



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kerrie Romanow
Matt Cano

SUBJECT: SEE BELOW

DATE: October 28, 2019

Approved

Date

11-6-19

SUBJECT: SECOND AMENDMENT TO THE MASTER CONSULTANT AGREEMENTS WITH KENNEDY/JENKS CONSULTANTS INC. AND MNS ENGINEERS, INC. FOR CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES FOR THE SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY CAPITAL IMPROVEMENT PROGRAM

RECOMMENDATION

Approve the Second Amendment to the Master Consultant Agreement with Kennedy/Jenks Consultants Inc. and MNS Engineers, Inc., for construction management and inspection services for various capital improvement projects at the San José-Santa Clara Regional Wastewater Facility, to clarify authorized travel expenses and provisions governing onsite and offsite employees, and align the consulting contracts with the Capital Improvement Program standards, with no extension to the term or increase to the maximum total compensation.

OUTCOME

Amending the construction management consultant agreements will clarify terms and provisions that will allow staff to manage these agreements more effectively and with greater consistency.

BACKGROUND

On June 14, 2016, the City Council approved master consultant agreements with Kennedy/Jenks Consultants Inc. (K/J) and MNS Engineers, Inc. (MNS) for construction management and inspection services to support the Capital Improvement Program (CIP) at the San José-Santa Clara Regional Wastewater Facility (RWF) (Agenda Item 7.4). On February 26, 2019 both agreements were amended to allow overtime payment for hourly consultant inspectors (Agenda Item 2.13).

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Unlike typical professional engineering services needed to deliver CIP projects, which can be performed at consultants' offices, construction management services have required certain consultant staff to be co-located at the RWF to effectively perform their tasks. The City's standard Master Consultant Agreement (MCA) requires all travel expenses to be reimbursed only to the extent allowed by the City's Employee Travel Policy. The MCAs used on the CIP also provide for payment to consultants based on a multiplier, which incorporates the consultant's overhead cost for providing services to the City. Neither the City's standard MCAs nor the Employee Travel Policy address consulting services where consultant staff are co-located at City facilities, like the RWF. Therefore, there have been inconsistencies in how consultants are reimbursed for travel expenses and the overhead costs of providing services to the City.

The City's standard form MCA allows for reimbursement of consultant travel expenses only in accordance with the Employee Travel Policy. However, the Employee Travel Policy generally concerns a City employee's required travel away from a City location for business purposes and does not address or authorize reimbursement of regular commuting costs for employees to get to their assigned City location. Rather, individuals are responsible for paying for their own commuting expenses. While the procurement documents for the construction management agreements stated that travel reimbursement would be allowed for consultant staff whose home office location was greater than 60 miles from the RWF, the procurement did not anticipate co-locating consultant staff or reimbursing commuting expenses. Because the City's standard MCA does not allow reimbursement of commuting expenses, the executed contracts do not authorize staff to pay for commuting expenses. After executing the original agreements, however, City staff and the consultants negotiated that the City would pay for certain commuting expenses. This was necessary in order for the City to obtain qualified consultant staff, with the construction management and inspection expertise needed for the projects at the RWF, given the increased demand for these specialized skills and tight local labor market. Going forward, staff want to create a standard set of guidelines for reimbursing consultant commute expenses that are in line with, but not specifically addressed by, the Employee Travel Policy.

In addition, the City's standard MCA assumes that consultant staff work in their company offices, with office space, furniture, computers, printers, supplies, and support provided by the company. These overhead costs are reflected in the multiplier that the City pays the consultant. It was realized after the agreements were executed that consultant staff would need to be based at the RWF. Under other agreements, staff has determined that providing office space, furniture, computers, etc., improves the efficiency of onsite consultant staff. Since the City is effectively reducing the consultant's overhead costs, the multiplier the City pays for onsite staff should be lower than the standard multiplier for offsite staff.

ANALYSIS

This second amendment to the agreements will clarify which travel expenses are eligible for reimbursement and provide City staff with authorization to pay for these expenses. The amendments provide for reimbursement of mileage and lodging expenses for commute travel for those employees whose home office location is beyond 60 miles from the RWF. This approach is consistent with the RFQ that was issued to procure the construction management services. However, the K/J agreement includes an exception to the greater-than-60-mile rule for the construction manager whose home office location is within 60 miles of the RWF, but who has been receiving commuting expense reimbursement during the term of the agreement. Staff have been negotiating with K/J to bring these commuting expenses in line with terms of the original procurement, but K/J has stated that it will not make the construction manager available unless the City agrees to continue reimbursing his commuting expenses. In order to retain the construction manager and maintain continuity through the end of the project, which is expected to finish in late 2020, staff are recommending that the agreement with K/J provide for the reimbursement of the construction manager's commuting expenses. Meals and incidentals will not be reimbursed for commuting travel for any consultant personnel. Off-site travel required for the performance of work under the contract, such as site tours of other wastewater facilities, witness testing of equipment, etc. will continue to be reimbursed in accordance with the Employee Travel Policy. As part of its negotiations on this amendment, staff is working with K/J to resolve certain past travel expenses that the City paid without having received the appropriate documentation of costs, as required by the Employee Travel Policy. Staff is recommending that the agreements be amended prior to resolving those travel reimbursement discrepancies so that the construction management services can continue without interruption.

The amendment also clarifies whether consultant staff are classified as onsite or offsite personnel, which accounts for the City providing office support infrastructure and other associate project support to the consultant's employees that are ordinarily provided by the consultant, such as: work space and office furniture, computers, printing access, network access, and parking. Consistent with other CIP consultant agreements, where the City provides office support infrastructure and associated project support, the consultant will be compensated using different multiplier rates for onsite and offsite staff.

In addition, the amendments also will bring these agreements in line with the standard form of consulting contracts to be implemented for the CIP. Based on these changes, staff expects to align the contract language with the infrastructure support that the City provides to consultants. This will result in consistency in managing service orders across construction management consultant agreements, as well as spending less effort on consultant invoice review, as the updated agreements simplify the expenses eligible for reimbursement.

CONCLUSION

The amendment to these construction management consultant agreements will clarify terms and provisions that will allow staff to manage them more effectively and with greater consistency.

EVALUATION AND FOLLOW-UP

No follow-up action with City Council is expected at this time. A progress report on the RWF CIP is made to the Transportation and Environment Committee and the Council on a semiannual basis. Monthly progress reports of the RWF CIP is also submitted to the Treatment Plant Advisory Committee and posted on the City's website. An update on this item will be included in these future reports, as appropriate.

CLIMATE SMART SAN JOSE

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

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the November 19, 2019 City Council meeting.

COORDINATION

This amendment and memorandum have been coordinated with the Finance Department, Planning, Building, and Code Enforcement, City Manager's Budget Office, and the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

This item is scheduled to be heard at the November 14, 2019 Treatment Plant Advisory Committee meeting. A supplemental memo with the committee's recommendation will be included in the amended November 19, 2019 City Council meeting agenda.

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CEQA

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

/s/

KERRIE ROMANOW

Director, Environmental Services Department

/s/

MATT CANO

Director of Public Works

For questions, please contact Napp Fukuda, Assistant Director, Environmental Services Department at (408) 793-5353.