Board Agenda Item 60

DATE: June 10, 2025

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director
Department of Public Works and Planning

SUBJECT: Resolution of Intention to Grant a Franchise to RT Diversified, Inc.; Setting dates for Public Protest Hearing and further actions.

RECOMMENDED ACTION(S):

1. **Pass and authorize the Chairman to execute a Resolution of Intention to grant up to a 25-year franchise on a non-exclusive basis (the "non-exclusive franchise"), by Ordinance, to RT Diversified, Inc., DBA Bakman Water Company, (also referred to as "RTD"), on behalf of Clovis Unified School District ("CUSD"), upon annual payment of a franchise fee to the County, to construct, maintain and use pipes and appurtenances for transmitting water and wastewater for CUSD's Terry Bradley Education Center Project ("Bradley Center" project) for any and all purposes, as allowed by a County-approved conditional use permit and/or road permit condition, in, along, across, upon, and under approximately 4.8 miles of the following public streets and highways within the unincorporated area of Fresno County: from the existing City of Fresno water main at McKinley Avenue, east of Temperance Avenue, eastward on E. McKinley Avenue, and then Northward on N. Leonard Avenue, to Shields Avenue, westward on Shields Avenue to a Shields and Locan terminus where the City is in the process of installing water and sewer mains, and along the streets surrounding the Bradley Center of Leonard, Weldon, Highland, and Princeton Avenues.**
2. **Set July 8, 2025, at 9:30 a.m. or as soon thereafter as may be heard for the public protest hearing, as required by Public Utilities Code Section 6232, for the Board to hear and pass upon on any protest, including any objections, made against granting of the non-exclusive franchise, and for the Board's first reading of the proposed Ordinance that would grant the non-exclusive franchise, with the Board's second reading of the proposed Ordinance expected to follow on August 5, 2025, at 9:30 am or as soon thereafter as may be heard; and further reading of the proposed Ordinance expected to be waived at the time of its introduction and passage.**
3. **Direct the Clerk of the Board to publish notice of the public protest hearing in a newspaper of general circulation within the County, at least once within fifteen (15) days after the passage of the Resolution.**

The recommended actions will initiate the process to enable your Board to consider granting of up to a 25-year non-exclusive franchise to RTD that would allow them, upon annual payment of a franchise fee of two percent (2%) of its gross annual receipts derived from the connected network to the County, to construct, maintain and use pipes and appurtenances for transmitting water and wastewater to service CUSD's Bradley Center for any and all purposes, as allowed by a County-approved conditional use permit and/or road permit condition, in, along, across, upon, and under the foregoing public streets and highways, under Division 3, Chapter 2 of the California Public Utilities Code. A location map is attached hereto as Attachment 1. The recommended actions comprise a component of the larger Bradley Center project. The

proposed pipeline system would be constructed along approximately 4.8 miles of County roadway.

The first recommended action requests your Board to pass a recommended Resolution declaring your Board's intention to grant the non-exclusive franchise. Your Board's passage of the Resolution would initiate these proceedings. This recommended action does not grant the non-exclusive franchise.

The second recommended action requests your Board to set a public protest hearing for all persons having any objection to the granting of the non-exclusive franchise to appear before your Board and be heard on that matter at such date and time. If no protest in writing is delivered to the Clerk of the Board up to the hour set for the protest hearing, or such protests as are filed have been heard and determined by your Board to be insufficient, or have been overruled or denied, then your Board may grant the non-exclusive franchise by proceeding with the ordinance adoption process. That process involves your Board conducting the first and second ordinance readings and passage and waiving further reading of the proposed ordinance at the time of its introduction and passage.

The third recommended action directs the Clerk of the Board to provide publication notice of the public protest hearing.

This item pertains to a location in District 5.

ALTERNATIVE ACTION(S):

Your Board may decline to adopt the recommended Resolution, which will result in your Board not considering (i.e. not holding the public hearing to consider) granting the non-exclusive franchise to RTD.

In determining whether to decline to adopt the recommended Resolution, your Board may take into account the two percent (2%) annual franchise fee rate (discussed below in the Fiscal Impact section), which was proposed by RTD in its application for the requested non-exclusive franchise. That franchise fee rate is one of the lawful options that an applicant may propose when requesting a non-exclusive franchise for nonpublic potable water and wastewater transmission, which are the types of pipelines here (Pub. Util. Code, § 6231). The other lawful options for an annual franchise fee that the applicant may propose are that the applicant will pay to the County during the life of the franchise:

1. A specified percentage agreed to by the applicant and the County of the gross annual receipts of the applicant arising from the use, operation, or possession of the franchise;

2. An annual franchise fee in an amount agreed to by the applicant and the County; or

3. An annual franchise fee computed by multiplying the sum of one-half cent ($0.005) times the nominal internal diameter of the pipe, expressed in inches (here, 8"-27" at present), times the number of lineal feet of the pipe (here, approximately 34,500 total lineal feet for both pipelines) within the public streets, ways, alleys, or other public places within the County; but this calculation would only result in a flat annual fee of $3,000 - $3,200, depending on the final diameter.

(Pub. Util. Code, § 6231)

If your Board believes that the two percent (2%) annual franchise fee rate is unacceptable, and declines to adopt the recommended Resolution, this item will not proceed, but your Board may direct the Department to return to RTD and CUSD to ask RTD to resubmit a new application for the franchise based one of the foregoing options for franchise fee rates desired by your Board.

However, the pipeline is currently under construction. The City of Fresno originally indicated that they would accept the pipeline into their service network and operate it, which would've circumvented the need for an additional Franchisee to operate the system, but the City has since indicated that they will decline to accept

ownership or operational responsibilities.

FISCAL IMPACT:

There will be no net County cost associated with the recommended actions. Clovis Unified is reimbursing the County for all staff time and any other costs associated with the Bradley Center project.

The recommended non-exclusive franchise requires that RTD and CUSD shall annually, from the date of the granting of the non-exclusive franchise, pay a franchise fee of two percent (2%) (under the authority of the Public Utilities Code section 6231) of its gross annual receipts to the County, arising from the use, operation or possession of the non-exclusive franchise each and every year for the life of the franchise, and in the event such payment is not made the non-exclusive franchise will be forfeited. "Gross annual receipts" means all income received by RTD under operation of the Franchise, and separate from other payments, reimbursements, or franchise fees payable or paid to the County.

The County currently deposits funds from grants of franchises into the General Fund as allowed by Government Code, section 26001.5, and the funds from the recommended non-exclusive franchise, if granted, will be deposited into the General Fund, unless otherwise directed by your Board.

DISCUSSION:

The recommended actions in this item comprise a component of a larger project, namely CUSD's Bradley Center Project. Other approvals will be necessary, including your Board approving a non-exclusive franchise as described above.

RTD is a licensed water and wastewater operator, has been engaged by CUSD to provide water and wastewater operations services in connection with the Bradley Center, and has submitted a written application requesting a franchise to construct, maintain and use pipes and appurtenances for transmitting water and wastewater for any and all purposes, as allowed by a County-approved conditional use permit and/or road permit condition, in, along, across, upon, and under public streets and highways within the unincorporated area of Fresno County. However, the recommended actions limit the franchise, on a non-exclusive basis, to transmitting water and wastewater, in, along, across, upon, and under the public streets and highways within the unincorporated area of Fresno County that are necessary to construct and maintain the pipeline network servicing the Bradely Center.

If approved by your Board, the ordinance granting the requested franchise (discussed below) will become effective thirty days after passage. The term of the proposed franchise is up to 25 years, and the franchise, if granted, would be on a non-exclusive basis.

To enable your Board to consider granting the non-exclusive franchise, Public Utilities Code section 6232 requires that your Board pass a Resolution of Intention to grant a non-exclusive franchise, by ordinance, including provisions for publishing a Notice of Protest Hearing relating to your Board's intention to the grant of the non-exclusive franchise, by ordinance, setting a date, time, and place where all persons objecting to the granting of the non-exclusive franchise may appear and be heard by your Board. That notice is to be published in a newspaper of general circulation once within 15 days after the passage of the recommended Resolution of Intention. The public protest hearing may not be sooner than 20 days or later than 60 days after the passage of the recommended Resolution of Intention.

Under the recommended Resolution of Intention, RTD shall, if granted the non-exclusive franchise, be required to file a bond running to the County of Fresno in the penal sum of $100,000.

The recommended Resolution of Intention sets the date and place of the public protest hearing for July 8, 2025. At the public protest hearing, your Board is to proceed to hear and pass upon all protests so made and its decision shall be final and conclusive, subject to the right of referendum of the people. If no protest in

writing is delivered to the Clerk up to the hour set for hearing, or such protests as are filed have been heard and determined by your Board to be insufficient, or have been overruled or denied, your Board may grant the non-exclusive franchise by ordinance adopted in the manner prescribed by law for the enactment of ordinances by the Board. The ordinance process involves your Board conducting the first and second ordinance readings and passage and waiving further reading of the proposed Ordinance at the time of its introduction and passage, as allowed under Government Code, sections 25120 - 25131.

If your Board desires to proceed with the ordinance adoption process, your Board may hold the first reading of the proposed Ordinance immediately following the conclusion of the protest hearing. The Department recommends that your Board set the first reading of the proposed Ordinance on July 8, 2025, and that your Board set a second reading of the proposed Ordinance for August 5, 2025. If adopted, the ordinance will become effective thirty days after its final passage, pending written acceptance of the non-exclusive franchise by RTD.

A copy of the draft of the proposed Ordinance is on file with the Clerk of the Board solely for informational purposes relating to this item.

A copy of the recommended Resolution of Intention, the proposed Publication Notice, and draft proposed Ordinance have been provided to RTD in advance of when this item was submitted to your Board.

California Environmental Quality Act:

The recommended actions comprise a component of a larger project, namely CUSD's Bradley Center project. Clovis Unified conducted an Initial Study, and adopted the resultant Mitigated Negative Declaration (MND) (SCH No. 2005101054) on February 2, 2024. The water and sewer facilities were contemplated within the scope of the project description and are consistent with any mitigation measures imposed on this project by the MND. Accordingly, the recommended actions comply with the California Environmental Quality Act because they are part of a project which has already undergone environmental review.

ATTACHMENTS INCLUDED AND/OR ON FILE:

Attachment 1 - Location Map
On file with Clerk - Resolution of Intention, including Publication Notice
On file with Clerk - Draft Proposed Ordinance

CAO ANALYST:

Maria Valencia