



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Katy Allen

**SUBJECT: GRANT OF FRANCHISE TO  
WICKLAND PIPELINES, LLC**

**DATE:** 06-01-10

Approved

Date

6/8/10

**COUNCIL DISTRICT: 4**

## RECOMMENDATION

Adopt a resolution:

- (a) Declaring the intention of the Council to grant a franchise to Wickland Pipelines, LLC, for the purpose of transmitting and distributing jet fuel and oil-related products;
- (b) Setting a public hearing on August 3, 2010, at 1:30 p.m. in the City Council Chambers located at 200 E. Santa Clara Street in San Jose, California to hear any objections to the granting of the franchise; and
- (c) Directing the City Clerk to publish notice of the public hearing at least once within fifteen (15) days after the passage of the resolution in a newspaper of general circulation.

## OUTCOME

Adoption of this resolution will enable Council to conduct a public hearing to consider objections to the City's intent to grant a franchise to Wickland Pipeline LLC, for the transmission and distribution of jet fuel and oil-related products through its pipeline to be located in the City's public rights-of-way between the San José Kinder Morgan Terminal located at 2150 Kruse Drive and the San Jose Fuel Terminal located at the Mineta San Jose International Airport (Airport), 2500 Seaboard Avenue, San Jose.

## BACKGROUND

The construction of a new jet fuel farm is one of the projects included in the 1997 Airport Master Plan for the Airport. A feasibility report titled "San Jose International Airport Fuel Farm Feasibility Study" which studied the financing and construction alternatives for the receipt and delivery of jet fuel to the fuel farm was completed for the City by URS Corporation in January 2006. Various alternatives to transport jet fuel from San José Kinder Morgan Terminal facility

to the Airport were analyzed and reviewed in the Study. The alternatives considered included: a) build a new fuel storage facility at the existing Chevron and City fuel farm, b) build a new fuel farm at the site located near Highway 101, with fuel delivery via truck, and c) build a new fuel farm at the site located near Highway 101, with fuel delivery via pipeline. The Study concluded that constructing a new fuel farm with fuel delivery via an underground fuel pipeline was the superior alternative. The construction of the new fuel farm is complete and operations commenced in December 2009. It is located on the east side of Highway 101 across from the northeastern corner of the Airport.

Wickland Pipelines LLC (Wickland) is a public utility regulated by the Public Utilities Commission. Wickland has been selected by SJC Fuel Company LLC which is a consortium of major airlines operating at City of San José that finance, own, and operate the fuel farm, to construct and operate a two mile long jet fuel pipeline connecting San José Kinder Morgan Products Terminal to the new fuel farm at the Airport. When completed, the jet fuel pipeline will replace tank trucks as the primary means by which jet fuel is supplied to the air carriers operating at the Airport.

The proposed pipeline is 8-inch diameter and the alignment of the pipeline will traverse through private properties and the City's public rights-of-way (see attached map). Wickland has already obtained approvals from the private property owners affected by the proposed pipeline project. Approval of Wickland's Conditional Use Permit (CUP) application is scheduled for consideration by the Planning Commission on June 23, 2010. The purpose of the franchise is to enable Wickland to use the City's public rights-of-way.

### **ANALYSIS**

Under Article XIII of the San José City Charter, the Council is empowered to grant a franchise by ordinance to any person for the purpose of furnishing the City or its inhabitants with water, light, heat, gas, etc., or any other public utility or service using or proposing to use any public street, way, alley or place in the City. Subject to the provisions of Article XIII of the San Jose City Charter, the Council may grant a franchise pursuant to procedures prescribed by ordinance or by State law. Since the City does not have an ordinance governing the procedures for granting a petroleum products franchise, the City may grant the franchise pursuant to State law. The Franchise Act of 1937 (Public Utilities Code Section 6201, *et. seq.*, "State law"), sets forth the procedure by which the City may grant a franchise to use, or to lay and use, pipes and appurtenances for the purpose of transmitting and distributing oil and related products. It also prescribes the franchise fees the City is entitled to receive under the franchise as discussed further below.

The San José International Airport Fuel Farm Feasibility Study concluded the following benefits will be derived as a result of implementation of the underground fuel pipeline alternative:

- Elimination of approximately 76 tanker trucks per day over City streets and highways, while allowing airlines operating out of the Airport to access jet fuel from all Bay Areas refineries completely free from any dependency on truck transportation.
- Reduction of jet fuel delivery costs.
- Elimination of tank truck air emissions.
- Reduction in traffic congestion.
- Improvement in Airport security.

The proposed pipeline is designed and will be installed and operated in compliance with the safety standards established by the US Department of Transportation's Office of Pipeline Safety, the Office of The California State fire Marshal and the American Petroleum Institute. The pipeline will be cathodically protected and a state-of-the-art computer-based leak detection monitoring will be installed. Additionally, the proposed pipeline will routinely be internally inspected by using tools called smart pigs that can inspect and record information of the conditions of the pipeline.

The proposed franchise is in the form of an ordinance that Council will consider at the public hearing on August 3, 2010. If approved by Council on August 3, 2010, a second reading of the ordinance would occur on August 10, 2010 and it would become effective on the 31<sup>st</sup> day following the second reading.

The proposed franchise is for a term of 25 years and sets forth various requirements for the construction, operation and maintenance of the pipeline. Additionally, the proposed franchise provides that the City will receive an annual franchise fee in the amount of \$752.00 subject to an annual escalator based on the Consumer Price Index beginning with the second January after the effective date of the franchise. State law limits compensation for use of the City's rights-of-way because Wickland is a public utility company. Even if the City adopted its own ordinance governing the procedures for establishing a jet fuel franchise, Public Utilities Code section 6205.1, specifically preempts charter cities from charging fees that are different than what is prescribed by State law. This rate is the same as other public utility petroleum franchises throughout the State. The franchise also provides that Wickland will compensate the City for all of the actual and administrative costs incurred by the City in relation to the approval, administration, and implementation of the franchise.

An encroachment permit will be issued to Wickland for their construction work within the public right of way.

The pipeline project is planned to start construction on August 15, 2010, and it is estimated to be completed and operational by December 15, 2010.

### **EVALUATION AND FOLLOW-UP**

Council will conduct a public hearing at the August 3, 2010 Council meeting to hear any objections to the City's intent to grant the franchise. Any interested person may make a written protest stating objections against the granting of the franchise. All protests shall be signed by the protestant and be delivered to the City Clerk. At the time set for hearing, Council shall hear all objections and pass upon all protests made and its decision shall be final and conclusive.

### **POLICY ALTERNATIVES**

Council has the discretion to not grant the franchise. As a public utility regulated by the Public Utilities Commission, Wickland has the authority under state law the ability to condemn the City's rights-of-way.

### **PUBLIC OUTREACH/INTEREST**

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This action does not meet any of the criteria above; however, this memorandum will be posted on the City's website for the June 22, 2010, Council agenda. The City Clerk will also be directed to publish notice of the public hearing at least once within fifteen (15) days after the passage of the resolution in a newspaper of general circulation.

### **COORDINATION**

The memorandum has been coordinated with the Departments of Transportation, Planning, Building and Code Enforcement, Airport, City Attorney's Office, and the City Manager's Budget Office. The required resolution to set the public hearing has been prepared by the City Attorney's Office.

### **FISCAL/POLICY ALIGNMENT**

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Not applicable.

**BUDGET REFERENCE**

Not applicable.

**CEQA**

CEQA: Mitigated Negative Declaration, File No. CP09-012

/s/

KATY ALLEN  
Director, Public Works Department

For questions, please contact TIMM BORDEN, DEPUTY DIRECTOR, at (408) 535-8300.

PG:ES  
Attachments

