




MEETING DATE: 09-23-05

COUNCIL AGENDA REPORT

DATE: SEPTEMBER 22, 2005

TO: MAYOR AND TOWN COUNCIL

FROM: DEBRA J. FIGONE, TOWN MANAGER 

SUBJECT: ADOPT RESOLUTION APPROVING A THIRD CONTINUATION AGREEMENT WITH THE WEST VALLEY SANITATION DISTRICT OF SANTA CLARA COUNTY


RECOMMENDATION:

Adopt a resolution approving a Third Continuation Agreement with the West Valley Sanitation District of Santa Clara County.

BACKGROUND:

The Town has since 1977 operated and maintained the sewer system within the Town boundaries under an agreement with the West Valley Sanitation District of Santa Clara County (the "District"). The 1977 agreement requires, among other things, that the District reimburse the Town for the costs incurred by the Town in maintaining the system. In 2004, the Town and District entered into a Continuation Agreement that extended the terms of the 1977 agreement to June 30, 2005, to allow the Town and District to complete the steps necessary to enable the District to acquire and take over the operation and maintenance of the Town's sewer system. This process was not completed by June 30th, requiring that the Town and District enter into a Second Continuation Agreement setting forth the terms and conditions that governed the additional period required to conclude negotiations concerning the proposed transfer. The Second Continuation Agreement will expire on September 30, 2005 and the Town and District have not yet completed the process regarding the acquisition of the Town's assets.


PREPARED BY: PAMELA S. JACOBS
ASSISTANT TOWN MANAGER

Reviewed by: _____ Assistant Town Manager  Town Attorney _____ Clerk Administrator
_____ Finance _____ Community Development Revised: 9/22/05 3:57 pm

Reformatted: 5/30/02

PAGE 2

MAYOR AND TOWN COUNCIL

SUBJECT: ADOPT RESOLUTION APPROVING A THIRD CONTINUATION
AGREEMENT WITH THE WEST VALLEY SANITATION DISTRICT OF
SANTA CLARA COUNTY

(September 22, 2005)

DISCUSSION:

The District and Town are willing to extend the 1977 agreement again, subject to the District's concern about the amount that the Town should be entitled to receive as reimbursement for the costs incurred by the Town in operating and maintaining the system. The proposed Third Continuation Agreement states that the terms of the 1977 agreement shall continue until December 6, 2005, with the exception of the cost reimbursement payment conditions, which shall be resolved on or before January 9, 2006.

FISCAL IMPACT:

Approval of the Second Continuation Agreement will result in the continuation of the operation and maintenance of the Town's sewer system without a guarantee of reimbursement of the Town's costs at a level consistent with past reimbursement payments. While the District remains obligated to reimburse the Town, the District has stated its intent to pay less than the prior level of reimbursement. Nevertheless, the Town would retain the right to seek reimbursement of any disputed amounts. The cost of doing so cannot be estimated at this time.

Because of the uncertainty of the revenues to be received by the Town for its ongoing maintenance activities in Fiscal Year 2005/06, no budget adjustment is proposed at this time. When the negotiations are completed, staff expects to adjust the operating budget accordingly at that time.

Attachment: Resolution approving a Third Continuation Agreement with the West Valley Sanitation District of Santa Clara County

Distribution: Robert Reid, General Manager, West Valley Sanitation District - 100 E. Sunnyoaks Avenue Campbell, CA 95008
Charles T. Kilian, District Counsel, 20410 Town Center Lane, Suite 210, Cupertino, CA 95014

RESOLUTION

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

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;

WHEREAS, on or about July 5, 2005, the Town and District entered into an agreement entitled "Second Continuation Agreement and Amendment No. 4 to Sewer Agreement Between the Town of Los Gatos and West Valley Sanitation District" (hereinafter referred to as "Second Continuation Agreement") to extend the terms of the Agreement to September 30, 2005 and to also defer decision 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; and

WHEREAS, the Town and District desire to extend the terms of the Second Continuation Agreement to December 6, 2005, in order to further facilitate negotiations of the proposed transfer of the Town sewer system to District.

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 Third 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 special 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

C:\Documents and Settings\pjacobs\Local Settings\TEMP\WVSD-RESO.wpd

**THIRD CONTINUATION AGREEMENT AND AMENDMENT NO. 5
TO SEWER AGREEMENT BETWEEN THE TOWN OF LOS GATOS
AND WEST VALLEY SANITATION DISTRICT**

THIS THIRD 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;

WHEREAS, on or about July 5, 2005, the Town and District entered into an agreement entitled "Second Continuation Agreement and Amendment No. 4 to Sewer Agreement Between the Town of Los Gatos and West Valley Sanitation District" (hereinafter referred to as "Second Continuation Agreement") to extend the terms of the Agreement to September 30, 2005 and to also defer decision 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; and

WHEREAS, the Town and District desire to extend the terms of the Second Continuation Agreement to December 6, 2005, in order to further facilitate negotiations of the proposed transfer of the Town 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 Second Continuation Agreement shall remain in full force and effect until December 6, 2005 except as follows:

- A. That part of Section 2 stating "during the period between July 1, 2005 and September 30, 2005" shall be changed to read "during the period between July 1, 2005 and December 6, 2005," and
- B. That part of Section 2.B of the Second Continuation Agreement stating "On or before November 1, 2005" shall be changed to read "On or before January 9, 2006."

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

C:\Documents and Settings\pjacobs\Local
Settings\TEMP\WVSD-3dCont.AGR.wpd