



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Matt Cano

**SUBJECT:** SEE BELOW

**DATE:** June 8, 2020

Approved

Date

6/11/2020

**COUNCIL DISTRICT: 3**

**SUBJECT: RULE 20B UNDERGROUND DISTRICT – DELMAS/PARK**

## **RECOMMENDATION**

- (a) Report on bids and award of construction contract for the 6302 – Rule 20B Underground District – Delmas/Park (“Project”) to the low bidder, Lewis & Tibbitts, Inc., in the amount of \$1,572,274, and approve a contingency in the amount of \$157,227.
- (b) Approve an Agreement to Perform Tariff Schedule Related Work with Pacific Gas and Electric Company (PG&E) (“Tariff Agreement”) in the total amount of \$457,908 for the engineering, administration, trench permits, and other work to be performed by PG&E for the Project.

## **OUTCOME**

Award of the construction contract and approval of the Tariff Agreement will allow the City to complete the undergrounding of the overhead utility facilities and removal of poles along West San Fernando Street, from Delmas Avenue to Route 87 and Park Avenue, from Bird Avenue/Montgomery Street to Delmas Avenue. The award of the construction contract and approval of the Tariff Agreement will also allow AT&T to remove the poles along Delmas Avenue and West San Fernando that were to be removed as part of the Rule 20A Delmas/Park project that was funded and constructed by the AT&T, Comcast and PG&E.

## **BACKGROUND**

The Rule 20B Underground Utility Program is a California Public Utilities Commission (CPUC) program. In June 1989, Council adopted an ordinance establishing the Utility Undergrounding Fee Program, also is known as Rule 20B In-Lieu Fee Program. The fee is required to be paid by developers in-lieu of completing the aerial-to-underground conversion along their development's street frontage. Fees under this program are used to pay the costs associated with the project. Developers also have the option to complete the aerial-to-underground conversion themselves under the Rule 20B In-Lieu Fee Program.

The Delmas/Park Rule 20A and 20B (in-Lieu Fee) Underground Utility District (District) Ordinance Number 28231 was adopted on January 15, 2008 by the City Council. The ordinance requires the utility companies to remove their overhead facilities and related poles from the District. The Rule 20A portion of the District, along Auzerai Avenue, from Bird to Delmas Avenue; Delmas Avenue, from Auzerai Avenue to West San Fernando Street; and West San Fernando Street, from Delmas Avenue to Autumn Street, was completed by PG&E in November 2015. AT&T, however, had some remaining work along Delmas and West San Fernando that could only be completed after the Rule 20B portion of the work on West San Fernando Street is completed.

The Rule 20B portion of the District is along West San Fernando Street, from Delmas Avenue to Highway 87, and Park Avenue, from Montgomery Street to Highway 87. The Rule 20B Underground District – Delmas/Park project will install joint trenches (conduits), boxes, vaults, and cabinets for PG&E, AT&T, and Comcast and remove approximately 1,000 linear feet of overhead wires and associated poles within the Rule 20B area. The utilities, at their expense, will install their cables and make the connections to their existing systems and the eighteen properties within the District using the new underground system installed by the City.

In addition, the Project will also install a new street light, remove a utility pole mounted street light, rewire four street lights from overhead to underground circuits, and wire five street lights to existing underground circuits. The project will also require eighteen properties to convert their existing electrical panel to accept the new underground service. These property owners will be reimbursed up to \$1,500 from the Public Works Non-Personal/Equipment appropriation in the General Fund for the electrical panel conversion and the telephone and cable conversions that will be performed by the respective utility.

### **Agreement to Perform Tariff Schedule Related Work**

The Tariff Agreement is necessary to reimburse PG&E under applicable CPUC rules for certain work performed on the Project. Per the CPUC's Rule 20B Undergrounding Utility Program, the City pays PG&E for the engineering, administration, inspection, and the tie-in of the new underground system to the existing system, but not for the actual equipment installed in the substructure (conduits, pull boxes, cabinets and vaults) the City constructs. Similarly, per the CPUC Rule 32 A.2, the City pays AT&T for their work. AT&T's agreement was paid

approximately \$38,000 by the City in September 2013. Comcast does not have a similar CPUC rule for the undergrounding and no agreement is required to pay for their design and inspection services. Therefore, the City pays for the installation of Comcast's substructure only.

The project is expected to start construction in August 2020, with completion in March 2021.

## **ANALYSIS**

Bids were opened on April 9, 2020, with the following results:

<u>Contractor</u>	<u>Bid Amount</u>	<u>Variance Amount</u>	<u>Over/ (Under) Percent</u>
<b>Engineer's Estimate</b>	<b>\$1,250,000</b>	<b>---</b>	<b>---</b>
Lewis & Tibbitts, Inc. (San Jose, CA)	1,572,274	\$322,274	26
MP NexLevel of California (Maple Lake, MN)	4,554,951	3,304,951	264

The low bid submitted by Lewis & Tibbitts, Inc. is 26 percent above the Engineer's Estimate. Potential reasons for the higher bid include installation of underground vaults in congested sidewalk and parkstrip areas. In addition, the increase in costs is conceivably attributed to higher demand or less availability of materials such as asphalt, vaults, and boxes. Also, the possibility of increased safety precautions on the job site to maintain social distancing and appropriate personal protection equipment. The availability and needs of personnel and personal protection equipment may also be a factor in the high costs. The bid is considered acceptable for the work involved in the project.

Lewis & Tibbitts, Inc. has been in construction business for 47 years and has done numerous projects in San José, including construction of Rule 20B Underground District projects – Saratoga Ave Underground Utility District (I-280 to Kiely Blvd.) and the Senter Road Underground Utility District (Balfour Dr. to Loumena Ln.). Lewis & Tibbitts, Inc. has also performed work for the City of Palo Alto, City of Campbell, and the University of California, Santa Cruz.

Council Policy provides for a standard contingency of ten percent on public works projects involving utilities which should be sufficient for this project.

### **Project Labor Agreement Applicability**

A project labor agreement (PLA) is not applicable to this project as the Engineer's Estimate is under three million dollars.

## **Local and Small Business Outreach**

Lewis & Tibbitts, Inc. and their two subcontractors, San Jose Signal Electric Construction, Inc. and Wattis Construction Inc., are local Santa Clara County businesses. Only the two aforementioned subcontractors are considered small businesses. In order to facilitate small and local business participation on this project, the following actions were taken: (1) During the design, the project engineers separated the following items for subcontracting opportunities: concrete work (sidewalk, curb and gutter, etc.), asphalt restoration, and electrical work (street lighting) in order to facilitate the ability for more local contractors to bid on the project; and (2) procurement staff outreached suppliers through Biddingo with 8,858 emails; eleven of those vendors were local businesses.

## **CONCLUSION**

The award of the construction contract to Lewis & Tibbitts, Inc. for \$1,572,274 with a ten percent contingency of \$157,227, approval of the two PG&E agreements and adoption of the appropriation ordinance will allow staff to complete the removal of overhead wires and poles with a new utility underground system. The project is in conformance with the City's Rule 20A and Rule 20B 5-year workplan and Development In-Lieu Fee Masterplan.

## **EVALUATION AND FOLLOW-UP**

The City Auditor's Office completed an audit of the City's Street and Underground In-Lieu Fee Program and recommended staff reassess the Underground In-Lieu Fee. The completion of the Project will allow staff to reassess the Developer's Underground Utility In-Lieu Fee as recommended. Staff will update the Underground Utility In-Lieu Fee based upon this project's final costs as well as the final costs of the future Rule 20B McKee/Jose Figueres.

## **CLIMATE SMART SAN JOSE**

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

## **POLICY ALTERNATIVES**

***Alternative #1: Direct City staff to reject all bids and rebid the project.***

**Pros:** Rebidding this project may increase the number of bidders as the bidders will be more aware of affects and requirements related to construction activities during this pandemic.

**Cons:** Rebidding this project after an undetermined amount of time will delay the project, may or may not increase the amount of bidders, including bid prices due to the pandemic.

**Reason for not recommending:** Rejecting all bids and rebidding this project will delay the project and does not guarantee that the bids would be significantly less, nor increase the number of bidders. The project delivery cost would also increase due to additional staff time required to re-bid the Project.

### **PUBLIC OUTREACH**

This project was listed on Biddingo (biddingo.com). The complete bid package and project information for all Department of Public Works construction projects are available on Biddingo for interested contractors, contractor organizations and builders' exchanges. This memorandum will be posted on the City's website for the June 23, 2020, Council agenda.

### **COORDINATION**

This project has been coordinated with the Departments of Transportation and Planning, Building and Code Enforcement, the City Attorney's Office, the City Manager's Budget Office, PG&E, AT&T, Comcast, and the Valley Transportation Agency.

### **COMMISSION RECOMMENDATION**

No Commission recommendation or input is associated with this action.

### **FISCAL/POLICY ALIGNMENT**

The project is in conformance with the City's General Plan "Envision San José 2040" to remove overhead utilities.

### **COST SUMMARY/IMPLICATIONS**

1.	AMOUNT OF RECOMMENDATION/COST OF PROJECT:	\$2,030,182
	Project Delivery*	\$676,288
	PG&E Agreements	457,908
	Construction	1,572,274
	Contingency	<u>157,227</u>
	<b>TOTAL PROJECT COSTS</b>	<b>\$2,863,697</b>
	Prior Cost Expenditures (Through May 5, 2020)	(426,976)
	<b>REMAINING PROJECT COSTS</b>	<b>\$2,436,721</b>

\*Project delivery includes \$209,760 for Construction Management and Inspection Services and \$37,756.32 for the AT&T agreement paid in September 2013. In previous fiscal years \$426,976 was expended in Project Delivery costs. The remaining Project Delivery costs, Construction Contract, Contingency and PG&E agreements will be spent in Fiscal Year 2020-21.

2. **COST ELEMENTS OF CONTRACT:**

Trenching	\$507,775
Vault, Boxes and Cabinet Installation	367,465
Restoration	419,300
Electrical Work (Street Lighting)	63,934
VTA Area Work (Boring, Restoration, Fees)	92,900
Police Officers, Project Information Signs, etc.	120,900
<b>TOTAL CONTRACT AMOUNT</b>	<b>\$1,572,274</b>

**COST ELEMENTS OF AGREEMENT**

Engineering & Administration Costs	\$196,345
Value of 20B Underground System	140,642
Tie-In of 20B by PG&E	144,094
PG&E Land Rights Cost	26,614
Inspection Fees	103,510
Value of 20B Trench & Excavation	636,129
Value of 20B Conduits & Substructures	137,924
Less Cost of Equivalent Overhead System	(157,194)
Less Applicant Installed System	(770,156)
<b>TOTAL AGREEMENT AMOUNT</b>	<b>\$457,908</b>

**TOTAL CONTRACT/AGREEMENT AMOUNT** **\$2,030,182**

3. **SOURCE OF FUNDING:**

416-Underground Utility Fund

4. **OPERATING COSTS:** The project will have no operating and maintenance impacts on the general fund.

**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 contingency costs.

HONORABLE MAYOR AND CITY COUNCIL

June 8, 2020

**Subject: Rule 20B Underground District – Delmas/Park**

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Fund #	Appn. #	Appn. Name	Total Appn.	Amt for Contract/Agreements	2020-2021 Proposed Budget Page	Last Budget Action (Date, Ord. No.)
416	4654	Underground Utility Program (20B)	\$2,640,000♦	\$2,030,182	Capital V-12	N/A

\*The 2020-2021 Proposed Capital Budget was approved by the City Council on June 16, 2020, and is scheduled for adoption on June 23, 2020.

♦The total appropriation consists of the 2020-2021 Proposed Capital Budget amount of \$1,375,000 and a rebudgeted amount of \$1,265,000. As part of the Recommended Amendments to the 2020-2021 Proposed Operating and Capital Budgets MBA scheduled to be approved by council on June 23, 2020, \$1,265,000 of the Fiscal Year 2019-2020 Underground Utility Program (20B) appropriation was rebudgeted to Fiscal Year 2020-2021.

### **CEQA**

File No. PP16-106

/s/

MATT CANO

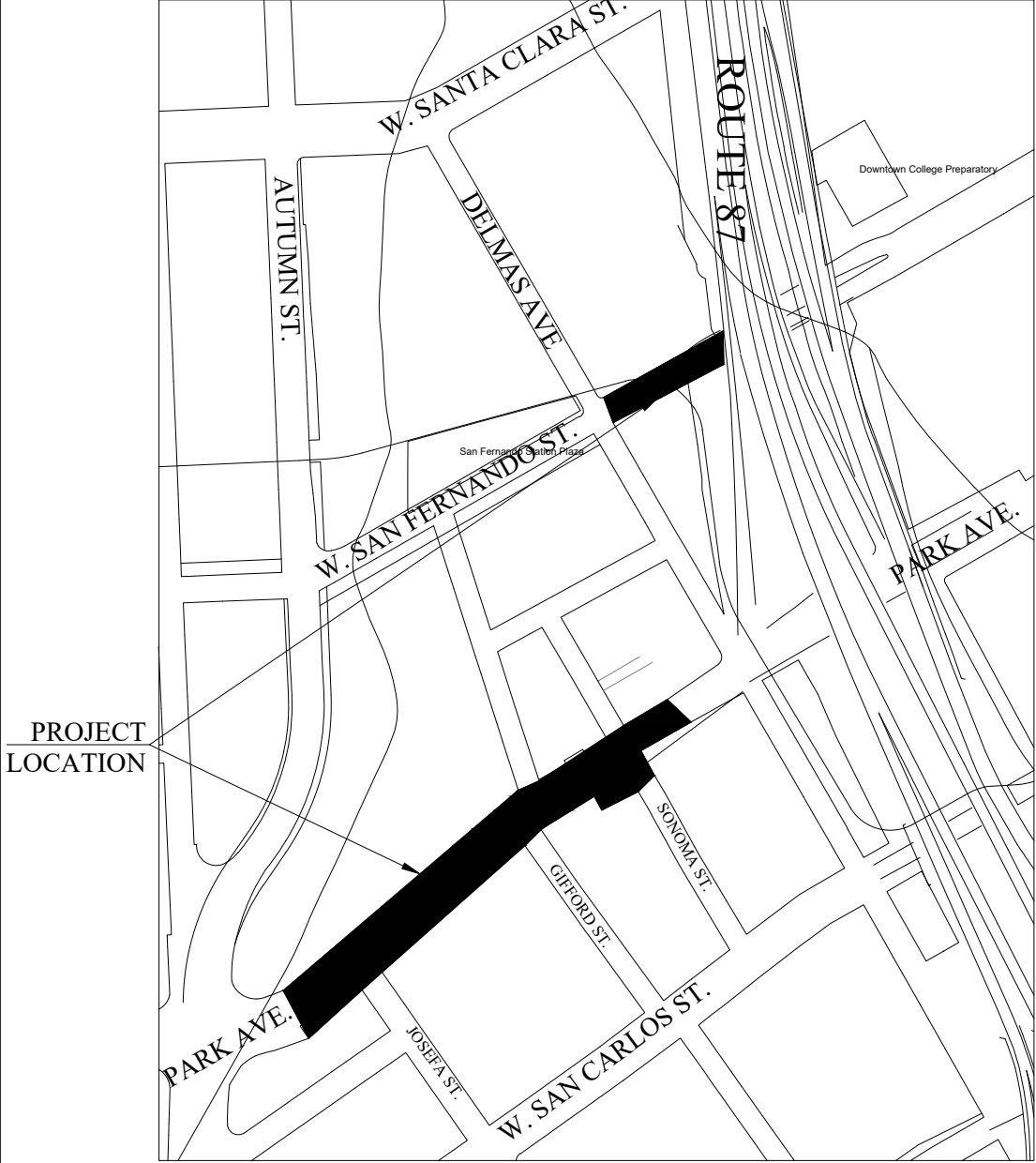
Director of Public Works

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

Attachments

Location Map

6302-RULE 20B UNDERGROUND DISTRICT - DELMAS/PARK  
LOCATION MAP



NOT TO SCALE

PROJECT LOCATION