



DATE: January 29, 2019

TO: Mayor and City Council

FROM: Director of Utilities & Environmental Services

SUBJECT: Sustainable Groundwater Management: Authorization for the City Manager to Amend the Cooperating Agreement with the East Bay Municipal Utility District for Preparation of a Groundwater Sustainability Plan for the East Bay Plain Subbasin

RECOMMENDATION

That Council adopts a resolution authorizing the City Manager to amend the Cooperating Agreement with the East Bay Municipal Utility District to jointly prepare a Groundwater Sustainability Plan for the East Bay Plain Subbasin.

SUMMARY

The Sustainable Groundwater Management Act (SGMA) was signed into law in 2014 to provide for comprehensive and sustainable management of groundwater resources within the State. Hayward and the East Bay Municipal Utility District (EBMUD) are the exclusive Groundwater Sustainability Agencies (GSAs) overlying the East Bay Plain Subbasin and, as such, are jointly responsible for the long-term sustainable management of the groundwater basin. On June 5, 2018, Council authorized execution of a Cooperating Agreement with EBMUD, under which the parties agree to work together and share the costs to prepare a single Groundwater Sustainability Plan (GSP) for the Subbasin in accordance with SGMA. The Cooperating Agreement includes a preliminary scope of work, schedule and budget for the project based on staff level estimates. Since the Cooperating Agreement was executed, staff has worked with EBMUD to procure technical consultant services to assist with the preparation of the GSP. Staff is requesting authorization from Council to make minor revisions to the Cooperating Agreement to reflect the actual consultant scope of work, schedule, and costs for the project. No other changes are proposed at this time, and the amendment will not have a material effect on the City's obligations.

BACKGROUND

The Sustainable Groundwater Management Act (SGMA) was signed into law in 2014 to provide for comprehensive and sustainable management of groundwater resources within the State. The legislation provides a framework for groundwater management at the local level through formation of Groundwater Sustainability Agencies (GSAs) and implementation

of Groundwater Sustainability Plans (GSPs). The requirements to form GSAs and develop and implement GSPs is mandatory for medium- and high-priority ranked groundwater basins and voluntary for low- and very-low ranked groundwater basins. Hayward became the GSA for the portion of the medium-priority East Bay Plain Subbasin underlying the City in June 2017. EBMUD is the GSA for the remaining portion of the Subbasin.

As the GSA for a portion of the East Bay Plain Subbasin, the City is responsible for developing and implementing a GSP to sustainably manage and utilize groundwater within its management area without causing undesirable results. SGMA requires that medium-priority basins be managed under an adopted GSP by January 31, 2022. Upon approval from the City Council on June 5, 2018, the City entered into a Cooperating Agreement on June 25, 2018 with EBMUD to jointly prepare a single GSP for the entire Subbasin. Working collaboratively with EBMUD will reduce duplication of technical work and thus the cost of preparing a GSP for both agencies. The following link to the June 5 Council report provides additional background and discussion of the key provisions of the Cooperating Agreement.¹

The Cooperating Agreement includes a preliminary scope of work, project schedule and budget to prepare the GSP that was based on staff estimates. The Cooperating Agreement anticipates the use of outside consultants to assist with the preparation of the GSP. Since the time the Cooperating Agreement was executed, EBMUD and City staff have refined the scope of work, schedule, and budget through the process of jointly selecting a technical consultant team to assist with preparation of the GSP. The estimated project costs have also become more certain after EBMUD, on behalf of the GSAs, executed a grant agreement with the State Department of Water Resources (DWR) in November 2018 for \$1 million in funding under Proposition 1 to help fund the GSP development. EBMUD and City staff are interested in amending the Cooperating Agreement to reflect the actual consultant scope of work, schedule, and budget. These minor changes are further described under Discussion.

The June 5, 2018 staff report also discusses the State's recent efforts to reprioritize groundwater basins. DWR is required under SGMA to periodically reassess groundwater basin prioritizations to reflect new information or requirements. In May 2018, DWR released new draft basin prioritizations that recommended re-classifying the East Bay Plain Subbasin as a very low-priority basin, making preparation of a GSP a voluntary, rather than a mandatory requirement. Preparation of a GSP, whether a mandatory or voluntary requirement, would ensure long-term sustainable management and protection of the City's groundwater resources. Therefore, given that EBMUD and the City have received a \$1 million grant towards preparing a GSP and the prioritization of the East Bay Plain Subbasin may continue to change in the future such that a GSP is required, staff recommended on June 5 that the City continue with its current approach to sustainable groundwater management and preparing a GSP cooperatively with EBMUD.

In August 2018, EBMUD and Hayward submitted a joint letter to DWR questioning the data used for the reprioritization and requesting that DWR use the most up to date information available for the Subbasin. On January 4, 2019, DWR released its final recommendations for

¹ <https://hayward.legistar.com/LegislationDetail.aspx?ID=3518462&GUID=B02415CC-0E35-4651-A514-0136EE070AB8&Options=&Search=>

new basin prioritizations. The East Bay Plain Subbasin will remain a medium-priority basin, subject to the requirement of SGMA.

DISCUSSION

The Cooperating Agreement between the City and EBMUD anticipates the use of outside consultants to assist with the preparation of the GSP. Technical support is specifically needed to:

- Create the groundwater model for the East Bay Plain Subbasin
- Collect and synthesize data
- Develop sustainability goals and sustainable management criteria, and actions needed to achieve the management objectives; and
- Prepare the draft and final GSP document

Technical Consultant Selection

The Cooperating Agreement outlines a process for EBMUD to be the Contracting Entity and for the parties to jointly select a qualified consultant. EBMUD and City staff worked closely to develop a request for proposal (RFP) that EBMUD issued in August 2018. A total of six firms submitted proposals. After an objective review and scoring process by EBMUD and City staff, four of the firms were invited to participate in an interview process, which was also scored using a consistent and objective methodology.

The firm selected was Lohdorff & Scalmanini Consulting Engineers (LSCE). LSCE has proposed a highly qualified team of engineers and support staff for this project and is familiar with the East Bay Plain Subbasin, especially the southern part of the Subbasin that underlies Hayward. The negotiated total cost of services for LSCE is \$1,591,442, including optional services, which is lower than the costs proposed by the other three firms that were interviewed, which ranged from \$1,725,800 to \$2,001,400. EBMUD staff received approval from its Board of Directors to execute an agreement with LSCE at the January 22, 2019 Board meeting.

Proposed Changes to Cooperating Agreement

The Cooperating Agreement executed on June 25, 2018 includes a preliminary scope of work, project schedule and budget to prepare the GSP largely based on information included in the Proposition 1 grant application. However, as part of the RFP process, EBMUD and City staff refined the scope of work to include additional services that the parties agreed may be necessary to successfully prepare a GSP. These services include:

- Incorporating additional information and analyses into the GSP to meet the salt and nutrient management requirements of the State's newly amended Recycled Water Policy
- Evaluation of data management systems for long-term management of data collected during GSP preparation and implementation
- Optional support for environmental compliance and permitting

The Cooperating Agreement also addresses the allocation of costs between EBMUD and Hayward for the work to prepare the GSP. Each party has agreed to be responsible for paying for its own internal staff costs. The parties further negotiated a cost allocation of 35 percent for the City and 65 percent for EBMUD for technical consulting services, based on the division of responsibilities and benefits to each agency.

Table 1 shows a comparison of the City’s estimated share of costs to prepare the GSP that were described in the June 5, 2018 staff report for the Cooperating Agreement versus the proposed amended budget that reflects the consulting contract with LSCE. The negotiated total cost of services for LSCE is \$1,591,442, including optional services. Under the cost allocation provisions of the Cooperating Agreement, EBMUD would directly contract with LSCE and the City would reimburse EBMUD for 35 percent of the invoiced consultant costs, or up to a maximum of \$557,000. Assuming that the parties receive the maximum grant reimbursement from the State of \$1 million, the City’s net share of consultant costs (after receipt of the City’s proportion of grant funding) is not expected to exceed \$207,000. As described in the June 5 report, based on cash flow needs and the timing of grant reimbursement from the State, EBMUD will setup a separate account to deposit agency contributions, grant funds, and from which to make disbursements to consultants. The City’s total upfront contributions would not exceed \$557,000, with the City’s net amount for paying consultants (after receipt of grant funding) estimated at \$207,000.

Table 1. Estimated City Share of Costs to Prepare GSP

	Cooperating Agreement Preliminary Budget June 2018 ^(a)	Cooperating Agreement Amended Budget January 2019
Total Consultant Budget	\$1,490,000 (estimated)	\$1,591,442 (actual)
City Share of Consultant Cost		
Estimated Maximum Cost-Share (Upfront Cost)	\$575,000	\$557,000
Maximum Prop 1 Grant Reimbursement	<u>(\$375,000)</u>	<u>(\$350,000)</u>
Net Cost-Share	\$200,000	\$207,000
City staff time (estimated)	\$150,000	\$150,000
Total	\$350,000	\$357,000

(a) The cost-share estimates included in the June 5, 2018 staff report account for uncertainties in the consultant budget and grant funding. The amended budget uses the cost allocation formula and actual consultant costs and grant funding.

In addition to its share of the consultant costs, Hayward will also be responsible for its internal costs related to supporting this effort. At this time, staff is estimating that internal costs will be in the range of \$150,000, but the actual costs will not be known until the technical work gets underway and staff has a better understanding of the resources needed to

represent the City's interests in developing the GSP. The City's total share of costs to prepare the GSP is estimated at \$357,000.

SGMA requires that all medium-priority groundwater basins be managed under a GSP by January 31, 2022. This deadline is also included in the grant agreement. The project schedule has been updated to assume that notice to proceed is issued to the technical consultant team by the end of January 2019.

ECONOMIC IMPACT

Costs for implementing the GSP have not been fully evaluated and will largely depend on actions needed to sustainably manage the basin. SGMA provides mechanisms for GSAs to recover costs for groundwater management through water rates, pump and extraction fees, and grants. The City's implementation costs are difficult to estimate at this time, but are not expected to significantly affect customer water rates.

FISCAL IMPACT

The Water Improvement Fund in the Capital Improvement Program (CIP) includes funds for groundwater-related activities such as preparation and implementation of a GSP. At this time, staff anticipates that the City's cost for developing the GSP will be about \$357,000, including \$207,000 for reimbursement to EBMUD for consultant costs and \$150,000 for internal costs. However, staff believes that the estimate will increase once work on the GSP begins and the internal resources needed to support development of the GSP are better understood. The existing allocation in the CIP is sufficient to fund the City's share of preparing the technical studies and investigations, along with developing a GSP that complies with SGMA requirements. Implementation costs will depend on the needed actions. There will be no impact on the General Fund.

STRATEGIC INITIATIVES

This agenda item does not directly relate to one of Council's Strategic Initiatives.

SUSTAINABILITY FEATURES

The City's emergency wells are an important part of Hayward's water supplies and critical to reliably delivering water in the event of an earthquake or other disruptions to imported surface water supplies. Hayward's role as a GSA and responsibility for developing a GSP provide the authority to ensure that the groundwater beneath the City is protected and sustainably managed for the future. A long-term commitment to groundwater sustainability increases Hayward's overall water supply reliability, maximizes local sources, and diversifies the City's water supplies, which will help the City respond to future water supply uncertainties and the effects of climate change.

PUBLIC CONTACT

SGMA requires active stakeholder participation in development of GSPs to ensure common understanding and transparency throughout the process. Key stakeholders include large groundwater users and neighboring agencies, such as the Hayward Area Park and Recreation District, Chabot College, Alameda County and Alameda County Water District.

Staff has developed an interested parties list to keep stakeholders apprised of the City's activities, and together with EBMUD, will be implementing a Stakeholder Communication and Engagement (C&E) Plan. The C&E Plan provides a roadmap for meeting SGMA's requirements for stakeholder outreach and incorporates a broad variety of communication methods, including stakeholder meetings, social media, and websites. The C&E Plan also calls for formation of a Technical Advisory Committee (TAC), comprised of individuals with relevant technical backgrounds, to review technical documents and provide comments and recommendations. The TAC will include professionals with diverse perspectives and experience.

Both the City and EBMUD also maintain websites² where interested parties can access information and updates.

NEXT STEPS

If Council concurs, staff will amend the Cooperating Agreement with EBMUD to jointly develop a single GSP for the East Bay Plain Subbasin with grant funding from DWR.

Prepared by: Jan Lee, Water Resources Manager

Recommended by: Alex Ameri, Director of Utilities & Environmental Services

Approved by:



Kelly McAdoo, City Manager

² The City's website can be viewed at: [City of Hayward](http://www.cityofhayward.org)