

ORDINANCE NUMBER O- 21886 (NEW SERIES)

DATE OF FINAL PASSAGE OCT 18 2024

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING CHANGE ORDER NO. 12 TO THE CONSTRUCTION CONTRACT WITH KIEWIT INFRASTRUCTURE WEST CO. (K-21-1861-DBB-3) FOR THE NORTH CITY WATER RECLAMATION PLANT EXPANSION IN AN AMOUNT NOT TO EXCEED \$16,000,000; AND AUTHORIZING THE CONTRACT OBLIGATIONS TO EXTEND BEYOND FIVE YEARS AND OTHER RELATED ACTIONS.

RECITALS

The Council of the City of San Diego (Council) adopts this Ordinance based on the following:

A. On June 16, 2021, the City of San Diego (City) entered into construction contract K-21-1861-DBB-3 with Kiewit Infrastructure West Co. (Contractor) for the North City Water Reclamation Plant Expansion (Project) for an amount not to exceed \$255,138,000 (Contract) as authorized by Resolution R-312062 (January 14, 2021).

B. During the course of construction, the Contractor claimed monetary damages related to delays encountered during the extended procurement and delivery time for large electrical equipment, and further alleged the delays were attributable to site conditions different from those presented in the contract plans, requiring design modifications. As a result of the delays, the Contractor claimed entitlement to additional compensation of \$27,000,000, of which \$22,000,000 was for time related overhead costs and \$5,000,000 was for related subcontractor escalation claims.

C. On May 29, 2024 the City and the Contractor participated in a mediation to resolve the claims, resulting in an agreement to settle the claims for \$16,000,000. The settlement includes addition of working days to the Contract, resolution of several outstanding Time Impact

Analysis claims, including time related overhead and subcontractor claims, and resolution of any and all claims related to project delays that occurred or may have occurred prior to May 29, 2024.

D. Construction Change Order No. 12, if approved by Council, will resolve all Contractor claimed costs as negotiated at the May 29, 2024 mediation for an amount of \$16,000,000.

E. The original Project completion date under the Contract was March 14, 2025. Staff now anticipates that all work will be completed by December 2027. This will require extending the Contract obligations for an additional 17 months to allow completion of all construction activities.

F. The Office of the City Attorney prepared this Ordinance based on the information provided by City staff (including information provided by affected third parties and verified by City staff), with the understanding that this information is complete and accurate.

G. The Contract is subject to San Diego Charter section 99, which provides (subject to certain exceptions) that no contract, agreement, or obligation creating indebtedness and extending for a period of more than five years may be authorized except by an ordinance adopted by a two-thirds majority of the Council.

ACTION ITEMS

Be it ordained by the Council of the City of San Diego:

Section 1. The Council approves Construction Change Order No. 12.

Section 2. The Council authorizes the extension of the Contract obligations for an additional 17 months to December 31, 2027.

Section 3. The Mayor, or his designee, is authorized, on behalf of the City, to sign and deliver Construction Change Order No. 12. When signed by both parties, Construction Change Order No. 12 will be placed on file in the Office of the City Clerk as Document No. OO- **21886**.

Section 4. The Chief Financial Officer is authorized to increase the Capital Improvements Program Budget in the amount of \$16,000,000 in CIP P-19002, Pure Water Pooled Contingency, of which \$10,097,600 is from Fund 700009 Metro Sewer CIP and \$5,902,400 from Fund 700010, Water Utility CIP.

Section 5. The Chief Financial Officer is authorized to appropriate and expend an additional amount not to exceed \$16,000,000 of which \$8,561,600 is from CIP B-21060 "PWP North City Water Rec Plant Expansion" Fund 700009 Metro Sewer CIP, \$3,817,600 is from B-21128 "PWP NC Wtr Rec Plant Expansion (W)" Fund 700010 Water Utility CIP, \$1,913,600 is from B-16140, NCPWF Influent Pump Station and Pipeline" Fund 700010 Water Utility CIP, and \$1,707,200 is from S-17012, "NCWRP Improvements to 30 mgd, of which \$1,536,000 is from Fund 700009 Metro Sewer CIP and \$171,200 from Fund 700010 Water Utility CIP, for the purpose of funding Construction Change Order No. 12 that will address the terms and conditions of the settlement agreement, contingent upon the Chief Financial Officer furnishing one or more certificates certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

Section 6. The Council dispenses with a full reading of this Ordinance before its passage because a written copy of this Ordinance was made available to the Council and the public before the date of its passage.

Section 7. This ordinance will take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By Elizabeth Anne Cason
Elizabeth Anne Cason
Deputy City Attorney

EAC:hm
September 16, 2024
Or.Dept: PW – Contract Formation
Doc. No. 3795550

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of OCT 15 2024.

DIANA J.S. FUENTES
City Clerk

By Kristell Medina
Deputy City Clerk

Approved: 10/18/24
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

OCT 15 2024

Passed by the Council of The City of San Diego on _____, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Henry L. Foster III	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage OCT 18 2024.

AUTHENTICATED BY:

(Seal)

TODD GLORIA

Mayor of The City of San Diego, California.

DIANA J.S. FUENTES

City Clerk of The City of San Diego, California.

By Linda Krwin, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

OCT 01 2024

, and on

OCT 18 2024.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

DIANA J.S. FUENTES

City Clerk of The City of San Diego, California.

By Linda Krwin, Deputy
For Krystell Medina

Office of the City Clerk, San Diego, California

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