



## Friends of Los Altos, Inc. (FOIA)

A non-profit, non-partisan, volunteer-run organization

### The Community Center project - A train wreck in the making?

The 1993 film *The Fugitive* has an iconic scene where a freight train smashed into fugitive Richard Kimble's (played by Harrison Ford) prisoner transport bus. After the impact the train derails, almost killing Kimble a second time. For those of us watching the Los Altos City Council meetings where the Community Center construction progress is being described, it brings back flashbacks of that movie and a train wreck happening before us, albeit in slow motion.

We know that readers often want us to tell them in twenty-five words or less what the problem is and what we want them to do about it. So instead of making you wait until the end of the article, let's give you the short version of the story, which we sincerely hope doesn't have a bad ending.

Based on the information presented to date, the project is about 50% completed, with 53% of the money spent to date. That sounds pretty good, right? Wrong. Why? Because the 53% actually already includes the 10% contingency that was added to the budget. In fact if you strip out the contingency of \$3.5M, the project has spent 58% of the total. That 8% represents a nearly \$2.8M overage as of September 30<sup>th</sup>. But wait, it gets worse. The numbers do not include the additional money the architects (who are managing the general contractor) nor Nova (who is also managing the general contractor) are due as a result of delays. You might also wonder why we have both the architects AND Nova managing the general contractor, but we'll get to that later. Those delays are from the project length increasing from the originally anticipated 13 months to 16 months (increasing the cost by \$ 233K for the architects and \$ 290K for Nova, inclusive of a 20% contingency) and a Covid delay which the architects claim consumed 2.5 months (and \$ 170K, also inclusive of a contingency). In fact, the site was only closed from March 30<sup>th</sup> to May 4<sup>th</sup>, i.e. 35 days---2.5 months is 75 days! Yes, we know, that doesn't add up, but there are many aspects of the project that don't add up and that we can't quite figure out. The numbers we cited also do not account for the cost of building changes that have been made to the project over the past 6-plus months and which have yet to be reflected in the revised budget projections.

So right now no one really knows what the total cost of the project will be. And that alone has us worried. This matter is again coming before the City Council at its October 27<sup>th</sup> meeting and the Council, which raised concerns at the last meeting, needs to hear from you (council@losaltosca.gov) that appropriate changes need to be made to ensure the project does not become a runaway train. By our count, the \$25M Community Center, later increased to \$35M with Council-approved upgrades and currently clocking in at \$38.3M (inclusive of a contingency) will now have a cost at completion of at least \$39M, with no obvious plan to pay

for the cost overrun. And it now appears more likely that it will come in over \$39M rather than under budget.

Meanwhile, the City is pursuing a \$10M bond that with existing reserves and some \$3-4M of parking-in-lieu funds (money that developers pay as part of project fees to cover the cost of new parking and other facilities for the community) was planned to be enough for the original high estimate (including contingency ) of \$38.3M. For anyone who has ever been involved in a house remodel or construction project knows, there are often end-of-project surprise costs that show up. And by the time they show up, unless your contingency (or bank account) is large enough, the project will run over budget and you simply may not be able to finish the project. We have some serious concerns that this may be the same fate for the Community Center and we think the City Council needs to get a better handle on the project, the estimated future costs, and what can be done right now to reduce those costs.

Another potential option might be to increase the size of the bond measure, but that may further strain City cash flow, particularly as the pandemic lingers on. But an option which we think is definitely not warranted is to simply ignore the problem, which up until the most recent Council meeting, appears to be what Staff and the consultants were doing.

Are you as nervous as we are? If so please read the rest of the article for a more detailed, nuanced explanation of what is going on.

### **Background - So how did we get here?**

The project was initially approved with only a single bid for the construction, although there were other contractors who were pre-qualified to bid on the project. At the time, the Council voted to proceed, over the objections of Lynette Lee Eng. In discussions with several local residents who are involved in large government building projects, their opinion was that the \$28.2 M contract was on the high side and should be more than enough to complete the job. Which goes to prove that getting more than one bid really would have been a good idea.

The most recent project review, during a special City Council study session financial update on October 13<sup>th</sup>, is worth your viewing. The update included a look at Fiscal 2020 results, Fiscal 2021 results to date, reserves and cash flow, along with a discussion of the Community Center budget. In the regular City Council meeting that followed, there was a further discussion on the status of the Community Center. If you're interested, the links to the reports are here:

[https://los-altos.granicus.com/MetaViewer.php?view\\_id=7&clip\\_id=1679&meta\\_id=66405](https://los-altos.granicus.com/MetaViewer.php?view_id=7&clip_id=1679&meta_id=66405)

[https://los-altos.granicus.com/MetaViewer.php?view\\_id=7&clip\\_id=1679&meta\\_id=66407](https://los-altos.granicus.com/MetaViewer.php?view_id=7&clip_id=1679&meta_id=66407)

[https://los-altos.granicus.com/MetaViewer.php?view\\_id=7&clip\\_id=1678&meta\\_id=66316](https://los-altos.granicus.com/MetaViewer.php?view_id=7&clip_id=1678&meta_id=66316)

videos from those meetings are here:

[https://los-altos.granicus.com/MediaPlayer.php?view\\_id=7&clip\\_id=1679](https://los-altos.granicus.com/MediaPlayer.php?view_id=7&clip_id=1679)

[https://los-altos.granicus.com/MediaPlayer.php?view\\_id=7&clip\\_id=1678](https://los-altos.granicus.com/MediaPlayer.php?view_id=7&clip_id=1678)

You may also want to read the September update report that was prepared by Nova Partners (more on who they are later in the article). The link to that report is here:

[https://www.losaltosca.gov/sites/default/files/fileattachments/public\\_works/page/41021/2020-1012\\_lacc\\_-\\_sept\\_2020\\_update.pdf](https://www.losaltosca.gov/sites/default/files/fileattachments/public_works/page/41021/2020-1012_lacc_-_sept_2020_update.pdf)

### **Realities of construction - Isn't this stuff easy?**

Anyone who has been involved in construction and the associated costs understands that it is, at best, an inexact science. Often-times delays happen because of unforeseen circumstances such as site conditions, availability of specific materials or subcontractors, etc. Some of those causes for delay will show up throughout a project, but there are also end-of-project surprises because of end-of-job work or late invoices. There is very little one can do to insulate against some of those issues, other than having a large enough contingency budget and holding back some money from subcontractors or the general contractor until the work has been completed.

### **Who is in charge of the project? Who is accountable for schedule and cost?**

Frankly that is one of the biggest questions in our mind. The City hired Noll & Tam to be project architects to also manage the general contractor. They also hired Nova Partners to do what appears to be the same thing. Each firm had a 13-month contract, costing \$522K for Noll & Tam (equivalent of \$40K/month) and \$1M for Nova Partners (\$77K/month). The City also has a full-time Staff person, Peter Maslo to manage the project. Based on feedback from industry veterans, this level and cost of project oversight is highly unusual. Our view is that if everyone is in charge then no one is in charge—or as mom used to say, “too many cooks spoil the broth”.

### **What is going wrong, cost- and time-wise?**

The pandemic has made everyone's lives more complicated and the Community Center project is not immune (sorry, pun intended). The project was delayed by the County-mandated shut down from March 30 through May 4. That, by the way, is 35 days as noted above. However, the project architects claim the shutdown lasted 2-1/2 months (75 days) and want to get paid \$42K/month for that time just as if construction was going at full pace. We don't understand the math here as the timeframe doesn't square and we find it hard to believe that during the shutdown they were working at the same pace as they would during the normal operations (where they were paid \$40K per month). While we think there should be some compensation for additional work, it doesn't pass the sniff test to us.

Noll & Tam (and the other construction management firm Nova Partners) also are looking to get paid additional fees as the project is taking 16 months instead of the originally anticipated 13 months when the contracts were first signed. However, Noll & Tam is asking for \$194K for the three-month extension, which is nearly \$65K per month. Right, that is a 50% increase over the rate they were paid for the first 13 months. Nova Partners is asking for an additional \$ 242K for the same time. Those two firms currently get in total over \$115K per

month for their services, so those expenses add up quickly, even before the proposed price increase. In reviewing the contracts, we are hard pressed to understand the difference in work between the two firms – it appears we have significant manpower being used for the same, or almost the same, work.

Over the project duration of 16 plus months that adds up to a cool \$2.4M for both firms. That works out to be about 8% of the \$31M cost (inclusive of a contingency) that is being paid to the general contractor – WOW! At the very least, we, the residents, need an explanation as to why we need so many people doing the same construction management job. And we need answers as to why the rate is going up and why we are being charged full price for the 2-1/2 months of shutdown when the site was only closed for a month.

From the most recent numbers it appears that the soft dollar budget (i.e., for design and monitoring of the project) will come in more than fully spending the original \$5.0 M budget as well as the \$500K contingency. On the other hand, the project has spent less money on furniture and fixtures than originally planned, saving \$307K. However the hard dollar costs (for the actual construction by the general contractor) have increased by \$340K and those hard dollar costs do not yet include a number of design changes for the project.

### **What has the Council done?**

Up until the October meeting referenced earlier in the story, not as much as they could have (or should have). Several Council members, notably Lynette Lee Eng and Anita Enander, have questioned the budget numerous times in the past. To their credit, all of the Council members at the October 13<sup>th</sup> meeting expressed concern, with the most pointed comments coming from Jeannie Bruins, Anita Enander, and Lynette Lee Eng. The council will review a number of budget increase requests for the project at the October 27<sup>th</sup> meeting. Just as an aside for those of our readers who are unaware, Mayor Jan Pepper is a registered Professional Civil Engineer with a B.S. in Civil Engineering and an MBA from Stanford (facts that she has brought up more than once during Council meetings) and if anyone on the Council should be cognizant of the management required as well as the unanticipated delays and costs in a construction project, it should be her.

### **Who is to blame, who isn't?**

Certainly not Lynette Lee Eng. Both as a Council member and Mayor, has raised concerns about the single bid contract and projected expenses for the Community Center from Day One. She contacted each of the pre-qualified contractors who did not submit bids, and it appeared to her that there were only minor issues with the contract that could have been resolved, thereby providing more than a single bid for the project. Unfortunately, the balance of the Council refused to have the contract wording changed, thus precluding others bidders.

From an historical perspective, the real blame at the Council level should be laid to the 2017-2018 Council under Mayor Jean Mordo, who despite the recommendations of the Finance

Commission to only spend \$25M for the Community Center, approved design changes and enhanced features in September 2017 that increased the cost of the project by \$9.7M, and ultimately to \$35M due to a few other modifications. With a contingency of 10%, the approved budget for the Community Center grew to \$38.3M. In numerous cases Lee Eng objected, but the Council, with Mordo, Pepper, Prochnow and Bruins, voted in favor of the larger expenditures. The irony is that in the current runup to the 2020 Council election, Mordo and Los Altos Community Voices have tagged Lee Eng in a rather biased “Candidate Score Card” election mailer as being opposed to progress in Los Altos, primarily because of her objections to the escalating costs for the Community Center.

### **Our recommendations**

The Council needs to take a holistic look at the Community Center project and get a much better understanding of the cost to complete it. Currently, the City Manager is spoon feeding the Council incremental budget requests, without providing the Council a clear picture as to what the final cost tally might actually be. This is completely unacceptable. The Council needs an overall—from 30,000 feet—view of the project status and a realistic projected cost-to-complete, not repetitive incremental funding requests.

Given what appears to be duplicative and extremely expensive project oversight, a hard look at those costs is warranted, along with a realistic look at what can be done to hold folks “feet to the fire”. The City Manager has publicly stated that he would bring the project in on-time and on-budget. While we would like to believe him, we think a careful look at expenses going forward is in order. While numerous critics have pointed to lawsuits as a real risk to the financial stability of the City, we think the Community Center project could be a very significant near-term financial risk. We hope we are wrong.

**Friends of Los Altos**

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