



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Julie Edmonds-Mares
Joseph Horwedel

SUBJECT: SEE BELOW

DATE: November 21, 2011

Approved

Date

11/29/11

COUNCIL DISTRICT: 4 & 5

**SUBJECT: COOPERATIVE AGREEMENT WITH SANTA CLARA VALLEY
TRANSPORTATION AUTHORITY FOR RIPARIAN IMPROVEMENTS IN
UPPER PENITENCIA CREEK IN ALUM ROCK PARK**

RECOMMENDATION

It is recommended that City Council:

- (a) Adopt a resolution adopting the Mitigated Negative Declaration (MND) prepared for the Alum Rock Park Bank Repair and Stream Restoration Project (File No. PP08-203), as having been completed in compliance with CEQA reflecting the City's independent judgment and analysis, and the adoption of a mitigation monitoring and reporting program.
- (b) Approve a Cooperative Agreement with Santa Clara Valley Transportation Authority for construction of riparian improvements and repair of the Youth Science Institute Bridge in the Upper Penitencia Creek in Alum Rock Park.

OUTCOME

Approval of the resolution adopting the Mitigated Negative Declaration will allow the projects to move forward for Federal and State permitting. Approval of the Agreement between the City and Santa Clara Valley Transportation Authority (VTA) will enable the VTA to construct four stream bank improvements and one historic bridge repair in Alum Rock Park. VTA will fund the design and construction of the four stream bank improvements with an approximate cost of \$2,500,000 and City will fund construction of the historic bridge repair with an approximate cost of \$407,550. No appropriation action is necessary as a result of this memorandum as funding for the Youth Science Institute ("YSI") Bridge repair is currently available in the Alum Rock Park Bridge Riparian Improvements project allocation in the Parks City-Wide Construction and Conveyance Tax Fund (Fund 391).

BACKGROUND

On June 26, 2007, Council approved an Agreement between the City and Winzler & Kelly to address the most immediate stream and stream bank repair projects needed to address the 2001 Alum Rock Park Riparian Management Plan ("Alum Rock Park RMP") as required by the California State Department of Fish and Game and the U.S. Army Corps of Engineers. The scope of work included preparation of 100 percent construction documents for two bridge repair projects and 65 percent construction documents for nine stream restoration projects. The 65 percent construction documentation for a tenth stream restoration project, removal of a fish barrier, was funded by the Center for Ecosystem Management and Restoration (CEMAR). Winzler and Kelly prepared an Initial Study/Mitigated Negative Declaration and the necessary Federal and State permits for the two bridge repair projects and all ten stream restoration projects.

Staff's goal has been to secure environmental clearance and the necessary permits to make the projects eligible and attractive for habitat restoration, historic preservation, and water conservation grants to fund construction. This proposed agreement with VTA will fund completion of construction documents from 65 percent to 100 percent for four of the ten stream restoration projects, and construction of those four projects with an estimated value of \$2,500,000 at VTA's sole expense. In addition, this proposed agreement will authorize VTA to repair the YSI Bridge on behalf of the City at the City's sole expense in an amount not to exceed Four Hundred Seven Thousand Five Hundred Fifty dollars (\$407,550).

ANALYSIS

In 2010, the VTA approached staff about funding four of the stream restoration projects at VTA's sole cost in exchange for mitigation credits. VTA will be constructing improvements as part of the Mission/Warren/Truck-Rail ("MWT") Program located in the City of Fremont that cannot be completely mitigated within the limits of or adjacent to the MWT program site. The California Regional Water Quality Control Board ("RWQCB") has authorized VTA to implement four of the Upper Penitencia Creek restoration projects identified by the City in the Alum Rock Park RMP to mitigate the impacts from the MWT Program. These four projects identified in EXHIBIT A are Projects 3, 5, 10 and 13 ("VTA Mitigation Projects"). VTA has agreed to be solely responsible for all costs and liability for the completion of design from 65 percent to 100 percent, plus construction, administration and management of the VTA Mitigation Projects. In addition, VTA shall be solely responsible for the subsequent mitigation monitoring pursuant to the proposed Mitigation Monitoring and Reporting Program (MMRP) submitted to City Council for approval as part of this memorandum. The specific VTA Mitigation Project descriptions are as follows:

- i. Remove an existing fish passage barrier created by a concrete weir by constructing a stable roughened channel downstream from the Youth Science Institute Bridge ("Project 13"); and

November 21, 2011

Subject: Cooperative Agreement with Santa Clara Valley Transportation Authority

Page 3

- ii. Repair rill erosion with a new grouted rock wall and an asphalt berm at the pavement edge to route parking lot runoff away from the area downstream from the Youth Science Institute Bridge ("Project 5"); and
- iii. Repair rock wall immediately downstream from Bridge "L" ("Project 3"); and
- iiii. Expand floodplain immediately downstream from Bridge "L" ("Project 10").

Two of the projects being funded by VTA are adjacent to the YSI Bridge and will require stream diversion around the YSI Bridge. This creates an ideal opportunity for the City to perform the YSI Bridge repairs because much of the mitigation and mobilization costs for work in the YSI Bridge Site are also required for VTA's projects. The YSI Bridge Site project is located at the southern upstream bank of the bridge and consists of repair of erosion and failure of the upper bank. This project work begins above the ordinary high water mark and consists of a curved retaining wall with a return into bank to prevent future scour. The wall will be approximately 17 feet in length and will protect the root mass of an existing cedar and of the bank. Because this is a historic bridge, the retaining wall will be faced with stone masonry veneer to match the existing bridge construction.

This project is fully funded for construction through the Alum Rock Park Bridge Riparian Improvements appropriation in the Parks City-Wide Construction and Conveyance Tax Fund (Fund 391) because it is a high priority repair project. The bridge is a significant historic resource and pedestrian access path that has suffered substantial damage from erosion. If the YSI Bridge project is done in conjunction with the VTA Mitigation Projects, the City's cost for the YSI Bridge Site will be reduced. In addition, it is very likely that the permitting agencies will require that stream diversions be minimized by combining adjacent projects. As a result, VTA has agreed to bid and repair the YSI Bridge as part of the VTA Mitigation Projects at the City's sole expense.

Staff believes that including the repairs to YSI Bridge in the proposed Agreement with VTA is the most cost-effective method to complete the repairs. VTA is required to include the YSI Bridge repairs as an "Optional Bid" item as part of its public competitive bid for the Mitigation Projects and provide construction administration and management services required to complete the YSI Bridge abutment repair. The estimated City contribution for construction and management of the YSI Bridge is not to exceed \$407,550.

VTA and City staff have negotiated a cooperative agreement for Council review and approval. The proposed Agreement authorizes VTA to complete the design, and then bid and construct the Mitigation Projects at VTA's sole cost and expense. If the bid comes in higher than \$2,500,000, VTA may terminate the proposed Agreement. VTA may also terminate the proposed Agreement at any time prior to the commencement of construction. Once construction commences, VTA must complete the Mitigation Projects. VTA will also be responsible for any hazardous materials that are discovered during the construction of the Mitigation Projects. VTA will also need to comply with the CEQA mitigations discussed below.

As for the City, the City is responsible for all environmental clearance for the projects. The City will also be responsible for the design and funding the construction of the repairs to the YSI Bridge and all CEQA mitigations for the YSI Bridge. If the bid for the YSI Bridge comes in higher than \$407,550, the City may elect to not move forward with the repairs, revise the scope of work to fit within the available budget, or increase funding for the repairs, subject to appropriation by Council. Any hazardous materials discovered during the repairs of the YSI Bridge will be the sole responsibility of City.

CEQA REVIEW

The Director of Planning, Building and Code Enforcement (PBCE) recommends that the Council adopt a resolution adopting the Mitigated Negative Declaration (MND) prepared for the Alum Rock Park Bank Repair and Stream Restoration Project (File No. PP08-203) as having been completed in compliance with CEQA reflecting the City's independent judgment and analysis, and the adoption of a mitigation monitoring and reporting program.

On October 25, 2011, the Director of PBCE circulated an Initial Study/Draft Mitigated Negative Declaration for a 30-day public review through the State Clearinghouse in conformance with the requirements of the California Environmental Quality Act (CEQA). The project is for stream and bank restoration activities on Upper Penitencia Creek within Alum Rock Park. Proposed activities include two bridge abutment repairs and 10 bank repair, floodplain restoration, and fish passage improvement projects. Several of the specific project elements are intended to restore riparian and aquatic habitat, reduce erosion and sedimentation in the creek, and repair damage to historic structures.

The Initial Study and MND for the streambank repairs was prepared and processed in compliance with the requirements of CEQA (see: <http://www.sanjoseca.gov/planning/eir/MND.asp>). The Director of Planning, pursuant to the requirements of Title 21 of the San José Municipal Code, reported that there is no substantial evidence in the public record received to date that the project will have a significant effect on the environment with the identified mitigation measures included in the project. The MND has been prepared and processed in a manner that reflects the City's independent judgment and analysis as Lead Agency.

The City has identified potential significant impacts as a result of the project to Aesthetics, Biological Resources, Cultural Resources, Geology and Soils, and Hazards and Hazardous Materials. All of the significant impacts identified can be reduced to a less than significant level with mitigation. The mitigation measures are identified in the Initial Study, the Mitigated Negative Declaration, and the Mitigation Monitoring and Reporting Program for the project.

As part of the Council's consideration of the MND, the Mitigation Monitoring and Reporting Program is also attached to the resolution. If Council adopts the MND, the Council will also be adopting the Mitigation Monitoring and Reporting Program to ensure the mitigation measures relating to the project are implemented.

EVALUATION AND FOLLOW-UP

Staff will seek Council authorization at a later date to apply for further construction grants for the remaining projects.

POLICY ALTERNATIVES

Alternative #1: Reject the Agreement with VTA to fund construction of the stream projects at VTA's sole cost and to manage construction of the YSI Bridge repair at the City's cost.

Pros: There are no clear benefits to this alternative unless the YSI Bridge project is completely cancelled and the \$490,000 existing appropriation is returned to Ending Fund Balance.

Cons: The YSI Bridge is of significant historical value to the park and is one of the main pedestrian bridges. Rejection of this portion of the agreement with VTA would delay award of the YSI Bridge construction contract and substantially increase the future project costs.

Reason for not recommending: If approval of the YSI Bridge construction portion of this agreement with VTA is not approved, the permitting agencies may not allow the repair to proceed for several years in order to minimize the damage to wildlife resulting from stream diversions. At that time, the City would bear the full cost of mobilization and remediation and possibly redesign of the construction plans due to increased erosion. Bridge failure would be the loss of an irreplaceable San José historic landmark and delay of the YSI Bridge repair would increase maintenance costs and potentially damage the riparian habitat requiring mandated emergency action.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This action does not meet any of the above criteria; however, this memorandum will be posted on the City's website for the December 13, 2011 City Council agenda.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

FISCAL/POLICY ALIGNMENT

This project is consistent with the Council-approved Budget Strategy Economic Recovery section in that the projects will spur construction spending in our local economy.

COST SUMMARY/IMPLICATIONS

1. AMOUNT OF RECOMMENDATION/COST OF PROJECT: \$407,550

YSI Bridge Construction Cost Estimate	\$407,550
Construction Design Support (Winzler & Kelly Agreement)*	46,900
DPW Inspection Fees	<u>35,550</u>
TOTAL PROJECT COSTS	\$490,000

* The construction design support agreement totaling \$46,900 has been submitted to City Council for approval under a separate memorandum, also agendized on December 13, 2011.

BUDGET REFERENCE

The table below identifies the existing fund and appropriation to fund the contract recommended as part of this memo.

Fund #	Appn #	Appn. Name	Total Appn	Amount for Contract	Adopted Budget Page	Last Budget Action (Date, Ord. No.)
Available Project Funding						
391	7322	Alum Rock Park Bridge Riparian Improvements	\$490,000	\$407,550	V-443	6/21/11, Ord. No. 28928
		TOTAL	\$490,000	\$407,550		

HONORABLE MAYOR AND CITY COUNCIL

November 21, 2011

Subject: Cooperative Agreement with Santa Clara Valley Transportation Authority

Page 7

CEQA

CEQA: Mitigated Negative Declaration/IS, File No. PP 08-203.

/s/
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Acting Director of Parks, Recreation and
Neighborhood Services

/s/
JOSEPH HORWEDEL
Director of Planning, Building and
Code Enforcement

For questions please contact Matt Cano, Deputy Director, at 408-535-3580.