



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Richard Doyle  
City Attorney

**SUBJECT:** Fourth Amendment to Legal  
Services Agreement for  
Regional Wastewater Facility  
Capital Program

**DATE:** May 21, 2020

## **RECOMMENDATION**

Approve a Fourth Amendment to the legal services agreement with Hawkins, Delafield & Wood LLP, to extend the term of the agreement through June 30, 2024 and revise the scope of services, at no additional cost to the City, to support the San José-Santa Clara Regional Wastewater Facility (“RWF”) Capital Improvement Program.

## **OUTCOME**

The outcome of the recommended action will allow Hawkins, Delafield and Wood LLP (“Hawkins Delafield”) to continue to provide legal services related to the design and construction of design-build projects at the RWF, including the Headworks and Dewatering projects, while ensuring that Hawkins Delafield will be able to seamlessly continue providing legal support for the design and construction of the Cogeneration Facility Project, as well as the development of a bank of forms, documents and information that can be used to support the Capital Improvement Program (“CIP”) in the future.

## **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 50 to 150 million dollars.

The RWF is now over 50 years old and is in need of significant capital improvements. Following an extensive master planning and program validation effort, the RWF is undertaking a major capital improvement program involving an increased level of capital investment to fund significant infrastructure rehabilitation projects. The program is anticipated to increase the five-year capital improvement program to upwards of one billion dollars.

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 the 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 into 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 (commencing on December 2, 2014 and ending on 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 (commencing on December 2, 2014 and ending on 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 (commencing on December 2, 2014 and ending on 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 for Fiscal Years 2017-2018, 2018-2019, and 2019-2020. The combined estimated total capital cost for these projects is estimated at \$481.2 million<sup>1</sup> and are scheduled to be procured on an overlapping and concurrent basis.

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<sup>1</sup> As reflected in the proposed 2018-22 CIP.

A fourth amendment is necessary 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 and Dewatering design-build projects, extending the term for one additional four-year period, through June 30, 2024, at no additional cost to the City. Additionally, the scope of services will be revised to remove the Yard Piping project, as that project is moving ahead as a traditional design-bid-build project, in multiple phases, and should not require any services from Hawkins Delafield. The compensation amount of \$100,000 originally designated for the Yard Piping project will be moved to the appropriation for the Cogeneration Facility Project.

### **CONCLUSION**

To ensure the continued delivery of legal services in support of the RWF Capital Improvement Program, staff recommends a fourth amendment to the agreement with Hawkins Delafield revising the scope of services to remove the Yard Piping project and extending the term through June 30, 2024, at no additional cost to the City.

### **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 website as part of the June 2, 2020 City Council Agenda.

### **COORDINATION**

This memorandum has been coordinated with the Department of Public Works, Department of Environmental Services, and the City Manager's Budget Office.

### **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 recommended action is also consistent with the budget strategy principle of focusing on protecting vital core services.

**COST SUMMARY/IMPLICATIONS**

1. AMOUNT OF RECOMMENDATION: N/A

Initial Term (12/02/14 – 06/30/16)	\$700,000
Option No. 1 (07/01/16 – 06/30/17)	\$300,000
Additional Term (07/01/17 – 06/30/24)	\$1,500,000
<b>TOTAL</b>	<b>\$2,500,000</b>

2. COST ELEMENTS OF LEGAL SERVICES AGREEMENT: The legal services are reimbursed on an hourly rate as set forth in the legal services agreement.

3. SOURCE OF FUNDING: Fund 512 - San José-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 José-Santa Clara Treatment Plant Operating Fund or General Fund operating budgets.

OPERATING COSTS: Approval of the recommendation will have no significant adverse impact on the San José-Santa Clara Treatment Plant Operating Fund or General Fund operating budgets.

**BUDGET REFERENCE**

The table below identifies the fund and appropriations proposed to fund the contracts recommended as part of this memorandum.

Fund #	Appn #	Appn. Name	Total Appn.	Amount for Contract	2019-2020 Adopted Capital Budget Page	Last Budget Action (Date, Ord. #)
512	7454	Energy Generation Improvements	\$3,833,000	\$100,000	V-130	10/22/2019 Ord. No. 30325

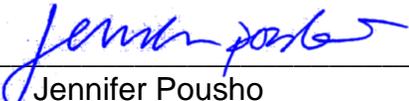
\*While there is no increase to the City in this contract amendment, \$100,000.00 will be reallocated to the Cogeneration Facility project which will require a new encumbrance of Energy Generation Improvements funds.

**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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