

**CALIFORNIA ALTERNATIVE ENERGY AND
ADVANCED TRANSPORTATION FINANCING AUTHORITY**

*Consideration of MSB Investors, LLC's Request to Approve a Time Extension for the Three
Year Initial Term of the Title Conveyance Agreement¹*

**MSB Investors, LLC
Application No. 14-SM005**

May 16, 2017

Prepared By: *Ellen Hildebrand, Analyst*

SUMMARY

Applicant – MSB Investors, LLC

Location – Santa Barbara, Santa Barbara County

Industry – Biogas Capture and Production

Project – New Biogas Capture and Production Facility (Alternative Source)

Value of Qualified Property – \$17,696,003

Estimated Sales and Use Tax Exclusion Amount² – \$1,490,003

Amount of Time Requested:

- Two years and five months, until October 18, 2019, for the Term of the Master Regulatory Agreement (five years and five months from the date of initial CAEATFA Board approval)

SUMMARY

In May 2014, the CAEATFA Board approved a sales and use tax exclusion (“STE”) for MSB Investors, LLC (“MSB” or the “Applicant”) for the purchase of \$17,696,003 of Qualified Property for the construction of an anaerobic digestion facility and materials recovery facility (the “Project”). The Master Regulatory Agreement (“Agreement”) initial term provided the Applicant with three years from the date of Board Approval to utilize its STE award. The initial term of the Agreement can be extended by the Board upon a finding that an extension is in the public interest and advances the purposes of the program.³

¹ All capitalized terms not defined in this document are defined in the Program’s statute and regulations.

² This amount is calculated based on the average statewide sales tax rate of 8.42%.

³ The provision of the regulations allowing CAEATFA to waive the requirement that all purchases of Qualified Property be made within three years of Application approval is in Regulation Section 10035(b)(1)(A).

As of January 30, 2017, MSB has used the STE to purchase \$1,151,747 of Qualified Property (6.5% of the total Qualified Property approved). MSB is requesting an extension of the Agreement initial term by two years and five months to accommodate Project permitting delays. The Applicant states that the Project experienced a prolonged California Environmental Quality Act (“CEQA”) analysis and permitting process by MSB’s Project partner, Santa Barbara County. MSB expects to complete the Project permitting within 90-120 days and reach financial close 30 days after that. Upon obtaining required permits, MSB plans to resume purchasing construction materials and equipment and complete purchasing by Q4 2018.

About the Applicant

MSB Investors, LLC is a special purpose entity created in 2012 by Mustang Renewable Power Ventures, LLC, for the purpose of the Santa Barbara Tajiguas Resource Recovery Project.

The CAEATFA Board approved another related MSB Project on October 18, 2016, for \$32,403,272 in Qualified Property, anticipated to result in a sales and use tax exclusion value of \$2,728,356. MSB represents that they are scheduled to begin purchasing equipment included in the 2016 application in November 2017. The Project approved in 2016 was a new materials recovery facility, which will recover recyclables from municipal solid waste and comingled source-separated recyclables. The facility will also recover organic materials that will be processed by the anaerobic digester contained in the May 20, 2014 application. Approximately 30% of the materials recovery facility equipment was included in the Project approved on May 20, 2014, and the remaining 70% of the equipment was included in the Project approved on October 18, 2016.

Project Description

MSB has been in the process of constructing a dry fermentation anaerobic digestion facility and a materials recovery facility to separate out the organic waste used as feedstock for the anaerobic digester. The Applicant represents that the Project will double the remaining expected life of the Tajiguas landfill, thus avoiding the need to site a new landfill or transport waste out of the area.

The anaerobic digestion facility will process approximately 74,000 tons of organic waste per year. This will produce biogas that will be converted to heat and power by two 1.1 MW combined heat and power engines. These engines will then produce heat and electricity that will be sold to the grid. The Project will also produce agricultural composting material as a byproduct.

Agreement Term Extension Request

MSB has requested that the initial term of the Agreement be extended from May 20, 2017 to October 18, 2019 to accommodate technical development delays in the Project timeline. The extension would give both MSB Projects approved by the CAEATFA Board the same initial term end date, which will simplify administration of the Projects for both MSB and CAEATFA.

Staff Evaluation

MSB has indicated that though their Project experienced permitting and CEQA related delays, they expect to complete permitting within the next few months. The Applicant represents that once permitting is complete, they plan to move forward with the Project as proposed, and make the remaining Qualified Property purchases in late 2017 and 2018. Based on this information, staff believes that extending the term of the Agreement will allow for the Project to be completed, and is therefore in the public interest and advances the purpose of the program.

Fees

In accordance with CAEATFA Regulations,⁴ the Applicant will pay an Additional Administrative Fee of \$500 because extending the initial term requires a modification to the Applicant's Master Regulatory Agreement.

Staff Recommendation

Staff recommends that the Board approve MSB Investors, LLC's request to extend the initial term of the Agreement by two years and five months to October 18, 2019 as it is in the public interest and advances the purpose of the program.

Attachments

Attachment A: MSB Investors LLC's Letter Requesting Waiver (March 22, 2017)
Attachment B: MSB Investors LLC's Staff Summary at Time of Approval.

⁴ California Code of Regulations Title 4, Division 13, Section 10036

**A RESOLUTION OF THE
CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION
FINANCING AUTHORITY APPROVING A TIME EXTENSION FOR
MSB INVESTORS LLC'S INITIAL TERM FOR THE MASTER REGULATORY
AGREEMENT**

May 16, 2017

WHEREAS, on May 20, 2014 the California Alternative Energy and Advanced Transportation Financing Authority (the "Authority"), a public instrumentality of the State of California, approved a Sales Tax Exclusion ("STE") in the amount of \$16,234,215 of Qualified Property for **MSB Investors, LLC** (the "Applicant"); and

WHEREAS, within three years of the approval by the Authority, the Applicant must make all purchases of the total amount of Qualified Property listed in the approval resolution (Regulations Section 10035(b)(1));

WHEREAS, upon a finding that it is in the public interest and advances the purposes of the Program, the Authority may waive the requirement that all purchases of Qualified Property be made within three years of Application approval (Regulations Section 10035(b)(1)(A));

WHEREAS, the Applicant has requested a waiver of the requirement to purchase all of the Qualified Property within three years, due to unexpected permitting delays, extending the term by two years and five months to October 18, 2019;

WHEREAS, granting the waiver will allow the Project to proceed and the state to receive the anticipated environmental and economic benefits that justified the initial approval of the Project in accordance with the law, thereby advancing both the public interest and the purposes of the Program.

NOW THEREFORE BE IT RESOLVED by the California Alternative Energy and Advanced Transportation Financing Authority, as follows:

Section 1. The Authority finds that it is in the public interest and advances the purposes of the Authority to extend the initial term of the Agreement to October 18, 2019.

Section 2. This resolution shall take effect immediately upon its passage.

Attachment A: MSB Investors LLC's Letter Requesting Waiver (March 22, 2017)

Mustang

Renewable Power Ventures

17 Corporate Plaza Drive, Suite 200
Newport Beach, CA 92660
O: 805.259.9499

March 22, 2017

Ms. Deana Carrillo
Executive Director
California Alternative Energy and Advanced Transportation Financing Authority
801 Capitol Mall, Room 220
Sacramento, CA 95814

RE: Request for an extension of time to purchase the remaining Qualified Property for the SB 71 Alternative Source and Advanced Transportation Manufacturing Sales and Use Tax Exclusion Program.

Dear Ms. Carrillo,

On May 20, 2014, MSB Investors, LLC (MSB) was granted a Sales and Use Tax Exclusion under SB 71 for the purchase of equipment for our Tajiguas Resource Recovery Project. To date MSB has claimed sales and use tax exemptions on \$1,151,747 of purchases against our total authorized amount of \$17,696,003. CAEATFA's records should indicate that on January 30th, 2017 MSB submitted the 2016 Semi-Annual and Annual Reports reflecting the purchase of two Jenbacher JMS 416 CHP engines (Qualified Property) in the amount of \$1,151,747 on December 27, 2013. On February 3, 2017 MSB received correspondence from Alejandro Ruiz requesting resubmittal of the reports as two separate sets which we did on February 3, 2017.

The reason for the lack of subsequent Qualified Property purchases has been a prolonged CEQA analysis and permitting of the project by our partner, Santa Barbara County. MSB expects to complete the project permitting within 90-120 days and reach financial close 30 days after that. Upon achieving this MSB will begin purchasing construction materials and equipment. Therefore, we respectfully request a two (2) year extension of the deadline to complete the purchase of all Qualified Property to October 18, 2019. Please find attached Exhibit B – List of Qualified Property reflecting the anticipated schedule for purchasing the remainder of the Qualified Property. We realize this is a longer extension than is normally granted but it should facilitate our completion of the CEQA process and the project's debt and equity financing.

Thank you for your consideration of our request and we hope you are able to accommodate our need for additional time. Please let us know if you have any questions or need any additional information.

Sincerely,



John Dewey
CEO & Managing Member

Attachment B: MSB Investors, LLC’s Staff Summary at Time of Approval

**CALIFORNIA ALTERNATIVE ENERGY AND
ADVANCED TRANSPORTATION FINANCING AUTHORITY**

Request to Approve Project for Sales and Use Tax Exclusion (STE)⁵

**MSB Investors, LLC
Application No. 14-SM005**

Tuesday, May 20, 2014

Prepared By: *Alejandro Ruiz*

SUMMARY

Applicant – MSB Investors, LLC

Location – Santa Barbara, Santa Barbara County

Industry – Biogas Capture and Production

Project – New Biogas Capture and Production Facility

Value of Qualified Property – \$17,696,003

Estimated Sales and Use Tax Exclusion Amount⁶ – \$1,490,003

Estimated Net Benefits – \$222,423

Application Score –

Fiscal Benefits Points:	935
<u>Environmental Benefits Points:</u>	<u>214</u>
Net Benefits Score:	1,149
<u>Additional Benefits Points:</u>	<u>50</u>
Total Score:	1,199

Staff Recommendation – Approval

⁵ All capitalized terms not defined in this document are defined in the Program’s statute and regulations.

⁶ This amount is calculated based on the average statewide sales tax rate of 8.42%.

THE APPLICANT

MSB Investors, LLC (“Mustang” or the “Applicant”) is a special purpose entity created in 2012 by Mustang Renewable Power Ventures, LLC for the purpose of the Santa Barbara Tajiguas Resource Recovery Project.

Mustang Renewable Power Ventures, LLC was founded in 2008 and specializes in developing waste resource recovery projects, often times structured as public-private partnerships. In 2010, Mustang Renewable Power Ventures, LLC was selected to be the project developer for this Santa Barbara project.

The major shareholders (10.0% or greater) of Mustang are:

Mustang Renewable Power Ventures, LLC
Blue Sand Holdings
Aztec Group

The corporate officers of Mustang are:

John Dewey – CEO

THE PROJECT

Mustang will oversee the construction of a dry fermentation anaerobic digestion facility and a materials recovery facility (“MRF”) to separate out the organic waste used as feedstock for the anaerobic digester (the “Project”). The Applicant represents that the Project will double the remaining expected life of the Tajiguas landfill, thus avoiding the need to site a new landfill or transport waste out of the area.

The anaerobic digestion facility will process approximately 74,000 tons of organic waste per year. This will produce biogas that will be converted to heat and power by two 1.1 MW combined heat and power engines. These engines will then produce heat and electricity that will be sold to the grid. The Project will also produce agricultural composting material as a byproduct.

Consistent with CAEATFA policy, the Qualified Property in this Application will be used to manufacture biogas and includes a portion of the 2.2 MW power generation equipment used to power the facility. The Project’s equipment will consume 51.8 percent of the total amount of energy generated; therefore 48.2 percent of the power generation equipment is eligible for an STE under the Program. However, the remaining 51.8 percent of the power generation equipment is not included in this Application as this represents the proportion of electricity that will be sold to the grid.

Additionally, a portion of the MRF facility responsible for separating the organic waste feedstock from the municipal solid waste will be eligible for a sales and use tax exclusion. Approximately 30% of the MRF equipment is responsible for sorting out organic waste from the municipal solid waste, therefore 30% of the MRF equipment is eligible for a sales and use tax

exclusion. Due to the relationship between the MRF organic waste sorting equipment and the anaerobic digester facility, the MRF equipment is considered a necessary part of the process of producing an alternative source product (biogas).

ANTICIPATED COSTS OF QUALIFIED PROPERTY

The anticipated Qualified Property purchases are listed below:

Loader	\$ 260,000
Technology building	146,652
Percolation tank	283,803
Delivery area materials	1,095,613
Biofilter area materials	210,143
Digester area materials	2,649,307
Pneumatics	282,342
Biogas treatment equipment	313,700
Heating/cooling equipment	317,243
Percolate equipment	351,373
Purging/ventilation equipment	829,578
Hydraulics equipment	188,324
Electrical	502,341
GE Jenbacher engines (with components)	1,151,747
Fire sprinkler system	81,636
Miscellaneous steel embeds	55,000
Ad general conditions & site work	1,429,194
Support building	112,665
MRF area materials (30% allocation)	1,906,798
MRF Sorting Equipment for AD Feedstock Production	<u>5,528,543</u>
Total	<u>\$17,696,003</u>

Note: The Qualified Property purchases reported in the Application and shown here in staff's report are estimated costs. At the termination of the master regulatory agreement a finalized project equipment list will be prepared detailing the value of the Project equipment acquired and detailing the actual tax benefit realized pursuant to Revenue and Tax Code Section 6010.8. Variance from the costs shown in the Application and in this report may occur prior to the closing due to increased costs of certain components (of the Project) over original estimates, and other reasons. In addition, such costs may vary after closing due also to increased costs, as well as common design and equipment modifications during construction, differences in equipment due to future changes in law or regulation, or for other reasons.

TIMELINE

The Applicant anticipates beginning construction in the second quarter of 2015, with construction taking 14 to 16 months to complete. It is anticipated that commercial operations will begin in the fourth quarter of 2016.

PROJECT EVALUATION

NET BENEFITS

The total cost of the Qualified Property purchases is anticipated to be \$17,696,003 and the total net benefits are valued at \$222,423 for the Project. The Project received a Total Score of 1,199 points, which exceeds the required 1,000 point threshold and a total Environmental Benefits Score of 214 points, which exceeds the 100 point threshold.

- A. Fiscal Benefits (935 points).** The net present value of the total fiscal benefits over the lifetime of the Qualified Property is derived from the Applicant's sales taxes, personal income taxes paid by the firm's employees, firm taxes on profits, property taxes and other indirect fiscal benefits of the Applicant which amounts to \$1,392,985 resulting in a Fiscal Benefits score of 935 points for the Project.
- B. Environmental Benefits (214 points).** The Project will result in \$319,442 of total pollution benefits over the life of the Facility resulting in an Environmental Benefits Score of 214 points for the Project. These benefits derive from displacing the use of fossil fuel through the production of biogas and the avoidance of emissions that would otherwise be produced if the municipal solid waste was sent to a landfill to decompose.
- C. Additional Benefits (50 points).** Applicants may earn additional points for their Total Score. The applicant submitted information and received 50 additional points.

 - 1. Permanent Jobs (20 of 75 points).** The Applicant's Project will support a total of 28 permanent jobs at its Facility. CAEATFA estimates that approximately two of these jobs will be attributable to a marginal increase in jobs created due to the approved STE resulting in a Permanent Jobs Score of 20 points for the Project.
 - 2. Construction Jobs (30 of 75 points).** The Applicant's Project will support a total of 47 construction jobs at its Facility. CAEATFA estimates that approximately three of these jobs will be attributable to a marginal increase in jobs created due to the approved STE resulting in a Construction Jobs Score of 30 points for the Project.

STATUS OF PERMITS/OTHER REQUIRED APPROVALS

The Applicant has completed its draft of the supplemental environmental impact report (“SEIR”) as part of the CEQA process. The Applicant anticipates that the Santa Barbara County Board of Supervisors will issue its final certification of the SEIR in October 2014.

The Applicant also represents that there are other permits and approvals it must acquire for the Project, including building permits, water and industrial discharge permits, fire and hazardous materials response plans, wildlife avoidance mitigation plans, and operating permits. The local air quality management district must also approve permits to construct and operate. Additionally, the Applicant will also be seeking pre-certification for the Renewable Portfolio Standard from the California Energy Commission. It is anticipated that all of these permits will be received prior to the end of 2014.

LEGAL QUESTIONNAIRE

Staff reviewed the Applicant’s responses to the questions contained in the Legal Status portion of the Application. The responses did not disclose any information that raises questions concerning the financial viability or legal integrity of this Applicant.

CAEATFA FEES

In accordance with CAEATFA Regulations,⁷ the Applicant has paid CAEATFA an Application Fee of \$8,848 and will pay CAEATFA an Administrative Fee of up to \$70,784.

RECOMMENDATION

Staff recommends approval of Resolution No. 14-SM005 for MSB Investors, LLC’s purchase of Qualified Property in an amount not to exceed \$17,696,003 anticipated to result in an approximate sales and use tax exclusion value of \$1,490,003.

⁷ California Code of Regulations Title 4, Division 13, Section 10036

RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A MASTER REGULATORY AGREEMENT WITH MSB INVESTORS, LLC

May 20, 2014

WHEREAS, the California Alternative Energy and Advanced Transportation Financing Authority (the “Authority” or “CAEATFA”) has received the Application of **MSB Investors, LLC** (the “Applicant”), for financial assistance in the form of a master regulatory agreement (the “Agreement”) regarding tangible personal property utilized in an Advanced Manufacturing process or for the design, manufacture, production or assembly of Advanced Transportation Technologies or Alternative Source products, components, or systems (“Qualified Property”) as more particularly described in the staff summary and in the Applicant’s Application to the Authority (collectively, the “Project”); and

WHEREAS, the Applicant has requested the Authority to enter into the Agreement to acquire Project equipment with an estimated cost not to exceed \$17,696,003 over a period of 3 years; and

WHEREAS, the Applicant believes that this form of financial assistance will enable it to avail itself of the benefits of an exclusion from sales and use taxes relative to the Qualified Property pursuant to California Revenue and Taxation Code Section 6010.8; and

WHEREAS, approval of the terms of the Agreement and authority for the Executive Director, Deputy Executive Director, or Chair of the Authority to execute the necessary documents to effectuate the Agreement is now sought;

NOW, THEREFORE, BE IT RESOLVED by the California Alternative Energy and Advanced Transportation Financing Authority, as follows:

Section 1. The Project constitutes a “project” within the meaning of Public Resources Code Section 26003(a)(8)(B).

Section 2. The requested master regulatory agreement constitutes “financial assistance” within the meaning of Public Resources Code Section 26003(a)(6).

Section 3. The Applicant is a “participating party” within the meaning of Public Resources Code Section 26003(a)(7).

Section 4. The Executive Director, Deputy Executive Director, or Chair of the Authority (the “Authorized Signatories”) are hereby authorized for and on behalf of the Authority to approve any changes to the Project as the Executive Director shall deem appropriate, provided that the amount of the Qualified Property to be purchased may not be increased above the amount approved by the Authority.

Section 5. The proposed form of the Agreement between the Applicant and the Authority, as filed with the Authority prior to this meeting, is hereby approved. The Authorized Signatories

Agenda Item 4.B.1

are hereby authorized and directed, for and on behalf and in the name of the Authority, to execute, acknowledge and deliver to the Applicant the Agreement in substantially the form filed with or approved by the Authority, with such insertions, deletions or changes therein as the Authorized Signatory executing the same may require or approve, and with particular information inserted therein in substantial conformance with the staff summary and in the Applicant's Application to the Authority, such approval to be conclusively evidenced by the execution and delivery thereof. The Authority understands and agrees that pursuant to the terms of the Agreement, the obligations of the Applicant may, under some circumstances, be carried out or assumed by a successor or assignee entity, or by an affiliate of the Applicant.

Section 6. Each of the Authorized Signatories, acting alone, is hereby authorized and directed to do any and all ministerial acts, including (without limitation) the execution and delivery of any and all documents and certificates they may deem necessary or advisable in order to consummate the Agreement and otherwise effectuate the purposes of this Resolution.

Section 7. The Applicant shall assure CAEATFA that all Qualified Property listed in the semi-annual reports pursuant to the Agreement shall be installed, maintained and operated in compliance with all applicable local, state and federal laws.

Section 8. The Agreement shall only apply to Qualified Property that the Applicant certifies will be installed, maintained and operated at facilities within the State of California.

Section 9. The adoption by the Authority of this Resolution for the Applicant shall not be referred to in any application before any governmental agency as evidence of the feasibility, practicality or suitability of the Project or in any application for any required permission or authority to acquire, construct or operate the Project.

Section 10. This Resolution is effective immediately and will remain in full force and effect unless the Regulatory Agreement, as defined in CAEATFA Regulations Section 10035(a), is not executed within thirty (30) days of the date of this Resolution. The Executive Director may extend the thirty days if necessary.