File #: 11-1256, **Version:** 5

Community Development Agency, Environmental Management Division, recommending the Board approve and authorize the Chair to sign the Sixth Amendment to Agreement for Services No. 443-S1011 (025-A-09/10-BOS) with Tetra Tech BAS, Inc., dba Bryan A. Stirrat & Associates, Inc. to:
1) Increase the compensation by $50,000 for services related to the Meyers Landfill cap closure project for a revised not-to-exceed amount of $1,553,840;
2) Retroactively extend the term of the agreement one (1) additional year to December 31, 2014; and
3) Change new ownership status from Bryan A. Stirrat & Associates, Inc. to Tetra Tech BAS, Inc., dba Bryan A. Stirrat & Associates, Inc.

Funding: Non General Fund Insurance (Federal Funds).

BUDGET SUMMARY:	
Total Estimated Cost……	$50,000
Budget - Current FY……..…	$50,000
Budget - Future FY……	
New Funding……	
Savings……..	
Other……..	
Total Funding Available……	$50,000
Change To Net County Cost……	$0

Fiscal Impact/Change to Net County Cost
Through the continuing Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) litigation, the County has contributed money for site investigation and closure obtained from the County's insurance carriers, Third Party Settlements, and closure grant funding from CalRecycle (formerly the California Integrated Waste Management Board). In previous actions the Board of Supervisors approved General Fund contingencies in the amount of $6,313,156 to the Meyers Landfill special revenue fund. This funding was appropriated as a temporary loan from other General Fund budget appropriations in FY 2012-13 until it can be potentially recovered from the United States Forest Service (USFS) or ERRG (USFS engineering firm responsible for the closure design). Failure to pay back this temporary loan will adversely impact other services provided by General Fund appropriations.

The federal court granted the County's Motion for Construction, Enforcement, and Modification of the Partial Consent Decree. The USFS appealed this decision and the case was heard by the Ninth Circuit Court of Appeals in October 2012. In January 2013 the Ninth Circuit Court ruled in favor of

the County and directed the case back to the federal court. Rather than immediately initiating potentially lengthy and costly court proceedings, the County entered into mediated discussions with the USFS in an effort to come to a mutually acceptable final agreement on compensation to the County for damages related to the cost overruns resulting from the USFS failed Final (100%) Remedial Design. The mediation has not yet yielded acceptable terms and the County is therefore preparing for court proceedings to take place in 2014.

This item does not increase the financial obligation of the County related to the Meyers Landfill closure. Funding for this Amendment is derived from savings within the overall project budget.

Background

On January 26, 2010, the Board of Supervisors approved Construction and Construction Quality Assurance (CQA) contracts for the remediation of the Meyers Landfill site. The remediation of the site requires an engineering construction management company with specialized qualifications and experience to maintain compliance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and National Oil and Hazardous Substances Pollution Control Contingency Plan (NCP) requirements and to oversee and direct the successful completion of the Meyers Landfill Cap System, French Drain and Landfill Gas Emission Control System construction.

On April 13, 2010, the Board awarded a contract to Bryan A. Stirrat & Associates, Inc. (BAS) for the construction management of the Cap System, French Drain and Landfill Gas Emission Control System for OU-1 at the Meyers Landfill for the period of April 20, 2010 through January 1, 2011, and a total not to exceed amount of $539,990 (Legistar Item 10-0313).

On December 14, 2010, the Board authorized the First Amendment to the Contract increasing the compensation amount by $330,550 for a total not to exceed amount of $870,540, and extending the term through June 1, 2012 (Legistar Item 10-1292). The First Amendment was required due to the large number of issues, errors and omissions with the Final 100% Remedial Design (Design) provided by the USFS to the County.

On November 15, 2011, the Board authorized the Second Amendment to the Contract increasing the compensation amount by $295,430 for a total contract not to exceed amount of $1,165,970, and extending the term through June 1, 2013 (Legistar Item 11-1256). The funding was increased by the Second Amendment to cover multiple unanticipated issues that were discovered during the 2011 construction season that resulted in ERRG issuing a third revised Design. The third revised Design was provided by the USFS to the County on July 1, 2011. Costs for winterization activities for the 2011/2012 winter season were also covered in the Second Amendment.

On April 17, 2012, the Board authorized the Third Amendment to the Contract increasing the compensation amount by $231,940 for a total contract not to exceed amount of $1,397,910 (Legistar Item 11-1256, Version 2). The Third Amendment was necessary due to the fact that while the USFS provided the third revised Meyers Landfill cap design on July 1, 2011, the Forest Service/ERRG did not issue a revised final grading plan for the project until August 24, 2011. In order to complete the closure project during the 2011 construction season, final cover would have to have been completed along with hydroseeding of the site by August 1, 2011 in order to ensure adequate vegetative cover to stabilize the site for winter. Since the site required dewinterization and extensive reworking of the foundation layer due to erosion caused by heavy precipitation the previous winter, 2011 construction

activities did not begin until the first week of July. As of July 1, 2011, only 50% of the revised required construction activities had been completed leaving inadequate time to complete the remaining 50% of construction by August 1, 2011. While the complete closure construction could have been accomplished in 2011, doing so would result in the need for extensive, costly site rehabilitation in 2012. After consultation with the County's construction, CQA, and engineering contractors, as well as discussion with the USFS, ERRG and Lahontan Regional Water Quality Control Board, it was determined that the most cost effective and environmentally protective solution was to cover the landfill site with plastic tarp material to protect the site from erosion over the 2011/2012 winter and place the final vegetation layer along with hydroseed during the 2012 construction season. Therefore, the Third Amendment was required to complete the Meyers Landfill cap construction during the 2012 construction season.

On December 18, 2012, the Board authorized the Fourth Amendment to the Contract extending the contract term six (6) additional months to December 31, 2013 with no net increase in compensation for services related to the Meyers Landfill cap closure project (Legistar Item 11-1256, Version 3).

On May 7, 2013, the Board authorized the Fifth Amendment to the Contract increasing the compensation amount by $105,930 for a total not to exceed amount of $1,503,840 (Legistar Item 11-1256, Version 4). The additional funding was required for engineering oversight of anticipated work required during the 2013 construction season as a result of damage to the site during the 2012/2013 wet weather season. Funding for this increase was derived from transferring funds within the overall Meyers Landfill construction budget resulting in no net increase in the overall project cost.

Reason for Recommendation

1) The Meyers Landfill cap construction was completed early in the 2012 construction season. The site was hydroseeded and then irrigated for over two (2) months in an effort to establish a vegetative cover that would meet the specified requirements of the USFS. Once the vegetative specification is met, the construction completion certification process is initiated, which entails the submittal of a construction completion certification report (Report) prepared by BAS on behalf of the County and submitted to the USFS. While most of the Meyers Landfill did meet the required vegetative specification, the entire site did not, thereby delaying the submission of the Report to the USFS until the full establishment of vegetation could be achieved in the summer of 2013.

In addition, during the 2012/2013 winter storms, the site incurred erosion and significant damage to poorly designed surface water control and conveyance features which required repair and reconstruction during the 2013 construction season. More work by the construction contractor, Sukut Construction, Inc., was required during the 2013 construction season than anticipated due in part to the USFS requesting additional modifications to the surface water control features. The time required to complete the 2013 work was almost double the original estimate developed in the spring of 2013. The 2013 construction repair work required engineering oversight by BAS.

2) During the summer of 2013, all repair areas and those areas that did not meet the vegetative specification in 2012 were once again hydroseeded and the entire landfill cap irrigated for the remainder of the construction season. The County's CQA consultant, Geosyntec, Inc., certified that the County met the USFS vegetative specification and BAS subsequently submitted a draft construction completion certification report (Report) to the USFS as requested.

The USFS has not provided written comment on the County's Report other than some

correspondence indicating the USFS disagrees with the County's consultant regarding the results of the vegetation establishment on the landfill. BAS will need to respond to the USFS comments on the draft Report and submit the Final Report to the USFS. It is unknown at this time how much time the USFS will require to review and respond to the County's draft Report and final Report. It was not anticipated that BAS would need to continue to work beyond December 31, 2013. Therefore, it is recommended that the contract with BAS be retroactively extended for one (1) additional year to December 31, 2014. There is no net increase to County cost associated with this Amendment. Funding is being provided from within the overall Meyers Landfill closure budget.

3) On May 20, 2011, BAS was acquired by TetraTech BAS, Inc., and has changed its company name to Tetra Tech BAS, Inc., dba Bryan A. Stirrat & Associates, Inc. All other terms and conditions of the agreement remained unchanged. The Sixth Amendment reflects this name change.

Clerk of the Board Follow Up Actions
Clerk to obtain the Chair's signature on the Sixth Amendment and forward one executed copy to the Environmental Management Division for distribution.

Contact
Steve Pedretti, Director
Community Development Agency

Concurrences
County Counsel and Risk Management

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