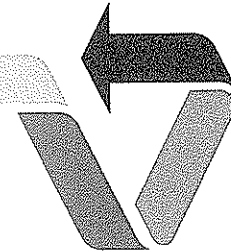


VENTURA REGIONAL SANITATION DISTRICT

1001 PARTRIDGE DRIVE, SUITE 150 • VENTURA, CA 93003-0704



A Public
Waste
Management
Agency

January 25, 2011

Board of Directors
Ventura Regional Sanitation District
Ventura, California

VRSD CONTRACT NO. 10-029-1 – KEMP WELDING, INC.

SUMMARY

Staff is seeking approval to amend an existing contract with Kemp Welding Inc. for welding services at the Toland Landfill

BACKGROUND

The Ventura Regional Sanitation District FY10-11 budget contains funds for projects at the Toland Landfill that would require a certified welder. Welding services have been used at the biosolids plant, repairing biosolids trailers, Toland operations manufacturing shaker plates and repairs needed on the heavy equipment.

In order to complete the work anticipated for the remainder of this fiscal year an amendment of the price of the existing contract with Kemp Welding, Inc. is needed. Therefore, staff recommends amending Kemp Welding's contract from \$15,000.00 to \$40,000.00. No time extension is required for the contract.

Please contact me at my office at 658-4676 or by email at dannash@VRSD.com, if you have any questions.

FISCAL IMPACT

Appropriations for this expense are included in the adopted Fiscal Year 2010-2011 budget.

RECOMMENDATION

It is recommended the Board authorize the Chairman to sign VRSD Contract No. 10-029-1 with Kemp Welding, Inc. increasing the amount of the contract from \$15,000.00 to \$40,000.00.


DANIEL NASH – FLEET MAINTENANCE SUPERVISOR

Enc.

REVIEWED AND APPROVED:


Sally Coleman – Director of Operations

APPROVED FOR FEBRURY 3, 2011 AGENDA


Mark Lawler – General Manager

CONTRACT NO. 10-029-1

**AMENDMENT NO. 1 TO CONTRACT NO. 10-029
AGREEMENT FOR FACILITIES MAINTENANCE & REPAIR
BETWEEN
VENTURA REGIONAL SANITATION DISTRICT
AND
KEMP WELDING, INC.**

THIS AGREEMENT is made and entered into this 3rd day of February, 2011 by and between the VENTURA REGIONAL SANITATION DISTRICT, a public agency formed pursuant to California Health & Safety Code Section 4700 et seq., hereinafter "DISTRICT" and KEMP WELDING, INC., a Sole Proprietor, hereinafter "CONTRACTOR."

RECITALS

A. On the 1st day of July 2010, a certain contract, hereinafter referred to as Contract No. 10-029, was executed between DISTRICT and CONTRACTOR for the occasional need for welding repair work related to the Shop and Biosolids area at the Toland Landfill.

B. DISTRICT and CONTRACTOR have agreed additional compensation is necessary to complete the work and can be accomplished by amending Contract No. 10-029 accordingly.

AMENDMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements set forth, it is agreed the aforesaid Contract No. 10-029, a copy of which is attached as Exhibit "I" and incorporated herein by reference, shall remain in full force and effect, except as otherwise hereinafter provided.

The parties agree the following language shall replace the original provisions of Article 3: Compensation

"Total fees to be paid by DISTRICT to CONTRACTOR for CONTRACTOR's services described herein shall not exceed \$45,000.00 without written amendment hereto."

7-3

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

APPROVED AS TO FORM:
ARNOLD, MATHEWS & ZIRBEL, LLP

VENTURA REGIONAL SANITATION DISTRICT

By _____
MARK A. ZIRBEL
Legal Counsel for DISTRICT

By _____
JAMES L. MONAHAN, Chairman
Board of Directors

ATTEST:

KEMP WELDING, INC

By _____
JOSIE GUZMAN, Clerk of the Board

By _____
RANDY KEMP, Owner

INTERNAL USE ONLY

Principal Analyst [Signature]

Finance Manager [Signature] 1/25/11

Director of Finance [Signature] 1/26

Fiscal Technician _____

7-4

CONTRACT NO. 10-029

**AGREEMENT FOR FACILITIES MAINTENANCE & REPAIR
BETWEEN
VENTURA REGIONAL SANITATION DISTRICT
AND
KEMP WELDING, INC.**

THIS AGREEMENT is made and entered into this 1st day of July, 2010 by and between the VENTURA REGIONAL SANITATION DISTRICT, a public agency formed pursuant to California Health & Safety Code Section 4700 et seq., hereinafter "DISTRICT," and KEMP WELDING, INC., a Sole Proprietor, hereinafter "CONTRACTOR."

RECITALS

- A. DISTRICT has an occasional need for welding repair work related to the Shop and Biosolids area at the Toland Landfill.
- B. CONTRACTOR represents that it possesses the necessary licenses, skills and experience to perform the required services and is willing to contract with DISTRICT.
- C. This Agreement is in accord with DISTRICT's Purchasing Resolution No. 89-13 adopted November 9, 1989.
- D. The parties enter into this Agreement to set forth their respective rights and obligations.

AGREEMENT

ARTICLE 1: TERM

The term of this Agreement shall be from July 1, 2010 until June 30, 2011. This Agreement may be extended for additional one-year periods to a total of five at DISTRICT's sole option upon acceptance of the current terms, conditions and price.

ARTICLE 2: SCOPE OF SERVICES

CONTRACTOR shall complete DISTRICT welding repair projects as requested during the term of this Agreement. All work performed by CONTRACTOR shall be in accordance with the provisions of Exhibit "1" to this Agreement, which is incorporated into this Agreement. All welding shall be done in accordance with the standards specified in ANSI-B31.3 and ASME Section IX. A procedure will be qualified and tested, each welder will then qualify to this approved procedure.

DISTRICT and CONTRACTOR shall discuss each project prior to commencing work under this Agreement. DISTRICT will provide CONTRACTOR with a written authorization to proceed, which shall include a brief project description as well as work and payment schedules, the required completion date and the total amount to be paid for the work. CONTRACTOR shall indicate its acceptance of the project by signing and returning a copy of the authorization to DISTRICT within five (5) working days.

7-5

It is understood between the parties that District is acting solely as project manager for Triunfo Sanitation District, Saticoy Sanitary District, Ventura County Waterworks, City of Thousand Oaks, and Rio Manor Water, each of which owns its facilities and bears all responsibility therefore.

It is expressly understood and agreed between the parties that this Agreement is not intended, nor shall it be used, for "public projects" as defined in the Uniform Public Construction Cost Accounting Act, Public Contract Code, Section 22000, et seq. Such projects shall be publicly bid and awarded as required thereby. In the event CONTRACTOR believes any project proposed by DISTRICT under this Agreement is subject to the Uniform Public Construction Cost Accounting Act, CONTRACTOR shall immediately advise DISTRICT in writing and await written confirmation of DISTRICT's intention to proceed before commencing work.

ARTICLE 3: COMPENSATION

DISTRICT will pay in accordance with price, terms and conditions as shown in Exhibit I.

ARTICLE 4: INDEMNIFICATION AND HOLD HARMLESS

CONTRACTOR agrees to defend, indemnify and hold harmless DISTRICT and its officers, agents and employees, from and against any and all liability, damages, costs, losses, claims including reasonable attorneys fees and costs incurred by DISTRICT, and expenses, however caused, resulting directly or indirectly from or connected with CONTRACTOR's negligent performance or errors and omissions under this Agreement (including, but not limited to such liability, cost, damage, loss, claim or expense arising from the death of or injury to, or damage to property of CONTRACTOR, DISTRICT, or their respective employees or agents).

ARTICLE 5: INSURANCE

CONTRACTOR shall provide and keep in effect during the term of this Agreement insurance as follows:

A. Comprehensive General Liability and Broad Form Comprehensive General Liability policies or Commercial General Liability policies with combined single limit coverage of at least \$1,000,000 for any personal injury, death, or property damage.

B. Comprehensive Automobile Liability policies with combined single limit coverage of at least \$1,000,000 for personal injury, death, or property damage.

CONTRACTOR shall provide a certificate of such insurance to DISTRICT prior to the start of work. Said certificate shall specifically provide that: (1) DISTRICT is an additional insured for the coverage in items A and B above; (2) any other insurance coverage applicable to the loss shall be deemed excess coverage and CONTRACTOR's insurance shall be primary; and (3) such insurance shall not be terminated or canceled without thirty (30) days' prior written notice having been given DISTRICT at its address set out in this Agreement, except that ten (10) days' written notice shall be acceptable in the case of cancellation for nonpayment.

Should CONTRACTOR use the services of a subcontractor, CONTRACTOR shall require that the subcontractor provide and keep in effect identical insurance to that which CONTRACTOR is required to provide pursuant to the terms of this Article 5 and shall require that the subcontractor provide a certificate of insurance to CONTRACTOR and DISTRICT prior to the time that the subcontractor starts work, which certificate shall be in the same form as CONTRACTOR is required to provide to DISTRICT.

ARTICLE 6: CHANGE ORDERS

No change to Exhibit "I" hereto, or to any other provision of this Agreement, may be made except by a written amendment authorized by DISTRICT Board of Directors and signed by CONTRACTOR and DISTRICT.

ARTICLE 7: SUSPENSION OR TERMINATION OF SERVICES

If CONTRACTOR refuses or fails to perform the work as requested in a timely and/or otherwise acceptable manner, DISTRICT shall notify CONTRACTOR in writing of such deficiency. Should CONTRACTOR fail to correct such deficiency within thirty (30) calendar days, DISTRICT may immediately terminate this agreement and notify CONTRACTOR in writing of such termination.

If any part or all of the work for which services have been authorized is postponed, suspended, or abandoned, DISTRICT shall have the right to suspend where the work has been postponed or suspended, or terminate where the work has been abandoned, the rendition of services or that portion of the work so postponed, suspended, or abandoned. In the event of such suspension or termination, CONTRACTOR shall have the right to expend additional time to assemble the work in progress for the particular section of work for the purpose of proper filing and closing the job. Such additional time shall not exceed ten percent of the total time expended on the section or sections of work suspended or abandoned at and to the date of the notice of suspension or termination, and shall not increase CONTRACTOR's total compensation beyond the maximum stated in Exhibit I.

ARTICLE 8: INDEPENDENT CONTRACTOR RELATIONSHIP

A. It is expressly understood between the parties that no employee/employer relationship is intended, the relationship of CONTRACTOR to DISTRICT being that of an independent contractor. DISTRICT shall not be required to make any payroll deductions or provide Workers' Compensation Insurance coverage or health benefits to CONTRACTOR.

B. CONTRACTOR is solely responsible for selecting the means, methods, and procedures for doing the work assigned, and for coordinating all portions of the work so the results will be satisfactory to DISTRICT. CONTRACTOR will supply all tools and instrumentalities required to perform its services under the Agreement.

ARTICLE 9: NO WAIVER

No failure or delay by DISTRICT in asserting any of DISTRICT's rights and remedies as to any default of CONTRACTOR shall operate as a waiver of the default, of any subsequent or other default by CONTRACTOR, or of any of DISTRICT's rights or remedies. No such delay shall deprive DISTRICT of its right to institute and maintain any action or proceeding which may be necessary to protect, assert or enforce any rights or remedies arising out of this Agreement or the performance of this Agreement.

ARTICLE 10: AUDIT

DISTRICT shall have the right to inspect and/or audit all records and other written materials used by CONTRACTOR in preparing its statements to DISTRICT as a condition precedent to any payment to CONTRACTOR.

ARTICLE 11: NOTICES

All notices or other official correspondence relating to contractual matters between the parties hereto shall be made by depositing same first-class, postage paid mail addressed as follows:

To CONTRACTOR: Randy Kemp
KEMP WELDING, INC.
90 Day Road
Ventura, CA 93003

To DISTRICT: Finance & Administration
VENTURA REGIONAL SANITATION DISTRICT
1001 Partridge Drive, Suite 150
Ventura, CA 93003-0704

or to such other address as either party may designate hereinafter in writing delivered to the other party. All notices shall be deemed to have been received three (3) days after mailing.

ARTICLE 12: AUTHORITY TO EXECUTE AGREEMENT

Both DISTRICT and CONTRACTOR do covenant that each individual executing this Agreement on behalf of each party is a person duly authorized and empowered to execute Agreements for such party.

ARTICLE 13: TITLE

Title to all materials shall remain with VENDOR until DISTRICT actually accepts the completed project.

ARTICLE 14: RIGHT OF INSPECTION

DISTRICT shall have the right to inspect the materials at the time and place of delivery/installation before accepting them.

ARTICLE 15: NON-INTERFERENCE WITH DISTRICT'S OPERATIONS

CONTRACTOR recognizes the primary activity at the work site is District's operation of water and wastewater treatment facilities. CONTRACTOR shall operate so all work under this contract is compatible with and does not interfere with DISTRICT's operations.

ARTICLE 16: PARTIAL INVALIDITY

If any term, covenant, condition or provision of this Agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated thereby.

ARTICLE 17: INCORPORATION OF RECITALS

The foregoing recitals are incorporated herein as though fully set forth.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

VENTURA REGIONAL SANITATION DISTRICT

KEMP WELDING, INC.

By *Vickie Dragan*
VICKIE DRAGAN, Director of Finance

By *Randy Kemp*
RANDY KEMP, Owner

INTERNAL USE ONLY

Principal Analyst *[Signature]*

Finance Manager *[Signature]*

Director of Finance _____

Fiscal Technician _____

EXHIBIT I

FACILITIES MAINTENANCE AND REPAIR PROJECTS

1. PRICE

Equipment and labor rates applied to DISTRICT projects shall not exceed CONTRACTOR's published rates on the day a project commences. CONTRACTOR's current rates are attached hereto and made a part hereof by reference. CONTRACTOR agrees to advise DISTRICT of any change in its published rates during the term of this Agreement. In any event, the total of all charges hereunder shall not exceed Fifteen Thousand Dollars (\$15,000.00) without DISTRICT Board of Directors approval.

2. BILLING INSTRUCTIONS/TERMS

CONTRACTOR shall submit an invoice in duplicate for each month in which services are provided. Invoices should reference Contract No: 07-023 and indicate where and when service was provided. Invoices must be addressed as follows to be processed for payment:

Finance & Administration
VENTURA REGIONAL SANITATION DISTRICT
1001 Partridge Drive, Suite 150
Ventura, CA 93003-0704

Net 30 days from receipt of SUPPLIER's invoice.

3. WARRANTY

CONTRACTOR shall guarantee all work for a period of at least one (1) year after date of project completion and shall repair or replace work that may prove defective in workmanship and/or materials, without expense whatsoever to DISTRICT, ordinary wear and tear, unusual abuse or neglect excepted. DISTRICT will give notice of observed defects or lack of performance with reasonable promptness. CONTRACTOR shall notify DISTRICT upon completion of repairs. This equipment warranty is in addition to the performance guarantee specified herein.

4. SUBCONTRACTING

a. CONTRACTOR agrees to bind every subcontractor by terms of the Contract as far as such terms are applicable to subcontractor's work. If contractor shall subcontract any part of this Contract, CONTRACTOR shall be as fully responsible to DISTRICT for acts and omissions of its subcontractor and of persons either directly or indirectly employed by its subcontractor as it is for acts and omissions of persons directly employed by itself. Nothing contained in the Contract Documents shall create any contractual relationship between any subcontractor and DISTRICT.

b. DISTRICT consent to or approval of any subcontractor under this Contract shall not in any way relieve CONTRACTOR of its obligations under this Contract and no such consent or approval shall be deemed to waive any provision of this Contract.

c. Substitution or addition of subcontractors shall be permitted only as authorized by California Public Contract Code Section 4100 et seq.

7-10

5. PERMITS AND LICENSES/COMPLIANCE WITH LAWS AND ORDINANCES

CONTRACTOR shall comply with all licensing and contracting laws and regulations pertaining to the work and related trades covered by this Agreement. CONTRACTOR, and all CONTRACTOR'S employees and/or subcontractors, shall hold all required licenses and/or certification or other legally required permits or training relating to the work, and shall provide documented proof of such qualifications to DISTRICT prior to commencement of work. DISTRICT shall obtain such permits as may be required by the ordinances and regulations of the public agencies having jurisdiction over areas in which the work is located. CONTRACTOR shall comply with the terms and conditions of all permits and licenses and with all lawful orders and regulations of each public agency relating to the work under the jurisdiction of such agency, and no additional compensation will be allowed therefore. DISTRICT shall secure and pay for all required building permits.

CONTRACTOR in performance of its work shall at all times observe and comply with and shall cause all its agents, employees, and subcontractors to observe and comply with all applicable existing or future laws, ordinances, regulations, orders, decrees and all other lawful requirements of District, City, County, State, Federal and other public authorities or other agencies within their respective jurisdictions governing the work.

6. REQUIREMENTS OF LAW

CONTRACTOR shall determine the contents of all applicable ordinances, laws, rules and regulations and strictly comply with their provisions throughout the performance of the Contract. These laws include, but are not limited to, the following: Labor Discrimination and Unlawful Employment Practices (Section 1735 of the California Labor Code) (California Government Code Section 12900 et seq.); Hours of Labor (California Labor Code Section 1810-1815); Prevailing Wages Requirements (California Labor Code Section 1775); and Assignment of Claims (California Government Code Section 4551).

7. OTHER CONDITIONS

1. CONTRACTOR will not be held liable for failure or delay in the fulfillment if hindered or prevented directly or indirectly by fire, strike, act of God or act of government.
2. In the performance of the terms of this Agreement, CONTRACTOR agrees that it will not engage in, nor permit such subcontractors as it may employ to engage in discrimination in employment of persons because of age, race, color, sex, national origin or ancestry, or religion of such persons.
3. CONTRACTOR shall hold DISTRICT, its officials, officers, employees, representatives and agents, harmless from liability of any nature or kind on account of use of any copyrighted, or uncopyrighted composition, secret process, patented or unpatented invention, articles or appliance furnished or used under this Agreement.