

**2.11 Actions Related to the 8087 – TRAIL: Coyote Creek (Mabury Road to Empire Street) Project-Rebid.**

**Recommendation:**

(a) Approve an increase to the construction contingency from 10% to 23% for the 8087 – TRAIL: Coyote Creek (Mabury Road to Empire Street) Project-Rebid in the amount of \$1,000,000 for a total contingency of \$1,748,363.

(b) Adopt the following Appropriation Ordinance amendments in the Construction Tax and Property

Conveyance Tax Fund: City-wide Parks Purposes:

(1) Increase the TRAIL: Coyote Creek (Mabury Road to Empire Street) appropriation to the Parks, Recreation and Neighborhood Services Department by \$1,100,000; and

(2) Decrease the Ending Fund Balance by \$1,100,000.

CEQA: Addendum to the Coyote Creek Trail Master Plan Mitigated Negative Declaration (Resolution No. 75982), File No. ER20-145. Council Districts 3 and 4. (Public Works/Parks, Recreation and Neighborhood Services/City Manager)



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Matt Loesch  
Jon Cicirelli  
Jim Shannon

**SUBJECT:** SEE BELOW

**DATE:** April 24, 2024

Approved

Date

4/24/24

**COUNCIL DISTRICT: 3, 4**

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

## **RECOMMENDATION**

- (a) Approve an increase to the construction contingency from 10% to 23% for the 8087 – TRAIL: Coyote Creek (Mabury Road to Empire Street) Project-Rebid in the amount of \$1,000,000 for a total contingency of \$1,748,363.
- (b) Adopt the following Appropriation Ordinance amendments in the Construction Tax and Property Conveyance Tax Fund: City-wide Parks Purposes:
  - (1) Increase the TRAIL: Coyote Creek (Mabury Road to Empire Street) appropriation to the Parks, Recreation and Neighborhood Services Department by \$1,100,000; and
  - (2) Decrease the Unrestricted Ending Fund Balance by \$1,100,000.

## **SUMMARY AND OUTCOME**

Approval of an increase for this project by \$1.1 million, of which \$1.0 million is for additional construction contingency and \$100,000 is for the project budget, enables staff to authorize the contractor to proceed with the additional work required to complete the TRAIL: Coyote Creek (Mabury Road to Empire Street Project-Rebid (Project) and provide sufficient funding for any unanticipated contract change orders for the remaining duration of the Project.

## **BACKGROUND**

The Project is a 0.3-mile Class I trail that stretches from Mabury Road to Empire Street, along the Coyote Creek channel (**Attachment:** Location Map - 8087 – TRAIL: Coyote Creek (Mabury Road to Empire Street) Project). The scope of the Project includes a 12-foot-wide paved pedestrian/bicycle pathway with two-foot-wide shoulders, a steel pedestrian bridge, trailheads, signage, striping, seating areas, and other related trail development work. The majority of the trail is located within City property, with an under-crossing beneath Caltrans right-of-way under Highway 101, and a portion of one of the bridge footings located on Santa Clara Valley Water District (Valley Water) land.

The Project overlaps with an active Valley Water flood control project in construction schedules, construction access, and construction staging lands. Therefore, a cost share agreement between Valley Water and the City has been executed for the Valley Water flood control project to incorporate a 20-foot Flood Gate – in lieu of an originally planned three-foot Flood Gate – to allow passage of the Project's construction materials and equipment. The cost share agreement joins resources to support flood control and increase the recreational value of the City's Trail Network. Under this cost share agreement, the maximum City contribution payment is \$220,000, absorbed by the existing Project budget.

On March 7, 2023, the City Council adopted a resolution authorizing the Director of Public Works to award and execute a contract for the construction of the Project and to establish a contingency in the amount of 10% of the construction contract amount.

On April 19, 2023, the Director of Public Works awarded a contract to Andrew M. Jordan, Inc. dba A&B Construction (A&B Construction) in the amount of \$7,483,626 with a 10% contingency of \$748,363. On July 18, 2023, a notice to proceed to start construction was issued to A&B Construction.

### *Federal Grant Funding*

The Project is partially funded by a federal Active Transportation Program grant in the amount of \$5,256,000 and a federal Earmark Grant in the amount of \$1,323,901, for a total of \$6,579,901 in federal grant funding. Both grants are on a reimbursement basis and funds are disbursed to the City incrementally as expenditures are invoiced. Thus far, under the federal Active Transportation Program grant, \$1,210,000 for the design phase and \$572,000 has been reimbursed for the construction phase. Under the federal Earmark Grant, \$811,000 has been received for the construction phase.

On July 21, 2023, during construction, a temporary suspension of work was issued for a segment of trail alignment which conflicted with an existing mitigation site located within Watson Park. The encroachment into the existing mitigation site at Watson Park triggers the requirement for additional mitigation planting to be completed by the environmental regulatory agencies (Regional Water Quality Control Board and California Department of Fish and Wildlife). Staff submitted a conceptual mitigation plan with a proposed 1.9-acre site on the west side of Coyote

Creek, east of Oakland Road near the San José Municipal Golf Course, and the plan was approved on March 6, 2024 by the regulatory agencies. The Project also received approval to resume work with a condition that the final mitigation plan will be submitted for approval, and mitigation plant installation will be completed as part of the Project.

To prevent development over existing mitigation areas in the future, staff is coordinating with the City's consultant to add a mitigation data layer into the City's geographic information system database.

## **ANALYSIS**

### *Additional Project Costs for Mitigation Design*

To complete the required mitigation design work and develop the final mitigation plan, staff will utilize the City's active Master Agreement with H. T. Harvey & Associates. Staff is preparing a service order for up to \$100,000 for the design of the final mitigation plan. Therefore, staff recommends increasing the Project's appropriation by \$100,000 to cover this additional project cost.

### *Additional Construction Costs for Unforeseen Site Conditions*

As of March 2024, approximately half of the construction contingency (\$372,586) has been expended to pay for additional work resulting from unforeseen existing site conditions, namely the presence of hazardous materials and the work involved with its removal and disposal. The contract change order issued to address the hazardous materials includes costs for the protection of existing mitigation plants, the use of the parking lot as a stockpile area, overtime to complete the work within the permitted work period in the creek channel (June 15, 2023 to October 15, 2023), extra excavation costs to remove unforeseen concrete masses found during the excavation process, and additional Tribal Monitoring fees from the originally estimated allowance.

Staff estimates a contract change order for the installation of the mitigation planting at approximately \$400,000, based on the bid price for the original off-site mitigation. Due to the hazardous materials encountered in the field to date and other unexpected conditions, staff anticipates additional contract change orders in the amount of approximately \$670,000 will be necessary to complete the Project. This total estimated amount of \$1,070,000 will exceed the current 10% (\$748,363) contingency.

The Project is approximately 60% complete, with construction completion scheduled for November 2024. Due to the amount of unexpected work that has already occurred, and the necessity to have enough funding in place to address potential future unforeseen conditions to ensure the proper construction and completion of the Project, staff recommends increasing the contingency by an additional \$1,000,000, for a total amount of \$1,748,363, or 23% of the contract amount.

### ***Climate Smart San José Analysis***

The recommendation in this memorandum aligns with one or more Climate Smart San José energy, water, or mobility goals. 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\*](#)<sup>1</sup> (*Montague Expressway to Watson Park*), which was approved by the City Council on September 13, 2011.

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

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

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 City Council Office meetings with the Department of Parks, Recreation, and Neighborhood Services staff. The Project development milestones will be posted via Twitter/X (@sanjosetrails) and site photos will be posted on Instagram (@sanjosetrails).

### **COST SUMMARY/IMPLICATIONS**

The total anticipated additional cost for the Project is \$1,100,000 – \$1.0 million for the contingency increase and \$100,000 of additional design costs for the final mitigation plan – will be funded through the City-wide Parks Purposes Construction Tax and Property Conveyance Tax Fund and was assumed in the development of the 2024-2025 Proposed Capital Budget and the 2025-2029 Proposed Capital Improvement Program which will be released in late April. The revised Project total is \$13.9 million of which \$11.6 million is funded by the Subdivision Park Trust Fund and \$2.3 million is funded by the City-wide Parks Purposes Construction Tax and Property Conveyance Tax Fund. Two federal grants totaling \$6.6 million will partially offset the costs for the Project. The Project's beneficial use date is anticipated to be November 2024 and the operating and maintenance costs have been included in the 2024-2025 Proposed Operating Budget within the Parks, Recreation, and Neighborhood Services Department.

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<sup>1</sup> <https://www.sanjoseca.gov/home/showpublisheddocument/20455/636687587009930000>

### **BUDGET REFERENCE**

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

Fund #	Appn #	Appn Name	Current Total Appn	Rec. Budget Action	2023-2024 Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
391	4110	TRAIL: Coyote Creek (Mabury Road to Empire Street)	\$1,202,000	\$1,100,000	607	6/20/2023, 30933
391	8999	Unrestricted Ending Fund Balance	\$1,292,499	(\$1,100,000)	590	2/13/2024, 31040

### **COORDINATION**

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

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the May 7, 2024 City Council meeting.

In addition, this Project was presented at the Parks and Recreation Commission and the City Council in 2011. 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/X (@sanjosetrails).

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.

### **COMMISSION RECOMMENDATION AND INPUT**

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

HONORABLE MAYOR AND CITY COUNCIL

April 24, 2024

**Subject: Actions Related to the 8087 – TRAIL: Coyote Creek (Mabury Road to Empire Street) Project-Rebid**

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**CEQA**

Addendum to the Coyote Creek Trail Master Plan Mitigated Negative Declaration (Resolution No. 75982), File No. ER20-145.

**PUBLIC SUBSIDY REPORTING**

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/

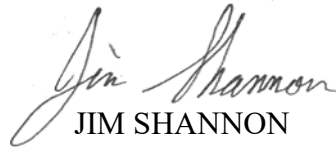
MATT LOESCH

Director of Public Works

/s/

JON CICIRELLI

Director of Parks, Recreation and  
Neighborhood Services

A handwritten signature in black ink, appearing to read "Jim Shannon", is positioned above the printed name and title.

JIM SHANNON  
Budget Director

For questions, please contact Sal Kumar, Deputy Director of Public Works, at [sal.kumar@sanjoseca.gov](mailto:sal.kumar@sanjoseca.gov).

**ATTACHMENT-** Location Map - 8087 – TRAIL: Coyote Creek (Mabury Road to Empire Street) Project Rebid

**Attachment: Location Map**  
**8087-TRAIL: Coyote Creek (Mabury Road to Empire Street)**  
**Project**

