



# Santa Clara Valley Water District

File No.: 23-0133

Agenda Date: 1/24/2023

Item No.: \*6.1.

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## BOARD AGENDA MEMORANDUM

Government Code § 84308 Applies: Yes  No   
(If "YES" Complete Attachment A - Gov. Code § 84308)

### SUBJECT:

Approve Amendment No. 2 to Agreement No. A4325G, with Horizon Water and Environment, LLC, for Environmental Planning and Permitting Services for the Anderson Dam Seismic Retrofit Project, Project No. 91864005, Increasing the Not-to-Exceed Fee by \$2,730,094 for a Total Not-to-Exceed Fee of \$10,198,324 (Morgan Hill) (District 1).

### RECOMMENDATION:

Approve Amendment No. 2 to Agreement No. A4325G with Horizon Water and Environment, LLC for Environmental Planning and Permitting Services for the Anderson Dam Seismic Retrofit Project, Project No. 91864005, increasing the not-to-exceed Fee by \$2,730,094, for a total not-to-exceed Fee of \$10,198,324.

### SUMMARY:

The Anderson Dam Seismic Retrofit Project (ADSRP or Project) will correct dam seismic deficiencies and meet all current Federal Energy Regulatory Commission (FERC) and California Department of Water Resources, Division of Safety of Dams (DSOD) dam safety design standards. Upon completion of ADSRP, Anderson Reservoir will return to its original storage capacity.

Since execution of the Agreement, response to FERC orders has required planning, design, and construction of additional major, interrelated elements, expanding the scope of the Project. Due to the increased complexity of the ADSRP elements, Consultant's scope of services will now include additional environmental review support services to modify the project description and supplement analysis for design and regulatory changes to the ADSRP. Santa Clara Valley Water (Valley Water) District and Consultant also anticipate additional work will be necessary to support preparation of federal National Environment Policy Act compliance.

Staff recommends approval of Amendment No. 2 to increase the not-to-exceed fee by \$2,730,094 for a total of \$10,198,324 for the Consultant to address design and regulatory Project modifications and continue environmental review and permitting services for ADSRP.

### ***Project Background***

Since 2009, Anderson Reservoir has been operated under reservoir restrictions due to seismic performance concerns. The Project will correct dam seismic deficiencies and otherwise meet all current FERC and California Department of Water Resources, Division of Safety of Dams (DSOD) dam safety design standards. Project staff and consultants have been progressing with preparation of design plans and specifications and supporting environmental and permitting documents.

### ***Previous Board Actions***

On February 4, 2020, the Board authorized the Chief Executive Officer to negotiate and execute an agreement with Consultant for environmental planning and permitting services for the ADSRP for a not-to-exceed fee of \$4,500,000.

On February 25, 2020, the CEO approved Agreement No. A4325G with Horizon Water and Environment, LLC (Consultant) for Environmental Planning and Permitting Services for the Project for a not-to-exceed fee of \$4,494,225.

On April 13, 2021, the Board approved Amendment No. 1 to Agreement A4325G to increase the not-to-exceed fee by \$2,974,005 for a total of \$7,468,230 to allow the Consultant to perform additional environmental review, natural resource agency permitting services, and supplemental services for the Project.

### ***Consultant Work Performed to Date***

The environmental planning and permitting services Agreement with the Consultant for the Anderson Dam Seismic Retrofit includes the following tasks:

- Task 1 - Project Management
- Task 2 - Environmental Documentation
- Task 3 - Regulatory Compliance
- Task 4 - Supplemental Services

### ***Project Management***

Since the Agreement was awarded, Consultant's scope of services has increased significantly due to numerous local, state, and federal agency directives. Outreach and coordination of environmental aspects due to an increased scope of Project activities and expedited timelines have resulted in increased Project Management activities. Examples include the development and management of a high volume of task orders, weekly team coordination meetings, weekly environmental progress meetings, monthly FERC Division of Hydropower Administration and Compliance environmental and permitting coordination meetings, bimonthly general interagency meetings, bimonthly fisheries Technical Workgroup (TWG) meetings, and various focused Technical Workgroup sub-committee meetings.

### ***Environmental Documentation***

Valley Water initiated environmental review of the ADSRP to prepare an Environmental Impact Report (EIR). To date, Consultant has performed a review of background information, updated the project description several times, performed environmental investigations and studies, and prepared EIR administrative drafts.

### ***Regulatory Compliance***

Valley Water has also initiated activities to support permitting requirements for ADSRP and secure the necessary regulatory permits. Consultant has initiated preparation of biological evaluations, performed National Historic Preservation Act Section 106 historical resource investigations and reporting, developed and refined preliminary mitigation plans, and provided technical and administrative support for extensive regulatory agency coordination.

### ***Supplemental Services***

The full extent of services required of Consultant was broadly described, as initially deemed appropriate, in the original Agreement and Amendment No. 1. However, subsequently, Valley Water and Consultant conducted extensive consultation with applicable local, state, and federal agencies, which has resulted in the need to substantially revise the project description to capture a revised Project scope. Resolution of agency requests for more technical analysis, refined Project components, and review of additional ADSR alternatives is fundamental to completing a stable project description and moving forward with environmental review. Ongoing consultations regarding ADSR elements and conservation measures have resulted in significant changes to the project description including new, large-scale efforts for fish passage improvements and restoration at Ogier Ponds and Coyote Percolation Dam.

The level of detail now critical to providing appropriate direction to the Consultant was not described in the original or amended Agreement. To provide more specific direction to Consultant, Valley Water issued two Task Orders pursuant to Task 4 Supplemental Services. Authorization of these Task Orders allowed Consultant to address agency requests without delay and move the Project forward in the most expeditious manner.

To fund this time sensitive work, Valley Water administratively reduced portions of Task 2 Environmental Documentation and Task 3 Regulatory Compliance scope and reallocated the fees budgeted to that scope, to Task Supplemental Services. Amendment Two restores and increases funding for Task 2 and Task 3, and increases the budget for Task 4 Supplemental Services, all of which will pay for Consultant to continue performing environmental review and permitting services as the Project develops.

### ***Amendment No. 2 Additional Scope of Services***

Amendment No. 2 amends the Scope of Services to include additional coordination and technical analysis in response to regulatory agency directives since execution of Amendment No. 1. Ongoing consultations regarding Project elements and conservation measures has resulted in significant

changes to the project description. Amendment No. 2 would restore and increase funding for Task 2 Environmental Documentation and Task 3 Regulatory Compliance, and increase funding for Task 4 Supplemental Services, by the not-to-exceed fee of \$2,730,094 for a total of \$10,198,324 for the Consultant to continue performing environmental review and permitting services as the Project develops.

Staff’s recommendation to approve Amendment No. 2 to the Agreement was discussed at the Capital Improvement Program (CIP) board committee meeting on November 14, 2022 and was supported by the committee members.

Amendment No. 2 to the Agreement will be provided with a Supplemental Board Agenda Memorandum to be distributed on Friday, January 20, 2023.

A summary of the task fees for the proposed Amendment No. 2 is presented in Table 1, Summary of Tasks and Fees.

**Table 1 - Summary of Tasks and Fees**

		Total Fixed Not-to-Exceed (NTE) Fees				
		Original Agreement (including administrative revisions)	Amendment No. 1	Re-allocations	Amendment No. 2	Revised NTE FEES Total
1	Project Management	\$525,413	\$662,205	-	\$164,263	\$1,351,881
2	Environmental Documentation	\$1,634,720	\$0	(\$328,512)	\$790,174	\$2,096,382
3	Regulatory Compliance	\$912,217	\$1,353,670	(\$327,017)	\$1,412,657	\$3,351,527
4	Supplemental Services	\$1,421,875	\$958,130	\$655,529	\$363,000	\$3,398,534
<b>Total Agreement Not-to-Exceed Amount</b>		<b>\$4,494,225</b>	<b>\$2,974,005</b>	<b>\$0</b>	<b>\$2,730,094</b>	<b>\$10,198,324</b>

Note:  
1. By letters from Valley Water to the Consultant dated November 5, 2020; May 3, 2022; June 1, 2022; and October 4, 2022; funds were reallocated from Task 2 (\$328,512) and Task 3 (\$327,017) to Task 4 (\$655,529).

**ENVIRONMENTAL JUSTICE IMPACT:**

There are no Environmental Justice Impacts associated with this action. Environmental Justice Impacts associated with ADSRP will be evaluated and be included in a future update to the Board.

**FINANCIAL IMPACT:**

The Anderson Dam Seismic Retrofit Project, Project No. 91864005, is included in the Capital Improvement Program (CIP) Fiscal Year (FY) 2023-27 Five-Year Plan and in the FY 2022-23

Adopted Budget. The increased not-to-exceed (NTE) fee for Amendment No. 2 to Agreement A4325G is \$2,730,094, resulting in a total NTE of \$10,198,324.

Based on current estimates, there are adequate funds in the Project's FY 2022-23 Adopted Budget to encumber the planned expenditures for the Consultant's services to be incurred during this fiscal year. Funds to cover subsequent fiscal year anticipated Consultant services will be included in the biennial budget process and recommended by staff during the annual fiscal year budget process or through budget adjustment(s), if needed.

Approval of Amendment No. 2 to Agreement A4325G would increase the total Project cost reflected in the CIP's FY 2023-27 Five-Year Plan. The increase in the total Project cost will be incorporated into the CIP's Draft FY 2024-28 Five-Year Plan. The Project is funded by a combination of Safe, Clean Water & Natural Flood Protection Program (Fund 26), and Water Utility (Fund 61) with 81.9% of the costs allocated to North County Zone W-2, 7.9% to South County Zone W-5 and 10.3% to South County Zone W-7.

**CEQA:**

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

**ATTACHMENTS:**

Attachment A: Gov. Code §84308

\*Supplemental Agenda Memo

\*Supplemental Attachment 1: Amendment No. 2

**UNCLASSIFIED MANAGER:**

John Bourgeois, 408-630-2990