



Santa Clara Valley Water District

File No.: 17-0741

Agenda Date: 11/28/2017

Item No.: 3.3.

BOARD AGENDA MEMORANDUM

SUBJECT:

Notice of Completion of Contract and Acceptance of Work for the Lower Silver Creek Flood Protection and Creek Restoration Project, Reaches 5C to 6A (Construction Phase - Milestone 1), Proven Management, Inc., Contractor, Project No. 40264008, Contract No. C0580 (San Jose) (District 6).

RECOMMENDATION:

- A. Accept the work 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, Proven Management, Inc., has completed the Construction Phase (*Milestone 1*) for the Lower Silver Creek Flood Protection and Creek Restoration Project, Reaches 5C to 6A (Project). The construction contract was awarded in the amount of \$18,217,915.50 and the contract amount through the completion of Milestone 1 is \$20,945,274.93. Subject to any withholds required by law or the contract, acceptance of the work by the Board will allow for the release of approximately \$1,024,390 in retention to the contractor.

The objective of the Lower Silver Creek Flood Protection and Creek Restoration Project, Reaches 5C to 6A (Project) is to convey the 1 percent flood flows and improve stream habitat values. The Project reach extends approximately 2,000 feet between Story Road and Moss Point Drive. This Project is the second segment of the Lower Silver Creek, Reaches 4-6 Project that the District is constructing in partnership with the Natural Resources Conservation Service. The District 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 Reaches 5C to 6A 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.

The Project segment between Story Road and Moss Point Drive includes the following elements:

- Channel excavation and embankment construction
- Construction of a maintenance road along the channel

- Concrete box culvert at Story Road
- Flood walls
- Retaining walls
- Rock slope toe protection along the channel

The Contractor has completed the Construction Phase (*Milestone 1*) of the contract. The revegetation and landscape planting and establishment maintenance phase (*Milestone 2*) of the contract is in progress and is scheduled for completion in November 2020.

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

Previous Board Actions

On February 28, 2012, the Board approved the plans and specifications and authorized advertisement for bids for the construction of the Project.

On April 24, 2012, the Board awarded the subject contract to Proven Management, Inc. in the amount of \$18,217,915.50 and approved a contingency fund of \$2,732,687. 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 Unit Manager and Deputy Operating Officer to approve individual changes up to \$30,000 and \$50,000, respectively.

Contract Change Orders

A total of fourteen (14) contract change orders totaling \$2,727,359.43 have been executed for this contract to address various issues, including unforeseen site conditions, utility conflicts, District-requested changes, quantity adjustments, post-design clarifications, and a global settlement of disputed items.

These changes included:

- A. \$921,281.08 for additional work required to address unforeseen site conditions. This includes work ranging from demolition of unknown concrete lining for \$775 to addressing unsuitable material below the maintenance road in the channel for \$252,456.
- B. \$249,611.31 for additional work required to address unknown utility conflicts. This includes work ranging from demolition of an existing manhole for \$1,592 to work related to additional PG&E shutdowns to accommodate work for \$180,161.
- C. \$163,237 for additional work required to address District-requested changes. This includes work ranging from repair to a short section of fencing for \$259 to installation of additional chain link fence along the channel for \$105,556.

- D. \$352,760.04 for adjustments to bid item quantities based on actual field measurement.
- E. \$173,470 for additional work required to address post-design clarifications. This includes work ranging from the addition of waterstop joints in the floodwall structure for \$1,025 to the installation of modified construction joints in the maintenance road ramps for \$90,622.
- F. \$867,000 for a global settlement for full and final compensation of all outstanding issues with the contract through Milestone 1, including Project delays, effects of delays, inefficiencies and acceleration of work.

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

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

	Contract Amount	Contingency Amount
Original Contract	\$18,217,915.50	\$2,732,687.00
Change Order No. 1 (staff approved)	\$17,611.15	<\$17,611.15>
Change Order No. 2 (staff approved)	\$337,607.41	<\$337,607.41>
Change Order No. 3 (staff approved)	\$25,863.40	<\$25,863.40>
Change Order No. 4 (staff approved)	\$432,618.03	<\$432,618.03>
Change Order No. 5 (staff approved)	\$30,000.00	<\$30,000.00>
Change Order No. 6 (staff approved)	\$30,000.00	<\$30,000.00>
Change Order No. 7 (staff approved)	\$28,042.13	<\$28,042.13>
Change Order No. 8 (staff approved)	\$20,247.27	<\$20,247.27>
Change Order No. 9 (staff approved)	\$11,688.60	<\$11,688.60>
Change Order No. 10 (staff approved)	\$19,811.40	<\$19,811.40>
Change Order No. 11 (staff approved)	\$20,323.00	<\$20,323.00>
Change Order No. 12 (staff approved)	\$153,996.00	<\$153,996.00>
Change Order No. 13 (staff approved)	\$22,043.00	<\$22,043.00>
Change Order No. 14 (staff approved)	\$1,577,508.04	<\$1,577,508.04>
Current Contract Amount and Remaining Contingency	\$20,945,274.93	\$5,327.57

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 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 Attachment 4.

Construction Contract Retention

California law requires the District 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.

The District is currently withholding retention funds totaling five percent (5%) of the contract items associated with Milestone 1 (\$1,024,390) in accordance with the Public Contract Code. Per the construction contract documents, the District 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 1 work and a second Notice of Completion will be recommended once Milestone 2 work is complete. Retention withheld for Milestone 1 will be released as a result of this Board item and will be released for Milestone 2 after that work is completed and a Notice of Completion is recorded.

Project Expenditures

As indicated in the Summary of Construction Contract and Contingency Amounts (Table 1), the original contract amount of \$18,217,915.50 has been increased by \$2,727,359.43 to \$20,945,274.93, an increase of approximately 15 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 of Contract
Attachment 2: Contract Acceptance
Attachment 3: Completion Letter
Attachment 4: PowerPoint

File No.: 17-0741

Agenda Date: 11/28/2017
Item No.: 3.3.

Attachment 5: Delivery Process Chart

UNCLASSIFIED MANAGER:
Katherine Oven, 408-630-3126