



CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov

Cover Memo

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DATE: September 15, 2015

TO: Mayor and City Council

FROM: Director of Public Works - Engineering & Transportation
Director of Library and Community Services

SUBJECT

21st Century Library and Community Learning Center and Heritage Plaza Arboretum - Approval of Addenda and Award of Construction Contract

RECOMMENDATION

That Council adopts the attached resolutions (Attachment I and II):

1. Approving Addenda Nos. 1 through 5, providing revisions to the plans and specifications for the 21st Century Library and Community Learning Center and Heritage Plaza Arboretum project;
2. Appropriating an additional \$4,780,000 for this project from the Measure C Capital fund; and
3. Rejecting one bid protest and awarding the contract to T.B. Penick & Sons, Inc., in the amount of \$52,550,000.

BACKGROUND

On [May 26, 2015 <http://www.ci.hayward.ca.us/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2015/CCA15PDF/cca052615full.pdf>](http://www.ci.hayward.ca.us/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2015/CCA15PDF/cca052615full.pdf), Council approved the plans and specifications for the 21st Century Library and Community Learning Center and Heritage Plaza Arboretum project and called for bids to be received on June 30, 2015. Addenda Nos. 1 through 5 made revisions to the drawings and specifications by adding additional information to the project documents, providing clarification to bidder questions, and revising the bid opening date to July 21, 2015.

A new main library and plaza was identified as a critically important capital need in 1998. Noll + Tam was selected as project architect in 2007 and has completed the project's design and bid phases. This project's design is the result of extensive public outreach and input that began in 2007 and continued through 2015 and involved thousands of Hayward residents and stakeholders. It involved: dozens of community focus groups; community visioning workshops; multiple field surveys; a comprehensive community needs analysis; a dynamic and interactive project website; and dozens of public/civic meetings, including seven City Council sessions, twenty-four Library Commission sessions, multiple Council Budget and Finance Committee discussions, and sessions with the Planning Commission, Council Sustainability Committee, and Hayward Youth Commission, among others.

All of the input received throughout this exhaustive process was integrated into the design team's

considerations and substantively informed the final design of the project.

DISCUSSION

Project Plans and Specifications

The proposed project will construct a new, sixty-one foot tall, three-story, 58,200 square foot 21st Century Library and Community Center; reduce the width of C Street while maintaining two through lanes and some parking on both sides of the street; remove the existing library building; and restore the Heritage Plaza/Arboretum to its original historic open plaza configuration.

The library will be constructed on the north side of C Street between Watkins Street and Mission Boulevard on an existing City owned parking lot, a portion of the adjacent United States Postal Service (USPS) parking lot, and a portion of C Street that will be vacated. While the City standard for public facility design is LEED (Leadership in Energy and Environmental Design) Silver Certification, City Council directed that the library meet LEED Gold standards at a minimum, and to make every reasonable effort to achieve LEED Platinum if possible. The proposed design will achieve the LEED Platinum standard.

The design incorporates extensive energy saving elements that focus on a central atrium that maximizes the potential use of natural light and ventilation, energy saving equipment, recycled materials, rainwater capture and reuse, onsite solar energy production, and a minimal carbon footprint. While the library will not use any natural gas, photovoltaic (PV) cells will be installed on the library and the adjacent garage roofs in sufficient quantity to offset the anticipated annual energy needs of the library and parking garage. Buildings that achieve this 100% offset are referred to as “Net Zero Energy” buildings.

The interiors of the new library facility will include multiple spaces and technologies to meet a wide range of community learning and creative needs, including:

- An overall physical collection of 200,000 books and media items;
- Two homework tutoring centers: one in the first floor children’s area and one in the second floor teen area;
- Two community art gallery spaces, to be curated by a local arts organization that will be selected through a request for proposals process;
- A digital media arts center for creating works of art and design including computer generated illustration, web design, computer-aided design, and audio/video production;
- A creative makerspace where people with common interests can gather and create with computers, robotics, textiles, 3D printing, electronic art, traditional arts and crafts and other means;
- Flexible community rooms for hosting community meetings and other activities including rotating art exhibitions, dance classes and performances, and more;
- A community learning center for partner community agencies to conduct workshops and demonstrations for the public;
- A small café to be operated by a local vendor;
- Friends of the Library office and gift shop;
- A children’s garden and living green wall; and
- Multiple restrooms for the general public on all three floors as well as dedicated restrooms for children and families.

Complete information about the features of the 21st Century Library and Heritage Plaza Arboretum can be found in the May 26, 2015 staff report referenced in the Background section above.

Solar (PV) Panels

Only half of the parking structure's upper deck area is needed for a sufficient quantity of PV panels to achieve Net Zero Energy. The proposed project includes all of the support conduit, wiring, and other electrical equipment that would be needed if a decision is made to install PV panels on the other half of the upper deck. While additional PV panels are not needed to meet the Net Zero Energy goal of the project, each additional panel would help reduce the on-going energy operational expenses of other public facilities, such as City Hall. The bid included unit costs for the PV panel work to simplify a contract change order for additional panels if bids came in below the engineer's estimate or if future funding becomes available. Since bids received are higher than the engineer's estimate, installation of additional PV panels on the remainder of the City's parking garage (estimated at \$1.7M) will wait for an identified future funding source. However, installation of the necessary support conduit and wiring for the future PV panels will occur with this project.

Existing Building Demolition

The old main library building is planned for removal as part of the project. This planned removal has been openly discussed in progressively more detail during each of the formal meetings to discuss the proposed library design over the past several years, most recently at four community meetings and two City Council design update work sessions in 2014 and at additional meetings of the Sustainability Committee, Planning Commission, Library Commission and City Council throughout 2015. During all of these aforesaid meetings, the removal of the current library and the restoration of the Heritage Plaza Arboretum were included in the overall project design and discussed in detail. Previously, beginning in 2010, when the initial preliminary design was first presented to City Council, and in virtually every subsequent design discussion since, the removal of the current main library and restoration of the historic plaza were included as integral components of the overall project design.

In addition to the voluminous public input gathered during these meetings, the City actively solicited additional input from community members who visited the library by providing presentation boards depicting options for the plaza design and collecting comment cards to help determine the community's vision for their plaza. During all of these meetings and from all of the comment cards, many thousands of community responses in all, there has been near unanimous support for the old building's removal and the restoration of the plaza

Staff is aware that a small group of community members have recently engaged in advocacy directed toward keeping the old main library standing and converting it to an alternate use. There would be several concerns if the old building were to remain in place. The building is deteriorating and is in need of major renovations and/or upgrades to meet basic current standards. Rough estimates from consultants for repairs to a building of this size and condition range from \$2 million to \$8 million depending upon the extent of the repairs. Staff is estimating the cost between \$4 to \$5 million for renovations and replacements of deteriorating systems and components such as HVAC, plumbing, electrical, seismic/structural, ADA accessibility, elevators, finishes, mold/asbestos abatement, and fire sprinklers. These estimates are consistent with the original assessments of the old building's condition conducted in 2007, when the decision whether to expand the old library building again, or to build new was first being weighed. In addition of the capital costs, the building's basic operational costs are currently estimated at an additional \$200,000 - \$250,000 annually for utilities and ongoing maintenance alone.

The new project design would be severely impacted if the old library building were to remain in place. Leaving a large, deteriorating building positioned in the center of the plaza would minimize any potential for large community events and gatherings, inhibit views across the plaza for visitors as well as public safety officers, and increase the need for security to address the persistent undesirable and/or illegal behaviors which take place around the building. There would also likely be some period of time before funding could be identified to renovate and operate the building, leaving a vacant building that could attract graffiti, break ins, and other nuisance behaviors. In addition to generating significant additional capital and operating cost to the City as described above, leaving the old library in place would mean that the project would no longer meet LEED Platinum requirements because the water recycling cistern could not be placed in the old building's existing basement.

Staff does not recommend leaving the old library standing, eliminating the community plaza and removing the rainwater cistern from the project at this time. This is consistent with the Council's direction when the plans and specifications were approved in May 2015 and also consistent with the project design that was presented to the public during the Measure C campaign. In addition to the cost concerns and design impacts described above, making a change of such significant magnitude at this very late juncture in the process would essentially erase the community input of thousands of Hayward residents that has been gathered and integrated into the project design over several years of intensive and thorough community-based design work. It could also further delay construction of the new library as the plans and specifications would need to be modified to account for this change. This could result in further project cost escalations given the current construction market in the Bay Area as described below.

Community Workforce Agreement

On April 14, 2015, City Council elected to proceed with a Community Workforce Agreement (CWA) with the Building and Construction Trades Council of Alameda County for this project. An overview of the CWA, including the key provisions and terms, can be found in the [Council report of April 14, 2015 <https://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2015/CCA15PDF/cca041415full.pdf>](https://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2015/CCA15PDF/cca041415full.pdf). The successful bidder and all subcontractors will be required to sign an agreement to be bound as a condition precedent to entering the contract for this project.

On July 21, 2015, the City received four bids for the project. The two low bids are as follows:

Engineer's Estimate		\$46,501,540
Low Bid:	T. B. Penick & Sons, Inc	\$49,290,599
Second Low Bid:	Alten Construction, Inc	\$51,436,947

The low bid from T. B. Penick & Sons, Inc. is 6.0% more than the Engineer's Estimate. The second low bid from Alten Construction, Inc. is 10.6% more than the Engineer's Estimate.

In general, the cost increase can be attributed to an exceptionally robust Bay Area construction market. For the past three years, the high level of construction activity has caused material and labor prices to increase and made some materials, such as window glass, aluminum and exterior facade, very difficult to obtain, which has raised concerns about material delivery schedules. Also, fewer local contractors and subcontractors are bidding projects because they have an abundance of work or went out of business during the post-2008 recession resulting in less competition. Over twenty local general contractors were contacted and each indicated that they were too busy to bid on the City's project. Two of the actual

bidders are from Southern California. Another factor is aggressive price escalation for longer duration, larger scale projects to account for future cost unpredictability.

When asked if the CWA requirement had an impact on their bids, contractors responded that there may have been a 4 - 6% cost increase due to the CWA, particularly related to the local hire requirements.

Bid Protest by Alten Construction, Inc.

On July 30, 2015, the City received a bid protest from Alten Construction, Inc., the second low bidder, stating that T. B. Penick and Sons' bid was nonresponsive because T. B. Penick and Sons, Inc. did not list all of their litigation in their qualification statement (QS). The QS required bidders to provide litigation information regarding: 1) claims, including any past judgments, current claims, litigation disputes, terminations for cause and arbitrations for cause associated with any work contracted on any project in the past five (5) years; 2) list of projects it has worked on within the last five (5) years where change orders exceeded 10% of the total contract price; and 3) any civil action or claims filed against project owners in the past five (5) years where the amount or damages claimed was one million dollars or more. Staff, in conjunction with the City Attorney's Office, reviewed the protest and subsequent response from T. B. Penick & Sons, Inc. and recommends rejection of the bid protest based on the following:

- 1) Non-Responsiveness - T. B. Penick & Sons' response to the QS identified four projects where change orders exceeded 10% of the total contract price and six projects which resulted in mediation or arbitration. T. B. Penick & Sons provided a written response to the bid protest explaining the omission of the lawsuits involved other divisions of the company (not the division that would be responsible for construction of the City's project) and the estimators inadvertently neglected to identify those lawsuits in the QS responses. T.B. Penick & Sons has substantially complied with the requirements of the QS. Their omissions did not provide them with an advantage not afforded to other bidders and the omissions did not affect the bid price.
- 2) Non-Responsibility - Pursuant to Section 1.10 of the QS, a Bidder will be disqualified if any of his responses to the QS is found to have any material untruths, discrepancies, or omissions. As referenced above, T.B. Penick & Sons has stated that their failure to list the cases identified in the bid protest was inadvertent and due to the fact that the cases involved other divisions of the company. This explanation is reasonable and there is no evidence that T.B. Penick & Sons sought to deliberately mislead the City such that they would be deemed untrustworthy, lacking in integrity and therefore not responsible.

A copy of Alten Construction's protest letter and the City's response are attached (Attachment IV).

Staff finds T. B. Penick & Sons' bid documents to be responsive and has confirmed its licenses are in order. Therefore, staff recommends award of contract to the lowest responsible bidder, T. B. Penick & Sons, Inc. in the amount of \$49,290,598.80 plus a construction contingency of \$3,259,401.20, for a total of \$52,550,000.

Environmental Review

On April 23, 2015, the Planning Commission adopted the Initial Study and Mitigated Negative Declaration (IS/MND) for the project and approved variances for setbacks to allow the construction and operation of the new library.

COMPLETE STREETS

This project considers all users of the public right-of-way in addition to motorists. Specifically, the project will install sidewalks, crosswalks, curb ramps, bulb-outs, and street lighting will create a more pedestrian friendly environment. Additionally, bus transit and bicycles will be accommodated. These measures are consistent with the City’s adopted Complete Streets Policy, where consideration is to be given to all users of the street, in addition to vehicular traffic.

PUBLIC CONTACT

An overview of the extensive public contact undertaken for this project can be found in the “Background” section of this report, above. In summary, scores of community focus groups, multiple opinion surveys, and dozens of public meetings have been undertaken with the participation and input of thousands of Hayward community members, experts, and stakeholders, spanning a continuous eight year period from 2007 to 2015. The April 23, 2015 Planning Commission, April 20, 2015 Library Commission, and May 26, 2015 City Council meetings were the most recent opportunities for public input on the project.

FISCAL IMPACT

The estimated total project costs given the actual construction bid are as follows:

Project Cost	
Construction Contract	\$49,290,599
Construction Contingency	3,259,401
Design and Administration	3,900,000
Construction Inspection, Testing and Administration	3,500,000
Fixtures, Furnishings and Equipment	4,580,000
Library Collections	850,000
Property Acquisition	300,000
Total	\$65,680,000

In the May 26, 2015 Council report to approve the plans and specifications, staff estimated the project costs as follows:

Construction Contract	\$46,490,000
Construction Contingency	3,250,000
Design and Administration	3,900,000
Construction Inspection, Testing and Administration	3,500,000
Fixtures, Furnishings and Equipment	4,580,000
Library Collections	850,000
Property Acquisition	300,000
Total	\$62,870,000

The Adopted FY 2016 Capital Improvement Program (CIP) includes a total of \$60,900,000 for this project. Therefore, an additional appropriation in the amount of \$4,780,000 from the Measure C Capital Fund is needed to complete the project given the new project cost estimate of \$65,680,000.

Project Revenues

Funding for the project is from several sources, with the largest being financing generated by issuance of debt supported by the new half cent district sales tax (Measure C) as approved by voters in June 2014. Initial funding for land acquisition and the preliminary design work was identified in 2006 using \$1M developer contributions related to the South of 92 project. In 2011, the allocation of \$10 million from Calpine as part of the agreement with the City helped fund the development of the project and favorably positioned the City to pursue alternate funding for construction and related project costs.

Project Funding	
CalPine Agreement	\$10,000,000
South 92 Developer Contributions	1,000,000
Measure C Financing Proceeds	54,680,000
Total	\$65,680,000

On July 14, 2015, staff presented to Council a financing plan based on Measure C district sales tax revenues to generate the funds needed to complete the Library construction of the project, as well as other identified City projects. The related debt service will be funded through Measure C proceeds and accounted for in Fund 102 (Measure C) of the General Fund.

NEXT STEPS

The contract provides twenty-five months for the project construction activities. This duration does not include potential delays that can be reasonably expected on any large construction project from rain and other inclement weather conditions, unforeseen site conditions, material delivery delays, utility company coordination or necessary design changes. The estimated schedule below includes an additional 4-6 months to account for these possibilities.

Begin Work	October 2015
Complete Library Work	Summer 2017
Complete Plaza Work	Early 2018

Prepared by: Yaw Owusu, Assistant City Engineer

Recommended by: Morad Fakhraj, Director of Public Works
Sean Reinhart, Director of Library and Community Services

Approved by:



Fran David, City Manager

Attachments:

Attachment I:	Resolution - Approval of Addenda, Rejection of Bid Protest and Award of Contract
Attachment II:	Resolution - Appropriation of Funds
Attachment III:	Bid Summary
Attachment IV:	Alten's Protest, T. B. Penick & Sons' Response to Protest, and City's Response