

**Carnahan, David**

**From:** Ng, Judy  
**Sent:** Thursday, November 1, 2018 4:18 PM  
**To:** Council Members; ORG - Clerk's Office; Council Agenda Email  
**Cc:** Keene, James; Shikada, Ed; De Geus, Robert; Flaherty, Michelle; Gaines, Chantal; Tanner, Rachael; Stump, Molly; Eggleston, Brad; Bobel, Phil; Allen, James  
**Subject:** 11/5 Council Agenda Questions for Item 7

**Council Question Response**

Dear Mayor and Council Members:

On behalf of City Manager Jim Keene, please find below in **bold** staff responses to inquiries made by Council Member Tanaka in regard to the November 5, 2018 council meeting agenda.

Item 7: Approval to Increase Compensation & Extend Term of Design Contract for Old Pumping Plant at RWQCP

**Item 7: Approval to Increase Compensation & Extend Term of Design Contract for Old Pumping Plant at RWQCP**

Q. 1. Who was negligent in this to require three amendments, the CONSULTANT who provided the evaluations or the public works engineers who vetted the CONSULTANT?

**A. 1. In rebuilding a treatment unit that is over 60 years old, there is much that is not visible to designers or construction crews. Only when construction commences do certain problems and impediments become exposed. We call these “unforeseen conditions” and they can cause delays and extra expenses. The first two amendments were no cost time extensions. That is, they delayed the work but did not increase design costs. Only the third one increased design expenses. All parties involved have been exercising due diligence and a proper standard of care in upgrading the raw sewage pump station, which was originally built in 1956. Please note that although the amendment attached to the staff report restates the consultant’s original scope of work, the amendment only addresses the time extension and budget increase for additional design work.**

Q. 2. Shouldn’t these issues been caught during the design workshops?

**A. 2. Some additional services design items, namely the motor control center slab elevation and the upgraded hazardous atmospheric gas monitoring system modifications, were items that arose after the design was complete. These items resulted from a discrepancy between datum levels in the City’s record drawings from 1956, and a plant standardization on gas monitoring that occurred after the design’s completion, respectively. The project’s additional services budget was sufficient to cover these expenses. The rest of the additional design work**

was needed to deal with difficult conditions that were revealed during construction; it provided critical and timely support of the construction work by the original design team. Due to the facility's age (1956) as well as extensive unforeseen and unknown conditions (that are common when retrofitting an aging facility), the construction project has encountered numerous conditions requiring additional design work beyond that originally budgeted. Unforeseen and unknown conditions have been caused by leaks of raw sewage into the pump station wetwell that prevented proper dewatering during design; subgrade concrete corrosion that was not visible during design stage inspections; buried pipes containing asbestos that were not identified on the original design drawing records; and complex changes to electrical equipment made over the 60 years of pump station life.

Q. 3. Did the consultant not know about the delay earlier?

**A. 3. The consultant did not know about the delay earlier. If the unforeseen conditions and the succeeding construction delays had been known to the consultant earlier, the consultant's fees would have been adjusted to support the larger scope of work. Instead, the increased fees and time extensions are being addressed by the three amendments.**

Q. 4. Section 16, Option A states that the consultant shall protect, indemnify, defend and hold harmless CITY,... from and against any claims, demands, or liability of any nature, including all costs and expenses of whatever nature including attorney fees, experts fees, court costs, and disbursements that arise out of, pertain to, or relate to negligence, recklessness, or willful misconduct of the CONSULTANT, its officers, employees, agents or contractors under this Agreement, under this optional agreement would the CONSULTANT be liable for any costs due to the delay of construction by its own subcontractors?

**A. 4. Staff has not identified any negligence, recklessness or willful misconduct. For clarification, the amendment is to the professional services agreement. Actual construction of the project by the contractor and its subcontractors is being conducted under a separate construction contract.**

Thank you,  
Judy Ng



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