



# Santa Clara Valley Water District

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**File No.:** 20-1095

**Agenda Date:** 1/12/2021

**Item No.:** 6.1.

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## BOARD AGENDA MEMORANDUM

### **SUBJECT:**

Approve a Budget Adjustment in the Amount of \$3,886,677 and Authorize the Chief Executive Officer to Negotiate and Execute Amendments to Consultant Agreements A4170G, for Native American Consulting Services for Permanente Creek Flood Protection Project, with Andrew Galvan, and A3932A, for Permanente Creek Flood Protection Project - Rancho San Antonio Construction Management Services, with Harris & Associates, Project No. 26244001, Rancho San Antonio Detention Basin Project. (Cupertino) (Districts 5 and 7).

### **RECOMMENDATION:**

- A. Approve a budget adjustment of \$3,886,677 from Fund 26 Operating and Capital Reserves to the Permanente Creek Flood Protection Project;
- B. Authorize the Chief Executive Officer to negotiate and execute Amendment No. 2 to Agreement A4170G, for Native American Consulting Services for Permanente Creek Flood Protection Project, with Andrew Galvan, to provide Native American monitoring; and
- C. Authorize the Chief Executive Officer to negotiate and execute Amendment No. 4 to Agreement No. A3932A, for Permanente Creek Flood Protection Project - Rancho San Antonio Construction Management Services, with Harris & Associates, to provide construction management services for the Permanente Creek Project, Rancho San Antonio Detention Basin Project.

### **SUMMARY:**

The Permanente Creek Flood Protection Project (Project) is included in the Safe, Clean Water and Natural Flood Protection Program (Safe, Clean Water Program). This Project protects approximately 2,200 parcels by implementing flood detention and channel improvements. The Project utilizes two flood detention areas located strategically in the watershed to maximize flood protection benefits while minimizing the construction work required in the downstream urban areas of the creek. The Project is being constructed through three separately bid sub-projects: Rancho San Antonio Detention Basin (RSA Project); McKelvey Park Detention Basin; and the Permanente Creek Channel Improvements. Construction of McKelvey and the Channel Improvements are complete. Finishing construction of the RSA Project will complete the entire Permanente Capital Project under the Safe, Clean Water Program.

On October 11, 2016, the Board awarded the Rancho San Antonio Detention Basin construction

contract to Granite Construction Company (Granite) in the sum of \$14,432,479.45 with the planned completion of construction and mitigation planting by December 2018. The Board also approved a contingency sum of \$1,444,000 for any potential change orders.

During construction, the RSA Project faced numerous challenges, such as delays associated with an existing PG&E gas line, the discovery of cultural resources during excavation activities and the resulting shutdown of almost a year and a half, and the subsequent additional work required to mitigate for California red-legged frogs entering the Project site during the shutdown.

### **PREVIOUSLY APPROVED BUDGET ADJUSTMENT**

On November 12, 2019, the Board approved an increase of \$3,000,000 to the construction contract contingency encumbrance to Granite due to the challenges and delays described above. This recommended amount was based on the estimate at that time that the treatment of cultural resources would be completed by the end of 2019 and construction completion to then follow in early 2020.

In addition to the on-going in-scope construction work, significant change orders that expended this amount are listed in Table 1 below.

**TABLE 1. SUMMARY OF CONTRACT CHANGE ORDERS SINCE NOVEMBER 2019 BUDGET ADJUSTMENT**

<b>Contract Change Order (CCO)</b>	<b>CCO Amount</b>
<i>Remaining Contingency Amount Prior to Nov. 12, 2019 Budget Adjustment</i>	\$46,383.06
Change Order No. 11 (11/20/2019) Woodrat Relocation, Biological Monitoring, Stinkwort Removal, Winterization, PG&E Gas Line Relocation, and Hand Clearing of Vegetation	\$475,388.51
Change Order No. 12 (12/10/2019) Cancellation of Concrete Pour, North Basin Hand Clearing of Vegetation, Fence Maintenance and Animex Fence Installation, and Stinkwort Removal	\$177,004.48
Change Order No. 13 (12/16/2019) Archaeological Digging Support and Biological Monitoring	\$458,284.99
Change Order No. 14 (12/17/2019) Double Handling of South Basin Dirt	\$14,502.81
Change Order No. 15 (02/26/2020) North Basin Dewatering and Biological Monitoring	\$101,030.36
Change Order No. 16 (05/06/2020) Exclusion Fence Maintenance and Animex Fence Installation, SWPPP BMPs, Fall Protection at South Basin, Bird Deterrent Work, Biological Monitoring	\$124,162.86

Change Order No. 17 (06/02/2020) Wooden Structure Potholing and Biological Monitoring	\$53,301.36
Change Order No. 18 (06/29/2020) Irrigation Well Drawing Modifications, Abandonment of Old Irrigation Well, Guardrail, Bird Deterrent Work, Biological Monitoring, Miscellaneous T&M	\$188,891.54
Change Order No. 19 (08/05/2020) Cemetery Outfall Incurred Costs, North Basin TRM, South Basin Planting Maintenance, June 2020 Biological Monitoring and Misc. T&M	\$108,941.62
Change Order No. 20 (09/09/2020) July 2020 Biological Monitoring and Misc. T&M	\$39,567.24
Change Order No. 21 (10/08/2020) August 2020 Biological Monitoring	\$17,715.50
Directed Change Order No. 1 (09/08/2020) Archaeological Digging Support (Nov 2019 - May 2020)	\$425,000.00
Change Order No. 22 (11/06/2020) Animex Fence Maintenance, Basin Erosion, Sept 2020 Biological Monitoring and SWPPP BMPs, Archaeological Midden Layer Protection, Cemetery Outfall, 2020 Remobilization and Escalation, Additional Archaeological Costs	\$244,529.69
Change Order No. 23 (11/25/2020) Oct 2020 Biological Monitoring, Stinkwort Removal, and Rock Weir Change	\$21,114.61
<b>Total Contract Change Order Amount since November 2019 Budget Adjustment</b>	<b>\$2,449,435.57</b>

### ***Recommended Budget Adjustment***

Unfortunately, the treatment of cultural resources was not completed until June 2020 instead of at the end of 2019, and construction could not resume until that time. In addition, a new unexpected challenge arose relating to disposal of soil from the Project site. The quarry that was initially receiving the soil material from the excavation of the detention basin in 2017 would no longer accept all the remaining soil from the RSA Project site, due to new regulatory requirements imposed on the quarry since 2017. However, since staff presented to the Capital Improvement Program (CIP) Committee on November 9, 2020, Granite was able to coordinate with the quarry and another site to accept the remaining soil. Currently, the majority of the soil has been removed from the Project site and, pending minimal weather delays and no other unexpected discoveries/challenges, construction is expected to be completed in early 2021.

A budget adjustment of \$3,886,677 is now recommended to pay for completing Project construction in early 2021 and Project close-out expenditures, such as dispute resolution with the contractor, potentially extending Project completion until summer 2021. With the Project duration extending an additional year due to the various challenges, it is recommended that funds be added to pay for

anticipated expenditures as outlined in Table 2 below. Due to the recent resolution of the soil offhaul issue, the original budget adjustment requested has now decreased by \$2.3 million since staff's presentation to the CIP Committee on November 9, 2020.

**TABLE 2. SUMMARY OF ADDITIONAL PROJECT EXPENDITURES**

Item	Reason
Additional budget for District staff to provide ongoing engineering, construction and other support (approx. \$1.5M)	Additional District staff support costs due to an additional year of delayed project completion
Additional budget for potential miscellaneous items for Project completion & close-out	- Geotechnical services for FEMA's LOMR application - Wetland ecologist services for passive revegetation support - Replacement of septic system for the adjacent cemetery; need for this work was discovered during detention basin excavation - Replacement vegetation due to schedule delay
Additional budget for Agreement A4170G Native American Consulting Services For Permanente Creek Flood Protection Project with Andrew Galvan	- Native American monitoring required during the remaining construction work
Additional budget for Agreement A3932A with Harris and Associates construction management consultant services	- Assistance with negotiating resolution of contractor disputes including possible Dispute Resolution Board (DRB) hearings - Archaeological monitoring by a Harris subconsultant, which is required during the remaining construction work
Additional contingency budget for the construction contract with Granite Construction Company	Potential contract change order costs due to an additional year of delay and issues with the soil off-haul and subsequent construction activities (plantings, trail restoration, etc.)

***Amendment No. 2 to Agreement A4170G Native American Consulting Services For Permanente Creek Flood Protection Project with Andrew Galvan***

Construction of the detention basin at Rancho San Antonio Park in the City of Cupertino began in late 2016. In May 2017, cultural resources were discovered at the Project site during excavation activities. Pursuant to applicable state laws, the California State Native American Heritage Commission (NAHC) was contacted and they subsequently appointed Mr. Andrew Galvan of the Ohlone Indian Tribe as the Most Likely Descendant (MLD) to be present during construction and

monitor excavation activities.

In August 2018, Valley Water entered into a consultant agreement with Andrew Galvan to provide Native American Consulting Services for the Permanente Creek Flood Protection Project. The schedule for completion of the RSA has been delayed due to the complex nature of the Project and several unanticipated circumstances including cultural resource discoveries and the time necessary for the related required federal regulatory process to be fully performed. The treatment of cultural resources was previously anticipated to be completed by end of 2019, but it was not until June 2020.

Therefore, additional budget is necessary to continue the monitoring of the remaining construction work (remaining soil disturbing activities such as planting, trail restoration, fence work, etc.). Due to the ongoing construction activities during which MLD monitoring is required (such as remaining soil disturbing activities including planting, trail restoration, fence work, etc.), staff recommends amending the Agreement to extend its term through the end of Project close-out, and increase the not-to-exceed compensation limit for additional MLD monitoring and supplemental services, if needed, as construction progresses.

While negotiations are in progress to draft Amendment No. 2, due to the critical nature of the ongoing construction work and to prevent any further delays to the Project, staff recommends a delegation of authority to the CEO to approve Amendment No. 2. Review of Amendment No. 2 will be scheduled for discussion with the Board's CIP Committee prior to staff recommending CEO approval of the Agreement Amendment.

#### ***Amendment No. 4 to Agreement A3932A with Harris and Associates consultant services***

Harris and Associates (HA) is currently performing minimal construction management services as a result of an amendment to their consultant Agreement in June 2019. The Agreement was amended due to increased staff capacity in the Valley Water Construction Engineering Unit at that time and to reallocate funding to pay for cultural resource services provided by HA's subconsultant CH2MHILL.

Due to their lengthy history managing construction of this Project and being involved in the cultural resource discovery during excavation in 2017, HA will provide valuable assistance to Valley Water in resolving pending disputes with the contractor, including providing support for any Dispute Resolution Board proceedings if such become necessary.

In addition, Amendment No. 4 provides funds to continue paying for HA's subconsultant to provide required services relating to the treatment and monitoring of cultural resource discoveries. This additional budget is necessary for CH2MHILL to continue the monitoring of the remaining construction work (remaining soil disturbing activities such as planting, fence work, trail restoration, etc.), perform sample analyses, and to prepare the final report to USACE.

While negotiations are in progress to draft Amendment No. 4, due to the critical nature of the ongoing construction work and to prevent any further delays to the Project, staff recommends a

delegation of authority to the CEO to approve Amendment No. 4. Review of Amendment No. 4 will be scheduled for discussion with the Board's CIP Committee prior to staff recommending CEO approval of the Agreement Amendment.

**FINANCIAL IMPACT:**

The recommended budget adjustment would transfer \$3,886,677 from the Safe, Clean Water Program Fund 26 Operating and Capital Reserves to the Permanente Creek Flood Protection Project, Project No. 26244001, increasing the total Project cost. The budget adjustment would leave a remaining balance in the Fund 26 Operating and Capital Reserves of \$50,618,974.

**CEQA:**

The recommended action does not constitute a project under CEQA because it does not have the potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

**ATTACHMENTS:**

None

**UNCLASSIFIED MANAGER:**

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