



DATE: March 23, 2021

TO: Mayor and City Council

FROM: Director of Public Works

SUBJECT: Adopt Resolutions Authorizing the City Manager to Increase the Consultant and Construction Contracts for the 21ST Century Library – Heritage Plaza Project and Appropriate Funds

RECOMMENDATION

That the Council adopt resolutions (Attachments II, III, and IV) to:

1. Appropriate \$850,000 of Measure C funds to Project 06988 – 21st Century Library and Community Learning Center and Heritage Plaza Restoration;
2. Authorize allocation of \$400,000 to the 21st Century Library Project's construction contract with T.B. Penick and Sons, Inc; and
3. Authorize allocation of \$100,000 to the 21st Century Library Project's consultant services contract with Noll + Tam and authorize the City Manager to execute an amendment to that contract.

SUMMARY

A construction contract for the 21st Century Library Project was awarded to TB Penick & Sons, Inc., (TBP) in the amount of \$52,550,000 on September 15, 2015. The TBP contract was increased to \$52,948,512 after receipt of a State of California Department of Housing and Community Development grant of \$398,512 for the Hayward Heritage Plaza construction. Construction of the library was expected to be complete within eighteen months of the Notice to Proceed that was issued as of January 4, 2016.

The project has experienced numerous delays due to project management turnover and late subcontractor payments, as well as for reasons such as contaminated soil removal, the COVID pandemic, and wildfire smoke concerns. There have been 385 Potential Change Orders (PCOs) submitted by TBP. Of these PCOs, 270 have been negotiated and approved, 64 have been rejected and 51 are still under discussion or awaiting additional documentation from TBP. Change orders for over \$1.2 million were approved for soil remediation efforts, public art, donor signage, and café tenant improvements.

Because of the extended project duration of over 3.5 years and unanticipated costs associated with the soil remediation efforts, an additional project appropriation of \$850,000 from Measure C funds is being requested for \$400,000 for construction contract administrative change orders to TBP, \$100,000 for an amendment to the professional services consultant contract with Noll + Tam, \$150,000 for construction administration, inspection and testing activities, and \$200,000 for anticipated outside legal services.

BACKGROUND

The Adopted Fiscal Year (FY) 2016 Capital Improvement Program (CIP) included a total of \$60,900,000 for the 21st Century Library Project. On September 15, 2015¹, Council appropriated an additional \$4,780,000 for this project from the Measure C Capital fund and awarded a construction contract to TBP, in the amount of \$52,550,000. This increased the project appropriation to \$65,680,000.

On November 7, 2017, the State of California Department of Housing and Community Development awarded a grant of \$398,512 to the City for construction of the Hayward Heritage Plaza. On May 14, 2019², Council approved a resolution authorizing an increase to the 21st Century Library project appropriation and the TBP construction contract by the amount of this grant with these funds used to reimburse the City for Heritage Plaza construction project expenses incurred prior to June 30, 2019. This additional authorization increased the overall project appropriation to \$66,078,512 and the construction contract amount to \$52,948,512.

On July 2, 2019³, Council authorized an additional appropriation increase of \$30,000 for Public Heritage Art and Interpretive Signage for a total project appropriation of \$66,108,512. Construction of the 21st Century Library was expected to take place over two years in two phases, with the first phase library construction taking eighteen months to complete and the second phase plaza construction taking another six months to complete. A one-month hiatus between phases was expected to allow for the library staff and collections to be moved into the completed building.

Library construction began on January 4, 2016 and was expected to be complete by November 17, 2017 with additional days allowed for rainy weather and construction delays not caused by the contractor. With understandably high community expectations, a soft opening with a ribbon cutting ceremony was held October 27, 2018 after the contractor appeared to be making good progress towards completion of the Phase 1 work. After a temporary occupancy permit was obtained, the grand opening event was rescheduled for and held on September 14, 2019. Subcontractors are continuing to work on construction punch list items and on unfinished areas, including rework on many of the library's wood surfaces,

¹ <https://hayward.legistar.com/LegislationDetail.aspx?ID=2456904&GUID=79444133-B65E-49C7-A133-21CF1F72C946&Options=&Search=>

² <https://hayward.legistar.com/LegislationDetail.aspx?ID=3945368&GUID=6879892A-7032-4500-A81E-CFBB859A6AAA&Options=&Search=>

³ <https://hayward.legistar.com/LegislationDetail.aspx?ID=3998570&GUID=0ABA8CA5-0CF9-4817-B01E-76732EB796C1&Options=&Search=>

modifications to the HVAC system, additional waterproofing, miscellaneous electrical, flooring, security, door hardware, signage, plumbing and other repairs, touch-up painting along with garage elevator and stairway installation.

Due to an expectation that good progress would continue after the late summer and early fall of 2018, library staff agreed to relocate staff offices and collections to the new library during September/October 2018. Phase 2 of the project began with the start of demolition of the old library during October 2018.

Project progress has been hampered by ongoing issues with TBP management turnover and late or non-payments to TBP subcontractors. Twenty-one stop notices have been received by the City to date from subcontractors claiming that they were not paid for work they performed for the library project. The City is required to withhold payments due to TBP in the amount claimed on each stop notice until a “stop notice release” or “surety bond” is received. On March 14, 2019, TBP informed the City that work on the project would cease until they were able to receive payment for work performed. One week later, the work stoppage ended when a surety bond was released in amounts equal to the stop notices that were recently received. Regrettably for the project, many of the subcontractors had demobilized their work forces and equipment from this project and were very slow to remobilize.

The management turnover has also resulted in steep learning curves for the new superintendents and project managers familiarizing themselves with the remaining work required and outstanding issues. The new TBP management has submitted billing statements for two- or three-month periods instead of one-month periods, adding to the subcontractor delayed payment dilemma and making subcontractor work scheduling and coordination even more difficult.

Additional construction delays have occurred as a result of Health Department related concerns about wildfire smoke and the Covid-19 pandemic.

DISCUSSION

Funds appropriated for construction contract administrative change orders (ACOs) have been exhausted. Funds appropriated for the library and plaza project have been nearly exhausted.

Besides the generally anticipated number of design and construction conflicts expected on a project of this size and complexity, there were some large unanticipated costs. At the beginning of the project, basement walls and demolition debris from prior construction were discovered. Lead, probably from lead-based wall paints and leaded gas used at the gas station previously located on this site, had to be removed. Remediation costs totaled approximately \$821,000. Changes made to accommodate public art and donor signage amounted to approximately \$215,000. Public utility modification requests from Pacific Gas and Electric and Pacific Bell amounted to \$125,000 while tenant improvements required by the Alameda County Health Department for the café permit cost another \$55,000.

The library and plaza construction durations are more than three years and two years longer than expected, respectively. The original construction budget did not account for the extended staff, consultant, testing and inspection, and vendor costs associated with the delayed completion. Additional consultant costs are estimated at \$100,000, while additional staff, inspection, testing, and other costs are estimated at \$150,000.

The contractor has submitted over 385 PCOs for this project. Staff has negotiated and approved 270 of these PCOs and rejected 64 of these PCOs because the work was in-scope or required because of contractor error. The remaining 51 PCOs were recently submitted, are under review by City consultants, or are awaiting additional clarifications or documentation from the contractor so they may be finalized. Staff is recommending an estimated additional appropriation of \$400,000 to resolve PCOs through project completion.

Because of the extended duration of this project and the numerous problems experienced by and with many subcontractors, staff is expecting a lengthy period of claims, counter claims, and litigation following project completion. Outside legal support services are estimated at \$200,000.

Work on library building punch list items will continue into Summer 2021 and hopefully prior to the Library's reopening following the easing of County health order restrictions. Ongoing landscape planting and cistern commissioning activities for Heritage Plaza could be completed by late April 2021 if the current construction activity stays on track.

ECONOMIC IMPACT

There is no economic impact associated with this item.

FISCAL IMPACT

The allocation of these funds to the 21st Century Library and Community Learning Center and Heritage Plaza Arboretum Project construction contract will increase the overall project cost from \$66,108,512 to \$66,958,512, will increase the construction contract allocation from \$52,948,512 to \$53,948,512 and will increase the consultant services contract from \$5,000,000 to \$5,100,000.

STRATEGIC ROADMAP

As noted in the "Support Quality of Life – Priority Item 6 – Plan Library operations and hours to leverage the new facility" section of the Strategic Roadmap Priorities and Projects adopted during the Special City Council Meeting on February 13, 2021 – Completion of the 21st Century Library and Heritage Plaza project will enable staff to optimize use of the new library and park spaces.

SUSTAINABILITY FEATURES

This is an allocation of funds to an on-going construction project for a purpose previously approved by Council.

PUBLIC CONTACT

Not applicable for this item.

NEXT STEPS

Work on library punch list items will continue into Summer 2021. The tentative expectation is that the woodwork repairs and atrium smoke exhaust louver installation will be completed in April 2021. Ongoing plaza landscape planting and cistern commissioning activities could be completed by late April 2021 if current construction activity remains on target. The plaza completion date is highly dependent upon TBP finding nurseries with the large box trees specified on the approved plans or approved substitutes.

Prepared by: Kevin Briggs, Senior Civil Engineer

Recommended by: Alex Ameri, Director of Public Works

Approved by:



Kelly McAdoo, City Manager