

Agenda Report

June 19, 2017

TO: Honorable Mayor and City Council

FROM: Water and Power Department

SUBJECT: AUTHORIZE THE CITY MANAGER TO AMEND CONTRACT NO. 30723 WITH TOBY B. HAYWARD, INC. TO FURNISH LABOR AND MATERIALS FOR CONSTRUCTION OF TEMPORARY BRIDGES AT ARROYO SECO CANYON

RECOMMENDATION:

It is recommended that the City Council:

1. Acknowledge that a lawsuit was filed against the City seeking to invalidate the City's approval of the Initial Study Mitigated Negative Declaration ("IS/MND") for the underlying Arroyo Seco Canyon Project, the court issued a decision in March 2017 partially against the City, the City is currently awaiting the terms of a final judgment which may allow the work proposed herein to move forward, and such work will only move forward if in compliance with the judgment; and
2. Authorize the City Manager to amend Contract No. 30,723 with Toby B. Hayward, Inc. to extend the contract duration by an additional one year with an option for three additional one-year terms subject to the approval of the City Manager, and increase the contract not-to-exceed amount from \$440,000 to \$470,000 to provide labor and materials for the construction of the temporary bridges at Arroyo Seco Canyon.
3. To the extent this could be considered a separate procurement subject to the Competitive Selection process, grant the contract an exemption pursuant to Pasadena Municipal Code (PMC) Section 4.08.049(B), contracts for which the City's best interests are served.

BACKGROUND:

The Water and Power Department ("PWP") is proposing to repair and replace facilities within the Arroyo Seco Canyon area that were damaged by events related to the 2009 Station Fire. Through enhancements located in three areas of the Arroyo Seco, the project will also allow for the increased utilization of existing surface water rights held by the City, improve water quality in the canyon, improve biological habitats, restore hydrological

function, and improve ecosystem health. The proposed improvements are collectively referred to as the Arroyo Seco Canyon Project ("ASCP") and are scheduled for construction in 2017.

Two existing bridges in the Arroyo Seco Canyon do not have the capacity to support loads from construction equipment that will be needed for the ASCP. Specification WD-16-01 includes the construction of temporary structures that will allow transport of heavy equipment and materials over two existing bridges and provide protection to the railing of a third bridge in advance of the planned ASCP construction.

On September 12, 2016, City Council authorized the contract with Toby B. Hayward, Inc. to furnish labor and materials for construction of temporary bridges at Arroyo Seco Canyon based on competitive bid results. The contract was signed on November 21, 2016 for an amount not to exceed \$440,000. Since the date of contract execution, Toby B. Hayward Inc. completed the construction of the first temporary bridge, and began procuring materials and fabrication for the construction of the second temporary bridge.

On July 2, 2015, two petitioners jointly filed a lawsuit against the City seeking to invalidate the City's approval of the California Environmental Quality Act ("CEQA") IS/MND. On March 23, 2017, the court issued a ruling that was unfavorable to the City; PWP instructed Toby B. Hayward Inc. to put the remaining construction of the second temporary bridge on hold, which otherwise would have been completed in approximately 45 days. On May 2, 2017, the City issued a proposed writ of mandate. However, as of May 30, 2017 the court had not issued the terms of the judgment, which would state which components of the ASCP, including the temporary bridges, will be allowed for construction.

Contract 30,723 with Toby B. Hayward Inc. expires on June 30, 2017. Staff recommends that the City Council approve an initial one-year extension to June 30, 2018 with an option for three additional one-year terms, and increase the contract amount from \$440,000 to \$470,000. The increased amount will cover remobilization costs resulting from the hold placed on the project and the extension of its duration. The additional costs include lease of equipment and materials, storage of materials that have been fabricated or partially fabricated, but not yet installed, and labor expenses representing the short period when the work was placed on hold, but believed to resume before contract expiration.

Staff's recommendation to extend the contract by at least one year will allow for a thorough evaluation of the City's options, which include permanent repair and strengthening of the bridge or to proceed with the temporary bridge as the preferred alternative. If the final ruling allows the work to move forward, and the evaluation of options leads to the conclusion that a continuation of the current contract remains in the best interest of the City, then the extension will also provide sufficient time to complete the second temporary bridge. Depending on the outcome of the final judgment, PWP may opt not proceed with the work, in which case staff will negotiate contract termination terms with the contractor. The optional one-year extensions may be needed depending on the timing of the final judgment and resulting additional delays to the work.

The contract amount includes a 15% contingency of \$57,400 to accommodate any necessary change orders as a result of unforeseen conditions, including environmental mitigation and logistical challenges due to the location of the work in the Arroyo Seco. To date, \$5,295 of this contingency has been committed. Not including contingency, the balance remaining on the contract for authorized work and retainage is \$227,609.

COUNCIL POLICY CONSIDERATION:

The contract is consistent with the Public Facilities Element of the General Plan and supports the City Council's goal to improve, maintain and enhance public facilities infrastructure, and to implement capital improvements that will maintain and rehabilitate infrastructure.

ENVIRONMENTAL ANALYSIS:

In compliance with CEQA, an Initial Study ("IS") was prepared as documentation to support a Mitigated Negative Declaration ("MND") for the ASCP. The IS/MND was approved by the City's Hearing Officer at a public hearing on January 7, 2015. Subsequent appeals were filed challenging this decision, but ultimately City Council adopted the IS/MND after a public hearing on June 1, 2015. During the 30-day period set by filing the Notice of Determination, a lawsuit was filed against the City seeking to invalidate the City's approval of the IS/MND. The court issued a decision in March 2017, and the City is currently awaiting the terms of the judgment. The work provided for in this contract will only move forward in compliance with the terms of the judgment.

FISCAL IMPACT:

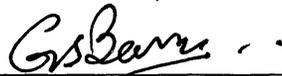
The cost of this action will be \$309,720, which includes the balance of the contract amount of \$227,609, plus remaining contingency of \$52,105, plus additional costs of \$30,000. Funding for this action will be addressed by the utilization of existing appropriations in the Water System Capital Improvement Program Budget Number 1040 – Arroyo Spreading Basins & Intake Structures. It is anticipated that 100% of the cost will be spent during fiscal year 2018. In addition, it is anticipated there will be \$50,000 in additional costs for contract administration, and inspection as a result of this action. The total fiscal impact will be \$359,720.

The following table presents the fiscal impact summary:

Remaining Authorized Work	\$227,609
Proposed Increase	\$30,000
Remaining Contingency	\$52,105
Total FY18 Contract Amount	\$309,720
Contract Administration	\$ 30,000
Inspection	\$ 20,000
Total Fiscal Impact	\$359,720

The ASCP, including the temporary bridge work, is partially funded by a Proposition 84 grant from the California Department of Water Resources. It is not known at this time what effect the outcome of the lawsuit will have on reimbursement of temporary bridge costs. There is no anticipated impact to other operational programs or capital projects as a result of this action.

Respectfully submitted,



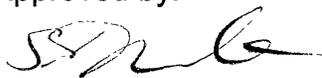
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