



February 25, 2014

Via E-mail and U.S. Mail

Local Agency Formation Commission of Santa Clara County  
Attn: Neelima Palacherla, LAFCO Executive Officer  
70 W. Hedding Street, 11th Floor, East Wing  
San Jose, CA 95110

**Re: Implementation of Recommendations of LAFCO's Special Districts Service  
Review: Phase 2 Sphere of Influence Updates**

Dear Ms. Palacherla:

West Valley Sanitation District ("District") has reviewed LAFCO's Special Districts Service Review: Phase 2 Report pertaining to the District and the associated recommendations that the District should implement in order to improve its services as well as accountability and transparency. The purpose of this letter is to provide responses to the recommendations summarized in Attachment A of your letter dated January 29, 2014, which are as follows:

- Assess the number of parcels that presently rely on private septic systems within the District's bounds, in order to better quantify potential future demand.
- Work with the cities of San Jose and Santa Clara to update the Master Agreement with regard to the treatment plant in the near future. The District has indicated that it would like to address the following issues: 1) define how debt payments related to the treatment plant are addressed as areas are annexed by the City of San Jose and detached from WVSD, 2) define how treatment capacity should be transferred if areas are reversely annexed into WVSD and detached from the cities, and 3) describe in detail the extent of the District's capital obligations with regard to master plan improvements at the plant.
- Collaborate further with Cupertino Sanitary District on issues of joint-concern, such as negotiations with the cities of San Jose and Santa Clara, as well as identify any potential for resource sharing.
- Apply to LAFCO to annex Area K (APN 393-17-002), as Area K is currently receiving services from the WVSD.

LAFCO also requests that the District provide an explanation if it does not plan to implement any of the above recommendations. While it is the District's desire to work with the cities of San Jose and Santa Clara as described in the second bullet point above, implementation of these recommendations is not within the sole control of the District, and will require the cooperation and agreement of all parties to accomplish these tasks.

**Assess the number of parcels that presently rely on private septic systems within the District's bounds, in order to better quantify potential future demand.**

Attached for your information is the District's assessment of the number of parcels currently relying on private septic tanks within our service area, as well as estimated potential future demand (See Attachment A). The District will continue to monitor these parcels as individual property owners seek connection to the District's collection system. Based on its assessment, the District anticipates that it has enough capacity to acquire the estimated future connections from abandoned septic systems. In fact, the District encourages such connections through its Septic System Abandonment Program, in which the District provides low interest loans to property owners of private septic systems that wish to abandon such systems, construct sewer system extensions (if necessary), and connect to the District.

**Work with the cities of San Jose and Santa Clara to update the Master Agreement with regard to the treatment plant in the near future.**

The District continues to work with both the cities of San Jose and Santa Clara (but primarily the City of San Jose) in regards to updating its 1983 Master Agreement for Wastewater Treatment ("Master Agreement"). Because the issues pertaining to the Master Agreement are complex and intertwined with the City of San Jose's need to finalize the engineering and financial plans for the Plant Master Plan, the District expects this negotiation process to take place over the next few years. Again, updating the Master Agreement is a joint effort among three public agencies, and will require cooperation and agreement from all parties in order to accomplish these tasks.

In a letter to San Jose Mayor Chuck Reed, the District strongly asserted that a comprehensive amendment to the Master Agreement is necessary in order to address implementation of the Master Plan for the San Jose/Santa Clara Regional Wastewater Facility, and requested that specific sections of the Master Agreement be updated, including provisions related to debt payments and treatment capacity upon the annexation and detachment of property, as well as the District's capital obligations to pay for future improvements associated with the Plant Master Plan. A copy of this letter, and the City of San Jose's response, are attached hereto as Attachments B and C, respectively.

As indicated in its response, the City of San Jose believes that it is premature to amend the Master Agreement until a specific development project comes forward. Over the next few months, San Jose staff expects to have more detailed information available for the District, as well as other tributary agencies, regarding the anticipated size, scope, sequencing, timing, and cost of the Plant Master Plan's capital projects. Once this validation process is complete, the District hopes to gain a better understanding of its potential capital cost obligations, and will use this information to work with the cities of San Jose and Santa Clara to update the Master Agreement accordingly.

The City of San Jose also acknowledged that its staff is “in the process of researching the annexation concerns raised by West Valley staff, and will provide a status update to West Valley staff under separate cover.” Although the City of San Jose did not specify a timeline for providing this additional information with respect to annexation, the District looks forward to addressing these issues with the City as soon as possible. Once the District receives and reviews this information, we will contact San Jose staff at our earliest convenience to discuss the process for amending Part VIII(B) and Exhibit G of the Master Agreement.

**Collaborate further with Cupertino Sanitary District on issues of joint-concern.**

The District continues to collaboratively work with Cupertino Sanitary District as a sister tributary agency to the San Jose/Santa Clara Regional Wastewater Facility. As stated above, Cupertino is also participating in the joint discussions with San Jose in an effort to reach agreement with all parties involved. Along with these discussions, the District and Cupertino Sanitary District will look for opportunities to share resources in an effort to improve efficiencies and reduce cost for our rate payers such as mutual aid response for situations that would not impede WVSD’s ability to respond to emergencies and outreach material for educating the public on preventing grease from entering the sanitary sewers.

**Apply to LAFCO to annex Area K (APN 393-17-002), as Area K is currently receiving services from the WVSD.**

We have reviewed our records regarding Area K and confirmed it is currently an “island” parcel owned by the San Jose Water Company that is located outside of the West Valley Sanitation District and not receiving services from our agency. Based on this, we do not see a need to annex this parcel into the service area. We apologize for not catching this fact during our opportunity to provide review and comments on the service review report.

Please let me know if you have any questions.

Sincerely,



Jon Newby  
District Manager and Engineer  
West Valley Sanitation District

**Attachment:**

- A. District’s Assessment of the Number of Parcels on Private Septic Tanks
- B. WVSD Letter Dated November 4, 2013
- C. City of San Jose Response Dated December 16, 2013

**Cc:**

West Valley Sanitation District Board of Directors  
LAFCO Members

Attachment A

West Valley Private Septic Systems					
Type	Number of Parcels	Flow GPD	BOD lbs/day	Suspended Solids lbs/day	Ammonia lbs/day
Residential	726	133,584.00	278.379	278.379	38.973
Commerical	22	4,048.00	8.436	8.436	1.181
Total	748	137,632.00	286.815	286.815	40.154



November 4, 2013

Hon. Mayor Chuck Reed  
City of San Jose  
200 E. Santa Clara St. (10<sup>th</sup> Floor)  
San Jose, CA 95113-1905

Re: Master Agreement for Wastewater Treatment Between City of San Jose, City of Santa Clara, and West Valley Sanitation District

Dear Mayor Reed:

As you know, the West Valley Sanitation District of Santa Clara Valley ("District") is one of the tributary agencies to the San Jose/Santa Clara Water Pollution Control Plant ("WPCP").<sup>1</sup> The District has a significant and long-term interest in the WPCP,<sup>2</sup> and has thus commented about the WPCP Master Plan to the City of San Jose ("City") through the Draft EIR, as well as through its participation on TPAC. The WPCP Master Plan contemplates substantial improvements and upgrades to the WPCP, many of which the District supports. However, a fundamental, overarching problem remains unaddressed that neither the CEQA process nor TPAC can resolve: the proposed changes to the WPCP necessitate, in the opinion of my Board of Directors, a comprehensive amendment to the District's 1983 Master Agreement for Wastewater Treatment with the Cities of San Jose and Santa Clara ("Master Agreement").

The current form of the Master Agreement does not contemplate the magnitude of the projects contained in the WPCP Master Plan. Essential provisions related to financing these projects, debt service, cost allocation, and buffer land are ambiguous, or altogether missing. In other words, the Master Agreement is not an adequate vehicle for implementing the WPCP Master Plan going forward and must be updated to clarify the parties' respective rights and responsibilities. Please find attached to this letter a summary of the major provisions that we believe need to be added to and/or updated in the Master Agreement.

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<sup>1</sup> The District provides wastewater collection and disposal services for the Cities of Campbell, Monte Sereno, Los Gatos, much of Saratoga, and some unincorporated areas of the Santa Clara County within the District boundary. The District serves approximately 109,000 persons with a service area of approximately 29.8 square miles. The pipeline collection system maintained and operated by the District consists of 414 miles of main and trunk sewers and 209 miles of sewer laterals, for a total of 623 miles of sewer lines.

<sup>2</sup> Under the District's 1983 Master Agreement for Wastewater Treatment with the Cities of San Jose and Santa Clara ("Master Agreement"), the District owns 12.052 million gallons per day of the WPCP capacity, shares 6.773% of capital costs of WPCP future improvements, and shares 8.747% of WPCP operation and maintenance costs, all of which demonstrates the District's substantial investment in the WPCP.

The District's Board of Directors would like to begin an open dialogue with the City about amending the Master Agreement, with the hope and expectation that we reach an agreement before the City begins implementing the WPCP Master Plan. The District has always worked with the City in good faith and continues to support the City's goals for wastewater treatment. However, if the City expects the District to financially contribute to the projects contemplated in the WPCP Master Plan, then a reasonable and reliable amendment must be negotiated. Proceeding without such an amendment will likely cause a financial hardship to the District's ratepayers and drop the District's capital reserves below fiscally prudent levels.

Given the City's aggressive implementation schedule, time is of the essence in negotiating a comprehensive update to the Master Agreement with long-term benefits for all parties. A minor amendment or several piecemeal amendments in the short-term would not go far enough. To continue this discussion, please contact the District's Manager and Engineer, Jon Newby, at your earliest convenience. We look forward to working with you and City staff.

Sincerely,

A handwritten signature in black ink that reads "Ken Yeager". The signature is written in a cursive, flowing style.

Ken Yeager, Chair  
West Valley Sanitation District

cc:

Kerrie Romanow, City of San Jose  
Mayor Jamie Matthews, City of Santa Clara  
Julio J. Fuentes, City of Santa Clara

**Summary of Major Provisions that could be added to  
and/or Updated in Master Agreement with West Valley Sanitation District**

**PART I: DEFINITIONS**

The Master Agreement has a definition for "First Stage Expansion." The WPCP Master Plan contemplates a major expansion of the Plant's facilities, and therefore deserves its own definition of this new "Second Stage Expansion" for easy reference throughout the Master Agreement.

The Master Agreement should clearly define "Improvements" or "Future Improvements." The defined term "Intermediate-Term Improvements" associated with the 1980's is no longer relevant, and the Master Agreement otherwise lacks any definition for any current or future improvement. This is problematic as the City begins to implement all of the significant and major improvements to the Plant under the WPCP Master Plan.

Likewise, the term "Major Rehabilitation" should be separately defined and distinguished from the term "Improvements." The term "Major Rehabilitation" is currently used in the definition of "Replacement Costs" and it is unclear how "Major Rehabilitation" projects are different from "Plant expansions or upgrades to meet future user demands," as well as Improvements generally. These definitions must be added for clarity.

**PART IV and EXHIBIT C: LAND**

The WPCP Master Plan considers development of new land uses on the existing WPCP property. However, the District needs to understand more clearly how development of buffer land relates to its sewer customers and wastewater treatment specifically, and how this would fit into the Master Agreement generally. Part IV and Exhibit C of the Master Agreement discuss land use, but only in the context of land purchases and the distribution of revenue upon the sale, lease, or rental of Plant property. With respect to the proposed development of buffer land, however, Part IV and Exhibit C have little to no relevance as to how any benefits and/or impacts of such development will be distributed to the District (and other tributary agencies, for that matter). For example, how will tax revenue be distributed? How will mitigation of the development's impacts be addressed and funded? The Master Agreement is silent on these and many other issues raised regarding the development of buffer land, and therefore needs to be amended.

**PART V: AMOUNTS PAYABLE BY AGENCY TO FIRST PARTIES**

Part V largely relates to payments for existing and additional capacity rights, future improvements, and operation and maintenance expenses of the Plant. In particular, section

V(C) [concerning future improvements] is inadequate to deal with the scope and magnitude of major improvements proposed in the WPCP Master Plan. This section is vague as to the type of improvements contemplated and is also entirely silent on how these improvements would be financed through debt service. The Master Agreement warrants a new section specifically devoted to debt service obligations for the WPCP Master Plan. Proceeding with implementing the WPCP Master Agreement without a complete and clear understanding of the parties' debt service obligations would create disagreements, misinterpretations, and other issues in the future. Amending the Master Agreement to provide clarity as to financing will benefit all parties involved.

The District is also very concerned with how the costs of these "future improvements" will be allocated among the tributary agencies. Payments for future improvements are currently based on the District's existing capacity rights, essentially its percentage ownership of flow, BOD, suspended solids, and ammonia multiplied by the investment cost for each loading parameter. The District's current capacity rights are more heavily weighted towards flow. However, the District anticipates that its weighted average will decrease upon implementation of the WPCP Master Plan, because the improvements appear to focus on BOD, suspended solids, and ammonia, and less on flow. As such, using the existing capacity rights method is no longer a one-size-fits-all solution for cost allocation of future improvements. To obtain the most equitable distribution of costs between the City and tributary agencies, an engineering study is necessary to determine the cost of each loading parameter for each anticipated improvement. The Master Agreement must be amended to reflect the proper calculation of the District's participation in the costs of a given future improvement. If this engineering study is not performed, then the District's share of costs would be unnecessarily inflated due to the District's ownership of flow.

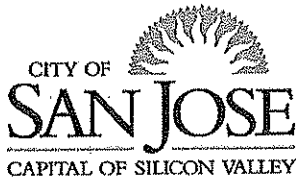
In addition, the Master Agreement should be amended – in Part V or elsewhere – to provide the District an option to participate in capital projects that are unrelated to wastewater treatment, capacity, or operation and maintenance expenses of the Plant, especially if a given project has no financial benefit to the District. A primary example is the WPCP Master Plan's proposed improvements to buffer land. Land development has little to no relationship to the provision of reliable and cost-effective wastewater treatment, capacity, or O&M. Other examples include City art projects and other nonessential aesthetic projects that are used to enhance the Plant's architecture or building design beyond code and discharge permit requirements. A similar opt-in provision is found in Section III(B) of the Master Agreement, where the District may elect to participate in an expansion of capacity. As such, the District should have the option to participate in financing the development of buffer land and other projects unrelated to wastewater treatment, capacity, and O&M, much like the District has the option to participate in the Plant's expansion of capacity.

#### PART VIII(B): ANNEXATION AND DETACHMENT



Although unrelated to the WPCP Master Plan, Part VIII(B) related to annexation and detachments also requires an update. The District's Counsel recently discussed this provision with the City's Counsel. Part VIII(B) needs to address future circumstances in which the District annexes property detached from the City. The Master Agreement only accounts for annexation and detachment in the other direction, from the District to the City. In addition, when property is detached from the District, this section should also address the potential Proposition 218 and Proposition 26 issues that may arise from the District's rate-setting and corresponding debt service obligations based on a revenue source that no longer exists.





*Environmental Services Department  
Director's Office*

December 16, 2013

The Honorable Ken Yeager, Chair  
West Valley Sanitation District  
100 East Sunnyoaks Ave.  
Campbell, CA 95008-6608

**Re: Master Agreement and Capital Program for San Jose/Santa Clara Water Pollution Control Plant**

Dear Chair Yeager:

Thank you for your letter regarding the capital program for the San Jose/Santa Clara Water Pollution Control Plant (Plant). As you may be aware, the cities of Santa Clara and San Jose adopted the Plant Master Plan on December 3, 2013, and November 19, 2013, respectively. I look forward to our agencies working cooperatively to ensure the future operation of the Plant for the mutual benefit of our customers.

We want to begin our response to your letter by noting that the majority of the capital projects envisioned in the Plant Master Plan are to address the longstanding deferral of much needed rehabilitation and renovation of existing facilities. Over the years, the City of San Jose, as the administering agency, has engaged in similar rehabilitation projects, based on the terms of the 1983 Master Agreements with the tributary agencies. The 1983 Master Agreements between San Jose/Santa Clara and the tributary agencies have provided the parties with the flexibility needed to address the critical needs of the Plant infrastructure in a timely fashion.

When the parties have agreed to modifications to the Master Agreements in the past, it was for limited purposes. For example, the parties agreed to supplemental financing agreements in 1983 for the intermediate improvements, and to amendments to the master agreements in 1995 for the South Bay Water Recycling Program (SBWR) due to changes in the National Pollutant Discharge Elimination System permit (NPDES) requirements. The 1983 financing agreements were required to memorialize the financing obligations of the parties, and the 1995 amendments were made to confirm that payment for the SBWR project would be based on flow capacity only, and not on the four parameters used for other capital projects.

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San Jose/Santa Clara Water Pollution Control Plant  
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We also want to reflect that San Jose staff has always worked diligently to provide information to West Valley and other tributary agencies concerning the Plant capital program. San Jose staff meets on a monthly basis with staff from Santa Clara and the tributary agencies including West Valley Sanitation District to review in detail the purpose of the all pending projects, and budget requirements prior to consideration by the Treatment Plant Advisory Committee. If West Valley has questions or concerns about specific projects, we find that it is more effective to have this discussion at the staff level, and to focus on the purpose of a specific project and how that project addresses the tributary agency's wastewater. San Jose, Santa Clara and tributary agency staff have also discussed at great length the importance of each agency reserving sufficient funds to pay for upcoming capital projects, or being prepared to make appropriate rate adjustments to accommodate anticipated increases in capital costs.

Within the next few months, San Jose staff expects to have more detailed information available for Santa Clara, West Valley and other tributary regarding the anticipated costs on the Plant Master Plan capital projects. The Plant Capital Program management team is scheduled to complete a validation process in February 2014 which will fine tune the size, scope, sequencing, timing, and cost of the capital projects. Once this process is complete, each party will have a better understanding of their potential capital cost obligations.

Even without the validation information, San Jose anticipates that it will have sufficient reserves for its share of near term projects. San Jose was able to set aside sufficient reserves due to rebudgeting savings from the capital budget each year. West Valley also had the same opportunity to set aside sufficient reserves by rebudgeting its savings from the previous fiscal years. We understand that despite the opportunity to reserve prior years' savings, West Valley may not currently have adequate reserves for its share of near term projects.

It should be noted that the near term project costs may not be high enough to justify the cost of a major financing. However, San Jose remains committed to coordinating with West Valley and all agencies that use the Plant, to determine whether financing will be needed to meet the capital cost obligations for both near and long term projects. We agree that if an agency needs to finance its share of project costs, as opposed to paying for the costs in the years they are budgeted, supplemental financing agreement(s), or master agreement amendment(s) would need to be executed to memorialize the repayment obligation of each party for the financing of these capital costs.

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We also want to assure West Valley that tributary agencies are not expected to contribute towards the economic development on the Plant lands that is unrelated to operation of the Plant. The Master Agreements provide the tributary agencies with the opportunity to provide input through TPAC when TPAC makes recommendations on potential sale or lease of Plant buffer lands. In addition, the Master Agreement provide for revenue sharing; and San Jose and Santa Clara have a history of sharing both leasehold and property sale revenue with the tributary agencies, without amending the Master Agreements. Until a specific development project comes forward, it would be speculative to address whether and how it might be desirable to amend the Master Agreements.

In closing, we briefly want to acknowledge West Valley's concern with the annexation provisions related to its Master Agreement. These provisions are unique to the Master Agreement with West Valley. San Jose staff is in the process of researching the annexation concerns raised by West Valley staff, and will provide a status update to West Valley staff under separate cover.

I hope this response has clarified the issues raised in your letter dated November 4, 2013. Please do not hesitate to contact me with further questions or concerns.

Sincerely,



Kerrie Romanow, Director  
Department of Environmental Services  
City of San Jose

cc: Honorable Mayor Chuck Reed  
Mayor Jamie Matthews, City of Santa Clara  
Chuck Page, West Valley Sanitation District  
Jon Newby, West Valley Sanitation District  
Julio J. Fuentes, City of Santa Clara

