COUNCIL AGENDA: 04/25/23
ITEM: 6.1

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: NORA FRIMANN

SUBJECT: SEE BELOW

DATE: April 13, 2023

SUPPLEMENTAL

SUBJECT: REPORT ON BIDS AND AWARD OF CONSTRUCTION CONTRACT FOR 9850 – YARD PIPING IMPROVEMENTS PHASE 2 PROJECT AT THE SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

Attached hereto is a true and correct copy of the letter sent by the Office of the City Attorney of San José to John W. Busby II, Attorney at Law, dated April 11, 2023, regarding the above-referenced subject.

NORA FRIMANN
City Attorney

By *___/s/ Nora Frimann_____*
NORA FRIMMAN
City Attorney

Attachment
cc: Kerrie Romanow
Matt Loesch
Jim Shannon

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Office of the City Attorney
NORA FRIMANN, CITY ATTORNEY

ROSALIA BURGUEÑO TAPIA
Sr. Deputy City Attorney III
Direct Line: 408.535.1927

VIA FIRST CLASS U.S. MAIL & EMAIL

April 11, 2023

jwbusby@jwbusbylaw.com
John W. Busby II
Attorney at Law, P.C.
251 Lafayette Circle, Suite 350
Lafayette, California 94549

Re: 9850 Yard Piping Improvements Phase 2 Project
Your client: Mountain Cascade, Inc.

Dear Mr. Busby:

I am in receipt of your letter dated April 7, 2023, addressed to the City Council regarding the above-referenced matter. Please be advised that it is City staff's position that the Revised Notice of Intent to Award Contract dated February 7, 2023, awarding the contract to Michels Trenchless, Inc., is proper and will not be retracted. Of course, the City Council will be voting on whether or not to approve the contract at the upcoming council meeting on April 25, 2023. It is my understanding that you will be speaking on your client's behalf during the public comment portion of the meeting, which you are welcomed to do.

Contrary to your assertions, your client's failure to submit the documents listed in the technical specifications as required to establish their experience is not inconsequential, requiring the City to waive the omission. Experience requirements are of a material nature and cannot be waived. Even if the omission was inconsequential, pursuant to San Jose Municipal Code Section 27.10.570, the City *may* waive informalities or minor irregularities in bids or bidding, but it is not obligated to do so. To waive the experience documentation requirement would certainly invite a protest from Michels Trenchless, Inc., as they did fully comply with all of the bid requirements. Additionally, City staff had another factor to consider, namely, the need to have work

commence as soon as possible. The majority of the work for this project can only be done in the summer and it is anticipated that it will take two consecutive summers, starting this summer, so putting this out for re-bid was not feasible.

Please contact me at rosalia.burgueno-tapia@sanjoseca.gov with some proposed dates/times for a conference call this week if you would like to discuss this matter. I will tell you that this matter is in the hands of the City Council at this point. I am not in a position to enter into any agreements that will change the current situation. Thank you.

Very truly yours,

NORA FRIMANN, City Attorney

By: _____
ROSALIA BURGUEÑO TAPIA
Sr. Deputy City Attorney III

RBT/ted