



**AGENDA**  
**WASTEWATER SUBCOMMITTEE MEETING**  
**SEPTEMBER 18, 2014 8:30 AM**  
**CITY HALL**  
**111 CIVIC CENTER**  
**HERCULES, CA**

1.	<b>CALL TO ORDER – PLEDGE OF ALLEGIANCE</b>
2.	<b>ROLL CALL</b>
3.	<b>APPROVAL OF MINUTES – MAY 27, 2014</b>
4.	<b>CITIZENS TO BE HEARD – FOR ITEMS NOT ON THE AGENDA</b>
5.	<b>PROJECT UPDATE:</b>  <i>RECEIVE AN UPDATE ON THE STATUS OF PROJECT SCHEDULE, ENGINEER'S ESTIMATE OF COST, PERMIT APPLICATION WITH BAY CONSERVATION AND DEVELOPMENT COMMISSION (BCDC), AND APPLICATION WITH THE STATE REVOLVING LOAN FUND COMMITTEE</i>
6.	<b>CONSTRUCTABILITY REVIEW:</b>  <i>RECEIVE A PRESENTATION FROM CAROLLO ENGINEERS ON THE CONSTRUCTABILITY REVIEW</i>

7.	<b>FISCAL AGREEMENT:</b>  <i>RECEIVE A PRESENTATION ON THE FISCAL AGREEMENT</i>
8.	<b>ADDITIONAL COMMENTS AND REQUESTS FROM THE SUBCOMMITTEE</b>
9.	<b>ADJOURN TO THE OCTOBER 16, 2014 MEETING</b>

POSTED: September 10, 2014 at 5:00 p.m. at City Hall




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Ana Morales, Secretary, City of Pinole

**PINOLE / HERCULES  
Wastewater Subcommittee**

**Draft Minutes prepared by: Anita Tucci-Smith  
May 27, 2014  
8:30 A.M.**

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

**Tim Banuelos, Mayor of Pinole, called the meeting to order at 8:39 A.M.**

**1. CALL TO ORDER**

**Subcommittee Members Present:**

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

**Subcommittee Members Absent:**

None

**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  
Phil Batchelor, Interim City Manager, Hercules  
Jeff Brown, Public Works Manager, Hercules

**Member(s) of the Public:**

Anthony Gutierrez, Pinole  
James Tillman, Pinole  
Andre Gharagozian, Process and Operations, Carollo Engineers  
Michael Warriner, Construction Manager, Carollo Engineers  
Mark Wing, Resident Project Representative, Carollo Engineers

**2. FLAG SALUTE**

**Pinole Mayor Banuelos** led the Pledge of Allegiance.

**3. INTRODUCTION OF PARTICIPANTS**

**4. PUBLIC COMMENTS**

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**Jim Tillman, Pinole**, referred to documents he had discussed at the last meeting relative to a Joint Powers Authority (JPA), and resubmitted those documents directly to the Subcommittee at this time. While he had been advised that the Subcommittee was not a JPA, he commented that the reference to a JPA continued. He also referred to the Rodeo Sanitary District and the outfall that would have to be constructed, and sought more information on the cost to repair the system and the cost that the cities of Pinole and Hercules would have to contribute. In addition, he requested the bylaws of the Subcommittee.

**Dean Allison, Public Works Director/City Engineer, Pinole**, suggested that staff be asked to bring back a report on the studies that had been done related to the referenced outfall. He was aware of no major project that needed to take place on that facility. He asked the Chair to ask Mr. Tillman if he had information to share it with the Subcommittee at its next meeting.

**Anthony Gutierrez, Pinole**, noted his understanding that the City of Pinole was the legal owner of the Wastewater Treatment Facility and responsible for all permits mandated by the State Water Board, and that the cities of Pinole and Hercules owned the assets of the facility in an equal 50 percent ownership, and that the Subcommittee did not form a JPA. He asked if the Subcommittee had constituted a JPA at the time the 2006 Wastewater Bond had been issued, whether the citizenry had voted to approve that bond, and if not why the bond had not been approved by ballot.

**Belinda Espinosa, Pinole City Manager**, advised that she would meet with Mr. Gutierrez to clarify that information.

**5. APPROVAL OF THE APRIL 17, 2014 MINUTES**

The minutes were not acted upon at this time.

**6. CONSTRUCTION MANAGEMENT SERVICES**

**Dean Allison, Public Works Director/City Engineer, Pinole**, advised that the Pinole City Council was to award and execute a Construction Management Services Contract for an amount not to exceed \$2,154,548 with Carollo Engineers for services related to the Wastewater Treatment Plant Upgrades, to be considered by the City Council at its June 3, 2014 meeting. He emphasized the urgency of the matter to get construction management services in place with the completion of the 65 percent plans. He described the process, the proposals received from four firms after a Request for Proposal (RFP) had been issued, the interview process, and reported that Carollo Engineers, which was both a design and construction firm, had offered the best people for the project, a more competitive price, and in the negotiations Carollo had agreed to reduce its proposal and add an equivalent amount of time.

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**Jeff Brown, Public Works Manager, Hercules**, stated he had been involved in the interviews and concurred that staff all felt very strongly about working with the Carollo firm given that one of the requirements would be to keep the plant running during the construction of the upgrades. He stated that Carollo Engineers had also brought ideas to the table that may save time and money.

**Ron Tobey, Plant Manager, Pinole**, commented as had earlier been noted that the interview process had been revealing and productive, and it had been good to communicate with those who would be in the plant during construction.

**Andre Gharagozian**, Process and Operations, Constructability Review, Carollo Engineers, offered a PowerPoint presentation and introduced Carollo's team of Michael Warriner, Construction Manager; Mark Wing, Resident Project Representative; Robert Carlon, Civil Mechanical Inspector; and Mike DeLuna, Electrical/Instrumentation and Control Inspection, and explained that most would work full time during the detailed process of constructability review, managing the sequencing and procurement challenges during construction, keeping the project on schedule, maintaining robust communication with all stakeholders, and supporting the cities through the process.

**Michael Warriner, Construction Manager, Carollo Engineers**, described the details of the submittals and procurement process and areas where money and time could be saved in the schedule. He responded to questions from the Subcommittee with respect to the State Revolving Loan Fund forms, a secondary staging area, quarterly meetings at the discretion of the Subcommittee that had been built into the proposal, and the established criteria for extending working hours given impacts to the community.

**Mr. Allison** responded to questions from the Subcommittee with respect to the 65 percent versus 90 percent plans, the full time equivalent staffing, the equipment costs, and the fact that equipment costs would be submitted to the state for reimbursement and replenishment of funds through the State Revolving Loan Fund.

Members of the Subcommittee made the following comments and requests:

- Requested the profit margin of the hourly rates for the engineers; stressed the need for outreach to neighborhoods during construction through the use of mailers, automatic calls, with notification to all neighbors along Tenant, and with the Carollo Construction Manager to walk that neighborhood to introduce himself (Romero);
- Concerned with the number of people and the hours involved; sought a commitment from Carollo to maintain the individuals identified for the project without reassigning them without City approval; and that they take on some of the fiscal responsibility in the field (McCoy);

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- Tasks to include the conclusion of construction; concerned that mileage and clerical costs were being called out and suggested those were the costs of doing business; emphasized the importance of local hire and the use of local businesses and recommended a comparison of Pinole/Hercules language regarding local hire; concerned with staging and stated if the park was used it would have to be returned to a condition better than it had been found; asked if there were properties in Hercules that could be used for staging; recommended an initial public hearing outreach regarding the staging area, particularly if it was the park; and when told that the contractor would be responsible for the security of the staging area asked for that in writing; emphasized that time is of the essence, that contractors and subcontractors were responsible for their time; and that fines would be associated with any negligence on the part of the contractor(s) (Long);
- Asked how substitutions would be controlled; whether there would be flexibility with sole sourcing; and emphasized the need to keep track of time change orders (Banuelos).

With respect to the staging area, **Ms. Espinosa** stated the only two local sites would be the use of the park, and more than likely the renting of property in the recreation storage yard for the staging.

**Mr. Brown** commented that they were looking at properties in Hercules to see if the staging area could be accommodated in Hercules.

**Anthony Gutierrez, Pinole**, congratulated Carollo Engineers on winning the bid; was pleased to read that materials inspection was a big part of its construction management philosophy; noted the costs associated with Phase II and III and asked how that would impact the earlier cash flow analysis; asked about the change order process with inclusion of design changes and who would be required to approve that process; whether an updated project schedule would be available on line for stakeholders on a monthly basis; and at what point the Gantt Chart would have sufficient granularity to see on a weekly basis.

**Ms. Espinosa** stated once a final bid had been accepted the cash flow would be updated based on a dollar amount, to be repeated on an updated basis; the change order process would also be discussed in the future; Carollo would be the first to look at change orders and make a recommendation to both cities, and there would be a structure to administratively approve change orders of a certain dollar amount by the city managers and beyond that by the Subcommittee and the City Councils. She emphasized they would be constructing and operating at the same time and the charges would be submitted to the State Revolving Loan Fund for reimbursement. A newsletter snippet would likely be provided as opposed to a Gantt schedule.

**Jim Tillman, Pinole**, expressed concern with staging and with the railroad property; suggested the use of the park property and suggested consideration of several other properties City staff explained would not work; if there was a spill he asked who would be responsible; and expressed concern with potential overtime costs.

**Ms. Espinosa** clarified that the only overtime associated with the project could be with City staff.

On the question, **Mr. Allison** emphasized that Carollo was not taking over any responsibility the City had with the State Revolving Loan Fund.

The Subcommittee took no official action at this time.

## **7. COMMENTS FROM BOARDMEMBERS AND STAFF**

**Pinole Councilmember Long** clarified that the continual references to JPA were to the Joint Powers Agreement and not to a Joint Powers Authority, which had led to confusion. She supported an addendum to spell out the Joint Powers Agreement, that it was not a legal document to be interpreted as authority, and that the power referred to was that the plant was operated collectively by the two cities.

**Hercules Councilmember Romero** suggested that recommendation be returned as an agenda item for further discussion, to include the attorneys from both cities.

## **8. APPROVAL OF THE APRIL 17, 2014 MINUTES**

When asked By **Hercules Vice Mayor McCoy**, **Mr. Allison** reported that 65 percent plans were expected to be submitted in the next two weeks.

**Action: Motion by Hercules Councilmember McCoy, seconded by Pinole Councilmember Long to approve the minutes of the April 17, 2014 meeting, as submitted, carried by the following vote:**

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

## **9. ADJOURNMENT**

The meeting was adjourned at 11:00 A.M. to a regular meeting on June 19, 2014 at 8:30 A.M. in the City of Hercules.

**DRAFT**





### **AGENDA ITEM 5**

**TO: WASTEWATER SUBCOMMITTEE**

**SUBMITTED BY: DEAN ALLISON** 

**MEETING DATE: SEPTEMBER 18, 2014**

**SUBJECT: PROJECT UPDATE**

### **RECOMMENDATION**

Receive a project update.

### **DISCUSSION**

The Subcommittee last met on May 27, 2014 in a special meeting to discuss and recommend a firm to serve as Construction Manager. On June 3, 2014 the Pinole City Council awarded a contract in the amount of \$2.15 Million to Carollo Engineers. Contracts were signed, on July 8, 2014, and a Notice to Proceed has been issued. Under the contract, the first item of work is the preparation of a Constructability Review. The Constructability Review has been completed and will be discussed under a separate item on this agenda.

On June 30, 2014, staff from both cities met with representatives of the Clean Water State Revolving Fund (CWSRF) to discuss loan status. As the subcommittee may recall, loan approval consists of multiple steps, the first being approval of environmental documentation. The CWSRF has taken a very proactive position with respect to the review of environmental documentation. At the June 30, 2014 meeting, state representatives indicated that they would be call for a consultation with the United State Fish and Wildlife Service regarding water quality issues. State representatives expressed concern that the change in water quality, albeit an improvement, may impact aquatic life in the bay, and thus a consultation is justified. This additional step was not anticipated, and has the potential to impact project schedule.

In early July, 2014 contact was made with the Bay Conservation and Development Commission (BCDC) regarding our permit application. As the subcommittee may recall, a permit will be required because a portion of the plant extends into the jurisdiction of BCDC. In conversations with BCDC, staff learned that a 1983 permit from BCDC required the City of Pinole to dedicate a deed restriction over a large portion of Bay Front Park. The proposed plant upgrade includes both temporary and permanent encroachments into the deed restricted area. See attached exhibit. The deed restriction issue has added a complexity not originally envisioned. It is not clear if this complexity will result impact schedule. Staff is scheduled to meet with BCDC the week of September 22, 2014.



### Project Schedule

Over the nine-month period during which the 65% design, and constructability review were completed, the project has fallen two months behind schedule. The existing schedule called for completion of the review in mid July 2014, and the review was completed on September 15, 2014. The delay is attributed to several items.

- HDR was delayed in completing the 65% complete plans
- Staff requested a significant redesign of the contact basins
- The Construction Management contract was delayed in being awarded

A revised schedule is attached. The table below compares the Board Deadlines to the current schedule.

<b>Milestone</b>	<b>Board Deadline</b>	<b>Current Schedule</b>
Complete Design	November 1, 2014	March 1, 2015
Begin Construction	March 1, 2015	August 1, 2015
Complete Construction	March 1, 2017	August 1, 2017
Bring Plant upgrades on line	June 1, 2017	October 1, 2017

Staff from the two cities will be meeting with Board representative to inform them of our current schedule.

As discussed above there will be delays to acquiring a permit from BCDC, as well as approval of the two city's loan application with the CWSRF. However, these two tasks are not critical path items and thus the overall schedule may not be impacted.

### Engineer's Estimate of Cost

The current engineer's estimate of cost is approximately 2.5% greater than the estimate prepared at the end of the preliminary engineering stage. The most significant changes to cost relate to the increased costs of the contact basins, and solids handling. See attached Estimate of Cost.

The cost estimate now includes four new line items of cost:

- New public restroom at Bay Front Park – the proposed plant upgrade proposes to displace the existing restrooms at Bay Front Park
- New storage building at Corporation Yard – the proposed aeration basins and solids handling facilities will displace this critical facility
- Use of the park by the contractor as a staging area will require restoration and perhaps enhancements
- It is expected that the heavy equipment over City streets, particular Tennent Avenue will require rehabilitation at the completion of the project.

#### Staging Area

As discussed at the last subcommittee meeting, a staging area for the contractor to store material, receive deliveries, and stage construction is critical if we are to receive competitive prices. Staff is proposing that a portion of Bay Front Park be fenced off for use by the contractor during construction.

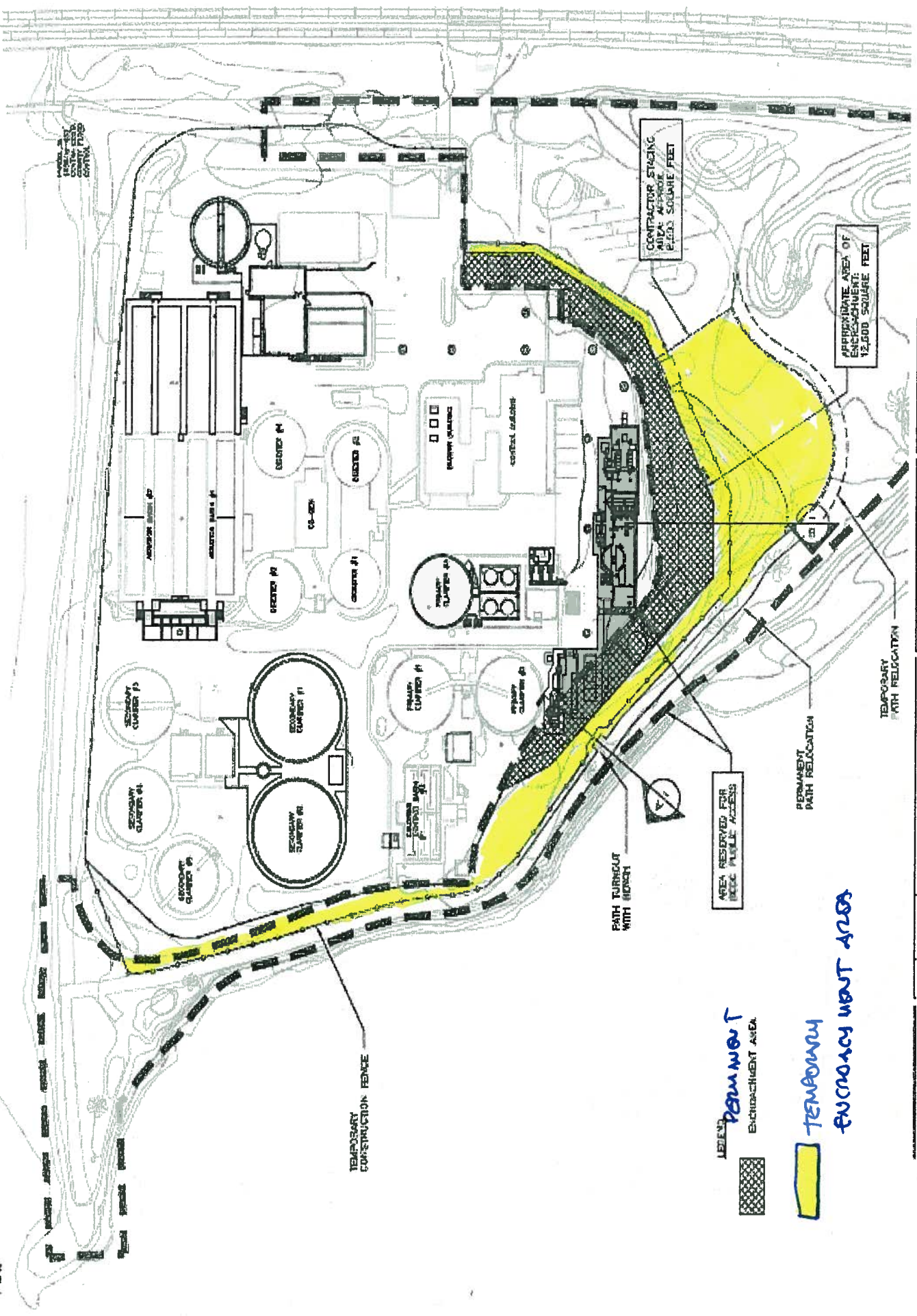
#### **ATTACHMENTS**

Attachment A: Exhibit showing deed restriction, area of encroachment into the deed restricted area

Attachment B: Project Staging Area

Attachment C: Schedule

Attachment D: Cost estimate

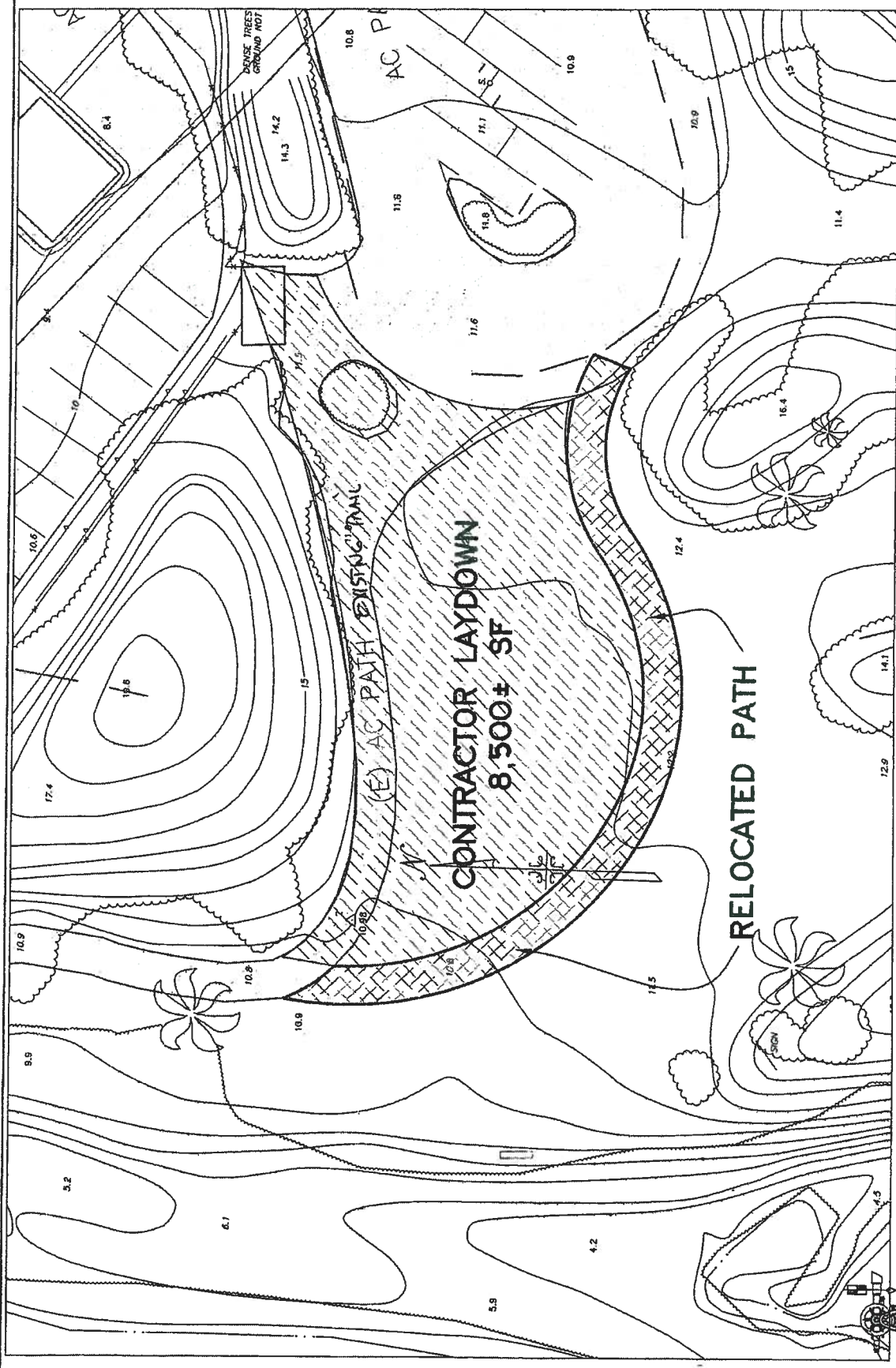


LEGEND  
PERMANENT  
ENCLOSURE AREA

TEMPORARY  
ENCLOSURE

ENCLOSURE UNIT AREA

CONTRACTOR LAYDOWN ALT. 2		CUNHA ENGINEERING INC. 701 BURNETT WAY, STE. A PO BOX 94264 PHOENIX, CALIFORNIA 94264 (510) 741-8290		SCALE: 1" = 10' DATE:		SHEET NUMBER: 5 OF 3 SHEETS DRAWING NO.: 20000	
DESIGNED BY: CHECKED BY: IN CHARGE: DATE:	APPROVED BY: DATE:	DATE:	DATE:	DATE:	DATE:	DATE:	DATE:

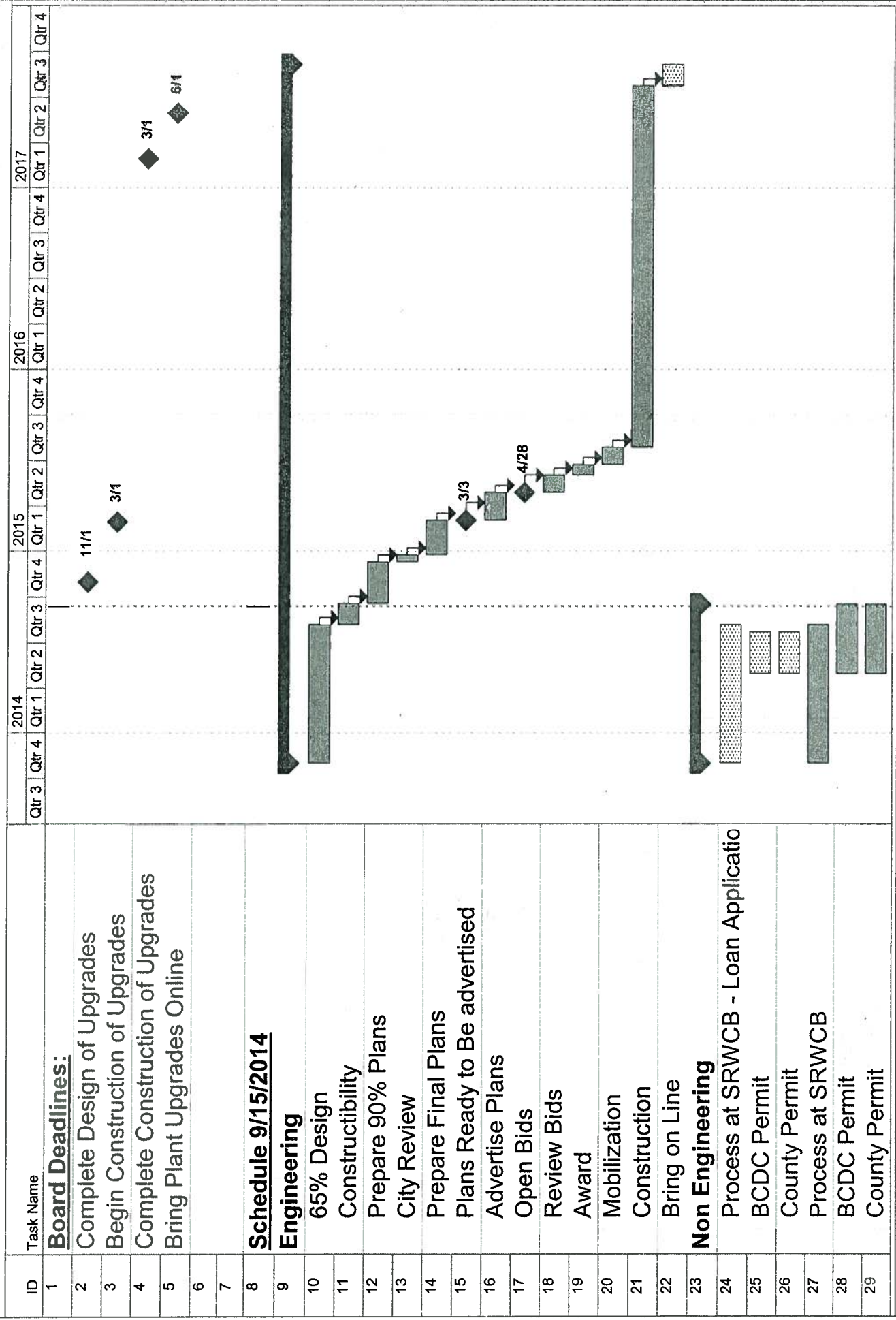


CUNHA ENGINEERING INC. ■■■

OPTION TWO



# Pinole Hercules Plant Upgrades



# 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
<b>SUBTOTAL</b>	<b>\$</b>	<b>41,435,000</b>	<b>\$</b>	<b>42,512,000</b>
<b>NEW LINE ITEMS:</b>				
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
<b>GRAND TOTAL</b>	<b>\$</b>	<b>42,635,000</b>	<b>\$</b>	<b>43,712,000</b>



### **AGENDA ITEM 6**

**TO: WASTEWATER SUBCOMMITTEE**  
**SUBMITTED BY: DEAN ALLISON**   
**MEETING DATE: SEPTEMBER 18, 2014**  
**SUBJECT: CONSTRUCTABILITY REVIEW**

### **RECOMMENDATION**

Receive a presentation from Carollo Engineers on their constructability review.

### **DISCUSSION**

The constructability review is a critical milestone for a complex project such as the plant upgrades. The constructability review marks a transition point for the project. Up until now the dominate thought has been "what to build". With the constructability review, thought begins to shift to "how to build it".

The scope of the constructability review includes such topics as assuring that the proposed upgrades are adequately sized, that the improvements are properly sequenced, that they can be constructed at the same time that the plant is operational, and assuring that there is adequate equipment area for construction.

Carollo Engineers will present this morning, the results of their review.





### **AGENDA ITEM 7**

**TO: WASTEWATER SUBCOMMITTEE**

**SUBMITTED BY: DEAN ALLISON** 

**MEETING DATE: SEPTEMBER 18, 2014**

**SUBJECT: FISCAL AGREEMENT**

### **RECOMMENDATIONS**

Receive and file a copy of the draft Fiscal Agreement

Receive and file a Scope of Services and Fee Estimate for Fiscal Administration

### **DISCUSSION**

The Cities of Pinole and Hercules are about to jointly fund a significant capital improvement project. Given the magnitude of cost, it is prudent that a Fiscal Agreement is established to assure agreement on cash flow management, coordination of contractor payment, and how reimbursement requests to the State of California will be coordinated. The attached Fiscal Agreement has been prepared for your consideration.

A flowchart of how cash, payments, and reimbursements will flow per the Fiscal Agreement is attached.

A critical aspect of the Fiscal Agreement is that a single person must be responsible for payment coordination, and reimbursement requests to the state. After considering other potential models, the most acceptable model appears to be one in which a third party provides fiscal administration. Carollo Engineers is capable of providing those services. Attached is a Scope Work and Fee proposal.

The Fiscal Agreement includes discussion on Change Order Administration. To assure job progress, and avoid costly delays, it is critical that a mechanism is established that provides authority to staff to approve change orders. The fiscal agreement identifies three categories of change orders:

**Level One Change Order: (Approved if both Directors of Public Works agree)**

- Amount is less than \$147,000; or 5% of the contingency amount, whichever is less.

**Level Two Change Order: (Approved if both City Managers agree)**

- A change order the two Directors of Public Works cannot agree upon, or
- Amount is greater than a Level One change order, but less than \$294,000; or 10% of the contingency amount; whichever is less.

**Level Three Change Order: (Approved by Pinole City Council)**

- A change order the two City Managers cannot agree upon, or
- An amount greater than \$294,000, or 10% of the contingency budget, whichever is less

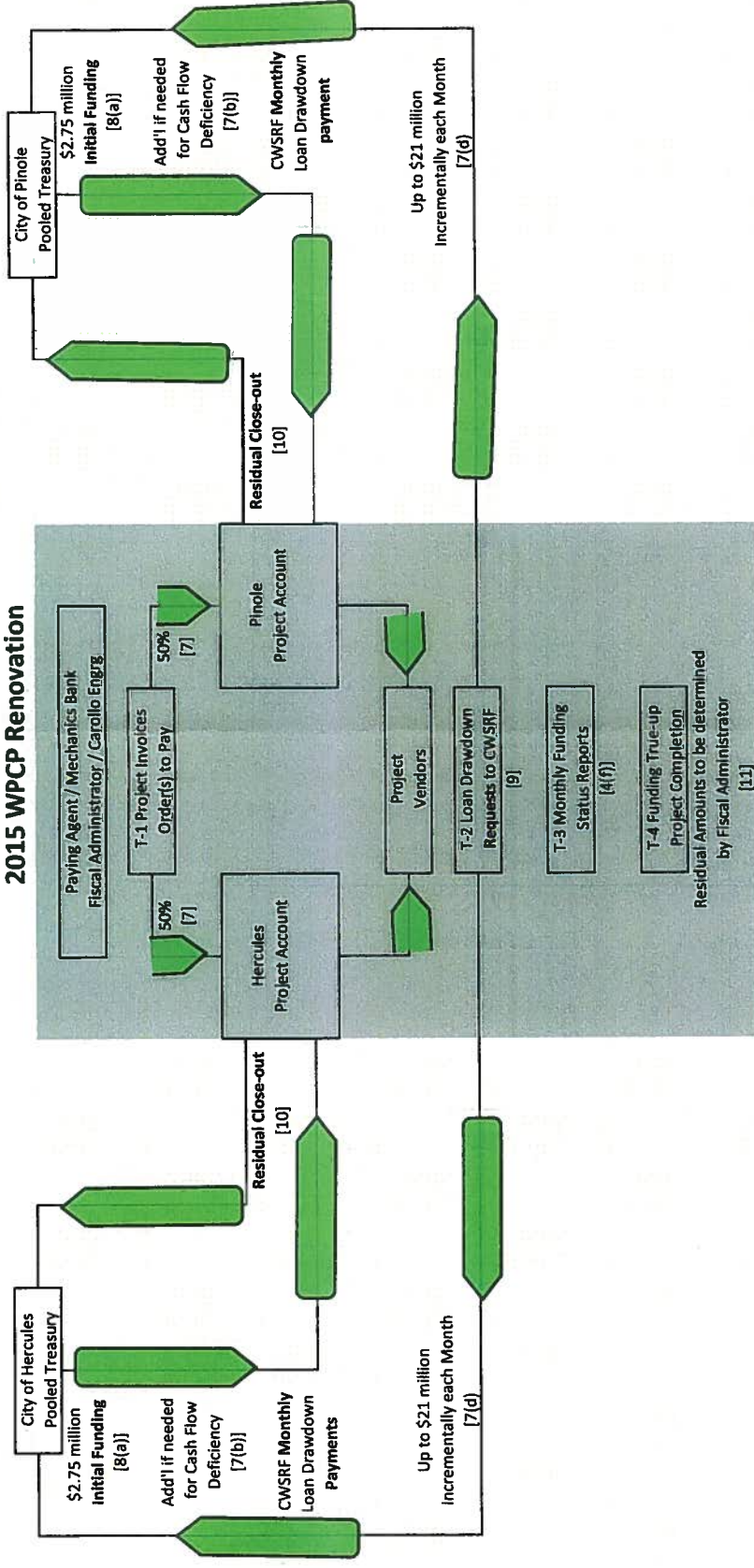
## **ATTACHMENT**

Attachment A – Flow Chart of Cash per Fiscal Agreement

Attachment B – Fiscal Agreement

Attachment C – Scope of work and Fees proposal by Carollo Engineers

# Project Financing 2015 WPCP Renovation



## Notes [Fiscal Agreement References]

- [7] Project Costs are shared "equally," paid upon checks drawn upon Project Accounts held by the "Paying Agent" (Mechanics Bank)
- [7(b)] Minimum balance in each "Project Account" shall be at least \$2.5 million
- [7(d)] Monthly the Fiscal Administrator shall prepare and submit project reimbursement funding requests (loan drawdowns) to CWSRF
- [7(i)] Quarterly the Fiscal Administrator shall prepare Project Funding Status Reports for each City
- [8(a)] Initial Deposit into Project Account(s) within 10-days following the release of bid documents
- [9] Fiscal Administrator will prepare and submit monthly project reimbursement forms to security CWSRF Loan Drawdowns
- [10] Fiscal Administrator will retain project accounts funds sufficient to pay contingent liabilities (if any) upon project completion
- [11] Fiscal Administrator will calculate project funding True-up liabilities upon project completion

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

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 are 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

**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 \$42,000,000; 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

**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 12(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 and financial management for the Parties through completion of the Project;
- (c) process, review, approve and pay all invoices subsequent to review by Hercules pursuant to Section 9(i);
- (d) through the 'Third Party' Fiscal Administrator, completing and submitting all "request for reimbursement" forms to the CWSRF for the draw-down of loan proceeds for both the Pinole and Hercules CWSRF loans; and

**4. Third Party Fiscal Administrator.**

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 Account 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:

- (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 9(i)**;
- (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 Account 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 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.**

Pursuant to the 2001 Wastewater Agreement, project costs shall be shared equally by the cities of Pinole and Hercules. Project Costs include all capital costs and construction costs for this Project, which include, but are not limited to:

- (a) all costs for engineering design and work associated with design which directly relate to the preparation of construction plans and specifications;
- (b) 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;



- (c) the costs for advertising and bidding of the design and construction work for the Project;
- (d) acquisition of equipment related to the Project;
- (e) the acquisition of required permits and authorizations to proceed with construction;
- (f) preparation of operation and maintenance manuals, revenue program requirements, and wastewater discharge studies;
- (g) all contractor and consulting services costs;
- (h) construction supervision and engineering costs; and
- (i) costs to administer and settle claims, including litigation that arises out of the Project.

In addition to the above enumerated costs, Pinole and Hercules shall share equally the supply of funds during the construction period that are necessary to meet cash flow needs.

**9. Project Account.**

Thirty days after the construction plans are advertised for bids, Project Accounts” shall be established with the Third Party Paying Agent 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 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 used to pay for Project expenses as set forth in Section 5.

(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 \$2,500,000 for each Party or less than \$5,000,000 in total. Each Party shall deposit within five (5) business days additional funds to increase the balance in the Project account to the amount necessary to pay the cost needed to construct the Project, but in no event should the combined Project Account have a balance that is less than \$2,500,000 for each respective Project Account. 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

(c) Payment of Invoices. Rob to work on this paragraph. 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.

(d) 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. Rob to fill in some language.

#### **10. CWSRF Reimbursement Forms**

The Third Party 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.

#### **11. Return of Funds Upon Project Completion.**

Within ninety (90) days of the filing of a notice of completion with the County for completion of the Project, The Paying Administrator shall return to each Party its share of their respective Project Account funds except, in its reasonable discretion, the Fiscal Administrator may withhold amounts necessary to cover the estimated outstanding costs and liabilities of the Parties, including any contingent liabilities, and shall retain all such funds until all such costs and liabilities have been fully paid or otherwise satisfied in full.

#### **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 and true-up for Project Costs. Any overpayments or underpayments for either Party will be credited or debited appropriately 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 Agent 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;
- (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<sup>1</sup> 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 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 15 (c) below.
- (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. If there is no remedy from this meeting, the change orders will be reviewed by the.....

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

	<b>5%</b>
<b>Director of Public Works/City Engineer</b>	<b>\$147,000</b>
Equal to an amount less than 5% of the Contingency amount	

<b>City Manager</b>	
Equal to an amount between 5% and 10% of the Contingency amount	<b>10%</b> <b>\$294,000</b>

**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 Fiscal Agent under this Agreement when due hereunder five (5) business days after receipt of notice given by the

Fiscal Agent 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 Agent 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 9.(a) above.

(c) Remedies in the Event of Default.

(i) Remedies of Pinole. Upon the occurrence of an Event of Default where Hercules is the Defaulting Party, 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, and following the applicable cure periods, where Pinole is the Defaulting Party, Hercules may, without limiting their 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 the Participants may have against Pinole, 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 in connection with such suspension or termination, including reasonable attorneys' fees, the fees and expenses of other experts, including auditors and accountants, 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 Team**

Pinole has sole responsibility and authority for the administration of this Agreement. Pinole shall provide updates to the City of Hercules with sufficient time to review all contractor invoices pursuant to Section 9(i), and shall provide information to Hercules on 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 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; 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 there from, 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.

**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

By: \_\_\_\_\_  
Belinda B. Espinosa, City Manager

City of Hercules

By: \_\_\_\_\_  
David Biggs, City Manager

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

**EXHIBIT A**

**Construction Milestone Schedule**

## **EXHIBIT B**

### **Project Account Funding Schedule (Cash Flow Analysis)**

# Scope of Work

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The Cities of Pinole and Hercules (the Parties) are entering into a financial contract in order to jointly fund the upgrades of the Pinole-Hercules Water Pollution Control Plant (WPCP). The agreement establishes the basis for sharing costs, administering the payments for the project contractor, and submitting reimbursement payment requests to the Clean Water State Revolving Fund (SRF). Additionally, in the event that SRF funding is not approved by the State, then the two agencies will seek alternative financing in order to proceed with the project as quickly as feasible to meet the requirements of the wastewater permit.

The Parties would like to engage a Third Party Fiscal Administrator to manage the Project Account process during construction and until final completion of the project to assure financial responsibility and accountability. Carollo is pleased to serve in this capacity, building from the work and knowledge as the designated Construction Manager for the delivery of the WPCP system upgrades.

## **Fiscal Agent Support –**

Following the issuance of the SRF loan, Carollo could continue to assist the Parties with ongoing project accounting and SRF loan compliance requirements. As the Parties are successful in securing a State Revolving Fund loan, Carollo will project upfront capital contributions and submit reimbursement requests to the State. As the Parties utilize traditional bond financing, Carollo will perform the independent project accounting and submit draws on bond proceeds. This process will be closely coordinated with the construction management group, accounting for monthly cash flow expenditures and projections.

## **Fiscal Agent Administration –**

As specifically requested by the Parties, Carollo will administer and manage the Project Account during construction and until final completion of the project to assure financial responsibility and accountability. As the Fiscal Agent, Carollo's duties will include:

- (a) project administration and financial management for the Parties through completion of the Project;
- (b) processing, overseeing, and paying ordering payment of (by the "Paying Agent") all invoices after review and approval by both cities pursuant to Section 9(i);
- (c) completing and submitting all "request for reimbursement" forms to the SRF for the draw-down of loan proceeds for both cities from the SRF loans
- (d) monitoring the cash balances in the Project Account 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 or if a foreseeable shortfall will occur;
- (f) providing both cities with a monthly statement of cash balances, invoices paid and outstanding, reimbursements made or outstanding, and retention monies.

In the process of these duties, Carollo will complete and file with the SRF all request for reimbursement forms for each Party and will provide both Parties through its designee, three (3) business days to review, comment and approve the form prior to submitting the form to SRF. As specified in the Third Party Fiscal Agreement entered into by the Parties, if either city does not respond within three (3) business days, the request for reimbursement will be deemed approved for submittal to SRF.

At the completion of the project, Carollo will provide an analysis comparing the payment of the Project Costs with the actual Project Costs paid by each agency. Both Parties shall be provided thirty (30) days to review and approve calculation of and true-up for Project Costs. Any overpayments for either Party will be credited or debited appropriately to each agency.

Carollo shall complete the services required herein as the City's "Fiscal Administrator." Carollo's services do not include and/or assume that Carollo is serving as the City's agent or fiduciary, and Carollo shall not be responsible for warranties, guarantees, fitness for a particular purpose, breach of fiduciary duty, loss of anticipated profits or for economic, incidental or consequential damages to the City or any third party arising out of breach of contract, termination, or for any other reason whatsoever.

## Proposed Budget

Carollo proposes to conduct the scope of work outline above at a cost of \$196,876 based on a 24 month construction period. All work will be performed on a time and materials basis.

Task	Project Director	Accounting Administrator	Administration/Word Processing	Labor Cost	Expenses	Total
	\$ 265	\$ 175	\$ 111			
1) Fiscal Project Set-Up (SRF and Paying Agent)	32.0	12.0	-	\$ 10,580	\$ 100	\$ 10,680
2) Monthly Payment Administration & Quarterly Reporting	48.0	768.0	192.0	168,432	300	168,732
3) Project Close Out & Final Documentation	40.0	24.0	24.0	17,464	-	17,464
Total	120.0	804.0	216.0	\$ 196,476	\$ 400	\$ 196,876