



Deschutes County Board of Commissioners
1300 NW Wall St., Suite 200, Bend, OR 97701-1960
(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of August 3, 2015

DATE: July 27, 2015.

FROM: Timm Schimke. Solid Waste 317-3177

TITLE OF AGENDA ITEM:

Consideration of Signature of Document No. 2015-526, amending an agreement with Waste to Energy Group, LLC, extending the time needed to reach Commercial Operations Date on a Landfill Gas to Energy Project at Knott Landfill.

PUBLIC HEARING ON THIS DATE? No

BACKGROUND AND POLICY IMPLICATIONS:

The original agreement with Waste to Energy Group specified a date by which the proposed Landfill Gas to Energy project was to begin commercial operations. Difficulties obtaining financing have prevented the contractor from meeting that date. The proposed amendment will extend the date when commercial operations are to commence, based on successful completion of several milestone tasks specified in the project schedule, which is attached to the amendment. Failure to meet any of project milestone dates (based solely on the discretion of the County) will allow the County to declare a breach of contract and take appropriate action.

FISCAL IMPLICATIONS:

There are no costs to the County associated with the amendment or original agreement. The project is anticipated to provide a minimum of \$240,000 per year in royalties for landfill gas generated by Knott Landfill once the project reaches commercial operations.

RECOMMENDATION & ACTION REQUESTED:

Waste to Energy Group has provided all documentation specified by the County to consider this amendment, including proof of financing, a detailed project schedule, and working drafts of both Community Development and Department of Environmental Quality permit applications. I recommend signature of Document No. 2015-526.

ATTENDANCE: Timm Schimke.

DISTRIBUTION OF DOCUMENTS:

Return copies to Solid Waste for distribution.

DESCHUTES COUNTY DOCUMENT SUMMARY

(NOTE: This form is required to be submitted with ALL contracts and other agreements, regardless of whether the document is to be on a Board agenda or can be signed by the County Administrator or Department Director. If the document is to be on a Board agenda, the Agenda Request Form is also required. If this form is not included with the document, the document will be returned to the Department. Please submit documents to the Board Secretary for tracking purposes, and not directly to Legal Counsel, the County Administrator or the Commissioners. In addition to submitting this form with your documents, please submit this form electronically to the Board Secretary.)

Please complete all sections **above** the Official Review line.

Date:

Department:

Contractor/Supplier/Consultant Name:

Contractor Contact:

Contractor Phone #:

Type of Document: Contract Amendment

Goods and/or Services: Contractor will finance, permit, construct and operate a landfill gas to energy facility at Knott Landfill..

Background & History: Original contract (DC No. 2014-027 specified a date by which commercial operations were to have begun. This amendment extends that date based on meeting milestone dates specified in the schedule attached to the amendment..

Agreement Starting Date:

Ending Date:

Annual Value or Total Payment:

Insurance Certificate Received (check box)

Insurance Expiration Date:

Check all that apply:

- RFP, Solicitation or Bid Process
 - Informal quotes (<\$150K)
 - Exempt from RFP, Solicitation or Bid Process (specify – see DCC §2.37)
-

Funding Source: (Included in current budget? Yes No)

If **No**, has budget amendment been submitted? Yes No

Is this a Grant Agreement providing revenue to the County? Yes No

Special conditions attached to this grant:

Deadlines for reporting to the grantor:

If a new FTE will be hired with grant funds, confirm that Personnel has been notified that it is a grant-funded position so that this will be noted in the offer letter: Yes No

Contact information for the person responsible for grant compliance:

Name:

Phone #:

Departmental Contact and Title: Timm Schimke
3177

Phone #: 317-

Department Director Approval: Timm Schimke 7/27/2015
Signature Date

Distribution of Document: Return copies to Solid Waste for distribution.

Official Review:

County Signature Required (check one): BOCC Department Director (if <\$25K)

Administrator (if >\$25K but <\$150K; if >\$150K, BOCC Order No. _____)

Legal Review mm Date 7/30/15

Document Number 2015-526



For Recording Stamp Only

DOCUMENT NO. 2015-526
AMENDING DESCHUTES COUNTY CONTRACT NO. 2014-027

THAT CERTAIN AGREEMENT, Deschutes County Contract No. 2014-027 dated February 3, 2014, by and between DESCHUTES COUNTY, a political subdivision of the State of Oregon ("County") and Waste to Energy Group, LLC. ("Contractor"), is amended, effective upon signing of all parties, as set forth below. Except as provided herein, all other provisions of the contract remain the same and in full force.

County's performance hereunder is conditioned upon Contractor's compliance with provisions of ORS 279B.220, 279B.225, 279B.230, and 279B.235, which are hereby incorporated by reference. In addition Standard Contract Provisions contained in Deschutes County Code Section 2.37.150 are hereby incorporated by reference. Contractor certifies that the representations, warranties and certifications contained in the original Contract are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

The above listed contract is amended as follows:

STANDARD TERMS AND CONDITIONS

1. Definitions

d. Commercial Operations Date - The date that the System commences full commercial operations through Acceptance of the System by the County and shall be no later than 18 months after the effective date of this Agreement. Failure to achieve full commercial operation within 18 months will be considered a breach of the agreement.

7. Schedules.

a. Mileston Schedule. Within sixty (60) days of execution of this Agreement, Contractor shall prepare and submit for County review and approval a Milestone Schedule, including without limitation the expected timeframe for permitting, finance, development, construction and operations to meet the Commercial Operations Date. The Milestone Schedule shall detail all steps to implement the System and be updated monthly with a copy of the updated milestone schedule provided to the County for review of Contractor's progress.

The Milestone Schedule designated Exhibit 9 is hereby incorporated into this Amendment and is intended to extend the timeframe allowed to reach the "Commercial Operations Date" provided Contractor completes or is in substantial compliance (as determined solely by the County) with the following milestone dates:

Milestone 1. PPT Analysis and Initial Engineering. Mapping of the waste mass through PPT analysis and initial engineering efforts are expected to take 4 1/2 months and is to be completed on or about January 1, 2016

Milestone 2. Land Use Approval. Satisfactory completion of Deschutes County Community Development Site Plan Review is expected to take 5 months and is to be completed on or about May 20, 2016, 2015.

Milestone 3. Oregon Department of Environmental Quality Permit Approval. Satisfactory completion of DEQ permitting is expected to take 5 months and is to be completed on or about October 7, 2016.

Milestone 4. Detailed Design and Specification . Completion of design and specification for all landfill gas extraction and processing equipment and infrastructure is expected to take 7 months and is to be completed on or about April 21, 2017.

Milestone 5. Construction and Installation. Construction and installation of all equipment and infrastructure is expected to take 1 year and is to be completed on March 23, 2018.

Milestone 6. Acceptance of the System/Commercial Operations Date. Approved Commercial Operations shall commence by March 23, 2018

Contract 2014-027 is amended to require a Commercial Operations date of no later than March 23, 2018 based on incremental completion of scheduled milestones. Failure to meet, to the County's satisfaction, any of the Milestones listed above may, at the sole discretion of the County, be declared a material breach of this Amendment by Contractor and a material breach of Contract 2014-027 by Contractor. Upon such a declaration, County may seek damages, if any, that it is entitled to by reason of the material breach(es). Delays or problems obtaining or maintaining financing for the project, presently or in the future, whether such delay(s) or problem(s) are under the control of Waste to Energy Group or not, will not be justification for extension of any milestone dates, or modification of this amendment or the original agreement.

CONTRACTOR: WASTE TO ENERGY GROUP, LLC.


Authorized Signature

Dated this 30th of July, 2015

COUNTY:

Dated this _____ of _____, 20__

BOARD OF COUNTY COMMISSIONERS

ANTHONY DEBONE, CHAIR

ALAN UNGER, VICE CHAIR

ATTEST:

Recording Secretary

TAMMY BANEY, COMMISSIONER

