

**MINUTES OF THE
SAN JOSÉ/SANTA CLARA
TREATMENT PLANT ADVISORY COMMITTEE**
City Hall, Council Chambers
Thursday, March 10, 2016 at 4:30 p.m.

1. ROLL CALL

Minutes of the Treatment Plant Advisory Committee convened this date at 4:31 p.m. Roll call was taken with the following members in attendance:

Committee Members: Jose Esteves, John Gatto, Steven Leonardis, Sam Liccardo, Dave Sykes, Manh Nguyen, Pierluigi Oliverio

2. APPROVAL OF MINUTES

A. February 11, 2016

Item 2.A. was approved to note and file.

Ayes – 5 (Esteves, Gatto, Leonardis, Liccardo, Sykes)

Nays – 0

Absent – 4 (Kolstad, Marsalli, Nguyen, Oliverio)

3. UNFINISHED BUSINESS/REQUEST FOR DEFERRALS

4. DIRECTORS REPORT

A. Directors Report (verbal)
Monthly progress report

There were no items to report.

5. AGREEMENTS/ACTION ITEMS

A. **Election of the Chair**

Vice Chair Liccardo made a suggestion to defer this item for one month due to the absences of City of Santa Clara representatives and due to the fact that TPAC is currently short one chair. Committee Member Gatto also suggested nominating a vice-chair at the April TPAC meeting.

On a motion made by Committee Member Esteves and a second by Committee Member Leonardis, TPAC approved to nominate a chair and vice-chair at the April TPAC Meeting.

Ayes – 5 (Esteves, Gatto, Leonardis, Liccardo, Sykes)

Nays – 0

Absent – 4 (Kolstad, Marsalli, Nguyen, Oliverio)

B. Confirmation of hearing date and procedures for Administrative Claim Hearing

Assistant Director Ashwini Kantak indicated that the administrative claim hearing moved to March 24, 2016 from 1:30-3:30 PM in the Council Chambers.

San Jose Senior Deputy City Attorney Rosa Tsongtaatarii confirmed an agreement reached with counsel for the Tributary Agencies regarding the hearing procedures:

- (1) Each party would be allotted 20 minutes for presentations, which would be followed by a 10 minute rebuttal. The Tributary Agencies will present first.
- (2) The remaining time would be allocated to answer questions from the Treatment Plant Advisory Committee members without counting towards each party's allotted time.

Committee Member Gatto inquired what the possible outcomes would be from the hearing. Ms. Tsongtaatarii clarified that a report would be issued by TPAC, and that the agencies who disagreed with the report would have the opportunity to express their disagreement. The legislative bodies of the respective agencies that remain in dispute may call a joint meeting.

C. Construction Contingency Increase and Contract Change Order Authorization for the "7076 – Influent Magnetic Meter and Valve Replacement for Nitrification Clarifiers A-5 and A-6 Project" at the San Jose- Santa Clara Regional Wastewater Facility

Staff Recommendation:

- (a) Approve a \$92,970 increase to the construction contingency amount of \$27,030 for a revised total contingency in the amount of \$120,000 and increase the original contract not-to-exceed amount from \$297,330 to a total revised contract amount not-to-exceed \$390,300.
- (b) Adopt a resolution authorizing the Director of Public Works to negotiate and execute Contract Change No. 4 with JMB Construction, Inc. for the 9076 – Influent Magnetic Meter and Valve Replacement for Nitrification Clarifiers A-5 and A-6 Project extending the project completion date from February 17, 2014 to May 27, 2016 for a total of 561 working days beyond the original contract completion date of February 7, 2014.

This item is scheduled for consideration by the City Council on March 15, 2016.

TPAC discussed the circumstances giving rise to a need to increase the contingency. On a motion by Committee Member Gatto and a second by Committee Member Leonardis, TPAC recommended approval of the Staff Recommendations for Item 5.C.

Ayes – 7 (Esteves, Gatto, Leonardis, Liccardo, Nguyen, Oliverio, Sykes)
Nayes – 0
Absent – 2 (Kolstad, Marsalli)

D. 2015-2016 Budget Adjustments for the San José- Santa Clara Regional Wastewater Facility Capital Improvement Program

Staff Recommendations:

- (a) Adopt the following 2015-2016 Appropriation Ordinance and Funding Sources Resolution Amendments in the San José-Santa Clara Treatment Plant Capital Fund:
 - (1) Decrease the estimate for Earned Revenue by \$4,219,000;
 - (2) Decrease the Transfer to the Clean Water Financing Authority Debt Service 2015-2016 by \$1,556,000; and
 - (3) Decrease the Unrestricted Ending Fund Balance by \$3,643,000.
- (b) Adopt the following 2015-2016 Appropriation Ordinance Amendments in the Sewer Service and Use Charge Fund:
 - (1) Decrease the Transfer to the San José/Santa Clara Treatment Plant Capital Fund on or before June 30 by \$980,000; and
 - (2) Increase the Unrestricted Fund Balance by \$980,000.

David Wall spoke on this item.

Several Committee Members discussed proposals on this matter: TPAC representatives from the Tributary Agencies requested that this item be deferred because it involved a project for which they are asserting a claim that will not be heard by TPAC until March 24, 2016.

Ms. Tsongtaarii clarified that procedurally the Master Agreement requires the budget be reviewed by TPAC for its advisory recommendation before it is considered by the San Jose City Council. In this case, the adopted budget was based on assumptions that the Tributary Agencies would fund their portion of the capital budget with short term financing, commercial paper. Since that did not occur, the budget now needs to be corrected. Secondly, the Tributary Agencies allocation can now be revised to reflect treatment parameters because engineer design has since been completed for the project. This was the basis of the Tributary Agency's claim, and San Jose is trying to comply with the Master Agreement. The Tributary Agencies do not need to recommend moving forward with the budget adjustment, and their claim could still be asserted before TPAC at the administrative hearing.

Britt Strottman, legal counsel representing the Tributary Agencies, proposed that TPAC should not recommend approval of a mid-year budget action because to do so would circumvent the claim process. Moreover, the Master Agreement required that the Tributary Agencies should be billed for the difference between the payment and actual expenditures in the third quarter of 2017.

Assistant Director Kantak noted that the third quarter reconciliation for the prior fiscal year is a separate process provided under the Master Agreement to reconcile actual expenditures with payments based on adopted budget. Adjustments to the budget have been made in the past. The Master Agreement requires that the invoice be based on the budget and does not preclude adjustments to the budget.

Director Kerrie Romanow and Assistant Director Ashwini Kantak explained that delaying the Digester project could result in significant consequences (i.e. higher costs for the project and an increased risk of failure at the facility). Moreover, the current budget is based on capital cost allocations for a facility-wide project. In order to invoice for the Digester project in the fourth quarter billing, based on parameter allocations, the budget would need be amended to reflect the correct allocation amounts. The billing would occur on April 1st with payments and award of contact occurring in May.

An initial motion was made by Committee Member Gatto with a second by Committee Member Esteves to defer the item until the claim can be heard by TPAC.

Vice Chair Liccardo indicated he would vote against the motion.

Committee Member Oliverio made a motion to move forward with Staff's Recommendation for Item 5.D., and was seconded by Committee Member Nguyen. The motion to defer failed by a 3-4 vote.

The motion to approve staff recommendations passed by a 4-3 vote:

Ayes – 4 (Liccardo, Nguyen, Oliverio, Sykes)

Nays – 3 (Esteves, Gatto, Leonardis)

Absent – 2 (Kolstad, Marsalli)

6. OTHER BUSINESS/CORRESPONDENCE

- A. Letter from Mayor Liccardo to the Tributary Agencies
- B. Letter from the Tributary Agencies to TPAC

There were no further questions or comments by TPAC regarding these letters. A letter dated February 26, 2016 was distributed by the Tributary Agencies. Since TPAC did not review the letter prior to meeting and was not scheduled as an agenda item, Vice-Chair Liccardo and Committee Member Gatto suggested referencing the letter in the minutes of this meeting.

7. STATUS OF ITEMS PREVIOUSLY RECOMMENDED FOR APPROVAL BY TPAC

- A. Master Agreement Claim Hearing Process

Staff Recommendations:

- (a) Adopt the hearing procedures.
- (b) Schedule a hearing date by March 25, 2016.

The proposed recommendations were approved by Council on January 26, 2016.

- B. Report on Bids and Award of Contract for the 6970 – Fiber Optic Connection Project at the San José- Santa Clara Regional Wastewater Facility

Staff Recommendation: Report on bids and award of a construction contract for the 6970 – Fiber Optic Connection Project to the low bidder, All Phase Excavating and Construction, Inc., in the amount of \$240,000 and approval of a 15 percent contingency in the amount of \$36,000.

The proposed recommendation was approved by Council on February 23, 2016.

David Wall spoke on these items.

All items under Section 7 were approved to note and file.

Ayes – 6 (Esteves, Gatto, Liccardo, Nguyen, Oliverio, Sykes)

Nayes – 0

Absent – 3 (Kolstad, Liccardo, Marsalli)

8. REPORTS

- A. Open Purchase Orders Greater Than \$100,000 (including Service Orders)

The attached monthly Procurement and Contract Activity Report summarizes the Purchase and contracting of goods with an estimated value between \$100,000 and \$1.08 million of services between \$100,000 and \$270,000.

David Wall spoke on this item.

Item 8.A. was approved to note and file.

Ayes – 6 (Esteves, Gatto, Leonardis, Nguyen, Oliverio, Sykes)

Nayes – 0

Absent – 3 (Kolstad, Liccardo, Marsalli)

9. MISCELLANEOUS

- A. The next TPAC meeting is April 14, 2016, at 4:30 p.m., City Hall, Room 1734.
- B. Committee Member Leonardis and Ashwini Kantak reminded TPAC that the Administrative Claim Hearing is on March 24, 2016 in the Council Chambers from 1:30-3:30 P.M.

10. **OPEN FORUM**

A. David Wall spoke.

11. **ADJOURNMENT**

A. The Treatment Plant Advisory Committee adjourned at 5:19 p.m.



Sam Liccardo, Vice-Chair
TREATMENT PLANT ADVISORY COMMITTEE