



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen
Jennifer Maguire

SUBJECT: SEE BELOW

DATE: 10-29-07

Approved

Date

11/5/07

COUNCIL DISTRICT: 6

SUBJECT: ADOPTION OF APPROPRIATION ORDINANCE AMENDMENTS IN THE BRANCH LIBRARIES BOND PROJECTS FUND AND APPROVAL OF A CONTINGENCY BUDGET INCREASE AND A CONTRACT CHANGE ORDER FOR THE ROSE GARDEN BRANCH LIBRARY

RECOMMENDATION

- a) Approval of a contingency budget increase in the amount of \$42,120 from \$370,000 to \$412,120 for the Rose Garden Branch Library project.
- b) Approval of Contract Change Order No. 26 with Robert A. Bothman Construction, Inc. for the Rose Garden Branch Library Project in the amount of \$45,294, for a total contract amount of \$7,817,385, as a final payment that resolves all outstanding issues.
- c) Adoption of the following Appropriation Ordinance Amendments in the Branch Libraries Bond Projects Fund:
 1. Increase the appropriation to the Library Department for the Rose Garden Branch for \$21,000; and
 2. Decrease the Ending Fund Balance by \$21,000.

OUTCOME

Approval of the increase to the contingency and of Contract Change Order No. 26 will enable the City to make a final payment to Robert A. Bothman Construction, Inc., that will resolve all outstanding compensation issues.

BACKGROUND

In September 2000, Council approved the Branch Facilities Master Plan, which had concluded that the City's branch library system needed significant capital improvements, including reconstruction or replacement of 14 of the 17 existing branches, and construction of six additional branches in unserved neighborhoods. In November 2000, the voters of San José

passed the Library Bond Measure (Measure O) to improve the library system in accordance with the Master Plan. The Rose Garden Branch Library is the fifth library to have been constructed under the Library Bond Measure program. The branch is located at the intersection of Naglee and Dana Avenues in San José (map attached). Substantial completion of the project was achieved on December 16, 2005, and Notice of Acceptance recorded with Santa Clara County on June 22, 2006.

The Rose Garden Branch Library project was completed approximately five months beyond the contractual completion date. The contractor and City staff have examined the causes of the delay and the proposed change order represents a resolution of these issues.

ANALYSIS

Two issues caused most of the delay of the project completion. The first issue was the replacement of the foundation subcontractor due to financial instability and insufficient resources to complete the work. The second issue was the PG&E relocation of overhead high-voltage power lines. The contractor has accepted responsibility for the subcontractor replacement and the City has agreed to compensate the contractor for schedule impacts outside their control.

The Engineer's Final Estimate analysis of the Contractor's General Conditions Cost for compensated time extension vs. City assessed damages resulted in a net additional amount owed to the General Contractor of \$45,294.

Compensated time due Robert A. Bothman – 130 days at \$1,715/day	\$222,950
City Assessed Damages	
- Equality Assurance wage violation assessment	(69,656)
- Impact for Delay – 36 days at \$3,000/day	<u>(108,000)</u>
Total due Robert A. Bothman	\$45,294

Given the challenges faced by Robert A. Bothman in replacing sub-contractors, and the City of San José working through PG&E related issues, the above reconciliation represents what is considered by Public Works staff to be a reasonable resolution and recommends approval of this request.

In 2006-2007 PG&E provided the City with a rebate check for the Rose Garden Branch Library for its participation in the Savings by Design program for energy efficiency. This funding was not utilized last fiscal year, therefore the funding became part of the funds Ending Fund Balance. The actions recommended in this memorandum would remove \$21,000 funding from the Ending Fund Balance and restore it to the project budget.

As previously mentioned, the remaining balance owed to the General Contractor for this project is \$45,294, however, the remaining contingency balance for the project is only \$3,174. This memorandum, therefore, requests the contingency budget be increased by \$42,120. Remaining project costs total \$46,339, which includes \$45,294 for outstanding costs to the General

Contractor, and \$1,045 in remaining project delivery costs. This memorandum includes an appropriation action to increase the project budget by \$21,000, which in conjunction with the existing project appropriation of \$26,000 (making the new available funding total \$47,000) will ensure there is adequate funding to complete the project.

The City standard for new buildings is 10%, however, the approved contingency for this project was 5% as a strategy to reduce costs. Actual contingency used would increase from 4.95% to 5.57% with approval of this request. This is well within what is considered a reasonable contingency for this type of project.

The proposed change order would contain language making clear that this final payment resolves and settles all outstanding issues between the parties.

Resolution efforts regarding ongoing warranty issues, including system failures, for the HVAC system at the library have resulted in Public Works staff deferral of processing this request until such time as an accurate assessment could be made regarding cause. The Rose Garden Branch Library HVAC system represents the very latest in eco-friendly, energy efficient, technology and has presented significant challenges for everyone with respect to understanding the inherent complexities and operating parameters involved. An intensely focused effort has been made by Public Works staff, General Services, the Engineer of Record, contractors, and product manufacturer's representatives to resolve these issues. Until recently, it was thought that some of the HVAC issues might be attributable to construction work performed by Robert A. Bothman. However, Public Works staff has determined, as a result of the analysis performed, that the issues are operational in nature and not related to faulty installation. Despite the challenges, final resolution of all remaining operational issues is expected in the very near future.

EVALUATION AND FOLLOW-UP

The project is complete. No additional follow up actions with the Council are expected at this time.

POLICY ALTERNATIVES

Not applicable.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**

- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This item does not meet any of the above criteria, but will be posted on the City's website for the December 4, 2007 City Council meeting.

COORDINATION

This memorandum and project have been coordinated with the Departments of Parks, Recreation and Neighborhood Services and Planning, Building and Code Enforcement, Library, and City Attorney's Office.

FISCAL/POLICY ALIGNMENT

This project is consistent with the Council-approved Budget Strategy, Economic Recovery section, in that it will help to stimulate construction spending in our local economy.

COST SUMMARY/IMPLICATIONS

1.	AMOUNT OF RECOMMENDATION/COST OF PROJECT:	
	Project Delivery	\$1,469,735
	Construction	7,772,091
	Remaining Contingency	3,174
	Public Art	<u>143,000</u>
	Total Project Costs	\$9,388,000
	Prior Year Expenditures	<u>(9,341,661)</u>
	Remaining Project Costs	\$46,339*

*The remaining project costs includes \$45,294 for close-out costs for the contractor, and \$1,045 in project delivery costs.

2. SOURCE OF FUNDING: 472 – Branch Libraries Bond Projects Fund
3. OPERATING COSTS:
This facility is already opened to the public; therefore, no additional fiscal impact is anticipated as a result of the actions recommended in this memorandum.

BUDGET REFERENCE

The table below identifies the fund and appropriations proposed to fund the contract recommended as part of this memorandum and remaining project costs, including project delivery, construction, and contingency costs.

Fund #	Appn #	Appn. Name	Total Appn	Amt. for Contract	2007-2008 Adopted Budget Page	Last Budget Action (Date, Ord. No.)
Remaining Project Costs			\$46,339			
Current Funding Available						
472	4026	Rose Garden Branch	\$26,000		V-256	10/16/07, Ord. No. 28143
Additional Funding Recommended						
472	8999	Ending Fund Balance	\$21,000*		V-259	10/16/07, Ord. No. 28143
Total Current Funding			\$47,000			

*The Ending Fund Balance for the Branch Libraries Bond Projects Fund totals \$25,736,042, however, only \$21,000 is being utilized for the Rose Garden Branch project.

CEQA

CEQA: Exempt, ND (Negative Declaration) No. PP H02-065.

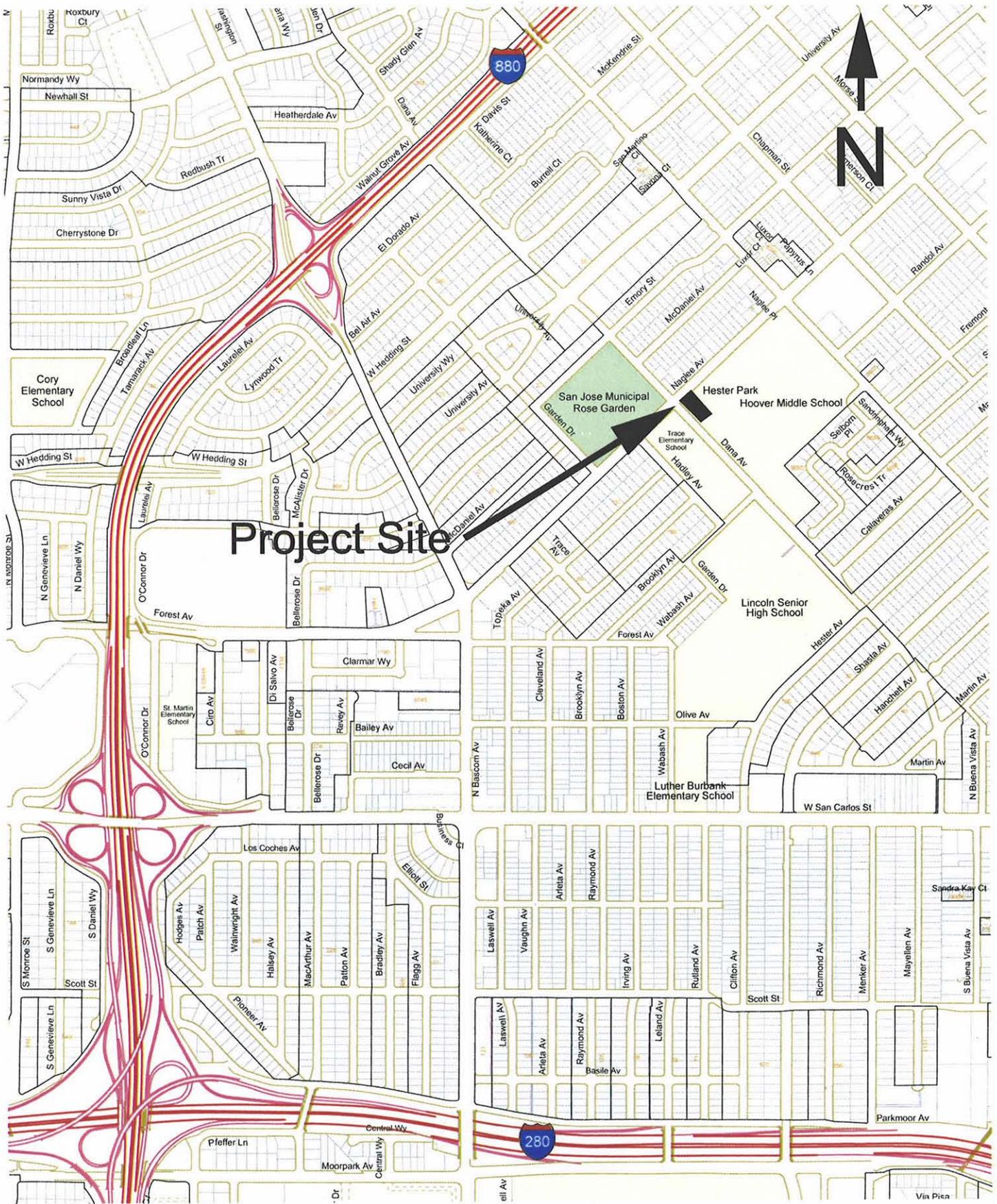


KATY ALLEN
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JENNIFER MAGUIRE
 Acting Budget Director

For questions please contact DAVE SYKES, ASSISTANT DIRECTOR, PUBLIC WORKS DEPARTMENT, at 408-535-8300.



Project Site

880

280

ROSEGARDEN BRANCH LIBRARY

Location Map
Not to Scale