



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: September 4, 2018
TO: James N. Holgersson, Interim City Manager
FROM: Andrew Clough, Public Works Director
SUBJECT: **Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Execute The Joint Exercise Of Powers Agreement (JPA) And All Other Implementing Agreements Of The Collection System Technical Advisory Committee (CSTAC)**

RECOMMENDATION

Staff recommends that the City Council approve the attached resolution authorizing the City Manager to execute the Joint Exercise of Powers Agreement (JPA) establishing and governing operation of the Collection System Technical Advisory Committee (CSTAC) and the Defendants' Side Agreement to facilitate Consent Decree (CD) compliance.

BACKGROUND

The City is a Defendant in the September 2014 Consent Decree (CD) issued by the Federal Government and State of California. The eight Defendants include East Bay Municipal Utility District (EBMUD) and the seven agencies tributary to the EBMUD wastewater system of wet weather facilities and wastewater treatment plant. The CD requires significant work by all Defendants over a 22-year period with the purpose of eliminating the use of wet weather facilities for flows up to and including design storm events, includes penalties for failure to complete work and failure to meet flow reductions, and processes for potential revisions to future work if flow reductions are not achieved as planned. The Defendants are linked through their use of wet weather facilities during high flow periods, as well as through their joint use of the EBMUD treatment plant. The work and the effectiveness (or not) of work in individual Defendant's systems affects the results of the entire system, so there is a definite interrelationship that necessitates the need for good communications and joint efforts in the Defendant group.

The City already has a formal relationship with EBMUD and the six other wastewater "satellite" agencies (eight total "members") that are tributary to EBMUD via an existing joint powers agreement (existing JPA) that was adopted in 1979 and amended in 1986. This existing JPA formed no new public entity and was developed in response to the need for these agencies to combine resources to address inflow/infiltration regulatory concerns and orders in the 1970s and 1980s. The existing JPA has enabled the agencies to contract for and administer common collection system services, realizing cost savings over contracting as individual agencies because of the economies of scale evident due to the magnitude of the contracts. EBMUD serves as the lead agency and is responsible for entering into contracts on behalf of the agencies and providing financial and administrative services to the group.

The existing JPA is outdated in that its specific stated purposes have been outlived or superseded, it is not applicable to current issues and requirements the agencies face, and a new agreement needs to be made to address requirements in the 2014 CD to which all members are subject. The new JPA agreement was developed with the input and review of all eight JPA members and all have scheduled approval by their governing bodies in September 2018. Similar to the previous JPA, this new JPA forms no new public entity. Approval of this agreement replaces and supersedes the previous agreement and amendment.

During the CD negotiations, in addition to revising the JPA, the Defendants' technical and legal staffs also recognized the possibility that revised work and evaluation plans may be imposed by the terms of the CD, and these plans may cause interrelated activities and requirements for some or all of the Defendants or JPA members. It was also recognized that there could be disputes among the members regarding these potential future plans and an agreement was needed in advance of the time such plans may be developed. Successful flow reduction in individual members' systems affects overall results of all members, therefore, the staffs of the eight Defendant agencies initiated a project to develop this "side agreement" to a new JPA in order to define how any future imposed work plans would be devised and implemented by Defendants or members. The side agreement was developed with the input and review of all eight Defendants, or JPA members, and all have scheduled approval by their governing bodies in September 2018, along with the new JPA.

DISCUSSION

EBMUD and the seven agencies tributary to the EBMUD wastewater system of wet weather facilities and wastewater treatment plant will be parties to this new JPA that will provide the means for the eight member agencies (members) to:

- Coordinate on engineering, consulting, and possible legal services for the development, preparation and implementation of studies, reports, and projects to address NPDES permit conditions for the members
- Jointly fund efforts related to the regional system for wastewater collection, transmission and treatment, including fats, oils, and greases (FOG) services and agreed-upon professional services
- Facilitate the efficient flow of information among the members and the filing of joint reports to appropriate recipients, including regulatory agencies

The new JPA includes the following:

- Ability to designate one or more member agencies as being responsible for financial and administrative matters
- Financial responsibility of each member for administrative overhead costs, as well as proportional responsibility for each contractual commitment
- A governance structure comprised of representatives from each of the signatory agencies, and the authority with regard to decision-making and contracting

- An opt-out provision for contracts entered into – participation in contracts is discretionary – at the option of each member, so no member is obligated to participate in any contract unless it so chooses
- The ability of a member to withdraw from the JPA
- Ability to designate one member to be responsible for banking and recordkeeping, and the process for replacing that member if required or necessary

The side agreement includes the following:

- A specified arbitration process to settle any disagreements among the CD Defendants (members) regarding Revised Work Plans that could potentially be required under the terms of the CD
- Roles and Responsibilities for all Defendants, other than the City of Berkeley who has their own program, regarding the Private Sewer Lateral (PSL) program
- Cost Allocation for Performance Evaluation Plan (PEP) implementation in the event that a PEP is required under the terms of the CD

The CD requires all Defendants to perform numerous interrelated actions over the course of the CD and this side agreement will help facilitate CD compliance. It is important that this side agreement is approved prior to the potential, future imposition of revised work plans or PEPs a few years from now, since the Defendants could likely have significant disagreements as to these plans if they are imposed, rendering unanimous agreement in the future difficult.

FISCAL IMPACT

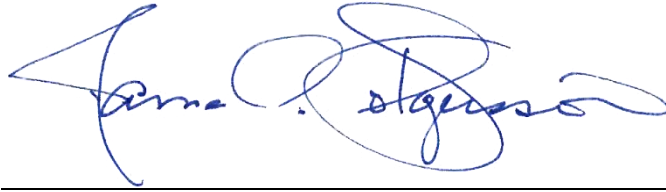
No immediate fiscal impact. The new JPA and side agreement may result in future cost savings for contracted sanitary sewer services that would otherwise be contracted for directly by the City.

STAFF COMMUNICATION WITH THE PUBLIC

There was no significant, non-routine staff communication with the public.

PREPARED BY: Keely Nelson, Associate Civil Engineer

**APPROVED AND FORWARDED TO THE
CITY COUNCIL OF THE CITY OF EMERYVILLE:**

A handwritten signature in blue ink, appearing to read "James N. Holgersson", is written over a horizontal line.

James N. Holgersson, Interim City Manager

ATTACHMENTS

- Draft Resolution
- Joint Exercise of Powers Agreement (JPA)
- Side Agreement