



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Matt Cano

**SUBJECT:** SEE BELOW

**DATE:** May 14, 2018

Approved

Date

5-25-18

**COUNCIL DISTRICT: 7**

**SUBJECT: REPORT ON BIDS AND AWARD OF CONTRACT FOR CONSTRUCTION OF THE 8765 – FEMA – KELLY PARK JAPANESE FRIENDSHIP GARDEN RESTROOMS AND MAINTENANCE SHOP FACILITY (SCSJE89/PW891)**

## RECOMMENDATION

Report on bids and award of the construction contract for the 8765 – FEMA – Kelly Park Japanese Friendship Garden Restrooms and Maintenance Shop Facility (SCSJE89/PW891) to the low bidder, Tucker Construction, Inc., for the total bid in the amount of \$244,443 and approval of a 15% percent Change Order Reserve in the amount of \$36,666.

## OUTCOME

Award of the construction contract to Tucker Construction, Inc. (Tucker) will enable the FEMA – Kelly Park Japanese Friendship Garden Restrooms and Maintenance Shop Facility (SCSJE89/PW891) project to proceed. Approval of a 15% Change Order Reserve, will provide funding for any unanticipated work necessary for the proper completion or construction of the project.

## BACKGROUND

During the severe storms and flooding along the Coyote Creek in February 2017, the 1,450 square foot building including an office, workshop, yard storage, men's and women's restrooms were damaged (map attached).

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During the design development of the project scope, two environmental reports were prepared by EFI Global, the first dated November 2, 2017. The latest report dated November 3, 2017, indicates that no trace of asbestos or lead was found during the sampling, therefore, asbestos abatement is not necessary.

On March 8, 2018, the Director of Public Works approved the plans and specifications for the project. The bid for the project consists of the following elements:

Base Bid: Re-construction for flood damage and remediation of a 1,450 square foot building, to include drywall, painting, flooring, in-kind accessories, miscellaneous repairs.

Change Order Reserve: 15% to provide funding for any unanticipated work necessary for the proper completion of the project.

Construction is scheduled to begin in July 2018.

### ANALYSIS

Bids were opened on April 5, 2018, with the following results:

<i>Contractor</i>	<i>Base Bid</i>	<i>Variance Amount</i>	<i>Over/(Under) Percent</i>
Tucker Construction, Inc. (San Jose)	\$244,443	(\$291,505)	(-54.4%)
WestCal Design and Build, Inc. (Union City)	\$453,628	(\$82,320)	(-15.4%)
Agbayani Construction Corporation (Daly City)	\$454,865	(\$81,083)	(-15.1%)
<i>Engineer's Estimate</i>	<b>\$535,948</b>		

On March 14, 2018, the project was advertised on Bidsync. Three responsive bids were received and opened on April 5, 2018 and the apparent lowest bid was Tucker Construction, Inc., with a total bid amount of \$244,443 and a variance of (-54.4%).

The variance between the apparent lowest bid and the Engineer's Estimate was addressed during a line-by-line evaluation of the bid with the contractor. The evaluation revealed some labor and material costs for the Engineer's Estimate had been too high. At the conclusion of the evaluation meeting, the Contractor was confident in his bid submitted and staff deemed Tucker's bid to be acceptable for the scope of work.

The 15% Change Order Reserve is consistent with the 15% Contingency for building renovation projects set forth in the City's contingency policy in Council Policy No. 1-18, entitled "Operating Budget and Capital Improvement Program Policy."

## BID PROTEST

The second low bidder, WestCal Design and Build, Inc. (WestCal), asserts that Tucker's bid is nonresponsive because it fails to list a subcontractor to perform asbestos abatement work. The protest is without merit and should be rejected.

WestCal's assertion regarding Tucker's failure to list an asbestos abatement subcontractor is baseless because the plans and specifications for the project do not include asbestos abatement work. Even if asbestos work were required, the protest would still be without merit. A bidder must list in its bid any subcontractor that will perform work in an amount in excess of ½ of one percent of the bid amount. If no bidder is listed, then the bidder must self-perform the work. Tucker's failure to list an asbestos abatement subcontractor, at most, would have meant that the asbestos work must be less than ½ of one percent of Tucker's bid or that Tucker would have to self-perform the work. It would not have rendered the bid nonresponsive.

## EVALUATION AND FOLLOW-UP

Approval of this recommendation will enable the project to move forward into the construction phase. No subsequent Council action on this issue is expected.

## PUBLIC OUTREACH

To solicit contractors, this project was listed on Bidsync and advertised in the *San José Post Record*. The complete bid package and project information for all Department of Public Works construction projects is available on Bidsync for interested contractors, contractor organizations and builder's exchanges. This memorandum will be posted on the City's website for the June 5, 2018, City Council agenda.

## COORDINATION

The project and memorandum have been coordinated with the Department of Planning, Building, and Code Enforcement, Parks, Recreation and Neighborhood Services, Budget Office, City Attorney's Office, CalOES and FEMA.

## 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	\$ 174,489
Construction	\$ 244,443
Change Order Reserve	\$ 36,666
<b>TOTAL PROJECT COSTS</b>	<b>\$ 455,598</b>
  
2. COST ELEMENTS OF AGREEMENT/CONTRACT: \$ 244,443
  
3. SOURCE OF FUNDING: 391 - Construction and Conveyance Tax Fund: City-Wide Parks Purposes

City staff are continuing to work closely with the California Governor's Office of Emergency Services (CalOES) and Federal Emergency Management Agency (FEMA) for final project approval and funding obligation. The table below outlines the maximum potential cost sharing/reimbursement for FEMA projects. Staff is following all known requirements from FEMA to maximize the chance of receiving reimbursement. At this time, staff anticipates receiving the maximum reimbursement from both Cal OES and FEMA. Staff will continue to work with internal stakeholders to better ascertain final reimbursement amounts for each project and can provide updates once FEMA approves the projects and reimbursement requests are submitted.

Total Project Cost:	\$ 455,598	
Agency	Anticipated Cost Share Amount (\$)	Anticipated Percentage of Total Project Cost
FEMA	\$341,698	75%
CalOES	\$85,425	18.75%
City	\$28,475	6.25%
Total	\$455,598	100%

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**BUDGET REFERENCE**

The table below identifies the fund and appropriations to fund the contract recommended as part of this memo and remaining project costs, including project delivery, construction, and Change Order Reserve costs.

Fund #	Appn #	Appropriation Name	RC #	Total Appn (\$)	Amt. for Contract (\$)
391	407I	2017 Flood – Japanese Friendship Garden Public Restroom	19027X	\$ 1,097,000	\$ 244,443
<b>Total</b>				<b>\$ 1,097,000</b>	<b>\$ 244,443</b>

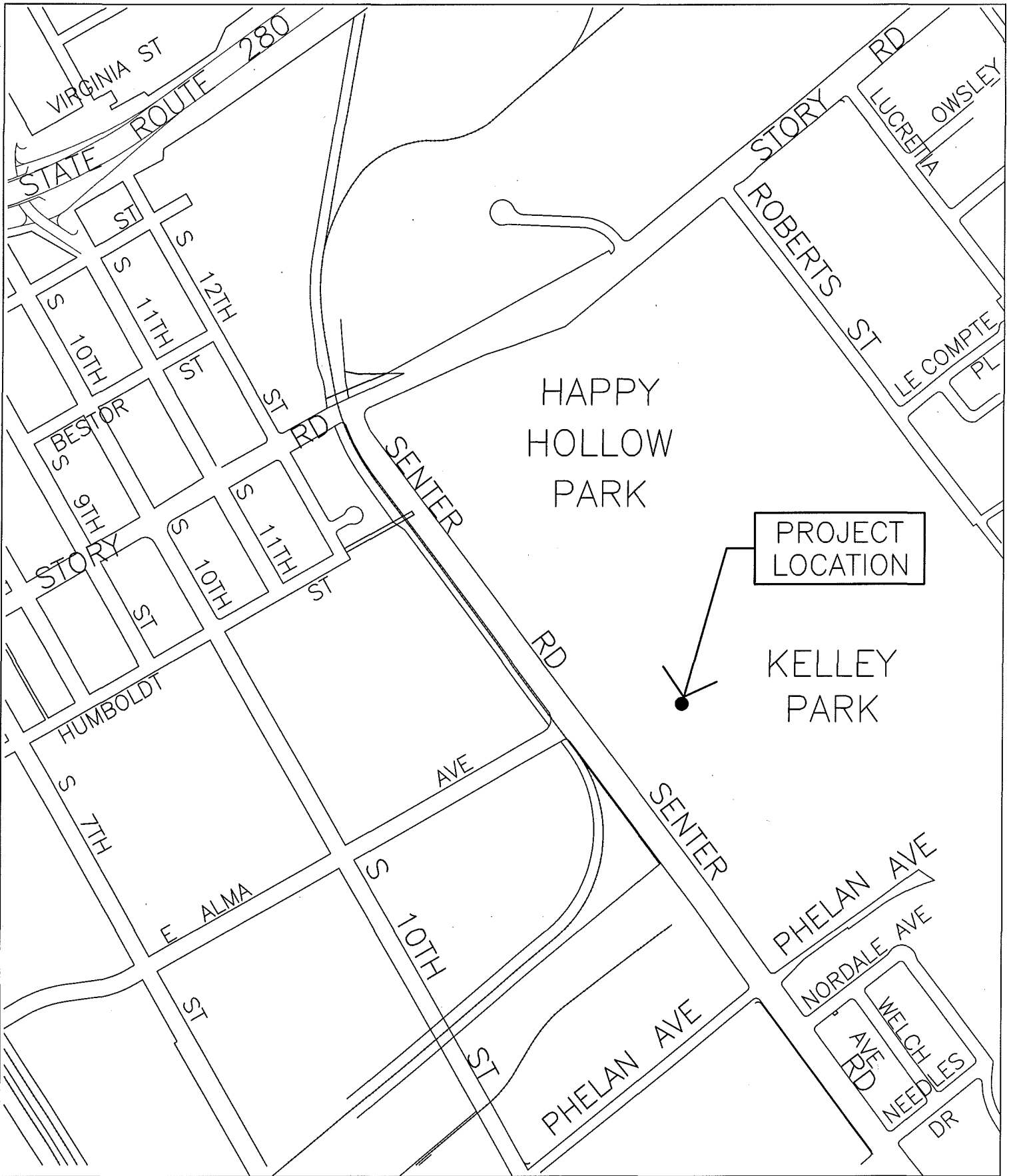
**CEQA**

Exempt, Resolution No. PP18-003.

/s/  
MATT CANO  
Director of Public Works

For questions, please contact Michael O’Connell, Deputy Director, Department of Public Works, at (408) 535-8300.

Attention: Location Map



**8765 - KELLY PARK - JFG RESTROOMS AND MAINTENANCE  
SHOP FACILITY (SCSJE89/PW891)**

**LOCATION MAP  
NOT TO SCALE**

