



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Matt Cano

SUBJECT: SEE BELOW

DATE: November 15, 2021

Approved

Date

11/19/21

COUNCIL DISTRICT: 3

SUBJECT: ACTIONS RELATED TO THE CONSTRUCTION CONTRACT FOR 9700 - POLICE E-LOT FENCING PROJECT RE-BID AT THE SOUTHWEST CORNER OF WEST MISSION STREET AND NORTH SAN PEDRO STREET FOR THE POLICE DEPARTMENT

RECOMMENDATION

- (a) Retroactively approve the Director of Public Works establishing a 15 percent construction contingency in the amount of \$34,953 for the 9700 – Police E-Lot Fencing Re-bid Project; and
- (b) Approve a \$55,260 increase to the contract contingency for a revised contingency amount of \$90,213, to pay for additional work completed by the Contractor for a total revised contract amount of \$323,232.

OUTCOME

Approval of the recommendation allows the Police E-Lot Fencing Re-bid (Project) to compensate the contractor for additional work completed to date.

BACKGROUND

The Police E-Lot Fencing project initially started in 2015. The original scope involved three (3) different fencing, parking, and site lighting options to accommodate the needs of Cirque de Soleil and the Police Department. After multiple plans were coordinated with the various stakeholders, a consensus could not be reached, and the project was put on hold. In 2019, a new

project scope for just fencing, two (2) pedestrian gates, and one (1) electronic gate was initiated. In 2019, the City advertised this project twice but did not receive any responsive bids. In February 2020, the City awarded this project to Fehl construction, Inc., but in July 2020, the City withdrew from this contract. In 2020, Public Works modified the project's scope again to add one (1) additional pedestrian gate, and one (1) additional electronic gate per the Police Department's request. In November 2020, Public Works re-bid and awarded a new contract to Agbayani construction corporation.

On November 23, 2020, the Public Works Director's Office awarded the Construction Contract to Agbayani Construction Corporation in the amount of \$233,019 for the 9700 – Police E-Lot Fencing Re-bid Project. The scope of this project is to provide an increased level of security for police employees and safeguard their vehicles and personal property. Work included installation of approximately 820 linear feet of 6-foot high chain-link fence, three 4-foot wide pedestrian gates with keypads, two 14-foot wide automatic rolling gates with gate operators, minor striping, and building a new driveway.

The City issued a Notice to Proceed to Agbayani Construction Corporation on February 5, 2021. During the construction phase, the Project encountered unexpected obstacles due to the lack of as built and survey drawings of the site. For example, staff had to revise the layout of the project electrical trench line due to existing underground utility conflicts which subsequently led to extending the trench line. Also, unanticipated additional work was necessary before installing the two new electronic gates due to the uneven existing driveway surface. In addition, the Project also encountered unexpected asphalt and concrete repairs due to existing asphalt and concrete failure at several locations while performing the demolition work necessary for the job. This additional work has led to a significant cost increase in construction materials and labor. The construction work has concluded with the intent of paying for all additional work performed by the contractor.

To pay for the additional work completed by the contractor, the City has issued four change orders totaling approximately \$34,375 for the following additional work:

- Additional asphalt repairs due to the existing asphalt failure near the new driveway.
- Reduction in scope for the demolition of the existing chain-link fence and pedestrian pathway located in the middle of the E-Lot (Staff used this credit to pay for some of the additional work.)
- Additional trenching and backfill to extend the electrical line for the two new electronic gates based on the revised electrical trench line layout.
- Construction of new concrete channel at the curb and gutter on both sides of the driveway to avoid interrupting the water flowline and building asphalt ramps at the entrance and exit of the two new electronic gates to fix the uneven driveway surface.

ANALYSIS

San José Municipal Code Section 27.04.050 authorizes the Director of Public Works to approve a contingency of up to 10 percent for a public works contract unless the City Council authorizes a higher amount. The Public Works Director's Office inadvertently approved a 15% contingency for this project in the amount of \$34,953. The recommended action includes Council retroactively approving the higher contingency amount.

Staff used approximately \$34,375 of the original contingency in issuing the four previously mentioned change orders, leaving a balance of approximately \$578.

Staff is requesting approval to increase the contingency amount by \$55,260 from the same project appropriation to provide funding for the remaining unpaid additional construction work completed by the contractor.

The additional \$55,260 will be used to execute Change Order No. 5, which will be a final settlement of all outstanding issues. Change Order No. 5 includes the following additional work:

- Installation of galvanized trench drain grates, modification of the size of the two new electronic gates from 14-feet to 18.5-feet wide to meet the current fire code clearance requirement, installation of an additional “no parking” sign and fire access key switch, and additional asphalt and concrete repairs near the two new electronic gates.

The five change orders were all necessary for the proper completion of the project.

CONCLUSION

Approval of the recommendation will provide a final settlement of outstanding compensation issues arising from additional work completed over the course of the construction project duration.

EVALUATION AND FOLLOW-UP

No follow-up action with the City Council is anticipated at this time.

CLIMATE SMART SAN JOSE

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memorandum will be posted on the City’s website for the November 30, 2021, City Council Agenda.

COORDINATION

This staff report has been coordinated with the City Attorney’s Office and the City Manager’s Budget Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

COST SUMMARY/IMPLICATIONS

1. AMOUNT OF RECOMMENDATION/COST OF PROJECT:

Project Delivery	\$176,924
Construction Base Bid	\$233,019
15% Contingency (Change Order 1-4)	\$34,953
Contingency (Change Order 5)	\$55,260
Current Project Budget	\$500,156
Prior Scope of Work Budget	\$235,844
TOTAL PROJECT BUDGET	\$736,000

Current Project Expenditures and Encumbrances	(\$392,313)
Prior Scope of Work Expenditures	(\$235,844)
Total Expenditures and Encumbrances	(\$628,157)

REMAINING PROJECT COSTS	\$107,843
Contingency Transfer	\$55,260
Estimated Project Delivery	\$52,583
Available Funding	\$107,843

2. SOURCE OF FUNDING:

Fund # 001 – General Fund, Appropriation 5699 - Police Administration Building
Fencing - Employee Parking Lot Perimeter

- 3. OPERATING COSTS:** The proposed operating and maintenance costs of this project have been reviewed and will have no significant impact on the General Fund operating budget.

BUDGET REFERENCE

The table below identifies the fund and appropriations allocated to fund the contract and remaining project costs, including project delivery, construction, and contingency costs.

Fund #	Appn #	Appn Name	Current Total Appn.	Amount for Contract	2021-2022 Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
001	5699	Police Administration Building Fencing - Employee Parking Lot Perimeter	\$36,000	\$55,260*	N/A	10/19/2021 Ord No. 30682

*In addition to the \$36,000 included in the budget, funds encumbered for this project were liquidated in 2021-2022 and are available to pay for the remaining project costs.

There is sufficient funding in the budget to fund the additional contingency costs as recommended in this memorandum which will provide a final settlement of outstanding compensation issues arising from additional work completed. Staff does not anticipate any operating or maintenance costs to the City as a result of this project.

CEQA

Exempt, File No. PP19-014, CEQA Guidelines 15301, Existing Facilities.

/s/
MATT CANO
 Director of Public Works

For questions, please contact Katherine Brown, Deputy Director of Public Works, at 408-795-1679.