



# City of Palo Alto

## City Council Staff Report

(ID # 9270)

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**Report Type: Consent Calendar**

**Meeting Date: 6/11/2018**

**Summary Title: Finding California Avenue Parking Garage Substantially Complex**

**Title: PUBLIC HEARING: Approval of a Finding That the California Avenue Parking Garage Project (CIP PE-18000) is "Substantially Complex" Under Public Contract Code Section 7201 and Direction to Increase the Retention Schedule From Five Percent to Ten Percent**

**From: City Manager**

**Lead Department: Public Works**

### **Recommendation**

Staff recommends that Council:

1. Approve a finding that the proposed California Avenue Parking Garage Project is “substantially complex” under Public Contract Code Section 7201 based on the reasons set forth in the staff report, and
2. Direct this project to be advertised for bid with a retention amount of ten percent (10%).

### **Executive Summary**

State law limits the City to five percent (5%) retention on public works projects unless City Council approves a finding that the project is “substantially complex.” This finding must be made before the project is advertised for bid. Staff is preparing to issue the formal Invitation for Bids (IFB) for the California Avenue Parking Garage Project. The IFB is expected to be released in July 2018.

### **Background**

Public Contract Code Section 7201 requires public agencies to limit contract retention on public works projects to 5% unless the project is found to be

“substantially complex” and therefore requires a higher retention amount. Retention is a contractual withholding of money by the City to cover any unexpected expenses, such as liens or poor workmanship, that may occur before the project is completed and accepted. The standard procedure is to return the retention once the following occurs: work is completed, the contractor provides the maintenance bond, the City accepts the project, and the lien period expires.

Public Contract Code Section 7201(b)(1) generally caps the retention amount that may be withheld at five percent (5%) of the contract price. However, Section 7201(b)(4) permits an awarding agency to withhold in excess of 5% on specific projects where the governing body approves a finding, during a properly noticed and normally scheduled public hearing and prior to bidding, that the project is substantially complex and therefore requires a higher retention amount. Section 7201(5) such a finding to “include a description of the specific project and why it is a unique project that is not regularly, customarily, or routinely performed by the agency or licensed contractors.”

The awarding entity must include in the bid documents details explaining the basis for the finding and the actual retention amount. Staff will include this information in the bid documents.

### **Discussion**

The California Avenue Parking Garage Project is part of the Council Infrastructure Plan. Construction of the garage is a key step in the delivery of a new Public Safety Building (PSB). The PSB will be built on the adjacent property at 250 Sherman Avenue that currently provides approximately 150 public parking stalls. The new garage will replace these stalls and provide approximately 310 new parking stalls to the California Avenue business district. The garage construction involves 2 subterranean levels and 4 above-ground levels to provide a total of 636 parking stalls. Construction will involve a cut-off wall to limit groundwater impact, cast-in-place post-tensioned structural concrete, provisions for an integrated solar canopy, and a signature grand stairway along Birch Street.

The construction cost is estimated to be \$35 million and is expected to be

completed in early 2020. The contractor will be required to subcontract for numerous specialties including shoring engineering, fire sprinklers, backup power, and ventilation systems. The project will require the coordination of multiple construction disciplines while maintaining right-of-way access within a heavily used business district.

City staff has determined and recommends that Council find that the California Avenue Parking Garage Project is “substantially complex” and therefore requires a higher retention amount of 10%, based on the large amount of work required, the multi-faceted nature of the project, the project cost, and the numerous specialized disciplines and trades involved in the construction. The City Clerk has published the required notice of this hearing in the newspaper starting on June 1, 2018.

The retention will be released as described in the City of Palo Alto’s standard contract General Conditions Section 9.8.1 which states, “Upon receipt of notice from Contractor that the Work is ready for final inspection, City will make such inspection. The City will file a Notice of Completion (NOC) with the County Clerk within ten (10) days after Acceptance by the City. Thirty-five (35) Days after filing the NOC, the City may release the final retention provided the requirements in this paragraph are met.”

### **Timeline**

Staff plans to issue an IFB for the project in July. Construction of the California Avenue Parking Garage is expected to begin in October with completion anticipated in early 2020.

### **Resource Impact**

There are no resource impacts associated with finding the project “substantially complex”. Funding for the California Avenue Parking Garage Project is available in Capital Improvement Program (CIP) Project PE-18000.

### **Policy Implications**

The proposed action is consistent with City policy.

### **Environmental Review**

Under the California Environmental Quality Act (CEQA), the PSB and California Avenue Parking Garage are considered as a single project because the public parking garage will mitigate for the loss of approximately 310 existing public surface parking spaces on both sites. The City of Palo Alto published the Draft Environmental Impact Report (EIR) for public review and comments on January 8, 2018; the public comment period closed February 22, 2018. During the public review period, both the Architectural Review Board and Planning and Transportation Commission held public meetings, on January 18th and January 31st, respectively, to take public testimony on the Draft EIR. Substantive public comments received at these meetings and in writing have been responded to in the Final EIR, provided to the Council in hard copy and published on May 11, 2018, on the Public Works webpage for the project. The Final EIR was also distributed via email to members of the public and agencies who commented on the Draft EIR.

Following Council certification of the Environmental Impact Report (EIR) and approval of the California Avenue Parking Garage, staff will file a Notice of Determination (NOD) reflecting approval with the County of Santa Clara.