

SAN JOSÉ/SANTA CLARA TREATMENT PLANT ADVISORY COMMITTEE

CHUCK REED, CHAIR
PETE McHUGH, MEMBER
KEVIN MOORE, MEMBER
JAMIE MATTHEWS, MEMBER
MADISON NGUYEN, MEMBER

KEN YEAGER, MEMBER
JOHN GATTO, MEMBER
ED SHIKADA, MEMBER
KANSEN CHU, MEMBER

**AGENDA/TPAC
SPECIAL MEETING
June 16, 2011**

4:30p.m.

Room T-1734

1. ROLL CALL

2. MINUTES

A. May 19, 2011

3. UNFINISHED BUSINESS

A. Action Item – TPAC Recommendation for approval:

The following action item is scheduled to be considered by the San Jose City Council on June 21, 2011, but is recommended for Council deferral for August 2011:

Acceptance of Plant Odor Assessment Status Report and direction to staff concerning a regional odor assessment study and continued exploration of the possibility of accelerating biosolids projects.

4. CORRESPONDENCE

5. REPORTS

A. Open Purchase Orders Greater Than \$100,000
The attached monthly Procurement and Contract Activity Report summarizes the purchase and contracting of goods with an estimated value between \$100,000 and \$1 million and of services between \$100,000 and \$250,000.

6. **AGREEMENTS**

A. Action Item – TPAC Recommendation for approval:

The following action item is scheduled to be considered by the San José City Council on, June 21, 2011:

Appoint Santa Clara Mayor Jaime Matthews with Santa Clara Vice Mayor Patricia Mahan as alternate to serve on the joint Recycled Water Policy Advisory Committee established in the Recycled Water Facilities and Program Integration Agreement between the City of San José and the Santa Clara Valley Water District.

B. Action Item – TPAC Recommendation for approval:

The following action item is scheduled to be considered by the San José City Council on, June 21, 2011:

Approve a master agreement with GHD Inc., for Asset Management Consultant Services in an amount not to exceed \$300,000, for a term of July 1, 2011 date to June 30, 2014.

C. Action Item – TPAC Recommendation for approval:

The following action item is scheduled to be considered by the San José City Council on, June 21, 2011:

Approval of Continuation Agreement with Westin Engineering, Inc., for Implementation of a Computerized Maintenance Management System at the San Jose/ Santa Clara Water Pollution Control Plant for ten additional months to expire on June 30, 2012.

D. Action Item – TPAC Recommendation for approval:

The following action items are scheduled to be considered by the San José City Council on, June 21, 2011:

1. Adoption of a resolution to adopt the Mitigated Negative Declaration prepared for the Dry-Fermentation Anaerobic Digestion Facility Project, File No. SP09-057, as having been completed in compliance with the California Environmental Quality Act and reflecting the City's independent judgment and analysis, and to adopt a related mitigation monitoring and reporting program. Council District: 4 (Planning, Building and Code Enforcement)

This item continues on the next page

D. Action Item – TPAC Recommendation for approval:

The following action items are scheduled to be considered by the San José City Council on, June 21, 2011:

2. Adopt a resolution to authorize the City Manager to execute a ground lease in the form proposed, with Zero Waste Energy Development Company (ZWED) for the construction and operation of a dry anaerobic digestion facility on Water Pollution Control Plant land, for a 30 year term, with an annual base rent equivalent to \$850,000 on Phase I, and potential additional rent payments of \$4.35 per organic ton processed in Phases II and III, subject to annual adjustment directly tied to Consumer Price Index increases.

7. **STATUS OF ITEMS PREVIOUSLY RECOMMENDED FOR APPROVAL BY TPAC**

A. **The following action items were approved by the San José City Council on, May 24, 2011:**

- 1) Award the construction contract for the San José/Santa Clara Water Pollution Control Plant, Filter Under-Drain System Renovation and Media Replacement (A-4) Project to the low bidder, ERS Industrial Services, Inc., in the amount of \$519,118.72.
- 2) Approve a contingency in the amount of \$51,900.

B. **The following action item was approved by the San José City Council on, May 24, 2011:**

Report on bids and award of construction contract for New Construction of Various Equipment 2010-2011 project to the low bidder, Anderson Pacific Engineering Construction, Inc., in the amount of \$1,299,300, and approval of a 15 percent contingency in the amount of \$200,700.

C. **The following action was approved by the San José City Council on, May 24, 2011:**

Adopt a resolution authorizing the Director of Environmental Services or his designee to negotiate and execute Contract Change Order No. 6 to install new remote control, relay protection and monitoring equipment as part of the Switchgears M1, M2 & M3 Replacement Design-Build Project in an amount not to exceed \$400,000.

D. **The following action items were approved by the San José City Council on, May 24, 2011:**

1. Accept the Plant's odor assessment status report and direct staff to continue with the development of a regional odor assessment study and deliver a status report in fall 2011.
2. Accept the analysis of the feasibility of implementing odor control projects in three to seven years and direct staff to continue to explore the possibility of accelerating biosolids projects and deliver a status report in fall 2011. **Items 6.D.1&2 were recommended for continuation to the June 16, 2011 TPAC meeting and June 21, 2011 City Council meeting with direction to staff to work with stakeholders to complete additional analysis.**

8. MISCELLANEOUS

- A. The next TPAC meeting will be July 14, 2011, at 4:30 p.m. City Hall, City Managers Office, 17th Floor, Room 1734.

9. OPEN FORUM

10. ADJOURNMENT

NOTE: If you have any changes or questions, please contact Monica Perras, Environmental Services, 408-975-2515.

To request an accommodation or alternative format for City-sponsored meetings, events or printed materials, please call Monica Perras at (408) 975-2515 or (408) 294-9337 (TTY) as soon as possible, but at least three business days before the meeting/event.

Availability of Public Records. All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at San Jose City Hall, 200 East Santa Clara Street, 10th Floor, Environmental Services at the same time that the public records are distributed or made available to the legislative body.

DRAFT
MINUTES OF THE
SAN JOSÉ/SANTA CLARA
TREATMENT PLANT ADVISORY COMMITTEE
City Hall, City Manager's Office, 17th Floor, Room 1734
Thursday, May 19, 2011 at 4:30 p.m.
Special Meeting

1. **ROLL CALL**

Minutes of the Treatment Plant Advisory Committee convened this date at 4:30 p.m. Roll call was then taken, with the following members in attendance:

Committee members: Chuck Reed, Pete McHugh, John Gatto, Jamie Matthews, Kevin Moore, Nanci Klein, Ken Yeager.

Staff present: Monica Perras, Mollie Dent, John Stufflebean, Mansour Nasser, Jon Newby, Bhavani Yerrapotu, Kirsten Struve, Matt Krupp, Kristen Yasukawa, Napp Fukuda, Michael O'Connell, Diane Ikegami, Laura Burke, Anthony Thompson.

Others present: Robert Reid(West Valley Sanitation), Chris de Groot(City of Santa Clara), Steve Machida(Cupertino Sanitary District), Jerry Strangis(Strangis Properties), Joey McCarthy(McCarthy Properties), Carol Kassab(Milpitas Chamber), Christina Fernandez (Mayors Office), Kathleen Phalen(City of Milpitas), David Wall(San José City Resident).

2. **APPROVAL OF MINUTES**

- A. April 7, 2011.
The minutes for April 7, 2011 were approved to note and file.
- B. TPAC-Proposed Capital Improvement Program – 2012-2016
Item 2.B was approved with direction to staff to improve the budgeting process to allow for more lead time for subsequent years and to discuss the future of recycled water funding as part of the SBWR master plan.
- C. TPAC – Proposed Operating and Maintenance Budget – 2011-2012
Item 2.C was approved.

David Wall presented speaker cards for Item 2.

3. **UNFINISHED BUSINESS**

- A. Election of Vice Chair
Madison Nguyen was elected Vice Chair of TPAC.

4. **CORRESPONDENCE**

5. **REPORTS**

- A. Open Purchase Orders Greater Than \$100,000

The attached monthly Procurement and Contract Activity Report summarizes the purchase and contracting of goods with an estimated value between \$100,000 and \$1 million and of services between \$100,000 and \$250,000.

Item 5.A was accepted to note and file.

6. AGREEMENTS

A. Action Item – TPAC Recommendation for approval:

The following action items are scheduled to be considered by the San José City Council on, May 24, 2011:

- 1) Award the construction contract for the San José/Santa Clara Water Pollution Control Plant, Filter Under-Drain System Renovation and Media Replacement (A-4) Project to the low bidder, ERS Industrial Services, Inc., in the amount of \$519,118.72.
- 2) Approve a contingency in the amount of \$51,900.

Items 6.A.1&2 were approved unanimously.

B. Action Item – TPAC Recommendation for approval:

Report on bids and award of construction contract for New Construction of Various Equipment 2010-2011 project to the low bidder, Anderson Pacific Engineering Construction, Inc., in the amount of \$1,299,300, and approval of a 15 percent contingency in the amount of \$200,700.

Item 6.B was approved unanimously.

David Wall presented a speaker card on Item 6.B.

C. Action Item – TPAC Recommendation for approval:

Adopt a resolution authorizing the Director of Environmental Services or his designee to negotiate and execute Contract Change Order No. 6 to install new remote control, relay protection and monitoring equipment as part of the Switchgears M1, M2 & M3 Replacement Design-Build Project in an amount not to exceed \$400,000.

Item 6.C was approved unanimously.

D. Action Item – TPAC Recommendation for approval:

1. Accept the Plant's odor assessment status report and direct staff to continue with the development of a regional odor assessment study and deliver a status report in fall 2011.
2. Accept the analysis of the feasibility of implementing odor control projects in three to seven years and direct staff to continue to explore the possibility of accelerating biosolids projects and deliver a status report in fall 2011.

Items 6.D 1&2 were recommended for continuation to the June 9, 2011 TPAC meeting and June 14, 2011 City Council meeting with direction to staff to work with stakeholders to complete additional analysis.

Documents Filed: (1) Memorandum from Jose S. Esteves, Mayor of Milpitas,

dated May 18, 2011, requesting San Jose City Council continue Item 7.1 to allow San Jose City staff to complete a more thorough feasibility analysis of the Water Pollution Control Plant odor mitigation projects.

David Wall presented a speaker card for Items 6.D.1&2.

Carol Kassab presented a speaker card for Items 6.D.1&2.

Joey McCarthy presented a speaker card for Items 6.D.1&2.

7. STATUS OF ITEMS PREVIOUSLY APPROVED BY TPAC

The items that were approved by the San Jose City Council on May 24, 2011 were accepted to note and file.

8. MISCELLANEOUS

- A. The next TPAC meeting will be June 9, 2011, at 4:30p.m., City Hall, City Manager's Office, 17th Floor, Room 1734.

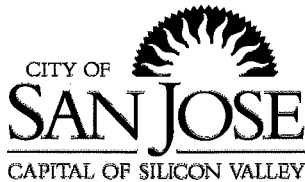
PUBLIC COMMENT

- A. David Wall presented a speaker card in Open Forum.

10. ADJOURNMENT

- A. The Treatment Plant Advisory Committee adjourned at 5:50 p.m.

Chuck Reed, Chair
Treatment Plant Advisory Committee



SUPPLEMENTAL

COUNCIL AGENDA: 06-21-11
ITEM:

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: John Stufflebean
David Sykes

SUBJECT: SEE BELOW

DATE: 06-07-11

Approved

Date

6/8/11

COUNCIL DISTRICT: City-Wide
SNI AREA:

SUBJECT: SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT (PLANT) – ODOR STATUS AND BIOSOLIDS PROCESS TRANSITION TIMING

SUPPLEMENTAL

REASON FOR SUPPLEMENTAL

The purpose of this supplemental memorandum is to provide an update on the status of working with stakeholders in responding to Treatment Plant Advisory Committee (TPAC) direction from May 14, 2011. Staff is recommending deferral of Council consideration to August 16, 2011.

BACKGROUND

The Preferred Alternative for the Plant Master Plan was approved by Council on April 19, 2011. The Preferred Alternative includes process changes that will reduce odors and shrink the Plant's footprint, thereby enabling new land uses along the South San Francisco Bay shoreline. Council directed staff to return in May 2011 with additional information on reducing odors from the Plant and an analysis of the feasibility to implement the transition to a new biosolids process in three to seven years.

At the May 14, 2011, TPAC meeting, staff was directed to meet with City of Milpitas and McCarthy Ranch technical consultants to discuss the timeline for the new biosolids process. A letter was submitted by the City of Milpitas to continue this item to allow staff to complete a more thorough analysis. In addition, McCarthy Ranch submitted additional information from their consultant.

ANALYSIS

Staff has contacted both Milpitas staff and McCarthy Ranch to arrange a meeting of McCarthy's consultants with the Plant Master Plan consultants, however, McCarthy's consultant was not available and no meeting has been scheduled. The City of Milpitas staff representative proposed that the meeting not be rushed to meet the June TPAC schedule, but instead be set at a mutually acceptable date that allows all parties sufficient time to coordinate, prepare, discuss, and review the findings. Both Milpitas staff and the McCarthy Ranch representative understand that this means the soonest the item can come back to TPAC is August, since TPAC typically takes a summer recess in July.

As a result, staff recommends further deferring this item until a meeting can be scheduled. Staff will report back in August 2011 with progress made on the analysis of the timeline for the biosolids project.

COORDINATION

This report has been coordinated with the City Attorney's Office, the Office of Economic Development, the Planning, Building, and Code Enforcement Department and is scheduled to be reported at the June 2011 Treatment Plant Advisory Committee meeting.

/s/

JOHN STUFFLEBEAN
Director, Environmental Services

/s/

DAVID SYKES
Acting Director of Public Works

For questions, please contact Bhavani Yerrapotu, Division Manager, Technical Services (ESD) at 945-5321 or Michael O'Connell, Acting Deputy Director (PW) at 535-8300.

City Manager's Contract Approval Summary
For Procurement and Contract Activity between \$100,000 and \$1 Million for Goods and \$100,000 and \$250,000 for Services

MAY 31, 2011

Description of Contract Activity ¹	Fiscal Year	Req#/ RFP#	PO#	Vendor/Consultant	Original \$ Amount	Start Date	End Date	Additional \$ Amount	Total \$ Amount
NEW:									
EG-2/EG-3 MIXED G AS GENERATOR CONTRL UPGRADE	FY10-11	12917			\$200,000				
TRANSFORMER	FY10-11	13586	75639	SHIHLIN ELECTRIC USA	\$510,484				
ONGOING:									
SCOOTER/CARTS	FY10-11	13984		TOYOTA MATERIAL HANDLING	\$345,000				

¹ This report captures in process contract activity (Requisition Number or RFP Number) and completed contract activity (Purchase Order Number, Contract Term, and Contract Amount)



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: John Stufflebean

SUBJECT: SEE BELOW

DATE: 05-27-11

Approved

Date

5/31/11

COUNCIL DISTRICT: City-Wide

SUBJECT: APPOINTMENT OF SANTA CLARA MAYOR JAIME MATTHEWS TO THE RECYCLED WATER POLICY ADVISORY COMMITTEE, AND APPOINTMENT OF SANTA CLARA VICE MAYOR PATRICIA MAHAN AS AN ALTERNATE

RECOMMENDATION

Appoint Santa Clara Mayor Jaime Matthews with Santa Clara Vice Mayor Patricia Mahan as alternate to serve on the joint Recycled Water Policy Advisory Committee established in the Recycled Water Facilities and Program Integration Agreement between the City of San José and the Santa Clara Valley Water District.

OUTCOME

Approval of this recommendation will allow Santa Clara Mayor Jaime Matthews to join Council members Chu and Oliverio as the three members of the Policy Advisory Committee representing cities or agencies that are voting members of the Treatment Plant Advisory Committee (TPAC) and will appoint Vice Mayor Mahan as an alternate.

BACKGROUND

In April 2010, the City executed the "Recycled Water Facilities and Program Integration Agreement" with the Santa Clara Valley Water District. The goal of that agreement was for the District and City to financially support the production and use of recycled water in Santa Clara County and to coordinate and cooperate their efforts "to achieve the most cost effective, environmentally beneficial utilization of recycled water to meet both water supply and wastewater treatment and disposal needs." Under the provisions of that agreement, the agencies agreed to form a Recycled Water Policy Advisory Committee whose purpose is to "tender its

advice to the Board of Directors of the Santa Clara Valley Water District and the City Council of the City of San José with respect to policy matters under consideration by those legislative bodies relating to the production, distribution and use of recycled water.”

ANALYSIS

The City of Santa Clara has requested that Mayor Jaime Matthews be appointed as the representative on the Recycled Water Liaison Committee with Vice-Mayor Mahan as an alternate. All the TPAC agencies members selected for the committee are knowledgeable about and interested in the topic of recycled water and will be able to represent the interests of the agencies tributary to the San José/Santa Clara Water Pollution Control Plant and the community as a whole.

EVALUATION AND FOLLOW-UP

If appointed to the Policy Advisory Committee, Mayor Matthews along with Councilmembers Chu and Oliverio will serve at the pleasure of the Council until alternative appointments are made. Their performance will be evident in the advice and recommendations provided to the Council concerning, among other things, proposed extensions to the recycled water system and the annual budget submitted to the Council and District for production and distribution of recycled water.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This item does not meet any of the above criteria, and no special notice is required.

COORDINATION

This project and memorandum have been coordinated with the City of Santa Clara, City Attorney's Office and is scheduled to be heard at the June 9, 2011 Treatment Plant Advisory Committee (TPAC) meeting.

FISCAL/POLICY ALIGNMENT

There are no cost implications to the General Fund as a result of this action. This recommendation meets the general principles of the 2010-2011 Mayor's June Budget Message of providing essential public services while valuing financial sustainability and cost recovery.

CEQA

Not a project, File Number PP10-068, "General Procedure & Policy Making Public Project."

/s/
JOHN STUFFLEBEAN
Director, Environmental Services


For questions please contact Mansour Nasser, Deputy Director, Environmental Services Department, at (408) 277-3671.



Subject: REQUEST APPROVAL TO AWARD THE ASSET MANAGEMENT CONSULTANT SERVICES AGREEMENT

**Council Agenda: 06-21-11
Item:**

City Council Action Request

Department: Environmental Services	CEQA: Not a Project, File No. PP10-066 (a), New contract for professional services with no change to the physical environment.	Coordination: Office of Risk Management, City Attorney's Office, and the Treatment Plant Advisory Committee	CMO Approval:  6/7/11
			Dept. Approval: John Stuffelbean /s/

RECOMMENDED ACTION:
Approve a master agreement with GHD Inc., for Asset Management Consultant Services in an amount not to exceed \$300,000, for a term of July 1, 2011 to June 30, 2014.

BASIS FOR RECOMMENDATION:

The Asset Management Program was initiated at the Water Pollution Control Plant (Plant) in 2008 with the long term goal of documenting and managing over 10,000 pieces of equipment, 62 buildings, and 160 miles of pipe that make up the \$2 Billion facility. The beginning of this program was the implementation of a Computerized Maintenance Management System (CMMS) in 2009 which enables staff to track maintenance and repair work done on these assets. Currently, an estimated 50% of staff maintenance efforts are tracked in CMMS. In order to effectively manage the assets and facilitate cost effective asset replacement decision making, a "cradle to grave" approach is necessary to document the investment into the asset from the day it is installed, to the time it requires replacement. This effort requires a comprehensive evaluation and realignment of all supporting activities that form the basis of "managing the asset", such as maintenance work order creation, deployment of resources and scheduling of work, ordering material, tracking work hours, and accounting costs for financial and auditing purposes.

The Plant is seeking consultant support to provide assistance in creating a comprehensive business process to enable this "cradle to grave" management. Specifically, over a three year period, this consultant will assist city staff with efforts such as:

- Benchmarking and adaptation to industry best management practices
- Facilitate the development of Plant specific Key Performance Indicators (KPIs) and Levels of Service (LOS)
- Development of Standards and Policies to enable reliability centered maintenance as opposed to current practice of reactive or time-bound preventative maintenance
- Development of a methodology to quantify and track risks due to asset failures
- Training and knowledge transfer to staff on asset management practices

Responses to City's Request for Qualifications (RFQ) for these services were submitted on November 29, 2010. Four proposals were submitted, of which two met the minimum requirements and were evaluated for technical qualification and cost. GHD Inc, was selected as the preferred consultant.

COST AND FUNDING SOURCE:

1. AMOUNT OF RECOMMENDATION/COST OF PROJECT: \$300,000
FY 11-12: \$100,000; FY12-13: \$100,000; FY13-14: \$100,000
2. SOURCE OF FUNDING:
513 – San Jose-Santa Clara Treatment Plant Operating Fund, Environmental Services Department Non-Personal-Equipment appropriation, No funding is required for the Master Agreement. Monies will be encumbered subject to appropriation of funds.


FOR QUESTIONS CONTACT: Stephane Lannoye, Program Manager, Environmental Service at (408) 945-5478.



Subject: **APPROVAL OF CONTINUATION AGREEMENT WITH WESTIN ENGINEERING, INC.**

Council Agenda: 06-14-11
Item: 2.11

City Council Action Request

Department: Environmental Services	CEQA: Not a Project, File No. PP10-066 (a), Contract amendment for software installation and support. Time only extension.	Coordination: Office of Risk Management, City Attorney's Office, and the Treatment Plant Advisory Committee	CMO Approval:  5/24/11
			Dept. Approval: John Stufflebean /s/

RECOMMENDED ACTION:

Approval of Continuation Agreement with Westin Engineering, Inc., for Implementation of a Computerized Maintenance Management System at the San Jose/ Santa Clara Water Pollution Control Plant for ten additional months to expire on June 30, 2012.

BASIS FOR RECOMMENDATION:

Contract is to develop a plan and provide implementation services for installation of a Computerized Maintenance Management System (CMMS) with a combination of software application modules to be separately procured by City from Infor/Datastream 7i. The implementation services included in this Scope of Services are:

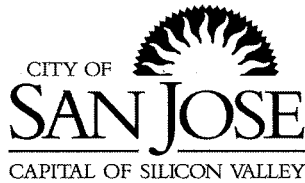
- (1) Project Management: provide a project team to manage and oversee the implementation of the CMMS.
- (2) System Development: plan and develop requirements for implementation of a CMMS.
- (3) System Implementation, Reports, Testing and Validation. This includes all data migration and needed reports
- (4) Documentation: provide documentation (hardcopy and electronic) relating to the new system.
- (5) Training: provide and implement a training plan for all levels of the organization.
- (6) Maintenance/Support: provide technical support and provide software updates, including installation and training, troubleshooting and help with any recovery operations.

Items 1 through 5 have been completed. This time only amendment is for Westin to assist in the implementation of the latest software upgrade under item 6. This will extend the contract till June 30, 2012.

COST AND FUNDING SOURCE:

- 1. This is a time only extension of the contract.
- 2. Amended contract will expire on June 30, 2012
- 3. Original Contract Amount was \$861, 000, approved by council on October 16, 2007. This contract was funded by Treatment Plant Capital Fund, Plant Infrastructure improvements appropriation.
- 4. No Fiscal Impact, since no additional funds added to the contract.

FOR QUESTIONS CONTACT: John Mukhar, Senior Engineer, Environmental Services at 945-5189.



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Walesh
Joseph Horwedel

SUBJECT: Zero Waste Energy Development
Company Lease

DATE: June 7, 2011

Approved

Date

6/8/11

COUNCIL DISTRICT: 4
SNI AREA: N/A

RECOMMENDATION

- a. Adoption of a resolution to adopt the Mitigated Negative Declaration prepared for the Dry-Fermentation Anaerobic Digestion Facility Project, File No. SP09-057, as having been completed in compliance with the California Environmental Quality Act and reflecting the City's independent judgment and analysis, and to adopt a related mitigation monitoring and reporting program. Council District: 4 (Planning, Building and Code Enforcement)
- b. Adopt a resolution to authorize the City Manager to execute a ground lease in the form proposed, with Zero Waste Energy Development Company (ZWED) for the construction and operation of a dry anaerobic digestion facility on Water Pollution Control Plant land, for a 30 year term, with an annual base rent equivalent to \$850,000 on Phase I, and potential additional rent payments of \$4.35 per organic ton processed in Phases II and III, subject to annual adjustment directly tied to Consumer Price Index increases.

OUTCOME

Approval of this ground lease will allow Zero Waste Energy Development Company, LLC (ZWED) to construct a three-phase dry fermentation Anaerobic Digestion facility that will process organic material from San Jose and other municipal solid waste streams and convert it into electricity.

BACKGROUND

Staff was approached by ZWED in 2008 regarding the possible use of Plant buffer lands for the development and operation of a dry anaerobic digestion facility to process organic waste. On June 16, 2009, the City Council approved a Memorandum of Understanding with ZWED

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Subject: Zero Waste Energy Development Company Lease

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directing staff to develop lease terms for the proposed development following their expressed interest in the property. The City based its selection of ZWED on the common ownership of the proposed facility with the adjacent properties.

The Site was acquired in 1982 as part of the buffer lands of the Plant. The City of San Jose and the City of Santa Clara are joint owners of Plant lands under the terms of the 1959 San Jose Santa Clara Joint Powers Authority Agreement. The treatment plant serves the homes of 1.4 million residents and about 17,000 main commercial/industrial sewer connections across the cities of San José, Santa Clara, Milpitas, Cupertino, Campbell, Los Gatos, Monte Sereno, and Saratoga. The cities and sanitation districts that contribute to the Plant share in any land use revenues. The site operated as a private landfill from approximately 1938 to 1969. The original landfill operation encompassed 166 acres which included the still operating Zanker Road Landfill property; the Zanker Resource Management Company purchased its 70-acre portion from the City in 1982. Since the cessation of disposal activities at Nine Par, the site has remained mostly undeveloped with only a recycled water filling station fronting the site and intermittent soil management and cover maintenance activities occurring as needed. More than half of the site's 96 acres are designated as wetlands leaving an approximate developable area of 40 acres.

Older landfills, such as Nine Par, present potential threats to groundwater from contaminants leaching from waste, landfill gas hazards as a result of decomposing waste, and structural concerns due to differential settlement of the site over time. Consequently, development of the site will require review under California Title 27 Regulations as a Post Closure End Use activity. Under these regulations, the City of San José is the Local Enforcement Agency (LEA) for the non-operating inactive Nine Par landfill site, and must approve an amendment to the Solid Waste Facility Permit and Closure Plan. A Solid Waste Facilities Permit (SWFP) will need to be obtained from the LEA, and concurred by the CalRecycle Permit Program, to cover proposed activities on the site. Development and activities on the site have also been extensively coordinated with the San Francisco Bay Regional Water Quality Control Board.

The Anaerobic Digestion Facility will be owned, managed and operated by Zero Waste Energy Development Company, LLC (ZWED). ZWED is a partnership between Zanker Road Resource Management, Ltd. and GreenWaste Recovery, Inc. Each company is separate and distinct and, while they share some common ownership, the companies and their facilities are operated independently and have separate and distinct functions. The two facilities adjacent to the Nine Par site, Zanker Road Resource Recovery Operation and Landfill (ZRRROL) and Zanker Material Processing Facility (ZPMF), are owned in their entirety by Zanker Road Resource Management, Ltd.

ANALYSIS

The subject 40 acre site is currently vacant and consists of a portion of the former Nine Par Landfill, a tidal marsh area, and the Plant's inactive recycled water filling station. The Nine Par Site is adjacent to the Zanker Road Resource Recovery Operation and Landfill and the Zanker Material Processing Facility.

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Subject: Zero Waste Energy Development Company Lease

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Development

ZWED proposes to develop the project in three phases, with each phase being capable of handling 75,000 tons of incoming organic waste material per year plus 15,000 tons of bulking material and compost amendments, for an eventual total of 225,000 tons of organic feedstock and 45,000 tons of bulking agent to be used in the anaerobic digestion process per year. The 15,000 tons of bulking material added at each phase will be transferred from the adjacent ZRRROL facility.

The proposed project will include three approximately 60,000 square foot enclosed buildings. Each building will include an enclosed receiving area for organic waste delivery and storage, sixteen digesters for the extraction of biogas, an engine room, compost curing tunnels, and a biogas storage area. The enclosed buildings will be equipped with an air circulation control system that will regulate air within the structure, and exhaust air through biofilters in a manner that controls any odors and emissions. The facility will also include a maintenance shop, administrative office, and washroom facilities for employees.

Business Terms

Valuation

The nature and previous use of the site present significant challenges to any future use. In addition to the added regulatory processing associated with the former landfill use, the site is currently not served by utilities, is surrounded by undesirable uses and requires significant investment in the design of any development due to the geotechnical challenges associated with construction on top of waste. In considering whether the site is suitable for this or any development these considerations have needed to be analyzed, especially in the context of determining an appropriate valuation.

Through analysis and evaluation of comparable light industrial properties in the immediate area, staff has determined the fair market value of the Phase 1 portion of the site for the duration of the lease to have a net present value equivalent to the site improvement costs of \$11.8 million. As ZWED shall perform all pre-development work associated with site preparation, staff has worked closely with ZWED to determine the costs associated with bringing the complete site to a developable condition. Under the terms of the proposed lease agreement, ZWED will be credited up to \$850,000 per year towards the Phase 1 base rent to offset the total amount to be expended on site improvement amortized over 30 years at a rate of 6%.

Term

The City and ZWED will enter into a ground lease with an Initial Term of seven years from the date of execution for all three leaseholds comprising approximately 40.7 acres of leasable area. ZWED shall have an automatic irrevocable right to continue the leasehold for the Phase 1 portion of the site for an additional 23 years following the initial term. In the event that ZWED has started implementation of Phase 2 of the development by submitting a complete building

June 7, 2011

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permit package within the initial seven year term, it shall have the right to continue the Phase 2 leasehold for the remainder of the 30 years, and continue the Phase 3 leasehold for an additional five years. ZWED will have to begin implementation of Phase 3 within this 5 year renewal period in order to maintain the Phase 3 leasehold.

In the event that ZWED has not commenced the implementation of either Phase 2 or Phase 3 as specified, the lease provides for three options to extend the Initial Term for the Phase 2 & Phase 3 leaseholds by one year, exercisable upon notice and payment of \$100,000 for each year and each option. Exercising these options will not extend the 30-year term of the lease. The lease provides the right to exercise one additional ten-year option on continuous renewal of the full lease based on an appraised market value less 10%.

Rent

The base rent for Phase 1 shall be payable as a proportional credit against the expenditure of site development costs or as a payment of \$850,000 per year. Rent for Phases 2 and 3 shall be collected on the number of organic tons collected at the facility. Every ton above the anticipated 75,000 tons of organic waste anticipated in Phase 1 shall be subject to a \$4.35 per ton of organic waste. To ensure that the City maintains payment equivalent to fair market value for Phases 2 and 3, a minimum payment equivalent to 60% of all anticipated tonnage has been included in the lease. Per City Council's direction through the approved Memorandum of Understanding, the per ton payments will be periodically adjusted by a factor equal to one plus the Annual Percentage Change in the CPI-U index. Staff has also negotiated a one-time 10% increase in the per ton rate due at the time of the first ton entering Phase 2 of the project. Assuming a 3% per year increase to represent CPI-U, and 18 months construction time for Phase 2 development, staff anticipates rent to begin as payment of \$297,470 in year nine of the lease. This is projected to increase to a payment of \$689,699 in year 14 of the lease as Phase 3 become active. Over the 30 year life of the lease, staff is anticipating minimum payments of over \$16.5 million. Incoming revenues will be distributed between the City of San Jose, City of Santa Clara and tributary agencies as predetermined by the master agreements with these agencies.

Assignment

Assignment or sublease is subject to the approval of the City and all use of the property will further the intent and/or goals of the City's Green Vision. In the event that ZWED meets the conditions in order to lease either Phase II or Phase III and does not construct the corresponding phases of the anaerobic digestion facility, but intends to use the property for another purpose or assign or sublease the property to a separate entity, both parties agree to negotiate on the appropriate equivalent to the per ton payment provided by the anaerobic digestion facility.

Liabilities/Indemnification

Under the provisions of the lease, the City retains liability for the physical and environmental condition of the property, including any hazardous materials present, previously landfilled materials, soils and groundwater conditions in existence prior to July 1, 2011. The City is also responsible for compliance with any applicable laws relating to the conditions. However, ZWED

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will be responsible for the cost of improving the site which will include any predetermined remediation relating to pre-existing conditions as a result of development. The City is indemnified against any costs or actions actually incurred or sustained as a result of the introduction of hazardous materials to the property or the exacerbation of any existing or unknown contamination caused by ZWED. ZWED has also agreed to perform the following maintenance activities:

- Mowing and Weed Abatement
- Erosion Control and Repair
- Maintenance and Replacement of Landscape/Vegetation
- Irrigation and Maintenance for Frontage Plantings along Los Esteros Road
- Maintenance and Repair of Landfill Cap and Site Drainage Infrastructure
- Maintenance and Repair of Site Fencing
- Ongoing Vector, Fire and Litter control
- ISO Settlement Mapping and reporting every 5 years.

Process

Staff has been working with ZWED since approval of the Memorandum of Understanding in 2009 to understand the full extent of the challenges posed by potential development of the site and to work through a lease structure that supports this innovative use of the property. The substantial details of the lease, including the responsibilities for maintenance of the site and any monitoring associated with the former landfill, have been negotiated and attached in draft format. Staff has continued to work expeditiously with ZWED to meet their timeline which is tied to the City's commercial organic waste processing service. The timeline is also linked to a Section 1603 grant program as part of the American Recovery and Reinvestment Act of 2009 which provides cash grant incentives for renewable energy projects but requires a portion of construction be completed by the end of the calendar year.

Because the City of Santa Clara owns the plant lands jointly with the City of San Jose, the Santa Clara City Council will also need to approve the lease. TPAC recommendation is also required for the consideration of a lease or other agreement between the two joint owners. In addition, the Milpitas City Council and the boards of the tributary agency sanitation districts need to approve amendments to their respective Tributary Agency Agreements. Staff has coordinated with TPAC and the City of Santa Clara throughout the negotiation of the proposed lease and following Council's action on the resolution authorizing the City Manager to negotiate and execute the ground lease, staff will coordinate with City of Santa Clara staff to bring the item before Santa Clara City Council.

Conclusion

The ability to leverage private investment in City property, provide an immediate resolution to a potential burden to City resources and to create a future revenue stream applicable to the General Fund represents a significant benefit to the City. Due to the unique disposition of property and the potential for future requirements to remediate, maintain and monitor this complex site even in the event that no project occurs, the facilitation of complementary development to the

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surrounding uses represents the best alternative for use of the property. The proposed use is consistent with the preferred Land Use Alternative for the Plant Master Plan and provides benefit to the City's long-term sustainability goals by diverting waste from landfills through conversion it into a renewable energy source. The lease is also consistent with the Council's adopted guiding principle for City ownership of real estate: supporting the cost-effective delivery of core City services to the community. Future revenue from the lease will support City services, while the site is currently generating no revenue and is not supporting any City services.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This action does not meet any of the above listed criteria; however it will be posted on the City's website for the June 21, 2011, Council agenda.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, Environmental Services Department, and Planning Building and Code Enforcement. This item is scheduled to be reported at the June 16, 2011 Treatment Plant Advisory Committee.

COST SUMMARY/IMPLICATIONS

Zanker Road Biogas, LLC, will be responsible for all one time and ongoing costs related to the development and operation of this facility, including site preparation, permitting, project design, construction, operations, maintenance, and on-going closed landfill mitigation monitoring on the Nine Par parcel related to this project.

This project will likely produce lease revenue for the City, City of Santa Clara and tributary agencies. As a joint owner of the Plant lands, Santa Clara is entitled to receive a share of any income derived from the lease of Plant lands during the term of the JPA. The Master Agreements governing the relationships for the City of Milpitas and the Cupertino Sanitary, West Valley Sanitation, Burbank, and Sunol sanitary districts provide the agencies with

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"participation rights" in the Plant lands through 2031. The Master Agreements state that, if San Jose and Santa Clara sell or otherwise dispose of any of the lands no longer needed for Plant purposes, the agencies have the right to share in any revenue derived. The Master Agreements further provide that Santa Clara and the tributary agencies are not entitled to receive revenue from the disposition of land until they have fully paid their allocable share of land costs. It should be noted that San Jose is scheduled to annex the entire Sunol District over the next few years, and as a result, San Jose will assume all of Sunol's rights in the Plant lands.

CEQA

The Director of Planning recommends that the City Council adopt a resolution adopting the Mitigated Negative Declaration (MND) prepared for the Zero Waste Development Company Dry-Fermentation Anaerobic Digestion project (File No. SP09-057) as having been completed in compliance with CEQA reflecting the City's independent judgment and analysis, and the adoption of a mitigation monitoring and reporting program.

On April 8, 2011, the Director of Planning, Building and Code Enforcement circulated an Initial Study/Draft Mitigated Negative Declaration for a 30-day public review through the State Clearinghouse in conformance with the requirements of the California Environmental Quality Act (CEQA). The project is for the Zero Waste Energy Development Company to construct a 270,000 ton per year dry fermentation anaerobic digestion (AD) facility to process the organic portion of solid waste. The facility includes three 60,000 square foot buildings, incidental office space, biofilters, outdoor space for aerated curing piles, screening and stockpiling finished materials, six power generators and three emergency generators on an approximately 41 gross acre site.

The project is consistent with the existing zoning for the site, which is LI Light Industrial, and allows recycling processing facilities and co-generation facilities with a Special Use Permit. The project is also consistent with the General Plan Land Use designation of Public/Quasi-public for the site in that the use is a part of the City's Zero Waste Strategy by diverting the City's commercial food waste away from landfills and converting it to compost and biogas.

The Initial Study and MND for the AD facility was prepared and processed in compliance with the requirements of CEQA (see: <http://www.sanjoseca.gov/planning/eir/MND.asp>). The Director of Planning, pursuant to the requirements of Title 21 of the San Jose Municipal Code, reported that there is no substantial evidence in the public record received to date that the project will have a significant effect on the environment with the identified mitigation measures included in the project. The MND has been prepared and processed in a manner that reflects the City's independent judgment and analysis as Lead Agency.

The City has identified potential significant impacts as a result of the project to Air Quality, Biological Resources, Geology and Soils, Hazards and Hazardous Materials, Hydrology and Water Quality, and Noise. All of the significant impacts identified can be reduced to a less than significant level with mitigation. The mitigation measures are identified in the Initial Study, the Mitigated Negative Declaration, and the Mitigation Monitoring and Reporting Program for the project.

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As part of the Council's consideration of the Mitigated Negative Declaration (MND), the Mitigation Monitoring and Reporting Program is also attached. If Council adopts the MND, the Council will also be adopting the Mitigation Monitoring and Reporting Program to ensure the mitigation measures relating to the project are implemented.

The Planning Division has received comment letters on the Initial Study/Mitigated Negative Declaration from local government agencies and from local non-profit organizations. Staff is currently responding to those comments and will forward the comments and responses in a supplemental memo.



KIM WALESH
Director of Economic Development
Chief Strategist



For JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Chris Burton, Senior Executive Analyst, at (408) 535-8114