



MEETING DATE: 6/20/05  
AGENDA ITEM: 8

## COUNCIL AGENDA REPORT

### *DESK ITEM*

DATE: June 20, 2005  
TO: MAYOR AND TOWN COUNCIL  
FROM: ORRY P. KORB, TOWN ATTORNEY *OK*  
SUBJECT: ADOPT RESOLUTION APPROVING A SECOND CONTINUATION AGREEMENT WITH THE WEST VALLEY SANITATION DISTRICT OF SANTA CLARA COUNTY

Attached is the amended resolution and agreement, which has been approved as to form by the West Valley Sanitation District staff.

Attachments: 1. Resolution  
Exhibit A - Agreement

PREPARED BY: ORRY P. KORB, TOWN ATTORNEY

OPK:/wp [N:\ATY\WVSD.Desk-TCR.wpd]

Reviewed by: *[Signature]* Town Manager *PSS* Assistant Town Manager \_\_\_\_\_ Clerk Administrator  
Finance \_\_\_\_\_ Community Development

Rev: 6/20/05 11:44 am  
Reformatted: 7/19/99

File# 301-05

## RESOLUTION

### RESOLUTION OF THE TOWN OF LOS GATOS AUTHORIZING THE TOWN MANAGER TO EXECUTE A SECOND CONTINUATION AGREEMENT WITH THE WEST VALLEY SANITATION DISTRICT OF SANTA CLARA COUNTY

**WHEREAS**, on May 19, 1977, the Town entered into an agreement with the West Valley Sanitation District of Santa Clara County ("District") entitled "District 4 – Los Gatos 1977 Sewer Agreement" (herein referred to as "Agreement"); and

**WHEREAS**, on June 13, 2001, Town and District entered into an amendment to the Agreement to continue said Agreement for a period not to exceed three years; and

**WHEREAS**, said Agreement and all amendments were to terminate on June 30, 2004; and

**WHEREAS**, on July 7, 2004, Town and District entered into an agreement with District entitled "Continuation Agreement and Amendment No. 3 to Sewer Agreement Between the Town of Los Gatos and West Valley Sanitation District" to extend the terms of the Agreement for an additional year, terminating on July 1, 2005, in order to provide the time necessary to transfer all current and future ownership and associated operation and maintenance responsibilities of the sanitary sewer system within the Town's jurisdiction to the District; and

**WHEREAS**, Town and District desire to extend the time for negotiating the terms of the proposed transfer for an additional ninety (90) days beyond July 1, 2005, to do so by extending the terms of the Agreement, but without determining at this time the amount that the Town is entitled to receive as reimbursement of its costs to operate and maintain the sewer system within the Town as set forth in the Agreement.

**RESOLVED**, by the Town Council of the Town of Los Gatos, County of Santa Clara, State of California, that the Town of Los Gatos enter into a Second Continuation Agreement with the West Valley Sanitation District (Exhibit A, attached hereto and incorporated by this reference) for the purpose of extending the time necessary to negotiate a transfer to the District of the ownership, operation and maintenance of the Town's sewer system, and that the Town Manager is authorized, and is hereby directed, to execute said contract/agreement in the name and on behalf of the Town of Los Gatos.

**PASSED AND ADOPTED** at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the \_\_\_\_\_ day of \_\_\_\_\_, 2005 by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

**SIGNED:**

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

ATTEST:

CLERK ADMINISTRATOR  
LOS GATOS, CALIFORNIA

N:\ATY\WVSD-RESO.wpd

**SECOND CONTINUATION AGREEMENT AND AMENDMENT NO. 4  
TO SEWER AGREEMENT BETWEEN THE TOWN OF LOS GATOS  
AND WEST VALLEY SANITATION DISTRICT**

THIS SECOND CONTINUATION AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by and between the Town of Los Gatos (hereinafter "Town") and West Valley Sanitation District of Santa Clara County (hereinafter "District").

WHEREAS, on May 19, 1977, Town entered into an agreement with District entitled "District 4 – Los Gatos 1977 Sewer Agreement" (herein referred to as "Agreement"); and

WHEREAS, Section D of Part II and Section C of Part III of the Agreement provides that Town shall be reimbursed for its costs of operating and maintaining the sewer system within the Town, and paragraph 6 of Section A of Part I of the Agreement defines "cost" as "[t]he amount reasonably expended in performing a particular act or operation;" and

WHEREAS, on June 13, 2001, Town and District entered into an amendment to the Agreement to continue said Agreement for a period not to exceed three years; and

WHEREAS, said Agreement and all amendments were to terminate on June 30, 2004; and

WHEREAS, on July 7, 2004, Town and District entered into an agreement with District entitled "Continuation Agreement and Amendment No. 3 to Sewer Agreement Between the Town of Los Gatos and West Valley Sanitation District" to extend the terms of the Agreement for an additional year, terminating on July 1, 2005, in order to provide the time necessary to transfer all current and future ownership and associated operation and maintenance responsibilities of the sanitary sewer system within the Town's jurisdiction to the District; and

WHEREAS, to allow the process for negotiating the terms of the proposed transfer to proceed without conflict, Town and District desire to extend the terms of the Agreement for an additional ninety (90) days beyond July 1, 2005, but disagree about how to determine the amount of payment to the Town for operating and maintaining the Town's sewer system during the time of the extension; and

WHEREAS, Town and District thus desire to defer discussion on the amount of payment due to the Town for the additional time the Town operates and maintains its sewer until completion of the negotiations of the proposed transfer of the sewer system to District.

NOW, THEREFORE, for and in consideration of their mutual promises, and subject to the terms, provisions and conditions herein set forth, the parties do hereby agree as follows:

1. All of the terms and provisions of the Agreement and all subsequent amendments remain in full force and effect for a period not to exceed ninety (90) days from the date of this Second Continuation Agreement with the exception of the following:

- A. That part of Section D of Part II of the Agreement stating: "and the District shall reimburse the Town all of the Town's cost of doing so. Request for payment and payments shall be made in the manner provided in Part III C 3;"
- B. That part of paragraph 3 of Section E of Part II stating: "and shall reimburse the Town for all of the Town's administrative cost of performing its obligations under Part II E, less amounts which are chargeable by the Town to applicants for and recipients of sewer service, and which are retained by the Town. Requests for payment and payment shall be made in the manner provided in Part III C 3;"
- C. That part of paragraph 2 of Section C of Part III stating: "for the Town's cost."
- D. All of paragraph 3 of Section C or Part III relating to the method of reimbursing the Town for its costs of operating and maintaining the sewer system; and
- E. All of Section A of Part IX, relating to the term of the Agreement.

2. Town shall be entitled to reimbursement by District for operating and maintaining the Town's sewer system during the period between July 1, 2005 and September 30, 2005, as follows:

- A. As may be agreed by the parties, but in the absence of such agreement, as specified in subsection b. below.
- B. On or before November 1, 2005, District shall pay Town an amount District deems appropriate, which Town may accept without waiver of its right to pursue as provided by law any additional payment Town deems appropriate. District may dispute any additional payment sought by Town.

WITNESS THE EXECUTION HEREOF the day and year first hereinabove written.

**TOWN OF LOS GATOS, by:**

**WEST VALLEY SANITATION DISTRICT, by:**

\_\_\_\_\_  
Debra J. Figone, Town Manager

\_\_\_\_\_  
(Signature)

**APPROVED AS TO FORM:**

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
Orry P. Korb, Town Attorney

**ATTEST:**

\_\_\_\_\_  
Marlyn Rasmussen, Clerk Administrator  
Town of Los Gatos

N:\ATY\WVSD-Cont.AGR.wpd