



City of Sunnyvale

Agenda Item-No Attachments (PDF)

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REPORT TO COUNCIL

SUBJECT

Authorize the City Manager to Execute a Contract Amendment for the Mary Avenue Overcrossing Environmental Impact Report (EIR) to Undertake Additional Work Required by CEQA, Approve Increase to Contract Contingency Amount and Approve Budget Modification No. 40 in the Amount of \$47,556

BACKGROUND

On October 4, 2016, Council awarded a contract to Kimley-Horn Associates to prepare the Environmental Impact Report (EIR) for the Mary Avenue Overcrossing Project (RTC No. 16-0862). The California Environmental Quality Act (CEQA) requires that an EIR evaluate the environmental impacts of a proposed "project" and then compare the project to a range of alternatives.

Due to the complexity of the issues surrounding the Mary Avenue Overcrossing Project, staff proposed to evaluate five different options each as a separate "project" within the EIR. Staff believed that this approach would benefit the public by providing the most comprehensive environmental analysis of each option before the Council is asked to choose an option. Although somewhat unusual, the guidelines to the California Environmental Quality Act (CEQA) did not appear to prohibit an agency from analyzing multiple "projects" in an EIR.

The five options are as follows:

1. Four motor vehicle lanes, plus protected bike facilities and sidewalks.
2. Two motor vehicle lanes, plus protected bike facilities and sidewalks.
3. Two high-occupancy vehicle (HOV)/bus/shuttle lanes, plus protected bike facilities and sidewalks.
4. A bicycle and pedestrian overcrossing.
5. Removal of the extension from the General Plan.

During a study session on February 28, 2017 (RTC No. 17-0335), staff updated City Council on the project timeline, outreach efforts, and the five designs under consideration. Council requested that in addition to the CEQA analysis, staff should develop a framework of criteria to help Council select the preferred option at a later date.

EXISTING POLICY

Pursuant to Sunnyvale Charter Section 1305, at any meeting after the adoption of the budget, the City Council may amend or supplement the budget by motion adopted by affirmative votes of at least four members to authorize the transfer of unused balances appropriated for one purpose to another, or to appropriate available revenue not included in the budget.

The 2017 Land Use and Transportation Element (LUTE) of the Sunnyvale General Plan does not include a specific policy on Mary Avenue Overcrossing or its configuration. However, the 2017 LUTE EIR included Mary Avenue Overcrossing in future travel demand models and the programmatic analysis of impacts and mitigations. The 2017 LUTE also outlines policies that shall be used to guide transportation decisions in Sunnyvale as paraphrased briefly below:

- Policy 24. Promote actions and modes that provide safe access and reduce single occupant vehicle trips; and consider users in the following order: pedestrians, bikes and non-automotive, mass transit, delivery vehicles, and single-occupant automobiles.
- Policy 25. Provide parking and lane priority to environmentally friendly motorized vehicles (e.g. carpools, low emission, zero emission).
- Policy 29. Use multimodal measures of effectiveness along with auto level of service (LOS) and vehicle miles traveled (VMT).
- Policy 33. Prioritize subsidies to the most environmentally friendly modes and services.
- Policy 40. Prioritize safety of all modes over capacity considerations of any one mode.
- Policy 42. Ensure effective and safe traffic flows for all modes of transport through physical and operational transportation improvements.
- Policy 69. Promote walking and bicycling through street design.

ENVIRONMENTAL REVIEW

The action to amend the consultant contract does not constitute a “project” within the meaning of CEQA pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment. The purpose of the contract is to complete the required environmental review of the Mary Avenue Overcrossing Project.

DISCUSSION

On March 7, 2017, the City released a Notice of Preparation (NOP) for the Mary Avenue Overcrossing EIR outlining the five potential “projects” listed above, and Kimley-Horn Associates began preparation of the EIR.

On November 15, 2017, the California Court of Appeals, First Appellate District, issued a decision which specifically rejects the concept of a multi-project EIR. In that case, *Washoe Meadows Community v. Department of Parks and Recreation* (2017) 17 Cal.App.5th 277, the agency had prepared an EIR that identified five potential projects without defining the preferred or proposed project. The court held that this approach violated CEQA because the EIR failed to provide the public with an “accurate, stable and finite” project description.

Considering the *Washoe Meadows* case, staff believes that proceeding with the Mary Avenue EIR in the current format would create an unacceptable risk of a successful legal challenge to the EIR. Therefore, additional work is necessary to enable the City Council to designate one of the five options as the “project” for purposes of the EIR.

Staff will return to City Council at a later date for Council to designate the proposed “project” for the purposes of the EIR after conducting additional community outreach. The other four alternatives will be thoroughly evaluated in the EIR as project alternatives. At the conclusion of the environmental review process, the Council will be able to choose any of the five options. Designating one option as

the EIR “project” will not commit the City to ultimately approving that project, or preclude the selection of any of the alternatives.

The process of designating a proposed project for the purpose and completion of the EIR involves the following tasks:

- Approve contract amendment (this action);
- Compile findings to allow comparison of alternatives including vehicle, transit, bicycle and pedestrian flows and travel times; intersection levels of service; project cost; property implications, and consistency with other City policies such as the 2017 LUTE, TIF and other EIRs (covered under original contract);
- Undertake additional community engagement to obtain input from agencies, stakeholders, and community members;
- Return to Council to designate the option that will be defined as the project in the EIR, including criteria to assist the Council in making that decision;
- Reissue the Notice of Preparation (NOP) for the EIR;
- Reformat preliminary draft chapters of the Administrative Draft EIR;
- Prepare the Draft EIR and receive public comments (covered under original contract); and
- Respond to public comments, prepare and certify the Final EIR (covered under original contract).

FISCAL IMPACT

Staff worked with the consultant to prepare a scope of work for the proposed amendment associated with designation of a proposed project for purposes of the EIR. This effort includes additional community outreach, reissuance of the Notice of Preparation (NOP), and reformatting of the Administrative Draft Environmental Impact Report (ADEIR). Following the additional community outreach efforts, Council will be asked to select a proposed project which would be incorporated into the Draft EIR.

The consultant cost totals \$47,556, including change order task items of \$42,800, and associated \$4,756 contingency (Attachment 1 - Contract Amendment).

Budget Modification No. 40 has been prepared to appropriate Transportation Impact Fee (TIF) funds in the amount of \$47,556 for Mary Avenue Overcrossing EIR.

Budget Modification No. 40 FY 2017/18

	Current	Increase/ (Decrease)	Revised
Capital Projects Fund/Traffic Impacts Fees Sub-Fund			
<u>Reserves</u>			
Capital Reserve	\$19,381,370	(\$47,556)	\$19,333,814

Expenditures

Project 832440 - Mary Avenue Overcrossing EIR	\$384,155	47,556	\$431,711
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PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

ALTERNATIVES

1. Authorize the City Manager to execute a contract amendment with Kimley-Horn Associates in the amount of \$42,800 for the Mary Avenue Overcrossing Environmental Impact Report (EIR) to undertake additional work required by CEQA to designate a proposed project for the EIR, approve an increase in the contract contingency of \$4,756 and approve Budget Modification No. 40 in the amount of \$47,556.
2. Do not authorize the City Manager to execute a contract amendment with Kimley-Horn Associates in the amount of \$42,800 for the Mary Avenue Overcrossing EIR to undertake additional work required by CEQA to designate a proposed project for the EIR, do not approve an increase in the contract contingency of \$4,756 and do not approve Budget Modification No. 40 in the amount of \$47,556.

STAFF RECOMMENDATION

Alternative 1: Authorize the City Manager to execute a contract amendment with Kimley-Horn Associates in the amount of \$42,800 for the Mary Avenue Overcrossing Environmental Impact Report (EIR) to undertake additional work required by CEQA to designate a proposed project for the EIR, approve an increase in the contract contingency of \$4,756 and approve Budget Modification No. 40 in the amount of \$47,556.

This work was not anticipated to be included in the EIR and was expected to occur after certification of a Final EIR. Project contingency funds may be needed for unanticipated work associated with the preparation and certification of the EIR. Any unused contingency funds remaining after project completion will be returned to the TIF fund. If Council decides not to authorize execution of the contract amendment, then Council will be asked to designate a project for the purposes of the EIR without the assistance of a consultant in soliciting additional community input. Staff would reissue the NOP, and reformat the preliminary draft chapters of the Administrative Draft EIR.

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Reviewed by: Timothy J. Kirby, Director of Finance
Reviewed by: Jennifer Ng, Interim Assistant Director of Public Works
Reviewed by: Wayne Tanda, Interim Director of Public Works
Reviewed by: Teri Silva, Assistant City Manager
Approved by: Kent Steffens, City Manager

ATTACHMENT

1. Contract Amendment