




MEETING DATE: 10-24-05

ITEM NO. 1

COUNCIL AGENDA REPORT

DATE: OCTOBER 20, 2005

TO: MAYOR AND TOWN COUNCIL

FROM: DEBRA J. FIGONE, TOWN MANAGER 

SUBJECT: ADOPT RESOLUTION AUTHORIZING MAYOR TO SIGN THE AGREEMENT BETWEEN WEST VALLEY SANITATION DISTRICT AND THE TOWN OF LOS GATOS FOR THE TRANSFER OF THE LOS GATOS SANITARY SEWER SYSTEM ASSETS AND MAINTENANCE RESPONSIBILITIES TO WEST VALLEY SANITATION DISTRICT

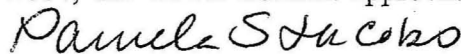
RECOMMENDATION:

Adopt resolution authorizing Mayor to sign the agreement between West Valley Sanitation District and the Town of Los Gatos for the transfer of the Los Gatos sanitary sewer system assets and maintenance responsibilities to West Valley Sanitation District (Attachment 1).

BACKGROUND:

The Town of Los Gatos has maintained the Town's public sewer system since 1977, when the Town entered into an agreement with the West Valley Sanitation District (WVSD). WVSD provides complete wastewater and collection disposal service for the cities of Campbell, Monte Sereno, Saratoga, and unincorporated areas of the County. In Los Gatos, WVSD has been responsible for permitting, repairs, construction, inspection, engineering and collection of all sewer-related fees. A portion of the fees collected by WVSD from Los Gatos residents has been used to reimburse the Town for maintaining the Los Gatos system.

Since 2001, the Town and WVSD have been in discussions to re-evaluate the current operational arrangement due to increased federal and regional regulations. Pursuant to those discussions and analysis of options for modifying the arrangement, the Town Council directed staff on June 7, 2004, to pursue the transfer of the sewer system assets and maintenance responsibilities for the Los Gatos system. On October 4, 2004, the Town Council approved a transition plan, which included



PREPARED BY: PAMELA S. JACOBS
ASSISTANT TOWN MANAGER

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Reviewed by: _____ Assistant Town Manager OK Town Attorney _____ Clerk Administrator
SC Finance _____ Community Development Revised: 10/20/05 12:29 pm

Reformatted: 5/30/02

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MAYOR AND TOWN COUNCIL

SUBJECT: ADOPT RESOLUTION APPROVING THE TRANSFER OF THE LOS GATOS
SEWER SYSTEM ASSETS AND MAINTENANCE RESPONSIBILITIES TO
WEST VALLEY SANITATION DISTRICT

October 20, 2005

information transfer, operations and maintenance transition, communication, assets transfer and performance commitments.

DISCUSSION:

Over the past year, the Town and WVSD have worked to implement the transition plan. This included sharing all relevant Town documents regarding the sewer system with WVSD; WVSD staff shadowing Town staff in sewer maintenance operations; developing a communications plan for implementation upon the transfer of the system; and negotiating the transfer of sewer system assets. The agreement included as Exhibit A on the attached resolution includes the terms of the transfer, effective November 1, 2005, including the sale of the assets (\$2,572,000). The agreement also includes a commitment by WVSD to a goal of providing a level of service that is equivalent to, or better than, sewer services previously provided by the Town, and calls for WVSD to provide two reports covering the remainder of this year documenting all service requests, response times, sewer maintenance and other work performed in the Town. In subsequent fiscal years, the Town will be able to request district-wide annual service reports.

Communication regarding the transfer of responsibility from the Town to WVSD will include a notice mailed to all Los Gatos residents and property owners to coincide approximately with the November 1st transfer. The notice will inform residents that the responsibility for maintenance of the sewer system is being transferred to WVSD and will provide telephone numbers for business hours and after hours. This information will also be provided in press releases to the local media, and will be placed on *What's New* on the Town's web site. Town staff will be advised to refer customers requesting assistance regarding their sewer service to WVSD.

Staff is in the process of identifying employee and fiscal impacts related to the transition of maintenance responsibilities to WVSD. It is anticipated that these will be addressed via budget adjustments at mid-year.

CONCLUSION:

Staff recommends that Council adopt the attached resolution, which authorizes the Mayor to sign the agreement (in substantial form attached as Exhibit A) for the transfer of the Los Gatos sewer system assets and maintenance responsibility to WVSD.

ENVIRONMENTAL ASSESSMENT:

Is not a project defined under CEQA, and no further action is required.

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MAYOR AND TOWN COUNCIL

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October 20, 2005

FISCAL IMPACT:

The transfer of sewer maintenance responsibilities to WVSD will result in the loss of ongoing revenue for direct services, which will no longer be provided, for departmental oversight, and for Town-wide overhead. While one-time funds may be used to bridge this loss in the short-term, over time the General Fund will be impacted and will require adjustments.

Upon the November 1, 2005 payment from WVSD to the Town, the Finance Department will begin final close-out activities for the Town's Sewer Maintenance Fund (#230). Any budget adjustments related to transition of the Town's sewer maintenance staff and other costs associated with the sewer maintenance program will occur at the mid-year FY 2005/06 budget review. Estimated maintenance costs for July 1, 2005 to November 1, 2005 are approximately \$130,000, which will be deducted from the payment amount of \$2,572,000 to reimburse the Sewer Maintenance fund for this period. This procedure will zero out the fund and allow for it to be closed out at the end of the fiscal year.

The net remaining proceeds from the payment are estimated to be approximately \$2.4 million. Staff recommended this amount be established as a newly designated Reserve for Sewer Maintenance Transition in the Town's General Fund. Though designated for sewer maintenance transition, these funds are not intended to be limited to only that use and are recommended to be eligible for other one-time purpose as authorized by the Town Council.

Attachments:

1. Resolution Authorizing Mayor to Sign Agreement Transferring Los Gatos Sewer Systems Assets and Maintenance Responsibility to West Valley Sanitation District (the exhibits to the agreement are Town documents which are not included with the staff report, but are available for review in the Clerk Department)

Distribution:

Robert R. Reid, District Manager, West Valley Sanitation District, 100 East Sunnyoaks Ave.,
Campbell, CA 95008-6608

RESOLUTION

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS AUTHORIZING MAYOR TO SIGN THE AGREEMENT BETWEEN WEST VALLEY SANITATION DISTRICT AND THE TOWN OF LOS GATOS FOR THE TRANSFER OF THE LOS GATOS SANITARY SEWER SYSTEM ASSETS AND MAINTENANCE RESPONSIBILITIES TO WEST VALLEY SANITATION DISTRICT

WHEREAS,

A. West Valley County Sanitation District of Santa Clara County (previously known as County Sanitation District No. 4 of Santa Clara County) hereinafter referred to as "District" and the Town of Los Gatos, hereinafter referred to as "Town" entered into an agreement on May 19, 1977 entitled "District 4 - Los Gatos 1977 Sewer Agreement" hereinafter referred to as "Agreement;"

B. On December 4, 1991, the District and the Town entered into an agreement to facilitate changes in procedures and technology (hereinafter referred to as the "First Amendment");

C. On June 12, 2001 the District and the Town entered into an amendment extending the term of the Agreement and First Amendment as well as adding additional terms (hereinafter referred to as the "Second Amendment");

D. On July 5, 2005 the District and the Town entered into a Second Continuation Agreement hereinafter referenced as the extending the Agreement and all amendments to September 30, 2005 as well as adding additional terms;

E. In August 2005 the District and the Town entered into a Third Continuation Agreement extending the Agreement and all amendments to December 6, 2005;

F. The Agreement, together with the First and Second Amendments and all continuation agreements will expire on December 6, 2005;

G. The Agreement, both Amendments and all continuation agreements provide for the Town's operation of its sanitary sewer system within the boundaries of the District; and

H. The Town wishes to transfer and the District wishes to take over the Town's sanitary sewer system effective November 1, 2005.

THEREFORE, BE IT RESOLVED:

That the Agreement between West Valley Sanitation District and the Town of Los Gatos for the Transfer of Sanitary Sewer System, attached hereto as Exhibit "A," is hereby approved along with Exhibits "A" and "B" thereto, as described therein, and the Mayor is authorized to sign the agreement on behalf of the Town.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 3rd day of October, 2005 by the following vote:

COUNCIL MEMBERS:

AYES: Steve Glickman, Diane McNutt, Joe Pirzynski, Barbara Spector,
Mayor Mike Wasserman.

NAYS: None

ABSENT: None

ABSTAIN: None

SIGNED: /s/ Mike Wasserman
MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:

/s/ MarLyn J. Rasmussen
CLERK ADMINISTRATOR
OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

**AGREEMENT BETWEEN WEST VALLEY COUNTY SANITATION DISTRICT
OF SANTA CLARA COUNTY AND THE TOWN OF LOS GATOS FOR THE
TRANSFER OF SANITARY SEWER SYSTEM**

WHEREAS, West Valley County Sanitation District of Santa Clara County (previously known as County Sanitation District No. 4 of Santa Clara County) hereinafter referred to as "District" and the Town of Los Gatos, hereinafter referred to as "Town" entered into an agreement on May 19, 1977 entitled "District 4 - Los Gatos 1977 Sewer Agreement" hereinafter referred to as "Agreement" and

WHEREAS, on December 4, 1991, the District and the Town entered into an agreement to facilitate changes in procedures and technology (hereinafter referred to as the "First Amendment" and;

WHEREAS, on June 12, 2001 the District and the Town entered into an amendment extending the term of the Agreement and First Amendment as well as adding additional terms (hereinafter referred to as the "Second Amendment"); and

WHEREAS, on July 5, 2005 the District and the Town entered into a Second Continuation Agreement hereinafter referenced as the "Second Continuation Agreement") extending the Agreement and all amendments to September 30, 2005 as well as adding additional terms, and

WHEREAS, on August , 2005 the District and the Town entered into a Third Continuation Agreement hereinafter referenced as the "Third Continuation Agreement") extending the Agreement and all amendments to December 6, 2005, and

WHEREAS, the Agreement, together with the First and Second Amendments and all continuation agreements will expire on December 6, 2005, and

WHEREAS, the Agreement, both Amendments and all continuation agreements provide for the Town's operation of its sanitary sewer system within the boundaries of the District; and

WHEREAS, the Town wishes to transfer and the District wishes to take over the Town's sanitary sewer system effective November 1, 2005.

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

Section 1. District Acceptance of the Town's Sanitary Sewer System

A. As used herein, the Town's sanitary sewer system includes:

1) All the Town's waste water facilities that it currently owns and operates including pipe lines, pump stations, and other structures.

2) All real property owned by the Town which is appurtenant to the Town's wastewater facilities including, but not limited to, easements and rights of way for sanitary sewer purposes. A partial list of these real properties is attached thereto as Exhibit A.

B. On the transfer date (see below) the Town will transfer all waste water facilities described in Exhibit A and all real property described in Exhibit B to the District. The District agrees that it will accept the Town's waste water facilities described in Exhibit A and the real properties described in Exhibit B on an "as is" basis. The Town disclaims any warranties, explicit or implied, for its wastewater facilities or for the real properties above described.

C. On the transfer date, the real properties described in Exhibit B shall be transferred to the District by quit claim deeds prepared and executed by the Town and delivered to the District which will cause said deeds to be recorded with the office of the County Recorder of Santa Clara County.

D. Any real properties described above which are not specifically listed in Exhibit A shall remain in the ownership of the Town and the District is appointed as to Town's agent with respect to all matters concerning said real properties. Upon request from the District, the Town shall immediately transfer by quit claim deed all such real properties above described as their legal descriptions become known to the District or the Town.

E. Effective on the transfer date, the Town assigns all of its rights and obligations under an agreement entitled Maintenance and Replacement Agreement: Sanitary Sewer Pump Station (14615 Shannon Road), recorded June 11, 1991, (document No. 10932852, book 745, page 0524, official records of the County of Santa Clara), a copy of which is attached hereto as Exhibit B. The District hereby accepts the assignment. The parties agree that any amounts collected by the Town pursuant to said agreement as of the transfer date shall repay the Town's expenses in maintaining the pump station incurred thereunder.

Section 2. Transfer Date

A. The transfer date described above shall be November 1, 2005 unless the parties agree in writing to any other date.

B. On the transfer date:

- 1) The Town shall have no further responsibility to provide, maintain or repair the sanitary sewer system.
- 2) The District shall commence providing waste water services to the properties previously served by the Town and shall be responsible for providing, maintaining and repairing the wastewater system.
- 3) Unless otherwise specified in this agreement, the Town shall have no additional obligations regarding the transfer of its sanitary sewer system.
- 4) Any personal property in the Town's possession for use by the Town in maintaining its sewer system shall remain in the Town's possession, whether or not acquired by or through the District, which hereby disclaims any and all interests in said personal property.

Section 3. Indemnification

A. The Town agrees to defend, indemnify, and hold harmless the District, its officers, agents and employees from and against any and all loss, damage, liability, claims, demands, detriments, costs and expenses (including reasonable attorney's fees) and causes of action of whatsoever character which the District may incur, sustain or be subjected to on account of loss or damage to property or loss of use thereof, or for bodily injury or death or any persons (including but not limited to property, employees, subcontractors, agents and invitees of each party hereto) arising out of or connected with the Town's sanitary sewer system and the date of occurrence of the injury or damage occurred prior to the transfer date.

B. The District agrees to defend, indemnify, and hold harmless the Town, its officers, agents and employees from and against any and all loss, damage, liability, claims, demands, detriments, costs and expenses (including reasonable attorney's fees) and causes of action of whatsoever character which the District may incur, sustain or be subjected to on account of loss or damage to property or loss of use thereof, or for bodily injury or death or any persons (including but not limited to property, employees, subcontractors, agents and invitees of each party hereto) arising out of or connected with the sanitary sewer system and the date of the occurrence of the injury or damage occurred on or after the transfer date.

Section 4. District's Obligations Upon Transfer

As and for full compensation for the transfer of the Town's sanitary sewer system to the District, as well as full compensation for any claims for reimbursement of costs incurred by the Town under the agreement and all amendments and continuation agreements previously executed by the parties prior to November 1, 2005, the District agrees to make payment to the Town the sum of \$2,572,000 payable in full on November 1, 2005, which shall be apportioned at the Town's

discretion to reimburse the Town its full costs incurred in maintaining its sewer system during the period from July 1, 2005 to November 1, 2005.

It is the District's goal to provide a uniform level of service to all District customers that is equivalent or better than sewer services previously provided by the Town. The District will document all service requests, response times, sewer maintenance, and other work performed in the Town and provide the Town with two reports on this work. The first report shall cover the period from November 1, 2005 through January 31, 2006. The second report shall cover the period from February 1, 2006 through June 30, 2006. Effective July 1, 2006, the District is not obligated to provide separate documentation of services provided within the Town. However, District-wide annual service reports will continue to be provided to the Town on request.

Section 5. Cooperation by Town

All public information, data, reports, and maps as are existing and available to the Town as public records, and which are necessary for carrying out this agreement, shall be furnished to the District at least ten (10) days prior to the transfer date and all information, data, reports and maps obtained by the Town at any time subsequent to said above described turn over date shall be furnished to the District without undue delay.

Section 6. Notices

All notices required or permitted to be given under this agreement shall be in writing and shall be personally delivered or mailed by first class or certified mail, postage prepaid, addressed as follows:

To Town: 110 E. Main Street
P.O. Box 949
Los Gatos, CA 95031

Attn: Debra Figone, Town Manager
Telephone: 408-354-6832
Fax: 408-354-8431

To District: 100 E. Sunnyside Avenue
Campbell, CA 95008

Attn: Robert Reid, Manager
Telephone: 408-378-2407
Fax: 408-364-1821

Section 7. Modification of Agreement

No amendment to or modification of this agreement shall be valid unless made in writing and approved by the District and the Town. The parties agree that this requirement for written modification cannot be waived and that attempted waiver shall be void.

Section 8. Entire Agreement

This agreement, including all attachments, is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supercedes all other agreement or understandings, whether oral or written, or entered into between the District and the Town prior to the execution of this Agreement, including the Third Continuation Agreement. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding.

Section 9. Severability

If a term, condition or covenant of this agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of the agreement shall not be affected thereby and the agreement shall be read and construed without the invalid, void or unenforceable provision(s).

Section 10. Disputes

If either party contends that the other has breached or is breaching this agreement or that this agreement is inequitable, its governing body shall so notify in writing the governing body of the other party and both governing bodies (subject to all laws concerning meetings of public agencies' governing bodies) shall meet jointly to resolve their differences. No action or suit concerning the terms or performance of the agreement shall be commenced, nor shall there be any act of rescission or notice of termination of this agreement shall occur until the joint meeting has been held. The parties agree that any statute of limitations as to any cause of action is, and shall be, tolled for the period from the above described notice from one governing body to the other until the joint meeting above described is concluded.

Section 11. Successors and assigns

The agreement, covenants, conditions, limitations, restrictions and undertakings contained in this agreement apply to and bind the successors and assigns of the parties.

In Witness Whereof, the parties hereto have executed this agreement on the dates set forth beside their signature, to become effective _____, 2005.

Dated:

West Valley County Sanitation District of
Santa Clara County

Attest

by: _____
Chairperson, Board of Directors

Secretary to the Board

Approved as to form:

Charles T. Kilian, District Counsel

Dated:

Town of Los Gatos

Attest

by: _____
Mayor

Clerk Administrator

Approved as to form:

Orry Korb, Town Attorney