



# Santa Clara Valley Water District

File No.: 21-0121

Agenda Date: 1/26/2021

Item No.: \*6.2.

## BOARD AGENDA MEMORANDUM

### SUBJECT:

Authorize the Chief Executive Officer to Execute the Master Agreement With the City of Milpitas for the Removal and Construction of City Improvements, Modifications to City Facilities, and Work Within City's Right of Way Included in the Lower Berryessa Creek Flood Protection, Lower Calera Creek Flood Protection, and Lower Penitencia Creek Improvements Projects (Project Nos. 40174005 and 40334005) for a Fee of \$1,665,505 (Milpitas) (District 3).

### RECOMMENDATION:

Authorize the Chief Executive Officer to Execute the Master Agreement With the City of Milpitas for the Removal and Construction of City Improvements, Modifications to City Facilities, and Work Within City's Right of Way Included in the Lower Berryessa Creek Flood Protection, Lower Calera Creek Flood Protection, and Lower Penitencia Creek Improvements Projects for a Fee of \$1,665,505 (Milpitas) (District 3).

### SUMMARY:

Valley Water has completed civil construction of the Lower Berryessa Creek Flood Protection Project (from the confluence of Lower Penitencia Creek to Calaveras Boulevard) (LBC Project) and is proceeding with the design and construction of the Lower Calera Creek Flood Protection Project (an element of the Lower Berryessa Creek Flood Protection Project, Phase 2, from the Union Pacific Railroad up to about 880 feet upstream of Arizona Avenue) (LCC Project) and the Lower Penitencia Creek Improvements Project (Coyote Creek confluence to just downstream of San Andreas Drive) (LPC Project). The LCC and LPC Projects are scheduled to begin construction in June 2021. All three projects are in City of Milpitas, and the City requested Valley Water construct additional improvements to City's facilities and rights of way within the limits of the LBC, LCC, and LPC Projects at City's cost. The improvements requested by the City include, but are not limited, to: upsizing of storm drain outfalls; asphalt pavement replacement along the City's public trail beyond limits required for Valley Water to complete its work, and installation of duckbill check valves at City's storm drain outfalls.

The estimated cost to construct City's requested improvements is summarized below:

1. LBC Project: \$1,046,575

2. LCC Project: \$283,130
3. LPC Project: \$335,800

The subject Master Agreement describes the obligations for the removal, replacement, reconstruction or alteration of existing City Improvements within the LBC, LCC and LPC Projects and reimbursement of any funds from the City to Valley Water for costs incurred by Valley Water for undertaking construction of improvements as requested by the City.

The Master Agreement also includes two additional items that are related to implementation of capital improvement projects of Valley Water and City: (1) consideration of transferring rights of way for implementation of capital improvements projects by Valley Water and City; and (2) payment for cost to replace damaged City landscape from construction of the Upper Berryessa Creek Flood Protection Project (UBC Project).

(1) Consideration of Transferring Rights of Way:

Valley Water requires acquisition of City right of way in fee for construction of the LPC Project and City requires acquisition of an easement from Valley Water for City's installation of a vehicular crossing over the East Penitencia Channel. City and Valley Water staff will present the proposed transfers of right of way to their respective elected body, City Council or Valley Water Board, for consideration and approval within 6 months of execution of the agreement. The agreement allows for the City to issue an encroachment permit for construction prior to the completion of the transfer of land rights.

(2) Payment for Cost to Replace Damaged City Landscape from Construction of the UBC Project

The UBC Project is a joint project between the U.S. Army Corps of Engineers (USACE) and Valley Water. As the Local Project Sponsor, in May 2016, Valley Water entered into a Project Partnership Agreement with the USACE for the construction of the UBC Project. Valley Water also entered into an agreement with the City in September 2016 for construction of USACE/Valley Water UBC Project. In April 2017, while constructing the project, the USACE construction contractor accidentally cut off an irrigation water line. The contractor requested City to shutoff water in order to repair the water line. However, upon completion of the repair, it was not conclusive if the contractor requested City to perform inspection and turn the water back on. As a result, City landscaping was damaged because of lack of water. City submitted a claim to USACE for the cost to replace the damaged landscaping. The USACE denied the claim twice citing that they did not find any negligence on their contractor. City then submitted the claim to Valley Water and Valley Water tendered the claim directly to the construction contractor's insurance company since the insurance policy named Valley Water and City as additional insured parties. The insurance company had initially denied the claim and Valley Water

resubmitted the claim. After further negotiation with Valley Water and the City, the insurance company agreed to pay the City \$45,000 of the City's claim of \$86,125 to replace the damaged landscaping. Valley Water is paying City the remaining \$41,125 of their claim by reducing the amount that City owes Valley Water from the LBC Project. Paying the balance of the claim is consistent with the District's obligation in Section 10.B. that states, "During construction and until acceptance of the City Project Improvements as evidenced by City's issuance of the Notice of Acceptance, the District assumes and shall bear all risk of and from (a) loss, injury, damage or destruction to the City Project Improvements...."

**FINANCIAL IMPACT:**

There are sufficient funds available in the FY 2021 budget for the Lower Berryessa Creek Flood Protection Project (Project No. 40174005) and the Lower Penitencia Creek Improvements Project (Project No. 40334005).

**CEQA:**

The District is the lead agency under the California Environmental Quality Act for the implementation of these Projects.

On December 13, 2011, the Board adopted and certified the FEIR for the Lower Berryessa Creek and Lower Calera Creek improvements. On November 28, 2017, the Board adopted and certified the FEIR for the Lower Penitencia Creek improvements. Impacts and mitigation due to improvements proposed are addressed in the approved FEIR. On December 2, 2020, Valley Water completed a Categorical Exemption document for the proposed trail pavement improvements along Lower Berryessa Creek that are a part of the work in the Agreement.

The recommended action does not alter any of our CEQA documents or permits.

**ATTACHMENTS:**

Attachment 1: Agreement

\*Supplemental Agenda Memorandum

\*Supplemental Attachment 1: Agreement

**UNCLASSIFIED MANAGER:**

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