



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Matt Cano
John Aitken
Jim Shannon

SUBJECT: SEE BELOW

DATE: November 30, 2022

Approved

Date

12/1/2022

SUBJECT: ACTIONS RELATED TO THE 10201-SJC AIRPORT ACCESSIBILITY UPGRADES PHASE 3A- TERMINAL BUILDINGS RE-BID PROJECT

REASON FOR ADDENDUM

On November 8, 2022, City Council authorized the Director of Public Works to award the 10201 – Norman Y. Mineta San José International Airport - Accessibility Upgrades Phase 3A - Terminal Buildings Re-Bid project to the lowest responsive bidder in an amount not to exceed \$14.0 million. That authorization enabled the City to award the project and begin construction before the end of the calendar year and take advantage of a Bipartisan Infrastructure Law (BIL) Discretionary Grant through the Airport Terminal Program of \$10.0 million administered by the Federal Aviation Administration. That grant has a condition that construction would need to start by the end of the calendar year. However, when bids were opened on November 17, 2022, bids came in higher than the Engineer’s Estimate and the not-to-exceed award amount of \$14.0 million. This memorandum requests award of the project expeditiously in order to meet the grant deadline condition of the project beginning by end of the calendar year and providing the City with the best opportunity to take advantage of the grant opportunity.

RECOMMENDATION

- a) Report on bids and award of contract for the 10201 – Norman Y. Mineta San José International Airport (SJC) Airport Accessibility Upgrades Phase 3A - Terminal Buildings Re-Bid Project to the lowest responsive bidder, Rodan Builders Inc., in an amount of \$16,590,000, and approve a contingency in the amount of \$2,488,500.
- b) Adopt the following 2022-2023 Appropriation Ordinance amendments in the Airport Revenue Fund:
 - 1) Decrease the Airline Agreement Reserve by \$2,327,000; and
 - 2) Increase the Transfer to the Airport Surplus Revenue Fund by \$2,327,000.
- c) Adopt the following 2022-2023 Appropriation Ordinance and Funding Sources Resolution amendments in the Airport Surplus Revenue Fund:
 - 1) Increase the estimate for Transfers and Reimbursements by \$2,327,000; and
 - 2) Increase the Transfer to the Airport Renewal and Replacement Fund by \$2,327,000.

- d) Adopt the following 2022-2023 Appropriation Ordinance and Funding Sources Resolution amendments in the Airport Renewal and Replacement Fund:
- 1) Increase the estimate for Transfers and Reimbursements by \$2,327,000; and
 - 2) Increase the Terminal Accessibility Upgrades appropriation to the Airport Department by \$2,327,000.

OUTCOME

Award of the construction contract to Rodan Builders Inc. will enable the project to proceed with construction before the end of December 2022, providing the City with the best opportunity to take advantage of a BIL Discretionary Grant through the Airport Terminal Program of \$10 million administered by the Federal Aviation Administration. Approval of a fifteen percent contingency will provide funding for any unanticipated work necessary for the proper completion and construction of the project. Adoption of the appropriation ordinance and funding source resolutions will provide the necessary budget for the project.

BACKGROUND

In 2018, the Airport retained the professional services of Jensen Hughes to survey its existing facilities to identify accessibility issues in publicly accessible areas. A list of needed accessibility improvements was identified and organized by area/location resulting in an accessibility analysis report dated November 16, 2018, by Jensen Hughes.

The analysis identified accessibility compliance issues located in the parking garages/lots, curbside/roadways, and terminal spaces. The parameters of the compliance issues covered include accessible parking, accessible path of travel, accessible entrances, stairs and ramps, doors, elevators, restroom clearances/accessories, signage, telephones, and drinking fountains.

Due to the COVID-19 pandemic's adverse economic impacts on the Airport's budget, the entire project was separated into four distinct phases, by area, and planned to be bid as stand-alone project(s) as follows:

- Phase 1 – Parking and Roadways.
 - Currently under construction.
- Phase 2 – Terminal A Ground Transportation Island.
 - Currently on hold pending further design work.
- Phase 3A – Terminal Buildings.
 - Current project requesting City Council award of contract.
- Phase 3B – Consolidated Rental Car Facility.
 - On hold pending further design work.

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The Phase 3A project concentrates on the terminal buildings which consists of modifications to the existing Terminal A, Terminal A-plus, Federal Inspection Service building, and Terminal B, to bring the facilities into compliance with current accessibility code requirements.

On March 4, 2022, City Council adopted Resolution No. 80428 authorizing the City Manager to apply for, execute, and accept upon receipt, Airport Terminal Program grants from the Federal Aviation Administration under the Infrastructure Investment and Jobs Act of 2021, referred to as the BIL, in a total amount not to exceed \$40 million for the Airport Terminal Americans with Disabilities Act projects which included the Airport Accessibility Upgrades Phase 3A – Terminal Buildings project.

The City submitted a funding application to the Federal Aviation Administration for the Airport Accessibility Upgrades Phase 3A – Terminal Buildings project under the BIL - Airport Terminal Program, and was selected to receive a grant in the amount of \$10.0 million with final award occurring once bids are available. A full listing of BIL Airport Terminal Program airport projects awarded across the country is available on the Federal Aviation Administration website: <https://www.faa.gov/bil/airport-terminals>.

The project was initially advertised on September 7, 2022. Bids were opened on September 29, 2022 and the City received two bids for the project. The low bid submitted by S&H Construction, Inc. contained multiple irregularities and, as such, was deemed non-responsive. S&H Construction, Inc. also requested to be relieved of its bid due to a clerical error. The remaining bid from Rodan Builders, Inc. was 99.14 percent over the Engineer's Estimate. On October 3, 2022, pursuant to Section 27.10.530 of the San José Municipal Code, the Director of Public Works rejected all bids.

The project re-bid was advertised on October 19, 2022, with bids opened on November 17, 2022. A condition of the \$10.0 million BIL grant award by the Federal Aviation Administration is that construction is required to start construction by the end of the current calendar year.

The project is anticipated to begin construction in December 2022 with projected completion by December 2024.

ANALYSIS

Bids were opened on November 17, 2022. Two bids were submitted with the following results:

<u>Contractor</u>	<u>Bid Amount</u>	<u>Variance Amount</u>	<u>Over/(Under) Percent</u>
Engineer's Estimate	\$10,500,000	--	--
Rodan Builders, Inc. (Hayward, CA)	\$16,590,000	\$6,090,000	58
Strawn Construction, Inc. (San Jose, CA)	\$18,915,449	\$8,415,449	80

The lowest bid submitted by Rodan Builders Inc., is 58% over the Engineer's Estimate. The difference between the low bid and the Engineer's Estimate is \$6,090,000. Of this, \$4,483,500 is due to an increase in the as-bid direct construction costs and \$1,606,500 is due to an increase in soft costs.

Following the opening of the bids, the design consultants, Jviation Inc. and Faithful + Gould (Consultant) performed a thorough bid analysis on the bid results. The Engineer's Estimate initially prepared by the consultant was based on a competitive open bid situation with an assumed 4-5 bids from reputable sub-contractors and a minimum of three bidders for all items of sub-contracted work. Faithful + Gould's experience indicates that fewer number of bidders may result in higher bids, and conversely an increased number of bidders may result in more competitive bids.

Based on Consultant's historical data, bid deviation from Engineer's Estimates is assumed as follows:

One bid:	+50% to +75%
Two to three bids:	+20% to +50%
Four to five bids:	0% to +15%

In the Consultant's opinion and based on industry experience, having two bidders wasn't likely to result in competitive pricing, which is reflected in the vast differences in the bid prices between the two bidders for the same subcontracted scope of work.

For the low-bidder, Rodan Builders Inc., the as-bid direct construction cost is approximately 42.7% higher than the Engineer's Estimate, which falls within the higher end of the historical deviation from cost estimates when receiving only two bids. Rodan Builders Inc.'s markup cost, however, is approximately 119% higher than the Engineer's Estimate. The markup cost differential is likely indicative of the contractor's assumed risk for the following items:

- Labor shortages
 - o There are shortages of skilled laborers (many workers have not returned after COVID), especially in the specialty trades of electrical, mechanical, and plumbing, and these contractors/subcontractors are getting very busy and are selective in their bids.
 - o The badging/security requirements of the Airport and City wage requirements may further impact preferred subcontractor's/employee's eligibility to work on the project.
- Constantly changing escalation and inflation trends
 - o Escalation of construction cost and inflation has been drastic in the past 12 months and the corresponding trends and future predictions are changing frequently.
- Extended delivery timelines
 - o Contractors are facing extended delivery times of materials and equipment which is severely impacting construction schedules resulting in an increase in the general conditions/soft costs associated with their ability to deliver a project.

The deviation in the direct construction costs is likely due to the uncertainties in the current market conditions, which include:

- Significant material/supply chain shortages and price fluctuations
 - o Material and equipment prices have been volatile and not predictable for contractors, and in recent months prices have skyrocketed.
 - o There are material shortages and supply chain (inventory/material availability) issues across many sectors which are impacting the construction industry.
 - o Contractors are facing extended delivery times which is severely impacting construction schedules and material/construction costs.

The complexity of the project (i.e. work occurring in multiple areas across multiple trades at the same time, Airport security/night-work/phasing/badging and escort requirements, etc.) and lengthy construction duration (21 months), as well as the current market conditions, present an increased risk to the project. Accordingly, contractors are going ensure they are protecting themselves from all potential risks, and are less likely to be willing to assume risk for a job when they are already busy and only bidding against one other bidder.

Staff feels that it is appropriate to pay \$6,090,000 over the Engineer's Estimate for construction costs due to the following:

1. Having two bidders for the original bid and current re-bid was not likely to drive competitive pricing, which is reflected in the vast differences in the bid prices between the two bidders for the same divisions of work (especially Divisions 22-Plumbing, 26-Electrical, and 27-Communication). It is noteworthy that for the two bids received, the sum of the bid prices for Division 2 through 14 are within approximately 4.3% (\$350k) of each other, but for Divisions 22, 26, and 27, Strawn was approximately 97.3% (\$3.6 million) higher than Rodan.
2. Awarding the project enables the Airport to take advantage of the \$10.0 million (BIL) Discretionary Grant, which covers close to 50% of the project costs. A condition of the

\$10.0 million grant award by the Federal Aviation Administration is that construction is required to start by the end of the current calendar year.

3. Based on the results of the original bid and the subsequent rebid, combined with the volatility of the current bidding environment, a re-bid of the project is unlikely to result in lower bid prices.
4. Based on the accessibility analysis report prepared by Jensen Hughes, City is encouraged to address the identified accessibility compliance issues in order to establish safe and efficient Airport operations as part of the Grant Assurances.

Ultimately, after the initial bid and subsequent re-bid of the project, it appears Rodan Builders Inc.'s bid of \$16,590,000 could be reflective of the actual cost of construction of the project based on the current bidding climate, and tolerance for risk given the current market conditions.

While staff does believe it is possible to obtain lower bids by sending this project out to bid for a third time, it is also unlikely that the bids will be significantly lower than the low bid submitted by Rodan Builders Inc. In hindsight, a more appropriate Engineer's Estimate for the re-bid of this project would have been \$13.5 million, taking into consideration all the elements outlined above. Were staff to utilize this revised Engineer's Estimate, the low bid submitted by Rodan Builders Inc. would now be 23 percent over, and within a more reasonable tolerance considering the complexities of the project, as outlined above.

Although a re-bid would allow for further analysis and review of the project documentation to ensure the best pricing is obtained, it is not guaranteed that bids will come back more favorable especially when considering the current bidding environment and the complexity of this project. Paying the additional \$3,090,000 (23 percent per the revised Engineer's Estimate) to proceed with this project now, rather than delaying the project by re-bidding and losing the \$10 million grant from the Federal Aviation Administration is in the City's best interest. Therefore, staff recommends that the project be awarded at this time.

Furthermore, once constructed, the accessibility improvements identified in the project bring the Airport terminal buildings up to current accessibility code requirements. All the items included within the project scope are aimed at achieving compliance with the Americans with Disabilities Act and expanding accessibility for persons with disabilities.

The project was bid in accordance with the Federal Aviation Administration's BIL Airport Terminal Program requirements, and the City required bids to be valid for a minimum of 180 days.

Rodan Builders Inc. has recently successfully completed a project substantially similar to the construction for this project involving complete modernization and accessibility upgrades to three school campuses for the Mountain View- Whisman School District. The contract value for the project was \$42,563,141.

San Jose Municipal Code Section 27.04.050 provides a standard contingency of 15 percent of the total contract amount for projects involving the renovation of a building or buildings, unless

Council approves a different contingency amount. Staff recommends the standard 15 percent contingency, which should be sufficient for unforeseen conditions that might arise in the construction.

Project Labor Agreement Applicability

The City's Project Labor Agreement is applicable to this project as the Engineer's Estimate was over \$1.2 million.

Local and Small Business Outreach

Procurement staff used Biddingo to outreach to local and small business enterprises. Chapter 4.12 of the San José Municipal Code defines a "local business enterprise" as one with a legitimate business presence in Santa Clara County and "small business enterprise" as a local business enterprise with 35 or fewer employees. Procurement staff sent bid invitations to 12,319 vendors, and documents were downloaded by 14 vendors, approximately 5 of which were located within Santa Clara County and therefore local. The recommended contractor is not a local or a small business enterprise. However, the subcontractors performing the electrical work (Cupertino Electric) and plumbing (Ciari Plumbing and Heating) are local business enterprises. The combined value of the work these two subcontractors will perform is approximately \$3,291,900.

CONCLUSION

Based on staff's evaluation of the bids, staff recommends award of the construction contract for the project to Rodan Builders, Inc. City Council award of the construction contract as described in the memorandum will allow for construction to start prior to the end of the current calendar year. A BIL Airport Terminal Program grant of \$10,000,000 is anticipated to be awarded by the start of construction, upon contract execution. Adoption of the appropriation ordinance and funding source resolution adjustments will allow the Airport to allocate the necessary budget for the project.

EVALUATION AND FOLLOW-UP

No additional follow-up action with City Council is expected at this time.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum 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 December 6, 2022 City Council meeting.

Since the project is funded in part with a United States Department of Transportation/Federal Aviation Administration BIL grant program, the federal Disadvantaged Business Enterprise (DBE) Program regulations found in 49 CFR Part 26 will apply. The City’s current DBE participation goal for FAA grant-funded Airport capital projects in federal fiscal years 2022-2025 is five percent annually. The City’s DBE Program for Airport Improvement Program grant funded Airport capital projects is a race neutral program that does not include project specific DBE participation goals.

Airport staff performed extensive outreach to encourage DBE participation. Outreach efforts included:

- Identification of 412 certified DBEs in multiple subcontracting work areas.
- Emails sent to ethnic chambers, San José Chamber of Commerce, and other interested organizations including Minority Business Consortium - providing project information, subcontracting opportunities (North American Industry Classification System Codes and Caltrans Work Codes), bid date and time, and DBE certification requirements.
- Posting of contracting opportunity on: Biddingo, Federal Aviation Administration Opportunities, Airport Minority Advisory Council, National Air Transportation Association, Airports Council International – North America, and the Minority Business Development Agency.
- Sharing of contract opportunity on Airport’s Requests for Information/ Proposal/ Qualification and Bid Notices.

Rodan Builders, Inc. has listed the following DBE subcontractor in their bid, which contributes to approximately 16% of the overall contract:

Contractor	Description of Work to be performed	Cost of Work	% of overall contract
House of Stainless	Miscellaneous Metal Works	\$2,700,000	16.27

COORDINATION

The project and memorandum have been coordinated with the City Attorney’s Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

FISCAL/POLICY ALIGNMENT

San José Municipal Code requires that capital projects at the Airport be consistent with the adopted Airport Master Plan. The proposed improvement project would be a minor alteration of existing Airport facilities and is therefore consistent with the adopted Airport Master Plan pursuant to San José Municipal Code Section 25.04.210(B)(4).

COST SUMMARY/IMPLICATIONS

1. AMOUNT OF RECOMMENDATION/COST OF PROJECT

Project Delivery	\$2,843,153
Construction	\$16,590,000
Contingency	\$2,488,500
TOTAL PROJECT COSTS	<u>\$21,921,653</u>
Prior Year Expenditures	\$487,207*
REMAINING PROJECT COSTS	\$21,434,446

* Consultant Services design costs of \$487,207 were incurred in 2020-2021 for Terminal Buildings and the Consolidated Rental Car Facility, described as Phases 3A and 3B in this memo.

2. COST ELEMENTS OF AGREEMENT/CONTRACT:

Mobilization	\$650,000
General Conditions	\$3,840,000
Demolition	\$650,000
Metals	\$3,000,000
Wood, Plastic and Composites	\$720,000
Doors and Frames	\$810,000
Finishes	\$1,560,000
Signage and Specialties	\$750,000
Countertops	\$20,000
Pet Relief Areas	\$50,000
Wheelchair Lifts	\$600,000
Plumbing	\$1,000,000
Electrical	\$2,600,000
Communications	\$100,000
Bonds	\$220,000
Miscellaneous Contract Provisions	\$20,000
TOTAL AGREEMENT/CONTRACT AMOUNT	<u>\$16,590,000</u>

3. SOURCE OF FUNDING:

- Airport Capital Improvement Fund (520): \$10.0 million provided through the BIL Airport Terminal Program grant
- Airport Renewal and Replacement Fund (527): \$6.3 million is appropriated in 2022-2023 and an additional \$2.3 million is recommended in this memorandum.

For 2023-2024, \$5.9 million is programmed in the 2023-2027 Adopted Capital Improvement Program which ensures that the project is fully funded.

4. **FISCAL IMPACT:** No additional operations and maintenance impacts will result from this project.

BUDGET REFERENCE

The table below identifies the fund and appropriations to fund the contract recommended as part of this memorandum and remaining project costs, including project delivery, construction, and contingency costs. The 2023-2027 Adopted Capital Improvement Program allocates an additional \$5.9 million to complete this project in 2023-2024. Any refinement of this allocation will occur during the 2023-2024 development budget process.

Fund #	Appn. #	Appn. Name	Current Total Appn.	Rec. Budget Action	Estimated Amount For Contract	2022-2023 Adopted Budget	Last Budget Action (Date, Ord. No.)
520	4160	Terminal Accessibility Upgrades	\$10,000,000		\$10,000,000	N/A	11/8/2022, Ord. No. 30845
527	4160	Terminal Accessibility Upgrades	\$6,312,000	\$2,327,000	\$6,590,000	Adopted Capital Budget page 872	6/21/2022, Ord. No. 30790
521	8697	Airline Agreement Reserve	\$100,281,171	(2,327,000)		Adopted Operating Budget page 949	10/18/2022, Ord. No. 30833
521	A016	Transfer to the Surplus Revenue Fund	\$71,353,000	2,327,000		Adopted Operating Budget page 949	10/18/2022, Ord. No. 30833
524	R003	Transfers and Reimbursements	\$71,353,000	2,327,000		Adopted Operating Budget page 950	10/18/2022, Ord. No. 80717
524	A014	Transfer to the Airport Renewal and Replacement Fund	\$51,353,000	2,327,000		Adopted Operating Budget page 950	10/18/2022, Ord. No. 30833
527	R003	Transfers and Reimbursements	\$51,353,000	2,327,000		Adopted Capital Budget page 828	10/18/2022, Ord. No. 80717

HONORABLE MAYOR AND CITY COUNCIL

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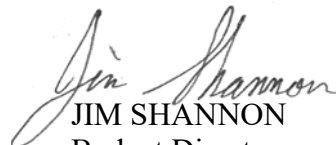
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CEQA

Determination of Consistency with the Final Environmental Impact Report for the Norman Y. Mineta San José International Airport (Resolution No. 79497), File No. ER22-262 [Airport, Accessibility Upgrades Phase 3A]

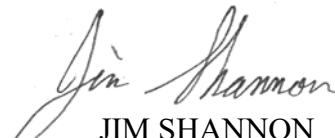
/s/
MATT CANO
Director of Public Works

/s/
JOHN AITKEN, AAE
Director of Aviation


JIM SHANNON
Budget Director

I hereby certify that there will be available funding for appropriation in the designated funds and in the amounts listed below in the Fiscal Year 2022-2023, monies in excess of those heretofore appropriated therefrom:

Airport Renewal and Replacement Fund	\$2,327,000
Airport Surplus Revenue Fund	\$2,327,000


JIM SHANNON
Budget Director

For questions, please contact Katherine Brown, Deputy Director, Public Works Department, at (408) 975-1679.