



Santa Clara Valley Water District

File No.: 20-1093

Agenda Date: 1/12/2021

Item No.: 3.7.

BOARD AGENDA MEMORANDUM

SUBJECT:

Approve Amendment No. 4 to Agreement No. A3536R, a Clean, Safe Creeks and Natural Flood Protection Program FY 2011 Trail and Open Space Grant Agreement between the Santa Clara Valley Water District and the City of San Jose, Providing a No-Cost Time Extension to the Agreement Expiration Date (San Jose) (District 2).

RECOMMENDATION:

Approve Amendment No. 4 to Agreement No. A3536R between the Santa Clara Valley Water District and the City of San Jose to retroactively extend the Agreement expiration date from March 20, 2020 to March 30, 2021, as a 12-month no-cost extension.

SUMMARY:

On June 28, 2011, Santa Clara Valley Water District (Valley Water) Board of Directors (Board) approved a grant award to the City of San Jose (City) in the amount not-to-exceed \$450,000 to support the Three Creeks Trail, Trestle, and Interim Improvements Project (Project) to construct a clear-span bridge trestle and an interim trail near Los Gatos Creek. This grant helped pay for retrofitting the existing trestle structure and installing interim trail features, such as fencing at roadways and directional signage, to encourage public access. The grant Agreement was fully executed as of January 4, 2012 (Attachment 1). To date, \$20,000 of the grant amount has been disbursed to the City for the interim trail portion of the Project.

The Project was originally scheduled to be completed December 30, 2015. However, due to a legal challenge to the Project, the City was required to prepare an Environmental Impact Report (EIR). As a result of this initial delay, on December 8, 2015, the CEO approved Amendment No. 1, a no-cost, time extension of the Agreement through December 30, 2017 (Attachment 2).

Due to the ongoing legal proceedings over the Project, the City requested a second 12-month extension. On January 2, 2018, the Board approved a no-cost, time extension of the Agreement through December 31, 2018 (Attachment 3).

In November 2018, the City requested a third extension due to delays caused by legal issues relating to replacing the wooden trestle bridge with a new steel one. On January 8, 2019 the Board approved a no-cost, time extension of the Agreement through March 20, 2020 (Attachment 4).

In February 2020, the City requested a fourth extension (Attachment 5) because the legal issues relating to the trestle bridge replacement were still unresolved and the Superior Court of Santa Clara County was expected to make a determination on the pending legal dispute in late March 2020.

The court's determination on the trestle bridge dispute was then delayed by the State Emergency Services Act, the Governor's Emergency Declaration related to the COVID-19 pandemic, the Governor's Executive Order N-29-20, and Order of the County of Santa Clara Public Health Officer dated March 16, 2020. In June 2020, the court ruled in favor of the City and work on the Project reconvened in late June of 2020.

Due to uncertainty surrounding the City's legal case, the COVID-19 pandemic, the County shelter-in-place order, and the revised Project schedule, the Agreement expired on March 20, 2020 before being amended to extend its term. In order to ensure continuity of the term of the Agreement and that the City receive the benefit of the grant Agreement to provide funding for the now-completed Project, staff recommends approval of Amendment No. 4 (Attachment 6) which would retroactively extend the term of the Agreement through March 30, 2021.

This will be the final amendment to the Agreement. The City completed the pedestrian bridge work in late November 2020 and the remaining Project closeout tasks are anticipated to be completed by March 30, 2021.

FINANCIAL IMPACT:

This is a no-cost, time extension; therefore, the Amendment has no financial impact.

CEQA:

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

ATTACHMENTS:

Attachment 1: Agreement A3536R
Attachment 2: Amendment No. 1
Attachment 3: Amendment No. 2
Attachment 4: Amendment No. 3
Attachment 5: City of San Jose Extension Request
Attachment 6: Amendment No. 4

UNCLASSIFIED MANAGER:

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