



Santa Clara Valley Water District

File No.: 18-0595

Agenda Date: 8/14/2018

Item No.: 3.8.

BOARD AGENDA MEMORANDUM

SUBJECT:

Notice of Completion of Contract and Acceptance of Work for the Lower Silver Creek Flood Protection and Creek Restoration Project, Reach 6B (Construction Phase - Milestone 1), 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 (Construction Phase - Milestone 1), 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 Construction Phase (*Milestone 1*) 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 contract amount through the completion of Milestone 1 is \$13,774,923.43. Subject to any withholds required by law or the contract, acceptance of the work by the Board will allow for the release of approximately \$688,750 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 1 percent 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 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 Reach 6B Project, together with future improvements planned by the District's Lake Cunningham Project, will provide 1 percent 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

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

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.

Contract Change Orders

A total of eleven (11) contract change orders totaling \$1,097,329.43 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. \$221,100.00 for additional work required to address unforeseen site conditions. This includes work ranging from fence repair for \$2,224 to installation of additional cast-in-drilled-hole (CIDH) piles for \$100,000.
- B. \$4,212.72 for additional work required to address unknown utility conflicts. This includes work ranging from installation of filter fabric at an existing storm drain line for \$1,120 to the repair of an existing storm drain for \$3,093.
- C. \$438,093.23 for additional work required to address District-requested changes. This includes

work ranging from installation of additional fencing for \$3,264 to additional work to modify the CIDH placement method to avoid PG&E shutdowns for \$142,283.

- D. \$334,432 credit for adjustments to bid item quantities based on actual field measurement.
- E. \$193,355.48 for additional work required to address post-design clarifications. This includes work ranging from installation of an underdrain system for \$2,357 to the extension of a retaining wall for \$135,000.
- F. \$575,000 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	\$12,677,594.00	\$1,267,760.00
Change Order No. 1 (CEO approved)	\$77,922.00	<\$77,922.00>
Change Order No. 2 (staff approved)	\$26,747.73	<\$26,747.73>
Change Order No. 3 (staff approved)	\$6,588.77	<\$6,588.77>
Change Order No. 4 (CEO approved)	\$252,283.24	<\$252,283.24>
Change Order No. 5 (staff approved)	\$25,662.38	<\$25,662.38>
Change Order No. 6 (CEO approved)	\$102,713.67	<\$102,713.67>
Change Order No. 7 (CEO approved)	\$641,000.00	<\$641,000.00>
Change Order No. 8 (staff approved)	\$28,268.10	<\$28,268.10>
Change Order No. 9 (staff approved)	\$25,494.89	<\$25,494.89>
Change Order No. 10 (staff approved)	\$11,847.73	<\$11,847.73>
Change Order No. 11 (staff approved)	<\$101,199.08>	\$0.00
Current Contract Amount and Remaining Contingency	\$13,774,923.43	\$69,231.49

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 (\$688,750) 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 \$12,677,594 has been increased by \$1,097,329.43 to \$13,774,923.43, an increase of approximately 8.7 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 and Acceptance of Work
Attachment 2: Construction Contract Acceptance
Attachment 3: Project Completion Letter
Attachment 4: Construction Summary
Attachment 5: Project Delivery Process Chart

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