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OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND 2017 FEB -2 PM 4:48

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Jeffrey Tumlin
Interim Director, DOT

SUBJECT: Cost-Sharing Agreement with
East Bay Municipal Utility District

DATE: December 28, 2016

City Administrator Approval

Date:

2/2/17

RECOMMENDATION

Staff Recommends That The City Council Adopt A Resolution Authorizing The City Administrator Or Designee To: (1) Negotiate And Execute An Agreement With East Bay Municipal Utility District For Cost-Sharing Of Joint-Benefit Paving Projects Throughout Oakland, And (2) Accept And Appropriate Funds From East Bay Municipal Utility District On A Case-By-Case Basis Per The Executed Agreement Without Returning To Council.

EXECUTIVE SUMMARY

Approval of this resolution will enable the City Administrator or designee, the Director or Assistant Director of the Department of Transportation, to negotiate and execute an agreement with East Bay Municipal Utility District (EBMUD) for cost-sharing of joint-benefit paving projects throughout Oakland and accept and appropriate funds from EBMUD on a case-by-case basis per the executed agreement without returning to Council.

BACKGROUND / LEGISLATIVE HISTORY

EBMUD provides Oakland residences water service. Due to the aging infrastructure, EBMUD continues to implement capital improvement projects to upgrade water lines. In coordination with the City's paving program and as part of EBMUD's improvements, there are potential opportunities for both the City and EBMUD to collaborate on comprehensive paving of roadways in Oakland.

ANALYSIS AND POLICY ALTERNATIVES

Oakland Municipal Code (OMC) Section 12.12.112 requires pavement restoration to be as wide as the lane in which the trench is located to eliminate deterioration of pavement along the trench excavation. Under this requirement in most residential streets, half of the roadway is repaved after a utility reconstruction project. This agreement allows the City to negotiate a cost-sharing agreement with EBMUD, on a case-by-case basis, for full-width paving of roadways as each opportunity may involve either EBMUD or the City to perform the work. A Draft Cost-Sharing

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Agreement Template shown in **Attachment A** was created by EBMUD and City staff. When there is an opportunity to jointly extend paving, the Draft Cost-Sharing Agreement Template will be used for each paving job.

This agreement does not obligate the City and EBMUD to participate in cost-sharing opportunities for paving; however, having a mechanism to share costs for pavement restoration between the two agencies improves paving conditions and is a direct benefit to the public.

The locations to be chosen for cost-sharing opportunities will follow the City's paving policy adopted by City Council on October 2014 (Resolution No. 85227 C.M.S.) or paving policies adopted by City Council in the future.

FISCAL IMPACT

Approval of this resolution will enable the City Administrator or designee to accept and appropriate funds from EBMUD per the executed agreement for cost-sharing of joint-benefit paving projects throughout Oakland. A deposit based on the engineer's estimate will be provided to the City prior to the work. Adjustments will be made after the actual cost of the work is determined. Funds requested to be accepted and appropriated will be placed in:

- Miscellaneous Grants Fund (2999); Complete Streets Design Organization (35213); Project No. To be determined;

Funds for the City's portion of pavement restoration work is budgeted and available in the Department of Transportation as it is intended to use existing appropriation through individual projects as opportunities arise. Staff is estimating that funds to be accepted and appropriated will be from \$1,000,000 to \$2,000,000 annually.

PUBLIC OUTREACH / INTEREST

Local residences for each project will be notified of the streets planned for pavement restoration.

COORDINATION

The following offices have reviewed this report and resolution:

- Office of the City Attorney
- Controller's Bureau
- East Bay Municipal Utility District

SUSTAINABLE OPPORTUNITIES

Economic: The cost-sharing of joint-benefit pavement restoration improves paving conditions, enhancing and protecting the City's infrastructure. Streets in good condition reflect well on the community and indirectly improve the economic conditions in the area.

Environmental: Improved street conditions increase fuel and vehicle efficiency and reduces carbon foot-print.

Social Equity: The cost-sharing of joint-benefit pavement restoration works to preserve the City's infrastructure, enhance public access and protect the public from hazardous conditions throughout the City.

ACTION REQUESTED OF THE CITY COUNCIL

Resolution Authorizing The City Administrator Or Designee To: (1) Negotiate And Execute An Agreement With East Bay Municipal Utility District For Cost-Sharing Of Joint-Benefit Paving Projects Throughout Oakland, And (2) Accept And Appropriate Funds From East Bay Municipal Utility District On A Case-By-Case Basis Per The Executed Agreement Without Returning To Council.

For questions regarding this report, please contact Jimmy Mach, P.E., Oakland Public Works, Acting Division Manager at (510) 238-3303.

Respectfully submitted,



JEFFREY TUMLIN
Interim Director
Oakland Department of Transportation

Reviewed by:
Wladimir Wlassowsky, P.E., Interim Assistant Director
Oakland Department of Transportation

Prepared by:
Jimmy Mach, P.E., Acting Division Manager
Oakland Public Works

Attachments (1):
A: Draft Cost-Sharing Agreement Template

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Attachment A

Cost-Sharing Agreement

AGREEMENT BY AND BETWEEN THE CITY OF OAKLAND AND THE EAST BAY MUNICIPAL UTILITY DISTRICT FOR PAVING WORK

THIS AGREEMENT FOR PAVEMENT REHABILITATION OF PORTIONS OF THE CITY OF OAKLAND STREETS ("Agreement") is made and entered into this ____ day of _____, 2017, 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 OAKLAND ("City") a municipal corporation.

RECITALS

WHEREAS, EBMUD may plan to construct an underground pipeline project, the PROJECT STREETS in the City of OAKLAND;

WHEREAS, the construction of the Project necessitates repairs to the existing pavement in the area of trenching for the Project in compliance with the OAKLAND Municipal Code Excavation Requirements Section 12.12 , to be completed at the expense of EBMUD;

WHEREAS, the City may plan a complete rehabilitation of the pavement on PROJECT STREETS;

WHEREAS, EBMUD and the City see a public benefit in coordinating EBMUD's pavement restoration for the Project and the City's planned pavement rehabilitation; and

WHEREAS, the City desires that in lieu of providing the City's standard asphalt pavement restoration of the OAKLAND Municipal Code Excavation Requirements over the Project trench area, EBMUD pay the City the equivalent of EBMUD's cost of the pavement restoration as calculated in this Agreement, which the City will put towards its planned paving rehabilitation of PROJECT STREETS;

WHEREAS, EBMUD has agreed to perform the complete rehabilitation of the pavement on PROJECT STREETS as part of the Project, subject to payment from the City for that portion of the pavement outside the Project area;

AGREEMENT

NOW, 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 PROJECT STREETS within the City. "Project" shall exclude any Pavement Restoration except for Pavement Repair over the Project pipeline trenches.

- b. "Pavement Repair" shall include the installation of a minimum of agreed thickness in inch hot mix asphalt (HMA) temporary paving patch flush with existing pavement over the Project pipeline trenches.
- c. "Pavement Restoration" shall include all final asphalt pavement installation, repair and rehabilitation, including saw cutting, removal, materials, labor, traffic control, and renewal of road striping and dots, and be performed following the completion of the Project.
- d. "Interim Pavement Maintenance" shall include all necessary temporary pavement mitigation measures required to maintain the road surface to allow vehicle access. The "Interim Pavement Maintenance" area includes the Pavement Repair area outside the Project trench during the Project and the entire roadway from the completion of the Project to until the Pavement Restoration.
- e. "Estimated Project Pavement Restoration Area" shall be based on the Project design and shall be the length and width of the Pavement Restoration for the Project in compliance with the excavation restoration requirements of the OAKLAND Municipal Code, as calculated in Exhibit A of this Agreement, below. The Estimated Project Pavement Restoration Area is shown on Project Plans of this Agreement.
- f. "Estimated Total Pavement Restoration Area" shall be the length and width of the total road area in which the Project shall take place based on the Project design, as calculated in Exhibit A of this Agreement, below. The Estimated Total Pavement Restoration Area is shown on Project Plans of this Agreement.
- g. "Actual Project Pavement Restoration Area" shall be based on the Project as built and shall be the actual length and width of the required Pavement Restoration for the Project in compliance with the excavation restoration requirements of the OAKLAND Municipal Code, as calculated following construction.
- h. "Actual 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.
- i. "EBMUD Estimated Restoration Cost" shall be an amount representing the approximate cost for providing Pavement Restoration of the Estimated Project Pavement Restoration Area. For the purposes of this Agreement, the EBMUD Estimated Restoration Cost shall be based on agreed unit price per inch deep per square foot of mill and overlay, and shall be as calculated in Exhibit A of this Agreement, below.
- j. "City Estimated Restoration Cost" shall be an amount representing the approximate cost for providing Pavement Restoration of the Estimated Total Pavement Restoration Area less the Estimated Project Pavement Restoration Area. For the purposes of this Agreement, the EBMUD Estimated Restoration Cost shall be based on agreed unit price per inch deep per square foot of mill and overlay, and shall be as calculated in Exhibit A of this Agreement, below.

2. Deposit of EBMUD Estimated Restoration Cost

- a. In lieu of compliance with the City's standard pavement restoration requirements, EBMUD shall deposit the EBMUD Estimated Restoration Cost with the City prior to commencement of the Project, which the City will put towards its planned paving rehabilitation of PROJECT STREETS.
- b. Upon completion of the Project, EBMUD will notify the City in writing of any difference between the Actual Project Pavement Restoration Area and the Estimated Project Pavement Restoration Area. In the event the Actual Project Pavement Restoration Area shall exceed the Estimated Project Pavement Restoration Area, EBMUD shall pay City an amount of agreed unit price per inch deep per square foot in exceedance of the Estimated Project Pavement Restoration Area. Should the Actual Project Pavement Restoration Area be less than the Estimated Project Pavement Restoration Area, the City will refund the difference to EBMUD in an amount of agreed unit price per inch deep per square foot for each square foot less than the Estimated Project Pavement Restoration Area.
- c. Other than as stated in this Agreement, EBMUD shall owe no other amounts associated with Pavement Restoration related to the Project.

3. Deposit of City Estimated Restoration Cost

- a. The City shall deposit the City Estimated Restoration Cost with EBMUD prior to commencement of the Project, which EBMUD will put towards the Pavement Restoration of PROJECT STREETS.
- b. Upon completion of the Project and all Pavement Restoration, EBMUD will notify the City in writing of any difference between the Actual Total Pavement Restoration Area and the Estimated Total Pavement Restoration Area. In the event the Actual Total Pavement Restoration Area shall exceed the Estimated Total Pavement Restoration Area, the City shall pay EBMUD an amount of agreed unit price per inch deep per square foot in exceedance of the Estimated Total Pavement Restoration Area. Should the Actual Project Pavement Restoration Area be less than the Estimated Project Pavement Restoration Area, EBMUD will refund the difference to the City in an amount of agreed unit price per inch deep per square foot for each square foot less than the Estimated Total Pavement Restoration Area.
- c. Other than as stated in this Agreement, the City shall owe no other amounts associated with Pavement Repair related to the Project.

4. Scope of EBMUD's Pavement Repair Work

- a. EBMUD shall perform Pavement Repair only over the Project pipeline trenches, installing a straight wall trench in-lieu of the OAKLAND Municipal Code Excavation Requirements and providing a minimum of agreed thickness in inches of HMA temporary paving patch flush with existing pavement in the roadway.
 - b. EBMUD shall perform agreed pavement work over the Total Pavement Restoration Area by EBMUD in conformance with City requirements.
 - c. EBMUD will be responsible for maintenance of its Pavement Repair work throughout the duration of the Project. Upon completion of the Project, EBMUD's responsibility for maintenance of its Pavement Repair will end.
 - b. The City shall be responsible for any Interim Pavement Maintenance required outside of EBMUD's pipeline trench envelope throughout the duration of the Project. The City shall be responsible for all Interim Pavement Maintenance within the Actual Total Pavement Restoration Area, including the trench envelope, following the completion of the Project.
5. Inspection. City shall provide a construction inspector, at City's expense, who will work with the EBMUD Paving Foreman to tabulate the Actual Project Pavement Restoration Area and Actual Total Pavement Restoration Area. If City cannot timely provide an inspector, the Actual Project Pavement Restoration Area and Actual Total Pavement Restoration Area as tabulated by the EBMUD Paving Foreman will be deemed acceptable by City.
6. Warranty. No warranty is required for the Project or any Pavement Repair.
7. Payments. For any amounts owing, each party shall provide the other with a written invoice. Invoices shall include copies of inspection reports or other relevant supporting documentation as described above. Invoices shall be paid within 30 days of the date of the invoice. No interest shall accrue on any amounts owed.
8. 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 City in the performance of its obligations under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, 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 resulting from anything done or omitted to be done by City in its performance of this Agreement.
 - b. It is understood and agreed that neither 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 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 resulting from anything done or omitted to be done by EBMUD in its performance of this Agreement.

9. Coordination Efforts and Representatives. 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.
10. Notices. 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 five days after deposit in the U.S. mail.

CITY

[Project Manager]
City of Oakland
250 Frank H. Ogawa Plaza, Suite 4314
Oakland, CA 94612

Phone: (510) 238-xxxx

EBMUD

[Project Manager]
East Bay Municipal Utility District
P.O. Box 24055, MS #XXX
Oakland, CA 94623

Phone: (510) 287-XXXX

11. Term of Agreement. This Agreement shall be effective upon execution by all parties and shall be terminated upon Project completion and the receipt by one party of the final payment owed by the other following calculation of the Actual Project Pavement Restoration Area.
12. Right to Cancel. Either the City or EBMUD may cancel this Agreement, with or without cause, so long as there is no Pavement Repair work underway subject to this Agreement, nor any outstanding amounts owed by either party. For any reduction of the scope of the Project due to cancellation, the final restoration cost shall be determined pursuant to Paragraph 2.b.
13. 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.
14. Modifications. This Agreement may only be modified, amended, or extended, by the mutual, written agreement of both parties.

15. 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.
16. 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.
17. Interpretation. The Parties to this Agreement acknowledge that they have had the benefit of counsel prior to entering into this Agreement and have relied upon the legal advice of counsel. Each party further represents that the terms and conditions of this Agreement have been completely explained and that the terms and conditions were voluntarily accepted and agreed to by each party. The Parties further acknowledge that they have entered into this Agreement voluntarily, without coercion, based on their own judgment, and not in reliance on any representation or promise made by the other party other than those contained herein.
18. 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.
19. 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.
20. 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 OAKLAND:

City Administrator or Designee

Date: _____

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

City Attorney

Date: _____

Attachments:

Exhibit A: Calculation of Estimated Restoration Cost

EXHIBIT A

East Bay Municipal Utility District

CALCULATION OF THE ESTIMATED RESTORATION COST

The Estimated Project Pavement Restoration Area, the Estimated Total Pavement Restoration Area, and the [EBMUD / City] Estimated Restoration Cost are set forth below.

Estimated Project Pavement Restoration Area

Length (feet)	Width (feet)	Area (square feet)
[length]	[width of EBMUD restoration responsibility]	[A = length x width]

Note: The Estimated Project Pavement Restoration assumes that EBMUD's restoration responsibility is [width] feet wide overall.

Estimated Total Pavement Restoration Area

Length (feet)	Width (feet)	Area (square feet)
[length]	[width of road]	[B = length x width]

EBMUD Estimated Restoration Cost

Area (square feet)	Depth (inch)	Inch Square Feet	[\$[dollar amount] / Inch Square Foot
[A]	[depth]	[C = A x depth]	[\$[= C x dollar amount]

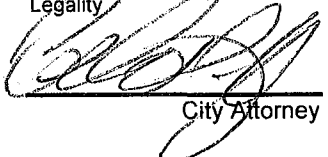
City Estimated Restoration Cost

Area (square feet)	Depth (inch)	Inch Square Feet	[\$[dollar amount] / Inch Square Foot
[D = B - A]	[depth]	[E = D x depth]	[\$[= E x dollar amount]

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OAKLAND CITY COUNCIL

Approved as to Form and
Legality



City Attorney

RESOLUTION No. _____ C.M.S.

Introduced by Councilmember _____

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR DESIGNEE TO: (1) NEGOTIATE AND EXECUTE AN AGREEMENT WITH EAST BAY MUNICIPAL UTILITY DISTRICT FOR COST-SHARING OF JOINT-BENEFIT PAVING PROJECTS THROUGHOUT OAKLAND, AND (2) ACCEPT AND APPROPRIATE FUNDS FROM EAST BAY MUNICIPAL UTILITY DISTRICT ON A CASE-BY-CASE BASIS PER THE EXECUTED AGREEMENT WITHOUT RETURNING TO COUNCIL

WHEREAS, East Bay Municipal Utility District (EBMUD) provides Oakland residences water service and due to the aging infrastructure for water supply delivery throughout EBMUD's service locations, EBMUD continues to deliver capital improvement projects to upgrade water lines; and

WHEREAS, EBMUD is required to provide pavement restoration according to the Oakland Municipal Code (OMC) Excavation Requirements Section 12.12.112; and

WHEREAS, pavement restoration is part of utility trench work but it does not cover the entire roadway area; and

WHEREAS, as part of the City's paving program and EBMUD's improvements, there are potential opportunities for both the City and EBMUD to collaborate on comprehensive paving of roadway in Oakland; and

WHEREAS, in order to provide full-width paving, resources need to be combined in a cooperative manner between a utility company and the City in order to jointly extend paving beyond the utility work; and

WHEREAS, this agreement allows the City Administrator, or designee, to negotiate a cost-sharing agreement with EBMUD, on a case-by-case basis, for full-width paving of roadways as each opportunity may involve either EBMUD or the City to perform the work; and

WHEREAS, approval of this resolution will enable the City Administrator, or designee, to pay EBMUD for pavement restoration the portion of pavement outside EBMUD's required areas; and

WHEREAS, funds for the City's portion of pavement restoration work is budgeted and available in the Department of Transportation as it is intended to use existing appropriation through individual projects as opportunities arise, be it; and

WHEREAS, the locations to be chosen for cost-sharing opportunities will follow the City's paving policy adopted by City Council on October 2014 (Resolution No. 85227 C.M.S.) or paving policies adopted by City Council in the future; and

WHEREAS, this agreement does not obligate the City and EBMUD to participate in cost-sharing opportunities for paving; however, having a mechanism to share costs for pavement restoration between the two agencies improves paving conditions and is a direct benefit to the public; and

WHEREAS, approval of this resolution will enable the City Administrator, or designee, to accept and appropriate funds from EBMUD on a case-by-case basis without returning to Council; and

RESOLVED: That the City Administrator, or designee, is authorized to negotiate and execute an agreement with East Bay Municipal Utility District for cost-sharing of joint-benefit paving projects throughout Oakland; and

FURTHER RESOLVED: Approval of this resolution will enable the City Administrator or designee to accept and appropriate funds for cost sharing of joint-benefit paving projects from EBMUD on a case-by-case basis per the executed agreement without returning to Council; and be it

FURTHER RESOLVED:, funds will accepted and appropriated based on actual revenues received from EBMUD and will be placed in:-

- Miscellaneous Grants Fund (2999) Complete Streets Design Organization (35213); Project No. To be determined;

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLEN, KALB, KAPLAN, AND PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California