



Office of the City Manager

CONSENT CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Phillip L. Harrington, Director, Public Works Department

Subject: Funding for the East Bay Communities and East Bay Municipal Utility District Joint Exercise of Powers Agreement and Defendants' Side Agreement for the Control of Wet Weather Overflows and Bypasses and Consent Decree Compliance

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to make payments to the Administrative Agency and Financial Agent (East Bay Municipal Utility District) for administering duties in accordance with the terms and conditions of the Joint Exercise of Powers Agreement and the Defendants' Side Agreement to control the wet weather overflows and bypasses for the 5-year period from FY 2020 through FY 2024 in an amount not to exceed \$1,000,000.

FISCAL IMPACTS OF RECOMMENDATION

Staff projects Berkeley's 5-year total cost will be approximately \$1,129,301 from FY 2020 through FY 2024 as shown in Attachment 2. A portion of the cost for FY 2020 will be offset by using funding previously contributed by Berkeley in the amount of \$129,301. The total funding required to pay the remainder of FY 2020 costs (amounting to \$109,569) plus future costs through FY 2024 is \$1,000,000. The remainder cost for FY 2020 (\$109,569) is available in the FY 2020 Sewer Fund (611-54-623-679-0000-000-472-612990). Funding for the future years will be subject to appropriation in future fiscal year budgets.

CURRENT SITUATION AND ITS EFFECTS

The current Joint Power's Authority (JPA) and Defendants' Side Agreement (DSA) were executed on August 6, 2019 as authorized by City Council Resolution No. 69,056-N.S. to meet the requirements of the September 2014 Consent Decree (CD) filed by the Federal Government and the State of California. The JPA members include the Cities of Alameda, Albany, Berkeley, Emeryville, and Piedmont, Stege Sanitary District, and East Bay Municipal Utility District (EBMUD). The JPA members selected EBMUD to continue in the role of the Administrative Agency and Financial Agent for the JPA. EBMUD led the effort to develop the implementation program, work plan and budget, on an annual basis for approval by the JPA members. The program includes professional field services for smoke testing, cleaning and inspection of larger diameter pipes, root control foaming, Fats, Oil, & Grease (FOG)

control as determined by City staff. The costs for studies and projects of general and special benefit were apportioned to the JPA members in accordance with the terms and conditions of the current JPA and DSA.

The work needed to meet the requirements of the CD for FY 2020 will exhaust the \$129,301 remaining from prior authorizations and in the fund balance with EBMUD. The \$1,000,000 will fully fund the additional \$109,569 required for FY 2020 and a total of \$890,431 for work from FY 2021 through FY 2024.

Authorizing the City Manager to make payments in accordance with the JPA supports the City's Strategic Plan goal of providing state-of-the-art, well-maintained infrastructure, amenities, and the goal of advancing environmental justice, and protecting the environment.

BACKGROUND

The current JPA and DSA (authorized by City Council by Resolution 69,056—N.S.) replaces and supersedes previous agreements dating back to 1979. The current JPA facilitates the implementation of programs needed to meet the requirements of the CD. The CD requires significant work by the City over a twenty-two (22) year period with the purpose of eliminating the use of EBMUD's wet weather facilities for discharges during 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 JPA members are linked through their use of the wet weather facilities during high flow periods, as well as through their joint use of the EBMUD treatment plant. The work and the effectiveness of work in an individual JPA member's system affects the results of the entire system, so there is a definite interrelationship that necessitates the need for good communications and joint efforts afforded through the current JPA.

ENVIRONMENTAL SUSTAINABILITY

Funding the current JPA and DSA has a direct benefit to protect the water quality of the San Francisco Bay by reducing wastewater discharges and overflows.

RATIONALE FOR RECOMMENDATION

The most cost effective and reasonable approach to comply with the CD is to work collaboratively with the other member agencies.

ALTERNATIVE ACTIONS CONSIDERED

No other alternative actions were considered as the agreements are required to comply with the Consent Decree.

CONTACT PERSON

Phillip L. Harrington, Director, Public Works (510) 981-6303

Andrew Brozyna, Deputy Director, Public Works (510) 981-6396

Nisha Patel, Manager of Engineering, Public Works (510) 981-6406

Daniel Akagi, Supervising Civil Engineer, Public Works (510) 981-6394

Tiffany Pham, Associate Civil Engineer, Public Works (510) 981-6427

Attachments:

1: Resolution

2: Planned Expenditures from FY 2020 through FY 2024

RESOLUTION NO. ##,###-N.S.

FUNDING FOR THE EAST BAY COMMUNITIES AND EBMUD JOINT EXERCISE OF POWERS AGREEMENT AND DEFENDANTS' SIDE AGREEMENT FOR THE CONTROL OF WET WEATHER OVERFLOWS AND BYPASSES

WHEREAS, on September 22, 2014, the City of Berkeley agreed to a Consent Decree filed by the Federal Government and the State of California to perform certain sanitary sewer capital improvements and maintenance work to control the use of East Bay Municipal Utility District's (EBMUD) wet weather facilities; and

WHEREAS, on July 23, 2019, the new Joint Exercise of Powers Agreement For Control of Wet Weather Overflows and Bypasses (JPA) and the Defendants' Side Agreement (DSA) were authorized by the City Council (Resolution No. 69,056—N.S.); and

WHEREAS, on August 6, 2019, the City Manager executed the JPA and the DSA allowing the City of Berkeley to join the City of Piedmont, City of Emeryville, City of Alameda, City of Albany and the Stege Sanitary District and EBMUD as a member of the JPA and DSA; and

WHEREAS, the City of Berkeley desires to participate in the JPA and DSA from FY 2020 through FY 2024; and

WHEREAS, the City will use \$129,301 remaining from prior authorizations to pay for the work required by the Consent Decree; and

WHEREAS, after the City depletes the remaining \$129,301 previously authorized, the estimated cost for required work from FY 2020 through FY 2024 is \$1,000,000; and

WHEREAS, \$109,569 is available in the Sewer Fund (611-54-623-679-0000-000-472-612990) to fully pay for the cost of FY 2020 work and the \$890,431 for FY 2021 through FY 2024 is subject to appropriation in future fiscal year budgets in the Sewer Fund (611-54-623-679-0000-000-472-612990).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to make payments to the Administrative Agency and Financial Agent in accordance with the terms and conditions of the JPA and the DSA for services provided from FY 2020 through FY 2024 in an amount not to exceed \$1,000,000.

ATTACHMENT 2

Planned Expenditures From FY 2020 Through FY 2024

Item No.	Program Descriptions	Proposed Budget					Total
		FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	
1a	Smoke Testing	\$85,000	\$130,000	\$130,000	\$130,000		
1b	Sewer Cleaning and Inspection (Large Diameter Pipe)	\$50,000		\$50,000		\$40,000	
1c	Root Foaming	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	
2	Management and Facilitation Services	\$2,857	\$2,857	\$2,857	\$2,857	\$2,857	
3	Contingency (10% of Items 1 and 2)	\$16,786	\$16,286	\$21,286	\$16,286	\$7,286	
4	Fog Control Program	\$50,108	\$50,346	\$50,346	\$50,346	\$50,345	
5	Program Costs	\$4,119	\$4,119	\$4,119	\$4,119	\$4,119	
	Total	\$238,870	\$233,608	\$288,608	\$233,608	\$134,607	\$1,129,301
	Previous Contribution by Berkeley	\$129,301					
	Required Funding by Fiscal Year	\$109,569	\$233,608	\$288,608	\$233,608	\$134,607	\$1,000,000

