



# City of Palo Alto

## City Council Staff Report

(ID # 10387)

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**Report Type: Consent Calendar**

**Meeting Date: 6/24/2019**

**Summary Title: Agreement for the Repair of the Concrete Liner on Barron Creek**

**Title: Approval of an Agreement With Santa Clara Valley Water District, in the Not-to-Exceed Amount of \$258,450, for Concrete Channel Lining Repair Along Barron Creek**

**From: City Manager**

**Lead Department: Utilities**

### **Recommendation**

Staff recommends that City Council approve an agreement with Santa Clara Valley Water District (SCVWD) in the not-to-exceed amount of \$258,450 to repair the creek bottom concrete slab along Barron Creek at the crossing of Bryant Street.

### **Background**

On December 22, 2017, the water line running along Bryant Street and crossing under Barron Creek ruptured and damaged the concrete liner in the creek bed. Due to the level of damage caused by the rupture, the creek liner needs to be replaced at this location.

### **Discussion**

The City has reviewed the condition of the creek liner at the rupture location and agrees with SCVWD that the creek liner needs to be replaced to repair damage following the City water line rupture. SCVWD is leading the project to replace the creek liner as the owner. The City has been negotiating with SCVWD regarding how to structure an agreement that fairly allocates costs to the City and SCVWD. The agreed upon terms of the agreement are as follows:

- Limits the City's costs to \$72,000 for planning, design, construction management, and permitting. Actual costs will determine the amount billed to the City.
- The cost of the creek liner repair will be established through a competitive bidding process where the creek liner will be a separate costing item on the bid table for SCVWD's larger Barron Creek project.
- The City will pay the bid item cost for the construction if the cost is within 25% above or below the engineering estimate of \$149,160:
  - The maximum amount the City will pay for construction is up to \$186,450, which is 125% of the engineering estimate.

- The minimum amount the City will pay for construction is \$111,870 which is 75% of the engineers estimate.

These terms were negotiated to limit the risk to the City since the concrete liner repair is only one bid item of SCVWD's overall project. The liner repair work is part of a larger project the SCVWD is performing in the area. SCVWD is plans to bid all the work on Barron Creek in this area to reduce costs for obtaining all the necessary permits and environmental clearances as well as reducing mobilization and construction costs. When the contractors prepare their bid tables, they allocate overhead costs such that they can recover costs and make a profit on the work. The methods used to allocate the costs vary between contractors and can lead to large differences in the bid item price. This agreement is determining the minimum and maximum amount cost range to the City for the creek liner repair and reduces cost risk to the City and SCVWD.

Recently the City worked with SCVWD on a similar concrete liner repair project along Matadero Creek ([Staff Report 9454](#)) where SCVWD's additional creek work was incorporated with liner repair needed following a water line rupture. The City's share of the Matadero Creek liner repair was \$227,000, whereas SCVWD's total project award amount was \$1,570,750. Given engineering's cost estimate of the Barron Creek liner repair and the actual cost of the prior Matadero Creek liner repair, staff believes the not-to-exceed amount of \$258,450 is fair and reasonable.

#### **Timeline**

Work will occur during the summer 2019. SCVWD will open bids on the project on May 29, 2019 and the project will occur during the summer of 2019. Consideration of approval of this agreement will occur after the award of the contract by SCVWD.

#### **Resource Impact**

Funding for the agreement will be established from FY 2019 savings in the Water Operating Budget as part of the year-end process.

#### **Policy Implications**

Authorization of this agreement does not represent any change to existing policy.

#### **Environmental Review**

The City is a responsible agency for this project under the California Environmental Quality Act (CEQA). SCVWD is the lead agency and will perform the Barron Creek lining repair project according to SCVWD's Stream Maintenance Program Environmental Impact Report and in accordance with any associated permits. Any additional permitting and environmental review, if needed, will be secured by SCVWD.

#### **Attachments:**

- Attachment A - Final Barron Creek Agreement

**AGREEMENT BY AND BETWEEN THE CITY OF PALO ALTO AND  
THE SANTA CLARA VALLEY WATER DISTRICT FOR  
CREEK BOTTOM CONCRETE SLAB REPAIR  
ALONG BARRON CREEK  
AT CROSSING OF BRYANT STREET**

THIS AGREEMENT (hereinafter “Agreement”) is made and entered into as of May \_\_, 2019 (“Effective Date”), by and between the CITY OF PALO ALTO (hereinafter “City”), a California chartered municipal corporation, and the SANTA CLARA VALLEY WATER DISTRICT (hereinafter “District”), a special district of the State of California. City and District may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

**RECITALS**

- A. The City is the sole owner of the portion of Barron Creek under Bryant Street (“City Property”), as more particularly shown on **Exhibit A**, *Barron Creek: Location Map*, attached hereto and incorporated herein.
- B. The District owns the portion of Barron Creek immediately upstream and downstream of Bryant Street (“District Property”) as more particularly shown on **Exhibit A**, *Barron Creek: Location Map*.
- C. In 1958 the District constructed concrete channel lining extending, in part, from Ramona Street to South Court, which includes the City Property.
- D. In 1959 the City constructed the concrete bridge at the crossing of Bryant Street over Barron Creek.
- E. On December 22, 2017, the City-owned water main running along Bryant Street and beneath Barron Creek broke, damaging the creek bottom concrete slab beneath the bridge at Bryant Street before the City cut and capped the water main.
- F. The condition of the creek bottom concrete slab at this location is believed, by both City and District, to need repairs to maintain appropriate and necessary creek bottom as-built conditions (the “Project”, as described more fully in Section 1). The City and District agree to cooperate to repair the concrete creek bottom slab, with the District administering, designing and constructing the Project and the City funding the Project’s reasonable associated costs, as described more fully in Sections 3 and 5 and Exhibit B, *Estimate of Project Costs*.
- G. The District will award the construction contract to rebuild the creek bottom concrete slab at Barron Creek during the 2019 construction season. The Engineer’s Estimate for construction cost is \$149,160 as more particularly described in **Exhibit B**, *Estimate of Project Costs*. Bid items for this work will be included as a Supplemental Bid Item. The District’s contract process includes addition of Supplemental Bid Items to determine the lowest bid. As agreed by the Parties for the convenience of both the District and City, a 25% cost deviation

clause is added to this Agreement, as further described below. Payment from the City to the District will be determined based on the successful low bid contract amount per the Public Contract Code as follows:

1. City will pay the District the actual cost for District staff costs for planning, design, construction management, and permitting, not to exceed \$72,000.
2. City agrees to fully compensate District for any additional Project work or change orders incurred above the Supplemental Bid Item amount, within the parameters detailed in subdivisions 3 through 5 below.
3. If the total Supplemental Bid Item amount is within a 25 percent deviation from the Engineer's Estimate for construction cost, the City will pay the District the actual total Supplemental Bid Item amount.
4. If the total Supplemental Bid Item amount is less than 75 percent of the Engineer's Estimate for construction cost, the City will pay the District 75 percent of the Engineer's Estimate for construction cost equal to \$111,870.
5. If the total Supplemental Bid Item amount for Barron Creek work is greater than 125 percent of the Engineer's Estimate for construction cost, the City will pay the District 125 percent of the Engineer's Estimate for construction cost equal to \$186,450.

H. In order to avoid the costs, risks, and uncertainties of any litigation, the Parties also agree that this Agreement represents a full and complete settlement and compromise of any claims that the District may have regarding City's conduct described in Recital E.

NOW THEREFORE, in consideration of their mutual promises and agreements, and subject to the terms, conditions and provisions hereinafter set forth, the Parties agree as follows:

## **AGREEMENT**

### **1. DESCRIPTION OF THE PROJECT**

- 1.1 **Project Site.** The Project Site shall consist of approximately 750 square feet of the creek bottom concrete slab requiring replacement under Bryant Street along Barron Creek, as shown more particularly on **Exhibit A, *Barron Creek: Location Map.***
- 1.2 **Project Scope.**
  - 1.2.1 The Project involves, as described more particularly in **Exhibit B, *Estimate of Project Costs,*** the administration, design and construction of repairs to the District's creek bottom concrete slab covering approximately 750 square feet, including:

- a) compliance with environmental permits;
- b) mobilization and demobilization, demolition and disposal;
- c) performing control of water;
- d) cleaning and video inspection of sewer pipe;
- e) saw cutting and removing cracked concrete creek bottom slab;
- f) removing loose soils, the extent of which is not known;
- g) replacing any soil eroded from behind the concrete creek bottom slab, the extent of which is not known;
- h) installing a concrete blanket cover over the existing sewer line;
- i) constructing a new concrete creek bottom slab;
- j) repairing multiple spot damages due to concrete spalling;
- k) other related work as necessary, as mutually agreed by the Parties, to complete the Project.

The Project will require any flows in Barron Creek or pipe outfalls in the work area to be diverted around the work area.

- 1.2.2 Any repairs or damage related to District’s Concrete Lining not identified in **Exhibit B**, *Estimate of Project Costs* will be addressed as described in Section 5.2.

## 2. TERM

The term of this Agreement shall commence upon the Effective Date and terminate upon completion of the Project, or no later than two (2) years from the Effective Date, whichever is shorter.

## 3. DISTRICT, CITY OBLIGATIONS

### 3.1 District shall perform the following:

- 3.1.1 Administer, design, and construct the Project, including coordination with appropriate local, state, federal, and regulatory agencies, regarding securing any necessary permits or approvals for the Project.
- 3.1.2 District, as Lead Agency under the California Environmental Quality Act (“CEQA”), will perform the Project under District’s Stream Maintenance Program (“SMP”) Environmental Impact Report and permits, if authorized by appropriate regulatory agencies, or, alternatively or in addition, obtain necessary environmental clearances and permits to perform the Project.
- 3.1.3 In the event regulatory agencies determine that the SMP is not appropriate or does not otherwise provide sufficient authorization to perform the Project, District shall use its best efforts to seek and obtain additional required permits and approvals from regulatory agencies in time for the District to timely complete the work.

3.1.4 District shall proceed in a timely manner to initiate and complete the Project. District will use its best efforts to complete the Project prior to August 30, 2019. If District and City determine this schedule cannot be met, the Parties agree to make reasonable efforts to negotiate a revised schedule for performance and execute an amendment to this Agreement. If the Parties cannot agree on a revised schedule of performance, then the Agreement may be terminated in accordance with Section 7 of this Agreement.

3.1.5 District shall inform Oscar Godinez, Manager for Maintenance Operations in the City's Public Works Department, and Anthony Meneses, Maintenance Supervisor, one month before starting construction work on the Project. District shall perform its work related to the Project in a manner as to minimize interference with City's operations.

3.2 City shall perform the following:

3.2.1 Act promptly to issue permits for encroachments, traffic control requirements, or haul routes if deemed necessary by City, for District's contractor to perform and complete the Project in a timely manner, and for the District's future use, maintenance and inspection of the Project.

3.2.2 Ensure its obligations are met as Responsible Agency under CEQA.

#### 4. PROJECT MANAGER

4.1.1 For District. The designated project manager for District for the duration of the Project is Roger Narsim. District's project manager shall have the necessary authority to direct technical and professional work within the scope of the Agreement and shall serve as the principal point of contact with City.

4.1.2 For City. The designated project manager for City for the duration of the Project is Anthony Meneses, Maintenance Supervisor, who shall serve as the principal point of contact with District.

4.1.3 Changes. Either Party may change its project manager at any time and shall provide the other Party with written notice of the change.

#### 5. PROJECT COST, INVOICES

5.1 Project Cost. The Engineer's Estimate for Barron Creek construction cost is \$149,160, and the District's estimated costs for planning, design, construction management, and permitting is \$72,000, as more particularly described in **Exhibit B, Estimate of Project Costs.** City agrees to compensate District as described in Recital G.

- 5.2 Any Project Costs not identified in **Exhibit B, Estimate of Project Costs**, which exceed the total estimated amount and which were both reasonably and actually incurred, will be memorialized by the Parties as a written amendment to this Agreement, within the parameters described in Recital G.
- 5.3 Invoices. In order to request payment from City, District agrees to submit invoices to City describing the services and/or equipment related to the Project and the applicable charges (including an identification of personnel who performed the services, hours worked, hourly rates and reimbursable expenses). The invoice shall also identify the percentage completion of each task. The information in the District's invoices shall be subject to verification by City. District agrees to submit invoices to the City's Project Manager at the address specified in Section 9 below. City will generally process payment to District no later than 45 days after receipt of District's complete invoices, along with any supporting documentation.
- 5.4 Audit. District will permit City to audit, at a reasonable time during the term of the Agreement and for three (3) years after, and District will maintain District's records pertaining to the matters covered by the Agreement.
- 5.5 Release and Settlement. In consideration for City's payment of Project Costs to which District is entitled to under this Agreement, all claims by and between the Parties related to the incidents described in Recital E above shall be considered fully and completely compromised and settled, without the admission of fault or liability by any Party, and each Party agrees to waive and release, in favor of the other Party and all employees, directors, agents, contractors, and representatives of the other Party, all claims, demands, causes of action, rights, damages, costs, expenses, compensation and legal entitlements of any kind or nature (including attorney fees) arising out of or connected with the incidents described in Recital E above, and to accept the duties and liabilities stated in this Agreement in full accord and satisfaction thereof.
- 5.6 Survival. The rights, duties and obligations of the Parties as set forth in this Section 5 shall survive expiration or termination of the Agreement.

## 6. INDEMNIFICATION, INSURANCE

- 6.1 Indemnification. In lieu of and notwithstanding the pro rata risk allocation, which might otherwise be imposed between the Parties pursuant to California Government Code Section 895.6, the Parties agree that all losses or liabilities incurred by a Party shall not be shared pro rata but, instead, District and City agree that, pursuant to California Government Code Section 895.4, each Party ("Indemnifying Party") shall fully indemnify, defend and hold the other Party ("Indemnified Party"), their officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability, including that imposed for injury (as defined in Government Code Section 810.8) occurring by

reason of the gross negligence or willful misconduct of the Indemnifying Party, its officers, employees, or agents, under or in connection with or arising out of any work, authority, or jurisdiction delegated to such other party under this Agreement.

- 6.2 Insurance. District and its consultant(s) or contractor(s), if any, performing the work, will secure and maintain in full force and effect, at all times during Project execution and until Project completion, bodily injury insurance, property damage insurance and contractual liability worker compensation and auto coverage in forms and limits of liability acceptable to both District and City, naming District and City and their respective officers, employees, and agents as additional insured from and against all damages and claims, loss or liability, cost or expense arising out of or in any way connected with the Project. District is self-insured and can meet any required obligations through self-insurance.
- 6.3 Survival. The rights, duties, and obligations of the Parties as set forth in Section 6 of this Agreement will survive termination and expiration of this Agreement.

## 7. TERMINATION

- 7.1 The Parties' May\_, 2019 Agreement for Creek Bottom Concrete Slab Repair Along Barron Creek at Crossing of Bryant Street is hereby terminated as of August 30, 2020, with neither Party having incurred any reimbursable costs associated with that agreement.
- 7.2 Either District or City may, upon thirty (30) days' written notice, with or without cause, suspend or terminate this Agreement.
- 7.3 Upon such suspension or termination of the Agreement, District will be paid for actual costs associated with the Project incurred and non-cancelable on or before the effective date of the suspension or termination.

## 8. ADDITIONAL PROVISIONS

- 8.1 Recitals. The Recitals set forth above are hereby incorporated in and made a part of this Agreement by this reference.
- 8.2 Waiver. A Party's waiver of any term, condition, covenant, or breach of any term, condition or covenant shall not be construed as a waiver of any other term, condition, or covenant or breach of any other term, condition, or covenant.
- 8.3 Integration. This Agreement contains the entire Agreement between District and City relating to Project. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect.

- 8.4** Compliance with Applicable Law. District and its consultants and/or contractors will comply with all laws applicable to the administration, design and construction of the Project. Except as expressly set forth herein, District will secure all permits and licenses, pay all charges and fees and give all notices required by law in connection with the Project.
- 8.5** Severability. If any term, condition or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall be valid and binding on District and City.
- 8.6** Choice of Law. This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 8.7** Counterparts. This Agreement may be executed in counterparts and will be binding as executed.
- 8.8** Amendment. All changes or extensions to this must be in writing in the form of an amendment approved by both Parties.
- 8.9** No Third Party Beneficiaries. This Agreement is entered into only for the benefit of the Parties executing this Agreement and not for the benefit of any other individual, entity, or person.
- 8.10** Labor Compliance. The District's consultants and/or contractors, if any, shall comply with State Labor Codes, including working hours, prevailing wage requirements and certified payroll records.
- 8.10.1** The District shall ensure that District's consultants and/or contractors, if any, shall comply with California Labor Code Section 1810, *et seq.* which provides that work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, must be compensated as overtime, at not less than 1 ½ times the basic rate of pay.
- 8.10.2** Payroll Records. The District shall ensure that District's contractors, if any, shall comply with California Labor Code Section 1776 which requires certified payroll records be maintained with the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with this Agreement. The payroll records shall be made available for inspection as provided in California Labor Code Section 1776.
- 8.10.3** Apprentices. The District shall ensure that District's contractors, if any, shall comply with California Labor Code Section 1777.5 regarding apprentices.

## 9. NOTICES

All correspondence relating to the Project, including all notices required by the terms of this Agreement may be delivered by first class mail addressed to the appropriate Party at the following addresses:

**To DISTRICT:** Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, CA 95118  
Attn: Roger Narsim, Engineering Unit Manager

**To CITY:** City of Palo Alto  
Utilities Department  
250 Hamilton Avenue  
Palo Alto, CA 94301  
Attn: Tomm Marshall, Utilities Assistant Director

With Copies Attention to:  
City Attorney's Office  
Attn: Aylin Bilir, Deputy City Attorney

(Remainder of page intentionally left blank; signatures follow on next page)

**IN WITNESS WHEREOF**, the Parties have executed the AGREEMENT the day and year set forth above.

**CITY:**

CITY OF Palo Alto  
a California chartered municipal corporation

By: \_\_\_\_\_  
City Manager

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Deputy City Attorney

Date: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

**DISTRICT:**

SANTA CLARA VALLEY WATER DISTRICT  
a special district

By: \_\_\_\_\_  
Norma J. Camacho  
Chief Executive Officer

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Brian Hopper  
Senior Assistant District Counsel

Date: \_\_\_\_\_

**Exhibit A**  
*Baron Creek: Location Map*

# Exhibit A: Barron Creek Location Map



**Exhibit B**  
*Estimate of Project Costs*

## Exhibit B: Estimate of Project Costs

**Santa Clara Valley Water District**

5750 Almaden Expressway, San Jose, CA 95118

Barron Creek Concrete Repair under Bryant Street in City of Palo Alto

BID BOND. CASH OR CERTIFIED CHECK ACCOMPANYING BID

SUPPLEMENTAL BID FOR BARRON CREEK		QUANTITIES	UNIT	ENGINEER'S ESTIMATE	
ITEM	DESCRIPTION			UNIT PRICE	AMOUNT
1	Compliance with Environmental Permits for Barron Creek	NTE	1	\$ 5,000	\$ 5,000
2	Mobilization & Demobilization, Demolition & Disposal for Barron Creek	LS	1	\$ 30,000	\$ 30,000
3	Control of Water for Barron Creek	LS	1	\$ 20,000	\$ 20,000
4	Remove Concrete for Barron Creek	LS	1	\$ 13,000	\$ 13,000
5	Structural Concrete for Barron Creek	CY	19	\$ 1,900	\$ 36,100
6	Concrete Blanket for Sewer Pipe for Barron Creek	CY	2	\$ 1,600	\$ 3,200
7	Cleaning and Video Inspection of Sewer Pipe for Barron Creek	LS	1	\$ 10,000	\$ 10,000
8	Repair Spalled Surface Areas for Barron Creek	SF	7	\$ 1,900	\$ 13,300
9	Slurry Cement Backfill for Barron Creek	NTE	1	\$ 5,000	\$ 5,000
10	<b>Bid Total:</b>				<b>\$ 135,600</b>
11	<b>Contingency 10% :</b>				<b>\$ 13,560</b>
12	<b>Construction Cost :</b>				<b>\$ 149,160</b>
13	<b>Planning, Design, Construction Management, and Permitting (48% of Construction Cost):</b>				<b>\$ 72,000</b>

**TOTAL: \$ 221,160**