



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kerrie Romanow

SUBJECT: SEE BELOW

DATE: 10-24-11

Approved

Date

10/27/11

COUNCIL DISTRICT: City-Wide

SUBJECT: AMENDED MEMORANDUM OF AGREEMENT AMONG THE CITIES OF SAN JOSÉ, MOUNTAIN VIEW, PALO ALTO, HAYWARD, PLEASANTON AND REDWOOD CITY, TOWN OF YOUNTVILLE, CENTRAL CONTRA COSTA SANITARY DISTRICT, DELTA DIABLO SANITATION DISTRICT, DUBLIN SAN RAMON SERVICES DISTRICT, IRONHOUSE SANITARY DISTRICT, ZONE 7 WATER AGENCY, NORTH COAST WATER DISTRICT, COASTSIDE COUNTY WATER DISTRICT, SANTA CLARA VALLEY WATER DISTRICT AND BAY AREA CLEAN WATER AGENCIES WITH RESPECT TO FEDERAL FUNDING FOR WATER RECYCLING PROJECTS

RECOMMENDATION

Adopt a resolution authorizing the City Manager to execute an Amended Memorandum of Agreement among the cities of San José, Mountain View, Palo Alto, Hayward, Pleasanton and Redwood City, Town of Yountville, Central Contra Costa Sanitary District, Delta Diablo Sanitation District, Dublin San Ramon Services District, Ironhouse Sanitary District, Zone 7 Water Agency, North Coast County Water District, Coastsides County Water District, Santa Clara Valley Water District and the Bay Area Clean Water Agencies to implement a regional approach to obtaining and allocating federal funding for water recycling projects, at a cost for 2011-12 not to exceed \$20,000, with future year funding to be subject to appropriation by the City Council.

OUTCOME

The City, as administering agency for South Bay Water Recycling and the San José/Santa Clara Water Pollution Control Plant, would re-enter into an agreement with five other cities, one Town, three water districts, a special district, four sanitation districts (the Participating Agencies) and Bay Area Clean Water Agencies (BACWA) (a regional joint powers authority of which the

City is already a member) to implement the "Bay Area Recycled Water Coalition" (BARWC), for the purpose of pursuing a regional approach to obtaining and allocating federal funding for water recycled projects. The City's participation with other agencies on a regional basis through approval of the amended Memorandum of Agreement (MOA) will continue to enhance its ability to obtain future grant funding.

BACKGROUND

South Bay Water Recycling (SBWR) is a multi-agency water recycling program administered by the City as lead agency for the San José/Santa Clara Water Pollution Control Plant. The SBWR project was included in Title XVI of PL102-575, the "1992 Central Valley Project Improvement Act" (Section 1607) which authorized the US Bureau of Reclamation (Reclamation) to reimburse the City for up to 25% of eligible construction costs. Since 1995, the City has signed several grant agreements with Reclamation for water recycling capital projects approximating \$237,000,000 of infrastructure investment. These agreements also provided for up to \$59,000,000 in federal grant reimbursement, however, only \$39,000,000 has been reimbursed as of September 2011, providing a balance of \$20,000,000 from Reclamation.

In 2007, Senator Dianne Feinstein wrote to a number of California agencies urging them to adopt a regional approach to coordinate their requests for federal support for water recycling projects. Senator Feinstein's request was consistent with state funding policy which requires agencies to demonstrate a regional approach to water projects proposed for funding through Propositions 50 and 84. In response, staff from a number of cities and agencies in the Bay Area actively developing recycled water projects formed the Bay Area Water Recycling Coalition (BARWC) to develop a regional platform for developing and coordinating projects in order to improve their ability to obtain federal funding.

Primary objectives of the BARWC agencies is to obtain Congressional authorization for federal funding for recycled water projects in the Bay area, and obtain an appropriation of federal funds adequate to fund the authorized projects. Subsequent to passage of PL110-229 "Consolidated Natural Resources Act of 2008." federal participation of seven BARWC projects were authorized. These projects included the Palo Alto/Mountain View Moffett Area Pipeline Project, South Bay Advanced Recycled Water Treatment Facility; and the Pittsburg, Antioch, North Coast County Water District, Redwood City, and South Santa Clara County Recycled Water Projects. The San José Area Water Reclamation and Reuse Project (now known as South Bay Water Recycling) that was originally authorized in PL102-575, was also included in the Bay Area Regional program.

ANALYSIS

A Memorandum of Agreement with BARWC agencies was originally drafted and executed on August 25th, 2008. The Participating agencies (including agencies that became Participating

agencies after the execution of the original MOA) and BACWA are proposing execution of an amended MOA. Under the amended MOA, the City would continue to no longer advocate exclusively for federal funding for SBWR, but rather would request federal support for the entire regional request, designating BACWA as the entity to represent the SBWR Program in pursuit of Title XVI recycled water grants under Public Law 102-575. City participation on behalf of SBWR in the amended MOA is recommended in order to continue maximizing the local share of federal funding by aligning San Jose's recycled water interests with the entire Bay Area region. Consistent with the original MOA, should the total amount of federal appropriation be less than the total amount sought for all authorized projects in any given year, each participating agency would receive its percentage share of the lower appropriation (federal funding for authorized recycled projects will be subject to pro rata allocation , total appropriation / total request/).

The MOA also addresses coordination and cost sharing for federal legislative efforts. It provides that one of the Participating Agencies will be responsible for managing outside consultant and legislative advocacy services. The amended MOA provides for the parties to share BACWA administrative and outside consultant costs, as well as advocacy costs based on their federal share (i.e. 25% of project cost) and not on the basis of the ratio of the number of agency projects to total projects, as was the case for the original MOA. For calendar year 2011, San Jose's share of BACWA outside agency costs is estimated to be an amount not expected to exceed \$20,000.

The amended MOA includes new provisions to allow other Investor-Owned Water Utilities to become members, and also allows for "associate" level of membership. Any public agency or an investor-owned water utility that does not have a recycled water project may become an Associate member, thus enabling them to participate in BARWC discussions regarding federal funding efforts. However, they may not vote or otherwise participate in any formal decision-making.

The amended MOA continues to allow any agency to unilaterally withdraw from the BARWC on or before October 31st of each year, and effective the following January 1st, should it determine that its interests are no longer served by participation with the other regional entities. If sufficient funds are not appropriated for participation in future years, the City Manager can terminate the city's participation. Further, if the City's share of costs for any calendar year should exceed the City Manager's contract authority, which is not anticipated, then the City Manager will seek Council authorization.

EVALUATION AND FOLLOW-UP

An annual accounting of federal support for San José area water recycling projects will be compared to recent year appropriations. If at any time it appears that the City would be more likely to receive significantly more funding by independently advocating for federal support, staff will recommend that the City consider terminating its agreement with BACWA and the other Coalition members.

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 memorandum will be posted on the City's website for the November 15, 2011 City Council Agenda.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the Office of Intergovernmental Relations, and the City Manager's Budget Office. This item is scheduled to be heard at the November 10, 2011 meeting of the Treatment Plant Advisory Committee (TPAC).

COST IMPLICATIONS

Participation in the Bay Area Water Recycling Coalition (BARWC) will continue enhancement of the City's ability to obtain authorized federal funding for South Bay Water Recycling. Based on past experience, annual contributions to the Bay Area Water Recycling Coalition costs are not expected to exceed \$20,000 per year. If the City's share of cost for any calendar year should exceed the City Manager's contract authority, which is not anticipated, then the City Manager will seek Council authorization. Payments in future years will be subject to City Council appropriation of funds.

HONORABLE MAYOR AND CITY COUNCIL

10-24-11

Subject: Memorandum of Agreement with BARWC Agencies

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BUDGET REFERENCE

Fund #	Appn. #	Appn. Name	Total Appn.	Amount for Project	2011-2012 Proposed Operating Budget Page*	Last Budget Action (Date, Ord. No.)
513	0762	ESD Non-Personal/Equipment	25,548,275	20,000	XI-77	06/21/2011 Ord. 28928

* The City Council adopted the 2011-2012 Proposed Operating Budget on June 21, 2011. The Adopted Budget will be published in Fall 2011.

CEQA

Not a Project, File No.PP10-066 (g), Memorandum of Understanding.

/s/

KERRIE ROMANOW

Acting Director, Environmental Services

For questions please contact Mansour Nasser, Deputy Director, at 277-4218.