



AGENDA NO: 9.b

MEETING DATE: April 9, 2024

Staff Report

TO: Honorable Mayor and City Council **DATE:** March 28, 2024

FROM: Greg Kwolek – Public Works Director
Ken Wilkins, PE – Water Reclamation Facility (WRF) Program Manager

SUBJECT: Approve WRF Close-out Agreement Contract Amendment for Anvil Builders, Inc. and Settlement Agreement

RECOMMENDED ACTION

Authorize the City Manager to execute Amendment No. 9 to the agreement with Anvil Builders, Inc. (Anvil) for the Water resources Center (WRC) Lift Stations and Offsite Pipelines (Conveyance Facilities) construction for \$880,000 and the accompanying settlement agreement, which results in a total not to exceed contract amount of \$37,264,606.

FISCAL IMPACT

Anvil Builders, Inc.

Anvil currently has unresolved change orders and claims submitted to the City for the Conveyance Facilities totaling \$2,586,370. Amendment No. 9 and the proposed settlement agreement with Anvil builders closes out all change orders and claims for the Conveyance Facilities Project for \$880,000 (with an additional approval of a \$200,000 retention by City pending outfall hydraulic final resolution concerning brine line effluent pipeline). The \$880,000 amount includes extending limits of final paving, Force Majeure claims on flood clean up from the January 9 and 10 storm events, additional work at the City Corporation Yard, and the acceleration of pipeline construction, including additional crews, overtime, and per diem pay. Prior to Amendment No. 9, Contract Amendment No. 8 was approved by City Council on May 24th, 2023, resulting in a total contract value of \$36,384,606. With approval of Amendment No. 9, Anvil's total contract results in a not to exceed amount of \$37,264,606.

As a reminder of the negotiation process to reach this close-out settlement, Anvil originally submitted a claim for \$4.2M for additional compensation for changes in the scope of the project work. With this Amendment No. 9 and Amendment No. 8, already approved by the Council at the May 27, 2023, meeting, the total being approved for all final claims is \$2.3M.

Overall Fiscal Impact

Acceptance of Anvil's contract amendments would not result in an increase in the overall WRF Program baseline budget, as adopted in the FY23 City Budget (\$159.84 Million). The following table connects the proposed contract amendment to the Conveyance Facilities Project item included in the overall WRF Program Budget. The negative overall conveyance facilities construction budget listed below has been covered over the course of the program using a combination of contingency budgets from the Conveyance Construction, General Program, and WRF Construction budgets. The

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City Manager Review: YK

City Attorney Review: CFN

construction budget overage identified in this contract Amendment is only considering the \$880,000 value for Amendment No. 9 and will be covered by reallocating funds from the WRF Project Construction contingency budget included in the WRF City Costs Budget.

Approved Conveyance Facilities Construction Budget	\$ 34,701,121
Original Contract Amount	\$ 31,493,675
Total Approved Amendments (1-8)	\$ 4,890,931
Amendment No. 9	\$ 880,000
Proposed Contract Amount	\$ 37,264,606
Overall Conveyance Facilities Construction Budget Remaining (including Amendment No. 9)	\$ (2,563,485)
WRF Construction Budget re-allocation to Cover Conveyance Overage	\$ 123,216
WRF Program Budget re-allocation to Cover Conveyance Overage	\$ 2,440,269

DISCUSSION

Amendment No. 9 defines the terms between the City and Anvil to reach final completion of this project component. Those items being resolved are as follows:

1. Contractor has completed all punch-list items required by the Contract.
2. City will pay Contractor \$880,000 in full settlement of all punch list items, disputed PCOs, and claims through Project completion, except for brine line effluent pipeline, as discussed in Paragraph 3., below.
3. As to the brine line effluent pipeline, \$200,000 in retention will be withheld by the City pending the outcome of the investigation of the conveyance capacity problem. If, after considering that investigation City determines, in good faith, the conveyance capacity problems were caused, in whole or in part, by construction defects, then City will continue to withhold the \$200,000 in retention until Contractor remedies the problem to the satisfaction of the City, then release such withheld retention to Contractor, in accordance with City's payment process. If City, after considering the investigation, in good faith determines the problem was not caused by construction defect, then City will release withheld retention to Contractor, in accordance with City's payment process.
4. Payment of the settlement amount of \$880,000 shall be made by City, as soon as possible, in accordance with City's payment process with payment no later than April 30, 2024.

ATTACHMENTS

1. Amendment No. 9 to the Agreement with Anvil Builders, Inc.
2. Exhibit A – Settlement Agreement Document