



Santa Clara Valley Water District

File No.: 19-0162

Agenda Date: 5/14/2019

Item No.: 6.1.

BOARD AGENDA MEMORANDUM

SUBJECT:

Budget Adjustment, Increase to Construction Contract Contingency Sum, and Notice of Completion of Contract and Acceptance of Work for the San Francisquito Creek Flood Protection Project, San Francisco Bay to Middlefield Road, Teichert Construction, Contractor, Project No. 26284002, Contract No. C0613 (Palo Alto) (District 7).

RECOMMENDATION:

- A. Approve a Fiscal Year 2019 budget adjustment in the amount of \$1,960,000 from Fund 26 Operating and Capital Reserves to the San Francisquito Creek Flood Protection Project, San Francisco Bay to Middlefield Road;
- B. Approve an increase of \$1,408,120.33 to the construction contract contingency sum for the San Francisquito Creek Flood Protection Project, San Francisco Bay to Middlefield Road;
- 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 and submit for recording to the Santa Clara County Clerk-Recorder.

SUMMARY:

Project Background

San Francisquito Creek (Creek) is the dividing line between San Mateo and Santa Clara counties. After the historic flood of 1998, the cities of Palo Alto, Menlo Park and East Palo Alto, the San Mateo County Flood Control District, and the Santa Clara Valley Water District (Valley Water) joined together to create the San Francisquito Creek Joint Powers Authority (SFCJPA). The SFCJPA is governed by a board of directors with elected officials representing each of the five member agencies.

On June 14, 2016, the Valley Water Board of Directors (Board) executed the First Amended Construction Funding Agreement and awarded the construction contract to Teichert Construction (Contractor) for construction of the San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project (Project).

The First Amended Construction Funding Agreement committed \$41,348,351 in total combined funding, with contributions from each of the SFCJPA member agencies and grant funding awarded to the SFCJPA. As part of this agreement, the Board set a "not-to-exceed" Valley Water contribution of \$28,000,000 to fund construction related costs. Beyond funding the construction contract, the total combined funds covered additional Project costs such as, utility relocations, real estate acquisitions,

and some mitigation activities.

In 2017, Valley Water successfully negotiated a reallocation of approximately \$3,000,000 in Proposition 84 grant funding to the Project from another Valley Water project that could not meet the grant requirements. These additional funds have helped significantly in offsetting some of the unforeseen cost increases over the course of the Project.

The Project, which has been completed and is in the process of closeout, has increased the Creek's capacity from San Francisco Bay to East Bayshore Road. This was accomplished by excavating sediment deposits within the channel to maximize conveyance; rebuilding levees and relocating a portion of the southern levee to widen the channel to reduce the influence of tides and increase channel capacity; and constructing floodwalls in the upper reach to increase capacity and maintain consistency with Caltrans' enlargement of the U.S. 101/East Bayshore Road Bridge over the Creek.

In addition, major Project elements included an overflow terrace at marsh elevation adjacent to the Baylands Preserve, extension of the Friendship Bridge via a boardwalk across new marshland within the widened channel, improvement of habitat for endangered species, and addition and improvement of public access trails within the Project area.

Over the years, the Project has faced numerous challenges. At the Project's onset, the issues were related to permitting and funding. During construction, the challenges included the off-haul of soil that fell outside of the Project's scope, an additional quantity of protective coating for the floodwalls, and delays caused by the PG&E and East Palo Alto Sanitary Sewer District Utility Relocation. Each of these challenges were reviewed by a Dispute Resolution Board (DRB), which made conclusions and recommendations in favor of the Contractor.

When these challenges were initially identified, the combined cost impacts were projected to increase project costs by approximately \$10,000,000 to \$13,000,000.

To avoid these extreme cost impacts to the Project, which no SFCJPA member agency had the identified funding to address, each member agency and the Contractor worked closely together to identify solutions to these challenges. The most significant and costly challenge was the Off-Haul of Unsuitable Materials.

Import and Export of Material (Resolved)

While the Contractor was able to minimize the costs related to importing soil, Valley Water and SFCJPA member agencies had to work closely together to offset the costs of off-hauling unsuitable soil. In order to avoid impeding Project construction, both the cities of Palo Alto and East Palo Alto agreed to permanently place a portion of the clean, unsuitable soil on-site and temporarily stockpile the remainder.

Valley Water's contribution to solving this problem was to off-haul the contaminated, unsuitable soil that cannot be permanently or temporarily stored on-site. All excavated soils were tested for contaminants, and it was determined that about 25,000 cubic yards was contaminated and required

disposal at a State-permitted, non-hazardous waste landfill.

As a result of the DRB conclusion and recommendations, Valley Water conducted a competitive procurement process and entered into a separate contract for the off-haul and disposal of contaminated soil. All contaminated soil has been removed from the site and disposed of.

Additional Quantity of Protective Coating for Floodwalls, and the PG&E and East Palo Alto Sanitary Sewer District Utility Relocation Delay (Un-Resolved)

These remaining challenges were not able to be resolved through such a collaborative approach within the contingency amount. The costs associated with these challenges were the primary causes of the increase to the total cost of the construction contract and were reflected in the final contract cost estimate submitted by the Contractor.

Despite all of the challenges faced by this Project, the Contractor continued to be a solutions-oriented partner throughout the construction process and delivered the Project on schedule. As a result of this successful collaborative approach, the Project was named as the winner of a 2019 Project Achievement Award for the <\$50,000,000 Public Works Category from the Construction Management Association of America for Northern California.

Contract Change Orders

A total of nine (9) contract change orders totaling \$2,638,880 were executed for this contract to address various issues, including unforeseen site conditions and Valley Water-requested changes.

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	\$26,388,000.00	\$2,638,880.00
Change Order No. 1 (staff approved)	\$12,000.00	<\$12,000.00>
Change Order No. 2 (staff approved)	\$77,433.05	<\$77,433.05>
Change Order No. 3 (staff approved)	\$87,162.51	<\$87,162.51>
Change Order No. 4 (Deputy approved)	\$109,039.54	<\$109,039.54>
Change Order No. 5 (Deputy approved)	\$173,270.30	<\$173,270.30>
Change Order No. 6 (CEO approved)	\$959,289.10	<\$959,289.10>
Change Order No. 7 (CEO approved)	\$363,796.08	<\$363,796.08>
Change Order No. 8 (CEO approved)	\$431,625.74	<\$431,625.74>

Change Order No. 9 (CEO approved)	\$425,263.68	<\$425,263.68>
Current Contract Amount and Remaining contingency	\$29,026,880.00	\$0
Contingency Amount Increase (pending Board Approval)		\$1408,120.33
Change Order No. 10 (Pending staff approval)	\$1,408,120.33	<\$1,408,120.33>
Proposed Final Contract Amount and Remaining Contingency	\$30,435,000.33	\$0

Increase Construction Contingency

As indicated in the Summary of Construction Contract and Contingency Amounts (Table 1), the original contract amount was \$26,388,000. The issuance of Contract Change Order No. 9 brought the total value of the contract up to \$29,026,880, by utilizing the 10 percent contingency fund of \$2,638,880.

Since the contingency is fully expended, Staff recommends the Board approve an increase to the contingency sum for the Project in the amount of \$1,408,120.33 to allow staff to execute the final contract change order. The additional contingency amount will result in a total contingency of 4,047,000.33, and a total contract amount of \$30,435,000.33.

This increased contract amount of \$30,435,000.33 was determined through a negotiated global settlement between Valley Water and the Contractor. The negotiated global settlement brought the cost of the contract down from \$31,008,113.90, which was the final contract cost estimate submitted by the Contractor. The Final negotiated amount is fully funded through the First Amended Construction Funding Agreement. Based upon this agreement, the SFJPA and each of its member agencies will provide a combined total of \$5,480,000 to Valley Water to fund the Construction Contract.

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 Project Completion Letter is included as Attachment 3. Photos of the completed Project and a video of the Celebration of Safety event are included in Attachment 4. The Construction Summary is included in Attachment 5.

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.

In accordance with the Public Contract Code, Valley Water is currently withholding retention funds totaling five percent (5%) of the contract. With the increase to the contingency for issuance of final Contract Change Order No. 10, the retention will total approximately \$1,522,000. 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.

Previous Board Actions

On February 23, 2016, the Board of Directors adopted the Project's plans and specifications and authorized advertisement for bids.

On June 14, 2016, the Board awarded the subject contract to the Contractor in the amount of \$26,388,000 and approved a contingency fund of \$2,638,880. 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 changes up to \$100,000 and \$250,000; respectively.

Budget Adjustment

Approval of Recommendations A and B requires a FY19 Budget Adjustment in the amount of \$1,960,000.

An additional \$1,408,120.33 is required to increase to the Construction Contract Contingency. In addition to the increase to the contingency sum, staff recommends an additional \$550,000 to be added to the San Francisquito Creek Flood Protection Project budget for Fiscal Year 2019 (FY19) to cover unanticipated labor, services and supply costs for the overall San Francisquito Creek Project to complete the Mitigation Planting contract and continue work on the EIR and design of San Francisquito Creek - Hwy 101 to Middlefield Road Project.

FINANCIAL IMPACT:

Approval of Recommendations A and B require a FY19 Budget Adjustment transferring \$1,960,000 from Fund 26 Operating and Capital Reserves to the San Francisquito Creek Flood Protection Project, Project No. 26284002.

The \$1,408,120.33 increase to the Construction Contract Contingency is fully funded through the First Amended Construction Funding Agreement. The additional \$550,000 to cover unanticipated labor and the Board approved addition of a second year of plant establishment for the Mitigation Planting Contract will be reallocated from the remaining 15-year Safe, Clean Water Program

allocation for the San Francisquito Creek Flood Protection Project.

Staff will pursue additional funding from partners and grants to complete the remaining portion of the project upstream of HWY 101.

CEQA:

The recommended action is a ministerial action and thus is not subject to the requirements of CEQA.

ATTACHMENTS:

Attachment 1: Notice of Completion/Acceptance of Work

Attachment 2: Construction Contract Acceptance Letter

Attachment 3: Project Completion Letter

Attachment 4: PowerPoint

Attachment 5: Project Delivery Process Chart

UNCLASSIFIED MANAGER:

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