



# Santa Clara Valley Water District

**File No.:** 20-1148

**Agenda Date:** 1/12/2021

**Item No.:** \*3.16.

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## BOARD AGENDA MEMORANDUM

### **SUBJECT:**

Notice of Completion of Contract and Acceptance of Work for the Rinconada Water Treatment Plant Reliability Improvement Project, Balfour Beatty Infrastructure, Inc., Contractor, Project No. 93294057, Contract No. C0601 (Los Gatos) (District 7). (Continued from November 10, 2020) (PREVIOUSLY LISTED AS ITEM 5.1)

### **RECOMMENDATION:**

- A. Accept the work on the Rinconada Water Treatment Plant Reliability Improvement Project, Project No. 93294057, Contract No. C0601 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, Balfour Beatty Infrastructure, Inc., has completed the Rinconada Water Treatment Plant Reliability Improvement Project (Project). The construction contract was awarded in the amount of \$179,850,000 and the final contract amount is \$152,803,135.72. Subject to any withholds required by law or the contract, acceptance of the work by the Board will allow for the release of \$7,640,156.78 in retention to the contractor.

### ***Project Background***

On May 26, 2015, the Board awarded a construction contract (Contract) in the amount of \$179,850,000 to Balfour Beatty Infrastructure, Inc. (BBII) for the Rinconada Water Treatment Plant Reliability Improvement Project (Project). The Contract provided for the Project to be constructed in five primary phases within a 5-year period, with a final sixth phase consisting of site restoration and contract closeout. The existing Rinconada Water Treatment Plant (RWTP) was to remain operational during the entire construction period, with the newly-constructed facilities and upgrades integrated with plant operations at the end of each phase.

Phase 1 of the work included activities to prepare the site for construction, including traffic control, installation of temporary construction facilities, vegetation removal, utility potholing, utility relocation, and stormwater pollution prevention requirements. Phase 2 of the work includes the construction of several new facilities for the upgraded treatment system at the RWTP such as: flocculation/sedimentation; ozone contactor building; washwater recovery facilities; an electrical

control building and appurtenant wiring and control systems; significant underground piping; and installation of chemical feed systems.

In an effort to address delayed construction progress and other unresolved disputes, Valley Water and BBII commenced Executive Partnering in May 2019. This process resulted in a resolution of past and pending matters, as documented in Amendment One to Contract dated May 26, 2015, Rinconada Water Treatment Plant Reliability Improvement Project (Amendment One), approved by the Board on March 10, 2020.

Amendment One reduced the scope of work of the Contract, resulting in BBII only completing Phases 1 and 2 of the Project, thus eliminating most of Phases 3, 4, 5 and 6. Amendment One required BBII to perform startup and testing of the Phase 2 scope of work. BBII completed startup and testing of Phase 2 improvements in June 2020 and the newly constructed facilities and upgrades have been integrated with current plant operations.

Amendment One reduced the Contract amount from \$187,704,335 to \$147,926,900, but also allowed for up to an additional \$5,000,000 to compensate BBII for equipment and materials procured by BBII and transmitted to Valley Water for future phase construction. Amendment One also made provision for execution of subsequent contract change orders necessary to complete the remaining work.

Phases 3, 4, and 5 of the original Contract scope include construction of the liquid oxygen building, ozone generation building, new filters, fluoride facility, reservoir liner replacement, and demolition of the existing clarifiers and filters. The remaining work and project delivery methods are being evaluated to determine the best approach to effectively complete the remaining phases.

### ***Acceptance of Work***

The recommended action is for the Board to accept the work for the Project as complete. In the case of this Project, all physical improvement work and services have been provided by the Contractor in accordance with the Contract Documents and Amendment One.

The action to accept the work and file the Notice of Completion of Contract and Acceptance of Work is solely an acknowledgement by Valley Water that the work of the contract was completed. This action is not an acknowledgement that all issues related to the Project, such as pending payment disputes between BBII and their subcontractors/suppliers/vendors, are resolved.

Once filing of the Notice of Completion of Contract and Acceptance of Work is made, timelines of various statutes related to public works construction contracts commence. Specifically, these statutes relate to deadlines for subcontractors and suppliers to provide Stop Payment Notices to the owner and release of retention.

### ***Stop Payment Notices***

It is not uncommon for agencies to receive Stop Payment Notices. A Stop Payment Notice is a legal mechanism used by any party not in direct contract with the project owner, such as a subcontractor,

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supplier, vendor, or laborer, to make a claim against the project funds. Since public property cannot be lienied (when used for a public purpose), the claimant is essentially putting a hold on money that would be available to pay the contractor. Upon receipt of a Stop Notice, the owner withholds 125% of the amount claimed against any payments that are due or become due and payable to the contractor. In its sole discretion, the owner may choose to accept a stop notice release bond from the contractor instead of holding the money.

Valley Water received nine Stop Payment Notices from five parties alleging they were owed money at some point for work relating to this contract. Attachment 2 provides a list and current status of each Stop Payment Notice. Some Stop Payment Notice withholds were released and payments made to the contractor after Valley Water received Stop Notice Releases from the claimants. In other cases, withholds were released after Valley Water received, reviewed, and accepted Stop Notice Release Bonds for 125% of the sum alleged due by the claimant.

Valley Water is withholding \$2,232,460.61 from progress payments and \$27,239,788.71 in release bonds related to Stop Payment Notices. Additional Stop Payment Notices may be filed after the Notice of Completion is recorded. Funds withheld will not be paid to Contractor until a release is received from the claimant or other legal direction is received such as via arbitration, court order, etc.

### ***Previous Board Actions***

On February 10, 2015, the Board approved the plans and specifications and authorized advertisement for bids for the construction of the Project.

On May 26, 2015, the Board awarded the subject contract to Balfour Beatty Infrastructure, Inc. in the amount of \$179,850,000 and approved a contingency fund of \$17,985,000.

On March 10, 2020, the Board approved Amendment One to the Contract which reduced the scope of work and the contract amount.

On November 10, 2020, the Board deferred action on accepting the work.

### ***Contract Change Orders***

Amendment One included provisions to execute future contract change orders as necessary to complete the remaining work. After the Board approved Amendment One, twenty-two (22) change orders and twenty-eight (28) directed change orders totaling \$1,138,208.54 were executed for this contract to address various issues, including unforeseen site conditions, Valley Water-requested changes necessary for plant operation, post-design clarifications, and credits to the contract. These changes included:

- A. \$8,765 for additional work required to address unforeseen site conditions. This includes work ranging from backfill and compaction of a sink hole for \$5,061 to revised allocation of I/O points for \$3,704.

- B. \$452,695 for Valley Water-requested changes necessary for plant operation. This includes work ranging from the addition of SCADA iFix alarm navigation buttons for \$12,897 to modifications to the raw water flow controls for \$7,526.
- C. \$791,785 for additional work required to address post-design clarifications. This includes work ranging from replacing parts of the flash mix injection quills to increase structural stability for \$9,673 to procuring permanent iFix and historian licenses for \$188,627.
- D. \$115,036.46 in credits to the contract for various items.

In addition to the change order amounts, the final contract amount includes a \$3,738,027.18 payment for contractor-procured equipment for future phase construction. As discussed above, Amendment One allowed for up to an additional \$5,000,000 to compensate BBII for equipment and materials procured by BBII and transmitted to Valley Water for future phase construction.

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

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

	<b>Contract Amount</b>	<b>Contingency Amount</b>
<b>Original Contract</b>	<b>\$179,850,000</b>	<b>\$17,985,000</b>
<b>Amendment One</b>	<b>\$147,926,900</b>	
Change Orders after Amendment One	\$464,089.54	(\$464,089.54)
Directed Change Orders after Amendment One	\$674,119.00	(\$674,119.00)
Equipment for Future Phase Construction	\$3,738,027.18	
<b>Final Contract Amount and Remaining Contingency</b>	<b>\$152,803,135.72</b>	<b>\$16,846,791.46</b>

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

The California Civil Code allows an owner or its agent to execute a Notice of Completion of Contract after acceptance of the work by the Board. The Notice of Completion of the 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. Photos of the completed Project are included in Attachment 1.

### ***Construction Contract Retention***

The California Public Contract Code requires public entities to withhold no less than five percent (5%) contract retention for public works construction contracts. Additionally, the code limits retention

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amounts to a maximum of 5% unless the governing body finds the proposed project is 'substantially complex' and requires contract retention greater than 5%. On February 10, 2015, the Board found that the Project was substantially complex and required construction contract retention of ten percent (10%). Amendment One included provisions to incrementally reduce the retention to five percent (5%) upon successful completion of the startup and testing of Phase 2 facilities.

Upon successful completion of the startup and testing of Phase 2 facilities in March 2020, Valley Water reduced retention to five percent (5%) of the contract amount and is currently withholding retention funds totaling \$7,640,156.78 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 work.

### ***Project Expenditures***

As indicated in the Summary of Construction Contract and Contingency Amounts (Table 1), the original contract amount of \$179,850,000 has been decreased by \$27,046,864.28 to \$152,803,135.72, a decrease of approximately 15 percent, partially due to the reduction of scope as documented in Amendment One to the contract.

### **FINANCIAL IMPACT:**

Total financial costs were detailed in previous sections of the agenda memorandum. Funds are available in the FY2020-21 budget in the Rinconada Water Treatment Plant Reliability Improvement Project, Project No. 93294057 to cover final closeout of the contract. 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: SCVWD BOD 111020 Item 3.1

Attachment 2: Stop Payment Notice Log

Attachment 3: Notice of Completion/Acceptance of Work

\*Handout 3.16-A: Neal Electric Corp.

\*Handout 3.16-B: Farwest Insulation Contracting

### **UNCLASSIFIED MANAGER:**

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