



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Matt Cano

SUBJECT: SEE BELOW

DATE: October 8, 2020

Approved

Date

10/9/20

COUNCIL DISTRICT: 6

SUBJECT: ACTIONS RELATED TO COMPLETING THE 7232 – TRAIL: THREE CREEKS PEDESTRIAN BRIDGE OVER LOS GATOS CREEK

RECOMMENDATION

- (a) Adopt a resolution authorizing the Director of Public Works to negotiate and execute one or more change orders to the 7232 – Trail: Three Creeks Pedestrian Bridge Over Los Gatos Creek construction contract with Gordon N. Ball to do the following:
 - (1) Increase the current base contract amount by up to \$700,000, from \$1,786,247 to a revised contract amount not to exceed \$2,486,247, subject to the condition that this increase is a full settlement of all cost increases, and
 - (2) Extend the completion date of the work by more than 180 calendar days, until December 10, 2020.
- (b) Authorize increasing the contract contingency by \$55,806, from \$162,745 to \$218,551, to provide for any unexpected work needed for the proper completion of the project.

OUTCOME

Approval of the recommendations address construction cost increases in the 7232 – Trail: Three Creeks Pedestrian Bridge Over Los Gatos Creek resulting from delays in constructing the project. These delays resulted largely from a lawsuit challenging the demolition of the trestle bridge that this project is replacing. Approval of the recommendations will facilitate the efficient completion of the Three Creeks Pedestrian Bridge project.

BACKGROUND

On May 20, 2014, the City Manager executed a Construction Contract with Gordon N. Ball in the amount of \$1,627,449 for the 7232 – Trail: Three Creeks Pedestrian Bridge Over Los Gatos Creek project. The project involved the demolition and replacement of the existing trestle bridge with a new, prefabricated pedestrian bridge.

The City issued a Notice to Proceed to Gordon N. Ball on May 22, 2014, causing the contractor to mobilize on site, with materials and equipment delivered to proceed. As the result of a lawsuit challenging the City's right to demolish the trestle bridge filed around this same time, the Superior Court issued an injunction prohibiting the City from demolishing the trestle bridge.

The lawsuit challenging the City's right to demolish the trestle bridge unexpectedly continued for approximately 6 years. During that time the contractor proceeded with work that did not involve removing the trestle bridge, such as causing the construction of the new prefabricated replacement bridge. During that time the contractor also prepared to start work four (4) different times. The preparation included mobilization, site clearing, erosion control, environmental surveys, and the installation/removal of creek diversion measures.

While the project was delayed, the City issued five change orders totaling approximately \$158,798.00. These change orders included:

- Change Order No. 3, dated February 20, 2019, in the amount of \$13,206.79 for the costs of additional mobilization for installation and removal of erosion control,
- Change Order No. 4, dated June 25, 2019, in the amount of \$58,206.75 for additional costs for labor and materials to demolish the existing bridge due to the project delay, and
- Change Order No. 5, dated October 1, 2019, in the amount of \$48,790.08 for additional costs for debris removal needed to proceed with construction.

The lawsuit challenging the City's right to demolish the trestle bridge was finally resolved in June 2020, after which the contractor resumed work on the project. The contractor has removed the trestle bridge and replaced it with the new, custom fabricated bridge. Staff anticipates the contractor will complete work by the end of December 2020.

ANALYSIS

1. Increasing the Base Contract

The current base construction contract amount is \$1,786,247, which is the original contract amount of \$1,627,449 plus the \$158,798 in change orders. Staff is recommending that the City Council authorize the Director of Public Works to increase the base contract by an amount not to

exceed \$700,000, resulting in a base contract amount not to exceed \$2,486,247. This increase is needed for the following reasons:

- Due to the 6-year delay caused by the legal claims filed against the City from 2014 to 2020, the cost of project completion has been significantly impacted by inflation and duplicative work.
- The cost of construction materials, labor, and storage have increased over time while mobilization of equipment and materials to the site has occurred four times (2014, 2018, 2019 & 2020).

Public Works staff estimates the increased costs to be approximately \$700,000, which will be refined and finalized with the contractor via change order negotiations. The construction cost increase has been analyzed by staff and is broken down as follows:

- 1) Based on RSMeans Data Book, which provides standardized cost information in the construction industry, the increase of “Historic Cost Index” from 2014 to 2020 is approximately 17%. The remaining contract amount to be completed as of June 2020 was \$946,465.28; therefore, it is reasonable the value of this remaining amount is increased by \$160,000 due to labor and material cost increase.
- 2) The new steel bridge was fabricated in 2015, and due to the delay had to be stored at the manufacture’s site. Storage fees from 2015 to 2020 for the bridge total roughly \$80,000.
- 3) Debris build-up from the 2017 flood event, as well as rains over the subsequent years caused significant bank erosion at the North bridge abutment. Erosion protection is now needed to prevent the new bridge structure from being damaged by further erosion. This work is estimated to cost approximately \$95,000.
- 4) Differing site conditions where unforeseen boulders and concrete masses were found buried underground, caused the contractor to utilize larger drilling equipment than originally planned for, resulting in approximately \$80,000 of additional cost.
- 5) Due to the multiple starts and stops on the project, the following contract tasks have been either partially or fully completed several times over the past 6 years totaling roughly \$285,000 of additional work, that has not been previously paid through change orders.

• Mobilization	\$ 35,000
• Temporary Facility Control	\$ 35,000
• Temporary Creek Access and Diversion	\$100,000
• Temporary Erosion and Sedimentation Control	\$ 40,000
• Site Cleaning	\$ 30,000
• Grading	\$ 45,000

A condition of the Director of Public Works executing the change order to increase the base Contract amount is that the final amount negotiated be a full and complete settlement of all costs related to the 6-year delay in completing the project.

2. Extending the Contract Completion Date.

San Jose Municipal Code Section 27.30.080 requires City Council approval to authorize the Director of Public Works to execute a change order that extends a contract's completion date by more than 180 Calendar Days. The litigation on this Project has resulted in the need to extend the Contract by more than 180 Calendar Days. Accordingly, staff is requesting the City Council to approve the Director executing a change order that will extend the Contract completion date to December 10, 2020.

3. Increase of Construction Contingency.

Council approved a 10% contingency for this project, which resulted in a contingency of \$162,745. Staff used \$158,798 of this contingency in issuing the 5 change orders, leaving a balance of \$3,947.

Staff is requesting approval to increase the contingency by \$55,806 to provide funding for any unanticipated work arising between now and the end of the project. Having enough contingency to address unanticipated work is important on this project because as mentioned previously, the contractor has already unexpectedly encountered boulders and concrete masses buried underground. Staff believes the requested increase should be sufficient to complete the project.

CONCLUSION

Approval of the recommendations will ensure proper completion of the Three Creeks Pedestrian Bridge Project as well as address the construction cost increases incurred by the contractor over the course of the six (6) year delay.

EVALUATION AND FOLLOW-UP

The project is currently over budget due to the extensive delay caused by years of litigation. The project is now on schedule with a projected completion of Fall 2020. No additional follow up action with the Council is expected at this time.

CLIMATE SMART SAN JOSE

Trail development supports the Land Use & Transportation goals of the Climate Smart San Jose plan. Specifically, supporting Transportation Policies TN-1: National Model for Trail Development & Use, TN-2: Trails as Transportation, and TN-3: Accessible Safe & Well-Functioning Trails.

PUBLIC OUTREACH

On March 26, 2013 (Item 5.1) and April 9, 2013 (Item 2.17), Council approved actions related to the project which consists of removing the existing railroad trestle bridge and replacing it with a free span bridge. The Rules Committee discussed this project on May 15, 2013 (Item G.5) and an Informational Memo was sent to Council on May 17, 2013 to further clarify specific questions that had been raised by the community. On August 13, 2013, Council heard public comment about this project when the minutes for the May 15 Rules Committee meeting were before Council for approval (Item 2.3(a)).

This memorandum will be posted on the City's website for the October 20, 2020, City Council Agenda.

COORDINATION

This memorandum has been coordinated with the Department of Parks, Recreation and Neighborhood Services, Planning, Building and Code Enforcement, the City Attorney's Office, and the City Manager's Budget Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

FISCAL/POLICY ALIGNMENT

This project is consistent with the Council-approved Budget Strategy to continue with capital investments that spur construction spending in our local economy. Development of the Three Creeks Trail was identified in the City's Greenprint for Parks and Community Facilities and Programs (Greenprint) in September 2000, was referenced in the Greenprint's 2009 update, and is considered part of the 100-mile Trail Network Benchmark noted by ActivateSJ; PRNS' 20-year strategic plan. The City's General Plan (Envision 2040) recognizes the trail system as part of the 100-mile interconnected Trail Network.

COST SUMMARY/IMPLICATIONS

1. COST OF PROJECT:

Project Delivery	\$1,201,086*
Construction	2,486,247
Contingency	<u>218,551</u>
TOTAL PROJECT COSTS	\$3,905,884
Prior Year Expenditure and Encumbrances	(2,710,884)
REMAINING PROJECT COSTS	\$1,195,000
Available Funding**	\$1,195,000

*Project delivery includes \$62,350 for Three Creeks Trail Interim Improvements, \$129,768 for Bridge Feasibility Study, \$49,155 for additional Environmental Impact Report (EIR) preparation, \$559,986 for Design Services and \$399,827 for Construction Management and Inspection Services.

2. COST ELEMENTS OF AGREEMENT/CONTRACT:

Base Bid	\$1,627,449
Contract Change Orders Total	158,798
EXISTING CONTRACT AMOUNT*	\$1,786,247
Contract Increase	\$700,000
REVISED CONTRACT AMOUNT	\$2,486,247

3. SOURCE OF FUNDING: 375 – Subdivision Park Trust Fund

4. OPERATING COSTS: This facility is anticipated to have an annual operating and maintenance impact on the General Fund of approximately \$1,000, which was allocated in the 2015-2016 Adopted Operating Budget. The operating and maintenance funding for this project was already included in the 2015-2016 Base Budget for the Parks, Recreation and Neighborhood Services Department.

BUDGET REFERENCE

The table below identifies the fund and appropriations allocated to fund the contract recommended as part of this memo:

Fund #	Appn #	Appn Name	Current Total Appn	Amount for Contract	2020-2021 Proposed Capital Budget Page*	Last Budget Action (Date, Ord. No.)
Remaining Project Cost			\$1,195,000			
Remaining Funding Available						
375	7307	TRAIL: Three Creeks Interim Improvements and Trestle Bridge	\$1,195,000**	\$700,000	V-302	06/23/2020 Ord. No. 30437
Total Current Funding Available			\$1,195,000	\$700,000		

* The 2020-2021 Adopted Budget was approved on June 16, 2020 and adopted on June 23, 2020 by the City Council.

**2019-2020 unexpended budget of \$526,000 is recommended to be rebudgeted to 2020-2021 as part of the 2019-2020 Annual Report. This action would increase the current year's budget from \$669,000 to \$1,195,000. The Annual Report is scheduled to be reviewed by the City Council on October 20, 2020.

CEQA

Environmental Impact Report for the Three Creeks Trail Pedestrian Bridge Project, File No. PP13-085.

Mitigated Negative Declaration for the Three Creeks Trail Master Plan – Western Alignment, File No. PP14-012.

Planning has approved and environmental impact report and a mitigated negative declaration for the respective projects. The environmental impact report and mitigated negative declaration identify specific mitigation measures that need to be implemented in order to address environmental impacts. These measures and their manner of implementation are identified in the *Mitigation Monitoring and Reporting Program* for the projects. These measures have been incorporated into the project design and the construction documents.

/s/

MATT CANO

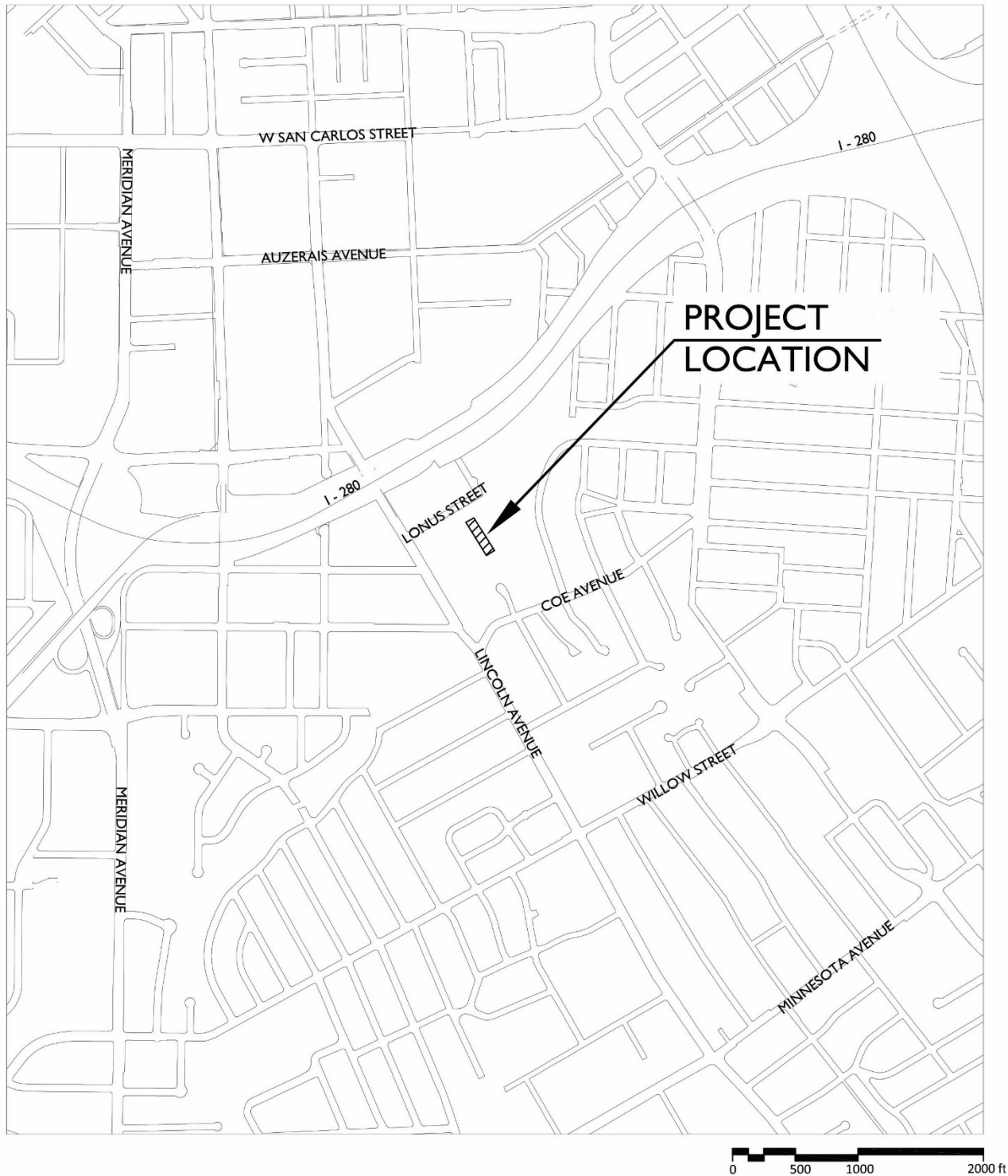
Director of Public Works

For questions please contact Michael O'Connell, Deputy Director, Public Works Department at 408-535-8300.

Attachment: Location Map

Location Map

Three Creeks Pedestrian Bridge over Los Gatos Creek Project



**THREE CREEKS TRAIL
PEDESTRIAN BRIDGE
LOCATION MAP**

