



# CITY OF POMONA COUNCIL REPORT

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August 6, 2018

To: Honorable Mayor and Members of the City Council

From: Linda Lowry, City Manager

Submitted by: Meg McWade, Public Works Director

Subject: **Adopt a Resolution Amending “Phil and Nell Soto Park,” Project No. 428-2590-XXXXX-71040 within FY 2018-19 Capital Improvement Program (CIP) Budget by Reappropriating Park and Recreation Improvement Fees from “Ganesha Park – Tree Grove, “Project No. 428-2590-XXXXX-71034 (\$4,633); Appropriating Available Park and Recreation Improvement Fees Fund Balance (\$137,000); Appropriating \$1,010,000 of San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy (RMC) Grant Funds to Project No. 71040; Waive Minor Irregularities in the Bid and Award a Construction Contract to CEM Construction Corporation in the Sum of \$2,297,151; and Authorize Construction Change Order Capacity Up to \$344,573 Subject to Additional/Maximum Available Funds**

## OVERVIEW

**Recommendation** – That the City Council:

1. Adopt the attached Resolution (Attachment 1) reappropriating \$4,633 of “Park and Recreation Improvement Fees” from “Ganesha Park – Tree Grove, “Project No. 428-2590-XXXXX-71034, appropriating \$137,000 of available Park and Recreation Improvement Fees fund reserves, and appropriating \$1,010,000 of San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy (RMC) Grant funds (due to the execution of an agreement with this agency) to “Phil and Nell Soto Park,” CIP Project No. 428-2590-XXXXX-71040;
2. Waive minor irregularities in the bid from CEM Construction Corporation (CEM Construction) for “Phil and Nell Soto Park,” Construction Project No. 428-2590-XXXXX-71040;
3. Award a construction contract in the amount of \$2,297,151 to CEM Construction Corporation (CEM Construction) for “Phil and Nell Soto Park,” Project No. 428-2590-XXXXX-71040;

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4. Authorize change order capability of up to \$344,573, subject to additional/ maximum available funds, that is up to 15% of the contract amount for “Phil and Nell Soto Park”, Project No. 428-2590-XXXXX-71040, that exceeds the \$100,000 allowed by City Code Section 2-1001(b)(14), and is commensurate with the conditions, size, and scope of this work;
5. Exercising its independent judgement, has reviewed the Initial Study and adopts a Negative Declaration for the proposed project, “Phil and Nell Soto Park,” Project No. 428-2590-XXXXX-71040, finding that the proposed project will not result in any significant impacts on the environment; and
6. Authorize the City Manager to execute the construction contract, grant application/agreement-related documents (and direct fiscal appropriation of any additional grant funds received for this project), all subsequent change orders, including the potential for reduced project scope due to funding, and all other items, needed for completion of this project on behalf of the City.

**Fiscal Impact** – The “Phil and Nell Soto Park,” Project No. 428-2590-XXXXX-71040, currently has a budget of \$1,390,069 funded from the California Natural Resource Agency – Urban Greening Grant. The anticipated fiscal impact on this project with this action, including the appropriation of \$1,010,000 in RMC grant funds, is as follows:

Category	“Phil and Nell Soto Park,” Project No. 428-2590-XXXXX-71040
Beginning Project Budget	\$1,390,069
Reappropriation of Park and Recreation Improvement Fees from CIP Proj. 428-71034	\$4,633
Appropriation of Available “Park and Recreation Improvement Fees” fund balance	\$137,000
Appropriation of San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy (RMC) Grant Funds	\$1,010,000
Revised Project Budget	\$2,541,702
Expenditures/Encumbrances (as of July 12, 2018)	(-\$0)
Construction Contract	(\$ 2,297,151)
Balance Remaining for construction management, staff time, testing, contingencies, and inspection costs	\$244,551

The fiscal impact on “Ganesha Park – Tree Grove,” Project No. 428-2590-XXXXX-71040 is as follows:

<b>Category</b>	<b>“Ganesha Park – Tree Grove,” Project No. 428-2590-xxxxx-71034</b>
Beginning Project Budget	\$119,851
Un-appropriation Parks and Recreation Improvement Fee	(\$4,633)
Revised Project Budget	\$115,218

The bids for this project came in higher than anticipated. As a result, there will be a need to reduce the project scope if additional grant funds are not forthcoming. Staff confirmed with both granting agencies that the reduction in scope will not jeopardize the current grant monies. Additionally, while Staff has requested change order capability up to \$344,573, this amount would only be utilized if additional project funding was made available. The award of this contract and subsequent construction of the park will result in ongoing maintenance costs anticipated to exceed \$60,000 per year. These future maintenance costs would be paid from the General Fund which is facing a structural deficit at this time.

**MBE/WBE** – CEM Construction Corporation is not a MBE/WBE contractor.

**Public Noticing Requirements** – City staff posted Notice Inviting Sealed Bids on Planet Bids on May 31, 2018, and in the Inland Valley Daily Bulletin on June 6, 2018 and June 17, 2018. In addition, notice was posted in City Hall and the Library.

**Previous Related Action** – On December 7, 2015, City Council approved the submission of a grant application to the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy (RMC) for the “Phil and Nell Soto Park” CIP project in the amount of \$1.5 million dollars and authorized submission for future grant applications for funding through the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Prop 1) Grant.

On May 15, 2017, City Council authorized the submittal of one grant application for grant funds from the California Natural Resources Agency – Urban Greening Program in the amount of \$1.5 Million in funding.

On June 4, 2018, City Council passed Resolution No. 2018-XX (number not yet assigned) adopting the Capital Improvement Program Budget (CIP) for FY 2018-19 which included the appropriation of \$1,390,069 in grant funds to “Phil and Nell Soto Park,” CIP Project No. 428-2590-XXXXX-71040, due to the execution of an agreement with California Natural Resources Agency – Urban Greening Program received for the “Phil and Nell Soto Park” project.

## **EXECUTIVE SUMMARY**

City Council approval and award to CEM Construction will provide for the construction of Phil and Nell Soto Park at the southwest corner of Orange Grove Avenue and Park Avenue (Attachment 2). This new 1.76-acre park will provide for active and passive recreational opportunities, including native plants and trees throughout the park, a butterfly habitat, and a bird sanctuary. The construction bids came in substantially higher than anticipated and current grant funds are not adequate to provide for the full scope. This action authorizes the use of Parks and Recreation Improvement Fee funds as well as authorizes Staff to seek additional grant funding (and appropriate those funds if obtained) or to reduce the scope of the project if grant funds are not available. Please note bid protest discussion below.

## **DISCUSSION**

Phil and Nell Soto Park,” CIP Project No. 428-2590-XXXXX-71040 will provide for the construction of a 1.76-acre community park. In addition to native plantings, interpretive signage will be distributed throughout the park site. This signage will feature information on the area’s history and the flora/fauna present on the site, as well as educate park-goers on water efficiency, energy efficiency, and resource conservation.

### ***Funding***

The additional funding needed for this project is primarily the result of strong market demand conditions and receiving very substantial but still less than anticipated grant funding approval. The City’s original grant application requests were \$2,000,000 in Prop 1 Funding through the RMC, and \$1,500,000 from the Urban Greening program for a total of \$3,500,000 in grant funds. RMC approved \$1,010,000 and Urban Greening approved \$1,390,069 for a total of \$2,400,069. The additional City funding in the amount of \$141,633 requested through this action for (re)appropriation on this project is Parks and Recreation Improvement Fee funds, some of which are from CIP project savings. Once approved the current project budget will be \$2,541,702.

The limited budget for this project in comparison to the contract award amount (as detailed in the fiscal impact section) will require the following general management strategy for this project:

- First, City Staff has already reached out to the RMC to request additional funding (if approved, the resolution to this Council Report allows for these funds to be added to the FY 18-19 CIP budget for this project). RMC has responded that it may consider this request upon start of construction. Once construction is authorized, the City will be working with RMC to request additional funding for the project.
- Second, the contingency for construction of this project will be managed to stay within the authorized change order capability of up to \$344,573, subject to additional/maximum available funds, that is up to 15% of the contract amount and will be reduced from 15% to 10% (\$229,715) or 0%, if necessary, to afford construction management, etc. (not recommended at this time).
- Third, after award (as allowed by Public Contract Code), and upon Staff determination

of potential costs that may exceed the available budget, Staff will work with granting agencies and negotiate with the Contractor to reduce costs by modifying the work/scope. Some examples (not an exhaustive or prioritized list) of scope reduction may include, but not be limited to:

- a. reduce height or modify type of ‘6-foot high Temporary Construction Fence’ (up to \$10,000 savings),
- b. replace up to 3 each ‘Bridge with 4 Cobble Veneer Pilasters and instead install culverts, earth fill, and decomposed granite (up to \$150,000 savings),
- c. eliminate ‘Open Shade Hexagon Structure with 6 columns – gazebo (up to \$70,000 savings), and/or
- d. other reductions in project scope.

Partial funding for this project is available from the Park and Recreation Improvement Fees fund. To be eligible to use these funds the resolution includes a finding that the use will provide a benefit to those who paid the impact fees. This new park will be City-owned and open for all public to use. Phil and Nell Soto Park will be a unique feature within the City’s Park System as it provides stormwater and historical educational components – in addition to passive recreational opportunities.

### ***Contract Award***

Per the requirements of Pomona City Code Section 2-1001(b) (2), a Notice Inviting Bids was posted on Planet Bids on May 31, 2018 and in the Inland Valley Daily Bulletin on June 6, 2018 and June 17, 2018. In addition, notice was posted in City Hall and the Library on the City Notice Boards. The request for bids that was released included a Base Bid as well an Additive Alternate. Eleven bids were received on June 27, 2018 and opened by the City Clerk. Award should be made to the lowest responsive, responsible bidder with the bids compared based upon the lowest combined sum total of project base bid and the additive alternate. The results of the bid opening are listed in the table below:

<b>Bidders</b>		<b>“Phil and Nell Soto Park,” Project No. 428-2590-XXXXX-71040</b>		
		Base Bid	Additive Alternate	Total
<b>1</b>	<b>CEM Construction Corp.</b>	<b>\$2,265,431.50</b>	<b>\$31,720</b>	<b>\$2,297,151.50</b>
2	California Landscape and Design, Inc.	\$2,704,253.25	\$15,000	\$2,719,253**
3	Aramexx Group, Inc.	\$2,859,156.31	\$350,000	\$3,209,156**
4	CS Legacy Construction, Inc.	\$3,198,455.67	\$95,669	\$3,294,124
5	Environmental Construction, Inc.	\$3,274,255.25	\$86,885	\$3,361,140**
6	Yakar	\$3,292,727.67	\$180,000	\$3,472,727**
7	Los Angeles Engineering, Inc.	\$3,458,788.70	\$72,000	\$3,530,788
8	Kasa Construction, Inc.	\$3,377,784.64	\$227,250	\$3,605,034

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9	United Irrigation, Inc. dba United GLI	\$3,528,027.40	\$113,000	\$3,641,027
10	Access Pacific	\$3,756,949.25	\$5,000	\$3,761,949
11	Horizon Construction Co. Int'l, Inc.	\$10,969,519.93	\$200,000	\$11,169,519**
	<b>Engineer's Estimate</b>			\$2,100,000

\*\* Total corrected to reflect proper extension of governing unit prices bid.

The additive alternate included in the bid allows the Contractor to do a portion of the work originally intended to be done by the California Conservation Corps (CCC). Since the cost for the CCC to perform the work is higher, having the contractor perform this work reduces project costs. This change in project approach has been authorized by the granting agencies.

Staff is in receipt of a bid protest in the form of a letter from the fifth apparent lowest bidder (Environmental Construction, Inc.) notifying Staff of concerns it has regarding the bids of both the apparent first and second lowest bidders (Attachment 3). Minor irregularities/discrepancies in the bid from CEM Construction are recommended to be waived, these include but are not limited to: notary seal and certificate of acknowledgement to the Non-Collusion affidavit; titles of corporate officers; and, Questionnaire responses omission/unclear. It should also be noted that CEM has addressed these issues by providing an updated notarized acknowledgement, clarifying the actual titles of its officers, and providing updated/clarified Questionnaire responses.

The above irregularities/discrepancies in CEM's bid are not material and are inconsequential, due to the following:

- (1) They do not affect the amount of the bid,
- (2) They do not give the bidder an advantage over others (they do not give CEM an opportunity to avoid its obligation to perform by withdrawing its bid without forfeiting security),
- (3) They are not a potential vehicle for favoritism,
- (4) They do not influence potential bidders to refrain from bidding, and
- (5) They do not affect the ability to make bid comparisons.
- (6) They do not give an economic edge to CEM.

The issues raised by ECI are none of these types of fatal defects.

The lowest responsive and responsible bid in the amount of \$2,297,151.50 was submitted by CEM Construction. CEM Construction is recommended as the apparent responsible and responsive low bidder, with a potential contract award amount of \$2,297,151.50 for this work.

Attachments: 1. Resolution  
2. Phil and Nell Soto Park Rendering  
3. Bid Protest Letter

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