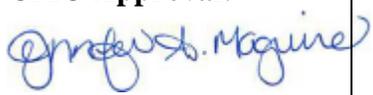


**CITY COUNCIL ACTION REQUEST**

<b>Department(s):</b> Environmental Services	<b>CEQA:</b> Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment	<b>Coordination:</b> Finance, City Manager’s Budget Office, City Attorney’s Office, the Treatment Plant Advisory Committee	<b>Dept. Approval:</b> /s/ Kerrie Romanow
<b>Council District(s):</b> Citywide			<b>CMO Approval:</b>  9/3/2020

**SUBJECT: AMENDMENTS TO MASTER CONSULTANT AGREEMENTS WITH CDM SMITH AND KENNEDY/JENKS FOR ENGINEERING AND CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES FOR PROJECTS AT THE SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY CAPITAL IMPROVEMENT PROGRAM**

**RECOMMENDATION:**

- (a) Approve the Second Amendment to the Master Consultant Agreement with CDM Smith, Inc. for engineering and construction management services for the 7701 – Headworks Project to alter authorized travel expenses, align the agreement with Capital Improvement Program standards, and extend the term from December 31, 2022 to December 31, 2023 with no increase to the maximum total compensation.
- (b) Approve the Third Amendment to the Master Consultant Agreement with Kennedy/Jenks Consultants, Inc. for construction management and inspection services for various capital improvement projects at the San José-Santa Clara Regional Wastewater Facility to alter authorized travel expenses, with no extension to the term or increase to the maximum total compensation.

**BASIS FOR RECOMMENDATION:**

CDM Amendment

On December 1, 2015, the City entered into a Master Consultant Agreement (“MCA”) with CDM Smith Inc. (“CDM”) to provide engineering and construction management services for the Headworks Project at the San José-Santa Clara Regional Wastewater Facility for a not-to-exceed amount of \$9,670,000 and term through December 31, 2022. On June 14, 2016, the City Council approved an amendment to the MCA to incorporate the multiplier compensation structure, which is the primary compensation method use in San José-Santa Clara Regional Wastewater Facility (“RWF”) Capital Improvement Program (“CIP”) consultant agreements. To date, four service orders have been issued to CDM to provide engineering services for the Headworks Project, including design, procurement, and environmental services. A fifth service order, for construction management services, is currently being negotiated. This agreement is exclusively for owner advisor services for the progressive design-build Headworks Project. A separate Council item, recommending award of a construction management agreement to CDM, will allow the City to obtain needed third-party CM services for upcoming CIP projects.

To date, CDM has been able to perform services from its offices, but to provide construction management services, consultant staff will need to be co-located at the RWF. The standard MCA does not anticipate reimbursement for travel expenses for onsite consultant staff and CDM’s current agreement does not authorize City staff to pay for certain travel expenses. The proposed amendment will allow certain travel and commute expenses for CDM’s onsite Construction Manager.

With respect to commuting expenses, the proposed amendment will allow staff to reimburse CDM for the cost of the onsite Construction Manager’s leased apartments, twice-monthly round-trip airfare from the Construction Manager’s home city to the RWF, and car rental costs to commute from his/her local accommodation to the RWF. The use of leased apartments has previously been approved by Council for certain consultant agreements on the CIP, provided the cost is less than the applicable lodging rates allowed

under the City's Employee Travel Policy. Reimbursing round-trip airfare for onsite staff is not standard practice at the CIP and is not necessary for the consultant's performance of the work, but the City has made a few exceptions, in particular for the Program Management agreement, when consultant staff with the necessary experience or expertise, cannot be found locally. Reimbursement for car rental commuting expenses also is not allowed by the CIP Consultant Travel Policy. However, for similar reasons as airfare mentioned above, staff is recommending that Council approve these exceptions to the CIP Consultant Travel Policy for CDM's Construction Manager. Other than these two exceptions, the proposed amended MCA with CDM requires that travel expenses be in accordance with the CIP Consultant Travel Policy, which sets guidelines for reimbursing travel and commute expenses that are consistent with, but not specifically addressed by, the City's Employee Travel Policy. Due to a discrepancy in the timing of this proposed second amendment and the start of construction that requires Construction Management services, the proposed amendment would become effective as of June 1, 2020 to allow staff to reimburse CDM for the commuting expenses incurred during the early stages of construction. CDM has submitted one invoice for June 2020, which the City has paid, that included these commuting expenses, but has agreed that it will not invoice the City and the City is not obligated to pay for any commuting expenses incurred after June 2020 unless and until Council approves the second amendment to the Agreement.

Construction for the Headworks Project started in June 2020 and is expected to be completed in June 2023. The current MCA term is through December 2022. To cover the projected construction period and six-month post-construction period, the proposed amendment extends the agreement term through December 31, 2023 at no additional cost to the City.

#### KJ Amendment

On June 14, 2016, the City entered into an MCA with Kennedy/Jenks Consultants, Inc. ("KJ") to provide construction management (CM) and inspection services for various CIP projects for a not-to-exceed amount of \$8,000,000 and a term through June 30, 2024. On February 26, 2019, the MCA was amended to allow overtime pay for hourly consultant inspectors. On November 19, 2019, the MCA was amended and restated to clarify authorized travel expenses and provisions governing onsite and offsite employees and align the consulting contracts with CIP standards. This agreement has been used to provide CM services for the Digester and Thickener Facilities Upgrade Project, the largest project in the CIP, and the agreement's capacity is nearly exhausted. A separate Council item, recommending award of a new construction management agreement to KJ will allow the City to obtain needed third-party CM services for upcoming CIP projects.

To provide the consultant with a lodging alternative to hotels, staff is recommending that Council amend the KJ MCA to allow for leased apartments provided that the cost is less than the applicable lodging rates allowed under the CIP Consultant Travel Policy.

As previously reported to Council, staff has been working with KJ to resolve certain of its past travel expenses that the City paid without having received the appropriate documentation of costs, as required by the contract. Staff and KJ have resolved these discrepancies and KJ will be returning all of the unsubstantiated travel costs previously paid by the City in the amount of \$192,500 by giving the City credits for services rendered on future invoices.

Climate Smart San José: The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

Commission Recommendation/Input: This item is scheduled to be heard at the September 10, 2020 TPAC meeting. A supplemental memo with the committee's recommendation will be included in the amended September 22, 2020 City Council meeting agenda.

<b>COST AND FUNDING SOURCE:</b>
No funding is needed to approve the amendments to the master agreements.
<b>FOR QUESTIONS CONTACT:</b> Napp Fukuda, ESD Assistant Director at (408) 973-5353