

**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.

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.