



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kerrie Romanow

SUBJECT: SEE BELOW

DATE: March 20, 2023

Approved

Date

3/29/23

**SUBJECT: ACTIONS RELATED TO THE MEMORANDUM OF AGREEMENT FOR
THE SANTA CLARA VALLEY URBAN RUNOFF POLLUTION
PREVENTION PROGRAM**

RECOMMENDATION

Adopt a resolution:

- (a) Authorizing the City Manager to execute the Fourth Amendment to the Memorandum of Agreement providing for the implementation of the Santa Clara Valley Urban Runoff Pollution Prevention Program, which will extend the term of the Memorandum of Agreement through one fiscal year beyond the five-year term of the current National Pollutant Discharge Elimination System stormwater permit, including any administrative extensions, with no change in the cost allocation formula for City of San Jose's participation; and
- (b) Authorizing the Director of Environmental Services to designate a City representative to serve on the Program Management Committee.

SUMMARY AND OUTCOME

Approval of this recommendation will result in the City of San Jose's (City) continued participation in the Santa Clara Valley Urban Runoff Pollution Prevention Program (Program) to facilitate the City's compliance with State Regional Water Quality Control Board's stormwater regulations and Federal Environmental Protection Agency's Clean Water Act in a manner that maximizes local valley-wide and City resources.

It will also allow the Director of Environmental Services continued authority to designate a City representative to serve on the Program Management Committee which the City co-chairs with the Santa Clara Valley Water District (Valley Water)

BACKGROUND

The Federal Clean Water Act requires the City to have a National Pollutant Discharge Elimination System Permit (Stormwater Permit) to discharge stormwater into waterways via the City's storm sewer collection system. San José is one of 76 agencies throughout the San Francisco Bay Area required to comply with the Stormwater Permit. Permittees are organized primarily by county.

The Program is a nationally recognized stormwater management association of 13 municipalities (including San José), the County of Santa Clara, and Valley Water. Through the Program, these local agencies collaborate and leverage resources to meet Stormwater Permit obligations. These agencies have shared a common Stormwater Permit and have collaborated under a Memorandum of Agreement (MOA) since 1990.

The MOA established the Program to collaborate and to manage urban runoff in the South Bay in compliance with Stormwater Permit requirements in a mutually beneficial manner. The Program's area-wide programs provide consistent and holistic program planning, water quality monitoring, outreach and education programs, and other regulatory benefits. The Program also serves as a strong link to regional and statewide stormwater agencies. The MOA provides a Program Management Committee, co-led by the City and Valley Water and comprised of one representative from each participating agency. EOA, Inc. is the consulting firm that serves as Program Administrator. For The Program to continue, the MOA requires approval from all fifteen co-permittees, which will allow this consortium to continue one fiscal year beyond the date of termination of the current Stormwater Permit.

The City Council approved an updated MOA on November 29, 1999. Since 1999, the MOA has been amended three times, extending and modifying the agreement to match current Stormwater Permit needs as well as setting the end date of the current MOA to one year after the previous Stormwater Permit terminates. The First Amendment was approved by City Council on March 1, 2005. The Second Amendment was approved by City Council on February 28, 2006. The Third Amendment was approved by City Council on November 1, 2016.

ANALYSIS

Participating in The Program allows the City to leverage resources and expertise to achieve Stormwater Permit compliance more cost-efficiently than on its own. The Program takes the lead in legal interpretation and implementation of county and regional permit compliance activities, while also supporting local permit compliance activities implemented by City staff. Examples of this are the water quality monitoring program to address pollutants of concern, advocacy for reasonable compliance measures in developing regulations, regional outreach and education campaigns, and production of county-wide technical and regulatory reports required for compliance. Additionally, The Program has been instrumental in obtaining grant funding to implement countywide and regional projects that benefit the City and the other permittees. The

Stormwater Permit includes requirements to be implemented at the local, county, and Bay Area regional levels. Without the Program, permittees would need to coordinate or individually manage implementation of these permit compliance activities.

In preparation for the proposed Fourth Amendment the Program Management Committee commissioned a review of the MOA using an independent consultant, Hilton Farnkopf & Hobson, LLC, benchmarking the Program against the three other countywide stormwater programs in the Bay Area. The review found that, adjusted for inflation, costs had increased slightly and steadily since 2007, indicative of the increased scope needed to address increasing Stormwater Permit requirements. While overall annual costs for the Program were found to be the highest among the Bay Area programs, they are second to lowest of all programs when normalized to population, number of households, land area, and median household income.

The Fourth Amendment maintains current cost sharing allocations for all co-permittees. the Program's approved 2022-2023 budget was \$5,192,964. San Jose's share was \$1,558,408.00, which is 30.01% of the annual Program budget and funded under 446 Storm Sewer Operating Fund. Valley Water's share is 30.02%, and the remaining co-permittees' shares are roughly commensurate with community size. The total Program budget reflects an increase of approximately 16 % since 2016, slightly above the average increase of 15% for all comparable Bay Area programs. As with all prior amendments, there are no changes to the funding allocation for the program, which was negotiated among the participating local governments at the time of its formation in 1990.

The proposed Fourth Amendment becomes effective when executed by all parties or by April 19, 2023, whichever arises sooner, and extends the term of the Agreement for one fiscal year beyond the termination date of the current Stormwater Permit, which currently expires on June 30, 2027. All other terms of the Agreement remain the same. Any co-permittee may terminate their participation under existing terms by giving at least thirty days written notice.

The Program activities will continue to be directed by the Program Management Committee with representatives from each agency. The San José representative is the designated Co-Chair of the Committee and is designated by the Director of Environmental Services, and it is recommended this authority be continued.

Policy Alternatives

Alternative #1: Do not approve the Amendment and terminate participation in the Program on June 30, 2023.

Pros: More City autonomy and control and the City would not contribute approximately \$1.5 million annually to the Program.

Cons: The City would not benefit from economies of scale in regional efforts such as outreach (over \$600,000), water quality monitoring (over \$1.2 million); and would need additional resources and expertise to perform tasks such as regulatory permit compliance assistance, polychlorinated biphenyls assessments, and trash controls which could cost over \$1,650,000.

HONORABLE MAYOR AND CITY COUNCIL

March 20, 2023

Subject: Actions Related to the Memorandum of Agreement for the Santa Clara Valley Urban Runoff Pollution Prevention Program

Page 4

Reason for not recommending: The City would lose collaborative resources and economies of scale. Acting independently could potentially cost more than the City's proportionate share under the MOA allocation and may result in conflicting policies among local jurisdictions.

EVALUATION AND FOLLOW-UP

As the City continues with Stormwater Permit implementation, staff will provide periodic reports to the Transportation and Environment Committee and City Council meetings.

COST SUMMARY/IMPLICATIONS

The City's portion of the Program assessment totaled \$1,558,408.00 for Fiscal Year 22-23.

Previous Fiscal Years Cost:

2017-2018	2018-2019	2019-2020	2020-2021	2021-2022
\$1,433,328.00	\$1,490,502.00	\$1,550,731.00	\$1,550,814.00	\$1,348,269.59

In comparison to previous years' expenses, costs are estimated to increase to approximately \$1,700,000 in Fiscal Year 2023-2024. It is anticipated that costs will steadily increase in subsequent year due to the increased level of requirements in the new Stormwater Permit. These costs will be included in each fiscal year's proposed budget in the Environmental Services Department's non-personal/equipment appropriation and are funded by the Storm Sewer Fee (Fund 446).

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

PUBLIC OUTREACH

The MOA and bylaws were developed and discussed during the regularly scheduled monthly public meetings of the Program Management Committee. The Program Management Committee approved the Fourth Amendment to the MOA on January 19, 2023 and agreed that each permittee would present the Fourth Amendment to the MOA to their governing body for approval and execution prior to April 19, 2023.

This memorandum will be posted on the City's Council Agenda website for the April 11, 2023 City Council meeting.

HONORABLE MAYOR AND CITY COUNCIL

March 20, 2023

Subject: Actions Related to the Memorandum of Agreement for the Santa Clara Valley Urban Runoff Pollution Prevention Program

Page 5

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (new or amended) resulting in no physical changes to the environment.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/

KERRIE ROMANOW

Director, Environmental Services

For questions, please contact Rajani Nair, Deputy Director, at rajani.nair@sanjoseca.gov or (408) 799-7462.