



DATE: June 20, 2023

TO: Mayor and Members of the City Council

VIA: Stefan Chatwin, City Manager
Marlene Subhashini, Assistant City Manager

FROM: Francine Magno, Senior Engineer
Paul Nagengast, Project Advisor, Regional Government Services

DEPARTMENT: Public Works

SUBJECT: CONTRACT AMENDMENT NO. FIVE (5) IN THE AMOUNT OF \$388,000 WITH SCHAAF & WHEELER CONSULTING CIVIL ENGINEERS FOR PHASE III SERVICES FOR THE LEVEE PROTECTION PLANNING AND IMPROVEMENTS PROJECT (CIP 327-657)

RECOMMENDATION

It is recommended that the City Council adopt the attached resolution authorizing the Mayor to execute Contract Amendment No. Five (5) to Phase III – Bidding, Construction Support Services and Project Closeout (Phase III) contract with Schaaf & Wheeler Consulting Civil Engineers (S&W) in the amount of \$388,000 for the Levee Protection Planning and Improvements Project (CIP 327-657).

EXECUTIVE SUMMARY

The various subconsultants to S&W Phase III contract with Foster City for the Levee Improvements Project (Project) have been performing additional work not anticipated or included in the scope of work for Project construction support services. Funds in the Not-to-Exceed amount of \$388,000 are being requested for S&W to continue Project related work through Project completion in January 2024.

BACKGROUND

The Project's design team consists of S&W and its various subconsultants that include Biggs Cardosa Associates – structural engineering, ENGEO – geotechnical, Wilsey Ham – land surveying, Bellinger-Foster-Steinmetz (BFS) – landscape architectural, and Huffman-Broadway Group (HBG) – environmental regulatory and permitting. S&W has three contracts with the City to cover the design team scope through the various stages of the project including:

1. Phase 1 – Preliminary Design and CEQA (closed contract)
2. Phase 2 – Final Design and Permitting (closed contract)
3. Phase 3 – Construction Support (ongoing contract)

Additional information regarding the Phase 1-3 contracts, including scope, are attached to this report.

The Phase 3 contract is the only ongoing contract of the three identified above. City Council adopted Resolution No. 2020-130 authorizing the Mayor to execute an agreement with S&W, in an amount not-to-exceed \$2,600,000 for the Phase 3 services on November 16, 2020. On May 3 and May 17, 2021 and April 4 and December 5, 2022, the City Council approved Contract Amendments Nos. 1, 2, 3, and 4 in the amounts of \$46,725, \$162,000, \$400,000 and \$760,000 respectively, adding to the contract the design of interpretive signage and providing continued environmental monitoring for the Project.

Phase III Contract Amendment No. 1 (CA #1)

On May 3, 2021, the City Council adopted Resolution No. 2021-49 authorizing the Mayor to execute CA #1 to Phase III contract with S&W in the amount of \$46,745 for the development of interpretive signage required as part of the BCDC permit for the Project. BCDC required the design and installation of interpretive signage to be integrated into the levee pathway. BFS, the landscape architect included in the S&W Phase III contract, submitted a proposal for this task for content development and artwork design for six (6) interpretive panels including planning of the sign locations along the new levee pedway which was outside of their original scope of work.

Phase III Contract Amendment No. 2 (CA #2)

On May 17, 2021, the City Council adopted Resolution No. 2021-65 authorizing the Mayor to execute CA #2 to Phase III contract with S&W in the amount of \$162,000 for environmental work related to the Project.

HBG, the environmental subconsultant to S&W had been performing rail bird nesting surveys and Project environmental observation and consultation during the construction of the Project. Additional services were needed for HBG to continue biological monitoring activities in accordance with various permitting agencies to remain in environmental

compliance through December 2021. CA #2 did not include surveying nesting rail birds for the 2022 season because the extent of necessary surveys were not known at the time.

Phase III Contract Amendment No. 3 (CA #3)

On April 4, 2022, the City Council adopted Resolution No. 2022-34 authorizing the Mayor to execute CA #3 to Phase III contract with S&W in the amount of amount of \$400,000 for environmental monitoring, design review and out of scope Project work. At the May 17, 2021 meeting, the Council was advised that the environmental monitoring work included as part of CA #2 would be sufficient only through calendar year 2021. It was determined that the project required continued environmental monitoring and additional construction related support service work to be completed in 2022.

CA #3 addressed the additional level of effort required by the design team to perform the necessary support services during the construction phase of the Project through the end of 2022. The bulk of CA #3 was related to the environmental compliance/monitoring performed by HBG. HBG's scope of work consists of regulatory compliance oversight, agency coordination and reporting, baseline mitigation monitoring (i.e., preconstruction conditions), annual protocol surveys for nesting rails, and periodic site visits with a frequency of one per month included in the scope and budget.

In the interest of keeping the Project on time and within budget and avoiding costly delays to the Contractor in the absence of required monitoring prior to and during their work activities, HBG was requested to provide the often-daily monitoring activities on an as-needed basis. Out of scope work included biological training to the Contractor and Construction Management team, construction monitoring, and public outreach efforts not originally anticipated. There were also changes in the U.S. Fish and Wildlife Service rail survey protocols, changes in the number of samples required for nesting sites, and changes in the survey locations.

The Staff Report noted that "Staff believes it prudent to provide the funding through December 2022 only. Staff will request additional funds for 2023 if necessary, based upon the amount of work the Contractor still needs to complete".

Phase III Contract Amendment No. 4 (CA #4)

On December 5, 2022, the City Council adopted Resolution No. 2022-34 authorizing the Mayor to execute CA #4 to Phase III contract with S&W in the amount of amount of \$760,000 for additional work not anticipated or included in the scope of work for Project construction support services.

At the April 4, 2022 meeting, the City Council was advised that the environmental monitoring work included as part of CA #3 would be sufficient only through calendar year 2022. Staff further advised City Council that due to no contingency monies authorized for S&W Phase III contract, amendments as necessary would be recommended to City Council for authorization of sufficient monies to complete the known additional items of

work. It was determined that the project required continued environmental monitoring and additional construction related support services work through 2023 to the Project completion in January 2024.

Similar to CA #3, the bulk of the work under CA #4 was related to the environmental compliance/monitoring performed by HBG. It should be noted that CA #4 did not include any additional protocol surveys in 2023 by HBG for nesting rails. At the time, staff anticipated that the Contractor would complete any restricted construction related work in Phase 1 by February 1 and would not require the surveys to restart restricted work in Phase 1 prior to September 1.

ANALYSIS

When CA #4 for S&W Phase III contract was executed, it was anticipated the amount would be sufficient through completion of the Project to January 2024. Given that the S&W Phase III Contract did not include any contingencies (typically 10-15% of the total contract amount), it was understood that any changes to the scope of work as necessary would be brought forward to Council in the form of an amendment for consideration prior to exhausting the not-to-exceed contract amount. Based on Council direction, it was fiscally prudent to request Council authorization for additional monies when additional or out-of-scope work was anticipated in lieu of requesting a contingency or additional contract monies in advance.

Even though it was anticipated that the CA #4 would be sufficient through Project completion date, several factors have affected the assumptions made for the CA #4 amount since approval in December 2022. These factors are outlined below and further explained below:

- The level of effort necessary for biological monitoring on the Project was never formally defined for the construction as a whole. The need and frequency has been evaluated with what was known at the time the scope was estimated with CA #2-4.
- The unanticipated 'atmospheric river' storm events experienced this past storm season required ENGEO to perform extra work to ensure the structural integrity of the levee system subsequent to these storm events.
- The approval by BCDC for the contractor to perform 'light construction' subsequent to February 1 in Phase I was unanticipated by City staff and HBG. The approval required the presence of a biological monitor more frequently than expected while performing work in the Phase 1 subsequent to February 1, Noise levels.
- The accelerated schedule resulted in the stacking of multiple activities/locations requiring additional HBG staffing. Instead of 1 monitor needed at one location on a given day, multiple monitors were needed to cover multiple locations of work that required monitoring. The same monitor could not bounce back between locations. They must be present at all times.

HBG services as a biological monitor was not in the original scope of work under S&W Phase III contract approved by City Council on November 16, 2020. The biological monitoring was a strict requirement by BCDC to ensure compliance with the BCDC permits. Given that this would involve a considerable effort, staff had indicated that there would be a separate staff person or the City would contract for those services. Due to the pandemic and staffing turnover, no direct contract with an environmental consultant was approved nor any staff person properly trained to provide the environmental monitoring/observation services was identified. As a result, during the course of construction, HBG had been asked to perform these services as needed. Previous amendments to S&W reflected the costs associated with these services.

The 2022-23 storm season delivered a series of atmospheric rivers not experienced in previous years of the Project. While most of the Project's earth work had been significantly completed prior to this storm season, there were some earthen levees that experienced degrees of failure due to their incomplete status. It was necessary for ENGE0 to provide additional work to re-examine any potentially compromised section of levee or earth work for the trail behind sheet pile or concrete levees subsequent to the storm events. The majority of damage to levees from the storm events was to the earthen levees near Shorebird Park. While the amount of time ENGE0 experienced reevaluating any compromised earthen locations due to the rain events was not enormous, it did require work not anticipated by ENGE0.

ENGE0's estimated cost for the scope of work anticipated along a 6.5-mile work zone of earth work was at the time of S&W Phase III contract approval reasonable but difficult to estimate accurately. Additional work experienced by ENGE0 during the Project construction included various redesigns from unknown material below earthen grade or change orders to redesign levee locations for ENGE0 review.

Shimmick has been working to open portions of the trail by agreed to phased milestone dates for Phase I, March 27 (South end of Project to Shorebird Park), Phase II, May 31 (Shorebird Park to San Mateo Bridge), and Phase III July 31 (San Mateo Bridge to north of Mariners Point). At the time when CA #4 was considered, staff had assumed Phase I to be completed by February 1 (start of restricted work area due to bird nesting requirements), and any minor remaining work would be completed outside of bird nesting window after September 1. However, BCDC permitted the contractor to continue construction after February 1. The approval by BCDC required the presence of a biological monitor more frequently than anticipated.

The overlapping of construction activities in Phase I by the contractor required HBG to have multiple monitors to cover multiple locations concurrently during the contractors' work activities subsequent to February 1. Even though it is the same amount of work by the contractor just in a condensed period of time, it caused HBG inefficiencies trying to

be attentive to the contractor to meet the expeditious opening of the trail by agreed to milestone dates.

Staff reviews invoices by S&W to determine trends in expenditures for monthly burn rates to predict available funding remaining in the contract budget. Invoices can be submitted a month or two after work has been completed so consultant burn rates to predict funding availability can experience some real time lag. Staff had noticed the downward trend for burn rates for S&W for early 2023 invoices and was trying to determine if the downward trend would continue through to summer 2023 before raising any budgetary concerns.

Staff had anticipated that the work by HBG and ENGE0 would even out as the Project neared completion. However, the S&W Phase III contract burn rates have stayed steady and not declined further as assumed when work by ENGE0 and other subconsultants would decrease. Essentially work performed by ENGE0 and HBG is ongoing. Staff believes CA #4 approved in December 2022 was a conservatively low estimate with the intention of requesting additional monies only when it is warranted. The previous amendment amount did not provide much flexibility in the event of unknowns.

The bulk of Contract Amendment No. 5 (CA #5) is related to the environmental compliance/monitoring performed by HBG and the geotechnical and materials observation and testing performed by ENGE0. Both ENGE0's and HBG's remaining services will adhere to the strict requirements of the Project contract specifications and regulatory permits. Additional controls have been implemented to monitor HBG's services.

CA #5 in the amount of \$388,000 to the Phase III Contract will ensure there is sufficient funding for S&W and their subconsultants to continue providing necessary construction support services through 2023 to Project completion in January 2024. Given the out of scope and additional effort items identified above, staff is recommending approval of CA #5.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

An Environmental Impact Report was prepared for the Levee Protection Planning and Improvements Project (State Clearinghouse No. 2016012012).

FISCAL IMPACT

With the execution of CA #5, the revised contract amount is \$4,346,745:

Phase III Contract	\$2,600,000
Contract Amendment #1	\$ 46,745
Contract Amendment #2	\$ 162,000
Contract Amendment #3	\$ 400,000
Contract Amendment #4	\$ 760,000
Contract Amendment #5	<u>\$ 388,000</u>

Revised Contract Amount

\$4,356,745

Adequate funding has been provided for this Project from the Project budget (CIP 327-657).

CITY COUNCIL VISION, MISSION, AND VALUE/PRIORITY AREA

Facilities and Infrastructure

ATTACHMENTS:

Attachment 1 – Resolution

Attachment 2 – Schaaf & Wheeler Contract Amendment No. Five (5)

Attachment 3 – Schaaf & Wheeler Phase I Agreement

Attachment 4 – Schaaf & Wheeler Phase II Agreement

Attachment 5 – Schaaf & Wheeler Phase III Agreement