



## Staff Report

**Date:** August 2, 2016

**To:** City Council

**From:** Valerie J. Barone, City Manager

**Reviewed by:** Victoria Walker, Director of Community and Economic Development

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**Subject:** **Ratify Contract Change Order for Clayton Road/Treat Blvd./Denkinger Road Intersection Improvements, Project No. 2144 in the amount of \$141,364 to Granite Rock Construction of San Jose (Funded by Measure J and Gas Tax)**

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### Report in Brief

The City Council awarded a contract to Granite Rock Construction for the construction of the Clayton Road/Treat Boulevard/Denkinger Road Intersection Improvements in March 2015. Once the project was under construction, several situations arose that resulted in delays. Discovery of underground fuel storage tanks and subsequent removal efforts delayed the project by approximately 6 months.

After that, difficulties were encountered during the installation of joint utility trench conduits with PG&E. Though staff had coordinated with PG&E early in the project design phase regarding required underground facilities to enable the joint utility pole relocations required by the project, when project construction was underway, PG&E advised staff of additional utility installations that were not included in their project plan approval set. PG&E added a requirement for additional underground conduits for the joint utility trench that should have been discussed during the project design.

Staff attempted to get PG&E to either perform the additional work or agree to pay for it, but PG&E did not respond. The contractor was not able to restart work until this issue was resolved. Ultimately, the project construction delay became so extended that staff coordinated with the City Attorney's Office to create a rational way to move the project forward. Staff executed Contract Change Order #4 in June 2016 in the amount of \$141,364 to get the construction underway again. Staff now requests the City Council

to approve the Contract Change Order for the project. The project contingency contains sufficient funds to cover the cost of Contract Change Order #4.

### **Recommended Action**

Staff recommends that the City Council take the following action:

1. Ratify Contract Change Order #4 in the amount of \$141,364 to Granite Rock Construction of San Jose.

### **Background**

The City Council awarded Project No. 2144 in March 2015. Shortly after the contractor mobilized and began work on the joint utility trench, underground fuel tanks were discovered that had not identified until that time. The project construction was delayed by approximately six months to account for regulatory notifications, assessments, tank removal, contaminated soil removal, soil backfill and site restoration.

Following handling of the underground tank issue, the contractor completed installation of the joint utility trench and conduits as required by the various companies. Following installation of joint utility trench conduits, staff coordinated with PG&E to initiate installation of electrical facilities to enable the joint utility pole relocations required by the project. PG&E then notified staff that additional underground conduits were required. PG&E had reviewed the plans during the design phase, but did not identify a desire or need for this additional conduit. This additional requirement was not brought up by PG&E during the design period despite numerous meetings between the City, the designer and PG&E.

Though PG&E indicated that, at the time the project was designed there was an available conduit in the street that they could have used, it was discovered that PG&E had in fact already used that available conduit following a previous winter storm, but did not inform the City or staff that they had done so. As a result, this additional conduit was no longer available for the project. PG&E had never advised the City of this fact, nor of the need to install additional conduit. Staff sent correspondence to PG&E on numerous occasions advising PG&E that the City had complied with conduit requirements agreed to during the design phase and any additional conduit required should be installed by PG&E or otherwise would be at PG&E's expense. PG&E did not officially respond to the correspondence, but advised staff to file a claim with PG&E. Completion of the joint utility trench is deemed "critical path work," and the City's contractor was not able to proceed with the project until this issue was resolved. PG&E continued to refuse to install the additional conduit or accept financial responsibility. Project construction was again delayed, and the contractor asserted delay damages. As the delay continued on without resolution, staff determined it was essential to do what was necessary to move the project forward.

Staff confirmed PG&E's requirements in writing and solicited a proposal for a contract change order (CCO) from the contractor to do the extra conduit work that was needed. Because the contractor's proposal was substantially higher than the City's estimate to perform the work, staff then tried to negotiate a fixed price for the additional conduit work, as well as the delay costs that had accrued since the identification of the additional conduit requirement, and other miscellaneous costs.

After failing to reach a fixed price agreement for the extra work, staff met with the City Attorney to review available options to restart the work. Pursuant to City Policy and Procedure No. 63 (Contractual Change Orders), the City Engineer and/or City Manager can approve the CCO if the situation is urgent and the change is in the City's best interests, affects the public health, safety or general welfare. Following approval of the CCO, staff must present the CCO to the City Council for subsequent ratification. As discussed below, the need for CCO #4 meets the requirements of Policy and Procedure No. 63.

The CCO #4 was executed in June, 2016 with both force account (time and materials) pricing for items where there was disagreement between the City and PG&E, and fixed pricing for agreed items. Based on the CCO #4, the contractor resumed work on July 5<sup>th</sup>. To minimize traffic congestion at the intersection during peak travel periods and to allow for productive shifts, a majority of the extra work is performed at night.

### **Analysis**

The total estimated cost of the Contract Change Order is \$141,364, including \$62,228 of delay charges, \$11,547 in fixed price work for on-going site maintenance during the delay period of 150 working days, \$12,235 rental charges of trench plates and shoring during the delay period of 150 working days, and \$55,354 in force account (time and materials) work for construction of additional joint trench to allow extension of conduit required by PG&E. The final costs of the force account work will be calculated after the associated work is completed and the actual labor and material costs are tabulated.

Given the delays that have occurred to the project to date, the interest in the project to the general welfare of the public and the City, and the desire to halt accrual of more delay charges and get the contractor back to work, the City Engineer made a finding that the conditions were urgent and met the intent of the Policy and Procedure No. 63.

### **Financial Impact**

There are sufficient funds in the project budget to fully fund the cost of CCO #4. The need for this CCO is the direct result of construction requirements that were unexpectedly changed by PG&E after they had reviewed and approved the project design. Further, PG&E did not inform the City that a previously available conduit was no longer available due to their appropriation of it earlier in the year. With the assistance

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of the City Attorney's office, staff will vigorously pursue reimbursement from PG&E for the costs attributable to this issue once the work has been completed and the costs have been finalized.

**Public Contact**

The City Council Agenda was posted.