COUNCIL AGENDA: 05-03-22
FILE: 22-609
ITEM: 3.3

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Matt Cano
Kerrie Romanow

SUBJECT: SEE BELOW

DATE: April 18, 2022

Approved Jennifer A. Maguire

Date **4/20/2022**

SUBJECT: GREAT OAKS WATER COMPANY APPLICATION FOR RENEWAL OF A POTABLE WATER FRANCHISE

RECOMMENDATION

(a) Hold a public hearing on the Great Oaks Water Company application for renewal of a potable water franchise per San José Municipal Code Section 15.40.720.
(b) Approve an uncodified ordinance, to extend the term of the Great Oaks Water Company nonexclusive franchise until July 1, 2032, with no change in any other terms and conditions of the franchise.
(c) Approval of a Memorandum of Understanding with Great Oaks Water Company regarding Great Oaks Water Company's shared commitment to explore future pilot project partnerships with the City.

OUTCOME

Great Oaks Water Company (Great Oaks) will continue to operate and maintain a potable water retail distribution system for retail distribution of potable water. Under San José Municipal Code Section 15.40.730, the renewed potable water franchise will be accepted by continued operation and distribution of water and the filing of a performance bond and applicable insurance requirements.

BACKGROUND

The public's health, safety, and welfare require that the City of San José (City) regulate the business of the retail distribution of potable water, utilizing pipes and other appurtenances located within public streets. Great Oaks is an existing retail distributor of potable water in the City since the early 1960s, serving over 20,000 customers in the Blossom Valley, Santa Teresa, Edenvale, Coyote Valley, and Almaden Valley areas in the southeast of San José. In 1995, Great Oaks was granted a City franchise for the distribution of potable water for a 20-year term. In 2015, the City renewed the franchise for an additional five years which expired July 1, 2020. On

June 8, 2021, City Council retroactively extended the franchise until July 1, 2022. This action renews the franchise for an additional ten years, through July 1, 2032.

ANALYSIS

In accordance with San José Municipal Code Section 15.40.710, Great Oaks filed an application with the City for renewal of its potable water franchise on September 28, 2020. In its application, Great Oaks requested a term of no less than 20 years under the same terms and conditions as the existing franchise. The notarized application was signed by person with authority to bind Great Oaks.

In 2021, the City's Department of Public Works reviewed all franchises spanning all utility types in the public right-of-way. A key finding is maximizing the franchise agreement process for mutual interests. For example, both parties want predictable franchise term lengths and do not want to increase costs for ratepayers. However, multi-decade terms reduce the ability to discuss shared interests and minimize the ability of a city to engage and secure partnership agreements to accomplish shared goals such as climate action, resiliency, and other programs. Therefore, staff recommends a franchise term of ten years, rather than Great Oaks' requested 20 years, to ensure periodic review of opportunities for both parties.

The San José Municipal Code requires the City Council to hold public hearing on the franchise application to provide the public with an opportunity to present evidence or otherwise be heard regarding the renewal of the franchise. The City Council may refuse to grant the requested franchise if it finds that the renewal is inimical to the public good. The City Council may consider whether the applicant is qualified to engage in supplying inhabitants of the city with potable water; the applicant's compliance with laws and regulations governing the supply and distribution of potable water; the applicant's income to the city through their monthly franchise fee; the applicant's experience and financial responsibility; and any other consideration that the Council determines will safeguard the interests of the city and its people.

In addition to the ten-year franchise renewal term, a separate Memorandum of Understanding is also a best practice to secure performance and partnership agreements not directly linked to the franchise. The Memorandum of Understanding states a shared commitment between Great Oaks and the City to remain open to partner on Smart City or other pilot project opportunities that may arise in the next ten-year period such as piloting new water conservation technologies and accelerating water supply resiliency options.

CONCLUSION

Great Oaks will continue to operate and maintain a potable water retail distribution system for retail distribution of potable water for ten years. Meanwhile, the Memorandum of Understanding enables better coordination for public safety and a shared commitment to partnership opportunities such as water system resiliency pilot projects over the term of the franchise.

EVALUATION AND FOLLOW-UP

No additional follow up actions with City Council are expected at this time.

CLIMATE SMART SAN JOSE

The recommendation has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This item will be posted on the City's website for the May 3, 2022, City Council agenda.

Per San José Municipal Code Section 15.40.720, the City Clerk published a description of the application, including the time and place of the public hearing, in a newspaper of general circulation in the City at least five days prior to May 3, 2022, hearing.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, Planning, Building and Code Enforcement, and the City Manager's Budget Office.

COMMISSION RECOMMENDATION/INPUT

No Commission recommendation or input is associated with this action.

COST SUMMARY/IMPLICATIONS

With the recommended renewal of the potable water franchise, Great Oaks will continue to make payment of a franchise fee, approximately $20,000, to the City on a monthly basis, per San José Municipal Code Section 15.40.410.

CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/
MATT CANO
Director, Public Works

/s/
KERRIE ROMANOW
Director, Environmental Services

For questions, please contact J. Guevara, Deputy Director, Department of Public Works at 408-807-1801.