



The Board of Directors of
The Hayward Area Recreation and Park District

RESOLUTION NO. R-2223-31

RESOLUTION AUTHORIZING THE GENERAL MANAGER TO ENTER INTO A CONSTRUCTION CONTRACT WITH CALSTATE CONSTRUCTION, INC. AND APPROVAL OF A BUDGET CHANGE FOR THE KENNETH C. AITKEN SENIOR AND COMMUNITY CENTER RENOVATION PROJECT

WHEREAS, the Five-Year Capital Improvement Program 2020-2025 includes funding for the renovation of facilities throughout the District; and

WHEREAS, the professional services of an architectural firm were selected to produce biddable documents for the Kenneth Aitken Senior and Community Center project; and

WHEREAS, the District prepared plans and specifications and Staff solicited bids through a competitive public bidding process; and

WHEREAS, Calstate Construction, Inc. has submitted a responsible bid for the Kenneth C. Aitken Senior and Community Center Renovation Project, Hayward Area Recreation and Park District, County of Alameda, State of California,

NOW THEREFORE, BE IT RESOLVED, that contingent upon receipt and acceptance of Performance and Payment Bonds by Staff that said Calstate Construction Inc. be, and is hereby awarded the contract for the Kenneth C. Aitken Senior and Community Center Renovation Project, and

BE IT FURTHER RESOLVED, that this Board approves the plans specifications and details for Kenneth C. Aitken Senior and Community Center Renovation Project; and

BE IT FURTHER RESOLVED, that the General Manager is hereby, authorized and directed to enter into a contract with said contractor in substantially the form of Exhibit "A" attached hereto and made a part hereof; and

BE IT FURTHER RESOLVED, that the Board authorizes the General Manager to approve change orders, if necessary, up to a total of 10% of the construction contract for the Kenneth C. Aitken Senior and Community Center Renovation Project.

BE IT FURTHER RESOLVED, that the Board approves a budget change to reallocate \$750,000 from the Castro Valley Community Center Renovation project to the Kenneth C. Aitken Senior and Community Center Renovation Project.

DATE: November 7, 2022

INTRODUCED BY: Peter Rosen

AYES: Andrade, Hodges, Pereira and Rosen

NOES: None

ABSTAIN: None

ABSENT: Hatcher

A handwritten signature in blue ink that reads "Carol A. Pereira".

Carol A. Pereira, President

A handwritten signature in blue ink that reads "Paul W. Hodges, Jr.".

Paul W. Hodges, Jr., Secretary

DOCUMENT 00 52 13AGREEMENT

This agreement is made and entered into on November 7, 2022 by and between the **Hayward Area Recreation and Park District** (“District”) and Calstate Construction, Inc. (“Contractor”) (“Agreement”). The District and the Contractor agree as follows:

1. **The Work:** Contractor shall furnish all tools, equipment, apparatus, facilities, labor, and material necessary to perform and complete in a good and workmanlike manner, the work of the following project:

KENNETH AITKEN SENIOR COMMUNITY CENTER FACILITY REFRESH

The Work shall be performed and completed as required in the Contract Documents as defined in the General Conditions including, without limitation, the Drawings and Specifications, under the direction and supervision of, and subject to, the approval of the District or its authorized representative.

2. **The Contract Documents:**

- a. The complete Contract consists of all Contract Documents as defined in the General Conditions and incorporated herein by this reference. All obligations of the District and Contractor are fully set forth and described in the Contract Documents. The Contract Documents are intended to cooperate so that Work called for in one and not mentioned in the other or vice versa is to be performed the same as if mentioned in all Contract Documents.
- b. **Interpretation of Contract Documents/Order of Precedence:** Questions concerning the intent, precedence, or meaning of the Contract Documents, including the Drawings or Specifications, shall be submitted to the District for interpretation. Inconsistencies in the Contract Documents shall be resolved by giving precedence in the following order:
 - (i) District-approved modifications, beginning with the most recent (if any);
 - (ii) Agreement;
 - (iii) Supplemental Conditions (if any);
 - (iv) General Conditions;
 - (v) Remaining Division 0 documents (Documents beginning with “00”);
 - (vi) Division 1 Documents (Documents beginning with “01”);
 - (vii) Division 2 through Division 49 documents (Technical Specifications);
 - (viii) Figured dimensions;
 - (ix) Large-scale drawings;
 - (x) Small-scale drawings.

In case of conflict, the greater quantity and/or higher standard of workmanship shall apply unless the District expressly in writing (e.g., via a Change Order) accepts a lesser quantity or lower quality of workmanship and the Contract Price is adjusted accordingly. The decision of the District in the matter shall be final.

3. **Integration / Modification.** The Contract Documents and any documents specifically incorporated by reference are completely integrated as the complete and exclusive statement of the terms of the Agreement. This Agreement supersedes all previous contracts, agreements, and / or communications, both oral and written, and constitutes the entire understanding of the District and Contractor. No extrinsic evidence whatsoever shall be admissible or used to explain or supplement the terms of the Contract, Contract Documents, or any items incorporated by reference. No changes, amendments or alterations shall be effective unless in writing, signed by both Parties, and unless provided otherwise by the Contract Documents.

KENNETH C. AITKEN SENIOR COMMUNITY CENTER FACILITY REFRESH

BID SET – 09/09/2022

Project # 4-155.01

- 4. Time for Completion:** It is hereby understood and agreed that the Contractor shall complete the Work within One Hundred Fifty (150) consecutive calendar days ("Contract Time") from the date specified in the District's Notice to Proceed. The District shall not approve an early completion schedule by Contractor. A schedule showing the Work completed in less than the Contract Time indicated in the Contract, shall be considered to have Project Float.
- 5. Completion-Extension of Time:** If Contractor fails to complete the Work within the Contract Time, due allowance being made for the contingencies provided for herein, Contractor shall become liable to District for all loss and damage that District may suffer on account thereof. Contractor shall coordinate its Work with the work of all other contractors. The District shall not be liable for delays resulting from Contractor's failure to coordinate its Work with other contractors in a manner that allows for timely completion of Contractor's Work. Contractor shall be liable for delays to other contractors caused by Contractor's failure to coordinate its Work with the work of other contractors.
- 6. Liquidated Damages:** Time is of the essence for all Work to be performed. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that District will sustain in the event of and by reason of Contractor's delay; therefore, pursuant to Government Code section 53069.85 and Public Contract Code section 7203, Contractor shall forfeit and pay to District the following sum(s) as liquidated damages ("Liquidated Damages"):
- **Project Completion:** One Thousand dollars (\$1,000) per day as Liquidated Damages for each and every day's delay beyond the Contract Time to complete all the Work.
- a. Each portion of the Liquidated Damages shall be calculated cumulatively. For example, if Contractor is late in completing two milestones and the entire Project, Contractor will forfeit and pay three separate Liquidated Damages amounts. It is hereby understood and agreed that neither the total cumulative Liquidate Damages amount nor any portion of the Liquidated Damage amount are penalties.
- b. District may deduct Liquidated Damages from money due or that may become due Contractor under this Agreement. Contractor's forfeiture of Liquidated Damages to District, and District's right to retain Liquidated Damages, are as indicated in Government Code section 53069.85 and as indicated herein and in the General Conditions. Liquidated Damages are automatically and without notice of any kind forfeited and payable by Contractor upon the accrual of each day of delay. Neither District's failure or delay in deducting Liquidated Damages from payments otherwise due the Contractor, nor District's failure or delay in notifying Contractor of the forfeiture and payment of Liquidated Damages, shall be deemed a waiver of District's right to Liquidated Damages and/or the District's right to withhold Liquidated Damages from any amounts that would otherwise be payable to the Contractor.
- c. Contractor and Surety shall be liable for and pay to District the entire amount of Liquidated Damages including any portion that exceeds the amount of the Contract Price then held, retained or controlled by District.
- d. Liquidated Damages shall be in addition, and not in lieu of, District's right to charge Contractor for the District's cost of completing or correcting items of the Work.
- 7. Contract Price:** In consideration of the foregoing covenants, promises, and agreements, Contractor offers, in the amounts stated below, to perform the Work according to the Contract Documents. District covenants, promises, and agrees that it will pay and cause to be paid to Contractor in full, and as the Contract Price the following amount(s):

One Million, Six Hundred Ninety Four Thousand, Nine Hundred Dollars (\$1,694,900)
(Base Contract Amount)

† Ten Thousand Dollars (\$10,000).
(Additive Alternate #1)

= One Million, Seven Hundred Four Thousand, Nine Hundred Dollars (\$1,704,900),
(“Contract Price”)

- a. THE ABOVE ALLOWANCES ARE WITHIN THE CONTRACT PRICE ONLY TO THE EXTENT CONTRACTOR HAS PERFORMED WORK ENCOMPASSED BY THE ALLOWANCE DESCRIPTION, CONTRACTOR HAS APPROPRIATELY INVOICED FOR THAT WORK, AND DISTRICT HAS APPROVED CONTRACTOR’S INVOICE. CONTRACTOR SHALL INVOICE ONLY FOR COMPONENTS OF THE WORK ENCOMPASSED BY THE ALLOWANCE DESCRIPTION, IN THE IDENTICAL STRUCTURE AS A CHANGE ORDER. THE UNUSED PORTION OF EACH ALLOWANCE SHALL BE RETAINED BY THE DISTRICT.
- b. The Contract Price shall be paid in lawful money of the United States pursuant to the payment provisions in the General Conditions.
- c. The District may, at its sole discretion, increase or decrease the Contract Price by unit prices or alternates contained in Contractor’s original bid. If the Bid for the Work included proposal(s) for Alternate Bid Item(s), during Contractor’s performance of the Work, the District may elect to add any such Alternate Bid Item(s) if that item did not form a basis for award of the Agreement or delete any such Alternate Bid Item(s) if that item formed a basis for award of the Agreement. If the District elects to add or delete an Alternate Bid Item(s) pursuant to the foregoing, the cost or credit for that Alternate Bid Item(s) shall be as set forth in the Contractor’s Bid, at the District’s discretion. If any Alternate Bid Item is added or deleted from the Work pursuant to the foregoing, the Contract Time shall be adjusted by the number of days allocated for the added or deleted Alternate Bid Item in the Contract Documents; if days are not allocated for any Alternate Bid Item added or deleted pursuant to the foregoing, the Contract Time shall be equitably adjusted.
8. **Insurance and Bonds:** Contractor shall provide all required certificates of insurance, and payment and performance bonds.
9. **Performance of Work:** If Contractor fails to perform the Work properly or fails to perform any provisions of this Contract, the District, may, pursuant to the General Conditions and without prejudice to any other remedy it may have, cure the deficiencies and deduct the cost thereof from the payment then or thereafter due Contractor.
10. **Authority of Construction Manager, Project Inspector, and County:**
Contractor hereby acknowledges that the Construction Manager, the Project Inspector(s), and the County have authority to approve and/or stop Work if Contractor’s Work does not comply with the requirements of the Contract Documents and all applicable laws. Contractor shall be liable for any delay caused by its non-compliant Work.
11. **Assignment of Contract:** Neither the Contract, nor any part thereof, nor any moneys due or to become due thereunder, may be assigned by Contractor without the written approval of District, nor without the written consent of the Surety on Contractor’s Performance Bond (the “Surety”), unless the Surety has waived in writing its right to notice of assignment.
12. **Classification of Contractor’s License:** Contractor hereby acknowledges that it currently holds valid Type A Contractor’s license(s) issued by the State of California, Contractor’s State Licensing Board, in accordance with division 3, chapter 9, of the Business and Professions Code and in the classification called for in the Contract Documents.

KENNETH C. AITKEN SENIOR COMMUNITY CENTER FACILITY REFRESH

BID SET – 09/09/2022

Project # 4-155.01

- 13. **Payment of Prevailing Wages:** Contractor and all Subcontractors under Contractor shall pay all workers on Work performed pursuant to this Contract not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations, State of California, for the type of work performed and the locality in which the work is to be performed within the boundaries of the District, pursuant to sections 1770 et seq. of the California Labor Code.
- 14. **Contractor & Subcontractor Registration:** Contractor shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including complying with any applicable enforcement by the Department of Industrial Relations.
- 15. **Authority of Contractor’s Representative:** Contractor hereby certifies that its legal representative as defined in the General Conditions and the person(s) it employees on the Project at or above the level of project superintendent, each have the authority to legally bind the Contractor.
- 16. **Severability:** If any term, covenant, condition, or provision of the Contract Documents is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions in the Contract Documents shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

IN WITNESS WHEREOF, accepted and agreed on the date indicated above:

Dated: _____, 20_____

Dated: _____, 20_____

Hayward Area Recreation and Park District

_____ **Contractor**

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

NOTE: If the Contractor is a corporation, Contractor must attach a certified copy of the corporation’s by-laws, or of the resolution of the Board of Directors of the corporation, authorizing the above person to execute this Agreement and the bonds required by the Contract Documents.

END OF DOCUMENT



Hayward Area Recreation and Park District

Change Order Request No. 1

(for Purchase Orders and Task Orders)

Date: November 7, 2022

Project: 4-155.01 Kenneth Aitken Senior and Community Center Renovation Project

Vendor: tBP Architecture
1777 Oakland Boulevard, Ste 320
Walnut Creek, CA 94596
Phil Newsom, pnewsom@tbparchitecture.com

PO and/or Task Order No.: PO 03252

The Contract is changed as follows:

Design effort has expanded in the following ways:

- 1. Exterior Path of Travel: Topographic Survey indicated that exterior parking and paving was out of compliance. This required that tBP engage a Civil Engineer to design required improvements.
- 2. Trash Enclosure: Building Department required that a trash enclosure be provided with Concrete Walls, A Roof, and a Sewer Line Extension. This required additional efforts by tBP, Our Civil and Structural Engineers.

Original Contract Sum:	\$155,000
Previously authorized Change Orders:	\$0
This Change Order	\$27,770
Total Contract Sum	\$182,770

James Wheeler, General Manager
 Hayward Area Recreation and Park District

Signature

Date

Company

Date

See Purchasing Policy for appropriate HARD authorization related to purchase authority and contract amount



Hayward Area Recreation and Park District
CAPITAL PROJECTS BUDGET CHANGE REQUEST FORM
 For entry into Project Tracking ("PTBA")

Date of Request 11/7/2022
Requested by: Meghan Tiernan
Effective Date: 11/7/2022
Project Tracking post date, if Board resolution not required

Admin Only:
 PTBA# _____
 Period: _____
 Reviewed by/date: _____
 Entered by/date: _____

NOTE: do not type in shaded fields

see Project List tab for reference

see Breakdown Codes tab for reference

Ref	Project ID (X-XXX-XX-XXXX)	Project Description <i>(this is a lookup formula)</i>	Break-down Code	Breakdown Code Description <i>(this is a lookup formula)</i>	EXPENDITURE ADJUSTMENTS			REVENUE ADJUSTMENTS (non-BOND only)			NET BUDGET IMPACT
					Current Budget (Adopted +/- any Revisions)	Budget Adjustment Requested	Line Item Budget after Proposed Revision	Current Budget (Adopted +/- any Revisions)	Budget Adjustment Requested	Line Item Budget after Proposed Revision	
1	4-155-01-BOND	Kenneth Aitken Senior Center Renovation	699	OTHER CONSTRUCTION COSTS	1,500,000.00	750,000.00	2,250,000.00			-	(750,000.00)
2	1-022-01-BOND	Castro Valley Comm Center Modernization	699	OTHER CONSTRUCTION COSTS	6,300,000.00	(750,000.00)	5,550,000.00			-	750,000.00
3							-			-	-
4							-			-	-
5							-			-	-
6							-			-	-

Total Exp Adjustments - Total Revenue Adjustments - -

 Capital Planning & Development Director Approval

 Date

 General Manager Approval

 Date

Board approval required for net increase or decrease for any one project shown above.

Board Approval Date: 11/7/2022
Project Tracking post date

Resolution Number: R-2022-xx
Please attach copy of resolution