



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Albert Balagso  
Jennifer A. Maguire

**SUBJECT:** SEE BELOW

**DATE:** 11-10-08

Approved

Date

11/14/08

**COUNCIL DISTRICT:** 4

**SUBJECT: APPROVAL OF A SECOND AMENDMENT TO THE AGREEMENT WITH THE SANTA CLARA VALLEY WATER DISTRICT FOR CONSTRUCTION OF THE AIRPORT PARKWAY UNDER-CROSSING PROJECT TO INCREASE FUNDING FOR THE PROJECT BY \$125,000 FOR A TOTAL CONTRACT AMOUNT NOT TO EXCEED \$2,450,980 AND ADOPTION OF APPROPRIATION ORDINANCE AMENDMENTS IN THE SUBDIVISION PARK TRUST FUND**

## RECOMMENDATION

1. Approval of a Second Amendment to the Agreement with the Santa Clara Valley Water District (SCVWD) for the construction of the Airport Parkway Under-Crossing Trail project to increase funding for the project in the amount of \$125,000 for a total contract amount not to exceed \$2,450,980.
2. Adoption of the following Appropriation Ordinance amendments in the Subdivision Park Trust Fund (Fund 375):
  - a. Establish an appropriation to the Parks, Recreation and Neighborhood Services Department in the amount of \$49,000 for the TRAIL: Airport Parkway Under-Crossing; and
  - b. Decrease the Reserve: Future PDO/PIFO Projects by \$49,000.

## OUTCOME

Approval of the second amendment and associated appropriation actions will provide the additional funding necessary to provide final compensation to the SCVWD for construction work that had been performed by the SCVWD on behalf of the City related to the Airport Parkway

Under-Crossing Trail project (the "Project"). The Project has been completed and accepted by the City. The constructed Project permits continuous trail access from Highway 880 to Gold Street as defined by the Lower Guadalupe River Trail Master Plan approved by the City Council on June 21, 2005.

### **EXECUTIVE SUMMARY**

This memorandum recommends that the City Council approve a second amendment to an existing agreement with SCVWD that provides for the implementation and construction of the Project. The agreement was executed on March 6, 2007. The City Council previously approved an amendment to the agreement to provide additional funds in an amount up to \$536,480 to supplement the existing agreement's funding and increased its total to \$2,325,980 (City Council Meeting: 5/1/07; Item 2.10). The first amendment was required to address higher than anticipated construction bids. This second amendment would provide additional funds in an amount not to exceed \$125,000 to supplement the previously approved funding for a total contract amount not to exceed \$2,450,980.

The second amendment provides additional funding to address unforeseen underground conditions that required a significant design change, structural enhancements to the Airport Parkway Bridge and curb relocation to facilitate traffic into the airport.

In order to support the second amendment, this memorandum includes a recommendation to appropriate \$49,000 in the Subdivision Park Trust Fund to augment currently available project funds in the amount of \$75,000 in various funds. This funding will compensate SCVWD a total of \$125,000 for the additional construction costs of the Project.

### **BACKGROUND**

The Project addresses a discontinuity in the otherwise continuous trail alignment along the Lower Guadalupe River. The Lower Guadalupe River Trail master plan identified an under-crossing and surface improvements as the best means to transition trail users across the river and make use of existing under-crossings along the remaining six (6) miles of the trail system. The Lower Guadalupe River Trail system links Alviso to the Guadalupe River Park.

On December 5, 2006, the City Council adopted a resolution authorizing the City Manager to negotiate and execute an agreement with the SCVWD to provide up to \$1,839,500 for construction and inspection of the Project. On March 6, 2007, the City and SCVWD executed the agreement which sets forth the obligations and responsibilities of the respective parties for the Project ("Agreement"). SCVWD was mainly responsible to bid, award and manage the construction of the Project. The City was required to transfer funding to the SCVWD in an amount not to exceed \$1,789,500 and retain \$50,000 for Department of Public Works inspection services.

On March 28, 2007, the SCVWD opened bids and determined that the lowest responsive bid was significantly greater than the \$2,451,175 engineer's cost estimate for the total Project. Additionally the line items for the City's share of work exceeded its estimated contribution (engineer's estimate was \$1,415,000).

On May 1, 2007, due to the unanticipated higher bids, the City Council adopted a resolution authorizing the City Manager to negotiate and execute an amendment to the Agreement to provide additional funding for the Project in an amount not to exceed \$2,375,500 (this amount included \$49,520 reserved for Department of Public Works staff related to inspection and oversight). Upon completion of negotiations, the City entered into an amendment of the Agreement with the SCVWD for a total contract amount of \$2,325,980 for the construction of the Project.

Construction of the project commenced in June 2007. The project was deemed to be complete and accepted by the City on January 31, 2008.

### ANALYSIS

Development of the Project has been on-going for several years and the Project's design has been driven by the knowledge that funding sources were limited for its development. During this period, City staff, the City's consultant and the SCVWD have worked cooperatively to prepare construction documents for a project that aligned as well as possible with available funding sources. At several stages during the design process, staff has made alterations to the Project scope to reduce the Project cost while minimally impacting the Project's functionality.

The City Council adopted the Lower Guadalupe River Trail Master Plan in May 2005. That planning document resulted from the active participation of City Staff and a consultant team to address all opportunities and constraints, secure environmental clearance and define a feasible project alignment. Staff from the Airport Department and the Department of Transportation participated on the Project's Technical Advisory Committee. Participation by the departments was intended to address any future required improvements associated with the Airport's on-going expansion project.

At the time that construction documents were completed, a final cost estimate for the Airport Parkway Under-Crossing project was prepared, and the Project was calculated to cost \$1,415,000. Due to the recent volatility of bids, the Department of Public Works recommended that a 30% contingency be in place, which would increase the construction total for the City's share of the Project to \$1,839,500. The SCVWD bid package included a contingency reserve, so it was anticipated that the City's contribution would be sufficient to cover any unforeseen circumstances.

The Agreement stipulated that, should project costs exceed the contract amount of \$2,325,980, the City Manager and Water District Chief Executive would meet to determine how to address the funding shortfall.

The cost of the Project exceeded the projected cost and contingency. A number of items, both unforeseen and Owner-requested, contributed to the cost overrun. Once construction commenced, a significant work element was necessary to account for unforeseen conditions at the project site. The improvements to address the unforeseen conditions significantly altered the Project resulting in a significant cost. Additionally, two significant work elements were requested by the Airport and Department of Transportation. The Airport and Department of Transportation made funds available for the additional work but there was no contractual mechanism to reimburse the contingency amount to pay for the work.

The additional item of work due to unforeseen conditions is as follows:

Upon removal of an existing slope protection wall along the base of the bridge, it was determined that the remaining original slope protection and underlying soil conditions required improvements well beyond those defined by the Project plans. Through a collaborative effort between City staff, the City's consulting engineer and the SCVWD, revisions to the original design were developed. The revisions required rebuilding the unsuitable soil slope, installing additional concrete slope paving and additional rock slope protection. As a result of this additional work, the Contractor requested a change order in the amount of approximately \$293,000; however an amount of approximately \$220,000 was agreed upon through negotiations. This requested amount was resolved after completion of the work and exceeded the City's funding contribution to the project and contingency budget by \$125,000. The second amendment proposed with this council action creates the mechanism to compensate the SCVWD.

The additional items of work requested by other City Departments and included in the second amendment with SCVWD are as follows:

Department of Transportation staff requested that structural reinforcement be added to the retaining wall being built beneath Airport Parkway. This additional work was intended to increase the structural integrity of the bridge structure and would have been more costly and damaging to the trail Project had it been addressed at a later time. The Department of Transportation provided \$21,000 as estimated by the project engineer for the reinforcement work. The work was pursued because the outcome led to a public safety improvement and subsequent work would have likely damaged the trail improvements. However, there was no mechanism in place to transfer the DOT funds into the Parks project fund.

Airport staff requested a modification to the existing curb radius at Airport Parkway and Airport Boulevard. The trail Project was making some curb modifications in the immediate area and the improvements proposed would facilitate inbound traffic to the Airport and potentially reduce damage to the fencing system installed as part of the

project. The Airport Department provided \$24,000 in supplemental funding for this work. This approach was taken because of the potential for damage to the newly installed trail improvements if the curbing had not been relocated at the same time. The work was completed and paid for using the project's contingency, however, there was no mechanism in place to transfer the Airport funds into the Parks project fund.

This Council action addresses the issue of payment by transferring funds from other City Departments for additional requested work and appropriating additional funding from the Park Trust Fund for additional work due to unforeseen conditions. The additional work elements noted above form the basis of the \$125,000 cost overrun. Executing an agreement as a result of this council action will permit final payment to the SCVWD.

In order to make the \$125,000 payment to the SCVWD, this memorandum recommends the appropriation of an additional \$49,000 from eligible PDO/PIO funds in the Park Trust Fund. This amount, combined with \$21,000 from the Department of Transportation, \$24,000 from the Airport Department and \$31,000 from Council District 3 Construction and Conveyance Tax Fund enables the final payment to be made. These last three sources are already appropriated.

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

Staff will provide updates on the project through a semi-annual presentation to the Transportation & Environment Committee and discussion on the Annual Trail Program Report (published each July).

### **POLICY ALTERNATIVES**

*Alternative #1:* Do nothing.

**Pros:** Taking no action at this time eliminates the need to allocate additional funds and process an agreement amendment.

**Cons:** Not pursuing the allocation of additional funds and an agreement amendment makes it infeasible for the City to adhere to the conditions of the fund transfer agreement.

**Reason for not recommending:** This alternative is inconsistent with the Lower Guadalupe River Master Plan and Airport Pedestrian Bicycle Master Plan, both approved by Council and both indicating the Airport Parkway improvements.

### **PUBLIC OUTREACH/INTEREST**

✓ **Criterion 1:** Requires 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)**

Progress reports on the master plan were shared with the Bicycle Pedestrian Advisory Committee as part of the Trail Program Updates on November 8, 2004 and April 11, 2005.

No outreach has occurred regarding the agreement amendment or appropriation amendment. This memorandum will be posted on the City's website for the December 2, 2008, City Council agenda.

### COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the Departments of Planning, Building and Code Enforcement, Transportation, Public Works and Airport, and the Mayor's Budget Office.

### FISCAL / POLICY ALIGNMENT

This project is consistent with the Council-approved Budget Strategy Economic Recovery section in that it will spur construction spending in our local economy with the additional project program elements. The Council-approved trail master plan defined an alignment that required construction of the Project for a continuous trail system.

### COST SUMMARY / IMPLICATIONS

1.	AMOUNT OF RECOMMENDATION:	
	Transfer to SCVWD	\$125,000
2.	COST OF PROJECT:	
	Consultant Services	\$243,380
	Project Delivery (Staff Time)	52,000
	Construction Cost	\$2,256,343
	Construction Contingency	<u>200,000</u>
	<b>TOTAL PROJECT COSTS</b>	<b>\$2,751,723</b>
	Prior Year Expenditure	\$(2,626,723)
	<b>REMAINING PROJECT COSTS</b>	<b>\$ 125,000</b>

11-10-08

Subject: Airport Parkway Under-Crossing Trail Project

Page 7

3. SOURCE OF FUNDING:
- 527 - Airport Renewal and Replacement Fund
  - 465 - Construction Excise Tax Fund
  - 380 – Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District 3
  - 381 – Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District 4
  - 391 – Construction Tax and Property Conveyance Tax Fund: City-Wide Parks Purposes
  - 375 – Subdivision Park Trust Fund
4. FISCAL IMPACT: Maintenance costs associated with the Airport Parkway Under-Crossing project (\$8,000) was included in Parks, Recreation and Neighborhood Services Department budget beginning in 2008-2009.

**BUDGET REFERENCE**

The table below identifies the fund and appropriations proposed to fund the project recommended as part of this memorandum.

Fund #	Appn. #	Appn. Name	Total Appn.	Amount for Fund Transfer	2008-2009 Adopted Budget (Page)	Last Budget Action (Date, Ord. No.)
<b>Remaining Project Cost</b>			<b>\$125,000</b>	<b>\$125,000</b>		
<b>Current Available Funding</b>						
380	5175	TRAIL: Airport Parkway Under Crossing	\$31,000	\$31,000	V-389	
465	4307	Misc. Street Improvements*	\$21,000	\$21,000		
527	4004	Land Improvements**	\$24,000	\$24,000	V-982	
<b>Total Current Available Funding</b>			<b>\$76,000</b>	<b>\$76,000</b>		
<b>Recommended Additional Funding</b>						
375	8845	Reserve: Future PDO/PIFO Projects	\$49,000***	\$49,000		
<b>Total Funding for Project</b>			<b>\$125,000</b>	<b>\$125,000</b>		

11-10-08

Subject: Airport Parkway Under-Crossing Trail Project

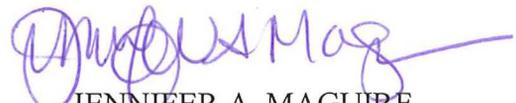
Page 8

- \* The Department of Transportation has allocated an additional \$21,000 from the Miscellaneous Street Improvements project appropriation to their previous allocation of \$546,000 from the North San José Deficiency Plan Improvements project appropriation in the Construction Excise Tax Fund to be used for the Airport Parkway Under-Crossing project for a total contribution to the project in the amount of \$567,000.
- \*\* The Airport Department has allocated an additional \$24,000 of their Land Improvements appropriation (appropriation totals \$150,000) in the Airport Renewal and Replacement Fund to be used for the Airport Parkway Under-Crossing project for a total contribution to the project in the amount of \$506,000.
- \*\*\* Included in this memorandum is a request to appropriate \$49,000 (unallocated collections within a two-mile radius of the project site) from the Reserve: Future PDO/PIFO Projects in the Subdivision Park Trust Fund (appropriation totals \$25,575,592) to be used for the Airport Parkway Under Crossing project.

CEQA

Mitigated Negative Declaration, File No. PP04-323.

  
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and Neighborhood Services

  
JENNIFER A. MAGUIRE  
Budget Director

For questions, please contact YVES ZSUTTY, TRAIL PROGRAM MANAGER, at 793-5561