



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: February 14, 2017
Placement: Administrative
Estimated Tme:
Continued Item: No
If Yes, date from:
Vote Required: 4/5

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 Direct Agreements between the County, MSB Investors, LLC and the following entities related to the development and operation of the Tajiguas Resource Recovery Project:
 - i) Diani - Construction of AD & MRF
 - ii) Bekon & Diani - Equip AD
 - iii) Bekon - AD Operations
 - iv) Mustang - AD Operations
 - v) Van Dyk - Equip MRF
 - vi) MarBorg - MRF Operations
 - vii) MarBorg - MRF Diversion Guarantee
- b) Approve the 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;
- c) Approve Budget Revision Request #BJE-0004878 to account for the appropriation related to the debt issuance for the Tajiguas Resource Recovery Project; and
- 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.

Summary

This item is on the agenda in order to consider recommendations regarding the Tajiguas Resource Recovery Project (TRRP). On December 13, 2016, your Board approved two items related to the development and operation of the TRRP. First, your Board approved (a) Material Delivery Agreements with four entities, (b) a Disposal Agreement with MarBorg Industries, and (c) an Amended Contract between the County and MSB Investors, LLC for the Development and Operation of the Tajiguas Resource Recovery Project (Waste Service Agreement). Link:

<https://santabarbara.legistar.com/LegislationDetail.aspx?ID=2903277&GUID=09E8B38A-3235-4DD3-A8EB-C9791B0BE3AD>.

Second, your Board approved several recommended actions related to public financing for the TRRP.

Link: <https://santabarbara.legistar.com/LegislationDetail.aspx?ID=2903307&GUID=0E482DC7-1013-43DF-BE9B-8FBD5231B24D>

Since the December 13, 2016 Board hearing, staff has been working diligently with the financing team to complete all documents and agreements needed to move forward with the TRRP financing. This Board Letter seeks your Board's approval of several assignment agreements identified by the financing team as necessary to complete the public financing as well as approval of several changes to the existing Waste Service Agreement. In addition, the Board Letter contains a request to approve a budget revision to account for the appropriation related to the debt issuance for the Tajiguas Resource Recovery Project.

Background:

On December 13, 2016, your Board approved several contracts securing the flow of solid waste materials to the TRRP in addition to adopting a resolution authorizing actions related to public financing of the TRRP. Since that time, staff has been working diligently with its financing team including representatives from the County's Treasurer-Tax Collector, Auditor-Controller, County Counsel, Public Works and a team of outside financial advisors and consultants.

Based on recommendations provided by the County's financial advisors, Direct Agreements have been prepared for all primary Subcontracts to facilitate the assignment of those Subcontracts to the County or the County's designee in the event MSB Investors defaults or files bankruptcy. The Direct Agreements provide an efficient and streamlined assignment process which allows the County to continue operation of the TRRP without interruption. Our financing team believes these Agreements will support the current business structure and make the project more stable over time (Attachment A).

In addition, to raise investor confidence, the financing team has recommended certain changes related to the timing of Notices to Proceed with Construction, Progress Payment Provisions, and construction bond requirements. These changes are reflected in the First Amendment to the Waste Services Agreement. In addition, MarBorg has informed the County that the operator of the Material Recovery Facility was inadvertently identified as Marborg Recovery Management LLC in its Subcontract when in fact the operator is Marborg Recovery, LP, a California Limited Partnership, whose general partner is Marborg Management, LLC. This change will be reflected in the First Amendment to the Waste Service

Agreement (Attachment B). Attachment (d) of Attachment B illustrates the changes made to the body of the Waste Service Agreement to facilitate your Board's review of the proposed First Amendment.

The proposed budget revision records the debt issuance related to the TRRP. It increases appropriations for current year project costs of \$39,000,000, appropriates transfers between funds of \$9,130,000 records interest and costs of issuance of \$3,180,000, increases current year services & supplies by \$1,500,000 and appropriates an increase to reserves of \$116,920,000 for expenditures over the two consecutive years. These current year appropriations are funded by debt proceeds, release of reserves, transfers, and Federal IRS Subsidies. Use of the proceeds for construction is anticipated to begin on March 1, 2017.

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 Direct Agreements are administrative in nature and provide a mechanism to assign the primary subcontracts to the County in the event MSB Investors defaults or files bankruptcy. Construction and operation of the facilities under the Direct Agreements would proceed as analyzed in the certified Final EIR. Therefore, execution of the Direct Agreements does not involve any new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
- The amendment to the Waste Service Agreement includes changes related to the timing of Notices to Proceed with Construction, Progress Payment Provisions, construction bond requirements and a correction in the entity (from Marborg Recovery Management LLC to Marborg Recovery, LP) in the Marborg Subcontract. With the exception of the timing on the Notices to Proceed, as discussed further below, these amendments are administrative and financial in nature. Such amendments have no impact on the environment or the analysis in the EIR and Errata. The amendment related to the Notice to Proceed would allow the contractor access to the site prior to the issuance of the Notice to Proceed with Construction. Activities associated with this early access would include establishing temporary construction field office trailers and lay down area within the disturbed area of the landfill outside of the Coastal Zone, delineation of the construction disturbance area (as required by the adopted Mitigation Monitoring and Reporting Program) and other preconstruction activities

consistent with the Project as analyzed in the Final EIR and within the areas analyzed in the Final EIR. These activities would not result in any new or substantially more severe impacts than previously analyzed in the EIR. Therefore, execution of the amendments to the 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.

Performance Measure:

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

Fiscal and Facilities Impacts:

Budgeted: No – Budget Revision attached for the debt issuance.

Special Instructions:

Please send a copy of the signed contracts (Attachments 1 and 2) to the Resource Recovery & Waste Management Division of the Public Works Department, Attn: Leslie Wells.

Attachments:

Attachment A: Direct Agreements between the County, MSB Investors & Primary Subcontractors

- a. Diani - Construction of AD & MRF
- b. Bekon & Diani - Equip AD
- c. Bekon - AD Operations
- d. Mustang - AD Operations
- e. Van Dyk - Equip MRF
- f. MarBorg - MRF Operations
- g. MarBorg - MRF Diversion Guarantee

Attachment B: First Amendment to the Amended Contract between the County of Santa Barbara and MSB Investors, LLC for Development and Operation of the TRRP

- a. Revised Exhibit G – Primary Subcontractors
- b. Revised Exhibit U- Performance Bond
- c. Revised Exhibit AA – Payment Provisions
- d. Redlined First Amendment
- e. Revised Exhibit V – Indemnification and Insurance Requirements

Attachment C: Budget Revision Request # BJE-00004878

Authored by:

Leslie Wells, Program Leader, Resource Recovery & Waste Management Division (ext. 3611).