



Legislation Text

File #: 16-0091, **Version:** 1

Recommendation to authorize City Manager to execute an Early Works Agreement between the City, the Harbor Department and Plenary Edgemoor Civic Partners, LLC, to continue the design development of the Civic Center project for a limited period of time. (District 2)

On December 15, 2015, the City Council authorized the City Manager to execute a Project Agreement with Plenary Edgemoor Civic Partners, LLC (PECP), and any other necessary documents related thereto, for the design, build, finance, operation and maintenance of a new Civic Center (Project), but to return back to the City Council for further consideration in the event of any material changes to the Project or the conditions under which it is to be built.

The Project has consistently included, as an integral element, a 40-year contract for operations and maintenance of, and capital reinvestment into, the City facilities. This 40-year contract assures a hand-back of the City facilities, at the end of the contract term, in a good or better condition.

Also on December 15, 2015, the City Council read for the first time a Proposition L ordinance which, pursuant to Section 1806 of the City Charter, made certain findings and determinations regarding the contracting out of custodial and maintenance services related to the Project.

City staff have been engaged in a number of meet and confer meetings with the local representative of the International Association of Machinists and Aerospace Workers, District Lodge 947, Local Lodge 1930 (IAM). Those discussions are currently ongoing. Additional negotiations may be necessary that extend beyond the date by which the City Manager was authorized to execute the Project Agreement to avoid construction cost increases, in order to continue the meet and confer process.

To minimize cost issues associated with a delay in execution of the Project Agreement, staff have worked with PECP to craft a short-term agreement that provides for a limited delay to the execution of the Project Agreement without causing cost increases. The parties have arrived at a solution that requires the City (and the Harbor Department) to fund the design development of the Project, as would have occurred if the Project Agreement had been executed, to ensure that start of construction remains as of June 1, 2016, to avoid construction cost increases. A delay in the execution of the Project Agreement still exposes the City to potential cost increases due to financial market and interest rate fluctuations. There is no effective way to avoid exposure to those risks.

To fund the continuing design development of the Project, the City will need to fund

approximately \$30,174 per day (or approximately \$905,232 per month), which cost shall be fully reimbursed shortly after the execution of the Project Agreement, and \$641 per day (or approximately \$19,200 per month), which cost shall not be reimbursed. It is anticipated that the Harbor Department will fund a similar amount. The City will receive rights to the design work funded through the Early Works Agreement.

This understanding will be formalized in a document referred to as the Early Works Agreement (EWA). The EWA is proposed to be executed by the City, the Harbor Department and PECP. The EWA is currently set to terminate as of May 1, 2016, or upon execution of the Project Agreement, whichever occurs first. The EWA will not obligate either party to execute the Project Agreement or move forward with the Project.

This matter was reviewed by Deputy City Attorney Richard F. Anthony on January 14, 2016 and by Financial Management Director John Gross on January 23, 2016.

City Council consideration of this item on February 2, 2016 is necessary to ensure that the EWA is executed in a timely manner in order to avoid construction cost increases, and to allow additional time to complete the meet and confer process.

The City will expend approximately \$2,263,000 (to May 1, 2016) to utilize the EWA to continue design work and avoid construction escalation or increases in other non-financing costs for the Civic Center. However, all of that except approximately \$48,100 (2 percent) is reimbursable by PECP if the Project Agreement is signed. If the Project Agreement is not signed, none of the amount is reimbursable to the City, but the City will gain additional design drawings for the Civic Center. The cost will be charged to the Civic Center using funds already appropriated and intended to fund the construction of the Civic Center. The EWA will not protect against increases in financing costs. It is impossible to predict whether financing costs will go up or down, but the maximum cost increase set by the City Council on December 15, 2015 of \$500,000 is still applicable.

Approve recommendation.

MICHAEL P. CONWAY
DIRECTOR OF ECONOMIC AND PROPERTY DEVELOPMENT

JOHN GROSS
DIRECTOR OF FINANCIAL MANAGEMENT

APPROVED:

PATRICK H. WEST
CITY MANAGER

