

SAN JOSÉ/SANTA CLARA TREATMENT PLANT ADVISORY COMMITTEE

SAM LICCARDO, CHAIR
PAT KOLSTAD, VICE CHAIR
LAN DIEP, MEMBER
DAVID SYKES, MEMBER
DEV DAVIS, MEMBER

MARSHA GRILLI, MEMBER
DEBI DAVIS, MEMBER
STEVEN LEONARDIS, MEMBER
JOHN GATTO, MEMBER

AGENDA/TPAC

4:00 p.m.

November 8, 2018

Room 1734

1. **ROLL CALL**

2. **APPROVAL OF MINUTES**

A. October 11, 2018

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

4. **DIRECTOR'S REPORT**

- A. Director's Report (verbal)
- Monthly Progress Report for the month of September.

5. **AGREEMENTS/ACTION ITEMS**

A. Project Labor Agreement

Staff Recommendation:

Provide input and accept the report on the City's execution of a Project Labor Agreement (PLA) that would apply to most Regional Wastewater Facility public works construction projects greater than \$3 million.

At its October 16, 2018 meeting, the City Council authorized the City Manager to negotiate the PLA and to execute the PLA after consultation with this Committee.

6. **OTHER BUSINESS/CORRESPONDENCE**

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

A. San José- Santa Clara Regional Wastewater Facility Capital Improvement Program Semiannual Status Report

Staff Recommendation:

Accept the semiannual status report on the San José-Santa Clara Regional Wastewater Facility Capital Improvement Program for the period of January 2018 through June 2018.

This item was approved by the Transportation and Environment Committee on October 1, 2018, and is scheduled to be considered by the City Council at a later date.

B. San José-Santa Clara Regional Wastewater Facility Staffing Level and Training Status Report

Staff Recommendation:

Accept this report on the status of staffing and training at the San José-Santa Clara Regional Wastewater Facility (Wastewater Facility).

This item was approved by the Transportation and Environment Committee on October 1, 2018, and is scheduled to be considered by the City Council at a later date.

C. Report on Bids and Award of Construction Contract for 8073- Blower Improvements Project at the San José-Santa Clara Regional Wastewater Facility

Staff Recommendation:

- (a) Report on bids and award of a construction contract for the 8073 - Blower Improvements Project to the low bidder, Monterey Mechanical Company, for the base bid and Add Alternate No. 1, in the amount of \$29,498,000, and approval of a contingency in the amount of \$4,425,000.
- (b) Adopt a resolution authorizing the Director of Public Works to negotiate and execute any single and/or multiple change orders in excess of \$100,000, up to the amount of the contingency of \$4,425,000

This item was approved by the City Council on October 31, 2018.

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 \$1.17 million and of services between \$100,000 and \$290,000.

9. MISCELLANEOUS

- A. The next monthly TPAC Meeting is on **December 14, 2018, at 4:00 p.m.**, City Hall, Room 1734.

10. OPEN FORUM

11. ADJOURNMENT

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

To request an accommodation or alternative format for City-sponsored meetings, events or printed materials, please contact Eva Roa (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, 10th Floor, Environmental Services at the same time that the public records are distributed or made available to the legislative bod

**MINUTES OF THE
SAN JOSÉ/SANTA CLARA
TREATMENT PLANT ADVISORY COMMITTEE**

San José City Hall, T-1734
Thursday, October 11, 2018 at 4:01 p.m.

1. ROLL CALL

Minutes of the Treatment Plant Advisory Committee convened this date at 4:01p.m. Roll call was taken with the following members in attendance:

Committee Members: Debi Davis, Dev Davis, Marsha Grilli, Patrick Kwok (Alternate), Sam Liccardo, David Sykes, Kathy Watanabe (alternate)

Absent: Lan Diep, Steven Leonardis

2. APPROVAL OF MINUTES

A. October 11, 2018

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

Ayes – 6 (Dev Davis, Grilli, Patrick Kwok (alternate), Liccardo, Sykes, Kathy Watanabe (alternate))

Abstain – Debi Davis

Nays – 0

Absent – 2 (Diep, Leonardis)

3. UNFINISHED BUSINESS/REQUEST FOR DEFERRALS

4. DIRECTOR'S REPORT

A. Director's Report (verbal)

- Monthly Progress Report

Director Kerrie Romanow informed the Committee that Public Works would be bringing a Project Labor Agreement to the next meeting.

5. AGREEMENTS/ACTION ITEMS

A. San José- Santa Clara Regional Wastewater Facility Capital Improvement Program Semiannual Status Report

Staff Recommendation:

Accept the semiannual status report on the San José-Santa Clara Regional Wastewater Facility Capital Improvement Program for the period of January 2018 through June 2018.

This item was approved by the Transportation and Environment Committee on October 1, 2018 and is scheduled to be considered by the City Council at a later date.

Deputy Director Julia Nguyen and Public Works Principal Engineer John Cannon presented.

Committee Member Alternate Kwok commended staff for doing a good job of continuing operations of the facility while simultaneously progressing several construction projects .

Committee Member Debi Davis also commended staff for doing a good job.

Committee Chair Liccardo asked if there were any flood control worries regarding this asset. Deputy Director Julia Nguyen informed the committee of the work that has and will be done over the next several years to ensure the San José-Santa Clara Regional Wastewater Facility is protected. Director Kerrie Romanow responded that if requested, staff would be able to report back.

On a motion made by Committee Member Alternate Kwok and a second by Committee Member Debi Davis, TPAC recommended approval of staff's recommendation for Item 5.A.

Ayes – 7 (Debi Davis, Dev Davis, Grilli, Patrick Kwok (alternate), Liccardo, Sykes, Kathy Watanabe (alternate))

Nays – 0

Absent – 2 (Diep, Leonardis)

B. San José-Santa Clara Regional Wastewater Facility Staffing Level and Training Status Report

Staff Recommendation:

Accept this report on the status of staffing and training at the San José-Santa Clara Regional Wastewater Facility (Wastewater Facility).

This item was approved by the Transportation and Environment Committee on October 1, 2018 and is scheduled to be considered by the City Council at a later date.

Director Kerrie Romanow and Deputy Director Amit Mutsuddy presented.

Committee Member Debi Davis commended staff for doing a good job.

On a motion made by Committee Member Debi Davis and a second by Committee Member Dev Davis, TPAC recommended approval of staff's recommendation for Item 5.B.

Ayes – 7 (Deb Davis, Dev Davis, Grilli, Patrick Kwok (alternate), Liccardo, Sykes, Kathy Watanabe (alternate))

Nayes – 0

Absent – 2 (Diep, Leonardis)

C. Report on Bids and Award of Construction Contract for 8073- Blower Improvements Project at the San José-Santa Clara Regional Wastewater Facility

Staff Recommendation:

- (a) Report on bids and award of a construction contract for the 8073 - Blower Improvements Project to the low bidder, Monterey Mechanical Company, for the base bid and Add Alternate No. 1, in the amount of \$29,498,000, and approval of a contingency in the amount of \$4,425,000.
- (b) Adopt a resolution authorizing the Director of Public Works to negotiate and execute any single and/or multiple change orders in excess of \$100,000, up to the amount of the contingency of \$4,425,000

This item is scheduled to be approved by the City Council on October 23, 2018.

Assistant Director Napp Fukuda introduced Program Manager Mike DeNicola. Program Manager Mike DeNicola presented.

Committee Member Alternate Kwok asked if there was any particular reason the bidders were all out of county. Program Manager Michael DeNicola stated that market is busy and contractors are selectively bidding on projects. Assistant Director Napp Fukuda let the committee know that the program facilitates regular open houses for contractors to be aware of projects and is planning to hold another one later this year. Public Works Principal Engineer John Cannon said that there is a lot of construction activity in the area, so many companies within the County were possibly too busy to take more on.

On a motion made by Committee Member Debi Davis and a second by Committee Member Alternate Kwok, TPAC recommended approval of staff's recommendation for Item 5.C.

Ayes – 7 (Deb Davis, Dev Davis, Grilli, Patrick Kwok (alternate), Liccardo, Sykes, Kathy Watanabe (alternate))

Nayes – 0

Absent – 2 (Diep, Leonardis)

6. **OTHER BUSINESS/CORRESPONDENCE**

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

A. Purchase of California Carbon Allowances

Staff Recommendation:

Adopt a Resolution authorizing the City Manager to negotiate and execute an agreement between the City of San José and Vitol, Inc., for the purchase of California Carbon Allowances for the San José-Santa Clara Regional Wastewater Facility (RWF) to fulfill the compliance obligation under the California Cap-and-Trade Program, for an amount of \$295,728.00.

This item was approved by the City Council on September 25, 2018.

B. Actions Related to Purchase Orders for Hazardous Fluid Waste Recycling, Disposal and Related Services

Staff Recommendation:

Adopt a resolution authorizing the City Manager to:

1. Execute two Purchase Orders with Safety-Kleen Systems, Inc. (Norwell, MA) for hazardous fluid waste recycling, disposal, and related services, including all labor, material, and equipment necessary to perform such services, for the Departments of Public Works and Environmental Services for an initial twelve-month period beginning on or about September 19, 2018 and ending September 30, 2019 in a combined amount not to exceed of \$145,000;
2. Approve a contingency of \$30,000 to amend purchase orders as required during the initial term in the event actual service needs exceed estimates, subject to the appropriation of funds; and
3. Execute purchase orders for up to four additional one-year option terms to extend the services through September 30, 2023, subject to the appropriation of funds.

This item was approved by the City Council on September 18, 2018.

C. Approval of Citywide Insurance Renewals

Staff Recommendation:

Adopt a resolution authorizing the Director of Finance to select and purchase City property and liability insurance policies for the period October 1, 2018 to October 1, 2019, at a total cost not to exceed \$1,850,000, including a 15% contingency for additional property or assets scheduled, with the following insurance carriers:

- (1) Factory Mutual Insurance Company for Property Insurance, including Boiler & Machinery

- (2) Old Republic Aerospace, Phoenix Aviation Managers, for Airport Owners and Operators Liability including War Risks & Extended Perils Coverage (including Excess Automobile and Employers' Liability) and Police Aircraft Hull & Liability including War Risks & Extended Perils Coverage.
- (3) The Travelers Indemnity Company of Connecticut for Automobile Liability (Airport fleet vehicles including Shuttle Buses, Regional Wastewater Facility fleet vehicles, and Airport Shuttle Bus physical damage).
- (4) QBE Specialty Insurance Company for Secondary Employment Law Enforcement Professional Liability.
- (5) National Union Fire Insurance Company of Pittsburg, PA for Accidental Death, Accidental Dismemberment, and Paralysis Policy for the Police Air Support Unit.
- (6) Berkley Regional Insurance Company for Government Fidelity/Crime Coverage.

This item was approved by the City Council on September 18, 2018.

D. Wildlife Habitat at the San José- Santa Clara Regional Wastewater Facility

Staff Recommendation:

Accept this report highlighting established wildlife habitat at the San José-Santa Clara Regional Wastewater Facility, and ongoing habitat management activities for the Western Burrowing Owl.

This item was approved by the Transportation and Environment Committee on September 10, 2018 and is scheduled to be considered by the City Council at a later date.

E. Master Service Agreement with HydroScience Engineers, Inc. for Engineering Support and Services for the San José/Santa Clara Regional Wastewater Facility

Staff Recommendation:

1. Approval of Master Service Agreement with HydroScience Engineers, Inc. for engineering support and services for the San José/Santa Clara Regional Wastewater Facility (Facility) for various operation and maintenance (O&M) projects requiring engineering support and services on an as-needed basis for an initial term starting from the date of execution to June 30, 2019, for a maximum compensation of \$500,000 during the initial term, subject to the annual appropriation of funds.
2. Adoption of a resolution authorizing the City Manager to exercise up to three twelve-month options to extend the term through June 30, 2022, for an amount not to exceed \$500,000 for each option term; and to amend the

Agreement to adjust the compensation to reflect changes in support service needs, provided the total aggregate amount does not exceed \$2,000,000 for the full term, subject to the annual appropriation of funds.

This item was approved by the City Council on September 25, 2018.

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 \$1.17 million and of services between \$100,000 and \$290,000 for the month of September.

9. MISCELLANEOUS

- A. The next TPAC Meeting is on **November 8, 2018, at 4:00 p.m.**, City Hall, Room 1734.

10. OPEN FORUM

Dean Stanton gave a one-page review of the park proposal that he had brought to a previous meeting.

11. ADJOURNMENT

- A. The Treatment Plant Advisory Committee adjourned at 4:44 p.m.

Sam Liccardo, Chair

TREATMENT PLANT ADVISORY COMMITTEE



Capital Improvement Program Monthly Status Report: September 2018

November 1, 2018

This report summarizes the progress and accomplishments of the Capital Improvement Program (CIP) for the San José-Santa Clara Regional Wastewater Facility (RWF) for September 2018.

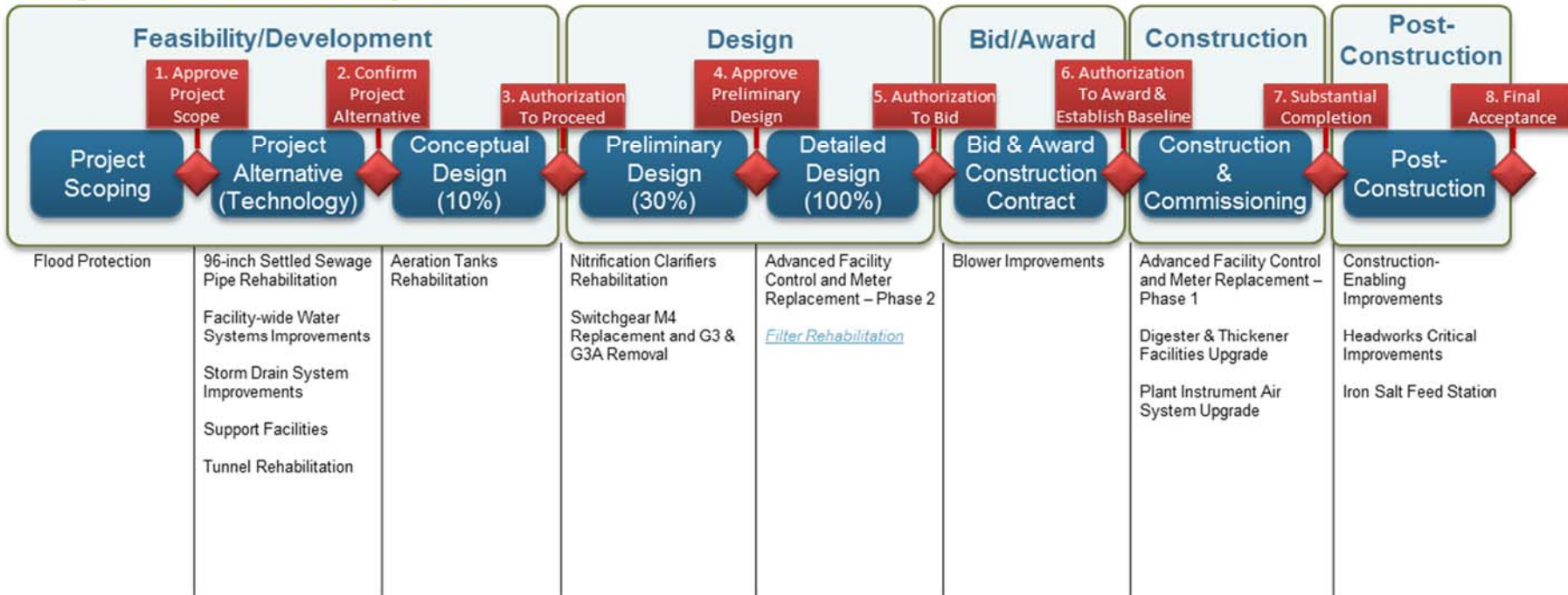
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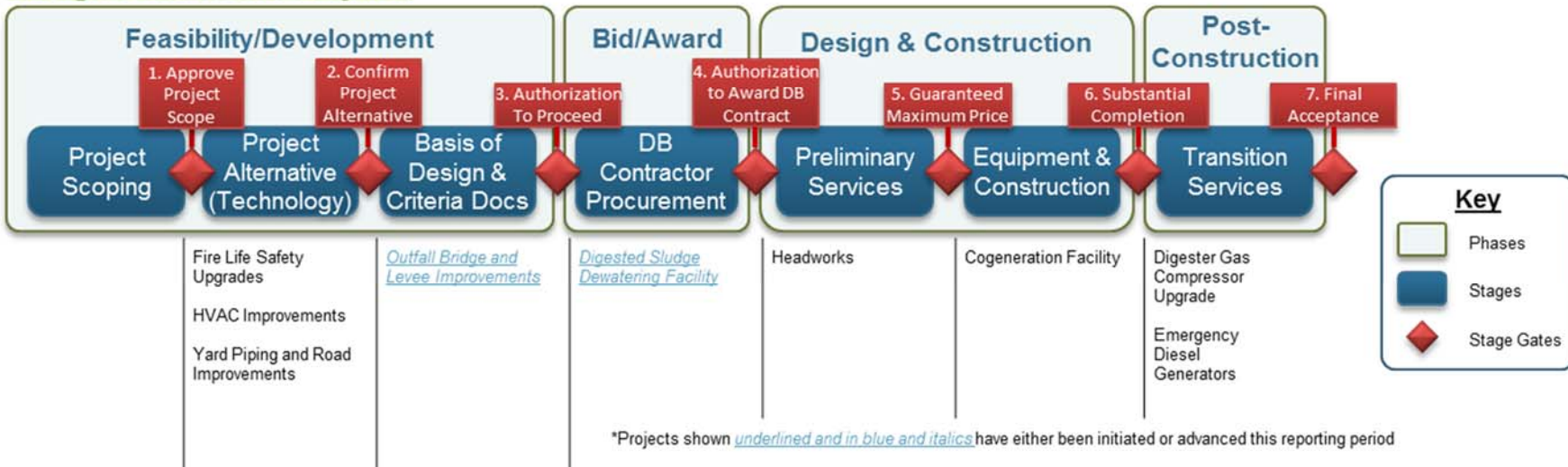


Project Delivery Model

Design-Bid-Build Active Projects



Design-Build Active Projects



Key

- Phases
- Stages
- Stage Gates



Program Summary

September 2018

In September, the City of San José (City) advanced three projects through the Project Delivery Model (PDM) stage gate process. The Outfall Bridge and Levee Improvements Project successfully passed Stage Gate 2 – Confirm Project Alternative. The Filter Rehabilitation Project advanced through Stage Gate 4 – Approve Preliminary Design. The Digested Sludge Dewatering Facility Project passed Stage Gate 3 – Authorization to Proceed, which allows the team to advertise a Request for Proposals for design-build (DB) contractor services in early October.

Field preparation work continued on the Yard Piping and Road Improvements Project to facilitate condition assessment of the 84-inch primary effluent pipeline. A hazardous materials investigation was conducted under the Advanced Facility Control and Meter Replacement - Phase 2 Project to identify the presence of hazardous materials for the purpose of developing plans, specifications, and engineer's estimates. Conceptual design work continued on the Fire Life Safety and Facility-wide Water Systems Improvements projects. Field survey work was completed for the Storm Drain System Improvements Project and process shut down planning work started to enable condition assessment work to commence in October.

The Switchgear M4 Replacement and G3 & G3A Removal Project team progressed the 60 percent design. This project will improve the reliability of the RWF 5kV electrical ring bus distribution system by replacing the existing 35-year-old M4 switchgear that has reached the end of its useful life. As part of the project, the G3 and G3A switchgear associated with the existing cogeneration units EG1, EG2 & EG3 will be decommissioned after the Cogeneration Facility Project is completed.

Construction work on the Digester and Thickener Facilities Upgrade Project reached 50 percent completion; this month the contractor completed the polychlorinated biphenyl (PCB) mitigations for digesters 5, 6, and 8. PCB mitigation for digester 7 is anticipated to be finished in October. The contractor continued work on post-tensioning (PT) cables and shotcrete for all digesters. The contractor also continued work on the digester 5 ring beam foundation and reinforcement steel for the remaining digesters' concrete ring beam foundations. The contractor also continued the installation of the digester gas piping and supports, sludge screening, and structures for the polymer injection and odor control systems. Finally, the contractor began installing the dissolved air flotation chains and flight collectors and skimmers.

Look Ahead

The following key activities are forecast for October and November of 2018:

- The next two months will be extremely busy with five projects proceeding to Stage Gate. The projects are as follows:
 1. Facility-wide Water System Improvements Project – Stage Gate 2: Confirm Project Alternative;
 2. 96-inch Settled Sewage Pipe Rehabilitation Project – Stage Gate 2: Confirm Project Alternative
 3. Headworks Project – Interim Stage Gate 4.1: Site Selection and Budget;
 4. Nitrification Clarifiers Rehabilitation Project – Stage Gate 4: Approve Preliminary Design; and
 5. Fire Life Safety Upgrades Project – Stage Gate 3: Authorization to Proceed.
- The Blower Improvements Project team will return to the Treatment Plant Advisory Committee (TPAC) and Council with a recommendation to award a construction contract in the amount of \$29.5 million plus a fifteen percent contingency.
- The DB contractor will complete a major concrete pour (approximately 1,700 cubic yards of concrete requiring over 180 concrete trucks in a 16-hour period) as part of the Cogeneration Facility Project. The new concrete base slab will serve as the foundation for the new internal combustion engines.
- The Digester and Thickener Facilities Upgrade Project contractor will install the odor control equipment and pour the walls for the sludge screening building.
- The Plant Instrument Air System Upgrade Project will complete the 28-day operational testing.
- The City will advertise the RFP for design-builder services for the Digested Sludge Dewatering Facility Project.
- The City will file Notice of Completion and Acceptance (NOCA) for the Iron Salt Feed Station and Headworks Critical Improvements projects.



Program Highlight – Risk Management

The goal of CIP Risk Management is to help ensure successful delivery of individual projects and the overall program through proactive management of significant risks. This involves identifying and mitigating risks to increase the probability and/or impact of positive risks (opportunities), and to decrease the probability and/or impact of negative risks (threats) in order to optimize the likelihood of individual project and overall program success.

The CIP approach to risk management is defined in the Program Execution Plan - Risk Management Plan (RMP). The RMP defines the processes, tools and roles required to effectively identify and manage risks at both the program and project level.

Process

The risk management process is iterative and continuous in nature (refer to Figure 1 below) executed throughout the life of each project and the overall program. Risks may be identified at any time requiring analysis, risk response planning, and ongoing continuing management until the risk is no longer a threat/opportunity or the project has been completed.

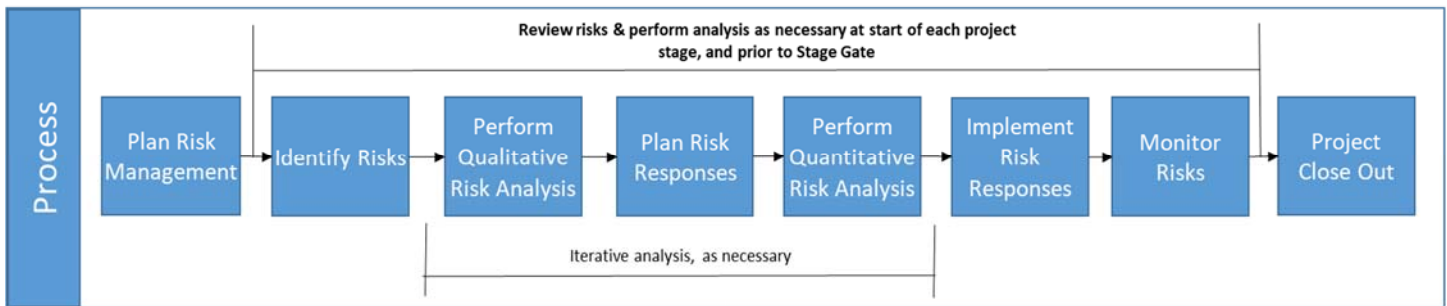


Figure 1: CIP Risk Management Process

Tools

The tools used in risk management include a risk assessment matrix, standard risk checklist for consideration by the project teams, risk 'heat maps' for presentation of key risks, and project and program-level risk registers.

All active CIP projects have risk registers. Project managers maintain and update project risk registers as part of the monthly progress reporting process. Information for each risk includes a description, magnitude and likelihood of impact, proposed mitigation measures and owner. Project risks are routinely reviewed at monthly CIP Package Performance Review Meetings and at PDM stage gates. Additionally, the CIP Risk Manager regularly conducts focused reviews of the project risk registers; and assists the project teams with risk identification, analysis, and risk response planning.

These risk tools help identify, assess, and monitor risks in a consistent and visible manner, as well as provide a written record of risk response plans to appropriately manage and mitigate threats and maximize opportunities.

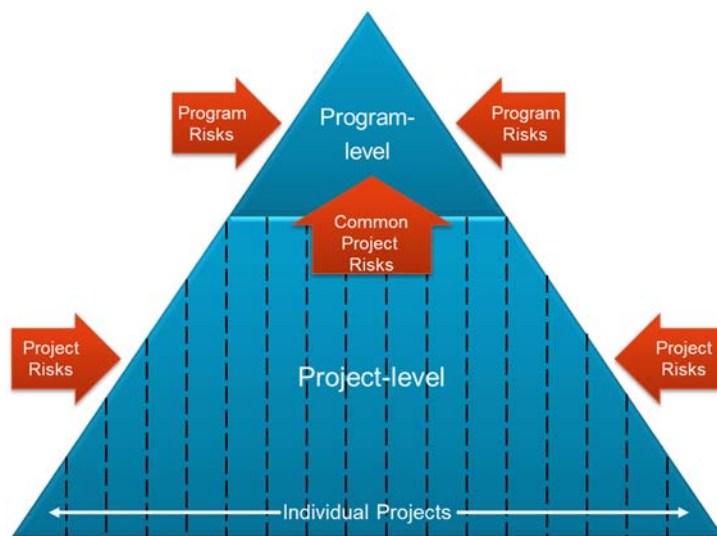


Figure 2: Program and Project Risk Relationship

Roles

The CIP has a Risk Manager, reflecting the importance of risk management to the overall successful delivery of the Program. The Risk Manager oversees and maintains the risk processes and tools and works with the project teams in the identification and management of risks. The Risk Manager also monitors risks across projects to identify common risks that may require a program-level response. In addition, the Risk Manager maintains the Program Risk Register which comprises the common project risks mentioned above, as well as risks which pose threats or opportunities to the CIP. This relationship between project and program risks is illustrated in Figure 2.

Program Performance Summary

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

Program Key Performance Indicators – Fiscal Year 2018-2019

KPI	Target	Fiscal Year to Date			Fiscal Year End		
		Actual	Status	Trend	Forecast	Status	Trend
Stage Gates	90%	100% 6/6 ¹			100% 19/19		
Measurement: Percentage of initiated projects and studies that successfully pass each stage gate on their first attempt. Target: Green: >= 90%; Amber: 75% to 90%; Red: < 75%							
Schedule	90%	50% 1/2			33% 1/3		
Measurement: Percentage of CIP projects delivered within 2 months of approved baseline Beneficial Use Milestone. ² Target: Green: >= 90%; Amber: 75% to 89%; Red: < 75%							
Budget	90%	NA 0/0			75% 3/4		
Measurement: Percentage of CIP projects that are accepted by the City within the approved baseline budget. ² Target: Green: >= 90%; Amber: 75% to 89%; Red: < 75%							
Expenditure	\$252M	\$218M			\$297M ³		
Measurement: CIP FY18-19 committed costs. Target: Committed cost meets or exceeds 70% of planned Budget. 70% of \$360M = \$252M. Therefore Green: >=\$252M; Amber: \$198M to \$252M; Red: < \$198M							
Safety	0	0			0		
Measurement: Number of OSHA reportable incidents associated with CIP delivery for the fiscal year. Criteria: Green: zero incidents; Amber: 1 to 2; Red: > 2							
Environmental	0	0			0		
Measurement: Number of permit violations caused by CIP delivery for the fiscal year. Target: Green: zero incidents; Amber: 1 to 2; Red: > 2							
Vacancy Rate⁴	10%	18% 15/84			6% 5/84		
Measurement: Ratio of the number of vacant approved positions to approved positions. Target: Green: <= 10%; Amber: 10% to 20%; Red: > 20%							

Notes

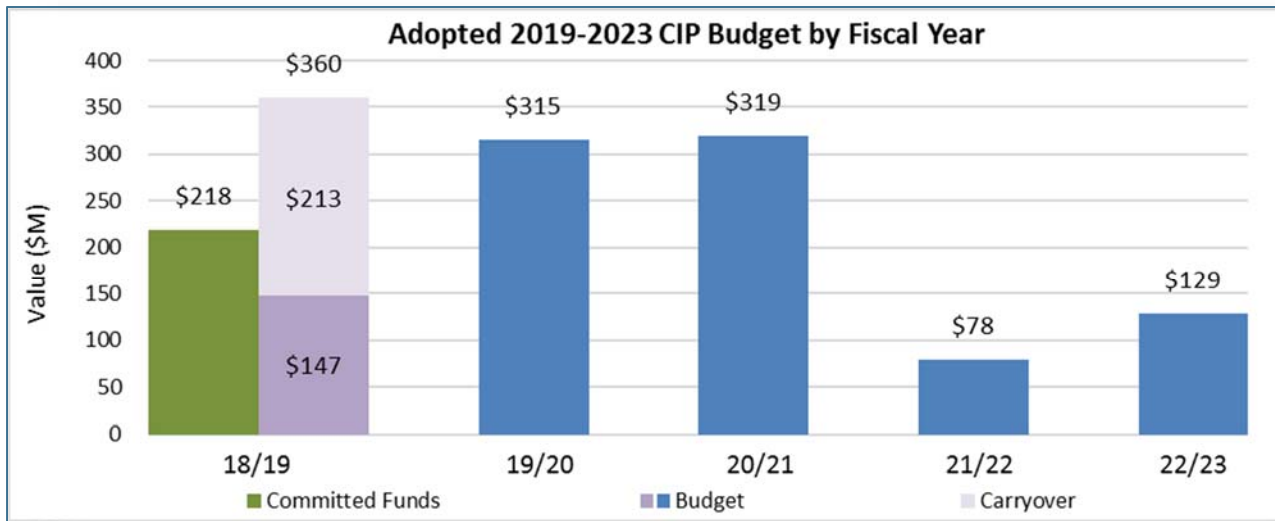
1. The Digested Sludge Dewatering Facility, Filter Rehabilitation, and Outfall Bridge and Levee Improvements projects successfully completed Stage Gate 3 - Authorization to Proceed, Stage Gate 4 - Approve Preliminary Design, and Stage Gate 2 - Confirm Project Alternative, respectively.
2. The baseline Beneficial Use date and the baseline budget for each project are established at construction contract award and execution.
3. The fiscal year-end forecast was increased approximately \$3 million due to revised encumbrance estimates.
4. The Vacancy Rate KPI measures City CIP-approved positions (ESD and Public Works) and program management consultant full-time staff.



Program Budget Performance Summary

This section summarizes the cumulative monthly budget performance for fiscal year (FY)18-19 based on the Adopted 2019-2023 CIP.

Adopted 2019-2023 CIP Expenditure and Encumbrances



Notes

Committed Funds: Total of expenditures and encumbrances.

Expenditure: Actual cost expended, either by check to a vendor or through the City's financial system, for expenses such as payroll or for 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. An encumbrance reserves the funding within the appropriation and project.

The FY18-19 budget is \$175 million, which consists of \$121 million in new funds and \$54 million in rebudgets. For purposes of this monthly report, the adopted FY18-19 budget is adjusted from \$175 million to \$147 million due to the exclusion of certain appropriations that are not measured as part of the expenditure KPI. Excluded appropriations include City Hall Debt Service Fund; Clean Water Financing Authority Debt Service Payment Fund; Debt Service Repayment for Plant Capital Improvement Projects (San José only debt service); Equipment Replacement Reserve; Ending Fund Balance; Public Art; SBWR Extension; State Revolving Fund Loan Repayment; and Urgent and Unscheduled Treatment Plant Rehabilitation. Similar adjustments have been made to the budgets for FY19-20 through FY 22-23.

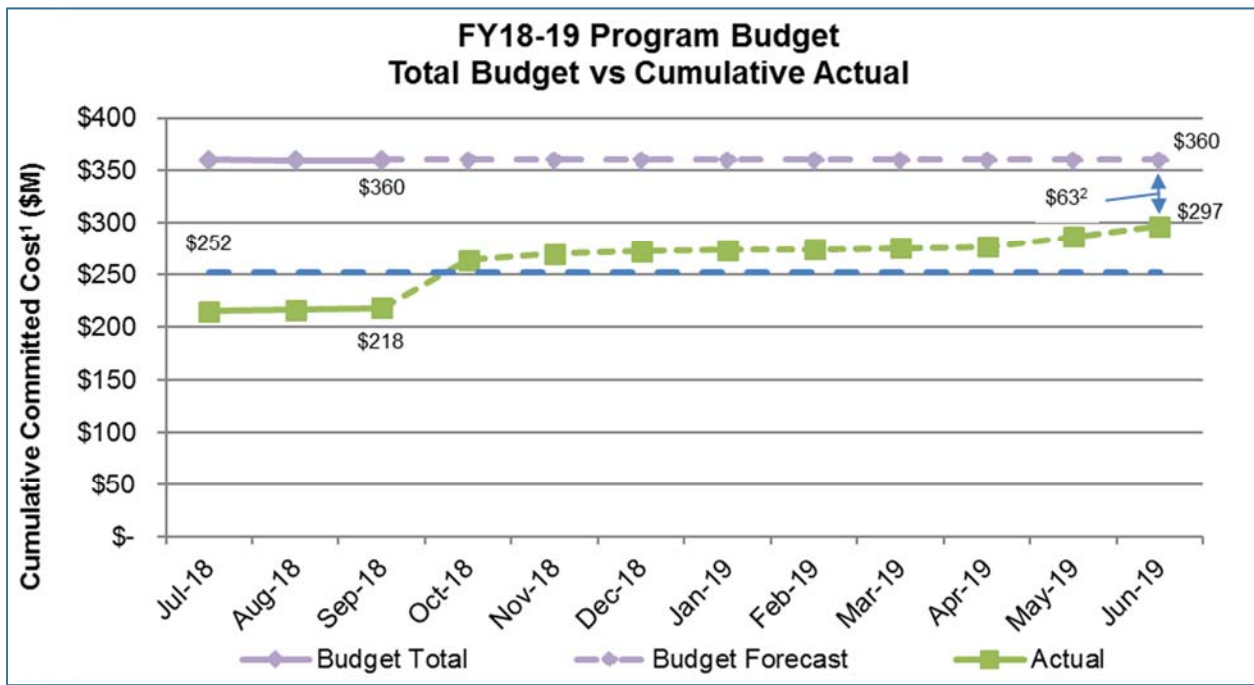
Carryover: Encumbrance balances at the end of the previous fiscal year are automatically carried forward to the current fiscal year as carryover funding to pay invoices for approved construction contracts and consultant agreements. FY18-19 carryover is \$213 million.

Budget of \$147 million and carryover of \$213 million totals \$360 million for FY18-19.



Fiscal Year 2018-2019 Program Budget Performance

The FY18-19 CIP budget is comprised of approximately \$147 million in new funds, plus encumbrances carryover of \$213 million for a total of \$360 million. This excludes City Hall Debt Service Fund; Clean Water Financing Authority Debt Service Payment Fund; Debt Service Repayment for Plant Capital Improvement Projects (San José only debt service); Equipment Replacement Reserve; Ending Fund Balance; Public Art; SBWR Extension; State Revolving Fund Loan Repayment; and Urgent and Unscheduled Treatment Plant Rehabilitation items. Overall, the forecasted fiscal year-end committed funds exceeds the fiscal year-end target by \$45 million.



Notes

1. Committed costs are expenditures and encumbrance balances, including carryover (encumbrance balances from the previous fiscal year).
2. The variance between forecasted budget and forecasted commitments can be primarily attributed to the following factors:
 - a. Several construction contracts are now anticipated to be awarded in FY19-20 instead of FY18-19 based on updated schedules:
 - i. Fire Life Safety Upgrades Project
 - ii. Switchgear M4 Replacement and G3 & G3A Removal
 - b. Several consultant service orders will not be awarded in FY18-19:
 - i. Aeration Tank Rehabilitation Project
 - ii. Support Facilities Project
 - iii. Tunnel Rehabilitation Project
 - c. The Blower Improvement Project construction bids came in under budget.
 - d. Several other minor encumbrances for consultant services are either lower than budgeted or are anticipated to be awarded in FY19-20.
 - e. Several authorized positions remain vacant, resulting in lower predicted personal services expenses than budgeted.
 - f. The payment for the annual premium budgeted for the Owners Controlled Insurance Program that was paid in in FY18-19 is now anticipated to be paid in FY19-20 due to later than expected invoicing from the insurers in FY17-18.



Project Performance Summary

There are currently seven projects in the construction and post-construction phases and an additional 18 projects in feasibility/development, design, bid and award, or design and construction phases (see PDM, page 2). Projects in the construction phase have established cost and schedule baselines 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.

Project Performance – Baselined Projects

Project Name	Phase	Estimated Beneficial Use Date ¹	Cost Performance ²	Schedule Performance ²
1. Iron Salt Feed Station	Post-Construction	May 2018 ³	●	◆
2. Construction-Enabling Improvements	Post-Construction	Aug 2018 ³	●	◆
3. Headworks Critical Improvements	Post-Construction	Aug 2018 ³	●	●
4. Plant Instrument Air System Upgrade	Construction	Nov 2018	●	◆
5. Cogeneration Facility	Design & Construction	Mar 2020 ⁴	●	●
6. Digester and Thickener Facilities Upgrade	Construction	Jan 2021	◆	◆
7. Advanced Facility Control & Meter Replacement - Phase 1	Construction	June 2021	●	●

KEY:

Cost:	● On Budget	◆ >1% Over Budget
Schedule:	● On Schedule	◆ >2 months delay

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 reviewed as part of project schedule reviews.
2. An explanation of cost and schedule variances on specific projects identified in this table is provided on pages 12 and 13.
3. Actual Beneficial Use date.
4. The project construction Beneficial Use date will be baselined once the City accepts the DB contractor's construction schedule.



Project Performance – Pre-Baselined Projects

Project Name	Phase	Estimated Beneficial Use Date ¹
1. Headworks Project	Design and Construction	Dec 2022
2. Blower Improvements	Bid and Award	Nov 2021
3. Switchgear M4 Replacement and G3 & G3A Removal	Design	Feb 2022
4. Advanced Facility Control & Meter Replacement Phase 2	Design	Dec 2022
5. Filter Rehabilitation	Design	Mar 2023
6. Nitrification Clarifiers Rehabilitation	Design	Jan 2024
7. 96-inch Settled Sewage Pipe Rehabilitation	Feasibility/Development	Sep 2019
8. Outfall Bridge and Levee Improvements	Feasibility/Development	Dec 2020
9. Digested Sludge Dewatering Facility	Feasibility/Development	Oct 2022
10. Fire Life Safety Upgrades	Feasibility/Development	Oct 2022
11. Storm Drain System Improvements	Feasibility/Development	Nov 2022
12. Flood Protection	Feasibility/Development	Jan 2023
13. HVAC Improvements	Feasibility/Development	Mar 2023
14. Facility-wide Water Systems Improvements	Feasibility/Development	May 2024
15. Support Facilities	Feasibility/Development	Mar 2027
16. Aeration Tanks Rehabilitation	Feasibility/Development	Apr 2027
17. Tunnel Rehabilitation	Feasibility/Development	June 2027
18. Yard Piping and Road Improvements	Feasibility/Development	June 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 reviewed as part of project schedule reviews.



Significant Accomplishments

Biosolids Package

Digested Sludge Dewatering Facility

- The project passed Stage Gate 3: Authorization to Proceed, which will allow the project team to advertise the RFP for a DB contractor in early October. Proposals will be due in December.

Digester and Thickener Facilities Upgrade

- Contractor Walsh completed the polychlorinated biphenyl (PCB) mitigations for digesters 5, 6, and 8 and is continuing PCB mitigation for digester 7, which is anticipated to be finished in October.
- The first of two layers of PT cables and shotcrete was completed for all digesters. The first two of four lifts of the Digester 5 ring beam foundation were completed.
- The contractor also began installing the dissolved air flotation chains and flight collectors and skimmers.

Facilities Package

Cogeneration Facility

- The gas purification system equipment began arriving on-site; equipment is being stored in the new central contractor laydown area until installation.
- The engine building reinforcement and underground electrical duct bank work continued in preparation for the concrete pour scheduled for next month.

Filter Rehabilitation Project

- The project successfully passed Stage Gate 4: Approve Preliminary Design. The design consultant is expected to complete detailed design by October 2019.

Fire Life Safety Upgrades

- Design consultant Kennedy/Jenks completed the conceptual design drawings. The project is expected to go to Stage Gate 3: Authorization to Proceed in December.

Outfall Bridge and Levee Improvements

- The project passed Stage Gate 2: Confirm Project Alternative and design consultant AECOM began conceptual design.

Storm Drain System Improvements

- Consultant AECOM finished locating the storm drain pipes that are planned to be upsized by using ground penetrating radar, induction, and conduction methods in concert with GPS surveying techniques.

Yard Piping and Road Improvements

- Owner's Advisor Consultant Black & Veatch (B&V) completed the condition assessment of the 96-inch and 87 by 136-inch settled sewage pipes and submitted the detailed report and videos to the City for review. These two pipes are in poor condition and a design-bid-build construction package will be prepared by the Owner's Advisor to expedite the necessary repairs.

Liquids Package

Advanced Facility Control and Meter Replacement – Phase 1

- Contractor Overaa Construction began mobilizing and preparing construction submittals. Construction will begin in May 2019 coinciding with the next dry season.

Advanced Facility Control and Meter Replacement – Phase 2

- The project team conducted a hazardous materials investigation for the plans, specifications, and engineer's estimates development. Next month, design consultant Black and Veatch will submit the 90 percent design package.

Headworks

- The project team held workshops with the DB contractor CH2M Hill on 1) risk management; 2) site selection; and 3) permitting. The team expects to advance to stage gate next month.



Nitrification Clarifiers Rehabilitation

- The project team in consultation with the design consultant HDR Engineering, Inc. finalized selection of value engineering recommendations that will be incorporated into the project. Next month the project team will bring the project to Stage Gate 4: Approve Preliminary Design.

Power and Energy Package

Plant Instrument Air System Upgrade

- Contractor Anderson Pacific successfully performed the 8-hour functional test. Next, the project team will perform the 28-day commissioning test.



Explanation of Project Performance Issues

Iron Salt Feed Station

Project construction was delayed by eight months due to a combination of heavy winter rain in 2016-17; longer than anticipated time to fabricate the double containment pipeline and leak detection system; piping modifications to resolve a pump operational issue at the ferric chloride station; and installation of additional piping to allow operations and maintenance (O&M) staff to temporarily dose polymer at an alternate location. In addition, operational testing and commissioning of the new equipment has taken longer than anticipated. Specifically, fine-tuning the control program; identifying and resolving pump operational issues; and addressing problems with the new flow meter and level sensor have taken additional time.

The project team resolved all issues and completed the commissioning test in May 2018. Beneficial Use was achieved on May 14, 2018. The project team is working with the contractor to complete the remaining work and anticipates filing the NOCA in October 2018.

Construction-Enabling Improvements

This project was originally scheduled to be substantially complete by mid-February 2017. Due to the extremely wet 2016-17 winter season, contractor Teichert Construction was unable to perform site work for several weeks from October 2016 through April 2017. Teichert was granted 47 extra work days for weather-related delays. Teichert was also granted additional time to remove and replace asphalt pavement in damaged areas of Zanker Road; install traffic-rated pull boxes for the streetlight system; install underground conduits for the fiber optic system; and make additional changes.

Delays in completing the installation of the project's portable trailers impacted the schedule. In early August 2018, the contractor completed installation of the utilities (electrical, communications, and wastewater) required to obtain a temporary Certificate of Occupancy permit for the trailers. The temporary Certificate of Occupancy was received in August 2018 and substantial completion was issued. The project team provided the contractor with a list of remaining contract work to be completed. Staff will work with Teichert to complete the outstanding work and schedule meetings to begin negotiating project close out and including liquidated damages. The project team anticipates accepting the project in December 2018.

Plant Instrument Air System Upgrade

Project construction has been delayed by seven months due to four issues: 1) Staff discovered that the planned construction site access route crossed a large settled sludge pipeline, requiring an alternative access route to be developed and constructed; 2) the contractor was temporarily unable to install a section of the conduit from the sludge control building to the new compressor building due to other work being performed in the area by a different contractor; 3) the development of the 28-day commissioning test procedure took longer than anticipated to develop, and 4) the project team discovered oxidized (rusted) carbon steel shavings in an existing condensate tank unrelated to the project construction during the 8-hour functioning test. The material was removed, and test successfully completed. The project is expected to achieve Beneficial Use in November 2018.

Digester and Thickener Facilities Upgrade

This project encountered numerous unforeseen conditions at the beginning of construction in 2016, described below. In 2017, design modifications were required to address seismic risks, and discovery of hazardous materials required extensive cleanup. Delays for these conditions are still being discussed and evaluated.

The City has negotiated contract change orders for the following unforeseen conditions discovered in 2016:

- Major corrosion of a below-ground, 78-inch settled sewage pipeline and junction structure delayed the construction of dissolved air flotation tank piping connections, two new pressurization flow boxes, and utility relocation work. The contractor postponed all repairs until a temporary pumping and pipeline system could be designed and safely installed to enable replacement of the pipeline in the 2018 dry season. In May of 2018, the contractor started full-time operation of this temporary pumping and pipeline system and began replacement of the 78-inch settled sewage pipeline, which is anticipated to be completed by late September 2018.
- A 36-inch biochemical oxygen demand pipe was found to be obstructing the new sludge screen building foundation. The contractor removed this pipe and relocated several gas drain vaults and associated piping before foundation construction began.
- Multiple conflicts between contract work and existing utilities required numerous relocations including water, natural gas, digester gas, landfill gas, storm drains, and sanitary sewer pipelines. The contractor completed necessary relocations and rerouting, especially near the new digester gas pipe rack footings. Many of these modifications also require design changes.
- Bay Area Air Quality Management District venting restrictions also delayed digester work. The contractor completed the temporary digester gas connections and the system became operational in February 2018.

The following outstanding issues are currently being evaluated and are expected to result in additional costs and delays:



- Digester structural redesign: The design consultant revised the structural drawings to address seismic issues by enlarging the foundation ring beam at the base of each of the four digesters. The contractor provided a cost proposal associated with this revision and the City issued a change order for a portion of the proposal. Work associated with the new foundation is ongoing.
- Hazardous material mitigation: Testing of soils and concrete for PCBs was completed and a final conditional approval was provided by the Environmental Protection Agency (EPA). All removal and disposal of contaminated materials has been completed to comply with the risk-based management plan approved by the EPA. All contaminated soils have been removed and disposed of and most of the impacted concrete has been encased. The last portion of the work will be finalized once all foundation work is completed. At that time, final reports on the work will be submitted to the EPA.

In November 2017, Council approved a contingency increase of \$15 million. The City issued change orders against the increased contingency for delays associated with the conditions discovered in 2016.

In June 2018, Council approved a second contingency increase of \$25 million for additional costs associated with the seismic redesign, hazardous material remediation, and extended construction duration.

An estimated delay of approximately 145 working days is currently reflected in the revised Beneficial Use date of January 2021. Staff is working with Contractor Walsh to evaluate the estimated delay days and anticipates having an updated schedule by late November.



Project Profile – Outfall Bridge and Levee Improvements

Treated RWF effluent is discharged via twin outfall pipes into an outfall channel before being conveyed a half-mile to a weir structure. The effluent discharges over the weir into an artesian slough. A footbridge crosses the channel over the weir structure and is used to mount probes and sensors to monitor water quality parameters upstream of the weir to demonstrate compliance with the RWF's National Pollutant Discharge Elimination System (NPDES) permit. Once effluent passes over the weir, it mixes with tidal water and travels another two miles until reaching Coyote Slough and into South San Francisco Bay.

This project has six components: (1) replacement of the footbridge above the outfall weir; (2) relocation and replacement of an electrical transformer located adjacent to the sulfur dioxide (SO₂) building; (3) bolstering erosion protection along the downstream face of the outfall weir; (4) replacement of pH and dissolved oxygen probes on the footbridge; (5) replacement of the outfall pipes flow meters; and (6) provision of fiber optic communications to critical instrumentation from outfall bridge area to the main facility.

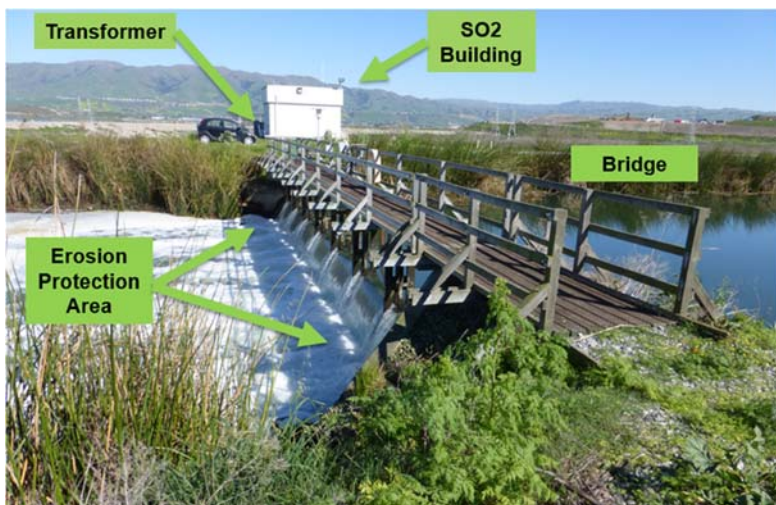


Figure 3: Outfall Bridge

A condition assessment of the project components was performed by the design consultant AECOM in June 2018. The assessment included a visual inspection, topographic survey, geotechnical analysis, underwater diver inspection, and interviews with RWF personnel. The dive inspection confirmed the deterioration of the underwater bridge substructure, the need for erosion protection on the downstream face of the weir, and replacement of the outfall flow meters located inside the two outfall pipes.

Outfall Bridge

The existing timber outfall bridge spans the approximately 65-foot-wide outfall channel and was last rehabilitated in 2000. Operators use the bridge to collect water samples two to three times daily. The project will replace the bridge.



Figure 4: Project Site Map

filtration influent pump station to the SO₂ building to improve communication and security, expand the amount of data that can be transmitted, and allow automation.

AECOM has begun the conceptual design, including the development of environmental documentation required to apply for appropriate state and federal permits to construct the project. The project will be constructed using the low-bid design-build delivery method with construction scheduled for the summer of 2020 and Beneficial Use anticipated in December 2020. The project budget is \$8,291,000.

Electrical Transformer

The 25-year-old existing electrical transformer (4160V:480V) is located adjacent to the sulfur dioxide building and supports all electrical equipment in the outfall channel, on the outfall bridge, and within the building. The transformer will be replaced and may be relocated as it currently sits at the edge of a slope on the widened levee which has settled and experienced some erosion since its original installation.

Flow Meters

The flow meters in the twin outfall pipes are nearing the end of their useful life. These meters are crucial to the RWF's operations and NPDES permit compliance. The project will replace these meters.

Fiber Optic Communications

Currently, the instruments at the bridge and SO₂ building communicate through radio transmission. The project will install fiber optic connections from the

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Regional Wastewater Facility Treatment – Current Treatment Process Flow Diagram

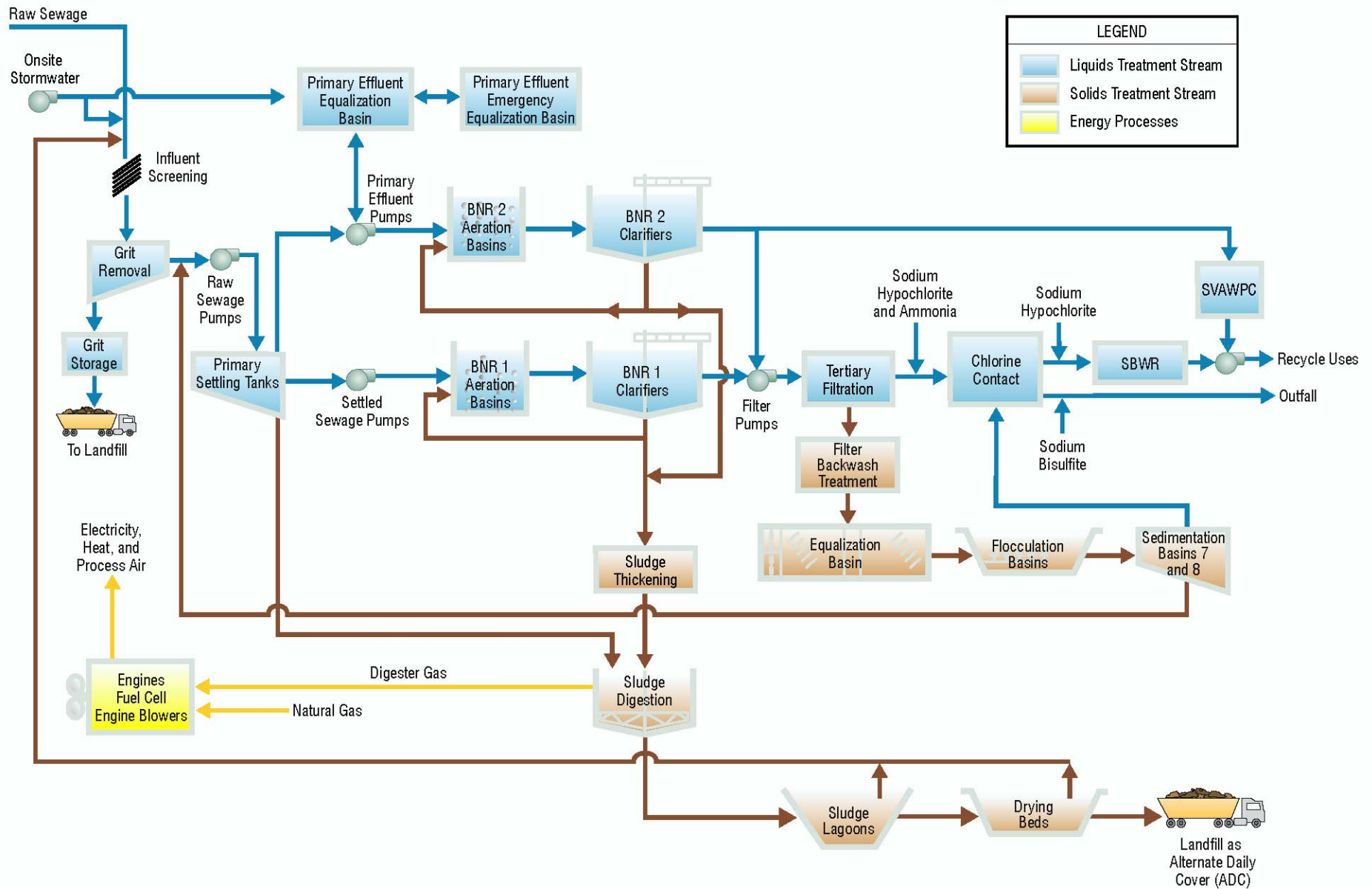


Figure 5 – Current Treatment Process Flow Diagram



Regional Wastewater Facility Treatment – Proposed Treatment Process Flow Diagram

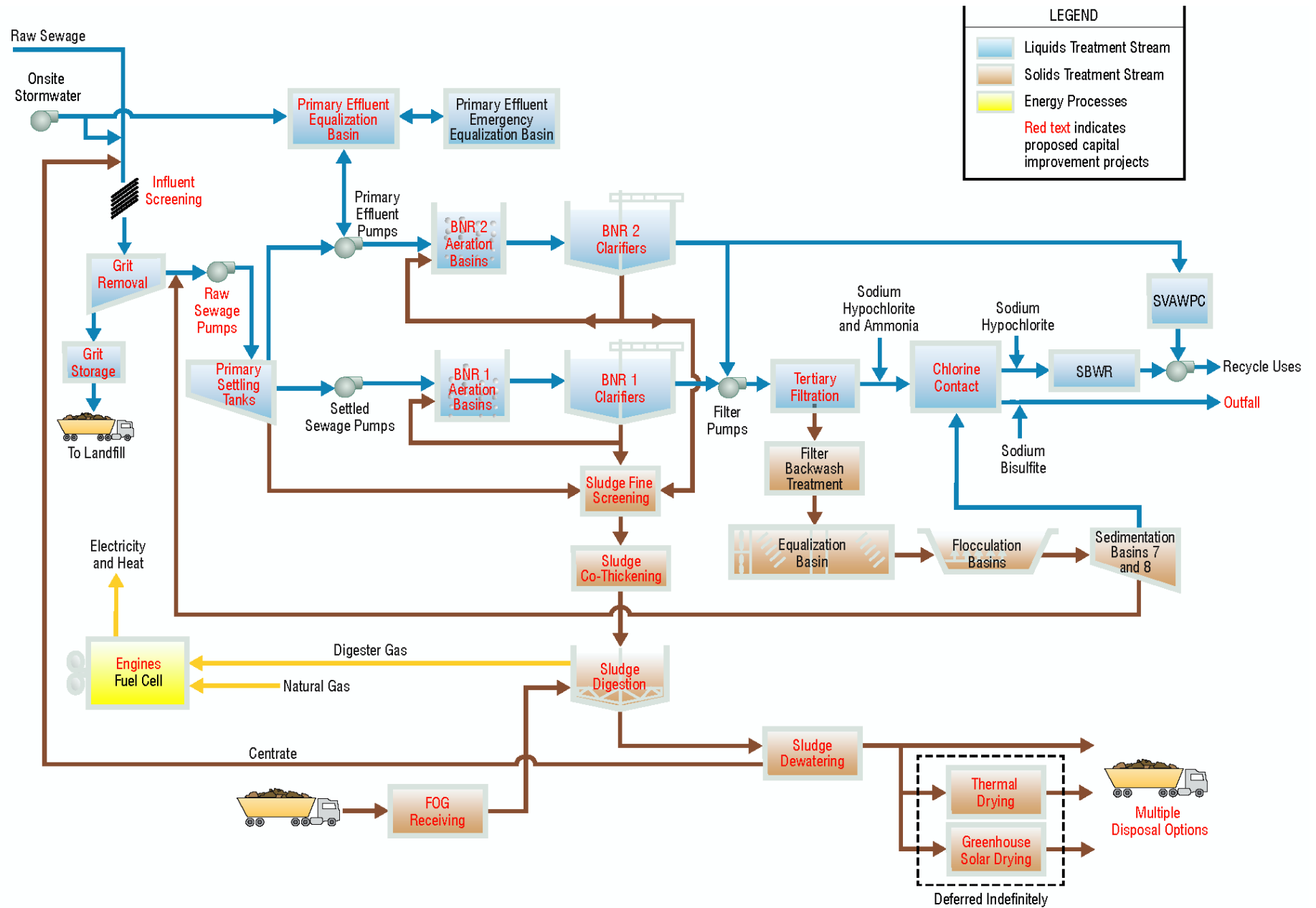


Figure 6 – Proposed Treatment Process Flow Diagram



Active Construction Projects – Aerial Plan

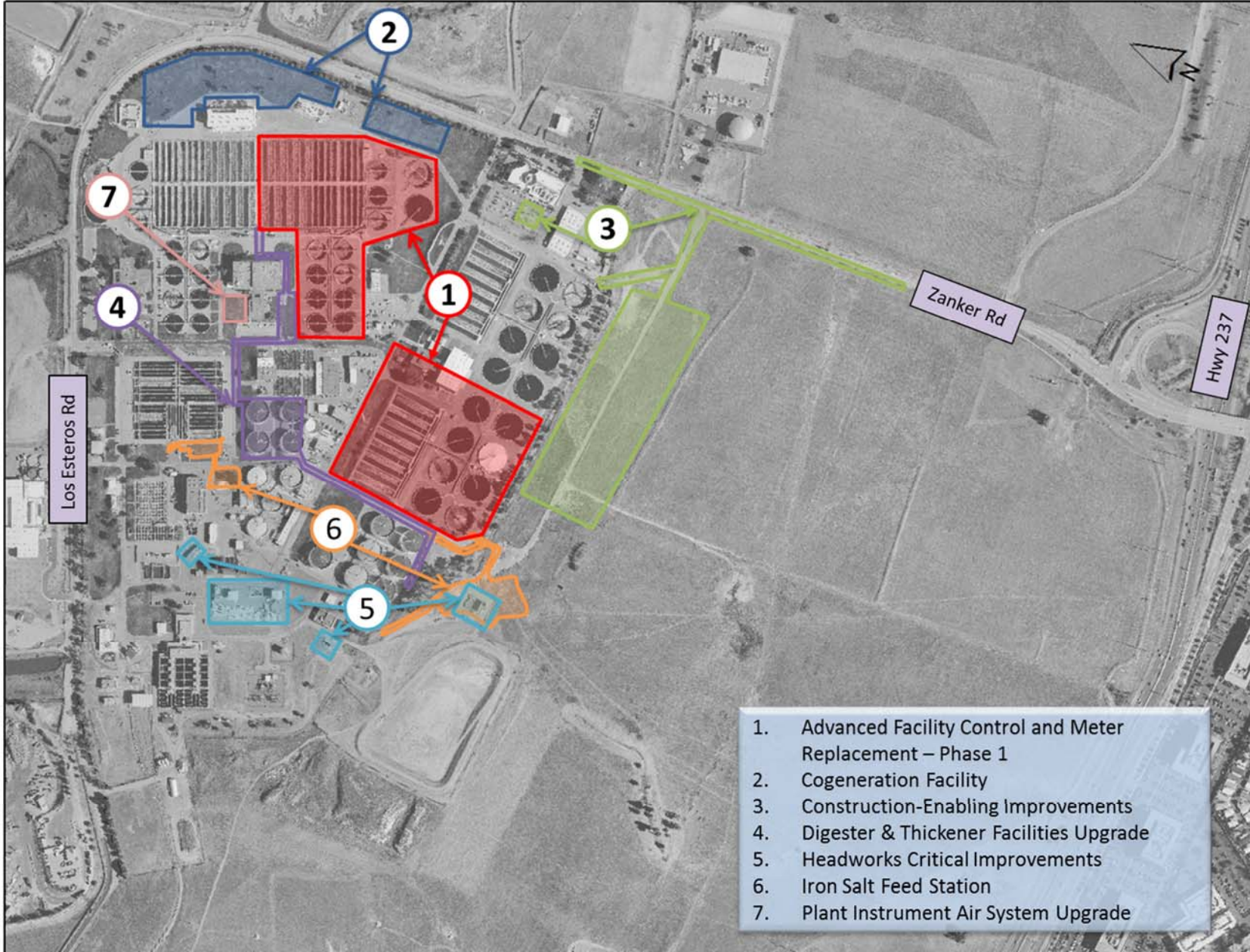


Figure 7: Active Construction Projects





Memorandum

TO: TREATMENT PLANT
ADVISORY COMMITTEE

FROM: Matt Cano
Director of Public Works

SUBJECT: PROJECT LABOR AGREEMENT

DATE: October 31, 2018

Approved D. D. S. L.

Date 10/31/18

RECOMMENDATION

Provide input on the City's execution of the attached Project Labor Agreement ("PLA") that would apply to most Regional Wastewater Facility (RWF) public works construction projects greater than \$3 million.

BACKGROUND

1. General Information on PLAs

A PLA is a multi-employer, multi-union pre-hire agreement designed to systemize labor relations at a construction site. Pre-hire agreements are collective bargaining agreements providing for union recognition, compulsory union dues, and mandatory use of union hiring halls prior to the hiring of any employees.

PLAs have been implemented by local government, special quasi-governmental taxing authorities, non-profit organizations, and private sector firms across the country. The Cities of Los Angeles, San Francisco, Oakland, Cleveland and New York have led efforts to negotiate and implement PLAs). In September 2016, the Valley Transportation Authority adopted a policy on PLAs and is currently negotiating the specific provisions. In January 2017, Santa Clara County adopted a PLA Policy and entered into a PLA with the Santa Clara and San Benito Counties Building & Construction Trades Council for public works projects over \$2 million.

2. Council Direction

On April 3, 2018, City Council directed City staff to negotiate a PLA with all affected labor unions. On October 16, 2018, City Council directed staff to negotiate the final language of the PLA, publish the final agreement on the City website immediately upon completion, and agendize the PLA for review by TPAC. Attached are the memorandums from the October 16, 2018 City Council meeting, Item 4.2. The specific direction adopted by the Mayor and City Council is shown in Mayor Sam Liccardo's memorandum dated October 16, 2018.

ANALYSIS

1. PLA Terms

The major terms of the attached PLA are as follows.

- It applies to RWF public works projects with an engineer's estimate for construction (or for the design build contract for design build projects) over \$3 million. The \$3 million threshold would be adjusted annually based on the nationwide consumer price index. In addition, a number of projects are specifically exempted, regardless of the amount of the engineer's estimate.
- It provides that non-union contractors and subcontractors may use up to five core workers on a project. It sets forth the requirements for qualifying as a core worker and the procedures for the dispatch of core workers.
- The Unions agree to no work stoppages, strikes and sympathy strikes. Contractors agree to no lockouts.
- Included are provisions for resolving labor and contractor grievances.
- Apprentices on the project can be from any California State approved apprenticeship program.
- A targeted hiring program will be in effect to increase the use of underrepresented workers on a PLA impacted project;
- The term of the PLA would be for five years and can be extended by a vote of the City Council. The PLA would apply to projects in which the bid or proposal solicitation occurs after the effective date of the PLA. The PLA would continue to apply to a project through project completion notwithstanding the expiration of the 5-year term.

2. PLAs for RWF Projects

There is no clear evidence regarding direct cost impacts of PLAs. The results of many studies seem to depend upon whether the group conducting the study are part of a labor organization or not. However, PLAs are intended to be an effective tool for large, lengthy, complex and time sensitive construction projects like those at the RWF.

A benefit of PLAs is that they tend to bring together the building trade's council, the project user or owner, and the general contractor to jointly develop the terms of a project. Another benefit of PLAs is that they include no-strike or lockout provisions, and include provisions for resolving contractor and labor grievances. In short, they are intended to help prevent delays, maintain workplace safety and ensure high-quality construction.

All public works projects, including RWF projects subject to a PLA, already require the payment of the same prevailing wages to all (union and non-union) workers. So staff believes the PLA will not increase costs of labor.

TREATMENT PLANT ADVISORY COMMITTEE

October 31, 2018

Subject: Project Labor Agreement

Page 3

The following projects that are currently projected to coincide with the current 5-year initial term of the PLA policy could be subject to a project labor agreement (pending finalization of scopes of work and engineer's estimates):

Project	Estimated Request for Bid or Proposal Month	Current Construction Estimate
Outfall Bridge	June 2019	\$4.0 million
Nitrification Clarifiers	June 2019	\$38.5 million
Switchgear M4 / G3 & G3A	August 2019	\$3.9 million
Advanced Facility Control - Phase 2	October 2019	\$12.7 million
Filter Rehabilitation	November 2019	\$28.2 million
Storm Drain System Improvements	September 2020	\$9.1 million
Yard Piping Improvements	August 2019	\$59.7 million
Flood Protection	January 2021	\$5.1 million
Secondary Clarifiers Rehabilitation	April 2021	\$17.7 million
Facility wide Water Systems Improvements	June 2021	\$9.5 million
East Primary Rehabilitation	December 2021	\$76.8 million
Tunnel Rehabilitation	April 2022	\$18.5 million
Final Effluent Pump Station	June 2022	\$31.0 million
Aeration Tanks Rehabilitation	August 2022	\$45.0 million
Additional Digesters	February 2023	\$43.5 million

/s/

MATT CANO

Director of Public Works

For questions, please contact Christopher Hickey, Division Manager, Department of Public Works, at (408) 535-8481.

List of attachments

- A. Mayor Liccardo ROGC Memorandum (March 22, 2018)
- B. Project Labor Agreement Negotiation Memorandum (October 5, 2018)
- C. Mayor Liccardo Supplemental Project Labor Agreements Memorandum (October 16, 2018)
- D. Draft Citywide Project Labor Agreement for the City of San Jose
- E. Draft Addendum B- Community Workforce Pipeline Targeted Hire Agreement





COUNCIL AGENDA: 4/03/2018
ITEM: 3.3 (18-447)

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Toni J. Taber, CMC
City Clerk

SUBJECT: SEE BELOW

DATE: March 22, 2018

SUBJECT: Private Development Workforce Standards/Community Workforce Agreements on Public Project.

RECOMMENDATION:

As recommended by the Rules and Open Government Committee on March 21, 2018, Council discussion and direction to staff on Private Development Workforce Standards, Capital Bond Measure, Best-Value Contracting, and Community Workforce Agreements as described in the memorandum.

[Rules Committee referral 3/21/18 - Item G.7]



Memorandum

TO: RULES AND OPEN
GOVERNMENT COMMITTEE

FROM: Mayor Sam Liccardo

**SUBJECT: PRIVATE DEVELOPMENT
WORKFORCE STANDARDS/COMMUNITY
WORKFORCE AGREEMENTS ON PUBLIC
PROJECTS**

DATE: March 16, 2018

Approved

Date

3-16-18

RECOMMENDATION

Approve a request to agendize for Council deliberation at the March 27, 2018 City Council meeting, the following:

1. **Private Development Workforce Standards:** Direct the City Manager and City Attorney to draft an ordinance requiring specific workforce standards for construction employment on private development projects, in those circumstances where the City is subsidizing the project. Those workforce standards will include provisions mandating prevailing wage, as well as goals and process requirements for apprentice ratios, the hiring of local workers, and targeted hiring from underrepresented subpopulations. City action may trigger such requirements where it commits a subsidy of land or money, or in narrow circumstances, where it grants a fee or tax reduction for reasons other than those fee reductions necessary to make a subcategory of projects financially viable. Investments by the City for such purposes as affordable, rent-restricted housing, or for nearby, public-serving infrastructure (e.g., traffic signals or off-ramps) will not trigger such requirements.
2. **Capital Bond Measure:** Direct the City Manager to identify a set of the highest-priority capital projects that the Council should consider placing before the voters as a bond measure during the November, 2018 election. Until better informed by polling and project evaluation, the bond measure should target an aggregate project valuation of \$300 million. The City Manager shall further include such a measure in City-funded polling conducted this Spring, and return to Council in late May with a preliminary proposed list of such projects for discussion and public review.

3. **Best-Value Contracting**: Direct the City Manager and City Attorney to review Charter provisions that mandate “lowest-cost bidder,” and evaluate what language would best supplant that mandate to enable the City to have better flexibility to avoid hiring poor-performing contractors on city capital projects, similar to other California cities. The City Manager shall further include in City-funded polling this Spring, the testing of a measure required to extract “lowest-cost bidder” requirements from the City Charter.
4. **Community Workforce Agreements**: Direct the City Manager and City Attorney to negotiate with all affected labor unions a Community Workforce Agreement to apply to City-funded capital contracts greater than \$3 million—increasing annually with CPI—but excluding all City Capital Maintenance Projects, which typically involve maintenance work, such as street repaving.

BACKGROUND

Since the submittal of a proposed “Build Better San Jose” Initiative, I have engaged in discussions and formal negotiations with several business and labor leaders to find a compromise that would support good wages and ensure high-paying jobs without stifling housing production and job creation in the city of San Jose. Through several weeks of negotiations, we have emerged with a verbal agreement on a proposed settlement with representatives of South Bay Labor Council, Working Partnerships USA, the Santa Clara-San Benito Counties Building Trades, and the Mechanical, Electrical, Plumbing, and Sprinkler Fitters (MEPS) unions. I thank them for working earnestly to find a satisfactory solution, and one that incorporates the following elements:

1. **Local Hiring and Prevailing Wage Requirements on Private Development**: In those circumstances in which private development is subsidized by the City of San Jose— particularly where there is a direct contribution of land or public money to any private project above a minimum threshold of valuation— additional workforce standards on the construction of the project will apply. Those standards will include mandates for hiring construction workers locally, targeted hiring of apprentices, and paying prevailing wage. More specific details about the elements of those provisions will be attached to this memorandum in the days ahead as supplemental Exhibit A.
2. **Gross Receipts Tax**: Given the compromise, the parties understand and agree that there will be no need for the proceeds from a Gross Receipts Tax to be utilized to subsidize private development workforce standards. Therefore, the parties have agreed that neither they nor their agents will bring any proposal for a Gross Receipts Tax for voter approval during the period in which the ordinances discussed will be in full force and effect.
3. **Prevailing Wage and Local Hire Mandates**: The parties have agreed that neither they nor their agents will bring a proposal to impose “prevailing wage” or “local hire” requirements on private development to the ballot for voter approval during the period in which the ordinance discussed will be in full force and effect.

4. **Community Workforce Agreements:** On City-funded capital construction projects, other than City Capital Maintenance Projects, Community Workforce Agreements shall apply wherever the valuation of the construction project exceeds \$3 million. Each year, the \$3 million threshold will increase with the Consumer Price Index. More specific details about the elements of those provisions will be attached to this memorandum in the days ahead in a supplemental Exhibit B.
5. **Bond Measure:** I've agreed to lead an effort for voter approval of a capital bond measure for replacement or new construction, to both address capital replacement needs within the City's \$1.3 billion capital maintenance and replacement backlog, and for new construction for public safety, communications, parks, and other City needs. Among the capital needs include a police training center, new fire stations, parks, bridge replacement, flood and sea-level-rise protection, and broadband infrastructure for emergency communications.
6. **Charter Change:** I've agreed to lead an effort to go to the voters to eliminate provisions in the existing City Charter that mandate "low-cost-bidder" selection on City capital projects, to enable the City to have more flexibility to disqualify poorly performing contractors.

I'd like to thank all of the participants who assisted the City in negotiating this framework, particularly the private-sector development partners who offered their advice and input. I look forward to deliberating with my Council colleagues, and moving forward with a City ordinance that reflects the broad interest of our community in the weeks ahead.



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Matt Cano

SUBJECT: PROJECT LABOR AGREEMENT
NEGOTIATIONS

DATE: October 5, 2018

Approved

Date

10/5/18

RECOMMENDATION

Adopt a resolution authorizing the City Manager to negotiate and execute a project labor agreement with the Santa Clara and San Benito Counties Building and Construction Trades Council for an initial term of five years and to require inclusion of the project labor agreement in certain City public works construction contracts exceeding \$3,000,000, a threshold that would be adjusted annually by the consumer price index.

OUTCOME

Approve a standard project labor agreement (PLA), consistent with the parameters set forth in this memorandum, that the City would include in certain Public Works construction contracts that exceed a specified threshold amount.

BACKGROUND

A. General Information on PLAs

A PLA is a pre-hire collective bargaining agreement that applies to a specific construction project or series of construction projects for the duration of the project(s). It is between the owner of the project(s) and a group of unions. A PLA typically contains provisions addressing wages and fringe benefits, union recognition, compulsory union dues, mandatory use of union hiring halls before hiring employees, use of apprentices, and procedures for resolving labor disputes. A PLA typically bars unions from striking and contractors from locking out workers.

The owner and unions enter a PLA **before** the owner solicits bids for construction of the project(s). The PLA is included in the bid documents, and the winning bidder is required to abide by the terms of the PLA. Through the bid documents and the resulting construction contract, the PLA is made applicable to all contractors and subcontractors working on the project(s).

Public entities, such as the City, generally can use PLAs when acting in their proprietary capacity as a market participant. Factors supporting the use of a PLA include the following: (1) the need for timely and successful completion of the project(s); (2) the project(s) involve a large number of workers of various skills that will be represented by signatories to the PLA; and (3) the project(s) will involve the use of multiple contractors and bargaining units on the job site at the same time over an extended period of time.

PLAs have been implemented by local government, special quasi-governmental taxing authorities and non-profit organizations across the country. The Cities of Los Angeles, San Francisco, Oakland, Cleveland and New York have led efforts to negotiate and implement PLAs. In September 2016, the Santa Clara Valley Transportation Authority adopted a policy on PLAs and is currently negotiating the specific provisions of its PLA. In January 2017, Santa Clara County adopted a PLA Policy and entered into a PLA with the Santa Clara and San Benito Counties Building & Construction Trades Council for certain capital projects.

B. Council Direction to Negotiate a PLA

At the City Council meeting on October 24, 2017, staff was directed to negotiate a PLA with specific terms with the Santa Clara & San Benito Counties Building and Trades Council (BTC). On December 10, 2017, the Mayor and Councilmembers received a letter dated December 10, 2017, from the BTC requesting that the Council reconsider their decision to impose the various parameters of the agreement that were outlined in the October 24, 2017, City Council direction. As a result, staff continued to meet with the BTC and returned to the City Council meeting on April 3, 2018, for further discussion and direction.

At the April 3, 2018, City Council meeting, the City Manager and City Attorney were directed to negotiate a PLA with all affected labor unions. The direction was subject to two requirements. One requirement was that the PLA would apply to City-funded capital contracts greater than \$3 million, with the threshold increasing annually by the consumer price index.

The other requirement was that the following projects would be except from the PLA:

“Existing infrastructure/assets that require repair, maintenance, or upgrades that extend the useful life of the asset. They include:

- Street maintenance: Sealing, slurry, repaving, re-surfacing, on-call maintenance contracts
- Sewer Maintenance: Repairs, rehabilitation, lining, maintenance at storm and sanitary pump stations
- Muni Water: Water tank and water pipeline maintenance
- Airport pavement maintenance
- On-call maintenance contracts for various repairs: Roof, pavement work, City facilities, parks

ANALYSIS

PLAs involve numerous complicated issues and the balancing of different interests among various parties. In May 2018 representatives of the City and local labor organizations, including the BTC, began negotiating a PLA. Although there are still numerous details and provisions that need to be negotiated, City staff and the BTC have reached agreement on significant core issues, as discussed further below. Staff is requesting the City Council to authorize the City Manager to negotiate and execute a PLA consistent with the following discussion.

A. Threshold Amount

Assuming a sufficient proprietary interest, the PLA will apply to any public works construction contract awarded, and paid for in whole or in part, by the City in which the engineer's estimate exceeds \$3 million. The \$3 million will be adjusted annually based the local consumer price index.

For design-build contracts, City staff has agreed to include design costs in determining whether the contract meets the threshold.

B. Covered work

City staff and the BTC generally agree the PLA will apply to all work within the craft jurisdiction of one of the labor organizations if the work is required (1) by a public works construction contract; (2) by a change order issued pursuant to the public works construction contract; and (3) during the public works construction contract's warranty period.

City staff and the BTC also agree on clarifications and refinements to the projects that the City Council directed be exempt from PLAs, as referenced above in the "background" section of this memorandum. After extensive discussions about this issue, BTC and City staff have agreed to limit the exclusion to the list of bulleted items, to provide further definition to these items, and to add building rehabilitation to the list.

It is staff's intent that the building exemption is intended to exempt any project that rehabilitates or upgrades an existing building that does not increase the square footage of the building by more than 10%. So, if a building project over \$3 million increases the square footage of a building by more than 10% or completely demolishes (and rebuilds) the entire exterior of the building then it would have a PLA. As an example, the recently completed nearly \$18 million project to rehabilitate the convention center exhibit hall with upgrades such as new ceiling, lighting, sound and rigging systems would be exempt from a PLA.

The revised list is included in the Attachment to this memorandum. By the action requested in the memorandum, City staff is requesting the Council to approve the modification to its previous direction.

City staff and the BTC are having ongoing discussions about other exclusions from covered work, such as for work by City employees, work performed by employees of a manufacturer or vendor in order to maintain a warranty or guarantee, work jointly funded by any federal, state or other local entity unless such other entity agrees the applying the PLA.

C. Core Workers – Number & Eligibility

A “core worker” is an existing worker on the workforce of a contractor or subcontractor. PLAs generally contain provisions allowing contractors and subcontractors to use a certain number of core workers under limited conditions.

BTC originally proposed allowing contractors/subcontractors to use up to five core workers. City staff agreed to BTC’s original proposal allowing contractors/subcontractors to use up to five core workers as this is typical of other PLAs in the State. After back and forth discussion, City staff and the BTC also agreed to the following requirements to qualify as a core worker:

1. Appearance on the Contractor/Employer’s active payroll for at least the 90 of 120 working days prior to award of a Construction Contract;
2. Possession of all licenses and certification required by applicable state and federal law for the Project Work;
3. Has worked at least 2,000 hours in the appropriate construction craft during the past four years.

D. Core Worker Distribution

Typical of PLA requirements, core workers must be referred from the union hiring hall. After reviewing PLAs throughout the State and back and forth discussion, City staff agreed with the BTC on the following referral process:

1. A worker is referred to from the applicable union hiring hall out-of-work list,
2. Then a core worker is referred from the union hiring hall,
3. Followed by a worker from the hiring hall out-of-work list, and
4. This process continues until the contractor/subcontractor’s requirements are met or until the contractor/subcontractor has hired five core workers for the trade or craft, whichever occurs first.

Once five Core Workers have been hired, any additional employees necessary for the affected trade or craft will be hired exclusively from the hiring hall out-of-work list. In the event the contractor/subcontractor reduces the workforce, any reduction will take place in the reverse order, starting with a core worker and in the same ratios as was applied to the hiring process.

E. Apprenticeship

City staff and the BTC have agreed to language in the PLA that would allow the use of apprentices from any California state-approved apprenticeship program.

F. Targeted Hiring

City staff and the BTC agree conceptually to “targeted worker” provisions aimed at increasing the use of underrepresented workers. Underrepresented workers include persons who are homeless, recently housed, or at risk of losing their homes; persons currently receiving public assistance; persons formerly incarcerated or currently participating in a reentry program; persons who have been continuously unemployed for the previous one year; persons having a family or household with a low income; persons who have been emancipated from the foster care system; military veterans; at-risk youth; or survivors of labor trafficking.

City staff and BTC are having on-going discussions about the targeted worker provisions and generally agree that the BTC would be responsible for recruitment of targeted workers and the contractor’s responsibility would be to submit a request to BTC.

G. Small Business Exemptions

At the June 19, 2018, City Council meeting, Council deemed Local Hire/Local Business/Apprentice Utilization Program and Disadvantaged Business Enterprises (DBE) as the second and fifth highest priority, respectively. Consistent with these Council priorities, City staff made numerous proposals aimed at encouraging greater participation of small, local and DBE subcontractors. These proposals included exemptions or carve-outs for such businesses, and exemptions from core worker requirements for low value, small business subcontracts. After several discussions, staff and BTC could not reach agreement on any small or local business exemptions or carve-outs. Accordingly, City staff’s recommendation includes requesting Council approval to move forward with a PLA that does not include any exemptions or separate processes for small/local or DBE Contractors/Employers. However, it is important to note that BTC agreed with the importance of small business inclusion on City projects and by agreeing to setting the project threshold at \$3 million there will be a large number of city projects that do not have PLAs and thus no additional perceived barriers to small business inclusion.

H. PLA Term

After a review of standard agreement language throughout the State, City staff and BTC agreed to a five year term for the PLA. At the expiration of the five year term, the PLA can extend for an additional five years, subject to approval by the City Council. This will give the City Council the opportunity to decide if it wants to continue the PLA for another five years.

EVALUATION AND FOLLOW-UP

Per council direction from April 3, 2018, staff will return to the City Council within two years for a review of the projects with project labor agreements implemented at that time.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the October 16, 2018, City Council Meeting.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/
Matt Cano
Director of Public Works

Attachment: Project Labor Agreements Project Exemption Listing

For questions, please contact Matt Cano, Public Works Director at (408) 535-8300.

ATTACHMENT

Project Labor Agreements Project Exemption Listing

This Agreement shall not apply to the following projects where more than fifty percent (50%) of the total cumulative value of the Engineer's Estimate for the project are for the following:

1. Street maintenance: Street sealing (slurry, chip, cape, fog, etc.), micro-surfacing, re-paving, repairing, re-surfacing, on-call maintenance contracts
2. Sewer maintenance: Repairs, rehabilitation, lining, maintenance of storm and sanitary sewers and pump stations
3. Muni Water: Water tank, pipeline maintenance, and repair.
4. Airport pavement maintenance: Sealing (slurry, chip, cape, fog, etc.), micro-surfacing, re-paving, repairing, and re-surfacing
5. On-call contracts for various repairs and minor projects such as: roof, pavement work, City facilities, parks. Each specific project within the on-call contract would be under the City's Minor Public Works project dollar threshold;
6. Building maintenance or rehabilitation

The installation of new public amenities, that did not exist previously, shall not be included in calculating this fifty percent (50%) threshold.

With respect to Item 6, a building maintenance or rehabilitation project shall not be excluded under this Addendum if the project increases the square footage of the building(s) by more than ten percent (10%) or if the exterior of the building will be entirely demolished.



Memorandum

TO: CITY COUNCIL

FROM: Mayor Sam Liccardo

SUBJECT: PROJECT LABOR AGREEMENTS

DATE: October 16, 2018

APPROVED:

Sam Liccardo MM

DATE: 10/16/2018

RECOMMENDATION

1. Negotiate the final language of the Project Labor Agreement (PLA) consistent with Staff direction;
2. Publish the final agreement on the city website immediately upon completion of final negotiation and drafting;
3. Consult with the Treatment Plant Advisory Committee regarding the specific terms of the PLA at the next available opportunity;
4. Execute immediately after consultation with TPAC, barring any unforeseen objection or issue raised at that hearing;
5. Adopt Councilmember Jones' recommendations F.1., G.1., and G.2., regarding reporting and assessing impacts to small businesses and disadvantaged workers.

DISCUSSION

On April 3, 2018, the Council directed staff to negotiate a project labor agreement on city construction projects with the Building and Trades, consistent with a term sheet that parties had negotiated in the prior several months.

Since that time, the negotiators for the Building Trades and the City— represented by Public Works Director Matt Cano and Deputy City Attorney Glenn Schwarzbach—have diligently negotiated the specific language of the final project labor agreement, which I'm told is close to final completion. I'd like to thank them, along with David Bini, Ben Field, and all of the participants who have worked many hours to reach an agreement.

A. Remaining Issue: Upgrades and Rehabilitation Projects

All of the deal points have been agreed to, as I understand it, but one issue has lingered: whether certain facility "upgrades" or "rehabilitation" will be considered "maintenance" projects for purposes of an exclusion from PLA requirements for "City Capital Maintenance Projects." (CCMP)

The Building Trades have contended that, although the parties agreed that building maintenance projects would remain exempt from PLA's, some building "upgrades" or "rehabilitation projects" should be covered by PLA's. City Staff disagrees, asserting that an upgrade of an HVAC system, replacing seats in a theater, or replacing a roof clearly falls within the CCMP exemption negotiated with the parities.

I believe City Staff has the far better argument, and one that accords with the negotiated language of the April term sheet—which Council approved—and with the intent of the people (of whom I was one) who negotiated that document.

As with any judge interpreting a contract, we would do best to begin with a close review of the language of the original term sheet agreed upon by the parties, which was attached to the memorandum that I submitted to the Rules Committee on March 21st (<https://sanjose.legistar.com/View.ashx?M=F&ID=6149999&GUID=2F0C8441-8C9B-4CAE-8659-99CD317B2A6A>). That agreement specifically excludes any "City Capital Maintenance Project" (CCMP) from a project labor agreement requirement. Exhibit B to the term sheet defines CCMP as:

"City Capital Maintenance Projects shall be defined as: Existing infrastructure/assets that require repair, maintenance, or upgrades that extend the useful life of the asset."...

The language is clear: if we're building a new asset worth more than \$3 million in construction, it's covered by a PLA. If we're merely repairing, maintaining, or upgrading an existing facility, then it's not covered by a PLA. The word "upgrades" is explicitly mentioned in the definition. Accordingly, examples of exempted CCMP projects—several of which are specified in the term sheet beneath the initial definition— include street repaving, roof replacement, or water and sewer line replacement.

Several Councilmembers and I issued memoranda prior to our April 3rd vote. In my memorandum, I responded to an argument of Councilmember Khamis', asserting, "For example, while Councilmember Khamis quotes from my 2017 memorandum pointing to the problems of raising costs for "road repaving" and 'park rehabilitation,' *the contemplated agreement explicitly excludes capital maintenance and repair projects such as these.*" [emphasis added]

All of these memoranda and documents were made public, and we heard extensive public testimony from dozens of members and leaders of the Building Trades at that April 3rd hearing. Never during that testimony did anyone disagree with either the CCMP language in the term sheet, nor my written characterization of that language.

After the Building Trades raised this issue in September, Staff constructed a compromise to further define the difference between a project that would fit within the CCMP exclusion, and one that would be governed by a PLA. That definition, as described in the City Manager's memo, provides that the parties' agreement:

“is intended to exempt any project that rehabilitates or upgrades an existing building that does not increase the square footage of the building by more than 10%. So, if a building project over \$3 million increases the square footage of a building by more than 10% or completely demolishes (and rebuilds) the entire exterior of the building then it would have a PLA. As an example, the recently completed nearly \$18 million project to rehabilitate the convention center exhibit hall with upgrades such as new ceiling, lighting, sound and rigging systems would be exempt from a PLA.”

Staff’s formulation of this definition is generous, in light of the pre-existing written agreement of the parties. The Council should approve Staff direction.

B. Impact on Bond Measures on November Ballot

In the ballot materials accompanying Measures T and V, some individuals opposing those measures have raised issues regarding the impact of these project labor agreements on our November bond measures. Accordingly, the Council may have questions about how their actions today could affect those \$1.1 billion bond-funded projects, if they are approved by the voters.

The overwhelming majority—certainly more than 80%—of the dollars from Measures T and V will fund projects that will not be covered by PLA’s. Council’s action today should not have significant impacts on those projects, for several reasons:

- The Measure T opponents offered arguments relating to PLA’s, but those were initially signed by an organization, Associated Builders and Contractors, that has since withdrawn its opposition to Measure T after further discussions about the content and applicability of the PLA provisions to these measures.
- None of the projects funded by the \$450 million in bonds authorized by Measure V will be subjected to a PLA, because the City and Building Trades specifically exempted all affordable housing in their agreement.
- With regard to the construction authorized by Measure T, none of the \$300 million in street repaving would be covered by a PLA, under the terms of the CCMP exclusion.
- None of Measure T’s \$50 million authorized for purchase of land in Coyote Valley for flood retention and prevention involves any construction, so it would also be exempt.
- Of the remaining \$300 million in Measure T proceeds, many contemplated upgrade, repair, or maintenance projects, such as bridge repairs and storm sewer line or outfall replacement, would not be covered by PLA’s under the terms of the CCMP exclusion.
- Of that subset of construction projects on “new” facilities or infrastructure within that \$300 million pool, only those projects exceeding \$3 million in cost will be subject to a PLA. In the past, that \$3 million threshold has applied to about 10% of all city public works projects since 2012.

The total aggregate valuation of these projects, therefore, constitute a fraction of the remaining \$300 million in Measure T not excluded for other reasons, and certainly less than 20% of the aggregated \$1.1 bond program. Accordingly, our vote today should not conflate these PLA requirements with these ballot measures. We expect that large, complex construction projects—such as the future airport expansion, and any additions to the Convention Center—will be subject to PLA's. However, those are not projects authorized by these bond measures anyway.

**CITYWIDE PROJECT LABOR AGREEMENT
FOR THE CITY OF SAN JOSE**

INTRODUCTION/FINDINGS

This Agreement is entered into this ____ day of _____, 20____, by and between the following parties: (1) City of San Jose (hereinafter the “City”), (2) contractors and subcontractors of all tiers who become signatories to this Agreement by signing the “**Agreement to be Bound**” (**Addendum A**) (referred to collectively herein as “Contractor(s)/Employer(s)”), and (3) the Santa Clara and San Benito Counties Building and Construction Trades Council (hereinafter the “Building Trades Council”) and its affiliated local Unions that have executed this Agreement (referred to collectively herein as “Union” or “Unions”).

WHEREAS, the City’s purpose in entering this Agreement is to efficiently procure public works contracts awarded by the City where the City engineer’s estimate of the total cost of the contract to construct the project exceeds \$3 million, as adjusted for inflation;

WHEREAS, this Agreement applies only to those qualifying public works contracts in which the initial bid or proposal solicitation occurs during the term of the Agreement;

WHEREAS, this Agreement promotes the efficiency of construction operations for the City through the use of skilled labor resulting in quality construction outcomes, and provides for the peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of the public works contracts to which it is applicable;

WHEREAS, the timely and successful completion of the public works contracts to which this Agreement is applicable is of the utmost importance to meet the needs of the City and avoid increased costs resulting from delays in construction; and

WHEREAS, the use of skilled labor on construction work increases the safety of construction projects as well as the quality of completed work; and

WHEREAS, the interests of the City, its residents, the Unions, and the Contractors/Employers is best served if the construction work proceeds in an orderly manner without disruption because of strikes, sympathy strikes, work stoppages, picketing, lockouts, slowdowns or other interferences with work; and

WHEREAS, the Contractors/Employers and the Unions desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on the public works contracts to which this Agreement is applicable and to encourage close cooperation among the Contractors/Employers and the Unions so that a satisfactory, continuous and harmonious relationship will exist among the parties to this Agreement; and

WHEREAS, the parties agree that one of the primary purposes of this Agreement is to avoid the tensions that might arise on the public works contracts to which this Agreement is applicable if Union and non-union workers of different employers were to work side by side, potentially leading to labor disputes that could delay completion; and

WHEREAS, this Agreement is not intended to replace, interfere with, abrogate, diminish or modify existing local or national collective bargaining agreements in effect during the duration of the public works contracts to which this Agreement is applicable, insofar as a legally binding agreement exists between the Contractors/Employers and the affected Unions, except to the extent that the provisions of this Agreement are inconsistent with said collective bargaining agreements, in which event, the provisions of this Agreement shall prevail; and

WHEREAS, the contract(s) for construction work on the public works contracts to which this Agreement is applicable will be awarded in accordance with the applicable provisions of the City Charter of the City of San Jose and any other applicable state, local and federal laws; and

WHEREAS, the City has the right to select the lowest responsive and responsible bidder for the award of public works contracts to which this Agreement is applicable; and

WHEREAS, the City, the Building Trades Council and the Unions place high priority upon the development of comprehensive programs for the recruitment, training and employment of traditionally underrepresented and targeted workers and local area residents, and recognizing the ability of local pre-apprenticeship and apprenticeship programs to provide meaningful and sustainable career pathways to careers in the building and construction industry; and

WHEREAS, the parties to this Agreement pledge their full good faith and trust to work toward the mutually satisfactory completion of the public works contracts to which this Agreement is applicable;

NOW, THEREFORE, IT IS AGREED BETWEEN AND AMONG THE PARTIES HERETO, AS FOLLOWS:

ARTICLE I
DEFINITIONS

1.1 “Agreement” means this Citywide Project Labor Agreement.

1.2 “Agreement to be Bound” means the agreement (attached hereto and incorporated herein as Addendum A) that shall be executed by each and every Contractor/Employer as a condition of working on the Project.

1.3 “Building Trades Council” means the Santa Clara and San Benito Counties Building and Construction Trades Council.

1.4 “Completion” means that point at which the City has executed a final written acceptance of the work required by the Construction Contract, including the Contractor’s submission of all required contract drawings, warranties, certificates, manuals and data, and completion of any training.

1.5 “Construction Contract” means a public works contract awarded by the City for the construction of a Project, as defined in Section 1.9. It includes design-build contracts, lease-leaseback contracts or other contracts for construction work on a Project.

1.6 “Contractor(s)/Employer(s)” or “Contractor(s)” or “Employer(s)” means any individual, firm, partnership or corporation (including the prime contractor, general contractor,

construction manager, project manager, design-build entity, lease-leaseback entity or equivalent entity), or combination thereof, including joint ventures, and their successors and assigns, that is an independent business enterprise and enters into a contract with the City with respect to the construction of any part of the Project, under contract terms and conditions that are approved by the City and that incorporate this Agreement, and all contractors and subcontractors of any tier.

1.7 “City” means the City of San Jose, its governing board, officers, agents and public employees, including managerial personnel.

1.8 “Master Agreement” or “Schedule A” means the Master Collective Bargaining Agreement of each craft Union signatory hereto.

1.9 “Project” means a project for which the City sends out the initial solicitation of a bid or proposal after the effective date of the Agreement, and that meets all three of the following requirements: (1) it is a public works project for construction awarded by the City (subject to section (c) below), (2) it is paid for in whole or in part out of City funds, and (3) the City’s engineer’s estimate of the total cost of the Construction Contract(s) to construct it exceeds three million dollars (\$3,000,000).

- (a) In determining the three million-dollar (\$3,000,000) threshold, the City will consider all Construction Contracts required to complete an integrated construction project and will include design costs for a design-build Construction Contract.
- (b) Each year on the anniversary date of the day this Agreement became effective, the parties will adjust up or down the three million-dollar (\$3,000,000) threshold based on the Consumer Price Index for All Urban Consumers – U.S. city average. The adjusted threshold amount will apply to Construction Contracts in which the City solicits bids or proposals after the effective date of the adjusted amount.
- (c) The City and the Building Trades Council may mutually agree in writing to add additional projects to be covered by this Agreement. The term Project applies to all projects as defined in this section, whether used in the singular or plural herein.

1.10 “Project Manager” means the person(s) or entity(ies) designated by the City to oversee all phases of construction on the Project and the implementation of this Agreement, and that works under the guidance of the City’s authorized representative.

1.11 “Union” or “Unions” means the Santa Clara and San Benito Counties Building and Construction Trades Council, and its affiliated local Unions signatory to this Agreement, acting on their own behalf and on behalf of their respective affiliates and member organizations, whose names are subscribed hereto and who have through their officers executed this Agreement.

ARTICLE II SCOPE OF AGREEMENT

2.1 Parties: This Agreement applies to and is limited to all Contractors/Employers performing Construction Contracts on the Project (including subcontractors at any tier), and their successors and assigns, the City, the Building Trades Council and the Unions signatory to this Agreement.

2.2 Applicability:

- (a) The Agreement applies only to Covered Work (defined in Section 2.3) required (i) as part of the Construction Contract or a change order issued pursuant to the Construction Contract, or (ii) during the Construction Contract's warranty period.
- (b) This Agreement does not apply to *any* work done (i) before execution of the Construction Contract or (ii) following Completion, except for Covered Work pursuant to the Construction Contract or during the warranty period.

2.3 Covered Work: This Agreement covers, without limitation, all on-site site preparation, surveying, construction, alteration, demolition, installation, improvement, remediation, retrofit, painting, or repair of buildings, structures and other works, and related activities for the Project, that is within the craft jurisdiction of one of the Unions and which is directly or indirectly part of the Project, including, without limitation to the following examples, geotechnical and exploratory drilling, temporary HVAC, landscaping and temporary fencing, pipelines (including those in linear corridors built to serve the Project), pumps, pump stations, start-up, modular furniture installation and final clean-up. On-site work includes work done for the Project in temporary yards, dedicated sites, or areas adjacent to the Project, and at any on-site or off-site batch plant constructed solely to supply materials to the Project. This scope of work includes all soils and materials testing and inspection where such testing and inspection is a classification in which a prevailing wage determination has been published.

2.3.1 This Agreement applies to any start-up, calibration, commissioning, performance testing, repair, maintenance, and operational revisions to systems and/or subsystems for the Project performed during any warranty period after Completion, unless performed by City employees.

2.3.2 This Agreement covers all on-site fabrication work over which the City, Contractor(s)/Employer(s) or subcontractor(s) possess the right of control (including work done for the Project in any temporary yard or area established for the Project). Additionally, this Agreement covers any off-site work, including fabrication necessary for the Project defined herein, that is covered by a current Schedule A Agreement or local addenda to a National Agreement of the applicable Union(s) that is in effect as of the execution date of this Agreement. This Agreement does not cover factory built modular construction when such work is covered by a collective bargaining agreement (within the meaning of Section 9(a) of the National Labor Relations Act) with the Unions. Such factory built modular construction shall be governed by the terms and conditions of said Section 9(a) collective bargaining agreements.

2.3.3 Except for the delivery of supplies, equipment or materials that are stockpiled for later use, this Agreement covers all construction trucking work, including the hauling and delivery of ready-mix, asphalt, aggregate, sand, soil or other fill or similar material that is directly incorporated into the construction process as well as the off-hauling of soil, sand, gravel, rocks, concrete, asphalt, excavation materials, construction debris and excess fill, material and/or mud. Contractor(s)/Employer(s), including brokers, of persons providing construction trucking work shall provide certified payroll records to the City within ten (10) days of written request or as required by bid specifications.

2.3.4 Work covered by this Agreement within the following craft jurisdictions shall be performed under the terms of their National Agreements as follows: the National Agreement of Elevator Constructors, the National Transient Lodge (NTL) Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, and any instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, with the exception that Articles IV, XIII and XIV of this Agreement shall apply to such work.

2.4 Exclusions: The following shall be excluded from the scope of this Agreement:

2.4.1 This Agreement is not intended to, and shall not, affect or govern the award of public works contracts by the City that are not included in the Project.

2.4.2 This Agreement shall not apply to a Contractor/Employer's non-construction craft executives, managerial employees, supervisors above the level of general foreman (except those covered by existing Master Agreements), and administrative and management personnel.

2.4.3 This Agreement shall not apply to any non-Project work performed on or near or leading to the site of work covered by this Agreement that is undertaken by state, county, city, or other governmental bodies or their contractors, or by public or private utilities.

2.4.4 This Agreement shall not apply to off-site maintenance of leased equipment and on-site supervision of such work.

2.4.5 The City shall not be required to comply with this Agreement for any work performed with its own forces as permitted by the City Charter.

2.4.6 The City is not limited or restricted on the choice of material or the full use and installation of equipment, machinery, package units, factory pre-cast, prefabricated or preassembled materials, tools or other labor-saving devices, except as set forth in Sections 2.3.2 and 2.3.3. Otherwise, the City has the right to purchase material and equipment from any source, and craft persons covered by this agreement will handle and install such material and equipment. This Agreement does not apply to off-site fabrication unless such fabrication is covered by a Master Agreement or local addenda to a national agreement, as set forth in Section 2.3.2.

2.4.7 This Agreement shall not apply to the items set forth in **Addendum C** hereto.

2.4.8 This Agreement does not apply to work performed by employees of a

manufacturer or vendor that is necessary to maintain such manufacturer's or vendor's warranty or guaranty provided that if the work can be performed by craft workers covered by this Agreement without voiding or limiting such warranty or guaranty, such work will be performed by such qualified craft workers. All such work shall be identified and discussed at the Pre-Construction Conference as provided in Article V of this Agreement.

2.4.9 This Agreement shall not apply to any start-up, calibration, commissioning, testing, integration, repair, maintenance, and operational revisions to systems and/or subsystems, unless such work is covered by a Master Agreement and is done pursuant to the Construction Contract

2.4.10 This Agreement does not apply to any Project in which a federal, state, or other public entity with jurisdiction over, or with authority to approve, all or some portion of the Project prohibits the use of project labor agreements on the Project. In such situations, the City will make a reasonable effort to gain the public entity's approval to apply the Agreement to the Project. A written letter by the City's Director of Public Works to such other public entity seeking approval will be deemed to be a "reasonable effort."

2.4.11 This Agreement does not apply to any Project funded in whole or in part by a federal, state or local grant if a condition of that grant prohibits the use of project labor agreements. In such situations, the City will make a reasonable effort to gain the public entity's approval to apply the Agreement to the Project. A written letter by the City's Director of Public Works to such other public entity seeking approval will be deemed to be a "reasonable effort."

2.5 Award of Contracts: It is understood and agreed that the City has the right to select any qualified bidder for the award of Construction Contracts under this Agreement. The bidder need only be willing, ready and able to execute and comply with this Agreement. It is further agreed that this Agreement shall be included in all invitations to bid or solicitations for proposals from contractors or subcontractors for work on the Project that are issued on and after the effective date of this Agreement. A copy of all invitations to bid shall be provided at time of issuance to the Building Trades Council.

ARTICLE III **EFFECT OF AGREEMENT**

3.1 By executing this Agreement, the Unions and the City agree to be bound by each and all of the provisions of the Agreement.

3.2 By accepting the award of work under a Construction Contract for the Project, whether as a Contractor or subcontractor thereunder, the Contractor/Employer agrees to be bound by each and every provision of the Agreement and agrees that it will evidence its acceptance prior to the commencement of work by executing the **Agreement to be Bound** in the form attached hereto as **Addendum A**.

3.3 At the time that any Contractor/Employer enters into a subcontract with any subcontractor providing for the performance of work under a Construction Contract, the Contractor/Employer shall provide a copy of this Agreement to said subcontractor and shall

require the subcontractor, as a condition of accepting the award of a construction subcontract, to agree in writing by executing the **Agreement to be Bound** to be bound by each and every provision of this Agreement prior to the commencement of work. The obligations of a Contractor may not be evaded by subcontracting. If the subcontractor refuses to execute the **Agreement to be Bound**, then such subcontractor shall not be awarded a construction subcontract to perform work on the Project.

3.4 This Agreement shall only be binding on the signatory parties hereto and their successors and assigns, and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such party. Each Contractor/Employer shall alone be liable and responsible for its own individual acts and conduct and for any breach or alleged breach of this Agreement, except as otherwise provided by law or the applicable Schedule A. Any dispute between the Union(s) and the Contractor(s)/Employer(s) respecting compliance with the terms of the Agreement shall not affect the rights, liabilities, obligations and duties between the Union(s) and other Contractor(s)/Employer(s) party to this Agreement.

3.5 It is mutually agreed by the parties that any liability by a Union signatory to this Agreement shall be several and not joint. Any alleged breach of this Agreement by a Union shall not affect the rights, liabilities, obligations and duties between the Contractor(s)/Employer(s) and the other Union(s) party to this Agreement.

3.6 The provisions of this Agreement, including the Schedule A's incorporated herein by reference, shall apply to the work covered by this Agreement, notwithstanding the provisions of any other local, area and/or national agreements which may conflict with or differ from the terms of this Agreement. To the extent a provision of this Agreement is inconsistent with a Schedule A, the provisions of this Agreement shall prevail. Where a provision of a Schedule A is not inconsistent with this Agreement, the provision of the Schedule A shall apply.

ARTICLE IV

WORK STOPPAGES, STRIKES, SYMPATHY STRIKES AND LOCKOUTS

4.1. The Unions, City, and Contractor(s)/Employer(s) covered by this Agreement agree that for the duration of the Project:

4.1.1 There shall be no strikes, sympathy strikes, work stoppages, picketing, hand billing or otherwise advising the public that a labor dispute exists, or slowdowns of any kind, for any reason, by the Unions or employees employed on the Project, at the job site of the Project or at any other facility of the City because of a dispute on the Project. Disputes arising between the Unions and Contractor(s)/ Employer(s) on other City projects are not governed by the terms of the Agreement or this Article.

4.1.2 There shall be no lockout of any kind by a Contractor/Employer of workers employed on the Project.

4.1.3 If a Master Agreement expires before the Contractor/Employer completes the performance of work under a Construction Contract and the Union or Contractor/Employer gives notice of demands for a new or modified Master Agreement, the Union agrees that it will not strike on work covered by this Agreement and the Union and the Contractor/Employer agree that the expired Master Agreement will continue in full force and effect for work covered under

this Agreement until a new or modified Master Agreement is reached. If the new or modified Master Agreement provides that any terms of the Master Agreement shall be retroactive, the Contractor/ Employer agrees to comply with any retroactive terms of the new or modified Master Agreement that are applicable to any employee(s) on the Project during the interim, with retroactive payment due within seven (7) calendar days of the effective date of the new or modified Master Agreement.

4.1.4 In the case of nonpayment of wages or trust fund contributions on the Project, the Union shall give the City and the Contractor/Employer three (3) business days' notice when nonpayment of trust fund contributions has occurred, and one (1) business day's notice when nonpayment of wages has occurred or when paychecks being tendered to a financial institution normally recognized to honor such paychecks will not honor such paycheck as a result of insufficient funds, of the intent to withhold labor from the Contractor/Employer's or their subcontractor's workforce, during which time the Contractor/Employer may correct the default. In this instance, a Union's withholding of labor (but not picketing) from a Contractor/Employer that has failed to pay its fringe benefit contributions or failed to meet its weekly payroll shall not be considered a violation of this Article.

4.1.5 Notification: If the City contends that any Union has violated this Article, it will so notify, in writing, the Senior Executive of the Building Trades Council and the Senior Executive of the Union, setting forth the facts alleged to violate the Article, prior to instituting the expedited arbitration procedure set forth below. The Building Trades Council will immediately use its best efforts to cause the cessation of any violation of this Article. The leadership of the Union will immediately inform the workers of their obligations under this Article. A Union complying with this obligation shall not be held responsible for unauthorized acts of employees it represents.

4.2 Expedited Arbitration: Any party to this Agreement shall institute the following procedure, prior to initiating any other action at law or equity, when a breach of this Article is alleged to have occurred.

4.2.1 A party invoking this procedure shall notify Robert Hirsch, as the permanent arbitrator, or Barry Winograd, as the alternate arbitrator under this procedure. In the event the permanent arbitrator is unavailable at any time, the alternate will be contacted. If neither is available, then the parties shall select the arbitrator from the list in Section 13.4. Notice to the arbitrator shall be by the most expeditious means available, with notice by email and telephone to the City and the party alleged to be in violation, and to the Building Trades Council and involved local Union if a Union is alleged to be in violation.

4.2.2 Upon receipt of said notice, the City will contact the permanent arbitrator named above, or his alternate, who will attempt to convene a hearing within twenty-four (24) hours if it is contended that the violation still exists.

4.2.3 The arbitrator shall notify the parties by email and telephone of the place and time for the hearing. Said hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all parties. A failure of any party to attend said hearings shall not delay the hearing of evidence or the issuance of an award by the arbitrator.

4.2.4 The sole issue at the hearing shall be whether or not a violation of Section 4.1 of the Agreement has occurred. The arbitrator shall have no authority to consider any matter of justification, explanation or mitigation of such violation or to award damages, which issue is reserved for court proceedings, if any. The award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) days, but the parties shall not delay compliance with or enforcement of the award due to the issuance of a written opinion. The arbitrator may order cessation of the violation of this Article and other appropriate relief and such award shall be served on all parties by hand or registered mail upon issuance. Should a party found in violation of this Article fail to comply with an arbitrator's award to cease the violation, the party in violation shall pay to the affected party as liquidated damages the sum of ten thousand dollars (\$10,000.00) per shift for which it failed to comply, or portion thereof, until such violation is ceased. The arbitrator shall retain jurisdiction to resolve any disputes regarding the liquidated damages claimed under this section.

4.2.5 Such award may be enforced by any court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to above in the following manner. The party filing such enforcement proceedings shall give written notice to the other party. In the proceeding to obtain a temporary order enforcing the arbitrator's award as issued under this Article, all parties waive the right to a hearing and agree that such proceedings may be *ex parte*. Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The Court's order or orders enforcing the arbitrator's award shall be served on all parties by hand or delivered by certified mail.

4.2.6 Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure, or which interfere with compliance, are waived by the parties.

4.2.7 The fees and expenses of the arbitrator shall be divided equally between the party instituting the arbitration proceedings provided in this Article and the party alleged to be in breach of its obligation under this Article.

4.2.8 Should either the permanent or the alternate arbitrator identified above no longer work as a labor arbitrator, the City and the Building Trades Council shall mutually agree to a replacement.

ARTICLE V **PRE-CONSTRUCTION CONFERENCE**

5.1 **Timing:** The Project Manager shall convene and shall conduct, together with the Building Trades Council, a pre-construction conference at the Building Trades Council at a mutually agreeable time, with the Unions and with representatives of all involved Contractors/Employers, who shall be prepared to announce craft assignments and to discuss in detail the scope of work and the other issues set forth below, at least twenty-one (21) calendar days prior to:

- (a) The commencement of any Project work, and

- (b) The commencement of Project work on each subsequently awarded Construction Contract.

5.2 The pre-construction conference shall be attended by a representative of each participating Contractor and each affected Union, and the Building Trades Council may attend at its discretion.

5.3 The pre-construction conference shall include but not be limited to the following subjects:

- (a) A listing of each Contractor's scope of work;
- (b) The craft assignments;
- (c) The estimated number of craft workers required to perform the work;
- (d) Transportation arrangements;
- (e) The estimated start and completion dates of the work; and
- (f) Discussion of pre-fabricated materials.

5.4 Joint Administrative Committee: In order to ensure the terms of this Agreement are being fulfilled and all concerns pertaining to the City, the Unions and the Contractors are addressed, the Project Manager, General Contractor and Senior Executive of the Building Trades Council, or designated representatives thereof, shall meet as a JAC on a periodic basis during the term of construction. The City and the Building Trades Council shall have the right to call a meeting of the appropriate parties to ensure the terms of this Agreement are being fulfilled.

5.5 Targeted Hiring Agreement (THA) Implementation: The JAC shall help monitor and implement the THA. The Community Workforce Coordinator shall provide the JAC with an annual report and interim reports as requested on key performance indicators of success such as the number of Targeted Workers and Underrepresented Workers who have participated in an Approved Pre-Apprenticeship Program and Program graduation rates.

ARTICLE VI **NO DISCRIMINATION**

6.1 The Contractors/Employers and the Unions agree to comply with all nondiscrimination provisions of federal, state and local law, to protect employees and applicants for employment, on the Project.

ARTICLE VII **UNION SECURITY**

7.1 The Contractors/Employers recognize the Unions as the sole bargaining representative of all craft employees working within the scope of this Agreement.

7.2 All employees who are employed by Contractors/Employers to work on the Project will be required to become members and maintain membership in the appropriate Union on or before eight (8) days of consecutive or cumulative employment on the Project.

Membership under this section shall be satisfied by the tendering of periodic dues and fees uniformly required to the extent allowed by law.

7.3 Authorized representatives of the Unions shall have access to the Project whenever work covered by this Agreement is being, has been, or will be performed on the Project.

ARTICLE VIII **REFERRAL**

8.1 Contractor(s)/Employer(s) performing construction work on the Project shall, in filling craft job requirements, utilize and be bound by the registration facilities and referral systems established or authorized by the Unions signatory hereto. The Contractor(s)/Employer(s) shall have the right to reject any applicant referred by the Union(s), in accordance with the applicable Master Agreement.

8.2 Contractor(s)/Employer(s) shall have the unqualified right to select and hire directly all supervisors above the level of general foreman it considers necessary and desirable, without such persons being referred by the Union(s) (unless such craft construction employees are covered by existing Master Agreements).

8.3 In the event that referral facilities maintained by the Union(s) are unable to fill the requisition of a Contractor/Employer for employees within a forty-eight (48) hour period (Saturdays, Sundays and Holidays excluded) after such requisition is made by the Contractor/Employer, the Contractor/Employer shall be free to obtain workers from any source. A Contractor/Employer who hires any worker(s) to perform Covered Work on the Project pursuant to this section shall immediately provide the appropriate Union with the name and address of such worker(s) and shall immediately refer such worker(s) to the appropriate Union to satisfy the requirements of Article VII of this Agreement.

8.4 Core Workers. A Contractor may request by name, and the Union shall honor, referral of Core Workers who have applied to the Union for Project Work and who demonstrate to the Union dispatcher and provide satisfactory proof (with a copy of such proof provided to the Project Manager) that the worker meets all the following qualifications:

- a. Appearance on the Contractor/Employer's active payroll for at least the last ninety (90) out of the one hundred and twenty (120) working days prior to award of a Construction Contract;
- b. Possession of all licenses and certifications required by applicable state and federal law for the Project Work; and
- c. Has worked at least two thousand (2,000) hours in the appropriate construction craft during the past two years.

8.4.1 The following procedure shall apply for dispatch of Core Workers: The first one (1) worker will be referred from the applicable Union hiring hall out-of-work list, then one (1) Core Worker shall be selected and referred from the hiring hall, followed by one (1) worker from the hiring hall out-of-work list, and this process shall repeat until such Contractor/Employer's requirements are met or until such Contractor/Employer has hired five (5) such Core Workers for that trade or craft, whichever occurs first. Thereafter, all additional

employees in the affected trade or craft shall be hired exclusively from the applicable hiring hall out-of-work list. In the event the Contractor/Employer reduces the workforce, such reduction will take place in the reverse order starting with a Core Worker and in the same ratios as was applied in hiring. In addition, at the request of the Building Trades Council or Union, Contractor/Employer shall submit a Core Worker list to the requesting party and shall provide payroll records evidencing the worker's qualifications as a Core Worker.

8.4.2 This provision applies only to employers not currently working under a current Master Agreement and is not intended to limit the transfer provisions of the Master Agreement of any trade. As part of this process, and in order to facilitate the contract administration procedures and appropriate fringe benefit fund coverage, all Contractor(s)/Employer(s) shall require their Core Workers to register with the appropriate Union hiring hall prior to the first day of employment on the Project and to comply with Union security on or before the eighth [8th] day of consecutive or cumulative employment on the Project.

8.4.3 Prior to each Contractor performing any Project Work, such Contractor or subcontractor shall provide a list of its Core Workers to the City and the Building Trades Council. Failure of such a Contractor to do so will result in that Contractor being prohibited from using any Core Workers on that Construction Contract.

8.5 Targeted Hiring: In order to increase construction job opportunities for traditionally underrepresented and targeted workers, the parties agree to comply with the Community Workforce Agreement for Targeted Hire, **Addendum B**.

ARTICLE IX **WAGES AND BENEFITS**

9.1 The Contractors/Employers agree to pay contributions to the vacation, pension and/or other form of deferred compensation plan, apprenticeship, worker protection and assistance, and health benefit funds established by the applicable Master Agreement(s) for each hour worked on the Project, in the amounts designated in the Master Agreement(s) of the appropriate local Union(s).

9.2 By signing this Agreement, the Contractors/Employers adopt and agree to be bound by the written terms of the legally established Trust Agreements described in Section 9.1, which may from time to time be amended, specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Trust Funds. The Contractors/Employers authorize the parties to such local Trust Agreements to appoint trustees and successor trustees to administer the Trust Funds and hereby ratify and accept the trustees so appointed as if made by the Contractors/Employers. The Contractors/Employers agree to execute a separate Subscription Agreement(s) when such Trust Fund(s) requires such document(s).

9.3 Wages, Hours, Terms and Conditions of Employment: The wages, hours and other terms and conditions of employment on the Project shall be governed by the Master Agreement of the respective craft, to the extent such Master Agreement is not inconsistent with this Agreement. Where a subject is covered by the Master Agreement and not covered by this

Agreement, the Master Agreement will prevail. When a subject is covered by both the Master Agreement and this Agreement, to the extent there is any inconsistency, this Agreement will prevail.

9.4 Holidays: Holidays shall be as set forth in the applicable Master Agreement.

ARTICLE X
APPRENTICES

10.1 Recognizing the need to develop adequate numbers of competent workers in the construction industry, the Contractors/Employers shall employ apprentices from a California state-approved apprenticeship program in the respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured.

10.2 The apprentice ratios will be in compliance with the applicable provisions of the California Labor Code and Prevailing Wage Rate Determinations.

10.3 Consistent with the Master Agreements, there shall be no restriction on the utilization of apprentices in performing the work of their craft, provided they are properly supervised.

ARTICLE XI
HELMETS TO HARDHATS

11.1 The Contractors/Employers and Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractors/Employers and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter “Center”) and the Center’s “Helmets to Hardhats” program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

11.2 The Unions and Contractors/Employers agree to coordinate with the Center to participate in an integrated database of veterans interested in working on the Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

ARTICLE XII
COMPLIANCE

12.1 It shall be the responsibility of the Contractors/Employers and Unions to investigate and monitor compliance with the provisions of the Agreement contained in Article IX. Nothing in this Agreement shall be construed to interfere with or supersede the usual and customary legal remedies available to the Unions and/or employee benefit Trust Funds to collect delinquent Trust Fund contributions from Contractors/Employers on the Project. The City shall monitor and enforce compliance with the applicable City, state or federal prevailing wage requirements and the Contractors/Employers’ compliance with this Agreement.

ARTICLE XIII
GRIEVANCE ARBITRATION PROCEDURE

13.1 Project Labor Disputes: All disputes involving the application or interpretation of a Master Agreement to which a Contractor/Employer and a Union are parties shall be resolved pursuant to the resolution procedures of the Master Agreement. All disputes relating to the interpretation or application of this Agreement, other than disputes under Article IV (Work Stoppages, Strikes, Sympathy Strikes and Lockouts) and Article XIV (Work Assignments and Jurisdictional Disputes), shall be subject to resolution by the grievance arbitration procedures set forth below.

13.2 Employee Discipline: All disputes involving the discipline and/or discharge of an employee working on the Project shall be resolved through the grievance and arbitration provisions contained in the Master Agreement for the craft of the affected employee. No employee working on the Project shall be disciplined or discharged without just cause.

13.3 No grievance shall be recognized unless the grieving party (Union or District on its own behalf, or on behalf of an employee whom it represents, or a Contractor/Employer on its own behalf) provides notice in writing to the party with whom it has a dispute within five (5) business days after becoming aware of the dispute but in no event more than twenty (20) business days after it reasonably should have become aware of the event giving rise to the dispute. Time limits may be extended by mutual agreement of the parties.

13.4 Grievances shall be settled according to the following procedures:

Step 1: Within five (5) business days after the receipt of the written notice of the grievance, the representative of the involved Union or District Council, or his/her designee, and the representative of the involved Contractor/Employer, shall confer and attempt to resolve the grievance.

Step 2: If the grievance is not resolved at Step 1, within five (5) business days of the Step 1 meeting, the alleged grievance may be referred in writing by either involved party to the Business Manager(s) of the affected Union(s) involved and the Labor Relations Manager of the Contractor/Employer, or the Contractor/Employer's designated representative, for discussion and resolution. Regardless of which party has initiated the grievance, the Union shall notify its International Union representative prior to the Step 2 meeting, and the International Union representative shall advise if it intends to participate in the Step 2 meeting. The Project Manager and the Building Trades Council shall have the right to participate in any efforts to resolve the dispute at Step 2.

Step 3: If the grievance is not resolved at Step 2, within five (5) business days of the Step 2 meeting, either party may request the dispute be submitted to arbitration or the time may be extended by mutual consent of both parties. Within five (5) business days after referral of a dispute to Step 3, the representatives shall notify the permanent arbitrator, or if he is not available, his alternate, for final and binding arbitration. The parties agree that if the permanent arbitrator set forth in Article IV or his alternate is not available, an arbitrator shall be selected by the alternate striking method from the list of three (3) below. The order of striking names from

the list of arbitrators shall be determined by a coin toss, the winner of which shall decide whether they wish to strike first or second

1. William Riker
2. Morris Davis
3. William Engler

13.5 The decision of the Arbitrator shall be final and binding on all parties. The Arbitrator shall have no authority to change, amend, add to or detract from any of the provisions of the Agreement. The expense of the Arbitrator shall be borne equally by both parties. The Arbitrator shall arrange for a hearing on the earliest available date from the date of his/her selection. A decision shall be given to the parties within five (5) calendar days after completion of the hearing unless such time is extended by mutual agreement. A written opinion may be requested by a party from the presiding Arbitrator.

13.6 The time limits specified at any step of the Grievance Procedure may be extended by mutual agreement of the parties. However, failure to process a grievance, or failure to respond in writing within the time limits provided above, without an agreed upon extension of time, shall be deemed a waiver of such grievance without prejudice, or without precedent to the processing and/or resolution of like or similar grievances or disputes.

13.7 In order to encourage the resolution of disputes and grievances at Steps 1 and 2 of this Grievance Procedure, the parties agree that such settlements shall not be precedent setting.

13.8 Should any of the arbitrators listed in this Article or Article IV no longer work as a labor arbitrator, the City and the Building Trades Council shall mutually agree to a replacement.

13.9 The Union will provide the City with a copy of any grievance involving a matter within the jurisdiction of the City's Office of Equality Assurance so that the City can properly investigate the matter and take the appropriate enforcement measures.

ARTICLE XIV **WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES**

14.1 The assignment of Covered Work will be solely the responsibility of the Employer performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of the Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

14.2 All jurisdictional disputes on this Project between or among the building and construction trades Unions and the Employers parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Employers and Unions parties to this Agreement.

14.3 If a dispute arising under this Article involves the Northern California Carpenters Regional Council or any of its subordinate bodies, an Arbitrator shall be chosen by the procedures specified in Article V, Section 5 of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch and Thomas Pagan, and the Arbitrator's hearing on the dispute shall be held at the offices of the California State Building and Construction Trades Council in Sacramento, California, within fourteen (14) days of the selection of the Arbitrator. All other procedures shall be as specified in the Plan.

14.4 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Employer's assignment shall be adhered to until the dispute is resolved. Individual employees violating this section shall be subject to immediate discharge. Each Employer will conduct a pre-job conference with the Building Trades Council prior to commencing work. The City and the Project Manager will be advised in advance of all such conferences and may participate if they wish. Pre-job conferences for different Employers may be held together.

ARTICLE XV **MANAGEMENT RIGHTS**

15.1 Consistent with the Schedule A agreements, the Contractors/Employers shall retain full and exclusive authority for the management of their operations, including the right to direct their work force in their sole discretion. No rules, customs or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees, except that lawful manning provisions in the Master Agreement shall be recognized.

ARTICLE XVI **DRUG AND ALCOHOL TESTING**

16.1 The use, sale, transfer, purchase and/or possession of a controlled substance, alcohol and/or firearms at any time during the work day is prohibited.

16.2 Drug and alcohol testing shall be conducted in accordance with the Substance Abuse Prevention Policies contained in the applicable Schedule A.

ARTICLE XVII **SAVINGS CLAUSE**

17.1 It is not the intent of the parties to this Agreement to violate any law. The parties agree that in the event any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void as being in contravention of any applicable law, by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect. The parties further agree that if any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void, by a court of competent jurisdiction, the parties shall substitute, by mutual agreement, in its place and stead, an article, provision, clause, sentence or word which will meet the objections to its validity and which will be in accordance with the intent and purpose of the article, provision, clause, sentence or word in question.

17.2 The parties agree that in the event a decision of a court of competent jurisdiction materially alters the terms of the Agreement such that the intent of the parties is defeated, then the entire Agreement shall be null and void.

17.3 If a court of competent jurisdiction determines that all or part of the Agreement is invalid and/or enjoins the City from complying with all or part of its provisions and the City accordingly determines that the Agreement will not be required as part of an award to a Contractor/Employer, the Unions will no longer be bound by the provisions of Article IV.

ARTICLE XVIII
TERM

18.1 This Agreement shall be included in the bid documents, requests for proposals, or other equivalent Project solicitations, which shall indicate that entering into this Agreement is a condition of the award of a Construction Contract(s) for the Project.

18.2 This Agreement shall become effective on the day it is executed by the City and by the Building Trades Council and shall continue in full force and effect for a period of five (5) years. At the expiration of the five (5) year term, the Agreement shall roll over for an additional five (5) years, subject to approval by the City Council. This Agreement shall continue to apply to all Projects for which Construction Contracts have already been awarded, or that were initially advertised for bid with the Agreement as a material specification, and shall apply until the Completion of each Project in accordance with Sections 1.4 and 2.2, except as to those provisions that expressly survive the termination of this Agreement.

ARTICLE XIX
MISCELLANEOUS PROVISIONS

19.1 This Agreement may be executed in counterparts, such that original signatures may appear on separate pages and when bound together all necessary signatures shall constitute an original. Faxed or emailed PDF signature pages transmitted to other parties to this Agreement shall be deemed the equivalent of original signatures.

19.2 Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the party indicated, and each of the parties signing this Agreement warrants and represents that such party is legally authorized and entitled to enter into this Agreement.

19.3 The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

19.4 The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement. All defined terms used in this Agreement shall be deemed to refer to the singular and/or plural, in each instance as the context and/or particular facts may require.

CITY OF SAN JOSE

By: _____
Matt Cano, City Manager

Date: _____

SANTA CLARA and SAN BENITO COUNTIES
BUILDING and CONSTRUCTION TRADES
COUNCIL

By: _____
David Bini, Executive Director

Date: _____

UNION SIGNATURES

ASBESTOS WORKERS LOCAL 16

BOILERMAKERS LOCAL UNION 549

BAC LOCAL UNION 3

IBEW LOCAL 332

ELEVATOR CONSTRUCTORS LOCAL
UNION 8

I.U.P.A.T. DISTRICT COUNCIL 16

IRON WORKERS LOCAL 377

LABORERS LOCAL UNION 270

OPERATING ENGINEERS LOCAL 3

OPERATIVE PLASTERERS AND CEMENT
MASONS LOCAL UNION 400

PLASTERERS LOCAL UNION 300

ROOFERS LOCAL UNION 95

UNITED ASOCIATION, PLUMBERS &
PIPEFITTERS LOCAL UNION 355

UNITED ASSOCIATION, PLUMBERS &
PIPEFITTERS LOCAL UNION 393

UNITED ASSOCIATION, SPRINKLER
FITTERS LOCAL UNION 483

SHEET METAL WORKERS
INTERNATIONAL UNION LOCAL 104

SIGN, DISPLAY AND ALLIED CRAFTS
LOCAL UNION 510

NORTHERN CALIFORNIA CARPENTERS
REGIONAL COUNCIL, FOR ITSELF AND
ITS AFFILIATES

LABORERS LOCAL UNION 67

TEAMSTERS LOCAL UNION 287

Addendum A

AGREEMENT TO BE BOUND

[Date]
[Addressee]
[Address]

Re: Citywide Project Labor Agreement for the City of San Jose -- Agreement to be Bound

Dear Mr./Ms. _____:

The undersigned confirms that it agrees to be a party to and bound by the Citywide Project Labor Agreement for the City of San Jose as such Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms.

By executing this **Agreement to be Bound**, the undersigned subscribes to, adopts and agrees to be bound by the written terms of the legally established trust agreements as set forth in Section 9.1, as they may from time to time be amended, specifying the detailed basis upon which contributions are to be made into, and benefits made out of, such trust funds, and ratifies and accepts the trustees appointed by the parties to such trust funds. The undersigned agrees to execute a separate Subscription Agreement(s) for such trust funds when such trust fund(s) require(s) such document(s).

The obligation to be a party to and bound by this Agreement shall extend to all work covered by the City of San Jose Citywide Project Labor Agreement undertaken by the undersigned. The undersigned shall require all of its subcontractors, of whatever tier, to become similarly bound for all their work within the scope of this Agreement by signing an identical Agreement to be Bound.

This letter shall constitute a subscription agreement, to the extent of the terms of the letter.

CONTRACTOR/SUBCONTRACTOR: _____

California Contractor State License No. or Motor Carrier (CA) Permit No.: _____

Name of Authorized Person (print): _____

Signature of Authorized Person: _____

Title of Authorized Person: _____

Telephone Number of Authorized Person: _____

Address of Authorized Person: _____

State Public Works Registration Number: _____

Addendum B
TARGETED HIRE AGREEMENT

[See attached]

Addendum C

Project Labor Agreements Project Exemption Listing

This Agreement does not apply to the following projects where more than fifty percent (50%) of the total cumulative value of the Engineer's Estimate for the project are for the following:

1. Street maintenance: Street sealing (slurry, chip, cape, fog, etc.), micro-surfacing, re-paving, repairing, re-surfacing, on-call maintenance contracts;
2. Sewer maintenance: Repairs, rehabilitation, lining, maintenance of storm and sanitary sewers and pump stations;
3. Muni Water: Water tank, pipeline maintenance, and repair;
4. Airport pavement maintenance: Sealing (slurry, chip, cape, fog, etc.), micro-surfacing, re-paving, repairing, and re-surfacing;
5. On-call contracts for various repairs and minor projects such as: roof, pavement work, City facilities, parks (each public works project within the on-call contract would be under the City's Minor Public Works project dollar threshold); and
6. Building maintenance or rehabilitation, which could include upgrading of the building.

The installation of new public amenities, that did not exist previously, shall not be included in calculating this fifty percent (50%) threshold.

With respect to Item 6, a building maintenance or rehabilitation project shall not be excluded under this Addendum if the project increases the square footage of the building(s) by more than ten percent (10%) or if the exterior of the building will be entirely demolished.

Addendum B to City of San Jose Citywide Project Labor Agreement

Community Workforce Pipeline Targeted Hire Agreement

Purpose. The Parties to the City of San Jose Citywide Project Labor Agreement (“the Agreement”) recognize the mutual needs and public interest in: (1) increasing training and career opportunities for underrepresented and targeted individuals in the construction trades through apprenticeship and pre-apprenticeship programs and (2) developing a pipeline to ensure the continued availability of a skilled, qualified and readily available construction workforce for this and future construction Projects. Furthermore, the Santa Clara and San Benito Counties Building and Construction Trades Council (“Building Trades Council”) with other parties, is signatory to the Santa Clara County Construction Careers Collaborative Memorandum of Understanding (“MOU”), which is working to establish a coordinated Santa Clara County pre-apprenticeship program to serve as a pipeline for youth and jobseekers into apprenticeship. In furtherance of these goals, the Parties agree to enter into this Community Workforce Agreement for Targeted Hire (“THA”) and to participate in the Santa Clara County Community Workforce Pipeline (“the Pipeline”).

I. Definitions.

All capitalized terms not defined below are as defined in the Agreement.

Approved Pre-Apprenticeship Program. An Approved Pre-Apprenticeship Program means the Santa Clara County Trades Orientation Program or an equivalent structured, MC-3 certified career training and placement program or Union-sponsored program, that: (1) serves Underrepresented Workers, and (2) is sponsored by Building Trades Council-approved community-based organizations (“CBOs”), Council affiliates, the Council, the State Building & Construction Trades Councils of California, or the North American Building & Construction Trades Council.

At-Risk Youth. An At-Risk Youth means a person 18-24 years old who is one of the following: 1) disconnected from school and/or work; 2) currently or formerly justice engaged; 3) in the foster care system; 4) pregnant/parenting; or 5) homeless.

City. City means the City of San Jose.

Community Workforce Coordinator. The Community Workforce Coordinator means the work2future Workforce Investment Board, or another entity as determined by mutual written agreement of the Building Trades Council and the City. The Community Workforce Coordinator is responsible for maintaining an up-to-date list of Targeted Workers who are available for work with their current contact information, and will provide this list to any of the Parties upon request.

Covered Contractor. A Covered Contractor means a contractor of whatever tier that performs \$250,000 or more of Covered Work (as that term is defined in Section 2.3 of the Agreement) on a Project. A Covered Contractor is subject to the Workforce Goal. If a contractor performs less than \$250,000 of Covered Work on a Project, that contractor is not subject to the Workforce Goal, but may nonetheless participate voluntarily in the Workforce Goal.

Targeted Worker. A Targeted Worker is an individual who has completed an Approved Pre-Apprenticeship Program.

Underrepresented Worker. An Underrepresented Worker is an individual who, prior to commencing work on a Project has at least one of the following barriers to employment: (1) is homeless, recently housed (within the past twelve months), or at risk of losing their housing; (2) is currently receiving public assistance; (3) is currently participating in a reentry program or was formerly incarcerated; (4) has been continuously unemployed for the previous one year; (5) has a family or household income that falls below the current HUD threshold for Low Income Households in Santa Clara County; (6) has been emancipated from the foster care system; (7) is a veteran of the U.S. military; (8) is an At-Risk Youth; or (9) is a survivor of labor trafficking.

II. Workforce Goal. The goal is for Covered Contractors to employ one (1) or more Targeted Worker(s) as First Year Apprentice(s), consistent with the applicable hiring hall procedures, Master Labor Agreement(s) and the applicable JATC standards, for at least 25% of the Covered Contractor's apprentice hours on the Project, unless the Contractor demonstrates to the Community Workforce Coordinator that the Targeted Worker(s) worked the maximum available first year apprentice hours or shows other good cause.

- a) Nothing herein requires a Covered Contractor either to hire a particular individual or to retain a particular individual in employment.
- b) A Covered Contractor will receive credit toward the Workforce Goal for hours performed by a Targeted Worker assigned to work on the Project or on another jobsite at the employer's discretion, provided that the worker is assigned to the same job classification that would apply to a Targeted Worker on the Project.
- c) Covered Contractors shall properly supervise and pay all apprentices in accordance with the Master Labor Agreements.
- d) The Covered Contractor agrees to provide upon request hours worked by Targeted Worker(s), to the General Contractor, the City, the Building Trades Council, or the Community Workforce Coordinator.
- e) **Community Workforce Coordinator Obligations.** The Community Workforce Coordinator, upon request, will refer names of qualified, available, and willing Targeted Workers to the Union and Covered Contractors.
- e) **Union Obligations.** The Unions agree to cooperate with Covered Contractor(s) in providing available apprentices as requested. The Unions also agree to cooperate with the City and community-based organizations designated by mutual agreement of the City and the Building Trades Council in conducting outreach activities to recruit and refer Underrepresented Worker applicants to Approved Pre-Apprenticeship Programs for which they are qualified or qualifiable.

III. Satisfying Workforce Goal. A Covered Contractor meets its obligations under this addendum by complying with one of the following:

- 1) Employing at least one (1) Targeted Worker apprentice on the Project (or for equivalent work on another jobsite, provided that the apprentice is assigned to the same job classification the apprentice would have performed on the Project).
- 2) Prior to commencing work on the Project, submitting a Targeted Hiring Form to the Community Workforce Coordinator and the applicable JATC, to request the applicable construction trades Union(s) to provide qualified and available Targeted Workers for employment consideration in a number sufficient to meet the hiring obligations under Section II. The requested employees will be used at the contractor's discretion.

IV. Consequences of Non-Compliance: The Joint Administrative Committee (JAC) established by the Project Labor Agreement shall consider allegations of non-compliance by a Covered Contractor with the THA. If there is a determination by the JAC that a Covered Contractor has failed to meet its obligations in this Addendum the issue will be referred to the grievance procedure as provided in Article XIII of the Agreement. At any time during the process of compliance review, the JAC shall have the authority to reach a resolution with the Covered Contractor.

V. Reporting: The Building Trades Council and Community Workforce Coordinator will cooperate with the City in annually providing information on the targeted hiring program so City staff can meet its reporting requirements.

VI. Implementation. The JAC shall help monitor and implement the THA.

City Manager's Contract Approval Summary
For Procurement and Contract Activity between \$100,000 and \$1.17 Million for Goods and \$100,000 and \$290,000 for Services

OCTOBER 1 - OCTOBER 31, 2018

Description of Contract Activity ¹	Fiscal Year	Req#/RFP#	PO#	Vendor/Consultant	Original \$ Amount	Start Date	End Date	Additional \$ Amount	Total \$ Amount	Comments
1 ENTERPRISE ENGINE PARTS AS REQUIRED	18-19	27089	56479	RECIPROCATING INTELLIGENCE	\$100,000	10/13/18	10/12/19			
2 DETAILED DESIGN AND BID AND AWARD SERVICES FOR FILTER REHABILITATION PROJECT	18-19		AC27382	KENNEDY/JENKS	\$2,249,990	10/23/18	06/30/20			SERVICE ORDER #03 (MASTER AGREEMENT TERM 01/08/16-6/30/23, \$4.95M)
3 FIRST AMENDMENT TO SO 25 PROJECT MANAGEMENT SERVICES FOR AERATION TANKS & BLOWER REHABILITATION	18-19		AC25704	STANTEC CONSULTING SERVICES INC	\$438,008	12/4/17	6/30/19	\$641,985	\$1,079,993	EXTENDS SO TERM TO 6/30/19; MASTER AGREEMENT TERM 9/24/13-6/30/23, \$78M
4 FIRST AMENDMENT TO SO 26 PROJECT MANAGEMENT SERVICES FOR COGEN	18-19		AC25704	STANTEC CONSULTING SERVICES INC	\$350,770	12/4/17	06/30/19	\$602,648	\$953,418	EXTENDS SO TERM TO 6/30/19; MASTER AGREEMENT TERM 9/24/13-6/30/23, \$78M
5 FIRST AMENDMENT TO SO 27 PROJECT MANAGEMENT SERVICES FOR DEWATERING FACILITY	18-19		AC25704	STANTEC CONSULTING SERVICES INC	\$405,724	12/4/17	06/30/19	\$486,310	\$892,034	EXTENDS SO TERM TO 6/30/19; MASTER AGREEMENT TERM 9/24/13-6/30/23, \$78M
6 FIRST AMENDMENT TO SO 28 FOR PROGRAM MANAGEMENT OFFICE SERVICES	18-19		AC25704	STANTEC CONSULTING SERVICES INC	\$3,275,176	12/4/17	06/30/19	\$4,272,254	\$7,547,430	EXTENDS SO TERM TO 6/30/19; MASTER AGREEMENT TERM 9/24/13-6/30/23, \$78M
7 FIRST AMENDMENT TO SO 29 FOR PROJECT MANAGMEENT SERVICES FOR HEADWORKS	18-19		AC25704	STANTEC CONSULTING SERVICES INC	\$580,099	12/4/17	06/30/19	\$852,159	\$1,432,258	EXTENDS SO TERM TO 6/30/19; MASTER AGREEMENT TERM 9/24/13-6/30/23, \$78M
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