

J.F. Shea Construction, Inc.

General Contractors
License No. 769989

July 03, 2024

Mission Springs Water District
66575 Second Street
Desert Hot Springs, CA 92240

Attention: Lucas Rathe – Resident Engineer
Reginal Water Reclamation Facility
Project No. 17-002-S

Subject: Potential Change Order No. 038 – Burrowing Owl Impacts/ Earthwork Operations Inefficiencies

Dear Mr. Rathe,

J.F. Shea Construction, Inc. (JFS) has been in discussion with Mission Springs Water District (MSWD) regarding the issues that have impacted our ability to complete the project per the original schedule. There are several significant unforeseen events that have contributed to the overall project delays. This summary is intended to provide facts related to the issues and a guideline to acknowledging merit for these impacts.

During the preparation stage for commencing work in the south infiltration basins area, an email was issued providing notification to stop all work associated with clearing and grubbing in the infiltration pond areas (entire southern half of the project site) until further notice. It was determined that the stop notice was due to a burrowing owl that had been discovered by the Biologist performing a pre-construction inspection of the upcoming work area. Several workarounds had to be implemented including a temporary basin to manage structure testing water and resequencing of earthwork activities and crews due to the inability to perform work as planned. Ultimately the delay to this significant portion of work caused impacts throughout the project, including unavoidable operation inefficiencies. JFS has continued to work through this issue with MSWD, including special Biologist requests and a complete resequencing of work to work within the evolving work boundaries resulting from this issue.

MSWD provided a response on April 3, 2023, to JFS's Burrowing Owl Delay Notification dated March 3, 2023, including a suggestion that JFS could be at fault for this delay since nesting bird season was nearing at the time of discovery. JFS is in disagreement with the suggestion that "JFS had ample opportunity" to construct the basins "outside of the nesting bird season". The Contract Documents do not provide limitations to the Contractor's work for any period/ season or in any area of the project. Furthermore, the Burrowing Owl issue falls under MMRP Section 4.5-1 which only requires a 30-day notification for a clearance survey with *no further restrictions*. The nesting bird survey per MMRP Section 4.5-3 is a stand-alone requirement that does not apply directly to the Burrowing Owl, as this section is intended to monitor for "raptors" and "migratory birds" with *no correlation to burrowing owls*. JFS stands behind its interpretation that this is a delay beyond the Contractor's control.

The timeline below provides insight to the time impacts caused by this change:

- 2/23/23 – Owner provided Stop Notice for all work on south side of project site due to discovery of burrowing owl

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- 3/03/23 – JFS provided delay notification to MSWD due to work stoppage
- 4/03/23 – MSWD responded to delay notification
- 10/18/23 – Obtained partial authorization to work in south areas
- 10/18/23 – JFS resequenced work and started south structures work, followed by Basin #3 excavation.
- 1/23/24 – MSWD provided authorization/ clearance to work in all areas.

The south basins work was originally planned to start March 15, 2023, and be completed by August 9, 2023, including earthwork, structures, mechanical and electrical work. The work restrictions continued for 334 calendar days from the day the stop notice was issued through the date full authorization to work in all areas was provided. JFS used best judgement to resequence work and shift personnel and equipment to accommodate this issue, and to attempt to minimize impacts to operational direct cost. Unfortunately, the duration of the delay caused the project to lose key personnel and did not allow for operations to be conducted efficiently and at the lowest cost possible. Based on this, most earthwork related operations on the project suffered significant inefficiencies and our crews did not have the ability to recover from these.

JFS has evaluated the impacts to operational direct cost and has determined that this delay has caused significant direct cost losses due to the evolving work restrictions and the inability to perform major portions of work in a single mobilization. JFS has compiled actual direct cost for specific impacted operations in order to compare against the original estimated budgets. Please reference Exhibit 1 – 17002S-MSWD-RWRF Burrowing Owl Impacts – Earthwork Operations Cost Code Report. Note, this cost information is confidential and must not be shared outside of your organization without explicit approval from JFS.

In accordance with General Conditions Section 2.13, J.F. Shea Construction, Inc. is hereby providing a Lump Sum Cost Proposal in the amount of **\$295,107.00** for the Burrowing Owl Impacts - Earthwork Operations Inefficiencies. Please reference Exhibit 2 – 17002S-MSWD-RWRF Burrowing Owl Impacts Cost Summary. Per General Conditions Section 2.13, J.F. Shea Construction, Inc. is requesting issuance of a Change Order in order to formalize this change request. Please contact me at (909) 824-4293 if you have any questions or require any additional information.

Sincerely,



Rafael Torres
Project Manager
J.F. Shea Construction, Inc.

Attachments:

1. Exhibit 1 – 17002S-MSWD-RWRF Burrowing Owl Impacts – Earthwork Operations Cost Code Report
2. Exhibit 2 – 17002S-MSWD-RWRF Burrowing Owl Impacts Cost Summary

EXHIBIT 1

17002S-MSWD-RWRF

17002S-MSWD-RWRF Burrowing Owl Impacts - Earthwork Operations Cost Code Report

Cost Code	Cost Code Description	Uom	Type	Estimate Dollars	Estimate Units	Estimate Unit Cost	Job to Date % Compl.	Job to Date Units	Job to Date Dollars	Job to Date Bdgt Earned	Job to Date Unit Cost	Job to Date Gain / Loss
02-203-003	South Portion Excavation	CY	L	83,249	41,000.000	2.030	100.00%	41,000.000	130,381	83,249	3.180	(47,132)
02-203-003	South Portion Excavation	CY	I	48,075	41,000.000	1.173	100.00%	41,000.000	109,364	48,075	2.667	(61,289)
02-203-003	South Portion Excavation	CY	O	33,000	41,000.000	0.805	100.00%	41,000.000	39,523	33,000	0.964	(6,523)
Cost Code:				164,324		4.008			279,268	164,324	6.811	(114,943)
02-203-011	Slope Finish	SF	L	44,676	200,000.000	0.223	100.00%	200,000.000	69,041	44,676	0.345	(24,365)
02-203-011	Slope Finish	SF	I	6,221	200,000.000	0.031	100.00%	200,000.000	39,493	6,221	0.197	(33,272)
02-203-011	Slope Finish	SF	O	17,600	200,000.000	0.088	100.00%	200,000.000	10,534	17,600	0.053	7,066
Cost Code:				68,497		0.342			119,069	68,497	0.595	(50,572)
02-213-011	Subgrade Finish	SF	L	63,728	180,000.000	0.354	100.00%	180,000.000	91,236	63,728	0.507	(27,508)
02-213-011	Subgrade Finish	SF	I	6,705	180,000.000	0.037	100.00%	180,000.000	42,371	6,705	0.235	(35,666)
02-213-011	Subgrade Finish	SF	O	36,630	180,000.000	0.204	100.00%	180,000.000	2,681	36,630	0.015	33,949
Cost Code:				107,063		0.595			136,288	107,063	0.757	(29,225)
02-213-013	Base/Sand Placement	TN	L	49,790	4,693.000	10.609	100.00%	4,693.000	55,176	49,790	11.757	(5,386)
02-213-013	Base/Sand Placement	TN	I	10,723	4,693.000	2.285	100.00%	4,693.000	14,091	10,723	3.003	(3,368)
02-213-013	Base/Sand Placement	TN	O	28,619	4,693.000	6.098	100.00%	4,693.000	10,845	28,619	2.311	17,774
Cost Code:				89,132		18.993			80,112	89,132	17.071	9,020
02-213-017	Install Redwood Header	LF	L	25,395	8,795.000	2.887	100.00%	8,795.000	58,481	25,395	6.649	(33,086)
02-213-017	Install Redwood Header	LF	I	1,770	8,795.000	0.201	100.00%	8,795.000	2,347	1,770	0.267	(577)
Cost Code:				27,165		3.088			60,828	27,165	6.916	(33,663)
02-213-023	Large Area Rip Rap Chanls	TN	L	30,596	7,750.000	3.948	100.00%	7,750.000	38,413	30,596	4.957	(7,817)
02-213-023	Large Area Rip Rap Chanls	TN	I	17,040	7,750.000	2.199	100.00%	7,750.000	15,323	17,040	1.977	1,717
02-213-023	Large Area Rip Rap Chanls	TN	O		7,750.000		100.00%	7,750.000	2,355		0.304	(2,355)
Cost Code:				47,636		6.147			56,091	47,636	7.238	(8,455)
50-100-015	Dewater Basin (PCO-38)	LS	L	-	100.000	-	100	100.000	11,213	-	-	(11,213)
50-100-015	Dewater Basin (PCO-38)	LS	I	-	100.000	-	100	100.000	4,186	-	-	(4,186)
Cost Code:									15,399			(15,399)
TOTAL SOUTH BASINS RELATED WORK				503,817					747,055			(243,237)

33%
of
115k

EXHIBIT 2

17002S-MSWD-RWRF

JF Shea Construction
Regional Water Reclamation Facility
MSWD Project No. 17-002-S

PCO/ CO: PCO-038

DESCRIPTION: Burrowing Owl Impacts - Earthwork Operations Inefficiencies

DATE

Issued: 04/30/24
Priced: 07/01/24

Item	Description	UM	Qty	MH/unit	Total MH	Rate	Total Labor Cost	Material Taxable	Other Non-Tax	Equipment	Sub	Total Cost	
1	JFS Direct Cost Losses	LS	1			\$ 243,237.00	\$ -	\$ -	\$ 243,237.00	\$ -	\$ -	\$ 243,237.00	
2						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
3						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
4						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
5						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
6						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
7						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
8						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
9						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
10						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
11						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
12						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
13						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
14						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
15						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
16						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
17						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
18						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
19						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
20						\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
SUBTOTAL					0		\$ -	\$ -	\$ 243,237.00	\$ -	\$ -	\$ 243,237.00	
Sales Tax 7.75%									\$ -				\$ -
SUBTOTAL							\$ -	\$ -	\$ 243,237.00	\$ -	\$ -	\$ 243,237.00	
MARKUP (Profit Only)													
Labor 10%								\$ -					\$ -
Materials 10%									\$ -	\$ 36,485.55			\$ 36,485.55
Equipment 10%											\$ -	\$ -	
Subcontractor 5%											\$ -	\$ -	
SUBTOTAL							\$ -	\$ -	\$ 36,485.55	\$ -	\$ -	\$ 279,722.55	
G&A COST (5.5%)													\$ 15,384.74
Total Cost												\$ 295,107.00	

Notes:

1. Reference Exhibit 1 for cost details.
- 2.
- 3.