



Santa Clara Valley Water District

File No.: 18-0073

Agenda Date: 3/21/2018

Item No.: 4.1.

BOARD AGENDA MEMORANDUM

SUBJECT:

Amendment No. 2 to Agreement A3901G with HDR Engineering, Inc., for Project Management Services for a Not-to-Exceed Fee of \$5,766,250, Resulting in a Total Not-to-Exceed Fee of \$8,077,765; Amendment No. 3 to Agreement A3611A With Public Resources Advisory Group for Financial Advisory Services for a Not-to-Exceed Fee of \$3,410,000, Resulting in a Total Not-to-Exceed Fee of \$5,666,000 for the Expedited Purified Water Program Project, Project No. 91304001; and Forms of Installment Purchase Agreement and Trust Agreement Relating to Santa Clara Valley Water District Revenue Certificates of Participation.

RECOMMENDATION:

- A. Approve Amendment No. 2 to Agreement A3901G with HDR Engineering Incorporated for Expedited Purified Water Program Project Management Services for a not-to-exceed fee of \$5,766,250, resulting in a total not-to-exceed fee of \$8,077,765;
- B. Approve Amendment No. 3 to Agreement A3611A with Public Resources Advisory Group (PRAG) for Financial Advisory Services for a not-to-exceed fee of \$3,410,000, resulting in a total not-to-exceed fee of \$5,666,000; and
- C. Approve the Forms of Installment Purchase Agreement and Trust Agreement Relating to Santa Clara Valley Water District Revenue Certificates of Participation (Water Utility System Improvement Projects).

SUMMARY:

The Expedited Purified Water Program (Program) was initiated in 2015 as part of the District's strategy to respond to a multi-year drought and is consistent with Board direction to expand recycled water use in the county.

On October 10, 2017, the Board directed staff to pursue a Public-Private Partnership (P3) delivery method for the Program. On December 12, 2017, the Board considered staff's recommendation to proceed with expansion of the Silicon Valley Advanced Water Purification Center for indirect potable reuse (IPR) at the Los Gatos Recharge Ponds. The Board directed staff to:

- 1. Issue another Request for Qualifications (RFQ) to expand the P3 shortlist;
- 2. Initiate development of a Request for Proposal Process assuming up to 24,000 acre-feet per year (AFY) of purified water production at the expanded SVAWPC and conveyance of purified water to the Los Gatos Recharge Ponds;

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3. Initiate the California Environmental Quality Act (CEQA)/National Environmental Policy Act (NEPA) assessment and documentation for the staff-recommended IPR project; and
 4. Execute an accelerated MOU with the City of San Jose

Staff's recommendation for Board approval of two amendments for consultant services will allow staff implementation of the Board's December 12, 2017 direction.

Project Management Services Agreement with HDR Engineering, Inc.

In accordance with Agreement A3901G, HDR Engineering, Inc. (HDR) has provided project management services for the development of the Expedited Purified Water Program. The services have included preparation of a Project Management Plan; development of a Program Schedule; a Risk Management Plan; assistance with oversight of and coordination between various studies and preliminary engineering work performed by various consultants as part of Program development; assistance with the Program's procurement process; and managing the environmental assessment and documentation to comply with the CEQA/NEPA.

Staff recommends amending this Agreement for HDR to continue performing project management services (schedule, risk management) through the P3 procurement process; manage the environmental and permitting support consultant agreement on behalf of the District; work with the District's financial and legal advisors to support the P3 procurement process; assist with coordination between Program work and related studies being undertaken by the District; compile engineering documents and obtain additional technical information for the P3 RFP.

Previous Board Actions

On September 22, 2015, the District Board of Directors authorized the CEO to negotiate and execute the Agreement with HDR Engineering Incorporated. Since then, HDR has been assisting the District by performing project management services for Program development and supporting the dual track procurement process.

HDR Work Performed to Date

The project management services Agreement with HDR for the Expedited Purified Water Program included the following tasks:

- Task 1 - Fast-Start Activities
- Task 2 - Core Project Management Activities
- Task 3 - Early Value-Engineering
- Task 4 - Environmental/Permit Planning
- Task 5 - Provide Support for Public-Private Partnership Procurement
- Task 6 - Support Workforce Development
- Task 7 - Supplemental Services

To date, the Consultant has completed the scope of services in Tasks 1 and 3, and has performed significant work on the remaining tasks, on an as-needed basis, as the Program and procurement method development have evolved during the past 2.5 years.

Staff Management of HDR Agreement

Staff has been monitoring and managing HDR's performance to meet the goals and terms of the Agreement. Weekly check-in meetings have been held with HDR staff to assess progress of the task work as necessitated by the development of the Expedited Purified Water Program and the decision process for alternative project delivery. HDR is required to and has been submitting detailed monthly progress/status reports with their invoices for review by District staff.

Amendment No. 2 to Consultant Agreement A3901G with HDR

The original Agreement with HDR was executed on September 22, 2015 for a not-to-exceed fee of \$2,311,515. Amendment No. 1 was executed on February 17, 2017 to extend the term of the Agreement to March 31, 2018. There was no change to the not-to-exceed fee or term of the Agreement for Amendment No. 1.

Staff recommends approval of Amendment No. 2, which will modify the scope of services of the current Agreement to continue project management activities through the P3 procurement process; manage the CEQA/NEPA work and permitting process; compile engineering documents and obtain additional technical information to support the P3 process and assist with P3 contract negotiations. This additional scope of services will increase the not-to-exceed fee by \$5,766,250, resulting in a total not-to-exceed fee of \$8,077,765. Amendment No. 2 will extend the term of the Agreement until March 2021.

Table 1 presents a summary of the tasks and fees for the original Agreement and the recommended Amendment No. 2.

Table 1. Summary of Original HDR Agreement and Amendment No. 2 Fees

| Task | Description | Original NTE* Fees | Amendment No. 2** NTE Fees | Revised Total NTE Fees |
|--------------------------------|---|--------------------|----------------------------|------------------------|
| 1 | Fast Start Activities | \$347,312 | \$0 | \$347,312 |
| 2 | Project Management | \$1,025,130 | \$815,546 | \$1,840,676 |
| 3 | Early Value Engineering | \$101,290 | \$0 | \$101,290 |
| 4 | Environmental and Permitting | \$301,669 | \$231,851 | \$533,520 |
| 5 | Provide Support for P3 Procurement | \$112,137 | \$1,689,091 | \$1,801,228 |
| 6 | Support Workforce Development | \$44,861 | \$76,382 | \$121,243 |
| 7 | Supplemental Services | \$304,116 | \$929,931 | \$1,234,047 |
| 8 | Development of Performance Requirements | \$0 | \$1,764,763 | \$1,764,763 |
| | Other Direct Expenses | \$75,000 | \$258,686 | \$333,686 |
| Total Not-to-Exceed Fee | | \$2,311,515 | \$5,766,250 | \$8,077,765 |

* Not-to-Exceed

** Amendment No. 1 was administrative only.

Financial Advisory Services Agreement with Public Resources Advisory Group (PRAG)

In accordance with Agreement A3611A, the Public Resources Advisory Group (PRAG) has provided financial advisory services to the District since 2012. Since the initiation of the Expedited Purified Water Program (Program) development in 2015, PRAG's sub-consultant, Clean Energy Capital, has provided extensive support to the formulation and discussions of alternative project delivery methods, as well as guidance on private activity concerns raised by the City of San Jose in regards to the expansion of purified water.

With the recent Board direction to pursue a public-private partnership (P3) project delivery method, staff recommends amending this Agreement with PRAG to continue receiving financial advisory services through the first year of the new purification facility's operations by a P3 entity.

Clean Energy Capital (CEC) (PRAG's Sub-Consultant) Work Performed to Date

The financial advisory services provided to date by CEC for the Expedited Purified Water Program include the following tasks, all of which have been completed:

- Task 1 - Prepare/Present Board Work Study Session on Project Delivery Methods
- Task 2 - Present the Final Report on Preliminary Evaluation of Program Delivery Methods for the Expedited Purified Water Program
- Task 3 - Provide Program Updates, P3 Project Finance Framework, and Threshold Legal/Financial Issues
- Task 4 - Prepare P3-Track 2016 Request for Qualification (RFQ) and Perform Evaluation of Statements of Qualification (SOQs)

Staff Management of PRAG Agreement

Staff has been monitoring and managing PRAG and its sub-consultant, CEC's performance to meet the goals and terms of the Agreement. The ongoing work effort will continue to be managed by staff in accordance with the Agreement.

Amendment No. 3 to Consultant Agreement A3611A with PRAG

The CEO was authorized by the Board to negotiate and execute the original Agreement with PRAG on September 11, 2012; the CEO executed the Agreement on October 1, 2012 for a not-to-exceed fee of \$925,000. Amendment No. 1 was approved by the Board on January 12, 2016, and increased the not-to-exceed fee by \$1,331,000, for a total not-to-exceed fee of \$2,256,000. Amendment No. 2, executed on March 2, 2016, was administrative and clarified the maximum amount payable to CEC (the increase of \$1,331,000 per Amendment No. 1 plus \$119,000 for CEC work completed prior to Amendment No. 1); there were no changes to the terms or not-to-exceed fee of the Agreement.

Staff recommends approval of Amendment No. 3, which will modify the scope of services of the Agreement to support the Board's direction to proceed with a P3 procurement. This additional work effort will increase the not-to-exceed fee by \$3,410,000, resulting in a total not-to-exceed fee of \$5,666,000. The extension of the term through December 31, 2025 is necessary to ensure the District maintains the financial advisory services from PRAG and CEC to negotiate, execute, and

implement the Board-directed procurement for a public-private partnership to develop, construct and operate the Expedited Purified Water Program.

As detailed in Amendment No. 3 (Attachment 2), the District will pay CEC on a time-and-materials basis at the hourly rates set forth in the Agreement, for services that CEC provides the District. Per Amendment No. 3, the not-to-exceed fees for CEC services are \$2,330,000. The remaining \$1,080,000 of the \$3,410,000 fee increase for Amendment No.3 are allocated for PRAG services. The District makes no guarantee as to the amount of services it will seek from CEC. Any portion of the fee allocated for the CEC services that is not spent on CEC services may be available for other PRAG services under the existing Financial Advisory Services Agreement.

Table 2 presents a summary of the fees for the previous Amendments and the recommended Amendment No. 3.

Table 2. Summary of Original PRAG Agreement Through Amendment No. 3 Fees

| Firm | Description | Original Fees | Amendment No. 1 Fees | Amendment No. 2 Fees | Amendment No. 3 Fees | Total Fees |
|--------------------------------|--------------------|------------------|----------------------|----------------------|----------------------|--------------------|
| PRAG | Financial Advisory | \$925,000 | | <\$119,000> | \$1,080,000 | \$1,886,000 |
| CEC | Financial Advisory | | \$1,331,000 | \$119,000 | \$2,330,000 | \$3,780,000 |
| Total Not-to-Exceed Fee | | \$925,000 | \$1,331,000 | \$0 | \$3,410,000 | \$5,666,000 |

Private Activity Analysis for Direct Potable Reuse

A Program option for future consideration is direct potable reuse (DPR) of purified water, which has certain constraints as it relates to the private activity rules associated with using tax-exempt debt to fund public facilities that may benefit private entities (i.e., District's non-public water retailers such as San Jose Water and Cal Water). Although the DPR option is still under evaluation, staff is proactively working with outside bond/tax counsel to implement a strategy to obtain official guidance from the Internal Revenue Service (IRS) on this matter through a Private Letter Ruling (PLR). The PLR will ideally affirm the District's strategy of allocating DPR for public use only, and thereby remain exempt from private activity limitations imposed by the IRS. Should the IRS reject the proposed allocation methodology, DPR may not be a viable option for the District to pursue.

The PLR request is currently being drafted by the District's outside bond/tax counsel. According to the IRS rules pertaining to submission of a PLR, the request must include financing documents related to the project-a Form of an Installment Purchase Agreement (Attachment 3) and a Form of Trust Agreement (Attachment 4). These sample forms must first be approved by both the District's Public Facilities Corporation (PFFC) and the Board of Directors in order to be included in the PLR request. Before any future financing related to the Program can be implemented, staff will submit for approval, to both the PFFC and the Board, final versions of the Installment Purchase Agreement and Trust Agreement as well as other documents as may be required. The PFFC Board approved both

Forms of Agreement at its annual meeting on November 8, 2017, and this agenda item now recommends approval by the Board of Directors.

FINANCIAL IMPACT:

Amendment No. 2 to Agreement A3901G with HDR Engineering Incorporated for Project Management Services will add a not-to-exceed fee of \$5,766,250, resulting in a total not-to-exceed fee of \$8,077,765.

Amendment No. 3 to Agreement A3611A with Public Resources Advisory Group (PRAG) for Financial Advisory Services will add a not-to-exceed fee of \$3,410,000, resulting in a total not-to-exceed fee of \$5,666,000. There are adequate funds in the Expedited Purified Water Program Project's Board-adopted FY 2017-2018 budget to encumber the necessary fees to support these two Amendments and Program work through the remainder of the current fiscal year. Fees for work to be performed in future fiscal years will be recommended for budget approval accordingly. These Amendments will increase the total Program cost estimate of \$639 million in the FY18-22 Capital Improvement Program by \$9.1 million.

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. Once Project development is complete, a CEQA environmental analysis will be provided for the Board to consider as part of its Project approval process.

ATTACHMENTS:

Attachment 1: Amendment No. 2 to Agreement A3901G with HDR, Inc.
Attachment 2: Amendment No. 3 to Agreement A3611A with PRAG
Attachment 3: Form of Installment Purchase Agreement
Attachment 4: Form of Trust Agreement

UNCLASSIFIED MANAGER:

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