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**DATE:** August 13, 2019  
**TO:** Board of Supervisors  
**FROM:** Jacqueline R. Onciano, Director, Dept. of Planning and Development  
**SUBJECT:** First Amendment to Agreement with Ascent Environmental, Inc.

**RECOMMENDED ACTION**

Approve First Amendment to Agreement with Ascent Environmental, Inc., relating to providing quarry-related planning management services increasing the maximum contract amount by \$227,196 from \$366,608 to \$593,804, with no change to the term of the Agreement, that has been reviewed and approved by County Counsel as to form and legality.

**FISCAL IMPLICATIONS**

There will be no net impact to the General Fund by approving this recommended action, as the applicant, Lehigh Southwest Cement Company (Lehigh), will fully reimburse all consultant costs. These funds are pass-through funds and have no effect on the Department budget or the General Fund.

**CONTRACT HISTORY**

The Department of Planning and Development (Department) has previously utilized contractors for professional planning and project management services. After completing a comprehensive needs assessment in September 2018, the Department determined a contract for professional planning project management services would be required to continue to manage current projects effectively and in a timely manner.

After an informal competitive procurement (ICP) process, the Board of Supervisors approved a Service Agreement with Ascent Environmental, Inc. (Ascent) on March 19, 2019, relating to providing quarry-related professional planning management services in the amount of \$366,608 (please refer to linked Legislative File 95422 for more detailed Contract History).

This would be the First Amendment to the Ascent Agreement. The First Amendment seeks a continuation of professional planning management services for the Lehigh 2019 Reclamation Plan Amendment (RPA), hereby referred to as the "Lehigh 2019 RPA", and builds on and is in addition to the Scope of Services set forth in the original Service Agreement approved by the Board in March 2019. The First Amendment is not to exceed \$227,196, and there is no change to the term of the agreement. The amended maximum financial obligation for the

Ascent Agreement shall not exceed \$593,804.

## **REASONS FOR RECOMMENDATION**

Due to ongoing staffing and recruitment challenges in the Planning Division, the Department is requesting the Board approve the First Amendment to the Agreement with Ascent to provide effective planning project management services and timely processing for Lehigh 2019 RPA application, filed with the Department of Planning and Development on May 22, 2019. The County Planning Commission will take action to approve or deny the Lehigh 2019 RPA application. The Planning Commission's action is subject to appeal to the Board of Supervisors.

The Lehigh 2019 RPA contains the following proposal and components.

1. Amend the Reclamation Plan for Permanente (Lehigh) Quarry, adopted by the Board of Supervisors on June 26, 2012, to expand mining operations on the 3,510-acre property.
  - a. Increase the reclamation boundary from 1,238.6 acres to 1,312 acres. Of the 1,312 acres, 631 acres would encompass current and planned reclamation surfaces.
  - b. Modify the 2012 Reclamation Plan Amendment regarding the materials (limestone and greenstone) stored at the West Materials Storage Area (WMSA). WMSA materials are now proposed to be reclaimed in place and not used as fill material for the North Quarry. Lehigh proposes to fill the quarry with materials from construction fill in the region. This would result in the maximum final elevation for the WMSA to increase from approximately 1,900 feet mean sea level (msl) to 2,060 feet msl.
  - c. Close the East Materials Storage Area (EMSA).
  - d. Decrease the lower ridge crest along a portion of the North Quarry highwall to a minimum elevation of approximately 1,400 feet msl. This would consist of a slope "lay-back" at the crest of the north highwall.
  - e. Implement new mining activities and reclamation of the Rock Plant Reserve site encompassing approximately 30 acres.
  - f. Establish use and eventual reclamation of an existing Pacific Gas & Electric, Co. (PG&E) utility access road or the potential establishment of new haul road between Leigh and Stevens Creek Quarry ("Utility Haul Road").
  - g. Reclaim an approximately 3,600-foot segment of the existing Plant Quarry Road and adjacent areas.

This project will require the preparation of an Environmental Impact Report by a consultant (other than Ascent) retained by the County. The Lehigh 2019 RPA, and its environmental review, will require internal coordination with County departments as well as regulatory agencies. Potential issues associated with the Lehigh 2019 RPA include impacts to long-

range scenic views, criteria air pollutants, water quality, contamination of nearby waterways, and transportation.

### **CHILD IMPACT**

The recommended action will have no/neutral impact on children and youth.

### **SENIOR IMPACT**

The recommended action will have no/neutral impact on seniors.

### **SUSTAINABILITY IMPLICATIONS**

The recommended action will have no/neutral sustainability implications.

### **BACKGROUND**

Lehigh Permanente Quarry is a surface mining operation located at 24001 Stevens Creek Boulevard, in the unincorporated area of the City of Cupertino. In 2011, the Board determined that Lehigh possessed vested rights to conduct quarry surface mining operations on 13 Quarry parcels, and thus did not require a Use Permit for ongoing surface mining activities.

In 2012, the Board approved an updated Reclamation Plan for the Lehigh Permanente Quarry, requiring the Quarry be restored to an open space use following the end of the vested surface mining activities.

In the Summer of 2018, and without the County's knowledge, Lehigh widened an existing PG&E maintenance road for the purpose of transporting and delivering aggregate materials from Lehigh to Stevens Creek Quarry, for the latter's processing and sale, which was determined by the County to be unpermitted.

On August 17, 2018, a Notice of Violation was issued requiring Lehigh to cease use of the illegally widened PG&E road, until a Reclamation Plan Amendment was applied for and approved.

On November 26, 2018, Lehigh submitted a Reclamation Plan Amendment to the County indicating the widened PG&E road would not be used for future hauling and instead identified an alternate proposed internal "haul road" connecting Lehigh and Stevens Creek Quarries. In February 2019, the County had intended to respond to the November 2018 Reclamation Plan Amendment with an Incomplete Letter, identifying incomplete information and issues associated with the proposal.

On February 20, 2019, Lehigh notified the County it would be withdrawing the November 2018 Reclamation Plan Amendment application, which had proposed the alternate internal "haul road." Lehigh stated it will be resubmitting the application as a Minor Amendment for the existing PG&E access road only.

On March 25, 2019, Lehigh submitted a Reclamation Plan Amendment addressing reclamation of the illegal haul road, responding to the August 17, 2018 Notice of Violation. An incomplete letter was sent from the Department to Lehigh regarding the Reclamation Plan Amendment on April 29, 2019.

On May 22, 2019, Lehigh submitted a Reclamation Plan Amendment to expand mining operations within the existing main pit and within an area southwest of the Rock Plant. This Reclamation Plan Amendment is currently under review by the Department; the Planning Division is currently in need of planning management service resources to manage the project due to the size, complexity, scope, and sensitivity.

### **CONSEQUENCES OF NEGATIVE ACTION**

If the Recommended Action is not approved, the Department will not have the resources to effectively manage the Lehigh 2019 RPA, resulting in delays in processing the application.

### **STEPS FOLLOWING APPROVAL**

The Office of the Clerk of the Board is requested to notify Rob Eastwood and Sarah Oliveira in the Department of Planning and Development once the Board President and Clerk of the Board have signed the Amendment.

### **LINKS:**

- Linked To: 95422 : 95422

### **ATTACHMENTS:**

- Ascent Service Agreement 4300016208 Amendment 1 (PDF)