



# Santa Clara Valley Water District

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**File No.:** 17-0089

**Agenda Date:** 3/14/2017

**Item No.:** 3.4.

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## BOARD AGENDA MEMORANDUM

### **SUBJECT:**

Reduction of Construction Contract Retention for the Lower Silver Creek Flood Protection and Creek Restoration Project, Reach 6B, Robert A. Bothman, Inc., Contractor, Project No. 40264008, Contract No. C0594 (San Jose) (District 6).

### **RECOMMENDATION:**

Authorize reducing the current construction contract retention of ten percent (10%) to five percent (5%), consistent with the minimum amount required by the California Public Contract Code.

### **SUMMARY:**

The Board awarded the subject contract to Robert A. Bothman, Inc. in the amount of \$12,677,594 on June 10, 2014. The improvement phase of the Project is approximately 80 percent complete and is scheduled for completion in Fall 2017. A three-year plant establishment maintenance phase will follow and is allocated approximately 1.0% of the total contract price. A reduction to the construction contract retention is recommended since substantially complex work is complete and the remaining work is of minimal risk, consisting of some civil installation scope and maintaining revegetation plantings. Taking this recommended action is consistent with statutory requirements.

### ***Project Background***

The objective of the Lower Silver Creek Flood Protection and Creek Restoration Project, Reach 6B (Project) is to convey the 1-percent chance of flood flows and improve stream habitat values. The Project reach is between Moss Point Drive and Cunningham Avenue, approximately 2,700 feet in length. This Project is the final portion of the Lower Silver Creek, Reaches 4-6 project that the District partners with the Natural Resources Conservation Service to construct improvements along 2.3 miles of the creek. Completion of this Project, together with future improvements planned by the District's Lake Cunningham project, will provide flood protection for a total of 3,800 parcels in the surrounding area.

This Project includes construction of floodwalls, retaining walls, maintenance access ramps and roads, channel widening, sediment removal, utility relocations and modifications, and revegetation. Project elements completed to date include 100 percent of all floodwalls along the Project length, approximately 50 percent of channel widening and maintenance roads, and sediment removal. The remaining 20 percent of the improvement work includes final channel widening and maintenance

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roads, and one retaining wall and maintenance ramp. Construction of the Project was originally anticipated to be completed in two construction seasons. However, due to a number of unforeseen conditions, including buried objects, soft soil conditions and utility conflicts, construction has extended into a third construction season. A contract change order has been executed to extend the contract, which includes final compensation to the Contractor for impacts associated with Project delays to date.

### ***Construction Contract Retention***

The California Public Contract Code requires public entities to withhold no less than five percent (5%) contract retention for public works construction contracts. Additionally, the code limits retention amounts to a maximum of 5% unless the governing body finds the proposed project is 'substantially complex' and requires contract retention greater than 5%. On March 25, 2014, the Board found that the Project was substantially complex and required construction contract retention of ten percent (10%). The District is currently withholding this amount.

The determination that the Project was 'substantially complex' was due to risks associated with the construction of cast-in-drilled-hole (CIDH) piers, which support floodwalls along the length of the Project. The Contractor has completed construction of all the CIDH piers and associated floodwalls on the Project. Since the work related to CIDH piers is complete, the circumstances supporting 10% retention no longer exist. Photographs of construction progress, including completed floodwalls, are included in Attachment 1.

The purpose of staff's recommendation to reduce retention at this time is to allow for release of half (approximately \$526,480) of the total retention now instead of the contractor waiting until after the District accepts the Project to receive the full 10% of the contract price withheld. The District would continue to withhold 5% until 35 days after the Project is accepted by the Board and the Notice of Completion is recorded, subject to any withholds required by law or the contract. Taking this recommended action is consistent with statutory requirements.

### ***Previous Board Actions***

On March 25, 2014, the Board approved the plans and specifications and authorized advertisement for bids for the construction of the Project. Additionally, the Board found that the Project was substantially complex and required a construction contract retention of ten percent (10%).

On June 6, 2014, the Board awarded the subject contract to Robert A. Bothman, Inc. in the amount of \$12,677,594 and approved a contingency fund of \$1,267,760. 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 Engineering Unit Manager and Deputy Operating Officer to approve individual changes up to \$30,000 and \$50,000 respectively.

### ***Contract Change Orders***

A total of seven (7) staff and CEO-approved contract change orders totaling \$1,132,917.79 have

been executed to date for this contract to address various issues, including unforeseen site conditions, unforeseen utility conflicts, District-requested changes, design clarifications, and delay impacts. The original contract amount of \$12,677,594 has been increased by \$1,132,917.79 to \$13,810,511.79, an increase of approximately 9 percent.

**FINANCIAL IMPACT:**

The recommendation does not result in a financial impact. The approved action reduces the contract retention of 10% (\$1,052,960) to 5% (\$526,480) from funds due to Robert A. Bothman, Inc. upon completion and acceptance of the contract.

**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: Construction Progress Photos

**UNCLASSIFIED MANAGER:**

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