BOARD OF SUPERVISORS
AGENDA LETTER

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

Agenda Number:

Department Name:	Public Works
Department No.:	054
For Agenda Of:	April 5, 2016
Placement:	Departmental
Estimated Time:	45 minutes
Continued Item:	Yes
If Yes, date from:	Set hearing on March 15, 2016
Vote Required:	Majority

TO:	Board of Supervisors	
FROM:	Department Director(s)	Scott D. McGolpin, P.E. Director, 568-3010
	Contact Info:	Mark Schleich, P.E. Deputy Director, 882-3605
SUBJECT:	**Consider Issues Related to the Tajiguas Resource Recovery Project Third Supervisorial District**	

County Counsel Concurrence
As to form: Yes

Other Concurrence: Risk Management
As to form: Yes

Auditor-Controller Concurrence
As to form: Yes

Treasurer
As to form: Yes

Recommended Actions:

Staff recommends that the Board of Supervisors:

a) Receive an update on the Tajiguas Resource Recovery Project;

b) Conceptually approve the attached Deal Points which are non-binding but provide the potential framework and cost for a Waste Service Agreement with MSB Investors, LLC (formerly referred to as Mustang Renewable Power Ventures) to design, build and operate the Tajiguas Resource Recovery Project at the Tajiguas Landfill (Attachment A);

c) Approve and authorize the Chair to execute the attached Agreement with HF&H Consulting for their continued assistance in the preparation of the Waste Service Agreement with the proposed vendor and Material Delivery Agreements with the participating jurisdictions for an amount not to exceed of $278,000. This Agreement is independent from the former Purchase Contract Order No. 17892 for $99,000 with the same vendor where all work has been performed and all authorized funds expended (Attachment B);

d) Authorize the Director of Public Works to prepare and submit permit applications to CalRecycle, Regional Water Quality Control Board, and the Air Pollution Control District; and

e) Direct staff to return to the Board for the Board’s simultaneous consideration of:

i) Certifying the Final Subsequent Environmental Impact Report;

ii) Receiving the Debt Advisory Committee's recommendation concerning the potential use of public financing for this project;

iii) Approving a Waste Service Agreement with the vendor to design, build, and operate the Tajiguas Resource Recovery Project, subject to compliance with the California Environmental Quality Act, based on the Deal Points.

f) Determine that actions taken on April 5, 2016 are not an approval of the project, nor do they commit the County of Santa Barbara to a definite course of action in regard to a project intended to be carried out, and direct staff to file a California Environmental Quality Act Notice of Exemption on the basis of California Environmental Quality Act Guidelines Section 15352 (Attachment C).

Summary Text:

On July 7, 2015, the Board directed staff to complete a variety of tasks and report back to the Board on the results of these tasks. Staff has begun an analysis of publicly financing the construction of the proposed Tajiguas Resource Recovery Project, evaluated the proposed performance and cost information submitted by the selected vendor (MSB Investors, LLC formerly referred to as Mustang Renewable Power Ventures) as well as conducted preliminary negotiations with the selected vendor on deal points that would provide the potential framework and price for a Waste Service Agreement to design, build and operate the facility. Staff has prepared recommendations as next steps for future implementation of the project.

The Department's recommended actions do not include certification of the proposed Final Subsequent Environmental Impact Report which the Board would consider when the item returns to the Board at a later date. The proposed Final Subsequent Environmental Impact Report was released on December 15, 2015 and pursuant to Government Code Section 65402, the County Planning Commission held a hearing on January 6, 2016. The County Planning Commission determined that the proposed project at the Tajiguas Landfill was in conformity with the Comprehensive Plan. The full environmental document can be viewed at http://resourcerecoveryproject.com/pages/downloads/environmental-documents.php .

The Department's recommended actions also do not include taking action on potential public financing, which the Board would consider when the item returns to the Board at a later date and along with a recommendation from the Debt Advisory Committee.

Background:

If approved, the Tajiguas Resource Recovery Project (TRRP) would modify current waste management operations at the Tajiguas Landfill by the addition of a Materials Recovery Facility (MRF) and Dry Fermentation Anaerobic Digestion (AD) Facility that would process municipal solid waste that is currently being buried into recyclables to be sold, organics to be further processed through the AD facility, and the residual to be buried. In addition, the project would have the ability to process commingled source separated recyclables and organics from the communities currently served by the Tajiguas Landfill. Implementation of the project would enhance the community's ability to be in compliance with state waste management regulations, greenhouse gas reduction requirements, provide 20 years of disposal capacity, and generate green energy.

On July 7, 2015, staff from the Public Works Department Resource Recovery & Waste Management Division (RR&WMD) provided an update to your Board and requested direction related to the TRRP. Your Board directed staff to:

- Evaluate alternative means of project financing including:
    - a hybrid approach using private financing for the Anaerobic Digester (AD) and public financing for the Material Recovery Facility (MRF), and
    - a publicly financed model supplemented with private equity investments,
- Present findings of the financial evaluations to the County's Debt Advisory Committee for their consideration, and
- Return to the Board in Fall 2015 with the results of the review.

In addition, staff indicated in the presentation that the following would also be undertaken in light of the possibility of the project being publicly funded:

- Ensure proposed construction and operating costs are accurate
- Consider the most effective organizational structure
- Review ways to limit risk to the County

The following provides an update of work accomplished since the July 2015 Board hearing as well as a set of recommendations going forward.

<u>Added Services to Our Community</u>
In the last ten years, as both federal and state agencies grapple with climate change, there have been an increasing number of policies and laws implemented to limit greenhouse gas (GHG) emissions by reducing the amount of waste landfilled and, more specifically, eliminating the disposal of organics in our landfills.

On a state level, California's Global Warming Solutions Act (AB 32), passed in 2006, is a state mandated reduction of GHGs to pre-1990 levels. In order for the State to achieve this goal, getting organics out of landfills has been specifically targeted in many pieces of subsequent policy and legislation. AB 32's "Scoping Plan" adopted by the California Air Resources Board specifically identifies the need to divert 22 million tons of organic material from landfills and the correlated need to expand the State's ability to compost diverted organics, specifically through anaerobic digestion and composting.

In addition, CalRecycle has implemented a State-wide Anaerobic Digestion Initiative under its Strategic Directive 6.1 which seeks to reduce by 50% the total amount of organics currently landfilled by 2020 and has released a state-wide programmatic EIR to assist local jurisdictions in developing facilities at existing waste management facilities like landfills, similar to the proposed TRRP.

The State's Public Resource Code has also been amended to reflect this shift towards increasing recycling and diverting organics through the following:

- AB 341 requires that businesses recycle and created a statewide goal of achieving 75% diversion of waste from landfills;

- AB 1826 requires businesses to divert organic waste they generate from disposal beginning in 2016 for larger generators extending to smaller generators through 2019;
- AB 876 requires local governments to plan for 15 years of organic waste recycling infrastructure; and
- AB 1045 requires state agencies to work together to support the diversion of organic waste from landfills.

In addition, the State Air Resources Board, in conjunction with CalRecycle, is currently considering additional regulation to be passed in 2018 that would effectively eliminate all organics from disposal in landfills by 2025. The federal government has followed California's lead establishing policies to remove organics from landfills. On September 15, 2015, the U.S. EPA in partnership with the U.S. Department of Agriculture announced the United States' first-ever national food waste reduction goal calling for a 50% reduction of food waste by 2030.

It is clear that managing organic waste is a rapidly expanding area of policy and law that will require local jurisdictions to develop needed infrastructure. Santa Barbara County is not alone in addressing these policies by proposing to establish an AD facility. As of 2014, CalRecycle identified 12 AD facilities processing organic waste, one under construction, and an additional eight going through the permitting process. It is clear that additional facilities will need to be developed locally in order to comply with existing and future state and federal mandates.

The reason to emphasize these state and federal regulations is because there will be added costs to communities to meet these greenhouse gas reduction and organic diversion requirements. Your Board approved the County's Energy and Climate Action Plan in June 2015 and the implementation of the TRRP is identified as one of the most significant reductions in the County's Plan, equivalent to taking 22,000 vehicles off of the road annually. While the implementation of the TRRP would increase rates to customers for solid waste collection services, it would be one of the most cost-effective greenhouse gas reduction projects being pursued by the County as well as providing the infrastructure to allow the region to be in compliance with new solid waste management regulations.

<u>Performance and Financial Review of Proposed Project</u>
As you are aware, the Board selected the project proposed by MSB Investors, LLC in January 2012 as a result of the Request for Proposals to Establish a Solid Waste Management Conversion Technology Facility to Process Waste Currently Buried at the Tajiguas Landfill distributed by the County in October 2009. In the proposal, the vendor demonstrated how the project performance specifications would be met with detailed design, mass balance spreadsheets, and cost data. When the cost for the proposed private financing significantly exceeded expectations, and your Board agreed to evaluate the possibility of publicly financing the project, staff felt it was necessary to have a third party review the proposed design and associated costs for due diligence.

During the summer of 2015, Public Works Staff hired independent experts to perform comprehensive performance and financial reviews of the proposed MRF and AD facility components of the TRRP. D. Edwards, Inc. (DEI) was tasked with reviewing the equipment performance, contractual relationships, scheduling, and construction and operational costs for the MRF, and completed a report presented to staff on August 20, 2015. DEI found that the TRRP as proposed achieved or exceeded the requirements and standards set out by the original RFP and subsequent addenda developed by the participating jurisdictions. Notably, it found the proposed project performance to be reasonable and achievable.

Additionally, DEI found that the costs related to the MRF are consistent with other similar facilities in the state.

The international engineering firm HDR was tasked with reviewing the proposed performance and construction and operational costs of the AD facility, and completed this task on July 30, 2015. This effort included a review and expansion of previous geotechnical and engineering reports on the AD facility developed by HDR, Solis Engineering, and Geotechnical Solutions. Similar to the DEI report, the findings were: the proposal met the requirements of the original RFP, the performance measures were achievable, and the costs related to this facility are either consistent with other facilities or justified given the requirements of the location. The report noted that the construction costs, specifically the cost for the facility foundation, while high, are justified by the need for a "robust foundation" in order to address site conditions. Other construction and operational costs associated with the facility are in line with costs for other similar facilities.

<u>Public Financing Review</u>
In July, your Board directed staff to evaluate alternative means of project financing including:

- a hybrid approach using private financing for the AD facility and public financing for the MRF, and
- a publicly financed model supplemented with private equity investments

With regards to the "hybrid approach", staff met with the vendor on August 13, 2015 to discuss the feasibility of this option. The vendor explained that the hybrid approach is cost-effective only if an Investment Tax Credit was used which requires fair market purchase of the facility and does not allow the transfer of the facility to the public sector at the end of the term, a provision required for a public/private partnership governed under Government Code 5956 et seq. and a requirement of the RFP. As such, the hybrid approach to funding the project is no longer feasible.

To evaluate a publicly financed facility supplemented with private equity investments, Public Works hired HF&H Consulting, a consulting firm that assisted staff during the earlier negotiations with MSB Investors, LLC, and who is one of the leading solid waste related consulting firms in the state. The firm has recently acquired an analyst who served as the Controller for a similar project recently built in the City of San Jose. HF&H has worked closely with County staff from Public Works to complete a financial model for the RR&WMD to potentially publicly finance construction of the proposed project guaranteed by annual financial commitments from other jurisdictions (20-year commitment to deliver waste material to the project at a required tip fee).

In addition, the RR&WMD Enterprise Fund costs and revenues were included to ensure all fiscal impacts of the project would be considered including required reserves for closure/post closure funding for the Tajiguas Landfill, defeasing our existing bond debt, and other necessary funds to be in compliance with reserve policies for Enterprise Funds previously adopted by the Board of Supervisors. The results of the analysis demonstrated that the cost for the facility would be approximately $105 per ton using publicly provided funding, which includes the additional costs to meet all of the financial obligations of the RR&WMD. Compared to the cost for private financing, meeting all of the provisions in the Term Sheet executed with the vendor and the additional Division costs would have cost approximately $146 per ton, which is approximately 39% higher than if the project is publicly financed. The preliminary results of this analysis were presented to the DAC on December 18, 2015 and they directed staff to move forward with selecting a financial advisor to manage the process for public financing.

The Board also authorized Public Works to apply for a grant to assist with the cost of constructing the AD facility through CalRecycle's Cap & Trade Organics Grant Programs. CalRecycle staff has developed the grant program criteria but the California legislature has not designated the use of the Cap & Trade funds in their current budget. Staff will watch to apply for the grant during the next legislative funding cycle as well as seek other grant opportunities.

Service Contract with MSB Investors, LLC and its Proposed Subcontractors

Under the context of a publicly financed project, the County would require a vendor to Design, Build, and Operate the proposed facilities. As shared with your Board in July, MSB Investors, LLC has assembled a strong team of experienced subcontractors including Diani Construction for construction, Bekon to provide the AD technology (Bekon currently has 19 facilities in operation and 8 facilities in development), Van Dyke Recycling Systems for the MRF technology (VDRS has equipment in over 500 operating MRFs), MarBorg Industries to operate the MRF, and Nursery Products to operate the AD facility. In addition, the vendor has made significant progress in designing the facilities and seeking various permits with regulatory agencies. If MSB Investors, LLC and the County (as well as the other public participants) could agree on the basic parameters of the Waste Service Agreement and a reasonable cost or tipping fee for the use of the facilities, it was considered to be valuable to retain the MSB Investors, LLC team.

To further evaluate the value of retaining MSB Investors, LLC, HF&H assisted the public participants in preparing a general business outline within the confines of the original RFP that was presented to the vendor in addition to a proposed price that the jurisdictions were willing to pay for the proposed services. MSB Investors, LLC responded to the recent package and the "Deal Points" attached to the Board Letter reflect the result of these negotiations. The negotiated tip fee that the public participants would potentially pay for design, construction and operational services is $ 5.60 per ton. The reason the tipping fee paid to the vendor is so low is because the revenues associated with operating the facility greatly offset the operational cost. It is important to note that this is only a portion of the overall tip fee which includes the capital cost for the facility as well as the additional required costs such as closure/postclosure reserves for the landfill. Including all of the costs for the facility, the tip fee would be approximately $105 per ton.

The resulting tip fee of approximately $105 per ton can be compared to the objective of the original RFP for the project prepared in 2009, which required a project to not exceed the cost of $100 per ton plus the additional Division costs of $22.41 per ton as contained in Addenda #3, Question #4 and revised Price Form 3 of the RFP, for a total cost not to exceed of $122.41 per ton. The table below demonstrates that the proposed project would meet the original financial objective of $100 per ton contained in the RFP. It is important to note that the final price per ton may be adjusted to a small degree once the financing is secured and the interest rate is fixed.

Tip Fee Components	Objective in RFP	Privately Financed Cost	Publicly Financed Cost
Facility Cost	$100 per ton	$121 per ton	$75 per ton
Additional Cost	$22.41 per ton	$25 per ton	$30 per ton
Total Cost	$122.41 per ton	$146 per ton	$105 per ton

A tipping fee of $105 per ton would increase the monthly service charge to the ratepayer by approximately $5 per month.

The results of the preliminary financial analysis and subsequent negotiations with the vendor will be presented to the County's Debt Advisory Committee on March 18, 2016 and to a meeting of the affected City Administrators and the County CEO on March 22, 2016. Results of these meetings will be shared with the Board at the April 5, 2016 hearing.

Potential Future Project Organization Structure

Over the last several years, the public participants have met to discuss several potential options for organizing the project with regards to contractual arrangements for services. Options included 1) each participating jurisdiction having a separate agreement with the vendor, or 2) the participating jurisdictions forming a Joint Powers Authority and the Authority could contract with the vendor for services and each jurisdiction would subsequently contract with the Authority for services. At a presentation to the regional City Managers and County CEO in June 2014 regarding organization for the project, Goleta, Buellton, Solvang and the County were interested in forming a single purpose Authority purely for the implementation of this project (and the entities would subsequently contract with the Authority for services) and Santa Barbara was interested in contracting directly with the vendor although Santa Barbara thought there was a possibility that they would participate in the Authority.

With the change in direction for financing the project, there were discussions regarding the proposed Authority seeking funding for the project but ultimately the jurisdictions concluded that the County was in the best position to secure the funding since the proposed Authority would have no credit history. The County has a good credit rating and can therefore secure funds at a lower interest rate. Another factor that was considered is that the County owns the property on which the proposed project would be built. As such, staff from the various cities has indicated that they intend to recommend that the County contract directly with the vendor and each of the cities contract directly with the County for services.

Under this proposed arrangement, it is imperative that there be protections to limit the County's risk including:

- 20-year commitments from each participating City to the County to deliver waste material to the project at an initial tip fee set by the County (including fees for early termination to cover their portion of the project's financing and operational costs);
- Delegation of authority by participating cities to the County to modify the initial tip fee by more than CPI to respond to changes in law and uncontrollable circumstances including a process for the other participants to present an alternative solution if they consider the County proposed price to be too high;
- Delegation of authority by the participating cities to the County to make changes to the facility to enhance efficiency, improve performance, or meet regulatory requirements if the changes do not change the general scope of services (to eliminate the need of having to go to each City Council to preapprove facility changes); and
- Protection for the County during construction and operation through performance bonds and project warranties.

These provisions, as well as others, would be developed with legal counsel if your Board directs staff to return with a Waste Service Agreement to design, build, and operate the Tajiguas Resource Recovery Project.

Recommendations

The County of Santa Barbara and its partner jurisdictions of Goleta and Santa Barbara and to a lesser extent, Buellton and Solvang, embarked on a procurement to reduce our community's reliance on landfilling in 2008. The project that was chosen as a result of the Request for Proposals is the construction of a material recovery facility and anaerobic digester that will sort waste that continues to be thrown in the trash can as well as sort source separated recyclables and organics. The facilities are projected to remove 60% of the material delivered through recovery and sale of recyclables, processing of organics into a usable soil amendment, and disposal of the remaining 40% of the waste. This facility would assist the region in complying with recent waste management and greenhouse gas reduction requirements and address the community's solid waste management needs for the next 20 years. The cost for the facility would meet the objectives of the original RFP and would result in the estimated increase of $5 per month to the ratepayer.

Staff is recommending that your Board conceptually approve the non-binding Deal Points, approve and authorize the Chair to execute a consultant contract to assist in the preparation of the Waste Service Agreement, authorize the Director of Public Works to prepare and submit permit applications to CalRecycle, Regional Water Quality Control Board, and Air Pollution Control District, and direct staff to return in the future for approval of the project and certification of the Proposed Final Subsequent Environmental Impact Report.

Fiscal and Facilities Impacts:
Budgeted: Yes

Fiscal Analysis:

Funding Sources	Current FY Cost:	Annualized On-going Cost:	Total One-Time Project Cost
General Fund			
State			
Federal			
Fees			
Other: RRWMD Ent Fund	$ 278,000.00		$ 278,000.00
Total	$ 278,000.00	$ -	$ 278,000.00

Narrative:
Efforts associated with actions in this Board Letter, including the $278,000 for the service contract with HF&H Consulting, are currently included in the adjusted budget for the Resource Recovery & Waste Management Division for Fiscal Year 15/16.

Key Contract Risks:
HF&H Consultants is a well-respected consulting firm that specializes in solid waste management projects including the preparation of waste management agreements as well as fiscal analysis. Contract risk associated with this contract would be considered low.

Special Instructions:

Following Board actions, Clerk of the Board to please post the Notice of Exemption and forward a stamped copy to the Resource Recovery & Waste Management Division of the Public Works Department, attn: Joddi Leipner. Please send an executed copy of the Agreement to the Resource Recovery & Waste Management Division of the Public Works Department, attn: Leslie Wells.

Attachments:

Attachment A: Deal Points
Attachment B: Agreement with HF&H Consultants
Attachment C: Notice of Exemption

Authored by:

Leslie Wells, Resource Recovery & Waste Management Division of County Department of Public Works, 882-3611.