



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Matt Cano
Jon Cicirelli
Jim Shannon

SUBJECT: SEE BELOW

DATE: December 18, 2020

Approved

Date

12/21/20

COUNCIL DISTRICT: 3 & 4

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

RECOMMENDATION

- (a) Adopt a resolution authorizing the City Manager to:
 - (1) Negotiate and execute amendments to the standard consultant agreement with CH2M HILL, Inc. for the 8087 – Trail: Coyote Creek (Mabury Road to Empire Street) project (“Project”) to do the following:
 - i. Expand the scope of work to include design of flood control improvements, design, and implementation of mitigation plan requirements, bid support, and construction management support; and
 - ii. Increase compensation by up to \$1,344,380 from \$1,355,620 to an amount not to exceed \$2,700,000 to pay for the expanded scope of work; and
 - iii. Extend the term of the agreement from December 2021 to December 2024.
 - (2) Negotiate and execute one or more Fund Transfer Agreements with the Santa Clara Valley Water District (“Valley Water”) setting forth the terms and conditions pursuant to which Valley Water will reimburse the City for the additional design and construction costs associated with including flood control improvements as part of the Project, which costs are estimated to be approximately \$3,600,000.
- (b) Adopt the following Appropriation Ordinance amendments in the Subdivision Park Trust Fund:
 - (1) Increase the TRAIL: Coyote Creek (Mabury Road to Empire Street) appropriation by \$1,500,000; and
 - (2) Decrease the TRAIL: Coyote Creek (Mabury Road to Empire Street) Reserve by \$1,500,000.

OUTCOME

Approval of the recommendation will enable the City to alter its existing 95% Design Plans and start co-designing and incorporating a portion of Valley Water's Coyote Creek Flood Protection Project as an integrated part of the Trail: Coyote Creek Trail (Mabury Road to Empire Street) ("Project"). A Fund Transfer Agreement will obligate Valley Water to fund the flood protection improvements. Specifically, this will support development of a trail with integrated flood control improvements that were not foreseen when the Active Transportation Program (ATP) grant was originally awarded to the City. The collaborative approach allows the City and Valley Water to provide a recreational & active transportation trail while addressing flood conditions identified during the February 2017 flood event. The flood protection improvements are anticipated to be sufficient to protect the City's Mabury Yard Facility from 20-year flood events and eliminate need for future alternations to the trail.

EXECUTIVE SUMMARY

City staff recommends authorizing the City Manager to execute agreements that enable the City to revise the Project design and build a portion of the Coyote Creek Flood Protection Project on behalf of Valley Water as part of the trail Project. The recommended budget action supports the Project through the bid phase. Staff presented three approaches to proceed with the project.

- 1) Recommended approach - collaborative development of trail and floodwall;
- 2) Alternative #1 - complete trail project without floodwall;
- 3) Alternative #2 - complete the trail design without floodwall, hold trail construction until Valley Water flood project is complete.

The recommended approach, if achieved, is the most sustainable project delivery method. However, it presents a great schedule challenge to the City: if the joint project cannot be completed by November 2021, City risks losing \$4,000,000 of ATP grant funding. Staff has limited control over the inter – agency agreement negotiations and environmental permit approvals required to complete the joint Project. Prolonged negotiations between the City and Valley Water will jeopardize the grant deadline. Alternatives #1 and #2 could serve as back up plans if benchmark deadlines cannot be met while proceeding with the recommended approach. Alternative #1 has the least schedule and financial risk to the City but brings the highest negative social and environmental impact. Alternative #2 presents the highest financial risk to the City and lowest schedule risk. See Attachment A for the analysis of the three approaches.

BACKGROUND

The City Council adopted the Master Plan for Coyote Creek Trail (Montague Expressway to Highway 101) in September 2011. The plan defines development of a Class I Bikeway (Trail) within the Coyote Creek riparian corridor. The 0.3-mile trail includes a pedestrian bridge and under-crossing beneath Highway 101. Development of the plan engaged stakeholder agencies including Valley Water and regulatory agencies.

The City Council authorized the City Manager (April 12, 2016, Item 2.9) to negotiate and execute a grant agreement with the California Department of Transportation (Caltrans) for a \$5,256,000 Active Transportation Program (ATP) grant, with a \$927,600 local match for the design and construction of the Project. The California Transportation Commission (CTC) is the grantor and Caltrans is a grant administrator for the ATP grant program. The memo acknowledged that if the City was unable to adhere to the strict timeline provided by the ATP grant guidelines, 1) the City would be subject to a penalty of ten points on future ATP grant applications (essentially making the city ineligible for future funds through the grant program) , and 2) would return previously reimbursed funds.

In May 2016, the City submitted conceptual level design documents based upon the Master Plan, in order to meet the ATP condition for a Project Specific Report. Design has continued since that time.

In February 2017, the City of San José and its residents faced a major flood event that impacted business and residents along the water way. The event has led Valley Water to re-evaluate its approach to flood control on the Coyote Creek channel.

On January 29, 2019, the City Council authorized the City Manager (Item 5.3) to negotiate and execute a standard consultant agreement with CH2M HILL, Inc. (Consultant) in the amount not to exceed \$1,400,000.00 to provide design services for the Project. On February 4, 2019, the City executed a standard consultant agreement with CH2M HILL, Inc. in the amount of \$1,355,620, for completion of construction documents and securing environmental permits. The project scope was based upon a confirmed trail alignment defined by the Council-adopted Master Plan. On-going coordination with Valley Water throughout the design process did not indicate substantial changes to the trail alignment.

Collaborative Action Plan between the City and Valley Water

The City and Valley Water have a long-standing relationship to develop joint trail and watershed protection projects. The *Collaborative Action Plan and Agreement Between the City of San José and the Santa Clara Valley Water District for the Development and Operation of Joint Trails Project*, (“CAP”) approved by City Council on January 21, 2003 (Item 10.1) established a framework for cooperative efforts in the planning, design, construction and operation of watershed protection and recreational facilities. This Project falls within the intention and scope of the CAP.

The CAP delegates authority to the City Manager and Chief Executive Officer of Valley Water or their designees (the “Oversight Committee”) to establish “Joint Trails Project Planning Teams” to develop a “Joint Trails Project Plan and Agreement” for each mutually agreed upon Joint Trails Project. The “Joint Trails Project Plan and Agreement” identifies the responsibilities, schedules, budget, and cost allocation for each party’s proposed Equitable Contribution to the Joint Trails Project. Staff is currently working on this Joint Trails Project Plan and Agreement under the CAP.

The City’s trail Project encroaches upon Valley Water’s property, thus an encroachment permit from Valley Water is needed. It is necessary to execute a Joint Trails Project Plan and Agreement before Valley Water can issue the encroachment permit.

It is important to note that under the CAP, the City may be responsible to demolish and re-build recreational facilities at the City’s own expense, if Valley Water exercises their lawful powers to construct the floodwall within the footprint of the built trail

Flood Protection Planning Coordination

In May 2019, Valley Water introduced to City staff their Coyote Creek Flood Protection Project, which was at a planning stage. The given schedule was: 1) Completion of Planning: end of 2019 or early 2020; 2) Design Completion: 2023; and 3) Construction: 2023-2025.

In December 2019, the City and Valley Water discussed the possibility of incorporating flood protection improvements into the trail project. Conceptually, the flood protection plans might be resolved with a wall alongside the trail, and/or elevating the trail as part of a flood barrier. At this conceptual stage, Valley Water Staff requested the City to modify the current 95% trail retaining wall design to accommodate the design criteria of Valley Water’s floodwall. City staff was mindful that the ATP Grant funding required adherence to a strict schedule and City did not have certainty that the flood protection project element could be incorporated in a timely manner.

On July 1, 2020, Valley Water staff proceeded with the design phase of the Coyote Creek Flood Protection Project which includes work within the Project area. Over the past several months, staff have been meeting regularly to discuss how to best integrate or anticipate site changes with minimum impact and expense to either agency. At this stage, data collection via soil samples and surveying has been completed, but the flood wall design has not moved forward because it is beyond the Consultant’s scope of services. Thus, City and Valley Water had not agreed on a preferred design approach.

Grant Extensions

The ATP Grant Guidelines allow grantees only one opportunity to pursue time extension per phase of project development. On March 13, 2019, the City secured overlapping extensions for two phases of work from the Grantor – the CTC:

- 12 months for Design Expenditure deadline (Now June 2020 – Completed and Achieved this deadline); and
- 20 months for the Construction Allocation deadline (Now February 2021).

The City has fulfilled the Design Expenditure requirements and received disbursement of \$1,210,000 from CTC.

On October 22, 2020, the CTC granted a further extension to the Construction Funding Allocation of 13 months. This additional time was based upon challenges faced by City and Consultant in shifting to a “Shelter in Place” work environment per the Santa Clara County Health Department. Per the extended deadline, the City must submit the design package by November 2021, receive construction allocation from the granting agencies by March 2022, and begin construction before September 2022. Staff anticipates awarding a construction contract before June 2022.

The 13-month extension presents the City a scheduling opportunity for incorporating Valley Water’s floodwall into the Project’s design, but the opportunity requires further investment to support a collaborative redesign of the affected portion of the trail. The City does not have any opportunities for further extensions of the ATP grant so time is of the essence.

ANALYSIS

Staff has investigated three alternatives for moving forward and concluded that the recommended approach produces the best possible outcome.

I. Recommended Approach: Collaborative Development of Trail and Floodwall:

Commence work immediately to alter the existing 95% trail Design Plans to incorporate the Water District’s floodwall. This action requires that the City Manager negotiate and execute the following agreements:

(a)(1) Amendments to the Standard Consultant Agreement with CH2MHILL:

Authorizing the City Manager will expedite the consultant agreement amendment process. Currently, the scope and fee are still under negotiation at the staff level. Staff recommends retaining CH2M HILL, Inc. (“Consultant”) as a design consultant because it is the most efficient way for making the design change. CH2M HILL, Inc. went through a strict consultant procurement process required by the grant administrator, Caltrans, for design, bid, and construction support services for the Project. The Consultant has the expertise to design the flood control improvements. City already received approval from Caltrans to proceed with the Consultant Agreement Amendment to include the floodwall design. Procuring a new consultant would be impractical and would likely delay the Project beyond the grant deadline. The recommended Consultant Agreement Amendment will include the following:

i. Additional Tasks

- Floodwall: This task includes the design and environmental clearance of the floodwall addition. Adding this task to the standard consultant agreement with CH2M HILL is essential to complete the collaborative work with Valley Water.
- Riparian Mitigation and Monitoring Plan: This Mitigation Plan must be approved as part of Water Quality Certification form Regional Water Quality Control Board (RWQCB). The permit application was submitted in April 2020, but the agency required additional mitigation to address the impact of the trail development. This service is necessary for the trail Project regardless of the floodwall; however, adding the floodwall will likely require some additional mitigation.
- Bid and Construction Management Support: The original Consultant Agreement only included the design phase. Per grant requirements, the construction contract must be awarded within six months after allocation of construction funds. City needs to have the Consultant under contract before the bid phase to meet the grant deadline.

ii. Increase Consultant Fee

- The recommended Consultant fee increase is approximately \$1,345,000. This is a conservative estimate which includes approximately \$400,000 for the floodwall design, \$175,000 for the Riparian Mitigation and Monitoring Plan, and \$770,000 for bid and construction support. Staff is currently negotiating with the Consultant and Valley Water on the final scope and fee. It is anticipated that the final Consultant Agreement Amendment fee will be lower than the recommended amount.

iii. Contract Term

- The current Standard Consultant Agreement only includes up to the design phase and will expire in December 2021. To complete additional tasks discussed above, staff recommends extending the term to December 2024. This gives the project some extra time to close out the construction, which is anticipated to be late 2023.

(a)(2) Fund Transfer Agreement with Valley Water

- Authorizing the City Manager to negotiate and execute a Fund Transfer Agreement between the City and Valley Water will expedite the approval process for the agreement.
- The Fund Transfer Agreement is currently in draft form. It will lay out the terms and conditions regarding how Valley Water will compensate the City for additional design and construction cost resulting from the floodwall. The City has used this approach on prior projects of joint interest such as the Airport Parkway Under-crossing along the Lower Guadalupe River Trail.
- Per the terms of the draft agreement, Valley Water would establish an escrow account to permit City staff to access funds to implement the project. Specifically, the agreement shall acknowledge the following:
 - The City will supply the construction drawings for the Project;
 - The construction drawings must be acceptable to Valley Water;
 - The City will manage, advertise, bid, and award the Project;

- The City and Valley Water will provide inspection services and project sign-off;
 - The City and Valley Water shall coordinate the invoicing process to secure reimbursement from the grant administrator for the grant-funded portion of the budget;
 - The Fund Transfer Agreement will also reference the Joint Trails Project Plan and Agreement, which will identify roles and responsibilities of both agencies in detail; and
 - The Fund Transfer Agreement will permit a retroactive payment clause for allowing tasks and expenses incurred prior to agreement execution, as design work may proceed immediately.
- City and Valley Water staff anticipates the Fund Transfer Agreement to be executed in two phases:
 - Phase 1 will allow Valley Water to reimburse the City the design fee associated with the floodwall; and
 - Phase 2 of the agreement will be executed once bids are received for the construction phase. The second phase of the agreement will likely be a wire transfer from Valley Water directly to the City prior to encumbrance of the construction contract.
- Valley Water's Board of Directors identified the Coyote Creek Flood Protection Project as a top priority project. Although the Board of Directors has not yet passed any resolution authorizing Valley Water staff to negotiate and execute the Fund Transfer Agreement with the City, the CEO provided a Letter of Intent to commit to reimbursing the City for costs associated with the floodwall. (See Attachment C)
- If City Council approves the recommended approach to the Project, there is still a risk that the City and Valley Water may not reach an agreement on the amount of each agency's financial responsibility. Extended negotiations may put the City's design schedule at risk. (See *Risks of Recommended Approach*, Attachment A)

Staff's recommended approach requires a budget recommendation:

(b)(1)&(b)(2) Appropriate \$1,500,000 from the Project Reserve

- The budget recommendation will allocate enough funding to complete the design and bid phase and encumber the entire Consultant fee for construction management support.
- At this time, the Project Reserve has \$5,049,000, and is sufficient to complete the Project up to the design and bid phases.
- Future budget recommendation to address the funding needed for construction will be brought forth to Council no later than early 2022, which is the estimated time to report on construction bids.

Benefits of Recommended Approach

There are significant financial and environmental benefits to the recommended approach. Combining a section of the floodwall into the trail Project can potentially save the City \$1,500,000 by preventing the City from having to pay for the demolition and restoration of a newly constructed trail when Valley Water builds the floodwall at a later date, which would result in trail closure for several months. Combining the construction activities will also benefit the riparian habitat by reducing disturbances to the creek.

In addition, working with Valley Water fulfills the two agencies' commitment as stated in the CAP, to collaboratively develop open spaces that improve the quality of life of the residents and protect Santa Clara County from flood and storm water. Furthermore, there is no added cost for the City to include the flood protection component since Valley Water will be paying for it through the Fund Transfer Agreement. Most importantly, City can keep the entire \$5,256,000 of ATP funding if the grant deadlines can be met. If the design deadline cannot be met, City can keep the \$1,210,000 of reimbursed design fee from CTC, if City awards a construction contract before 2027, but will lose the \$4,000,000 ATP construction funding. Staff also believes the City's effort to avoid future demolition of a newly constructed trail to make way for a floodwall presents a strong case for the granting agencies to approve another extension.

Risks of Recommended Approach

Re-designing the trail to include the floodwall triggers additional deliverables that require other agencies' input and approvals with limited control by City staff. Between now and November 2021, City staff must achieve the tasks noted above, and meet additional milestones:

1. Negotiate and amend current Consultant Agreement;
2. Negotiate and execute the Fund Transfer Agreement with Valley Water;
3. Revise and execute the standard Joint Trails Project Plan and Agreement with Valley Water;
4. Conduct additional design review process by Valley Water and City;
5. Update State and Federal environmental permit applications; and
6. Receive environmental permits.

Considering uncertainties on the duration of additional work listed above, the 13-month COVID-19 extension may not be enough to complete the re-design, and currently there are no remaining extension opportunities for this grant. Although staff is hopeful that the collaborative effort may persuade the granting agencies to make an exception for another grant extension, it is not guaranteed to happen. Should the Project team encounter any challenges beyond its control and is unable to complete the design and permit by November 2021, the City may lose approximately \$4,000,000 of the ATP grant that was intended for construction and the City would lose ten points as it applies for any other projects through the ATP program. The City would also be unable to pursue ATP funding for this project moving forward.

Currently, staff is already facing negotiation challenges: The scope and fee negotiation among Valley Water, the City, and the Consultant is taking longer than expected, and the Fund Transfer Agreement is still in a draft form. Extended negotiations of these agreements could potentially delay the Project schedule. Beyond coordination with Valley Water, the ability to proceed with the project is dependent upon securing permits from regulatory agencies. Staff has submitted all environmental permit applications for the original trail design but faced unanticipated challenges from some of the regulatory agencies. One of the most challenging agencies, for example, is the Regional Water Quality Control Board. Their staff voiced concerns that the current mitigation plan is insufficient and requested the City to expand its mitigation measures. If the City cannot identify land for additional mitigation, the Project may be further delayed.

The table below shows the cost implication of the best case scenario of this recommended approach.

	ATP Grant	Valley Water Contribution*	City Local Match	Total Cost
If November design deadline is met	\$5,256,000	\$3,600,000	\$2,344,000	\$11,200,000

*This is an estimate. The Fund Transfer Agreement is not yet executed.

Backup Plans Should the Project Fail to Reach Benchmark Dates

To minimize the risk of missing the November 2021 design and permit deadline, staff set up benchmark dates as below. These dates are critical check points and if they are missed, the Project team shall immediately discuss and follow up with Council regarding whether to continue with the recommended approach, or switch to Alternative #1 or #2 to ensure the grant funding is retained.

- A. Benchmark 1: City and Valley Water to finalize the Fund Transfer Agreement – March 31, 2021
- B. Benchmark 2: Completion of Review by City and Water District for 65% Design for Floodwall – May 28, 2021
- C. Benchmark 3: Preliminary Approval of Environmental Permits by California Department of Fish and Wildlife, Regional Water Quality Control Board, US Army Corps of Engineers, and National Marine Fisheries Service – July 2, 2021
- D. Benchmark 4: Completion of Review by City and Water District for 95% Design for Floodwall – July 30, 2021

II. Analysis of Alternative #1 - Complete Trail Project without Floodwall

If Council chooses to proceed with Alternative #1, staff will proceed to complete the current trail design, permit, and construction without the floodwall.

Pros: This alternative would release the City from risks associated with the collaborative project with Valley Water and allows the City to deliver the project within the ATP grant deadline without losing ATP grant funds.

Cons: Valley Water will have to demolish a section of the newly installed City trail and retaining wall and close the trail during construction when they install the floodwall later. This can potentially incur an additional \$1,500,000 expense for the City, as the City is responsible for the trail reconstruction based on the Collaborative Action Plan (CAP) mentioned in the *Background*. Furthermore, this approach will cause interruptions to trail operations, disrupting pedestrian and bicyclist mobility.

Reason for not recommending: Not pursuing the collaborative opportunity will result in negative impact on the Coyote Creek Trail and Valley Water's Coyote Creek Flood Protection Project. It may create a negative perception among the community as two public agencies are unable to collaborate. This alternative is only recommended if staff is unable to complete critical milestones by the benchmark dates discussed above.

The table below shows the cost implication of this alternative. If costs have already incurred on the floodwall and a Fund Transfer Agreement is already executed, but the collaboration project cannot move forward due to the risk of missing deadlines, Valley Water will still be able to compensate the City for the cost incurred. The exact Valley Water contribution cannot be determined at this time.

	ATP Grant	Valley Water Contribution	City Local Match	Total Cost
If November design deadline is met	\$5,256,000	\$0	\$3,964,000 (\$2,464,000 for trail + \$1,500,000 for future demolition and reconstruction of trail)	\$9,220,000
If November design deadline is missed*	\$1,210,000	\$0	\$8,010,000	\$9,220,000

* The likelihood of this scenario is very low. Staff will report to Council immediately if the trail design cannot meet the November 2021 deadline due to further unforeseen circumstances.

III. Analysis of Alternative #2 - Complete the Trail Design without Floodwall, Hold Trail Construction until Valley Water Flood Project is Complete.

If Council chooses to proceed with Alternative #2, staff would complete the design of the trail without the floodwall, coordinate with the granting agency to terminate access to the ATP Grant construction funding, and resume trail construction once Valley Water completes its floodwall project.

Pros: This alternative will allow the City to complete the phase that is under City control and return grant funding for construction so that a portion of trail will not have to be demolished for the Valley Water floodwall.

Cons: This alternative would result in a trail design without the floodwall and may incur additional cost to the City to redesign the trail. This approach will prevent the City from seeking ATP Funds for this specific trail project in the future, and require the City to award a construction contract before 2027, or repay \$1,210,000 in previously expended design funds that

were reimbursed via the ATP Program. In addition, the City would lose ten points as it applies for any other projects through the ATP program. There are few options for seeking large scale grants needed to advance construction, and the cost may be a burden on the City's future Capital Improvement Program, with potential impacts to Construction & Conveyance Tax Funds and Subdivision Park Trust Fund budgets. In addition, giving up the ATP Grant construction funding does not relieve the City from following rules associated with Federal funding, this will increase project delivery cost without any benefit from the federal funds.

Reason for not recommending: While this option does not result in an immediate cost-change, it creates an obligation for San José to initiate construction of the trail by 2027. Without grant resources, the City would need to expend \$4,700,000 on the construction contract. This alternative would be the last resort, if the trail project without floodwalls cannot be completed before the November 2021 deadline, and if no grant extension can be awarded. The chance of this scenario is very low.

The table below shows the cost implication of this alternative.

	ATP Grant	Valley Water Contribution	City Local Match	Total Cost
If trail construction begins before 2027	\$1,210,000	\$0	\$6,790,000	\$8,000,000
If trail construction begins after 2027	\$0	\$0	\$8,000,000	\$8,000,000

Project Labor Agreement Applicability

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

Local and Small Business Outreach

Local and small business outreach does not apply for the recommended Council actions.

CONCLUSION

This Project became more complex after the flood of February 2017 when Valley Water requested City to collaborate on the flood control project along Coyote Creek. The City should collaborate with Valley Water so that the project outcome meets objectives of both agencies in a cost-effective manner, and to prevent the removal of near-term City improvements.

City advanced the trail design per the 2011 Master Plan. Acknowledging the work by Valley Water since the 2017 flood, it is timely to alter the design to support a collaborative project. Doing so will eliminate the need to spend \$1,500,000 to demolish and restore a newly built trail to make way for a floodwall, which leads to reduced construction activities, benefiting the riparian habitat, and reduced impacts to trail access and use.

The COVID-19 grant extension of 13 months opened a window of opportunity for the City to commit to adding the floodwall at the 95% design stage, and Staff recommends this route with risks and costs discussed above.

EVALUATION AND FOLLOW-UP

Final budget recommendations to support construction are expected to be brought to Council no later than early 2022. If the Project needs to change course and switch to Alternative #1 or 2, staff will follow up with a memorandum to the Council.

Staff will report on progress of the Project in the Annual Trail Program Report (issued online 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).

CLIMATE SMART SAN JOSE

The recommendation in this memo aligns with one or more Climate Smart San José energy, water or mobility goals.

POLICY ALTERNATIVES

See *Analysis* Section – for discussion of the relationship between the Alternatives and the Recommended Action. Staff moved the Policy Alternatives to the *Analysis* Section due to the level of detail and consequences of each decision. The table in Attachment A summarizes the recommended action, the alternatives, benefits, risks and cost.

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 5, 2021, City Council agenda.

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.

COORDINATION

This memorandum has 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 budget recommendation to allocate \$1,500,000 from the Project reserve will provide enough funding to complete the design and bid phase and encumber the entire Consultant fee for construction management support. Staff is not seeking to allocate construction funding at this time. See below for breakdown of the allocation:

Consultant Fee for Floodwall Design and Permits	\$400,000
Consultant Fee for Mitigation Plan	\$175,000
Consultant Fee for Bid/Construction Administration	\$769,380
City Staff Fee for Project Management through Bid Phase	\$155,620
Total Recommended Budget Allocation	\$1,500,000

Currently, the total project budget is \$6,769,000. During the design and permit process, it became apparent that the original budget is not sufficient to complete the trail project. There is about \$800,000 of funding shortfall due to unanticipated field conditions and additional off-site mitigation requirements. With the floodwall addition, total project cost is approximately \$11,200,000. It is estimated that Valley Water will reimburse the City approximately \$3,600,000. The final budget recommendations to complete construction and grant fronting are expected to be presented to Council no later than early 2022.

The total prior expenditure is \$1,493,928, of which \$1,210,000 of the expenditure was reimbursed by the ATP grant, and \$4,046,000 is pending disbursement by the granting agency upon design completion. The City must submit the design package by November 2021, receive construction allocation from the granting agencies by March 2022, and begin construction before September 2022 and complete construction by September 2025. Staff anticipates awarding a construction contract before June 2022. Additional expenditures related to the flood control component will not be reimbursed by the ATP grant, but will be reimbursed by Valley Water.

1. **SOURCE OF FUNDING:** 375 – Subdivision Park Trust Fund. There is \$5,049,000 in the Project Reserve in Subdivision Park Trust Fund to front the portion of the project costs.

Below is a table showing the funding sources of the recommended approach:

	ATP Grant	Valley Water Contribution*	City Local Match	Total Cost
If November design deadline is met	\$5,256,000	\$3,600,000	\$2,344,000	\$11,200,000

*This is an estimate. The Fund Transfer Agreement is not yet executed.

2. **OPERATING COSTS:** 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 2022, or beyond. This project will be included in future forecasts.

BUDGET REFERENCE

The table below identifies the fund and appropriations actions recommended to fund the design and bid phase.

Fund #	Appn #	Appn. Name	Total Appn	Requested Budget Action	Amt. Needed For Contract Amendment	2020-2021 Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
375	8479	TRAIL: Coyote Creek (Mabury Rd to Empire St) Reserve	\$5,049,000	(\$1,500,000)	N/A	V-446	06/23/2020, 30437
375	4110	TRAIL: Coyote Creek (Mabury Rd to Empire St)	\$295,000	\$1,500,000	\$1,344,380	V-426	10/20/2020 30494

HONORABLE MAYOR AND CITY COUNCIL

December 18, 2020

Subject: 8087 – TRAIL: Coyote Creek (Mabury Road to Empire Street) Project

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CEQA

Not a Project, File No. PP17-002, Consultant services for design, study, inspection, or other professional services with no commitment to future action.

/s/

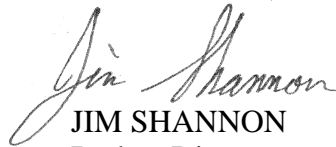
MATT CANO

Director of Public Works

/s/

JON CICIRELLI

Director of Parks, Recreation and
Neighborhood Services

A handwritten signature in cursive script, reading "Jim Shannon".

JIM SHANNON

Budget Director

For questions, please contact Michael O'Connell, Deputy Director, Public Works Department at michael.oconnell@sanjoseca.gov.

Attachment A: Benefit/Risk Matrix of Recommended Actions and Alternatives

Attachment B: Trail and Floodwall Location Map

Attachment C: Letter of Intent from Valley Water

Attachment A: Benefit/Risk Matrix of Recommended Actions and Alternatives

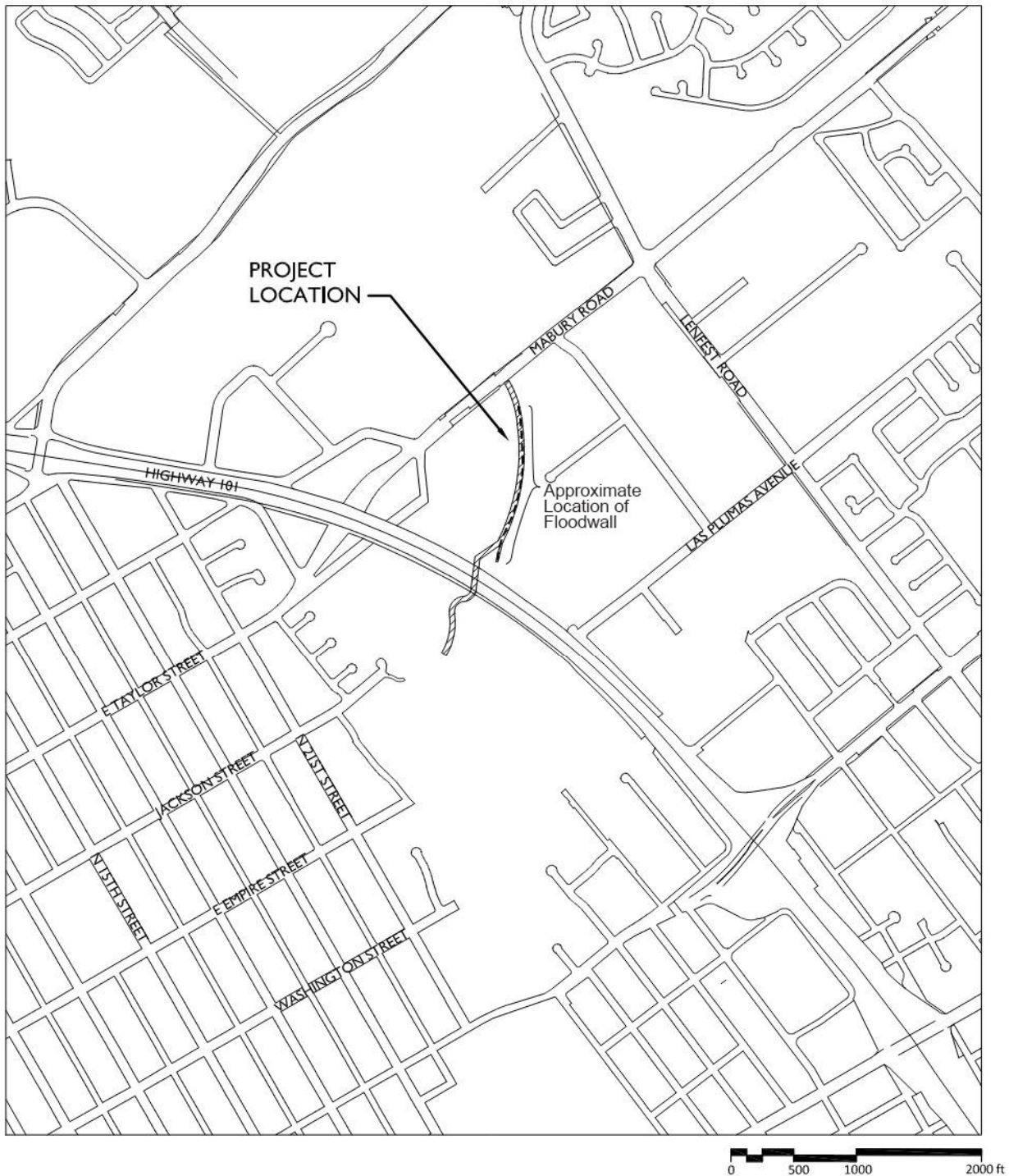
Alternatives	Benefit	Risk	Cost
<p><u>Staff Recommendation:</u> <u>Collaborative Development of Trail and Floodwall:</u></p> <p>Incorporate approximately 700' of floodwall within the trail Project. See Attachment C</p>	<ul style="list-style-type: none"> • Efficient use of public funding, eliminating potential \$1,500,000 cost to the City to demolish and rebuild a portion of the new trail. • Environmental benefit • Build trust between Valley Water and City by honoring the CAP. • Fulfill both agencies' goals. • Valley Water pays for flood protection component. • City can keep the entire \$5,256,000 of ATP funding if the deadlines can be met. • If the design deadline cannot be met, City can keep the \$1,210,000 of reimbursed design fee, as long as a construction contract is awarded before 2027. • The collaborative effort presents a strong case for the granting agencies to approve another extension. 	<ul style="list-style-type: none"> • City assumes an additional collaborative design effort and timeline. • City may not be able to complete design by the grant deadline of Nov 2021 since staff do not have full control of the critical path items involved in the collaborative design effort. • City may lose \$4 million grant for construction if granting agencies do not approve another extension. • Prolonged negotiations between VW and City may risk the opportunity to advance in a timely process. • Environmental permits may not be obtained in time. • The City would lose ten points as it applies for any other projects through the ATP program. • The City would be unable to pursue ATP funding for this project moving forward. 	<ul style="list-style-type: none"> • Appropriate \$1,500,000 from reserve for City to proceed with further design work. • Fund Transfer Agreement with Valley Water would seek full reimbursement for cost impact of flood protection element, estimated at \$3,600,000.
<p><u>Alternative #1: Complete Trail Project without Floodwall</u></p> <p>Complete City's current design package and award construction contract without collaborating with VW.</p>	<ul style="list-style-type: none"> • City does not need to assume the additional collaborative design effort and deadlines. • City will use all grant funding in a timely manner. • This alternative could potentially be a backup plan if benchmark milestones cannot be met. 	<ul style="list-style-type: none"> • Trail may need to be closed and/or demolished due to floodwall construction. • Under the CAP, City is potentially liable for reconstruction. • Damage the relationship with Valley Water • Project maybe perceived by the community as an inefficient use of public funds. 	<ul style="list-style-type: none"> • No change to City's grant administration process. • Future trail re-construction could cost \$1,500,000 at the City's expense.
<p><u>Alternative #2: Complete the Trail design without Floodwall, Hold Trail Construction until Valley Water Flood Project is Complete.</u></p> <p>Develop plans to 100% without floodwall, and return ATP Awarded Construction Funding. Resume the trail project after construction of floodwall</p>	<ul style="list-style-type: none"> • City can complete a phase of the project currently under its control. • Prevents the demolition of the City's new trail. 	<ul style="list-style-type: none"> • Completed design drawings would not reflect future floodwall and potentially would need to be revised at additional costs. • The City would lose ten points as it applies for any other projects through the ATP program. • The City would be unable to pursue ATP funding for this project moving forward. • Loss of ATP construction funds. • Must follow federal grant rules even without the grant funds. 	<ul style="list-style-type: none"> • No immediate cost-change. • City must award construction contract (\$4,700,000) by 2027 without grant resources. • Repay \$1,210,000 design reimbursement if construction does not start by 2027.

HONORABLE MAYOR AND CITY COUNCIL

December 14, 2020

Subject: 8087 – TRAIL: Coyote Creek (Mabury Road to Empire Street) Project

Attachment B: Trail and Floodwall Location Map



COYOTE CREEK TRAIL (MABURY RD TO EMPIRE ST) LOCATION MAP





Clean Water • Healthy Environment • Flood Protection

December 14, 2020

David Sykes
City Manager
City of San José
200 East Santa Clara St.
San José, CA 95113

Subject: Valley Water's Letter of Intent to Commit to Reimburse the City of San José for Additional Efforts by the City's Consultant to Incorporate a Floodwall into the City's Coyote Creek Trail (Mabury Road to Empire Street) Project

Dear Mr. Sykes:

The Santa Clara Valley Water District (Valley Water) is interested in contributing funds for the Coyote Creek Trail (Mabury Road to Empire Street) Project. The purpose of this letter is to show Valley Water's intent to commit to reimburse the City of San José (City) for any additional design and construction phase costs incurred by incorporating a floodwall into the Project. The specific details and breakdown of the reimbursements to the City, for incorporating and constructing the floodwall, will be developed and detailed in future cost-share agreements between Valley Water and the City.

The City of San José is currently proceeding with the Coyote Creek Trail Project with a retaining wall located along the Mabury Service Yard on the east bank of Coyote Creek, just downstream of Highway 101. Valley Water is looking to design and construct a floodwall along the same alignment as the proposed retaining wall, but a few hundred feet longer, as part of Valley Water's Coyote Creek Flood Protection Project (CCFPP). Since the Coyote Creek Trail Project is slated to be completed in 2022-23, and the CCFPP will not be constructed until 2025, it is prudent and responsible for both public agencies to work together to minimize any impacts to each other's newly constructed projects, the public use of the trail, and to show the responsible use of tax-payer funds.

Valley Water is willing to compensate the City for any fees associated with revising the design of the existing retaining wall along the Mabury Service Yard to a floodwall and extending the floodwall limits beyond the end of the proposed retaining wall. Additionally, Valley Water is willing to compensate the City for any fees associated with regulatory agency coordination and permit revisions stemming from this design revision. Lastly, Valley Water is willing to compensate the City for any associated Construction Management and Construction costs associated with implementing the floodwall, above the original retaining wall cost.

Valley Water is committed to implementing the Coyote Creek Flood Protection Project and looks forward to working collaboratively with the City of San José to complete this project as well as the Coyote Creek Trail Project.

If you have questions or require additional information on this project, please contact Alec Nicholas at (408) 630-2825 or via email at anicholas@valleywater.org.

Sincerely,
DocuSigned by:

A handwritten signature in black ink that reads "Rick Callender".

Rick L. Callender, Esq.
Chief Executive Officer

