



**San José-Santa Clara  
Regional Wastewater Facility**  
*Second Administrative Claim Hearing*  
May 18, 2017



## TPAC Findings: First Administrative Claim

- Master Agreements require Agencies to pay for future improvements.
- Agencies have not been overcharged for future improvements.
- Co-Owners have not breached the Master Agreements or acted inequitably in seeking amendments to the Master Agreements to confirm participation in financing.
- The Agencies' allegations related to lack of transparency is unsupported.

## Administering Agency

- “[M]aintain, repair, expand, replace, improve and operate the treatment Plant, and to do any and all things which it shall find to be reasonably necessary, with respect to its maintenance, repair, expansion, replacement, improvement and operation.” (Exhibit E, Section B(1))
- “To make, award and enter into contracts with third parties for the construction, improvement, replacement, expansion, or repair of the Treatment Plant.” (Exhibit E, Section B(2))

## Legislative History

It was the intent of the representatives in drafting this Agreement to provide a document that could be easily revised and updated as necessary. To that end, the Agreement is substantially comprised of Exhibits. These Exhibits will be updated as necessary so current information can be easily incorporated without the necessity of revising the entire Agreement. This Agreement replaces the original Master Agreements, the Settlement Agreement, and various other agreements that have been executed by the Agencies over the last fifteen years.

## History of Amendments to the Master Agreements

- First Amendments to Master Agreements to reflect participation in treatment plant capacity expansion (December 1985);
- Second Amendments to Master Agreements to reflect cost share between Agencies for development of a reclamation program (SBWR) as required by the Regional Water Quality Control Board before issuance of bonds to finance the program (December 1995);
- Third Amendment to West Valley Master Agreement to sell one million gallons per day (1mgd) contract capacity to the City of Milpitas (August 2006);
- Third Amendment to City of Milpitas Master Agreement to purchase one million gallons per day (1 mgd) contract capacity from West Valley Sanitation District (July 2006);
- Third Amendment to Cupertino Sanitary District Master Agreement to sell seven hundred and fifty thousand gallons per day (.75 mgd) of contract capacity to the City of Milpitas (August 2009); and
- Fourth Amendment to City of Milpitas Master Agreement to purchase seven hundred and fifty thousand gallons per day (.75 mgd) of contract capacity from Cupertino Sanitary District (August 2009).



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## Compare Definitions

- California State Revenue Guidelines  
(State Water Resource Control Board March 1998 Edition Appendix G)
- Operation and Maintenance, including Replacement Costs
  - “[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 Costs
  - “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.”



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## Compare Definitions

- 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.”*



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## Section C Payment For Future Improvements

- “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”)



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## Examples of Improvements

- WPCP Reliability Improvements Project (\$85M) FY08-09
- Electrical Reliability Improvements (\$23M) FY13-14, FY14-15
- Alternative Disinfection Facility (\$10.9M) FY 12-13
- Handrail Replacement (\$4M) FY08-09 to FY 15-16
- Fire Main Replacement (\$3.65M) FY 07-08 to FY 14-15



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## Project Packages

#	Package	Project	Estimated Start
1	Energy & Automation	Cogeneration Facilities	November 2013
2	Energy & Automation	Digester Gas Compressor	November 2013
3	Energy & Automation	Digester Gas Holder	November 2013
4	Energy & Automation	Electrical Reliability	November 2013
5	Energy & Automation	Emergency Generators	November 2013
6	Facilities	Handrail Replacement	November 2013
7	Primary Treatment	Iron Salt Facilities	November 2013
8	Solids Processing	Digester & DAFT Facilities Upgrades	November 2013
9	Facilities	Instrumentation Air	December 2013
10	Energy & Automation	Advanced Facility Control	February 2014
11	Filtration & Disinfection	Outfall R&R	March 2014
12	Facilities	Facility Wide Water Systems	July 2014
13	Headworks	Near-Term Headworks Improvements Package	July 2014
14	Headworks	New Headworks	July 2014
15	Secondary Treatment	Final Clarifier Rehabilitation & Repair	July 2014
16	Solids Processing	Digested Sludge Dewatering Facility	July 2014
17	Filtration & Disinfection	Filter R&R	September 14



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## Project Packages

#	Package	Project	Estimated Start
18	Facilities	Record Drawings Standardization of P&ID Documents	January 2015
18	Secondary Treatment	Aeration Tanks Rehabilitation & Repair	January 2015
19	Facilities	Support Building Improvements	March 2015
20	Facilities	Tunnel Rehabilitation	June 2015
21	Facilities	Yard Piping & Road Improvements	June 2015
22	Primary Treatment	East Primaries Rehabilitation & Repair	January 2016
23	Solids Processing	Lagoons & Drying Bed Retirement	January 2016
24	Secondary Treatment	BNR1 Clarifier Rehab Demonstration	January 2017
25	Solids Processing	Thermal Dryer Facility	January 2019
26	Filtration & Disinfection	New Disinfection Package	April 2019
27	Filtration & Disinfection	Alternative Filter Technology Field Verification	July 2019
28	Filtration & Disinfection	Alternative Filter Technology Field Verification	July 2019
29	Filtration & Disinfection	Final Effluent Pump Station & Stormwater Channel Improvements	July 2019
30	Secondary Treatment	Aeration Basin Future Modifications	July 2019
31	Solids Processing	Additional Digester Facility Upgrade	July 2019
32	Solids Processing	FOG Receiving	July 2019
33	Solids Processing	Greenhouse Demonstration	January 2020



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## Treatment Contingent on Payment of Costs

- “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”)



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## Treatment Contingent on Payment of Costs

- “City of San Jose shall be reimbursed from Treatment Plant funds for all costs and expenses incurred by it as Administering Agency of this Agreement, including, but not limited to, salaries and wages paid by San Jose to its officers and employees...”
- “[o]verhead expenses incurred by San Jose in furnishing said services and in administering this Agreement, to wit: payments made by San Jose for retirement benefits, payments made by San Jose for medical and hospital insurance covering officers and employees, miscellaneous overhead expenses of the auditing, purchasing and engineering departments of San Jose.”
- “The percentage or amount of overhead allowance or expense payable to San Jose shall be increase or decreased from year to year to truly reflect actual overhead and incidental costs and expenses incurred by San Jose...” (Exhibit E, Section D)

## Records

- Budget
- Invoices
- Reconciliation
- Public Records Act

## Wastewater Treatment Costs

- SBWR/AWTF
- Capital Project Art Element
- Program Outreach (Christmas in the Park)

## Findings to Second Administrative Claim

- The Agencies are required to pay their proportionate share of the capital cost for future improvements under the Master Agreements.
- The Agencies have been provided sufficient records relating to accounting of revenues and costs for the Wastewater Treatment Program.
- The Agencies were properly charged for overhead, SBWR/AWTF, public art, and educational outreach.