

COUNCIL AGENDA: 1/29/19  
FILE: 18-1837  
ITEM: 5.3

## Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Matt Cano  
Jon Cicirelli  
Margaret McCahan

**SUBJECT:** SEE BELOW

**DATE:** January 17, 2019

Approved

*D. DSYL*

Date

*1/18/19*

**COUNCIL DISTRICTS: 3 & 4**

**SUBJECT: ACTIONS RELATED TO THE 8087 - TRAIL: COYOTE CREEK  
(MABURY ROAD TO EMPIRE STREET) PROJECT AND ADOPTION  
OF RELATED APPROPRIATION ORDINANCE AMENDMENTS IN THE  
SUBDIVISION PARK TRUST FUND**

### RECOMMENDATION

- (a) Adopt a resolution authorizing the City Manager to negotiate and execute a standard consultant agreement and related amendments with CH2M HILL, Inc. in the amount not to exceed \$1,400,000 for the 8087 - TRAIL: Coyote Creek (Mabury Road to Empire Street) Project.
- (b) Adopt the following Appropriation Ordinance amendments in the Subdivision Park Trust Fund:
  - (1) Establish the TRAIL: Coyote Creek (Mabury Road to Empire Street) appropriation to the Parks, Recreation and Neighborhood Services Department in the amount of \$1,720,000; and
  - (2) Decrease the TRAIL: Coyote Creek (Mabury Road to Empire Street) Reserve by \$1,720,000.

### OUTCOME

Approval of the recommended actions authorizing the City Manager to negotiate and execute a standard consultant agreement will facilitate execution of the design contract of the 0.3 mile Coyote Creek Trail project. Design is anticipated to start in February 2019 and to be completed by early 2020 or as allowed by a pending extension request to the grant oversight organization.

## **BACKGROUND**

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 (BART) station through Watson Park to its Empire Street frontage.

### *Grant Application and Award*

In spring 2015, the Department of Parks, Recreation and Neighborhood Services (PRNS) and the Department of Transportation (DOT) prepared an application to the Active Transportation Program (ATP) for the design and construction of the Coyote Creek Trail from Mabury Road to Empire Street (Project) based on the 2011 Coyote Creek Trail Master Plan. The ATP grant program solicits project proposals from agencies, with the understanding that formal authority to enter into grant agreements is dependent upon future actions by governing bodies.

ATP funds are secured from a variety of state and federal resources. The California Transportation Commission (CTC) oversees the award of funds and monitors the schedule of delivery. The Metropolitan Transportation Commission (MTC) manages the Transportation Improvement Plan to ensure projects are recorded and scheduled for allocation. The State of California Department of Transportation (Caltrans) manages federally funded grant programs and is the primary point of contact for local agencies (i.e. San José) to seek authorization for use of grant funds as the project moves through the design, right-of-way and construction phases.

In October 2015, the MTC released staff recommendations for the 2015 Regional ATP which included a grant award for the Project.

### *Grant Agreement*

On April 12, 2016, the City Council authorized the City Manager (Item 2.9) to negotiate and execute a grant agreement with Caltrans for a \$5,256,000 ATP grant, with a \$927,600 local match. The memorandum explained that the funding needs were defined at a conceptual level, which is consistent with the detail made available during the master planning stage. Per the memorandum, City staff would provide further detail on project cost when a design contract was to be awarded.

In June 2016, City staff prepared a Project Specific Report (PSR) as a condition of the grant agreement, which provided detail on the site work necessary to develop the trail.

### *Caltrans Consultant Selection Requirements*

Based on the PSR, Caltrans provided preliminary approval for the City to conduct a Request for Qualifications (RFQ) for engineering design services. Through a funding arrangement between PRNS and DOT, local funds were used for preparation of this report as referenced by the April

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**Subject: Trail: Coyote Creek (Mabury Road to Empire Street)**

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12, 2016, Council Memorandum given that the report and RFQ process did not qualify for reimbursement under the grant program.

In July 2016, the City issued the RFQ seeking qualified engineering firms to enter into a standard consultant agreement to prepare construction documents, including plans, specifications, and an engineer's estimate, as well as assist in construction administration for this project. The RFQ process followed guidance provided by the Caltrans Local Assistance Manual. Mark Thomas & Company, Inc. and GHD, Inc. were the two firms who submitted Statements of Qualifications.

In November 2016, the City requested from Caltrans a formal authorization to proceed with executing the contract with the engineering design firm selected per the July 2016 RFQ.

While working closely with Caltrans to preapprove the consultant selection, it was brought to the City's attention that the most recent Caltrans' Local Assistance Manual had been updated in August 2016 - one month after the City's RFQ process was conducted. Consequently, elements of the City process from July 2016 were not in compliance with the new Caltrans selection requirements. Specifically, local business preference in Santa Clara County is now prohibited by the new Caltrans guidelines.

To avoid risking the loss of grant funding, City staff issued a rejection of all Statements of Qualifications and initiated a new consultant procurement process. Per Caltrans new Consultant Selection Process (August 2016), City staff began development of a Request for Proposals (RFP) that was issued in April 2018. The development of the this RFP package required coordination among various City departments and Caltrans, and took approximately one year to finalize, resulting in this recommendation.

From April 2018 to May 2018, the City conducted an RFP for engineering design and received one proposal from CH2M Hill, Inc. In June 2018, City staff submitted detailed background on the proposal's competitive process and secured approval from Caltrans to continue with the selection process in July 2018.

Since August 2018, City staff have been coordinating with Caltrans to submit the necessary audit and review forms, which are required for projects over \$150,000, per the Caltrans standard procedures. These forms are currently in the process of being reviewed by Caltrans for approval.

## **ANALYSIS**

City staff is recommending CH2M Hill, Inc. as the chosen consultant to support design development of Class I Bikeway Trail improvements over a 0.3-mile distance. Improvements will include a pedestrian bridge, an under-crossing beneath Highway 101, and a paved trail from Watson Park to Mabury Road, including signage, striping and other miscellaneous improvements.

### *Potential Risk of Grant Deadline*

The ATP Grant program has stringent schedule requirements, which currently require the City to complete all design documentation by June 2019. If the City does not complete the design documents by June 2019, the City is at risk for repayment of previously invoiced funds (\$19,000), and may not have the opportunity to invoice for any expenses paid in completion of the subject design contract.

### *Grant Extension*

City staff have been coordinating with MTC staff for a time extension. Initial conversations confirm that an extension can be pursued, though extensions tend to be limited to 12 months. Based on the typical review and approval period for this type of work, staff estimates that it will take between 12 to 14 months to complete the design documents. Staff is concerned that requesting the typical 12-month extension will not allow sufficient time to complete the work. Failure to complete the work within the extension timeframe could present a financial risk for the City, since missing the deadline may result in the need to repay expended grant funds as a condition of the grant agreement.

City staff has kept a detailed chronology of project delivery challenges and seeks to be agendized for the public March 2019 CTC meeting in Los Angeles to request an extension well in advance of the grant deadline. At this time, City staff cannot predict the outcome of the CTC decision. As a result, this recommendation to proceed presents some financial risks to the City if the extension is not approved by CTC.

### *Grant Reimbursement*

The City has expended approximately \$217,000 toward this project, with approximately \$19,000 previously reimbursed from the State. Proceeding with this recommendation and the preparation of the design documents will expend funds that are anticipated to be grant reimbursable, pending extension approval. If the planned extension is denied, City staff will pause work on the project, which is allowable under the proposed design agreement with CH2M Hill. The design efforts completed up to that point can be leveraged for future grant funding opportunities. Staff would continue pursuit of other grant opportunities and consideration of this project during the development of future capital improvement programs.

### *Project Labor Agreement Applicability*

A project labor agreement (PLA) is not applicable for design consultant agreements.

### *Local and Small Business Outreach*

The RFP was solicited publicly on BidSync to 12,661 registered businesses of which 372 of those were Local Businesses, including CH2M Hill, Inc. Though as mentioned previously, Caltrans does not allow local preference points to be used as a scoring metric in the consultant procurement process.

The grant guideline requires the project to meet a Disadvantaged Business Enterprise (DBE) goal of 15%. The DBE goal was included as a requirement in the City's RFP. The consultant submitted a proposal with a 15% commitment to DBE's.

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

Final budget recommendations to support right-of-way (temporary) acquisition, bid and award, and construction phases of work are expected to be brought to Council no later than early 2021.

City 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 Council office meetings with PRNS staff. Project development milestones will be posted via Twitter (@sanjosetrails) and site photos will be posted on Instagram (@sanjosetrails).

### **POLICY ALTERNATIVES**

**Alternative #1:** Defer execution of the agreement until a grant extension has been awarded.

**Pros:** This alternative would not further commit the City to unreimbursable expenses if the grant was not extended.

**Cons:** Without demonstrated action by the City to further the project, the CTC may be less likely to provide the requested grant extension. Loss of such a significant funding source (\$5.3 million) would significantly jeopardize the City's ability to complete this regional trail project and delay the trail network referenced in the City's 2009 Greenprint and Green Vision.

**Reason for not recommending:** Connection between the new Berryessa BART station and Downtown San José is a high priority for the City and the Project would establish this link. Confirmed funding of about \$5.3 million via the ATP Grant would accelerate construction and provide improved mobility for pedestrians and bicyclists.

### **PUBLIC OUTREACH**

In 2011, this project was presented at the Parks and Recreation Commission and the City Council. 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. In addition, this memorandum will be posted on the City's website for the January 29, 2019, City Council agenda.

### **COORDINATION**

This agreement and memorandum have been coordinated with the Planning, Building and Code Enforcement Department and the City Attorney's Office.

### **COMMISSION RECOMMENDATION/INPUT**

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

### **FISCAL/POLICY ALIGNMENT**

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 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.

### **COST SUMMARY/IMPLICATIONS**

The recommended actions would authorize the execution of a design agreement with CH2M Hill in an amount not to exceed \$1.4 million and pay for associated staffing and consultant costs of approximately \$320,000. Appropriation adjustments of \$1.72 million would reallocate funding from the project reserve to a live project expense appropriation.

To date, approximately \$217,000 has been expended on preliminary project development activities since the grant was awarded, funded from the North San José Decificiency Plan Improvements project in the Construction Excise Tax Fund. Of this funding, the City would need to return the \$19,000 previously received from the State if the grant is not extended. After execution of the agreement, costs and invoices are expected to be limited in the first quarter as site conditions are being documented. City staff estimates invoices totaling \$20,000 to \$100,000 during the first three months – this amount may not be reimburseable if the grant extension is not awarded.

## 1. TOTAL ESTIMATED PROJECT COST: \$6,769,000

Design - Contractor Award*	\$1,400,000
Project Management*	\$320,000
Bid & Award (incl. consultant & staff)	\$40,000
Construction (incl. permits, consultant & staff)	\$5,009,000
<b>TOTAL PROJECT COSTS</b>	<b>\$6,769,000</b>

\*Recommended budget actions fund these project cost components.

2. SOURCE OF FUNDING: 375 – Subdivision Park Trust Fund. The Subdivision Park Trust Fund has \$6.8 million allocated for this project, with no offsetting grant revenue currently programmed. Because grant funding is provided on a reimbursement basis, the Subdivision Park Trust Fund is expected to be reimbursed as the grant funds are awarded. If the extension is awarded, the federal grant would reimburse a total amount of \$5,256,000.

3. OPERATING COSTS: City staff estimates that the operations and maintenance impact of the 0.3 mile of trail will be approximately \$5,600 annually. This amount is based on the cost of trail maintenance at the rate of \$15,000/mile, and \$3,600/mile for Park Rangers. There will be no operational costs until construction is completed, which is expected in late 2021, or beyond. This project will be included in future forecasts.

### **BUDGET REFERENCE**

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

Fund #	Appn #	Appn. Name	Total Appn	Requested Budget Action	Estimated Amt. For Contract	2018-2019 Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
375	8479	TRAIL: Coyote Creek (Mabury Road to Empire Street) Reserve	\$6,769,000	(\$1,720,000)	N/A	V-616	06/19/2018, 30124
375	NEW	TRAIL: Coyote Creek (Mabury Road to Empire Street)	N/A	\$1,720,000	\$1,400,000	N/A	N/A

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## CEQA

The Department of Planning, Building and Code Enforcement has issued a Mitigated Negative Declaration (MND) for the Coyote Creek Trail Master Plan. This project is a component of that master plan. The MND identifies a number of mitigations that need to be implemented in order to address environmental impacts. These mitigation measures and their manner of implementation are identified in the Mitigation Monitoring and Reporting Program (MMRP) for the master plan. The mitigations that are required for this project will be incorporated into the project design and the construction documents.

Mitigation measures that are required as part of this project include the following:

- Trees – If the design of the Project requires the removal of any trees, they shall be replaced as outlined in the MMRP.
- Wildlife Habitat – Habitat assessment and survey for the Biological Study Area will be performed prior to construction of the Project, and measures to avoid or minimize the impact will be implemented according to the MMRP.
- Cultural Resources – During demolition and excavation activities, the contractor shall adhere to the requirements as outlined in the project specifications for archaeological requirements.

CEQA: Mitigated Negative Declaration for the Coyote Creek Trail Master Plan (Montague Expressway to Watson Park), File No. PP09-218.

/s/

MATT CANO

Director of Public Works

/s/

JON CICIRELLI

Acting Director of Parks, Recreation and  
Neighborhood Services



MARGARET MCCAHAN

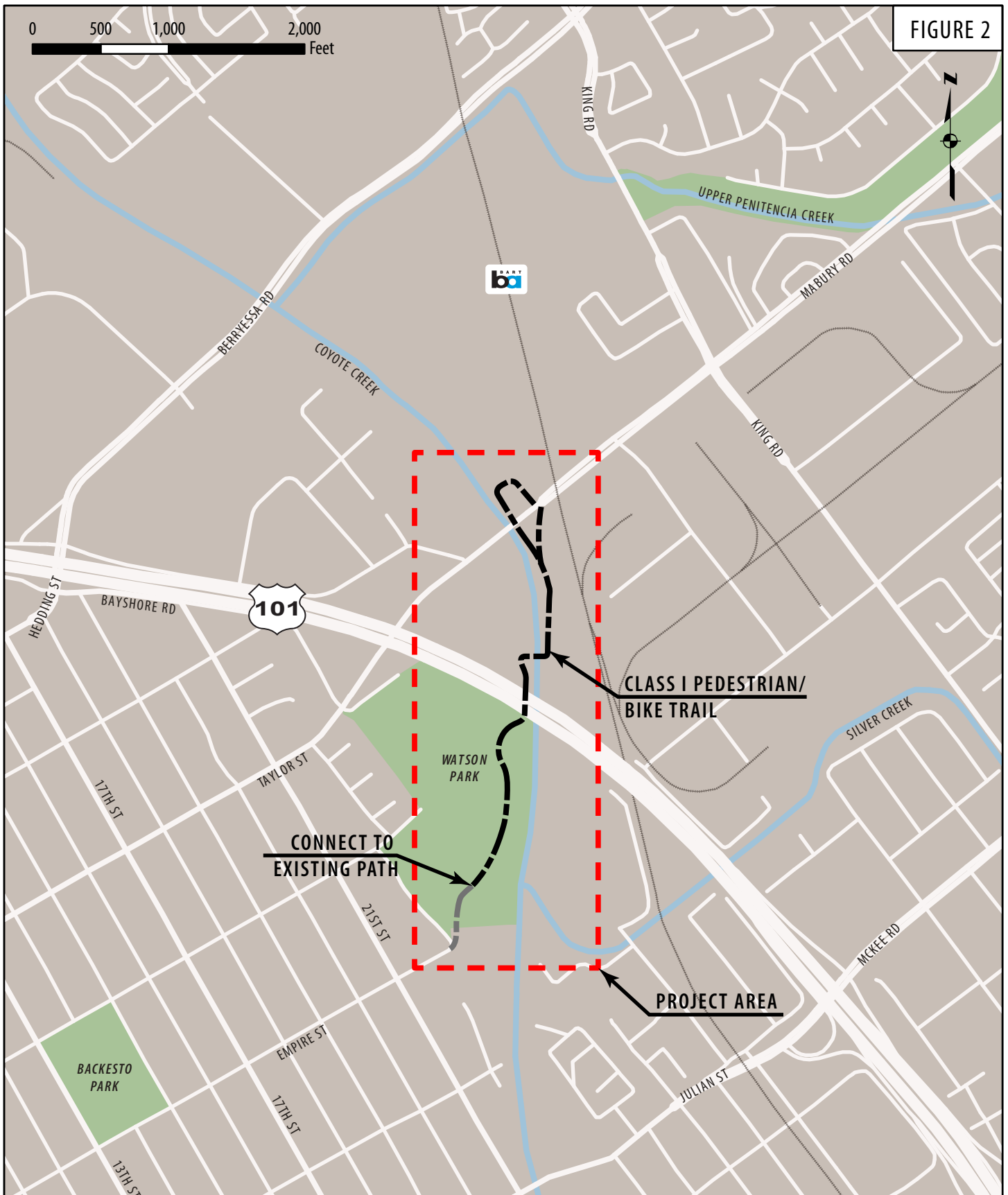
Budget Director

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

Attachments: Location Map  
Caltrans' "Authorization to Proceed"



FIGURE 2



## COYOTE CREEK TRAIL

AREA MAP



**MARK THOMAS & COMPANY, INC.**  
1960 ZANKER RD  
SAN JOSE, CA 95112  
(408) 453-5373

**DEPARTMENT OF TRANSPORTATION**

DISTRICT 4 OFFICE OF LOCAL ASSISTANCE

P.O. BOX 23660, MS-10B

OAKLAND, CA 94623-0660

PHONE (510) 286-5900

FAX (510) 286-6301

TTY 711

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April 3, 2017

04-SCL-0-SJS

ATPL-5005(146)

Coyote Creek Trail (Mabury Rd – Empire  
St) - Bike/Ped Trail

Mr. Jim Ortbal  
Director of Transportation  
City of San Jose  
200 East Santa Clara St  
San Jose, CA 95113

Attention: Yves Zsutty

Dear Mr. Zsutty:

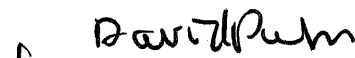
We are pleased to notify you that the request for Preliminary Engineering funds has been approved for the above-referenced Federal aid project. A copy of the authorization document (E-76) is attached for your files. The effective date of approval is March 30, 2017. You now may proceed with preliminary engineering and environmental studies. You are reminded that Federal law prohibits beginning final design work prior to approval of the Federal environmental document.

Prior to invoicing the State for eligible project costs, your agency must assure that the master and project supplemental agreements are fully executed. All invoice packages for this project are to be submitted to the following address:

Caltrans - District 4 Office of Local Assistance  
Attention of Invoice Coordinator  
Mail Station 10-B,  
P.O. Box 23660, Oakland, CA 94623-0660

Please note that your agency must submit an invoice for this project at least every 6 months to avoid placement on the inactive project list and loss of federal funds. If your agency will be using engineering consultant(s) for this project, the consultant selection process must follow the requirements outlined in Chapter 10, "Consultant Selection" of the Local Assistance Procedures Manual (LAPM). The current version of the LAPM is located on the Division's website at <http://www.dot.ca.gov/hq/LocalPrograms/public.htm>. The latest procedures that impact the Manual can be found at this same site under Local Program Procedures (LPPs) and the Division of Local Assistance (DLA) Office Bulletins. If you have any questions, please contact me at 510-286-6485 or Val Chauhan at 510-286-5237.

Sincerely,

  
Hin Kung  
Senior Transportation Engineer

Office of Local Assistance

# AUTHORIZATION / AGREEMENT SUMMARY - (E-76)

CALIFORNIA DEPARTMENT OF TRANSPORTATION

## FEDERAL AID PROGRAM

DLA LOCATOR: 04-SCL-0-SJS  
 PREFIX: ATPL  
 PROJECT NO: 5005(146)  
 SEQ NO: 1  
 STATE PROJ NO: 0417000177L-N  
 AGENCY: SAN JOSE  
 ROUTE:

PROJECT LOCATION:  
 COYOTE CREEK TRAIL (MABURY RD TO EMPIRE ST)  
 TYPE OF WORK:  
 BIKE/PEDESTRIAN TRAIL  
 FED RR NO'S:  
 PUC CODES:  
 PROJ OVERSIGHT: ASSUMED/LOCAL ADMIN  
 ENV STATUS / DT: DELEG TO STATE USC 326/SEC 6004 07/12/2012  
 RW STATUS / DT:  
 INV RTE:  
 BEG MP:  
 END MP:

## PREV AUTH / AGREE DATES:

PE:  
 R/W:  
 CON:  
 SPR:  
 MCS:  
 OTH:

DISASTER NO:

## TIP DATA

MPO: MTC  
 FSTIP YR: 16/17  
 STIP REF: 206-0000-3862  
 FSTIP ID NO: SCL050083

BRIDGE NO:

PROG CODE	LINE NO	IMPV TYPE	FUNC SYS	URBAN AREA	URB/RURAL	DEMO ID
M300	10	15				

## FUNDING SUMMARY

PHASE	PROJECT COST	FEDERAL COST	AC COST
PE	PREV. OBLIGATION \$0.00	\$0.00	\$0.00
	THIS REQUEST \$1,510,000.00	\$1,210,000.00	\$0.00
	SUBTOTAL \$1,510,000.00	\$1,210,000.00	\$0.00
R/W	PREV. OBLIGATION \$0.00	\$0.00	\$0.00
	THIS REQUEST \$0.00	\$0.00	\$0.00
	SUBTOTAL \$0.00	\$0.00	\$0.00
CON	PREV. OBLIGATION \$0.00	\$0.00	\$0.00
	THIS REQUEST \$0.00	\$0.00	\$0.00
	SUBTOTAL \$0.00	\$0.00	\$0.00
OTH	PREV. OBLIGATION \$0.00	\$0.00	\$0.00
	THIS REQUEST \$0.00	\$0.00	\$0.00
	SUBTOTAL \$0.00	\$0.00	\$0.00
TOTAL:		\$1,210,000.00	\$0.00

## STATE REMARKS

03/23/2017 \* SEQ 1: Authorizing federal funds for PE  
 \* ATP funds (\$1,210,000 - 100% Fed ) were allocated to the PS&E component of work on March 16, 2017 by the CTC.  
 \* NEPA was Re-Validated 12/20/16

## FEDERAL REMARKS

## AUTHORIZATION

AUTHORIZATION TO PROCEED WITH REQUEST: PRE  
 FOR: PE  
 DOCUMENT TYPE: AAGR

PREPARED IN FADS BY: PNEH, DAVID  
 REVIEWED IN FADS BY: HOANG, KHA B  
 SUBMITTED IN FADS BY: ANDERSON, PETER  
 PROCESSED IN FADS BY: FOGLE, JERILYNN  
 E-76 AUTHORIZED DATE IN FMIS BY: TASIA PAPAJOHN

ON 2017-03-21 622-5909  
 ON 2017-03-23 653-6460  
 ON 2017-03-27 FOR CALTRANS  
 ON 2017-03-27 FOR FHWA  
 ON 2017-03-30 19:39:53.0

SIGNATURE HISTORY FOR PROJECT NUMBER 5005(146) AS OF 04/03/2017

FHWA FMIS SIGNATURE HISTORY

MOD #	SIGNED BY	SIGNED ON
0	SHUN HUEY	03/29/2017
	LANH PHAN	03/30/2017
	TASIA PAPAJOHN	03/30/2017

FHWA FMIS 3.0 SIGNATURE HISTORY

CALTRANS SIGNATURE HISTORY

DOCUMENT TYPE	SIGNED BY	SIGNED ON
AUTH/AGREE	ANDERSON, PETER	03/27/2017