

MEMO

To: Citizen Bond Oversight Committee

From: Travis Ritchie and Mike Beebe

Date: April 12, 2021

Re: Investigation of Emerson Field Project Costs

This report provides the conclusions and recommendations of an investigation by Travis Ritchie and Mike Beebe as part of their oversight role as members of the Citizens' Bond Oversight Committee ("CBOC") for the Oakland Unified School District ("OUSD"). With the assistance of the OUSD Facilities Department ("Staff"), the investigation reviewed the budgets, contracts and costs related to the construction of a new softball field and related improvements at Emerson Elementary School (the "Emerson Field" or the "Project").

Summary of Conclusions and Recommendations:

We conclude that Staff's management of Project costs from the time the design and construction bids were awarded through the end of the project was reasonable. Staff conducted a competitive bidding process for the primary construction contract that resulted in three bids ranging from \$2.54 million to \$2.77 million. While some cost increases occurred related to design and other ancillary contracts, the contract amendments cumulatively represented an increase of less than 10% of the original budget and only about 6% relative to final Project costs. Furthermore, Staff took measures to reduce cost increases or recover cost increases from vendors where appropriate.

We further conclude that, while the actual Project costs were reasonable, Staff failed to timely update its internal budget projections or to inform the OUSD Board of Education ("the Board") of the substantial budget increases that would be necessary to complete the Project.

We recommend that for future bond construction projects Staff provide more detailed and timely documentation to explain and justify when actual cost projections will or may exceed Spending Plan budgets to both the CBOC and the Board. While we do not want to second guess Staff's expertise and discretion in managing and prioritizing the Facilities Department budget, we do expect those decisions to be knowable and reviewable by both the CBOC, the Board, and the public in a timely manner such that approval decisions can be made appropriately and with complete information.

We further recommend that for future projects Staff include a reference to the applicable Spending Plan budget and an explanation of any anticipated or necessary budget increases when they submit professional services contract requests to the Board for approval.

Purpose and Scope of Investigation:

The CBOC exists pursuant to California Education Code Section 15278. Paragraph (b) of that section provides: “The purpose of the citizens’ oversight committee shall be to inform the public concerning the expenditure of bond revenues. The citizens’ oversight committee shall actively review and report on the proper expenditure of taxpayers’ money for school construction.” In addition to the state-required oversight, in January 2021 the OUSD School Board approved additional oversight authority in Resolution No. 2021-0031, which is codified in Board Bylaw (BB) 9131, Section 2. This authority provides the CBOC the ability of, “Reviewing and making advisory recommendations to the OUSD Board of Directors regarding proposed alterations to project budgets, timelines, and other changes to bond program expenditures that are subject to OUSD Board of Directors approval.” BB §9131(2)(8).

This oversight authority from both the State of California and the Board directs the CBOC to review spending decisions and budgets related to bond expenditures. The CBOC primarily accomplishes this role through the course of its monthly meetings, which are assisted by OUSD Staff and open to the public. At the regular CBOC meeting on January 20, 2021, Staff presented a proposal for a revised Measure J Spending plan (the “January 2021 Spending Plan”). Item 21-0047. While Staff’s presentation was helpful in laying out the overall changes to the prior August 2018 Spending Plan, CBOC members raised concerns about the lack of documentation or detail for certain budget items that included significant increases from the prior spending plan. In particular, the Emerson Field project increased from \$2 million in the August 2018 Spending Plan to \$4 million in the September 2021 Spending Plan.

Further discussion of the Emerson Field Project during that meeting raised the additional concern that construction of the project was already substantially completed, and that funds in excess of the approved August 2018 Spending Plan had already been committed in contract. The CBOC noted its concerns with this mismatch given the fact that the Board had yet to approve the revised 2021 Spending Plan. Ultimately, the CBOC recommended that the Board approve the 2021 Spending Plan, but noted its concerns to the Board. Following discussion of these issues at the January 27, 2021 Board Meeting and notwithstanding the concerns raised by the CBOC, the Board did

approve the revised January 2021 Spending Plan. See, January 27, 2021 Board Meeting, Item 21-0047.

Around the same time, on January 25, 2021, Travis Ritchie sent an informal request for documents to Staff requesting all of the contracts, communications, planning documents, and other relevant documentation related to the Emerson Field Project. Staff responded in a timely and thorough manner to this request. On February 8, 2021, Staff provided many of the requested documents to Mr. Ritchie and Mr. Beebe. Staff then offered to provide a discussion of the project to Mr. Ritchie and Mr. Beebe on March 1, 2021.

Throughout the informal document request process and the subsequent meeting on March 1, 2021, Staff was helpful and transparent. As discussed in more detail below, the timely and thorough response by Staff helped to alleviate many of the concerns initially raised by the investigation. While we continue to have concerns regarding Staff's past processes for documenting changes to approved budgets and spending plans, we are satisfied that the Emerson Project was reasonably managed and that bond funds were spent properly.

The Emerson Field Project

OUSD envisioned the Emerson Field Project as a much needed addition to the District's sports field complex. The Emerson Field would provide the only regulation girls softball field in the District. The field would be available for official games played by the girls softball team from nearby Oakland Tech High School, and related playground and field improvements would greatly improve on the daily play area available to Emerson Elementary School. The Project would also alleviate potential Title IX concerns related to equity in boys and girls sports funding.

The first mention of the Emerson Field in the documents provided to this investigation noted the inclusion of a \$2.9 million "unfunded" project in June 2015. Another reference budgeted the Project at \$4.3 million of Measure B funds in October 2015. The Project was then removed from Measure B and included in the Measure J June 2017 Spending Plan at an estimated \$2 million. See, File ID 17-1394. That \$2 million estimate remained unchanged in the August 2018 Spending Plan and was not raised to \$4 million until the January 2021 Spending Plan.

On June 6, 2018, the Board approved a contract for \$198,600 with Verde Design to begin the design of the Emerson Field. Over the course of the construction of the Project, that contract was amended 5 times to increase to a total of \$307,110 as of

August 12, 2020. The majority of these contract changes occurred during construction and were for additional work and time not originally bid. Additional ancillary contracts were awarded on December 11, 2019 to Anthonio, Inc. for \$39,600 to provide inspector services (File ID 19-2331) and Terraphase Engineering for \$19,947 (File ID 19-2364) to provide stormwater training and inspection. The Anthonio contract was amended once to increase to \$52,371 as of April 7, 2020. On January 22, 2020, a contract was awarded to Consolidated Engineering Laboratories (CEL) for \$30,000 to provide materials testing services (File ID 19-2665). That contract was amended once to increase to \$64,187. For the CEL increase, Staff indicated that some of those increases may be attributable to the primary contractor and that funds would be recovered or withheld as appropriate.

While three of these four ancillary contracts included substantial percent increases from the originally contracted amount, the cumulative increase of these amendments was approximately \$188,000. Given the overall project budget of \$2 million, we do not find this cumulative increase of less than 10% of the original budget to be unreasonable and find no grounds to dispute Staff's recommendation to approve the contract amendments.

The primary construction contract was awarded on April 22, 2020 to Redgwick Construction Company for \$2,763,555 (File ID No. 20-0637). To our knowledge as of March 2021, Staff does not expect to amend this contract. The \$2.7 million award to Redgwick was the result of a competitive bidding process that resulted in three different construction bids in response to specifications provided by Verde Design. All of the bids came in between \$2.74 and \$2.77 million.¹

Based on our review of these contracts, the current estimate of the Emerson Project is approximately \$3.24 million. While the final amounts may change, Staff does not expect a large deviation from that estimate at this point.

Conclusion

We appreciate Staff's open, communicative and transparent response to this investigation. We acknowledge that the collection of documents by Staff to provide to us and the March 1 meeting to review the materials represent a substantial commitment of valuable Staff time. In responding to our questions, we found Staff to be truthful and helpful.

¹ Though slightly higher than another bid, the Redgwick bid was awarded the contract due to a higher score under the District's Local Business Utilization Policy.

Overall, we initiated this investigation due to the large and mostly unexplained increase in the budget for the Emerson Field from \$2 million to \$4 million in the January 2021 Spending Plan. While we understand that budgets change due to a variety of factors, we believe that our role as members of the CBOC requires us to understand *why* those changes occurred. Above all, we seek to ensure that bond funds are spent properly, without waste, fraud, or abuse.

Our role, however, has limits. We do not seek to substitute our judgment or discretion for Staff's. OUSD Staff has the benefit of numerous trained and skilled employees with years, and in some cases decades, of applicable experience. Moreover, Staff routinely provides detailed overviews of their work to our regular monthly CBOC meetings. As noted above, Staff has also been very responsive and helpful throughout this investigation. In both our regular meetings and this process, we have found Staff to be open to constructive criticism and responsive to suggestions or requests from the CBOC. We appreciate that cooperation and look forward to continued positive engagement with Staff.

With respect to the Emerson Field, we have found no evidence of any waste, fraud or abuse in the expenditure of bond funds. Although the budget did expand substantially, the increase in expected costs was primarily the result of the construction contract. That contract was the result of a competitive bidding process resulting in three substantially similar bids. Through the course of the project, various other contract amendments resulted in a total increase of approximately \$188,000 from the originally contracted amounts. This overrun is less than 6% of the final estimated cost of \$3.24 million. We find that amount to be an acceptable variation.

In summary, with respect to the expenditure of funds, we find that once the decision to construct a softball field was made, Staff pursued the project in a reasonable manner. Bond money was spent properly and to the benefit of the students of the district.

However, while we find no fault with regard to any waste, fraud or abuse, we do wish to convey to Staff certain recommendations regarding the overall planning and prioritization of this Project. To put it plainly, doubling the budget of a project *after* it is substantially completed does not inspire confidence in proper management from the public. In this case, Staff knew, or should have known, early in the Project timeline that actual costs would be 150%-200% of the estimated \$2 million budget approved for the Emerson Field in the June 2017 Spending Plan. At a minimum, Staff knew in February 2020 that the Project would be over budget when all three bids came in around \$2.7 million. That cost alone - setting aside the design and ancillary contracts - indicated that

the project would exceed the \$2 million budget. We also question whether Staff could have anticipated the expected overrun earlier in Verde's design process.

Despite this substantial increase, Staff could provide no documentation to our investigation that either explained or justified the budget increase, nor could Staff provide any documentation addressing the impact that these cost increases would have on other budget priorities.

In April 2020, Staff sought Board approval for the Redgwick contract. Yet that request for approval did not mention the fact that approval of the contract would necessarily result in a substantial increase over the approved Spending Plan. It wasn't until January 2021, when the Emerson Project was already substantially completed, that Staff alerted either CBOC or the Board to the proposed increase from \$2 million to \$4 million for the Emerson Field.² As noted above, we do not question Staff's discretion in determining the appropriateness of this change, but we do expect that Staff be able to explain and justify the exercise of that discretion and communicate anticipated budget changes in a prompt and timely manner.

Overall, our criticism with the process relates to Staff's internal planning, communication, and documentation of its decision making. We recognize that the spending plans are a broad road map for spending decisions and that actual project costs can deviate substantially from estimates. We further recognize that spending additional money up front to provide better estimates for projects that may not even proceed is not an efficient use of bond money. To that end, we understand that even large deviations in budgets may occur. However, when they do, the CBOC, the Board, and the public would benefit from a clearly documented explanation of the rationale for large changes.

For future projects, we recommend that Staff provide better documentation to explain and justify when actual cost projections will or may exceed spending plan budgets. We further recommend that Staff include a reference to the applicable Spending Plan budget and an explanation of any anticipated overruns when they submit professional services contract requests to the Board for approval.

² We note an additional concern with the \$4 million budget included and approved by the Board in the January 2021 Spending Plan. Upon further review and discussion with Staff, the actual cost appears to be approximately \$3.25 million. We do not fully understand why Staff included an additional \$750,000 in the Project budget that it recently recommended when the actual Project is so close to completion at a lower cost.