

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOSTER CITY AUTHORIZING THE MAYOR TO EXECUTE CONTRACT CHANGE ORDER NO. THIRTY-ONE (CCO #31) TO SHIMMICK CONSTRUCTION CO. INC., IN THE AMOUNT OF \$3,193,635.92; APPROVING AN ADDITIONAL \$300,000 TO CONSTRUCTION CONTINGENCIES; AND AUTHORIZING A BUDGET APPROPRIATION IN THE AMOUNT OF \$15 MILLION FOR THE LEVEE PROTECTION PLANNING AND IMPROVEMENTS PROJECT (CIP 327-657) FROM ISSUING THE REMAINING \$5 MILLION IN MEASURE P GO BONDS AND TRANSFER OF \$10 MILLION FROM CITY CIP FUND 301

CITY OF FOSTER CITY

WHEREAS, on May 21, 2018, the City Council adopted Resolution No. 2018-40 approving the designation of construction contingency funding in an amount not to exceed \$10 million by the City towards the Levee Protection Planning and Improvements Project; and

WHEREAS, the designation of funds up to \$10 million from General Fund Reserves or any identified alternative source of funding was for project construction costs overruns beyond the \$90 million General Obligation (GO) bond measure that was under consideration at the time; and

WHEREAS, on June 5, 2018, Foster City voters approved a ballot measure (Measure P) that would authorize the issuance of not more than \$90 million in GO bonds to be used to improve the City's existing levee system to provide flood protection in accordance with updated Federal Emergency Management Agency (FEMA) guidelines, allow the City to retain FEMA accreditation for the levee, and protect against future sea level rise (Levee Protection Planning and Improvements Project); and

WHEREAS, on July 6, 2020, the City Council, authorized the issuance of GO bonds in the principal amount not to exceed \$90 million to fund the Project; and

WHEREAS, based upon preliminary estimates for the Project, the City issued \$85 million GO bond funds for the Levee Protection Planning and Improvements Project (CIP 327-657); and

WHEREAS, the City identified \$10 million in City CIP Fund 301 to be made available if necessary for the Levee Protection Planning and Improvements Project (CIP 327-657); and

WHEREAS, on July 20, 2020, the City Council adopted Resolution 2020-76 awarding a contract to Shimmick Construction Co. Inc. (SCCI), in the amount of \$60,218,000 for the Levee Protection Planning and Improvements Project (CIP 327-657) (Project); and

WHEREAS, on July 20, 2020, a construction contingency in the amount of \$9,000,000 was provided for contract change orders during the construction of the Project with contract change orders greater than \$250,000 to be approved by City Council; and

WHEREAS, SCCI claims construction-related inefficiencies due to altering their scheduling and path of execution as a result from alleged impacts by others effecting their work productivity and their ability to complete the work in the manner anticipated and with resources assumed at bid; and

WHEREAS, SCCI has proposed achieving early interim milestones for phased trail openings which would minimize the potential for delay problems or other potential impacts to final Project completion; and

WHEREAS, SCCI has submitted costs of all known pending change order requests already or will be incurred by SCCI for work not included in the original plans and specifications which have been reviewed by the Project team and determined as compensable extra work prior to a formal contract change order submittal process; and

WHEREAS, Contract Change Order No. Thirty-one (CCO #31) in the amount of \$3,193,636.26 includes total costs associated with inefficiency claims, achieving early interim milestones and pending contract change orders; and

WHEREAS, there currently exists insufficient construction contingency monies in the contract for the approval of CCO #31; and

WHEREAS, the execution of CCO #31 will be in substantial conformance to the version attached hereto except that changes that are non-material in nature may be made administratively prior to execution upon approval by the City Attorney; and

WHEREAS, additional construction contingency monies in the amount of \$300,000 are necessary to address potential change orders for unknown and unanticipated issues arising out the remaining items of work until project completion; and

WHEREAS, the initial Project outlay of \$85 million in GO bonds for the Project is projected to be insufficient to complete the Project; and

WHEREAS, \$15 million is available from the remaining \$5 million Measure P GO bonds and \$10 million in previously identified in City CIP Fund 301 to be included in the budget for the Levee Protection Planning and Improvements Project (CIP 327-657); and

WHEREAS, in addition to authorizing the issuance of the remaining \$5 million in GO bonds, appropriation of \$10 million in the previously identified CIP Fund 301 for the levee project is necessary; and

WHEREAS, any unexpended funds from CIP Fund 301 upon project completion will be returned to the originating fund account.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Foster City hereby authorizes:

1. The Mayor to execute CCO #31 to SCCI in the amount of \$3,193,635.92, as a settlement of alleged inefficiency claims, an early completion of interim milestones (phased trail openings) and the additional agreed cost for change orders and change order requests costs as of February 1, 2023; and
2. Approving additional construction contingency monies in the amount of \$300,000 with authorization given to the City Manager to execute contract change orders up to \$250,000 and authorization required by City Council for any contract change orders above \$250,000; and
3. A supplemental budget appropriation in the amount of \$15 million in the Levee Project Fund 327 for FY 22-23 from issuing the remaining \$5 million in Measure P GO bonds, City staff to take actions to implement the issuance of the remaining \$5 million of GO bonds, and transfer of \$10 million from City CIP Fund 301 to Levee Project Fund 327 for the Levee Protection Planning and Improvements Project (CIP 327-657) with authorization granted to the Finance Director to make budget adjustments in the various accounts necessary to effectuate the above authorizations.

PASSED AND ADOPTED as a resolution of the City Council of the City of Foster City at the regular meeting held on the 6th day of March 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

JON FROOMIN, MAYOR

ATTEST:

PRISCILLA SCHAUS, CITY CLERK