Sustainable Business Park
Anchor Tenant

Project Development Agreement Review

Kent County Board of Public Works

Work Session – January 20, 2022

KENT COUNTY DEPARTMENT OF PUBLIC WORKS

Speakers:

- **Darwin Baas**, Director, Kent County Department of Public Works
- **Steve Simmons**, President, Gershman, Brickner & Bratton Inc.
- **Scott Patton**, Senior Manager, Plante Moran
- **Harvey Koning**, Partner, Varnum Law

POTENTIAL SYSTEMS

- PHASE 1 PUD
- PHASE 2 PUD
- DEDICATED/PRESERVED OPEN SPACE
- FUTURE/RESERVED FOR MDOT RIGHT-OF-WAY
- STORMWATER MANAGEMENT AREA
- REGULATED WETLAND AERA (7.8 ACRES)
- PUBLIC/STAFF ROADWAY
- TRUCK TRAFFIC ROADWAY

CONCEPTUAL PLAN

THE LAND USE AND LAYOUT INDICATED IS CONCEPTUAL IN NATURE

NORTH

SCALE: 1" = 300'

fishbeck
Engineers | Architects | Scientists | Constructors

Kent County Sustainable Business Park

Conceptual Plan 2C

November 2021

191460

Terminology

- **PDA** = Project Development Agreement, a document that expressly defines a development project's rules, regulations, commitments, and/or policies for a specific period of time.
- **CM+A** = Continuus Materials and Anaergia, jointly proposing to own and operate the mixed waste processing facility, anaerobic digestion unit and board manufacturing plant.
- **SPV** = Special Purpose Vehicle, a business relationship which is formed to undertake a specific business purpose or activity.
- **SBP** = Sustainable Business Park, a group of businesses that can process waste and mutually benefit each other because of their physical closeness, as well as from the processes they use to develop a feedstock or a fuel that benefits fellow tenants.
- **Anchor Tenant** = the first of several businesses to occupy the SBP, leading the complementary and symbiotic relationship between tenants.
- **SSR** = Source separated recyclables

Project Development Agreement (PDA)

- Purpose is to guide the DPW and CM+A's efforts to develop the SBP Anchor Tenant project to the degree it can be fully contracted and financed
- Sets out a schedule for the project development phase
- Describes the obligations and responsibilities of both the DPW and CM+A
- Establishes grounds for early termination and default
- Provides for payment obligations in the event of default or termination for convenience.
- Expires in 36 months if the project doesn't progress

County-owned buildings and equipment

- The DPW will own and finance certain portions of the waste receiving and processing equipment along with related buildings, utilities and improvements at the anchor facility.
- Anchor tenant responsible to design, construct and operate DPW owned facilities.
- Total DPW facility investment expected to be $70 million.
- Does not include business park real estate and infrastructure improvements.
- Anchor Tenant Facility investment to be financed with 25-year bonds co-terminus with the feedstock agreement.

DPW PDA Obligations

- Work with the Company to obtain permits and to secure potential local support and grants for the Project,
- Provide a site ready for development at the Sustainable Business Park (precise acreage to be determined) under a long-term lease for the Project at a nominal rate,
- Bringing utility connections to the perimeter of the Facility site, obtaining all easements as necessary;
- Ownership of the building(s) to be used by the Project
- Supply of Processable Waste (MSW) for the Project on a put-or-pay basis up to the Guaranteed Tonnage (and above it with Company's prior written agreement) and allowing the Company to source and manage the supply of other Processable Waste from outside sources. The Parties will implement revenue sharing and tip fee modification mechanisms in the Service Agreement;

DPW PDA Obligations *(cont'd)*

- Disposal of Nonprocessable Waste (resulting from County Solid Waste but excluding any Nonprocessable Waste resulting from non-County Solid Waste) and Process Residue (an allocated percentage corresponding to the percentage of County Solid Waste in the total quantity of Solid Waste);
- Securing the financing of that portion of the Project to be owned by the County;
- Provision of and access to Sustainable Business Park base civil infrastructure including roadways and utilities; and
- Grant Company, its licensees and Project invitees permission to use the County's scale-house facilities.

Company PDA Obligations

- Commercial development activities of the Project;
- Design, building, commissioning and operating of the Facility;
- Operation of the Facility for MSW and SSR processing;
- Securing the financing of that portion of the Project to be owned by the Company – equity (including equity partners/investors), grants, debt, government support, etc.;
- Work with the County to obtain permits and to secure potential local support and grants for the Project;

Company PDA Obligations *(cont'd)*

- Work with the County on government relations for the Project;
- Provision of all on-site utilities required for the construction of the Facilities;
- Processing delivered County Processable Waste (MSW and SSR) generally on a take-or-pay basis;
- Provision of bonds or other guarantees for construction, as applicable; and
- Offtake/sale of all outputs/products.

Project Development Agreement (PDA) Schedule

Sign PDA

Project Definition
Months 1-3

- Define waste quality and quantity
- Define regulatory approval requirements

Facility Design
Months 3-10

- Site plans and arrangements
- Equipment specifications
- Prepare regulatory approval submittals
- Begin feedstock supply and lease negotiations

Project Contracting
Months 10-18

- Bid packages to local contractors for cost estimating
- Finalize regulatory approvals
- Finalize DPW / CM+A agreement(s)
- Finalize product offtake agreements

Project Financing
Months 18-24

- Prepare independent consultant reports
- Obtain project equity commitments
- Retain underwriters and legal counsel(s)
- Issue Bond Official Statement(s)
- Market bonds

Break Ground

Early Termination

a. By the County:

   i. For convenience with 30 days advance written notice to the Company.

   ii. If (1) the then current projected Operation and Maintenance Fee to be paid by the County to the Company, or (2) the capital cost of the portion of the Facility to be owned by the County increases materially above the amount proposed by the Company in its response to SRFP4041, other than as such increase may result from a County Fault or Default by the County, or otherwise due to a change in the Project requested by the County.

   iii. Upon Default by the Company.

b. By the Company

   i. For convenience with 30 days advance written notice to the County.

   ii. For good reason, without Default by the Company, rendering progress on the Project impossible or impracticable, such as inability to obtain necessary permits or approvals despite diligent, good faith efforts.

   iii. Upon Default by the County.

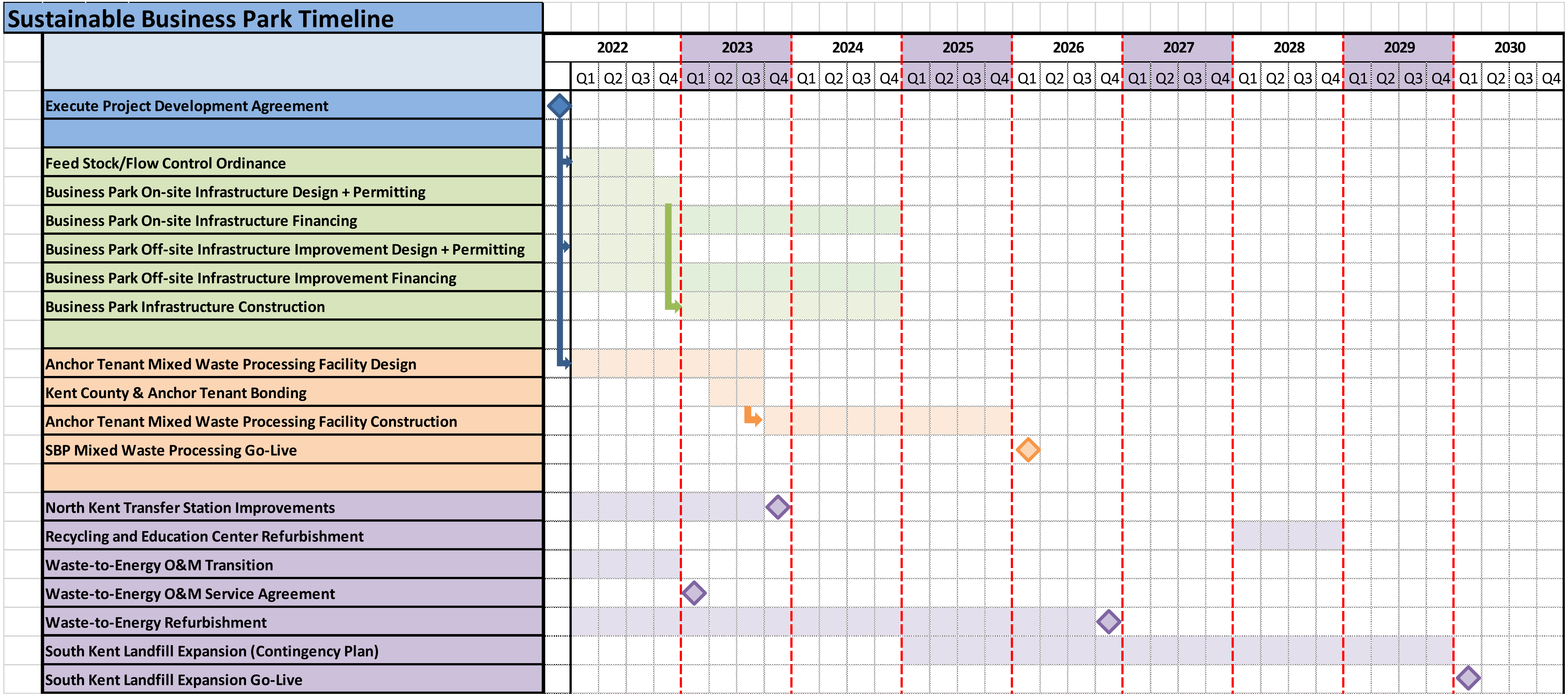
Termination Payments

Reason	Payment
County Convenience	If the County terminates this PDA due to Section 10.a.i, the County will reimburse the Company for the necessary and reasonable expenses incurred by the Company under this PDA up to a maximum amount of three million four hundred thousand United States Dollars (US$3,400,000)
Material Cost Increases	If the County terminates this PDA due to Section 10.a.ii, the County will reimburse the Company for fifty percent (50%) of the necessary and reasonable expenses incurred by the Company under this PDA up to a maximum amount of one million seven hundred thousand United States Dollars (US$1,700,000)
Company Convenience	If the Company terminates this PDA due to Section 10.b.i, the Company will pay the County an amount equal to twenty-five thousand dollars (US$25,000) per month for each month in the period from the date of this Agreement until the effective date of termination to compensate the County for the County's time invested and opportunity costs
County Default	If the Company terminates this PDA due to Section 10.b.iii, the County will reimburse the Company for the necessary and reasonable expenses incurred by the Company under this PDA up to a maximum amount of three million four hundred thousand United States Dollars (US$3,400,000)
Project Becomes Infeasible or The Expiration of PDA in 36 months	If this PDA terminates due to its expiration under Section 9 or under Section 10.b.ii, the County will reimburse the Company for fifty percent (50%) of the necessary and reasonable expenses incurred by the Company under this PDA up to a maximum amount of one million seven hundred thousand United States Dollars (US$1,700,000)

Bonding: General Obligation vs Revenue

	General Obligation Bonds	Revenue Bonds
Issuer	Kent County	Kent County via DPW Enterprise Fund
Pros / Cons	Lowest transaction cost and interest rate (Current 25-Yr. AAA tax exempt: 1.40%)	Higher transaction cost and interest rate (Current 25-Yr. Single A tax exempt: 1.6%)
Repayment	All County revenues	DPW system revenues
Debt Service difference		$100,000 more than GO bonds

Timeline


Sustainable Business Park Timeline
2022
2023
2024
2025
2026
2027
2028
2029
2030
Q1 Q2 Q3 Q4
Execute Project Development Agreement
Feed Stock/Flow Control Ordinance
Business Park On-site Infrastructure Design + Permitting
Business Park On-site Infrastructure Financing
Business Park Off-site Infrastructure Improvement Design + Permitting
Business Park Off-site Infrastructure Improvement Financing
Business Park Infrastructure Construction
Anchor Tenant Mixed Waste Processing Facility Design
Kent County & Anchor Tenant Bonding
Anchor Tenant Mixed Waste Processing Facility Construction
SBP Mixed Waste Processing Go-Live
North Kent Transfer Station Improvements
Recycling and Education Center Refurbishment
Waste-to-Energy O&M Transition
Waste-to-Energy O&M Service Agreement
Waste-to-Energy Refurbishment
South Kent Landfill Expansion (Contingency Plan)
South Kent Landfill Expansion Go-Live

Discussion