

Special Meeting  
November 21, 2011

The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:03 P.M.

Present: Burt, Espinosa, Holman arrived @ 7:13 P.M., Klein, Price, Scharff, Schmid, Shepherd, Yeh arrived @ 7:06 P.M.

Absent:

#### SPECIAL ORDERS OF THE DAY

1. Community Group Presentation - Developmental Assets Initiative, Project Safety Net.

The City Council heard a presentation from one of our community collaborative teams working on Project Safety Net strategy implementation - The Developmental Assets Initiative. Developmental Assets are the positive values, relationships, and experiences that youth need to thrive. Youth with low asset levels are more likely to engage in risky behaviors and fail to achieve at school. Youth with high asset levels are more likely to choose healthy activities, succeed in school, and avoid risky behaviors. Put simply, "More Assets ==> More thriving." The Palo Alto Developmental Assets Initiative team launched the Asset of the Month campaign to raise awareness. Banners promoting asset building can be seen around the city. The team has carried the message to our community organizations and recently brought Clay Roberts, a wonderful trainer, to Palo Alto to train and

inspire community leaders, middle school staff at all three public middle schools and parents. City Council members and School Board trustees have added their voices to the effort by launching a campaign to reach out wider in the community. A few key messages presented included our community has a history of supporting youth, and every person in Palo Alto can be an asset builder. At every chance we ask people to take advantage of every moment to build assets in every child. A few examples include: *Take the time to listen when a young person speaks. Set an example for youth. Take the initiative in engaging young people positively. Smile and make eye contact with young people. Even when a child is in trouble try to concentrate on what is right with them.*

#### CITY MANAGER COMMENTS

City Manager, James Keene announced that the Palo Alto Art Center Holiday Family Day and Cubberley Artist Open House would be held on December 3rd, 1-5 p.m. The event will consist of art demos, music, and holiday shopping. A tree lighting ceremony and Lytton Plaza dedication will be held on December 9<sup>th</sup>. On November 15<sup>th</sup> the City opened seven additional acres around the closed landfill at Byxbee Park. Seventy-two out of 126 acres will be accessible for hiking. A tree planting event at Greer Park was scheduled for December 3rd, 9 a.m. to Noon. Volunteers will plant 54 new trees where 30 trees were removed.

#### ORAL COMMUNICATIONS

Marilu Lopez-Serrano spoke regarding employee issues and the Ravenswood City School District (RCSD) Superintendent.

Alice Frayne spoke regarding City employee, Joe Valdez and thanked him and his team for fixing seven miles of disrepair sidewalks within weeks that provided safer access to 28 bus routes.

170.6 (Mark Petersen-Perez) spoke regarding a response to a Public Records Request he submitted to the City regarding the Palo Alto Police response to Occupy Oakland. He spoke of the criticisms he received from the Council and issues regarding freedom of speech.

Brian Schmidt said he would be leaving his position with the Committee for Green Foothills at the end of the year. He held the position for nine years and wanted to thank the Council and Staff for the opportunity of working with them and introduced his replacement Alice Coffman.

Alice Coffman spoke regarding her new position with the Committee for Green Foothills as a legislative advocate and looked forward to working with the Council and City Staff.

Richard Brand spoke regarding parking issues in the Professorville area and a parking permit program.

#### APPROVAL OF MINUTES

**MOTION:** Vice Mayor Yeh moved, seconded by Council Member Shepherd to approve the minutes of October 3, 2011.

**MOTION PASSED:** 9-0

## CONSENT CALENDAR

Staff requested Agenda Item No. 6 be pulled to be heard on November 28, 2011.

**MOTION:** Council Member Klein moved, seconded by Council Member Scharff to pull Agenda Item No. 2, to become Agenda Item No. 8c.

**MOTION:** Council Member Scharff moved, seconded by Council Member Shepherd to approve Agenda Item Nos. 3-5, 7-8b.

- ~~2. Approval of a Water Enterprise Fund Contract with Anderson Pacific Engineering Construction, Inc. in a Total Not to Exceed Amount of \$3,135,200.00 for the Seismic Upgrade of the Mayfield and Boronda Reservoirs WS-08002-501.~~
3. Approval to Adopt Networking Equipment Standardization Based Upon Hewlett Packard Network Switching Equipment.
4. Approval of City of Palo Alto Response Letter to Metropolitan Transportation Commission Regarding One Bay Area Grant Proposal.
5. Approval of a Contract with RBF Consulting, Inc. in the Amount of \$140,000 for Southgate Neighborhood Storm Drain Improvements and Green Street Project, Capital Improvement Program Project SD-10101.
- ~~6. Approval of Final Map to Merge Four Parcels into a 3.62 Acre Parcel for Condominium Subdivision into a Hotel Unit and 26 Residential Units, Located at 4301 and 4329 El Camino Real.~~

7. Approval of Changes to the "One Percent for Art" Policy Relating to Art Projects' Procedures for Determining Project and Funding Eligibility.
8. Budget Amendment Ordinance 5133 in the Amount of \$111,487.75 to Fund the Purchase of Seven (7) Diesel Particulate Filter Devices; the Approval of a Purchase Order with Exhaust Emissions Reduction Specialists in an Amount Not to Exceed \$132,139.16 for the Purchase and Installation of Ten Diesel Particulate Filter Devices; Approval of a Purchase Order with Emissions Retrofit Group in an Amount Not to Exceed \$60,550.72 for the Purchase and Installation of four (4) Diesel Particulate Filter Devices and the Approval of a Purchase Order with Diesel Emission Service in an Amount not to Exceed \$50,937.03 for the Purchase and Installation of Three (3) Diesel Particulate Filter Devices (Vehicle Replacement Fund Capital Improvement Project VR-07002).
- 8a. Rescission of Prior Approvals of Resolution, Negative Declaration, and Capital Improvements Program Project Funding for California Avenue Transit Hub Corridor Improvements Project.
- 8b. Appointment of James Pelletier as City Auditor and Approval of At-Will Employment Contract.

**MOTION PASSED for Agenda Item Nos. 3-5, 7-8b: 9-0**

Mayor Espinosa welcomed and introduced the new City Auditor, Jim Pelletier.

City Auditor, Jim Pelletier stated that he looked forward to working with the City to support Council's priorities, accountability, and transparency within the City and to provide efficient auditing services.

Council Member Shepherd welcomed Mr. Pelletier to the City.

Council Member Holman welcomed Mr. Pelletier. She stated that the Council was impressed with the energy, passion, and compassion he emitted for his profession during the interview process and looked forward to having him apply those attributes to his task here at the City.

#### AGENDA CHANGES, ADDITIONS, AND DELETIONS

8c. (Former Item No. 2) Approval of a Water Enterprise Fund Contract with Anderson Pacific Engineering Construction, Inc. in a Total Not to Exceed Amount of \$3,135,200 for the Seismic Upgrade of the Mayfield and Boronda Reservoirs WS-08002-501.

**MOTION:** Council Member Klein moved, seconded by Council Member Scharff to approve the Staff recommendation but to reduce the contingency amount from 15 percent to 10 percent.

Council Member Klein stated that the contingency reserves should have stricter guidelines. The Council should maintain discretion and supervision in distributing the funds. He said a 10 percent contingency was sufficient for smaller contracts. The Council should be made aware of any unforeseen complications as the project moved forward.

Council Member Scharff stated that a 10 percent contingency should be policy and any unforeseen work could be brought back to the Council on the Consent Calendar.

Council Member Shepherd said she was in favor of decreasing the contingency limit. She said contract audits, change order policies, and how close original project estimates stay in line with the bid awards were part of the City Auditor's Office scope of work in the coming year. She supported the Motion.

Mayor Espinosa asked City Manager Keene if there would be issues regarding the recommendation.

City Manager, Jim Keene said contingencies were built on the variability of factors and not always on the 15 percent contingencies. He said the project was long-term. He did not see a problem with bringing items back on the Consent Calendar. He recommended a study to see if there were correlations between the current bid markets and bids coming in below job estimates.

Brian Schmidt, Water District Director, stated he had received information from Santa Clara County's (SCCO) former Water District Director Pat Ferraro that the District considered funding similar types of backup well facilities in the County and wanted to share the information with the Council and Staff.

**MOTION PASSED: 9-0**

## ACTION ITEMS

- 9 Submittal of Mitchell Park Library and Community Center Monthly Construction Contract Report and Council Direction to Staff to Continue Construction Contract Monthly Reports.

City Manager, James Keene stated there was an electronic mail (e-mail) and an addendum to the item "at places" that reflected recent change orders.

Interim Public Works Director, Mike Sartor stated this was the second in a series of monthly reports for the project. The first was in October 2012. He said the project was presented to the Council in September 2012 and that a number of project controls had been put in place as per the Council's direction. The City Attorney had brought in experts to help with potential change orders and claim issues. Additional training was conducted on field order controls and change orders on the site. Turner Construction had brought in a senior-level person to help manage and control the project.

Assistant Public Works Director, Phil Bobel gave a brief update on what had taken place since the last update in October. Change Order #9 under \$200K, and Change Order #10 under \$80K had been added. He said a summary of all change orders were listed in Staff Report ID#2242, page 2-3, Table 1. No change orders to the project had been made to attain a Platinum rating. Staff and consultants did not foresee any change orders to move the rating from Gold to Platinum. He said a Gold rating could be achieved by including more than the bare minimum of measures. The goal was to attain a Gold rating and Staff was hopeful of achieving a Platinum rating. Three new consultants had been hired to help evaluate the project. Consulting firms and their costs were listed in Staff Report ID#2242, page 4.



Change Order #8 was negotiated as a package and a breakdown of its components were noted in Staff Report ID#2242, page 4. He said hand-out Attachment E was in response to the Council's request regarding the number of outstanding change orders that were pending negotiations. As of November 14, 2011, there were over \$4 million in pending change orders.

Council Member Klein stated that the outstanding change orders were at 62 percent of the project and asked if there was any indication of any additional change orders coming from the contractors.

Mr. Sartor stated that was unknown at this time.

Council Member Klein asked if the contractors had been asked.

Mr. Sartor stated they had and the contractors had given Staff all the change orders they had up to this point.

Mr. Keene stated that Staff was opposed to the increase in change orders and hoped the amount would decrease through negotiations. He said strong project management should continue to be the key in the project.

Council Member Klein spoke regarding the contingency amounts and said the expectation should be to not spend the full amount approved by the Council. A 20 percent contingency was a large amount and the major reason for the monthly reports was to see how the project was progressing.

Mr. Keene stated he agreed with Council Member Klein and that the 20 percent was a ceiling. Staff's focus was to keep the contingency close to minimum as possible.

Council Member Klein stated that the community's perception was that the project was over budget. He clarified it was not and was \$7 million under budget. He stated the Downtown Library project was under budget and was completed on time. The community needed to know that the Council and Staff were keeping on top of the project and that they cared about the public's money and that it was spent wisely.

Council Member Shepherd noted that the color chart clearly showed the project was under budget. She asked Staff to explain Change Order #9 that included the addition of a basketball court slab and the foundation for an art sculpture.

Mr. Bobel explained that the material for the basketball court slab was not specified in the original bid and the foundation for the art sculpture was overlooked and not included in the design.

Council Member Shepherd agreed with Council Member Klein's comment to spend the public's money wisely; however, she noted that Staff had indicated that a 15 percent contingency worked in the past and could be reconsidered. She asked Staff what their thoughts were in making an incremental move.

Mr. Keene stated that in September the Council had reduced the Staff's contingency request from 25 to 20 percent and have considered another reduction from 15 to 10 percent. He said history has shown that 10 percent was the norm. Staff's job was to keep the spending as low as possible. The monthly meeting reports would show which way the project was moving and felt that the Council could decide what contingencies should be set for the months ahead.

Council Member Shepherd asked Mr. Keene if he meant to reduce the contingency officially and publicly.

Mr. Keene said yes. The Council could set contingencies as data came in and could set a target date of when changes should be made.

Council Member Shepherd asked how about in December.

Mr. Keene stated he would follow the Council's direction.

City Attorney, Molly Stump advised that the item before the Council was to receive a report. Adjusting contingency amounts would need to be agendized for a later date.

Council Member Price asked how the additional consultants would be used.

Mr. Sartor said they would review past change orders and help Staff in moving forward.

Council Member Price stated that the core issue for change orders was because the original documentation lacked sufficient information. She said Staff understood the project in its entirety and asked if the consultants would be addressing the issues on change orders.

Mr. Sartor said yes. He stated that a good example was that the project was at the point where major activities would be taking place in the areas of mechanical, electrical, and plumbing where change orders may be required. Staff did not have a complete handle of the specifications and drawings and have asked the consultants to help.

Council Member Schmid asked if Staff had an idea of how many change orders the major activities would bring.

Mr. Bobel said there were a substantial number of new change orders forthcoming.

Council Member Schmid echoed Council Member Klein's comments that the operation was still below the estimated budget even with the onset of change orders. He reiterated that the Council was dedicated to insure the process was well-run.

Council Member Scharff asked that the next report be written broadly as possible to allow the Council to take action, to make changes, or to give policy directives. A statement such as "*please accept the report*" was too limiting. He noted that the color chart had two different figures for the project and needed clarification.

Mr. Bobel said the \$32 million was for construction and the larger figure was for design and other features such as permitting.

Council Member Scharff asked if the \$32 million was still in line of the budget.

Mr. Sartor said yes. The City's total project cost was awarded at \$41 million, which included design, construction management, signage, and other contracts associated with equipment and materials and still on track of the awarded cost.

Council Member Scharff said he supported the monthly reports and found the discussion was helpful but was unsure if the monthly discussions were necessary. He asked Staff what their thoughts were of placing the item on the Consent Calendar.

Mr. Keene stated that Staff felt the first few monthly reports should be Action items and did not think there would be a problem placing it on the Consent Calendar.

Council Member Holman asked if there was a way for the City to clearly communicate to the public and not depend solely on the Media to get the information out regarding the Bond Measure s and current expenditures.

Mr. Keene said Staff had used several communication vehicles but found that issues discussed at Council meetings projected a stronger message and that several conclusions were drawn through public discussions. He said Staff was open to any other forms of communication that the Council may be aware of.

Council Member Holman asked that the Media clearly communicate to the public where the City was in terms of the project's estimates compared to the Bond Measure estimate.

Vice Mayor Yeh asked what type of feedback Staff received from the Bond Oversight Committee.

Mr. Sartor stated he attended the last Bond Oversight Committee meeting in October. The Committee was appreciative of Staff's efforts in managing the

project and acknowledged that the total project budget was still under the Bond amount that was put forth as \$50 million.

Vice Mayor Yeh said he was in favor of keeping the item as an Action item given the flux of change orders because viable discussions would show which way the project was progressing. He commended Staff on their help and responsiveness given the large scale of the project and that good practices had been put in place while going through the process.

Council Member Schmid said the September project status report indicated the project opening was scheduled in Fall 2012. The Library Bondholder and Stakeholder Committee noted on October 13 that the project's completion date would be in mid-summer. He asked which date was accurate.

Mr. Sartor stated the Fall 2012 was the accurate date.

**MOTION:** Council Member Scharff moved, seconded by Council Member XXXX to accept Staff recommendation to: 1) accept the update on the Mitchell Park Library and Community Center (MPL&CC) construction contract change orders, 2) direct Staff to continue to submit monthly reports to Council, 3) Staff has the ability to put the reports on the Consent calendar, and 4) the reports are to be written more broadly to allow action to be taken by Council.

**MOTION FAILED DUE TO THE LACK OF A SECOND**

**MOTION:** Council Member Shepherd moved, seconded by Council Member Klein to: 1) accept the update on the Mitchell Park Library and Community

Center (MPL&CC) construction contract change orders, 2) direct Staff to continue to submit monthly reports to Council.

Council Member Shepherd asked if a December monthly report was scheduled.

Mr. Bobel said one was not.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** that Staff is to return in January with the next report so that it would allow the Council to consider adjusting the contingency to 15 percent.

Ms. Stump stated that her understanding of the Motion was to ask for the third update report in January and consideration would be made at that time to adjust the contingency amount.

Council Member Shepherd said yes.

Ms. Stump said that would be permissible.

Council Member Shepherd thanked Staff for articulating the project to the public and looked forward to monthly reports.

Council Member Klein asked if the report could be written as broadly as possible so they could make Motions.

Ms. Stump stated that the request was open-ended and advised that Staff would need to make a strong effort to comply with the request. The Agenda

item would need details or parameters and that Staff would need to draft the item as broadly as possible.

Mr. Keene said Staff might ask Council to allow time for Staff to return with alternatives before they take action.

Council Member Klein said he was undecided on the 15 percent contingency which would be further discussed when the item returned to the Council. He wanted to make clear that the City, the contractor, the contract administrator, and the architects were all responsible for change orders. He said the Council may approve something where the City was not totally responsible for the change order.

Council Member Burt stated there were shared concerns on how the contract started with an abnormal number of change orders and amounts that remain ongoing at this point. Overall the project was still under budget.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to change in the Motion "consider adjusting the contingency to 15 percent" to "evaluate the contingency percentage".

Mayor Espinosa stated he was not sure the item was ready to be placed on the Consent Calendar but hopeful it would get there in the near future. He said this was an exciting project for the City and the Council was please that it was well under budget. There were concerns regarding oversight. He said right processes had been put in place to make sure the City was on top of the oversights and reviewed monthly.



Council Member Holman stated there was the issue of looking for latitude and the Motion was written giving latitude to the contingency amount.

**MOTION AS AMENDED PASSED: 9-0**

COUNCIL MEMBER QUESTIONS, COMMENTS, AND ANNOUNCEMENTS

Council Member Shepherd spoke about the upcoming Turkey Trot to be held in San Jose on Thanksgiving Day.

Council Member Klein reported on attending the National League of Cities Conference in Phoenix several weeks ago.

Council Member Burt requested Staff address the issue of the Leaf Blower Ordinance not being enforced, as he recently saw two gardeners using electric leaf blowers, and ten using gas leaf blowers.

Council Member Holman read an article regarding a wallet belonging to Julian Gomez that had been lost and returned by a good Samaritan. She also recognized Ruth Beahrs Spangenberg who loved to help people, had a passion for education and a commitment to the well being of her community. She passed away on October 30, 2011

ADJOURNMENT: The meeting was adjourned in memory of Ruth Beahrs Spangenberg at 8:53 P.M.