



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kerrie Romanow

SUBJECT: SEE BELOW

DATE: September 8, 2015

Approved

D. D. Syl

Date

9/9/15

INFORMATION

SUBJECT: UPDATE ON AGENCY PARTICIPATION IN EXTERNAL FINANCING THROUGH THE CLEAN WATER FINANCING AUTHORITY FOR THE SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY CAPITAL IMPROVEMENT PROGRAM

The attached information memorandum will be provided to the Treatment Plant Advisory Committee providing an update on agency participation in external financing through the Clean Water Financing Authority for the San José-Santa Clara Regional Wastewater Facility Capital Improvement Program.

/s/Ashwini Kantak for
KERRIE ROMANOW
Director, Environmental Services

Attachment

Memorandum

TO: TREATMENT PLANT
ADVISORY COMMITTEE

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This information memorandum provides an update on agency participation in external financing through the Clean Water Financing Authority for the San José-Santa Clara Regional Wastewater Facility (RWF) Capital Improvement Program (CIP).

BACKGROUND

Since early 2014 staff has been working with representatives from the City of Santa Clara (Santa Clara) and the Tributary Agencies on a funding strategy for the \$1,400,000,000 CIP at the RWF. On May 14, 2015 and June 2, 2015, respectively, the Treatment Plant Advisory Committee (TPAC) and San José City Council (Council) approved the RWF CIP Ten-Year Funding Strategy and associated staff recommendations. An information memorandum dated July 29, 2015 (<http://www.sanjoseinfo.org/external/content/document/1914/2573854/1/07-30-15ESD.PDF>) was sent to the Treatment Plant Advisory Committee (TPAC) to provide a status update on the progress of those recommendations. As stated in the July 29 memo, staff was working with representatives from Santa Clara and the Tributary Agencies to review three external financing options (State Revolving Fund (SRF) loans, short term financing, and long term tax exempt revenue bonds) and to assist the agencies in finalizing their participation in one or more of those financing options. Per prior TPAC and Council direction, confirmation from all agencies was required by the end of August 2015, so their participation could be considered in establishing the commercial paper program in early 2016, and in applying for SRF funding.

Based on meetings and discussions with Santa Clara and the Tributary Agencies, the July 29 memo indicated preliminary levels of participation by each agency. The memo also outlined next steps which included sending a participation form (see Attachment A) for all agencies to fill in and return by the due date of August 31. Upon receipt of this form from all agencies, San José staff was to begin drafting amendments to the 1983 Master Agreements and work with agencies to obtain approval through their respective Councils and Boards by November 2015.

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ANALYSIS

San José staff received a letter from all the Tributary Agencies (Attachment B) indicating that they were not prepared to confirm participation by the August 31, 2015 due date because they did not have the final terms and conditions. San José staff sent a response (Attachment C) to the agencies indicating that in order to meet previously approved timelines and to obtain SRF funding and establish a short term financing program in time for large project awards in this fiscal year, it was essential to confirm participation by the August 31 deadline. The letter also reiterated that substantial information had been provided to the agencies to assist them in their decision making and that final numbers would be dependent on market conditions, number of agencies participating in Clean Water Financing Authority (CWFA) financing, and amount of SRF funding received, none of which could be confirmed at this time. If the participation confirmation form was not submitted by the due date, staff would proceed with the assumption that the specific agency or agencies did not wish to participate in external financing.

San José staff received the completed participation forms from Santa Clara and the City of Milpitas (Milpitas) by the due date of August 31; no other agencies have responded. The table below summarizes the agency responses.

Agency Name	CWFA Short Term Financing	SRF loans	CWFA Long Term Financing
San José	Yes ¹	Yes	No
Santa Clara	No ²	Yes	No ²
WVSD	No Response	No Response	No Response
Milpitas	Yes ³	Yes	No ³
Cupertino	No Response	No Response	No Response
CSD 2-3	No Response	No Response	No Response
Burbank	No Response	No Response	No Response

Footnotes

1. San José does not need short term financing until FY 16-17 and will only establish program in FY 15-16 if there is firm commitment through a Master Agreement amendment by November 2015.
2. Santa Clara has declined short term and long term financing based on the current CIP allocations and would like to reconsider their participation should there be significant changes to those numbers.
3. Milpitas is interested in SRF loans and short term financing but is unable to commit until final terms and conditions are presented.

External Financing Options

Based on the agency responses and prior direction from TPAC and Council, staff proposes the following approach for external financing.

1. *Short Term Financing (Commercial Paper Program or similar)*

As stated in the July 29 memo, the May 2015 ten-year forecast scenario for a commercial paper program was built on a set of assumptions. As such, these numbers may change based on the final number of agencies participating in the program, the amount borrowed and term for each agency's usage of the program, and the actual financial terms at the time of establishment of a commercial paper or other short-term financing program. *San*

José does not need short term financing until FY 16-17 and will only proceed with establishing this program in FY 15-16 if there is firm commitment and need from Milpitas, and an agreement with Milpitas as to appropriate cost sharing. A firm commitment through a Master Agreement amendment is essential in order to avoid incurring unnecessary costs to establish and maintain a program that may not be needed by San José until the following fiscal year.

For Santa Clara and other agencies that may wish to participate in the future, limited windows of opportunity may be available every two to three years when underlying credit documents are renegotiated or replaced. Any near term program through CWFA will only be established contingent on firm commitment by other agencies. If this commitment is not formalized through an amendment to the Master Agreement per the previously approved timeline, San José may consider proceeding with a short term program outside of the CWFA structure.

Staff would once again like to emphasize that establishment of a CP program or similar short term financing program provides a highly flexible financial tool for funding the capital needs and mitigating the upfront impacts of large capital project encumbrances. A CP Program would also improve the mechanics of initial funding and reimbursement for projects funded from SRF loans.

2. SRF loans

Per prior TPAC and Council direction staff intends to pursue SRF funding for projects to the maximum extent possible. ***Therefore, staff will pursue SRF loans on behalf of all the agencies that committed to participation in SRF funding (San José, Santa Clara, and Milpitas).*** The Master Agreement amendment will need to be completed prior to entering into a SRF loan agreement in order to be able to finalize the loan amount and demonstrate the ability to pay based on revenues from all participating agencies. Specific repayment terms will not be finalized until the loan agreement is finalized but payment terms are anticipated to be more favorable than any other form of external financing.

As stated in the July 29 memo, agencies will need to take into consideration that SRF funding, if approved, is provided on a reimbursable basis. Thus agencies will have to arrange for funding their contributions upfront. In the event that an agency cash funds its contribution for a project that subsequently receives SRF funding, the agency's contribution related to that project will be reconciled with the SRF debt service repayment schedule and the remaining funds will either be returned or credited to the agency as is already the practice through the third quarter adjustment period after Year End close. For agencies cash funding and not participating in SRF loans, this true-up will occur upon project completion.

3. Long Term Tax Exempt Revenue Bond Financing

At this time, based on agency responses, staff is not planning to arrange for long term financing through CWFA for borrowers other than San José. Each agency will address its own long term financing needs. Depending upon the structure of the pledges related

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to the SRF loan(s), it may be appropriate for San José to borrow for its needs through CWFA, as it has done in the past.

As noted in the July 29 memo, timely approvals of the amendments to Master Agreement by the respective Councils and Boards are required for agencies to be able to participate in any external financing, including SRF loans.

Next Steps

Staff will bring forward resolutions for the SRF loan application for the Digester and Thickener Facilities Upgrade project to the City Councils of Santa Clara and San José and to CWFA for consideration in October. The final application package for the project will be submitted shortly thereafter. This will enable loan approval in time for construction award in spring 2016.

Staff will send draft amendments to the 1983 Master Agreements to all agencies with a target of obtaining approval through their respective Councils and Boards by November 2015. These amendments will be based on prior TPAC and Council direction and will include the operating reserve contributions for all agencies, and general financing terms for Milpitas, pending final confirmation of participation in short term financing. As stated in the August 28, 2015 staff letter to the Tributary Agencies (Attachment C), changes to the Master Agreements unrelated to financing are not being considered at this time in the interest of dedicating resources towards implementation of the CIP.

/s/Ashwini Katak for
KERRIE ROMANOW
Director, Environmental Services

For questions, please contact ESD Assistant Director Ashwini Katak at 408-975-2553.

Attachments

CC:

San José City Council
Santa Clara City Council
West Valley Sanitation District Board
Milpitas City Council
Cupertino Sanitary District Board
County Sanitation District Nos. 2-3 Board
Burbank Sanitary District Board
Technical Advisory Committee



RWF CIP Ten-Year Funding Strategy Agency Participation in External Financing

Introduction/Background

On May 14, 2015, the Treatment Plant Advisory Committee (TPAC) approved the San José-Santa Clara Regional Wastewater Facility (RWF) Capital Improvement Program (CIP) Ten-Year Funding Strategy. A copy of the approved funding strategy is available at the following link:
<http://www.sanjoseca.gov/DocumentCenter/View/43377>

This approved strategy includes several recommendations, including:

- All agencies contribute to a 60-day operating reserve beginning in fiscal year 2016-2017;
- Pursue State Revolving Fund (SRF) loans for RWF capital improvement projects to the maximum extent possible;
- Confirm agency participation in a commercial paper program and/or long-term revenue bonds through the Clean Water Financing Authority (CWFA) by August 2015;
- Amend the 1983 Master Agreement to incorporate terms related to operating reserve contributions, as well as terms related to financing of RWF improvements through the CWFA.

This form will allow each agency to confirm their participation in each of the three external financing options:

- 1) SRF loans;
- 2) Short-term financing instruments (such as commercial paper);
- 3) Long-term revenue bond financing through the CWFA.

It is important that this information be provided by the end of August in order for staff to begin drafting appropriate amendments to the 1983 Master Agreements, develop and submit the SRF loan application package to the State Water Resources Control Board by the end of 2015, initiate the process to establish a short-term financing program by early 2016, and ensure sufficient funding to award CIP projects during the fourth quarter of fiscal year 2015-2016. To further assist each agency in its evaluation, the table on page 3 provides the estimated capital cost allocations for each agency over the next five years.

Please complete the Agency External Financing Participation Form beginning on page 2 and email your completed form to Ashwini Kantak at ashwini.kantak@sanjoseca.gov by no later than August 31, 2015.



Agency External Financing Participation Form

Agency Name: Please Select Your Agency

Agency Representative: _____

1. Does the agency wish to participate in SRF Loans to the maximum extent possible?

Yes No

2. Does the agency wish to have a proportionate share of its RWF CIP costs covered by a commercial paper or other short-term financing program?

Yes No

3. Does the agency wish to have a proportionate share of its RWF CIP costs covered by long-term revenue bond financing through CWFA?

Yes No

4. The estimated CIP Cost Allocations for each agency are shown in the table on the following page. The amounts shown in the rows highlighted in yellow reflect the estimated CIP construction costs that may be financed and/or cash-funded. The amounts highlighted in green reflect the CIP costs that are ineligible for financing and MUST be cash-funded by each agency.

Please determine the estimated cash funding your agency will provide over the next five years for RWF CIP costs and enter these amounts in the *Agency Cash Funding line*. This information will allow staff to further refine financing options based on the specific funding needs of each agency.

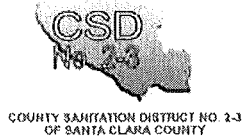


2017-2021 CIP AGENCY COST ALLOCATIONS/CASH FUNDING

	16-17	17-18	18-19	19-20	20-21
Santa Clara					
CIP Construction Costs Eligible for Financing	13,905,185	29,882,471	23,019,688	10,690,785	11,695,645
CIP Costs Ineligible for Financing/Minimum Agency Cash Funding	4,595,415	1,462,902	1,019,031	751,957	396,019
Total CIP Cost Allocations	18,500,600	31,345,372	24,038,719	11,442,743	12,091,664
<i>Agency Cash Funding</i>					
West Valley					
CIP Construction Costs Eligible for Financing	6,094,783	13,074,627	10,146,624	4,713,126	5,210,222
CIP Costs Ineligible for Financing/Minimum Agency Cash Funding	2,687,267	760,170	522,240	374,685	218,534
Total CIP Cost Allocations	8,782,050	13,834,797	10,668,863	5,087,811	5,428,757
<i>Agency Cash Funding</i>					
Cupertino					
CIP Construction Costs Eligible for Financing	3,933,941	8,426,940	6,572,208	3,046,581	3,383,806
CIP Costs Ineligible for Financing/Minimum Agency Cash Funding	1,704,441	465,789	322,837	234,012	133,302
Total CIP Cost Allocations	5,638,381	8,892,729	6,895,045	3,280,594	3,517,108
<i>Agency Cash Funding</i>					
Milpitas					
CIP Construction Costs Eligible for Financing	6,768,950	14,503,880	11,311,176	5,254,640	5,850,291
CIP Costs Ineligible for Financing/Minimum Agency Cash Funding	1,956,552	430,884	401,751	398,442	224,932
Total CIP Cost Allocations	8,725,502	14,934,764	11,712,926	5,653,083	6,075,223
<i>Agency Cash Funding</i>					
CSD 2/3					
CIP Construction Costs Eligible for Financing	486,141	1,042,120	812,441	376,510	418,759
CIP Costs Ineligible for Financing/Minimum Agency Cash Funding	295,456	185,866	149,649	130,354	117,900
Total CIP Cost Allocations	781,596	1,227,986	962,089	506,864	536,660
<i>Agency Cash Funding</i>					
Burbank					
CIP Construction Costs Eligible for Financing	218,228	466,652	368,263	168,004	187,578
CIP Costs Ineligible for Financing/Minimum Agency Cash Funding	90,768	41,574	33,324	28,689	23,146
Total CIP Cost Allocations	308,996	508,226	401,587	196,693	210,724
<i>Agency Cash Funding</i>					

Notes:

- 1) Agency cost allocations above are based on updated capital cost parameters and may be adjusted in the future based on further changes to capital cost parameters and agency capacity for each flow parameter.
- 2) Minimum Agency Cash Funding amounts include: non-construction costs, equipment replacement reserve contributions, SRF loan annual repayments, and CWFA debt service payments.



August 14, 2015

Kerrie Romanow
 City of San Jose
 200 E. Santa Clara Street
 10th Floor Tower
 San Jose, CA 95113

Re: City of San Jose Memorandum to TPAC dated July 29, 2015

Dear Ms. Romanow

The West Valley Sanitation District, Burbank Sanitary District, Cupertino Sanitary District, County Sanitation District 2-3, and the City of Milpitas (collectively, the "Tributary Agencies") jointly submit this response to the above-referenced memorandum ("Memo") in connection with the funding of capital improvements to the San Jose-Santa Clara Regional Wastewater Facility (RWF). Although the Memo was addressed to the Treatment Plant Advisory Committee, the Tributary Agencies' staff are compelled to send this response because the Memo raises a number of immediate concerns. The comments below are intended to, in good faith, foster a more transparent discussion between the Tributary Agencies and the City of San Jose including City of Santa Clara, co-owner of the RWF.

First, the Memo presupposes that each of the Tributary Agencies, and the City of Santa Clara, will confirm their participation in a commercial paper program or other short-term financing program and/or long-term revenue bonds through the Clean Water Financing Authority ("CWFA") by August 31, 2015. The Memo suggests that the Tributary Agencies base their respective decisions on financial planning documents adopted by the San Jose City Council, a sample commercial paper term sheet, an FAQ sheet on short-term financing, and the general statement that "these numbers may change" based on various factors. The Tributary Agencies appreciate that the City of San Jose has provided us with this information. However, the available information is not sufficient for the Tributary Agencies to make an informed, reasoned decision by August 31. The available information lacks specific terms and conditions for financing beyond the City of San Jose's unilateral demand that each Tributary Agency contribute a 60-day operating reserve beginning in FY 2016-2017.¹ The Tributary Agencies need to know

¹ Even though TPAC recommended, and the San Jose City Council approved, this 60-day reserve requirement, there is no guarantee that each Tributary Agency's Board or Council will likewise agree to such requirement. A reserve requirement requires an amendment to the 1983 Master Agreement and any amendment will require mutual concurrence between the parties.

if the City of San Jose is planning to impose other conditions for participation in financing through the CWFA. In addition, more detailed information is needed regarding the short and long-term financing programs, such as what is the Not-To-Exceed amount for each Tributary Agency, the schedule of payments, and if only a three-year commercial paper program is expected or if the term is likely to be extended.

The City of San Jose can certainly appreciate that funding the RWF capital improvements involves a significant, long-term financial investment that has corresponding long-term impacts to our respective ratepayers. The Tributary Agencies support many of the planned upgrades and are prepared to make such investment, however we risk breaching our fiduciary duties to our ratepayers if we do not have the information necessary to carefully consider the costs and the terms and conditions of all of our options. Therefore, the Tributary Agencies need additional information and additional time to evaluate this information prior to making any committed decision.

Second, the Memo suggests that any amendments to the Tributary Agencies' 1983 Master Agreement will be approved by November 2015. This deadline is unrealistic because the amendments will require some amount of negotiation, which will likely take longer than 2.5 months to reach any mutual agreement and then processing the final agreement through our respective board/council for approval. The Tributary Agencies are also developing our own lists of provisions that should be included in this amended Master Agreement. Consequently, formal meetings with City of San Jose and City of Santa Clara staff and their legal counsel are needed to discuss and negotiate these amendments to the Master Agreements. The Tributary Agencies and their counsel are interested in meeting the week of September 28th.

Finally, the last page of the Memo suggests that if amendments to the Master Agreements are not approved by November 2015, then the City of San Jose will preclude the Tributary Agencies from participating in SRF loans and external financing. This statement reads as unnecessarily aggressive and unproductive; the Tributary Agencies wish to work cooperatively with the Cities of San Jose and Santa Clara and expect the Cities would want the same cooperative relationship.

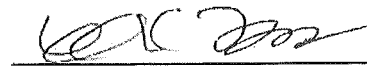
Thank you for considering the above comments. We look forward to discussing these issues with you further. For any questions related to any of the Tributary Agencies regarding these issues, please contact Sarah Quiter at Squiter@meyersnave.com and 510-808-2000.

Sincerely,


West Valley Sanitation District


Jon Newby, District Manager and Engineer

County Sanitation District 2-3


Richard Tanaka, District Manager

Burbank Sanitary District


Richard Tanaka, District Manager

City of Milpitas


Nina Hawk, Public Works Director

Cupertino Sanitary District



Richard Tanaka, District Manager

CC:

San Jose City Council

Santa Clara City Council

West Valley Sanitation District

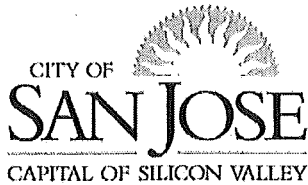
Milpitas City Council

Cupertino Sanitary District Board

County Sanitation District Nos. 2-3

Burbank Sanitary District Board

Technical Advisory Committee

*Environmental Services Department*

August 28, 2015

To:

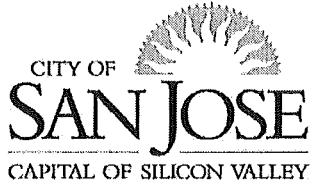
Nina Hawk, Public Works Director - City of Milpitas
Jon Newby, District Manager and Engineer - West Valley Sanitation District
Richard Tanaka, District Manager - Cupertino Sanitary District; Burbank Sanitary
District, County Sanitation District 2-3

**Re: San José-Santa Clara Regional Wastewater Facility Capital Improvement
Program Financing Assistance**

Dear Ms. Hawk, Mr. Newby, and Mr. Tanaka,

On August 20, 2015, the City of San José received your letter dated August 14, indicating that your respective agencies are not prepared to confirm whether they require assistance with financing for their proportionate obligation to the San José-Santa Clara Regional Wastewater Facility (RWF) Capital Improvement Program (CIP) costs. Specifically, the letter claims that the information provided to the Tributary Agencies is not adequate to determine whether they will require assistance in securing financing.

Contrary to the representations made in the letter from the Tributary Agencies, the process for adopting the financing strategy has been transparent, in good faith, and developed in coordination with Santa Clara and the Tributary Agencies over two years and through numerous meetings, to advance our collective interest in preserving the RWF's ability to continue providing wastewater treatment services to all of our communities. We developed guiding principles in early 2014 in collaboration with all agencies and discussed a funding strategy with TPAC in April 2014 which would include external financing to smooth out rate spikes and provide intergenerational equity for all agencies. Since most agencies indicated that they would not be able to fund the CIP without financing assistance, we invested a significant amount of time and resources developing options to assist all agencies. As you are well aware, no agency is required to participate in future financing for the Capital Program if it can otherwise pay for the continued use of the Regional Wastewater Treatment Facility.



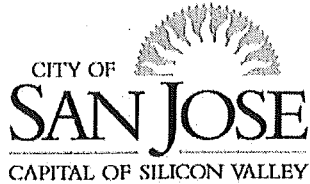
Environmental Services Department

As noted in the July 29, 2015 memo, on May 14, 2015, TPAC unanimously approved staff recommendations and forwarded the item to San José City Council with a recommendation to approve. With that direction, San José staff authored a memo on July 29 to all agency boards and city councils with the details of needed financing decisions and the current status of agency input on financing. Therefore, the July 29 memorandum and the subsequent participation form sent on August 19, 2015 could not have come as a surprise to any of you as it simply provides the mechanism for agencies to share with staff their final decision.

Beginning in early 2014, the City of San José, as the administering agency, has worked closely with representatives from the City of Santa Clara and the Tributary Agencies to develop a funding strategy and discuss potential external financing options. There have been several TAC and TPAC meetings focused on the funding strategy, including, but not limited to the most recent action at the May 14, 2015 TPAC meeting. At this meeting, TPAC members unanimously approved staff recommendations and directed all agencies to 1) contribute to a 60 day operating reserve beginning in FY 2016-2017 and continue to work on optimal reserve levels for operational purposes; 2) to pursue State Revolving Fund loans for RWF capital improvement projects to the maximum extent possible; 3) to continue to work with the City of Santa Clara and all Tributary Agencies to confirm participation in a commercial paper program and/or long term revenue bonds through the Clean Water Financing Authority (CWFA), by August 2015; and 4) to amend the 1983 Master Agreements to incorporate terms related to operating reserve contributions, as well as terms related to financing of the RWF improvements through the CWFA.

The potential types of external financing include State Revolving Fund (SRF) loans, short term financing such as a commercial paper program, and long term tax-exempt revenue bonds. Further, we have provided the Tributary Agencies the following information:

1. Agency specific capital cost allocation estimates for the next ten years
2. Cash flow expenditure and encumbrance profiles for the next three years by each quarter
3. Multiple examples of financing scenarios
4. A term sheet and a FAQ document for short-term financing (answering many of the questions raised in your letter)
5. Information about reserve requirements for long-term financing.

*Environmental Services Department*

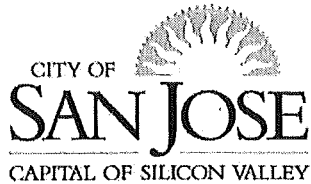
This information should be adequate for each agency to evaluate, as part of their other program needs, whether and when they can cash fund based on projected revenues, independently finance, or would require financing through CWFA.

As is typical in this type of complex financing model, it is not possible to determine final repayment terms for any of the financing options until we know the specific borrowing terms which will be determined by market conditions, both for short term and long term financing. The exact duration of the commercial paper program or similar short term financing program will also be dependent on the amount of SRF funding received, if any. Moreover, the number of agencies that request assistance with financing would influence cost such as required contribution to reserves, and each agencies' proportionate share.

As discussed at TAC meetings over the past two years and as directed by TPAC and San José City Council in May and June 2015 respectively, the Master Agreements need to be amended to document the payment terms of joint financing, as applicable, as well as to include the unanimous TPAC and San José City Council direction for each agency to contribute funding to maintain reserve levels at a financially responsible level. With the exception of agency transfers of capacity, the amendments to the Master Agreements are limited to memorializing repayment for financing of the South Bay Water Recycling projects in 1995. Based on our past experience, we are confident these focused amendments can be completed by November 2015. It was never contemplated that we would amend provisions of the Master Agreement not critical to financing the CIP. Requests for other changes to the Master Agreement would delay implementation of the CIP, and if appropriate, should be considered independent of the financing timeline.

Confirmation from your agency regarding assistance with external financing by August 31, 2015 is required to maintain the current schedule for implementation of the CIP, and associated financing. If we do not receive confirmation about your participation by that date, we will plan accordingly on the assumption that your agency will pursue independent financing or cash fund its proportionate share.

We will provide drafts of the Master Agreement Amendments by mid September to each agency to reflect the 60-Day operating reserve requirement per direction from your elected representatives, and/or revisions to reflect general terms for participation in financing. We can schedule a meeting with each agency as to their agreement thereafter.



Environmental Services Department

In the interest of conserving our time and resources towards implementation of the CIP, I would encourage your constructive participation in our monthly TAC meetings, and look forward to answering any questions your agency may have through your TPAC representative or by phone and email. Please call Ashwini Kankar, Assistant Director of Environmental Services, at (408) 975 2553 if you have any questions. Thank you.

Sincerely,

Kerrie Romanow
Director, Environmental Services

Cc:

Treatment Plant Advisory Committee Members
San José City Council
Santa Clara City Council
West Valley Sanitation District
City of Milpitas
Cupertino Sanitary District Board
County Sanitation Districts 2-3
Burbank Sanitary District Board
Chris deGroot, City of Santa Clara
Sarah Quiter, Meyers Nave