



PUBLIC WORKS DEPARTMENT

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CITY COUNCIL STAFF REPORT

Meeting: June 1, 2021

Subject

Consideration of 1) Authorization of Award of Construction Contract for Privacy Fencing; 2) Request to Increase Regnart Creek Trail Privacy Fencing Project Budget Allocation; 3) Request to Increase Budget Allocation for Regnart Creek Trail Project Contingency; 4) Request to Increase Budget Allocation for Regnart Creek Trail and Regnart Creek Fencing Design Services; and 5) Request to Execute a First Amendment to the Master Agreement Between the City and CSG Consultants, Incorporated to Increase Agreement Amount.

Recommended Action

Recommend that the City Council:

1. Authorize the City Manager to Award a Construction Contract with California Commercial Fence Company in an Amount not to exceed \$1,504,069, and Authorize the Director of Public Works to Execute any Necessary Change Orders, up to the Construction Contingency Amount of \$300,814, for a Total Authorized Contract Amount of \$1,804,883, for the Regnart Creek Fencing Project;
2. Approve Budget Modification #2021-143 increasing appropriations in the Capital Improvement Program Capital Projects Fund (420-99-036) by \$1,159,883 for the Regnart Creek Trail Fencing Project;
3. Approve Budget Modification #2021-143 increasing appropriations in the Capital Improvement Program Capital Projects Fund (420-99-036) by \$175,000 for Regnart Creek Trail Project Contingency;
4. Approve Budget Modification #2021-143 increasing appropriations in the Capital Improvement Program Capital Projects Fund (420-99-036) by \$25,000 for Regnart Creek Trail and \$30,000 for Regnart Creek Trail Fencing Project for additional design services; and
5. Authorize the City Manager to Execute a First Amendment to Agreement 2021-11, a Master Agreement between the City of Cupertino and CSG Consultants, Incorporated, to increase agreement amount from \$500,000 to \$538,045.

Background

On September 17, 2019 and June 16, 2020, the City Council authorized a total of \$2,650,000 million for the Regnart Creek Trail Project construction. Of this amount, \$1,885,000 was estimated for trail construction, leaving a balance of \$765,000 in estimated costs for

fencing. Additionally, the City Council authorized the City Manager to award a construction contract if a responsive bidder was received within the authorized budget amount.

In order to accommodate residents who were still considering fence choices and to receive the most competitive bids, the Regnart Creek Trail Project was separated into two projects: the Trail Project and the Privacy Fence Project. On December 15, 2020, the two projects were advertised for bid. On January 8, 2021, nine bids were received for the Trail Project and no bids were received for the Privacy Fence Project.

Trail Project

On January 13, 2021, the lowest responsible bidder, Redwood Engineering Construction, was awarded the Trail Construction Project. Information about this award, in addition to other costs required to deliver the trail project, are displayed below.

Contract Amount to Redwood Engineering Construction	\$1,442,881
Construction Management	\$332,960
Construction Contingency	\$284,159
Subtotal	\$2,060,000
Total Budget	\$1,885,000
Additional Funds Needed	\$175,000

It is typical for projects of this type to include a 20% project contingency. Due to various challenges of this project, including work adjacent to a creek and the complexities of doing work along private property, it is recommended that an additional \$175,000 in funds be allocated for a total allocation of \$284,159 to be used as a project contingency.

Privacy Fence Project

A total of \$765,000 is currently available for fence construction. The fencing of two properties on Lozano/DePalma is integral to the trail construction. The cost of that fence work is estimated at \$105,160, which is included in the Trail Project costs outlined above and is not a part of the Privacy Fence Project for other properties adjacent to the trail. To date, no award of bid has been made to construct additional privacy fencing.

When no bids are received for a project, the Public Contract Code allows an agency to directly solicit proposals from contractors and to negotiate a construction contract. Therefore, the City solicited proposals from six fencing contractors. A total of two responsive proposals were received as shown below.

California Commercial Fence Co.	\$1,504,069
Rodan Construction	\$1,898,877

The lowest proposal, in addition to other costs required to deliver the privacy fence project, are displayed below.

Proposed Contract Amount to California Commercial Fence	\$1,504,069
Contingency (20%)	\$300,814
Construction Management	\$120,000
Total	\$1,924,883
Amount Currently Available for Fencing	\$765,000
Additional Funds Needed	\$1,159,883

Factors contributing to the need for the increased budget requested include:

- *Impacts of COVID on local markets* – surging demand and a pandemic-constrained supply have driven lumber prices up nearly five-fold in the last year to historic highs. (Reference May 17, 2021 Mercury News article.)
- *Impacts of COVID on U.S. lumber commodities* – lumber commodities have increased approximately 325 percent within the past year.
- *Quantity of wood needed* – wood fencing is approximately 67 percent of the project.
- *Pre-cast contractor increase of estimate* – precast concrete supplier costs have increased 50 percent since the Fall of 2020.
- *Overall increase in the cost of all goods and services* – in the last year, the All-Items Index from the U.S. Bureau of Labor Statistics increased 4.2 percent. This is the largest 12-month increase since the period ending September 2008.
- *Impacts of COVID on availability of contractors* – demand in the private sector has increased, including an increased demand for contractors in the public sector for infrastructure projects.

All fencing work is anticipated to be completed by August 2022, if no significant issues occur that would delay trail work. The Fencing contractor will complete a portion of the scope of work following completion of the Trail project. The trail will not be opened until all privacy fence work is complete. In relation to the schedule, it is also noteworthy that Rights-of-Entry will be obtained from each property owner prior to fencing construction.

Privacy Fencing - Reimbursement for Precast Concrete

If the agreement is authorized with California Commercial Fence, the City's cost to install precast concrete fencing will be \$431 per foot.

Thirteen trail-side property owners who selected precast concrete fencing as their first preference were informed that a reimbursement to the City for a portion of the cost of the fencing is required, and that a "not to exceed" amount of \$170 per linear foot reimbursement to the City is required (regardless of the price received from the lowest contractor). The final reimbursement amount received by the City from the residents will depend on the number of property owners that ultimately select concrete fencing. Based on this quantity, the reimbursement to the City could be as high as \$177,820. This amount

is for a total of 1,046 feet of precast concrete fencing (13 properties). If Council wished to consider a lower reimbursement for the residents, the chart below shows possible reimbursement amounts.

	\$170 per foot	\$150 per foot	\$125 per foot	\$100 per foot
Amount Reimbursed	\$177,820	\$156,900	\$130,750	\$104,600
Cost to City	\$273,006	\$293,926	\$320,076	\$346,226

Construction Management (CM) Services

On October 6, 2020, the City Council authorized a Master Agreement with CSG Consultants, Incorporated (CSG), for an amount of \$500,000 with funding to be paid from individual projects requiring CM Services. Of this amount, \$332,960 has been allocated to the Regnart Creek Trail project. An additional \$120,000 of allocation for CM services will be needed for the Privacy Fence Project. Once CM services are allocated to the Privacy Fence Project, CSG's maximum compensation will be \$38,045 over the current master agreement amount. How these needed amounts are used within this master agreement is displayed in the chart below, and explained further below.

Master Agreement Amount	\$500,000
Amount Allocated to Trail Project	\$332,960
Amount Allocated to Privacy Fence Project	\$120,000
Amount Allocated to Other Projects (not related to the trail or fence projects)	\$85,085
Balance	(\$38,045)

Trail Project CM

Management of the Trail project has required increased onsite CM due to the contractor's sporadic staffing levels, irregular scheduling, and other issues related to compliance with contract requirements. This was not anticipated and requires increased CM services to monitor and manage the project, to protect the City's investment, as well as to protect the well-being of the Regnart Creek natural habitat. This increase in CM support is anticipated to continue for the duration of the project and is reflected in the \$332,960 of funds allocated to CM Services.

Privacy Fence Project CM

The decision to split the Trail Project into the Trail Construction project and the Privacy Fencing project to accommodate residents requesting fencing and to receive the most competitive pricing, has increased the need for CM services for this project because the

City is now dealing with separate contractors operating on separate schedules. CM Services for the Privacy Fence Project is allocated at \$120,000.

Design Services

The authorized amount of \$813,000 for feasibility and design has been expended. A total of \$55,000 additional funds is needed to support construction. \$25,000 is required for the trail project due to an anticipated large number of requests for information from the contractor and to confirm contractor property survey. \$30,000 is required for the fence project to address the number of fences to be replaced on the opposite side of the creek, immediately adjacent to the top of the bank.

Sustainability Impact

Construction of the Regnart Creek Trail will encourage bicycling and reduce reliance on the Single Occupancy Vehicle (SOV) and will therefore have a positive impact on sustainability. The trail is consistent with *General Plan: Community Vision 2015-2040* Policy M-1.3: Regional Trail Development, Policy M-2.3: Connectivity, and Policy M-5.3: Connections to Trails.

Fiscal Impact

Regnart Creek Trail project has a total budget of \$3,463,000:

Phase	Budget	Estimates	Budget Adjustment
Feasibility and Design	\$813,000	\$813,000	\$0
Trail Construction	\$1,885,000	\$2,060,000	\$175,000
Fencing Construction	\$ 765,000	\$1,924,883	\$1,159,883
Additional Design for Construction Support	\$0	\$55,000	\$55,000
Total Budget	\$3,463,000	\$4,852,883	\$1,389,883
Revenue			
Measure B Local Streets and Road Funds	\$1,885,000	\$1,885,000	\$0
Total Revenue	\$1,885,000	\$1,885,000	\$0
Net Impact (Revenue – Expenditures)	(\$1,578,000)	(\$2,967,883)	(\$1,389,883)

\$813,000 was allocated and spent on feasibility and design. \$1,885,000 is allocated for trail construction, and \$765,000 is allocated for fencing. The amount of \$2,650,000 is currently budgeted for both the Regnart Creek Trail and Regnart Creek Privacy Fence Project. An additional amount of \$1,159,883, is needed for privacy fencing construction. An additional \$175,000 of budget allocation is requested for Regnart Creek Trail project contingency. Allocation for Construction Management Services for both Regnart Creek Trail and the Privacy Fence Project will require \$38,045 of additional authorization. Allocation for additional design services will require \$55,000 of additional authorization.

Measure B Local Streets and Road Funds of \$1,885,000 will offset City expenses for the Trail Project. Additionally, reimbursement from property owners selecting concrete walls will offset net expenditures by up to \$177,820.

If all recommended budget adjustments are approved, the total Regnart Creek Trail and Fencing budget will be \$4,852,000. These costs are offset by \$1,885,000 in Measure B Funds resulting in a net cost to the City of \$2,967,883.

Prepared by: David Stillman, Transportation Manager

Reviewed by: Roger Lee, Director of Public Works

Approved for Submission by: Dianne Thompson, Assistant City Manager

Attachments

A – Draft Contract