



Santa Clara Valley Water District

File No.: 20-0381

Agenda Date: 4/28/2020

Item No.: 3.11.

BOARD AGENDA MEMORANDUM

SUBJECT:

Approve Amended and Restated Joint Powers Agreement for the San Francisquito Creek Joint Powers Authority, Project No. 26284002, (Palo Alto) (District 7).

RECOMMENDATION:

Approve the Amended and Restated Joint Powers Agreement for the San Francisquito Creek Joint Powers Authority.

SUMMARY:

Effective May 18, 1999, an agreement was made by and among the City of Menlo Park, the City of Palo Alto, the City of East Palo Alto, the Santa Clara Valley Water District (Valley Water), and the San Mateo Flood Control District ("Member Entities"), all of which are public entities organized and operating under the laws of the State of California and each of which is a public agency as defined in California Government Code section 6500, to create the San Francisquito Creek Joint Power Authority (SFCJPA).

One of the SFCJPA's five member agencies was officially reconstituted as of January 1, 2020. With the enactment of State Assembly Bill 825 in mid-September 2019, effective January 1, 2020, the 60-year old San Mateo County Flood Control District became the San Mateo County Flood and Sea Level Rise Resiliency District (District). The new District assumed the revenues and responsibilities of its predecessor, including within the watershed of San Francisquito Creek. It has an expanded mission and Board of Directors. This name change precipitated an update to the original SFCJPA Agreement (Agreement) and the District will be executing the Amended and Restated Joint Powers Agreement in its new name.

Bifurcated Approach to Agreement Revisions

The original Agreement creating SFCJPA has not been updated or revised since it was approved almost 21 years ago. Since then, there have been updates to laws, guidelines, and standards that should be corrected as stated in the Agreement. In addition to implementing the name change discussed above, the SFCJPA general counsel recommended other updates to the Agreement. Many of these involved minor language changes to reflect current practices of the SFCJPA or updates to state laws relevant to SFCJPAs. Others, however, involved larger policy issues relative to expanding the SFCJPA's enumerated purposes and powers.

At the Chief Executive Officer/City Manager meetings, staff discussed options for separating the two categories of revisions and decided on a bifurcated approach; this first Amended and Restated SFCJPA Agreement will address administrative changes while a second document will address the more substantive policy-oriented modifications. This strategy provides more time for discussion amongst the member agencies. This first Amended and Restated SFCJPA Agreement will be retroactively effective January 1, 2020, to be commensurate with the official name change date for the San Mateo County Flood and Sea Level Rise Resiliency District.

A working group consisting of only attorneys representing each member agency was formed for review and discussion of all proposed revisions to the SFCJPA Agreement. The members agreed to the language implementing a series of administrative amendments that could be adopted before the more substantive policy-oriented updates. The administrative amendments encompassed in this first Amendment and Restated SFCJPA Agreement are shown in track changes (Attachment 1).

Revisions in the recommended Amended and Restated SFCJPA Agreement include clarifications and modifications regarding the San Mateo County Flood Control District's name change; who can serve as a SFCJPA board member; timing of board member elections; maintenance of both operating and capital budgets; designation of fiscal year; updated insurance and bonding provisions; expanded options for audits and other financial controls; modification to SFCJPA member expulsions and termination voting provisions; and adding a typical miscellaneous clause stating non-parties cannot assert rights under the Agreement (known as a "no third-party beneficiary clause").

The SFCJPA member agency staff anticipated discussions would take place regarding the policy-oriented issues during the next several months and a second Amended and Restated SFCJPA Agreement might be submitted to the SFCJPA Board and its member agencies for discussion and approval by the end of this fiscal year. However, the timing will certainly be delayed due to the many challenges all member agencies are addressing due to the COVID 19 and may not occur until this fall or winter.

While the SFCJPA is not a signatory agency to this Agreement, and as such the SFCJPA Board is not required to take an action to complete the required amendments, on February 27, 2020, the SFCJPA Board approved the draft Amended and Restated Joint Powers Agreement effective January 1, 2020, and recommended sending it to the governing boards of all member agencies for approval. A final version has now been prepared and is attached as Attachment 2.

FINANCIAL IMPACT:

There is no immediate or direct financial impact with the approval of the Agreement.

CEQA:

The recommended action does not constitute a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

Attachment 1: Amended and Restated JPA (track changes)

Attachment 2: Amended and Restated JPA

UNCLASSIFIED MANAGER:

Ngoc Nguyen, 408-630-2632