



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Matt Loesch  
Jon Cicirelli

**SUBJECT:** SEE BELOW

**DATE:** January 30, 2023

Approved

Date

01/30/23

**COUNCIL DISTRICT: 7**

**SUBJECT: ACTIONS RELATED TO THE 9387 – PARK: HAPPY HOLLOW PARK  
AND ZOO EXHIBIT POLES PROJECT**

## **RECOMMENDATION**

Award a construction contract for the 9387 - Park: Happy Hollow Park and Zoo Exhibit Poles Project to Suarez & Munoz Construction, Inc. pursuant to City Charter Section 1217 (h), in the amount of \$1,712,600 and approve a ten percent contingency in the amount of \$171,260.

## **SUMMARY AND OUTCOME**

Two public bids received no responsive bidders for this project. Staff negotiated directly with two contractors. Suarez & Munoz Construction, Inc. submitted the lowest proposal of \$1,902,600. Staff was able to negotiate a reduction down to \$1,712,600. This amount is higher than the original Engineer's Estimate of \$910,000, likely due to a combination of factors, including competitiveness in the current construction market, site access constraints at the zoo and the unusual nature of the project necessitating specialized contractor experience.

Approval of the recommendation will allow the Happy Hollow Park & Zoo Exhibit Poles Project to proceed. This will implement much-needed upgrades to three animal enclosures. The completion of these upgrades is needed to replace deteriorating and failing wood animal enclosure poles and is also needed to ensure continued Association of Zoos and Aquariums (AZA) accreditation of the zoo.

## **BACKGROUND**

The Happy Hollow Park and Zoo Exhibit Poles Project (“Project”) was initiated by the Department of Parks Recreation and Neighborhood Services (the Department) to address deteriorating facilities and to support requirements for AZA accreditation. The Project includes improvements to three animal enclosures (jaguar, fossa, and red panda). Deteriorating and failing wood poles are to be replaced with steel poles and new foundations in all three enclosures. The fossa enclosure is to receive new enclosure netting that meets AZA standards for the animal, while the netting for the jaguar and red panda enclosures, which currently meet standards, is to be detached, preserved, and reattached to the new steel poles.

### *Special Experience Requirement for Zoo Netting*

Zoo netting is a specialized product requiring expert design and installation. There are a small number of vendors who manufacture and install netting for zoo enclosures. Given the importance of high-quality animal enclosures to both animals and zoo visitors, a special experience requirement was added to the bid documents for the project. The project documents require that any contractor or subcontractor working with enclosure netting (installing, detaching, preserving, and replacing) demonstrate previous experience with hand-woven stainless steel animal containment mesh.

### *Two Public Bids*

The project was initially advertised for bid on December 22, 2021. A non-mandatory site visit was held at the zoo on January 7, 2022. Two firms attended the site visit. Bids were opened on January 27, 2022. One bid was received but was deemed unresponsive because it did not submit evidence of the required special experience.

Staff reached out to other zoos in the Bay Area to identify general contractors who might be suitable for this type of project. Staff conducted extensive outreach to contractors to inform them of the project and held a pre-advertisement conference advertised on Biddingo. The conference was held virtually on March 22, 2022. Staff gave a presentation that described the project and highlighted special experience requirements.

The project was advertised for a second time on April 6, 2022. The Bid Open date was April 28, 2022. No bids were received.

## **ANALYSIS**

Under Charter Section 1217(h), Council can decide to not further comply with the City’s competitive bidding requirements when no responsive bids are received. In practice, foregoing additional competitive bidding means selecting a contractor, negotiating a construction contract, and awarding that contract.

*Negotiation with Contractor*

Staff reached out to five contractors. Contractors were selected based on recommendations from other Bay Area zoos, previous successful experience on City projects and contractor interest expressed during the public bid process. Two of the five contractors agreed to provide proposals based on the project documents advertised on April 6, 2022. Both contractors attended a site visit to see the project area on June 14, 2022. Staff communicated to both contractors that proposals must meet the special experience requirement included as part of the public bid process. The proposals were submitted as follows:

	Base Bid	Variance (% Over/Under EE)	Add Alternate
<b>Engineer's Estimate</b>	<b>\$910,000</b>	-	<b>\$315,000</b>
Suarez & Munoz Construction	\$1,902,600	109.08%	\$570,500
Ashron Construction	\$3,407,500	274.45%	\$715,000

Staff requested feedback from both contractors on why the proposals were significantly higher than the April 2022 Engineer's Estimate of \$910,000. Only Suarez & Munoz Construction responded. Feedback is summarized below:

- Contractor had “difficulty finding manufacturers/vendors and engineering for the enclosure materials due to the complexity of the project and the challenges presented due to access constraints”.
- “Most, if not all, of this work will need to be done by hand, requiring more manpower”.
- “...this is very detailed work and not the type of scope we would be able to rush through as these types of projects are a lot different than something like a park due to the complexity of them”.
- “Based on the cost difference for the alternates alone it is clear the EE had a significantly lower materials cost at the time it was created”.

In addition to the reasons provided by the contractor, the competitive nature of the construction industry over recent months means that contractors have had impacted schedules and have not been motivated to seek out additional work, particularly if the work is unusual or outside of their areas of expertise. Furthermore, the three enclosures included in this project are in constrained, developed portions of the older part of the zoo and are surrounded by many mature trees. Access by large construction equipment will be difficult or impossible in some cases. The extra effort created by these circumstances may have been underestimated in the Engineer's Estimate.

Staff reached out to Suarez & Munoz Construction and requested a reduction in the proposal amount to assist the City in moving the project forward. They agreed and submitted a revised proposal as follows:

	Base Bid	Variance (% Over/Under EE)	Bid Alternate
<b>Engineer's Estimate</b>	<b>\$910,000</b>	-	<b>\$315,000</b>
Suarez & Munoz Construction	\$1,712,600	88.20%	\$513,519

This project, which includes upgrades to three animal enclosures, is important to the well-being of the animals and is needed for continued AZA accreditation. Over the period that the two public bids and contract negotiations have taken place, existing wood poles at the red panda exhibit have continued to deteriorate and fail. Animals must be kept out of enclosures when the poles and netting are not sufficiently stable and may need to be kept off-exhibit until repairs are made. This is an undesirable situation for the animals, as well as visitors to the zoo.

The unusual nature of the project, site access constraints, specialized netting material, and a relatively small dollar value for the contract (where the work will predominantly be done by a specialized subcontractor), all make the project generally unappealing to Class A contractors who typically bid on City projects for the Department facilities. While the final proposal for the base bid from Suarez & Munoz Construction significantly exceeds the April 2022 Engineer's Estimate, the Department has identified the needed additional funds and supports award of the project so that it can move forward. Based on the results of the two public bid attempts, feedback from other Bay Area zoos, and communications with at least twelve contractors, staff finds the proposal from Suarez & Munoz Construction to be fair and reasonable for the scope of work.

For the reasons outlined above, staff recommends awarding the construction contract for the Project to Suarez & Munoz Construction at the negotiated proposal amount of \$1,712,600.

San Jose Municipal Code Section 27.04.050 provides that the contingency for all public works contracts (except those involving the renovation of a building or buildings) cannot exceed 10 percent of the total contract amount. Staff recommends a 10 percent contingency, which should be sufficient to account for unforeseen conditions that might arise during construction.

The Add Alternates, which provided for new enclosure netting for the red panda and jaguar exhibits, rather than reuse, will not be awarded due to budget constraints.

### ***Project Labor Agreement Applicability***

Although the Engineer's Estimate for this project fell below the \$1,200,000 threshold used to determine automatic Project Labor Agreement applicability, the Director of Public Works determined that the Project Labor Agreement should apply because this contract is being awarded via non-competitive procurement and the value of the negotiated contract exceeded \$1,200,000.

### ***Policy Alternatives***

***Alternative # 1:*** Do not directly award the contract and attempt to publicly bid the project a third time.

**Pros:** The project moves through a more typical public procurement process, allowing any and all qualified contractors to bid on it.

**Cons:** There is no guarantee that a third attempt to bid the project will result in responsive bids. Outreach from the previous two bid attempts shows that regardless of market fluctuations, this is not a desirable project for a general contractor to bid on, given the unique complexities and site constraints of the project.

**Reason for not recommending:** The project has already attempted two public bid procurements which each resulted in no responsive bids. Charter Section 1217(h) gives Council the authority to directly award a project, which would allow the project to move forward as efficiently and quickly as possible.

***Alternative # 2:*** Do not directly award the contract and do not move forward with the project.

**Pros:** The City conserves \$1,712,600 in capital funding for Happy Hollow Park and Zoo Exhibit Improvements that can be reallocated for other exhibit improvement projects.

**Cons:** The jaguar, fossa and red panda enclosures would continue to deteriorate. Additional poles at the red panda enclosure are likely to fail in the near future and existing wood poles at the other two enclosures may also begin to fail. Happy Hollow Park & Zoo would be at risk of losing AZA accreditation.

**Reason for not recommending:** This work is essential to the ongoing well-being of zoo animals and to the AZA accreditation that the zoo currently enjoys.

### **CONCLUSION**

Staff recommends awarding the construction contract for the Project per Charter Section 1217 (h) to Suarez & Munoz Construction for the negotiated proposal amount of \$1,712,600.

Two unsuccessful bid attempts and extensive outreach to other Bay Area zoos and a variety of contractors indicate that it is unlikely that an additional public bid attempt will be successful. Awarding the project without further delay will allow urgently needed upgrades to the red panda enclosure to move forward and ensures that the AZA expectation to complete these upgrades for continued accreditation can be met.

### **EVALUATION AND FOLLOW-UP**

No additional follow up action with Council is expected at this time.

**POLICY ALIGNMENT**

This project supports Goal PR-1 of Envision 2040, which seeks to provide recreation amenities “nationally recognized for their excellence”. Happy Hollow Park & Zoo has been an AZA accredited facility for more than 25 years. AZA is a non-profit organization that represents 235 facilities in the United States and overseas. It is dedicated to the advancement of zoos and aquariums in the areas of conservation, education, science, and recreation. AZA-accredited zoos and aquariums “meet the highest standards in animal care and welfare and provide a fun, safe, and educational family experience”. The upgrades completed with this project are necessary for continued AZA accreditation.

**COST SUMMARY/IMPLICATIONS**

## 1. COST OF PROJECT:

Project Delivery	\$752,140*
Construction	\$1,712,600
Contingency	\$171,260
<b>Total Project Costs</b>	<b>\$2,636,000</b>
Prior Years' Expenditures and Encumbrances	\$287,575

**Total Remaining Project Costs** **\$2,348,425**

\* Project delivery includes \$340,545 for Design Services and \$411,595 for Construction Management and Inspection Services.

## 1. COST ELEMENTS OF AGREEMENT/CONTRACT:

<b>DESCRIPTION</b>	<b>TOTAL</b>
Mobilization, Operation & Maintenance Period	\$75,000
Temporary Facilities & Controls	\$15,000
Utility Conflict Cost Allowance	\$24,000
Temporary Erosion and Sediment Control	\$4,500
Emergency Erosion and Sediment Control Allowance	\$10,500
Site Clearing and Demolition	\$310,000
Enclosure Improvements	\$640,000
Drilled Concrete Piers and Shafts	\$620,000
Grading	\$13,600
<b>Total Contract Amount</b>	<b>\$1,712,600</b>

## 2. SOURCE OF FUNDING: 391 – Parks City Wide Construction and Conveyance Tax Fund

3. **FISCAL IMPACT:** Operation and maintenance for this project has been included as part of the operating budget for Happy Hollow Park & Zoo.

### **BUDGET REFERENCE**

The table below identifies the fund and appropriation to fund the contract recommended as part of this memorandum. A portion of the appropriation is also to fund the design and construction of the fossa night house, of which staff will return to City Council with recommendations at a future date.

Fund #	Appn #	Appn. Name	Total Appn	Rec. Budget Action	Amt. for Contract	2022-2023 Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
391	413O	Happy Hollow Park and Zoo Exhibit Improvements	\$3,511,000	N/A	\$1,712,600	692	30833 (10/18/22)
001	413O	Happy Hollow Park and Zoo Exhibit Improvements	\$8,000	N/A	N/A	408	30833 (10/18/22)

### **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.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the February 14, 2023 Council meeting.

### **COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

HONORABLE MAYOR AND CITY COUNCIL

January 30, 2023

**Subject: Actions Related to the 9387 – Park: Happy Hollow Park & Zoo Exhibit Poles Project**

Page 8

**CEQA**

Categorically Exempt, File No. ER21-115, CEQA Guidelines Section 15301. Existing Facilities.

**PUBLIC SUBSIDY REPORTING**

This item does not include a public subsidy.

/s/  
MATT LOESCH  
Acting Director of Public Works

/s/  
JON CICIRELLI  
Director of Parks, Recreation and  
Neighborhood Services

For questions, please contact Katherine Brown, Deputy Director, Public Works Department at [katherine.brown@sanjoseca.gov](mailto:katherine.brown@sanjoseca.gov), or at 408-795-1679.