



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Julie Edmonds-Mares

SUBJECT: SEE BELOW

DATE: November 21, 2011

Approved

Date

11/29/11

COUNCIL DISTRICT: 4 & 5

SUBJECT: APPROVAL OF A SIXTH AMENDMENT TO AN AGREEMENT WITH WINZLER & KELLY FOR PERMITTING AND GEOTECHNICAL ENGINEERING DESIGN SUPPORT SERVICES RELATING TO UPPER PENITENCIA CREEK IN ALUM ROCK PARK

RECOMMENDATION

Approve a Sixth Amendment to an Agreement with Winzler & Kelly to:

- (a) Expand the scope of services to include additional permitting assistance and geotechnical engineering design support for the YSI Bridge Site on the Upper Penitencia Creek in Alum Rock Park;
- (b) Extend the term of the agreement from December 31, 2011 to April 30, 2013; and
- (c) Increase the compensation by \$46,900 to an amount not to exceed \$583,900.

OUTCOME

Approval of this Sixth Amendment to the Agreement between the City and Winzler & Kelly will enable the permitting of 10 riparian and two historic bridge projects in Alum Rock Park, and bidding and construction management services for the YSI Bridge Site. No further appropriation action is required because the additional \$46,900 compensation 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).

EXECUTIVE SUMMARY

In 2007, the City entered into an agreement with Winzler & Kelly to prepare CEQA documents and permit applications for a total of 10 stream restoration projects and two bridge repair projects in Alum Rock Park 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 agreement was amended once to change the CEQA documentation from a Categorical Exemption to an Initial Study/Mitigated Negative Declaration, once to change the level of design from conceptual level to 65 percent construction documentation level, and three times to extend the expiration date while solutions were identified. The agreement with Winzler & Kelly is set to expire on December 31, 2011.

Staff's goal has been to complete the CEQA process so as to secure habitat restoration, historic preservation, or water conservation grants to fund construction of the eligible projects and to identify funding needs for the projects that are marginally eligible for grants. However, before the City completed the CEQA, the Santa Clara Valley Transportation Authority (VTA) approached the City about funding four of the stream restoration projects at an estimated project cost of \$2,500,000 which called for a change of strategy because of the following:

1. The conditions of the agreement with VTA are that the City will secure the necessary Federal and State permits at the City's expense prior to the 2012 in-stream construction season. This may require additional coordination with the permitting agencies to expedite permit processing. If the permits are not secured, construction would be delayed an additional year which would incur additional Federal and State penalties and the potential loss of VTA's \$2,500,000 contribution.
2. 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. This project is fully funded for construction through Citywide funds, but the City's cost for the YSI Bridge Site will be reduced if done in conjunction with the VTA projects. In addition, it is very likely that the permitting Agency will require that stream diversions be minimized by combining adjacent projects.
3. Although VTA has agreed to manage construction of the YSI Bridge Site project on the City's behalf and at the City's sole expense, VTA will not provide geotechnical engineering construction support services for the YSI Bridge Site project. There are no City geotechnical engineers so this work will need to be contracted out. VTA has hired Winzler & Kelly to provide construction support services for their projects.

Consequently, the City needs the services of a consultant to work with the permitting agencies to expedite the permit process, and to provide geotechnical engineering construction support. Given that VTA has brought forward substantial construction funding to the partnership and also

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hired Winzler & Kelly to provide their consultant services, it makes sense for the City to amend the City's agreement with Winzler & Kelly to complete the YSI Bridge Site project. The result of this action is that VTA will spend \$2,500,000 to construct four projects (Projects 3, 5, 10 and 13) and the City will invest \$490,000 for the YSI Bridge Site project (Project 2).

These services were not included in previous amendments because staff did not anticipate the need to expedite the permit applications or that VTA would hire Winzler & Kelly to provide their construction support services. Staff seeks approval of a Sixth Amendment to the Winzler & Kelly agreement to expand the scope of services to include additional permitting assistance and geotechnical engineering design support for the YSI Bridge Site in Alum Rock Park, extend the term of the agreement from December 31, 2011 to April 30, 2013, and increase the compensation by \$46,900 to an amount not to exceed \$583,900.

BACKGROUND

In response to concerns raised by the California State Department of Fish and Game and the U.S. Army Corps of Engineers 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 resulted in the 2001 Alum Rock Park Riparian Management Plan (RMP). The RMP identified two bridges and a number of stream bank areas that require immediate attention and specific design evaluation to prevent the creek from further undercutting.

The Upper Penitencia Creek that runs through Alum Rock Park 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, Regional Water Quality Control Board, U.S. Fish and Wildlife Service, National Oceanic and Atmospheric Administration, Santa Clara Valley Water District, and National Marine Fisheries Service, to name only the major agencies. CDFG acts as the coordinating agency for permits relating to Upper Penitencia Creek. Given the amount of effort required to secure permits and the staffing reductions at the various permitting agencies, CDFG advised the City's Department of 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.

On June 26, 2007, Council approved an Agreement with Winzler & Kelly in the amount of \$300,000 for the following services:

- Survey the sites;
- Conduct hydraulics, scour, geo-technical, and biotic studies;
- Prepare 100 percent construction documents for two bridge repair projects;
- Prepare conceptual designs for nine stream restoration projects;
- Incorporate the conceptual design for a tenth stream restoration project, removal of a fish barrier, funded by the Center for Ecosystem Management and Restoration (CEMAR);
- Provide CEQA documentation at the level of a Categorical Exemption; and

- Consult with the permitting agencies and prepare the permit application.

Subsequently, Alum Rock Park was identified as a Historic District and San José City Landmark, and portions of the creek were determined eligible for the National and California Historic Landmark Registers. As a result, City staff determined that the historic bridge and stream bank repair projects could have significant impact on historical resources and that a Categorical Exemption would be insufficient for environmental review. In March 2008, the City and Winzler & Kelly executed a First Amendment to the Agreement to extend the term of the Agreement to September 1, 2008, to allow staff additional time to identify an alternative funding source. On August 19, 2008, Council approved a Second Amendment to the Agreement securing an additional \$37,000 to fund the Initial Study/Mitigated Negative Declaration (IS/MND) required for CEQA purposes and extending the term of the Agreement to July 2009.

When the project was presented to the Coyote Watershed Integration Working Group (CWIWG) for review on May 12, 2009, the permitting agencies determined that the 10 conceptual designs needed to be further developed in order to obtain a permit for the entire project because of the scope of the project and the fact that some of the stream restoration projects are required as mitigation for the bridge repair projects.

In June 2009, a Third Amendment to the Agreement was executed to extend the term of the agreement for six months to allow staff and the consultant time to modify the scope of work and identify additional funding required for the work identified by CWIWG.

On December 1, 2009, Council approved a Fourth Amendment expanding the scope of services, extending the term of the contract from December 31, 2009 to June 30, 2011, and increasing compensation by \$200,000 to an amount not to exceed \$537,000. The additional scope of work was to verify mitigation requirements and incorporate the appropriate elements into the CEQA and permitting documents, and to develop drawings for nine stream restoration projects to 65 percent construction document levels. CEMAR separately funded development of the tenth stream restoration project to the 65 percent construction document level. A Fifth Amendment was executed on June 16, 2011, to extend the term of the agreement for six months from July 1, 2011 to December 31, 2011, to allow more time for CEQA processing.

Five of the 10 stream restoration projects will be highly eligible for grant funding once the CEQA and permits are approved. Staff's goal has been to complete the CEQA process so as to secure habitat restoration, historic preservation, or water conservation grants to fund construction of these improvements. The remaining five stream restoration projects and two bridge repairs are of high priority for staff because they impact service delivery but they are marginally eligible for grants because they are considered maintenance issues. For that reason, the 2011-12 Capital Budget includes an appropriation of \$490,000 (Fund 391, Appropriation 7322) for Alum Rock Park Bridge Riparian Improvements to begin working on the projects that are marginally eligible for grant funding.

Staff intended to submit the various State and Federal permits and issue a Request for Qualifications to hire a geotechnical engineer to consult on construction of the most urgently needed bridge and riparian improvement projects in the future. However, before the City completed the CEQA, the Santa Clara Valley Transportation Authority (VTA) approached the City about funding four of the highly eligible stream restoration projects at an estimated project cost of \$2,500,000 which called for a change of strategy¹. VTA's funding of Projects 3, 5, 10 and 13 has accelerated staff's prioritization of Project 2, the YSI Bridge Site project because two of the projects being funded by VTA (Projects 5 & 13) 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. Consequently, the City's cost for the YSI Bridge Site will be reduced if done in conjunction with the VTA projects. In addition, it is very likely that the permitting Agency will require that stream diversions be minimized by combining adjacent projects.

VTA has agreed to manage construction of the YSI Bridge Site project on the City's behalf and at the City's sole expense, excluding geotechnical services. In addition to VTA's \$2,500,000 funding of Projects 3, 5, 10 & 13, the City will also benefit from a reduced cost to build the YSI Bridge Site project.

VTA has hired Winzler & Kelly to provide geotechnical support services for construction of Projects 3, 5, 10 and 13. Staff believes amending the existing Agreement with Winzler & Kelly is the most cost-effective method to provide the permitting, bidding and geotechnical construction support services for construction of the YSI Bridge Site project.

ANALYSIS

Staff proposes to enter into a Sixth Amendment to the Agreement with Winzler & Kelly to expand the scope of services and extend the term from December 31, 2011 to April 30, 2013. The additional scope of work provides for: consultation with the Federal and State permitting agencies towards project approval of the entire project (10 riparian and two historic bridge projects) in Alum Rock Park; and geotechnical engineering design support during the bidding and construction phases of the YSI Bridge Site project.

The conditions of the agreement with VTA are that the City will secure the necessary Federal and State permits at the City's expense prior to the 2012 in-stream construction season. This may require additional coordination with the permitting agencies to expedite permit processing. If the permits are not secured, construction would be delayed an additional year which would incur additional Federal and State penalties. These services were not included in previous amendments because staff did not anticipate the need to expedite the permit applications or that

¹ A cooperative agreement between the City and VTA will be submitted to City Council for approval under a separate memorandum, also agendized on December 13, 2011.

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VTA would hire Winzler & Kelly to provide their construction support services. Given that VTA has brought forward substantial construction funding to the partnership and also hired Winzler & Kelly to provide their consultant services, it makes sense for the City to amend the City's agreement with Winzler & Kelly to complete the YSI Bridge Site project.

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.

The additional cost for the Sixth Amendment to the Agreement is not to exceed \$46,900. It provides up to 60 hours of coordination with permitting agencies, preparation of addenda during the bid phase, and up to 60 hours of geotechnical engineering services responding to submittals, RFIs, and change order requests during the construction phase. No appropriation action is necessary as a result of this memorandum as funding for the Sixth Amendment 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). The Sixth Amendment also extends the term of the Agreement to April 30, 2013 to cover the construction period.

CEQA REVIEW

A cooperative agreement between the City and VTA will be submitted to City Council for approval under a separate memorandum, also agendized on December 13, 2011. In that memo, the Director of Planning recommended that the City 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.

EVALUATION AND FOLLOW-UP

Once the CEQA document and permit applications have been completed, the City will be positioned to apply for construction grants for the remaining Projects 1, 4, 6, 7, 8, 9 and 11. Staff will seek Council authorization at a later date to apply for construction grants.

POLICY ALTERNATIVES

Alternative #1: Reject the Sixth Amendment and repair of the YSI Bridge.

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

Cons: Eliminating the additional consultant services will prevent staff from awarding the construction project until spring 2013 and substantially increase the project's cost. The YSI Bridge is of significant historical value to the park and is one of the main pedestrian bridges. Rejection of the Sixth Amendment would delay award of the construction contract and substantially increase the project costs.

Reason for not recommending: If the additional consultant services are not approved, the City cannot award a construction contract until spring 2013 at the earliest. At that time, the City would bear the full cost of mobilization and remediation. 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, City Manager's Budget Office, and the Department of Planning, Building and Code Enforcement.

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FISCAL/POLICY ALIGNMENT

This project is consistent with the Council-approved Budget Strategy Economic Recovery section. Should the Council appropriate funds for construction in the future, the project will spur construction spending in our local economy.

BUDGET REFERENCE

The table below identifies the existing fund and appropriation to fund the contract amendment 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	\$46,900	V-443	6/21/11, Ord. No. 28928
		TOTAL	\$490,000*	\$46,900		

A total of \$490,000 is allocated to the Alum Rock Park Bridge Riparian Improvements project. Of this amount, \$46,900 is needed for the amendment recommended in this memorandum. Remaining project funds will be used for construction of the YSI bridge repair.

CEQA

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

/s/

JULIE EDMONDS-MARES
Acting Director of Parks, Recreation and
Neighborhood Services

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

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