



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: David Sykes
Jennifer A. Maguire

SUBJECT: SEE BELOW

DATE: April 16, 2012

Approved

Date

4/24/12

COUNCIL DISTRICT: 7

SUBJECT: APPROVAL OF CONTRACT CHANGE ORDER NO. 78 AND ADOPTION OF APPROPRIATION ORDINANCE AMENDMENTS IN THE PARKS AND RECREATION BOND PROJECTS FUND AND THE BRANCH LIBRARIES BOND PROJECTS FUND FOR THE SEVEN TREES COMMUNITY CENTER AND BRANCH LIBRARY

RECOMMENDATION

- a. Approve the Contract Change Order No. 78 (CCO No. 78) with Gonsalves and Stronck Construction Company, Inc. for the Seven Trees Community Center and Branch Library, resolving all outstanding issues by making a final payment of additional compensation in the total amount of \$255,681 for a total contract amount of \$27,502,160.
- b. Adopt the following Appropriation Ordinance amendments in the Parks and Recreation Bond Projects Fund (Fund 471):
 1. Increase the Seven Trees Community Center – Multi Service project by \$130,000 and
 2. Decrease the Contingency Reserve: Parks and Recreation Bond Projects by \$130,000.
- c. Adopt the following Appropriation Ordinance amendments in the Branch Libraries Bond Projects Fund (Fund 472):
 1. Increase the Seven Trees Branch project by \$16,000 and
 2. Decrease the Contingency Reserve: Library Bond Projects by \$16,000.

OUTCOME

Approval of the CCO No. 78 would result in the final settlement of all outstanding issues between the City and Gonsalves and Stronck regarding the construction of the Seven Trees Community Center and Branch Library. At the conclusion of the construction, Gonsalves and Stronck sought \$406,044 in additional compensation – only part of which the City concluded

was justified. The parties have agreed to resolve the matter by the City making a final payment in the amount of \$255,681. The appropriation action restores funding to the project to cover this final payment.

BACKGROUND

The new Seven Trees Community Center and Branch Library is the sixteenth library and second joint use facility project for the City of San José. The project was constructed using Library and Parks and Recreation bond funds (approved by San José voters in November 2000), as well as supplemental funding from the Council District 7 Construction and Conveyance Tax Fund and the Park Trust Fund.

The new facility is located on a 12 acre site in Council District 7. The site is bounded by Cedros Street and Los Arboles School in the north, Los Arboles Avenue and residential units on the east, Cas Drive and a commercial center on the south and Capitol Expressway to the west (map attached).

On May 20, 2008, the City Council awarded the construction contract to Gonsalves and Stronck Construction, Inc. (G&S) for the subject project in the amount of \$25,670,567 and approved a 10 percent contingency in the amount of \$2,570,000. A Notice to Proceed was issued on June 16, 2008 for a contract term of 655 calendar days. Construction began on June 26, 2008, and was substantially completed in July 2010, within the contractual completion date. The Notice of Acceptance was recorded on July 1, 2011, following completion of the punch list work.

ANALYSIS

Following substantial completion, G&S sought additional compensation from the City for additional work and differing site conditions such as

- Changes to the mechanical system
- Discovery of naturally occurring asbestos in the soil,
- Additional off-haul of soils.
- Structural changes in foundations and signs
- Additional miscellaneous changes.

The total amount of compensation sought by G&S was approximately \$406,044.

After carefully analyzing and considering the request for additional compensation, Public Works staff concluded that part of the request was justified. However, staff also concluded that a substantial part of the request was not justified, and the contractor had not provided documentation to sufficiently demonstrate otherwise. As a result, and following prolonged

April 16, 2012

Subject: Seven Trees Community Center and Branch Library- Contract Change Order No.78

Page 3

negotiations, the parties have agreed to resolve the matter by the City making a final payment in the amount of \$255,681 in additional compensation.

The final payment of \$255,681 would constitute a full settlement. It would settle all known and unknown claims of the contractor arising out of the Project, including any requests for additional compensation arising out of claims relating to delay, productivity, efficiency or other disruptive impacts. The settlement includes the City withholding necessary funds for stop notices until the contractor takes appropriate action.

Public Works staff believes that the final payment of \$255,681 constitutes a reasonable final payment to resolve all outstanding issues and bring the Project to a close. Moreover, even with this additional payment, the Project will have been completed within the approved contingency. Projects of this size and nature by policy have a contingency set at 10 percent of the construction cost. In this case, the project contingency was set at \$2,570,000 upon award. Should Council approve this settlement, the total contingency expenditure will be \$1,830,000.

While the project was completed well within the original budget, this memorandum includes a recommendation to allocate funding in the Parks and Recreation Bond Projects Fund (\$130,000) and the Branch Libraries Bond Projects Fund (\$16,000) to ensure sufficient funding is available for the final change order and additional project delivery costs. Project savings of approximately \$6,800,000 had previously been redistributed from these project budgets and placed in the respective funds' Contingency Reserves.

EVALUATION AND FOLLOW-UP

The project was within budget and schedule. No additional follow up action with the Council is expected at this time.

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 criteria above. This memorandum will be posted on the City's website for the May 8, 2012 Council agenda.

COORDINATION

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

COST SUMMARY/IMPLICATIONS

1. AMOUNT OF RECOMMENDATION: \$255,681

Project Delivery	\$5,998,000
Construction	25,670,567
Previous CCO #1 through CCO #77	1,575,912
Proposed CCO #78	255,681
Remaining Contingency	738,407
Public Art (Library portion)	210,000
TOTAL PROJECT COSTS	\$34,448,567
Prior Year Expenditures	34,121,975
REMAINING PROJECT COSTS	\$326,592

2. SOURCE OF FUNDING: 375-Subdivision Park Trust Fund
471-Parks and Recreation Bond Projects Fund
472-Branch Libraries Bond Projects Fund

3. OPERATING COST: The Seven Trees Branch Library is scheduled to open in December 2012/January 2013 and will have a net annual operating and maintenance impact of \$479,000 starting in FY 2012-2013 with an ongoing net annual operating and maintenance impact of \$891,000. This funding was included in the 2013-2017 General Fund Forecast, released in February 2012.

BUDGET REFERENCE

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

HONORABLE MAYOR AND CITY COUNCIL

April 16, 2012

Subject: Seven Trees Community Center and Branch Library- Contract Change Order No.78

Page 5

Fund #	Appn #	Appn. Name	Total Appn	Amt. for Contract	2011-2012 Adopted Budget Page	Last Budget Action (Date, Ord. No.)
Remaining Project Costs			\$326,592	\$255,681		
Current Funding Available						
375	5261	Seven Trees Community Center-Multi Service	\$99,000		V-490	09/20/11, Ord. No. 28966
471	5145	Seven Trees Community Center-Multi Service	\$13,000		V-566	10/18/11, Ord. No. 28979
472	5159	Seven Trees Branch	\$69,000		V-286	09/20/11 Ord. No. 28967
Total Current Funding Available			\$181,000	\$255,681		
Additional Funding Recommended*						
471	5145	Seven Trees Community Center-Multi Service	\$130,000		V-566	10/18/11, Ord. No. 28979
472	5159	Seven Trees Branch	\$16,000		V-286	09/20/11 Ord. No. 28967
Total Funding For Remaining Project Costs			\$327,000	\$255,681		

*Included in this memorandum is a recommendation to allocate \$130,000 from the Contingency Reserve: Parks and Recreation Bond Projects (reserve totals \$8,699,244) and \$16,000 from the Contingency Reserve: Library Bond Projects (reserve totals \$2,960,229) to ensure sufficient funding is available for final payment costs.

CEQA

CEQA: Mitigated Negative Declaration, File No. PP06-175. Resolution approved by Council on September 11, 2007.

/s/
 DAVID SYKES
 Director of Public Works


 JENNIFER A. MAGUIRE
 Budget Director

For questions, please contact Harry Freitas, Assistant Director, Public Works Department 408-535-8300.

Attachments