

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jeff Provenzano
Matt Loesch
Jim Shannon

SUBJECT: See Below

DATE: December 1, 2025

Approved



Date:

12/10/25

COUNCIL DISTRICT: 4

SUBJECT: Approval of a Design-Build Contract with Jacobs Project Management Co. for the Additional Digester Facility Upgrade Project at the San José-Santa Clara Regional Wastewater Facility

RECOMMENDATION

- (a) Approve the design-build contract with Jacobs Project Management Co. for the Additional Digester Facility Upgrade Project at the San José-Santa Clara Regional Wastewater Facility in an amount not to exceed \$9,542,366 for the performance of preliminary services under the contract, subject to the appropriation of funds.
- (b) Approve a design contingency in the amount of \$954,237 for City-approved changes to the scope of Preliminary Services.
- (c) Adopt a resolution authorizing the City Manager or her designee to:
 - (1) Negotiate and execute separate amendments to the contract to allow Jacobs Project Management Co. to proceed with discrete portions of the design-build work (referred to as "Early Work Packages") prior to the City's execution of the definitive contract amendment in an amount not to exceed \$10,000,000, which amounts will be subject to the base guaranteed maximum price and to the appropriation of funds.
 - (2) Negotiate and execute change orders in excess of \$100,000 up to the amount of the approved contingency for changes to the scope of the preliminary services and/or Early Work Packages.
- (d) Adopt the following 2025-2026 appropriation ordinance amendments in the San José-Santa Clara Treatment Plant Capital Fund:
 - (1) Increase the Additional Digester Upgrades appropriation to the Environmental Services Department by \$661,000; and
 - (2) Decrease the Switchgear S2/S2A Replacement appropriation to the Environmental Services Department by \$661,000.

SUMMARY AND OUTCOME

Approval of the recommendation will allow for preliminary services for the Additional Digester Facility Upgrade Project (Project), by Jacobs Project Management Co. (Jacobs), pursuant to the design-build contract. The improvements to the mesophilic digestion process (the lower temperature sludge breakdown process) at the San José-Santa Clara Regional Wastewater Facility (RWF) will increase the reliability and lifespan of the digestion process. In addition, activities that are schedule-driven could be initiated as Early Work Packages (EWPs), allowing for refinement of the guaranteed maximum price (GMP) before it is presented to City Council in August 2027. The preliminary services contingencies will provide funding for additional work and unforeseen conditions that may be necessary for the effective completion of the preliminary services.

BACKGROUND

Description of Current Solids Treatment Process

The RWF is an advanced wastewater treatment facility that treats an average of 110 million gallons per day of wastewater collected from eight South Bay cities and four special districts. Solids resulting from the wastewater treatment process are first thickened and then processed in anaerobic digesters to reduce pathogen content, reduce sludge volume, and create biogas for beneficial reuse. This process results in approximately 200 dry tons of digested sludge per day, which is pumped to open-air lagoons and drying beds to undergo a four-year stabilization process before being used as alternative daily cover material at the Newby Island Landfill.

Plant Master Plan and Biosolids Transition Strategy

In 2008, the RWF embarked on a master planning effort to rehabilitate and upgrade its facilities and to explore potential process changes. The San José-Santa Clara Water Pollution Control Plant Master Plan, adopted by the San José and Santa Clara City Councils in 2013, proposed several capital improvements to the solids treatment process. In 2014, the City of San José (City) completed a detailed project validation of these improvements. The validated projects, along with other recommendations, were included in a Biosolids Transition Strategy Report approved by the Treatment Plant Advisory Committee and City Council in 2015.

The approved capital improvements were organized into three major projects:

1. Digester and Thickener Facilities Upgrade;
2. Digested Sludge Dewatering Facility; and
3. Additional Digester Facility Upgrade.

The Digester and Thickener Facilities Upgrade project, completed in 2022, was the first phase of work to rehabilitate the anaerobic digesters. Key project elements included rehabilitation of four digesters to operate as a Temperature Phased Anaerobic Digestion process, six dissolved air flotation tank units to operate as co-thickening units, a new primary sludge screening facility, an external elevated gas piping system, and miscellaneous electrical and civil works. The Temperature Phased Anaerobic Digestion process improves sludge digestion performance and increases biogas generation for energy reuse at the RWF.

The Digested Sludge Dewatering Facility project is currently under construction and is expected to reach substantial completion in 2026. Key project elements include a new mechanical dewatering system housed in a new enclosed, odor-controlled facility, new sludge transfer pumps and sludge storage tanks, a new sludge export pump station and pipelines, and general civil works. Once finished, the new facility will position the RWF to have multiple and diversified biosolids disposition options and allow the RWF to retire the existing lagoons and drying beds, reducing its footprint.

The Project is the second and final phase of work to rehabilitate the anaerobic digesters. It is also the third and final project outlined in the Biosolids Transition Strategy. Upon the Project's completion, the RWF's solids treatment process will be fully rehabilitated and upgraded.

Project Description

The Project will make improvements to the remainder of the mesophilic digestion process and ancillary biosolid systems, which may include, but are not limited to, the following scope elements:

- Rehabilitate or replace six mesophilic digesters, which will be integrated with the thermophilic digesters to complete the Temperature Phased Anaerobic Digestion process;
- Construct a new Fats, Oils, and Grease facility that will be tied into the Temperature Phased Anaerobic Digestion process;
- Replace Switchgear S2/S2A to increase electrical reliability for the solids treatment process; and
- Provide for other site civil, mechanical, and electrical improvements required to improve system reliability.

See Attachment A - Additional Digester Facility Upgrade Project Site Plan.

Project Delivery Method

On January 1, 2015, Senate Bill 785 (Wolk) took effect and allowed the use of design-build by regional facilities, like the RWF, for projects valued over \$1.0 million as long as their respective governing bodies approved. Subsequently, on March 24, 2015, City Council adopted a resolution approving the use of low bid design-build and progressive design-build (subsequently changed to design-build) as possible delivery methods for projects in the RWF's Capital Improvement Program and delegated authority to the Directors of the Environmental Services and Public Works Departments to determine the appropriate delivery method for each project.

In November 2022, design-build was selected as the project delivery method for the Project. The recommendation was largely driven by the inherent complexity of a project of this scale. There are numerous potential situations that will be easier to manage with the flexibility of a design-build contract, including changes in scope related to digester gas capture; sequencing complexities during construction; integration of upstream and downstream processes; and unforeseen conditions. The design-build delivery method also provides a single point of responsibility for both design and construction, increases the potential for innovative solutions to complex issues, and provides the ability to pre-order equipment to minimize schedule delays. Carollo Engineers, Inc. is assisting with the process by serving as the owner's advisor for the Project and providing support to City staff to resolve technical issues.

ANALYSIS

Design-Builder Selection Process

The City used a two-step selection process for procurement of the design-builder, in accordance with California Code Public Contract Code, Sections 22160-22169, which governs certain local agency design-build projects.

The first step of the selection process involved shortlisting design-builders based on qualifications. As part of this step, a Request for Qualifications (RFQ) was advertised on February 18, 2025, and Statements of Qualifications (SOQs) were received on March 18, 2025, by interested proposers. The RFQ consisted of a pre-qualification questionnaire intended to address the minimum general requirements that should be met by design-build firms (acceptable safety record, licenses and registrations, workers compensation history, etc.) and a requirement to list key personnel, including their project experiences. The RFQ also required that the design-build firm had completed design-build projects similar in nature to the Project and was financially capable of performing the work.

Two design-build firms submitted SOQs:

- Jacobs Project Management Co., with Walsh Construction as General Contractor; and
- Kiewit Infrastructure West Co., as Engineer and General Contractor.

Based on the submittals, the City determined that both firms were qualified and eligible to submit proposals.

The second step of the selection process consisted of the submission and evaluation of technical proposals. A Request for Proposals (RFP) was issued on May 12, 2025, and the City received proposals from the two firms listed above on July 3, 2025.

State law allows the use of “best value” as a design-builder selection method so that competitive proposals can be evaluated by using the criteria and selection procedures specifically identified in the RFP. Best value selection is done through an evaluation of objective criteria that may include, but not limited to, price, features, functions, life-cycle costs, experience, and past performance. Responsive proposers are ranked based on a determination of the best value provided to the City. Key elements reviewed and scored during the RFP process included:

- Technical and management approach to meet Project objectives;
- A design-build price consisting of a preliminary services fee, general conditions fee, and design-builder fee;
- Design narrative and renderings, including approach to how life-cycle cost will be addressed during the Project cost evaluation process;
- Carryover score from SOQs;
- Schedule and phasing plan;
- Safety and security approach;
- Interview;
- Strategy for local subcontracting, commitment to providing a skilled and trained workforce, and labor peace; and
- The City’s small and local business preference.

The selection panel, consisting of representatives from the Environmental Services Department, evaluated the written proposals based on the key elements above and held interviews with the two candidate firms on August 13, 2025. Evaluations were based on the following criteria and scoring.

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Evaluation Criteria	Weight
Proposal Project Approach	10
Proposal Design Narrative and Renderings	20
Proposal Scheduling and Phasing	5
Proposal Safety and Security Approach	2
Proposal Subcontracting Plan	3
SOQ Carry-Over	20
Oral Interviews	20
Price	10
Local Business Preference	5
Small Business Preference	5
Total:	100

The rounded scores and final ranking were as follows.

Evaluation Criteria	Jacobs	Kiewit
Proposal Project Approach	8.80	7.96
Proposal Design Narrative and Renderings	18.00	13.90
Proposal Scheduling and Phasing	4.30	3.80
Proposal Safety and Security Approach	1.44	1.46
Proposal Subcontracting Plan	2.51	2.62
SOQ Carry-Over	17.01	17.07
Oral Interviews	18.24	16.34
Price	10.00	7.00
Local Business Preference	5.00	5.00
Small Business Preference	0	0
Total:	85.30	75.15

The selection panel unanimously chose Jacobs as the highest-ranked firm to execute the Project. While both firms were qualified, Jacobs distinguished itself from the other proposer during the interview phase by demonstrating a clear understanding of Project objectives, outlining innovative approaches to completing the Project, and confirming their highly experienced professionals were dedicated to the success of the Project. The Jacobs/Walsh team has extensive design-build experience, including the design and construction of similar digester facilities as well as the RWF's Headworks project, in which Jacobs was the design builder, under the name CH2M HILL Engineers, Inc. Walsh Construction has a local Bay Area office in Concord and has been successfully working with the City for the last nine years on the Digester and Dewatering projects.

Design-Builder Contract Negotiations

A draft design-build agreement was included as part of the RFP process. This agreement was initially developed by City staff and the City Attorney's Office in consultation with attorneys from the City's outside design-build counsel, Hawkins Delafield & Wood LLP. This agreement has been previously used in three other design-build projects at the RWF, the Cogeneration Facility, Headworks, and Dewatering projects, and it was tailored to accommodate specific requirements of the Project. See Attachment B - Key Contract Elements and Terms.

Upon establishment of the proposer rankings, City staff negotiated all aspects of the design-build contract with Jacobs in order to finalize the terms of the agreement. Negotiations started in August 2025 and were completed in October 2025. The negotiations were completed with the intent of achieving the following goals.

- Develop a fixed and fair fee for the preliminary services consistent with industry standards that ensures the City receives services commensurate with cost;
- Achieve scope, schedule, and budget requirements;
- Establish a collaborative relationship with Jacobs that will continue during the design process;
- Allow for aspects that will allow innovation to maximize value to the City;
- Equitably allocate risk and reward; and
- Maximize transparency of costs.

Although the terms of the contract apply to the entire Project, staff is requesting approval of only the preliminary services and authorization to negotiate EWP's, and associated City-controlled contingencies as summarized below:

Preliminary Services (design phase, design-builder)	\$9,542,366
Design Contingency (owner-controlled)	\$954,237
Early Work Package(s) (equipment procurement and	\$10,000,000
Final Design) not-to-Exceed limit	
Total Not-To-Exceed Amount	\$20,496,603

The preliminary services to be performed under this contract will include project management; preliminary investigations; preparation of Basis of Design Report; completion of detailed design to 60%; development of Definitive Project Submittal and GMP; and completion of the Definitive Contract Amendment.

As part of the proposal submittal, Jacobs was required to submit a quote for the preliminary services reflecting the scope included in the RFP; this initial quoted cost was used as the starting point for the negotiations with the City. Preliminary investigations to be completed include geotechnical and hydrologic analysis, hazardous materials

investigations, soils testing, underground utilities investigations, and odor modeling. The final lump sum fee that is presented in this memorandum reflects these City-identified additions.

Staff recognizes that despite the best efforts that have been made to develop an all-inclusive scope, there may be unknown conditions and changes to the design required to accommodate potential regulatory issues, changes in existing conditions, or items identified by project stakeholders, so it is recommended to include a City-controlled design contingency amount to cover costs for City-approved changes to the preliminary services scope. Staff is recommending the allowance of a 10% contingency for this purpose. All changes will be negotiated based on a detailed scope, pre-negotiated service fees schedule, and allowable markups for the design builder, as established in the agreement.

In addition, City staff is also recommending EWP for activities that should be completed prior to the final negotiation and approval of the GMP: 1) equipment procurement; and 2) final design of the Project. Since the Supplemental Environmental Impact Report (SEIR) has not been completed, the Project will not be able to commence construction work until the SEIR is approved. However, the Project will be able to procure equipment needed.

The purpose of the EWP for equipment procurement is to purchase equipment that has a historically long lead time. This allows the design builder to continue with final design and begin construction without having to add schedule days for the equipment to arrive.

The purpose of the EWP for final design is to allow the design builder to proceed with the final design while the GMP is being negotiated with the City, avoiding potential delays. In addition, if GMP negotiations are not successful and the City decides not to enter into contract with the design builder for the construction phase, the finalized design could be packaged and put out for bid for construction like any other traditional design-bid-build project, minimizing overall delay.

Both of these packages are schedule-driven and timely completion will reduce overall risk to the City. The costs included at this point are “not-to-exceed” amounts, which will be subject to the base GMP.

Project Schedule

The preliminary services work is projected to take 16 months, and the subsequent design-build work is anticipated to take 40 months, including site preparation. The following are key milestones for the Project.

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January 2026	Notice to Proceed for Preliminary Services
August 2026	Return to City Council for approval of SEIR
November 2026	Execution of EWP's
June 2027	Definitive Project Submittal
August 2027	Completion of GMP negotiations, return to City Council for approval, and Notice to Proceed for construction/design-build work
November 2030	Project completion

Since the SEIR is still in progress, no physical changes will occur until after approval of the SEIR.

Project Budget

The Project's current budget can be broken down as follows:

Preliminary Services (design phase, design-builder)	\$9,542,366
Design Contingency (owner controlled)	\$954,237
Construction Phase/GMP (includes EWP's of \$10.0 million)	\$164,500,000
Construction Contingency @ 15% (owner-controlled)	<u>\$24,675,000</u>
Total Design and Construction	\$199,671,603
 Project Delivery	 \$23,198,583
Total Project Budget	<u>\$222,870,186</u>

The \$164.5 million GMP estimate for construction included in the current Project budget is based on a planning-level estimate from the project definition report (representing approximately a 5% design level of completion) developed by the Owner's Advisor. The current estimate includes a 30% design contingency and 15% complexity factor. As the design progresses, the percentage used for the contingency and complexity factor will decrease as the level of certainty increases.

These are preliminary estimates, and it is anticipated that construction costs could be higher after the design builder performs early investigations and progresses the design. Staff will make budget adjustments through a future budget process and continue to refine the costs after completion of the Basis of Design Report and the EWP's, when a more definitive scope of work and construction cost estimate will be available.

Staff will also actively work with Jacobs during the design process and incorporate value engineering, evaluation of life-cycle costs, and validation of scope and cost elements to obtain the best value for the City. During the development of the Definitive Project

Submittal, there will be an opportunity to evaluate construction costs through a transparent, open-book process. The owner's advisor will assist in validating the proposed costs to ensure the City receives a fair and competitive price to construct the Project.

Policy Alternatives

Alternative #1: Approve the Contract to authorize Preliminary Services, but do not authorize the City Manager to negotiate and execute contracts for the EWP.

Pros: Postpones City Council approval of EWPs until GMP scope and fee are completely defined.

Cons: Delays equipment procurement of long lead items and completion of design, extending the Project schedule, which increases project costs.

Reason for not recommending: Staff recommends authorizing the EWPs to reduce City-risk and avoid schedule delays. Additional authorization for other EWPs may be requested, if beneficial, as part of the next Project City Council memorandum to be submitted in 2026.

Alternative #2: Approve the Contract to authorize Preliminary Services and authorize the City Manager to negotiate and execute contracts for the EWPs, and the GMP.

Pros: Allows for identification of manufacturer-specific design requirements, which eliminate the risk of redesign costs, avoids potential delays of equipment procurement of long lead items, which would extend Project schedule, and eliminates the need to return to City Council if the initial budget is adequate.

Cons: At the current level of design completion, there is uncertainty regarding Project costs, thus the GMP recommendation to City Council for approval at this point in time will need additional contingency to account for these uncertainties.

Reason for not recommending: Staff recommends waiting until completion of 60% of the design and EWPs before authorizing the GMP in order to collect additional information and advance project design, which will improve the accuracy of the GMP.

EVALUATION AND FOLLOW-UP

Following the completion of the SEIR in August 2026, staff will return to City Council for approval of the SEIR, and approval of one or more construction-related EWPs.

Following the completion of the EWPs and the 60% design in June 2027, which will more clearly define the Project, staff will return to City Council to seek delegation of authority to the City Manager, or her designee, to negotiate and execute the Definitive Contract Amendment, which will allow the construction phase design-build work to begin for the agreed upon GMP.

A progress report on this and other RWF capital projects will be made to the Transportation and Environment Committee and City Council on a semiannual basis. Monthly progress reports of the RWF Capital Improvement Program will also be submitted to the Treatment Plant Advisory Committee and posted on the City's website.

COST SUMMARY/IMPLICATIONS

The contract will be funded by the San José-Santa Clara Treatment Plant Capital Fund. Services performed under this contract will be authorized by Notice to Proceed. Although the contract is not to exceed \$20.5 million, this amount is not required for the execution of this design-build contract, rather, funding is needed for each Notice to Proceed. There is adequate funding available this fiscal year to issue \$4.2 million for preliminary services to complete the Basis of Design Report. The remaining balance of \$16.3 million is planned for FY 2026-2027 for the completion of the detailed design to 60% and the two EWPs. Future funding is subject to appropriation of funds and will be included in a future budget process.

The Switchgear S2/S2A Replacement scope has been added to the Additional Digester Facility Upgrades project scope, resulting in schedule and project delivery cost savings; therefore, \$661,000 for the Switchgear S2/S2A Replacement project is recommended for reallocation to the Additional Digester Upgrades project. As noted above, additional funding will be recommended for the Project during the 2026-2027 budget development process.

No additional operations and maintenance costs are anticipated for the preliminary services and EWPs.

1. **TOTAL COST OF PROJECT**

Preliminary Services (design phase, design builder)	\$9,542,366
Design Contingency (owner-controlled)	\$954,237
EWPs not-to-exceed limit	\$10,000,000
TOTAL PROJECT COSTS	\$20,496,603
2. **PROJECT COST ALLOCATION:** In accordance with the recommendations set forth in the Capital Project Cost Allocations Technical Memorandum (Carollo Engineers, Inc., March 2016), this Project is allocated 40% to biological oxygen demand and 60% to total suspended solids.

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BUDGET REFERENCE

The table below identifies the fund and appropriations to fund the contract recommended as part of this memorandum.

Fund #	Appn. #	Appropriation Name	Total Appropriation	Recommended Budget Action	Amt. for Contract*	2025-2027 Adopted Biennial Capital Budget Page	Last Budget Action (Date, Ord. No.)
512	426D	Additional Digester Upgrades	\$10,868,000	\$661,000	\$4,185,978	270	10/21/2025 31252
512	439L	Switchgear S2/S2A Replacement	\$661,000	(\$661,000)		282	6/17/2025 31230

*The total contract amount is \$20.5 million, with \$4.2 million anticipated to be needed for the preliminary services this fiscal year. The remaining \$16.3 million for this contract will be appropriated next fiscal year.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the Finance Department, and the Planning, Building, and Code Enforcement Department.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the January 13, 2026 City Council meeting following the Treatment Plant Advisory Committee meeting on January 8, 2026.

The RFQ was advertised on Biddingo on February 18, 2025. Information about the procurement process was shared during a vendor open house event held at the RWF on September 11, 2024, which was well-attended by prospective consultants and contractors. Information on this event was posted to Biddingo and the Capital Improvement Plan Document Library on the City's website.¹

¹ <https://www.sanjoseca.gov/your-government/departments-offices/public-works/capital-improvement-program-cip>

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COMMISSION RECOMMENDATION AND INPUT

This item is scheduled to be heard at the January 8, 2026, Treatment Plant Advisory Committee meeting. A supplemental memorandum with the Committee's recommendation will be included in the amended January 13, 2026, City Council meeting agenda.

CEQA

Not a Project, File No. PP17-007, Preliminary direction to staff and eventual action requires approval from decision-making body.

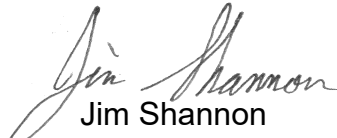
A Supplemental Environmental Impact Report (SEIR) to the PMP EIR and information on additional environmental permitting and mitigation is being prepared for the Project. Development of the Supplemental EIR is expected to continue through the Preliminary Services phase. The results of the SEIR will be brought to City Council for approval prior to any construction.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/
Matt Loesch
Director of Public Works

/s/
Jeff Provenzano
Director, Environmental Services


Jim Shannon
Budget Director

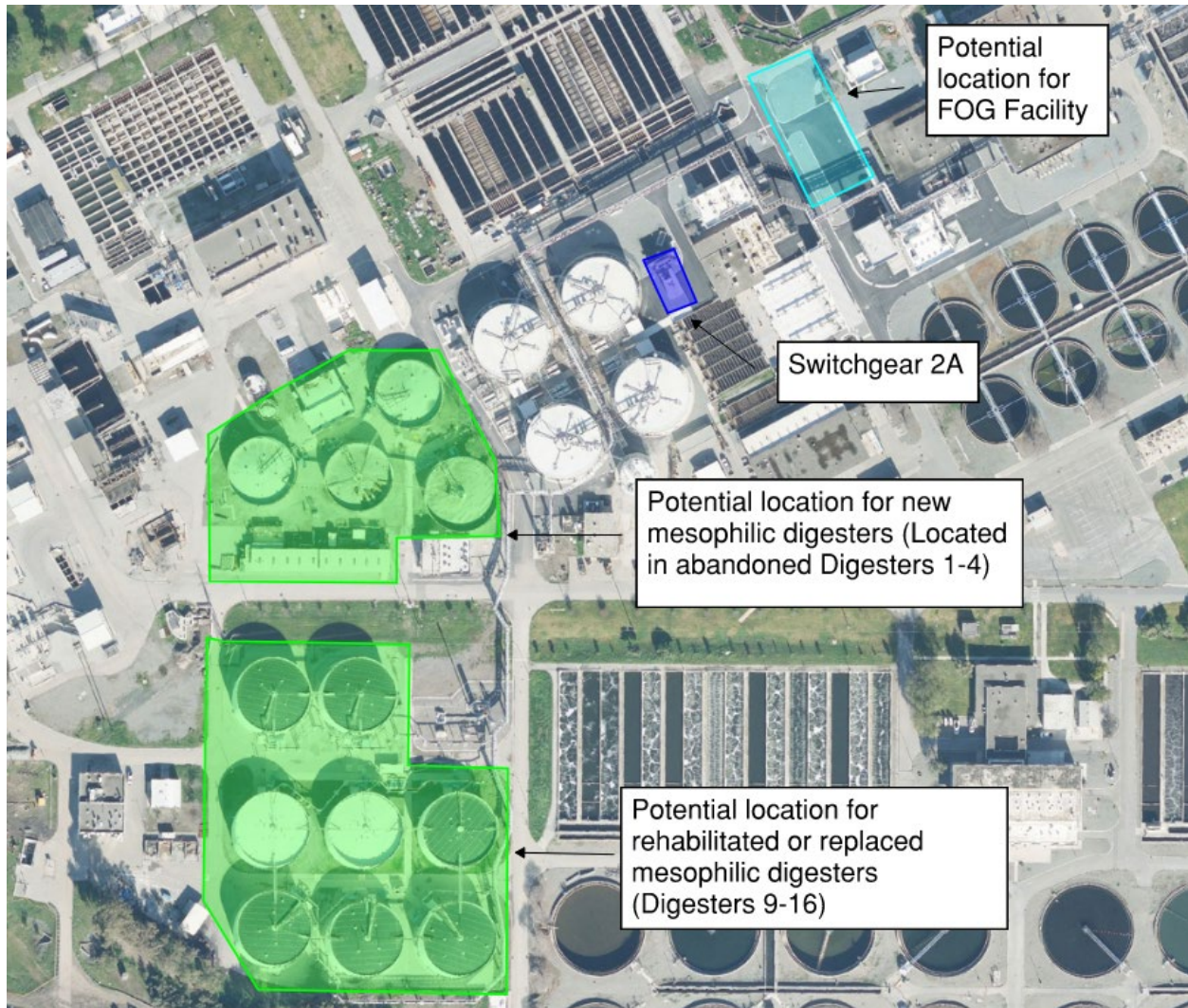
The principal author of this memorandum is Joel Cabrera, Senior Wastewater Facility Engineer, Environmental Services Department. For questions, please contact Mariana Chavez-Vazquez, RWF General Manager, Environmental Services Department, at Mariana.Chavez-Vasquez@sanjoseca.gov or (408) 635-4012.

ATTACHMENTS:

Attachment A: Additional Digester Facility Upgrade Project Site Plan
Attachment B: Key Contract Elements and Terms

ATTACHMENT A
Additional Digester Facility Upgrade Project Site Plan

Potential Locations for the Project Elements



ATTACHMENT B

Key Contract Elements and Terms

1. Preliminary Services –These services include preliminary investigations of existing site conditions, development of the Basis of Design Report, detailed design to a 60-percent level of completion, and development of the Definitive Project Submittal (DPS), which will include the GMP, and lead to the Definitive Contract Amendment (DCA), which will contain the terms and conditions for the Design-Build Work to complete the Project.

As part of the procurement process, proposers were required to submit a lump-sum fee for the Preliminary Services, which was incorporated into the proposal rankings and further reviewed during contract negotiations. The agreed upon amount for Jacobs to perform the Preliminary Services is \$9,542,366.

2. Definitive Project Submittal – As part of the Preliminary Services, Jacobs is required to advance the design of the Project to a level (beyond the 60% level of completion) sufficient to produce the DPS, which will be completed and submitted to the City and will remain a firm offer by Jacobs for at least 90 days. The DPS will include and be based on the technical specifications, acceptance standards, and other information, analysis, findings, and reports developed by Jacobs during performance of the Preliminary Services and will be prepared in accordance with the contract standards. The DPS will include a price submittal, a technical submittal, a commercial terms submittal, and an additional information submittal.
3. Definitive Contract Amendment - The Design-Build Work to be performed following the completion of Preliminary Services will be defined in the DCA, which will: (1) set a GMP for the Design-Build Price, (2) set a schedule for completion of the Design-Build Work; (3) define the technical specifications and guaranteed performance requirements for the Project, (4) identify Transition Services and associated fee; (5) establish the insurance requirements for the Design-Build Work; and (6) amend other terms and conditions of the contract necessary to accomplish the foregoing. The parties may, at the City's discretion, agree to convert the GMP into a lump sum price, subject to the not-to-exceed Project costs authorized by City Council.

Should the parties fail to agree on the DCA, the City is under no obligation to proceed with any further work by Jacobs, except in accordance with unfinished EWP's. The parties may, however, negotiate to enter into a separate agreement to fully complete the design (discussed previously as EWP No.2) and/or provide other City-requested services so the City can solicit bids for construction of the Project by separate contractors using the design-bid-build delivery method.

4. EWP's - The contract allows the City to issue EWP's before the parties execute the DCA if the Work can be done prior to design completion and if the EWP's will

reduce City risk and/or shorten the Project schedule. In addition to the first EWP, additional EWPs for the Project may be identified, if they can reduce City risk and/or shorten the Project schedule, both of which can have potential for significant Project cost reduction. Additional EWPs will require separate amendments to the contract and will contain terms and conditions for Jacobs' performance of the Work and obligations should the parties fail to agree on the DCA.

5. Design-Build Work (Work) – The DPS and DCA define the price and contract terms for the Work, which will include construction of the Project. At the City's discretion, the Work may also include Transition Services in the form of assistance with operating the new facility for a specified period. Additional EWPs may be issued during the Preliminary Services phase in order to reduce City risk and/or shorten the Project schedule, both of which have potential for significant Project cost reduction.
6. Guaranteed Maximum Price (GMP) - The contract sets forth a process to allow the City and Jacobs to negotiate a GMP for the Work. The GMP includes all costs for the performance of the Work and cannot be adjusted except for specified reasons such as uncontrollable circumstances, changes to the contract's technical specifications, and City-directed changes. Except for funding of the EWPs, the City will not commit construction funds until the GMP has been successfully negotiated.
7. Design-Build Price – The Design-Build Price will be an amount equal to the sum of 1) Design-Build Period Costs, 2) Design-Builder Fee, and 3) General Conditions Fee, and it cannot not exceed the GMP. Further definition of these terms is provided below:
 - a. Design-Build Period Costs – These costs include costs paid or incurred by Jacobs in the proper performance of the Work, including third party professional service fees, subcontractors, Jacobs' labor, materials, equipment, supplies, Project-specific insurance premiums, and performance and payment bond premiums.
 - b. Design-Builder Fee – The Design-Builder Fee is an amount equal to 9% of the Design-Build Period Costs (excluding Project-specific insurance premiums, sales taxes, and performance and payment bond premiums), and is the amount attributable to profit, risk, mark-up and general or indirect overhead with respect to the Work.

As part of their submittals, proposers were required to submit a Design-Builder Fee percentage, which was considered during proposal evaluations and ranking. Staff believes this fee is competitive based on a comparison with the Design-Build Fee proposed by the other proposers.

- c. General Conditions Fee – The "General Conditions Fee" is an amount equal to 12% of the Design-Build Period Costs, other than Project-specific insurance premiums, sales taxes, and performance and payment bond

premiums. In general, this includes the general conditions costs, including Jacobs' supervisory wages, field office and supplies, and temporary utilities, as well as general conditions-related profit, risk, mark-up, and overhead.

As part of their submittals, proposers were required to submit a General Conditions Fee percentage, which was considered during proposal evaluations and ranking. Staff believes this fee is competitive based on a comparison with the General Conditions Fee proposed by the other proposers.

8. Liquidated Damages - The contract includes liquidated damages for delay. The daily amount for liquidated damages will be negotiated as part of the DCA. Currently, the contract states: "The aggregate liability of the Design-Builder, with respect to any liquidated damages...shall not exceed an amount equal to 25% of the GMP."
9. Dispute Resolution – This contract requires formal partnering between the City and Jacobs for the duration of the Project. Consistent with the City's Dispute Avoidance and Dispute Resolution Policy (S.J.M.C. Chapter 14.06), the contract provides that either the City or Jacobs may voluntarily initiate a request for non-binding mediation in the event that other partnering opportunities available under the contract are unsuccessful. Mediation is not mandatory and either the City or Walsh may elect to proceed with litigation if a dispute cannot be resolved by the Project team. Because of the collaborative nature of design-build contracts, significant disputes are less likely to occur, and it is anticipated that mediation and/or litigation is unlikely and would only occur if all other cooperative efforts by the Project team fail.
10. Project Contingencies – The contract includes provisions for three contingencies.

The two City-controlled Contingencies are: (1) a design contingency to cover costs for City-approved changes to the scope of Preliminary Services, and (2) a construction contingency to cover unanticipated costs of the Work that are not Jacobs' responsibility under the contract. The construction contingency covers typical construction issues such as differing site conditions, force majeure events, and City-directed change orders. Expenditure of the City-controlled contingency will require a change order to be negotiated and executed by the City Manager or his/her designee.

The contract also provides for a Design-Builder Contingency, which will be negotiated by the parties and established as part of the DCA. It covers unforeseen costs of the Work that neither Jacobs' design manager nor the contractor could predict when the GMP was established. Jacobs is entitled to receive payment from the Design-Builder Contingency, with the City's right to monitor and verify the use of the funds. The Design-Builder Contingency is contained within the GMP. Jacobs will be responsible for costs in excess of this contingency unless the contract otherwise entitles them to compensation.

11. Insurance – Jacobs will be required to enroll in the City’s Owner Controlled Insurance Program (OCIP) approved by City Council in June 2017. The OCIP provides commercial general/excess liability and workers’ compensation insurance for all Contractors, regardless of tier, that are approved for participation in the insurance program. Additional coverages for builder’s risk and pollution liability insurance are provided by the City outside of the OCIP:

Contractors of any tier are required to maintain insurance coverage that protects the City from liabilities arising from the Contractor of any tier’s operations performed away from the Project site, for types of coverage not provided by the OCIP, and for operations performed in connection with excluded parties operating under Contractor or any tier’s operations control or direction.

The City will pay all premiums associated with the OCIP coverages and the other coverages provided by the City. Jacobs will pay all other premiums, including the premiums for the Additional Insurance Required from Enrolled Parties and Excluded Parties. The Required Insurance will be in place concurrent with the execution and delivery of this contract and remain in effect for the periods specified in the contract. Jacobs’ liability insurance, including professional liability, will not include any design-build or similar exclusions that would compromise coverages because of the design-build nature of the Work to be performed pursuant to this contract.

12. Subcontracting and Self-Performance – Jacobs has submitted a draft subcontracting plan, which will be included in the contract and further developed during the Preliminary Services. This plan provides an overview of Jacobs’ proposed approach to engage subcontractors and to support them during execution of the Work; identifies the type of work or trades that will be required to complete the Project; describes the methods Jacobs will utilize to engage local subconsultants and subcontractors; and describes the methods Jacobs will utilize to engage with subconsultants and subcontractors classified as small, disadvantaged and women owned business enterprises.

Jacobs intends to maximize, to the greatest extent possible, local San José and Santa Clara County firms’ participation in the Project through an outreach program that will be coordinated with the City’s existing outreach program. Jacobs intends to ensure that local firms and small, disadvantaged and women-owned business enterprises are made aware of all opportunities available to them to subcontract on the Project in-line with their interest, capabilities and areas of expertise, and to utilize such firms to the maximum extent possible consistent with this plan. This plan is intended to provide sufficient information on Project opportunities that will be available and communicate how local firms can participate or express an interest in bidding for those opportunities.

As identified in its proposal, Jacobs has identified Walsh as their contractor partner for the Project. Walsh intends to self-perform approximately 40% of the construction work with market price validation by the Owner’s Advisor. The balance of the Work will be competitively bid out by Jacobs in accordance with

contract requirements. Jacobs' subcontracting plan will outline all work items to be self-performed and work to be bid out and awarded to subcontractors. Notwithstanding proposals to self-perform work, the contract allows the City to require Jacobs to competitively bid out any or all of the Work in compliance with applicable law.

13. Skilled/Trained Workforce and Labor Peace Plan - Part of the RFP process to select a design-builder was the evaluation of the proposer's strategy for local subcontracting, commitment to providing a skilled and trained workforce.

Ensuring a skilled and available workforce will be critical to successfully delivering the Project. Jacobs/Walsh possess a large skilled labor pool that will be key to ensuring on time project delivery with the highest levels of quality and craftsmanship. Walsh maintains agreements with California registered apprenticeship programs and has successfully placed apprentices from various programs in their jobs. State law, under which the Project will be performed, mandates certain apprenticeship requirements that will be adhered to under the contract.

Avoiding labor disputes and disruptions is another significant factor in delivering the Project in a timely manner. The Project requires the payment of local prevailing wages and requirements regarding prevailing wage are included in the contract. Walsh is signatory to the trade unions required to complete the Project and has delivered more than a dozen union-staffed water and wastewater projects in the Bay Area, each of which was completed with no labor disruptions.

14. Acceptance – Acceptance means demonstration by Jacobs that the Acceptance Test has been conducted, the Acceptance Standards have been demonstrated, and all other Acceptance Conditions have been achieved.

15. Transition Services - The contract includes provisions for providing Transition Services, following Project acceptance if desired by the operations and maintenance staff. In this event, Jacobs would provide services generally consisting of advising and monitoring the City's operation and maintenance of the new facilities. Establishment of the Transition Services and the fee will be negotiated as part of the DCA.