



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Matt Loesch  
Jim Shannon

**SUBJECT:** SEE BELOW

**DATE:** May 23, 2024

Approved

Date

5/23/24

**COUNCIL DISTRICT:** 4, 5, 6, 8, 10

**SUBJECT: ACTIONS RELATED TO THE 9703 - LARGE TRASH CAPTURE DEVICE  
INSTALLATION PROJECT PHASE VII**

## **RECOMMENDATION**

- (a) Approve a \$1,568,571 increase to the construction contingency amount of \$1,123,200 for a revised total contingency amount of \$2,691,771 for the 9703 – Large Trash Capture Device Installation Project Phase VII.
- (b) Adopt the following 2023-2024 Appropriation Ordinance Amendments in the Storm Sewer Capital Fund:
  - (1) Decrease the Unrestricted Ending Funding Balance by \$500,000; and
  - (2) Increase Large Trash Capture Devices appropriation to the Public Works Department by \$500,000.

## **SUMMARY AND OUTCOME**

Approval of the increase in construction contingency will provide the funding necessary to compensate for additional work and delays encountered in the last eight months of construction of the 9703-Large Trash Capture Device Installation Project Phase VII (Project) due to weather conditions and additional permits required from the California State Water Resources Control Board. The increase in contingency will also provide funding needed to allow the contractor to proceed with the additional work required to complete the Project.

## **BACKGROUND**

On October 25, 2022<sup>1</sup>, City Council awarded a contract for the construction of the 9703 – Large Trash Capture Device Installation Project Phase VII to KJ Woods Construction, Inc. in the amount of \$7,488,000 with a 15% contingency in the amount of \$1,123,200. The Project will have installed four Large Trash Capture Devices at three locations by summer and will install four more Large Trash Capture Devices at three remaining locations.

On June 16, 2022, the City entered into a Stormwater Mitigation Cooperative Agreement with Caltrans (**Attachment** - Stormwater Mitigation Cooperative Agreement), that authorized reimbursements to the City for actual project cost up to a maximum amount of \$12.5 million. To date, Caltrans has reimbursed the City \$4.7 million, with \$7.8 million budgeted to be received in 2024-2025.

The City issued a Notice to Proceed to KJ Woods Construction, Inc. on March 6, 2023. Construction was completed at two of the six locations, Alexian Drive and East San Antonio Street, in June 2023. Construction will be completed at Quimby Road within the next two months. The remaining three locations experienced excessive groundwater that caused construction to be temporarily halted until a solution could be agreed to by City staff and the contractor. It was determined that additional construction dewatering was necessary in order to continue construction at these locations.

The Project locations remaining to be completed are: 1) Hartog Drive near the intersection of Charcot Avenue (Council District 4); 2) Blossom Hill Road between Indian Avenue and Blossom Avenue (Council District 10); and 3) Airport Boulevard near Guadalupe River (Council District 6).

## **ANALYSIS**

The high groundwater level was greater than initially indicated in the pre-project geotechnical reports. The large amounts of groundwater encountered during construction overwhelmed the sanitary sewer system such that the Project had to stop construction. Staff determined it would be best to utilize the storm sewer system due to the volume of water. A permit must be obtained from the California State Water Resources Control Board to allow groundwater to be discharged into the existing storm sewer system.

The California State Water Resources Control Board permit requires an additional filtration system to clean the groundwater before it is discharged into the storm system and eventually to the nearby waterways. This work is outside the original scope of the contract, and the estimated costs to complete it will exceed the remaining contingency amount.

---

<sup>1</sup> <https://sanjose.legistar.com/View.ashx?M=F&ID=11337006&GUID=9116BEFD-626C-4F42-9B90-87227B388C26>

The increased contingency will be utilized to complete the following work scopes necessary for the Project:

- Installation of dewatering and filtration devices at Hartog Drive, Blossom Hill Road, and Airport Boulevard to temporarily reduce groundwater levels and discharge to the storm system in compliance with California State Water Resources Control Board permit requirements.
- Construction of temporary dewatering wells to drawdown groundwater below the installation depth of the Large Trash Capture Device at Hartog Drive and Blossom Hill Road.
- Structural outlet changes for the Quimby Large Trash Capture Device to avoid utility conflicts that were not identified during the design process.
- Other unanticipated work necessary to complete the Project that is required by the San Francisco Bay Regional Water Quality Control Board National Pollutant Discharge Elimination System Permit.

Additionally, funding has been included to cover time-related overhead expenses incurred by the contractor for delays in the Project schedule.

Construction is scheduled to reach substantial completion in October 2024. To ensure sufficient funding available to complete the Project, staff recommends increasing the approved contingency of \$1,123,200, by \$1,568,571, for a new total contingency of \$2,691,771. This will increase the contingency from 15% to 36% of the contract amount.

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

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

### **COST SUMMARY/IMPLICATIONS**

Of the current year project appropriation of \$3.1 million within the Storm Sewer Capital Fund, \$1.4 million has already been spent or encumbered. This leaves \$1.7 million in remaining capacity within the project appropriation. With \$2.2 million in expected expenditures remaining in the Project, including an increase to the contingency of \$1.6 million, a budget adjustment of \$500,000 is required in order to ensure that the Project has the needed capacity to support all expected expenditures.

**BUDGET REFERENCE**

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

Fund #	Appn #	Appn Name	Total Appn	Amt. for Recommendation	2023-2024 Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
469	7676	Large Trash Capture Devices	\$3,100,000	\$500,000	234	10/17/2023, 30966
469	8999	Ending Fund Balance	\$9,467,778	(\$500,000)	233	10/17/2023, 30966

**COORDINATION**

This project and memorandum were coordinated with the City Attorney's Office, and the Airport, Environmental Services, Planning, Building, and Code Enforcement, and Transportation departments.

**PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the June 4, 2024 City Council meeting. Due to the roadway closures during construction, City staff will provide more outreach to the neighboring communities, which will be impacted by accessibility and detour plans.

**COMMISSION RECOMMENDATION AND INPUT**

No commission recommendation or input is associated with this action.

**CEQA**

Public Project for the Citywide Large Trash Capture Device Installation for the installation of new prefabricated manhole Hydro Dynamic Separators or Full Trash Capture devices at various sites throughout the City within the public right-of-way or on City property as part of the trash load reductions requirements set forth in C.10 of the San Francisco Bay Region Municipal Regional Stormwater Permit.

HONORABLE MAYOR AND CITY COUNCIL

May 23, 2024

**Subject: Actions Related to the 9703 - Large Trash Capture Device Installation Project Phase VII**

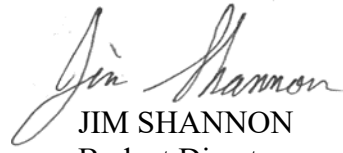
Page 5

Categorically Exempt, File No. ER21-299, CEQA Guidelines Section 15301, Existing Facilities, adopted on March 17, 2022.

**PUBLIC SUBSIDY REPORTING**

The 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  
Director of Public Works

  
JIM SHANNON  
Budget Director

For questions, please contact Mathew Nguyen, Deputy Director, Public Works Department at (408) 535-8300.

ATTACHMENT: Stormwater Mitigation Cooperative Agreement

## STORMWATER MITIGATION COOPERATIVE AGREEMENT

This AGREEMENT, effective on Jun 16, 2022, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

The City of San José, a municipal corporation or chartered city of the State of California, referred to hereinafter as CITY.

CALTRANS and CITY are individually referred to as PARTY and collectively referred to as PARTIES.

### RECITALS

1. CALTRANS and CITY, individually referred to as PARTY and collectively referred to as PARTIES, pursuant to California Streets and Highways Code Sections 114 and 130 are authorized to enter into a Cooperative Agreement for Stormwater Mitigation hereinafter referred to as AGREEMENT.
2. The Federal Clean Water Act (CWA) requires the State of California to establish a priority ranking for impaired waters, referred to as the 303(d) list. The United States Environmental Protection Agency (USEPA) has oversight authority for the 303(d) program. The USEPA approves the State's 303(d) list.
3. CALTRANS is required to reduce trash within its Right-Of-Way (R/W) in San Francisco Bay Region. This requirement is outlined in the Caltrans Statewide National Pollution Discharge Elimination System (NPDES) Permit from the State Water Resources Control Board (SWRCB) Order No 2012-011-DWQ Attachment V (San Francisco Bay Region requirements on trash reduction), which is further reinforced by the issuance of a Cease-and-Desist Order (CDO) (Order No R2-2019-0007) by the San Francisco Bay Regional Water Quality Control Board (SFB-RWQCB) in February 2019. The CDO requires Caltrans to address trash discharge from 8,800 acres of significant trash generation area (STGA) within Caltrans R/W. The Full Trash Capture (FTC) device will remove all debris larger than five (5) mm from the stormwater run-off resulting from a 1-year, 1-hour storm event in the tributary drainage area (TDA) for both the City and Caltrans R/W. For each one (1) acre of treated Caltrans R/W TDA, the project will accomplish one (1) compliance unit (CU) for trash reduction (stormwater mitigation).
4. CITY intends to install SWRCB approved FTC devices connected to the storm drain systems of the City of San Jose, hereinafter referred to as IMPROVEMENTS.
5. The location of IMPROVEMENTS is within the city limits of San Jose, hereinafter referred to as PROJECT.

6. PROJECT will receive runoff flows from a tributary area of 125 acres minimum from CALTRANS roadways and impervious surfaces within Caltrans' significant trash generation area ("STGA").
7. CALTRANS will contribute an amount, not to exceed, \$12,500,000 to CITY for the design and construction of PROJECT to satisfy its NPDES requirements, in part.
8. CALTRANS will receive a total of 125 CUs as a result of PROJECT
9. CALTRANS will receive 100% credit for TDA pollutant reduction.
10. PARTIES intend to define herein the terms and conditions under which PROJECT will proceed.

## SECTION I

### CALTRANS AGREES:

1. To reimburse CITY within forty-five (45) calendar days of receipt of a signed invoice for actual PROJECT costs incurred and paid.
2. The total financial obligation provided by CALTRANS for PROJECT shall not exceed the amount of \$12,500,000.
3. To provide encroachment permits to CITY and its consultants and contractor for access to CALTRANS right of way if necessary to fulfill PROJECT requirements.
4. To provide quality assurance oversight for all portions of PROJECT that resides within CALTRANS right of way.

## SECTION II

### CITY AGREES:

1. All work performed by CITY, or performed on behalf of CITY, shall be performed in accordance with state, federal and local laws, regulations and standards.
2. To be fully responsible for completing the environmental clearance, right of way requirements, design, construction, and maintenance of IMPROVEMENTS.
3. To obtain and all necessary property rights (easements, rights of entry, fee, etc.) required to complete and maintain IMPROVEMENTS. Rights-of-entry shall also include CALTRANS and resource agency personnel to monitor PROJECT for a period of five (5) years.

4. To obtain all environmental approvals and resource agency agreements and permits, including California Environmental Quality Act (CEQA) documents and approvals and if applicable National Environmental Quality Act (NEPA) documents and approvals, California State Water Resources Control Board permit for PROJECT prior to the commencement of construction.
5. To fully comply with all the terms and conditions expressed in the environmental approvals, agreements and permits.
6. To prepare, or cause to prepare, a complete set of design plans, specifications and estimate, and any other necessary technical documents, sufficient to advertise and award a construction contract for PROJECT. All documents shall be signed and sealed by an engineer duly registered in the state of California.
7. To provide CALTRANS with the 65% complete plan set and 95% complete plan set and specifications for IMPROVEMENTS so that Caltrans can review and provide comments within fifteen (15) working days of receipt and incorporate or resolve all comments submitted by CALTRANS.
8. To provide CALTRANS with copies of the final construction plans, specifications and estimate; applicable environmental approvals, agreements and permits; right of way clearances, hereinafter referred to as Plans, Specifications, and Estimates (PS&E) PACKAGE, prior to advertising the contract for construction.
9. To prepare contract documents, advertise and award a construction contract in accordance with CITY acquisition processes.
10. To manage all aspects of PROJECT.
11. Provide annual documentation of PROJECT progress to CALTRANS for the storm water compliance files.
12. To prepare, sign and submit monthly billing statements in arrears (invoices) to CALTRANS for actual PROJECT costs incurred and paid.
13. To prepare and submit a final accounting for all PROJECT costs. Based on the final accounting, CALTRANS will refund or invoice as necessary in order to satisfy the financial commitments of this AGREEMENT.
14. To conform with the provisions of Labor Code section 1720-1815, and all applicable provisions of the California Code of Regulations found in Title 8, Chapter 8, subchapter 3, articles 1-7 where Labor Code section 1720(a)(1) definition of “public works” includes construction, alteration, demolition, installation, repair or maintenance work under Labor Code section 1771.



15. To include prevailing wage requirements in its contracts for public work. Work performed by CITY's own forces is exempt from the Labor Code's prevailing wage requirements.
16. To require the contractors to include prevailing wage requirements in all subcontracts funded by this AGREEMENT when the work to be performed falls within Labor Code sections 1729(a)(1) definition of "public works" under Labor Code section 1771. Subcontractors shall include all prevailing wage requirements set forth in CITY's contracts.
17. If work performed under this AGREEMENT is paid for in whole or in part with federal funds, and is the type of work subject to federal prevailing wage requirements, CITY must conform to the provisions of the Davis-Bacon and related acts, 40 U.S.C. 1341 et seq. 276(a) in addition to Labor Code provisions.
18. To include federal prevailing wage requirements in its contracts for public work. Work performed by CITY's own forces is exempt from federal prevailing wage requirements.
19. To retain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred, including support data for cost proposals, and to make such materials available to CALTRANS at all reasonable times for three (3) years after completion and acceptance of PROJECT. CALTRANS, the Federal Highway Administration, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CITY that pertain to this AGREEMENT for audits, examinations, excerpts, transactions, and copies thereof shall be furnished when requested.
20. To maintain, inspect and operate IMPROVEMENTS to design standards. Any deficiencies found during inspection must be repaired immediately. CITY will provide annual inspection and maintenance records to CALTRANS.

### SECTION III

#### IT IS MUTUALLY AGREED:

1. All portions of this AGREEMENT, including the Recitals Section, are enforceable.
2. If any provision of this AGREEMENT is held invalid, the other provisions shall not be affected thereby.
3. All CALTRANS' obligations under this AGREEMENT are subject to the appropriation of resources by the Legislature, the State Budget Act authority, and the allocation of funds by the California Transportation Commission (CTC).
4. All applicable laws, regulations, rules and policies relating to the use of federal or state funds shall apply notwithstanding other provisions of this AGREEMENT.

5. If CITY fails to complete the PROJECT for any reason, CITY will refund the full amount of CALTRANS' contribution.
6. CITY will retain all PROJECT related records for four (4) years after the final voucher.
7. CITY will accept operation, maintenance and ownership or title to all materials or equipment installed as part of IMPROVEMENTS.
8. CALTRANS has a total of 15 working days to perform review and return comments to CITY for each review cycle (65% plans complete and 95% plans and specifications complete).
9. CITY will defend, indemnify, and save harmless CALTRANS and all of its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, including, but not limited to, environmental, tortuous, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of CITY'S operation and maintenance of IMPROVEMENTS.
10. HM-1 is hazardous materials (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law, whether it is disturbed by PROJECT or not.
11. HM-2 is hazardous materials (including but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law only if disturbed by PROJECT.
12. The management activities related to HM-1 and HM-2, including and without limitation, any necessary manifest requirements and disposal facility designations are referred to herein as HM-1 MANAGEMENT and HM-2 MANAGEMENT respectively.
13. If HM-1 or HM-2 is found, the discovering PARTY will immediately notify the other PARTY.
14. CALTRANS, independent of the PROJECT is responsible for any HM-1 found within the existing state highway system right-of-way. CALTRANS will undertake, or cause to be undertaken, HM-1 MANAGEMENT with minimum impact to the PROJECT schedule.  
  
CALTRANS will pay the cost of HM-1 MANAGEMENT for HM-1 found within the existing state highway system right-of-way with funds that are independent of the funds obligated in this AGREEMENT.
15. CITY is responsible for HM-2 MANAGEMENT for PROJECT and shall be paid from funds obligated in this AGREEMENT.
16. CITY and CALTRANS will comply with the Soil Management Agreement for Aerially Deposited Lead Contaminated Soils (Soil Management Agreement) executed between CALTRANS and the California Department of Toxic Substances Control (DTSC). Under Section 3.2 of the Soil Management Agreement, CALTRANS and CITY each retain joint

and severable liability for noncompliance with the provisions of the Soil Management Agreement. CITY will assume all responsibilities assigned to CALTRANS in the Soil Management Agreement during the entire implementation of PROJECT except for final placement and burial of soil within the State right-of-way, per Section 4.5 of the Soil Management Agreement, which is subject to CALTRANS concurrence and reporting to DTSC which will be performed by CALTRANS.

17. CALTRANS' acquisition or acceptance of title to any property on which any HM-1 or HM-2 is found will proceed in accordance with CALTRANS' policy on such acquisition.
18. CITY is responsible for any HM-1 found within the PROJECT limits and outside the existing State Highway System right-of-way. CITY will undertake, or cause to be undertaken, HM-1 MANAGEMENT with minimum impact to the CALTRANS PROJECT schedule.

CITY will pay, or cause to be paid, the cost of HM-1 MANAGEMENT for HM-1 found within the PROJECT limits and outside of the existing State Highway System right-of-way with funds that are independent of the funds obligated in this AGREEMENT.

19. Neither CALTRANS nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CITY, its contractors, sub-contractors and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CITY or under this AGREEMENT. It is understood and agreed that CITY, to the extent permitted by law, will defend, indemnify, and save harmless CALTRANS and all of its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY, its contractors, sub-contractors and/or its agents under this AGREEMENT.
20. Neither CITY nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS or under this AGREEMENT. It is understood and agreed that CALTRANS, to the extent permitted by law, will defend, indemnify, and save harmless CITY and all of its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors and/or its agents under this AGREEMENT.
21. This AGREEMENT will terminate upon execution of a Cooperative Agreement Closure Statement by PARTIES. The Cooperative Agreement Closure Statement is a document that verifies all commitments of this AGREEMENT have been met and PROJECT is fully complete.

However, all indemnification, document, retention, audit, claims, environmental commitment, legal challenge, hazardous material, operation, maintenance and ownership articles will remain in effect until terminated or modified in writing by mutual agreement.

## **CONTACT INFORMATION**

The information provided below indicates the primary contact information for each PARTY to this AGREEMENT. PARTIES will notify each other in writing of any personnel or location changes. Contact information changes do not require an amendment to this AGREEMENT.

### **THE CITY OF SAN JOSE**

Deputy Director: Mathew Nguyen

Phone Number: (408) 535-8384

E-mail: [mathew.nguyen@sanjoseca.gov](mailto:mathew.nguyen@sanjoseca.gov)

Billing Address: 200 E. Santa Clara Street, San Jose, CA 95113

### **CALTRANS**

Project Manager: Eunmi Choi

Phone Number: (408) 210-8203

E-mail: [eunmi.choi@dot.ca.gov](mailto:eunmi.choi@dot.ca.gov)

Billing Address: 111 Grand Avenue, Oakland, CA 94612

**SIGNATURES**

PARTIES are authorized to enter into this AGREEMENT and have delegated to the undersigned the authority to execute this AGREEMENT on behalf of the respective agencies and hereby covenants to have followed all the necessary legal requirements to validly execute this AGREEMENT. By signing below, the PARTIES each expressly agree to execute this AGREEMENT electronically.

The PARTIES acknowledge that executed copies of this AGREEMENT may be exchanged by facsimile or email, and that such copies shall be deemed to be effective as originals.

**STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**

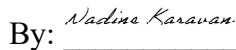
Helena (Lenka) Culik-Caro  
Deputy District Director, Design

**VERIFIED OF FUNDS & AUTHORITY:**

Jeffrey Kuehnel  
District Budget Manager

**APPROVED AS TO FORM & PROCEDURE:**

By: Cassandra Hoff (Jun 9, 2022 09:46 PDT)  
Cassandra M. Hoff  
Deputy Attorney

**CERTIFIED AS TO FINANCIAL TERMS &  
POLICIES:**

By: Nadine Karavan  
Nadine Karavan  
HQ Accounting Admin I / Supervisor

**THE CITY OF SAN JOSE**

Sarah Zarate  
Director, City Manager's Office

**APPROVED AS TO FORM:**

Kevin Fisher  
Assistant City Attorney

**FUNDING TABLE**

IMPLEMENTING AGENCY		CITY	Totals
Source	*Fund Type	CONST. CAPITAL	
STATE	SHOPP	\$12,500,000	\$12,500,000

\*FUNDING CODE 20.20.201.335