

CITY COUNCIL

For City Clerk's Use:

☐ **APPROVED** ☐ **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 9

Date: June 27, 2012

TO: Honorable Mayor and Members of the City Council

FROM: Edward N. Domingue, Director of Engineering Services

SUBJECT: First Amendment to Consulting Agreement - Remediation of the Benton Burn Site

RECOMMENDATION:

Requested Council adopt Resolution No. 2012-118 authorizing the Mayor and City Clerk to execute a First Amendment to the Consulting Agreement with URS Corporation, in the amount of \$81,700 for additional environmental services for the remediation of the Benton Burn Site.

FISCAL ANALYSIS:

Project costs are proposed to be split between a California Department of Resources Recycling and Recovery (CalRecycle) grant and the City liability fund. The grant limits are not exceeded by this request.

PREVIOUS ACTION:

On September 1, 2010, Council approved a project budget and adopted Resolution Nos. 2010-134 and 135 in support of the grant request and approving the Consulting Agreement respectively. On October 5, 2011, Council approved Resolution No. 2011-126 adopting a Final Mitigated Negative Declaration (MND) and the associated Mitigation Monitoring Report Program for the remediation of the project.

BACKGROUND:

The Benton Burn site, within the Escondido Country Club area, was operated in the late 1940s, early 1950s, by Jesse and Lena Benton. The Benton's contracted to receive trash collected by the City of Escondido, and briefly, the County of San Diego. Trash was burned on the site releasing lead along with other metals and contaminants into the soil. This former burn site is located in the northern portion of the City of Escondido and in an unincorporated area of San Diego County. A portion of the site underlies property owned by the Country Club Woods Homeowners' Association (HOA) and two other private residences. The HOA property is located within the City of Escondido and the two other properties lie within the County of San Diego.

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When the portion of the site within the City of Escondido was developed for housing in the early 1980s, potential home buyers were not informed about the site's history or that hazardous contaminants had permeated the soil. Today the burn site lies in a publicly-accessible two-acre greenbelt, which is commonly owned by a homeowners association. The potentially serious public health and environmental ramifications resulting from the presence of toxins in this publicly accessible area must be remediated in an expeditious and cost-effective manner. The proposed method of cleanup would consolidate and cap the hazardous materials thereby reducing potential health risks to the public.

URS Corporation prepared a remedial action plan (RAP), dated October 5, 2009, under contract to the California Integrated Waste Management Board (CIWMB), currently the California Department of Resources Recycling and Recovery (CalRecycle). The City became aware of a grant opportunity and submitted with council approval a grant application to CalRecycle on September 15, 2010, for processing/permits/remediation of the site. CalRecycle on February 24, 2011, approved this grant request for up to half of the remediation costs for this site, maximum reimbursement of \$200,000. CalRecycle as well as the County of San Diego Solid Waste Local Enforcement Agency (LEA) are very supportive of this project.

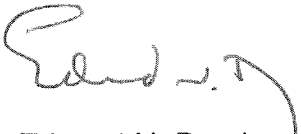
Upon approval of the grant, the City's consultant prepared documents for a MND, which were then reviewed and processed by City staff and then approved by Council on October 5, 2011. Work then began on the remediation grading plan and subsequent processing of the final agency permits. Approximately one month after council approval of the environmental document, the California Regional water Quality Control Board (RWQCB) sent the city a letter denying our project enrollment in the general 401 Water Quality Certification (U.S. Army Corps of Engineers Clean Water Act Section 404 Nationwide Permit no. 38). No comments were received by the city from the RWQCB during the public review period of the MND.

Fortunately, after several unbudgeted meetings with the resource agencies involved, RWQCB determined that the City does not have to resubmit the 401 Water Quality Certification. The successful negotiations with RWQCB and the other resource agencies, while delaying the project schedule, ultimately avoided setbacks that would have jeopardized completion of this project within the grant funding time limits. The resource agency permits and the final construction documents are now approaching approvals and actual project remediation is scheduled in the early fall. Because grant funding expires in June 2013, construction is critical for this last available time which avoids such environmental concerns as sensitive species nesting periods and the rainy season constraints.

First Amendment to Consulting Agreement - Benton Burn Site Remediation Project
June 27, 2012
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The scope of work for this First Amendment to the Consulting Agreement includes unanticipated work such as California gnatcatcher surveys, cultural resources evaluation, additional drafts/reviews of the environmental documents, and extensive permitting with several resource agencies- specifically RWQCB, California Department of Fish and Game, and the U.S. Army Corps of Engineers. The scope of this proposed amendment does not exceed the grant authorization or the budget contingency originally established for this project.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Edward N. Domingue", with a stylized flourish at the end.

Edward N. Domingue, P.E.
Director of Engineering Services

RESOLUTION NO. 2012-118

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR AND CITY CLERK, TO EXECUTE, ON BEHALF OF THE CITY, A FIRST AMENDMENT TO THE CONSULTING AGREEMENT WITH URS CORPORATION FOR ADDITIONAL ENVIRONMENTAL SUPPORT FOR THE REMEDIATION OF THE BENTON BURN SITE FOR THE CITY OF ESCONDIDO

WHEREAS, the City of Escondido desires to implement a remedial action plan for the Benton Burn Site in order to protect public health, safety, and the environment; and

WHEREAS, the California Department of Resources Recycling and Recovery ("CalRecycle") has approved grant funds to facilitate cleanup and mitigation efforts for former solid waste disposal sites; and

WHEREAS, the URS Corporation previously prepared a remedial action plan dated October 5, 2009, and subsequently approved by the California Integrated Waste Management Board for the Benton Burn Site; and

WHEREAS, the City and URS Corporation entered into a consulting agreement by Resolution No. 2010-135, dated September 1, 2010; and

WHEREAS, the Director of Engineering Services recommends approval of a First Amendment to the Consulting Agreement ("First Amendment") with URS Corporation for additional environmental support for the Benton Burn Site Remediation Project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true.
2. That the City Council accepts the recommendation of the Director of Engineering Services.
3. That the Mayor and the City Clerk are hereby authorized to execute, on behalf of the City, a First Amendment with URS Corporation for additional environmental services for the Benton Burn Site Remediation Project. A copy of the First Amendment is attached as Exhibit "1" and is incorporated by this reference.

CITY OF ESCONDIDO
FIRST AMENDMENT TO CONSULTING AGREEMENT

This "Amendment" is made this day of , 2012.

Between: CITY OF ESCONDIDO
 a municipal corporation
 201 N. Broadway
 Escondido, California 92025
 Attn: Edward N. Domingue
 ("CITY")

And: URS Corporation
 4225 Executive Square, Suite 1600
 La Jolla, California 92037
 Attn: Robert K. Scott
 (858) 812-9292
 ("CONSULTANT")

Witness that whereas:

- A. CITY and CONSULTANT entered into an agreement on November 15, 2010 ("Agreement"), wherein CITY retained CONSULTANT to provide services support a grant application and implement a corrective action plan for the Benton Burn Site Remediation Project; and
- B. CITY and CONSULTANT desire to amend the Agreement to include additional work, which is defined in "Attachment A" to this Amendment, which is incorporated by reference;

NOW THEREFORE, it is mutually agreed by and between CITY and CONSULTANT as follows:

- 1. The CONSULTANT will furnish the services described in "Attachment A" to this Amendment.
- 2. CITY will compensate the CONSULTANT in an additional amount not to exceed \$81,700.00, pursuant to the conditions contained in "Attachment A" to this

Amendment. Total authorized compensation based on all agreements to date is \$386,200.00.

3. All additional terms under the Agreement between CITY and CONSULTANT still apply to the additional work to be performed by CONSULTANT under this Amendment. If any of the terms of this Amendment conflict with the Agreement, this Amendment must prevail.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day and year first above written.

CITY OF ESCONDIDO

Date: _____

Sam Abed
Mayor

Date: _____

Diane Halverson
City Clerk

Date: _____

URS Corporation

Robert K. Scott
Vice President

(The above signature should be notarized)

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
JEFFREY R. EPP, City Attorney

By: _____



March 8, 2011
Revised May 24, 2012

Mr. Ed Domingue, P.E.
Director of Engineering Services
City of Escondido
201 N. Broadway
Escondido, CA 92025

Subject: Former Benton Burn Site Remediation Project (A-3000)
Request for Budget Amendment for Additional Services
City of Escondido, California
URS Project No. 27700025.03000

Dear Mr. Domingue:

URS Corporation Americas (URS) is providing this request to the City of Escondido Department of Planning (City) for a budget amendment to address additional services to support the Former Benton Burn Site Remediation Project (A-3000). This request is being submitted in response to a meeting Mr. Bob Scott of URS had with you at your office on May 11, 2012. This request for budget amendment supercedes the request submitted to the City dated March 8, 2011. Background, the scope of work and estimated cost are described below.

BACKGROUND

The former burn site is located in the northern portion of the City of Escondido and an unincorporated area of San Diego County. A portion of the site underlies property owned by the Country Club Woods Homeowners' Association (HOA) and two other private residences. The HOA property is located within the City of Escondido and the two other properties lie within the County of San Diego.

A Remedial Action Plan (RAP) was prepared by URS under contract to the California Integrated Waste Management Board (CIWMB), currently CalRecycle. The RAP identifies three remedial alternatives for the site and recommends consolidation and capping to meet the requirements of California Code of Regulations Title 27. In September 2010, the City applied for a matching grant with CalRecycle through AB 2136 for the remediation of the former Benton Burn Site. In order to apply for the grant, the City needed to show that it was completing permitting associated with the remedial action.

URS prepared an Initial Study/Mitigated Negative Declaration (IS/MND) pursuant to California Environmental Quality Act (CEQA) guidelines that was certified by City Council in October 2011. There were several out-of-scope items URS completed in order to complete the IS/MND. These services were summarized in a previous change order request dated March 8, 2011 that have been included herein at your request.

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URS continues to assist the City with permitting the remedial action with the resource agencies, including the U.S. Army Corps of Engineers (USACE), California Department of Fish and Game (CDFG) and the San Diego Regional Water Quality Control Board (RWQCB) through a notification under Nationwide Permit No. (NWP) 38. URS submitted documentation in support of the use of NWP 38 to the RWQCB for this project on August 18, 2011; however, the enrollment was denied in a letter dated November 1, 2011 for a number of reasons, including that the RWQCB had no record of having reviewed the RAP. The RWQCB had several opportunities to review the RAP but had not provided comments to CalRecycle during its finalization of the RAP in 2009 or during circulation of the IS/MND. URS addressed the RWQCB letter as an out-of-scope task, as was concurred by you during our recent May 11, 2012 meeting.

SCOPE OF WORK

IS/MND-RELATED SERVICES

The tasks described below are additional activities that were identified to be completed during the preparation of the IS/MND. These services have been completed and the IS/MND was certified by City Council in October 2011.

TASK 1. CALIFORNIA GNATCATCHER SURVEYS AND REPORTING

Biological resources surveys were conducted and identified coastal sage scrub vegetation in the study area. Coastal sage scrub is represented by California sagebrush (*Artemisia californica*), black sage (*Salvia melifera*), laurel sumac (*Malosma laurina*), and flat-topped buckwheat (*Eriogonum fasciculatum*). This vegetation community occupies the south-facing slope that rises to the northwest of the drainage, and extends to a major ridgeline to the north. A small portion (0.05 acre) of the lower section extends into the project site. Although not observed during URS survey activities, the presence of coastal sage scrub vegetation infers the possibility of California gnatcatcher inhabiting the area, a state- and federal-listed species. Protocol surveys were needed to confirm absence of the California gnatcatcher.

Upon your notice to resume work, URS notified USFWS of the surveys in writing on February 28, 2011 (at least 10 days prior to the anticipated start date of survey work and receive approval prior to beginning work). URS will follow USFWS protocol *California Coastal California Gnatcatcher (Polioptila californica californica)* Presence/Absence Survey Guidelines (February 28, 1997) for survey activities. A total of three survey visits were conducted in March 2011. The survey visits were conducted at least seven days apart. URS prepared a report to document the findings of the surveys, which was submitted to USFWS within 45 days following field surveys. No California gnatcatcher was observed during the surveys.

TASK 2. CULTURAL RESOURCES

URS requested a records search for the Benton Burn Site with the South Coastal Information Center (SCIC) at California State University, San Diego. The records search included the Project area and a quarter-mile search radius surrounding the Project. URS performed an archaeological survey of

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the Project area, which included a "walkover" archaeological inspection of the Project area, overview photographs of the site, survey conditions, and notes/observations. The survey's purpose was to provide researchers with a specific understanding of the archaeological potential of the Project area in support of the IS/MND. URS has documented the results of the records search and the archaeological survey of the Benton Burn Site in a technical letter report, which was used as a reference document in the Initial Study/Mitigated Negative Declaration.

The results of the archaeological survey were positive for archaeological resources; since a historic 1940s – 1950s burn dump (i.e., the Benton Burn Site) is located within the ravine of the Project area. URS has prepared Department of Parks and Recreation (DPR) forms for the site, including a Primary Record (DPR 523A (1/95)), Archaeological Site Record (DPR 523C (1/95)), and a Location Map (DPR 523J (1/95)), and submitted the forms to the SCIC for their records. URS included the completed DPR forms with the final IS/MND.

TASK 3. IS/MND ADDITIONAL DRAFTS

The scope of work for the IS/MND in our proposal assumed that the document would be completed as a draft and final document. URS worked with City staff to complete the IS/MND through several additional iterations (five drafts) over an extended period of time. This process required additional meetings, staff time and project management beyond that initially proposed. The cost associated with these additional services is included herein.

PERMIT-RELATED SERVICES

TASK 4. CDFG, USACE AND RWQCB PERMITTING

URS has assisted the City with permitting the activities appearing in the RAP with the resource agencies. This task has included submittal of permit application fees on behalf of the City. It prepared an application for a Streambed Alteration Agreement (SBAA; CDFG 1602) for impacts to drainage or watercourse that may fall under the jurisdiction of the California Department of Fish and Game (CDFG). The results of the wetlands delineation survey described in Task 1 were used to prepare the SBAA for the project and to initiate consultation with CDFG. Mitigation measures, if needed, will be identified and outlined in the application. The SBAA process typically takes approximately 60 days from the date the application is submitted.

URS is coordinating consultation with the U.S. Army Corps of Engineers (USACE) to submit a Clean Water Act (CWA) 404 Wetlands Nationwide Permit Application for the project site. The drainage is under the USACE jurisdiction and URS will follow the Preliminary Determination Process for this project. Mitigation measures, if needed, will be identified and outlined in the application. The USACE wetlands permitting process can take up to 180 days from the date the application is submitted depending on USACE staff availability. The USACE has maintained an open file for this project in considering the additional permitting activities required by the RWQCB described below.

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URS is coordinating consultation with the RWQCB and submitted a CWA 401 Water Quality Certification Application. Mitigation measures, if needed, will be identified and outlined in the application. RWQCB water quality certification has been concurrent with CDFG and USACE permitting.

TASK 5. ADDITIONAL PERMITTING SUPPORT

URS submitted the permit applications and began consultation with the resource agencies in late August 2011. The permitting process with the resource agencies is nearing completion; however, on November 1, 2011, the City received a letter from the RWQCB denying approval to implement the RAP under NWP No. 38. Receipt of the letter from the RWQCB was unexpected and as agreed during our meeting with you on May 11, 2012, addressing the letter was an out-of-scope activity. As a result of the letter, the following services were needed to make progress on the permitting process:

- Addressing RWQCB comments appearing in its November 1, 2011 letter;
- Coordinating and scheduling a site reconnaissance with CDFG, USACE, RWQCB and City staff;
- Meeting with City personnel on November 22, 2011;
- Conducting a site reconnaissance with DFG and RWQCB staff on November 22, 2011;
- Preparing a response to the RWQCB letter;
- Attending and conducting conference calls;
- Attending a site reconnaissance with USACE staff on December 6, 2011;
- Scheduling, preparing for and conducting a meeting with RWQCB staff on December 13, 2011;
- Resubmitting the permit application and supporting information to the RWQCB for the 401 Water Quality Certification on December 27, 2011; and
- Managing the project.

Concurrent with these activities, the RWQCB developed a permit application form for 401 Water Quality Certifications that must accompany to permit applications. The RWQCB has requested that this form be completed. Staff time has been included to complete this form so that the RWQCB can move forward with approving our permit application.



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COST ESTIMATE

Our estimated fees are provided in the table below. We propose to perform our services on a time-and-materials basis in accordance with our existing contract.

TASK	Estimated Cost
IS/MND-related Services:	
Task 1 – California Gnatcatcher Surveys and Reporting	\$4,800
Task 2 – Cultural Resources	\$4,800
Task 3 – IS/MND Additional Drafts	\$9,100
Permit-related Services:	
Task 3 – USACE, CDFG and RWQCB Permitting	22,500
Task 4 – Additional Permitting Support	\$39,500
TOTAL ESTIMATED COST	\$81,700

We estimate that the cost to conduct the services described herein is approximately \$81,700. We will perform these services in accordance with Consulting Agreement A-3000 for the Benton Burn Dump Remediation Project dated November 15, 2010 and the Schedule of Fees. We will not exceed this fee without prior notification and approval. It is requested that the contract budget will be amended from \$304,500 to \$386,200 to accommodate the services described herein. Please provide written authorization of this amendment.

We appreciate the opportunity to assist the City of Escondido with this project. If you have any questions regarding this request for a change order amendment to our contract, please contact us at call us at 858.812.9292.

Sincerely,

URS CORPORATION

Robert K. Scott, P.G., C.Hg.
Vice President

RKS\KEW:ml

Kristen E. Walker-Potente
Environmental Project Manager