



County of San Mateo

Inter-Departmental Correspondence

Department: PUBLIC WORKS

File #: 20-167

Board Meeting Date: 3/24/2020

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors
From: James C. Porter, Director of Public Works
Subject: Memorandum of Understanding between the Members of the Amended and Restated Joint Powers Agreement - Cable Television and Video Franchises

RECOMMENDATION:

Adopt a resolution authorizing the President of the Board to execute a Memorandum of Understanding between the Members of the Amended and Restated Joint Exercise of Powers Agreement dated June 9, 2009, Relating to the Administration of Cable Television and Video Franchises.

BACKGROUND:

On July 19, 1983, your Board adopted Resolution No. 044745, which authorized execution of Joint Exercise of Powers Agreement (JPA Agreement) with the City of Palo Alto (Palo Alto), City of Menlo Park, City of East Palo Alto, Town of Atherton (Atherton), County of San Mateo, and County of Santa Clara (JPA members) for the purpose of obtaining cable television services within these jurisdictions. Only portions of both counties are covered by the JPA Agreement. The JPA Agreement gives Palo Alto the sole authority to act on behalf of the JPA members and includes franchise and Public, Educational, and Government (PEG) access fee collection, PEG oversight, customer service issue oversight, and related activities with respect to all state franchise holders. Cable franchise holders provide compensation (franchise and PEG access fees) for the use of the JPA members' public rights-of-way.

The Digital Infrastructure and Video Competition Act of 2006 (DIVCA) went into effect January 1, 2007. DIVCA established a state franchising system administered by the Public Utilities Commission for video service providers. DIVCA allows for the payment of PEG support to the local authority, provided that the local authority enacts an ordinance establishing the PEG fee. On November 18, 2008, your Board adopted Ordinance No. 04453, which repealed and replaced sections of the San Mateo County Ordinance Code Governing Cable Television Franchises to conform to DIVCA. Your Board adopted Ordinance No. 4806 on November 6, 2018, which reauthorized the PEG fee upon the expiration of state franchises to ensure continued collection of PEG fees.

The County's Ordinance Codes allow for a monthly per subscriber PEG fee to be paid to the County for PEG channel purposes. The PEG fee collected in the County areas within the JPA area is \$0.88 per subscriber per month.

DISCUSSION:

The Midpeninsula Community Media Center, Inc. (Media Center) operates and manages the PEG channels in the JPA area and is the designated PEG access provider in the JPA area. The Media Center has served in this capacity since the early 1990s. The Media Center administers the JPA's seven local PEG channels, broadcasts local community programs, provides gavel-to-gavel coverage of local government meetings, offers video production classes and workshops to community members, and provides local election coverage. Palo Alto forwards all PEG fee revenues received by JPA members from franchise holders (currently AT&T and Comcast) to the Media Center in support of these services, approximately \$300,000 in 2019. Federal law restricts the use of PEG fees to capital expenditures and the County's PEG fee annual revenue for the JPA area is approximately \$6,000.

The Palo Alto auditor issued the Cable Franchise and PEG Fee Audit in May 2016, which included a finding that the Media Center had been using PEG fees for operating expenses, rather than solely for capital expenses. The Palo Alto Council directed staff to work with the Media Center to correct this practice, preferably in a way that enables the Media Center to continue operations. The Media Center is currently placing PEG fees in a restricted account that can only be used for capital expenditures.

During fall 2019, the JPA member agencies developed a proposal that uses PEG revenues to pay for appropriate PEG-related expenditures (capital projects) in JPA member agency jurisdictions. The JPA member agency would provide the Media Center with a grant of unrestricted funds in the amount of the PEG-related capital expenditures by the JPA member agency. The JPA member agencies are now seeking approval of a memorandum of understanding (MOU) among its members to support this use of funds.

Two JPA member agencies have budgeted PEG-related capital projects: 1) Palo Alto Council Chambers Audio/Video Upgrade project (\$1.7 million budget); and 2) Atherton Council Chambers Building Construction project (\$2.9 million budget). PEG funds can be used for the portions of these projects that enable the JPA member agency to start to provide for, or upgrade to enhance, the cablecasting of government meetings on the government channels (i.e., broadcast systems including cameras, switchers, captioning and supporting equipment; audio visual systems including speakers, microphones, and supporting infrastructure; broadcast lighting; glare reduction film at windows; blackout shades, etc.). The Atherton project is currently underway and will allow it to begin to broadcast its Town Council meetings on the government channels. Palo Alto staff is in the process of determining the total value of the qualifying PEG-related expenditures for both projects. The City of East Palo Alto may also have a qualifying project in 2021 for PEG-related expenditures. PEG funds could also be used for the Media Center PEG capital project needs, if available and not needed for JPA member projects.

It is expected that the grants to the Media Center would be enough to address its budget gap for up to five years (in an amount of approximately \$300,000 per year). However, this is expected to be a short-term solution since there are a limited number of qualifying JPA member projects.

Another option, that is not recommended, involves using JPA Cable Fund reserves to subsidize the Media Center's operating costs for several years. However, this is another short-term solution since

the JPA Cable Fund is limited (available balance of \$684,471 as of December 31, 2018) and there is no ongoing source of revenue to replenish JPA Cable Fund reserves.

Under the proposed MOU, individual JPA members will use PEG fee revenue for the acquisition or improvement of their own PEG access equipment and facilities. When this occurs, the JPA member agency agrees to provide a grant to the Media Center in the same amount as the PEG-related capital expenditures. The MOU includes an "Authorization Form" that will be approved by Palo Alto, as administrator of the Cable JPA, to the member agency. This form will document the member request for use of PEG fees and the agreement to contribute a matching sum to the Media Center. Although Comcast and AT&T are required to remit all JPA member PEG fee payments directly to Palo Alto, each jurisdiction has a share of the revenue (based on each member's pro rata share of total JPA area cable subscribers). The PEG fee account balance is approximately \$1,065,701 with the County's share being equal to approximately \$21,314. The JPA members have discussed pooling the PEG revenue to support qualifying projects that may exceed an individual member's share of the revenue. Palo Alto would maintain an accounting of each member's share of the funds to facilitate the availability of funds for all jurisdictions with qualifying PEG-capital projects. The City of Menlo Park, Town of Atherton, and Palo Alto Council have approved the MOU and approval by the City of East Palo Alto and County of Santa Clara are pending.

Future agreements and proposals related to restructuring of the PEG fee usage, long-term use of funds and potentially revisiting the building purchase option would be presented to your Board for consideration.

FISCAL IMPACT:

The JPA members' PEG fee revenue is approximately \$300,000 annually, with the County's share being approximately \$6,000. The MOU provides a strategy and process to ensure PEG fees are being utilized appropriately for PEG capital expenditures.

There is no impact to the General Fund.