



City of Palo Alto

City Council Staff Report

(ID # 9425)

Report Type: Consent Calendar

Meeting Date: 8/13/2018

Summary Title: Approve Amendment No. 5 RWQCP Pretreatment Agreement with Stanford University

Title: Approve Amendment No. 5 to Contract No. C869 Between the City of Palo Alto and the Board of Trustees of the Leland Stanford Junior University Related to the Regional Water Quality Control Plant's Pretreatment Program as Applied to Stanford

From: City Manager

Lead Department: Public Works

Recommendation

Staff recommends that Council approve and authorize the City Manager or his designee to execute Amendment No. 5 (Attachment A) to Contract No. C869 between the City of Palo Alto (City) and the Board of Trustees of the Leland Stanford Junior University (Stanford) to ensure that the City has the legal authority to implement and enforce its approved industrial pretreatment program within Stanford.

Background

The City of Palo Alto owns and operates the Palo Alto Regional Water Quality Control Plant (RWQCP) which serves the cities of Los Altos, Mountain View and Palo Alto; the Town of Los Altos Hills; the East Palo Alto Sanitary District; and Stanford University; each known as "Partner" and collectively as "Partners."

The City is required by State and Federal law, including the Federal Clean Water Act, to obtain a National Pollutant Discharge Elimination System ("NPDES") Permit from the State of California San Francisco Bay Regional Water Quality Control Board to discharge treated wastewater to the San Francisco Bay. The City's NPDES Permit No. CA0037834 (Permit), Section VI.C.4, requires the RWQCP to implement and enforce its approved Pretreatment Program (Pretreatment

Program). The Pretreatment Program is in place to control industrial dischargers throughout the entire service area, including within the geographic boundaries of Stanford University, one of the Partners.

To implement and enforce the Pretreatment Program, the City must have the requisite legal authority. Within the City, that authority is contained in Palo Alto Municipal Code (PAMC) Chapter 16.09 (Sewer Use Ordinance). Within the geographic boundaries of the Partners, that authority is obtained through legally binding contracts or agreements between the City and each Partner. These contracts clarify the Pretreatment Program responsibilities of each party and require the Partner to either adopt a sewer use ordinance of their own that is as broad in scope and no less stringent than the City's, adopt the City's Sewer Use Ordinance by reference, or agree to subject industrial dischargers within their boundaries to the City's Sewer Use Ordinance.

Discussion

The proposed Amendment No. 5 to Contract 869 provides the City with the requisite legal authority to implement its Pretreatment Program within the geographic area of Stanford that discharges to the RWQCP by subjecting industrial dischargers within Stanford to the City's Sewer Use Ordinance. The City already issues permits to Stanford that covers the industrial dischargers and subjects them to Federal pretreatment requirements; this agreement provides the legal authority to continue to implement the Pretreatment Program.

Resource Impact

This Amendment is not expected to impact resources as no new requirements are being added to City staff.

Policy Implications

This recommendation does not represent any change to existing City policies.

Environmental Review

Executing this Amendment does not commit either party to a particular course of action that would likely result in a physical change to the environment, and; therefore, execution of this Amendment is not subject to California Environmental Quality Act review.

Attachments:

- Attachment A: Amendment No. 5 to Contract C869

AMENDMENT NO. FIVE TO CONTRACT NO. C869 BETWEEN
THE CITY OF PALO ALTO AND THE BOARD OF TRUSTEES
OF THE LELAND STANFORD JUNIOR UNIVERSITY

This Amendment No. Five [5] to Contract No. C869 is made and entered into on _____, by and between the CITY OF PALO ALTO, a chartered city and a chartered municipal corporation of the State of California (“City”) and THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, a body having corporate powers under the laws of the State of California (“Stanford”) (individually, a “Party”, and collectively, the “Parties”).

RECITALS:

WHEREAS, the Parties have entered into that certain Contract Between City and Stanford, executed on November 30, 1956, as amended by the Addendum and Amendments described herein (collectively, the “Contract”). The Contract has been amended four times as follows: Addendum No. One (1) to the Contract Between the City and Stanford dated as of June 11, 1971; Amendment No. Two (2) to the Contract Between the City and Stanford, dated as of November 2, 1998; Amendment No. Three (3) to the Contract Between the City and Stanford, dated as of March 16, 2009; and Amendment No. Four (4) to the Contract Between the City and Stanford, dated as of October 17, 2016.

WHEREAS, City owns and operates the sewerage system (“System”) and Stanford utilizes the System pursuant to the Contract; and

WHEREAS, City has developed and continues to implement an industrial pretreatment program (“Pretreatment Program”), pursuant to conditions contained in its National Pollutant Discharge Elimination System (“NPDES”) Permit number CA0037834 issued by the State Regional Water Quality Control Board (“State Board”) for the San Francisco Bay Region, implementing the requirements and policies of State law and the Federal Clean Water Act; and

WHEREAS, Stanford who is currently a partner to the Palo Alto Regional Water Quality Control Plant desires to continue to utilize the System and recognizes its industrial waste control obligations under the Federal Pretreatment Regulations at Title 40 of the Code of Federal Regulations, Part 403, (“40 CFR 403”) as the same may be amended from time to time; and

Now, THEREFORE, in consideration of the covenants, terms, conditions, and provisions of this Amendment, the Parties agree:

1. City has adopted and shall amend from time to time, and continue to diligently enforce its Sewer Use Ordinance (“SUO”) contained in Chapter 16.09 of the Palo Alto Municipal Code (“PAMC”). As described in PAMC Section 16.09.005, the SUO is designed to be no less stringent than the Federal Pretreatment Regulations published at 40 CFR 403. The SUO shall apply to discharges from Stanford and shall be enforced via an industrial waste discharge permit or permits issued by City. The permit procedures, requirements and enforcement actions and sanctions relative to permits shall be those contained in the SUO, as may be amended from time to time. The prohibition against dilution section of the SUO, currently PAMC Section 16.09.115, means that the discharge standards and prohibitions section of the SUO, currently PAMC Section 16.09.040, apply to any individual source or combination of sources within Stanford University. City shall periodically review and adopt amendments to the SUO as necessary to insure the effective administration and operation of the Pretreatment Program.

2. Stanford shall be responsible for updating Stanford’s industrial waste survey at a minimum on an annual basis. This shall mean at least annual identification of [a] any new or modified industrial sources based on water use data and other information available to Stanford; and [b] any industrial sources subject to the EPA Categorical Standards. Stanford shall also

identify any sources of a type being investigated or regulated by City [e.g., photofinishing] upon request by City. City shall be responsible for other aspects of the Pretreatment Program, including notifying Stanford of new requirements, routine inspections and sampling, issuance of control mechanisms or discharge permits including new source permits prior to discharge, discharger report review, and enforcement of Stanford's permit provisions and the SUO. Stanford shall control by contract with equivalent terms and conditions to the SUO, as amended, any discharger connected to Stanford's system.

3. All monitoring reports prepared by or for Stanford, including 40 CFR Section 403.12 compliance reports, self-monitoring reports, base-line reports, records of violations and actions taken, and any other monitoring or reporting requirements imposed by Federal, State or local regulations shall be submitted to City by required timelines. These records and other relevant information, including but not limited to all records maintained pursuant to the SUO and/or industrial waste discharge permits, shall be made immediately available to City for inspection and duplication upon request and maintained by Stanford for a minimum of three [3] years. This period shall be automatically extended for the duration of any unresolved litigation concerning Stanford or the City, or where Stanford has been specifically notified of a longer retention period by the City.

4. Any authorized officer or employee of City may enter and inspect at any reasonable time any part of the sewer system of Stanford. The right of entry and inspection shall extend to public streets, easements, and property within which the system is located. Additionally, City may conduct inspections and sampling without unreasonable delay at any industrial discharger's facility located within Stanford as City deems necessary to carry out the functions of the Pretreatment Program, and Stanford shall accommodate and make arrangements for City to be permitted to enter onto private property to inspect industrial waste dischargers. The right of inspection shall include on-site inspection of any premises of any discharger including pretreatment and sewer facilities, areas of process operation or areas where chemicals or wastes are or could be stored and/or generated, observation, measurement, sampling, and testing.

5. If City determines that Stanford has failed or has refused to fulfill any Pretreatment Program obligations, City shall develop and issue a remedial plan containing a description of the nature of the Pretreatment Program deficiencies, and an enumeration of the steps to be taken by Stanford, and a time schedule for attaining compliance with all Pretreatment Program requirements. Where Stanford fails or declines to satisfy the conditions of the remedial plan on schedule, City may seek review of the remedial plan and enforcement thereof, via seeking injunctive relief or any other legally available remedy, in a court of competent jurisdiction. Where Stanford fails to satisfy any such conditions on schedule, other than those imposed or required by formal administrative or judicial enforcement actions, City may conduct those tasks. Stanford shall reimburse City for any and all costs associated with performing these tasks. In the event Stanford has failed to satisfy the terms of any remedial plan, City may, upon thirty [30] days' written notice, refuse to accept industrial waste from violating industrial dischargers at Stanford, and enforce such prohibition in any court of competent jurisdiction.

6. Stanford shall defend, indemnify and hold harmless the City, its agents, officers and employees, of, from and for all damages, fines and costs incurred as a result of industrial waste discharge from Stanford (including industrial dischargers connected to Stanford's system) or incurred as a result of the failure of Stanford to comply with a material provision of this Agreement. Stanford shall reimburse City for fines or costs stemming from damages to City facilities or the System, disruption of treatment processes or operations, degradation of sludge quality, NPDES permit violations arising in the jurisdiction of Stanford, and other air, water and sludge quality violations attributable to Stanford, or its industrial dischargers, and any enforcement actions of regulatory agencies including the state and regional water boards and federal and state environmental protection agencies. In the event that any suit based on such a claim, demand, suit, action, fine, penalty or liability is brought against either party, each party retains the right to participate in said suit.

7. Where a discharge to the System reasonably appears to present an imminent danger to the health and welfare of persons, or presents or may present an imminent danger to the environment, or threatens to interfere with the System, City may immediately initiate steps to identify the source of the discharge, and to halt or prevent said discharge. City may seek injunctive relief against Stanford, outside jurisdictions, or any industrial discharger contributing to the emergency condition, and/or may pursue other self-help remedies as appropriate, in City's sole discretion.

8. The terms of this Agreement may be amended only by written agreement of the Parties.

9. If any term of this Agreement is held to be invalid in any judicial action, the remaining terms will be unaffected.

10. This Agreement modifies only those provisions of the existing Contract between the Parties which conflict with the terms of this Agreement.

11. In all other respects, the Contract, dated November 30, 1956, and as amended, shall remain unchanged.

IN WITNESS WHEREOF, the Parties have by their duly authorized representatives executed this Amendment as of the date first written above.

ATTEST:

CITY OF PALO ALTO

City Clerk

By: _____
Mayor

APPROVED AS TO FORM:

Assistant City Attorney

APPROVED AS TO CONTENT:

City Manager

THE BOARD OF TRUSTEES OF THE
LELAND STANFORD JUNIOR
UNIVERSITY

ATTEST:

DocuSigned by:
Tom W. Zigterman
By: _____
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Tom W. Zigterman
Director – Water Resources and Civil
Infrastructure

APPROVED AS TO FORM:

APPROVED AS TO CONTENT: