



# Santa Clara Valley Water District

File No.: 19-1014

Agenda Date: 12/10/2019

Item No.: 6.2.

## BOARD AGENDA MEMORANDUM

### SUBJECT:

Budget Adjustment in the Amount of \$320,000; Approve an Increase of \$12,591.63 to the Construction Contract Contingency Sum; and Accept the Project as Complete for the Cunningham Flood Detention Facility Certification Project (Construction Stage 1 - Milestones 1 and 1a), Gordon N. Ball, Contractor, Project No. 40264011, Contract No. C0641 (San Jose) (District 1).

### RECOMMENDATION:

- A. Approve a Fiscal Year 2020 budget adjustment in the amount of \$320,000 from Fund 12 Watershed Stream Stewardship Fund to the Cunningham Flood Detention Facility Project;
- B. Approve an increase of \$12,591.88 to the construction contract contingency sum;
- C. Accept the work as complete on the Cunningham Flood Detention Facility Certification Project (Construction Stage 1 - Milestones 1 and 1a), Project No. 40264011, Contract No. C0641; and
- D. Direct the Clerk of the Board to sign the Notice of Completion of Contract and Acceptance of Work for Construction Stage 1 - Milestones 1 and 1a and submit for recording to the County of Santa Clara Office of the Clerk-Recorder.

### SUMMARY:

The construction contractor, Gordon N. Ball, Inc., has completed Construction Stage 1 (*Milestones 1 and 1a*)\* for the Cunningham Flood Detention Facility Certification Project (Project). The construction contract was awarded in the amount of \$3,748,000.00 with a contingency budget of \$562,200.00 and the contract amount through the completion of Milestones 1 and 1a is \$4,322,791.88. Subject to any withholds required by law or the contract, acceptance of the work by the Board will allow for the release of \$214,789.59 in retention to the contractor.

*\*Milestone 1 is to complete all levee embankment, floodwall, and all other associated work within the Project area. Milestone 1a is to complete all remaining civil work, including completion of items on the deficiency list, obtaining approvals from Parks, Recreation and Neighborhood Services for items owned by the City of San Jose.*

### **Project Background**

The Project is situated within Lake Cunningham Regional Park in the southeast section of San Jose and is just upstream of Santa Clara Valley Water District's (Valley Water) Lower Silver Creek Flood Protection Project. The park was designed and constructed in accordance with the park's Master

Plan originally developed in 1976 by the City of San Jose (City) to function dually as a recreational and flood detention facility. Lower Silver, Flint, and Ruby Creeks flow along the perimeter of the park. In 1978, Valley Water entered into a Joint Use Agreement with the City to develop a joint recreational-flood detention facility at the park site.

The park area functions as a detention basin and attenuates the 100-year flood peak flow from upstream. However, the detention facility does not have sufficient freeboard for it to be certified by the Federal Emergency Management Agency (FEMA). In order to meet this objective, Valley Water raised the existing levee ranging from 0 to 4 feet high along Capitol Expressway and Cunningham Avenue and adjacent to Lower Silver Creek, and constructed a floodwall ranging from 2 to 4 feet in height along Cunningham Avenue and Flint Creek. These improvements were necessary to satisfy FEMA freeboard requirements for flood protection facilities. Other Project elements include in-kind replacement of the existing chain-link fence along Cunningham Avenue park frontage, relocation of an existing trash compactor and greenwaste collection area; removal of concrete slabs at the existing trash compactor and greenwaste collection area, construction of a new pedestrian path, and regrading of approximately 70 feet of trails near the Lake Cunningham shoreline.

Valley Water and the City will apply to FEMA to certify the levee and floodwall that would remove about 3,800 parcels from the flood hazard area, eliminating the requirement for the property owners to purchase flood insurance.

The Contractor has completed Construction Stage 1 (*Milestones 1 and 1a*) of the contract.

Construction Stage 2 consists of the landscape and revegetation establishment maintenance work of the contract (*Milestones 2 and 3*), which is in progress and is scheduled for completion in June 2022.

This Board action is for the acceptance of the Construction Stage 1 (*Milestones 1 and 1a*). Staff will recommend a separate Board action to accept the Construction Stage 2 work (*Milestones 2 and 3*) after the landscape and revegetation establishment maintenance phase of the contract is completed.

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

On April 10, 2018, the Board adopted the plans and specifications and authorized advertisement for bids for the construction of the Project.

On June 12, 2018, the Board awarded the subject contract to Gordon N. Ball, Inc. in the amount of \$3,748,000.00 and approved a contingency fund of \$374,800.00. 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 \$100,000 and \$250,000, respectively.

On July 23, 2019, the Board approved an increase in contingency fund to \$562,200.00 or 15 percent (15%) of the original contract.

### ***Budget Adjustment***

If the Board approves Recommendations A and B, there will be an additional \$12,591.88 in the Project's construction contract contingency amount to execute the final construction contract change order, and an additional \$307,408 in funds necessary to complete the remaining construction phase elements. As of November 2019, the Project budget was overspent by \$120,510 due to higher labor hours than anticipated for the remaining construction work between July and November 2019. Staff is anticipating an additional \$186,898 is necessary to pay for labor, materials, and services to complete the remaining construction phase elements such as grant requirements, as-built documents, public outreach, and construction management during the 3-year planting establishment period.

Overall, the total Project construction cost has increased from \$3,748,000 to \$4,322,791.88. The funding sources for the Project are Fund 12 Watershed and Stream Stewardship and Grants from: 1) the Department of Water Resources Proposition 1E; the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protections Bond Act of 2006; and 2) the United States Department of Agriculture, Natural Resources Conservation Services.

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

A total of eight contract change orders totaling \$551,588.81 were executed to date for this contract to address various issues, including unforeseen site conditions and utilities, staff-requested changes, post-design clarifications, and credits to the contract.

These changes included:

- A. \$52,269.45 for additional work required to address unforeseen site conditions. This includes work ranging from additional tree removal for \$11,938.00 to removing existing construction material stockpiles to a class 2 waste facility for \$33,800.00.
- B. \$72,520.09 for additional work required to address utility conflicts. This includes work ranging from installing a wood retaining wall to protect a PG&E manhole for \$4,176.11 to relocation existing utilities that were in conflict with the trash compactor pad for \$20,642.00.
- C. \$393,383.99 for additional Valley Water staff-requested changes. This includes work ranging from providing additional hazardous material testing for the levee fill material for \$12,290.00 to replacing a 36-inch storm drain pipe and concrete manhole for \$265,000.00.
- D. \$73,797.27 for additional work required to address post-design clarifications. This includes work ranging from revising the trash compactor pad elevations and trench drain details for \$19,513.08 to providing additional City mitigation planting for \$28,102.00.
- E. \$17,178.92 for credits back to the contract as a result of Valley Water supplied materials for the vault hatch and trash racks.

A final contract change order in the amount of \$23,203.07 has been negotiated by staff, which includes work such as additional requested hazmat testing on levee for soil contaminants, modifying

a drainpipe, installing additional fencing, and constructing a retaining wall around a utility manhole.

However, insufficient funds remain in the contingency sum to execute the change order. Staff is recommending the Board approve an increase to the contingency fund in the amount of \$12,591.88, which will enable staff to execute the final contract change order. If the Board approves the contingency increase, the total number of staff-approved change orders will increase to nine, resulting in an increase to the contract amount of \$574,791.88.

Table 1 presents a summary of the construction contract and contingency amounts as well as a breakdown of the recommended increase to the contingency sum and proposed final contract change order.

**TABLE 1. SUMMARY OF CONSTRUCTION CONTRACT AND CONTINGENCY AMOUNTS**

	<b>Contract Amount</b>	<b>Contingency Amount</b>
<b>Original Contract</b>	<b>\$3,748,000.00</b>	<b>\$374,800.00</b>
Change Order No. 1 (staff approved)	\$69,799.00	<\$69,799.00>
Change Order No. 2 (staff approved)	\$29,544.30	<\$29,544.30>
Change Order No. 3 (staff approved)	\$21,874.84	<\$21,874.84>
Change Order No. 4 (staff approved)	\$2,464.88	<\$2,464.88>
Change Order No. 5 (staff approved)	\$97,563.47	<\$97,563.47>
Change Order No. 6 (staff approved)	\$40,708.85	<\$40,708.85>
<b>Contract Amount and Remaining Contingency</b>	<b>\$4,009,955.34</b>	<b>\$112,844.66</b>
Contingency Amount Increase (Board Approval on 7/23/2019)		\$187,400.00
Change Order No. 7 (CEO approved)	\$265,000.00	<\$265,000.00 >
Change Order No. 8 (staff approved)	\$24,633.47	<\$24,633.47>
<b>Contract Amount and Remaining Contingency</b>	<b>\$4,299,588.81</b>	<b>\$10,611.19</b>
Contingency Amount Increase (Pending Board Approval)		\$12,591.88
Change Order No. 9 (Pending staff approval)	\$23,203.07	<\$23,203.07>
<b>Proposed Final Contract Amount and Remaining Contingency</b>	<b>\$4,322,791.88</b>	<b>\$0</b>

***Increase in Construction Contingency***

There are insufficient funds remaining in the contingency sum to execute the proposed final change order No. 9. Staff recommends the Board approve an increase to the contingency sum for the Project in the amount of \$12,591.88 to allow staff to execute the final contract change order. The additional

contingency amount will result in a total contingency of \$574,791.88 or approximately 15.3 percent (15.3%) of the original contract amount of \$3,748,000.

***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 and it clearly indicates only Construction Stage 1 - Milestones 1 and 1a have been completed. The 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 the Construction Summary as 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 Milestones 1 and 1a 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 Milestones 1 and 1a work and a second Notice of Completion will be recommended once Milestones 2 and 3 work is complete. Retention withheld for Milestones 1 and 1a will be released as a result of this Board item and will be released for Milestones 2 and 3 after that work is completed and a Notice of Completion is recorded.

***Total Project Expenditures***

As indicated in the Summary of Construction Contract and Contingency Amounts (Table 1), with the issuance of change order No. 9, the original contract amount of \$3,748,000 has been increased by \$574,791.88 to \$4,322,791.88, an increase of approximately 15.3 percent.

**FINANCIAL IMPACT:**

Approval of Recommendations A and B will result in a FY20 Budget Adjustment to transfer a total of \$320,000 from the Fund 12 Watershed and Stream Stewardship Operating and Capital Reserve to the Cunningham Flood Detention Facility Certification Project, Project No. 40264011.

**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 and Acceptance of Work

Attachment 2: Construction Contract Acceptance

Attachment 3: Project Completion Letter

Attachment 4: PowerPoint

Attachment 5: Project Delivery Process Chart

**UNCLASSIFIED MANAGER:**

Ngoc Nguyen, 408-630-2632