



## City Council Staff Report

**From: City Manager**

**Report Type: ACTION ITEMS**

**Lead Department: City Manager**

**Meeting Date: October 16, 2023**

Report #:2309-2022

### **TITLE**

City Council Discussion and Potential Direction on Feedback Regarding the Proposed Joint Powers Agency (JPA) Agreement for Cities Association of Santa Clara County; CEQA: Not a Project

### **RECOMMENDATION**

Staff recommends the City Council discuss the Proposed Joint Powers Agency (JPA) Agreement for Cities Association of Santa Clara County (CASCC) and provide potential direction to staff and to Mayor Kou as the City's representative on CASCC, on any feedback to the Cities Association of Santa Clara County (CASCC) regarding the proposed terms.

### **EXECUTIVE SUMMARY**

The Cities Association of Santa Clara County (CASCC) is pursuing a more formal structure, which CASCC Executive Committee members and contract staff state will provide increased clarity relating to tax status and governmental immunities, and limit the potential liability of Member Agencies. CASCC drafted a JPA Agreement and is seeking Member Agencies input and approval of a proposed JPA. Staff is requesting Council review and feedback on the proposed JPA Agreement. Cities and towns throughout Santa Clara County are similarly considering the proposed Agreement, and some are likely to approve the Agreement as drafted. Should Council propose changes to the Agreement, staff will convey this feedback to CASCC. CASCC may then consider revising the draft Agreement in response to this feedback, and the final Agreement will be brought back for Council consideration.

### **BACKGROUND**

The resulting proposed Draft JPA Agreement is provided as Attachment A. Over thirty years ago, the cities and towns in Santa Clara County ("Member Agencies") established the CASCC to improve cooperation on issues of common interest. The intent was to consolidate and maintain the functions and purposes of the Inter-City Council, the Santa Clara County Mayor's Conference, and the City Selection Committee for Santa Clara County. The cities and towns entered into an

informal agreement to provide some structure and outline the purpose and function of the CASC, eventually adopting bylaws and operating as an unincorporated association.

In 2017, the CASC began reviewing its organizational structure. In August 2020, the CASC Board voted 12 ayes with 3 absences (Los Altos Hills, Monte Sereno, San José) to take the steps necessary to recommend that member cities form a joint powers authority to provide a more formal and recognized structure and clarity regarding tax status and governmental immunities, and limit the potential liability of the Member Agencies. The vote took place after a presentation considering both a JPA and a 501(c)4. The presentation noted that:

- Since CASC formation, California and federal law has changed.
- CASC was not originally registered as a governmental entity and attempts to do so with the IRS have been unsuccessful.
- CASC is growing with respect to its responsibilities and involvement in projects of mutual interest (e.g., Planning Collaborative, SCSC Airplane Noise Roundtable, Silicon Valley Clean Energy, City Selection Committee).

Currently, the CASC appoints members to a variety of regional boards. This function falls under the City Selection Committee established by state statute and will continue whether or not a JPA is formed. The appointments include the Airport Land Use Commission, the Association of Bay Area Governments (ABAG), ABAG Regional Planning Committee, Bay Area Air Quality Management District (BAAQMD), Sourcewise, the Local Agency Formation Commission (LAFCO), Metropolitan Transportation Commission (MTC), Santa Clara County Local Board CAL-ID-RAN, Santa Clara County Emergency Operational Area Council (EOAC), Silicon Valley Regional Interoperability Authority (SVRIA), Recycling Waste & Reduction Commission (RWRC), Redevelopment Dissolution Countywide Oversight Board of Santa Clara County, and Santa Clara County Measure A (Housing Bond) Independent Citizens' Oversight Committee.

To form a joint powers authority, a JPA must be approved by the CASC Board of Directors and then executed by each Member Agency that wishes to join.

Over the past two years, the CASC conducted outreach and sought input from City and Town Attorneys, as well as City Managers. This outreach included circulating the Draft Agreement and attending meetings. There was extensive feedback and input from the City and Town Attorneys and City Managers, some of which was incorporated into the Draft Agreement.

On September 14, 2023 the Draft Agreement was considered by the CASC Board. In response to various issues raised at the meeting, the CASC Board directed that the Draft Agreement be revised to clarify that the JPA would not hire employees and to provide some language permitting but not requiring the CASC Board to appoint a working committee composed of professional staff from the member cities to review new initiatives and provide input to the CASC Board. With these changes, the CASC Board unanimously approved transmittal of the Draft Agreement

to the City and Town Councils of the proposed Member Agencies for their consideration. The CASC Executive Board has expressed a goal of finalizing the JPA in November.

## **ANALYSIS**

Development of the proposed JPA Agreement has been led by CASC's Executive Board (to be renamed the Executive Committee with the proposed JPA). Executive Board members have spent significant time and effort, working with their Executive Director and General Counsel to draft the agreement, seek input, and respond to feedback to date.

CASC has incorporated many suggestions into the draft Agreement, and staff appreciates their effort to address the issues raised. At this point, staff has identified a few remaining issues for Council to consider in determining whether to request changes from CASC:

1. **Alternatives to a JPA** - CASC has indicated it is seeking to become a JPA to ensure governmental immunities and decrease liability for member agencies. There are alternative ways of avoiding liability, such as refraining from hiring employees and avoiding involvement in initiatives without sufficient management or checks and balances. Over time, CASC has also been challenged to maintain financial and organizational management given limited resource allocation and oversight. At this point, it is unclear whether the JPA will proceed without Palo Alto participation. If Palo Alto were to propose that CASC continue as an unincorporated association, the City would likely need to be prepared to offer an alternative. Such an alternative could be that cities provide greater in-kind support such as acting as fiscal agent, and/or providing other services to assist with the ongoing functions of the organization. This could be referred to the city managers and city attorneys groups for development.
2. **Scope and Purpose** – Article 7 of the Draft Agreement outlines activities that the JPA would be prohibited from engaging in, such as purchasing real property, hiring employees, and issuing debt. Beyond these specific functions, the language describing what the JPA can do (Articles 2 and 6) —its purposes and powers —is very broad. Council may wish to discuss whether these activities should be further limited, either by adding prohibited activities or by more tightly defining its purposes and powers. This may also include recommendations on the level of consensus required before the JPA were to represent positions on issues or undertake new initiatives. For example, whether a simple majority or supermajority should be required for action.
3. **Fiscal Management** –
  - a. *Timing and Ability to Provide Budget Input.* Article 8 of the Draft Agreement provides the Board responsibility for developing a budget. However, it does not specify an opportunity for member agencies to review and provide input to budget decisions. The Silicon Valley Regional Interoperability Authority (SVRIA),

used as a model for the JPA, established a Working Committee<sup>1</sup> consisting of member agency staff and assigns to the Working Committee responsibility for ensuring preparation and establishes deadlines for distribution of the budget to members. This ensures member agencies can provide timely input to the JPA budget preparation.

- b. *Cost Allocation Specificity.* The Draft Agreement does not specify cost allocations to Member agencies. While CASC representatives have indicated no plans to change current fees and allocations to individual cities, neither the initial dues structure nor process for future changes are stated. Having clearly defined cost allocations and a process for changes would provide cities and towns greater clarity when making decisions about becoming a JPA member.
4. **Undertaking New Initiatives/Programs** – In Article 15 of the Draft Agreement, the definition of a significant program assumes the JPA’s ability to determine whether an activity will require \$10,000 or more annually. In response to feedback received, the Draft Agreement authorizes the Board to appoint a Working Committee to study a significant activity and provide input to the Board. However, the need to establish a Working Committee when an opportunity has already been presented would likely be a barrier to implementation, versus establishing a Working Committee in advance, responsible for identifying what may constitute a significant program, and advising the Board on issues that may not initially appear to be significant. In its discussions, CASC has indicated the Executive Committee would serve this function in lieu of a Working Committee.

However, given the breadth of powers proposed for the JPA, staff recommends that a Working Committee comprised of staff from Member agencies be required as advisory to the Board. Some initiatives can appear no-cost or low cost when first suggested, only later becoming clear to require significant time and/or funding to implement. A Working Committee composed of staff would ensure that professional expertise on a range of topics can support decision-making and help ensure focus of JPA resources.

5. **Contract/Contractor Oversight and Performance Review** – The contractual professional services provided by the Executive Director, General Counsel, Auditor, and potentially other services are described in Article 14. The draft Agreement does not specify, however, the responsibilities of the Board and Executive Committee for the selection, performance evaluation, and potential termination of the contractors providing these services. Absent a member agency staff structure for supporting these duties, this can be a difficult function for the Board and Executive Committee to perform.

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<sup>1</sup> <https://svria.org/wp-content/uploads/2021/09/JPA-Agreement-SVRIA-5-26-16.pdf>

6. **Executive Committee Authority** – Decisions other than the annual budget are largely left to the Executive Committee (see Article 11 of the Draft Agreement). This raises that potential that Executive Committee decisions and activities may not align with the Board.

Overall, staff believes that proceeding with a JPA and addressing the issues above would best be undertaken with the expectation that Member agencies will need to devote more time to ensuring appropriate consultation and engagement on CASC activities and operations.

Staff requests feedback from Council on the above summarized issues, and which among these issues or others should be communicated to CASC as requested revisions to the draft Agreement.

### **FISCAL/RESOURCE IMPACT**

The primary fiscal impacts are related to the future dues structure and cost allocation that would be associated with the JPA. Since the Draft Agreement does not define this, there is the potential that future costs may vary from current contributions. The City currently contributes \$18,314 to CASC annually. The CASC reported a budget of \$293,403 total revenues and \$212,159 total expenses for fiscal year 2024. Future dues will be established after approval of the JPA, and the CASC has stated that no changes are anticipated. Long-term costs are unknown.

### **STAKEHOLDER ENGAGEMENT**

The CASC circulated a Draft Agreement to all City and Town Attorneys in the County for their review and input and incorporated significant changes into the agreement. The Acting Executive Director and the General Counsel attended two virtual meetings with most of the Town or City Attorneys or Assistant City Attorneys on September 14 and September 28, 2022. A separate and additional meeting was held by the Santa Clara City Attorneys Roundtable on September 16, 2022.

CASC representatives presented the Draft Agreement at the Santa Clara County City Managers Association (“SCCMA”) meeting on October 12, 2022. Following that meeting, the City Managers submitted a list of 17 questions to CASC representatives. Due to changes in CASC over the last year, including a new General Counsel and the rotation of new City Council Board representatives, the answers to those questions were not completed until August 2023. These responses (Attachment B) were then circulated to the SCCMA members. On August 9, 2023, CASC representatives again met with the SCCMA to discuss the responses to the October 12, 2022 questions, review the Draft Agreement, and receive additional input. Following that meeting, further edits were made to the Draft Agreement.

On September 14, 2023, the CASC Board received the updated Draft Agreement that included edits that responded to comments of the City/Town Attorneys and City Managers. At the meeting, the CASC Board received comments from Board members and city managers in

attendance. The CASC Board directed some additional changes, resulting in the Draft Agreement now under review.

**ENVIRONMENTAL REVIEW**

Council consideration of and direction on the Draft Agreement will not cause physical changes to the environment and does not constitute a "project" under the California Environmental Protection Act (CEQA).

**ATTACHMENTS**

Attachment A: Draft Agreement

Attachment B: City Managers Questions and CASC Answers

**APPROVED BY:**

Ed Shikada, City Manager