



COUNCIL AGENDA: 2/25/20

FILE: 20-181

ITEM: 6.6

## Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Kerrie Romanow  
Kim Walesh

**SUBJECT:** OFFER TO PURCHASE  
POND A-18

**DATE:** February 6, 2020

Approved

Date

2/6/2020

### RECOMMENDATION

Adopt a resolution authorizing the City Manager to negotiate and execute an agreement with Valley Water for the sale of Pond A-18 and related easements to support the Shoreline Levee Project consistent with the criteria directed by the Treatment Plant Advisory Committee (TPAC) and Council in October of 2015 and 2017.

### OUTCOME

Providing the City Manager the authority to negotiate and execute an agreement with Valley Water for the sale of Pond A-18 and related easements to Valley Water would facilitate the Shoreline Levee Project and enable staff to provide a formal response by rejecting or countering Valley Water's prior offer of \$13,778,000 by February 14, 2020.

### BACKGROUND

The Shoreline Levee Project is a congressionally authorized project sponsored by the U.S. Army Corps of Engineers (USACE) together with Valley Water (formerly Santa Clara Valley Water District) and the California State Coastal Conservancy (CSCC) to manage flood risk and ecosystem restoration along South San Francisco Bay. Within the South Bay region, the Alviso area was identified as the first phase, because of the high potential for flood damage, including possible damage to homes, businesses, and the Regional Wastewater Facility (RWF). Phase One of the Shoreline Levee Study proposes to build a new flood-protection levee along existing salt pond levee alignments, including the RWF's Pond A18 (Project). An estimated \$177.2M in funding has been authorized by Congress for construction of the Project with a completion date of January 2023.

The City of San Jose is the administering agency for the RWF and co-owner of the RWF with the City of Santa Clara. As the administering agency for the RWF, the City is responsible for the acquisition and disposition of real and personal property which the City determines to be

reasonably necessary for treatment plant purposes. The RWF purchased Pond A-18 on October 17, 2005 for \$13,500,000.

In 2015 and 2017 respectively, TPAC recommended and the City Council directed that staff begin negotiations with Valley Water for the transfer of Pond A-18 to facilitate the construction of the Shoreline Levee Project consistent with the criteria set forth below:

1. Need for coordination and concurrence of the City of Santa Clara, as co-owner of the RWF.
2. Confirmation that the value of the shoreline levee to the RWF is equivalent to fair market value of the proposed property.
3. Transfer of property to the Valley Water to be triggered upon award of the design contract by U.S. Army Corps of Engineers. However, if construction was unable to commence by January 1, 2021, Valley Water would need to pay the RWF the fair market value of Pond A18.
4. Inclusion of provisions that the levee crossing of Artesian Slough would not interfere with the RWF's current operation and preserve the RWF's current ability to discharge into the Bay as permitted under the National Pollutant Discharge Elimination System permit.
5. If construction of the levee required investment in capital or operational costs to RWF sooner than otherwise expected, the Shoreline Levee Project would equitably share the burden of those costs.
6. Consideration of the RWF's capital expenditures for the repair of both gate structures on the pond that have occurred as a result of the delays on the levee project.
7. Finalization of the levee alignment and confirmation that any costs associated with a change in alignment will be borne by the Shoreline Levee Project.
8. Resolution of the RWF's Waste Discharge Requirement for the management of water quality in Pond A18. This regulatory obligation should not be the RWF's after the property is transferred, but the Water Board has indicated that this is not an automatic action that happens concurrent to title transfer.

The City sought to initiate the transfer of Pond A-18 with Valley Water in 2017, but Valley Water declined to begin negotiations at that time. In the interim, the RWF incurred approximately \$2,000,000 to repair the North and South Gate of Pond A-18.

## **ANALYSIS**

The City received an offer from Valley Water on November 22, 2019 and certain easements for \$13,778,000. The parties have been in negotiation regarding price and terms of the transfer. The offer is based on the following breakdown:

**Offer Price**

Pond A-18	\$13,725,000
Ingress/egress easement (1.13 acres)	\$6,300
Ingress/egress easement (4.23 acres)	\$23,500
Flood protection levee easement (1.21 acres)	\$16,800
Temporary work area easement (2.63 acres)	\$6,400

Offer total for Pond A-18 and related easements: \$13,778,000

City staff retained Ron Garland of Garland & Salmon and Terry S. Larson of Smith & Associates to conduct reviews of Valley Water's appraisal of Pond A-18 and appraisal of related easements by Matt Watson of Carneghi-Nakasako & Associates. Mr. Garland indicated Valley Water's offer amount for Pond A-18 "is very conservative and barely reaches what I see as the bottom end of the credible range of market value opinions". The offer didn't account for the RWF's cost of North and South gate repairs in the appraisal report. Staff reviewed the same appraisal and found that Mr. Watson removed the two best comparable sales, those of wetlands located in San Jose, with the rationale that the buyer (Valley Water) "has powers of eminent domain." Staff disagrees with Valley Water's interpretation of the law and recommends including the comparable transactions to base the valuation. These sales support the high end of the value range and weighting these sales would indicate a higher value for the property close to \$20,000,000, as opposed to the appraised \$13,725,000.

Mr. Larson reviewed Valley Water's appraisal of the easements and agreed with Valley Water's appraisal by Carneghi-Nakasako & Associates amount of \$53,000 as the market value of the easements. However, staff and Valley Water have not confirmed the final easements necessary for truck route and construction, and the final easements could impact price.

City staff have communicated to all parties during various meetings that there are cost impacts to the City of San Jose as a result of this project. Working within the abovementioned negotiating terms approved by TPAC and Council, these costs should be considered and included in the overall transaction as these costs would not be realized if it were not for the project. In August 2019, the Regional Water Quality Control Board issued an Order to expedite a phased cleanup of the RWF's Legacy Lagoons to meet the Shoreline Project timeline to transfer a portion of clean lagoons to Valley Water. The total cleanup cost is not budgeted and is estimated at \$41M (Phase 1: \$6.7M, Phase 2: \$34.3M). In addition, with the Shoreline Levee, the current gravity-flow RWF effluent will need to be pumped through or over the levee. The current project estimate for a final effluent pump station is \$50M.

The estimated cost impacts to the City, accruing as a result of the Shoreline project, are as follows:

	<b>Cost</b>
Amount to cover cost of betterments to prepare levee for Regional Water Facility to connect to the final effluent pump station project (estimated)	\$3,000,000
Additional cost (inefficiencies) of 2-phased cleanup of Legacy Lagoons	\$1,700,000
Perimeter security fence and gates to isolate Regional Water Facility (estimated)	\$1,000,000
Compensatory mitigation (estimated split)	\$1,000,000
Estimated total for capital impacts:	\$6,700,000

Valley Water and other parties have acknowledged that there will be immense cost impacts to the City due to this project, but have not yet indicated a willingness to contribute non-federal funds or other in-kind consideration and reductions to mitigate the total financial impact on the RWF.

City staff sent a response letter dated December 20, 2019 to Valley Water's offer, indicating that staff has completed review of the appraisal reports and believe the asset was undervalued. Staff believe the best comparable sales, those of Bay wetlands in the City of San Jose, indicate a value in the high-end of the credible range, or roughly \$25,000,000, which includes approximately \$2,000,000 for the North and South gate repairs and the estimated total for capital impacts.

## **CONCLUSION**

City staff understand and recognize the importance of the Shoreline Levee Project. Staff are moving to transfer the property to support the required timeline and expect the appropriate funding participation of all parties.

## **EVALUATION AND FOLLOW-UP**

Staff will provide a formal response rejecting or countering Valley Water's offer by February 14, 2020 and advise that participating entities should return to City a total of \$25,000,000, for the fair value of Pond A-18 and related easements and to reasonably compensate the San Jose/Santa Clara RWF for operational and capital impacts resulting from the Shoreline Levee Project. Staff have submitted a memo to request to declare Pond A-18 as surplus to the needs of the City at the

February 25, 2020 public council session, in accordance with California's Surplus Land Act (Cal. Gov. Code §54220 et seq.), which is required prior to completing any transfer of the property. Staff will also work with Santa Clara City Council to gain approval for transfer of Pond A-18.

### **CLIMATE SMART SAN JOSE**

The recommendation in this memo aligns with one or more Climate Smart San José energy, water, or mobility goals.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the February 25, 2020 City Council meeting.

### **COORDINATION**

This memorandum was prepared in coordination with the City Attorney's Office, Office of Economic Development and the Environmental Services Department and City Manager's Budget Office.

### **COMMISSION RECOMMENDATION/INPUT**

This memorandum is scheduled to be heard at the February 13, 2020 TPAC meeting.

### **CEQA**

PP20-006, Determination of Consistency with the San José/Santa Clara Water Pollution Control Plant Master Plan Final EIR (Resolution no. 76858)

/s/  
KERRIE ROMANOW  
Director, Environmental Services

/s/  
KIM WALES  
Director, Office of Economic Development

For questions, please contact Jennifer Voccola-Brown, Interim Sustainability and Compliance Division Manager, at (408) 975-2594 or Nanci Klein, Assistant Director of Economic Development, Director Real Estate, at 408-535-8184.