



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Matt Loesch
Jon Cicirelli

SUBJECT: SEE BELOW

DATE: February 13, 2023

Approved

Date

2/17/23

COUNCIL DISTRICTS: 3, 4

**SUBJECT: ACTIONS RELATED TO THE 8087 – TRAIL: COYOTE CREEK
(MABURY ROAD TO EMPIRE STREET) – ATP GRANT PROJECT**

RECOMMENDATION

Adopt a resolution authorizing the Director of Public Works to:

- (a) Award and execute a contract for the construction of the 8087 - TRAIL: Coyote Creek (Mabury Road to Empire Street) - ATP Grant Project Re-Bid to the lowest responsive, responsible bidder in an amount not to exceed \$8,500,000;
- (b) Decide any timely bid protest(s) and make the City's final determination as to the lowest responsive bidder that is responsible as needed to award the contract; and
- (c) Establish a contingency in the amount of 10 percent of the contract amount.

SUMMARY AND OUTCOME

The initial bid for the 8087 - TRAIL: Coyote Creek (Mabury Road to Empire Street) project advertised on September 21, 2022 received five bids. Only the second lowest bidder was deemed responsive; therefore, staff decided to rebid to solicit more competitive bids. The project team completed a thorough analysis to update the Engineer's Estimate to reflect the current market, and a maximum authorization amount was determined to accommodate potentially higher bids. The project is funded through a Federal Active Transportation Program (ATP) Grant, which strictly outlines deadlines for project award and construction. The project is also within the limits of Santa Clara Valley Water District's (Valley Water) floodwall construction, which has the potential to pose additional schedule constraints due to the environmental permit conditions.

Approval of the resolution authorizing the Director of Public Works to award and execute a construction contract expedites the construction contract award process for the project to meet the grant award deadline of May 2023 and ultimately the grant project deadline defined in E-76, a federal authorization of funds issued by the Federal Highway Administration, for construction completion of December 2025. Meeting these deadlines will allow the City to receive a \$6,579,901 reimbursement from the ATP Grant and Federal Earmark Grant.

BACKGROUND

Master Plan

On September 13, 2011, the City Council adopted the [Coyote Creek Trail Master Plan](#) (Montague Expressway to Watson Park) establishing a conceptual trail alignment along the creek in general proximity to the new Berryessa Bay Area Rapid Transit station through Watson Park to its Empire Street frontage.

Scope

This project is a 0.3-mile Class I trail that stretches from Mabury Road to Empire Street, along the Coyote Creek channel. (**Attachment – Location Map - 8087-TRAIL: Coyote Creek (Mabury Road to Empire Street) Project**). The work scope of the project includes a 12-foot-wide paved pedestrian/bicycle pathway with two-foot-wide shoulders, a steel pedestrian bridge, trailheads, signage, striping, seating areas, and other miscellaneous work. The majority of the trail is located within the City property, with an under-crossing beneath Caltrans right-of-way under Highway 101, and a portion of the bridge footing located on Valley Water's land.

Coordination with Valley Water

Since the City's project and Valley Water's future Coyote Creek Flood Protection Project overlap in the same location, staff had been coordinating the trail's design with Valley Water since 2019 to accommodate both projects.

Valley Water plans to begin construction on its Flood Protection Project in spring 2023, and its planned floodwall will block City's access to the Valley Water parcel for the pedestrian bridge footing construction. Valley Water agreed to build a gate in the floodwall for the City to access the parcel to complete the project. Staff is currently negotiating with Valley Water on a Cost Share Agreement for the floodwall gate.

Grant and Funding

The project is partially funded by an ATP Grant in the amount of \$5,256,000 and a Federal Earmark Grant of \$1,323,901, for a total of \$6,579,901.

Under the ATP Grant, \$1.21 million for the design phase was fully disbursed in April 2020, and a \$4.046 million construction phase funding request was approved in May 2022 by the California Transportation Commission. In addition, the Earmark Grant in the amount of \$1,323,901 has been reprogrammed to this project this year. This grant is reimbursement based and will be disbursed back to the City incrementally as expenditures are invoiced.

Grant Deadlines

The reversion date for both ATP and Earmark Grants is June 30, 2027, and the project deadline defined in E-76 for construction is December 31, 2025. These dates can be extended if the City requests an extension before expiration, though it is not anticipated to be necessary at this time as construction is anticipated to begin in July 2023 and be completed by the end of 2024.

However, the ATP Grant defines an additional deadline for construction contract award, which was November 18, 2022 and extended to May 31, 2023. At that point, the City was informed that this is the final deadline for award without further opportunities for extensions.

Environmental Permits

The project has received the necessary environmental permits including:

- Santa Clara Valley Habitat Plan Implementation Certificate of Approval in August 2020 from Santa Clara Valley Habitat Agency;
- Lake and Streambed Alteration Notification in March 2022 through operational law from the California Department of Fish and Wildlife;
- Section 401 Water Quality Certification in February 2022 from San Francisco Bay Regional Water Quality Control Board; and,
- Section 404 Regional General Permit 18 in August 2022 from United States Army Corps of Engineers.

Original Procurement

The project was initially advertised on September 21, 2022. Bids were opened on October 27, 2022 and the City received five bids for the project. Four bids were deemed non-responsive for their failure to include a trail closure plan, which was not a typical required submittal at the time of bid. Because of this, only the second lowest bidder was deemed responsive and was 45.5% over the Engineer's Estimate.

Therefore, staff decided to rebid without a trail closure plan requirement to solicit more competitive bids. On November 16, 2022, pursuant to Section 27.10.530 of the San José Municipal Code, the Director of Public Works rejected all bids.

ANALYSIS

The project faces several challenges during bid and construction; however, staff is treating this project as a high priority and is confident all deadlines can be met.

Award Deadline

The ATP Grant program has stringent schedule requirements which require the City to complete the award by May 2023. If a construction contract is not awarded by that time, the City is at risk of losing \$4.046 million in construction funds from the ATP Grant program. Losing that funding would jeopardize the needed cash flow to construct the project. If the project is not constructed, the City is also at risk to repay previously invoiced design phase funds in the amount of \$1.21 million. In addition, if the project stalls and does not invoice every six months, the City is subject to lose the \$1.3 million in Earmark funds. Authorizing the Public Works Director to award and execute the construction contract enables the project team to meet the grant deadline.

The project rebid was advertised in early February 2023, with a bid opening currently scheduled for late February 2023. The current Engineer's Estimate for this project is \$7,000,000. Based on

prior bids received, as well as the volatility of the current bidding market, staff feels that a do-not-exceed amount of \$8,500,000 will be sufficient to proceed forward with the award of the project. The current appropriated project budget is \$12,978,000 in preparation for this higher bid.

To lower the risk of bid irregularities, staff made necessary modifications in the plans and specifications to clarify bid submittal requirements. Should any further unforeseen issues arise during the bid process, and if the City is unable to award the contract by May, the ATP Grant funding will be at risk. Currently, staff does not anticipate any issues that will risk receipt of the grant funding.

The project was rebid per the Local Assistance Procedures Manual.

Construction Deadline

The grant deadline for construction completion is December 31, 2025, per the E-76 for construction with an opportunity to extend. Currently, the project is anticipated to complete within two years upon execution of the Notice to Proceed. The additional construction window and extension opportunity can accommodate potential delays such as:

1. *Coordination with Grant Administrator* - In addition to stringent timelines, the ATP Grant requires compliance with the Local Assistance Procedures Manual, which involves an extensive amount of coordination with the grant administrators throughout the construction process. Grant administrators' timely response is key to meeting the grant deadlines.
2. *Environmental Permit Constraints* - Environmental permits only allow construction activities below the top of bank between June 15 and October 15 each year. Although some trail sections on top of bank can continue to be constructed year round, major work such as the steel pedestrian bridge, concrete bridge abutments, and retaining walls are located below top of bank and can only be constructed during the permitted work period. Any delay in the manufacturing process may result in missing the June through October construction period.
3. *Valley Water Flood Protection Project Coordination* - Although a floodwall gate provides access to the construction site, floodwalls surrounding the trail site could potentially slow down construction work since the contractor needs to be extra cautious on site.
4. *Temporary Construction Easement* - The project requires access through a private parcel to construct the bridge abutment. A Temporary Construction Easement was secured but may need to be extended should any delays occur during construction.

San José 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 in construction.

Project Labor Agreement Applicability

The City's project labor agreement is applicable to this project as the Engineer's Estimate is over \$1,200,000.

Local and Small Business Outreach

Procurement staff will use Biddingo to outreach to local and small business enterprises.

Policy Alternatives

***Alternative #1:** Defer award of a construction contract by City Council.*

Pros: The award decision will not have a limit to the maximum bid amount and will be made based on the lowest responsive bid among the received bids.

Cons: The award process will be longer and the City risks missing the ATP Grant award deadline of May 2023.

Reason for not recommending: The award deadline by ATP Grant is May 31, 2023. If the bid opening is held in late February 2023, as currently planned, the City Council award would be anticipated around late April or early May, which is very close to the award deadline. If any unforeseen delay occurs, the City will be at risk of losing the grant reimbursements.

***Alternative #2:** Request an award deadline extension from California Transportation Commission.*

Pros: With an extended award deadline, the project award can be done according to the normal City Council award process without a risk of losing grant funding.

Cons: If the extension request is denied by the California Transportation Commission, the City will be required to fund the construction phase grant amount.

Reason for not recommending: ATP Grant rules stipulate one extension per milestone (per the Timely Use of Funds policy) and the extension for award milestone has already been granted.

Climate Smart San José Analysis

The recommendation in this memorandum aligns with one or more Climate Smart San José energy, water, or mobility goals. The project is part of the interconnected Trail Network and referenced in the City's 2009 Greenprint and Green Vision. The project is listed in the General Plan (Envision San José 2040) and is consistent with that document's policies (PR 1.11 and PR 7.1). The project is defined by the [*Coyote Creek Trail Master Plan*](#) (*Montague Expressway to Watson Park*), which was approved by the City Council on September 13, 2011.

EVALUATION AND FOLLOW-UP

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

Staff will report on progress of the project in the Annual Trail Program Report (issued on-line each year on or around July 1), and at regularly scheduled City Council office meetings with the

department of Parks, Recreation, and Neighborhood Services staff. Project development milestones will be posted via Twitter (@sanjosetrails) and site photos will be posted on Instagram (@sanjosetrails).

COST SUMMARY/IMPLICATIONS

The project is consistent with the City Council-approved Budget Strategy to continue with capital investments that spur construction spending in our local economy. The current appropriated project budget is \$12,978,000 to cover potential higher bids as discussed in the Analysis section of this memorandum and will be adjusted before an award based on the actual bid results. The funding for this project was made available through the FY2022-2023 Mid-Year Report.

The trail is anticipated to have an annual operating and maintenance impact on the General Fund of approximately \$42,000 which is allocated in the 2023-2027 Five-Year General Fund Forecast.

1. TOTAL COST OF PROJECT:

Project Delivery	\$4,398,000
Construction (Engineer's Estimate)	\$7,000,000
Contingency	\$700,000
TOTAL PROJECT COSTS	\$12,098,000
Prior Year Expenditure and Encumbrances	(\$2,874,444)
REMAINING PROJECT COSTS	\$9,223,556

2. COST ELEMENTS OF ENGINEER'S ESTIMATE AS RECOMMENDED AS PART OF THE MEMORANDUM:

Mobilization	650,000
Temporary Facilities And Controls	60,000
Temporary Erosion And Sediment Control	160,000
Site Clearing And Demolition	200,000
Utility Conflict Allowance	30,000
Earthwork, Excavation, Rock Slope Protection	1,250,000
Flexible And Rigid Paving	900,000
Fences And Gates	90,000
Concrete, Drainage, And Site Furnishings	400,000
Striping And Signage	40,000
Retaining Walls	1,000,000
Bicycle And Pedestrian Bridge	1,470,000
Mitigation, Planting, And Hydroseed	350,000
Miscellaneous Compliance Plans	400,000
TOTAL ENGINEER'S ESTIMATE	\$7,000,000*

*Based off prior bids received, as well as the volatility of the current bidding climate, staff expects that bids could be as high as \$8.5 million. As described below, sufficient resources are available for the requested \$8.5 million authorization.

BUDGET REFERENCE

The table below identifies the fund and appropriations to fund the contract recommended as part of this memorandum and remaining project costs, including project delivery, construction, and contingency costs.

Fund #	Appn #	Appn Name	Current Total Appn	Rec. Budget Action*	Amt for Contract	2022-2023 Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
375	411O	TRAIL: Coyote Creek (Mabury Road to Empire Street)	\$8,764,000	N/A	N/A	480	02/14/2022 Ord. No. 30883
391	411O	TRAIL: Coyote Creek (Mabury Road to Empire Street)	\$1,340,000	N/A	N/A	480	02/14/2022 Ord. No. 30883

*A recommendation of additional funding of \$9.8 million (\$8.44 million from the Subdivision Park Trust Fund and \$1.34 million from the Parks City-Wide Construction and Conveyance Tax Fund) was a part of the 2022-2023 Mid-Year Report presented and approved by City Council on February 14, 2023.

COORDINATION

This memorandum has been coordinated with the Department of 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 March 7, 2023 City Council meeting.

In addition, this project was presented at the Parks and Recreation Commission and the City Council in 2011. A series of public workshops were held to gather input through development of the master plan that defined this project. To solicit proposals from consultants, this project was listed on Bidsync and posted on Twitter (@SanJoseTrails).

During June 2020, City staff joined Valley Water staff to review conceptual flood protection projects along Coyote Creek, with a focus on parks and trails improved by the planning work.

HONORABLE MAYOR AND CITY COUNCIL

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COMMISSION RECOMMENDATION AND INPUT

The master plan for this trail project, entitled *Coyote Creek Trail Master Plan (Montague Expressway to Watson Park)*, was accepted by the Parks and Recreation Commission on March 23, 2011 and approved by City Council on September 13, 2011.

CEQA

Addendum to the Coyote Creek Trail Master Plan Mitigated Negative Declaration (Resolution No. 75982), File No. ER20-145.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/
MATT LOESCH
Acting Director of Public Works

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

For questions, please contact Katherine Brown, Acting Assistant Director of Public Works, at katherine.brown@sanjoseca.gov or (408) 795-1679.

Attachment: Location Map - 8087-TRAIL: Coyote Creek (Mabury Road to Empire Street) Project

Location Map

8087-TRAIL: Coyote Creek (Mabury Road to Empire Street)

Project

