

City of Piedmont
COUNCIL AGENDA REPORT

DATE: December 5, 2022

TO: Mayor and Council

FROM: Sara Lillevand, City Administrator

SUBJECT: Consideration of the Award of a Construction Contract for the Piedmont Community Pool Project to Wickman Development & Construction in the Amount of \$21,700,000 and Approval of an Overall Construction Budget of \$23,870,000

RECOMMENDATION:

By a single motion, take the following actions regarding the Piedmont Community Pool Project:

1. Approve the award of the construction contract for the Piedmont Community Pool Project to Wickman Development & Construction based on their submitted base bid of \$21,700,000
2. Approve the overall Estimated Construction Budget of \$23,870,000, which includes the construction cost and a 10% contingency.

BACKGROUND:

At its August 15, 2022 meeting, Council authorized staff to solicit bids from two pre-qualified contractors for the Piedmont Community Pool Project, which were opened on September 26, 2022. Both bids received exceeded the construction cost estimate by more than 15%. Because of this, on October 17, 2022, the City Council rejected all bids and directed staff to modify the bid documents with regard to contractor qualifications, but keep the same scope of work. The revised bid documents were issued, and four bids were opened on November 16, 2022, with bid prices for the pools, building, and on-site improvements ranging from \$21,350,000 to \$30,650,000. The project construction cost estimate was prepared by ELS and vetted by Griffin Structures, with an expected cost of \$21,152,000 for the pools, building, and on-site improvements.

The revised bid documents were structured to have contract award go to the qualified bidder with the lowest combined total of the base bid, comprised of the pools, building, and on-site improvements, as well as off-site right of way improvements, and four additive alternates (swimming pool competition lighting, pool storage enclosure, scoreboard and timing system, and composite decking). Once the low bidder is identified, the City can elect in its sole discretion whether to include any or all of the alternates in the actual construction contract.

The specific items included in the base bid are as follows:

- Single Story Pool Building with an office, lobby, locker rooms, two gender neutral changing rooms and rooftop pavilion
- 27-meter x 25-yard Competition Pool with diving well
- 3,177 square foot Activity Pool with zero beach entry and three 25-yard lap lanes
- All-electric powered aquatic center, including building, site and pool systems
- Poolside Multipurpose Room
- Competition Pool Toe Ledges
- Off-Site Right of Way (ROW) Improvements
 - As approved by Council on July 18, 2022, the ROW improvements were included in the base project for efficiency and cost containment, but will be paid from non-Measure UU funds

The four additive alternative items, none of which are included in the recommended award of contract are:

- Swimming Pool Competition Lighting
- Pool Storage Enclosure
- Scoreboard and Timing System
- Composite Decking

Staff recommends purchasing upgraded lighting, scoreboard and timing system at a later date if sufficient funds are raised by PRFO.

Base Bid Items	Wickman	Bobo Construction	Gonsalves & Stronck	SJ Amoroso
Pool, Building, and On-Site Improvements	\$21,350,000	\$24,263,492	\$30,650,000	\$23,447,000
ROW Improvements	\$350,000	\$600,000	\$350,000	\$300,000
Total Base Bid	\$21,700,000	\$24,863,492	\$31,000,000	\$23,747,000
Add Alternates	Wickman	Bobo Construction	Gonzales & Stronck	SJ Amoroso
Competition Lighting	\$85,000	\$60,000	\$65,000	\$13,000
Pool Storage Enclosure	\$250,000	\$175,000	\$125,000	\$53,000
Scoreboard and Timing System	\$350,000	\$300,000	\$320,000	\$230,000
Composite Decking	\$485,000	\$350,000	\$224,000	\$244,000
Total Additive Alternates	\$1,170,000	\$885,000	\$734,000	\$540,000
Total Base Bid Plus Alternates	\$22,870,000	\$25,748,492	\$31,734,000	\$24,287,000

Wickman Development & Construction (Wickman) submitted the lowest overall bid, which was checked and determined to be responsive under public contracting law. Wickman has a valid contractor's license which is in good standing with the Contractors State License Board. Wickman and each of its subcontractors were vetted and found to be in good regulatory standing.

Background and reference checks were conducted with a positive result. Staff recommends award of the Piedmont Community Pool Project, including only the base bid items (not the alternates), to Wickman Development and Construction.

FISCAL CONSIDERATIONS

Construction Contract

The construction contract under consideration by the Council will be funded from Measure UU General Obligation Bonds and private donations.

Staff recommends the construction budget as follows:

Construction	\$ 21,700,000
Construction Contingency (10%)	<u>\$ 2,170,000</u>
Total Estimated Construction Budget	\$ 23,870,000

Total Project Budget and Funding Sources

The total all-in project budget includes other significant costs outside of direct construction, some of which have already been approved and expended. As anticipated, the total project costs are beyond funds available from Measure UU. As approved at the Council's meeting of August 15th, in order for the project to retain the size, shape and depth of the pools, critical indoor spaces included in the design, as well as a scoreboard, timing system, and upgraded lighting, a robust fundraising effort led by the Piedmont Recreational Facilities Organization (PRFO) is underway to raise \$2.1 million for these project components.

The City Council made a bold decision in April to proceed with designing an all-electric facility in the face of stiff construction inflation headwinds, knowing there was no identified funding and no real opportunity to change course and revert to gas heating in the case that bids were higher than expected. This will be a demonstration project with potential to help transform the way large public pools are heated in California. Councilmembers and Staff have worked tirelessly to secure funding to support this effort to be an early adopter of heating large public swimming pools with electricity. To this end, the City and East Bay Community Energy (EBCE) have held significant discussions about financing and grants for the electrification effort, and EBCE has indicated its commitment to partner with the City. Discussions regarding the structure of the financing and its terms and conditions, as well as potential grants funding, are currently underway with EBCE.

Costs associated with offsite ROW improvements are to be funded from the Facility Capital Fund, with \$75,140 for design already approved by Council and spent in FY 22-23. The remaining costs will be budgeted in FY 23-24 when this work is likely to be completed.

The total all-in project budget including the pools, building, off-site ROW improvements, full electrification of the facility, and two of the add alternates (Scoreboard/Timing System and Upgraded Lighting) is estimated to be \$28,981,000. Though the City is not committing to the

additive alternates at this time, they are being included in this total for the purposes of fundraising. The additive alternative items will not be purchased unless the fundraising goal is met.

The total project budget is summarized below:

Expenditures	Pool Facility	Offsite Improvements*
Direct Construction (Includes \$748,106 Pool Electrification Cost)	\$21,350,000	\$350,000
Contingency - Direct Construction	\$2,135,000	\$35,000
Subtotal - Direct Construction	\$23,485,000	\$385,000
Total Construction Budget	\$23,870,000	
Project Management**	\$907,000	
Architecture and Engineering**	\$2,500,695	\$75,140
Other***	\$668,510	
Contingencies - Miscellaneous	\$524,655	
Subtotal - Required Items	\$4,600,860	\$75,140
Additive Alternates (Timing System, Scoreboard, Lighting)	\$435,000	
Subtotal - Additive Alternates	\$435,000	
Total Project Cost	\$28,981,000	
Funding Sources	Pool Facility	Offsite Improvements*
Measure UU Funds	\$24,418,577	
Interest Earned from Measure UU Funds	\$300,000	
Piedmont Recreational Facilities Organizing Fundraising Goal	\$2,100,000	
Private Contribution (Kroger Estate)	\$800,000	
Facility Preservation Fund	\$154,177	
EBCE Grant / Loan & Electrification Fundraising	\$748,106	
Facility Capital Fund		\$460,140
Subtotal - Funding Sources	\$28,520,860	\$460,140
Total Funding	\$28,981,000	
*Offsite right of way improvements are adjacent to but outside the community pool facility		
**Previously Approved by City Council		
***Includes Surveys, Environmental, Special Inspection/Testing, Utility Connection Services, Furniture and Fixtures		

ENVIRONMENTAL REVIEW

The City submitted a design review application for this project, which was considered by the Planning Commission at its May 9, 2022 meeting. As a part of this application, the Planning Commission reviewed and approved a determination that the project is categorically exempt from the provisions of the California Environmental Quality Act. The Notice of Exemption was filed on May 24, 2022 and no appeals were received.

SCHEDULE OF CONSTRUCTION

Should the Council award the contract at this meeting, it is anticipated that the work will begin early in 2023. The contract provides for 335 working days to complete the project so, even including adjustments for weather, the project could be completed as early as summer 2024.

CITY ATTORNEY REVIEW

The City Attorney has reviewed and approved the Agreement as to form and legality.

ATTACHMENTS

A: Agreement with Wickman Development and Construction

By: Daniel Gonzales, Director of Public Works

SECTION 00 5200

AGREEMENT

CITY OF PIEDMONT NEW COMMUNITY POOL

THIS AGREEMENT was executed this 5th day of December 2022 by and between **Wickman Development and Construction** whose place of business is located at **550 West Grand Avenue, Oakland CA. 94612** ("Contractor"), and the CITY OF PIEDMONT ("City"), acting under and by virtue of the authority vested in the City by the laws of the State of California.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, Contractor and City agree as follows:

Article 1. Work

- 1.1 Contractor shall complete all Work specified in the Contract Documents, in accordance with the Plans, Specifications, and all other terms and conditions of the Contract Documents.

Article 2. Architect/Engineer and Project Manager

- 2.1 The City and its selected Architect/Engineers designed the Project and furnished the Plans and Specifications. The City Administrator shall have the rights assigned to Architect/Engineer in the Contract Documents.
- 2.2 City has designated the Project Manager from Griffin Structures as its Project Manager to act as City's point of contact relating to the Contract Documents and to determine whether the work performed is in accordance with the Contract Documents.
- 2.3 The City may assign all or part of the Project Manager's rights, responsibilities and duties to a Project or Construction Manager.

Article 3. Contract Time and Liquidated Damages**3.1 Contract Time**

Contractor shall commence work on the date established in the Notice to Proceed. City reserves the right to modify or alter the commencement date of the Work. Contractor shall achieve Substantial Completion of the entire Work within **335** Working Days from the date when the contract time commences to run as provided in Document 00 72 00 (General Conditions). Contractor shall achieve Final Completion of the entire Work and be ready for Final Payment in accordance with Section 01 77 00 (Closeout

Procedures) 20 Working Days from the date when Substantial Completion was established.

3.2 Liquidated Damages

City and Contractor recognize that time is of the essence of this Agreement and that City will suffer financial loss in the form of Contract administration expenses (such as project management and consultant expenses), if all or any part of the Work is not completed within the times specified above, plus any extensions thereof allowed in accordance with the Contract Documents. Contractor and City agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of actual damages incurred by City because of a delay in completion of all or any part of the Work. Accordingly, City and Contractor agree that as liquidated damages for delay Contractor shall pay City:

- 3.2.1 Two Thousand dollars (\$ 2,000) for each Working Day that expires after the time specified herein for Contractor to achieve Final Completion of the entire Work, until achieved.

These measures of liquidated damages shall apply cumulatively and except as provided below, shall be presumed to be the damages suffered by City resulting from delay in completion of the Work.

- 3.3 Liquidated damages for delay shall only cover administrative, overhead, interest on bonds, and general loss of public use damages suffered by City as a result of delay. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from defective work, lost revenues or costs of substitute facilities, or damages suffered by others who then seek to recover their damages from City (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof.
- 3.4 It is further agreed that prior to issuance of a Notice of Completion under the terms of this Contract, and as a condition precedent to the City's obligation for the issuance of the Notice of Completion and Final Payment, the Contractor shall submit to the City a "Maintenance and Warranty Bond" in form of Document 00 61 19 to be valued at ten percent (10%) of the final contract amount. Such Bond shall be in force and valid for a period of one (1) year unless extended.

Article 4. Contract Sum

- 4.1 City shall pay Contractor the Contract Sum of **Twenty One Million Seven Hundred Thousand Dollars (\$21,700,000)** for completion of Work in accordance with Contract Documents as set forth in Contractor's Bid, attached hereto.

Article 5. Contractor's Representations

In order to induce City to enter into this Agreement, Contractor makes the following representations and warranties:

- 5.1 Contractor has visited the Site and has examined thoroughly and understood the nature and extent of the Contract Documents, Work, Site, locality, actual conditions, as-built conditions, and all local conditions, and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.
- 5.2 Contractor has examined thoroughly and understood all reports of exploration and tests of subsurface conditions, as-built drawings, drawings, products specifications or reports, available for Bidding purposes, of physical conditions, including Underground Facilities, which have been made available for Bidders or which may appear in the Drawings. Contractor accepts the determination set forth in these Documents and Document 00 72 00 of the limited extent of the information contained in such materials upon which Contractor may be entitled to rely. Contractor agrees that except for the information so identified, Contractor does not and shall not rely on any other information contained in such reports and drawings.
- 5.3 Contractor has conducted or obtained and has understood all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in Section 5.2 of this Agreement) that pertain to the subsurface conditions, as-built conditions, Underground Facilities and all other physical conditions at or contiguous to the Site or otherwise that may affect the cost, progress, performance or furnishing of Work, as Contractor considers necessary for the performance or furnishing of Work at the Contract Sum, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Document 00 72 00; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.
- 5.4 Contractor has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

Article 6. Contract Documents

- 6.1 Contract Documents consist of the Project Manual and include the following documents, and all changes, Addenda, and Modifications thereto:

Document 00 10 00 Notice Inviting Bids

Document 00 21 00	Instructions to Bidders
Document 00 24 13	Scopes of Bids
Document 00 41 00	Bid Proposal
Document 00 41 70	Addenda Acknowledgement
Document 00 51 00	Notice of Award
Document 00 52 00	Contract Agreement
Document 00 61 13.13	Construction Performance Bond
Document 00 61 13.16	Construction Labor and Material Payment Bond
Document 00 72 00	General Conditions

General Requirements
 Technical Specifications
 Drawings

- 6.2 The Contract Documents may only be amended, modified or supplemented as provided in Document 00 72 00.

Article 7. Miscellaneous

- 7.1 Terms and abbreviations used in this Agreement are defined in Document 00 72 00 and Section 01 42 16 (Definitions) and will have the meaning indicated therein.
- 7.2 It is understood and agreed that in no instance are the persons signing this Agreement for or on behalf of City or acting as an employee, agent, or representative of City, liable on this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of the City is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.
- 7.3 Contractor shall not assign any portion of the Contract Documents without the City's prior approval. Any assignment of any portion of the Contract Documents without the City's prior written approval shall be deemed null and void. Contractor may subcontract portions of the Contract Documents only in compliance with the Subcontractor Listing Law, California Public Contract Code Section 4100, *et seq.*
- 7.4 The Contract Sum includes all allowances (if any).
- 7.5 In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time City tenders final payment to Contractor, without further acknowledgment by the parties.
- 7.6 Copies of the general prevailing rates of per diem wages for each craft, classification,

or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are deemed included in the Contract Documents and on file at City's Office, and shall be made available to any interested party on request. Pursuant to California Labor Code Section 1861, Contractor represents that it is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the Work of the Contract Documents.

- 7.7 Should any part, term or provision of this Agreement or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void or unenforceable, all remaining parts, terms and provisions shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. If the provisions of any law causing such invalidity, illegality or unenforceability may be waived, they are hereby waived to the end that this Agreement and the Contract Documents may be deemed valid and binding agreements, enforceable in accordance with their terms to the greatest extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by this reference (or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).
- 7.8 This Agreement and the Contract Documents shall be deemed to have been entered into in the City of Piedmont, State of California, and governed in all respects by California law (excluding choice of law rules). The exclusive venue for all disputes or litigation hereunder shall be in Alameda County Superior Court. Contractor accepts the terms of Document 00 72 00, Article 12, as a claims procedure by agreement under the California Government Code, Title 1, Division 3.6, Part 3, Chapter 5.

IN WITNESS WHEREOF the parties have executed this Agreement in duplicate the day and year first above written.

CONTRACTOR: WICKMAN DEVELOPMENT AND CONSTRUCTION

By: _____

By: _____

Its: _____

Title (If corporation: Chairman,
President, or Vice President)

Its: _____

Title (If corporation: Secretary, Chief
Financial Officer or Assistant Treasurer)

CITY OF PIEDMONT

By: _____

Theadora Gray King, Mayor

Date: _____

(Council Action dated December 5,
2022)

Attest: _____

John O. Tulloch, City Clerk

APPROVED AS TO FORM

By: _____

Michelle Marchetta Kenyon, City Attorney

Attachments: Document 00 41 00 - Bid Proposal 11/16/2022

END OF SECTION