



Legislation Text

File #: 11-1397, **Version:** 5

Community Development Agency, Environmental Management Division, recommending the Board approve and authorize the Chair to sign the Seventh Amendment to Agreement for Services No. 139-S1111 (017-A-09/10-BOS) with Geosyntec Consulting Inc., retroactively extending the contract term one (1) additional year to December 31, 2014, with no net increase to the compensation for services related to the Meyers Landfill Cap Closure project.

Funding: Non General Fund Insurance (Federal Funding).

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 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 recovered from the US Forest Service (USFS) or ERRG (USFS engineering firm responsible for the closure design). Failure to payback 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 (i.e. not to exceed contract amount) for the County related to the Meyers Landfill closure. This is simply a contract term extension and redistribution of the previously approved budget to allow for payment to be made in the areas worked.

Background

On January 26, 2010, the Board awarded the Meyers Landfill Cap Construction Quality Assurance (CQA) services contract to Geosyntec Consulting, Inc (Legistar Item 09-1544). On June 29, 2010, the Board approved the First Amendment to the Contract to account for changes in the scope of work and compensation sections of the original contract (Legistar Item 10-0683). The revised scope of work included required air, noise and storm water monitoring and sampling throughout the duration of the project. The revisions to the scope of work are CERCLA requirements that were not previously

identified in the original contract. The environmental monitoring and sampling must be conducted as part of the Meyers Landfill closure construction project pursuant to CERCLA requirements.

On December 14, 2010, the Board approved the Second Amendment to the Contract (Legistar Item 10-1293) which was required due to the large number of issues, errors and omissions associated with the original Final (100%) Remedial Design (Design) provided by the USFS to the County.

On December 13, 2011, the Board approved the Third Amendment to the Contract (Legistar Item 11-1397) which was required to extend the project to cover three (3) construction seasons and provide the funding to cover the unanticipated extensive repair costs incurred at the beginning of the 2011 construction season as a result of the heavy wet weather over the previous winter. The funding was also increased by the Third 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.

On April 17, 2012, the Board approved the Fourth Amendment to the contract increasing the compensation amount by \$76,821, for a total not to exceed amount of \$782,372.02, and extending the contract term to December 31, 2012 (Legistar Item 11-1397 Version 2). The Fourth Amendment was necessary due to the fact that while the USFS provided the third revised Meyers Landfill cap Design on July 1, 2011, the USFS/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 to ensure adequate vegetative cover to stabilize the site for winter. Since the site required dewatering 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 and 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 Fourth Amendment was required to complete the Meyers Landfill cap construction during the 2012 construction season.

On December 18, 2012, the Board authorized the Fifth Amendment to the Contract extending the contract term one (1) year to December 31, 2013 with no net increase in compensation for services related to the Meyers Landfill cap closure project (Legistar Item 11-1397, Version 3).

On May 7, 2013, the Board authorized the Sixth Amendment to the Contract increasing the compensation amount by \$72,828 for a total not to exceed amount of \$855,201.02 (Legistar Item 11-1397, Version 4). The additional funding was required for Construction Quality Assurance oversight of 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

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 CQA report prepared by Geosyntec and submitted to Bryan A. Stirrat & Associates, Inc. (BAS) (the County's supervising engineering consultant for the Meyers Landfill closure project), who in turn incorporates the CQA report into the construction completion certification report that is ultimately submitted to the USFS on behalf of the County. While most of the Meyers Landfill did meet the required vegetative specification, the entire site did not, thereby delaying the submission of the CQA report to BAS 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. This work required CQA oversight by Geosyntec.

In May 2013, Geosyntec submitted a draft CQA report, excluding the vegetative compliance section, to the USFS in an effort to expedite approval of the full CQA report once the vegetation specification was met. The USFS didn't provide comment on the draft CQA report until November 20, 2013.

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. On November 13, 2013, Geosyntec issued a memorandum certifying that the County met the USFS vegetative specification, which was provided to the USFS that same day. BAS subsequently submitted a draft construction completion certification report (Report), including Geosyntec's vegetation certification, to the USFS as requested, on November 21, 2013.

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. Geosyntec will need to respond to the USFS comments on the draft CQA report and work in concert with BAS on the submittal of 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 Geosyntec would need to continue to work beyond December 31, 2013. Therefore, it is recommended that the contract with Geosyntec be retroactively extended for one (1) additional year with a new expiration date of December 31, 2014. There is no net increase to County cost associated with this amendment.

Clerk of the Board Follow Up Actions

Clerk to obtain the Chair's Signature on the Seventh Amendment and forward one executed copy to the Environmental Management Division for distribution.

Contact

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Concurrences

County Counsel and Risk Management