



COUNCIL REPORT

DATE: May 24, 2022
CATEGORY: Consent
DEPT.: Public Works
TITLE: **Shoreline Boulevard Interim Bus Lane and Utility Improvements, Projects 16-58 and 18-43—Various Actions**

RECOMMENDATION

1. Authorize the City Manager or designee to pursue termination of the construction contract with Granite Rock Construction for Shoreline Boulevard Interim Bus Lane and Utility Improvements, Project 18-43.
2. Transfer and appropriate \$259,331 from the Wastewater Fund and \$238,000 from the Water Fund to Shoreline Boulevard Interim Bus Lane and Utility Improvements, Design, Project 16-58. (Five votes required)
3. Acting in its capacity as Board of Directors of the Shoreline Regional Park Community, transfer and appropriate \$80,000 from Shoreline Community Fund to Shoreline Boulevard Interim Bus Lane and Utility Improvements, Design, Project 16-58.
4. Authorize the City Manager or designee to amend the professional services agreement with Mark Thomas & Company, Inc., in the amount of \$577,331 to provide additional design services in a not-to-exceed amount of \$2,821,000.

BACKGROUND

The Shoreline Boulevard Reversible Bus Lane is a multi-phase project that is a Priority Transportation Improvement in the North Bayshore Precise Plan (NBPP) intended to support commercial and residential development in the North Bayshore Area. In addition to transit, bicycle, and pedestrian improvements, the project includes new water lines that support growth in North Bayshore and sewer lines for growth outside of North Bayshore. The elements originally approved and included in the first phase of the project are shown in Figure 1.

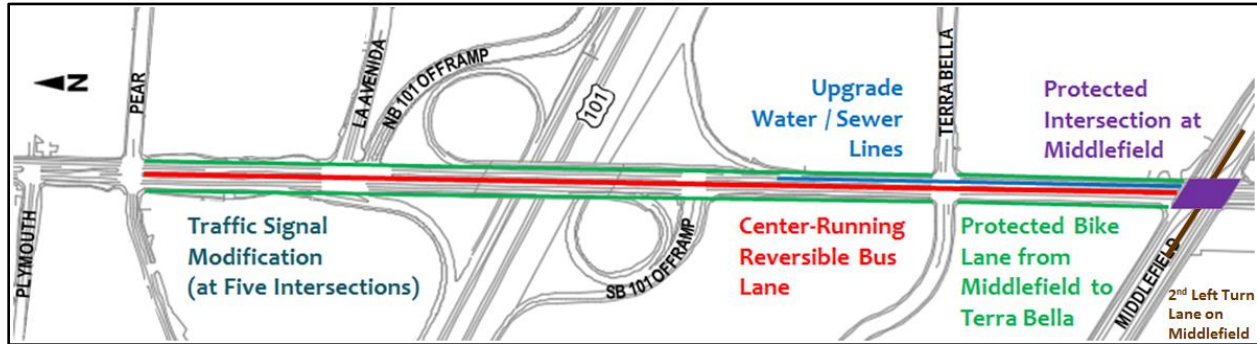


Figure 1: Project Elements (Approved in December 2019)

Council has taken several actions for the design, right-of-way acquisition, and construction of the project. Recent key actions include:

- **December 3, 2019:** Council approved plans and specifications and authorized staff to advertise the project for bids.
- **December 8, 2020:** Council approved amending the project budget to add funding and awarded the construction contract to Granite Rock Construction (Contractor).
- **October 26, 2021:** Council approved amending the project budget and agreement with Mark Thomas & Company, Inc., (Mark Thomas) to add design support during construction. Council also directed staff to defer constructing the second left-turn lanes on West Middlefield Road for five years and to proceed with California Environmental Quality Act (CEQA) review and NBPP Environmental Impact Report (EIR) revisions as needed for removal of the additional left-turn lanes from the construction project's scope of work.
- **Right-of-way acquisition:** The City has completed the purchase of the right-of-way needed for the protected bikeways from eight parcels. One additional property is still in the eminent domain legal process, but the City has received an Order of Possession for the right-of-way allowing the project to proceed with construction.

ANALYSIS

Initial Contractor Work and Scope Change

During construction, the Contractor performed underground site investigations, including contracted and additional authorized utility potholing, to confirm the existing underground utility locations. North Shoreline Boulevard is one of the most challenging streets in the City for installation of underground utilities. Many City-owned utilities already exist, electric and

communication lines have been undergrounded, and an unusually high number of fiber optic lines are also present. The Contractor found significant site condition differences from what was shown in the plans, including an unmarked buried communications conduit and an abandoned PG&E gas main. These utility conflicts required the redesign of the alignment of portions of the new water and sewer mains and several traffic signal poles. This additional design work was due, in part, to insufficient potholing during design and unmarked utilities that were not previously identified. In addition, the removal of the second left-turn lanes on West Middlefield Road from the construction project requires a redesign of the intersection and signal improvement to accommodate these changes.

The Contractor reviewed the revised elements and indicated that due to the substantial scope of the changes, the character of the work had significantly changed from their submitted bid. The City and Contractor were not able to reach an agreement on a change order cost and the Contractor indicated that the Contractor would only proceed with the work on a "time-and-materials" basis. A "time-and-materials" basis is an open-ended construction compensation method whereby an owner compensates a contractor based on the actual time spent by a contractor to perform the work, including equipment and materials used by the contractor. This method does not have a known final cost amount before the work begins, would cause administrative burdens to both parties with detailed tracking, and could potentially result in time delays and cost increases. This approach to a large and complex portion of the project is neither desirable nor recommended due to the inherent risk involved to the City. As a result, the Contractor and staff mutually agreed that the best course of action is to terminate the construction contract.

Council authorization is required for staff to proceed with contract termination. As part of a termination, the City will be obligated to pay the Contractor incurred costs for construction elements completed to date and other costs such as mobilization, materials purchased but not installed, and valid lost profit costs. Staff is currently negotiating these costs with the Contractor.

Consultant Agreement Amendment

In order to rebid the project, additional design services will be required to revise the design and repackage the plans and specifications. Mark Thomas is the design and engineering consultant for Shoreline Boulevard Interim Bus Lane and Utility Improvements, Project 16-58, and has an existing professional services agreement with the City for \$2,243,732. Staff considered various options for redesign efforts and met with Mark Thomas several times to identify design process and team improvements to ensure quality plans are developed based on more in-depth underground utilities investigation. Based on the discussed expectations for both parties and the significant background knowledge Mark Thomas has with the project, staff recommends continuing with Mark Thomas to lead the redesign efforts of the project.

The City requested an additional services proposal for additional design services and construction support services to revise the design and repackage the plans and specification for bid documents. Mark Thomas submitted a proposal for an increase to basic services in the amount of \$573,600. This scope of work includes additional potholing and revised plans incorporating discovered site conditions (existing conditions plans, utility staging plans, etc.) and construction support services. Staff reviewed the proposal and found the fee to be fair and reasonable and recommends Mark Thomas's agreement be amended to add \$577,331 for a total not-to-exceed amount of \$2,821,000.

California Environmental Quality Act

In accordance with the requirements of CEQA, the NBPP EIR provided program-level review for Shoreline Boulevard Bus Lane and Utility Improvements, Project 16-58. The project-level CEQA review findings concluded that no new significant impacts or impacts of substantially greater severity would result from the project than were discussed in the EIR. Pursuant to CEQA Guidelines Section 15164, the City Council adopted a resolution on March 21, 2017 to certify an Addendum to the NBPP EIR for the project.

However, the second left-turn lanes on West Middlefield Road are listed as a mitigation in the Mitigation Monitoring and Reporting Program (MMRP) for the NBPP FEIR. According to the MMRP, this improvement will be included in the reversible bus lane project. To proceed with deferral of the left-turn lane for five years, and exclusion of the second left-turn lane from the reversible bus lane project, the MMRP will need to be modified. It is recommended that Council approve modifications to the MMRP when Council approves the project for rebidding to indicate that the left-turn lanes will be constructed separate from the reversible bus lane project at a later date. It is anticipated that no additional addendums will be necessary to rebid the project.

Next Steps

Should Council approve the recommended actions, staff would continue working with the Contractor to determine the close-out items and final contract payment amount. Staff would then return to a future City Council meeting, anticipated in August or September 2022, to recommend Council accept the portions of the project work completed to date, authorize final payment, and terminate the construction contract. In parallel, the project redesign is anticipated to be completed by the end of this calendar year, at which time staff would seek Council adoption of a modified NBPP EIR MMRP, approval of project plans and specifications, and authorization to rebid the project.

FISCAL IMPACT

As shown in Table 1, design of the project is under Shoreline Boulevard Interim Bus Lane and Utility Improvement, Phase I Construction, Project 16-58, and funded from various sources.

Table 1: Funding Sources, Project 16-58

| | Design, Project 16-58 |
|---|----------------------------------|
| Shoreline Regional Park Community, 2018 Series A Bond | \$ 60,000 |
| Shoreline Regional Park Community Fund | 1,923,000 |
| Water Fund | 90,000 |
| Water Capacity Fees | 444,000 |
| Wastewater Fund | 90,000 |
| Wastewater Capacity Fees | <u>148,000</u> |
| TOTAL | <u>\$2,755,000</u> |

The fee for the recommended amendment is \$577,331 for additional services, for a total not-to-exceed amount of \$2,821,000. Staff recommends transferring and appropriating \$259,331 of Wastewater funds, \$275,000 of Water funds, and \$80,000 of Shoreline Community funds to Shoreline Boulevard Interim Bus Lane and Utility Improvements, Design, Project 16-58. With the recommended transfer of funds, there are sufficient funds in the project budget for the amendment to the Mark Thomas agreement.

Based on the utility conflicts identified and inflation, staff anticipates construction costs to increase and exceed the current construction project budget. Staff will return to Council with the approval of the plans and specifications and include a recommendation to increase project funding once a construction cost estimate is better defined. Funding is expected to be available from the Water, Wastewater, and Shoreline Regional Park Community Funds.

CONCLUSION

The Shoreline Bus Lane project is an ambitious and complex project with improvements for all major modes of on-street transportation and needed utility improvements to serve many areas of the City. Underground investigation after construction began has revealed a number of unforeseen utility conflicts with planned improvements. Due to conflicts with existing utilities and the West Middlefield Road turn lane changes to the project, the scope of the project has changed significantly, and the Contractor and staff do not agree on a compensation method. Therefore, the Contractor and staff agree that contract termination is the preferred course of

action, and Council authorization is required for staff to proceed with termination. Staff has initiated the settlement and close-out process and does not anticipate that it will be adversarial.

Staff recommends initiating redesign with Mark Thomas to rebid the project. Additional design funding is required in the amount of \$573,600 for additional design services and is requested from the Water, Wastewater, and Shoreline Community Funds. The redesign effort is anticipated to be complete at the end of this calendar year, at which time staff will return to Council to modify the NBPP EIR MMRP, approve additional construction funding, approve the plans and specifications, and authorize rebidding the project.

ALTERNATIVES

1. Pursue termination of the construction contract and defer redesign and rebidding the project.
2. Provide other direction.

PUBLIC NOTICING—Agenda posting.

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