



# Santa Clara Valley Water District

**File No.:** 17-0833

**Agenda Date:** 2/27/2018

**Item No.:** 4.2.

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## BOARD AGENDA MEMORANDUM

### **SUBJECT:**

Consider the Board Audit Committee's Recommendation to Expand the Scope of Services of Agreement No. A4046F, Performance Audit of Lower Silver Creek Flood Protection Project Consultant Agreement (A3277G) with RMC Water and Environment.

### **RECOMMENDATION:**

- A. Discuss and consider the Board Audit Committee's recommendation to expand the scope of the Lower Silver Creek Flood Protection Performance Audit to include:
  - i. A financial review to ensure that there was no double billing and no billing for work that was not done, including additional analysis on the October 27, 2015, verbal report to the Board that considers whether the invoices followed appropriate financial review and approval processes and followed appropriate preparation and submittal processes; and
  - ii. A review of media allegations in newspaper reports and video and ensure that they have been addressed.
- B. If the Board accepts the Board Audit Committee's recommendation, approve Amendment No. 3 to Standard Consultant Agreement No. A4046F, Performance Audit of Lower Silver Creek Flood Protection Project Consultant Agreement (A3277G) with RMC Water and Environment to expand the scope of services and increase the not-to-exceed amount by \$193,500 for a new, Not-to-Exceed amount of \$292,887.

### **SUMMARY:**

The Board Audit Committee (Committee) was established to assist the Board of Directors, consistent with direction from the full Board, to identify potential areas for audit and audit priorities, and to review, update, plan and coordinate execution of Board audits.

This agenda item is presented for the Board to discuss and consider its Committee's recommendation to expand the scope of services of the Lower Silver Creek Flood Protection Performance Audit, as was discussed by the Committee during its September 28, 2017, and November 30, 2017, meetings.

The Committee recommends expanding the performance audit's scope of services to include:

1. A financial review to ensure that there was no double billing and no billing for work that was not done, including additional analysis on the October 27, 2015, verbal report to the Board that considers whether the invoices followed appropriate financial review and approval processes and followed appropriate preparation and submittal processes; and
2. A review of media allegations in newspaper reports and video and ensure that they have been addressed.

The expanded scope of services adds \$193,500 to the original Agreement amount of \$99,387, for a not-to-exceed total of \$292,887.

Amendment No. 3 (Attachment 1) implements the scope of services described in Table 1: Audit Tasks and Cost Breakdown (Attachment 2).

If the Board accepts the Committee's recommendation and all new audit tasks and costs, Amendment No.3 to Standard Consultant Agreement No. A4046F, Performance Audit of Lower Silver Creek Flood Protection Project Consultant Agreement (A3277G) with RMC Water and Environment is attached for Board approval.

## **Background**

### ***Lower Silver Creek Flood Protection Project***

The Lower Silver Creek Flood Protection Project was identified in the 1986 Benefit Assessment Program and was enabled to protect the surrounding area by removing 3,800 parcels from the 1% floodplain and to improve stream habitat values. The Lake Cunningham Project was also necessary to provide 1% flood protection to areas along Lower Silver Creek. The federal sponsor is the United States Department of Agriculture (USDA), through its Natural Resources Conservation Service (NRCS). The NRCS was the lead agency in the development of the original 1983 Watershed Plan and the 1988 Alternative Analysis Plan Update. In 2000, the Santa Clara Valley Water District (District) initiated the Coyote Watershed Program to accelerate work in the Watershed which included the Lower Silver Creek Project and the Lake Cunningham Project. Improvements for Lower Silver Creek Reaches 1-3 were constructed. Although project designs were nearly completed for Reaches 4-6, improvements to these reaches and to the Lake Cunningham facility were not constructed due to funding limitations and were consequently deferred.

Due to the completeness of design (ranging from 90-100%), District staff identified Reaches 4-6 (Project) as a "shovel ready" project eligible for federal funds. On April 16, 2009, the USDA Secretary Vilsack announced that the Lower Silver Creek project would receive \$2 million in federal economic stimulus funds through the NRCS as part of the American Recovery and Reinvestment Act (ARRA) of 2009. The terms and conditions applicable to the District's award of the federal economic stimulus funds associated with Reaches 4-6 required the District to award the first contract for project construction no later than August 2009; a very tight timeline.

As the District did not have the management and services staff available to support the Project, and since the short timeline was deemed as critical, a sole-source procurement strategy was made to utilize consultant staffing associated with previous Reaches. RMC Water and Environment (RMC) entered into a consultant agreement, effective June 17, 2009, to perform Program Oversight and Management and a notice-to-proceed was issued for the firm to commence work.

To comply with the August 2009 deadline, the first contract awarded (allowing for access to federal stimulus funding) was the construction of Reach 6B Early Grading work, from Moss Point Drive to Cunningham Avenue. As a condition of receiving initial grant funding, the District executed a construction contract for the Early Grading work. It was the first phase prior to final design and construction of the preferred channel configuration and flood protection improvements.

In order to receive an additional approximate \$16 million of federal stimulus funding for the previously deferred Reaches 4- 6A Project, the District was required to award the subsequent professional services agreements for project management, permitting, design and coordination during construction by August 2010.

### ***Audit of the RMC Water and Environment Program Oversight and Management Consultant Agreement***

At the October 27, 2015, Board meeting, the Board received a staff report in response to a Board Request related to recent media coverage regarding the RMC Agreement. A financial review of the Lower Silver Creek Flood Protection Project Reaches 4-6A's (Project) finances and grants was conducted through the Chief Financial Officer's office.

The comprehensive financial review included the review of all invoices and payments made to RMC, invoice supporting documents, payment authorizations, agreement payment worksheets, and compliance with the District's policies for goods and services. Staff's review found no irregularities or noncompliance issues with the District's policies and procedures for payments of goods and services. All invoices paid to RMC were approved by the project manager, paid within the executed contract agreement amount, and were supported by RMC Progress Work Billing Detail documents.

As a result, the Board took action to refer to its Committee a performance audit of the Lower Silver Creek Flood Protection Project Consultant Agreement with RMC, consideration of whether additional audits should be considered by the Board, and an audit of District processes relating to Conflict of Interest between contractors and staff; and bring discussion back to the Board that includes the March 10, 2015, Consultant Contracts Management Process Audit.

At the request of the Board, the District Counsel's Office retained outside counsel to conduct fact finding relating to allegations of ethical violations, conflict of interest, and corruption surrounding the District's dealings with RMC Water and Environment Incorporated. At the regular December 8, 2015 Board meeting, Senior Assistant District Counsel Brian Hopper gave a report regarding the outcome of this fact finding. Six discrete issues were evaluated, and the fact finder identified two areas warranting further review or consideration: (1) whether amendment of the RMC agreement on the Lower Silver Creek project violated any District policy; and (2) whether the evaluation structure

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involving the Deputy Operating Officer and her supervision of those overseeing RMC projects should be reviewed. As to this second issue, then Chief Operating Officer Norma Camacho reported to the Board that changes in the reporting structure for the Deputy Operating Officer had already been implemented. As to the remaining issues, the fact finder did not identify any District employee misconduct or ethical violations and noted that issues relating to the quality of performance by RMC could be addressed separately by a technical audit. The Board noted the information and took no formal action.

At the Committee's March 25, 2016, meeting, the Committee discussed and directed staff to prepare a scope and schedule for the Committee to review and commence a Board-commissioned performance audit of the Lower Silver Creek Flood Protection Project Agreement with RMC Water and Environment (A3277G), including all agreement amendments. The scope of the performance audit focused on policies, procedures, and resources. A financial review was not included in the original performance audit scope.

At the July 7, 2016, Committee meeting, the Committee approved the performance audit scope and directed staff to issue a Request for Proposal (RFP).

The RFP was released on August 12, 2016, through September 9, 2016. A total of three proposals were received and two firms were interviewed. The highest ranked firm was PMA Consultants LLC (PMA). The District and the Committee evaluated the proposals, conducted interviews, and selected PMA to conduct the performance audit.

The District entered into an Agreement with PMA, effective January 18, 2017, and a notice-to-proceed was issued January 25, 2017.

On March 1, 2017, a kickoff meeting with PMA and District staff was held to review the scope and methodology for conducting the performance audit. The performance audit was scheduled to be completed by November 2017 and the Consultant Agreement was set to expire December 31, 2017.

On June 8, 2017, Amendment No. 1 to the PMA Agreement was executed to add travel expense funding and update District and Consultant staff contact information.

On September 28, 2017, PMA presented its final draft performance audit report to the Committee. The Committee also received draft management responses to the performance audit recommendations.

At this meeting, the Committee further recommended expanding the performance audit scope to include:

1. A financial review to ensure that there was no double billing and no billing for work that was not done, including additional analysis on the October 27, 2015, verbal report to the Board that considers whether the invoices followed appropriate financial review and approval processes and followed appropriate preparation and submittal processes; and

2. A review of media allegations in newspaper reports and video and ensure that they have been addressed.

At the November 30, 2017, Committee meeting, the Committee discussed a draft expanded scope of services to verify it met the Committee's intent, as requested during the September 28, 2017, meeting.

On December 28, 2017, Amendment No. 2 to the PMA Agreement was executed to update District contact information and extend its term to allow time for the full Board to consider the Committee's recommendation to expand the performance audit scope.

**FINANCIAL IMPACT:**

The initial Agreement not-to-exceed amount, plus, funding added pursuant to Amendment No. 1, total \$99,387. Amendment No. 3 adds an additional \$193,500 to the total cost for a total not-to-exceed amount of \$292,887. Fiscal Year 2018 funds are available in Project 60131016 to fund Amendment No. 3.

**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 1: Amendment No. 3 to Standard Consultant Agreement
- Attachment 2: Audit Tasks and Cost Breakdown

**UNCLASSIFIED MANAGER:**

Norma Camacho, 408-630-2084