

HAYWARD CITY COUNCIL

RESOLUTION NO. 19-

Introduced by Council Member _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD
APPROVING REMOVAL AND SUBSTITUTION OF COLLINS
ELECTRICAL COMPANY, INC., FROM THE 21ST CENTURY LIBRARY
AND COMMUNITY CENTER AND HERITAGE PLAZA PROJECT

WHEREAS, on September 15, 2015, the Hayward City Council awarded the construction contract for the 21st Century Library and Community Learning Center and Heritage Plaza project to T. B. Penick & Sons, Inc. (TBP); and

WHEREAS, Collins Electrical Company, Inc. (Collins) was listed in TBP's bid as the electrical subcontractor to perform all electrical related work on the project; and

WHEREAS, Construction on the new main library is still not complete, for various reasons, among them is Collins' inability or unwillingness to complete critical tasks necessary to obtain occupancy of the library building and to complete the project, which tasks are necessary prerequisites prior to testing of life/safety systems that must be completed before the building can be occupied; and

WHEREAS, Section 5-1.13 of the 2010 CalTrans Standard Specifications regarding Subcontracting, which is incorporated into the contract between the City and TBP by Section 1 and Section 2-1.07 of the Project Specifications, states that upon request, the contractor shall immediately remove and not again use a subcontractor who fails to prosecute the work satisfactorily; and

WHEREAS, pursuant to Public Contract Code section 4107, substitution of a listed subcontractor is permissible when the awarding authority determines that the work performed by the subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work; and

WHEREAS, on July 3, 2019 the City transmitted a letter to TBP requesting removal of Collins from the project based on Collins' failure to prosecute the work in a timely and satisfactory manner and requested TBP to provide a substitute subcontractor for approval by the City as required by the Public Contract Code; and

WHEREAS, on July 3, 2019 the City transmitted a letter to Collins advising that the City had made the above referenced request to TBP and that a hearing before the City Council was scheduled for July 9, 2019 on the matter, for which Collins was invited to provide written and oral evidence and testimony; and

WHEREAS, the City Council, having conducted the aforementioned public hearing and considered the evidence and testimony provided by the parties, makes the following findings:

(1) Collins failed to diligently prosecute tasks that are necessary prerequisites prior to testing of life/safety systems that must be completed before the building can be occupied, specifically:

- Window Actuators - On January 8, 2019, TBP asked if the low voltage window actuator wiring need to be in conduit. Two days later, the City's Fire Department provided code language that confirmed the wiring was required to be enclosed in conduit. On January 22, 2019, based on a TBP request for formal direction, the City directed TBP to enclose all window actuator wiring in conduit. One week later, Spacetone began removing ceiling panels to provide access for the conduit installation. On February 4, 2019, Collins started the rework. On February 16, 2019, TBP provided notice that they formally disagreed with City's position but would continue work under protest. On May 14, 2019, the conduit and wiring had been installed. Rework on the wiring continued through mid-June during the Commercial Controls pretest activities.

After TBP suspended work on the project between March 15 and March 22, 2019, Collins refused to return until TBP could assure them that all work areas related to all of Collins remaining activities were complete and available to Collins. Collins returned to work on April 15, 2019.

Collins has had limited staff on the project with only one or two and rarely three electricians on-site at any one time even though there were many areas available for work.

- Strobes and Horns - On March 11, 2019, TBP asked for clarification of horn and strobe locations at the wood cloud ceiling locations on each floor of the library. On March 11, 2019, the City's architect provided plans with suggested alternate horn and strobe locations outside of the cloud ceiling envelope. These alternate locations were dependent upon feedback from Pyrocom, a Collins subcontractor, feedback because the spacing and strobe design came from Pyrocom. A formal response to the Request for Information (RFI) was sent on March 20, 2019. On April 24, 2019, TBP submitted a Collins change order request for this work. On April 30, 2019, TBP submitted plans with the revised strobe locations to

the City for Building permit approval. On May 9, 2019, the City rejected the change order request because this conflict should have been identified and addressed during the contractor's early work with the Building Infrastructure Model. On May 16, 2019, the City confirmed its direction to TBP that this work proceed under protest if necessary. On May 23, 2019 TPB confirmed that the work would proceed under protest and began removing ceiling panels to start the work. On June 21, Collins completed installation of the last strobe. However, TBP had to replace the ceiling panels so the strobes were removed, and the ceiling panels replaced. To date, the strobes have not been reinstalled.

- (2) Collins delayed or disrupted progress of the work by turning off power and data to receptacles and rooms. On various occasions, power has not been available for training activities or for vendor installation activities. This has impacted the installation of the owner furnished equipment, such as the book return units, the self-check-out machines and the security stanchions and training on the wall in the large conference room.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Hayward that the removal of Collins Electrical Company, Inc. from the 21st Century Library and Community Learning Center and Heritage Plaza project is approved based on the reasons and findings stated herein.

BE IT FURTHER RESOLVED, that the City Manager is authorized to provide consent on behalf of the City Council to any proposed subcontractor identified by T.B. Penick & Sons, Inc. to replace Collins on the Project.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2019

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
 MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
 City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward