



Santa Clara Valley Water District

File No.: 20-0155

Agenda Date: 4/28/2020

Item No.: 3.2.

BOARD AGENDA MEMORANDUM

SUBJECT:

Receive and Direct the Clerk to File the Notice of Completion of Contract and Acceptance of Work for the Lower Silver Creek Flood Protection and Creek Restoration Project, Reach 6B (Landscape and Revegetation Establishment Maintenance Phase - Milestone 2), Robert A. Bothman, Inc., Contractor, Project No. 40264008, Contract No. C0594 (San Jose) (District 6).

RECOMMENDATION:

- A. Accept the work on the Lower Silver Creek Flood Protection and Creek Restoration Project, Reach 6B (Landscape and Revegetation Establishment Maintenance Phase - Milestone 2), Robert A. Bothman, Inc., Contractor, Project No. 40264008, Contract No. C0594 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, Robert A. Bothman, Inc., has completed the Landscape and Revegetation Establishment Maintenance Phase (*Milestone 2*) for the Lower Silver Creek Flood Protection and Creek Restoration Project, Reach 6B. The construction contract was awarded in the amount of \$12,677,594 and the final contract amount is \$12,997,848.15. Subject to any withholds required by law or the contract, acceptance of the work by the Board will allow for the release of approximately \$8,925 in retention to the Contractor.

The objective of the Lower Silver Creek Flood Protection and Creek Restoration Project, Reach 6B (Project) is to convey the one percent chance flood flows and improve stream habitat values. The Project reach extends approximately 2,750 feet between Moss Point Drive and Cunningham Avenue. This Project is the final segment of the Lower Silver Creek, Reaches 4-6 Project that Valley Water is constructing in partnership with the Natural Resources Conservation Service. Valley Water has received \$20.2 million for the Reaches 4-6 Project from a federal grant as part of the American Recovery and Reinvestment Act of 2009 to construct improvements along 2.3 miles of the creek. Completion of the Reach 6B Project, 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.

The Project segment between Moss Point Drive and Cunningham Avenue includes the following

elements:

- Channel excavation and embankment construction
- Construction of a maintenance road along the channel
- Flood walls
- Retaining walls
- Rock slope toe protection along the channel
- Installation of landscaping and revegetation plantings and irrigation
- Three-year landscape and revegetation establishment maintenance period

The Contractor has completed the three-year Landscape and Revegetation Establishment Maintenance Phase (*Milestone 2*) of the contract. The Board accepted the Construction Phase (*Milestone 1*) in August 2018. This Board action is only for the acceptance of the landscape and revegetation establishment maintenance phase.

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.

On June 10, 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 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.

On August 14, 2018 the Board accepted only the Construction Phase of the contract (*Milestone 1*).

Contract Change Orders

During the previously accepted Construction Phase of the Project, a total of eleven (11) contract change orders totaling \$1,097,329.43 were executed for this contract to address various issues, including unforeseen site conditions, utility conflicts, Valley Water requested changes, quantity adjustments, post-design clarifications, and a global settlement of disputed items.

During the Landscape and Revegetation Establishment Maintenance Phase, two change orders were executed which resulted in a credit in the amount of \$777,075.28. These deductive change orders included a reduction in work for in-stream vegetation removal and decreases in amounts awarded for supplemental bid items of work for: removal of sediments, removal of course aggregate, and reconstruction of an access road.

The final contract amount is \$12,997,848.15, which includes a net total increase of \$330,254.15 in contract changes, both additive from Milestone 1 and deductive from Milestone 2 work, within the Board-approved contingency fund.

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	\$12,677,594.00	\$1,267,760.00
Change Order Nos. 01 to 11 (Construction Phase, accepted August 14, 2018)	\$1,097,329.43	<\$1,097,329.43>
Change Order No. 12	<\$10,095.28>	\$10,095.28
Change Order No. 13	<\$766,980.00>	\$766,980.00
Current Contract Amount and Remaining Contingency	\$12,997,848.15	\$947,505.85

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 his 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 (\$8,925) 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 \$12,677,594 has been increased by \$320,254.15 to \$12,997,848.15, an increase of approximately 2.5 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.

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 Summary
- Attachment 5: Project Delivery Process Chart

UNCLASSIFIED MANAGER:

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