



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: November 28, 2023
Placement: Set Hearing
Estimated Time: 60 Minutes on
December 12, 2023
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Scott D. McGolpin, Public Works Director, 805-568-3010
Director(s)
Contact Info: Jeanette Gonzales-Knight, P.E., Interim Deputy Director,
(805) 882-3605

SUBJECT: Set Hearing to Consider Termination of Contract with MSB Investors, LLC for
Development and Operation of the Tajiguas ReSource Recovery Project - Third
Supervisory District

County Counsel Concurrence

As to form: Yes

Other Concurrence: None

As to form: N/A

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

That the Board of Supervisors, set a hearing on December 12, 2023 to:

- a) Conduct a hearing to consider terminating the Agreement for Development and Operation of the Tajiguas ReSource Recovery Project with MSB Investors, LLC executed by the County on December 13, 2016 (Agreement); and
- b) Upon conclusion of the hearing:
 - i. Direct the Public Works Director or designee to issue a letter terminating the Agreement;
 - ii. Delegate authority to the Public Works Director or designee to take actions necessary for the wind down of the Agreement and transition to new operator(s) of the ReSource Center, subject to the Board's ability to rescind this delegated authority at any time;

- iii. Direct staff to work with MSB Investors, LLC to transition operation per the terms of the Agreement;
 - iv. Authorize the Public Works Director or designee to notify and exercise application of the direct agreements with MarBorg Recovery, LP, Diani Building Corporation, Van Dyk Baler Corporation, and Bekon Energy Technologies, Inc. approved by the Board on February 14, 2017 as needed for continuity of service at the ReSource Center; and
 - v. Authorize the Public Works Director or designee to enter into an agreement with Bekon Energy Technologies, Inc. for operation of the ADF and/or CMU for a period not to exceed 12 months and not to exceed \$6,318,880, subject to approval by Auditor Controller, Risk Management, and County Counsel.
- c) Determine that the proposed actions are not a “project” under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15378(b)(2), as they involve administrative and other general policy and procedure making activities that will not result in direct or indirect physical changes to the environment.
- d) Provide other direction to staff.

Summary Text:

This item is on the agenda to set a hearing to consider termination of the Agreement with MSB Investors, LLC (MSB) for Development and Operation of the Tajiguas ReSource Recovery Project (also commonly referred to as the ReSource Center) based on MSB’s failure to comply with the Agreement including inadequate performance, inability to timely complete the project, and incursion of regulatory violations. Staff plans to present the basis for termination of the Agreement, including recommendations for additional actions to ensure continuous operation of the ReSource Center, on December 12, 2023.

Background:

The County of Santa Barbara owns and operates the Tajiguas Sanitary Landfill (landfill). As a means to divert waste and preserve the life of the landfill, as well as in consideration of other environmental and regulatory factors such as compliance with SB 1383, the County contracted with MSB Investors, LLC (MSB) on December 13, 2016, to construct and operate several facilities including a materials recycling facility (MRF), an anaerobic digestion facility (ADF), and a compost management unit (CMU). (See [County of Santa Barbara - File #: 16-00968 \(legistar.com\)](https://legistar.com/View/00000000-0000-0000-0000-000000000000).) These facilities have been in limited service since fall of 2021, for the purpose of processing municipal solid waste, recyclables, and source separated organic waste into marketable commodities, such as recycled commodities, renewable energy, and compost. To date, MSB has been unable to attain substantial completion of various components, has not passed certain acceptance tests, has incurred violations from the Central Coast Regional Water Quality Control Board, Santa Barbara County Environmental Health Services, and the Santa Barbara County Air Pollution Control District, has not adequately marketed compost material, and has not adequately compensated certain subcontractors.

If the Board approves termination of the Agreement, replacement contracts will be developed and brought to the Board for approval at a later date. However, to ensure continued operations of the ReSource Center during the transition period, staff is recommending that the Board also authorize the Director of Public Works to exercise application of the direct agreements previously approved by the Board on February 14, 2017 (See [County of Santa Barbara - File #: 17-00112 \(legistar.com\)](#)) as may be useful for transition. These direct agreements were established to allow the County to directly contract with and compensate certain vendors for construction and/or operation of certain ReSource Center facilities under circumstances such as these. To the extent that the direct agreements are not sufficient to cover all operations, staff is also recommending that the Board approve a limited term agreement with Bekon Energy Technologies, Inc.

Partial termination would be effective as of the date of the Board's action on the Notice of Termination, in accordance with Section 14.6 of the Agreement, through a period of 180 days as defined in the agreement for transition services. Transition pursuant to this process provides for the development of new long-term agreements during the transition period specified in the existing agreement. Retaining these services without bidding is consistent with Government Code §22002(d)(5) as the services relate to work being performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems.

Authored by:

Jeanette Gonzales-Knight, P.E., Interim Deputy Director, (805) 882-3605