

**Council Meeting: April 26, 2011****SUBJECT: Authorization to Amend an Existing Contract for the Refurbishment of Water Tanks at Wright Avenue (F1004-104)****BACKGROUND**

Approval is requested to amend an existing contract with AA-1 Services, Inc. of Paramount, CA for the refurbishment of water tanks at the Wright Avenue Water Plant to increase the total contract value by \$136,000 to compensate for a contractor claim submitted during the course of construction on the project.

DISCUSSION

On May 27, 2009, Invitation for Bids No. F0805-76 for the Refurbishment of Water Tanks at Wright Ave (Project No.UW-08/06-08) was released. The project included interior and exterior coating, seismic upgrades and replacement of connection hardware for two (2) 5-million gallon water storage tanks at the Wright Avenue Water Plant. AA-1 Services was the lowest responsive and responsible bidder of the seven bids received in response to the bid invitation. Council awarded a contract on July 28, 2009 (RTC No. 09-198) in an amount of \$1,233,153 for construction (plus a 10% contingency of \$123,315).

Construction of the project was completed in August 2010. During construction, the contractor submitted notices of potential claims and filed a potential claim of \$636,921 for compensation for unforeseen and changed conditions in the form of mill scale encountered under the existing coating of the tanks. The contractor claimed that the encountered mill scale was neither shown in the contract documents nor anticipated by a reasonable bidder at bid time. Public Works Construction Engineering rejected the contractor's claim. Subsequently, the contractor elevated the claim for review to the Director of Public Works as required by the dispute resolution provisions of the construction contract.

The Public Works Department reevaluated the contractor's claim and consulted with the City Attorney's Office. Public Works determined that the contractor's claim had merit and subsequently negotiated a settlement with the contractor for a reduced amount of \$180,000. This amount constitutes full settlement and final release of all claims by the contractor.

The entire construction budget awarded for the project has been expended and only \$44,571 of the original contingency remains. In order to pay for the negotiated settlement, the value of the contract must be increased.

FISCAL IMPACT

In order to pay the negotiated settlement the value of the existing contract needs to be increased by \$136,000, which along with the remaining contingency will cover the claim. As the costs for construction were less than anticipated in the budget, funds are still available in Project 824311 (Refurbishment of Water Tanks at Wright Avenue).

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

RECOMMENDATION

It is recommended that Council approve an amendment, in substantially the same form as the attached draft, to an existing contract with AA-1 Services, Inc. for the refurbishment of water tanks at the Wright Avenue Water Plant to increase the contract value by \$136,000 to compensate for the negotiated settlement to a contractor claim submitted during the course of construction on the project.

Reviewed by:

Grace K. Leung, Director of Finance
Prepared by: Pete Gonda, Purchasing Officer

Reviewed by:

Marvin Rose, Director of Public Works

Approved by:

Gary M. Luebbbers
City Manager

Attachments

- A. Draft Amendment to General Construction Contract

**ATTACHMENT A
DRAFT**

**AMENDMENT TO GENERAL CONSTRUCTION CONTRACT
BETWEEN THE CITY OF SUNNYVALE AND AA-1 SERVICES, INC.
FOR REFURBISHMENT OF WATER TANKS AT WRIGHT AVENUE**

This Amendment to Consultant Services Agreement, dated _____, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY") and AA-1 SERVICES, INC. ("CONTRACTOR").

WHEREAS, on September 29, 2009, CITY and CONTRACTOR entered into a General Construction Contract whereby CONTRACTOR would perform construction services necessary for a project known as Refurbishment of Water Tanks at Wright Avenue (Project No. UW-08/06-08) consisting of interior and exterior coating, seismic upgrades and the replacement of connection hardware for two (2) 10-million gallon water storage tanks at the Wright Avenue Water Plant; and

WHEREAS, the parties now agree that an Amendment to said Contract is advisable;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AMENDMENT TO GENERAL CONSTRUCTION CONTRACT:

Section 3. Contract Price – replace existing with the following:

3. Contract Price. The CITY agrees to pay and the Contractor agrees to accept, in full payment for the work above agreed to be done, the lump sum of One Million Three Hundred Sixty Nine Thousand One Hundred Fifty three and No/100 Dollars (\$1,369,153.00) subject to additions and deductions as provided in the Contract Documents and in accordance with Contract Documents. The sum includes base bid and accepted Additive Alternates Number 1 through 4 inclusive.

All other terms and conditions remain unchanged.

IN WITNESS WHEREOF, the parties have executed this Agreement Amendment.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By _____
City Clerk

By _____
City Manager

APPROVED AS TO FORM:

AA-1 SERVICES, INC.
("CONTRACTOR")

By _____
City Attorney

By _____

Name and Title