

ALAMEDA COUNTY BOARD OF SUPERVISORS

** MINUTE ORDER **

The following was action taken by the Board of Supervisors on November 2, 2010

Approved as Recommended ☒ Other ☐

Unanimous ☒ Carson ☐ Haggerty ☐ Miley ☐ Steele ☐ Lai-Bitker ☐ - 5

Vote Key: N=No; A=Abstain; X=Excused

Documents accompanying this matter:

☐ Resolution(s) _____

☐ Ordinance(s) _____

☒ Contract(s) C-2010-187

File No. 26713

Item No. 14

Document to be signed by Agency/Purchasing Agent

☐ Contract(s) _____

Copies sent to:

Maps & Files, QIC 50501

✓ Development Services Admin Services, QIC 51502

Auditor, QIC 20111

Special Notes:



I certify that the foregoing is a correct copy of a Minute Order adopted by the Board of Supervisors, Alameda County, State of California.

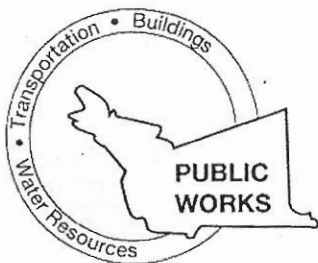
ATTEST:

Crystal Hishida Graff, Clerk of the Board
Board of Supervisors

By: _____

Deputy

FLOOD CONTROL AGENDA Item# _____ October 26, 2010

**COUNTY OF ALAMEDA
PUBLIC WORKS AGENCY**399 Elmhurst Street • Hayward, CA 94544-1307
(510) 670-5480

October 6, 2010

REVISED
10/26/10

The Honorable Board of Supervisors
County Administration Building
1221 Oak Street
Oakland, CA 94612

Dear Board Members:

SUBJECT: APPROVE AND AUTHORIZE EXECUTION OF THE AGREEMENT WITH THE CITY OF HAYWARD FOR MAINTENANCE SERVICES OF A STORM WATER TREATMENT POND ASSOCIATED WITH TRACT 7065 IN THE CITY OF HAYWARD

RECOMMENDATION:

Approve and execute an agreement with the City of Hayward and Alameda County Flood Control and Water Conservation District to provide maintenance services of a Storm Water Treatment Pond associated with Tract 7065, in the City of Hayward.

DISCUSSION/SUMMARY:

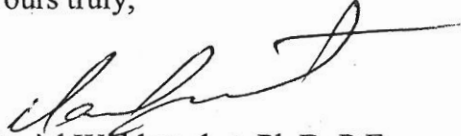
The City of Hayward approved for development Tract 7065, located on the southwest corner of the intersection of Hesperian and Industrial Boulevards. Conditions imposed on the Developer included obtaining approval from the Alameda County Flood Control and Water Conservation District (District) for onsite drainage improvements and easements required over the District maintained A-2 Flood Channel. The District entered into agreement, C-2001-301, on January 23, 2001, with one of the conditions stating that the District will maintain and repair the Storm Water Treatment Pond associated with the development, with reasonable reimbursement from the City of Hayward.

This agreement requires the City of Hayward to submit operation, maintenance, and administration costs to the District to reimburse our costs. The City of Hayward will also be responsible for administering the Capital Improvement Fund to be used for major repairs or replacement costs.

FINANCE:

No County financing will be required. The City of Hayward will be responsible for all costs associated with the Agreement.

Yours truly,

A handwritten signature in black ink, appearing to read 'Daniel Woldesenbet', with a long horizontal flourish extending to the right.

Daniel Woldesenbet, Ph.D, P.E.
Director of Public Works

DW:wl

c: Andrew Massey, County Counsel

AGREEMENT

THIS AGREEMENT is entered into this 2nd day of November, 2010 by and between the ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter referred to as "District" and the CITY OF HAYWARD, hereinafter referred to as "City".

WITNESSETH:

WHEREAS, Chapter 5 of Division 7 of the Government Code of the State of California authorizes and empowers any two or more public agencies to jointly exercise by agreement any powers common to the contracting parties; and

WHEREAS, both parties are authorized by the acts governing them to operate and maintain facilities constructed for the purposes of flood control and the protection of life, limb, and property from the adverse effects of storm waters; and

WHEREAS, City approved the plans for Vesting Tentative Tract Map 7065, which calls for the construction of a Storm Water Treatment pond (the Pond); and

WHEREAS, District entered into agreement, C-2001-301, with the Developer of Tract 7065, stating that the District will maintain and repair the Pond with reasonable reimbursement from the Eden Shores Homeowners Association of Tract 7065; and

WHEREAS, District owns the parcel on which the Pond was constructed and is willing to provide maintenance subject to the City providing the District with the monies to operate and maintain the Pond annually and as demanded by the District fund for a capital replacement.

NOW, THEREFORE, BE IT AGREED that for in consideration of the mutual covenants herein set forth and the mutual benefits to be derived by the parties hereto, City shall:

- 1) Upon acceptance of the Pond and demand by the District, remit \$2,750, this sum being the initial cost to cover the first year of operation and maintenance, and administration of the Pond. Thereafter, the City agrees, no later than July 1st of each succeeding year to remit to the District, the monies to operate and maintain the Pond. Said funds shall be obtained by the City from the Maintenance District No. 2 (MD 2) established by the City as part of the approval of Tract 7065.
- 2) The City will be responsible for administering the Capital Improvement Fund. The Capital Improvement Fund would be used for major repairs or replacement including but not limited to, any unscheduled/emergency repairs, the replacement of riser and discharge pipe, and access ramp, embankment repairs or replacements, any sediment removal, and costs of any future permitting requirements of the State and Federal Regulations.

C-2010-187

- 3) Cooperate fully and work jointly with the District to insure that operation and maintenance are implemented in the most efficient and least costly manner.
- 4) Recognize that unforeseen/emergency repairs, equipment replacement or modifications necessary to keep the Pond in normal safe and functional operating condition may arise. City shall reimburse District for all expenses related to such work. If the monies reserved by the City in the Capital Improvement Fund are inadequate to cover the expenses, City shall reimburse the amount owed for such work with the District at the next regularly scheduled annual remittance dates through two equal installments. The monies deposited for this purpose shall be in addition to the annual maintenance and operation costs.
- 5) Save, hold harmless, defend and indemnify District from any and all liabilities and claims for damages or suits, or both, for or by reason of, any action of City or its agents arising out of this agreement.
- 6) Provide funds as stated in (1), and (4) above. If City fails to provide funds, District will serve a notice of default. When served a written notice of default for failure to pay such monies as are due under this agreement, City shall have a 90-day period, commencing from the date notice of default is received to cure the default. If the default is cured within the 90-day period, District shall continue to operate the Pond as provided for in this agreement. If the default is not cured within the 90-day period, City will assume the operation and maintenance of the Pond. District will cease all maintenance operations and grant to the City all rights, including access rights over District property.
- 7) The City understands and accepts that Eden Shores Homeowners Association shall be subject to any future permitting requirements of the San Francisco Bay Regional Water Quality Control Board.

NOW, THEREFORE, BE IT AGREED that upon approval of this agreement, the District shall:

- 1) Upon execution of this agreement, maintain and operate the Pond within its designed capabilities as part of the storm water management program consistent with the requirements of the San Francisco Bay Regional Water Quality Control Board (RWQCB). The District shall inform the City if any new permitting requirements are identified resulting in added costs.
- 2) It should be noted that the Eden Shores Homeowners Association shall be responsible for adhering to any future permitting requirements of the SF Bay Regional Water Quality Control Board. The District will not be responsible for or party to any permitting between the Eden Shores Homeowners Association and the RWQCB.
- 3) Save, hold harmless, defend and indemnify City from any and all liabilities and claims for damages or suits, or both, for and by reason of any actions of District, or its agents arising out of this agreement.

- 4) Cooperate fully and work jointly with the City to insure that operation and maintenance are implemented in the most efficient and least costly manner.
- 5) Agree that the initial annual operation and maintenance cost is \$2,500 plus an administration cost of \$250 (in 2010 dollars). Thereafter, the subsequent annual operation and maintenance, and administration costs shall not exceed the current year plus three percent (3%) to cover the regular maintenance work listed under 9) below.
- 6) Furnish City no later than December 1st of each year an itemized estimate of the cost to perform major repair or replacement work beyond the annual operation and maintenance work in the Pond for the fiscal year commencing on July 1 of the following year. Such costs to be reviewed and approved or disputed in writing by City within 10 working days of receipt. If resolution on the cost or schedule for the major repair or replacement between the District and the City cannot be agreed upon, it will be the City's obligation to perform such work.
- 7) Provide City with written notice for additional funding to cover unscheduled/emergency repairs that are found by District to be necessary for the normal and safe performance of the Pond. Such notice shall be provided to the City at least 30 days before commencing such work. District will have the work done and will provide funding to complete such work with the understanding that City will reimburse District as noted in item (4) of the City recitals above. If District determines that the work is necessary to prevent serious risk of substantial injury or harm to the public emergency notice will be given as soon as practical and work will be undertaken by the District prior to giving a 30 day notice.
- 8) Establish parameters with City for uniform series Sinking Fund for Capital Replacement program funded by the Capital Improvement Fund so operating and capital reserve balance can be maintained at acceptable levels, and if necessary, to modify the annual collection rate.
- 9) Maintenance of the Pond shall include the following:
Regular maintenance work:
 - a) Minor erosion gullies to be repaired on earthen banks within the Pond
 - b) Vegetation to be periodically trimmed
 - c) Debris to be cleared from structures within the Pond
 - d) Rodent control on an as needed basis when rodents are present. Animal burrows within banks to be filled with compacted clean material; animals to be controlled as necessary with non-toxic chemicals
 - e) Quarterly inspections by District personnel
Major repair or replacement work may include but not be limited to:
 - f) Remove accumulated sediments from the Pond if sediment depth in the Pond basin equals or exceeds half the height of basin depth or vertical riser
 - g) Significant erosion gullies to be repaired on earthen banks within the Pond
 - h) Replace or repair riser and discharge pipe, access ramp, and embankment
 - i) Any other work necessary to remove or abate anything interfering with the operation of the Pump Station.

- j) Any other work related to maintenance of pond mutually agreed to by parties to this agreement.
- 10) Any work not specifically listed in paragraph 9a to 9e is not considered annual operation and maintenance work and is not included within the funding amounts specified in paragraph 5 as annual operation and maintenance costs. Additional payments will be needed from the City to fund work beyond that specified as regular maintenance work including, but not limited to, major repair or replacement work identified in paragraph 9.

This agreement shall be subject to modification only by a written amendment executed by both parties.

IN WITNESS WHEREOF, the parties hereto, thereunto duly authorized have executed this agreement the day and year first above written.

CITY OF HAYWARD, a municipal corporation

By: 

Robert Bauman,
Director of Public Works

ALAMEDA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

By: 

PRESIDENT OF THE BOARD OF SUPERVISORS
OF ALAMEDA COUNTY, CALIFORNIA

11/2/2010

R. Caballero

11/2/2010

APPROVED AS TO FORM

By: 

Michael Lawson
City Attorney

APPROVED AS TO FORM

RICHARD E. WINNIE, County Counsel

By: 