

# **REQUEST FOR CITY COUNCIL CONSIDERATION**

**Meeting Date: March 19, 2007**

Agenda Item: 7B	Prepared By: A. William Moss, City Manager Date: March 14, 2007
Agenda Section: Business: Discussion	
Subject: Construction Staging Areas and Settlement Agreement with Quality Enterprises USA, Inc.	Department: City Manager

City Council has agreed to schedule a discussion regarding the current status of the construction staging area at the Veterans Community Park (Glon property), and staging areas in general. In conjunction with this discussion, staff seeks City Council consideration and approval of a contract with Quality Enterprises USA, Inc. regarding removal of a construction debris pile on Site A and other related staging issues.

## **BACKGROUND:**

### **Staging Areas:**

Cost effective implementation of capital projects necessitates areas adjacent or near to project sites for the temporary storage of materials. This area is generally called a "lay down area," although staff has used the term "staging area." Project construction costs are influenced by the distance between staging areas and the project site.

The development of Marco Island and its land use limits the availability of land for construction staging areas. Contractors awarded capital projects generally lease private property for use as staging areas during the project. Occasionally the City allows the use of public property for staging areas or directly secures leases from private owners. For instance, three privately owned lots are leased by the City and used to store material for the Collier Boulevard Project. These are located at 750 and 770 Bald Eagle Drive, and 991 Chalmers Drive and each are in commercially zoned areas.

Tracts of land owned by the City include:

- Veterans Community Park (Glon property) – Site A (2 acres), Site B (1.5 acres), and Site C (2.75 acres)
- Tract R-C (1.5 acres) residential area between Heathwood and Leland
- North Water Treatment Plant facilities – no space available
- South Water Treatment Plant facilities – limited space available
- Tract C (0.65 acres) on Winterberry Drive between Sand Hill and Winterberry Bridge
- Tract D (Winterberry Drive) – no space available
- Mackle Park – no space available
- Recycling Site on Elkcam Circle (1.5 acres) – may be available

As referenced above, there is limited space available at the South Utility Plant facilities near Mackle Park. The contractor installing lift stations associated with Year 2 of the STRP has been granted permission to use the site to store soil that is removed from the current lift station construction sites. The soil will be returned to the lift station sites as needed. Furthermore, the contractor stores equipment associated with sheet pile work, although the sheet pile activity is conducted at each site. In addition to the contractor's use of this staging area, Public Works has several containers used to store street lights that will be installed on Collier Boulevard. Public Works also uses the area for the occasional deposit of soil and asphalt associated with minor construction activity. Quality Enterprises will relocate a fuel storage tank.

Most larger capital projects require staging areas. The upcoming Winterberry Bridge Replacement Project is one example. Staff is contacting owners of lots adjacent to or near the East Winterberry Bridge seeking to lease property for the duration of the project. The staging area required will be similar to that used for the two bridge replacement projects on North Barfield Drive. The STRP construction projects are other examples of the necessity of acquiring staging areas. For past projects, the contractor has leased and contracted property from owners to serve as temporary staging areas. In addition to or as an alternative to the use of private property, Tract C along Winterberry Drive may be available for the Winterberry Bridge construction. However, certain issues require resolution before this property can be used for a construction site.

As a related issue, the City itself occasionally requires space for the storage of materials. As previously approved by City Council, the City may purchase materials for construction projects directly rather than have the contractor purchase the material. The advantage to the City is that the 6% sales tax is avoided. Nearly \$500,000 has been saved through direct purchase for previous projects, although the continuation of this cost-saving method will require staging areas to store materials. For instance, Year 2 of the STRP construction cost can be reduced by approximately \$150,000 through direct purchase of materials. However, no site for storage of this material has been identified.

**Contract between the City of Marco Island and Quality Enterprises USA, Inc. regarding debris pile removal:**

The Veterans Community Park (Glon property) has been used by Quality Enterprises as a staging area for the past two years. The park is divided into three sites, Site A, B, and C (see attached map). Site C was used by LCEC to store electric wire used for the installation of underground electric power lines on Collier Boulevard, and it was used by Balgas to store pipe for a gas line upgrade along Collier Boulevard. Site B is used by Quality Enterprises for a construction management complex and the storage of material such as utility valves, fittings, etc. Site A has been used for the storage of soil, gravel, asphalt, concrete material, vehicles, and a diesel fuel tank (since removed).

Upon termination of Site C as a staging area, asbestos concrete material was found on the site. While it has not been determined why asbestos concrete pipe fragments were on Site C, one theory suggests that asbestos concrete pipe was inadvertently transferred from Site A to Site C by Quality Enterprises, at the specific request of a City employee, to secure a pile of loose woodchips stored on Site C in order to prevent bodily injury or property damage during the Hurricane Wilma event. Both the quantity of pipe

fragments later removed and the depth of these fragments suggests other theories are possible. What is known is that Quality Enterprises has not used Site C for construction activities or a staging area except for the Hurricane Wilma event.

Following the discovery of asbestos concrete pipe fragments on Site C, it was determined that some quantity of asbestos concrete pipe is mixed in with a large pile of soil and concrete rubble on Site A. A mitigation and removal plan was developed by Quality Enterprises for review and approval by the FDEP. However, the U.S. Environmental Protection Agency became involved and asked that the rubble pile not be removed until they completed their review. Mitigation plans and testing procedures have been submitted and reviewed for nearly nine months, but the EPA and Quality have not reached an agreement as to the terms and conditions for the removal of the rubble pile. However, on March 7, 2007, in a conference call with EPA, EPA agreed that removal of the rubble pile to an approved landfill, as a "regulated material" would be acceptable.

Both City staff and Quality Enterprises recognize that receiving concurrence from EPA on a mitigation plan for subsequent removal of the rubble pile may take a long time. Furthermore, both parties recognize the potential that the rubble pile will remain until certain legal issues are resolved between the City and Quality Enterprises. For instance, the City may claim that Quality mishandled a/c pipe when removing old utility pipe along Collier Boulevard. Quality maintains that they have documented the presence of a/c pipe fragments in the work area that was not associated with the removal of utility pipe.

It is apparent that certain members of the community want the rubble pile removed sooner rather than later, particularly property owners located adjacent to or near Site A. In recognition of common interests to ensure prompt removal of the rubble pile from Site A and to shut down Site A as a staging area, staff and Quality Enterprises discussed ways in which this could be accomplished. These discussions were held in recognition of the Mediation Settlement Agreement that settled the U.S. District Court case (Clean Air Act lawsuit) against the City, Quality Enterprises, et al. Demands were made by the City. A contract between the City of Marco Island and Quality Enterprises USA, Inc. was negotiated and is presented for consideration and approval by City Council. The contract is summarized as follows:

- Consistent with the terms of the Mediation Settlement Agreement, the City has placed demands on Quality Enterprises. In an effort to amicably resolve the issues regarding the City's recovery of its expenses connected with the remediation of any asbestos contamination from Site A and Site C, Quality and the City have negotiated the terms of the contract. The City agrees that any and all claims it has against Quality associated with any expenses incurred by the City for the remediation at Site A and Site C are satisfied, contingent upon Quality's satisfactory performance of the activities provided in the contract.
- Quality will remove the rubble pile from Site A as a regulated material and deposit the material at a regulated landfill. The rubble pile will be removed in its entirety within 90 days of acquisition by Quality of any required permits or approvals. Quality will also remove approximately 12 inches of soil beneath the rubble pile.
- Quality will pay the cost of transporting the rubble pile to a regulated landfill.

- If the rubble pile is transported to the Collier County landfill, the landfill disposal costs will be recorded as a debit to the City in accordance with provisions of an agreement between the City and Collier County in effect until December 31, 2007.
- Quality shall be responsible for the payment of these landfill costs upon demand by Collier County for payment. The estimated landfill disposal cost is in excess of \$650,000.
- To offset landfill expenses, Quality agrees to transport asphalt and soil material from the Collier Boulevard Project or their STRP project for a credit to the landfill disposal costs.
- The City shall make available excess asphalt and soil materials associated with the FY07 STRP projects for transportation to the Collier County landfill until offsetting credits eliminate the landfill disposal debits.
- Quality shall cease the use of Site A for construction materials upon the removal of the rubble pile and top soil, and the City is not obligated to provide additional staging areas for the Collier Boulevard Project, other than the recycling site on Elkcam Circle.
- Quality shall haul, screen, and grade soil at Site C to prepare for the installation of irrigation and sod by the City. Site C will be screened by the City to minimize view and disturbance to neighbors.
- Quality agrees to demolish existing structures at the City-owned recycling site on Elkcam Circle in accordance with the previously prepared bid plans and specifications.
- Quality shall be permitted to use the recycling site as a staging area for the storage of lime rock for the Collier Boulevard Project. The lime rock pile shall allow the City to avoid hauling approximately 12,000 cubic yards of soil to compress the site prior to the installation of a ground storage tank for potable water, a savings to the City of approximately \$180,000.
- Quality shall be permitted to continue to use Site B as a storage area for valves, fittings, hydrants, etc. and construction management facilities until March 2008.

The agreement provides an amicable resolution of outstanding issues. There is no cash transaction required of the City. The value of the benefits to the City is summarized as follows:

1.	Demolition of recycling structures per design engineer's estimate	\$ 50,000
2.	Recycling site stabilization to prepare for 4 million gallon storage tank	180,000
3.	Cost avoidance to provide staging area to replace loss of use of Site A as staging area	500,000
4.	Site C soil screening and grading to prepare for sod	<u>35,000</u>
		\$ 765,000

In accordance with STRP contract documents, the City owns excess soil removed through construction. Soil not used by the City will be transferred to the landfill for credit by the STRP contractors. This excess soil not otherwise used by the City has some economic value. However, this value is only applicable if the City is able to stage and later sell the material. There are no plans to store and sell excess soil.

**RECOMMENDED ACTION:**

1. Discussion.
2. Approval to acquire staging areas associated with the Winterberry Bridge Replacement Project, including Tract C.
3. Approval of contract with Quality Enterprises USA, Inc.
4. Approve the transfer of up to \$150,000 from Capital Contingencies funds for the site preparation, irrigation, and sodding of Site C.

Reviewed by Department Director

Reviewed by City Manager

Council Action:      Motion by:

Second by: