



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Matt Loesch

**SUBJECT:** SEE BELOW

**DATE:** May 15, 2023

Approved

Date

5/31/23

**COUNCIL DISTRICT: 6**

**SUBJECT: REPORT ON BIDS AND AWARD OF CONTRACT FOR THE 7700 – AUTUMN PARKWAY OUTFALL 67F AND 509 REHABILITATION PROJECT – RE-BID**

## **RECOMMENDATION**

- (a) Report on bids and award of a contract for the construction of 7700 – Autumn Parkway Outfall 67F & 509 Project - Re-Bid to the lowest responsive, responsible bidder, Brannon Corporation, in the amount of \$1,973,965, and;
- (b) Approve a 15% contingency in the amount of \$296,095.

## **SUMMARY AND OUTCOME**

Award of the construction contract to Brannon Corporation enables the 7700 – Autumn Parkway Outfall 67F & 509 Project – Re-Bid (Project) to rehabilitate the existing outfalls, restore the embankment, and reduce the risk of slope failure along the Guadalupe River. Approval of a 15% contingency provides funding for any unanticipated work necessary for the proper completion or construction of the Project.

## **BACKGROUND**

Since 2012, the City of San José Departments of Transportation and Public Works have worked together to complete an internal assessment of problematic storm sewer outfalls located along the City's waterways, creating a list of deteriorated outfalls that need to be rehabilitated. Staff have been working with various consultants and regulatory agencies to obtain permits and advance the design for the eight most deteriorated outfalls. To date, staff have successfully completed the rehabilitation of six storm sewer outfalls.

This Project involves the rehabilitation of the remaining two deteriorated storm sewer outfalls located along the Guadalupe River in the vicinity of Autumn Parkway and Coleman Avenue (see **Attachment – Location Map**). Scour and erosion of the riverbank has undermined and, in some cases, washed away portions of the existing concrete sack rip-rap and outfall infrastructures. The Project will repair and refurbish the existing outfalls with newer slope protection techniques and materials to stabilize the riverbank and optimize storm sewer function while reducing channel erosion and associated sedimentation.

To access the Project location and proceed with construction, several external regulatory permits were required to be obtained including the following:

- a. San Francisco Bay Regional Water Quality Control Board Section 401 Water Quality Certification dated March 19, 2020;
- b. California Department of Fish and Wildlife, Streambed Alteration Agreement, Notification Number 1600-2015-0151-R3;
- c. United States Department of Commerce National Oceanic and Atmospheric Administration, National Marine Fisheries Service Permit No. WCR-2017-6670;
- d. Santa Clara Valley Habitat Plan Implementation Certification of Approval File No. SJ-2020-025;
- e. United States Army Corps of Engineers Regional General Permit 18, Section 404 File No. SPN-2017-00081S, and Section 408 File No. 408-SPN-2021-0004; and
- f. Santa Clara Valley Water District Encroachment/Construction Permit File Number 33582 (Permit No. 22007).

Each permit has defined parameters that are required to be met, one of which is the project completion date. The deadline for construction completion for this Project, as outlined in each of the permit conditions, is October 15, 2023. Currently, the Project is anticipated to be completed by this date, upon execution of the Notice to Proceed.

1. *Environmental Permit Constraints* - Environmental permits from various regulatory agencies only allow construction activities below the top of bank between June 15 and October 15 each year. Although some outfall sections above the top of bank can be constructed year-round, major work activities such as pipe installation, construction of new outfall wing walls and head wall structures, installation of rock slope protection, and flap gates are located below the top of bank and can only be constructed during the permitted work period.
2. *Temporary Encroachment Permit* - The Project requires Santa Clara Valley Water District's temporary encroachment permit to gain access to the outfall sites. This encroachment permit expires on October 15, 2023.
3. *Temporary Construction Easement Permit* - The Project also requires the temporary use of Santa Clara Valley Water District's property for construction staging. This 100-foot by 60-foot area is located along the Guadalupe River and will be used as a construction staging area for outfall 67F. With the stringent construction schedule requirements, the City needs to award the Project by June 2023, which will allow the construction to start by July 2023. In the event that construction activities are not completed by October 15, 2023, staff would need to suspend the work until June 15, 2024 and obtain

extensions on existing permits. Staff will explore the option of permit extensions with the appropriate agencies in anticipation of not being able to complete the construction by October 15, 2023.

The Project was originally advertised on January 11, 2023, with the bids being opened on February 2, 2023. The City received five bids for the Project with a variance ranging between 92% to 173% over the Engineer's Estimate and as a result, on February 13, 2023, the Director of Public Works rejected all bids.

## **ANALYSIS**

The Project was re-advertised on March 15, 2023. Bids were opened on April 6, 2023, with the following results:

<b><u>Contractor</u></b>	<b><u>Bid Amount</u></b>	<b><u>Variance Amount</u></b>	<b><u>Over/(Under) Percent</u></b>
<b>Engineer's Estimate</b>	<b>\$1,725,000</b>	-	-
Brannon Corporation (Morgan Hill, CA)	\$1,973,965	\$248,965	14
JMB Construction, Inc. (South San Francisco, CA)	\$2,295,655	\$570,655	33
Andrew M. Jordan, Inc. dba A & B (Oakland, CA)	\$2,489,800	\$764,800	44

The lowest bid submitted by Brannon Corporation is 14% higher than the Engineer's Estimate. The higher than estimated bid can be attributed to a general contractor's assumed risk of the following items:

- Significant material and supply chain shortages and price fluctuations which have impacted construction schedules and material/construction costs.
- Project construction window constraints to the dry season only.
- Challenges in accessing the construction sites with equipment and materials within the river riparian corridor.
- Challenges with construction activities dictated by the environmental permit conditions.

Brannon Corporation is a contractor experienced in the construction of outfalls and has successfully completed an outfall project for the City of Sunnyvale. Recently, Brannon Corporation completed the 8843 – FEMA – ARP Penitencia Creek Trail Trestle Rock Wall Repair Project that was awarded by the Director of Public Works on June 14, 2022.

San José Municipal Code Section 27.04.050 provides for a standard contingency of 10% on all public works contracts except those involving the renovation of a building or buildings. However, on this Project, a 15% contingency is recommended because of the high potential to encounter the following conditions:

- a. Archeological artifacts that are typically found along the riparian banks and stream channels;
- b. Construction during the bird nesting season which may cause impacts to construction activities;
- c. High ground water level when performing construction near and along the riverbank;

- d. Special-status species encountered during construction;
- e. Other unanticipated work necessary to ensure this project is completed as mandated by other governmental agencies permits and agreements requirements;
- f. Additional post construction environmental monitoring and reports of constructed sites required by the outside regulatory agencies.

The funds budgeted for this Project are sufficient to provide for the recommended contingency.

### **Project Labor Agreement Applicability**

The City’s Project Labor Agreement is applicable to this Project because the Engineer’s Estimate is over \$1.2 million.

### **Local and Small Business Outreach**

Procurement staff used Biddingo to outreach to local and small business enterprises. Chapter 4.12 of the San José Municipal Code defines a “local business enterprise” as one with a legitimate business presence in Santa Clara County and “small business enterprise” as a local business enterprise with 35 or fewer employees. Procurement staff sent bid invitations to 10,833 vendors, and documents were downloaded by 10 vendors, four of which were located within Santa Clara County and therefore local. The recommended contractor is a local but not a small business enterprise. No local or small business enterprises are listed as subcontractors.

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

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

### **COST SUMMARY/IMPLICATIONS**

The total contract award amount is detailed below. Future operation and maintenance to be funded and performed by Department of Transportation remains unchanged.

1. TOTAL COST OF PROJECT:	
Project Delivery*	\$1,050,000
Construction	1,973,965
Contingency	<u>296,095</u>
<b>TOTAL PROJECT COSTS</b>	<b>\$3,320,060</b>
Prior Years’ Expenditures and Encumbrances	<u>680,964</u>
<b>TOTAL REMAINING PROJECT COSTS</b>	<b>\$2,639,096</b>

\* Project delivery includes \$202,018 for consultant design services, \$95,000 for consultant construction support fees, \$25,000 for Valley Water and outside regulatory agency permit fees.

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2. COST ELEMENTS OF CONTRACT AS RECOMMENDED AS PART OF THE  
MEMORANDUM:

Mobilization, Demobilization, Permits and Traffic Control	\$213,312
Civil Work, Utility Conflicts and Repairs	\$70,410
Outfall Work and Associated Components	\$1,690,243
<b>TOTAL CONTRACT AMOUNT</b>	<b>\$1,973,965</b>

3. SOURCE OF FUNDING: Storm Sewer Capital Fund (Fund 469)

**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	Total Appn	Amt. for Contract	2022-2023 Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
469	4245	Outfall Rehabilitation Capital	\$4,250,000	\$1,973,965	235	06/21/2022 Ord. No. 30790

**COORDINATION**

This Project and memorandum have been coordinated with the City Attorney's Office, the City Manager's Budget Office, and the Departments of Planning, Building, and Code Enforcement and Transportation.

**PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the June 13, 2023 City Council meeting.

**COMMISSION RECOMMENDATION AND INPUT**

No commission recommendation or input is associated with this action.

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## **CEQA**

Public Project for the rehabilitation of eight failing storm drain outfalls throughout the City by removing and replacing the damaged structures in place, to reduce erosion and improve function. Reference to the Statement of Exemption File No. ER20-266 dated February 26, 2021. Under the provisions of Sections 15301 Existing Facilities and 15302 Replacement Reconstruction of the State Guidelines for Implementation of the California Environmental Quality Act, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

Categorically Exempt, File No. ER20-266, CEQA Guidelines Sections 15301 Existing Facilities and 15302 Replacement or Reconstruction.

## **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

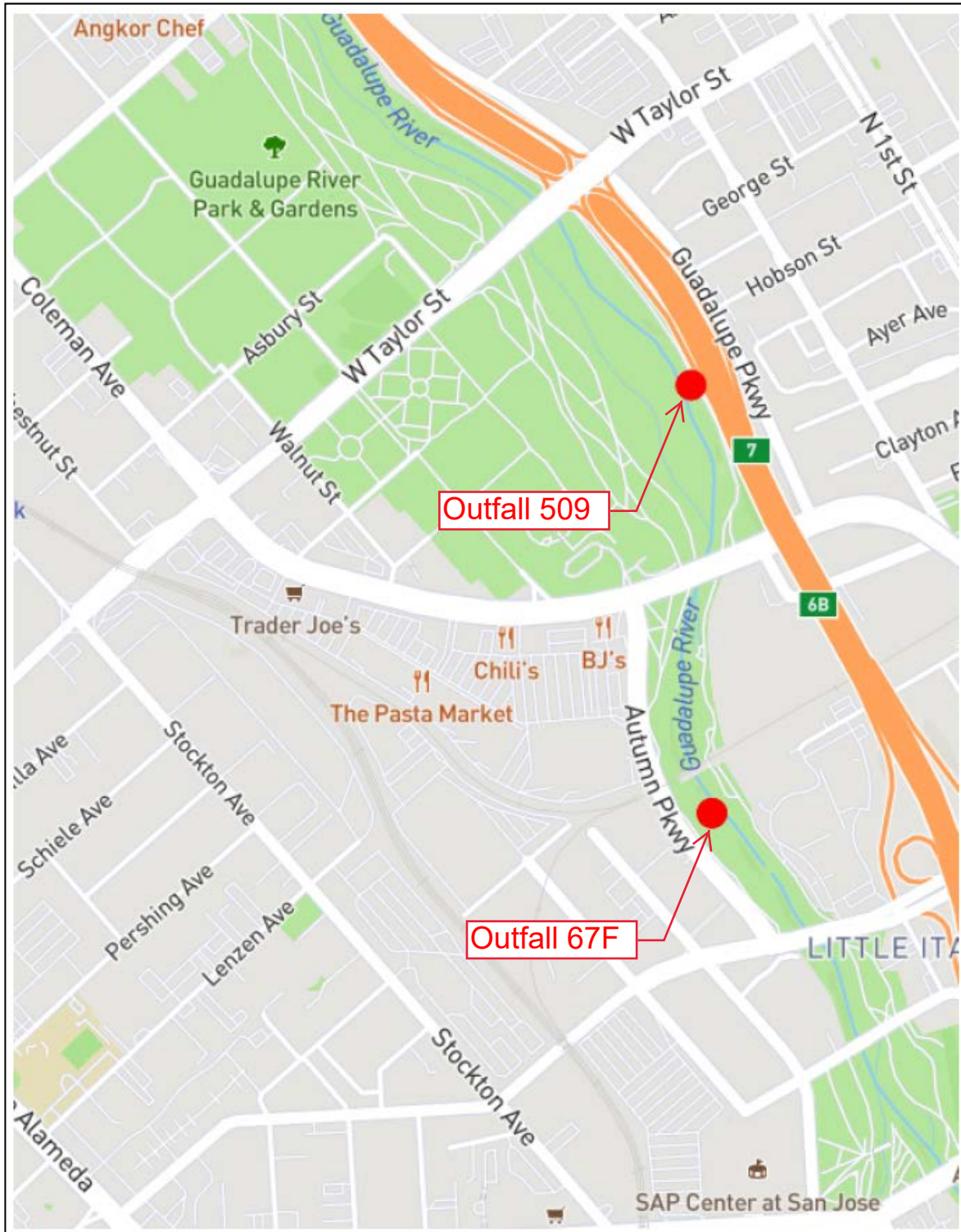
Acting Director of Public Works

For questions, please contact Mathew Nguyen, Public Works Deputy Director, at [Mathew.Nguyen@sanjoseca.gov](mailto:Mathew.Nguyen@sanjoseca.gov) or (408) 535-8384.

**ATTACHMENT – Location Map**

# Attachment Location Map

## 7700 - AUTUMN PARKWAY OUTFALL 67F & 509 REHABILITATION PROJECT



NOT TO SCALE

