

City of Piedmont
COUNCIL AGENDA REPORT

DATE: October 1, 2018

TO: Mayor and Council

FROM: Paul Benoit, City Administrator

SUBJECT: Consideration of Entering into Various Agreements related to the On-going Technical and Legal Activities of the East Bay Sewer Collection System Agencies

RECOMMENDATION

Approve the attached resolution authorizing the City Administrator to sign the following documents:

1. Joint Exercise of Powers (JEP) Agreement Establishing and Governing Operation of the Collection System Technical Advisory Committee.
2. Defendants' Side Agreement to Facilitate Consent Decree Compliance.
3. Statement of Roles and Responsibilities Between the City of Piedmont and the East Bay Municipal Utility District for Implementation of the Regional Private Sewer Lateral Program.

EXECUTIVE SUMMARY

This item includes three agreements related to the sanitary sewer program and the Consent Decree (CD) that was entered in September, 2014. The JEP Agreement replaces an outdated Joint Powers Agreement from 1986 that enables the agencies to cooperate on the sewer issues and programs. The Side Agreement will facilitate CD compliance and help in the resolution of issues that may arise. The PSL (Private Sewer Lateral) Roles & Responsibilities agreement defines and clarifies the critical activities, responsibilities and cooperation between Piedmont and EBMUD, much of which has already been occurring since 2011. These agreements are fully in line with provisions of the Consent Decree and has no negative or unanticipated impact on Piedmont.

BACKGROUND

The City was named as a defendant in the lawsuit *United States v. City of Alameda, et al.*, United States District Court, Northern District of California. Case No. CV 09-05684RS. A Consent Decree (CD) was entered in that case and a related case against EBMUD on September 22, 2014, between the United States Environmental Protection Agency (USEPA), the California State Water Resources Control Board (SWRCB) and the California Regional Water Quality Control Board, San Francisco Bay Region (SFRWB) as plaintiffs; and the East Bay Municipal Utility District (EBMUD), the Cities of Alameda, Albany, Berkeley, Emeryville, Oakland, and Piedmont, and the

Stege Sanitary District (Stege), as Defendants. The cities and Stege are collectively referred to as “Satellites,” each of which contributes flows from their respective wastewater collection systems into the EBMUD’s interceptor system, which includes three wet-weather flow treatment facilities (WWFs) and the main waste water treatment plant, which ultimately discharge into the San Francisco Bay.

For the last several years, as a part of the on-going East Bay sewer agency activities related to the Consent Decree and improvements to the City’s sanitary sewer system, agency staff and legal counsel determined the need to update several documents and establish new procedures. A copy of the agreements is attached.

The CD (i) requires significant work by all Defendants with the ultimate goal of eliminating discharges into the San Francisco Bay from the WWFs for storm events not bigger than the December 5, 1952 storm, addressing alleged sanitary sewer overflows, and decreasing inflow and infiltration, and (ii) includes penalties for failure to complete work and failure to meet flow reductions, along with processes for potential revisions to future, anticipated work if flow reductions are not achieved as planned. The work and the effectiveness of work in individual Defendant's sewer collection systems affects the results in the overall system.

DISCUSSION

JEP Agreement

The City already has a formal relationship with EBMUD and the six other 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. The JPA formed no new public entity, but was developed in response to the need for the agencies to combine resources to address sewer inflow and infiltration, regulatory concerns, and legal orders in the 1970’s and 1980’s. This group has gone by various acronyms/names over the years, the current group being named CSTAC – Collection System Technical Advisory Committee. The JPA 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. 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 the specific stated purposes for it are outlived; it is not applicable to the current issues and requirements the agencies face; and a new agreement needs to be made to address requirements in the CD. Similar to the JPA, this JEP forms no new public entity. Approval of this agreement replaces and supersedes the previous agreement and amendment.

This JEP will provide the means for the agencies to:

- Coordinate on engineering, consulting, and possible legal services for the development, preparation and implementation of studies, reports, and projects to address National Pollutant Discharge Elimination System (NPDES) permit conditions for the members.
- Jointly-fund efforts related to the regional system for wastewater collection, transmission and treatment, which may include payment for fats, oils, and greases (FOG) services and agreed-upon professional services (on a pro-rata basis).

- Facilitate the efficient flow of information among the members, including the filing of joint reports to appropriate recipients, including regulatory agencies.

The agreement includes the following:

- Ability to designate one or more member agencies as being responsible for financial and administrative matters, and the process for replacing that member if required or necessary.
- 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 regarding 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 JEP agreement.

Side Agreement

The side agreement will help facilitate CD compliance. It is important that this agreement is approved prior to the potential, future imposition of Revised Work Plans (RWPs) or Performance Evaluation Plans (PEPs) that may be required under the CD, since the Defendants could have significant disagreements as to these plans if they are imposed by the requirements of the CD, which could make unanimous agreement in the future difficult. The PEP would be a process or plan to improve the performance under the CD if progress is not being obtained in meeting the requirements of the CD. The side agreement includes the following:

- A specified, confidential arbitration process to settle any disagreements among the Defendants regarding RWPs that could potentially be required under the terms of the CD.
- Roles and Responsibilities for the Defendants, other than Berkeley, regarding the Regional Private Sewer Lateral (PSL) program operated by EBMUD (Berkeley maintains their own program).
- Cost Allocation for a PEP implementation in the event that a PEP is required under the terms of the CD.

PSL Roles & Responsibilities

As the side agreement was developed, a need for refinement of the private sewer lateral inspection and rehabilitation program was determined. This document is incorporated by reference into the Side Agreement. The EBMUD Regional Private Sewer Lateral (PSL) Program was implemented in 2011 to address leaking and defective sewer laterals. Affected property owners must obtain a certificate from EBMUD certifying that all of their PSLs are leak-free. Property owners may also voluntarily have their laterals tested and certified. The ordinance applies only if a property is sold or bought, if there is building or remodeling in excess of \$100,000, or if the size of the water meter needs to be changed.

This PSL Roles & Responsibilities agreement defines and clarifies the critical activities, responsibilities and cooperation between Piedmont and EBMUD.

All agreements were developed with the input and review of all eight agencies, both technical staff

and legal counsel.

FISCAL CONSIDERATIONS

There are no additional fiscal considerations resulting from these documents. The City's ongoing sewer operations and maintenance activities, along with ongoing technical support activities related to the Consent Decree, are funded annually through the Sewer Fund. The JEP and Side Agreements could result in cost savings for contracted common services that would otherwise be contracted for directly by the City.

CITY ATTORNEY REVIEW

The City Attorney has been closely involved in the development of these agreements and has reviewed and approved the attached resolution and agreements.

By: Chester Nakahara, Public Works Director
Mark Obergfell, Deputy City Engineer

Attachments

RESOLUTION No.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PIEDMONT, STATE OF CALIFORNIA, AUTHORIZING THE CITY ADMINISTRATOR TO SIGN THE AGREEMENTS FOR: THE JOINT EXERCISE OF POWERS (JEP) AGREEMENT ESTABLISHING AND GOVERNING OPERATION OF THE COLLECTION SYSTEM TECHNICAL ADVISORY COMMITTEE; THE DEFENDANTS' SIDE AGREEMENT TO FACILITATE CONSENT DECREE COMPLIANCE; AND THE STATEMENT OF ROLES AND RESPONSIBILITIES BETWEEN THE CITY OF PIEDMONT AND THE EAST BAY MUNICIPAL UTILITY DISTRICT FOR IMPLEMENTATION OF THE REGIONAL PRIVATE SEWER LATERAL PROGRAM.

WHEREAS, the City is party to the Consent Decree entered in United States v. City of Alameda, et al., United States District Court, Northern District of California. Case No. CV 09-05684 RS on September 22, 2014, requiring the City and other agencies in the area that operate wastewater collection systems that contribute flows to the East Bay Municipal Utility District (EBMUD) interceptor treatment system to implement improvements in their collection systems to reduce wet-weather inflows and reduce sewer overflows; and

WHEREAS, the City along with the other agencies and EBMUD wish to continue the cooperation for improvements to their respective systems; and

WHEREAS, a new Joint Exercise of Powers Agreement Establishing and Governing Operation of the Collection System Technical Advisory Committee (Joint Powers Agreement), between Alameda, Albany, Berkeley, Emeryville, Oakland, Piedmont, Stege Sanitary District, and EBMUD (Parties), is needed to replace the Joint Powers Agreement first established in 1979; and

WHEREAS, entry into the Defendants' Side Agreement to Facilitate Consent Decree Compliance (Side Agreement) is desired by the Parties to facilitate compliance with the Consent Decree; and

WHEREAS, the Private Sewer Lateral Roles and Responsibilities Agreement between the City and EBMUD (PSL Roles and Responsibilities Agreement), is desired to better define the obligations between the City and EBMUD in regard to the inspection, repair, replacement and testing of private sewer laterals under the Regional Private Sewer Lateral Program.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PIEDMONT AS FOLLOWS:

1. The above recitals are true and correct and are hereby incorporated into this Resolution as findings of the City Council of the City of Piedmont.
2. The City Administrator is hereby authorized and directed to sign the Joint Powers Agreement, Side Agreement, and PSL Roles and Responsibilities Agreement on behalf of the City.

3. This Resolution shall become effective immediately.
4. All portions of this resolution are severable. Should any individual component of this Resolution be adjudged to be invalid and unenforceable by a body of competent jurisdiction, then the remaining resolution portions shall be and continue in full force and effect, except as to those resolution portions that have been adjudged invalid. The City Council of the City of Piedmont hereby declares that it would have adopted this Resolution and each section, subsection, clause, sentence, phrase and other portion thereof, irrespective of the fact that one or more section subsection, clause sentence, phrase or other portion may be held invalid or unconstitutional.