Agenda Item No. 15

File Code No. 630.01

CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: July 28, 2015

TO: Mayor and Councilmembers

FROM: Environmental Services Division, Finance Department

SUBJECT: Status Of The Resource Recovery Project At Tajiguas Landfill

RECOMMENDATION: That Council:

A. Receive a report on the status of the proposed Resource Recovery Project at Tajiguas Landfill; and

B. Direct staff to work with County of Santa Barbara staff to study and evaluate a public financing model for the Resource Recovery Project.

EXECUTIVE SUMMARY:

For the past several years, the County, in concert with the City of Santa Barbara and neighboring jurisdictions, has investigated various conversion technologies as alternatives to disposal at Tajiguas Landfill. Following a competitive procurement initiated in 2009, the Public Participants executed a Term Sheet with Mustang Renewable Power Ventures in January of 2013 to design, build, own and operate a materials recovery facility and an anaerobic digester at Tajiguas Landfill.

The County, as Lead Agency under the California Environmental Quality Act, released a draft Subsequent EIR for the project in August of 2014. City staff discussed the draft EIR with the City Planning Commission in September of 2014 and submitted a letter incorporating Planning Commission comments to the County. The Final Subsequent EIR will be brought to the Board of Supervisors for consideration of certification after the forthcoming County Planning Commission hearing, tentatively scheduled for fall of 2015. The City Council would only be required to make findings on the Final Subsequent EIR in the event that the City formally committed its waste to the project.

The Mustang proposal includes financing a portion of the construction of the project from private financing. In part due to the high cost of the private financing, the vendor has been unable to achieve the $100 per ton threshold and risk allocation set forth in the request for proposals and the Term Sheet executed between the Public Participants and Mustang in January of 2013. For this reason, the Public Participants and the County's consultant have evaluated alternative financing approaches, including one in which the County would finance the project through the issuance of its own debt, such as revenue bonds. The bonds would be secured by material delivery agreements between the County and the participating agencies, including the City of Santa Barbara. A publicly financed approach yields tipping fees considerably lower than those proposed by Mustang and with little additional risk to ratepayers.

On July 7, 2015, the Board of Supervisors directed County staff to complete the modeling of publicly financed alternatives, share the results with the County's Debt Advisory Committee, and bring the final results to the Board of Supervisors in fall of 2015.

DISCUSSION:

For several years, staff from multiple jurisdictions, including the County of Santa Barbara and the cities of Santa Barbara, Goleta, Buellton and Solvang (Public Participants), have worked together to explore the development of a Resource Recovery Project (RRP) at the Tajiguas Landfill. Following a formal procurement process which began in 2009, the Public Participants selected a project proposal, submitted by Mustang Renewable Power Ventures (Mustang), comprised of the following components:

1. Materials Recovery Facility (MRF) – this facility would sort the municipal solid waste (MSW) that is currently received at Tajiguas Landfill into three streams:

    - Recyclables – that would be separated, baled and sold for reuse;
    - Organics – that would be recovered for processing in the Anaerobic Digestion Facility; and,
    - Residual – non-recoverable materials left over from the MRF and Anaerobic Digestion Facility, which would ultimately be landfilled.

2. Anaerobic Digestion Facility (ADF) – this facility would convert organics recovered from the MSW into compostable material and biogas. The compost would be marketed as a soil amendment or used for reclamation projects. The biogas would be combusted to generate electricity.

It should be noted that the RRP would provide the Public Participants a local option for processing source-separated recyclables and source-separated organics, which are currently processed in Ventura and Santa Maria, respectively.

In January of 2013, the Public Participants jointly executed a Term Sheet, including an Exclusive Right to Negotiate with Mustang, who has assembled the following team of subcontractors to design, build and operate the RRP:

- Diani Construction: primary construction contractor
- Van Dyk Recycling Solutions: Material Recovery Facility equipment provider

- MarBorg Industries, Inc: Material Recovery Facility operator
- BEKON: Anaerobic Digester technology provider
- Nursery Products: Anaerobic Digester Operator

The project was proposed to be a public/private partnership in which Mustang would design, build, own, and operate the facility.

The Public Participants would have the option to purchase the facility for one dollar at the end of the 20-year contract. The Public Participants would commit to deliver a fixed range of waste tonnage to the facility in exchange for a set tipping fee. The jurisdictions would then be obligated under a “put or pay” arrangement to compensate the vendor for its minimum tonnage commitment regardless the amount of material actually delivered.

Other key parameters from the request for proposals (RFP) and the Term Sheet include the following:

a. The vendor would assume risks associated with the design, construction and operation of the RRP; and,

b. Tipping Fees to process material would not exceed $100 per ton.

A detailed description of the history of the project, the procurement process, proposed technologies, and business terms to be negotiated were presented to the City Council on January 10, 2012. The Council Agenda Report is available at: http://tinyurl.com/o28jo4g

Update on Business Negotiations with Mustang

In October of 2014, the Public Participants received an updated proposal from Mustang which incorporated changes that have occurred since the release of the RFP. Between November 2014 and February 2015, the Public Participants engaged in extensive negotiations with the vendor. However, those sessions failed to produce business terms consistent with the terms of the RFP and the Term Sheet. The proposal that most closely aligned with the RFP and Term Sheet resulted in a vendor service fee of $126 per ton or a final tipping fee of $146 per ton with the addition of the $20 per ton site lease fee[1]. This proposal also shifted more of the risk burden to the Public Participants’ ratepayers than originally contemplated.

Public Financing Alternative

In reviewing Mustang’s proposal, it became apparent that a primary factor leading to the higher tipping fees was the cost of private funds (internal rate of return on equity,

[1] The purpose of the site lease fee is to cover existing debt service and future costs related to the closure and postclosure maintenance of Tajiguas Landfill.

interest rate on debt service, etc.), as well as other terms and conditions associated with the proposed financing model.

To better understand the specific costs associated with the private funding, staff and its contract consultant, prepared a cursory review of a publicly financed project. The model assumed that the County of Santa Barbara would finance the project using revenue bonds guaranteed by waste delivery agreements. Such a financing structure would pose no risk to the General Funds of the Public Participants.

The draft model was shared with staff of the County Treasurer, Auditor- Controller and the County Executive Office to confirm assumptions. The public financing model results in considerable cost savings to the rate payer (approximately 25-30% less) when compared to the Mustang proposal, with little additional risk imposed by the Mustang proposals.

In May 2015, staff from the Public Participants met with the City Managers of Buellton, Goleta, Santa Barbara, and Solvang and the County's CEO and recommended that staff continue to evaluate alternative means of financing the project to decrease costs to ratepayers including a detailed evaluation of:

a. A publicly financed model supplemented by private equity investments; and

b. A hybrid approach using public financing for the MRF component of the project and private financing for the AD (to take advantage of an investment tax credit that Mustang has already secured).

In the case of a publicly financed project, the City would execute an agreement with the County (instead of Mustang) to process City waste and recyclables. The Agreement would contain similar provisions as those envisioned for a public/private arrangement including: a set tipping and defined adjustments (e.g. CPI); a put or pay commitment by the City; and, a process for evaluating and negotiating non-standard tipping fee adjustments.

On July 7, 2015, the Board of Supervisors directed County staff to complete the evaluation, present the findings to the County's Debt Advisory Committee for review and return to the Board in late fall of 2015 with a final analysis.

<u>Update on Environmental Review</u>

The County, as Lead Agency, prepared and released a draft Subsequent EIR (SEIR) for the project to responsible and trustee agencies and members of the public on August 11, 2014 for a 45-day public review period. At the public's request, the review period was subsequently extended to October 9, 2014. One of the alternatives studied in depth contemplated siting the MRF at 620 Quinientos Street in the City of Santa Barbara on property owned by MarBorg. For this reason, City staff discussed the SEIR with the City Planning Commission on September 4, 2014. Following the meeting, staff prepared and submitted a letter incorporating Planning Commission comments to the County.

County staff have reviewed and prepared responses to comments submitted on the SEIR. The comment letters and responses will be included in the Final SEIR, which will be made available prior to the County Planning Commission's Government Code Section 65402 General Plan conformity hearing on the project. County staff will bring the Final SEIR to the Board for consideration of certification after the County Planning Commission hearing.

In the event that the City formally commits waste to the RRP, the City Council would be required to make findings on the Final SEIR.

BUDGET/FINANCIAL INFORMATION:

A publicly financed project would result in tipping fees consistent with the $100 per ton ceiling established by the RFP and Term Sheet and substantially lower than those proposed by Mustang.

SUSTAINABILITY IMPACT:

Construction of the Resource Recovery Project would significantly increase the City's waste diversion rate, which would support City efforts to comply with State diversion mandates set forth in Assembly Bill 939, Assembly Bill 341 and most recently, Assembly Bill 1826. This increase in South Coast diversion would approximately double the number of years before Tajiguas Landfill reaches its permitted capacity depending upon disposal rates and when the facility becomes operational. As such, the State's mandate to maintain at least 15 years of disposal capacity (Title 27, California Code of Regulations) would be satisfied.

In addition, the project would generate renewable energy (equivalent to approximately 1,000 homes) and would reduce greenhouse gas emissions (equivalent to removing 22,000 vehicles) when compared to current landfill disposal in direct support of the City's efforts to comply with Assembly Bill 32.

PREPARED BY: Matthew R. Fore, Environmental Services Manager

SUBMITTED BY: Robert Samario, Finance Director

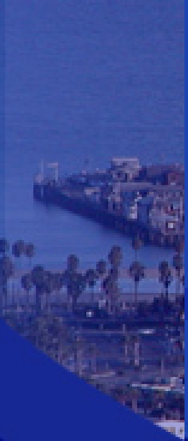
APPROVED BY: City Administrator's Office

Update on Resource Recovery Project

City Council
July 28, 2015

Outline

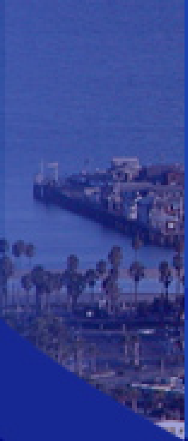
- Project Background
- Vendor Negotiations
- Public Financing Alternative
- Environmental Review
- Next Steps



Project Background

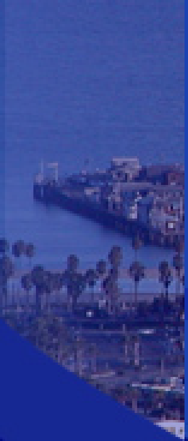
Three components of RRP "Project":

- Materials Recovery Facility (MRF)
  - Processes incoming landfill stream into Recyclables, Organics, and Residual
- Anaerobic Digestion Facility (ADF)
  - Would convert organics recovered from MSW into compostable material and biogas
- Landfill disposal of remaining waste
  - All components located at Tajiguas Landfill



Benefits of Project

- Stable tipping fee with pre-determined CPI
- 20-year diversion and disposal solution
- Greater ability to meet State mandates for diversion and greenhouse gas reductions



Project Background

Key Parameters of RFP and Term Sheet:

- Tipping Fee less than $100 per ton
- Design, build, own, operate, transfer at end of 20 year contract term
- Minimum diversion rate of 60%
- Generation of renewable energy
- Vendor to assume virtually all risks

Project Background

Categories of Risk

- Pre-Construction (legal, environmental, regulatory, etc.)
- Technological
- Performance
- Market volatility in recyclable commodities
- Changes to the waste characterization
  - Volumetric Reduction
  - Commodities disappear

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Vendor Negotiations

- October 2014: received updated proposal from Mustang
- November 2014 – February 2015: negotiations with Mustang
- Result: unable to reach business deal consistent with RFP and Term Sheet
  - Price exceeded original threshold of $100/ton
  - Cost of private equity a big factor in higher tipping fees
  - Vendor looked to shift significant risks to public participants

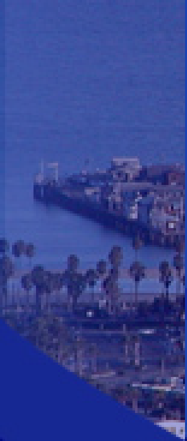
Vendor Negotiations

Most Compliant Scenario:

- Tipping Fee: $126 (+ County $20 site lease fee)
- Includes some risks being shifted to Public Participants beyond original RFP:
  - Revenue guarantee related to recyclable commodities
  - Significant risks associated with "Uncontrollable Circumstances"
  - Weakening of liquidated damages related to performance

Overall Conclusion

- Initial direction from elected officials and original RFP sought to shift nearly 100% of risk to vendor
- This original approach appears to be too expensive and would likely result in a significant increase in costs to ratepayers
- Other options should be studied, including a traditional publicly financed project
  - Desal plant
  - Major enhancements to Wastewater facilities



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Public Financing Alternative

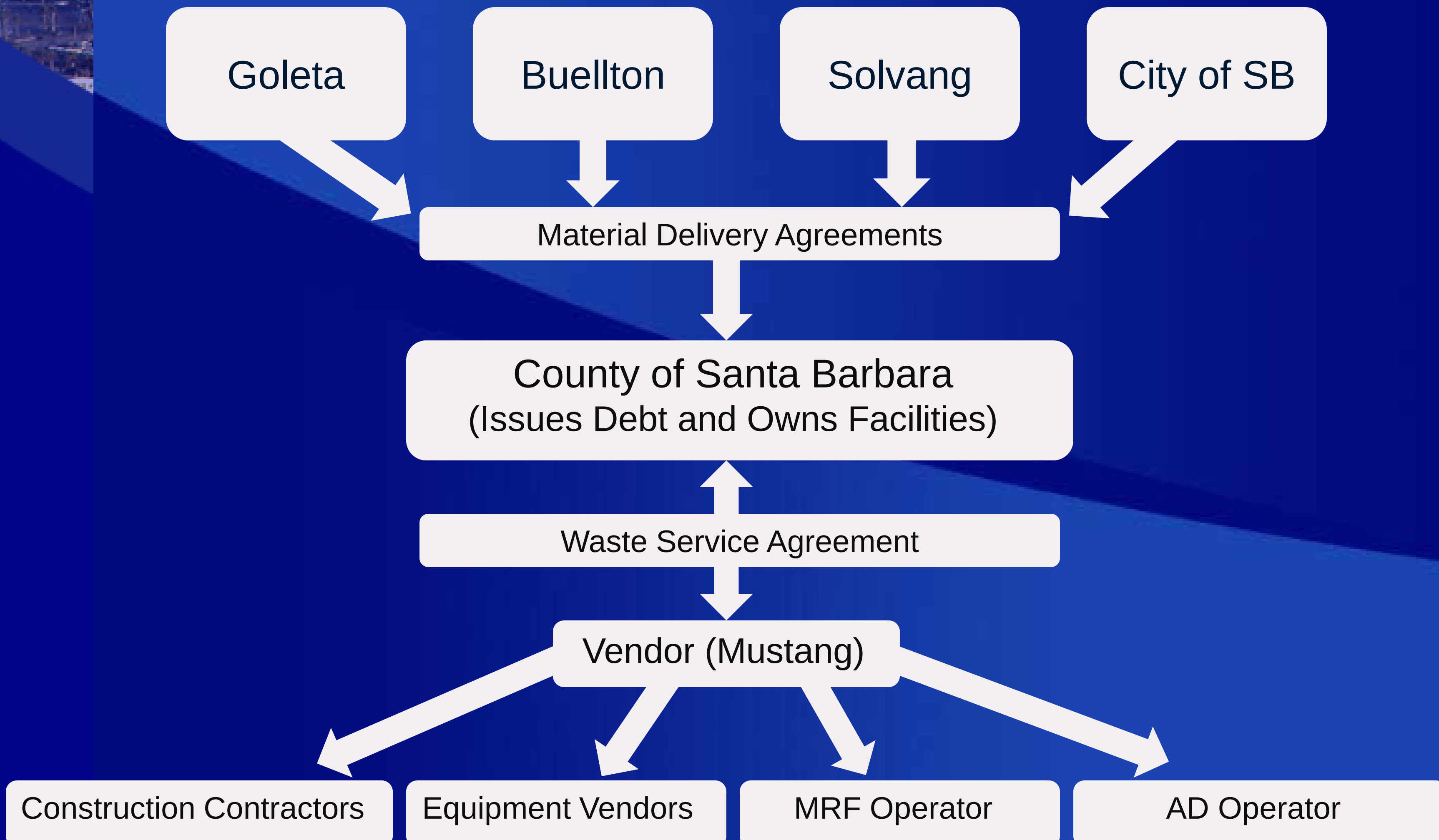
- County’s consultant modeled a project financed almost entirely from County-issued debt
  - All other costs and revenues held constant from Mustang’s Most Compliant pro-forma ($126/ton)
- Result:
  - Tipping fees 25% - 30% less than Mustang’s Most Compliant proposal
  - Meets $100/ton threshold

Public Financing Alternative

Board of Supervisors directed County staff to evaluate alternative financing structures:

- Publicly financed model supplemented with private equity investment
  - 95% publicly financed (e.g., bonds)
  - 5% Mustang equity contribution
- Hybrid of privately financed AD and publicly financed MRF

Public Financing Alternative Contractual Arrangement



Public Financing Alternative Risk Profile

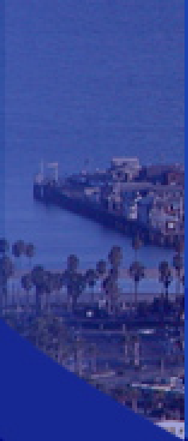
Public Participants assume all typical risks associated with such a project

- Most can be mitigated through typical contracting terms with vendor (e.g., performance bonds, insurance, etc.) and other measures (rate stabilization fund)
- Some will remain (e.g., market failure in recyclables), and in some cases are reasonable risks to retain
- Exact risk apportionment under public financing will be subject of future negotiations with County and vendor

Public Financing Alternative

Effect of New Approach on City:

- Obviates need for Joint Powers Authority
- City would become contractual customer of County via Material Delivery Agreement
  - Does not necessarily mean zero risks to the City
  - Some risks may be reasonable to assume in the context of a lower tipping fee and mitigating measures



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Environmental Review

- SEIR released to public: Aug 2014
- Public comment period through October 2014
  - City Planning Commission Hearing held on September 4, 2014

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Next Steps (tentative)

- Summer 2015:
  - Complete study of public financing options
  - Independent analyses (technical and financial) of MRF and AD Facilities

Next Steps (tentative)

Fall 2015:

- Release Final SEIR to public in fall 2015
- County Planning Commission Hearing on conformity of project with Comprehensive Plan
- Board of Supervisors Hearing to consider Final SEIR: after County Planning Commission hearing

City Council findings on Final SEIR only if City commits waste to project via Material Delivery Agreement

Recommendation

A. Receive a report on the status of the proposed RRP at Tajiguas Landfill; and,

B. Direct staff to work with County staff to study and evaluate a public financing model for the RRP