



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann

SUBJECT: SEE BELOW

DATE: April 2, 2024

SUBJECT: FIFTH AMENDMENT TO LEGAL SERVICES AGREEMENT WITH HAWKINS, DELAFIELD & WOOD LLP FOR THE SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY CAPITAL IMPROVEMENT PROGRAM

RECOMMENDATION

Approve a Fifth Amendment to the legal services agreement with Hawkins, Delafield & Wood LLP, increasing the amount of compensation by \$600,000 for a total agreement amount not to exceed \$3,100,000 and extending the term of the agreement through June 30, 2029 to support the San José-Santa Clara Regional Wastewater Facility Capital Improvement Program.

SUMMARY AND OUTCOME

The outcome of the recommended action will allow Hawkins, Delafield & Wood LLP (“Hawkins Delafield”) to continue to provide legal services related to the design and construction of design-build projects at the San José-Santa Clara Regional Wastewater Facility (“RWF”), including the Dewatering and Additional Digesters projects.

BACKGROUND

The RWF is owned jointly by the cities of San José and Santa Clara. The ownership agreement designates San José as having primary responsibility for administering, operating and maintaining the RWF. It expressly states that San José has the power to “make, award and enter into contracts with third parties for the construction, improvement, replacement, expansion, or repair” of the RWF.

Over the years, San José and Santa Clara have entered into a variety of separate agreements to provide wastewater treatment services to the cities of Milpitas, Cupertino, Campbell, Los Gatos, Monte Sereno and Saratoga, and to unincorporated areas of Santa Clara County. Currently, the RWF provides tertiary treatment of up to 167 million gallons of wastewater a day to approximately 1.4 million residents and about 17,000 commercial/industrial sewer connections. It operates 24 hours a day, 7 days a week.

The RWF uses a five-year capital improvement program to plan and identify capital improvement projects. Historically, the total cost of the capital improvement projects identified in the five-year capital improvement program has ranged from \$5 million to \$200 million dollars.

The RWF is now over 60 years old and has been undergoing significant capital improvements. Following an extensive master planning and program validation effort, the RWF has been undertaking a major capital improvement program to rehabilitate and upgrade major process areas and facilities. Over the past ten years, the capital improvement program (“CIP”) has made over \$800 million in capital investments.

The Office of the City Attorney provides legal support services to City staff administering the RWF. Given the large volume of construction work planned for the RWF in a relatively short period of time, and the size and complexity of the projects, City staff requested the City Attorney’s Office to engage outside legal counsel with an expertise in primarily the following areas to work with the City Attorney’s Office in:

1. Advising the City with the analysis of various alternative methods available to it for delivering major public works construction projects, including design-build projects; and
2. Advising the City on implementing, administering and managing major public works construction projects undertaken at the RWF using various project delivery methods, including design-build projects.

ANALYSIS

Following a request for qualifications process held earlier in 2014, on November 24, 2014, the City entered a contract for legal services with Hawkins Delafield to provide the above-referenced services. Compensation and the term of the original agreement were as follows:

- The initial term of the contract was one year (December 2, 2014 - December 1, 2015), with maximum compensation not to exceed \$180,000.
- There were two one-year options to extend the term of the agreement, with the maximum compensation for each option year not to exceed \$160,000.
- The City Attorney was authorized to exercise each of the options subject to the appropriation of funds.

Due to an increase in the amount of legal services requested by the City and provided by Hawkins Delafield in the first months of the contract, a First Amendment was approved by the City Council on May 20, 2015, which modified the original agreement as follows:

- The initial term of the contract was one year (December 2, 2014 - December 1, 2015), with maximum compensation not to exceed \$400,000.
- There were two one-year options to extend the term of the agreement, with the maximum compensation for each option year not to exceed \$300,000.
- The City Attorney was authorized to exercise each of the options subject to the appropriation of funds by the Council.

In order for Hawkins Delafield to continue providing legal services through the contract negotiations with the successful design-builder for the City's Cogeneration Facility Project, a Second Amendment was approved by the City Council on December 1, 2015, which modified the amended agreement as follows:

- The initial term of the contract was one year and seven months (December 2, 2014 - June 30, 2016), with maximum compensation not to exceed \$700,000.
- There was one one-year option to extend the term of the agreement, with maximum compensation for the option year not to exceed \$300,000.
- The City Attorney was authorized to execute the Second Amendment subject to the appropriation of funds.

In order for Hawkins Delafield to continue to provide legal services related to the Cogeneration Facility Project and to provide legal services related to the Headworks, Dewatering, and Yard Piping design-build projects, a Third Amendment was approved by the City Council on June 13, 2017, extending the term for an additional three-year period through June 30, 2020 in an amount not to exceed \$1,500,000.

A Fourth Amendment was necessary and approved by the City Council on June 2, 2020 for Hawkins Delafield to continue to provide legal services related to the ongoing design-build projects, extending the term for an additional four-year period, through June 30, 2024, at no additional cost to the City. Additionally, the scope of services was revised to remove the Yard Piping project, as that project moved ahead as a traditional design-bid-build project, in multiple phases, and did not require any services from Hawkins Delafield. The compensation amount of \$100,000 originally designated for the Yard Piping project was moved to the appropriation for the Cogeneration Facility Project.

To ensure the continued legal services to support the RWF CIP, staff recommends a fifth amendment to the agreement with Hawkins Delafield to provide legal services for the Dewatering Project. In addition, over the past three design-build projects, Hawkins Delafield and the City have worked extensively to develop and improve the CIP's design-build procurement and contract documents. Staff recommends amending the agreement to ensure the continuity of the consultant's expertise for the Additional Digesters project, which secured

owner’s advisor services in January 2024 and anticipates beginning the drafting of the design-build procurement documents later this calendar year. Staff recommends increasing the amount of compensation by \$600,000 for a total agreement amount not to exceed \$3,100,000; revising the scope of services to add the three projects; and extending the term for a five-year period through June 30, 2029.

CLIMATE SMART SAN JOSÉ ANALYSIS

The recommendation in this memorandum has no effect on Climate Smart San Jose energy, water or mobility goals.

EVALUATION AND FOLLOW UP

No follow up action with City Council is expected at this time.

FISCAL/POLICY ALIGNMENT

The recommended action is consistent with the City council approved budget strategy to focus on rehabilitating aging facility infrastructure, improve efficiency, and reduce operating costs. The recommendation action is also consistent with the budget strategy principle of focusing on protecting vital core services.

COST SUMMARY/IMPLICATIONS

1. TOTAL COST OF CONTRACT/AGREEMENT

Contract/Agreement Amount	\$2,500,000
Recommended Amendment (as included in memorandum)	\$600,000
Total Contract/Agreement Amount	\$3,100,000

2. COST ELEMENTS OF AGREEMENT/CONTRACT AS RECOMMENDED AS PART OF THE MEMORANDUM: The legal services are reimbursed on an hourly rate as set forth in the legal services agreement.

3. SOURCE OF FUNDING: Fund 512 – San Jose – Santa Clara Treatment Plant Capital Fund

4. FISCAL IMPACT: The consultant contract has been reviewed and was determined that it will have no significant adverse impact on the San Jose – Santa Clara Treatment Plant Operating Fund or General Fund operating budgets.

BUDGET REFERENCE

The table below identifies the fund and appropriations to fund the contract recommended as part of this memorandum and remaining project costs, including project delivery, construction, and contingency costs.

Fund #	Appn #	Appn. Name	Total Appn	Amt. for Contract	2024-2028 Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
512	426D	Additional Digester Upgrades	2,179,000	\$600,000	272	10/17/2023 Ord. No. 30966

COORDINATION

This memorandum has been coordinated with the Department of Environmental Services and the City Manager’s Budget Office.

PUBLIC OUTREACH

This memorandum will be posted on the City’s Council Agenda website for the April 23, 2024 City Council meeting.

COMMISSION RECOMMENDATION AND INPUT

This item is scheduled to be heard at the April 11, 2024 Treatment Plant Advisory Committee meeting. A supplemental memorandum with the Committee’s recommendation will be included in the April 23, 2024 City Council meeting agenda.

CEQA

Not a Project, File No. PP17-003, Agreements/ Contracts (New or Amended) resulting in no physical changes to the environment.

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PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in Section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

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City Attorney

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