

**Master City of San José Consultant Agreement
Amendment to Approved Service Order – RWF Capital Projects
Cover Page**

- 1a. CPMS Contract No.: 7995 1b. Master Agreement AC No.: 27586
2. First Second Third Fourth Amendment to Approved Service Order No. 12
3. Consultant's Name: Brown and Caldwell ("Consultant")
-

Project Name: Digester & Thickener Facilities Upgrade Project (Additional Testing, Startup and Commissioning Support) ("Project")

Amendment Description: This Amendment to Service Order No. 12 ("SO") extends the completion date for all tasks and adds compensation to Task 1 (Project Management) and Task 3 (Startup and Commissioning Assistance Associated with Transitioning Process to TPAD Operation). A portion of the original SO 12 compensation will retroactively pay for TSC work performed before its execution (see attached memo).

4. The above-referenced Approved Service Order is amended as follows:

- a. **Budget/Fiscal:** The original Budget/Fiscal information in Section 7 of the Approved Service Order First Revised Budget/Fiscal Attachment Second Revised Budget/Fiscal Attachment is amended to read as set forth in the attached First Second Third Revised Budget/Fiscal Attachment.
- b. **Tasks – Attachment A:** The original First Revised Second Revised Attachment A is amended to read as set forth in the attached First Second Third Revised Attachment A.
- c. **Terms and Conditions – Attachment B:** The original First Revised Second Revised Attachment B is amended to read as set forth in the attached First Second Third Revised Attachment B.
- d. **Compensation Table – Attachment C:** The original First Revised Second Revised Attachment C is amended to read as set forth in the attached First Second Third Revised Attachment C.
5. Each of the attachments to this amendment is incorporated herein by reference and supersedes in its entirety any corresponding attachment to the original Approved Service Order and any amendments thereto.
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6. **Consultant Approval:** *Jeffrey R Kivett* Date: Apr 2, 2022
Jeffrey R Kivett (Apr 2, 2022 15:05 EDT)

7. Approval as to Form (City Attorney):

Approved Service Order Amendment Form Approved by the Office of the City Attorney

(There are no material changes to the provisions of the Approved Service Order Amendment Form.)

Approved as to Form:

(Sr.) Dept. City Attorney: _____ Date: _____

8. **City Director Approval:** *Napp Fukuda* Date: Apr 5, 2022
Napp Fukuda (Apr 5, 2022 13:00 PDT)

First **Second** **Third** **Revised Budget/Fiscal Attachment**

- This Revised Budget/Fiscal Attachment is attached to the First Second Third amendment to Approved Service Order No. 12 issued pursuant to the Master Agreement having the above-referenced CPMS Contract No.
- The Maximum Service Order Compensation set forth on Line 7.b. of Section 7 of the Approved Service Order cover page is:

Decreased from \$ _____ to \$ _____.

Increased from \$ 505,000.00 to \$ 775,000.00.

- Section 7 of the Approved Service Order cover page is appended to read as follows:

a.	Current unencumbered amount in Master Agreement:	\$	405,680.11
b.	Service Order Compensation for this Approved Service Order Amendment:	\$	\$270,000.00
c.	New unencumbered balance in Master Agreement:	\$	135,680.11
d.	Appropriation Certification: I certify that an unexpended appropriation in the amount of the Maximum service Order Compensation is available in the following fund(s) and that such fund(s) will be encumbered to pay for this Approved Service Order.		
	Fund: <u>512</u>	Appn: <u>4127</u>	RC: <u>144945</u> Amount: \$ <u>270,000.00</u>
	Fund: _____	Appn: _____	RC: _____ Amount: \$ _____
	Fund: _____	Appn: _____	RC: _____ Amount: \$ _____
	Fund: _____	Appn: _____	RC: _____ Amount: \$ _____
	Division Analyst Approval: <u>Mary Crippen</u>	Date:	<u>Apr 5, 2022</u>
	Authorized Signature: <u>Harpal Singh</u>	Date:	<u>Apr 5, 2022</u>

First **Second** **Third** **Revised Attachment A: Tasks**

This Revised Attachment A is attached to the First Second Third amendment to Approved Service Order No. 12 issued pursuant to the Master Agreement having the above-referenced CPMS Contract No.

General Description of Project for which Consultant will Provide Services:

The Project at the RWF includes the rehabilitation of four (4) mesophilic digesters to operate as Temperature-Phased Anaerobic Digestion (“TPAD”) digesters, six (6) Dissolved Air Flotation Thickener (“DAFT”) tanks to operate as co-thickening units, a new primary sludge screening facility, two (2) new electrical buildings and associated electrical equipment, an external elevated gas piping system, gas flare system, and miscellaneous civil works. Construction for this project started in August 2016 with a projected substantial completion in March 2022.

The objective of this Service Order No. 12 (“SO”) is for the Consultant to provide additional mesophilic and TPAD testing, startup and commissioning support services for the Project.

This SO consists of the following tasks.

- Task No. 1: Project Management
- Task No. 2: Inspection/Start up and commissioning assistance for Contractor’s substantial completion associated with Mesophilic Digestion
- Task No. 3: Startup and Commissioning Assistance associated with Transitioning Process to TPAD

Task No. 1: Project Management

- A. Services:** Consultant’s project manager (“PM”) shall make staffing assignments, review and track work progress, coordinate quality management and review procedures, and serve as the primary point of contact when communicating with the City. Consultant’s PM shall manage the budget, schedule and invoicing. Consultant’s PM shall also prepare and maintain a log to record decisions made by City throughout the Project and manage the quality of deliverables.

Consultant shall use the document management systems used by the RWF CIP. The systems included a Microsoft SharePoint site referred to as the CIP Portal and EADOC, which is a cloud-based design and construction management software.

Consultant shall perform the following project management activities.

1. **Daily Oversight:** Consultant shall oversee the daily management of scope, deliverables, schedule and budget.
2. **Coordination:** Consultant shall coordinate work with internal staff, subconsultants, City staff, and other City consultants as appropriate and necessary. All work performed and all work products should be coordinated with other CIP projects currently underway to avoid duplication,

confusion, and conflicts.

3. Progress Meetings and Teleconferences: Consultant shall participate in status meetings or teleconferences as-needed with the City to discuss overall work progress and the status of near-term efforts and requirements. Topics discussed shall be determined by the City. Communication that is more frequent may occur if necessary, and as requested by the City's Contract Manager. When requested by the City, Consultant shall provide agendas and meeting materials in advance of the meetings and minutes after the meetings.
4. Quality Management: Comments from the City's review of the Consultant's draft and final deliverables will be recorded on a Quality Review Form. Consultant shall review the City's comments, confirm with the City how Consultant shall address the comments in the next iteration of the deliverable or a subsequent deliverable, and then submit a Quality Review Form with responses to the City's comments.
5. Monthly Progress Reports: Consultant shall prepare and submit a Monthly Progress Report by the tenth of each month, unless requested otherwise by the City's Contract Manager. The Monthly Progress Report shall be a brief written summary of the progress made on each task, estimate the overall task's percent completion, and include the status of each deliverable. The Monthly Progress Report shall also include any significant issues encountered, risks, or concerns Consultant has (e.g., anticipates difficulty meeting deadline for work due within the next thirty (30) days for some reason beyond their control).
6. Monthly Invoices: Consultant shall prepare and submit invoices on a monthly basis by the tenth of each month, unless requested otherwise by the City's Contract Manager. The invoices shall be accompanied by the Monthly Progress Report that describes the work completed during the invoice's billing period.

B. Deliverables: Consultant shall provide the following documents to the City's Contract Manager.

1. A Quality Review Form with Consultant's responses to the City's comments shall be submitted within five (5) Business Days after receipt of City comments on the draft deliverable.
2. Meeting agendas and materials (e.g., handouts and presentation):
 - a. When requested by the City, a draft agenda and materials shall be provided in an electronic editable file format five (5) Business Days in advance of the meeting date. Consultant shall allow City three (3) Business Days to review, compile, and provide comments.
 - b. The final agenda and materials addressing City comments shall be provided as electronic editable files and as PDF files no later than two (2) Business Days before the meeting. Consultant shall also provide sufficient printed copies of the final agenda and any handouts for meeting attendees.
3. Meeting minutes:
 - a. Draft minutes shall be provided in an electronic editable file format within five (5) Business Days after the meeting. Consultant shall allow City a minimum of five (5) Business Days to review, compile, and provide comments.
 - b. Final minutes addressing City comments shall be provided as an electronic editable file and as a PDF file within three (3) Business Days after receipt of City comments.
4. Monthly Progress Reports shall be provided as a PDF file.

5. Monthly invoices shall be provided as a PDF file with each Monthly Progress Report.

C. Completion Time: Consultant must complete the services and deliverables for this task in accordance with whichever one of the following is marked:

On or before the following date: June 30, 2022

On or before ____ Business Days from _____.

Task No. 2: Inspection/Start up and Commissioning Assistance Associated with Contractor's Substantial Completion and Mesophilic Operation

A. Services: Consultant shall assist City in performing inspections and provide start-up and commissioning assistance during the period when the Contractor is performing functional testing with water before substantial completion and when City is performing operational testing of the mesophilic operation after substantial completion. Services provided by Consultant shall include, but are not limited to, the following:

1. Consultant shall witness equipment and system testing associated with the startup as described below. Consultant startup representative shall attend regular startup meetings with the project team either in person or virtually (e.g. Microsoft Teams). This includes the daily testing tailgate meeting, the weekly large group startup meeting, weekly construction meeting and weekly small group startup meeting.
2. Consultant shall witness selected functional tests, including equipment installation, mechanical testing, instrument calibration, control loop, DCS and HVAC verifications.
3. Consultant shall provide start-up assistance to City during start-up of the new facilities. Consultant's Operations Specialists shall be available to plan and evaluate process start-up activities in consultation with the City's construction management and operations and maintenance staff; review contractor's proposed start-up plan and schedules; resolve startup and process setting adjustment issues; and provide general consultation regarding equipment installation issues.
4. Consultant shall review and provide comments to the proposed commissioning plans and schedule submitted by the contractor.
5. Consultant shall provide assistance to City during contractor's functional (wet) testing and City's operational (sludge and process fluids) testing.
6. Consultant shall assist City in performing a final Project "walk-through" inspection in preparing final punch lists of outstanding items to be completed by the contractor to achieve final acceptance of individual process systems.
7. Consultant shall develop and provide Operations Manual, in a format consistent with City specifications. The Operations Manual shall describe each process system, all standard operation procedures, trouble shooting and emergency shutdown processes, etc.
8. Prior to operational testing, Consultant shall provide process trainings to City operations and maintenance staff. Training sessions shall cover all new processes, shall last up to three hours and shall be provided for each of the four shifts, during their respective shift times. Consultant shall video/audio record training sessions, including question and answer sessions.

B. Deliverables: Consultant shall provide the following documents to the City's Contract Manager.

1. Operations Process manuals – For each manual provide four (4) bound hard copies, one (1) copy of original MS Office files, and one (1) electronic PDF file, with table of contents, fully indexed and linked.
2. Operator training presentations and handouts 30-days prior to operator training in a PDF format of the PowerPoint so City's comments may be incorporated into the text.
3. Video recording using a Teams Recording Format of one, full operator training session, including question and answer session. Recording shall have adequate lighting with clear visuals, and audible throughout the question-and-answer period. Within 30-days after last training date, provide a thumb drive or data link to the Teams Video file for direct download to the City network.

C. Completion Time: Consultant must complete the services and deliverables for this task in accordance with whichever one of the following is marked:

- On or before the following date: June 30, 2022
- On or before ____ Business Days from _____.

Task No. 3: Startup and Commissioning Assistance Associated with Transitioning Process to TPAD Operation

A. Services: Consultant shall assist the City with commissioning and training activities for the

- Digesters. In this context, commissioning follows contractor performance testing, operational testing and substantial completion of mesophilic digestion. All sludge process systems will have been operated by the City for at least two (2) weeks. Digesters will begin operation in Mesophilic mode and, through a series of exercises over a defined period, facilities features will be demonstrated and validate so as to increase City O&M staff familiarity with new systems and to solicit staff sign-off on satisfactory performance prior to startup activities in TPAD Mode.
1. Consultant shall modify the TPAD Startup plan and prepare a startup plan for Mesophilic Digestion and transitioning the Mesophilic Digestion to the TPAD Mode. The TPAD Startup portion of the plan shall be modified as necessary to reflect changes in the startup due to the prior mesophilic digestion period. Work shall include a draft of the plan and up to three anticipated revisions to address comments by the startup team.
 2. Operations Training. Consultant shall provide City O&M staff with in-person or virtual (e.g. Microsoft Teams) classroom training on major Project elements related to operations. It will build on the training module presented under Task No. 2. Training of each major Project element is anticipated within approximately 45 to 60 days of beginning seeding of the digesters for mesophilic operations, but prior to TPAD operations. Consultant shall provide four (4) training sessions for City operations staff and each training session shall last up to four (4) hours. Training will present lessons learned during the mesophilic startup related to operations, process control setpoints, troubleshooting, and key trends in the startup data and will identify opportunities for operational optimization for TPAD based on the mesophilic digestion startup experience.
 3. Commissioning Activities. Consultant shall lead a commissioning team to execute commissioning plan. Consultant shall provide operations and/or engineering specialist(s) to work with City O&M staff on site throughout the commissioning phase. Commissioning support shall be directed at complex areas of the Project elements and major trains of process

equipment, where input from the Consultant will be most beneficial. Consultant shall maintain commissioning verification log. The Task Maximum Payable for this sub-task assumes that the commissioning period will last the duration of this service order, thirty (30) weekly commissioning meetings will occur, and up to two (2) Consultant team members will attend each meeting.

B. Deliverables: Consultant shall provide the following documents to the City's Contract Manager.

1. Commissioning Plan – one (1) hard copy and one (1) copy of original MS Office file and one (1) electronic PDF file of each draft Plan as well as the Final Plan.
2. Operations training materials which includes classroom slides (in PowerPoint format)
3. Field notes and memoranda identifying corrective actions for problems or deficiencies noted during commissioning.

C. Completion Time: Consultant must complete the services and deliverables for this task in accordance with whichever one of the following is marked:

- On or before the following date: June 30, 2022
- On or before ____ Business Days from _____

First **Second** **Third** **Revised Attachment C: Compensation Table**

This Revised Attachment C is an attachment to the First Second Third amendment to Approved Service Order No. 12 issued pursuant to the Master Agreement having the above-referenced CPMS Contract No.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Task No. and Task Title from Attachment A	Invoice Period	Multiplier Compensation	Contract Personnel	Reimbursable Expenses (Including applicable markup)	Subconsultant Costs (Including markup)	Total Compensation
Task No. 1 Project Management	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$30,300	\$	\$	\$	\$30,300
Task No. 2 Inspection/Startup & Commissioning Assistance Associated with Substantial Completion and Mesophilic Operation	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$184,465	\$	\$9,641	\$	\$194,106
Task No. 3 Startup & Commissioning Assistance TPAD	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$509,500	\$	\$41,094	\$	\$550,594
Maximum Compensation		\$724,265	\$	\$50,735	\$	\$775,000



Memorandum

TO: Jennifer Maguire
City Manager

FROM: Kerrie Romanow
Environmental Services Director

SUBJECT: Approval of Retroactivity

DATE: March 7, 2022

Approved

Sarah Zarate

Date 3/30/22

SUBJECT: APPROVAL OF RETROACTIVITY FOR SERVICE ORDER NO. 12 UNDER THE MASTER SERVICES AGREEMENT WITH BROWN AND CALDWELL FOR GENERAL ENGINEERING SERVICES FOR THE SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY CAPITAL IMPROVEMENT PROGRAM

In June 2013, the City Auditor released an audit report entitled "Consulting Agreements: Better Enforcement of Procurement Rules, Monitoring, and Transparency is Needed." (City Audit Report No. 13-06.) Recommendation No. 4 (Audit Report pages 16-17) involves limiting retroactive agreements to situations where contract execution is in process. The audit report states that when a City employee informally authorizes work before execution of the agreement, the employee commits City funds not within his/her authority to commit.

The Environmental Services Department (ESD) is seeking authorization to retroactively pay for services under Service Order No. 12 of Master Services Agreement with Brown & Caldwell (B&C) for General Engineering services for the San José-Santa Clara Regional Wastewater Facility (RWF) Capital Improvement Program (CIP). The justification for the request detailed below is:

- Its execution was already in process when the services started.
- The services responded to an *immediate* threat to public health, safety, or property.
- The manner of compensation doesn't involve a commitment of City funds.
- The consultant/contractor provided a letter stating that the City isn't obligated to pay for any services it provided if the contract/amendment isn't executed.
- Starting services protected or advanced the following significant City interest:

March 7, 2022

Subject: Approval of Retroactivity for Brown and Caldwell Service Order No. 12

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The Digester and Thickener Facilities Upgrades Project (Project) is the initial phase of a comprehensive upgrade to the RWF's aged biosolids processing facilities under the CIP. The Project is upgrading four of the RWF's sixteen digesters, six dissolved air flotation thickener (DAFT) units, and associated sludge processing equipment that feeds sludge to the DAFT units and digesters to maintain viable biosolids processing capacity.

Construction started in July 2016 and should be completed by April 2022. It involves excavation, rehabilitation of tanks, and installation of new structures, equipment, and utility systems underground and inside tunnels. Due to the specialized nature of testing, startup, and commissioning (TSC) services, the standard consultant agreement for design, with B&C, included funds for this task. As different areas of the construction were completed, B&C provided onsite TSC support to operators at each process area.

Staff originally envisioned these services would be completed under B&C's existing standard consultant agreement. However, due to challenges encountered in coordinating the new equipment to operate as part of a new TPAD (Thermophilic Phase Anerobic Digestion) process system, and construction delays, TSC activities have extended for a longer period than expected. Recognizing that TSC services would be delayed beyond 12/31/21, a new service order was negotiated to cover TSC costs from January through March 2022. Shortly after the City negotiated the new service order with B&C, the Consultant Project Manager resigned from B&C for personal reasons. Despite several gaps of transitioning in a new Consultant Project Manager, B&C continued to provide TSC activities. Unfortunately, the effort required by Consultant staff was greater than what had originally been estimated to complete TSC services through March 2022. It was also recognized that during the time period of October through December 31, 2021, the project experienced unforeseen TSC challenges and issues that were not able to be foreseen during the early negotiations with the Consultant. Due to late invoicing, staff continued using B&C's services without knowing the full extent of the shortfall until after Service Order No. 12 (SO12) was executed on December 10, 2021. Although funds were exhausted, B&C continued TSC activities to prevent disruption of the startup sequence and to prevent further project delays.

Under the standard consultant agreement, \$140,000 in TSC services were performed above the not-to-exceed amount. Staff has reviewed the charges and has determined that they are reasonable for the required services performed by B&C. Therefore, staff is requesting authorization to retroactively pay for the unpaid expenses incurred, under the new SO12.

ESD understands that retroactive services are to be avoided and staff is fully aware that requesting approval for a late service order should be avoided and is not normal. However, in this instance, due to the urgency and the impact to RWF operation and construction schedule that this finding could have, staff is requesting an exception be made and the retroactive work allowed to be paid under B&C's general engineering agreement.


Napp Fukuda (Mar 21, 2022 13:24 PDT)

for KERRIE ROMANOW
Director of Environmental Services

For questions, please contact Mariana Chavez-Vazquez, Capital Improvement Program Deputy Director, at 408-635-4008.

City of San José Contract/Agreement Transmittal Form

Route Order

Attached / Completed

Electronically Signed

TO: City Attorney
 City Manager
 City Clerk **OR** Return to
Dept. (circle one)

Insurance Certificates / Waivers Electronically Signed: Yes
 Business Tax Certificate Audit Trail Attached (if applicable)
 Contacted Clerk re: Form 700 Scanned Signature Authorization
 Supplemental Memorandums (if applicable): Select One

Type of Document: Amendment

Type of Contract: Consulting Services

REQUIRED INFORMATION FOR ALL CONTRACTS:

Existing GILES # 661293-033

Contractor: Brown and Caldwell

Address: 75 E. Santa Clara St., Suite 375, San Jose, CA 95113

Phone: (408) 702-7982

Email: mnakamoto@brwncauld.com

Contract Description: First Amendment to Service Order 12 - Digester & Thickener Facilities Upgrade
Project Additional Testing, Startup and Commissioning Support

Term Start Date: 12/10/2021 Term End Date: 06/30/2022 Extension: Yes

Method of Procurement: Select one RFB, RFP or RFQ No.: _____ Date Conducted: _____

Agenda Date (if applicable): _____ Agenda Item No.: _____

Resolution No.: _____ Ordinance No.: _____

Original Contract Amount: \$505,000.00 Amount of Increase/Decrease: \$270,000.00

Option #: ___ of ___ Option Amount: _____ NTE/Updated Contract Amount: \$775,000.00

Fund/Appropriation: _____

Form 700 Required (Selection mandatory for processing): Yes

Revenue Agreement: No

Tax Certificate No.: 6454721210

Expiration Date: 05/15/2022

Department: ESD (76)

Department Contact: Virginia Farley / 408-635-4099 Customer (Finance Only): _____

Notes:



Department Director Signature: _____ Date

Office of the City Manager Signature: _____ Date