

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



ITEM
12.1
(ID # 10148)

MEETING DATE:

Tuesday, June 25, 2019

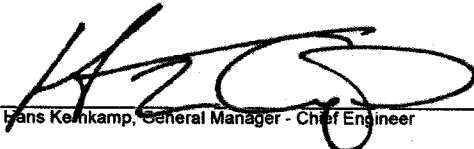
FROM : DEPARTMENT OF WASTE RESOURCES:

SUBJECT: DEPARTMENT OF WASTE RESOURCES: Amendment No. 2 to the Legal Services Agreement (Agreement) between the County of Riverside, on behalf of its Department of Waste Resources, (COUNTY), and Murphy & Evertz, LLP. (ATTORNEY), for the Lamb Canyon Preserve Land Acquisition, District 5. [Total Cost - \$365,000 - Department of Waste Resources Enterprise Fund 100%]
(Nothing Further Required under CEQA)

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve Amendment No. 2 to the Agreement between the COUNTY and ATTORNEY for the Lamb Canyon Preserve Land Acquisition, and authorize the General Manager-Chief Engineer to execute it on behalf of the County.

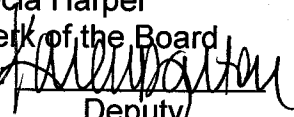
ACTION: Policy


Hans Kerkamp, General Manager - Chief Engineer 6/13/2019

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Perez, seconded by Supervisor Hewitt and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None
Date: June 25, 2019
xc: Waste

Kecia Harper
Clerk of the Board
By 
Deputy

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 30,000	\$ 335,000	\$ 365,000	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: Department of Waste Resources Enterprise Funds			Budget Adjustment: No	
			For Fiscal Year: 18/19-19/20	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

On March 20, 2018, the Board approved Resolution No. 2018-039, authorizing the Resolution of Necessity for the Lamb Canyon Landfill (LCL) Expansion Project, as well as funding for the acquisition of two contiguous parcels (Preserve), measuring approximately 70 acres along the northerly boundary of the landfill property, through an eminent domain process. (Item 9.1, MT #6335).

Due to the complex and unique legal issues for this land acquisition project, and based on County Counsel's recommendation, outside legal services were obtained. On May 18, 2018, a Legal Services Agreement (Agreement) between the COUNTY and ATTORNEY, in an amount of \$50,000, was prepared and processed through Central Purchasing. Additional funds were needed due to the lengthy legal procedures that are unique to this case, such as the need to obtain relief from a bankruptcy stay prior to filing for eminent domain in State court. Therefore, on November 20, 2018, Amendment No. 1 to the Agreement was processed to increase the total compensation from \$50,000 to \$100,000.

On February 27, 2019, the Superior Court of the State of California granted the County motion for prejudgment possession of the Preserve property.

On March 13, 2019, the Preserve representative, Scott Krentel, and the bankruptcy trustee challenged the County's "right to take" the property; moreover, Mr. Krentel filed a writ with the court of appeal asking the court to reverse the court ruling.

Due to the various bankruptcy matters and the unique procedural issues being raised by Mr. Krentel and the bankruptcy trustee, ATTORNEY has advised, and County Counsel concurred, that the litigation process for this matter could extend to mid-2020 and that an estimated additional budget for legal services in the amount of \$365,000 will be needed. At COUNTY request, ATTORNEY has provided an action plan and corresponding budget estimate (**Attachment 1**); and COUNTY has since prepared Amendment No. 2 to Agreement (**Attachment 2**). If approved by the Board, the revised total cost of the Agreement, including Addenda No. 1 and 2, would amount to \$465,000.

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

Prev. Agn. Ref.: M.O. 12.2 of 2/6/18
M.O. 9.1 of 3/20/18

California Environmental Quality Act (CEQA) Findings

On February 6, 2018, the Board of Supervisors adopted a Mitigated Negative Declaration (MND) and Mitigation Monitoring Program (MMP) for the Land Acquisition and Site Improvement Project at the Lamb Canyon Landfill based on the findings incorporated in Environmental Assessment (EA) No. 2017-01, concluding that with mitigation, the Project would not cause significant environmental impacts. As such, a Notice of Determination (NOD) was filed and the 30-day statute of limitations has expired.

The Project contemplated in this Form 11 only involves funding for continued assistance with navigating the legal issues for the land acquisition project, which was previously assessed in the above-mentioned environmental document. Therefore, all environmental impacts have been previously evaluated and nothing further is required for the purposes of CEQA.

Impact on Residents and Businesses

The 70 acres land represents the "head Canyon" for the next planned landfill expansion at LCL, and without this acquisition the future expansion at this site will be limited due to surface drainage issues; hence, the corresponding disposal capacity will be significantly reduced. Therefore, the acquisition of this land will help the Department to continue provide uninterrupted disposal services to County residents, and it's also necessary to promote and protect the safety, health and welfare of County residents and property.

Additional Fiscal Information

All costs associated with this land acquisition project, including legal services, are fully funded by the Department of Waste Resources Enterprise Fund and is included the Department of Waste Resources budget for FY 2018/19 and FY 2019/20. No net County costs will be incurred as a result of this increase of Agreement amount.

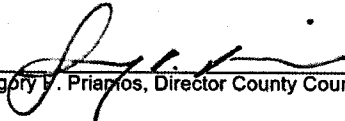
Contract History and Price Reasonableness

The rate of \$340.00 per hour for legal services by ATTORNEY is significantly below the average rates for counsel of comparable experience and expertise. These rates have not changed for the county since at least March 8, 2012 when the Transportation and Land Management Agency entered into an agreement with Murphy and Evertz, LLP.

Attachments:

Attachment 1 – Action Plan and Budget Estimate
Attachment 2 – Addendum 2 to Legal Services Agreement

SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA



Gregory V. Priamos, Director County Counsel 6/18/2019

ATTACHMENT 1

Action Plan and Budget Estimate

(This page left intentionally blank)

County of Riverside v. The Preserve, LLC, et al.
(Riverside County Superior Court Case No. RIC 1824891)

ACTION PLAN AND BUDGET ESTIMATE

	<u>Estimated Fees</u>
1. <u>Stage 1:</u> Litigating Defendants' Procedural Matters	\$25,000
A. PCF Relief from Bankruptcy Stay	
B. Case Management Conference	
C. NFL Motion re Receiver	
D. NFL Demurrer	
E. Writ of Mandate - - if opposition required	
F. Krentel Demurrer	
2. <u>Stage 2:</u> Right to Take Trial (If Necessary)	\$40,000
A. Prepare County Witnesses for Trial	
B. Prepare Direct and Cross-Examinations	
C. Prepare Exhibits	
D. Prepare Opening Brief	
E. Bench Trial	
3. <u>Stage 3:</u> Current to 90 days before valuation trial	\$50,000
A. Propound discovery and respond to landowner's discovery requests.	
B. Prepare for and take deposition of landowner.	
C. Work with appraisers to finalize "Statements of Value." (Code Civ. Proc., §§ 1258.250 & 1258.260.)	
D. Finalize appraisal approaches and refine appraisal report.	

- E. Begin work on legal issues motions, where appropriate.
(Code Civ. Proc., § 1260.040.)

4. Stage 4: Between 90 days and 30 days before valuation trial \$75,000

- A. Continue work on legal issues motions.
- B. Exchange statements of valuation data (90 days before trial).
- C. Prepare for and defend County's expert witness depositions.
- D. Prepare for and take landowner's expert witness depositions.
posit.
- E. Prepare final offer of compensation and engage in settlement negotiations. (Code Civ. Proc., § 1250.410.)
- F. Prepare Motions *in Limine*.
- G. Prepare for and attend mediation and/or settlement conferences,
if scheduled.

5. Stage 5: Final 30 days before valuation trial. \$75,000

- \$
- A. Continue working on Motions *in Limine*.
 - B. Prepare direct examination of County's witnesses.
 - C. Prepare cross-examination of defense witnesses.
 - D. Prepare our experts for trial.
 - E. Prepare exhibits and other trial documents.
 - F. Prepare trial brief.
 - G. Conduct final settlement negotiations.

6. Stage 6: Trial

\$84,000

A. Jury selection and motions (1-2 days).

Trial costs approximately
\$12,000 per day, including
partner, associate and paralegal

B. Trial (5 day estimate).

7. Stage 7: Post-Trial Motions and Matters

\$16,000

TOTAL ESTIMATED ATTORNEYS' FEES:

\$365,000

**Note: Due to the many current uncertainties associated with the case, fees incurred could be substantially different - - either higher or lower. Truly accurate budgeting is not possible until we resolve certain matters. This budget does not include the costs of retained experts.*

CLERK'S COPY

to Riverside County Clerk of the Board, Stop 1010
Post Office Box 1147, Riverside, Ca 92502-1147

**COUNTY OF RIVERSIDE
AMENDMENT NO. 2 TO THE AGREEMENT**

**WITH
MURPHY & EVERTZ, LLP.**

Original Contract Term:	May 18, 2018 until December 31, 2019
Contract Term Extended To:	December 31, 2020
Effective Date of Amendment:	April 1, 2019
Original Maximum Contract Amount:	\$50,000
Amended Maximum Contract Amount:	\$465,000
Contract ID:	WMARC-96149-001-10/19

This Amendment No. 2 to the Legal Services Agreement for the Lamb Canyon Preserve Land Acquisition (Contract ID No. WMARC-96149-001-10/19) (the "Amendment") is entered into by and between the County of Riverside (COUNTY) and Murphy & Evertz, LLP. (ATTORNEY), effective April 1, 2019.

WHEREAS, County and Attorney entered into that certain Legal Services Agreement for the Lamb Canyon Preserve Land Acquisition, effective May 18, 2018 (the "Agreement");

WHEREAS, County and Attorney have since amended the Agreement one (1) time as follows:

- a. **Amendment No. 1** executed on 11/20/18 added reference to Contract ID No. WMARC-96149-001-10/19, and increased total compensation to \$100,000 annually.

WHEREAS, County and Attorney now desire to amend the Agreement to extend the period of performance through December 31, 2020, and increase total maximum compensation to \$465,000.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, County and Attorney agree as follows:

1. The above recitals are true and correct, and are incorporated herein by reference.
2. The first sentence of Section 1. TERM OF AGREEMENT is hereby deleted in its entirety and replaced with the following: "This Agreement shall commence on May 18, 2018, and continue until December 31, 2020, or completion of the last work assignment, whichever occurs first, unless sooner terminated."
3. The first sentence of Section 6. COMPENSATION is hereby deleted in its entirety and replaced with the following: "The total amount of compensation paid to ATTORNEY under the terms of this Agreement shall not exceed Four Hundred Sixty-Five Thousand Dollars (\$465,000), including all expenses."
4. All other terms and conditions of the Agreement not modified herein shall remain unchanged.

[SIGNATURES ON NEXT PAGE]

JUN 25 2019 12:10

COUNTY OF RIVERSIDE
AMENDMENT NO. 2 TO THE AGREEMENT
WITH
MURPHY & EVERTZ, LLP.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Amendment.

COUNTY OF RIVERSIDE, a political
subdivision of the State of California

ATTORNEY, Murphy & Evertz, LLP.

By: _____
~~KEVIN JEFFRIES, CHAIRMAN~~
~~BOARD OF SUPERVISORS~~

By: _____
DOUGLAS J. EVERTZ
PARTNER

Dated: _____

Dated: _____

ATTEST:
KECIA HARPER
CLERK OF THE BOARD

APPROVED AS TO FORM:
Gregory P. Priamos
County Counsel

By: _____
DEPUTY

By: Bruce G. Fordon
BRUCE G. FORDON
DEPUTY COUNTY COUNSEL

Dated: _____

Dated: 6-18-19