TO: HONORABLE CITY COUNCIL
FROM: CITY MANAGER DEPARTMENT: PUBLIC WORKS
DATE: MARCH 6, 2006 CMR:150:06

SUBJECT: APPROVAL OF: 1) OFFER AND AGREEMENT TO PURCHASE TRANSFERABLE DEVELOPMENT RIGHTS AND DECLARATION OF COVENANTS AND RESTRICTIONS FOR HISTORIC PRESERVATION OF PALO ALTO CHILDREN’S LIBRARY; 2) BUDGET AMENDMENT ORDINANCE IN THE AMOUNT OF $1,384,542; 3) A CONTRACT WITH BRCO CONTRACTORS IN THE AMOUNT OF $2,646,000 FOR EXPANSION AND IMPROVEMENT OF THE CHILDREN’S LIBRARY; 4) CONSTRUCTION CONTINGENCY OF $317,520; AND 5) AMENDMENT NO. 2 TO CONTRACT NO. C05108354 WITH ARCHITECTURAL RESOURCES GROUP, ARCHITECTS, PLANNERS & CONSERVATORS, INC. IN THE AMOUNT OF $32,850 FOR CONSTRUCTION ADMINISTRATION-RELATED SERVICES, CAPITAL IMPROVEMENT PROGRAM PROJECT PE-04010

RECOMMENDATION
Staff recommends that Council:

1. Accept the high bid for transferable development rights from the Palo Alto Children’s Library, 1276 Harriet Street, by authorizing the Mayor to execute the attached Offer and Agreement to Purchase Certified Development Rights and its attached Certification of Transfer of Development Rights accepting the high bid in the amount of $237,500 submitted by The Banatao Heritage Trust (Attachment A); and an Agreement and Declaration of Covenants and Restrictions for Historic Preservation, Palo Alto Children’s Library (Attachment B).

2. Approve a Budget Amendment Ordinance (Attachment C) to add $1,384,542 to the project budget. CIP Page for Children’s Library Improvements (PE-04010) is attached for reference (Attachment D).

3. Approve and authorize the City Manager to execute the attached contract with BRCO Contractors in the amount of $2,646,000 for expansion and improvement of the Children’s Library (Attachment E). Bid Summary and Certificate of Non-Discrimination are also attached. (Attachments F & G)
4. Authorize the City Manager or his designee to negotiate and execute one or more change orders to the contract with BRCO Contractors for related, additional but unforeseen work which may develop during the project, the total value of which shall not exceed $317,520.

5. Approve and authorize City Manager or his designee to execute a second amendment (Attachment H) to the contract (C05108354) with Architectural Resources Group in the amount of $32,850 for additional construction administration-related services.

BACKGROUND

On February 10, 2003, the City Council approved a public-private partnership between the City and the Friends of the Palo Alto Library (Friends) to support the fundraising effort that the Friends proposed for the renovation and expansion of the Children’s Library. At that meeting, the Council deferred designing a renovation and upgrade of the existing Children’s Library until December 31, 2003 when the results of the Friends and Palo Alto Library Foundation (Foundation) efforts would be known. The City’s Infrastructure Management Plan included needed renovations and upgrades to the existing building to meet seismic and accessibility (ADA) code requirements and to replace aged mechanical and electrical systems. The Friends’ and Foundation’s fundraising was targeted at adding a north wing expansion to the project and to raise half the funds needed for construction of that project. At its March 1, 2004 meeting, the City Council approved a cost sharing agreement between the City, the Friends and the Foundation for the Children’s Library renovation and expansion. Under the terms of the agreement the Friends and Foundation committed to contribute $960,000 to fund project construction costs with the City covering the remaining construction costs along with project design and construction administration costs.

On October 25, 2004, the City Council approved an amendment to the City’s agreement with the Friends and Foundation that provided for a small south wing expansion to the project to provide for needed program space (CMR:450:04). Under the amendment the Friends and Foundation committed to another $170,000 towards project construction for a total contribution of $1.13 million. At that time, construction was estimated to be $2.26 million. The Friends’ and Foundation’s contributions amounted to half this cost with the City committed to covering remaining project costs.

On June 28, 2004, the City Council awarded a design contract to Architectural Resources Group (ARG) for the Children’s Library renovation and expansion (CMR:340:04) and on July 18, 2005, Council awarded a contract to NOVA Partners, Inc. for construction management services for the Children’s Library project (CMR:326:05).

On August 1, 2005, Council approved a resolution designating the Palo Alto Children’s Library an eligible “sender site” in the City’s Transfer of Development Rights (TDR) program (CMR:340:05). On September 19, 2005, Council approved the Request for Proposals (RFP) for the sale of 2,500 square feet of Certified Development Rights from the Palo Alto Children’s Library (CMR:376:05). One purpose of the TDR program is to encourage and support the
rehabilitation of historic buildings. The program provides a floor area bonus for the qualified rehabilitation of Category 1 and 2 historic buildings which are either owned by the City of Palo Alto or located in the Downtown CD zone district. The size of the bonus is 2,500 square feet, or 25% of the existing building, whichever is greater. Floor area bonuses may be transferred (sold) from eligible “sender” sites for use on eligible “receiver” sites in the Downtown. For City-owned property, floor area bonuses from eligible sender sites must be sold by the City on the open market through a public bid process. Funds from the sale must then be used to rehabilitate eligible City-owned historic buildings.

**DISCUSSION**

The Children’s Library project will rehabilitate the plumbing and electrical systems, add new heating, ventilation, and air conditioning systems, add a fire sprinkler system, and seismically stabilize the original 3,400 sf building. The project will also construct a 1,892 sf single story North Wing addition and a 709 sf single story South Wing addition. The total area of the library will become approximately 6,000 sf.

Attachment I is a summary of project costs and funding to date for the Children’s Library project. The cost analysis shows that the project is under funded by $649,825. The majority of this shortfall is due to the project’s construction cost which is $430,520 short based on the low bid received from BRCO Contractors plus a needed 12% construction contingency. The remaining project cost shortfall of $219,305 is due to unanticipated design costs related primarily to meeting historic preservation requirements and testing for the “green” HVAC system planned for the project. Details leading to the budget shortfall are further discussed in this report.

Staff met with the Friends and Foundation to explore the possibility of sharing the cost of the construction shortfall 50/50 as provided for in the cost sharing agreement. Since that meeting the Friends have declined to participate further in the project cost. (See their email and its accompanying spreadsheet showing the Friends’ available funds Attachments J and K.) The Foundation has already committed $660,000 which is one fourth (their share) of the construction cost. The Foundation also plans to raise additional funds to cover the cost of furniture, fixtures, and equipment for the Children’s Library.

This leaves the Council with the following alternatives:

1. Fund the $649,825 shortfall using Infrastructure Reserve (IR) funds.
   Since all the funds in the Infrastructure Management Plan (IMP) have been allocated to projects according to need and priority, funds to one project come at the expense of other projects. If Council were to select this option, staff proposes to defer the Foothills Park Interpretive Center Rehabilitation Project ($210,000) because of the lower usage of that facility relative to the Children’s Library, and the Cubberley Restroom Renovation Project ($240,000) as it was not originally part of the IMP. With these projects deferred, the IR will still need to fund $199,825 of the $649,825 project budget shortfall. Deferral of these two projects will only provide temporary
relief to the IR. These projects will require funding in the future once their deferral ends and they will cost more then due to inflation.

If Council approves this alternative:
   a. The project will proceed as planned.
   b. Library services for children will be improved.
   c. Two other projects will be postponed.

2. Cancel the Children’s Library Expansion & Improvements Project.
   This would require rejection of all construction bids and rejection of all outside funding gathered to date (total funding – City funds = outside funds; $3,137,717 - $1,350,000 = $1,787,717). Rejection of outside funding makes a future return to those sources for money unlikely.

   If Council approves this alternative:
      a. Library services for children would not be improved.
      b. Deterioration of the historic building would continue.

3. Postpone the project until additional outside funding can be found.
   This would require that the construction and TDR bids be rejected, since sufficient outside funding cannot be secured before the bids expire on March 10. Re-bidding and other associated costs would likely add to the cost of the project as would any inflation that would occur in the meantime.

4. Fund the additional cost from the General Fund’s Budget Stabilization Reserve (BSR).
   a. This option will reduce the BSR slightly; however, it will not impact the IR.
   b. This option will help preserve the remaining IR balance in light of Council’s goal to find additional funding for infrastructure.

Offer and Agreement to Purchase Certified Development Rights

Following Council’s approval of the RFP on September 19, 2005, staff solicited bid proposals by sending information flyers to persons owning eligible “receiver sites” in the CD District, persons on the Real Estate Division “Surplus Property Mailing List,” local developers, and others likely to be interested in the offering. Staff also advertised the sale in the San Jose Mercury News, San Jose Business Journal, and the Palo Alto Weekly.

The RFP offered the opportunity to purchase 2,500 square feet of floor area bonus, available for sale in 500 square foot lots.

On November 8, 2005, the following written bids were received:

<table>
<thead>
<tr>
<th>Bidder</th>
<th>No. of 500 s.f. lots</th>
<th>Bid Amount/lot</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 278 University Investors, LLC</td>
<td>3</td>
<td>$45,500</td>
<td>$136,500</td>
</tr>
<tr>
<td>2. The Banatao Heritage Trust</td>
<td>5</td>
<td>$47,500</td>
<td>$237,500</td>
</tr>
</tbody>
</table>
The Offer and Agreement to Purchase Certified Development Rights accepting the high bid submitted by the Banatao Heritage Trust is attached.

During its September 19, 2005 discussion prior to approving the RFP, Council members expressed concern that the minimum bid of $42,500 for each 500 square foot lot was too low considering the value of each lot in terms of parking exemption. The Zoning Code provides that the first 5,000 square feet of TDR transferred to an eligible receiver site are exempt from parking requirements. The parking requirement in the Downtown is one space per 250 square feet of floor area, and parking for new non-exempt development must be provided on site or a fee of $53,000 per space is assessed by the University Avenue Parking In-Lieu Fund. As required by the City’s Procedure for Sale/Transfer of Development Rights for City-owned property, staff had the TDRs appraised to determine the minimum bid. The appraisal determined a minimum bid of $42,500 for each 500 square foot lot based on current market conditions including: 1) lower rental rates and higher development costs which have depressed the effective demand for new construction; 2) the fact that the economic benefit of waiving onsite parking requirements and fees for parking-exempt floor area is offset by the lower value of downtown office space that is deficient in onsite parking; and 3) the fact that privately owned TDR’s have been available on the market for some time without a purchase being consummated.

The City received two bids for its TDRs, both of which are higher than the minimum bid ($45,500 and $47,500 per lot) but not equivalent to the $53,000 assessment district fee per space. However, based on the professional appraisal and the well-advertised RFP, staff believes the bids are competitive and recommends Council approve the high bid. Rejection of the bids would mean the $237,500 from the high bid would not be available for the Children’s Library project. The development rights cannot be sold after the project has been completed.

Project funds were expended to complete the steps involved in the TDR process including the preparation of a historic structures report (HSR). To date, about $24,000 has been committed or spent. These costs were not anticipated at the time the project budget was established.

**Agreement and Declaration of Covenants and Restrictions for Historic Preservation**

As a condition of the sale of TDR, the Municipal Code requires that the sender site be subject to a covenant running with the land and requiring that the historic building be rehabilitated and maintained in conformance with the Secretary of Interior’s Standards and Guidelines for Rehabilitation of Historic Buildings. In the case of sender sites owned by the City, this covenant must be held by a qualified and disinterested third party.

For the Children’s Library, staff has negotiated a proposed protective covenant with Palo Alto Stanford Heritage (PAST) (See Attachment B). Formed in 1987, PAST is a local nonprofit organization exempt from taxation under Internal Revenue Code Section 501(c)(3) and supporting the preservation of historic architecture, neighborhoods, and character in the greater Palo Alto-Stanford area. If approved by Council, the attached covenant with PAST will be recorded against the Children’s Library property and includes provisions that:
1. Palo Alto will maintain the Children’s Library site (consisting of the library building and adjacent garden) in accordance with the Secretary of Interior’s Standards and Guidelines for Rehabilitation of Historic Buildings and the recently approved project plans. These plans may be modified in the future under regular City procedures, but advance notice to PAST and compliance with the Secretary’s Standards is required. PAST may require that the City obtain a qualified independent historic preservation expert to evaluate whether the changes conform to the Secretary of the Interior’s Standards.

2. Following completion of construction, the Department of Public Works will prepare an annual report on the Children’s Library site for review by PAST and the Historic Resources Board, describing recent repairs, maintenance and alterations to the site, and identifying any changes that are planned.

3. Disputes will be resolved through arbitration if necessary. Because PAST’s financial resources are limited, if there is an arbitration, the City will pay the arbitrator’s fees and a portion of PAST’s expenses.

Construction Contract
All of the bidders on this project were prequalified as noted in the staff report approving the contract with NOVA Partners for construction management services (CMR:326:05). Prequalification of contractors is used on projects where specialized knowledge or qualifications are critical to successful completion of a construction project. The Children’s Library Expansion and Improvement Project entails historic rehabilitation, seismic upgrade, and complete renovation of all building systems. Prequalification of contractors ensured that the contractors that bid on the project had the knowledge and experience with the construction and demolition requirements particular to this historic structure. The prequalification process followed the guidelines set forth in the City Manager’s Policy and Procedure, “Prequalification of Contractor.”

Prequalification materials included:
- A Request for Pre-qualification of Bidders;
- A public notice of the distribution of a Request for Pre-qualification of Bidders;
- A Notice to Bidders; and
- A Pre-qualification Questionnaire

The prequalification packets were available starting on October 13, 2005 and completed questionnaires were due on November 1, 2005. The availability of the pre-qualification packets was advertised in the same manner as a construction bid.

A scorecard was used to rank contractors’ responses to the questionnaire to determine, as objectively as possible, whether a contractor was sufficiently qualified or not. Staff and the City’s construction manager, NOVA Partners, independently scored the questionnaire responses. Of the twelve contractors who submitted responses, seven were deemed qualified. Those who had failed to provide sufficient information to demonstrate experience with historic rehabilitation were deemed unqualified. Prospective bidders were given an opportunity to dispute the City’s determination, but none requested a dispute hearing.
Invitations for bid were mailed to the seven prequalified contractors on November 29, 2005 and bids were opened on January 10, 2006. The following is a summary of the bid results:

**Construction Contract Bids**

<table>
<thead>
<tr>
<th>Summary of Contract Bid Process</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bid Name/Number</td>
</tr>
<tr>
<td>Proposed Length of Project</td>
</tr>
<tr>
<td>Number of Bids Mailed to Contractors</td>
</tr>
<tr>
<td>Number of Bids Mailed to Builders’ Exchanges</td>
</tr>
<tr>
<td>Total Days to Respond to Bid</td>
</tr>
<tr>
<td>Pre-Bid Meeting?</td>
</tr>
<tr>
<td>Number of Company Attendees at Pre-Bid Meeting</td>
</tr>
<tr>
<td>Number of Bids Received:</td>
</tr>
<tr>
<td>Bid Price Range</td>
</tr>
</tbody>
</table>

*Bid summary provided in Attachment F.*

Staff reviewed all bids submitted and recommends that the bid of $2,646,000 submitted by BRCO Contractors be accepted, and that BRCO Contractors be declared the lowest responsible bidder. The bid is 10% above the engineer’s estimate of $2.4 million. The contingency amount of $317,520, equaling 12% of the total construction contract, is requested because of the greater possibility of unknown conditions in a historic building than in standard construction. Staff would have preferred a higher construction contingency of 15%, but because of cost concerns is only requesting 12% and believes this amount will be adequate.

Staff confirmed with the Contractor’s State License Board that the contractor has an active license on file. Staff checked references supplied by the contractor for previous work performed and found no significant complaints. Other information given in the pre-qualification packet has also been verified. One of the other bidders wrote a letter of protest concerning awarding this project to BRCO. The City looked into the concerns, responded accordingly, and the protest was not upheld.

The City’s contract with ARG also needs to be amended in the amount of $32,850 to provide for construction administration-related services. These services include:

- Reviewing required contractor submittals for conformance with the project plans and specifications.
- Answering design related questions from the contractor.
- Responding to information requests that City staff get from other entities.
- Any design work associated with change orders.
- Provision of a landscape maintenance plan for maintenance of the Secret Garden after project completion.
Completing a Life Cycle Cost Analysis for the mechanical system as required for CARE grant from City of Palo Alto Utilities.

Coordination with Construction Manager

**RESOURCE IMPACT**

As discussed above, total project costs for the Children’s Library are estimated to be $3,787,542 while identified project funding is $3,137,717, resulting in a budget shortfall of $649,825 (see Attachment I). There are several reasons for this shortfall.

Construction costs for the project have increased dramatically since fundraising and design for this project began. Inflation over the three years since the original cost estimates were prepared has been greater than it has been in the past and significant increases in concrete, wood and steel prices have occurred along with large fuel cost increases. Several unanticipated design details were required to preserve the Children’s Library’s historic nature. These details also contributed to increased construction costs. Overall, the low bid for construction was about 10% above the engineer’s estimate of $2.4 million which is not out of range by industry standards although it results in a construction shortfall of $430,520 as previously discussed.

Project design costs have also increased for the following reasons:

- Soil thermal conductivity testing was needed for “green” elements such as the heating/air conditioning system which will use a sustainable ground source heat pump system eliminating the need for bulky roof mounted HVAC units that would conflict with the building’s historic roof tiles.

- HUD grant funding required Federal environmental clearance under the National Environmental Protection Act (NEPA) in addition to the CEQA clearance already provided for in the Library Bond process that failed in Fall 2002. This resulted in additional documentation (Section 106 Report) being prepared requiring review by the State Historic Preservation Office (SHPO).

- The TDR process also required unanticipated additional work to prepare another historic preservation document (a Historic Structures Report) as specified in the City’s TDR Ordinance.

- Lastly, incidental costs directly related to the project such as the relocation of an electrical transformer that was in conflict with the north wing expansion and additional hazardous materials testing (asbestos and lead paint) were expended during project design and not anticipated when the original project budget was prepared.

These additional design costs amount to $219,305 of the estimated project budget shortfall (see Attachment I).

Approving the attached Budget Amendment Ordinance will bring the total budget for this project to $3,787,542 from seven sources.
A summary of the budget changes and associated funding sources are shown in the table below.

<table>
<thead>
<tr>
<th>Project Cost</th>
<th>Adopted Budget to date (Column A)</th>
<th>Budget Changes (Column B)</th>
<th>Adjusted Budget Column C (Column A + Column B)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Design and Construction</td>
<td>$2,403,000 *</td>
<td>$1,384,542</td>
<td>$3,787,542</td>
</tr>
<tr>
<td>Total Project Cost</td>
<td>$2,403,000</td>
<td>$1,384,542</td>
<td>$3,787,542</td>
</tr>
<tr>
<td>Sources</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Palo Alto Foundation (PALF)</td>
<td>$515,000</td>
<td>$145,000</td>
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<tr>
<td>Friends of the Palo Alto Library (FOPAL)</td>
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<td>$75,000</td>
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<tr>
<td>HUD Grant</td>
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<td>$267,217 **</td>
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<tr>
<td>Arillaga Donation</td>
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<tr>
<td>City of Palo Alto infrastructure reserve</td>
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<td>$649,825</td>
<td>$1,999,825</td>
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<tr>
<td>Sale of Transferable Development Right – Children’s Library</td>
<td>0</td>
<td>$237,500</td>
<td>$237,500</td>
</tr>
<tr>
<td>City of Palo Alto Utilities Department CARE Program</td>
<td>0</td>
<td>$10,000</td>
<td>$10,000</td>
</tr>
<tr>
<td>Total Sources</td>
<td>$2,403,000</td>
<td>$1,384,542</td>
<td>$3,787,542</td>
</tr>
</tbody>
</table>

* does not include staff support of $194,415  
** net of amendment of $585

**POLICY IMPLICATIONS**

The proposed sale of Certified Development Rights is in accordance with Chapters 18.87, 18.49 and 18.32 of the Zoning Code and the City Manager’s Procedures for Sale/Transfer of Development Rights for City-Owned Property.

The recently released survey of the Palo Alto Library system found that the provision of more children’s services is a high priority to the public. The survey also found that the Children’s Library has earned great loyalty from its constituency. Nearly doubling the size of the Children’s Library, rehabilitating the building to meet present standards, and preserving its historic integrity are consistent with any objectives for library improvements.

**ENVIRONMENTAL REVIEW**

This project is a modified version of the previously approved project that was developed for the City’s November 2002 bond measure. The previous project underwent environmental review pursuant to the California Environmental Quality Act (CEQA), including a Mitigated Negative Declaration (MND), Resolution No. 8183, which was approved by Council and included both north and south wing additions that were larger than the current project described in this report. Due to the historic significance of the building and funding from HUD, additional environmental review under the National Environmental Protection Act (NEPA) was conducted along with required design review by the State Historic Preservation Office (SHPO). Because of its historical significance, the MND requires expansion of the Children’s Library to adhere to the Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. An addendum to the MND consistent with CEQA Guideline Section 15164 and an updated NEPA review was completed in September 2005 to represent the current reduced scale project. These documents were considered with the Planning Director (Architectural Review)
approval which occurred on October 4, 2005. The project, including any seismic and ADA retrofits, will be done in accordance with the mitigation measures of the MND, MND Addendum and NEPA environmental analysis and monitored in accordance with the mitigation monitoring plan adopted with the MND/Addendum. See Attachment L (for Council only).

**ATTACHMENTS**
Attachment A: Offer and Agreement to Purchase Certified Development Rights
Attachment B: Protective Covenant with PAST for Children’s Library
Attachment C: Budget Amendment Ordinance
Attachment D: CIP Page for Children’s Library Improvement (PE-04010)
Attachment E: Contract
Attachment F: Bid Summary
Attachment G: Certificate of Nondiscrimination
Attachment H: Amendment #2 to the Architectural Resources Group contract
Attachment I: Project Cost Analysis
Attachment J: Letter from the president of Friends of the Palo Alto Libraries
Attachment K: Friends Notes on the Children’s Library Cost Overrun
Attachment L: Children’s Library Mitigated negative Declaration and Addendum (for Council only)

PREPARED BY: ____________________________________________________________

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______________________________________________________________

WILLIAM W. FELLMAN
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DEPARTMENT HEAD: ______________________________________________________

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CITY MANAGER APPROVAL: _________________________________________________

EMILY HARRISON
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cc: Architectural Resources Group
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    BRCO Contractors
    The Banatao Heritage Trust
    Palo Alto Stanford Heritage