



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Albert Balagso

SUBJECT: SEE BELOW

DATE: 06-04-07

Approved

Ray Winer

Date

6/10/07

COUNCIL DISTRICT: Citywide

SUBJECT: APPROVAL OF AN AGREEMENT WITH WINZLER & KELLY CONSULTING ENGINEERS FOR UNIQUE SERVICES RELATING TO UPPER PENITENCIA CREEK IN ALUM ROCK PARK

RECOMMENDATION

1. Approval of an exemption from the Qualifications-Based Consultant Selection Policy (QBCS) with regard to the selection of Winzler & Kelly Consulting Engineers to provide engineering services for Upper Penitencia Creek bridge and stream bank repair projects in Alum Rock Park.
2. Approval of an agreement with Winzler & Kelly Consulting Engineers for consultant services to design engineering solutions to repair Upper Penitencia Creek stream damage in Alum Rock Park from the date of execution to March 1, 2008, in an amount not to exceed \$300,000.

OUTCOME

Approval of an agreement between the City and Winzler & Kelly Consulting Engineers will enable the design of engineering solutions to protect two historic bridges in Alum Rock Park and repair nine damaged stream bank areas on an accelerated schedule and with significant cost savings to the City.

BACKGROUND

Since 1998, the historic Youth Sciences, Creek Side, and Visitor Center bridges in Alum Rock Park have suffered severe damage by erosion during high-flow conditions and are at risk of failing. In response to concerns raised by regulatory agencies on the techniques used to repair damaged sections of stream and stream bank structures after the 1997-98 flood in Alum Rock Park, the City commissioned a study that became the 2001 Alum Rock Park Riparian Management Plan (RMP). The RMP identified the Youth Sciences and Creek Side bridges, as

well as a number of stream bank areas, as needing immediate attention and specific design evaluation to prevent the creek from further undercutting the abutments. Since then, the abutments of the Visitor Center vehicle and pedestrian bridge have also eroded.

Alum Rock Park is a significant historic landmark and the Upper Penitencia Creek is a major watershed to the Santa Clara Basin requiring coordination with the California State Department of Fish and Game (CDFG), U.S. Army Corps of Engineers (Corps), Regional Water Quality Control Board (RWQCB), U.S. Fish and Wildlife Service, National Oceanic and Atmospheric Administration (NOAA), Santa Clara Valley Water District, and National Marine Fisheries Service to name the major players. Consequently, it is not uncommon for only a handful of in-stream and riparian projects to be permitted in a year. The CDFG, which acts as a coordinating agency, advised the Parks, Recreation and Neighborhood Services (PRNS) staff to develop the most pressing projects as identified in the RMP, regardless of funding, and submit one permit application to cover potential improvements over the next five to ten years.

ANALYSIS

Since 1998, several historic bridges and stream banks have suffered severe damage by erosion during high-flow conditions and are at risk of failing. Temporary measures have been implemented to protect the bridge abutment for the Visitor Center Bridge, but the CDFG requires the City to submit a permit application offering permanent solutions before approving further temporary solutions for the Youth Sciences and Creek Side bridges. In order to permit these projects, the City must hire an engineering consultant to survey the sites, conduct hydraulics, scour, geo-technical, and biotic studies, prepare conceptual designs, provide CEQA documentation, consult with the permitting agencies, and prepare the permit application.

In November 2006, Winzler & Kelly Consulting Engineers (W&K) received a grant from the California State Coastal Conservancy through the Center for Ecosystem Management and Restoration to develop a conceptual design of a fish passage between the Youth Sciences and Visitor Center bridges. In order to prepare the fish passage design, W&K must perform nearly all of the same geo-technical, hydraulic, and scour studies and surveys that are needed to provide engineering solutions for the City's bridge and stream bank projects. By contracting W&K, the City will:

- ♦ save approximately \$9,000 by using W&K's geo-technical, hydraulic, and scour studies;
- ♦ save approximately \$5,000 by using W&K's survey of the creek between the Youth Sciences and Visitor Center bridges;
- ♦ save approximately \$3,000 in coordination meetings with the permitting agencies;
- ♦ save approximately \$10,000 in CEQA documentation and permit application;
- ♦ eliminate at least 80 hours that Environmental Services, Public Works, and PRNS staff would spend meeting with two consultants, attending two sets of permitting meetings, and reviewing two sets of documents; and
- ♦ reduce the project delivery time by approximately six months.

As shown in the compensation schedule below, this agreement includes a \$25,421 contingency.

Compensation	
Task No. 1 - Site Meetings	\$ 5,142
Task No. 2 - Surveying	38,208
Task No. 3 – Geotechnical Analysis	20,306
Task No. 4 – Hydraulics and Scour Analysis	5,890
Task No. 5 – Construction Documents for Bridge Repairs	47,474
Task No. 6 – Conceptual Designs for Stream Bank Repairs	80,154
Task No. 7 – CEQA and Permitting	77,405
Total Consultant Agreement	\$ 274,579
Contingency	25,421
Grand Total	\$ 300,000

To take advantage of a unique opportunity to save significant time and money, staff has negotiated a consultant agreement with W&K in an amount not to exceed \$300,000 for engineering solutions to repair various bridges and stream banks in Upper Penitencia Creek within Alum Rock Park. This negotiated agreement requires City Council approval of an exemption to the Council adopted QBCS policy, which stipulates the selection of a design professional through a public bid. Staff believes that the Alum Rock Park project involves unique facts justifying Council approval of an exception of the QBCS policy.

POLICY ALTERNATIVES

Alternative #1: Direct staff to select the consultant based on the QBCS Policy.

Pros: Following this policy will provide opportunity for other consultants (including local and small businesses) to compete for the services under this agreement.

Cons: W&K is currently under contract with the Center for Ecosystem Management and Restoration (CEMAR) so the City does not have a right to the geo-technical, hydraulic, and scour studies and surveys that are needed to provide engineering solutions for the bridge and stream bank repairs. Therefore, the City would need to repeat the various studies and surveys and coordinate with W&K on the fish passage design, both of which would increase the cost of the project at least 10 to 20 percent or from \$20,000 to \$40,000. In addition, approximately 180-day delay to the project to allow for selection of a different consultant. If the City purchased the studies from W&K and provided the information to a consultant as part of a QBCS process, the City would have to assume the responsibility for the studies. If the studies did not include all the information necessary for the design or for the CEQA and permitting application, the studies would have to be repeated at City expense.

Reason for not recommending: The erosion problem at the bridge abutments is of serious concern to staff. Bridge failure would be the loss of an irreplaceable San José historic landmark. Issuing a Request for Qualifications (RFQ) would delay the start of the design phase of the

project and complicate the permit application process thereby creating further delays. In addition, this option is not cost effective.

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)**

While this action does not meet any of the above criteria, this memorandum will be posted on the City's website for the June 26, 2007 City Council agenda.

COORDINATION

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

BUDGET REFERENCE

Fund #	Appn #	Appn. Name	Total Appn	Amt. for Contract	Adopted Budget Page	Last Budget Action (Date, Ord. No.)
391	4956	Capital Maintenance Projects	\$1,174,000	\$300,000	V-571	10/17/06 Ord. No. 27888

HONORABLE MAYOR AND CITY COUNCIL

06-04-07

**Subject: Approval of an Agreement with Winzler & Kelly Consulting Engineers for Unique Services
Relating to Upper Penitencia Creek in Alum Rock Park**

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CEQA

CEQA: Not a project.

A handwritten signature in black ink that reads "Albert Balagso". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

ALBERT BALAGSO
Director of Parks, Recreation
and Neighborhood Services

For questions please contact MATT CANO, DIVISION MANAGER, at (408) 535-3580.