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Staff Report for Amendments to the East Bay Dischargers Authority Joint Exercise of Powers Agreement

SUMMARY AND RECOMMENDATIONS

This item presents amendments to the East Bay Discharges Authority (EBDA) Joint Exercise of Powers Agreement (JPA) to the Facilities and Transportation Committee. This issue is scheduled to go before City Council on November 18, 2019. Staff recommends that the Facilities and Transportation Committee recommend to the City Council to pass resolutions authorizing the City Manager to extend the agreement.

BACKGROUND

EBDA was created in 1974 for the purpose of discharging treated wastewater to the San Francisco Bay. It collects the discharges from four wastewater treatment plants in the East Bay: Union Sanitary District, City of Hayward, Oro Loma Sanitary District and the City of San Leandro. It dechlorinates these discharges and pumps the water about seven miles into the San Francisco Bay. These four entities, plus Castro Valley Sanitary District, are the five member agencies of EBDA. Each agency sends a representative to serve on the EBDA Commission. Mayor Cutter is currently representing the City on the Commission.

EBDA owns and is responsible for pump stations at each treatment plant, the pipes that convey the wastewater from the treatment plants, the Marina Dechlorination Facility and the outfall pipeline. EBDA's budget is about \$5 million per year, which is funded by the member agencies, pro-rated by the quantity of water each member discharges.

The agreement that created the EBDA JPA has been amended three times since its inception. The

term of the current agreement ends on January 1, 2020. The member agency managers and Commission members of EBDA have been negotiating for the last four years an amendment to extend the agreement for an additional 20 years.

The EBDA Commission has approved two amendments and recommends that the governing bodies of each agency authorize their execution. The first (Amendment Four) would simply extend the term of the current agreement for six months, until June 30, 2020. This would allow EBDA staff and the member agencies time to fully prepare for the updated amendment and aligns the term with the fiscal year. The second amendment (Amendment Five) is a substantial restatement of the agreement with a term ending June 30, 2040.

Analysis

The amended agreement makes changes to the governance, funding, and other terms. The changes most relevant to the City are:

- The City will take ownership of the discharge pump station at the Water Pollution Control Plant (WPCP) and the pipeline between the Plant and the Marina Dechlorination Facility. The City will take direct responsibility for maintenance of these facilities, with funding derived from the WPCP's Wastewater Utility Fund.
- Currently, the City shares in the cost of the entire system. Under the amended agreement, the City will no longer pay for costs related to the pump stations and pipelines for the other agencies, which are located south of the Marina Dechlorination Facility.
- Each member agency has agreed to a maximum discharge flow rate. This maximum rate is used to set the percent of EBDA expenses for which each agency is responsible. Any flow rate greater than the maximum will be subject to an overage charge, with one free incident each fiscal year. The City agreed to a maximum flow rate of 14 million gallons per day (MGD) and is very unlikely to exceed this amount. The current maximum flow rate is 22.3 MGD, but the WPCP now has enough storage capacity to be able to stay under the new lower flow rate.
- Currently, each agency has an equal vote on the Commission, with some votes requiring unanimous agreement (e.g. budget approval, special studies and changes to the agreement). Other decisions, such as for contracts and policies, require four votes. In the proposed amended agreement, nearly all decisions will require both a majority of the members and greater than 50% of a weighted vote based on maximum discharge flow of the member agency. Certain important decisions, including amendment or termination of the amended agreement and changes to the ownership of JPA facilities, will still require a unanimous vote.

Board/Commission Review and Actions

The EBDA Joint Powers Authority Commission approved the amendments at the October 29, 2019 Commission meeting.

Fiscal Impacts

Under the new agreement, the City's Wastewater Utility Fund will have lower payments to EBDA as a result of not paying for other agencies' pipelines and pump stations. However, these savings will be partially offset by increased maintenance and operational costs of the discharge pump station at the Water Pollution Control Plant and pipeline to the Marina Dechlorination Facility. Staff expects there

will be a small net savings as a result of efficiencies gained by maintaining these facilities internally.

ATTACHMENTS

Attachment to Staff Report

- East Bay Dischargers Authority Third Amended Joint Exercise of Powers Agreement with term ending January 1, 2020
- East Bay Dischargers Authority Fourth Amended Joint Exercise of Powers Agreement, with term ending June 30, 2020
- East Bay Dischargers Authority Fifth Amended Joint Exercise of Powers Agreement, effective July 1, 2020 and ending June 30, 2040

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