

City of Piedmont
COUNCIL AGENDA REPORT

DATE: October 21, 2019

TO: Mayor and Council

FROM: Sara Lillevand, City Administrator

SUBJECT: Consideration of a Resolution Authorizing the City Administrator to Sign an Agreement with East Bay Municipal Utility District (EBMUD) for Cost Sharing Associated with Pavement Restoration on Sunnyside, Olive, and Oakland Avenues

RECOMMENDATION

Approve a resolution authorizing the City Administrator to sign an agreement with EBMUD regarding cost sharing associated with City-requested pavement restoration associated with EBMUD's water line replacement work on Sunnyside, Olive, and Oakland Avenues in the amount of \$152,251.

BACKGROUND

In December 2018, the City issued an Excavation Permit (EX17-00054) to EBMUD for replacement of water mains on Sunnyside, Olive, and Oakland Avenues. More specifically, EBMUD's work impacted the entirety of Olive Avenue, the entirety of Sunnyside Avenue, and Oakland Avenue between Sunnyside Avenue to the western city limits. The excavation permit includes specific conditions requiring paving or slurry sealing for portions of the streets impacted by installation of new water mains. On those streets having a Pavement Condition Index rating of less than 65, the permit requires EBMUD to mill and pave half of the street pavement and for those streets with PCI's greater than 65, the permit requires slurry sealing half of the street. Typically, impacted portions of the street require paving or slurry sealing for only the half of the street directly impacted by the trench associated with the new water main.

During the course of construction, staff reviewed the pavement condition on all of the streets associated with EBMUD's work and determined it would be in the best interest of the City and residents living in the area to include full street width paving or slurry sealing on streets impacted by the project. The City worked with EBMUD to add the portion of the street not covered by the excavation permit to the paving work, at the City's cost, to take advantage of the economies of scale of doing a single paving job.

EBMUD's work on its water lines was completed a few months ago. However, paving has been delayed due to work being performed by PG&E in the project area. All work by PG&E has recently been completed and EMBUD has scheduled the pavement restoration work for these streets. On Friday, October 11th, EBMUD informed the City of its desire to begin work on October 21st to take advantage of the availability of a paving contractor. Staff has been working since that date to finalize the terms of the agreement in order to avoid conflicts between the City's requirements already imposed under its excavation permit and EBMUD's proposed form of cost-sharing agreement. EBMUD has been advised

that proceeding with work prior to the execution of a final agreement with the City will be at EBMUD's sole risk.

EBMUD and City representatives have reviewed the project area and have agreed on the proportional cost responsibilities of both agencies. Based on field measurements, the following is the breakdown of fiscal responsibilities associated with the total required paving and slurry sealing:

EBMUD - \$213,659

City of Piedmont - \$152,251

EBMUD and the City are negotiating an agreement outlining each agency's financial responsibilities for this project. As EBMUD is the agency responsible for the overall contract, the City will reimburse EBMUD once all work is completed to the City's satisfaction. The bidding for the work was conducted by EBMUD in accordance with the Public Contracts Code and EBMUD's own regulations and is therefore exempt from the City's bidding requirements under City Code section 2.154(g). The City will have an inspector onsite during paving operations to ensure pavement is placed in accordance with City standards.

FISCAL CONSIDERATIONS

Based on the agreement, the City's maximum share includes the base amount of \$152,251, as well as a contingency amount of an additional 10% to cover any potential unanticipated overruns, bringing the total maximum amount to \$167,476. It is anticipated that funding for this paving will come from Measure B and BB Local Streets and Roads funds.

SCHEDULE OF CONSTRUCTION

If the agreement with EBMUD is approved, paving work is anticipated to start immediately. It is anticipated that construction would take 2-3 weeks, weather dependent.

CITY ATTORNEY REVIEW

The City Attorney's office is working with staff to negotiate the final language of the cost sharing agreement with EBMUD and the final agreement language will be approved by the City Attorney as to form and legality.

By: Chester Nakahara, Public Works Director
John Wanger, City Engineer

ATTACHMENTS:

- A. Resolution
- B. Agreement with East Bay Municipal Utility District

RESOLUTION No. _____**A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO SIGN AN AGREEMENT WITH EAST BAY MUNICIPAL UTILITY DISTRICT FOR REIMBURSEMENT OF ADDITIONAL CITY-REQUESTED PAVING AND SLURRY SEALING WORK ASSOCIATED WITH EXCAVATION PERMIT EX17-00054**

WHEREAS, the City of Piedmont issued Excavation Permit EX17-00054 to East Bay Municipal Utility District (EBMUD) for replacement of water mains in the Sunnyside Avenue, Oakland Avenue and Olive Avenue area of the City (hereinafter referred to as “Project”); and

WHEREAS, the Excavation Permit specified paving and slurry sealing limits on the various impacted streets associated with EBMUD’s project; and

WHEREAS, during the course of construction, the City determined that it would be in the best interest of the City and the residents living within the construction area impacted by the Project to include additional paving and slurry sealing such that all streets were treated to their entire widths; and

WHEREAS, EBMUD has provided an Agreement to the City to clarify the financial responsibility of the City for this additional work; and

WHEREAS, the City and EBMUD are in final negotiations on the terms of that agreement;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Piedmont does hereby resolve, declare, determine, and order as follows:

1. The above recitals are true and correct and are hereby incorporated into this Resolution as findings of the City Council.
2. The City Administrator is authorized to execute a cost-sharing agreement with EBMUD for reimbursement of City costs related the Project that is associated with Excavation Permit EX17-00054, subject to modifications approved by the City Attorney, in an amount not to exceed \$167,476 in City contribution for the project.
3. The maximum contribution by the City for work associated with this Project shall be \$167,476.
4. All portions of this resolution are severable. Should any individual component of this Resolution be adjudged to be invalid and unenforceable by a body of competent jurisdiction, then the remaining resolution portions shall be and continue in full force and effect, except as to those resolution portions that have been adjudged invalid.
The City Council of the City of Piedmont hereby declares that it would have adopted this Resolution and each section, subsection, clause, sentence, phrase and other portion thereof, irrespective of the fact that one or more section subsection, clause sentence, phrase or other portion may be held invalid or unconstitutional.

[END OF RESOLUTION]

**AGREEMENT BY AND BETWEEN THE CITY OF PIEDMONT AND THE
EAST BAY MUNICIPAL UTILITY DISTRICT FOR PAVING WORK ON SUNNYSIDE
AVENUE, OAKLAND AVENUE AND OLIVE AVENUE**

THIS AGREEMENT FOR PAVEMENT REHABILITATION OF PORTIONS OF SUNNYSIDE AVENUE, OAKLAND AVENUE AND OLIVE AVENUE, PIEDMONT (“Agreement”) is made and entered into this ____ day of _____, 2019, by and between the EAST BAY MUNICIPAL UTILITY DISTRICT (“EBMUD”), a municipal utility district organized and existing under the laws of the State of California and the CITY OF PIEDMONT (“City”) a municipal corporation.

RECITALS

WHEREAS, EBMUD constructed an underground pipeline project, “Oakland Avenue Cluster” (“Project”), in the City of Piedmont;

WHEREAS, the construction of the Project necessitates repairs to the existing pavement in the area of trenching for the Project in compliance with the excavation restoration requirements of the City of Piedmont Municipal Code and the City-issued Excavation Permit for the Project to be completed at the expense of EBMUD;

WHEREAS, City desires additional pavement rehabilitation, in the form of a two-inch thick asphalt mill-and-resurface, geosynthetic paving mat, and slurry seal to extend beyond the limits as specified in the permit to be rehabilitated by EBMUD, to be completed at the expense of City;

WHEREAS, EBMUD has agreed to perform the complete rehabilitation of the pavement on Sunnyside Avenue, Oakland Avenue and Olive Avenue as part of the Project, subject to payment from the City for that portion of the pavement outside the Project area, and;

WHEREAS, EBMUD and City see a public benefit in coordinating EBMUD’s Project’s asphalt pavement repair and the City’s planned pavement rehabilitation.

AGREEMENT

THEREFORE, in consideration of the mutual covenants hereinafter set forth, City and EBMUD mutually agree as follows:

1. Definitions

- a. “Project” shall include EBMUD’s installation of pipeline for the Oakland Avenue Cluster project within the City, as shown in Exhibit A and included in the Excavation Permit as issued by the City.
- b. “Pavement Restoration” shall include all final asphalt pavement installation, repair and rehabilitation, including, as necessary, a two-inch thick asphalt mill-and-resurface, installation of geosynthetic paving mat, and slurry seal.

- c. "Project Pavement Restoration Area" shall be based on the Project as built and shall be the actual length and width of the required pavement repair for the Project in compliance with the excavation restoration requirements of the Piedmont Municipal Code, **the City-issued Excavation Permit and** as calculated following construction. The estimated area of the Project Pavement Restoration Area is **118,317** square feet.
- d. "Total Pavement Restoration Area" shall be the actual length and width of the road area in which the Project is constructed, as calculated following construction.

2. City Payment of Costs for Pavement Restoration

- a. The City shall be responsible for payment of the cost of all Pavement Restoration performed by EBMUD outside of the Project Pavement Restoration Area, being the difference between the Project Pavement Restoration Area and the Total Pavement Restoration Area. This area shall be determined based on the as-built drawings for the Project **and actual field measurements.**
- b. The cost of **2-inch mill and fill portion of the** Pavement Restoration payable by the City shall be \$3.07 per square foot of restoration for asphalt 2 inches thick based on the lowest competitive bid received by EBMUD for the Project. The estimated area of Pavement Restoration outside of the Project Pavement Restoration Area is **27,606** square feet and the estimated cost payable by the City is **\$84,750.42.**
- c. The City shall be responsible for payment of the cost of all geosynthetic paving mat to be installed within the Total Pavement Restoration Area, including the Project Pavement Restoration Area. The cost of geosynthetic paving mat payable by the City shall be \$0.90 per square foot based on the lowest competitive bid received by EBMUD for the Project. The estimated area of geosynthetic paving mat is **49,140** square feet and the estimated cost payable by the City is **\$44,271.00.**
- d. The cost of slurry seal payable by the City shall be \$1.00 per square foot based on the lowest competitive bid received by EBMUD for the Project. The estimated area of slurry seal is **19,229** square feet and the estimated cost payable by the City is **\$19,229.00.**
- e. The cost of adjusting sanitary sewer manhole frame and covers payable by the City shall be \$2,000.00 each based on the lowest competitive bid received by EBMUD for the Project. The estimated number of manholes to be adjusted is two (2), and the estimated cost payable by the City is \$4,000.00
- f. As shown in Exhibit B, the estimated cost of all work payable by the City is **\$152,250.42.** The total cost to be paid by the City shall not exceed **\$167,475.46,** without further advance agreement in writing by City.
- g. The cost to the City will be billed only for work actually installed at the agreed rate and as detailed in reports initialed by EBMUD and City inspectors.

- h. EBMUD shall provide a final invoice to the City for payment due under this Agreement following calculation of the Project Pavement Restoration Area, the Total Pavement Restoration Area, the area of installed geosynthetic paving mat and the area of installed slurry seal. Invoices shall include copies of inspection reports for the Project relative to the Pavement Restoration. The City shall pay EBMUD within 30 days of the date of the invoice.
 - i. Other than as stated in this Agreement, the City shall owe no other amounts associated with Pavement Restoration related to the Project.
- 3. Scope of Work, Costs, and Contingencies.
 - a. EBMUD shall provide for trench restoration and Pavement Restoration in accordance with the City-issued Excavation Permit and City Standards.
 - b. EBMUD shall have no responsibility to perform any roadway work other than the Pavement Restoration as specified in this Agreement, including, but not limited to: dig-out and replacement of the entire road section, repairs to curb and gutter (other than curb and gutter that may be damaged by EBMUD's contractor during Pavement Restoration), installation of curb ramps, or pavement striping that falls outside the area of EBMUD's responsibility as outlined in the Excavation Permit.
 - c. The City and EBMUD shall consult on contract issues pertaining to the Pavement Restoration. EBMUD shall advertise, award, and administer a construction contract consistent with all provisions of applicable Public Contracting law. EBMUD shall have sole responsibility for administration and supervision of any contractor used in the Pavement Restoration.
- 4. Inspection. The City shall provide a construction inspector, at the City's expense, who will work with the EBMUD construction inspector to tabulate the Project Pavement Restoration Area and Total Pavement Restoration Area and monitor the quality of work performed under this Agreement. If the City cannot provide an inspector in a timely manner, the Project Pavement Restoration Area and Total Pavement Restoration Area as tabulated by the EBMUD construction inspector will be deemed acceptable by the City.
- 5. Warranty. The EBMUD contract with the General Contractor will provide for a one-year warranty of all materials and services, including asphalt paving. EBMUD will enforce this warranty provision for the benefit of the City, if needed. No other warranty of the paving work by EBMUD or by the Contractor, implied or explicit, exists, and no claims by the City against EBMUD will be allowed after the end of the one-year warranty period. The City shall be responsible for all maintenance of the restored paving within the entire Total Pavement Restoration Area following expiration of the one-year warranty.
- 6. Indemnification.
 - a. It is understood and agreed that neither EBMUD nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by the City in the performance of its obligations under this

- Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, the City shall defend, indemnify, and save harmless EBMUD, and all EBMUD directors, officers, employees, and agents from all claims, suits or actions of every name, kind, and description brought for or on account of injuries to or death of any person or damage to property arising out of or resulting from negligent acts, errors or omissions, or willful misconduct in the City's operation or performance under this Agreement.
- b. It is understood and agreed that neither the City nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by EBMUD in the performance of its obligations under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, EBMUD shall defend, indemnify, and save harmless the City, and all City officers, employees, and agents from all claims, suits or actions of every name, kind, and description brought for or on account of injuries to or death of any person or damage to property arising out of or resulting from negligent acts, errors or omissions, or willful misconduct in EBMUD's operation or performance under this Agreement.
7. Coordination Efforts and Representatives. The City and EBMUD agree that the successful execution of the Pavement Restoration is dependent upon full and complete cooperation of the parties and their representatives. Therefore, each party agrees to use its best and diligent good faith efforts to perform its obligation in a timely manner.
8. Notices. The City and EBMUD shall each designate a representative to be responsible for receiving and delivering notices of any kind, obtaining information and stating the position of the respective party on any decision required by a party. All notices and correspondence to be delivered under this Agreement shall be delivered personally or mailed via first class US mail, postage prepaid to the addresses set forth below, or as may be otherwise be required by notice from one party to the other. Notices personally delivered shall be deemed delivered on the date of personal delivery; notices mailed shall be deemed delivered 5 days after deposit in the U.S. mail.

CITY

Chester Nakahara
 City of Piedmont
 120 Vista Avenue
 Piedmont, CA 94611

Phone: (510) 420-3061

EBMUD

Ben Townley
 East Bay Municipal Utility District
 P.O. Box 24055, MS #62
 Oakland, CA 94623

Phone: (510) 287-2147

9. Term of Agreement. This Agreement shall be effective upon execution by all parties and shall terminate upon receipt by EBMUD of the final payment owed by the City under this Agreement.
10. Jurisdiction. This Agreement and all matters relating to it shall be governed by and enforced in accordance with the laws of the State of California.

11. Modifications. This Agreement may only be modified, amended, or extended, by the mutual, written agreement of both parties.
12. Assignment: Successors. This Agreement is not assignable, and shall be binding upon and inure to the benefit of the successors and assigns of the parties.
13. Integration. This Agreement contains the entire agreement between the parties with respect to the subject matter thereof and supersedes all prior understandings or agreements, oral or written, regarding the subject matter of this Agreement.
14. Negotiated Agreement. This Agreement and each of the provisions hereof, is the product of negotiations between the Parties and their respective attorneys. Each of the Parties hereto expressly acknowledges and agrees that this Agreement shall not be deemed to have been prepared by or drafted by any particular party hereto. The rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.
15. Severability. Should any part of this Agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement can be interpreted to give effect to the intentions of the parties.
16. Time is of the Essence. In the performance of this Agreement, time is of the essence.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

EAST BAY MUNICIPAL UTILITY DISTRICT:

Xavier J. Irias
Director of Engineering and Construction

Date: _____

Approved as to form and legality for EBMUD:

Derek McDonald
Attorney

Date: _____

CITY OF PIEDMONT:

Sara Lillevand, City Administrator

Date: _____

Attest:

John O. Tulloch, City Clerk

Date: _____

Approved as to form and legality for the City of Piedmont:

Michelle Marchetta Kenyon, City Attorney
Chad Herrington, Assistant City Attorney

Date: _____