



Santa Clara Valley Water District

File No.: 20-0486

Agenda Date: 6/23/2020

Item No.: 6.3.

BOARD AGENDA MEMORANDUM

SUBJECT:

Approve Budget Adjustment, Increase to Construction Contract Contingency Sum, and Notice of Completion of Contract and Acceptance of Work for the Permanente Creek Flood Protection Project - McKelvey Park Detention Basin Project (Stage 2), Kiewit Infrastructure West Company, Contractor, Project No. 26244001, Contract No. C0616 (Mountain View) (District 7).

RECOMMENDATION:

- A. Approve a Fiscal Year 2020 budget adjustment in the amount of \$1,682,000 from Fund 26 Operating and Capital Reserves to the Permanente Creek Flood Protection Project;
- B. Approve an increase of \$1,682,000 to the construction contract contingency sum for the Permanente Creek Flood Protection Project - McKelvey Park Detention Basin Project, Project No. 26244001, Contract No. C0616;
- C. Accept the work as complete; and
- D. Direct the Clerk of the Board to sign the Notice of Completion of Contract and Acceptance of Work for Permanente Creek Flood Protection Project - McKelvey Park Detention Basin Project (Stage 2) and submit for recording to the County of Santa Clara Office of the Clerk-Recorder.

SUMMARY:

On November 8, 2016, the Board awarded a contract in the amount of \$28,105,969 to Kiewit Infrastructure West Company (Kiewit) for construction of the Permanente Creek Flood Protection Project - McKelvey Park Detention Basin Project (Project). Kiewit has completed construction of the Project and the current contract amount is \$30,888,479. Subject to any withholds required by law or the contract, acceptance of the work by the Board will allow for the release of \$104,418.73 in retention to the Contractor.

In collaboration with the City of Mountain View, Mountain View California Little League and the neighboring community, a ribbon cutting event was held on Saturday, February 29, 2020.

Project Background

The Permanente Creek Flood Protection Project is part of the Safe, Clean Water and Natural Flood Protection Program. When completed, the Project will protect approximately 2,200 parcels by implementing flood detention and channel improvement works. The Project utilizes two flood

detention areas located strategically in the watershed to maximize flood protection benefits at an acceptable cost. The Project was built by awarding three separately bid contracts: Rancho San Antonio Detention Basin; McKelvey Park Detention Basin; and the Permanente Creek Channel Improvements. The construction of the Permanente Creek Channel Improvements Project was accepted by the Board on April 9, 2019, and construction of the Rancho San Antonio Detention Basin is currently in progress and is anticipated for completion in late 2020.

The objective of the Project was to construct a flood detention basin at McKelvey Park. Flows higher than approximately the 50-year flood event will spill into the detention area for temporary storage. Once the peak flows pass, the stored flood water will drain back into Permanente Creek by gravity flow and through pumping. Low-flow pumps have been installed in a wet-well adjacent to the inlet structure.

On February 11, 2020, the Board accepted the completion of the Stage 1 (Milestones 1 and 2) of the Project's construction that included the opening of the two baseball fields. and completion of all civil work improvements. As of April 26, 2020, the Contractor has completed Stage 2 of the Project's construction contract (which was all remaining scope of work) that includes landscape and revegetation establishment maintenance work.

During construction, the contractor encountered numerous significant challenges delaying their work such as the PG&E power line relocation delay and coordination with the City of Mountain View and adjacent residents during excavation and off-haul of the soil. The six-month PG&E power line relocation delay significantly impacted the efficiency of the construction work, sequencing of work for the contractor, completion of the Project, and opening of the park to the public. The original estimated completion date was February 2019 and construction was completed in February 2020.

Construction Costs Summary and Contract Change Orders

A total of twenty-two (22) contract change orders totaling \$2,782,510 have been executed to date for this contract to address various issues, including unforeseen site conditions and utilities, Santa Clara Valley Water District (Valley Water)-requested changes, neighborhood concerns, post-design clarifications, and quantity overruns.

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

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

	Contract Amount	Contingency Amount
Original Contract	\$28,105,969.00	\$2,810,000.00
Change Order No. 1 (staff approved) PG&E delay initial inefficiency cost	\$100,000.00	<\$100,000.00>

Change Order No. 2 (staff approved) Load/unload/store steel piles at San Joseph's School	\$46,322.98	<\$46,322.98>
Change Order No. 3 (staff approved) Remove unknown transit pipe, sheet pile subcontractor remobilization cost	\$80,629.16	<\$80,629.16>
Change Order No. 4 (staff approved) Kiewit support for sheet pile subcontractor remobilization	\$59,237.30	<\$59,237.30>
Change Order No. 5 (staff approved) Additional telecom boxes and conduits	\$55,555.47	<\$55,555.47>
Change Order No. 6 (staff approved) Delay cost for sheet pile installation	\$55,000.00	<\$55,000.00>
Change Order No. 7 (staff approved) Park Drive sewer conflict with existing storm drain and gas line conflict with waterline	\$93,312.00	<\$93,312.00>
Change Order No. 8 (staff approved) Light pole lead testing, rock road winterizing, and extended work hours' premium for July thru October 2018.	\$37,811.00	<\$37,811.00>
Change Order No. 9 (staff approved) 60" RCP field collar tie-ins, broken irrigation line repair, and City Building Department permit shut down	\$45,872.04	<\$45,872.04>
Change Order No. 10 (staff approved) Staff premium cost and craft subsistence for November 2018, January 2019 Partnering meeting cost.	\$85,098.60	<\$85,098.60>
Change Order No. 11 (staff approved) Staff premium cost and craft subsistence for December 2018 and January 2019.	\$86,782.71	<\$86,782.71>
Change Order No. 12 (staff approved) Staff premium cost and craft subsistence for February 2019, February 2019 Partnering cost.	\$61,040.22	<\$61,040.22>
Change Order No. 13 (staff approved) Staff premium cost and craft subsistence for March 2019, March 2019 Partnering cost, added manhole at Miramonte Avenue, added fire service at Mountain View Avenue, and water proofing buildings.	\$145,072.43	<\$145,072.43>
Change Order No. 14 (staff approved) Staff premium cost and craft subsistence for April 2019.	\$50,194.71	<\$50,194.71>
Change Order No. 15 (staff approved) Staff premium cost and craft subsistence for May 2019, and design clarification/changes costs.	\$122,369.89	<\$122,369.89>
Change Order No. 16 (staff approved) Design clarification/changes costs, and decorative screen.	\$93,376.09	<\$93,376.09>
Change Order No. 17 (staff approved) Additional handrails, bio-retention and landing curb design changes, Channel Improvement Project impact on RW#2	\$99,385.67	<\$99,385.67>

Change Order No. 18 (staff approved) Relocating the utility lines under City sidewalk, Light poles relocation, sewer line modification, anti-theft for speakers	\$84,092.61	<\$84,092.61>
Change Order No. 19 (staff approved) Additional structural backfill costs and additional PG&E work.	\$84,711.55	<\$84,711.55>
Change Order No. 20 (staff approved) Babe Ruth Field Bldg fabric, Pedestrian access, sewer conflict, community bldg. window, speaker changes, etc.	\$226,548.38	<\$226,548.38>
Change Order No. 21 (staff approved) Bid items over/underruns	\$109,561.00	<\$109,561.00>
Change Order No. 22 (staff approved) Structural excavation, structural concrete, disposal of contaminated stockpile, additional paving, etc.	\$960,536.00	<\$960,536.00>
Current Contract Amount and Remaining Contingency	\$30,888,478.81	\$27,490.19
Contingency Amount Increase (pending Board Approval)		\$1,682,000
Change Order No. 23 (Pending staff approval) Global settlement to compensate for additional construction time and inefficiencies caused for resequencing of the construction work due to the PG&E powerline relocation delay impact.	\$1,682,000	<\$1,682,000>
Proposed Final Contract Amount and Remaining Contingency	\$32,570,478.81	\$27,490.19

Increase Construction Contingency

Because of their costs incurred from the PG&E delay, primarily because it resulted in an additional one year of construction, Kiewit submitted several notices of potential claims with an estimated additional cost of \$6 million. Staff has reviewed, evaluated, and negotiated a resolution of these disputed amounts. The amount of \$1,084,365 has been paid for some of the additional contractor expense and work, using available contract contingency budget. Staff and Kiewit have agreed to a financial resolution of their claim for remaining costs in the amount of \$1,682,000. A budget adjustment is therefore recommended to increase the contract contingency, which will fund a change order to resolve all claims with the contractor. If approved by the Board, the additional contingency amount will result in a total contingency of \$4,492,000 or 15.88 percent of the original contract amount of \$28,105,969.

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. The 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 Construction Manager's Project Completion Letter is included as Attachment 3.

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's board accepted completion of Stage 1, Milestones 1 and 2, and therefore already released the retention funds for the contract items associated with those Milestones but is currently withholding retention funds totaling five percent (5%) of the contract items associated with Stage 2 in accordance with the Public Contract Code and the Contract Documents. 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 Final Notice of Completion is recommended for Stage 2 (revegetation establishment maintenance phase, which was all of the remaining scope of work in the Contract Documents).

Previous Board Actions

On August 9, 2016, the Board adopted the plans and specifications and authorized advertisement for bids for the construction of the Project.

On November 8, 2016, the Board awarded a contract to Kiewit in the amount of \$28,105,969.00 and approved a contingency fund of \$2,810,000.00 for construction of the Project. 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 February 11, 2020, the Board accepted the work as complete for the Permanente Creek Flood Protection Project - McKelvey Park Detention Basin Project (Stage 1).

Budget Adjustment

Approval of Recommendations A and B requires a FY20 budget adjustment in the amount of \$1,682,000. Funding from the budget adjustment will allow adequate funds to increase the contingency budget of the Project by \$1,682,000 from \$2,810,000 to \$4,492,000 or 15.88 percent of the original contract amount of the Project and pay for a final change order to resolve all pending

delay claim disputes with the contractor.

FINANCIAL IMPACT:

Funding for the proposed budget adjustment of \$1,682,000 will come from Fund 26 Operating and Capital Reserves to the Permanente Creek Flood Protection Project, Project No. 26244001, leaving a remaining balance in the Fund 26 Operating and Capital Reserves of \$76,266,580.

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: Project Delivery Process Chart

UNCLASSIFIED MANAGER:

Ngoc Nguyen, 408-630-2632