

SAN JOSE / SANTA CLARA WATER POLLUTION CONTROL PLANT



February 2, 1983

CITY OF SAN JOSE
DEPARTMENT OF WATER POLLUTION CONTROL

CONTRIBUTING AGENCIES

The Honorable Mayor James Rogers, Chairman
Treatment Plant Advisory Committee
184 Smithwood Avenue
Milpitas, California 95035

CITY OF SAN JOSE
CITY OF SANTA CLARA
COUNTY SANITATION DIST. NO. 2-3
COUNTY SANITATION DIST. NO. 4
Cities of Campbell, Los Gatos,
Monte Sereno and Saratoga
BURBANK SANITARY DISTRICT
CUPERTINO SANITARY DISTRICT
City of Cupertino
CITY OF MILPITAS
SUNOL SANITARY DISTRICT

SUBJECT: Master Agreement

Dear Mayor Rodgers:

BACKGROUND

Attached is a proposed draft of the Master Agreements for Wastewater Treatment between the Cities of San Jose, Santa Clara, and the City of Milpitas, County Sanitation District #4, and Cupertino Sanitary District. This draft has been developed and negotiated by the Technical Committee over the past six months with review by each of the participants legal staff in accordance with the terms of the 1981 Settlement Agreement.

This Draft Master Agreement has been approved by the Technical Committee and is submitted to the Treatment Plant Advisory Committee for review, approval, and recommendation.

It was the intent of the representatives of TAC in drafting this Agreement to provide a document that could be easily revised and updated as necessary. To that end, the Agreement is substantially comprised of Exhibits. These Exhibits will be updated as necessary so current information can be easily incorporated without the necessity of revising the entire Agreement. This Agreement replaces the original Master Agreements, the Settlement Agreement, and various other agreements that have been executed by the Agencies over the last fifteen years.

PREVIOUS TPAC APPROVALS AND RECOMMENDATIONS

Two of the major provisions contained in this Agreement have already been approved by TPAC. Exhibit C, which describes the participation and distribution of Water Pollution Control Plant land, was reviewed, approved, and recommended by TPAC on October 13, 1982.

The distribution of costs for the Intermediate-term Improvements and future capital costs was reviewed, approved, and recommended by TPAC on June 9, 1982.

ELEMENTS OF DRAFT MASTER AGREEMENT WHICH SUBSTANTIALLY DIFFER FROM ORIGINAL AGREEMENTS

Some of the provisions which have involved substantial revisions from the original Agreements are as follows:

Powers and Duties of the Treatment Plant Advisory Committee

The Treatment Plant Advisory Committee membership has remained the same with nine members total. Three members are from the City Council of San Jose, two members from the Santa Clara City Council, and one member each from the City of Milpitas, County Sanitation District #4, and the Cupertino Sanitary District. The ninth member is the City Manager of the City of San Jose, or a designated representative. However, the powers and duties of TPAC have been expanded to include review and recommendation of all policy matters, as determined by the Director of Water Pollution Control, which require action by the San Jose City Council with respect to the maintenance, repair, expansion, replacement, improvement and operation of the Water Pollution Control Plant. Any action by the San Jose City Council which is contrary to the TPAC recommendation requires a finding of fact by the San Jose City Council. If new evidence is presented at the San Jose City Council Meeting that was not considered by TPAC in the making of any recommendation, then, if time permits, San Jose will refer the matter back to TPAC for a supplemental report. If TPAC fails to make a supplemental report within a specified time, then the City Council is free to make a decision. In the event of emergency as determined by the Director of Water Pollution Control, the above procedures may be waived.

Term

The term of this Agreement has been extended to January 1, 2031, unless terminated earlier by mutual written consent. The Agency has the right to continue discharging into the Plant after the termination date provided that all payments of Agency's share of costs are made. Further, if this Agreement is terminated by mutual consent, then the capacity rights of the Agency will be considered excess pooled capacity. This capacity will be reserved for the

Agency, and Agency will continue to pay for all costs associated with such capacity until that capacity is purchased by another agency or there is a Plant failure.

Engineering Study

San Jose and Santa Clara agree to have an engineering study made to redefine all of the Agencies' future needs when the Plant has reached 85% of its designed capacity, beginning with 167 MGD. The first engineering study will be performed when the flow to the Plant reaches 142 MGD. The study shall include capacity analysis, proposed facilities, construction timetables and an estimate of total project costs, as well as the participating Agency's share of project cost. The Agencies will have the right to participate in the proposed expansion if they share in the proportional cost. If any Agency wishes to dispose of their capacity, then the capacity will be designated as excess pooled capacity. This excess pooled capacity can be acquired by another Agency as recommended by TPAC. If an Agency desires to increase its capacity at the time when no expansion of the plant is contemplated and no excess pooled capacity is available, then the Agency can fund a special engineering study to determine the most feasible means to add to Plant capacity. If addition of capacity is feasible, as determined by the engineering study, then the cost of adding this increment in capacity would be paid for solely by the requesting Agency.

Adjustments in Capacity

Pursuant to the Settlement Agreement, any reductions in operational capacity, as well as the cost of restoration, will be borne by all Agencies, including San Jose and Santa Clara. If it becomes necessary to allocate connections among the Agencies, then First Parties would receive 40%, and the other dischargers would receive 60% of any remaining connections. This provision will only remain in effect until completion of the Intermediate-term Improvements.

LIABILITY

This Agreement provides that any liability of San José or Santa Clara for damage to person or property would be mutually shared and paid for by San Jose, Santa Clara and the Agency on a proportional basis. No official or employee will be personally responsible for any liability. In addition, San Jose and Santa Clara do not guarantee any liability. In addition, San Jose and Santa Clara do not guarantee or warrant that the Plant would be able to satisfactorily treat wastewater. San Jose and Santa Clara will not be liable to the Agency for damages arising out of the failure of the Plant to treat wastewater other than by gross negligence or intentional misconduct.

Insurance

There are other less significant changes from the original Agreement, including an insurance provision which requires that San Jose and Santa Clara provide sufficient insurance against loss or damage to the Plant, and that all Agencies will be named as a co-insured. The premiums will be mutually shared as part of maintenance and operation.

Method of Payment

The Agencies will receive invoices for payments at the beginning of the quarter in which the obligation is anticipated to occur, and those payments are due within thirty (30) days from presentation. An adjustments in payment will be made no later than the third quarter billing of the fiscal year.

RECOMMENDATION AND ACTION REQUESTED:

As amended

It is recommended that the Treatment Plant Advisory Committee review, approve, and recommend ~~the form of this~~ Master Agreement to the City of San Jose, the City of Santa Clara, the City of Milpitas, County Sanitation District #4, and the Cupertino Sanitary District, and that the same be circulated to all parties for approval and authorization to execute.

Respectfully submitted,



E. H. BRAAFELIEN Jr.
Director of Water Pollution Control

EHB:eah

Attachment

TO HONORABLE MAYOR AND CITY COUNCIL

FROM E. H. BRAATELIEN Jr.
Director of Water
DATE Pollution Control
March 18, 1983

SUBJECT Approval of Master Agreements for
Wastewater Treatment

APPROVED

DATE

*memo to SJ City
Council*

SUBJECT: APPROVAL OF MASTER AGREEMENTS FOR WASTEWATER TREATMENT BETWEEN THE CITIES OF SAN JOSE AND SANTA CLARA AND COUNTY SANITATION DISTRICT No. 4, CUPERTINO SANITARY DISTRICT, AND THE CITY OF MILPITAS

On Wednesday, March 16, 1983, the Treatment Plant Advisory Committee (TPAC) unanimously approved the proposed Master Agreements for wastewater treatment between the Cities of San Jose and Santa Clara and County Sanitation District No. 4, Cupertino Sanitary District and the City of Milpitas. The attached letter from Chairman Rodgers confirms the TPAC approval.

Under the direction of TPAC, this Agreement has been developed and negotiated by the Technical Committee over the past six months with review by each of the participants legal staff in accordance with the terms of the 1981 Settlement Agreement.

It was the intent of the representatives in drafting this Agreement to provide a document that could be easily revised and updated as necessary. To that end, the Agreement is substantially comprised of Exhibits. These Exhibits will be updated as necessary so current information can be easily incorporated without the necessity of revising the entire Agreement. This Agreement replaces the original Master Agreements, the Settlement Agreement, and various other agreements that have been executed by the Agencies over the last fifteen years.

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Council with respect to the maintenance, repair, expansion, replacement, improvement and operation of the Water Pollution Control Plant. Any action by the San Jose City Council which is contrary to the TPAC recommendation requires a finding of fact by the San Jose City Council. If new evidence is presented at the San Jose City Council Meeting that was not considered by TPAC in the making of any recommendation, then, if time permits, San Jose will refer the matter back to TPAC for a supplemental report. If TPAC fails to make a supplemental report within a specified time, then the City Council is free to make a decision. In the event of emergency as determined by the Director of Water Pollution Control, the above procedures may be waived.

Term

The term of this Agreement has been extended to January 1, 2031, unless terminated earlier by mutual written consent. The Agency has the right to continue discharging into the Plant after the termination date provided that all payments of Agency's share of costs are made. Further, if this Agreement is terminated by mutual consent, then the capacity rights of the Agency will be considered excess pooled capacity. This capacity will be reserved for the Agency, and Agency will continue to pay for all costs associated with such capacity until that capacity is purchased by another Agency or there is a Plant failure.

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Pursuant to the Settlement Agreement, any reductions in operational capacity, as well as the cost of restoration, will be borne by all Agencies, including San Jose and Santa Clara. If it becomes necessary to allocate connections among the Agencies, then First Parties would receive 40%, and the other dischargers would receive 60% of any remaining connections. This provision will only remain in effect until completion of the Intermediate-term Improvements.

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There are other less significant changes from the original Agreement, including an insurance provision which requires that San Jose and Santa Clara provide sufficient insurance against loss or damage to the Plant, and that all Agencies will be named as co-insured. The premiums will be mutually shared as part of maintenance and operation.

Method of Payment

The Agencies will receive invoices for payments at the beginning of the quarter in which the obligation is anticipated to occur, and those payments are due within forty-five (45) days from presentation. Any adjustments in payment will be made no later than the third quarter billing of the fiscal year.

RECOMMENDATION AND ACTION REQUESTED

It is recommended that the City Council of the City of San Jose approve and authorize execution of the Master Agreements for wastewater treatment between the Cities of San Jose and Santa Clara and County Sanitation District No. 4, Cupertino Sanitary District, and the City of Milpitas.



E. H. BRAATELIEN Jr.
Director of Water Pollution Control

Attachment

