



# AGENDA REPORT

**TO:** Edward D. Reiskin  
City Administrator

**FROM:** David Ferguson  
Interim Director, OPW

**SUBJECT:** Courtland Creek Restoration Project  
Grant and Professional Services  
Contract Amendment

**DATE:** November 2, 2020

City Administrator Approval 

Date: Nov 17, 2020

## **RECOMMENDATION**

### **Staff Recommends That The City Council**

- 1) Adopt A Resolution Authorizing The City Administrator, Or Designee, To (1) Apply For, Accept, And Appropriate Grant Funds In An Amount Not-To-Exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00) From The Environmental Protection Agency (EPA) San Francisco Bay Water Quality Improvement Fund (SFBWQIF) To Implement The Courtland Creek Restoration Project (Project), And (2) Enter Into A Grant Agreement With The EPA To Implement The Project (No. 1005340), And**
- 2) Adopt A Resolution (1) Amending The Professional Services Agreement With FlowWest, LLC To Increase The Agreement By An Additional One Million One Hundred Twenty-Four Thousand Seventy-One Dollars (\$1,124,071.00) For A Total Contract Amount Not-To-Exceed One Million Five Hundred Twenty-Four Thousand Seventy-One Dollars (\$1,524,071.00) For Phase II Of Project Design, Construction Support, And Post-Construction Services, And (2) Waiving The Competitive Request For Proposals/Qualifications Requirement.**

## **EXECUTIVE SUMMARY**

Approval of the two proposed resolutions will authorize the City Administrator, or designee, to 1) apply for, accept and appropriate \$1,500,000.00 in grant funds from the EPA SFBWQIF for the Courtland Creek Restoration Project (Project) in Courtland Creek Park and to enter into a grant agreement with the EPA to implement the Project and 2) amend the professional services agreement with FlowWest, LLC (FlowWest) to perform the Phase II that includes remaining design and construction support and post-construction services. The amendment will increase the contract by an amount not-to-exceed \$1,124,071.00 for a total contract maximum of \$1,524,071.00. The Project's goals are to improve water quality and habitat, stabilize creek banks, reduce flood risk, reduce illegal dumping, improve park safety, connect the neighboring community to the creek in a visually appealing way, and provide enhanced nature-based recreation and educational opportunities.

## **BACKGROUND / LEGISLATIVE HISTORY**

On June 4, 2019, City Council authorized the City Administrator to enter into a professional services agreement with FlowWest per Council Resolution No. 87720 C.M.S. (**Attachment A**). FlowWest was selected through a competitive, qualification-based bid process to provide consulting design and engineering services and construction support and post-construction services for the Project. Due to limited Project funding at the time FlowWest was selected, the professional services agreement was structured in two phases. Phase I authorized design services that included planning and technical studies through schematic design. Phase II, to be executed upon securing additional funds, includes remaining design, construction support, and post-construction services. Phase I and the option to amend the FlowWest agreement for Phase II upon receipt of additional project funds were authorized by the City Council in the aforementioned Resolution. Staff described the anticipated full value of the project along with the rationale for the proposed phasing of the design services contract in the June 4, 2019 staff report to Council. The contract phasing approach was also detailed in the request for proposals for the competitive bidding process from which FlowWest was selected. The Public Outreach / Interest section of the staff report also described the outreach that staff conducted to reach a diverse and broad audience of engineering consultants with the request for proposal.

The Project will restore three heavily-degraded stretches of open creek channel that flow above-ground through Courtland Creek Park, parallel to High Street between Brookdale Avenue and 45<sup>th</sup> Avenue (see **Attachment B – Project Location Map and Conceptual Designs**). The Project will stabilize and repair steep and eroding creek banks to protect property, reduce flood risk, and improve water quality. The Project will also restore native vegetation to create habitat and will incorporate some park enhancements that are designed to reduce illegal dumping in the Park by connecting the community to the creek in a visually appealing way, and to increase recreation and provide education opportunities for the surrounding community.

The Project cost is estimated between \$4.5 - \$5 million. The acceptance of this \$1.5 million grant from EPA requires a cost-share grant match contribution and the funding sources include:

- \$500,000 allocated from the Oakland Trust for Clean Water and Safe Parks Bond (Measure DD). The (Project) is on the Council-adopted DD Prioritized Creek Restoration Project List that was authorized in Council Resolution No. 79649 C.M.S. (**Attachment C**). The Project, located in Districts 4 and 5, is ranked seventh on the List.
- \$1,000,000 from a State Proposition 68 grant from the California Department of Water Resources (DWR) Urban Streams Restoration Program (USRP). These grant funds have been accepted and appropriated in Council Resolution No. 88143 C.M.S. (**Attachment D**).

With the acceptance of this grant, the Project will have secured \$3,030,000 in funding to date.

## **ANALYSIS AND POLICY ALTERNATIVES**

To continue filling the Project funding gap, on May 13, 2020, the City applied for \$1,500,000.00 in Project funding through the SFBWQIF grant from EPA. On September 13, 2020 the City received notice of being selected for the federal grant (No. 98T15701). Upon Council approval, the grant agreement (**Attachment E**) can be fully executed. The grant will provide critical

funding needed for the Project. The City is actively seeking additional funding required to complete the full scope of the Project.

To meet the EPA and DWR grant funding expenditure deadlines of October 31, 2024, and December 31, 2024, respectively, amending the professional services agreement with FlowWest is needed to complete Phase II of the project design, construction support, and post-construction services. FlowWest is near completion of the draft schematic design. The amendment will increase the contract by an amount not-to-exceed \$1,124,071.00 for a total contract maximum of \$1,524,071.00.

Once the Project is fully funded and constructed, it will improve water quality and habitat, stabilize creek banks, reduce flood risk, reduce illegal dumping, improve park safety, provide enhanced nature-based recreation and educational opportunities, and will connect the neighboring community to the creek in a visually appealing way.

The Project is in a Census Tract designated as a disadvantaged community, is near other disadvantaged and severely disadvantaged communities (see **Attachment F – Disadvantaged Communities Map for the Courtland Creek Restoration Project**), and will benefit the surrounding community with urban green space access, and recreation and educational opportunities. These project elements will be designed in equitable collaboration with the community to help reduce burdens for residents most impacted by racial disparities in the neighborhood, such as chronic illegal dumping and park safety concerns.

#### **WAIVER OF COMPETITIVE REQUEST FOR PROPOSAL/QUALIFICATIONS REQUIREMENT**

Oakland Municipal Code (OMC) Section 2.04.051 A. requires a competitive request for proposals/qualifications ("RFP/Q") proposal solicitation process. However, OMC Section 2.04.051 B. permits the Council to waive this RFP/Q requirement upon a finding and determination that it is in the best interests of the City to do so. As the consultant selection process in 2019 adhered to City's OMC for competitive process and the solicitation notice stated that the selected consultant team would provide planning through construction and post-construction support services, the proposed amendment adheres to the original intent. To continue the services as initially specified and avoid any project disruption or delay completing the scope, and to meet the granting agencies' timelines for the expenditure of grant funds (as referenced in the Analysis and Policy Alternatives section above), staff recommends that it is in the City's best interest to waive the competitive RFP/Q requirement and amend the City's agreement with FlowWest.

#### **FISCAL IMPACT**

Approval of the first proposed Resolution will authorize the City Administrator, or designee, to accept and appropriate EPA SFBWQIF grant funds in an amount not-to-exceed one million five hundred thousand dollars (\$1,500,000.00). The acceptance of these grant funds requires a cost-share matching contribution of \$1,500,000 that is available and is provided by the following funding sources:

**Table 1: Project Funding Sources**

Description	Fund # / Award #	Project #	Org #	Amount
Match Funds - Measure DD (Resolution 79649)	5322 - Measure DD Series C / 23146	1001190 - Creek Restoration	30245, 92245, 92270	\$500,000
Match Funds - DWR USRP Grant	2159 - State of California / TBD	1005340 - Courtland Creek Restoration	92270	\$1,000,000
Total Funding:				\$1,500,000

EPA SFBWQIF grant funding will be disbursed for costs incurred by the City to implement the Project, per the grant agreement, and will be deposited into the following funding source:

**Table 2: Federal Grant Deposit Fund**

Description	Fund # / Award #	Project #	Org #	Amount
Federal Grant Fund	2125 - Environmental Protection Agency/ TBD	1005340 - Courtland Creek Restoration	30245	\$1,500,000

Additionally, the cost-share matching contribution in project Creek Restoration-B (1001190), in the Watershed and Stormwater Program and Capital Project Management Orgs (30245, 92245, and 92270) will be transferred to the Courtland Creek Restoration project (1005340).

Approval of the second proposed Resolution will authorize the City Administrator, or designee, to amend the professional services agreement with FlowWest, LLC to increase the contract by an additional one million one hundred twenty-four thousand seventy-one dollars (\$1,124,071.00) for a total contract amount not-to-exceed one million five hundred twenty-four thousand seventy-one dollars (\$1,524,071.00). Funding is available contingent upon the adoption of the first resolution and will be provided by the following funding sources:

**Table 3: Federal Grant Funding Source**

Description	Fund # / Award #	Project #	Org #	Amount
Federal Grant Fund	2125 - Environmental Protection Agency/ TBD	1005340 - Courtland Creek Restoration	30245	\$1,500,000

There is no impact on the General Purpose Fund, and no additional funding is requested.

**PUBLIC OUTREACH / INTEREST**

The Project will incorporate design and scope input from Courtland Creek Park neighbors and other community members and stakeholders. The City's design consultant team, City staff, and Oakland Parks and Recreation Foundation are currently working to develop and implement a collaborative community engagement plan and process that will be conducted following the City's Department of Race and Equity (DRE) Inclusive Public Engagement Planning Guide,

which includes effective strategies for inclusive engagement and guides engagement and Project objectives that will address disparities and increase opportunities and/or reduce burdens for the communities most impacted by racial disparities. Staff plan to schedule community meetings for late fall and winter of Fiscal Year 2020-2021. Meetings will be held using virtual engagement tools to increase community participation. The Project team will hold public meetings periodically throughout the design process to ensure responsiveness to community concerns, build engagement in the project, and foster long-term stakeholders and stewards. Given the long history of community participation around this creek and park, staff anticipates strong community interest and participation in the Project. The Friends of Courtland Creek, local schools such as Melrose Leadership Academy and Fremont High School's Service Learning Program through build On, and the City's Adopt a Spot/Creek program volunteers are aware of the Project. They have agreed to collaborate with the City to expand outreach and education activities and promote equitable environmental stewardship designed to benefit the surrounding neighborhoods by reducing illegal dumping and littering in the Project area and increasing access to natural habitat.

### **COORDINATION**

The work to be done under this Project will continue to be coordinated with Oakland Parks and Recreation and Youth Development, Contract and Compliance Department, Department of Race and Equity, and appropriate divisions within Oakland Public Works.

This report and resolution have been reviewed for form and legality by the Office of the City Attorney and the Budget Bureau of the Finance Department.

### **SUSTAINABLE OPPORTUNITIES**

***Economic:*** The Project will repair a City asset by stabilizing creek banks on City property. This will reduce flood risk on City and adjacent private property, and will reduce the potential cost of repairs in the future. Implementation of the Project will generate business tax, sales tax, and other revenues for the City by those firms who work on the project. Local businesses will be utilized on the Project and will benefit directly.

***Environmental:*** Implementation of the Project will improve and enhance habitat, creek bank stability, water quality, flood protection, and climate change resilience. The Project will also be designed in accordance with requirements set by applicable environmental regulatory agencies as well as by the City of Oakland Creek Protection Ordinance.

***Race & Equity:*** Implementation of the Project will benefit the surrounding underserved and disadvantaged neighborhoods by increasing the quality of Courtland Creek and Courtland Creek Park through enhanced access to natural amenities, reduced trash levels, and illegal dumping, and expanded nature-based, hands-on educational opportunities for local students. The resulting Project will also comply with the Americans with Disabilities Act (ADA) and enhance the enjoyment of Courtland Creek Park for all ages and abilities.

**CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The Project has been reviewed by and is incorporated in the Measure DD programmatic EIR. The Project will meet all mitigation requirements that are outlined for Creek Restoration Projects in the Mitigation, Monitoring, and Reporting Plan of the Measure DD EIR.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the City Council adopt the following resolutions:

1. **A Resolution Authorizing The City Administrator, Or Designee, To (1) Apply For, Accept, And Appropriate Grant Funds In An Amount Not-To-Exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00) From The Environmental Protection Agency (EPA) San Francisco Bay Water Quality Improvement Fund (SFBWQIF) To Implement The Courtland Creek Restoration Project (Project), And (2) Enter Into A Grant Agreement With The EPA To Implement The Project (No. 1005340), And**
2. **Adopt A Resolution (1) Amending The Professional Services Agreement With FlowWest, LLC To Increase The Agreement By An Additional One Million One Hundred Twenty-Four Thousand Seventy-One Dollars (\$1,124,071.00) For A Total Contract Amount Not-To-Exceed One Million Five Hundred Twenty-Four Thousand Seventy-One Dollars (\$1,524,071.00) For Phase II Of Project Design, Construction Support, And Post-Construction Services, And (2) Waiving The Competitive Request For Proposals/Qualifications Requirement.**

For questions regarding this report, please contact Kristin Hathaway, Watershed and Stormwater Division and DD Program Manager, at (510) 238-7571.

Respectfully submitted,



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Attachments (6):

- A: Resolution No. 87720 C.M.S.
- B: Project Location Map and Conceptual Designs
- C: Resolution No. 79649 C.M.S.
- D: Resolution No. 88143 C.M.S.
- E: EPA SFBWQIF Grant Agreement
- F: Disadvantaged Communities Map for the Courtland Creek Restoration Project