



Santa Clara Valley Water District

File No.: 19-0319

Agenda Date: 4/9/2019

Item No.: 3.3.

BOARD AGENDA MEMORANDUM

SUBJECT:

Budget Adjustment, Increase to the Construction Contract Contingency Sum, and Notice of Completion of Contract and Acceptance of Work for the Permanente Creek Flood Protection Project - Permanente Creek Channel Improvements, Robert A. Bothman Construction, Inc., Contractor, Project No. 26244001, Contract No. C0625 (Mountain View, Los Altos) (District 7).

RECOMMENDATION:

- A. Approve a budget adjustment transferring an amount of \$708,223.83 from Fund 26 Operating and Capital Reserves to the Permanente Creek Flood Protection Project, Project No. 26244001, Fund 26;
- B. Approve an increase of \$108,223.83 to the construction contract contingency sum for the Permanente Creek Flood Protection Project - Permanente Creek Channel Improvements;
- C. Accept the work as complete for the Permanente Creek Flood Protection Project - Permanente Creek Channel Improvements, Robert A. Bothman Construction, Inc., Contractor, Project No. 26244001, Contract No. C0625; 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 County of Santa Clara Office of the Clerk-Recorder.

SUMMARY:

The construction contractor, Robert A. Bothman Construction, has completed the Permanente Creek Flood Protection Project - Permanente Creek Channel Improvements. The construction contract was awarded in the amount of \$7,027,917 and upon approval of the recommended actions, the final contract amount will be \$7,836,140.83. Subject to any withholds required by law or the contract, acceptance of the work by the Board will allow for the release of \$391,807.04 in retention to the contractor.

The objective of the Permanente Creek Flood Protection Project is to construct channel improvements in certain reaches of Permanente Creek and Hale Creek to contain the 100-year flow. This Channel Improvements Project (Project) is one of three sub-projects that are comprised of the Permanente Creek Flood Protection Project. Approximately 2,200 parcels in the surrounding area will be provided flood protection upon the completion of the three projects. The remaining two projects, Rancho San Antonio Detention Basin and McKelvey Park Detention Basin, are in progress.

The Permanente Creek Channel Improvements Project includes the following elements:

- Constructing 1,335 linear feet of floodwalls and raising 500 linear feet of levee.
- Constructing 1,815 linear feet of concrete U-shaped channels.
- Installation of a concrete double cell box culvert at Mountain View Avenue.
- Installation of an overflow weir wall into the McKelvey Park detention basin.

Previous Board Actions

On February 28, 2017, the Board adopted the plans and specifications and authorized advertisement for bids for the construction of the Project.

On May 23, 2017, the Board awarded the subject contract to Robert A. Bothman Construction in the amount of \$7,027,917 and approved a contingency fund of \$700,000. 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.

Contract Change Orders

A total of seven (7) contract change orders totaling \$689,884.08 were executed to date for this contract to address various issues, including unforeseen site conditions and utilities, District-requested changes, neighborhood concerns, post-design clarifications, and credits to the contract.

These changes included:

- A. \$184,263.05 for additional work required to address unforeseen site conditions and utilities. This includes work ranging from relocating an irrigation mainline for \$14,728 to demolishing a larger concrete channel slab thickness for \$44,927.
- B. \$405,241.09 for additional District-requested changes. This includes work ranging from providing additional reinforcement around fence post pockets for \$11,854.50 to raising the new levee height for \$92,331.
- C. \$74,884.84 for neighborhood concerns. This includes work ranging from installing noise blankets along adjacent properties for \$14,085 to relocating an access ramp for \$18,559.
- D. \$71,179.15 for additional work required to address post-design clarifications. This includes work ranging from revising the new headwall detail for \$7,358 to revising the Arroyo Road ramp wall design for \$24,455.
- E. \$45,684.05 credit for deleted items of work and adjustments based on final quantity

measurements.

A final contract change order in the amount of \$118,339.75 has been negotiated by staff. However, insufficient funds remain in the contingency sum to execute the change order. Staff is recommending the Board approve an increase to the contingency fund in the amount of \$108,223.83, which will enable staff to execute the final contract change order. If the Board approves the contingency increase, the total number of staff-approved change orders will increase to eight (8), resulting in an increase to the contract amount of \$808,223.83.

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**

	Contract Amount	Contingency Amount
Original Contract	\$7,027,917.00	\$700,000.00
Change Order No. 1 (staff approved)	\$93,231.55	<\$93,231.55>
Change Order No. 2 (staff approved)	\$105,803.58	<\$105,803.58>
Change Order No. 3 (staff approved)	\$160,840.14	<\$160,840.14>
Change Order No. 4 (staff approved)	\$44,926.80	<\$44,926.80>
Change Order No. 5 (staff approved)	\$100,408.83	<\$100,408.83>
Change Order No. 6 (staff approved)	\$104,673.18	<\$104,673.18>
Change Order No. 7 (staff approved)	\$80,000.00	<\$80,000.00>
Current Contract Amount and Remaining Contingency	\$7,717,801.08	\$10,115.92
Contingency Amount Increase (Pending Board approval)		\$108,223.83
Change Order No. 8 (Pending staff approval)	\$118,339.75	<\$118,339.75>
Proposed Final Contract Amount and Remaining Contingency	\$7,836,140.83	\$0.00

Increase in Construction Contingency

As part of the contract, the District received two Notice of Potential Claims from the Contractor in the amount of \$112,264, which were resolved in the negotiated change orders. Additionally, minor site work and resolution of several items were required at the end of the contract.

There are insufficient funds remaining in the contingency sum to execute the proposed final change order. Staff recommends the Board approve an increase to the contingency sum for the Project in the amount of \$108,223.83 to allow staff to execute the final contract change order. The additional contingency amount will result in a total contingency of \$808,223.83 or approximately 12 percent

(12%) of the original 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 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 amount 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.

Total Project Expenditures

As indicated in the Summary of Construction Contract and Contingency Amounts (Table 1), upon Board approval of the recommended actions, the original contract amount of \$7,027,917 will be increased by \$808,223.83 to \$7,836,140.83, an increase of approximately 12 percent.

Additional Labor, Services and Supplies Costs

In addition to the \$108,223.83 increase to the contingency sum, staff recommends an additional \$600,000 to be added to the overall Permanente Creek Flood Protection Project budget for FY19. Due to the complexities and unforeseen challenges from all three elements of the Permanente Creek Project, there has been a large unanticipated increase to the labor, services and supplies cost. For example, extensive community coordination was required from design, construction, and communication staff during construction of the channel improvements and McKelvey Park Detention Basin which occurred within an urban neighborhood. Also, the projects required an unanticipated level of special inspection by independent outside firms for concrete structures and large soldier pile installations. Finally, the delay from the sensitive discovery at Rancho San Antonio Detention Basin has required the mitigation plants to be regrown multiple times in special nurseries.

FINANCIAL IMPACT:

As indicated in the Summary of Construction Contract and Contingency Amounts (Table 1), the original contract amount was \$7,027,917. The proposed final Contract Change Order No. 8 would increase the total contract amount to \$7,836,140.83 by utilizing the original Board-approved contingency sum of \$700,000 plus the recommended increase of \$108,223.83.

To fund the increase to the contingency sum, a budget adjustment in the amount of \$108,223.83 is required to execute the final Contract Change Order No. 8 for the Channel Improvements Project. An additional \$600,000 is recommended to be included in the budget adjustment to cover unanticipated labor, services and supplies costs for the overall Permanente Creek Project. This increase to the total project cost has been incorporated into the FY 2020-24 CIP that will be presented to the Board in May.

Approval of Recommendations A and B would require a FY19 Budget Adjustment transferring \$708,223.83 from Fund 26 Operating and Capital Reserves to the Permanente Creek Flood Protection Project, Project No. 26244001, Fund 26.

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

UNCLASSIFIED MANAGER:

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