



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: July 27, 2010
Placement: Administrative
Estimated Tme:
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Scott D. McGolpin, Public Works Director, 568-3010
Director(s)
Contact Info: Mark A. Schleich, Deputy Director RRWMD, 882-3600

SUBJECT: Collateral Assignment by NEO Tajiguas, LLC to Union Bank, N.A. of the Landfill Gas Lease and Operating Agreement dated March 10, 1998 (as amended) between the County of Santa Barbara and NEO Tajiguas, LLC

County Counsel Concurrence As to form: Yes

Auditor-Controller Concurrence As to form: Yes

Other Concurrence: Risk Management
As to form: Yes

Recommended Actions:

Authorize the Chair to execute the notice and consent letter from NEO Tajiguas, LLC to the County of Santa Barbara dated June 21, 2010.

Summary Text:

The County of Santa Barbara (County) owns and operates the Tajiguas Landfill. Fortistar is the current landfill gas to electricity developer at the Tajiguas Landfill. Fortistar is the owner of a number of landfill gas to electricity project companies, including NEO Tajiguas, LLC, the company that owns and operates the landfill gas to electricity project located at the Tajiguas Landfill. There is a Landfill Gas Lease and Operating Agreement dated March 10, 1998 (as amended) (the "Agreement") by and between the County of Santa Barbara ("Lessor") and NEO Tajiguas, LLC ("Lessee").

Fortistar is in the process of refinancing its portfolio of landfill gas to electricity projects. The landfill gas to electricity project at the Tajiguas Landfill is one of the projects in their portfolio. Fortistar wants the County to allow NEO Tajiguas LLC to assign the "Agreement" as collateral to Union Bank, N.A. as part of their arrangement for financing. This would be done by your Board by executing the notice and consent letter dated June 21, 2010 from NEO Tajiguas, LLC to the County for collateral assignment. This action by your Board will acknowledge receipt of the notice and consent letter and will constitute your agreement to the following:

- (i) Lessee is the current lessee under the Agreement, the Agreement is in full force and effect, there is no default under the Agreement and no event has occurred that with the giving of notice or passage of time would constitute a default under the Agreement or give rise to a Lessor right to terminate the Agreement and
- (ii) Lessor owns good, valid, unencumbered title to the Landfill Gas and that there are no leases, easements or encumbrances affecting the Landfill Gas, the use or maintenance of which could interfere with Lessee's operations on the subject landfill or the rights of Lessee under the Agreement.

This upcoming financing will give Union Bank, N.A. oversight to NEO Tajiguas LLC, which will benefit the County by assuring that the project is operated properly and in full compliance with its contract with the County.

Background:

The County owns and operates the Tajiguas Landfill, which produces landfill gas generated by the decomposition of waste buried in the landfill. On March 10, 1998, the County entered into the "Agreement" with NEO Tajiguas, LLC to collect landfill gas at the Tajiguas Landfill for a landfill gas to energy project that supplies electricity to the grid powering over 2000 homes per month. Since 1998, NEO Tajiguas, LLC has been purchased by various landfill gas developers (parent companies), but has continued to be the company that owns and operates the landfill gas to electricity project at the Tajiguas Landfill. NEO Tajiguas, LLC was purchased by Algonquin Power in October 2004. NEO Tajiguas, LLC was then purchased from Algonquin Power by Fortistar in January 2008. Fortistar is the owner of a number of landfill gas to electricity project companies, including NEO Tajiguas, LLC. The "Agreement" by and between the County and NEO Tajiguas, LLC has been amended through the years, and is in full effect at this time.

Fiscal and Facilities Impacts:

Budgeted: No

Fiscal Analysis:

Other than the possible added benefit of additional oversight provided by Union Bank, N.A., assuring contract and operational compliance, there are no fiscal impacts associated with this recommended action.

Special Instructions:

Please forward a Certified Minute Order approving the recommendation and four originals of the executed letters to Shannon Barcelona in the Public Works Department, Resource Recovery and Waste Management Division.

Attachments:

Five original notice and consent letters from NEO Tajiguas, LLC to the County of Santa Barbara dated June 21, 2010.

Authored by: Imelda Cragin, Program/Business Leader

cc: Mark Schleich – RRWMD
Marie LaSala – County Counsel

NEO Tajiguas, LLC
3005 Douglas Boulevard
Roseville, California

June 21, 2010

County of Santa Barbara
Public Works Department
Resource & Waste Management
130 East Victoria Street, Suite 100
Santa Barbara, CA 93101

Re: Landfill Gas Lease and Operating Agreement dated March 10, 1998 (as amended, the “Agreement”) by and between The County of Santa Barbara (“Lessor”) and NEO Tajiguas, LLC (“Lessee”)

Dear Sirs:

Lessee hereby notifies Lessor that Lessee has pledged and collaterally assigned all of its right, title and interest in, to, and under the Agreement to Union Bank, N.A., not in its individual capacity but solely as collateral agent (together with its successors and assigns in such capacity, “Collateral Agent”), pursuant to the terms and conditions of an Assignment and Security Agreement (the “Security Agreement”) dated on or about the date hereof. The Security Agreement and the grant of the security interests therein constitute security for the obligations of Fortistar Methane 3 LLC, a Delaware limited liability company (the “Borrower”), with respect to the loans and credit facilities contemplated by that certain Credit Agreement by and among Borrower, Collateral Agent and the lenders and other parties identified therein. Capitalized terms used but not defined in this letter shall have the meanings set forth in the Agreement.

Pursuant to the Agreement, copies of all notices provided to Lessee shall also be sent to Collateral Agent at the following address:

Union Bank, N.A., as Collateral Agent
551 Madison Ave., 11th Floor
New York, NY 10022
Attention: Fernando Moreyra
Vice President

Telephone: (646) 452-2015
Facsimile: (646) 452-2000
Email: fernando.moreyra@unionbank.com

with a copy to:

Union Bank, N.A., as Administrative Agent
445 South Figueroa St., 15th Floor
Los Angeles, CA 90071
Attention: Hideyuki Okamoto
Power & Utilities
Phone: (213) 236 5724
Fax: (213) 236 4096
Email: Hideyuki.Okamoto@unionbank.com

Please acknowledge your receipt of this notice by having an authorized signatory countersign this letter where indicated below. Your signature below will also constitute your agreement to the following: (i) Lessee is the current lessee under the Agreement, the Agreement is in full force and effect, there is no default under the Agreement and no event has occurred that with the giving of notice or passage of time would constitute a default under the Agreement or give rise to a Lessor right to terminate the Agreement and (ii) Lessor owns good, valid, unencumbered title to the Landfill Gas and that there are no leases, easements or encumbrances affecting the Landfill Gas, the use or maintenance of which could interfere with Lessee's operations on the subject landfill or the rights of Lessee under the Agreement. Please fax a fully executed copy of this letter to Collateral Agent's counsel, Wilson Sonsini Goodrich & Rosati, Attention: Suzanne Perry, Esq. (fax: 202-973-8899), and return the fully executed original of this letter to the following address:

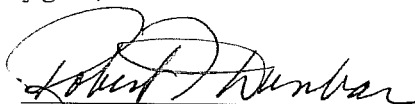
Wilson Sonsini Goodrich & Rosati
1700 K Street NW, 5th Floor
Washington, DC 20006
Attention: Suzanne Perry, Esq.

Your prompt attention to this matter is greatly appreciated. If you have any questions, please feel free to contact Robert Dunbar at 302-559-9036; bdunbar@fortistar.com.

Very truly yours,

NEO Tajiguas, LLC

By:



Name: Robert F. Dunbar
Title: Senior Vice President

ACKNOWLEDGED AND AGREED:

THE COUNTY OF SANTA BARBARA

By: _____
Name: Janet Wolf
Title: Chair, Board of Supervisors

Dated: _____

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this

_____ of _____ 2009, by the following vote:

AYES:

NOES:

ABSENT:

ACCEPTED AND AGREED:

COUNTY OF SANTA BARBARA

By: _____


Janet Wolf, Chair
Board of Supervisors

APPROVED AS TO FORM:

ROBERT W. GEIS

AUDITOR CONTROLLER

By: _____

Deputy  Auditor Controller

ATTEST:

MICHAEL F. BROWN
CLERK OF THE BOARD

By: _____

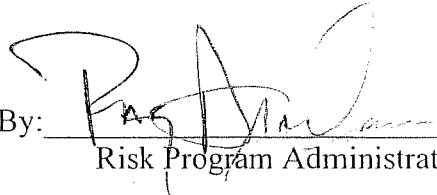
Deputy

APPROVE TO FORM:

RAY AROMATORIO

RISK PROGRAM ADMINISTRATOR

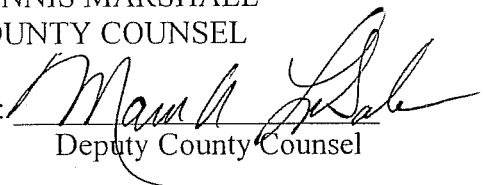
By: _____


Risk Program Administrator

APPROVED AS TO FORM:

DENNIS MARSHALL
COUNTY COUNSEL

By: _____


Deputy County Counsel