

**MINUTES OF THE
SAN JOSÉ/SANTA CLARA
TREATMENT PLANT ADVISORY COMMITTEE**
San José City Hall, T-1734
Thursday, May 18, 2017 at 4:00 p.m.

1. ROLL CALL

Minutes of the Treatment Plant Advisory Committee convened this date at 4:03 p.m. Roll call was taken with the following members in attendance:

Committee Members: Debi Davis, Dev Davis, John Gatto, Marsha Grilli, Pat Kolstad, Steven Leonardis, Sam Liccardo, Dave Sykes, Lan Diep

2. APPROVAL OF MINUTES

A. April 13, 2017

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

Ayes – 9 (Debi Davis, Dev Davis, Diep, Gatto, Grilli, Kolstad, Leonardis, Liccardo, Sykes)

Nays – 0

Absent – 0

3. UNFINISHED BUSINESS/REQUEST FOR DEFERRALS

4. DIRECTOR'S REPORT

A. Director's Report (verbal)

- Monthly Progress Report

Director Kerrie Romanow mentioned former Santa Clara TPAC Member Jerry Marsalli passed away over the weekend. He last served on TPAC in August 2016.

Ms. Romanow also provided an update on the South Bay Shoreline Protection Project. The Santa Clara Valley Water District is in the process of applying for a permit from the State and construction is tentatively slated for 2018. Staff will bring a recommendation forward to TPAC at a later date.

5. AGREEMENTS/ACTION ITEMS

A. San Jose – Santa Clara Regional Wastewater Facility Capital Improvement Project 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 July 2016 through December 2016.

This item was accepted by the Transportation and Environment Committee on May 1, 2017, and will be considered by the City Council on May 23, 2017.

Deputy Director Julia Nguyen and Principal Engineer John Cannon presented.

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

Ayes – 9 (Debi Davis, Dev Davis, Diep, Gatto, Grilli, Kolstad, Leonardis, Liccardo, Sykes)

Nayes – 0

Absent – 0

B. San Jose/Santa Clara Water Pollution Control Plant Proposed Capital Improvement Program

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

The San Jose/Santa Clara Water Pollution Control Plant Proposed Capital Improvement Program is scheduled for Council consideration on June 13, 2017, and for adoption on June 30, 2017.

Committee Member Gatto raised questions regarding the escalation of costs in the Capital Improvement Program particularly with debt service. He expressed concerns about the substitution of short-term and long-term financing, and if costs would be deferred to ratepayers. Staff explained that since both short-term and long-term financing will be used by San Jose, the debt balance for the short-term Commercial Paper Program would be paid off through the use of long-term revenue bonds in order to cover San Jose's costs only.

Committee Member Gatto expressed that the Tributary Agencies were not given term sheets in order to make an informed decision on whether to agree to participate in the proposed financing.

Director Kerrie Romanow conveyed that the Tributary Agencies were given the option to participate in a financing program during multiple conversations with agency representatives, but to date there wasn't a commitment of interest and an extension of contracts. Agencies had expressed an interest in the financing but were not willing to contribute to the required financing reserves. This financing approach would have raised rates for San Jose ratepayers in order to build a substantial reserve on behalf of the agencies.

Per Prop 218, San Jose ratepayers could not subsidize other ratepayers. As a result, agencies were advised to complete their own financing.

A motion was made by Committee Member Gatto not to approve Item 5.B., the CIP Budget due to various outstanding issues with financing and other CIP projects; a second was made by Committee Member Leonardis. The vote on the motion made by Committee Member was as follows:

Ayes – 3 (Gatto, Grilli, Leonardis)

Noes – 6 (Debi Davis, Dev Davis, Diep, Kolstad, Liccardo, Sykes)

Absent – 0

Another motion was made by Committee Member Kolstad to approve staff's recommendation for Item 5.B. and was seconded by Committee Member Debi Davis. The vote on the motion made by Committee Member Kolstad was as follows:

Ayes – 6 (Debi Davis, Dev Davis, Diep, Kolstad, Liccardo, Sykes)

Noes – 3 (Gatto, Grilli, Leonardis)

Absent – 0

C. San Jose/Santa Clara Water Pollution Control Plant Proposed Operations and Maintenance Budget

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

Committee Members Gatto, Debi Davis, and Marsha Grilli expressed concerns about the elimination of the Fats Oils and Grease (FOG) Program, and recommended that the program remain intact at least six months to a year to provide agencies time to adjust and develop an alternative program.

Director Kerrie Romanow indicated there would be a six month transition period, and that staff is waiting to hear back from all agencies about the level of support services they would need so that side agreements can be negotiated with the agencies.

Committee Member Gatto conveyed that cost should be comparable to what the Tributary Agencies would be paying for if the FOG Program had remained in the Treatment Plant Operating Budget. Ms. Romanow responded that the proportion of costs would be determined once level of service recommendations from the Tributary Agencies are received.

Committee Member Gatto asserted that South Bay Water Recycling improvements are being implemented over and above what is required for maintenance and rehabilitation. Further, improvements are being done to improve the capability of the Plant, but are not necessarily required under the National Pollutant Discharge Elimination permit. An example was the South Bay Water Recycling (SBWR) Infrastructure Improvement Project. Ms. Romanow explained that TPAC recommended approval of the SBWR Master Plan in December 2014, and that the infrastructure improvements plan is derived from the SBWR Master Plan. In essence, improvements are being done to avoid catastrophic failure which would result in significantly higher costs.

Chair Liccardo directed staff to clarify the significant increase when comparing 2015-2016 actuals to the 2017-2018 proposed budget. Ms. Romanow explained that significant savings were realized in 2015-2016 due to low staffing levels.

Committee Member Gatto questioned why actual expenses were increasing each fiscal year. Administrative Officer Allen Fong indicated that the primary reason was due to pension costs and overhead.

On a motion by Committee Member Kolstad and a second by Committee Member Diep, TPAC recommended approval of staff's recommendation for Item 5.C.

Ayes – 7 (Debi Davis, Dev Davis, Diep, Grilli, Kolstad, Liccardo, Sykes)

Nays – 2 (Gatto, Leonardis)

Absent – 0

D. Report on Bids and Award of Construction Contract for 8101 – Headworks Critical Improvements Project – Rebid at the San José – Santa Clara Regional Wastewater Facility

Staff Recommendation:

- (a) Reject all bids received and postponed on December 8, 2016 for Headworks Critical Improvements Project.
- (b) Report on bids and award of construction contract for 8101 – Headworks Critical Improvements Project – Rebid to the low bidder, C. Overaa & Co., in the amount of \$1,499,000, and approve a 15 percent construction contingency in the amount of \$224,850.
- (c) Adopt a resolution authorizing the Director of Public Works to negotiate and execute one or more change orders in excess of \$100,000 for the duration of the Project, not to exceed the total contingency amount for the project.

This item is scheduled for consideration by the City Council on May 23, 2017.

On a motion by Committee Member Leonardis and a second by Committee Member Debi Davis, TPAC approved to accept approval of staff's recommendation for Item 5.D.

Ayes – 9 (Debi Davis, Dev Davis, Diep, Gatto, Grilli, Kolstad, Leonardis, Liccardo, Sykes)

Nays – 0

Absent – 0

E. Report on Bids and Award of Contract for 8332 – Nitrification Clarifiers Lighting Improvements Project Re-Bid at the San Jose – Santa Clara Regional Wastewater Facility

Staff Recommendation:

- (a) Reject all bids received and opened on February 2, 2017 for the Nitrification Clarifiers Lighting Improvements Project.
- (b) Reports on bids and award 8332 – Nitrification Clarifiers Lighting Improvements Project Re-bid to the sole bidder Boscacci, Inc. for the base bid in the amount of \$500,000 and approval of a construction contingency of 15 percent in the amount of \$75,000.

This item is scheduled for consideration by the City Council on May 23, 2017.

On a motion by Committee Member Dev Davis and a second by Committee Member Debi Davis, TPAC approved to accept approval of staff's recommendation for Item 5.E.

Ayes – 9 (Debi Davis, Dev Davis, Diep, Gatto, Grilli, Kolstad, Leonardis, Liccardo, Sykes)

Nayes – 0

Absent – 0

- F. 8251 – Master Consultant Agreement with SCA Environmental, Inc. for Industrial Hygienist Services at the San Jose – Santa Clara Regional Wastewater Facility

Staff Recommendation: Approve a Master Consultant Agreement with SCA Environmental, Inc. to provide industrial hygienist services at the San Jose – Santa Clara Regional Wastewater Facility from the date of execution through June 30, 2024 in an amount not to exceed \$500,000, subject to the appropriation of funds.

This item is scheduled for consideration by the City Council on May 23, 2017.

On a motion by Committee Member Debi Davis and a second by Committee Member Leonardis, TPAC approved to accept approval of staff's recommendation for Item 5.F.

Ayes – 9 (Debi Davis, Dev Davis, Diep, Gatto, Grilli, Kolstad, Leonardis, Liccardo, Sykes)

Nayes – 0

Absent – 0

- G. Administrative Hearing for Claim 2 by the Tributary Agencies

Purpose: To conduct a hearing on the administrative claim for breach of contract and inequities filed by the Tributary Agencies

1. Presentations from Tributary Agencies (10 minutes)
2. Presentations from Co-Owners (10 minutes)
3. Discussion (20 minutes)

West Valley Sanitation District, Burbank Sanitary District, Cupertino Sanitary District, Santa Clara County Sanitation District No. 2-3, and the City of Milpitas (Tributary Agencies), each individually and jointly filed a “Claims for Breach of Agreement and Inequities” (Claim 2) with TPAC and Members of the City Councils of the City of San José and Santa Clara in accordance with provisions of each of the Tributary Agencies’ respective Master Agreements for Wastewater Treatment on September 7, 2016, and requested a public hearing on the Claim. Written exhibits and documents supporting the Claim were also submitted by the Tributary Agencies to TPAC on September 7, 2016.

The City of San José (San Jose), as the Administering Agency of the Regional Wastewater Facility (RWF or Plant), submitted its response to Claim 2 on behalf of the cities of San José and Santa Clara (Co-Owners), along with supporting exhibits and documents to TPAC on May 11, 2017.

As requested by the Tributary Agencies in accordance with each of their respective Master Agreements, a hearing on Claim 2 was held before TPAC on May 18, 2017.

David Mehretu, of Meyers Nave, appeared on behalf of the Agencies and presented arguments in favor of TPAC’s approval of Claim 2. Rosa Tsongtaarii, Senior Deputy City Attorney of the San José City Attorney’s Office appeared on behalf of the Co-Owners and presented arguments and testimony supporting Co-Owners’ request that TPAC deny Claim No. 2.

TPAC considered and discussed the arguments, testimony and previously submitted documents by the Tributary Agencies and Co-Owners at the hearing.

A motion was made by Committee Member Gatto to uphold Claim 2, which was seconded by Committee Member Grilli. The motion failed on the following vote:

Ayes – 3 (Gatto, Grilli, Leonardis)

Nayes – 6 (Debi Davis, Dev Davis, Diep, Kolstad, Liccardo, Sykes)

Absent – 0

There was additional discussion of the Claim by TPAC members following the first motion. A second motion following that portion of the discussion was made by Committee Pat Kolstad and seconded by Committee Member Grilli to deny the claim. The motion was approved on the following vote:

Ayes – 6 (Dev Davis, Diep, Kolstad, Grilli, Liccardo, Sykes)

Nayes – 3 (Debi Davis, Gatto, Leonardis)

Absent – 0

The complete discussion, motions and votes taken by TPAC are reflected in the hearing Transcript on file with the Director of Environmental Services, Kerrie Romanow, Secretary to TPAC located at <https://www.sanjoseca.gov/index.aspx?NID=5338>

6. **OTHER BUSINESS/CORRESPONDENCE**

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

A. Discharge Regulations and Future Impacts on the San José– Santa Clara Regional Wastewater Facility

Staff Recommendation: Accept the first annual update on regulatory items related to the San José – Santa Clara Regional Wastewater Facility.

The update was accepted by the Transportation and Environment Committee on April 2, 2017, and by the City Council on April 25, 2017.

B. Approve Master Service Agreements with Cornerstone Earth Group, Golder Associates, and AEI Consultants for On-Call Environmental Consulting Support for Various City Projects

Staff Recommendation: Approval of Master Service Agreements with the following Firms for on-call environmental consulting services for various City projects:

- (1) Cornerstone Earth Group from the date of execution through May 1, 2020 in an amount not to exceed \$500,000;
- (2) Golder Associates from the date of execution through May 1, 2020 in an amount not to exceed \$500,000; and
- (3) AEI Consultants from the date of execution through May 1, 2020 in an amount not to exceed \$500,000.

The proposed recommendation was accepted by the City Council on April 25, 2017.

C. Amendment of Title 22 of the San Jose Municipal Code (Convention, Cultural and Visitors Services) Relating to Funding of Public Art

Staff Recommendation: Approve an ordinance to amend Section 22.08.030 of Title 22 of the San José Municipal Code to exempt capital improvement projects for the San José – Santa Clara Regional Wastewater Facility from the one percent public art assessment of the capital improvement budget.

This item is scheduled for consideration by the City Council on June 6, 2017.

Item 7.A. was approved to note and file.

Ayes – 9 (Debi Davis, Dev Davis, Diep, Gatto, Grilli, Kolstad, Leonardis, Liccardo, Sykes)

Nayes – 0

Absent – 0

8. **REPORTS**

9. **MISCELLANEOUS**

A. The next monthly TPAC Meeting is June 8, 2017 at 4:00 p.m., City Hall, Room 1734.

10. **OPEN FORUM**

11. **ADJOURNMENT**

A. The Treatment Plant Advisory Committee adjourned at 5:48 p.m.



Sam Liccardo, Chair
TREATMENT PLANT ADVISORY COMMITTEE