Calendar Lines 1, 2, 3, 4 & 5
Case Name: *City of Half Moon Bay v. Granada Community Services District, et al.*
Case No.: 17CV316927

The following motions are at issue: (1) defendant/cross-defendant Montara Water and Sanitary District's ("Montara") motion for summary judgment as to the complaint ("Complaint") filed by plaintiff/cross-defendant City of Half Moon Bay (the "City"); (2) the City's motion for summary judgment as to its own Complaint; and (3) defendant/cross-complainant Granada Community Services District's ("Granada") motion for summary judgment as to the City's Complaint and its own cross-complaint ("Cross-Complaint"). Granada joins in Montara's motion and Montara joins in Granada's.

I. Background

A. Factual

1. *Complaint*

This action arises out of a dispute between various municipalities over their financial obligations concerning sewer infrastructure for the San Mateo Coast. According to the allegations of the operative Complaint, on February 3, 1976, the City, Montara and Granada entered into a Joint Exercise Powers Agreement ("JPA") for the purposes of creating the Sewer Authority Mid-Coastside Authority (the "Authority") to construct, own, and operate regional wastewater facilities for the three communities. (Complaint, ¶ 14 and Exhibit B.) Shortly after the execution of the JPA, the Authority constructed the Intertie Pipe System ("Intertie") pursuant to Phase I of the agreement. (*Id.*, ¶ 15.) Intertie is a sewer force main and associated tanks, pumps, and mechanical and electrical components that convey wastewater from Montara's and Granada's sewer collection systems to the Authority's treatment plant in the City. Intertie's construction, net of state and federal grants, was funded only by Granada and Montara, with the City assigned no benefit from, and thus no burden to fund, it. (*Id.*)

Intertie was constructed to be operated and maintained for its useful life. (Complaint, ¶ 17.) While the JPA did not specify the useful life, the JPA foresaw that Intertie would eventually require replacement. (*Id.*) After four decades of use, critical portions of the Intertie must now be replaced at a cost of approximately $4.4 million. (*Id.*, ¶¶ 17-18.) This cost was included by the Authority in its proposed 2017-2018 General Budget which, if approved and implemented, would purport to obligate the City to bear approximately half the cost to replace critical portions of the Intertie. (*Id.*) However, the City does not have any use for, nor right to use the Intertie and thus no obligation to fund the replacement parts under the JPA. (*Id.*)

Under the JPA, a member agency's share of the Authority's general fund is based on its share of flows to the Authority's plant, while only member agencies participating in a particular capital project contribute to its budget. (*Id.*, ¶ 19.) The City alleges that under the JPA, the Intertie replacement is a capital project for which Montara and Granada must approve and contribute to a project budget, rather than be funded from the general budget. (*Id.*, ¶¶ 20-22.) Among the factors alleged by the City to support its position are: the age of the Intertie and its finite useful life; the replacement nature of the subject project; the significant cost of the project; the nature of the costs to be incurred; the City's lack of benefit from the Intertie; and the JPA's distinction of "construction" from "maintenance and operation." (Complaint, ¶ 25.)

The City further alleges that under the JPA, any member may withhold its approval of capital projects and project budgets. (Complaint, ¶ 26.) The latter requires unanimous approval of the agencies that benefit from, and are therefore obliged to fund, the associated projects. (*Id*.) If the City withdraws from a project, it is not obligated to contribute to that project's budget nor may it benefit from that project. (*Id*.) Accordingly, the City asserts, it may withhold its approval of the Intertie project budget. (*Id*., ¶ 27.) The City seeks a declaration that capital projects such as large-scale pipe replacement do not constitute "operation and maintenance" and the JPA therefore does not oblige the City to contribute to the cost of the $4.4 million in Intertie capital replacement projects via the general budget.

2. *Granada's Cross-Complaint*

Granada takes the opposite position to the City in its Cross-Complaint. According to the allegations of this pleading, the Authority constructed Intertie in two phases. (Cross-Complaint, ¶ 17.) Phase I consisted of three components with "capacity rights, construction costs and operation and maintenance expenses being shared as specified" until these costs were reallocated as contemplated in Phase II. (*Id*., ¶ 18.) Intertie was one of the three components, with initial construction costs shared equally between Montara and Granada. (*Id*.) Phase II, in turn, consisted of construction of the final component of the Authority's sewer system, which contemplated one or more wastewater treatment facilities. (*Id*.) Ultimately, the member agencies chose to construct a single consolidated treatment plant, to which the Authority connected the then-existing Intertie. (*Id*.)

Under the terms of the JPA, and upon the Authority's Board of Directors' decision to construct a single treatment plant, the member agencies agreed to reallocate the costs and expenses of the Authority's sewer system, thereby terminating the previous Phase I cost allocations. (Cross-Complaint, ¶ 20.) The member agencies agreed to share the total expenses of operation and maintenance of all the components of Intertie "based on flows into the single consolidated treatment plant facility," and that "capacity rights and construction costs previously allocated in Phase I components shall be reallocated to be consistent with the treatment plant facility allocations." (*Id*.) As of 2017, the flow allocations consisted of 52% (the City), 26% (Granada) and 22% (Montara). (*Id*., ¶ 22.)

Granada alleges that contrary to the allegations in the City's Complaint, the City directly and indirectly utilizes and benefits from Intertie, which transports its wastewater to the Authority's wastewater treatment plant, and the City receives wastewater flow "priority" there. (Cross-Complaint, ¶ 23.) Nevertheless, Granada asserts, the JPA Phase II reallocation of the Authority's sewer system costs and expenses does not rely on a "benefit" calculation, but rather relies on each member agency's proportion of wastewater flows into the wastewater treatment plant and their LCP allocations. From the time of Phase II reallocation until the City's June 2017 refusal to approve the Authority's 2017-2018 general budget, Granada pleads, the City has continually funded the operation and maintenance, including construction, on the Intertie, in accordance with the reallocation set and agreed to by the member agencies in the JPA. (*Id*., ¶¶ 25-26.)

Granada further alleges that under the plain reading of the JPA and the past practice of the member agencies, the "Project Budget" provisions apply to new improvements not previously existing. (Cross-Complaint, ¶ 30.) Thus, Granada maintains, because three

components of the Authority's sewer system components, including Intertie, have been in existence and continual used and have been functioning for nearly four decades, the project budget provisions of the JPA are inapplicable to work done on the Intertie. (*Id*.) The 2017-2918 general budget did not envision expanding Intertie or increasing its capacity; it only proposed to implement a plan to repair and replace certain segments of the Intertie, in line with similarly funded past repairs and replacements. (*Id*) The member agencies have regularly and properly funded work on the existing sewer system, including Intertie, through the general budget. (*Id*.) Granada seeks a declaration that the City continues to share responsibility for its share of all costs and expenses related to the Intertie, as reflected in the JPA, as well as an affirmative declaration that infrastructure work which does not envision expanding the Intertie or increasing its capacity, but only proposes to implement to repair and replace certain segments of the Intertie does not require a project budget. (*Id*., ¶ 31.)

B. Procedural

The City filed its Complaint for declaratory relief in San Mateo County Superior Court on July 11, 2017. Granada filed its Cross-Complaint for declaratory relief on September 5, 2017.[1] Several weeks later, a motion for mandatory transfer was granted by the San Mateo County Superior Court, transferring this entire action to this Court. On September 30, 2021, the instant three motions for summary judgment were filed by the parties. All of the motions are opposed.[2]

II. Montara's Motion for Summary Judgment

A. Requests for Judicial Notice

In connection with Montara's motion for summary judgment, Granada, the City and Montara itself all make requests for judicial notice.

First, in support of its motion, Montara requests that the Court take judicial notice of the existence and contents of the Declarations of Pippin Cavagnaro and Clemens Heldmaier in support of its opposition to the City's own motion for summary judgment. As these items are court records, they are proper subjects of judicial notice pursuant to Evidence Code section 452, subdivision (d). Accordingly, Montara's request is GRANTED.

Next, in support of its joinder in Montara's motion for summary judgment, Granada requests that the Court take judicial notice of the City's Complaint (Exhibit A), a court record. Granada's request is GRANTED. (Evid. Code, § 452, subd. (d).)

Finally, in connection with its opposition to Montara's motion, the City requests that the Court take judicial notice of various items attached to the Declaration of John Doughty in Support of the City's Joint Opposition to Montara's and Granada's motions for summary judgment, specifically: Staff Report of the January 25, 2010 Authority Board Meeting Agenda

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[1] Montara filed a cross-complaint for declaratory relief on August 24, 2017, that is substantively the same as Granada's. This pleading is not at issue in Montara's motion.

[2] Pursuant to a stipulation between the parties and resulting Court order, Granada and Montara filed a joint opposition to the City's motion for summary judgment. The City also filed 9 volumes of joint evidentiary exhibits relied on by all parties in support of their motions or oppositions to the motions.

Item No. 6A (Exhibit K); California Regional Water Quality Control Board ("RWQCB") Order R2-2018-1005, Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order in the matter of Granada's Discharges of Untreated Sewage to Surface Water between May 2, 2007 and December 31, 2017 (Exhibit L); RWQCB Order R2-2018-1012, Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order in the matter of the Authority's Discharges of Untreated Sewage to Surface Water between May 2, 2007 and December 31, 2017 (Exhibit M); RWQCB Order R2-2018-1022, Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order in the matter of the Authority's Discharges of Untreated Sewage to Surface Water between May 2, 2007 and December 31, 2017 (Exhibit N); July 14, 2008 Authority Board Meeting Minutes (Exhibit O); and Authority Resolution No. 3-2009 (Exhibit P).

Government records are judicially noticeable pursuant to Evidence Code sections 451, subd. (a) and 452, subds. (b) and (c). Evidence Code section 452 provides that the Court may take judicial notice of "(b) Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States." The Court may notice relevant portions of a city's or joint powers authority's staff reports and legislative enactments. (*Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1225 [judicial notice of staff report]; see *Trinity Park, L.P. v. City of Sunnyvale* (2011) 193 Ca1.App.4th 1014, 1027 [applying Evid. Code, § 452, subd. (b) and (c) to "local ordinances and the official resolutions, reports, and other official acts of a city."].) The authority to take judicial notice, includes those government records published on the internet. (See, e.g., *People ex rel. Totten v. Colonia Chiques* (2007) 156 Cal.App.4th 31, 38, fn. 3.) Exhibits K, O, and P fall into this category.

The administrative decisions of the State RWQCB, i.e., Exhibits L, M and N, are also proper subjects of judicial notice as "[o]fficia1 acts of the legislative, executive, and judicial departments of any state." (Evid. Code, § 452, subd. (c); *Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 484.) Accordingly, the City's request for judicial notice is GRANTED.

B. Burden of Proof

"A defendant seeking summary judgment [or adjudication] must show that at least one element of the plaintiff's cause of action cannot be established, or that there is a complete defense to the cause of action … The burden then shifts to the plaintiff to show there is a triable issue of material fact on that issue." (*Alex R. Thomas & Co. v. Mutual Service Casualty Ins. Co.* (2002) 98 Cal.App.4th 66, 72 [internal citations omitted].)

"The 'tried and true' way for defendants to meet their burden of proof on summary judgment motions is to present affirmative evidence (declarations, etc.) negating, as a matter of law, an essential element of plaintiff's claim." (Weil & Brown, Cal. Prac. Guide; Civ. Proc. Before Trial (The Rutter Group 2014) ¶ 10:241, p. 10-104, citing *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334.) "The moving party's declaration and evidence will be strictly construed in determining whether they negate (disprove) an essential element of plaintiff's claim 'in order to resolve any evidentiary doubts or ambiguities in plaintiff's (opposing party's) favor.'" (*Id*., ¶ 10:241.20, p. 10-105, citing *Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 64.)

"Another way for a defendant to obtain summary judgment is to 'show' that an essential element of plaintiff's claim cannot be established. Defendant does so by presenting evidence that plaintiff 'does not possess and cannot reasonably obtain, needed evidence' (because plaintiff must be allowed a reasonable opportunity to oppose the motion)." (*Id*., ¶ 10:242, p. 10-105, citing *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854-855.) "Such evidence usually consists of admissions by plaintiff following extensive discovery to the effect that he or she has discovered nothing to support an essential element of the cause of action." (*Id.*)

C. Analysis

The disposition of the instant motion rests on an issue of contractual interpretation. Per Montara's motion, the dispute at issue and its position can be summarized thusly: despite all member agencies of the Authority historically contributing to the cost of repair and replacements of improvements comprising the intertie pipeline system ("IPS") as required by the provisions of the JPA, the City no longer wishes to pay its share based on an interpretation of the JPA that such repairs and replacements of the IPS are not expenses of operation and maintenance, but rather a "project" that is to be funded by Montara and Granada only. It is Montara's position that the City must pay because maintenance *includes* repair and replacement of segments of the IPS based on the following: the plain language of the JPA; the context in which the JPA was drafted; the members' course of performance; definitions of terms in federal and state regulations that governed the Authority at inception; and public policy considerations.

1. *Montara's Undisputed Material Facts*

In support of its motion, Montara submits the following purportedly undisputed material facts:

a. Formation of SAM

In 1976, real party in interest Sewer Authority Mid-Coast (the "Authority" or "SAM") was formed pursuant to the Joint Exercise of Powers Act (Gov. Code, § 6500 et seq.) (the "Act") to construct, own and operate regional wastewater treatment works. (Montara's Separate Statement of Undisputed Material Facts in Support of Motion for Summary Judgment ("UMF") No. 1.) The Joint Exercise of Powers Act "provides a means by which governmental agencies may join together to accomplish goals that they could not accomplish alone, or that they might more efficiently and more effectively accomplish together." (*Robings v. Santa Monica Mountains Conservancy* (2010) 188 Cal.App.4th 952, 962.) Under the Act, when authorized by governing bodies to do so, "two or more public agencies by agreement may jointly exercise any power common to the contracting parties," and they main join in the creation of a separate entity to exercise those powers on their behalf. (Gov. Code § 6502.)

In the years preceding SAM's formation, all three members- Montara, Granada and the City- were operating separate treatment works. (See Joint Exhibit ("Jt. Ex.") 14 ["City Reso. No. 11-79"] at p. 1.) However, the City's and Granada's systems lacked sufficient capacity to meet demand, while Montara's newly constructed system had excess capacity. (*Id*.) Various plans were considered and rejected, including regional cooperation, separate treatment

facilities by each member but a shared common deep water outfall at the location of the City's existing outfall which utilized an intertie pipe system ("IPS" or "Intertie") ("Plan A"), and full consolidation with members sharing a single treatment plant, outfall and construction of an IPS ("Plan F"). (*Id*.) The members were ultimately unable reach a consensus as to how to proceed because certain plans would have placed disproportionate cost burdens on certain members. The City therefore proposed sharing the cost of the consolidated system on an equitable basis, and the three members formed SAM to pursue a true regional approach. (City Reso. 11-79 at p. 2.)

b. Development of Consolidated Regional System

Working together as SAM, the members pursued a plan under which they would share use of an outfall and construction of an IPS, as well as a single treatment plant at the location of the City's existing plant. (City Reso. No. 11-79 at pp. 3-4.) Encountering difficulty obtaining permits caused the members to reconsider a plan pursuant to which each would operate its own treatment facility but share a common deep water ocean outfall at the site of the City's existing outfall. After cease and desist orders were imposed on all three members as a result of enforcement of federal and state clean water rules by the San Francisco Bay Regional Water Quality Control Board ("RWQCB"), meetings were held by all relevant parties to determine a way forward, and it was agreed that SAM would pursue a regional wastewater treatment system in two phases. (*Id*. at pp. 4-5; UMF No. 16.) In Phase I, construction would begin on the IPS and outfall and during that time, the members would decide whether to proceed with separate plants or a single plant. (*Id*.; UMF No. 11.) The agreement was embodied in a court order issued in an action against SAM filed by the state Attorney General, and the order contained a compliance schedule for construction of both phases. (*Id*. at 5; Jt. Ex. 17.)

In July 1979, Article IV of SAM's JPA was amended to incorporate the two-phased approach. (Jt. Ex. 4; UMF No 9.) The amendment defined both Phase I and Phase II components of SAM's proposed regional consolidated wastewater treatment system as the "Present Project." (*Id*. at pp. 1, 3; UMF No. 14.) The amendment indicated that in Phase I, the IPS would be constructed to the shared outfall and would be "shared equally between Montara and Granada" (UMF No. 12) and the new outfall would be shared "one-half (1/2) by [the City], one-quarter (1/4) by Montara and one-quarter (1/4) by Granada." (Jt. Ex. 4 at p. 1; UMF No. 12.)

As amended, Article IV(B)(4) also stated that if in Phase II the members chose to pursue a single consolidated treatment facility, then: "The total expenses of operation and maintenance of all components of the Present Project [would] be shared in a manner based on flows into the single consolidated treatment plant facility." (Jt. Ex. 4 at p 4; UMF No. 13.) In the case of a shared plant, capacity rights in the Phase I components would be reallocated. (*Id*.) However, if the members opted to maintain separate wastewater treatment plants, then "[t]he expenses of operation and maintenance of various components of the Present Project" would be "borne solely by those member agencies using said components." (*Id*.; UMF No 13.)

Cost allocation was discussed by the SAM board before the JPA was amended, with the City expressing their belief that they should not pay for operation and maintenance ("O&M") for the IPS under either Plans A or F. (Jt. Ex 19, p. JE104; UMF No. 15.) After "considerable discussion," it was agreed that under Plan F, O&M costs would be shared for all components

of the project by all three agencies based on each agency's respective flows in the treatment plant, while under Plan A each agency would share O&M costs of only those components used by that agency, and then according to flows. (*Id.*)

c. Funding of the IPS

Ultimately, SAM and its members decided to pursue a single, consolidated wastewater treatment plant (UMF No. 16), and SAM was awarded grant funding from the state and federal governments which paid nearly all of the costs of the consolidated system, including the IPS. (Jt. Ex. 16.) Grant proceeds were conditioned, in part, on compliance with state regulations then in effect at 40 C.F.R. Chapter I, Subchapter B. (Jt. Ex. 26 at HMB2199, General Cond. (a).)

In the years following, SAM members shared financial responsibility for the maintenance of the IPS pursuant to the general budget provisions of the JPA. (UMF No 17.) For example, the Budget for Fiscal Year 1983-1984 shows reserves for "capital equipment purchases" and "repair and replacement" of SAM's treatment works divided among all three members based on their flows into the Wastewater Treatment Plant. (Jt Ex. 29, p. 3.) The budgets for Fiscal Years 1996-1997 and 1997-1998 show that funding for operation and maintenance of all components of the SAM consolidated system were based on the flows. (Declaration of Christine C. Fitzgerald in Support of Montara's Motion for Summary Judgment ("Fitzgerald Decl."), ¶ 3, Exs. A, B.) In Fiscal Years 1998-1999 and 1999-2000, SAM's General Budget included a separate capital budget for which allocation of costs was not based on flows but, instead, based on each member's ownership and capacity rights in SAM's treatment plant. O&M costs were still shared by all members. (*Id*, ¶ 4, Exs. C, D.) Beginning in Fiscal Year 2000-2001, maintenance costs were allocated once again based on flows, including IPS repair and replacement costs. (*Id*., ¶ 5, Exs. E-I.) This practice continued until Fiscal Year 2005-2006, when SAM again began to allocate capital costs based upon capacity in the SAM treatment plant. (*Id*., ¶ 6, Exs. J-Q.) However, the members continued to share costs for IPS capital items except for costs related to a new project known as the Wet Weather Storage Project ("WWSP"), the costs of which were shared by Montara and Granada pursuant to the project budget process set forth in Article IV(B) of the JPA. (*Id*., ¶ 7, Ex. R.) Beginning in Fiscal Year 2013-2014, capital items were once again based on flow (supported by legal opinions from SAM's counsel) (*id*., ¶ 9, Exs. W, X) until 2017 when the instant dispute arose (*id*., ¶ 8, Exs. S-V).

Between 2010 and 2017, SAM's annual budget included several capital items for the IPS involving repair and replacement of components and the costs of these items were shared by all members, whether based on flows or capacity. (Fitzgerald Decl., ¶ 10, Exs. O at p. 45, T, U.)

d. The Present Dispute

By 2017, portions of the IPS had eroded, resulting in wastewater spills in some locations and an estimated cost of $4.4 million to replace those portions most in need of repair. (Complaint, ¶ 3.) On October 9, 2017, SAM's board awarded a contract in the amount of $1,997,050 to Bay Pacific Pipelines Inc. for the replacement of approximately one mile of force main segments, made necessary by recent spills resulting from corroded pipelines. (Jt. Ex. 48 at pp. JE158-160 [staff report]; Ex. 49 at p. JE212 [minutes].) The board also awarded a contract in the amount of $30,378 to Blacoh Industries for replacement of a surge pump at

the Portola Pump Station, which is part of the IPS. (*Id*., Ex. 48, pp. JE206-207; Ex. 49, p. JE213.)

City representatives on the board voted in favor of awarding both contracts. (Jt. Ex. 49, pp. JE212-213.) However, the City later took the view that it was not responsible for contributing toward IPS maintenance costs despite having done so in the past, and initiated the instant litigation seeking a declaration that it is not responsible for repair and replacement of IPS components. The City's view is based on the following: its belief that the replacement of IPS components involves construction activities rather than maintenance activities and thus the work should not be paid for out of SAM's general budget but rather should be addressed through the JPA's project budge procedures where a member may opt out (Complaint, ¶¶ 18-27); its belief that the JPA obligates it to contribute to the maintenance of the IPS only for its "useful life," which it is currently beyond (*id*., ¶ 17); and its belief that it does not use or benefit from the IPS and therefore has no obligation to contribute to its upkeep (*id*., ¶¶ 25, 27.)

2. *Rules of Contract Interpretation*

As this case rests on an issue of contractual interpretation, particularly that of the JPA and its provisions relating to costs and how those costs are to be borne by SAM's members, it is critical to lay out the well-settled rules of contractual interpretation that will apply here. In short, the "fundamental canon of contract interpretation is the ascertainment of the parties' intent." (*Appalachian Ins. Co. v. McDonnell Douglas Corp.* (1989) 214 Cal.App.3d 1, 11.) If clear and explicit, the language of the subject agreement controls (see Civ. Code, § 1638), and generally the words are to be understood in their ordinary and popular sense (*Salton Bay Marina, Inc. v. Imperial Irrigation Dist.* (1985) 172 Cal.App.3d 914, 931; Civ. Code, § 1644; Code Civ. Proc., § 1861), unless a contrary intent is shown, such as a specialized meaning due to trade custom and practice or a prior course of dealing (*LaCount v. Hensel Phelps Constr. Co.* (1978) 79 Cal.App.3d 754; Code Civ. Proc., § 1856, subd. (c).

The interpretation of a written construct is a question of law for the court unless such interpretation turns on the credibility of extrinsic evidence. (*Parsons v. Bristol Development Co* (1965) 62 Cal.2d 861, 865.) Extrinsic evidence is permissible where the terms of a contract are ambiguous (see *Vegas v. Western Employers Ins. Co.* (1985) 170 Cal.App.3d 922, 927), and a term qualifies as such when it is capable of more than one reasonable interpretation (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 798.) The determination of whether ambiguity exists in the first instance is solely a judicial function. (*Wolf v. Superior Court* (2004) 114 Cal.App.4th 1343, 1350-1351.)

A court must view the language in light of the instrument as a whole, and not use a "disjointed, single paragraph, strict construction approach." (*Ezer v. Fuchsloch* (1979) 99 Cal.App.3d 849, 861.) If possible, the court should give effect to every provision (Civ. Code, § 1641; *White v. Dorfman* (1981) 116 Cal.App.3d 892, 897), though an interpretation which renders part of the instrument to be surplusage should be avoided (see *Estate of Newmark* (1977) 67 CalApp.3d 350, 356).

3. *Relevant Provisions of the JPA and the Parties' Interpretations*

As set forth above, when interpreting the terms of an agreement, a court first begins with the words contained therein, understood in their ordinary and popular sense. In making its

argument that the City's interpretation of the JPA is erroneous, Montara focuses on Article IV(B)(4) of the JPA, which provides as follows:

> In the event the member agencies choose to construct a single consolidated treatment plant facility …. [t]he total expenses of operation and maintenance of all of the components of the Present Project shall be shared in a manner based on the flows into the single consolidated treatment plant facility.

(JPA Art. IV(B)(4); UMF No. 14)

"Present Project," in turn, is defined earlier in Article IV(B) to include the IPS.[3] The members of SAM elected to construct a single consolidated system with only one treatment plant, and therefore, per the express terms of the JPA, all three have shared financial responsibility for operation and maintenance of the IPS based on flows, including replacement and repair of IPS force main segments and pumps.

Montara maintains that the drafters of the JPA intended the term "maintenance" to be understood in its broad, ordinary sense, i.e., to include everything necessary to maintain SAM's treatment works in good condition. In contrast, the City asserts that the replacement of force main segments in the IPS is *not* mere operation and maintenance, but rather "construction" as defined in the "Definitions" section of the JPA, i.e., the "acquisition, reconstruction, alteration, enlargement, replacement or reparation as well as construction." (JPA, Section I(d).) This distinction is critical because whether or not the cost of IPS repairs is to be shared or borne by just some of the members is dependent on how it is categorized within the meaning of the JPA.

The JPA creates two types of budgets: general budgets and project budgets. (UMF No. 2.) General budgets, described in Article V(A), are SAM's annual budgets for administrative expenses and the expenses of operations and maintenance. The latter expenses are allocated based on flows into the Wastewater Treatment Plant, which the former are allocated based on each member's voting rights on the SAM Board. Project budgets, described separately in Article V(B), are intended for new SAM projects, and include, among other things, the cost of construction of the project. Unlike general budgets, a member may opt out of a project for which a project budget has been prepared, and a SAM Board subcommittee of participating members would be formed to oversee the project.

The City maintains that because the work that needs to be done on the IPS involves the replacement of parts, it qualifies as "construction" and thus is subject to a project budget that it can elect to opt out of. Montara asserts that because the work at issue in this action is for the maintenance of the existing IPS, the general budget process is implicated and the City is obligated to pay its share of costs based on flows into the Wastewater Treatment Plant.

As set of forth above, the City also bases its position on the notion that the IPS requires replacement of parts that have reached their "useful life" and therefore the project giving rise to this litigation and the costs incurred therein are not "the expenses of operating and maintaining

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[3] "The Present Project shall be a secondary wastewater treatment and disposal system, divided into four components to service the combined needs of the member agencies to the year 2000 …. Phase I of the system is composed of …. [a]n intertie pipeline and attendant pumping facilities …." (JPA at Art. IV(B)(1)(a)(i).)

improvements" or "general administrative expenses," but rather a project that requires planning, engineering and construction costs to be funded by a project budget. With the foregoing in mind, the Court will discuss its conclusions below.

4. *The Court Finds Montara's Position Persuasive and Therefore Agrees that the City is Obligated to Share in the Costs of the IPS Project*

Without even considering the course of conduct between the members of SAM, the Court agrees with Montara that's its interpretation of the relevant provisions of the JPA with regards to the work to be performed on the IPS is more reasonable.

First, the Court agrees with Montara that support for the notion that the drafters of the JPA intended the term "maintenance" to be understood in its broad and ordinary sense is found within the agreement itself, particularly the categories of budgets created and the nature of those budgets as per the language used to describe them. The process of approving a project budget begins with the SAM Board approving a project "in concept." (UMF No. 7.) As Montara contends, approval of a project "in concept" signifies approval of one *not yet* in existence, i.e., *new* projects, as distinct from the project at issue here, which is defined, presently existing, and one that SAM came together to build and maintain. Responsibility for construction and ongoing maintenance of the IPS is provided for in Article IV of the JPA, and thus there is no need to address governance of it through a subcommittee under Article VI. In short, project budgets are for new facilities/future projects and general budgets are for the present project, and because the costs of IPS repair and replacement cannot be described as administrative expenses, the category under which they must fit is operation and maintenance expenses, which is to be borne by all SAM members.

The City's reliance on the "surplusage rule," a rule of construction where every word of a contract or statute is assumed to have an independent meaning, does not compel the conclusion that the work to be done on the IPS qualifies as "construction." The City argues that the JPA consistently distinguishes "construction" from "maintenance," and cites to various provisions in the agreement in which these terms are listed separately, explaining that there would be no need to list them separately if the intention was that one was subsumed within the other. But as Montara notes, the surplusage rule is not as uncompromising as the City would have this Court believe, to wit: "While courts should strive to avoid constructions that make statutory words surplusage, this principle is merely a guide and should not be employed to defeat legislative intent." (*People v. De Porceri* (106 Cal.App.4th 60, 69.) Indeed, there are instances of redundancy of terms in the JPA which suggest that the surplusage rule should not have ironclad application to the interpretation of its terms. For example, the JPA provides that "The parties hereto have in common the power to plan for, acquire, *construct*, *reconstruct*, alter, enlarge, *replace*, *repair*, maintain, manage, operate and control facilities for the collection, transmission, treatment and disposal of wastewater." (JPA, Art. II(C)(4).) Yet the JPA also defines "construction" to include "acquisition, *reconstruction*, alteration, enlargement, *replacement* or *reparation* as well as construction." Notably, the City has not addressed this type of redundancy.

The City's assertion that making its ratepayers pay their share for the operations and maintenance is not "fair" because they derive no benefit from ignores the stated intent of SAM's members as expressed within the JPA, particularly that "[i]n the event a single

treatment plan concept was selected as the fourth component under Phase II, it is the intent of the Authority to further consolidate sewer functions within the service areas of the three member agencies, and to establish a uniform system of sewer service charges, levied throughout the entire jurisdiction of the Authority, with which to pay expenses of operations and maintenance." (JPA, Art. IV(B)(5).) By choosing to apply uniform rates throughout SAM's service area the member agencies, as Montara contends, intended that all of them were meant to be equally on the hook for SAM's liabilities, including for the IPS. Moreover, the JPA does not otherwise limit the City's responsibility to fund operations and maintenance work based on its perceived benefits, and it should be noted that the member agencies, back when they entered into the JPA, elected *not* to utilize a wastewater system that required each member to only pay for its use of facilities.

In any event, even if benefit *was* a relevant consideration, the Court is not persuaded by the City's insistence that it derives no benefit from the IPS. SAM's members elected to create a consolidated system and the IPS is what effectively consolidates it so that member agencies can share a single wastewater treatment plant. The City does not transport is own wastewater through the IPS because SAM's treatment plant is located in the City itself and therefore transport is not necessary. If the plant had been located elsewhere, the City would require the IPS to transport waste, but the fact that Montara and Granada were willing to transport their waste instead is a material benefit to the City.

While the City also maintains that it was only required to fund operations and maintenance of the SAM IPS system during its useful life, and that that time has ended, not only does the JPA *not* specify what "useful life," which appears in the Phase I cost allocation section of the JPA,[4] means, but a review of the statutory and regulatory environment in which the JPA was drafted supports the conclusion that the phrase "useful life" does not place an endpoint on the City's obligation to share in the cost of operating and maintaining the components of the SAM wastewater system, including the IPS. The language of the JPA regarding operations and maintenance was created to comply with the May 10, 1979 preliminary injunction and to obtain federal and state Clean Water Grant Program funding. The injunction required the City, Granada and Montara to construct the SAM IPS, to be "operated and maintained by defendant Sam in accordance with the rules and regulations applicable to the California Clean Water Grants Program." (UMF No. 35.) The Clean Water Grant Program approvals themselves explicitly required SAM to comply with all federal and state Clean Water Grant Program regulations. (See July 12, 1979 EPA Clean Water Grant Approval, requiring SAM to comply with "all applicable provisions of 40 C.F.R Chapter I, Subchapter B [the federal Clean Water Grant Program regulations]." (UMF No. 4.) Had SAM adopted contrary definitions of operations and maintenance, it would have suffered significant consequences.

Clean Water Grant Program regulations specify that "[t]he term 'operation and maintenance' includes replacement" and define "useful life" as the "period during which the treatment works will be operated" (40 C.F.R. § 35.905 (UMF No. 19), not just until the IPS needs repair or replacement, and RWQCB regulations further provide a definition of

[4] Article IV(B)((1)(d)(iii), which pertains to operation and maintenance of Phase I components of the wastewater treatment and disposal system, states that, "Each member agency hereby agrees to utilize Phase I components as said components are completed and available for use, and to ensure the proper operation and maintenance of same in accordance with the requirements of the Regional Water Quality Control Board for the *useful life thereof*."

"rehabilitation" which "include[es] repair and replacement not considered routine or periodic" (Cal. Admin. Code, tit. 23, § 2102, subd. (hh) (UMF No. 21)). These regulations also define "replacement" by citing and paraphrasing the definition provided by the federal regulations which, among other things, state that the term "operation and maintenance" *includes* replacement. Per the foregoing, repair, replacement and rehabilitation are all forms of maintenance of treatment works. Because SAM's treatment works were intended to facilitate the members' compliance with the aforementioned regulations, they establish the context in which the JPA was drafted and support the conclusion that the drafters of the JPA intended the term "maintenance" to be construed broadly.

In its opposition, the City emphasizes that the definitions in clear water regulations at the time JPA was drafted are irrelevant because they have since been rescinded, but the point is that they *were* in existence when the JPA was drafted, and thus provide relevant context and provide insight as to how the drafter intended the term "maintenance" to be construed.

The City also places emphasis on the statement in the JPA that the "Present Project" was intended to serve the member agencies' needs through 2000 (see fn. 3, *supra*), arguing that the JPA was therefore only intended to govern initial construction of SAM's system until that point in time, and not future related projects, including replenishment. But this statement refers to the *entire* Present Project, not just the IPS, and the Court agrees with Montara that the more reasonable interpretation of the statement is that it was intended to obligate the parties to create a system that would anticipated needs up to the year 2000, rather than establish an end point for the parties' financial obligations for that system.

The Court also does not find persuasive the City's assertion that Montara is attempting to re-write the terms of the JPA, as its interpretation is based on the plain language of the agreement. If anything, the Court agrees with Montara that the City's interpretation is dependent on a revision of the JPA, especially given its appeal to "fairness," which has nothing to do with the plain language of the agreement.

In sum, the Court agrees with Montara that the costs of operations and maintenance of the Present Project, *inclusive of the IPS*, fall within Article IV(B)(4) of the JPA and thus are a joint responsibility of the member agencies. Thus, the City cannot decline to contribute its share of the cost for repairs of the IPS, including the replacement of components that require as much.

Montara's motion for summary judgment, joined by Granada, is GRANTED.

III. Granada's Motion for Summary Judgment

A. Requests for Judicial Notice

In connection with Granada's motion for summary judgment, both Granada and the City make requests for judicial notice.

First, in support of its motion, Granada requests that the Court take judicial notice of the City's Complaint and its own Cross-Complaint. As these items are court records, they are proper subjects of judicial notice pursuant to Evidence Code section 452, subdivision (d). Accordingly, Granada's request is GRANTED.

In support of its opposition to Granada's motion, the City submits a request for judicial notice that is identical to the request it submitted in support of its opposition to Montara's motion for summary judgment. For the same reason set forth above in the preceding section, the City's request for judicial notice is GRANTED.

B. Analysis

Granada' motion for summary judgment relies on essentially the same theory as Montara's, that is, the plain language of the JPA supports the conclusion that "Operations and Maintenance" includes the "Repair, Rehabilitation, and Replacement" of consolidated treatment works such that the City is obligated to bare its share of the cost to make repairs to the IPS. As articulated above, the Court finds this interpretation of the JPA both reasonable and persuasive. Accordingly, Granada's motion for summary judgment, joined by Montara, is GRANTED.

IV. The City's Motion for Summary Judgment

A. Requests for Judicial Notice

In connection with the City's motion, both the City and Montara submit requests for judicial notice.

First, the City requests that the Court take judicial notice of the following items, which are attached the declarations of John Doughty (the "Doughty Decl.") and Pamela Graham (the "Graham Decl.") filed in support of its motion for summary judgment: the City's Complaint (Exhibit A to Graham Decl.); Montara's Cross-Complaint (Exhibit B to Graham Decl.); Granada's Cross-Complaint (Exhibit C to Graham Decl.); SAM's IPS Review and Evaluation Report dated December 2009 prepared by SRT Consultants, attached to the January 25, 2010 SAM Board Meeting Agenda for Item No. 6A (Exhibit D to Graham Decl."); engineering drawings of Granada Force Main Replacement Project dated August 2017 (Exhibit E to Graham Decl.); Stipulation and Order Regarding Expenses and Assessments of Sewer Authority Mid-Coast dated August 21, 2017 (Exhibit F to Graham Decl.); the City's protest letter to SAM dated July 10, 2018, accompanying the City's payment for operations and maintenance for the month of June 2018 (Exhibit G to Doughty Decl.); staff report for the May 18, 2021 City Council Meeting, when the City adopted a resolution to approve under protest the SAM General Budget for fiscal year 2021-2022 (Exhibit H to Doughty Decl.); SAM General Budget for fiscal year 2021-2022 (Exhibit I to Doughty Decl.); and City Resolution No. C-2021-22, approving under protest the SAM General Budget for fiscal year 2021-2022 (Exhibit J to Doughty Decl.).

Exhibits A, B, C and F are court records and therefore proper subjects of judicial notice under subdivision (d) of Evidence Code section 452.

Government records are judicially noticeable pursuant to Evidence Code sections 451, subd. (a) and 452, subds. (b) and (c). Evidence Code section 452 provides that the Court may take judicial notice of "(b) Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States." The Court may notice relevant portions of a city's or joint powers authority's staff reports and legislative enactments.

(*Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1225 [judicial notice of staff report]; see *Trinity Park, L.P. v. City of Sunnyvale* (2011) 193 Ca1.App.4th 1014, 1027 [applying Evid. Code, § 452, subd. (b) and (c) to "local ordinances and the official resolutions, reports, and other official acts of a city."].) The authority to take judicial notice, includes those government records published on the internet. (See, e.g., *People ex rel. Totten v. Colonia Chiques* (2007) 156 Cal.App.4th 31, 38, fn. 3.) Exhibits D, E, G, H, I and J fall into this category.

In accordance with the foregoing, the City's request for judicial notice is GRANTED.

Next, in support of its opposition, Montara requests that the Court take judicial notice of the existence and contents of the Declaration of Christine Fitzgerald filed in support of its motion for summary judgment. This request is GRANTED. (See Evid. Code, § 452, subds. (d) and (h).)

B. Analysis

The arguments asserted by the City in support of its motion are the same as those that it asserts in opposition to Montara's and Granada's summary judgment motions. That is, it maintains that it is not obligated to pay for any portion of repairs to the IPS because such repairs qualify as new "construction" under the JPA rather than maintenance. However, for the reasons articulated in detail above in the section pertaining to Montara's motion, the Court does not find this interpretation of the JPA to be reasonable. Consequently, the City's motion for summary judgment is DENIED.

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