

## SAN JOSÉ/SANTA CLARA TREATMENT PLANT ADVISORY COMMITTEE

SAM LICCARDO, CHAIR  
PAT KOLSTAD, VICE CHAIR  
PIERLUIGI OLIVERIO, MEMBER  
DAVID SYKES, MEMBER  
MANH NGUYEN, MEMBER

JOSE ESTEVES, MEMBER  
JERRY MARSALLI, MEMBER  
STEVEN LEONARDIS, MEMBER  
JOHN GATTO, MEMBER

### SPECIAL MEETING AGENDA/TPAC

4:00 p.m.

June 9, 2016

Room 1734

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1. **ROLL CALL**

2. **APPROVAL OF MINUTES**

A. May 19, 2016

3. **UNFINISHED BUSINESS/REQUEST FOR DEFERRALS**

4. **DIRECTOR'S REPORT**

A. Directors Report (verbal)

- Monthly Progress Report

5. **AGREEMENTS/ACTION ITEMS**

A. Actions related to the March 24, 2016 Hearing on the Tributary Agencies' Claims of Breach of Agreement and Inequities

Staff Recommendations:

- Adopt a Resolution setting forth the San José/Santa Clara Treatment Plant Advisory Committee's (TPAC) report, findings, and recommendations following the March 24, 2016, hearing before TPAC on the Claims of Breach of Agreement and Inequities Filed on January 22, 2016 by West Valley Sanitation District, Burbank Sanitary District No. 2-3, and the City of Milpitas (Tributary Agencies); and
- Direct the Secretary of TPAC to distribute to the legislative bodies of the Tributary Agencies, the City of San José, and the City of Santa Clara a copy of TPAC's Resolution.

B. Report on Bids and Award of Contract for 7987- Construction Enabling Project

Staff Recommendations:

- Adopt a resolution approving the Construction-Enabling Improvements Project Addendum to the San José / Santa Clara Water Pollution Control

- Plant Master Plan Environmental Impact Report (SCH# 2011052074) and related Mitigation Monitoring and Reporting Program (File No. PP15-120).
- (b) Report on bids and award of contract for the 7987 – Construction-Enabling Improvements Project to the low bidder, Teichert Construction, Inc., for the base bid of \$3,124,885 and Add Alternate No. 2 in the amount of \$11,025 for a total amount of \$3,135,910 and approval of a 10 percent construction contingency in the amount of \$314,000.
  - (c) Adopt a resolution authorizing the Director of Public Works to execute one or more change orders in excess of \$100,000 for the duration of the Construction Enabling Improvements project, not to exceed the total contingency amount approved for the project.
  - (d) Adopt the following 2015-2016 Appropriations Ordinance amendments in the San Jose-Santa Clara Treatment Plant Capital Fund:
    - (1) Decrease the Urgent and Unscheduled Treatment Plant Rehabilitation appropriation to the Environmental Services Department by \$455,000; and
    - (2) Increase the Construction-Enabling Improvements appropriation to the Environmental Services Department by \$455,000.

**This item is scheduled for consideration by the City Council on June 14, 2016.**

C. Master Consultant Agreement with Brown & Caldwell for Engineering Services for the 8001 – Aeration Tanks Rehabilitation Project and 8073 – Blower Improvements Project at the San Jose- Santa Clara Regional Wastewater Facility

Staff Recommendation: Approve a Master Consultant Agreement with Brown and Caldwell to provide engineering services for the 8073 – Blower Improvements Project and 8001 – Aeration Tanks Rehabilitation Project at the San José- Santa Clara Regional Wastewater Facility from the date of execution through December 21, 2024, in an initial amount not to exceed \$7,900,000, subject to the appropriation of funds.

**This item is scheduled for consideration by the City Council on June 14, 2016.**

D. Amendments to Master Consultant Agreements with CDM Smith and Kennedy/Jenks for Engineering Services for Projects in the San Jose- Santa Clara Regional Wastewater Facility Capital Improvement Program

Staff Recommendations:

- (a) Approve an amended and restated master consultant agreement with CDM Smith, Inc. for engineering and construction management services for the 7701- Headworks Project, with no extension to the term or increase to the maximum total compensation.
- (b) Approve an amended and restated master consultant agreement with Kennedy/Jenks Consultants, Inc. for engineering services for the 7448 – Filter Rehabilitation Project, with no extension to the term or increase to the maximum total compensation.

**This item is scheduled for consideration by the City Council on June 14, 2016.**

E. Master Agreements with Kennedy/Jenks Consultants, Inc. and MNS Engineers, Inc. for Construction Management and Inspection Services for the San Jose-Santa Clara Regional Wastewater Facility Capital Improvement Program

Staff Recommendation: Approve master consultant agreements with Kennedy/Jenks Consultants, Inc. and MNS Engineers, Inc., for construction management and inspection services for various capital improvement projects at the San Jose-Santa Clara Regional Wastewater Facility, from the date of execution through June 30, 2024, in a total amount not to exceed \$8,000,000 for each agreement, subject to the appropriation of funds.

**This item is scheduled for consideration by the City Council on June 14, 2016.**

F. Master Consultant Agreements with Hazen and Sawyer and Value Management Strategies, Inc. for 8095- Value Engineering and Peer Review Services for the San Jose- Santa Clara Regional Wastewater Facility Capital Improvement Program

Staff Recommendation: Approve the master consultant agreements with Hazen and Sawyer, and Value Management Strategies, Inc. to provide value engineering and peer review services for the Capital Improvement Program at the San José-Santa Clara Regional Wastewater Facility from the date of execution through June 30, 2021, in a total amount not to exceed \$5,000,000 for each agreement, subject to the appropriation of funds.

**This item is scheduled for consideration by the City Council on June 14, 2016.**

G. Execute an Open Purchase Order with Tucker Construction, Inc.

Staff Recommendation: Authorize the City Manager to:

- (1) Execute a Purchase Order with Tucker Construction, Inc. (San Jose, CA) to provide all labor, material, and equipment to perform expansion joint and concrete maintenance and repair services at the Regional Wastewater Facility for the term June 22, 2016 through June 21, 2017, in an amount not-to-exceed \$300,000.
- (2) Approve a contingency of \$50,000 in the event that additional repairs are required.
- (3) Exercise up to four, one-year options to extend the term through June 30, 2021, with any price increases subject to approval by the City and subject to the annual appropriation of funds.

**This item is scheduled for consideration by the City Council on June 21, 2016.**

6. **OTHER BUSINESS/CORRESPONDENCE**

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

A. Approval of an Ordinance Designating Additional Public Right-of Way for Zanker Road

Staff Recommendations:

- (1) Consider the Addendum to the Plant Master Plan EIR; and
- (2) Approve an ordinance designating approximately 27,000 square feet along the west side of Zanker Road, located over a portion of the San José/Santa Clara Regional Wastewater Facility, as public right-of-way and accept the newly-dedicated right-of-way into the City's street system as part of Zanker Road to allow for construction-related traffic improvements on Zanker Road.

**The proposed recommendations were approved by the Santa Clara City Council on May 24, 2016, and is scheduled for considered by the San José City Council on June 7, 2016.**

B. 7995 - Master Consultant Agreements with Brown and Caldwell, AECOM Technical Services, Inc., and Black & Veatch Corporation, for General Engineering Services for the San Jose- Santa Clara Regional Wastewater Facility Capital Improvement Program

Staff Recommendation: Approve Master Consultant Agreements with Brown and Caldwell, AECOM Technical Services, Inc., and Black and Veatch Corporation to provide general engineering services at the San José- Santa Clara Regional Wastewater Facility from the date of execution to June 30, 2021 in a total amount not to exceed \$5,000,000 each, subject to the appropriation of funds.

**The proposed recommendation was approved by the City Council on May 24, 2016.**

C. Report on Bids and Award of Construction Contract for 7382- Digester and Thickeners Facilities Upgrade Project at the San Jose- Santa Clara Regional Wastewater Facility

Staff Recommendations:

- (a) Adopt a Resolution
  - (1) Approving the Digester and Thickener Facilities Upgrade Project Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program (File No. PP15-055).
  - (2) Reporting on bids and award of construction contract for the 7382- Digester and Thickener Facilities Upgrade project to the low bidder, Walsh Construction Company II, LLC, to include the base bid less Revocable Item No. 5, in the amount of \$107,925,000, and approve a 12.5 percent construction contingency in the amount of \$13,490,625.

- (3) Authorizing the Director of Public Works to execute one or more change orders in excess of \$100,000 for the duration of the Digester and Thickener Facilities Upgrade project, not to exceed the total contingency amount approved for the project.
- (b) Adopt the following 2015-2016 Appropriation Ordinance Amendments in the San Jose- Santa Clara Treatment Plant Capital Fund:
  - (1) Decrease the Energy Generation Improvements appropriation to the Environmental Services Department by \$6,000,000;
  - (2) Decrease the SBWR System Reliability and Infrastructure Replacement appropriation to the Environmental Services Department by \$4,692,000;
  - (3) Decrease the Tunnel Rehabilitation appropriation to the Environmental Services Department by \$600,000;
  - (4) Decrease the Ending Fund Balance – Unrestricted appropriation by \$17,253,000; and
  - (5) Increase the Digester and Thickener Facilities Upgrade appropriation to the Environmental Services Department by \$28,545,000.

**The proposed resolutions were adopted by the City Council on May 24, 2016.**

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

Staff Recommendation: Report on bids and award a construction contract for the 6970- Fiber Optic Connection Project to the second low bidder, Aegis ITS, Inc., in the amount of \$271,692 and approval of a 15 percent contingency in the amount of \$40,754.

**The proposed recommendation was approved by the City Council on May 24, 2016.**

E. Agreement with Santa Clara Valley Habitat Agency to Manage Burrowing Owl Habitat

Staff Recommendation: Adoption of resolution authorizing the City Manager to negotiate and execute an Agreement between the City of San José and the Santa Clara Valley Habitat Agency to manage the 201-acre burrowing owl habitat at the Regional Wastewater Facility for a term of five years.

**The proposed resolution was adopted by the City Council on May 24, 2016.**

F. Execute a Purchase Order with Pipe and Plant Solutions, Inc.

Staff Recommendations: Adopt a resolution authorizing the City Manager to:

- (1) Execute a Purchase Order with Pipe and Solutions, Inc. (Berkeley, CA) to provide all labor and material to clean three anaerobic digesters at the Regional Wastewater Facility for the term June 7, 2016 through June 6, 2017, in an amount not to exceed \$339,067;
- (2) Approve a contingency of \$50,000 in the event that unanticipated issues are identified during the performance of the work; and

- (3) Exercise up to three additional one-year options to extend the term of the cleaning services for nine additional digesters that are scheduled for cleaning on a rotational basis through June 6, 2020, subject to the appropriation of funds.

**The item is scheduled for consideration by the City Council on June 7, 2016.**

G. Amendment to Master Service Agreement with Hydrosience Engineers, Inc.

Staff Recommendation: Approve the First Amendment to the Master Agreement with Hydrosience Engineers, Inc. for engineering services to allow for future adjustments to rates and charges, and to increase the rates for Hydrosience Engineers, Inc. and subconsultants.

**The proposed recommendation was approved by the City Council on May 24, 2016.**

H. San Jose/Santa Clara Water Pollution Control Plant 2017-2021 Proposed Capital Improvement Program

Staff Recommendation: TPAC approval of the San Jose/Santa Clara Water Pollution Control Plant 2017-2021 Proposed Capital Improvement Program.

**The Five-Year Capital Improvement Program is scheduled for Council consideration on June 14, 2016, and for adoption on June 21, 2016.**

I. San Jose/Santa Clara Water Pollution Control Plant 2016-2017 Proposed Operating and Maintenance Budget

Staff Recommendation: TPAC approval of the San Jose/Santa Clara Water Pollution Control Plant 2016-2017 Proposed Operating and Maintenance Budget

**The Operating and Maintenance Budget is scheduled for Council consideration on June 14, 2016, and for adoption on June 21, 2016.**

**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 and of services between \$100,000 and \$270,000.

**9. MISCELLANEOUS**

- A. The next monthly TPAC Meeting is August 11, 2016, at 4:00 p.m., City Hall, Room 1734. **Please note new start time for meeting.**

**10. OPEN FORUM**

**11. ADJOURNMENT**

NOTE: If you have any changes or questions, please contact Melrose Cacal, Environmental Services (408) 975-2547.

To request an accommodation or alternative format for City-sponsored meetings, events or printed materials, please contact Melrose Cacal (408) 975-2547 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, 10<sup>th</sup> Floor, Environmental Services at the same time that the public records are distributed or made available to the legislative body.

**MINUTES OF THE  
SAN JOSÉ/SANTA CLARA  
TREATMENT PLANT ADVISORY COMMITTEE**  
City Hall, Council Chambers  
Thursday, May 19, 2016 at 4:30 p.m.

**1. ROLL CALL**

Minutes of the Treatment Plant Advisory Committee convened this date at 4:33 p.m. Roll call was taken with the following members in attendance:

**Committee Members:** Jose Esteves, Pat Kolstad, Patrick Kwok, Sam Liccardo, Pierluigi Oliverio, Dave Sykes, Magdalena Carrasco (alternate), Teresa O'Neill (alternate)

Absent: Committee Members: Manh Nguyen, Steven Leonardis

**2. APPROVAL OF MINUTES**

A. April 14, 2016

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

**Ayes – 6** (Esteves, Kolstad, Kwok, Liccardo, Oliverio, Sykes)

**Nays – 0**

**Absent – 3** (Carrasco, Leonardis, O'Neill)

**3. UNFINISHED BUSINESS/REQUEST FOR DEFERRALS**

**4. DIRECTORS REPORT**

A. Directors Report (verbal)

- Monthly Progress Report

Assistant Director Ashwini Kantak presented a PowerPoint presentation highlighting major milestones for two capital improvement projects.

**5. AGREEMENTS/ACTION ITEMS**

Items 5.A. through 5.I were heard after Section 6, Other Business and Correspondences.

A. Approval of an Ordinance Designating Additional Public Right-of-Way for Zanker Road

Staff Recommendations:

- (1) Consider the Addendum to the Plant Master Plan EIR; and
- (2) Approve an ordinance designating approximately 27,000 square feet along the west side of Zanker Road, located over a portion of the San José/Santa Clara Regional Wastewater Facility, as public right-of-way and accept the newly-dedicated right-of-way into the City's street system as part of



Zanker Road to allow for construction-related traffic improvements on Zanker Road.

**This item is scheduled for consideration by the Santa Clara City Council on May 24, 2016, and the San José City Council on June 7, 2016.**

Committee Member Esteves inquired if the intent of the newly-dedicated right-of-way is temporary. Principal Engineer John Cannon responded that the intent for the right-of-way was to be temporary, however when the right-of-way is no longer needed it will need to go through a street vacation process.

David Wall spoke on this item.

**On a motion made by Committee Member Kwok and a second by Committee Member Oliverio, TPAC recommended approval of staff's recommendations for Item 5.A.**

**Ayes – 7** (Carrasco, Esteves, Kolstad, Kwok, Liccardo, Oliverio, Sykes)

**Nays – 0**

**Absent – 2** (Leonardis, O'Neill)

B. 7995 – Master Consultant Agreements with Brown and Caldwell, AECOM Technical Services, Inc., and Black & Veatch Corporation, for General Engineering Services for the San Jose- Santa Clara Regional Wastewater Facility Capital Improvement Program

Staff recommendation: Approve Master Consultant Agreements with Brown and Caldwell, AECOM Technical Services, Inc., and Black and Veatch Corporation to provide general engineering services at the San José-Santa Clara Regional Wastewater Facility from the date of execution to June 30, 2021 in a total amount not to exceed of \$5,000,000 each, subject to the appropriation of funds.

**This item is scheduled for consideration by the City Council on May 24, 2016.**

Chair Liccardo had a question about the ranking and scores, specifically why Brown & Caldwell was considered least favorable from a cost standpoint, but ranked highly on the overall ranking. Assistant Director Ashwini Kantak clarified that the selection was mainly based on qualifications, and cost was a minor component.

David Wall spoke on this item.

**On a motion made by Committee Member Kwok and a second by Committee Member Oliverio, TPAC recommended approval of staff's recommendations for Item 5.B.**

**Ayes – 7** (Carrasco, Esteves, Kolstad, Kwok, Liccardo, Oliverio, Sykes)

**Nayes – 0**

**Absent – 2** (Leonardis, O’Neill)

C. Report on Bids and Award of Construction Contract for 7382 – Digester and Thickeners Facilities Upgrade Project at the San Jose- Santa Clara Regional Wastewater Facility

Staff Recommendations:

(a) Adopt a Resolution

- (1) Approving the Digester and Thickener Facilities Upgrade Project Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program (File No. PP15-055).
- (2) Reporting on bids and award of construction contract for the 7382- Digester and Thickener Facilities Upgrade project to the low bidder, Walsh Construction Company II, LLC, to include the base bid less Revocable Item No. 5, in the amount of \$107,925,000, and approve a 12.5 percent construction contingency in the amount of \$13,490,625.
- (3) Authorizing the Director of Public Works to execute one or more change orders in excess of \$100,000 for the duration of the Digester and Thickener Facilities Upgrade project, not to exceed the total contingency amount approved for the project.

(b) Adopt the following 2015-2016 Appropriation Ordinance Amendments in the San José- Santa Clara Treatment Plant Capital Fund:

- (1) Decrease the Energy Generation Improvements appropriation to the Environmental Services Department by \$6,000,000;
- (2) Decrease the SBWR System Reliability and Infrastructure Replacement appropriation to the Environmental Services Department by \$4,692,000;
- (3) Decrease the Tunnel Rehabilitation appropriation to the Environmental Services Department by \$600,000;
- (4) Decrease the Ending Fund Balance – Unrestricted appropriation by \$17,253,000; and
- (5) Increase the Digester and Thickener Facilities Upgrade appropriation to the Environmental Services Department by \$28,545,000.

**This item is scheduled for consideration by the City Council on May 24, 2016.**

Program Manager Colin Page presented on this item.

Committee Members expressed concerns about bids being higher than the Engineer’s Estimate. Committee Member Kwok suggested re-bidding the project. He also indicated that staff should have been aware of the competitive construction market when they developed the Engineer’s Estimate six month ago. Assistant Director Ashwini Kantak shared the possible reasons for the high bids. Based on follow up with the general contractors, Ms. Kantak shared with the Committee that the initial estimates of the general contractors were in line with the Engineer’s Estimate and specialty

subcontractors' costs were significantly higher than expected by staff and even the general contractors. Public Works Assistant Director spoke about cyclical market conditions and the current bid environment. Based on the feedback from all the general contractors and a recognition of current market conditions, the additional costs to re-bid the project, the condition of the infrastructure, and the criticality of the project, staff recommended awarding the project instead of re-bidding.

David Wall spoke on this item.

**On a motion made by Committee Member Kolstad and a second by Committee Member Oliverio, TPAC recommended approval of staff's recommendations for Item 5.C.**

**Ayes – 6** (Carrasco, Kolstad, Liccardo, Oliverio, O'Neill, Sykes)

**Nayes – 2** (Esteves, Kwok)

**Absent – 1** (Leonardis)

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

Staff Recommendation: Report on bids and award a construction contract for the 6970- Fiber Optic Connection Project to the second low bidder, Aegis ITS, Inc., in the amount of \$271,692 and approval of a 15 percent contingency in the amount of \$40,754.

**This item is scheduled for consideration by the City Council on May 24, 2016.**

David Wall spoke on this item.

**On a motion made by Committee Member Esteves and a second by Committee Member O'Neill, TPAC recommended approval of staff's recommendations For Item 5.D.**

**Ayes – 7** (Carrasco, Esteves, Kolstad, Kwok, Oliverio, O'Neill, Sykes)

**Nayes – 0**

**Absent – 2** (Leonardis, Liccardo)

E. Agreement with the Santa Clara Valley Habitat Agency to Manage Burrowing Owl Habitat

Staff Recommendation: Adoption of a resolution authorizing the City Manager to Negotiate and execute an Agreement between the City of San José and the Santa Clara Valley Habitat Agency to manage the 201-acre burrowing owl habitat at the Regional Wastewater Facility for a term of five years.

**This item is scheduled for consideration by the City Council on May 24, 2016.**

David Wall spoke on this item.

**On a motion made by Committee Member Oliverio and a second by Committee Member Carrasco, TPAC recommended approval of staff's recommendation for Item 5.E.**

**Ayes – 7** (Carrasco, Esteves, Kolstad, Kwok, Oliverio, O'Neill, Sykes)

**Nayes – 0**

**Absent – 2** (Leonardis, Liccardo)

F. Execute a Purchase Order with Pipe and Plant Solutions, Inc.

Staff Recommendations: Adopt a resolution authorizing the City Manager to:

- (1) Execute a Purchase Order with Pipe and Solutions, Inc. (Berkeley, CA) to provide all labor and material to clean three anaerobic digesters at the Regional Wastewater Facility for the term June 7, 2016 through June 6, 2017, in an amount not to exceed \$339,067;
- (2) Approve a contingency of \$50,000 in the event that unanticipated issues are identified during the performance of the work; and
- (3) Exercise up to three additional one-year options to extend the term of the cleaning services for nine additional digesters that are scheduled for cleaning on a rotational basis through June 6, 2020, subject to the appropriation of funds.

**This item is scheduled for consideration by the City Council on June 7, 2016.**

David Wall spoke on this item.

**On a motion made by Committee Member Oliverio and a second by Committee Member Carrasco, TPAC recommended approval of staff's recommendations for Item 5.F.**

**Ayes – 7** (Carrasco, Esteves, Kolstad, Kwok, Oliverio, O'Neill, Sykes)

**Nayes – 0**

**Absent – 2** (Leonardis, Liccardo)

G. Amendment to the Master Service Agreement with Hydrosience Engineers, Inc.

Staff Recommendation: Approve the First Amendment to the Master Agreement with Hydrosience Engineers, Inc. for engineering service to allow for future adjustments to rates and charges, and to increase the rates for Hydrosience Engineers, Inc. and subconsultants.

**This item is scheduled for consideration by the City Council on June 7, 2016.**

David Wall spoke on this item.

**On a motion made by Committee Member Oliverio and a second by Committee Member Carrasco, TPAC recommended approval of staff's recommendations for Item 5.G.**

**Ayes – 7** (Carrasco, Esteves, Kolstad, Kwok, Oliverio, O'Neill, Sykes)

**Nays – 0**

**Absent – 2** (Leonardis, Liccardo)

H. San Jose/Santa Clara Water Pollution Control Plant 2017-2021 Proposed Capital Improvement Program

Staff Recommendation: TPAC approval of the San Jose/Santa Clara Water Pollution Control Plant 2017-2021 Proposed Capital Improvement Program.

**The San Jose/Santa Clara Water Pollution Control Plant 2016-2017 Proposed Capital Improvement Program is scheduled for Council consideration on June 14, 2016, and for adoption on June 21, 2016.**

I. San Jose/Santa Clara Water Pollution Control Plant 2016-2017 Proposed Operating and Maintenance Budget

Staff Recommendation: TPAC approval of the San Jose/Santa Clara Water Pollution Control Plant 2016-2017 Proposed Operating and Maintenance Budget

**The San Jose/Santa Clara Water Pollution Control Plant 2016-2017 Proposed Operating and Maintenance Budget is scheduled for Council consideration on June 14, 2016, and for adoption on June 21, 2016.**

Items 5.H. and 5.I. were jointly heard.

Division Manager Linda Charfarous provided an overview with a PowerPoint presentation.

Committee Member Kwok expressed concerns about the \$1.4 billion capital costs inflating over 30 to 50 percent over the next the 10 years, especially with Digester and Thickeners Facilities Upgrade being 30 percent over the Engineer's Estimate.

Ms. Kantak responded that staff had managed the scope of the Digester project and gone through a thorough value engineering process to stay within budget and had put in place various controls and processes to manage project budgets, however it was challenging to control market conditions. Ms. Kantak shared that some of the current projects, such as the digester gas storage replacement project and emergency diesel generators project were under budget and over the life of the program they were anticipating costs to balance out within the overall program. Ms. Romanow added that monthly CIP reports are provided to show trends of expenditures and to increase transparency.

Committee Member Kwok inquired what the percentage break was between Operation and Maintenance versus the cost of Administration. Ms. Charfarous responded that the Administrative Services costs accounted for \$4.2 million out of \$85.6 million or approximately five percent.

David Wall spoke on Items 5.H. and 5.I.

**On a motion by Committee Member Oliverio and a second by Committee Member Carrasco, TPAC recommended approval of staff's recommendations for Items 5.H. and 5.I.**

**Ayes – 5** (Carrasco, Esteves, Kolstad, O'Neill, Sykes)

**Nays – 2** (Esteves, Kwok)

**Absent – 2** (Leonardis, Liccardo)

## **6. OTHER BUSINESS/CORRESPONDENCE**

### A. Update on Task Force Discussions

Item 6.A. was heard after the Director's Report.

Committee Member Sykes provided a summary.

The task force comprised of six members: John Gatto (Cupertino Sanitary District), Jon Newby (West Valley Sanitation District), Nina Hawk (City of Milpitas), Chris De Groot (City of Santa Clara), Dave Sykes (City of San Jose), and Ashwini Kantak (City of San Jose).

Committee Member Sykes described the meetings as productive and two themes emerged:

- (1) More involvement desired by the Tributary Agencies
- (2) The owners- San José and Santa Clara- taking on more responsibility

Committee Member Sykes also reported that he advised the task force that a path forward might revolve around one of themes, but that it could not be both.

Chair Liccardo responded that he had a chance to review the May 2, 2016 letter from the Tributary Agencies and is concerned that PRA requests have hindered any sort of progress in resolving the claim. Chair Liccardo preferred that the focus be on helping the Tributary Agencies get the financing they need to pay for an equitable share of the cost for capital projects.

Senior Deputy City Attorney Rosa Tsongtaatarii indicated that 15,000 pages were provided in response to the 12 PRA requests. Ms. Tsongtaatarii added that progress was made in explaining to the opposing council and forensic accountant about what records were available.

Chair Liccardo suggested that a process guided by professional staff be in order. Moreover, he asked that the Tributary Agencies be specific on what concerns they have about documents, as rehabilitation needs for the RWF are time sensitive. Committee Member Esteves echoed Chair Liccardo's comment about reaching an equitable share; however, the purpose of the PRA request was to close the gap in transparency.

Chair Liccardo responded that the best remedy at this time would be move to forward with mediation. Assistant Director Ashwini Kantak mentioned that the terms of mediation are currently being discussed between the City Attorney's Office and the Tributary Agencies' counsel. Director Kerrie Romanow concluded that having a third party involved would be helpful in understanding what areas the Tributary Agencies and Owners needed to focus on.

B. Letter from the Tributary Agencies to Mayor Liccardo dated May 5, 2016

C. Letter from the Tributary Agencies to TPAC dated March 30, 2016

Director Kerrie Romanow reviewed Items 6.B. and 6.C. There were no questions or comments from TPAC.

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

### **A. Approval of a Design-Build Contract with CH2M Hill Engineers, Inc. for the Cogeneration Facility at the San Jose- Santa Clara Regional Wastewater Facility**

Staff Recommendations:

- (a) Approve the design-build contract with CH2M HILL Engineers, Inc. for the Cogeneration Facility at the San José-Santa Clara Regional Wastewater Facility in an amount not-to-exceed \$5,655,000 for the performance of preliminary design services under the contract.
- (b) Approve a design contingency in the amount of \$565,000 for City-approved changes to the scope of preliminary design services.
- (c) Adopt a resolution authorizing the City Manager or his designee to:
  - (1) Negotiate and execute a definitive contract amendment with CH2M HILL to: (1) set a base guaranteed maximum price or lump sum amount in accordance with the contract, in an amount not-to-exceed \$82,884,000 for the design-build work to be performed following the preliminary design services; (2) set a schedule for completion and acceptance of the design-build work required by the contract; (3) define the technical specifications and guaranteed performance capabilities for the Cogeneration Facility; (4) establish any additional professional services required by the City for transitioning the Cogeneration Facility to City control after acceptance , and the fee to be charged therefore; (5) establish the insurance requirements for the design-build work; and (6) subject to review and approval by the City Attorney's Office, amend other terms and conditions of the contract that are necessary to accomplish the foregoing;

- (2) Negotiate and execute separate agreements and/or amendments to the contract to allow CH2M HILL to proceed with discrete portions of the design-build work prior to the City's execution of the definitive contract amendment in an amount not to exceed \$30,000,000, which amounts will be subject to the base guaranteed maximum price;
- (d) Approve a construction contingency in the amount of \$8,288,000 to pay for adjustments to the base guaranteed maximum price or if applicable, the lump sum amount, in accordance with the contract and to pay for the transition services after acceptance of the Cogeneration Facility.
- (e) Adopt a resolution authorizing the City Manager or his designee to:
  - (1) Execute change orders in excess of \$100,000 up to the amount of the design contingency for changes to the scope of the preliminary design services, and up to the amount of the construction contingency for adjustments to the base guaranteed maximum price or lump sum amount during the performance of the design-build work;
  - (2) Negotiate and execute the necessary regulatory permits and public utility agreements in excess of \$100,000 for the permitting, design, construction and inspection of utility connections associated with the new Cogeneration Facility, up to an aggregate amount of \$600,000.

**The proposed recommendations were approved by the City Council on April 26, 2016.**

B. Master Consultant Agreement with HDR Engineering, Inc. for the Engineering Services for the 7731 – Nitrification Clarifiers Rehabilitation Project at the San Jose- Santa Clara Regional Wastewater Facility

Staff recommendation:

- (a) Approve a master consultant agreement with HDR Engineering, Inc. to provide engineering services for the 7731 – Nitrification Clarifiers Rehabilitation Project at the San José-Santa Clara Regional Wastewater Facility from the date of execution through December 31, 2023, in a total amount not to exceed \$5,000,000, subject to the appropriation of funds.

**The proposed recommendation was approved by the City Council on May 10, 2016.**

C. Report on Request for Proposal for a Design and Construction Management System

Staff Recommendation:

- (a) Accept the report on the Request for Proposal for the purchase and implementation of a Design Construction Management System for the Capital Improvement Program at the San José- Santa Clara Regional Wastewater Facility, and adoption of a resolution authorizing the City Manager to:
  - (1) Negotiate and execute an Agreement with Bentley Systems, Inc. (Exton, PA) for the purchase and implementation of a Design and Construction Management System, including software subscription, implementation,



- configuration, testing, training, and related professional services, taxes, maintenance and support for an initial five-year term commencing on or about May 1, 2016 and ending on or about July 31, 2021, with a maximum compensation not-to-exceed \$342,700 for the initial five-year term, subject to the appropriation of funds; and
- (2) Execute change orders to cover any additional requirements for a not-to-exceed contingency amount of \$100,000, subject to the appropriation of funds; and
  - (3) Execute one-year options to extend the term of the Agreement to provide ongoing software subscription, hosting, and technical support services after the initial five-year term, subject to the appropriation of funds.

**The proposed recommendations was approved by the City Council on April 26, 2016.**

D. Review of the Emergency Action for the Replacement of Pond A18 Northern Gate Structure and Termination of Action

Staff Recommendations:

- (a) Review of the emergency action for the replacement of the Pond A18 northern gate structure at the San José-Santa Clara Regional Wastewater Facility; and
- (b) Adopt a resolution terminating the emergency declaration for the replacement of the Pond A18's northern gate structure.

**The proposed resolution was adopted by the City Council on April 26, 2016.**

E. San Jose- Santa Clara Regional Wastewater Facility Capital Improvement Program

Staff Recommendation:

- (a) Accept the semi-annual status progress report on the San Jose- Santa Clara Regional Wastewater Facility Program for the period July through December 2015.

**The proposed report was accepted by the City Council on April 26, 2016.**

F. Audit of South Bay Water Recycling

Staff Recommendation:

- (a) Accept the Audit Report on the efficiency and effectiveness of South Bay Water Recycling.

**The proposed report was accepted by the City Council on April 26, 2016.**

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

**Ayes – 7** (Carrasco, Esteves, Kolstad, Kwok, Oliverio, O’Neill, Sykes)

**Nayes – 0**

**Absent – 2** (Leonardis, Liccardo)

**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.

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

**Ayes – 7** (Carrasco, Esteves, Kolstad, Kwok, Oliverio, O’Neill, Sykes)

**Nayes – 0**

**Absent – 2** (Leonardis, Liccardo)

**9. MISCELLANEOUS**

A. The monthly TPAC Meeting is June 9, 2016, at 4:30 p.m., City Hall, Room 1734.

**10. OPEN FORUM**

David Wall spoke.

**11. ADJOURNMENT**

A. The Treatment Plant Advisory Committee adjourned at 5:34 p.m.

Sam Liccardo, Chair  
TREATMENT PLANT ADVISORY COMMITTEE



San José-Santa Clara  
Regional Wastewater Facility

# Capital Improvement Program Monthly Status Report: April 2016

June 2, 2016

This report summarizes the progress and accomplishments of the Capital Improvement Program (CIP) for the San José-Santa Clara Regional Wastewater Facility (RWF) for April 2016.

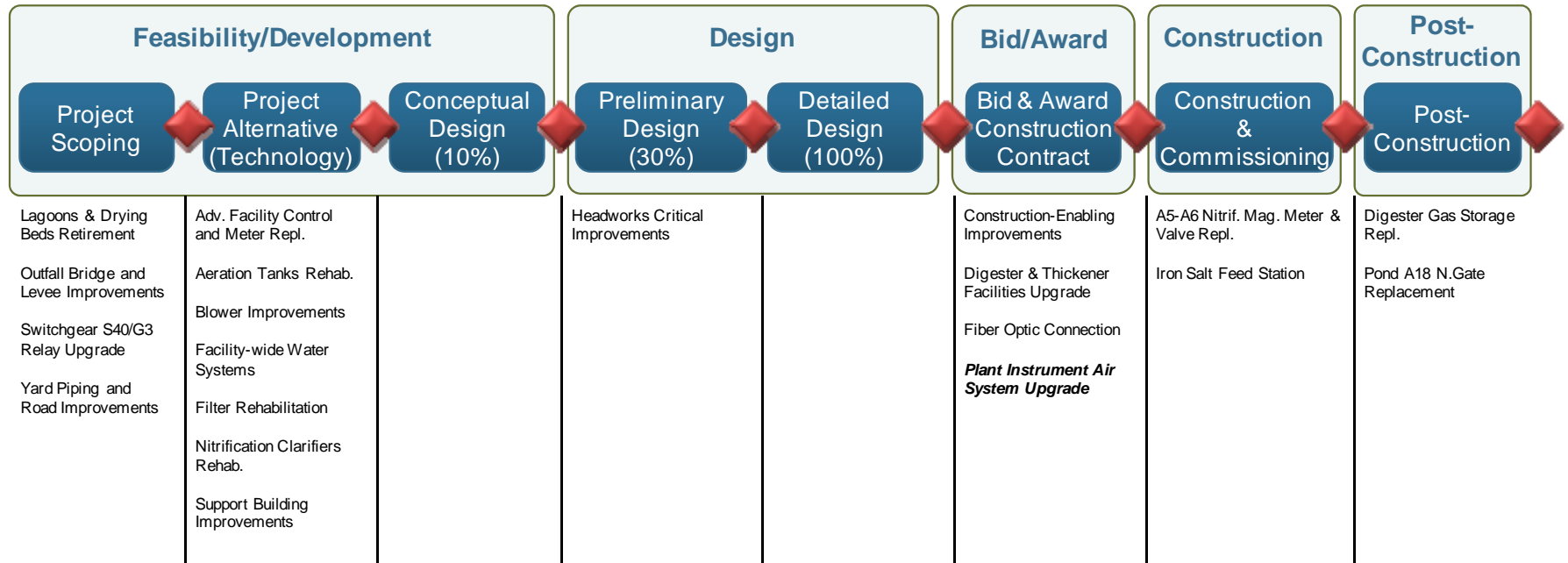
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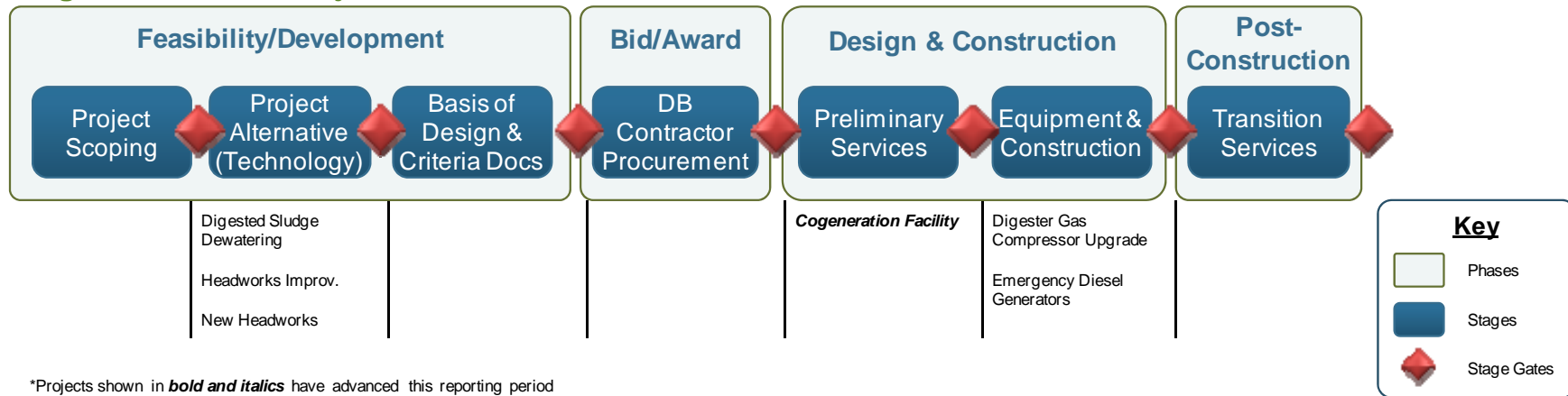


# Project Delivery Model

## Design-Bid-Build Active Projects



## Design-Build Active Projects



\*Projects shown in **bold and italics** have advanced this reporting period



# Program Summary

April 2016

In April, the CIP progressed on multiple fronts, including advancing the Plant Instrument Air System Upgrade Project through the Project Delivery Model (PDM) Authorization-To-Bid Stage Gate. In additional developments, CIP staff:

- Advertised a Request for Qualifications (RFQ) for System Integrator Services to pre-qualify consultants for future CIP projects;
- Advertised a construction contract for the Plant Instrument Air System Upgrade Project. This project will replace the existing instrument air compressor system at the Secondary Blower and Nitrification buildings with a new dedicated air compressor system that will provide suitable redundancy and capacity to support all RWF operations in the event of an extended power loss;
- Received bids from three contractors for the Construction-Enabling Improvements Project with award scheduled for June 2016; and
- Received Statements of Qualifications (SOQ) from four consultants for the recently-advertised Owner's Advisor services for the Digested Sludge Dewatering Facility Project.

Staff presented the following recommendations to the Treatment Plant Advisory Committee (TPAC) and City Council (Council) this month:

- Award a design-build contract to CH2M Hill for the Cogeneration Facility Project;
- Purchase and implement a Design and Construction Management System (DCMS) with Bentley Systems; and
- Adopt a resolution terminating the emergency declaration for the replacement of Pond A18's northern gate structure.

Staff also presented the Semiannual Status Report for the period July through December 2015 to TPAC, Council, and the Transportation and Environment (T&E) Committee. All recommendations were accepted or approved.

Design continued on the Headworks Critical Improvements Project, with the project scheduled to reach the Preliminary Design 30 percent milestone next month. Alternatives analysis commenced this month on the Headworks Improvement and New Headworks projects, and is scheduled to commence on the Filter Rehabilitation and Nitrification Clarifiers Rehabilitation projects during the next two months.

Staff issued a notice of intent to award the construction contract for the Digester and Thickener Facilities Upgrade Project, having assessed the reasons for bids received exceeding the Engineer's Estimate. A recommendation will be made to TPAC and Council next month to proceed with the award of the contract to the lowest bidder, Walsh Construction, and for construction to commence this fiscal year.

In addition, construction continued at the RWF on the Emergency Diesel Generators, Digester Gas Compressor Upgrade, and Iron Salt Feed Station projects.

## Look Ahead

In May, staff will recommend Council award a construction contract for the Digester Thickener and Facility Upgrade Project; a construction contract for the Fiber Optic Connection Project; a master consultant agreement for General Engineering; and a master consultant agreement for the Nitrification Clarifier Rehabilitation Project. The City will issue an RFQ for a design consultant on the Support Building Improvements Project and a Notice-to-Proceed to CH2M Hill for the Cogeneration Facility Project. Staff will organize a partnering session with CH2M Hill and begin to schedule workshops for the Cogeneration Facility Project design. Project teams will work to advance the Headworks Critical Improvements Project through the Authorization-to-Proceed Stage Gate, and the Flood Protection Study through the Final Acceptance Stage Gate. Staff will also present the 2017-2021 Proposed CIP for review by the Planning Commission, TPAC, and City Council during special study sessions.

In June, staff will seek Council's award of consultant contracts for the following projects: Aeration Tanks and Blower Rehabilitation; Construction Management and Inspection Services; Facility Wide Water Systems Improvements; and Value Engineering and Peer Review Services. Finally, staff will seek Council award of a construction contract and right-of-way dedication for the Construction Enabling Improvements Project.

In addition, all CIP project managers and project engineers will continue formal staff training with the next training session focused on communications management.



## Program Highlight – Value Management Plan

Each CIP project utilizes a Value Management Plan (VMP) to obtain the greatest benefits for the lowest cost. CIP projects are major investments; therefore, it is imperative that formal processes, procedures, and tools be used to maximize project value. The VMP includes the systems and structure to achieve this goal and consists of four distinct activities that occur at specific stages throughout the life of a project:

1. Value Scoping – During initial project definition and scoping, staff review project needs, scope requirements, cost reduction opportunities, overall approach to value management, and documentation of results within the VMP.
2. Value Analysis – As project alternative solutions are being evaluated, staff analyze value-based alternatives to arrive at the most cost-effective set of project facilities. This analysis is included in documents such as Business Case Analyses, Conceptual Design, Project Definition, and Basis of Design reports.
3. Value Engineering – During the early stages of detailed design, an independent, third-party value engineering team performs a prescriptive and systematic value assessment of the project's design, and prepares findings and recommendations to add value and reduce costs.
4. Value Review – At the end of project startup, staff focus on lessons learned to apply to future projects and optimize current facilities.

Together, these four activities keep the project team focused on adding value and reducing costs while achieving project objectives. Currently, the project team has completed 23 separate value scoping and value analysis activities on 17 different CIP projects. The City is working on a consultant selection process and expects to award two \$5 million agreements in June for value engineering and peer review services. The selected consultants will undertake independent value engineering activities during the design phase.

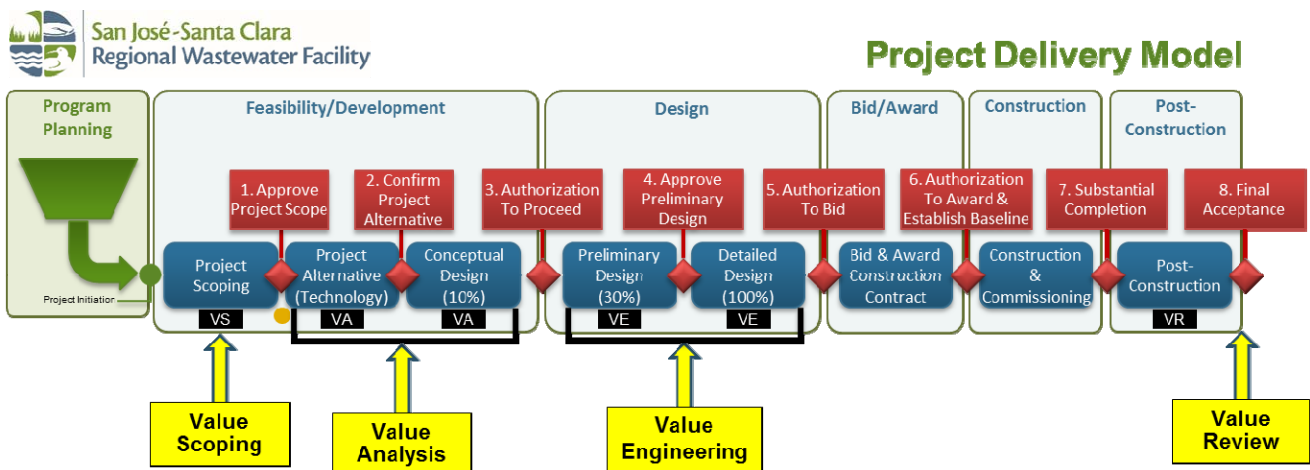


































Figure 1 – Value Management Phasing

## Program Performance Summary

Eight key performance indicators (KPIs) have been established to measure the overall success of the CIP. Each KPI represents a metric that will be monitored on a regular frequency. Through the life of the CIP, KPIs will be selected and measured that best reflect the current maturity of the program.

### Program Key Performance Indicators – Fiscal Year 2015-2016

KPI	Target	Fiscal Year to Date			Fiscal Year End		
		Actual	Status	Trend	Forecast	Status	Trend
<b>Stage Gates</b>	80%	100% (18/18) <sup>1</sup>			100% (24/24) <sup>2</sup>		
Measurement: Percentage of initiated projects and studies that successfully pass each stage gate. Criteria: Red: < 70%; Amber: 70% to 80%; Green: >=80%							
<b>Schedule</b>	85%	33% (1/3)			25% (1/4)		
Measurement: Percentage of CIP projects delivered within 2 months of approved baseline Beneficial Use Milestone. Criteria: Red: < 75%; Amber: 75% to 85%; Green: >=85%							
<b>Budget</b>	90%	100% (4/4)			83% (5/6)		
Measurement: Percentage of CIP projects that are completed within the approved baseline budget. Criteria: Red: < 80%; Amber: 80% to 89%; Green: >=90%							
<b>Expenditure</b>	\$147M	\$77M			\$208M <sup>3</sup>		
Measurement: CIP Fiscal Year 15/16 committed costs. Committed cost meets or exceeds 70% of planned Budget (70% of \$210M = \$147M)							
<b>Procurement</b>	80%	100% (16/16) <sup>4</sup>			100% (17/17) <sup>5</sup>		
Measurement: Number of consultant and contractor procurements for initiated projects and program-wide services advertised compared to planned for the fiscal year. Criteria: Red: < 70%; Amber: 70% to 79%; Green: >=80%							
<b>Safety</b>	0	0			0		
Measurement: Number of OSHA reportable incidents associated with CIP construction for the fiscal year. Criteria: Red: > 2; Amber: 1 to 2; Green: zero incidents							
<b>Environmental</b>	0	0			0		
Measurement: Number of permit violations caused by CIP construction for the fiscal year. Criteria: Red: > 2; Amber: 1 to 2; Green: zero incidents							
<b>Staffing<sup>6</sup></b>	80%	53% (9/17)			59% (17/29)		
Measurement: Number of planned positions filled for the fiscal year. Criteria: Red: < 70%; Amber: 70% to 79%; Green: >=80%							

#### Notes

- The number of completed stage gates increased from 17 to 18 for the Stage Gate KPI Fiscal Year to Date (YTD) as the Plant Instrument Air System Upgrade Project successfully completed its stage gate.
- The Fiscal Year End Stage Gate KPI total has decreased by one project.
- The forecast increase of \$9M is due to the Digester & Thickener Facilities Upgrade Project: The City's portion of the contingency, approximately \$9M, will be encumbered in FY15-16 instead of FY16-17 as previously planned. The balance will still be encumbered next fiscal year.
- The Procurement KPI Year to Date has increased from 14 to 16 as procurements were advertised in April for the Plant Instrument Air System Upgrade Project construction contract and System Integrator Services pre-qualification.
- The Fiscal Year End total procurements were increased by one project due to a decision to include the System Integrator Services pre-qualification in the KPI.
- The City Staffing level KPI for planned recruitments for positions that are vacant at the start of the fiscal year is measured quarterly; all other KPIs are measured monthly. KPI measurement does not account for staff turnover throughout the fiscal year.

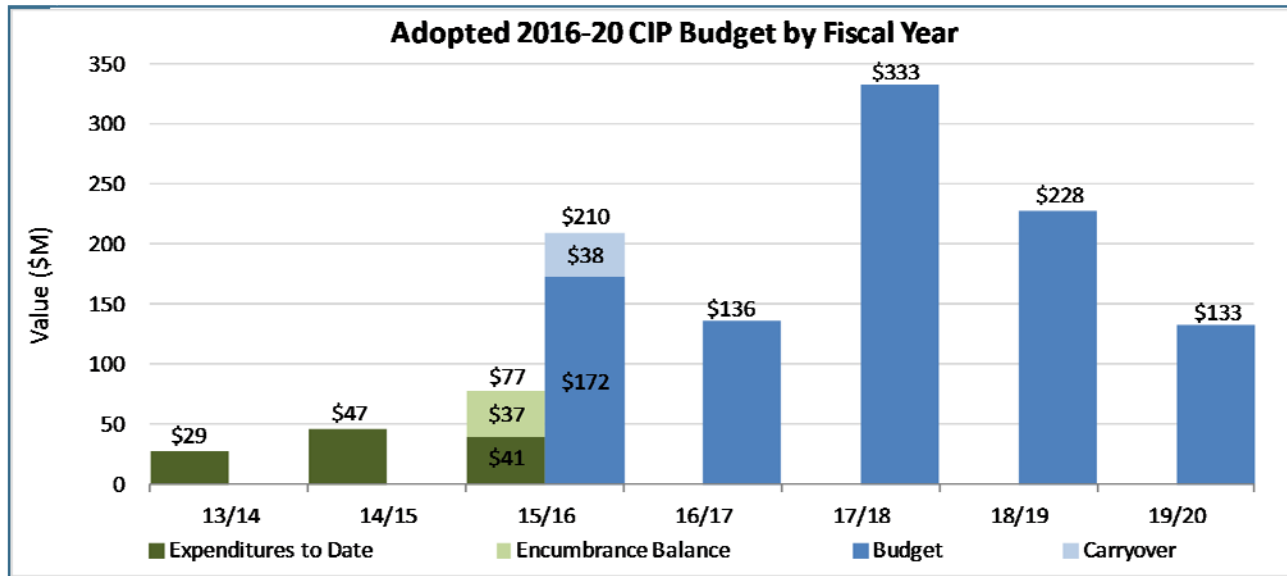


## Program Cost Performance Summary

This section summarizes CIP cost performance for all construction projects and non-construction activities for FY15-16 and for the 2016-2020 CIP.

### Adopted 2016-2020 CIP Expenditure and Encumbrances

To accommodate the proposed increase in expenditures and encumbrances over the next five years, the City is implementing a long-term financial strategy to fund needed, major capital improvements while minimizing the impact to ratepayers. FY13-14 and FY14-15 expenditures have been adjusted to reflect the CIP portion of the Treatment Plant Capital Fund, Fund 512, excluding South Bay Water and Urgent and Unscheduled Cost (\$2.6M and \$1.5M, respectively).



#### Notes

Expenditure: Actual cost expended, either by check to a vendor or through the City's financial system for expenses such as payroll or non-personal expenses that do not require a contract.

Encumbrance: Financial commitments, such as purchase orders or contracts, that are committed to a vendor, consultant, or contractor. The encumbrance reserves the funding within the appropriation and project.

Encumbrance Balance: The amount of the remaining encumbrance committed after payments.

Budget: Adopted FY 2016-2020 Budget. This is new funding plus rebudgeted funds.

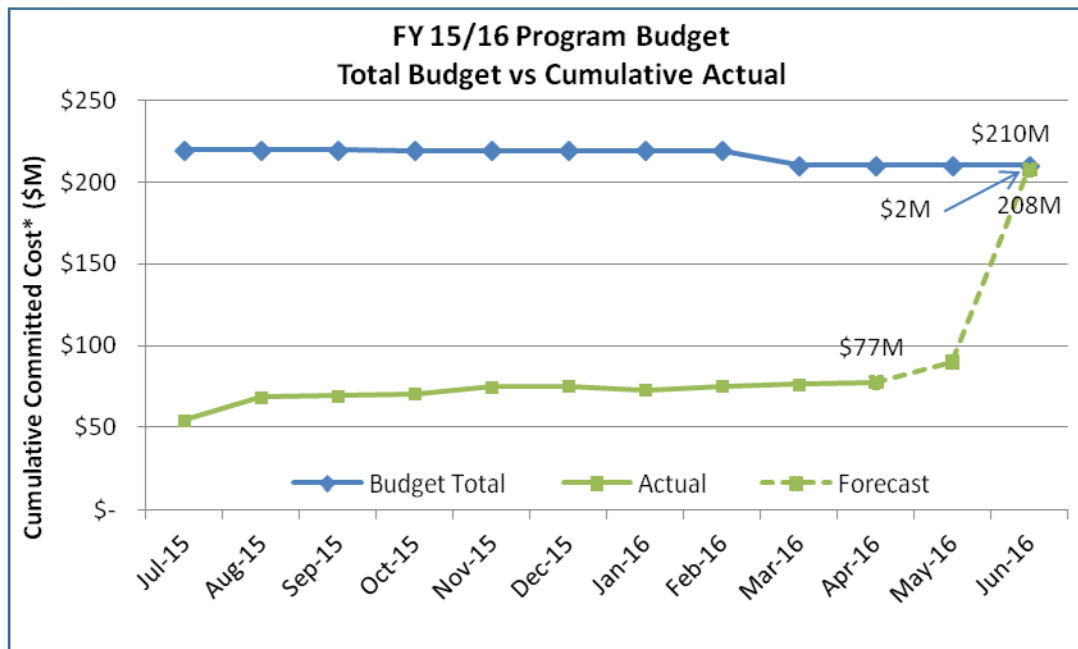
Carryover: Encumbrance balances at the end of a fiscal year become carryover funding. Carryover is different from rebudgeted funds, in that it automatically utilizes funding that was previously committed, but not yet paid.





## Fiscal Year 2015-2016 Program Budget Performance

This budget comprises the 2015-2016 budget of \$172 million plus carryover of \$38 million. The budget excludes Reserves, Ending Fund Balance, South Bay Water Recycling, Public Art, and Urgent and Unscheduled Rehabilitation items.













\*Committed costs are expenditures and encumbrance balances, including carryover (encumbrance balances from the previous fiscal year).







## Project Performance Summary

There are currently six active projects in the construction or post-construction phases, with a further 20 projects in feasibility/development, design, bid and award, or design and construction (design build projects) phases (see PDM graphic, page 2). All active projects are listed in the tables below. Projects in the construction phase have cost and schedule baselines established and are monitored using the City's Capital Project Management System (CPMS). Green/red icons are included in the table below to indicate whether these projects are on budget and schedule, using CPMS data as a source.

### Project Performance – Baselined Projects

Project Name	Phase	Estimated Beneficial Use Date <sup>1</sup>	Cost Performance <sup>2</sup>	Schedule Performance <sup>2</sup>
Pond A18 Northern Gate Structure	Post-Construction	Aug 2015 <sup>3</sup>	N/A <sup>4</sup>	N/A <sup>4</sup>
Digester Gas Storage Replacement	Post-Construction	Nov 2015 <sup>3</sup>		
A5-A6 Nitrification Mag. Meter & Valve Replacement	Construction	May 2016		
Digester Gas Compressor Upgrade	Construction	Oct 2016		
Emergency Diesel Generators	Construction	Dec 2016		
Iron Salt Feed Station	Construction	Sept 2017		

#### KEY:

<b>Cost:</b>		On Budget		>1% Over Budget
<b>Schedule:</b>		On Schedule		>2 months delay

#### Notes

- Beneficial Use is defined as work that is sufficiently complete, in accordance with contract documents, that it can be used or occupied by the City. Beneficial Use dates are being reviewed as part of project schedule reviews.
- An explanation of cost and schedule variances on specific projects identified in this table is provided on page 11.
- Actual Beneficial Use date.
- Due to the emergency nature of the Pond A18 Northern Gate Replacement project, cost and schedule performance measurement criteria have not been applied.



## Project Performance – Pre-Baselined Projects

Project Name	Phase	Estimated Beneficial Use Date <sup>1</sup>
Cogeneration Facility	Design & Construction	May 2019
Construction-Enabling Improvements	Bid & Award	Feb 2017
Fiber Optic Connection	Bid & Award	Feb 2017
Plant Instrument Air System Upgrade	Bid & Award	Jan 2018
Digester & Thickener Facilities Upgrade	Bid & Award	July 2019
Headworks Critical Improvements	Design	Sept 2017
Blower Improvements	Feasibility/Development	Jan 2019
Adv. Facility Control & Meter Replacement	Feasibility/Development	June 2020
Switchgear S40 Upgrade, M4 Replacement, G3 & G3A Removal	Feasibility/Development	Jan 2021
Headworks Improvements	Feasibility/Development	April 2021
Outfall Bridge and Levee Improvements	Feasibility/Development	Nov 2021
Digested Sludge Dewatering Facility	Feasibility/Development	Dec 2021
Facility Wide Water Systems Improvements	Feasibility/Development	Mar 2022
Filter Rehabilitation	Feasibility/Development	April 2022
New Headworks	Feasibility/Development	Aug 2022
Yard Piping and Road Improvements	Feasibility/Development	Aug 2022
Nitrification Clarifiers Rehabilitation	Feasibility/Development	Sept 2022
Aeration Tanks Rehabilitation	Feasibility/Development	Sept 2023
Support Building Improvements	Feasibility/Development	Jan 2027
Lagoons & Drying Beds Retirement	Feasibility/Development	Mar 2027

### Notes

1. Beneficial Use is defined as work that is sufficiently complete, in accordance with contract documents, that it can be used or occupied by the City. Beneficial Use dates are being reviewed as part of project schedule reviews.



## Significant Accomplishments

The projects below are described under different “packages.” In the CIP, packages are groups of projects organized within the same treatment process area.

### Biosolids Package

#### Digester and Thickener Facilities Upgrade

- Staff completed investigation into the bids received.
- Due to the critical nature of the system, necessary connections to the future Cogeneration Facility, a severe labor shortage, and low likelihood that rebidding would result in lower bids, staff worked diligently to develop a funding strategy that minimizes impact to rate payers.
- The City issued a notice of intent to award to the lowest bidder, Walsh Construction. Staff will recommend Council award the construction contract in May.

#### Digester Gas Storage Replacement

- The contractor completed all outstanding work.
- The City submitted the Notice of Completion and Acceptance for the project to the County.

#### Digested Sludge Dewatering Facility

- Four SOQ documents for Owner’s Advisor were submitted by prospective consultants. The Technical Evaluation Panel will complete ranking and interviews in May 2016.

### Facilities Package

#### Cogeneration Facility

- The project team reached a significant milestone this month with the award of the design-build contract to CH2M Hill Engineers, Inc. The contract is being executed and the first notice to proceed will be issued in May.

#### Construction-Enabling Improvements

- The project team received three bids. Staff will recommend Council award the construction contract in June.

#### Facility Wide Water Systems Improvements

- Staff completed negotiations with the top-ranked consultant and is targeting Council approval in June.

#### Fiber Optic Connection

- Staff has concluded discussions with the second low bidder and will recommend Council award of the contract to them on May 24.

### Liquids Package

#### Blower Improvements

- A consultant team comprised of MWH, Carollo, and Howden Roots completed a condition assessment of Secondary Blower Building blowers, Tertiary Blower Building blowers, and process air blowers.

#### Nitrification Clarifiers Rehabilitation

- On April 14, TPAC approved staff’s recommendation to award a master consultant agreement to HDR Engineering, Inc. Staff anticipates presenting the agreement for Council consideration on May 10.

### Power and Energy

#### Plant Instrument Air System Upgrade

- The City advertised the construction contract on BidSync. Bids are due on June 2 with award of the contract expected in September 2016.



## Explanation of Project Performance Issues

### A5-A6 Nitrification Magnetic Meter & Valve Replacement

In September 2014 during startup, the project team discovered that the actuators that had been specified and installed were incompatible with the available power supply. Engineering staff determined it would cost more to modify the electrical system than to order and install compatible actuators. Operations and Maintenance (O&M) staff requested that the actuators match the custom actuators used in the other 14 clarifiers. The City pursued various options to resolve the issue and received a proposal from the contractor to install new actuators based on a revised specification. A counterproposal was provided to the contractor in December 2015. Discussions between senior management from both sides have been productive. A negotiated agreement to resolve all outstanding contract issues was concluded in January 2016 and a change order was issued for the contractor to purchase replacement custom actuators, with lead time of between 12 to 14 weeks. Council approved the additional required funding in March. The Contractor has completed the list of outstanding items on two manual actuators. Contractor mobilization, actuator installation, wiring, troubleshooting, and punch list signoff will take a minimum of three weeks. Beneficial Use is forecast for late May 2016.

### Digester Gas Storage Replacement

During a comprehensive review of the gas storage tank design submitted by design consultant Brown and Caldwell, it was noted that the removable piston legs used in the subcontractor's proposed design did not meet design standards and could cause problems with the tank's intended use. The contractor was granted a three-month, no-cost time extension to September 2015 to complete design modifications to the gas holder support structure. Several owner-requested changes were evaluated during the pre-startup period, resulting in three additional change orders. All work requiring welding or other spark-producing activities was completed prior to the introduction of gas. The tank successfully passed its required leakage test and was commissioned in November 2015. The tank is in use, the project is within budget, and the Notice of Completion and Acceptance was submitted to the County at the end of April to be recorded.

### Emergency Diesel Generator

The schedule for completion is delayed approximately three months due to the following three factors:

1. Caterpillar, the supplier of the Emergency Diesel Generator system, encountered delays in developing the controls that interface with the existing RWF controls. Caterpillar has completed the design and submitted the controls to the City for review and reference. Caterpillar expects to deliver the controls to the City by May 2016.
2. Additional time is required for Pacific Gas & Electric (PG&E) to approve and witness-test the installation and commissioning of the Emergency Diesel Generator equipment. The Office of the City Attorney and the Public Works Department are reviewing the PG&E Telemetry Services Agreement.
3. The commissioning sequence for the existing facility cogeneration engines EG-1, EG-2, and EG-3 changed. The controls for the existing generators are being modified to load-share with the new emergency diesel generators. However, these units can be modified only after the new generators have been commissioned. This sequence change has extended the project completion date. After revisiting the rehabilitation sequence for the existing cogeneration generators, the project team determined that commissioning for the EG-1 engine modification and the new generators may be combined, which will reduce the schedule delay.



## Project Profile – Aeration Tanks Rehabilitation and Blower Improvements

The RWF secondary treatment process consists of two separate biological nutrient removal (BNR) systems, BNR-1 and BNR-2. These systems include a biological treatment process that removes organics from the incoming primary effluent. System components include aeration tanks, in which air is added to allow biodegradation of organic material, and blowers, which supply the air. Figure 2 illustrates the BNR process.

BNR-1 and BNR-2 were originally constructed in 1961 and 1975, respectively. Key components of the systems have aged beyond their useful lives and require rehabilitation to ensure long-term operability while minimizing maintenance requirements. The objective of this project is as follows:

- To rehabilitate various critical components of the BNR systems, such as blowers, motors, piping systems, pumps, and aeration basins, and
- To optimize the secondary treatment process to meet future regulatory requirements and to increase efficiency.

This effort has been divided into two projects:

**The Blower Improvements Project** will include a detailed condition assessment, and will design and install new motors, variable frequency drives, instrumentation, and controls. The project's feasibility and development phase is scheduled for completion in August 2016. Final design and installation will be performed by the design consultant and construction contractor, respectively, and are scheduled for completion by January 2019. This project must be constructed prior to the startup of a new cogeneration facility in January 2019, as the new facility will use a blended gas supply previously used in some of the aeration blowers.

**The Aeration Tanks Rehabilitation Project** will include a comprehensive condition assessment and rehabilitation of existing aeration basin mechanical, electrical, and structural components. The project will include rehabilitation of existing pipe systems, replacement of aeration diffusers, concrete repairs, pump replacements, control upgrades, and rehabilitation of other appurtenances to minimize maintenance requirements. The project is scheduled to be completed by the end of 2024.

Brown & Caldwell has been selected as the highest-ranked design consultant for both projects. Council award is scheduled for June 2016. The notice to proceed for both projects is scheduled for August 2016, which will allow design work to commence for the Blower Improvements Project and evaluation of project alternatives to commence on the Aeration Tanks Rehabilitation Project.

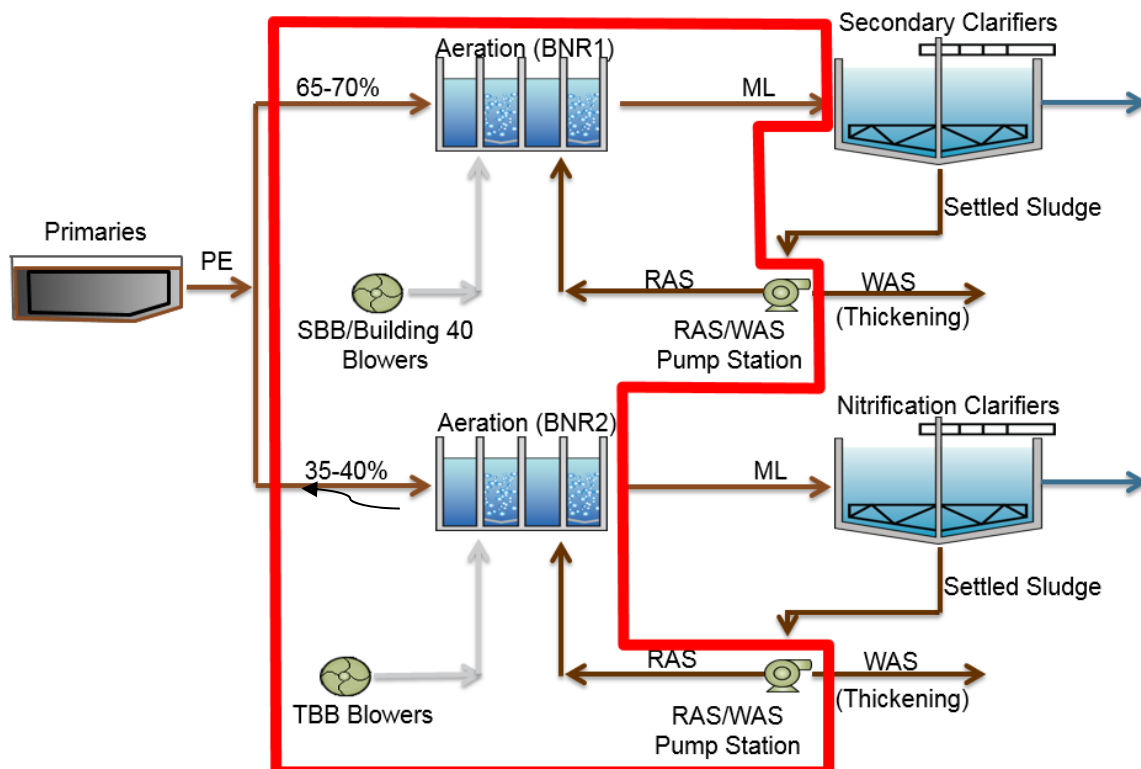


Figure 2 – BNR Process



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# Regional Wastewater Facility Treatment – Current Treatment Process Flow Diagram

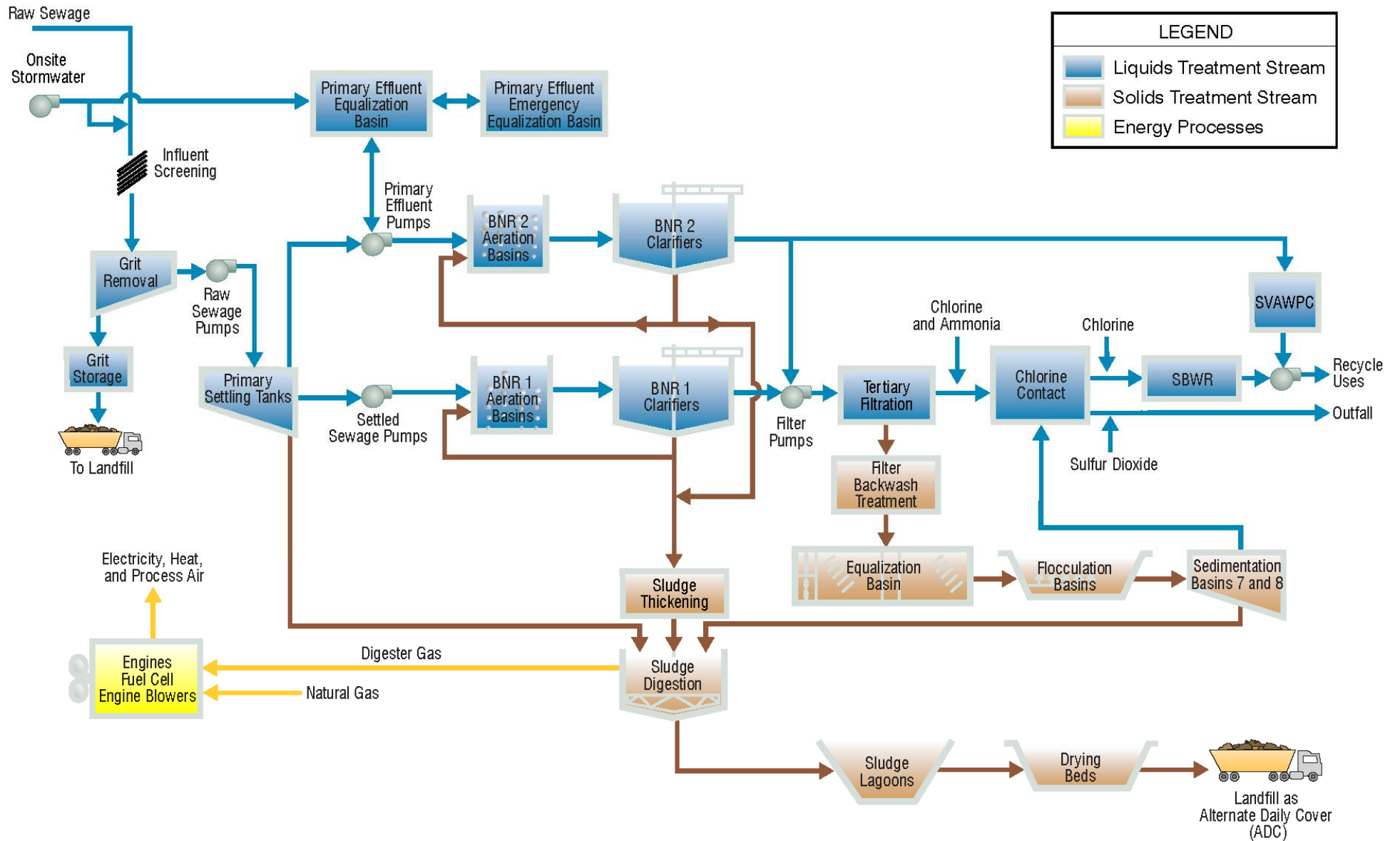


Figure 3 – Current Treatment Process Flow Diagram





# Regional Wastewater Facility Treatment – Proposed Treatment Process Flow Diagram

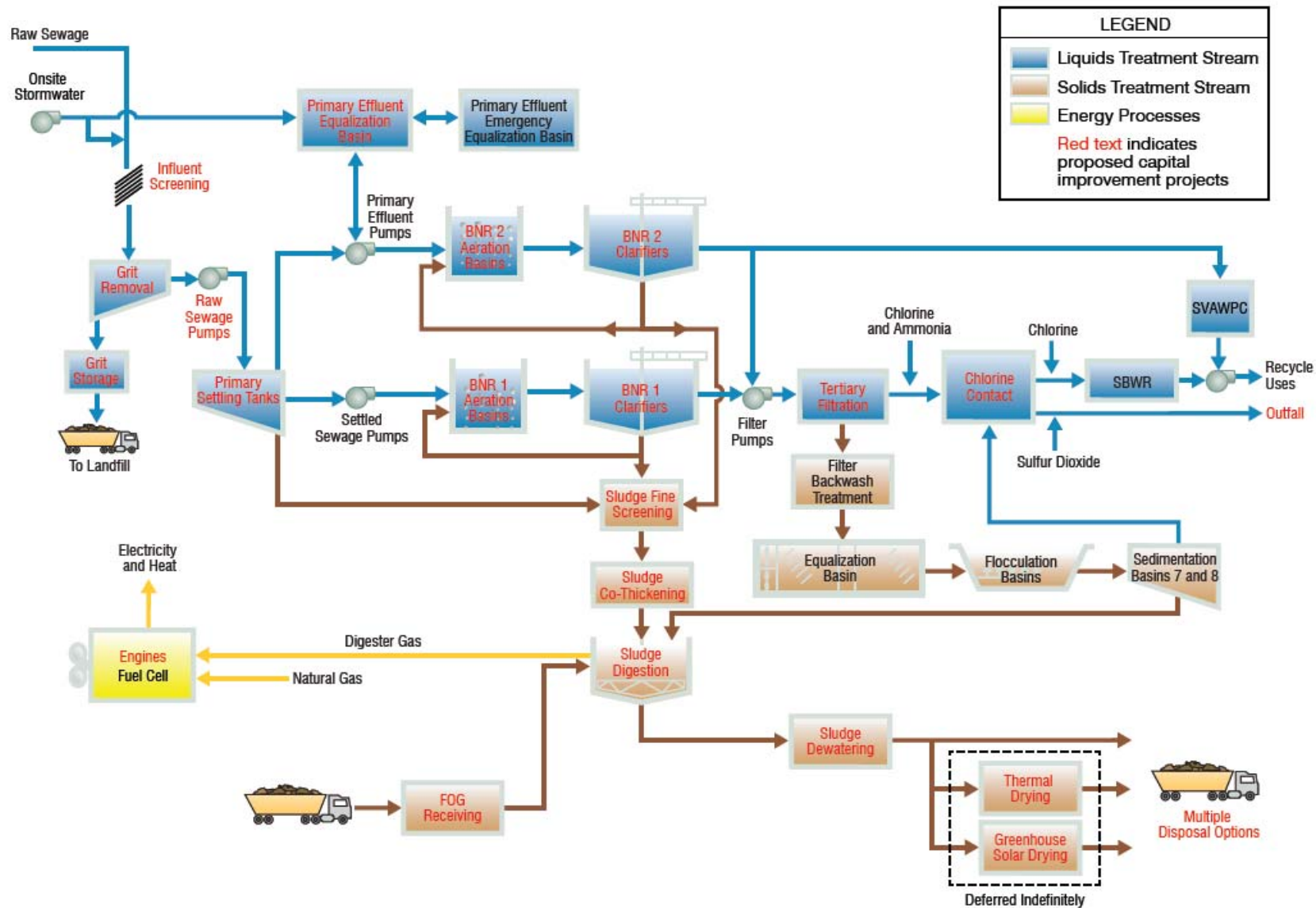


Figure 4 – Proposed Treatment Process Flow Diagram



## Active Construction Projects – Aerial Plan

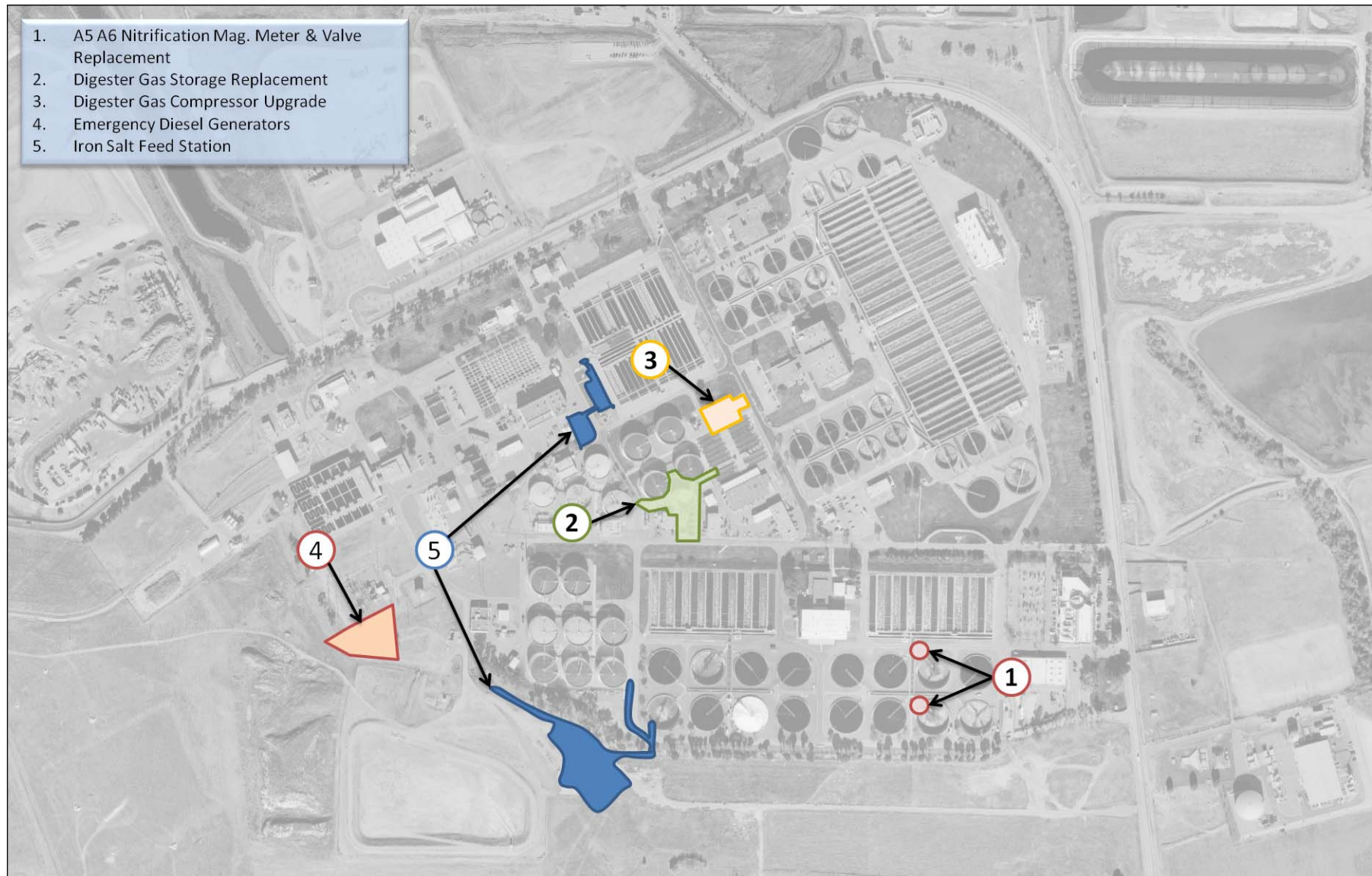


Figure 5 – Active Construction Projects

# Memorandum

**TO:** San José/Santa Clara  
Treatment Plant Advisory  
Committee

**FROM:** Richard Doyle  
City Attorney

**SUBJECT:** Adoption of a Resolution  
Following March 24, 2016  
Hearing on Tributary Agencies'  
Claim

**DATE:** June 1, 2016

West Valley Sanitation District, Burbank Sanitary District, Cupertino Sanitary District, Santa Clara County Sanitation District No. 2-3, and the City of Milpitas (Tributary Agencies) each have an agreement with the Cities of San José and Santa Clara under which the Tributary Agencies discharge wastewater for treatment and disposal by the San José-Santa Clara Regional Wastewater Facility (Master Agreements). On January 25, 2016, the Tributary Agencies filed individually and jointly the Claims of Breach of Agreement and Inequities under the provisions of the Master Agreements (Tributary Agencies' Claims).

On March 24, 2016, the San José/Santa Clara Treatment Plant Advisory Committee's (TPAC) held a hearing on the Tributary Agencies Claims and voted 6 to 3 deny their Claims. Pursuant to Part 7.G. of the Master Agreements, following the March 24 hearing, TPAC is required to issue its report setting forth its findings and recommendations on the Tributary Agencies' Claims.

The San José City Attorney's Office has prepared the attached resolution for TPAC's consideration and adoption. The resolution is organized by setting out the factual background of the Tributary Agencies' Claims, findings on each of the claims made by the Tributary Agencies and then TPAC's recommendations as discussed at the conclusion of the March 24<sup>th</sup> hearing.

The undersigned will be at the TPAC meeting on June 9, 2016 in order to address any questions concerning procedural matters related to TPAC's consideration of the proposed resolution.

A memo and the proposed resolution have been posted to the agenda and have been provided to the representatives of the Co-Owners and the Tributary Agencies.

RICHARD DOYLE  
City Attorney

By   
Jennifer Pousho  
Sr. Deputy City Attorney

cc:

Kerrie Romanow, City of San Jose Director of Environmental Services  
Chris DeGroot, City of San Jose Director of Water and Sewer Utilities  
Nina Hawk, City of Milpitas Director of Public Works  
Richard Tanaka, District Manager of Cupertino and Burbank Sanitary Districts, and CSD 2-3  
Jon Newby, District Manager of West Valley Sanitation District

Richard E. Nosky, Jr, Esq., City of Santa Clara City Attorney  
Sarah N. Quiter, Esq., West Valley Sanitation District Counsel  
Christopher J. Diaz, Esq., City of Milpitas City Attorney  
Marc Haynes, Esq., Cupertino Sanitary District Counsel  
Jennifer E. Faught, Esq., Burbank Sanitary District Counsel  
Michael L. Rossi, Esq., County of Santa Clara Deputy County Counsel (CSD 2-3)

Rosa Tsongtaatarii, City of San Jose Senior Deputy City Attorney  
Britt Strottman, Special Counsel to the Tributary Agencies

RESOLUTION NO. 2016-01

**A RESOLUTION OF THE SAN JOSE/SANTA CLARA TREATMENT PLANT ADVISORY COMMITTEE SETTING FORTH THE COMMITTEE REPORT, INCLUDING FINDINGS AND RECOMMENDATIONS ON THE CLAIMS OF BREACH OF AGREEMENT AND INEQUITIES FILED ON JANUARY 25, 2016 BY WEST VALLEY SANITATION DISTRICT, BURBANK SANITARY DISTRICT, CUPERTINO SANITARY DISTRICT, SANTA CLARA COUNTY SANITATION DISTRICT NO. 2-3, AND THE CITY OF MILPITAS**

**WHEREAS**, the Cities of San José and Santa Clara (collectively, Co-Owners) own the San José - Santa Clara Regional Wastewater Facility (RWF); and

**WHEREAS**, the City of San José (San José) operates the RWF as Administering Agency under an agreement with the City of Santa Clara that dates back to 1959 (San José/Santa Clara Master Agreement); and

**WHEREAS**, West Valley Sanitation District, Burbank Sanitary District, Cupertino Sanitary District, Santa Clara County Sanitation District No. 2-3, and the City of Milpitas (Tributary Agencies), each have agreements with the Cities of San José and Santa Clara (Master Agreements) under which the Tributary Agencies discharge wastewater for treatment and disposal by the RWF; and

**WHEREAS**, each of the Master Agreements contains provisions requiring that if any party to the Master Agreement has a claim that the other party has in any way breached or is breaching the Agreement, or that the Agreement is inequitable, the complaining party shall file a written claim of said breach or inequity (Claim of Breach or Inequities) with the Co-Owners' legislative bodies and with the San José/Santa Clara Treatment Plant Advisory Committee (TPAC) for the RWF; and

**WHEREAS**, the Master Agreements further provide that TPAC shall, within two (2) months of receiving a Claim of Breach or Inequities, give all concerned parties full opportunity to be heard on the matter of the Claim of Breach or Inequities, and shall

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upon the conclusion of said hearing give the legislative bodies of the parties a full report of its findings and recommendation; and

**WHEREAS**, on January 25, 2016, the Tributary Agencies, pursuant to the terms of the Master Agreements, individually and jointly filed a “Claims of Breach of Agreement and Inequities” (Tributary Agencies’ Claims) with Co-Owners and TPAC; and

**WHEREAS**, on February 26, 2016, Co-Owners submitted a written response to the Tributary Agencies’ Claims to TPAC and the Tributary Agencies (Response to Claims); and

**WHEREAS**, on March 4, 2016, the Tributary Agencies submitted a written reply to the Response to Claims (Tributary Agencies’ Reply); and

**WHEREAS**, on March 11, 2016, Co-Owners submitted a written supplemental response to the Tributary Agencies’ Reply (Co-Owners’ Supplemental Response); and

**WHEREAS**, the Tributary Agencies’ specific allegations relate to Plant Master Plan (PMP) capital costs; and

**WHEREAS**, on March 24, 2016, TPAC provided the Tributary Agencies and the Co-Owners full opportunity to be heard on the Tributary Agencies’ Claims in accordance with the Master Agreements. Britt Strottman, of Meyers Nave appeared on behalf of the Tributary Agencies. Rosa Tsongtaarii, Senior Deputy City Attorney of the San José City Attorney’s Office appeared on behalf of Co-Owners; and

**WHEREAS**, TPAC has considered the written arguments, hearing presentations and the supporting documents submitted by the Tributary Agencies and Co-Owners<sup>1</sup>, and testimony from witnesses<sup>2</sup>; and

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<sup>1</sup> A list of the documents submitted by the Tributary Agencies and Co-Owners is attached hereto as Attachment A.

<sup>2</sup> A transcript of the March 24, 2016 hearing prepared by City vendor Vitac from the audio recording of the hearing is attached hereto as Attachment B. A printout of the closed captions for video recording of the March 24, 2016 hearing prepared by City vendor Vitac is attached hereto as Attachment C.

**WHEREAS**, at the conclusion of the March 24, 2016 hearing, TPAC acted by a 6-3 vote to deny the Tributary Agencies' Claims;

**NOW, THEREFORE**, BE IT RESOLVED THAT THE SAN JOSE/SANTA CLARA TREATMENT PLANT ADVISORY COMMITTEE FINDS AND RECOMMENDS AS FOLLOWS WITH RESPECT TO THE TRIBUTARY AGENCIES' CLAIMS:

**SECTION 1. FINDINGS**

**A. The City of San José's Methodology for Allocating PMP Capital Costs<sup>3</sup> to Each Tributary Agency is not a Breach of the Master Agreements or Inequitable.**

1. Most PMP Capital Costs are Future Improvement Costs, not Replacement Costs.

The Tributary Agencies' Claims assert that the Master Agreements require that all PMP costs be billed to the Tributary Agencies as "future improvements", but that San José has decided to improperly construe such projects as "replacement costs."<sup>4</sup> The Tributary Agencies further assert that treating PMP costs as "replacement costs" results in improper billing and creates numerous inequities among the Tributary Agencies.<sup>5</sup>

In response to the Tributary Agencies' Claims, Co-Owners agreed that "most CIP costs" should be treated as "future improvements."<sup>6</sup>

However, Co-owners' Response also correctly noted that the Master Agreements specify two different billing methods for future improvement costs: parameter based billing for future improvement costs that exceed \$2 million and are process related; and rolling weighted average billing for future improvement costs that are less than \$2 million or are not process related.<sup>7</sup>

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<sup>3</sup> PMP capital costs are identified in San Jose's Five-Year 2016-2020 Capital Improvement Program (CIP). Response to Claims, Ex. D-1.

<sup>4</sup> Tributary Agencies' Claims, p. 7.

<sup>5</sup> Tributary Agencies' Claims, p. 8.

<sup>6</sup> Response to Claims, p. 2.

<sup>7</sup> Response to Claims, pgs. 3-4.

The Tributary Agencies did not provide an example of any PMP cost that had been improperly billed as a replacement cost.<sup>8</sup> Accordingly, we concur with Co-Owners that the Tributary Agencies' Claims with respect to billing of PMP projects as future improvement costs is premature.<sup>9</sup> We further note that the issue may be moot, given Co-Owners' acknowledgment that most PMP Capital Costs projects should be treated as future improvements.

2. The Rolling Weighted Average Can Properly be Used to Allocate Some PMP Capital Costs.

The Tributary Agencies' Claims assert that the rolling weighted average billing methodology that is specified in the Master Agreements for some capital project costs cannot be used to bill PMP costs.<sup>10</sup> The Tributary Agencies' Claims reference to this methodology as the "less than \$2 million dollar methodology" indicates an incomplete reading by the Tributary Agencies of the Master Agreements. As explained in Co-Owners' Response, the Master Agreements specify use of the rolling weighted average billing methodology for all projects that are not process related, as well as for projects that costs less than \$2 million.<sup>11</sup> Co-Owners' Response also explained why the rolling weighted average billing methodology would need to be used for some project costs that may be incurred before completion of the engineering design work that is needed to allocate the costs to parameters.<sup>12</sup>

We find that use of the rolling weighted average billing methodology is consistent with the Master Agreements and is equitable for projects that are not process related, and for projects that cost less than \$2 million. We further find that use of the rolling weighted average is consistent with the Master

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<sup>8</sup> As noted in Co-Owners' Response, the Tributary Agencies' evidence related to improper billing was based on an incorrect assumption concerning how costs would be billed, not an actual bill. Response to Claims, p. 2.

<sup>9</sup> Response to Claims, p. 2.

<sup>10</sup> Tributary Agencies' Claims, p. 8.

<sup>11</sup> Response to Claims, p. 3.

<sup>12</sup> Response to Claims, p. 4.



Agreements for project costs that are incurred before completion of the engineering design work that is needed to allocate the costs to parameters. As Co-Owner's consultant testified, the development of the specific and final cost of each project included in the CIP is not possible at the earliest point in time when the projects are included in the CIP, as the timing and scope of projects may change over time, and the specific project cost is subject to completion of engineering design work.<sup>13</sup>

As the Tributary Agencies acknowledge, the Master Agreements include a process for adjusting the amounts owed by the Tributary Agencies no later than the third quarter of the fiscal year following receipt of any payment.<sup>14</sup> Although the Tributary Agencies complained that this process could result in delay in the processing of credits<sup>15</sup>, to the Tributary Agencies' disadvantage, Co-Owners' Supplemental Response explained how the Master Agreements' adjustment process was used to promptly reallocate the costs of the Digester and Thickener and Upgrade Project, once engineering design was complete.<sup>16</sup> We find that the adjustment process included in the Master Agreements is the appropriate method for reallocating costs to parameters once engineering design work is complete.

**B. The Tributary Agencies' Payment Obligations for PMP Capital Projects are Enforceable.**

The Tributary Agencies' Claims assert that the Tributary Agencies are not currently obligated to pay for PMP project expenditures because the Master Agreements need to be amended to specifically address "cost allocation for the PMP capital projects as well as description, scope of work, schedule of implementation, and financing or payment schedule."<sup>17</sup> Contrary to the Tributary Agencies' Claims, the obligation to pay for capital projects is comprehensively

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<sup>13</sup> See testimony of Robb Grantham, Carollo Engineers, Attachment B, pgs. 26 and 27.

<sup>14</sup> Tributary Agencies' Claims, p. 9; Master Agreements Part V.E.3. b.

<sup>15</sup> Tributary Agencies' Claims, p. 9

<sup>16</sup> Co-Owners' Supplemental Response, p. 5.

<sup>17</sup> Tributary Agencies' Claims, p. 10.

addressed in the Master Agreements, as was detailed in the Response to Claims and Co-Owners' hearing presentation.<sup>18</sup>

The Tributary Agencies' Claims further assert that San José's act of billing the Tributary Agencies for their share of PMP capital costs is inequitable, based on the Tributary Agencies' belief that the FY 15-16 fourth quarter invoice, due on April 1, 2016 "will most certainly be based" on the rolling weighted average billing methodology.<sup>19</sup> Co-Owners in their Response to Claims made it clear that the first quarter invoice would be based on the appropriate billing methodology under the Master Agreement (parameter based billing for the Digester and Thickener Project.)<sup>20</sup>

We find that that the Tributary Agencies are obligated to pay for PMP capital costs under the terms of the Master Agreements; and that it is not inequitable for San José to bill the Tributary Agencies for PMP capital costs in accordance with the terms of the Master Agreements.

**C. Co-Owners have not Breached the Master Agreements or Acted Inequitably with Respect to Proposed Amendments to the Master Agreements.**

The Tributary Agencies' Claims and the Co-Owners' Response include a broad range of arguments regarding amendments to the Master Agreements that have been proposed by both the Tributary Agencies and Co-Owners. At the center of the Tributary Agencies' Claims related to their proposed amendments is the contention that "comprehensive revision" of the Master Agreements is necessary.<sup>21</sup> We agree with Co-Owners that amendment of the Master Agreements is not required in order for Co-Owners to enforce the Tributary Agencies' obligation to pay for capital projects, including PMP projects under the Master Agreements as currently written.<sup>22</sup>

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<sup>18</sup> Response to Claims, p.6 and Co-Owners' Presentation Slides 4-7.

<sup>19</sup> Tributary Agencies' Claims, p. 10.

<sup>20</sup> Response to Claims, p. 4.

<sup>21</sup> Tributary Agencies' Claims, p. 11.

<sup>22</sup> See Section 1.B above.

At the center of Co-Owners' Response to the Tributary Agencies' Claims is the contention that amendment of the Master Agreements is necessary in relation to the PMP projects if the Tributary Agencies' wish to have Co-Owners secure financing for their share of PMP capital costs.<sup>23</sup> The Tributary Agencies' Claims affirm the desire of the Tributary Agencies to have Co-Owners secure financing in which they can participate.<sup>24</sup> In light of the Tributary Agencies' desire to participate in long term financing and to have an amendment to the Master Agreement relating to financing, we find that it was not inequitable or a breach of the Master Agreement for San José to propose an Amended and Restated Master Agreement<sup>25</sup> that focused on long term financing of the PMP projects.

We also find that the Tributary Agencies' characterization of Co-Owners' proposed amendment as inadequate for failure to "address the scope and magnitude of PMP projects, most notably the development of land and odor control"<sup>26</sup> is inconsistent with their contention that the amendments that they sought to the Master Agreements "are primarily related to financing the PMP."<sup>27</sup>

We further find that the following Tributary Agencies' proposed amendments, as described in their hearing presentation, are also inconsistent with the position that they are only seeking amendments relating to financing:

- Amendment of the dispute resolution provision<sup>28</sup>;
- Amendment of budget, billing and auditing procedures.<sup>29</sup>

Co-Owners in their response<sup>30</sup> also identify other provisions contained in the Tributary Agencies' proposed amendments, which would fundamentally alter the

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<sup>23</sup> Response to Claims, p.7.

<sup>24</sup> Tributary Agencies' Claims, p. 12. We do not agree with the Tributary Agencies that the Co-Owners have an obligation to develop a least-cost long term financing program on their behalf. However, this issue may be moot, as San José has actively attempted to facilitate the Tributary Agencies' participation in a program to finance PMP capital costs. Response to Claims, Exhibit C.

<sup>25</sup> Tributary Agencies' Reply, Attachment A.

<sup>26</sup> Tributary Agencies' Claims, p. 11.

<sup>27</sup> Tributary Agencies' Reply p. 2.

<sup>28</sup> Tributary Agencies' Hearing Presentation, Slide 3.

<sup>29</sup> Attachment B, pg. 4 and Tributary Agencies' Hearing Presentation, Slide 16.

<sup>30</sup> Response to Claims, p.8.

relationship of the parties and go beyond what is necessary to secure financing for PMP projects, including:

- Amendment to cap RWF capital budget;
- Amendment to shift liability for RWF operations;
- Amendment to allow Tributary Agencies to have discretion to refuse to fund capital projects.

Finally, we find that proposing amendments targeted to address the long term financing of PMP projects was consistent with the past practice of the parties. As noted by Co-Owners, in the over 30 years since the Master Agreements were executed, the fundamental provisions of the Master Agreements have remained in place as amendments to the Master Agreement have been limited to: memorializing repayment terms for financing; documenting each parties' interest in RWF expansion projects; and addressing the sale of contract capacity between agencies<sup>31</sup>.

**D. The Tributary Agencies' Allegations Related to Lack of Transparency Are Unsupported.**

The Tributary Agencies allege a lack of transparency by Co-Owners in the Tributary Agencies' Claims and in their Hearing Presentation regarding the cost of the CIP and the financing of the CIP.<sup>32</sup> We find that these allegations were unsubstantiated. Co-Owners' submissions in response to the Tributary Agencies' Claims demonstrate the following<sup>33</sup>:

- Information regarding the CIP has been provided to the Tributary Agencies in the annual and five-year CIP, including a source and use of funds;
- San José provides the Tributary Agencies with an annual estimate of their proportional share of project costs during the upcoming fiscal year and quarterly invoices with the basis of the amount billed;
- Semi-annual reports on the CIP are provided to the Treatment Plant Advisory Committee

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<sup>31</sup> Co-Owners' Supplemental Response, p.4.

<sup>32</sup> Tributary Agencies' Claims, p.2 and Tributary Agencies Hearing Presentation, p.5.

<sup>33</sup> Response to Claims, pgs. 8-9 and Exhibits B, C and D referenced therein; Attachment B, pgs. 24-25.

- A 10 Year Funding Strategy for the financing of the CIP was prepared and reviewed at Treatment Plant Advisory Committee meetings and with staff of the Tributary Agencies at the Technical Advisory Committee meetings.

**E. The Tributary Agencies' Claims with Respect to Payment for Legal Services Are Moot.**

Co-Owners agree with the Tributary Agencies that the Tributary Agencies should not be required to pay for the cost of legal services to advise Co-Owners in negotiating amendments to the Master Agreements. We therefore find that the Tributary Agencies' Claims with respect to payment for legal service are moot.

**SECTION 2. REPORT OF THE TREATMENT PLANT ADVISORY COMMITTEE**

- A. This Resolution, including its recitals, constitutes the report, findings and recommendations of the Treatment Plant Advisory Committee, as required by Part 7.G of the Master Agreements (Report).
- B. The Secretary to this Committee is hereby directed to distribute the Report to the Tributary Agencies' legislative bodies and to the legislative bodies of Co-Owners.

**SECTION 3. RECOMMENDATIONS**

- A. The Tributary Agency Advisory Committee recommends that neither the Tributary Agencies nor Co-Owners take any further actions with respect to the Tributary Agencies' Claims, other than to meet jointly, as required by Part 7.G of the Master Agreements if any Party provides written notice of disagreement or dissatisfaction with this Report.
- B. The Tributary Agency Advisory Committee further recommends that discussion continue among Tributary Agencies' and Co-Owners' staff on an informal basis in order to arrive at a mutually agreeable amendment to the Master Agreements that focuses on the parties' common concern regarding financing the projects included in the CIP.

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ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2016, by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
SAM LICCARDO  
Chair

ATTEST:

\_\_\_\_\_  
Secretary

## ATTACHMENT A

### DOCUMENTS SUBMITTED BY TRIBUTARY AGENCIES AND CO-OWNERS

1. Letter dated January 22, 2016 from City of Milpitas, Burbank Sanitary District, County Sanitation District 2-3, West Valley Sanitary District and Cupertino Sanitary District to Treatment Plant Advisory Committee, City of San José and City of Santa Clara, including Claims of Breach of Agreement and Inequities and Exhibits A-Y.
2. Letter dated February 26, 2016 and entitled "Cities of San José and Santa Clara's Response to Administrative Claim" from City of San José, Office of the City Attorney, to Treatment Plant Advisory Committee, including Exhibits A, B, C, D-1 and D-2.
3. Letter dated March 4, 2016 and entitled "Tributary Agency Response to First Parties' Answer to Claim" from City of Milpitas, Burbank Sanitary District, County Sanitation District 2-3, West Valley Sanitary District and Cupertino Sanitary District to Treatment Plant Advisory Committee, City of San José and City of Santa Clara.
4. Letter dated March 11, 2016 and entitled "Cities of San José and Santa Clara's Supplemental Response to Administrative Claim" from City of San José, Office of the City Attorney, to Treatment Plant Advisory Committee, including Exhibit A.
5. Tributary Agencies' March 24, 2016 Power Point Presentation, (19 pages).
6. Co-Owners' March 24, 2016 Power Point Presentation, parts 1, 2 and 3 (35 pages).
7. Email dated March 17, 2016 from Sarah Quiter of Meyers, Nave to Treatment Plant Advisory Committee, including the first set of additional documents as follows:
  - a. San Jose/Santa Clara Treatment Plant Capital Fund "Comparison of Budget vs Actual Revenue" prepared by Hemming Morse, LLP;
  - b. San Jose/Santa Clara Treatment Plant Capital Fund "Comparison of Estimated vs Actual Ending Fund Balance" prepared by Hemming Morse, LLP;
  - c. Program CIP Package Summary for Package Name "FOG Receiving" dated 3/25/2014, pages 70-71 of 78 pages; and
  - d. Letter dated March 10, 2016 and entitled "FY 2016-17 Treatment Plant Capital Cost and SRF Loan Repayments Allocation" from Laura Burke,

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Principal Accountant, Environmental Services Division City of San José, to Tributary Agencies, including “Attachment I – Treatment Plant Capital Cost Allocation” and “Attachment II – State Revolving Fun Loan Repayments”.

8. Email dated March 17, 2016 from Sarah Quiter of Meyers, Nave to Treatment Plant Advisory Committee, including the second set of additional documents as follows:
  - a. Technical Memorandum entitled “Alternative SJ/SC WPCP Cost Allocation” dated March 4, 1982, from San José consultant Glen Daigger of CH2MHill to E.H. Braateliën, Jr.; and
  - b. Technical Memorandum entitled “Capital Project Cost Allocations Revised Final” dated March 8, 2016 from Carollo Engineers to City of San José.



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**ATTACHMENT B**

**TRANSCRIPT PREPARED BY VITAC FROM AUDIO RECORDING OF THE  
MARCH 24, 2016 HEARING BEFORE TPAC**

>> Good afternoon. We'll call the meeting to order for the Administrative Claim Hearing on March 24, 2016. We have a period of time designated from 1:30 to 3:30, and I appreciate everyone making time out of their busy schedules to be here. We'd like to do all we can to be able to wrap this up within that period of time, so we'll certainly encourage the participation of everyone, but we want to, hopefully, keep our questions fairly succinct and see if we can move things along. So, I'm going to look here for guidance to our counsel as to exactly how to proceed first. I assume that there is a Claimant and a Respondent. Is that right? Should we allow the Claimant to speak?

>> The Claimant, right, is scheduled to go first.

>> Very well. Thank you. Please take it over. If you could identify yourself as you come to the...

>> [ Inaudible ]

>> That would probably be best, yeah. And for any of my colleagues, if you could just push that big button to the upper right -- I'm sorry -- upper left, that will indicate to me that you'd like to speak or ask a question. Thank you.

>> All right. Could we take roll call?

>> Yeah.

>> Oh, let's do that. What the heck?

>> All right.

>> [ Laughs ]

>> [ Inaudible ]

>> Present.

>> [ Inaudible ]

>> Here.

>> John Gatto.

>> JOHN GATTO: Here.

>> Pat Kolstad.

>> TERESA O'NEILL: I'm his alternate. . Teresa O'Neill as his alternate.

>> Jerry Marsalli.

>> KATHY WATANABE: Kathy Watanabe as his alternate.

>> Dave Sykes.

>> DAVE SYKES: Here.

>> Steven Leonardis.

>> STEVEN LEONARDIS: Here.

>> We have a quorum.

>> Okay, thank you. And just so – Forgive me for not being more familiar with the process. I'm not sure if we've ever done this before. Is there a defined period of time for the Claimant and then for the Respondent?

>> Yes, Mayor. It's 20 minutes for the Claimant and then it's 20 minute for the City, and then each of the parties has a 10-minute rebuttal.

>> Great. Okay, thank you. So I know questions will come up. We'll take those questions, I think, at the end after parties have an opportunity.

>> [ Inaudible ]

>> I'm sorry. We're having some technical... [Inaudible]

>> Yes, you can do that by pushing -- to my colleagues, if you push the upper-right green button that says "view video," that will enable you to see what they're presenting without having to turn your head. [ Indistinct conversations ]

>> We apologize. I'm sorry. We thought it had already been loaded.

>> Okay.

>> But it hasn't.

>> No problem.

>> I am sorry.

>> That's okay. We'll start the clock when you're ready.

>> Okay. [ Indistinct conversations ]

>> I did not come back with a big bag of money. That's the -- [ Chuckles ] [ Indistinct conversations ] John, if you could also adjust the timer to help us, that'd be great. Thank you. I believe it's 20 minutes.

>> BRITT STROTTMAN: Okay. Good afternoon. My name is Britt Strottman, and I am Special Counsel for the tributary agencies. Before I delve into our presentation, I just wanted

to handle a quick housekeeping issue. We just have an initial concern today about the fairness for this hearing. We follow the TPAC procedures in good faith. We gave counsel for San José our presentation and all of our documents for rebuttal seven days before this hearing, and that hearing procedure was adopted at a TPAC hearing. So we feel like we're at a disadvantage right now because we didn't receive San José's presentation until about a half an hour ago, and nor did we receive any documents that San José would use in this hearing. So it all boils down to an issue of fairness for us. So I'm going to first talk about the tributary agencies and why we're here. So the claims were brought by the tributary agencies, and we collect wastewater and send it to the treatment plant owned by San José and Santa Clara. The tributary agencies include the city of Milpitas, the Cupertino Sanitary District, the West Valley Sanitation District, Burbank Sanitary District, and Santa Clara County Sanitation District Number 2-3. We have a population of about 240,000. Next I'm going to talk about the Master Agreements. As you know, there are legal agreements between the agencies, San José, and Santa Clara, but San José operates the plant. They were executed in 1983 or 1985, so they're about 30 years old. They currently end in 2031. Basically the legal agreement obligates the agencies to pay an allocated share of operation, maintenance, and capital upgrades in exchange for wastewater treatment and disposal. They contain many outdated and cumbersome dispute resolution processes, which allowed us to file the claim, but the dispute resolution process is flawed, and you may ask, "Well, why do you think it's flawed?" First of all, we think that there's an inherent conflict of interest. San José is not a neutral party, they're an interested party. They're going to prepare the report and make recommendations, and there's another issue that makes this dispute resolution problematic. Two of our sanitary districts are not fully represented on the TPAC, and, first of all, that's the Burbank Sanitary District and Santa Clara County Sanitation District Number 2-3. They do not have representatives on TPAC. Ultimately, the primary reason why we're here today is because a Master Agreement must be updated to reflect the Plant Master Plan. So, what is a Plant Master Plan and why is it driving our claim? The Plant Master Plan is comprised of about 30 projects, and it was adopted in 2013. As you can see from the slide, the Plant Master Plan mostly includes projects that are budgeted to cost millions of dollars. These are major and structural rehabilitation projects and new improvements to the regional wastewater facility. They're estimated to cost about \$2.1 billion in capital costs over the next 20 years, and here's a list of some of the projects. So, this \$2.1 billion is obviously a huge investment for the tributary agencies. We fully, fully support the critical upgrades to the plant. However, to invest in these projects, the Master Agreement must be reflected to update the Plant Master Plan. The Plant

Master Plan costs will be passed down to our ratepayers, and we are accountable to our ratepayers. We lack contractual assurances for the financing of the Plant Master Plan. There's a total lack of transparency on the use of ratepayer funds, and San José is unfairly allocating the costs of the Plant Master Plan, and we fear that San José will continue to overcharge the tributary agencies millions of dollars for these capital upgrades. Now I'm going to give you a quick overview of our claim arguments. San José allocates treatment plant costs to the agencies. We claim that San José's use of the wrong allocation method results in severe overcharges, which puts the tributary agencies in an untenable financial position. Our ratepayers must be charged consistent with what the Master Agreement requires. In addition, the Master Agreements must be updated to enable the agencies to obtain financing and to ensure transparency. It's critical to understand the two allocation methods under the Master Agreements and why using the wrong allocation method is a detriment to the agencies. So there are two different types of allocation methods under the Master Agreements, and just for reference, these methods are derived from the State Water Resources Control Board Revenue Guidelines, and the amount of money that's charged to us depends on which allocation method is used. So one allocation method is called the Billable Parameters Method, and that applies, one, to future improvements, and, two, process-related replacement cost projects that exceed \$2 million. The second method is called the Rolling Weighted Average, and that applies to replacement-cost projects that either cost less than \$2 million or are not process-related, and it's important to note, too, that in the Master Agreement, the definition of replacement costs specifically excludes major and structural rehabilitation projects. San José intends to use the Rolling Weighted Average for major and structural rehabilitation projects in violation of the expressed terms of our agreement, which results in overcharges to the agencies, and in return, that hurts our ratepayers. Major and structural rehabilitation projects are future improvements and subject to the Billable Parameters Method. San José has acknowledged in this next slide in three recent documents that the Plant Master Plan Projects are major and structural rehabilitation projects which fall under the Billable Parameter Methodology, and you can see here the three different documents. There's a C.I.P. -- 5-year C.I.P. document, there's a Plant Master Plan on a page 11 and in San José's own press release. Now, on this slide, this is an illustration of \$146-million worth of projects where San José used the Billable Parameter Method, and this was about 30 years ago. So if San José has correctly used this method before in the past, why can't they use it now for these projects? After the agency submitted their claims, San José sent the tributary agencies a letter in February of this year. The letter conceded that San José used the wrong allocation method for

the Digester Project, which costs about over \$100 million. This is just one example, one project, but there's still other projects that we're concerned about. San José has conceded that most Capital Improvement Program costs are future improvements, therefore the Billable Parameter Methodology must be used. However, recent documentation from San José shows that San José will apply the wrong method to other rehabilitation projects. For example, despite admitting that San José used the wrong allocation method for the Digester Project, San José continues to use the Rolling Weighted Average Method for an entirely new facility, and this is the Cogeneration Facility. And why is this important? Because using the Rolling Weighted Average overcharges the agencies and harms our ratepayers, and it's inconsistent with the Master Agreement. San José moved forward with this cost allocation even though we were in the middle of this dispute process, and this was just a few weeks ago. I want to give an example of a project of what happens when the tributary agencies are overcharged. As you can see from this slide, for \$100-million Digester Project alone, the incorrect use of the Weighted Average Methodology costs the tributary agencies real money, and as you can see here, if you calculate this, it's about over \$5 million. If you imply the incorrect methodology with \$2.1-billion worth of projects, you can see the financial difficulties that we're facing, and as I already stated, San José later conceded that it used the wrong method, and it would the Billable Parameter Method for the Digester Project. All of this places us in an untenable financial position, and let me just paint a picture for you. So, imagine that you're a new homebuyer, and you have \$300,000 to spend on a house, and you find the house that you like, but you learn that the roof needs \$75,000 worth of repair damage. So, what do you have to do? You have to take out a loan for \$375,000. Once you move in, you find out that the roof actually doesn't need to be repaired, so now you're stuck with \$375,000 loan, a higher interest rate, and then let's just also say, hypothetically speaking, that there's a prepayment penalty on the loan. So I give you this example to show that this is similar to what the agencies face when we're overcharged for capital projects. We have to take on more debt than necessary, which forces us to raise our rates higher than necessary. If we take out long-term debt for Plant Master Plan Projects, and there's a prepayment penalty, we risk falling into negative arbitrage. Even if we're credited back the amount that we were overcharged at a later date, we are still stuck with the extra debt, and as I will explain later in a few slides, San José's offer of a low-interest loan for the Digesters was contingent on economically unacceptable terms, which adds to our financial pressures. So I'd like to quickly introduce to you our Forensic Accountant. His name is Dan Ray, and he is with the firm Hemming Morse, and he's going to

explain the challenges that the agencies face when they're planning to finance capital projects for the Plant Master Plan.

>> DAN RAY: Good afternoon, everyone. My name is Dan Ray. I'm a partner in the Accounting Firm of Hemming Morse. We are located throughout the state of California, primarily in San Francisco. We are a firm that provides Forensic Accounting services to municipalities, law firms, and a variety of other clients. My firm has been retained to assist the tributary agencies in trying to demonstrate for purposes of today's hearing through these graphs some of the challenges that they're facing in order -- in their ability to adequately and properly and accurately finance their share of costs for these capital improvement programs. The first chart that you're looking at, the source data, is the annual reports for the City of San José, which we obtained from public sources via the Internet, and it demonstrates the differences -- and this is for the San José/ Santa Clara Treatment Plant Capital Fund specifically, and what we're doing in this chart is we'll demonstrate the historical variances, significant variances between the budgeted expenditures versus the actual expenditures, and, in fact, each year it shows pretty significant variations in what the anticipated expenditures would be in the form of the budget versus what the actual expenditures were. By way of example, Fiscal Year '13, which is calendar year 2012 and 2013, the actual expenditures were identified in the annual reports as being 56% below budget. So this is a backwards-looking chart. The next chart that I'm demonstrating is the forward-looking chart. The source on this for these charts is the Capital Improvement Program. It's a 5-year document that projects both sources and uses of revenue -- sources of revenue and uses of funds for a 5-year period, and it's forward-looking. What this demonstrates, this chart -- And I acknowledge it's a little difficult to read because there's a lot of data in it -- but what it demonstrates is the great variability year-over-year as to what the projected expenditures would be in a particular year. So, by way of example, if I can pick the grouping in the middle there for Fiscal Year 2015, what that chart is showing is that in Fiscal Year 2011, the estimated expenditures -- and it's expenditures minus remaining fund balance is the calculation. The estimated expenditures for Fiscal Year '15 as told or as represented in Fiscal '11 was \$79 million. In Fiscal Year '12, the estimated expenditure for that same Fiscal Year, 2015, was now \$72 million. In Fiscal '13, the documents indicate that the spending in Fiscal '15, Fiscal Year '15 would be \$48 million. Then in Fiscal Year 2014, the documents indicate that the expected expenditures for Fiscal Year 2015, again, the same fiscal year, is going to rise to \$217 million, and in Fiscal Year 2015, the documents indicate that the expenditures for Fiscal Year 2015 would be \$121 million. So this



graph, I think, clearly demonstrates the challenges that the tributary agencies face in order to try and accurately obtain the correct amount of financing for these capital projects. Thank you.

>> BRITT STROTTMAN: Thank you. So, as Mr. Ray just stated, these agencies, our agencies, tributary agencies confront similar issues when trying to figure out how to pay for major Plant Master Plan Projects because the information necessary to obtain financing keeps changing like a moving target. The bottom line is, is that the 30-year-old Master Agreement, all of our Master Agreements need to be updated, and we're asking for what any other debt issuer would ask for. For example -- I'm going to give you another example. So let's say San José wants to buy a car, and it needs us, the agencies, to help make payments on the car loan. However, taking out a loan to make the car payments, we have no idea what San José is buying. We don't know if it's a Tesla, if it's a Kia, if it's a Volvo. We don't know how much the car costs. We don't know the essential terms to take out the loan. Because we don't own the car, we don't even get the key, we don't even get to drive it. We, therefore, have no assurances that the car will take us where we need to go. So we've no ability to finance our car payments because we don't know what to tell the lender, for the same reason we can't finance our portions of the Plant Master Plant Projects because we don't know the essential terms. We need to know each major project scope, cost, schedule, and allocation method so we know what we're paying for. San José has demanded to unilaterally amend the Master Agreement, and there are three problems with that. First of all, San José wanted to extend the term until 2065 and is essentially asking us to sign a blank check for the Plant Master Plan without guarantees of accountability and transparency. San José basically told us, "Sign these agreements by this date or you will be prevented from obtaining a low-interest loan and forced into bankruptcy." And lastly, San José ignored our thoughtful redlines that took a lot of time, energy, and effort to the Master Agreement, which we submitted back in early of October of 2015. We have to be in a position where we can answer our ratepayers' legitimate questions, that we can assure them that they are being fairly charged, and if we don't even know the actual costs of the projects San José is building, how can we increase our rates to pay for these projects without protest from the public? Now, what we're asking for are three things -- Number One, properly allocate the Plant Master Plan Projects to avoid overcharging. Number Two, we're asking for greater transparency and accountability -- for example, a third-party audit. And Number Three, we're looking forward to having a meaningful negotiation with us on our proposed amendments -- all of our proposed amendments. It doesn't mean that San José

has to agree to every one, we're just asking for a meaningful conversation to address our issues. Thank you so much, and I look forward to your questions.

>> Great. Thank you very much, Ms. Strotzman. You have about 2 1/2 minutes left. You want to take some questions now before we go on to the rebuttal?

>> BRITT STROTTMAN: Sure.

>> And then we'll proceed as soon as this time's up, and we can take on more questions then. Are there members of the panel who would like to ask questions at this time? Just hit that button up on the right corner. I had a couple, and I'll just throw them out in the short time we have, and then we'll move on. First, with regard to this dream of estimated – I should say budgeted expenditures versus actual expenditures, the suggestion is somehow or another that when you finance a project, you're only financing a discrete single year's worth of [Inaudible] when, in fact, what we're trying to finance is a set of projects that may, in fact, overlap multiple years. So why should it matter which year those expenditures should be made if, in fact, what you're trying to do is finance an entire, say, \$1.4-billion worth of projects?

>> BRITT STROTTMAN: So, then, is your question then you're wondering why we're asking for an implementation of schedule when we don't know what years the projects...?

>> No. You seem to make much about the difference between the actual and budgeted expenditures one year to another, and --

>> BRITT STROTTMAN: I'll have our Forensic Accountant --

>> ...and I can tell you, in any big city, we have significant carryover of capital expenditures from one year to the another. That's very standard in any big city. Why? Because you try to get a budget expenditure that won't encompass everything you think you can possibly build within that year, knowing some of it isn't going to get built, right, because of schedule and so forth, and so that is sort of a standard process here in the City of San José, and I'd venture to guess any other big city in the country. We don't finance based on any particular single year's worth of expenditure. We try to finance a project. So whether the expenditure happens in year '13 or '14, why should it matter that the expenditure happened in one year versus another if, in

fact, what we're telling you is, "Here's the project, here's the cost, and we're going to try and stay within that cost"?

>> DAN RAY: You want me to respond to that?

>> BRITT STROTTMAN: Yeah, yeah. Go, please.

>> DAN RAY: A couple comments. First of all, when I looked at the historical financial statements, what I saw is this pattern of every budget being far in excess of the actual. If it was simply a timing, I would expect -- and I would expect -- some years expenditures to go above, some years to be below, and eventually over a period of time, it might smooth out. What this demonstrated is year-over-year historically that there was very material differences between budget and the actual, but from a financing perspective, just the simple concept of cost of funds, that if you take out and finance more than what is needed, then perhaps your funds are dormant, perhaps the -- I don't know. I'm not sure if there's interest being earned on the extra finance funds and whether there's an arbitrage problem where --

>> You're assuming then that the funds would actually be released on Day 1, right, and that we'd be paying interest on Day 1 on those funds, which isn't every method of public financing. In other words, there are certainly ways in which you can draw...

>> DAN RAY: Right.

>> ...from debt so that you're not paying interest until you're actually using the funds.

>> DAN RAY: But I think the big challenge -- and, again, Counsel, correct me if I'm wrong -- is just how much debt do they require to finance? What is the number? Whether it's a function of timing on the draws and when you need the financing, but how much do you go out and try to get in the form of financing is the challenge.

>> But nobody tries to finance in any big city in America. Nobody tries to finance a single year of expenditure. They try to finance a project, and so what I don't understand is --

>> BRITT STROTTMAN: So...

>> And you're suggesting from your last answer, in fact, that some years you'd expect actuals to exceed budgeted, which, by the way, is impossible legally. We can't spend more than we have budgeted, so we always budget more than we can spend, right, with the expectation there's going to be carryover of the project.

>> DAN RAY: Right.

>> So, bringing this to the real world, it seems, to me, your expectations seem not to match what we routinely see in any large capital expenditure in any city.

>> NINA HAWK: So, Nina Hawk, Public Works Director for the City of Milpitas -- just to kind of share what the challenge is, is the way the Master Agreements are written right now is when there is a large project, and the way we're being billed right now is when it's time of award. So if an award is let, and we do not participate with San José, and perhaps we do financing on our own, we need to go procure and get that financing and be able to cash-fund and provide the entire payment at that time. So that's the challenge is the language of the Master Agreement prohibits us to make payments on expenditures or encumbrances. So it's literally at time of award. So that's the tricky part, and that's why we want to sit down and talk about those little things, maybe work out different language -- something that would work and be more feasible to address the issue you're bringing up.

>> Thank you, Ms. Hawk. Appreciate it.

>> Okay, the 20 minutes has been expended. Thank you. We know we'll see you again shortly.

>> BRITT STROTTMAN: Okay. Thank you.

>> Great. [ Speaks indistinctly ]

>> ROSA TSONGTAATARII: Good. afternoon. It's a beautiful day outside, and I appreciate you spending it inside with me.

>> [ Laughs ]

>> ROSA TSONGTAATARII: My name is Rosa Tsongtaatarii. I'm from the San José City Attorney's Office, and this afternoon, I represent San José and Santa Clara in this Administrative Claim. I'd like to first respond real quick to the presentation material. We did not actually agree to share presentation material, and had we known, we certainly would have prepared it in advance, but as it was, it was literally bound at 12 o'clock this afternoon, so... But I don't think the information we're going to share with you today is any different than what we have submitted in our papers. We fundamentally agree as to what the nature of the dispute is, and you'll find through the course of the presentation that we actually agree more things than you would think. So I'd like to provide some context and begin with a review of our respective roles. San José is the administering agency under the Master Agreement, and as the administering agency, we have the authority to maintain, repair, expand, replace, improve, and do what's necessary to operate the plant. We also make award and enter into contracts for services and construction. The agencies are considered outside users. In consideration for use of the plant to treat their wastewater, their obligation is to pay for the operation and maintenance cost as well as the capital cost based on their contract capacity. TPAC has been an advisory body that provides direction as to policy matters, and the members that are designated to TPAC are so selected because of their relative investment and obligation to the plant. There is a reason why the two smaller agencies do not have a seat at TPAC. That was agreed to originally. But the ultimate decision lies with the San José City Council as an administering agency. We have a responsibility to operate and improve the plant. We serve a region that includes 1.4 million residents and over 17,000 business connections to the plant. So, this is a slide that tells you the relative share of the cost in both O&M and Capital, and as you can see, San José pays two-thirds of the cost in both O&M and Capital, and with Santa Clara, we collectively pay over 80 [Inaudible] This contract capacity has not changed except in 2006, when West Valley sold capacity to Milpitas, and in 2009, when Cupertino sold capacity to Milpitas. This is a definition of Operation and Maintenance and Replacement Cost in the Master Agreement. I won't belabor the point, but we do agree that the C.I.P. -- the projects and the C.I.P. are not replacement. We do agree that it is major rehabilitation. These major rehabilitations, these definitions in the Master Agreement, actually match the California State Revenue Guidelines -- almost identical in terms of verbiage. So whatever is not operation and maintenance costs or considered replacement costs would be considered capital cost. So you can see it identifies major rehabilitation, structural rehabilitations, or facility expansions and

upgrades to meet future user demands. So we are in the process of securing the lowest-cost financing available with the state -- the State Revolving Fund Loan. One of the conditions for receiving financing is that the agencies, the sewer agencies must charge their customers in accordance with these guidelines. We comply with these guidelines because we have a loan right now with the state, and we are hoping to secure more loans in the future. These are provisions in the Master Agreement, in the current Master Agreement, that support the city's position that the agencies have a current obligation to pay for the capital costs for future improvements, such as major rehabilitations, and I won't read these aloud. You can see for yourself they are in various parts. They describe their obligation in terms of according to their contract capacity. They describe the timing of payment, and the fourth bullet -- even after the term ends in the Master Agreement, if the agencies want to continue to use the plant, they have an obligation to pay for the cost. That includes capital costs as these facilities will continue to treat their sewage. This is consistent with the memo to TPAC and Counsel with the 1983 Master Agreement was approved. It was never intended that these agreements would be amended every time a major rehabilitation project occurred. It is amended only in limited circumstances: It's amended when there is a capacity expansion, which is what occurred with the 1983 agreement. It is also amended when agencies sell or buy capacity, which is what occurred with Milpitas, Cupertino, and West Valley. It is also amended when there is financing, and that amendment reflects the repayment obligations of the agency to the financing program. This slide addresses some of the issues that were raised by the agencies. As you can see, in the course of the life of a project development from the beginning of feasibility to the point of design, bid award, construction, and post-construction, it is a long period of time. The information, particularly with respect to estimates of the cost of the project, gets refined as it progresses. And by example, you can see in the Digester Project that over the course from conceptual design to detail design, that the price of the project was further refined, and we still won't know until we've evaluated the bids for the construction project. The agencies have argued that the master agreement is not enforceable because it fails to describe each project with a fixed project schedule and cost. The type of information they are seeking to include in the Master Agreement is not -- not only is it impractical, but it's not possible because it's refined at each stage. Unlike a cookie-cutter C.I.P. to pave the street or put in sewer pipes, the projects of the plant must be built while the plant continues to run. Changes to any aspect of one project could impact the timing of a related project. These inherent risks make it difficult to identify a fixed project cost until -- really until the time of award, and it certainly doesn't compare to the purchase of a car or a house. As the

administering agency responsible for timely implementation of the C.I.P., we cannot arbitrarily suspend the project which may be connected to half a dozen other projects in the pipeline because one agency decides that the Master Agreement must be amended before we can proceed because somehow the cost is off or somehow the schedule is off. That is part of a C.I.P. this large and this complex. We have to build in the ability to accommodate that flexibility, and the agencies in seeking the right to amend the contract every time there is a new project are seeking far more authority and control over the administration of the plant and the C.I.P. program than is commensurate with their obligation under the Master Agreement. This slide -- You can't see it very well, however in your packet, hopefully it's a little bit better. It is Exhibit "B" [Inaudible] The agencies' second claim is that they have been overcharged for the capital cost of future improvements because the wrong methodology was applied. I'm going to walk through the process of the Master Agreement. Hopefully it won't be too painful as it sounds, and we do agree in part with the agency. Major rehabilitations that are process-related and over \$2 million should be charged based on parameters, but let me go through the specific notes under Exhibit "B" because this is what we use to guide us in terms of how to calculate that. You have to go through a decision tree of sorts. Is a project a process-related treatment for wastewater? Not all C.I.P. projects are, and I would also note -- And this is a little bit of a side -- C.I.P. is only one part of the P&P. We never intended to charge the agencies for projects that are not related to the treatment of wastewater. We don't have that authority under the Master Agreement. However, there is no dispute that the projects in the C.I.P. are for the purpose of treatment of wastewater. So, there are projects that aren't process-related. For example, an administration building. That serves the entire facility. Similar, the Cogen Facility provides electricity to the entire facility. So, if it is process-related, the second question is, is it over \$2 million? And most of the projects in the C.I.P. are over \$2 million, but if it's under \$2 million, we do use a Rolling Weighted Average. If it's over \$2 million, we use engineer design, and that's a critical point. We allocated to parameters based on engineer design. That means that engineer design needs to have been completed before we have the final guidance on the allocation. Hmm. I'm missing a slide, but it's probably in your packet. It's a picture of the facility, and it has the various C.I.P. projects.

>> Yes, it's entitled "Capital Cost Allocation." Is that correct?

>> ROSA TSONGTAATARII: Right.

>> Okay.

>> ROSA TSONGTAATARII: These are examples of process-related projects. So I'll move on to this slide. We also agree that the Digester and Thickener Upgrade Project is a process-related project, and it's clearly over \$2 million, but the critical point to remember again is the engineer design. The agencies' claim that they've been overcharged is premature. The fourth-quarter invoice for construction award of the project has not been presented, and at the time, the budget was first adopted for Fiscal Year '16-'17 in June of 2015. The engineer design for this project was not available. In fact, it was completed in December of 2015. A midyear budget action was recently approved to update this budget so that the invoice in the fourth quarter could be allocated based on treatment parameters. The agencies claim they've been overcharged under the Master Agreement for preplanning costs is also not correct because those costs were charged before Engineer Design was completed. In order to shepherd a project to the engineer design stage, there will be expenditures for project planning costs. These costs have to be based on the Rolling Weighted Average because, one, engineer design is not complete, and it's entirely conceivable that you could do a feasibility analysis and decide that you're not going to proceed with the project because it simply didn't make sense, at which point it never resulted in the process-related project. If the project should proceed past engineer design, project-planning costs paid up to that point based on the Rolling Weighted Average would need to be adjusted. So in the Digester Project, for example, we've expended \$11 million. The bulk of the expenditure for that project has not occurred yet. The agencies also claim economic duress because San José will not charge agencies on an expenditure basis or finance their share of the capital cost. The reason we cannot charge the agencies on an expenditure basis is at the time San José enters into a contract for services or construction, we must encumber the funds. This way we know we'll have enough money to fulfill our legal obligations. We can't float the funds on a reimbursement basis. San José and Santa Clara wouldn't have enough funds to cover the share of the agencies. This also would not be a fair share of the cost. There is a value to a time delay in payment. The reason why we cannot finance for the agency share of the capital cost is because under Prop 218, we cannot charge our ratepayers more than the service they receive. In order to borrow money for the agencies' portion of the capital cost, we would need to pledge another source of revenue for repayment. In light of the agencies dispute us their obligations to pay for the C.I.P. under the Master Agreement, we're understandably concerned that we cannot borrow for the agencies' share until we have a commitment from them to participate in the financing program.



For the C.I.P., the amount of financing will have to depend on the project schedule at the time we go out to finance, and the rates we are able to secure will be based on market conditions. This is why specific repayment terms for each agency for each project will not be accurate until the financing occurs. In the past, agencies have either cash-funded or financed their share of the future improvement. For example, Milpitas cash-funded its portion of South Bay, which was required by the state under the regulatory permit, and we executed an amendment to the Master Agreement to reflect the agency's participation for those that sought financing for the South Bay. The agencies asked San José to pursue SRF on their behalf. SRF is the lowest-cost, long-term financing available, and would greatly benefit ratepayers by minimizing the impact of the C.I.P. on rate increases. We submitted SRF applications for two projects -- the Digester and Thickener Upgrade Project and the Cogen Facility. SRF also has built-in accountability because it's a reimbursement loan. We have to provide documentation that the funds were properly spent on the project in order to be reimbursed. When we propose amendments to the Master Agreement to confirm participation in an SRF, the agencies condition the amendment on other changes to the Master Agreement. We analyze these proposals and believe that they would have put the San Jose and Santa Clara ratepayers at a disadvantage. We're willing to negotiate reasonable audit requirements. Actually, that was probably one of the most reasonable proposals in their proposal for Amendments, and as you can see in our next set of packets, which I'll go through in rebuttal, our accounting practices have received the highest accolades in the industry. What we're not willing to forgo is the opportunity to secure SRF funds while we are in the midst of negotiation, especially because, based on what I have discussed just now, we believe the master agreement already contains enforceable provisions for payment of the C.I.P. The agencies have also claimed a lack of notice. I will be going over the various forms of information that we have shared. We've been in this process since 2005. We started the condition assessment in 2005. We went through a planning process. We went through C.I.P. validation. I'm sure TPAC is filled with information and quite tired of hearing about this matter. So, I will conclude, the purpose of this hearing is not to negotiate the scope of the amendment. The purpose of this hearing is to determine whether their claim has any merit. If it was to negotiate the scope of the amendment, we could have started that in January because we wanted to begin negotiations at that point. Based in the papers we have submitted on this presentation, we would proffer to TPAC the following specific findings. The Master Agreement requires agencies to pay for the capital cost of future improvements. Capital cost future improvements were properly allocated under the Master Agreement for Project Planning before engineer design was completed. The claim for breach

of contract based on assumptions of improper capital-cost allocation for the Fiscal Year Fourth-Quarter Invoice is premature. The Master Agreement does not require the administering agency to finance the agency's share of the capital cost, but the administering agency can assist the agencies with financing if the agencies agree to participate in the financing program, and no agency has been charged or was ever intended to be charged for outside legal counsel services if those services were exclusively to benefit San José and Santa Clara. We all have a responsibility to our ratepayers. We all must pay our fair share. San José and Santa Clara ratepayers cannot be asked to shoulder a greater burden than the benefit they receive. If we can begin with these principles, I think we can move forward. Thank you for your time.

>> Thank you. And there's a minute left of time. Just to make full use of it, if any of my colleagues have questions at this time, you can certainly raise them now, and since -- Yes?

>> Mayor, I heard you say the tributary agencies are asking amendment of agreement for every project. That's not true. I think the amendment has been brought out because of this big, huge project, billion-dollar project that we're having that's about time to review the contract we have, and it's like 30 years' hence or more since we had this agreement, so that's why we're looking into this Master Agreement.

>> ROSA TSONGTAATARII: That's a very good --

>> So it's not per project. You said for per project. That's entirely incorrect.

>> ROSA TSONGTAATARII: It's a good question. The nature of the information that they would want to have in the Master Agreement asks for each project what its schedule is and how much it would cost. Some of that information may be available now, some of it won't be available. This is a long-term endeavor. Not only that, even if we were to give an estimate, the information that we would put in the amendment would not be accurate by the time the project goes out to bid, in which case, then, there's going to be a question as to whether we could proceed with the project because it's so different. Our position is that the Master Agreement as it stands now with its current provisions has an enforceable obligation for the agencies to pay for the project. Now, is there a middle ground? Of course there could be a middle ground, but I don't think we can allow the administering agency to be impeded by the

possibility that any variation in the schedule of the project cost would mean that we would have to suspend the project.

>> Okay. Thank you very much. Ms. Strottman?

>> BRITT STROTTMAN: Thank you.

>> And just to be clear on the timing, is that 5 minutes? 10 minutes. Okay, 10 minutes. Thank you.

>> BRITT STROTTMAN: And I'll be less than 10.

>> Okay.

>> BRITT STROTTMAN: [ Chuckles ] Thank you. Well, I'm happy to hear that we have some common ground between us -- the tributary agencies and the City of San José, and, in my personal opinion, it's unfortunate that we had to get to this point to actually have this sort of meaningful discussion about each party's concern. First of all, to me, it just seemed like Counsel may have been insinuating that the tributary agencies don't want to pay for any of these costs. We want to pay for the costs. We're not being obstructionists here, but we have to make sure that our share is fair, and that's why we're here. We've continued to pay our share this entire time, we just feel that the budgets are not reliable, and we can't finance based on San José historical budget variability, and, once again, all we're doing is asking for what any other debt issuer would ask for. Second of all, I'm happy to hear that San Jose agrees that the projects in the C.I.P. are not replacement costs. So what I'm asking is, why can't we just sit down and negotiate San Jose's amendments and our amendments together? And it seems like it could be some sort of simple amendment that there could be a term that all Plant Master Plan Projects or all C.I.P. costs are major and structural rehabilitation projects, so the Billable Parameter Method should apply. The third issue is -- I understand from Counsel that the project-specific amendments are not feasible, it's hard to quantify project costs, and she's right. It is difficult, but we would be happy to sit down with you and work this out together, but these type of project amendments are necessary for multimillion-dollar projects. I mean, you had BART Extension that you were able to successfully complete. It's not like we haven't done this before. In 1982, there were about 20 projects, and we were able to amend the Master

Agreement. In 1995, for the South Bay Recycling Project, we were able to go back and amend the agreement. And the fourth point is that we're not asking to suspend any projects. Once again, we're not being obstructionists. We have asked since 2010 to have a discussion about our concerns. This is not the first time that we brought this up. The Digester's not going to fail within the next few months. If we started this process, this negotiation and mediation process six months ago, maybe we [Inaudible] all of our disagreements worked out, but San José completed ignored our amendments. In a small point, too, Counsel discussed the phrase "process-related" when she was discussing the two allocation methods, and I just wanted to point out that the Master Agreement does not have a definition for "process-related," so that could be another amendment that we could work out so we don't have these issues in the future, and the fact with the Digester Project that it's not ripe because we have not been overcharged, the fact is, is that San José applied the Rolling Weighted Average Method, and when we started complaining and we flagged this issue for the City of San José, San José then conceded that they should have used the Billable Parameter Method. And the last issue as far as economic duress, we were denied the opportunity to participate in the State Revolving Fund unless we agreed with San José's amendment, and that amendment, they wanted to amend the Master Agreement until 2065, and we felt like we needed to go back and rework some of our issues and work together and not just agree to San Jose's unilateral amendment. And we look forward to working through these issues with you. Thank you.

>> Thank you. Ms. Strottman, I just had one important question in terms of process. You kept referring to San Jose's amendment and San Jose's position and so forth. Ms. Tsongtaarii actually represents San José and Santa Clara. Isn't that correct?

>> BRITT STROTTMAN: Yes, and you are correct, and I apologize if that was confusing, but San José does operate the plant. But you are correct. It is San José and Santa Clara.

>> Okay. Okay, I just wanted to make sure. When you mention words like "unilateral," it suggests that San José is operating alone, and I wanted to make -- we're clear on that. Could you just help us understand which specific projects you're alleging are misclassified as replacement costs as opposed to future improvements?

>> BRITT STROTTMAN: I do not have a list of the projects in front of me right now. We proposed several amendments to the Master Agreement, and we are happy to provide you a

list with all the projects where we feel like the wrong allocation method is being used, but as I stand here right now -- For example, maybe the Cogeneration Facility. That was listed as, I believe, using the Rolling Weighted Average.

>> Yes.

>> BRITT STROTTMAN: And that was in March of this year, and we disagree with that. We believe that that's a new facility and the Billable Parameter Method should be used.

>> Okay, so the Cogeneration Facility would be one. My understanding is what I heard and what I read in the briefs and what I heard from opposing counsel was that there's a concession that most of the projects are, in fact, future improvements and should be billed to parameters, and so it would really be helpful for her to narrow down what the area of dispute really is. If it's just one or two projects, it seems like we're a whole lot closer.

>> BRITT STROTTMAN: Yeah, and I agree, and I'm happy to hear you say that because I feel like we are coming closer to an agreement. We'd be happy to provide you with that information. We can do it as early as next week and put together a list of projects where we feel like the wrong allocation method's being used.

>> Okay.

>> BRITT STROTTMAN: Or we may have to get more information from you.

>> Yeah, that would be really helpful, I'm sure, for folks at TPAC and everybody involved to really understand where the dispute is, because I think we're mostly dealing in the abstract right now talking about projects and I think I understand why the allegation is the Cogeneration Facility is providing electricity to the entire plant, so it's not process-related, but I guess we can get into those weeds when we actually are able to narrow it down.

>> BRITT STROTTMAN: Yes. Thank you.

>> Okay.

>> BRITT STROTTMAN: That's a good idea. Thank you.

>> Other questions? Comments? Okay. Well, since I got you for a few more minutes, I might as well ask -- I wonder if I could, and if my colleagues want to jump in, please hit the button and feel free. You indicated that San José conceded that it used the wrong allocation method and then corrected it. I'm assuming you're referring to December of 2015 with regard to -- Remind me. I'm sorry. The project is the...?

>> BRITT STROTTMAN: The Digester?

>> The Digester.

>> BRITT STROTTMAN: Yes.

>> Yes. In the papers from San José and Santa Clara, what it represented was we couldn't know how to allocate those costs until we had the engineering done. We got the engineering done, and now we're able to do it. Wouldn't you expect that to be the process with every project?

>> BRITT STROTTMAN: Yes, but it's my understanding, and I could be wrong, and I can confer with Mr. Nuby here, who's the District Manager of West Valley. It was my understanding, though, that San José and Santa Clara said that the Digester Project would have to use the Rolling Weighted Average, and then in February of 2016, just last month, we received a letter saying that the wrong method was used.

>> Yeah. So, I mean, I see Carrie shaking her head behind you, so I don't -- It sounds as though that may have not been the suggestion, but certainly we can allow opposing counsel to respond to what exactly was in mind, but it seems to me that the question of what we intended and what we wrote is really the issue, and if what we told you was one kind of allocation and then changed our minds, that's one thing. Another would be if we told you it's this kind of allocation, but we now have engineering information that helps us better understand how the dollar should be allocated. Wouldn't you agree?

>> BRITT STROTTMAN: Yeah, I do, and I actually have in one of the slides -- I'm sorry. I don't know which page it is -- the excerpt from the letter.

>> Okay.

>> BRITT STROTTMAN: And I'm happy to provide you your letter. I think it was dated February 2 [Inaudible], but it was my understanding that San José -- And I understand the distinction that you're making. It's my understanding, though, that San José told us that the Rolling Weighted Average would be used and then said later on that the Billable Parameter Method should be used.

>> Okay.

>> All right, thank you. And then I know that there's an outstanding public-record request from the tributary agencies. The response is not -- Has that been provided yet? I know it wasn't as of the date that the briefs were filed, but...

>> BRITT STROTTMAN: Are you talking -- I'm sorry. Are you talking about your responses?

>> No. I understand there -- I know we provided thousands of pages in response. I'm just wondering if the tributary agencies have responded at all to the P.R.A. requests that were submitted back in February.

>> BRITT STROTTMAN: Yes, we have. We have submitted our responses. I cannot stand here and say that they're 100% complete at this time, but we have.

>> Right. There's been some response.

>> BRITT STROTTMAN: Yes.

>> Okay. Great. And then, finally, the analogy that you used with the automobile, which you indicated tributary agencies really don't know what kind of car they're basically going to be required to pay for, but in this case, we've had a lot -- a lot of discussion at TPAC about what the 10-year Capital Project List would be, what it would look like, what the cost estimates were.

Obviously those costs change as Engineering and Design gets closer and closer to bid. We never really know until we get the bid, but certainly the type of car, wouldn't you agree, is known because, in fact, this TPAC Board approved that 10-year Project List unanimously last year. So isn't it fair to say we actually know what kind of car we're going to be paying for?

>> BRITT STROTTMAN: Well, you could say we know what type of car that it's going to be -- You know, a Tesla or a Porsche -- that type of category, or if it's going to be a Kia or that type of category. We -- Maybe -- Maybe I will agree that, yes, maybe the type of car, but we don't know what the inside of the car is going to look [Inaudible]

>> Right.

>> BRITT STROTTMAN: And that's the reason why we're here. Because we wouldn't have spent all this time and effort if it was clear what we were getting.

>> So is it fair to say, though, that at least we have a common understanding of what the basic projects are -- the big -- in large parameters? And is it also fair to say that we don't know what the exact cost is until the project goes out to bid? Is that fair?

>> BRITT STROTTMAN: Yeah, I think that's fair, yes.

>> So then if we agree that you can't know exactly what it's going to cost, and there's going to be some discrepancy between what we project at the beginning of the process and whatever it's bid at, are you then suggesting that ratepayers in Santa Clara and San José should basically pick up the cost and risk a floating for the other agencies -- that period of uncertainty for which we have to get some assurance of financing?

>> BRITT STROTTMAN: No, no. That's not what we're asking. We're just asking for more clarity from San José and Santa Clara as to this \$2.1-billion wastewater -- or I'm sorry -- regional wastewater facility. But, no, and I'm not a Public Finance expert, so I --

>> Nor am I.



>> BRITT STROTTMAN: Yeah. [ Laughs ] I'm happy to provide an answer to that question in any sort of supplemental briefing, but the reason why we're here is that we don't know what we're getting, and we need help from San José and Santa Clara.

>> Okay. I know we'll be coming back for more questions, I'm sure. The time is up, but thank you, Ms. Strotzman.

>> BRITT STROTTMAN: Okay, Okay. Thank you.

>> We'll come back to you. [ Chuckles ] Thank you.

>> BRITT STROTTMAN: Thank you.

>> ROSA TSONGTAATARII: Back again. So hopefully in this second set, I'll be able to address some of the questions, as well, but, quickly, it's not at \$2.1 billion, it's \$1.4 for the C.I.P., and the reason [Inaudible] didn't engage in negotiations because we were busy trying to put together a financing strategy last fall, and a lot of the requests that were sent in from the agency, some of them didn't even relate to the capital program. They related to other issues at the plant, which we're happy to negotiate, but at the time, it wasn't a priority, and some of the proposals they have submitted, as I previously indicated, were not in San José or Santa Clara's interest. However, we're certainly happy to sit down with them to go through the list of projects that they believe were improperly allocated, and I also would like to note that the prior amendments again were for facility expansion or they were for financing. They were not to confirm that we could proceed with this C.I.P. We had proposed an extension of the term to 2065 because we anticipate the Capital Program will complete in 2025. Usually long-term financing has a repayment term of about 30 years, and that's why we had an estimated 2065 term. So let me just go over these few slides, and I think they'll help answer some questions as to the type of and amount of information we have provided on the C.I.P. program. So this is a slide that demonstrates the 5-year C.I.P.s. As you can see, it's a rolling C.I.P., but the amount really hasn't varied that much from 5-year to 5-year to 5-year. There are variations within each year, but as I've previously indicated, that really depends on where the project is in the cycle and how many projects are in that given year. The budget is going to go through a curve where a particular year, there's going to be higher expenditures than other years. This is not a situation where form can supercede function. We have to let the criticalness of the

project drive the time of when it needs to be implemented. This is another slide with a different look at it. And we went over this briefly to describe the various phases and how the pricing gets refined over time. So I'd like to address the issue. There's been conjectures that we have not been transparent, that they do not know what the C.I.P. includes. The adopted budget for the RWF Capital Program, along with the other City Capital Programs, are published on the City's website, including a Budget Document Archives. The City also issues a fully audited CAFR report on an annual basis. We also share our draft C.I.P. We provide detailed information on the C.I.P. Our 2016-2020 adopted Capital Improvement Program Budget is 71 pages. It discusses the program in detail, including program overview, source of funds and use of funds, detail project sheets for each construction project, included estimated cost schedule and timing of expenditures. The Source of Funds and Use Section of our adopted C.I.P. budget -- this is all available publicly, by the way -- provide information on how revenues are used on the program and project. On an annual basis, we provide the tributary agencies with their estimated proportional share. We bill them on a quarterly basis, and with that, we attach attendant documents for the basis for the charge. The Plant Master Plan, the [Inaudible] memorandums, the project descriptions, the planning level costs and schedule -- they're all available online. In fact, we dedicated a Rebuild the Plant website where all the documents are publicly available. Key program documents are posted on the San José website and accessible to anyone in the public. Since April 2013, we've been issuing detailed semiannual reports to highlight significant program accomplishments and project progress, as well as upcoming priorities. Since April of 2014, we've issued monthly program performance reports, which includes program overview, performance metrics, project highlights, budget and expenditures. Since April 2013, we've been issuing detailed semiannual reports to highlight significant program accomplishments and progress. This is on the city's website. We also provide a C.I.P. external monthly program status report. I think TPAC has seen these on a monthly basis, and these are available online, as well as they've been provided to the staff of the various agencies. Finally, I'd like to end. We're certainly willing to discuss auditing requirements, but the city has been awarded over many years industry awards for Best Practices, so we're happy to sit down and discuss the agencies' concern, but we don't believe that there's been any violation of the Master Agreement. Thank you for your time.

>> Thank you. Would you care to respond to the question that I raised earlier about this suggestion that the city changed how it was classified or how it was going to characterize the cost allocation on the Digester Project?

>> ROSA TSONGTAATARII: Sure. So the engineer design for the Digester Project was completed in December of 2015. The technical memorandum analyzing what the parameters for a particular projects that are considered process related was actually not completed until recently, and if you have detailed questions, which is beyond my expertise, we have Carollo Engineers' Robb Grantham here to answer any questions you might have.

>> Okay. Yeah, maybe if he could just shed light on what motivated staff's decision to be -- to rejigger how to allocate the cost on that project.

>> ROBB GRANTHAM: Absolutely. Robb Grantham, Carollo Engineers, working with the member agencies, the owners, and the tributary agencies in order to create a fair and reasonable cost allocation. Originally, one of the key objectives and parameters in terms of what we looked at in terms of allocation. We talked about three methodologies, and so if I may, I'll talk about those three and how [Inaudible] apply to original approach and now a slight modification. So, key tenets -- Stability. Especially with the tributary agencies looking for stability year-over-year in terms of what cost might be coming up in terms of capital contributions. Another key tenet is proportionality. The reasonable cost allocation between the different agencies based on what they own both from a flow and loadings perspective. So, moving down, we had three methodologies in terms of allocation. One is discuss the rolling average. So, we take the existing system which was designed to treat both flow and quantity and quality of wastewater. This program is, in large part, is to discuss the replacement of that system. So what the Rolling Average does is says, "We're going to take and allocate those costs based on the existing system. As we're replacing it, it's reasonable to then take and [Inaudible] everyone to pay in proportion to the existing system in place. The benefit of the Rolling Average created that stability, and I'll get into it in a moment in terms of materialities. I think it's an important element. When we move over to a Project-by-Project allocation, we looked at each one of the projects as best known at that time in terms of cost -- Digesters, Cogen, so on and so forth. We did the allocation. We came up within \$8 million out of \$1.4 billion in terms of the Rolling Average tying out to this Project-by-Project allocation. That's half a percent. In terms of planning-level estimates, materiality needs to be discussed, and so basically as a group, tributary agencies very much part of this process, and the owner, as we said, Rolling Average seemed like a reasonable approach knowing that we would be getting into more detailed allocations as we went. Last alternative is to do an allocation based on the

C.I.P., which would also create stability. We know we're going to spend over time, but specifically tied to those existing projects. The challenge with that approach is that the C.I.P. can change. We talked about that just a moment ago in terms of projects are going to change in terms of cost, timing, and maybe some projects will be pulled out. So that really leaves two alternatives -- the Rolling Average or Project-by-Project. So, initially because of the timing in terms of the cost, knowledge of the specific cost, we use Rolling Average. It's appropriate in terms of planning-level cost to base it on that existing system that we're replacing. Now that we've gone through the process, understand the specific costs, say, like with the Digesters, it is reasonable and it is appropriate to go back and look at that and say based on what we originally looked at, is that still in alignment? And so what we're proposing now, which is an agreement with the tributary agencies and the owners is to look at this project by project, and so now that we have the cost, [Inaudible] what Billable Parameters it will tie back to, then the approach in terms of changing that methodology is now reasonable and the costs stay relatively the same between Rolling Average and Project-by-Project in aggregate.

>> Okay, and that information was only really available to us when the report was done in December. Is that right?

>> ROBB GRANTHAM: Correct.

>> And you work for Carollo?

>> ROBB GRANTHAM: Carollo -- the Program Team delivering the project -- MWH Carollo Team.

>> Okay, great. Thank you very much.

>> ROBB GRANTHAM: Thank you.

>> And then I just had another question, Ms. Tsongtaatarii. I, uh -- I know that the tributary agencies want to spend our time -- when I say "our," I mean staff's time -- negotiating over the agreement at the end of last year when the documents were submitted. You indicated that the priority had to be given to financing, trying to figure out the financing for the project. Could you explain why that was the priority?

>> ROSA TSONGTAATARII: Sure, and as to the critical nature of the project, I'm going to defer to the Capital Team, but I can speak to the timing. So during the fall, we were spending considerable amount of time trying to put together long-term financing strategy. They had proposed certain amendments. We had looked at them, and our priority was to submit the application for the SRF, which was the best form of long-term financing available. So we had proposed a more limited set of amendments in order to expedite that process because we felt that the scope of the proposals they submitted would have required extensive negotiations. Moreover, it's our position that the current Master Agreement has enforceable provisions already. We are here today, and we still don't have an amendment, so at the end of the day, we're going to be at the table because we need to be at the table. We have a long-term relationship here. We need to walk this [Inaudible] But they submitted a claim, and we have to prepare a defense, and so we need to get over this claim. It's our position that the claim doesn't have any merit, and then we can begin negotiations.

>> Thank you. Okay, I have three members of the public that have submitted cards. I'm happy to go to public comment, and we can come back to the panel. Would that be all right? Okay. David Wall, followed by Michelle -- I believe it's Kaelker-Boor. Please forgive me if I'm not reading it correctly -- and Ken Colson. Give us two minutes, Mr. Wall.

>> DAVID WALL: Thank you, Your Honor. With reference to what type of car you're buying, it's a gold diamond-studded Lamborghini. The following issues do not need to be built -- mechanical dewatering, the Cogen Facility, and above all, stay away from thermophilic digesters. With reference to the Digester Project, the costs are not accurate by many means. One, we don't have the cost from BLP Engineering that, through my memorandums and speeches, was canceled. This was a \$5.2-million, I believe, contract. Now, there were significant cost involved with BLP Engineering that should also be part and parcel of your claim. Also, with reference to the cost-benefit analysis, do we have any cost-benefit analysis for thermophilic digesters versus dual-phase anaerobic mesophilic digesters, which is a significant lower cost that will produce Class-A biosolids. Now, with reference to the funding. City of San José for the last 5 fiscal years has returned the fund balance tens of millions of dollars. This is to the detriment of the tributary agencies because you are relying upon the city of San José to be competent. That is to your peril, because you base your rates on the projected budgets, and if they're returning to fund balance, which I have shown you -- \$50

million, \$52 million, \$40 million and what have you the last 5 fiscal years, obviously competence is not part of the equation. Now, you should also look into the South Bay Water Recycling. Why was that audit intentionally deferred? Because you're going to have far more claims from the tributary agencies when you see that. There are other issues that will be a matter of record that I've spoken about and will continue to let you know. Thank you.

>> Thank you, sir. Michelle. After Michelle, it's Ken. Feel free to come down here to the base of the stairs. Thank you.

>> MICHELLE KAELKER-BOOR: All right. Hi. How are you? My -- I actually have a clarifying question, and the clarifying question is actually -- It's like putting the cart before the horse because the question is, Miss Tsongtaarii? No. [ Laughing ] I just totally botched -- Rosa -- Counsel -- had stated that there are reasons that there are two tributary agencies that are not on the TPAC Council, but I could be asking this question if I were on the TPAC Council as I do represent the Board for the Burbank Sanitary District. So it's sort of a question of, what are those reasons that the Board of one of the Districts is not on this Advisory Committee? So that is a question. I don't know if you guys can clarify that question, but it is a question I wanted to bring up to the Committee.

>> Thank you.

>> MICHELLE KAELKER-BOOR: Understand that there is County Sanitation 2-3 and there is Burbank Sanitary District that are both not seated at that table with you that should have input to what is going on.

>> Thank you. This is time for public comment. Certainly that question, I'm sure, will be swimming in everyone's minds, and we'll allow them to respond when they choose.

>> MICHELLE KAELKER-BOOR: I appreciate that.

>> Great. Thank you.

>> MICHELLE KAELKER-BOOR: Thank you.

>> Mr. Colson?

>> KEN COLSON: Mayor, that's the same issue I had.

>> Okay.

>> Reaffirm that that's an important issue. I wish it to be established in the record, please.

>> Okay. The question -- So, Mr. Colson wasn't at the mic, so let me just make it clear. Mr. Colson raised precisely the concern raised by Miss Kaelker-Boor.

>> KEN COLSON: Yes.

>> Thank you. ...with regard to the lack of representation of two of the tributary agencies on the TPAC Advisory Board.

>> To clarify, she said there's a reason. We want to understand what that reason is.

>> Yes. Okay. So, we are now returning to the Board for questions, for clarification, or for comments, and feel free to push the green button on the upper-right corner if you'd like to speak. All right. Mr. Sykes.

>> DAVE SYKES: Thanks, Mayor. I actually had a list of questions I was going to ask, but in kind of listening to things today, I don't know if it would really be that productive. We heard, I think, from the complaints about the allocation method, and I feel in terms of our response to that in kind of how things have been done, I don't see where we've reached the contract in using our allocation method. I think the explanations provided by the staff make complete sense to me. I think what I really heard from the Complainant is concerns about how and when payments are to be made under the agreement, and the difficulty that kind of presents for the tributaries, but the fact is, that doesn't translate to a breach in the contract. I think really what we were hearing was a request to negotiate changes to the agreement, and so I think we have expressed an interest in doing that. I just don't see how that translates to a breach in the agreement. So I don't really see a need to kind of go through questions trying to pin people down. It's too bad we had to kind of get this far. I think at one point, the Mayor had sent a

letter offering to kind of -- asking if the tributaries would be willing to withdraw their complaint so that we can kind of sit down and have this conversation, and I think all of us probably up here are ready to have that. So, it would be my wish that we could kind of head in that direction. I just don't personally see there's merit in the complaint, and there's, I think, really other issues that the tributaries are really wanting to get to. Thank you.

>> Mr. Gatto.

>> JOHN GATTO: Thank you. [ Inaudible ]

>> Could you hit the button underneath the mic?

>> JOHN GATTO: Yeah. I'm okay now?

>> Yeah, there you go.

>> JOHN GATTO: Okay, thank you. All this technology's beyond me. I'd like to just put things in perspective 'cause I think the majority of what you're hearing is frustration on the part of the agencies in trying to get some sort of resolution to this whole issue. Back when this whole plan started, it was obvious that after 50 years, the plant needed some rehab, and so the idea of a new vision for the plant was well-accepted. The concern even at the beginning was how was this going to be paid for? And the numbers that we got offered to us -- 'cause the C.I.P.s had been running in the \$40-million-to-\$50-million range a year, and we were told that under the new vision, we're probably in the neighborhood of \$80 million to \$90 million a year in C.I.P.s. Okay, so that was understandable with the scope of the project we were looking at. I think all the agencies in San José and Santa Clara started to raise rates in anticipation of this new reality. So, some were more aggressive than others, but at least there was the anticipation that 3 or 4 years down the road -- I'm going back to '13, '12 -- that we would need more money than we were presently acquiring from our ratepayers. We made that decision. Most agencies raised rates to some reasonable level, and all along, even before the master plan was approved by San José, the discussion was, this is a major, major undertaking. We need a document that reflects the reality of this undertaking, which translated was a new agreement. So that discussion occurred well into the '12, '13-year timeframe well before the thing was approved. But now it gets approved. There's still some questions about the various



components, but I'm going to leave that to the side for a moment. Within the approved document that was for the master plan, there was a chart that showed the various projects by year, by category, by amount. Understand that was an estimate, and it was the best guess at the time. Subsequent to that, we were told there was going to be a validation process where they were going to look more closely at the various projects and refine some of these costs. That validation process took place. We never saw that chart that was in the master plan updated to reflect whatever the validation process produced. So we had no concept of what the new costs were. In early of last year, there was a financing strategy, if you will, memo put out. Within that memo, there were costs that were proposed that were radically different both in timing and amount in what was approved in the master plan. Anytime we tried to get clarification of what all that meant, we were rebuffed, causing frustration. The whole last year was basically one of posturing and no resolution of any of these issues. I'm happy to hear that we're looking perhaps to sit down and talk about this in some meaningful dialogue. I think without that, you're never going to get resolution to this issue. Thank you.

>> John, thank you for your comments. I agree with all of them except for one word, which is "perhaps." I think we've expressed this strong, and I say "we." Those of us in Santa Clara and San José delegation have expressed a desire to sit down over the table to discuss all of these issues. I think -- You know, as I look at the claims that are raised in the briefs -- and I want to commend Counsel on both sides for doing an excellent job. I thought the briefs really helped to narrow the issues considerably. They're much more substantive than I've heard in the media or press releases, so I appreciate the fact that the briefs really focused on the critical issues. It seems like whether you regard the allegations as true or false is probably less relevant. I think the real question is, I don't think they're ripe. That is, if I ask Ms. Strotzman whether or not we really have defined which projects have been mischaracterized as being replacement-cost improvements, that's sort of forthcoming. We understand at least both sides seem to have greater clarity about what the position of the staff is. When -- You know, the single example that was used was that of the Digesters. That was not an example, I think, that really supported the notion that somehow or another there's a mischaracterization. What heard from Carollo Engineers was that, as with all projects, we gather information with Engineering and Design that enables us to better allocate cost. And really going back to your point, John, the validation of cost -- the only true way to validate any potential cost of any project is to go out for bid. [ Chuckles ] That's when we really know what it's going to cost, and even then sometimes, as we all know, we have change orders and who knows, right? So,

there's got to be a certain level of tolerance for uncertainty in this process because that's the way big capital projects work. Obviously we want to be fully transparent. We want all of the agencies to be full partners and analyzing every detail to be able to understand are we saving the dollars we need to save in delivering these in the most cost-effective way. But I think there needs to be additional negotiation, first, to narrow down what the difference really is around which projects are mischaracterized, which ones aren't. I think we've heard and we've seen in the response brief from San José and Santa Clara a desire to negotiate over some change in the timing of when the billing would be determined to allow for greater certainty in that number. I think we've seen certainly in the response, I'm seeing in San José and Santa Clara the concern that was raised in Part 7 that there is no desire to allocate legal costs to the tributary agencies that would be consumed by Santa Clara, San José. So, as I look at all this, it goes back to I think to what Dave said. I think what we ought to do is simply deny this, get to the negotiating table. If folks want to raise these concerns they're after, then let's raise the concerns after negotiation, but let's get to the table and work these out. Other questions or comments?

>> Comment.

>> Yes, Mayor?

>> Well, first, on your last comment, maybe we could go in parallel -- keep the claim and then we negotiate. It doesn't hurt, you know? That's number one. But the key thing there is, again, this is a big, huge capital project -- billions of dollars, and definitely the current Master Agreement does not reflect that in detail. So that's what we want to know as tributary agencies because it's something new -- billion dollars. So we want a big clarification on that one. Second, you're asking us to extend to 2065 without due review of the whole agreement? I think we just have a full review of that agreement, and you should listen to what we say, too, instead of just saying, "Oh, it's enforceable. Just go on. Close your eyes." You know, that's what I'm hearing -- "Currently enforceable. Go on," you know? And that's not comfortable is what we are saying. Third, maybe I am a layman here. I mean, I am a layman, but I'm looking at definition of Billable Parameters and Rolling Weighted Average. For sure, preplanning you don't know the cost, but you know the project. The project is definitely -- Even preplanning itself as a phase is more than \$2 million, and that [Inaudible] would drop it under Billable Parameters. Second, you know that it's not a replacement project. It's a new project, too. So

that, again, should be a Billable Parameter. So, initially even at the beginning for you to have Engineering Design and all this estimate of cost, you have ballpark estimate of how much even the first phase more than \$2 million, and the whole project definitely is multimillion if it goes through. So why are we avoiding the Billable Parameters and keep using the Rolling Weighted Average? That's where I'm coming from. So that's just one example. So I don't know. I'm speaking here as a layman because it's to our disadvantage if we were charged more even at the beginning, even we were paid back in the end because of financing, you know, and we don't want to unnecessarily burden our tax -- not tax, but ratepayers at the beginning when, in fact, it should not be. That's why it's important that your actual end projects would be as close as possible, because that's where really competence comes in. You know, there, so far, I can say that the job was a guessing game, you know, because you're not even close to the actual. I'm sure most projects is not exact, but the difference should not be tremendous is what I'm saying. Okay, so, because of that, we want to work with you. This is our -- I would say our plan, although it's San José and Santa Clara, but when we sit together, then we could build a good bridge, that we could be good after 2065. It's a good project. It's a good aim. To say that, "Oh, you have no claim. They're not -- [ Speaking indistinctly ] They're not valid," it's unfriendly, you know, because we [Inaudible] offering some friendly, friendly offers to sit down. Let's build a strong foundation. Listen to us. Maybe we will need some of your staff time, but by sitting down, you go into the details, and then from there, they could summarize the result. That's how I understand the whole picture here. Thank you.

>> Thank you, Mayor. Other questions or comments? And we can also entertain a motion this time, as well. Mr. Gatto.

>> JOHN GATTO: Can I pursue the going forward perhaps from this point. Assuming whatever happens at this hearing, I think we still have unresolved issues, and that's been expressed around the table. We really need to sort of sit down and work these things out. I have a suggestion. Perhaps the next meeting of TPAC could frame the issues and maybe narrow down the points, see what the points of agreement are. If that doesn't work, then I think we'll have to go elsewhere. But I think it's worth at least an hour or so at that meeting to see if we can't focus the issue, define the issue, and maybe find what where we have agreements.

>> Thank you. Other questions? Let me suggest, I certainly appreciate the spirit of the suggestion. I suspect that the most conversation would probably be happening among staff before we ever got to a TPAC hearing or meeting because I think these are really -- These are very technical questions that I know I'm not well-versed at understanding no matter how much reading I might do, and perhaps having staff be able to narrow the areas of difference first might help before even [Inaudible] Would you concur, Mr. Gatto?

>> JOHN GATTO: No, I think we need to frame the broader issues, and then TPAC, or the staff can fill in the details. If there's wordsmanship that needs to be done, they can do that, but there needs to be a consensus on where we're going with this thing in general, not [Inaudible] Some of the discussions today have been very technical and very detailed. I'm looking at a process that we can all agree with how we're going to do this master plan, and I think that it's worth at least an initial discussion. If it proves that we need to have staff involved, then I'm willing to let it go, but I think we need to have at least a broad level, top-level discussion of what the general concepts are.

>> I think that we are constrained here for the purposes of this hearing to simply decide whether to deny or accept the claims, and I suppose we might have a third option, which is to defer, and I'll look to [Inaudible] to inform me otherwise.

>> Yeah, Your Honor -- Your Honorable Mayor. You could defer it. You could also potentially hold the Claim in advance until you wanted to go through some other process -- if you wanted to go to TPAC, if you wanted staff to go do some more work.

>> Okay.

>> There's a couple of other options.

>> So, certainly I'm willing to -- In terms of -- I know I'm only one vote here out of nine, but in terms of what I'd be willing to vote for, I'd be willing to either vote for a denial, and we go let staff work on this, and if there's still claims, then the claims can be raised subsequently, or alternatively, we defer to hold this in advance and work it out, and then I imagine, perhaps, the hearing could be continued to the next TPAC meeting or whenever it might be if that's appropriate. But I'll let the lawyers tell me if I'm way off on that. Council Member Leonardis.

>> STEVEN LEONARDIS: Thank you, Mayor. I would be inclined to entertain a motion that we move forward -- keep the claim on the table, but move forward with mediation in parallel until this is resolved.

>> Is that a motion?

>> STEVEN LEONARDIS: Yes.

>> Okay. Allow me to ask either of San José, Santa Clara staff or of Counsel, how does that impact whatever we're trying to do in terms of the timeline for getting financing to be able to get particularly the Digester Project, which I know is mission-critical. How would the proposed motion affect that timeline?

>> ROSA TSONGTAATARII: Well, there are two issues here. With respect to the claim under the Master Agreement, in the agencies asserting a claim, this is the process that's required that enables them to pursue other remedies. This is kind of a condition precedent. So some determination with respect to the claim should be made at some point. Obviously TPAC can collectively agree to continue it, but it's a procedural requirement for them to pursue other remedies. With respect to the SRF --

>> And by that, you mean file a claim in Superior Court?

>> ROSA TSONGTAATARII: That's right.

>> Right.

>> ROSA TSONGTAATARII: With respect to the second issue of the SRF loan, we are still hopeful if we can quickly negotiate something that's amenable to the agencies that's sufficiently narrow in scope that we can still bring them along, but time is [Inaudible] obviously, and the sooner we get together to try and agree on changes, the better.

>> Okay.

>> BRITT STROTTMAN: And may --

>> Ms. Strottman... [Speaking indistinctly]

>> BRITT STROTTMAN: Thank you. Thank you. If I could interject. It's my understanding that the agencies can still participate in the State Revolving Fund Loan without agreeing to San Jose's and Santa Clara's amendment. So I thought that we would just be able to added to the loan application. So I don't understand what could hold us up.

>> I'm not sure how it is we agree -- that is, any lender is going to agree to finance a set of projects if agencies are only willing to pay for those projects for a period of less than 30 years, and we're looking for 30-year financing. My understanding is that's the primary obstacle, right?

>> BRITT STROTTMAN: Yes.

>> We need a period of agreement which matches the period of financing, and we don't have that if this wraps up in 2031.

>> BRITT STROTTMAN: Well, hopefully Counsel [Inaudible] will somehow come to an agreement so we can move forward with financing.

>> Miss Kantak.

>> ASHWINI KANTAK: Good afternoon. Ashwini Kantak, Assistant Director with the City of San José. I just wanted to provide some clarity. The amendment we had proposed earlier, Rosa had touched upon why we had the 2065 date, and it was to line up with SRF financing, because at that point, all agencies have said they were interested. So it was to line up because those -- the 30 years starts a year after completion of every project, and so we look to the project timeline and come up with that. The initial application that we have filed -- because, again, we were operating under the principle that everybody was going to participate -- is for the entire project loan amount, but we would have to show that all of the agencies on whose behalf they are borrowing, we have an agreement with [Inaudible] at least goes through the term of the loan, and right now it would not do that with the 2031 timeline.

>> Right. Okay. Okay, Mr. Leonardis has made a motion. There is not a second yet. So if there's a second, it can be made now. If not, motion will fail and we can reconsider another motion. Okay, so that motion fails. So, I would like to suggest -- Yes, Miss Mayor?

>> I was going to make a motion.

>> Please, Miss Mayor.

>> I move that we deny the claim.

>> Second.

>> Okay. There's a motion to deny the claim. Any comments on that motion? All right. Let's vote on that motion. All in favor, perhaps you can raise your hand since I know that the electronics system may not be working. One, two, three, four... Okay, so that motion has six votes. All right. All against? Three no's. So that passes by a vote of 6 to 3.

>> Mr. Mayor?

>> Yes?

>> The committee has acted. May I make a suggestion then that if Counsel sees it the right thing and staff sees it the right thing, that discussions may continue on an informal basis, and if something wants to come back at the next TPAC or the TPAC after that meeting, then that would be fine.

>> I think that's a good suggestion. I think staff is hearing loud and clear a desire to work this out. I know we'll be reconvening for TPAC, and hopefully the scope of difference will be considerable narrowed, if not eliminated. [ Laughs ] That's optimistic, I know, but at least if it's significantly narrowed, then I think we'll all have a better opportunity of making progress. So, there's been a -- I think a close of the hearing and a vote. Any other comments from my colleagues before we adjourn the meeting? All right, we'll adjourn. Thank you.

5/31/2016

**ATTACHMENT C**

**TRANSCRIPT PREPARED BY VITAC FROM CLOSED CAPTIONS FOR THE VIDEO  
RECORDING OF THE MARCH 24, 2016 HEARING BEFORE TPAC**



The following transcript is provided for your convenience, but does not represent the official record of this meeting. The transcript is provided by the firm that provides closed captioning services to the City. Because this service is created in real-time as the meeting progresses, it may contain errors and gaps, but is nevertheless very helpful in determining the gist of what occurred during this meeting.

Treatment Plant Advisory Committee, March 24th, 2016

. >>> Good afternoon, we'll call the meeting to order for the administrative claim hearing on March 24th, 2016. We have a period of time designated from 1:30 to 3:30. I appreciate everyone making time out of their schedules to be here. We'd like to wrap this up within that period of time. We'll certainly encourage the participation of everyone, but we want to hopefully keep questions fairly succinct and try to move things along.

>> I am going to look for guidance to our counsel as to exactly how to proceed first. I assume that there is a claimant and a respondent. Is that right? Should we allow the claimant to speak?

Very well. Thank you. Take it over. If you could identify yourself as you come to the -- that would probably be best, yeah? For any of the -- my colleagues, if you could just push the -- the big button to the upper right, that will -- I'm sorry -- upper left, that would indicate to me that you'd like to speak or ask a question.

>> could we take roll call?

>> let's do that.

What the heck.

>> present.

>> john gatto.

>> here.

>> pat kolstad.

>> I am here as his alternate.

>> jerry marsalli.

Katty juan nubi.

>> steve sykes.

>> here.

>> steved leonardis.

>> here..

>> we have a quorum.

>> forgive me for in the being more familiar with the process.

I am not sure if we've done this before. Is there a defined period of time.

>> 20 minutes for the claimant and 20 minutes for the city and each of the parties has a ten-minute rebuttal.

>> thank you.

>> I know questions will come up. We'll take the questions, I think, at the end after having -- the parties have an opportunity to --

>> you can do that -- to my colleagues, if you push the upper right green button, it says "view video," that will enable you to see what they're presenting without having to turn your head.

>>> we apologize. I'm sorry. We thought it had already been loaded but it hasn't.

>> no problem.

>> I am so sorry.

>> we'll start the clock when you're ready.

>>> john, if you could also adjust the timer to help us, that would be great. Thank you. I believe it's 20 minutes.

>>> good afternoon. My name is brit strawman. I am special counsel for the tributary agencies. Before I delve into the presentation, I wanted to handle a quick housekeeping issue. We just have an initial concern today about the fairness for this hearing. We follow the TPAC procedures in good faith. We gave counsel for San José our presentation and documents for rebuttal seven days before the hearing.

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That procedure was adopted at a TPAC hearing. We feel as if we're at a disadvantage right now because we didn't receive San José's presentation until an hour ago or any documents. It outline boils down to an issue of fairness for us. I'm going to first talk about the tributary agencies and why we're here. So the claims were brought by the tributary agencies. We collect waste water and send it to the treatment plant owned by San José and Santa Clara. The tributary agencies include the city of mip lpitás.

Cupertino, west valley, burbank and Santa Clara county Sanitation district number 23. We have a population of about 240,000. Next I'm going to talk about the master agreements. As you know, there are legal agreements between the agencies, San José and Santa Clara. But San José operates the plant. They were executed in 1983 or 1985. They're about 30 years old. They currently end in 2031. Basically, the legal agreement obligates the agencies to pay an allocated share of operation, maintenance and capital upgrades in exchange for waste water treatment and disposal. They contain many outdated and cumbersome dispute resolution processes which allowed us to file the claim but the dispute resolution process is flawed. You May ask, why do you think it's flawed.

First of all, we think that there is an inherent conflict of interest. San José is not a neutral party. They are an interested party. They can going to prepare the report and make recommendations. There is another issue that makes this dispute resolution problematic. Two of our Sanitary districts are not fully represented on this -- on the TPAC. First of all, that's the burbank Sanitary district and Santa Clara county Sanitation district number 23. They do not have representatives on TPAC.

Ultimately, the primary reason why we're here today is because the master agreement must be updated to reflect the plant master plans. So, what is the plant master plan and why is it driving our claim? The plant master plan is comprised of about 30 projects. It was adopted in 2013. As you can see from the slide, the plant master plan mostly includes projects that are budgeted to cost millions of dollars. These are major and structural rehabilitation projects and new improvements to the regional waste water facility. They're estimated to cost about \$2.1 billion in capital costs over the next 20 years. Here is a list of some of the projects.

So, this 2 \$2.1 billion is a huge investment for the tributary agencies. We fully, fully support the critical upgrades to the plant. However, to invest in these projects the master agreement must be reflected to update the plant master plan. The plant master plan costs will be passed down to our rate payers and we are accountable to our rate payers. We lack contractual assurances for the financing of the plant master plan. There is a total lack of transparency on the use of riparian funds and San José is unfairly allocating the cost for the plant master plans and we fear San José will continue to overcharge the tributary agencies millions of dollars for these capital upgrades. I'm going to give you an overview of our claim arguments.

San José allocates treatment plant costs to the agencies. We claim that San José's use of the wrong allocation method results in severe overcharges which puts the tributary agencies in an untenable financial position. Our

rate payers must be charged consistent with what the master agreement requires. In addition, the master agreements must be updated to enable the agencies to obtain financing and to ensure transparency. It's critical to understand the two allocation methods under the master agreements and why using the wrong allocation method is a detriment to the agencies. So there are two different types of allocation methods under the master agreements. And just for reference, these methods are derived from the state water resources control board revenue guidelines.

The amount of money that's charged to us depends on which allocation method is used. One allocation method is called the billable parameters method. That applies, one, to future improvements and, two, process related replacement cost related projects exceeding \$2 million. The second method is called the rolling weighted average. That applies to replacement cost projects that either cost less than \$2 million or are not process related. And it's important to note, too, that, in the master agreement, the definition of replacement costs specifically excludes major and structural rehabilitation projects. San José intends to use the rolling weighted average for major and structural rehabilitation projects, in violation of the express terms of our agreement, which results in overcharges to the agencies and then, in turn, that hurts our rate payers.

Major and structural rehabilitation projects are future improvements and subject to the billable parameters method. San José has acknowledged, in this next slide, in three recent documents that the plant master plan projects are major and structural rehabilitation projects which fall under the billable parameter methodology. You can see here the three different documents. There is a five-year cip document, the plant master plan on page 11 and San José's own press release. Now, this -- on this slide, this is an illustration of a \$146 million worth of projects where San José used the billable parameter method. This was about 30 years ago. So San José has correctly used this method before in the past, so why can't they use it now for these projects?

After the agencies submitted their claims, San José sent the tributary agencies a letter in February of this year, the letter conceded that San José used the wrong allocation method for the digester project which cost over a hundred million dollars. This is one example, one project, but there are still other projects that we're concerned about. San José has conceded that most capital improvement programs costs are future improvements. Therefore, the billable parameter methodology must be used. However, recent documentation from San José shows that San José will apply the wrong method to other major rehabilitation projects. For example, despite admitting that San José used the wrong allocation method for the digester project, San José continues to use the rolling weighted average method for an entirely new facility. This is the co-generation facility.

Why is this important? Because using the rolling weighted average overcharges the agencies and harms our rate payers, and it's inconsistent with the master agreement. San José moved forward with this cost allocation even though we were in the middle of this dispute process. This was just a few weeks ago. I want to give an example of a project -- of what happens when the tributary agencies are overcharged. As you can see from this slide, for a

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hundred million dollar digester project alone the incorrect use of the weighted average methodology cost the tributary agencies real money. If you calculate this, it's about over \$5 million.

If you apply the incorrect methodology with \$2.1 billion worth of projects, you can see the financial difficulties that we're facing. As I already stated, San José later conceded that it used the wrong method and it will use the billable parameter method for the digester project. All of this places us in an untenable financial position and let me paint a picture for you. Imagine that you are a new home buyer and you have \$300,000 to spend on a house. You find a house you like but learn that the roof needs \$75,000 worth of repair damage. So what you do -- what do you have to do? You take out a loan for \$375,000. Once you move in, you find out that the roof actually doesn't need to be repaired.

Now you're stuck with a \$375,000 loan at a higher interest rate and then, let's also say hypothetically speaking that there is a pre-payment penalty on the loan. So I give you this example to show that this is similar to what the agencies face when we are overcharged for capital projects. We have to take on more debt than necessary, forcing us to raise our rates higher than necessary. If we take out long-term debt for plant master plan projects and there is a pre-payment penalty, we risk falling into negative arbitrage. Even if we're credited back the amount that we were overcharged at a later date we are still stuck with the extra debt. And as I will explain later, San José's offer of a low-interest loan for the digesters was contingent on economically unacceptable terms, which adds to our financial pressures. So I would like to quickly introduce to you our forensic accountant.

His name is dan ray with the firm hemming, morris. He'll explain the challenges that the agencies face when they are planning to finance capital projects for the plant master plan. >> good afternoon, everyone. I'm dan ray. I am a partner in the accounting firm of hemming, morris. We are located throughout the state of california, primarily in San francisco. We are a firm that provides forensic accounting services to municipalities, law firms and a variety of other clients.

I have -- my firm has been retained to assist the tributary agencies in trying to demonstrate for purposes of today's hearing, through these graphs, some of the challenges that they are facing in order -- in their ability to adequately and properly and accurately finance their share of costs for these capital improvement programs. The first chart that you are looking at, the source data is the annual reports for the city of San José, which we obtained from public sources via the internet. It demonstrates the differences -- this is for the San José-Santa Clara treatment plant capital fund, specifically. What we are doing in this chart is we demonstrate the significant historical variances between the budgeted expenditures and the actual expenditures. Each year it shows pretty significant variations in what the anticipated expenditures would be in the form of the budget versus what the actual expenditures were. By way of example, fiscal year '13, which is calendar year 2012 and 2013, the actual expenditures were identified in the annual reports as being 56% below budget. This is a backwards looking chart.

The next chart is a forward-looking chart. The source on this, for these charts, is the capital improvement program. It's a five-year document that projects both sources and uses of revenue. Sources of revenue and uses of funds for a five-year period, and it's forward-looking. What this chart demonstrates -- I acknowledge it's a little difficult to read because there is a lot of data in it. It demonstrates the great variability year over year as to what the expected expenditures would be in a particular year. If I can pick the grouping in the middle for fiscal year 2015, what that chart is showing is that in fiscal year 2011 the estimated expenditures, and it's expenditures minus remaining fund balance is the calculation.

The estimated expenditures for fiscal year '15, as told or as represented in fiscal '11 was \$79 million. In fiscal year '12 the estimated expenditure was now \$72 million for the same year. In fiscal '13, the documents indicate the spending in '15 would be \$48 million. In fiscal year 2014 the documents indicate that the expected expenditures for fiscal year 2015, the same fiscal year, will rise to \$217 million, and then in fiscal year 2015 the documents indicate that the expenditures for fiscal year 2015 would be \$121 million. So this graph, I think, clearly demonstrates the challenges that the tributary agencies face in order to try and accurately obtain the correct amount of financing to -- for these capital projects. Thank you. >> thank you.

As Mr. Ray just stated, these agencies -- our agencies, tributary agencies, confront similar issues. When trying to figure out how to pay for major plant master plan projects because the information necessary to obtain financing keeps changing like a moving target. The bottom line is that the 30-year-old master agreement, all of our master agreements need to be updated. We're asking for what any other debt issuer would ask for. For example, let me -- I'll give you another example. Let's say San José wants to buy a car and it needs us, the agencies, to help make payments on the car loan.

However, taking out a loan to make the car payments, we have no idea what San José is buying. We don't know if it's a tesla, a kia, a volvo. We don't know how much the car costs, we don't know the essential terms to take out the loan because we don't own the car, we don't even get the key. We don't even get to drive it. We have no assurances that the car will take us where we need to go. So we have no ability to finance our car payments because we don't know what to tell the lender. For the same reason we can't finance our portions of the plant master plan projects because we don't know the essential terms.

We need to know each major project's scope, cost, schedule and allocation method so we know what we're paying for. San José has demanded to unilaterally amend the master agreement, and there are three problems with that. First of all, San José wanted to extend the term until 2065, and it's essentially asking us to sign a blank check for the plant master plan without guarantees of accountability and transparency. San José basically told us sign these agreements by this date or you will be prevented from obtaining a low-interest loan and forced into bankruptcy. Lastly, San José ignored our thoughtful red lines that took a lot of time, energy and effort to the master agreement, which we submitted back in early October of 2015. We have to be in a position where we can

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answer our rate payers' legitimate questions. If we can't assure them that they are being fairly charged and if we don't even know the actual costs of the projects San José is building, how can we increase our rates to pay for these projects without protests from the public? Now, what we're asking for are three things.

Number one, properly allocate the plant master plan projects to avoid overcharging. Number two, we're asking for greater transparency and accountability. For example, a third-party audit. Number three, we're looking forward to having a meaningful negotiation with us for – on our proposed amendments, all of our proposed amendments. Doesn't mean that San José has to agree to every one. We're just asking for a meaningful conversation to address our issues. Thank you so much, and I look forward to your questions.

>> great. Thank you very much, Miss Stralman. You have two and a half minutes left. do you want to take some questions now before we go to the rebuttal?

>> sure.

>> are there members of the panel who would like to ask questions at this time? Hit that button up on the right corner.

I had a couple. I'll just throw them out in the short time we have. Then we'll move on. First, with regard to the stream of estimated -- I should say budgeted expenditures versus actual expenditures, the suggestion is somehow or another that, when you finance a project, you're only financing it -- a discrete, single-year's worth of expenditure when in fact what we're trying to finance is a set of projects that may overlap multiple years. So why should it matter which year those expenditures should be -- should be made if in fact what you're trying to do is finance an entire, say, \$1.4 billion worth of projects?

>> is your question, then, you're wondering why we're asking for an implementation of schedule when we don't know what years the project --

>> no. You seem to make much about the difference between the actual and budgeted expenditures, one year to another.

>> I'll have our forensic accountant --

>> I can tell you. In any big city we have significant carryover of capital expenditures from one year to another. That's standard in any big city. Why? because you try to get a budgeted expenditure that will encompass everything you think you can possibly build within that year, knowing some of it isn't going to get built, right, because of scheduling and so forth. That's sort of a standard process here in the city of San José and I venture



to say any other big city in the country. We don't finance based on any particular single year's worth of expenditure.

We try to finance a project. Whether the expenditure happens in year '13 or '14, how -- why should it matter that the expenditure happened in one year versus another if in fact what we're telling you is here is the project, here is the cost, and we're going to try to stay within that cost?

>> a couple comments. First of all, when I looked at the historical financial statements, what I saw is a pattern of every year the budget being far in excess of the actual. I would expect some years to be above, some below and eventually over a period of time it would smooth out. This demonstrated year over year historically that there were material differences between budgeted and the actual. But from a financing perspective, just the simple concept of cost of funds, if you take out and finance more than what is needed then perhaps your funds are dormant.

I'm not sure if interest is being earned on the extra finance funds and whether there is an arbitrage problem --

>> you're assuming, then, that the funds would actually be released on day one, right, and that we would be paying interest on day one on those funds, which isn't every method of public financing. In other words, there are certainly ways in which you can draw --

>> right.

>> -- from debt so you're not paying interest until you're actually using the funds.

>> I think the big challenge is how much debt are they required to finance? What is the number? If it's a function of a timing on the draws and when you need the financing but how much do you go out and try to get in the form of financing is the challenge. >> nobody tries to finance.

In any big city in america nobody tries to finance a single year of expenditure. They try to finance a project. And so, what I don't understand is -- you're suggesting from your last answer, in fact, in some years you expect actuals to exceed budgeted which, by the way, is impossible legally. We can't spend more than we have budgeted so we always budget more than we can spend, right, with the expectation there will be some carryover of the project.

>> right.

>> bringing this to the real world, it seems to me your expectations seem not to match what we routinely see in any large capital expenditure in any city.

>> nina halt, public works director.

The way the master agreements are written now, when there is a large project and the way we're being billed is from time of award. If the award is let and we do not participate with San José and perhaps do financing on our own we need to get the financing and provide the entire payment at that time. That's the language. The language in the master agreement prohibits us to make changes or expenditures or encumbrances. It's literally at time of award. That's the tricky part. That's why we want to talk about those things and work out language, something that would be more feasible to address the issue you're bringing up.

>> 20 minutes has been extended. Thank you. We'll see you again shortly.

>> thank you.

>> great.

>> good afternoon. It's a beautiful day outside.

I appreciate you spending it inside with me. My name is rosa from the San José city attorney's office. This afternoon I represent San José and Santa Clara in this administrative claim. I would like to first respond real quickly to the presentation material. We did not actually agree to share presentation material and, had we known, we certainly would have prepared it in advance. As it was, it was literally bound at 12:00 this afternoon. So -- but I don't think the information we're going to share with you today is any different than what we have submitted in our papers.

We fundamentally agree as to what the nature of the dispute is, and you'll find through the course of the presentation that we actually agree on more things than you would think. I would like to provide some context and begin with a review of our respective roles. San José is the administering agency under the master agreement and as such we have the authority to maintain, repair, expand, replace and improve and do what's necessary to operate the plant. We also make, award and enter into contracts for services and construction. The agencies are considered outside users. In consideration for use of the plant to treat their waste water their obligation is to play the operation and maintenance cost as well as splaegs cost. TPAC has provided direction as to policy matters.

The member that are designated to TPAC are so selected because of their relative investment and obligation to the plant. There is a reason why the two smaller agencies do not have a seat at TPAC. That was agreed to originally. The ultimate decision lies with the San José city council as the administering agency. We have a responsibility to operate and improve the plant. We serve a region that includes 1.4 million residents and over

17,000 business connections to the plant. So this is a slide that tells you the relative share of the cost in both o & m and capital.

as you can see, San José pays two-thirds of the costs in both o & m and capital. With Santa Clara we collectively pay over 80%. This contract capacity has not changed except in 2006 when west valley sold to milpitas in 2009 and cupertino sold capacity to milpitas. This is a definition of operation and maintenance and replacement costs in the master agreement. I won't belabor the point, but we do agree that the cip, the projects in the cip are not replacement. We do agree that it is major rehabilitation. These major rehabilitations, these definitions in the master agreement actually match the california state revenue guidelines. Almost identical in terms of verbiage.

So whatever is not operation and maintenance costs or considered replacement costs would be considered capital costs. So you can see it identifies major rehabilitation, structural rehabilitations or facility expansions and upgrades to meet future user demands. So we're in the process of securing the lowest cost financing available with the state. One of the conditions for receiving financing is that the agencies, the sewer agencies, must charge their customers in accordance with these guidelines. We comply with these guidelines because we have a loan right now with the state, and we are hoping to secure more loans in the future. These are provisions in the master agreement, in the current master agreement, that support the city's position that the agencies have a current obligation to pay for the capital costs for future improvements, such as major rehabilitations. And I won't read these aloud.

You can see for yourself they are in various parts. They describe their obligation in terms of according to their contract capacity. They describe the timing of payment. And the fourth bullet, even after the term ends in the master agreement, if the agencies want to continue to use the plant, they have an obligation to pay for the cost. That includes capital costs, as the facilities will continue to treat their sewage. This is consistent with the memo to TPAC and counsel when the 1983 master agreement was approved. It was never intended that these agreements would be amended every time a major rehabilitation project occurred.

It is amended only in limited circumstances. It's amended when there is a capacity expansion, which is what occurred with the 1983 agreement. It is also amended when agencies sell or buy capacity, which is what occurred with milpitas, cupertino and west valley. It is also amended when there is financing, and that amendment reflects the repayment obligations of the agency to the financing program. this slide addresses some of the issues that were raised by the agencies. As you can see, in the course of the life of a project development, from the beginning of feasibility to the point of design, bid award, construction, and post-construction, it is a long period of time. The information, particularly with respect to estimates of the costs of the project, gets refined as it progresses.

And by example, you can see in the digester project that over the course from conceptual design to detailed design that the price of the project was further refined. And we still won't know until we have fully evaluated the bids for the construction project. The agencies argued that the master agreement is not enforceable because it fails to describe each project with a fixed project schedule and costs. The type of information they are seeking to include in the master agreement is not -- not only is it impractical, but it's not possible because it's refined at each stage. Unlike a cookie-cutter cip to pave the street or put in sewer pipes, the projects of the plant must be built while the plant continues to run. Changes to any aspect of one project could impact the timing of a related project. These inherent risks make it difficult to identify a fixed project cost really until the time of award.

It certainly doesn't compare to the purchase of a car or a house. as the administering agency responsible for timely implementation of the cip, we cannot arbitrarily suspend the project which May be connected to half a dozen other projects in the pipeline because one agency decides that the master agreement must be amended before we can proceed because somehow the cost is off or somehow the schedule is off. That is part of a cip this large and this complex. We have to build in the ability to accommodate that flexibility. The agencies, in seeking the right to amend the contract every time there is a new project, are seeking far more authority and control over the administration of the plant and the cip program than is commensurate with their obligation under the master agreement. This slide, you can't see it very well, however, in your packet hopefully it's better. It's exhibit b in the master agreement.

The ag crist' second claim is that they've been overcharged for capital costs because the wrong methodology was applied. I am going to walk through the process of the master agreement. Hopefully it won't be too painful as it sounds. And we do agree in part with the agency. Major rehabilitations that are process related and over \$2 million should be charged based on parameters. But, let me go through the specific notes under exhibit b because this is what we use to guide us in terms of how to calculate that. you have to go through a decision tree of sorts.

Is the project a process-related treatment for waste water? Not all cip projects are. I would also note as an aside, cip is only one part of the pmp. We never intended to charge the agencies for projects that are not related to the treatment of waste water. We don't have that authority under the master agreement. However, there is no dispute that the projects in the cip are for the purpose of treatment of waste water. So there are projects that aren't process related.

For example, an administration building. That serves the entire facility. Similarly, the co-jen facility provides electricity to the entire facility. So, if it is process related, the second question is, is it over \$2 million? And most of the projects in the cip are over \$2 million. But if it's under \$2 million we do use the rolling weighted average. If it's over \$2 million, we use engineering design.

That's a critical point. We allocate to parameters based on engineered design. That means that engineered design needs to have been completed before we have the final guidance on the allocation. Hmm. I am missing a slide. But it's probably in your packet. It's a picture of the facility, and it has the various cip projects.

>> yes. It's entitled "capital cost allocation?"

>> right. These are examples of process-related projects. I'll move on to this slide. We also agree that the digester and thickener upgrade project is process related project and it's clearly over \$2 million. But the critical point to remember, again, is the engineered design. The agencies claim that they have been overcharged is premature.

The fourth quarter invoice for construction award of the project has not been presented, and at the time the budget was first adopted for fiscal year '16-'17 in June of 2015 the engineered design for this project was not available. In fact, it was completed into December of 2015. In midyear budget action was recently approved to update this budget so that the invoice in the fourth quarter for the project could be allocated based on treatment parameters. The agencies claim they've been overcharged under the master agreement for pre-planning costs is also not correct because those costs were charged before engineered design was completed. In order to shepherd a project to the engineered design stage there will be expenditures for project planning costs. These costs have to be based on the rolling weighted average because, one, engineered design is not complete and it entirely is conceivable that you could do a feasibility analysis and decide that you're not going to proceed with the project because it simply didn't make sense, at which point it never resulted in a process related project. If the project should proceed past engineered design, project planning costs paid up to that point based on the rolling weighted average would need to be adjusted. So in the digester project, for example, we've expended \$11 million.

The bulk of the expenditure for that project has not occurred yet. The agencies also claim economic duress because San José will not charge agencies on an expenditure basis or finance their share of the capital costs. The reason we cannot charge the agencies on expenditure basis is at the time San José enters into a contract for services or construction, we must encumber the funds. This way we know we'll have enough money to fulfill our legal obligations. We can't float the funds on a reimbursement basis. San José and Santa Clara wouldn't have enough funds to cover that -- the share of the agencies. This also would not be a fair share of the cost.

There is a value to a time delay in payment. The reason why we cannot finance the agencies' share of the capital cost is we cannot charge our rate payers more than the service they receive. In order to borrow money for the agencies' portion of the capital cost, we would need to pledge another source of revenue for repayment. In light of the agencies' dispute as to their obligations to pay for the cip under the master agreement, we're understandably concerned that we cannot borrow for the agencies' share until we have a commitment from them to participate in the financing program. For the cip, the amount of financing will have to depend on the project schedule at the time we go out to finance and the rates we're able to secure will be based on market conditions. This is why

specific repayment terms for each agency for each project will not be act rat curate until the financing occurs. In the past, agencies have either cash funded or financed a share of the future improvements.

For example, milpitas cash funded its portion of south bay which was required by the state under the regulatory permit and we executed an amendment to the master agreement to reflect the agencies' participation for those that sought financing for the south bay. The agencies asked San José to pursue srf on their behalf. Srf is the lowest cost long-term financing available and would greatly benefit rate payers. We submitted srf applications for two projects, the digester and thickener upgrade project and the co-gen facility. Srf has built-in accountability because it's a reimbursement loan. We have to provide documentation that the funds were properly spent on the project in order to be reimbursed. When we propose amendments to the master agreement to confirm participation in an srf the agencies' conditioned the amendment on other changes to the master agreement.

We analyzed these proposals and believe that they would have put the San José and Santa Clara rate payers at a disadvantage. We're willing to negotiate reasonable audit requirements. Actually, that was probably one of the most reasonable proposals in their proposal for amendments. And as you can see in our next set of packets, which I will go through in rebuttal, our accounting practices have received the highest accolades in the industry. What we are not willing to forego is the opportunity to secure srf funds while we are in the midst of negotiation, especially because, based on what I have discussed just now, we believe the master agreement already contains enforceable provisions for payment of the cip. The agencies have also claimed a lack of notice. I will be going over the various forms of information that we have shared.

We have been in this process since 2005. We started the condition assessment in 2005. We went through a planning process. We went through cip validation. I am sure TPAC is filled with information and quite tired of hearing about this matter. So, I will conclude. The purpose of this hearing is not to negotiate the scope of amendments. The purpose of this hearing is to determine whether their claim has any merit. If it was to renegotiate the scope of amendment we could have started that in January because we wanted to begin negotiations at that point.

Based on the papers we have submitted on this presentation, we would proffer to TPAC the following specific findings. The master agreement requires agencies to pay for the capital costs of future improvements. Capital costs future improvements were properly allocated under the master agreement for project planning before engineered design was completed. The claim for breach of contract based on assumptions of improper capital cost allocation for the fiscal year fourth quarter invoice is premature. The master agreement does not require the administering agency to finance the agencies' share of capital cost but the administerings can assist with financing if the agencies agree to participate in the financing program. And no agency has been charged or was ever intended to be charged for outside legal counsel services, if those services were exclusively to benefit San José and Santa Clara. We all have a responsibility to our rate payers.

We all must pay our fair share. San José and Santa Clara rate payers cannot be asked to shoulder a greater burden than the benefit they receive. If we can begin with these principles, I think we can move forward. Thank you for your time.

>> thank you. There is a minute left of time, just to make full use of it, if any of my colleagues have questions at this time, you can certainly raise them now. Since -- yes.

Mayor?

>> I heard you said the tributary agencies are asking amendment of the agreement for every project? >> that's not true.

>> I think the amendment is being brought out because of this big, huge project, a billion dollar project that we're having that's about time to review the contract we have and it's like 30 years hence or more since we have this agreement. So that's why we are looking to this master agreement.

>> that's a very good question. >> it's not per project.

You said per project. That's entirely incorrect.

>> it's a good question. The nature of the information that they would want to have in the master agreement asks for each project what its schedule is and how much it would cost. Some of that information may be available now. Some of it won't be available. This is a long-term endeavor.

Not only that, even if we were to give an estimate, the information that we would put in the amendment would not be accurate by the time the project goes out to bid. In which case, then, there is going to be a question as to whether we could proceed with the project because it's so different. Our position is that the master agreement, as it stands now with its current provisions, has an enforceable obligation for the agencies to pay for the project. Now, is there a middle ground? Of course there could be a middle ground, but I don't think we can allow the administering agency to be impeded by the possibility that any variation in the schedule of the project costs would mean that we would have to suspend the project.

>> okay. All right.

Thank you very much. Miss Stralman.

>> thank you.

>> just to be clear on the timing. Was that five minutes? Ten minutes. Okay.

Ten minutes. Thank you.

>> I will be less than ten. Thank you.

>> all right. Thanks.

>> I am happy to hear that we have some common ground between us -- the tributary agencies and the city of San José.

In my personal opinion it's unfortunate that we had to get to this point to actually have this sort of meaningful discussion about each party's concerns. First of all, to me it just seems like counsel May have been insinuating that the tributary agencies don't want to pay for any of these costs. We want to pay for the costs. We are not being obstructionists here. We have to make sure that our share is fair. And that's why we are here. We've continued to pay our share this entire time.

We just feel that the budgets are not reliable and we can't finance based on San José historical budget variability. Once again, all we are doing is asking for what any other debt issuer would ask for. Second of all, I am happy to hear that San José agrees that the projects in the cip are not replacement costs, so what I am asking is why can't we sit down and negotiate San José's amendments and our amendments together. It seems like it could be some sort of simple amendment that there could be a term that all plant master plan projects or all cip costs are major and structural rehabilitation projects so the billable parameter method should apply. The third issue is, I understand from counsel that the project-specific amendments are not feasible, it's hard to quantify project costs, and she is right. This -- it is difficult. But we would be happy to sit down with you and work this out together.

But these type of project amendments are necessary for multi-million dollar projects. You have the B.A.R.T. Extension that you were able to successfully complete. It's not like we haven't done this before. In 1982 there were about 20 projects and we were able to amend the master agreement. In 1995 for the south bay recycling project we were able to go back and amend the agreement. The fourth point is that we're not asking to suspend any projects. Once again, we're not being obstructionist.

We have asked since 2010 to have a discussion about our concerns. This is not the first time that we've brought this up. The digester is not going to fail within the next few months. If we started this process, this negotiation, mediation process, six months ago, maybe we could have all of our disagreements worked out. But San José



completely ignored our amendments. A small point, too. Counsel discussed the phrase "process related" when she was discussing the two allocation methods.

I just wanted to point out that the master agreement does not have a definition for "process related," so that could be another amendment we could work out so we don't have these issues in the future. The fact with the digester project that it's not ripe because we have not been overcharged, the fact is that San José applied the rolling weighted average method. And when we started complaining and we flagged this issue for the city of San José, San José then conceded that they should have used the billable parameter method. And the last issue as far as economic duress. We were denied the opportunity to participate in the state revolving fund unless we agreed with San José's amendment, and that amendment, they wanted to amend the master agreement until 2065. We felt like we needed to go back and re-work some of our issues and work together and not just uni -- agree to San José's unilateral amendment. And we look forward to working through these issues with you. Thank you.

>> thank you. Miss Stralman, one important question in terms of process. You referred to San José's amendment and their position and so forth. Song tari represents San José and Santa Clara. Isn't that correct?

>> yes. You are correct.

I apologize if that was confusing. But San José does operate the plant. But you are correct. It is San José and Santa Clara.

>> I just wanted to make sure. When you mention words like "unilateral" it suggests that San José is operating alone. Could you help us understand which specific projects you are alleging are misclassified as replacement costs.

As opposed to future improvements.

>> I do not have a list of the projects in front of me right now. We proposed several amendments to the master agreement, and we are happy to provide you a list with all the projects where we feel like the wrong allocation method is being used. As I stand here right now -- for example, maybe the co-generation facility. That was listed as, I believe, using the rolling weighted average.

>> yes.

>> that was in March of this year.

And we disagree with that. We believe that that's a new facility and the billable parameter method should be used.

>> the co-generation facility should be one. My understanding is what I heard and read in the briefs and heard from opposing counsel, is there is a concession that most of the projects are in fact future improvements and should be billed to parameters. And so, it would really be helpful for her to narrow down what the area of dispute really is, if it's just one or two projects, it seems like we're a whole lot closer.

>> yeah. I agree.

I am happy to hear you say that because I feel like we are coming closer to an agreement. We would be happy to provide you with that information. We can do it as early as next week and put together a list of projects for we feel like the wrong allocation method is being used.

>> okay.

>> or we May have to get more information from you.

>> that would be really helpful, I am sure, for folks at TPAC and everybody involved to really understand where the dispute is. I think we're mostly dealing in the abstract right now, talking about projects.

I think I understand why the cogeneration facility is not process related but I guess we can get into those weeds when we're able to narrow it down.

>> yes. Thank you. That's a good idea. Thank you.

>> other questions, comments? Okay.

Since I've got you for a few more minutes, I might as well ask a couple more, if I could. If my colleagues want to jump in, please hit the button and feel free. You indicated that San José conceded that it used the wrong allocation method and then corrected it. I assume you are referring to December 2015 with regard to -- remind me. I am sorry. The project is the -- ?

>> digester? >> yes.

In the papers from San José and Santa Clara, what it represented was we couldn't know how to allocate those costs until we had the engineering done. We got the engineering done. And now we're able to do it. Wouldn't you expect that to be the process with every project? >> yes, but it's my understanding, and I could be wrong, and I can confer with Mr. Newbie here, the district manager of the west valley. It was my understanding, though, that

San José and Santa Clara said that the digester project would have to use the rolling weighted average and then, in February of 2016, just last month, we received a letter saying that the wrong method was used.

>> yeah. I see kari shaking her head behind you. It sounds as though that May not have been the suggestion. Certainly we can allow opposing counsel to respond as to what exactly was in mind. But it seems to me that the question of what we intended and what we wrote is really the issue, and if what we told you was that it was one kind of allocation and then changed our minds, that's one thing. Another would be if we told you it's this kind of allocation but we now have engineering information that helps us better understand how the dollar should be allocated. Wouldn't you agree?

>> yeah, I do. I actually have in one of the slides -- I don't know which page it is -- the excerpt from the letter.

>> okay.

>> and I am happy to provide you your letter. I think it was dated February 26th. But it was my understanding that San José -- I understand the distinction that you are making. It's my understanding, though, that San José told us that the rolling weighted average would be used and then said later on that the billable parameter method should be used.

>> okay. All right. Thank you. Then, I know that there is an outstanding public record act request from the tributary agencies. Has that been provided yet? I know it wasn't as of the date the briefs were filed.

>> I'm sorry.

Are you talking about your responses?

>> no. I know we provided thousands of pages in response. I am wondering if the tributary agencies responded?

>> yes. We have submitted our responses. I cannot say they're 100% complete at this time but we have.

>> there has been some response?

>> yes.

>> great. And then, finally, on the -- the analogy you used with the automobile in which you indicated that tributary agencies don't know what kind of car they're going to be required to pay for. In this case we have had a lot, a lot, of discussion at TPAC about what the ten-year capital project list would be, what it looked like, what the cost

estimates were. Obviously the estimates change as engineering and design gets closer and closer to bid. We never really know until we get to bid.

But certainly the type of car, wouldn't you agree, is known because in fact this TPAC board approved that ten-year project list unanimously last year. Isn't it fair to say we actually know what kind of car we're going to be paying for?

>> well, you could say we know what type of car that it's going to be, you know, a tesla or a porsche, that type of category or if it's going to be a kia or that type of category. Maybe I will agree that, yes, maybe the type of car. But we don't know what the inside of the car is going to look like.

>> right.

>> and that's the reason why we're here, because we wouldn't have spent all this time and effort if it was clear what we were getting.

>> so is it fair to say, though, that at least we have a common understanding of what the basic projects are, the big -- in large parameters? And is it also fair to say that we don't know what the exact cost is until the project goes out to bid? Is that fair?

>> yeah, I -- I would think that's fair, yes. >> so then, if we agree that you can't know exactly what it's going to cost and there is going to be some discrepancy between what we project at the beginning of the process and whatever it's bid at, are you, then, suggesting that rate payers in Santa Clara and San José should basically pick up the cost and risk of floating three other agencies that period of uncertainty for which we have to get some assurance of financing?

>> no, that's not what we're asking. We're asking for more clarity from San José and Santa Clara as to the \$2.1 billion regional waste water facility.

I am not a public finance expert.

>> nor am I.

>> I am happy to provide an answer to that question in any sort of supplemental briefing. The reason why we're here is that we don't know what we're getting and we need help from San José and Santa Clara.

>> okay. I know we'll be coming back for more questions, I am sure. The time is up. Thank you, Miss Stralman.

>> thank you.

>> we'll come back to you.

>> thank you.

>> back again. So hopefully in this second set I will be able to address some of the questions as well. But quickly, it's not a \$2.1 billion. It's 1.4 for the cip.

The reason we didn't engage in negotiations, because we were busy trying to put together a financing strategy last fall. A lot of the requests that were sent in from the agencies, some of them didn't even relate to the capital program. They related to other issues at the plant, which we're happy to negotiate. But at the time it wasn't a priority. And some of the proposals they have submitted, as I previously indicated, were in the in San José or Santa Clara's interests. However, we're certainly happy to sit down with them, to go through the list of projects that they believe were improperly allocated. And I would also like to note that the prior amendments, again, were for our facility expansion or they were for financing.

They were not to confirm that we could proceed with the cip. We had proposed an extension of the term to 2065 because we anticipate that the capital program will complete in 2025, usually long-term financing has a repayment term of about 30 years. And that's why we had an estimated 2065 term. So let me just go over these few slides, and I think they'll help answer some questions as to the type and amount of information we have provided on the cip program. So this is a slide that demonstrates the five-year CIPs. As you can see, it's the rolling cip, but the amount really hasn't varied that much from five-year to five-year to five-year. There are variations within each year, but as I previously indicated, that really depends on where the project is in the cycle and how many projects are in that given year.

The budget is going to go through a curve where a particular year there is going to be higher expenditures than other years. This is not a situation where form can supersede function. We have to let the criticalness of the project drive the time of when it needs to be implemented. This is another slide of the different look at it. And we went over this briefly to describe the various phases and how the pricing gets refined over time. So I would like to address the issue -- there has been conjectures that we have not been transparent, that they do not know what the cip includes. The adopted budget for the rwf capital program, along with other city capital programs, are published on the city's website including budget document archives.

City issues a fully audited cafr report on an annual basis. We also share our draft cip. We provide detailed information on the cip. Our 2016-2020 adopted capital improvement program budget is 71 pages. It discusses the

program in detail including program overview, source of funds and use of funds, detailed project sheets for each construction project. Included estimated cost schedule and timing of expenditures. The source of funds and use section of our adopted cip budget -- this is all available publicly provide information on how revenues are used on the program and project.

We provide the tributatory agencies with estimated proportional share. We bill on a quarterly basis and, with that, we attach attendant documents for the basis for the charge. The plant master palestine, the technical memorandums, the project descriptions, the planning level costs and schedule, they're all available online. In fact, we dedicated a rebuild the plant website where all the documents are publicly available. Key program documents are posted on San José website and accessible to anyone in the public. Since April of 2013 we have been issuing detailed semi-annual reports to highlight significant program accomplishments and project progress as well as upcoming priorities. since April of 2014 we have issued monthly program performance reports which includes program overview, performance metrics, project highlights, budget and expenditures.

Since April 2013 we have been issuing detailed semi annual reports to highlight significant program accomplishments and progress. This is on the city's website. We also provide a cip external monthly program status report. I think TPAC has seen these on a monthly basis. These are available online as well as they've been provided to the staff of the various agencies. Finally, I would like to end, we are certainly willing to discuss auditing requirements, but the city has been awarded, over many years, industry awards for best practices. So we would be happy to sit down and discuss the agencies concern, but we don't believe that there has been any violation of the master agreement.

Thank you for your time.

>> thank you. Would you care to respond to the question that I raised earlier about this -- the suggestion that the city changed how it was classifying -- or how it was going to characterize the cost allocation on the digester project?

>> sure. The engineered design for the digester project was completed in December of 2015. The technical memorandum analyzing what the parameters for particular projects that are considered process related was actually not completed until recently. And I am -- if you have detailed questions, which is beyond my expertise, we have engineers. Rob grantham here to answer any questions you might have.

>> maybe if you could shed light on what motivated staff's decision to be -- to rejigger how to allocate the costs on that project.

>> absolutely. Rob gran tham. Working in order to create a fair and reasonable cost allocation. Originally one of the key objectives and parameters, we talked about three mod methodologies. I talk about those three and how they apply to original approach and site modification. Key tenants.

Stability. Especially with a tributary agencies looking for stability year over year in terms of what costs might be coming up in terms of capital contributions. Another key tenet is proportionality. The reasonable cost allocation between the different agencies based on what they own, both from a flow and loaning perspective. We had three methodologies. One is discuss the rolling average. We take the existing system, which was designed to treat both flow and quantity -- quality of waste water.

This program is in large part, as discussed, the replacement of that system. What the rolling average does is says we're going to take and allocate those costs based on the existing system. We're replacing it. It's reasonable to then take and ask everyone to pay in proportion to the existing system in place. The benefit of the rolling average. Created that stability. And I'll get into it in a moment in terms of materiality.

I think it's an important element. When we move over to a project by project allocation, we looked at each one of the projects as best known at that time in terms of cost. Digesters, cogen, so on and so forth. We did the allocation. We came up within \$8 million out of \$1.4 billion in terms of the rolling average tying out to this project by project allocation. That's.5%. In terms of planning level estimates, materiality needs to be discussed. And so, basically, as a group, tributary agencies, very much a part of this process, and the owners, we said rolling average seemed like a reasonable approach knowing that we would be getting into more detailed allocations as we went.

Last alternative is to doin' a allocation based on the cip, which also creates stability. We know what we're going to spend over time. Specifically tied to those existing projects. The challenge with that approach is that the cip can change. We talked about that just a moment ago in terms of projects are going to change in terms of cost, timing and maybe some projects will be pulled out. So that leaves two alternatives, the rolling average or project by project. So initially, because of the timing in terms of the cost -- knowledge of the specific costs, we used rolling average.

It's appropriate in terms of planning level costs, to base it on that existing system that we're replacing. Now that we have gone through the process, understand the specific costs say like with the digesters, it is reasonable and it is appropriate to go back and look at that and say, based on what we originally looked at, is that still in alignment? What we're proposing now which is an agreement with the tributary agencies and the owners, is to look at those project by project. We have a cost. We can state what billable parameters they tie back to. And then the approach in terms of changing the methodology is now reasonable and the costs stay relatively the same between rolling average and project by project in the aggregate.

>> that information was only really available to us when the report was done in December.

Is that correct?

>> correct.

>> you work for corolla?

>> the program team delivering the project. Mwh corolla team.

>> thank you very much.

>> thank you.

>> I just had another question. I know that the tributary agencies wanted us to spend our time -- I say "our," I mean staff's time -- negotiating over the agreement at the end of last year when the document was submitted. You indicated that priority had to be given to financing, trying to figure out the financing for the project. Could you explain why that was the priority.

>> sure. And as to the critical nature of the project, I'll defer to the capital team. I can speak to the timing.

During the fall we were spending considerable amount of time trying to put together long-term financing strategy. The -- they had proposed certain amendments. We had looked at them. And our priority was to submit the application for the srf, which was the best form of long-term financing available. So we had proposed a more limited set of amendments in order to expedite that process because we felt that the scope of the proposals they submitted would have required extensive negotiations. Moreover, it's our position that the current master agreement has enforceable provisions already. We are here today, and we still don't have an amendment.

So at the end of the day, you know, we're going to be at the table because we need to be at the table. We have a long-term relationship here. We need to walk this through. But they submitted a claim, and we have to prepare a defense. And so we need to get over this claim. It's our position that the claim doesn't have any merit. And then we can begin negotiation.

>> thank you. Okay. I have three members of the public who submitted cards. I'm happy to go to public comment and then come back to the panel. Would that be all right? Okay. David Wall followed by michelle I believe it's kokeror?



For give me if I am not reading it correctly. And ken.

>> two minutes.

>> with reference to what type of car you're buying, it's a gold, diamond-studded lamborghini. The following issues should not need to be built. Mechanical dewatering, the co-gen facility and above all stay away from -- [Lost audio]

>> -- digester versus dual-phase anaerobic mesophyllic digesters which is a significant lower cost. It will produce class a biosolids.

Now, with reference to the funding. City of San José, for the last five fiscal years, has returned to fund balance tens of millions of dollars. This is to the detriment of the tributary agencies because you're relying on the city of San José to be competent. That is to your peril, because you base your rates on the projected budgets. if they're returning to fund balance was, I have shown you, 50 million, 52 million, 40 million and what have you for the last five fiscal years, obviously competence is not part of the equation. Now, you should also look into the south bay water recycling. Why wasn't that audit -- why was that audit intentionally deferred?

Because you're going to have far more claims from the tributary agencies when you see that. There are other issues that will be a matter of record that I have spoken about and will continue to let you know. Thank you.

>> thank you, sir. Michelle.

>> after michelle, it's ken. Feel free to come down here to the base of the stairs.

Thank you.

>> all right. Hi. How are you? My -- I actually have a clarifying question, and the clarifying question is actually, it's like putting the cart before the horse because the question is, Miss Santahari? No. Rosa, counsel, had stated that there are reasons that there are two tributary agencies that are not on the TPAC council.

But I could be asking this question if I were on the TPAC council, as I do represent the board for the burbank Sanitary district. So it's sort of a question of what are the reasons that the board of one of the districts is not on this advisory committee? So that is the question. i don't know if you guys can clarify that question, but it is a question I wanted to bring up to the committee to understand that there is county Sanitation 23 and burbank Sanitary district that are both not seated at that table with you that should have input into what is going on.

>> thank you. This is time for public comment. I'm sure that question will be swimming in everyone's minds and I'll allow them to respond when they choose.

>> great. I appreciate that.

>> thank you. Mr. Colson? [Inaudible]

>> the question -- so Mr. Colson wasn't on the mike.

Mr. Colson raised the concern raised by Miss Kelkabor with regard to the lack of representation of two of the tributary agencies on the TPAC advisory board. [Inaudible] >> so we are now returning to the board for questions. For clarification or for comments. Feel free to push the green button on the upper-right corner if you would like to speak. All right. Mr.

Sykes.

>> thanks, mayor. I actually had a list of questions I was going to ask, but in kind of listening to things today, I don't know if there's really -- it would be that productive. We heard, I think, from the complainants about the allocation method. And I feel in terms of our response to that and kind of how things have been done, I don't see where we have breached the contract in using our allocation method. I think the explanations provided by the staff made complete sense to me. I think what I really heard from the complainant is concerns about how and when payments are to be made under the agreement. And the difficulty that kind of presents for the tributaries.

But the fact is that doesn't translate to a breach in the contract. I think, really, what we were hearing was a request to negotiate changes to the agreement. And so I think we've -- we have expressed an interest in doing that. I just don't see how that translates to a breach in the agreement. So I don't really see a need to kind of go through questions trying to pin people down. It's too bad we had to kind of get this far. I think at one point the mayor had sent a letter offering to kind of -- asking if the tributaries would be willing to withdraw their complaint so that we can sit down and have this conversation.

I think all of us probably up here are ready to have that. It would be my wish that we can head in that direction. I don't personally see there is merit in the complaint and there's, I think, really, other issues that the tributaries are really wanting to get to.

>> thank you. Mr. Gatto.

>> thank you.

>> would you hit the button underneath the mike.

>> yeah. I'm okay now?

>> there you go.

>> thank you. All this technology is beyond me. I would like to just put things in perspective because I think the majority of what you are hearing is frustration on the part of the agencies in trying to get some sort of a resolution to this whole issue.

Back when this whole plan started, it was the -- it was obvious that, after 50 years, the plant needed some rehab, and so the idea of a new vision for the plant was well accepted. The concern even at the beginning was how was this going to be paid for. And the numbers that we got offered to us, because the CIPs have been running in the \$40 million to \$50 million range a year, and we were told that, under the new vision, we would probably be in the neighborhood of \$80 million to \$90 million a year in CIPs. Okay. So that was understandable with the scope of the projects we were looking at. I think all of the agencies in San José and Santa Clara started to raise rates in anticipation of the new reality. So some were more aggressive than others, but at least there was anticipation that three or four years down the road, going back to '13, '12, that we would need more money than we were presently acquiring from our rate payers.

we made that decision. Most agencies raised rates to some reasonable level. All along, even before the master plan was approved by San José, the discussion was, this is a major, major undertaking. We need a document that reflects the reality of this undertaking, which, translated, as was a new agreement. So that discussion occurred well into the 12, 13 years' time frame, well before the thing was approved. Now it gets approved. There is still some questions about the various components, but I'm going to leave that aside for the moment.

Within the approved document that was for the master plan, there was a chart that showed the various projects by year, by category, by amount. Understand that was an estimate, and it was the best guess at the time. Subsequent to that we were told there was going to be a validation process where they were going to look more closely at the various projects and refine some of the costs. That validation process took place. We never saw that chart that was in the master plan updated to reflect whatever the validation process produced. So we had no concept of what the new costs were. In early of last year, there was a financing strategy, if you will, memo put out.

Within that memo there were costs that were proposed that were radically different both in timing and amounts, from what was approved in the master plan. Anytime we tried to get clarification of what all that meant, we were

rebuffed. Causing frustration. The whole last year was basically one of posturing and no resolution of any of these issues. I am happy to hear that we're looking perhaps to sit down and talk about this in some meaningful dialogue. I think, without that, you are never going to get resolution to this issue. Thank you.

>> thank you for your comments. I agree with all of them except for one word, which is "perhaps." I think we have expressed a strong -- and I say we -- those of us -- Santa Clara and San José delegation have expressed a desire to sit down at the table to discuss all of these issues. I think -- you know, as I look at the claims that are raised in the briefs, and I want to commend counsel on both sides for doing an excellent job, I thought the briefs really helped to narrow the issues considerably. They were much more substantive than I've heard in the media or press releases so I appreciate that. Seems like whether you regard the allegations as true or false is probably less relevant. I think the real question is I don't think they're ripe. That is, as I asked Miss Stralman, whether or not we've defined which projects have been mischaracterized as replacement projects for improvements, that's forthcoming.

both sides seem to have greater clarity. The single example that was used was the digesters that was not an example. I think that supported the notion that somehow or another there was a mischaracterization. What we heard from the engineers is as with all projects we gather information with engineering and design better enabling us to allocate costs. Going back to your point, John, the validation of costs -- the only true way to validate the cost of any project is to go out for bid. That's when we really know what it's going to cost. Even then, sometimes, as we all know, we get change orders and who knows, right?

So there's got to be a certain level of tolerance for uncertainty in this process because that's the way big capital projects work. Obviously we want to be fully transparent. We want all the agencies to be full partners in analyzing every detail to be able to understand are we saving the dollars we need to save and delivering these in the most cost effective way. I think there needs to be additional negotiation first to narrow down what the difference really is on the mischaracterization of projects. And we've seen in the response brief from San José and Santa Clara a desire to negotiate over some change in the timing of when the billing would be determined to allow perhaps for greater certainty in that number. I think we've seen certainly in the response city of San José and Santa Clara the concern raised in part 7 that there is no desire to allocate legal costs to the tributary agencies that would be consumed by Santa Clara and San José. So as I look at all of this, it goes back to I think to what Dave said.

I think what we ought to do is simply deny this, get to the negotiating table. If folks want to raise these concerns thereafter, let's raise the concerns after negotiation but let's get to the table and work these out. Other questions or comments?

>> comments.

>> yes. Mayor.

>> first, on your last comment maybe we could go in parallel, keep the claim and then negotiate.

Doesn't hurt. You know. That's number one. The key thing there is we, again – this is a big, huge capital project, billions of dollars. And definitely the current master agreement does not reflect that in detail. So that's what we want to know. Is it something new, billion dollars.

You want a big clarification on that one. Second, you were asking us to extend to 2065 without due review of the whole agreement. I think we deserve a full agreement out of you to the agreement and you should listen to what we say too instead of just saying, oh, it's enforceable, just go on, close your eyes. That's what I'm hearing. Enforceable. Go on. That's not comfortable.

That's what we are seeing. Third, maybe I am a layman here. I mean, I am a layman, but I am looking at definition of billable parameters and rolling weighted average. For sure, pre-planning is another cost. But you know the project. The project has definitely been pre-planning at its face is more than \$2 million. That would drop it under billable parameters.

Second, you know that it's not a replacement project. It's a new project too. So that, again, should be a billable parameter. So initially even at the beginning you don't have all the estimates of cost but you have ballpark estimate of how much even the first phase is, more than \$2 million, and the whole project definitely is multimillion, if it goes through. So why are you avoiding the billable parameters and keep using the rolling weighted average? That's where I am coming from. So this is just one example.

So I don't know. I am speaking here as a layman. Because it's to our disadvantage if we were charged more even in the beginning, even we were paid back at the end because of financing. You know. And we don't want to unnecessarily burden our tax -- not taxpayer. Rate payers at the beginning when in fact it should not be. That's why it's important that your actual should be as close as possible.

That's really where competence comes in. If they are so far, I can say that the job was a guessing game. You know? Because you are not even close to the actual. I am sure most projects are -- it is not exact, but the difference should not be tremendous is what I am saying. Okay. So, because of that, I -- we want to work with you.

This is our -- I would say our plan, although it's San José and Santa Clara. When we sit together, we could build a good bridge that could be good up to 2065. It's a good project. It's a good game. To say that, oh, you have no

claim. They are not -- they are not valid. It's unfriendly, you know. Because we come here and offering some friendly, friendly offers to sit down.

Let's build a strong foundation. Listen to us. Maybe we'll eat some of your staff time. But by sitting down, you go into the details. And then, from there, we could summarize the result. That's how I understand the whole picture here. Thank you.

>> thank you, mayor.

>> other questions? [Captioner lost audio feed]

>> -- sit down and work this out. I have a discussion. Perhaps the next meeting of TPAC could frame the issues and maybe narrow down the points, see what the points of agreement are. If that doesn't work, then I think we're, you know -- have to go elsewhere. I think it's worth at least an hour or so at that meeting to see if we can't focus the issue, define the issue, and maybe find where we have agreements.

>> I thank you. Other questions? Let me suggest -- I certainly appreciate the spirit of the suggestion. I suspect that the most productive conversation would probably be happening among staff before we ever got to a TPAC hearing or meeting. Because I think these are really -- these are very technical questions that I know I am not well versed at understanding no matter how much reading I might do. And perhaps, having staff be able to narrow the areas of difference first might help before it even gets to TPAC. Would you concur, Mr.

Gatto?

>> no. I think that we need to frame the broader issues and then TPAC, or the staff, can fill in the details. If there is wordsmanship that needs to be done, they can do that, but there needs to be a consensus on where we're going with this thing in general, not some of the discussions today have been very technical and very detailed. I am looking at a process that we can all agree with of how we're going to do this master plan. And I think that it's worth at least an initial discussion. If it proves that we need to have staff involved, then I am willing to let it go.

But I think we need to have at least a broad level, top-level discussion, of what the general concepts are.

>> I think that we are constrained here, for the purposes of this hearing, to simply decide whether to deny or accept the claims. And I suppose we might have a third option, which is to defer. I'll look to counsel never we otherwise. >> you could defer it. You could also potentially hold the claim in abeyance until you wanted to go through some other process, if you wanted to go to TPAC, if you wanted staff to do some more work. Other options.

>> okay. So certainly I am willing to -- in terms of -- I know I am only one vote here out of nine. In terms of what I would be willing to vote for. I would be willing to vote for a denial and we let staff work on this and, if there are still claims, then the claims can be raised subsequently. Alternatively we defer, hold this in abeyance and work it out and then I would imagine perhaps the hearing could be continued to the next TPAC meeting or whenever it might be, if that's appropriate. I'll let the lawyers tell me if I am way off on that. counsel leonardis.

>> thank you, mayor. I would be inclined to entertain a motion that we move forward, keep the claim on the table but move forward with mediation. In parallel. Until this is resolved.

>> is that a motion?

>> yes.

>> okay.

>> allow me to ask either of our -- San José-Santa Clara staff or counsel, how does that impact whatever we're trying to do in terms of the time line for getting financing to be able to get particularly the digester project, which I know is mission critical. How would the proposed motion affect that time line?

>> there are two issues here. With respect to the claim under the master agreement, in the agencies asserting a claim, this is the process that's required, that enables them to pursue other remedies. This is a -- kind of a conditioned precedent. So some determination with respect to the claim should be made at some point, obviously TPAC can collectively agree to continue it. But it's a procedural requirement for them to pursue other remedies.

>> by that you mean file a claim in superior court.

>> that's right.

>> right.

>> with respect to the second issue of the srf loan, we are still hopeful, if we can quickly negotiate something that's amenable to the agencies, that's sufficiently narrow in scope that we can still bring them along, but time is ticking, obviously, and the sooner we get together to try and agree on changes, the better.

>> okay.

>> May I --

>> yes.

>> thank you.

If I could interject. It's my understanding that the agencies can still participate in the state revolving fund loan without agreeing to San José's and Santa Clara's amendment. So I thought that we would just be able to -- be able to be added to the loan application, so I don't understand, you know, what could hold us up.

>> I'm not sure how it is we agree that is any lender is going to agree to finance a set of projects if agencies are only willing to pay for those projects for a period of less than 30 years and we're looking for 30-year financing. My understanding is that's the primary obstacle, right? We need a period of agreement which matches the period of financing, and we don't have that, if this wraps up in 2031. >> hopefully counsel and I can somehow come to an agreement so we can move forward with financing. >> those -- the 30 years start the year after completion of every project.

So we'd look to the project time lines and come up with that. The initial application that we have filed, because, again, we were operating under the principle that everybody was going to participate, is for the entire project loan amount. But we would have to show that all of the agencies on whose behalf we are borrowing, we have an agreement with them that at least goes through the term of the loan. Rhine right now it would not do that with the 2031 time line.

>> Mr. Leonardis has made a motion. There is not a second yet.

So if there is a second, it can be made now. If not, the motion will fail and we can reconsider another motion.

>> okay. So that motion fails. So I -- I would like to suggest -- yes?

>> I was going to make a motion?

>> please.

>> I move that we deny the claim.

>> second. >> there is a motion to deny the claim. Any comments on that motion? All right. Let's vote on that motion. All in favor -- perhaps you can raise your hand since I know that electronic system May not be working.



One, two, three, four -- okay. So that motion has -- six votes. All right. All against? Three NOs. So that passes by a vote of 6-3.

>> Mr. Mayor?

>> yes.

>> the committee has acted. May I make a suggestion, then, that if counsel sees it the right thing and staff sees it the right thing that discussions may continue on an informal basis and if something wants to come back at the next TPAC or the TPAC after that meeting that would be fine.

>> that's a good suggestion. There is a desire to work this thing out. I know we'll be reconvening for TPAC and hopefully the scope of difference will be considerably narrowed if not eliminated. That's optimistic I know.

At least if significantly narrowed we'll all have a better opportunity to make progress. So, there has been a -- I think a close of the hearing and a vote. Any other comments from my colleagues before we adjourn the meeting? All right. We'll adjourn. Thank you.



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Barry Ng  
Kerrie Romanow  
Jennifer A. Maguire

**SUBJECT:** SEE BELOW

**DATE:** June 1, 2016

Approved

Date

6/1/16

**SUBJECT: REPORT ON BIDS AND AWARD OF CONTRACT FOR  
7987 – CONSTRUCTION-ENABLING IMPROVEMENTS PROJECT**

## RECOMMENDATION

- (a) Adopt a resolution approving the Construction-Enabling Improvements Project Addendum to the San José / Santa Clara Water Pollution Control Plant Master Plan Environmental Impact Report (SCH# 2011052074) and related Mitigation Monitoring and Reporting Program (File No. PP15-120).
- (b) Report on bids and award of contract for the 7987 – Construction-Enabling Improvements Project to the low bidder, Teichert Construction, Inc., for the base bid of \$3,124,885 and Add Alternate No. 2 in the amount of \$11,025 for a total amount of \$3,135,910 and approval of a 10 percent construction contingency in the amount of \$314,000.
- (c) Adopt a resolution authorizing the Director of Public Works to execute one or more change orders in excess of \$100,000 for the duration of the Construction Enabling Improvements project, not to exceed the total contingency amount approved for the project.
- (d) Adopt the following 2015-2016 Appropriations Ordinance amendments in the San Jose-Santa Clara Treatment Plant Capital Fund:
  - (1) Decrease the Urgent and Unscheduled Treatment Plant Rehabilitation appropriation to the Environmental Services Department by \$455,000; and
  - (2) Increase the Construction-Enabling Improvements appropriation to the Environmental Services Department by \$455,000.

<sup>1</sup> The legal, official name of the facility remains San José -Santa Clara Water Pollution Control Plant, but beginning in early 2013, the facility was approved to use a new common name, the San José-Santa Clara Regional Wastewater Facility.

## **OUTCOME**

Award of this construction contract to Teichert Construction, Inc. will allow for the construction of the Construction-Enabling Improvements Project (Project) at the San José-Santa Clara Regional Wastewater Facility<sup>1</sup>. Approval of a 10 percent construction contingency will provide funding for any unanticipated work necessary for the completion of the project. Adoption of the appropriation ordinance amendments will provide additional funding need to construct this project.

## **BACKGROUND**

The San José-Santa Clara Regional Wastewater Facility (RWF) is an advanced wastewater treatment facility that treats an average of 110 million gallons per day of wastewater collected from eight South Bay cities and four special districts. Most of the infrastructure at the RWF is more than 50 years old, has exceeded its useful life and needs repair. The RWF is currently undertaking numerous projects under the Capital Improvement Program (CIP) to rehabilitate and upgrade infrastructure at the RWF. The CIP includes 24 projects, valued at more than \$900 million, which will be under construction over the next eight years. Projects range in size from \$10 million to over \$120 million. Major projects include the Digester and Thickener Facilities Upgrade, Cogeneration Facility, Headworks Improvements and New Headworks, Nitrification Clarifiers Rehabilitation, Filter Rehabilitation, Digested Sludge Dewatering Facility, and Aeration Tanks Rehabilitation.

As part of the Environmental Impact Report (EIR) for the San José / Santa Clara Water Pollution Control Plant Master Plan, the transportation and cumulative impact analyses identified the need to provide construction staging as mitigation to address the traffic-related impacts associated with construction of CIP-related improvements, including preparation of a Construction Traffic Management Plan (CTMP). The Project responds to the EIR mitigation requirements by providing necessary facilities to improve safe access to and from the RWF from Zanker Road and support increased construction activities associated with the CIP projects.

The Project will widen and reconfigure approximately 1,500 feet of Zanker Road to add a dedicated northbound left-turn lane directing construction traffic into a new secured access driveway entering the RWF and add a dedicated southbound acceleration lane onto Zanker Road for construction traffic exiting the new driveway. This new configuration will accommodate safe access into and out of the RWF during peak construction periods when daily traffic volumes are expected to increase by several hundred vehicle trips. The Project will also include an area where contractors can locate their construction trailers, including a contractor staging area and contractor employee parking area that will encompass an area of approximately 7.5 acres. The Project will also install an eight-foot-high chain link perimeter fence that will extend along the southern boundary of the Project site. Attachment A shows the Project location.

Several temporary construction support structures will also be included in the Project. A new entrance gate guard shack and a 720 square-foot Safety Orientation and Security Badging trailer

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will be located on the new driveway, which will be west of existing gate Z-12 off Zanker Road. To support anticipated construction management (CM) staff needs, a new 2,900 square-foot CM trailer will also be installed as part of the Project, and will be located adjacent to the existing CM trailer in the west parking lot of the Environmental Services Building. Installing associated utility infrastructure and purchasing the existing CM Trailer lease is included in the Project budget. Construction of the new access improvements along Zanker Road require designating approximately 27,000 square feet of RWF property along the west side of Zanker Road as public right-of-way and accepting the newly-designated right-of-way into the City's street system. Since the RWF is co-owned by the City of Santa Clara, both the City and the City of Santa Clara must consent to the designation of additional right-of-way. Approval of the right-of-way designation was approved by Treatment Plant Advisory Committee (TPAC) on May 19, 2016. The Santa Clara City Council adopted a resolution designating the additional right-of-way area on May 24, 2016. The San José City Council is expected to approve the designation on June 7, 2016.

Construction is scheduled to begin in August 2016 with substantial completion in December 2016.

### ANALYSIS

Bids for this project were opened on April 7, 2016 with the following results:

<u>Contractor</u>	<u>Base Bid Amount</u>	<u>Add Alt Total</u>	<u>Total Bid</u>	<u>Variance Amount</u>	<u>Over/(Under) Percent</u>
Teichert Construction (Pleasanton, CA)	\$3,124,885	\$142,649	\$3,267,534	(\$14,023)	-0.43%
<b>Engineer's Estimate</b>	<b>\$3,039,712</b>	<b>\$241,845</b>	<b>\$3,281,557</b>	---	---
Granite Construction (Santa Clara, CA)	\$3,256,018	\$158,953	\$3,414,971	\$133,414	4.07%
Galeb Paving, Inc. (Saratoga, CA)	\$3,406,589	\$183,263	\$3,589,852	\$308,295	9.39%

In addition to the base bid scope of work, there are four Add Alternate bid items included in the bid documents for the following items of work:

1. Additional Parking and Staging Area (supports future growth in 2020);
2. Offsite bicycle signage recommended by the RWF CTMP to provide bicyclists information on an alternative bike route around the RWF (safety issue);
3. Electrical power circuit to staging area (pedestals 1, 3, and 5, for contractor use); and
4. Electrical power circuit to staging area (pedestals 2, 4, and 6, for contractor use)

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<b>Contractor</b>	<b>Add Alt. 1</b>	<b>Add Alt. 2</b>	<b>Add Alt. 3</b>	<b>Add Alt. 4</b>
Teichert Construction (Pleasanton, CA)	\$51,624	\$11,025	\$40,000	\$40,000
<b>Engineer's Estimate</b>	<b>\$154,345</b>	<b>\$17,500</b>	<b>\$35,000</b>	<b>\$35,000</b>
Granite Construction (Santa Clara, CA)	\$61,928	\$11,025	\$43,000	\$43,000
Galeb Paving, Inc. (Saratoga, CA)	\$84,678	\$11,585	\$45,000	\$42,000

The Bid Alternates were included in the event that bids came in sufficiently below the engineer's estimate to award additional work. Given the available funding for this project, Staff recommends awarding the base bid and Add Alternate 2 only. The base bid and Add Alternate 2 cost submitted by Teichert Construction is 2.6 percent above the Engineer's Estimate. Staff considers the bids submitted for this project acceptable for the work involved and recommends award of contract to Teichert Construction.

Teichert Construction has no recent history working with the City, but it has operated in the State of California for over 127 years, constructing private and public infrastructure projects while possessing one of the oldest active California Contractor's Licenses (No. 8). Teichert Construction's corporate office is located in Sacramento, California and it has six construction offices located in Central California, including one located in Pleasanton. With experience constructing public sector projects such as roads, highways, bridges, airport runways, dams, canals, levees, driveways, parks, and recreational facilities, Teichert Construction has the necessary experience to perform the work required for the Project.

Council Policy provides for a standard contingency of ten percent on public works projects of this nature to cover for unforeseen conditions that may be encountered during construction. Staff considers the 10 percent contingency appropriate for the Project.

Staff also recommends delegating authority to the Director of Public Works to execute one or more change orders in excess of \$100,000 for the duration of the Project. This is not to exceed the total contingency amount approved for the Project, and is subject to other applicable limitations on the authority of the Director in the San José Municipal Code. Approval of these recommendations will provide staff with the flexibility to efficiently and effectively respond to and provide the funding for any unanticipated work necessary for the proper completion of the Project.

### **EVALUATION AND FOLLOW-UP**

No additional follow-up action with City Council is expected at this time. A progress report on this and other RWF capital projects will be made to the Transportation and Environment

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Committee and the Council on a semiannual basis. Monthly progress reports of the RWF CIP will also be submitted to the TPAC and posted on the City's website.

### **PUBLIC OUTREACH**

A "Notice to Contractors" inviting qualified contractors to submit a bid was posted on BidSync and the *San José Post Record*. This memorandum will be posted on the City's website for the June 14, 2016, City Council meeting.

### **COORDINATION**

This project and memorandum has been coordinated with the Finance Department, the Planning, Building and Code Enforcement Department, and the City Attorney's Office. This item is scheduled to be heard at the June 9, 2016 TPAC meeting.

### **FISCAL/POLICY ALIGNMENT**

This project is consistent with the City Council-approved Budget Strategy Economic Recovery section in that it will spur construction spending in our local economy.

### **COST SUMMARY/IMPLICATIONS**

1. AMOUNT OF RECOMMENDATION/COST OF PROJECT:	\$3,135,910
Project Delivery *	\$941,618
Buy Out of Existing Construction Management Trailers	\$200,000
Utility Service From PG&E Construction	\$50,000
Construction ((Base Bid plus Add Alt No. 2)	\$3,135,910
Contingency (10.0%)	<u>\$314,000</u>
<b>TOTAL PROJECT COSTS</b>	<b>\$4,641,528</b>
Prior Year Expenditures **	\$164,528
<b>REMAINING PROJECT COSTS</b>	<b>4,477,000</b>

\* Project delivery includes \$30,630 for consultant design and construction support services, \$100,360 for project management during feasibility and development, \$403,200 for project management during design, \$58,000 for bid and award, \$262,190 for construction management, \$72,238 for environmental consultant services, and \$15,000 for post construction and project closeout. The estimated project delivery cost is 30% of the construction cost, which is in line with project delivery costs for other City capital projects of similar size.

\*\* Prior year expenditures were made in the Plant Infrastructure Improvements appropriation.

2. COST ELEMENTS OF AGREEMENT/CONTRACT:

This is a lump sum contract. \$3,135,910

3. SOURCE OF FUNDING: 512 – San José-Santa Clara Treatment Plant Capital Fund.

4. OPERATING COSTS: The annual costs to operate and maintain this project have been estimated at \$154,000 beginning in 2017-2018, as shown in the Proposed 2016-2017 Capital Budget and 2017-2021 CIP.

5. PROJECT COST ALLOCATION: In accordance with the recommendations set forth in the Capital Project Cost Allocations Technical Memo (Carollo Engineers, March 2016), this project is allocated between the four billable parameters relative to the rolling weighted average distribution of all RWF assets.

Funding for the Project in the 2015-2016 Construction-Enabling Improvements appropriation is insufficient for this award. A budget action is recommended to increase the appropriation budget by \$455,000. To offset this increase, a decrease to the Urgent and Unscheduled Treatment Plant Rehabilitation appropriation is recommended.

**BUDGET REFERENCE**

The table below identifies the fund and appropriations proposed to fund the contract recommended as part of this memorandum and remaining project costs, including project delivery, construction, and contingency costs. Additional funding sources have been identified to cover the costs above the original budgeted estimate for this Project.

Fund #	Appn #	Appn Name	Current Total Appn	Rec. Budget Action	Amt for Contract	2015-2016 Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
512	6313	Construction-Enabling Improvements	\$3,476,000	\$455,000	\$3,135,910	V – 187	06/23/2015, Ord. No. 29589
512	7395	Urgent and Unscheduled Treatment Plant Rehabilitation	\$1,500,000	(\$455,000)	N/A	V – 197	06/23/2015, Ord. No. 29589

Included in the 2016-2017 Proposed Capital Budget, which is currently scheduled for adoption on June 21, 2016, is \$785,000 for this project.

HONORABLE MAYOR AND CITY COUNCIL

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**Subject: 7987 – Construction-Enabling Improvements Project**

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**CEQA**

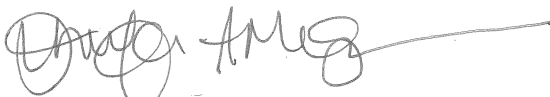
Addendum to the Environmental Impact Report for the San José / Santa Clara Water Pollution Control Plant Master Plan (SCH# 2011052074), CEQA File No. PP15-120, April 2016.

/s/

BARRY NG  
Director of Public Works

/s/

KERRIE ROMANOW  
Director, Environmental Services



JENNIFER A. MAGUIRE  
Senior Deputy City Manager/  
Budget Director

For questions please contact Michael O'Connell, Deputy Director, Department of Public Works at (408) 535-8300.

Attachment A – Construction-Enabling Improvements Location Map



# Attachment A



LOS ESTEROS ROAD

MAIN STREET

ZANKER ROAD

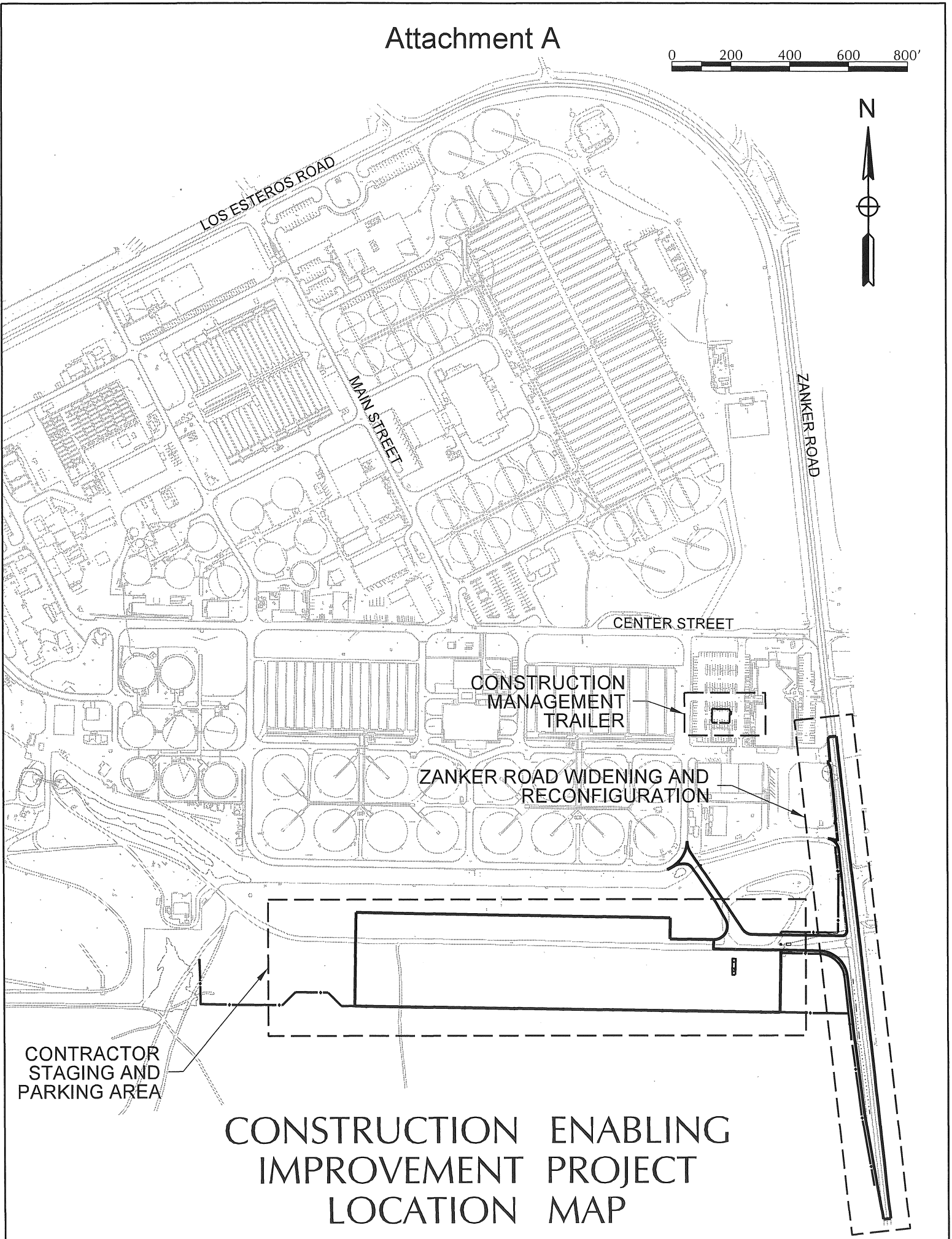
CENTER STREET

CONSTRUCTION  
MANAGEMENT  
TRAILER

ZANKER ROAD WIDENING AND  
RECONFIGURATION

CONTRACTOR  
STAGING AND  
PARKING AREA

CONSTRUCTION ENABLING  
IMPROVEMENT PROJECT  
LOCATION MAP





# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Kerrie Romanow

**SUBJECT:** SEE BELOW

**DATE:** June 1, 2016

Approved

*D. D. Syl*

Date

*6/2/16*

**SUBJECT: MASTER CONSULTANT AGREEMENT WITH BROWN & CALDWELL FOR ENGINEERING SERVICES FOR THE 8001- AERATION TANKS REHABILITATION PROJECT AND 8073 - BLOWER IMPROVEMENTS PROJECT AT THE SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY**

## RECOMMENDATION

Approve a Master Consultant Agreement with Brown and Caldwell to provide engineering services for the 8073 – Blower Improvements Project and 8001 – Aeration Tanks Rehabilitation Project at the San José-Santa Clara Regional Wastewater Facility from the date of execution through December 31, 2024, in an initial total amount not to exceed \$7,900,000, subject to the appropriation of funds.

## OUTCOME

Approval of the master consultant agreement with Brown and Caldwell (B&C) provides the City with the ability to obtain professional services required for preliminary engineering, design, and engineering services during construction of the Blower Improvements Project and Aeration Tanks Rehabilitation Project at the San José-Santa Clara Regional Wastewater Facility<sup>1</sup> (RWF). Approval of this master consultant agreement will not result in any physical changes to the environment, as the City Council will need to take additional actions before construction commences on the projects.

## EXECUTIVE SUMMARY

The RWF's secondary treatment system includes two separate parallel biological nutrient removal (BNR1 and BNR2) aeration basin systems which along with clarifiers form the

<sup>1</sup> The legal, official name of the facility remains San Jose-Santa Clara Water Pollution Control Plant, but beginning in early 2013, the facility was approved to use a new common name, the San José-Santa Clara Regional Wastewater Facility.

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**Subject: Master Consultant Agreement with Brown and Caldwell for Aeration Tanks Rehabilitation and Blower Improvements Projects**

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biological treatment process and function to remove organics and nutrients from the wastewater. Performance of each BNR facility directly affects the quality of the final effluent.

These two projects are focused on providing improvements to the BNR1 and BNR2 aeration basins and their associated aeration blower systems. These facilities were constructed in the 1960's, 1970's and 1980's, and many of their structural, mechanical, electrical, and instrumentation/control components are reaching the ends of their useful lives. The improvements to the BNR facilities will assure continued regulatory compliance, improve operational efficiency, and provide long-term reliability. The extent of these improvements will be determined following an updated condition assessment and an alternatives analysis performed by an engineering consultant.

Staff has completed the evaluation of the Statements of Qualifications (SOQ) submitted in response to a Request for Qualifications (RFQ) to procure an engineering consultant for both the Blower Improvements Project and the Aeration Tanks Rehabilitation Project. The SOQ was intended to select an engineering consultant to provide the following professional services: project management, CEQA support, preliminary engineering and detailed design, bid/award support, engineering services during construction and startup and commissioning assistance. Construction will be solicited and awarded under a separate procurement.

B&C emerged as the top-ranked firm, and it was determined that B&C met all the qualifications and experience requirements set forth in the RFQ. Staff has negotiated a master consultant agreement with B&C that is being recommended for award. The master consultant agreement will have an initial total maximum compensation not to exceed \$7,900,000 and a term that ends December 31, 2024. The master consultant agreement will include design and engineering services during construction for the Blower Improvements Project and condition assessment, alternative analysis and conceptual design for the Aeration Tanks Rehabilitation Project. Upon completion of condition assessment, alternative analysis and conceptual design for the Aeration Tanks Rehabilitation Project, the total not to exceed amount will be amended to include preliminary design, detailed design, bid/award support, engineering services during construction, and startup and commissioning assistance. The services to be provided in the amendment are estimated to approximately be an additional \$10,000,000. This amount will be refined following the alternatives analysis of the Aeration Tanks Rehabilitation Project when the project is better defined. After execution of the agreement, B&C will proceed with specified tasks under the master consultant agreement upon issuance of service orders by the City.

## **BACKGROUND**

### *Description of Existing Secondary Treatment Process*

Secondary treatment at the RWF is provided by two separate parallel biological nutrient removal (BNR) treatment facilities. The older facility, BNR1, was originally constructed in 1961 to provide aeration and carbonaceous treatment of the primary effluent. BNR1 aeration basins are divided into Batteries A and B and each battery has eight basins: Tanks A-1 through A-8 and B-1

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through B-8, respectively. Each basin has four quadrants and is configured to operate in two passes to provide plug flow treatment. Process or aeration air was originally supplied by six digester gas powered blowers housed in the Secondary Blower Building (SBB). Three electrically driven blowers were later constructed in 1982 within Building 40 to provide additional aeration air for current requirements and anticipated future expansion.

The newer facility, BNR2, was constructed in two phases in 1975 and 1984 and was originally intended to operate in series with BNR1 to provide nitrification. BNR 2 is divided into Batteries A and B and each battery has eight basins: Tanks A-1 through A-8 and B-1 through B-8, respectively. These basins were modified in 1990 to operate in parallel with BNR1. The modifications combined basins (e.g., Tanks A-1 and A-2 operate as a single basin) and were made to improve operations. Process air is supplied to BNR2 by five electrically driven blowers located in the Tertiary Blower Building (TBB) (See attachment for project location map).

### Previous Studies

Since the commissioning of the BNR facilities, several documents have been prepared to address the current status and future needs of the secondary treatment process including:

- 2013 Plant Master Plan (PMP);
- 2014 CIP Validation Project Summary;
- 2015 Blower Evaluation Technical Memorandum (TM);
- 2015 Biowin Modeling Technical Memoranda; and
- Bay Area Clean Water Association (BACWA) Study (ongoing).

The PMP and Validation Summary recommended improvements and rehabilitation to the secondary treatment facilities, BNR1 and BNR2 and all ancillary processes to replace aging infrastructure, improve efficiency, and reduce operating costs. The goal of these projects will be to ensure the long term integrity of all structural, mechanical equipment, piping and electrical/instrumentation and control components and compliance with future National Pollutant Discharge Elimination System (NPDES) permit requirements. The Blower Evaluation Technical Memorandum and Biowin Modeling Technical Memorandum have recommended initial process modifications that will include the conversion of any remaining coarse bubble diffusers to fine bubble diffusers to improve efficiency and reduce energy demands.

The on-going study being conducted by the Bay Area Clean Water Agencies (BACWA) is investigating if and when a probable total nitrogen (TN) standard will be imposed on discharges to the San Francisco Bay and will assist with determining the scope and timing of recommended process improvements.

The Blower Evaluation Technical Memorandum (“TM”) has documented the modifications to the existing blower system that are recommended to ensure that the system is capable of meeting the aeration demands of BNR1 and BNR2 following the startup of the new cogeneration facility. Based on the recommendations of the Blower Evaluation TM, this project will replace existing motors, install variable frequency drives, replace auxiliary equipment, improve the controls system, and rehabilitate the electrical system.

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*Aeration Tanks Rehabilitation Project Description*

The City initiated the Aeration Tanks Rehabilitation Project to perform a detailed evaluation of the alternatives to rehabilitate the secondary treatment process. Specifically, the Aeration Tanks Rehabilitation Project will evaluate options to mitigate identified deficiencies and improve long term reliability and energy efficiencies of the tanks. Construction for this project will be solicited and awarded under a separate procurement.

Although regular maintenance activities have been implemented to repair certain components, a larger and more comprehensive project is needed to address identified deficiencies, improve operational reliability, and bring the facilities up to compliance with current codes. In addition, the City anticipates that modifications to the secondary process may be required to accommodate potential changes in future NPDES regulatory discharge permit requirements. This project will complete an extensive condition assessment to determine the condition of the secondary treatment facilities, BNR1 and BNR2 and all ancillary processes.

It is expected that there may be an eventual conversion of BNR1 and BNR2 to a treatment process such as a Modified Ludzak-Ettinger process capable of achieving projected TN discharge limitations. This project will develop a sequential plan, including a detailed schedule, for the eventual conversion of the secondary treatment system from the existing step-feed system to one capable of meeting the anticipated more stringent NPDES permit discharge criteria. The extent and timing of the recommended capital improvements, currently programmed as a separate project (Aeration Basin Future Modifications), will be dependent upon the findings of an alternative analysis study.

The planning level construction cost for the above work is in the range of \$65 to \$75 million, which will be refined as the Aeration Tanks Rehabilitation Project advances through feasibility/development and conceptual design stages. The CIP Validation Project Summary identified the scope of work to include replacement of aeration diffusers, rehabilitation of process piping, structural rehabilitation of concrete aeration tanks, replacement of process pumps, and installation of partition walls. The engineering consultant will conduct a condition assessment and alternative analysis in the feasibility/development stage that will better define the construction cost and design fee. Upon completion of feasibility/development in August 2017, the master consultant agreement will be amended to include preliminary design, detailed design, bid/award support, engineering services during construction, and startup and commissioning assistance. This project will be delivered using the conventional design-bid-build project delivery method. Since the construction involves the rehabilitation of existing structures and facilities of repeatable design elements, there is limited opportunity to take advantage of innovative solutions often associated with alternative project delivery methods. Design is estimated to be completed by January 2019 with beneficial use anticipated by September 2023. Post construction activities for the project are scheduled to be completed by December 2024.

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*Blower Improvements Project Description*

Aeration air demands supplied to BNR1 and BNR2 are met through a combination of blowers. The Secondary Blower Building (SBB) engine-driven blowers, currently utilized to supply air to BNR1, operate on a blend of digester and natural gas. The City has executed a design-build contract to construct a new cogeneration facility (Cogeneration Project) that will utilize all of the digester gas. This means that digester gas will no longer be available to operate the SBB engine blowers and due to Title V Air Permit restrictions on total allowable emissions from the RWF, these engine-driven blowers will no longer be able to operate once the new cogeneration facility comes online. The project will modify the existing blower system to accommodate the City's long term aeration air demands, improve the reliability of the electrically driven blowers, and allow the City to decommission the six digester gas powered blowers. The project must be completed before the Cogeneration Project startup in spring 2019.

The planning level construction cost for the Blower Improvements Project is in the range of \$20 to \$25 million, which will be refined as this project advances through feasibility/development, preliminary design, and detailed design stages. This project will be delivered using the conventional design-bid-build project delivery method. Since the construction involves the rehabilitation of existing structures and facilities of repeatable design elements, there is limited opportunity to take advantage of innovative solutions often associated with alternative project delivery methods. Design is estimated to be completed by May 2017 with beneficial use anticipated by January 2019. Post construction activities for the project are scheduled to be completed by May 2019.

**ANALYSIS**

On December 23, 2015, the City issued an RFQ seeking preliminary engineering, design, engineering services during construction, and post-construction services for these projects. A non-mandatory pre-proposal conference and site tour was held on January 26, 2016. A total of 10 engineering firms attended the event.

Four responsive SOQs were received by the February 19, 2016 deadline from the following firms:

- Black and Veatch, Inc. (B&V)
- Brown and Caldwell (B&C)
- CDM Smith, Inc. (CDM)
- HDR Engineering, Inc. (HDR)

A Technical Evaluation Panel (TEP) consisting of representatives from the Environmental Services Department's RWF CIP and Operations and Maintenance divisions and a third-party independent reviewer evaluated and ranked the SOQs in accordance with the procurement process set forth in the RFQ.

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Each panel member evaluated the SOQs using a consistent scoring matrix based on the following evaluation criteria: firm experience, experience and expertise of key staff, project approach, cost, and Local/Small Business Enterprise (LBE/SBE) status. Each firm received a total score comprised of their SOQ score, LBE/SBE status, and interview score (if applicable) as shown below:

Description	Weight
Responsiveness	Pass/Fail
Expertise	15%
Experience	15%
Approach	20%
Cost Form	10%
Local Business Enterprise	5%
Small Business Enterprise	5%
Interview (if applicable)	30%
<b>TOTAL</b>	<b>100%</b>

After the TEP evaluated and scored the SOQs, the top two firms were invited for an interview. Interviews were evaluated and scored based upon the TEP's overall impression with respect to the firm's competence to successfully perform the work in a professional manner and in alignment with the City's expectations and preferences. The final scoring for each firm is based on their respective combined numerical overall scores of the SOQ and interview.

The final scoring is summarized below:

Rank	Firm	Expertise	Experience	Approach	Cost	LBE	SBE	Interview	Total
<b>1</b>	B&C	12.4	14.9	17.6	9.5	5.0	0.0	27.9	<b>87.3</b>
<b>2</b>	B&V	9.6	12.1	15.1	9.6	5.0	0.0	24.3	<b>75.7</b>

In accordance with City policy, 10 percent of the total evaluation points were reserved for local and small business enterprise status. Both of the firms selected for interview qualified for the LBE status. None of the firms applying qualified for the SBE status.

Award Recommendation

Staff recommends awarding a master consultant agreement in an initial amount not to exceed \$7,900,000 to the top-ranked firm, B&C. B&C is nationally recognized for their expertise in wastewater engineering, and more specifically, with the planning, design, and rehabilitation of secondary treatment processes. The B&C team demonstrated strong project management, technical expertise, and engineering design experience. The firm also demonstrated a strong local presence of management, organizational depth and a large pool of technical support staff resources to draw from.

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**Subject: Master Consultant Agreement with Brown and Caldwell for Aeration Tanks Rehabilitation and Blower Improvements Projects**

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The MCA not-to-exceed amount of \$7,900,000, is comprised of \$4,500,000 for the Aeration Tanks Rehabilitation Project and \$3,400,000 for the Blower Improvements Project. The master consultant agreement will include project management, CEQA support, preliminary engineering and detailed design, bid/award support, engineering services during construction, and startup and commissioning assistance for the Blower Improvements Project and condition assessment, alternative analysis and conceptual design for the Aeration Tanks Rehabilitation Project. Upon completion of the alternatives analysis for the Aeration Tanks Rehabilitation Project, the total not to exceed amount will be amended to include preliminary design, detailed design, bid/award support, engineering services during construction, and startup and commissioning assistance. Optional services for both projects include Clean Water State Revolving Fund (SRF) loan application assistance, value engineering participation, and other items of work as may be requested by the City and authorized by service orders.

B&C's compensation will be based on its employees' actual hourly wages (i.e., its direct labor cost) times a multiplier of 3.16. The multiplier will not change during the term of the master agreement. The multiplier is based on an independent auditor's financial report, and in addition to B&C's direct labor cost, it covers all of B&C's overhead (e.g., fringe benefits, payroll taxes, group insurance, building/rental expenses, etc.), associated project cost (e.g., computer equipment, network and telecommunications expenses, routine printing and copying, etc.), and profit under the master agreement. The master agreement also allows B&C to receive compensation for pre-approved subconsultants and contract personnel, as well as certain reimbursable expenses. The term of the agreement will be from the date of execution through December 31, 2024.

#### Funding Strategy

In accordance with the RWF Ten-Year Funding Strategy that was presented to and approved by the Treatment Plant Advisory Committee (TPAC) on May 14, 2015 and by City Council on June 2, 2015, staff will be pursuing an SRF loan to finance the Aeration Tanks Rehabilitation Project and Blower Improvements Project through the State Water Resources Control Board.

#### EVALUATION AND FOLLOW-UP

An amendment to the master consultant amendment will be brought back to the City Council in the summer of 2017. The amendment will include the remaining engineering services for the Aeration Tanks Rehabilitation Project and will increase the not to exceed amount which will be refined following the alternatives analysis of the project.

All service orders issued under this master consultant agreement will be reported to the TPAC on the monthly summary of procurement and contract activity. A progress report on this and other RWF capital projects will be made to the Transportation and Environment Committee and the City Council on a semiannual basis. Monthly progress reports of the RWF CIP will also be submitted to TPAC and posted on the City's website.



June 1, 2016

**Subject: Master Consultant Agreement with Brown and Caldwell for Aeration Tanks Rehabilitation and Blower Improvements Projects**

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Since the current action is for award of a master consultant agreement for professional engineering services, staff will return to City Council with a construction contract award recommendation after the final design and bidding phases of these projects are complete.

### **POLICY ALTERNATIVES**

***Alternative #1: Direct City Staff to provide the required services with in-house resources.***

**Pros:** These projects would give City staff an opportunity to gain experience in the design of large wastewater treatment facilities.

**Cons:** A lack of existing in-house capacity and expertise will result in significant delays completing these projects and subsequently create delays to other pending capital projects.

**Reason for not recommending:** This large and complex project requires the use of design professionals with experience and expertise in performing condition assessment work, preparing bid documents, and construction estimates. The work also involves multiple engineering disciplines (e.g., structural, mechanical, electrical, instrumentation, and controls).

***Alternative #2: Approve the full engineering consultant not to exceed amount of \$18,250,000***

**Pros:** This would reduce the Aeration Tanks Rehabilitation Project administrative cost and schedule by not requiring submission of an amendment for the balance of the engineering consultant's services.

**Cons:** Due to insufficient detailed information of the Aeration Tanks Rehabilitation Project scope, the full extent of engineering services and associated fees is not clearly known at this time.

**Reason for not recommending:** The Aeration Tanks Rehabilitation Project scope of work is not currently developed enough to procure the balance of the design services due to the absence of a comprehensive alternative analysis.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's website for the June 14, 2016 City Council meeting agenda. This item is scheduled to be heard at the Treatment Plant Advisory Committee meeting June 9th, 2016.

### **COORDINATION**

This project and memorandum has been coordinated with the City Manager's Budget Office, the Finance Department, the City Attorney's Office, and the Department of Planning, Building and Code Enforcement.

**FISCAL/POLICY ALIGNMENT**

The Aeration Tanks Rehabilitation Project and Blower Improvements Project are consistent with the City Council-approved budget strategy to focus on rehabilitating aging RWF infrastructure, improve efficiency and reduce operating costs. These projects are also consistent with the budget strategy principle of focusing on protecting our vital core services.

**COST SUMMARY/IMPLICATIONS**

1. AMOUNT OF RECOMMENDATION: \$7,900,000

2. COST ELEMENTS OF MASTER AGREEMENT:

<u>Cost Elements</u>	<u>Aeration Tanks Rehab</u>	<u>Blower Improvements</u>
Alternatives Analysis (incl. condition assessment)	3,500,000	0
Conceptual Design (10%) Preliminary and Detailed Design	1,000,000	0
Bid and Award Services		2,232,000
Engineering Services During Construction		68,000
SRF Assistance		1,000,000
<b>PROJECT AGREEMENT AMOUNT</b>	<b>\$4,500,000</b>	<b>\$ 3,400,000</b>

3. SOURCE OF FUNDING: 512 - San José-Santa Clara Treatment Plant Capital Fund.

4. FISCAL IMPACT: The Aeration Tanks Rehabilitation Project and Blower Improvements Project are funded through the San José-Santa Clara Treatment Plant Capital Fund and will have no impact on the San José-Santa Clara Treatment Plant Operating Fund (Fund 513) or the General Fund.

5. PROJECT COST ALLOCATION: In accordance with the recommendations set forth in Capital Project Cost Allocations Technical Memorandum (Carollo Engineers, March 2016), the cost for this project will be allocated 20 percent to flow, 60 percent to biochemical oxygen demand (BOD), and 20 percent to ammonia (NH<sup>3</sup>).

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**Subject: Master Consultant Agreement with Brown and Caldwell for Aeration Tanks Rehabilitation and Blower Improvements Projects**

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**BUDGET REFERENCE**

The table below identifies the fund and appropriation to fund the master consultant agreement recommended as part of this memorandum.

Fund #	Appn. #	Appn. Name	Total Appn.	2015-2016 Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
512	7677	Aeration Tanks and Blower Rehabilitation	\$1,815,000	V-175	06/23/2015 Ord No. 29589

Services performed by B&C under this agreement will be authorized by service orders. An appropriation is not required for execution of the master consultant agreement, but is required for each service order authorized under this agreement. The appropriation listed above is included in the 2015-2016 Adopted Capital Budget and may be used for service orders issued in 2015-2016.

Future funding is subject to appropriation and, if needed, will be included in the development of future year budgets during the annual budget process. Included in the 2016-2017 Proposed Capital Budget, which is currently scheduled for adoption on June 21, 2016, is \$15,717,000 for this project.

**CEQA**

Statutory Exempt, File No. PP10-066(d), Section 15262, Feasibility and Planning Studies with respect to the alternatives analysis and design work under the master agreement. B&C's scope of work for construction-related services such as bidding and award of the construction contract and engineering services during construction, as well as any future activities resulting in a change to the physical environment would require approval of CEQA review.

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


For questions, please contact Ashwini Kantak, Assistant Director, Environmental Services Department, at 408-975-2553.

Attachment - Location Map

ATTACHMENT - PROJECT LOCATION MAP



**CITY COUNCIL ACTION REQUEST**

<b>Department(s):</b> Environmental Services	<b>CEQA:</b> Statutory Exemption, File No. PP10-066(d), Consultant Services with no change in the physical environment	<b>Coordination:</b> City Attorney's Office, City Manager's Budget Office	<b>Dept. Approval:</b> /s/ Ashwini Kantak
<b>Council District(s):</b> City-wide		The Treatment Plant Advisory Committee will consider this item on June 9, 2016.	<b>CMO Approval:</b> 

**SUBJECT: AMENDMENTS TO MASTER CONSULTANT AGREEMENTS WITH CDM SMITH AND KENNEDY/JENKS FOR ENGINEERING SERVICES FOR PROJECTS IN THE SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY CAPITAL IMPROVEMENT PROGRAM**

**RECOMMENDATION:**

- (a) Approve an amended and restated master consultant agreement with CDM Smith, Inc. for engineering and construction management services for the 7701 – Headworks Project, with no extension to the term or increase to the maximum total compensation.
- (b) Approve an amended and restated master consultant agreement with Kennedy/Jenks Consultants, Inc. for engineering services for the 7448 – Filter Rehabilitation Project, with no extension to the term or increase to the maximum total compensation.

**BASIS FOR RECOMMENDATION:**

The City Council approved master consultant agreements with CDM Smith, Inc. (CDM) for engineering and construction management services for the Headworks Project and with Kennedy/Jenks Consultants, Inc. (K/J) for engineering services for the Filter Rehabilitation Project on December 1 and 15, 2015, respectively.

Both agreements were based on the standard Public Works master consultant agreement previously approved as to form by the City Attorney's Office in November 2012, but included provisions in an exhibit for compensation based on actual hourly wages times a multiplier (Multiplier). The Multiplier was contemplated in the procurements for both projects; however, the Multiplier is not compatible with the standard Public Works master consultant agreement, which allows compensation only on a time and materials or fixed fee basis. Therefore, the master consultant agreements with CDM and K/J must be amended for the City to compensate based on the Multipliers negotiated.

After the CDM and K/J agreements were executed, staff modified the standard Public Works master consultant agreement to incorporate the Multiplier as the sole basis for compensation and made other changes to the compensation structure in the standard form. This new form has been developed specifically for the Capital Improvement Program (CIP) at the San José-Santa Clara Regional Wastewater Facility. Staff anticipates using this as the primary compensation method for CIP consultant agreements going forward to minimize the time spent negotiating fees in the various new project-specific and program-level agreements and service orders.

Staff recommends amending and restating the CDM and K/J master consultant agreements to replace the current agreements with the new form. The amended and restated agreements will not alter the terms, multipliers or maximum compensation in the current agreements. CDM would be able to provide services through December 31, 2022 for an amount not to exceed \$9,670,000 and K/J would be able to provide services through June 30, 2023 for an amount not to exceed \$4,950,000.

<b>COST AND FUNDING SOURCE:</b>
No funding is needed to approve these amendments to the CDM and K/J master consultant agreements. Funds will be encumbered in existing project appropriations as service orders are issued.
<b>FOR QUESTIONS CONTACT:</b> Ashwini Katak, ESD Assistant Director, (408) 975-2553



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Kerrie Romanow  
Barry Ng

**SUBJECT:** SEE BELOW

**DATE:** May 26, 2016

Approved

Date

6/2/16

**SUBJECT: MASTER AGREEMENTS WITH KENNEDY/JENKS CONSULTANTS INC. AND MNS ENGINEERS, INC. FOR CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES FOR THE SAN JOSE -SANTA CLARA REGIONAL WASTEWATER FACILITY CAPITAL IMPROVEMENT PROGRAM**

## RECOMMENDATION

Approve Master Consultant Agreements with Kennedy/Jenks Consultants, Inc. and MNS Engineers, Inc., for construction management and inspection services for various capital improvement projects at the San José-Santa Clara Regional Wastewater Facility, from the date of execution through June 30, 2024, in a total amount not to exceed \$8,000,000 for each agreement, subject to the appropriation of funds.

## OUTCOME

Approval of the master consultant agreements will supplement existing City resources with construction management and inspection services for a variety of projects for the Capital Improvement Program (CIP) at the San José-Santa Clara Regional Wastewater Facility<sup>1</sup> (RWF). Approval of these master consultant agreements will not result in any physical changes to the environment, as the City Council will need to take additional actions before construction on any capital projects commences.

## BACKGROUND

The RWF is an advanced wastewater treatment facility that treats an average of 110 million gallons per day of wastewater collected from eight South Bay cities and four special districts. Most of the infrastructure at the RWF is more than 50 years old, has exceeded its useful life and needs repair. The RWF is currently undertaking numerous projects under the CIP to improve

<sup>1</sup> The legal, official name of the facility remains San Jose-Santa Clara Water Pollution Control Plant, but beginning in early 2013, the facility was approved to use a new common name, the San José-Santa Clara Regional Wastewater Facility.

and upgrade infrastructure at the RWF. The CIP includes 24 projects, valued at more than \$900,000,000 that will be under construction over the next eight years. Projects range in size from \$10,000,000 to over \$120,000,000. Major projects include the Digester and Thickener Facilities Upgrade, Cogeneration Facility, Headworks Improvements and New Headworks, Nitrification Clarifiers Rehabilitation, Filter Rehabilitation, Digested Sludge Dewatering Facility and Aeration Tanks Rehabilitation.

The RWF CIP Construction Management (CM) team has historically had the capacity and expertise to manage and inspect all CIP projects over the past several years. The anticipated annual construction volume over the next eight years represents over a five-fold increase over current levels. Upcoming projects are significantly larger and more complex than projects undertaken in recent years. Most of these projects are inter-related, requiring a great deal of scheduling and coordination efforts.

### ANALYSIS

The sharp increase in construction activity will require significant resources with expertise, experience and capacity to effectively manage the significant and complex workload. Working alongside the City's CM staff, outside construction management resources are required to effectively and efficiently manage the work. Employing third-party construction management services to supplement existing resources is common on large capital programs and allows the City a great deal of flexibility to add resources when the workload dictates, and scale back resources during slower periods of activity.

On December 23, 2015, the City issued a Request for Qualifications (RFQ) seeking two firms for as-needed construction management and inspection services at the RWF. The RFQ was specifically focused on consultants with previous construction management experience in wastewater facilities. The City received responsive Statements of Qualifications (SOQs) by the January 29, 2016, submittal deadline from the following firms:

- Kennedy/Jenks Consulting, Inc.
- MNS Engineers, Inc.
- The Covello Group, Inc.
- Consolidated CM, Inc.
- Apex Testing Laboratories, Inc.

A Technical Evaluation Panel consisting of representatives from the Public Works Department RWF CIP, Environment Services Department RWF Operations and Maintenance Division and the Santa Clara Valley Transportation Authority (VTA) evaluated the SOQs in accordance with the procedures set forth in the RFQ.

Each panel member evaluated the SOQ using a consistent scoring matrix based on the following evaluation criteria: firm expertise, experience and expertise of key staff, project approach, cost,



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and Local/Small Business Enterprise (LBE/SBE) status. Each firm received a total score comprised of their SOQ score, Interview score, and LBE/SBE status as shown below:

<b>Evaluation Categories</b>	<b>Possible Points</b>
<b>SOQ</b>	
Proposal Responsiveness	Pass/Fail
Expertise	25
Experience	20
Project Approach	35
Cost	10
Local Business Enterprise (LBE)	5
Small Business Enterprise (SBE)	5
<b>SOQ Subtotal</b>	<b>100</b>
<b>Interview</b>	
Technical Evaluation Categories	54
Preferences	
Local Business Enterprise	3
Small Business Enterprise	3
<b>Interview Subtotal</b>	<b>60</b>
<b>TOTAL</b>	<b>160</b>

All five firms met the minimum qualifications and passed the proposal responsiveness requirement. In accordance with the City policy, 10 percent of the total evaluation points were reserved for local and small business enterprise status. Two of the firms qualified for the SBE status. All five of the firms qualified for the LBE points. Three of the five firms were invited to interviews based on their SOQ Subtotal scores. Interviews were conducted with all three firms on March 16, 2016.

Firms were evaluated on their breadth and depth of construction management resources, along with their proposed team to support the Digester and Thickener Facilities Upgrade Project which is one of the largest and most complex projects in the CIP and is scheduled to begin construction in the summer of 2016. Of specific interest during the interview was the teams' experience working on large solids processing projects, such as digester rehabilitation, at waste water facilities. On March 18, 2016, the Notice of Final Rankings was posted for the three interviewed firms as follows:

Rank	Firm	Expertise	Experience	Approach	Cost	LBE	SBE	Interview	Total
1	KJC	18.0	12.8	25.0	7.8	5.0	0.0	44.6	113.2
2	MNS	17.5	11.8	26.5	8.1	5.0	0.0	40.4	109.2
3	CG	17.0	13.2	25.8	7.8	5.0	0.0	36.6	105.4

Award Recommendation

Staff recommends awarding one Master Consultant Agreement in an amount not to exceed \$8,000,000 to Kennedy/Jenks Consultants, Inc. (Kennedy/Jenks) and a second Master Consultant Agreement in an amount not to exceed \$8,000,000 to MNS Engineers, Inc. (MNS Engineers). The \$16,000,000 dollar total contracts amount was determined by assigning a percentage of construction management expenses to the projected construction costs over the next eight years. CM typically accounts for 5% to 10% of construction expenses. Since CM staffing will be performed under a "team integration" approach with contracted staff accounting for 50 percent CM expenses, contracted staff will account for approximately \$3,500,000 for every \$100,000,000 of construction work. Annual construction activity is projected to increase to \$100,000,000 a year within two years, and will remain at that level through 2023.

Kennedy/Jenks is a 97-year old, California-based engineering consulting firm focused on water/wastewater and environmental design and construction management. The firm has completed over 3,700 construction management assignments. Kennedy/Jenks, as the prime consultant, will be partnering with Design & Construction Management Services (DCMS), as a subconsultant, in providing CM services to the RWF.

MNS Engineers is a California-based multi-service infrastructure consulting firm specializing in construction management, civil engineering and land surveying services. MNS Engineers has substantial experience in managing the construction of large-scale water and wastewater projects. The firm has eight California offices and will be teaming with two subconsultants, GHD, Inc. and Kleinfelder, Inc. in providing CM services to the RWF.

Both firms will be compensated based on actual hourly wages (*i.e.*, their direct labor cost) times a multiplier of 2.82 for Kennedy/Jenks and 2.74 for MNS. The multipliers are based on an independent auditor's financial report, and in addition to the firms' direct labor cost, the respective multipliers cover all of the firms' overhead (e.g., fringe benefits, payroll taxes, group insurance, building/rental expenses, etc.), associated project cost (e.g., computer equipment, network and telecommunications expenses, routine printing and copying, etc.), and profit limited to 10 percent under the master agreements. The multipliers will not change during the term of the master agreements. The master agreements also allow the firms to receive compensation for pre-approved subconsultants and contract personnel, as well as certain reimbursable expenses.

Service Orders issued will be project-specific with duration and scope dependent on the size and complexity of the project. Assignment of service orders will be made on a rotational basis, if appropriate, between the two firms with the first service order to be issued to the top ranked firm. Kennedy/Jenks, as the top-ranked firm, will be assigned the Digester and Thickener Facility Upgrades project. The Scopes of Services will be based on an integrated team approach between City staff and the consultant. For each project, staff will negotiate the scope of services, deliverables, schedule, and cost with the selected firm. In the event negotiations are unsuccessful, staff may negotiate with the other firm. The City may elect to issue a service order for urgent work or other circumstances (special expertise, familiarity with project, available staff, etc.) to the more qualified firm.

The term of agreement will be from the execution date through June 30, 2024, unless terminated earlier pursuant to its terms.

### **EVALUATION AND FOLLOW-UP**

No additional follow-up action with the City Council is expected at this time. All service orders issued under these master consultant agreements over \$100,000 in value will be reported to the Treatment Plant Advisory Committee (TPAC) on the monthly summary of procurement and contract activity. A progress report on RWF capital projects will be made to the Transportation and Environment Committee and the City Council on a semiannual basis. Monthly progress reports of the RWF Capital Improvement Program (CIP) will also be submitted to TPAC and posted on the City's website.

### **POLICY ALTERNATIVES**

***Alternative #1: Direct City Staff to perform the work using in-house resources.***

**Pros:** Provides additional work opportunities for City staff and would further develop skills in construction management and inspection.

**Cons:** Staffing levels would need to increase significantly to cover the work over the next few years, but would need to be reduced when the workload decreases. Recruitment and training efforts would need to increase significantly and immediately while construction work is already underway. Specialized expertise such as commissioning, scheduling, estimating and properly certified employees may be difficult to recruit. Staff may lack the experience, skills and knowledge to effectively manage the breadth and complexity of upcoming construction activity.

**Reason for not recommending:** Large construction projects require construction management and inspection teams with established experience and expertise in order to ensure that projects are built according to the engineered design and to the contract documents. In order to deliver the highest value to the City, experienced professionals likely will be required for certain intense times of construction activity. This procurement is integral to the City's CM staffing strategy for the CIP program. This procurement will provide the experienced professionals necessary in the near term to manage peaks in work load and to train in-house personnel, resulting in a more experienced and skilled core group of in-house CM personnel to address future project requirements over the long term.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's website for the June 14, 2016 City Council meeting agenda. This item is scheduled to be heard at the TPAC meeting June 9, 2016.

**COORDINATION**

This memorandum has been coordinated with Planning, Building and Code Enforcement, the City Manager's Budget Office, and the City Attorney's Office.

**FISCAL/POLICY ALIGNMENT**

Construction of CIP projects is consistent with the City Council-approved budget strategy to focus on rehabilitating aging RWF infrastructure, improve efficiency and reduce operating costs. This work is also consistent with the budget strategy principle of focusing on protecting our vital core services.

**COST SUMMARY/IMPLICATIONS**

1. AMOUNT OF RECOMMENDATION: \$16,000,000  
  
Kennedy/Jenks Consultants, Inc. \$8,000,000  
MNS Engineers, Inc. \$8,000,000  
TOTAL AGREEMENT AMOUNT \$16,000,000
  
2. COST ELEMENTS OF MASTER AGREEMENTS: The consultant's services are reimbursed on actual hourly wages times a multiplier, which is based on an independent auditor's financial report and will not change during the term of the master agreement. The firms are also compensated for pre-approved subconsultants and contract personnel, as well as certain reimbursable expenses.
  
3. SOURCE OF FUNDING: 512 - San José-Santa Clara Treatment Plant Capital Fund.
  
4. FISCAL IMPACT: This Project is funded through the San José-Santa Clara Treatment Plant Capital Fund and will have no impact on the San José-Santa Clara Treatment Plant Operating Fund (Fund 513) or the General Fund.

**BUDGET REFERENCE**

Services performed by Kennedy/Jenks and MNS Engineers under these agreements will be authorized by service orders. An appropriation is not required for execution of the master consultant agreements, but is required for each service order authorized under these agreements. Future funding is subject to appropriation and, if needed, will be included in the development of future year budgets during the annual budget process.

HONORABLE MAYOR AND CITY COUNCIL

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**CEQA**

Statutory Exempt, File No. PP10-066(d), Section 15262, Feasibility and Planning Studies with respect to the scope of work that is limited to this action. Any future activities resulting in a change to the physical environment would require approval of CEQA review.

/s/ Ashwini Kantak for

\s\

KERRIE ROMANOW  
Director, Environmental Services

BARRY NG  
Director of Public Works

For questions, please contact John Cannon, Principal Engineer, Public Works Department, at 408-635-4006.



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Kerrie Romanow

**SUBJECT:** SEE BELOW

**DATE:** May 24, 2016

Approved

*D. D. SyL*

Date

*5/26/16*

**SUBJECT: MASTER CONSULTANT AGREEMENTS WITH HAZEN AND SAWYER AND VALUE MANAGEMENT STRATEGIES, INC. FOR 8095 - VALUE ENGINEERING AND PEER REVIEW SERVICES FOR THE SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY CAPITAL IMPROVEMENT PROGRAM**

## RECOMMENDATION

Approve Master Consultant Agreements with Hazen and Sawyer, and Value Management Strategies, Inc. to provide value engineering and peer review services for the Capital Improvement Program at the San José-Santa Clara Regional Wastewater Facility from the date of execution through June 30, 2021, in a total amount not to exceed \$5,000,000 for each agreement, subject to the appropriation of funds.

## OUTCOME

Approval of the master consultant agreements provides the City with the ability to obtain value engineering and peer review services for projects in the Capital Improvement Program (CIP) at the San José-Santa Clara Regional Wastewater Facility<sup>1</sup> (RWF). Approval of these master consultant agreements will not result in any physical changes to the environment, as the City Council will need to take additional actions before construction on any capital projects commences.

## BACKGROUND

The RWF is an advanced wastewater treatment facility that treats an average of 110 million gallons per day of wastewater collected from eight South Bay cities and four special districts. Most of the infrastructure at the RWF is more than 50 years old, has exceeded its useful life and needs repair. The RWF is currently undertaking numerous projects under the CIP to improve and upgrade infrastructure at the RWF.

<sup>1</sup> The legal, official name of the facility remains San Jose-Santa Clara Water Pollution Control Plant, but beginning in early 2013, the facility was approved to use a new common name, the San José-Santa Clara Regional Wastewater Facility.

The Adopted 2016-2020 CIP includes more than 20 capital projects, ranging from \$10 million to \$120 million in total estimated project costs that will be under detailed engineering design or construction. Given the scale and large capital outlay, specialty consultants will be needed to provide value engineering and peer review services to improve the value and quality of these capital projects.

Value Engineering (VE) is the systematic application of analytical and creative approaches on a project. VE has been widely used in the construction industry for many years. The VE process provides opportunities to enhance how the project objectives are achieved more efficiently or more cost effectively, and helps achieve an optimum balance between function, performance, quality, safety, and cost. The proper balance results in the maximum value for the project. Over the past 35 years, the federal government has averaged costs savings of more than \$12 for every dollar they have invested in this process<sup>2</sup>.

Peer Review (PR) services consist of independent engineering review and assessment of criteria and concept for a project under design or construction. PR is common in the engineering field to maintain standards of quality, improve performance and provide credibility. Finding and fixing items at the earliest stage will minimize rework necessary on projects.

VE and PR services are performed by an experienced and multi-disciplinary team not involved in the project. VE and PR can be held at any phase of a project: planning, design, and construction. However, typically the earlier it is applied the higher the return on the time and effort invested. For this reason, the RWF CIP program intends to hold VE sessions at the conclusion of the preliminary design phase. The successful application of VE and PR processes can contribute measurable benefits to the quality of the projects and to the effective delivery of the projects.

## **ANALYSIS**

On November 30, 2015, the City issued a Request for Qualifications (RFQ) seeking value engineering and peer review services for the CIP at the RWF. The City received two Statements of Qualifications (SOQs), by the January 25, 2016 submittal deadline, from the following firms:

- Hazen and Sawyer (Hazen)
- Value Management Strategies, Inc. (VMS)

A Technical Evaluation Panel consisting of representatives from the Environmental Services Department (CIP and O&M divisions) and the Department of Public Works evaluated and ranked the SOQs in accordance with the procedures set forth in the RFQ.

Each panel member evaluated the SOQ using a consistent scoring matrix based on the firm's expertise, experience, approach, cost, and Local/Small Business Enterprise (LBE/SBE) status.

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<sup>2</sup> *Alphonse Dell'Isola (1997), Value Engineering Practical Applications, RSMMeans, Figure 1.10 Results of VE Programs.*

Each firm received a total score comprised of their SOQ score, and LBE/SBE status as shown below:

Evaluation Categories	Points
Responsiveness	Pass/Fail
Expertise	30
Experience	20
Approach	30
Cost Form	10
Local Business Enterprise (LBE)	5
Small Business Enterprise (SBE)	5
<b>TOTAL</b>	<b>100</b>

Both firms met the minimum qualifications and their SOQs were deemed responsive. The final ranking and scores for each firm are as follows:

Rank	Firm	Expertise	Experience	Approach	Cost	LBE	SBE	Total
<b>1</b>	Hazen	26.2	16.8	21.5	10.0	5.0	0.0	<b>79.5</b>
<b>2</b>	VMS	23.7	14.8	23.5	9.9	0.0	0.0	<b>71.9</b>

In accordance with the City policy, 10 percent of the total evaluation points were reserved for LBE/SBE status. Neither of the firms qualified for the SBE status. Hazen qualified for the LBE points. As a result of the evaluation of the SOQs, it was decided that interviews would not be necessary.

Award Recommendation

Staff recommends awarding one master consultant agreement in an amount not to exceed \$5,000,000 to Hazen and a second master consultant agreement in an amount not to exceed \$5,000,000 to VMS.

Hazen is a nationally recognized environmental engineering and consulting firm, specializing in the design of all components of the wastewater industry. This firm has six California offices and has assembled a team of experienced wastewater specialists under the direction of two Certified Value Specialists to address the range and type of CIP projects being implemented at the RWF.

VMS is a specialty firm focused on the conduct of value enhancement projects and peer review assignments for clients throughout the country and around the world. The firm is the largest specialty VE firm in the country and has 11 Certified Value Specialists on staff.

It is expected that each VE project assignment will take up to a month to complete and will include an intense set of workshop activities on site over a full week, followed by the preparation of a report and review of recommendations. PR assignments will vary in length and scope depending upon issues that arise. It is anticipated that PR tasks will consist of a short period of research of regulatory, funding and technical issues, followed by the preparation of a document addressing the particular topic.



Both firms will be compensated based on actual hourly wages (*i.e.*, their direct labor cost) times a multiplier, which is 3.00 for Hazen and 3.01 for VMS. The multiplier will not change during the term of the master agreement. The multiplier is based on an independent auditor's financial report, and in addition to the firms' direct labor cost, the respective multipliers cover all of the firms' overhead (e.g., fringe benefits, payroll taxes, group insurance, building/rental expenses, etc.), associated project cost (e.g., computer equipment, network and telecommunications expenses, routine printing and copying, etc.), and profit limited to 10 percent under the master agreement. The master agreements also allow the firms to receive compensation for pre-approved subconsultants and contract personnel, as well as certain reimbursable expenses.

Assignment of service orders will be made on a rotational basis between the two firms with the first service order to be issued to the top ranked firm. In each instance, staff will negotiate the scope of services, deliverables, schedule, and cost with the selected firm. In the event negotiations are unsuccessful, staff may negotiate with the other firm. The City may elect to not issue a service order to the firm next in line based on the rotation protocol, when it determines that urgent work or other circumstances (e.g., special expertise, familiarity with project, available staff, etc.) so require.

The term of agreement will be from the date of execution through June 30, 2021.

### **EVALUATION AND FOLLOW-UP**

No additional follow-up action with the City Council is expected at this time. All service orders issued under these master consultant agreements over \$100,000 in value will be reported to the Treatment Plant Advisory Committee (TPAC) on the monthly summary of procurement and contract activity. A progress report on this and other RWF capital projects will be made to the Transportation and Environment Committee and the City Council on a semiannual basis. Monthly progress reports of the RWF CIP will also be submitted to TPAC and posted on the City's website.

### **POLICY ALTERNATIVES**

***Alternative #1: Direct City Staff to perform the work using in-house resources.***

**Pros:** It allows staff to develop skills in VE and PR over time.

**Cons:** Lack of in-house skills and breadth of knowledge to address the needed VE and PR on capital projects.

**Reason for not recommending:** VE and PR assignments require the use of professionals with established experience and expertise. In order to deliver the highest value to the City, experienced professionals likely will be required for certain intense times of construction activity.

**PUBLIC OUTREACH**

This memorandum will be posted on the City's website for the June 14, 2016 City Council meeting agenda. This item is scheduled to be heard at the June 9, 2016 TPAC meeting.

**COORDINATION**

This memorandum has been coordinated with the Finance Department, the City Manager's Budget Office, and the City Attorney's Office.

**FISCAL/POLICY ALIGNMENT**

This Project is consistent with the City Council-approved budget strategy to focus on rehabilitating aging RWF infrastructure, improve efficiency and reduce operating costs. This Project is also consistent with the budget strategy principle of focusing on protecting our vital core services.

**COST SUMMARY/IMPLICATIONS**

- |    |                                |                    |
|----|--------------------------------|--------------------|
| 1. | AMOUNT OF RECOMMENDATION:      | \$10,000,000       |
|    | Value Management Service, Inc. | \$5,000,000        |
|    | Hazen and Sawyer               | <u>\$5,000,000</u> |
|    | TOTAL                          | \$10,000,000       |
2. COST ELEMENTS OF MASTER AGREEMENT: The consultant's services are reimbursed on actual hourly wages times a multiplier, which is based on an independent auditor's financial report and will not change during the term of the master agreement. The firms are also compensated for pre-approved subconsultants and contract personnel, as well as certain reimbursable expenses.
3. SOURCE OF FUNDING: 512 - San José-Santa Clara Treatment Plant Capital Fund.
4. FISCAL IMPACT: This Project is funded through the San José-Santa Clara Treatment Plant Capital Fund and will have no impact on the San José-Santa Clara Treatment Plant Operating Fund (Fund 513).

HONORABLE MAYOR AND CITY COUNCIL

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**Subject: Master Consultant Agreements for Value Engineering and Peer Review Services**

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**BUDGET REFERENCE**

Services performed by Hazen and VMS under these agreements will be authorized by service orders. An appropriation is not required for execution of the master consultant agreements, but is required for each service order authorized under these agreements. Future funding is subject to appropriation and, if needed, will be included in the development of future year budgets during the annual budget process.


**CEQA**

Statutorily Exempt, File No. PP10-066(d), Section 15262, Feasibility and Planning Studies with respect to the scope of work that is limited to this action. Any future activities resulting in a change to the physical environment would require approval of CEQA review.

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

For questions, please contact Ashwini Kantak, Assistant Director, Environmental Services Department, at 408-975-2553.

**CITY COUNCIL ACTION REQUEST**

<b>Department(s):</b> Finance	<b>CEQA:</b> Not a Project, File No. PP10-066 (a), Agreements and Contracts	<b>Coordination:</b> ESD, CAO and CMO-Budget Office  On June 9, 2016 the Treatment Plant Advisory Committee is scheduled to consider this item.	<b>Dept. Approval:</b> /s/ Julia H. Cooper
<b>Council District(s):</b> Citywide			<b>CMO Approval:</b> 

**SUBJECT: PURCHASE ORDER WITH TUCKER CONSTRUCTION, INC.**

**RECOMMENDATION:**

Authorize the City Manager to:

1. Execute a Purchase Order with Tucker Construction, Inc. (San Jose, CA) to provide all labor, material and equipment to perform expansion joint and concrete maintenance and repair services at the Regional Wastewater Facility for the term June 22, 2016 through June 21, 2017, in an amount not-to-exceed \$300,000.
2. Approve a contingency of \$50,000 in the event that additional repairs are required.
3. Exercise up to four, one-year options to extend the term through June 30, 2021, with any price increases subject to approval by the City and subject to the annual appropriation of funds.

**Desired Outcome:** Repair concrete and associated expansion joints to maintain walkways and structures in optimal condition.

**BASIS FOR RECOMMENDATION:**

The Regional Wastewater Facility (RWF) requires expansion joint and concrete maintenance and repair services on existing tanks, walkways, stairs, ground water leaks, interior and exterior of buildings and secondary containment structures. This work is vital to keep the RWF's infrastructure, facilities, and equipment functioning in optimal conditions.

A competitive Request for Bid was facilitated by the Finance Department to procure this service. The City received two bids to the RFB.

Staff recommends award of the contract to Tucker Construction, Inc. as the lowest responsive and responsible bidder pursuant to the formal bidding procedures of the San Jose Municipal Code, Section 4.12.310B.

Office of Equality Assurance: Living Wage or Prevailing Wage, whichever is higher, is applicable to work under this purchase order.

This Council item is consistent with Council approved Budget Strategy to have functional public infrastructure, facilities, and equipment.

**COST AND FUNDING SOURCE:**

Amount: \$300,000  
Fund: San Jose-Santa Clara Treatment Plant Operating Fund (Fund 513)  
Appropriation: Environmental Services Department Non-Personal/Equipment (Appn 0762)

**FOR QUESTIONS CONTACT:** Mark Giovannetti, Deputy Director, Finance at 408-535-7052

**City Manager's Contract Approval Summary**  
**For Procurement and Contract Activity between \$100,000 and \$1.08 Million for Goods and \$100,000 and \$270,000 for Services**

MAY 1, 2016 - MAY 31, 2016

Description of Contract Activity <sup>1</sup>	Fiscal Year	Req#/RFP#	PO#	Vendor/Consultant	Original Amount \$	Start Date	End Date	Additional \$ Amount	Total \$ Amount	Comments
PIPES, FITTINGS & RELATED PARTS	15-16	20676	51697	FERGUSON WATERWORKS	\$120,000	7/1/2015	6/30/2016	\$20,000	\$140,000	EMERGENCY REPAIR FOR THE WASH DOWN WATER AT EAST PRIMARY (\$15K)
SANDBLASTING & PAINTING SERVICES	15-16	21792	52110	JEFFCO PAINTING & COATING, INC	\$400,000	12/17/2015	12/16/2016	\$38,917	\$438,917	EMERGENCY WORK ON DIGESTER #10
FILTER REHABILITATION	15-16		AC27382	KENNEDY/JENKS CONSULTANTS, INC	\$817,000	5/31/2016	3/22/2017			SERVICE ORDER #1 (MASTER AGREEMENT TERM 1/08/16-6/30/23)

<sup>1</sup> This report captures completed contract activity (Purchase Order Number, Contract Term, and Contract Amount)