



Date: May 24, 2022

Honorable Mayor and Council Members:

Author and title: Jessica Thompson, Senior Engineer

Title: **Truckee River Legacy Trail Phase 4A C0702—Contract Award**

Approved By: _____ Jen Callaway, Town Manager

Recommended Action: Town Council to:

1. Authorize the Town Manager to award and execute the Truckee River Legacy Trail Phase 4A contract to Mercer-Fraser Company in the amount of \$12,395,287.32 and authorize a contingency amount of \$1,239,528 (10%) for a total not to exceed amount of \$13,634,815.32.
2. Reject Walsh Construction Company bid protest and waive minor defects and inconsistencies in the Mercer-Fraser Company bid;
3. Authorize staff to explore alternative bridge designs for the Truckee Springs Bridge;
4. Authorize the Town Manager to execute an amendment to the Truckee Springs Cost Share Agreement with the Truckee Donner Land Trust as outlined in this staff report;
5. Authorize the Town Manager to execute a task order with NV5 for material inspection and testing in the amount of \$114,030.98; and
6. Amend the budget for C0702 as outlined in the Fiscal Impact section of this staff report.

Discussion: Truckee River Legacy Trail Phase 4A consists of construction of a 10-12 foot wide Class 1 multi-use trail along the south side of the Truckee River between the west end of South River Street and the western town limits. The project would also include a pedestrian bridge across the Truckee River, extension of South River Street with a vehicle bridge to a trailhead parking lot, and a spur to the Cottonwood Restaurant with a second pedestrian bridge. The project includes riverbank restoration and a trail to the river at the Donner Creek Confluence with the Truckee River on West River Street, restoration of existing wetlands and a portion of a small creek within the project area, and a new Truckee Donner Public Utility District (TDPUD) water line connecting existing waterlines on West River Street to existing waterlines on South River Street will also be incorporated into the project.

The project construction bid was publicly advertised on February 23, 2022. Bids were received from three contractors on April 15, 2022. The low bidder was Mercer-Fraser Company and the bid results were presented to Council on April 26, 2022. The bid tabulation is included as **Attachment 1**.

Table 1: Bid Summary

Contractor	Bid Amount
Herback General Engineering	\$13,170,160.23
Walsh Construction Company	\$12,489,209.25
Mercer-Fraser Company	\$12,395,287.32 *apparent low bid

The Engineer's estimate for the project was \$8.2 million and the apparent low bid is \$12,395,287, which is \$4.2 million (50 percent) above the Engineer's Estimate. The Construction Bid for the bridge over the

Truckee River was approximately 2.5 times the Engineer's Estimate for that bridge, and thus represents the majority of the overall project bid which is in excess of the Engineer's Estimate.

Bid Protest

Staff received a bid protest letter from Walsh Construction Company on April 21, 2022 and a supplement letter on April 29, 2022. Both documents are included as **Attachments 2 and 3**. The supplement does not need to be officially considered as it was received after the bid protest deadline, however, no substantially new information was provided in the supplement. Mercer-Fraser Company's response to the bid protest is included as **Attachment 4**. The items that Walsh is protesting (and staff's summary responses shown *in italics*) are as follows:

1. Mercer-Fraser's bid is nonresponsive as it fails to comply with the requirements of the contract documents.
 - a. Failure to list material fabricators. *Mercer-Fraser has confirmed that, consistent with the bid specifications, they will be self performing any items not listed to be performed by a contractor, or the subcontractor's work is less than an estimated ½ of 1% of the contract amount for the item.*
 - b. Failure to list two projects completed within two years similar to this project. *Mercer-Fraser did provide a list of projects (5) that ranged from work performed between 2017-2022. Also, the requirement to list completed projects appeared in the contract special conditions, not in the list of requirements for all bidders. As a result, bidders were not required to list projects within a specific time frame and Mercer-Fraser's lack of a project list in its bid does not constitute non-compliance with the requirements for bidders. To the extent any deviation exists, it is immaterial and can be waived.*
 - c. Failure to identify and provide qualifications for superintendent and micro-pile foreman. *Staff believes the contractor has adequate qualifications to do the work and the omission of this information did not give Mercer-Fraser an unfair advantage. The subcontractor was listed with the bid submittal. As with the requirement to list completed projects, the requirement to identify and provide qualifications for the superintendent and micro-pile foreman applies only to the contractor to which the contract is awarded, not to all bidders. As a result, the omission of this information from Mercer-Fraser's bid does not constitute non-compliance with the requirements for bidders. To the extent any deviation exists, it is immaterial and can be waived.*
2. Mercer's bid failed to comply with the listing Law and should therefore be rejected as non-responsive. *Based on Mercer-Fraser's response, staff believes the bid was consistent with the listing Law.*
3. The flaws in Mercer's bid fail to comply with the Contract Documents, provide a potential competitive advantage and render Mercer's bid non-responsive. *Staff believes the bid inconsistencies were minor, did not give Mercer-Fraser an unfair advantage, and the bid is valid. Moreover, compliance with the contract documents is not required of bidders, only of the contractor to whom the contract is awarded, and only once the contract has been executed.*

Staff is recommending that the bid protest is rejected and minor defects and inconsistencies in the Mercer-Fraser Company bid are waived.

Funding Partners

The Town has funding agreements in place or in progress with both the Truckee Donner Land Trust (TDLT) and Truckee Donner Public Utility District (TDPUD), summarized below.

Town of Truckee

- The Town will fund 100% of the paved trails for the connection from the trailhead to the western Town limits, the "J-line" connection from the main trail to Cottonwood, and a few soft surface connections to the river and parking lot at Cottonwood. The Town is also funding the civil infrastructure (not planting) for the Donner Creek Confluence area.

Truckee Donner Land Trust (TDLT)

- TDLT and the Town will split the design and construction costs for the pedestrian bridge with TDLT paying 75% and the Town paying 25% of the bridge costs.
- TDLT will fund 100% of the design of the trailhead infrastructure in the Truckee Springs parcel, including the South River Street road extension, small vehicle bridge over existing drainage, parking lot, trail connection to the pedestrian bridge, and the soft surface trail improvements. The Town will fund the trail connection connecting the parking lot and the Legacy Trail.

Truckee Donner Public Utility District (TDPUD) Water Line

- TDPUD agrees to reimburse the Town for 100 percent of the actual construction costs associated with the TDPUD waterline.

The TDLT agreement has a meet and confer requirement if the bridge bid is above \$2.5 million or the trailhead is above \$800,000 to discuss possible means of reducing the cost, including revising the bridge design or eliminating items, as well as the possibility of TDLT raising additional funds. Staff has discussed these options for moving forward with TDLT and TDLT has indicated they are supportive of pursuing an alternative bridge design subsequent to the contract award. It is uncertain as to the amount of cost savings that could be realized with a different bridge, but staff anticipates they could be in the \$1 to \$2 million dollar range. Should Council award the construction contract, the Town will work with the contractor and project engineer to develop a bridge alternative, the cost for which (including the bridge, abutments, and wingwalls) is anticipated to be available in mid July.

In addition, TDLT has committed to the following in terms of funding:

1. Deposit \$3.3 million with the Town within 10 days of the bid award
2. Deposit an additional \$1.65 million with the Town by July 1, 2022.
3. Continue to fund raise to fund their complete fair share, assuming 75 percent of the bridge costs and 100 percent of the trailhead, parking, and associated connection costs. This additional amount is estimated to be \$1,540,339 based on the current bid but could potentially be significantly less if an alternative, less-expensive bridge is constructed.

Ideally, the bridge costs will be split 75%/25% as previously agreed upon. However, if TDLT is unable to raise funds for their fair share and additional funding is still required even with an alternative, less-expensive bridge, staff recommends that the Town Council approve the use of Measure R funds to make up any funding shortfalls. The funding shortfall is currently estimated to be \$1,540,339.38 based on the originally-proposed stress ribbon bridge and a 10% construction contract contingency (which may not be used in its entirety). The actual shortfall will likely be much less with an alternative bridge and unexpended contingency.

The cost share agreement between the TDLT and the Town will require an amendment to reflect the changes described above. The draft amendment is included as **Attachment 5**. The amendment includes the description of how the funds will be split above the original \$2,500,000 estimate and the timing of when the funds shall be provided by the TDLT. This additional funding commitment will be executed prior to the Town signing the contract for the project.

Staff is recommending that Council award the bid to Mercer-Fraser Company. Town Council does have the option to reject the/all bids at this time instead of awarding the contract. If Council chooses to reject the bid, staff would recommend re-bidding the project in late summer or fall of 2022 without the bridge for construction during the summer of 2023. This option could result in more bids being received, although lower prices are not guaranteed.

Status of Permitting

Staff is still finalizing permits with California Fish and Wildlife, US Army Corp of Engineers, and Lahontan Regional Water Board. The California Fish and Wildlife and Lahontan Regional Water Board permits are anticipated to be received by late May or early June but the Army Corp permit may be further delayed. Staff will work diligently to acquire the permits as soon as possible but has also evaluated what work can be initiated in the absence of the permits that are only related to work that would impact wetlands or floodplains. Based on this evaluation, staff believes a significant amount of work can be accomplished on the trail and bridge abutments prior to acquiring the floodplain and wetland permits and, therefore, recommends proceeding with the contract award and initiation of construction.

NV5 Material Testing and Inspection

In conjunction with the contract award for construction, staff is also recommending that a new task order with NV5 is authorized to provide materials testing and specialized inspections related to the bridge and retaining wall. The Town has a 5 year on-call contract with NV5. The scope of work is included in **Attachment 6**. The total cost of the work is estimated at \$114,030.98, which is significantly higher than what is typically required for a construction project but necessary because of the complexity associated with the bridge construction and soil nail wall. The NV5 work will also be split between the funding partners based on the amount of work for each entity.

Priority:

<input type="checkbox"/>	Enhanced Communication	<input checked="" type="checkbox"/>	Climate and Greenhouse Gas Reduction	<input type="checkbox"/>	Housing
<input checked="" type="checkbox"/>	Infrastructure Investment	<input type="checkbox"/>	Emergency and Wildfire Preparedness	<input type="checkbox"/>	Core Service

Fiscal Impact: The total construction cost for the Project is estimated to be **\$14,360,511.05**, which includes a 10% contingency and various construction management and permitting costs. The breakdown of the various parts of the trail is provided in **Table 2**:

Table 2: Summary of Estimated Construction Costs

	Section Description	Estimated Cost
A	General (Mobilization, Stormwater BMPs, Traffic Control, etc.)	\$ 1,538,400.00
B	Legacy Trail A Line (Class 1 Trail from Parking Lot to West)	\$ 1,466,532.00
C	Legacy Trail J Line (Class 1 Trail to Cottonwood)	\$ 2,690,228.32
D	South River Street Extension, Trailhead Parking Lot and H Line to Bridge	\$ 904,307.00
E	Truckee Springs Pedestrian Bridge	\$ 5,463,120.00
F	TDPUD Water Line (excludes portion on the bridge)	\$ 252,750.00
G	Donner Creek Confluence Restoration	\$ 79,950.00
	Subtotal	\$ 12,395,287.32
	Construction Contract Contingency (10%)	\$ 1,239,529.73
	Construction Engineering/ Materials Testing/Permits/Construction Support	\$ 725,694.00
	Total	\$ 14,360,511.05

Per the existing agreement, the costs for the construction of the bridge will be split 75%/25% between the TDLT and the Town respectively. There are some costs in the bridge construction that will be paid for by the TDPUD for incorporating the water line. The “General” items Row A will be split between the various entities based on the proportion of the cost of each entities’ non-general construction items to the total cost of non-general construction items. Below is a summary of the fair share amounts of the Town, TDLT, and TDPUD.

Table 3: Construction Estimate Cost Split

Agency	Construction Amount	With 10% Cont. for Construction and CM costs
TDLT	\$ 5,600,092	\$ 6,490,339
TOT	\$ 6,354,344	\$ 7,349,813
TDPUD	\$ 440,852	\$ 520,359
Total	\$ 12,395,288	\$14,360,511

Below is a summary of the potential funding shortfall, assuming a 10% construction contract contingency and the project is constructed per the bid.

Table 4: Project Cost Delta

Agency	Project Completion Cost	Project Completion Current Commitment Total	Delta
TDLT	\$ 6,490,339	\$ 4,950,000	\$ 1,540,339
TOT	\$ 7,349,813	\$ 7,349,813	\$ 0
TDPUD	\$ 520,359	\$ 520,359	\$ 0
Total	\$ 14,360,511	\$ 12,820,172	\$ 1,540,339

In order to fund the construction contract, staff is proposing a budget amendment. The proposed budget for CIP C0702 that reflects the construction costs and cost splits is provided below:

Table 5: Proposed Budget Amendment for Truckee River Legacy Trail Phase 4A

Funding Sources	FY 21/22	FY 22/23	FY 23/24	Total
Measure R Sales Tax Fund	\$1,678,610	\$3,000,000	\$3,249,813	\$7,928,423
Private Contributions (TDLT Hard Commitment)	\$ 3,300,000	\$1,650,000	\$0	\$4,950,000
Private Contributions (TDLT Soft Commitment)*	\$0	\$0	\$1,540,339	\$1,540,339
Trails Amenities Contributions	\$6,390	\$0	\$0	\$6,390
Private Contributions (TDPUD)	\$0	\$440,852	\$79,507	\$520,359
Inter-government Contributions	\$141,109	\$0	\$0	\$141,109
Total	\$5,126,109	\$5,090,852	\$4,869,659	\$15,086,620
Expenditures	FY 21/22	FY 22/23	FY 23/24	Total

Design	\$678,610	\$0	\$0	\$678,610
Construction	\$4,447,499	\$5,090,852	\$4,869,659	\$15,008,010
Total	\$5,126,109	\$5,090,852	\$4,869,659	\$15,086,620

***Pursued through fundraising or alternative bridge. If not realized, the Town funds the difference through Measure R.**

At the April Council meeting, staff indicated that a grant was applied for in February. The grant award date was pushed out to the middle or end of summer. It is unclear if the Town could still use the grant if it is awarded for this project.

Public Communication: Ongoing communication with the property owners, TDPUD, and TDLT.

Attachments:

1. Bid Summary
2. Bid Protest
3. Supplemental Bid Protest
4. Mercer-Fraser Bid Protest Response
5. Draft Amendment for Cost Share Agreement
6. Scope of Work for NV5