

**MINUTES OF THE
SAN JOSÉ/SANTA CLARA
TREATMENT PLANT ADVISORY COMMITTEE**
City Hall, Council Chambers
Thursday, April 14, 2016 at 4:00 p.m.

1. ROLL CALL

Minutes of the Treatment Plant Advisory Committee convened this date at 4:02 p.m. Roll call was taken with the following members in attendance:

Committee Members: Jose Esteves, John Gatto, Lisa Gillmor (alternate), Steven Leonardis, Sam Liccardo, Teri Killgore (alternate), Manh Nguyen, Pat Kolstad, Pierluigi Oliverio

Absent: Committee Members: Jerry Marsalli, Dave Sykes

2. APPROVAL OF MINUTES

A. March 10, 2016

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

Ayes – 9 (Esteves, Gatto, Gillmor, Kolstad, Leonardis, Liccardo, Killgore, Nguyen, Oliverio)

Nays – 0

3. UNFINISHED BUSINESS/REQUEST FOR DEFERRALS

A. Election of the Chair and Vice-Chair

Chair:

1. Mayor Sam Liccardo was nominated by Committee Member Pat Kolstad to be Chair of TPAC.

Ayes – 9 (Esteves, Gillmor, Gatto, Killgore, Kolstad, Leonardis, Liccardo, Nguyen, Oliverio)

Nays – 0

Vice Chair:

1. Councilmember Pat Kolstad was nominated by Committee Member Gatto to be Vice Chair of TPAC.

Ayes – 9 (Esteves, Gillmor, Gatto, Killgore, Kolstad, Leonardis, Nguyen Oliverio)

Nays – 0

4. **DIRECTORS REPORT**

A. Directors Report (verbal)

- American Planning Association National Achievement for Plant Master Plan

Director Kerrie Romanow highlighted three awards that the City of San José's Environmental Services Department (ESD) attained in April 2016:

- (1) The "American Planning Association National Achievement Award" for the Plant Master Plan in Environmental Planning
- (2) The Government Finance Officers Association recognized the City of San José with their "National Distinguished Budget Award" 26 years in a row
- (3) The California Public Information Officers Association awarded ESD with the "Excellence in Communications Award" for its quarterly, internal newsletter, "Green Matters"

- Update on the Digester and Facilities Upgrade project

Program Manager Colin Page provided a summary of digester project bids and considerations. Six of the 18 digesters are currently out of service. Delaying the project would result in higher costs, risk of failure in the treatment process, and could potentially impact other Capital Improvement Program projects underway. The bidding process began on March 27, 2016. Five bids were received, ranging from \$109 to \$129 million with the Engineer's construction estimate at \$85 million. The lowest bidder was Walsh Construction. The high bids were due to an increased cost in construction, materials, and a limited labor pool. In light of these considerations, staff does not anticipate that a deferral to a future procurement will yield better results.

Due to the significant overage of this project, Assistant Director Ashwini Kantak discussed funding options, such as re-evaluating budgets for existing projects and determining which projects could be delayed or liquidated so the net impact would be zero. Additional funding is needed for the contingency and is included in the proposed budget. It is anticipated that staff will bring forward a recommendation to award in May or June. Current bid prices are effective until June 15, 2016.

- Monthly Progress Report

5. **AGREEMENTS/ACTION ITEMS**

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

Staff Recommendations:

- (a) Approve the design-build contract with CH2M HILL Engineers, Inc. for the Cogeneration Facility at the San José-Santa Clara Regional Wastewater Facility in an amount not-to-exceed \$5,655,000 for the performance of preliminary design services under the contract.
- (b) Approve a design contingency in the amount of \$565,000 for City-approved changes to the scope of preliminary design services.
- (c) Adopt a resolution authorizing the City Manager or his designee to:
 - (1) Negotiate and execute a definitive contract amendment with CH2M HILL to: (1) set a base guaranteed maximum price or lump sum amount in accordance with the contract, in an amount not-to-exceed \$82,884,000 for the design-build work to be performed following the preliminary design services; (2) set a schedule for completion and acceptance of the design-build work required by the contract; (3) define the technical specifications and guaranteed performance capabilities for the Cogeneration Facility; (4) establish any additional professional services required by the City for transitioning the Cogeneration Facility to City control after acceptance, and the fee to be charged therefore; (5) establish the insurance requirements for the design-build work; and (6) subject to review and approval by the City Attorney's Office, amend other terms and conditions of the contract that are necessary to accomplish the foregoing;
 - (2) Negotiate and execute separate agreements and/or amendments to the contract to allow CH2M HILL to proceed with discrete portions of the design-build work prior to the City's execution of the definitive contract amendment in an amount not to exceed \$30,000,000, which amounts will be subject to the base guaranteed maximum price;
- (d) Approve a construction contingency in the amount of \$8,288,000 to pay for adjustments to the base guaranteed maximum price or if applicable, the lump sum amount, in accordance with the contract and to pay for the transition services after acceptance of the Cogeneration Facility.
- (e) Adopt a resolution authorizing the City Manager or his designee to:
 - (1) Execute change orders in excess of \$100,000 up to the amount of the design contingency for changes to the scope of the preliminary design services, and up to the amount of the construction contingency for adjustments to the base guaranteed maximum price or lump sum amount during the performance of the design-build work;
 - (2) Negotiate and execute the necessary regulatory permits and public utility agreements in excess of \$100,000 for the permitting, design, construction and inspection of utility connections associated with the new Cogeneration Facility, up to an aggregate amount of \$600,000.

This item is scheduled for consideration by the City Council on April 26, 2016.

Principal Engineer John Cannon presented on this item.

Committee Member Gatto inquired: (1) how the \$82 million design build estimate was determined without beginning the preliminary design work to reach the GMP

and (2) what the next steps are if the contractor requested more funding after completing the \$5.6 million preliminary design service. Mr. Cannon clarified that CH2M Hill submitted a design proposal based on their best estimate. The project is considered a progressive design build project. Staff will receive another estimate at 30 percent design. Director Romanow and Mr. Cannon added that the project can be scoped down (i.e. shrinking square footage) if costs are trending high. City staff can also bring this item, along with a list of milestones, to TPAC and Council, if further authorization is needed.

TPAC was unanimous in approving Recommendations (a) and (b) for Item 5.A.:

Ayes – 9 (Esteves, Gatto, Gillmor, Killgore, Kolstad, Leonardis, Liccardo, Nguyen, Oliverio)

Nayes – 0

Absent – 0

TPAC separately voted on Recommendations (c) through (e). Committee Member Gatto asked for staff to bring back an update on the project to TPAC. There was concern regarding the impact of a material change to the project in order to keep it within the estimated budget. TPAC voted to approve Recommendations (c) through (e) provided staff return to TPAC to brief TPAC in the event there is a material change to the scope prior to taking action on (c) through (e).

A motion was made by Vice Chair Kolstad with a second by Committee Member Oliverio.

Ayes – 7 (Gatto, Gillmor, Killgore, Kolstad, Liccardo, Nguyen, Oliverio)

Nayes – 2 (Esteves, Leonardis)

Absent – 0

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

Staff recommendation:

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

This item is scheduled for consideration by the City Council on May 10, 2016.

Mr. Page provide an overview of critical improvements needed to enable continued regulatory compliance and long-term operational reliability.

Committee Member Gatto inquired if the money needs to be identified at the time of the design build contract, or if the payment can be done in increments if the project has a two or three year lifespan. Ms. Kantak clarified that this particular award was for consultant services; however for construction contracts, the money is encumbered at the time the contract is awarded regardless of whether it's a design bid build or design build contract award.

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

Ayes – 9 (Esteves, Gatto, Gillmor, Killgore, Kolstad, Liccardo, Leonardis, Nguyen, Oliverio)

Nays – 0

Absent – 0

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

Staff Recommendation:

- (a) Accept the report on the Request for Proposal for the purchase and implementation of a Design Construction Management System for the Capital Improvement Program at the San José- Santa Clara Regional Wastewater Facility, and adoption of a resolution authorizing the City Manager to:
- (1) Negotiate and execute an Agreement with Bentley Systems, Inc. (Exton, PA) for the purchase and implementation of a Design and Construction Management System, including software subscription, implementation, configuration, testing, training, and related professional services, taxes, maintenance and support for an initial five-year term commencing on or about May 1, 2016 and ending on or about July 31, 2021, with a maximum compensation not-to-exceed \$342,700 for the initial five-year term, subject to the appropriation of funds; and
 - (2) Execute change orders to cover any additional requirements for a not-to-exceed contingency amount of \$100,000, subject to the appropriation of funds; and
 - (3) Execute one-year options to extend the term of the Agreement to provide ongoing software subscription, hosting, and technical support services after the initial five-year term, subject to the appropriation of funds.
 - (4) Negotiate and execute an Agreement with Aconex (San Bruno, CA), the second ranked proposer, in the event staff is unable to finalize negotiations with Bentley Systems, Inc. within 60 days of Council approval.

This item is scheduled for consideration by the City Council on April 26, 2016.

Assistant Director Ashwini Kantak indicated that they are no longer seeking authority for Recommendation (4).

On a motion made by Committee Member Gatto and a second by Committee Member Oliverio, TPAC recommended approval of staff's amended recommendations, (a) 1-3, for Item 5.C.

Ayes – 8 (Esteves, Gatto, Gillmor, Killgore, Kolstad, Leonardis, Nguyen, Oliverio)
Nayes – 0
Absent – 1 (Liccardo)

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

Staff Recommendations:

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

This item is scheduled for consideration by the City Council on April 26, 2016.

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

Ayes – 8 (Esteves, Gatto, Gillmor, Killgore, Kolstad, Leonardis, Nguyen, Oliverio)
Nayes – 0
Absent – 1 (Liccardo)

E. San José- Santa Clara Regional Wastewater Facility Capital Improvement Program Semi-Annual Status Report

Staff Recommendation:

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

This item is scheduled for consideration by the City Council on April 26, 2016.

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

Ayes – 8 (Esteves, Gatto, Gillmor, Killgore, Kolstad, Leonardis, Nguyen, Oliverio)
Nayes – 0
Absent – 1 (Liccardo)

F. Audit of South Bay Water Recycling

Staff Recommendation:

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

This item is scheduled for consideration by the City Council on April 26, 2016.

City of San José Auditor Sharon Erickson answered questions from Committee Member Esteves and Committee Member Gatto about which findings TPAC should be aware. The Auditor noted that the purpose of the audit was to evaluate whether the program was at cost recovery. The Auditor recommended improving the tracking of expenditures, and including the amendment of the Integration Agreement with the Santa Clara Valley Water District as part of the overall discussion of recycled water that the City is having with the Water District.

On a motion made by Committee Member Esteves and a second by Vice Chair Kolstad, TPAC recommended approval of staff's recommendation for Item 5.F.

Ayes – 8 (Esteves, Gatto, Gillmor, Killgore, Kolstad, Leonardis, Nguyen, Oliverio)

Nays – 0

Absent – 1 (Liccardo)

6. **OTHER BUSINESS/CORRESPONDENCE**

- A. Discussion and direction on guiding principles for mediation of all outstanding disputes including the administrative claim, request for records, and potential amendments to the Master Agreements.

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

Chair Liccardo provided TPAC a summary of additional guiding principles to ensure that necessary changes to the Master Agreement can be made in a timely manner in order for critical projects at the Plant to move forward:

- (1) Ensure equity by allocating costs and risks and parties proportionally.
- (2) Ensure consistency among all agencies by requiring uniformity of key terms of the agreement as to all similarly situated parties.
- (3) Conserve time and staff resources by focusing on resolving the key obstacles to a settlement, while remaining sensitive to critical deadlines for financing and construction of essential projects.
- (4) Identifying with specificity the information needed to make decisions, and making all relevant records available upon request, and avoiding the unnecessary expenditure of resources in responding to overly broad Public Records Act requests.

Committee Member Gatto indicated that in his meeting with Assistant Director Kantak that he had received helpful information. Committee Member Gatto suggested creating a task force comprised of staff and representatives, and two or three members from each side to minimize the cost of mediation and litigation.

Vice Chair Kolstad inquired if there are time constraints TPAC would need to work with to attain a resolution. Director Romanow and Ms. Kantak indicated that the agreement for the State Revolving Fund (SRF) loan application would need to be finalized in one month assuming that all agencies are participating.

Another suggestion was made by Chair Liccardo to create a hybrid option of Committee Member Gatto's suggestion and the additional guiding principles.

TPAC had a discussion on next steps based on the time constraints for the SRF loan. It was suggested that the two or three members each from Tributary Agencies and Owners, which would include both elected officials and staff, meet on an as needed basis within the next two weeks before pursuing mediation. Committee Member Gatto added that both parties can also narrow the scope of the dispute.

A motion was made by Vice Chair Kolstad with a second by Committee Member Oliverio to direct that a committee comprising of representatives from each side meet in the next two weeks to discuss a resolution to the outstanding disputes, and/or to narrow the scope of the dispute.

Ayes – 9 (Esteves, Gatto, Gillmor, Killgore, Kolstad, Leonardis, Liccardo, Nguyen, Oliverio)

Nayes – 0

Absent – 0

- B. Letter from Director Romanow to the Tributary Agencies dated April 7, 2016

Director Romanow noted that the correspondence from the Tributary Agencies dated March 30, 2016 will be included in the May TPAC meeting packet.

- C. Letter from the Tributary Agencies dated February 26, 2016 to TPAC

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

- A. Election of the Chair

This item was deferred to the April 14, 2016 TPAC meeting, and was amended to include nominations for the Vice-Chair.

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

TPAC confirmed the hearing date and procedures for the Administrative Claim Hearing during the March 10, 2016 TPAC meeting.

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

Staff Recommendations:

- (a) Approve a \$92,970 increase to the construction contingency amount of \$27,030 for a revised total contingency in the amount of \$120,000 and increase the original contract not-to-exceed amount from \$297,330 to a total revised contract amount not-to-exceed \$390,300.
- (b) Adopt a resolution authorizing the Director of Public Works to negotiate and execute Contract Change No. 4 with JMB Construction, Inc. for the 7076 – Influent Magnetic Meter and Valve Replacement for Nitrification Clarifiers A-5 and A-6 Project extending the project completion date from February 17, 2014 to May 27, 2014 to May 27, 2016 for a total of 561 working days beyond the original contract completion date of February 7, 2014.

This item was approved by the City Council on March 15, 2016.

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

Staff Recommendations:

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

This item was approved by the City Council on March 22, 2016.

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

Ayes – 8 (Esteves, Gatto, Gillmor, Killgore, Kolstad, Leonardis, Nguyen, Oliverio)

Nayes – 0

Absent – 1 (Liccardo)

8. **REPORTS**

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

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

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

Ayes – 8 (Esteves, Gatto, Gillmor, Killgore, Kolstad, Leonardis, Nguyen, Oliverio)

Nays – 0

Absent – 1 (Liccardo)

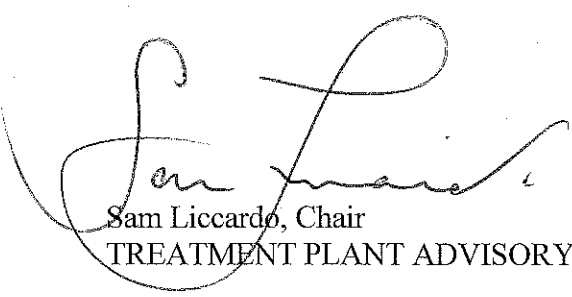
9. **MISCELLANEOUS**

A. The monthly TPAC Meeting is May 19, 2016, at 4:30 p.m., City Hall, Room 1734. Please note that this is on the third Thursday of the month.

10. **OPEN FORUM**

11. **ADJOURNMENT**

A. The Treatment Plant Advisory Committee adjourned at 5:12 p.m.



Sam Liccardo, Chair

TREATMENT PLANT ADVISORY COMMITTEE