



COUNCIL REPORT

DATE: October 25, 2022

CATEGORY: Consent

DEPT.: Public Works

TITLE: **Shoreline Boulevard Interim Bus Lane and Utility Improvements, Project 18-43—Accept Construction**

RECOMMENDATION

Accept the completed construction elements for Shoreline Boulevard Interim Bus Lane and Utility Improvements, Project 18-43, and authorize the final contract payment.

BACKGROUND

“Acceptance” of a construction contract is a legal event recognized by State law when the City verifies the contractor has satisfactorily completed, or mutually agreed to complete, portions of a public project. Once accepted, other actions occur, such as final payment to the contractor and the release of bonds obtained by the contractor that ensure completion of the project. Following acceptance, the City becomes responsible for the maintenance of the public project.

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.

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.

- **May 24, 2022**: Council authorized staff to amend the project budget and agreement with Mark Thomas for additional design services and to pursue termination of the construction contract with the Contractor. During the Contractor's underground site investigations, the Contractor discovered unforeseen site conditions creating several utility conflicts. In addition, in October 2021, Council directed additional scope changes removing the proposed second left-turn lanes on West Middlefield Road. Due to these substantial scope changes, the work to be performed had significantly changed from the Contractor's submitted bid and, unfortunately, staff and the Contractor could not agree on the terms of the compensation. As a result, both parties mutually agreed to terminate the construction contract.
- **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

As noted in the May 24, 2022 Council report, the next steps were for staff to continue working with the Contractor to determine the close-out items and final contract payment amount and return to a future City Council meeting to recommend that Council accept the portions of the project work completed to date subsequent to the termination of the contract.

Per the terms of the construction contract general provisions, the City is 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 profits. Although the entire scope of the original contract was not completed due to the mutual agreement to terminate the contract, it is necessary to accept the completed work and release the final payment to complete the contract termination process.

Staff has completed review of the documentation of costs incurred for the completed work items and expenses and has reached an agreement with the Contractor on the final contract costs (see Table 1).

Table 1: Itemized Final Contract Costs

Item	Final Payment
Mobilization, Traffic Control, Pollution Prevention, Groundwater Sampling	\$ 483,908
Tree Removal	66,906
Materials and Equipment	424,491
Potholing and Soils Testing	1,057,525
Profit, Overhead, and Suspension	<u>303,876</u>
TOTAL	<u>\$2,336,706</u>

Incurring expenses include overhead and profit on work completed. The work completed for groundwater sampling, tree removal, potholing, and soil testing are expenses that will support the next construction contract. There were unused pipe materials that could not be returned to the supplier. The City has taken possession of these materials, which are being stored on City property. Staff is evaluating the liability and risks, such as possible lack of material warranty, associated with reusing the materials for the next construction contract.

The final construction cost of \$2,336,706 is 16% of the original construction contract amount and included six change orders with a total cost of \$1,077,383. The completed work was accomplished in accordance with the approved plans and specifications.

Staff has continued with the additional project design effort, incorporating the utility potholing information addressing the utility conflicts for installing the new water and sewer lines as well as updating the anticipated increase in construction costs due to these conflicts and inflation. Staff anticipates design completion and returning to Council to seek approval of plans and specifications, including a recommendation to increase project funding, in early 2023. Funding is expected to be available from the Water, Wastewater, and Shoreline Regional Park Community Funds.

FISCAL IMPACT

Construction of Shoreline Boulevard Interim Bus Lane and Utility Improvements, Project 18-43, is funded with \$16,401,605 from the Shoreline Community Fund (including Shoreline Regional Park Community 2018 Series A Bond Proceeds), Water Fund (including capacity charges and North Bayshore development impact fee), Wastewater Capacity Charges (including wastewater North Bayshore development impact fee), Capital Improvement Program (CIP) Reserve Fund, and a contribution from the 1045 La Avenida development (Microsoft) in the North Bayshore Area. There is sufficient funding available for the recommended action.

ALTERNATIVES

Determine that the completed improvements have not been completed in conformance with City standards and decline to accept the improvements until they are completed to the satisfaction of the City Council.

PUBLIC NOTICING—Agenda posting.

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File (18-43)