

Meeting Date: 10/8/2013

Report Type: Consent

Report ID: 2013-00734

Title: Agreement: Economic Development Treatment Capacity Bank Program Agreement

Location: Citywide

Issue: Sacramento Regional County Sanitation District (SRCSD) would like to replace the existing multi-agency memorandum of understanding (MOU) regarding the Economic Development Treatment Capacity Bank Program (City Agreement 2001-054) with separate contracts with each of participating agencies. Economic Development recommends approval of the new contract.

Recommendation: Pass a Motion authorizing the City Manager or his designee to execute the Economic Development Treatment Capacity Bank Program Agreement with the Sacramento Regional County Sanitation District.

Contact: Sabrina Tefft, Project Manager, (916) 808-3789, Economic Development Department

Presenter: None

Department: Economic Development Dept

Division: Citywide Development

Dept ID: 18001031

Attachments:

1-Description/Analysis

2-Agreement

City Attorney Review

Approved as to Form
Michael Sparks
10/1/2013 9:36:26 AM

City Treasurer Review

Reviewed for Impact on Cash and Debt
John Colville
9/27/2013 9:25:35 AM

Approvals/Acknowledgements

Department Director or Designee: Jim Rinehart - 9/30/2013 11:32:53 AM

Description/Analysis

Issue: The Sacramento Regional County Sanitation District (SRCSD) established an Economic Development Treatment Capacity Bank (Bank) program in June 2000. Creation of the Bank program was made possible by SRCSD's purchase of unused sewer capacity from industrial users (e.g., closed canneries) and established Treatment Capacity Bank Credits (Credits). The Bank program allocated Credits to SRCSD's member agencies for allocation to new development projects in accordance with SRCSD and City adopted guidelines. Since 2001, the City has participated in the Bank through a multi-agency memorandum of understanding (MOU) identified as City Agreement No. 2001-054.

Over the past two years, SRCSD has considered, reviewed and revised a number of its special financial programs and rate and fee structures to reflect sewer impact fee reductions. In addition, SRCSD has adopted changes to fee deferral programs and proposed revisions to special financial programs, such as the Bank. Recognizing the Bank program has lasted longer than originally envisioned and does not have the ability to reflect the sewer impact fee changes that have occurred over time, SRCSD has suggested replacing the MOU with separate contracts between the SRCSD and each of the agencies that participate in the Bank program to reflect changed circumstances.

Revised terms in the Bank contract include: (1) distribution of SRCSD's remaining Credits to the participating agencies, (2) a sunset date of December 31, 2020, with the option for an agency to liquidate the Credits at any time prior to the sunset date and (3) the option to use additional Credits (based on cash value) to pay for any remaining sewer impact fees in lieu of cash payment.

The first revision will provide the City with an additional 266.1 Credits, which must be used by June 30, 2015. The second revision places a sunset date on the program, with the understanding that at the conclusion of the program the City will receive financial compensation from SRCSD for any unused Credit at the rate of \$1,462 per Credit. In addition, the City may choose to liquidate a portion of or the balance of the unused Credits at any time prior to December 31, 2020. The final revision gives the City the option to use additional Credits (based on cash value) to fund any remaining sewer impact fees in lieu of cash payment. The City of Sacramento's Economic Development Department, and other partner agencies, worked closely with SRCSD on the proposed revisions and recommends approval of the Bank contract between SRCSD and the City.

Policy Considerations: The City views programs that promote job growth and creation as an important cornerstone of the City's economic development goals. Approval of the Bank contract serves to promote this City policy objective, by continuing a program that

provides an incentive that assists in creating new jobs and encourages business expansion.

Economic Impacts: None.

Environmental Considerations: Approval of the Bank contract is not a project for the purposes of the California Environmental Quality Act because it is a government fiscal activity that does not involve a commitment to a specific project that may result in a potentially significant physical impact on the environment. (Cal. Code Regs., tit. 14, § 15378, subd. (b)(4)).

Sustainability: Not applicable.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: Since 2000, the City has used the Bank program as an incentive to promote economic development. To date, the City has awarded 5,295.45 Credits, which has contributed to the creation of over 7,000 jobs. Notable projects that have utilized Credits, to lower their impact fees, include: Jackson Labs, Globe Mills, Capitol Lofts and 16 Powerhouse. Continuing use of the Bank program, under the Bank contract, will provide the City greater flexibility to utilize Credits to promote all types of development within the approved City Council guidelines.

The City Council approved guidelines for allocating Credits, most recently by the adoption of Resolution 2006-456 in 2006. With the execution of the Bank contract, the former guidelines would remain in place and the City will continue to follow the approved guidelines until the sunset date of December 31, 2020.

Financial Considerations: Should the City have remaining credits with the Bank on December 31, 2020, or if SRCSD voluntarily liquidates the credits, the City will receive financial compensation from SRCSD at the rate of \$1,462 per credit.

Emerging Small Business Development (ESBD): No goods or services are being purchased as a result of this action.

SACRAMENTO REGIONAL COUNTY SANITATION DISTRICT**ECONOMIC DEVELOPMENT TREATMENT CAPACITY BANK PROGRAM AGREEMENT**

This Agreement is made and entered into on this ____ day of _____, 2013 between the Sacramento Regional County Sanitation District, a county sanitation district pursuant to and operating under the authority of the County Sanitation District Act, commencing at Health and Safety Code section 4700, hereinafter referred to as "SRCSO" or "District", and the City of Sacramento, a municipal corporation of the state of California (hereinafter referred to as "Agency"). The term "Agencies" hereinafter refers to those jurisdictions, including the Agency, that participate in the SRCSO Economic Development Treatment Capacity Bank (hereinafter referred to as "Econ Bank") Program.

RECITALS

WHEREAS, on June 30, 1999, the SRCSO Board of Directors enacted a District Treatment Capacity Buyback Ordinance whereby the District purchased unused industrial treatment capacity; and

WHEREAS, pursuant to the provisions of that Ordinance, the District purchased \$15.3 million dollars worth of excess wastewater treatment capacity from industries within the jurisdictional limits of the District; and,

WHEREAS, the excess treatment capacity purchase was converted to Econ Bank credits which correspond to Equivalent Single-family Dwelling (ESDs) units; and,

WHEREAS, the District found that it was in the best interests of the District and its ratepayers to place the Econ Bank credits in the Econ Bank; and,

WHEREAS, the purpose of the Econ Bank is to encourage economic development within the District's jurisdictional limits in that the purchased Econ Bank credits could be used as a discount to reduce the sewer impact fees; and,

WHEREAS, the Agencies acknowledged that their abilities to offer Econ Bank credits will assist them in encouraging economic development; and,

WHEREAS, the District determined that it is in the best interests of the District and its ratepayers to distribute the Econ Bank credits to the Agencies; and,

WHEREAS, in 2001, the District and the Agencies entered into an agreement to distribute the 16,606 credits among the Agencies and the District; and

WHEREAS, the SRCSO and each Agency entered into a new agreement in 2003 to provide flexibility to allow Agencies and the District to utilize their Econ bank credits to promote the construction of affordable housing; and

WHEREAS, the SRCSO was authorized to execute a new agreement with the Agencies on March 23, 2005 and Agencies entered into the new agreement with SRCSO to re-establish the Econ Bank program guidelines and disbursement criteria and allocate the additional 2,545

Econ Bank credits purchased in 2002 among various Agencies and the District, resulting in a total of 19,151 Econ Bank credits under the Program; and

WHEREAS, the Agencies and SRCSD recognize and acknowledge that it is in the best interest of each jurisdiction to continue to participate in the Econ Bank Program; and

WHEREAS, the Agencies and SRCSD desire to revise and replace all prior agreements to allow the Agencies and the District the flexibility to utilize the credits to promote all types of development; and

WHEREAS, the Econ Bank Program has lasted significantly longer than originally envisioned and it does not have the ability to reflect the sewer impact fee changes that have occurred over time.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Prior Agreements.

This Agreement is intended to amend, replace and supercede all prior agreements and resolutions between the parties hereto, related to the operation, allocation and use of the Econ Bank credits.

2. Economic Development Treatment Capacity Bank.

As historical reference, SRCSD established the Econ Bank and transferred to the Econ Bank a total of 19,151 Econ Bank credits in units of ESDs to Agencies and the District. Table 1 shows the distribution of the 19,151 Econ Bank credits and balance available as of June 30, 2013 for each Agency and SRCSD.

Table 1. Econ Bank Credit Allocation and Balance

Agency	Allocation of Econ Bank Credits (in ESDs)	Remaining Econ Bank Credits as of June 30, 2013* (in ESDs)
SRCSD	1,434	802.9
City of Sacramento	8,727	3472.19
County of Sacramento	5,284	3581.38
City of Citrus Heights	1,206	978.12
City of Folsom	712	505.4
City of Elk Grove	1,146	712.11
City of Rancho Cordova	92	0
City of West Sacramento	550	124.27

*Remaining credits for all jurisdictions exclude credits assigned to projects that are undergoing or have undergone the plan check process as of June 30, 2013, with the exception of West Sacramento where the 124.27 credits includes the 100 credits assigned to Riverfront Hotel by the West Sacramento City Council.

3. Ownership of Econ Bank Credits.

The Agency acknowledges that the Econ Bank credits allocated are not and shall not become the property of the Agency. An Econ Bank credit is a right to discharge into the SRCSD sewerage system. Each Econ Bank credit is specific to the assigned parcel of real property when assignment of the Econ Bank credit is made by the Agency. The Econ Bank credits assigned to a parcel shall not be used as security in any agreement between the Agency and a customer. The Agency agrees that once an assignment of Econ Bank credits has been made

and permits have been issued to a parcel, such assignment cannot be rescinded or revoked by the Agency. The capacity acquired through the use of Econ Bank credits may not be transferred to other real property except for industrial customers whose flow and load capacities are transferrable, as set forth in the SRCSD Consolidated Ordinance.

4. Use of Econ Bank Credits.

The Agency acknowledges that the Econ Bank credits allocated by SRCSD to all Agencies and the District are intended to promote the goal of economic development within the region. The Econ Bank credits may be assigned, by the Agency, to parcels for industrial, commercial, governmental, non-profit or residential users. The Agency shall define its own guidelines for entitlement to the Econ Bank credits allocated to it, and how the Agency dedicates those credits to the user or the number of credits granted to a user.

Further, the Agency agrees that the Econ Bank credits allocated by this Agreement shall not be used as an incentive to lure established industrial or commercial businesses from one Agency to another.

5. Payment for Econ Bank Credits.

The use of Econ Bank credits will entitle the user to a discount in sewer impact fees. The user shall pay the difference between the then existing sewer impact fee and the discount shown in Table 2, but not less than \$923 to ensure SRCSD cost recovery. Alternatively, the Agencies, at their sole discretion, may use additional Econ Bank credits (based on cash value) to make payment for the difference between the then existing sewer impact fee and the discount as shown in Table 2.

Table 2. Sewer Impact Fee Discount^a

Fiscal Year	Infill Area – Discount per ESD Credit Used	New Area - Discount per ESD Credit Used
FY2013/14 (Effective January 1, 2014)	\$1,712	\$3,076
FY2014/15	\$1,952	\$3,042
FY2015/16	\$2,191	\$3,009
FY 2016/17	\$2,430	\$2,976
FY 2017/18	\$2,670	\$2,942
FY 2018/19	\$2,909	\$2,909

^a Discount value is inflated at 3.5% a year.

For example, if the impact fees were \$2,854 per ESD for the Infill Area and \$4,743 per ESD for the New Area in FY2014/15, the discounted impact fee in the Infill Area would still be \$923 per ESD because the difference between the Infill Area Impact Fee of \$2,854 and the Infill Area Discount of \$1,952 (from Table 2) is \$902, which is less than \$923. The discounted impact fee in the New Area for FY2014/15 would be \$1,701, which is the difference between the New Area impact fee of \$4,743 and New Area Discount of \$3,042 (from Table 2). In this example, if the Agency wishes to use additional Econ Bank credits in lieu of requiring the user to make cash payment, the Agency may use an additional 0.63 ESD (\$923/\$1462) if the use is in Infill Area or an additional 1.16 ESD (\$1701/\$1462) if the use is in the New Area.

Starting in FY2019/20, the discount will be inflated according to the change in the Engineering News-Record (ENR) Construction Cost Index (CCI).

For example, if the ENR CCI were to be 12,000 in FY2018/19 and 12,300 in FY2019/20, then the discount for both the Infill and New areas in FY2019/20 would be:

$$\$2,982 = (12,300/12,000) \times \$2,909$$

where \$2,909 was the discount from FY2018/19 per Table 2.

6. Inter-Agency Transfers.

The Agency may transfer the Econ Bank credits allocated to it to any of the other Agencies. In the event of such a transfer, the Agency shall provide SRCSD with written notice of the identity of the transferee and the number of Econ Bank credits transferred. By execution of the Agreement, the Agency receiving such a transfer will be liable to SRCSD for the sewer impact fee payment as set forth in Section 5.

7. Distribution of SRCSD’s Remaining Econ Bank Credits

SRCSD’s remaining Econ Bank credits (total of 802.9 per Table 1) will be distributed to the Agency once an agreement in the form of this Agreement has been approved and executed by each Agency. Distribution of the credits will be in the amounts shown in Table 3, and the distribution is approximately proportional to the population count (based on 2010 census data) within each Agency’s geographical boundary in the SRCSD service area.

Table 3. Allocation of SRCSD’s Remaining Econ Bank Credits

Agency	Allocation of SRCSD’s Econ Bank Credits (in ESDs)
City of Citrus Heights	47.4
City of Elk Grove	85.4
City of Folsom	41.1
City of Rancho Cordova	36.9
City of Sacramento	266.1
County of Sacramento (unincorporated area)	298.2
City of West Sacramento	27.8

Agencies agree to use or liquidate the newly allotted credits listed in Table 3 by June 30, 2015. If liquidated, the newly allotted credits will receive a cash payment of \$1462 per ESD. Use and liquidation of the previously allotted Econ Bank credits as indicated in Section 2 will be subject to the terms and conditions in Section 14. If the Agency does not execute this Agreement by December 31, 2013, the Agency will lose any and all rights to the additional Econ Bank credits to be received from the above distribution.

8. Procedure.

If the Agency determines to assign all or a portion of its allocated Econ Bank credits, it shall contact SRCSD for application of that portion of Econ Bank credits to a user of a designated parcel. The application shall set forth the nature of the new business or project and parcel location. If the Agency is not already aware of the number of credits necessary to serve that parcel, SRCSD staff shall determine the number of Econ Bank credits required to serve the parcel based upon the intended use of the parcel. Said determination of the amount of Econ Bank credits necessary shall be made pursuant to the methods for estimating sewer service capacity in SRCSD Consolidated Ordinance. Consistent with the direction of the Agency assigning the units, SRCSD shall then assign the Econ Bank credits to the specified parcel. SRCSD shall provide the Agency written notice as to the number of Econ Bank credits assigned, including credits assigned to Infill and New areas respectively.

9. Accounting and Audit.

The Agency shall prepare and file with SRCSD an accounting of its use and transfer of its allocated Econ Bank credits during the previous calendar year in the Infill and New areas, respectively. Said accounting must be in writing and submitted to SRCSD on or before January 31st of each calendar year. SRCSD shall keep record of the number of Econ Bank credits allotted to the Agency, along with the used and remaining credits the Agency has available for use.

SRCSO shall have the right to conduct periodic audits as to the Agency's use of Econ Bank credits, upon thirty (30) days written notice to the Agency. A payment is delinquent if not made as set forth in Section 5. If it is determined from that audit that the Agency is delinquent in payment to SRCSD for the use of Econ Bank credits allocated herein, SRCSD shall provide the Agency with a Notice of Delinquency, setting forth the amount due to SRCSD. Payment of the delinquent amount, together with interest at the rate of ten (10) percent per annum, shall be payable to SRCSD within thirty (30) days of the date of the written Notice of Delinquency. If payment is not received by SRCSD within the time specified, SRCSD may suspend the Agency from participation in the Econ Bank Program until the delinquent amount has been paid.

10. Party Contacts.

The Agency and SRCSD shall each designate a representative to act as a contact person between SRCSD and the Agency.

11. Mediation of Disputes.

In the event a dispute arises in the performance of this Agreement, the parties to that dispute agree to seek non-binding mediation of the dispute.

12. Litigation.

By execution of this Agreement, the Agency waives all right to filing any claims or taking any legal action against SRCSD related to the legality of the Econ Bank Program, including the allocation, use and transfer of the Econ Bank credits. Nothing in this wavier would prevent the Agency from filing a claim or taking legal action relating to payment of Econ Bank Credits.

13. Transfers and Assignments.

The Agency may not transfer or assign any of the Econ Bank credits allocated to it except in the manner and procedure described in this Agreement. No parties may be added to this Agreement, and only the agencies listed in Section 2 are entitled to participate in the Econ Bank Program.

14. Liquidation

The Econ Bank Program will sunset on December 31, 2020. If the Agency has unused Econ Bank credits upon sunset of the program, it will receive financial compensation from SRCSD by March 1, 2021 at the rate of \$1,462 per unused Econ Bank credit.

Alternatively, the Agency may voluntarily liquidate, with 60-calendar days' advance written notice, up to the full amount of unused credits at the rate of \$1,462 per unused Econ Bank credit. SRCSD and the Agency will reconcile the credit balance within 30 calendar days of SRCSD receiving the written request for liquidation. SRCSD will make a good faith effort to furnish payment for the liquidated credits within 60 calendar days of SRCSD receiving the written request for liquidation.

15. Term of Agreement

This Agreement terminates on June 30, 2021.

16. Amendments.

Any amendment to this Agreement must be in writing and executed by the parties.

17. Termination.

Termination of the Agreement for any reason other than as forth in Sections 15 must be in writing and executed jointly between the District and the Agency. Termination of the Agreement between the District and Agency does not affect the validity or enforceability of any Agreement between the District and any of the other Agencies.

18. Severability.

If any portion of this Agreement is found to be void or unenforceable, the remainder of the Agreement shall remain in full force and effect.

19. Counterparts.

This Agreement may be signed in counterparts.

20. Entire Agreement.

This Agreement represents the entire Agreement between the parties to the Econ Bank Program regarding the allocation, use and transfer of Econ Bank credits.

21. Failure to Execute.

The failure of any of the Agencies listed in Section 2 to approve and execute an agreement in the form of this Agreement will not nullify or render this Agreement void or unenforceable.

22. Effective Date.

Upon execution of this Agreement by its governing board, **or their designee**, the Agency shall be bound to the terms and conditions set forth above.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

CITY OF SACRAMENTO, a municipal corporation of the state of California

By: _____

Title: _____

Date: _____

Signed under the authority delegated by

Resolution No. _____

Agenda Date: _____

Item Number: _____

APPROVED AS TO FORM:

City Attorney/County Counsel:

Date: _____

SACRAMENTO REGIONAL COUNTY SANITATION DISTRICT, a county sanitation district pursuant to and operating under the authority of the County Sanitation District Act, commencing at Health and Safety Code section 4700

By: _____

Prabhakar Somavarapu, District Engineer
Sacramento Regional County Sanitation District (SRCS D)

Date: _____

Agreement Approved by the Board of Directors with Authority Delegated to the District Engineer to execute the Agreement on behalf of District
Agenda Date: _____

Item Number: _____

Resolution No.: _____

APPROVED AS TO FORM:

District Counsel: _____

Lisa A. Travis
Supervising Deputy County Counsel

Date: _____