to requesting that County issue the Notice to Proceed with Initial Development Activities Construction, Contractor shall warrant to the County in writing that the following Conditions Precedent have been met:"~~

Amended Section 4.7.B now provides:

**"B. Notice to Proceed With Construction – Satisfaction of Preconditions"**

"Prior to requesting that County issue the Notice to Proceed with Construction, Contractor shall warrant to the County in writing that the following Conditions Precedent have been met:"

7. Section 4.7.B.1 "Initial Development Activities" (lines 1660-1662) is amended as follows:

"1. Initial Development Activities. Contractor has substantially completed Initial Development Activities, including but not limited to those related to Project design and Non-Fixed-Equipment financing."

Amended Section 4.7.B.I now provides:

"1. Initial Development Activities. Contractor has substantially completed Initial Development Activities, including but not limited to those related to Project design."

8. Section 4.7.B.3 "Construction Bond" (lines 1665 – 1666) is amended as follows:

"3. Construction Bonds. Contractor has provided the Construction performance and payment bonds as required in Section 13.2.B."

Amended Section 4.7.B now provides:

"3. Construction Bonds. Contractor has provided the Construction performance and payment bonds as required in Section 13.2.B."

9. Section 13.2.B Construction Performance Bond (lines 3742-3754) is amended as follows:

"B. Construction Performance and Payment Bonds"

"Contractor and/or its Primary Subcontractors shall provide one or more performance and payment bond(s), or other surety devices as may be reasonably required by the County in the aggregate amount of \$97,606,000, the estimated full cost of Construction of the Project of \$99,890,000 exclusive of the costs of the SoCal Edison Interconnection, Construction & Start-up Insurance, Start-up & Acceptance and Contract Administration (i.e., \$2,284,000 in the aggregate), to securing the Construction of the Project and to ensure, including ensuring that the Primary Subcontractors and all persons providing labor and materials for the Construction of the Facility receive full payment for services and materials provided, and in a form acceptable to the County as dual-obligee eo-beneficiary. Such bonds shall be in standard AIA form, and shall be issued by a surety company or companies rated "A" or better pursuant to current AM. Best Company ratings and listed in the United States Treasury Department's Circular 570. Such surety shall be an admitted surety in California. Contractor may discontinue maintaining this performance bond upon written County approval, which shall be provided within ten (10) Week Days of issuance of the Notice to Proceed with Full Operations as provided in Section 4.9.B."



Amended Section 13.2.B now provides:

"B. Construction Performance and Payment Bonds"

"Contractor and/or its Primary Subcontractors shall provide one or more performance and payment bond(s), or other surety devices as may be reasonably required by the County in the aggregate amount of \$97,606,000, the estimated full cost of Construction of the Project of \$99,890,000 exclusive of the costs of the SoCal Edison Interconnection, Construction & Start-up Insurance, Start-up & Acceptance and Contract Administration (i.e., \$2,284,000 in the aggregate), to secure the Construction of the Project and to ensure that the Primary Subcontractors and all persons providing labor and materials for the Construction of the Facility receive full payment for services and materials provided, and in a form acceptable to the County as dual-obligee. Such bonds shall be issued by a surety company or companies rated "A" or better pursuant to current AM. Best Company ratings and listed in the United States Treasury Department's Circular 570. Such surety shall be an admitted surety in California. Contractor may discontinue maintaining this performance bond upon written County approval, which shall be provided within ten (10) Week Days of issuance of the Notice to Proceed with Full Operations as provided in Section 4.9.B."

**Attachment E**

**Revised Exhibit V- Insurance Requirements**

**Attachment E**

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**Indemnification and Insurance Requirements  
(For Design/Build)**

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**INDEMNIFICATION**

A. **Indemnification pertaining to Construction:** Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless County and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by County on account of any claim except where such indemnification is caused by the sole negligence, active negligence, or willful misconduct of the County.

B. **Indemnification pertaining to Design Professional Services:** Contractor agrees to indemnify, defend (with counsel reasonably approved by the County) and hold harmless the County and its members, officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, costs, expenses (including but not limited to attorneys' fees), judgments and/or liabilities that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor and its employees, Subcontractors, or agents in the performance of services under this Contract, but this indemnity does not apply to liability for damages arising from the sole negligence, active negligence, or willful acts of the County.

**CONTRACTOR'S HAZARDOUS SUBSTANCES INDEMNIFICATION**

A. **General Description:** Without regard to any insurance coverage or requirements, and without limiting the above general indemnification obligation in any way, Contractor specifically agrees to and shall, to the maximum extent permitted by law, defend (with counsel acceptable to County), reimburse, indemnify, and hold Indemnitees harmless from and against any and all claims, actions, liabilities, damages, demands, judgments, losses, costs, liens, expenses, suits, actions, attorneys' fees, consultant fees, penalties and any and all other losses, damages, fees and expenses of whatever kind or nature ("Claims") (including but not limited to response costs, investigative costs, assessment costs, monitoring costs, treatment costs, cleanup costs, removal costs, remediation costs, and similar costs, damages and expenses) that arise out of or are alleged to arise out of or in any way relate to any action, inaction or omission of Contractor that:

1. Results in any demand, claim, Notice, order, or lawsuit, asserting that any Indemnitee is liable, responsible or in any way obligated to investigate, assess, monitor, study, test, treat, remove, remediate, or otherwise cleanup, any Hazardous Contaminant (as defined below in this Exhibit V); or

2. Relates to material received, Processed, sold, or Disposed of by Contractor.

B. Contractor's Obligations: Contractor's obligations pursuant to this Exhibit V shall apply, without limitation, to:

1. Any Claims brought pursuant to or based on the provisions of any Environmental Law;
2. Any Claims based on or arising out of or alleged to be arising out of the ownership, use, sale, design, Construction, Maintenance or Operation of of any facility;
3. Any Claims based on or arising out of or alleged to be arising out of the Marketing, sale, distribution, storage, transportation, Disposal, Processing or use of any Products;
4. Any Claims based on or arising out of or alleged to be arising out of any breach of any express or implied warranty, representation or covenant arising out of or in connection with this Contract.

C. Negligence Not Required: The foregoing indemnity and defense obligations shall apply irrespective of the negligence or willful misconduct of CONTRACTOR or any affiliate of CONTRACTOR.

D. Hazardous Contaminant: For purposes of this Exhibit, the term "Hazardous Contaminant" shall mean any Hazardous Substance, any Hazardous Waste, any Unacceptable Waste, any crude oil or refined or unrefined petroleum product or any fraction or derivative thereof; and any asbestos or asbestos-containing material. The term "Hazardous Contaminant" shall also include any and all amendments to any referenced statutory or regulatory provisions made before or after the date of execution of this Contract.

E. No Expiration: THE PROVISIONS OF THIS EXHIBIT V SHALL NOT TERMINATE OR EXPIRE, SHALL BE GIVEN THE BROADEST POSSIBLE INTERPRETATION, AND SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS CONTRACT.

#### DEFENSE OF PATENT INFRINGEMENT SUITS

Upon request by the County, the Contractor shall defend any lawsuit or proceeding that is brought against the County, County's affiliated employees, County Board of Supervisors, officers, officials, agents, assigns and volunteers, insofar as such lawsuit or proceeding is based upon an allegation of infringement, violation or conversion of any patent, licenses, proprietary right, trade secret or other similar interest, in connection with all Project Operations and any technology, processes, machinery or equipment supplied by the Contractor, except in cases of sole negligence on the part of the County, Public Participants, and their officers and employees. The Contractor shall pay all liabilities, damages, claims, demands, judgments, losses, costs and expenses awarded in any such lawsuit or proceeding it defends, in accordance with this Exhibit V. If as a result of any such lawsuit or proceeding it defends, the Project, or any portion thereof,

is held to constitute an infringement or use by the County is enjoined, then the Contractor shall, at its option, either (1) acquire the right of continued use under the infringed patent, license, proprietary right, trade secret or other similar interest on behalf of the County or (2) to the satisfaction of the County, modify or replace the infringing equipment with equipment that is equivalent in quality, performance, useful life and technical characteristics, which meets performance requirements.

THE PROVISIONS OF THIS EXHIBIT V SHALL NOT TERMINATE OR EXPIRE, SHALL BE GIVEN THE BROADEST POSSIBLE INTERPRETATION AND SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS CONTRACT.

#### CONSEQUENTIAL FINES RELATED TO DIVERSION

Contractor shall defend and indemnify, and pay all fines and/or penalties imposed by a State agency on the County or any Public Participant if:

1. Failure to meet the requirements of AB 939, AB 341, AB 1826, AB 32 or other applicable statutes or regulations result from Contractor's failure to meet the Diversion Guarantee and not from the failure of any County or Public Participant programs to meet contemplated Diversion levels; and,
2. If such failure is: (i) due to the failure of Contractor to meet its obligations under this Contract; or, (ii) due to Contractor delays in providing information that prevents Contractor or the County from submitting reports to regulators in a timely manner.

If Contractor does not pay any such damages to County by the first Day of each month, the County may declare a Contractor Event of Default in accordance with Section 14.2 of the Contract.

#### NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

Contractor shall notify County immediately in the event of any accident or injury arising out of or in connection with this Contract. The indemnification provisions in this Contract shall survive any expiration or termination of this Contract.

## INSURANCE

Contractor shall procure and maintain at its expense for the duration of this Contract, insurance in the amounts shown below against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, its agents, representatives, employees or Subcontractors.

### A. Minimum Scope and Limit of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury and "certified acts of terrorism," with limits no less than \$22,000,000 per occurrence and \$22,000,000 in the aggregate.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), with limit no less than \$2,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Professional Liability:** Insurance appropriate to the Contractor's profession, with limit of no less than \$5,000,000 per occurrence or claim, \$10,000,000 aggregate.
5. **Contractors' Pollution Liability and/or Asbestos Legal Liability:** with limits no less than \$5,000,000 per occurrence or claim, and \$10,000,000 policy aggregate. Such coverage shall, if commercially available, without involvement of the County, automatically broaden its form of coverage to include legislated changes in the definition of waste materials and/or irritants, contaminants or pollutants.
6. **Pollution Legal Liability and Remediation and/or Errors & Omissions:** applicable to underground or above ground fuel storage tanks, fueling or refueling operations with a limit no less than \$10,000,000 per claim or occurrence and \$10,000,000 aggregate per policy period of one year. This policy shall include coverage for bodily injury, property damage, personal injury, "certified acts of terrorism," and environmental site restoration, including fines and penalties in accordance with applicable EPA or state regulations.
7. **Builder's Risk (Course of Construction):** insurance utilizing an "all Risk" (aka "Special" policy form) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions. The policy must include the perils of earthquake and flood and "certified acts of terrorism" with a minimum \$25,000,000 policy limit, with maximum deductible of \$25,000. Coverage must also include soft costs, building ordinance or law, off site materials storage, property in

transit, loss of materials and equipment at the job site and boiler and machinery if applicable.

If the Contractor maintains higher limits than the minimums shown above, the County requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – The County and their respective members, officers, officials, employees, agents and volunteers are to be covered as Additional Insureds on the CGL policy and Pollution with respect to liability arising out of work or Operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or Operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
2. **Primary Coverage** – For any claims related to this Contract, the Contractor's insurance coverage shall state that it is primary insurance as respects the County and their respective members, officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the County or their respective members, officers, officials, employees, agents or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with Notice to the County.
4. **Waiver of Subrogation Rights** – Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation** in favor of the County for all work performed by the Contractor, its employees, agents and Subcontractors. This provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the County. At the option of the County, either: the Contractor shall cause the insurer to reduce or eliminate such deductibles or self-insured retentions as respects the County and their respective officers, officials, employees, agents and volunteers; or, the Contractor shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

6. **Acceptability of Insurers** – Unless otherwise approved by County Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** – Contractor shall furnish the County with proof of insurance, original certificates and amendatory endorsements as required by this Contract. The proof of insurance, certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Contractor shall furnish evidence of renewal of coverage throughout the Term of the Contract. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Contract does not comply with the requirements, is not procured, or is canceled and not replaced, County has the right but not the obligation or duty to terminate the Contract. Maintenance of required insurance coverage is a material element of the Contract and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by County as a material breach of contract.
9. **Subcontractors** – Contractor shall require and verify that all Subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that the County and the Public Participants are named as Additional Insureds on insurance required from Subcontractors. For CGL coverage Subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.
10. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
  - i. The Retroactive Date must be shown and must be before the date of the Contract or the beginning of Contract work.
  - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of Contract work.
  - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Contract Effective Date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of Contract work.
11. **Special Risks or Circumstances** – County reserve the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.



Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Contract. Contractor agrees to execute any such amendment within thirty (30) Days of receipt.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

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**Indemnification and Insurance Requirements  
(For Operations)**

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**INDEMNIFICATION**

Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless County and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is prohibited by law. Contractor's indemnification obligation applies to County's active as well as passive negligence but does not apply to County's sole negligence or willful misconduct.

**NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS**

CONTRACTOR shall notify County immediately in the event of any accident or injury arising out of or in connection with this Contract. The indemnification provisions in this Contract shall survive any expiration or termination of this Contract.

**INSURANCE**

CONTRACTOR shall procure and maintain for the duration of this Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, its agents, representatives, employees or Subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury and "certified acts of terrorism," with limits no less than \$10,000,000 per occurrence and \$10,000,000 in the aggregate.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$2,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Pollution Legal Liability and/or Errors & Omissions:** applicable to underground or above ground fuel storage tanks, fueling or refueling operations with a limit no less

than \$10,000,000 per claim or occurrence and \$10,000,000 aggregate per policy period of one year. This policy shall include coverage for bodily injury, property damage, personal injury, "certified acts of terrorism," and environmental site restoration, including fines and penalties in accordance with applicable EPA or state regulations.

If the Contractor maintains higher limits than the minimums shown above, the County require and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

**B. Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – County and its members, officers, officials, employees, agents and volunteers are to be covered as Additional Insureds on the CGL and Pollution Liability policy with respect to liability arising out of work or Operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or Operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
2. **Primary Coverage** – For any claims related to this Contract, the Contractor's insurance coverage shall be primary insurance as respects the County and their respective members, officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the County and their respective members, officers, officials, employees, agents or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with Notice to the County.
4. **Waiver of Subrogation Rights** – Contractor hereby grants to the County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the County. The County may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

6. **Acceptability of Insurers** – Unless otherwise approved by County Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** – Contractor shall furnish the County with proof of insurance, original certificates and amendatory endorsements as required by this Contract. The proof of insurance, certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Contractor shall furnish evidence of renewal of coverage throughout the Term of the Contract. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Contract does not comply with the requirements, is not procured, or is canceled and not replaced, County has the right but not the obligation or duty to terminate the Contract. Maintenance of required insurance coverage is a material element of the Contract and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by County as a material breach of Contract.
9. **Subcontractors** – Contractor shall require and verify that all Subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that County and County members are named as Additional Insureds on insurance required from Subcontractors.
10. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
  - i. The Retroactive Date must be shown and must be before the date of the Contract or the beginning of Contract work.
  - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of Contract work.
  - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Contract Effective Date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of Contract work.
11. **Special Risks or Circumstances** – County reserve the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Contract. Contractor agrees to execute any such amendment within thirty (30) Days of receipt.

Any failure, actual or alleged, on the part of County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of County