



DATE: February 10, 2015

AGENDA ITEM # 4

TO: City Council
FROM: Christopher Lamm, Engineering Services Manager
SUBJECT: Second Amendment to Sanitary Sewer Agreement

RECOMMENDATION:

Approve the second amendment to agreement between the City of Los Altos and the Town of Los Altos Hills for transportation, treatment and disposal of sewage

SUMMARY:

Estimated Fiscal Impact:

Amount: \$77,000

Budgeted: Yes; prior revenue received for CIP project 06-12 is available for this purpose

Public Hearing Notice: Not applicable

Previous Council Consideration: January 3, 2007

CEQA Status: Categorically Exempt pursuant to Section 15301 (b)

Attachment:

1. Second amendment to agreement between the City of Los Altos and the Town of Los Altos Hills for transportation, treatment and disposal of sewage

BACKGROUND

The City of Los Altos and the Town of Los Altos Hills have been partners in multiple sanitary sewer agreements since incorporation in the 1950s. The current agreement was executed on January 26, 2007 and amended on July 1, 2007 (clarifying ownership of sewer mains on Summerhill Avenue). The 2007 agreement required sanitary sewer flow metering stations be installed at five (5) locations to calculate actual flow from the Town to the City. Prior agreements used an estimated flow of 300 gallons per day from each single-family unit, or a grand total of 339,000 gallons per day from the Town to the City for all connections. This value was used for calculating pro-rated treatment costs charged to the City by the treatment plant located in Palo Alto as well as pro-rated costs for maintenance of trunk lines conveying sewage from the Town through the City to the Palo Alto treatment facility.

DISCUSSION

In 2009, the City installed the required metering stations of the 2007 agreement with shared costs of \$134,000 from the Town for design, construction, and installation. Upon completion of the project (Project 06-12), it was discovered that data collected was unreliable for billing purposes. Metered flows were never used for billing as required in the 2007 agreement. The agreement allowed for the previous billing model of an estimated total of 339,000 gallons per day to be used until such time that the meters were functioning properly.

The second amendment returns the agreement to the previously characterized estimated flow of 300 gallons per day for each single-family unit, or 339,000 for all connections and revises all sections of the agreement with reference to the metering stations. Additionally, the agreement requires the City to reimburse the Town for 50% of the project costs associated with the design, construction, and installation of the metering stations (approximately \$77,000 to be finalized by the Town's Engineer and City's Engineer).

Additionally, the amendment stipulates that within a year from the date of the amendment, the 300 gallons per day will be evaluation and adjusted if needed.

FISCAL IMPACT

Reimburse the Town for 50% (approximately \$77,000 to be finalized by the Town's Engineer and City's Engineer) of the costs of the design, construction, and installation associated with the sewer metering project to be paid in two equal payment credits applied to the Cost of Operation and Maintenance per section 8(a) of the Sewer Agreement.

PUBLIC CONTACT

Posting of the meeting agenda serves as notice to the general public.

**SECOND AMENDMENT TO AGREEMENT BETWEEN THE CITY OF LOS
ALTOS AND THE TOWN OF LOS ALTOS HILLS FOR TRANSPORTATION,
TREATMENT AND DISPOSAL OF SEWAGE**

THIS SECOND AMENDMENT made and entered into in, this _____ day of _____, 2015, by and between the City of Los Altos (“CITY”) and the Town of Los Altos Hills (“TOWN”)

RECITALS:

WHEREAS, on January 26, 2007, CITY and TOWN entered into an agreement entitled “Agreement Between the City of Los Altos and The Town of Los Altos Hills for Transportation, Treatment and Disposal of Sewage”(“Sewage Agreement”); and

WHEREAS, on July 1, 2007, CITY and TOWN entered into an amendment to the Sewage Agreement which clarified the ownership of sewer mains south of Summerhill Avenue; and

WHEREAS, the Sewage Agreement provides that “Town flow shall be measured continuously at flow meter stations where Town sewage flow enters City’s collection system”; and

WHEREAS, the Sewage Agreement provides that the City will design, construct and maintain the flow meters and the Town will fund the costs of design, construction, operation and maintenance of the flow meters; and

WHEREAS, City and Town entered into an agreement for the installation of sanitary sewer meters (“Installation Agreement”) on November 3, 2008 which outlined in greater detail the terms governing the design, construction, installation and operation of the sewer meters; and

WHEREAS, pursuant to the terms of the Installation Agreement and the Sewage Agreement, the City constructed and the Town funded the installation of five sewer meters at (i) Eastbrook Avenue/Westbrook Ave (ii) Putter Way/Niblick Ave (iii) O’Keefe Lane at El Monte (iv) Summerhill Avenue at Magdalena Avenue (v) Edith Ave at City Limits; and

WHEREAS, Section III of the Installation Agreement provides that the Installation Agreement may be terminated by either party at any time upon giving the other party thirty (30) days written notice of intent to do so.

WHEREAS, the Town paid the City \$134, 000 for the design, construction and installation of the sewer meters; and

WHEREAS, the meters were installed in 2009 and they have never functioned properly; and

WHEREAS, under the Town and the City's previous sewage agreement, dated March 26, 1985 and amended June 24, 1993 ("Previous Agreement"), the Town was limited to 1,100 "capacity units," which was defined as the total flow generated from each single family residential connection, which was 300 gallons per day ; and

WHEREAS, the Town and the City have abandoned the sewer meters and have been calculating the flow of sewage by multiplying 300 gallons per day by the number of properties connected to sewer lines ultimately discharging into the City's sewer system; and

WHEREAS, the Town and the City have agreed to continue calculating the flow of sewage by multiplying 300 gallons per day by the number of properties connected to sewer lines ultimately discharging into the City's sewer system and desire to formalize this agreement in this Second Amendment; and

WHEREAS, the City has agreed to repair any damage to the sewer lines that may *have resulted* from the *installation removal* of the sewer meters; and

WHEREAS, the City has agreed to reimburse the Town for 50% of the costs of the design, construction and installation and to return all of any unused portion of the funds; and

WHEREAS, the total sum of the Town's reimbursement will be approximately [\$77,000] (with such number being subject to final confirmation of total project costs as determined by the TOWN's engineer and CITY's engineer); and

WHEREAS, the City and Town have agreed that the City will reimburse the Town in the form of two equal credit payments applied to Cost of Operation and Maintenance per Section 8(a) of the Sewage Agreement over a one year period.

NOW, THEREFORE, in consideration of this Second Amendment, the mutual promises, covenants, and stipulations herein contained, the parties hereto agree to terminate the Installation Agreement and to amend the Sewage Agreement as follows:

SECOND AMENDMENT

The following sections of the Sewage Agreement are hereby amended to read as follows, with additions in italics and deletions in strikethrough text:

1. Revision to Recital Paragraph F

The parties now desire, pursuant to the terms and conditions set forth in this Agreement, to alter their relationship to an arrangement whereby the TOWN is entitled to discharge 339,900 gallons per day, as *calculated by multiplying 300 gallons per day by the number of properties connected to sewer lines ultimately discharging into the City's sewer system* ~~measured by to-be-installed flow meters~~, to the CITY's sewer system (notwithstanding the number of capacity rights previously issued either by the TOWN or the CITY) and whereby the TOWN will allocate capacity rights and sewer connections among the residents and property owners in the Town. *The TOWN's entitlement to discharge 339,900 gallons per day, as calculated by multiplying 300 gallons per day by the number of properties*

connected to sewer lines ultimately discharging into the City's sewer system shall be reviewed by the Town and City within one year of the approval of the Second Amendment to determine whether this calculation is accurate and/or requires an adjustment.

2. Revision to Section 1(a); Addition of Section 1(d); Addition of Section 1(e)

Effect of Agreement; Term; Reimbursement; Termination of Installation Agreement

(a) The Previous Agreement had limited the amount of flow from the TOWN by limiting the number of capacity units available. This agreement instead allocates a certain amount of flow to the Town, which will be calculated by multiplying 300 gallons per day by the number of properties connected to sewer lines ultimately discharging into the City's sewer system ~~measured by to-be-~~ installed flow meters, and permits the TOWN to allocate that flow among its customers in any manner it sees fit

(d) Under this agreement, CITY agrees to reimburse TOWN approximately [\$77,000] [with such number being subject to final confirmation of total project costs as determined by the TOWN's engineer and CITY's engineer] for 50% of the costs of design, construction and installation of the sewer meters and all of any unused portion of the TOWN's funds. Further, CITY agrees to repair, at its own expense, any damage to the sewer lines caused by the removal of the sewer meters. The CITY will reimburse the TOWN in the form of two equal credit payments applied to the Cost of Operation and Maintenance per Section 8(a) of this agreement over a one year period from the date of execution of the Second Amendment to this agreement.

(e) CITY and TOWN agree to terminate the Installation Agreement and that execution of the Second Amendment constitutes sufficient notice to terminate pursuant to Section III(1) of the Installation Agreement. Section II(7) of the Installation Agreement shall survive the termination of the Installation Agreement for a period of four years.

3. Revisions to Section 4(a), 4(d), 4(e), and 4(g)

(a) Maximum Allowable Volumes of Discharge TOWN shall be allowed 339,900 gallons per day total flow ("the Maximum Daily Flow"), or 124.06 million gallons per year ("the Maximum Annual Flow"), as calculated by multiplying 300 gallons per day by the number of properties in the LOS ALTOS BASIN connected to sewer lines ultimately discharging into the City's sewer system for the Maximum Daily Flow and by multiplying 300 gallons per day by the number of properties in the LOS ALTOS BASIN connected to sewer lines ultimately discharging into the City's sewer system multiplied by the number of days in a year for the Maximum Annual Flow ~~measured by the combination of all flow meters in the LOS ALTOS BASIN~~, excepting the flow meters installed by the CITY to measure flow from Foothill College. This total flow amount is inclusive of base sanitary flow, groundwater infiltration, and rainfall dependent infiltration and inflow. When the sewage flow from the LOS ALTOS BASIN reaches eighty percent (80%) of the allowable maximum volume of discharge, TOWN agrees to notify CITY and to perform an engineering study (Master Plan) to address future capacity needs, which shall include implementation systems to meet the future capacity needs. TOWN and CITY shall agree upon the scope of work for the engineering study (Master Plan) prior to beginning the study.

(d) TOWN Limitation on Sewer Connection and/or Sewer Connection Permits if Maximum Allowable Flow is Exceeded ~~If TOWN shall not allow sewer connections and/or sewer connection permits in numbers that would cause the~~ exceeds (a) the Maximum Daily Flow, ~~or on any day during a non-wet weather period,~~ (b) the Maximum Daily Flow plus the wet weather flow allowance during a wet weather period, ~~or (c) (b) the Maximum Annual Flow to be exceeded,~~ TOWN will immediately suspend the issuance of sewer connections and/or sewer connection permits from the date of the Maximum Daily Flow or Maximum Annual Flow is exceeded until the flow volume is less than or equal to the maximum allowable flow. ~~If TOWN allows sewer connections and/or sewer connection permits in numbers that cause the Maximum Daily Flow or Maximum Annual Flow to be exceeded, then CITY may assess Financial penalties for exceeding the Maximum Daily Flow or Maximum Annual Flow will not be assessed unless sewer connections and/or sewer connection permits are allowed by TOWN during the period in which the Maximum Daily Flow or Maximum Annual Flow is exceeded.~~

(e) Financial Penalty for Exceeding Maximum Allowable Volume of Flow If TOWN allows new connections to the sewer system and/or issues sewer connection permits *in numbers that cause the* during the period in which the Maximum Daily Flow or Maximum Annual Flow *to be exceeded* is exceeded, TOWN will pay a fine as outlined in the table below, and 100% of actual costs associated with exceeding capacity including, but not limited to, additional treatment costs, entire cost of upsizing mains, entire cost of fines and/or penalties from the PARWQCP, including any fines and/or penalties from any state or federal agencies, and notwithstanding paragraph 12, TOWN shall be responsible for indemnifying, defending and holding harmless CITY for claims arising from overflows caused by TOWN's excessive sewage discharge. Penalties will begin accruing from the date that the Maximum Daily Flow or Maximum Annual Flow is exceeded and will cease when the flow volume is less than or equal to the Maximum Daily Flow or Maximum Annual Flow.

Days of Exceeding Max. Allowable Flow	Daily Financial Penalty
0-90 days	Double the cost of sewage treatment ¹ per day
90-180 days	Four times the cost of sewage treatment ¹ per day
More than 180 days	Eight times the cost of sewage treatment ¹ per day

Note 1. Cost of sewage treatment per day will be the total of sewage treatment costs for the preceding six months divided by 182.5 days

If the Town exceeds its maximum allowable flow volume ~~at any time during the first six months from the time that flow meter data is available from the metering stations, and the Town corrects the flow violation within six (6) months from the time the violation is discovered, then the City will allow the Town to correct the flow violation and~~ waive any financial penalties accrued during

this period. Financial penalties will be imposed if necessary following the initial six month period ~~when the violation is discovered that the flow meters are in operation.~~

(g) Cost of Sewage Treatment CITY shall bill TOWN for the actual costs of treatment of TOWN flow based upon ~~calculated flow, i.e. multiplying 300 gallons per day by the number of properties connected to sewer lines ultimately discharging into the City's sewer system~~ ~~measured flow from metering stations~~ ("TOWN Costs of Treatment"). Actual costs of treatment shall include all costs that PARWQCP bills CITY including, but not limited to plant operations and maintenance, minor and major capital improvements, source control program, public outreach, permitting and enforcement, and bond debt service ("Total Costs of Treatment"). TOWN Costs of Treatment shall be determined by the following formula based on the billing period:

$$\text{TOWN Cost of Treatment} = \frac{\text{TOWN flow/Total flow of CITY and TOWN at master meter}}{\text{multiplied by (Total Cost of Treatment based on PARWCQP billings)}}$$

4. Revision to Section 6

~~Measurement Calculation of Volume of Town Flow.~~ TOWN Flow shall be ~~calculated by multiplying 300 gallons per day by the number of properties connected to sewer lines ultimately discharging into the CITY's sewer system.~~ ~~measured continuously at flow meter stations where TOWN sewage flow enters CITY's collection system~~

~~(a) CITY will design, construct, operate and maintain flow metering stations at the following locations:~~

~~(i) Eastbrook Avenue/Westbrook Avenue~~

~~(ii) Putter Way/Niblick Avenue at I-280,~~

~~(iii) O'Keefe Lane at El Monte Road,~~

~~(iv) Summerhill Avenue at Magdalena Avenue,~~

~~(v) Edith Avenue at City Limits,~~

~~(vi) West of Pine Lane Lift Station near Foothill Expressway. This flow meter will be eliminated if Town transfers flow anticipated at this location to the City of Palo Alto collection system.~~

~~CITY will provide TOWN with data from the meters and, upon request, provide TOWN with the ability to verify calibration of meters.~~

~~(b) TOWN will fund costs of design, construction, operation, and maintenance of the flow metering stations. Within 30 days of execution of this agreement, TOWN shall deposit with CITY an amount not less than \$50,000 for design of the flow metering stations. Any used portion of this amount will be used to fund the construction, inspection, and contract administration of the flow meter installations. If there is a shortfall of funds for design, CITY will notify TOWN of shortfall. TOWN will remit shortfall to CITY within 30 days of notification.~~

~~Within 30 days of construction contract bid opening, TOWN shall deposit with CITY an amount equal to 100% of the lowest responsible bidder amount plus an additional 20% of the bid amount to fund construction contingencies (in an amount estimated at 10% of bid amount) and construction inspection and administration (in an amount estimated at 10% of bid amount). Any used TOWN funds will be returned to Town following acceptance of the project and release of retention. Town will remit any funding shortfall for total project costs to CITY within 30 days of notice and invoice. TOWN shall be permitted to inspect CITY project accounting documents at TOWN's request.~~

~~_____ (c) For each day TOWN fails to meet the schedule or milestones set forth in Section 6. b above and Section 7.a.i below, TOWN shall be subject to the daily penalties set forth below:~~

Schedule Lapse	Daily Financial Penalty
0-90 days	Two times the daily TOWN Cost of Treatment per day
90-180 days	Four times the daily TOWN Cost of Treatment per day
More than 180 days	Eight times the daily TOWN Cost of Treatment per day

5. **Revision to Section 7(b)**

(b) Maximum TOWN Flow in Joint Use Mains If the capacity of a joint use sewer main is exceeded as a result the flow contribution from TOWN, TOWN will be responsible for 100% of costs of increasing the size of the joint use main to accommodate the current and future projected flow from TOWN. TOWN flow will be determined *by calculating the flow by multiplying 300 gallons per day by the number of upstream properties connected to sewer lines ultimately discharging into the City's system* ~~measuring actual flow as determined by the nearest upstream meter(s)~~. Maximum allowable TOWN flow will be determined by calculating the maximum flow capacity of the main and subtracting the calculated maximum future CITY flow, including peaking factor based on General Plan projects for CITY "build out" (as of the Effective Date) at and upstream of the problem area. TOWN shall hold CITY harmless for all claims and local, state, and federal regulatory penalties arising from any sanitary sewer overflow resulting from TOWN's flow exceeding the capacity of the joint use main.

6. **Revision to Section 8(a); 8(d)(i); 8(d)(iii)**

(a) Cost of Operation and Maintenance of CITY-Owned Facilities When all ~~flow meter stations and~~ parallel mains, required to be installed by ~~Sections 6.a and~~ 7.a, become operational, operation and maintenance costs for the collection system within CITY that carries sewage from CITY and TOWN ~~(including flow meter stations)~~ shall be invoiced on a *biannual*

quarterly basis for remittance by TOWN. The amount invoiced shall be equal to fifty percent (50%) of TOWN Costs of Treatment (as determined pursuant to Section 4 e g above) during the billing period. CITY shall have the right to renegotiate or terminate the agreement if CITY's operating costs exceed 50% of TOWN Costs of Treatment. Prior to all ~~flow meter stations and parallel mains~~, required to be installed by ~~Sections 6.a and 7.a~~, become operational, CITY shall bill TOWN for operation and maintenance of CITY-owned facilities pursuant to the Previous Agreement.

(d) Capital Improvements Capital Improvements are defined as repair or construction work on sewer mains, manholes, or lift stations that are equal to or greater than \$10,000 in cost.

(i) CITY shall be responsible for design and construction for all capital improvements for Joint-Use Mains within CITY's sewer system. TOWN's cost share for improvements will be based on the proportion of ~~metered~~ *calculated* flow of TOWN contribution as determined by the nearest upstream ~~meter(s) connections~~ of TOWN flow contributing to the sewer main and the total flow at the downstream location of the improvement. CITY will be responsible for ~~measuring~~ *calculating* flow and ~~determining the duration that the meter will be in place for such measurement~~. TOWN has the right to participate in the ~~physical-flow~~ *calculation measurement* and will be provided data from the flow ~~calculation measurement~~. TOWN's cost share will include direct costs for design, construction, inspection, and construction administration as well as CITY standard overhead charges.

(iii) TOWN's share of costs for all capital improvements related to the PARWQCP will be paid for as part of the TOWN Costs of Treatment as determined in Section 4 e above.

General Provisions of the Second Amendment

The following general provisions shall govern this Second Amendment to the Sewage Agreement:

- A. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.
- B. Except as modified hereby, the terms and provisions of the Sewage Agreement shall remain unmodified and in full force and effect.
- C. Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Sewage Agreement.
- D. In case of any conflict between any term or provision of this Amendment and any term or provision of the Sewage Agreement, the term or provision of this Amendment shall govern.
- E. This Amendment shall be deemed to be made in, and construed in accordance with, the laws of the State of California. In the event suit is brought by either party hereunder, the Parties agree that venue for such action shall be vested in the state courts of California in the County of Santa Clara or in the United States District court in the Northern District of California.

This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Amendment has been executed as of the date set forth above.

CITY OF LOS ALTOS
A California municipal corporation
corporation

TOWN OF LOS ALTOS HILLS
A California municipal

APPROVED AS TO CONTENT:

APPROVED AS TO CONTENT:

Public Works Director

Public Works Director

APPROVED AS TO FORM
AND LEGALITY:

APPROVED AS TO FORM
AND LEGALITY:

City Attorney

City Attorney

AGREED:

AGREED:

City Manager

City Manager

4853-2127-1585, v. 1