



Santa Clara Valley Water District

File No.: 20-1142

Agenda Date: 1/12/2021
Item No.: 3.10.

BOARD AGENDA MEMORANDUM

SUBJECT:

Notice of Completion of Contract and Acceptance of Work for the Lower Silver Creek Flood Protection and Creek Restoration Project, Reaches 5C to 6A (Landscape and Revegetation Establishment Maintenance Phase - Milestone 2), Proven Management, Inc., Contractor, Project No. 40264008, Contract No. C0580 (San Jose) (District 6).

RECOMMENDATION:

- A. Accept the work on the Lower Silver Creek Flood Protection and Creek Restoration Project, Reaches 5C to 6A (Landscape and Revegetation Establishment Maintenance Phase - Milestone 2), Proven Management, Inc., Contractor, Project No. 40264008, Contract No. C0580 as complete; and
- B. Direct the Clerk of the Board to sign the Notice of Completion of Contract and Acceptance of Work and submit for recording to the Santa Clara County Clerk-Recorder.

SUMMARY:

The construction contractor, Proven Management, Inc., has completed the Landscape and Revegetation Establishment Maintenance Phase (*Milestone 2*) for the Lower Silver Creek Flood Protection and Creek Restoration Project, Reaches 5C to 6A. The construction contract was awarded in the amount of \$18,217,915.50 and the final contract amount is \$20,945,274.93. Subject to any withholds required by law or the contract, acceptance of the work by the Board will allow for the release of approximately \$11,435.50 in retention to the Contractor.

The objective of the Lower Silver Creek Flood Protection and Creek Restoration Project, Reaches 5C to 6A (Project) is to convey the one percent chance flood flows and improve stream habitat values. The Project reach extends approximately 2,000 feet between Story Road and Moss Point Drive. This Project is part of the Lower Silver Creek, Reaches 4-6 project that Valley Water constructed in partnership with the Natural Resources Conservation Service. Completion of Reaches 4-6, together with improvements completed by Valley Water's Lake Cunningham Project, provides one percent chance flood protection to a total of 3,800 parcels in the surrounding area. All of the improvements and revegetation maintenance for Reaches 4-6 are complete.

The Contractor has completed the Landscape and Revegetation Establishment Maintenance Phase (*Milestone 2*) of the contract. The Board accepted the Construction Phase (*Milestone 1*) in November 2017. This Board action is only for the acceptance of the landscape and revegetation establishment

maintenance phase.

Previous Board Actions

On February 28, 2012, the Board approved the plans and specifications and authorized advertisement for bids for the construction of the Project.

On April 24, 2012, the Board awarded the subject contract to Proven Management, Inc. in the amount of \$18,217,915.50 and approved a contingency fund of \$2,732,687. The Board authorized the Chief Executive Officer (CEO) or designee to approve individual change orders up to the total amount of the contingency, with the Unit Manager and Deputy Operating Officer to approve individual changes up to \$30,000 and \$50,000, respectively.

On November 28, 2017 the Board accepted only the Construction Phase of the contract (*Milestone 1*) as only that portion of the Project had been completed. The three-year Landscape and Revegetation Establishment Maintenance Phase followed the Construction Phase and has now been completed as well.

Contract Change Orders

During the previously accepted Construction Phase of the Project, a total of fourteen (14) contract change orders totaling \$2,727,359.43 were executed for this contract to address various issues, including unforeseen site conditions, utility conflicts, District-requested changes, quantity adjustments, post-design clarifications, and a global settlement of disputed items. No additional change orders were required for completion of the Landscape and Revegetation Establishment Maintenance Phase.

Table 1 presents a summary of the construction contract and contingency amounts.

TABLE 1. SUMMARY OF CONSTRUCTION CONTRACT AMOUNT

| | Contract Amount | Contingency Amount |
|---|------------------------|---------------------------|
| Original Contract | \$18,217,915.50 | \$2,732,687.00 |
| Change Order Nos. 01 to 14 (Construction Phase, accepted November 28, 2017) | \$2,727,359.43 | <\$2,727,359.43> |
| Final Contract Amount and Remaining Contingency | \$20,945,274.93 | \$5,327.57 |

Acceptance of the Work and Recording Notice of Completion of Contract

The California Civil Code allows an owner or agent to execute a Notice of Completion of Contract after acceptance of the work by the Board. The Notice of Completion of Contract and Acceptance of

Work is included in Attachment 1. Valley Water's designated Engineer has determined that the work has been completed, to the best of her knowledge, in accordance with the plans and specifications, and recommends acceptance. The designated Engineer's recommendation of construction acceptance is included in Attachment 2. The Project Completion Letter is included as Attachment 3. Photos of the completed Project are included in Attachment 4.

Construction Contract Retention

California law requires Valley Water to release contract retention in accordance with certain time frames, which will commence once the Notice of Completion is recorded. Interest payment on retention due to the contractor may be avoided by meeting the requisite deadlines.

Valley Water is currently withholding retention funds totaling five percent (5%) of the contract items associated with Milestone 2 (\$11,435.50) in accordance with the Public Contract Code. Per the construction Contract Documents, Valley Water is required to release retention funds associated with the contract 35 days after recording the Notice of Completion of Contract and Acceptance of Work, subject to any withholds required by law or the contract.

Recording a Notice of Completion is recommended for the Milestone 2 work.

Project Expenditures

As indicated in the Summary of Construction Contract and Contingency Amounts (Table 1), the original contract amount of \$18,217,915.50 has been increased by \$2,727,359.43 to \$20,945,274.93, an increase of approximately 15 percent. There were sufficient funds in the Board-approved contingency amount to pay these additional costs.

FINANCIAL IMPACT:

Total financial costs were detailed in previous sections of the agenda memorandum. No additional funding is recommended. The Project is included in the Five-Year 2021-25 Capital Improvement Program (CIP) and in the Board-adopted FY 2020-21 Budget.

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.

ATTACHMENTS:

- Attachment 1: Notice of Completion
- Attachment 2: Construction Contract Acceptance
- Attachment 3: Project Completion Letter
- Attachment 4: Construction Photos
- Attachment 5: Project Delivery Process Chart

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UNCLASSIFIED MANAGER:
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