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REPORT TO COUNCIL

SUBJECT

Authorize the City Manager to Execute a Revised 2023 Amended and Restated Joint Use Agreement Between the City of Sunnyvale and Santa Clara Valley Water District for the Sunnyvale West Channel and Sunnyvale East Channel Project

BACKGROUND

In August 2015, the Sunnyvale City Council (RTC No. 15-0665) authorized the City Manager to enter into a Joint Use Agreement (JUA) with Valley Water for trail improvements and recreational uses along the Sunnyvale West and Sunnyvale East Channels. The JUA was executed in 2016 following approval by the Valley Water Board of Directors.

The 2016 JUA provided that Valley Water would construct a series of infrastructure upgrades for additional flood protection and improved water quality in the Sunnyvale West Channel and Sunnyvale East Channel. The City committed to providing funding (\$500,000) to pave the maintenance road on each channel for use as a public trail. After project completion, the City will be responsible for maintenance of the public trails. Valley Water has not yet completed the infrastructure improvements.

In May 2020, City Council approved a Special Development Permit for development of a Google office campus at 360 W. Caribbean Drive (RTC No. 20-0433). The project is under construction and includes proposed trail improvements to a portion of the West Channel and modified the planned Valley Water Flood Protection Project on Sunnyvale West Channel in the area from Caribbean Drive. In March 2022, City Council approved a Revised JUA between the City of Sunnyvale and Valley Water (RTC No. 22-0028) that included inclusion of the east side of the West Channel on the Google Caribbean campus. The Revised JUA was executed on April 13, 2022 (Attachment 1).

In June 2022, Google submitted a Miscellaneous Plan Permit (MPP) 2022-7354 for a different project abutting the West Channel, entitled as the Google Moffett Park Green Link Bordeaux-Borregas Bridge (Project). The Project proposes improvements to a portion of the Sunnyvale West Channel ("Google Reach") to construct publicly accessible paved (multi-use) trails on both sides of the Channel and a privately-owned but publicly accessible channel bridge over the West Channel connecting the existing publicly accessible paved (multi-use) Moffett Park Green Link pathways on 1212 Bordeaux Drive and 1265 Borregas Avenue. The MPP was approved on April 24, 2023.

In conjunction with the approval of the Google Moffett Park Green Link Bordeaux-Borregas Bridge Project Miscellaneous Planning Permit 2022-7354, the City and Valley Water have drafted a revised JUA (Attachment 2) that encompasses Google's trail improvements to the West Channel authorizing the City to assign maintenance responsibilities to Google. The City will also be entering into a separate operation and maintenance agreement with Google (Attachment 3), which is being provided for informational purposes as it can be executed at a staff level.

EXISTING POLICY

General Plan, Chapter 3, Policy LT-9.9 - Support the acquisition or joint use through agreements with partners of suitable sites to enhance Sunnyvale's open spaces and recreation facilities based on community need and through such strategies as development of easements and rights-of-way for open space use, conversion of sites to open space from developed use of land and landbanking.

ENVIRONMENTAL REVIEW

Valley Water certified an Environmental Impact Report (EIR) for the Sunnyvale East and West Channels Flood Protection Project (SCH #2013012041) on September 9, 2014 ("Valley Water EIR"). On May 12, 2020, the City Council certified the Transportation Environmental Impact Report for the Google Caribbean Campus (SCH #2007052121), which tiered off of the Land Use and Transportation (LUTE) EIR and Valley Water EIR with respect to the proposed trail improvements to the West Channel on the Google project site. In February 2022, Valley Water approved an Addendum to the Valley Water EIR to address changes to the Flood Protection Project related to the Google Caribbean campus.

To support the MPP approval of the current project, a Second Addendum to the Valley Water EIR was prepared to evaluate environmental impacts associated with the proposed changes to the Flood Protection Project in the Google Reach. However, the proposed revisions to the JUA between the City and Valley Water merely assign maintenance responsibilities for the completed trail improvements, and do not require additional environmental review.

DISCUSSION

Over the last several months, staff from the City and Valley Water coordinated to revise the Joint Use Agreement (Attachment 2) to reflect the limits of the trail and bridge proposed by Google within the Sunnyvale West Channel to supersede the 2022 Joint Use Agreement.

In general, the terms of the Agreement remain the same as the 2022 JUA. The key changes are the inclusion of the Bordeaux-Borregas Bridge and updating the effective date of the Agreement for the portion of the trail that Google is agreeing to maintain pursuant to a separate agreement between the City and Google. Additionally, a provision, Section 29 (Amendments), has been included that will allow the City Manager to approve future amendments to the JUA.

Concurrently, City staff coordinated with Google on a separate Voluntary Improvement, Operation and Maintenance Agreement (Attachment 3) to pass maintenance responsibilities from the City to Google which include:

- Trash removal associated with trail uses
- Trail vegetation management
- Graffiti removal
- Removal or Relocation of City Improvements
- Closure of trail when needed by the Valley Water or due to water level
- Signage
- Bird Nesting Season
- Maintenance and Repair

The City will retain responsibility for security and public complaints (sections 8 and 9 of the JUA). Staff anticipates that the Department of Public Safety will handle security through normal operations such as responding to emergency calls. Maintenance and other issues involving the trail will be referred to Google or Valley Water, as appropriate.

The Voluntary Improvement, Operation and Maintenance Agreement between Google and the City is for the life of the Google properties at 1212 Bordeaux Drive and 1265 Borregas Avenue, until mutual termination, or expiration of the JUA (initial term is for a 25-year period, with an option for the City to renew for an additional 25-year period, for total of 50 years). The Agreement attached as Exhibit 3 is being provided for information only. It is expected to have minimal fiscal impact on the City and can be executed at a staff level. The West Channel is owned by Valley Water and is not subject to the Publicly Accessible Recreation and City Service (PARCS) Ordinance (Sunnyvale Municipal Code Chapter 2.07).

FISCAL IMPACT

Funding for the ongoing maintenance was previously identified to come from the General Fund. It was previously estimated that regular trail maintenance would require approximately \$12,000 a year, for a twenty-year total of approximately \$240,000. With the subsequent execution of the Voluntary Improvement, Operation and Maintenance Agreement, City will pass-thru maintenance costs to Google within the identified portion of Google trail improvements on the Sunnyvale West Channel.

PUBLIC CONTACT

Public contact was made by posting the Council meeting agenda on the City's official-notice bulletin board at City Hall, at the Sunnyvale Public Library and in the Department of Public Safety Lobby. In addition, the agenda and this report are available at the NOVA Workforce Services reception desk located on the first floor of City Hall at 456 W. Olive Avenue (during normal business hours), and on the City's website.

RECOMMENDATION

Authorize the City Manager to execute a Revised 2023 Amended and Restated Joint Use Agreement between the City of Sunnyvale and Santa Clara Valley Water District for the Sunnyvale West Channel and Sunnyvale East Channel Project.

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Reviewed by: Jaqui Guzmán, Deputy City Manager
Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. 2022 Joint Use Agreement
2. 2023 Amended and Restated Joint Use Agreement
3. Voluntary Improvement, Operation and Maintenance Agreement