



Council Meeting: September 24, 2013

SUBJECT: Discussion and Possible Action to adopt the Mitigated Negative Declaration for the Wolfe Road Recycled Water Project and approve the Cost Share Agreement with the Santa Clara Valley Water District (District) for the engineering design of the Wolfe Road Recycled Water Project

BACKGROUND

The Wolfe Road Recycled Water Project consists of constructing a new recycled water pipeline along Wolfe Road to Homestead Road (approximately 13,500 linear feet) and performing improvements to the existing San Lucar Pump Station. The project would provide for the delivery of up to 0.44 million gallons a day of additional recycled water for uses within the City of Sunnyvale and adjacent communities. Potential future connections nearby include schools, parks, and the Sunken Garden Golf Course.

The project would also serve the Apple 2 Campus, which is located across Homestead Road in the City of Cupertino. Improvements to the San Lucar Pump Station would be sized to accommodate anticipated water demands.

EXISTING POLICY

General Plan Policy EM-1.2: Maximize recycled water use for all approved purposes both within and in areas adjacent to the City, where feasible.

CEQA REVIEW

On October 12, 2012, the engineering consulting firm, CH2MHill, Inc. prepared an Initial Study (IS) for the Wolfe Road Recycled Water Project and the findings of the IS concluded that this project will not have significant impact on the environment.

The City prepared a draft Mitigated Negative Declaration (**Attachment A**) for the Wolfe Road Recycled Water Project, and circulated it for public review from October 19, 2012 to November 7, 2012. The Final Mitigated Negative Declaration is presented today for Council adoption.

DISCUSSION

The purpose of this agreement (**Attachment B**) is to enable the design of the project to commence as quickly as possible in order to complete construction by fall of 2016. The District will lead the effort to plan and design the project,

with Sunnyvale and the District sharing equally in the design costs estimated at \$1,250,300. Sunnyvale will share 50:50 in the actual design costs, up to half of this amount.

The total cost of the project is expected to be from \$10 million up to a possible cost of \$13 million. The higher cost includes contingencies that reflect the fact that the current project is in the early pre-design stage. As the design progresses, the construction costs will become more precise, and contingencies will be reduced as the construction details are better understood and defined. Current funding commitments are \$6.3 million from Cal Water and Apple Corporation staff. The project schedule is being driven by Apple, who is requesting water deliveries by the summer of 2016. Sunnyvale's share is anticipated to be half of the amount not covered by Cal Water and Apple. The project costs include construction management and contingencies.

A second agreement will be submitted this fall for Council consideration that addresses institutional arrangements for establishing a wholesaler-retailer framework between Sunnyvale and the District for both non-potable and potentially potable recycled water partnerships, as well as sharing the construction costs for the Wolfe Road project. The District is currently working with both Cal Water and Apple on parallel agreements.

Sunnyvale's total budget in FY 13-14 thru FY 15-16 for the project including design and construction is approximately \$2.1 million. Should total cost of the project be higher than \$10.5 million resulting in Sunnyvale's half of the cost it is proposing to share with the District being more than \$2.1 million, the following options are available:

- 1) Find another source of outside funding. This could include additional funding from the existing partners (Cal Water, Apple, and the District) as well as funding from other sources such as the State, the Federal government, and other potential recycled water users along the Wolfe Road alignment. The State and Federal government have a long history of providing funding assistance on recycled water projects. Sunnyvale and the Water District are actively pursuing all sources of funding at this time.

- 2) Reallocate funds within the water and wastewater project budgets. The funding of recycled water projects is integrated within the larger water and wastewater capital improvement programs. The Council has established the recycled water infrastructure as a priority for funding. The distribution of funds among the sewer collection systems, the Water Pollution Control Plant, the potable water system, and the recycled water system can be adjusted to reflect the Council priorities for recycled water relative to the other program needs. If additional funds are needed, staff will propose a reallocation of funds to cover the increase.

FISCAL IMPACT

The total cost of design of the project is estimated at \$1,250,000, including a 20% contingency. Sunnyvale's 50% share of the cost is up to \$625,000, with a maximum payment of \$300,000 in fiscal year 2013-14 and any remaining balance to be paid in fiscal year 2014-15. Funds are available in Capital Project 829450 – Recycled Water Interconnect.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

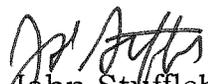
ALTERNATIVES

1. Adopt the Mitigated Negative Declaration for the Wolfe Road Recycled Water Project and approve the Cost Share Agreement with the District for the engineering design of the Wolfe Road Recycled Water Project
2. Do not adopt the Mitigated Negative Declaration for the Wolfe Road Recycled Water Project and do not approve the Cost Share Agreement with the District for the engineering design of the Wolfe Road Recycled Water Project

RECOMMENDATION

Staff Recommends Alternative 1: Adopt the Mitigated Negative Declaration for the Wolfe Road Recycled Water Project and approve the Cost Share Agreement with the District for the engineering design of the Wolfe Road Recycled Water Project

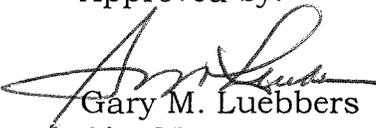
Reviewed by:



John Stufflebean, Director, Environmental Services Department

Prepared by: Mansour Nasser, Water & Sewer Systems Division Manager

Approved by:



Gary M. Luebbers
City Manager

Attachments

- A. Mitigated Negative Declaration
- B. Sunnyvale-District Cost Sharing Agreement



Environmental Services Department
 City of Sunnyvale
 P.O. Box 3707
 Sunnyvale, California 94088-3707

DRAFT MITIGATED NEGATIVE DECLARATION

The Director of Environmental Services Department has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

NAME OF PROJECT: Wolfe Road Recycled Water Project

PROJECT DESCRIPTION: The project consists of improvements to the existing San Lucar Pump Station and the construction of a new recycled water pipeline down Wolfe Road to Homestead Road, approximately 13,500 linear feet.

PROJECT LOCATION & ASSESSORS PARCEL NO.: The project would be located along Wolfe Road, from the San Lucar Pump Station (approximately 0.25 miles south of Central Expressway) to Homestead Road.

APPLICANT CONTACT INFORMATION: Mansour Nasser, P.E., Environmental Services Department, 456 W. Olive Ave, Sunnyvale, CA 94086. Phone (408) 730-7578.

FINDING

The Director of Environmental Services Department finds the project described above will not have a significant effect on the environment in that the attached initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

- I. **AESTHETICS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- II. **AGRICULTURE RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- III. **AIR QUALITY** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- IV. **BIOLOGICAL RESOURCES** – Due to the presence of potential migratory bird nesting habitat in the vicinity of the project area, the mitigation measure below will be implemented to avoid any direct and indirect effects to migratory birds during construction.

To minimize and avoid potential direct and indirect impacts to migratory bird species and in conformance with the Migratory Bird Treaty Act, pre-construction nesting bird surveys shall be conducted for all construction activity occurring within the nesting season (generally extending from February 1st to August 31st). Surveys shall be conducted no more than 7 days prior to any construction activity in areas within or directly adjacent to the construction disturbance area. All surveys shall be done by a qualified biologist in conformance with CDFG survey protocol for migratory birds. If ground-disturbing activities are delayed for more than 30 days after the pre-construction survey, the site must be re-surveyed.

- V. **CULTURAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- VI. **GEOLOGY AND SOILS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- VII. **HAZARDS AND HAZARDOUS MATERIALS** – Due to the presence of potential hazardous materials in the vicinity of the project area, the mitigation measures below will be implemented to help ensure avoidance of any potential direct and indirect effects to the community caused by disturbances to these materials.

Prior to any construction activities, the construction contractor shall conduct an initial site investigation to help confirm the absence of contaminated soil or groundwater that may exist within the area to be excavated. Additional investigations may be required based on the results of the initial investigation. Regardless of the results of the investigation, any hazardous materials that are found during construction of the pipeline would be handled in compliance with applicable laws and regulations regarding transport, handling, disposal, and storage. All federal, state, and local reporting requirements would be followed regarding the use and handling of hazardous and non-hazardous materials at the project site.

- VIII. **HYDROLOGY AND WATER QUALITY** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- IX. **LAND USE AND PLANNING** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- X. **MINERAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XI. **NOISE** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XII. **POPULATION AND HOUSING** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XIII. **PUBLIC SERVICES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XIV. **RECREATION** – The project will not have a significant impact on this resource, therefore no mitigation is required.

XV. TRANSPORTATION / TRAFFIC – The project will not have a significant impact on this resource, therefore no mitigation is required.

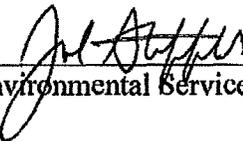
XVI. UTILITIES AND SERVICE SYSTEMS – The project will not have a significant impact on this resource, therefore no mitigation is required.

XVII. MANDATORY FINDINGS OF SIGNIFICANCE – The project will not substantially reduce the habitat of a fish or wildlife species, be cumulatively considerable, or have a substantial adverse effect on human beings, therefore no additional mitigation is required.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on November 7, 2012, any person may:

1. Review the Draft Mitigated Negative Declaration (MND) as an informational document only;
or
2. Submit written comments regarding the information, analysis, and mitigation measures in the Draft MND. Before the MND is adopted, staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND.

 _____, Director
Environmental Services Department

Circulated on: October 19, 2012

Adopted on: _____

**COST SHARING AGREEMENT BETWEEN CITY OF SUNNYVALE
AND SANTA CLARA VALLEY WATER DISTRICT
FOR THE PLANNING AND DESIGN OF THE WOLFE ROAD PIPELINE**

This Cost Sharing Agreement (“Agreement”) is made and entered into on September ____, 2013 (“Effective Date”), by and between the City of Sunnyvale, a municipal corporation (“Sunnyvale”), and Santa Clara Valley Water District, an independent special district created by Legislature of the State of California (“District”). Sunnyvale and District hereinafter may be referred to individually as “Party” or collectively as “Parties”.

RECITALS

- A. **Whereas**, the Parties are actively involved in efforts to develop recycled water supplies; and
- B. **Whereas**, the Parties recognize that sustainable water resource management requires integration of water supply and wastewater discharge limitations; and
- C. **Whereas**, the Parties have a mutual interest in expanding the distribution of recycled water; and
- D. **Whereas**, the District's Board of Directors has reaffirmed its commitment to recycled water by passing Resolution 97-60 in support of the expanded use of recycled water; and
- E. **Whereas**, the Parties desire that the District plan and design a recycled water pipeline and pumping station as generally shown in Exhibit A (which is incorporated into this Agreement by this reference), which will enable the delivery of Sunnyvale recycled water to Apple Computer's new 175-acre campus located near Interstate 280 Highway in Cupertino (“Wolfe Road Pipeline”); and
- F. **Whereas**, the Parties desire to contribute equally to the District's cost to plan and design the Wolfe Road Pipeline; and
- G. **Whereas**, the Parties understand neither Party is making any representation that it will commit resources to actually construct the Wolfe Road Pipeline other than the financial commitment agreed to by the Parties in this Agreement to plan and design the Wolfe Road Pipeline.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE MUTUAL PROMISES HEREINAFTER PROVIDED, THE PARTIES AGREE AS FOLLOWS:

1. **PLANNING AND DESIGNING WOLFE ROAD PIPELINE.** The District shall plan and design the Wolfe Road Pipeline. District may use outside consultants and contractors to assist it with those efforts. All services to be furnished by the District under this Agreement shall be of the professional standard and quality prevailing among engineers with the necessary professional expertise and skill engaged in engineering practice to plan and design a project such as the Wolfe Road Pipeline. Each Party shall appoint a representative that will meet regularly until the Wolfe Road Pipeline design is completed. The District representative shall keep Sunnyvale's representative reasonably informed of the District progress and of any significant pending issues and actions that may arise during those efforts.
2. **REVIEW OF NINETY PERCENT DESIGN.** Upon completion of ninety percent design of the Wolfe Road Pipeline (“Ninety Percent Design”), the District shall provide Sunnyvale with an opportunity to review said design and provide the District with comments within fifteen (15) working days. If District receives comments from Sunnyvale within fifteen (15) working days of Sunnyvale receiving the Ninety Percent Design, the District shall review Sunnyvale's comments and exercise its independent discretion on whether to incorporate any or all of Sunnyvale's comments into the final one hundred percent design

drawings and specifications. If Sunnyvale's comments are not included in the final one hundred percent design drawings and specifications, the District shall provide Sunnyvale with a written explanation.

3. PLANNING AND DESIGN SCHEDULE. The District will use its best efforts to adhere to the planning and design schedule shown below:

Task	Completion Date
Complete Planning of Wolfe Road Pipeline	October 31, 2013
Complete Design of Wolfe Road Pipeline	January 31, 2015

The dates specified in the above schedule are estimates only and are based on information currently available to the District. The estimated dates assume that no events beyond the reasonable control of the District will contribute to the delay of planning and designing the Wolfe Road Pipeline, including, but not limited to, the initiation of any third-party lawsuit. Failure to complete a milestone by its applicable date shall not be considered a breach of this Agreement, but rather should prompt the Parties to work together to evaluate the cause of the delay and assess how to continue to make progress towards completing the Wolfe Road Pipeline design.

4. FUNDING. The total estimated cost to plan and design the Wolfe Road Pipeline is \$1,250,000. If at any time during the term of the Agreement, the District obtains information that reasonably indicates that the actual total cost to plan and design the Wolfe Road Pipeline will exceed the total estimated cost of \$1,250,000, then District will inform Sunnyvale of those additional costs before incurring additional costs, and the Parties shall negotiate in good faith in order to agree to a reasonable increase of the total estimated cost. Sunnyvale shall have no obligation to share costs exceeding the total estimated cost absent mutual agreement.

The District and Sunnyvale shall equally share in all the total estimated cost of \$1,250,000 (and any mutually agreed upon increase, if any, of that total estimated cost) to plan and design the Wolfe Road Pipeline ("Eligible Costs"). The Parties understand that the total estimated cost not only includes the cost of contractors and consultants retained by the District to plan and design the Wolfe Road Pipeline, but also includes the cost of materials, supplies, equipment, and the District technical and engineering personnel used to perform the work.

5. INVOICING. After each calendar quarter, the District shall itemize the Eligible Costs and submit an invoice to Sunnyvale to recover one-half of the Eligible Costs. Each invoice shall be accompanied with a statement of all Eligible Costs incurred by District during the invoiced calendar quarter and reasonable supporting documentation. Notwithstanding the foregoing, if one-half of the Eligible Costs incurred from the Effective Date through June 30, 2014 exceeds \$300,000, then the District will defer invoicing Sunnyvale on said excess amount (i.e. the amount in excess of \$300,000) until the first calendar quarter after July 1, 2014. For example, if the total Eligible Costs incurred from the Effective Date through June 30, 2014 is \$800,000, Sunnyvale is responsible for reimbursing the District one-half of this \$800,000, which is equal to \$400,000. The District will only invoice Sunnyvale \$300,000 of this \$400,000 amount prior to June 30, 2014. The remaining \$100,000 of the \$400,000 will be invoiced the first calendar quarter after July 1, 2014.

6. PAYMENT. Sunnyvale shall pay all undisputed invoices within thirty (30) calendar days of receipt. Sunnyvale may in good faith assert a bona fide dispute as to all or any portion of the invoice. All amounts not in dispute will be paid within thirty (30) calendar days of receiving the invoice. However, if any portion of the invoiced amount is subject to a bona fide dispute, then within twenty (20) calendar days of receiving the invoice, Sunnyvale will notify the District in writing of the specific items that are in dispute, and will describe its rationale for disputing each such item. Representatives from Sunnyvale and District shall act in good faith to resolve the dispute in a timely manner.

7. **TERM.** The term of this Agreement is from the Effective Date through the later of: (i) the date the design of the Wolfe Road Pipeline is finalized; or (ii) June 30, 2014 inclusive, subject to the provisions of Section 11 of this Agreement.

8. **INDEPENDENT CONTRACTOR.** The Parties, in the performance of the tasks to be performed by each, will each act as and be an independent contractor and not an agent or employee of any other Party. As independent contractors, the Parties are responsible for tasks performed by their agents, contractors, consultants, or employees. Each Party agrees to indemnify and hold harmless any other Party from any claim that may be made by its agents, contractors, consultants, or employees for benefits or compensation.

9. **INDEMNIFICATION.** Pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, employees, and agents, harmless from any damage or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with any work performed or authority delegated to such party under this Agreement. No party, nor any officer, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other parties hereto, their officers, employees or agents, under or in connection with any work performed or authority delegated to such other parties under this agreement. Nothing contained herein will be construed as a waiver of any immunities or defenses that a Party may have under applicable provisions of law, including the provisions of the California Tort Claims Act (Govt. Code §810 et seq.). This provision will survive expiration or termination of this Agreement.

10. **NONDISCRIMINATION.** Each Party shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, or any other legally protected category, in connection with or related to the performance of this Agreement.

11. TERMINATION.

(a) Each Party has a right to terminate this Agreement for convenience, without cause, by giving not less than thirty (30) calendar days written notice of termination to the other Party.

(b) If any Party fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, any of the other Party may terminate this Agreement immediately upon written notice.

12. **GOVERNING LAW.** This Agreement will be governed by the laws of the State of California.

13. **COMPLIANCE WITH LAWS.** Each Party shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

14. **CONFLICT OF INTEREST.** Each Party will avoid all conflict of interest or appearance of conflict of interest in performance of this Agreement.

15. **NOTICES.** All notices and other communications required or permitted to be given under this Agreement will be in writing and will be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective Parties as follows:

To SUNNYVALE:

John Stufflebean, Director,
City of Sunnyvale - Environmental Services Department

456 W. Olive Ave
Sunnyvale, Ca 94086

To DISTRICT: Jim Fiedler, Water Utility Enterprise Chief Operating Officer
Santa Clara Valley Water District
5750 Almaden Expressway
San José, CA 95118

Notice will be deemed effective on the date personally delivered or, if mailed, three (3) calendar days after deposit in the mail.

16. VENUE. In the event that suit is brought by any Party to this Agreement, the Parties agree that venue will be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

17. SEVERABILITY. In the event that any provision of this Agreement is prohibited by any law governing its construction, performance or enforcement, such provision shall be ineffective to the extent of such prohibition without invalidating thereby any of the remaining provisions of the Agreement.

18. ENTIRE AGREEMENT. This Agreement represents the entire understanding of the Parties as to those matters contained herein. No prior oral or written understanding will be of any force or effect with respect to those matters covered hereunder. This Agreement may only be modified by a written amendment duly executed by the Parties to this Agreement.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

CITY OF SUNNYVALE
A Municipal Corporation

By: _____

Gary Luebbers
City Manager

SANTA CLARA VALLEY WATER DISTRICT
An independent special district created by
Legislature of the State of California

By: _____

Beau Goldie,
Chief Executive Officer

Exhibit A

Map of Proposed Wolfe Road Pipeline

