



## SHERBORN LIBRARY CONSTRUCTION PROJECT UPDATE

November 2018

### TO BE PRESENTED IN A PUBLIC FORUM TO BE HELD AT LINDQUIST COMMONS, DOVER-SHERBORN HIGH SCHOOL DECEMBER 11, 2018

This document was created to help the Sherborn community understand what is happening with the Library Project. Since 2015, when the project was originally estimated, there have been unexpected events, unanticipated requirements and unforeseen conditions on the site. This project overview and the questions & answers that follow were prepared to provide residents with information in anticipation of the public forum.

#### INTRODUCTION

At the November 1, 2018 meeting of the Select Board, on advice of both Bond Counsel and Town Counsel, the Select Board voted not to proceed with a Special Town Meeting on December 11, 2018. Specifically, both Town Counsel and Bond Counsel have opined that the entire \$7.4m authorized by Town Meeting in 2015 is available to be borrowed for Library construction project costs. As a result, both Town Counsel and Bond Counsel agree that a Special Town Meeting is not needed at this time and could, in fact, have negative consequences for the Town. Based on this legal advice, the Select Board has elected not to proceed with a Special Town Meeting, and will instead, together with the Library Trustees and Library Building Committee (LBC) host a public forum to hear a report from the Library Trustees regarding the status of the Library Project and to answer questions from the public.

The Library Trustees, Select Board, the Advisory Committee, Town Administration and LBC share the extreme disappointment and frustration felt by all Sherborn residents. We are committed to working together to protect the Town's interests, and rest assured that we will pursue all available legal remedies to recover costs that should not be borne by the Town once the project is completed.

#### PROJECT OVERVIEW

At the April 25, 2015 Annual Town Meeting, Town Meeting approved borrowing in the amount of \$7.4m for the Library project. The motion, which was approved unanimously, included 3 contingencies: (1) the Town receives the grant from the Massachusetts Board of Library Commissioners (MBLC); (2) the Library Trustees deliver at least \$2.8m in private donations; and (3) a debt exclusion is approved. All three of these contingencies have since been satisfied. At that time, the expectation of the Library Trustees, Select Board and Advisory Committee was that the Town's contribution toward the total project cost would be approximately \$1m. However, by 2016, the project estimate had increased from \$7.4m to \$8.6m due to unanticipated escalating construction costs. As a result, in 2016, the Library Trustees voted to make an additional \$1m available from Library endowment funds to cover the increased cost estimate. Additionally, in 2017, Town Meeting voted to approve a request from the Library Trustees for an additional \$190K to cover the cost of replacing the existing roof, which had not been included in the original base bid for the project.

At the present time, construction is significantly behind schedule due to many factors outside of our control, and as a result, the total project cost, including extra costs related to a longer schedule, is now estimated at approximately \$10.8m. While we believe that this estimate accurately reflects the costs required to complete the project, this figure could change as construction continues and additional unknown conditions are discovered. Accordingly, despite our best efforts to complete the project within the original budget, we now forecast that the Town's share will be higher than the \$1m originally anticipated in 2015.



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### ENSURING THE PROJECT IS DONE RIGHT

We continue to do everything possible to ensure the project gets done right with the expected high level of workmanship. The Library Trustees are committed to delivering on the promise of a beautifully renovated and expanded Library to serve all Sherborn residents for many decades to come. If the project is not completed, the Town will be faced with a number of negative consequences. The Town will be asked to return the \$3.6m construction grant plus interest as per our contractual assurances and certifications with the MBLC; private monies raised for the project may need to be returned to donors; and the Sherborn Library would no longer have a home. We will also risk losing library accreditation, and residents would lose borrowing privileges in neighboring libraries.

A culmination of project issues has now reached the point that the Town has taken steps to notify the Performance Bond Surety of the sub-par performance issues with the general contractor and has asked the Surety to intervene to ensure project completion. Examples of the problems include:

#### **General Contractor staffing and schedule problems.**

Lack of progress, non-conforming work product, inadequate staffing and the absence of a functional project schedule from the general contractor have been ongoing concerns. The latest schedule provided to the Town calls for substantial completion in February 2019, more than a year past the substantial completion date agreed upon in the construction contract. There are a number of factors that contribute toward the delay, some of which are attributable to the general contractor's

performance. One key factor concerns the initial foundation for the new addition, which was poured incorrectly. This required the new foundation to be removed and redone in July 2017, which was done at the general contractor's expense. Also, curbing work recently installed was not done according to the specifications and will need to be redone. Further, interior work has been done out of sequence and exposed to the weather because the building was not made weather-tight. This work will also have to be redone.

**Design changes and rework.** Numerous change orders necessary to complete the project - but not requested by the Trustees or Library Building Committee - have impacted the project cost and schedule. Changes include design corrections to meet code requirements, and to address various design errors, omissions and mechanical coordination issues.

**Site plan changes.** In August 2017, the Massachusetts Department of Environmental Protection (MADEP) imposed a 'cease and desist work order' on any work in the Public Water Supply (PWS) Zone 1 area behind Town Hall because the original project site plan design was not acceptable to the MADEP. On August 2, 2018, a revised site plan with relocated fire suppression tank and pump and a shared replacement generator at Town Hall, was formally approved by MADEP, and the cease and desist work order was lifted. Critical path tasks in the other construction areas (roof, windows, interior work, etc.) were not impacted by this order. However, the order did delay the general contractor's ultimate ability to substantially complete the project in accordance with the original contract deadline.



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## QUESTIONS & ANSWERS

### WHAT IS THE BREAKDOWN OF THE PROJECT COST OVERAGE?

The estimate of additional costs is broken down into three areas. Because all change orders have not been finalized, we are estimating the additional cost conservatively so the project can be completed.

- 60% non-owner requested design changes not covered by construction or project contingencies (e.g. relocation of fire suppression outside of Zone 1, code corrections and design omissions)
- 10% owner-requested design changes not covered in the original project scope (e.g. additional parking, shared generator, campus site improvements)
- 20% additional fees accrued due to the longer than anticipated schedule (e.g. professional fees, rent, storage)
- 10% additional construction and project contingency

### CAN THE ADDITIONAL PROJECT COSTS BE FUNDED BY LIBRARY ENDOWMENT FUNDS?

To date, the Library has provided \$3.8m towards the project cost, which includes both funds raised by the Campaign for the Sherborn Library and existing endowment funds. Our Library endowment funds are restricted for specific uses and are used to fund specific programs that are not otherwise funded by the Town. At their November 20th meeting, Library Trustees voted to make available specific additional endowment funds to offset a portion of the additional project cost. The Library Trustees vote annually to offset Library operating costs with endowment funds available for that specific purpose. The operating subsidy is a foot note of the Library budget in the Annual Town Meeting Warrant and Annual Report. In FY19, the Trustees funded approximately 9% of the total Library budget from endowment funds available for operating costs.

### ARE THERE OPTIONS AVAILABLE TO RECOVER ANY COSTS?

The Town will pursue all legal options to recover those costs that should be borne by others, including the general contractor and architect. Efforts to recover costs that we believe should not be borne by the Town will take place after the project is completed. The Town has engaged Town Counsel to assist with this effort.

### HOW DID WE FIND OURSELVES IN THIS SITUATION?

There is no single cause. In Massachusetts, as with many other states, competitive bidding laws govern contracts for public works construction and for building construction, which require a municipality to award a project to the lowest responsible bidder. We have managed the project in accordance with those laws and, unfortunately, have faced a series of problems with both the general contractor and the design team, as well as other unforeseen issues. The project budget was developed with a construction contingency (for the actual construction to be completed) and a project contingency (for professional fees, furnishings, technology).

### HOW HAS THE TOWN BEEN KEPT INFORMED?

When it became clear that the project would require more funding, the Library Building Committee shared updates with Library Trustees who, in turn, shared the information with the Select Board. On several occasions (January 2018, May 2018, July 2018, August 2018) these groups met in Executive Session to discuss the Town's position, possible litigation and to agree on a course of action. We value the numerous boards, volunteers, and employees who have provided their expertise and guidance, and we must rely on the professionals to get the job done as contracted.



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### **WHAT HAVE WE DONE PROACTIVELY TO MAKE SURE THE PROJECT GETS DONE CORRECTLY?**

We recently notified the Performance Bond Surety of the sub-par performance issues with the general contractor and asked the Surety to intervene in accordance with its obligations under the performance bond to ensure project completion. Massachusetts General Laws required the Town to hire an Owner's Project Manager (OPM) for this project. Library Building Committee members and Library Trustees meet regularly, and there are weekly Owner, Architect, Construction (OAC) meetings at Town Hall. In addition, the Library's Advisory Committee Liaison, Building Inspector and Town Facilities Director have been closely involved with the project. The Select Board appointed a liaison member to work with Library Trustees, and the Town is in close contact with Town Counsel to ensure we are doing everything necessary to protect the Town's interests and rights.

### **WHAT DOES THE PROFESSIONAL OWNER'S PROJECT MANAGER DO TO MANAGE THE PROJECT AND BUDGET?**

As is required by law for Massachusetts municipal construction projects valued at \$1.5m or greater, the Town has an OPM in place. The selection of the OPM is a qualifications-based process. In addition to documenting the work that the contractor is doing, the OPM also coordinates the weekly OAC meeting, manages all change orders, reporting, and budget tracking, and provides oversight of the general contractor and design team.

### **DOES THE TOWN HAVE CONTRACTS WITH THE GENERAL CONTRACTOR AND DESIGN TEAM TO PROTECT US FROM THESE ADDITIONAL COSTS?**

Yes, the Town has contracts in place with the general contractor and with the design team, and we have specific protections as the project "Owner." After the project is completed, the Town will pursue all legal remedies available to recover project costs that we believe should be borne by others.

### **WHY DID WE NEED TO RENOVATE/EXPAND THE LIBRARY?**

After many years of careful planning, Town-wide surveys, building evaluations, a public grant process, and successful private fundraising, the Library Trustees and Town Officials determined that the 1971 Library building needed significant updates to meet current building codes and to comply with the Americans with Disabilities Act (ADA). In 2015, the estimate to bring the building fully up to code was more than \$2.5m. With that in mind, the Library Trustees determined that it would be of value to the Town to pursue a matching state construction grant and make the building fully accessible, compliant with current codes, and attain US Green Building Council LEED certification. This approach added 8,000 square feet with an addition, and reflected new and renovated space including a new children's wing, dedicated adult space, a teen media room, conference and study rooms, community meeting space with after-hours access, an outdoor reading terrace, updated technology infrastructure, all new heating, ventilating and air conditioning (HVAC) and mechanical, electrical and plumbing (MEP) systems, code-compliant public safety systems, adequate storage and staff rooms.

### **WHERE CAN I FIND MORE INFORMATION ABOUT THE PROJECT?**

Sherborn Library website: [sherbornlibrary.org](http://sherbornlibrary.org)  
Town of Sherborn website: [sherbornma.org](http://sherbornma.org)