



January 22, 2016

Treatment Plant Advisory Committee, San Jose - Santa Clara Regional Wastewater Facility
Attn: Mayor Jamie L. Matthews, Chair
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
MayorAndCouncil@santaclaraca.gov

Members of the City Council of the City of San Jose
200 E. Santa Clara Street
San Jose, CA 95113
mayoremail@sanjoseca.gov

Members of the City Council of the City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
MayorAndCouncil@santaclaraca.gov

Re: Master Agreement for Wastewater Treatment - Claims of Breach of Agreement or Inequities

Dear Chair and Members of the Treatment Plant Advisory Committee and Members of the City Councils of the City of San Jose and City of Santa Clara,

West Valley Sanitation District, Burbank Sanitary District, Cupertino Sanitary District, Santa Clara County Sanitation District No. 2-3, and the City of Milpitas (collectively, the "Tributary Agencies"), each individually and jointly file the attached Claims of Breach of Agreement and Inequities ("Claim") to the Treatment Plant Advisory Committee ("TPAC") and the Members of the City Councils of the City of San Jose and City of Santa Clara, in accordance with the following provisions of the following Master Agreements for Wastewater Treatment:

Part VII, Section G, of the Master Agreement for Wastewater Treatment Between City of San Jose, City of Santa Clara and County Sanitation District #4, dated March 1, 1983, as amended.

Part VII, Section G, of the Master Agreement for Wastewater Treatment Between City of San Jose, City of Santa Clara and Burbank Sanitary, dated May 1, 1985, as amended.

Part VII, Section G, of the Master Agreement for Wastewater Treatment Between City of San Jose, City of Santa Clara and Cupertino Sanitary District, dated March 1, 1983, as amended.

Part V, Section G, of the Master Agreement for Wastewater Treatment Between City of San Jose, City of Santa Clara and County Sanitation District No. 2-3, dated January 1, 1985, as amended.

Part VII, Section G, of the Master Agreement for Wastewater Treatment Between City of San Jose, City of Santa Clara and City of Milpitas, dated March 1, 1983, as amended.

Each of the Tributary Agencies is exercising its individual right to file the attached Claim pursuant to its respective Master Agreement. The Claim is also jointly filed by all of the Tributary Agencies. Please find attached or enclosed the above-referenced Claim, together with all supporting documentation. In the electronic copy, the supporting documentation is available through the following hyperlink: <https://ext1.ci.milpitas.ca.gov:5001/fbsharing/415cjMfP>. A list of hyperlinks for each individual Exhibit is also attached. A hard copy of the Claim, which encloses the supporting documentation, will be sent via FedEx to your attention by Wednesday January 27, 2016.

We look forward to the scheduling of the TPAC public hearing to present our findings on the matter.

Sincerely,

City of Milpitas



Nina Hawk, Public Works Director

West Valley Sanitation District



Jon Newby, District Manager and Engineer

Burbank Sanitary District



Richard Tanaka, District Manager

Cupertino Sanitary District



Richard Tanaka, District Manager

County Sanitation District No. 2-3



Richard Tanaka, District Manager

Encs.

CC:

Board of Directors, West Valley Sanitation District

Board of Directors, Burbank Sanitary District

Board of Directors, Cupertino Sanitary District

Board of Directors, Santa Clara County Sanitation District No. 2-3

City Council, City of Milpitas

CLAIMS OF BREACH OF AGREEMENT AND INEQUITIES

Of the Master Agreements for Wastewater Treatment Between the City of San Jose, Santa Clara and the Tributary Agencies¹

Part 1: Introduction

The West Valley Sanitation District, Burbank Sanitary District, Cupertino Sanitary District, Santa Clara County Sanitation District No. 2-3, and the City of Milpitas (collectively, the “Tributary Agencies”) each individually and jointly file this written Claim of Breach of Agreement and Inequities (“Claim”) with the Treatment Plant Advisory Committee (“TPAC”) and the City Councils for the City of San Jose and City of Santa Clara. Filing of this Claim is a right afforded to the Tributary Agencies under their current Master Agreements for Wastewater Treatment with the City of San Jose and City of Santa Clara, the Co-Owners of the San Jose/Santa Clara Water Pollution Control Plant (presently known as the San Jose-Santa Clara Regional Wastewater Facility, hereinafter “Plant” or “RWF”), in accordance with the following provisions of the following agreements:

- Part VII, Section G, of the Master Agreement for Wastewater Treatment Between City of San Jose, City of Santa Clara and County Sanitation District #4 [West Valley Sanitation District], dated March 1, 1983, as amended.
- Part VII, Section G, of the Master Agreement for Wastewater Treatment Between City of San Jose, City of Santa Clara and Burbank Sanitary, dated May 1, 1985, as amended.
- Part VII, Section G, of the Master Agreement for Wastewater Treatment Between City of San Jose, City of Santa Clara and Cupertino Sanitary District, dated March 1, 1983, as amended.
- Part V, Section G, of the Master Agreement for Wastewater Treatment Between City of San Jose, City of Santa Clara and County Sanitation District No. 2-3, dated January 1, 1985, as amended.

¹ Tributary Agencies are West Valley Sanitation District, Burbank Sanitary District, Cupertino Sanitary District, Santa Clara County Sanitation District No. 2-3, and the City of Milpitas.

- Part VII, Section G, of the Master Agreement for Wastewater Treatment Between City of San Jose, City of Santa Clara and City of Milpitas, dated March 1, 1983, as amended.

(See Master Agreements under Exhibits A, B, C, D and E, hereinafter collectively referred to as the “Master Agreements”). Each of the Tributary Agencies is exercising its individual right to file the attached Claim pursuant to its respective Master Agreement referenced above. The Claim is also jointly filed by all Tributary Agencies. These Master Agreements are legal contracts that define the arrangement between the Co-Owners and each of the Tributary Agencies with respect to the treatment and disposal of wastewater at the RWF. Compliance with the terms and conditions of the Master Agreements is paramount to ensuring the future operation of the RWF, including the successful implementation of the Plant Master Plan (“PMP”), which anticipates approximately \$1.4 billion in capital upgrades to the RWF over the next ten years.²

Over the past several years, the Tributary Agencies have raised numerous concerns with the Treatment Plant Advisory Committee (“TPAC”) and the Co-Owners regarding the Master Agreements’ silence with respect to implementation of the PMP. Many of the issues pertain to fairness, equity and transparency in the City of San José’s billing of the Tributary Agencies for the PMP. After exhaustive yet unsuccessful efforts to resolve their concerns, the Tributary Agencies find it necessary to file this Claim because they are accountable to their ratepayers and must ensure that their obligations to pay their share of improvements to the RWF remain fair and equitable.

In summary, the Tributary Agencies’ Claim addresses the following:

- The City of San José’s methodology for allocating capital costs of the PMP to each Tributary Agency is a breach of the Master Agreements and inequitable;
- The Tributary Agencies’ payment obligations for PMP capital projects are currently unenforceable;
- The City of San José’s proposed amendments to the Master Agreements do not sufficiently address the scope of the PMP;
- The City of San José’s threat to the Tributary Agencies to approve incomplete restated Master Agreements by February 1, 2016, or else be denied the opportunity to participate in cost-saving pooled financing, is inequitable and violates the current Master Agreements; and
- The Tributary Agencies object to paying for legal services to negotiate against themselves.

In response to this Claim, the Tributary Agencies request that TPAC schedule a time and place for all parties to be heard within two months of the date of this Claim as required pursuant to above-referenced provisions of the Master Agreements.

² The Plant Master Plan was approved by the San José City Council on November 19, 2013.

Part 2: History and Background

The Tributary Agencies have been requesting amendments to the current Master Agreements for at least the past five years. The Tributary Agencies made these requests in response to the City of San José's and the City of Santa Clara's proposal to embark on a PMP for proposed improvements at the RWF. This process began around 2007, and the Tributary Agencies began noting issues with the current Master Agreements in 2010.

The Tributary Agencies are prepared to pay their fair share of the costs associated with the PMP, especially those deemed critical to the future of the RWF. This is evident from the support the PMP has received from the Tributary Agencies at both the Technical Advisory Committee and the TPAC. However, the Tributary Agencies are being asked to spend millions of dollars on major capital upgrades when the terms and conditions for payment are not within the scope of the Master Agreements and the costs of the upgrades are being unfairly allocated. Additionally, the payments would extend over the next 30 to 50 years without the Tributary Agencies knowing the scope, cost or payment schedule of each project when obtaining financing and without any guarantee that all the projects would be completed. This places the Tributary Agencies at great financial risk and compromises their ability to obtain long-term financing for these projects. These issues are even more urgent as the Tributary Agencies have a large fourth quarter payment due on April 1, 2016, as they are collectively required to pay \$18,371,389. This payment includes costs associated with the PMP improvements, even though the Master Agreements fail to address these improvements and the payment obligation.

Below is a chronology of the Tributary Agencies' history of raising concerns regarding the current Master Agreements:

- On August 17, 2010, the City of Milpitas adopted Resolution No. 8025 detailing guiding principles for the PMP. (See Exhibit F.) In Resolution No. 8025, the Milpitas City Council indicated that a new Master Agreement was required upon implementation of the PMP.
- In letters dated September 24 and October 14, 2010, City of Milpitas City Manager Tom Williams asked the City Council of the City of San José to have these guiding principles discussed, along with the need for an updated Master Agreement. Instead of welcoming this dialogue, the City of San José appears to have intentionally prevented the City of Milpitas from bringing forth these issues of concern, refusing to include the Milpitas discussion on meeting agendas as previously agreed. (See Exhibits G and H.)
- On October 7, 2010, the District Manager-Engineer from the Cupertino Sanitary District sent a letter to Mayor Chuck Reed requesting that Cupertino Sanitary District's Resolution No. 1221 be included on the October 12, 2010 TPAC meeting agenda. In Resolution No. 1221, the Cupertino Sanitary District's Board of Directors indicated that a new Master Agreement was needed in light of the proposed PMP. In this letter, the District Manager-Engineer also requested that the San José City Council support the position of Cupertino Sanitary District. (See Exhibit I.)

- On December 13, 2010, staff from the Cupertino Sanitary District met with San José City staff members to discuss certain costs being imposed outside the scope of the current Master Agreement, including the imposition of a public art fee and charges for staff time not associated with the RWF. The Cupertino Sanitary District also raised concerns regarding the general failure of the City of San José, as the administering agency of the Master Agreement, to properly keep the Tributary Agencies informed regarding budget issues and the future development of the land surrounding the RWF. Attending this meeting on behalf of the City of San José was Mollie Dent from the City Attorney's office, along with Dale Ihrke, Laura Burke, Kerrie Romanow, Bhavani Yerrapotu, Kirsten Struve, John Stufflebean, Mansour Nasser, and Linda Charfaurus. (See Exhibit J.)
- In 2013, during the period the PMP was undergoing California Environmental Quality Act review, the City of Milpitas, the Cupertino Sanitary District, and the West Valley Sanitation District all expressed concern that their Master Agreements did not properly address the proposed PMP projects. As such, these agencies requested a comprehensive update to the Master Agreements. This concern was expressed in written correspondence attached hereto as Exhibits K, L, and M.

For several years, the Tributary Agencies have expressed concerns regarding the need for an update to the current Master Agreements. The City of San José, however, has not taken this request seriously and no updates have been made.

More recently, on August 14, October 5, November 20, and December 9, 2015, staff and legal counsel for the Tributary Agencies sent letters to the City of San José regarding the need for a Master Agreements update. Staff and legal counsel for the Tributary Agencies even went so far as to prepare a redlined version of their current Master Agreements, proposing changes. Correspondence from staff to and from legal counsel to the City of San José is attached hereto as Exhibits N, O, P and Q. The redlined versions prepared by the Tributary Agencies addresses such basic items as updating and clarifying terms and definitions; enabling a process for funding capital improvements to the RWF; enabling a process for funding projects unrelated to the RWF; increasing transparency in the administration of RWF funds; and clarifying share in revenue generated from RWF lands. Following the submittal of the Tributary Agencies' redlined agreements, the City of San José circulated a proposed amended and restated Master Agreement to each of the agencies. The City's redlined version did not address a single one of the Tributary Agencies' proposed amendments.

Part 3: The City of San José's Methodology for Allocating Capital Costs of the Plant Master Plan to Each Tributary Agency is a Breach of the Master Agreements and Inequitable.

A. Plant Master Plan Projects are "Future Improvements," not "Replacement Costs."

The City of San José's (hereinafter "City," where unambiguous) current methodology for allocating PMP capital costs to the Tributary Agencies is not only a breach of the Master Agreement, but also is patently inequitable. Under the Master Agreements, the City is obligated to allocate capital costs for each project based on each Tributary Agency's respective contractual capacity. As an example, the Master Agreement with West Valley Sanitation District ("West Valley") provides:

All payments associated with future improvements at the Plant shall be made on the basis of Agency's existing capacity rights. Final payment shall be determined based upon actual project cost. This payment shall be a proportional share in accordance with a revised Exhibit "A."

(See Exhibit A, Part V(C)(1) (hereinafter "West Valley Master Agreement").³ Contractual capacity rights are based upon four treatment parameters: flow, Biochemical Oxygen Demand ("BOD"), Suspended Solids ("SS"), and Ammonia ("NH₃"). The capital costs of a given project must be attributed to these four parameters based upon the project's defined treatment purpose. (See, e.g., Exhibit R, State Water Resources Control Board, *Revenue Program Guidelines: Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities, Appendix G* (March 1998, p. G-19). Some project's costs might be based exclusively on flow, while others might be based exclusively on BOD and SS.

The determination of capital costs allocated to each Tributary Agency begins with assigning applicable treatment parameters to the project, and then calculating the total costs of each parameter. Then the total project costs of the applicable parameters are distributed to each Tributary Agency based on its percentage of contractual capacity for that parameter. For example, if a \$10 million capital project is based exclusively on flow and a Tributary Agency's contractual flow capacity is 10%, then that Tributary Agency's proportional share of the project's capital costs is \$1,000,000.

The City applied the above methodology to large capital improvement projects in the past. (See, e.g., West Valley Master Agreement, Exhibit D of the Second and Third Amendments.) For example, to allocate costs of Phase 1 of the South Bay Water Recycling Program ("SBWRP"), the City recognized that the applicable treatment parameter of the SBWRP was flow, and therefore the cost-sharing methodology was based upon each Tributary Agencies' contractual capacity for flow:

SBWRP Phase 1 consists primarily of water transmission and distribution facilities....Such facilities are designed based on handling flow – the volume of water that will be distributed through the recycled water transmission and distribution system. Thus, the costs of the SBWRP Phase 1 facilities are allocated entirely upon flow capacity....This proposed amendment provides a flow-based

³ The other Tributary Agencies' Master Agreements contain substantially similar, if not identical, provisions.

allocation of SBWRP Phase 1 costs and is consistent with the current cost allocation provisions of the Master Agreements.

(See Exhibit S, City of San José Memorandum to the Honorable Mayor and City Council: Amendment to Master Agreements – Participation in South Bay Water Recycling Project, Phase 1, January 24, 1995.) The Master Agreements were amended accordingly to include a capital cost-sharing program for Phase 1 of the SBWRP based upon each Tributary Agency’s contractual flow capacity. (See for example Exhibit A, West Valley Master Agreement, Second Amendment, Exhibit D, p. D-2 and Table 3.)

The City of San José acknowledges that this methodology of allocating capital costs on a project-specific basis using the parameters associated with the project’s treatment purpose applies to the PMP. In the City’s Ten-Year Funding Forecast for the RWF dated February 2015, the City’s consultant, Carollo Engineers, described how this cost-sharing methodology should function for projects included in the PMP:

The process of assigning capital costs to billable constituents [the four treatment parameters of flow, BOD, SS, and NH₃] is developed by first allocating the physical system to the billable constituents on a unit cost basis. For example, the Headworks project is primarily sized based on hydraulic capacity requirements. Consequently, the cost of operating and maintaining a Headworks is proportional to the amount of flow that passes through it and is allocated 100 percent to sewer flow.

(Exhibit T, Carollo Engineers, *City of San José, San José-Santa Clara Regional Wastewater Facility Ten-Year Funding Forecast, February 2015*, p. 18 (hereinafter “Carollo Report”).) The Carollo Report states that PMP capital costs should be allocated on a project-specific basis using applicable parameters, and it represents a cost-sharing methodology that is consistent with the Master Agreements and consistent with past practice for cost-sharing the SBWRP. The City Council accepted the Carollo Report at its May 6, 2015 meeting. More recently, on January 15, 2016, City staff provided Tributary Agency staff with two documents indicating how the capital costs for the PMP Digester project *could* be allocated to the Tributary Agencies based upon the applicable parameters of BOD and SS. (See Exhibit U.)⁴ These documents are also consistent with the Carollo Report’s description above.⁵ The PMP capital projects should therefore be considered “Future Improvements” under Part V(C)(1) of the Master Agreements, which requires a methodology for allocating the costs of a project’s applicable treatment parameters based on contractual capacity rights, and further requires corresponding revisions to the Master Agreements.

⁴ The City has yet to make any official commitment that the Digester project costs will be allocated to the Tributary Agencies in this manner.

⁵ The Carollo Report later recommends an alternate, improper methodology, which is the focus of the remainder of Part 3.

Notwithstanding the foregoing, the City has decided to construe PMP projects differently. Rather than view PMP projects as “future improvements” to the RWF, the City has decided to improperly construe such projects as “Replacement Costs.” The definition of “Replacement Costs” is as follows:

All 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:

1. Major rehabilitation which will be needed as individual unit processes or other facilities near the end of their useful lives;
2. Structural rehabilitations;
3. Plant expansions or upgrades to meet future user demands.

(See, e.g., Exhibit A, Part I(N).) To summarize this definition, Replacement Costs include all capital expenditures necessary to maintain the capacity and performance of the RWF as it stands today, but exclude capital expenditures that concern projects on the scale of major or structural rehabilitation that are necessary to upgrade facilities that are failing and need to be rebuilt, as well as Plant expansions or upgrades to meet future demand.

The PMP projects, totaling an estimated \$1.4 billion over the next decade, are clearly major and structural rehabilitation projects that are necessary to upgrade an aging treatment plant that has facilities nearing the end of their useful lives. In the RWF’s Five-Year 2016-2020 Capital Improvement Program (“5-Year CIP”), the PMP is described as a “30-year planning-level document focused on long-term rehabilitation and modernization of the Plant.” (See Exhibit V, Overview, p. V-148.) The 5-Year CIP then goes on to state that rehabilitation is needed for the primary, secondary and tertiary treatment processes. For example, it states:

“*Rehabilitation* of the primary tanks will be conducted in four phases....”;
“*Rehabilitation* of the secondary and nitrification clarifiers will be conducted in phases and involves performance modifications, along with mechanical, *structural*, and electrical *rehabilitation*”; “*Due to the age and condition* of the existing tertiary filters, a significant investment would be required to *refurbish* and retain them for long-term future use;” “The Plant’s engine generators, mechanical and electrical process air compressor, and gas compressors are between 17 and 58 years old, and *have been breaking down with increasing frequency*, well beyond forecasted levels.”

(*Id.*, pp. V-151, V-152, V-153, V-155 (emphasis added).) The 5-Year CIP goes on to describe some of the PMP projects as major and structural rehabilitation projects, such as the construction of a new headworks facility, which is designed to provide preliminary treatment of incoming wastewater (\$90 million); aeration tanks and blower rehabilitation (\$35 million); the rehabilitation of structural, mechanical, and electrical elements of existing nitrification and secondary clarifiers (\$74.1 million); a digester and thickener facilities upgrade, which includes the

rehabilitation of up to 10 anaerobic digesters, including new covers, mixing systems, and heating system upgrades, as well as the construction of new above-ground gas manifold, new sludge pipeline, and new waste biogas flare system (\$92.3 million); and the construction of a new cogeneration facility to replace existing engine-generators with new internal combustion engines, and construction of new emergency diesel generators (\$86.7 million). (*Id.*, pp. V-151 – V-155.) In other words, the capital projects included in the PMP do not meet the definition of Replacement Costs.

Under California law, “a contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting.” (Cal. Civil Code § 1636.) Further, the parties’ intent in entering into an agreement should be ascertained from the writing alone.” (*Id.* § 1639.) The City’s interpretation of “Replacement Costs” as including PMP projects is inconsistent with California law and a plain reading of the Master Agreements. This contrary interpretation creates numerous inequities among the Tributary Agencies, as explained further herein.

B. The City of San José’s Use of the FY 2015-2016 Revenue Program to Allocate Plant Master Plan Costs Does Not Apply to Plant Master Plan Capital Projects.

Because the City has taken the liberty to construe PMP capital projects as Replacement Costs, the City is therefore relying upon a cost allocation methodology that is specific to Replacement Costs, one which should *not* be applied to PMP projects. This methodology appears in Exhibit B, Note B of the West Valley Master Agreement (and noted in other Master Agreements). Exhibit B, Note B of the West Valley Master Agreement provides:

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 replacement allowance percentages contained in the most current Revenue Program* (emphasis added).

Exhibit B, Note B contains two separate cost allocation methodologies: the first sentence contains a methodology for projects that cost more than \$2 million, while the second sentence contains a methodology for projects that cost less than \$2 million.⁶ For reasons unclear to the Tributary Agencies, the City has decided to apply the “less than \$2 million” methodology in the second sentence to PMP projects, even though most, if not all of the PMP projects are expected to exceed \$2 million each. This “less than \$2 million” methodology has a cost infrastructure allocation demonstrated in the Fiscal Year 2015-2016 Revenue Program Form No. 10D. (Exhibit W, City of San José, *FY 2015-2016 Revenue Program*, March 4, 2015, p. 12.) On Form No. 10D of the FY 2015-2016 Revenue Program, the total costs for each of the parameters are \$335,502,200 (flow), \$62,777,600 (BOD), \$38,011,500 (SS), and \$20,940,300 (NH₃), for a grand total of \$457,231,600. The allocation of project cost based on Form 10D is 73.1% based on

⁶ The first sentence contains the same methodology used for “future improvements.”

flow, 13.9% based on BOD, 8.4% based on SS, and 4.6% based on NH₃. Therefore, to allocate current PMP costs in FY 2015-2016 and in future years, the City intends to multiply each Tributary Agency's contractual capacity by the respective parameters' capital percentage and summed for the total capital allocation for each agency. The City intends to use Form No. 10D as the baseline for allocation of PMP costs and then adjust the allocation each fiscal year as new projects are undertaken. (See Exhibit T, p. 19.) Using Form No. 10D as a baseline is highly problematic because it represents combined allocations for capital projects completed more than 20 years ago: specifically, pre-1982 debt service for the primary, secondary, and advanced waste treatment facilities (Form No. 10A); plus the 1982 Priority and Intermediate-Term Improvements and the First Stage Expansion (Form No. 10B); plus the SBWR Phase I (Form No. 10C). Costs for these past capital projects were based on parameters that have no relevance to the parameters that apply to current PMP projects. In other words, the City plans to allocate PMP project costs based upon the combined costs of past CIP projects, which themselves were based upon treatment purposes that have no similarity with the PMP projects.

Not only is use of the "less than \$2 million" methodology for PMP projects a breach of the Master Agreements, but it also causes the Tributary Agencies to endure appreciable financial hardship. Chiefly, it compels the Tributary Agencies to spend millions more on allocated costs for PMP projects than if the proper methodology were used. As illustrated in the spreadsheet attached as Exhibit X, the Tributary Agencies would be required to pay substantially *more* than their fair shares for the Digester project. Assuming the Digester project costs \$119,197,800, under the Replacement Costs and Exhibit B, Note B for projects less than \$2 million approach, West Valley would overpay by \$1,372,209; Cupertino Sanitary District would overpay by \$1,384,698; the City of Milpitas would overpay by \$2,941,523; and Burbank Sanitary District would overpay by \$89,863.⁷ (See Exhibit X.) This example clearly illustrates why allocating costs using the "less than \$2 million" methodology is wholly inequitable, as well as a breach of the implied covenant of good faith and fair dealing. The Digester costs and all other PMP capital costs must be allocated on a project-specific basis using parameters based on the project's treatment purposes. This is the only fair and equitable methodology that the Tributary Agencies can justify to their ratepayers.

Even if the City were to credit the Tributary Agencies for their overpayment of PMP costs in the third quarter each fiscal year, doing so will still place the Tributary Agencies in an untenable financial position. If the Tributary Agencies obtain long-term financing based on the provision under Replacement Costs and Exhibit B, Note B for projects less than \$2 million approach, they will be required to take on more debt than necessary and likely face unnecessary rate increases, among other budgetary issues. This scenario should be avoided. Moreover, if the Tributary Agencies take out long-term debt for multiple PMP projects, but one or more of the projects is delayed or cancelled for some reason, then the Tributary Agencies risk falling into negative arbitrage. These are important reasons why the City must allocate PMP project costs on a project-specific basis. Just as the City amended the Master Agreements in the past for the

⁷ County Sanitation District No. 2-3 is not included in the spreadsheet because it does not own any capacity in the RWF; for the purposes of this illustration only, its costs are subsumed within the costs allocated to the Cities of San José and Santa Clara.

Phase I SBWRP, which contained a project-specific scope, allocated cost, and payment schedule, so too should the City amend the Master Agreements for each PMP project, with the specific scope, allocated cost, and payment schedule for each project. This will enable the Tributary Agencies to document their funding obligations to their underwriters, avoid negative arbitrage, and avoid overcharging their ratepayers.

In summary, the City's method for allocating PMP costs using the "less than \$2 million" provision under Replacement Costs and Exhibit B, Note B is a breach of the Master Agreements. PMP Projects are not only excluded from the definition of Replacement Costs, but also the costs of the projects exceed \$2 million each. Using past CIP projects and using the "less than \$2 million" methodology as a baseline further result in numerous inequities, most critically the overpayment of millions of dollars in capital costs that could otherwise be used to smooth rates or pay for other necessary capital, or operation and maintenance RWF costs. Even if the PMP projects meet the definition of Replacement Costs, then only the first sentence of Exhibit B, Note B of the West Valley Master Agreement should apply, because it requires projects that exceed \$2 million to be allocated to the parameters (flow, BOD, SS, ammonia) based on engineering design. Consequently, cost allocation must at least follow the first sentence of Exhibit B, Note B, which uses applicable parameters based on a specific project's treatment purpose. However, the most appropriate methodology is to construe the PMP projects as "future improvements" and to amend the Master Agreements exhibits to allocate PMP costs on a project-specific basis using parameters associated with the project's treatment purpose.

Part 4: The Tributary Agencies' Payment Obligations for PMP Capital Projects are Currently Unenforceable.

Until the Master Agreements are amended to include the appropriate cost allocation for PMP capital projects, as well as a description, scope of work, schedule of implementation, and financing or payment schedule for PMP capital projects, the Tributary Agencies have no obligation to make payments on PMP capital expenditures. Nonetheless, the Tributary Agencies are currently being charged for PMP projects. This is causing the Tributary Agencies to violate their fiduciary duties to their ratepayers. The obligation to make payments on PMP capital expenditures without an amendment to the Master Agreements is unconscionable, a violation of public policy, an impossibility, a breach of the covenant of good faith and fair dealing, and therefore unenforceable. The City's act of billing the Tributary Agencies for PMP capital costs is essentially a breach of the Master Agreement.

Furthermore, the City's act of billing the Tributary Agencies for PMP capital costs is inequitable. As explained above, the methodology for allocating PMP costs is in error, because such costs will most certainly be based on Form 10D of the FY 2015-2016 Revenue Program. The fourth quarter bill due on April 1, 2016 is therefore inappropriately calculated, because the Tributary Agencies are being overcharged to effectively subsidize the City of San José and City of Santa Clara. Charging the Tributary Agencies in this manner also equates to a breach of the implied covenant of good faith and fair dealing. The Tributary Agencies should be charged only for their proportional share of a specific project's capital costs based on the project's treatment purpose. The Tributary Agencies are willing to pay their proportional share of PMP costs, but the costs must be accurately and fairly allocated. Consequently, the Tributary Agencies reserve

the right to dispute those portions of their fourth quarter FY 2015-16 bills that pertain to PMP capital costs. This same analysis applies to previous bills that included charges for PMP projects. The Tributary Agencies do not know how those project costs were allocated to the four treatment parameters. The Tributary Agencies therefore reserve the right to dispute these prior billings as well.

Part 5: The City of San José’s Proposed Amendments to the Master Agreements Do Not Sufficiently Address the Scope of the PMP.

Although the City’s proposal to amend the Master Agreements is intended to cover financing of PMP capital projects over the next 50 years, the City’s proposal fails to address the scope and magnitude of other PMP projects, most notably the development of land and odor control. To the extent the City expects the Tributary Agencies to agree to its proposal by February 1, 2016 without any negotiation, the City should be forewarned that many other obligations associated with the larger PMP would not be covered under the terms and conditions of that amended Master Agreement. Consequently, it is extremely important to engage in thoughtful and good faith negotiations over the necessary terms and conditions to ensure that the PMP is sufficiently covered in the Master Agreements for the long term.

Part 6: The City of San José’s Threat to the Tributary Agencies to Approve Incomplete Restated Master Agreements by February 1, 2016, or else be Denied the Opportunity to Participate in Cost-Saving Pooled Financing, is Inequitable and Violates the Current Master Agreements.

The City has informed the Tributary Agencies that to participate in low-interest Clean Water State Revolving Fund (“SRF”) loans for which the City has applied, they must sign the City’s version of a restated Master Agreement no later than February 1, 2016. The City has been unclear about the basis for the February 1 financing deadline, except to say that upgrades are long overdue, a point on which the Tributary Agencies do not disagree. The Tributary Agencies believe, however, that the City has artificially created the February 1 deadline to pressure the agencies to sign a restated Master Agreement that denies the ratepayers transparency regarding the basis for their rates. The Tributary Agencies also believe that this timeline can realistically be extended a few months to allow the City of San José, the City of Santa Clara, and all of the Tributary Agencies to negotiate mutually-agreeable amended and restated Master Agreements.

As noted above, on numerous occasions over the past five years, the Tributary Agencies have written letters to and verbally communicated with City staff stressing the need to negotiate a comprehensive revision to the Master Agreements in order to address the RWF’s future and minimize financial risk to their ratepayers. Had the City engaged in an active discussion with the Tributary Agencies regarding the need to amend the Master Agreements at the time these issues were initially raised in 2010, or even in 2013, then it is very likely the Tributary Agencies and the City would have executed mutually agreeable amended and restated Master Agreements by now. The Tributary Agencies maintain that the City’s February 1 deadline should be extended a few months to accommodate this much-needed negotiation.

Despite the Tributary Agencies' good faith intentions to negotiate amendments to the Master Agreements, the City has demanded that the Tributary Agencies sign a restated Master Agreement which, as proposed by the City, essentially requires the Tributary Agencies to approve and execute without any opportunity to negotiate the proposed terms. The City's proposal also expects the Tributary Agencies to effectively sign a blank check for the entire 50-year term of the PMP, with some minor revisions to definitions and insurance provisions. This is unreasonable because it ignores any of the substantive changes requested by the Tributary Agencies. The City has repeatedly demanded that the Tributary Agencies acquiesce to its version of a restated Master Agreement or risk exclusion from the SRF program. This behavior is a breach of the obligation of the City to deal fairly and in good faith with the Tributary Agencies under the Master Agreement.

The Tributary Agencies have repeatedly acknowledged their obligation and intention to pay their fair share of RWF operation, maintenance and capital improvement costs. The Tributary Agencies maintain that it is the City's obligation, as administrator of the RWF, to develop least-cost long-term financing programs in which Tributary Agencies participate. The SRF loan program offers the least expensive financing option for the Tributary Agencies, because of its low-interest loans. It is not the obligation of the Tributary Agencies to assume their own long-term financial obligations in order to use their capacity in the RWF. It is consequently unreasonable and unfair for the City to deny the Tributary Agencies an opportunity to obtain low-interest SRF loans and save ratepayer money if the Tributary Agencies do not agree to the City's proposal by February 1, 2016.

Further, a court would likely find that the City is engaging in economic duress by forcing the Tributary Agencies to sign off on the City's version of a restated Master Agreement. Courts have held that economic duress may provide a basis to invalidate a contract. (*Chan v. Lund* (2010) 188 Cal.App.4th 1159, 1173; *Tarpy v County of San Diego* (2003) 110 Cal.App.4th 267, 276.) Economic duress does not require an unlawful act such as a tort or a crime but may be present if there is a wrongful act that is so coercive that a reasonably prudent person without any reasonable alternative has given in to the perpetrator's pressure and agreed to an unfavorable contract. (*Rich & Whillock, Inc. v Ashton Dev., Inc.* (1984) 157 Cal.App.3d 1154, 1158.) An important element of economic duress is that the party seeking to avoid the contract must have had no reasonable alternative. For some of the Tributary Agencies, the inability to participate in low-interest SRF loans through the City leaves them no other means to make the large payments coming due. If these agencies are not able to participate in low-interest SRF loans, they will be unable to pay in cash or secure proper financing on their own because of existing financial limitations. Even if some of these agencies can pay some portion of the payments in cash, it will leave them with no remaining funds to continue to make payments, thereby running the risk of bankruptcy. If bankruptcy were to occur, some of these agencies would be unable to maintain critical infrastructure and the public health and safety would be placed at risk. Raising rates is also not a viable option as some of the agencies do not believe rates can be raised fast enough to accommodate the cash payments that will become due. Overall, the opportunity to participate

in SRF financing is being held hostage until the Tributary Agencies sign the City's version of the Restated Master Agreement.

Signing this version of the Master Agreement is also not an option as it lacks the financial accountability the Tributary Agencies need to provide their respective ratepayers and creates additional legal liability for the Tributary Agencies. The City's behavior in holding the SRF loan hostage is in bad faith, a breach of the implied covenant of good faith and fair dealing, and raises concerns regarding economic duress.

Part 7: The Tributary Agencies Object to Paying for Legal Services to Negotiate Against Themselves.

The January 14, 2016 TPAC special meeting agenda indicated a request for the TPAC to accept the proposed 2015-2016 Mid-Year Budget Review strategy to provide staffing and funding to support amendments to the Master Agreement for Wastewater Treatment between the City of San José, City of Santa Clara, and the Tributary Agencies. (See Exhibit Y.) In the staff report for this item, dated January 8, 2016, it is indicated that outside counsel legal services will be required to negotiate amendments to the Master Agreements. It also appears that the City expects the Tributary Agencies to help pay for such outside legal counsel as part of the wastewater treatment budget. To the extent that the hiring of outside legal counsel would be solely for the benefit of the City of San José and the City of Santa Clara, making the Tributary Agencies pay for these costs presents a clear conflict of interest. The Tributary Agencies should not be paying for the City of San José's and the City of Santa Clara's outside legal counsel that do not represent the Tributary Agencies' interests. The Tributary Agencies will not pay to negotiate amendments to the Master Agreements against themselves, and therefore object to such an arrangement. This objection was the basis for the Tributary Agencies voting in opposition to approve the 2015-2016 Mid-Year Budget Review at the January 14 TPAC meeting.

Part 8: Relief Requested

The Tributary Agencies request the following:

- a. The Master Agreements should be updated to reflect implementation of the PMP on a project-specific basis, including project descriptions, schedule of implementation, project cost, updated infrastructure parameters, and a cost allocation methodology that is based upon the parameters of the project's treatment purpose, consistent with the State Water Resources Control Board Revenue Program Guidelines.
- b. The Tributary Agencies should be billed only for costs covered under the Master Agreements and based on the appropriate cost allocation.
- c. Improperly billed Plant Master Plan projects should be refunded to the Tributary Agencies.

d. In negotiating the Master Agreements, the Tributary Agencies should not be forced to pay for the City of San José or City of Santa Clara's outside legal counsel hired to assist San Jose and Santa Clara with such negotiations.

e. The City should not force the Tributary Agencies to sign proposed amendments to the Master Agreements under duress.

LIST OF HYPERLINKED EXHIBITS:

Exhibit A_WVSD Master Agreement 1983 and amendments 1,2,3.pdf:

<https://ext1.ci.milpitas.ca.gov:5001/fbsharing/7DRWHJYS>

Exhibit B_Burbank Master Agreement 1985 and Amendment 1.pdf:

<https://ext1.ci.milpitas.ca.gov:5001/fbsharing/NZUxuI9R>

Exhibit C_CUSD Master Agreements 1983 with amendment 1,2,3,4.pdf:

<https://ext1.ci.milpitas.ca.gov:5001/fbsharing/7190qYxk>

Exhibit D_CSD2-3 Master Agreement 1989.pdf:

<https://ext1.ci.milpitas.ca.gov:5001/fbsharing/MseVvdwX>

Exhibit E_Milpitas Master Agreement 1983 and amendments 1,2,3,4.pdf:

<https://ext1.ci.milpitas.ca.gov:5001/fbsharing/vq6VEILS>

Exhibit F_Reso 8025 Milpitas 041710.pdf:

<https://ext1.ci.milpitas.ca.gov:5001/fbsharing/eUO0Dc31>

Exhibit G_Letter Milpitas to CSJ 092410.pdf:

<https://ext1.ci.milpitas.ca.gov:5001/fbsharing/dFcmfRK0>

Exhibit H_Letter Milpitas to CSJ 101410.pdf:

<https://ext1.ci.milpitas.ca.gov:5001/fbsharing/aW4CcVTy>

Exhibit I_Letter CuSD to CSJ 100710.pdf:

<https://ext1.ci.milpitas.ca.gov:5001/fbsharing/f8GHxPqa>

Exhibit J_CuSD BOD Memo 011211.pdf:

<https://ext1.ci.milpitas.ca.gov:5001/fbsharing/dmNuGo55>

Exhibit K_Letter CuSD to CSJ 030613.pdf:

<https://ext1.ci.milpitas.ca.gov:5001/fbsharing/sxVvyKws>

Exhibit L_Letter WVSD to CSJ 110413.pdf:

<https://ext1.ci.milpitas.ca.gov:5001/fbsharing/xOAmbcJS>

Exhibit M_Letter Milpitas to CSJ 110513.PDF:

<https://ext1.ci.milpitas.ca.gov:5001/fbsharing/VtceOAEI>

Exhibit N_Letter Tribs to CSJ 081415.pdf:

<https://ext1.ci.milpitas.ca.gov:5001/fbsharing/JBolxoTk>

Exhibit O_Letter Tribs to CSJ 100515.pdf:

<https://ext1.ci.milpitas.ca.gov:5001/fbsharing/yu1FuFdx>

Exhibit P_Letter Tribs to CSJ 112015.pdf:
<https://ext1.ci.milpitas.ca.gov:5001/fbsharing/49RcU63f>

Exhibit Q_Letter Tribs to CSJ 120915.PDF:
<https://ext1.ci.milpitas.ca.gov:5001/fbsharing/B4ApQkoP>

Exhibit R_Revenue Program Guidelines SWRCB.pdf:
<https://ext1.ci.milpitas.ca.gov:5001/fbsharing/4Xd4YugW>

Exhibit S_CSJ Memo Amendment to Master Agreement 012495.pdf:
<https://ext1.ci.milpitas.ca.gov:5001/fbsharing/upyPgdaS>

Exhibit T_Carollo Report 10 year Funding Forecast.pdf:
<https://ext1.ci.milpitas.ca.gov:5001/fbsharing/6l2dZaxQ>

Exhibit U_Table 1 and 3 011516.pdf:
<https://ext1.ci.milpitas.ca.gov:5001/fbsharing/G3figBBu>

Exhibit V_Capital Budget 2016-2020.pdf:
<https://ext1.ci.milpitas.ca.gov:5001/fbsharing/u3T3sCZC>

Exhibit W_Revenue Program.pdf:
<https://ext1.ci.milpitas.ca.gov:5001/fbsharing/PEvf4lJC>

Exhibit X_PMP and Current Allocation Overpayment Analysis.pdf:
<https://ext1.ci.milpitas.ca.gov:5001/fbsharing/F7CUvHc4>

Exhibit Y_Mid-Year Budget Review Strategy for Master Agreement Amendments.pdf:
<https://ext1.ci.milpitas.ca.gov:5001/fbsharing/AiM2Gnep>



March 4, 2016

Mayor Sam Liccardo, Vice Chair
Treatment Plant Advisory Committee
200 East Santa Clara Street, 10th Floor
San Jose, CA 95113
mayoremail@sanjoseca.gov

Re: Tributary Agencies' Response to First Parties' Answer to Claim

Dear Vice Chair Liccardo and Members of the Treatment Plant Advisory Committee:

This letter responds to the City of San Jose's and the City of Santa Clara's ("First Parties") February 26, 2016 answer to the Claims for Breach of Agreement and Inequities filed by the West Valley Sanitation District, Burbank Sanitary District, Cupertino Sanitary District, Santa Clara County Sanitation District No. 2-3, and the City of Milpitas ("Tributary Agencies") on January 12, 2016 ("Claim") regarding the San Jose-Santa Clara Regional Wastewater Facility ("RWF").

The Tributary Agencies respectfully reject the First Parties' dismissal of each of the allegations raised in the Claim. In particular, the First Parties' assertion that an amendment to the Master Agreements is unnecessary for the Tributary Agencies to fulfill their obligations to pay for future RWF improvements ignores both historical precedent and the existing Master Agreements' shortcomings. This is especially true given the complexity and costs of the RWF upgrades associated with the Plant Master Plan.

The First Parties have mischaracterized as "simple" their own proposed amendment to the Master Agreements (see Attachment A). While the proposed changes may be few in number, the legal consequences are many and far-reaching. The proposed changes would impose an overbroad obligation on the Tributary Agencies to finance their share of the Plant Master Plan for the next 49 years, without detailing the scope and magnitude of the projects and without the legally required language dealing with transparency, accountability and the use of ratepayer funds.

The Master Agreements must clarify that ratepayer funds are only being used for wastewater treatment and disposal purposes. The Tributary Agencies requested this clarification in their proposed amendments by adding a definition of "Plant Purposes" (see Attachment B), but the First Parties' amendment did not acknowledge this important term. Ultimately, given that ratepayers will be investing hundreds of millions of dollars into the RWF over the next several

decades, the lack of transparency and contractual assurances not only threatens the Tributary Agencies' ratepayers, but the First Parties' ratepayers as well.

The First Parties' answer ignores the correspondence sent by the Tributary Agencies to the City of San Jose (the "City") over the past several years in which the agencies asserted the need to update the Master Agreements to include capital improvements and funding of the Plant Master Plan. A history of these communications is detailed in the Claim. However, San Jose dismissed the Tributary Agencies' concerns and delayed consideration of the Master Agreement changes. This stall tactic resulted in the City creating a self-imposed, time-critical argument to move forward -- since projects were out to bid -- and shut the agencies out of receiving low-interest loans from the state, situations that could have easily been avoided had the City responded in good faith and agreed to update the Master Agreements as requested.

In addition, the First Parties maintain that they have not overcharged the Tributary Agencies because the City has not yet issued fourth quarter bills. However, the City's letter regarding re-appropriation of funds, also dated February 26, 2016, acknowledges that the City overcharged the Tributary Agencies due to an incorrect cost allocation for the digester project, which will require reconciliation through a credit. (See Attachment C). Further, the Tributary Agencies are unable to quantify the magnitude of the past overcharges due to the City's inadequate response to the agencies' public records request for expenditures on Plant Master Plan projects.¹ This is direct evidence that the Master Agreements must be updated to make the billing process more transparent.

The amendments sought by the Tributary Agencies are primarily related to financing the Plant Master Plan and are not an attempt to shift RWF costs and liabilities to the First Parties' ratepayers. On the contrary, the Tributary Agencies have consistently maintained their willingness to pay their fair share of wastewater services, and continue to support the need for treatment plant improvements, which they recognize as necessary for the good of the entire service region. But without a clear understanding of the size of their financial obligations and the timing and scope of the planned projects, the agencies would be putting their ratepayers in jeopardy of being overcharged by the City. In filing the Claim, the Tributary Agencies are simply attending to their fiduciary duties to ensure that the large payments due in the future are correctly billed, and that ratepayer funds are being used for wastewater purposes.

Finally, the Tributary Agencies appreciate the First Parties' concurrence that the agencies should not be required to pay for the cost of the City's outside legal counsel in any future negotiations with the agencies.

¹ The Tributary Agencies note that, in response to their Public Records Act request dated January 12, 2016, the City has provided a meager amount of information. Withholding any nonexempt responsive information violates the Public Records Act and is inconsistent with the City's sunshine policy and the need to be transparent in the use of funds. The Tributary Agencies continue to review the documents provided and will be following up with the City regarding documents that are clearly missing.

For all other remaining issues in the Claim, the Tributary Agencies remain open to mediation to resolve their differences with the First Parties. The Tributary Agencies look forward to the opportunity to present their case and answer any questions at the public hearing before the Treatment Plant Advisory Committee.

Sincerely,

City of Milpitas



Nina Hawk, Public Works Director

West Valley Sanitation District



Jon Newby, District Manager and Engineer

Burbank Sanitary District



Richard Tanaka, District Manager

Cupertino Sanitary District



Richard Tanaka, District Manager

County Sanitation District No. 2-3



Richard Tanaka, District Manager

Encs.

CC:

City Council, City of San Jose
City Council, City of Santa Clara
Board of Directors, West Valley Sanitation District
Board of Directors, Burbank Sanitary District
Board of Directors, Cupertino Sanitary District
Board of Directors, Santa Clara County Sanitation District No. 2-3
City Council, City of Milpitas

ATTACHMENT A:

**First Parties' proposed amendment to the Master Agreements with
each of the Tributary Agencies**

**AMENDMENT AND RESTATEMENT OF MASTER AGREEMENT FOR
WASTEWATER TREATMENT
BETWEEN CITIES OF SAN JOSE AND SANTA CLARA
AND THE CITY OF MILPITAS**

This Amendment and Restatement of Master Agreement is made and entered into this ____ day of _____, 2016, by and between the City of San José and the City of Santa Clara, both being municipal corporations of the State of California (hereinafter referred to as “First Parties”), and City of Milpitas (hereinafter referred to as “Milpitas” or “Agency”).

WHEREAS, First Parties are co-owners of the “San José-Santa Clara Regional Wastewater Facility,” (the “Plant”) formerly known as the “San Jose/Santa Clara Water Pollution Control Plant”; and

WHEREAS, First Parties and Milpitas have previously entered into a Master Agreement for Wastewater Treatment dated March 1, 1983, a First Amendment to Master Agreement for Wastewater Treatment dated December 17, 1985, a Second Amendment to Master Agreement for Wastewater Treatment dated December 4, 1995, a Third Amendment to Master Agreement for Wastewater Treatment dated July 14, 2006, and a Fourth Amendment to Master Agreement for Wastewater Treatment dated August 5, 2009 (collectively referred to as the “Original Milpitas Master Agreement”) related to Milpitas’s use of the Plant; and

WHEREAS, implementation of the Regional Wastewater Facility Plant Master Plan will require investment in long-term capital improvement projects to upgrade and rebuild the Plant over the next thirty to fifty years necessitating certain additional amendments to the Original Milpitas Master Agreement; and

WHEREAS, for convenience and ease of reference, the parties wish to amend and restate the Original Milpitas Master Agreement;

NOW, THEREFORE, the parties agree that the Original Milpitas Master Agreement is hereby amended and restated to read as follows:

**PART I
DEFINITIONS**

A. Administering Agency.

The City of San José is and shall be the Administering Agency of this Agreement and as such shall execute and administer this Agreement in accordance with Section VIII of the 1959 Agreement excerpted in the attached Exhibit E.

B. Agencies.

The term “Agencies” shall be those tributary agencies discharging wastewater into the San José-Santa Clara Regional Wastewater Facility, previously referred to as “outside users” in the 1959 Agreement.

C. 1959 Agreement.

The term “1959 Agreement” shall mean the Agreement between San José and Santa Clara, dated May 6, 1959 and entitled “Agreement between San Jose and Santa Clara Respecting Sewage Treatment Plant,” as such Agreement now reads or as it may here after from time to time be amended or renegotiated.

D. Capacity.

The term “capacity” shall mean the Mean Peak Five (5) Day Dry Weather Plant Treatment capacity as contained in Exhibit “A,” attached hereto and incorporated herein by reference as if fully set forth.

E. Director.

The term “Director” shall mean the Director of the Environmental Services Department for the City of San José.

F. Engineering Study.

The term “Engineering Study” shall mean those studies that the First Parties shall cause to be made when the Plant has reached eighty-five percent (85%) of its designed capacity, beginning with 167 MGD and for every incremental capacity increase thereafter. The first Engineering Study shall be performed when the mean peak five-day dry weather flow to the Plant reaches 142 MGD. The Engineering Study shall include an analysis of capacity needs, the size, and nature of proposed facilities to be constructed, a construction timetable, and an estimate of total project costs, and an estimate of each participating agency’s share of project cost.

G. Exhibits.

The term “Exhibits” shall mean those Exhibits attached to this Agreement and incorporated into this Agreement by reference as if fully set forth. These Exhibits may be modified as contract amendments or amended from time to time as necessary to reflect changes of fact. The Exhibits shall be reviewed annually, or at such other times as significant changes occur, by the Treatment Plant Advisory Committee, which body shall recommend any modifications or amendments required.

H. First Stage Expansion.

The term “First Stage Expansion” shall mean that portion, as is presently described in the report of CH2M Hill, engineers, entitled “San José/Santa Clara Water Pollution Control Plant, Capital Improvement Program, Executive Summary, Revised June, 1982” and dated June 25, 1982, or as amended or revised, which consists of

improvements to all areas of the Plant and expansion of the Liquid Process, Process Control System, Sludge Processing and Disposal and will provide a capacity of 167 mgd.

I. Interest.

Interest will be to the extent permitted by law, equal to the rate of interest set forth in the monthly report to the Council of the City of San José, prepared by the Director of Finance of San José, with respect to said City's portfolio and interest earnings thereon.

J. Intermediate-Term Improvements.

The term "Intermediate-Term Improvements" shall mean that portion, as is presently described in the report of CH2M Hill, engineers, entitled "San José/Santa Clara Water Pollution Control Plant, Capital Improvement Program, Executive Summary, Revised June, 1982" and dated June 25, 1982, or as amended or revised, which consists of six (6) elements, as outlined in Chapter 2 of said report, which are designated to provide the Plant with a mean peak five (5) day dry weather treatment capacity of 143 mgd.

K. Long-Term Improvements.

The term "Long-Term Improvements" shall mean capital improvement projects identified in the Plant Master Plan dated March 2012 and approved by TPAC on November 14, 2013; Capital Improvement Program Validation Project Packages dated March 25, 2014; Ten-Year Funding Strategy dated February 2015 and approved by TPAC on May 14, 2015; and the Proposed 2016-2020 Capital Improvement Program for the Water Pollution Control Plant approved by TPAC on May 14, 2015, collectively referred to as "Project Documents," as these Project Documents may be amended or revised through the annual budget process, and periodic updates. The capital improvement projects identified in the Project Documents are to repair, replace, and upgrade the aging facilities and treatment processes at the Plant. The process areas include, but are not limited to, liquids treatment, solids treatment, energy and automation, and support facilities process areas.

L. Operating and Maintenance Costs.

Any 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, chemicals, 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.

M. Parameters.

The term “parameters” shall mean the four (4) treatment parameters of Flow, Biochemical Oxygen Demand (BOD), Suspended Solids (SS), and Ammonia (NH₃) as expressed in terms of estimates, which are the common denominator for computing annual and/or daily loadings.

N. Plant.

The term “Plant” shall mean the “San José-Santa Clara Regional Wastewater Facility,” formerly known as the “San Jose/Santa Clara Water Pollution Control Plant.”

O. Replacement Costs.

All 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:

1. Major rehabilitation which will be needed as individual unit processes or other facilities near the end of their useful lives;
2. Structural rehabilitations;
3. Plant expansions or upgrades to meet future user demands.

P. Replacement Fund.

Replacement fund shall mean those monies deposited with the Administering Agency for Replacement Costs at the Plant.

Q. TPAC.

The term “TPAC” shall mean the Treatment Plan Advisory Committee.

PART II
CAPACITY RIGHTS GRANTED TO AGENCY

A. General.

Commencing on the effective date of the Original Agreement, and thereafter during the term of this Agreement, and subject to all the conditions, limitations, restrictions, terms and provisions contained in this Agreement, and Agency's faithful compliance with and performance of the same, First Parties hereby grant to Agency a right to discharge wastewater into the Plant and to have the same treated and disposed of in and by said Plant the same as wastewaters of First Parties.

B. Capacity Rights.

First Parties have designed the Plant to provide for capacity to treat and dispose the volume and strength of wastewater specified in Exhibit "A". Agency shall be entitled for the duration of this Agreement to use the capacity as set forth in said Exhibit "A". First Parties and Agency agree not to discharge more than its capacity in the parameters as is specified in said Exhibit "A", except with the approval and agreement of the First Parties hereto in accordance with the terms and conditions hereinafter provided, or as provided in Part III. Any continuous and intentional violation of capacity rights will be considered a material breach of this Agreement and will be given priority in the claim of breach process as set forth in Part VII Section G.

C. San José-Santa Clara Regional Wastewater Facility Engineering Study.

First Parties agree to make an Engineering Study to redefine all "Agencies" future needs as set forth in Part I, Section F.

D. Restrictions and Regulations Respecting Nature, Kind, Type and Strength of Sewage.

First Parties shall inform Agency of the Industrial Waste Ordinance of the City of San José concerning the type and condition of discharge, which would be detrimental to the Plant. Each party to this Agreement shall adopt and enforce ordinances, resolutions, rules, and regulations to conform to the restrictions of said Ordinance. Any waiver to the above must be authorized by written Resolution of both the Council of the City of San José and the Council of the City of Santa Clara. Each party to this Agreement shall also comply with the applicable statutes, ordinances, rules, and regulations of agencies of the United States of America, and the State of California.

E. Reports, Data and Maps to be Provided by Agency.

It is mutually agreed that all parties shall prepare and file with the Director reports, data and maps as deemed necessary by the Director and Agency.

F. Area Restrictions.

Agency, unless otherwise authorized by written resolutions of the governing boards of both the City of San José and the City of Santa Clara shall not, and agrees that it will not, discharge or cause, allow, permit or suffer to be discharged into the Plant, or into any sewer line or lines which convey either directly or indirectly any wastewater to the Plant, any wastewater which is produced in, or emanates, or comes from any territorial property situated outside the service area map attached as Exhibit F. First Parties and Agency further agree not to discharge, or cause to be discharged, any wastewater into any sewer line or lines of the other party, either directly or indirectly, conveying wastewater to the Plant without written authorization of the owner of the sewer line.

PART III
FUTURE DISCHARGE CAPACITY RIGHTS

A. Redistribution of Capacity Rights.

1. In order to dispose of capacity, any Agency or First Parties may designate all or a portion of its capacity right as “excess pooled capacity,” which shall be available for disposal as hereinafter provided.
2. Any Agency or First Parties may acquire excess-pooled capacity as recommended by TPAC. Any Agency or First Parties may acquire excess pooled capacity at the replacement cost as described in Exhibit “B” plus that portion of the selling party’s replacement balance remaining in the Replacement Fund maintained by the Administering Agency.
3. If requests for excess pooled capacity total more than the excess pooled capacity available, then, as set forth in Part VI, TPAC will allocate the pooled capacity actually available in a manner to most closely achieve the same planning horizon for all requesting parties.

B. Acquisition of Additional Capacity Rights With Plant Expansion.

Agency shall have the right to participate in Plant expansions for the purpose of increasing the capacity right into the expanded Plant, subject to the following terms and conditions:

1. Before commencing the design of any such additions, improvements or changes, First Parties shall give Agency written notice of their intention to expand the Plant, and the design year for the proposed expansion, as set forth in the Engineering Study prepared in accordance with Part II, Section C.
2. Within ninety (90) days from and after the giving of such notice, Agency shall notify First Parties in writing whether it wishes to participate in the proposed expansion, and the amount of capacity desired to serve until the design year. If Agency fails to give such notice within such time, it shall be deemed to have elected not to participate in such expansion.
3. If Agency elects not to participate in such expansion, it will pay no part of the cost of additions, improvements, and changes, which are made for the purpose of increasing the capacity of the Plant.
4. If Agency elects to participate in such expansion, it shall pay to First Parties that part of the total cost of such additions, improvements, and changes as defined in Part V, Section B.
5. If the needs of all parties are different than the next feasible increment of plant expansion capacity as described in the Engineering Study, then as set forth in

Part VI, TPAC, will allocate the capacity available in a manner to most closely achieve the same planning horizon for all requesting parties.

C. Acquisition of Additional Capacity Rights Without First Parties Initiated Plant Expansion.

If Agency should desire to increase its capacity right into the Plant at a time when no expansion of the Plant as described in the Engineering Study, is proposed by First Parties and no excess pooled capacity is available, then Agency may seek additional capacity by the following method:

If requested by Agency, First Parties shall initiate a Special Engineering Study to determine the most feasible means to add to the Plant that capacity requested by Agency. When Agency agrees to pay for such increment, then First Parties shall expand the Plant by such increment. This right shall not be exercised within five (5) years of completion of the latest Engineering Study.

D. Adjustment to Capacity Rights Due to Operating Conditions.

1. In the event of a major Plant facility failure caused by an earthquake, explosion, war, flooding or the like, reductions in operational capacity and any cost of restoration shall be borne by all Agencies, including San José/Santa Clara and Agency in accordance with Exhibit "A", and the cost of restoration shall be borne proportionately.
2. Any changes in Plant capacity which either increase or decrease the capacity of the Plant, resulting from any means whatsoever, shall be proportioned to each agency including San José and Santa Clara in accordance with Exhibit "A".
3. TPAC, as set forth in Part VI, shall determine annually, during the month of November, the operational capacity, and productive use of the Plant in all parameters for all parties and the remaining design capacity of the Plant.
4. Agency and First Parties shall not exceed the capacity rights agreed upon pursuant to Exhibit "A".
5. If at any time, prior to the completion of the Intermediate-term Improvements, it becomes necessary to allocate connections to the sewer systems of the combined agencies; in that event, to the extent permitted by law, First Parties will receive forty percent (40%) of the connections of whatever type and all other dischargers will receive sixty percent (60%) of the connections of whatever type. Agency's share will be determined by Agreement among the Agencies. This paragraph shall only remain in effect until completion of the Intermediate-term Improvements.

PART IV
LAND

A. Participation.

Participation and rights in Plant land shall be as described in Exhibit “C”.

B. Sale of Land.

It is mutually agreed between First Parties and Agency that if First Parties should, during the term of this Agreement, sell or otherwise dispose of any of the lands of Exhibit “C” which is or are no longer needed for Plant purposes, Agency shall have the right to share in any revenue derived from such sale by First Parties proportionally in accordance with Exhibit “C.”

PART V
AMOUNTS PAYABLE BY AGENCY TO FIRST PARTIES

A. Payments for Existing Capacity Rights In The Intermediate Term And First Stage Expansion Projects and Phase 1 Water Recycling Program.

Payments for participation in the Intermediate-term and First Stage Expansion and Phase 1 Water Recycling Program shall be as described in Exhibit “D” attached hereto and incorporated by reference herein.

B. Payments for Additional Capacity Rights.

1. Payments with Plant Expansion. All payments associated with a Plant expansion as outlined in Part III, Section B, shall be paid for in proportion to the capacity rights requested in the basic parameters or based upon appropriate ratios of Agency design parameters to total project design parameters times total project cost.
2. Payments Without Planned Expansion. Should Agency elect to obtain additional capacity rights at a time when First Parties do not intend to expand Plant as designated in Part III, Section B, the expenses associated with this addition of capacity rights shall be the sole responsibility of Agency. All payments for studies, designs, and construction to provide additional capacity shall be deposited with the Administering Agency.
3. Payments for Transfer of Capacity Rights. Transfers of capacity rights between First Parties and Agency or between Agency and Agencies, shall be recommended by the TPAC and approved by First Parties and based upon the pooled capacity costs determined in Part IV, Section A. Transfer of capacity rights shall be based upon written agreement between the participating parties. Payment shall be due and payable as provided in said agreement.

C. Payments for Future Improvements.

1. All payments associated with future improvements at the Plant shall be made on the basis of Agency’s existing capacity rights. Final payment shall be determined based upon actual project cost. This payment shall be a proportional share in accordance with Exhibit “A”.
2. First Parties shall, not later than March 1st, of any fiscal year, provide Agency with a preliminary estimate of the amount of money required from Agency for future improvements or replacements for the ensuing fiscal year.

D. Payments for Operation and Maintenance Costs.

1. First Parties, Agency, and Agencies shall bear the cost of the operations and maintenance expenses of the Plant, including all reclamation facilities operated by the Plant. The cost of operation and maintenance of reclamation facilities shall be

determined based upon the actual flow (in million gallons per day) of Agency's discharge into the Plant. All other operation and maintenance expenses of the Plant shall be determined based upon the parameters of Agency's actual discharge into the Plant. Agency shall provide to First Parties, by December 1st of each year, data indicating expected flow and discharge for the ensuing fiscal year.

2. First Parties shall, not later than March 1st of each year, provide Agency with a preliminary estimate of the amount of money required to operate and maintain the Plant, including all reclamation facilities operated by the Plant, for the ensuing fiscal year. In addition, First Parties shall indicate Agency's estimated annual share for operation and maintenance costs as apportioned to treatment parameters, and for operation and maintenance costs for reclamation as apportioned to flow.
3. Agency shall provide to First Parties a copy of Agency's adopted annual sewer revenue program by August 1st of each year. This revenue program shall conform to all federal and/or state guidelines as now exist or may exist in the future.
4. During the second quarter of each fiscal year, TPAC shall review each Agency's total flow and total discharge to the Plant for the preceding fiscal year in terms of the parameters. Adjustments and costs, if any resulting from this review shall be made in accordance with Part V, Section E, Paragraph 3b herein.

E. Method of Payment.

1. Capital and Land Acquisition. All payments for capital and land acquisition shall be on a quarterly basis, the first quarter beginning July 1st. These invoices shall be presented at the beginning of the quarter in which the obligation is anticipated to occur. The date of financial obligations for capital expenses and land acquisitions shall be the date of award of contract. These payments shall be based upon the budget for capital costs for the Plant as recommended by TPAC and approved by the Administering Agency.
2. Operation and Maintenance Costs. All payments for operation & maintenance expenses shall be made on a quarterly basis, the first quarter beginning July 1st. Invoices for these payments 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 operation and maintenance costs of the Plant as recommended by TPAC and approved by the Administering Agency.
3. General Information.
 - a. All bills shall be paid to the Administering Agency within forty-five (45) days from presentation. Interest will be charged on any late or unpaid bills.
 - b. 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. A statement outlining the method of adjusting costs and actual adjustments shall be included.

- c. Any and all monies which Agency is herein required to pay to First Parties shall be paid to the Administering Agency.

F. Credits.

1. Grants or Outside Financial Assistance. Any grants, recoveries, or outside financial assistance received, and any interest earned thereon, shall be credited to First Parties, Agencies and Agency in the quarter following receipt, along with a statement outlining the source of grant revenue and method of distribution. 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.
2. Interest. Interest on moneys advanced, credits held for Agency or amounts due from Agency, shall be determined on a monthly basis.
3. Revenues and Income. If First Party should, during the term of this Agreement, receive any income or revenues related to land, products or services at the Plant, then Agency shall be entitled to a share of the income. Agency's share shall be that proportion of such income based on Agency's contribution to the capital cost or O & M cost, which is applicable, during the fiscal year of receipt of such income.

G. General.

Payment to Agency of any moneys to which it may become entitled may be made by off-setting the amount of such moneys against any payments which Agency may be obligated to pay to First Parties under the provisions of this Agreement or Agency may request cash reimbursement of any credit balance. The request for cash reimbursement shall be honored by First Parties within forty-five (45) days following receipt of notice. Any additional payments requested from Agency shall be made with the third quarter payment.

H. Payments for Operating Reserve.

The Administering Agency's annual operation and maintenance budget for the Plant shall include an operating reserve as an operating cost as described in this subsection. First Parties and all Agencies shall contribute their proportionate share to fund the operating reserve in the minimum amount of sixty (60) days of annual operating and maintenance expenses for unanticipated operation and maintenance costs for the Plant ("Operating Reserve") beginning in Fiscal Year 2016-2017. Each Agency's contribution to the Operating Reserve shall be determined in proportion to the Agency's estimated annual share of operation and maintenance costs of the Plant. The Operating Reserve contribution for each Agency shall be calculated as follows: annual Agency operation and maintenance allocation percentage multiplied by the

total estimated annual Plant operation and maintenance budget amount, divided by 365 days, and then multiplied by 60 days. In each fiscal year following Fiscal Year 2016-2017, the calculation will take into account the amount held in the Operating Reserve as of the date of calculation.

The Administering Agency shall provide each Agency on or before March 1 of each fiscal year, commencing in Fiscal Year 2015-2016 for the amount of its estimated contribution to the Operating Reserve for the following fiscal year. Each Agency shall be billed for its contribution to the Operating Reserve following the Administering Agency's adoption of the annual operation and maintenance budget for the Plant for Fiscal Year 2016-2017, and each fiscal year thereafter. If the adopted annual budget for operation and maintenance costs of the Plant is greater than or less than the amount on which the Agencies' respective contributions were calculated and paid into the Operating Reserve for the prior fiscal year, then the billing statement presented to each Agency will identify the revised contribution amount and specify the amount of the adjustment due if an Agency's contribution has increased or the amount subject to credit if an Agency's contribution amount has decreased. Agency shall make payment in full of the amount of its contribution to the Operating Reserve within forty-five (45) days of presentation of the billing statement. Any credit due to the Agency shall be applied to the Agency's first quarterly payment for operation and maintenance costs.

PART VI
SAN JOSE-SANTA CLARA TREATMENT PLANT
ADVISORY COMMITTEE

A. Creation and Membership.

The San José-Santa Clara Treatment Plant Advisory Committee (TPAC), created by the 1959 Agreement, shall consist of nine (9) members. Three (3) of the members shall be members of the Council of the City of San José, shall be appointed by said Council, and shall serve at the pleasure of said Council. Two (2) of the members shall be members of the Council of the City of Santa Clara, shall be appointed by the Council of the City of Santa Clara, and shall serve at the pleasure of said Council. One (1) of the members shall be a member of the Council of the City of Milpitas, shall be appointed by said Council, and shall serve at the pleasure of said Council. One of the members shall be a member of the governing body of the West Valley Sanitation District, shall be appointed by the governing body of the West Valley Sanitation District, and shall serve at the pleasure of said body. One (1) of the members shall be a member of the governing body of the Cupertino Sanitary District, shall be appointed by the governing body of the Cupertino Sanitary District, and shall serve at the pleasure of said body. The ninth (9th) member shall be the City Manager of San José or a designated representative. No member shall have more than one (1) vote.

B. Alternate Members.

The Council of the City of San José may appoint three (3) of its Council members as alternative members of TPAC. The Council of the City of Santa Clara may appoint two (2) of its Council members as alternative members of TPAC. The Council of the City of Milpitas may appoint one (1) of its Council members as an alternative member of TPAC. The governing body of the West Valley Sanitation District and the governing body of the Cupertino Sanitary District may each appoint one (1) of its members as an alternative member of TPAC. Said alternate members shall serve in the place and stead of any of the regular members whenever said regular member should be absent from a meeting of TPAC.

C. Chair.

At the first meeting of each fiscal year, the members of TPAC shall elect a Chair and Vice Chair of TPAC. The Chair and Vice Chair shall serve as such until the election of his or her successor, or until cessation of membership of the TPAC, whichever is earlier. Vacancies in the office of the Chair and Vice Chair occurring in-between regular elections may be filled by TPAC electing a Chair and Vice Chair elected to serve until the next regular election. The Chair, or the Vice Chair in the Chair's absence, shall preside at all meetings. In the event the Chair and Vice Chair should

both be absent from any meeting, the members of TPAC may elect a Chair pro tem to serve as Chair during the latter's absence.

D. Secretary.

The Administering Agency shall provide a secretary for TPAC. Said secretary shall keep minutes of TPAC proceedings and shall also have custody of all books, records and papers of TPAC.

E. Meetings.

Regular meetings of TPAC shall be held at a time and place to be determined by TPAC. Special meetings may be called at any time by the Chair, to be held at a reasonable time and place specified in the notice calling the special meeting, subject to applicable requirements of law.

F. Procedure.

Except as may otherwise be provided by Resolution of TPAC, the procedure to be followed by TPAC at its meeting shall be that set forth in Robert's Rules of Order. TPAC may act by resolution of motion; a motion duly passed by TPAC and entered at length on TPAC's minutes may be deemed to be a resolution.

G. Power and Duties.

TPAC shall have the following powers and duties with respect to those items to be considered.

1. Make recommendation to First Parties and Agencies with respect to policy relating to the Plant and its maintenance, repair, expansion, replacement, improvement, and operation.
2. Make recommendation to the legislative bodies of First Parties and Agencies with respect to proposed amendments and revisions to exhibits to this Agreement.
3. Make recommendations to both First Parties and Agencies with respect to the advisability of selling interests in the Plant.
4. Make recommendations to First Parties with respect to the advisability of entering into contracts with other entities desiring to use the Plant on a rental or other basis.
5. Make recommendations to the Administering Agency and Agencies as to type and amount of insurance to be purchased for the Plant.
6. Annually, during the month of May in each fiscal year, TPAC shall review and recommend to the legislative bodies of First Parties and Agencies, a proposed budget for the ensuing fiscal year for the maintenance, expansion, replacement, improvement, and operation of the Plant.

7. Make recommendations to the Administering Agency with respect to the award of consultant, construction, or service contacts relating to the Plant.
8. Annually, TPAC shall file with the legislative bodies of First Parties and Agencies, a report on Plant capacity pursuant to Part III, Section D, paragraph 3.
9. Make recommendations to First Parties and Agencies with respect to the redistribution of pooled excess capacity pursuant to Part III, Section A, paragraphs 1 and 2.
10. Periodically, TPAC shall review and make current, long-range plans for expansion and/or improvement of the Plant to provide for the anticipated Plant capacity required to accommodate the general plans of San José, Santa Clara and Agencies and to meet current wastewater discharge requirements.
11. Make recommendations to the legislative bodies of First Parties and Agencies with respect to claim of breach proceedings pursuant to Part VII, Section C.

H. Action Upon Recommendations.

The legislative bodies of First Parties or the Agencies, shall not adopt any motion, Resolution or Ordinance that is contrary to any recommendation submitted to it by TPAC with respect to the Plant and its maintenance, repair, expansion, replacement, improvement and operation without a finding of fact or facts justifying such contrary action. The finding of fact or facts shall be submitted in writing to TPAC within fifteen (15) days after any contrary action. All policy matters as determined by the Director requiring an adoption of a motion, Resolution or Ordinance by the Council of the City of San José relating to the Plant and its maintenance, repair, expansion, replacement, improvement and operation, shall first be submitted to TPAC for its recommendation and in sufficient time, as determined by the Administering Agency, to allow TPAC to make a recommendation thereon. The Council of the City of San José shall not act upon any such policy matter until it has received the recommendation from TPAC. If TPAC does not submit its recommendation to the Council of the City of San José within the prescribed time, the City Council may adopt such a motion, Resolution or Ordinance. If a legislative body is presented with any evidence not considered by TPAC in the making of any recommendation, then, prior to the taking of action contrary to said recommendation, if time permits as determined by the Administering Agency, the legislative body shall refer the matter back to TPAC for a supplementary report. Said supplementary report shall be submitted by TPAC within thirty (30) days after reference, or such longer period as may be designated by the legislative body. If TPAC fails to make such supplementary report within the time specified, the legislative body is free to consider such evidence without TPAC recommendations. In the event of an emergency as determined by the Director, the above procedure may be waived.

I. Expenses.

Members of TPAC shall be reimbursed for all expenses reasonably incurred by them in the performance of their duties, and that provision therefor, shall be made in the annual budget. Such expenses shall be considered as “operating costs” of the Plant.

PART VII
MISCELLANOUS PROVISIONS

A. Effective Date and Duration of Agreement.

It is hereby agreed that this Agreement shall be in force and effect for a term beginning on May 10, 1983 and extending to, and including, and ending on June 30, 2065, or until sooner termination by mutual written agreement of the parties hereto or by operation of law or because of a material breach by one of the parties hereto.

B. Extension, Renewal or Amendment to the Agreement.

It is mutually agreed that the term of this Agreement may be extended or renewed only by mutual written agreement of the parties hereto and that this Agreement, including exhibits, may be amended or supplemented by a mutual written agreement of the parties hereto. This Agreement shall be reviewed in its entirety by First Parties and Agency in the year 2050. First Parties and Agency further agree that in the year 2065, they will meet and confer in good faith to negotiate a revised or new Agreement.

C. Use of Regional Wastewater Facility After Expiration of Term.

If for any reason the contact cannot be renewed in the year 2065, or subsequent to the termination date, the discharging Agency shall have the right to continue to discharging to the Plant, provided all payments of Agency's share of Plant costs are made. All other rights under this Agreement shall cease.

D. Termination.

If for any reason this Agreement is terminated by mutual consent of both parties, then the discharging capacity rights of the Agency shall be considered "excess pooled capacity" pursuant to the terms of Paragraph III Section A. This capacity shall be reserved for the Agency and Agency shall continue to pay for all costs associated with such capacity until such time as that capacity is either purchased by other users pursuant to the terms of this Agreement, or until failure of the Plant to treat wastewater.

E. Sale or Transfers by First Parties.

Nothing in this Agreement contained shall be deemed to prohibit or restrict First Parties, or either of them, for selling, granting, assigning or otherwise transferring this Agreement or any part or interest therein, or the Plant or any part or interest therein, or any right to discharge wastewater therein and to have the same therein treated and disposed of, to any corporation, district, governmental organization or entity or to any other person or persons, provided that any such transaction shall be subject to such

rights and privileges as First Parties and Agency may have under and by virtue of the provisions of this Agreement.

F. Industrial Waste Program.

The Administering Agency agrees to maintain personnel for the specific purposes of assisting all parties with matters concerning industrial waste. Such responsibilities shall include industrial waste monitoring, sampling and analysis, technical advice and surveillance of all industrial discharges tributary to the Plant. The Administering Agency agrees to be responsible for issuing notices of nonconformance within Agency's service area for violations of the ordinance requirements in Part II, Section D. Agency shall be responsible for the adoption and enforcement of any Industrial Waste Ordinance requirements. The Administering Agency shall endeavor to keep all dischargers informed of federal, state, county and city laws, rules, regulations, standards, and ordinances relating to industrial waste requirements.

G. Claims of Breach of Agreement or of Inequities.

In the event any party to this Agreement should at any time claim that the other party has in any way breached or is breaching this Agreement, or that the Agreement is inequitable, the complaining party shall file with the legislative body or bodies of the other parties, and with TPAC, a written claim of said breach or inequity, describing the alleged breach or inequity and otherwise giving full information respecting the same. TPAC shall within two (2) months at a place specified by it, give all concerned parties full opportunity to be heard on the matter, and shall, upon conclusion of said hearing, give the legislative bodies of both parties a full report of its finding and recommendations. Said report, findings, and recommendations shall be deemed advisory only; shall not be deemed to establish any facts, either presumptively or finally. Upon receipt of said report and recommendations, if any party is dissatisfied with or disagree with same, the legislative bodies of all parties concerned shall jointly meet with each other within two (2) months at a place to be determined by them, for the purpose of resolving their differences. No action for breach of this Agreement, and no action for any legal relief because of any breach or alleged breach of this Agreement shall be filed or commenced, and nothing shall be done by either party to rescind or terminate this Agreement, unless and until the above provisions of this paragraph have been complied with and unless the complaining party has first given to the other party three (3) months from the conclusion of said joint meeting of said legislative bodies within which to cure any breach or alleged breach.

H. Liability.

It is mutually agreed that any liability of San José and/or Santa Clara, or of San José as the Administering Agency for any damage to any such person or property arising or resulting from any dangerous or defective condition in the Plant or any part or property thereof, or arising or resulting from any act or omission of San José or Santa

Clara or their respective officers, agents, employees or contractors, in the control, administration, construction, expansions, installation, operation, maintenance or repair of said Plant or any part or property thereof, shall be mutually shared and paid for by First Parties and Agencies on the basis of operations and maintenance or capital costs, whichever is applicable. It is understood and agreed that First Parties in granting to Agencies certain discharge capacity rights in the Plant and to have wastewater treated and disposed of in said Plant, are not guaranteeing or warranting that the Plant will be able to satisfactorily treat such wastewater. In the event the Plant should for any reason other than by the gross negligence or intentional misconduct of First Parties be incapable of satisfactorily treating wastewater discharge into the Plant by Agency or First Parties, First Parties shall in no way be liable to Agency for any damages arising or resulting from or suffered because of the failure of the Plant to satisfactorily receive, hold, treat or otherwise dispose of wastewater.

I. Compliance with Federal and State Laws and Regulations.

Agency and First Parties agree to comply with any and all Federal, State, or local laws, the rules, regulations, standards and requirements of any Federal, State, or local board, commission, agency or similar body, and the decisions of any court or competent jurisdiction which must be complied with to enable First Parties to qualify for Federal or State grants for the construction, improvement, administration, operation, maintenance, or repair of the Plant.

J. Assignment.

Agency shall not assign or transfer any interest nor the performance of any of Agency's obligations hereunder without the prior written consent of First Parties, and any attempt by Agency to so assign this Agreement or any rights, duties or obligations arising hereunder without written consent shall be void and of no effect.

K. Successors and Assigns.

It is mutually agreed by all the parties hereto that the agreements, covenants, conditions, limitations, restrictions and undertakings herein contained shall, subject to the provisions as to assignment, apply to and bind the successors and assigns of the respective parties hereto as if they were in all cases named.

L. Waivers.

One or more waivers of any term, covenant or condition by either party shall not be construed as a waiver of a subsequent breach of the same or any other term, covenant or condition and the consent or approval by either party to any act shall not be deemed to waive or render unnecessary either party's consent or approval for any subsequent similar act by the other party.

M. Performance and Time to be of The Essence.

It is understood and agreed that full and faithful compliance with and performance of each and every covenant and provision of this Agreement by the party or parties required to comply with or perform each such covenant or provision is and shall be of the essence; also that time is and shall be of the essence; also that such full and faithful compliance with and performance of each and every covenant and provision of this Agreement shall be deemed to be a material condition of this Agreement.

N. Insurance Requirements and Risk Financing.

1. General Provisions. The Administering Agency may elect to self-insure any obligations hereunder should a program of self-insurance be deemed, at the sole discretion of the Administering Agency, the most economically reasonable risk financing option. The Administering Agency may contract for brokerage services and procure insurance policies or products, as needed and as would customarily be maintained, to mitigate against risks associated with common losses related to work or operations described in this Agreement including, but not limited to, claims for injuries to persons or damages to property from performance of the work or operations described in or incidental to this Agreement. The Administering Agency shall further provide services related to administration and maintenance of the insurance policies procured for on behalf of the Plant. The form of risk financing required under this section does not alter the liability of the parties. Each party shall be responsible for its proportionate share of any costs associated with self-insurance and the premiums, deductibles, copayments, losses, claims recovery, or other related costs.
2. Scope of Coverage. In the event that the Administering Agency procures and maintains insurance policies by a third party provider, the coverage, to the extent economically feasible and available in the marketplace, will include:
 - 2.1. A property and casualty insurance policy or policies insuring the Plant, in such forms and with such carriers as shall be within industry standards, including:
 - 2.1.1. “All risk” property policy including boiler and machinery exposures, coverage for loss due to business interruption, and flood.
 - 2.1.2. 100% Replacement Cost, excluding foundations and excavations, with a deductible amount of no more than \$100,000 for scheduled properties unless otherwise specified in these Requirements or, in the event that the identified deductible is no longer available at reasonable market rates.
 - 2.1.3. Wind, Flood, Boiler, and Sprinkler Leakage coverages, in amounts consistent with industry practice.

- 2.1.4. The Administering Agency will annually market for and assess the economic feasibility of procuring earthquake coverage and Terrorism Risk Insurance Act (“TRIA”) coverage.
 - 2.1.5. The Administering Agency shall not insure personal property located at the Plant that is not an owned asset of the Plant.
 - 2.2. A commercial general liability policy (“occurrence” form CG 0001) or its equivalent and, if necessary, an umbrella or excess policy or policies liability with limits as are reasonable within the industry and a combined single limit for bodily injury and property damage, providing to the extent economically feasible all of the following coverage:
 - 2.2.1. Premises Operations
 - 2.2.2. Products/Completed Operations
 - 2.2.3. Personal and Advertising Injury and Liability
 - 2.2.4. Fire Legal Liability with a minimum limit of \$100,000
 - 2.2.5. Environmental Legal Liability (if not obtained by separate environmental legal liability policy)
 - 2.3. A business automobile policy with coverage provided by Insurance Services Office form number CA 0001 covering automobile liability and a minimum limit of not less than \$1,000,000 combined single limit for bodily injury and property damage.
 - 2.4. A workers’ compensation and employer’s liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of contractor.
 - 2.5. In the event that the Administering Agency uses an excess liability policy(ies) to meet commercial general liability policy limits or property policy limits as would be reasonable considering industry standards, the excess liability coverage must follow form or have greater scope of coverage than the commercial general liability coverage. All Parties shall receive the same status on the excess liability policy including receipt of additional insured endorsements.
 3. Policies and Endorsements. At any party’s request, the Administering Agency shall provide a certificate of insurance with applicable endorsements, an insurance summary, or a copy of the insurance policy or policies obtained pursuant to this Agreement.
 - 3.1. All parties shall have additional insured endorsements on each policy (excluding workers’ compensation) to the extent each individual party has an insurable interest.
 - 3.2. All policies shall be endorsed as primary and noncontributing to any other insurance policy of any of the parties to the extent permitted by policy form.

4. Costs. All related insurance costs shall be included in the maintenance and operating expenses. Costs shall include but not be limited to brokerage fees, premiums, deductibles, copayments, uncovered losses, claims recovery expenses including disputed claims, fees, taxes, administration costs, fines, or penalties not otherwise insured or covered.
- O. Titles and Headings.
- The sub-heading and titles of this Agreement are inserted for the convenience of reference only and shall not be taken or considered as having any bearing on the interpretation thereof.
- P. Notices.
- All notices shall be mailed to the address designated beneath the signatures of the parties hereto or as subsequently designated in writing by the parties.

PART VIII
SPECIAL PROVISIONS

A. Termination of Agreements.

It is mutually agreed by all parties hereto that the following agreements heretofore entered into between the CITY OF SAN JOSE and the CITY OF MILPITAS; or between the CITY OF SANTA CLARA and the CITY OF MILPITAS; or between the CITY OF MILPITAS, and both the CITY OF SAN JOSE and the CITY OF SANTA CLARA relating to the Plant, and any and all supplements, addendums, changes, or amendments thereto, have been terminated.

1. July 10, 1973 Agreement between Cities of San José and Santa Clara and the Milpitas Sanitary District relating to sewage treatment plant.
2. January 25, 1974 Amendment to Agreement between Cities of San José and Santa Clara and Milpitas Sanitary District relating to sewage treatment plant.
3. July 16, 1979 Agreement between the Cities of San José, Santa Clara, and Milpitas providing for the sharing of costs to be incurred in connection with the employment of a consultant or consultants for the preparation of a study or studies relating to the uses of reclaimed wastewater from the San José/Santa Clara Water Pollution Control Plant facility.
4. April 8, 1981 Settlement Agreement by and between the Cities of San José, Santa Clara and the City of Milpitas.
5. April 13, 1981 Agreement by and between the Cities of San José, Santa Clara, and the City of Milpitas, providing Interim Allocation of Treatment Capacity,

B. Basic Charge.

Agency agrees to pay \$1,350,803.00 to First Parties in order to discharge wastewater and have it treated at the Plant. This cost represents an 8.5/160 share of the \$25,426,803 value of the Plant as determined for the July 10, 1973 Agreement between the Parties. Agency further agrees to make principal and interest payments to First Parties for this basic charge as shown in Exhibit G. Any payments of principal by Agency before payment date shall not incur any prepayment penalties. If any prepayments occur, Exhibit G shall be revised to reflect the appropriate reduction in interest due.

C. Easements.

1. General

First Parties have conveyed by Quitclaim Deed an easement to Agency for sanitary force interceptors across land of the Plant as specifically described in Exhibit H. Agency shall have the right to discharge and conduct sewage into the interceptor to convey such sewage to the Plant subject to all terms and conditions of this Agreement and the easement. Agency shall maintain and repair said interceptors except in the case of damage caused by operations, procedures, or activities of First Parties. First Parties agree to reimburse Agency at Plant expense for any damage which they may cause to interceptors within thirty (30) days of presentation of bill by Agency. First Parties agree to extend the term of the easement described in Exhibit H to January 1, 2031 or until termination of this Agreement, whichever occurs first.

2. Termination

Upon termination of this Agreement, Agency agrees to immediately reconvey said easement to First Parties. Upon termination, interceptors installed in said easement shall become the property of the Plant to maintain, repair, remove, dispose of, abandon, or use in any manner deemed best by First Parties. However, First Parties shall not exclude Agency from discharging into said interceptor until all provisions of Part VII, Paragraphs C and D have been met.

3. Relocation

If, during the term of this Agreement, First Parties deem it necessary for the operation of the Plant to move or relocate any or all of the interceptor in said easement, then First Parties agree to do so at Plant expense and direction. In addition, First Parties shall be responsible for granting a new easement to Agency for all interceptors. Upon receipt of the new easement and upon completion of construction of the new interceptors, Agency agrees to reconvey the old easement to First Parties and accept maintenance of the new interceptor. If Agency, during the term of this Agreement, should desire to relocate sewer interceptors, it agrees to first notify First Parties of its intentions to relocate and the proposed location of the new interceptor. First Parties shall then approve or disapprove proposed location based upon the operational needs of the Plant. If approved, Agency agrees to be solely responsible for the design and construction of the new interceptor within easements granted to Agency by First Parties.

IN WITNESS WHEREOF, FIRST PARTIES, and CITY OF MILPITAS have caused this AMENDMENT AND RESTATEMENT OF MASTER AGREEMENT as to be executed in their respective names and their respective seals to be affixed hereunto by their duly authorized officers, all as of the date first above written.

APPROVED AS TO FORM

CITY OF SAN JOSE, a municipal corporation

ROSA TSONGTAATARII
Senior Deputy City Attorney

TONI TABER, CMC
City Clerk
200 East Santa Clara Street
San José, CA 95113-1905

APPROVED AS TO FORM

CITY OF SANTA CLARA, a municipal corporation

RICHARD E. NOSKY JR.
City Attorney

ROD DIRIDON JR.
City Clerk
1500 Warburton Avenue
Santa Clara, CA 95050

APPROVED AS TO FORM

CITY OF MILPITAS

City Attorney

MARY LAVELLE
City Clerk
455 East Calaveras Boulevard
Milpitas, CA 95035

EXHIBIT A

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

TREATMENT PLANT CAPACITY ALLOCATIONS

Table 1 - 167 MGD Plant, Intermediate Term Improvements and First Stage Expansion.

Table 1 contains the Agencies' and First Parties' treatment plant capacities achieved by implementation of the Intermediate-term Improvements and First Stage Expansion. Increased capacity was allocated only to those Agencies that elected to participate in Plant expansion to 167 MGD. Milpitas was allocated 4 MGD of the 24 MGD expansion, and the First Parties' share the remaining 20 MGD based on assessed valuation. BOD, SS, and Ammonia capacities were allocated in the same proportion as Flow.

Table 2 – 167 MGD Plant, after transfer of capacity to Milpitas from West Valley and Cupertino.

Table 2 shows the Agencies' and First Parties' treatment plant capacities effective with the transfer of 0.75 MGD from Cupertino to Milpitas with prorated shares of Suspended Solids and Ammonia, but excludes any prorated share of Biochemical Oxygen Demand effective January 1, 2009. On July 1, 2006, West Valley Sanitation District transferred 1 MGD of flow with 2.430 KLBS/Day Biochemical Oxygen Demand, 2.308 KLBS/Day Suspended Solids, and 0.242 KLBS/Day Ammonia capacity to Milpitas. The other Agencies' capacities remain the same as in the 143/167 MGD Plant.

Table 3 – 167 MGD Plant, after annexations from West Valley and Sunol into San José.

Table 3 shows the Agencies and First Parties' treatment plant capacities effective June 30, 2014 with the transfer of capacity associated with annexations into San José from West Valley in 2007-2013, and Sunol in November 30, 2009. The other Agencies' capacities remain the same as in the 143/167 MGD Plant.

TABLE 1
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

167 MGD PLANT

SUMMARY OF CAPACITY ALLOCATION*

(Intermediate-Term, First Stage Expansion & South Bay Water Recycling Improvements Implemented)

AGENCY	FLOW MGD	BOD K LBS/DAY	SS K LBS/DAY	AMMONIA K LBS/DAY
San José ^a	110.800	390.393	346.342	34.332
Santa Clara ^a	21.298	75.042	66.575	6.599
Subtotal ^b	132.098	465.435	412.917	40.931
West Valley	13.052	31.713	30.120	3.156
Cupertino	8.600	16.419	17.856	2.506
Milpitas	12.500	24.819	22.125	2.386
Burbank	0.400	0.815	0.853	0.297
Sunol	0.350	1.799	2.129	0.324
Subtotal	34.902	75.565	73.083	8.669
TOTAL	167.000	541.000	486.000	49.600

*The term “capacity” is defined as the mean peak five-day dry weather plant treatment capacity.
 Note(s):

- a. San José and Santa Clara allocations vary annually according to assessed property value; values shown are effective as of January 1, 2009.
- b. CSD 2-3 rents capacity from San José and Santa Clara. Allocations vary annually depending flow from CSD 2-3.

TABLE 2
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

167 MGD PLANT

SUMMARY OF CAPACITY ALLOCATION*

(After transfer of capacity to Milpitas from West Valley in July 1, 2006, and Cupertino in January 1, 2009)

AGENCY	FLOW MGD	BOD K LBS/DAY	SS K LBS/DAY	AMMONIA K LBS/DAY
San José ^a	110.800	390.393	346.342	34.332
Santa Clara ^a	21.298	75.042	66.575	6.599
Subtotal ^b	132.098	465.435	412.917	40.931
West Valley	12.052	29.283	27.812	2.914
Cupertino	7.850	16.419	16.299	2.287
Milpitas	14.250	27.249	25.990	2.847
Burbank	0.400	0.815	0.853	0.297
Sunol	0.350	1.799	2.129	0.324
Subtotal	34.902	75.565	73.083	8.669
TOTAL	167.000	541.000	486.000	49.600

*The term “capacity” is defined as the mean peak five-day dry weather plant treatment capacity.
 Note(s):

- a. San José and Santa Clara allocations vary annually according to assessed property value. The values shown are effective as of January 1, 2009.
- b. CSD 2-3 rents capacity from San José and Santa Clara. Allocations vary annually depending flow from CSD 2-3.

TABLE 3
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

167 MGD PLANT

SUMMARY OF CAPACITY ALLOCATION*

(June 30, 2014)

AGENCY	FLOW MGD	BOD K LBS/DAY	SS K LBS/DAY	AMMONIA K LBS/DAY
San José ^{a,c}	109.555	385.994	342.915	34.106
Santa Clara ^a	23.248	81.912	72.770	7.238
Subtotal ^b	132.803	467.906	415.685	41.344
West Valley ^c	11.697	28.611	27.173	2.825
Cupertino	7.850	16.419	16.299	2.287
Milpitas	14.250	27.249	25.990	2.847
Burbank	0.400	0.815	0.853	0.297
Subtotal	34.197	73.094	70.315	8.256
TOTAL	167.000	541.000	486.000	49.600

*The term “capacity” is defined as the mean peak five-day dry weather plant treatment capacity.
 Note(s):

- a. San José and Santa Clara allocations vary annually according to assessed property value. The values shown are effective as of June 30, 2014.
- b. CSD 2-3 rents capacity from San José and Santa Clara. Allocations vary annually depending flow from CSD 2-3.
- c. San José and West Valley Sanitation District allocations reflect the transfer of capacity associated with annexations from the District into San José from 2007-2013.

EXHIBIT B

9/18/15

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
REPLACEMENT COST OF PLANT AND EQUIPMENT
JUNE 2014

FACILITY	ACQUISITION DATE	ORIGINAL COST	REPLACEMENT COST
Asset #1 - Original primary plant	1958	3,786,400	45,876,200
Asset #2 - Plant Additions	1960	1,370,200	15,269,000
Asset #3 - Plant Additions & New Secondary Facility	1963	24,166,800	258,656,700
Asset #4 - Final Tank	1965	1,183,000	11,053,800
Asset #5 - Digesters	1966	993,600	8,419,400
Other Projects:			
1965-66	1965	103,900	970,800
1966-67	1966	253,800	2,150,600
1967-68	1967	24,200	187,600
1968-69	1968	322,100	2,300,800
1969-70	1969	59,900	396,700
1970-71	1970	102,700	634,000
Sludge Lagoons	1968	839,000	5,993,000
Foam Flotation Program	1970	23,000	142,000
1970 94/MGD Improvements	1970	5,809,400	35,865,200
1970 66/MGD Additions	1970	23,049,000	142,296,600
A.W.T.F.	1977	62,810,900	219,021,500
Other Projects:			
1977-78	1977	745,500	2,599,600
1978-79	1978	312,200	997,300
1979-80	1979	1,421,100	4,292,200
1980-81	1980	1,962,300	4,992,300
1981-82	1981	535,200	1,325,800
1982-83	1982	1,777,765	3,770,200
CAPITAL IMPROVEMENT PROGRAM:			
Intermediate-term Improvement	1987	88,699,500	175,232,300
First Stage Expansion	1987	20,035,100	39,580,800
1987 Capitalized Expenditures	1987	894,900	1,767,900
1989 Capitalized Expenditures	1989	527,473	1,002,300
1990 Capitalized Expenditures	1990	823,720	1,485,800
1991 Capitalized Expenditures	1991	114,902	204,300
1992 Capitalized Expenditures	1992	407,154	708,700
1993 Capitalized Expenditures	1993	1,291,825	2,188,600
1994 Capitalized Expenditures	1994	255,378	424,500

1995 Capitalized Expenditures	1995	10,595,576	17,651,200
1996 Capitalized Expenditures	1996	3,396,270	5,650,100
1997 Capitalized Expenditures	1997	9,320,130	15,161,500
1998 Capitalized Expenditures	1998	2,829,981	4,559,800
1999 Capitalized Expenditures	1999	133,138,713	212,724,200
2000 Capitalized Expenditures	2000	2,464,590	3,749,200
2001 Capitalized Expenditures	2001	3,866,326	5,687,800
2002 Capitalized Expenditures	2002	930,265	1,323,300
2003 Capitalized Expenditures	2003	1,663,511	2,324,100
2004 Capitalized Expenditures	2004	3,321,630	4,443,200
2005 Capitalized Expenditures	2005	665,760	877,300
2006 Capitalized Expenditures	2006	2,096,762	2,707,600
2007 Capitalized Expenditures	2007	1,197,306	1,439,900
2008 Capitalized Expenditures	2008	68,856,165	81,431,200
2009 Capitalized Expenditures	2009	86,452,121	96,787,700
2010 Capitalized Expenditures	2010	5,337,506	5,871,000
2011 Capitalized Expenditures	2011	4,237,725	4,537,800
2012 Capitalized Expenditures	2012	14,961,081	15,701,600
2013 Capitalized Expenditures	2013	24,009,116	25,189,500
2014 Capitalized Expenditures	2014	909,001	909,000
TOTAL		624,951,452	1,498,533,500*

(*) 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:

- 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 percentages contained in the most current Revenue Program (Form 8, Summary of Distribution of Capital Costs).
- 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.

EXHIBIT C

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

LAND DISTRIBUTION

1. Table 1 includes the original land purchase price for each parcel purchased before June 30, 1982 (“Pre-1982 Land.”). The San José’s average yearly rate of return for all investments was applied to this amount and compounded to establish a June 30, 1982 value for all Pre-1982 Land.
2. Land participation for Pre-1982 Lands was based upon the 167 MGD capacity of the Plant (Flow BOD, Suspended Solids and Ammonia). Percentage of participation in Pre-1982 Land is based upon the total acreage and not on an individual parcel basis.
3. Agencies which still owe San José and West Valley Sanitation District for their allocated share of cost for Pre-1982 Land shall pay all the costs of this land from sale, lease or rental revenues to be received from the Regional Wastewater Facility properties. Percentage of revenue shall be based upon each Agency’s full capacity percentage. The Pre-1982 Land costs will be paid off only from sale, lease, or rental revenues of the Plant property and shall have no fixed term. Table 2 shows First Parties’ and Agencies’ allocations and amounts/credits due for Pre-1982 Land costs as of June 30, 2014.
4. Table 3 shows the original purchase price, date of purchase and cost allocation for all land purchased on or after July 1, 1982 (“Post 1982 Land”). Cost allocation in Post 1982 Land was based on the flow and wastewater strength allocations for First Parties and participating Agencies, except for land purchased for recycled water facilities, which is based on flow allocation only.
5. Table 4 shows the percentage participation in Pre-1982 Land and Post-1982 Land for First Parties and Agencies effective June 30, 2014 including, the annexation of Sunol into San José on November 30, 2009, the annexation of territory from West Valley into San José from 2007-2013, the transfer of land equivalent to 0.75 MGD capacity

from Cupertino to Milpitas effective January 1, 2009, and the transfer of land equivalent to 1 MGD from West Valley to Milpitas effective July 1, 2006.

6. Sale, lease or rental revenues from Regional Wastewater Facility property shall be first applied to an Agency's debt, and only upon completion of that debt, will revenues be passed on to the Agency.
7. If and when expansion of the facilities takes place in the future, land values shall again be adjusted based upon the new MGD denominator. Each Agency's percentage of participation in land shall, at that time, be recomputed based upon total land cost shown in the applicable Land Cost Allocation.
8. All purchases of land in the future shall be distributed to all Agencies in the percentage of discharge capacity at the Plant, except that land purchased for recycling improvements shall be based on the Agencies' and First Parties' purchased capacity in the 167 MGD Plant for the flow parameter only.

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
LAND COST ALLOCATION METHODOLOGY

1. Attachment A is a Regional Wastewater Facility Property map.
2. Table 1 includes the original land purchase price for each parcel purchased before June 31, 1982. This amount was then applied to San José's average yearly rate of return for all investments and compounded to establish a June 30, 1982 value for the Pre-1982 Land.
3. Table 2 shows the First Parties' and Agencies' share of Pre-1982 land Costs. Table 2 also shows the amounts still due or owing by First Parties and Agencies for Pre-1982 Land Costs, as of June 30, 2014.
4. Table 3 shows the land allocation for First Parties and Agencies for all land purchased on or after July 1, 1982, based on the amount actually paid by First Parties and Agencies for land purchased on or after July 1, 1982.
5. Table 4 shows the land participation allocation for First Parties and Agencies as of June 30, 2014 including, the annexation of Sunol into San José on November 30, 2009, the annexation of territory from West Valley into San José from 2007-2013, the transfer of land equivalent to 0.75 MGD capacity from Cupertino to Milpitas effective January 1, 2009, and the transfer of land equivalent to 1 MGD from West Valley to Milpitas effective July 1, 2006. The transfer of capacity and adjusted land allocation percentages shall not affect the amounts due or owing by Agencies for Pre-1982 Land Costs.

Attachment A
Regional Wastewater Facility Property Map



TABLE 1
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
PRE-1982 LAND PURCHASES

Pre-1982 Purchases Parcel	Acres	Original Cost	Purchase Date	Cost*
Berger Williamson	43.668	\$ 15,284	8/49	\$ 88,282
Coolidge Quitclaim	--	150	3/52	805
John R. Watrous	106.747	101,043	7/54	490,206
John R. Medina	16.970	15,067	8/54	73,106
Other Costs (Easement- Condemnation)*	--	23,468	1956-57	106,183
Curtner-Zanker	.776	1,000	7/55	5,082
Los Altos Garbage	2.045	1,000	8/55	4,692
James Clayton	181.680	182,160	4/58	795,944
A. M. Standish	.197	120	10/61	457
Spring Valley	.180	50	4/62	189
Beatrice Standish	39.888	55,109	7/62	202,258
Other Costs (Unallocated)*	--	603	3/65	2,048
Nine-Par	46.970	201,515	1/68	596,405
A. L. Kricheberg	41.13	162,170	4/69	452,708
Anselmo-Campi	34.48	208,771	7/69	541,583
Casteel	117.78	932,240	11/69	2,418,376
Chisolm-Hopham	Parcel	5,232	8/70	12,738
Rankin-Gilman	Parcel	600	8/70	1,461
Owens-Corning	3.16	23,743	11/70	57,801
Standish	630.0	2,831,034	4/71	6,892,016
Owens-Corning	2.58	17,133	6/71	41,713
Phillips-Bosio	Parcel	2,136	12/71	4,943
Zanker Ranch	145.7	1,496,478	8/72	3,446,515
Garcia	19.54	236,328	12/72	517,884
Martin-Moore	16.47	200,446	1/73	439,257
Tempco	12.33	327,153	7/75	566,730
County of Santa Clara	Parcel	4,495	1975-76	7,788
County of Santa Clara	2.98	13,476	4/76	20,716
Brazil	54.546	513,359	7/76	841,819
McCarthy (1st)	43.0	483,880	12/76	793,479
McCarthy (2 nd)	43.0	483,879	4/77	793,478
McCarthy (3 rd)	43.0	483,879	1/78	743,861
Other Costs (Unallocated)	--	47,693	1978-79	67,043
Calvo	58.415	586,405	1/78	901,473
Leslie Salt	Parcel	820	9/78	1,153
Graham-Cassin	52.8	3,339,932	8/80	3,775,793
Geomax	4.2	273,972	1/81	291,849
TOTAL	1,764.23**	\$13,271,823		\$25,997,834

*Represents costs not allocable to a specific land purchase (e.g., appraisal of land not purchased).

**Acreage has been and will be reduced by the following completed and pending conveyances:

- Santa Clara Valley Water District - flood control easement dated November 25, 1986.
- State of California – 14.8 acres for widening of State Route 237, Grant Deed dated March 17, 1997.
- PG&E - various completed and pending easements.
- Los Esteros Critical Energy Facility - access road easement conveyed November 3, 2003, pursuant to Conveyance Agreement dated November 22, 2002, as amended May 4, 2005; open space easement and pole line license pursuant to Conveyance Agreement dated pending as of March 2006.
- City of Santa Clara, Silicon Valley Power, electric transmission line easement pursuant to Conveyance Agreement dated July 15, 2003, pending as of March 2006.
- Various Agency sanitary sewer trunk line easements.

TABLE 2

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
LAND COST ALLOCATION
PRE-1982 PURCHASES

AGENCY	% SHARE	AMOUNT SHOULD HAVE PAID 1982 DOLLARS	AMOUND PAID 1982 DOLLARS	AMOUNT PAYABLE <DUE> AS OF JUNE 30, 2014
San José ^a	66.494	\$17,287,000	\$19,144,541	<\$439,491>
Santa Clara	15.620	\$4,060,862	\$3,234,047	\$0
West Valley ^{a,b}	6.472	\$1,822,188	\$1,945,035	<\$30,449>
Cupertino ^b	4.074	\$1,160,283	\$1,141,582	\$0
Milpitas ^b	7.092	\$1,603,026	\$523,426	\$439,549
Burbank	0.248	\$64,475	\$9,203	\$30,391
TOTAL	100%	\$25,997,834	\$25,997,834	

County Sanitation District 2-3 rents capacity from San José and Santa Clara. The rental agreement does not entitle it to share in land revenue.

Note(s):

- a. San José allocation reflects the annexation of Sunol into San José in November 30, 2009, and annexation of territory from West Valley into San José in 2007-2013.
- b. Milpitas allocation reflects the capacity transfer from West Valley effective July 1, 2006, and from Cupertino effective January 1, 2009.

TABLE 3

**SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
LAND COST ALLOCATION POST-1982 LAND PURCHASES**

AGENCY	SOUTH Bay Water Recycling Phase 1 easements \$265,000; 1996-1997)	Moseley Tract (56 acres; \$460,000; 9/96)	McCarthy Ranch (6 acres; \$6,534,000; 8/00)	Cargill Pond A-18 (856 acres; \$13,301,250; 10/05)	Silver Creek Reservoir (4.839 acres fee; 1.97 acres permanent easement; \$7,800,000; 3/05)
San José ^a	64.869%	67.923%	67.385%	67.331%	64.869%
Santa Clara	14.440%	14.511%	15.049%	15.103%	14.440%
West Valley ^{a,b}	7.816%	6.928%	6.928%	6.928%	7.816%
Cupertino ^b	5.150%	4.360%	4.360%	4.360%	5.150%
Milpitas ^b	7.485%	6.040%	6.040%	6.040%	7.485%
Burbank	0.240%	0.238%	0.238%	0.238%	0.240%
TOTAL	100%	100%	100%	100%	100%

County Sanitation District 2-3 rents capacity from San José and Santa Clara. The rental agreement does not entitle it to share in land revenue.

Note(s):

- a. San José allocation reflects the annexation of Sunol into San José in November 30, 2009, and annexation of territory from West Valley into San José in 2007-2013.
- b. Milpitas allocation reflects the capacity transfer from West Valley effective July 1, 2006, and from Cupertino effective January 1, 2009.

TABLE 4
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
LAND PARTICIPATION ALLOCATION

(June 30, 2014)

AGENCY	Pre-1982 Land	Moseley Tract , McCarthy, Cargill Pond A-18	South Bay Water
San José ^a	66.494	67.923%	64.869%
Santa Clara	15.620	14.511%	14.440%
West Valley ^{a,b}	6.472	6.397%	7.217%
Cupertino ^b	4.074	3.980%	4.701%
Milpitas ^b	7.092	6.951%	8.533%
Burbank	0.248	0.238%	0.240%
TOTAL	100%	100%	100%

County Sanitation District 2-3 rents capacity from San José and Santa Clara. The rental agreement does not entitle it to share in land revenue.

Note(s):

- a. San José allocation reflects the annexation of Sunol into San José in November 30, 2009, and annexation of territory from West Valley into San José in 2007-2013.
- b. Milpitas allocation reflects the capacity transfer from West Valley effective July 1, 2006, and from Cupertino effective January 1, 2009.

EXHIBIT D

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

PARTICIPATION IN MAJOR PROCESS RELATED IMPROVEMENTS

Intermediate Term Improvements and First Stage Expansion

The construction and design cost of the Intermediate-term Improvement Project for restoration of the Plant capacity to 143 MGD was Eighty-Nine Million Three Hundred Thousand Two Hundred and Thirty Dollars (\$89,300,230.00). The construction costs and design cost of the First Stage Expansion Project for expansion of Plant capacity to 167 MGD was Twenty-Seven Million Eighty-Four Thousand Eight Hundred and Four Dollars (\$27,084,804.00). Agency has fully paid all amounts due for its capacity in the Intermediate Term Improvements and the First Stage Expansion Project.

Water Recycling Improvements

In October 1991, the Regional Water Quality Control Board (RWQCB) approved the San José Action Plan which included development of a reclamation program to reclaim a portion of the San José/Santa Clara Regional Wastewater Facility's (Plant) effluent, thereby providing an alternative to discharging treated effluent to South San Francisco Bay (Bay). In October 1993, the RWQCB incorporated the Action Plan into the Plant's NPDES permit. The South Bay Recycling Program (SBWRP) is intended to satisfy this permit requirement.

Implementation of the SBWRP has been divided into two phases. Under the Phase 1, Water Recycling Program, approximately 9,000 acre-feet per year (up to 21.1 million gallons per day) of recycled water will be produced and distributed beginning in November 1997. The budgeted cost of Phase I was \$139,840,000. Construction of Phase II is now underway, with an estimated cost of \$100,000,000.

On January 12, 1995, TPAC approved a cost sharing method whereby First Parties and Agencies would participate in payment for the Water Recycling Program based on their respective flows to the Plant. Table 1 contains First Parties' and Agencies' allocation of Phase 1 recycling costs, as of January 12, 1995. Table 2 contains First Parties and Agencies share of Phase 2 Recycling costs, as of January 12, 1995. The final Phase 2 cost allocation will be adjusted to reflect the actual cost when construction of the Phase 2 facilities is completed.

First Party Santa Clara and Milpitas elected to cash fund their share of the Phase 1 Recycling Costs. However, effective January 1, 2009, Milpitas assumed the obligations of Cupertino, with respect to a portion of Cupertino debt service obligations for Recycling Cost. Table 3 shows the debt service allocation for the bond issued by San José for Phase 1 costs for First Party San José, and all Agencies including Milpitas, as of January 1, 2009.

Milpitas also elected to cash fund its share of the Phase 2 Recycling Costs. First Parties and all other Agencies chose to utilize State Revolving Loan Fund proceeds for their share of the Phase 2 Recycling costs. However, effective January 1, 2009, Milpitas assumed the obligations of Cupertino, with respect to a portion of Cupertino debt service obligations for Phase 2 Recycling Costs. Table 4 shows the debt service allocation for the SRLF proceeds, as of January 1, 2009.

Long-Term Improvements

On May 14, 2015, TPAC approved the San José -Santa Clara Regional Wastewater Facility Ten-Year Funding Strategy (“Funding Strategy”) whereby First Parties and Agencies participate in the funding of Long-Term Improvements proportionately based on their capacity allocations detailed in Table 1 of Exhibit A, as may be amended. The Funding Strategy contemplates the Administering Agency, pursuing Clean Water State Revolving Fund (“SRF”) loans to the maximum extent possible to finance the Long-Term Improvements. If Agency elects to finance its proportionate share of the costs of the Long-Term Improvements through SRF, short term financing, and long term financing obtained by First Parties or Administering Agency, Agency agrees to execute and deliver to the Administering Agency the necessary documentation to secure such financing and Agency’s repayment thereof.

In the event that all or a portion of financing for the Long-Term Improvements is secured through a short-term variable rate financing program, Agency acknowledges and agrees that any participating Agency will be responsible for its proportionate cost for establishing the financing program based on the total amount to be financed by Agency through the short-term variable rate financing program relative to the total dollar size of the program. Any Agency that requests participation in the program after the deadline established by the Administering Agency for participation may incur additional expenses associated with accommodating the Agency. Agencies that choose to participate in the program can cease their participation upon repayment of the funds and associated costs.

Agency acknowledges and agrees that its participation in any financing obtained by First Parties or the Administering Agency, including amount financed, debt service and repayment scheduled shall be memorialized in a supplemental financing agreement. Any supplemental financing agreement shall be executed prior to or contemporaneous with the closing of the financing.

Notwithstanding the terms and conditions of this Agreement, the process for asserting a claim for breach of the supplemental financing agreement such as nonpayment shall be governed by the provisions of the supplemental financing agreement. If Agency shall fail to make payment when due for their portion of the financing, Agency agrees First Parties shall have the right to institute an action for damages sustained as a result of any such default and shall have the right by mandamus or other proceeding at law or in equity to enforce their rights against Agency and to compel Agency and its officers or employees thereof to perform and carry out their obligations and duties under this Agreement, and any supplemental financing agreement. No remedy conferred upon or reserved to First Parties is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, any supplemental financing agreement, existing at law or in equity or by statute. First Parties or San Jose, as the Administering Agency,

shall provide the Agency notice of payment past due at least thirty (30) calendar days prior to instituting an action for damages.

TABLE 1

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

Participation in South Bay Water Recycling Program
Phase 1 Capital Costs

<u>Agency</u>	<u>Percent</u>	<u>Phase 1 Budgeted Costs</u>
City of San José ^{a,b}	64.007%	\$89,507,389.
City of Santa Clara ^b	14.292%	\$19,985,933
West Valley Sanitation District ^{a,c}	7.816%	\$10,929,894
Cupertino Sanitary District ^c	5.150%	\$7,201,760
City of Milpitas ^c	7.485%	\$10,467,024
County Sanitation District 2-3*	1.010%	\$1,412,384
Burbank Sanitary District	.240%	\$335,616
TOTAL	100%	\$139,840,000

*County Sanitation District 2-3 (CSD 2-3) has entered into an agreement with FIRST PARTIES for sharing Regional Wastewater Facility costs on a different basis than the other AGENCIES. The agreement provides for adjusting payments to reflect changes in CSD 2-3's flow and loadings. The agreement between CSD 2-3 and FIRST PARTIES do not affect the other AGENCIES participation in the South Bay Water Recycling Program Phase 1 capital costs.

Note(s):

- a. San José allocation reflects the annexation of Sunol into San José in November 30, 2009, and annexation of territory from West Valley into San José in 2007-2013.
- b. San José and Santa Clara allocations vary annually according to assessed property value; values shown are effective as of June 30, 2014.
- c. Milpitas allocation reflects the capacity transfer from West Valley effective July 1, 2006, and from Cupertino effective January 1, 2009.

TABLE 2
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

Participation in South Bay Water Recycling Program
Phase 2 Capital Cost

<u>Agency</u>	<u>Percent</u>	<u>Phase 2 Estimated Costs</u>
City of San José ^{a,b}	64.007%	\$64,007,000
City of Santa Clara ^b	14.292%	14,292,000
West Valley Sanitation District ^{a,c}	7.816%	7,816,000
Cupertino Sanitary District ^c	5.150%	5,150,000
City of Milpitas ^c	7.485%	7,485,000
County Sanitation District 2-3*	1.010%	1,010,000
Burbank Sanitary District	.240%	240,000
TOTAL	100%	\$100,000,000

*County Sanitation District 2-3 (CSD 2-3) has entered into an agreement with FIRST PARTIES for sharing Regional Wastewater Facility costs on a different basis than the other AGENCIES. The agreement provides for adjusting payments to reflect changes in CSD 2-3's flow and loadings. The agreement between CSD 2-3 and FIRST PARTIES do not affect the other AGENCIES participation in the South Bay Water Recycling Program Phase 2 capital costs.

Note(s):

- a. San José allocation reflects the annexation of Sunol into San José in November 30, 2009, and annexation of territory from West Valley into San José in 2007-2013.
- b. San José and Santa Clara allocations vary annually according to assessed property value; values shown are effective as of June 30, 2014.
- c. Milpitas allocation reflects the capacity transfer from West Valley effective July 1, 2006, and from Cupertino effective January 1, 2009.

TABLE 3
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
PHASE 1 RECYCLING DEBT ALLOCATION

Series 2005 A Refunding Bonds - Principal \$54,020,000; last payment due November 15, 2016

Series 2005 B Refunding Bonds - Principal \$27,130,000; last payment due November 15, 2020

San José ^a	West Valley	Cupertino	Milpitas	District 2-3	Burbank
80.356%	10.594%	6.734%	0.643%	1.436%	.237%

Series 2009 A Refunding Bonds - Principal \$21,420,000; last payment due November 15, 2020¹

San José ^a	Milpitas	District 2-3	Burbank
97.198%	0.778%	1.737%	0.287%

Note(s):

- a. San José allocation reflects the annexation of Sunol into San José in November 30, 2009.

¹ The 2009 Refunding Bonds were issued on January 29, 2009 in the Principal Amount of \$21,420,000 for the purpose of refinancing the 2005B Refunding Bonds. On January 20, 2009, Cupertino made cash payment in the amount of ONE MILLION EIGHT HUNDRED TWENTY- SIX THOUSAND EIGHT HUNDRED FORTY-TWO DOLLARS (\$1,826,842.00) to redeem its portion of the 2005B Refunding Bonds. Accordingly, Cupertino has no further obligation for 2005B Refunding Bonds and no obligation for 2009A Refunding Bonds. On January 20, 2009, West Valley made a cash payment in the amount of TWO MILLION EIGHT HUNDRED SEVENTY-FOUR THOUSAND ONE HUNDRED FIFTY-TWO DOLLARS and TWENTY CENTS (\$2,874,152.20) to redeem its portion of the 2005B Refunding Bonds. Accordingly, West Valley has no further obligation for 2009A Refunding Bonds.

TABLE 4**SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY STATE REVOLVING LOAN FUND DEBT ALLOCATION
FY 1998 thru 2019**

	Annual Debt Service Payment	Annual San José	Annual Santa Clara	Annual Milpitas	Annual West Valley	Annual Cupertino	Annual Sanitation District 2-3	Annual Burbank	Annual Sunol
Repayment Period(s)	100.000%	68.998%	15.409%	0.000%	8.448%	5.567%	1.092%	0.259%	0.227%
FY 1998/1999	\$1,661,799	\$1,146,608	\$256,067	-	\$140,389	\$92,512	\$18,147	\$4,304	\$3,772
FY 1999/2000 thru 2007/2008	\$4,463,882	\$3,079,989	\$687,840	-	\$377,109	\$248,504	\$48,746	\$11,561	\$10,133
Repayment Period(s)	100.000%	68.998%	15.409%	0.486% ^a	8.448%	5.081%	1.092%	0.259%	0.227%
FY2008/2009	\$4,463,882	\$3,079,989	\$687,840	\$21,694	\$377,109	\$226,810	\$48,746	\$11,561	\$10,133
Repayment Period(s)	100.000%	69.225%	15.409%	0.486% ^a	8.448%	5.081%	1.092%	0.259%	0.000% ^b
FY2009/2010 Thru FY2017/2018	\$4,463,882	\$3,090,122	\$687,840	\$21,694	\$377,109	\$226,810	\$48,746	\$11,561	-
FY 2018/2019	\$1,804,020	\$1,248,833	\$277,981	\$8,768	\$152,404	\$91,662	\$19,700	\$4,672	-

Note(s):

- a. Milpitas shall be responsible for 0.486% of the debt service repayment, which is prorated share of the Cupertino payment due on or after January 1, 2009.
- b. San José allocation reflects the annexation of Sunol into San José in November 30, 2009.

EXHIBIT E
ADMINISTERING AGENCY

A. San José to be Administering Agency.

It is mutually agreed that the City of San José is and shall be the Administering Agency of this Agreement, and, as such, shall execute and administer this Agreement.

B. Powers and Duties of Administering Agency, Scope, and Exercise.

Subject to such limitations as may be imposed in this Agreement, the Administering Agency shall have the following powers and duties:

1. To maintain, 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 (subject to the provision of funds therefor in accordance with the provisions of this Agreement), to treat and dispose of all sewage (and by-products thereof) of San José and Santa Clara and of any and all "Outside Users" now or hereafter authorized to discharge or convey sewage into or to said treatment plant or any sewer lines leading thereto, so that said sewage and all effluent from said Plant will not pollute the waters of San Francisco Bay, or any other waters, and so that said sewage will be disposed of in a manner authorized by law.
2. To make, award and enter into contracts with third parties for the construction, improvement, replacement, expansion, or repair of the Treatment Plant or any part or parts thereof.
3. To acquire, by purchase, condemnation or otherwise, any and all real or personal property which it should find to be reasonably necessary for Treatment Plant purposes.
4. To receive, be the depository for, expend and disburse, for the purposes of this Agreement, any and all funds or monies advanced, contributed or paid by the parties hereto to said Administering Agency pursuant to the provisions of this Agreement, together with all income collected from "Outside Users", all other Treatment Plant income, and all other Treatment Plant funds.
5. To keep accurate accounts of all receipts and disbursements of the above-mentioned funds and monies.
6. To provide and supply any and all personnel and services, including, but not limited to, legal, engineering and accounting services, which it should find to be reasonably necessary for the maintenance, repair, expansion, replacement, improvement and operation of said Treatment Plant, the cost and expense of providing such personnel

and services to be charged to and shared by San José and Santa Clara as part of operating or other Treatment Plant costs as elsewhere provided in this Agreement.

7. To exercise any and all other powers, common to both San José and Santa Clara, with respect to the maintenance, repair, expansion, replacement, improvement and operation of the Treatment Plant.
8. To do any and all things reasonably necessary to treatment and dispose of all sewage entering the Treatment Plant in such manner as will comply with all applicable laws and regulations.
9. To do any and all other things which the Administering Agency is required or authorized to do by other provisions of this Agreement.

C. Manner of Exercising Powers or Performing Duties.

The manner in which the Administering Agency shall exercise its powers and perform its duties is and shall be subject to the restrictions upon the manner in which the City of San José could exercise such powers and perform such duties; and shall not be subject to any restrictions applicable to the manner in which the City of Santa Clara could exercise such powers or perform such duties.

D. Expenses of Administering Agency.

It is mutually agreed that the City of San José 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 José to its officers and employees for services rendered by them for Treatment Plant purposes. It is further agreed that San José shall be paid, from Treatment Plant funds, an amount equal to seventeen and three hundred thirteen one thousandths per cent (17,313%) of all the above mentioned salaries and wages as and for the following overhead expenses incurred by San José in furnishing said services and in administering this Agreement, to wit: payments made by San José for retirement benefits, payments made by San José for medical and hospital insurance covering officers and employees, miscellaneous overhead expenses of the auditing, purchasing and engineering departments of San José.

The percentage or amount of overhead allowance or expense payable to San José shall be increased or decreased from year to year to truly reflect actual overhead and incidental costs and expenses incurred by San José for Treatment Plant purposes to the extent that such costs and expenses are not included in other items of cost or expense for which San José is otherwise reimbursed from Treatment Plant Funds.

EXHIBIT G

REPORT BASIC 26-APR-83 PAGE 1
 CITY OF MILPITAS
 SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT
 BASIC CHARGE AMORTIZATION SCHEDULE

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*****
PAYMENT      PRINCIPAL      DAYS IN      PRINCIPAL      INTEREST      TOTAL      NEW AMOUNT
DATE          REMAINING      PERIOD      PAYMENT      PAYMENT      PAYMENT      REMAINING
*****
    
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PAYMENT DATE	PRINCIPAL REMAINING	DAYS IN PERIOD	PRINCIPAL PAYMENT	INTEREST PAYMENT	TOTAL PAYMENT	NEW AMOUNT REMAINING
JAN 31 1974	1,350,803.00	215	33,770.07	46,149.32	79,919.39	1,317,032.93
JUN 30 1974	1,317,032.93	150	33,770.07	31,392.30	65,162.37	1,283,262.86
JAN 31 1975	1,283,262.86	215	33,770.07	43,841.94	77,612.01	1,249,492.79
JUN 30 1975	1,249,492.79	150	33,770.07	29,782.35	63,552.42	1,215,722.72
JAN 31 1976	1,215,722.72	215	33,770.07	41,534.35	75,304.42	1,181,952.65
JUN 30 1976	1,181,952.65	150	33,770.07	28,172.55	61,942.62	1,148,182.58
JAN 31 1977	1,148,182.58	215	33,770.07	39,226.97	72,997.04	1,114,412.51
JUN 30 1977	1,114,412.51	150	33,770.07	26,562.75	60,332.82	1,080,642.44
JAN 31 1978	1,080,642.44	215	33,770.07	36,919.37	70,689.44	1,046,872.37
JUN 30 1978	1,046,872.37	150	33,770.07	24,952.80	58,722.87	1,013,102.30
JAN 31 1979	1,013,102.30	215	33,770.07	34,611.99	68,382.06	979,332.23
JUN 30 1979	979,332.23	150	33,770.07	23,343.00	57,113.07	945,562.16
JAN 31 1980	945,562.16	215	33,770.07	32,304.61	66,074.68	911,792.09
JUN 30 1980	911,792.09	150	33,770.07	21,733.05	55,503.12	878,022.02
JAN 31 1981	878,022.02	215	33,770.07	29,997.02	63,767.09	844,251.95
JUN 30 1981	844,251.95	150	33,770.07	20,123.25	53,893.32	810,481.88
JAN 31 1982	810,481.88	215	33,770.07	27,689.64	61,459.71	776,711.81
JUN 30 1982	776,711.81	150	33,770.07	18,513.45	52,283.52	742,941.74
JAN 31 1983	742,941.74	215	33,770.07	25,382.04	59,152.11	709,171.67
JUN 30 1983	709,171.67	150	33,770.07	16,903.50	50,673.57	675,401.60
JAN 31 1984	675,401.60	215	33,770.07	23,074.66	56,844.73	641,631.53
JUN 30 1984	641,631.53	150	33,770.07	15,293.70	49,063.77	607,861.46
JAN 31 1985	607,861.46	215	33,770.07	20,767.28	54,537.35	574,091.39
JUN 30 1985	574,091.39	150	33,770.07	13,683.75	47,453.82	540,321.32

EXHIBIT G

EXHIBIT G

REPORT BASIC 26-APR-83 PAGE 2
 CITY OF HILPITAS
 SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT
 BASIC CHARGE AMORTIZATION SCHEDULE

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PAYMENT    PRINCIPAL    DAYS IN    PRINCIPAL    INTEREST    TOTAL    NEW AMOUNT
DATE       REMAINING    PERIOD    PAYMENT     PAYMENT     PAYMENT  REMAINING
*****
JAN 31 1986  540,321.32   215      33,770.07   18,459.69   52,229.76   506,551.25
JUN 30 1986  506,551.25   150      33,770.07   12,073.95   45,844.02   472,781.18
JAN 31 1987  472,781.18   215      33,770.07   16,152.31   49,922.38   439,011.11
JUN 30 1987  439,011.11   150      33,770.07   10,464.15   44,234.22   405,241.04
JAN 31 1988  405,241.04   215      33,770.07   13,844.71   47,614.78   371,470.97
JUN 30 1988  371,470.97   150      33,770.07   8,854.20    42,624.27   337,700.90
JAN 31 1989  337,700.90   215      33,770.07   11,537.33   45,307.40   303,930.83
JUN 30 1989  303,930.83   150      33,770.07   7,244.40    41,014.47   270,160.76
JAN 31 1990  270,160.76   215      33,770.07   9,229.95    43,000.02   236,390.69
JUN 30 1990  236,390.69   150      33,770.07   5,634.45    39,404.52   202,620.62
JAN 31 1991  202,620.62   215      33,770.07   6,922.36    40,692.43   168,850.55
JUN 30 1991  168,850.55   150      33,770.07   4,024.65    37,794.72   135,080.48
JAN 31 1992  135,080.48   215      33,770.07   4,614.98    38,385.05   101,310.41
JUN 30 1992  101,310.41   150      33,770.07   2,414.85    36,184.92   67,540.34
JAN 31 1993  67,540.34    215      33,770.07   2,307.38    36,077.45   33,770.27
JUN 30 1993  33,770.27    150      33,770.07   804.90      34,574.97   .20
    
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Basic Charges are based upon a Plant value of 1,350,803 as established during contract negotiation in 1972 and 1973 and are amortized over a twenty year period in semi-annual payments at a simple interest rate of 5.8%.

EXHIBIT H

4815444

B 008 REC 273

EXHIBIT H

Sanitary District Engineer, Milpitas
Sanitary District, Acceptance

Certificate No. 120

NO TAX DUE

Recorded at the request of
Western Title Guaranty Co.
JUL 24 1974 8:01AM
GEORGE A. MANN, Recorder
Santa Clara County, Official Records

B 008 REC 273

This document presented for filing
or recording under Government Code
§6103 by City of Milpitas. No fee. QUIT CLAIM DEED

DH

The CITY OF SAN JOSE, a municipal corporation does hereby remise,
release and quit claim unto

THE MILPITAS SANITARY DISTRICT, a public corporation

the real property situated in the City of San Jose, County of
Santa Clara, State of California, described as follows:

An easement, 20.00 feet in width, for the purpose of construction,
maintenance, repair, renewal, replacement and operation of sanitary
force interceptors in, under, along and across, and the right to
ingress and egress in, upon, over and/or through that portion of those
certain tracts of land described in the deeds to the City of San Jose,
to wit: deed from John R. Watrous, et ux, recorded on July
30, 1954 in Book 2928 at page 224 and deed from Bank of America National Trust and
Savings Association, et al, recorded on May 6, 1971 in Book 9319 at page 17, Official
Records of the County of Santa Clara; and lying within the bounds of a strip of land,
the centerline of which is more particularly described as follows:

Commencing at the southeast corner of that certain 9.16 acre parcel of land
described as Parcel No. 2 in the Final Judgement of Condemnation recorded on March
12, 1954 in Book 2832 of Official Records at page 234, Santa Clara County Records;
thence along the easterly boundary of said 9.16 acre parcel, North 8°04'38" West,
343.38 feet; thence leaving said easterly boundary South 81°55'58" West, 457.71 feet;
thence North 78°04'02" West, 206.39 feet; thence along a tangent curve to the right
having a radius of 35.00 feet through a central angle of 19°13'23" an arc distance
of 11.74 feet; thence North 58°50'39" West, 530.00 feet; thence along a tangent curve
to the left having a radius of 45.00 feet through a central angle of 90°00'07" an
arc distance of 70.69 feet; thence South 31°09'14" West, 623.21 feet to a point on
the Township line between Townships 5 and 6 South, of Range 1 West, Mount Diablo
Base and Meridian, said point being distant along said Township line South 89°10'57"
East, 1483.21 feet from an axle marking the corner common to Sections 35 and 36 of
Township 5 South, and Sections 1 and 2 of Township 6 South; thence continuing South
31°09'14" West, 1,134.72 feet to a point hereby designated for reference as "POINT 'A'";
thence continuing South 31°09'14" West, 4,483.80 feet; thence along a tangent curve
to the right having a radius of 35.00 feet through a central angle of 43°44'48" an
arc distance of 26.72 feet to a point distant North 15°05'58" West, 16.00 feet from
the southerly boundary line of the tract of land described as Parcel One in said
deed from Bank of America National Trust and Savings Association; thence along a
line parallel with and distant northerly 16.00 feet from said southerly boundary
line, South 74°54'02" West, 105.62 feet to a point hereby designated for reference
as "POINT 'B'"; thence continuing South 74°54'02" West, 941.51 feet; thence along a
tangent curve to the left having a radius of 45.00 feet through a central angle of
1°11'8" an arc distance of 63.76 feet to a point distant North 83°42'54" East,

EXHIBIT H

40.00 feet from the centerline of Zanker Road (40 feet wide); thence along a line parallel with and distant easterly 40.00 feet from said Zanker Road centerline, South 6°17'06" East, 788.28 feet; thence along a tangent curve to the right having a radius of 35.00 feet through a central angle of 97°19'53" an arc distance of 59.46 feet to a point distant North 1°02'47" East, 5.00 feet from the easterly extension of the centerline of an entrance road to the San Jose-Santa Clara Water Pollution Control Plant; thence along a line parallel with and distant northerly 5.00 feet from said entrance road centerline, North 88°57'13" West, 1,412.09 feet; thence leaving said parallel line South 85°45'42" West, 401.72 feet to a point distant South 1°02'47" West, 32.00 feet from said entrance road centerline; thence North 89°08'29" West, 609.78 feet to a point distant South 1°02'47" West, 34.00 feet from said entrance road centerline and the terminus of the easement centerline being described herein. U

TOGETHER WITH easements for the purpose of installation, maintenance, repair and replacement of cathodic protection stations and appurtenances thereto, described as follows:

B 008 PAGE 274

Parcel One: A strip of land 10.00 feet in width, the northwesterly line of which is more particularly described as follows: BEGINNING at a point on a southeasterly line of the 20-foot easement described hereinabove, distant South 58°50'46" East, 10.00 feet from "POINT 'A'"; thence along said southeasterly line South 31°09'14" West, 60.00 feet to the terminus of the northwesterly line being described herein.

Parcel Two: A strip of land 6.00 feet in width, the northwesterly line of which is more particularly described as follows: BEGINNING at a point on a southeasterly line of the 20-foot easement described hereinabove, distant South 15°05'58" East, 10.00 feet from "POINT 'B'"; thence along said southeasterly line South 74°54'02" West, 60.00 feet to the terminus of the northwesterly line being described herein.

TOGETHER WITH two temporary construction easements, each 20.00 feet in width and lying contiguous to the side lines of the 20.00-foot easement described hereinabove. Said temporary construction easements shall have no further force or effect upon the completion of construction of the "Water Pollution Control Facilities - 1972", Project No. 6020 of the Milpitas Sanitary District.

The bearings used herein are California Coordinate System, Zone 3. To obtain grid distance, multiply ground distance by 0.999944. 24

TABLE OF CONTENTS

PART I	DEFINITIONS.....	1
PART II	CAPACITY RIGHTS GRANTED TO AGENCY.....	5
	A. General.	5
	B. Capacity Rights.	5
	C. San José/Santa Clara Regional Wastewater Facility Engineering Study.	5
	D. Restrictions and Regulations Respecting Nature, Kind, Type and Strength..... of Sewage.	5
	E. Reports, Data and Maps to be Provided by Agency.....	5
	F. Area Restrictions.	6
PART III	FUTURE DISCHARGE CAPACITY RIGHTS.....	7
	A. Redistribution of Capacity Rights.....	7
	B. Acquisition of Additional Capacity Rights With Plant Expansion.	7
	C. Acquisition of Additional Capacity Rights Without First Parties Initiated..... Plant Expansion.....	8
	D. Adjustment to Capacity Rights Due to Operating Conditions.	8
PART IV	LAND	9
	A. Participation.....	9
	B. Sale of Land.....	9
PART V	AMOUNTS PAYABLE BY AGENCY TO FIRST PARTIES.....	10
	A. Payments for Existing Capacity Rights In The Intermediate Term And..... First Stage Expansion Projects and Phase 1 Water Recycling Program.....	10
	B. Payments for Additional Capacity Rights.	10
	C. Payments for Future Improvements.	10
	D. Payments for Operation and Maintenance Costs.	10
	E. Method of Payment.	11
	F. Credits.	12
	G. General.	12
	H. Payments for Operating Reserves.	12
PART VI	SAN JOSE-SANTA CLARA TREATMENT PLANT ADVISORY..... COMMITTEE.....	14
	A. Creation and Membership.....	14

	B. Alternate Members.....	14
	C. Chair.....	14
	D. Secretary.....	15
	E. Meetings.....	15
	F. Procedure.....	15
	G. Power and Duties.....	15
	H. Action Upon Recommendations.....	16
	I. Expenses.....	17
PART VII	MISCELLANEOUS PROVISIONS	18
	A. Effective Date and Duration of Agreement.....	18
	B. Extension, Renewal or Amendment to the Agreement.....	18
	C. Use of Regional Wastewater Facility After Expiration of Term.....	18
	D. Termination.....	18
	E. Sale or Transfers by First Parties.....	18
	F. Industrial Waste Program.....	19
	G. Claims of Breach of Agreement or of Inequities.....	19
	H. Liability.....	19
	I. Compliance with Federal and State Laws and Regulations.....	20
	J. Assignment.....	20
	K. Successors and Assigns.....	20
	L. Waivers.....	20
	M. Performance and Time to be of The Essence.....	21
	N. Insurance Requirements and Risk Financing.....	21
	O. Titles and Headings.....	23
	P. Notices.....	23
PART VIII	SPECIAL PROVISIONS.....	24
	A. Termination of Agreements.....	24
	B. Basic Charge.....	24
	C. Easements.....	25

- EXHIBIT A ESTIMATED REPLACEMENT COST OF PLANT AND EQUIPMENT
- EXHIBIT B AGENCY TREATMENT PLANT CAPACITY ALLOCATION
- EXHIBIT C LAND DISTRIBUTION
- EXHIBIT D PARTICIPATION IN MAJOR PROCESS RELATED IMPROVEMENTS
- EXHIBIT E ADMINISTERING AGENCY
- EXHIBIT F SERVICE AREA
- EXHIBIT G BASIC CHARGE AMORTIZATION SCHEDULE
- EXHIBIT H SEWER INTERCEPTOR EASEMENT

**AMENDMENT AND RESTATEMENT OF MASTER AGREEMENT FOR
WASTEWATER TREATMENT
BETWEEN CITIES OF SAN JOSE AND SANTA CLARA
AND WEST VALLEY SANITATION DISTRICT**

This Amendment and Restatement of Agreement is made and entered into this ____ day of _____, 2016, by and between the City of San José and the City of Santa Clara, both being municipal corporations of the State of California (hereinafter referred to as “First Parties”), and West Valley Sanitation District (hereinafter referred to as “West Valley” or “Agency”).

WHEREAS, First Parties are co-owners of the “San José-Santa Clara Regional Wastewater Facility,” (the “Plant”) formerly known as the “San Jose/Santa Clara Water Pollution Control Plant”; and

WHEREAS, First Parties and West Valley have previously entered into a Master Agreement for Wastewater Treatment dated March 1, 1983 (then known as County Sanitation District No. 4), a First Amendment to Master Agreement for Wastewater Treatment dated December 17, 1985, a Second Amendment to Master Agreement for Wastewater Treatment dated December 4, 1995, a Third Amendment to Master Agreement for Wastewater Treatment dated August 7, 2006, and a Fourth Amendment to Master Agreement for Wastewater Treatment dated June 16, 2009 (collectively referred to as the “Original West Valley Master Agreement”) related to West Valley’s use of the Plant; and

WHEREAS, implementation of the Regional Wastewater Facility Plant Master Plan would require investment in long-term capital improvement projects to upgrade and rebuild the Facility over the next thirty to fifty years necessitating certain additional amendment to the Original West Valley Master Agreement; and

WHEREAS, for convenience and ease of reference, the parties wish to amend and restate the Original West Valley Master Agreement;

NOW, THEREFORE, the parties agree that the Original West Valley Master Agreement is hereby amended and restated to read as follows:

**PART I
DEFINITIONS**

A. Administering Agency.

The City of San José is and shall be the Administering Agency of this Agreement and

as such shall execute and administer this Agreement in accordance with Section VIII of the 1959 Agreement excerpted in the attached Exhibit E.

B. Agencies.

The term “Agencies” shall be those tributary agencies discharging wastewater into the San José-Santa Clara Regional Wastewater Facility, previously referred to as “outside users” in the 1959 Agreement.

C. 1959 Agreement.

The term “1959 Agreement” shall mean the Agreement between San José and Santa Clara, dated May 6, 1959 and entitled “Agreement between San Jose and Santa Clara Respecting Sewage Treatment Plant,” as such Agreement now reads or as it may here after from time to time be amended or renegotiated.

D. Capacity.

The term “capacity” shall mean the Mean Peak Five (5) Day Dry Weather Plant Treatment capacity as contained in Exhibit “A,” attached hereto and incorporated herein by reference as if fully set forth.

E. Director.

The term “Director” shall mean the Director of the Environmental Services Department for the City of San José.

F. Engineering Study.

The term “Engineering Study” shall mean those studies that the First Parties shall cause to be made when the Plan has reached eighty-five percent (85%) of its designed capacity, beginning with 167 MGD and for every incremental capacity increase thereafter. The first Engineering Study shall be performed when the mean peak five-day dry weather flow to the Plant reaches 142 MGD. The Engineering Study shall include an analysis of capacity needs, the size, and nature of proposed facilities to be constructed, a construction timetable, and an estimate of total project costs, and an estimate of each participating agency’s share of project cost.

G. Exhibits.

The term “Exhibits” shall mean those Exhibits attached to this Agreement and incorporated into this Agreement by reference as if fully set forth. These Exhibits may be modified as contract amendments or amended from time to time as necessary to reflect changes of fact. The Exhibits shall be reviewed annually, or at such other times as significant changes occur, by the Treatment Plant Advisory Committee, which body shall recommend any modifications or amendments required.

H. First Stage Expansion.

The term “First Stage Expansion” shall mean that portion, as is presently described in

the report of CH2M Hill, engineers, entitled “San José/Santa Clara Water Pollution Control Plant, Capital Improvement Program, Executive Summary, Revised June, 1982” and dated June 25, 1982, or as amended or revised, which consists of improvements to all areas of the Plant and expansion of the Liquid Process, Process Control System, Sludge Processing and Disposal and will provide a capacity of 167 mgd.

I. Interest.

Interest will be to the extent permitted by law, equal to the rate of interest set forth in the monthly report to the Council of the City of San José, prepared by the Director of Finance of San José, with respect to said City’s portfolio and interest earnings thereon.

J. Intermediate-Term Improvements.

The term “Intermediate-Term Improvements” shall mean that portion, as is presently described in the report of CH2M Hill, engineers, entitled “San José/Santa Clara Water Pollution Control Plant, Capital Improvement Program, Executive Summary, Revised June, 1982” and dated June 25, 1982, or as amended or revised, which consists of six (6) elements, as outlined in Chapter 2 of said report, which are designated to provide the Plant with a mean peak five (5) day dry weather treatment capacity of 143 mgd.

K. Long-Term Improvements.

The term “Long-Term Improvements” shall mean capital improvement projects identified in the Plant Master Plan dated March 2012 and approved by TPAC on November 14, 2013; Capital Improvement Program Validation Project Packages dated March 25, 2014; Ten-Year Funding Strategy dated February 2015 and approved by TPAC on May 14, 2015; and the Proposed 2016-2020 Capital Improvement Program for the Water Pollution Control Plant approved by TPAC on May 14, 2015, collectively referred to as “Project Documents,” as these Project Documents may be amended or revised through the annual budget process, and periodic updates. The capital improvement projects identified in the Project Documents are to repair, replace, and upgrade the aging facilities and treatment processes at the Plant. The process areas include, but are not limited to, liquids treatment, solids treatment, energy and automation, and support facilities process areas.

L. Operating and Maintenance Costs.

Any 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, chemicals, 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.

M. Parameters.

The term “parameters” shall mean the four (4) treatment parameters of Flow, Biochemical Oxygen Demand (BOD), Suspended Solids (SS), and Ammonia (NH₃) as expressed in terms of estimates, which are the common denominator for computing annual and/or daily loadings.

N. Plant.

The term “Plant” shall mean the “San José-Santa Clara Regional Wastewater Facility,” formerly known as the “San José/Santa Clara Water Pollution Control Plant.”

O. Replacement Costs.

All 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:

1. Major rehabilitation which will be needed as individual unit processes or other facilities near the end of their useful lives;
2. Structural rehabilitations;
3. Plant expansions or upgrades to meet future user demands.

P. Replacement Fund.

Replacement fund shall mean those monies deposited with the Administering Agency for Replacement Costs at the Plant.

Q. TPAC.

The term “TPAC” shall mean the Treatment Plan Advisory Committee.

PART II
CAPACITY RIGHTS GRANTED TO AGENCY

A. General.

Commencing on the effective date of the Original Agreement, and thereafter during the term of this Agreement, and subject to all the conditions, limitations, restrictions, terms and provisions contained in this Agreement, and Agency's faithful compliance with and performance of the same, First Parties hereby grant to Agency a right to discharge wastewater into the Plant and to have the same treated and disposed of in and by said Plant the same as wastewaters of First Parties.

B. Capacity Rights.

First Parties have designed the Plant to provide for capacity to treat and dispose the volume and strength of wastewater specified in Exhibit "A". Agency shall be entitled for the duration of this Agreement to use the capacity as set forth in said Exhibit "A". First Parties and Agency agree not to discharge more than its capacity in the parameters as is specified in said Exhibit "A", except with the approval and agreement of the First Parties hereto in accordance with the terms and conditions hereinafter provided, or as provided in Part III. Any continuous and intentional violation of capacity rights will be considered a material breach of this Agreement and will be given priority in the claim of breach process as set forth in Part VII Section G.

C. San José-Santa Clara Regional Wastewater Facility Engineering Study.

First Parties agree to make an Engineering Study to redefine all "Agencies" future needs as set forth in Part I, Section F.

D. Restrictions and Regulations Respecting Nature, Kind, Type and Strength of Sewage.

First Parties shall inform Agency of the Industrial Waste Ordinance of the City of San José concerning the type and condition of discharge, which would be detrimental to the Plant. Each party to this Agreement shall adopt and enforce ordinances, resolutions, rules, and regulations to conform to the restrictions of said Ordinance. Any waiver to the above must be authorized by written Resolution of both the Council of the City of San José and the Council of the City of Santa Clara. Each party to this Agreement shall also comply with the applicable statutes, ordinances, rules, and regulations of agencies of the United States of America, and the State of California.

E. Reports, Data and Maps to be Provided by Agency.

It is mutually agreed that all parties shall prepare and file with the Director reports, data and maps as deemed necessary by the Director and Agency.

F. Area Restrictions.

Agency, unless otherwise authorized by written resolutions of the governing boards of both the City of San José and the City of Santa Clara shall not, and agrees that it will not, discharge or cause, allow, permit or suffer to be discharged into the Plant, or into any sewer line or lines which convey either directly or indirectly any wastewater to the Plant, any wastewater which is produced in, or emanates, or comes from any territorial property situated outside the service area map attached as Exhibit F. First Parties and Agency further agree not to discharge, or cause to be discharged, any wastewater into any sewer line or lines of the other party, either directly or indirectly, conveying wastewater to the Plant without written authorization of the owner of the sewer line.

PART III
FUTURE DISCHARGE CAPACITY RIGHTS

A. Redistribution of Capacity Rights.

1. In order to dispose of capacity, any Agency or First Parties may designate all or a portion of its capacity right as “excess pooled capacity,” which shall be available for disposal as hereinafter provided.
2. Any Agency or First Parties may acquire excess-pooled capacity as recommended by TPAC. Any Agency or First Parties may acquire excess pooled capacity at the replacement cost as described in Exhibit “B” plus that portion of the selling party’s replacement balance remaining in the Replacement Fund maintained by the Administering Agency.
3. If requests for excess pooled capacity total more than the excess pooled capacity available, then as set forth in Part VI, TPAC will allocate the pooled capacity actually available in a manner to most closely achieve the same planning horizon for all requesting parties.

B. Acquisition of Additional Capacity Rights With Plant Expansion.

Agency shall have the right to participate in Plant expansions for the purpose of increasing the capacity right into the expanded Plant, subject to the following terms and conditions:

1. Before commencing the design of any such additions, improvements or changes, First Parties shall give Agency written notice of their intention to expand the Plant, and the design year for the proposed expansion, as set forth in the Engineering Study prepared in accordance with Part II, Section C.
2. Within ninety (90) days from and after the giving of such notice, Agency shall notify First Parties in writing whether it wishes to participate in the proposed expansion, and the amount of capacity desired to serve until the design year. If Agency fails to give such notice within such time, it shall be deemed to have elected not to participate in such expansion.
3. If Agency elects not to participate in such expansion, it will pay no part of the cost of additions, improvements, and changes, which are made for the purpose of increasing the capacity of the Plant.
4. If Agency elects to participate in such expansion, it shall pay to First Parties that part of the total cost of such additions, improvements, and changes as defined in Part V, Section B.
5. If the needs of all parties are different than the next feasible increment of plant expansion capacity as described in the Engineering Study, then as set forth in

Part VI. TPAC, will allocate the capacity available in a manner to most closely achieve the same planning horizon for all requesting parties.

C. Acquisition of Additional Capacity Rights Without First Parties Initiated Plant Expansion.

If Agency should desire to increase its capacity right into the Plant at a time when no expansion of the Plant as described in the Engineering Study, is proposed by First Parties and no excess pooled capacity is available, then Agency may seek additional capacity by the following method:

If requested by Agency, First Parties shall initiate a Special Engineering Study to determine the most feasible means to add to the Plant that capacity requested by Agency. When Agency agrees to pay for such increment, then First Parties shall expand the Plant by such increment. This right shall not be exercised within five (5) years of completion of the latest Engineering Study.

D. Adjustment to Capacity Rights Due to Operating Conditions.

1. In the event of a major Plant facility failure caused by an earthquake, explosion, war, flooding or the like, reductions in operational capacity and any cost of restoration shall be borne by all Agencies, including San José/Santa Clara and Agency in accordance with Exhibit "A", and the cost of restoration shall be borne proportionately.
2. Any changes in Plant capacity which either increase or decrease the capacity of the Plant, resulting from any means whatsoever, shall be proportioned to each agency including San José and Santa Clara in accordance with Exhibit "A".
3. TPAC, as set forth in Part VI, shall determine annually, during the month of November, the operational capacity, and productive use of the Plant in all parameters for all parties and the remaining design capacity of the Plant.
4. Agency and First Parties shall not exceed the capacity rights agreed upon pursuant to Exhibit "A".
5. If at any time, prior to the completion of the Intermediate-term Improvements, it becomes necessary to allocate connections to the sewer systems of the combined agencies; in that event, to the extent permitted by law, First Parties will receive forty percent (40%) of the connections of whatever type and all other dischargers will receive sixty percent (60%) of the connections of whatever type. Agency's share will be determined by Agreement among the Agencies. This paragraph shall only remain in effect until completion of the Intermediate-term Improvements.

PART IV
LAND

A. Participation.

Participation and rights in Plant land shall be as described in Exhibit “C”.

B. Sale of Land.

It is mutually agreed between First Parties and Agency that if First Parties should, during the term of this Agreement, sell or otherwise dispose of any of the lands of Exhibit “C” which is or are no longer needed for Plant purposes, Agency shall have the right to share in any revenue derived from such sale by First Parties proportionally in accordance with Exhibit “C.”

PART V
AMOUNTS PAYABLE BY AGENCY TO FIRST PARTIES

A. Payments for Existing Capacity Rights In The Intermediate Term And First Stage Expansion Projects and Phase 1 Water Recycling Program.

Payments for participation in the Intermediate-term and First Stage Expansion and Phase 1 Water Recycling Program shall be as described in Exhibit “D” attached hereto and incorporated by reference herein.

B. Payments for Additional Capacity Rights.

1. Payments with Plant Expansion. All payments associated with a Plant expansion as outlined in Part III, Section B, shall be paid for in proportion to the capacity rights requested in the basic parameters or based upon appropriate ratios of Agency design parameters to total project design parameters times total project cost.
2. Payments Without Planned Expansion. Should Agency elect to obtain additional capacity rights at a time when First Parties do not intend to expand Plant as designated in Part III, Section B, the expenses associated with this addition of capacity rights shall be the sole responsibility of Agency. All payments for studies, designs, and construction to provide additional capacity shall be deposited with the Administering Agency.
3. Payments for Transfer of Capacity Rights. Transfers of capacity rights between First Parties and Agency or between Agency and Agencies, shall be recommended by the TPAC and approved by First Parties and based upon the pooled capacity costs determined in Part IV, Section A. Transfer of capacity rights shall be based upon written agreement between the participating parties. Payment shall be due and payable as provided in said agreement.

C. Payments for Future Improvements.

1. All payments associated with future improvements at the Plant shall be made on the basis of Agency’s existing capacity rights. Final payment shall be determined based upon actual project cost. This payment shall be a proportional share in accordance with Exhibit “A”.
2. First Parties shall, not later than March 1st, of any fiscal year, provide Agency with a preliminary estimate of the amount of money required from Agency for future improvements or replacements for the ensuing fiscal year.

D. Payments for Operation and Maintenance Costs.

1. First Parties, Agency, and Agencies shall bear the cost of the operations and maintenance expenses of the Plant, including all reclamation facilities operated by the Plant. The cost of operation and maintenance of reclamation facilities shall be

determined based upon the actual flow (in million gallons per day) of Agency's discharge into the Plant. All other operation and maintenance expenses of the Plant shall be determined based upon the parameters of Agency's actual discharge into the Plant. Agency shall provide to First Parties, by December 1st of each year, data indicating expected flow and discharge for the ensuing fiscal year.

2. First Parties shall, not later than March 1st of each year, provide Agency with a preliminary estimate of the amount of money required to operate and maintain the Plant, including all reclamation facilities operated by the Plant, for the ensuing fiscal year. In addition, First Parties shall indicate Agency's estimated annual share for operation and maintenance costs as apportioned to treatment parameters, and for operation and maintenance costs for reclamation as apportioned to flow.
3. Agency shall provide to First Parties a copy of Agency's adopted annual sewer revenue program by August 1st of each year. This revenue program shall conform to all federal and/or state guidelines as now exist or may exist in the future.
4. During the second quarter of each fiscal year, TPAC shall review each Agency's total flow and total discharge to the Plant for the preceding fiscal year in terms of the parameters. Adjustments and costs, if any resulting from this review shall be made in accordance with Part V, Section E, Paragraph 3b herein.

E. Method of Payment.

1. Capital and Land Acquisition. All payments for capital and land acquisition shall be on a quarterly basis, the first quarter beginning July 1st. These invoices shall be presented at the beginning of the quarter in which the obligation is anticipated to occur. The date of financial obligations for capital expenses and land acquisitions shall be the date of award of contract. These payments shall be based upon the budget for capital costs for the Plant as recommended by TPAC and approved by the Administering Agency.
2. Operation and Maintenance Costs. All payments for operation & maintenance expenses shall be made on a quarterly basis, the first quarter beginning July 1st. Invoices for these payments 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 operation and maintenance costs of the Plant as recommended by TPAC and approved by the Administering Agency.
3. General Information.
 - a. All bills shall be paid to the Administering Agency within forty-five (45) days from presentation. Interest will be charged on any late or unpaid bills.
 - b. 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. A statement outlining the method of adjusting costs and actual adjustments shall be included.

- c. Any and all monies which Agency is herein required to pay to First Parties shall be paid to the Administering Agency.

F. Credits.

1. Grants or Outside Financial Assistance. Any grants, recoveries, or outside financial assistance received, and any interest earned thereon, shall be credited to First Parties, Agencies and Agency in the quarter following receipt, along with a statement outlining the source of grant revenue and method of distribution. 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.
2. Interest. Interest on moneys advanced, credits held for Agency or amounts due from Agency, shall be determined on a monthly basis.
3. Revenues and Income. If First Party should, during the term of this Agreement, receive any income or revenues related to land, products, or services at the Plant, then Agency shall be entitled to a share of the income. Agency's share shall be that proportion of such income based on Agency's contribution to the capital cost or O & M cost, which is applicable, during the fiscal year of receipt of such income.

G. General.

Payment to Agency of any moneys to which it may become entitled may be made by off-setting the amount of such moneys against any payments which Agency may be obligated to pay to First Parties under the provisions of this Agreement or Agency may request cash reimbursement of any credit balance. The request for cash reimbursement shall be honored by First Parties within forty-five (45) days following receipt of notice. Any additional payments requested from Agency shall be made with the third quarter payment.

H. Payments for Operating Reserves.

The Administering Agency's annual operation and maintenance budget for the Plant shall include an operating reserve as an operating cost as described in this subsection. First Parties and all Agencies shall contribute their proportionate share to fund the operating reserve in the minimum amount of sixty (60) days of annual operating and maintenance expenses for unanticipated operation and maintenance costs for the Plant ("Operating Reserve") beginning in Fiscal Year 2016-2017. Each Agency's contribution to the Operating Reserve shall be determined in proportion to the Agency's estimated annual share of operation and maintenance costs of the Plant. The Operating Reserve contribution for each Agency shall be calculated as follows: annual Agency operation and maintenance allocation percentage multiplied by the

total estimated annual Plant operation and maintenance budget amount, divided by 365 days, and then multiplied by 60 days. In each fiscal year following Fiscal Year 2016-2017, the calculation will take into account the amount held in the Operating Reserve as of the date of calculation.

The Administering Agency shall provide each Agency on or before March 1 of each fiscal year, commencing in Fiscal Year 2015-2016 for the amount of its estimated contribution to the Operating Reserve for the following fiscal year. Each Agency shall be billed for its contribution to the Operating Reserve following the Administering Agency's adoption of the annual operation and maintenance budget for the Plant for Fiscal Year 2016-2017, and each fiscal year thereafter. If the adopted annual budget for operation and maintenance costs of the Plant is greater than or less than the amount on which the Agencies' respective contributions were calculated and paid into the Operating Reserve for the prior fiscal year, then the billing statement presented to each Agency will identify the revised contribution amount and specify the amount of the adjustment due if an Agency's contribution has increased or the amount subject to credit if an Agency's contribution amount has decreased. Agency shall make payment in full of the amount of its contribution to the Operating Reserve within forty-five (45) days of presentation of the billing statement. Any credit due to the Agency shall be applied to the Agency's first quarterly payment for operation and maintenance costs.

PART VI
SAN JOSE-SANTA CLARA TREATMENT PLANT
ADVISORY COMMITTEE

A. Creation and Membership.

The San José-Santa Clara Treatment Plant Advisory Committee (TPAC), created by the 1959 Agreement, shall consist of nine (9) members. Three (3) of the members shall be members of the Council of the City of San José, shall be appointed by said Council, and shall serve at the pleasure of said Council. Two (2) of the members shall be members of the Council of the City of Santa Clara, shall be appointed by the Council of the City of Santa Clara, and shall serve at the pleasure of said Council. One (1) of the members shall be a member of the Council of the City of Milpitas, shall be appointed by said Council, and shall serve at the pleasure of said Council. One of the members shall be a member of the governing body of the West Valley Sanitation District, shall be appointed by the governing body of the West Valley Sanitation District, and shall serve at the pleasure of said body. One (1) of the members shall be a member of the governing body of the Cupertino Sanitary District, shall be appointed by the governing body of the Cupertino Sanitary District, and shall serve at the pleasure of said body. The ninth (9th) member shall be the City Manager of San José or a designated representative. No member shall have more than one (1) vote.

B. Alternate Members.

The Council of the City of San José may appoint three (3) of its Council members as alternative members of TPAC. The Council of the City of Santa Clara may appoint two (2) of its Council members as alternative members of TPAC. The Council of the City of Milpitas may appoint one (1) of its Council members as an alternative member of TPAC. The governing body of the West Valley Sanitation District and the governing body of the Cupertino Sanitary District may each appoint one (1) of its members as an alternative member of TPAC. Said alternate members shall serve in the place and stead of any of the regular members whenever said regular member should be absent from a meeting of TPAC.

C. Chair.

At the first meeting of each fiscal year, the members of TPAC shall elect a Chair and Vice Chair of TPAC. The Chair and Vice Chair shall serve as such until the election of his or her successor, or until cessation of membership of the TPAC, whichever is earlier. Vacancies in the office of the Chair and Vice Chair occurring in-between regular elections may be filled by TPAC electing a Chair and Vice Chair elected to serve until the next regular election. The Chair, or the Vice Chair in the Chair's absence, shall preside at all meetings. In the event the Chair and Vice Chair should

both be absent from any meeting, the members of TPAC may elect a Chair pro tem to serve as Chair during the latter's absence.

D. Secretary.

The Administering Agency shall provide a secretary for TPAC. Said secretary shall keep minutes of TPAC proceedings and shall also have custody of all books, records and papers of TPAC.

E. Meetings.

Regular meetings of TPAC shall be held at a time and place to be determined by TPAC. Special meetings may be called at any time by the Chair, to be held at a reasonable time and place specified in the notice calling the special meeting, subject to applicable requirements of law.

F. Procedure.

Except as may otherwise be provided by Resolution of TPAC, the procedure to be followed by TPAC at its meeting shall be that set forth in Robert's Rules of Order. TPAC may act by resolution of motion; a motion duly passed by TPAC and entered at length on TPAC's minutes may be deemed to be a resolution.

G. Power and Duties.

TPAC shall have the following powers and duties with respect to those items to be considered.

1. Make recommendation to First Parties and Agencies with respect to policy relating to the Plant and its maintenance, repair, expansion, replacement, improvement, and operation.
2. Make recommendation to the legislative bodies of First Parties and Agencies with respect to proposed amendments and revisions to exhibits to this Agreement.
3. Make recommendations to both First Parties and Agencies with respect to the advisability of selling interests in the Plant.
4. Make recommendations to First Parties with respect to the advisability of entering into contracts with other entities desiring to use the Plant on a rental or other basis.
5. Make recommendations to the Administering Agency and Agencies as to type and amount of insurance to be purchased for the Plant.
6. Annually, during the month of May in each fiscal year, TPAC shall review and recommend to the legislative bodies of First Parties and Agencies, a proposed budget for the ensuing fiscal year for the maintenance, expansion, replacement, improvement, and operation of the Plant.

7. Make recommendations to the Administering Agency with respect to the award of consultant, construction, or service contracts relating to the Plant.
8. Annually, TPAC shall file with the legislative bodies of First Parties and Agencies, a report on Plant capacity pursuant to Part III, Section D, paragraph 3.
9. Make recommendations to First Parties and Agencies with respect to the redistribution of pooled excess capacity pursuant to Part III, Section A, paragraphs 1 and 2.
10. Periodically, TPAC shall review and make current, long-range plans for expansion and/or improvement of the Plant to provide for the anticipated Plant capacity required to accommodate the general plans of San José, Santa Clara and Agencies and to meet current wastewater discharge requirements.
11. Make recommendations to the legislative bodies of First Parties and Agencies with respect to claim of breach proceedings pursuant to Part VII, Section C.

H. Action Upon Recommendations.

The legislative bodies of First Parties or the Agencies, shall not adopt any motion, Resolution or Ordinance that is contrary to any recommendation submitted to it by TPAC with respect to the Plant and its maintenance, repair, expansion, replacement, improvement and operation without a finding of fact or facts justifying such contrary action. The finding of fact or facts shall be submitted in writing to TPAC within fifteen (15) days after any contrary action. All policy matters as determined by the Director requiring an adoption of a motion, Resolution or Ordinance by the Council of the City of San José relating to the Plant and its maintenance, repair, expansion, replacement, improvement and operation, shall first be submitted to TPAC for its recommendation and in sufficient time, as determined by the Administering Agency, to allow TPAC to make a recommendation thereon. The Council of the City of San José shall not act upon any such policy matter until it has received the recommendation from TPAC. If TPAC does not submit its recommendation to the Council of the City of San José within the prescribed time, the City Council may adopt such a motion, Resolution or Ordinance. If a legislative body is presented with any evidence not considered by TPAC in the making of any recommendation, then, prior to the taking of action contrary to said recommendation, if time permits as determined by the Administering Agency, the legislative body shall refer the matter back to TPAC for a supplementary report. Said supplementary report shall be submitted by TPAC within thirty (30) days after reference, or such longer period as may be designated by the legislative body. If TPAC fails to make such supplementary report within the time specified, the legislative body is free to consider such evidence without TPAC recommendations. In the event of an emergency as determined by the Director, the above procedure may be waived.

I. Expenses.

Members of TPAC shall be reimbursed for all expenses reasonably incurred by them in the performance of their duties, and that provision therefor, shall be made in the annual budget. Such expenses shall be considered as “operating costs” of the Plant.

PART VII
MISCELLANEOUS PROVISIONS

A. Effective Date and Duration of Agreement.

It is hereby agreed that this Agreement shall be in force and effect for a term beginning on May 10, 1983 and extending to, and including, and ending on June 30, 2065, or until sooner termination by mutual written agreement of the parties hereto or by operation of law or because of a material breach by one of the parties hereto.

B. Extension, Renewal or Amendment to the Agreement.

It is mutually agreed that the term of this Agreement may be extended or renewed only by mutual written agreement of the parties hereto and that this Agreement, including exhibits, may be amended or supplemented by a mutual written agreement of the parties hereto. This Agreement shall be reviewed in its entirety by First Parties and Agency in the year 2050. First Parties and Agency further agree that in the year 2065, they will meet and confer in good faith to negotiate a revised or new Agreement.

C. Use of Regional Wastewater Facility After Expiration of Term.

If for any reason the contact cannot be renewed in the year 2065, or subsequent to the termination date, the discharging Agency shall have the right to continue to discharging to the Plant, provided all payments of Agency's share of Plant costs are made. All other rights under this Agreement shall cease.

D. Termination.

If for any reason this Agreement is terminated by mutual consent of both parties, then the discharging capacity rights of the Agency shall be considered "excess pooled capacity" pursuant to the terms of Paragraph III Section A. This capacity shall be reserved for the Agency and Agency shall continue to pay for all costs associated with such capacity until such time as that capacity is either purchased by other users pursuant to the terms of this Agreement, or until failure of the Plant to treat wastewater.

E. Sale or Transfers by First Parties.

Nothing in this Agreement contained shall be deemed to prohibit or restrict First Parties, or either of them, for selling, granting, assigning or otherwise transferring this Agreement or any part or interest therein, or the Plant or any part or interest therein, or any right to discharge wastewater therein and to have the same therein treated and disposed of, to any corporation, district, governmental organization or entity or to any other person or persons, provided that any such transaction shall be subject to such

rights and privileges as First Parties and Agency may have under and by virtue of the provisions of this Agreement.

F. Industrial Waste Program.

The Administering Agency agrees to maintain personnel for the specific purposes of assisting all parties with matters concerning industrial waste. Such responsibilities shall include industrial waste monitoring, sampling and analysis, technical advice and surveillance of all industrial discharges tributary to the Plant. The Administering Agency agrees to be responsible for issuing notices of nonconformance within Agency's service area for violations of the ordinance requirements in Part II, Section D. Agency shall be responsible for the adoption and enforcement of any Industrial Waste Ordinance requirements. The Administering Agency shall endeavor to keep all dischargers informed of federal, state, county and city laws, rules, regulations, standards, and ordinances relating to industrial waste requirements.

G. Claims of Breach of Agreement or of Inequities.

In the event any party to this Agreement should at any time claim that the other party has in any way breached or is breaching this Agreement, or that the Agreement is inequitable, the complaining party shall file with the legislative body or bodies of the other parties, and with TPAC, a written claim of said breach or inequity, describing the alleged breach or inequity and otherwise giving full information respecting the same. TPAC shall within two (2) months at a place specified by it, give all concerned parties full opportunity to be heard on the matter, and shall, upon conclusion of said hearing, give the legislative bodies of both parties a full report of its finding and recommendations. Said report, findings, and recommendations shall be deemed advisory only; shall not be deemed to establish any facts, either presumptively or finally. Upon receipt of said report and recommendations, if any party is dissatisfied with or disagree with same, the legislative bodies of all parties concerned shall jointly meet with each other within two (2) months at a place to be determined by them, for the purpose of resolving their differences. No action for breach of this Agreement, and no action for any legal relief because of any breach or alleged breach of this Agreement shall be filed or commenced, and nothing shall be done by either party to rescind or terminate this Agreement, unless and until the above provisions of this paragraph have been complied with and unless the complaining party has first given to the other party three (3) months from the conclusion of said joint meeting of said legislative bodies within which to cure any breach or alleged breach.

H. Liability.

It is mutually agreed that any liability of San José and/or Santa Clara, or of San José as the Administering Agency for any damage to any such person or property arising or resulting from any dangerous or defective condition in the Plant or any part or property thereof, or arising or resulting from any act or omission of San José or Santa

Clara or their respective officers, agents, employees or contractors, in the control, administration, construction, expansions, installation, operation, maintenance or repair of said Plant or any part or property thereof, shall be mutually shared and paid for by First Parties and Agencies on the basis of operations and maintenance or capital costs, whichever is applicable. It is understood and agreed that First Parties in granting to Agencies certain discharge capacity rights in the Plant and to have wastewater treated and disposed of in said Plant, are not guaranteeing or warranting that the Plant will be able to satisfactorily treat such wastewater. In the event the Plant should for any reason other than by the gross negligence or intentional misconduct of First Parties be incapable of satisfactorily treating wastewater discharge into the Plant by Agency or First Parties, First Parties shall in no way be liable to Agency for any damages arising or resulting from or suffered because of the failure of the Plant to satisfactorily receive, hold, treat or otherwise dispose of wastewater.

I. Compliance with Federal and State Laws and Regulations.

Agency and First Parties agree to comply with any and all Federal, State, or local laws, the rules, regulations, standards and requirements of any Federal, State, or local board, commission, agency or similar body, and the decisions of any court or competent jurisdiction which must be complied with to enable First Parties to qualify for Federal or State grants for the construction, improvement, administration, operation, maintenance, or repair of the Plant.

J. Assignment.

Agency shall not assign or transfer any interest nor the performance of any of Agency's obligations hereunder without the prior written consent of First Parties, and any attempt by Agency to so assign this Agreement or any rights, duties or obligations arising hereunder without written consent shall be void and of no effect.

K. Successors and Assigns.

It is mutually agreed by all the parties hereto that the agreements, covenants, conditions, limitations, restrictions and undertakings herein contained shall, subject to the provisions as to assignment, apply to and bind the successors and assigns of the respective parties hereto as if they were in all cases named.

L. Waivers.

One or more waivers of any term, covenant or condition by either party shall not be construed as a waiver of a subsequent breach of the same or any other term, covenant or condition and the consent or approval by either party to any act shall not be deemed to waive or render unnecessary either party's consent or approval for any subsequent similar act by the other party.

M. Performance and Time to be of The Essence.

It is understood and agreed that full and faithful compliance with and performance of each and every covenant and provision of this Agreement by the party or parties required to comply with or perform each such covenant or provision is and shall be of the essence; also that time is and shall be of the essence; also that such full and faithful compliance with and performance of each and every covenant and provision of this Agreement shall be deemed to be a material condition of this Agreement.

N. Insurance Requirements and Risk Financing.

1. General Provisions. The Administering Agency may elect to self-insure any obligations hereunder should a program of self-insurance be deemed, at the sole discretion of the Administering Agency, the most economically reasonable risk financing option. The Administering Agency may contract for brokerage services and procure insurance policies or products, as needed and as would customarily be maintained, to mitigate against risks associated with common losses related to work or operations described in this Agreement including, but not limited to, claims for injuries to persons or damages to property from performance of the work or operations described in or incidental to this Agreement. The Administering Agency shall further provide services related to administration and maintenance of the insurance policies procured for on behalf of the Plant. The form of risk financing required under this section does not alter the liability of the parties. Each party shall be responsible for its proportionate share of any costs associated with self-insurance and the premiums, deductibles, copayments, losses, claims recovery, or other related costs.
2. Scope of Coverage. In the event that the Administering Agency procures and maintains insurance policies by a third party provider, the coverage, to the extent economically feasible and available in the marketplace, will include:
 - 2.1. A property and casualty insurance policy or policies insuring the Plant, in such forms and with such carriers as shall be within industry standards, including:
 - 2.1.1. “All risk” property policy including boiler and machinery exposures, coverage for loss due to business interruption, and flood.
 - 2.1.2. 100% Replacement Cost, excluding foundations and excavations, with a deductible amount of no more than \$100,000 for scheduled properties unless otherwise specified in these Requirements or, in the event that the identified deductible is no longer available at reasonable market rates.
 - 2.1.3. Wind, Flood, Boiler, and Sprinkler Leakage coverages, in amounts consistent with industry practice.

- 2.1.4. The Administering Agency will annually market for and assess the economic feasibility of procuring earthquake coverage and Terrorism Risk Insurance Act (“TRIA”) coverage.
 - 2.1.5. The Administering Agency shall not insure personal property located at the Plant that is not an owned asset of the Plant.
 - 2.2. A commercial general liability policy (“occurrence” form CG 0001) or its equivalent and, if necessary, an umbrella or excess policy or policies liability with limits as are reasonable within the industry and a combined single limit for bodily injury and property damage, providing to the extent economically feasible all of the following coverage:
 - 2.2.1. Premises Operations
 - 2.2.2. Products/Completed Operations
 - 2.2.3. Personal and Advertising Injury and Liability
 - 2.2.4. Fire Legal Liability with a minimum limit of \$100,000
 - 2.2.5. Environmental Legal Liability (if not obtained by separate environmental legal liability policy)
 - 2.3. A business automobile policy with coverage provided by Insurance Services Office form number CA 0001 covering automobile liability and a minimum limit of not less than \$1,000,000 combined single limit for bodily injury and property damage.
 - 2.4. A workers’ compensation and employer’s liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of contractor.
 - 2.5. In the event that the Administering Agency uses an excess liability policy(ies) to meet commercial general liability policy limits or property policy limits as would be reasonable considering industry standards, the excess liability coverage must follow form or have greater scope of coverage than the commercial general liability coverage. All Parties shall receive the same status on the excess liability policy including receipt of additional insured endorsements.
 - 3. Policies and Endorsements. At any party’s request, the Administering Agency shall provide a certificate of insurance with applicable endorsements, an insurance summary, or a copy of the insurance policy or policies obtained pursuant to this Agreement.
 - 3.1. All parties shall have additional insured endorsements on each policy (excluding workers’ compensation) to the extent each individual party has an insurable interest.
 - 3.2. All policies shall be endorsed as primary and noncontributing to any other insurance policy of any of the parties to the extent permitted by policy form.
 - 4. Costs. All related insurance costs shall be included in the maintenance and

operating expenses. Costs shall include but not be limited to brokerage fees, premiums, deductibles, copayments, uncovered losses, claims recovery expenses including disputed claims, fees, taxes, administration costs, fines, or penalties not otherwise insured or covered.

O. Titles and Headings.

The sub-heading and titles of this Agreement are inserted for the convenience of reference only and shall not be taken or considered as having any bearing on the interpretation thereof.

P. Notices.

All notices shall be mailed to the address designated beneath the signatures of the parties hereto or as subsequently designated in writing by the parties.

PART VIII
SPECIAL PROVISIONS

A. Termination of Agreements.

It is mutually agreed by all parties hereto that the following agreements heretofore entered into between the CITY OF SAN JOSE and the WEST VALLEY SANITATION DISTRICT (formerly COUNTY SANITATION DISTRICT NO. 4); or between the CITY OF SANTA CLARA and WEST VALLEY SANITATION DISTRICT; or between the WEST VALLEY SANITATION DISTRICT, and both the CITY OF SAN JOSE and the CITY OF SANTA CLARA relating to the Plant, and any and all supplements, addendums, changes, or amendments thereto, have been terminated.

6. Agreement By and Between the Cities of San Jose, Santa Clara, and County Sanitation District No. 4 Providing Interim Allocation of Treatment Capacity, dated April 13, 1981.
5. Settlement Agreement By and Between the Cities of San Jose, Santa Clara, and County Sanitation District No. 4, dated January 14, 1981.
4. Agreement between Cities of San Jose, Santa Clara, and County Sanitation District No. 4 Relating to Sharing of Operating Costs of The Sewage Treatment Plant, dated April 29, 1976.
3. Agreement Providing for the Sharing of Cost to be Incurred in Connection with the Employment of a Consultant for the Preparation of a Study for Ultimate Disposition of South San Francisco Bay Waste Water, dated May 26, 1970.
2. Agreement Supplementing Agreements with CSD #4 and Cupertino Sanitary District and City of Santa Clara, dated June 1, 1966.
1. Agreement between Cities of San Jose and Santa Clara and County Sanitation District No. 4 Relating to Sewage Treatment Plant, dated April 1, 1965.

B. Annexation And Detachments

1. GENERAL.

It is contemplated that territories within the boundaries of Agency will become either annexed, consolidated, or otherwise a part of either of the First Parties. It is agreed by First Parties and Agency that when any Agency territory becomes a part of either of the First Parties, Agency will do all that it can legally do to facilitate the detachment of such territory from Agency. In no event shall Agency be obligated to initiate detachment proceedings.

2. TRANSFER OF CAPACITY RIGHTS.

Agency shall, when any Agency territory becomes a part of either of First Parties and is detached from Agency, transfer to First Parties capacity rights as specified in Exhibit "G".

3. PAYMENTS FOR TRANSFER OF CAPACITY RIGHTS.

The capacity rights being used by existing developments in a territory being transferred from Agency to either of First Parties shall be computed using the parameters of Agency's actual discharge into the Plant and the amounts subtracted from the amounts of capacity rights to be transferred to determine the amount of unused capacity rights. First Parties shall pay Agency an amount as specified in Exhibit "G" for the unused capacity rights transferred to either of the First Parties. Payment shall be made within ninety (90) days of detachment of territory from Agency. If the capacity rights being used by existing developments in a territory being transferred from Agency to either of First Parties exceeds the amount of capacity rights being transferred, First Parties shall be credited an amount as specified in Exhibit "G" for the excess used capacity. Credits shall be applied to future payments to be made by the First Parties to the Agency pursuant to this Section.

IN WITNESS WHEREOF, FIRST PARTIES, and WEST VALLEY SANITATION DISTRICT have caused this AMENDMENT AND RESTATEMENT OF MASTER AGREEMENT as to be executed in their respective names and their respective seals to be affixed hereunto by their duly authorized officers, all as of the date first above written.

APPROVED AS TO FORM

CITY OF SAN JOSE, a municipal corporation

ROSA TSONGTAATARII
Senior Deputy City Attorney

TONI TABER, CMC
City Clerk
200 East Santa Clara Street
San José, CA 95113-1905

APPROVED AS TO FORM

CITY OF SANTA CLARA, a municipal corporation

RICHARD E. NOSKY JR.
City Attorney

ROD DIRIDON JR.
City Clerk
1500 Warburton Avenue
Santa Clara, CA 95050

APPROVED AS TO FORM

WEST VALLEY SANITATION
DISTRICT

EXHIBIT A

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

TREATMENT PLANT CAPACITY ALLOCATIONS

Table 1 - 167 MGD Plant, Intermediate Term Improvements and First Stage Expansion.

Table 1 contains the Agencies' and First Parties' treatment plant capacities achieved by implementation of the Intermediate-term Improvements and First Stage Expansion. Increased capacity was allocated only to those Agencies that elected to participate in Plant expansion to 167 MGD. Milpitas was allocated 4 MGD of the 24 MGD expansion, and the First Parties' share the remaining 20 MGD based on assessed valuation. BOD, SS, and Ammonia capacities were allocated in the same proportion as Flow.

Table 2 – 167 MGD Plant, after transfer of capacity to Milpitas from West Valley and Cupertino.

Table 2 shows the Agencies' and First Parties' treatment plant capacities effective with the transfer of 0.75 MGD from Cupertino to Milpitas with prorated shares of Suspended Solids and Ammonia, but excludes any prorated share of Biochemical Oxygen Demand effective January 1, 2009. On July 1, 2006, West Valley Sanitation District transferred 1 MGD of flow with 2.430 KLBS/Day Biochemical Oxygen Demand, 2.308 KLBS/Day Suspended Solids, and 0.242 KLBS/Day Ammonia capacity to Milpitas. The other Agencies' capacities remain the same as in the 143/167 MGD Plant.

Table 3 – 167 MGD Plant, after annexations from West Valley and Sunol into San José.

Table 3 shows the Agencies and First Parties' treatment plant capacities effective June 30, 2014 with the transfer of capacity associated with annexations into San José from West Valley in 2007-2013, and Sunol in November 30, 2009. The other Agencies' capacities remain the same as in the 143/167 MGD Plant.

TABLE 1
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

167 MGD PLANT

SUMMARY OF CAPACITY ALLOCATION*

(Intermediate-Term, First Stage Expansion & South Bay Water Recycling Improvements Implemented)

AGENCY	FLOW MGD	BOD K LBS/DAY	SS K LBS/DAY	AMMONIA K LBS/DAY
San José ^a	110.800	390.393	346.342	34.332
Santa Clara ^a	21.298	75.042	66.575	6.599
Subtotal ^b	132.098	465.435	412.917	40.931
West Valley	13.052	31.713	30.120	3.156
Cupertino	8.600	16.419	17.856	2.506
Milpitas	12.500	24.819	22.125	2.386
Burbank	0.400	0.815	0.853	0.297
Sunol	0.350	1.799	2.129	0.324
Subtotal	34.902	75.565	73.083	8.669
TOTAL	167.000	541.000	486.000	49.600

*The term “capacity” is defined as the mean peak five-day dry weather plant treatment capacity.

Note(s):

- a. San José and Santa Clara allocations vary annually according to assessed property value; values shown are effective as of January 1, 2009.
- b. CSD 2-3 rents capacity from San José and Santa Clara. Allocations vary annually depending flow from CSD 2-3.

TABLE 2
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

167 MGD PLANT

SUMMARY OF CAPACITY ALLOCATION*

(After transfer of capacity to Milpitas from West Valley in July 1, 2006, and Cupertino in January 1, 2009)

AGENCY	FLOW MGD	BOD K LBS/DAY	SS K LBS/DAY	AMMONIA K LBS/DAY
San José ^a	110.800	390.393	346.342	34.332
Santa Clara ^a	21.298	75.042	66.575	6.599
Subtotal ^b	132.098	465.435	412.917	40.931
West Valley	12.052	29.283	27.812	2.914
Cupertino	7.850	16.419	16.299	2.287
Milpitas	14.250	27.249	25.990	2.847
Burbank	0.400	0.815	0.853	0.297
Sunol	0.350	1.799	2.129	0.324
Subtotal	34.902	75.565	73.083	8.669
TOTAL	167.000	541.000	486.000	49.600

*The term “capacity” is defined as the mean peak five-day dry weather plant treatment capacity.
 Note(s):

- a. San José and Santa Clara allocations vary annually according to assessed property value. The values shown are effective as of January 1, 2009.
- b. CSD 2-3 rents capacity from San José and Santa Clara. Allocations vary annually depending flow from CSD 2-3.

TABLE 3
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

167 MGD PLANT

SUMMARY OF CAPACITY ALLOCATION*

(June 30, 2014)

AGENCY	FLOW MGD	BOD K LBS/DAY	SS K LBS/DAY	AMMONIA K LBS/DAY
San José ^{a,c}	109.555	385.994	342.915	34.106
Santa Clara ^a	23.248	81.912	72.770	7.238
Subtotal ^b	132.803	467.906	415.685	41.344
West Valley ^c	11.697	28.611	27.173	2.825
Cupertino	7.850	16.419	16.299	2.287
Milpitas	14.250	27.249	25.990	2.847
Burbank	0.400	0.815	0.853	0.297
Subtotal	34.197	73.094	70.315	8.256
TOTAL	167.000	541.000	486.000	49.600

*The term “capacity” is defined as the mean peak five-day dry weather plant treatment capacity.
 Note(s):

- a. San José and Santa Clara allocations vary annually according to assessed property value. The values shown are effective as of June 30, 2014.
- b. CSD 2-3 rents capacity from San José and Santa Clara. Allocations vary annually depending flow from CSD 2-3.
- c. San José and West Valley Sanitation District allocations reflect the transfer of capacity associated with annexations from the District into San José from 2007-2013.

EXHIBIT B

9/18/15

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
REPLACEMENT COST OF PLANT AND EQUIPMENT
JUNE 2014

FACILITY	ACQUISITION DATE	ORIGINAL COST	REPLACEMENT COST
Asset #1 - Original primary plant	1958	3,786,400	45,876,200
Asset #2 - Plant Additions	1960	1,370,200	15,269,000
Asset #3 - Plant Additions & New Secondary Facility	1963	24,166,800	258,656,700
Asset #4 - Final Tank	1965	1,183,000	11,053,800
Asset #5 - Digesters	1966	993,600	8,419,400
Other Projects:			
1965-66	1965	103,900	970,800
1966-67	1966	253,800	2,150,600
1967-68	1967	24,200	187,600
1968-69	1968	322,100	2,300,800
1969-70	1969	59,900	396,700
1970-71	1970	102,700	634,000
Sludge Lagoons	1968	839,000	5,993,000
Foam Flotation Program	1970	23,000	142,000
1970 94/MGD Improvements	1970	5,809,400	35,865,200
1970 66/MGD Additions	1970	23,049,000	142,296,600
A.W.T.F.	1977	62,810,900	219,021,500
Other Projects:			
1977-78	1977	745,500	2,599,600
1978-79	1978	312,200	997,300
1979-80	1979	1,421,100	4,292,200
1980-81	1980	1,962,300	4,992,300
1981-82	1981	535,200	1,325,800
1982-83	1982	1,777,765	3,770,200
CAPITAL IMPROVEMENT PROGRAM:			
Intermediate-term Improvement	1987	88,699,500	175,232,300
First Stage Expansion	1987	20,035,100	39,580,800
1987 Capitalized Expenditures	1987	894,900	1,767,900
1989 Capitalized Expenditures	1989	527,473	1,002,300
1990 Capitalized Expenditures	1990	823,720	1,485,800
1991 Capitalized Expenditures	1991	114,902	204,300
1992 Capitalized Expenditures	1992	407,154	708,700
1993 Capitalized Expenditures	1993	1,291,825	2,188,600
1994 Capitalized Expenditures	1994	255,378	424,500

1995 Capitalized Expenditures	1995	10,595,576	17,651,200
1996 Capitalized Expenditures	1996	3,396,270	5,650,100
1997 Capitalized Expenditures	1997	9,320,130	15,161,500
1998 Capitalized Expenditures	1998	2,829,981	4,559,800
1999 Capitalized Expenditures	1999	133,138,713	212,724,200
2000 Capitalized Expenditures	2000	2,464,590	3,749,200
2001 Capitalized Expenditures	2001	3,866,326	5,687,800
2002 Capitalized Expenditures	2002	930,265	1,323,300
2003 Capitalized Expenditures	2003	1,663,511	2,324,100
2004 Capitalized Expenditures	2004	3,321,630	4,443,200
2005 Capitalized Expenditures	2005	665,760	877,300
2006 Capitalized Expenditures	2006	2,096,762	2,707,600
2007 Capitalized Expenditures	2007	1,197,306	1,439,900
2008 Capitalized Expenditures	2008	68,856,165	81,431,200
2009 Capitalized Expenditures	2009	86,452,121	96,787,700
2010 Capitalized Expenditures	2010	5,337,506	5,871,000
2011 Capitalized Expenditures	2011	4,237,725	4,537,800
2012 Capitalized Expenditures	2012	14,961,081	15,701,600
2013 Capitalized Expenditures	2013	24,009,116	25,189,500
2014 Capitalized Expenditures	2014	909,001	909,000
TOTAL		624,951,452	1,498,533,500*

(*) 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:

- 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 percentages contained in the most current Revenue Program (Form 8, Summary of Distribution of Capital Costs).
- 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.

EXHIBIT C

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

LAND DISTRIBUTION

1. Table 1 includes the original land purchase price for each parcel purchased before June 30, 1982 (“Pre-1982 Land.”). The San José’s average yearly rate of return for all investments was applied to this amount and compounded to establish a June 30, 1982 value for all Pre-1982 Land.
2. Land participation for Pre-1982 Lands was based upon the 167 MGD capacity of the Plant (Flow BOD, Suspended Solids and Ammonia). Percentage of participation in Pre-1982 Land is based upon the total acreage and not on an individual parcel basis.
3. Agencies which still owe San José and West Valley Sanitation District for their allocated share of cost for Pre-1982 Land shall pay all the costs of this land from sale, lease or rental revenues to be received from the Regional Wastewater Facility properties. Percentage of revenue shall be based upon each Agency’s full capacity percentage. The Pre-1982 Land costs will be paid off only from sale, lease, or rental revenues of the Plant property and shall have no fixed term. Table 2 shows First Parties’ and Agencies’ allocations and amounts/credits due for Pre-1982 Land costs as of June 30, 2014.
4. Table 3 shows the original purchase price, date of purchase and cost allocation for all land purchased on or after July 1, 1982 (“Post 1982 Land”). Cost allocation in Post 1982 Land was based on the flow and wastewater strength allocations for First Parties and participating Agencies, except for land purchased for recycled water facilities, which is based on flow allocation only.
5. Table 4 shows the percentage participation in Pre-1982 Land and Post-1982 Land for First Parties and Agencies effective June 30, 2014 including, the annexation of Sunol into San José on November 30, 2009, the annexation of territory from West Valley into San José from 2007-2013, the transfer of land equivalent to 0.75 MGD capacity

from Cupertino to Milpitas effective January 1, 2009, and the transfer of land equivalent to 1 MGD from West Valley to Milpitas effective July 1, 2006.

6. Sale, lease or rental revenues from Regional Wastewater Facility property shall be first applied to an Agency's debt, and only upon completion of that debt, will revenues be passed on to the Agency.
7. If and when expansion of the facilities takes place in the future, land values shall again be adjusted based upon the new MGD denominator. Each Agency's percentage of participation in land shall, at that time, be recomputed based upon total land cost shown in the applicable Land Cost Allocation.
8. All purchases of land in the future shall be distributed to all Agencies in the percentage of discharge capacity at the Plant, except that land purchased for recycling improvements shall be based on the Agencies' and First Parties' purchased capacity in the 167 MGD Plant for the flow parameter only.

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
LAND COST ALLOCATION METHODOLOGY

1. Attachment A is a Regional Wastewater Facility Property map.
2. Table 1 includes the original land purchase price for each parcel purchased before June 31, 1982. This amount was then applied to San José's average yearly rate of return for all investments and compounded to establish a June 30, 1982 value for the Pre-1982 Land.
3. Table 2 shows the First Parties' and Agencies' share of Pre-1982 land Costs. Table 2 also shows the amounts still due or owing by First Parties and Agencies for Pre-1982 Land Costs, as of June 30, 2014.
4. Table 3 shows the land allocation for First Parties and Agencies for all land purchased on or after July 1, 1982, based on the amount actually paid by First Parties and Agencies for land purchased on or after July 1, 1982.
5. Table 4 shows the land participation allocation for First Parties and Agencies as of June 30, 2014 including, the annexation of Sunol into San José on November 30, 2009, the annexation of territory from West Valley into San José from 2007-2013, the transfer of land equivalent to 0.75 MGD capacity from Cupertino to Milpitas effective January 1, 2009, and the transfer of land equivalent to 1 MGD from West Valley to Milpitas effective July 1, 2006. The transfer of capacity and adjusted land allocation percentages shall not affect the amounts due or owing by Agencies for Pre-1982 Land Costs.

Attachment A
Regional Wastewater Facility Property Map



TABLE 1
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
PRE-1982 LAND PURCHASES

Pre-1982 Purchases Parcel	Acres	Original Cost	Purchase Date	Cost*
Berger Williamson	43.668	\$ 15,284	8/49	\$ 88,282
Coolidge Quitclaim	--	150	3/52	805
John R. Watrous	106.747	101,043	7/54	490,206
John R. Medina	16.970	15,067	8/54	73,106
Other Costs (Easement- Condemnation)*	--	23,468	1956-57	106,183
Curtner-Zanker	.776	1,000	7/55	5,082
Los Altos Garbage	2.045	1,000	8/55	4,692
James Clayton	181.680	182,160	4/58	795,944
A. M. Standish	.197	120	10/61	457
Spring Valley	.180	50	4/62	189
Beatrice Standish	39.888	55,109	7/62	202,258
Other Costs (Unallocated)*	--	603	3/65	2,048
Nine-Par	46.970	201,515	1/68	596,405
A. L. Kricheberg	41.13	162,170	4/69	452,708
Anselmo-Campi	34.48	208,771	7/69	541,583
Casteel	117.78	932,240	11/69	2,418,376
Chisolm-Hopham	Parcel	5,232	8/70	12,738
Rankin-Gilman	Parcel	600	8/70	1,461
Owens-Corning	3.16	23,743	11/70	57,801
Standish	630.0	2,831,034	4/71	6,892,016
Owens-Corning	2.58	17,133	6/71	41,713
Phillips-Bosio	Parcel	2,136	12/71	4,943
Zanker Ranch	145.7	1,496,478	8/72	3,446,515
Garcia	19.54	236,328	12/72	517,884
Martin-Moore	16.47	200,446	1/73	439,257
Tempco	12.33	327,153	7/75	566,730
County of Santa Clara	Parcel	4,495	1975-76	7,788
County of Santa Clara	2.98	13,476	4/76	20,716
Brazil	54.546	513,359	7/76	841,819
McCarthy (1st)	43.0	483,880	12/76	793,479
McCarthy (2 nd)	43.0	483,879	4/77	793,478
McCarthy (3 rd)	43.0	483,879	1/78	743,861
Other Costs (Unallocated)	--	47,693	1978-79	67,043
Calvo	58.415	586,405	1/78	901,473
Leslie Salt	Parcel	820	9/78	1,153
Graham-Cassin	52.8	3,339,932	8/80	3,775,793
Geomax	4.2	273,972	1/81	291,849
TOTAL	1,764.23**	\$13,271,823		\$25,997,834

*Represents costs not allocable to a specific land purchase (e.g., appraisal of land not purchased).

**Acreage has been and will be reduced by the following completed and pending conveyances:

- Santa Clara Valley Water District - flood control easement dated November 25, 1986.
- State of California – 14.8 acres for widening of State Route 237, Grant Deed dated March 17, 1997.
- PG&E - various completed and pending easements.
- Los Esteros Critical Energy Facility - access road easement conveyed November 3, 2003, pursuant to Conveyance Agreement dated November 22, 2002, as amended May 4, 2005; open space easement and pole line license pursuant to Conveyance Agreement dated pending as of March 2006.
- City of Santa Clara, Silicon Valley Power, electric transmission line easement pursuant to Conveyance Agreement dated July 15, 2003, pending as of March 2006.
- Various Agency sanitary sewer trunk line easements.

TABLE 2

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
LAND COST ALLOCATION
PRE-1982 PURCHASES

AGENCY	% SHARE	AMOUNT SHOULD HAVE PAID 1982 DOLLARS	AMOUND PAID 1982 DOLLARS	AMOUNT PAYABLE <DUE> AS OF JUNE 30, 2014
San José ^a	66.494	\$17,287,000	\$19,144,541	<\$439,491>
Santa Clara	15.620	\$4,060,862	\$3,234,047	\$0
West Valley ^{a,b}	6.472	\$1,822,188	\$1,945,035	<\$30,449>
Cupertino ^b	4.074	\$1,160,283	\$1,141,582	\$0
Milpitas ^b	7.092	\$1,603,026	\$523,426	\$439,549
Burbank	0.248	\$64,475	\$9,203	\$30,391
TOTAL	100%	\$25,997,834	\$25,997,834	

County Sanitation District 2-3 rents capacity from San José and Santa Clara. The rental agreement does not entitle it to share in land revenue.

Note(s):

- a. San José allocation reflects the annexation of Sunol into San José in November 30, 2009, and annexation of territory from West Valley into San José in 2007-2013.
- b. Milpitas allocation reflects the capacity transfer from West Valley effective July 1, 2006, and from Cupertino effective January 1, 2009.

TABLE 3

**SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
LAND COST ALLOCATION POST-1982 LAND PURCHASES**

AGENCY	SOUTH Bay Water Recycling Phase 1 easements (1996-1997)	Moseley Tract (56 acres; \$460,000; 9/96)	McCarthy Ranch (6 acres; \$6,534,000; 8/00)	Cargill Pond A-18 (856 acres; \$13,301,250; 10/05)	Silver Creek Reservoir (4.839 acres fee; 1.97 acres permanent easement; \$7,800,000; 3/05)
San José ^a	64.869%	67.923%	67.385%	67.331%	64.869%
Santa Clara	14.440%	14.511%	15.049%	15.103%	14.440%
West Valley ^{a,b}	7.816%	6.928%	6.928%	6.928%	7.816%
Cupertino ^b	5.150%	4.360%	4.360%	4.360%	5.150%
Milpitas ^b	7.485%	6.040%	6.040%	6.040%	7.485%
Burbank	0.240%	0.238%	0.238%	0.238%	0.240%
TOTAL	100%	100%	100%	100%	100%

County Sanitation District 2-3 rents capacity from San José and Santa Clara. The rental agreement does not entitle it to share in land revenue.

Note(s):

- a. San José allocation reflects the annexation of Sunol into San José in November 30, 2009, and annexation of territory from West Valley into San José in 2007-2013.
- b. Milpitas allocation reflects the capacity transfer from West Valley effective July 1, 2006, and from Cupertino effective January 1, 2009.

TABLE 4
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
LAND PARTICIPATION ALLOCATION

(June 30, 2014)

AGENCY	Pre-1982 Land	Moseley Tract , McCarthy, Cargill Pond A-18	South Bay Water
San José ^a	66.494	67.923%	64.869%
Santa Clara	15.620	14.511%	14.440%
West Valley ^{a,b}	6.472	6.397%	7.217%
Cupertino ^b	4.074	3.980%	4.701%
Milpitas ^b	7.092	6.951%	8.533%
Burbank	0.248	0.238%	0.240%
TOTAL	100%	100%	100%

County Sanitation District 2-3 rents capacity from San José and Santa Clara. The rental agreement does not entitle it to share in land revenue.

Note(s):

- a. San José allocation reflects the annexation of Sunol into San José in November 30, 2009, and annexation of territory from West Valley into San José in 2007-2013.
- b. Milpitas allocation reflects the capacity transfer from West Valley effective July 1, 2006, and from Cupertino effective January 1, 2009.

EXHIBIT D

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

PARTICIPATION IN MAJOR PROCESS RELATED IMPROVEMENTS

Intermediate Term Improvements and First Stage Expansion

The construction and design cost of the Intermediate-term Improvement Project for restoration of the Plant capacity to 143 MGD was Eighty-Nine Million Three Hundred Thousand Two Hundred and Thirty Dollars (\$89,300,230.00). The construction costs and design cost of the First Stage Expansion Project for expansion of Plant capacity to 167 MGD was Twenty-Seven Million Eighty-Four Thousand Eight Hundred and Four Dollars (\$27,084,804.00). Agency has fully paid all amounts due for its capacity in the Intermediate Term Improvements and the First Stage Expansion Project.

Water Recycling Improvements

In October 1991, the Regional Water Quality Control Board (RWQCB) approved the San José Action Plan which included development of a reclamation program to reclaim a portion of the San José/Santa Clara Regional Wastewater Facility's (Plant) effluent, thereby providing an alternative to discharging treated effluent to South San Francisco Bay (Bay). In October 1993, the RWQCB incorporated the Action Plan into the Plant's NPDES permit. The South Bay Recycling Program (SBWRP) is intended to satisfy this permit requirement.

Implementation of the SBWRP has been divided into two phases. Under the Phase 1, Water Recycling Program, approximately 9,000 acre-feet per year (up to 21.1 million gallons per day) of recycled water will be produced and distributed beginning in November 1997. The budgeted cost of Phase I was \$139,840,000. Construction of Phase II is now underway, with an estimated cost of \$100,000,000.

On January 12, 1995, TPAC approved a cost sharing method whereby First Parties and Agencies would participate in payment for the Water Recycling Program based on their respective flows to the Plant. Table 1 contains First Parties' and Agencies' allocation of Phase 1 recycling costs, as of January 12, 1995. Table 2 contains First Parties and Agencies share of Phase 2 Recycling costs, as of January 12, 1995. The final Phase 2 cost allocation will be adjusted to reflect the actual cost when construction of the Phase 2 facilities is completed.

First Party Santa Clara and Milpitas elected to cash fund their share of the Phase 1 Recycling Costs. However, effective January 1, 2009, Milpitas assumed the obligations of Cupertino, with respect to a portion of Cupertino debt service obligations for Recycling Cost. Table 3 shows the debt service allocation for the bond issued by San José for Phase 1 costs for First Party San José, and all Agencies including Milpitas, as of January 1, 2009.

Milpitas also elected to cash fund its share of the Phase 2 Recycling Costs. First Parties and all other Agencies chose to utilize State Revolving Loan Fund proceeds for their share of the Phase 2 Recycling costs. However, effective January 1, 2009, Milpitas assumed the obligations of Cupertino, with respect to a portion of Cupertino debt service obligations for Phase 2 Recycling Costs. Table 4 shows the debt service allocation for the SRLF proceeds, as of January 1, 2009.

Long-Term Improvements

On May 14, 2015, TPAC approved the San José -Santa Clara Regional Wastewater Facility Ten-Year Funding Strategy (“Funding Strategy”) whereby First Parties and Agencies participate in the funding of Long-Term Improvements proportionately based on their capacity allocations detailed in Table 1 of Exhibit A, as may be amended. The Funding Strategy contemplates the Administering Agency, pursuing Clean Water State Revolving Fund (“SRF”) loans to the maximum extent possible to finance the Long-Term Improvements. If Agency elects to finance its proportionate share of the costs of the Long-Term Improvements through SRF, short term financing, and long term financing obtained by First Parties or Administering Agency, Agency agrees to execute and deliver to the Administering Agency the necessary documentation to secure such financing and Agency’s repayment thereof.

In the event that all or a portion of financing for the Long-Term Improvements is secured through a short-term variable rate financing program, Agency acknowledges and agrees that any participating Agency will be responsible for its proportionate cost for establishing the financing program based on the total amount to be financed by Agency through the short-term variable rate financing program relative to the total dollar size of the program. Any Agency that requests participation in the program after the deadline established by the Administering Agency for participation may incur additional expenses associated with accommodating the Agency. Agencies that choose to participate in the program can cease their participation upon repayment of the funds and associated costs.

Agency acknowledges and agrees that its participation in any financing obtained by First Parties or the Administering Agency, including amount financed, debt service and repayment scheduled shall be memorialized in a supplemental financing agreement. Any supplemental financing agreement shall be executed prior to or contemporaneous with the closing of the financing.

Notwithstanding the terms and conditions of this Agreement, the process for asserting a claim for breach of the supplemental financing agreement such as nonpayment shall be governed by the provisions of the supplemental financing agreement. If Agency shall fail to make payment when due for their portion of the financing, Agency agrees First Parties shall have the right to institute an action for damages sustained as a result of any such default and shall have the right by mandamus or other proceeding at law or in equity to enforce their rights against Agency and to compel Agency and its officers or employees thereof to perform and carry out their obligations and duties under this Agreement, and any supplemental financing agreement. No remedy conferred upon or reserved to First Parties is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, any supplemental financing agreement, existing at law or in equity or by statute. First Parties or San Jose, as the Administering Agency,

shall provide the Agency notice of payment past due at least thirty (30) calendar days prior to instituting an action for damages.

TABLE 1

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

Participation in South Bay Water Recycling Program
Phase 1 Capital Costs

<u>Agency</u>	<u>Percent</u>	<u>Phase 1 Budgeted Costs</u>
City of San José ^{a,b}	64.007%	\$89,507,389.
City of Santa Clara ^b	14.292%	\$19,985,933
West Valley Sanitation District ^{a,c}	7.816%	\$10,929,894
Cupertino Sanitary District ^c	5.150%	\$7,201,760
City of Milpitas ^c	7.485%	\$10,467,024
County Sanitation District 2-3*	1.010%	\$1,412,384
Burbank Sanitary District	.240%	\$335,616
TOTAL	100%	\$139,840,000

*County Sanitation District 2-3 (CSD 2-3) has entered into an agreement with FIRST PARTIES for sharing Regional Wastewater Facility costs on a different basis than the other AGENCIES. The agreement provides for adjusting payments to reflect changes in CSD 2-3's flow and loadings. The agreement between CSD 2-3 and FIRST PARTIES do not affect the other AGENCIES participation in the South Bay Water Recycling Program Phase 1 capital costs.

Note(s):

- a. San José allocation reflects the annexation of Sunol into San José in November 30, 2009, and annexation of territory from West Valley into San José in 2007-2013.
- b. San José and Santa Clara allocations vary annually according to assessed property value; values shown are effective as of June 30, 2014.
- c. Milpitas allocation reflects the capacity transfer from West Valley effective July 1, 2006, and from Cupertino effective January 1, 2009.

TABLE 2
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

Participation in South Bay Water Recycling Program
Phase 2 Capital Cost

<u>Agency</u>	<u>Percent</u>	<u>Phase 2 Estimated Costs</u>
City of San José ^{a,b}	64.007%	\$64,007,000
City of Santa Clara ^b	14.292%	14,292,000
West Valley Sanitation District ^{a,c}	7.816%	7,816,000
Cupertino Sanitary District ^c	5.150%	5,150,000
City of Milpitas ^c	7.485%	7,485,000
County Sanitation District 2-3*	1.010%	1,010,000
Burbank Sanitary District	.240%	240,000
TOTAL	100%	\$100,000,000

*County Sanitation District 2-3 (CSD 2-3) has entered into an agreement with FIRST PARTIES for sharing Regional Wastewater Facility costs on a different basis than the other AGENCIES. The agreement provides for adjusting payments to reflect changes in CSD 2-3's flow and loadings. The agreement between CSD 2-3 and FIRST PARTIES do not affect the other AGENCIES participation in the South Bay Water Recycling Program Phase 2 capital costs.

Note(s):

- a. San José allocation reflects the annexation of Sunol into San José in November 30, 2009, and annexation of territory from West Valley into San José in 2007-2013.
- b. San José and Santa Clara allocations vary annually according to assessed property value; values shown are effective as of June 30, 2014.
- c. Milpitas allocation reflects the capacity transfer from West Valley effective July 1, 2006, and from Cupertino effective January 1, 2009.

TABLE 3
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
PHASE 1 RECYCLING DEBT ALLOCATION

Series 2005 A Refunding Bonds - Principal \$54,020,000; last payment due November 15, 2016

Series 2005 B Refunding Bonds - Principal \$27,130,000; last payment due November 15, 2020

San José ^a	West Valley	Cupertino	Milpitas	District 2-3	Burbank
80.356%	10.594%	6.734%	0.643%	1.436%	.237%

Series 2009 A Refunding Bonds - Principal \$21,420,000; last payment due November 15, 2020¹

San José ^a	Milpitas	District 2-3	Burbank
97.198%	0.778%	1.737%	0.287%

Note(s):

- a. San José allocation reflects the annexation of Sunol into San José in November 30, 2009.

¹ The 2009 Refunding Bonds were issued on January 29, 2009 in the Principal Amount of \$21,420,000 for the purpose of refinancing the 2005B Refunding Bonds. On January 20, 2009, Cupertino made cash payment in the amount of ONE MILLION EIGHT HUNDRED TWENTY- SIX THOUSAND EIGHT HUNDRED FORTY-TWO DOLLARS (\$1,826,842.00) to redeem its portion of the 2005B Refunding Bonds. Accordingly, Cupertino has no further obligation for 2005B Refunding Bonds and no obligation for 2009A Refunding Bonds. On January 20, 2009, West Valley made a cash payment in the amount of TWO MILLION EIGHT HUNDRED SEVENTY-FOUR THOUSAND ONE HUNDRED FIFTY-TWO DOLLARS and TWENTY CENTS (\$2,874,152.20) to redeem its portion of the 2005B Refunding Bonds. Accordingly, West Valley has no further obligation for 2009A Refunding Bonds.

TABLE 4**SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY STATE REVOLVING LOAN FUND DEBT ALLOCATION
FY 1998 thru 2019**

	Annual Debt Service Payment	Annual San José	Annual Santa Clara	Annual Milpitas	Annual West Valley	Annual Cupertino	Annual Sanitation District 2-3	Annual Burbank	Annual Sunol
Repayment Period(s)	100.000%	68.998%	15.409%	0.000%	8.448%	5.567%	1.092%	0.259%	0.227%
FY 1998/1999	\$1,661,799	\$1,146,608	\$256,067	-	\$140,389	\$92,512	\$18,147	\$4,304	\$3,772
FY 1999/2000 thru 2007/2008	\$4,463,882	\$3,079,989	\$687,840	-	\$377,109	\$248,504	\$48,746	\$11,561	\$10,133
Repayment Period(s)	100.000%	68.998%	15.409%	0.486% ^a	8.448%	5.081%	1.092%	0.259%	0.227%
FY2008/2009	\$4,463,882	\$3,079,989	\$687,840	\$21,694	\$377,109	\$226,810	\$48,746	\$11,561	\$10,133
Repayment Period(s)	100.000%	69.225%	15.409%	0.486% ^a	8.448%	5.081%	1.092%	0.259%	0.000% ^b
FY2009/2010 Thru FY2017/2018	\$4,463,882	\$3,090,122	\$687,840	\$21,694	\$377,109	\$226,810	\$48,746	\$11,561	-
FY 2018/2019	\$1,804,020	\$1,248,833	\$277,981	\$8,768	\$152,404	\$91,662	\$19,700	\$4,672	-

Note(s):

- a. Milpitas shall be responsible for 0.486% of the debt service repayment, which is prorated share of the Cupertino payment due on or after January 1, 2009.
- b. San José allocation reflects the annexation of Sunol into San José in November 30, 2009.

EXHIBIT E
ADMINISTERING AGENCY

A. San José to be Administering Agency.

It is mutually agreed that the City of San José is and shall be the Administering Agency of this Agreement, and, as such, shall execute and administer this Agreement.

B. Powers and Duties of Administering Agency, Scope, and Exercise.

Subject to such limitations as may be imposed in this Agreement, the Administering Agency shall have the following powers and duties:

1. To maintain, 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 (subject to the provision of funds therefor in accordance with the provisions of this Agreement), to treat and dispose of all sewage (and by-products thereof) of San José and Santa Clara and of any and all "Outside Users" now or hereafter authorized to discharge or convey sewage into or to said treatment plant or any sewer lines leading thereto, so that said sewage and all effluent from said Plant will not pollute the waters of San Francisco Bay, or any other waters, and so that said sewage will be disposed of in a manner authorized by law.
2. To make, award and enter into contracts with third parties for the construction, improvement, replacement, expansion, or repair of the Treatment Plant or any part or parts thereof.
3. To acquire, by purchase, condemnation or otherwise, any and all real or personal property which it should find to be reasonably necessary for Treatment Plant purposes.
4. To receive, be the depository for, expend and disburse, for the purposes of this Agreement, any and all funds or monies advanced, contributed or paid by the parties hereto to said Administering Agency pursuant to the provisions of this Agreement, together with all income collected from "Outside Users", all other Treatment Plant income, and all other Treatment Plant funds.
5. To keep accurate accounts of all receipts and disbursements of the above-mentioned funds and monies.
6. To provide and supply any and all personnel and services, including, but not limited to, legal, engineering and accounting services, which it should find to be reasonably necessary for the maintenance, repair, expansion, replacement, improvement and operation of said Treatment Plant, the cost and expense of providing such personnel

and services to be charged to and shared by San José and Santa Clara as part of operating or other Treatment Plant costs as elsewhere provided in this Agreement.

7. To exercise any and all other powers, common to both San José and Santa Clara, with respect to the maintenance, repair, expansion, replacement, improvement and operation of the Treatment Plant.
8. To do any and all things reasonably necessary to treatment and dispose of all sewage entering the Treatment Plant in such manner as will comply with all applicable laws and regulations.
9. To do any and all other things which the Administering Agency is required or authorized to do by other provisions of this Agreement.

C. Manner of Exercising Powers or Performing Duties.

The manner in which the Administering Agency shall exercise its powers and perform its duties is and shall be subject to the restrictions upon the manner in which the City of San José could exercise such powers and perform such duties; and shall not be subject to any restrictions applicable to the manner in which the City of Santa Clara could exercise such powers or perform such duties.

D. Expenses of Administering Agency.

It is mutually agreed that the City of San José 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 José to its officers and employees for services rendered by them for Treatment Plant purposes. It is further agreed that San José shall be paid, from Treatment Plant funds, an amount equal to seventeen and three hundred thirteen one thousandths per cent (17,313%) of all the above mentioned salaries and wages as and for the following overhead expenses incurred by San José in furnishing said services and in administering this Agreement, to wit: payments made by San José for retirement benefits, payments made by San José for medical and hospital insurance covering officers and employees, miscellaneous overhead expenses of the auditing, purchasing and engineering departments of San José.

The percentage or amount of overhead allowance or expense payable to San José shall be increased or decreased from year to year to truly reflect actual overhead and incidental costs and expenses incurred by San José for Treatment Plant purposes to the extent that such costs and expenses are not included in other items of cost or expense for which San José is otherwise reimbursed from Treatment Plant Funds.

EXHIBIT F

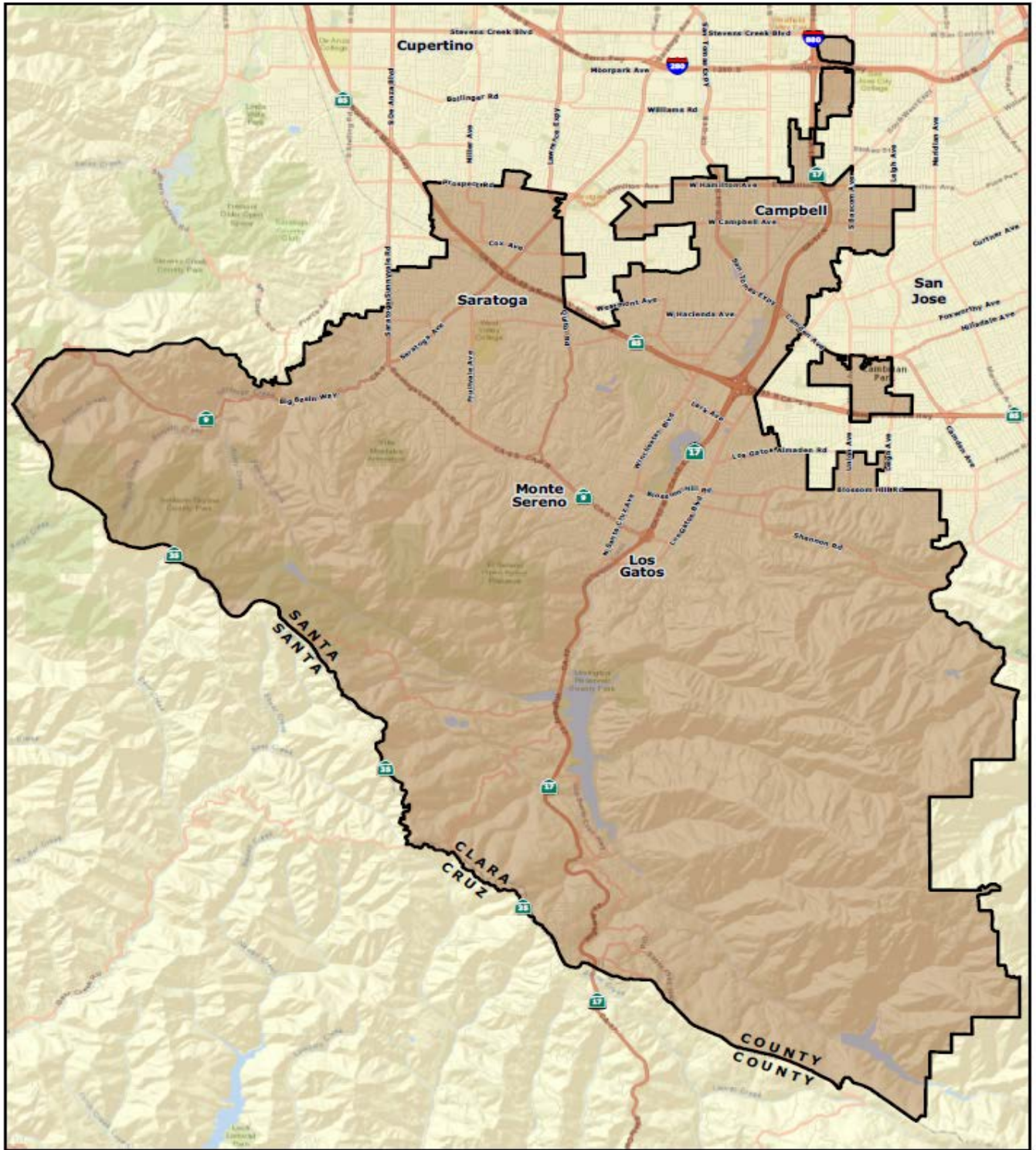


Exhibit ____ - Wastewater Treatment Service Area Map for
West Valley Sanitation District of Santa Clara County
September 29, 2015



EXHIBIT G

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
TRANSFER OF AND PAYMENT FOR CAPACITY RIGHTS ON ANNEXATION AND
DETACHMENT OF TERRITORY

Table 1 sets forth the amount of capacity rights to be transferred from Agency to First Parties on annexation of Agency territory by either of First Parties and detachment of territory from Agency.

Table 1

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
AMOUNT OF CAPACITY RIGHT TO BE TRANSFERRED ON ANNEXATION AND
DETACHMENT OF TERRITORY

<u>Capacity Parameter</u>	<u>Transfer Per Acre of Territory</u>
Flow	759.60 GD
BOD	1.44 lbs/day
SS	1.37 lbs/day
Ammonia	0.19 lbs/day

Table 2 sets forth the amount of payment by First Parties to Agency for unused capacity transferred to First Parties on annexation of Agency territory by either of First Parties and detachment of the territory from Agency.

Table 2

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
AMOUNT PAYABLE FOR TRANSFER OF UNUSED CAPACITY RIGHTS ON
ANNEXATION AND DETACHMENT OF TERRITORY

<u>Capacity Parameter</u>	<u>Transfer Per Acre of Territory</u>
Flow	\$0.79 per GD
BOD	\$191.35 per lbs/day
SS	\$230.45 per lbs/day
Ammonia	\$693.79 per lbs/day

TABLE OF CONTENTS

PART I	DEFINITIONS.....	1
PART II	CAPACITY RIGHTS GRANTED TO AGENCY.....	5
	A. General.	5
	B. Capacity Rights.	5
	C. San José/Santa Clara Regional Wastewater Facility Engineering Study.	5
	D. Restrictions and Regulations Respecting Nature, Kind, Type and Strength..... of Sewage.	5
	E. Reports, Data and Maps to be Provided by Agency.....	5
	F. Area Restrictions.	6
PART III	FUTURE DISCHARGE CAPACITY RIGHTS.....	7
	A. Redistribution of Capacity Rights.....	7
	B. Acquisition of Additional Capacity Rights With Plant Expansion.	7
	C. Acquisition of Additional Capacity Rights Without First Parties Initiated..... Plant Expansion.....	8
	D. Adjustment to Capacity Rights Due to Operating Conditions.	8
PART IV	LAND	9
	A. Participation.....	9
	B. Sale of Land.....	9
PART V	AMOUNTS PAYABLE BY AGENCY TO FIRST PARTIES.....	10
	A. Payments for Existing Capacity Rights In The Intermediate Term And..... First Stage Expansion Projects and Phase 1 Water Recycling Program.....	10
	B. Payments for Additional Capacity Rights.	10
	C. Payments for Future Improvements.	10
	D. Payments for Operation and Maintenance Costs.	10
	E. Method of Payment.	11
	F. Credits.	12
	G. General.	12
	H. Payments for Operating Reserves.	12
PART VI	SAN JOSE-SANTA CLARA TREATMENT PLANT ADVISORY..... COMMITTEE.....	14
	A. Creation and Membership.....	14

	B. Alternate Members.....	14
	C. Chair.....	14
	D. Secretary.....	15
	E. Meetings.....	15
	F. Procedure.....	15
	G. Power and Duties.....	15
	H. Action Upon Recommendations.....	16
	I. Expenses.....	17
PART VII	MISCELLANEOUS PROVISIONS	18
	A. Effective Date and Duration of Agreement.....	18
	B. Extension, Renewal or Amendment to the Agreement.....	18
	C. Use of Regional Wastewater Facility After Expiration of Term.....	18
	D. Termination.....	18
	E. Sale or Transfers by First Parties.....	18
	F. Industrial Waste Program.....	19
	G. Claims of Breach of Agreement or of Inequities.....	19
	H. Liability.....	19
	I. Compliance with Federal and State Laws and Regulations.....	20
	J. Assignment.....	20
	K. Successors and Assigns.....	20
	L. Waivers.....	20
	M. Performance and Time to be of The Essence.....	21
	N. Insurance Requirements and Risk Financing.....	21
	O. Titles and Headings.....	23
	P. Notices.....	23
PART VIII	SPECIAL PROVISIONS.....	24
	A. Termination of Agreements.....	24
	B. Annexation and Detachments.....	24

- EXHIBIT A ESTIMATED REPLACEMENT COST OF PLANT AND EQUIPMENT
- EXHIBIT B AGENCY TREATMENT PLANT CAPACITY ALLOCATION
- EXHIBIT C LAND DISTRIBUTION
- EXHIBIT D PARTICIPATION IN MAJOR PROCESS RELATED IMPROVEMENTS
- EXHIBIT E ADMINISTERING AGENCY
- EXHIBIT F SERVICE AREA
- EXHIBIT G TRANSFER OF AND PAYMENT FOR CAPACITY RIGHTS ON
ANNEXATION AND DETACHMENT OF TERRITORY

**AMENDMENT AND RESTATEMENT OF MASTER AGREEMENT FOR
WASTEWATER TREATMENT
BETWEEN CITIES OF SAN JOSE AND SANTA CLARA
AND BURBANK SANITARY DISTRICT**

This Amendment and Restatement of Agreement is made and entered into this ____ day of _____, 2016, by and between the City of San José and the City of Santa Clara, both being municipal corporations of the State of California (hereinafter referred to as “First Parties”), and Burbank Sanitary District (hereinafter referred to as “Burbank” or “Agency”).

WHEREAS, First Parties are co-owners of the “San José-Santa Clara Regional Wastewater Facility,” (the “Plant”) formerly known as the “San Jose/Santa Clara Water Pollution Control Plant”; and

WHEREAS, First Parties and Burbank have previously entered into a Master Agreement for Wastewater Treatment dated May 1, 1985, and a First Amendment to Master Agreement for Wastewater Treatment dated December 17, 1985 (collectively referred to as the “Original Burbank Master Agreement”) related to Burbank’s use of the Plant; and

WHEREAS, amendments in 1995 were executed by outside users to reflect changes in treatment plant discharge requirements and capital improvement program costs that have been previously approved by the Treatment Plant Advisory Committee; and

WHEREAS, Burbank has paid and continues to contribute its allocated share of the costs associated with the South Bay Water Recycling Program for both the capital improvements and the operation and maintenance of the reclamation facilities; and

WHEREAS, implementation of the Regional Wastewater Facility Plant Master Plan would require investment in long-term capital improvement projects to upgrade and rebuild the Facility over the next thirty to fifty years necessitating certain additional amendment to the Original Burbank Master Agreement; and

WHEREAS, for convenience and ease of reference, the parties wish to amend and restate the Original Burbank Master Agreement;

NOW, THEREFORE, the parties agree that the Original Burbank Master Agreement is hereby amended and restated to read as follows:

PART I
DEFINITIONS

A. Administering Agency.

The City of San José is and shall be the Administering Agency of this Agreement and as such shall execute and administer this Agreement in accordance with Section VIII of the 1959 Agreement excerpted in the attached Exhibit E.

B. Agencies.

The term “Agencies” shall be those tributary agencies discharging wastewater into the San José-Santa Clara Regional Wastewater Facility, previously referred to as “outside users” in the 1959 Agreement.

C. 1959 Agreement.

The term “1959 Agreement” shall mean the Agreement between San José and Santa Clara, dated May 6, 1959 and entitled “Agreement between San Jose and Santa Clara Respecting Sewage Treatment Plant,” as such Agreement now reads or as it may here after from time to time be amended or renegotiated.

D. Capacity.

The term “capacity” shall mean the Mean Peak Five (5) Day Dry Weather Plant Treatment capacity as contained in Exhibit “A,” attached hereto and incorporated herein by reference as if fully set forth.

E. Director.

The term “Director” shall mean the Director of the Environmental Services Department for the City of San José.

F. Engineering Study.

The term “Engineering Study” shall mean those studies that the First Parties shall cause to be made when the Plan has reached eighty-five percent (85%) of its designed capacity, beginning with 167 MGD and for every incremental capacity increase thereafter. The first Engineering Study shall be performed when the mean peak five-day dry weather flow to the Plant reaches 142 MGD. The Engineering Study shall include an analysis of capacity needs, the size, and nature of proposed facilities to be constructed, a construction timetable, and an estimate of total project costs, and an estimate of each participating agency’s share of project cost.

G. Exhibits.

The term “Exhibits” shall mean those Exhibits attached to this Agreement and incorporated into this Agreement by reference as if fully set forth. These Exhibits may be modified as contract amendments or amended from time to time as necessary to reflect changes of fact. The Exhibits shall be reviewed annually, or at such other

times as significant changes occur, by the Treatment Plant Advisory Committee, which body shall recommend any modifications or amendments required.

H. First Stage Expansion.

The term “First Stage Expansion” shall mean that portion, as is presently described in the report of CH2M Hill, engineers, entitled “San Jose/Santa Clara Water Pollution Control Plant, Capital Improvement Program, Executive Summary, Revised June, 1982” and dated June 25, 1982, or as amended or revised, which consists of improvements to all areas of the Plant and expansion of the Liquid Process, Process Control System, Sludge Processing and Disposal and will provide a capacity of 167 mgd.

I. Interest.

Interest will be to the extent permitted by law, equal to the rate of interest set forth in the monthly report to the Council of the City of San José, prepared by the Director of Finance of San José, with respect to said City’s portfolio and interest earnings thereon.

J. Intermediate-Term Improvements.

The term “Intermediate-Term Improvements” shall mean that portion, as is presently described in the report of CH2M Hill, engineers, entitled “San Jose/Santa Clara Water Pollution Control Plant, Capital Improvement Program, Executive Summary, Revised June, 1982” and dated June 25, 1982, or as amended or revised, which consists of six (6) elements, as outlined in Chapter 2 of said report, which are designated to provide the Plant with a mean peak five (5) day dry weather treatment capacity of 143 mgd.

K. Long-Term Improvements.

The term “Long-Term Improvements” shall mean capital improvement projects identified in the Plant Master Plan dated March 2012 and approved by TPAC on November 14, 2013; Capital Improvement Program Validation Project Packages dated March 25, 2014; Ten-Year Funding Strategy dated February 2015 and approved by TPAC on May 14, 2015; and the Proposed 2016-2020 Capital Improvement Program for the Water Pollution Control Plant approved by TPAC on May 14, 2015, collectively referred to as “Project Documents,” as these Project Documents may be amended or revised through the annual budget process, and periodic updates. The capital improvement projects identified in the Project Documents are to repair, replace, and upgrade the aging facilities and treatment processes at the Plant. The process areas include, but are not limited to, liquids treatment, solids treatment, energy and automation, and support facilities process areas.

L. Operating and Maintenance Costs.

Any 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, chemicals, 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.

M. Parameters.

The term “parameters” shall mean the four (4) treatment parameters of Flow, Biochemical Oxygen Demand (BOD), Suspended Solids (SS), and Ammonia (NH₃) as expressed in terms of estimates, which are the common denominator for computing annual and/or daily loadings.

N. Plant.

The term “Plant” shall mean the “San José-Santa Clara Regional Wastewater Facility,” formerly known as the “San Jose/Santa Clara Water Pollution Control Plant.”

O. Replacement Costs.

All 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:

1. Major rehabilitation which will be needed as individual unit processes or other facilities near the end of their useful lives;
2. Structural rehabilitations;
3. Plant expansions or upgrades to meet future user demands.

P. Replacement Fund.

Replacement fund shall mean those monies deposited with the Administering Agency for Replacement Costs at the Plant.

Q. TPAC.

The term “TPAC” shall mean the Treatment Plan Advisory Committee.

PART II
CAPACITY RIGHTS GRANTED TO AGENCY

A. General.

Commencing on the effective date of this Original Agreement, and thereafter during the term of this Agreement, and subject to all the conditions, limitations, restrictions, terms and provisions contained in this Agreement, and Agency's faithful compliance with and performance of the same, First Parties hereby grant to Agency a right to discharge wastewater into the Plant and to have the same treated and disposed of in and by said Plant the same as wastewaters of First Parties.

B. Capacity Rights.

First Parties have designed the Plant to provide for capacity to treat and dispose the volume and strength of wastewater specified in Exhibit "A". Agency shall be entitled for the duration of this Agreement to use the capacity as set forth in said Exhibit "A". First Parties and Agency agree not to discharge more than its capacity in the parameters as is specified in said Exhibit "A", except with the approval and agreement of the First Parties hereto in accordance with the terms and conditions hereinafter provided, or as provided in Part III. Any continuous and intentional violation of capacity rights will be considered a material breach of this Agreement and will be given priority in the claim of breach process as set forth in Part VII Section G.

C. San José-Santa Clara Regional Wastewater Facility Engineering Study.

First Parties agree to make an Engineering Study to redefine all "Agencies" future needs as set forth in Part I, Section F.

D. Restrictions and Regulations Respecting Nature, Kind, Type and Strength of Sewage.

First Parties shall inform Agency of the Industrial Waste Ordinance of the City of San José concerning the type and condition of discharge, which would be detrimental to the Plant. Each party to this Agreement shall adopt and enforce ordinances, resolutions, rules, and regulations to conform to the restrictions of said Ordinance. Any waiver to the above must be authorized by written Resolution of both the Council of the City of San José and the Council of the City of Santa Clara. Each party to this Agreement shall also comply with the applicable statutes, ordinances, rules, and regulations of agencies of the United States of America, and the State of California.

E. Reports, Data and Maps to be Provided by Agency.

It is mutually agreed that all parties shall prepare and file with the Director reports, data and maps as deemed necessary by the Director and Agency.

F. Area Restrictions.

Agency, unless otherwise authorized by written resolutions of the governing boards of both the City of San José and the City of Santa Clara shall not, and agrees that it will not, discharge or cause, allow, permit or suffer to be discharged into the Plant, or into any sewer line or lines which convey either directly or indirectly any wastewater to the Plant, any wastewater which is produced in, or emanates, or comes from any territorial property situated outside the service area map attached as Exhibit F. First Parties and Agency further agree not to discharge, or cause to be discharged, any wastewater into any sewer line or lines of the other party, either directly or indirectly, conveying wastewater to the Plant without written authorization of the owner of the sewer line.

PART III
FUTURE DISCHARGE CAPACITY RIGHTS

A. Redistribution of Capacity Rights.

1. In order to dispose of capacity, any Agency or First Parties may designate all or a portion of its capacity right as “excess pooled capacity,” which shall be available for disposal as hereinafter provided.
2. Any Agency or First Parties may acquire excess-pooled capacity as recommended by TPAC. Any Agency or First Parties may acquire excess pooled capacity at the replacement cost as described in Exhibit “B” plus that portion of the selling party’s replacement balance remaining in the Replacement Fund maintained by the Administering Agency.
3. If requests for excess pooled capacity total more than the excess pooled capacity available, then as set forth in Part VI, TPAC will allocate the pooled capacity actually available in a manner to most closely achieve the same planning horizon for all requesting parties.

B. Acquisition of Additional Capacity Rights With Plant Expansion.

Agency shall have the right to participate in Plant expansions for the purpose of increasing the capacity right into the expanded Plant, subject to the following terms and conditions:

1. Before commencing the design of any such additions, improvements or changes, First Parties shall give Agency written notice of their intention to expand the Plant, and the design year for the proposed expansion, as set forth in the Engineering Study prepared in accordance with Part II, Section C.
2. Within ninety (90) days from and after the giving of such notice, Agency shall notify First Parties in writing whether it wishes to participate in the proposed expansion, and the amount of capacity desired to serve until the design year. If Agency fails to give such notice within such time, it shall be deemed to have elected not to participate in such expansion.
3. If Agency elects not to participate in such expansion, it will pay no part of the cost of additions, improvements, and changes, which are made for the purpose of increasing the capacity of the Plant.
4. If Agency elects to participate in such expansion, it shall pay to First Parties that part of the total cost of such additions, improvements, and changes as defined in Part V, Section B.
5. If the needs of all parties are different than the next feasible increment of plant expansion capacity as described in the Engineering Study, then as set forth in

Part VI, TPAC, will allocate the capacity available in a manner to most closely achieve the same planning horizon for all requesting parties.

C. Acquisition of Additional Capacity Rights Without First Parties Initiated Plant Expansion.

If Agency should desire to increase its capacity right into the Plant at a time when no expansion of the Plant as described in the Engineering Study, is proposed by First Parties and no excess pooled capacity is available, then Agency may seek additional capacity by the following method:

If requested by Agency, First Parties shall initiate a Special Engineering Study to determine the most feasible means to add to the Plant that capacity requested by Agency. When Agency agrees to pay for such increment, then First Parties shall expand the Plant by such increment. This right shall not be exercised within five (5) years of completion of the latest Engineering Study.

D. Adjustment to Capacity Rights Due to Operating Conditions.

1. In the event of a major Plant facility failure caused by an earthquake, explosion, war, flooding or the like, reductions in operational capacity and any cost of restoration shall be borne by all Agencies, including San José-Santa Clara and Agency in accordance with Exhibit "A", and the cost of restoration shall be borne proportionately.
2. Any changes in Plant capacity which either increase or decrease the capacity of the Plant, resulting from any means whatsoever, shall be proportioned to each agency including San José and Santa Clara in accordance with Exhibit "A".
3. TPAC, as set forth in Part VI, shall determine annually, during the month of November, the operational capacity, and productive use of the Plant in all parameters for all parties and the remaining design capacity of the Plant.
4. Agency and First Parties shall not exceed the capacity rights agreed upon pursuant to Exhibit "A".
5. If at any time, prior to the completion of the Intermediate-term Improvements, it becomes necessary to allocate connections to the sewer systems of the combined agencies; in that event, to the extent permitted by law, First Parties will receive forty percent (40%) of the connections of whatever type and all other dischargers will receive sixty percent (60%) of the connections of whatever type. Agency's share will be determined by Agreement among the Agencies. This paragraph shall only remain in effect until completion of the Intermediate-term Improvements.

PART IV
LAND

A. Participation.

Participation and rights in Plant land shall be as described in Exhibit “C”.

B. Sale of Land.

It is mutually agreed between First Parties and Agency that if First Parties should, during the term of this Agreement, sell or otherwise dispose of any of the lands of Exhibit “C” which is or are no longer needed for Plant purposes, Agency shall have the right to share in any revenue derived from such sale by First Parties proportionally in accordance with Exhibit “C.”

PART V
AMOUNTS PAYABLE BY AGENCY TO FIRST PARTIES

A. Payments for Existing Capacity Rights In The Intermediate Term And First Stage Expansion Projects and Phase 1 Water Recycling Program.

Payments for participation in the Intermediate-term and First Stage Expansion and Phase 1 Water Recycling Program shall be as described in Exhibit “D” attached hereto and incorporated by reference herein.

B. Payments for Additional Capacity Rights.

1. Payments with Plant Expansion. All payments associated with a Plant expansion as outlined in Part III, Section B, shall be paid for in proportion to the capacity rights requested in the basic parameters or based upon appropriate ratios of Agency design parameters to total project design parameters times total project cost.
2. Payments Without Planned Expansion. Should Agency elect to obtain additional capacity rights at a time when First Parties do not intend to expand Plant as designated in Part III, Section B, the expenses associated with this addition of capacity rights shall be the sole responsibility of Agency. All payments for studies, designs, and construction to provide additional capacity shall be deposited with the Administering Agency.
3. Payments for Transfer of Capacity Rights. Transfers of capacity rights between First Parties and Agency or between Agency and Agencies, shall be recommended by the TPAC and approved by First Parties and based upon the pooled capacity costs determined in Part IV, Section A. Transfer of capacity rights shall be based upon written agreement between the participating parties. Payment shall be due and payable as provided in said agreement.

C. Payments for Future Improvements.

1. All payments associated with future improvements at the Plant shall be made on the basis of Agency’s existing capacity rights. Final payment shall be determined based upon actual project cost. This payment shall be a proportional share in accordance with Exhibit “A”.
2. First Parties shall, not later than March 1st, of any fiscal year, provide Agency with a preliminary estimate of the amount of money required from Agency for future improvements or replacements for the ensuing fiscal year.

D. Payments for Operation and Maintenance Costs.

1. First Parties, Agency, and Agencies shall bear the cost of the operations and maintenance expenses of the Plant, including all reclamation facilities operated by the Plant. The cost of operation and maintenance of reclamation facilities shall be

determined based upon the actual flow (in million gallons per day) of Agency's discharge into the Plant. All other operation and maintenance expenses of the Plant shall be determined based upon the parameters of Agency's actual discharge into the Plant. Agency shall provide to First Parties, by December 1st of each year, data indicating expected flow and discharge for the ensuing fiscal year.

2. First Parties shall, not later than March 1st of each year, provide Agency with a preliminary estimate of the amount of money required to operate and maintain the Plant, including all reclamation facilities operated by the Plant, for the ensuing fiscal year. In addition, First Parties shall indicate Agency's estimated annual share for operation and maintenance costs as apportioned to treatment parameters, and for operation and maintenance costs for reclamation as apportioned to flow.
3. Agency shall provide to First Parties a copy of Agency's adopted annual sewer revenue program by August 1st of each year. This revenue program shall conform to all federal and/or state guidelines as now exist or may exist in the future.
4. During the second quarter of each fiscal year, TPAC shall review each Agency's total flow and total discharge to the Plant for the preceding fiscal year in terms of the parameters. Adjustments and costs, if any resulting from this review shall be made in accordance with Part V, Section E, Paragraph 3b herein.

E. Method of Payment.

1. Capital and Land Acquisition. All payments for capital and land acquisition shall be on a quarterly basis, the first quarter beginning July 1st. These invoices shall be presented at the beginning of the quarter in which the obligation is anticipated to occur. The date of financial obligations for capital expenses and land acquisitions shall be the date of award of contract. These payments shall be based upon the budget for capital costs for the Plant as recommended by TPAC and approved by the Administering Agency.
2. Operation and Maintenance Costs. All payments for operation & maintenance expenses shall be made on a quarterly basis, the first quarter beginning July 1st. Invoices for these payments 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 operation and maintenance costs of the Plant as recommended by TPAC and approved by the Administering Agency.
3. General Information.
 - a. All bills shall be paid to the Administering Agency within forty-five (45) days from presentation. Interest will be charged on any late or unpaid bills.
 - b. 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. A statement outlining the method of adjusting costs and actual adjustments shall be included.

- c. Any and all monies which Agency is herein required to pay to First Parties shall be paid to the Administering Agency.

F. Credits.

1. Grants or Outside Financial Assistance. Any grants, recoveries, or outside financial assistance received, and any interest earned thereon, shall be credited to First Parties, Agencies and Agency in the quarter following receipt, along with a statement outlining the source of grant revenue and method of distribution. 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.
2. Interest. Interest on moneys advanced, credits held for Agency or amounts due from Agency, shall be determined on a monthly basis.
3. Revenues and Income. If First Party should, during the term of this Agreement, receive any income or revenues related to land, products or services at the Plant, then Agency shall be entitled to a share of the income. Agency's share shall be that proportion of such income based on Agency's contribution to the capital cost or O & M cost, which is applicable, during the fiscal year of receipt of such income.

G. General.

Payment to Agency of any moneys to which it may become entitled may be made by off-setting the amount of such moneys against any payments which Agency may be obligated to pay to First Parties under the provisions of this Agreement or Agency may request cash reimbursement of any credit balance. The request for cash reimbursement shall be honored by First Parties within forty-five (45) days following receipt of notice. Any additional payments requested from Agency shall be made with the third quarter payment.

H. Payments for Operating Reserves.

The Administering Agency's annual operation and maintenance budget for the Plant shall include an operating reserve as an operating cost as described in this subsection. First Parties and all Agencies shall contribute their proportionate share to fund the operating reserve in the minimum amount of sixty (60) days of annual operating and maintenance expenses for unanticipated operation and maintenance costs for the Plant ("Operating Reserve") beginning in Fiscal Year 2016-2017. Each Agency's contribution to the Operating Reserve shall be determined in proportion to the Agency's estimated annual share of operation and maintenance costs of the Plant. The Operating Reserve contribution for each Agency shall be calculated as follows: annual Agency operation and maintenance allocation percentage multiplied by the

total estimated annual Plant operation and maintenance budget amount, divided by 365 days, and then multiplied by 60 days. In each fiscal year following Fiscal Year 2016-2017, the calculation will take into account the amount held in the Operating Reserve as of the date of calculation.

The Administering Agency shall provide each Agency on or before March 1 of each fiscal year, commencing in Fiscal Year 2015-2016 for the amount of its estimated contribution to the Operating Reserve for the following fiscal year. Each Agency shall be billed for its contribution to the Operating Reserve following the Administering Agency's adoption of the annual operation and maintenance budget for the Plant for Fiscal Year 2016-2017, and each fiscal year thereafter. If the adopted annual budget for operation and maintenance costs of the Plant is greater than or less than the amount on which the Agencies' respective contributions were calculated and paid into the Operating Reserve for the prior fiscal year, then the billing statement presented to each Agency will identify the revised contribution amount and specify the amount of the adjustment due if an Agency's contribution has increased or the amount subject to credit if an Agency's contribution amount has decreased. Agency shall make payment in full of the amount of its contribution to the Operating Reserve within forty-five (45) days of presentation of the billing statement. Any credit due to the Agency shall be applied to the Agency's first quarterly payment for operation and maintenance costs.

PART VI
SAN JOSE-SANTA CLARA TREATMENT PLANT
ADVISORY COMMITTEE

A. Creation and Membership.

The San José-Santa Clara Treatment Plant Advisory Committee (TPAC), created by the 1959 Agreement, shall consist of nine (9) members. Three (3) of the members shall be members of the Council of the City of San José, shall be appointed by said Council, and shall serve at the pleasure of said Council. Two (2) of the members shall be members of the Council of the City of Santa Clara, shall be appointed by the Council of the City of Santa Clara, and shall serve at the pleasure of said Council. One (1) of the members shall be a member of the Council of the City of Milpitas, shall be appointed by said Council, and shall serve at the pleasure of said Council. One of the members shall be a member of the governing body of the West Valley Sanitation District, shall be appointed by the governing body of the West Valley Sanitation District, and shall serve at the pleasure of said body. One (1) of the members shall be a member of the governing body of the Cupertino Sanitary District, shall be appointed by the governing body of the Cupertino Sanitary District, and shall serve at the pleasure of said body. The ninth (9th) member shall be the City Manager of San José or a designated representative. No member shall have more than one (1) vote.

Agency shall have the privilege of having one representative of Agency attend all meetings of TPAC who may participate in all discussions and deliberations of said Committee; however, said representative of Agency may not vote on any matters presented to said Committee for its advice or action, and shall not have any other privileges accorded to voting members of said TPAC, including reimbursement for expenses. Said representative of Agency shall be designated by the governing body of said Agency. An Alternate representative may be designated by this governing body of Agency to serve in the place and stead of the regular representative of Agency whenever said regular representative should be absent from the meeting of TPAC.

B. Alternate Members.

The Council of the City of San José may appoint three (3) of its Council members as alternative members of TPAC. The Council of the City of Santa Clara may appoint two (2) of its Council members as alternative members of TPAC. The Council of the City of Milpitas may appoint one (1) of its Council members as an alternative member of TPAC. The governing body of the West Valley Sanitation District and the governing body of the Cupertino Sanitary District may each appoint one (1) of its members as an alternative member of TPAC. Said alternate members shall serve in

the place and stead of any of the regular members whenever said regular member should be absent from a meeting of TPAC.

C. Chair.

At the first meeting of each fiscal year, the members of TPAC shall elect a Chair and Vice Chair of TPAC. The Chair and Vice Chair shall serve as such until the election of his or her successor, or until cessation of membership of the TPAC, whichever is earlier. Vacancies in the office of the Chair and Vice Chair occurring in-between regular elections may be filled by TPAC electing a Chair and Vice Chair elected to serve until the next regular election. The Chair, or the Vice Chair in the Chair's absence, shall preside at all meetings. In the event the Chair and Vice Chair should both be absent from any meeting, the members of TPAC may elect a Chair pro tem to serve as Chair during the latter's absence.

D. Secretary.

The Administering Agency shall provide a secretary for TPAC. Said secretary shall keep minutes of TPAC proceedings and shall also have custody of all books, records and papers of TPAC.

E. Meetings.

Regular meetings of TPAC shall be held at a time and place to be determined by TPAC. Special meetings may be called at any time by the Chair, to be held at a reasonable time and place specified in the notice calling the special meeting, subject to applicable requirements of law.

F. Procedure.

Except as may otherwise be provided by Resolution of TPAC, the procedure to be followed by TPAC at its meeting shall be that set forth in Robert's Rules of Order. TPAC may act by resolution of motion; a motion duly passed by TPAC and entered at length on TPAC's minutes may be deemed to be a resolution.

G. Power and Duties.

TPAC shall have the following powers and duties with respect to those items to be considered.

1. Make recommendation to First Parties and Agencies with respect to policy relating to the Plant and its maintenance, repair, expansion, replacement, improvement, and operation.
2. Make recommendation to the legislative bodies of First Parties and Agencies with respect to proposed amendments and revisions to exhibits to this Agreement.
3. Make recommendations to both First Parties and Agencies with respect to the advisability of selling interests in the Plant.

4. Make recommendations to First Parties with respect to the advisability of entering into contracts with other entities desiring to use the Plant on a rental or other basis.
5. Make recommendations to the Administering Agency and Agencies as to type and amount of insurance to be purchased for the Plant.
6. Annually, during the month of May in each fiscal year, TPAC shall review and recommend to the legislative bodies of First Parties and Agencies, a proposed budget for the ensuing fiscal year for the maintenance, expansion, replacement, improvement, and operation of the Plant.
7. Make recommendations to the Administering Agency with respect to the award of consultant, construction, or service contracts relating to the Plant.
8. Annually, TPAC shall file with the legislative bodies of First Parties and Agencies, a report on Plant capacity pursuant to Part III, Section D, paragraph 3.
9. Make recommendations to First Parties and Agencies with respect to the redistribution of pooled excess capacity pursuant to Part III, Section A, paragraphs 1 and 2.
10. Periodically, TPAC shall review and make current, long-range plans for expansion and/or improvement of the Plant to provide for the anticipated Plant capacity required to accommodate the general plans of San José, Santa Clara and Agencies and to meet current wastewater discharge requirements.
11. Make recommendations to the legislative bodies of First Parties and Agencies with respect to claim of breach proceedings pursuant to Part VII, Section C.

H. Action Upon Recommendations.

The legislative bodies of First Parties or the Agencies, shall not adopt any motion, Resolution or Ordinance that is contrary to any recommendation submitted to it by TPAC with respect to the Plant and its maintenance, repair, expansion, replacement, improvement and operation without a finding of fact or facts justifying such contrary action. The finding of fact or facts shall be submitted in writing to TPAC within fifteen (15) days after any contrary action. All policy matters as determined by the Director requiring an adoption of a motion, Resolution or Ordinance by the Council of the City of San José relating to the Plant and its maintenance, repair, expansion, replacement, improvement and operation, shall first be submitted to TPAC for its recommendation and in sufficient time, as determined by the Administering Agency, to allow TPAC to make a recommendation thereon. The Council of the City of San José shall not act upon any such policy matter until it has received the recommendation from TPAC. If TPAC does not submit its recommendation to the Council of the City of San José within the prescribed time, the City Council may adopt such a motion, Resolution or Ordinance. If a legislative body is presented with

any evidence not considered by TPAC in the making of any recommendation, then, prior to the taking of action contrary to said recommendation, if time permits as determined by the Administering Agency, the legislative body shall refer the matter back to TPAC for a supplementary report. Said supplementary report shall be submitted by TPAC within thirty (30) days after reference, or such longer period as may be designated by the legislative body. If TPAC fails to make such supplementary report within the time specified, the legislative body is free to consider such evidence without TPAC recommendations. In the event of an emergency as determined by the Director, the above procedure may be waived.

I. Expenses.

Members of TPAC shall be reimbursed for all expenses reasonably incurred by them in the performance of their duties, and that provision therefor, shall be made in the annual budget. Such expenses shall be considered as “operating costs” of the Plant.

PART VII
MISCELLANEOUS PROVISIONS

A. Effective Date and Duration of Agreement.

It is hereby agreed that this Agreement shall be in force and effect for a term beginning on May 10, 1983 and extending to, and including, and ending on June 30, 2065, or until sooner termination by mutual written agreement of the parties hereto or by operation of law or because of a material breach by one of the parties hereto.

B. Extension, Renewal or Amendment to the Agreement.

It is mutually agreed that the term of this Agreement may be extended or renewed only by mutual written agreement of the parties hereto and that this Agreement, including exhibits, may be amended or supplemented by a mutual written agreement of the parties hereto. This Agreement shall be reviewed in its entirety by First Parties and Agency in the year 2050. First Parties and Agency further agree that in the year 2065, they will meet and confer in good faith to negotiate a revised or new Agreement.

C. Use of Regional Wastewater Facility After Expiration of Term.

If for any reason the contact cannot be renewed in the year 2065, or subsequent to the termination date, the discharging Agency shall have the right to continue to discharging to the Plant, provided all payments of Agency's share of Plant costs are made. All other rights under this Agreement shall cease.

D. Termination.

If for any reason this Agreement is terminated by mutual consent of both parties, then the discharging capacity rights of the Agency shall be considered "excess pooled capacity" pursuant to the terms of Paragraph III Section A. This capacity shall be reserved for the Agency and Agency shall continue to pay for all costs associated with such capacity until such time as that capacity is either purchased by other users pursuant to the terms of this Agreement, or until failure of the Plant to treat wastewater.

E. Sale or Transfers by First Parties.

Nothing in this Agreement contained shall be deemed to prohibit or restrict First Parties, or either of them, for selling, granting, assigning or otherwise transferring this Agreement or any part or interest therein, or the Plant or any part or interest therein, or any right to discharge wastewater therein and to have the same therein treated and disposed of, to any corporation, district, governmental organization or entity or to any other person or persons, provided that any such transaction shall be subject to such

rights and privileges as First Parties and Agency may have under and by virtue of the provisions of this Agreement.

F. Industrial Waste Program.

The Administering Agency agrees to maintain personnel for the specific purposes of assisting all parties with matters concerning industrial waste. Such responsibilities shall include industrial waste monitoring, sampling and analysis, technical advice and surveillance of all industrial discharges tributary to the Plant. The Administering Agency agrees to be responsible for issuing notices of nonconformance within Agency's service area for violations of the ordinance requirements in Part II, Section D. Agency shall be responsible for the adoption and enforcement of any Industrial Waste Ordinance requirements. The Administering Agency shall endeavor to keep all dischargers informed of federal, state, county and city laws, rules, regulations, standards, and ordinances relating to industrial waste requirements.

G. Claims of Breach of Agreement or of Inequities.

In the event any party to this Agreement should at any time claim that the other party has in any way breached or is breaching this Agreement, or that the Agreement is inequitable, the complaining party shall file with the legislative body or bodies of the other parties, and with TPAC, a written claim of said breach or inequity, describing the alleged breach or inequity and otherwise giving full information respecting the same. TPAC shall within two (2) months at a place specified by it, give all concerned parties full opportunity to be heard on the matter, and shall, upon conclusion of said hearing, give the legislative bodies of both parties a full report of its finding and recommendations. Said report, findings, and recommendations shall be deemed advisory only; shall not be deemed to establish any facts, either presumptively or finally. Upon receipt of said report and recommendations, if any party is dissatisfied with or disagree with same, the legislative bodies of all parties concerned shall jointly meet with each other within two (2) months at a place to be determined by them, for the purpose of resolving their differences. No action for breach of this Agreement, and no action for any legal relief because of any breach or alleged breach of this Agreement shall be filed or commenced, and nothing shall be done by either party to rescind or terminate this Agreement, unless and until the above provisions of this paragraph have been complied with and unless the complaining party has first given to the other party three (3) months from the conclusion of said joint meeting of said legislative bodies within which to cure any breach or alleged breach.

H. Liability.

It is mutually agreed that any liability of San José and/or Santa Clara, or of San José as the Administering Agency for any damage to any such person or property arising or resulting from any dangerous or defective condition in the Plant or any part or property thereof, or arising or resulting from any act or omission of San José or Santa

Clara or their respective officers, agents, employees or contractors, in the control, administration, construction, expansions, installation, operation, maintenance or repair of said Plant or any part or property thereof, shall be mutually shared and paid for by First Parties and Agencies on the basis of operations and maintenance or capital costs, whichever is applicable. It is understood and agreed that First Parties in granting to Agencies certain discharge capacity rights in the Plant and to have wastewater treated and disposed of in said Plant, are not guaranteeing or warranting that the Plant will be able to satisfactorily treat such wastewater. In the event the Plant should for any reason other than by the gross negligence or intentional misconduct of First Parties be incapable of satisfactorily treating wastewater discharge into the Plant by Agency or First Parties, First Parties shall in no way be liable to Agency for any damages arising or resulting from or suffered because of the failure of the Plant to satisfactorily receive, hold, treat or otherwise dispose of wastewater.

I. Compliance with Federal and State Laws and Regulations.

Agency and First Parties agree to comply with any and all Federal, State, or local laws, the rules, regulations, standards and requirements of any Federal, State, or local board, commission, agency or similar body, and the decisions of any court or competent jurisdiction which must be complied with to enable First Parties to qualify for Federal or State grants for the construction, improvement, administration, operation, maintenance, or repair of the Plant.

J. Assignment.

Agency shall not assign or transfer any interest nor the performance of any of Agency's obligations hereunder without the prior written consent of First Parties, and any attempt by Agency to so assign this Agreement or any rights, duties or obligations arising hereunder without written consent shall be void and of no effect.

K. Successors and Assigns.

It is mutually agreed by all the parties hereto that the agreements, covenants, conditions, limitations, restrictions and undertakings herein contained shall, subject to the provisions as to assignment, apply to and bind the successors and assigns of the respective parties hereto as if they were in all cases named.

L. Waivers.

One or more waivers of any term, covenant or condition by either party shall not be construed as a waiver of a subsequent breach of the same or any other term, covenant or condition and the consent or approval by either party to any act shall not be deemed to waive or render unnecessary either party's consent or approval for any subsequent similar act by the other party.

M. Performance and Time to be of The Essence.

It is understood and agreed that full and faithful compliance with and performance of each and every covenant and provision of this Agreement by the party or parties required to comply with or perform each such covenant or provision is and shall be of the essence; also that time is and shall be of the essence; also that such full and faithful compliance with and performance of each and every covenant and provision of this Agreement shall be deemed to be a material condition of this Agreement.

N. Insurance Requirements and Risk Financing.

1. General Provisions. The Administering Agency may elect to self-insure any obligations hereunder should a program of self-insurance be deemed, at the sole discretion of the Administering Agency, the most economically reasonable risk financing option. The Administering Agency may contract for brokerage services and procure insurance policies or products, as needed and as would customarily be maintained, to mitigate against risks associated with common losses related to work or operations described in this Agreement including, but not limited to, claims for injuries to persons or damages to property from performance of the work or operations described in or incidental to this Agreement. The Administering Agency shall further provide services related to administration and maintenance of the insurance policies procured for on behalf of the Plant. The form of risk financing required under this section does not alter the liability of the parties. Each party shall be responsible for its proportionate share of any costs associated with self-insurance and the premiums, deductibles, copayments, losses, claims recovery, or other related costs.

2. Scope of Coverage. In the event that the Administering Agency procures and maintains insurance policies by a third party provider, the coverage, to the extent economically feasible and available in the marketplace, will include:

2.1. A property and casualty insurance policy or policies insuring the Plant, in such forms and with such carriers as shall be within industry standards, including:

2.1.1. "All risk" property policy including boiler and machinery exposures, coverage for loss due to business interruption, and flood.

2.1.2. 100% Replacement Cost, excluding foundations and excavations, with a deductible amount of no more than \$100,000 for scheduled properties unless otherwise specified in these Requirements or, in the event that the identified deductible is no longer available at reasonable market rates.

2.1.3. Wind, Flood, Boiler, and Sprinkler Leakage coverages, in amounts consistent with industry practice.

2.1.4. The Administering Agency will annually market for and assess the economic feasibility of procuring earthquake coverage and Terrorism Risk

Insurance Act (“TRIA”) coverage.

2.1.5. The Administering Agency shall not insure personal property located at the Plant that is not an owned asset of the Plant.

- 2.2. A commercial general liability policy (“occurrence” form CG 0001) or its equivalent and, if necessary, an umbrella or excess policy or policies liability with limits as are reasonable within the industry and a combined single limit for bodily injury and property damage, providing to the extent economically feasible all of the following coverage:
 - 2.2.1. Premises Operations
 - 2.2.2. Products/Completed Operations
 - 2.2.3. Personal and Advertising Injury and Liability
 - 2.2.4. Fire Legal Liability with a minimum limit of \$100,000
 - 2.2.5. Environmental Legal Liability (if not obtained by separate environmental legal liability policy)
 - 2.3. A business automobile policy with coverage provided by Insurance Services Office form number CA 0001 covering automobile liability and a minimum limit of not less than \$1,000,000 combined single limit for bodily injury and property damage.
 - 2.4. A workers’ compensation and employer’s liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of contractor.
 - 2.5. In the event that the Administering Agency uses an excess liability policy(ies) to meet commercial general liability policy limits or property policy limits as would be reasonable considering industry standards, the excess liability coverage must follow form or have greater scope of coverage than the commercial general liability coverage. All Parties shall receive the same status on the excess liability policy including receipt of additional insured endorsements.
3. Policies and Endorsements. At any party’s request, the Administering Agency shall provide a certificate of insurance with applicable endorsements, an insurance summary, or a copy of the insurance policy or policies obtained pursuant to this Agreement.
 - 3.1 All parties shall have additional insured endorsements on each policy (excluding workers’ compensation) to the extent each individual party has an insurable interest.
 - 3.2 All policies shall be endorsed as primary and noncontributing to any other insurance policy of any of the parties to the extent permitted by policy form.
 4. Costs. All related insurance costs shall be included in the maintenance and operating expenses. Costs shall include but not be limited to brokerage fees, premiums, deductibles, copayments, uncovered losses, claims recovery expenses

including disputed claims, fees, taxes, administration costs, fines, or penalties not otherwise insured or covered.

O. Titles and Headings.

The sub-heading and titles of this Agreement are inserted for the convenience of reference only and shall not be taken or considered as having any bearing on the interpretation thereof.

P. Notices.

All notices shall be mailed to the address designated beneath the signatures of the parties hereto or as subsequently designated in writing by the parties.

PART VIII
SPECIAL PROVISIONS

A. Termination of Agreements.

It is mutually agreed to by all parties hereto that any agreements heretofore entered into between the City of San José and Agency, or between the City of Santa Clara and Agency, or between Agency and both the City of San José and City of Santa Clara relating to the Plant or any part thereof, or in any way relating to its ownership, construction, maintenance, repair, operation or use, and any and all supplements, addendums, changes, or amendments hereto, which have not already terminated, are hereby terminated; and Agency does relinquish, remise, release and quitclaim unto First Parties any and all rights, title or interest, if any, which Agency may have on date of execution of this Agreement, under and by virtue of any of said agreements in and to the Plant or any part thereof or in or to its ownership, construction, maintenance, operation or use.

IN WITNESS WHEREOF, San José, and Santa Clara and Burbank Sanitary District have caused this AMENDMENT AND RESTATEMENT OF MASTER AGREEMENT to be executed in their respective names and their respective seals to be affixed hereunto by their duly authorized officers, all as of the date first above written.

APPROVED AS TO FORM

CITY OF SAN JOSE, a municipal corporation

ROSA TSONGTAATARII
Senior Deputy City Attorney

TONI TABER, CMC
City Clerk
200 East Santa Clara Street
San José, CA 95113-1905

APPROVED AS TO FORM

CITY OF SANTA CLARA, a municipal corporation

RICHARD E. NOSKY JR.
City Attorney

ROD DIRIDON JR.
City Clerk
1500 Warburton Avenue
Santa Clara, CA 95050

APPROVED AS TO FORM

BURBANK SANITARY DISTRICT

Chairperson

Secretary

EXHIBIT A

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

TREATMENT PLANT CAPACITY ALLOCATIONS

Table 1 - 167 MGD Plant, Intermediate Term Improvements and First Stage Expansion.

Table 1 contains the Agencies' and First Parties' treatment plant capacities achieved by implementation of the Intermediate-term Improvements and First Stage Expansion. Increased capacity was allocated only to those Agencies that elected to participate in Plant expansion to 167 MGD. Milpitas was allocated 4 MGD of the 24 MGD expansion, and the First Parties' share the remaining 20 MGD based on assessed valuation. BOD, SS, and Ammonia capacities were allocated in the same proportion as Flow.

Table 2 – 167 MGD Plant, after transfer of capacity to Milpitas from West Valley and Cupertino.

Table 2 shows the Agencies' and First Parties' treatment plant capacities effective with the transfer of 0.75 MGD from Cupertino to Milpitas with prorated shares of Suspended Solids and Ammonia, but excludes any prorated share of Biochemical Oxygen Demand effective January 1, 2009. On July 1, 2006, West Valley Sanitation District transferred 1 MGD of flow with 2.430 KLBS/Day Biochemical Oxygen Demand, 2.308 KLBS/Day Suspended Solids, and 0.242 KLBS/Day Ammonia capacity to Milpitas. The other Agencies' capacities remain the same as in the 143/167 MGD Plant.

Table 3 – 167 MGD Plant, after annexations from West Valley and Sunol into San José.

Table 3 shows the Agencies and First Parties' treatment plant capacities effective June 30, 2014 with the transfer of capacity associated with annexations into San José from West Valley in 2007-2013, and Sunol in November 30, 2009. The other Agencies' capacities remain the same as in the 143/167 MGD Plant.

TABLE 1
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

167 MGD PLANT

SUMMARY OF CAPACITY ALLOCATION*

(Intermediate-Term, First Stage Expansion & South Bay Water Recycling Improvements Implemented)

AGENCY	FLOW MGD	BOD K LBS/DAY	SS K LBS/DAY	AMMONIA K LBS/DAY
San José ^a	110.800	390.393	346.342	34.332
Santa Clara ^a	21.298	75.042	66.575	6.599
Subtotal ^b	132.098	465.435	412.917	40.931
West Valley	13.052	31.713	30.120	3.156
Cupertino	8.600	16.419	17.856	2.506
Milpitas	12.500	24.819	22.125	2.386
Burbank	0.400	0.815	0.853	0.297
Sunol	0.350	1.799	2.129	0.324
Subtotal	34.902	75.565	73.083	8.669
TOTAL	167.000	541.000	486.000	49.600

*The term “capacity” is defined as the mean peak five-day dry weather plant treatment capacity.

Note(s):

- a. San José and Santa Clara allocations vary annually according to assessed property value; values shown are effective as of January 1, 2009.
- b. CSD 2-3 rents capacity from San José and Santa Clara. Allocations vary annually depending flow from CSD 2-3.

TABLE 2
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

167 MGD PLANT

SUMMARY OF CAPACITY ALLOCATION*

(After transfer of capacity to Milpitas from West Valley in July 1, 2006, and Cupertino in January 1, 2009)

AGENCY	FLOW MGD	BOD K LBS/DAY	SS K LBS/DAY	AMMONIA K LBS/DAY
San José ^a	110.800	390.393	346.342	34.332
Santa Clara ^a	21.298	75.042	66.575	6.599
Subtotal ^b	132.098	465.435	412.917	40.931
West Valley	12.052	29.283	27.812	2.914
Cupertino	7.850	16.419	16.299	2.287
Milpitas	14.250	27.249	25.990	2.847
Burbank	0.400	0.815	0.853	0.297
Sunol	0.350	1.799	2.129	0.324
Subtotal	34.902	75.565	73.083	8.669
TOTAL	167.000	541.000	486.000	49.600

*The term “capacity” is defined as the mean peak five-day dry weather plant treatment capacity.
 Note(s):

- a. San José and Santa Clara allocations vary annually according to assessed property value. The values shown are effective as of January 1, 2009.
- b. CSD 2-3 rents capacity from San José and Santa Clara. Allocations vary annually depending flow from CSD 2-3.

TABLE 3
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

167 MGD PLANT

SUMMARY OF CAPACITY ALLOCATION*

(June 30, 2014)

AGENCY	FLOW MGD	BOD K LBS/DAY	SS K LBS/DAY	AMMONIA K LBS/DAY
San José ^{a,c}	109.555	385.994	342.915	34.106
Santa Clara ^a	23.248	81.912	72.770	7.238
Subtotal ^b	132.803	467.906	415.685	41.344
West Valley ^c	11.697	28.611	27.173	2.825
Cupertino	7.850	16.419	16.299	2.287
Milpitas	14.250	27.249	25.990	2.847
Burbank	0.400	0.815	0.853	0.297
Subtotal	34.197	73.094	70.315	8.256
TOTAL	167.000	541.000	486.000	49.600

*The term “capacity” is defined as the mean peak five-day dry weather plant treatment capacity.
 Note(s):

- a. San José and Santa Clara allocations vary annually according to assessed property value. The values shown are effective as of June 30, 2014.
- b. CSD 2-3 rents capacity from San José and Santa Clara. Allocations vary annually depending flow from CSD 2-3.
- c. San José and West Valley Sanitation District allocations reflect the transfer of capacity associated with annexations from the District into San José from 2007-2013.

EXHIBIT B

9/18/15

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
REPLACEMENT COST OF PLANT AND EQUIPMENT
JUNE 2014

FACILITY	ACQUISITION DATE	ORIGINAL COST	REPLACEMENT COST
Asset #1 - Original primary plant	1958	3,786,400	45,876,200
Asset #2 - Plant Additions	1960	1,370,200	15,269,000
Asset #3 - Plant Additions & New Secondary Facility	1963	24,166,800	258,656,700
Asset #4 - Final Tank	1965	1,183,000	11,053,800
Asset #5 - Digesters	1966	993,600	8,419,400
Other Projects:			
1965-66	1965	103,900	970,800
1966-67	1966	253,800	2,150,600
1967-68	1967	24,200	187,600
1968-69	1968	322,100	2,300,800
1969-70	1969	59,900	396,700
1970-71	1970	102,700	634,000
Sludge Lagoons	1968	839,000	5,993,000
Foam Flotation Program	1970	23,000	142,000
1970 94/MGD Improvements	1970	5,809,400	35,865,200
1970 66/MGD Additions	1970	23,049,000	142,296,600
A.W.T.F.	1977	62,810,900	219,021,500
Other Projects:			
1977-78	1977	745,500	2,599,600
1978-79	1978	312,200	997,300
1979-80	1979	1,421,100	4,292,200
1980-81	1980	1,962,300	4,992,300
1981-82	1981	535,200	1,325,800
1982-83	1982	1,777,765	3,770,200
CAPITAL IMPROVEMENT PROGRAM:			
Intermediate-term Improvement	1987	88,699,500	175,232,300
First Stage Expansion	1987	20,035,100	39,580,800
1987 Capitalized Expenditures	1987	894,900	1,767,900
1989 Capitalized Expenditures	1989	527,473	1,002,300
1990 Capitalized Expenditures	1990	823,720	1,485,800
1991 Capitalized Expenditures	1991	114,902	204,300
1992 Capitalized Expenditures	1992	407,154	708,700
1993 Capitalized Expenditures	1993	1,291,825	2,188,600
1994 Capitalized Expenditures	1994	255,378	424,500

1995 Capitalized Expenditures	1995	10,595,576	17,651,200
1996 Capitalized Expenditures	1996	3,396,270	5,650,100
1997 Capitalized Expenditures	1997	9,320,130	15,161,500
1998 Capitalized Expenditures	1998	2,829,981	4,559,800
1999 Capitalized Expenditures	1999	133,138,713	212,724,200
2000 Capitalized Expenditures	2000	2,464,590	3,749,200
2001 Capitalized Expenditures	2001	3,866,326	5,687,800
2002 Capitalized Expenditures	2002	930,265	1,323,300
2003 Capitalized Expenditures	2003	1,663,511	2,324,100
2004 Capitalized Expenditures	2004	3,321,630	4,443,200
2005 Capitalized Expenditures	2005	665,760	877,300
2006 Capitalized Expenditures	2006	2,096,762	2,707,600
2007 Capitalized Expenditures	2007	1,197,306	1,439,900
2008 Capitalized Expenditures	2008	68,856,165	81,431,200
2009 Capitalized Expenditures	2009	86,452,121	96,787,700
2010 Capitalized Expenditures	2010	5,337,506	5,871,000
2011 Capitalized Expenditures	2011	4,237,725	4,537,800
2012 Capitalized Expenditures	2012	14,961,081	15,701,600
2013 Capitalized Expenditures	2013	24,009,116	25,189,500
2014 Capitalized Expenditures	2014	909,001	909,000
TOTAL		624,951,452	1,498,533,500*

(*) 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:

- 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 percentages contained in the most current Revenue Program (Form 8, Summary of Distribution of Capital Costs).
- 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.

EXHIBIT C

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

LAND DISTRIBUTION

1. Table 1 includes the original land purchase price for each parcel purchased before June 30, 1982 (“Pre-1982 Land.”). The San José’s average yearly rate of return for all investments was applied to this amount and compounded to establish a June 30, 1982 value for all Pre-1982 Land.
2. Land participation for Pre-1982 Lands was based upon the 167 MGD capacity of the Plant (Flow BOD, Suspended Solids and Ammonia). Percentage of participation in Pre-1982 Land is based upon the total acreage and not on an individual parcel basis.
3. Agencies which still owe San José and West Valley Sanitation District for their allocated share of cost for Pre-1982 Land shall pay all the costs of this land from sale, lease or rental revenues to be received from the Regional Wastewater Facility properties. Percentage of revenue shall be based upon each Agency’s full capacity percentage. The Pre-1982 Land costs will be paid off only from sale, lease, or rental revenues of the Plant property and shall have no fixed term. Table 2 shows First Parties’ and Agencies’ allocations and amounts/credits due for Pre-1982 Land costs as of June 30, 2014.
4. Table 3 shows the original purchase price, date of purchase and cost allocation for all land purchased on or after July 1, 1982 (“Post 1982 Land”). Cost allocation in Post 1982 Land was based on the flow and wastewater strength allocations for First Parties and participating Agencies, except for land purchased for recycled water facilities, which is based on flow allocation only.
5. Table 4 shows the percentage participation in Pre-1982 Land and Post-1982 Land for First Parties and Agencies effective June 30, 2014 including, the annexation of Sunol into San José on November 30, 2009, the annexation of territory from West Valley into San José from 2007-2013, the transfer of land equivalent to 0.75 MGD capacity

from Cupertino to Milpitas effective January 1, 2009, and the transfer of land equivalent to 1 MGD from West Valley to Milpitas effective July 1, 2006.

6. Sale, lease or rental revenues from Regional Wastewater Facility property shall be first applied to an Agency's debt, and only upon completion of that debt, will revenues be passed on to the Agency.
7. If and when expansion of the facilities takes place in the future, land values shall again be adjusted based upon the new MGD denominator. Each Agency's percentage of participation in land shall, at that time, be recomputed based upon total land cost shown in the applicable Land Cost Allocation.
8. All purchases of land in the future shall be distributed to all Agencies in the percentage of discharge capacity at the Plant, except that land purchased for recycling improvements shall be based on the Agencies' and First Parties' purchased capacity in the 167 MGD Plant for the flow parameter only.

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
LAND COST ALLOCATION METHODOLOGY

1. Attachment A is a Regional Wastewater Facility Property map.
2. Table 1 includes the original land purchase price for each parcel purchased before June 31, 1982. This amount was then applied to San José's average yearly rate of return for all investments and compounded to establish a June 30, 1982 value for the Pre-1982 Land.
3. Table 2 shows the First Parties' and Agencies' share of Pre-1982 land Costs. Table 2 also shows the amounts still due or owing by First Parties and Agencies for Pre-1982 Land Costs, as of June 30, 2014.
4. Table 3 shows the land allocation for First Parties and Agencies for all land purchased on or after July 1, 1982, based on the amount actually paid by First Parties and Agencies for land purchased on or after July 1, 1982.
5. Table 4 shows the land participation allocation for First Parties and Agencies as of June 30, 2014 including, the annexation of Sunol into San José on November 30, 2009, the annexation of territory from West Valley into San José from 2007-2013, the transfer of land equivalent to 0.75 MGD capacity from Cupertino to Milpitas effective January 1, 2009, and the transfer of land equivalent to 1 MGD from West Valley to Milpitas effective July 1, 2006. The transfer of capacity and adjusted land allocation percentages shall not affect the amounts due or owing by Agencies for Pre-1982 Land Costs.

Attachment A
Regional Wastewater Facility Property Map



TABLE 1
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
PRE-1982 LAND PURCHASES

Pre-1982 Purchases Parcel	Acres	Original Cost	Purchase Date	Cost*
Berger Williamson	43.668	\$ 15,284	8/49	\$ 88,282
Coolidge Quitclaim	--	150	3/52	805
John R. Watrous	106.747	101,043	7/54	490,206
John R. Medina	16.970	15,067	8/54	73,106
Other Costs (Easement- Condemnation)*	--	23,468	1956-57	106,183
Curtner-Zanker	.776	1,000	7/55	5,082
Los Altos Garbage	2.045	1,000	8/55	4,692
James Clayton	181.680	182,160	4/58	795,944
A. M. Standish	.197	120	10/61	457
Spring Valley	.180	50	4/62	189
Beatrice Standish	39.888	55,109	7/62	202,258
Other Costs (Unallocated)*	--	603	3/65	2,048
Nine-Par	46.970	201,515	1/68	596,405
A. L. Kricheberg	41.13	162,170	4/69	452,708
Anselmo-Campi	34.48	208,771	7/69	541,583
Casteel	117.78	932,240	11/69	2,418,376
Chisolm-Hopham	Parcel	5,232	8/70	12,738
Rankin-Gilman	Parcel	600	8/70	1,461
Owens-Corning	3.16	23,743	11/70	57,801
Standish	630.0	2,831,034	4/71	6,892,016
Owens-Corning	2.58	17,133	6/71	41,713
Phillips-Bosio	Parcel	2,136	12/71	4,943
Zanker Ranch	145.7	1,496,478	8/72	3,446,515
Garcia	19.54	236,328	12/72	517,884
Martin-Moore	16.47	200,446	1/73	439,257
Tempco	12.33	327,153	7/75	566,730
County of Santa Clara	Parcel	4,495	1975-76	7,788
County of Santa Clara	2.98	13,476	4/76	20,716
Brazil	54.546	513,359	7/76	841,819
McCarthy (1st)	43.0	483,880	12/76	793,479
McCarthy (2 nd)	43.0	483,879	4/77	793,478
McCarthy (3 rd)	43.0	483,879	1/78	743,861
Other Costs (Unallocated)	--	47,693	1978-79	67,043
Calvo	58.415	586,405	1/78	901,473
Leslie Salt	Parcel	820	9/78	1,153
Graham-Cassin	52.8	3,339,932	8/80	3,775,793
Geomax	4.2	273,972	1/81	291,849
TOTAL	1,764.23**	\$13,271,823		\$25,997,834

*Represents costs not allocable to a specific land purchase (e.g., appraisal of land not purchased).

**Acreage has been and will be reduced by the following completed and pending conveyances:

- Santa Clara Valley Water District - flood control easement dated November 25, 1986.
- State of California – 14.8 acres for widening of State Route 237, Grant Deed dated March 17, 1997.
- PG&E - various completed and pending easements.
- Los Esteros Critical Energy Facility - access road easement conveyed November 3, 2003, pursuant to Conveyance Agreement dated November 22, 2002, as amended May 4, 2005; open space easement and pole line license pursuant to Conveyance Agreement dated pending as of March 2006.
- City of Santa Clara, Silicon Valley Power, electric transmission line easement pursuant to Conveyance Agreement dated July 15, 2003, pending as of March 2006.
- Various Agency sanitary sewer trunk line easements.

TABLE 2

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
LAND COST ALLOCATION
PRE-1982 PURCHASES

AGENCY	% SHARE	AMOUNT SHOULD HAVE PAID 1982 DOLLARS	AMOUNT PAID 1982 DOLLARS	AMOUNT PAYABLE <DUE> AS OF JUNE 30, 2014
San José ^a	66.494	\$17,287,000	\$19,144,541	<\$439,491>
Santa Clara	15.620	\$4,060,862	\$3,234,047	\$0
West Valley ^{a,b}	6.472	\$1,822,188	\$1,945,035	<\$30,449>
Cupertino ^b	4.074	\$1,160,283	\$1,141,582	\$0
Milpitas ^b	7.092	\$1,603,026	\$523,426	\$439,549
Burbank	0.248	\$64,475	\$9,203	\$30,391
TOTAL	100%	\$25,997,834	\$25,997,834	

County Sanitation District 2-3 rents capacity from San José and Santa Clara. The rental agreement does not entitle it to share in land revenue.

Note(s):

- a. San José allocation reflects the annexation of Sunol into San José in November 30, 2009, and annexation of territory from West Valley into San José in 2007-2013.
- b. Milpitas allocation reflects the capacity transfer from West Valley effective July 1, 2006, and from Cupertino effective January 1, 2009.

TABLE 3

**SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
LAND COST ALLOCATION POST-1982 LAND PURCHASES**

AGENCY	SOUTH Bay Water Recycling Phase 1 easements \$265,000; 1996-1997)	Moseley Tract (56 acres; \$460,000; 9/96)	McCarthy Ranch (6 acres; \$6,534,000; 8/00)	Cargill Pond A-18 (856 acres; \$13,301,250; 10/05)	Silver Creek Reservoir (4.839 acres fee; 1.97 acres permanent easement; \$7,800,000; 3/05)
San José ^a	64.869%	67.923%	67.385%	67.331%	64.869%
Santa Clara	14.440%	14.511%	15.049%	15.103%	14.440%
West Valley ^{a,b}	7.816%	6.928%	6.928%	6.928%	7.816%
Cupertino ^b	5.150%	4.360%	4.360%	4.360%	5.150%
Milpitas ^b	7.485%	6.040%	6.040%	6.040%	7.485%
Burbank	0.240%	0.238%	0.238%	0.238%	0.240%
TOTAL	100%	100%	100%	100%	100%

County Sanitation District 2-3 rents capacity from San José and Santa Clara. The rental agreement does not entitle it to share in land revenue.

Note(s):

- a. San José allocation reflects the annexation of Sunol into San José in November 30, 2009, and annexation of territory from West Valley into San José in 2007-2013.
- b. Milpitas allocation reflects the capacity transfer from West Valley effective July 1, 2006, and from Cupertino effective January 1, 2009.

TABLE 4
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
LAND PARTICIPATION ALLOCATION

(June 30, 2014)

AGENCY	Pre-1982 Land	Moseley Tract , McCarthy, Cargill Pond A-18	South Bay Water
San José ^a	66.494	67.923%	64.869%
Santa Clara	15.620	14.511%	14.440%
West Valley ^{a,b}	6.472	6.397%	7.217%
Cupertino ^b	4.074	3.980%	4.701%
Milpitas ^b	7.092	6.951%	8.533%
Burbank	0.248	0.238%	0.240%
TOTAL	100%	100%	100%

County Sanitation District 2-3 rents capacity from San José and Santa Clara. The rental agreement does not entitle it to share in land revenue.

Note(s):

- a. San José allocation reflects the annexation of Sunol into San José in November 30, 2009, and annexation of territory from West Valley into San José in 2007-2013.
- b. Milpitas allocation reflects the capacity transfer from West Valley effective July 1, 2006, and from Cupertino effective January 1, 2009.

EXHIBIT D

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

PARTICIPATION IN MAJOR PROCESS RELATED IMPROVEMENTS

Intermediate Term Improvements and First Stage Expansion

The construction and design cost of the Intermediate-term Improvement Project for restoration of the Plant capacity to 143 MGD was Eighty-Nine Million Three Hundred Thousand Two Hundred and Thirty Dollars (\$89,300,230.00). The construction costs and design cost of the First Stage Expansion Project for expansion of Plant capacity to 167 MGD was Twenty-Seven Million Eighty-Four Thousand Eight Hundred and Four Dollars (\$27,084,804.00). Agency has fully paid all amounts due for its capacity in the Intermediate Term Improvements and the First Stage Expansion Project.

Water Recycling Improvements

In October 1991, the Regional Water Quality Control Board (RWQCB) approved the San José Action Plan which included development of a reclamation program to reclaim a portion of the San José/Santa Clara Regional Wastewater Facility's (Plant) effluent, thereby providing an alternative to discharging treated effluent to South San Francisco Bay (Bay). In October 1993, the RWQCB incorporated the Action Plan into the Plant's NPDES permit. The South Bay Recycling Program (SBWRP) is intended to satisfy this permit requirement.

Implementation of the SBWRP has been divided into two phases. Under the Phase 1, Water Recycling Program, approximately 9,000 acre-feet per year (up to 21.1 million gallons per day) of recycled water will be produced and distributed beginning in November 1997. The budgeted cost of Phase I was \$139,840,000. Construction of Phase II is now underway, with an estimated cost of \$100,000,000.

On January 12, 1995, TPAC approved a cost sharing method whereby First Parties and Agencies would participate in payment for the Water Recycling Program based on their respective flows to the Plant. Table 1 contains First Parties' and Agencies' allocation of Phase 1 recycling costs, as of January 12, 1995. Table 2 contains First Parties and Agencies share of Phase 2 Recycling costs, as of January 12, 1995. The final Phase 2 cost allocation will be adjusted to reflect the actual cost when construction of the Phase 2 facilities is completed.

First Party Santa Clara and Milpitas elected to cash fund their share of the Phase 1 Recycling Costs. However, effective January 1, 2009, Milpitas assumed the obligations of Cupertino, with respect to a portion of Cupertino debt service obligations for Recycling Cost. Table 3 shows the debt service allocation for the bond issued by San José for Phase 1 costs for First Party San José, and all Agencies including Milpitas, as of January 1, 2009.

Milpitas also elected to cash fund its share of the Phase 2 Recycling Costs. First Parties and all other Agencies chose to utilize State Revolving Loan Fund proceeds for their share of the Phase 2 Recycling costs. However, effective January 1, 2009, Milpitas assumed the obligations of Cupertino, with respect to a portion of Cupertino debt service obligations for Phase 2 Recycling Costs. Table 4 shows the debt service allocation for the SRLF proceeds, as of January 1, 2009.

Long-Term Improvements

On May 14, 2015, TPAC approved the San José -Santa Clara Regional Wastewater Facility Ten-Year Funding Strategy (“Funding Strategy”) whereby First Parties and Agencies participate in the funding of Long-Term Improvements proportionately based on their capacity allocations detailed in Table 1 of Exhibit A, as may be amended. The Funding Strategy contemplates the Administering Agency, pursuing Clean Water State Revolving Fund (“SRF”) loans to the maximum extent possible to finance the Long-Term Improvements. If Agency elects to finance its proportionate share of the costs of the Long-Term Improvements through SRF, short term financing, and long term financing obtained by First Parties or Administering Agency, Agency agrees to execute and deliver to the Administering Agency the necessary documentation to secure such financing and Agency’s repayment thereof.

In the event that all or a portion of financing for the Long-Term Improvements is secured through a short-term variable rate financing program, Agency acknowledges and agrees that any participating Agency will be responsible for its proportionate cost for establishing the financing program based on the total amount to be financed by Agency through the short-term variable rate financing program relative to the total dollar size of the program. Any Agency that requests participation in the program after the deadline established by the Administering Agency for participation may incur additional expenses associated with accommodating the Agency. Agencies that choose to participate in the program can cease their participation upon repayment of the funds and associated costs.

Agency acknowledges and agrees that its participation in any financing obtained by First Parties or the Administering Agency, including amount financed, debt service and repayment scheduled shall be memorialized in a supplemental financing agreement. Any supplemental financing agreement shall be executed prior to or contemporaneous with the closing of the financing.

Notwithstanding the terms and conditions of this Agreement, the process for asserting a claim for breach of the supplemental financing agreement such as nonpayment shall be governed by the provisions of the supplemental financing agreement. If Agency shall fail to make payment when due for their portion of the financing, Agency agrees First Parties shall have the right to institute an action for damages sustained as a result of any such default and shall have the right by mandamus or other proceeding at law or in equity to enforce their rights against Agency and to compel Agency and its officers or employees thereof to perform and carry out their obligations and duties under this Agreement, and any supplemental financing agreement. No remedy conferred upon or reserved to First Parties is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, any supplemental financing agreement, existing at law or in equity or by statute. First Parties or San Jose, as the Administering Agency,

shall provide the Agency notice of payment past due at least thirty (30) calendar days prior to instituting an action for damages.

TABLE 1

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

Participation in South Bay Water Recycling Program
Phase 1 Capital Costs

<u>Agency</u>	<u>Percent</u>	<u>Phase 1 Budgeted Costs</u>
City of San José ^{a,b}	64.007%	\$89,507,389.
City of Santa Clara ^b	14.292%	\$19,985,933
West Valley Sanitation District ^{a,c}	7.816%	\$10,929,894
Cupertino Sanitary District ^c	5.150%	\$7,201,760
City of Milpitas ^c	7.485%	\$10,467,024
County Sanitation District 2-3*	1.010%	\$1,412,384
Burbank Sanitary District	.240%	\$335,616
TOTAL	100%	\$139,840,000

*County Sanitation District 2-3 (CSD 2-3) has entered into an agreement with FIRST PARTIES for sharing Regional Wastewater Facility costs on a different basis than the other AGENCIES. The agreement provides for adjusting payments to reflect changes in CSD 2-3's flow and loadings. The agreement between CSD 2-3 and FIRST PARTIES do not affect the other AGENCIES participation in the South Bay Water Recycling Program Phase 1 capital costs.

Note(s):

- a. San José allocation reflects the annexation of Sunol into San José in November 30, 2009, and annexation of territory from West Valley into San José in 2007-2013.
- b. San José and Santa Clara allocations vary annually according to assessed property value; values shown are effective as of June 30, 2014.
- c. Milpitas allocation reflects the capacity transfer from West Valley effective July 1, 2006, and from Cupertino effective January 1, 2009.

TABLE 2
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

Participation in South Bay Water Recycling Program
Phase 2 Capital Cost

<u>Agency</u>	<u>Percent</u>	<u>Phase 2 Estimated Costs</u>
City of San José ^{a,b}	64.007%	\$64,007,000
City of Santa Clara ^b	14.292%	14,292,000
West Valley Sanitation District ^{a,c}	7.816%	7,816,000
Cupertino Sanitary District ^c	5.150%	5,150,000
City of Milpitas ^c	7.485%	7,485,000
County Sanitation District 2-3*	1.010%	1,010,000
Burbank Sanitary District	.240%	240,000
TOTAL	100%	\$100,000,000

*County Sanitation District 2-3 (CSD 2-3) has entered into an agreement with FIRST PARTIES for sharing Regional Wastewater Facility costs on a different basis than the other AGENCIES. The agreement provides for adjusting payments to reflect changes in CSD 2-3's flow and loadings. The agreement between CSD 2-3 and FIRST PARTIES do not affect the other AGENCIES participation in the South Bay Water Recycling Program Phase 2 capital costs.

Note(s):

- a. San José allocation reflects the annexation of Sunol into San José in November 30, 2009, and annexation of territory from West Valley into San José in 2007-2013.
- b. San José and Santa Clara allocations vary annually according to assessed property value; values shown are effective as of June 30, 2014.
- c. Milpitas allocation reflects the capacity transfer from West Valley effective July 1, 2006, and from Cupertino effective January 1, 2009.

TABLE 3
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
PHASE 1 RECYCLING DEBT ALLOCATION

Series 2005 A Refunding Bonds - Principal \$54,020,000; last payment due November 15, 2016

Series 2005 B Refunding Bonds - Principal \$27,130,000; last payment due November 15, 2020

San José ^a	West Valley	Cupertino	Milpitas	District 2-3	Burbank
80.356%	10.594%	6.734%	0.643%	1.436%	.237%

Series 2009 A Refunding Bonds - Principal \$21,420,000; last payment due November 15, 2020¹

San José ^a	Milpitas	District 2-3	Burbank
97.198%	0.778%	1.737%	0.287%

Note(s):

- a. San José allocation reflects the annexation of Sunol into San José in November 30, 2009.

¹ The 2009 Refunding Bonds were issued on January 29, 2009 in the Principal Amount of \$21,420,000 for the purpose of refinancing the 2005B Refunding Bonds. On January 20, 2009, Cupertino made cash payment in the amount of ONE MILLION EIGHT HUNDRED TWENTY- SIX THOUSAND EIGHT HUNDRED FORTY-TWO DOLLARS (\$1,826,842.00) to redeem its portion of the 2005B Refunding Bonds. Accordingly, Cupertino has no further obligation for 2005B Refunding Bonds and no obligation for 2009A Refunding Bonds. On January 20, 2009, West Valley made a cash payment in the amount of TWO MILLION EIGHT HUNDRED SEVENTY-FOUR THOUSAND ONE HUNDRED FIFTY-TWO DOLLARS and TWENTY CENTS (\$2,874,152.20) to redeem its portion of the 2005B Refunding Bonds. Accordingly, West Valley has no further obligation for 2009A Refunding Bonds.

TABLE 4**SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY STATE REVOLVING LOAN FUND DEBT ALLOCATION
FY 1998 thru 2019**

	Annual Debt Service Payment	Annual San José	Annual Santa Clara	Annual Milpitas	Annual West Valley	Annual Cupertino	Annual Sanitation District 2-3	Annual Burbank	Annual Sunol
Repayment Period(s)	100.000%	68.998%	15.409%	0.000%	8.448%	5.567%	1.092%	0.259%	0.227%
FY 1998/1999	\$1,661,799	\$1,146,608	\$256,067	-	\$140,389	\$92,512	\$18,147	\$4,304	\$3,772
FY 1999/2000 thru 2007/2008	\$4,463,882	\$3,079,989	\$687,840	-	\$377,109	\$248,504	\$48,746	\$11,561	\$10,133
Repayment Period(s)	100.000%	68.998%	15.409%	0.486% ^a	8.448%	5.081%	1.092%	0.259%	0.227%
FY2008/2009	\$4,463,882	\$3,079,989	\$687,840	\$21,694	\$377,109	\$226,810	\$48,746	\$11,561	\$10,133
Repayment Period(s)	100.000%	69.225%	15.409%	0.486% ^a	8.448%	5.081%	1.092%	0.259%	0.000% ^b
FY2009/2010 Thru FY2017/2018	\$4,463,882	\$3,090,122	\$687,840	\$21,694	\$377,109	\$226,810	\$48,746	\$11,561	-
FY 2018/2019	\$1,804,020	\$1,248,833	\$277,981	\$8,768	\$152,404	\$91,662	\$19,700	\$4,672	-

Note(s):

- a. Milpitas shall be responsible for 0.486% of the debt service repayment, which is prorated share of the Cupertino payment due on or after January 1, 2009.
- b. San José allocation reflects the annexation of Sunol into San José in November 30, 2009.

EXHIBIT E
ADMINISTERING AGENCY

A. San José to be Administering Agency.

It is mutually agreed that the City of San José is and shall be the Administering Agency of this Agreement, and, as such, shall execute and administer this Agreement.

B. Powers and Duties of Administering Agency, Scope, and Exercise.

Subject to such limitations as may be imposed in this Agreement, the Administering Agency shall have the following powers and duties:

1. To maintain, 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 (subject to the provision of funds therefor in accordance with the provisions of this Agreement), to treat and dispose of all sewage (and by-products thereof) of San José and Santa Clara and of any and all "Outside Users" now or hereafter authorized to discharge or convey sewage into or to said treatment plant or any sewer lines leading thereto, so that said sewage and all effluent from said Plant will not pollute the waters of San Francisco Bay, or any other waters, and so that said sewage will be disposed of in a manner authorized by law.
2. To make, award and enter into contracts with third parties for the construction, improvement, replacement, expansion, or repair of the Treatment Plant or any part or parts thereof.
3. To acquire, by purchase, condemnation or otherwise, any and all real or personal property which it should find to be reasonably necessary for Treatment Plant purposes.
4. To receive, be the depository for, expend and disburse, for the purposes of this Agreement, any and all funds or monies advanced, contributed or paid by the parties hereto to said Administering Agency pursuant to the provisions of this Agreement, together with all income collected from "Outside Users", all other Treatment Plant income, and all other Treatment Plant funds.
5. To keep accurate accounts of all receipts and disbursements of the above-mentioned funds and monies.
6. To provide and supply any and all personnel and services, including, but not limited to, legal, engineering and accounting services, which it should find to be reasonably necessary for the maintenance, repair, expansion, replacement, improvement and operation of said Treatment Plant, the cost and expense of providing such personnel

and services to be charged to and shared by San José and Santa Clara as part of operating or other Treatment Plant costs as elsewhere provided in this Agreement.

7. To exercise any and all other powers, common to both San José and Santa Clara, with respect to the maintenance, repair, expansion, replacement, improvement and operation of the Treatment Plant.
8. To do any and all things reasonably necessary to treatment and dispose of all sewage entering the Treatment Plant in such manner as will comply with all applicable laws and regulations.
9. To do any and all other things which the Administering Agency is required or authorized to do by other provisions of this Agreement.

C. Manner of Exercising Powers or Performing Duties.

The manner in which the Administering Agency shall exercise its powers and perform its duties is and shall be subject to the restrictions upon the manner in which the City of San José could exercise such powers and perform such duties; and shall not be subject to any restrictions applicable to the manner in which the City of Santa Clara could exercise such powers or perform such duties.

D. Expenses of Administering Agency.

It is mutually agreed that the City of San José 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 José to its officers and employees for services rendered by them for Treatment Plant purposes. It is further agreed that San José shall be paid, from Treatment Plant funds, an amount equal to seventeen and three hundred thirteen one thousandths per cent (17,313%) of all the above mentioned salaries and wages as and for the following overhead expenses incurred by San José in furnishing said services and in administering this Agreement, to wit: payments made by San José for retirement benefits, payments made by San José for medical and hospital insurance covering officers and employees, miscellaneous overhead expenses of the auditing, purchasing and engineering departments of San José.

The percentage or amount of overhead allowance or expense payable to San José shall be increased or decreased from year to year to truly reflect actual overhead and incidental costs and expenses incurred by San José for Treatment Plant purposes to the extent that such costs and expenses are not included in other items of cost or expense for which San José is otherwise reimbursed from Treatment Plant Funds.

EXHIBIT F

TABLE OF CONTENTS

PART I	DEFINITIONS.....	2
PART II	CAPACITY RIGHTS GRANTED TO AGENCY.....	5
	A. General.....	5
	B. Capacity Rights.....	5
	C. San José-Santa Clara Regional Wastewater Facility Engineering Study.....	5
	D. Restrictions and Regulations Respecting Nature, Kind, Type and Strength of Sewage.....	5
	E. Reports, Data and Maps to be Provided By Agency.....	5
	F. Area Restrictions.....	6
PART III	FUTURE DISCHARGE CAPACITY RIGHTS.....	7
	A. Redistribution of Capacity Rights.....	7
	B. Acquisition of Additional Capacity Rights with Plant Expansion.....	7
	C. Acquisition of Additional Capacity Rights without First Parties Initiated Plan Expansion.....	8
	D. Adjustments to Capacity Rights Due to Operating Conditions.....	8
PART IV	LAND.....	9
	A. Participation.....	9
	B. Sale of Land.....	9
PART V	AMOUNTS PAYABLE BY AGENCY TO FIRST PARTIES..	10
	A. Payments for Existing Capacity Rights in the Intermediate-term and First Stage Expansion Projects.....	10
	B. Payments for Additional Capacity Rights.....	10
	C. Payments for Future Improvements.....	10
	D. Payments for Operation and Maintenance Costs.....	10
	E. Method of Payment.....	11
	F. Credits.....	12
	G. General.....	12
	H. Payments for Operating Reserves.....	12
PART VI	SAN JOSE-SANTA CLARA TREATMENT PLANT ADVISORY COMMITTEE.....	14
	A. Creation and Membership.....	14

	B. Alternate Members.....	14
	C. Chair.....	15
	D. Secretary.....	15
	E. Meetings.....	15
	F. Procedure.....	15
	G. Powers and Duties.....	15
	H. Action Upon Recommendation.....	16
	I. Expenses.....	17
PART VII	MISCELLANEOUS PROVISIONS.....	18
	A. Effective Date and Duration of Agreement.....	18
	B. Extension, Renewal or Amendment to the Agreement.....	18
	C. Use of Regional Wastewater Facility after Expiration of Term.....	18
	D. Termination.....	18
	E. Sale or Transfer by First Parties.....	18
	F. Industrial Waste Program.....	19
	G. Claims of Breach of Agreement of Inequities.....	19
	H. Liability.....	19
	I. Compliance with Federal and State Laws And Regulations.....	20
	J. Assignment.....	20
	K. Successors and Assigns.....	20
	L. Waivers.....	20
	M. Performance and Time to be of the Essence.....	21
	N. Insurance Requirements and Risk Financing.....	21
	O. Titles and Headings.....	23
	P. Notices.....	23
PART VIII	SPECIAL PROVISIONS.....	24
	A. Termination of Agreement.....	24

- EXHIBIT A ESTIMATED REPLACEMENT COST OF PLANT AND EQUIPMENT
- EXHIBIT B AGENCY TREATMENT PLANT CAPACITY ALLOCATION
- EXHIBIT C LAND DISTRIBUTION
- EXHIBIT D PARTICIPATION IN MAJOR PROCESS RELATED IMPROVEMENTS
- EXHIBIT E ADMINISTERING AGENCY
- EXHIBIT F SERVICE AREA

**AMENDMENT AND RESTATEMENT OF MASTER AGREEMENT FOR
WASTEWATER TREATMENT
BETWEEN CITIES OF SAN JOSE AND SANTA CLARA
AND COUNTY SANITATION DISTRICT NO. 2-3**

This Amendment and Restatement of Master Agreement is made and entered into this ____ day of _____, 2016, by and between the City of San José and the City of Santa Clara, both being municipal corporations of the State of California (hereinafter referred to as “First Parties”), and County Sanitation District No. 2-3 (hereinafter referred to as “CSD 2-3” or “Agency”).

WHEREAS, First Parties are co-owners of the “San José-Santa Clara Regional Wastewater Facility,” (the “Plant”) formerly known as the “San Jose/Santa Clara Water Pollution Control Plant”; and

WHEREAS, First Parties and Milpitas have previously entered into a Master Agreement for Wastewater Treatment dated January 1, 1985 (the “Original CSD 2-3 Master

WHEREAS, implementation of the Regional Wastewater Facility Plant Master Plan will require investment in long-term capital improvement projects to upgrade and rebuild the Plant over the next thirty to fifty years necessitating certain additional amendments to the Original CSD 2-3 Master Agreement; and

WHEREAS, for convenience and ease of reference, the parties wish to amend and restate the Original CSD 2-3 Master Agreement;

NOW, THEREFORE, the parties agree that the Original CSD 2-3 Master Agreement is hereby amended and restated to read as follows:

**PART I
DEFINITIONS**

A. Administering Agency.

The City of San José is and shall be the Administering Agency of this Agreement and as such shall execute and administer this Agreement in accordance with Section VIII of the 1959 Agreement.

B. Agencies.

The term “Agencies” shall be those tributary agencies discharging wastewater into the San José-Santa Clara Regional Wastewater Facility, previously referred to as “outside users” in the 1959 Agreement.

C. 1959 Agreement.

The term “1959 Agreement” shall mean the Agreement between San José and Santa Clara, dated May 6, 1959 and entitled “Agreement between San Jose and Santa Clara Respecting Sewage Treatment Plant,” as such Agreement now reads or as it may here after from time to time be amended or renegotiated.

D. Capacity.

The term “capacity” shall mean the Mean Peak Five (5) Day Dry Weather Plant Treatment capacity.

E. Director.

The term “Director” shall mean the Director of the Environmental Services Department for the City of San José.

F. Interest.

Interest will be to the extent permitted by law, equal to the rate of interest set forth in the monthly report to the Council of the City of San José, prepared by the Director of Finance of San José, with respect to said City’s portfolio and interest earnings thereon.

G. Intermediate-Term Improvements.

The term “Intermediate-Term Improvements” shall mean that portion, as is presently described in the report of CH2M Hill, engineers, entitled “San José/Santa Clara Water Pollution Control Plant, Capital Improvement Program, Executive Summary, Revised June, 1982” and dated June 25, 1982, or as amended or revised, which consists of six (6) elements, as outlined in Chapter 2 of said report, which are designated to provide the Plant with a mean peak five (5) day dry weather treatment capacity of 143 mgd.

H. Long-Term Improvements.

The term “Long-Term Improvements” shall mean capital improvement projects identified in the Plant Master Plan dated March 2012 and approved by TPAC on November 14, 2013; Capital Improvement Program Validation Project Packages dated March 25, 2014; Ten-Year Funding Strategy dated February 2015 and approved by TPAC on May 14, 2015; and the Proposed 2016-2020 Capital Improvement Program for the Water Pollution Control Plant approved by TPAC on May 14, 2015, collectively referred to as “Project Documents,” as these Project Documents may be amended or revised through the annual budget process, and periodic updates. The capital improvement projects identified in the Project Documents are to repair, replace, and upgrade the aging facilities and treatment processes at the Plant. The process areas include, but are not limited to, liquids treatment, solids treatment, energy and automation, and support facilities process areas.

I. Operating and Maintenance Costs (Including Replacement Costs).

Any and all costs and expenses (including replacement costs) 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, chemicals, 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.

J. Parameters.

The term “parameters” shall mean the four (4) treatment parameters of Flow, Biochemical Oxygen Demand (BOD), Suspended Solids (SS), and Ammonia (NH₃) as expressed in terms of estimates, which are the common denominator for computing annual and/or daily loadings.

K. Plant.

The term “Plant” shall mean the “San José-Santa Clara Regional Wastewater Facility,” formerly known as the “San Jose/Santa Clara Water Pollution Control Plant.”

L. Replacement Costs.

All 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:

1. Major rehabilitation which will be needed as individual unit processes or other facilities near the end of their useful lives;
2. Structural rehabilitations;
3. Plant expansions or upgrades to meet future user demands.

M. Replacement Fund.

Replacement fund shall mean those monies deposited with the Administering Agency for Replacement Costs at the Plant.

N. TPAC.

The term “TPAC” shall mean the Treatment Plan Advisory Committee.

PART II
DISCHARGE RIGHTS GRANTED TO AGENCY

A. General.

Commencing on the effective date of the Original Agreement, and thereafter during the term of this Agreement, and subject to all the conditions, limitations, restrictions, terms and provisions contained in this Agreement, and Agency's faithful compliance with and performance of the same, First Parties hereby grant to Agency a right to discharge wastewater into the Plant and to have the same treated and disposed of in and by said Plant the same as wastewaters of First Parties.

B. Discharge Rights.

1. Agency, unless otherwise authorized by the written resolution of the governing bodies for both the City of San Jose and the City of Santa Clara, shall never discharge or cause, allow, permit or suffer to be discharged into the Plant:

- a. Any Agency wastewater at a mean peak five-day dry weather rate of flow in excess of 2.266 million gallons per day.
- b. Any amount of biochemical oxygen demand in Agency wastewater in excess of 8,915 pounds per day.
- c. Any amount of suspended solids in Agency wastewater in excess of 4,864 pounds per day.
- d. Any amount of ammonia in Agency wastewater in excess of 545 pounds per day.

2. Agency shall be entitled for and during each fiscal year for the term of this Agreement to use the capacity required to meet its needs excepting, however, that in any fiscal year during the term of this Agreement, Agency shall not be permitted to use more capacity than that used in the preceding fiscal year, plus five percent. However, notwithstanding anything herein to the contrary, Agency shall not be permitted to use more capacity in any fiscal year during the term of this Agreement that is contained in Part IIB1.

C. Restrictions and Regulations Respecting Nature, Kind, Type and Strength of Sewage.

First Parties shall inform Agency of the Industrial Waste Ordinance of the City of San José concerning the type and condition of discharge, which would be detrimental to the Plant. Each party to this Agreement shall adopt and enforce ordinances, resolutions, rules, and regulations to conform to the restrictions of said Ordinance. Any waiver to the above must be authorized by written Resolution of both the Council of the City of San José and the Council of the City of Santa Clara. Each party to this Agreement shall also comply with the applicable statutes, ordinances,

rules, and regulations of agencies of the United States of America, and the State of California.

D. Reports, Data and Maps to be Provided by Agency.

It is mutually agreed that all parties shall prepare and file with the Director reports, data and maps as deemed necessary by the Director and Agency.

E. Area Restrictions.

Agency, unless otherwise authorized by written resolutions of the governing boards of both the City of San José and the City of Santa Clara shall not, and agrees that it will not, discharge or cause, allow, permit or suffer to be discharged into the Plant, or into any sewer line or lines which convey either directly or indirectly any wastewater to the Plant, any wastewater which is produced in, or emanates, or comes from any territorial property situated outside the legal boundaries of the Agency.

First Parties and Agency further agree not to discharge, or cause to be discharged, any wastewater into any sewer line or lines of the other party, either directly or indirectly, conveying wastewater to the Plant without written authorization of the owner of the sewer line.

PART III
AMOUNTS PAYABLE BY AGENCY TO FIRST PARTIES

A. Payments for Discharge Rights Provided by the Intermediate-term Projects and Water Recycling Program.

Payments for participation in the Intermediate-term Improvement and Water Recycling Program shall be as described in Exhibit “A” attached hereto and incorporated by reference herein.

B. Payments for Future Improvements.

1. All payments associated with future improvements at the Plant shall be made on the basis of Agency’s use of Plant capacity. Agency shall pay that proportion of Flow, BOD, SS and Ammonia cost, as herein determined, which the amounts of Flow, BOD, SS and Ammonia discharged by Agency into the Plant in the fiscal year or portion of a fiscal year for which the payment is being calculated bears to the total existing Flow, BOD, SS, and Ammonia capacities of the Plant.
2. For purposes of computing Agency’s share of future improvement costs, future improvements costing in excess of \$2 million and are process related shall be allocated to parameters based on engineering design. Future improvements 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.”
3. First Parties shall, not later than March 1, of any fiscal year, provide Agency with a preliminary estimate of the amount of money required from Agency for future improvements or replacements for the ensuing fiscal year.

C. Payments for Operation and Maintenance Costs.

1. First Parties, Agency, and Agencies shall bear the cost of the operations and maintenance expenses of the Plant, including all reclamation facilities operated by the Plant. The cost shall be determined based upon the parameters of Agency’s actual discharge into the Plant. Agency shall provide to First Parties, by December 1st of each year, data indicating expected discharge for the ensuing fiscal year.
2. First Parties shall, not later than March 1 of each year, provide Agency with a preliminary estimate of the amount of money required to operate and maintain the Plant, including all reclamation facilities operated by the Plant, for the ensuing fiscal year. In addition, First Parties shall indicate Agency’s estimated annual share for operation and maintenance costs as apportioned to treatment parameters, and for operation and maintenance costs for reclamation as apportioned to flow.
3. Agency shall provide to First Parties a copy of Agency’s adopted annual sewer

revenue program by August 1 of each year. This revenue program shall conform to all federal and/or state guidelines as now exist or may exist in the future.

4. During the second quarter of each fiscal year, TPAC shall review each Agency's total flow and total discharge to the Plant for the preceding fiscal year in terms of the parameters. Adjustments and costs, if any, resulting from this review shall be made in accordance with Part III, Section E, Paragraph 3b herein.

D. Connection Fees.

For each new connection to the Agency's sanitary sewerage system, Agency shall pay First Parties a connection charge, the amount of which shall be equal to the Sewage Treatment Plant Connection Fee that would have been charged had the connection been made in the City of San Jose. Agency shall pay connection charges as herein collected to the Administering Agency on a monthly basis.

E. Method of Payment.

1. Capital Costs.

All payments for capital and land acquisition shall be on a quarterly basis, the first quarter beginning July 1. These invoices shall be presented at the beginning of the quarter in which the obligation is anticipated to occur. The date of financial obligations for capital expenses and land acquisitions shall be the date of award of contract. These payments shall be based upon the budget for capital costs for the Plant as recommended by TPAC and approved by the Administering Agency.

2. Operation and Maintenance Costs.

All payments for operation and maintenance expenses shall be made on a quarterly basis, the first quarter beginning July 1. Invoices for these payments shall be presented at the beginning of the quarter. These payments shall be based upon the budget for operation and maintenance costs of the Plant as recommended by TPAC and approved by the Administering Agency.

3. General Information.

- a. All invoices shall be paid to the Administering Agency within forty-five (45) days from presentation. Interest will be charged on any late or unpaid invoices.
- b. 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. A statement outlining the method of adjusting costs and actual adjustments shall be included.
- c. Any and all monies which Agency is herein required to pay to First Parties shall be paid to the Administering Agency.

F. Interest.

Interest on monies advanced, credits held for Agency, or amounts due from Agency, shall be determined on a monthly basis.

G. General.

Payment to Agency of any monies to which it may become entitled may be made by offsetting the amount of such monies against any payments which Agency may be obligated to pay to First Parties under the provisions of this Agreement or Agency may request cash reimbursement of any credit balance. The request for cash reimbursement shall be honored by First Parties within forty-five (45) days following receipt of notice. Any additional payments requested from Agency shall be made with the third quarter payment.

H. Payments for Operating Reserve.

The Administering Agency's annual operation and maintenance budget for the Plant shall include an operating reserve as an operating cost as described in this subsection. First Parties and all Agencies shall contribute their proportionate share to fund the operating reserve in the minimum amount of sixty (60) days of annual operating and maintenance expenses for unanticipated operation and maintenance costs for the Plant ("Operating Reserve") beginning in Fiscal Year 2016-2017. Each Agency's contribution to the Operating Reserve shall be determined in proportion to the Agency's estimated annual share of operation and maintenance costs of the Plant. The Operating Reserve contribution for each Agency shall be calculated as follows: annual Agency operation and maintenance allocation percentage multiplied by the total estimated annual Plant operation and maintenance budget amount, divided by 365 days, and then multiplied by 60 days. In each fiscal year following Fiscal Year 2016-2017, the calculation will take into account the amount held in the Operating Reserve as of the date of calculation.

The Administering Agency shall provide each Agency on or before March 1 of each fiscal year, commencing in Fiscal Year 2015-2016 for the amount of its estimated contribution to the Operating Reserve for the following fiscal year. Each Agency shall be billed for its contribution to the Operating Reserve following the Administering Agency's adoption of the annual operation and maintenance budget for the Plant for Fiscal Year 2016-2017, and each fiscal year thereafter. If the adopted annual budget for operation and maintenance costs of the Plant is greater than or less than the amount on which the Agencies' respective contributions were calculated and paid into the Operating Reserve for the prior fiscal year, then the billing statement presented to each Agency will identify the revised contribution amount and specify the amount of the adjustment due if an Agency's contribution has increased or the amount subject to credit if an Agency's contribution amount has decreased. Agency shall make payment in full

of the amount of its contribution to the Operating Reserve within forty-five (45) days of presentation of the billing statement. Any credit due to the Agency shall be applied to the Agency's first quarterly payment for operation and maintenance costs.

PART IV
SAN JOSE-SANTA CLARA TREATMENT PLANT
ADVISORY COMMITTEE

A. Creation and Membership.

The San José-Santa Clara Treatment Plant Advisory Committee (TPAC), created by the 1959 Agreement, shall consist of nine (9) members. Three (3) of the members shall be members of the Council of the City of San José, shall be appointed by said Council, and shall serve at the pleasure of said Council. Two (2) of the members shall be members of the Council of the City of Santa Clara, shall be appointed by the Council of the City of Santa Clara, and shall serve at the pleasure of said Council. One (1) of the members shall be a member of the Council of the City of Milpitas, shall be appointed by said Council, and shall serve at the pleasure of said Council. One of the members shall be a member of the governing body of the West Valley Sanitation District, shall be appointed by the governing body of the West Valley Sanitation District, and shall serve at the pleasure of said body. One (1) of the members shall be a member of the governing body of the Cupertino Sanitary District, shall be appointed by the governing body of the Cupertino Sanitary District, and shall serve at the pleasure of said body. The ninth (9th) member shall be the City Manager of San José or a designated representative. No member shall have more than one (1) vote.

Agency shall have the privilege of having one representative of Agency attend all meetings of the Treatment Plant Advisory Committee who may participate in all discussions and deliberations of said Committee; however, said representative of Agency may not vote on any matters presented to said Committee for its advice or action, and shall not have any other privileges accorded to voting members of said Committee, including reimbursement for expenses.

Said representative of Agency shall be designated by the governing body of said Agency. An alternate representative may be designated by this governing body of Agency to serve in the place and stead of the regular representative of Agency whenever said regular representative should be absent from the meeting of the TPAC.

B. Alternate Members.

The Council of the City of San José may appoint three (3) of its Council members as alternative members of TPAC. The Council of the City of Santa Clara may appoint two (2) of its Council members as alternative members of TPAC. The Council of the City of Milpitas may appoint one (1) of its Council members as an alternative member of TPAC. The governing body of the West Valley Sanitation District and the governing body of the Cupertino Sanitary District may each appoint one (1) of its

members as an alternative member of TPAC. Said alternate members shall serve in the place and stead of any of the regular members whenever said regular member should be absent from a meeting of TPAC.

C. Chair.

At the first meeting of each fiscal year, the members of TPAC shall elect a Chair and Vice Chair of TPAC. The Chair and Vice Chair shall serve as such until the election of his or her successor, or until cessation of membership of the TPAC, whichever is earlier. Vacancies in the office of the Chair and Vice Chair occurring in-between regular elections may be filled by TPAC electing a Chair and Vice Chair elected to serve until the next regular election. The Chair, or the Vice Chair in the Chair's absence, shall preside at all meetings. In the event the Chair and Vice Chair should both be absent from any meeting, the members of TPAC may elect a Chair pro tem to serve as Chair during the latter's absence.

D. Secretary.

The Administering Agency shall provide a secretary for TPAC. Said secretary shall keep minutes of TPAC proceedings and shall also have custody of all books, records and papers of TPAC.

E. Meetings.

Regular meetings of TPAC shall be held at a time and place to be determined by TPAC. Special meetings may be called at any time by the Chair, to be held at a reasonable time and place specified in the notice calling the special meeting, subject to applicable requirements of law.

F. Procedure.

Except as may otherwise be provided by Resolution of TPAC, the procedure to be followed by TPAC at its meeting shall be that set forth in Robert's Rules of Order. TPAC may act by resolution of motion; a motion duly passed by TPAC and entered at length on TPAC's minutes may be deemed to be a resolution.

G. Power and Duties.

TPAC shall have the following powers and duties with respect to those items to be considered.

1. Make recommendation to First Parties and Agencies with respect to policy relating to the Plant and its maintenance, repair, expansion, replacement, improvement, and operation.
2. Make recommendation to the legislative bodies of First Parties and Agencies with respect to proposed amendments and revisions to exhibits to this Agreement.

3. Make recommendations to both First Parties and Agencies with respect to the advisability of selling interests in the Plant.
4. Make recommendations to First Parties with respect to the advisability of entering into contracts with other entities desiring to use the Plant on a rental or other basis.
5. Make recommendations to the Administering Agency and Agencies as to type and amount of insurance to be purchased for the Plant.
6. Annually, during the month of May in each fiscal year, TPAC shall review and recommend to the legislative bodies of First Parties and Agencies, a proposed budget for the ensuing fiscal year for the maintenance, expansion, replacement, improvement, and operation of the Plant.
7. Make recommendations to the Administering Agency with respect to the award of consultant, construction, or service contracts relating to the Plant.
8. Annually, TPAC shall file with the legislative bodies of First Parties and Agencies, a report on Plant capacity pursuant to Part III, Section D, paragraph 3.
9. Make recommendations to First Parties and Agencies with respect to the redistribution of pooled excess capacity pursuant to Part III, Section A, paragraphs 1 and 2.
10. Periodically, TPAC shall review and make current, long-range plans for expansion and/or improvement of the Plant to provide for the anticipated Plant capacity required to accommodate the general plans of San José, Santa Clara and Agencies and to meet current wastewater discharge requirements.
11. Make recommendations to the legislative bodies of First Parties and Agencies with respect to claim of breach proceedings pursuant to Part VII, Section C.

H. Action Upon Recommendations.

The legislative bodies of First Parties or the Agencies, shall not adopt any motion, Resolution or Ordinance that is contrary to any recommendation submitted to it by TPAC with respect to the Plant and its maintenance, repair, expansion, replacement, improvement and operation without a finding of fact or facts justifying such contrary action. The finding of fact or facts shall be submitted in writing to TPAC within fifteen (15) days after any contrary action. All policy matters as determined by the Director requiring an adoption of a motion, Resolution or Ordinance by the Council of the City of San José relating to the Plant and its maintenance, repair, expansion, replacement, improvement and operation, shall first be submitted to TPAC for its recommendation and in sufficient time, as determined by the Administering Agency, to allow TPAC to make a recommendation thereon. The Council of the City of San José shall not act upon any such policy matter until it has received the

recommendation from TPAC. If TPAC does not submit its recommendation to the Council of the City of San José within the prescribed time, the City Council may adopt such a motion, Resolution or Ordinance. If a legislative body is presented with any evidence not considered by TPAC in the making of any recommendation, then, prior to the taking of action contrary to said recommendation, if time permits as determined by the Administering Agency, the legislative body shall refer the matter back to TPAC for a supplementary report. Said supplementary report shall be submitted by TPAC within thirty (30) days after reference, or such longer period as may be designated by the legislative body. If TPAC fails to make such supplementary report within the time specified, the legislative body is free to consider such evidence without TPAC recommendations. In the event of an emergency as determined by the Director, the above procedure may be waived.

I. Expenses.

Members of TPAC shall be reimbursed for all expenses reasonably incurred by them in the performance of their duties, and that provision therefor, shall be made in the annual budget. Such expenses shall be considered as “operating costs” of the Plant.

PART V

MISCELLANEOUS PROVISIONS

A. Effective Date and Duration of Agreement.

It is hereby agreed that this Agreement shall be in force and effect for a term beginning on January 1, 1985 and extending to, and including, and ending on June 30, 2065, or until sooner termination by mutual written agreement of the parties hereto or by operation of law or because of a material breach by one of the parties hereto.

B. Extension, Renewal or Amendment to the Agreement.

It is mutually agreed that the term of this Agreement may be extended or renewed only by mutual written agreement of the parties hereto and that this Agreement, including exhibits, may be amended or supplemented by a mutual written agreement of the parties hereto. This Agreement shall be reviewed in its entirety by First Parties and Agency in the year 2050. First Parties and Agency further agree that in the year 2065, they will meet and confer in good faith to negotiate a revised or new Agreement.

C. Use of Regional Wastewater Facility After Expiration of Term.

It is mutually agreed that if Agency should continue to discharge sewage into the Plant during any period of time after expiration of the term of this Agreement or after a sooner termination of this Agreement, with or without the consent of First Parties, then in that event, unless otherwise provided by subsequent Agreement, Agency shall pay First Parties for use of the Plant during such time, if First Parties elect to demand such payment and not otherwise, the same charges as Agency would have continued to pay pursuant to the provisions of this Agreement if the term of this Agreement were to include such additional period of time. The above is an alternate remedy available to First Parties, and shall not be deemed to deprive First Parties of any other rights or remedies which they may have because of Agency's continued use of the Plant after expiration of this Agreement.

During the period within which Agency is discharging sewage into the Plant pursuant to this Section, First Parties and Agency shall negotiate in good faith a revised or new agreement for the discharge of sewage into the Plant by Agency. In the event either First Parties or Agency determine that negotiations are no longer being conducted in good faith or that negotiations have ceased, the party making such determination shall notify the other party in writing of the determination by certified mail. In that event, First Parties and Agency shall submit the matter to an advisory arbitration panel within ninety (90) days of the above notice. First Parties and Agency shall each select a member of the arbitration panel and the two arbitrators so selected shall jointly select a third arbitrator. The decision of the arbitration panel shall be advisory.

In the event First Parties and Agency are unable to reach an agreement after the arbitration process, Agency shall be allowed to discharge into the Plant, providing all payments of Agency as required above are made. Agency shall have a maximum discharge rate equal to that at which Agency was discharging on the date of the expiration of this Agreement.

D. Termination.

If for any reason this Agreement is terminated by mutual consent of both parties, then Agency shall have no further right or privilege to discharge any wastewater into the Plant or to make any other use thereof, nor have any rights or privileges whatsoever under the Agreement, nor have any rights or privileges with respect to any physical item of Plant property, nor be required to pay any part of Plant cost or expenses incurred after said termination.

E. Sale or Transfer by First Parties.

Nothing in this Agreement contained shall be deemed to prohibit or restrict First Parties, or either of them, for selling, granting, assigning or otherwise transferring this Agreement or any part or interest therein, or the Plant or any part or interest therein, or any right to discharge wastewater therein and to have the same therein treated and disposed of, to any corporation, district, governmental organization or entity or to any other person or persons, provided that any such transaction shall be subject to such rights and privileges as First Parties and Agency may have under and by virtue of the provisions of this Agreement.

F. Industrial Waste Program.

The Administering Agency agrees to maintain personnel for the specific purposes of assisting all parties with matters concerning industrial waste. Such responsibilities shall include industrial waste monitoring, sampling and analysis, technical advice and surveillance of all industrial discharges tributary to the Plant. The Administering Agency agrees to be responsible for issuing notices of nonconformance within Agency's service area for violations of the ordinance requirements in Part II, Section C. Agency shall be responsible for the adoption and enforcement of any Industrial Waste Ordinance requirements. The Administering Agency shall endeavor to keep all dischargers informed of federal, state, county and city laws, rules, regulations, standards, and ordinances relating to industrial waste requirements.

G. Claims of Breach of Agreement or of Inequities.

In the event any party to this Agreement should at any time claim that the other party has in any way breached or is breaching this Agreement, or that the Agreement is inequitable, the complaining party shall file with the legislative body or bodies of the other parties, and with TPAC, a written claim of said breach or inequity, describing the alleged breach or inequity and otherwise giving full information respecting the same. TPAC shall, at a place specified by it, give all concerned parties full

opportunity to be heard on the matter, and shall, upon conclusion of said hearing, give the legislative bodies of both parties a full report of its finding and recommendations. Said report, findings, and recommendations shall be deemed advisory only; shall not be deemed to establish any facts, either presumptively or finally. Upon receipt of said report and recommendations, if any party is dissatisfied with or disagree with same, the legislative bodies of all parties concerned shall jointly meet with each other within two (2) months at a place to be determined by them, for the purpose of resolving their differences. No action for breach of this Agreement, and no action for any legal relief because of any breach or alleged breach of this Agreement shall be filed or commenced, and nothing shall be done by either party to rescind or terminate this Agreement, unless and until the above provisions of this paragraph have been complied with and unless the complaining party has first given to the other party three (3) months from the conclusion of said joint meeting of said legislative bodies within which to cure any breach or alleged breach.

H. Liability.

It is mutually agreed that any liability of San José and/or Santa Clara, or of San José as the Administering Agency for any damage to any such person or property arising or resulting from any dangerous or defective condition in the Plant or any part or property thereof, or arising or resulting from any act or omission of San José or Santa Clara or their respective officers, agents, employees or contractors, in the control, administration, construction, expansions, installation, operation, maintenance or repair of said Plant or any part or property thereof, shall be mutually shared and paid for by First Parties and Agencies on the basis of operations and maintenance or capital costs, whichever is applicable. It is understood and agreed that First Parties in granting to Agencies certain discharge capacity rights in the Plant and to have wastewater treated and disposed of in said Plant, are not guaranteeing or warranting that the Plant will be able to satisfactorily treat such wastewater. In the event the Plant should for any reason other than by the gross negligence or intentional misconduct of First Parties be incapable of satisfactorily treating wastewater discharge into the Plant by Agency or First Parties, First Parties shall in no way be liable to Agency for any damages arising or resulting from or suffered because of the failure of the Plant to satisfactorily receive, hold, treat or otherwise dispose of wastewater.

I. Compliance with Federal and State Laws and Regulations.

Agency and First Parties agree to comply with any and all Federal, State, or local laws, the rules, regulations, standards and requirements of any Federal, State, or local board, commission, agency or similar body, and the decisions of any court or competent jurisdiction which must be complied with to enable First Parties to qualify for Federal or State grants for the construction, improvement, administration, operation, maintenance, or repair of the Plant.

J. Assignment.

Agency shall not assign or transfer any interest nor the performance of any of Agency's obligations hereunder without the prior written consent of First Parties, and any attempt by Agency to so assign this Agreement or any rights, duties or obligations arising hereunder without written consent shall be void and of no effect.

K. Successors and Assigns.

It is mutually agreed by all the parties hereto that the agreements, covenants, conditions, limitations, restrictions and undertakings herein contained shall, subject to the provisions as to assignment, apply to and bind the successors and assigns of the respective parties hereto as if they were in all cases named.

L. Waivers.

One or more waivers of any term, covenant or condition by either party shall not be construed as a waiver of a subsequent breach of the same or any other term, covenant or condition and the consent or approval by either party to any act shall not be deemed to waive or render unnecessary either party's consent or approval for any subsequent similar act by the other party.

M. Performance and Time to be of The Essence.

It is understood and agreed that full and faithful compliance with and performance of each and every covenant and provision of this Agreement by the party or parties required to comply with or perform each such covenant or provision is and shall be of the essence; also that time is and shall be of the essence; also that such full and faithful compliance with and performance of each and every covenant and provision of this Agreement shall be deemed to be a material condition of this Agreement.

N. Insurance Requirements and Risk Financing.

1. General Provisions. The Administering Agency may elect to self-insure any obligations hereunder should a program of self-insurance be deemed, at the sole discretion of the Administering Agency, the most economically reasonable risk financing option. The Administering Agency may contract for brokerage services and procure insurance policies or products, as needed and as would customarily be maintained, to mitigate against risks associated with common losses related to work or operations described in this Agreement including, but not limited to, claims for injuries to persons or damages to property from performance of the work or operations described in or incidental to this Agreement. The Administering Agency shall further provide services related to administration and maintenance of the insurance policies procured for on behalf of the Plant. The form of risk financing required under this section does not alter the liability of the parties. Each party shall be responsible for its proportionate share of any costs associated with self-insurance and the premiums, deductibles, copayments, losses, claims recovery, or other related costs.

2. Scope of Coverage. In the event that the Administering Agency procures and maintains insurance policies by a third party provider, the coverage, to the extent economically feasible and available in the marketplace, will include:
 - 2.1. A property and casualty insurance policy or policies insuring the Plant, in such forms and with such carriers as shall be within industry standards, including:
 - 2.1.1. “All risk” property policy including boiler and machinery exposures, coverage for loss due to business interruption, and flood.
 - 2.1.2. 100% Replacement Cost, excluding foundations and excavations, with a deductible amount of no more than \$100,000 for scheduled properties unless otherwise specified in these Requirements or, in the event that the identified deductible is no longer available at reasonable market rates.
 - 2.1.3. Wind, Flood, Boiler, and Sprinkler Leakage coverages, in amounts consistent with industry practice.
 - 2.1.4. The Administering Agency will annually market for and assess the economic feasibility of procuring earthquake coverage and Terrorism Risk Insurance Act (“TRIA”) coverage.
 - 2.1.5. The Administering Agency shall not insure personal property located at the Plant that is not an owned asset of the Plant.
 - 2.2. A commercial general liability policy (“occurrence” form CG 0001) or its equivalent and, if necessary, an umbrella or excess policy or policies liability with limits as are reasonable within the industry and a combined single limit for bodily injury and property damage, providing to the extent economically feasible all of the following coverage:
 - 2.2.1. Premises Operations
 - 2.2.2. Products/Completed Operations
 - 2.2.3. Personal and Advertising Injury and Liability
 - 2.2.4. Fire Legal Liability with a minimum limit of \$100,000
 - 2.2.5. Environmental Legal Liability (if not obtained by separate environmental legal liability policy)
 - 2.3. A business automobile policy with coverage provided by Insurance Services Office form number CA 0001 covering automobile liability and a minimum limit of not less than \$1,000,000 combined single limit for bodily injury and property damage.
 - 2.4. A workers’ compensation and employer’s liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of contractor.
 - 2.5. In the event that the Administering Agency uses an excess liability policy(ies) to meet commercial general liability policy limits or property policy limits as would be reasonable considering industry standards, the excess liability coverage must follow form or have greater scope of coverage than the commercial general liability coverage. All Parties shall

receive the same status on the excess liability policy including receipt of additional insured endorsements.

3. Policies and Endorsements. At any party's request, the Administering Agency shall provide a certificate of insurance with applicable endorsements, an insurance summary, or a copy of the insurance policy or policies obtained pursuant to this Agreement.

3.1 All parties shall have additional insured endorsements on each policy (excluding workers' compensation) to the extent each individual party has an insurable interest.

3.2 All policies shall be endorsed as primary and noncontributing to any other insurance policy of any of the parties to the extent permitted by policy form.

4. Costs. All related insurance costs shall be included in the maintenance and operating expenses. Costs shall include but not be limited to brokerage fees, premiums, deductibles, copayments, uncovered losses, claims recovery expenses including disputed claims, fees, taxes, administration costs, fines, or penalties not otherwise insured or covered.

O. Titles and Headings.

The sub-heading and titles of this Agreement are inserted for the convenience of reference only and shall not be taken or considered as having any bearing on the interpretation thereof.

P. Notices.

All notices shall be mailed to the address designated beneath the signatures of the parties hereto or as subsequently designated in writing by the parties.

Q. Limited Rights of Agency.

Nothing herein in this Agreement contained shall be deemed to give Agency any ownership rights or any other right, title or interest in or to the Plant, Plant land, or any part thereof, excepting the sole and limited contractual right to discharge Agency sewage therein and have the same therein treated in the same manner as First Parties' sewage is treated, subject to all limitations, conditions, restrictions and other provisions set forth or contained in this Agreement.

PART VI

SPECIAL PROVISIONS

A. Termination of Agreements.

It is mutually agreed by all parties hereto that all these portions of any and all agreements heretofore entered into between the City of San Jose and County Sanitation District No. 2, or between the City of San Jose and County Sanitation District No. 3, or between the City of Santa Clara and County Sanitation District No. 2, or between the City of Santa Clara and County Sanitation District No. 3, or between County Sanitation District No. 2 and both the City of San Jose and the City of Santa Clara, or between County Sanitation District No. 2 and County Sanitation District No. 3, and both the City of San Jose and the City of Santa Clara in any way relating to the Plant or any part thereof, or in any way relating to its ownership, construction, maintenance, repair, operation or use, and all those portions of any and all supplements, addendums, changes or amendments thereto, in any way relating to the Plant or any part thereof, or in any way relating to its ownership, construction, maintenance, repair, operation or use, which have not already terminated, are hereby terminated, and Agency does hereby relinquish, remise, release and quitclaim unto First Parties any and all rights, titles or interest, if any, which Agency may have on date of execution of this Agreement, under and by virtue of any said agreements in and to the Plant or any part thereof or in or to its ownership, construction, maintenance, operation or use.

B. Charges for Past Capital Cost.

For the privilege of discharging sewage into the Plant and having the same therein treated and disposed of, pursuant to and subject to the provisions of this Agreement, Agency agrees to pay First Parties, at the time and manner described in Part III, Paragraph E, Sections 3a and 3c.

IN WITNESS WHEREOF, FIRST PARTIES, and CITY OF MILPITAS have caused this AMENDMENT AND RESTATEMENT OF MASTER AGREEMENT as to be executed in their respective names and their respective seals to be affixed hereunto by their duly authorized officers, all as of the date first above written.

APPROVED AS TO FORM

CITY OF SAN JOSE, a municipal corporation

ROSA TSONGTAATARI
Senior Deputy City Attorney

TONI TABER, CMC
City Clerk
200 East Santa Clara Street
San José, CA 95113-1905

APPROVED AS TO FORM

CITY OF SANTA CLARA, a municipal corporation

RICHARD E. NOSKY JR.
City Attorney

ROD DIRIDON JR.
City Clerk
1500 Warburton Avenue
Santa Clara, CA 95050

APPROVED AS TO FORM

COUNTY SANITATION DISTRICT 2

COUNTY SANITATION DISTRICT 3

EXHIBIT A

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

TREATMENT PLANT CAPACITY ALLOCATIONS

Table 1 - 167 MGD Plant, Intermediate Term Improvements and First Stage Expansion.

Table 1 contains the Agencies' and First Parties' treatment plant capacities achieved by implementation of the Intermediate-term Improvements and First Stage Expansion. Increased capacity was allocated only to those Agencies that elected to participate in Plant expansion to 167 MGD. Milpitas was allocated 4 MGD of the 24 MGD expansion, and the First Parties' share the remaining 20 MGD based on assessed valuation. BOD, SS, and Ammonia capacities were allocated in the same proportion as Flow.

Table 2 – 167 MGD Plant, after transfer of capacity to Milpitas from West Valley and Cupertino.

Table 2 shows the Agencies' and First Parties' treatment plant capacities effective with the transfer of 0.75 MGD from Cupertino to Milpitas with prorated shares of Suspended Solids and Ammonia, but excludes any prorated share of Biochemical Oxygen Demand effective January 1, 2009. On July 1, 2006, West Valley Sanitation District transferred 1 MGD of flow with 2.430 KLBS/Day Biochemical Oxygen Demand, 2.308 KLBS/Day Suspended Solids, and 0.242 KLBS/Day Ammonia capacity to Milpitas. The other Agencies' capacities remain the same as in the 143/167 MGD Plant.

Table 3 – 167 MGD Plant, after annexations from West Valley and Sunol into San José.

Table 3 shows the Agencies and First Parties' treatment plant capacities effective June 30, 2014 with the transfer of capacity associated with annexations into San José from West Valley in 2007-2013, and Sunol in November 30, 2009. The other Agencies' capacities remain the same as in the 143/167 MGD Plant.

County Sanitation District No. 2-3 Intermediate-term Improvements

Payments for the use of the capacity provided by the Intermediate-term Improvement projects for and during each of the fiscal years or portions of fiscal years between July 1, 1984, and June 30, 2003 shall be \$218,500 less any amount of money determined as follows:

2.266 MGD	Minus	Amount of Flow capacity used by Agency in the fiscal year for which the payment is being calculated.	Multiplied by	\$43,799 per MGD
		Plus		
8.915 Klbs/day	Minus	Amount of BOD capacity used by Agency in the fiscal year for which the payment is being calculated.	Multiplied by	\$32,256 per Klbs/day
		Plus		
4.864 Klbs/day	Minus	Amount of SS capacity used by Agency in the fiscal year for which the payment is being calculated.	Multiplied by	\$12,214 per Klbs/day
		Plus		
0.545 Klbs/day	Minus	Amount of NH3 capacity used by Agency in the fiscal year for which the payment is being calculated.	Multiplied by	\$175,472 per Klbs/day

In no event shall the payments for use of the capacity provided by the Intermediate-term Improvements projects for and during each of the fiscal years or portions of the fiscal years between July 1, 1984 and June 30, 2003 be less than zero.

On or after June 30, 2003, the payment for use of the discharge capacity by the Agency for each of the parameters, Flow, BOD, SS and NH₃, shall be based on the costs allocable to each of the parameters in the approved budget for the Operation and Maintenance Costs for that fiscal year.

TABLE 1
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

167 MGD PLANT

SUMMARY OF CAPACITY ALLOCATION*

(Intermediate-Term, First Stage Expansion & South Bay Water Recycling Improvements Implemented)

AGENCY	FLOW MGD	BOD K LBS/DAY	SS K LBS/DAY	AMMONIA K LBS/DAY
San José ^a	110.800	390.393	346.342	34.332
Santa Clara ^a	21.298	75.042	66.575	6.599
Subtotal ^b	132.098	465.435	412.917	40.931
West Valley	13.052	31.713	30.120	3.156
Cupertino	8.600	16.419	17.856	2.506
Milpitas	12.500	24.819	22.125	2.386
Burbank	0.400	0.815	0.853	0.297
Sunol	0.350	1.799	2.129	0.324
Subtotal	34.902	75.565	73.083	8.669
TOTAL	167.000	541.000	486.000	49.600

*The term “capacity” is defined as the mean peak five-day dry weather plant treatment capacity.

Note(s):

- a. San José and Santa Clara allocations vary annually according to assessed property value; values shown are effective as of January 1, 2009.
- b. CSD 2-3 rents capacity from San José and Santa Clara. Allocations vary annually depending flow from CSD 2-3.

TABLE 2
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

167 MGD PLANT

SUMMARY OF CAPACITY ALLOCATION*

(After transfer of capacity to Milpitas from West Valley in July 1, 2006, and Cupertino in January 1, 2009)

AGENCY	FLOW MGD	BOD K LBS/DAY	SS K LBS/DAY	AMMONIA K LBS/DAY
San José ^a	110.800	390.393	346.342	34.332
Santa Clara ^a	21.298	75.042	66.575	6.599
Subtotal ^b	132.098	465.435	412.917	40.931
West Valley	12.052	29.283	27.812	2.914
Cupertino	7.850	16.419	16.299	2.287
Milpitas	14.250	27.249	25.990	2.847
Burbank	0.400	0.815	0.853	0.297
Sunol	0.350	1.799	2.129	0.324
Subtotal	34.902	75.565	73.083	8.669
TOTAL	167.000	541.000	486.000	49.600

*The term “capacity” is defined as the mean peak five-day dry weather plant treatment capacity.
 Note(s):

- a. San José and Santa Clara allocations vary annually according to assessed property value. The values shown are effective as of January 1, 2009.
- b. CSD 2-3 rents capacity from San José and Santa Clara. Allocations vary annually depending flow from CSD 2-3.

TABLE 3
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

167 MGD PLANT

SUMMARY OF CAPACITY ALLOCATION*

(June 30, 2014)

AGENCY	FLOW MGD	BOD K LBS/DAY	SS K LBS/DAY	AMMONIA K LBS/DAY
San José ^{a,c}	109.555	385.994	342.915	34.106
Santa Clara ^a	23.248	81.912	72.770	7.238
Subtotal ^b	132.803	467.906	415.685	41.344
West Valley ^c	11.697	28.611	27.173	2.825
Cupertino	7.850	16.419	16.299	2.287
Milpitas	14.250	27.249	25.990	2.847
Burbank	0.400	0.815	0.853	0.297
Subtotal	34.197	73.094	70.315	8.256
TOTAL	167.000	541.000	486.000	49.600

*The term “capacity” is defined as the mean peak five-day dry weather plant treatment capacity.
 Note(s):

- a. San José and Santa Clara allocations vary annually according to assessed property value. The values shown are effective as of June 30, 2014.
- b. CSD 2-3 rents capacity from San José and Santa Clara. Allocations vary annually depending flow from CSD 2-3.
- c. San José and West Valley Sanitation District allocations reflect the transfer of capacity associated with annexations from the District into San José from 2007-2013.

EXHIBIT B

9/18/15

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
REPLACEMENT COST OF PLANT AND EQUIPMENT
JUNE 2014

FACILITY	ACQUISITION DATE	ORIGINAL COST	REPLACEMENT COST
Asset #1 - Original primary plant	1958	3,786,400	45,876,200
Asset #2 - Plant Additions	1960	1,370,200	15,269,000
Asset #3 - Plant Additions & New Secondary Facility	1963	24,166,800	258,656,700
Asset #4 - Final Tank	1965	1,183,000	11,053,800
Asset #5 - Digesters	1966	993,600	8,419,400
Other Projects:			
1965-66	1965	103,900	970,800
1966-67	1966	253,800	2,150,600
1967-68	1967	24,200	187,600
1968-69	1968	322,100	2,300,800
1969-70	1969	59,900	396,700
1970-71	1970	102,700	634,000
Sludge Lagoons	1968	839,000	5,993,000
Foam Flotation Program	1970	23,000	142,000
1970 94/MGD Improvements	1970	5,809,400	35,865,200
1970 66/MGD Additions	1970	23,049,000	142,296,600
A.W.T.F.	1977	62,810,900	219,021,500
Other Projects:			
1977-78	1977	745,500	2,599,600
1978-79	1978	312,200	997,300
1979-80	1979	1,421,100	4,292,200
1980-81	1980	1,962,300	4,992,300
1981-82	1981	535,200	1,325,800
1982-83	1982	1,777,765	3,770,200
CAPITAL IMPROVEMENT PROGRAM:			
Intermediate-term Improvement	1987	88,699,500	175,232,300
First Stage Expansion	1987	20,035,100	39,580,800
1987 Capitalized Expenditures	1987	894,900	1,767,900
1989 Capitalized Expenditures	1989	527,473	1,002,300
1990 Capitalized Expenditures	1990	823,720	1,485,800
1991 Capitalized Expenditures	1991	114,902	204,300
1992 Capitalized Expenditures	1992	407,154	708,700
1993 Capitalized Expenditures	1993	1,291,825	2,188,600
1994 Capitalized Expenditures	1994	255,378	424,500

1995 Capitalized Expenditures	1995	10,595,576	17,651,200
1996 Capitalized Expenditures	1996	3,396,270	5,650,100
1997 Capitalized Expenditures	1997	9,320,130	15,161,500
1998 Capitalized Expenditures	1998	2,829,981	4,559,800
1999 Capitalized Expenditures	1999	133,138,713	212,724,200
2000 Capitalized Expenditures	2000	2,464,590	3,749,200
2001 Capitalized Expenditures	2001	3,866,326	5,687,800
2002 Capitalized Expenditures	2002	930,265	1,323,300
2003 Capitalized Expenditures	2003	1,663,511	2,324,100
2004 Capitalized Expenditures	2004	3,321,630	4,443,200
2005 Capitalized Expenditures	2005	665,760	877,300
2006 Capitalized Expenditures	2006	2,096,762	2,707,600
2007 Capitalized Expenditures	2007	1,197,306	1,439,900
2008 Capitalized Expenditures	2008	68,856,165	81,431,200
2009 Capitalized Expenditures	2009	86,452,121	96,787,700
2010 Capitalized Expenditures	2010	5,337,506	5,871,000
2011 Capitalized Expenditures	2011	4,237,725	4,537,800
2012 Capitalized Expenditures	2012	14,961,081	15,701,600
2013 Capitalized Expenditures	2013	24,009,116	25,189,500
2014 Capitalized Expenditures	2014	909,001	909,000
TOTAL		624,951,452	1,498,533,500*

(*) 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:

- 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 percentages contained in the most current Revenue Program (Form 8, Summary of Distribution of Capital Costs).
- 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.

EXHIBIT C

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

PARTICIPATION IN MAJOR PROCESS RELATED IMPROVEMENTS

Intermediate Term Improvements and First Stage Expansion

The construction and design cost of the Intermediate-term Improvement Project for restoration of the Plant capacity to 143 MGD was Eighty-Nine Million Three Hundred Thousand Two Hundred and Thirty Dollars (\$89,300,230.00). The construction costs and design cost of the First Stage Expansion Project for expansion of Plant capacity to 167 MGD was Twenty-Seven Million Eighty-Four Thousand Eight Hundred and Four Dollars (\$27,084,804.00). Agency has fully paid all amounts due for its discharge rights in the Intermediate Term Improvements and the First Stage Expansion Project.

Water Recycling Improvements

In October 1991, the Regional Water Quality Control Board (RWQCB) approved the San José Action Plan which included development of a reclamation program to reclaim a portion of the San José/Santa Clara Regional Wastewater Facility's (Plant) effluent, thereby providing an alternative to discharging treated effluent to South San Francisco Bay (Bay). In October 1993, the RWQCB incorporated the Action Plan into the Plant's NPDES permit. The South Bay Recycling Program (SBWRP) is intended to satisfy this permit requirement.

Implementation of the SBWRP has been divided into two phases. Under the Phase 1, Water Recycling Program, approximately 9,000 acre-feet per year (up to 21.1 million gallons per day) of recycled water will be produced and distributed beginning in November 1997. The budgeted cost of Phase I was \$139,840,000. Construction of Phase II is now underway, with an estimated cost of \$100,000,000.

On January 12, 1995, TPAC approved a cost sharing method whereby First Parties and Agencies would participate in payment for the Water Recycling Program based on their respective flows to the Plant. Table 1 contains First Parties' and Agencies' allocation of Phase 1 recycling costs, as of January 12, 1995. Table 2 contains First Parties and Agencies share of Phase 2 Recycling costs, as of January 12, 1995. The final Phase 2 cost allocation will be adjusted to reflect the actual cost when construction of the Phase 2 facilities is completed.

First Party Santa Clara and Milpitas elected to cash fund their share of the Phase 1 Recycling Costs. However, effective January 1, 2009, Milpitas assumed the obligations of Cupertino, with respect to a portion of Cupertino debt service obligations for Recycling Cost. Table 3 shows the debt service allocation for the bond issued by San José for Phase 1 costs for First Party San José, and all Agencies including Milpitas, as of January 1, 2009.

Milpitas also elected to cash fund its share of the Phase 2 Recycling Costs. First Parties and all other Agencies chose to utilize State Revolving Loan Fund proceeds for their share of the Phase

2 Recycling costs. However, effective January 1, 2009, Milpitas assumed the obligations of Cupertino, with respect to a portion of Cupertino debt service obligations for Phase 2 Recycling Costs. Table 4 shows the debt service allocation for the SRLF proceeds, as of January 1, 2009.

Long-Term Improvements

On May 14, 2015, TPAC approved the San José -Santa Clara Regional Wastewater Facility Ten-Year Funding Strategy (“Funding Strategy”) whereby First Parties and Agencies participate in the funding of Long-Term Improvements proportionately based on their capacity allocations detailed in Table 1 of Exhibit A, as may be amended. The Funding Strategy contemplates the Administering Agency, pursuing Clean Water State Revolving Fund (“SRF”) loans to the maximum extent possible to finance the Long-Term Improvements. If Agency elects to finance its proportionate share of the costs of the Long-Term Improvements through SRF, short term financing, and long term financing obtained by First Parties or Administering Agency, Agency agrees to execute and deliver to the Administering Agency the necessary documentation to secure such financing and Agency’s repayment thereof.

In the event that all or a portion of financing for the Long-Term Improvements is secured through a short-term variable rate financing program, Agency acknowledges and agrees that any participating Agency will be responsible for its proportionate cost for establishing the financing program based on the total amount to be financed by Agency through the short-term variable rate financing program relative to the total dollar size of the program. Any Agency that requests participation in the program after the deadline established by the Administering Agency for participation may incur additional expenses associated with accommodating the Agency. Agencies that choose to participate in the program can cease their participation upon repayment of the funds and associated costs.

Agency acknowledges and agrees that its participation in any financing obtained by First Parties or the Administering Agency, including amount financed, debt service and repayment scheduled shall be memorialized in a supplemental financing agreement. Any supplemental financing agreement shall be executed prior to or contemporaneous with the closing of the financing.

Notwithstanding the terms and conditions of this Agreement, the process for asserting a claim for breach of the supplemental financing agreement such as nonpayment shall be governed by the provisions of the supplemental financing agreement. If Agency shall fail to make payment when due for their portion of the financing, Agency agrees First Parties shall have the right to institute an action for damages sustained as a result of any such default and shall have the right by mandamus or other proceeding at law or in equity to enforce their rights against Agency and to compel Agency and its officers or employees thereof to perform and carry out their obligations and duties under this Agreement, and any supplemental financing agreement. No remedy conferred upon or reserved to First Parties is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, any supplemental financing agreement, existing at law or in equity or by statute. First Parties or San Jose, as the Administering Agency, shall provide the Agency notice of payment past due at least thirty (30) calendar days prior to instituting an action for damages.

TABLE 1

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

Participation in South Bay Water Recycling Program
Phase 1 Capital Costs

<u>Agency</u>	<u>Percent</u>	<u>Phase 1 Budgeted Costs</u>
City of San José ^{a,b}	64.007%	\$89,507,389.
City of Santa Clara ^b	14.292%	\$19,985,933
West Valley Sanitation District ^{a,c}	7.816%	\$10,929,894
Cupertino Sanitary District ^c	5.150%	\$7,201,760
City of Milpitas ^c	7.485%	\$10,467,024
County Sanitation District 2-3*	1.010%	\$1,412,384
Burbank Sanitary District	.240%	\$335,616
TOTAL	100%	\$139,840,000

*County Sanitation District 2-3 (CSD 2-3) has entered into an agreement with FIRST PARTIES for sharing Regional Wastewater Facility costs on a different basis than the other AGENCIES. The agreement provides for adjusting payments to reflect changes in CSD 2-3's flow and loadings. The agreement between CSD 2-3 and FIRST PARTIES do not affect the other AGENCIES participation in the South Bay Water Recycling Program Phase 1 capital costs.

Note(s):

- a. San José allocation reflects the annexation of Sunol into San José in November 30, 2009, and annexation of territory from West Valley into San José in 2007-2013.
- b. San José and Santa Clara allocations vary annually according to assessed property value; values shown are effective as of June 30, 2014.
- c. Milpitas allocation reflects the capacity transfer from West Valley effective July 1, 2006, and from Cupertino effective January 1, 2009.

TABLE 2
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

Participation in South Bay Water Recycling Program
Phase 2 Capital Cost

<u>Agency</u>	<u>Percent</u>	<u>Phase 2 Estimated Costs</u>
City of San José ^{a,b}	64.007%	\$64,007,000
City of Santa Clara ^b	14.292%	14,292,000
West Valley Sanitation District ^{a,c}	7.816%	7,816,000
Cupertino Sanitary District ^c	5.150%	5,150,000
City of Milpitas ^c	7.485%	7,485,000
County Sanitation District 2-3*	1.010%	1,010,000
Burbank Sanitary District	.240%	240,000
TOTAL	100%	\$100,000,000

*County Sanitation District 2-3 (CSD 2-3) has entered into an agreement with FIRST PARTIES for sharing Regional Wastewater Facility costs on a different basis than the other AGENCIES. The agreement provides for adjusting payments to reflect changes in CSD 2-3's flow and loadings. The agreement between CSD 2-3 and FIRST PARTIES do not affect the other AGENCIES participation in the South Bay Water Recycling Program Phase 2 capital costs.

Note(s):

- a. San José allocation reflects the annexation of Sunol into San José in November 30, 2009, and annexation of territory from West Valley into San José in 2007-2013.
- b. San José and Santa Clara allocations vary annually according to assessed property value; values shown are effective as of June 30, 2014.
- c. Milpitas allocation reflects the capacity transfer from West Valley effective July 1, 2006, and from Cupertino effective January 1, 2009.

TABLE 3
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
PHASE 1 RECYCLING DEBT ALLOCATION

Series 2005 A Refunding Bonds - Principal \$54,020,000; last payment due November 15, 2016

Series 2005 B Refunding Bonds - Principal \$27,130,000; last payment due November 15, 2020

San José ^a	West Valley	Cupertino	Milpitas	District 2-3	Burbank
80.356%	10.594%	6.734%	0.643%	1.436%	.237%

Series 2009 A Refunding Bonds - Principal \$21,420,000; last payment due November 15, 2020¹

San José ^a	Milpitas	District 2-3	Burbank
97.198%	0.778%	1.737%	0.287%

Note(s):

- a. San José allocation reflects the annexation of Sunol into San José in November 30, 2009.

¹ The 2009 Refunding Bonds were issued on January 29, 2009 in the Principal Amount of \$21,420,000 for the purpose of refinancing the 2005B Refunding Bonds. On January 20, 2009, Cupertino made cash payment in the amount of ONE MILLION EIGHT HUNDRED TWENTY- SIX THOUSAND EIGHT HUNDRED FORTY-TWO DOLLARS (\$1,826,842.00) to redeem its portion of the 2005B Refunding Bonds. Accordingly, Cupertino has no further obligation for 2005B Refunding Bonds and no obligation for 2009A Refunding Bonds. On January 20, 2009, West Valley made a cash payment in the amount of TWO MILLION EIGHT HUNDRED SEVENTY-FOUR THOUSAND ONE HUNDRED FIFTY-TWO DOLLARS and TWENTY CENTS (\$2,874,152.20) to redeem its portion of the 2005B Refunding Bonds. Accordingly, West Valley has no further obligation for 2009A Refunding Bonds.

TABLE 4

**SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY STATE REVOLVING LOAN FUND DEBT ALLOCATION
FY 1998 thru 2019**

	Annual Debt Service Payment	Annual San José	Annual Santa Clara	Annual Milpitas	Annual West Valley	Annual Cupertino	Annual Sanitation District 2-3	Annual Burbank	Annual Sunol
Repayment Period(s)	100.000%	68.998%	15.409%	0.000%	8.448%	5.567%	1.092%	0.259%	0.227%
FY 1998/1999	\$1,661,799	\$1,146,608	\$256,067	-	\$140,389	\$92,512	\$18,147	\$4,304	\$3,772
FY 1999/2000 thru 2007/2008	\$4,463,882	\$3,079,989	\$687,840	-	\$377,109	\$248,504	\$48,746	\$11,561	\$10,133
Repayment Period(s)	100.000%	68.998%	15.409%	0.486% ^a	8.448%	5.081%	1.092%	0.259%	0.227%
FY2008/2009	\$4,463,882	\$3,079,989	\$687,840	\$21,694	\$377,109	\$226,810	\$48,746	\$11,561	\$10,133
Repayment Period(s)	100.000%	69.225%	15.409%	0.486% ^a	8.448%	5.081%	1.092%	0.259%	0.000% ^b
FY2009/2010 Thru FY2017/2018	\$4,463,882	\$3,090,122	\$687,840	\$21,694	\$377,109	\$226,810	\$48,746	\$11,561	-
FY 2018/2019	\$1,804,020	\$1,248,833	\$277,981	\$8,768	\$152,404	\$91,662	\$19,700	\$4,672	-

Note(s):

- a. Milpitas shall be responsible for 0.486% of the debt service repayment, which is prorated share of the Cupertino payment due on or after January 1, 2009.
- b. San José allocation reflects the annexation of Sunol into San José in November 30, 2009.

EXHIBIT D
ADMINISTERING AGENCY

A. San José to be Administering Agency.

It is mutually agreed that the City of San José is and shall be the Administering Agency of this Agreement, and, as such, shall execute and administer this Agreement.

B. Powers and Duties of Administering Agency, Scope, and Exercise.

Subject to such limitations as may be imposed in this Agreement, the Administering Agency shall have the following powers and duties:

1. To maintain, 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 (subject to the provision of funds therefor in accordance with the provisions of this Agreement), to treat and dispose of all sewage (and by-products thereof) of San José and Santa Clara and of any and all "Outside Users" now or hereafter authorized to discharge or convey sewage into or to said treatment plant or any sewer lines leading thereto, so that said sewage and all effluent from said Plant will not pollute the waters of San Francisco Bay, or any other waters, and so that said sewage will be disposed of in a manner authorized by law.
2. To make, award and enter into contracts with third parties for the construction, improvement, replacement, expansion, or repair of the Treatment Plant or any part or parts thereof.
3. To acquire, by purchase, condemnation or otherwise, any and all real or personal property which it should find to be reasonably necessary for Treatment Plant purposes.
4. To receive, be the depository for, expend and disburse, for the purposes of this Agreement, any and all funds or monies advanced, contributed or paid by the parties hereto to said Administering Agency pursuant to the provisions of this Agreement, together with all income collected from "Outside Users", all other Treatment Plant income, and all other Treatment Plant funds.
5. To keep accurate accounts of all receipts and disbursements of the above-mentioned funds and monies.
6. To provide and supply any and all personnel and services, including, but not limited to, legal, engineering and accounting services, which it should find to be reasonably necessary for the maintenance, repair, expansion, replacement, improvement and operation of said Treatment Plant, the cost and expense of providing such personnel

and services to be charged to and shared by San José and Santa Clara as part of operating or other Treatment Plant costs as elsewhere provided in this Agreement.

7. To exercise any and all other powers, common to both San José and Santa Clara, with respect to the maintenance, repair, expansion, replacement, improvement and operation of the Treatment Plant.
8. To do any and all things reasonably necessary to treatment and dispose of all sewage entering the Treatment Plant in such manner as will comply with all applicable laws and regulations.
9. To do any and all other things which the Administering Agency is required or authorized to do by other provisions of this Agreement.

C. Manner of Exercising Powers or Performing Duties.

The manner in which the Administering Agency shall exercise its powers and perform its duties is and shall be subject to the restrictions upon the manner in which the City of San José could exercise such powers and perform such duties; and shall not be subject to any restrictions applicable to the manner in which the City of Santa Clara could exercise such powers or perform such duties.

D. Expenses of Administering Agency.

It is mutually agreed that the City of San José 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 José to its officers and employees for services rendered by them for Treatment Plant purposes. It is further agreed that San José shall be paid, from Treatment Plant funds, an amount equal to seventeen and three hundred thirteen one thousandths per cent (17,313%) of all the above mentioned salaries and wages as and for the following overhead expenses incurred by San José in furnishing said services and in administering this Agreement, to wit: payments made by San José for retirement benefits, payments made by San José for medical and hospital insurance covering officers and employees, miscellaneous overhead expenses of the auditing, purchasing and engineering departments of San José.

The percentage or amount of overhead allowance or expense payable to San José shall be increased or decreased from year to year to truly reflect actual overhead and incidental costs and expenses incurred by San José for Treatment Plant purposes to the extent that such costs and expenses are not included in other items of cost or expense for which San José is otherwise reimbursed from Treatment Plant Funds.

TABLE OF CONTENTS

PART I DEFINITIONS..... 1

PART II DISCHARGE RIGHTS GRANTED TO AGENCY.....4

 A. General. 4

 B. Discharge Rights. 4

 C. Restrictions and Regulations Respecting Nature, Kind, Type and Strength..... 4

 of Sewage. 4

 D. Reports, Data and Maps to be Provided by Agency..... 5

 E. Area Restrictions. 5

PART III AMOUNTS PAYABLE BY AGENCY TO FIRST PARTIES.....6

 A. Payments for Discharge Rights Provided by Intermediate-Term Projects
 and Water Recycling Program.....6

 B. Payments for Future Improvements. 6

 C. Payments for Operation and Maintenance Costs. 6

 D. Connection Fee.....7

 E. Method of Payment. 7

 F. Interest..... 8

 G. General. 8

 H. Payments for Operating Reserve..... 8

PART IV SAN JOSE-SANTA CLARA TREATMENT PLANT ADVISORY
COMMITTEE.....10

 A. Creation and Membership.....10

 B. Alternate Members 10

 C. Chair 11

 D. Secretary..... 11

 E. Meetings 11

 F. Procedure 11

 G. Powers and Duties 11

 H. Action Upon Recommendations 12

 I. Expenses..... 13

PART V	MISCELLANEOUS PROVISION.....	14
	A. Effective Date and Duration of Agreement.....	14
	B. Extension, Renewal of Amendment to the Agreement	14
	C. Use of Regional Wastewater Facility After Expiration of Terms	14
	D. Termination.	15
	E. Sale or Transfer by First Parties	15
	F. Industrial Waste Program.....	15
	G. Claims of Breach of Agreement of Inequities	15
	H. Liability.	16
	I. Compliance with Federal and State Laws and Regulations.	16
	J. Assignments	17
	K. Successor and Assigns	17
	L. Waivers	17
	M. Performance and Time to be of the Essence	17
	N. Insurance Requirements and Risk Financing.	17
	O. Titles and Headings	19
	P. Notices	19
	Q. Limited Rights and Agency.....	19
PART VI	SPECIAL PROVISIONS	20
	A. Termination of Agreement.....	20
	B. Charges for Past Capital Cost.....	20

- EXHIBIT A AGENCY TREATMENT PLANT CAPACITY ALLOCATION
- EXHIBIT B REPLACEMENT COST OF PLANT AND EQUIPMENT
- EXHIBIT C PARTICIPATION IN MAJOR PROCESS RELATED IMPROVEMENTS
- EXHIBIT D ADMINISTERING AGENCY

**AMENDMENT AND RESTATEMENT OF MASTER AGREEMENT FOR
WASTEWATER TREATMENT
BETWEEN CITIES OF SAN JOSE AND SANTA CLARA
AND THE CUPERTINO SANITARY DISTRICT**

This Amendment and Restatement of Agreement is made and entered into this ____ day of _____, 2016, by and between the City of San José and the City of Santa Clara, both being municipal corporations of the State of California (hereinafter referred to as “First Parties”), and the Cupertino Sanitary District (hereinafter referred to as “Cupertino” or “Agency”).

WHEREAS, First Parties are co-owners of the “San José-Santa Clara Regional Wastewater Facility,” (the “Plant”) formerly known as the “San Jose/Santa Clara Water Pollution Control Plant”; and

WHEREAS, First Parties and Cupertino have previously entered into a Master Agreement for Wastewater Treatment dated March 1, 1983, a First Amendment to Master Agreement for Wastewater Treatment dated December 17, 1985, a Second Amendment to Master Agreement for Wastewater Treatment dated December 4, 1995, and a Third Amendment to Master Agreement for Wastewater Treatment dated August 5, 2009 (collectively referred to as the “Original Cupertino Master Agreement”) related to Cupertino’s use of the Plant; and

WHEREAS, implementation of the Regional Wastewater Facility Plant Master Plan will require investment in long-term capital improvement projects to upgrade and rebuild the Plant over the next thirty to fifty years necessitating certain additional amendments to the Original Cupertino Master Agreement; and

WHEREAS, for convenience and ease of reference, the parties wish to amend and restate the Original Cupertino Master Agreement;

NOW, THEREFORE, the parties agree that the Original Cupertino Master Agreement is hereby amended and restated to read as follows:

**PART I
DEFINITIONS**

A. Administering Agency.

The City of San José is and shall be the Administering Agency of this Agreement and as such shall execute and administer this Agreement in accordance with Section VIII of the 1959 Agreement excerpted in the attached Exhibit E.

B. Agencies.

The term “Agencies” shall be those tributary agencies discharging wastewater into the San José-Santa Clara Regional Wastewater Facility, previously referred to as “outside users” in the 1959 Agreement.

C. 1959 Agreement.

The term “1959 Agreement” shall mean the Agreement between San José and Santa Clara, dated May 6, 1959 and entitled “Agreement between San José and Santa Clara Respecting Sewage Treatment Plant,” as such Agreement now reads or as it may here after from time to time be amended or renegotiated.

D. Capacity.

The term “capacity” shall mean the Mean Peak Five (5) Day Dry Weather Plant Treatment capacity as contained in Exhibit “A,” attached hereto and incorporated herein by reference as if fully set forth.

E. Director.

The term “Director” shall mean the Director of the Environmental Services Department for the City of San José.

F. Engineering Study.

The term “Engineering Study” shall mean those studies that the First Parties shall cause to be made when the Plan has reached eighty-five percent (85%) of its designed capacity, beginning with 167 MGD and for every incremental capacity increase thereafter. The first Engineering Study shall be performed when the mean peak five-day dry weather flow to the Plant reaches 142 MGD. The Engineering Study shall include an analysis of capacity needs, the size, and nature of proposed facilities to be constructed, a construction timetable, and an estimate of total project costs, and an estimate of each participating agency’s share of project cost.

G. Exhibits.

The term “Exhibits” shall mean those Exhibits attached to this Agreement and incorporated into this Agreement by reference as if fully set forth. These Exhibits may be modified as contract amendments or amended from time to time as necessary to reflect changes of fact. The Exhibits shall be reviewed annually, or at such other times as significant changes occur, by the Treatment Plant Advisory Committee, which body shall recommend any modifications or amendments required.

H. First Stage Expansion.

The term “First Stage Expansion” shall mean that portion, as is presently described in the report of CH2M Hill, engineers, entitled “San José/Santa Clara Water Pollution Control Plant, Capital Improvement Program, Executive Summary, Revised June, 1982” and dated June 25, 1982, or as amended or revised, which consists of

improvements to all areas of the Plant and expansion of the Liquid Process, Process Control System, Sludge Processing and Disposal and will provide a capacity of 167 mgd.

I. Interest.

Interest will be to the extent permitted by law, equal to the rate of interest set forth in the monthly report to the Council of the City of San José, prepared by the Director of Finance of San José, with respect to said City's portfolio and interest earnings thereon.

J. Intermediate-Term Improvements.

The term "Intermediate-Term Improvements" shall mean that portion, as is presently described in the report of CH2M Hill, engineers, entitled "San José/Santa Clara Water Pollution Control Plant, Capital Improvement Program, Executive Summary, Revised June, 1982" and dated June 25, 1982, or as amended or revised, which consists of six (6) elements, as outlined in Chapter 2 of said report, which are designated to provide the Plant with a mean peak five (5) day dry weather treatment capacity of 143 mgd.

K. Long-Term Improvements.

The term "Long-Term Improvements" shall mean capital improvement projects identified in the Plant Master Plan dated March 2012 and approved by TPAC on November 14, 2013; Capital Improvement Program Validation Project Packages dated March 25, 2014; Ten-Year Funding Strategy dated February 2015 and approved by TPAC on May 14, 2015; and the Proposed 2016-2020 Capital Improvement Program for the Water Pollution Control Plant approved by TPAC on May 14, 2015, collectively referred to as "Project Documents," as these Project Documents may be amended or revised through the annual budget process, and periodic updates. The capital improvement projects identified in the Project Documents are to repair, replace, and upgrade the aging facilities and treatment processes at the Plant. The process areas include, but are not limited to, liquids treatment, solids treatment, energy and automation, and support facilities process areas.

L. Operating and Maintenance Costs.

Any 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, chemicals, 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.

M. Parameters.

The term "parameters" shall mean the four (4) treatment parameters of Flow, Biochemical Oxygen Demand (BOD), Suspended Solids (SS), and Ammonia (NH₃)

as expressed in terms of estimates, which are the common denominator for computing annual and/or daily loadings.

N. Plant.

The term “Plant” shall mean the “San José-Santa Clara Regional Wastewater Facility,” formerly known as the “San José/Santa Clara Water Pollution Control Plant.”

O. Replacement Costs.

All 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:

1. Major rehabilitation which will be needed as individual unit processes or other facilities near the end of their useful lives;
2. Structural rehabilitations;
3. Plant expansions or upgrades to meet future user demands.

P. Replacement Fund.

Replacement fund shall mean those monies deposited with the Administering Agency for Replacement Costs at the Plant.

Q. TPAC.

The term “TPAC” shall mean the Treatment Plan Advisory Committee.

PART II
CAPACITY RIGHTS GRANTED TO AGENCY

A. General.

Commencing on the effective date of the Original Agreement, and thereafter during the term of this Agreement, and subject to all the conditions, limitations, restrictions, terms and provisions contained in this Agreement, and Agency's faithful compliance with and performance of the same, First Parties hereby grant to Agency a right to discharge wastewater into the Plant and to have the same treated and disposed of in and by said Plant the same as wastewaters of First Parties.

B. Capacity Rights.

First Parties have designed the Plant to provide for capacity to treat and dispose the volume and strength of wastewater specified in Exhibit "A". Agency shall be entitled for the duration of this Agreement to use the capacity as set forth in said Exhibit "A". First Parties and Agency agree not to discharge more than its capacity in the parameters as is specified in said Exhibit "A", except with the approval and agreement of the First Parties hereto in accordance with the terms and conditions hereinafter provided, or as provided in Part III. Any continuous and intentional violation of capacity rights will be considered a material breach of this Agreement and will be given priority in the claim of breach process as set forth in Part VII Section G.

C. San José/Santa Clara Regional Wastewater Facility Engineering Study.

First Parties agree to make an Engineering Study to redefine all "Agencies" future needs as set forth in Part I, Section F.

D. Restrictions and Regulations Respecting Nature, Kind, Type and Strength of Sewage.

First Parties shall inform Agency of the Industrial Waste Ordinance of the City of San José concerning the type and condition of discharge, which would be detrimental to the Plant. Each party to this Agreement shall adopt and enforce ordinances, resolutions, rules, and regulations to conform to the restrictions of said Ordinance. Any waiver to the above must be authorized by written Resolution of both the Council of the City of San José and the Council of the City of Santa Clara. Each party to this Agreement shall also comply with the applicable statutes, ordinances, rules, and regulations of agencies of the United States of America, and the State of California.

E. Reports, Data and Maps to be Provided by Agency.

It is mutually agreed that all parties shall prepare and file with the Director reports, data and maps as deemed necessary by the Director and Agency.

F. Area Restrictions.

Agency, unless otherwise authorized by written resolutions of the governing boards of both the City of San José and the City of Santa Clara shall not, and agrees that it will not, discharge or cause, allow, permit or suffer to be discharged into the Plant, or into any sewer line or lines which convey either directly or indirectly any wastewater to the Plant, any wastewater which is produced in, or emanates, or comes from any territorial property situated outside the service area map attached as Exhibit F. First Parties and Agency further agree not to discharge, or cause to be discharged, any wastewater into any sewer line or lines of the other party, either directly or indirectly, conveying wastewater to the Plant without written authorization of the owner of the sewer line.

PART III
FUTURE DISCHARGE CAPACITY RIGHTS

A. Redistribution of Capacity Rights.

1. In order to dispose of capacity, any Agency or First Parties may designate all or a portion of its capacity right as “excess pooled capacity,” which shall be available for disposal as hereinafter provided.
2. Any Agency or First Parties may acquire excess-pooled capacity as recommended by TPAC. Any Agency or First Parties may acquire excess pooled capacity at the replacement cost as described in Exhibit “B” plus that portion of the selling party’s replacement balance remaining in the Replacement Fund maintained by the Administering Agency.
3. If requests for excess pooled capacity total more than the excess pooled capacity available, then as set forth in Part VI, TPAC will allocate the pooled capacity actually available in a manner to most closely achieve the same planning horizon for all requesting parties.

B. Acquisition of Additional Capacity Rights With Plant Expansion.

Agency shall have the right to participate in Plant expansions for the purpose of increasing the capacity right into the expanded Plant, subject to the following terms and conditions:

1. Before commencing the design of any such additions, improvements or changes, First Parties shall give Agency written notice of their intention to expand the Plant, and the design year for the proposed expansion, as set forth in the Engineering Study prepared in accordance with Part II, Section C.
2. Within ninety (90) days from and after the giving of such notice, Agency shall notify First Parties in writing whether it wishes to participate in the proposed expansion, and the amount of capacity desired to serve until the design year. If Agency fails to give such notice within such time, it shall be deemed to have elected not to participate in such expansion.
3. If Agency elects not to participate in such expansion, it will pay no part of the cost of additions, improvements, and changes, which are made for the purpose of increasing the capacity of the Plant.
4. If Agency elects to participate in such expansion, it shall pay to First Parties that part of the total cost of such additions, improvements, and changes as defined in Part V, Section B.
5. If the needs of all parties are different than the next feasible increment of plant expansion capacity as described in the Engineering Study, then as set forth in

Part VI, TPAC, will allocate the capacity available in a manner to most closely achieve the same planning horizon for all requesting parties.

C. Acquisition of Additional Capacity Rights Without First Parties Initiated Plant Expansion.

If Agency should desire to increase its capacity right into the Plant at a time when no expansion of the Plant as described in the Engineering Study, is proposed by First Parties and no excess pooled capacity is available, then Agency may seek additional capacity by the following method:

If requested by Agency, First Parties shall initiate a Special Engineering Study to determine the most feasible means to add to the Plant that capacity requested by Agency. When Agency agrees to pay for such increment, then First Parties shall expand the Plant by such increment. This right shall not be exercised within five (5) years of completion of the latest Engineering Study.

D. Adjustment to Capacity Rights Due to Operating Conditions.

1. In the event of a major Plant facility failure caused by an earthquake, explosion, war, flooding or the like, reductions in operational capacity and any cost of restoration shall be borne by all Agencies, including San José/Santa Clara and Agency in accordance with Exhibit "A", and the cost of restoration shall be borne proportionately.
2. Any changes in Plant capacity which either increase or decrease the capacity of the Plant, resulting from any means whatsoever, shall be proportioned to each agency including San José and Santa Clara in accordance with Exhibit "A".
3. TPAC, as set forth in Part VI, shall determine annually, during the month of November, the operational capacity, and productive use of the Plant in all parameters for all parties and the remaining design capacity of the Plant.
4. Agency and First Parties shall not exceed the capacity rights agreed upon pursuant to Exhibit "A".
5. If at any time, prior to the completion of the Intermediate-term Improvements, it becomes necessary to allocate connections to the sewer systems of the combined agencies; in that event, to the extent permitted by law, First Parties will receive forty percent (40%) of the connections of whatever type and all other dischargers will receive sixty percent (60%) of the connections of whatever type. Agency's share will be determined by Agreement among the Agencies. This paragraph shall only remain in effect until completion of the Intermediate-term Improvements.

PART IV
LAND

A. Participation.

Participation and rights in Plant land shall be as described in Exhibit “C”.

B. Sale of Land.

It is mutually agreed between First Parties and Agency that if First Parties should, during the term of this Agreement, sell or otherwise dispose of any of the lands of Exhibit “C” which is or are no longer needed for Plant purposes, Agency shall have the right to share in any revenue derived from such sale by First Parties proportionally in accordance with Exhibit “C.”

PART V
AMOUNTS PAYABLE BY AGENCY TO FIRST PARTIES

A. Payments for Existing Capacity Rights In The Intermediate Term And First Stage Expansion Projects and Phase 1 Water Recycling Program.

Payments for participation in the Intermediate-term and First Stage Expansion and Phase 1 Water Recycling Program shall be as described in Exhibit “D” attached hereto and incorporated by reference herein.

B. Payments for Additional Capacity Rights.

1. Payments with Plant Expansion. All payments associated with a Plant expansion as outlined in Part III, Section B, shall be paid for in proportion to the capacity rights requested in the basic parameters or based upon appropriate ratios of Agency design parameters to total project design parameters times total project cost.
2. Payments Without Planned Expansion. Should Agency elect to obtain additional capacity rights at a time when First Parties do not intend to expand Plant as designated in Part III, Section B, the expenses associated with this addition of capacity rights shall be the sole responsibility of Agency. All payments for studies, designs, and construction to provide additional capacity shall be deposited with the Administering Agency.
3. Payments for Transfer of Capacity Rights. Transfers of capacity rights between First Parties and Agency or between Agency and Agencies, shall be recommended by the TPAC and approved by First Parties and based upon the pooled capacity costs determined in Part IV, Section A. Transfer of capacity rights shall be based upon written agreement between the participating parties. Payment shall be due and payable as provided in said agreement.

C. Payments for Future Improvements.

1. All payments associated with future improvements at the Plant shall be made on the basis of Agency’s existing capacity rights. Final payment shall be determined based upon actual project cost. This payment shall be a proportional share in accordance with Exhibit “A”.
2. First Parties shall, not later than March 1st, of any fiscal year, provide Agency with a preliminary estimate of the amount of money required from Agency for future improvements or replacements for the ensuing fiscal year.

D. Payments for Operation and Maintenance Costs.

1. First Parties, Agency, and Agencies shall bear the cost of the operations and maintenance expenses of the Plant, including all reclamation facilities operated by

the Plant. The cost of operation and maintenance of reclamation facilities shall be determined based upon the actual flow (in million gallons per day) of Agency's discharge into the Plant. All other operation and maintenance expenses of the Plant shall be determined based upon the parameters of Agency's actual discharge into the Plant. Agency shall provide to First Parties, by December 1st of each year, data indicating expected flow and discharge for the ensuing fiscal year.

2. First Parties shall, not later than March 1st of each year, provide Agency with a preliminary estimate of the amount of money required to operate and maintain the Plant, including all reclamation facilities operated by the Plant, for the ensuing fiscal year. In addition, First Parties shall indicate Agency's estimated annual share for operation and maintenance costs as apportioned to treatment parameters, and for operation and maintenance costs for reclamation as apportioned to flow.
3. Agency shall provide to First Parties a copy of Agency's adopted annual sewer revenue program by August 1st of each year. This revenue program shall conform to all federal and/or state guidelines as now exist or may exist in the future.
4. During the second quarter of each fiscal year, TPAC shall review each Agency's total flow and total discharge to the Plant for the preceding fiscal year in terms of the parameters. Adjustments and costs, if any resulting from this review shall be made in accordance with Part V, Section E, Paragraph 3b herein.

E. Method of Payment.

1. Capital and Land Acquisition. All payments for capital and land acquisition shall be on a quarterly basis, the first quarter beginning July 1st. These invoices shall be presented at the beginning of the quarter in which the obligation is anticipated to occur. The date of financial obligations for capital expenses and land acquisitions shall be the date of award of contract. These payments shall be based upon the budget for capital costs for the Plant as recommended by TPAC and approved by the Administering Agency.
2. Operation and Maintenance Costs. All payments for operation & maintenance expenses shall be made on a quarterly basis, the first quarter beginning July 1st. Invoices for these payments 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 operation and maintenance costs of the Plant as recommended by TPAC and approved by the Administering Agency.
3. General Information.
 - a. All bills shall be paid to the Administering Agency within forty-five (45) days from presentation. Interest will be charged on any late or unpaid bills.

- b. 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. A statement outlining the method of adjusting costs and actual adjustments shall be included.
- c. Any and all monies which Agency is herein required to pay to First Parties shall be paid to the Administering Agency.

F. Credits.

- 1. Grants or Outside Financial Assistance. Any grants, recoveries, or outside financial assistance received, and any interest earned thereon, shall be credited to First Parties, Agencies and Agency in the quarter following receipt, along with a statement outlining the source of grant revenue and method of distribution. 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.
- 2. Interest. Interest on moneys advanced, credits held for Agency or amounts due from Agency, shall be determined on a monthly basis.
- 3. Revenues and Income. If First Party should, during the term of this Agreement, receive any income or revenues related to land, products or services at the Plant, then Agency shall be entitled to a share of the income. Agency's share shall be that proportion of such income based on Agency's contribution to the capital cost or O & M cost, which is applicable, during the fiscal year of receipt of such income.

G. General.

Payment to Agency of any moneys to which it may become entitled may be made by off-setting the amount of such moneys against any payments which Agency may be obligated to pay to First Parties under the provisions of this Agreement or Agency may request cash reimbursement of any credit balance. The request for cash reimbursement shall be honored by First Parties within forty-five (45) days following receipt of notice. Any additional payments requested from Agency shall be made with the third quarter payment.

H. Payments for Operating Reserves.

The Administering Agency's annual operation and maintenance budget for the Plant shall include an operating reserve as an operating cost as described in this subsection. First Parties and all Agencies shall contribute their proportionate share to fund the operating reserve in the minimum amount of sixty (60) days of annual operating and maintenance expenses for unanticipated operation and maintenance costs for the Plant ("Operating Reserve") beginning in Fiscal Year 2016-2017. Each Agency's contribution to the Operating Reserve shall be determined in proportion to the Agency's estimated annual share of operation and maintenance costs of the Plant.

The Operating Reserve contribution for each Agency shall be calculated as follows: annual Agency operation and maintenance allocation percentage multiplied by the total estimated annual Plant operation and maintenance budget amount, divided by 365 days, and then multiplied by 60 days. In each fiscal year following Fiscal Year 2016-2017, the calculation will take into account the amount held in the Operating Reserve as of the date of calculation.

The Administering Agency shall provide each Agency on or before March 1 of each fiscal year, commencing in Fiscal Year 2015-2016 for the amount of its estimated contribution to the Operating Reserve for the following fiscal year. Each Agency shall be billed for its contribution to the Operating Reserve following the Administering Agency's adoption of the annual operation and maintenance budget for the Plant for Fiscal Year 2016-2017, and each fiscal year thereafter. If the adopted annual budget for operation and maintenance costs of the Plant is greater than or less than the amount on which the Agencies' respective contributions were calculated and paid into the Operating Reserve for the prior fiscal year, then the billing statement presented to each Agency will identify the revised contribution amount and specify the amount of the adjustment due if an Agency's contribution has increased or the amount subject to credit if an Agency's contribution amount has decreased. Agency shall make payment in full of the amount of its contribution to the Operating Reserve within forty-five (45) days of presentation of the billing statement. Any credit due to the Agency shall be applied to the Agency's first quarterly payment for operation and maintenance costs.

PART VI
SAN JOSE-SANTA CLARA TREATMENT PLANT
ADVISORY COMMITTEE

A. Creation and Membership.

The San José-Santa Clara Treatment Plant Advisory Committee (TPAC), created by the 1959 Agreement, shall consist of nine (9) members. Three (3) of the members shall be members of the Council of the City of San José, shall be appointed by said Council, and shall serve at the pleasure of said Council. Two (2) of the members shall be members of the Council of the City of Santa Clara, shall be appointed by the Council of the City of Santa Clara, and shall serve at the pleasure of said Council. One (1) of the members shall be a member of the Council of the City of Milpitas, shall be appointed by said Council, and shall serve at the pleasure of said Council. One of the members shall be a member of the governing body of the West Valley Sanitation District, shall be appointed by the governing body of the West Valley Sanitation District, and shall serve at the pleasure of said body. One (1) of the members shall be a member of the governing body of the Cupertino Sanitary District, shall be appointed by the governing body of the Cupertino Sanitary District, and shall serve at the pleasure of said body. The ninth (9th) member shall be the City Manager of San José or a designated representative. No member shall have more than one (1) vote.

B. Alternate Members.

The Council of the City of San José may appoint three (3) of its Council members as alternative members of TPAC. The Council of the City of Santa Clara may appoint two (2) of its Council members as alternative members of TPAC. The Council of the City of Milpitas may appoint one (1) of its Council members as an alternative member of TPAC. The governing body of the West Valley Sanitation District and the governing body of the Cupertino Sanitary District may each appoint one (1) of its members as an alternative member of TPAC. Said alternate members shall serve in the place and stead of any of the regular members whenever said regular member should be absent from a meeting of TPAC.

C. Chair.

At the first meeting of each fiscal year, the members of TPAC shall elect a Chair and Vice Chair of TPAC. The Chair and Vice Chair shall serve as such until the election of his or her successor, or until cessation of membership of the TPAC, whichever is earlier. Vacancies in the office of the Chair and Vice Chair occurring in-between regular elections may be filled by TPAC electing a Chair and Vice Chair elected to serve until the next regular election. The Chair, or the Vice Chair in the Chair's absence, shall preside at all meetings. In the event the Chair and Vice Chair should

both be absent from any meeting, the members of TPAC may elect a Chair pro tem to serve as Chair during the latter's absence.

D. Secretary.

The Administering Agency shall provide a secretary for TPAC. Said secretary shall keep minutes of TPAC proceedings and shall also have custody of all books, records and papers of TPAC.

E. Meetings.

Regular meetings of TPAC shall be held at a time and place to be determined by TPAC. Special meetings may be called at any time by the Chair, to be held at a reasonable time and place specified in the notice calling the special meeting, subject to applicable requirements of law.

F. Procedure.

Except as may otherwise be provided by Resolution of TPAC, the procedure to be followed by TPAC at its meeting shall be that set forth in Robert's Rules of Order. TPAC may act by resolution of motion; a motion duly passed by TPAC and entered at length on TPAC's minutes may be deemed to be a resolution.

G. Power and Duties.

TPAC shall have the following powers and duties with respect to those items to be considered.

1. Make recommendation to First Parties and Agencies with respect to policy relating to the Plant and its maintenance, repair, expansion, replacement, improvement, and operation.
2. Make recommendation to the legislative bodies of First Parties and Agencies with respect to proposed amendments and revisions to exhibits to this Agreement.
3. Make recommendations to both First Parties and Agencies with respect to the advisability of selling interests in the Plant.
4. Make recommendations to First Parties with respect to the advisability of entering into contracts with other entities desiring to use the Plant on a rental or other basis.
5. Make recommendations to the Administering Agency and Agencies as to type and amount of insurance to be purchased for the Plant.
6. Annually, during the month of May in each fiscal year, TPAC shall review and recommend to the legislative bodies of First Parties and Agencies, a proposed budget for the ensuing fiscal year for the maintenance, expansion, replacement, improvement, and operation of the Plant.

7. Make recommendations to the Administering Agency with respect to the award of consultant, construction, or service contracts relating to the Plant.
8. Annually, TPAC shall file with the legislative bodies of First Parties and Agencies, a report on Plant capacity pursuant to Part III, Section D, paragraph 3.
9. Make recommendations to First Parties and Agencies with respect to the redistribution of pooled excess capacity pursuant to Part III, Section A, paragraphs 1 and 2.
10. Periodically, TPAC shall review and make current, long-range plans for expansion and/or improvement of the Plant to provide for the anticipated Plant capacity required to accommodate the general plans of San José, Santa Clara and Agencies and to meet current wastewater discharge requirements.
11. Make recommendations to the legislative bodies of First Parties and Agencies with respect to claim of breach proceedings pursuant to Part VII, Section C.

H. Action Upon Recommendations.

The legislative bodies of First Parties or the Agencies, shall not adopt any motion, Resolution or Ordinance that is contrary to any recommendation submitted to it by TPAC with respect to the Plant and its maintenance, repair, expansion, replacement, improvement and operation without a finding of fact or facts justifying such contrary action. The finding of fact or facts shall be submitted in writing to TPAC within fifteen (15) days after any contrary action. All policy matters as determined by the Director requiring an adoption of a motion, Resolution or Ordinance by the Council of the City of San José relating to the Plant and its maintenance, repair, expansion, replacement, improvement and operation, shall first be submitted to TPAC for its recommendation and in sufficient time, as determined by the Administering Agency, to allow TPAC to make a recommendation thereon. The Council of the City of San José shall not act upon any such policy matter until it has received the recommendation from TPAC. If TPAC does not submit its recommendation to the Council of the City of San José within the prescribed time, the City Council may adopt such a motion, Resolution or Ordinance. If a legislative body is presented with any evidence not considered by TPAC in the making of any recommendation, then, prior to the taking of action contrary to said recommendation, if time permits as determined by the Administering Agency, the legislative body shall refer the matter back to TPAC for a supplementary report. Said supplementary report shall be submitted by TPAC within thirty (30) days after reference, or such longer period as may be designated by the legislative body. If TPAC fails to make such supplementary report within the time specified, the legislative body is free to consider such evidence without TPAC recommendations. In the event of an emergency as determined by the Director, the above procedure may be waived.

I. Expenses.

Members of TPAC shall be reimbursed for all expenses reasonably incurred by them in the performance of their duties, and that provision therefor, shall be made in the annual budget. Such expenses shall be considered as “operating costs” of the Plant.

PART VII
MISCELLANEOUS PROVISIONS

A. Effective Date and Duration of Agreement.

It is hereby agreed that this Agreement shall be in force and effect for a term beginning on May 10, 1983 and extending to, and including, and ending on June 30, 2065, or until sooner termination by mutual written agreement of the parties hereto or by operation of law or because of a material breach by one of the parties hereto.

B. Extension, Renewal or Amendment to the Agreement.

It is mutually agreed that the term of this Agreement may be extended or renewed only by mutual written agreement of the parties hereto and that this Agreement, including exhibits, may be amended or supplemented by a mutual written agreement of the parties hereto. This Agreement shall be reviewed in its entirety by First Parties and Agency in the year 2050. First Parties and Agency further agree that in the year 2065, they will meet and confer in good faith to negotiate a revised or new Agreement.

C. Use of Regional Wastewater Facility After Expiration of Term.

If for any reason the contact cannot be renewed in the year 2065, or subsequent to the termination date, the discharging Agency shall have the right to continue to discharging to the Plant, provided all payments of Agency's share of Plant costs are made. All other rights under this Agreement shall cease.

D. Termination.

If for any reason this Agreement is terminated by mutual consent of both parties, then the discharging capacity rights of the Agency shall be considered "excess pooled capacity" pursuant to the terms of Paragraph III Section A. This capacity shall be reserved for the Agency and Agency shall continue to pay for all costs associated with such capacity until such time as that capacity is either purchased by other users pursuant to the terms of this Agreement, or until failure of the Plant to treat wastewater.

E. Sale or Transfers by First Parties.

Nothing in this Agreement contained shall be deemed to prohibit or restrict First Parties, or either of them, for selling, granting, assigning or otherwise transferring this Agreement or any part or interest therein, or the Plant or any part or interest therein, or any right to discharge wastewater therein and to have the same therein treated and disposed of, to any corporation, district, governmental organization or entity or to any other person or persons, provided that any such transaction shall be subject to such

rights and privileges as First Parties and Agency may have under and by virtue of the provisions of this Agreement.

F. Industrial Waste Program.

The Administering Agency agrees to maintain personnel for the specific purposes of assisting all parties with matters concerning industrial waste. Such responsibilities shall include industrial waste monitoring, sampling and analysis, technical advice and surveillance of all industrial discharges tributary to the Plant. The Administering Agency agrees to be responsible for issuing notices of nonconformance within Agency's service area for violations of the ordinance requirements in Part II, Section D. Agency shall be responsible for the adoption and enforcement of any Industrial Waste Ordinance requirements. The Administering Agency shall endeavor to keep all dischargers informed of federal, state, county and city laws, rules, regulations, standards, and ordinances relating to industrial waste requirements.

G. Claims of Breach of Agreement or of Inequities.

In the event any party to this Agreement should at any time claim that the other party has in any way breached or is breaching this Agreement, or that the Agreement is inequitable, the complaining party shall file with the legislative body or bodies of the other parties, and with TPAC, a written claim of said breach or inequity, describing the alleged breach or inequity and otherwise giving full information respecting the same. TPAC shall within two (2) months at a place specified by it, give all concerned parties full opportunity to be heard on the matter, and shall, upon conclusion of said hearing, give the legislative bodies of both parties a full report of its finding and recommendations. Said report, findings, and recommendations shall be deemed advisory only; shall not be deemed to establish any facts, either presumptively or finally. Upon receipt of said report and recommendations, if any party is dissatisfied with or disagree with same, the legislative bodies of all parties concerned shall jointly meet with each other within two (2) months at a place to be determined by them, for the purpose of resolving their differences. No action for breach of this Agreement, and no action for any legal relief because of any breach or alleged breach of this Agreement shall be filed or commenced, and nothing shall be done by either party to rescind or terminate this Agreement, unless and until the above provisions of this paragraph have been complied with and unless the complaining party has first given to the other party three (3) months from the conclusion of said joint meeting of said legislative bodies within which to cure any breach or alleged breach.

H. Liability.

It is mutually agreed that any liability of San José and/or Santa Clara, or of San José as the Administering Agency for any damage to any such person or property arising or resulting from any dangerous or defective condition in the Plant or any part or property thereof, or arising or resulting from any act or omission of San José or Santa

Clara or their respective officers, agents, employees or contractors, in the control, administration, construction, expansions, installation, operation, maintenance or repair of said Plant or any part or property thereof, shall be mutually shared and paid for by First Parties and Agencies on the basis of operations and maintenance or capital costs, whichever is applicable. It is understood and agreed that First Parties in granting to Agencies certain discharge capacity rights in the Plant and to have wastewater treated and disposed of in said Plant, are not guaranteeing or warranting that the Plant will be able to satisfactorily treat such wastewater. In the event the Plant should for any reason other than by the gross negligence or intentional misconduct of First Parties be incapable of satisfactorily treating wastewater discharge into the Plant by Agency or First Parties, First Parties shall in no way be liable to Agency for any damages arising or resulting from or suffered because of the failure of the Plant to satisfactorily receive, hold, treat or otherwise dispose of wastewater.

I. Compliance with Federal and State Laws and Regulations.

Agency and First Parties agree to comply with any and all Federal, State, or local laws, the rules, regulations, standards and requirements of any Federal, State, or local board, commission, agency or similar body, and the decisions of any court or competent jurisdiction which must be complied with to enable First Parties to qualify for Federal or State grants for the construction, improvement, administration, operation, maintenance, or repair of the Plant.

J. Assignment.

Agency shall not assign or transfer any interest nor the performance of any of Agency's obligations hereunder without the prior written consent of First Parties, and any attempt by Agency to so assign this Agreement or any rights, duties or obligations arising hereunder without written consent shall be void and of no effect.

K. Successors and Assigns.

It is mutually agreed by all the parties hereto that the agreements, covenants, conditions, limitations, restrictions and undertakings herein contained shall, subject to the provisions as to assignment, apply to and bind the successors and assigns of the respective parties hereto as if they were in all cases named.

L. Waivers.

One or more waivers of any term, covenant or condition by either party shall not be construed as a waiver of a subsequent breach of the same or any other term, covenant or condition and the consent or approval by either party to any act shall not be deemed to waive or render unnecessary either party's consent or approval for any subsequent similar act by the other party.

M. Performance and Time to be of The Essence.

It is understood and agreed that full and faithful compliance with and performance of each and every covenant and provision of this Agreement by the party or parties required to comply with or perform each such covenant or provision is and shall be of the essence; also that time is and shall be of the essence; also that such full and faithful compliance with and performance of each and every covenant and provision of this Agreement shall be deemed to be a material condition of this Agreement.

N. Insurance Requirements and Risk Financing.

1. General Provisions. The Administering Agency may elect to self-insure any obligations hereunder should a program of self-insurance be deemed, at the sole discretion of the Administering Agency, the most economically reasonable risk financing option. The Administering Agency may contract for brokerage services and procure insurance policies or products, as needed and as would customarily be maintained, to mitigate against risks associated with common losses related to work or operations described in this Agreement including, but not limited to, claims for injuries to persons or damages to property from performance of the work or operations described in or incidental to this Agreement. The Administering Agency shall further provide services related to administration and maintenance of the insurance policies procured for on behalf of the Plant. The form of risk financing required under this section does not alter the liability of the parties. Each party shall be responsible for its proportionate share of any costs associated with self-insurance and the premiums, deductibles, copayments, losses, claims recovery, or other related costs.
2. Scope of Coverage. In the event that the Administering Agency procures and maintains insurance policies by a third party provider, the coverage, to the extent economically feasible and available in the marketplace, will include:
 - 2.1. A property and casualty insurance policy or policies insuring the Plant, in such forms and with such carriers as shall be within industry standards, including:
 - 2.1.1. “All risk” property policy including boiler and machinery exposures, coverage for loss due to business interruption, and flood.
 - 2.1.2. 100% Replacement Cost, excluding foundations and excavations, with a deductible amount of no more than \$100,000 for scheduled properties unless otherwise specified in these Requirements or, in the event that the identified deductible is no longer available at reasonable market rates.
 - 2.1.3. Wind, Flood, Boiler, and Sprinkler Leakage coverages, in amounts consistent with industry practice.

- 2.1.4. The Administering Agency will annually market for and assess the economic feasibility of procuring earthquake coverage and Terrorism Risk Insurance Act (“TRIA”) coverage.
 - 2.1.5. The Administering Agency shall not insure personal property located at the Plant that is not an owned asset of the Plant.
 - 2.1.6. A commercial general liability policy (“occurrence” form CG 0001) or its equivalent and, if necessary, an umbrella or excess policy or policies liability with limits as are reasonable within the industry and a combined single limit for bodily injury and property damage, providing to the extent economically feasible all of the following coverage:
 - 2.1.7. Premises Operations
 - 2.1.8. Products/Completed Operations
 - 2.1.9. Personal and Advertising Injury and Liability
 - 2.1.10. Fire Legal Liability with a minimum limit of \$100,000
 - 2.1.11. Environmental Legal Liability (if not obtained by separate environmental legal liability policy)
 - 2.2. A business automobile policy with coverage provided by Insurance Services Office form number CA 0001 covering automobile liability and a minimum limit of not less than \$1,000,000 combined single limit for bodily injury and property damage.
 - 2.3. A workers’ compensation and employer’s liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of contractor.
 - 2.4. In the event that the Administering Agency uses an excess liability policy(ies) to meet commercial general liability policy limits or property policy limits as would be reasonable considering industry standards, the excess liability coverage must follow form or have greater scope of coverage than the commercial general liability coverage. All Parties shall receive the same status on the excess liability policy including receipt of additional insured endorsements.
 3. Policies and Endorsements. At any party’s request, the Administering Agency shall provide a certificate of insurance with applicable endorsements, an insurance summary, or a copy of the insurance policy or policies obtained pursuant to this Agreement.
 - 3.1. All parties shall have additional insured endorsements on each policy (excluding workers’ compensation) to the extent each individual party has an insurable interest.
 - 3.2. All policies shall be endorsed as primary and noncontributing to any other insurance policy of any of the parties to the extent permitted by policy form.

4. Costs. All related insurance costs shall be included in the maintenance and operating expenses. Costs shall include but not be limited to brokerage fees, premiums, deductibles, copayments, uncovered losses, claims recovery expenses including disputed claims, fees, taxes, administration costs, fines, or penalties not otherwise insured or covered.
- O. Titles and Headings.
The sub-heading and titles of this Agreement are inserted for the convenience of reference only and shall not be taken or considered as having any bearing on the interpretation thereof.
- P. Notices.
All notices shall be mailed to the address designated beneath the signatures of the parties hereto or as subsequently designated in writing by the parties.

PART VIII
SPECIAL PROVISIONS

A. Termination of Agreements.

It is mutually agreed by all parties hereto that the following agreements heretofore entered into between the CITY OF SAN JOSE and the CUPERTINO SANITARY DISTRICT; or between the CITY OF SANTA CLARA and the CUPERTINO SANITARY DISTRICT; or between the CUPERTINO SANITARY DISTRICT, and both the CITY OF SAN JOSE and the CITY OF SANTA CLARA relating to the Plant, and any and all supplements, addendums, changes, or amendments thereto, have been terminated.

1. “Agreement Between Cities of San Jose and Santa Clara and the Cupertino Sanitary District Relating to Sewage Treatment Plant” dated February 26, 1961 (Initial Master Agreement).
2. “Addendum to Agreement Between Cities of San Jose and Santa Clara and the Cupertino Sanitary District Relating to Sewage Treatment Plant” dated March 15, 1965. (Change of Service Area) Terminated by October 7, 1969 Amendment.
3. “Agreement Amending Agreement Between the Cities of San Jose and Santa Clara and the Cupertino Sanitary District of Santa Clara County, California, Relating to Sewage Treatment Plant, and Terminating a Certain Addendum to said Agreement Hereby Amended” dated October 7, 1969. (Change of Service Area and Various Provisions of February 26, 1961 Master Agreement).
4. Resolution No. 3487
“Resolution of the Council of the City of Santa Clara Offering to sell to Cupertino Sanitary District of Santa Clara County, California, Additional Capacity Rights in the San Jose/Santa Clara Sewage Treatment Plant” dated May 13, 1975.
(Additional 4.6 MGD to total 8.0 MGD)
5. Resolution No. 46699
“A Resolution of the Council of the City of San Jose Offering to Sell to Cupertino Sanitary District of Santa Clara County, California, Additional Capacity Rights in the San Jose/Santa Clara Sewage Treatment Plant” dated May 20, 1975.
(Additional 4.6 MGD to 8.0 MGD).
Payment made to San Jose in the amount of \$642,917.00 by Warrant No. 1319 on June 9, 1975 for additional 4.6 MGD capacity.
6. “Agreement Among the Cities of San Jose and Santa Clara and the Cupertino Sanitary District Relating to the Sharing of Operating Costs of the Sewage

Treatment Plant” dated July 2, 1976. (Operating costs based on engineering analysis and report, including Revenue Program)

7. “Agreement By and Between the Cities of San Jose, Santa Clara and Cupertino Sanitary District, Providing Interim Allocation of Treatment Capacity” dated April 13, 1981.
8. Settlement Agreement By and Between the Cities of San Jose, Santa Clara and Cupertino Sanitary District dated March 11, 1981.

IN WITNESS WHEREOF, San José, and Santa Clara and Cupertino Sanitary District have caused this AMENDMENT AND RESTATEMENT OF MASTER AGREEMENT to be executed in their respective names and their respective seals to be affixed hereunto by their duly authorized officers, all as of the date first above written.

APPROVED AS TO FORM

CITY OF SAN JOSE, a municipal corporation

ROSA TSONGTAATARII
Senior Deputy City Attorney

TONI TABER, CMC
City Clerk
200 East Santa Clara Street
San José, CA 95113-1905

APPROVED AS TO FORM

CITY OF SANTA CLARA, a municipal corporation

RICHARD E. NOSKY JR.
City Attorney

ROD DIRIDON JR.
City Clerk
1500 Warburton Avenue
Santa Clara, CA 95050

APPROVED AS TO FORM

CUPERTINO SANITARY DISTRICT

City Attorney

Chairperson

Secretary

EXHIBIT A

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

TREATMENT PLANT CAPACITY ALLOCATIONS

Table 1 - 167 MGD Plant, Intermediate Term Improvements and First Stage Expansion.

Table 1 contains the Agencies' and First Parties' treatment plant capacities achieved by implementation of the Intermediate-term Improvements and First Stage Expansion. Increased capacity was allocated only to those Agencies that elected to participate in Plant expansion to 167 MGD. Milpitas was allocated 4 MGD of the 24 MGD expansion, and the First Parties' share the remaining 20 MGD based on assessed valuation. BOD, SS, and Ammonia capacities were allocated in the same proportion as Flow.

Table 2 – 167 MGD Plant, after transfer of capacity to Milpitas from West Valley and Cupertino.

Table 2 shows the Agencies' and First Parties' treatment plant capacities effective with the transfer of 0.75 MGD from Cupertino to Milpitas with prorated shares of Suspended Solids and Ammonia, but excludes any prorated share of Biochemical Oxygen Demand effective January 1, 2009. On July 1, 2006, West Valley Sanitation District transferred 1 MGD of flow with 2.430 KLBS/Day Biochemical Oxygen Demand, 2.308 KLBS/Day Suspended Solids, and 0.242 KLBS/Day Ammonia capacity to Milpitas. The other Agencies' capacities remain the same as in the 143/167 MGD Plant.

Table 3 – 167 MGD Plant, after annexations from West Valley and Sunol into San José.

Table 3 shows the Agencies and First Parties' treatment plant capacities effective June 30, 2014 with the transfer of capacity associated with annexations into San José from West Valley in 2007-2013, and Sunol in November 30, 2009. The other Agencies' capacities remain the same as in the 143/167 MGD Plant.

TABLE 1
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

167 MGD PLANT

SUMMARY OF CAPACITY ALLOCATION*

(Intermediate-Term, First Stage Expansion & South Bay Water Recycling Improvements Implemented)

AGENCY	FLOW MGD	BOD K LBS/DAY	SS K LBS/DAY	AMMONIA K LBS/DAY
San José ^a	110.800	390.393	346.342	34.332
Santa Clara ^a	21.298	75.042	66.575	6.599
Subtotal ^b	132.098	465.435	412.917	40.931
West Valley	13.052	31.713	30.120	3.156
Cupertino	8.600	16.419	17.856	2.506
Milpitas	12.500	24.819	22.125	2.386
Burbank	0.400	0.815	0.853	0.297
Sunol	0.350	1.799	2.129	0.324
Subtotal	34.902	75.565	73.083	8.669
TOTAL	167.000	541.000	486.000	49.600

*The term “capacity” is defined as the mean peak five-day dry weather plant treatment capacity.

Note(s):

- a. San José and Santa Clara allocations vary annually according to assessed property value; values shown are effective as of January 1, 2009.
- b. CSD 2-3 rents capacity from San José and Santa Clara. Allocations vary annually depending flow from CSD 2-3.

TABLE 2
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

167 MGD PLANT

SUMMARY OF CAPACITY ALLOCATION*

(After transfer of capacity to Milpitas from West Valley in July 1, 2006, and Cupertino in January 1, 2009)

AGENCY	FLOW MGD	BOD K LBS/DAY	SS K LBS/DAY	AMMONIA K LBS/DAY
San José ^a	110.800	390.393	346.342	34.332
Santa Clara ^a	21.298	75.042	66.575	6.599
Subtotal ^b	132.098	465.435	412.917	40.931
West Valley	12.052	29.283	27.812	2.914
Cupertino	7.850	16.419	16.299	2.287
Milpitas	14.250	27.249	25.990	2.847
Burbank	0.400	0.815	0.853	0.297
Sunol	0.350	1.799	2.129	0.324
Subtotal	34.902	75.565	73.083	8.669
TOTAL	167.000	541.000	486.000	49.600

*The term “capacity” is defined as the mean peak five-day dry weather plant treatment capacity.
 Note(s):

- a. San José and Santa Clara allocations vary annually according to assessed property value. The values shown are effective as of January 1, 2009.
- b. CSD 2-3 rents capacity from San José and Santa Clara. Allocations vary annually depending flow from CSD 2-3.

TABLE 3
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

167 MGD PLANT

SUMMARY OF CAPACITY ALLOCATION*

(June 30, 2014)

AGENCY	FLOW MGD	BOD K LBS/DAY	SS K LBS/DAY	AMMONIA K LBS/DAY
San José ^{a,c}	109.555	385.994	342.915	34.106
Santa Clara ^a	23.248	81.912	72.770	7.238
Subtotal ^b	132.803	467.906	415.685	41.344
West Valley ^c	11.697	28.611	27.173	2.825
Cupertino	7.850	16.419	16.299	2.287
Milpitas	14.250	27.249	25.990	2.847
Burbank	0.400	0.815	0.853	0.297
Subtotal	34.197	73.094	70.315	8.256
TOTAL	167.000	541.000	486.000	49.600

*The term “capacity” is defined as the mean peak five-day dry weather plant treatment capacity.
 Note(s):

- a. San José and Santa Clara allocations vary annually according to assessed property value. The values shown are effective as of June 30, 2014.
- b. CSD 2-3 rents capacity from San José and Santa Clara. Allocations vary annually depending flow from CSD 2-3.
- c. San José and West Valley Sanitation District allocations reflect the transfer of capacity associated with annexations from the District into San José from 2007-2013.

EXHIBIT B

9/18/15

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
REPLACEMENT COST OF PLANT AND EQUIPMENT
JUNE 2014

FACILITY	ACQUISITION DATE	ORIGINAL COST	REPLACEMENT COST
Asset #1 - Original primary plant	1958	3,786,400	45,876,200
Asset #2 - Plant Additions	1960	1,370,200	15,269,000
Asset #3 - Plant Additions & New Secondary Facility	1963	24,166,800	258,656,700
Asset #4 - Final Tank	1965	1,183,000	11,053,800
Asset #5 - Digesters	1966	993,600	8,419,400
Other Projects:			
1965-66	1965	103,900	970,800
1966-67	1966	253,800	2,150,600
1967-68	1967	24,200	187,600
1968-69	1968	322,100	2,300,800
1969-70	1969	59,900	396,700
1970-71	1970	102,700	634,000
Sludge Lagoons	1968	839,000	5,993,000
Foam Flotation Program	1970	23,000	142,000
1970 94/MGD Improvements	1970	5,809,400	35,865,200
1970 66/MGD Additions	1970	23,049,000	142,296,600
A.W.T.F.	1977	62,810,900	219,021,500
Other Projects:			
1977-78	1977	745,500	2,599,600
1978-79	1978	312,200	997,300
1979-80	1979	1,421,100	4,292,200
1980-81	1980	1,962,300	4,992,300
1981-82	1981	535,200	1,325,800
1982-83	1982	1,777,765	3,770,200
CAPITAL IMPROVEMENT PROGRAM:			
Intermediate-term Improvement	1987	88,699,500	175,232,300
First Stage Expansion	1987	20,035,100	39,580,800
1987 Capitalized Expenditures	1987	894,900	1,767,900
1989 Capitalized Expenditures	1989	527,473	1,002,300
1990 Capitalized Expenditures	1990	823,720	1,485,800
1991 Capitalized Expenditures	1991	114,902	204,300
1992 Capitalized Expenditures	1992	407,154	708,700
1993 Capitalized Expenditures	1993	1,291,825	2,188,600
1994 Capitalized Expenditures	1994	255,378	424,500

Revised B-1

1995 Capitalized Expenditures	1995	10,595,576	17,651,200
1996 Capitalized Expenditures	1996	3,396,270	5,650,100
1997 Capitalized Expenditures	1997	9,320,130	15,161,500
1998 Capitalized Expenditures	1998	2,829,981	4,559,800
1999 Capitalized Expenditures	1999	133,138,713	212,724,200
2000 Capitalized Expenditures	2000	2,464,590	3,749,200
2001 Capitalized Expenditures	2001	3,866,326	5,687,800
2002 Capitalized Expenditures	2002	930,265	1,323,300
2003 Capitalized Expenditures	2003	1,663,511	2,324,100
2004 Capitalized Expenditures	2004	3,321,630	4,443,200
2005 Capitalized Expenditures	2005	665,760	877,300
2006 Capitalized Expenditures	2006	2,096,762	2,707,600
2007 Capitalized Expenditures	2007	1,197,306	1,439,900
2008 Capitalized Expenditures	2008	68,856,165	81,431,200
2009 Capitalized Expenditures	2009	86,452,121	96,787,700
2010 Capitalized Expenditures	2010	5,337,506	5,871,000
2011 Capitalized Expenditures	2011	4,237,725	4,537,800
2012 Capitalized Expenditures	2012	14,961,081	15,701,600
2013 Capitalized Expenditures	2013	24,009,116	25,189,500
2014 Capitalized Expenditures	2014	909,001	909,000
TOTAL		624,951,452	1,498,533,500*

(*) 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:

- 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 percentages contained in the most current Revenue Program (Form 8, Summary of Distribution of Capital Costs).
- 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.

EXHIBIT C

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

LAND DISTRIBUTION

1. Table 1 includes the original land purchase price for each parcel purchased before June 30, 1982 (“Pre-1982 Land.”). The San José’s average yearly rate of return for all investments was applied to this amount and compounded to establish a June 30, 1982 value for all Pre-1982 Land.
2. Land participation for Pre-1982 Lands was based upon the 167 MGD capacity of the Plant (Flow BOD, Suspended Solids and Ammonia). Percentage of participation in Pre-1982 Land is based upon the total acreage and not on an individual parcel basis.
3. Agencies which still owe San José and West Valley Sanitation District for their allocated share of cost for Pre-1982 Land shall pay all the costs of this land from sale, lease or rental revenues to be received from the Regional Wastewater Facility properties. Percentage of revenue shall be based upon each Agency’s full capacity percentage. The Pre-1982 Land costs will be paid off only from sale, lease, or rental revenues of the Plant property and shall have no fixed term. Table 2 shows First Parties’ and Agencies’ allocations and amounts/credits due for Pre-1982 Land costs as of June 30, 2014.
4. Table 3 shows the original purchase price, date of purchase and cost allocation for all land purchased on or after July 1, 1982 (“Post 1982 Land”). Cost allocation in Post 1982 Land was based on the flow and wastewater strength allocations for First Parties and participating Agencies, except for land purchased for recycled water facilities, which is based on flow allocation only.
5. Table 4 shows the percentage participation in Pre-1982 Land and Post-1982 Land for First Parties and Agencies effective June 30, 2014 including, the annexation of Sunol into San José on November 30, 2009, the annexation of territory from West Valley into San José from 2007-2013, the transfer of land equivalent to 0.75 MGD capacity

from Cupertino to Milpitas effective January 1, 2009, and the transfer of land equivalent to 1 MGD from West Valley to Milpitas effective July 1, 2006.

6. Sale, lease or rental revenues from Regional Wastewater Facility property shall be first applied to an Agency's debt, and only upon completion of that debt, will revenues be passed on to the Agency.
7. If and when expansion of the facilities takes place in the future, land values shall again be adjusted based upon the new MGD denominator. Each Agency's percentage of participation in land shall, at that time, be recomputed based upon total land cost shown in the applicable Land Cost Allocation.
8. All purchases of land in the future shall be distributed to all Agencies in the percentage of discharge capacity at the Plant, except that land purchased for recycling improvements shall be based on the Agencies' and First Parties' purchased capacity in the 167 MGD Plant for the flow parameter only.

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
LAND COST ALLOCATION METHODOLOGY

1. Attachment A is a Regional Wastewater Facility Property map.
2. Table 1 includes the original land purchase price for each parcel purchased before June 31, 1982. This amount was then applied to San José's average yearly rate of return for all investments and compounded to establish a June 30, 1982 value for the Pre-1982 Land.
3. Table 2 shows the First Parties' and Agencies' share of Pre-1982 land Costs. Table 2 also shows the amounts still due or owing by First Parties and Agencies for Pre-1982 Land Costs, as of June 30, 2014.
4. Table 3 shows the land allocation for First Parties and Agencies for all land purchased on or after July 1, 1982, based on the amount actually paid by First Parties and Agencies for land purchased on or after July 1, 1982.
5. Table 4 shows the land participation allocation for First Parties and Agencies as of June 30, 2014 including, the annexation of Sunol into San José on November 30, 2009, the annexation of territory from West Valley into San José from 2007-2013, the transfer of land equivalent to 0.75 MGD capacity from Cupertino to Milpitas effective January 1, 2009, and the transfer of land equivalent to 1 MGD from West Valley to Milpitas effective July 1, 2006. The transfer of capacity and adjusted land allocation percentages shall not affect the amounts due or owing by Agencies for Pre-1982 Land Costs.

TABLE 1
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
PRE-1982 LAND PURCHASES

Pre-1982 Purchases Parcel	Acres	Original Cost	Purchase Date	Cost*
Berger Williamson	43.668	\$ 15,284	8/49	\$ 88,282
Coolidge Quitclaim	--	150	3/52	805
John R. Watrous	106.747	101,043	7/54	490,206
John R. Medina	16.970	15,067	8/54	73,106
Other Costs (Easement- Condemnation)*	--	23,468	1956-57	106,183
Curtner-Zanker	.776	1,000	7/55	5,082
Los Altos Garbage	2.045	1,000	8/55	4,692
James Clayton	181.680	182,160	4/58	795,944
A. M. Standish	.197	120	10/61	457
Spring Valley	.180	50	4/62	189
Beatrice Standish	39.888	55,109	7/62	202,258
Other Costs (Unallocated)*	--	603	3/65	2,048
Nine-Par	46.970	201,515	1/68	596,405
A. L. Kricheberg	41.13	162,170	4/69	452,708
Anselmo-Campi	34.48	208,771	7/69	541,583
Casteel	117.78	932,240	11/69	2,418,376
Chisolm-Hopham	Parcel	5,232	8/70	12,738
Rankin-Gilman	Parcel	600	8/70	1,461
Owens-Corning	3.16	23,743	11/70	57,801
Standish	630.0	2,831,034	4/71	6,892,016
Owens-Corning	2.58	17,133	6/71	41,713
Phillips-Bosio	Parcel	2,136	12/71	4,943
Zanker Ranch	145.7	1,496,478	8/72	3,446,515
Garcia	19.54	236,328	12/72	517,884
Martin-Moore	16.47	200,446	1/73	439,257
Tempco	12.33	327,153	7/75	566,730
County of Santa Clara	Parcel	4,495	1975-76	7,788
County of Santa Clara	2.98	13,476	4/76	20,716
Brazil	54.546	513,359	7/76	841,819
McCarthy (1st)	43.0	483,880	12/76	793,479
McCarthy (2 nd)	43.0	483,879	4/77	793,478
McCarthy (3 rd)	43.0	483,879	1/78	743,861
Other Costs (Unallocated)	--	47,693	1978-79	67,043
Calvo	58.415	586,405	1/78	901,473
Leslie Salt	Parcel	820	9/78	1,153
Graham-Cassin	52.8	3,339,932	8/80	3,775,793
Geomax	4.2	273,972	1/81	291,849
TOTAL	1,764.23**	\$13,271,823		\$25,997,834

*Represents costs not allocable to a specific land purchase (e.g., appraisal of land not purchased).

**Acreage has been and will be reduced by the following completed and pending conveyances:

- Santa Clara Valley Water District - flood control easement dated November 25, 1986.
- State of California – 14.8 acres for widening of State Route 237, Grant Deed dated March 17, 1997.
- PG&E - various completed and pending easements.
- Los Esteros Critical Energy Facility - access road easement conveyed November 3, 2003, pursuant to Conveyance Agreement dated November 22, 2002, as amended May 4, 2005; open space easement and pole line license pursuant to Conveyance Agreement dated pending as of March 2006.
- City of Santa Clara, Silicon Valley Power, electric transmission line easement pursuant to Conveyance Agreement dated July 15, 2003, pending as of March 2006.
- Various Agency sanitary sewer trunk line easements.

TABLE 2

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
LAND COST ALLOCATION
PRE-1982 PURCHASES

AGENCY	% SHARE	AMOUNT SHOULD HAVE PAID 1982 DOLLARS	AMOUND PAID 1982 DOLLARS	AMOUNT PAYABLE <DUE> AS OF JUNE 30, 2014
San José ^a	66.494	\$17,287,000	\$19,144,541	<\$439,491>
Santa Clara	15.620	\$4,060,862	\$3,234,047	\$0
West Valley ^{a,b}	6.472	\$1,822,188	\$1,945,035	<\$30,449>
Cupertino ^b	4.074	\$1,160,283	\$1,141,582	\$0
Milpitas ^b	7.092	\$1,603,026	\$523,426	\$439,549
Burbank	0.248	\$64,475	\$9,203	\$30,391
TOTAL	100%	\$25,997,834	\$25,997,834	

County Sanitation District 2-3 rents capacity from San José and Santa Clara. The rental agreement does not entitle it to share in land revenue.

Note(s):

- a. San José allocation reflects the annexation of Sunol into San José in November 30, 2009, and annexation of territory from West Valley into San José in 2007-2013.
- b. Milpitas allocation reflects the capacity transfer from West Valley effective July 1, 2006, and from Cupertino effective January 1, 2009.

TABLE 3

**SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
LAND COST ALLOCATION POST-1982 LAND PURCHASES**

AGENCY	SOUTH Bay Water Recycling Phase 1 easements (1996-1997)	Moseley Tract (56 acres; \$460,000; 9/96)	McCarthy Ranch (6 acres; \$6,534,000; 8/00)	Cargill Pond A-18 (856 acres; \$13,301,250; 10/05)	Silver Creek Reservoir (4.839 acres fee; 1.97 acres permanent easement; \$7,800,000; 3/05)
San José ^a	64.869%	67.923%	67.385%	67.331%	64.869%
Santa Clara	14.440%	14.511%	15.049%	15.103%	14.440%
West Valley ^{a,b}	7.816%	6.928%	6.928%	6.928%	7.816%
Cupertino ^b	5.150%	4.360%	4.360%	4.360%	5.150%
Milpitas ^b	7.485%	6.040%	6.040%	6.040%	7.485%
Burbank	0.240%	0.238%	0.238%	0.238%	0.240%
TOTAL	100%	100%	100%	100%	100%

County Sanitation District 2-3 rents capacity from San José and Santa Clara. The rental agreement does not entitle it to share in land revenue.

Note(s):

- a. San José allocation reflects the annexation of Sunol into San José in November 30, 2009, and annexation of territory from West Valley into San José in 2007-2013.
- b. Milpitas allocation reflects the capacity transfer from West Valley effective July 1, 2006, and from Cupertino effective January 1, 2009.

TABLE 4
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
LAND PARTICIPATION ALLOCATION

(June 30, 2014)

AGENCY	Pre-1982 Land	Moseley Tract , McCarthy, Cargill Pond A-18	South Bay Water
San José ^a	66.494	67.923%	64.869%
Santa Clara	15.620	14.511%	14.440%
West Valley ^{a,b}	6.472	6.397%	7.217%
Cupertino ^b	4.074	3.980%	4.701%
Milpitas ^b	7.092	6.951%	8.533%
Burbank	0.248	0.238%	0.240%
TOTAL	100%	100%	100%

County Sanitation District 2-3 rents capacity from San José and Santa Clara. The rental agreement does not entitle it to share in land revenue.

Note(s):

- a. San José allocation reflects the annexation of Sunol into San José in November 30, 2009, and annexation of territory from West Valley into San José in 2007-2013.
- b. Milpitas allocation reflects the capacity transfer from West Valley effective July 1, 2006, and from Cupertino effective January 1, 2009.

EXHIBIT D

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

PARTICIPATION IN MAJOR PROCESS RELATED IMPROVEMENTS

Intermediate Term Improvements and First Stage Expansion

The construction and design cost of the Intermediate-term Improvement Project for restoration of the Plant capacity to 143 MGD was Eighty-Nine Million Three Hundred Thousand Two Hundred and Thirty Dollars (\$89,300,230.00). The construction costs and design cost of the First Stage Expansion Project for expansion of Plant capacity to 167 MGD was Twenty-Seven Million Eighty-Four Thousand Eight Hundred and Four Dollars (\$27,084,804.00). Agency has fully paid all amounts due for its capacity in the Intermediate Term Improvements and the First Stage Expansion Project.

Water Recycling Improvements

In October 1991, the Regional Water Quality Control Board (RWQCB) approved the San José Action Plan which included development of a reclamation program to reclaim a portion of the San José/Santa Clara Regional Wastewater Facility's (Plant) effluent, thereby providing an alternative to discharging treated effluent to South San Francisco Bay (Bay). In October 1993, the RWQCB incorporated the Action Plan into the Plant's NPDES permit. The South Bay Recycling Program (SBWRP) is intended to satisfy this permit requirement.

Implementation of the SBWRP has been divided into two phases. Under the Phase 1, Water Recycling Program, approximately 9,000 acre-feet per year (up to 21.1 million gallons per day) of recycled water will be produced and distributed beginning in November 1997. The budgeted cost of Phase I was \$139,840,000. Construction of Phase II is now underway, with an estimated cost of \$100,000,000.

On January 12, 1995, TPAC approved a cost sharing method whereby First Parties and Agencies would participate in payment for the Water Recycling Program based on their respective flows to the Plant. Table 1 contains First Parties' and Agencies' allocation of Phase 1 recycling costs, as of January 12, 1995. Table 2 contains First Parties and Agencies share of Phase 2 Recycling costs, as of January 12, 1995. The final Phase 2 cost allocation will be adjusted to reflect the actual cost when construction of the Phase 2 facilities is completed.

First Party Santa Clara and Milpitas elected to cash fund their share of the Phase 1 Recycling Costs. However, effective January 1, 2009, Milpitas assumed the obligations of Cupertino, with respect to a portion of Cupertino debt service obligations for Recycling Cost. Table 3 shows the debt service allocation for the bond issued by San José for Phase 1 costs for First Party San José, and all Agencies including Milpitas, as of January 1, 2009.

Milpitas also elected to cash fund its share of the Phase 2 Recycling Costs. First Parties and all other Agencies chose to utilize State Revolving Loan Fund proceeds for their share of the Phase 2 Recycling costs. However, effective January 1, 2009, Milpitas assumed the obligations of Cupertino, with respect to a portion of Cupertino debt service obligations for Phase 2 Recycling Costs. Table 4 shows the debt service allocation for the SRLF proceeds, as of January 1, 2009.

Long-Term Improvements

On May 14, 2015, TPAC approved the San José -Santa Clara Regional Wastewater Facility Ten-Year Funding Strategy (“Funding Strategy”) whereby First Parties and Agencies participate in the funding of Long-Term Improvements proportionately based on their capacity allocations detailed in Table 1 of Exhibit A, as may be amended. The Funding Strategy contemplates the Administering Agency, pursuing Clean Water State Revolving Fund (“SRF”) loans to the maximum extent possible to finance the Long-Term Improvements. If Agency elects to finance its proportionate share of the costs of the Long-Term Improvements through SRF, short term financing, and long term financing obtained by First Parties or Administering Agency, Agency agrees to execute and deliver to the Administering Agency the necessary documentation to secure such financing and Agency’s repayment thereof.

In the event that all or a portion of financing for the Long-Term Improvements is secured through a short-term variable rate financing program, Agency acknowledges and agrees that any participating Agency will be responsible for its proportionate cost for establishing the financing program based on the total amount to be financed by Agency through the short-term variable rate financing program relative to the total dollar size of the program. Any Agency that requests participation in the program after the deadline established by the Administering Agency for participation may incur additional expenses associated with accommodating the Agency. Agencies that choose to participate in the program can cease their participation upon repayment of the funds and associated costs.

Agency acknowledges and agrees that its participation in any financing obtained by First Parties or the Administering Agency, including amount financed, debt service and repayment scheduled shall be memorialized in a supplemental financing agreement. Any supplemental financing agreement shall be executed prior to or contemporaneous with the closing of the financing.

Notwithstanding the terms and conditions of this Agreement, the process for asserting a claim for breach of the supplemental financing agreement such as nonpayment shall be governed by the provisions of the supplemental financing agreement. If Agency shall fail to make payment when due for their portion of the financing, Agency agrees First Parties shall have the right to institute an action for damages sustained as a result of any such default and shall have the right by mandamus or other proceeding at law or in equity to enforce their rights against Agency and to compel Agency and its officers or employees thereof to perform and carry out their obligations and duties under this Agreement, and any supplemental financing agreement. No remedy conferred upon or reserved to First Parties is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, any supplemental financing agreement, existing at law or in equity or by statute. First Parties or San Jose, as the Administering Agency,

shall provide the Agency notice of payment past due at least thirty (30) calendar days prior to instituting an action for damages.

TABLE 1

SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

Participation in South Bay Water Recycling Program
Phase 1 Capital Costs

<u>Agency</u>	<u>Percent</u>	<u>Phase 1 Budgeted Costs</u>
City of San José ^{a,b}	64.007%	\$89,507,389.
City of Santa Clara ^b	14.292%	\$19,985,933
West Valley Sanitation District ^{a,c}	7.816%	\$10,929,894
Cupertino Sanitary District ^c	5.150%	\$7,201,760
City of Milpitas ^c	7.485%	\$10,467,024
County Sanitation District 2-3*	1.010%	\$1,412,384
Burbank Sanitary District	.240%	\$335,616
TOTAL	100%	\$139,840,000

*County Sanitation District 2-3 (CSD 2-3) has entered into an agreement with FIRST PARTIES for sharing Regional Wastewater Facility costs on a different basis than the other AGENCIES. The agreement provides for adjusting payments to reflect changes in CSD 2-3's flow and loadings. The agreement between CSD 2-3 and FIRST PARTIES do not affect the other AGENCIES participation in the South Bay Water Recycling Program Phase 1 capital costs.

Note(s):

- a. San José allocation reflects the annexation of Sunol into San José in November 30, 2009, and annexation of territory from West Valley into San José in 2007-2013.
- b. San José and Santa Clara allocations vary annually according to assessed property value; values shown are effective as of June 30, 2014.
- c. Milpitas allocation reflects the capacity transfer from West Valley effective July 1, 2006, and from Cupertino effective January 1, 2009.

TABLE 2
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY

Participation in South Bay Water Recycling Program
Phase 2 Capital Cost

<u>Agency</u>	<u>Percent</u>	<u>Phase 2 Estimated Costs</u>
City of San José ^{a,b}	64.007%	\$64,007,000
City of Santa Clara ^b	14.292%	14,292,000
West Valley Sanitation District ^{a,c}	7.816%	7,816,000
Cupertino Sanitary District ^c	5.150%	5,150,000
City of Milpitas ^c	7.485%	7,485,000
County Sanitation District 2-3*	1.010%	1,010,000
Burbank Sanitary District	.240%	240,000
TOTAL	100%	\$100,000,000

*County Sanitation District 2-3 (CSD 2-3) has entered into an agreement with FIRST PARTIES for sharing Regional Wastewater Facility costs on a different basis than the other AGENCIES. The agreement provides for adjusting payments to reflect changes in CSD 2-3's flow and loadings. The agreement between CSD 2-3 and FIRST PARTIES do not affect the other AGENCIES participation in the South Bay Water Recycling Program Phase 2 capital costs.

Note(s):

- a. San José allocation reflects the annexation of Sunol into San José in November 30, 2009, and annexation of territory from West Valley into San José in 2007-2013.
- b. San José and Santa Clara allocations vary annually according to assessed property value; values shown are effective as of June 30, 2014.
- c. Milpitas allocation reflects the capacity transfer from West Valley effective July 1, 2006, and from Cupertino effective January 1, 2009.

TABLE 3
SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY
PHASE 1 RECYCLING DEBT ALLOCATION

Series 2005 A Refunding Bonds - Principal \$54,020,000; last payment due November 15, 2016

Series 2005 B Refunding Bonds - Principal \$27,130,000; last payment due November 15, 2020

San José ^a	West Valley	Cupertino	Milpitas	District 2-3	Burbank
80.356%	10.594%	6.734%	0.643%	1.436%	.237%

Series 2009 A Refunding Bonds - Principal \$21,420,000; last payment due November 15, 2020¹

San José ^a	Milpitas	District 2-3	Burbank
97.198%	0.778%	1.737%	0.287%

Note(s):

- a. San José allocation reflects the annexation of Sunol into San José in November 30, 2009.

¹ The 2009 Refunding Bonds were issued on January 29, 2009 in the Principal Amount of \$21,420,000 for the purpose of refinancing the 2005B Refunding Bonds. On January 20, 2009, Cupertino made cash payment in the amount of ONE MILLION EIGHT HUNDRED TWENTY- SIX THOUSAND EIGHT HUNDRED FORTY-TWO DOLLARS (\$1,826,842.00) to redeem its portion of the 2005B Refunding Bonds. Accordingly, Cupertino has no further obligation for 2005B Refunding Bonds and no obligation for 2009A Refunding Bonds. On January 20, 2009, West Valley made a cash payment in the amount of TWO MILLION EIGHT HUNDRED SEVENTY-FOUR THOUSAND ONE HUNDRED FIFTY-TWO DOLLARS and TWENTY CENTS (\$2,874,152.20) to redeem its portion of the 2005B Refunding Bonds. Accordingly, West Valley has no further obligation for 2009A Refunding Bonds.

TABLE 4**SAN JOSE-SANTA CLARA REGIONAL WASTEWATER FACILITY STATE REVOLVING LOAN FUND DEBT ALLOCATION
FY 1998 thru 2019**

	Annual Debt Service Payment	Annual San José	Annual Santa Clara	Annual Milpitas	Annual West Valley	Annual Cupertino	Annual Sanitation District 2-3	Annual Burbank	Annual Sunol
Repayment Period(s)	100.000%	68.998%	15.409%	0.000%	8.448%	5.567%	1.092%	0.259%	0.227%
FY 1998/1999	\$1,661,799	\$1,146,608	\$256,067	-	\$140,389	\$92,512	\$18,147	\$4,304	\$3,772
FY 1999/2000 thru 2007/2008	\$4,463,882	\$3,079,989	\$687,840	-	\$377,109	\$248,504	\$48,746	\$11,561	\$10,133
Repayment Period(s)	100.000%	68.998%	15.409%	0.486% ^a	8.448%	5.081%	1.092%	0.259%	0.227%
FY2008/2009	\$4,463,882	\$3,079,989	\$687,840	\$21,694	\$377,109	\$226,810	\$48,746	\$11,561	\$10,133
Repayment Period(s)	100.000%	69.225%	15.409%	0.486% ^a	8.448%	5.081%	1.092%	0.259%	0.000% ^b
FY2009/2010 Thru FY2017/2018	\$4,463,882	\$3,090,122	\$687,840	\$21,694	\$377,109	\$226,810	\$48,746	\$11,561	-
FY 2018/2019	\$1,804,020	\$1,248,833	\$277,981	\$8,768	\$152,404	\$91,662	\$19,700	\$4,672	-

Note(s):

- a. Milpitas shall be responsible for 0.486% of the debt service repayment, which is prorated share of the Cupertino payment due on or after January 1, 2009.
- b. San José allocation reflects the annexation of Sunol into San José in November 30, 2009.

EXHIBIT E
ADMINISTERING AGENCY

A. San José to be Administering Agency.

It is mutually agreed that the City of San José is and shall be the Administering Agency of this Agreement, and, as such, shall execute and administer this Agreement.

B. Powers and Duties of Administering Agency, Scope, and Exercise.

Subject to such limitations as may be imposed in this Agreement, the Administering Agency shall have the following powers and duties:

1. To maintain, 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 (subject to the provision of funds therefor in accordance with the provisions of this Agreement), to treat and dispose of all sewage (and by-products thereof) of San José and Santa Clara and of any and all "Outside Users" now or hereafter authorized to discharge or convey sewage into or to said treatment plant or any sewer lines leading thereto, so that said sewage and all effluent from said Plant will not pollute the waters of San Francisco Bay, or any other waters, and so that said sewage will be disposed of in a manner authorized by law.
2. To make, award and enter into contracts with third parties for the construction, improvement, replacement, expansion, or repair of the Treatment Plant or any part or parts thereof.
3. To acquire, by purchase, condemnation or otherwise, any and all real or personal property which it should find to be reasonably necessary for Treatment Plant purposes.
4. To receive, be the depository for, expend and disburse, for the purposes of this Agreement, any and all funds or monies advanced, contributed or paid by the parties hereto to said Administering Agency pursuant to the provisions of this Agreement, together with all income collected from "Outside Users", all other Treatment Plant income, and all other Treatment Plant funds.
5. To keep accurate accounts of all receipts and disbursements of the above-mentioned funds and monies.
6. To provide and supply any and all personnel and services, including, but not limited to, legal, engineering and accounting services, which it should find to be reasonably necessary for the maintenance, repair, expansion, replacement, improvement and operation of said Treatment Plant, the cost and expense of providing such personnel

and services to be charged to and shared by San José and Santa Clara as part of operating or other Treatment Plant costs as elsewhere provided in this Agreement.

7. To exercise any and all other powers, common to both San José and Santa Clara, with respect to the maintenance, repair, expansion, replacement, improvement and operation of the Treatment Plant.
8. To do any and all things reasonably necessary to treatment and dispose of all sewage entering the Treatment Plant in such manner as will comply with all applicable laws and regulations.
9. To do any and all other things which the Administering Agency is required or authorized to do by other provisions of this Agreement.

C. Manner of Exercising Powers or Performing Duties.

The manner in which the Administering Agency shall exercise its powers and perform its duties is and shall be subject to the restrictions upon the manner in which the City of San José could exercise such powers and perform such duties; and shall not be subject to any restrictions applicable to the manner in which the City of Santa Clara could exercise such powers or perform such duties.

D. Expenses of Administering Agency.

It is mutually agreed that the City of San José 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 José to its officers and employees for services rendered by them for Treatment Plant purposes. It is further agreed that San José shall be paid, from Treatment Plant funds, an amount equal to seventeen and three hundred thirteen one thousandths per cent (17,313%) of all the above mentioned salaries and wages as and for the following overhead expenses incurred by San José in furnishing said services and in administering this Agreement, to wit: payments made by San José for retirement benefits, payments made by San José for medical and hospital insurance covering officers and employees, miscellaneous overhead expenses of the auditing, purchasing and engineering departments of San José.

The percentage or amount of overhead allowance or expense payable to San José shall be increased or decreased from year to year to truly reflect actual overhead and incidental costs and expenses incurred by San José for Treatment Plant purposes to the extent that such costs and expenses are not included in other items of cost or expense for which San José is otherwise reimbursed from Treatment Plant Funds.

EXHIBIT F

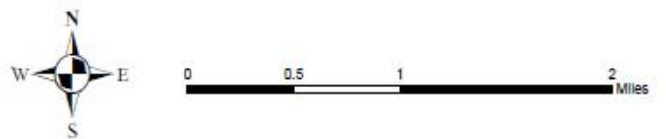
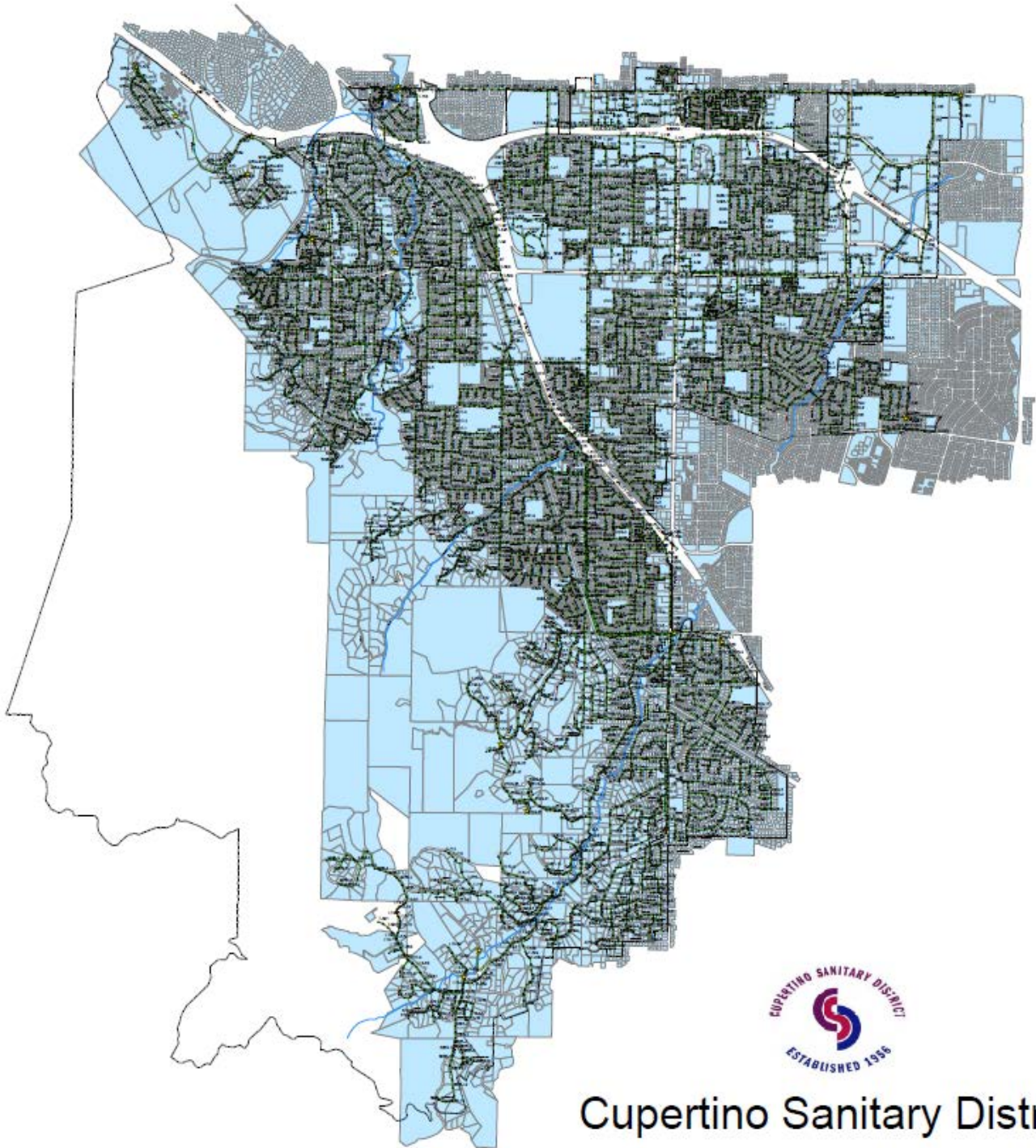


TABLE OF CONTENTS

PART I	DEFINITIONS.....	1
PART II	CAPACITY RIGHTS GRANTED TO AGENCY.....	5
	A. General.....	5
	B. Capacity Rights.....	5
	C. San José-Santa Clara Regional Wastewater Facility Engineering Study.....	5
	D. Restrictions and Regulations Respecting Nature, Kind, Type and Strength of Sewage.....	5
	E. Reports, Data and Maps to be Provided By Agency.....	5
	F. Area Restrictions.....	6
PART III	FUTURE DISCHARGE CAPACITY RIGHTS.....	7
	A. Redistribution of Capacity Rights.....	7
	B. Acquisition of Additional Capacity Rights with Plant Expansion.....	7
	C. Acquisition of Additional Capacity Rights without First Parties Initiated Plan Expansion.....	8
	D. Adjustments to Capacity Rights Due to Operating Conditions.....	8
PART IV	LAND.....	9
	A. Participation.....	9
	B. Sale of Land.....	9
PART V	AMOUNTS PAYABLE BY AGENCY TO FIRST PARTIES..	10
	A. Payments for Existing Capacity Rights in the Intermediate-term and First Stage Expansion Projects.....	10
	B. Payments for Additional Capacity Rights.....	10
	C. Payments for Future Improvements.....	10
	D. Payments for Operation and Maintenance Costs.....	10
	E. Method of Payment.....	11
	F. Credits.....	12
	G. General.....	12
	H. Payments for Operating Reserves	12
PART VI	SAN JOSE-SANTA CLARA TREATMENT PLANT ADVISORY COMMITTEE.....	14
	A. Creation and Membership.....	14
	B. Alternate Members.....	14

	C. Chair.....	14
	D. Secretary.....	15
	E. Meetings.....	15
	F. Procedure.....	15
	G. Powers and Duties.....	15
	H. Action Upon Recommendation.....	16
	I. Expenses.....	17
PART VII	MISCELLANEOUS PROVISIONS.....	18
	A. Effective Date and Duration of Agreement.....	18
	B. Extension, Renewal or Amendment to the Agreement.....	18
	C. Use of Regional Wastewater Facility after Expiration of Term.....	18
	D. Termination.....	18
	E. Sale or Transfer by First Parties.....	18
	F. Industrial Waste Program.....	19
	G. Claims of Breach of Agreement of Inequities.....	19
	H. Liability.....	19
	I. Compliance with Federal and State Laws And Regulations.....	20
	J. Assignment.....	20
	K. Successors and Assigns.....	20
	L. Waivers.....	20
	M. Performance.....	21
	N. Insurance Requirements and Risk Financing.....	21
	O. Titles and Headings.....	23
	P. Notices.....	23
PART VIII	SPECIAL PROVISIONS.....	24
	A. Termination of Agreement.....	24

- EXHIBIT A AGENCY TREATMENT PLANT CAPACITY ALLOCATION
- EXHIBIT B ESTIMATED REPLACEMENT COST OF PLANT AND EQUIPMENT
- EXHIBIT C LAND DISTRIBUTION
- EXHIBIT D PARTICIPATION IN MAJOR PROCESS RELATED IMPROVEMENTS
- EXHIBIT E ADMINISTERING AGENCY
- EXHIBIT F SERVICE AREA

ATTACHMENT B:
Tributary Agencies' Proposed Amendments

AMENDED AND RESTATED AGREEMENT BETWEEN THE CITIES OF SAN JOSE AND SANTA CLARA AND ~~CITY OF MILPITAS AGENCY~~ RELATING TO SAN JOSE/SANTA CLARA REGIONAL WASTEWATER FACILITY WATER POLLUTION CONTROL PLANT.

This AMENDED AND RESTATED AGREEMENT (“Agreement”) is made and entered into this ___ Day of _____ 19__, by and between the CITY OF SAN JOSE and the CITY OF SANTA CLARA, both being municipal corporations of the State of California (hereinafter referred to as “First Parties”), and the CITY OF MILPITAS (hereinafter referred to as “Agency”)

RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

WHEREAS, First Parties are co-owners of the San Jose-Santa Clara Regional Wastewater Facility (“Plant”), which is operated by the City of San Jose Environmental Services Department;

WHEREAS, the Agency owns and operates a collection system that conveys wastewater to the Plant for treatment and disposal;

WHEREAS, First Parties and the Agency previously entered into a Master Agreement for Wastewater Treatment dated March 1, 1983, as it has been amended from time-to-time (“1983 Agreement”), which set forth the parties’ rights and obligations related to the Plant;

WHEREAS, on November 19, 2013, the City of San Jose adopted a Plant Master Plan, which identifies, among other things, significant capital projects necessary to rebuild and improve the Plant through the year 2040;

WHEREAS, First Parties and the Agency desire to amend various provisions of the 1983 Agreement in order to address implementation of the Plant Master Plan, as well as to update and clarify the parties’ rights and obligations related to the future of Plant operations generally;

WHEREAS, this Agreement has been developed by and is satisfactory to the parties and their respective City Councils; and

WHEREAS, this Agreement supersedes any and all prior agreements and understandings between the parties, including the 1983 Agreement.

Now, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained in this Agreement and for other good and valuable consideration, First Parties and the Agency agree as follows:

Part I
DEFINITIONS

A. Administrative Agency.

The City of San Jose is and shall be the Administering Agency of this Agreement and as such shall execute and administer this Agreement in accordance with Section VIII of the 1959 Agreement attached hereto as Exhibit E.

B. Agencies

The term “Agencies” shall be those tributary agencies discharging wastewater into the ~~San Jose/Santa Clara Water Pollution Control~~ Plant, including City of Milpitas previously referred to as “outside users” in the 1959 Agreement.

C. Allowable Capital Expenses

The term “Allowable Capital Expenses” shall mean those Capital Expense necessary for Plant Purposes that do not exceed the annual monetary cap set forth in Part V Section C.

D. 1959 Agreement.

The term “1959 Agreement” shall mean the Agreement between San Jose and Santa Clara, dated May 6, 1959 and entitled “agreement between Sn Jose and Santa Clara Respecting Sewage Treatment Plant” as such Agreement now reads or as it may hereafter from time to time to be amended or renegotiated.

E. Capacity.

The term “capacity” shall mean the Mean Peak Five (5) Day Dry Weather Plant Treatment capacity as contained in Exhibit “A”, attached hereto and incorporated herein by reference as if fully set forth.

F. Capital Expenses

The term “Capital Expenses” shall mean costs and expenses allocated to fund Plant improvements, including by not limited to major and structural rehabilitation projects, upgrades and expansions to meet future user demands, and other capital projects.

G. Director.

The term “Director” shall mean the Director of Environmental Services Department ~~Water Pollution Control~~ for the City of San Jose.

H. Engineering Study.

The term “Engineering Study” shall mean those studies prepared by a third-party consultant on behalf of First Parties ~~that the First Parties shall cause to be made when the Plant has reached eighty five percent (85%) of its designed capacity, beginning with 167 MGD and for every incremental capacity increase thereafter. The first Engineering study shall be performed when the mean peak five day dry weather flow to the plant reaches 142 MGD.~~ The Engineering Study shall include an analysis of Plant capacity needs, the size and nature of proposed facilities to be constructed, a construction timetable and an estimate of total project costs, and an estimate of each participating agency’s share of project cost.

I. Equipment Replacement Fund. Replacement fund shall mean those monies deposited with the administering agency for the replacement of capital facilities at the Plant. The total monies or deposit for the Equipment Replacement Fund shall be capped at an amount not to exceed \$5,000,000.

I.J. Exhibits.

The term “Exhibits” shall mean those Exhibits attached to this Agreement and incorporated into this Agreement by reference as if fully set forth. These Exhibits may be modified as contract amendments or amended from time to time as necessary to reflect changes of fact. The Exhibits shall be reviewed annually, or at such other times as significant changes occur by the Treatment Plant Advisory Committee, which body shall recommend any modifications or amendments required.

I.K. First Stage Expansion.

The term “Frist Stage Expansion” shall mean that portion, as presently described in the report of CH2M Hill, engineers, entitled “San Jose/Santa Clara Water Pollution Control Plant, Capital Improvement Program, Executive Summary, Revised June 1982, as amended or revised, which consists of improvements to all areas of the Plant and expansion of the Liquid Process, Process Control System, Sludge Processing and Disposal and will provide a capacity of 167 MGD.

K.L. Interest.

Interest will be to the extent permitted by law, equal to the rate of interest set forth in the monthly report to the Council of the City of San Jose, prepared by the Director of Finance of San Jose, with respect to City’s portfolio and interest earnings thereon.

L.M. Intermediate –Term Improvements.

The term “Intermediate-Term Improvements” shall mean that portion, as presently described in the report of CH2M Hill, engineers, entitled “San Jose/Santa Clara Water Pollution Control Plant, Capital Improvement Program, Executive Summary, Revised June 1982” and dated June 25, 1982, or as amended or revised, which consists of six (6) elements, as outlined

in Chapter 2 of said report, which are designated to provide the Plant with a mean peak five (5) day dry weather treatment capacity of 143 MGD.

M.N. NPDES Permit

The “NPDES” permit shall mean the National Pollutant Discharge Elimination System Permit issued by the San Francisco Bay Regional Water Quality Control Board, Order No. R2-2014-0034 (NPDES No. CA0037842), as it may be amended or reissued from time to time.

N.O. Operation and Maintenance Expenses~~Costs.~~

Any 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 supplied and materials, labor, services, power, chemicals, 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 Plant facilities in proper operating conditions and for obtaining and installing equipment, accessories or appurtenances that are necessary during the service life of the Plant to maintain the capacity and performance for which the Plant was designed and constructed. Operation and Maintenance Expenses are distinct from and do not include Capital Expenses.

O.P. Parameters.

The term “parameters” shall mean the four (4) treatment parameters of Flow, Biochemical Oxygen Demand (BOD), Suspended Solids (SS), and Ammonic (NH3) as expressed in terms of estimates which are the common denominator for computing annual and/or daily loadings.

P.Q. Plant ~~(Existing Treatment Plant).~~

The term “Plant” shall mean the “San Jose/Santa Clara Regional Wastewater Facility water Pollution Control Plant”.

Q.R. Plant Master Plan

The term “Plant Master Plan” shall mean the certain document approved by the San Jose City Council on November 19, 2013.

R.S. Plant Purposes

The term “Plant Purposes” shall mean the treatment and disposal of wastewater from the Plant’s service area, including the distribution of Recycled Water through the South Bay Water Recycling, for the sole purpose of complying with the NPDES Permit and other applicable state and federal law. Plant Purposes do not include the operation and maintenance of, or capital improvements to the AWPC.

S. Replacement Costs.

~~All capital expenditures for obtaining and installing equipment, accessories or appurtenances which are necessary during the service life of the Plant to maintain and capacity and performance for which the Plant was designed and constructed except:~~

- ~~1. Major rehabilitation which will be needed as individual unit processes or other facilities near the end of their useful lives;~~
- ~~2. Structural rehabilitation;~~
- ~~3. Plant expansions or upgrades to meet future user demands.~~

~~Replacement Fund. Replacement fund shall mean those monies deposited with the administering agency for the replacement of capital facilities at the Plant.~~

~~T. Recycled Water For the purposes of this Agreement, "Recycled Water" shall mean wastewater from the Plant's service area, which as a result of treatment at the Plant, is suitable for uses other than potable use.~~

~~T.U. Silicon Valley Advanced Water Purification Center ("AWPC") The term "AWPC" shall mean that facility owned and operated by the Santa Clara Valley Water District that is designed to enhance the quality of Recycled Water and expand its usage.~~

~~U.V. South Bay Water Recycling. The term "South Bay Water Recycling" shall mean the system of pipelines, pump stations, and storage reservoirs, administered by the City of San Jose, for the purpose of providing Recycled Water to customers. The facilities part of South Bay Water Recycling are shown in Exhibit [insert].~~

~~V.W. TPAC~~

~~The term "TPAC" shall mean the Treatment Plant Advisory Committee.~~

PART II CAPACITY RIGHTS GRANTED TO AGENCY

A. General.

Commencing on the effective date of this Agreement, and thereafter during the term of this Agreement, and subject to all the conditions, limitations, restrictions, terms and provisions contained in this Agreement, and Agency's faithful compliance with an performance of the same, First Parties hereby grant to Agency a right to discharge wastewater into the Plant and to have the same treated and disposed of in an by said Plant the same as wastewater from First Parties.

B. Capacity Rights.

First Parties have designed the Plant to provide for capacity to treat and dispose the volume and strength of wastewater specified in Exhibit "A". Agency shall be entitled for the duration of this Agreement to use the capacity as set forth in said Exhibit "A". First Parties and Agency agree not to discharge more than its capacity in the parameters as is specified in said Exhibit "A", except with the approval and agreement of the First Parties hereto in

accordance with the terms and conditions hereinafter provided, or as provided in Part III. Any continuous and intentional violation of capacity rights will be considered a material breach of this Agreement and will be given priority in the claim of breach process as set forth in Part VII Section G.

C. San Jose/Santa Clara ~~Water Pollution Control Plant Regional Wastewater Facility~~ Engineering Studies.

First Parties agree to make ~~the following an~~ Engineering Studies ~~to redefine all Agencies' future needs~~ as ~~set forth~~ defined in Part I, Section HF.

1. For implementation of the Plant Master Plan; and

1.2. For any single project, or aggregate of projects that are a part of a larger common plan which are forecasted to exceed fifty million dollars (\$50,000,000).

D. Restrictions and Regulations Respecting Nature, Kind, Type, and Strength of Sewage.

First Parties shall inform Agency of the Industrial Waste Ordinance of the City of San Jose concerning the types and condition of discharge which would be detrimental to the Plant. Each party to this Agreement shall adopt and enforce ordinances, resolutions, rules and regulations to conform to the restrictions of said Ordinance. Any waiver to the above must be authorized by written Resolution of both the Council of the City of San Jose and the Council of the City of Santa Clara. Each party to this Agreement shall also comply with the applicable statutes, ordinances, rules and regulations of agencies of the United States of America and the State of California.

E. Reports, Data and Maps to be Provided by Agency and First Parties.

It is mutually agreed that all parties shall prepare and file with the Director and Agency, reports, data and maps as deemed necessary by the Director and Agency.

F. Area Restrictions.

Agency, unless otherwise authorized by written resolutions of the governing boards of both the City of San Jose and the City of Santa Clara shall not, and agrees that it will not, discharge or cause, allow, permit or suffer to be discharged into the Plant, or into any sewer line or lines which convey either directly or indirectly any wastewater to the Plant, any wastewater which is produced in, or emanates, or comes from any territorial property situated outside the service area map attached as Exhibit [insert]E.

First Parties and Agency further agree not to discharge or cause to be discharged, any wastewater into any sewer line or lines of the other party, either directly or indirectly, conveying wastewater to the Plant without written authorization of the owner of the sewer line.

PART III
FUTURE DISCHARGE CAPACITY RIGHTS

A. Redistribution of Capacity Rights.

1. In order to dispose of capacity, any of the Agencies or first Parties may designate all or a portion of its capacity right as “excess pooled capacity,” which shall be available for disposal as hereinafter provided.
2. Any of the Agencies or First Parties may acquire excess pooled capacity as recommended by TPAC. Any of the Agencies or First Parties may acquire excess pooled capacity at the replacement cost as described in Exhibit “B” plus that portion of the selling party’s replacement balance remaining in the Replacement Fund maintained by the Administering Agency.
3. If request for excess pooled capacity total more than the excess pooled capacity available, then TPAC will allocate the pooled capacity actually available in the manner to most closely achieve the same planning horizon for all requesting parties.

B. Acquisition of Additional Capacity Rights with Plant Expansion.

Agency shall have the right to participate in Plant expansions for the purpose of increasing the capacity right into the expanded Plant, subject to the following terms and conditions:

1. Before commencing the design of any such additions, improvements or changes, First Parties shall give Agency written notice of their intention to expand the Plant, and the design year for the proposed expansion, as set forth in the Engineering Study prepared in accordance with Part II, Section C.
2. Within ninety (90) days from and after the giving of such notice, Agency shall notify First Parties in writing whether it wishes to participate into the proposed expansion, and the amount of capacity desired to serve until the design year. If Agency fails to give such notice within such time, it shall be deemed to have elected to not participate in such expansion.
3. If Agency elects not to participate in such expansion, it will pay no party of the cost of the additions, improvements and changes which are made for the purpose of increasing the capacity of the Plant.
4. If Agency elects to participate in such expansion, it shall pay to First Parties that part of the total costs of such additions, improvements and changes as designed in Part V, Section B.
5. In the needs of all parties are different than the next feasible increment of plant expansion capacity as described in the Engineering Study, then TPAC will allocate

the capacity available in a manner to most closely achieve the same planning horizon for all requesting parties.

C. Acquisition of Additional Capacity Rights Without First Parties Initiated Plant Expansion.

If Agency should desire to increase its capacity right into the Plant at a time when no expansion of the Plant as described in the Engineering Study, is proposed by First Parties and no excess pooled capacity is available, then Agency may seek additional capacity by the following methods.

If requested by Agency, First Parties shall initiate a Special Engineering Study to determine the most feasible means to add to the Plant that capacity request by Agency. The Agency agrees to pay for such increment, then First Parties shall expand the Plant by such increment. This right shall not be exercised within five (5) years of completion of the latest Engineering Study.

D. Adjustment to Capacity Rights Due to Operating Conditions.

1. In the event of major Plant facility failure caused by an earthquake, explosion, war, flooding or the like, reductions in operational capacity and any cost of restoration shall be borne by all agencies, including San Jose/Santa Clara and Agency in accordance with a revised Exhibit "A" and the cost of restoration shall be borne proportionately.
2. Any changes in Plant capacity which either increase or decrease the capacity of the Plant, resulting from any means whatsoever, shall be proportionate to each agency including San Jose and Santa Clara in accordance with a revised Exhibit "A".
3. TPAC shall determine annually, during the month of November, the operational capacity and productive use of the Plant in all parameters for all parties and the remaining design capacity of the Plant. By January 31 of the coming year, TPAC shall provide a report of its Findings to the Agencies and First Parties.
4. Agency and First Parties shall not exceed the capacity rights agreed upon pursuant to Exhibit "A."
- ~~5. If at any time, prior to the completion of the Intermediate term Improvements, it becomes necessary to allocate connections to the sewer systems of the combined agencies; in that event to the extent permitted by law, First Parties will received forty percent (40%) of the connections of whatever type and all other discharges will received sixty percent (60%) of the connections of whatever type. Agency's share will be determined by Agreement among the Agencies. This paragraph shall only remain in effect until completion of the Intermediate term Improvements.~~

PART IV
LAND

A. Participation. Participation and rights in Plant land shall be as described in Exhibit "C".

~~B. Sale, Lease, or Transfer of Land. It is mutually agreed between First Parties and Agency, that if If First Parties should, during the term of this Agreement, sell, lease, transfer or otherwise dispose of any-of the land located on Plant property for any purposes of Exhibit "C" which is or are no longer needed for Plant purposes, then the Agency shall have the right to its proportional share in any income or revenue derived from such sale, lease, transfer, or disposal, based upon the land's fair market value as defined in California Revenue and Taxation Code § 110(a), or actual value, whichever is greater. by First Parties proportionally in accordance with Exhibit "C."~~ Each quarter, First Parties shall provide Agency with written notice of the amount of income or revenue received, and the Agency's share of such income or revenue. Payments of revenue due to the Agency shall be made in accordance with Part VI, Section E.

~~C. Other Land Revenue. To the extent First Parties receive income or revenue generated from Plant land other than through Part IV, Section B above, including but not limited to revenue generated from tipping fees received from the landfill located on Plant land, the Agency shall have the right to its proportional share in such revenue in accordance with Exhibit "C."~~ Each quarter, First Parties shall provide the Agency with written notice of the amount of income or revenue received, and the Agency's share of such income or revenue. Payments of revenue due to the Agency shall be made in accordance with Part VI, Section E.

~~D. Section B and C of this Part IV are not intended to conflict with Part VI, Section E(3)~~

PART V
PLANT EXPENSES

A. Expenses Limited to Plant Purposes.

Except as otherwise provided in Part V, Section B below, First Parties agree that all Operation and Maintenance Expenses and Allowable Capital Expenses shall be used solely for Plant Purposes.

B. Capital Expenses Unrelated to Plant Purposes.

Should First Parties seek to build, invest in, or fund projects that are unrelated to Plant Purposes, including but not limited to expansion of the Plant for resource recovery, then First Parties shall give the Agency written notice of their intention and the parties shall promptly meet and confer to discuss the scope of any such project(s) and any Agreement amendments. The Agency shall have the discretion whether to participate in funding such project(s), the default being no participation, whereby the Agency shall not be required to pay any costs associated with such project(s), for the life of the project(s). If the Agency elects to

participate, the Agency shall provide First Parties with written notice of its election within sixty (60) calendar days of the parties' first meet and confer. The terms of funding such project(s) shall be set negotiated and forth in an Agreement amendment.

C. Cap on Allowable Capital Expenses.

In each fiscal year, the Agency's allocation of the total Allowable Capital Expenses shall not exceed [insert] million dollars (\$[insert],000,000) per fiscal year, the amount which shall be adjusted annually using the "Consumer Price Index, All Urban Consumers, All Items, San Francisco-Oakland-San Jose Metropolitan Area, 1982-84=100)," which is compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor agency. Total combined capital project expenses that are equal to or less than [insert] million dollars (\$[insert],000,000) per fiscal year shall not require an amendment to this Agreement.

D. Capital Expenses Exceeding the Cap.

1. If a proposed project's estimated fiscal year Capital Expenses will exceed the cap specified in Part V, Section C, then First Parties and the Agency shall meet and confer to negotiate an amendment to this Agreement that sets forth the terms and conditions related to funding such fiscal year Capital Expenses. First Parties and the Agency shall establish methods for guaranteeing that funding is available (including, but not limited to, securing lines or letters of credit or similar instruments) so that First Parties can award contracts for capital projects without having all of the funds in cash at the time of award.

2. The parties acknowledge that the Plant Master Plan exceeds the cap specified in Part V, Section C. Because the Plant Master Plan was approved prior to execution of this Agreement, the terms and conditions related to funding the Plant Master Plan are set forth in Part IX.

E. Projections of Future Capital Expenses.

First Parties shall develop, regularly update, and maintain reasonable and accurate projections of future Capital Expenses for the Plant. Such projections shall be for at least ten (10) years and updated and distributed to the City on a quarterly basis for its internal budgeting and financial planning purposes. First Parties shall also develop more detailed projections for the next two (2) years and shall also distribute them to the Agency on a quarterly basis.

F. Accounting Records.

1. The Administering Agency shall maintain full, complete and separate financial, statistical and accounting records relating or pertaining to this Agreement, in accordance with generally accepted accounting principles. Such records shall include, but not be limited to, accounting records; payroll documents; overhead expenses; timesheets; all paid vouchers including those for out-of-pocket expenses; other reimbursements supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals, original estimates; estimating work sheets; contract amendments and change order files; insurance documents; written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); memoranda; and correspondence.

2. Such records shall enable the Agency to readily identify the Plant's assets, expenses, costs of goods, and use of funds received from each of the following categories: revenues received from the Agency; revenues received from the other Agencies; revenues and income generated from the sale, lease, transfer, or disposal of Plant land; and revenues and income from generated from other products or services at the Plant.

3. The Administering Agency shall maintain all such records for a minimum period of ten (10) years after termination of this Agreement.

G. Agency's Right to Audit and Inspect Accounting Records.

The Agency and its authorized representatives shall have the right, on an annual basis, to audit, examine, and make copies of or extracts from all financial, statistical, and accounting records of the Administering Agency and the Administering Agency's employees, agents, assigns, successors, and subcontractors, in whatever form they may be kept, relating or pertaining to this Agreement. At the Agency's written request, the Administering Agency shall make such records available for audit and inspection during normal business hours at the Administering Agency's office, within three (3) business days' of the Agency's request. Costs of any audit conducted pursuant to this provision shall be borne by the Agency, except as otherwise provided herein and in Part VI, Section D(3)(c). If the audit discovers findings related to accounting errors, fraud, misrepresentation, or non-performance, including use of wastewater and Recycled Water revenues for purposes unrelated to the Plant or the South Bay Water Recycling, then the Administering Agency shall reimburse the Agency for the total costs of the audit. Within ninety (90) calendar days following the Agency's presentation of its audit findings to the Administering Agency, the Administering Agency shall make any adjustments and/or payments to the Agency.

PART VI
AMOUNTS PAYABLE BY AGENCY TO FIRST PARTIES

A. ~~Payments for Existing Capacity Rights In The Intermediate Term and first Stage Expansion projects.~~ Payments for capacity rights in the Intermediate term and First Stage Expansion projects shall be as described in Exhibit "D".

B.A. Payments for Additional Capacity Rights.

1. Payments with Plant Expansion. All payments associated with a Plant expansion as outlined in Part III, Section B, shall be paid for in proportion to the capacity rights request in the basic parameters or based upon appropriate ratios of Agency design parameters to total project design parameters time total project cost.
2. Payments without Planned Expansion. Should Agency elect to obtain additional capacity rights at a time when First Parties do not intend to expand Plant as designated in Part III, Section B, the expenses associated with this addition of capacity rights shall be the sole responsibility of Agency. All payments for studies, designs and construction to provide additional capacity shall be deposited with the Administering Agency.

3. Payments for Transfer of Capacity Rights. Transfers of capacity rights between First Parties and Agency or between Agency and Agencies, shall be recommended by the Treatment Plant Advisory Committee and approved by First Parties and based upon the pooled capacity costs determined in Part ~~III~~IV, Section A. Transfer of capacity rights shall be based upon written agreement between the participating parties. Payment shall be due and payable in said agreement.

~~C.B.~~ Payments for Allowable Capital Expenses. ~~Future Improvements.~~

1. All payments associated with Allowable Capital Expenses ~~future improvements~~ at the Plant shall be made on the basis of Agency's existing capacity rights. Final payment shall be determined based upon actual project cost. This payment shall be a proportional share in accordance with revised Exhibit "A."~~;~~
2. ~~First Parties shall, not later than March 1st, of any fiscal year, provide Agency with a preliminary estimate of the amount of money required from Agency for future improvements or replacements for the ensuing fiscal year.~~ First Parties shall notify the Agency of the exact amount of each upcoming quarterly payment at least one hundred (120) calendar days prior to the date the Agency's quarterly payment is due.

~~D.C.~~ Payments for Operation and Maintenance Expenses ~~Costs.~~

1. First Parties, Agency and Agencies shall bear the costs of the ~~O~~perations and ~~M~~aintenance expenses of the Plant, including the South Bay Water Recycling but excluding the AWPC. This costs of operation and maintenance of such facilities shall be determined based upon the actual flow (in million gallons per day) of Agency's discharge into the Plant. All other Operations and Maintenance Expenses of the Plant shall be determined based upon the parameters of Agency's actual discharge into the Plant. Agency shall provide to First Parties, by December 1st of each year, data indicating expected discharge for the ensuing fiscal year.
2. First Parties shall, not later than March 1st of each year, provide Agency with a preliminary estimate of the amount of money required to operate and maintain the Plant, including all Water Recycling Facilities operated by the Plant, for the ensuing fiscal year. In addition, First Parties shall indicate Agency's estimated annual share for ~~O~~peration and ~~M~~aintenance Expenses ~~costs~~ as apportioned to treatment parameters, and for Operation and Maintenance Expenses for Water Recycling as apportioned to flow.
3. Agency shall provide to First Parties a copy of Agency's adopted annual sewer revenue program by August 1st of each year. This revenue program shall conform to all federal and/or state guidelines as now exist or may exist in the future.
4. During the first quarter of each fiscal year, TPAC shall review each Agency's total discharge to the Plant for the preceding fiscal year in terms of the parameters. Adjustments in costs, if

any, resulting from this review shall be made in accordance with Part VI, Section ~~DE~~, Paragraph 3(b) herein.

E.D. Method of Payment.

1. Allowable Capital Expenses~~Capital~~ and Land Acquisition. All payments for Allowable Capital Expenses~~capital~~ and land acquisition shall be on a quarterly basis, the first quarter beginning July 1st. The quarterly payment shall be for the reasonably estimated and expected expenditures to be paid during that quarter, based upon the projections provided by First Parties in accordance with Part V, Section E. The quarterly payment shall not be for encumbrances related to future Capital Expenses or payments. These invoices shall be presented at the beginning July 1st. These invoices shall be presented at the beginning of the quarter in which the obligation is anticipated to occur. The date of financial obligations for capital expenses and land acquisitions shall be the date of award of contract. These payments shall be based upon the budget for capital costs for the Plant as recommended by TPAC and approved by the Administering Agency.
2. Operation and Maintenance Expenses~~Costs~~. All payments for Operation & Maintenance~~Expenses~~ shall be made on a quarterly basis, the first quarter beginning July 1st. Invoices for these payments 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 Operation and Maintenance~~Expenses~~~~costs~~ for the Plant as recommended by TPAC and approved by the Administering Agency.
3. General Information.
 - a. All bills shall be paid to the Administering Agency within forty-five (45) days from presentation. Interest will be charged for any late or unpaid bills.
 - b. 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. A statement outlining the method of adjusting costs and actual adjustments shall be included.
 - c. All amounts paid to First Parties shall be subject to independent audit and recalculation by the Agency in accordance with Part V, Section G. If the audit identifies overpricing or overcharges of any nature by the Administering Agency to the Agency in excess of one-half of one percent (>0.5%) of the original billed amount per quarter, then the Administering Agency shall reimburse the Agency for the total costs of the audit. Furthermore, within ninety (90) calendar days following the Agency's presentation of its audit findings to the Administering Agency, the Administering Agency shall make any adjustments and/or payments to the Agency.
 - d. Any and all monies which Agency is herein required to pay to First Parties shall be paid to the Administering Agency.

F.E. Credits

1. Grants or Outside Financial Assistance. Any grants, recoveries, or outside financial assistance received, and any interest earned thereon, shall be credited to First Parties, Agencies and Agency in the quarter following receipt, along with a statement outlining the source of grant revenue and method of distribution. 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.
2. Interest. Interest on monies advanced, credits held for Agency, or amounts due from Agency, shall be determined on a monthly basis.

3. Revenues and Income.

- a. If First Parties should, during the term of this Agreement, receive any income or revenues related to ~~land~~, products or services at the Plant, including by not limited to the revenue from the sale of Recycled Water, then Agency shall be entitled to a share of the income. Each quarter, First Parties shall provide the Agency with written notice of the amount of income or revenue received, and the Agency's share of such income or revenue. Agency's share shall be that proportion of such income based on Agency's contribution to the capital cost or O & M costs, which is applicable during the fiscal year of receipt or such income. The sharing of revenue derived from Plant land is discussed above in Part IV.
General.
- b. Payment of Agency of any revenue or income moneys to which it may become entitled under Part IV or Section E(3)(a) of this Part VI shall first be applied to any Agency debt owed to the Administering Agency or First Parties. Upon discharge of all debt, the Agency shall then have the option to either (i) may be made by off setting the amount of such moneys against any payments which Agency may be obligated to pay to First Parties under the provisions of this Agreement or Agency may request cash reimbursement of any credit balance; or (ii) apply the revenue or income as a credit towards any future quarterly payments due to the First Parties. The Agency shall have the sole discretion to choose which method it prefers. If the Agency requests a cash reimbursement, First Parties shall honor. ~~The request for cash reimbursement shall be honored by First Parties~~ within forty-five (45) days following receipt of the Agency's request, notice. Any additional payments requested from Agency shall be made with the third quarter payment.

PART VII
SAN JOSE-SANTA CLARA TREATMENT PLANT
ADVISORY COMMITTEE

- A. Creation and Membership. The San Jose-Santa Clara Treatment Plant Advisory Committee (TPAC), created by the 1959 Agreement, shall consist of nine (9) members. Three (3) of the members shall be members of the Council of the City of San Jose, shall be appointed by said Council, and shall serve at the pleasure of said Council. Two (2) of the members shall be members of the Council of the City of Santa Clara, shall be appointed by the Council of the City of Santa Clara, and shall serve at the pleasure of said Council. One (1) of the members shall be a member of the Council of City of Milpitas, shall be appointed by said Council, and shall serve at the pleasure of said Council. One (1) of the members shall be a member of the governing body of the ~~County Sanitation District No. 4 of Santa Clara County~~ West Valley Sanitation District, shall be appointed by the governing body of the ~~County Sanitation District No. 4~~ West Valley Sanitation District, and shall serve at the pleasure of said body. One (1) of the members shall be a member of the governing body of the Cupertino Sanitary District, shall be appointed by the governing body of the Cupertino Sanitary District, and shall serve at the pleasure of said body. The ninth (9th) member shall be the City Manager of San Jose or a designated representative. No member shall have more than one (1) vote.
- B. Alternate Members.
The Council of the City of San Jose may appoint three (3) of its Council members as alternate members of TPAC. The Council of the City of Santa Clara may appoint two (2) of its Council members as alternate members of TPAC. The Council of the City of Milpitas may appoint one (1) of its Council members as an alternative member of TPAC. The governing body of the ~~County of Sanitation District No. 4~~ West Valley Sanitation District and the governing body of the Cupertino Sanitary District may each appoint one (1) of its members as an alternate member of TPAC. Said alternate members shall serve in the place and stead of any of regular members whenever said regular member should be absent from a meeting of TPAC.
- C. Chair.
At its July meeting, the members of TPAC shall elect a Chair of TPAC. The Chair shall serve as such until the election of his successor, or until cessation of membership on the TPAC, whichever is earlier. Vacancies in the office of the Chair occurring in-between regular elections, may be filled by TPAC electing a Chair elected to serve until the next regular election. The Chair shall preside at all meetings. In the event the Chair should be absent from any meeting, the members of TPAC may elect a Chair pro tem to serve as Chair during the latter's absence.
- D. Secretary.
The Administering Agency shall provide a secretary for TPAC. Said secretary shall keep minutes of TPAC proceedings and shall also have custody of all books, records and papers of TPAC.
- E. Meetings.

Regular meetings of TPAC shall be held at a time and place to be determined by TPAC. Special meetings may be called at any time by the Chair, to be held at a reasonable time and place specified in the notice calling the special meeting, subject to applicable requirements of law.

F. Procedure.

Except as may otherwise be provided by Resolution of TPAC, the procedure to be followed by TPAC at its meetings shall be that set forth in Robert's Rules of Order.

TPAC may act by resolution or motion; a motion duly passed by TPAC and entered at length on TPAC's minutes may be deemed to be a resolution.

G. Power and Duties.

TPAC shall have the following powers and duties with respect to those items to be considered.

1. Make recommendations to First Parties and Agencies with respect to policy relating to the Plant and its maintenance, repair, expansion, replacement, improvement and operation.
2. Make recommendation to the legislative bodies of First Parties and Agencies with respect to proposed amendments and revisions to exhibits to this Agreement.
3. Make recommendations to both First Parties and Agencies with respect to the advisability of selling interests in the Plant.
4. Make recommendations to First Parties with respect to the advisability of entering into contracts with other entities desiring to use the Plant on a rental or other basis.
5. Make recommendations to the Administering Agency and Agencies as to type and amount of insurance to be purchased for the Plant.
6. Annually, during the month of May in each fiscal year, TPAC shall review and recommend to the legislative bodies of First Parties and Agencies, a proposed budget to the ensuing fiscal year for the maintenance, expansion, replacement, improvement and operation of the Plant.
7. Make recommendations to the Administering Agency with respect to the award of consultant, construction of service contracts relating to the Plant.
8. Annually, TPAC shall file with the legislative bodies of First Parties and Agencies, a report on Plant capacity pursuant to Part III, Section D, paragraph 3.
9. Make recommendations to First Parties and Agencies with respect to the redistribution of pooled excess capacity pursuant to Part III, Section A, paragraphs 1 and 2.

10. Periodically, TPAC shall review and make current, long range plans for expansion and/or improvement of the Plant to provide for the anticipated Plant capacity required to accommodate the general plans of San Jose, Santa Clara and Agencies and to meet current wastewater discharge requirements.

11. Make recommendations to the legislative bodies of First Parties and Agencies with respect to claim of breach proceedings pursuant to Part VIII, Section G.

H. Action Upon Recommendations.

The legislative bodies of First Parties or the Agencies, shall not adopt any motion, Resolution or Ordinance that is contrary to any recommendation submitted to it by TPAC with respect to the Plant and its maintenance, repair, expansion, replacement, improvement and operation without a finding of fact or facts justifying such contrary action. The finding of fact or facts shall be submitted in writing to TPAC within fifteen (15) days after any contrary action. All policy matters as determined by the Director requiring an adoption of a motion, Resolution or Ordinance by the Council of the City of San Jose relating to the Plant and its maintenance, repair, expansion, replacement, improvement and operation, shall first be submitted to TPAC for its recommendation and in sufficient time, as determined by the Administering Agency, to allow TPAC to make recommendation thereon. The Council of the City of San Jose shall not act upon any such policy matter until it has received the recommendation from TPAC. If TPAC does not submit its recommendation to the Council of the City of San Jose within the prescribed time, the City Council may adopt such a motion, Resolution or Ordinance. If a legislative body is presented with any evidence not considered by TPAC in the making of any recommendation, then, prior to the taking of action contrary to said recommendation, if time permits as determined by the Administering Agency, the legislative body shall refer the matter back to TPAC for a supplementary report. Said supplementary report shall be submitted by TPAC within thirty (30) days after reference, or such longer period as may be designated by the legislative body. If TPAC fails to make such supplementary report within the time specified, the legislative body is free to consider such evidence without TPAC recommendations. In the event of an emergency as determined by the Director, the above procedure may be waived.

I. Expenses.

Members of TPAC shall be reimbursed for all expenses reasonably incurred by them in the performance of their duties, and that provision therefor, shall be made in the annual budget. Such expenses shall be considered as part of the “operating costs” of the Plant.

PART VIII
MISCELLANEOUS PROVISIONS

A. Effective Date and Duration of Agreement.

It is hereby agreed that the effective date of this Agreement shall be the date on which all parties to this Agreement have executed same, and that this Agreement shall be in force and

effect for a term beginning on said effective date and extending to, and including, and ending on January 1, ~~2031~~2050, or until sooner termination by mutual written agreement of the parties hereto or by operation of law or because of a material breach by one of the parties hereto.

B. Extension, Renewal or Amendment to the Agreement.

It is mutually agreed that the term of this Agreement may be extended or renewed only by mutual written agreement of the parties hereto and that this Agreement, including exhibits, may be amended or supplemented by a mutual written agreement of the parties hereto.

~~Beginning ten (10) years after the Effective Date of this Agreement, and at least every ten (10) years thereafter, this Agreement shall be reviewed in its entirety by First Parties and Agency in the year 2002 to consider any amendments. First Parties and Agency further agree that in the year 2030, they will meet and confer in good faith to negotiate a revised or new Agreement.~~

C. Use of Plant After Expiration of Term.

If the Agreement is terminated or is not renewed in the year 2050, the Agency shall have the right to continue discharging to the Plant, provided all payments of the Agency's share of Plant costs are made. All other rights under this Agreement shall cease.

D. Termination.

If for any reason this Agreement is terminated by mutual consent of both parties, then the discharging capacity rights of the Agency shall be considered "excess pooled capacity" pursuant to the terms of Paragraph III, Section A. This capacity shall be reserved for the Agency and Agency shall continue to pay for all costs associated with such capacity until such time as that capacity is either purchased by other users pursuant to the terms of this Agreement, or until failure of the Plant to treat wastewater.

E. Sale or Transfer by First Parties.

Nothing in this Agreement contained shall be deemed to prohibit or restrict First Parties, or either of them, from selling, granting, assigning or otherwise transferring this Agreement or any part or interest therein, or the Plant or any part or interest therein, or any right to discharge wastewater therein and to have the same therein treated and disposed of, to any corporation, district, governmental organization or entity or to any other person or persons, provided that any such transaction shall be subject to such rights and privileges as First Parties and the Agency may have under and by virtue of the provisions of this Agreement.

F. Industrial Waste Program.

The Administering Agency agrees to maintain personnel for the specific purposes of assisting all parties with matters concerning industrial waste. Such responsibilities shall include industrial waste monitoring, sampling and analysis, technical advice and surveillance of all industrial dischargers tributary to the Plant. The Administering Agency agrees to be responsible for issuing notices of non-conformance within the Agency's service area for violations of ordinance requirements in Part II, Section D. The Agency shall be responsible

for the adoption and enforcement of any Industrial Waste Ordinance requirements. The Administering Agency shall endeavor to keep all dischargers informed of federal, state, county and city laws, rules regulations, standards and ordinances relating to industrial waste requirements.

G. Claims of Breach of Agreement or of Inequities.

In the event any party of this Agreement should at any time claim that the other party has in any way breached or is breaching this Agreement, or that the Agreement is inequitable, the complaining party shall file with the legislative body or bodies of the other parties, and with TPAC, a written claim of said breach or inequity, describing the alleged breach or inequity and otherwise giving full information respecting the same. TPAC shall within two (2) months at a place specified by it, give all concerned parties full opportunity to be heard on the matter, and shall, upon conclusion of said hearing, give the legislative bodies of both parties a full report of its findings and recommendations. Said report, findings and recommendations shall be deemed advisory only; shall not in any way bind any of the parties hereto; and shall not be deemed to establish any facts, either presumptively or finally. Upon receipt of said report and recommendations, if any party is dissatisfied with or disagree with same, the legislative bodies of all parties concerned shall jointly meet with each other within two (2) months at a place to be determined by them, for the purpose of resolving their differences. No action for breach of this Agreement, and no action for any legal relief because of any breach or alleged breach of this Agreement shall be filed or commenced, and nothing shall be done by either party to rescind or terminate this Agreement, unless and until the above provisions of this paragraph have been complied with and unless the complaining party has first given to the other party three (3) months from the conclusion of said joint meeting of said legislative bodies within which to cure any breach or alleged breach.

H. Liability and Indemnification.

~~It is mutually agreed that any liability of First Parties, or of the City of San Jose as the Administrative Agency for any damage to any person or property arising First Parties shall indemnify, defend, and hold harmless (to the full extent permitted by law) the Agency and its officers, officials, employees, volunteers, and agents from and against any and all claims, liability, loss, injuries, damage, expense, and costs (including without limitation costs and fees of litigation) (collectively, "Damages") of every nature arising out of or resulting from any dangerous or defective condition in the Plant or any part or property thereof-, or arising or resulting from any act or omission of First Parties or their respective officers, agents, employees or contractors, in the control, administrative, construction, expansions, installation, operation, maintenance or repair of said Plant or any part or property thereof, shall be mutually shared and paid for by First Parties and Agencies on the basis of operations and maintenance or capital costs, whichever is applicable. It is understood and agreed that First Parties in granting to Agencies certain discharge capacity rights in the Plant and to have wastewater treated and disposed of in said Plant, are not guaranteeing or warranting that the Plant will be able to satisfactorily treat such wastewater. In the event the Plant should for any reason other than by the gross negligence or intentional misconduct of First Parties be incapable of satisfactorily~~

~~treating wastewater discharged into the Plant by the Agency or First Parties, First Parties shall in no way be liable to the Agency for any damages arising or resulting from or suffered because of the failure of the Plant to satisfactorily receive, hold, treat or otherwise dispose of wastewater, including but not limited to violations of the NPDES Permit, any order issued by State Water Resources Control Board or the San Francisco Bay Regional Water Quality Control Board, any other applicable permits or licenses, or other applicable local, state or federal law, except for any Damages caused by the sole negligence or willful misconduct of the Agency or the other Agencies.~~

~~Notwithstanding the foregoing, in the event any Damages are occasioned by a force majeure event, including but not limited to floods, earthquakes, other acts of nature, war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of either First Parties or the Agencies, then First Parties and the Agencies shall mutually share the liability of any Damages based upon each party's respective contribution towards Capital Expenses or Operations and Maintenance Expenses, whichever is applicable.~~

~~The above provisions shall survive the expiration or earlier termination of this Agreement and shall not be construed as a waiver of rights by either First Parties or the Agency to contribution or indemnity from third parties.~~

I. Compliance With Federal and State Laws and Regulations.

Agency and First Parties agree to comply with any and all Federal, State, or local laws, the rules, regulations, standards and requirements of any Federal, State, or local board, commission, agency or similar body, and the decisions of any court of competent jurisdiction which must be complied with to enable First Parties to qualify for Federal or State grants for the construction, improvement, administration, operation, maintenance, or repair of the Plant.

J. Assignment.

Agency shall not assign or transfer any interest nor the performance of any of Agency's obligations hereunder without the prior written consent of First Parties, and any attempt by Agency to so assign this Agreement or any rights, duties or obligations arising hereunder without written consent shall be void and of no effect.

K. Successors and Assigns.

It is mutually agreed by all the parties hereto that the agreements, covenants, conditions, limitations, restrictions and undertakings herein contained shall, subject to the provisions as to assignments, apply to and bind the successors and assigns of the respective parties hereto as if they were in all cases named.

L. Waivers.

One or more waivers of any term, covenant or condition by either party shall not be construed as a waiver of a subsequent breach of the same or any other term, covenant or condition and

the consent or approval by either party to any act shall not be deemed to waive or render unnecessary either party's consent or approval for any subsequent similar act by the other party.

M. Performance and Time to be of the Essence.

It is understood and agreed that full and faithful compliance with and performance of each and every covenant and provision of this Agreement by the party or parties required to comply with or perform each such covenant or provision is and shall be of the essence; also that time is and shall be of the essence; also that such full and faithful compliance with and performance of each and every covenant and provision of this Agreement shall be deemed to be a material condition of this Agreement.

N. Insurance.

First Parties shall at all times maintain with responsible insurer or insurers sufficient insurance against loss or damage to the Plant as is customarily maintained with respect to loss and property of like character. Each party hereto shall be named as a co-insured. First Parties shall maintain with a responsible insurer or insurers, workmen's compensation insurance and insurance against public liability and property damage. The premiums on all such insurance shall be a part of the Operation and ~~m~~Maintenance ~~and operating~~ ~~e~~Expenses.

O. Titles and Headings.

The sub-headings and titles of this Agreement are inserted for the convenience of reference only and shall not be taken or considered as having any bearing on the interpretation thereof.

P. Notices.

All notices shall be mailed to the address designated beneath the signatures of the parties hereto or as subsequently designated in writing to the parties.

PART IX
PLANT MASTER PLAN

A. Short-Term Financing

The Agency agrees to participate in short-term financing of the Plant Master Plan through the San Jose-Santa Clara Clean Water Financing Authority ("CWFA") using a Commercial Paper Program (or similar short-term debt instrument such as a line of credit or short-term notes) subject to the following terms and conditions:

1. The total amount of short-term financing incurred by the Administering Agency on behalf of the Agency shall not exceed XX million dollars (\$XX,000,000) through the end of fiscal year 2017-2018, unless otherwise authorized in writing by the Agency. This amount shall be in addition to the Agency's annual allocated payments of Allowable Capital Expenses.

2. The Agency shall review and approve in writing the terms and structure of any proposed short-term financing program prior to the Administering Agency's incurring debt on the Agency's behalf.

B. Long-Term Financing

1. The Agency will participate in long-term financing of the Plant Master Plan. Before the Agency can participate, however, the Agency must have an opportunity to review the Engineering Study of the Plant Master Plan, as required in Part II, Section C(1) above. First Parties and the Agency shall meet and confer to discuss the options for long-term financing based upon the information contained in the Engineering Study. The Agency will consider the following options for long-term financing:

a. The Agency may participate in subsidized, low-cost long-term financing secured by the Administering Agency for the Plant Master Plan from various state and/or federal grant and loan programs, subject to the Agency's review and approval of terms and conditions for such financing. Participation may be through the CWFA or directly with the state or federal awarding agency. Any agreement to participate under this provision shall be in writing, in the form of an amendment to this Agreement or in the form of a Side Letter Agreement.

b. Alternatively, the Agency may self-finance the long-term financing of the Plant Master Plan, to the extent any costs are not financed with state and/or federal grants and low-cost loans.

PART XVIII
SPECIAL PROVISIONS

~~A. TERMINATION OF AGREEMENTS. It is mutually agreed by all parties hereto that the following agreements heretofore entered into between the CITY OF SAN JOSE and the CITY OF MILPITAS; or between the CITY OF SANTA CLARA and the CITY OF MILPITAS; or between the CITY OF MILPITAS, and both the CITY OF SAN JOSE and the CITY OF SANTA CLARA relating to the Plant, and any and all supplements, addendums, changes, or amendments thereto, are hereby terminated.~~

~~a. July 10, 1973 — Agreement between Cities of San Jose and Santa Clara and the Milpitas Sanitary District relating to sewage treatment plant.~~

~~b. January 25, 1974 — Amendment to Agreement between Cities of San Jose and _____ Santa Clara and Milpitas Sanitary District relating to sewage treatment plant.~~

~~c. July 16, 1979 — Agreement between the Cities of San Jose, Santa Clara~~

~~and Milpitas providing for the sharing of costs to be incurred in connection with the employment of a consultant or consultants for the preparation of a study or studies relating to the uses of reclaimed wastewater from the San Jose/Santa Clara Water Pollution Control Plant facility.~~

~~d. April 8, 1981 Settlement Agreement by and between the Cities of San Jose, Santa Clara and the City of Milpitas.~~

~~e. April 13, 1981 Agreement by and Between the Cities of San Jose, Santa Clara, and the City of Milpitas, Providing Interim Allocation of Treatment Capacity.~~

~~B. BASIC CHARGE. Agency agrees to pay \$1,350,803.00 to First Parties in order to discharge wastewater and have it treated at the Plant. This cost represents an 8.5/160 share of \$25,426,803 value of the Plant as determined for the July 10, 1973 Agreement between the Parties. Agency further agrees to make principal and interest payments to First Parties for this basic charge as shown in Exhibit G. Any payments of principal by Agency before payment date shall not incur any prepayment penalties. If any prepayments occur, Exhibit G shall be revised to reflect the appropriate reduction in interest due.~~

C.A. EASEMENTS

- a. General First Parties have conveyed by Quitclaim Deed an easement to Agency for sanitary force interceptors across land of the Plant as specifically described in Exhibit H. Agency shall have the right to discharge and conduct sewage to the Plant subject to all terms and conditions of this Agreement and the easement. Agency shall maintain and repair said interceptors except in the case of damage caused by operations, procedures or activities of First Parties. First Parties agree to reimburse Agency at Plant expense for any damage which they may cause to interceptors within thirty (30) days of presentation of bill by Agency. First Parties agree to extend the term of the easement described in Exhibit H to January 1, 20~~50~~³¹ or until termination of this Agreement, whichever occurs first.
- b. Termination Upon termination of this Agreement, Agency agrees to immediately reconvey said easement to First Parties. Upon termination, interceptors installed in said easement shall become the property of the Plant to maintain, repair, remove, dispose of, abandon, or use in any manner deemed best by First Parties. However First Parties shall not exclude Agency from discharging into said interceptor until all provision of Part VIII, Paragraphs C and D have been met.

- c. Relocation If, during the term of this Agreement, First Parties deem it necessary for the operation of the Plant to move or relocate any or all of the interceptor in said easement, the First Parties agree to do so at Plant expense and direction. In addition, First Parties shall be responsible for granting a new easement and upon completion of construction of the new interceptors, Agency agrees to reconvey the old easement to First Parties and accept maintenance of the new interceptor. If Agency, during the term of this Agreement, should desire to relocate sewer interceptors, it agrees to first notify First Parties of its intentions to relocate and the proposed location of the new interceptor. First Parties shall then approve or disapprove proposed location based upon the operational needs of the Plant. If approved, Agency agrees to be solely responsible for the design and construction of the new interceptor within easements granted to Agency by First Parties.

IN WITNESS WHEREOF, San Jose, Santa Clara and Milpitas have caused this Agreement to be executed in their respective names and their respective seals to be affixed hereunto by their duly authorized officers, all as of the date first written.

APPROVED AS TO FORM:

Deputy City Attorney

ATTEST:

City Clerk

APPROVED AS TO FORM:

Deputy Clerk Attorney

ATTEST:

By _____
City Clerk

CITY OF SAN JOSE, a municipal corporation

By _____
Mayor

Address _____

Telephone No. _____

CITY OF SANTA CLARA, a municipal corporation

By _____
Mayor

By _____
City Manager

Address _____

Telephone No. _____

“First Parties”

APPROVED AS TO FORM:

City Attorney

ATTEST:

Clerk

CITY OF MILPITAS

BY _____
Mayor

By _____
City Manager

Address _____

Telephone No. _____
“Agency”

TABLE 1

SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT
LAND PURCHASES

TABLE 2

SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT
SUMMARY OF DISTRIBUTION OF CAPITAL COSTS TO PARAMETERS

TABLE 3

SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT

TABLE 4

SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT
ALLOCATED SHARE COST OF FACILITIES

TABLE 5

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

Land Cost Allocation

EXHIBIT D

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

PARTICIPATION IN
INTERMEDIATE TERM AND FIRST STAGE EXPANSION PROJECTS

TABLES 1-5

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

Participation in Intermediate-term Projects

TABLE 6-7

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

Participation in First Stage Expansion

EXHIBIT E
ADMINISTERING AGENCY

- A. San Jose to be Administering Agency. It is mutually agreed that the City of San Jose is and shall be the Administering Agency of this Agreement, and, as such, shall execute and administer this Agreement
- B. Powers and Duties of Administering Agency, Scope and Exercise. Subject to such limitations as may be imposed in this Agreement, the Administering Agency shall have the following powers and duties:
1. To maintain, repair, expand, replace, improve, and operate the ~~treatment~~ Plant for Plant Purposes, and to do any and all things which it shall find to be reasonably necessary, with the respect to its maintenance, repair, expansion, replacement, improvement and operation (subject to the provision of funds therefor in accordance with the provisions of this Agreement), to treat and dispose of all sewage (and by-products thereof) of ~~San Jose and Santa Clara~~ First Parties, Agency, and of any and all “Outside Users” now or hereafter authorized to discharge or convey sewage into or to said ~~treatment p~~ Plant or any sewer lines leading thereto, so that said sewage and all effluent from said Plant will not pollute the waters of San Francisco Bay, or any other waters, and so that said sewage will be disposed of in a manner authorized by law.
 2. To make, award and enter into contracts with third parties for the construction, improvement, replacement, expansion, or repair of the ~~Treatment~~ Plant or any part or parts thereof.
 3. To acquire, by purchase, condemnation or otherwise, any and all real or personal property which it should find to be reasonably necessary for ~~Treatment~~ Plant ~~p~~ Purposes.
 4. To receive, be the depository for, expend and disburse, for the purposes of this Agreement, any and all funds or monies advanced, contributed or paid by the parties hereto to said Administering Agency pursuant to the provision of this Agreement, together with all income collected from the Agencies, other “Outside Users,” and all other ~~Treatment~~ Plant income, ~~and all other Treatment Plant~~ and funds.
 5. To keep accurate accounts of all receipts and disbursements of the above-mentioned funds and monies, in accordance with Part V, Section F.
 6. To provide and supply any and all personnel and services, including, but not limited, legal, engineering and accounting services, which it should find to be reasonably necessary for the maintenance, repair, expansion, replacement, improvement and operation of said ~~Treatment~~ Plant, the cost and expense of providing such personnel and services to be charged to and shared by ~~San Jose and Santa Clara~~ First Parties as part of operation or other ~~Treatment~~ Plant costs as elsewhere provided in this Agreement.

7. To exercise any and all other powers, common to ~~both San Jose and Santa Clara~~First Parties, with respect to the maintenance, repair, expansion, replacement, improvement and operation of the ~~Treatment~~ Plant.
8. To do any and all things reasonably necessary to treatment and dispose of all sewage entering the ~~Treatment~~ Plant in such manner as will comply with the NDPES Permit and all applicable laws and regulations.
9. To do any and all other things which the Administering Agency is required or authorized to do by other provisions of this Agreement.

C. Manner of Exercising Powers or Performing Duties. The manner in which the Administering Agency shall exercise its powers and perform its duties is and shall be subject to the restrictions upon the manner in which the City of San Jose could exercise such powers and perform such duties; and shall not be subject to any restrictions applicable to the manner in which the City of Santa Clara could exercise such powers or perform such duties.

D. Expense of Administering Agency. It is mutually agreed that the City of San Jose shall be reimbursed from ~~Treatment~~ Plant funds for all reasonable costs and expenses incurred by it as Administering Agency of this Agreement, including, but not limited to, salaries and wages paid by the Administering Agency San Jose to its officers and employees for services rendered by them for ~~Treatment~~ Plant ~~p~~urposes. It is further agreed that ~~San Jose~~the Administering Agency shall be paid, from ~~Treatment~~ Plant funds, an amount equal to seventeen and three hundred thirteen one thousandths per cent (17.313%) of all the above mentioned salaries and wages ~~as and for the following reasonable~~ overhead 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.~~ For calculating the allowable overhead expenses, the Administering Agency shall comply with the most current version of U.S. Office of Management and Budget Uniform Guidance Cost Principles, Audit, and Administrative requirements for Federal Awards, formerly known as OMB Circular A-87.

~~—The percentage or amount of overhead allowance or expense payable to San Jose shall be increased or decreased from year to year to year to truly reflect actual overhead and incidental costs and expenses incurred by San Jose for Treatment Plant purposes to the extent that such costs and expenses are not included in other items of cost or expense for which San Jose is otherwise reimbursed from Treatment Plant Funds.~~

EXHIBIT F
THE CITY OF MILPITAS ULTIMATE SANITARY SEWER SERVICE AREA

EXHIBIT H
QUIT CLAIM DEED

CITY OF SAN JOSE AND CITY OF MILPITAS

AMENDED AND RESTATED AGREEMENT BETWEEN THE
CITIES OF SAN JOSE AND SANTA CLARA
AND
~~AGENCY~~WEST VALLEY SANITATION DISTRICT RELATING TO THE
SAN JOSE, ~~SANTA CLARA~~ ~~WATER~~
~~POLLUTION CONTROL PLANT~~REGIONAL WASTEWATER FACILITY

This AMENDED AND RESTATED AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 19____, by and between the CITY OF SAN JOSE and the CITY OF SANTA CLARA, both being municipal corporations of the State of California (hereinafter referred to as “First Parties”), and ~~COUNTY SANITATION DISTRICT #4~~WEST VALLEY SANITATION DISTRICT (hereinafter referred to as the “~~Agency~~District”).

RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

WHEREAS, First Parties are co-owners of the San Jose-Santa Clara Regional Wastewater Facility (“Plant”), which is operated by the City of San Jose Environmental Services Department;

WHEREAS, the District owns and operates a collection system that conveys wastewater to the Plant for treatment and disposal;

WHEREAS, First Parties and the District previously entered into a Master Agreement for Wastewater Treatment dated March 1, 1983, as it has been amended from time-to-time (“1983 Agreement”), which set forth the parties’ rights and obligations related to the Plant;

WHEREAS, on November 19, 2013, the City of San Jose adopted a Plant Master Plan, which identifies, among other things, significant capital projects necessary to rebuild and improve the Plant through the year 2040;

WHEREAS, First Parties and the District desire to amend various provisions of the 1983 Agreement in order to address implementation of the Plant Master Plan, as well as to update and clarify the parties’ rights and obligations related to the future of Plant operations generally;

WHEREAS, this Agreement has been developed by and is satisfactory to the parties and their respective City Councils and Board of Directors; and

WHEREAS, this Agreement supersedes any and all prior agreements and understandings between the parties, including the 1983 Agreement.

Now, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained in this Agreement and for other good and valuable consideration, First Parties and the District agree as follows:

PART I

DEFINITIONS

A. Administering Agency.

The City of San Jose is and shall be the Administering Agency of this Agreement and as such shall execute and administer this Agreement in accordance with Section VIII of the 1959 Agreement attached hereto as Exhibit E.

B. Agencies.

The term “Agencies” shall be those tributary agencies discharging wastewater into the ~~San Jose/Santa Clara Water Pollution Control~~ Plant, including West Valley Sanitation District ~~previously referred to as “outside users” in the 1959 Agreement.~~

C. Allowable Capital Expenses

The term “Allowable Capital Expenses” shall mean those Capital Expenses necessary for Plant Purposes that do not exceed the annual monetary cap set forth in Part V Section C ~~except as otherwise provided in Section 2.~~

D. 1959 Agreement.

The term “1959 Agreement” shall mean the Agreement between San Jose and Santa Clara, dated May 6, 1959 and entitled “Agreement between San Jose and Santa Clara Respecting Sewage Treatment Plant,” as such Agreement now reads or as it may hereafter from time to time be amended or renegotiated.

E. Capacity.

The term “capacity” shall mean the Mean Peak Five (5) Day Dry Weather Plant Treatment capacity as contained in Exhibit “A,” attached hereto and incorporated herein by reference as if fully set forth.

F. Capital Expenses.

The term “Capital Expenses” shall mean costs and expenses allocated to fund Plant improvements, including but not limited to major and structural rehabilitation projects, upgrades and expansions to meet future user demands, and other capital projects.

G. Director.

The term “Director” shall mean the Director of ~~Water Pollution Control~~ Environmental Services Department for the City of San Jose.

H. Engineering Study.

The term “Engineering Study” shall mean those studies prepared by a third-party consultant on behalf of First Parties that ~~the First Parties shall cause to be made when the Plant has reached eighty-five percent (85%) of its designed capacity, beginning with 167 MGD and for every incremental capacity increase thereafter. The first Engineering Study shall be performed when the mean peak five day dry weather flow to the Plant reached 142 MGD. The Engineering Study shall~~ include an analysis of Plant capacity needs, the size and nature of proposed facilities to be constructed, a construction timetable and an estimate of total project costs, and an estimate of each participating agency’s share of project cost.

I. Equipment Replacement Fund.

The term “Equipment Replacement Fund” shall mean those monies deposited with the Administering Agency for the replacement of capital facilities at the Plant. The total monies on deposit for the Equipment Replacement Fund shall be capped at an amount not to exceed \$5,000,000.

J. Exhibits.

The term “Exhibits” shall mean those Exhibits attached to this Agreement and incorporated into this Agreement by reference as if fully set forth. These Exhibits may be modified as contract amendments or amended from time to time as necessary to reflect changes of fact. The Exhibits shall be reviewed annually, or at such other times as significant changes occur, by the Treatment Plant Advisory Committee, which body shall recommend any modifications or amendments required.

K. First Stage Expansion.

The term “First Stage Expansion” shall mean that portion, as is presently described in the report of CH2M Hill, engineers, entitled “San Jose/Santa Clara Water Pollution Control Plant, Capital Improvement Program, Executive Summary, Revised June, 1982” and dated June 25, 1982, or as amended or revised, which consists of improvements to all areas of the Plant and expansion of the Liquid Process, Process Control System, Sludge Processing and Disposal and will provide a capacity of 167 MGD.

L. Interest.

Interest will be to the extent permitted by law, equal to the rate of interest set forth in the monthly report to the Council of the City of San Jose, prepared by the Director of Finance of San Jose, with respect to said City’s portfolio and interest earnings thereon.

M. Intermediate-Term Improvements.

The term “Intermediate-Term Improvements” shall mean that portion, as is presently described in the report of CH2M Hill, engineers, entitled “San Jose/Santa Clara Water Pollution Control Plant, Capital Improvement Program, Executive Summary, Revised June, 1982” and dated June 25, 1982, or as amended or revised, which consists of six (6) elements, as outlined in Chapter 2 of said report, which are designated to provide the Plant with the mean peak five (5) day dry weather treatment capacity of 143 MGD.

N. NPDES Permit.

The term “NPDES” Permit shall mean the National Pollutant Discharge Elimination System Permit issued by the San Francisco Bay Regional Water Quality Control Board, Order No. R2-2014-0034 (NPDES No. CA0037842), as it may be amended or reissued from time to time.

O. ~~Operation~~ng and Maintenance ~~Costs~~Expenses.

Any 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, chemicals, 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~~ Plant in proper operating condition and for obtaining and installing equipment, accessories or appurtenances that are necessary during the service life of the Plant to maintain the capacity and performance for which the Plant was designed and constructed. ~~s.~~ Operation and Maintenance Expenses are distinct from and do not include Capital Expenses.

~~LP.~~ Parameters.

The term “Parameters” shall mean the four (4) treatment parameters of Flow, Biochemical Oxygen Demand (BOD), Suspended Solids (SS), and Ammonia (NH₃) as expressed in term of estimates which are the common denominator for computing annual and/or daily loadings.

~~QM.~~ Plant ~~(Existing Treatment Plant).~~

The term “Plant” shall mean the San Jose ~~Santa Clara~~ ~~Water Pollution Control Plant~~ Regional Wastewater Facility.

R. Plant Master Plan.

The term “Plant Master Plan” shall mean that certain document approved by the San Jose City Council on November 19, 2013.

S. Plant Purposes.

The term “Plant Purposes” shall mean the treatment and disposal of wastewater from the Plant’s service area, including the distribution of Recycled Water through the South Bay Water Recycling, for the sole purpose of complying with the NPDES Permit and other applicable state and federal law. Plant Purposes do not include the operation and maintenance of, or capital improvements to the AWPC.

Replacement Costs:

~~All 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 rehabilitation which will be needed as individual unit processes or other facilities near the end of their useful lives;~~

~~Structural rehabilitations;~~

~~Plant expansions or upgrades to meet future user demands.~~

~~– Replacement Fund.~~

~~Replacement fund shall mean those monies deposited with the Administering Agency for the replacement of capital facilities at the Plant.~~

T. Recycled Water.

For the purposes of this Agreement, “Recycled Water” shall mean wastewater from the Plant’s service area, which as a result of treatment at the Plant, is suitable for uses other than potable use.

U. Silicon Valley Advanced Water Purification Center (“AWPC”).

The term “AWPC” shall mean that facility owned and operated by the Santa Clara Valley Water District that is designed to enhance the quality of Recycled Water and expand its usage.

V. South Bay Water Recycling.

The term “South Bay Water Recycling” shall mean the system of pipelines, pump stations, and storage reservoirs, administered by the City of San Jose, for the purpose of providing Recycled Water to customers. The facilities part of South Bay Water Recycling are shown in Exhibit [insert].

W. TPAC.

The term “TPAC” shall mean the Treatment Plant Advisory Committee.

PART II

CAPACITY RIGHTS GRANTED TO ~~AGENCY~~THE DISTRICT

A. General.

Commencing on the effective date of this Agreement, and thereafter during the term of this Agreement, and subject to all the conditions, limitations, restrictions, terms and provisions contained in this Agreement, and ~~Agency’s~~the District’s faithful compliance with and performance of the same, First Parties hereby grant to ~~Agency~~the District a right to discharge wastewater into the Plant and to have the same treated and disposed of in and by said Plant the same as wastewaters of First Parties.

B. Capacity Rights.

First Parties have designed the Plant to provide for capacity to treat and dispose the volume and strength of wastewater specified in Exhibit “A₁”; ~~Agency~~The District shall be entitled for the duration of this Agreement to use the capacity as set forth in said Exhibit “A₁”; First Parties and ~~Agency~~the District agree not to discharge more than its capacity in the parameters as is specified in said Exhibit “A₁”; except with the approval and agreement of the First Parties hereto in accordance with the terms and conditions hereinafter provided, or as provided in Part III. Any continuous and intentional violation of capacity rights will be

considered a material breach of this Agreement and will be given priority in the claim of breach process as set forth in Part VIII Section G.

C. ~~San Jose/Santa Clara Water Pollution Control Plant~~Regional Wastewater Facility Engineering Studies.

First Parties agree to make ~~the following an~~Engineering Studies ~~to redefine all Agencies' future needs,~~ as ~~set forth~~defined in Part I, Section ~~HF~~:

1. For implementation of the Plant Master Plan; and

2. For any single project, or aggregate of projects that are a part of a larger common plan, which are forecasted to exceed fifty million dollars (\$50,000,000).

D. Restrictions and Regulations Respecting Nature, Kind, Type and Strength of Sewage.

First Parties shall inform ~~Agency~~the District of the Industrial Waste Ordinance of the City of San Jose concerning the type and condition of discharge which would be detrimental to the Plant. Each party of this Agreement shall adopt and enforce ordinances, resolutions, rules and regulations to conform to the restrictions of said Ordinance. Any waiver to the above must be authorized by written Resolution of both the Council of the City of San Jose and the Council of the City of Santa Clara. Each party to this Agreement shall also comply with applicable statutes, ordinances, rules and regulations of agencies of the United States of America, and the State of California.

E. Reports, Data and Maps to be Provided by ~~Agency~~the District and First Parties.

It is mutually agreed that all parties shall prepare and file with the Director and District reports, data and maps as deemed necessary by the Director and ~~Agency~~the District.

F. Area Restrictions.

~~Agency~~The District, unless otherwise authorized by written resolutions of the governing boards of both the City of San Jose and the City of Santa Clara shall not, and agrees that it will not, discharge or cause, allow, permit or suffer to be discharged into the Plant, or into any sewer line or lines which convey either directly or indirectly any wastewater to the Plant, any wastewater which is produced in, or emanates, or comes from any territorial property situated outside the service area map attached as Exhibit ~~F~~[insert].

First Parties and ~~Agency~~the District further agree not to discharge, or caused to be discharged, any wastewater into any sewer line or lines of the other party, either directly or indirectly, conveying wastewater to the plant without written authorization of the owner of the sewer line.

PART III

FUTURE DISCHARGE CAPACITY RIGHTS

A. Redistribution Of Capacity Rights.

1. In order to dispose of capacity, any of the Agencies or First Parties may designate all or a portion of its capacity right as “excess pooled capacity,” which shall be available for disposal as hereinafter provided.
2. Any of the Agencies or First Parties may acquire excess pooled capacity as recommended by TPAC. Any of the Agencies or First Parties may acquire excess pooled capacity at the replacement cost as described in Exhibit “B” plus that portion of the selling party’s replacement balance remaining in the Replacement Fund maintained by the Administering Agency.
3. If requests for excess pooled capacity total more than the excess pooled capacity available, then TPAC will allocate the pooled capacity actually available in a manner to most closely achieve the same planning horizon for all requesting parties.

B. Acquisition of Additional Capacity Rights with Plant Expansion.

Agency-The District shall have the right to participate in Plant expansions for the purpose of increasing the capacity right into the expanded Plant, subject to the following terms and conditions:

1. Before commencing the design of any such additions, improvements or changes, First Parties shall give Agency-the District written notice of their intention to expand the Plant, and the design year for the proposed expansion, as set forth in the Engineering Study prepared in accordance with Part II, Section C.
2. Within ninety (90) days from and after the giving of such notice, Agency-the District shall notify First Parties in writing whether it wishes to participate in the proposed expansion, and the amount of capacity desired to serve until the design year. If Agency the District fails to give such notice within such time, it shall be deemed to have elected not to participate in such expansion.
3. If Agency-the District elects not to participate in such expansion, it will pay no part of the cost of the additions, improvements and changes which are made for the purpose of increasing the capacity of the Plant.
4. If Agency-the District elects to participate in such expansion, it shall pay to the First Parties that part of the total cost of such additions, improvements and changes as defined in Part VI, Section B.
5. If the needs of all parties are different than the next feasible increment of plant expansion capacity as described in the Engineering Study, then TPAC will allocate the capacity available in a manner to most closely achieve the same planning horizon for all requesting parties.

C. Acquisition of Additional Capacity Rights Without First Parties Initiated Plant Expansion.

If Agency-the District should desire to increase its capacity right into the Plant at a time when no expansion of the Plant as described in the Engineering Study, is proposed by First

Parties and no excess pooled capacity is available, then ~~Agency~~the District may seek additional capacity by the following method:

If requested by ~~Agency~~the District, First Parties shall initiate a Special Engineering Study to determine the most feasible means to add to the Plant that capacity requested by ~~Agency~~the District. When ~~Agency~~the District agrees to pay for such increment, then First Parties shall expand the Plant by such increment. This right shall not be exercised within five (5) years of completion of the latest Engineering Study.

D. Adjustment to Capacity Rights Due to Operating Conditions.

1. In the event of a major Plant facility failure caused by an earthquake, explosion, war, flooding or the like, reductions in operational capacity and any cost of restoration shall be borne by all Agencies, including San Jose/Santa Clara and ~~Agency~~the District in accordance with a revised Exhibit "A₂"; and the cost of restoration shall be borne proportionately.
2. Any changes in Plant capacity which either increase or decrease the capacity of the Plant, resulting from any means whatsoever, shall be proportioned to each agency including San Jose and Santa Clara in accordance with a revised Exhibit "A₂".
3. TPAC shall determine annually, during the month of November, the operational capacity and productive use of the Plant in all parameters for all parties and the remaining design capacity of the Plant. By January 31 of the coming year, TPAC shall provide a report of its findings to the Agencies and First Parties.
4. ~~Agency~~The District and First Parties shall not exceed the capacity rights agreed upon pursuant to Exhibit "A₂".
5. ~~If at any time, prior to the completion of the Intermediate-term Improvements, it becomes necessary to allocate connections to the sewer systems of the combined agencies, in that event, to the extent permitted by law, First Parties will receive forty percent (40%) of the connections of whatever type and all other dischargers will receive sixty percent (60%) of the connections of whatever type. Agency's share will be determined by Agreement among the Agencies. This paragraph shall only remain in effect until completion of the Intermediate-term Improvements.~~

PART IV
LAND

A. Participation.

Participation and rights in Plant land shall be as described in Exhibit "C₂".

B. Sale, Lease, or Transfer of Land.

~~It is mutually agreed between First Parties and Agency that~~ if First Parties should, during the term of this Agreement, sell, lease, transfer, or otherwise dispose of any ~~of the lands of~~

located on Plant property for any purpose~~Exhibit "C" which is or are no longer needed for Plant purposes, Agency~~ then the District shall have the right to its proportional share in any income or revenue derived from such sale, lease, transfer, or disposal, -based upon the land's fair market value as defined in California Revenue and Taxation Code § 110(a), or actual value, whichever is greater.~~by First Parties proportionally in accordance with Exhibit "C."~~ Each quarter, First Parties shall provide the District with written notice of the amount of income or revenue received, and the District's share of such income or revenue. Payments of revenue due to the District shall be made in accordance with Part VI, Section F.

C. Other Land Revenue.

To the extent First Parties receive income or revenue generated from Plant land other than through Part IV, Section B above, including but not limited to revenue generated from tipping fees received from the landfill located on Plant land, the District shall have the right to its proportional share in such revenue in accordance with Exhibit "C." Each quarter, First Parties shall provide the District with written notice of the amount of income or revenue received, and the District's share of such income or revenue. Payments of revenue due to the District shall be made in accordance with Part VI, Section E.

D. Sections B and C of this Part IV are not intended to conflict with Part VI, Section E(3).

PART V PLANT EXPENSES

A. Expenses Limited to Plant Purposes.

Except as otherwise provided in Part V, Section B below, First Parties agree that all Operation and Maintenance Expenses and Allowable Capital Expenses shall be used solely for Plant Purposes.

B. Capital Expenses Unrelated to Plant Purposes.

Should First Parties seek to build, invest in, or fund projects that are unrelated to Plant Purposes, including but not limited to expansion of the Plant for resource recovery, then First Parties shall give the District written notice of their intention and the parties shall promptly meet and confer to discuss the scope of any such project(s) and any Agreement amendments. The District shall have the discretion whether to participate in funding such project(s), the default being no participation, whereby the District shall not be required to pay any costs associated with such project(s), for the life of the project(s). If the District elects to participate, the District shall provide First Parties with written notice of its election within sixty (60) calendar days of the parties' first meet and confer. The terms of funding such project(s) shall be set negotiated and forth in an Agreement amendment.

C. Cap on Allowable Capital Expenses.

In each fiscal year, the District's allocation of the total Allowable Capital Expenses shall not exceed three million dollars (\$3,000,000) per fiscal year, the amount which shall be adjusted annually using the "Consumer Price Index, All Urban Consumers, All Items, San Francisco-

Oakland-San Jose Metropolitan Area, 1982-84=100),” which is compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor agency. Total combined capital project expenses that are equal to or less than three million dollars (\$3,000,000) per fiscal year shall not require an amendment to this Agreement.

D. Capital Expenses Exceeding the Cap.

1. If a proposed project’s estimated fiscal year Capital Expenses will exceed the cap specified in Part V, Section C, then First Parties and the District shall meet and confer to negotiate an amendment to this Agreement that sets forth the terms and conditions related to funding such fiscal year Capital Expenses. First Parties and the District shall establish methods for guaranteeing that funding is available (including, but not limited to, securing lines or letters of credit or similar instruments) so that First Parties can award contracts for capital projects without having all of the funds in cash at the time of award.

2. The parties acknowledge that the Plant Master Plan exceeds the cap specified in Part V, Section C. Because the Plant Master Plan was approved prior to execution of this Agreement, the terms and conditions related to funding the Plant Master Plan are set forth in Part IX.

E. Projections of Future Capital Expenses.

First Parties shall develop, regularly update, and maintain reasonable and accurate projections of future Capital Expenses for the Plant. Such projections shall be for at least ten (10) years and updated and distributed to the District on a quarterly basis for its internal budgeting and financial planning purposes. First Parties shall also develop more detailed projections for the next two (2) years and shall also distribute them to the District on a quarterly basis.

F. Accounting Records.

1. The Administering Agency shall maintain full, complete and separate financial, statistical and accounting records relating or pertaining to this Agreement, in accordance with generally accepted accounting principles. Such records shall include, but not be limited to, accounting records; payroll documents; overhead expenses; timesheets; all paid vouchers including those for out-of-pocket expenses; other reimbursements supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals, original estimates; estimating work sheets; contract amendments and change order files; insurance documents; written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); memoranda; and correspondence.

2. Such records shall enable the District to readily identify the Plant’s assets, expenses, costs of goods, and use of funds received from each of the following categories: revenues received from the District; revenues received from the other Agencies; revenues and income generated from the sale, lease, transfer, or disposal of Plant land; and revenues and income from generated from other products or services at the Plant.

3. The Administering Agency shall maintain all such records for a minimum period of ten (10) years after termination of this Agreement.

A.G. District's Right to Audit and Inspect Accounting Records.

The District and its authorized representatives shall have the right, on an annual basis, to audit, examine, and make copies of or extracts from all financial, statistical, and accounting records of the Administering Agency and the Administering Agency's employees, agents, assigns, successors, and subcontractors, in whatever form they may be kept, relating or pertaining to this Agreement. At the District's written request, the Administering Agency shall make such records available for audit and inspection during normal business hours at the Administering Agency's office, within three (3) business days' of the District's request. Costs of any audit conducted pursuant to this provision shall be borne by the District, except as otherwise provided herein and in Part VI, Section D(3)(c). If the audit discovers findings related to accounting errors, fraud, misrepresentation, or non-performance, including use of wastewater and Recycled Water revenues for purposes unrelated to the Plant or the South Bay Water Recycling, then the Administering Agency shall reimburse the District for the total costs of the audit. Within ninety (90) calendar days following the District's presentation of its audit findings to the Administering Agency, the Administering Agency shall make any adjustments and/or payments to the District.

PART VI
AMOUNT PAYABLE BY THE ~~AGENCY~~ DISTRICT TO FIRST PARTIES

~~A. Payments For Existing Capacity Rights in the Intermediate Term And First Stage Expansion Projects.~~

~~— Payments for capacity rights in the Intermediate-term and First Stage Expansion projects shall be described in Exhibit "D".~~

B.A. Payments For Additional Capacity Rights.

1. Payments With Plant Expansion. All payments associated with a Plant expansion as outlined in Part III, Section B, shall be paid for in proportion to the capacity rights requested in the basic parameters or based upon appropriate ratios of the ~~Agency~~ District designed parameters to total project design parameters times total project cost.
2. Payments Without Planned Expansion. Should ~~Agency~~ the District elect to obtain additional capacity rights at a time when First Parties do not intend to expand the Plant as designated in Part III, Section B, the expenses associated with this addition of capacity rights shall be the sole responsibility of ~~Agency~~ the District. All payments for studies, designs and construction to provide additional capacity shall be deposited with the Administering Agency.
3. Payments for Transfer of Capacity Rights. Transfers of capacity rights between First Parties and ~~Agency~~ the District or between ~~Agency~~ the District and Agencies, shall be recommended by the Treatment Plant Advisory Committee and approved by First Parties and based upon the pooled capacity cost determined in Part ~~III~~ IV, Section A. Transfer of

capacity rights shall be based upon written agreement between the participating parties. Payment shall be due and payable as provided in said agreement.

B. Payments for ~~Future Improvements~~ Allowable Capital Expenses.

1. All payments associated with ~~future improvements at the Plant~~ Allowable Capital Expenses shall be made on the basis of ~~Agency's~~ the District's existing capacity rights. Final payment shall be determined based upon actual project cost. This payment shall be a proportional share in accordance with a revised Exhibit "A";
2. ~~First Parties shall, not later than March 1st, of any fiscal year, provide Agency with a preliminary estimate of the amount of money required from Agency for future improvements or replacements for the ensuing fiscal year.~~ First Parties shall notify the District of the exact amount of each upcoming quarterly payment at least one hundred twenty (120) calendar days prior to the date the District's quarterly payment is due.

~~CD.~~ Payments for Operation and Maintenance ~~Costs~~ Expenses.

1. First Parties, ~~Agency~~ the District and Agencies shall bear the cost of ~~o~~ Operations and ~~m~~ Maintenance ~~e~~ Expenses of the Plant, including ~~all reclamation facilities operated by the Plant~~ the South Bay Water Recycling but excluding the AWPC. This cost of operation and maintenance of ~~reclamation such~~ facilities shall be determined based upon the actual flow (in million gallons per day) of ~~Agency's~~ the District's discharge into the Plant. All other ~~o~~ Operation and ~~m~~ Maintenance ~~e~~ Expenses of the Plant shall be determined based upon the parameters of ~~Agency's~~ the District's actual discharge into the Plant. ~~Agency~~ The District shall provide to First Parties, by December 1st of each year, data indicating expected discharge for the ensuing fiscal year.
2. First Parties shall, not later than March 1st of each year, provide ~~Agency~~ the District with a preliminary estimate of the amount of money required to operate and maintain the Plant, including all ~~reclamation~~ Water Recycling facilities operated by the Plant, for the ensuing fiscal year. In addition, First Parties shall indicate ~~Agency's~~ the District's estimated annual share for ~~o~~ Operation and ~~m~~ Maintenance ~~costs~~ Expenses as apportioned to treatment parameters, and for ~~o~~ Operation and ~~m~~ Maintenance ~~costs~~ Expenses for ~~reclamation~~ Water Recycling as apportioned to flow.
3. ~~Agency~~ The District shall provide to First Parties a copy of ~~Agency's~~ the District's adopted annual sewer revenue program by August 1st of each year. This revenue program shall conform to all federal and/or state guidelines as now exist or may exist in the future.
4. During the first quarter of each fiscal year, TPAC shall review each Agency's total discharge to the Plant for the preceding fiscal year in terms of the parameters. Adjustments in costs, if any, resulting from this review shall be made in accordance with Part VI, Section ~~DE~~, Paragraph 3(b) herein.

~~DE.~~ Method of Payment.

1. ~~Capital and~~ Allowable Capital Expenses and Land Acquisition. All payments for Allowable Capital Expenses and land acquisition shall be on a quarterly basis, the first quarter beginning July 1st. The quarterly payment shall be for the reasonably estimated and expected expenditures to be paid during that quarter, based upon the projections provided by First Parties in accordance with Part V, Section E. The quarterly payment shall not be for encumbrances related to future Capital Expenses or payments. These invoices shall be presented at the beginning of the quarter in which the obligation is anticipated to occur. The date of financial obligations for capital expenses and land acquisitions shall be the date of award of contract. These payments shall be based upon the budget for capital costs for the Plant as recommended by TPAC and approved by the Administering Agency.
2. Operation and Maintenance ~~Costs~~ Expenses. All payments for ~~o~~ Operation and ~~m~~ Maintenance ~~e~~ Expenses shall be made on a quarterly basis, the first quarter beginning July 1st. Invoices for these payments 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 ~~o~~ Operation and ~~m~~ Maintenance ~~e~~ Expenses for the Plant as recommended by TPAC and approved by the Administering Agency.
3. General Information.
 - a. All bills shall be paid to the Administering Agency within ~~F~~ forty-five (45) calendar days from presentation. Interest will be charged on any late or unpaid bills.
 - b. 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. A statement outlining the method of adjusting costs and actual adjustments shall be included.
 - c. All amounts paid to First Parties shall be subject to independent audit and recalculation by the District in accordance with Part V, Section G. If the audit identifies overpricing or overcharges of any nature by the Administering Agency to the District in excess of one-half of one percent (>0.5%) of the original billed amount per quarter, then the Administering Agency shall reimburse the District for the total costs of the audit. Furthermore, within ninety (90) calendar days following the District's presentation of its audit findings to the Administering Agency, the Administering Agency shall make any adjustments and/or payments to the District.
 - d. Any and all monies which ~~Agency~~ the District is herein required to pay to First Parties shall be paid to the Administering Agency.

FE.Credits.

1. Grants or Outside Financial Assistance. Any grants, recoveries, or outside financial assistance received, and any interest earned thereon, shall be credited to First Parties, Agencies and ~~Agency~~ the District in the quarter following receipt, along with a statement outlining the source of grant revenue and method of distribution. Grants or outside financial assistance shall be shared on the basis of the ~~Agency's~~ District's participation and the program for which the outside financial assistance is received.
2. Interest. Interest on ~~moneys~~ monies advanced, credits held for ~~Agency~~ the District, or amounts due from ~~Agency~~ the District, shall be determined on a monthly basis.
3. Revenues and Income.
 - a. _____ If First Parties ~~y~~ should, during the term of this Agreement, receive any income or revenues related to ~~land~~, products or services at the Plant, including but not limited to the revenue from the sale of Recycled Water, then ~~Agency~~ the District shall be entitled to a share of the income. Each quarter, First Parties shall provide the District with written notice of the amount of income or revenue received, and the District's share of such income or revenue. ~~Agency's~~ The District's share shall be that proportion of such income based on ~~Agency's~~ the District's contribution to the capital cost or O&M cost, whichever is applicable, during the fiscal year of receipt of such income. The sharing of revenue derived from Plant land is discussed above in Part IV.

~~G. General:~~

b. Payment to ~~Agency~~ the District of any ~~moneys~~ revenue or income to which it may become entitled under Part IV or Section E(3)(a) of this Part VI shall first be applied to any District debt owed to the Administering Agency or First Parties. Upon discharge of all debt, the District shall then have the option to either (i) ~~may be made by off-setting the amount of such moneys against any payments which Agency may be obligated to pay to First Parties under the provisions of this Agreement or Agency may~~ request cash reimbursement of any credit balance; or (ii) apply the revenue or income as a credit towards any future quarterly payments due to First Parties. The District shall have the sole discretion to choose which method it prefers. If the District requests a cash reimbursement, First Parties shall honor ~~The request for cash reimbursement shall be honored by First Parties~~ within forty-five (45) days following receipt of ~~notice~~ the District's request. Any additional payments requested from ~~Agency~~ the District shall be made with the third quarter payment.

PART VII

SAN JOSE-SANTA CLARA TREATMENT PLANT
ADVISORY COMMITTEE

A. Creation and Membership.

The San Jose-Santa Clara Treatment Plant Advisory Committee (TPAC), created by the 1959 Agreement, shall consist of nine (9) members. Three (3) of the members shall be members of the Council of the City of San Jose, shall be appointed by said Council, and shall serve at the pleasure of said Council. Two (2) of the members shall be members of the Council of the

City of Santa Clara, shall be appointed by the Council of the City of Santa Clara, and shall serve at the pleasure of said Council. One (1) of the members shall be a member of the Council of City of Milpitas, shall be appointed by said Council, and shall serve at the pleasure of said Council. One (1) of the members shall be a member of the governing body of the ~~County Sanitation District No. 4 of Santa Clara County~~[West Valley Sanitation District](#), shall be appointed by the governing body of the ~~County Sanitation District No. 4~~[West Valley Sanitation District](#), and shall serve at the pleasure of said body. One (1) of the members shall be a member of the governing body of the Cupertino Sanitary District, shall be appointed by the governing body of the Cupertino Sanitary District, and shall serve at the pleasure of said body. The ninth (9th) member shall be the City Manager of San Jose or a designated representative. No member shall have more than one (1) vote.

A. Alternate Members.

The Council of the City of San Jose may appoint three (3) of its Council members as alternate members of TPAC. The Council of the City of Santa Clara may appoint two (2) of its Council members as alternate members of TPAC. The Council of the City of Milpitas may appoint one (1) of its Council members as an alternative member of TPAC. The governing body of the ~~County of Sanitation District No. 4~~[West Valley Sanitation District](#) and the governing body of the Cupertino Sanitary District may each appoint one (1) of its members as an alternate member of TPAC. Said alternate members shall serve in the place and stead of any of regular members whenever said regular member should be absent from a meeting of TPAC.

B. Chair.

At its July meeting, the members of TPAC shall elect a Chair of TPAC. The Chair shall serve as such until the election of his successor, or until cessation of membership on the TPAC, whichever is earlier. Vacancies in the office of the Chair occurring in-between regular elections, may be filled by TPAC electing a Chair elected to serve until the next regular election. The Chair shall preside at all meetings. In the event the Chair should be absent from any meeting, the members of TPAC may elect a Chair pro tem to serve as Chair during the latter's absence.

C. Secretary.

The Administering Agency shall provide a secretary for TPAC. Said secretary shall keep minutes of TPAC proceedings and shall also have custody of all books, records and papers of TPAC.

D. Meetings.

Regular meetings of TPAC shall be held at a time and place to be determined by TPAC. Special meetings may be called at any time by the Chair, to be held at a reasonable time and place specified in the notice calling the special meeting, subject to applicable requirements of law.

E. Procedure.

Except as may otherwise be provided by Resolution of TPAC, the procedure to be followed by TPAC at its meetings shall be that set forth in Robert's Rules of Order.

TPAC may act by resolution or motion; a motion duly passed by TPAC and entered at length on TPAC's minutes may be deemed to be a resolution.

F. Power and Duties.

TPAC shall have the following powers and duties with respect to those items to be considered.

1. Make recommendations to First Parties and Agencies with respect to policy relating to the Plant and its maintenance, repair, expansion, replacement, improvement and operation.
2. Make recommendation to the legislative bodies of First Parties and Agencies with respect to proposed amendments and revisions to exhibits to this Agreement.
3. Make recommendations to both First Parties and Agencies with respect to the advisability of selling interests in the Plant.
4. Make recommendations to First Parties with respect to the advisability of entering into contracts with other entities desiring to use the Plant on a rental or other basis.
5. Make recommendations to the Administering Agency and Agencies as to type and amount of insurance to be purchased for the Plant.
6. Annually, during the month of May in each fiscal year, TPAC shall review and recommend to the legislative bodies of First Parties and Agencies, a proposed budget to the ensuing fiscal year for the maintenance, expansion, replacement, improvement and operation of the Plant.
7. Make recommendations to the Administering Agency with respect to the award of consultant, construction of service contracts relating to the Plant.
8. Annually, TPAC shall file with the legislative bodies of First Parties and Agencies, a report on Plant capacity pursuant to Part III, Section D, paragraph 3.
9. Make recommendations to First Parties and Agencies with respect to the redistribution of pooled excess capacity pursuant to Part III, Section A, paragraphs 1 and 2.
10. Periodically, TPAC shall review and make current, long range plans for expansion and/or improvement of the Plant to provide for the anticipated Plant capacity required to accommodate the general plans of San Jose, Santa Clara and Agencies and to meet current wastewater discharge requirements.
11. Make recommendations to the legislative bodies of First Parties and Agencies with respect to claim of breach proceedings pursuant to Part VIII, Section G.

G. Action Upon Recommendations.

The legislative bodies of First Parties or the Agencies, shall not adopt any motion, Resolution or Ordinance that is contrary to any recommendation submitted to it by TPAC with respect to the Plant and its maintenance, repair, expansion, replacement, improvement and operation without a finding of fact or facts justifying such contrary action. The finding of fact or facts shall be submitted in writing to TPAC within fifteen (15) days after any contrary action. All policy matters as determined by the Director requiring an adoption of a motion, Resolution or Ordinance by the Council of the City of San Jose relating to the Plant and its maintenance, repair, expansion, replacement, improvement and operation, shall first be submitted to TPAC for its recommendation and in sufficient time, as determined by the Administering Agency, to allow TPAC to make recommendation thereon. The Council of the City of San Jose shall not act upon any such policy matter until it has received the recommendation from TPAC. If TPAC does not submit its recommendation to the Council of the City of San Jose within the prescribed time, the City Council may adopt such a motion, Resolution or Ordinance. If a legislative body is presented with any evidence not considered by TPAC in the making of any recommendation, then, prior to the taking of action contrary to said recommendation, if time permits as determined by the Administering Agency, the legislative body shall refer the matter back to TPAC for a supplementary report. Said supplementary report shall be submitted by TPAC within thirty (30) days after reference, or such longer period as may be designated by the legislative body. If TPAC fails to make such supplementary report within the time specified, the legislative body is free to consider such evidence without TPAC recommendations. In the event of an emergency as determined by the Director, the above procedure may be waived.

H. Expenses.

Members of TPAC shall be reimbursed for all expenses reasonably incurred by them in the performance of their duties, and that provision therefor, shall be made in the annual budget. Such expenses shall be considered as part of the “operating costs” of the Plant.

PART VIII

MISCELLANEOUS PROVISIONS

A. Effective Date and Duration of Agreement.

It is hereby agreed that the effective date of this Agreement shall be the date on which all parties to this Agreement have executed same, and that this Agreement shall be in force and effect for a term beginning on said effective date and extending to, and including, and ending on January 1, ~~2034~~2050, or until sooner termination by mutual written agreement of the parties hereto or by operation of law or because of a material breach by one of the parties hereto.

B. Extension, Renewal or Amendment to the Agreement.

It is mutually agreed that the term of this Agreement may be extended or renewed only by mutual written agreement of the parties hereto and that this Agreement, including exhibits, may be amended or supplemented by a mutual written agreement of the parties hereto. Beginning ten (10) years after the Effective Date of this Agreement, and at least every ten (10) years thereafter, ~~F~~this Agreement shall be reviewed in its entirety by First Parties and ~~Agency~~

~~the District in the year 2002 to consider any amendments. First Parties and Agency further agree that in the year 2030, they will meet and confer in good faith to negotiate a revised or new Agreement.~~

C. Use of Plant After Expiration of Term.

If the Agreement is terminated or is not renewed in the year 20540, the District shall have the right to continue discharging to the Plant, provided all payments of the District's share of Plant costs are made. All other rights under this Agreement shall cease.

D. Termination.

If for any reason this Agreement is terminated by mutual consent of both parties, then the discharging capacity rights of the District shall be considered "excess pooled capacity" pursuant to the terms of Paragraph III, Section A. This capacity shall be reserved for the ~~Agency-District~~ and ~~Agency-the District~~ shall continue to pay for all costs associated with such capacity until such time as that capacity is either purchased by other users pursuant to the terms of this Agreement, or until failure of the Plant to treat wastewater.

E. Sale or Transfer by First Parties.

Nothing in this Agreement contained shall be deemed to prohibit or restrict First Parties, or either of them, from selling, granting, assigning or otherwise transferring this Agreement or any part or interest therein, or the Plant or any part or interest therein, or any right to discharge wastewater therein and to have the same therein treated and disposed of, to any corporation, district, governmental organization or entity or to any other person or persons, provided that any such transaction shall be subject to such rights and privileges as First Parties and the District may have under and by virtue of the provisions of this Agreement.

F. Industrial Waste Program.

The Administering Agency agrees to maintain personnel for the specific purposes of assisting all parties with matters concerning industrial waste. Such responsibilities shall include industrial waste monitoring, sampling and analysis, technical advice and surveillance of all industrial dischargers tributary to the Plant. The Administering Agency agrees to be responsible for issuing notices of non-conformance within the District's service area for violations of ordinance requirements in Part II, Section D. The District shall be responsible for the adoption and enforcement of any Industrial Waste Ordinance requirements. The Administering Agency shall endeavor to keep all dischargers informed of federal, state, county and city laws, rules regulations, standards and ordinances relating to industrial waste requirements.

G. Claims of Breach of Agreement or of Inequities.

In the event any party of this Agreement should at any time claim that the other party has in any way breached or is breaching this Agreement, or that the Agreement is inequitable, the complaining party shall file with the legislative body or bodies of the other parties, and with TPAC, a written claim of said breach or inequity, describing the alleged breach or inequity and otherwise giving full information respecting the same. TPAC shall within two (2) months at a place specified by it, give all concerned parties full opportunity to be heard on the matter, and shall, upon conclusion of said hearing, give the legislative bodies of both parties a full

report of its findings and recommendations. Said report, findings and recommendations shall be deemed advisory only; shall not in any way bind any of the parties hereto; and shall not be deemed to establish any facts, either presumptively or finally. Upon receipt of said report and recommendations, if any party is dissatisfied with or disagree with same, the legislative bodies of all parties concerned shall jointly meet with each other within two (2) months at a place to be determined by them, for the purpose of resolving their differences. No action for breach of this Agreement, and no action for any legal relief because of any breach or alleged breach of this Agreement shall be filed or commenced, and nothing shall be done by either party to rescind or terminate this Agreement, unless and until the above provisions of this paragraph have been complied with and unless the complaining party has first given to the other party three (3) months from the conclusion of said joint meeting of said legislative bodies within which to cure any breach or alleged breach.

H. Liability and Indemnification.

~~It is mutually agreed that any liability of San Jose and/or Santa Clara, or of San Jose as the administrative agency for any damage to any person or property arising~~ First Parties shall indemnify, defend, and hold harmless (to the full extent permitted by law) the District and its Board of Directors, officers, officials, employees, volunteers, and agents from and against any and all claims, liability, loss, injuries, damage, expense, and costs (including without limitation costs and fees of litigation) (collectively, "Damages") of every nature arising out of or resulting from any dangerous or defective condition in the Plant or any part or property thereof, or arising or resulting from any act or omission of San Jose or Santa Clara or their respective officers, agents, employees or contractors, in the control, administrative, construction, expansions, installation, operation, maintenance or repair of said Plant or any part or property thereof, ~~shall be mutually shared and paid for by First Parties and Agencies on the basis of operations and maintenance or capital costs, whichever is applicable. It is understood and agreed that First Parties in granting to Agencies certain discharge capacity rights in the Plant and to have wastewater treated and disposed of in said Plant, are not guaranteeing or warranting that the Plant will be able to satisfactorily treat such wastewater. In the event the Plant should for any reason other than by the gross negligence or intentional misconduct of First Parties be incapable of satisfactorily treating wastewater discharged into the Plant by Agency or First Parties, First Parties shall in no way be liable to Agency for any damages arising or resulting from or suffered because of the failure of the Plant to satisfactorily receive, hold, treat or otherwise dispose of wastewater.~~ including but not limited to violations of the NPDES Permit, any order issued by State Water Resources Control Board or the San Francisco Bay Regional Water Quality Control Board, any other applicable permits or licenses, or other applicable local, state or federal law, except for any Damages caused by the sole negligence or willful misconduct of the District or the other Agencies.

Notwithstanding the foregoing, in the event any Damages are occasioned by a force majeure event, including but not limited to floods, earthquakes, other acts of nature, war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of either First Parties or the Agencies, then First Parties and the Agencies shall mutually share the liability of any Damages based upon each party's respective contribution towards Capital Expenses or Operations and Maintenance Expenses, whichever is applicable.

The above provisions shall survive the expiration or earlier termination of this Agreement and shall not be construed as a waiver of rights by either First Parties or the District to contribution or indemnity from third parties.

I. Compliance With Federal and State Laws and Regulations.

~~Agency~~ The District and First Parties agree to comply with any and all Federal, State, or local laws, the rules, regulations, standards and requirements of any Federal, State, or local board, commission, agency or similar body, and the decisions of any court of competent jurisdiction which must be complied with to enable First Parties to qualify for Federal or State grants for the construction, improvement, administration, operation, maintenance, or repair of the Plant.

J. Assignment.

~~Agency~~ The District shall not assign or transfer any interest nor the performance of any of ~~Agency's~~ the District's obligations hereunder without the prior written consent of First Parties, and any attempt by ~~Agency~~ the District to so assign this Agreement or any rights, duties or obligations arising hereunder without written consent shall be void and of no effect.

K. Successors and Assigns.

It is mutually agreed by all the parties hereto that the agreements, covenants, conditions, limitations, restrictions and undertakings herein contained shall, subject to the provisions as to assignments, apply to and bind the successors and assigns of the respective parties hereto as if they were in all cases named.

L. Waivers.

One or more waivers of any term, covenant or condition by either party shall not be construed as a waiver of a subsequent breach of the same or any other term, covenant or condition and the consent or approval by either party to any act shall not be deemed to waive or render unnecessary either party's consent or approval for any subsequent similar act by the other party.

M. Performance and Time to be of the Essence.

It is understood and agreed that full and faithful compliance with and performance of each and every covenant and provision of this Agreement by the party or parties required to comply with or perform each such covenant or provision is and shall be of the essence; also that time is and shall be of the essence; also that such full and faithful compliance with and performance of each and every covenant and provision of this Agreement shall be deemed to be a material condition of this Agreement.

N. Insurance.

First Parties shall at all times maintain with responsible insurer or insurers sufficient insurance against loss or damage to the Plant as is customarily maintained with respect to loss and property of like character. Each party hereto shall be named as a co-insured. First Parties shall maintain with a responsible insurer or insurers, workmen's compensation insurance and

insurance against public liability and property damage. The premiums on all such insurance shall be a part of the Operation and Maintenance and operating Expenses.

O. Titles and Headings.

The sub-headings and titles of this Agreement are inserted for the convenience of reference only and shall not be taken or considered as having any bearing on the interpretation thereof.

P. Notices.

All notices shall be mailed to the address designated beneath the signatures of the parties hereto or as subsequently designated in writing to the parties.

PART ~~VIII~~X

~~SPECIAL PROVISIONS~~PLANT MASTER PLAN

A. Short-Term Financing

The District agrees to participate in short-term financing of the Plant Master Plan through the San Jose-Santa Clara Clean Water Financing Authority ("CWFA") using a Commercial Paper Program (or similar short-term debt instrument such as a line of credit or short-term notes) subject to the following terms and conditions:

1. The total amount of short-term financing incurred by the Administering Agency on behalf of the District shall not exceed fifteen million dollars (\$15,000,000) through the end of fiscal year 2017-2018, unless otherwise authorized in writing by the District. This amount shall be in addition to the District's annual allocated payments of Allowable Capital Expenses.
2. The District shall review and approve in writing the terms and structure of any proposed short-term financing program prior to the Administering Agency's incurring debt on the District's behalf.

B. Long-Term Financing

1. The District will participate in long-term financing of the Plant Master Plan. Before the District can participate, however, the District must have an opportunity to review the Engineering Study of the Plant Master Plan, as required in Part II, Section C(1) above. First Parties and the District shall meet and confer to discuss the options for long-term financing based upon the information contained in the Engineering Study. The District will consider the following options for long-term financing:

- a. The District may participate in subsidized, low-cost long-term financing secured by the Administering Agency for the Plant Master Plan from various state and/or federal grant and loan programs, subject to the District's review and approval of

terms and conditions for such financing. Participation may be through the CWEA or directly with the state or federal awarding agency. Any agreement to participate under this provision shall be in writing, in the form of an amendment to this Agreement or in the form of a Side Letter Agreement.

b. Alternatively, the District may self-finance the long-term financing of the Plant Master Plan, to the extent any costs are not financed with state and/or federal grants and low-cost loans.

TERMINATION OF AGREEMENTS:

~~A. It is mutually agreed by all parties hereto that the following agreements heretofore entered into between the CITY OF SAN JOSE and COUNTY SANITATION DISTRICT #4; or between the CITY OF SANTA CLARA and COUNTY SANITATION DISTRICT #4; or between COUNTY SANITATION DISTRICT #4, and both the CITY OF SAN JOSE and CITY OF SANTA CLARA relating to the Plant, and any and all supplements, addendums, changes, or amendments thereto, and hereby terminated:~~

~~B.~~

~~C. Agreement By and Between the Cities of San Jose, Santa Clara, and County Sanitation District No. 4 Providing Interim Allocation of Treatment Capacity, dated April 13, 1981.~~

~~D. 5. Settlement Agreement By and Between the Cities of San Jose, Santa Clara, and County Sanitation District No. 4, dated January 14, 1981.~~

~~E. Agreement between Cities of San Jose, Santa Clara, and County Sanitation District No. 4 Relating to Sharing of Operating Costs of The Sewage Treatment Plant, dated April 29, 1976.~~

~~F. 3. Agreement Providing for the Sharing of Cost to be Incurred in Connection with the Employment of a Consultant for the Preparation of a Study for Ultimate Disposition of South San Francisco Bay Waste Water, dated May 26, 1970.~~

~~G. 2. Agreement Supplementing Agreements with CSD #4 and Cupertino Sanitary District and City of Santa Clara, dated June 1, 1966.~~

~~Agreement between Cities of San Jose and Santa Clara and County Sanitation District No. 4 Relating to Sewage Treatment Plant, dated April 1, 1965.~~

H. ANNEXATION AND DETACHMENTS

1. GENERAL:

It is contemplated that territories within the boundaries of Agency will become either annexed, consolidated, or otherwise a part of either of the First Parties. It is agreed by First Parties and Agency that when any Agency territory becomes a part of either of the First Parties, Agency will do all that it can legally do to facilitate the detachment of such territory for Agency. In no event shall Agency be obligated to initiate detachment proceedings.

2. TRANSFER OF CAPACITY RIGHTS:

Agency shall, when any Agency territory becomes a part of either of First Parties and is detached from Agency, transfer to First Parties capacity rights as specified in Exhibit "G".

~~3. PAYMENTS FOR TRANSFER OF CAPACITY RIGHTS:~~

~~The capacity rights being used by existing developments in a territory being transferred from Agency to either First Parties shall be computed using the parameters of Agency's actual discharge into the Plant and the amounts subtracted from the amounts of capacity rights to be transferred to determine the amount of unused capacity rights. First Parties shall pay Agency an amount as specified in Exhibit "F" for the unused capacity rights transferred to either of the First Parties. Payment shall be made within ninety (90) days of detachment of territory from Agency. If the capacity rights being used by existing developments in a territory being transferred from Agency to either of First Parties exceeds the amount of capacity rights being transferred, First Parties shall be credited an amount as specified in Exhibit "G" for the excess used capacity. Credits shall be applied to future payments to be made by the First Parties to the Agency pursuant to this Section.~~

IN WITNESS WHEREOF, ~~San Jose, Santa and County Sanitation District #4~~ First Parties and the West Valley Sanitation District have caused this Agreement to be executed in their respective names and their respective seals to be affixed hereunto by their duly authorized officers, all as of the date first written.

APPROVED AS TO FORM:

Deputy City Attorney

ATTEST:

City Clerk

CITY OF SAN JOSE, a municipal corporation

By _____
Mayor

Address _____

Telephone No. _____

APPROVED AS TO FORM:

Deputy Clerk Attorney

ATTEST:

By _____
City Clerk

CITY OF SANTA CLARA, a municipal corporation

By _____
Mayor

By _____
City Manager

Address _____

Telephone No. _____

“First Parties”

APPROVED AS TO FORM:

COUNTY SANITATION
~~DISTRICT #4~~ West Valley Sanitation
District

Attorney

Chairperson

ATTEST:

By _____

Secretary of
Board of Directors

Clerk

Address _____

Telephone No. _____

“Agency”

EXHIBIT A

**SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT**

TREATMENT PLANT CAPACITY ALLOCATIONS

The attached Table 1 contains the Agencies' and First Parties' treatment plant capacities achieved by implementation of the Intermediate-term Improvements and First Stage Expansion. Table 2 shows the Agencies' and First Parties' treatment plant capacities, as effective with the transfer of 1 MGD from West Valley to Milpitas (July 1, 2006.)

Table 1 - 167 MGD Plant, Intermediate Term Improvements and First Stage Expansion. Increased capacity was allocated only to those Agencies that elected to participate in Plant expansion to 167 MGD. Milpitas was allocated 2 MGD of the 24 MGD expansion, and the First Parties' share the remaining 22 MGD based on assessed valuation. BOD, SS, and Ammonia capacities were allocated in the same proportion as Flow.

Table 2- 167 MGD Plant, After transfer of 1 MGD from West Valley to Milpitas. Table 2 shows the Agencies' and First Parties' treatment plant capacities, as effective with the transfer of 1 MGD from West Valley to Milpitas (July 1, 2006.) The other Agencies' capacities remain the same as in the 143/167 MGD Plant (Table 2).

TABLE 1

**SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT**

143 MGD Plant
Summary of Capacity ⁽¹⁾ Allocation
(Intermediate-term Improvements Implemented)

TABLE 2

**SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT**

167 MGD Plant
Summary of Capacity ⁽¹⁾ Allocation
(First Stage Expansion Implemented)

EXHIBIT B

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

REPLACEMENT COST OF PLANT & EQUIPMENT
JUNE 1982

|

EXHIBIT C

SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT LAND DISTRIBUTION

1. Table 1 includes the original land purchase price for each parcel purchased before June 30, 1982 ("Pre-1982 Land."). The City of San Jose's average yearly rate of return for all investments was applied to this amount and compounded to establish a June 30, 1982 value for all Pre-1982 Land.
2. Land participation for Pre-1982 Lands was based upon the 167 MGD capacity of the Plant (Flow BOD, Suspended Solids and Ammonia). Percentage of participation in Pre-1982 Land is based upon the total acreage and not on an individual parcel basis.
3. Agencies which still owe the City of San Jose and West Valley Sanitation District for their allocated share of cost for Pre-1982 Land shall pay all the costs of this land from sale, lease or rental revenues to be received from the Water Pollution Control Plant properties. Percentage of revenue shall be based upon each Agency's full capacity percentage. The Pre-1982 Land costs will be paid off only from. sale, lease or rental revenues of the Plant property and shall have no fixed term. Table 2 shows First Parties' and Agencies' allocations and amounts/credits due for Pre-1982 Land costs as of June 30, 2005.
4. Table 3 shows the original purchase price, date of purchase and cost allocation for all land purchased on or after July 1, 1982 ("Post 1982 Land"). Cost allocation in Post 1982 Land was based on the flow and wastewater strength allocations for First Parties and Participating Agencies, except for land purchased for recycled water facilities, which is based on flow allocation only.
5. Table 4 shows the percentage participation in Pre-1982 Land and Post-1982 Land for First Parties and Agencies effective July 1, 2006.

~~Sale, lease or rental revenues from Water Pollution Control Plant property shall be first applied to an Agency's debt, and only upon completion of that debt, will revenues be passed on to the Agency.~~

6. If and when expansion of the facilities takes place in the future, land values shall again be adjusted based upon the new MGD denominator. Each Agency's percentage of participation in land shall, at that time, be recomputed based upon total land cost shown in the applicable Land Cost Allocation.
7. All purchases of land in the future shall be distributed to all Agencies in the percentage of discharge capacity at the Plant, except that land purchased for Water Recycling ~~improvements~~ shall be based on the Agencies' and First Parties' purchased capacity in the 167 MGD Plant for the flow parameter only.

SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT
LAND COST ALLOCATION METHODOLOGY

1. Attachment A is a Treatment Plant Property map.
2. Table 1 includes the original land purchase price for each parcel. This amount was then applied to the City of San Jose's average yearly rate of return for investments and compounded to establish a June 30, 1982 value for the Pre-1982 Land.
3. Table 2 shows the First Parties' and Agencies share of Pre-1982 Land Costs. Table 2 also shows the amounts still due or owing by First Parties and Agencies for Pre-1982 Land Costs, as of June 30, 2005.
4. Table 3 shows the land allocation for First Parties and Agencies for all land purchases on or after July 1, 1982, based on the amount actually paid by First Parties and Agencies for land purchased on or after July 1, 1982.
5. Table 4 shows the land participation allocation, effective July 1, 2006, for West Valley and Milpitas, reflecting the transfer of land equivalent to 1 MGD capacity from West Valley to Milpitas. The transfer of capacity and adjusted land allocation percentages shall not affect the amounts due or owing by Milpitas or West Valley for Pre-1982 Land Costs.

TABLE 1

SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT
LAND PURCHASES

TABLE 2

SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT
SUMMARY OF DISTRIBUTION OF CAPITAL COSTS TO PARAMETERS

TABLE 3

SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT

TABLE 4

SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT
ALLOCATED SHARE COST OF FACILITIES

TABLE 5

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

Land Cost Allocation

EXHIBIT D

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

PARTICIPATION IN
INTERMEDIATE-TERM AND FIRST STAGE EXPANSION PROJECTS

D-2 of 4
TABLE 1

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

Participation in Intermediate-term Projects

D-3 of 4
TABLE 2

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

Participation in First Stage Expansion

EXHIBIT E
ADMINISTERING AGENCY

- A. San Jose to be Administering Agency. It is mutually agreed that the City of San Jose is and shall be the Administering Agency of this Agreement, and, as such, shall execute and administer this Agreement
- B. Powers and Duties of Administering Agency, Scope and Exercise. Subject to such limitations as may be imposed in this Agreement, the Administering Agency shall have the following powers and duties:
1. To maintain, repair, expand, replace, improve, and operate the ~~treatment~~ Plant for Plant Purposes, and to do any and all things which it shall find to be reasonably necessary, with the respect to its maintenance, repair, expansion, replacement, improvement and operation (subject to the provision of funds therefor in accordance with the provisions of this Agreement), to treat and dispose of all sewage (and by-products thereof) of ~~San Jose and Santa Clara~~ First Parties, the District, the Agencies, and of any and all “Outside Users” now or hereafter authorized to discharge or convey sewage into or to said ~~treatment p~~ Plant or any sewer lines leading thereto, so that said sewage and all effluent from said Plant will not pollute the waters of San Francisco Bay, or any other waters, and so that said sewage will be disposed of in a manner authorized by law.
 2. To make, award and enter into contracts with third parties for the construction, improvement, replacement, expansion, or repair of the ~~Treatment~~ Plant or any part or parts thereof.
 3. To acquire, by purchase, condemnation or otherwise, any and all real or personal property which it should find to be reasonably necessary for ~~Treatment~~ Plant ~~p~~ Purposes.
 4. To receive, be the depository for, expend and disburse, for the purposes of this Agreement, any and all funds or monies advanced, contributed or paid by the parties hereto to said Administering Agency pursuant to the provision of this Agreement, together with all income collected from the Agencies, other “Outside Users,” and all other ~~Treatment~~ Plant income, ~~and all other Treatment Plant~~ and funds.
 5. To keep accurate accounts of all receipts and disbursements of the above-mentioned funds and monies, in accordance with Part V, Section F.
 6. To provide and supply any and all personnel and services, including, but not limited, legal, engineering and accounting services, which it should find to be reasonably necessary for the maintenance, repair, expansion, replacement, improvement and operation of said ~~Treatment~~ Plant, the cost and expense of providing such personnel and

services to be charged to and shared by ~~San Jose and Santa Clara~~ First Parties as part of operation or other ~~Treatment~~ Plant costs as elsewhere provided in this Agreement.

7. To exercise any and all other powers, common to ~~both San Jose and Santa Clara~~ First Parties, with respect to the maintenance, repair, expansion, replacement, improvement and operation of the ~~Treatment~~ Plant.
8. To do any and all things reasonably necessary to treatment and dispose of all sewage entering the ~~Treatment~~ Plant in such manner as will comply with the NDPES Permit and all applicable laws and regulations.
9. To do any and all other things which the Administering Agency is required or authorized to do by other provisions of this Agreement.

C. Manner of Exercising Powers or Performing Duties. The manner in which the Administering Agency shall exercise its powers and perform its duties is and shall be subject to the restrictions upon the manner in which the City of San Jose could exercise such powers and perform such duties; and shall not be subject to any restrictions applicable to the manner in which the City of Santa Clara could exercise such powers or perform such duties.

D. Expense of Administering Agency. It is mutually agreed that the City of San Jose shall be reimbursed from ~~Treatment~~ Plant funds for all reasonable costs and expenses incurred by it as Administering Agency of this Agreement, including, but not limited to, salaries and wages paid by the Administering Agency San Jose to its officers and employees for services rendered by them for ~~Treatment~~ Plant ~~p~~ Purposes. It is further agreed that ~~San Jose~~ the Administering Agency shall be paid, from ~~Treatment~~ Plant funds, an amount equal to seventeen and three hundred thirteen one thousandths per cent (17.313%) of all the above mentioned salaries and wages ~~as and for the following~~ reasonable overhead 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.~~ For calculating the allowable overhead expenses, the Administering Agency shall comply with the most current version of U.S. Office of Management and Budget Uniform Guidance Cost Principles, Audit, and Administrative requirements for Federal Awards, formerly known as OMB Circular A-87.

~~—The percentage or amount of overhead allowance or expense payable to San Jose shall be increased or decreased from year to year to year to truly reflect actual overhead and incidental costs and expenses incurred by San Jose for Treatment Plant purposes to the extent that such costs and expenses are not included in other items of cost or expense for which San Jose is otherwise reimbursed from Treatment Plant Funds.~~

EXHIBIT G

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

TRANSFER OF AND PAYMENT FOR CAPACITY RIGHT ON ANNEXATION AND DETACHMENT OF
TERRITORY

Table 1 sets forth the amount of capacity rights to be transferred from Agency to First Parties on annexation of Agency territory by either of First Parties and detachment of the territory from Agency.

TABLE 1

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

AMOUNT OF CAPACITY RIGHTS TO BE TRANSFERRED
ON ANNEXATION AND DETACHMENT OF TERRITORY

<u>Capacity Parameter</u>	<u>Transfer Per Acre of Territory</u>
FLOW	759.60 GD
BOD	1.44 lbs/day
SS	1.37 lbs/day
Ammonia	0.19 lbs/day

Table 2 sets forth the amount of payment by first parties to Agency for unused capacity transferred to First Parties on annexation of Agency territory by either of First Parties and detachment of the territory from Agency.

TABLE 2

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

AMOUNT PAYABLE FOR TRANSFER OF UNUSED CAPACITY RIGHTS
ON ANNEXATION AND DETACHMENT OF TERRITORY

<u>Capacity Parameter</u>	<u>Unit Amount of Payment</u>
FLOW	\$0.79 per GD
BOD	\$191.35 per lbs/day
SS	\$230.45 per lbs/day
Ammonia	\$693.79 per lbs/day

MAP

AMENDED AND RESTATED AGREEMENT BETWEEN THE CITIES OF SAN JOSE AND SANTA CLARA AND BURBANK SANITARY DISTRICT RELATING TO THE SAN JOSE/SANTA CLARA REGIONAL WASTEWATER FACILITY~~WATER POLLUTION CONTROL PLANT~~

This Amended and Restated Agreement is made and entered into this ___ day of _____, 2015, by and between the City of San Jose and the City of Santa Clara, both being municipal corporations of the State of California hereinafter referred to as "FIRST PARTIES"), and BURBANK SANITARY DISTRICT (hereinafter referred to as the "AGENCY").

RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

WHEREAS, First Parties are co-owners of the San Jose-Santa Clara Regional Wastewater Facility ("Plant"), which is operated by the City of San Jose Environmental Services Department; and

WHEREAS, the District owns and operates a collection system that conveys wastewater to the Plant for treatment and disposal; and

WHEREAS, First Parties and the Agency previously entered into a Master Agreement for Wastewater Treatment dated May 1, 1985, as it has been amended from time-to-time ("Master Agreement"), which set forth the parties' rights and obligations related to the Plant; and

WHEREAS, on December 17, 1985, First Parties and the Agency entered into the First Amendment to the 1985 Agreement, which amended Exhibits A, C, and D, respectively, based on changes in treatment plant capacity and Capital Improvement Program costs; and

WHEREAS, on November 19, 2013, the City of San Jose adopted a Plant Master Plan, which identifies, among other things, significant capital projects necessary to rebuild and improve the Plant through the year 2040;

WHEREAS, First Parties and the Agency desire to amend various provisions of the Master Agreement in order to address implementation of the Plant Master Plan, as well as to update and clarify the parties' rights and obligations related to the future of Plant operations generally;

WHEREAS, this Agreement has been developed by and is satisfactory to the parties and their respective City Councils and Board of Directors; and

WHEREAS, this Agreement supersedes any and all prior agreements and understandings between the parties, including the Master Agreement.

Now, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained in this Agreement and for other good and valuable consideration, First Parties and the Agency agree as follows:

PART I

DEFINITIONS

A. Administering Agency

The City of San Jose is and shall be the Administering Agency of this Agreement and as such shall execute and administer this Agreement in accordance with Exhibit E.

B. Agencies

The term "Agencies" shall be those tributary agencies discharging wastewater into the ~~San Jose/Santa Clara Water Pollution Control Plant~~, including Burbank Sanitary District~~previously referred to as "outside users" in the 1959 Agreement.~~

C. Allowable Capital Expenses

The term "Allowable Capital Expenses" shall mean those Capital Expenses necessary for Plant Purposes that do not exceed the annual monetary cap set forth in Part V, Section C.

~~C.~~D. 1959 Agreement

The term "1959 Agreement" shall mean the Agreement between San Jose and Santa Clara, dated May 6, 1959 and entitled "Agreement Between San Jose and Santa Clara Respecting Sewer Treatment Plant", as such Agreement now reads or as it may hereafter from time to time be amended or renegotiated.

~~D.~~E. Capacity

The term "capacity" shall mean the Mean Peak Five-day Dry Weather Plant treatment capacity as contained in Exhibit A, attached hereto and incorporated herein by reference as if fully set forth.

F. Capital Expenses

The term "Capital Expenses" shall mean costs and expenses allocated to fund Plant improvements, including but not limited to major and structural rehabilitation projects, upgrades and expansions to meet future user demands, and other capital projects.

~~E.~~G. Director

The term "Director" shall mean the Director of ~~Water Pollution Control~~Environmental Services Department for the City of San Jose.

~~F.~~H. Engineering Study

The term "Engineering Study" shall mean those studies prepared by a third-party consultant on behalf of the First Parties ~~that the First Parties shall cause to be made when the Plant has reached 85% of its designed capacity, beginning with 167 MGD and for every incremental capacity increase thereafter. The first Engineering Study shall be performed when the mean peak five-day dry weather flow to the Plant reaches 143 MGD. The Engineering Study shall~~ include an analysis of Plant capacity needs, the size and nature of proposed facilities to be constructed, a construction timetable and an estimate of total project costs, and an estimate of each participating agency's share of project cost.

~~G.~~I. Equipment Replacement Fund

The term "Equipment Replacement Fund" shall mean those monies deposited with the Administering Agency for the replacement of capital facilities at the Plant. The total monies on deposit for the Equipment Replacement Fund shall be capped at the amount not to exceed \$5,000,000.

H.J. Exhibits

The term "Exhibits" shall mean those Exhibits attached to this Agreement and incorporated into this Agreement by reference as if fully set forth. These Exhibits may be modified as contract amendments or amended from time to time as necessary to reflect changes of fact. The Exhibits shall be reviewed annually, or at such other times as significant changes occur, by the Treatment Plant Advisory Committee, which body shall recommend any modifications or amendments required.

H.J. First Stage Expansion

The term "First Stage Expansion" shall mean that portion, as is presently described in the report of CH2M Hill, consulting engineers, entitled "San Jose/Santa Clara Water Pollution Control Plant, capital Improvement Program, Executive Summary, Revised January 1984", and dated January 15, 1984, or as amended or revised, which consists of improvements to all areas of the Plant and expansion of the Liquid Process, Process Control System, Sludge Processing and Disposal, and will provide a capacity of 167 MGD.

H.K. Interest

Interest will be to the extent permitted by law, equal to the rate of interest set forth in the monthly report to the Council of the City of San Jose, prepared by the Director of Finance of San Jose, with respect to said City's portfolio and interest earnings thereon.

H.L. Intermediate-term Improvements

The term "Intermediate-term Improvements" shall mean that portion, as is presently described in the report of CH2M Hill, consulting engineers, entitled "San Jose/Santa Clara Water Pollution Control Plant, Capital Improvement Program, Executive Summary, Revised January 1984", and dated January 15, 1984, or as amended or revised, as outlined in Chapter 2 of said report, which are designated to provide the Plant with a mean peak five-day dry weather treatment capacity of 143 MGD.

M. NPDES Permit

The term "NPDES" Permit shall mean the National Pollutant Discharge Elimination System Permit issued by the San Francisco Bay Regional Water Quality Control Board, Order No. R2-2014-0034 (NPDES No. CA0037842), as it may be amended or reissued from time to time.

KN. Operationng and Maintenance CostsExpenses

Any 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, chemicals, 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-Plant~~ in proper operating conditions and for obtaining and installing equipment, accessories or appurtenances that are necessary during the service life of the Plant to maintain the capacity and performance for which the Plant was designed and constructed. Operation and Maintenance Expenses are distinct from and do not include Capital Expenses.

LO. Parameters

The term "parameters" shall mean the four treatment parameters of Flow, Biochemical Oxygen Demand (BOD), Suspended Solids (SS), and Ammonia (NH₃) as expressed in terms of estimates which are the common denominator for computing annual and/or daily loadings.

MP. Plant (~~Existing Treatment Plant~~)

The term "Plant" shall mean the San Jose/~~Santa Clara~~ Water Pollution Control Plant~~Regional Wastewater Facility.~~

Q. Plant Master Plan.

The term "Plant Master Plan" shall mean that certain document approved by the San Jose City Council on November 19, 2013.

R. Plant Purposes.

The term "Plant Purposes" shall mean the treatment and disposal of wastewater from the Plant's service area, including the distribution of Recycled Water through the South Bay Water Recycling for the sole purpose of complying with the NPDES Permit and other applicable state and federal law. Plant Purposes do not include the operation and maintenance of, or capital improvements to the AWPC.

N. ~~Replacement Costs~~

~~All 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:~~

- ~~1. Major rehabilitation which will be needed as individual unit processes or other facilities near the end of their useful lives;~~
- ~~2. Structural rehabilitation; and~~
- ~~3. Plant expansions or upgrades to meet future user demands.~~

T. Recycled Water.

For the purposes of this Agreement, "Recycled Water" shall mean wastewater from the Plant's service area, which as a result of treatment at the Plant, is suitable for uses other than potable use.

U. Silicon Valley Advanced Water Purification Center ("AWPC").

The term "AWPC" shall mean that facility owned and operated by the Santa Clara Valley Water District that is designed to enhance the quality of Recycled Water and expand its usage.

V. South Bay Water Recycling.

The term "South Bay Water Recycling" shall mean the system of pipelines, pump stations, and storage reservoirs, administered by the City of San Jose, for the purpose of providing Recycled Water to customers. The facilities which are part of South Bay Water Recycling are shown in Exhibit (),

PW. TPAC

The term "TPAC" shall mean the Treatment Plant Advisory Committee.

PART II

CAPACITY RIGHTS GRANTED TO AGENCY

A. General

Commencing on the effective date of this Agreement, and thereafter during the term of this Agreement, and subject to all the conditions, limitations, restrictions, term and provisions contained in this Agreement, and Agency's faithful compliance with and performance of the same, First Parties hereby grant to Agency a right to discharge wastewater into the Plant and to have the same treated and disposed of in and by said Plant the same as wastewaters of First Parties.

B. Capacity Rights

First Parties have designed the Plant to provide for capacity to treat and dispose of the volume and strength of wastewater specified in Exhibit A. Agency shall be entitled for the duration of this Agreement to use the capacity as set forth in said Exhibit A. First Parties and Agency agree not to discharge more than its capacity in the parameters as is specified in said Exhibit A, except with the approval and agreement of the First Parties hereto in accordance with the terms and conditions hereinafter provided, or as provided in Part III. Any continuous and intentional violation of capacity rights will be considered a material breach of this Agreement and will be given priority in the claim of breach process as set forth in Part VII, Section G.

C. San Jose/Santa Clara ~~Water Pollution Control Plant~~ Regional Wastewater Facility Engineering Study/Studies

First Parties agree to ~~prepare Engineering Studies, as defined~~ ~~make an Engineering Study to~~ ~~redefine all Agencies' future needs as set forth~~ in Part I, Section FH ~~when any of the following occur:~~

1. For implementation of the Plant Master Plan; or

4.2. For any single project, or aggregate of projects that are a part of a larger common plan, which are forecasted to exceed fifty million dollars (\$50,000,000).

- D. Restrictions and Regulations Respecting Nature, Kind, Type and Strength of Sewage
First Parties shall inform Agency of the Industrial Waste -Ordinance of the City of San Jose concerning the type and condition of discharge which would be detrimental to the Plant. Each party to this Agreement shall adopt and enforce ordinances, resolutions, rules, and regulations to conform to the restrictions of said Ordinance. Any waiver of the above must be authorized by written Resolution of both the Council of the City of San Jose and the Council of the City of Santa Clara. Each party to this Agreement shall also comply with the applicable statutes, ordinances, rules and regulations of agencies of the United States of America, and the State of California.
- E. Reports, Data and Maps to be provided by Agency and First Parties
It is mutually agreed that all parties shall prepare and file with the Director and Agency reports, data and maps as deemed necessary by the Director and Agency.
- F. Area Restrictions
Agency, unless otherwise authorized by written resolutions of the governing boards of both the City of San Jose and the City of Santa Clara shall not, and agrees that it will not, discharge or cause, allow, permit or suffer to be discharged into the Plant, or into any sewer line or lines which convey either directly or indirectly any wastewater to the Plant, any wastewater which is produced in, or emanates, or comes from any territorial property situated outside the legal boundaries of the Agency.

First Parties and Agency further agree not to discharge, or cause to be discharged, any wastewater into any sewer line or lines of the other party, either directly or indirectly, conveying wastewater to the Plant without written authorization of the owner of the sewer line.

PART III

FUTURE DISCHARGE CAPACITY RIGHTS

- A. Redistribution of Capacity Rights

1. In order to dispose of capacity, any Agency of the Agencies or First Parties may designate all or a portion of its capacity right as "excess pooled capacity", which shall be available for disposal as hereinafter provided.
-

2. Any Agency of the Agencies or First Parties may acquire excess pooled capacity as recommended by TPAC. Any Agency of the Agencies or First Parties may acquire excess pooled capacity at the replacement cost as described in **Exhibit B** plus that portion of the selling party's replacement balance remaining in the Replacement Fund maintained by the Administering Agency.

3. If requests for excess pooled capacity total more than the excess pooled capacity available, then TPAC will allocate the pooled capacity actually available in a manner to most closely achieve the same planning horizon for all requesting parties.

B. Acquisition of Additional Capacity Rights with Plant Expansion

Agency shall have the right to participate in Plant expansions for the purpose of increasing the capacity right into the expanded Plant, subject to the following terms and conditions:

1. Before commencing the design of any such additions, improvements or changes, First Parties shall give Agency written notice of their intention to expand the Plant, and the design year for the proposed expansion, as set forth in the Engineering Study prepared in accordance with Part II, Section C.
2. Within ninety (90) days from and after the giving of such notice, Agency shall notify First Parties in writing whether it wishes to participate in the proposed expansion, and the amount of capacity desired to serve until the design year. If Agency fails to give such notice within such time, it shall be deemed to have elected not to participate in such expansion.
3. If Agency elects not to participate in such expansion, it will pay no part of the cost of the additions, improvements and changes which are made for the purpose of increasing the capacity of the Plant.
4. If Agency elects to participate in such expansion, it shall pay to First Parties that part of the total cost of such additions, improvements and changes as defined in Part VI, Section B.

5. If the needs of all parties are different than the next feasible increment of Plant expansion capacity as described in the Engineering Study, then TPAC will allocate the capacity available in a manner to most closely achieve the same planning horizon for all requesting parties.

C. Acquisition of Additional Capacity Rights Without First Parties Initiated Plant Expansion

If Agency should desire to increase its capacity right into the Plant at a time when no expansion of the Plant, as described in the Engineering Study, is proposed by First Parties and no excess pooled capacity is available, then Agency may seek additional capacity by the following method:

If requested by Agency, First Parties shall initiate a Special Engineering Study to determine the most feasible means to add to the Plant that capacity requested by Agency. When Agency agrees to pay for such increment, then First Parties shall expand the Plant by such increment. This right shall not be exercised within five (5) years of completion of the latest Engineering Study.

D. Adjustment to Capacity Rights Due to Operating Conditions

1. In the event of a major Plant facility failure caused by an earthquake, explosion, war, flooding or the like, reductions in operational capacity and any cost of restoration shall be borne by First Parties and Agencies in accordance with Exhibit A, and the cost of restoration shall be borne proportionately.
2. Any changes in Plant capacity which either increase or decrease the capacity of the Plant, resulting from any means whatsoever, shall be proportioned to First Parties and each Agency in accordance with a revised Exhibit A.
3. TPAC shall determine annually, during the month of November, the operational capacity and productive use of the Plant in all parameters for all parties and the remaining design capacity of the Plant. By January 31 of the coming year, TPAC shall provide a report of its findings to the Agencies and First Parties.
4. Agency and First Parties shall not exceed the capacity rights agreed upon pursuant to Exhibit A.
- ~~5. If at any time, prior to the completion of the Intermediate term Improvements, it becomes necessary to allocate connections to the sewer systems of the combined agencies; in that event, to the extent permitted by law, First Parties will receive 40% of the connections of whatever type and all other dischargers will receive~~

~~60% of the connections of whatever type. Agency's share will be determined by agreement among the Agencies. This paragraph shall only remain in effect until completion of the Intermediate term Improvements.~~

PART IV LAND

A. Participation

Participation and rights in plant land shall be as described in Exhibit C.

~~—~~ Sale, Lease, or Transfer of Land

~~It is mutually agreed between First Parties and Agency that if First Parties should, during the term of this Agreement, sell, lease, transfer, or otherwise dispose of any of the land located on Plant property for any purpose lands of Exhibit C which is or are no longer needed for Plant purposes, then Agency shall have the right to its proportional share in any income or revenue derived from such sale, lease, transfer, or disposal, based upon the land's fair market value as defined in California Revenue and Taxation Code § 110(a), or actual value, whichever is greater. Each quarter, First Parties shall provide the District with written notice of the amount of income or revenue received, and the District's share of such income or revenue. Payments of revenue due to the District shall be made in accordance with Part VI, Section F. by First Parties proportionally in accordance with Exhibit C.~~

B.

C. Other Land Revenue.

~~To the extent First Parties receive income or revenue generated from Plant land other than through Part IV, Section B above, including but not limited to revenue generated from tipping fees received from the landfill located on Plant land, the Agency shall have the right to its proportional share in such revenue in accordance with Exhibit "C." Each quarter, First Parties shall provide the Agency with written notice of the amount of income or revenue received, and the Agency's share of such income or revenue. Payments of revenue due to the Agency shall be made in accordance with Part VI, Section F.~~

~~B.D. Sections B and C of this Part IV are not intended to conflict with Part VI, Section E(3).~~

PART V PLANT EXPENSES

A. Expenses Limited to Plant Purposes.

Except as otherwise provided in Part V, Section B below, First Parties agree that all Operation and Maintenance Expenses and Allowable Capital Expenses shall be used solely for Plant Purposes.

B. Capital Expenses Unrelated to Plant Purposes.

Should First Parties seek to build, invest in, or fund projects that are unrelated to Plant Purposes, including but not limited to expansion of the Plant for resource recovery, then First Parties shall give the Agency written notice of their intention and the parties shall promptly meet and confer to discuss the scope of any such project(s) and any Agreement amendments. The Agency shall have the discretion whether to participate in funding such project(s). If the Agency elects to participate, the Agency shall provide First Parties with written notice of its election within sixty (60) calendar days from the date of the parties' first meet and confer. The terms of funding such project(s) shall be negotiated and set forth in an Agreement amendment.

C. Cap on Allowable Capital Expenses.

In each fiscal year, the Agency's allocation of the total Allowable Capital Expenses shall not exceed one hundred thousand dollars (\$100,000) per fiscal year, the amount which shall be adjusted annually using the "Consumer Price Index, All Urban Consumers, All Items, San Francisco-Oakland-San Jose Metropolitan Area, 1982-84=100," which is compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor agency. Total combined capital project expenses that are equal to or less than one hundred thousand dollars (\$100,000) per fiscal year shall not require an amendment to this Agreement.

D. Capital Expenses Exceeding the Cap.

1. If a proposed project's estimated fiscal year Capital Expenses will exceed the cap specified in Part V, Section C, then First Parties and the Agency shall meet and confer to negotiate an amendment to this Agreement that sets forth the terms and conditions related to funding such fiscal year Capital Expenses. First Parties and the Agency shall establish methods for guaranteeing that funding is available (including, but not limited to, securing lines or letters of credit or similar instruments) so that First Parties can award contracts for capital projects without having all of the funds in cash at the time of award.

2. The parties acknowledge that the Plant Master Plan exceeds the cap specified in Part V, Section C. Because the Plant Master Plan was approved prior to execution of this Agreement, the terms and conditions related to funding the Plant Master Plan are set forth in Part IX.

E. Projections of Future Capital Expenses.

First Parties shall develop, regularly update, and maintain reasonable and accurate projections of future Capital Expenses for the Plant. Such projections shall be for at least ten (10) years and updated and distributed to the Agency on a quarterly basis for its internal budgeting and financial planning purposes. First Parties shall also develop more detailed projections for the next two (2) years and shall also distribute them to the Agency on a quarterly basis.

F. Accounting Records.

1. The Administering Agency shall maintain full, complete and separate financial, statistical and accounting records relating or pertaining to this Agreement, in accordance with generally accepted accounting principles. Such records shall include, but not be limited to, accounting records; payroll documents; overhead expenses; timesheets; all paid vouchers including those for out-of-pocket expenses; other reimbursements supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals, original estimates; estimating work sheets; contract amendments and change order files; insurance documents; written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); memoranda; and correspondence.

2. Such records shall enable the Agency to readily identify the Plant's assets, expenses, costs of goods, and use of funds received from each of the following categories: revenues received from the Agency; revenues received from the other Agencies; revenues and income generated from the sale, lease, transfer, or disposal of Plant land; and revenues and income from generated from other products or services at the Plant.

3. The Administering Agency shall maintain all such records for a minimum period of ten (10) years after termination of this Agreement

G. Agency's Right to Audit and Inspect Accounting Records

The Agency and its authorized representatives shall have the right, on an annual basis, to audit, examine, and make copies of or extracts from all financial, statistical, and accounting records of the Administering Agency and the Administering Agency's employees, agents, assigns, successors, and subcontractors, in whatever form they may be kept, relating or pertaining to this Agreement. At the Agency's written request, the Administering Agency shall make such records available for audit and inspection during normal business hours at the Administering Agency's office, within three (3) business days' of the Agency's request. Costs of any audit conducted pursuant to this provision shall be borne by the Agency, except as otherwise provided herein and in Part VI, Section D(3)(c). If the audit discovers findings related to accounting errors, fraud, misrepresentation, or non-performance, including use of wastewater and Recycled Water revenues for purposes unrelated to the Plant or the South Bay Water Recycling, then the Administering Agency shall reimburse the Agency for the total costs of the audit. Within ninety (90) calendar days following the District's presentation of its audit findings to the Administering Agency, the Administering Agency shall make any adjustments and/or payments to the Agency.

PART VI

AMOUNTS PAYABLE BY THE AGENCY TO FIRST PARTIES

~~A. Payments for Existing Capacity Rights in the Intermediate term and First Stage Expansion Projects~~

~~Payment for capacity rights in the Intermediate term and First Stage Expansion projects shall be as described in Exhibit D.~~

B.A. Payments for Additional Capacity Rights

1. Payments with Plant Expansion. All payments associated with a Plant expansion as outlined in Part III, Section B, shall be paid for in proportion to the capacity rights requested in the basic parameters or based upon appropriate ratios of Agency design parameters to total project design parameters times total project cost.
2. Payments Without Planned Expansion. Should Agency elect to obtain additional capacity rights at a time when First Parties do not intend to expand Plant as designated in Part III, Section B, the expenses associated with this addition of capacity rights shall be the sole responsibility of Agency. All payments for studies, designs, and construction to provide additional capacity shall be deposited with the Administering Agency.

3. Payments For Transfer Of Capacity Rights. Transfers of capacity rights between First Parties and Agency or between Agency and Agencies shall be recommended by TPAC and approved by First Parties and based upon the pooled capacity cost determined in Part ~~IVIII~~, Section A. Transfer of capacity rights shall be based upon written agreement between the participating parties. Payment shall be due and payable as provided in said agreement.

~~C.~~ B. Payments For ~~Future Improvements~~ Allowable Capital Expenses

1. All payments associated with ~~future improvements at the Plant~~ Allowable Capital Expenses shall be made on the basis of Agency's existing capacity rights. Final payment shall be determined based upon actual project cost. This payment shall be a proportional share in accordance with a revised Exhibit A.
2. First Parties shall notify the Agency of the exact amount of each upcoming quarterly payment at least one hundred twenty (120) calendar days prior to the date the Agency's quarterly payment is due~~First Parties shall, not later than March 1 of any fiscal year, provide Agency with a preliminary estimate of the amount of money required from Agency for future improvements or replacements for the ensuing fiscal year.~~

C. Payments For Operation and Maintenance ~~Expenses~~ Costs

1. First Parties, Agency and Agencies shall bear the cost of the ~~operations~~ Operations and ~~maintenance~~ Maintenance expenses ~~Expenses~~ of the Plant, including the South Bay Water Recycling, but excluding the AWPC. This cost of Operations and Maintenance Expenses of such facilities shall be determined based upon the parameters of Agency's actual flow (in million gallons per day) of discharge into the Plant. All other Operation and Maintenance Expenses of the Plant shall be determined based upon the parameters of the District's actual discharge into the Plant. Agency shall provide to First Parties, by December 1 of each year, data indicating expected discharge for the ensuing fiscal year.
2. First Parties shall, not later than March 1 of each year, provide Agency with a preliminary estimate of the amount of money required to operate and maintain the Plant, including all Water Recycling facilities operated by the Plant, for the ensuing fiscal year. In addition, First Parties shall indicate Agency's estimated annual share for Operation and Maintenance Expenses for Water Recycling operation and maintenance costs as apportioned to flow.
3. Agency shall provide to First Parties a copy of Agency's adopted annual sewer revenue program by August 1 of each year. This revenue program shall conform to all Federal and/or State guidelines as now exist or may exist in the future.

4. During the first quarter of each fiscal year, TPAC shall review each Agency's total discharge to the Plant for the preceding fiscal year in terms of the parameters. Adjustments in costs, if any, resulting from this review shall be made in accordance with Part VI, Section ~~ED~~, Paragraph 3(b), herein.

E. Method of Payment

1. Allowable Capital Expenses and Land Acquisition - All payments for Allowable Capital Expenses~~capital~~ and land acquisition shall be on a quarterly basis, the first quarter beginning July 1. ~~The quarterly payment shall be for the reasonably estimated and expected expenditures to be paid during that quarter, based upon the projections provided by First Parties in accordance with Part V, Section E. The quarterly payment shall not be for encumbrances related to future Capital Expenses or payments. These invoices shall be presented at the beginning of the quarter in which the obligation is anticipated to occur. The date of financial obligations for capital expenses and land acquisitions shall be the date of award of contract. These payments shall be based upon the budget for capital costs for the Plant as recommended by TPAC and approved by the Administering Agency.~~
2. Operation and Maintenance Costs-Expenses.- All payments for Operation and Maintenance ~~e~~Expenses shall be made on a quarterly basis, the first quarter beginning July 1. Invoices for these payments 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 ~~operation-Operation~~ and ~~maintenance-Maintenance costs-Expenses~~ for the Plant as recommended by TPAC and approved by the Administering Agency.
3. General Information
 - a. All bills shall be paid to the Administering Agency within Forty-Five (45) calendar days from presentation. Interest shall be charged on any late or unpaid bills.
 - b. 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. A statement outlining the method of adjusting costs and actual adjustments shall be included.
 - c. All amounts paid to First Parties shall be subject to independent audit and recalculation by the Agency in accordance with Part V, Section G. If the audit

identifies overpricing or overcharges of any nature by the Administering Agency to the Agency in excess of one-half of one percent (>0.5%) of the original billed amount per quarter, then the Administering Agency shall reimburse the Agency for the total costs of the audit. Furthermore, within ninety (90) calendar days following the Agency's presentation of its audit findings to the Administering Agency, the Administering Agency shall make any adjustments and/or payments to the Agency.

e.d. Any and all monies which Agency is herein required to pay to First Parties shall be paid to the Administering Agency.

F. Credits

1. Grants or outside Financial Assistance- Any grants, recoveries, or outside financial assistance received, and any interest earned thereon, shall be credited to First Parties, Agencies and Agency in the quarter following receipt, along with a statement outlining the source of grant revenue and method of distribution. 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.
2. Interest - Interest on monies advanced, credits held for Agency, or amounts due from Agency, shall be determined on a monthly basis.
3. Revenues and Income - If First Parties should, during the term of this Agreement, receive any income or revenue related to ~~land~~, products or services at the Plant, including but not limited to the revenue from the sale of Recycled Water, then Agency shall be entitled to a share of the income. Each quarter, First Parties shall provide the Agency with written notice of the amount of income or revenue received, and the Agency's share of such income or revenue. Agency's share shall be that proportion of such income based on Agency's contribution to the capital cost or operations and maintenance cost, whichever is applicable, during the fiscal year of receipt of such income. The sharing of revenue derived from Plant land is discussed above in Part IV.

G. General

Payment to Agency of any ~~monies~~ revenue or income to which it may become entitled under Part IV or Section E(3)(a) of this Part VI shall first be applied to any Agency debt owed to the Administering Agency or First Parties. Upon discharge of all debt, the Agency shall then have the option to either (i)

~~may be made by off-setting the amount of such monies against any payments which Agency may be obligated to pay to First Parties under the provisions of this Agreement or Agency may request cash reimbursement of any credit balance; or ii) apply the revenue or income as a credit towards any future quarterly payments due to First Parties. The Agency shall have the sole discretion to choose which method it prefers. If the Agency requests a cash reimbursement, First Parties shall honor the.~~ The request for cash reimbursement ~~shall be honored by First Parties~~ within Forty-Five (45) calendar days following receipt of notice. Any additional payments requested from Agency shall be made with the third quarter payment.

PART VII

TREATMENT PLANT ADVISORY COMMITTEE

A. Creation and Membership

The San Jose/Santa Clara Treatment Plant Advisory Committee (TPAC), created by the 1959 Agreement, shall consist of nine (9) members. Three (3) of the members shall be members of the Council of the City of San Jose, shall be appointed by said Council, and shall serve at the pleasure of said Council. Two (2) of the members shall be members of the Council of the City of Santa Clara, shall be appointed by said Council, and shall serve at the pleasure of said Council. One (1) of the members shall be a member of the Council of the City of Milpitas, shall be appointed by said Council, and shall serve at the pleasure of said Council. One of the members shall be a member of the governing body of ~~West Valley Sanitation District~~County Sanitation District No. 4 of Santa Clara County, shall be appointed by the governing body of ~~West Valley Sanitation District~~County Sanitation District No. 4, and shall serve at the pleasure of said body. One (1) member shall be a member of the governing body of the Cupertino Sanitary District, shall be appointed by the governing body of the Cupertino Sanitary District, and shall serve at the pleasure of said body. The ninth member shall be the City Manager of San Jose or a designated representative. No member shall have more than one vote.

Agency shall have the privilege of having one representative of Agency attend all meetings of TPAC who may participate in all discussions and deliberations of said Committee; however, said representative of Agency may not vote on any matters presented to said Committee for its advice or action, and shall not have any other privileges accorded to voting members of said TPAC, including reimbursement for expenses. Said representative of Agency shall be designated by the governing body of said Agency. An Alternate representative may be designated by this governing body of Agency to serve in the place and stead of the regular representative of Agency whenever said regular representative should be absent from the meeting of TPAC.

B. Alternate Members

The Council of the City of San Jose may appoint three of its Council members as alternate members of TPAC. The Council of the City of Santa Clara may appoint two of its Council members as alternate members of TPAC. The Council of the City of Milpitas may appoint one of its Council members as an alternate member of TPAC. The governing body of West Valley Sanitation District~~County Sanitation District No. 4~~ and the governing body of the Cupertino Sanitary District may each appoint one of its members as an alternate member of TPAC. Said alternate members shall serve in the place and stead of any of the regular members whenever said regular member should be absent from a meeting of TPAC.

C. Chair

At its July meeting, the members of TPAC shall elect a Chair of TPAC. The Chair shall serve as such until the election of a successor, or until cessation of membership on the TPAC, whichever is earlier. Vacancies in the office of the Chair, occurring between regular elections, may be filled by TPAC electing a Chair to serve until the next regular election. The Chair shall preside at all meetings. In the event the Chair should be absent from any meeting, the members of TPAC may elect a Chair Pro Tem to serve as Chair during the latter's absence.

D. Secretary

The Administering Agency shall provide a secretary for TPAC. Said secretary shall keep minutes of TPAC proceedings and shall also have custody of all books, records and papers of TPAC.

E. Meetings

Regular meetings of TPAC shall be held at a time and place to be determined by TPAC. Special meetings may be called at any time by the Chair, to be held at a reasonable time and place specified in the notice calling the special meeting, subject to applicable requirements of law.

F. Procedure

Except as may otherwise be provided by resolution of TPAC, the procedure to be followed by TPAC at its meetings shall be that set forth in Robert's Rules of Order. TPAC may act by resolution or motion; a motion duly passed by TPAC and entered at length on TPAC's minutes may be deemed to be a resolution.

G. Power and Duties

TPAC shall have the following powers and duties with respect to those items to be considered:

1. Make recommendations to First Parties and Agencies with respect to policy relating to the Plant and its maintenance, repair, expansion, replacement, improvement and operation.

2. Make recommendations to the legislative bodies of First Parties and Agencies with respect to proposed amendments and revisions to Exhibits to this Agreement.
3. Make recommendations to both First Parties and Agencies with respect to the advisability of selling interests in the Plant.
4. Make recommendations to First Parties with respect to the advisability of entering into contracts with other entities desiring to use the Plant on a rental or other basis.
5. Make recommendations to the Administering Agency and Agencies as to type and amount of insurance to be purchased for the Plant.
6. Annually, during the month of May in each fiscal year, TPAC shall review and recommend to the legislative bodies of First Parties and Agencies, a proposed budget for the ensuing fiscal year for the maintenance, expansion, replacement, improvement and operation of the Plant.
7. Make recommendations to the Administering Agency with respect to the award of consultant, construction or service contracts relating to the Plant.
8. Annually, TPAC shall file with the legislative bodies of First Parties and Agencies a report on Plant capacity.
9. Make recommendations to First Parties and Agencies with respect to the redistribution of pooled excess capacity.
10. Periodically, TPAC shall review and make current long-range plans for expansion and/or improvement of the Plant to provide for the anticipated Plant capacity required to accommodate the general plans of San Jose, Santa Clara and Agencies, and to meet current wastewater discharge requirements.
11. Make recommendations to the legislative bodies of First Parties and Agencies with respect to claim of breach proceedings pursuant to Part VIII, Section G.

H. Action Upon Recommendations

The legislative bodies of First Parties or the Agencies shall not adopt any motion, resolution or ordinance that is contrary to any recommendation submitted to it by

TPAC with respect to the Plant and its maintenance, repair, expansion, replacement, improvement and operation without a finding of fact or facts justifying such contrary action. The finding of fact or facts shall be submitted in writing to TPAC within 15 days after any contrary action. All policy matters as determined by the Director requiring an adoption of a motion, resolution or ordinance by the Council of the City of San Jose relating to the Plant, its maintenance, repair, expansion, replacement, improvement and operation shall first be submitted to TPAC for its recommendation and in sufficient time, as determined by the Administering Agency, to allow TPAC to make a recommendation thereon. The Council of the City of San Jose shall not act upon any such policy matter until it has received the recommendation from TPAC. If TPAC does not submit its recommendation to the Council of the City of San Jose within the prescribed time, the City Council may adopt such a motion, resolution or ordinance. If a legislative body is presented with any evidence not considered by TPAC in the making of any recommendation, then, prior to the taking of action contrary to said recommendation, if time permits as determined by the Administering Agency, the legislative body shall refer the matter back to TPAC for a supplementary report. Said supplementary report shall be submitted by TPAC within 30 days after reference, or such longer period as may be designated by the legislative body. If TPAC fails to make such supplementary report within the time specified, the legislative body is free to consider such evidence without TPAC recommendations. In the event of an emergency as determined by the Director, the above procedure may be waived.

I. Expenses

Members of TPAC shall be reimbursed for all expenses reasonably incurred by them in the performance of their duties and that provision, therefore, shall be made in the annual budget. Such expenses shall be considered as part of the "operating costs" of the Plant.

PART VIII

MISCELLANEOUS PROVISIONS

A. Effective Date and Duration of Agreement

It is hereby agreed that the effective date of this Agreement shall be the date on which all parties to this Agreement have executed same, and that this Agreement shall be in force and effect for a term

beginning on said effective date and extending to, and including, and ending on January 1, ~~2031~~2050, or until sooner termination by mutual written agreement to the parties hereto or by operation of law or because of a material breach by one of the parties hereto.

B. Extension, Renewal or Amendment to the Agreement

It is mutually agreed that the term of this Agreement may be extended or renewed only by mutual written agreement of the parties hereto and that this Agreement, including Exhibits, may be amended or supplemented by a mutual written agreement of the parties hereto. Beginning ten (10) years after the Effective Date of this Agreement, and at least every ten (10) years thereafter, ~~This Agreement shall be reviewed in its entirety by First Parties and Agency to consider any amendments in the year 2002. First Parties and Agency further agree that in the year 2030 they will meet and confer in good faith to negotiate a revised or new Agreement.~~

C. Use of ~~Treatment~~ Plant After Expiration of Term

If for any reason the contract cannot be renewed in the year ~~2031~~2050, or subsequent to the termination date, the discharging Agency shall have the right to continue discharging to the Plant at the same discharge rate at which Agency was discharging on the date of the expiration of the Agreement, provided all payments of Agency's share of Plant costs are made. All other rights under this Agreement shall cease.

D. Termination

If for any reason this Agreement is terminated by mutual consent of both parties, then the discharging capacity rights of the Agency shall be considered "excess pooled capacity" pursuant to the terms of Part III, Section A. This capacity shall be reserved for the Agency and Agency shall continue to pay for all costs associated with such capacity until such time as that capacity is either purchased by other users pursuant to the terms of this Agreement, or until failure of the Plant to treat wastewater.

E. Sale or Transfers by First Parties

Nothing contained in this Agreement shall be deemed to prohibit or restrict First Parties, or either of them, from selling, granting, assigning or otherwise transferring this Agreement or any part or interest therein, or the Plant or any part or interest therein, or any right to discharge wastewater therein and to have the same therein treated or disposed of, to any corporation, district, governmental organization or entity or to any other person or persons, provided that any such transaction shall be subject to such rights and privileges as First Parties and Agency may have under and by virtue of the provisions of this Agreement.

F. Industrial Waste Program

The Administrating Agency agrees to maintain personnel for the specific purposes of assisting all parties with matters concerning industrial waste. Such responsibilities shall include industrial waste monitoring, sampling and analysis, technical advice and surveillance of all industrial dischargers tributary to the Plant. The Administering Agency agrees to be responsible for issuing notices of non-conformance within Agency's service area for violations of the ordinance requirements in Part II, Section D. Agency shall be responsible for the adoption and enforcement of any Industrial Waste Ordinance requirements. The

Administering Agency shall endeavor to keep all dischargers informed of Federal, State, County and City laws, rules, regulations, standards and ordinances relating to industrial waste requirements.

G. Claims of Breach of Agreement or of Inequities

In the event any party to this Agreement should at any time claim that the other party has in any way breached or is breaching this Agreement, or that the Agreement is inequitable, the complaining party shall file with the legislative body or bodies of the other parties, and with TPAC, a written claim of said breach or inequity, describing the alleged breach or inequity and otherwise giving full information respecting the same. TPAC shall, within two months at a place specified by it, give all concerned parties full opportunity to be heard on the matter and shall, upon conclusion of said hearing, give the legislative bodies of both parties a full report of its findings and recommendations. Said report, findings and recommendations shall be deemed advisory only, shall not in any way bind any of the parties hereto, and shall not be deemed to establish any facts, either presumptively or finally. Upon receipt of said report and recommendations, if any party is dissatisfied with or disagree with same, the legislative bodies of all parties concerned shall jointly meet with each other within two months at a place to be determined by them, for the purpose of resolving their differences. No action for breach of this Agreement and no action for any legal relief because of any breach or alleged breach of this Agreement shall be filed or commenced, and nothing shall be done by either party to rescind or terminate this Agreement, unless and until the above provisions of this paragraph have been complied with and unless the complaining party has first given to the other party three months from the conclusion of said joint meeting of said legislative bodies within which to cure any breach or alleged breach.

H. Liability and Indemnification

~~It is mutually agreed that any liability of San Jose and/or Santa Clara, or of San Jose as the administrative agency for any damage to any person or property arising~~
First Parties shall indemnify, defend, and hold harmless (to the full extent permitted by law) the District and its Board of Directors, officers, officials, employees, volunteers, and agents from and against any and all claims, liability, loss, injuries, damage, expense, and costs (including without limitation costs and fees of litigation) (collectively, "Damages") of every nature arising out of or resulting from any dangerous or defective condition in the Plant or any part or property thereof, or arising or resulting from any act or omission of First Parties or their respective officers, agents, employees or contractors, in the control, administrative, construction, expansions, installation, operation, maintenance or repair of said Plant or any part or property thereof, ~~shall be mutually shared and paid for by First Parties and Agencies on the basis of operations and maintenance or capital costs, whichever is applicable. It is understood and agreed that First Parties in granting to Agencies certain discharge capacity rights in the Plant and to have wastewater treated and disposed of in said Plant, are not guaranteeing or warranting that the Plant will be~~

H.

~~able to satisfactorily treat such wastewater. In the event the Plant should for any reason other than by the gross negligence or intentional misconduct of First Parties be incapable of satisfactorily treating wastewater discharged into the Plant by Agency or First Parties, First Parties shall in no way be liable to Agency for any damages arising or resulting from or suffered because of the failure of the Plant to satisfactorily receive, hold, treat or otherwise dispose of wastewater including but not limited to violations of the NPDES Permit, any order issued by State Water Resources Control Board or the San Francisco Bay Regional Water Quality Control Board, any other applicable permits or licenses, or other applicable local, state or federal law, except for any Damages caused by the sole negligence or willful misconduct of the District or the other Agencies.~~

Notwithstanding the foregoing, in the event any Damages are occasioned by a force majeure event, including but not limited to floods, earthquakes, other acts of nature, war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of either First Parties or the Agencies, then First Parties and the Agencies shall mutually share the liability of any Damages based upon each party's respective contribution towards Capital Expenses or Operations and Maintenance Expenses, whichever is applicable.

The above provisions shall survive the expiration or earlier termination of this Agreement and shall not be construed as a waiver of rights by either First Parties or the District to contribution or indemnity from third parties.

I. Compliance with Federal and State Laws and Regulations

Agency and First Parties agree to comply with any and all Federal, State and local laws, rules, regulations, standards and requirements of any Federal, State, or local board, commission, agency or similar body, and the decisions of any court of competent jurisdiction which must be complied with to enable First Parties to qualify for Federal or State grants for the construction, improvement, administration, operation, maintenance or repair of the Plant.

J. Assignment

Agency shall not assign or transfer any interest nor the performance of any of Agency's obligations hereunder without the prior written consent of First Parties, and any attempt by Agency to so assign this Agreement or any rights, duties, or obligations arising hereunder without written consent shall be void and of no effect.

K. Successors and Assigns

It is mutually agrees by all the parties hereto that the agreements, covenants, conditions, limitations, restrictions, and undertakings herein contained shall, subject to the provisions as to assignment, apply to and bind the successors and assigns of the respective parties hereto as if they were in all cases named.

L. Waivers

One or more waivers of any term, covenant or condition by either party shall not be construed as a waiver of a subsequent breach of the same or any other term, covenant or condition and the consent or approval of either party to any act shall not be deemed to waive or render unnecessary either party's consent or approval for any subsequent similar act by the other party.

M. Performance and Time to be of the Essence

It is understood and agreed that full and faithful compliance with and performance of each and every covenant and provision of this Agreement by the party or parties required to comply with or perform each such covenant or provision is and shall be of the essence; also that time is and shall be of the essence; also that such full and faithful compliance with and performance of each and every covenant and provision of this Agreement shall be deemed to be a material condition of this Agreement.

N. Insurance

First Parties shall at all times maintain with responsible insurer or insurers sufficient insurance against loss or damage to the Plant as is customarily maintained with respect to loss and property of like character. Each party hereto shall be named as a co-insured. First Parties shall maintain with a responsible insurer or insurers Workmen's Compensation insurance and insurance against public liability and property damage. The premiums on all such insurance shall be a part of the Operation and Maintenance Expenses and operating expenses.

O. Titles and Headings

The sub-headings and titles of this Agreement are inserted for the convenience of reference only and shall not be taken or considered as having any bearing on the interpretation thereof.

P. Notices

All notices shall be mailed to the address designated beneath the signatures of the parties hereto or as subsequently designated in writing by the parties.

Q. Integration

This agreement constitutes the entire agreement between the parties and may only be amended, supplemented, or modified, in writing by mutual agreement of the parties.

PART ~~VIII~~X

SPECIAL PROVISIONS PLANT MASTER PLAN

A. Short-Term Financing

The Agency agrees to participate in short-term financing of the Plant Master Plan through the San Jose-Santa Clara Clean Water Financing Authority ("CWFA") using a Commercial Paper Program (or similar short-term debt instrument such as a line of credit or short-term notes) subject to the following terms and conditions:

1. The total amount of short-term financing incurred by the Administering Agency on behalf of the Agency shall not exceed fifteen million dollars (\$15,000,000) through the end of fiscal year 2017-2018, unless otherwise authorized in writing by the Agency. This amount shall be in addition to the Agency's annual allocated payments of Allowable Capital Expenses.
2. The Agency shall review and approve in writing the terms and structure of any proposed short-term financing program prior to the Administering Agency's incurring debt on the Agency's behalf.

B. Long-Term Financing

1. The Agency will participate in long-term financing of the Plant Master Plan. Before the Agency can participate, however, the Agency must have an opportunity to review the Engineering Study of the Plant Master Plan, as required in Part II, Section C(1) above. First Parties and the Agency shall meet and confer to discuss the options for long-term financing based upon the information contained in the Engineering Study. The Agency will consider the following options for long-term financing:

a. The Agency may participate in subsidized, low-cost long-term financing secured by the Administering Agency for the Plant Master Plan from various state and/or federal grant and loan programs, subject to the District's review and approval of terms and conditions for such financing. Participation may be through the CWFA or directly with the state or federal awarding agency. Any agreement to participate under this provision shall be in writing, in the form of an amendment to this Agreement or in the form of a Side Letter Agreement.

b. Alternatively, the Agency may self-finance the long-term financing of the Plant Master Plan, to the extent any costs are not financed with state and/or federal grants and low-cost loans.

A. Termination of Agreement

~~It is mutually agreed by all parties hereto that the following agreements heretofore entered into between the City of San Jose and Agency, or between the City of Santa Clara and Agency, or between Agency and both the City of San Jose and the City of Santa Clara relating to the Plant or any part thereof, or in any way relating to its ownership, construction, maintenance, repair, operation or use, and any and all supplements, addendums, changes, or amendments hereto, which have not already terminated, are hereby terminated; and Agency does hereby relinquish, remise, release and quitclaim unto First Parties any and all rights, title or interest, if any, which Agency may have on date of execution of this Agreement, under and by virtue of any of said agreements in and to the Plant or any part thereof or in or to its ownership, construction, maintenance, operation or use.~~

IN WITNESS WHEREOF, First Parties and the Agency have caused this Agreement to be executed in their respective names and their respective seals to be affixed hereunto by their duly authorized officers, all as of the date first written.

[ADD SIGNATURE BLOCKS]

EXHIBIT A

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

TREATMENT PLANT CAPACITY ALLOCATIONS

The attached Tables 1 and 2 contain the Agencies' and First Parties' treatment plant capacities achieved by implementation of the Intermediate-term Improvements and First Stage Expansion.

Table 1 - 143 MGD Plant, Intermediate-term Improvements Implemented.

Table 1 contains the Agencies' and First Parties' share of the present 143 MGD Plant capacity.

Table 2 - 167 MGD Plant, First Stage Expansion Implemented.

Increased capacity was allocated only to those Agencies that have elected to participate in Plant expansion to 167 MGD. Milpitas was allocated 4 MGD of the 24 MGD expansion, and the First Parties' share the remaining 20 MGD based on assessed valuation. BOD, SS, and Ammonia capacities were allocated in the same proportion as Flow. The other Agencies' capacities remain the same as in the 143 MGD Plant (Table 1).

TABLE 1

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

143 MGD Plant
Summary of Capacity⁽¹⁾ Allocation
(Intermediate-term Improvements Implemented)

TABLE 2

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

167 MGD Plant
Summary of Capacity⁽¹⁾ Allocation
(First Stage Expansion Implemented)

EXHIBIT B

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

REPLACEMENT COST OF PLANT & EQUIPMENT

JUNE 1983

EXHIBIT C
SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT
LAND DISTRIBUTION

EXHIBIT D
SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

PARTICIPATION IN
INTERMEDIATE-TERM AND FIRST STAGE EXPANSION PROJECTS

EXHIBIT E

ADMINISTERING AGENCY

A. San Jose to be Administering Agency. It is mutually agreed the City of San Jose is and shall be the Administering Agency of this Agreement, and, as such, shall execute and administer this Agreement.

B. Powers and Duties of Administering Agency, Scope and Exercise. Subject to such limitations as may be imposed in this Agreement, the Administering Agency shall have the following powers and duties:

1. To maintain, repair, expand, replace, improve and operate the Plant for Plant Purposes, 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, to treat and dispose of all sewage (and by-products thereof) of ~~San Jose and Santa Clara~~ First Parties, the Agency, the Agencies, and of any and all Agencies now or hereafter authorized to discharge or convey sewage into or to said Plant or any sewer lines leading thereto, so that said sewage and all effluent from said Plant will not pollute the waters of the San Francisco Bay, or any other waters, and so that said sewage will be disposed of in a manner authorized by law.
2. To make, award and enter into contracts with third parties for the construction, improvement, replacement, expansion, or repair of the Plant or any part of parts thereof.
3. To acquire, by purchase, condemnation or otherwise, any and all real or personal property which it should find to be reasonably necessary for Plant purposes.
4. To receive, be the depository for, expend and disburse, for the purpose of this Agreement, any and all funds or monies advanced, contributed or paid by First Parties and Agencies to said Administering Agency pursuant to the provisions of this Agreement, together with all other Plant income collected from the Agencies, and all other Plant income and Funds.
5. To keep accurate accounts of all receipts and disbursements of the above-mentioned funds and monies, in accordance with Part V, Section F.
6. To provide and supply any and all personnel and services, including, but not limited to, legal, engineering and accounting services, which it should find to be reasonably necessary for the maintenance, repair, expansion, replacement, improvement and operation of said Plant, the cost and expense of providing such

personnel and services to be charged to and shared by ~~San Jose and Santa Clara~~First Parties as part of operating or other Plant costs as elsewhere provided in this Agreement.

7. To exercise any and all other powers, common to ~~both San Jose and Santa Clara~~First Parties, with respect to the maintenance, repair, expansion, replacement improvement and operation of the Plant.

8. To do any and all things reasonably necessary to treat and disposal of all sewage entering the Plant in such manner as will comply with the NPDES Permit ant all applicable laws and regulations.

9. To do any and all other things which the Administering Agency is required or authorized to do by other provisions of th is Ag ree men t .

C. Manner of Exercising Powers or Performing Duties. The manner in which the Administering Agency shall exercise its powers and perform its duties is and shall be subject to the restrictions upon the manner in which the City of San Jose could exercise such powers and perform such duties; and shall not be subject to any restrictions applicable to the manner in which the City of Santa Clara could exercise such powers or perform such duties.

D. Expenses of Administering Agency.

It is mutually agreed that the City of San Jose shall be reimbursed from Plant funds for all reasonable costs and expenses incurred by it as Administering Agency of this Agreement, including, but not limited to, salaries and wages paid by ~~San Jose~~the Administering Agency to its officers and employees for services rendered by them for Plant ~~purposes~~Purposes. It is further agreed that ~~San Jose~~the Administering Agency shall be paid, from Plant funds, an amount equal to seventeen and three hundred thirteen one thousandths per cent (17.313%) of all the above mentioned salaries and wages ~~as and for the following~~for overhead expenses incurred ~~by San Jose in furnishing said services and~~ in administering this Agreement. For calculating the allowable overhead expenses, the Administering Agency shall comply with the most current version of U.S. Office of Management and Budget Uniform Guidance Cost Principles, Audit, and Administrative requirements for Federal Awards, formerly known as OMB Circular A-87. , 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 of amount of overhead allowance or expense payable to San Jose shall be increased or decreased from year to year to truly reflect actual overhead and incidental costs and expenses incurred by San Jose for Plant purposes to the extent that such costs and expenses are not included in other items of cost or expense for which San Jose is otherwise reimbursed from Plant funds.~~

AMENDED AND RESTATED AGREEMENT BETWEEN THE CITIES OF SAN JOSE AND SANTA CLARA AND COUNTY SANITATION DISTRICT NO. 2-3 RELATING TO SAN JOSE/SANTA CLARA ~~WATER POLLUTION CONTROL PLANT~~ REGIONAL WASTEWATER FACILITY

This Amended and Restated Agreement made and entered into this ___ day of _____, ~~192015~~– by and between the CITY OF SAN JOSE and the CITY OF SANTA CLARA, both being municipal corporations of the State of California (~~hereinafter referred to as~~ "First Parties"); and COUNTY SANITATION DISTRICT NO. 2-3 (~~hereinafter referred to as~~ "the District").

RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

WHEREAS, First Parties are co-owners of the San Jose-Santa Clara Regional Wastewater Facility ("Plant"), which is operated by the City of San Jose Environmental Services Department; and

WHEREAS, the District owns and operates a collection system that conveys wastewater to the Plant for treatment and disposal; and

WHEREAS, First Parties and the District previously entered into a Master Agreement for Wastewater Treatment dated May 1, 1985, as it has been amended from time-to-time ("Master Agreement"), which set forth the parties' rights and obligations related to the Plant; and

WHEREAS, on January 1, 1985, First Parties and the District entered into the First Amendment to the 1985 Agreement, which amended Exhibits A, C, and D, respectively, based on changes in treatment plant capacity and Capital Improvement Program costs; and

WHEREAS, on November 19, 2013, the City of San Jose adopted a Plant Master Plan, which identifies, among other things, significant capital projects necessary to rebuild and improve the Plant through the year 2040;

WHEREAS, First Parties and the District desire to amend various provisions of the Master Agreement in order to address implementation of the Plant Master Plan, as well as to update and clarify the parties' rights and obligations related to the future of Plant operations generally;

WHEREAS, this Agreement has been developed by and is satisfactory to the parties and their Boards of Directors; and

WHEREAS, this Agreement supersedes any and all prior agreements and understandings between the parties, including the 1985 Master Agreement.

Now, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained in this Agreement and for other good and valuable consideration, First Parties and the District agree as follows:

PART I

DEFINITIONS

A. Administering Agency

The City of San Jose is and shall be the Administering Agency of this Agreement and as such shall execute and administer this Agreement in accordance with Section VIII of the 1959 Agreement.

B. Agencies

The term “Agencies” shall be those tributary agencies discharging wastewater into the ~~San Jose/Santa Clara Water Pollution Control Plant, previously referred to as “Outside Users” in the 1959 Agreement including County Sanitation District 2-3.~~

C. Allowable Capital Expenses

The term “Allowable Capital Expenses” shall mean those Capital Expenses necessary for Plant Purposes that do not exceed the annual monetary cap set forth in Part V, Section C.

D. 1959 Agreement

The term “1959 Agreement” shall mean the Agreement between San Jose and Santa Clara, dated May 6, 1959 and entitled “Agreement Between San Jose and Santa Clara Respecting Sewage Treatment Plant,” as such Agreement now reads or as it may hereafter from time to time be amended or renegotiated.

E. Capacity

The term “capacity” shall mean the Mean Peak Five-day Dry Weather Plant Treatment capacity as contained in Exhibit A, attached hereto and incorporated herein by reference as if fully set forth.

F. Capital Expenses

The term “Capital Expenses” shall mean costs and expenses allocated to fund Plant improvements, including but not limited to major and structural rehabilitation projects, upgrades and expansions to meet future user demands, and other capital projects.

G. Director

The term “Director” shall mean the Director of ~~Water Pollution Control~~the Environmental Services Department for the City of San Jose.

H. Engineering Study

The term “Engineering Study” shall mean those studies prepared by a third-party consultant on behalf of the First Parties that include an analysis of Plant capacity needs, the size and nature of proposed facilities to be constructed, a construction timetable and an estimate of total project costs, and an estimate of each participating agency’s share of project cost.

I. Exhibits

The term “Exhibits” shall mean those Exhibits attached to this Agreement and incorporated into this Agreement by reference as if fully set forth. These Exhibits may be codified as contract amendments or amended from time to time as necessary to reflect changes of fact. The Exhibits shall be reviewed annually, or at such other times as significant changes occur, by the Treatment Plant Advisory Committee, which body shall recommend any modifications or amendments required.

J. First Stage Expansion

The term “First Stage Expansion” shall mean that portion, as is presently described in the report of CH2M Hill, consulting engineers, entitled “San Jose/Santa Clara Water Pollution Control Plant, capital Improvement Program, Executive Summary, Revised January 1984.” and dated January 15, 1984, or as amended or revised, which consists of improvements to all areas of the Plant and expansion of the Liquid Process, Process Control System, Sludge Processing and Disposal, and will provide a capacity of 167 MGD.

K. Interest

Interest will be to the extent permitted by law, equal to the rate of interest set forth in the monthly report to the Council of the City of San Jose, prepared by the Director of Finance of San Jose, with respect to said City’s portfolio and interest earnings thereon.

L. Intermediate-term Improvements

The term “Intermediate-term Improvements” shall mean that portion, as is presently described in the report of CH2M Hill, consulting engineers, entitled “San Jose/Santa Clara Water Pollution Control Plant, Capital Improvement Program, Executive Summary, Revised January 1984” and dated January 15, 1984, or as amended or revised, as outlined in Chapter 2 of said report, which are designated to provide the Plant with a mean peak five-day dry weather treatment capacity of 143 MGD.

M. NPDES Permit

The term “NPDES” Permit shall mean the National Pollutant Discharge Elimination System Permit issued by the San Francisco Bay Regional Water Quality Control Board, Order No. R2-2014-0034 (NPDES No. CA0037842), as it may be amended or reissued from time to time.

N. Operating and Maintenance ~~Costs (Including Replacement Costs)~~ Expenses

Any and all costs and expenses (including replacement costs) 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, chemicals, 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~~ Plant in proper operating conditions and for obtaining and installing equipment, accessories, or appurtenances that are necessary during the service life of the Plant to maintain the capacity and performance for which the Plant was designed and constructed. Operation and Maintenance Expenses are distinct from and do not include Capital Expenses.

O. Parameters

The term “parameters” shall mean the four (4) treatment parameters of Flow, Biochemical Oxygen Demand (BOD), Suspended Solids (SS), and Ammonia (NH3) as expressed in terms of estimates which are the common denominator for computing annual and/or daily loadings.

P. Plant ~~(Existing Treatment Plant)~~

The term “Plant” shall mean the San Jose/Santa Clara ~~Water Pollution Control Plant~~ Regional Wastewater Facility.

Q. Plant Master Plan

The term “Plant Master Plan” shall mean that certain document approved by the San Jose City Council on November 19, 2013.

R. Plant Purposes

The term “Plant Purposes” shall mean the treatment and disposal of wastewater from the Plant’s service area, including the distribution of Recycled Water through the South Bay Water Recycling for the sole purpose of complying with the NPDES Permit and other applicable state and federal law. Plant Purposes do not include the operation and maintenance of, or capital improvements to the AWPC.

~~Q.~~ Replacement Costs

~~All 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:~~

- ~~1. Major rehabilitation which will be needed as individual unit processes or other facilities near the end of their useful lives;~~
- ~~2. Structural rehabilitations;~~
- ~~3. Plant expansions or upgrades to meet future user demands.~~

S. Replacement Fund

“Replacement fund” shall mean those monies deposited with the Administering Agency for the replacement of ~~equipment~~capital facilities at the Plant. The total monies on deposit for the Equipment Replacement Fund shall be capped at an amount not to exceed \$5,000,000.

T. Recycled Water

For the purposes of this Agreement, “Recycled Water” shall mean wastewater from the Plant’s service area, which as a result of treatment at the Plant, is suitable for uses other than potable use.

U. Silicon Valley Advanced Water Purification Center (AWPC)

The term “AWPC” shall mean that facility owned and operated by the Santa Clara Valley Water District that is designed to enhance the quality of Recycled Water and expand its usage.

V. South Bay Water Recycling

The term “South Bay Water Recycling” shall mean the system of pipelines, pump stations, and storage reservoirs, administered by the City of San Jose, for the purpose of providing Recycled Water to customers. The facilities which are part of the South Bay Water Recycling are shown in Exhibit .

W. TPAC

The term “TPAC” shall mean the Treatment Plant Advisory Committee.

PART II

DISCHARGE CAPACITY RIGHTS GRANTED TO AGENCY THE DISTRICT

A. General

Commencing on the effective date of this Agreement, and thereafter during the term of this Agreement, and subject to all conditions, limitations, restrictions, terms, and provisions contained in this Agreement, and ~~Agency~~the District's faithful compliance with and performance of the same, First Parties hereby grant to ~~Agency~~the District a right to discharge wastewater into the Plant and to have the same treated and disposed of in and by said Plant the same as wastewaters of First Parties.

B. DischargeCapacity Rights

~~1. Agency, unless otherwise authorized by the written resolution of the governing bodies for both the City of San Jose and the City of Santa Clara, shall never discharge or cause, allow, permit or suffer to be discharged into the Plant:~~

~~a. Any Agency wastewater at a mean peak five-day dry weather rate of flow in excess of 2.266 million gallons per day.~~

~~b. Any amount of biochemical oxygen demand in Agency wastewater in excess of 8,915 pounds per day.~~

~~c. Any amount of suspended solids in Agency wastewater in excess of 4,864 pounds per day.~~

~~d. Any amount of ammonia in Agency wastewater in excess of 545 pounds per day.~~

~~2. Agency shall be entitled for and during each fiscal year for the term of this Agreement to use the capacity required to meet its needs excepting, however, that in any fiscal year during term of this Agreement, Agency shall not be permitted to use more capacity than that used in the preceding fiscal year, plus five percent. However, notwithstanding anything herein the contrary, Agency shall not be permitted to use more capacity in any fiscal year during the term of this Agreement than is contained in Part IIB1.~~

First Parties have designed the Plant to provide for capacity to treat and dispose of the volume and strength of wastewater specified in Exhibit A. The District shall be entitled for the duration of this Agreement to use the capacity as set forth in said Exhibit A. First Parties and Agency agree not to discharge more than its capacity in the parameters as is specified in said Exhibit A, except with the approval and agreement of the First Parties hereto in accordance with the terms and conditions hereinafter provided, or as provided in Part III. Any continuous and intentional violation of capacity rights will be considered a material breach of this Agreement and will be given priority in the claim of breach process as set forth in Part VII, Section G.

C. San Jose/Santa Clara Regional Wastewater Facility Engineering Studies

First Parties agree to prepare Engineering Studies, as defined forth in Part I, Section H when any of the following occur:

1.1 For implementation of the Plant Master Plan; or

1.2. For any single project, or aggregate of projects that are a part of a larger common plan, which are forecasted to exceed fifty million dollars (\$50,000,000)

D. Restrictions and Regulations Respecting Nature, Kind, Type and Strength of Sewage

First Parties shall inform ~~Agency~~The District of the Industrial Waste Ordinance of the City of San Jose concerning the type and condition of discharge which would be detrimental to the Plant. Each party to this Agreement shall adopt and enforce ordinances, resolutions, rules and regulations to conform to the restrictions of said Ordinance. Any waiver to the above must be authorized by written Resolution of both the Council of the City of San Jose and the Council of the City of Santa Clara. Each party to this Agreement shall also comply with the applicable statutes, ordinances, rules and regulations of agencies of the United States of America, and the State of California.

E. Reports, Data, and Maps to be Provided by ~~Agency~~The District

It is mutually agreed that all parties shall prepare and file with the Director and District reports, data and maps as deemed necessary by the Director and ~~Agency~~ the District.

F. Area Restrictions

~~Agency~~The District, unless otherwise authorized by written resolution of the governing boards of both the City of San Jose and the City of Santa Clara shall not, and agrees that it will not, discharge or cause, allow, permit or suffer to be discharged into the Plant, or into any sewer line or lines which convey either directly or indirectly any wastewater to the Plant, any wastewater which is produced in, or emanates, or comes from any territorial property situated outside the legal boundaries of the ~~Agency~~District.

First Parties and ~~Agency~~The District further agree not to discharge, or cause to be discharged, any wastewater into any sewer line or lines of the other party, either directly or indirectly, conveying wastewater to the Plant without written authorization of the owner of the sewer line.

PART III

AMOUNTS PAYABLE BY ~~AGENCY~~THE DISTRICT TO FIRST PARTIES

A. Redistribution of Capacity Rights

1. To dispose of capacity, any Agency of the Agencies or First Parties may designate all or a portion of its capacity right as “excess pooled capacity,” which shall be available for disposal as hereinafter provided.
2. Any Agency of the Agencies or First Parties may acquire excess pooled capacity as recommended by TPAC. Any Agency of the Agencies or First Parties may acquire excess pooled capacity at the replacement cost as described in Exhibit B plus that portion of the selling party’s replacement balance remaining in the Replacement Fund maintained by the Administering Agency.
3. If requests for excess pooled capacity total more than the excess pooled capacity available, then TPAC will allocate the pooled capacity actually available in a manner to most closely achieve the same planning horizon for all requesting parties.

B. Acquisition of Additional Capacity Rights Without First-Parties-Initiated Plan Expansion

The District shall have the right to participate in Plant expansions for the purpose of increasing the capacity right into the expanded Plant, subject to the following terms and conditions:

1. Before commencing the design of any such additions, improvements or changes, First Parties shall give the District written notice of their intention to expand the Plant, and the design year for the proposed expansion, as set forth in the Engineering Study prepared in accordance with Part II, Section C.
2. Within ninety (90) days from and after the giving of such notice, the District shall notify First Parties in writing whether it wishes to participate in the proposed expansion, and the amount of capacity desired to serve until the design year. If the District fails to give such notice within such time, it shall be deemed to have elected not to participate in such expansion.
3. If the District elects not to participate in such expansion, it will pay no part of the cost of the additions, improvements and changes which are made for the purpose of increasing the capacity of the Plant.
4. If the District elects to participate in such expansion, it shall pay to First Parties that part of the total cost of such additions, improvements and changes as defined in Part VI, Section B.
5. If the needs of all parties are different than the next feasible increment of Plant expansion capacity as described in the Engineering Study, then TPAC will allocate the capacity available in a manner to most closely achieve the same planning horizon for all requesting parties.

C. Acquisition of Additional Capacity Rights Without First Parties Initiated Plant Expansion

If the District should desire to increase its capacity right into the Plant at a time when no expansion of the Plant, as described in the Engineering Study, is proposed by First Parties and no excess pooled capacity is available, then the District may seek additional capacity by the following method:

If requested by the District, First Parties shall initiate a Special Engineering Study to determine the most feasible means to add to the Plant that capacity requested by the District. When the District agrees to pay for such increment, then First Parties shall expand the Plant by such increment. This right shall not be exercised within five (5) years of completion of the latest Engineering Study.

D. Adjustment to Capacity Rights Due to Operating Conditions

1. In the event of a major Plant facility failure caused by an earthquake, explosion, war, flooding or the like, reductions in operational capacity and any cost of restoration shall be borne by First Parties and Agencies in accordance with Exhibit A, and the cost of restoration shall be borne proportionately.
2. Any changes in Plant capacity which either increase or decrease the capacity of the Plant, resulting from any means whatsoever, shall be proportioned to First Parties and each Agency in accordance with a revised Exhibit A.
3. TPAC shall determine annually, during the month of November, the operational capacity and productive use of the Plant in all parameters for all parties and the remaining design capacity of the Plant. By January 31 of the coming year, TPAC shall provide a report of its findings to the Agencies and First Parties.
4. The District and First Parties shall not exceed the capacity rights agreed upon pursuant to Exhibit A.

Payment for Discharge Rights Provided by the Intermediate-term Projects

Payment for the use of capacity provided by the Intermediate-term Improvements shall be as described in Exhibit A.

A. ~~Payments for Future Improvements~~

- ~~1. All payments associated with future improvements at the plant shall be made on the basis of Agency's use of plant capacity. Agency shall pay that proportion of Flow, BOD, SS and Ammonia cost, as herein determined, which the amounts of Flow, BOD, SS and Ammonia discharged by Agency into the Plant in the fiscal year or portion of a fiscal year for which the payment is being calculated bears to the total existing Flow, BOD, SS, and Ammonia capacities of the Plant.~~
- ~~2. For purposes of computing Agency's share of future improvement costs, future improvements costing in excess of \$2 million and are process relate shall be allocated to parameters based on engineering design. Future improvements 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."~~
- ~~3. First Parties shall, not later than March 1 of any fiscal year, provide Agency with a preliminary estimate of the amount of money required from Agency for future improvements or replacements for the ensuing fiscal year.~~

~~B. Payments for Operation and Maintenance Costs~~

- ~~1. First Parties, Agency and Agencies shall bear the cost of the operations and maintenance expenses of the Plant. This cost shall be determined based upon the parameters of Agency's actual discharge into the Plant. Agency shall provide to First Parties, by December 1 of each year, data indicating expected discharge for the ensuing fiscal year.~~
- ~~2. First Parties shall, not later than March 1 of each year, provide Agency with a preliminary estimate of the amount of money required to operate and maintain the Plant for the ensuing fiscal year. In addition, First Parties shall indicate Agency's estimated annual share for operation and maintenance costs as apportioned to treatment parameters.~~
- ~~3. Agency shall provide to First Parties a copy of Agency's adopted annual sewer revenue program by August 1 of each year. This revenue program shall conform to all federal and/or state guidelines as now exist or may exist in the future.~~
- ~~4. During the first quarter of each fiscal year, TPAC shall review each Agency's total discharge to the Plant for the preceding fiscal year in terms of the parameters. Adjustments in costs, if any, resulting from this review shall be made in accordance with Part III, Section E, Paragraph 3b herein.~~

~~C. Connection Fees~~

~~For each new connection to the Agency's sanitary sewerage system, Agency shall pay First Parties a connection charge, the amount of which shall be equal to the Sewage Treatment Plant Connection Fee that would have been charged had the connection been made in the City of San Jose. Agency shall pay connection charges as herein collected to the Administering Agency on a monthly basis.~~

~~D. Method of Payment~~

~~1. Capital Costs~~

~~All payments for capital costs shall be on a quarterly basis, the first quarter beginning July 1. These invoices shall be presented at the beginning of the quarter in which the obligation is anticipated to occur. The date of financial obligations for capital expenses shall be the date of award of contract. These payments shall be based upon the budget for capital costs for the Plant as recommended by TPAC and approved by the Administering Agency.~~

~~2. Operation and Maintenance Costs~~

~~All payments for operation and maintenance expenses shall be made on a quarterly basis, the first quarter beginning July 1. Invoices for these payment shall be presented at the beginning of the quarter. These payments shall be based upon the budget for operation and maintenance costs for the Plant as recommended by TPAC and approved by the Administering Agency.~~

3. General Information

- a. ~~All invoices shall be paid to the Administering Agency within forty five (45) days from presentation. Interest will be charged on any late or unpaid invoices.~~
- b. ~~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. A statement outlining the method of adjusting costs and actual adjustments shall be included.~~
- c. ~~Any and all monies which Agency is herein required to pay to First Parties shall be paid to the Administering Agency.~~

E. Interest

~~Interest on monies advanced, credits held for Agency, or amounts due from Agency, shall be determined on a monthly basis.~~

F. General

~~Payment to Agency of any monies to which it may become entitled may be made by offsetting the amount of such monies against any payments which Agency may be obligated to pay to First Parties under the provisions of this Agreement or Agency may request cash reimbursement of any credit balance. The request for cash reimbursement shall be honored by First Parties within forty five (45) days following receipt of notice. Any additional payments requested from Agency shall be made with the third quarter payment.~~

PART IV
LAND

A. Participation

Participation and rights in plant land shall be as described in Exhibit C.

B. Sale, Lease, or Transfer of Land

If First Parties should, during the term of this Agreement, sell, lease, transfer, or otherwise dispose of any of the land located on Plant property for any purpose, then the District shall have the right to its proportional share in any income or revenue derived from such sale, lease, transfer, or disposal, based upon the land's fair market value as defined in California Revenue and Taxation Code § 110(a), or actual value, whichever

is greater. Each quarter, First Parties shall provide the District with written notice of the amount of income or revenue received, and the District's share of such income or revenue. Payments of revenue due to the District shall be made in accordance with Part VI, Section F. by First Parties proportionally in accordance with Exhibit C.

C. Other Land Revenue

To the extent First Parties receive income or revenue generated from Plant land other than through Part IV, Section B above, including but not limited to revenue generated from tipping fees received from the landfill located on Plant land, the District shall have the right to its proportional share in such revenue in accordance with Exhibit "C." Each quarter, First Parties shall provide the District with written notice of the amount of income or revenue received, and the District's share of such income or revenue. Payments of revenue due to the District shall be made in accordance with Part VI, Section F.

D. Sections B and C of this Part IV are not intended to conflict with Part VI, Section E(3).

PART V
PLANT EXPENSES

A. Expenses Limited to Plant Purposes.

Except as otherwise provided in Part V, Section B below, First Parties agree that all Operation and Maintenance Expenses and Allowable Capital Expenses shall be used solely for Plant Purposes.

B. Capital Expenses Unrelated to Plant Purposes.

Should First Parties seek to build, invest in, or fund projects that are unrelated to Plant Purposes, including but not limited to expansion of the Plant for resource recovery, then First Parties shall give the District written notice of their intention and the parties shall promptly meet and confer to discuss the scope of any such project(s) and any Agreement amendments. The District shall have the discretion whether to participate in funding such project(s). If the District elects to participate, it shall provide First Parties with written notice of its election within sixty (60) calendar days of the parties'

first meet and confer. The terms of funding such project(s) shall be negotiated and set forth in an Agreement amendment.

C. Cap on Allowable Capital Expenses.

In each fiscal year, the District's allocation of the total Allowable Capital Expenses shall not exceed two hundred eighty thousand dollars (\$280,000) per fiscal year, the amount which shall be adjusted annually using the "Consumer Price Index, All Urban Consumers, All Items, San Francisco-Oakland-San Jose Metropolitan Area, 1982-84=100," which is compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor agency. Total combined capital project expenses that are equal to or less than two hundred eighty thousand dollars (\$280,000) per fiscal year shall not require an amendment to this Agreement.

D. Capital Expenses Exceeding the Cap.

1. If a proposed project's estimated fiscal year Capital Expenses will exceed the cap specified in Part V, Section C, then First Parties and the District shall meet and confer to negotiate an amendment to this Agreement that sets forth the terms and conditions related to funding such fiscal year Capital Expenses. First Parties and the District shall establish methods for guaranteeing that funding is available (including, but not limited to, securing lines or letters of credit or similar instruments) so that First Parties can award contracts for capital projects without having all of the funds in cash at the time of award.
2. The parties acknowledge that the Plant Master Plan exceeds the cap specified in Part V, Section C. Because the Plant Master Plan was approved prior to execution of this Agreement, the terms and conditions related to funding the Plant Master Plan are set forth in Part IX.

E. Projections of Future Capital Expenses.

First Parties shall develop, regularly update, and maintain reasonable and accurate projections of future Capital Expenses for the Plant. Such projections shall be for at least ten (10) years and updated and distributed to the District on a quarterly basis for its internal budgeting and financial planning purposes. First Parties shall also develop

more detailed projections for the next two (2) years and shall also distribute them to the District on a quarterly basis.

F. Accounting Records.

1. The Administering Agency shall maintain full, complete and separate financial, statistical and accounting records relating or pertaining to this Agreement, in accordance with generally accepted accounting principles. Such records shall include, but not be limited to, accounting records; payroll documents; overhead expenses; timesheets; all paid vouchers including those for out-of-pocket expenses; other reimbursements supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals, original estimates; estimating work sheets; contract amendments and change order files; insurance documents; written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); memoranda; and correspondence.
2. Such records shall enable the District to readily identify the Plant's assets, expenses, costs of goods, and use of funds received from each of the following categories: revenues received from the District; revenues received from the other Agencies; revenues and income generated from the sale, lease, transfer, or disposal of Plant land; and revenues and income from generated from other products or services at the Plant.
3. The Administering Agency shall maintain all such records for a minimum period of ten (10) years after termination of this Agreement

G. The District's Right to Audit and Inspect Accounting Records

The District and its authorized representatives shall have the right, on an annual basis, to audit, examine, and make copies of or extracts from all financial, statistical, and accounting records of the Administering Agency and the Administering Agency's employees, agents, assigns, successors, and subcontractors, in whatever form they may be kept, relating or pertaining to this Agreement. At the District's written request, the Administering Agency shall make such records available for audit and inspection during normal business hours at the Administering Agency's office, within three (3) business days' of the District's request. Costs of any audit conducted pursuant to this

provision shall be borne by the District, except as otherwise provided herein and in Part VI, Section D(3)(c). If the audit discovers findings related to accounting errors, fraud, misrepresentation, or non-performance, including use of wastewater and Recycled Water revenues for purposes unrelated to the Plant or the South Bay Water Recycling, then the Administering Agency shall reimburse the District for the total costs of the audit. Within ninety (90) calendar days following the District's presentation of its audit findings to the Administering Agency, the Administering Agency shall make any adjustments and/or payments to the District.

PART VI

AMOUNTS PAYABLE BY THE DISTRICT TO FIRST PARTIES

A. Payments for Additional Capacity Rights

- 1. Payments with Plant Expansion. All payments associated with a Plant expansion as outlined in Part III, Section B, shall be paid for in proportion to the capacity rights requested in the basic parameters or based upon appropriate ratios of the District design parameters to total project design parameters times total project cost.**
- 2. Payments Without Planned Expansion. Should the District elect to obtain additional capacity rights at a time when First Parties do not intend to expand Plant as designated in Part III, Section B, the expenses associated with this addition of capacity rights shall be the sole responsibility of the District. All payments for studies, designs, and construction to provide additional capacity shall be deposited with the Administering Agency.**
- 3. Payments For Transfer Of Capacity Rights. Transfers of capacity rights between First Parties and the District or between the District and Agencies shall be recommended by TPAC and approved by First Parties and based upon the pooled capacity cost determined in Part III, Section A. Transfer of capacity rights shall be based upon written agreement between the participating parties. Payment shall be due and payable as provided in said agreement.**

B. Payments For Allowable Capital Expenses

1. All payments associated with Allowable Capital Expenses shall be made on the basis of the District's existing capacity rights. Final payment shall be determined based upon actual project cost. This payment shall be a proportional share in accordance with a revised Exhibit A.

2. First Parties shall notify the District of the exact amount of each upcoming quarterly payment at least one hundred twenty (120) calendar days prior to the date the District's quarterly payment is due.

C. Payments for Operation and Maintenance Expenses

1. First Parties, the District, and Agencies shall bear the cost of Operations and Maintenance Expenses of the Plant, including the South Bay Water Recycling, but excluding the AWPC. This cost of Operations and Maintenance Expenses of such facilities shall be determined by The District's actual flow (in million gallons per day) of discharge into the Plant. All other Operation and Maintenance Expenses of the Plant shall be determined by the District's actual discharge into the Plant. The District shall provide to First Parties, by December 1 of each year, data indicating expected discharge for the ensuing fiscal year.

2. First Parties shall, not later than March 1 of each year, provide The District with a preliminary estimate of the amount of money required to operate and maintain the Plant, including all Water Recycling facilities operated by the Plant, for the ensuing fiscal year. In addition, First Parties shall indicate The District's estimated annual share for Operation and Maintenance Expenses for Water Recycling as apportioned to treatment parameters.

3. The District shall provide to First Parties a copy of The District's adopted annual sewer revenue program by August 1 of each year. This revenue program shall conform to all Federal and/or State guidelines as now exist or may exist in the future.

4. During the first quarter of each fiscal year, TPAC shall review each Agency's total discharge to the Plant for the preceding fiscal year in terms of the parameters. Adjustments in costs, if any, resulting from this review shall be made in accordance with Part VI, Section ED, Paragraph 3(b), herein.

E. Method of Payment

1. Allowable Capital Expenses and Land Acquisition - All payments for Allowable Capital Expenses and land acquisition shall be on a quarterly basis, the first quarter beginning July 1. The quarterly payment shall be for the reasonably estimated and expected expenditures to be paid during that quarter, based upon the projections provided by First Parties in accordance with Part V, Section E. The quarterly payment shall not be for encumbrances related to future Capital Expenses or payments.

2. Operation and Maintenance Costs Expenses.- All payments for Operation and Maintenance Expenses shall be made on a quarterly basis, the first quarter beginning July 1. Invoices for these payments shall be presented at the beginning of the quarter in which the obligation is anticipated to occur. These payments shall be based on the budget for Operation and Maintenance Expenses for the Plant as recommended by TPAC and approved by the Administering Agency.

3. General Information

a. All bills shall be paid to the Administering Agency within Forty-Five (45) calendar days from presentation. Interest shall be charged on any late or unpaid bills.

b. 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. A statement outlining the method of adjusting costs and actual adjustments shall be included.

—c. All amounts paid to First Parties shall be subject to independent audit and recalculation by the District in accordance with Part V, Section G. If the audit identifies overpricing or overcharges of any nature by the Administering Agency to the District in excess of one-half of one percent (>0.5%) of the original billed amount per quarter, then the Administering Agency shall reimburse the District for the total costs of the audit. Furthermore, within ninety (90) calendar days following the District's presentation of its audit findings to the Administering Agency, the Administering Agency shall make any adjustments and/or payments to the District.

—d. Any and all monies which The District is herein required to pay to First Parties shall be paid to the Administering Agency.

F. Credits

1. Grants or outside Financial Assistance- Any grants, recoveries, or outside financial assistance received, and any interest earned thereon, shall be credited to First Parties, Agencies and The District in the quarter following receipt, along with a statement outlining the source of grant revenue and method of distribution. Grants or outside financial assistance shall be shared on the basis of the District's participation in the program for which the outside financial assistance is received.
2. Interest - Interest on monies advanced, credits held for The District, or amounts due from The District, shall be determined on a monthly basis.
3. Revenues and Income - If First Parties should, during the term of this Agreement, receive any income or revenue related to land, products or services at the Plant, including but not limited to the revenue from the sale of Recycled Water, then The District shall be entitled to a share of the income. Each quarter, First Parties shall provide the District with written notice of the amount of income or revenue received, and the District's share of such income or revenue. The District's share shall be that proportion of such income based on the District's contribution to the capital cost or operations and maintenance cost,

whichever is applicable, during the fiscal year of receipt of such income. The sharing of revenue derived from Plant land is discussed above in Part IV.

G. General

Payment to The District of any revenue or income to which it may become entitled under Part IV or Section E(3)(a) of this Part VI shall first be applied to any District debt owed to the Administering Agency or First Parties. Upon discharge of all debt, the District shall then have the option to either: (1) request cash reimbursement of any credit balance; or (2) apply the revenue or income as a credit towards any future quarterly payments due to First Parties. The District shall have the sole discretion to choose which method it prefers. If the District requests a cash reimbursement, First Parties shall honor the request for cash reimbursement within Forty-Five (45) calendar days following receipt of notice. Any additional payments requested from the District shall be made with the third quarter payment.

PART ~~IV~~VI

**SAN JOSE/SANTA CLARA
TREATMENT PLANT ADVISORY COMMITTEE**

A. Creation and Membership

The San Jose/Santa Clara Treatment Plant Advisory Committee (TPAC), created by the 1959 Agreement, shall consist of nine (9) members. Three (3) of the members shall be members of the Council of the City of San Jose, shall be appointed by said Council, and shall serve at the pleasure of said Council. Two (2) of the members shall be members of the Council of the City of Santa Clara, shall be appointed by said Council, and shall serve at the pleasure of said Council. One of the members shall be a member of the Council of the City of Milpitas, shall be appointed by said Council, and shall serve at the pleasure of said Council. One of the members shall be a member of the governing body of the West Valley County Sanitation District No. 4 of Santa Clara County, shall be appointed by the governing body of ~~the County Sanitation District No. 4~~West Valley Sanitation District, and shall serve at the pleasure of said body. One of the members shall be a member of the governing body of the Cupertino Sanitary District, shall be appointed by the governing body of the Cupertino Sanitary District, and shall serve at the pleasure of said body. The ninth member shall be the City Manager of San Jose or a designated representative. No member shall have more than one vote.

The District shall have the privilege of having one representative of the District attend all meetings of the ~~Treatment Plant Advisory Committee~~ who may participate in all

discussions and deliberations of ~~said Committee~~TPAC; however, said representative of the District may not vote on any matters presented to ~~said Committee~~TPAC for its advice or action, and shall not have any other privileges accorded to voting members of ~~said Committee~~TPAC, including reimbursement for expenses.

Said representative of the District shall be designated by ~~its the~~ governing body ~~of said Agency~~. An alternate representative may be designated by this governing body of ~~Agency~~the District to serve in the place and stead of the regular representative of the District whenever said regular representative should be absent from the meeting of ~~the~~ TPAC.

B. Alternate Members

The Council of the City of San Jose may appoint three of its Council members as alternate members of TPAC. The Council of the City of Santa Clara may appoint two of its Council members as alternate members of TPAC. The Council of the City of Milpitas may appoint one of its Council members as an alternate member of TPAC. The governing body of West Valley County Sanitation District ~~No. 4~~ and the governing body of the Cupertino Sanitary District may each appoint one of its members as an alternate member of TPAC. Said alternate members shall serve in the place and stead of any of the regular members whenever said regular member should be absent from a meeting of TPAC.

C. Chair

At its July meeting, the members of TPAC shall elect a Chair ~~of TPAC~~. The Chair shall serve as such until the election of a successor, or until cessation of membership on the TPAC, whichever is earlier. Vacancies in the office of the Chair, occurring between regular elections, may be filled by TPAC electing a Chair elected to serve until the next regular election. The Chair shall preside at all meetings. In the event the Chair should be absent from any meeting, the members of TPAC may elect a Chair Pro Tern to serve as Chair during the latter's absence.

D. Secretary

The Administering Agency shall provide a secretary for ~~TPAC~~. Said secretary shall keep minutes of TPAC proceedings and shall also have custody of all books, records, and papers of TPAC.

E. Meetings

Regular meetings of TPAC shall be held at a time and place to be determined by TPAC. Special meetings may be called at any time by the Chair, to be held at a reasonable time and place specified in the notice calling the special meeting, subject to applicable requirements of law.

F. Procedure

Except as may otherwise be provided by resolution of TPAC, the procedure to be followed by TPAC at its meetings shall be that set forth in Robert's Rules of Order. TPAC may act by resolution or motion; a motion duly passed by TPAC and entered at length on TPAC's minutes may be deemed to be a resolution.

G. Power and Duties

TPAC shall have the following powers and duties with respect to those items to be considered.

1. Make recommendations to First Parties and Agencies with respect to policy relating to the Plant and its maintenance, repair, expansion, replacement, improvement and operation.
2. Make recommendation to the legislative bodies of First Parties and Agencies with respect to proposed amendments and revisions to Exhibits to this Agreement.
3. Make recommendation to both First Parties and Agencies with respect to the advisability of selling interests in the Plant.
4. Make recommendations to First Parties with respect to the advisability of entering into contracts with other entities desiring to use the Plant on a rental or other basis.
5. Make recommendations to the Administering Agency and Agencies as to type and amount of insurance to be purchased for the Plant.
6. Annually, during the month of May in each fiscal year, TPAC shall review and recommend to the legislative bodies of First Parties and Agencies, a proposed budget for the ensuing fiscal year for the maintenance, expansion, replacement, improvement and operation of the plant.
7. Make recommendations to the Administering Agency with respect to the award of consultant, construction or service contracts relating to the Plant.
8. Annually, TPAC shall file with the legislative bodies of First Parties and Agencies, a report on Plant capacity.
9. Make recommendations to First Parties and Agencies with respect to the redistribution of pooled excess capacity.
10. Periodically, TPAC shall review and make current long-range plans for expansion and/or improvement of the Plant to provide for the anticipated Plant capacity required to accommodate the general plans of San Jose, Santa Clara and Agencies and to meet current wastewater discharge requirements.

11. Make recommendations to the legislative bodies of First Parties and Agencies with respect to claim of breach proceedings pursuant to Part V, Section G.

H. Action Upon Recommendations

The legislative bodies of First Parties or the Agencies, shall not adopt any motion, resolution or ordinance that is contrary to any recommendation submitted to it by TPAC with respect to the Plant and its maintenance, repair, expansion, replacement, improvement and operation without a finding of fact or facts justifying such contrary action. The finding of fact or facts shall be submitted in writing to TPAC within fifteen (15) days after any contrary action. All policy matters as determined by the Director requiring an adoption of a motion, resolution or ordinance by the Council of the City of San Jose relating to the Plant, its maintenance, repair, expansion, replacement, improvement and operation shall first be submitted to TPAC for its recommendation and in sufficient time, as determined by the Administering Agency, to allow TPAC to make a recommendation thereon. The Council of the City of San Jose shall not act upon any such policy matter until it has received the recommendation from TPAC. If TPAC does not submit its recommendation to the Council of the City of San Jose within the prescribed time, the City Council may adopt such a motion, resolution or ordinance. If a legislative body is presented with any evidence not considered by TPAC in the making of any recommendation, then, prior to the taking of action contrary to said recommendation, if time permits as determined by the Administering Agency, the legislative body shall refer the matter back to TPAC for a supplementary report. Said supplementary report shall be submitted by TPAC within thirty (30) days after reference, or such longer period as may be designated by the legislative body. If TPAC fails to make such supplementary report within the time specified, the legislative body is free to consider such evidence without TPAC recommendations. In the event of an emergency as determined by the Director, the above procedure may be waived.

I. Expenses.

Members of TPAC shall be reimbursed for all expenses reasonably incurred by them in the performance of their duties, and that provision therefor, shall be made in the annual budget. Such expenses shall be considered as part of the “operating costs” of the Plant.

PART VIII

MISCELLANEOUS PROVISIONS

A. Effective Date and Duration of Agreement

It is hereby agreed that the effective date of this Agreement shall be the date on which all parties to this Agreement have executed same and that this Agreement shall be in force and effect for a term beginning on said effective date and extending to, and including, and ending on January 1, 203150 or until sooner termination by mutual written agreement of

the parties hereto or by operation of law or because of a material breach by one of the parties hereto.

B. Extension, Renewal or Amendment to the Agreement

~~It is mutually agreed that~~ The term of this Agreement may be extended or renewed only by mutual written agreement of the parties hereto and that this Agreement, including Exhibits, may be amended or supplemented by a mutual written agreement of the parties hereto. Beginning ten (10) years after the Effective Date of this agreement and at least every ten (10) years thereafter, ~~This Agreement shall be reviewed in its entirety by First Parties and the District to consider any amendments in the year 2002. First Parties and Agency further agree that in the year 2030 they will meet and confer in good faith to negotiate a revised or new Agreement.~~

C. Use of ~~Treatment~~ Plant After Expiration of Term

If for any reason the contract cannot be renewed in the year 2050, or subsequent to the termination date, the District shall have the right to continue discharging to the Plant at the same discharge rate at which the District was discharging on the date of the expiration of the Agreement, provided all payments of the District's share of Plant costs are made. All other rights under this Agreement shall cease.

~~It is mutually agreed that if Agency should continue to discharge sewage into the Plant during any period of time after expiration of the term of this Agreement or after a sooner termination of this Agreement, with or without the consent of First Parties, then in that event, unless otherwise provided by subsequent Agreement, Agency shall pay First Parties for use of the Plant during such time, if First Parties elect to demand such payment and not otherwise, the same charges as Agency would have continued to pay pursuant to the provisions of this Agreement if the term of this Agreement if the term of this Agreement were to include such additional period of time. The above is an alternate remedy available to First Parties, and shall not be deemed to deprive First Parties of any other rights or remedies which they may have because of Agency's continued use of the Plant after expiration of this — Agreement.~~

~~During the period within which Agency is discharging sewage into the Plant pursuant to this Section, First Parties and Agency shall negotiate in good faith a revised or new agreement for the discharge of sewage into the Plant by Agency. In the event either First Parties or Agency determine that negotiations are no longer being conducted in good faith or that negotiations have ceased, the party making such determination shall notify the other party in writing of the determination by certified mail. In that event, First Parties and Agency shall submit the matter to an advisory arbitration panel within ninety (90) days of the above notice. First Parties and Agency shall each select a member of the arbitration panel and the two arbitrators so selected shall jointly select a third arbitrator. The decision of the arbitration panel shall be advisory.~~

~~In the event First Parties and Agency are unable to reach an agreement after the arbitration process, Agency shall be allowed to discharge into the Plant, providing all payments of Agency as required above are made. Agency shall have a maximum discharge rate equal to that at which Agency was discharging on the date of the expiration of the Agreement.~~

D. Termination

If for any reason the Agreement is terminated by mutual consent of both parties, then the discharging capacity rights of the District shall be considered "pooled excess capacity" pursuant to the Terms of Part III, Section A. ~~have no further right or privilege to discharge any wastewater into the Plant or to make any other use thereof, nor have any rights or privileges whatsoever under the Agreement, nor have any rights or privileges with respect to any physical item of plant property, nor be required to pay any part of Plant cost or expenses incurred after said termination.~~ This capacity shall be reserved for the District and the District shall continue to pay for all costs associated with such capacity until such time as that capacity is either purchased by other users pursuant to the terms of this Agreement, or until failure of the Plant to treat wastewater.

E. Sale or Transfer by First Parties

Nothing in this Agreement contained shall be deemed to prohibit or restrict First Parties, or either of them, from selling, granting, assigning or otherwise transferring this Agreement or any part or interest therein, or the Plant or any part of interest therein, or any right to discharge wastewater therein and to have the same therein treated and disposed of, to any corporation, district, governmental organization or entity or to any other person or persons, provided that any such transaction shall be subject to such rights and privileges as First Parties and ~~Agency~~the District may have under and by virtue of the provisions of this Agreement.

F. Industrial Waste Program

The Administering Agency agrees to maintain personnel for the specific purpose of assisting all parties with matters concerning industrial waste. Such responsibilities shall include industrial waste monitoring, sampling and analysis, technical advice and surveillance of all industrial dischargers tributary to the plant. The Administering Agency agrees to be responsible for issuing notices of non-conformance within ~~Agency~~the District's service area for violations of the ordinance requirements in Part II, Section c. ~~Agency~~The District shall be responsible for the adoption and enforcement of any Industrial Waste Ordinance requirements. The Administering Agency shall endeavor to keep all dischargers informed of federal, state, county and city laws, rules, regulations, standards and other ordinances relating to industrial waste requirements.

G. Claims of Breach of Agreement or of Inequities.

In the event any party to this Agreement should at any time claim that the other party have in any way breached or is breaching this Agreement, or that the Agreement is

inequitable, the complaining party shall file with the legislative body or bodies of the other parties, and with TPAC, a written claim of said breach or inequity describing the alleged breach or inequity and otherwise giving full information respecting the same. TPAC shall, at a place specified by it, give all concerned parties full opportunity to be heard on the matter, and shall, upon conclusion of said hearing, give the legislative bodies of both parties a full report of its findings and recommendations. Said report, findings and recommendations shall be deemed advisory only; shall not in any way bind any of the parties hereto; and shall not be deemed to establish any facts, either presumptively or finally. Upon receipt of said report and recommendations, if any party is dissatisfied with or disagree with same, the legislative bodies of all parties concerned shall jointly meet with each other within two months at a place to be determined by them, for the purpose of resolving their differences. No action for breach of this Agreement, and no action for any legal relief because of any breach or alleged breach of this Agreement shall be filed or commenced, and nothing shall be done by either party to rescind or terminate this Agreement, unless and until the above provisions of this paragraph have been complied with and unless the complaining party has first given to the other party three months from the conclusion of said joint meeting of said legislative bodies within which to cure any breach or alleged breach.

H. Liability and Indemnification.

~~It is mutually agreed that any liability of San Jose and/or Santa Clara, or of San Jose as the administrative agency for any damage to any person or property arising~~First Parties shall indemnify, defend, and hold harmless (to the full extent permitted by law) the District and its Board of Directors, officers, officials, employees, volunteers, and agents from and against any and all claims, liability, loss, injuries, damage, expense, and costs (including without limitation costs and fees of litigation) (collectively, "Damages") of every nature arising out of or resulting from any dangerous or defective condition in the Plant or any part or property thereof, or arising or resulting from any act or omission of First Parties or their respective officers, agents, employees or contractors, in the control, administrative, construction, expansions, installation, operation, maintenance or repair of said Plant or any part or property thereof, shall be mutually shared and paid for by First Parties and Agencies on the basis of operations and maintenance or capital costs, whichever is applicable. It is understood and agreed that First Parties in granting to Agencies certain discharge capacity rights in the Plant and to have wastewater treated and disposed of in said Plant, are not guaranteeing or warranting that the Plant will be able to satisfactorily treat such wastewater. In the event the Plant should for any reason other than by the gross negligence or intentional misconduct of First Parties be incapable of satisfactorily treating wastewater discharged into the Plant by Agency or First Parties, First Parties shall in no way be liable to Agency for any damages arising or resulting from or suffered because of the failure of the Plant to satisfactorily receive, hold, treat or otherwise dispose of wastewater, including but not limited to violations of the NPDES Permit, any order issued by State Water Resources Control Board or the San Francisco Bay Regional Water Quality Control Board, any other applicable permits or licenses, or

other applicable local, state or federal law, except for any Damages caused by the sole negligence or willful misconduct of the District or the other Agencies.

Notwithstanding the foregoing, in the event any Damages are occasioned by a force majeure event, including but not limited to floods, earthquakes, other acts of nature, war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of either First Parties or the Agencies, then First Parties and the Agencies shall mutually share the liability of any Damages based upon each party's respective contribution towards Capital Expenses or Operations and Maintenance Expenses, whichever is applicable.

The above provisions shall survive the expiration or earlier termination of this Agreement and shall not be construed as a waiver of rights by either First Parties or the District to contribution or indemnity from third parties.

H.I. Compliance with Federal and State Laws and Regulations

~~Agency~~The District and First Parties agree to comply with any and all federal, state, or local laws, the rules, regulations, standards and requirements of any federal, state, or local board, commission, agency or similar body, and the decisions of any court of competent jurisdiction which must be complied with to enable First Parties to qualify for federal or state grants for the construction, improvement, administration, operation, maintenance, or repair of the Plant.

H.J. Assignment

~~Agency~~The District shall not assign or transfer any interest nor the performance of any of ~~Agency's~~sits obligations hereunder without the prior written consent of First Parties, and any attempt by ~~Agency~~the District to so assign this Agreement or any rights, duties or obligations arising hereunder without written consent shall be void and of no effort.

H.K. Successors and Assigns

It is mutually agreed by all the parties hereto that the agreements, covenants, conditions, limitations, restrictions and undertakings herein contained shall, subject to the provisions as to assignment, apply to and bind the successors and assigns of the respective parties hereto as if they were in all cases named.

H.L. Waivers

One or more waivers of any term, covenant or condition- by either -party shall not be construed as a waiver of a subsequent breach of the same or any other term, covenant, or condition and the consent or approval by either party to any act shall not be deemed to waive or render unnecessary either party's¹ consent or approval for any subsequent similar act by the other party.

H.M. Performance and Time to be of the Essence

It is understood and agreed that full and faithful compliance with and performance of each and every covenant and provision of this Agreement by the party or parties required to comply with or perform each such covenant or provision is and shall be of the essence; also that time is and shall be of the essence; also that such full and faithful compliance with and performance of each and every covenant and provision of the Agreement shall be deemed to be a material condition of this Agreement.

M.N. Insurance

First Parties shall at all times maintain with responsible insurer or insurers sufficient insurance against loss or damage to the Plant as is customarily maintained with respect to loss and property of like character. Each party hereto shall be named as a co-insured. First Parties shall maintain with a responsible insurer or insurers, workmen's compensation insurance and insurance against public liability and property damage. The premiums on all such insurance shall be a part of ~~the o~~Operationg and ~~m~~Maintenance costsExpenses.

N.O. Titles and Headings

The sub-headings and titles of this Agreement are inserted for the convenience of reference only and shall not be taken or considered as having any bearing on the interpretation thereof.

O.P. Notices

All notices shall be mailed to the address designated beneath the signatures of the parties hereto or as subsequently designated in writing by the parties.

P.Q. ~~Limited Rights of Agency~~Integration

~~Nothing herein in this agreement contained shall be deemed to give Agency any ownership rights or any other right, title or interest in or to the Plant, Plant land, or any part thereof, excepting the sole and limited contractual right to discharge Agency sewage therein and have the same therein treated in the same manner as First Parties' sewage is treated, subject to all limitations, conditions, restrictions and other provisions set forth or contained in this Agreement.~~

This agreement constitutes the entire agreement between the parties and may only be amended, supplemented, or modified, in writing by mutual agreement of the parties.

PART ~~VII~~X

SPECIAL PROVISIONSPLANT MASTER PLAN

A. Short-Term Financing

The District agrees to participate in short-term financing of the Plant Master Plan through the San Jose-Santa Clara Clean Water Financing Authority (“CWFA”) using a Commercial Paper Program (or similar short-term debt instrument such as a line of credit or short-term notes) subject to the following terms and conditions:

1. The total amount of short-term financing incurred by the Administering Agency on behalf of the District shall not exceed fifteen million dollars (\$15,000,000) through the end of fiscal year 2017-2018, unless otherwise authorized in writing by the District. This amount shall be in addition to the District’s annual allocated payments of Allowable Capital Expenses.
2. The District shall review and approve in writing the terms and structure of any proposed short-term financing program prior to the Administering Agency’s incurring debt on the District’s behalf.

B. Long-Term Financing

1. The District will participate in long-term financing of the Plant Master Plan. Before the District can participate, however, it must have an opportunity to review the Engineering Study of the Plant Master Plan, as required in Part II, Section C(1) above. First Parties and the District shall meet and confer to discuss the options for long-term financing based upon the information contained in the Engineering Study. The District will consider the following options for long-term financing:
 - a. The District may participate in subsidized, low-cost long-term financing secured by the Administering Agency for the Plant Master Plan from various state and/or federal grant and loan programs, subject to the District’s review and approval of terms and conditions for such financing. Participation may be through the CWFA or directly with the state or federal awarding agency. Any agreement to participate under this provision shall be in writing, in the form of an amendment to this Agreement or in the form of a Side Letter Agreement.

b Alternatively, the District may self-finance the long-term financing of the Plant Master Plan, to the extent any costs are not financed with state and/or federal grants and low-cost loans.

Termination of Agreements

~~It is mutually agreed by all parties hereto that all these portions of any and all agreements heretofore entered into between the City of San Jose and County Sanitation District No. 2, or between the City of San Jose and County Sanitation District No. 3, or between the City of Santa Clara and County Sanitation District No. 2, or between the City of Santa Clara and County Sanitation District No. 3, or between County Sanitation District No. 2 and both the City of San Jose and the City of Santa Clara, or between County Sanitation District No. 3 and both the City of San Jose and the City of Santa Clara, or between County Sanitation District No. 2 and County Sanitation District No. 3, and both the City of San Jose and the City of Santa Clara in any way relating to the Plant or any part thereof, or in any way relating to its ownership, construction, maintenance, repair, operation or use, and all those portions of any and all supplements, addendums, changes or amendments thereto, in any way relating to the Plant or any part thereof, or in any way relating to its ownership, construction, maintenance, repair, operation or use, which have not already terminated, are hereby terminated, and Agency does hereby relinquish, remise, release and quitclaim unto First Parties any and all rights, titles or interest, if any, which Agency may have on date of execution of this Agreement, under and by virtue of any said agreements in and to the Plant or any part thereof or in or to its ownership, construction, maintenance operation or use.~~

~~A. Charges for Past Capital Cost~~

~~For the privilege of discharging sewage into the Plant and having the same therein treated and disposed of, pursuant to and subject to the provisions of this Agreement, Agency agrees to pay to First Parties, at the time and manner described in Part III, Paragraph E, Sections 3a and 3c, the amounts of money described in Exhibit B.~~

IN WITNESS WHEREOF, First Parties and the District have caused this Agreement to be executed in their respective names and their respective seals to be affixed hereunto by their duly authorized officers, all as of the date first written.

[ADD SIGNATURE BLOCKS]

EXHIBIT A

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT
TREATMENT PLANT CAPACITY ALLOCATIONS

The attached Tables 1 and 2 contain the Agencies' and First Parties' treatment plant capacities achieved by implementation of the Intermediate-term Improvements and First Stage Expansion.

Table 1 - 143 MGD Plant, Intermediate-term Improvements Implemented

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

TREATMENT PLANT CAPACITY ALLOCATIONS

The attached Table 1 contains the Agencies' and First Parties' treatment plant capacities achieved by implementation of the Intermediate-term Improvements and First Stage Expansion. Table 2 shows the Agencies' and First Parties' treatment plant capacities, as effective with the transfer of 1 MGD from West Valley to Milpitas (July 1, 2006.)

Table 1 - 167 MGD Plant, Intermediate Term Improvements and First Stage Expansion. Increased capacity was allocated only to those Agencies that elected to participate in Plant expansion to 167 MGD. Milpitas was allocated 2 MGD of the 24 MGD expansion, and the First Parties' share the remaining 22 MGD based on assessed valuation. BOD, SS, and Ammonia capacities were allocated in the same proportion as Flow.

Table 2— 167 MGD Plant, After transfer of 1 MGD from West Valley to Milpitas. Table 2 shows the Agencies' and First Parties' treatment plant capacities, as effective with the transfer of 1 MGD from West Valley to Milpitas (July 1, 2006.) The other Agencies' capacities remain the same as in the 143/167 MGD Plant (Table 2).

TABLE 1

SAN JOSE/SANTA CLARA

WATER POLLUTION CONTROL PLANT

143 MGD Plant
Summary of Capacity⁽¹⁾ Allocation
(Intermediate-term Improvements Implemented)

TABLE 2

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

167 MGD Plant
Summary of Capacity⁽¹⁾ Allocation
(First Stage Expansion Implemented)

EXHIBIT B

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

REPLACEMENT COST OF PLANT & EQUIPMENT

JUNE 1983

EXHIBIT C

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT
LAND DISTRIBUTION

1. Table 1 includes the original land purchase price for each parcel purchased before June 30, 1982 ("Pre-1982 Land."). The City of San Jose's average yearly rate of return for all investments was applied to this amount and compounded to establish a June 30, 1982 value for all Pre-1982 Land.
 2. Land participation for Pre-1982 Lands was based upon the 167 MGD capacity of the Plant (Flow BOD, Suspended Solids and Ammonia). Percentage of participation in Pre-1982 Land is based upon the total acreage and not on an individual parcel basis.
-

3. Agencies which still owe the City of San Jose and West Valley Sanitation District for their allocated share of cost for Pre-1982 Land shall pay all the costs of this land from sale, lease or rental revenues to be received from the Water Pollution Control Plant properties. Percentage of revenue shall be based upon each Agency's full capacity percentage. The Pre-1982 Land costs will be paid off only from. sale, lease or rental revenues of the Plant property and shall have no fixed term. Table 2 shows First Parties' and Agencies' allocations and amounts/credits due for Pre-1982 Land costs as of June 30, 2005.
4. Table 3 shows the original purchase price, date of purchase and cost allocation for all land purchased on or after July 1, 1982 ("Post 1982 Land"). Cost allocation in Post 1982 Land was based on the flow and wastewater strength allocations for First Parties and Participating Agencies, except for land purchased for recycled water facilities, which is based on flow allocation only.
5. Table 4 shows the percentage participation in Pre-1982 Land and Post-1982 Land for First Parties and Agencies effective July 1, 2006.
6. Sale, lease or rental revenues from Water Pollution Control Plant property shall be first applied to an Agency's debt, and only upon completion of that debt, will revenues be passed on to the Agency.
7. If and when expansion of the facilities takes place in the future, land values shall again be adjusted based upon the new MGD denominator. Each Agency's percentage of participation in land shall, at that time, be recomputed based upon total land cost shown in the applicable Land Cost Allocation.
8. All purchases of land in the future shall be distributed to all Agencies in the percentage of discharge capacity at the Plant, except that land purchased for Water Recycling improvements shall be based on the Agencies' and First Parties' purchased capacity in the 167 MGD Plant for the flow parameter only.

SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT
LAND COST ALLOCATION METHODOLOGY

1. Attachment A is a Treatment Plant Property map.
 2. Table 1 includes the original land purchase price for each parcel. This amount was then applied to the City of San Jose's average yearly rate of return for investments and compounded to establish a June 30, 1982 value for the Pre-1982 Land.
 3. Table 2 shows the First Parties' and Agencies share of Pre-1982 Land Costs. Table 2 also shows the amounts still due or owing by First Parties and Agencies for Pre-1982 Land Costs, as of June 30, 2005.
-

4. Table 3 shows the land allocation for First Parties and Agencies for all land purchases on or after July 1, 1982, based on the amount actually paid by First Parties and Agencies for land purchased on or after July 1, 1982.
5. Table 4 shows the land participation allocation, effective July 1, 2006, for West Valley and Milpitas, reflecting the transfer of land equivalent to 1 MGD capacity from West Valley to Milpitas. The transfer of capacity and adjusted land allocation percentages shall not affect the amounts due or owing by Milpitas or West Valley for Pre-1982 Land Costs.

TABLE 1

SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT
LAND PURCHASES

TABLE 2

SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT
SUMMARY OF DISTRIBUTION OF CAPITAL COSTS TO PARAMETERS

TABLE 3

SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT

TABLE 4

SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT
ALLOCATED SHARE COST OF FACILITIES

TABLE 5

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

Land Cost Allocation

EXHIBIT E

ADMINISTERING AGENCY

- A. San Jose to be Administering Agency. It is mutually agreed the City of San Jose is and shall be the Administering Agency of this Agreement, and, as such, shall execute and administer this Agreement.
- B. Powers and Duties of Administering Agency, Scope and Exercise. Subject to such limitations as may be imposed in this Agreement, the Administering Agency shall have the following powers and duties:
1. To maintain, repair, expand, replace, improve and operate the Plant for Plant Purposes, 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, to treat and dispose of all sewage (and by-products thereof) of First Parties, the District, the Agencies, and of any and all Agencies now or hereafter authorized to discharge or convey sewage into or to said Plant or any sewer lines leading thereto, so that said sewage and all effluent from said Plant will not pollute the waters of the San Francisco Bay, or any other waters, and so that said sewage will be disposed of in a manner authorized by law.
 2. To make, award and enter into contracts with third parties for the construction, improvement, replacement, expansion, or repair of the Plant or any part of parts thereof.
 3. To acquire, by purchase, condemnation or otherwise, any and all real or personal property which it should find to be reasonably necessary for Plant purposes.
 4. To receive, be the depository for, expend and disburse, for the purpose of this Agreement, any and all funds or monies advanced, contributed or paid by First Parties and Agencies to said Administering Agency pursuant to the provisions of this Agreement, together with all other Plant income collected from the Agencies, and all other Plant income and Funds.
 5. To keep accurate accounts of all receipts and disbursements of the above-mentioned funds and monies, in accordance with Part V, Section F.
 6. To provide and supply any and all personnel and services, including, but not limited to, legal, engineering and accounting services, which it should find to be reasonably necessary for the maintenance, repair, expansion, replacement, improvement and operation of said Plant, the cost and expense of providing such personnel and services to be charged to and shared by First Parties as part of operating or other Plant costs as elsewhere provided in this Agreement.

7. To exercise any and all other powers, common to First Parties, with respect to the maintenance, repair, expansion, replacement improvement and operation of the Plant.
8. To do any and all things reasonably necessary to treat and disposal of all sewage entering the Plant in such manner as will comply with the NPDES Permit and all applicable laws and regulations.
9. To do any and all other things which the Administering Agency is required or authorized to do by other provisions of this Agreement.

C. Manner of Exercising Powers or Performing Duties

The manner in which the Administering Agency shall exercise its powers and perform its duties is and shall be subject to the restrictions upon the manner in which the City of San Jose could exercise such powers and perform such duties; and shall not be subject to any restrictions applicable to the manner in which the City of Santa Clara could exercise such powers or perform such duties.

D. Expenses of Administering Agency

It is mutually agreed that the City of San Jose shall be reimbursed from Plant funds for all reasonable costs and expenses incurred by it as Administering Agency of this Agreement, including, but not limited to, salaries and wages paid by the Administering Agency to its officers and employees for services rendered by them for Plant Purposes. It is further agreed that the Administering Agency shall be paid, from Plant funds, an amount equal to seventeen and three hundred thirteen one thousandths per cent (17.313%) of all the above mentioned salaries and wages for overhead expenses incurred in administering this Agreement. For calculating the allowable overhead expenses, the Administering Agency shall comply with the most current version of U.S. Office of Management and Budget Uniform Guidance Cost Principles, Audit, and Administrative requirements for Federal Awards, formerly known as OMB Circular A-87.

Amounts Payable by CSD No. 2-3 For Use of
Capacity Provided by the Intermediate-term Improvements

Payments for the use of Plant capacity provided by the Intermediate-term projects for and during each of the fiscal years or portions of fiscal years between July 1, 1984, and June 30, 2003 shall be an amount of money equal to the annual debt service of the Clean Water Financing Authority Series A bonds sold to finance CSD No. 2-3 estimated share of the Intermediate-term Improvements, less CSD No. 2-3's estimated share of Federal and State grant reimbursements. This amount shall be adjusted annually to reflect any change in CSD No. 2-3 flows and loading.

CSD No. 2-3's share of the Intermediate-term Improvements and Federal and State grants reimbursements under the 90% G' plus 10% B compromise cost sharing concept, which was approved by the Treatment Plant Advisory Committee on June 9, 1982, is as follows:

Project	Total Estimated Amount	CSD No. 2-3 Allocation
1982 Priority and Intermediate term Improvements	\$86,530,200	\$2,485,500
	<u>20,704,000</u>	<u>738,400</u>
Less: Grants	\$65,826,200	\$1,747,100
Total	<u> </u>	<u> </u>

Annual debt service on Series A bonds sold to yield \$1,747,100 is \$213,500. This amount represents the maximum annual payment that CSD No. 2-3 would incur since its discharge is limited to 5% above its 1984-85 level as set forth in Part IIB of this Agreement. This amount would be adjusted annually to reflect changes in CSD No. 2-3's discharge.

Payments for the use of the capacity provided by the Intermediate-term Improvements projects for and during each of the fiscal years or portions of fiscal years between July 1, 1984, and June 30, 2003 shall be \$218,500 less an amount of money determined as follows:

2.266 MGD	Minus—Amount of Flow capacity used by Agency in the fiscal year for which the payment is being calculated.	Multiplied by	\$43,799 —per MGD
8.915 Klbs/day	Minus—Amount of BOD capacity used by Agency in the fiscal year for which the payment is being calculated. Plus	Multiplied by	\$32,256 -per Klbs/day
4.864..Klbs/day	Minus—Amount of SS capacity used by Agency in the fiscal year for which the payment is being calculated. Plus	Multiplied by	\$32,256 Per Klbs/day
4.864..Klbs/day	Minus—Amount of SS capacity	Multiplied by	\$12,214

	<p>used by Agency in the fiscal year for which the payment is being calculated.</p> <p>———— Plus</p>		Per Klbs/day
0.545 Klbs/day	<p>Minus— Amount of NH3 capacity used by Agency in the fiscal year for which the payment is being calculated.</p>	Multiplied by	\$175,472 Per Klbs/day

~~In no event shall the payments for the use of the capacity provided by the Intermediate-term Improvements projects for and during each of the fiscal years or portions of fiscal years between July 1, 1984 and June 20, 2003 be less than zero.~~

EXHIBIT B

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

CHARGES FOR PAST CAPITAL COSTS

The attached schedules contain CSD No. 2-3's share of debt service on Clean Water Financing Authority Series A bonds, capital costs, and capital equipment replacement allowance costs for FY 1982-83 and 1983-84. The District's use of plant capacity in those years was used as the basis for determining its share of costs. In addition, a schedule showing CSD No. 2-3's remaining obligation for use of the secondary treatment plant is also attached.

- Debt Service on CWFA Series A Bonds—Schedules A and B contain CSD No. 2-3's debt service obligations for FY 1982-83 and 1983-84 and were developed using the procedure described in Exhibit A of the Agreement. Amounts previously paid CSD No. 2-3 have been deducted from the District's obligations.

- Capital Costs—Schedules C and D contain CSD No. 2-3's capital cost allocation for FY 1982-83 and 1983-84, which were based on the District's use of plant capacity in those years.

- Capital Equipment Replacement Allowance—Schedules E and F contain CSD No. 2-3's obligations for its share of the capital equipment replacement allowance for FY 1982-83 and 1983-84. Payments for capital equipment replacement shall be deposited with the Administering Agency in the replacement fund.

- Rental Charges for Secondary Treatment Plant—Schedule G contains the final rental payments due from CSD No. 2 for use of the secondary treatment plant.

CSD No. 2-3's total obligation for past capital costs is as follows:

Schedule A—	Amount due from CSD No. 2-3 for debt service on Clean Water Financing Authority Series A Bonds for FY 1982-83.	\$ 14,299.00
Schedule B—	Amount due to CSD No. 2-3 for debt service on Clean Water Financing Authority Series A Bonds for FY 1983-84.	(12,956.00)
Schedule C—	Amount due from CSD No. 2-3 for capital cost for FY 1982-83.	33,964.18
Schedule D—	Amount due from CSD No. 2-3 for capital cost for FY 1983-84.	9,764.93

Schedule E	Amount due from CSD No. 2-3 for capital equipment replacement allowance for FY 1982-83.	10,338.00
Schedule F	Amount due from CSD No. 2-3 for capital equipment replacement allowance for FY 1983-84.	20,828.00
Schedule G	Amount due from CSD No. 2-3 for rental charges for secondary treatment plant.	22,849.83
	TOTAL	\$99,087.94

~~SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT~~

~~AMOUNT DUE FROM C.S.D. NO. 2-3 FOR DEBT
SERVICE ON C.W.F.A. SERIES A BONDS FOR F.Y. 1982-83~~

~~Base Amount~~ _____ \$218,500

~~Less Adjustment:~~

~~2.266 MGD - 1.951 MGD(1) = 0.315 MGD X \$43,799~~ _____ \$ 13,797

~~8.915 Klbs/day - 5.654 Klbs/day(1) = 3.261 Klbs/day X \$32,256 = 105,187~~

~~4.864 Klbs/day - 4.023 Klbs/day (1) = 0.841 Klbs/day X 12,214 = 10,272~~

~~0.545 Klbs/day - 0.508 Klbs/day (1) = 0.037 Klbs/day X 175,472 = 6,492~~ \$135,748

1982-83 Debt Service Charge	\$ 82,752
Less: Amount Previously Paid (3/10/83)	62,453
Amount Due from (to) C.S.D. No. 2-3	\$14,299

(1) ~~Source: C.S.D. No. 2-3 1983-84 Revenue Program~~

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

AMOUNT DUE TO C.S.D. NO. 2-3 FOR DEBT SERVICE
ON C.W.F.A. SERIES A BONDS FOR F.Y. 1983-84

Base Amount		\$218,500
Less Adjustment:		
2.266 MGD - 1.939 MGD ^(†) = 0.327 MGD X \$43,799	= \$14,322	
8.915 Klbs/day - 5.693 Klbs/day ^(†) = 3.222 Klbs/day X \$32,256 =	103,929	
4.864 Klbs/day - 4.022 Klbs/day ^(†) = 0.842 Klbs/day X \$12,214 =	10,284	
0.545 Klbs/day - 0.507 Klbs/day ^(†) = 0.038 Klbs/day X \$175,472 =	6,668	\$135,203
1983-84 Debt Service Charge	\$83,297	

Less: Amount Previously Paid 9/10/83	\$52,230	
3/10/84	44,023	
		96,253
Amount Due From (To) - C.S.D. No. 2-3		(\$12,956)

^(†) Source: C.S.D. No. 2-3 1984-85 Revenue Program

**SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT**

**AMOUNT DUE FROM CSD NO. 2-3 FOR
CAPITAL COST FOR FY 1982-83**

1982-83 Capital Cost (Actual)

<u>Capital Project</u>	<u>Total Cost</u>
Security Fencing	2,762.18
Remodel Shower, Locker Room, Lunch Room—P & E Building Gas Line Replacement	69,670.28
Replacement U3 Water Well Dist. System	3,332.55
Ammonia/Chloramine Dispensing Equipment	2,012.57
Supplemental Ammonia Storage	684.87
Rehabilitation Engine Blowers and Generators	2,098.40
Drainage Line	1,756,479.79
TOTAL COST	109,845.90
	<u>\$1,946,886.54</u>

Parameter	Percentage Allocation	Total Project Cost Allocated To Parameters	CSD No. 2-3 Proportional Share	CSD No. 2-3 Proportional Cost
Flow	58.850%	\$1,145,742.73	1.951 MGD 132.0 MGD	-\$16,934.42
BOD	19.357%	376,858.83	5.654 Klbs/d 530.0 Klbs/d	4,020.30
SS	9.827%	191,320.54	4.023 Klbs/d 508.0 Klbs/d	1,515.12
Ammonia	11.966%	232,964.44	0.508 Klbs/d	4,733.84
Totals		\$1,946,886.54		\$27,203.68
Add: Interest	100%		N/A	6,760.50
Total Due				\$33,964.18

**SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT**

AMOUNT DUE FROM CSD NO. 2-3 FOR
CAPITAL COST FOR FY 1983-84

<u>Capital Project:</u>		<u>Total Cost</u>
Security Fencing		— \$ 25,247.02
Gas Line Replacement		— 87,599.92
Supplementary Oxygen	System	435.00
Replace #3 Water Well District System		— 164,400.00
Improve Control Diesel Oil Desp.		— 1,291.50
Rehab. Engine Blowers and Generators		— 346,941.45
Drainage Line		— 12,205.10
Rehab. Plant Phone System		12,154.97
Total Cost		\$650,274.96

Parameter	Percentage Allocation	Total Project Cost Allocated to Parameters	CSD No. 2-3 Proportional Share	CSD No. 2-3 Proportional Cost
Flow	58.850%	\$382,686.82	1.939 MGD 138.0 MGD	\$ 5,377.03
BOD	19.357%	125,873.72	5.693 Klbs/d 545.0 Klbs/d	— 1,314.86
SS	9.827%	63,902.52	4.022 Klbs/d 522.0 Klbs/d	— 492.37
Ammonia	11.966%	77,811.90	0.507 Klbs/d 25.0 Klbs/d	— 1,578.03
Totals	100%	\$650,274.96	N/A	\$ 8,762.29
Add: Interest				1,002.64
Total Due				\$9,764.93

**SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT**

**AMOUNT DUE FROM CSD NO. 2-3 FOR
RENTAL CHARGES FOR SECONDARY TREATMENT**

Cost of Capacity Multiplied by:	\$14,131.00 per MGD
Capacity Reserved for Agency	x 1.617 MGD
Amount Due for Secondary Treatment Plant Capacity	\$ 22,849.83(1)

(1) Represents final rental payment for use of secondary treatment plant by CSD No. 2-3

AMENDED AND RESTATED AGREEMENT BETWEEN CITIES OF SAN JOSE AND
SANTA CLARA
AND CUPERTINO SANITARY DISTRICT~~AGENCY~~ RELATING TO SAN JOSE ~~SANTA~~
CLARA
REGIONAL WASTEWATER FACILITY~~WATER POLLUTION CONTROL PLANT~~.

This AMENDED AND RESTATED AGREEMENT ("Agreement") is made and entered into this ____ day of ____, 2015 ~~19~~, by and between the CITY OF SAN JOSE and the CITY OF SANTA CLARA, both being municipal corporations of the State of California (hereinafter referred to as "First Parties"), and CUPERTINO SANITARY DISTRICT (hereinafter referred to as "Cupertino Agency").

RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

WHEREAS, First Parties are co-owners of the San Jose-Santa Clara Regional Wastewater Facility ("Plant"), which is operated by the City of San Jose Environmental Services Department;

WHEREAS, Cupertino owns and operates a collection system that conveys wastewater to the Plant for treatment and disposal;

WHEREAS, First Parties and Cupertino previously entered into a Master Agreement with Supplemental Agreement for Wastewater Treatment dated March 1, 1983, as it has been amended by a First Amendment dated December 17, 1985, a Second Amendment dated December 4, 1995, and a Third Amendment dated August 5, 2009 (collectively herein referred to as the "1983 Agreement"), which set forth the parties' rights and obligations related to the Plant;

WHEREAS, on November 19, 2013, the City of San Jose adopted a Plant Master Plan, which identifies, among other things, significant capital projects necessary to rebuild and improve the Plant through the year 2040;

WHEREAS, First Parties and Cupertino desire to amend various provisions of the 1983 Agreement as amended, in order to address implementation of the Plant Master Plan, as well as to update and clarify the parties' rights and obligations related to the future of Plant operations generally;

WHEREAS, this Agreement has been developed by and is satisfactory to the parties and their respective City Councils and Board of Directors; and

WHEREAS, this Agreement supersedes any and all prior agreements and understandings between the parties of the 1983 Agreement; and

WHEREAS, this Agreement shall continue to include Revised Exhibits A, B, C and D as attached to and incorporated by reference in the Third Amendment dated August 5, 2009 (hereafter Revised Exhibits A, B, C and D).

Now, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained in this Agreement and for other good and valuable consideration, First Parties Cupertino agree as follows:

PART I DEFINITIONS

A. Administering Agency.

The City of San Jose is and shall be the Administering Agency of this Agreement and as such shall execute and administer this Agreement in accordance with Section VIII of the 1959 Agreement attached hereto as Exhibit E.

B. Agencies.

The term "Agencies" shall be those tributary agencies discharging wastewater into the San Jose-/Santa Clara ~~Water Pollution Control Plant~~ Regional Wastewater Facility which now includes West Valley Sanitation District, Cupertino, Burbank Sanitary District, County Sanitation District 2-3 and City of Milpitas., ~~previously referred to as "outside users" in the 1959 Agreement.~~

C. Allowable Capital Expenses.

The term "Allowable Capital Expenses" shall mean those Capital Expenses necessary for Plant Purposes that do not exceed the annual monetary cap set forth in Part V Section C.

~~C.~~ D. 1959 Agreement.

The term "1959 Agreement" shall mean the Agreement between San Jose and Santa Clara, dated May 6, 1959 and entitled "Agreement between San Jose and Santa Clara Respecting Sewage Treatment Plant," as such Agreement now reads or as it may hereafter from time to time be amended or renegotiated.

~~D.~~ E. Capacity.

The term "capacity" shall mean the Mean Peak Five (5) Day Dry Weather Plant Treatment capacity as contained in Exhibit "A," attached hereto and incorporated herein by reference as if fully set forth.

F. Capital Expenses.

The term "Capital Expenses" shall mean costs and expenses allocated to fund Plant improvements, including but not limited to major and structural rehabilitation projects, upgrades and expansions to meet future user demands, and other capital

projects.

E.G. Director.

The term "Director" shall mean the Director of Environmental Services Department~~Water Pollution Control~~ for the City of San Jose.

~~—~~Engineering Study.

H.

~~—~~The term "Engineering Study" shall mean those studies prepared by a third-party consultant on behalf of First Parties that ~~the First Parties shall cause to be made when the Plant has reached eighty five percent (85%) of its designed capacity, beginning with 167 MGD and for every incremental capacity increase thereafter. The first Engineering Study shall be performed when the mean peak five day dry weather flow to the Plant reaches 142 MGD.~~ The Engineering Study shall include an analysis of Plant capacity needs, the size and nature of proposed facilities to be constructed, a construction timetable and an estimate of total project costs, and an estimate of each participating agency's share of project cost.

G-I. Equipment Replacement Fund.

The term "Equipment Replacement Fund" shall mean those monies deposited with the Administering Agency for the replacement of capital facilities at the Plant. The total monies on deposit for the Equipment Replacement Fund shall be capped at an amount not to exceed \$5,000,000

F.J. Exhibits.

The term "Exhibits" shall mean those Exhibits attached to this Agreement and incorporated into this Agreement by reference as if fully set forth. These Exhibits may be modified as contract amendments or amended from time to time as necessary to reflect changes of fact. The Exhibits shall be reviewed annually, or at such other times as significant changes occur, by the Treatment Plant Advisory Committee, which body shall recommend any modifications or amendments required.

H.K. First Stage Expansion.

The term "First Stage Expansion" shall mean that portion, as is presently described in the report of CH2M Hill, engineers, entitled "San Jose/Santa Clara Water Pollution Control Plant, Capital Improvement Program, Executive Summary, Revised June, 1982" and dated June 25, 1982, or as amended or revised, which consists of improvements to all areas of the Plant and expansion of the Liquid Process, Process Control System, Sludge Processing and Disposal and will provide a capacity of 167 mgd.

I.L. Interest.

Interest will be to the extent permitted by law, equal to the rate of interest set forth in the monthly report to the Council of the City of San Jose, prepared by

the Director of Finance of San Jose, with respect to said City's portfolio and interest earnings thereon.

J.M. Intermediate – Term Improvements.

The term "Intermediate-Term Improvements" shall mean that portion, as is presently described in the report of CH2M Hill, engineers, entitled "San Jose/Santa Clara Water Pollution Control Plant, Capital Improvement Program, Executive Summary, Revised June, 1982" and dated June 25, 1982, or as amended or revised, which consists of six (6) elements, as outlined in Chapter 2 of said report, which are designated to provide the Plant with a mean peak five (5) day dry weather treatment capacity of 143 mgd.

N. NPDES Permit.

The term "NPDES" Permit shall mean the National Pollutant Discharge Elimination System Permit issued by the San Francisco Bay Regional Water Quality Control Board, Order No. R2-2014-0034 (NPDES No. CA0037842), as it may be amended or reissued from time to time.

K.O. Operationng and Maintenance ExpensesCosts.

Any 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, chemicals, 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 Plantfacilities in proper operating condition and for obtaining and installing equipment, accessories or appurtenances that are necessary during the service life of the Plant to maintain the capacity and performance for which the Plant was designed and constructed. Operation and Maintenance Expenses are distinct from and do not include Capital Expenses.s-

L.P. Parameters.

The term "parameters" shall mean the four (4) treatment parameters of Flow, Biochemical Oxygen Demand (BOD),Suspended Solids (SS),and Ammonia (NH_3H_3)-as expressed in terms of estimates which are the common denominator for computing annual and/or daily loadings.

M.O. Plant-(Existing Treatment Plant).

The term "Plant" shall mean the "San Jose-/Santa Clara Regional Wastewater FacilityWater Pollution Control Plant".

R. Plant Master Plan.

The term "Plant Master Plan" shall mean that certain document approved by the San Jose City Council on November 19, 2013.

S. Plant Purposes.

The term "Plant Purposes" shall mean the treatment and disposal of wastewater from the Plant's service area, including the distribution of Recycled Water through the South Bay Water Recycling, for the sole purpose of complying with the NPDES

Permit and other applicable state and federal law. Plant Purposes do not include the operation and maintenance of, or capital improvements to the Silicon Valley Advanced Water Purification Center (“AWPC”).

~~N. Replacement Costs.~~

~~All 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:~~

- ~~1. Major rehabilitation which will be needed as individual unit processes or other facilities near the end of their useful lives;~~
- ~~2. Structural rehabilitations;~~
- ~~3. Plant expansions or upgrades to meet future user demands.~~

T. Recycled Water.

For the purposes of this Agreement, “Recycled Water” shall mean wastewater from the Plant’s service area, which as a result of treatment at the Plant, is suitable for uses other than potable use.

U. Silicon Valley Advanced Water Purification Center (“AWPC”).

The term “AWPC” shall mean that facility owned and operated by the Santa Clara Valley Water District that is designed to enhance the quality of Recycled Water and expand its usage.

V. South Bay Water Recycling.

The term “South Bay Water Recycling” shall mean the system of pipelines, pump stations, and storage reservoirs, administered by the City of San Jose, for the purpose of providing Recycled Water to customers. The facilities part of South Bay Water Recycling are shown in Exhibit [insert].

~~O.~~

~~—Replacement fund shall mean those monies deposited with the administering agency for the replacement of capital facilities at the Plant.~~

P.W. TPAC.

The term "TPAC" shall mean the Treatment Plant Advisory Committee.

PART II

CAPACITY RIGHTS GRANTED TO CUPERTINO AGENCY

A. General.

Commencing on the effective date of this Agreement, and thereafter during the term of this Agreement, and subject to all the conditions, limitations, restrictions, terms and provisions contained in this Agreement, and Cupertino Agency's faithful compliance with and performance of the same, First Parties hereby grant to Cupertino Agency a right to discharge wastewater into the Plant and to have the same treated and disposed of in and by said Plant the same as wastewaters of First

Parties.

B. Capacity Rights.

First Parties have designed the Plant to provide for capacity to treat and dispose the volume and strength of wastewater specified in Exhibit "A" as revised August 5, 2009. Cupertino Agency shall be entitled for the duration of this Agreement to use the capacity as set forth in said Exhibit "A". First Parties and Cupertino Agency agree not to discharge more than its capacity in the parameters as is specified in said Exhibit "A", except with the approval and agreement of the First Parties hereto in accordance with the terms and conditions hereinafter provided, or as provided in Part III. Any continuous and intentional violation of capacity rights will be considered a material breach of this Agreement and will be given priority in the claim of breach process as set forth in Part VIII Section G.

C. San Jose-/Santa Clara Water Regional Wastewater Facility-Pollution Control Plant Engineering Studies.

First Parties agree to make the following an Engineering Studiesy to redefine all Agencies' future needs as defined set forth in Part I, Section HF.

1. For implementation of the Plant Master Plan
2. For any single project, or aggregate of projects that are a part of a larger common plan, which are forecasted to exceed fifty million dollars (\$50,000,000)

D. Restrictions and Regulations Respecting Nature, Kind, Type and Strength of Sewage.

First Parties shall inform Cupertino Agency of the Industrial Waste Ordinance of the City of San Jose concerning the type and condition of discharge which would be detrimental to the Plant. Each party to this Agreement shall adopt and enforce ordinances, resolutions, rules and regulations to conform to the restrictions of said Ordinance. Any waiver to the above must be authorized by written Resolution of both the Council of the City of San Jose and the Council of the City of Santa Clara. Each party to this Agreement shall also comply with the applicable statutes, ordinances, rules and regulations of agencies of the United States of America, and the State of California.

E. Reports, Data and Maps to be Provided by First Parties and Cupertino Agency.

It is mutually agreed that all parties shall prepare and file with the Director and Cupertino reports, data and maps as deemed necessary by the Director and Cupertino Agency.

F. Area Restrictions.

Cupertino Agency, unless otherwise authorized by written resolutions of the governing boards of both the City of San Jose and the City of Santa Clara shall not, and agrees that it will not, discharge or cause, allow, permit or suffer to be discharged into the Plant, or into any sewer line or lines which convey either directly or indirectly any wastewater to the plant, any wastewater which is produced in, or emanates, or comes from any territorial property situated outside the service area map attached as Exhibit (Insert)F.

First Parties and CupertinoAgency further agree not to discharge, or cause to be discharged, any wastewater into any sewer line or lines of the other party, either directly or indirectly, conveying wastewater to the Plant without written authorization of the owner of the sewer line.

PART III FUTURE DISCHARGE CAPACITY RIGHTS

A. Redistribution of Capacity Rights.

1. In order to dispose of capacity, any of the -Agenciesy or First Parties may designate all or a portion of its capacity right as "excess pooled capacity," which shall be available for disposal as hereinafter provided.
2. Any of the Agenciesy or First Parties may acquire excess pooled capacity as recommended by TPAC. Any of the Agenciesy or First Parties may acquire excess pooled capacity at the replacement cost as described in Exhibit "B" plus that portion of the selling party's replacement balance remaining in the Replacement Fund maintained by the Administering Agency.
3. If requests for excess pooled capacity total more than the excess pooled capacity available, then TPAC will allocate the pooled capacity actually available in a manner to most closely achieve the same planning horizon for all requesting parties.

B. Acquisition of Additional Capacity Rights With Plant Expansion.

CupertinoAgency shall have the right to participate in Plant expansions for the purpose of increasing the capacity right into the expanded Plant, subject to the following terms and conditions:

1. Before commencing the design of any such additions, improvements or changes, First Parties shall give CupertinoAgency written notice of their intention to expand the Plant, and the design year for the proposed expansion, as set forth in the Engineering Study prepared in accordance with Part II, Section C.
2. Within ninety (90) days from and after the giving of such notice, CupertinoAgency shall notify First Parties in writing whether it wishes to participate in the proposed expansion, And the amount of capacity desired to serve until the design year. If CupertinoAgency fails to give such notice within such time, it shall be deemed to have elected not to participate in such expansion.
3. If Agency elects not to participate in such expansion, it will pay no part of the cost of the additions, improvements and changes which are made for the purpose of in- creasing the capacity of the Plant.
4. If CupertinoAgency elects to participate in such expansion, it shall pay to First Parties that part of the total cost of such additions, improvements and changes as defined in Part VI, Section B.
5. If the needs of all parties are different than the next feasible increment of plant expansion capacity as described in the Engineering Study, then TPAC will allocate the capacity available in a manner to most closely achieve the same planning horizon for all requesting parties.

C. Acquisition of Additional Capacity Rights Without First Parties Initiated Plant Expansion.

If CupertinoAgency should desire to increase its capacity right into the Plant at a time when no expansion of the Plant as described in the Engineering Study, is proposed by First Parties and no excess pooled capacity is available, then CupertinoAgency may seek additional capacity by the following method:

If requested by CupertinoAgency, First Parties shall initiate a Special Engineering Study to determine the most feasible means to add to the Plant that capacity requested by CupertinolAgency. When CupertinoAgency agrees to pay for such increment, then First Parties shall expand the Plant by such increment. This right shall not be exercised within five (5) years of completion of the latest Engineering Study.

D. Adjustment to Capacity Rights Due to Operating Conditions.

1. In the event of a major Plant facility failure caused by an earthquake, explosion, war, flooding or the like, reductions in operational capacity and any cost of restoration shall be borne by all Agencies, including San Jose/Santa Clara and CupertinoAgency in accordance with a revised Exhibit "A", and the cost of restoration shall be borne proportionately.

~~1-2.~~2. Any changes in Plant capacity which either increase or decrease the capacity of the Plant, resulting from any means whatsoever, shall be proportioned to each agency including San Jose and Santa Clara in accordance with a revised Exhibit "A", i.e. a further revision to Exhibit A as revised August 5, 2009 ("Revised Exhibit A")

~~2-3.~~3. TPAC shall determine annually, during the month of November, the operational capacity and productive use of the Plant in all parameters for all parties and the remaining design capacity of the Plant. By January 31 of the upcoming year, TPAC shall provide a report of its findings to the Agencies and First Parties.

~~3.~~ CupertinoAgency and First Parties shall not exceed the capacity rights agreed upon pursuant to Revised Exhibit "A".

~~4.~~ ~~If at any time, prior to the completion of the Intermediate term Improvements, it becomes necessary to allocate connections to the sewer systems of the combined agencies; in that event, to the extent permitted by law, First Parties will receive forty percent (40%) of the connections of whatever type and all other dischargers will receive sixty percent (60%) of the connections of whatever type. Agency's share will be determined by Agreement among the Agencies. This paragraph shall only remain in effect until completion of the Intermediate term Improvements.~~

4.

PART IV
LAND

A. Participation.

Participation and rights in Plant land shall be as described in Exhibit "C".

B. Sale, Lease or Transfer of Land.

~~It is mutually agreed between First Parties and Agency that~~ if First Parties should, during the term of this Agreement, sell, lease, transfer or otherwise

~~dispose of any of the land located on Plant Property for any purposes of Exhibit "C" which is or are no longer needed for Plant purposes, then Cupertino Agency shall have the right to its proportionate share in any income or revenue derived from such sale, lease, transfer or disposal, based upon the land's fair market value as defined in California Revenue and Taxation Code § 110(a), or actual value, whichever is greater. Each quarter, First Parties shall provide Cupertino with written notice of the amount of income or revenue received, and Cupertino's share of such income or revenue. Payments of revenue due to Cupertino shall be made in accordance with Part VI, Section F.~~

C. Other Land Revenue.

To the extent First Parties receive income or revenue generated from Plant land other than through Part IV, Section B above, including but not limited to revenue generated from tipping fees received from the landfill located on Plant land, Cupertino shall have the right to its proportional share in such revenue in accordance with revised Exhibit "C." Each quarter, First Parties shall provide Cupertino with written notice of the amount of income or revenue received, and Cupertino's share of such income or revenue. Payments of revenue due to Cupertino shall be made in accordance with Part VI, Section F.

D. Sections B and C of this Part IV are not intended to conflict with Part VI, Section E(3).

~~by First Parties proportionally in accordance with Exhibit "C".~~

PART V
PLANT EXPENSES

A. Expenses Limited to Plant Purposes.

Except as otherwise provided in Part V, Section B below, First Parties agree that all Operation and Maintenance Expenses and Allowable Capital Expenses shall be used solely for Plant Purposes.

B. Capital Expenses Unrelated to Plant Purposes.

Should First Parties seek to build, invest in, or fund projects that are unrelated to Plant Purposes, including but not limited to expansion of the Plant for resource recovery, then First Parties shall give Cupertino written notice of their intention and the parties shall promptly meet and confer to discuss the scope of any such project(s) and any Agreement amendments. Cupertino shall have the discretion whether to participate in funding such project(s), the default being no participation, whereby Cupertino shall not be required to pay any costs associated with such project(s), for the life of the project(s). If Cupertino elects to participate, Cupertino shall provide First Parties with written notice of its election within sixty (60) calendar days of the parties' first meet and confer. The terms of funding such project(s) shall be set negotiated and forth in an Agreement amendment.

C. Cap on Allowable Capital Expenses.

In each fiscal year, Cupertino's allocation of the total Allowable Capital Expenses shall not

exceed two million dollars (\$2,000,000) per fiscal year, the amount which shall be adjusted annually using the “Consumer Price Index, All Urban Consumers, All Items, San Francisco-Oakland-San Jose Metropolitan Area, 1982-84=100,” which is compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor agency. Total combined capital project expenses that are equal to or less than two million dollars (\$2,000,000) per fiscal year shall not require an amendment to this Agreement.

D. Capital Expenses Exceeding the Cap.

1. If a proposed project’s estimated fiscal year Capital Expenses will exceed the cap specified in Part V, Section C, then First Parties and Cupertino shall meet and confer to negotiate an amendment to this Agreement that sets forth the terms and conditions related to funding such fiscal year Capital Expenses. First Parties and Cupertino shall establish methods for guaranteeing that funding is available (including, but not limited to, securing lines or letters of credit or similar instruments) so that First Parties can award contracts for capital projects without having all of the funds in cash at the time of award.
2. The parties acknowledge that the Plant Master Plan exceeds the cap specified in Part V, Section C. Because the Plant Master Plan was approved prior to execution of this Agreement, the terms and conditions related to funding the Plant Master Plan are set forth in Part IX.

E. Projections of Future Capital Expenses.

First Parties shall develop, regularly update, and maintain reasonable and accurate projections of future Capital Expenses for the Plant. Such projections shall be for at least ten (10) years and updated and distributed to Cupertino on a quarterly basis for its internal budgeting and financial planning purposes. First Parties shall also develop more detailed projections for the next two (2) years and shall also distribute them to Cupertino on a quarterly basis.

F. Accounting Records.

1. The Administering Agency shall maintain full, complete and separate financial, statistical and accounting records relating or pertaining to this Agreement, in accordance with generally accepted accounting principles. Such records shall include, but not be limited to, accounting records; payroll documents; overhead expenses; timesheets; all paid vouchers including those for out-of-pocket expenses; other reimbursements supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals, original estimates; estimating work sheets; contract amendments and change order files; insurance documents; written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); memoranda; and correspondence.
2. Such records shall enable Cupertino to readily identify the Plant’s assets, expenses, costs of goods, and use of funds received from each of the following categories: revenues received from Cupertino; revenues received from the other Agencies; revenues and income generated from the sale, lease, transfer, or disposal of Plant land; and revenues and income from generated from other products or services at the Plant.
3. The Administering Agency shall maintain all such records for a minimum period of ten (10) years after termination of this Agreement.

G. Cupertino's Right to Audit and Inspect Accounting Records.

Cupertino and its authorized representatives shall have the right, on an annual basis, to audit, examine, and make copies of or extracts from all financial, statistical, and accounting records of the Administering Agency and the Administering Agency's employees, agents, assigns, successors, and subcontractors, in whatever form they may be kept, relating or pertaining to this Agreement. At Cupertino's written request, the Administering Agency shall make such records available for audit and inspection during normal business hours at the Administering Agency's office, within three (3) business days' of the Cupertino's request. Costs of any audit conducted pursuant to this provision shall be borne by Cupertino, except as otherwise provided herein and in Part VI, Section D(3)(c). If the audit discovers findings related to accounting errors, fraud, misrepresentation, or non-performance, including use of wastewater and Recycled Water revenues for purposes unrelated to the Plant or the South Bay Water Recycling, then the Administering Agency shall reimburse Cupertino for the total costs of the audit. Within ninety (90) calendar days following Cupertino's presentation of its audit findings to the Administering Agency, the Administering Agency shall make any adjustments and/or payments to Cupertino.

PART VI

AMOUNTS PAYABLE BY CUPERTINO AGENCY TO FIRST PARTIES

~~A. Payments For Existing Capacity Rights In The Intermediate Term And First Stage Expansion Projects.~~

~~Payments for capacity rights in the Intermediate term and First Stage Expansion projects shall be as described in Exhibit "D".~~

B-A. Payments For Additional Capacity Rights.

1. Payments With Plant Expansion. All payments associated with a Plant expansion as outlined in Part III, Section B, shall be paid for in proportion to the capacity rights requested in the basic parameters or based upon appropriate ratios of Cupertino Agency design parameters to total project design parameters times total project cost.
2. Payments Without Planned Expansion. Should Cupertino Agency elect to obtain additional capacity rights at a time when First Parties do not intend to expand the Plant as designated in Part III, Section B, the expenses associated with this addition of capacity rights shall be the sole responsibility of Cupertino Agency. All payments for studies, designs and construction to provide additional capacity shall be deposited with the Administering Agency.
3. Payments for Transfer of Capacity Rights. Transfers of capacity rights between First Parties and Cupertino Agency or between Cupertino Agency and Agencies, shall be recommended by the Treatment Plant Advisory Committee and approved by First Parties and based upon the pooled capacity cost determined in Part ~~III~~IV, Section A. Transfer of capacity rights shall be based upon written agreement between the participating parties. Payment shall be due and payable as provided in said agreement.

C-B. Payments For Allowable Capital Expenses~~Future Improvements.~~

~~—All payments associated with Allowable Capital Expenses~~future improvements~~~~

~~at the Plant~~ shall be made on the basis of Cupertino Agency's existing capacity rights. Final payment shall be determined based upon actual project cost. This payment shall be a proportional share in accordance with a revised Exhibit "A".

- ~~1.~~
2. First Parties shall notify Cupertino of the exact amount of each upcoming quarterly payment at least one hundred twenty (120) calendar days prior to the date Cupertino's quarterly payment is due.
~~, not later than March 1st, of any fiscal year, provide Agency with a preliminary estimate of the amount of money required from Agency for future improvements or replacements for the ensuing fiscal year.~~

~~D.C.~~ Payments For Operation and Maintenance Costs.

1. First Parties, Cupertino Agency and Agencies shall bear the cost of the Operations and Maintenance Expenses of the Plant, including the South Bay Water Recycling, but excluding the AWPC. This cost of operations and maintenance of facilities shall be determined based upon ~~the parameters of Cupertino Agency's actual flow (in million gallons per day) discharge~~ into the Plant. All other Operations and Maintenance Expenses of the Plant shall be determined based upon the parameters of Cupertino's actual discharge into the Plant. Cupertino shall provide to Agency shall provide to First Parties, by December 1st of each year, data indicating expected discharge for the ensuing fiscal year.
2. First Parties shall, not later than March 1st of each year, provide Cupertino Agency with a preliminary estimate of the amount of money required to operate and maintain the Plant, including water recycling facilities operated by the Plant, for the ensuing fiscal year. In addition, First Parties shall indicate Cupertino Agency's estimated annual share for operation and maintenance costs as apportioned to treatment parameters and for Operation and Maintenance Expenses for Water Recycling as apportioned to flow.
3. Cupertino Agency shall provide to First Parties a copy of Cupertino Agency's adopted annual sewer revenue program by August 1st of each year. This revenue program shall conform to all federal and/or state guidelines as now exist or may exist in the future.
4. During the first quarter of each fiscal year, TPAC shall review each Agency's total discharge to the Plant for the preceding fiscal year in terms of the parameters. Adjustments in costs, if any, resulting from this review shall be made in accordance with Part VI, Section DE, Paragraph 3(b) herein.

~~E.D.~~ Method Of Payment.

1. Allowable Capital Expenses and Land Acquisition. All payments for Allowable Capital Expenses and Land Acquisition shall be on a quarterly basis, the first quarter beginning July 1st. The quarterly payment shall be for the reasonably estimated and expected expenditures to be paid during that quarter, based upon the projections provided by First Parties in accordance with part V, Section E. The quarterly payment shall not be for encumbrances related to future Capital Expenses or payments. These invoices shall be presented at the beginning of the quarter in which the obligation is anticipated to occur. The date of financial obligations for capital expenses and land acquisitions shall be the date of award of

~~contract. These payments shall be based upon the budget for capital costs for the Plant as recommended by TPAC and approved by the Administering Agency.~~

2. ~~Operation and Maintenance Expenses~~~~Costs~~. All ~~payments~~~~payments~~ for ~~O~~peration & ~~M~~aintenance ~~E~~xpenses shall be made on a quarterly basis, the first quarter beginning July 1st. Invoices for these payments 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 ~~O~~peration and ~~M~~aintenance ~~E~~xpenses~~costs~~ for the Plant as recommended by TPAC and approved by the Administering Agency.
3. General Information.
 - a. All bills shall be paid to the Administering Agency within ~~f~~Forty-five (45) calendar days from presentation. Interest will be charged on any late or unpaid bills.
 - b. 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. A statement outlining the method of adjusting costs and actual adjustments shall be included.
 - ~~b~~.c. All amounts paid to First Parties shall be subject to independent audit and recalculation by Cupertino in accordance with Part V, Section G. If the audit identifies overpricing or overcharges of any nature by the Administering Agency to Cupertino in excess of one-half of one percent (>0.5%) of the original billed amount per quarter, then the Administering Agency shall reimburse Cupertino for the total costs of the audit. Furthermore, within ninety (90) calendar days following Cupertino's presentation of its audit findings to the Administering Agency, the Administering Agency shall make any adjustments and/or payments to Cupertino.
 - ~~e~~.d. Any and all monies which ~~Cupertino Agency~~ is herein required to pay to First Parties shall be paid to the Administering Agency.

F.E. Credits.

1. Grants or Outside Financial Assistance. Any grants, recoveries, or outside financial assistance received, and any interest earned thereon, shall be credited to First Parties, Agencies and ~~Cupertino Agency~~ in the quarter following receipt, along with a statement outlining the source of grant revenue and method of distribution. Grants or outside financial assistance shall be shared on the basis of the ~~Cupertino Agency's~~ participation in the program for which the outside financial assistance is received.
2. Interest. Interest on monies~~ies~~ advanced, credits held for ~~Cupertino Agency~~, or amounts due from ~~Cupertino Agency~~, shall be determined on a monthly basis.
3. Revenue and Income.
 - a) If First Parties should, during the term of this Agreement, receive any income or revenues related to products or services at the Plant, including but not limited to the revenue from the sale of Recycled Water, then Cupertino shall be entitled to a share of the income. Each quarter, First Parties shall provide Cupertino with written notice of the amount of income or revenue received, and Cupertino's share of such income or revenue. Cupertino's share shall be that proportion of such income based on Cupertino's contribution to the capital cost or O&M cost, whichever is applicable, during the fiscal year of receipt of such income. The sharing of revenue derived from Plant land is discussed

above in Part IV.

~~—Payment to Cupertino of any revenue or income to which it may become entitled under Part IV or Section E(3)(a) of this Part VI shall first be applied to any Cupertino debt owed to the Administering Agency or First Parties. Upon discharge of all debt, Cupertino shall then have the option to either (i) request cash reimbursement of any credit balance; or (ii) apply the revenue or income as a credit towards any future quarterly payments due to First Parties. Cupertino shall have the sole discretion to choose which method it prefers. If Cupertino requests a cash reimbursement, First Parties shall honor within forty-five (45) calendar days following receipt of Cupertino’s request. Any additional payments requested from Cupertino shall be made within the third quarter payment.~~

b)

~~G. General:~~

~~Payment to Agency of any moneys to which it may become entitled may be made by off-setting the amount of such moneys against any payments which Agency may be obligated to pay to First Parties under the provisions of this Agreement or Agency may request cash reimbursement of any credit balance. The request for cash reimbursement shall be honored by First Parties within forty-five (45) days following receipt of notice. Any additional payments requested from Agency shall be made with the third quarter payment.~~

PART VI

SAN JOSE-SANTA CLARA TREATMENT PLANT ADVISORY COMMITTEE

~~A. Creation and Membership.~~

A.

The San Jose-Santa Clara Treatment Plant Advisory Committee (TPAC), created by the 1959 Agreement, shall consist of nine (9) members. Three (3) of the members shall be members of the Council of the City of San Jose, shall be appointed by said Council, and shall serve at the pleasure of said Council. Two (2) of the members shall be members of the Council of the City of Santa Clara, shall be appointed by the Council of the City of Santa Clara, and shall serve at the pleasure of said Council. One (1) of the members shall be a member of the Council of the City of Milpitas, shall be appointed by said Council, and shall serve at the pleasure of said Council. One (1) of the members shall be a member of the governing body of the West Valley Sanitation District~~County Sanitation District No. 4, of Santa Clara County~~, shall be appointed by the governing body of the West Valley Sanitation District~~County Sanitation District No. 4~~, and shall serve at the pleasure of said body. One (1) of the members shall be a member of the governing body of the Cupertino Sanitary District, shall be appointed by the governing body of the Cupertino Sanitary District, and shall serve at the pleasure of said body. The ninth

(9th) member shall be the City Manager of San Jose or a designated representative. No member shall have more than one (1) vote.

B. Alternate Members.

The Council of the City of San Jose may appoint three (3) of its Council members as alternate members of TPAC. The Council of the City of Santa Clara may appoint two (2) of its Council members as alternate members of TPAC. The Council of the City of Milpitas may appoint one (1) of its Council members as an alternative member of TPAC. The governing body of the West Valley Sanitation District~~County Sanitation District No. 4~~ and the governing body of the Cupertino Sanitary District may each appoint one (1) of its members as an alternate member of TPAC. Said alternate members shall serve in the place and stead of any of the regular members whenever said regular member should be absent from a meeting of TPAC.

C. Chair.

At its July meeting, the members of TPAC shall elect a Chair of TPAC. The Chair shall serve as such until the election of his successor, or until cessation of membership on the TPAC, whichever is earlier. Vacancies in the office of the Chair occurring in-between regular elections, may be filled by TPAC electing a Chair elected to serve until the next regular election. The Chair shall preside at all meetings. In the event the Chair should be absent from any meeting, the members of TPAC may elect a Chair pro tern to serve as Chair during the latter's absence.

D. Secretary.

The Administering Agency shall provide a secretary for TPAC. Said secretary shall keep minutes of TPAC proceedings and shall also have custody of all books, records and papers of TPAC.

E. Meetings.

Regular meetings of TPAC shall be held at a time and place to be determined by TPAC. Special meetings may be called at any time by the Chair, to be held at a reasonable time and place specified in the notice calling the special meeting, subject to applicable requirements of law.

F. Procedure.

Except as may otherwise be provided by Resolution of TPAC, the procedure to be followed by TPAC at its meetings shall be that set forth in Robert's Rules of Order. TPAC may act by resolution or motion; a motion duly passed by TPAC and entered at length on TPAC's minutes may be deemed to be a resolution.

G. Power and Duties.

TPAC shall have the following powers and duties with respect to those items to be considered.

1. Make recommendations to First Parties and Agencies with respect to policy relating to the Plant and its maintenance, repair, expansion, replacement, improvement and operation.

2. Make recommendation to the legislative bodies of First Parties and Agencies with respect to proposed amendments and revisions to exhibits to this Agreement.
3. Make recommendations to both First Parties and Agencies with respect to the advisability of selling interests in the Plant.
4. Make recommendations to First Parties with respect to the advisability of entering into contracts with other entities desiring to use the Plant on a rental or other basis.
5. Make recommendations to the Administering Agency and Agencies as to type and amount of insurance to be purchased for the Plant.
6. Annually, during the month of May in each fiscal year, TPAC shall review and recommend to the legislative bodies of First Parties and Agencies, a proposed budget for the ensuing fiscal year for the maintenance, expansion, replacement, improvement and operation of the Plant.
7. Make recommendations to the Administering Agency with respect to the award of consultant, construction or service contracts relating to the Plant.
8. Annually, TPAC shall file with the legislative bodies of First Parties and Agencies, a report on plant capacity pursuant to Part III, Section D, paragraph 3.
9. Make recommendations to First Parties and Agencies with respect to the redistribution of pooled excess capacity pursuant to Part III, Section A, paragraphs 1 and 2.
10. Periodically, TPAC shall review and make current, long range plans for expansion and/or improvement of the Plant to provide for the anticipated Plant capacity required to accommodate the general plans of San Jose, Santa Clara and Agencies and to meet current wastewater discharge requirements.
11. Make recommendations to the legislative bodies of First Parties and Agencies with respect to claim of breach proceedings pursuant to Part VII, Section G.

H. Action Upon Recommendations.

The legislative bodies of First Parties or the Agencies, shall not adopt any motion, Resolution or Ordinance that is contrary to any recommendation submitted to it by TPAC with respect to the Plant and its maintenance, repair, expansion, replacement, improvement and operation without a finding of fact or facts justifying such contrary action. The finding of fact or facts shall be submitted in writing to TPAC within fifteen (15) days after any contrary action. All policy matters as determined by the Director requiring an adoption of a motion, Resolution or Ordinance by the Council of the City of San Jose relating to the Plant and its maintenance, repair, expansion, replacement, improvement and operation, shall first be submitted to TPAC for its recommendation and in sufficient time, as determined by the Administering Agency, to allow TPAC to make a recommendation thereon. The Council of the City of San Jose shall not act upon any such policy matter until it has received the recommendation from TPAC. If TPAC does not submit its recommendation to the Council of the City of San Jose within the prescribed time, the City Council may adopt such a motion, Resolution or Ordinance. If a legislative body is presented with any evidence not considered by TPAC in the making of any recommendation, then, prior to the taking of action contrary to said recommendation, if time permits as determined by the Administering Agency, the legislative body shall refer the matter back to TPAC for a supplementary report. Said supplementary report

shall be submitted by TPAC within thirty (30) days after reference, or such longer period as may be designated by the legislative body. If TPAC fails to make such supplementary report within the time specified, the legislative body is free to consider such evidence without TPAC recommendations. In the event of an emergency as determined by the Director, the above procedure may be waived.

I. Expenses.

Members of TPAC shall be reimbursed for all expenses reasonably incurred by them in the performance of their duties, and that provision therefor, shall be made in the annual budget. Such expenses shall be considered as part of the "operating costs" of the Plant.

PART VIII
MISCELLANEOUS PROVISIONS

A. Effective Date and Duration of Agreement.

It is hereby agreed that the effective date of this Agreement shall be the date on which all parties to this Agreement have executed same, and that this Agreement shall be in force and effect for a term beginning on said effective date and extending to, and including, and ending on January 1, 20~~5034~~, or until sooner termination by mutual written agreement of the parties hereto or by operation of law or because of a material breach by one of the parties hereto.

B. Extension, Renewal or Amendment to The Agreement.

It is mutually agreed that the term of this Agreement may be extended or renewed only by mutual written agreement of the parties hereto and that this Agreement, including exhibits, may be amended or supplemented by a mutual written agreement of the parties hereto. Beginning ten (10) years after the Effective Date of this Agreement, and at least every ten (10) years thereafter, ~~This Agreement shall be reviewed in its entirety by First Parties and Cupertino to consider any amendments. Agency in the year 2002. First Parties and Agency further agree that in the year 2030, they will meet and confer in good faith to negotiate a revised or new Agreement.~~

C. Use of Treatment Plant After Expiration of Term.

If for any reason the contract cannot be renewed in the year 20~~5034~~, or subsequent to the termination date, ~~Cupertino the discharging Agency~~ shall have the right to continue discharging to the Plant, provided all payments of ~~Cupertino Agency's~~ share of Plant costs are made. All other rights under this Agreement shall cease.

D. Termination.

If for any reason this Agreement is terminated by mutual consent of both parties, then the discharging capacity rights of the ~~Cupertino Agency~~ shall be considered "excess pooled capacity" pursuant to the terms of Paragraph III Section A. This capacity shall be reserved for the ~~Cupertino Agency~~ and ~~Cupertino Agency~~ shall continue to pay for all costs associated with such capacity until such time as that capacity is either purchased by other users pursuant to the terms of this Agreement, or until failure of the Plant to treat wastewater.

E. Sale Or Transfers By First Parties.

Nothing in this Agreement contained shall be deemed to prohibit or restrict First Parties, or either of them, from selling, granting, assigning or otherwise transferring this Agreement or any part or interest therein, or the Plant or any part or interest therein, or any right to discharge wastewater therein and to have the same therein treated and disposed of, to any corporation, district, governmental organization or entity or to any other person or persons, provided that any such transaction shall be subject to such rights and privileges as First Parties and Cupertino Agency may have under and by virtue of the provisions of this Agreement.

F. Industrial Waste Program.

The Administering Agency agrees to maintain personnel for the specific purposes of assisting all parties with matters concerning industrial waste. Such responsibilities shall include industrial waste monitoring, sampling and analysis, technical advice and surveillance of all industrial dischargers tributary to the Plant. The Administering Agency agrees to be responsible for issuing notices of non-conformance within Cupertino Agency's service area for violations of the ordinance requirements in Part II, Section D. Cupertino Agency shall be responsible for the adoption and enforcement of any Industrial Waste Ordinance requirements. The Administering Agency shall endeavor to keep all dischargers informed of federal, state, county and city laws, rules, regulations, standards and ordinances relating to industrial waste requirements.

G. Claims of Breach of Agreement or of Inequities.

In the event any party to this Agreement should at any time claim that the other party has in any way breached or is breaching this Agreement, or that the Agreement is inequitable, the complaining party shall file with the legislative body or bodies of the other parties, and with TPAC, a written claim of said breach or inequity, describing the alleged breach or inequity and otherwise giving full information respecting the same. TPAC shall within two (2) months at a place specified by it, give all concerned parties full opportunity to be heard on the matter, and shall, upon conclusion of said hearing, give the legislative bodies of both parties a full report of its findings and recommendations. Said report, findings and recommendations shall be deemed advisory only; shall not in any way bind any of the parties hereto; and shall not be deemed to establish any facts, either presumptively or finally. Upon receipt of said report and recommendations, if any party is dissatisfied with or disagree with same, the legislative bodies of all parties concerned shall jointly meet with each other within two (2) months at a place to be determined by them, for the purpose of resolving their differences. No action for breach of this Agreement, and no action for any legal relief because of any breach or alleged breach of this Agreement shall be filed or commenced, and nothing shall be done by either party to rescind or terminate this Agreement, unless and until the above provisions of this paragraph have been complied with and unless the complaining party has first given to the other party three (3) months from the conclusion of said joint meeting of said legislative bodies within which to cure any breach or alleged breach.

H. Liability and Indemnification.

~~It is mutually agreed that any liability of San Jose and/or Santa Clara, or of San Jose as the administrative agency for any damage to any person or property arising~~First Parties shall indemnify, defend, and hold harmless (to the full extent permitted by law) the District and its Board of Directors, officers, officials, employees, volunteers, and agents from and against any and all claims, liability, loss, injuries, damage, expense, and costs (including without limitation costs and fees of litigation) (collectively, "Damages") of every nature arising out or resulting from any dangerous or defective condition in the Plant or any part or property thereof, or arising or resulting from any act or omission of San Jose or Santa Clara or their respective officers, agents, employees or contractors, in the control, administrative, construction, expansions, installation, operation, maintenance or repair of said Plant or any part or property thereof, ~~shall be mutually shared and paid for by First Parties and Agencies on the basis of operations and maintenance or capital costs, whichever is applicable. It is understood and agreed that First Parties in granting to Agencies certain discharge capacity rights in the Plant and to have wastewater treated and disposed of in said Plant, are not guaranteeing or warranting that the Plant will be able to satisfactorily treat such wastewater. In the event the Plant should for any reason other than by the gross negligence or intentional misconduct of First Parties be incapable of satisfactorily treating wastewater discharged into the Plant by Agency or First Parties. First Parties shall in no way be liable to Agency for any damages arising or resulting from or suffered because of the failure of the Plant to satisfactorily receive, hold, treat or other dispose of wastewater. including but not limited to violations of the NPDES Permit, any order issued by State Water Resources Control Board or the San Francisco Bay Regional Water Quality Control Board, any other applicable permits or licenses, or other applicable local, state or federal law, except for any Damages caused by the sole negligence or willful misconduct of the District or the other Agencies.~~

Notwithstanding the foregoing, in the event any Damages are occasioned by a force majeure event, including but not limited to floods, earthquakes, other acts of nature, war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of either First Parties or the Agencies, then First Parties and the Agencies shall mutually share the liability of any Damages based upon each party's respective contribution towards Capital Expenses or Operations and Maintenance Expenses, whichever is applicable.

The above provisions shall survive the expiration or earlier termination of this Agreement and shall not be construed as a waiver of rights by either First Parties or the District to contribution or indemnity from third parties.

I. Compliance With Federal and State Laws and Regulations.

Cupertino Agency and First Parties agree to comply with any and all Federal, State, or local laws, the rules, regulations, standards and requirements of any Federal, State, or local board, commission, agency or similar body, and the decisions of any court of competent jurisdiction which must be complied with enable First Parties to qualify for Federal or State grants for the construction, improvement,

administration, operation, maintenance, or repair of the Plant.

J. Assignment.

Cupertino Agency shall not assign or transfer any interest nor the performance of any of Cupertino Agency's obligations hereunder without the prior written consent of First Parties, and any attempt by Cupertino Agency to so assign this Agreement or any rights, duties or obligations arising hereunder without written consent shall be void and of no effect.

K. Successors and Assigns.

It is mutually agreed by all the parties hereto that the agreements, covenants, conditions, limitations, restrictions and undertakings herein contained shall, subject to the provisions as to assignment, apply to and bind the successors and assigns of the respective parties hereto as if they were in all cases named.

L. Waivers.

One or more waivers of any term, covenant or condition by either party shall not be construed as a waiver of a subsequent breach of the same or any other term, covenant or condition and the consent or approval by either party to any act shall not be deemed to waive or render unnecessary either party's consent or approval for any subsequent similar act by the other party.

M. Performance and Time to be of ~~t~~The Essence.

It is understood and agreed that full and faithful compliance with and performance of each and every covenant and provision of this Agreement by the party or parties required to comply with or perform each such covenant or provision is and shall be of the essence; also that time is and shall be of the essence; also that such full and faithful compliance with and performance of each and every covenant and provision of this Agreement shall be deemed to be a material condition of this Agreement.

N. Insurance.

First parties shall at all times maintain with responsible insurer of insurers Sufficient insurance against loss or damage to the Plant as is customarily maintained with respect to loss and property of like character. Each party hereto shall be named as coinsured. First Parties shall maintain with a responsible insurer or insurer, workmen's compensation insurance and insurances against public liability and property damage. The premiums on all such insurance shall be a part of the Maintenance and Operating Expenses.

O. Titles and Headings.

The sub-headings and titles of this Agreement are inserted for the convenience of reference only and shall not be taken or considered as having any bearing on the interpretation thereof.

P. Notices.

All notices shall be mailed to the address designated beneath the signatures of the parties hereto or as subsequently designated in writing by the parties.

PART IX

VIII

PLANT MASTER PLANSPECIAL PROVISIONS

A. Short-Term Financing

Cupertino agrees to participate in short-term financing of the Plant Master Plan through the San Jose-Santa Clara Clean Water Financing Authority (“CWFA”) using a Commercial Paper Program (or similar short-term debt instrument such as a line of credit or short-term notes) subject to the following terms and conditions:

1. The total amount of short-term financing incurred by the Administering Agency on behalf of Cupertino shall not exceed fifteen million dollars (\$15,000,000) through the end of fiscal year 2017-2018, unless otherwise authorized in writing by Cupertino. This amount shall be in addition to Cupertino’s annual allocated payments of Allowable Capital Expenses.
2. Cupertino shall review and approve in writing the terms and structure of any proposed short-term financing program prior to the Administering Agency’s incurring debt on Cupertino’s behalf.

B. Long-Term Financing

1. Cupertino will participate in long-term financing of the Plant Master Plan. Before Cupertino can participate, however, Cupertino must have an opportunity to review the Engineering Study of the Plant Master Plan, as required in Part II, Section C(1) above. First Parties and Cupertino shall meet and confer to discuss the options for long-term financing based upon the information contained in the Engineering Study. Cupertino will consider the following options for long-term financing:
 - a. Cupertino may participate in subsidized, low-cost long-term financing secured by the Administering Agency for the Plant Master Plan from various state and/or federal grant and loan programs, subject to Cupertino’s review and approval of terms and conditions for such financing. Participation may be through the CWFA or directly with the state or federal awarding agency. Any agreement to participate under this provision shall be in writing, in the form of an amendment to this Agreement or in the form of a Side Letter Agreement.
 - b. Alternatively, Cupertino may self-finance the long-term financing of the Plant Master Plan, to the extent any costs are not financed with state and/or federal grants and low-cost loans.

A. TERMINATION OF AGREEMENTS.

It is mutually agreed by all parties hereto that the following agreements

~~heretofore entered into between the CITY OF SAN JOSE and CUPERTINO SANITARY DISTRICT; or between the CITY OF SANTA CLARA and CUPERTINO SANITARY DISTRICT; or between CUPERTINO SANITARY DISTRICT, and both the CITY OF SAN JOSE and the CITY OF SANTA CLARA relating to the Plant, and any and all supplements, addendums, changes, or amendments thereto, are hereby terminated.~~

- ~~1. "Agreement Between Cities of San Jose and Santa Clara and the Cupertino Sanitary District Relating to Sewage Treatment Plant" dated February 26, 1961 (Initial Master Agreement).~~
- ~~2. "Addendum to Agreement Between Cities of San Jose and Santa Clara and the Cupertino Sanitary District Relating to Sewage Treatment Plant" dated March 15, 1965. (Change of Service Area) Terminated by October 7, 1969, Amendment.~~
- ~~3. "Agreement Amending Agreement Between the Cities of San Jose and Santa Clara and the Cupertino Sanitary District of Santa Clara County, California, Relating to Sewage Treatment Plant, and Terminating a certain Addendum to said Agreement Hereby Amended" dated October 7, 1969. (Change of Service Area and Various Provisions of February 26, 1961 Master Agreement).~~
- ~~4. Resolution No. 3487 "Resolution of the Council of the City of Santa Clara Offering to sell to Cupertino Sanitary District of Santa Clara County, California, Additional Capacity Rights in the San Jose/ Santa Clara Sewage Treatment Plant" dated May 13, 1975. (Additional 4.6 MGD to total 8.0 MGD)~~
- ~~5. Resolution No. 46699 " A resolution of the Council of the City of San Jose Offering to sell to Cupertino Sanitary District of Santa Clara County, California, Additional Capacity Rights in the San Jose/ Santa Clara Sewage Treatment Plant" dated May 20, 1975. (Additional 4.6 MGD to total 8.0 MGD). Payment made to San Jose in the amount of \$642,917.00 by Warrant No. 1319 on June 9, 1975 for additional 4.6 MGD capacity.~~
- ~~6. "Agreement Among the Cities of San Jose and Santa Clara and the Cupertino Sanitary District Relating to the Sharing of Operating Costs of the Sewage Treatment Plant" dated July 2, 1976. (Operating costs based on engineering analysis and report, including Revenue Program)~~
- ~~7. "Agreement By and Between the Cities of San Jose, Santa Clara and Cupertino Sanitary District, Providing Interim Allocation of Treatment Capacity" dated April 13, 1981.~~
- ~~8. Settlement Agreement By and Between the Cities of San Jose, Santa Clara and Cupertino Sanitary District dated March 11, 1981.~~

IN WITNESS WHEREOF, San Jose, Santa Clara and Cupertino Sanitary District have caused this Agreement to be executed in their respective names and their respective seals to be affixed hereunto by their duly authorized officers, all as of the date first above written.

~~APPROVED AS TO FORM:~~

~~ATTEST: _____ By Thomas McEnery~~

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal
corporation

Deputy City Attorney

By

ATTEST:

Mayor

Address

City Clerk

Telephone No.

APPROVED AS TO FORM:

CITY OF SANTA CLARA, a
municipal corporation

Deputy Clerk Attorney

By

ATTEST:

Mayor

By

City Clerk

By

City Manager

Address

Telephone No.

“First Parties”

APPROVED AS TO FORM:

Cupertino Sanitary District

Attorney

Chairperson

ATTEST:

By

Clerk

Secretary of
Board of Directors

Address

Telephone No.

“Agency”

Helen Jackson _____ Mayor
Address _____
Room 116, City Hall
801 No. First Street
San Jose, Calif. 95110

APPROVED AS TO FORM: _____ Telephone No. (408) 277 4424
Telephone No (408) _____

Bruce J. McCarthy
Deputy City Attorney

ATTEST:

AS Beluk

CITY OF SANTA CLARA, a municipal corporation

By W.A. Gissler
Mayor

By J.R.H. Rausch
City Manager

Address: 1500 WARBURTON AVE
SANTA CLARA, CALIF 95050
Phone No. (408) 984 3101

"First Parties"

~~CUPERTINO SANITARY DISTRICT~~
Secretary
the Board of Directors
Address 20065 Stevens Cr. Blvd., Rm 204 _____ Cupertino, CA _____ 95014

Telephone No. (408) 253 7071

APPROVED AS TO FORM:
Philip D. Assaf
Attorney

"Agency"

John E. Henning
Clerk

|

EXHIBIT A

REVISED EXHIBIT A FROM 8/5/2009 AMENDMENT

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

TREATMENT PLANT CAPACITY ALLOCATIONS

The attached Table 1 contains the Agencies' and FIRST PARTIES' treatment plant capacities achieved by implementation of the Intermediate-term Improvements and First Stage Expansion. Table 2 shows the Agencies' and FIRST PARTIES' treatment plant capacities, as effective with the transfer of 0.75 MGD from CUPERTINO to MILPITAS.

Table 1 - 167 MGD Plant, Intermediate Term Improvements and First Stage Expansion. Increased capacity was allocated only to those Agencies that elected to participate in Plant expansion to 167 MGD. MILPITAS was allocated 4 MGD of the 24 MGD expansion, and the FIRST PARTIES' share the remaining 20 MGD based on assessed valuation. BOD, SS, and Ammonia capacities were allocated in the same proportion as Flow.

Table 2- 167 MGD Plant, After transfer of 0.75 MGD from CUPERTINO to MILPITAS. Table 2 shows the Agencies' and FIRST PARTIES' treatment plant capacities, as effective with the transfer of 0.75 MGD from CUPERTINO to MILPITAS. The transfer includes prorated shares of Suspended Solids and Ammonia, but excludes any prorated share of Biochemical Oxygen Demand. The other Agencies' capacities remain the same as in the 143/167 MGD Plant (Table 2).

TABLE 1

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

167 MGD PLANT

SUMMARY OF CAPACITY ALLOCATION*

**(Intermediate-Term, First Stage Expansion & South Bay Water Recycling Improvements
Implemented)**

<u>AGENCY</u>	<u>FLOW MGD</u>	<u>BOD</u> <u>K LBS/DAY</u>	<u>SS</u> <u>K LBS/DAY</u>	<u>AMMONIA</u> <u>K LBS/DAY</u>
<u>San José^a</u>	<u>110.754</u>	<u>390.229</u>	<u>346.198</u>	<u>34.318</u>
<u>Santa Clara^a</u>	<u>21.344</u>	<u>75.206</u>	<u>66.719</u>	<u>6.613</u>
<u>Subtotal^b</u>	<u>132.098</u>	<u>465.435</u>	<u>412.917</u>	<u>40.931</u>
<u>West Valley</u>	<u>13.052</u>	<u>31.713</u>	<u>30.12</u>	<u>3.156</u>
<u>Cupertino</u>	<u>8.600</u>	<u>16.419</u>	<u>17.856</u>	<u>2.506</u>
<u>Milpitas</u>	<u>12.500</u>	<u>24.819</u>	<u>22.125</u>	<u>2.386</u>
<u>Burbank</u>	<u>0.400</u>	<u>0.815</u>	<u>0.853</u>	<u>0.297</u>
<u>Sunol</u>	<u>0.350</u>	<u>1.799</u>	<u>2.129</u>	<u>0.324</u>
<u>Subtotal</u>	<u>34.902</u>	<u>75.565</u>	<u>73.083</u>	<u>8.669</u>
<u>TOTAL</u>	<u>167.000</u>	<u>541.001</u>	<u>486.000</u>	<u>49.600</u>

*The term "capacity" is defined as the mean peak five-day dry weather plant treatment capacity.

Footnotes:

- a. San José and Santa Clara allocations vary annually according to assessed property value; values shown are effective as of January 1, 2008.
- b. CSD 2-3 rents capacity from San José and Santa Clara. Allocations vary annually depending flow from CSD 2-3.

TABLE 2

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

167 MGD PLANT

SUMMARY OF CAPACITY ALLOCATION*

(After Transfer of 0.75 MGD from CUPERTINO to MILPITAS)

<u>AGENCY</u>	<u>FLOW MGD</u>	<u>BOD</u> <u>K LBS/DAY</u>	<u>SS</u> <u>K LBS/DAY</u>	<u>AMMONIA</u> <u>K LBS/DAY</u>
<u>San José^a</u>	<u>110.754</u>	<u>390.229</u>	<u>346.198</u>	<u>34.318</u>
<u>Santa Clara^a</u>	<u>21.344</u>	<u>75.206</u>	<u>66.719</u>	<u>6.613</u>
<u>Subtotal^b</u>	<u>132.098</u>	<u>465.435</u>	<u>412.917</u>	<u>40.931</u>
<u>West Valley</u>	<u>12.052</u>	<u>29.283</u>	<u>27.812</u>	<u>2.914</u>
<u>Cupertino</u>	<u>7.850</u>	<u>16.419</u>	<u>16.299</u>	<u>2.287</u>
<u>Milpitas</u>	<u>14.250</u>	<u>27.249</u>	<u>25.990</u>	<u>2.847</u>
<u>Burbank</u>	<u>0.400</u>	<u>0.815</u>	<u>0.853</u>	<u>0.297</u>
<u>Sunol</u>	<u>0.350</u>	<u>1.799</u>	<u>2.129</u>	<u>0.324</u>
<u>Subtotal</u>	<u>34.902</u>	<u>75.565</u>	<u>73.083</u>	<u>8.669</u>
<u>TOTAL</u>	<u>167.000</u>	<u>541.000</u>	<u>486.000</u>	<u>49.600</u>

*The term "capacity" is defined as the mean peak five-day dry weather plant treatment capacity.

Footnotes:

- a. San José and Santa Clara allocations vary annually according to assessed property value; values shown are effective as of January 1, 2008.
- b. CSD 2-3 rents capacity from San José and Santa Clara. Allocations vary annually depending flow from CSD 2-3.

EXHIBIT B

REVISED EXHIBIT B AS OF 8/5/2009 AMENDMENT

**SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT
REPLACEMENT COST OF PLANT & EQUIPMENT**

June 2008

<u>FACILITY</u>	<u>ACQUISITION DATE</u>	<u>ORIGINAL COST</u>	<u>REPLACEMENT COST</u>	<u>ENR COST INDEXES</u>
- Asset #1 - Original primary plant	1958	3,786,400	34,813,300	899.60
- Asset #2 - Plant Additions	1960	1,370,200	11,587,000	978.10
- Asset #3 - Plant Additions & New Secondary Facility	1963	24,166,800	196,282,700	1,018.37
- Asset #4 - Final Tank	1965	1,183,000	8,388,200	1,166.50
- Asset #5 - Digestors	1966	993,600	6,389,100	1,286.30
- Other Projects:				
- 1965-66	1965	103,900	736,700	1,166.50
- 1966-67	1966	253,800	1,632,000	1,286.30
- 1967-68	1967	24,200	142,400	1,406.10
- 1968-69	1968	322,100	1,746,000	1,525.90
- 1969-70	1969	59,900	301,100	1,645.70
- 1970-71	1970	102,700	481,100	1,765.50
- Sludge Lagoons	1968	839,000	4,547,800	1,525.90
- Foam Flotation Program	1970	23,000	107,800	1,765.50
- 1970 94/MGD Improvements	1970	5,809,400	27,216,500	1,765.50
- 1970 66/MGD Additions	1970	23,049,000	107,982,400	1,765.50
- A.W.T.F.	1977	62,810,900	166,205,400	3,125.78
- Other Projects:				
- 1977-78	1977	745,500	1,972,700	3,125.78
- 1978-79	1978	312,200	756,800	3,411.98
- 1979-80	1979	1,421,100	3,257,200	3,608.71
- 1980-81	1980	1,962,300	3,788,400	4,284.29
- 1981-82	1981	535,200	1,006,100	4,400.00
- 1982-83	1982	1,777,765	2,861,000	5,139.51
- CAPITAL IMPROVEMENT PROGRAM:				
- Intermediate-term Improvement	1987	88,699,500	132,975,800	5,517.18
- First Stage Expansion	1987	20,035,100	30,036,100	5,517.18
- 1987 Capitalized Expenditures	1987	894,900	1,341,600	5,517.18
- 1989 Capitalized Expenditures	1989	527,473	760,600	5,735.84
- 1990 Capitalized Expenditures	1990	823,720	1,127,500	6,042.56
- 1991 Capitalized Expenditures	1991	114,902	155,000	6,131.10
- 1992 Capitalized Expenditures	1992	407,154	537,800	6,262.14
- 1993 Capitalized Expenditures	1993	1,291,825	1,660,800	6,433.55
- 1994 Capitalized Expenditures	1994	255,378	322,100	6,557.48
- 1995 Capitalized Expenditures	1995	10,595,576	13,394,700	6,542.75
- 1996 Capitalized Expenditures	1996	3,396,270	4,287,600	6,551.75
- 1997 Capitalized Expenditures	1997	9,320,130	11,505,400	6,700.22
- 1998 Capitalized Expenditures	1998	2,829,981	3,460,300	6,764.62
- 1999 Capitalized Expenditures	1999	133,138,713	161,426,600	6,821.78
- 2000 Capitalized Expenditures	2000	2,464,590	2,845,100	7,165.08
- 2001 Capitalized Expenditures	2001	3,866,326	4,316,200	7,409.12
- 2002 Capitalized Expenditures	2002	930,265	1,004,200	7,662.33
- 2003 Capitalized Expenditures	2003	1,663,511	1,763,600	7,801.70

**CONFIDENTIAL: SUBJECT TO ATTORNEY-CLIENT
PRIVILEGE, WORK PRODUCT DOCTRINE, AND/OR
COMMON INTEREST DOCTRINE AND
JOINT DEFENSE PRIVILEGE**

-	<u>2004 Capitalized Expenditures</u>	<u>2004</u>	<u>1,221,630</u>	<u>3,371,800</u>	<u>8,148.25</u>
-	<u>2005 Capitalized Expenditures</u>	<u>2005</u>	<u>665,760</u>	<u>665,800</u>	<u>8,271.20</u>
	<u>2006 Capitalized Expenses</u>	<u>2006</u>	<u>2,096,762</u>	<u>2,300,400</u>	<u>8440.71</u>
	<u>2007 Capitalized Expenses</u>	<u>2007</u>	<u>1,197,306</u>	<u>1,223,300</u>	<u>9063.41</u>
	<u>2008 Capitalized Expenses</u>	<u>2008</u>	<u>68,856,165</u>	<u>74,121,200</u>	<u>9216.42</u>
-	<u>TOTAL</u>	-	<u>489,044,902</u>	<u>1,228,390,900</u>	<u>(*)</u>

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:

- 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 percentages contained in the most current Revenue Program (Form No. 8, Summary of Distribution of Capital Costs).
- 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.

REVISED EXHIBIT C AS OF 8/5/2009 AMENDMENT

SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT

LAND DISTRIBUTION

1. Table 1 includes the original land purchase price for each parcel purchased before June 30, 1982 ("Pre-1982 Land."). The City of San José's average yearly rate of return for all investments was applied to this amount and compounded to establish a June 30, 1982 value for all Pre-1982 Land.
2. Land participation for Pre-1982 Lands was based upon the 167 MGD capacity of the Plant (Flow BOD, Suspended Solids and Ammonia). Percentage of participation in Pre-1982 Land is based upon the total acreage and not on an individual parcel basis.
3. Agencies which still owe the City of San José and West Valley Sanitation District for their allocated share of cost for Pre-1982 Land shall pay all the costs of this land from sale, lease or rental revenues to be received from the Water Pollution Control Plant properties. Percentage of revenue shall be based upon each Agency's full capacity percentage. The Pre-1982 Land costs will be paid off only from sale, lease or rental revenues of the Plant property and shall have no fixed term. Table 2 shows FIRST PARTIES' and Agencies' allocations and amounts/credits due for Pre-1982 Land costs as of June 30, 2008.
4. Table 3 shows the original purchase price, date of purchase and cost allocation for all land purchased on or after July 1, 1982 ("Post 1982 Land"). Cost allocation in Post 1982 Land was based on the flow and wastewater strength allocations for FIRST PARTIES and Participating Agencies, except for land purchased for recycled water facilities, which is based on flow allocation only.
5. Table 4 shows the percentage participation in Pre-1982 Land and Post-1982 Land for FIRST PARTIES and Agencies effective with the transfer of 0.75 mgd capacity from CUPERTINO to MILPITAS.

6. Sale, lease or rental revenues from Water Pollution Control Plant property shall be first applied to an Agency's debt, and only upon completion of that debt, will revenues be passed on to the Agency.

7. If and when expansion of the facilities takes place in the future, land values shall again be adjusted based upon the new MGD denominator. Each Agency's percentage of participation in land shall, at that time, be recomputed based upon total land cost shown in the applicable Land Cost Allocation.

8. All purchases of land in the future shall be distributed to all Agencies in the percentage of discharge capacity at the Plant, except that land purchased for recycling improvements shall be based on the Agencies' and FIRST PARTIES' purchased capacity in the 167 MGD Plant for the flow parameter only.

SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT
LAND COST ALLOCATION METHODOLOGY

1. Attachment A is a Treatment Plant Property map.

2. Table 1 includes the original land purchase price for each parcel purchased before June 31, 1982. This amount was then applied to the City of San José's average yearly rate of return for all investments and compounded to establish a June 30, 1982 value for the Pre-1982 Land.

3. Table 2 shows the FIRST PARTIES' and Agencies share of Pre-1982 land Costs. Table 2 also shows the amounts still due or owing by FIRST PARTIES and Agencies for Pre-1982 Land Costs, as of June 30, 2008.

4. Table 3 shows the land allocation for FIRST PARTIES and Agencies for all land purchased on or after July 1, 1982, based on the amount actually paid by FIRST PARTIES and Agencies for land purchased on or after July 1, 1982.

5. Table 4 shows the land participation allocation for CUPERTINO and MILPITAS, reflecting the transfer of land equivalent to 0.75 MGD capacity from CUPERTINO to MILPITAS. The transfer of capacity and adjusted land allocation percentages shall not affect the amounts due or owing by MILPITAS or CUPERTINO for Pre-1982 Land Costs.

TABLE 1**SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT****PRE-1982 LAND PURCHASES**

<u>Pre-1982 Purchases Parcel</u>	<u>Acres</u>	<u>Original Cost</u>	<u>Purchase Date</u>	<u>Cost*</u>
Berger Williamson	43.668	\$ 15,284	8/49	\$ 88,282
Coolidge Quitclaim	--	150	3/52	805
John R. Watrous	106.747	101,043	7/54	490,206
John R. Medina	16.970	15,067	8/54	73,106
Other Costs (Easement- Condemnation)*	--	23,468	1956-57	106,183
Curtner-Zanker	.776	1,000	7/55	5,082
Los Altos Garbage	2.045	1,000	8/55	4,692
James Clayton	181.680	182,160	4/58	795,944
A. M. Standish	.197	120	10/61	457
Spring Valley	.180	50	4/62	189
Beatrice Standish	39.888	55,109	7/62	202,258
Other Costs (Unallocated)*	--	603	3/65	2,048
Nine-Par	46.970	201,515	1/68	596,405
A. L. Kricheberg	41.13	162,170	4/69	452,708
Anselmo-Campi	34.48	208,771	7/69	541,583
Casteel	117.78	932,240	11/69	2,418,376
Chisolm-Hopham	Parcel	5,232	8/70	12,738
Rankin-Gilman	Parcel	600	8/70	1,461
Owens-Corning	3.16	23,743	11/70	57,801
Standish	630.0	2,831,034	4/71	6,892,016
Owens-Corning	2.58	17,133	6/71	41,713
Phillips-Bosio	Parcel	2,136	12/71	4,943
Zanker Ranch	145.7	1,496,478	8/72	3,446,515
Garcia	19.54	236,328	12/72	517,884
Martin-Moore	16.47	200,446	1/73	439,257
Tempco	12.33	327,153	7/75	566,730
County of Santa Clara	Parcel	4,495	1975-76	7,788
County of Santa Clara	2.98	13,476	4/76	20,716
Brazil	54.546	513,359	7/76	841,819
McCarthy (1st)	43.0	483,880	12/76	793,479
McCarthy (2 nd)	43.0	483,879	4/77	793,478
McCarthy (3 rd)	43.0	483,879	1/78	743,861
Other Costs (Unallocated)	--	47,693	1978-79	67,043
Calvo	58.415	586,405	1/78	901,473
Leslie Salt	Parcel	820	9/78	1,153
Graham-Cassin	52.8	3,339,932	8/80	3,775,793
Geomax	4.2	273,972	1/81	291,849
TOTAL	1,764.23**	\$13,271,823		\$25,997,834

*Represents costs not allocable to a specific land purchase (e.g., appraisal of land not purchased).

**Acreage has been and will be reduced by the following completed and pending conveyances:

- Santa Clara Valley Water District - flood control easement dated November 25, 1986.
- State of California – 14.8 acres for widening of State Route 237, Grant Deed dated March 17, 1997.
- PG&E - various completed and pending easements.
- Los Esteros Critical Energy Facility - access road easement conveyed November 3, 2003, pursuant to Conveyance Agreement dated November 22, 2002, as amended May 4, 2005; open space easement and pole line license pursuant to Conveyance Agreement dated pending as of March 2006.
- City of Santa Clara, Silicon Valley Power, electric transmission line easement pursuant to Conveyance Agreement dated July 15, 2003, pending as of March 2006.
- Various Agency sanitary sewer trunkline easements.

TABLE 2

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

LAND COST ALLOCATION
PRE-1982 PURCHASES

<u>AGENCY</u>	<u>% SHARE</u>	<u>AMOUNT SHOULD HAVE PAID 1982 DOLLARS</u>	<u>AMOUNT PAID 1982 DOLLARS</u>	<u>AMOUNT PAYABLE <DUE> AS OF JUNE 30, 2008</u>
<u>San José</u>	<u>66.181</u>	<u>\$17,205,627</u>	<u>\$19,134,275</u>	<u><\$747,289></u>
<u>Santa Clara</u>	<u>15.620</u>	<u>\$4,060,862</u>	<u>\$3,234,047</u>	<u>\$0</u>
<u>West Valley</u>	<u>7.009</u>	<u>\$1,822,188</u>	<u>\$1,945,035</u>	<u><\$47,671></u>
<u>Cupertino</u>	<u>4.463</u>	<u>\$1,160,283</u>	<u>\$1,141,582</u>	<u>\$0</u>
<u>Milpitas</u>	<u>6.166</u>	<u>\$1,603,026</u>	<u>\$523,426</u>	<u>\$704,692</u>
<u>Burbank</u>	<u>0.248</u>	<u>\$64,215</u>	<u>\$9,203</u>	<u>\$40,192</u>
<u>Sunol</u>	<u>0.313</u>	<u>\$81,373</u>	<u>\$10,266</u>	<u>\$52,076</u>
<u>TOTAL</u>	<u>100%</u>	<u>\$25,997,834</u>	<u>\$25,997,834</u>	

County Sanitation District 2-3 rents capacity from San José and Santa Clara. The rental agreement does not entitle it to share in land revenue.

TABLE 3
SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT
LAND COST ALLOCATION POST-1982 LAND PURCHASES

<u>AGENCY</u>	<u>SOUTH Bay Water Recycling Phase 1 easements \$265,000; 1996-1997)</u>	<u>Moseley Tract (56 acres; \$460,000; 9/96)</u>	<u>McCarthy Ranch (6 acres; \$6,534,000; 8/00)</u>	<u>Cargill Pond A-18 (856 acres; \$13,301,250; 10/05)</u>	<u>Silver Creek Reservoir (4.839 acres fee; 1.97 acres permanent easement; \$7,800,000; 3/05)</u>
<u>San José</u>	<u>64.659%</u>	<u>67.607%</u>	<u>67.069%</u>	<u>67.015%</u>	<u>64.659%</u>
<u>Santa Clara</u>	<u>14.440%</u>	<u>14.511%</u>	<u>15.049%</u>	<u>15.103%</u>	<u>14.440%</u>
<u>West Valley</u>	<u>7.816%</u>	<u>6.928%</u>	<u>6.928%</u>	<u>6.928%</u>	<u>7.816%</u>
<u>Cupertino</u>	<u>5.150%</u>	<u>4.360%</u>	<u>4.360%</u>	<u>4.360%</u>	<u>5.150%</u>
<u>Milpitas</u>	<u>7.485%</u>	<u>6.040%</u>	<u>6.040%</u>	<u>6.040%</u>	<u>7.485%</u>
<u>Burbank</u>	<u>0.240%</u>	<u>0.238%</u>	<u>0.238%</u>	<u>0.238%</u>	<u>0.240%</u>
<u>Sunol</u>	<u>0.210%</u>	<u>0.316%</u>	<u>0.316%</u>	<u>0.316%</u>	<u>0.210%</u>
<u>TOTAL</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>

County Sanitation District 2-3 rents capacity from San José and Santa Clara. The rental agreement does not entitle it to share in land revenue.

TABLE 4
SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT
LAND PARTICIPATION ALLOCATION
EFFECTIVE WITH THE TRANSFER OF 0.75 MGD CAPACITY

<u>AGENCY</u>	<u>Pre-1982 Land</u>	<u>Moseley Tract, McCarthy, Cargill Pond A-18</u>	<u>South Bay Water</u>
<u>San José</u>	<u>66.181</u>	<u>67.607%</u>	<u>64.65%</u>
<u>Santa Clara</u>	<u>15.620</u>	<u>14.511%</u>	<u>14.440%</u>
<u>West Valley</u>	<u>6.472</u>	<u>6.397%</u>	<u>7.217%</u>
<u>Cupertino</u>	<u>4.074</u>	<u>3.980%</u>	<u>4.701%</u>
<u>Milpitas</u>	<u>7.092</u>	<u>6.951%</u>	<u>8.533%</u>
<u>Burbank</u>	<u>0.248</u>	<u>0.238%</u>	<u>0.240%</u>
<u>Sunol</u>	<u>0.313</u>	<u>0.316%</u>	<u>0.210%</u>
<u>TOTAL</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>

County Sanitation District 2-3 rents capacity from San José and Santa Clara. The rental agreement does not entitle it to share in land revenue.

REVISED EXHIBIT D AS OF 8/5/2009 AMENDMENT

SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT

PARTICIPATION IN MAJOR PROCESS RELATED IMPROVEMENTS

Intermediate Term Improvements and First Stage Expansion

The construction and design cost of the Intermediate-term Improvement Project for restoration of the Plant capacity to 143 MGD was Eighty-Nine Million Three Hundred Thousand Two Hundred and Thirty Dollars (\$89,300,230.00). The construction costs and design cost of the First Stage Expansion Project for expansion of Plant capacity to 167 MGD was Twenty-Seven Million Eighty-Four Thousand Eight Hundred and Four Dollars (\$27,084,804.00). AGENCY has fully paid all amounts due for its capacity in the Intermediate Term Improvements and the First Stage Expansion Project.

Water Recycling Improvements

In October 1991, the Regional Water Quality Control Board (RWQCB) approved the San José Action Plan which included development of a reclamation program to reclaim a portion of the San José/Santa Clara Water Pollution Control Plant's (WPCP) effluent, thereby providing an alternative to discharging treated effluent to South San Francisco Bay (Bay). In October 1993, the RWQCB incorporated the Action Plan into the WPCP's NPDES permit. The South Bay Recycling Program (SBWRP) is intended to satisfy this permit requirement.

Implementation of the SBWRP has been divided into two phases. Under the Phase 1, Water Recycling Program, approximately 9,000 acre-feet per year (up to 21.1 million gallons per day) of recycled water will be produced and distributed beginning in November 1997. The budgeted cost of Phase I was \$139,840,000. Construction of Phase II is now underway, with an estimated cost of \$100,000,000.

On January 12, 1995, TPAC approved a cost sharing method whereby FIRST PARTIES and AGENCIES would participate in payment for the Water Recycling Program based on their respective flows to the WPCP. Table 1 contains FIRST PARTIES' and AGENCIES' allocation of Phase 1 recycling costs, as of January 12, 1995. Table 2 contains FIRST PARTIES and AGENCIES share of Phase 2 Recycling costs, as of January 12, 1995. The final Phase 2 cost allocation will be adjusted to reflect the actual cost when construction of the Phase 2 facilities is completed.

FIRST PARTY SANTA CLARA and MILPITAS elected to cash fund their share of the Phase 1 Recycling Costs. However, effective January 1, 2009, MILPITAS assumed the obligations of CUPERTINO, with respect to a portion of CUPERTINO debt service obligations for Recycling Cost. Table 3 shows the debt service allocation for the bond issued by San José for Phase 1 costs for FIRST PARTY SAN JOSE, and all AGENCIES including MILPITAS, as of January 1, 2009.

MILPITAS also elected to cash fund its share of the Phase 2 Recycling Costs. FIRST PARTIES and all other AGENCIES chose to utilize State Revolving Loan Fund proceeds for their share of the Phase 2 Recycling costs. However, effective January 1, 2009, MILPITAS assumed the obligations of CUPERTINO, with respect to a portion of CUPERTINO debt service obligations for Phase 2 Recycling Costs. Table 4 shows the debt service allocation for the SRLF proceeds, as of January 1, 2009.

TABLE 1

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

Participation in South Bay Water Recycling Program
Phase 1 Capital Costs

<u>Agency</u>	<u>Percent</u>	<u>Phase 1 Budgeted Costs</u>
<u>City of San José</u>	<u>63.833%</u>	<u>\$89,264,067.20</u>
<u>City of Santa Clara</u>	<u>14.256%</u>	<u>\$19,935,590.40</u>
<u>West Valley Sanitation District</u>	<u>7.816%</u>	<u>\$10,929,894.40</u>
<u>Cupertino Sanitary District</u>	<u>5.150%</u>	<u>\$7,201,760.00</u>
<u>City of Milpitas</u>	<u>7.485%</u>	<u>\$10,467,024.00</u>
<u>County Sanitation District 2-3*</u>	<u>1.010%</u>	<u>\$1,412,384.00</u>
<u>Burbank Sanitary District</u>	<u>.240%</u>	<u>\$335,616.00</u>
<u>Sunol Sanitary District</u>	<u>.210%</u>	<u>\$293,664.00</u>
<u>TOTAL</u>	<u>100%</u>	<u>\$139,840,000</u>

*County Sanitation District 2-3 (CSD 2-3) has entered into an agreement with FIRST PARTIES for sharing Water Pollution Control Plant costs on a different basis than the other AGENCIES. The agreement provides for adjusting payments to reflect changes in CSD 2-3's flow and loadings. The agreement between CSD 2-3 and FIRST PARTIES do not affect the other AGENCIES participation in the South Bay Water Recycling Program Phase 1 capital costs.

TABLE 2

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

Participation in South Bay Water Recycling Program
Phase 2 Capital Cost

<u>Agency</u>	<u>Percent</u>	<u>Phase 2 Estimated Costs</u>
<u>City of San José</u>	<u>63.833%</u>	<u>\$63,833,000</u>
<u>City of Santa Clara</u>	<u>14.256%</u>	<u>14,256,000</u>
<u>West Valley Sanitation District</u>	<u>7.816%</u>	<u>7,816,000</u>
<u>Cupertino Sanitary District</u>	<u>5.150%</u>	<u>5,150,000</u>
<u>City of Milpitas</u>	<u>7.485%</u>	<u>7,485,000</u>
<u>County Sanitation District 2-3*</u>	<u>1.010%</u>	<u>1,010,000</u>
<u>Burbank Sanitary District</u>	<u>.240%</u>	<u>240,000</u>
<u>Sunol Sanitary District</u>	<u>.210%</u>	<u>210,000</u>
<u>TOTAL</u>	<u>100%</u>	<u>\$100,000,000</u>

*County Sanitation District 2-3 (CSD 2-3) has entered into an agreement with FIRST PARTIES for sharing Water Pollution Control Plant costs on a different basis than the other AGENCIES. The agreement provides for adjusting payments to reflect changes in CSD 2-3's flow and loadings. The agreement between CSD 2-3 and FIRST PARTIES do not affect the other AGENCIES participation in the South Bay Water Recycling Program Phase 2 capital costs.

TABLE 3

**SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT**

PHASE 1 RECYCLING DEBT ALLOCATION

Series 2005 A Refunding Bonds - Principle \$54,020,000; last payment due November 15, 2016

Series 2005 B Refunding Bonds - Principle \$27,130,000; last payment due November 15, 2020

<u>San José</u>	<u>West Valley</u>	<u>Cupertino</u>	<u>Milpitas</u>	<u>District 2-3</u>	<u>Sunol</u>	<u>Burbank</u>
<u>80.21%</u>	<u>10.594%</u>	<u>6.803%</u>	<u>0.574%</u>	<u>1.436%</u>	<u>.237%</u>	<u>.075%</u>

TABLE 4

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

STATE REVOLVING LOAN FUND DEBT ALLOCATION FY 1998 thru 2019

<u>Repayment</u> <u>Period(s)</u>	<u>Annual Debt</u> <u>Service</u> <u>Payment</u>	<u>Annual</u> <u>San José</u>	<u>Annual</u> <u>Santa Clara</u>	<u>Annual</u> <u>West</u> <u>Valley</u>	<u>Annual</u> <u>Cupertino</u>	<u>Annual</u> <u>Sanitation</u> <u>District 2-3</u>	<u>Annual</u> <u>Burbank</u>	<u>Annual</u> <u>Sunol</u>
	<u>100.000%</u>	<u>68.998%</u>	<u>15.409%</u>	<u>8.448%</u>	<u>5.567%¹</u>	<u>1.092%</u>	<u>0.259%</u>	<u>0.227%</u>
<u>FY 1998/1999</u>	<u>\$1,661,799</u>	<u>\$1,146,608</u>	<u>\$256,067</u>	<u>\$140,389</u>	<u>\$92,512</u>	<u>\$18,147</u>	<u>\$4,304</u>	<u>\$3,772</u>
<u>FY 1999/2000</u>	<u>\$4,463,882</u>	<u>\$3,079,989</u>	<u>\$687,840</u>	<u>\$377,109</u>	<u>\$248,504</u>	<u>\$48,746</u>	<u>\$11,561</u>	<u>\$10,133</u>
<u>thru</u> <u>2017/2018</u>								
<u>FY 2018/2019</u>	<u>\$1,804,020</u>	<u>\$1,244,738</u>	<u>\$277,981</u>	<u>\$152,404</u>	<u>\$100,430</u>	<u>\$19,700</u>	<u>\$4,672</u>	<u>\$4,095</u>

¹ Milpitas shall be responsible for 0.486% of the debt service payment which is the prorated share of the Cupertino payment due on or after January 1, 2009.

EXHIBIT E

ADMINISTERING AGENCY

A. San Jose to be Administering Agency. It is mutually agreed that the City of San Jose is and shall be the Administering Agency of this Agreement, and, as such, shall execute and administer this Agreement

B. Powers and Duties of Administering Agency, Scope and Exercise. Subject to such limitations as may be imposed in this Agreement, the Administering Agency shall have the following powers and duties:

1. To maintain, repair, expand, replace, improve, and operate the Plant for Plant Purposes, and to do any and all things which it shall find to be reasonably necessary, with the respect to its maintenance, repair, expansion, replacement, improvement and operation (subject to the provision of funds therefor in accordance with the provisions of this Agreement), to treat and dispose of all sewage (and by-products thereof) of First Parties, Cupertino, the Agencies, and of any and all "Outside Users" now or hereafter authorized to discharge or convey sewage into or to said Plant or any sewer lines leading thereto, so that said sewage and all effluent from said Plant will not pollute the waters of San Francisco Bay, or any other waters, and so that said sewage will be disposed of in a manner authorized by law.
2. To make, award and enter into contracts with third parties for the construction, improvement, replacement, expansion, or repair of the Plant or any part or parts thereof.
3. To acquire, by purchase, condemnation or otherwise, any and all real or personal property which it should find to be reasonably necessary for Plant Purposes.
4. To receive, be the depository for, expend and disburse, for the purposes of this Agreement, any and all funds or monies advanced, contributed or paid by the parties hereto to said Administering Agency pursuant to the provision of this Agreement, together with all income collected from the Agencies, other "Outside Users," and all other Plant income and funds.
5. To keep accurate accounts of all receipts and disbursements of the above-mentioned funds and monies, in accordance with Part V, Section F.
6. To provide and supply any and all personnel and services, including, but not limited, legal, engineering and accounting services, which it should find to be reasonably necessary for the maintenance, repair, expansion, replacement, improvement and operation of said Plant, the cost and expense of providing such personnel and services to be charged to and shared by First Parties as part of operation or other Plant costs as elsewhere provided in this Agreement.

7. To exercise any and all other powers, common to First Parties, with respect to the maintenance, repair, expansion, replacement, improvement and operation of the Plant.
8. To do any and all things reasonably necessary to treatment and dispose of all sewage entering the Plant in such manner as will comply with the NDPEs Permit and all applicable laws and regulations.
9. To do any and all other things which the Administering Agency is required or authorized to do by other provisions of this Agreement.

C. Manner of Exercising Powers or Performing Duties. The manner in which the Administering Agency shall exercise its powers and perform its duties is and shall be subject to the restrictions upon the manner in which the City of San Jose could exercise such powers and perform such duties; and shall not be subject to any restrictions applicable to the manner in which the City of Santa Clara could exercise such powers or perform such duties.

D. Expense of Administering Agency. It is mutually agreed that the City of San Jose shall be reimbursed from Plant funds for all reasonable costs and expenses incurred by it as Administering Agency of this Agreement, including, but not limited to, salaries and wages paid by the Administering Agency to its officers and employees for services rendered by them for Plant Purposes. It is further agreed that the Administering Agency shall be paid, from Plant funds, an amount equal to seventeen and three hundred thirteen one thousandths per cent (17.313%) of all the above mentioned salaries and wages for reasonable overhead expenses incurred in administering this Agreement. For calculating the allowable overhead expenses, the Administering Agency shall comply with the most current version of U.S. Office of Management and Budget Uniform Guidance Cost Principles, Audit, and Administrative requirements for Federal Awards, formerly known as OMB Circular A-87.

12/82

Rev.—5/83

TABLE 5

SAN JOSE/SANTA CLARA
WATER POLLUTION CONTROL PLANT

167MGD PLANT
SUMMARY OF CAPACITY
ALLOCATION*
(First Stage Expansion)

	FLOW	BOD	SS	AMMONIA
AGENCY	MGD	KLBS/DAY	KLBS/DAY	KLBS/DAY
San Jose	105.024	415.036	399.435	18.766
Santa Clara	24.786	97.950	94.267	4.429
Subtotal	129.810	512.986	493.702	23.195
CSD #4	-13.550	-35.561	37.346	2.370
Cupertino	8.600	-20.566	22.663	1.506
Milpitas	12.500	-29.134	35.708	2.319
CSD #2-3	-1.790	-5.311	3.724	0.479
Burbank	0.400	1.001	1.107	0.070
Sunol	0.350	-1.441	1.750	0.061
Subtotal	-37.190	93.014	102.298	6.805
TOTAL	-167.000	606.000	596.000	30.000

*The term "capacity" is defined as the mean peak five-day-dry-weather-plant-treatment-capacity.

ATTACHMENT C:

**Letter from City of San Jose to West Valley Sanitation District dated February 26, 2016
(a similar letter was sent to each of the Tributary Agencies)**

February 26, 2016

Jon Newby
West Valley Sanitation District
100 E. Sunnyoaks Avenue
Campbell, CA 95008

Re: 2016-2020 Regional Wastewater Facility Capital Improvement Program Modified Budget

Dear Mr. Newby:

This letter is being sent to inform you that a request to modify the 2016-2020 Regional Wastewater Facility (RWF) Capital Improvement Program (CIP) budget will be brought to the Treatment Plant Advisory Committee (TPAC) at its March 10 meeting. The modifications are focused on two areas: assumptions related to short terms financing and cost allocations for the Digester and Thickener Upgrade project.

Short Term Financing

As you are aware, at the request of the Tributary Agencies, the [2016-2020 RWF CIP budget](#) included assumptions related to short term financing. These assumptions have been described in various reports and memos, including an Information Memo to San José Mayor and City Council and distributed to TPAC dated April 6, 2015 ([Status of Regional Wastewater Facility Ten-Year Funding Strategy](#)) and the [Ten-Year Funding Strategy](#). The April 2015 information memo stated that if an agency did not participate in short term financing, a budget adjustment would be required in the future. The need for this adjustment was also recently reiterated at a January 15, 2016 meeting with you and the other Tributary Agency representatives.

As noted in the [San José-Santa Clara Regional Wastewater Facility Ten-Year Funding Strategy Report Update](#) presented to TPAC on December 10, 2015, San José staff has met on several occasions with you and representatives from Santa Clara and the other Tributary Agencies and shared information so as to enable each agency to evaluate its participation in short term financing. As you are aware, even though San José did not need short-term financing in 2015-2016, we were willing to establish a program to assist your agency and other agencies that had expressed interest in this type of financing. However, for San José to establish a short term financing program on behalf of the agencies, a timely amendment to the Master Agreement, which included extending the term of the agreement to ensure loan repayment, was needed. This was communicated several times to you and the other Tributary Agencies. A preliminary draft of an Amended and Restated Master Agreement was sent to you on October 22, 2015. Since no comments were received by your agency on this draft, a final document was sent to you on January 12, 2016, for execution by February 1, 2016.

On January 25, 2016, your agency and the other Tributary Agencies filed an Administrative Claim for Breach of Contract against San José and Santa Clara. On February 1, your agency and the other Tributary Agencies sent a letter to San José and Santa Clara stating that you did not intend to execute the Amended and Restated Master Agreement and asked that San José not pursue short or long term financing until the Administrative Claim has been resolved.

Since it is now clear that the establishment of a short term financing program will not occur this fiscal year, staff will be bringing forward a revised 2016-2020 RWF Capital Budget to reflect this change and to assume capital contributions from all agencies will be on a cash basis.

Updated Loading Parameters

The cost of RWF capital improvements are divided between San José, Santa Clara and the Tributary Agencies based on each agency's owned capacity of the following four billable parameters:

- Flow – Capital costs incurred to treat, convey, and dispose of wastewater;
- Biochemical Oxygen Demand (BOD) – Costs incurred to remove and dispose of organic compounds;
- Total Suspended Solids (TSS) – Costs associated with removing and disposing of small particles in the wastewater;
- Ammonia (NH₃) – Costs associated with removing and disposing of Nitrogen

As described in the Master Agreement, Exhibit A, Table 2, each agency pays its fair share of capital costs based on each agency's contractual capacity for the four billable parameters and the amount of each billable parameter treated by each process areas. The State Water Resources Control Board (SWRCB) has established guidelines for useful life and allocation parameters for the major components based upon each component's major function (which parameters the component treats). Annually, the City of San José submits the Revenue Program information to the SWRCB for its review and approval.

Per the Master Agreements, costs of projects that are process related and are over \$2 million need to be allocated based on the parameters treated by those projects. This allocation is determined by the engineering design of that project. Projects that are either less than \$2 million or are not process related and serve the entire RWF have their costs allocated based on the parameter allocations in the existing Revenue Program. These allocations are adjusted when new process related projects come online.

Although the Ten-Year Funding Strategy presents an initial estimate of system loading factors, additional analysis was required to determine the parameter allocations for all projects. Since this analysis was not available at the time of the Adopted 2016-2020 budget, staff had planned on making more comprehensive adjustments to project costs allocations in the 2017-2021 budget. However, since the Digester and Thickener Upgrade project is scheduled to award in May 2016, staff is proposing to make the allocation adjustments for this project prior to the award of the

contract. Based on information in the Ten-Year Funding Strategy and updated information from Carollo Engineers we have determined that this project will treat BOD and TSS at a ratio of 40% BOD and 60% TSS. Thus, in order to adjust the cost allocations to the Tributary Agencies in a timely manner, we will be bringing forward an adjustment to the Adopted 2016-2020 budget. Any reconciliation for prior costs on this project will be made in fiscal year 2016-2017 and any final reconciliation will be made at the time of project close out.

Please contact ESD Assistant Director Ashwini Katak at (408) 975 2553 or by email ashwini.katak@sanjoseca.gov with any questions.

Sincerely,

/s/

Kerrie Romanow

Cc: West Valley Sanitation District Board of Directors
City of San José Mayor and Council
City of Santa Clara Mayor and Council
Norberto Dueñas, City Manager, City of San José
Julio J. Fuentes, City Manager, City of Santa Clara
Chris de Groot, City of Santa Clara
Ashwini Katak, City of San José