



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: John Stufflebean

SUBJECT: SEE BELOW

DATE: 05-24-10

Approved

Date

6-4-10

COUNCIL DISTRICT: City-Wide

SUBJECT: FIRST AMENDMENT TO AGREEMENT BETWEEN THE CITY OF SAN JOSÉ AND SAN JOSE WATER COMPANY FOR SUPPLY OF RECYCLED WATER

RECOMMENDATION

Adopt a resolution authorizing the City Manager to negotiate and execute a First Amendment to the Wholesaler-Retailer Agreement for Supply of Recycled Water between the City of San José and San Jose Water Company (SJWC): to permit SJWC to connect approximately 16 miles of recycled water pipeline, to be built, owned, operated and maintained by SJWC in north and central San José, to the South Bay Water Recycling system; to permit SJWC to own, operate maintain and connect certain other recycled water pipeline within SJWC's service area as may be approved by the City and SJWC in the future; and to allocate additional responsibility and liability to SJWC related to recycled water operations within SJWC's service area.

OUTCOME

Approval of a First Amendment to the Wholesaler-Retailer Agreement for Supply of Recycled Water between the City of San José and SJWC will allow SJWC to own, operate and maintain approximately 16 miles of new pipelines that will provide an average of 1100 acre-feet of recycled water to an additional 146 San José customers in the SJWC service area. SJWC's estimated investment in the new pipelines is approximately \$22 million. The estimated annual revenues to the Plant from the sale of recycled water to the new customers is between \$400,000 and \$500,000, depending on actual demand, while the estimated additional cost to serve these customers is approximately \$100,000 per year.

BACKGROUND

In September 1993, as administering agency of the San José/Santa Clara Water Pollution Control Plant (Plant) the San José City Council authorized design and construction of a project to divert up to 15 million gallons per day (mgd) of treated effluent from the south Bay during the summer by providing nonpotable recycled water to customers in Milpitas, Santa Clara and San José. Between 1993 and 2009 the City invested over \$220 million including four pump stations, two reservoirs, and over one hundred miles of pipeline constructing a recycled water system with the capacity to distribute a peak flow of up to 50 million gallons per day. In 2009 the South Bay Water Recycling (SBWR) system delivered over 10,000 acre-feet of water to 600 irrigation and industrial customers, with an average summer demand of nearly 15 million gallons per day.

As administering agency for the Plant, the City serves as the water wholesaler for recycled water produced and delivered by the SBWR system, the City has agreements with water retailers in Santa Clara, Milpitas and San José (including SJWC) to deliver recycled water to their customer meters. The retailers in turn supply recycled water to their retail water customers, charging a retail markup on the wholesale cost of recycled water comparable to what they receive for selling potable water. However, unlike the retailers' potable systems, the City owns all recycled water distribution pipelines and is responsible for maintaining them, and also pays for all pipeline extensions, except for those funded by developers. Furthermore, the recycled water system was initially built by the Plant to reduce effluent discharge to San Francisco Bay, and since this objective has been largely achieved by means of the existing infrastructure, further system expansion has recently been limited to extensions justified by projected water revenues, and developer-funded or grant-funded projects.

In 2008 SJWC proposed to begin funding recycled water pipeline extensions in their service area as a means of ensuring a more reliable local water supply. Their proposal was facilitated by a change in the policy of the California Public Utilities Commission (PUC) which regulates the rates charged by San Jose Water Company and other investor-owned utilities. Since the inception of the SBWR system in 1993, the PUC had prohibited investor-owned utilities from passing on the cost of recycled water pipelines to potable water customers, having defined the practice as a "cross-subsidy." However, recently the PUC decided to allow SJWC to pass the cost of recycled water pipelines on to all water customers by "rate-basing" this infrastructure.

In response, SJWC developed a Recycled Water Master Plan (RWMP) that evaluated seventeen different alignments ability to deliver recycled water to its customers, primarily for landscape irrigation purposes. Potential customers identified include schools, parks, and commercial, industrial, and multi-family common areas. Four of these alignments now have environmental clearance and SJWC is prepared to proceed with construction upon approval of the proposed First Amendment to the Wholesaler-Retailer Agreement between the City of San José and San Jose Water Company.

ANALYSIS

The proposed First Amendment will authorize connection of the four alignments shown on Attachment A, which have a combined capital cost of approximately \$22 million. The four projects located in north and central San José would result in the construction of approximately 16 miles of recycled water pipelines ranging in diameter from 4- to 24-inches. Under this agreement recycled water use is projected to increase, and operating costs currently borne by the ratepayers of the San José/Santa Clara Water Pollution Control Plant for the expansion of the South Bay Water Recycling distribution system are expected to decrease.

The proposed First Amendment also alters the existing relationship under which SJWC receives water from SBWR at its customer meters and, in effect, simply acts as the water retailer for billing purposes. Under the current agreement, the City, as the operator of SBWR, is responsible for constructing, operating and maintaining all recycled water facilities in SJWC's service area, except the customer meters which are owned by SJWC; and the City is also responsible for providing all customers services, except billing.

Under the proposed First Amendment:

- SJWC will be able to own the 4 pipeline segments identified in Exhibit A and to connect these pipelines to the SBWR system, and SJWC will be responsible for operating and maintaining these pipelines.
- SJWC will be required to obtain an encroachment permit for the facilities that it will be building in city streets.
- SJWC and the City will meet and confer on all future recycled water facilities to be built in SJWC's service area, including facilities to be built by developers.
- SJWC will be able own and connect recycled water facilities that are approved for construction by the City in the future, unless the City has provided funding for the construction or has notified SJWC that it wishes to own the facilities..
- SJWC will be responsible for all costs of operating and maintaining the facilities that it owns.
- SJWC will pay for all water supplied by SBWR at the City established wholesale rates, regardless of ownership of the facilities. If a master meter is located at the turnout between the Wholesaler and Retailer systems, Retailer will be billed for any recycled water lost through leafage or line breaks as measured by the master meter.
- SJWC and the City will each work with customers on sizing of service lines that are to be connected to the facilities that they own.
- SJWC will collect customer self monitoring reports for submission by the City to the San Francisco Bay Regional Water Quality Control Board and shall notify the City of any material misuse of recycled water by a customer, for possible enforcement of the recycled water use

rules by the City. However, SJWC will not be liable for any customer misuse or improper application of recycled water.

- Each party will defend, indemnify and hold harmless the other party from claims and losses caused by its negligence or will misconduct. However, neither party will be responsible to the other for consequential, special, indirect, incidental, punitive or exemplary damages, costs, expenses or losses, nor for any and loss, damage or injury to its property arising out of or resulting from the activities conducted under Agreement, unless such loss, injury, or damage as may be caused by the sole active negligence or the willful misconduct of the other Party.

EVALUATION AND FOLLOW-UP

The City will continue to be responsible for billing SJWC for use of recycled water. SBWR staff will also collaborate with SJWC in planning, designing and constructing new facilities. As such, City staff will be able to evaluate SJWC's effectiveness in implementing the designated infrastructure and can readily assess the reliability of the proposed pipelines. Staff will also measure the increase in revenues due to the addition of customers on the proposed pipelines.

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)**

San Jose Water Company and the City of San José have attended monthly meetings to review recycled water planning and operations since the inception of the SBWR program in 1994. This amendment to the existing Wholesaler-Retailer Agreement between the City and SJWC will allow the City to significantly increase recycled water use within existing budget limits as mandated by the City's Green Vision Plan adopted by the San José City Council in October 2008.

HONORABLE MAYOR AND CITY COUNCIL

06-01-10

Subject: First Amendment to Wholesaler-Retailer Agreement with San Jose Water Company

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COORDINATION

This memo has been coordinated with Planning and the City Attorney's Office. This memorandum is scheduled to be heard at the June 10, 2010 Treatment Plant Advisory Committee (TPAC) meeting.

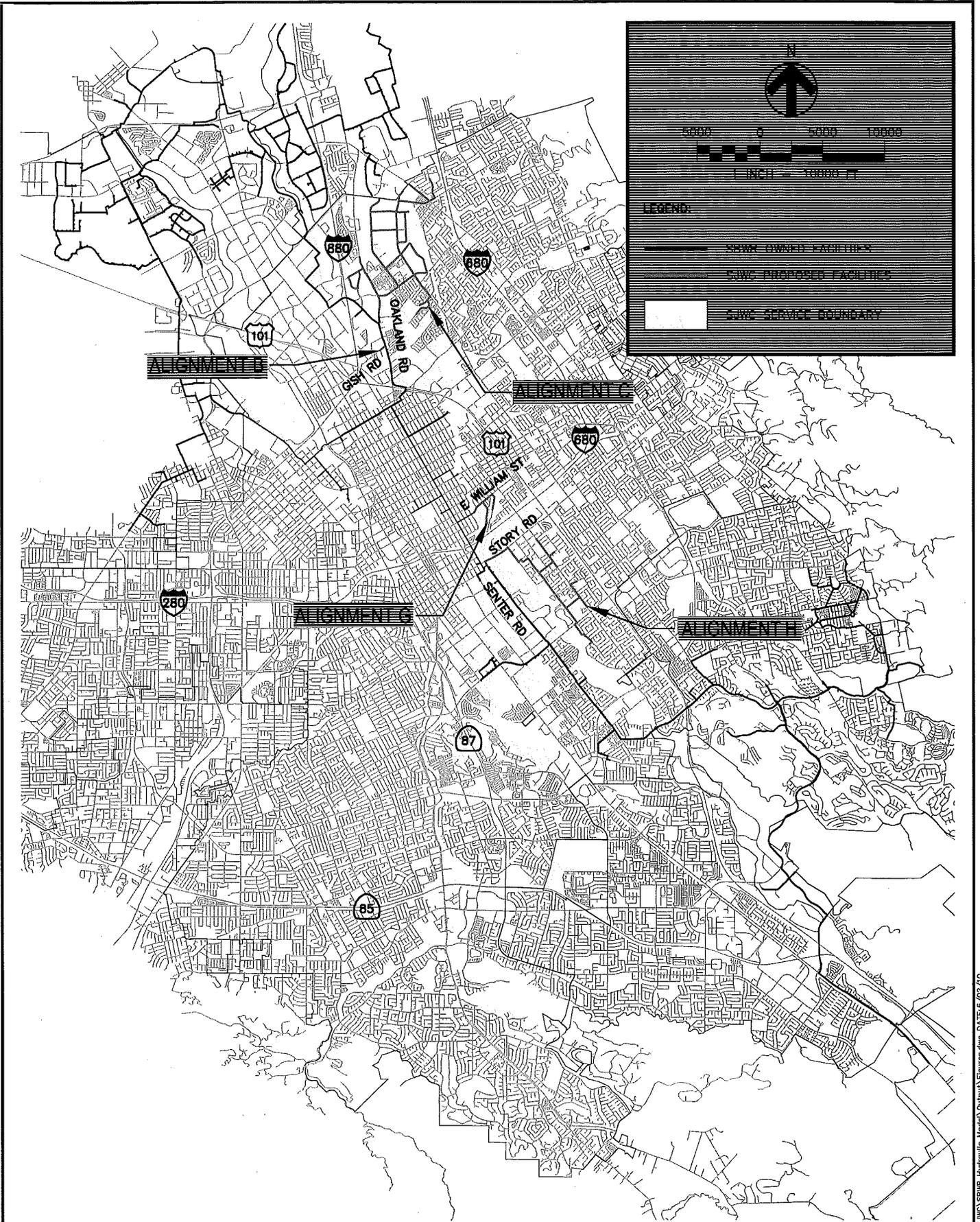
CEQA

Mitigated Negative Declaration PP-10-089

/s/
JOHN STUFFLEBEAN
Director, Environmental Services

For questions, please contact Mansour Nasser, Deputy Director, at (408) 277-2558.

Attachment A



LEGEND:

- SOLID LINE: SEWER OWNED FACILITIES
- DASHED LINE: SJWC PROPOSED FACILITIES
- SOLID BLACK LINE: SJWC SERVICE BOUNDARY

EXHIBIT A
SJWC 2010-2011 ALIGNMENTS



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