



Midpeninsula Regional
Open Space District

R-18-90
Meeting 18-30
July 25th, 2018

AGENDA ITEM 7

AGENDA ITEM

Award of Contract for State and Federal Waters Environmental Permitting Services

GENERAL MANAGER'S RECOMMENDATIONS

1. Authorize the General Manager to enter into a contract with Horizon Water and Environment, LLC., to provide state and federal waters environmental permitting services in an amount not to exceed \$93,209.
2. Authorize a 7% contingency of \$6,525, to be awarded only if necessary, to cover unanticipated issues, for a total contract amount not to exceed \$99,734.

SUMMARY

Midpeninsula Regional Open Space District (District) regularly obtains many environmental permits for ongoing maintenance, operations, and new construction activities for protected waters and species. The District utilizes a mix of “programmatic” permits that cover many activities across District boundaries and “individual” permits that cover specific projects. The proposed contract of \$99,734 would provide consultant services to develop and obtain programmatic federal and state permits from the US Army Corps of Engineers (Corps) and Regional Water Quality Control Board (RWQCB) to cover ‘routine maintenance’ activities and as many capital projects identified in the 5-year capital improvement program as feasible. The Fiscal Year 2018-19 Budget includes sufficient funds for the proposed contract.

DISCUSSION

Background

Environmental permits largely fall within two categories: water and wildlife, which derive from the Clean Water Act and Endangered Species Act respectively, each having state and federal versions. Much of the District’s work that generates the need for environmental permitting is centered around avoiding or controlling water as it intersects with District infrastructure, including trails, roads, bridges, and ponds. Additionally, many of the protected species on District preserves (e.g. California red-legged frog, San Francisco garter snake, western pond turtle) are associated with these aquatic habitats and obtaining permits for potential impacts to these species becomes a component of the environmental permitting process. Therefore, most projects require species and water-related permits from both state and federal agencies (see Attachment 1 and Table 1). The District has experienced a significant increase in the number of permits that need to be secured given the recent growth of the maintenance and capital programs.

Although the California Department of Fish and Wildlife issued a 5-year renewal of the District’s Routine Maintenance Agreement (RMA), the RWQCB have conditioned the renewal or extension of their RMA with the District to the District obtaining a similar agreement with the Corps to cover the federal waters jurisdiction. By securing a similar agreement with the Corps, the RWQCB can fulfill its shared duty under the Clean Water Act. The RMA, covering the majority of the District’s maintenance activities that intersect State waters jurisdiction, is set to expire at the end of the 2018 construction season. The impact of losing this routine maintenance permit would mean that the District’s routine projects will have to obtain individual permits, requiring additional staff and consultant resources, and adding significant time and cost to deliver ‘routine’ projects. Therefore, renewal of the RMA is a high priority. As stated previously, renewal of the RMA is predicated on the District also securing a programmatic Federal waters permit, which is estimated to require three years. Although this is a long timeframe, staff is hopeful that the RWQCB will extend the current RMA if the District is able to demonstrate progress in obtaining the Federal permit from the Corps.

Obtaining a Federal waters permit (AKA ‘Regional General Permit’) from the Corps also entails the Corps consulting with US Fish and Wildlife Service (USFWS) to ensure Federally-listed species (e.g. San Francisco garter snake, California red-legged frog) are adequately protected under the Endangered Species Act. This “Section 7” consultation will add to the suite of wildlife-related permits that the District currently has and will facilitate the delivery of routine and capital projects.

Table 1. State and Federal Environmental Permits for District Projects

Permit Type	Agencies	Current Permit Approach	Potential Future Approach
Federal Wildlife	US Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS)	Mixed: programmatic “recovery” permit for some species/activities and some individual permits	Comprehensive: Section 7 consultation for Corps-jurisdiction projects
Federal Water	US Army Corps of Engineers (Corps)	Individual permits specific to different activities	Comprehensive: 404 Regional General Permit covering <u>most</u> activities
State Wildlife	California Department of Fish and Wildlife (CDFW)	Mixed: programmatic “routine maintenance agreement” and individual permits for new facilities (roads, trails, parking lots), or large (non-routine) projects	Comprehensive: Recently obtained expanded activities covered under programmatic agreement
State Water	Regional Water Quality Control Board (RWQCB)	Mixed: programmatic “routine maintenance agreement” and individual permits for new facilities or large (non-routine) projects	Comprehensive: Programmatic “Stream Maintenance Program” covering <u>most</u> activities

The primary drivers for a change to the status quo permitting approach are:

- Expiring Routine Maintenance Agreement (RMA) with RWQCB
- Request from RWQCB to obtain a Regional General Permit/Clean Water Act, Section 404 Permit from the Corps to renew the RMA
- A lack of programmatic Federal wildlife coverage for projects that are not species 'recovery' activities (i.e. public access/development projects).
- Ensuring most if not all District activities are covered by programmatic permits
- Reduce project delay, cost and uncertainty caused by long individual Corps permit processes
- Avoid inconsistent mitigations that are in conflict and/or difficult to track
- Reduce impacts to staff time from obtaining individual permits

Project Approach

Staff is recommending a phased approach to this project in order to accommodate scope uncertainties arising from permitting agency consultations and requests (such as requests for further review or delayed response times). This work will begin with a first phase of defining permitting needs, including the scale and types of projects requiring permit coverage. This will be determined by reviewing the capital project program, the Vision Plan, Measure AA, restoration projects, and past and future routine projects (i.e. summarize project activities). The consultant will then work with staff to determine which types of routine and capital projects will be included in the permits. The consultant will complete this first phase of work by meeting with the Corps, USFWS, and RWQCB to negotiate and determine an agreed upon permitting approach given District needs and the regulatory requirements.

Once a permitting approach has been identified with regulatory agency input, staff will work with the consultants to develop a scope of work to complete the second contract phase and obtain the permit coverage. This work will be a more extensive effort than the first phase, because it will likely require extensive technical analysis to obtain the permits. This work may include developing a 'Routine Maintenance Program Manual', wetlands delineations, assessment of biological and environmental resources, cultural resources analysis, and the permit applications themselves, including an Initial Study/Environmental Assessment to comply with CEQA and NEPA and any other environmental review documents. Staff estimates this second phase of work to cost approximately \$400,000, and will return to the Board for authorization to amend the contract for the second phase at a later time after the final required deliverables are confirmed.

Consultant Selection

On April 10, 2018, staff released a Request for Proposals for these services. On May 7, three (3) proposals were received and interviews were held on May 25 and 31 with Horizon Environment and Water LLC., and ICF Jones & Stokes, Inc., respectively. The third firm submitting a proposal, WRECO, was not interviewed due to a lack of experience with programmatic permitting. After reviewing all proposals and conducting interviews, the General Manager recommends entering into a contract with Horizon Water and Environment, LLC., as the most qualified with the best proposed approach to provide these services at a fair and reasonable price. Horizon is well experienced in applying for and obtaining similar permits for Santa Clara Valley Water District, San Jose Water Company, and is currently under contract with San Mateo County for similar services.

FISCAL IMPACT

There are sufficient funds in the project budget to cover the cost of the base contract and the contract contingency.

80034-44	PRIOR YEAR ACTUAL S	FY18-19	FY19-20	FY20-21	FUTURE YEARS	TOTAL
Endangered Species Act Programmatic Permitting Budget	\$13,123	\$100,000	\$100,000	\$50,000	\$75,000	\$338,123
Spent-to-Date (<i>as of 6/12/2018</i>):	\$13,123	\$0				\$13,123
Encumbrances:		\$0				\$0
Proposed Award of Contract (base contract):		\$93,209				\$93,209
Proposed Award of Contract (7% contingency):		\$6,525				\$6,525
Budget Remaining (Proposed):	\$0	\$266	\$100,000	\$50,000	\$75,000	\$225,266

BOARD COMMITTEE REVIEW

This item has not been previously reviewed by a Board Committee.

PUBLIC NOTICE

Public notice was provided as required by the Brown Act.

CEQA COMPLIANCE

This item is not a project subject to the California Environmental Quality Act.

NEXT STEPS

If approved, the consultants will review the Vision Plan, Measure AA, and routine maintenance projects; meet with District staff and the regulatory agencies; and develop a permitting strategy and approach to obtain the necessary permits. This first phase of work is estimated to take approximately nine months, pending agency feedback. The consultant will then prepare a scope of work and budget to obtain the permits, which will include agency negotiations, permit applications, technical studies in support of the permits, mitigation strategies, and an initial study/environmental assessment as part of the CEQA/NEPA process. This second phase of work and contract will return to the Board for consideration.

Attachment

1. Jurisdictional Conceptual Diagram

Responsible Department Head:
Kirk Lenington, Natural Resources Department Manager

Prepared by:
Aaron Hébert, Water Resources Specialist
Julie Andersen, Resource Management Specialist III

Contact person:
Aaron Hébert, Water Resources Specialist

Graphics prepared by:
Jamie Hawk, GIS Data Analyst I

Environmental Jurisdiction Diagram

Midpeninsula Regional Open Space District

