



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen
Darryl Von Raesfeld

SUBJECT: SEE BELOW

DATE: 01-04-10

Approved

Date

1/8/10

COUNCIL DISTRICT: 8

SUBJECT: REPORT ON BIDS AND AWARD OF CONTRACT FOR CONSTRUCTION OF FIRE STATION NO. 36.

RECOMMENDATION

Report on bids and award the construction contract for the Fire Station No. 36 Project to the lowest responsive bidder, Applegate Johnston, Inc., to include the base bid and Add Alternate Nos. 2 and 3, in the amount of \$4,008,500, and approve a contingency in the amount of \$601,275.

OUTCOME

Award of the construction contract to Applegate Johnston, Inc., (Applegate) will enable the Fire Station No. 36 project to proceed. Approval of a 15 percent contingency will provide funding for any unanticipated work necessary for the proper completion or construction of the project.

EXECUTIVE SUMMARY

Bids for the project were opened on November 3, 2009. The low bidder for the project is Barry Swenson Builder. The second lowest bidder is Applegate. Subsequent to the bid opening, Barry Swenson Builder was relieved of their bid based on a mistake made in filling out the bid documents. After the bid opening, the third lowest bidder, Reeve-Knight Construction, Inc., (Reeve Knight) filed a bid protest claiming that Applegate failed to list subcontractors for certain portions of the specified scope of work, as well as listing one subcontractor that was unlicensed. Swenson Development and Construction (Swenson Development), the fourth lowest bidder, also filed bid protests claiming that both Applegate and Reeve Knight failed to list subcontractors for certain portions of the specified scope of work.

The protest letters and responses to those protest letters are included in the analysis of this memorandum. After carefully analyzing the issues, staff finds the protests are without merit and recommends the award of contract to the second lowest bidder, Applegate Johnston, Inc.

Staff is requesting that the project schedule for Fire Station No. 36 be reset to reflect a change in the base line construction start date of March 1, 2010. This is requested in order to address the consultant's delayed delivery of the 100% contract and bid documents and the necessary response period for multiple bid protests received after the bid opening, moving the award date to January 2010.

BACKGROUND

In March 2002, the voters in San José passed Measure O, the "9-1-1, Fire, Police, Paramedic and Neighborhood Security Act" (Neighborhood Security Act Bond Measure). This bond measure authorized the City to issue General Obligation Bonds in an amount not to exceed \$159 million to fund capital improvements in the Public Safety Capital Program.

The Fire Station No. 36 project is the eighth new Fire Station to be initiated under the Neighborhood Security Act Bond Program. Fire Station No. 36 is a new two-company, two-story building, with two apparatus bays containing approximately 11,378 square feet. The facility will be located at 1924 Yerba Buena Road at the north end of Silver Creek Linear Park, near the intersection of Silver Creek Road and Yerba Buena Road, in southeast San José. Fire Station No. 36 is being designed as an "Essential Services Facility" in accordance with the California Essential Services Buildings Seismic Safety Act of 1986.

In addition to the base bid scope of work, there are three Add Alternate bid items as follows:

Add Alternate No. 1: Flagpole pylon/bench with canopy

Add Alternate No. 2: Installation of plywood wall panel in the apparatus bay.

Add Alternate No. 3: Installation of six tubular skylights for the second floor hallway.

Construction is scheduled to begin in March 2010 with completion in July 2011.

ANALYSIS

A. Report on bids and recommendation to award construction contract.

Bids were opened on November 3, 2009 with the following results:

<u>Contractor</u>	<u>Base Bid</u>	<u>Add Alts. 2 & 3 Total</u>	<u>Total Base Bid+Add Alts.2&3</u>	<u>Variance Amount</u>	<u>Over/ (Under) Percent</u>
Kuehne Construction (Sunnyvale)	\$6,067,506	\$56,661	\$6,124,167	\$244,633	4
Engineer's Estimate	\$5,862,000	\$17,534	\$5,879,534		
Tombleson Incorporated (Salinas)	5,594,172	16,276	5,610,448	(269,086)	(5)

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<u>Contractor</u>	<u>Base Bid</u>	<u>Add Alts. 2 & 3 Total</u>	<u>Total Base Bid+Add Alts.2&3</u>	<u>Variance Amount</u>	<u>Over/ (Under) Percent</u>
Bogard Construction, Inc. (Santa Cruz)	\$4,864,000	\$16,118	\$4,880,118	(\$999,416)	(17)
Rodan Builders, Inc. (Burlingame)	4,773,000	18,500	4,791,500	(1,088,034)	(19)
W.A. Thomas Co., Inc. (Martinez)	4,740,000	17,000	4,757,000	(1,122,534)	(19)
ZCON Builders (Oakland)	4,687,000	21,000	4,708,000	(1,171,534)	(20)
Zolman Construction & Development, Inc. (San Carlos)	4,680,000	20,000	4,700,000	(1,179,534)	(20)
John Plane Construction (Brisbane)	4,665,000	22,200	4,687,200	(1,192,334)	(20)
McCrary Construction Company (Belmont)	4,602,293	19,463	4,621,756	(1,257,778)	(21)
Ralph Larsen & Son, Inc. (San Mateo)	4,533,000	16,000	4,549,000	(1,330,534)	(23)
W.L. Butler Construction (Redwood City)	4,500,000	19,000	4,519,000	(1,360,534)	(23)
Zovich & Sons Inc. (Hayward)	4,435,000	35,000	4,470,000	(1,409,534)	(24)
Jeff Luchetti Construction, Inc. (Santa Rosa)	4,341,000	26,300	4,367,300	(1,512,234)	(26)
D.L. Falk Construction (Hayward)	4,289,000	18,000	4,307,000	(1,572,534)	(27)
Sausal Corporation (San Leandro)	4,241,000	16,000	4,257,000	(1,622,534)	(28)
Santa Clara Valley Corporation DBA Swenson Development & Construction (San Jose)	4,195,034	17,960	4,212,994	(1,666,540)	(28)
Reeve-Knight Construction, Inc. (Roseville)	4,170,000	15,328	4,185,328	(1,694,206)	(29)
Applegate Johnston, Inc. (Modesto)	3,991,000	17,500	4,008,500	(1,871,034)	(32)
Green Valley Corporation DBA Barry Swenson Builders (San Jose)	3,990,000	13,700	4,003,700	(1,875,834)	(32)

<u>Contractor</u>	<u>Add Alt No. 1</u>	<u>Add Alt No. 2</u>	<u>Add Alt No. 3</u>
Kuehne Construction	\$51,542	\$18,513	\$38,148
Engineer's Estimate	\$12,633	\$6,575	\$10,959
Tombleson Incorporated	31,441	4,101	12,175
Bogard Construction, Inc.	31,262	2,666	13,452
Rodan Builders, Inc.	8,000	4,500	14,000
W.A. Thomas Co., Inc.	15,000	6,500	10,500
ZCON Builders	36,000	7,500	13,500
Zolman Construction & Development, Inc.	20,000	10,000	10,000
John Plane Construction	17,600	5,200	17,000
McCrary Construction Company	37,100	5,300	14,163
Ralph Larsen & Son, Inc.	27,000	5,000	11,000
W.L. Butler Construction	72,000	3,000	16,000
Zovich & Sons Inc.	35,000	20,000	15,000
Jeff Luchetti Construction, Inc.	39,000	6,300	20,000
D.L. Falk Construction	17,000	4,500	13,500
Sausal Corporation	51,000	6,000	10,000
Swenson Development & Construction	18,730	5,960	12,000
Reeve-Knight Construction, Inc.	26,091	4,387	10,000
Applegate Johnston, Inc.	18,000	4,000	13,500
Barry Swenson Builders	17,300	4,200	9,500

All but one of the 20 bids received are below the Engineer's Estimate. The low bids submitted by Barry Swenson Builders and Applegate, with a base bid difference of \$1,000 between them, are 32 percent below the Engineer's Estimate.

The large number of bidders and the fact that the lowest 15 bids received ranged from 20 to 32 percent below the Engineer's Estimate, strongly suggests that the regional construction market continues to remain highly competitive, and in particular, for public sector projects. While the Engineer's Estimate was based on trends of construction costs experienced over the last several years, it also allowed for the softening of the current construction market. With the weakened economy and high unemployment rate in the area, the construction industry has been adversely affected, driving more companies to bid on municipal projects. The high number of bidders and the good bid results are therefore attributed to the increasingly favorable bidding climate that staff has recently experienced on several other projects. Staff believes that the narrow variation in the bid results continue to reflect the fact that contractors are submitting bids with reduced overhead/profit and other costs, and that some contractors are even submitting bids that reflect a decision to take a loss. This has made it very difficult to provide accurate cost estimates. Also, the narrow bid range indicates that the bid documents are consistent and that the below market value bids are valid and acceptable for the work involved in the project.

Shortly after the bid opening on November 3, 2009, Barry Swenson Builder notified the City that they had made a mistake in filling out their bid and provided documentation and a written request to be relieved of their bid in accordance with the City's Standard Specifications, dated July 1992, Section 2-1.095 Relief of Bidders, due to a mistake made in tabulating their bid when it was delivered to the City Clerk's office. Upon review of the documentation provided by Barry Swenson Builder to support their request, the City approved the request to be relieved from their bid without forfeiting the bid security (Bidder's Bond).

As a result of granting Barry Swenson relief of their bid, staff recommends award of the construction contract including Add Alternates 2 and 3 to Applegate. The construction award will include the base bid and Add Alternates 2 and 3 for a total construction contract of \$4,008,500. After careful consideration, Add Alternate 1 is not being recommended for award due to the higher-than-expected cost and the limited added value the bench and canopy at the flag pole would bring to the project.

Council Policy provides for a standard contingency of 10 percent on public works projects involving the construction of a building. Along with the award of the construction contract, staff is recommending a 15 percent construction contingency. Due to the below market value bid, the contingency amount for this contract will yield approximately 32 percent less than what it would normally yield from a contract of full market value. To increase the ability of staff to effectively manage any unforeseen work and/or address other challenges arising during the construction phase, staff is recommending increasing the contingency fund from the standard 10% to 15% or \$601,275 of the contract amount. The funds budgeted for this project are sufficient to provide for the recommended contingency. Furthermore staff estimates that due in large part to the low bids, approximately \$500,000 of the project budget could be made available for other pressing Fire improvement program needs. Staff is developing a reallocation plan for all funds in excess of construction and delivery costs to cover the cost of remaining improvements for various facilities that were not previously evaluated, prioritized and or addressed. These improvements are needed in order to:

- 1- Ensure the ongoing operation and function of the existing fire training center and
- 2- Complete the functional upgrades in various areas of several old fire stations.
- 3- Address potential costs for extended construction management of Fire station 19.

B. Bid Protests and Award of Contract

On November 9, 2009, staff posted the bid results and bid documents of all bidders. On November 17, 2009, the letter of intent to award the contract was posted on the City's website and later faxed to all bidders. This letter indicated the City's intent to award a contract to the second low bidder, Applegate, and instructed that all bid protests must be submitted within five business days. Prior to the deadline, staff received protests from Reeve Knight and Swenson Development.

Protests from Reeve Knight regarding bid of Applegate and Staff responses are outlined as follows:

1. Protest that the bid is not responsive because subcontractors for painting, concrete finishes, and concrete rebar are not listed is without merit.

Project specifications require that, in the event a bidder intends to subcontract any portion of work in an amount in excess of ½ of 1% of the bidder's proposal, the bidder must identify each such subcontractor in its bid, together with a description of the portion of the work to be performed by each such subcontractor. In the event a bidder fails to identify a subcontractor for any such portion of the work, the bidder is obligated to perform that portion itself (i.e. as opposed to subcontracting that portion of the work). By law, general building contractors (i.e. "B" licensees) are permitted to self-perform (i.e. perform with their own work forces, as opposed to the work forces of subcontractors holding specialty trade licenses) the work of any specialty trade other than fire protection and well drilling. It should be noted that numerous individual items of work are generally considered as being included in a broader description of a "portion" of work, even though those items are not mentioned specifically in a bidder's proposal. For example, the individual item of work consisting of "concrete finishes" is normally considered to be included within the portion of work described as "concrete" without specific mention of "concrete finishes" in the bidder's proposal. Substantial remedies are available to the City, including the imposition of penalties and cancellation of the construction contract, as against bidders who fail to observe subcontractor listing requirements.

Reeve Knight asserts that Applegate's bid is non-responsive because Applegate did not identify painting, concrete finishes or concrete rebar subcontractors. Additionally, as the project specifications require concrete finishes to be applied by applicators certified by the applicable manufacturers, Reeve Knight questions Applegate's qualification as a certified applicator.

This protest is without merit for the following reasons. First, Reeve Knight has merely asserted that such portions of the work represent an amount in excess of ½ of 1% of Applegate's proposal. Second, in the event that any of such portions of the work do in fact represent an amount in excess of ½ of 1% of Applegate's proposal and were not otherwise properly included within other portions of work identified as being subcontracted, then Applegate will be obligated to, and as a general building contractor may legally, self-perform such portions of the work. Finally, any question of Applegate's qualification as a certified applicator is not relevant to the responsiveness of Applegate's proposal for the reason that any project specification requiring that concrete finishes be applied by manufacturer-certified applicators is a performance specification to be met at the time the work is performed, not a responsiveness-linked qualification to be demonstrated at the time proposals are submitted.

2. Protest that the bid is not responsive because the listed subcontractor for the fueling system is unlicensed is without merit.

The subcontractor identified in Applegate's proposal for the fueling system, American Contractors & Environmental Services (identified in its proposal by the abbreviation "ACES"), is a "B" licensee and, as such, may legally perform such work. The identification of the subcontractor by an acronym of its name, particularly when the business location has been provided and the subcontractor's full name can be easily ascertained, does not constitute an irregularity requiring disqualification of Applegate's proposal.

Protests from Swenson Development regarding the bid of Applegate and staff responses are outlined as follows:

1. Protest that the bid is not responsive because subcontractors for metal fabrications, concrete finishes and concrete rebar, and a "qualified" subcontractor for vehicle tailpipe exhaust, are not listed is without merit.

Swenson Development asserts that Applegate's bid is non-responsive because Applegate did not identify metal fabrications, concrete finishes or concrete rebar subcontractors. Additionally, as the project specifications for the vehicle tailpipe exhaust portion of the work are based upon a certain manufacturer's (Nederman) system, Swenson Development questions the qualifications of Applegate's listed HVAC subcontractor (Lias Mechanical) as an authorized distributor of that system. Further, as the project specifications require concrete finishes to be applied by applicators certified by the applicable manufacturers, Swenson Development questions Applegate's qualification as a certified applicator. Finally, Swenson Development questions Applegate's experience and qualifications to self-perform metal fabrications or vehicle tailpipe exhaust work.

This protest is without merit for the following reasons. First, again, it has merely been asserted by Swenson Development that such portions of the work represent an amount in excess of ½ of 1% of Applegate's proposal. Second, in the event that any of such portions of the work do in fact represent an amount in excess of ½ of 1% of Applegate's proposal and were not otherwise properly included within other portions of work identified as being subcontracted, then Applegate will be obligated to, and as a general building contractor may legally, self-perform such portions of the work. Third, any question of Lias Mechanical's qualification as an authorized distributor of Nederman systems is not relevant to the responsiveness of Applegate's proposal for the reason that the identification of vehicle tailpipe exhaust system to be installed and the qualifications of the provider of that system are determinations to be made and/or matters to be confirmed post-award, not a responsiveness-linked qualification to be demonstrated at the time proposals are submitted. Fourth, any question of Applegate's qualification as a certified applicator is not relevant to the responsiveness of Applegate's proposal for the reason that any project specification requiring that concrete finishes be applied by manufacturer-certified applicators is a performance specification to be met at the time the work is performed, not a responsiveness-linked qualification to be demonstrated at the time proposals are submitted. Finally, while staff recognizes the difference between a bidder's being legally permitted to self-perform a portion of the work and that same bidder's experience and qualifications to self-perform that portion of the work, the assertions of Swenson Development regarding Applegate's

experience and qualifications to self-perform metal fabrications or vehicle tailpipe exhaust work are presented entirely without factual basis and, without more, cannot be seriously considered by staff as a basis for questioning the responsiveness of Applegate's proposal or for that matter the responsibility of Applegate as a bidder on this or any other project.

Protest from Swenson Development regarding the bid of Reeve Knight and staff responses are outlined as follows:

1. Protest that the bid is not responsive because properly licensed subcontractor for custom casework is not listed is without merit.

Swenson Development asserts that Reeve Knight's bid is non-responsive because Reeve Knight did not identify a properly licensed custom casework subcontractor.

This protest is without merit for the reason that Reeve Knight did list a subcontractor, Countertop Specialists, for "finish carpentry." Further, while it does not appear that this subcontractor is presently licensed to permit it to legally provide "C-6" trade work (i.e. cabinet, millwork and finish carpentry), and staff would consider it unusual for listed subcontractors not to be properly licensed at the time of proposal submittal, there is no requirement that they be so licensed at the time of proposal submittal. Ultimately, it is the responsibility of the prime contractor to ensure that the subcontractors with whom they contract are properly licensed. Should Countertop Specialists not have the proper license, such failure may be grounds for their substitution with another subcontractor; however, their failure to be so licensed at the time of Reeve Knight's proposal submission does not render the Reeve Knight proposal non-responsive. Additionally, if there is any question of Countertop Specialists' qualification as a member of the Woodwork Institute it is not relevant to the responsiveness of Reeve Knight's proposal for the reason that any project specification requiring that custom casework be undertaken by a member of the Woodwork Institute is a performance specification to be met at the time the work is performed, not a responsiveness-linked qualification to be demonstrated at the time proposals are submitted.

C. Applegate Performance

Applegate is currently the general contractor for the construction of Fire Station No. 19 which is approximately 75% complete to date. Although significantly complete with the project, Applegate has had performance challenges with some sub-contractors resulting in a delay of the delivery of Fire Station No. 19. Applegate's performance issues, while a concern, are not severe enough to justify questioning the responsibility of Applegate as a bidder on this or any other project at this time. Although they have been able to improve upon their delay, Public Works will continue to monitor their performance. Public Works will report back to Council the status of the schedule.

EVALUATION AND FOLLOW-UP

This project is currently within budget. A schedule reset of the Beneficial Use Date will allow sufficient time to complete the project. Staff will return to Council to request approval of an amendment to increase compensation to the consultant RossDrulisCusenbery Architecture, Inc. and to extend the current consultant agreement to align with the extended project schedule.

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 action meets the first criteria above. This memorandum will be posted on the City's website for the January 26, 2010 Council agenda.

COORDINATION

The project and memorandum have been coordinated with the Departments of Planning, Building and Code Enforcement, General Services, Environmental Services, Finance, 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:	\$4,008,500	
Project Delivery	\$3,308,000	
Construction	4,500,500	*
Contingency	601,275	
TOTAL PROJECT COSTS	\$8,459,775	
Prior Year Expenditures	(1,682,005)	**
REMAINING PROJECT COSTS	\$6,727,770	

* The construction budget include costs for certain adjacent offsite street, sidewalk and trail improvements, utility fees, street signal modifications and owner provided equipment that are not part of the proposed contract. Those costs are estimated at approximately \$492,000 and are captured in the overall construction cost line item above.

** A total of \$1,683,623 was expended and encumbered thru fiscal year 2007-2008 for project delivery costs for Fire Station No. 36 and adjacent off-site improvements.

- | | |
|---|--|
| 2. COST ELEMENTS OF AGREEMENT/CONTRACT: | \$4,008,500 |
| This is a Lump Sum Contract. | |
| 3. SOURCE OF FUNDING: | 475 - Neighborhood Security Bond Act
392 – C&C tax Fund: Fire Protection Services |
| 4. OPERATING COSTS: | No additional operating costs will be incurred since this is a relocation of the existing Fire Station No. 24. |

BUDGET REFERENCE

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

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Fund #	Appn #	Appn. Name	RC #	Total Appn	Amt. for Contract	2009-2010 Adopted Budget (Page)	Last Budget Action (Date, Ord. No.)
Remaining Project Costs				\$6,727,770			
Current Funding Available							
475	4878	Fire Station No. 36 Silver Creek/ Yerba Buena	132015	\$6,880,000	\$4,008,500	V-743	10/20/2009 Ord. No. 28653
392	4878	Fire Station No. 36 Silver Creek/ Yerba Buena		\$66,000		V-743	6/23/2009 Ord. No. 28593
Total Current Funding				\$6,946,000	\$4,008,500		
Future Funding Available				\$282,000			
Total Funding Available				\$7,228,000			

CEQA

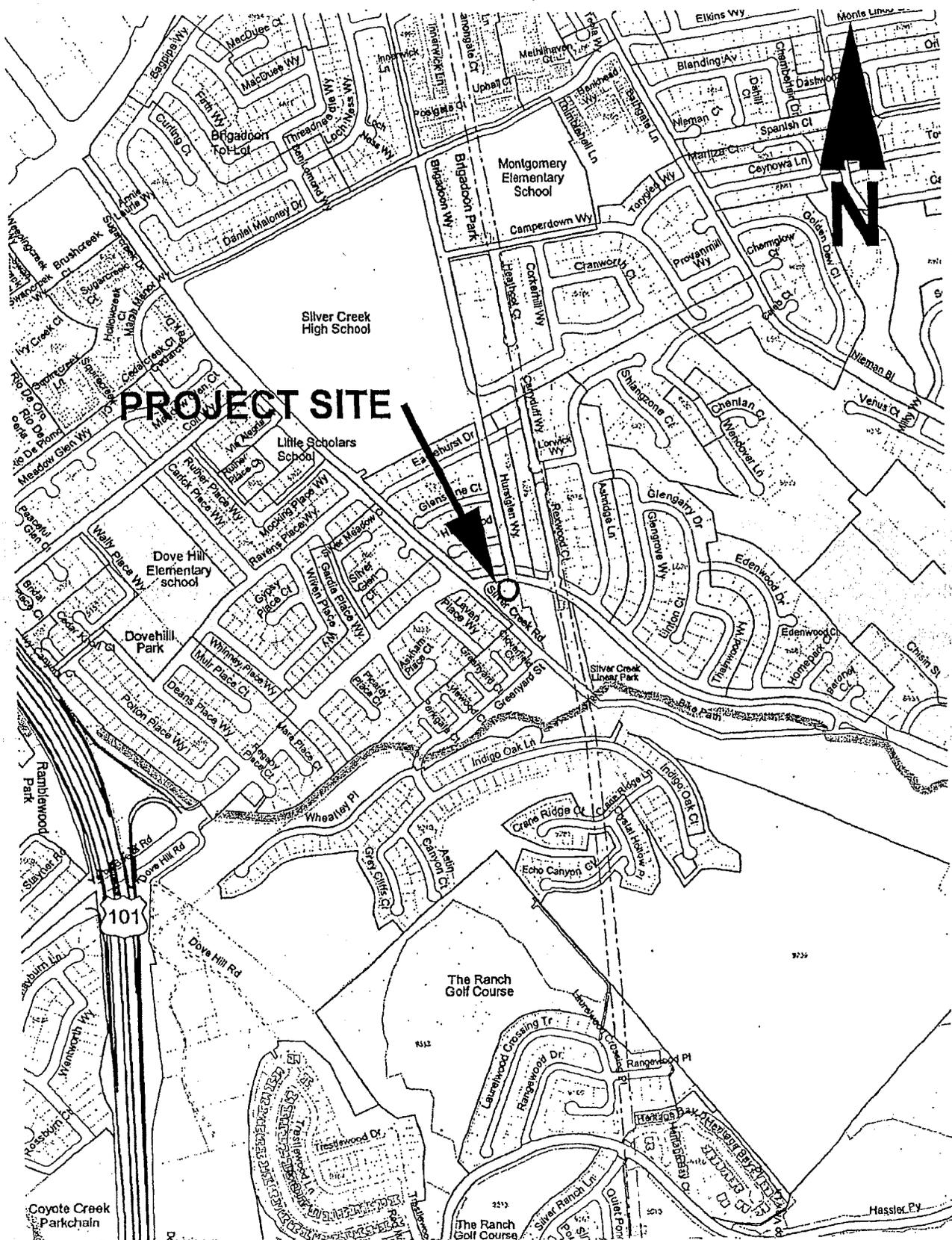
CEQA: Exempt, PPO6-009 and PPO9-150.

Katy Allen
 KATY ALLEN
 Director, Public Works Department

Darryl Von Raesfeld
 DARRYL VON RAESFELD
 Fire Chief

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

KJ: dp: ra
 Attachments



PROJECT SITE

**FIRE STATION #36
LOCATION MAP**
Not to Scale