



Santa Clara Valley Water District

File No.: 15-0653

Agenda Date: 1/12/2016

Item No.: *5.3.

BOARD AGENDA MEMORANDUM

SUBJECT:

Update on the Expedited Purified Water Program-Project No. 91304001 San Jose.

RECOMMENDATION:

- *A. Receive and discuss other Expedited Purified Water Program updates and provide direction to staff as needed.
- *B. Affirm proceeding with dual track solicitation for Statements of Qualification for both a Progressive Design-Build project delivery and a Public-Private Partnership project delivery;
- *C. Authorize the Chief Executive Officer to negotiate and execute Amendment No. 1 to Agreement A3611A for Financial Advisory Services between the Santa Clara Valley Water District (District) and Public Resources Advisory Group to increase the maximum contract amount by \$1,331,000 for a total contract value of \$2,256,000; and
- *D. Do not proceed with a Project Labor Agreement for the Expedited Purified Water Program.

SUMMARY:

The Expedited Purified Water Program (Program) is part of the District's strategy to respond to the current drought and is consistent with Board direction to expand Santa Clara County (County)'s water supply. As currently conceived, the Program could provide up to 45,000 acre-feet per year (AFY) of purified water for indirect and/or direct potable reuse to supplement groundwater recharge from other existing sources such as imported water and stored local water supplies.

Program Background

The Expedited Purified Water Program (Program) is part of the District's strategy to respond to the current drought and is consistent with: Board direction to develop recycled water (Board Policy E-2.1.4), and the Board Appointed Officer's (BAO)'s interpretation that the annual recycled water production meets at least 10% of the County's water demands by 2025 (Outcome Measure 2.1.4.1). As currently conceived, the Program could provide up to 45,000 AFY of purified water for indirect potable reuse to supplement groundwater recharge from other existing sources such as imported and stored local water supplies. The Program consists of several key components: (1) Silicon Valley Advanced Water Purification Center (SVAWPC) Expansion; (2) Ford Recharge Ponds Indirect Potable Reuse Facility; (3) Mid-Basin Injection Wells; (4) Los Gatos Recharge Ponds; (5) Westside Injection Wells (or central pipeline direct potable reuse as a future alternative); and (6) Sunnyvale Indirect Potable Reuse.

Due to the ongoing drought, there is increasing urgency for the District to expedite the Program at an acceptable risk and cost to the District. The successful implementation of the Program will mitigate the risk of land subsidence and salt water intrusion, which could significantly impact the infrastructure and economy of the County.

The District's approach to implementing the Program is currently organized into 12 strategies as shown in Table 1. The primary focus of this agenda item pertains to Strategy 6 - Expedite Purified Water Expansion Program (Public Track) and Strategy 7 - Develop Public-Private Partnership for the Program (P3 Track).

Table 1-Recycled and Purified Water Program Implementation Strategies

Strategic Planning	Operations & Capital Program	Board Support & Outreach	Administrative & Financial Management
1. Complete & Implement Master Plans	5. Deliver projects in CIP	8. Support Board engagement in policy & governance	11. Develop and implement financing plan
2. Promote & conduct research to support potable reuse	6. Expedite purified water expansion program (Public Track)	9. Build community & stakeholder support for potable reuse	12. Develop District workforce to support expanded program
3. Integrate with groundwater management	7. Develop public-private-partnership for the Program (P3 Track)	10. Promote legislation and regulations to advance potable reuse	
4. Develop partnership strategy for countywide system			

A. Dual Track Solicitation for Statements of Qualification

Staff has prepared the Request for Qualifications (RFQ) for both a Progressive Design-Build (PDB) project delivery approach and the Public-Private Partnership (P3) project delivery approach. Three RFQs are anticipated to be released on Friday, January 15, 2016. One will be a P3 RFQ for the Program, and the other two will be PDB RFQs for two Program elements-one for the Silicon Valley Advanced Water Purification Center (SVAWPC) expansion, and the second for the main pipeline that

will convey the purified water from the expanded SVAWPC to the Los Gatos Recharge Ponds.

At the December 4, 2015 special Board meeting, staff presented a series of policy issues for Board consideration and discussion. Several important policy questions related to the alternative project delivery approaches are:

1. Is the District open to working with a P3 entity to implement the expedited purified water program if the District's financial and operational interests can be met with such an arrangement?
2. Is the District open to a P3 entity providing operations and maintenance (O&M) for the new purified water facilities and associated infrastructure if the District's financial and operational interests can be met with such an arrangement?
3. Is the District open to contracting with one P3 entity vs. spreading design-build or design-bid-build work among multiple firms and contractors?

Staff recommends the Board affirm the current plan to proceed with a dual track solicitation for Statements of Qualification for both a Progressive Design-Build and a Public-Private Partnership approach for project delivery. Staff plans to schedule a work study session with the Board in February 2016 to present and discuss in greater detail the steps that will follow over the next several months with regards to the dual track process.

B. Financial Advisory Services Contract Amendment

Background. In 2012, the Public Resources Advisory Group (PRAG) was selected through a formal, competitive Request for Proposal (RFP) process. The Consultant Review Board consisted of three members from the District's Financial Planning and Management Division and one external member from the City of Cupertino Finance Department.

On September 11, 2012, the Board authorized the CEO to negotiate and execute the Financial Advisory Services Agreement (Agreement) with PRAG with an initial term of five years, and an option to extend the term of the agreement for two additional 2-year periods, for a maximum contract amount of \$925,000. The contract was executed by the parties and became effective on October 1, 2012 (Agreement No. A3611A). The main deliverables of the Agreement include the following:

- 1) Issuance of debt to meet the District's short-term and long-term capital financing needs;
- 2) Restructuring of existing debt to ensure optimal debt financing portfolio strategy;
- 3) On-going management of the District's debt portfolio in the most effective manner while adhering to all federal, state, local and other contractual compliance requirements; and
- 4) Providing general financial advisory, financial analysis and other special projects as requested by the District.

Financial Advisory Services for Public-Private Partnership (P3). Staff had informed the Board of the need for financial advisory services to evaluate and analyze alternative project delivery methods in the Board Memorandums dated March 12 and April 28, 2015. In May 2015, staff requested PRAG to

provide specialized financial advisory service to evaluate the public-private partnership (P3) project delivery method for the Program. To facilitate this service request, PRAG subcontracted the scope of services related to P3 to Clean Energy Capital (CEC), who had provided financial advisory services for the Poseidon Desalination P3 projects in Carlsbad and Huntington Beach. The work completed by CEC to date includes the Board Work Study Session on project delivery methods held on June 22, 2015, the Final Report on Program Delivery Methods, presented to the Board on July 28, 2015, and additional analysis of key legal/financial issues, as presented to the Board on September 22, 2015. The total amount of \$119,000, expended for work performed through September 22, 2015, is accounted for under the current PRAG contract.

In response to the Board's direction on July 28, 2015, to pursue a dual track procurement strategy, staff recommends that the Board authorize the CEO to negotiate and execute Amendment No. 1 to Agreement A3611A for Financial Advisory Services to increase the maximum contract amount by \$1,331,000 for a total not-to-exceed fee of \$2,256,000. The Amendment No. 1 will incorporate the tasks outlined in Table 2 below to complete all financial advisory work for the P3 procurement process, beginning with the preparation of the RFQ through final P3 contract negotiations. Actual costs billed to the District will be based on the number of hours CEC expended for each task at the hourly rate per the Agreement (billing rate varies by position title to a maximum of \$350/hour), up to the not-to-exceed fee of \$1,331,000.

The proposed Amendment No. 1 has no impact on the Board-approved FY 2016 budget as funding for financial advisory services was incorporated in the current fiscal year's budget for the Indirect Potable Reuse - Planning project.

Table 2-Clean Energy Capital's P3 Advisory Services Fees

Task	Description	Fee	Target Schedule
1	Support District through P3 RFQ Issuance	\$144,000	Currently underway through Jan. 2016
2	Support District through P3 SOQ Evaluation	\$85,000	March 2016
3	Support District through P3 RFP Issuance	\$117,000	June 2016
4	Support District through P3 Proposal Evaluation	\$205,000	December 2016
5	Support District in P3 Contract Negotiations/Stage 1	\$390,000	December 2017
6	Support District in P3 Contract Negotiations/Stage 2	\$390,000	December 2018
	Total Not-to-Exceed Fee	\$1,331,000	

C. Project Labor Agreement

At the December 4, 2015 special Board meeting, staff presented information on Project Labor Agreements (PLAs). A Board decision on whether to pursue a PLA for the Program will impact the overall Program delivery schedule. At this time, staff recommends the Board not pursue a PLA for the Program for the following reasons:

1. A PLA has never been used for a District project.
2. No District construction project to date has been delayed due to construction worker strikes, lockouts, or similar labor-related job disruptions despite the lack of PLAs.
3. A PLA must be in place before a Request for Proposals (RFP) can be issued to both PDB and P3 entities. As staff reported to the Board on December 4, 2015, the East Bay Municipal Utility District (EBMUD) recently instituted a pilot program to develop a PLA for one of its projects. This PLA development has been underway for almost one year, and has stalled due to various concerns raised by different parties involved in the process. If the Board chooses to proceed with a PLA for the Program, the current schedule (June 2016) for releasing an RFP to shortlisted PDB and P3 entities would be delayed to mid-2017, or later. Staff believes this would not align well with the urgency to proceed with planning efforts related to the Program.
4. The District diligently monitors its contractors on all construction projects to verify that prevailing wages are paid to their workers in compliance with state law. The District requires that all contractors and sub-contractors submit certified payroll to District staff in support of the monthly progress payment application. If the certified payroll documents are not submitted in a timely manner, the District withholds a penalty from the progress payment in accordance with California Labor Code §1776. Based on review of the certified payroll records, if wages/benefits to any construction worker are found to be below the California Department of Industrial Relations' prevailing wage rates for the work performed, the District withholds a penalty from the progress payment in accordance with California Labor Code §1775.

D. Program Updates

In the December 4, 2015 special Board Meeting, Board members requested an update on District staff's efforts to address necessary contractual issues with the City of San Jose (City) -- to allow the Expedited Purified Water Program to proceed - and on the District's public outreach program related to potable water reuse. Updates on these two topics are provided as follows.

1. Integration Agreement with City of San Jose for Advanced Water Purification Expansion

Background: On March 2, 2010, the City and the District entered into the following two agreements: (i) A *Ground Lease and Property Use Agreement* (Ground Lease Agreement) to provide for the construction and operation of the Silicon Valley Advanced Water Purification Center (SVAWPC) and related facilities on a portion of the City's Regional Wastewater Facility (RWF); and (ii) *Recycled Water Facilities and Programs Integration Agreement* (Integration Agreement) to financially support the production and use of recycled water in the County, and to coordinate and cooperate in meeting both party's needs.

On October 23, 2012, the City and the District entered into a third agreement entitled *Operations and Maintenance of the SVAWPC* (Operations and Maintenance Agreement). The key provisions of these three agreements that are likely to be impacted by development of the Program are provided in

Attachment 1 to this agenda memorandum.

Next steps: If the SVAWPC will be expanded as part of the Program, the above-described agreements will need to be amended or superseded by new agreements to address property use and lease terms for the expanded facility, volume of effluent from the City's Plant that will be available to the Program, amount of brine from the expanded SVAWPC that will be accepted by the City, as well as other terms for the operation and maintenance of the expanded SVAWPC. The key issues that must be addressed by the District and City are summarized in Table 3 as follows. A meeting was held on December 4, 2015, between senior leaders from both the District and the City to set forth a process on reaching resolution on these issues. City leaders expressed their overall support for moving forward with the Program.

Table 3-Expedited Purified Water Program - Key Contractual Issues to Be Considered between the City of San Jose and District

Issue	Current Arrangement	District's Proposed Changes ¹	Comments
Purpose	"...enhance the quality of non-potable recycled water"	Create new potable water supply and reduce land subsidence risk	County water supply alternatives are limited and may limit growth
Land Lease	Provision of land for current 8 mgd facility at an annual rent of \$10 per year	Provision of land adjacent to current 8 mgd facility for facility expansion.	City is keeping adjacent land open until July 1, 2020 date in current agreement.
Flow from Regional Wastewater Facility (Plant)	"...twelve (12) million gallon per day (mgd) of Plant secondary effluent... at a cost saving to the Plant for tertiary treatment..."	Up to an additional fifty (50) mgd of City's Plant secondary or tertiary effluent.	Potable reuse program size governed by the available secondary or tertiary effluent from the City's Plant.
Brine (RO Concentrate) Discharge	"...up to 2 mgd will be accepted at the Plant provided that the discharge is compatible with ability of the Plant to meet its NPDES permit"	Up to an additional 8 mgd with protections to City should brine stream be the source of NPDES permit non-compliance.	District has contracted specialists for brine toxicity studies and dilution credits; awaiting City input on strategy and concurrence on testing protocols.

¹ Per the March 2, 2010 Integration Agreement, page 13-14: "Mutual consent of the governing bodies of the Parties shall be required prior to any changes...including but not limited to...any expansion of the AWTF in size of capacity, including any increase in brine discharge."

2. Public Outreach

The Public Outreach services agreement with Katz & Associates was amended on July 8, 2015, as per Board authorization on April 28, 2015. As of October 2015, the purified water outreach team has been fully staffed with the addition of a new tour program manager to help serve as a public tour

guide and help increase stakeholder engagement.

Major milestones that have been achieved in the past several months include:

- a. A Community Open House was held on October 24, 2015, at the Silicon Valley Advanced Water Purification Center (SVAWPC) that featured an interactive kids' fun zone, water gallery videos, tours and a water taste test station. Over 650 members of the public attended the event. Purified water taste samples (from purified water which was further treated with an advanced oxidation process) were made available to all the attendees. Over 90% voluntarily tasted the water. Based on 200 event surveys collected, 86% of the respondents think advanced purified water is safe to drink today. Furthermore, 95% support using advanced purified water to replenish our groundwater basins. In addition, 45 on-camera testimonials in multiple languages were collected from attendees stating their vocal support for expanding the use of purified water, and over 60 supporter cards were filled out at the event giving the District permission to use their name and city in support of purified water to display on our website or other media.
- b. The District offered over 150 water taste test samples at San Jose's VERGE Conference on October 29, 2015, where entrepreneurial business leaders in Silicon Valley convened to discuss technology and sustainability. Attendees voiced and showed their support for the expansion of potable reuse by readily taking taste tests and allowing District staff to take photos for social media use.

Public outreach milestones that are currently in progress include:

- a. Setting up a special meeting and tour of the SVAWPC with County Health Officers / Public Health Director and the County Department of Environmental Health in late January or early February, 2016. The goal is to propose a potable reuse symposium for health professionals to increase support of this key stakeholder group.
- b. Refining stakeholder lists and strategy to identify groups to target and gain official statements or letters of support, and offer speaker bureau presentations to key groups.
- c. Identifying community and multicultural events to participate in and offer taste tests.
- d. Developing youth/school tour program curriculum to offer more tours to youth.
- e. Exploring partnerships with universities for class projects.

FINANCIAL IMPACT:

There are adequate funds in the Indirect Potable Reuse Planning Project's FY 2015-16 Board-adopted Budget to encumber the additional \$1,331,000 for the Financial Advisory Services amended agreement.

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 change in the physical environment.

ATTACHMENTS:

Original Board Agenda Memo
Original Attachment 1: Key Provisions
*Supplemental Board Agenda Memo
*Supplemental Attachment 1: Amendment
*Supplemental Attachment 2: PowerPoint
*Supplemental Attachment 3: Handout 5.3-A

UNCLASSIFIED MANAGER:

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