



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Kerrie Romanow

**SUBJECT:** SEE BELOW

**DATE:** February 14, 2012

Approved

Date

2/29/12

**SUBJECT: PROPOSITION 84 BAY AREA INTEGRATED REGIONAL WATER MANAGEMENT PROGRAM FUNDING AGREEMENT WITH BAY AREA CLEAN WATER AGENCIES, NINTH AMENDMENT WITH THE CITY OF SANTA CLARA FOR DESIGN AND CONSTRUCTION OF SOUTH BAY WATER RECYCLING FACILITIES, AND IMPLEMENTATION OF A REGIONAL OUTREACH AND MASTER PLAN PROJECT WITH THE SANTA CLARA VALLEY WATER DISTRICT**

## RECOMMENDATION

1. Adopt a resolution authorizing the City Manager to negotiate and execute an agreement with the Bay Area Clean Water Agencies to accept grant funding under State Proposition 84 Bay Area Integrated Regional Water Management Program in an amount up to \$2,485,000, for South Bay Water Recycling facility improvements, including a Bay Area recycled water outreach program component.
2. Adopt a resolution authorizing the City Manager to negotiate and execute an agreement with the Santa Clara Valley Water District for the District to conduct the regional outreach program covered by the Proposition 84 grant at cost to the District of up to \$300,000, with a potential for reimbursement to the District of 45.2% of eligible project costs, up to a maximum amount of \$136,000 from the Proposition 84 grant funds District; and for the District to contribute funding up to \$400,000 for the South Bay Water Recycling Master Planning effort, with a reimbursement from the City of San José of up to \$200,000.
3. Adopt a resolution authorizing the City Manager to negotiate and execute the Ninth Amendment to the San José/Santa Clara Construction Services Agreement to revise the approved project list specified in the agreement, and extend the term of agreement by twenty-four months to December 31, 2014.

4. Adopt a resolution approving the Mitigated Negative Declaration and adopting the mitigation monitoring and reporting program prepared for the South Bay Water Recycling Northern Regional Connector Pipeline Project (File No. PP12-015) as having been completed in compliance with the California Environmental Quality Act and reflecting the City's independent judgment and analysis.

### **OUTCOME**

The recommended agreement with the Bay Area Clean Water Agencies (BACWA) will provide funds of up to \$2,485,000 for construction of South Bay Water Recycling (SBWR) facilities and recycled water public outreach. The City needs to amend the City of Santa Clara Construction Services agreement and enter into a new agreement with the Santa Clara Valley Water District (District) to implement this grant. BACWA has advised staff to execute the grant agreement and the City of Santa Clara amendment by the end of March 2012 to ensure the funding remains available.

### **EXECUTIVE SUMMARY**

Approval of this memorandum will allow the City of San José to accept a State Proposition 84 grant, administered by the Bay Area Clean Water Agencies, in the amount of \$2,485,000 to support capital improvements in the SBWR system. Proposition 84 funding will be used to construct potable backup systems for the San José International Airport and the Advanced Water Treatment Facility (a partnership with the District), a pipeline extension in the City of Santa Clara, and components of a Bay Area Recycled Water Outreach Program. Proposition 84 funding could be combined with grant funding previously received to construct an extension in the City of Santa Clara, referred to as the Northern Regional Connector (NRC). Adoption of the memorandum also provides authority to execute an agreement with the District to fund a water recycling outreach program and District coordination for recycled water use County-wide.

### **BACKGROUND**

The City of San José, in association with other Bay Area cities and agencies through BACWA, applied for grant funding through State Proposition 84 to fund the Bay Area Integrated Regional Water Management Program. On August 16, 2011, the California Department of Water Resources awarded BACWA a Bay Area Implementation grant for a total amount of \$30,093,592. Through a State Proposition 84 Funding Agreement, the City is eligible for reimbursement of up to 45.2% of eligible project costs, up to a maximum award of \$2,485,000 for projects completed in 2011-2012 through 2013-2014.

Proposition 84 grant reimbursements will be applied to eligible costs to construct potable water backup systems at the San José International Airport and the Advanced Water Treatment Facility (AWTF), a jointly constructed water reclamation facility with the District. Grant funds are

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designated to construct a new pipeline project in the City of Santa Clara, and this pipeline could serve as part of the Northern Regional Connector (NRC) which would connect the SBWR system to the City of Sunnyvale's recycled water system. The City and Sunnyvale will begin exploring the financial and technical feasibility of this option in March. There are recycled water quality concerns with the Sunnyvale system that need further exploration before any connection efforts move forward. If a mutually beneficial agreement can be reached with Sunnyvale, these grant funds will be recognized as part of the 2012-2013 budget process and reimbursements will be returned to fund balance.

As part of the recommendations in this memorandum, the City would enter into a new agreement with the District for two projects: 1) to provide Proposition 84 grant funding to the District to implement regional outreach; and 2) to allow the District to participate in and contribute resources to the SBWR Feasibility Study funded by the US Bureau of Reclamation and approved by Council on September 13, 2011. The District will contribute funding of up to \$400,000 toward the new SBWR planning effort and be reimbursed up to \$200,000 by the Reclamation grant. The Proposition 84 funding will reimburse up to \$136,000 of eligible costs for the District to develop a Bay Area Recycled Water Outreach Program aimed at educating Bay Area communities on the benefits of recycled water. Since the City is lead agency for the grant, the reimbursement by the grantor for the District's eligible costs would be made to the City; then the City would pay these reimbursed amounts to the District.

On May 24, 1995, the City of San José entered into an agreement with the City of Santa Clara in the amount of \$12,600,000 for design and construction services to extend the recycled water system within the boundaries of Santa Clara. The City of San José and Santa Clara subsequently executed eight amendments to the original agreement increasing the total compensation to \$34,661,000, expanding the recycled water pipeline in Santa Clara and funding customer retrofits. The City will need to amend its agreement with the City of Santa Clara to implement the State Proposition 84 Funding Agreement. The proposed Ninth Amendment to the agreement would substitute a new Santa Clara extension for the Industrial 3B Package 1 specified in the sixth and eighth amendments since these were determined no longer feasible due to reduced customer demand and elevated construction costs. In addition, the amendment will include the Space Park Extension project, and extend the term by 24 months to December 31, 2014;

The attachment to this memorandum provides a summary of the amendments to the Santa Clara agreement to date.

## **ANALYSIS**

The construction projects eligible for reimbursement under the State Proposition 84 Funding Agreement include the construction of potable backup systems for the San José International Airport and the Advanced Water Treatment Facility (AWTF), a pipeline extension in the City of Santa Clara, and components of a Bay Area Recycled Water Outreach Program.

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### Potable Backup Water Systems

The potable backup systems for the airport and the AWTF will add reliability to the SBWR system to address redundancy requirements and ensure adequate water supplies in the unlikely event the SBWR recycled water system is temporarily taken out of service. The Backup Water Supply project is already underway and is funded by the City for \$3,000,000 as approved in the Adopted 2011-2012 Capital Budget and will qualify for a reimbursement of up to \$1,000,000 from the State Proposition 84 Funding Agreement. The reimbursed grant funds will fall to fund balance to offset the costs of this project.

### Pipeline Extension in the City of Santa Clara

The Proposition 84 Funding would also provide funding of up to \$1,349,000 for the Ninth Amendment to the Agreement with the City of Santa Clara to implement SBWR pipeline extension in Santa Clara. If the proposed NRC project is determined not feasible, staff will return to Council with recommendations for an alternative project suitable for grant reimbursement. Funds already encumbered in the Santa Clara Agreement would pay for design and construction of the NRC, and the Proposition 84 reimbursement would be deposited in fund balance to offset the costs of this project. Of the \$3,200,000, \$1,851,000 is not covered by the Proposition 84 Grant. Of this, \$1,000,000 was offset by grant funds specifically appropriated as part of the Eight Amendment to the Santa Clara Agreement approved by Council on December 14, 2010, and \$851,000 of a \$1,000,000 payment received from the Santa Clara Valley Water District in 2010-2011 solely for recycled water expansion.

On January 10, 2012, Council authorized staff to submit an application to the Bureau of Reclamation for a grant to fund the potential regional intertie project to connect SBWR to Sunnyvale's recycled water system and/or construct a pipeline along Wolfe Road to provide recycled water to the customers in the City of Cupertino, including Apple Inc. If Reclamation approves the grant in April 2012, and National Environmental Policy Act clearance can be obtained for upsizing the pipeline, staff will return to Council by fall 2012 with the Tenth Amendment to the City of Santa Clara Construction Service Agreement to upsize the 16-inch diameter pipe to a 30-inch diameter pipeline. The upsizing of the pipe will facilitate providing additional revenue to SBWR. The intertie project will not commence until a mutually beneficial agreement terms can be reached with Sunnyvale.

At the request of the City of Santa Clara, the Ninth amendment also downsizes Santa Clara Industrial 3B Package 1 approved in the Eighth Amendment. The downsized extension will deliver approximately 50 AFY to data centers located on Space Park Drive in Santa Clara through 1,700 LF of 12-inch recycled water pipeline. The estimated project costs of \$320,000 are currently encumbered under the Agreement with the City of Santa Clara.

The term of San José/Santa Clara Construction Services Agreement will be extended by 24 months to December 31, 2014, to allow time for implementing the projects in the Ninth amendment.

There is currently a balance of \$4,350,342 remaining in the Santa Clara Construction Services Agreement (Agreement). Of this, a maximum of \$1,740,000 is allocated to connecting new customers in Santa Clara and the balance of \$2,610,342 is allocated for pipeline extensions. The Ninth Amendment will re-allocate the balance as follows: \$3,520,000 for the pipeline extension in Santa Clara and the Space Park Alignment and \$830,342 for customer connections. The term of the Agreement will be extended by 24 months to December 31, 2014, to allow time for implementing the projects in the Ninth amendment.

#### New Agreement with District: Bay Area Recycled Water Outreach and Coordination

The final component of the State Proposition 84 Funding Agreement will allow an option for the District to participate in a Bay Area Recycled Water Outreach Program with the objective of expanding the number of recycled water customers. The District would contribute \$300,000 towards this effort and will have the potential to receive up to \$136,000 of the total outreach costs. Should the District not participate, the City will have the option to participate, provided funds are available. Since the City is lead agency for the grant, reimbursements by the grantor will go to the City; the City would then pay these reimbursed amounts to the District as necessary. Any payments would be made to the District in 2012-2013, subject to the appropriation of funds.

Staff is also recommending adding a provision in the District agreement to allow an option for the District to participate in a future planning effort for the South Bay Water Recycling System currently underway and to contribute up to \$400,000 to this effort if both parties determine that this collaboration would be beneficial. The District's \$400,000 contribution will satisfy the Regional Coordination component per the City's existing agreement with the U.S. Bureau of Reclamation (approved per Council Resolution No. 75987, dated September 13, 2011) and would be eligible for 50% reimbursement by Reclamation. The City would receive the reimbursement from Reclamation, and would make the \$200,000 payment to the District out of the SBWR Master Plan appropriation.

#### Environmental Clearance

On February 3, 2012, the Director of Planning, Building, and Code Enforcement (PBCE) circulated an Initial Study/Draft Mitigated Negative Declaration (MND) for a 30-day public review through the State Clearinghouse in conformance with the requirements of the California Environmental Quality Act (CEQA). The project is for the construction of a 30-inch pipeline to be constructed from the intersection of Lafayette Street and Tasman Drive in the City of Santa Clara westerly through Santa Clara into the City of Sunnyvale. The pipeline would be used to convey recycled water as an expansion of the South Bay Water Recycling program. While much of the proposed construction would take place within existing public street right-of-way, portions of the pipeline would also be constructed through the closed All Purpose Landfill in Santa Clara and would include crossings of the San Tomas Aquino and Calabazas creek channels. Depending upon the location, construction of the pipeline will require the use of "cut and cover," jack and bore tunneling, or directional drilling construction techniques.

The Initial Study and MND for the Pipeline Project (File No. PP12-015) was prepared and processed in compliance with the requirements of CEQA (see: <http://www.sanJoseca.gov/planning/eir/MND.asp>). The Director of PBCE, pursuant to the requirements of Title 21 of the San José Municipal Code, reported that there is no substantial evidence in the public record received to date that the project will have a significant effect on the environment with the identified mitigation measures included in the project. The MND has been prepared and processed in a manner that reflects the City's independent judgment and analysis as Lead Agency.

The City has identified potential significant impacts as a result of the project to Air Quality, Biological Resources, and Hazards and Hazardous Materials. All of the significant impacts identified can be reduced to a less than significant level with mitigation. A summary of the mitigation measures follows:

- Air Quality – The project will have temporary construction related air quality impacts, and best management practices recommended by the Bay Area Air Quality Management District will be implemented to mitigate for fugitive dust control.
- Biological Resources – Because of the presence of known nesting habitat north of the Santa Clara Golf and Tennis Club, pre-construction surveys and biological monitoring will mitigate for any direct or indirect effects to burrowing owl during construction. Further, the project will cross two creeks, avoidance and mitigation measures will be implemented to compensate for any accidental impacts to subsurface flows at the two creek crossing within the project alignment.
- Hazards and Hazardous Materials – The proposed pipeline alignment extends through the Santa Clara Golf and Tennis Club, a closed all-purpose landfill. Prior to construction, investigations will be conducted to confirm the extent and risk of potential impacts associated with existing site conditions; construction methods will be implemented to minimize the potential for landfill gas migration, air intrusion, groundwater mitigation, groundwater contact, and construction-derived waste requiring special handling and disposal.

As part of the Council's consideration of the MND, the Council will also consider the adoption of the Mitigation Monitoring and Reporting Program for the project. The Mitigation Monitoring and Reporting Program outlines the implementation of the mitigation measures relating to the project.

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

The increased demand for recycled water created by the NRC will be provided as part of regular SBWR performance measures reports to Council and in the Green Vision Annual report. Staff plans to commence negotiating rates and terms of service with Sunnyvale staff in March 2012 and bring a proposed agreement for Treatment Plant Advisory Committee and Council consideration by summer 2012.

### 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 recommendation is scheduled to be considered by the District Board on February 28, 2012. This memorandum will be posted on the City's website for the March 13, 2012 City Council meeting.

### COORDINATION

This memo has been coordinated with the City's Attorney's Office, Planning, Building and Code Enforcement, the City Manager's Budget Office, and the City of Santa Clara. This memorandum is scheduled to be heard at the March 8, 2012 Treatment Plant Advisory Committee (TPAC) meeting.

### COST SUMMARY/IMPLICATIONS

The State Proposition 84 Funding Agreement recommended to be accepted in this memorandum provides funding of up to \$2,485,000 towards recycled water projects totaling at least \$5,503,000.

The following details the City funds budgeted to pay for the projects identified in the Proposition 84 grant:

1. City provides up to \$3,000,000 in funds already budgeted for the San José Mineta International Airport and the AWT backup potable project as part of the 2011-2012 Adopted Budget in the Water Pollution Control Capital program, Backup Water Supply appropriation. This project could be eligible for a reimbursement of up to \$1,000,000 from the Proposition 84 grant, assuming a total project cost of up to \$2,554,000.
2. \$3,200,000 for the construction of the SBWR pipeline extension in the City of Santa Clara is encumbered under the Sixth and Eighth Amendments to the agreement with the City of Santa Clara, approved per Council Resolution No. 75176 dated November 17, 2009 and Council Resolution No. 75668 dated December 14, 2010. This project would

be eligible for a reimbursement of up to \$1,349,000 from the Proposition 84 grant, assuming a total project cost of \$2,649,000.

3. District provides \$300,000 for a Bay Area Recycled Water Outreach Program and the City provides up to \$136,000 or 45.2% of District expended funds for this effort. The State Proposition 84 Funding Agreement will reimburse the City for the funds provided to the District.

Total match from sources above is \$3,018,000 or 54.8% of \$5,503,000 total estimated project cost providing a reimbursement of \$2,485,000 or 45.2%. Reimbursement percentages vary by project depending on the respective project elements eligible for grant reimbursement.

Funds for the additional recommended actions in this memorandum are as follows:

1. District provides \$400,000 for a regional Coordination effort and the City reimburses up to \$200,000 for this effort from the SBWR Master Plan appropriation. The U.S. Bureau of Reclamation grant would reimburse the City for all of the \$200,000 under the Feasibility Study Agreement, approved by the City Council on September 13, 2011.
2. The downsized Space Park Drive alignment construction of approximately \$320,000 will be paid for from funds already encumbered in the San José/Santa Clara Construction Services Agreement.

**BUDGET REFERENCE**

The tables below show the City source of the funds for the recommended actions in this memorandum.

Fun d	Appn. #	Appn. Name	Total Appn.	Amount for Agreement	2011-2012 Adopted Capital Budget (Page)	Last Budget Action (Date, Ord. No.)
512	7362	SBWR Backup Water Supply	\$3,000,000	\$2,554,000*	V-172	6/21/2011, Ord. No. 28928
512	7364	SBWR Master Plan	\$2,268,000	\$200,000**	V-174	09/13/2011, Ord. No. 28959

\* \$2,554,000 of the budgeted \$3,000,000 will be used as the grant match for Proposition 84 reimbursements of up to \$1,000,000.

\*\* \$200,000 would be reimbursed to the City in 2012-2013 from the U.S. Bureau of Reclamation for the District's \$400,000 regional coordination effort.

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**CEQA**

Relevant environmental clearance completed by City of San José:

Resolution No. 64667, Environmental Impact Report for the San José Nonpotable Reclamation Project, now known as the South Bay Water Recycling Program dated June 15, 1993.

Resolution No. 67380 Reuse of the Airport Master Plan EIR/SEIR, PP08-071 dated June 17, 2008.

Mitigated Negative Declaration for Potable Backup Supply, PP11-054.

Mitigated Negative Declaration (pending) for Northern Regional Connector, PP12-015.

Relevant environmental clearance completed by City of Santa Clara:

Santa Clara Industrial 3B: CEQ2010-01113

/s/

KERRIE ROMANOW

Acting Director, Environmental Services

For questions, please contact Jo Zientek, Acting Assistant Director, at (408) 535-8557.

Attachment – Summary of Amendment to the Santa Clara Agreement

## Attachment - Summary of Amendment to the Santa Clara Agreement.

Summary of the Construction Service Agreement with the City of Santa Clara and Related Amendments						
#	Date	Council Date	Agenda Item	Reso #	Amount (\$M)	Purpose
	5/24/1995	5/24/1995	9.g	65890	\$12.6	Established an agreement between the City of San José and City of Santa Clara for engineering, construction, and construction services for the South Bay Water Recycling Program. Established maximum compensation at \$12,600,000.
1	5/6/1997	3/4/1997	6.e.(2)	67178	\$0	Modified the original agreement to utilize cost savings for provision of retrofit engineering, construction services, and grant administration by Santa Clara.
2	3/24/1998	3/24/1998	9.a	69422	\$3.4	Authorized additional services by Santa Clara, including construction of transmission pipelines and service connections. Increased maximum compensation to \$16,000,000.
3	2/29/2000	2/24/2000	9.c.(1)	N/A	\$8.9	Authorized Santa Clara to implement a private property retrofit bid program to augment the grant program previously authorized. Also authorized Santa Clara to design and construct two infill pipe segments, SC-1 and SC-3, and added three segments, SC-2, SC-4, and SC-5, subject to future appropriation of funds. Increased maximum compensation to \$24,900,000.
4	10/21/2003	10/21/2003	7.1	N/A	\$2.7	Substituted a previously approved project, SC-3, with a new pipeline, SC-6. This amendment authorized the construction of a reliability connector, SC-5, and added an additional project, Juliette Lane, to serve irrigation customers. Increased maximum compensation to \$27,600,000.
5	3/18/2008	3/18/2008	2.4	N/A	\$0	Extended the contract period to June 30, 2010 and eliminated the Juliette Lane project.

6	11/17/2009	11/17/2009	7.1	75176	\$3.0	Revised the approved project list and outlined appropriations for the construction of three SBWR American Recovery and Reinvestment Act of 2009 projects and funding for \$250,000 for design of Industrial 3B-Package 1 that had not yet been certified as compliant with CEQA. Increased maximum compensation to \$30,600,000.
7	4/20/2010	4/20/2010	7.1	75349	\$3.0	Revised the approved project list to add construction of the Santa Clara Industrial 3A extension project to be built in Santa Clara. Increased maximum compensation to \$33,650,000.
8	04/11/2011	12/14/10	2.11	75668	\$1.0	Increased maximum compensation to \$34,661,000 by recognizing and appropriating \$1.01 million in grant revenues and adds construction of the project designated as Industrial 3B-Package 1.
				Total	\$34.7	