

AGENDA DATE: August 8, 2006



RESOURCE MANAGEMENT AGENCY

5961 SOUTH MOONEY BLVD.
VISALIA, CA. 93277
PHONE (559) 733-6291
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Britt L. Fussel	Engineering
Deborah Kruse	Development Services
Jean P. Brou	Transportation
George Finney	Long Range Planning
Hal Cypert	Support Services
Roger Hunt	Administrative Services

HENRY HASH, DIRECTOR

THOMAS W. SHERRY, ASSOCIATE DIRECTOR

AGENDA ITEM

ITEM NO. _____
District 2

SUBJECT:

Award and approval of a contract for the construction of the Richgrove Stormwater Drainage, Air Quality Improvement and Recreation Project – Phase 1 and authorize the Chairman to sign said contract and a Memorandum of Understanding between the County of Tulare and the Tulare County Redevelopment Agency.

REQUEST(S):

1. Approve a Memorandum of Understanding (MOU) between the Tulare County Redevelopment Agency and the County of Tulare for reimbursement of the cost for hauling excavated materials from the Richgrove site to the Earlimart Land Fill for use as landfill closure materials.

SUMMARY:

The Richgrove Stormwater Drainage, Air Quality Improvement and Recreation Project - Phase 1, will expand and re-contour an existing primary stormwater basin located on Richgrove Elementary School District property and excavate an adjacent 3.9 acre parcel to serve as a dual-purpose secondary stormwater basin/ recreation park. In addition to capturing the additional stormwater runoff that will be generated when Phase 2 and 3 of the project are completed, the two stormwater basins will be designed and landscaped to function as bio-filters to aid in preventing stormwater runoff pollutants from permeating and contaminating the groundwater table.

On May 16, 2006, your Board authorized and approved the advertisement for bids for the Richgrove Stormwater Drainage, Air Quality Improvement and Recreation Project – Phase 1, and bids were opened on June 21, 2006. A total of 4 complete bids were received and the low bid of \$756,579 was 23% over the engineer's estimate of \$615,000.

The excavation work will generate approximately 50,000 cubic yards of dirt of a soil type which has been tested to meet the requirements as a landfill cap. The material meets the needs of the County to complete the closure of the Earlimart Landfill and the attached agreement provides for the County Solid Waste Fund to reimburse TCRA for transportation costs.

Construction is to be completed within 90 working days.

FINANCING:

Construction of the Phase 1 project, at the bid price of \$756,579, will be funded through a portion of the Community Development Block Grant in the amount of \$428,779 with the excavated soil going to the Earlimart Landfill Closure Project at a cost to the County Solid Waste fund in the amount of \$285,000.

ALTERNATIVES:

None recommended; however, your Board could choose to reject all bids and negotiate for costs or re-bid the project.

INVOLVEMENT OF OTHER DEPARTMENTS OR AGENCIES:


Tulare County Resource Management Agency, County Counsel, Risk Management, Richgrove Elementary School District (RESD) and the Richgrove Community Services District (RCSD). The RESD and RCSD will jointly own, operate and maintain the basin and improvements at completion of the storm water project.

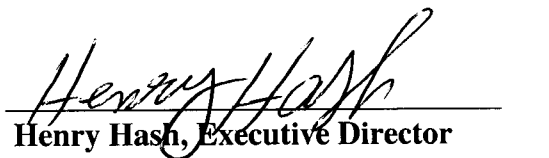
SIGNATURE REQUIREMENTS:

Chairman of the Board of Supervisors to sign all copies of the contract upon receipt of approved bonds and insurance and the Memorandum of Understanding. Clerk of the Board of Supervisors or Authorized Deputy to attest to the Resolution and the Contract.

ADMINISTRATIVE SIGN OFF:

RESOURCE MANAGEMENT AGENCY


George Finney, Assistant Director
Long Range Planning


Henry Hash, Executive Director
Tulare County Redevelopment Agency

Steve Horton, ext. 4302

Submittal Date: June 02, 2006

**BOARD OF SUPERVISORS
TULARE COUNTY
COUNTY OF TULARE, STATE OF CALIFORNIA**

**IN THE MATTER OF AWARDING A CONTRACT)
FOR THE CONSTRUCTION OF THE RICHGROVE)
STORM WATER DRAINAGE, AIR QUALITY AND) RESOLUTION NO. _____
RECREATION PROJECT – PHASE ONE TO DUNN’S)
SAND, INCORPORATED AND APPROVING A)
MEMORANDUM OF UNDERSTANDING BETWEEN)
THE TULARE COUNTY REDEVELOPMENT AGENCY)
AND THE COUNTY OF TULARE)**

THE FOREGING RESOLUTION WAS ADOPTED UPON MOTION OF SUPERVISOR _____, SECONDED BY SUPERVISOR _____, AT A REGULAR MEETING HELD ON AUGUST 8, 2006, BY THE FOLLOWING VOTE:

**AYES:
NOES:
ABSTAIN:
ABSENT:**

**ATTEST: C. BRIAN HADDIX
COUNTY ADMINISTRATIVE OFFICER
CLERK OF THE BOARD OF SUPERVISORS
BY: _____
Deputy Clerk**

1. Approved a Memorandum of Understanding (MOU) between the Tulare County Redevelopment Agency and the County of Tulare for reimbursement of the cost for hauling excavated materials from the Richgrove site to the Earlimart Land Fill for use as landfill closure materials.

MEMORANDUM OF UNDERSTANDING
Richgrove Storm Water Drainage, Air Quality and Recreation Project

This Memorandum of Understanding (the “MOU”) by and between the County of Tulare Resource Management Agency – Solid Waste Division (COUNTY), and the Tulare County Redevelopment Agency (“TCRA”), is entered into in contemplation of the implementation of the TCRA Richgrove Storm Water Drainage, Air Quality and Recreation Project (Project) and the provision of excess dirt fill for use by COUNTY.

Purpose:

This MOU is to outline the process, responsibilities and commitments of each party with regard to the PROJECT which is comprised of the following work items:

1. The COUNTY is in need of approximately 50,000 cubic yards of dirt for the closure of its Earlimart Landfill. The TCRA project will generate approximately 50,000 cubic yards of excess fill dirt and may provide for the transport of excavated dirt to the Earlimart Landfill site operated by the COUNTY and placement in designated site or sites in accordance with direction as provided by the COUNTY. The excavated material is derived from a TCRA construction contract for the Richgrove Stormwater Drainage, Air Quality Improvement and Recreation Project – Phase 1, Stormwater Basin Excavation.

The following is a summary of the respective commitments of the COUNTY and TCRA with regard to the PROJECT.

General Items:

1. The parties hereto shall each assign staff members to attend regular meetings for review of the progress, policies, planning, and plan preparation, at a time and frequency to be determined by mutual consent by those assigned staff members.
2. PROJECT schedule will be jointly prepared to address the planning, approval process, design, and construction periods and related critical dates.
3. PROJECT description may be changed by written consent from both TCRA and COUNTY.
4. PROJECT shall include design plans, testing, design standards, specifications, details, bid documents, award of contracts, construction of the improvements, transport of excavated materials and placement at designated site(s).
5. This MOU shall become effective between all parties when the TCRA has executed this Agreement.

6. COUNTY and TCRA may terminate the PROJECT at any time before the initiation of construction if the PROJECT is determined to be unfeasible to continue.

This Agreement may be terminated by either party should the other party materially breach this Agreement. Upon a material breach, the Agreement may be terminated following the failure of the defaulting party to remedy the breach to the satisfaction of the non-defaulting party within FIVE (5) work days of written notice specifying the breach. If the breach is not remedied within that FIVE (5) work day period, the non-defaulting party may terminate the Agreement on further written notice specifying the date of termination.

If the nature of the breach is such that it cannot be cured within a FIVE (5) work day period, the defaulting party may, submit a written proposal within that period which sets forth a specific means to resolve the default. If the non-defaulting party consents to that proposal in writing, which consent shall not be unreasonably withheld, the defaulting party shall immediately embark on its plan to cure. If the default is not cured within the time agreed, the non-defaulting party may terminate upon written notice specifying the date of the termination.

This Agreement may be terminated at any time by mutual consent of the parties.

Termination of this Agreement shall not terminate any obligations to indemnity, to maintain and make available any records pertaining to the Agreement, to cooperate in any funding application, to cooperate with any audit, or to make any reports of pretermination Agreement activities.

7. The parties are aware that the TCRA was award grant funding from the State of California Housing and Community Development Department (“HCD”) Community Development Block Grant Program (“CDBG”). The parties acknowledge that if the TCRA is unable to proceed, the TCRA may terminate this Agreement by providing notice to the other party members. The COUNTY is not entitled to any compensation, reimbursement or damages.

8. Each party will execute any additional documents and perform any further acts, which may be reasonably required to effect the purposes of this Agreement.

9. If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties, otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, either party may pursue litigation to resolve the dispute.

10. Each party shall maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, each party shall maintain complete and accurate records with respect to any payments to employees or subcontractors. All such records shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified, and shall be kept readily accessible. Upon request, each party shall make such records available within Tulare County to the other party and to his agents and

representatives, for the purpose of auditing and/or copying such records for a period of five (5) years from the date of final payment under this Agreement.

11. This Agreement is entered into by all parties with the express understanding that each party will perform all services required under this Agreement as an independent contractor. Nothing in this Agreement shall be construed to constitute that a party or any of its agents, employees or officers as an agent, employee or officer of the other party.

A. Each party agrees to advise everyone it assigns or hires to perform any duty under this Agreement that they are not employees of the other party. Subject to any performance criteria contained in this Agreement, each party shall be solely responsible for determining the means and methods of performing the specified services and each party shall have no right to control or exercise any supervision over the other party as to how the services will be performed. As neither party is the others employee, each party is responsible for paying all required state and federal taxes. In particular, each party will not:

- i. Withhold FICA (Social Security) from payments to the other party.
- ii. Make state or federal unemployment insurance contributions on other party's behalf.
- iii. Withhold state or federal income tax from payments to the other party.
- iv. Make disability insurance contributions on behalf of the other party.
- v. Obtain unemployment compensation insurance on behalf of the other party.

B. Notwithstanding this independent contractor relationship, each party shall have the right to monitor and evaluate the performance of the other party to assure compliance with this Agreement.

12. Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

TCRA:

William L. Hayter, Division Manager
Tulare County Redevelopment Agency
5961 S. Mooney Blvd.
Visalia, CA 93277
Phone No: (559) 733-6291 Ext. 4301
Fax No: (559) 730-2591

COUNTY:

Jeff Monaco, Division Manager
Tulare County Resource Management Agency
5961 S. Mooney Blvd.
Visalia, CA 93277
Phone No: (559) 733-6291 Ext. 4847
Fax No: (559) 733-740-4333

Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

COUNTY COMMITMENTS:

1. COUNTY acknowledges that TCRA will be designated “Lead Agency” for the purpose of administration and implementation of the PROJECT. However, COUNTY reserves the right to review and comment on all placement/installation work, materials, testing, and practices related to PROJECT.
2. COUNTY acknowledges that the PROJECT is federally funded under the CDBG program and is subject to the thirty (30) day prompt payment rules for federally funded projects and programs. RMA -SOLID WASTE DIVISION will reimburse TCRA for PROJECT related costs within thirty (30) days of receiving an approved invoice from TCRA.
3. COUNTY has ascertained through previous soils testing that the proposed excavated fill dirt meets its requirements for providing a cap over the Earlimart Landfill and inspect all deliveries of construction excavation materials to ensure consistency of the soils types required and shall provide all direction for placement of transported soils to clearly marked locations.
4. COUNTY will not unreasonably withhold approval for payment.
5. Payment by COUNTY shall be for all costs associated with the transportation of all excavation used for fill dirt at the designated Earlimart Land Fill site including but not limited to, inspection, testing and administration expenses estimated to be \$285,000 plus a 1% administration fee.
6. The Director of the Tulare County Resource Management Agency, shall be the designated agent for COUNTY. The Director shall have the authority to execute this MOU and any subsequent related documents or letters of commitment on behalf of the COUNTY.
7. COUNTY shall hold harmless, defend and indemnify TCRA, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including TCRA property, arising from, or in connection with, the performance by COUNTY or its agents, officers and employees under this Agreement. This indemnification specifically includes any claims that may be made against TCRA by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against TCRA alleging civil rights violations by COUNTY under Government Code sections 12920 et seq. (California Fair Employment and Housing Act), and any fines or penalties imposed on TCRA for COUNTY failure to provide form DE-542, when applicable. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

TCRA COMMITMENTS:

1. TCRA will administer the CDBG funding secured for construction, and administration required for funding the PROJECT.

2. TCRA will implement PROJECT through bids for construction of the work including excavation and hauling of the materials to areas designated at the Earlimart Landfill by the COUNTY. Work shall commence upon award of a construction contract by TCRA.

3. TCRA will submit, in a form acceptable to the COUNTY, a reimbursement request for expenses incurred for prosecution of the work including but not limited to the costs to excavate the materials, transportation costs, inspection, testing and administration committed to the PROJECT.

4. TCRA will advertise and award the construction excavation contract for the PROJECT and provide construction management.

6. TCRA shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including COUNTY property, arising from, or in connection with, the performance by TCRA or its agents, officers and employees under this Agreement. This indemnification specifically includes any claims that may be made against COUNTY by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against COUNTY alleging civil rights violations by TCRA under Government Code sections 12920 et seq. (California Fair Employment and Housing Act), and any fines or penalties imposed on COUNTY for TCRA failure to provide form DE-542, when applicable. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

7. The Chairman of the Tulare County Redevelopment Agency shall have the authority to execute this MOU and any subsequent related documents or letters of commitment on behalf of the COUNTY.

It is understood and agreed by all parties hereto that this MOU, including any agreements, amendments or changes in funding commitments will be submitted to the appropriate governing bodies for approval. This MOU can be altered only by mutual agreement among the COUNTY and TCRA.

Accepted and agreed to this _____ day of August 2006:

County of Tulare

By: Henry Hash
Title: Director
County of Tulare
Resource Management Agency

By: Steven Worthley
Title: Chairman
Tulare County Redevelopment Agency

Approved as to form:

County Counsel