



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: John Stufflebean

SUBJECT: SEE BELOW

DATE: 09-24-07

Approved

Ray Whier

Date

9/24/07

**SUBJECT: SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT
RELIABILITY IMPROVEMENTS PROJECT CONTRACT CHANGE
ORDER FOR ADDITIONAL DEWATERING COSTS**

RECOMMENDATION

Approval of a change order for the project entitled, "San José/Santa Clara Water Pollution Control Plant Reliability Improvements Project," for a total negotiated amount of \$339,469 with no change to the term of contract with Kiewit Pacific Company.

OUTCOME

Approval of this contract change order will provide an allowance to pay Kiewit Pacific Company for additional work involved with the dewatering of the trench for the 120-inch Raw Sewage Influent Pipeline. The funds to accomplish the work scope to be performed under this change order are within the current appropriated contract amount and no additional funds are required.

BACKGROUND

The Water Pollution Control Plant (WPCP) Reliability Improvements Project is aimed at improving the Plant's treatment reliability and the ability to handle wet-weather flows as well as flows during power outages. The completed project will improve the reliability of several of the facility's critical systems, such as the headworks, filtration, and associated pumping stations. As a result, these improvements will eliminate the possibility of discharging untreated or partially treated sewage to the Bay.

On February 15, 2005, Council awarded the construction of this project to the low bidder, Kiewit Pacific Company in an amount of \$69,522,000, and approved a contingency in an amount of \$6,952,200 to cover unforeseen costs associated with the project. An additional authorization of \$2,000,000 for contingency was made by Council on June 26, 2007. The project is currently at

98% completion and has a target completion date of November 2007, approximately eleven months ahead of schedule.

ANALYSIS

As the construction progressed, this project has encountered significant challenges related to site conditions unknown at the design stage. One of these instances occurred during the excavation for the major pipeline that delivers raw sewage to the new head works. This pipeline, referred to as the 120-inch raw sewage influent pipeline, was intended for an underground area which was projected to be mostly clay based on the initial geotechnical investigation report. Upon installation of the shoring system and excavation of the trench, however, a large pocket of sand that was saturated with ground water was discovered. On June 30, 2006, the Contractor submitted a notice of a differing site condition with the intent to request additional funds for the extra work. In an attempt to maintain the construction schedule and minimize possible costly overruns on the project, an agreement was reached between the Contractor and the City to allow tracking of the potential extra work on a time and material basis.

The Contractor was able to take additional measures to properly trench and prepare the area for placement of the pipe by October 2006. The Contractor then submitted his records for the additional work with a total additional cost of \$547,000 for additional compensation. The initial request for the extra compensation was denied by the City staff following discussions with the independent geotechnical engineer consultant. This initial denial was based upon the fact that other borings within a reasonable distance had indicated such conditions, and that such conditions should have been expected. The Contractor, in turn, re-submitted the request with additional information and requested that the matter be heard by the dispute review board for the project. A presentation was made on March 16, 2007, and following another review of the information by the City and the geotechnical engineer, City staff denied the request again.

A series of negotiations were conducted in accordance with City's Dispute Avoidance and Dispute Resolution Policy under Municipal Code Chapter 14.06. City staff revisited the cost breakdown information in an effort to categorize what the Contractor believed to be extra work and what City staff could consider being additional work. Based upon this analysis, the City proceeded to negotiate a settlement of the claim for this amount. An agreement was reached on September 5, 2007, for a total negotiated amount of \$339,469 upon analysis of the contractor's cost breakdown information. The agreement will be formalized in a separate change order for execution upon the Council's authorization.

Staff believes the negotiated amount of \$339,469 is a fair assessment of the additional work done by the contactors in the following areas:

- ◆ Installation and operation of six additional dewatering wells at a cost of \$98,388.
- ◆ Grouting of the installed shoring to prevent ground water seepage at a cost of \$71,606.

- ◆ Installation of internal steel bracing for additional stabilization of the shoring system at a cost of \$27,055.
- ◆ Material cost of shoring left in place permanently to prevent possible settlement of the new pipe at a cost of \$36,522.
- ◆ Lost time and productivity due to the saturated soil conditions at a cost of \$105,898.

EVALUATION AND FOLLOW-UP

At its June 26, 2007 meeting, Council approved an additional contingency amount of \$2,000,000 on this project, to pay for unforeseen conditions such as the changing site conditions and the discovery of naturally occurring asbestos at the project site. As stated in the supplemental memorandum of Council agenda item 7.2 for the June 26, 2007 meeting, this current memorandum is being presented to the council for approval of the negotiated settlement of the change order related to the additional dewatering costs for this project. Staff is currently reviewing another change order related to the asbestos mitigation on this project. This change order is anticipated to be over \$100,000 and will be presented to the Treatment Plant Advisory Committee and Council for approval in the next couple of months.

POLICY ALTERNATIVES

Alternative 1: Deny the change order.

Pros: Possible lower or no cost if supported throughout the dispute resolution process.

Cons: Additional costs to the City for the various levels of the dispute resolution, the length of time involved in resolution process, and also the potential for upholding of the entire claim of \$547,000 against the City.

Reason for not recommending: Staff believes, the negotiated settlement of the claim is the most fair and equitable way of settling the potential claim for both the City and the Contractor. Based on the recommendations by the City's construction manager and with consultation of the geotechnical engineer, the City is paying for only that portion of the claim associated with what could be considered legitimate extra work to the Contractor.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**

- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this action does not meet any of the criteria above, this memorandum is posted on the City's Council Agenda Website for the October 16, 2007 City Council Meeting.

COORDINATION

This amendment and memorandum have been coordinated with the City Attorney's Office, and the City Manager's Budget Office, and is scheduled to be heard at October 11, 2007 Treatment Plant Advisory Committee meeting.

FISCAL/POLICY ALIGNMENT

This project is consistent with the Council-approved Budget Strategy General Principles and Economic Recovery section in that it will stimulate local economic growth and recovery.

COST SUMMARY/IMPLICATIONS

1.	AMOUNT OF RECOMMENDATION/COST OF PROJECT:	\$339,469
2.	COST ELEMENTS OF AGREEMENT/CONTRACT:	
	Project Development	\$ 770,000
	Project Delivery*	3,468,800
	Construction Management**	2,658,000
	Design	3,450,000
	Construction	69,522,000
	Contingency	<u>8,952,200</u>
	TOTAL	\$88,821,000
	Prior Year Expenditures	(\$85,208,000)
	REMAINING PROJECT COSTS	\$3,613,000

* Includes City Staff costs

* First and Second Amendments

3. SOURCE OF FUNDING: 512 - San José/Santa Clara Treatment Plant Capital Fund

4. FISCAL IMPACT: No additional funding is necessary to fund this recommendation.

BUDGET REFERENCE

<u>Fund #</u>	<u>Appn. #</u>	<u>Appn. Name</u>	<u>RC #</u>	<u>Total Appn.</u>	<u>Amt. for Contract</u>	<u>Proposed Budget Page</u>	<u>Last Budget Action (Date, Ord. No.)</u>
Remaining Project Costs				\$3,613,000			
Current Funding Available							
512	6585	WPCP Reliability Improvements	101153	\$3,613,000	\$339,469	V-135	6-19-2007
Total Current Funding Available				\$3,613,000			
Total Funding for Remaining Project Costs				\$3,613,000	\$339,469		

CEQA

Emergency Basin Exempt: File Number, PP03-05-183

WPCP Reliability Improvements Exempt: File Number, PP04-07-217



JOHN STUFFLEBEAN
Director, Environmental Services

For questions please contact Bhavani Yerrapotu, Division Manager, Environmental Services, at (408) 945-5321.