



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen
Darryl Von Raesfeld

SUBJECT: SEE BELOW

DATE: 11-10-08

Approved

Date

11/14/08

COUNCIL DISTRICTS: 9 & 10

SUBJECT: APPROVAL OF VARIOUS AMENDMENTS FOR CONSULTANTS AGREEMENTS FOR FIRE STATIONS NOS. 12 AND 17

RECOMMENDATION

- a. Approval of the Third Contract Amendment for Don Dommer Associates, Inc. for the Fire Station No. 12 project, increasing the agreement compensation by \$35,152 from \$347,929 to \$383,081 and extending the contract term by three months from March 1, 2009 to June 1, 2009.
- b. Approval of the Fourth Contract Amendment with Banducci Associates Architects, for the Fire Station No.17 project, increasing the agreement compensation by \$30,275 from \$369,555 to \$399,830 and extending the contract term by three months from March 1, 2009 to June 1, 2009.

OUTCOME

Approval of the amendments to the architectural consulting agreements will provide sufficient funds and time necessary to secure consultant services through to completion and close out processes of the construction of Fire Station Nos. 12 and 17.

EXECUTIVE SUMMARY

In large part because of contractor performance problems, the construction of Fire Station Nos. 12 and 17 is nearing completion later than scheduled. Late completion of the construction, along with a variety of other contractor performance problems, have resulted in the architectural design consultants hired to design the projects and provide construction administrative support having to expend additional staff time and effort beyond that included in their base agreements. The proposed agreement amendments will allow the City to secure the necessary consultant services through the duration of the projects and compensate the consultants for services rendered.

BACKGROUND

In March 2002, San José voters passed the Neighborhood Security Bond Act that approved the issuance of \$159 million in General Obligation bonds to fund the construction of various public safety facilities. A portion of the items funded under the Bond Act is the construction of four new fire stations to replace four existing stations. Fire Station No. 12 is the second replacement station and will be located on a portion of a parcel located at 5912 Cahalan Avenue adjacent to the Santa Teresa Catholic Church. The new station will replace the existing Fire Station No. 12, currently located at 502 Calero Avenue, a little less than one mile from the proposed fire station (map attached). Fire Station No. 17, the third replacement station, will be located at 5170 Coniston Way at the northeast corner of Blossom Hill Road and Coniston Way (map attached). This relocated fire station will replace the existing station currently located at 1494 Ridgewood Drive near the intersection of Dent Avenue and Kooser Road.

On November 30, 2004, the City entered into agreement with Banducci Associates Architects for architectural design services on the Fire Station No. 17.

On February 7, 2006 the City entered into an agreement with Don Dommer Associates, Inc. for architectural design services on the Fire Station No. 12 Relocation project.

The two projects were subsequently bundled as one construction contract as a cost efficiency measure. On April 10, 2007, Council awarded the construction contract to Fire Station Nos. 12 and 17 projects to D.L. Falk Construction, Inc. On this date, Council also approved amendments to both consultant agreements which extended their respective end dates to October 1, 2008. A Notice to Proceed with construction was issued to D.L. Falk on May 1, 2007. As of this memo, the projects are approximately 97% and 99% complete respectively.

On November 6, 2007, the City Council approved the increase of the combined construction contingency from \$340,000 to \$510,000 due to the discovery of Native American remains during construction at the New Fire Station No. 12. At that time, Council also approved the second amendment for the Banducci Associates Architects' agreement to accommodate additional programmatic changes that the Fire Department had requested during the additional length of time needed to bundle, and re-bid Fire Station No. 17 with Fire station No. 12.

On September 30, 2008 the City Manager executed the second and third consultant agreement amendments for Don Dommer and Banducci Architects respectively to extend the term of the agreements by five months from October 1, 2008 to March 1, 2009. This was necessary to avoid the expiration of the agreements before the projects were completed.

As of this memo, the construction of both stations is essentially complete. The contractor continues to perform punch list work while City staff works on completing the installation of operational equipment and furniture that are not part of the contractor's work. On November 5, 2008, Fire Station No. 17 became operational and the crews began responding for calls for service from this station. As of this report, Fire Station No. 12 still requires some additional

equipment installation and alerting system testing before crews can move in and begin using the station. Staff anticipates activation of the station by late November or early December 2008.

ANALYSIS

Throughout construction of the projects the City has experienced a number of different problems with the performance of D.L. Falk Construction. One problem directly impacting the Dommer and Banducci architectural consultant agreements is that D.L. Falk Construction regularly provided inadequate submittals and submittals that did not provide the required levels of engineering coordination. Submittals in the form of drawings and product data are required from contractors to confirm acceptability and coordination of work prior to installation. Another problem directly impacting these consultant agreements is that D.L. Falk Construction has been unable to complete the projects in a timely manner. The current contractual completion date for Fire Station No. 12 was August 10, 2008. The current contractual completion date for Fire Station No. 17 was August 23, 2008. For Fire Station No. 12, D.L. Falk achieved substantial completion on October 24, 2008 which is 75 days late. For Fire Station No. 17, D. L. Falk achieved substantial completion on October 14, 2008 which is 52 days late. Both stations have substantive punch list items that the contractor continues to work on before the City can issue final acceptance certificates and close out the projects.

The additional length of time for construction beyond the contractual completion dates has required the architectural consultants for the Fire Station Nos. 12 and 17 projects to expend additional time for construction administration services. Moreover, in order to avoid even greater delays in D.L. Falk's completion of the Projects, both Dommer and Banducci expended additional time and provided supplemental engineering services during construction beyond that in their respective agreements. The consultants provided multiple re-reviews and coordination of submittals and shop drawing, performed added site visits and attended construction meetings as required to complete the projects. In order to facilitate completion of these projects in as timely manner as possible, each of the consultants performed these services without interruption on an ad-hoc basis and before they could provide quotes and fee proposals.

To compensate both Dommer and Banducci for the additional services rendered beyond the scopes of their existing agreements, and to provide sufficient funds to allow them to complete the contract closeout and record documents, staff is recommending that the two agreements to be amended and their compensation amounts increased. Staff is also recommending that the additional services tasks for each agreement be increased by a combined total of \$15,000 to address any future services needed to close out the subject projects.

The amount earmarked in the Dommer agreement (Fire Station No. 12) for additional services would be increased by a total of \$35,152, resulting in a total maximum contract amount of \$383,081. Of this amount, \$25,152 would be used to compensate Dommer for authorized additional services already provided. \$10,000 would be used to pay for any future additional services needed to close out the project.

The amount earmarked in the Banducci agreement (Fire Station No. 17) for additional services would be increased by a total of \$30,275, resulting in a total maximum contract amount of \$399,830. Of this amount, \$25,275 would be used to compensate Banducci for authorized additional services already provided. \$5,000 would be used to pay for any future additional services needed to close out the project.

Staff believes that the delays in the completion of the respective projects and the additional costs incurred are the responsibility of the D.L. Falk and intends to seek liquidated damages from this contractor. In light of D.L. Falk's performance problems on these two projects staff is also considering what other remedies may be available to the City.

EVALUATION AND FOLLOW-UP

The projects are currently within budget. No additional follow up actions with the Council are expected at this time.

POLICY ALTERNATIVES

Alternative #1: Use of City staff for construction closeout services.

Pros: City staff would perform all final sign-offs and Construction Record Document and related contract closeout work.

Cons: City Staff are not the Architects and Engineers of Record for the subject projects responsible for certifying that the construction was implemented in accordance with the contract documents and for producing the Record Documents. The consultant would not be compensated for additional services that were performed to prevent greater delays to the projects completion.

Reason for not recommending: Reliance solely on City resources would not allow the City to compensate the consultants for the unanticipated additional work required to date that work. Accordingly, it is recommended that the requested consultant agreement extensions will allow for the efficient and timely completion of punch lists and record documentation required for an essential facility.

Alternative #2: Require the contractor to directly compensate the consultants.

Pros: No contract amendments would be required.

Cons: The contractor may dispute the costs and refuse to directly compensate the Architects and Engineers of Record for the subject projects. There may also be conflict of interest in having the City's consultant paid directly by the contractor.

Reason for not recommending: While staff is analyzing the project record to verify if portions of the contract retention can be withheld to reimburse the City for staff and consultant expenses that were incurred fulfilling the Contractor's obligations, the final amounts due the City are not finalized at this time. Requiring the contractor to compensate the City's consultants directly may result in a lengthy dispute that even if the City were to prevail would unfairly delay compensation for services rendered in good faith. Accordingly, it is recommended that the

requested increase in compensation to both consultant agreements will allow for the efficient and timely completion of punch lists and record documentation required for an essential facility.

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 action does not meet any of the criteria above; however, this memorandum will be posted on the City's website for the December 2, 2008 Council agenda.

COORDINATION

This memo has been coordinated with the City Manager's Budget Office and the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

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

COST SUMMARY/IMPLICATIONS

1. AMOUNT OF RECOMMENDATION/COST OF PROJECT:	\$65,427*	
Project Delivery		\$ 3,317,984
Construction		6,924,729
Contingency		<u>510,000</u>
TOTAL PROJECT COSTS		\$10,752,713
Prior Year Expenditures		10,273,713 **
REMAINING PROJECT COSTS		\$ 479,000

* Combined total for both projects

** A total of \$10,273,713 was expended and encumbered from 2002-2003 thru 2007-2008 for project delivery and construction costs for Fire Station Nos. 12 and 17 combined.

2. COST ELEMENTS OF AGREEMENT/CONTRACT:
- a. ELEMENTS OF CONSTRUCTION CONTRACT: \$6,924,729
 This is a Lump Sum Contract.
- b. ELEMENTS OF AGREEMENTS: * CURRENT** AMENDMENTS
- | | | |
|--|------------------|--------------------|
| Program Review / Design Scoping | 25,905 | 0 |
| Schematic Design | 38,855 | 0 |
| Design Development | 84,255 | 0 |
| Construction Documents | 264,478 | 0 |
| Bidding and Award | 75,955 | 0 |
| Construction Administration | 127,005 | 0 |
| Record Documents / Project Closeout | 10,072 | 0 |
| Additional Services | 90,959 | \$ 65,427 |
| TOTAL ORIGINAL AGREEMENTS: | \$717,484 | \$65,427.00 |
| TOTAL ORIGINAL PLUS AMENDMENTS: | | \$782,911 |
- * Combined total for both agreements (Dommer & Banducci)
 ** Including all prior Amendments for both agreements

3. SOURCE OF FUNDING: 475 – Neighborhood Security Bond Fund
 392 – Construction and Property Conveyance Tax Fund:
 Fire Protection Purposes

4. OPERATING COSTS: Since Fire Stations 12 and 17 are already existing facilities, no additional funding was assumed in the 2008-2009 Adopted Operating Budget for the incremental operating and maintenance cost increase of the new fire stations.

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	RC No.	Total Appn.	Amt. For Contracts	2008-2009 Adopted Budget Page	Last Budget Action (Date, Ord. No.)
<u>Remaining Project Costs</u>				\$479,000			
<u>Current Funding Available</u>							
475	4545	Fire Station 12-Relocation (Calero)	122865	\$161,000	\$35,152 Dommer	V-880	10/21/08 Ord. No. 28422
392	4545	Fire Station 12-Relocation (Calero)	TBD	\$35,000		N/A	10/21/08 Ord. No. 28422

475	4807	Fire Station 17 – Relocation (Cambrian)	128965	\$283,000	\$30,275 Banducci	V-880	10/21/08 Ord. No. 28422
Total Current Funding Available				\$479,000	\$65,427		

CEQA

CEQA: Fire Station No. 12: Mitigated Negative Declaration, PP05-071: Planning has issued a mitigated negative declaration for this project. The mitigated negative declaration identifies a number of mitigations that need to be implemented in order to address environmental impacts. These mitigation measures and their manner of implementation are identified in the Mitigation Monitoring and Reporting Program for the project. These mitigations have been incorporated into the project design and the construction documents. On April 10, 2007 Council approved these mitigations and their manner of implementation, as set forth in the Mitigation Monitoring and Reporting Program, and directed the implementation of these mitigations as part of the project.

CEQA: Fire Station No. 17: Exempt, PP05-275



KATY ALLEN
Director, Public Works Department



DARRYL VON RAESFELD
Chief, Fire Department

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

KA:kj:dp:lw
Attachment
Vicinity Map