

County of Santa Clara
Parks and Recreation Department



24-5557

DATE: May 7, 2024 (Item No. {{item.number}})

TO: Board of Supervisors

FROM: Don Rocha, Director, Parks and Recreation Department

SUBJECT: Fourth Amendment to Agreement for Possession and Use with Santa Clara Valley Water District

RECOMMENDED ACTION

Consider recommendations relating to the Fourth Amendment to Agreement for Possession and Use with the Santa Clara Valley Water District.

Possible action:

- a. Approve Fourth Amendment to Agreement for Possession and Use with the Santa Clara Valley Water District, retroactively effective as of July 1, 2023, to allow the Santa Clara Valley Water District to occupy County parkland (Assessor's Parcel No. 729-36-001 and portions of Assessor's Parcel Nos. 728-34-020, 728-35-001, 678-02-034, 678-02-031, and 725-06-008) and construct improvements described therein necessary for the Santa Clara Valley Water District implementation of the initial phase of the Anderson Dam Seismic Retrofit Project with an expiration date of October 15, 2024, that has been reviewed and approved by County Counsel as to form and legality.
- b. Approve delegation of authority to the County Executive, or designee, to negotiate, amend and execute all documents and agreements necessary to implement the terms of the Fourth Amendment to Agreement for Possession and Use, excluding documents and agreements relating to real property conveyance or any final determination of just compensation amounts due from the Santa Clara Valley Water District for ultimate County transfer of any such property interests, following approval by County Counsel as to form and legality, and approval by the Office of the County Executive. Delegation of authority shall expire on December 31, 2025

FISCAL IMPLICATIONS

There is no impact to the County General Fund as a result of the recommended action.

Although approval of the Fourth Amendment to Agreement for Possession and Use will have no immediate fiscal implications, it gives Santa Clara Valley Water District (Valley Water) interim possession of certain County properties for the Anderson Dam Seismic Retrofit Project (Project) and waives the County's right to challenge Valley Water's efforts to acquire

those specific property interests through a condemnation proceeding, provided the terms of the Agreement for Possession and Use (PUA) and applicable state laws regarding adequate compensation being provided to the County for these property interests are met.

CONTRACT HISTORY

On April 20, 2021 (Item No. 68), the Board of Supervisors (Board) approved the PUA with Valley Water along with a delegation of authority to the County Executive through December 31, 2023 to negotiate, amend and execute all documents necessary to implement the terms of the PUA. Valley Water's Board of Directors subsequently approved the PUA on April 27, 2021.

On November 15, 2021, a First Amendment to the PUA was administratively executed, effective retroactively as of October 24, 2021, to extend the term of the PUA by twelve months from the original effective date for an additional six months (from April 27, 2021 to April 27, 2022) as the parties continued to negotiate.

On April 21, 2022, a Second Amendment to the PUA was administratively executed, effective April 27, 2022, extending the term of the PUA until December 31, 2022 as the parties continued to negotiate.

On April 27, 2023, a Third Amendment to the PUA was administratively executed, effective retroactively as of January 1, 2023, slightly modifying the legal description of one of the property interests and extending the term of the PUA until June 30, 2023 as the parties continued to negotiate.

REASONS FOR RECOMMENDATION AND BACKGROUND

The Parks and Recreation Department (Department) is recommending approval of the Fourth Amendment (Amendment) to the PUA to facilitate Valley Water's use of certain County properties for the initial phase of the Project for the following reasons:

- a. Upon execution of the PUA, Valley Water took possession and use of the County's property interests covered under the agreement, constructed improvements on subject properties, and continues to need use of subject properties and improvements to meet requirements of the Federal Energy Regulatory Commission (FERC) Emergency Order.
- b. The additional property interests included in the Amendment are necessary for Valley Water's channel construction which will ultimately allow for safer passage of the higher flow rates from Anderson Reservoir through County parkland.
- c. Valley Water has made significant progress to date, and continuing to allow this Project to move forward in this manner is consistent with the County's support for this significant Project and will help to prevent potential loss of life and property caused by a dam failure.
- d. While the negotiations between parties have been ongoing and productive, more time is necessary to fully evaluate and value the various project impacts to County parks.

Reason for request of Delegation of Authority

Although delegations of authority are discouraged except under certain circumstances, this

delegation of authority is necessary to allow the Administration to take actions required to implement the PUA, following review and approval by County Counsel as to form and legality, and approval by the Office of the County Executive. Any settlement or litigation resulting in conveyance of property interests to Valley Water will be brought to the Board for approval.

CHILD IMPACT

The recommended action will have no/neutral impact on children and youth.

SENIOR IMPACT

The recommended action will have no/neutral impact on seniors.

SUSTAINABILITY IMPLICATIONS

The recommended action will have no/neutral sustainability implications.

CONSEQUENCES OF NEGATIVE ACTION

The County would not convey the necessary property interests to Valley Water in a timely manner, the strict project timelines imposed by FERC through their emergency order for this important safety project may not be achievable, and Valley Water would need to continue negotiations for compensation with the County or pursue other means – such as litigation – to obtain these property interests.

STEPS FOLLOWING APPROVAL

- Notify Eric Ross, Parks and Recreation Department.
- Upon final execution of the Fourth Amendment to Agreement for Possession and Use, return the executed document to the Department, and it will process and return a fully executed version (or a signed counterpart).

ATTACHMENTS:

- Attachment A – PUA Fourth Amendment with Exhibits