




AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: Ryan Russo
Director, OakDOT

SUBJECT: Contract Authority for Utility Cost-Share Paving Projects with EBMUD

DATE: October 14, 2020

City Administrator Approval 

Date: Oct 27, 2020

RECOMMENDATION

Staff Recommends That The City Council Adopt A Resolution Waiving Advertising, Competitive Bidding, And City Contracting Program Requirements And Authorizing The City Administrator To Negotiate And Award Construction Contracts To East Bay Municipal Utility District Contractors For All Current and Future Utility Cost-Share Paving Without Return To Council.

EXECUTIVE SUMMARY

Approval of the proposed resolution will authorize the City Administrator or designee to execute supplemental construction contracts with contractors awarded competitively-bid contracts to perform trench restoration work on behalf of East Bay Municipal Utility District (EBMUD) for work on Oakland streets. These contracts will allow the City to flexibly contract to perform full-width paving as budgeted within the City's adopted Capital Improvement Program and prioritized within the City's adopted 3-Year Paving Plan (3YP) (No. 87673 C.M.S.) and future paving plans when that paving overlaps with or is adjacent to existing EBMUD pipeline restoration projects, reducing multiple mobilizations by separate agency forces reporting to the same project area. This resolution is urgent due to immediate coordination opportunities with EBMUD's Helen Cluster Pipeline Replacement Project.

BACKGROUND/LEGISLATIVE HISTORY

On February 21, 2017, City Council approved a resolution authorizing a cost-sharing framework with the East Bay Municipal Utility District (EBMUD) for joint-benefit pavement rehabilitation (No. 86602 C.M.S). EBMUD provides water service to properties within the City of Oakland. Due to aging pipeline infrastructure, EBMUD implements major capital improvement projects to upgrade water lines, replacing thousands of feet of pipeline across Oakland every year. The 2017 cost-sharing agreement framework approved by Council built upon Oakland Municipal Code (OMC) Section 12.12.112 which requires pavement restoration as part of any pipeline replacement projects which excavate trenches in the roadway. Per OMC, pavement restoration over the trench must be as wide as the travel lane in which the trench is located to eliminate deterioration of pavement along the trench excavation. On most residential streets, this

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requirement means half the roadway is repaved after a utility reconstruction project. The framework authorized by Council in 2017 has allowed the City to negotiate and implement multiple individual cost-sharing agreements with EBMUD to implement full-width paving of roadways, including work within Cleveland Heights, Mera Street & Agua Vista Street, and Foothill Boulevard. The original cost-share framework, however, did not anticipate a scenario in which the total amount of non-EBMUD paving work (i.e. paving the “other half” of the road) doubles or triples the scope of EBMUD’s original restoration job, creating an untenable imbalance to the cost-share framework.

Recently, EBMUD completed the Helen Cluster Pipeline Replacement Project (Helen Cluster), a major pipeline replacement project in the Clawson neighborhood of West Oakland. EBMUD has not yet completed trench restoration nor surface paving restoration, pending interagency discussions around mutually agreeable terms for a cost-share agreement to perform full-width paving in the Helen Cluster project area.

The goal remains for one agency to complete all work in the area, reducing construction impacts to residents and providing a more efficient and seamless restoration process. If the City were to perform all work in the Helen project area, including trench restoration and the City’s portion of the cost-share paving, it would displace other City paving efforts already in queue under the 3YP, delaying long-awaited paving. If EBMUD were to accommodate the City’s request to incorporate significant paving outside its current OMC obligations (the City’s portion of the cost-share plus adjacent streets), it would be forced to delay vital pipeline replacement work.

Staff of both agencies have proposed a “middle way” option. This option would allow both agencies to maintain their independent agency priorities of completing pipeline replacement projects (EBMUD) and completing existing 3YP priorities (City of Oakland). This middle way option would involve EBMUD advertising and competitively bidding their required trench and surface restoration work. Once EBMUD has approved a contract, the City would then negotiate with EBMUD’s contractor to augment the project scope to include additional paving to perform full-width paving. This is the option before City Council.

ANALYSIS/POLICY ALTERNATIVES

Existing contract authority per Oakland Municipal Code (OMC) requires Council authorization for contracts in excess of \$250,000 (2.04.030) and requires advertising and competitive bidding for contracts in excess of \$50,000 (section 2.04.050). However, OMC Title 2, Chapter 2.0, Article I, Section 2.04.050.1 5 provides an exception to this advertising and competitive bidding requirement when specifically authorized by the City Council after a finding and determination that it is in the best interests of the City.

Additionally, OMC Section 02.04.020 identifies multiple local contracting programs required of City contractors that may not be achievable given the City does not have control over EBMUD’s bidding processes. While the City will negotiate with contractors to comply with all of the City’s local contracting program requirements, in some instances the requirements may not be achievable or achievable within the timeframe necessary to coordinate the joint-benefit paving. Acknowledging that full compliance with the City’s contract programs may not be feasible, the

proposed resolution directs the City Administrator to negotiate with these contractors to maximize compliance with the City's contract programs.

Staff requests that the City Council find and determine that it is in the best interests of the City to waive advertising and competitive bidding and local contracting program requirements on the following basis:

- As a public agency subject to the California Public Contracts Code, EBMUD advertises and competitively bids its contracts and awards to the lowest responsible, responsive bidder.
- EBMUD maintains its own contracting program requirements which include requiring small/local business enterprise participation, apprenticeship, and prevailing wage, and encouraging local hire.
- Completing site restoration work with one contractor reduces construction impacts and is in the best interest of Oakland residents and businesses. One contractor per location ensures better site control, eliminates inefficiency due to the need to "work around" multiple contractors at one site, and reduces confusion from the public regarding who is responsible for the effort.
- Completing full-width paving in one mobilization with one contractor is a cost-effective and efficient use of public dollars and is in the best interest of Oakland tax-payers, who are also EBMUD rate-payers.

It is in the best interest of the City to approve the proposed resolution and waive further advertising and competitive bidding per the OMC Section 2.04.050.1.5 and, to the extent necessary and not otherwise negotiable, waive local contracting program requirements under OMC Section 02.04.020 for the reasons stated above.

If approved, the City would immediately work to negotiate and execute an agreement with EBMUD's contractor for the Helen Cluster to augment the scope so that full-width paving could be completed as part of EBMUD's restoration work. See a map of the proposed Helen Cluster paving coordination in **Attachment A**. The resolution would also authorize the City to negotiate and execute similar agreements with EBMUD contractors in the future when EBMUD pipeline projects overlap with City paving priorities. **Attachment B** provides EBMUD's FY21 Pipeline Work Plan, demonstrating the significant volume of pipeline work—and cost-share coordination opportunities—on Oakland streets in the coming year. **Attachment C** provides EBMUD's Contract Equity Program documentation.

The alternative to the proposed resolution would be for EBMUD to perform its OMC requirements for partial-width paving and for the City to mobilize its own paving construction at a later date, paving the remaining portion of the street in a separate operation.

PUBLIC OUTREACH/INTEREST

Street repaving is one of the top priorities for Oaklanders, and a significant public outreach process was performed toward the adoption of the 3YP. Prior to starting construction, residents

and businesses affected by the work will be notified regarding the construction schedule and planned activities. Additionally, every 6 months OakDOT's Paving Program provides an updated report detailing 3YP progress and contract statuses, provided on the City's website.

COORDINATION

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

FISCAL IMPACT

Funds are available for paving in the FY 2020-21 Budget in Fund 5332 Measure KK, Organization 92246 Engineer Design Streets and Structures, Account 57411 Street Construction, and Project No. 1005420.

SUSTAINABLE OPPORTUNITIES

Economic: Cost-sharing of joint-benefit pavement restoration enables the City to improve paving conditions, enhancing and protecting the City's infrastructure, at a cost-benefit for the City.

Environmental: The contractors will be required to make every effort to use best management practices for the protection of storm water runoff during construction. Recyclable materials will be used within asphalt concrete construction materials to the greatest extent possible. Grindings from asphalt paving will be recycled whenever possible.

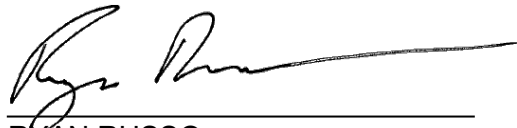
Race & Equity: Work performed under this resolution will follow the racial equity framework of the adopted 2019 3-Year Paving Plan.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Adopt A Resolution Waiving Advertising And Competitive Bidding And City Contracting Program Requirements And Authorizing The City Administrator To Negotiate And Award Construction Contracts To East Bay Municipal Utility District Contractors For Utility Cost-Share Paving Without Return To Council.

For questions regarding this report, please contact Sarah Fine, Program Manager, Complete Streets Paving and Sidewalk, 510-238-6241.

Respectfully submitted,



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Attachments:

- A: Map of Helen Cluster*
- B: EBMUD FY21 Pipeline Construction Work Plan*
- C: EBMUD Contract Equity Program & Equal Opportunity Guidelines (March 2019)*