



## Legislation Text

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**File #:** 21-1544, **Version:** 1

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Department of Transportation recommending the Board consider the following regarding the Silver Springs Parkway Offsite (South Segment) Project, Capital Improvement Program project number 76108/36105039, Contract 4076 with Granite Construction Company:

- 1) Retroactively approve and authorize the Chair to sign Contract Change Order 28 in the amount of \$90,380 to construct a leveling course of hot mix asphalt on Bass Lake Road and on Madera Way;
- 2) Retroactively approve and authorize the Chair to sign Contract Change Order 30 in the amount of \$11,600 for grinding the existing hot mix asphalt surfacing on Bass Lake Road and on Madera Way; and
- 3) Find that an exception to the competitive bidding requirement of Public Contract Code section 20137 exists here and that a waiver of competitive bidding is appropriate.

**FUNDING:** Road Fund/Discretionary (0.4%), TIM Zone 1-7 (16.6%), Developer Advance TIM Zone 1-7 (21.7%), Developer Funded (61.2%).

### **DISCUSSION / BACKGROUND**

The contract for the Silver Springs Parkway Offsite (South Segment) Project (Project) was approved by the Board on August 4, 2020 (Legistar 20-0950, Item 26). All roadway repairs were completed by July 21, 2021, and the Project was accepted by the Board on August 31, 2021 (Legistar 21-1303, Item 28).

Construction projects in the Department of Transportation's (Transportation) Capital Improvement Program (CIP) generally include a contingency budget of 10% of the original contract amount, pursuant to Section 20137 of the California Public Contract Code. The contingency budget is used for items of construction work that are unanticipated or unknown at bid time, but then show up during construction and are necessary to complete to meet the project goals. This Project's low bid was \$3,846,753.65, and the contingency budget established by the Board is \$384,675.37. Transportation has executed contract change orders (CCOs) with a cumulative value of \$384,284.17, which is 9.99% of the original contract amount. Execution of the subject contract change orders 28 and 30 will increase the Project's contingency expenditures to \$486,227.17, which is 12.64% of the original contract amount.

CCO 28 was required to construct a hot mix asphalt (HMA) leveling course for a 600 foot long segment of Bass Lake Road, as well as along Madera Way between Bass Lake Road and Jasmine Circle/Summer Drive. This CCO also includes grinding of existing HMA prior to installation of new HMA leveling course, and incidental shoulder backing and striping. This work was required to vertically align existing HMA surfacing to new HMA surfacing.

CCO 30 was required to add conform grinding of existing HMA at the southerly end of the Project on Bass Lake Road and at the easterly end of Madera Way to vertically align existing HMA and new HMA (this work is separate from the grinding that occurred under CCO 28). This work was required to vertically align new HMA with existing HMA at locations where the Project ends and joins up with existing roadways.

The CCOs are retroactive because Transportation staff concluded that it was in the County's best interest to contemporaneously authorize the extra work and keep the contractor working. If Transportation staff had instead directed the contractor to stop work for several weeks while Transportation brought the CCOs to the Board for approval, the County would have been exposed to very expensive delay claims from the Contractor, and the project may have extended into another construction season.

### Waiver of Competitive Bidding

Execution of CCOs 28 and 30 will push the cumulative value of CCOs on this Project to 12.64% of the original contract amount. Public Contract Code section 20137 requires that changes to public works contract exceeding 10% of the original contract amount be let by competitive bidding. However, a well-recognized exception to that requirement applies when the nature of the subject of the contract is such that competitive proposals would be unavailing or would not produce an advantage, and the advertisement for competitive bid would thus be undesirable, impractical, or impossible. (*Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631). The courts developed this exception to assure that the competitive bidding requirement is applied reasonably with reference to the public interest and its underlying purposes, including obtaining the best economic result for the public. Where competitive proposals would not result in any advantage to the public entity or where it is practically impossible to obtain what is required, competitive bidding may be waived.

The specific circumstances concerning the subject Project supports the conclusion that competitive bidding for the work described in CCOs 28 and 30 would have been undesirable and impractical and would not have resulted in the best economic result for the public for the following reasons:

1. Each of the items of change order work is functionally integrated with the base project. The Contractor its subcontractors were already mobilized and onsite doing the base project work. These factors allow the integration of the CCO work to be successful and maximize the public benefits from the project;
2. Advertising and bidding for the project changes would have resulted in delays in project completion; and
3. Competitive bidding requires award to the lowest responsible bidder. This could have resulted in multiple contractors working on the same project components at the same time, potentially causing conflicts and problems with performance, system functionality and warranty liabilities.

For these reasons, Transportation recommends the Board find that an exception to the competitive bidding requirement exists here and that a waiver of competitive bidding is appropriate.

### **ALTERNATIVES**

The Board could choose to not approve these change orders. The contractor would likely then file a claim against the County to recuperate monies expended.

### **PRIOR BOARD ACTION**

See Discussion/Background section above.

### **OTHER DEPARTMENT / AGENCY INVOLVEMENT**

N/A

**CAO RECOMMENDATION**

Approve as recommended.

**FINANCIAL IMPACT**

The construction budget for the Project in the 2021 CIP Book approved by the Board on June 8, 2021 (Legistar 21-0624, Item 54) is \$4,538,964. Costs-to-date (including CCOs 28 and 30) are as follows:

Contract bid items:	\$ 3,714,017
Supplemental Work:	\$ 236,689
Contingency CCOs executed:	\$ 384,247
Contingency CCOs 28, 30:	\$ 101,980
Total estimated direct construction cost:	\$ 4,436,933

Adequate funding for CCOs 28 and 30 remains in the Project’s construction budget. No additional funding is requested.

**CLERK OF THE BOARD FOLLOW UP ACTIONS**

- 1) The Clerk of the Board will obtain the Board Chair's signature on CCOs 28 and 30.
- 2) The Clerk of the Board will return a fully executed copy of CCOs 28 and 30 to John Kahling at Transportation (Headington) for further processing.

**STRATEGIC PLAN COMPONENT**

Infrastructure

**CONTACT**

Rafael Martinez, Director  
Department of Transportation