

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Environmental Resources

BOARD AGENDA # *B-5

Urgent

Routine

AGENDA DATE March 1, 2011

CEO Concurs with Recommendation YES NO

4/5 Vote Required YES NO

(Information Attached)

SUBJECT:

Approval to Amend the Agreement for Legal Services with Meyers Nave, a Professional Law Corporation, for the Geer Road Landfill

STAFF RECOMMENDATIONS:

1. Amend the Agreement for legal services with Meyers Nave, a professional law corporation, to increase the not to exceed limit to \$225,000 for the initial contract year only which ends December 8, 2011.
2. Authorize the Director of Environmental Resources, or her designee, to sign the Agreement.

FISCAL IMPACT:

The original Agreement with Meyers Nave for legal services was for \$100,000, dated December 9, 2010. It is estimated, however, that total compensation for legal services, including the cost of any necessary subcontractors, consultants, experts, or investigators which are retained, will exceed this amount. Staff recommends amending the Agreement to include a not to exceed limit of \$225,000 for the initial contract year only. Sufficient appropriations exist within the current Geer Road Landfill Operating Budget for this purpose.

BOARD ACTION AS FOLLOWS:

No. 2011-123

On motion of Supervisor O'Brien, Seconded by Supervisor Chiesa
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, DeMartini, and Chairman Monteith

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

DISCUSSION:

Stanislaus County and the City of Modesto entered into an agreement in 1970 to purchase property and establish the Geer Road Landfill in order to provide disposal capacity for local residents. Landfill operations in the State of California are overseen by various regulatory agencies that enforce an array of statutes and regulations. One of these agencies is the Regional Water Quality Control Board (RWQCB). Regulatory oversight from the RWQCB occurs in the form of Waste Discharge Requirements (WDRs) which serve as a type of permit for the site.

For the Geer Road Landfill (GRLF), the WDRs were revised in April 2009 to include requirements that a series of studies and reports, among other deliverables, be completed. The County contracts with an outside environmental consulting firm to complete the majority of this required work. Since April 2009, the County, together with its consultant, SCS Engineers, has worked diligently to provide the required deliverables, meeting every deadline to date with only two exceptions: specifically, two documents related to the October 30, 2009, Evaluation of Impacted Groundwater in North Area Report (Evaluation Report), a Corrective Action Plan and a Well Installation Report. The sole reason these two documents were not submitted is that the Evaluation Report recommended no additional corrective action measures.

The County's first and only correspondence from the RWQCB regarding the Evaluation Report came in the form of a Draft Cease and Desist Order issued on November 22, 2010, thirteen months after the Evaluation Report was submitted. The County believes wholeheartedly in doing the right thing, but it did not seem to make fiscal or logical sense to prepare plans/reports and install additional wells when its consultant concluded that no additional corrective action was needed. Had the County received communication from the RWQCB indicating it did not concur with the conclusion in the Evaluation Report, the County would have completed the additional work by the required deadlines.

The County takes environmental compliance very seriously, in fact, it has been proactive in taking many recent steps without being required to do so by the RWQCB. For example: 1) During a meeting with RWQCB staff in July 2010, the County disclosed that there are two existing water supply wells onsite, and volunteered to have them destroyed so as to eliminate them as possible sources of contamination; 2) During the same July 2010 meeting, the County also disclosed that a recent sampling event had revealed the collapse of an onsite monitoring well. Given that, the County offered to replace the well even though it is not a point-of-compliance well; 3) During a September 2010 meeting with RWQCB staff, the County submitted a Well Abandonment and Replacement Plan for the aforementioned wells, but has yet to receive an approval to proceed on this work in the five months since; and 4) In the past, the County was required to periodically collect water samples from the nearby Pinewood Mobile Home Park for analysis. This practice continued for several years until access was restricted. In August 2010 access was again provided, and rather than wait until the

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November/December regular sampling interval, the County resumed sampling immediately in addition to the regularly scheduled intervals.

A Cease and Desist Order (Order) is a serious matter and the County believes the action is unjustified. As such, under the direction of County Counsel, the Department of Environmental Resources contracted with the law firm of Meyers Nave on December 9, 2010, to represent the County's interests. Meyers Nave is a firm that specializes in environmental compliance issues such as this. County policy requires Board of Supervisors approval for any contract or agreement where the total cumulative compensation exceeds \$100,000. It is anticipated that total compensation will exceed this amount, particularly if agreement on an amended Order cannot be reached prior to the matter being heard before the RWQCB in April 2011.

POLICY ISSUES:

Approval of this agenda item to amend the Agreement for legal services with Meyers Nave for the Geer Road Landfill, is consistent with the Board's priorities of providing A Safe Community, A Healthy Community, and the Efficient Delivery of Public Services.

STAFFING IMPACTS:

There are no staffing impacts associated with this item.

CONTACT PERSON:

Sonya K. Harrigfeld, Director of Environmental Resources Telephone: 209-525-6770



DEPARTMENT OF ENVIRONMENTAL RESOURCES
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AMENDMENT NO. 1

TO

LEGAL SERVICE AGREEMENT

MEYERS NAVE

This Amendment No. 1 to the Agreement for Legal Services ("Amendment No. 1") by and between the COUNTY OF STANISLAUS ("County") and Meyers Nave ("Attorney") is made and entered into on March 1, 2011.

Whereas, the County and Attorney entered into an Agreement for Legal Services dated December 9, 2010 ("the Agreement"); and

Whereas, Paragraph 17 says the Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties; and

Whereas, the County has a need to increase the initial calendar year "not to exceed" \$100,000.00 amount in Section 2.2 by \$125,000.00, due to the complexity of the project; and

Whereas, this amendment is for the mutual benefit of County and Attorney;

Now, therefore, the County and Attorney agree as follows:

- 1. In Section 2.2, is amended as follows:

"The parties hereto acknowledge the maximum amount to be paid by the Client for services provided shall not exceed \$225,000.00 during the initial calendar year, including without limitation, the cost of any subcontractors, consultants, experts or investigators retained pursuant to Paragraph 1.3 of the Agreement, unless fees and compensation exceeding \$225,000.00 are approved by the Client.

If the Agreement is not terminated after the initial calendar year, and continues on a year-to-year basis until terminated, the parties hereto acknowledge the maximum amount to be paid by the Client for services provided in the continued term shall not exceed \$100,000.00 during the any single calendar year, including without limitation, the cost of any subcontractors, consultants, experts or investigators retained pursuant to Paragraph 1.3 of the Agreement, unless fees and compensation exceeding \$100,000.00 are approved by the Client "

- 2. Except as stated herein, all other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first hereinabove written.

Table with 2 columns and 2 rows. Top-left: COUNTY OF STANISLAUS, Department of Environmental Resources, By: Sonya K. Harrigfeld, Director, "Client". Top-right: MEYERS NAVE, By: Steven T. Mattas, Esq., Principal, "Attorney". Bottom-left: APPROVED AS TO FORM: John P. Doering, County Counsel, By: Thomas E. Boze, Deputy County Counsel. Bottom-right: (Empty)