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Department of Utilities
Office of the Director

CITY OF SACRAMENTO
CALIFORNIA

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January 29, 2002

City Council
Sacramento, California

AG 2002-032

Honorable Members in Session:

SUBJECT: ASSOCIATE MEMBERSHIP IN COUNTY OF SACRAMENTO / EAST BAY MUNICIPAL UTILITY DISTRICTS' JOINT POWERS AUTHORITY - FREEPORT REGIONAL WATER AUTHORITY

LOCATION AND COUNCIL DISTRICT: Council Districts 7 and 8

RECOMMENDATION:

Staff recommends that City Council approve the attached resolution authorizing the Mayor to sign the Associate Member Agreement between the City and the Freeport Regional Water Authority, a joint exercise of powers authority (JPA) between the County of Sacramento and the East Bay Municipal Utility District.

CONTACT PERSONS: Jim Sequeira, Director of Utilities, 264-1407

FOR COUNCIL MEETING OF: February 12, 2002

SUMMARY:

The County of Sacramento (County) and the East Bay Municipal Utility District (EBMUD) will soon approve a "Joint Exercise of Powers Agreement" forming a JPA - the Freeport Regional Water Authority - for the purpose of constructing a water diversion facility near Freeport and pipeline conveyance east to the Folsom South Canal. The City, EBMUD, and the County all share a common interest in the manner in which the Freeport Regional Water Project is planned and constructed. These common interests would be benefitted by the City's continued association with the project partners. It is therefore recommended that if the JPA is formed, the City of



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Sacramento participate as an associate member of the Authority pursuant to the attached agreement.

COMMITTEE/COMMISSION ACTION: None

BACKGROUND INFORMATION:

- For the past four years, the City staff has attempted to facilitate an acceptable Joint Water Supply Project between Sacramento parties and the East Bay Municipal Utility District (EBMUD).
- On January 16, 2001 EBMUD, The U.S. Bureau of Reclamation, Sacramento County, and the City signed a Memorandum of Agreement to jointly pursue development and implementation of a project to construct a Sacramento River diversion structure near Freeport and pipeline facilities extending east to the Folsom South Canal.
- In late fall of 2001 the County decided it did not want to participate with the City in the planning and construction of a water treatment plant at Freeport that would receive water from the above joint project. Instead, it wanted to construct its own facility far to the east, near Bradshaw Road. As a result, the City concluded that it was not cost effective to construct a facility on its own and withdrew from active participation.
- Although no longer actively participating in the Freeport Regional Water Project, the City shares a common interest in the manner that is project is planned, constructed, and operated.
- In recognition of these common interests, the City has been asked to continue its participation as an associate member of the JPA being created by the County and EBMUD.
- Associate membership allows the City to continue involvement and oversight by providing a non-voting representative to the Freeport Regional Water Authority Board until such time as the construction phase is complete. It would also provide at least one City representative to participate in the review and selection of the architectural design treatment of the river diversion structure.

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ENVIRONMENTAL CONSIDERATIONS:

Environmental review required for the Freeport Regional Water Project will be the responsibility of the JPA and its member agencies, the County of Sacramento and the East Bay Municipal Utility District.

FINANCIAL CONSIDERATIONS:

There are no financial implications associated with this report.

POLICY CONSIDERATIONS:

City Council has previously approved discussions and negotiations with EBMUD and Sacramento County in an effort to develop an acceptable water supply project.

ESBD CONSIDERATIONS

As no services or supplies are being purchased there are no ESBD issues.

Respectfully submitted,



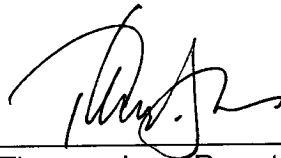
Jim Sequeira, Director of Utilities

APPROVED:

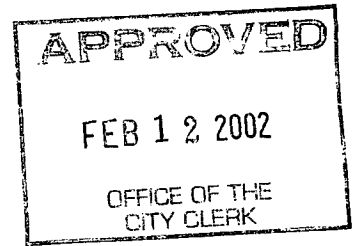


Robert P. Thomas, City Manager

RECOMMEND APPROVAL:



Thomas Lee, Deputy City Manager



RESOLUTION NO. 2002-078

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT WITH THE FREEPORT REGIONAL WATER AUTHORITY

BE IT RESOLVED BY THE SACRAMENTO CITY COUNCIL THAT:

- 1. If the Freeport Regional Water Authority is formed by Sacramento County and EBMUD, the Mayor (or her designee) is authorized to sign the attached Associate Member Agreement with the Freeport Regional Water Authority, and
- 2. The Mayor is authorized to appoint a representative to sit on the Freeport Regional Water Authority's Board of Directors in accordance with the provisions of the Agreement.

MAYOR

ATTEST:

CITY CLERK

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____

Agenda: 02/12/02
From 6.1

The document "Associate Member

Agreement" ... is in form only
and is meant to be a part
of the staff report only. The

Agreement number is to be assigned.

For the Adopted Resolution No. 2002-078

1.) "Of the Frisport Regional Water Authority

no formed ...", (per Ruth Lunday @

org 3320 (Utilities), a new agreement

is to be approved by Council if
the condition of this if met

as a result of Resolution 2002-078.



2/13/02

Rep: Lina
Manny
Robert
Carolyn

ASSOCIATE MEMBER AGREEMENT
By and Among the
FREEPORT REGIONAL WATER AUTHORITY
and
THE CITY OF SACRAMENTO

This ASSOCIATE MEMBER AGREEMENT (“this Agreement”), dated as of February ___, 2002, is entered into by and among the Freeport Regional Water Authority (Authority) and the City of Sacramento (City), a political subdivision of the State of California, with reference to the following facts:

RECITALS:

- A. The Authority is a public entity and joint exercise of powers authority created by that certain Joint Exercise of Powers Agreement dated as of February ___, 2002 (the “Joint Exercise of Powers Agreement”), by and among the East Bay Municipal Utility District and the Sacramento County Water Agency (each, a “Member” of the Authority), and pursuant to Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (commencing with Section 6500) and all laws amendatory thereof or supplemental thereto;
- B. The Authority was established to pursue, subject to environmental review, development and implementation of the Freeport Regional Water Project (the “FRWP”) that may involve construction of a new water diversion on the Sacramento River one mile north of the Town of Freeport and pipeline alignments that traverse the City’s jurisdiction between Freeport and the Folsom South Canal;
- C. The Authority and the City share a common interest in the manner in which the FRWP is planned and constructed, which common interests are benefited by the City’s participation as an associate member of the Authority pursuant to this Agreement;
- D. Section 2.2 of the Joint Exercise of Powers Agreement provides that a public agency such as the City may be admitted to the Authority as an associate member; and,
- E. The City is a municipal corporation and is authorized to make contracts necessary to the exercise of its powers.

NOW, THEREFORE, the Authority and the City, in consideration of the terms, conditions, and covenants of this Agreement, hereby agree as follows:

- 1. Associate Membership. For and in consideration of the terms, conditions and covenants of this Agreement, the Authority does hereby offer, and the City hereby accepts, admission to the Authority as an associate member accorded the privileges and subject to the obligations set forth herein.

2. Associate Membership Privileges:

The following are privileges associated with the City's associate membership:

- a. The City may appoint one (1) non-voting representative to attend all meetings of the Authority's Board of Directors ("Board") throughout the construction phase of the FRWP provided that the City shall not attend duly authorized closed sessions of the Authority.
 - b. The City's Board representative will be provided, in advance, notice of all meetings of the Board and copies of written materials associated with the Board's open meeting agendas.
3. Associate Member Cooperation. The City and each of its departments will make best efforts to complete all permitting processes required by the City for the FRWP on a timely basis. Notwithstanding the foregoing, this Agreement does not determine the specific outcome of any permitting process required by the City.
4. Authority Cooperation. The Authority and each of its Members will give priority assistance to City Departments in all required permitting processes.
- a. During the City's FRWP permitting processes, the Authority will hold periodic workshops with City staff and the community to provide maximum information about the Project to the City's staff and constituents. Such workshops, subject to mutual agreement on timing and scope, may include the following subjects:
 - 1) Design review and pipeline alignment
 - 2) Street closures, traffic management, noise and work hours
 - 3) Tree preservation and recreational land uses
 - 4) Utility coordination
 - 5) Road pavement coordination
 - 6) Development planning
 - 7) Coordination with flood control projects
 - 8) Other subjects to be identified by mutual agreement
 - 9) Coordination with Sacramento Regional County Sanitation District projects.
 - b. The Authority and each of its Members will make best efforts to promptly resolve all issues associated with the Authority's potential use of the City's Freeport properties.
 - c. The City may have at least one representative that participates in review, selection, and/or recommendations concerning the FRWP intake structure architectural design.

- d. The Authority will provide City staff with the opportunity, as mutually agreed, for advance consultation in other required permitting processes for the FRWP, including the CEQA, NEPA and 404 processes.
5. No Obligations. None of the debts, liabilities or obligations of the Authority shall be the debts, liabilities or obligations of the City, nor shall City have any responsibility or liability for any aspect of the FRWP, except as expressly agreed by the City in writing.
6. Indemnity. Each party hereto (hereafter "INDEMNIFYING PARTY") shall indemnify, defend and hold harmless the other party, its officers, agents and employees, from and against any and all loss, cost, damage, expense, claim, suit, demand, or liability of any kind or character, including but not limited to reasonable attorney fees, arising from or relating to any negligent, wrongful or illegal act or omission of the INDEMNIFYING PARTY, its officers, agents or employees, which occurs in the performance of this Agreement.
7. Terms and Termination. This Agreement shall become effective as of the date hereof. Either the City or the Authority may terminate this Agreement upon thirty (30) days' written notice to the other party. The provisions of section 6, above, shall survive any such termination with respect to any act or omission occurring prior to the effective termination date.

IN WITNESS WHEREOF, the parties represent to each other that, by the signatures below of their duly authorized representatives, this Agreement has been made and entered into with all requisite official action, effective as of the date and year first written above.

FREEPORT REGIONAL WATER
AUTHORITY

THE CITY OF SACRAMENTO

By: _____
Chairperson of the Board of Directors
of the Freeport Regional Water
Authority

By: _____
Mayor

Attest: _____
City Clerk

APPROVED AS TO FORM:

Authority Counsel

City Attorney