



COUNCIL REPORT

DATE: June 27, 2023

CATEGORY: Consent

DEPT.: Public Works

TITLE: **Memorandum of Understanding for the Preliminary Engineering and Environmental Clearance Phase of the Rengstorff Avenue Grade Separation Project**

RECOMMENDATION

Authorize the City Manager or designee to execute a new Memorandum of Understanding with the Peninsula Corridor Joint Powers Board for the preliminary engineering and environmental clearance phase of the Rengstorff Avenue Grade Separation Project in an amount not to exceed \$3.5 million.

BACKGROUND

The Peninsula Corridor Joint Powers Board (JPB) is the owner and operator of Caltrain, a commuter service which provides transportation for communities on the Peninsula between San Francisco and Gilroy.

On November 27, 2018, the City Council authorized the City Manager to execute a Memorandum of Understanding (MOU) with the JPB for the preliminary engineering and environmental clearance phase of the Rengstorff Avenue Grade Separation Project. The MOU identified the project description, scope, JPB responsibilities as project lead, City responsibilities, funding, payment, insurance and indemnification, and other miscellaneous terms. The key terms for the MOU approved by Council as listed in the November 2018 Council report (Attachment 1 to this Council report) included:

- The City will provide up to \$3.5 million to JPB for the preliminary engineering/environmental clearance phase of the project.
- The preliminary engineering and environmental clearance (scope of work) will have a target completion date of June 2020 and must be completed within three years from the execution date of the MOU.

The MOU was executed on June 10, 2019, and was set to terminate upon the earliest of the following: (1) six months after written acceptance/endorsement of completion of the scope of

work; (2) termination by the City or JPB; or (3) three years and six months from the execution date (based on a completion timeline of three years and additional time for final invoicing and project closeout). The MOU terminated on December 10, 2022, three years and six months from the execution date.

ANALYSIS

The JPB completed the preliminary engineering/environmental clearance in 2023, after the termination date of the MOU. The work was delayed by over a year due to JPB staffing challenges and the pandemic. The JPB has submitted invoices, including a final invoice in 2023, and a new MOU is needed to process these invoices for payment. During the term of the 2019 MOU, the City paid \$2.9 million to JPB. The remaining invoices to be paid are within the total original agreement amount of \$3.5 million.

Staff recommends that Council authorize the City Manager or designee to execute a new MOU with the JPB to allow the City to make final payments. The new MOU project description, scope, agency responsibilities, funding, and payment terms will remain the same as the 2019 MOU, with the revision of a termination date of June 30, 2024, to allow time for the parties to enter into a new MOU, fully close out the preliminary engineering/environmental clearance phase of the project, and pay all invoices related to this phase of the project.

With the completion of this phase of the project, the final design and right-of-way acquisition phase will begin. On [November 1, 2022](#), the City Council authorized the City Manager to execute a Cooperative Agreement with the JPB and the Santa Clara Valley Transportation Authority (VTA) to fund this next phase of work and to establish roles and responsibilities for each party. The Cooperative Agreement is expected to be executed in the next month, and the JPB is beginning the process for selecting the final design consultant.

FISCAL IMPACT

Rengstorff Grade Separation Environmental Clearance, Project 17-37, is funded with \$905,000 from the Construction/Conveyance Tax Fund and \$3,115,000 from the San Antonio Public Benefit Fund, for a total funding amount of \$4.02 million. There is no fiscal impact associated with the recommended action. The new MOU will allow final payment within the not-to-exceed amount of \$3.5 million established in the 2019 MOU. No additional appropriation is requested at this time.

ALTERNATIVES

1. Specify additional or modified terms for the MOU.
2. Provide other direction.

PUBLIC NOTICING—Agenda posting.

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Attachment: 1. November 27, 2018 Council Report

cc: APWD—Arango, PCE—Gonzales, SCE—Houghton, SMA—Goedicke, File (17-37)