



**DATE:** May 23, 2017

**TO:** Mayor and City Council

**FROM:** Director of Utilities & Environmental Services

**SUBJECT** New Garin Reservoir and Pump Station Improvements: Rejection of Bid Protest, Award of Construction Contract, and Appropriation of Funds

### **RECOMMENDATION**

That Council adopts the attached resolutions:

1. Approving Addendum No. 1, providing revisions to the plans and specifications;
2. Rejecting the bid protest from Sierra Mountain Construction, Inc.;
3. Awarding the construction contract to Spiess Construction Co., Inc., in the amount of \$3,389,700; and
4. Appropriating additional funds in the amount of \$1,252,700, and
5. Authorizing the City Manager to execute an Amendment to an Agreement related to payment of additional per dwelling unit water service fees for the remaining dwelling units in the development

### **BACKGROUND**

The City required the La Vista Development to build a new 0.75 million-gallon water storage reservoir and upgrade the existing Garin Pump Station. To ensure that the required water system improvements are built in a timely manner and to provide a greater degree of control over the design and construction of critical infrastructure, the City administered the design of the project to ensure proper attention to all details and materials of construction. Further, as the tank will be constructed on City property, and will be adjacent and connected to an existing in-service City water tank, it was deemed preferable that the construction be done under City staff's supervision. Staff discussed the City administering the design and construction of the improvements with La Vista, L.P., representatives, and they were supportive and agreed to this approach. On May 26, 2015, Council approved Resolution No. 15-086, revising the development's Conditions of Approval No. 58 and No. 120 related to the water system improvements. The revisions allow the City to manage all aspects of design and construction of the project, and approved a per dwelling fee of \$20,534 on the first 150 dwelling units in the development to fully reimburse the City for the cost.

On June 15, 2015, the City entered into an agreement with La Vista, L.P., that the City will be reimbursed for all costs associated with the design and construction of the water storage reservoir and pump station upgrades. The estimated cost of the project at that time, \$2,834,000, was used as a placeholder in the agreement.

On September 15, 2015, Council approved Resolution No. 15-172, authorizing the City to enter into a Professional Services Agreement with Kleinfelder, Inc., for design services and technical support during construction.

### Project Plans and Specifications

Kleinfelder, Inc., issued a preliminary design report for the New Garin Reservoir and Pump Station Improvements on January 26, 2016. Based on that report, it was determined that substantial improvements to the pump station were needed to accommodate the La Vista development.

To meet this increased demand, a new 0.75 million-gallon steel reservoir will need to be constructed and the existing pump station will need to be modified. The construction of the second tank will provide additional water storage and include a new valve vault, inlet and outlet piping, and site paving and grading. Moreover, the upgrades at the pump station will improve its pumping capacity. The installation of four new pumps and related appurtenances and electrical components will reduce the duration required to fill the tanks.

On December 13, 2016, Council approved the plans and specifications for the New Garin and Pump Station Improvements Project and called for bids to be received on March 7, 2017. Addendum No. 1 revised the drawings and specifications by adding information to the project documents that provided clarification to bidder questions.

## **DISCUSSION**

On March 7, 2017, the City received six (6) bids. Spiess Construction Co., Inc., submitted the lowest bid in the amount of \$3,389,700, which is approximately 4% above the Engineer's Estimate of \$3,259,000. Mountain Cascade Inc., submitted the second lowest bid in the amount of \$3,597,650. The bids ranged from \$3,389,700 to \$4,631,000. Given the relatively high number of bids, and the fact that the lowest bid is within a few percentage points of the Engineer's estimate, staff is convinced that this is a reasonable bid.

### Bid Protest by Sierra Mountain Construction, Inc.

On March 14, 2017, the City received a bid protest from Sierra Mountain Construction, Inc., the third low bidder, alleging that the low bidder, Spiess Construction Co., Inc., and second low bidder, Mountain Cascade, Inc., had failed to indicate a System Supplier in their bids and that this omission renders their bids non-responsive. Staff, in conjunction with the City Attorney's Office, reviewed the bid protest and recommends rejection of the bid protest.

Specification section 16-010-1.04(C)-(D) requests that the Contractor submit the proposed electrical Subcontractor and System Supplier with the bid documents and gives the City discretion to reject bids if the System Supplier is deemed not qualified. Specification section 16-010-1.01(L) provides a list of pre-qualified System Suppliers for this project. This list

includes: (1) Krug-Bixby-Long Associates; (2) Technical Systems, Inc.; (3) Primex; and (4) Tesco.

While it is true that Spiess Construction Co., Inc., and Mountain Cascade, Inc., failed to include a pre-qualified System Supplier in their bids, none of the bidders, including Sierra Mountain Construction, Inc., included a pre-qualified System Supplier in their bids. On the list of subcontractors and suppliers sheet, which is required as part of the bid, Sierra Mountain Construction, Inc., wrote and crossed off “KDL” (although a hand-writing “KDL Stockton” appears on Con J Franke’s experience package that was attached to the bid). “KDL Stockton” is not one of the pre-qualified System Suppliers. Accordingly, like Spiess Construction Co., Inc., and Mountain Cascade, Inc., Sierra Mountain Construction, Inc., also failed to include a pre-qualified System Supplier in the bid. No other bids furnished listed a System Supplier.

Regardless of whether the System Supplier is listed on the bid, the Contractor is required to utilize a pre-qualified System Supplier as provided in specification section 16-010-1.01(L). The omission of the System Supplier does not change the bid total and therefore is not materially non-conforming.

Staff believes the failure to list a System Supplier by Spiess Construction Co., Inc., to be a minor irregularity that does not affect the bid amount or give Spiess Construction Co., Inc., an advantage or benefit not allowed to other bidders. Staff also does not consider the omission to be an error that made the bid materially different than what was intended.

Staff finds Spiess Construction’s bid documents to be responsive and has confirmed that their licenses are in order. Therefore, staff recommends that Council reject Sierra Mountain’s bid protest, and award the contract to the low bidder, Spiess Construction Co., Inc., in the amount of \$3,389,700.

#### Revised Per Dwelling Fee

Given the higher construction costs, and thus total project cost, the developer has agreed to fully reimburse the City for the updated cost. To keep the per-unit cost as low as possible, the developer has asked the City to extend the fee over the entire development, i.e., 179 units, and not just the first 150 as originally agreed to. At this time, the developer has already received 46 building permits and paid the lower fee for each; therefore, the remaining project costs are spread over the remaining 133 dwelling units. The revised per dwelling unit has been calculated at \$24,091 and La Vista, L.P., has agreed to it.

#### Citywide Community Workforce Agreement (CWA)

The City Council approved a Community Workforce Agreement on November 15, 2016 that required that all City projects with an engineer’s estimate in excess of \$1 million would be subject to the CWA. While this project meets the dollar threshold to make it subject to the CWA, the project is exempt from the CWA requirements for two reasons identified in the terms of the agreement. The City Council approved the plans and specifications and called for bids on this project on December 13, 2016. The effective date of the CWA was January 1,

2017. In addition, since this project is funded by developer fees, it is also exempted from the CWA for this reason.

## **ECONOMIC IMPACT**

There are no economic impacts to Hayward customers. All of the construction costs will be paid by the developer as agreed upon with La Vista, L. P., and in accordance with the terms of the agreement mentioned in this report. The developer has submitted an amendment to the original agreement to reimburse the City for all project costs, with interest, as building permits are issued for the new homes.

## **FISCAL IMPACT**

The estimated project costs are as follows:

Professional Engineering Services – Consultant	\$300,000
Design Administration – City Staff	\$50,000
Engineering and Inspection Fees – PG&E (Estimated)	\$100,000
Testing and Inspection Services (Estimated)	\$100,000
Construction Contract	\$3,389,700
Administrative Change Orders (Estimated)	\$163,000
Total:	<hr/> \$4,102,700

### *Appropriation of Additional Funds*

A total of \$2,850,000 has been appropriated for this project in the Water System Capital Improvement Fund. As shown above, the current total estimated cost to design and construct the water reservoir exceeds this amount. The original estimates were based on conceptual design. These costs are typically developed when project definition is at the planning stage. Expected accuracy for a planning stage estimate typically ranges from 50% below or above the actual cost. The current estimate in this case is approximately 44% higher. Staff requests that Council appropriate additional funds in the amount of \$1,252,700 from the Water System Improvement Fund (604) to fully fund the project in FY 2017. Adequate fund balance is available to cover the necessary appropriation.

As mentioned previously, La Vista, L.P., will be responsible for fully reimbursing the City for all costs related to this project. Per the referenced agreement, reimbursement requirements have been amended accordingly to reflect the actual costs of construction.

## **PUBLIC CONTACT**

City staff has worked closely with representatives of La Vista, L.P., through all elements of this project. There is no material impact on other Hayward residents and businesses.

Prior to and during construction, notices will be provided to affected residents and property owners to inform them of the nature and purpose of the work, potential impacts, work schedule and City contact for additional information.

## **NEXT STEPS**

If Council approves the award of contract, staff will prepare the construction contract and issue a notice to proceed. The following schedule has been developed for this project:

Award Construction Contract	May 23, 2017
Notice to Proceed	June, 2017
Construction Completion	July, 2018

*Prepared by:* Tay Nguyen, Assistant Civil Engineer

*Recommended by:* Alex Ameri, Director of Utilities & Environmental Services

Approved by:



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Kelly McAdoo, City Manager