



City Council Staff Report

From: City Manager

Report Type: CONSENT CALENDAR

Lead Department: Public Works

Meeting Date: December 9, 2024

Report #:2410-3658

TITLE

Approval of 1) Amendment No. 7 to Contract No. C16163034A with Cumming Management Group, Inc. in the amount of \$827,418 for Additional Construction Management Services; 2) Increase of Construction Contingency for Contract No. C21178123B with Swinerton Builders in the Amount Not-to-Exceed \$3,000,000 for the New Public Safety Building Capital Improvement Program Project (PE- 15001); and 3) Budget Amendment in the Capital Improvement Fund; CEQA - Environmental Impact Report for the New Public Safety Building (Resolution No. 9772)

RECOMMENDATION

Staff recommends that Council:

1. Approve and authorize the City Manager or their designee to execute Amendment No. 7 to Contract No. C16163034A with Cumming Management Group, Inc. to add \$827,418, increasing the not to exceed amount to \$10,475,243 for Construction Management Services for the New Public Safety Building project (PE-15001);
2. Approve an increase of construction contingency for Contract No. C21178123B with Swinerton Builders in an amount not-to-exceed \$3,000,000, for a total contract contingency amount not to exceed \$13,392,800; and
3. Amend the Fiscal Year 2025 Budget Appropriation for the Capital Improvement Fund by (requires a 2/3 vote):
 - a. Decreasing the Capital Fund Infrastructure Reserve by \$3,800,000; and
 - b. Increasing the New Public Safety Building project (PE-15001) appropriation by \$3,800,000.

BACKGROUND

The New Public Safety Building (PSB) (PE-15001) is one of ten key projects included in the 2014 Council Infrastructure Plan. The PSB was identified as the plan's highest priority project, and its environmental impacts were analyzed with the 350 Sherman Avenue parking garage project for the purposes of complying with the California Environmental Quality Act (CEQA). The parking garage opened in December 2020. On February 1, 2021, Council approved the award of the

construction contract for the PSB to Swinerton Builders (Swinerton) and authorized execution and delivery of one series of Certificates of Participation (COPs) in an amount not to exceed \$120 million to finance PSB construction; ultimately, only \$101 million in debt was issued.¹

On June 13, 2016, Council authorized a contract with Nova Partners, Inc. (Nova) for program management and construction management services for the Infrastructure Plan projects implementation.² On November 27, 2017, Amendment No. 1 to Nova's contract added construction management services for the Fire Station #3 replacement project.³ On February 21, 2018, Amendment No. 2 to Nova's contract updated the hourly rate schedules for years 2018 and 2019. On December 10, 2018, Amendment No. 3 to Nova's contract added construction management, special inspection and testing for the California Avenue Parking Garage.⁴ On February 1, 2021, Amendment No. 4 to Nova's contract added the construction management, special inspection and testing for the PSB.⁵ On July 31, 2023, Amendment No. 5 to Nova's contract extended the time of the contract through January 2024. On February 26, 2024, Amendment No. 6 to Nova's contract extended the time of the contract through July 31, 2025 and added additional construction management, special inspection, and testing for the PSB.⁶

In July 2024, Nova merged with Cumming Management Group, Inc. ("CMGI") and CMGI assumed all duties and obligations of Nova.

In addition to the initial construction contingency of \$8,395,300 for the Swinerton contract, Council approved an additional \$1 million on June 17, 2024⁷ and \$1 million on October 21, 2024⁸, for a total of \$2 million in additional construction contingency for Swinerton.

¹ City Council, February 1, 2021; Agenda Item #3, SR #11752
<https://portal.laserfiche.com/Portal/DocView.aspx?id=97913&repo=r-704298fc>

² City Council, June 13, 2016; Agenda Item #5, SR #6809
<https://portal.laserfiche.com/Portal/DocView.aspx?id=51191&repo=r-704298fc>

³ City Council, November 27, 2017; Agenda Item #7, SR #8561
<https://portal.laserfiche.com/Portal/DocView.aspx?id=50867&repo=r-704298fc>

⁴ City Council, December 10, 2018; Agenda Item #15, SR #9688
<https://portal.laserfiche.com/Portal/DocView.aspx?id=99464&repo=r-704298fc>

⁵ City Council, February 1, 2021; Agenda Item #3, SR #11752
<https://portal.laserfiche.com/Portal/DocView.aspx?id=97913&repo=r-704298fc>

⁶ City Council, February 26, 2024; Agenda Item #6, SR #2310-2130
<https://portal.laserfiche.com/Portal/DocView.aspx?id=70485&repo=r-704298fc>

⁷ City Council, June 17, 2024; Agenda Item #17, SR #2404-2929
<https://portal.laserfiche.com/Portal/DocView.aspx?id=73965&repo=r-704298fc>

⁸ City Council, October 21, 2024; Agenda Item #10, SR #2410-3550
<https://portal.laserfiche.com/Portal/DocView.aspx?id=103789&repo=r-704298fc>

ANALYSIS

The PSB is one of the most complex projects that the City has constructed to date. Given its complexity, since the PSB construction contract was awarded in early 2021, there have been change orders addressing issues of unforeseen site conditions, owner requested changes, design clarifications, and required changes due to the authorities having jurisdiction, which are agencies that are responsible for enforcing codes and regulations. In addition, since change order costs are based on current construction costs rather than bid amounts, the significant escalation of construction costs since award of the construction contract has impacted the project and the use of contingency.

Due to the length of time it has taken to construct the PSB, additional funding is needed for the construction manager, CMGI. Staff recommends approval of Amendment No. 7 (Attachment A) to the contract with CMGI, which provides additional funding for continued construction management services including project close-out through April 2025. Specifically, it includes funding for four scopes of work including construction management services (performed by CMGI), specialty scheduling services (performed by Rowecon, LLC.), special testing & inspection services (performed by Consolidated Engineering Laboratories), and Photo-Documentation (performed by Multi-Vista). This contract amendment includes \$752,198 for base services and \$75,220 for additional services.

Since June 2024, Council has approved \$2 million in additional contingency for the PSB construction contract beyond the initial \$8,395,300 contingency. As of November 2024, that contingency has been nearly fully used on multiple change orders including smoke control for the detention area, sally port coiling doors, and a number of other items needed to address code compliance and American with Disabilities Act (ADA) matters that are required to receive a Temporary (initial) Certificate of Occupancy (TCO). Staff expects to receive a TCO in December and an additional \$3,000,000 is recommended to provide enough contingency authorization to continue to evaluate and process valid change orders for work already completed and work required for TCO as the project nears completion.

FISCAL/RESOURCE IMPACT

Staff recommends increasing the Fiscal Year 2025 budget appropriation for the New Public Safety Building project (PE-15001) by \$3,800,000 using the Capital Fund Infrastructure Reserve to award the attached contract amendment and to provide additional contingency to the construction contract. Staff presented the FY 2024 Annual Comprehensive Financial Report (ACFR) and Year-End budget adjustments in various funds⁹. In the ACFR, staff recommended that the amount above the 18.5% target for the General Fund Budget Stabilization Reserve (BSR) be allocated to the Capital Fund Infrastructure Reserve (\$3.0 million) and the Budget

⁹ December 3, 2024 Finance Committee, Item #1B:

<https://cityofpaloalto.primegov.com/Portal/Meeting?meetingTemplateId=14543>

Uncertainty Reserve (\$5.9 million). Consistent with current practice, the budget actions to allocate BSR funds above the 18.5% target level will be included in the FY 2025 Mid-Year Revenue (February 2025). General fund savings of \$3 million will be transferred to the Capital Improvement Fund during Fiscal Year 2025 midyear covering the majority of this recommended budget amendment to PSB. If the budget amendment is approved, the revised PSB project budget (without salaries and benefits) will be \$119,432,064.

STAKEHOLDER ENGAGEMENT

Public Works has coordinated with key staff from departments whose operations will be dependent upon the PSB.

ENVIRONMENTAL REVIEW

An Environmental Impact Report for the PSB and the New California Avenue Area Parking Garage was prepared and certified by Council on June 11, 2018 (ID #8967), by adoption of Resolution No. 9772.¹⁰

ATTACHMENTS

Attachment A: Cumming Management Group, Inc. Contract No. C16163034A Amendment No. 7

APPROVED BY:

Brad Eggleston, Director Public Works/City Engineer

¹⁰ Resolution 9772, <https://portal.laserfiche.com/Portal/DocView.aspx?id=18240&repo=r-704298fc>