



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** John Aitken  
John Ristow  
Jon Cicirelli  
Matt Cano  
Jim Shannon

**SUBJECT:** SEE BELOW

**DATE:** October 15, 2021

Approved

Date

10/15/2021

**COUNCIL DISTRICT: 3**

## SUPPLEMENTAL

**SUBJECT: ADDITIONAL INFORMATION RELATED TO THE PROCUREMENT FOR 9821 – SJC GUADALUPE GARDENS FENCING PROJECT AND PROVISION OF OPTIONS FOR CONSIDERATION**

## REASON FOR SUPPLEMENTAL

The purpose of this supplemental memorandum is to:

- Respond to the Mayor's and City Council's September 28, 2021 Council direction to provide additional options for preventing encampments to address the Federal Aviation Administration's (FAA) concerns about maintaining the City's grant assurances for the Guadalupe Gardens Area;
- Describe how the original plan is conducive to requested additional options;
- Describe additional options;
- Summarize key considerations; and
- Provide a summary and additional as detailed in Appendix A:
  - Option 1 Full Fencing of the Space (as originally proposed)
  - Option 2 Limited Beautification Improvements
  - Option 3 Increased Beautification Improvements

**It is critical that Council provide its concurrence at this meeting to pursue Items (b) and (c) below to temporarily close the proposed streets while other options are being considered. Temporary closure of the streets does not hinder implementation of other options.**

**RECOMMENDATION**

- (a) Adopt a resolution delegating authority to the Director of Public Works to award the construction contract for the 9821 – SJC Guadalupe Gardens Fencing Project pursuant to City Charter Section 1217(h), in an amount not greater than \$1,500,000.
- (b) Conduct a public hearing on the proposed temporary closure of Spring Street between Hedding Street and Asbury Street, and Asbury Street between Walnut Street and Irene Street, and Irene Street between Taylor Street and Asbury Street.
- (c) Adopt a resolution to temporarily close Spring Street between Hedding Street and Asbury Street, and Asbury Street between Walnut Street and Irene Street, and Irene Street between Taylor Street and Asbury Street.
- (d) Adopt the following 2021-2022 Appropriation Ordinance Amendments in the Airport Renewal and Replacement Fund:
  - (1) Decrease the Ending Fund Balance in the amount of \$700,000; and
  - (2) Increase the Guadalupe Gardens Fencing appropriation in the amount of \$700,000.
- (e) Direct the City Manager to:
  - (1) Near term (next two months): Continue trash/debris removal and abatements as previously proposed; install k-rail or other suitable barriers to prevent vehicles from entering abated areas and to deter illegal dumping; close Spring Street to allow additional RV/vehicle parking through the end of Phase III abatements; and provide daily police presence and security patrols to prevent re-encampment of abated areas;
  - (2) Medium term (next 2-8 months): Engage surrounding community and stakeholders, and recommend to Council temporary recreational uses of the site to activate cleared areas; and identify funding sources; and
  - (3) Long term (6-18 months): Engage surrounding community and stakeholders to identify permanent compatible public uses, and identify funding sources.

**BACKGROUND**

In February 2021, the FAA wrote to the City to voice safety concerns about a homeless encampment located on the Guadalupe Gardens area and stated that this encampment violated the City’s grant assurances with the FAA. This land was bought with FAA funds for runway approach protection purposes and noise mitigation for the Airport. In the letter the FAA expressed the desire that the Airport and City avoid “any situation which may compromise applicable airport design surfaces, for continued safe operations at this airport facility.”

In response to the directive issued by the FAA, staff from the Airport, Parks, Recreation and Neighborhood Services (PRNS), Housing, and Police departments collaborated to recommend a viable plan to address the current condition at Guadalupe Gardens. Staff acknowledge that the conditions at this location are of concern, not just from an airplane safety perspective, but from a humanitarian and public health perspective as well. To address the numerous concerns in this area, staff identified the following goals of the proposed project:

1. Optimize Use of City Funding;
2. Honor City Commitment to FAA Grant Funding;
3. Protect the Health and Safety of the Unhoused Population;
4. Protect the Natural Environment;
5. Prevent Future Re-encampment of the Area; and
6. Protect Businesses in area

The FAA is concerned that this was not the first time that this land was used for unauthorized purposes and requested that the City take “increased measures to address the infraction.” After some negotiations with the FAA about the timing of the action to be taken, the City proposed a Corrective Action Plan (CAP) that included a three-stage abatement process, followed by installation of a fence to prevent additional encampments. This plan was coordinated among the Airport, PRNS, Housing, Public Works, and Transportation departments, as well as the City Attorney’s Office and the City Manager’s Office and became part of the CAP that was submitted to the FAA. The FAA concurred with the City proposed CAP in an August 4, 2021 letter.

On September 28, 2021, the City Council discussed the concerns about the homeless encampment, including attempts to balance the need for the City to follow its grant assurances to the FAA and the desire to help the unhoused individuals currently residing there. City staff presented the CAP to the Council at its September 28, 2021 meeting. City staff explained that it is humanely abating the property in three stages to give the City time to best address the significant need for additional sheltering options. Once each stage is cleared, and only after it was cleared of all individuals, the CAP included installation of a fence to prevent the future encampment of the cleared land. The recommended action presented to Council included actions that would ultimately result in the installation of a fence – a solution that met the goals of the project in the following ways:

1. Optimize Use of City Funding – Relocation of the unhoused and installation of the fence was determined to be the most cost-effective strategy to prevent re-encampment. The ongoing abatement action is expected to cost \$1.5M in addition to the cost associated with installation of the fence for total one-time costs of approximately \$1.7M. If the fence is not installed the City would need to provide ongoing abatement as well as trash pick-up services to the area, and ongoing police and/or security for the area. In addition, environmental impacts could continue and would need to be addressed. All these services come with ongoing costs that would exceed the cost of installing the fence. The annual cost of the ongoing services is estimated at \$2.15M per year.

2. Honor City Commitment to FAA Grant Funding – Installation of the fencing is the most certain way to prevent future re-encampment of the area. The FAA has been clear that use of this space by unhoused violates the grant agreements between the City and the FAA and that this situation must be remedied. Failure to honor the grant funding requirements could result in the loss of federal funding for the airport operations.
3. Protect the Health and Safety of the Unhoused Population – While staff has been working to manage conditions, this site is not well suited to support unhoused families and individuals. The limited availability of restrooms and potable water create a concern for the health and safety of residents.
4. Protect the Natural Environment – Preventing future unhoused residents from living in the area will prevent additional environmental degradation due to biological and chemical waste. Installation of the fencing may allow for build out of certain aspects of the Guadalupe Gardens Master Plan, which would enhance the environment. Without the fencing, installation of plants and irrigation and walking paths would be unlikely to succeed. Also, it should be noted that installation of the fencing would not preclude future public access to the area. Many of San José’s regional parks have chain link fence surrounding them to manage public access.
5. Prevent Future Re-encampment of the Area – Installation of the chain link fencing provides the greatest level of certainty to prevent re-encampment of the area. Other potential solutions such as split rail fence or installation of concrete barriers at roadway entries would not prevent future encampments from establishing here. In installing the fencing, staff seek to reduce the long-term, on-going costs associated with relocating unhoused individuals from the area.
6. Protect Businesses in the Area – Local businesses along Coleman Avenue have struggled in recent years with theft, vandalism and other criminal activities resulting from easy access from the park area to the businesses. In considering options for meeting the FAA requirements, staff also considered impacts or benefits to these businesses. By installing fencing the businesses would be separated from the park and access to the back of the businesses would be limited.

For purposes of clarity, staff is aware of the sensitivity and perception associated with installing fencing at this location. However, staff does believe it is the option that most fulfills the goals of the project. For example, the inclusion of a fence around the property does not preclude build out of the Guadalupe Gardens Master Plan and use of the land for recreational activities. There are many City parks that have fencing to limit access. Examples of this include the Municipal Rose Garden, Overfelt Gardens Park, Rotary PlayGarden, Almaden Lake Park, and Lake Cunningham. Installation of the fence would facilitate management and protection of the area while funding is sought for other improvements. The improvements would need to include environmental remediation, which would be required prior to any recreational use of the space.

Remediation and park enhancements could be constructed while the City complies with the CAP sent to the FAA and maintains its grant assurances.

In developing the originally proposed plan City staff also considered the many challenges that arise from the need to abate the land. The current abatement activity to clear Guadalupe Gardens is estimated to cost the City \$1.5 million to complete all three stages. Significant staff time and resources have been dedicated into this project from around the City to address the cleanup efforts and to provide services to the unhoused. Abatement is disruptive to the unhoused and presents challenges for staff that work to provide housing and social services to the unhoused. This area has also seen a significant increase in illegal dumping, criminal activity, and fires, all of which pulls City resources away from other areas and programs to address the needs of the unhoused and City residents.

On September 28, 2021 the City Council discussed the concerns about the homeless encampment, including attempts to balance the need for the City to follow its grant assurances to the FAA and the desire to help the unhoused individuals currently residing there. After the discussion, the Council requested information about other potential options for protecting the land from re-encampment without the need for a fence. Council also had questions about the cost of fencing in the property and if this cost was reasonable. Council voted to defer all recommendations in the original memorandum with a request to return on October 19, 2021 with the additional information. As part of this motion, the Council approved the placement of low-lying concrete barriers (i.e., k-rail) around the abated property to prevent vehicles from re-entering the cleared land. Installation of k-rail is scheduled to begin in October 2021. It should be noted that illegal dumping has already occurred on the area abated as part of the Phase I action plan and that k-rail may not stop all dumping because debris can be thrown over the barrier or in the street.

## **ANALYSIS**

As requested by Council, staff reviewed other options for achieving the project goals while eliminating the use of fencing. In making this evaluation, staff considered the goals of the project noted in the background section and evaluated options. Three specific options were considered (see Appendix A for summary and cost estimates):

1. Full Fencing of the Space (as originally proposed);
2. Limited Beautification Improvements; and
3. Increased Beautification Improvements.

Each option in Appendix A was evaluated for capital and operating costs, the ability to meet the projects goals, advantages and disadvantages of each option, and the cost analysis using the following criteria:

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- Environmental – Does the project already have environmental approval, or will additional approval be necessary?
- Funding – Is this option funded?
- Schedule – What is the implementation schedule for the option?
- Cost – What are the capital and on-going operating costs for the option?
- Effective – How effective will this option be at achieving the goals of the project?

Staff analysis concludes that the installation of a fence around the 40 acres undergoing abatement is the lowest cost, most effective deterrent to re-encampment. The fence represents the option that best fulfills the six goals outlined above and has the highest likelihood to protect and preserve the land for the general public welfare and future use. A fence can be employed in conjunction with a Guadalupe Gardens beautification plan to develop appropriate recreational areas.

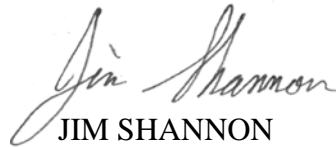
**COORDINATION**

This supplemental memorandum was coordinated with the City Attorney’s Office, City Manager’s Office, and Housing Department.

/s/  
JOHN AITKEN, A.A.E.  
Director of Aviation

/s/  
MATT CANO.  
Director of Public Works

/s/  
JOHN RISTOW  
Director of Transportation

  
JIM SHANNON  
Budget Director

/s/  
JON CICIRELLI  
Director of Parks, Recreation &  
Neighborhood Services

For questions, please contact Matthew Kazmierczak, Manager of Policy and Strategy at 408-392-3640.

Attachment: Appendix A

ADDITIONAL INFORMATION RELATED TO THE PROCUREMENT FOR 9821 – SJC GUADALUPE GARDENS FENCING PROJECT AND PROVISION OF OPTIONS FOR CONSIDERATION

**APPENDIX A**  
**Table 1 - Options Analysis**  
**October 19, 2021**

Project Goals:

1. Optimize Use of City Funds
2. Honor City Commitment to FAA Grant Funding
3. Protect the Health and Safety of the Unhoused Population
4. Protect the Natural Environment
5. Prevent Future Re-encampment
6. Protect Businesses in Area

Options #	Options Name	Description of Work Plan	Description of Long-Term Maintenance Management	Advantages	Disadvantages	Capital Cost (2021\$)	Ongoing Maintenance / Management Cost (2021) Escalated at 5% annually (5 yr.)	Total Projected Cost (Capital + 5 Years Ongoing Maintenance)	Meets Project Goals?
1	Fence Perimeter	Relocation of unhoused and install 8' high chain link around perimeter; provide pedestrian and vehicular access gates	<ul style="list-style-type: none"> <li>• Weekly inspection in conjunction with inspection of other airport fences</li> <li>• Periodic fence repair</li> </ul>	<ul style="list-style-type: none"> <li>• Approved by FAA</li> <li>• Would prevent future contamination and allow existing contamination (e.g. biological waste, oil, gasoline) to be removed</li> <li>• Would allow future build out of gardens with high degree of certainty of success</li> </ul>	<ul style="list-style-type: none"> <li>• Not aesthetically pleasing</li> </ul>	\$1,706,000	\$15,000 per year; Total Cost over 5 Years (2022-2026) @5% Inflation = \$87,000	\$1,793,000	Yes. This option achieves projects goals 1, 2, 4, 5 and 6. It could protect the unhoused (goal 3) by accelerating the City's drive to secure safe housing
2	Limited Beautification Improvements	Construct split rail around exterior and provide limited trails, urban gardens, and / or native grasses consistent with Guadalupe River Master Plan.	<ul style="list-style-type: none"> <li>• Ongoing park maintenance / irrigation/vegetation management</li> <li>• Ongoing periodic abatement</li> <li>• Ongoing sanitary and potable water services to support unhoused</li> <li>• Ongoing safety monitoring</li> <li>• Ongoing security</li> </ul>	<ul style="list-style-type: none"> <li>• Fulfills long held City goal</li> <li>• "Softer" approach may be more palatable to community</li> <li>• Opens space for potential public use</li> <li>• Use of low height concrete barrier (aka K-Rail) would prohibit vehicular access</li> </ul>	<ul style="list-style-type: none"> <li>• As designed, Master Plan is unlikely to generate enough activity to limit future encampment</li> <li>• Success of park construction will be limited if unauthorized intrusion cannot be prevented.</li> <li>• K-Rail would not inhibit future encampments or illegal dumping</li> <li>• Ongoing costs for encampments and illegal dumping</li> <li>• Ongoing costs for security services</li> </ul>	\$2,739,543. + \$157,500. = \$2,897,043.	\$12,489,891.	\$15,386,934.	Goal 1 – Unknown Goal 2 – Possible with extensive police or security. Goal 3 – Existing services for unhoused would likely cease after abatement Goal 4 – Yes. Expanded uses will foster stewardship of the area. Goal 5– Unlikely as gardens alone may not generate enough activity to sustain park. Goal 6 – Possible. More activity by park users could decrease current crime in nearby businesses.

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Options #	Options Name	Description of Work Plan	Description of Long-Term Maintenance Management	Advantages	Disadvantages	Capital Cost (2021\$)	Ongoing Maintenance / Management Cost (2021) Escalated at 5% annually (5 yr.)	Total Projected Cost (Capital + 5 Years Ongoing Maintenance)	Meets Project Goals?
3	Increased Beautification Improvements	Construct split rail around exterior and provide limited trails, urban gardens, and / or native grasses, with other high use recreational amenities such as disc golf or dog parks consistent with Guadalupe River Master Plan.	<ul style="list-style-type: none"> <li>• Ongoing park maintenance / irrigation/vegetation management</li> <li>• Ongoing periodic abatement</li> <li>• Ongoing sanitary and potable water services to support unhoused</li> <li>• Ongoing safety monitoring</li> <li>• Ongoing security</li> </ul>	<ul style="list-style-type: none"> <li>• Fulfills long held City goal to build Gardens</li> <li>• “Softer” approach may be more palatable to community</li> <li>• K-Rail would prohibit vehicle intrusion</li> <li>• Addition of disc golf and / or dog park would foster stewardship of the space</li> <li>• Disc golf has been successful in managing formerly encamped areas at Kelley Park</li> </ul>	<ul style="list-style-type: none"> <li>• Ongoing public health and safety concerns would persist</li> <li>• K-Rail would not inhibit future encampments</li> <li>• Airport funding cannot be used to build parks so no funding is currently available</li> <li>• As designed, Master plan is unlikely to generate enough activity to limit future encampment</li> <li>• Longer lead time for implementation due to need for outreach and community coordination</li> <li>• Ongoing costs for security services</li> <li>• Need years to vet with community, environmental approvals, and other authorizations</li> </ul>	\$17,310,106. + \$157,500. = \$17,467,606.	\$10,664,525.	\$28,132,131.	<p>Goal 1 – Unknown                      Goal 2 – Possible.                      Goal 3 – Existing services for unhoused would likely cease after abatement                      Goal 4 – Yes                      Goal 5– Possible. Recreational uses may increase stewardship of park                      Goal 6 - Possible                      More activity by park users could decrease current crime in nearby businesses.</p>