

Treatment Plant Advisory Committee



THE REQUIREMENTS OF THE MASTER AGREEMENTS FOR WASTEWATER TREATMENT SERVICES

Administrative Hearing
March 24, 2016

Master Agreements



- **Administering Agency** (Exhibit E, Section B)
- **Agency** (Part V, Sections C, E)
- **TPAC** (Part VI)

Master Agreements



Distribution of Treatment Costs: FY 15-16 *

Agency Name	% Distribution of O&M Costs	% Distribution of CIP Costs
San José	66.127%	66.586%
Santa Clara	13.719%	14.026%
West Valley Sanitation District	9.101%	6.591%
Milpitas	5.809%*	7.661%*
Cupertino Sanitary District	5.096%*	4.356%*
County Sanitation District 2-3	0.921%	0.541%
Burbank Sanitary District	0.227%	0.239%

*% Distribution of Costs updated for Milpitas and Cupertino Sanitary District

Enforceable Master Agreements



- **Operation and Maintenance Costs** (Part I, Section K)
 - “[A]ny and all costs and expenses incurred by the Administering Agency, for the administration, operation, maintenance and repair of the Plant, including but not limited to supplies and materials, labor, services, power, laboratory control and monitoring, insurance, general administration and incidental items incurred during normal operations. Also included are those expenditures for ordinary repairs necessary to keep the facilities in proper operating conditions.”
- **Replacement Costs** (Part I, Section N)
 - “[A]ll capital expenditures for obtaining and installing equipment, accessories or appurtenances which are necessary during the service life of the Plant to maintain the capacity and performance for which the Plant was designed and constructed except:”
 - ✦ Major rehabilitations which may be needed as individual unit processes near the end of their useful life;
 - ✦ Structural rehabilitations; or
 - ✦ Facility expansions or upgrades to meet future users demands or upgrade treatment.”

Enforceable Master Agreements



- **California State Revenue Guidelines**

(State Water Resource Control Board March 1998 Edition Appendix G)

- **Operation and Maintenance, including replacement**

- “[I]nclude the costs of labor, power, chemicals, supplies, laboratory control and monitoring, general administration, billing, and incidental items incurred during operation...replacement and other administrative costs, such as overhead and accounting which are directly related to the O.M.&R.”
- Replacement
 - ✦ “[I]nclude all expenditures required for a facility to operate for its design life. Replacement cost does not include the following capital costs:”

- **Capital Cost**

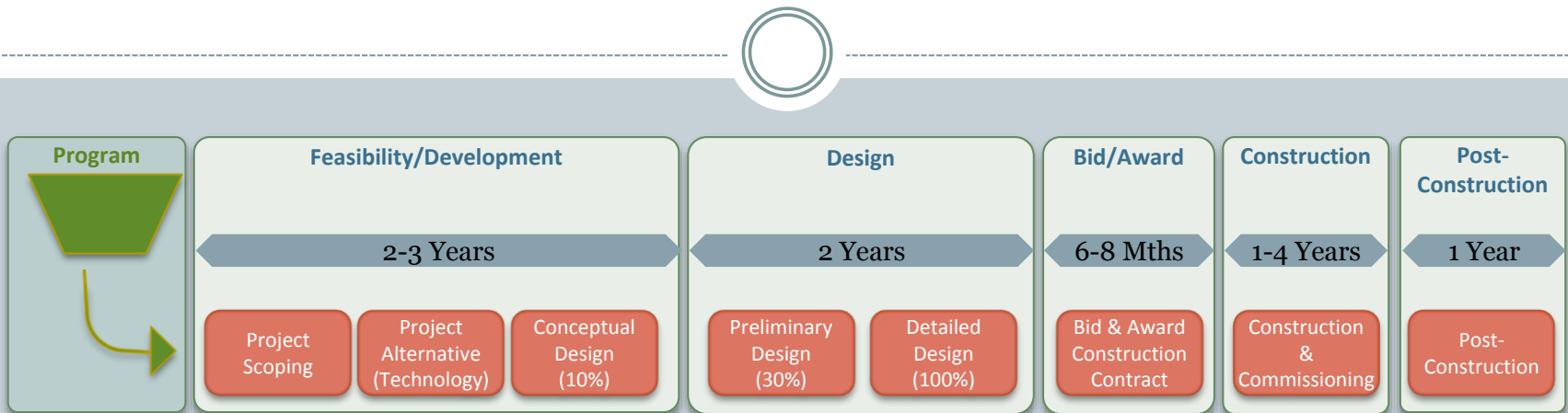
- “Major rehabilitations which may be needed as individual unit processes near the end of their useful life;
- Structural rehabilitations; or
- Facility expansions or upgrades to meet future users demands or upgrade treatment.”

Enforceable Master Agreements



- “All payments associated with future improvements at the Plant shall be made on the basis of Agency’s existing capacity rights.” (Part V, Section C “Payment for Future Improvements”)
- “All payments for capital...shall be on a quarterly basis...These invoices shall be presented at the beginning of the quarter in which the obligation is anticipated to occur...These payments shall be based upon the budget for capital costs for the Plant as recommended by TPAC and approved by the Administering Agency.” (Part V, Section E(1) “Capital and Land Acquisition”)
- “All bills shall be paid to the Administering Agency within forty-five (45) days from presentation...Adjustments in any payment described above shall be on the basis of actual payment to actual expenditures and shall be made no later than the third quarter billing of the following fiscal year.” (Part V, Section E(3) “Capital and Land Acquisition”)
- “If for any reason the contract cannot be renewed in the year 2031, or subsequent to the termination date, the discharging Agency shall have the right to continue discharging to the Plant, provided all payments of Agency’s share of Plant costs are made. All other rights under this Agreement shall cease.” (Part VII, Section C “Use of Treatment After Expiration of Term”)

Enforceable Master Agreements



PDM Stages	Project Scoping	Conceptual Design	Preliminary Design	Detailed Design	Bid & Award
AACE Estimate Class	Class 5	Class 4	Class 3	Class 2	Class 1
Expected Level of Accuracy	-50% to +100%	-30% to +50%	-20% to +30%	-15% to +20%	-10% to +15%
Digester Project		\$68.1M	\$78.6M	\$83.4M (60%) \$85M (90%)	TBD

Basis of Methodology: AACE International – Cost Estimate Classification*

Capital Cost Allocation



10/13/15
By: LN

EXHIBIT B
SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT
REPLACEMENT COST OF PLANT & EQUIPMENT
June 2015

FACILITY	ACQUISITION DATE	ORIGINAL COST	REPLACEMENT COST	ENR COST INDEXES
Asset #1 - Original primary plant	1958	3,788,400	46,951,500	899.60
Asset #2 - Plant Additions	1960	1,370,200	15,626,900	978.10
Asset #3 - Plant Additions & New Secondary Facility	1963	24,168,800	264,719,400	1,018.37
Asset #4 - Final Tank	1965	1,183,000	11,312,900	1,166.50
Asset #5 - Digestors	1966	993,600	8,616,700	1,286.30
Other Projects:				
1965-66	1965	103,900	993,600	1,166.50
1966-67	1966	253,300	2,201,000	1,286.30
1967-68	1967	24,200	192,000	1,406.10
1968-69	1968	322,100	2,354,700	1,525.90
1969-70	1969	59,900	406,000	1,645.70
1970-71	1970	102,700	648,900	1,765.50
Sludge Lagoons	1968	839,000	6,133,500	1,525.90
Foam Flotation Program	1970	23,000	145,300	1,765.50
1970 94/MGD Improvements	1970	5,809,400	36,705,900	1,765.50
1970 66/MGD Additions	1970	23,049,000	145,632,000	1,765.50
A.W.T.F.	1977	62,810,900	224,155,200	3,125.78
Other Projects:				
1977-78	1977	745,500	2,660,500	3,125.78
1978-79	1978	312,200	1,020,700	3,411.98
1979-80	1979	1,421,100	4,392,800	3,608.71
1980-81	1980	1,962,300	5,109,300	4,284.29
1981-82	1981	635,200	1,356,900	4,400.00
1982-83	1982	1,777,765	3,858,600	5,139.51
CAPITAL IMPROVEMENT PROGRAM:				
Intermediate-term Improvement	1987	88,699,500	179,339,700	5,517.18
First Stage Expansion	1987	20,035,190	40,599,100	5,517.18
1987 Capitalized Expenditures	1987	894,900	1,809,400	5,517.18
1989 Capitalized Expenditures	1989	527,473	1,025,800	5,735.84
1990 Capitalized Expenditures	1990	823,720	1,520,700	6,042.56
1991 Capitalized Expenditures	1991	114,902	209,100	6,131.10
1992 Capitalized Expenditures	1992	407,154	725,300	6,262.14
1993 Capitalized Expenditures	1993	1,291,825	2,239,900	6,433.55
1994 Capitalized Expenditures	1994	255,378	434,400	6,557.48
1995 Capitalized Expenditures	1995	10,595,576	18,064,900	6,542.75
1996 Capitalized Expenditures	1996	3,396,270	5,782,600	6,551.75
1997 Capitalized Expenditures	1997	9,320,130	15,516,900	6,700.22
1998 Capitalized Expenditures	1998	2,829,981	4,666,700	6,764.62
1999 Capitalized Expenditures	1999	133,138,713	217,710,300	6,821.78
2000 Capitalized Expenditures	2000	2,464,590	3,837,000	7,165.08
2001 Capitalized Expenditures	2001	3,663,326	5,821,100	7,409.12
2002 Capitalized Expenditures	2002	930,266	1,354,300	7,682.33
2003 Capitalized Expenditures	2003	1,663,511	2,378,500	7,801.70
2004 Capitalized Expenditures	2004	3,321,630	4,547,400	8,148.25
2005 Capitalized Expenditures	2005	665,780	897,900	8,271.20
2006 Capitalized Expenditures	2006	2,099,762	2,771,000	8,440.73
2007 Capitalized Expenditures	2007	1,197,306	1,473,600	9,063.41
2008 Capitalized Expenditures	2008	68,856,165	83,339,900	9,216.42
2009 Capitalized Expenditures	2009	86,452,121	99,056,300	9,735.67
2010 Capitalized Expenditures	2010	5,337,506	6,008,600	9,909.17
2011 Capitalized Expenditures	2011	4,237,725	4,644,200	10,178.79
2012 Capitalized Expenditures	2012	14,961,081	16,069,600	10,385.54
2013 Capitalized Expenditures	2013	24,009,116	25,779,900	10,388.84
2014 Capitalized Expenditures	2014	909,001	930,300	10,899.59
2015 Capitalized Expenditures	2015	745,432	745,400	11,155.07
TOTAL		625,696,884	1,534,403,400 (*)	

(*) Plant and equipment replacement cost is distributed to parameters using the percentages contained in the most current Revenue Program (Form No. 8, Summary of the Distribution of Capital Costs).

NOTE:

- Major plant facilities or equipment items shall be added to this Exhibit in the year purchased. Construction projects shall be added to this Exhibit in the year of acceptance at full construction value.
- Process related facilities and equipment that cost in excess of \$2 million shall be allocated to parameters (flow, BOD, SS, Ammonia) based on engineering design. Capital costs that are less than \$2 million and/or are not process related shall be allocated to parameters using the percentages contained in the most current Revenue Program (Form No. 8, Summary of Distribution of Capital Costs).
- This Exhibit shall not include replacement or rehabilitation costs.
- Facilities and equipment sold or otherwise disposed shall be deleted from this exhibit.
- This exhibit shall be updated annually using the June ENR (San Francisco) Construction cost index.

Capital Cost Allocation



- Exhibit B Notes (A-E)
- A. “Major plant facilities or equipment items shall be added to this Exhibit in the year purchased. Construction projects shall be added to this Exhibit in the year of acceptance at full construction value.”
- B. “Process related facilities and equipment that cost in excess of \$2 million shall be allocated to parameters (flow, BOD, SS, ammonia) based on engineering design. Capital costs that are less than \$2 million and/or are not process related shall be allocated to parameters using the percentage contained in the most current Revenue Program (Form 8, Summary of Distribution of Capital Cost”).
- C. “This Exhibit shall not include replacement or rehabilitation costs.”
- D. “Facilities and equipment sold or otherwise disposed shall be deleted from this Exhibit.”
- E. “This Exhibit shall be updated annually using the June ENR (San Francisco) construction cost index.

Capital Cost Allocation



- Agencies were, and will be charged for capital cost of future improvements according to the Master Agreement.
- Timing of project planning costs

Financing



- “Grants or outside financial assistance shall be shared on the basis of the Agency’s participation in the program for which the outside financial assistance is received.” (Part V, Section F(1) “Grants or Outside Financial Assistance”)
- Pledge for repayment of financing requires a source of revenue.

Financing



- State Revolving Fund Loan (SRF)
- Agency Proposed Amendments
 - Cap on CIP
 - Shifting of liability for costs
 - Redefining costs
 - Auditing
- Notice and Planning

TPAC Recommendation



- The Master Agreement requires Agencies to pay for the capital cost of future improvements.
- Capital cost of future improvements were properly allocated under the Master Agreement for project planning before engineer design was completed.
- The claim for breach of contract based on assumptions of improper capital cost allocation for the FY 16-17 fourth quarter invoice is premature.
- The Master Agreement does not require the Administering Agency to finance the Agency's share of the capital cost but the Administrating Agency can assist Agencies with financing if the Agencies agree to participate in the financing program.
- No Agency was charged for the cost of outside legal counsel services to assist San Jose and Santa Clara in negotiations of the Master Agreements.