


AGENDA
WASTEWATER SUBCOMMITTEE MEETING
DECEMBER 18, 2014, 8:30A.M.
HERCULES CITY HALL
111 CIVIC DRIVE
HERCULES, CA 94547

1.	CALL TO ORDER – PLEDGE OF ALLEGIANCE
2.	ROLL CALL
3.	APPROVAL OF MINUTES – NOVEMBER 2014
4.	CITIZENS TO BE HEARD – FOR ITEMS NOT ON THE AGENDA
5.	FISCAL AGREEMENT: <i>DISCUSS REVISED AND UPDATED DRAFT FISCAL AGREEMENT</i>
6.	PROJECT UPDATE: <i>RECEIVE A PROJECT STATUS UPDATE</i> <ul style="list-style-type: none">• <i>ENGINEERING PLANS</i>• <i>APPLICATION WITH THE STATE REVOLVING LOAN FUND COMMITTEE</i>• <i>PERMIT APPLICATION WITH BAY CONSERVATION AND DEVELOPMENT COMMISSION (BCDC), INCLUDING DISCUSSIONS OF FLOOD WALLS</i>• <i>PERMIT APPLICATION WITH COUNTY</i>

7.	ADDITIONAL COMMENTS AND REQUEST FROM THE SUBCOMMITTEE
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POSTED: Thursday December 11, 2014 at 5:00 p.m. at City Hall



Ana Morales, Secretary, City of Pinole

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**PINOLE / HERCULES
Wastewater Subcommittee**

**Draft Minutes prepared by: Anita Tucci-Smith
November 20, 2014
8:30 A.M.**

The meeting was hosted by the City of Pinole in the Council Chambers of City Hall.

1. CALL TO ORDER/PLEDGE OF ALLEGIANCE

Tim Banuelos, Mayor of Pinole, serving as Chair called the meeting to order at 8:34 A.M. and led the Pledge of Allegiance.

2. ROLL CALL

Subcommittee Members Present:

Tim Banuelos, Mayor, City of Pinole
Debbie Long, Councilmember, City of Pinole
Sherry McCoy, Vice Mayor, City of Hercules

Subcommittee Members Absent:

Dan Romero, Councilmember, City of Hercules

Staff Present:

Belinda Espinosa, City Manager, Pinole
Hector de la Rosa, Assistant City Manager, Pinole
Dean Allison, Public Works Director/City Engineer, Pinole
Ron Tobey, Plant Manager, Pinole
David Biggs, City Manager, Hercules
Jeff Brown, Interim Public Works Director, Hercules
Patrick Tay, City Attorney, Hercules

Member(s) of the Public:

Anthony Gutierrez, Pinole
Aram Hodess, Plumbers & Steamfitters 159
Roy Swearingen, Councilmember, Pinole,
James Tillman, Wastewater Advocate, Pinole

3. APPROVAL OF MINUTES – SEPTEMBER 18, 2014

Pinole Councilmember Long advised that she should have been shown as absent from the last meeting even though an alternate had attended in her absence.

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Action: Motion by Hercules Vice Mayor McCoy, seconded by Pinole Councilmember Long to approve the minutes of the September 18, 2014 meeting, as corrected to show that Pinole Councilmember Long had been absent, carried by the following vote:

Ayes: Banuelos, Long, McCoy
Noes: None
Abstain: None
Absent: Romero

4. CITIZENS TO BE HEARD – FOR ITEMS NOT ON THE AGENDA

Jim Tillman, Pinole, requested that all financial agreement documents be made available to the public to allow a review of those documents prior to the meeting; requested, as he had previously done on a number of occasions, a review of the 2001 wastewater treatment plant contract between the two cities to ensure that all parties and the public understood the limits of the contract; and requested that the City of Pinole post notifications it received from state agencies associated with the wastewater treatment plant as a legal public notice in the newspaper to allow the citizenry to express an opinion on the issues related to the agencies.

5. ~~FISCAL AGREEMENT: Receive a Presentation on the Fiscal Agreement~~

Belinda Espinosa, City Manager, Pinole, reported that staff had been working on the Fiscal Agreement for some time; noted that both Pinole and Hercules had independent applications before the State to be able to finance the \$42 million upgrade project; each was attempting to come up with its own way of handling its finances; and the agreement would be strictly between Pinole and Hercules through a third party administrator, Mechanics Bank, as the paying agent. Each city would initially deposit \$2.75 million in each city's separate bank account, and by resolution each city would agree to deposit an additional amount although that amount had yet to be determined. The amounts were critical given the initial cash flow analysis and the importance of having the cash reserves available to avoid holding up the project. She sought feedback on the document and explained that no determination was expected at this time and the item could be scheduled for further discussion.

The Subcommittee discussed concerns related to the following:

- Change orders and turnaround time, how the change orders would be addressed, if both cities would be involved in all change orders, and how disagreements would be addressed;
- The inclusion of a statement that there may be a need to clarify the \$42 million upgrade cost given potential currently unknown problems;

- What would occur with the project if there was a lack of cooperation between both parties given that Pinole carried all the risks and Hercules had veto power;
- With respect to the corporation yard building and the restrooms in the park there was also a concern for the statement related to "like-to-like replacement;" it was noted that the flood walls and restrooms could be re-discussed and it was also noted the language could be revised to clarify the intent;
- Since a permit would be required from BCDC, some enhancements and replacements could be required, which would also be a shared cost;
- With respect to the Project Labor Agreement (PLA), it was noted that issue would have to be discussed more thoroughly, particularly since the City of Hercules had not been included in the determination of a PLA;
- The need to be mindful of the fact that Mechanic's Bank might not be intact throughout the term of the Fiscal Agreement, and as a result the reference to Mechanic's Bank would be removed and replaced with the term "third party paying agent," with the name of the bank added later;
- A need to consistently represent the known and expected construction costs in the contract given that a subset of the \$40 million plus contract had been paid and would not be covered by the Agreement.

Jim Tillman, Pinole, urged an effort to select the highest interest rate possible and urged the use of local banks, but on the cash flow issues did not support a third party agent and suggested that the two cities could do the same thing in-house to save time and money. He also sought just compensation for the loss of the use of the park and stated the restoration of the park should be included in the Agreement. He also verified that the Agreement would have to be approved by both cities and urged that be done as soon as possible.

Dean Allison, Public Works Director/City Engineer, Pinole, reported that the park would remain open, usable, and enjoyable. A portion of the park would be used for staging and the restoration of that portion would be covered by the Agreement.

6. PROJECT UPDATE - Receive a Project Status Update on Engineering Plans, Application with the State Revolving Loan Fund Committee, Permit Application with Bay Conservation and Development Commission (BCDC), and Permit Application with Contra Costa County

Mr. Allison presented a PowerPoint presentation, identified the project schedule, and noted that all the activities were expected to be complete prior to the completion of the engineering, with final plans expected to be ready for bid by March 17, 2015. He described the status of the associated permit processes, and explained that the BCDC permit process was expected to be the lengthiest.

Jim Tillman, Pinole, expressed concern dealing with the County and with two different cities, and asked for real time scheduling so that the public could understand what was going on given that any additional costs would have to be paid by the ratepayers. He wanted to know when the final engineering would be completed and asked and was told that 90 percent plans would be ready by December 2014, and be advertising ready between December 2014 and March 2015.

Anthony Gutierrez, Pinole, asked that the PLA be added to the schedule along with the granularity and some of the dependencies.

7. PROJECT LABOR AGREEMENT: Receive an Update Regarding Project Labor Agreement

Ms. Espinosa reported that the Pinole City Council had discussed the merits of whether or not to pursue a PLA over three or four meetings, had gone through a variety of questions, had received presentations from the Association of Building Contractors and the Building Trades, and a number of options had been considered. She explained that a PLA was an agreement between labor and the project owner and the contractors were not involved. If approved, a PLA would help contractors cost out a project to submit a bid. The project would be ~~prevailing wage with or without PLA, and there was no clear determination~~ whether a PLA would increase costs although if a negotiator was hired to negotiate a PLA that could involve a cost.

The Subcommittee sought more discussion of:

- The aspects of a PLA that could and could not be included in the pre-qualification process;
- Clarification that workers working out of a PLA did not have to be union workers although they had to be hired out of a union hall to ensure that the hires were local;
- How many wastewater treatment plants had been constructed with or without PLAs, and how many had been upgraded while they were in operation;
- Whether a PLA increased costs;
- A subcommittee of both cities to discuss the deal points of a PLA collaboratively.

Aram Hodess, Plumbers & Steamfitters 159, reported that PLAs had been used throughout the Bay Area and Contra Costa County had a good record of acceptance; noted the benefits that only a PLA could provide would be labor harmony which prohibited strikes by workers and lockouts by employers; and characterized PLAs as insurance that should provide a great deal of assurance that the project would proceed smoothly without disruptions.

Mr. Hodess clarified that whether union or non-union had no effect although the PLA would mean that the labor force would have to be hired from the union hall to protect against "cheating." As to cost, a Contra Costa County study had found no increase in cost and he suggested there could be a cost savings with a PLA. He described the apprentice program and explained that apprentices could be dispatched to the project under a PLA; offered to make a presentation to the Hercules City Council; and responded to questions related to the PLA and noted that anything in a PLA would trump the master labor agreement of the union.

Anthony Gutierrez, Pinole, thanked Pinole Mayor Banuelos for recommending that the PLA discussion be forwarded to the City of Hercules for discussion before approval. He described his background, suggested the PLA should have been reviewed by the Subcommittee first and then been forwarded to the City Councils, and expressed his hope that the process could be smoothed out and that there would be professional collaboration between the two cities.

Jim Tillman, Pinole, stated that the Pinole City Council had agreed to have a PLA and under the 2001 wastewater contract, Pinole was the decision maker as the owner of the land and the owner of the permit for the plant. He referenced some discussion of the contents of the facility and the ownership of those contents but stated that since the Pinole City Council had approved the PLA it was essentially part of the contract that Hercules had to accept.

8. ADDITIONAL COMMENTS AND REQUESTS FROM THE SUBCOMMITTEE

Hercules Vice Mayor McCoy asked that some of the items just discussed be returned to the Subcommittee at its next meeting along with an update on the flood walls.

Chair Banuelos referred to the flood wall in terms of flood control versus plant upgrade and urged an effort to determine whether there might be other local, state, or federal funding sources from a flooding standpoint that could be considered.

9. ADJOURNMENT

The meeting was adjourned at 11:40 A.M. to December 18, 2014 in the City of Hercules.



AGENDA ITEM 5

TO: WASTEWATER SUBCOMMITTEE

SUBMITTED BY: DEAN ALLISON

MEETING DATE: DECEMBER 18, 2014

SUBJECT: FISCAL AGREEMENT

RECOMMENDATIONS

Discuss the revised and updated draft Fiscal Agreement

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Version 12
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Pinole-Hercules Wastewater Subcommittee

**FISCAL AGREEMENT
FOR IMPROVEMENT OF
PINOLE HERCULES WATER POLLUTION CONTROL PLANT**

THIS FISCAL ADMINISTRATOR AGREEMENT (this "**Agreement**") is entered into this ____ day of _____, 2014, by and between the CITY OF PINOLE, a municipal corporation ("**Pinole**,") and the CITY OF HERCULES, a municipal corporation ("**Hercules**"), which is jointly referred to in this Agreement as the "**Parties**."

RECITALS

WHEREAS, the Pinole-Hercules Water Pollution Control Plant (the "**WPCP**") is located along the shoreline of San Pablo Bay at 11 Tennent Avenue within the city limits of Pinole; and

WHEREAS, the WPCP was constructed in 1956 to treat wastewater generated only by Pinole; and

WHEREAS, in 1971, the Cities of Pinole and Hercules entered into a joint use agreement, which included expansion and upgrades to the WPCP to treat wastewater effluent from Hercules; and

WHEREAS, the operating permit with the California Regional Water Control Board (RWQCB) is in the name of Pinole; and

WHEREAS, the plant is operated, maintained and administered by Pinole, pursuant to a 2001 joint powers agreement with Hercules (the "**Wastewater Agreement**"); and

WHEREAS, treated wastewater from the WPCP is discharged from a deep water outfall known as "**Outfall 001**" (which also includes treated wastewater from the Rodeo Sanitary District ("**RSD**")); and

WHEREAS, During periods of heavy rainfall from winter storm events, a portion of the WPCP effluent is discharged from a shallow water or near shore outfall known as "**Outfall 002**"; and

WHEREAS, the WPCP currently has an average dry weather flow capacity of 4.06 million gallons per day (mgd) and a wet weather capacity of 10.3 mgd; and

WHEREAS, effluent discharged from the WPCP is regulated by the California Regional Water Quality Control Board, San Francisco Bay Region ("**RWQCB**"), under the National Pollutant Discharge Elimination System ("**NPDES**"); and

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WHEREAS, The NPDES permit issued in March of 2007 included a requirement that Pinole, as the permit holder, must examine alternatives and implement improvements to reduce the use of the shallow-water Outfall 002, and eliminate blending of primary and

Secondary-treated effluent, which occasionally occurs during periods of high rainfall during winter storm events; and

WHEREAS, in response to the need to upgrade wastewater treatment infrastructure, Pinole designed an upgrade project for the WPCP to comply with the requirements of the NPDES permit (the "Project"); and

WHEREAS, in August of 2012, the RWQCB issued a revised NPDES permit for the WPCP specifically intended to avoid construction of a parallel outfall pipeline that had been studied in the 2010 Environmental Impact Report, concluding that the additional cost of such a parallel outfall pipeline would be better spent on improvements to the collection system to reduce infiltration and the need to use the emergency outfall; and

WHEREAS, the August 2012 NPDES permit now requires the WPCP provide full secondary treatment for influent flows up to 20 mgd, discharge treated effluent up to 14.6 mgd to Outfall 001, and to limit use of Outfall 002 to flows in excess of 14.6 mgd; and

WHEREAS, the August 2012 NPDES permit further allows diversion of excess flow to the emergency outfall under the bypass conditions, provided that the peak wet weather influent flow exceeds 14.6 mgd after the effluent pump upgrades are completed and put into service, that the discharge complies with effluent and receiving water limitations, and the facility is properly operated as designed. The WPCP operator must report incidents of blending or use of the emergency outfall, or both, in routine monitoring reports. The compliance schedule in the 2012 NPDES permit requires upgrades to be operational by June 1, 2017; and

WHEREAS, Pinole and Hercules began preparation of a preliminary design for the WPCP to identify the treatment and conveyance upgrades needed to meet the current 2012 NPDES permit requirements for a redesigned Project; and

WHEREAS, the Wastewater Agreement between Pinole and Hercules requires each Party to share equally in the costs of the Project, which is currently estimated to be \$42.0 Million; and

WHEREAS, in order to finance their share of the upgrade Project, Pinole and Hercules have each submitted separate loan applications to the Clean Water State Revolving Fund ("CWSRF") program from the United States Environmental Protection Agency, which is administered by the State of California; and

WHEREAS, this Agreement is necessary in order to ensure sufficient cash flow requirements are met for the Project given the CWSRF funding requirements and the construction schedule for the Project; and

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WHEREAS, it is the desire and intent of the Parties, without in any way surrendering the sovereignty of their respective governmental authority, to enter into this Agreement to set forth the basis for sharing costs, and administering the payments for the Project to contractor(s); and

WHEREAS, In the event that CWSRF funding is not approved by the State, then the Parties shall seek alternative financing, recognizing that time is of the essence in order for the Project to proceed; and

WHEREAS, it is the desire of both parties to obtain a Third Party Fiscal Administrator to oversee and manage the Project Account during construction and until final completion of the project to assure financial responsibility and accountability.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES HEREIN CONTAINED, THE PARTIES AGREE AS FOLLOWS:

1. Recitals.

The recitals hereinabove set forth are included herein and made a part of this Agreement.

2. Term.

The term of this Agreement shall be coterminous with the upgrade Project and will continue in force and effect until the Project is deemed complete and all contractor claims and bonds have been released, or unless terminated sooner in accordance with Section 17 (d).

3. Project Lead.

For the purposes of this agreement and project, Pinole shall serve as the Project Lead. Therefore, the City of Pinole will on behalf of both parties:

- (a) enter into all mutually agreed upon Project related contracts.
- (b) provide project administration for the Parties through completion of the Project;
- (c) process, review, approves and pay all invoices subsequent to review by Hercules pursuant to Section 9(d).

4. Third Party Fiscal Administrator.

In consultation with the City of Hercules, the City of Pinole will enter into a contract to obtain a Third Party Fiscal Administrator to represent both cities. The purpose of the Third Party Fiscal Administrator shall be to oversee and manage the Project Accounts during construction and until final completion of the project to assure financial responsibility and accountability. The duties of the Fiscal Administrator include, but are not limited to:

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- (a) project administration and financial management for the Parties through completion of the Project;
- (b) processing and ordering payment of (by the "Paying Agent") all invoices after review and approval by both cities pursuant to Section 16 (a)
- (c) completing and submitting all "request for reimbursement" forms to the CWSRF for the draw-down of loan proceeds for both cities from the CWSRF loans
- (d) monitoring the cash balances in the Project Accounts to assure that adequate cash is available for the timely payment of invoices;
- (e) notifying each city when there is not sufficient cash available on the project account;
- (f) providing both cities with a monthly statement of cash balances, invoices paid and outstanding, retention monies

5. Paying Agent

Pinole and Hercules agree to establish separate "project accounts" at Mechanics Bank for the payment of debts for the construction of Project, authorizing Mechanics Bank as the Paying Agent to issue commercial checks/bank drafts upon demand of the Fiscal Administrator.

6. Ownership of the Plant.

This Agreement is limited to matters set forth herein and shall not affect the ownership rights of the Parties in the WPCP, nor does it supersede, affect, modify or amend, in any way any of the agreements already existing between Pinole and Hercules with respect to any other matters.

7. Federal and State Assistance - Project Financing.

Pinole and Hercules have filed the necessary applications for loans from the CWSRF, which are or may be available for construction of Project and each Party shall, in good faith, each undertake all proceedings necessary to secure such CWSRF funds, or such other financing as may be necessary, for the benefit of both Parties hereto.

8. Sharing of Project Costs.

(a) Project Costs. Pursuant to the 2001 Wastewater Agreement, and upon approval by the Parties pursuant to the Construction Management procedure delineated in Section 16(a), Project Costs shall be shared equally by the cities of Pinole and Hercules.

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The Plans and Specifications shall be accepted by both parties prior to advertisement for construction bids. The Scope of Work for all contractor and consultant services related to the Project must be approved by the City of Hercules prior to award. Project Costs include all capital, engineering, and construction costs for this Project, which include, but are not limited to:

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- (i) all costs for engineering design and work associated with design which directly relate to the preparation of Project construction plans and specifications;
- (ii) project management costs, including the cost of a project manager (the **"Project Manager"**), Third Party Fiscal Administrator, the Paying Agent, as well as legal and administrative expenses associated with the Project;
- (iii) the costs for advertising and bidding of the design and construction work for the Project;
- (iv) acquisition of equipment related to the Project;
- (v) the acquisition of required permits and authorizations to proceed with construction;
- (vi) preparation of operation and maintenance manuals, cash flow analysis and wastewater discharge studies;
- (vii) all contractor and consulting services costs associated with the Project;
- (viii) Project construction supervision and engineering costs; and
- (ix) costs to administer and settle claims, including litigation that arises out of the Project.
- (x) Temporary facilities to replace structures impacted by the construction.

(b) Non-Project Related Construction Impacts. To the extent the Project impacts existing infrastructure and improvements, the costs associated shall be limited as follows:

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- (i) Tenant Avenue. Project costs related to the mitigation of any construction related impacts to Tenant Avenue shall be limited to the incremental costs which result directly from the construction impacts. These impacts shall be determined by an assessment of the street condition prior to construction and an assessment after the completion of construction with a value assigned based upon the difference as determined jointly by the Directors of Public Works for the Parties.

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- (ii) Replacement of Pinole Corporation Yard. The replacement of the storage building being displaced by the Project shall be limited to a newly constructed "like for like" replacement adjusted to address any current Building Code or other regulatory requirements. Any costs for a replacement structure outside of these parameters shall be the sole responsibility of the City of Pinole.
- (iii) Replacement of Park Restroom. The replacement of the park restroom building being displaced by the Project shall be limited to a newly constructed "like for like" replacement adjusted to address any current building code or other regulatory requirements. Any costs for a replacement structure outside of these parameters shall be the sole responsibility of the City of Pinole.
- (iv) Other Structures or Improvements. The repair, replacement, and/or relocation of any other structure or improvement by the Project shall be on a new construction on a "like for like" basis adjusted to address any current building code or other regulatory requirements. Any costs for the repair, replacement and/or relocation of structures or improvements outside of these parameters shall be the sole responsibility of the City of Pinole.
- (v) Park Enhancements or Mitigation. Any park enhancement or mitigation for use of the park for staging or construction purposes shall be limited to those enhancements or mitigations imposed by Bay Conservation Development Commission (BCDC) or another regulatory agency.
- (c) Project Labor Agreement—Should the City Council of Pinole determine to undertake the Project under the terms of a Project Labor Agreement (PLA) without the concurrence of the City Council of Hercules, any incremental or direct costs associated with the project being completed under the terms of a PLA shall be borne exclusively by the City of Pinole.
- Construction of the Project may proceed under the terms of a Project Labor Agreement (PLA) subject to the mutual agreement of both Parties.

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9. Project Account.

Thirty days after the construction plans are advertised for bids, Project Accounts shall be established with the mutually agreed upon in advance of the award of the contract and both cities shall deposit a total of \$2,750,000 into the account prior to the award of the construction contract

- (a) Initial Amounts. Pinole and Hercules shall each be obligated to deposit into their respective Project Account a cash amount equal to \$2,750,000 each for an initial total amount of \$5, 500, 000, which represents the highest two (2) months of estimated Project

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costs over the term of this Agreement. Each Party shall deposit its initial cash share into their respective Project Account no later than ten (10) business days after the Project construction bid documents are released for bid. The monies in the Project Accounts will be confirmed by the Third Party Paying Agent and used to pay for Project expenses as set forth in Section 5 through the Fiscal Administrator.

(b) Minimum Project Account Balance. At no time prior to completion of the Project should the available balance in the Project Accounts be less than \$500,000 for each Party or less than \$1,000,000 in total. Each Party shall deposit within five (5) business days additional funds to increase the balance in their respective Project accounts to a total of \$2.75 Million each, but in no event should the balance be less than \$500,000 for each respective Project Account.

(c) Project Backstop Financing (Safety Net). Each City shall approve by Resolution the authorization for establishing a back up financing plan or a "safety net" to assure that cash flow is maintained throughout the project. Each City shall identify the source of said funding. In addition to the initial \$2.75 Million in the Project Accounts, each City shall secure financing of totaling \$3.5 Million to be used only if necessary due to delays in State reimbursements as confirmed by the Third Party Fiscal Administrator.

Upon completion and review of a cash flow analysis, additional funds may be required for deposit into the Project Accounts, based upon the recommendation of the Third Party Administrator. These funds shall be deposited into the Project Accounts within five (5) business days of such notification.

(d) Payment of Invoices. Invoices shall be paid based upon the 2001 joint powers agreement with the City of Pinole and City of Hercules ("Wastewater Agreement"). The Fiscal Administrator shall order the timely payment of invoices for eligible project costs following review and approval of invoiced charges. Neither City shall unreasonably delay in the review of Project invoices. Copies of checks issued by the Paying Agent will be provided to each City in a timely manner, by the Fiscal Administrator.

(e) Reimbursement by CWSRF. Project expenses are to be reimbursed by the CWSRF. As reimbursement checks are received by each city, equivalent funds are to be deposited into each respective Project Account with the Paying Agent (Mechanics Bank) within five (5) business days.

10. CWSRF Reimbursement Forms

The Fiscal Administrator will complete and file with the CWSRF all request for reimbursement forms for each Party and will provide both cities through its designee, three (3) business days to review, comment and approve the form prior to submitting the form to CWSRF. If either City does not respond within three (3) business days, the request for reimbursement will be deemed approved for submittal to CWSRF.

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11. Return of Funds Upon Project Completion.

Within ninety (90) days of the Project being deemed complete in accordance with Section 2 and the filing of a Notice of Completion with the County for completion of the Project, the Third Party Fiscal Administrator shall return to each Party its share of their respective Project Account funds.

12. Calculation of and True-Up for Project Costs.

Upon completion of the Project, the Third Party Fiscal Administrator shall provide an analysis comparing the payment of Project Costs with the actual Project Costs paid by each Party. Both cities shall be provided thirty (30) days to review and approve calculation of any true-up for Project Costs. Any overpayments or underpayments for either Party will be credited or debited to each Party.

13. Cooperation and Further Assurances.

The Parties agree to cooperate and act in good faith in connection with the payment of all capital costs related to the upgrade Project. Each Party agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement.

14. Examination of Books and Records.

Any Party to this Agreement shall have the right to examine the books and records created and maintained by the Third Party Fiscal Administrator pursuant to this Agreement at any reasonable, mutually agreed upon time.

15. Revenue Covenant.

Any failure of a Party to meet its obligations hereunder or to cure such failure in a timely manner shall constitute a Default and the defaulting Party shall be subject to such remedies as provided herein. Each Party covenants and agrees:

- (a) to continue to pay or advance to their respective Project Account from its revenues, only its share of the Project costs in accordance with this Agreement. Each Party further agrees that it will establish the user rates and charges for services provided by its enterprise so that it will at all times have sufficient revenues to meet this obligation;
- (b) to make payments to their respective Project Account under this Agreement from the revenues;

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- (c) to make payments under this Agreement whether or not there is an interruption in, interference with, or reduction or suspension of services provided under this Agreement; such payments not being subject to any reduction, whether by offset or otherwise, and regardless of whether any dispute exists provided such interruption, interference or reduction in services is caused by forces constituting a Force Majeure Event and not reasonably contemplated by the Parties;
- (d) to operate its enterprise in an efficient manner and to maintain its facilities in good repair, condition and working order so that:
 - (i) the Parties' obligations to make payments under this Agreement are not adversely affected or threatened; and
 - (ii) each Party's bond rating and ability to negotiate and enter into any other agreements for this Project are not adversely affected or threatened; and
- (e) annually, and in each and every fiscal year during the term of this Agreement, to include in its enterprise budget, as an enterprise capital project expense, whether or not any other items are included, an appropriation or commitment from its revenues sufficient to satisfy all payments required to be made by the Party in such fiscal year under this Agreement, which are not paid from other available funds of the Party, until all such payments required to be made by the Parties under this Agreement have been paid in full.

16. Construction Management

- (a) *Coordination Meetings.* Representatives from the City of Hercules and the City of Pinole along with the onsite construction management firm shall meet weekly for the purpose of discussing and coordinating project related matters. The weekly meeting will include, but will not be limited to, project status, review of invoice(s) and invoice approval by both parties, analysis of change orders to determine if change orders should be accepted for the project, and a monthly review of each City's Project Account with Paying Agent bank statements.
- (b) *Contingency Fund.* The Project shall have a Contingency Fund representing 7% of the Contractor's final bid award. Staff shall be authorized to administratively approve change orders within this amount and under the guidelines of 16 (c) below. If change orders are on track to exceed the total amount of the contract award plus the 7% Contingency Fund, this Agreement shall be amended by the Parties to increase the total contingency prior to additional change orders being approved.

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- (c) *Change Orders.* If a dispute arises out of acceptance of change order(s), the change order(s) will be reviewed at a meeting by both City Managers and if not resolved, the Change Order will be reviewed and approved by the Pinole City Council up to the limit set forth in Section 16 (b), by use of an alternative dispute resolution process acceptable to both Parties. If there is no remedy from this meeting, the change orders will be reviewed and approved by the City of Pinole City Council.

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Comment [PT1]: Perhaps if the City managers cannot agree, this goes to mediation/dispute resolution.

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For the purposes of this project, the authority for the approval of change orders shall be as follows:

Directors of Public Works/City Engineers	5%
Equal to an amount less than 5% of the Contingency amount	\$147,000

City Managers	10%
Equal to an amount between 5% and 10% of the Contingency amount	\$294,000

Pinole City Council
Equal to an amount over 10% of the Contingency amount.

17. Default and Remedies.

(a) Events of Default. An Event of Default under this Agreement shall exist with respect to a Party ("Defaulting Party") upon the occurrence of any one or more of the following:

(i) If any Party fails to make any payment or to provide assurances as required by the Third Party Fiscal Administrator under this Agreement when due hereunder five (5) business days after receipt of notice given by the Fiscal Administrator of such non-payment or requirement to provide assurances; or

(ii) the failure of the Party to perform any other covenant or obligation under this Agreement where such failure is not cured within ten (10) days following receipt of a notice from the Third Party Fiscal Administrator demanding cure; or

(b) Cure of an Event of Default. An Event of Default shall be deemed cured only if such default shall be remedied within the time periods set forth in Section 17(a) above.

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(c) Remedies in the Event of Default.

(i) Remedies of Pinole. Upon the occurrence of an Event of Default, and following the applicable cure periods, where Hercules is the Defaulting Party, Pinole may, without limiting its other rights or remedies available under this Agreement, at law or in equity, and without constituting or resulting in a waiver, release or estoppels of any right, action or cause of action Pinole may have against Hercules, Pinole may demand that Hercules provide further assurances to compel the correction of the default, including, but not limited to, raising rates and charges to its customers or mandating the collection of a surcharge to produce revenues sufficient to secure the cure of the Event of Default.

(ii) Remedies of Hercules. Upon the occurrence of an Event of Default, where Pinole is the Defaulting Party, Hercules may, without limiting its other rights or remedies available under this Agreement, at law or in equity, and without constituting or resulting in a waiver, release or estoppel of any right, action or cause of action Hercules may have against Pinole, Hercules may demand that Pinole provide further assurances to compel the correction of the default, including, but not limited to, raising rates and charges to its customers or mandating the collection of a surcharge to produce revenues sufficient to secure the cure of the Event of Default

(iii) Special Covenants Regarding Project Accounts. In the event that either Party's balance of their respective Project Account is insufficient to cover all project invoices for costs incurred under this Agreement sent to such Party, then, without limiting the other City's rights or remedies available under this Agreement, at law or in equity, such Party shall cooperate in good faith and shall cure the default within thirty (30) days, on an emergency basis, taking all such action as is necessary, including, but not limited to, raising rates and charges to its customers to increase its revenues to replenish its share of their respective Project Account as provided herein, obtaining further assurances by way of credit support and letters of credit, and taking all such other action as will cure the default.

(d) Effect of Termination or Suspension. This Agreement may not be terminated or suspended, except in writing signed by both Parties. In no event shall the termination of this Agreement waive, or otherwise discharge any ongoing or undischarged contingent liabilities or obligations arising from this Agreement until such obligations are satisfied in full, and all of the costs incurred by Pinole in connection with such suspension or termination, including reasonable attorneys' fees, the fees and expenses of other experts, including auditors and accountants,

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other costs and expenses that a Party is entitled to recover under this Agreement, and other reasonable and necessary costs associated with any and all of the remedies, are paid in full.

18. Administration of Agreement by the Project Lead

Pinole, shall serve as the Project Lead for purposes of this agreement. The Project Lead shall provide project updates to the City of Hercules at each regular meeting of the Pinole - Hercules Wastewater Subcommittee and shall otherwise provide timely information to Hercules on all pending acts, decisions or approvals.

19. Miscellaneous.

(a) Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the parties at their respective addresses specified below or to such other address as a party may designate by written notice delivered to the other party in accordance with this Section.

All such notices shall be sent by:

(i) ~~personal delivery, in which case~~ notice shall be deemed delivered upon receipt;

(ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail; or

(iii) nationally recognized overnight courier in which case notice shall be deemed delivered one (1) day after deposit with such courier.

Pinole: City of Pinole
2131 Pear Street
Pinole, CA 94564
Attention: City Manager, Copy to City Attorney

Hercules: City of Hercules
111 Civic Center Drive
Hercules, CA 94547
Attn: City Manager, Copy to City Attorney

(b) Counterparts. This Agreement may be executed in multiple counterparts each of which shall be an original and all of which taken together shall constitute one and the same instrument.

(c) Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder

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of the provisions shall continue in full force and effect unless the rights and obligations of the parties are materially altered or abridged by such invalidation, voiding or unenforceability.

(d) Legal Actions and/or Attorneys' Fees. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the Party prevailing in any such action shall be entitled to recover against the other Party all reasonable attorneys' fees and costs incurred in such action.

(e) Captions; Interpretation. The captions of the Sections of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party.

(f) Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

(g) Governing Law; Venue. This Agreement shall in all respects be construed and enforced in accordance with laws of the State of California without regard to principles of conflicts of laws. Any action to interpret or enforce this Agreement shall be filed in Superior Court in Contra Costa County or in Federal Court for the Northern District of California.

(h) Waiver; Modification and Amendment. No failure or delay on the part of either Party in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. No modification or waiver of any provision of this Agreement, nor any consent to any departure therefrom, shall in any event be effective unless the same shall be in writing, signed by Pinole and Hercules, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No amendment to or modification of this Agreement shall be effective unless and until such amendment or modification is in writing, properly approved in accordance with applicable procedures, and executed by Pinole and Hercules.

(i) Assignment. This Agreement shall be binding upon each Party and their successors and assigns; provided however, this Agreement shall not be assignable by either Party, either by operation of law or otherwise, and any such assignment by operation of law or otherwise shall be void.

(j) Entire Agreement. This Agreement, together with the documents referenced herein constitutes the entire Agreement of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous written or oral agreements with respect thereto.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives the day and year first above written.

City of Pinole

City of Hercules

By: _____
Belinda B. Espinosa, City Manager

By: _____
David Biggs, City Manager

Date: _____

Date: _____

ATTEST:

By: _____
Patricia Athenour, MMC, City Clerk

By: _____
Margaret Roberts, City Clerk

APPROVED AS TO FORM:

By: _____
Benjamin T. Reyes II, City Attorney

By: _____
Patrick Tang, City Attorney

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EXHIBIT A
Construction Milestone Schedule

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EXHIBIT B
Project Account Funding Schedule
(Cash Flow Analysis)

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AGENDA ITEM 6

TO: WASTEWATER SUBCOMMITTEE

SUBMITTED BY: DEAN ALLISON

MEETING DATE: DECEMBER 18, 2014

SUBJECT: PROJECT STATUS REPORT

The project continues to proceed in accordance with the schedule discussed at the November 2014 meeting. The next significant milestone will be receipt of the 90% plans, which is scheduled for the week of December 15, 2014. When those plans are submitted copies of the plans will be distributed to staff from both cities, as well as Carollo Engineers who will prepare the plan review.

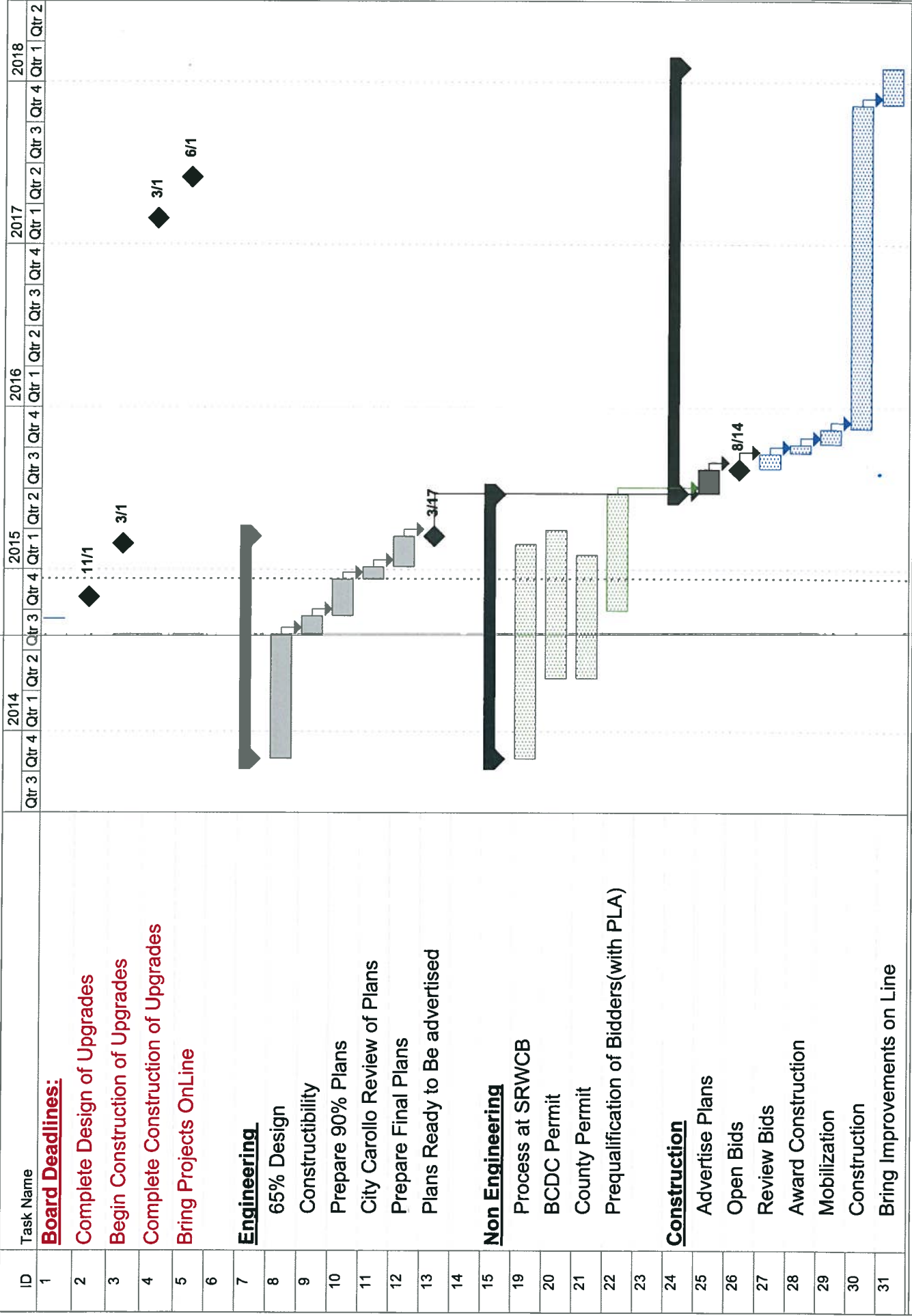
Attached is an updated schedule. The updated schedule now shows the correct date for the board deadline related to getting the improvements on line. The updated schedule also shows a longer duration for pre-qualifying bidders which has been extended to include time for negotiating a Project Labor Agreement. The extended duration for the prequalification process means that it is on the project's critical path for advertising plans.

Finally there were questions at the September and November meetings regarding flood walls, and if they will be part of the project. Flood walls were originally listed as a possible item of work when it appeared that one or more of the permitting agencies would require the walls. No permitting agencies are currently requiring flood walls and they are not being proposed.

Attachments

Project Schedule
Engineering Cost Estimate Plant Upgrades

Pinole Hercules Waste Water Plant Upgrades - Dec 2014



Pinole Hercules Waste Water Plant Upgrades - Dec 2014

ID	Task Name	Start	Finish	Predecessors
1	<u>Board Deadlines:</u>	Fri 9/12/14	Fri 9/12/14	
2	Complete Design of Upgrades	Sat 11/1/14	Sat 11/1/14	
3	Begin Construction of Upgrades	Sun 3/1/15	Sun 3/1/15	
4	Complete Construction of Upgrades	Wed 3/1/17	Wed 3/1/17	
5	Bring Projects OnLine	Thu 6/1/17	Thu 6/1/17	
6				
7	<u>Engineering</u>	Fri 11/1/13	Tue 3/17/15	
8	65% Design	Fri 11/1/13	Thu 8/7/14	
9	Constructibility	Fri 8/8/14	Thu 9/18/14	8
10	Prepare 90% Plans	Fri 9/19/14	Wed 12/10/14	9
11	City Carollo Review of Plans	Thu 12/11/14	Wed 1/7/15	10
12	Prepare Final Plans	Thu 1/8/15	Tue 3/17/15	11
13	Plans Ready to Be advertised	Tue 3/17/15	Tue 3/17/15	12
14				
15	<u>Non Engineering</u>	Fri 11/1/13	Fri 6/19/15	
19	Process at SRWCB	Fri 11/1/13	Fri 2/27/15	
20	BCDC Permit	Thu 5/1/14	Tue 3/31/15	
21	County Permit	Thu 5/1/14	Tue 2/3/15	
22	Prequalification of Bidders(with PLA)	Wed 10/1/14	Fri 6/19/15	
23				
24	<u>Construction</u>	Mon 6/22/15	Fri 2/2/18	
25	Advertise Plans	Mon 6/22/15	Fri 8/14/15	13,22
26	Open Bids	Fri 8/14/15	Fri 8/14/15	25
27	Review Bids	Mon 8/17/15	Fri 9/18/15	26
28	Award Construction	Mon 9/21/15	Fri 10/9/15	27
29	Mobilization	Mon 10/12/15	Fri 11/13/15	28
30	Construction	Mon 11/16/15	Fri 11/10/17	29
31	Bring Improvements on Line	Mon 11/13/17	Fri 2/2/18	30

Engineering Cost Estimate Plant Upgrades

Item	Engineer's Estimate Dated March 2013		Engineer's Estimate Dated August 2014	
	In 2016 Dollars		In 2016 Dollars	
Headworks	\$	5,507,926	\$	6,167,000
Electrical	\$	2,340,041	\$	3,013,000
Secondary System	\$	14,350,410	\$	14,190,000
Chlorine Disinfection	\$	866,477	\$	2,553,000
Effluent Pumping	\$	1,138,010	\$	1,235,000
Solids Handling	\$	3,682,253	\$	4,772,000
Confluence Structure Modification with Rodeo	\$	280,363	\$	32,000
Subtotal	\$	28,165,480	\$	31,962,000
Construction Contingency	\$	4,982,520	\$	4,150,000
Total Construction	\$	33,148,000	\$	36,112,000
Estimated cost of Engineering	\$	8,287,000		
Preliminary Engineering (Actual)			\$	700,000
Final Design (Actual)			\$	2,700,000
Construction Management (Actual)			\$	2,000,000
Engineering During Construction (Est)			\$	1,000,000
Subtotal Engineering	\$	8,287,000	\$	6,400,000
SUBTOTAL	\$	41,435,000	\$	42,512,000
NEW LINE ITEMS:				
Flood Walls around plant (\$1.5M, currently not included)	\$	-	\$	-
Replace Public Restroom	\$	300,000	\$	300,000
Replace Corp Yard Storage Building	\$	500,000	\$	500,000
Park Mitigation	\$	200,000	\$	200,000
Street Mitigation	\$	200,000	\$	200,000
GRAND TOTAL	\$	42,635,000	\$	43,712,000