

**CLARK COUNTY
STAFF REPORT**

DEPARTMENT/DIVISION: Environmental Services / Policy and Planning / Clean Water Program

DATE: October 15, 2013

REQUEST: Authorize the Environmental Services Director to amend a contract for expert witness services with Geosyntec Consultants, Inc. to support Clark County's appeal of NPDES permit requirements to a maximum amount of \$32,500.

CHECK ONE: Consent Hearing Chief Administrative Officer

BACKGROUND: Clark County is appealing several requirements of the 2013 National Pollutant Discharge Elimination Systems (NPDES) Phase I municipal stormwater permit issued in August 2012. For example, the permit's monitoring requirements, mandatory use of untested practices such as permeable pavement, and an untested approach to watershed planning do not allow Clark County to use alternatives to prescribed permit approaches. Geosyntec is a national leader in stormwater management, providing professional services to evaluate permit requirements and expert witness testimony to support the county's contention that alternatives can provide equal or greater environmental benefit than the permit actions.

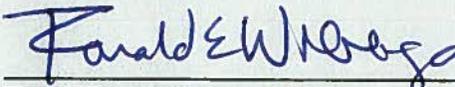
COMMUNITY OUTREACH: This contract does not include public outreach elements.

BUDGET AND POLICY IMPLICATIONS: Funding is included in the approved 2013-2014 Environmental Services budget in Fund 4420. The action is consistent with Clark County Board of County Commissioners' direction to Environmental Services and the Prosecuting Attorney to appeal certain permit requirements. The \$24,500 contract was approved by the County Administrator. This amendment adds \$8,000 to the total contract amount.

FISCAL IMPACTS: Yes (see Fiscal Impacts Attachment) No

ACTION REQUESTED: Authorize the Environmental Services Director to amend a contract for expert witness services with Geosyntec Consultants, Inc. to support Clark County's appeal of NPDES permit requirements to a maximum amount of \$32,500.

DISTRIBUTION: Please return the approved staff report to Environmental Services Administration.



Ron Wierenga
Resource Policy and Planning Manager



Don Benton
Environmental Services Director

RS/RW/bt

APPROVED: 

CLARK COUNTY, WASHINGTON
BOARD OF COMMISSIONERS

OCT. 15, 2013

SR 201-13

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FISCAL IMPACT ATTACHMENT

Part I: Narrative Explanation

I.A - Explanation of what the request does that has fiscal impact and the assumptions for developing revenue and costing information.

The expert witness and technical support professional services contract expends a portion of approved Clean Water Fund professional services budget. The cost is a "not to exceed" amount. The original contract was a \$24,500 contract approved by the County Administrator. This amendment adds \$8,000 to the total contract amount.

Part II: Estimated Revenues

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total	GF	Total
4420 / Clean Water Fund		\$8,000.00				
Total:	\$0.00	\$8,000.00	\$0.00	\$0.00	\$0.00	\$0.00

II.A - Describe the type of revenue (grant, fees, etc.)

The Clean Water fund revenue is largely stormwater fees, with some grant and interest revenue.

Part III: Estimated Expenditures

III.A - Expenditures summed up

Fund #/Title	FTE's	Current Biennium		Next Biennium		Second Biennium	
		GF	Total	GF	Total	GF	Total
4420 / Clean Water Fund			\$8,000.00				
Total:		\$0.00	\$8,000.00	\$0.00	\$0.00	\$0.00	\$0.00

III.B = Expenditure by object category

Fund 4420 Clean Water Fund	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total	GF	Total
Salary/Benefits						
Contractual		\$8,000.00				
Supplies						
Travel						
Other controllables						
Capital Outlays						
Inter-fund Transfers						
Debt Service						
Total:	\$0.00	\$8,000.00	\$0.00	\$0.00	\$0.00	\$0.00

**CLARK COUNTY
STAFF REPORT**

DEPARTMENT/DIVISION: Environmental Services / Policy and Planning / Clean Water Program

DATE: March 19, 2013

REQUEST: Approve a contract for expert witness services by Geosyntec Consultants, Inc. to support Clark County's appeal of NPDES permit monitoring requirements for a maximum amount of \$24,500.

CHECK ONE: Consent Hearing Chief Administrative Officer

BACKGROUND: Clark County is appealing several requirements of the 2013 National Pollutant Discharge Elimination Systems (NPDES) Phase I municipal stormwater permit issued in August 2012. For example, the permit's monitoring requirements, mandatory use of untested practices such as permeable pavement, and an untested approach to watershed planning do not allow Clark County to use alternatives to prescribed permit approaches. Geosyntec is a national leader in stormwater management, and can provide professional services to evaluate permit requirements and provide expert witness testimony to support the county's contention that alternatives can provide equal or greater environmental benefit than the permit actions.

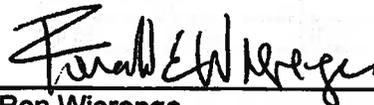
COMMUNITY OUTREACH: This contract does not include public outreach elements.

BUDGET AND POLICY IMPLICATIONS: Funding is included in the approved 2013-2014 Environmental Services budget in Fund 4420. The action is consistent with Clark County Board of County Commissioners' direction to Environmental Services and the Prosecuting Attorney to appeal certain permit requirements.

FISCAL IMPACTS: Yes (see Fiscal Impacts Attachment) No

ACTION REQUESTED: Approve a contract for expert witness services by Geosyntec Consultants, Inc. to support Clark County's appeal of NPDES permit monitoring requirements for a maximum amount of \$24,500.

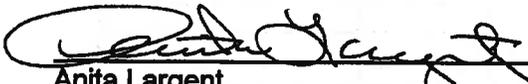
DISTRIBUTION: Please return the original signed agreements and the approved staff report to Environmental Services Administration.



Ron Wierenga
Resource Policy and Planning Manager

APPROVED: 

Bill Barron
County Administrator



Anita Largent
Interim Environmental Services Director

RS/RW/bt

c: Rod Swanson

FISCAL IMPACT ATTACHMENT

Part I: Narrative Explanation

I.A - Explanation of what the request does that has fiscal impact and the assumptions for developing revenue and costing information.

The expert witness and technical support professional services contract expends a portion of approved Clean Water Fund professional services budget. The cost is a "not to exceed" amount.

Part II: Estimated Revenues

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total	GF	Total
4420 / Clean Water Fund		\$24,500.00				
Total:	\$0.00	\$24,500.00	\$0.00	\$0.00	\$0.00	\$0.00

II.A - Describe the type of revenue (grant, fees, etc.)

The Clean Water fund revenue is largely stormwater fees, with some grant and interest revenue.

Part III: Estimated Expenditures

III.A - Expenditures summed up

Fund #/Title	FTE's	Current Biennium		Next Biennium		Second Biennium	
		GF	Total	GF	Total	GF	Total
4420 / Clean Water Fund			\$24,500.00				
Total:		\$0.00	\$24,500.00	\$0.00	\$0.00	\$0.00	\$0.00

III.B = Expenditure by object category

Fund 4420 Clean Water Fund	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total	GF	Total
Salary/Benefits						
Contractual		\$24,500.00				
Supplies						
Travel						
Other controllables						
Capital Outlays						
Inter-fund Transfers						
Debt Service						
Total:	\$0.00	\$24,500.00	\$0.00	\$0.00	\$0.00	\$0.00

CONTRACT

THIS AGREEMENT, entered this 25 day of March, 2013, by and between CLARK COUNTY, WASHINGTON, after this called "County," a municipal corporation of the State of Washington, and GEOSYNTEC CONSULTANTS, INC., a Florida Corporation, after this called "Contractor."

WITNESSETH

WHEREAS, County is requesting professional support and expert witness services.

WHEREAS, Contractor has the expertise to provide professional services related to preparing hearing materials and providing expert testimony regarding County's appeal of the Washington Department of Ecology NPDES phase I municipal stormwater permit Special Condition S5.C.5. Stormwater Controls for Development and Redevelopment, including LID BMP applications and watershed-scale stormwater planning; S8.B. Status and Trends Monitoring; and S8.C. Effectiveness Monitoring.

WHEREAS, County does not have available staff with the expertise to provide such services for the benefit of the County, NOW, THEREFORE,

THE COUNTY AND THE CONTRACTOR MUTUALLY AGREE AS FOLLOWS:

1. Services. The Contractor shall perform services as follows:

A. Generally: To provide professional factual and expert witness services for Clark County related to the issues in Clark County v. Ecology as directed.

B. Preparation of general approach to addressing stated legal issues and exhibits supporting the County case.

C. If requested, evaluation of deposition transcripts, prefiled testimony, and exhibits filed by other parties.

D. Providing written prefiled testimony.

E. Appearing to testify at deposition, if required.

F. Appearing as a witness at the hearing.

G. Professional services may address the validity of the County status and trend monitoring as an alternative to the permit requirements to monitor stormwater, the efficacy of particular LID practices such as permeable pavement, and the effectiveness of proposed watershed-scale planning. .

2. Time. The contract shall be deemed effective beginning February 15, 2013 and ending December 31, 2013.

3. Compensation. County shall pay the Contractor for performing said services upon receipt of a written invoice. The parties mutually agree that billing will be at an hourly rates and other direct costs as included in Attachment 1, and in no event shall the total amount of billing exceed \$24,500 without prior written approval of the County.

4. Termination. The County may terminate this contract immediately upon any breach of this contract by Contractor. The waiver by the County of one or more breaches shall not be held or construed as a waiver of any subsequent breach or breaches. Further, County may terminate this contract upon immediate notice to Contractor in the event that the funding for the project, from wheresoever obtained, ceases or is reduced in amount. The Contractor will be reimbursed for services performed up to the date of termination.

5. Independent Contractor. The Contractor shall always be an independent contractor and not an employee of the County, and shall not be entitled to compensation or benefits of any kind except as specifically provided herein.

6. Indemnification Clause. The Contractor does release, indemnify and promise to defend and save harmless the County, its elected officials, officers, employees and agents from and against any and all liability, loss, damages, expense, action, and claims, including costs and reasonable attorney's fees incurred by the County, its elected officials, officers, employees and agents in defense thereof, asserting or arising directly or indirectly on account of or out of the performance of service, or failure to perform service, by Contractor and any employee or officer, pursuant to this Agreement. With respect to professional liability (liability related to professional acts, errors or omissions), the foregoing indemnity obligations shall be

limited only to the extent of professional fault, breach of contract, or breach of other legal obligation of Contractor. In making such assurances, the Contractor specifically agrees to indemnify and hold harmless the County from any and all bodily injury claims brought by employees of the Contractor and expressly waives its immunity under the Industrial Insurance Act as to those claims which are brought against the County; provided, however, this paragraph does not purport to indemnify the County against the liability for damages arising out of bodily injuries to person or damages caused by or resulting from the negligence of the County, its elected officials, officers, employees and agents.

7. Wage and hour compliance. Contractor shall comply with all applicable provisions of the Fair Labor Standards Act and any other legislation affecting its employees and the rules and regulations issued thereunder insofar as applicable to its employees and shall always save County free, clear and harmless from all actions, claims, demands and expenses arising out of said act and the rules and regulations that are or may be promulgated in connection therewith.

8. Social Security and Other Taxes. The Contractor assumes full responsibility for the payment of all payroll taxes, use, sales, income or other form of taxes, fees, licenses, excises, or payments now required by any city, federal or state legislation, or that may be enacted during the term of this Agreement, as to all persons employed by the Contractor in performance of the work pursuant to this Agreement; and Contractor shall assume exclusive liability therefore, and meet all requirements there under pursuant to any rules and regulations that are now and may be promulgated in connection therewith.

9. Contract Documents. Contract documents consist of this Agreement and any written amendments hereto that may be adopted and signed by both parties in the future.

10. Equal Employment Opportunity. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, handicap, marital status or national origin.

11. Changes. County may, from time to time, require changes in the scope of the services to be

performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between County and the Contractor, shall be incorporated in the written amendments to the Agreement.

12. Governing Law: Venue. This Agreement shall be governed by the laws of the State of Washington. Venue for any litigation shall be Clark County, Washington.

13. Confidentiality. Contractor agrees to keep confidential all information relating to County, and the permit appeal, including preparation materials and communications with the County, unless authorized by County to release the information.

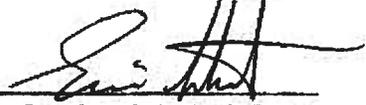
14. Conflict of Interest. The Contractor covenants that neither it nor any employee has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services hereunder. The Contractor further covenants that in the performance of this Agreement, no person having such interest shall be employed by it.

15. Consent and Understanding. This Agreement contains a complete and integrated understanding of the agreement between the parties and supersedes any understandings, agreement, or negotiations, whether oral or written, not set forth herein or in written amendments hereto duly executed by both parties.

16. Severability. If any provision of this Agreement is held invalid, the remainder would then continue to conform to the terms and requirements of applicable law.

IN WITNESS THEREOF, County and the Contractor have executed this agreement on the date first above written.

GEOSYTEC CONSULTANTS

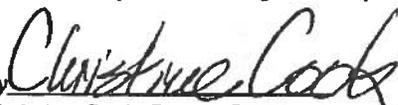
By 
Eric Strecker, Principal, Geosyntec Consultants, Inc

CLARK COUNTY

By 
Bill Barron, County Administrator

APPROVED AS TO FORM ONLY

**Anthony F. Golik,
Clark County Prosecuting Attorney**

By 
Christine Cook, Deputy Prosecuting Attorney

GEOSYNTEC CONSULTANTS

2013 RATE SCHEDULE

<u>Engineer/Scientist</u>	<u>Rate/Hour</u>
Staff Professional	\$114
Senior Staff Professional	\$130
Professional	\$150
Project Professional	\$172
Senior Professional	\$194
Associate	\$214
Principal	\$230
<u>Construction Services</u>	
Engineering Technician I	\$ 59
Engineering Technician II	\$ 64
Senior Engineering Technician I	\$ 69
Senior Engineering Technician II	\$ 74
Site Manager I	\$ 82
Site Manager II	\$ 92
Construction Manager	\$104
<u>Design, Graphical, and Administrative Services</u>	
Designer	\$125
Senior Drafter/Senior CADD Operator	\$ 110
Drafter/CADD Operator/Artist	\$ 95
Project Administrator	\$ 60
Clerical	\$ 49
<u>General</u>	
Direct Expenses	Cost plus 12% Subcontract
Services	Cost plus 12%
Technology/Communications Fee	3% of Professional Fees
Specialized Computer Applications (per hour)	\$ 15
Personal Automobile (per mile)	Current Gov't Rate
Photocopies (per page)	\$.09

Rates are provided on a confidential basis and are client and project specific.

The labor rate for depositions or testimony shall be \$400 per hour.

Unless otherwise agreed, rates will be adjusted annually based on a minimum of the applicable Consumer Price Index (CPI).

Rates for field equipment, health and safety equipment, and graphical supplies presented upon request.