



DATE: November 16, 2020

TO: Mayor and Members of the City Council

VIA: Dante Hall, Interim City Manager

FROM: Norm Dorais, Public Works Director/City Engineer

SUBJECT: APPROVAL OF CONTRACT AMENDMENT ONE IN THE AMOUNT OF \$529,150 TO THE SCHAAF & WHEELER CONSULTING CIVIL ENGINEERS CONTRACT FOR PHASE II – ENGINEERING DESIGN AND ENVIRONMENTAL REGULATORY PERMITTING SERVICES AND CONTRACT FOR PHASE III – BIDDING, CONSTRUCTION SUPPORT SERVICES AND PROJECT CLOSEOUT – LEVEE PROTECTION PLANNING AND IMPROVEMENTS PROJECT IN THE AMOUNT NOT TO EXCEED \$2,600,000

RECOMMENDATION

It is recommended that the City Council adopt the attached resolutions authorizing:

1. The Mayor to execute Contract Amendment No. One in the amount of \$529,150 with Schaaf & Wheeler Consulting Engineers to provide professional consulting services for Phase II of the Levee Protection Planning and Improvements Project; and
2. The Mayor to execute a Phase III Contract with Schaaf & Wheeler Consulting Engineers to provide continuing services associated with the Levee Protection Planning and Improvements Project during construction in the amount not to exceed \$2,600,000.

Funding will be provided by the budget established for Levee Protection Planning and Improvements Project.

EXECUTIVE SUMMARY

Authorization of the amendment to the Phase II Contract will allow for payment of outstanding invoices for Phase II work performed by Schaaf & Wheeler and their subconsultants at a discounted rate of 50% as directed by the City Council.

Authorization of the contract for Phase III will provide for continuing services by Schaaf & Wheeler and the subconsultants during the construction phase of the contract.

BACKGROUND

In 2014, the City was advised by the Federal Emergency Management Agency (FEMA) that its coastal flood hazard study concluded that 85% of Foster City's levee system is deficient. FEMA indicated that if the height of the levee was not increased, FEMA accreditation would be lost and the City would be placed in a flood hazard zone when FEMA's new Flood Insurance Rate Map (FIRM) was released in 2016. After receiving this notification from FEMA and conferring with City Council, City staff held a series of meetings with FEMA representatives and obtained their agreement not to move the City into a flood hazard zone upon release of the FIRM. Instead, FEMA agreed to place the City in a "seclusion zone" status while the City considered its options for increasing the levee height. That meant the City would not be placed in a flood hazard zone so long as it made progress to increase the height of the levee. With that, the City began the Project.

As a first step, in July 2015, the City Council received a Levee Protection Planning Report concluding that the levee needed to be raised 2.5-5.5 ft., depending on location, in order to retain FEMA accreditation. Three design alternatives and estimated costs were presented for Council consideration:

1. Construction by imported design - \$50-75 million
2. Construction of a floodwall and earthen backfill - \$40-65 million
3. Construction of sheet piles and earthen backfill – Hybrid Design - \$35-65 million

The City Council directed that Option #3 (Hybrid Design) be pursued.

SCHAAF & WHEELER PHASE I CONTRACT

To implement the Hybrid Design, on September 8, 2015, the Council approved the first in a series of Project contracts. This included:

1. A contract with SCI Consulting Group, in the amount not-to-exceed \$110,000, to provide a feasibility analysis and public opinion survey, assessment engineering, Proposition 218 balloting and other professional consulting services associated with exploring funding options for the Project; and

2. A contract with Kitahata Company and William Euphrat Municipal Finance, Inc., as joint consultants, in the amount not-to-exceed \$80,000, to provide an evaluation of financing options to implement the Project and appropriating \$80,000 from the City Capital Projects Fund to the Project; and
3. A contract with Schaaf & Wheeler Consulting Civil Engineers, in the amount not-to-exceed \$887,644, to provide professional services including preliminary design and environmental regulatory permitting for the Project. (Phase I Contract)

The Phase I Contract with Schaaf & Wheeler called for them to perform the civil engineering on the Project and to supply services of the following subconsultants: Biggs Cardosa Associates – structural engineering services; ENGEO – geotechnical services; Wilsey Ham – surveying services; Bellinger-Foster-Steinmetz – landscape architectural services; and Huffman-Broadway Group – environmental regulatory and permitting services.

Under this contract, Schaaf & Wheeler:

1. Coordinated all Project related activities between FEMA and other agencies;
2. Prepared the materials necessary for public outreach;
3. Prepared the base maps to develop design alternatives;
4. Performed a geotechnical investigation for design development;
5. Developed a preliminary design based on City Council and public input;
6. Provided environmental regulatory permitting information; and
7. Prepared cost estimates for the Project.

All of this work was aimed at obtaining a Basis of Design report suitable for preparation of the California Environmental Quality Act (CEQA) documents and the plans and specifications for construction of the Project.

SCHAAF & WHEELER PHASE II CONTRACT

Work was completed under the Phase I Contract for the amount authorized by the contract. In October 2016, the City Council approved a Phase II contract with Schaaf & Wheeler in the amount not to exceed \$2,324,286. (See Attachment 5.) Per this contract, Schaaf & Wheeler, working with the same group of subconsultants, was tasked with:

1. Developing the Project plans and specifications suitable for public bid.
2. Completing final geotechnical exploration and design coordination.
3. Developing design level mitigation measures to address biological resources and wetlands affected by the Project in order to meet permitting requirements.
4. Completing the BCDC permitting application.

5. Completing all other State and Federal permitting applications.
6. Obtaining all regulatory permits.
7. Drafting final construction documents.
8. Attending meetings with staff, Planning Commission, City Council, and all regulatory agencies.

The Levee Improvements Project required the acquisition of permits from four major regulatory agencies: the State Lands Commission (SLC), the Regional Water Quality Control Board (RWQCB), the San Francisco Bay Conservation and Development Commission (BCDC), and the U.S. Army Corps of Engineers (USACE). Schaaf & Wheeler's scope of work on Phase II required that they complete all work required to obtain these permits. There were a number of challenges in securing the needed permits. As a result, the fourth and final regulatory permit was not secured by the City until January 7, 2020, two years later than originally anticipated.

Bids for construction of the levee improvements were received on June 30, 2020, and a construction contract with Shimmick Construction Company, Inc. was approved by the City Council on July 20, 2020 in the amount of \$60,218,000; well under the original \$90M cost projection.

AMENDMENT TO SCHAAF & WHEELER PHASE II CONTRACT

In September 2020, the Interim City Manager and the City Attorney advised the City Council that charges for the work done by Schaaf & Wheeler and their subconsultants on the Phase II Contract exceeded the contract amount authorized by the City Council. Staff informed the City Council that these cost overruns had been incurred while the former City Manager was supervising the project and he had, without authority, instructed Schaaf & Wheeler and their subconsultants to continue working despite having exhausted their contract budget. The former City Manager gave this direction without informing City staff or the City Council and he never requested that the City Council authorize additional funding of this work through a contract amendment as he was required to do once the contract limit was reached. Based on the City Manager's direction, Schaaf & Wheeler, in good faith, continued to perform work on the project in order to prevent delays.

When the City Council was informed of this unauthorized action by the former City Manager, the City Council undertook a detailed review of the invoices associated with the request for additional funds. The invoices totaled \$990,000. After City Council negotiations with Schaaf & Wheeler, this amount has been reduced by 50% as shown in the proposed contract amendment for Phase II. Staff is requesting that the City Council now approve Contract Amendment No. One in the amount of \$529,150, comprised of the following charges:

Design Consultant or Vendor	
Schaaf & Wheeler	\$245,000
Huffman Broadway Group	\$155,500
BFS Landscape Architects	\$33,150
ENGEO	\$28,000
JDH Corrosion Engineers	\$30,000
Bess Test Labs (utility locators)	\$21,000
Direct Permit Fees	\$16,500
Total	\$529,150

PHASE III CONTRACT

After completing the scope of services authorized by Phase II for permitting the project, Schaaf & Wheeler then moved on to assist with services for the final phase of the project (i.e., construction of the levee improvements). First, Schaaf & Wheeler and their subconsultants continued to assist the City in design services during the bidding process. While the Phase III Contract for these services had not yet been approved, Schaaf & Wheeler performed those services, as stated above, in good faith to avoid delays on the project.

There are two additional areas in which continuing services from Schaaf & Wheeler and their subconsultants will be needed during construction. First, for design services during construction. This includes:

- a. Contractor submittal reviews related to technical specification sections.
- b. Responses to Contractor RFIs related to design and technical specifications.
- c. Issuing clarifications regarding intent of contract documents.
- d. Preparation of supplemental drawings and details.
- e. Assistance with evaluation of Contractor- or City-issued CCOs.
- f. Periodic observation of general Work progress.
- g. Geotechnical quality control, testing, and observation.
- h. Participation in construction meetings, but only when requested. Fee estimates assume that someone from the design team will participate in a one-hour meeting every other week, for a total of 60 person-meetings during construction.
- i. Assistance with punch list preparation and project closeout, including Record Drawings.
- j. Field testing and adjustments for corrosion monitoring system; and O&M manual.

Second, Schaaf & Wheeler and their subconsultants' services are needed to assist with regulatory compliance during construction in the following areas:

- a. General permit compliance oversight, including monthly site visits, and coordination with the City, Tanner Pacific, Contractor, and regulatory agencies.

- b. Activity compliance review including dewatering, site winterization, and annual reporting.
- c. Baseline mitigation monitoring.
- d. Project biological monitoring.
- e. Special status species surveys.

If the proposed contract for these services is approved, Schaaf & Wheeler and their subconsultants will bill on a time and materials basis for an amount not to exceed \$2,600,000. The total estimated billings for Schaaf & Wheeler and their subconsultants are:

Table 2 – Phase 3 Fee Estimate

Design Consultant	Fees and Expenses
ENGEO	\$1,475,000
Huffman Broadway Group	\$400,000
Schaaf & Wheeler	\$350,000
Biggs Cardosa Associates	\$250,000
BFS Landscape Architects	\$100,000
JDH Corrosion Engineers	\$25,000
Total	\$2,600,000

FISCAL IMPACT

If approved, staff would be authorized to pay all outstanding invoices for Phase II work for the negotiated amount of \$529,150, thus closing out the Phase II Contract. If the Phase III Contract is approved, Schaaf & Wheeler and their subconsultants would be authorized to complete the scope of work shown in the proposed Phase III Contract on a time and materials basis for an amount not to exceed \$2,600,000.

CONCLUSION

Staff requests that the City Council approve Contract Amendment No. One to the Phase II Contract and approve the Phase III Contract. Staff is keenly aware of the need to assure that billings from project consultants and the project contract are submitted on a timely basis, carefully vetted, and only approved for payment if they fall within the amount authorized by the City Council. As this report details, that did not occur on the Schaaf & Wheeler Phase II Contract where the former City Manager failed to advise the City Council that additional funds were needed for this contract and failed to bring forward a contract amendment for the City Council's approval.

In order to ensure that the Council and public is fully informed on the progress of this project and expenditures, regular reports are now being made to the Levee

Subcommittee, the City Council, and the Levee Bond Oversight Committee. Staff has also instituted a more rigorous process for reviewing invoices to ensure that they are submitted in a timely manner and fall within budget and contractually authorized amounts.

Attachments:

- Attachment 1 – Resolution – Contract Amendment No. One (Phase II Contract)
- Attachment 2 – Resolution – Approving Phase III Contract
- Attachment 3 – Contract Amendment One (Phase II Contract)
- Attachment 4 – Agreement to Provide Bidding, Construction Support Services, and Project Closeout for Levee Protection Planning and Improvements Project (Phase III Contract)
- Attachment 5 – Agreement dated October 17, 2016 (Phase II Contract)