



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: SETTLEMENT AGREEMENT
WITH BROWN AND CALDWELL

DATE: February 6, 2020

RECOMMENDATION

Approve a Settlement Agreement between the City of San Jose and Brown and Caldwell in the amount of \$2,750,000, which includes a direct payment to the City in the amount of \$2,500,000 and future professional engineering and design services that have a value of \$250,000.

OUTCOME

Approval of the Settlement Agreement will provide compensation to the City for additional project costs incurred by the City as a result of a design issue caused by Brown and Caldwell during Brown and Caldwell's work on the Digester and Thickener Facilities Upgrade Project, currently under construction at the San José-Santa Clara Regional Wastewater Facility.

BACKGROUND

On October 8, 2013, the City entered into a contract with Brown and Caldwell (Consultant) to provide professional engineering and design services for the Digester and Thickener Facilities Upgrade Project (Project) at the San José-Santa Clara Regional Wastewater Facility (RWF). The Project involves modifying four existing digesters as part of an overall project that also includes modifications to six dissolved air flotation thickener (DAFT) units, associated sludge processing equipment, and biogas collection system. Construction for the Project was started in July 2016 by Walsh Construction Company (Contractor).

In July 2017, Consultant notified the City of the existence of a "seismic design issue" that would require additional elements to resist potential seismic forces exerted by the existing digesters, as modified through construction, and their contents (Seismic Uplift Issue). Working collaboratively with the City, Consultant prepared a final revised design to address the Seismic Uplift Issue. In April of 2018, the City approved the final revised design (Final Revised Design). The Contractor has since implemented the modifications included in the Final Revised Design as reflected in change orders issued by the City to the Contractor.

ANALYSIS

Based on staff's analysis of the facts and technical aspects of the Project, in coordination with the City Attorney's Office, the City Attorney's Office recommends approval of the Settlement Agreement. The City will receive a direct payment from Consultant in the amount of \$2,500,000. Consultant will also provide the City with future professional and engineering services in the amount of \$250,000, for total compensation in the amount of \$2,750,000.

PUBLIC OUTREACH/INTEREST

This memorandum and Settlement Agreement have been posted on the City's website for the RWF Treatment Plant Advisory Committee's (TPAC) February 13, 2020 agenda. The memorandum and Settlement Agreement have also been posted on the City's website for the City Council's February 25, 2020 agenda.

COORDINATION

The Settlement Agreement has been coordinated with the Department of Environmental Services and the Department of Public Works.

COST SUMMARY/IMPLICATIONS

City staff recommends crediting the direct payment of \$2,500,000 to the Project appropriation – 4127 Digester and Thickener Facilities Upgrade. The \$250,000 of future professional engineering and design services will be provided through Consultant's agreement with the City for the Project and tracked as a separate line item through invoices to ensure the services are properly credited to the City.

CEQA

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

RICHARD DOYLE
City Attorney

By


JENNIFER POUSHO
Sr. Deputy City Attorney

cc: Dave Sykes, City Manager

For questions please contact RICHARD DOYLE, City Attorney, at (408) 535-1900