



# Santa Clara Valley Water District

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**File No.:** 20-0632

**Agenda Date:** 7/28/2020

**Item No.:** \*6.2.

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## BOARD AGENDA MEMORANDUM

### **SUBJECT:**

Approve an Increase to the Construction Contract Contingency Sum and Notice of Completion of Contract and Acceptance of Work for the Lower Berryessa Creek Flood Protection Project Phase 2, (Construction Phase - Stage 1), Brosamer & Wall, Inc., Contractor, Project No. 40174005, Contract No. C0614 (Milpitas) (District 3).

### **RECOMMENDATION:**

- A. Approve an increase of \$187,841.27 to the construction contract contingency sum for the Lower Berryessa Creek Flood Protection Project Phase 2, (Construction Phase - Stage 1), Brosamer & Wall, Inc., Contractor, Project No. 40174005, Contract No. C0614;
- B. Accept the work as complete; and
- C. 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, Brosamer & Wall, Inc., has completed the Construction Phase (Stage 1) for the Lower Berryessa Creek Flood Protection Project Phase 2 (Project). The construction contract was awarded in the amount of \$38,876,550 and the construction contract amount through the completion of Stage 1 is \$44,845,046.27. Subject to any withholds required by law or the contract, acceptance of the work by the Board will allow for the release of \$2,242,252.31 in retention to the Contractor.

### **Project Background**

The Lower Berryessa Creek Project, which extends approximately 1.6 miles from its confluence with Lower Penitencia Creek upstream to Calaveras Boulevard, is part of a number of flood protection improvements within the City of Milpitas. The Project will protect the surrounding area by removing approximately 1,800 parcels from the 1 percent (1%) floodplain and provide improved maintenance access to the channel. The Lower Berryessa Creek Project was constructed in two phases. Phase 1 was completed in December 2016 and included improvements between the confluence with Lower Penitencia Creek and Abel Street. Phase 2 includes approximately 1.1 miles of channel improvements upstream of Jacklin Road/Abel Street to Calaveras Boulevard and is the subject of this Board agenda item.

The Contractor has completed the Construction Phase (Stage 1) of the subject Project.

The three-year Plant Establishment and Maintenance Phase (Stage 2) of the Project is in progress and is scheduled for completion in December 2022.

This Board action is only for the acceptance of the Construction Phase (Stage 1). A separate Board action will be scheduled once the three-year Plant Establishment and Maintenance Phase (Stage 2) of the contract is completed.

### **Previous Board Actions**

On March 22, 2016, the Board approved the plans and specifications and authorized advertisement for bids for the construction of the Project.

On June 28, 2016, the Board awarded the construction contract for the Project to Brosamer & Wall, Inc., in the amount of \$38,876,550 and approved a contingency sum of \$3,887,655. 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 \$50,000 and \$100,000, respectively.

On June 28, 2016 the Board authorized the CEO to negotiate and execute Amendment No. 1 to the Standard Consultant Agreement with Ghirardelli Associates, Inc. for construction management services for construction of the Project, for the not-to-exceed amended amount of \$3,436,036. Previously, on June 9, 2015 the Board approved the original Agreement with Ghirardelli Associates, Inc., for construction management services for construction of the Lower Berryessa Creek Flood Protection Project Phase 1 and Phase 2. It was later amended to extend its term to be commensurate with the duration of construction of the Project.

On November 14, 2017, the Board approved an increase to the construction contingency sum of the Project by \$1,943,000 to \$5,830,655 to a new total contingency amount of 15 percent (15%) of the contract amount.

On March 13, 2018, the Board authorized reducing the construction contract retention of ten percent (10%) to five percent (5%), consistent with the minimum amount required by the California Public Contract Code.

### **Contract Change Orders**

Since construction started in August 2016, staff and the contractor have approved 73 contract change orders totaling \$5,801,119.46 for costs resulting from schedule recovery efforts from utility relocation delays, locating unexpected utilities, additional tree removal, and necessary design changes. During the first year of construction, the Project was delayed by utility relocations from PG&E, Chevron, and AT&T. Because of the utility relocation delays, the Project incurred about \$2.2 million in acceleration costs to increase Contractor staff and equipment and to get the Project back on schedule. In the second year of construction additional change orders were approved to address another season of accelerated construction, design changes, replacement of damaged landscaping,

and changed site conditions.

A final contract change order in the amount of \$167,376.81 for the Construction Phase (Stage 1) has been agreed to by the parties and payment is pending board approval of staff's recommendation to increase the contingency sum. This last change order will compensate the contractor for the repairs of a below grade unforeseen conduit and fiber optic communication line damaged during excavation, and hydroseed irrigation.

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 Amount</b>	\$38,876,550.00	\$5,830,655.00
Change Order No. 1 (Deleted)	N/A	N/A
Change Order No. 2 (Staff Approved) Construction fencing along Edgewater Drive	\$36,726.25	<\$36,726.25>
Change Order No. 3 (CEO Approved) Removal of additional trees	\$181,500.00	<\$181,500.00>
Change Order No. 4 (Staff Approved) Pothole and survey existing AT&T ducts	\$22,777.21	<\$22,777.21>
Change Order No. 5 (Staff Approved) Modify CIDH rebar cages	\$36,213.50	<\$36,213.50>
Change Order No. 6 (Staff Approved) Remove irrigation at FW12	\$5,695.67	<\$5,695.67>
Change Order No. 7 (Deputy Approved) Increase insurance to cover VTA/UPRR requirements	\$62,721.00	<\$62,721.00>
Change Order No. 8 (Staff Approved) Demolish existing sound wall at FW12	\$42,000.00	<\$42,000.00>
Change Order No. 9 (Staff Approved) Locate limit of unknown 48-inch storm drain	\$7,064.34	<\$7,064.34>
Change Order No. 10 (CEO Approved) Add cobblestone texturing to floodwalls	\$138,116.59	<\$138,116.59>
Change Order No. 11 (CEO Approved) Remove unknown concrete channel lining	\$168,745.59	<\$168,745.59>
Change Order No. 11S1 (Staff Approved) Credit for quantities of concrete removal to CCO No. 10	<\$20,000.00>	\$0.00
Change Order No. 12 (Staff Approved) Provide support to AT&T at FW12 and FW16	\$25,000.00	<\$25,000.00>

Change Order No. 13 (Staff Approved) Provide Project Partnering Meetings	\$50,000.00	<\$50,000.00>
Change Order No. 14 (Staff Approved) Facilitate the Dispute Review Board	\$50,000.00	<\$50,000.00>
Change Order No. 15 (CEO Approved) Schedule recovery costs due to AT&T and PG&E relocation delays	\$2,264,098.35	<\$2,264,098.35>
Change Order No. 16 (Staff Approved) Landscape repairs at Beresford Village	\$30,000.00	<\$30,000.00>
Change Order No. 16S1 (Staff Approved) Additional landscape repairs at Beresford Village	\$5,000.00	<\$5,000.00>
Change Order No. 17 (Staff Approved) Improve access road for PG&E pole relocation	\$36,035.24	<\$36,035.24>
Change Order No. 18 (Staff Approved) Pothole PG&E Gas Line near IHOP	\$4,986.44	<\$4,986.44>
Change Order No. 19 (Staff Approved) Lower Existing AT&T Manhole at FW12	\$1,082.61	<\$1,082.61>
Change Order No. 20 (Staff Approved) Additional Tree removal at Sta 14+10	\$6,229.57	<\$6,229.57>
Change Order No. 21 (Deputy Approved) Additional shoring for FW 16	\$78,139.07	<\$78,139.07>
Change Order No. 22 (Staff Approved) Fence removal at FW 12, 14 and 17	\$14,517.24	<\$14,517.24>
Change Order No. 23 (Deputy Approved) Additional potholing, repair and cleanup of water utilities, excavation for AT&T duct work	\$83,717.91	<\$83,717.91>
Change Order No. 24 (Deputy Approved) Place 12-foot-wide Asphalt Pavement on Levee	\$82,800.00	<\$82,800.00>
Change Order No. 24S1 (Staff Approved) Credit to eliminate 2 feet of Asphalt Pavement	<\$42,261.91>	\$0.00
Change Order No. 25 (Staff Approved) Extra work on Saturday	\$12,682.95	<\$12,682.95>
Change Order No. 25S1 (Staff Approved) Supplemental Saturday Work	\$31,537.54	<\$31,537.54>
Change Order No. 26 (Staff Approved) Install and Maintain Concrete Cover at FW 12	\$33,035.74	<\$33,035.74>
Change Order No. 27 (Deputy Approved) Additional Winter Work	\$100,000.00	<\$100,000.00>
Change Order No. 28 (CEO Approved) Eliminate CIDH Piles at FW12, FW13, FW14, FW16	<\$1,186,142.20>	\$0.00
Change Order No. 29 (Deputy Approved) Additional Pothole utilities and relocate electrical lighting	\$54,667.97	<\$54,667.97>

Change Order No. 30 (Deputy Approved) Additional potholing utilities at FW11, FW12, FW15 and furnish temporary fencing at Sutterwind Drive	\$74,566.82	<\$74,566.82>
Change Order No. 31 (Deputy Approved) Manage High Groundwater and additional rip-rap at LV14 wingwall	\$60,468.33	<\$60,468.33>
Change Order No. 32 (Staff Approved) Survey AT&T ducts, FW17 fence removal, RW 17 and 18 changes due to PG&E gas vents, ADA ramp at FW17	\$38,839.89	<\$38,839.89>
Change Order No. 33 (CEO Approved) Acceleration costs for FW 12	\$173,070.00	<\$173,070.00>
Change Order No. 34 (Staff Approved) Remove additional concrete lining, modify storm drainage at LV13, add expansion joint at pedestrian bridge	\$46,643.39	<\$46,643.39>
Change Order No. 35 (Deputy Approved) Install and maintain 2 additional vibration monitors	\$56,490.00	<\$56,490.00>
Change Order No. 36 (Staff Approved) Remove existing sidewalk and sacked concrete at RW 17 and RW18	\$21,019.33	<\$21,019.33>
Change Order No. 37 (Staff Approved) Steepen slopes, remove and restore existing fence at LV13	\$28,914.93	<\$28,914.93>
Change Order No. 38 (CEO Approved) FW13 CIDH Pile Cave-in Impacts	\$117,652.44	<\$117,652.44>
Change Order No. 39 (Staff Approved) Off-Season Staffing in 2018	\$44,903.04	<\$44,903.04>
Change Order No. 40 (Deputy Approved) Moving and Disposing of Eliminated CIDH Pile Cages, FW 12 Shear Key Work	\$88,574.44	<\$88,574.44>
Change Order No. 41 (Deputy Approved) Off-season Work at FW11 and RW11	\$68,300.44	<\$68,300.44>
Change Order No. 42 (CEO Approved) Landscape Repairs at Sutterwind Drive	\$270,444.30	<\$270,444.30>
Change Order No. 42S1 (Staff Approved) Supplemental Landscape Repairs at Sutterwind Drive	\$19,444.95	<\$19,444.95>
Change Order No. 43 (CEO Approved) Additional Guardrailing at FW17	\$253,124.00	<\$253,124.00>
Change Order No. 43S1 (Staff Approved) Supplement Costs for Guardrailing at FW17	\$16,712.64	<\$16,712.64>
Change Order No. 44 (Deputy Approved) Additional Mobilization for CIDH Pile Work, mow area of weeds not in contract	\$72,750.00	<\$72,750.00>
Change Order No. 45 (CEO Approved) Additional concrete work at FW 11 and FW15	\$156,515.40	<\$156,515.40>

Change Order No. 45S1 (Staff Approved) Credit for FW11 and FW15 Design to U-Frame Walls	<\$15,009.80>	\$0.00
Change Order No. 46 (Staff Approved) 8-inch Pipe Repair at Wrigley Ford Pump Station	\$32,131.29	<\$32,131.29>
Change Order No. 47 (CEO Approved) 2018 Recovery and Acceleration	\$884,708.00	<\$884,708.00>
Change Order No. 48 (Staff Approved) FW12 Design Changes, VTA Background Check	\$20,219.21	<\$20,219.21>
Change Order No. 49 (Staff Approved) FW 13 Storm Drain protection, FW 12 drywells, remove and replace chain link fence	\$12,519.23	<\$12,519.23>
Change Order No. 50 (Staff Approved) LV11 keyway subgrade stabilization	\$19,575.69	<\$19,575.69>
Change Order No. 51 (Deputy Approved) Credit for elimination of CIDH piles for FW15	<\$297,997.94>	\$0.00
Change Order No. 52 (CEO Approved) Design changes for FW11, FW15, and FW16	\$279,545.11	<\$279,545.11>
Change Order No. 53 (CEO Approved) Adjustment for Decrease of in quantity of CIDH piles by more than 25%	\$332,316.19	<\$332,3116.19>
Change Order No. 54 (Deputy Approved) Install Additional Chain Link Fence, PG&E gas line conflicts at RW12 and RW14	\$62,059.64	<\$62,059.64>
Change Order No. 55 (Staff Approved) Credit to eliminate decomposed granite path at FW12	<\$15,952.19>	\$0.00
Change Order No. 56 (Staff Approved) Credit to eliminate Asphalt Concrete path at LV11	<\$178,643.30>	\$0.00
Change Order No. 57 (Deputy Approved) Remove/dispose abandoned manhole, add weep holes to U-frame invert, grade modification to lower maintenance road, pave slope at FW11 outfall, install City traffic sign at FW17	\$50,422.90	<\$50,422.90>
Change Order No. 58 (Staff Approved) Repair 2-inch irrigation line at Wrigley Ford, RW12 and RW14 weep hole extensions, erosion control blankets at revegetation areas 1 and 2, unknown manhole obstruction at FW11	\$17,574.03	<\$17,574.03>
Change Order No. 59 (Staff Approved) Modify 60 inch storm drain cap, ACB work at AT&T duct bank, additional chain link fence at trash rack	\$14,624.73	<\$14,624.73>

Change Order No. 60 (Staff Approved) Extra labor for 60 inch Storm Drain Leak, abandoned concrete obstruction, extend 60 inch storm drain outfall pipe at FW11	\$40,075.26	<\$40,075.26>
Change Order No. 61 (Staff Approved) Credit for design changes to FW11, FW15 and FW16	<\$81,662.37>	\$0.00
Change Order No. 62 (Staff Approved) Additional bird monitoring for 2018 season	\$66,246.01	<\$66,246.01>
Change Order No. 63 (Staff Approved) Cleaning Box Culvert Cell #3 of sediment	\$48,420.57	<\$48,420.57>
Change Order No. 64 (Staff Approved) Additional noise and vibration monitoring, weed removal and herbicide treatment, additional concrete apron removal at FW11	\$20,623.16	<\$20,623.16>
Change Order No. 65 (Staff Approved) Additional gates and fencing at FW12	\$10,878.00	<\$10,878.00>
Change Order No. 66 (Staff Approved) Additional topsoil preparation for planting	\$15,180.18	<\$15,180.18>
Change Order No. 67 (CEO Approved) Remedial levee work at LV11, LV12, LV13 and LV14	\$247,660.39	<\$247,660.39>
Change Order No. 68 (Pending CEO Approval) Balance Contract Items	\$0.00	\$0.00
Change Order No. 69 (Staff Approved) Riprap at Berryessa Pump Station Outfall	\$80,042.29	<\$80,042.29>
Change Order No. 70 (Staff Approved) 60-inch Storm Drain Scour Protection	\$52,485.78	<\$52,485.78>
Change Order No. 71 (Staff Approved) Asphalt Pavement Trail at LV12	\$96,691.01	<\$96,691.01>
Change Order No. 72 (Staff Approved) Credit for Valley Water O&M Labor at Pond A-8	<\$33,754.62>	\$0.00
Change Order No. 73 (Staff Approved) Modification to Waiver of Subrogation	\$0.00	\$0.00
<b>Current Contract Amount and Remaining Contingency</b>	<b>\$44,677,669.46</b>	<b>\$29,535.54</b>
Contingency Amount Increase (Pending Board Approval)		\$187,841.27
Change Order No. 74 (Pending CEO Approval) Fiber Optic Cable Repair and Hydroseed Irrigation	\$167,376.81	<\$167,376.81>
<b>Proposed Contract Amount and Remaining Contingency</b>	<b>\$44,845,046.27</b>	<b>\$50,000.00</b>

### **Increase in Construction Contingency**

There are insufficient funds remaining in the contingency sum to execute change order No. 74 required to resolve remaining cost issues with the Contractor for the Construction Phase (Stage 1). Additionally, some contingency funds are necessary to address issues that may arise during the three-year Plant Establishment and Maintenance Phase (Stage 2). Staff recommends the Board approve an increase to the contingency sum for the Project in the amount of \$187,841.27 to allow staff to execute the final contract change order and provide contingency funds for the Plant Establishment and Maintenance Phase (Stage 2). The additional contingency amount will result in a total contingency of \$6,018,496.27 which is approximately 15.5 percent (15.5%) of the original contract.

### **Acceptance of the Work and Recording Notice of Completion of Contract**

The California Civil Code allows an owner or its agent to execute a Notice of Completion of Contract Acceptance of the work by the Board. The Notice of Completion of the Contract and Acceptance of all 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 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 Stage 1 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 Stage 1 work and a second Notice of Completion will be recommended once Stage 2 work is complete. Retention withheld for Stage 1 will be released as a result of the Board's acceptance. Retention withheld for Stage 2 will be released after that work is completed and a Notice of Completion is recorded.

### **Project Expenditures**

As presented in the Summary of Construction Contract and Contingency Amounts (Table 1), at the end of Construction Phase - Stage 1 the original contract amount of \$38,876,550 has been increased by \$5,968,496.27 to \$44,845,046.27, an increase of approximately 15.4 percent (15.4%).

**FINANCIAL IMPACT:**

There are sufficient funds available in the FY 2021 Project 40174005 Lower Berryessa Creek Phase 2 budget to increase the construction contract contingency by \$187,814.27 to a total contingency of \$6,018,496.27, which is approximately 15.5 percent (15.5%) of the original contract. Approving this increase will result in a total Project construction cost increase from \$44,707,205 to \$44,895,046.27. The funding sources for the Project are the Watershed Stream Stewardship Fund and a \$25 million grant from the Department of Water Resources Proposition 1E; the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006.

**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: PowerPoint

Attachment 3: Project Delivery Process Chart

\*Supplemental Agenda Memorandum

\*Supplemental Attachment 1: Construction Contract Acceptance

\*Supplemental Attachment 2: Project Completion Letter

**UNCLASSIFIED MANAGER:**

Ngoc Nguyen, 408-630-2632