



Santa Clara Valley Water District

File No.: 21-1268

Agenda Date: 1/25/2022

Item No.: 3.4.

BOARD AGENDA MEMORANDUM

SUBJECT:

Notice of Completion of Contract and Acceptance of Work for the Permanente Creek Flood Protection Project - Rancho San Antonio Detention Basin (Construction Stage 1 - Milestones 1-3), Granite Construction Company, Project No. 26244001, Contract No. C0617 (Cupertino) (Districts 5 and 7).

RECOMMENDATION:

- A. Accept the work on the Permanente Creek Flood Protection Project - Rancho San Antonio Detention Basin (Construction Stage 1 - Milestones 1-3), Project No. 26244001, Contract No. C0617 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 County of Santa Clara Office of the Clerk-Recorder.

SUMMARY:

The construction contractor, Granite Construction Company, has completed Construction Stage 1 - Milestones 1-3 for the Permanente Creek Flood Protection Project - Rancho San Antonio Detention Basin (RSA Project). The construction contract was awarded in the amount of \$14,432,479.45 and the current construction contract amount, through the completion of Milestones 1-3, is \$19,562,325.71. Subject to any withholds required by law or the contract, acceptance of the work by the Board will allow for the release of \$960,305.77 in retention to the contractor.

For this construction contract, Milestone 1 is the completion of the new parking area, access road, and restroom. Milestone 2 is all work required for the completion of the detention basins and associated civil improvements. Milestone 3 is the completion of the mitigation planting. Remaining work for the RSA Project includes Construction Stage 2, completion of a three-year plant establishment period.

Project Background

The Permanente Creek Flood Protection Project (Project) is part of the Safe, Clean Water and Natural Flood Protection Program (Safe, Clean Water Program). This Project protects approximately 2,200 parcels by implementing flood detention and channel improvement works. The Project utilizes two flood detention areas located strategically in the watershed to maximize flood protection

benefits at an acceptable cost. The Project was constructed through three separately bid sub-projects: Rancho San Antonio Detention Basin; McKelvey Park Detention Basin; and the Permanente Creek Channel Improvements. The construction of the Permanente Creek Channel Improvements and McKelvey Park Detention Basin Projects were accepted by the Board on April 9, 2019 and February 11, 2020, respectively.

The objective of the RSA Project is to construct an approximately 8-acre detention basin (referred to as the north basin) on the east side of Permanente Creek and another 2-acre basin (referred to as the south basin) on the west side of the creek at Rancho San Antonio County Park and Open Space Preserve. The new basins are approximately 8 to 15 feet deep, with gently sloped sides contoured for a natural appearance. An inlet structure, which replaced an existing stream crossing, was constructed between the two basins. Flows in excess of the design flow will spill into the structure and be transmitted to the basins through inlet pipes. Outlets from each basin will return temporarily detained water back to the creek. An existing parking lot was replaced, and new restroom facilities were also installed in conjunction with the parking lot. Other activities included a well relocation, trail construction, and site restoration including re-vegetation.

During the construction of the RSA Project, numerous challenges arose such as delays associated with an existing Pacific Gas and Electric (PG&E) gas line, the discovery of environmentally sensitive resources during excavation activities and the resulting Project construction shutdown of almost a year and a half, and the subsequent additional work required to mitigate for California red-legged frogs which entered the RSA Project site during the shutdown.

The contractor has completed Construction Stage 1 - Milestones 1-3 of the RSA Project's construction contract. Construction Stage 2 includes the plant establishment work required of the contract and is scheduled for completion in February 2024.

This Board action is for the acceptance of Construction Stage 1 - Milestones 1-3 of the contract. Staff will recommend a separate Board action to accept the completion of the Construction Stage 2 after the plant establishment maintenance phase of the contract is completed..

Previous Board Actions

On June 28, 2016, the Board adopted the plans and specifications and authorized advertisement for bids for the construction of the RSA Project.

On October 11, 2016, the Board awarded the subject contract to Granite Construction Company, for the amount of \$14,432,479.45 and approved a contingency fund of \$1,444,000.00. 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.

On November 12, 2019, the Board approved an increase of \$3,000,000.00 to the construction contract contingency encumbrance to pay for the financial impact of the challenges and delays described above. This contingency increase was based on the estimate at that time that the

treatment of cultural resources would be completed by the end of 2019 and construction would be completed in early 2020.

Unfortunately, the treatment of cultural resources was not completed until June 2020 and construction was not completed until April 2021. Therefore, on January 12, 2021, the Board approved a budget adjustment of \$3,886,677.00 to pay for further delays and added costs to complete the RSA Project construction and close-out expenditures. Examples of additional costs related to Project delay included extending the consultant agreement for Native American Most Likely Descendant activities; extending the consultant agreement and increasing the not-to-exceed compensation limit for construction management/archaeological professional services performed by Harris & Associates; extended internal Santa Clara Valley Water District (Valley Water) labor costs; increased construction contract contingency amount; and other miscellaneous items such as geotechnical and ecological services necessary for RSA Project completion and close-out.

Contract Change Orders

A total of forty-one contract change orders totaling \$5,129,846.26 were executed to date for this contract to address various issues including unforeseen site conditions and utilities, staff-requested changes, post-design clarifications, and credits to the contract.

These changes included:

- A. \$4,615,71.14 for additional work required to address unforeseen site conditions. This included costs for archeological digging support and associated delays for \$1,646,786.92. The associated delays with the archeological work resulted in remobilization and escalation costs of \$768,485.81. The presence of California Red-Legged Frogs onsite resulted in biological monitoring costs totaling \$769,850.73.
- B. \$507,141.74 for additional work required to address utility conflicts. This included work ranging from the relocation of a PG&E Power Pole for \$47,407.61 to the cost and impacts associated with the PG&E Gas Line Relocation Global Settlement for \$328,000.00.
- C. \$566,608.96 for additional district-requested changes. This included costs for a modified storm drain outfall for \$68,716.46 and additional maintenance of the erosion and sediment control BMPs for \$87,528.01.
- D. \$201,524.58 for additional work required to address post-design clarifications. This included work ranging from a revised irrigation well for \$90,000.00 to providing additional design changes on the Rancho San Antonio Parking Lot for \$62,554.53.
- E. \$762,139.16 for credits back to the contract which included a \$575,170.92 credit for reduced basin excavation.

Table 1 presents a summary of the construction contract amounts.

TABLE 1. SUMMARY OF CONSTRUCTION CONTRACT AMOUNTS

	Contract Amount
Original Contract	\$14,432,479.45
Change Order No. 1 (Staff approved)	\$15,591.11
Change Order No. 2 (Staff approved)	\$4,258.74
Change Order No. 3 (Staff approved)	\$1,185.61
Change Order No. 4 (Staff approved)	\$84,083.70
Change Order No. 5 (Staff approved)	\$97,646.04
Change Order No. 6 (Staff approved)	\$328,000.00
Change Order No. 7 (Staff Approved)	\$99,389.86
Change Order No. 8 (Staff Approved)	\$67,657.89
Change Order No. 9 (Staff Approved)	\$34,803.96
Change Order No. 10 (CEO Approved)	\$665,000.00
Change Order No. 11 (CEO Approved)	\$475,388.51
Change Order No. 12 (Deputy Approved)	\$177,004.48
Change Order No. 13 (CEO Approved)	\$458,284.99
Change Order No. 14 (Staff Approved)	\$14,502.81
Change Order No. 15 (Deputy Approved)	\$101,030.36
Change Order No. 16 (Deputy Approved)	\$124,162.86
Change Order No. 17 (Staff Approved)	\$53,301.36
Change Order No. 18 (Deputy Approved)	\$188,891.54
Change Order No. 19 (Deputy Approved)	\$108,941.62
Change Order No. 20 (Staff Approved)	\$39,567.24
Change Order No. 21 (Staff Approved)	\$17,715.50
Directed Change Order No. 01 (CEO Approved)	\$425,000.00
Change Order No. 22 (Staff Approved)	\$244,529.69
Change Order No. 23 (Staff Approved)	\$21,114.61
Change Order No. 24 (CEO Approved)	\$530,000.00
Change Order No. 25 (Deputy Approved)	\$104,228.65
Change Order No. 26 (Staff Approved)	\$50,000.00
Change Order No. 27 (Deputy Approved)	\$215,000.00
Directed Change Order No. 02 (Staff Approved)	\$90,432.89
Directed Change Order No. 03 (CEO Approved)	\$269,164.38
Change Order No. 28 (Deputy Approved)	\$140,758.64
Change Order No. 29 (Staff Approved)	\$65,910.60

Directed Change Order No. 04 (Staff Approved)	\$48,982.32
Change Order No. 30 (Staff Approved)	\$37,265.99
Change Order No. 31 (Staff Approved)	\$17,242.58
Change Order No. 32 (Deputy Approved)	\$230,402.73
Change Order No. 33 (Staff Approved)	\$0.00
Change Order No. 34 (Staff Approved)	\$49,762.84
Change Order No. 35 (Staff Approved)	<\$28,750.00>
Change Order No. 36 (Deputy Approved)	\$195,781.32
Change Order No. 37 (Deputy Approved)	<\$733,389.16>
Current Contract Amount (through Stage 1)	\$19,526,325.71

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 the Construction Summary as Attachment 4.

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.

Valley Water is currently withholding retention funds totaling five percent (5%) of the contract items associated with Construction Stage 1 - Milestones 1-3 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 Construction Stage 1 - Milestones 1-3. Retention withheld for Milestones 1-3 will be released as a result of this Board item and the associated Notice of Completion is recorded.

A final Notice of Completion will be recommended once remaining work for Construction Stage 2 - Milestone 4, plant establishment maintenance, is completed at a future date. Retention withheld for Stage 2 will be released once that work has been accepted by the Board, and the associated Notice of Completion is recorded.

Total Project Expenditures

As indicated in the Summary of Construction Contract Amounts (Table 1), the original contract amount of \$14,432,479.45 has been increased by \$5,129,846.26 to \$19,526,325.71, an increase of approximately 35.5 percent.

ENVIRONMENTAL JUSTICE IMPACT:

There are no environmental justice impacts associated with this board action to approve this Notice of Completion of Contract and Acceptance of Work (NCCAW).

During this project Valley Water engaged local tribal communities regarding cultural resources discovered while this project was underway. This engagement required the infusion of additional financial resources to ensure the appropriate management of these cultural resources for this critical stakeholder. This engagement has enabled the Valley Water project team to develop a greater understanding of cultural sensitivities and awareness for all communities, particularly disadvantaged communities, that may be impacted by our capital improvement projects.

FINANCIAL IMPACT:

The Permanente Creek Flood Protection Project - Rancho San Antonio Detention Basin (Construction Stage 1 - Milestones 1-3), Project No. 26244001, was included in the Five-Year 2021-25 Capital Improvement Program (CIP) and in the Board-adopted FY 2020-21 Budget. The overall total Project cost remains unchanged. The Project was funded through the 2012 Safe, Clean Water and Natural Flood Protection Program Fund (Fund 26). No additional funding is necessary.

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: NOC 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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