



Town of Moraga	Agenda Item
CONSENT	6.5

Meeting Date: April 10, 2019

TOWN OF MORAGA

STAFF REPORT

To: Honorable Mayor and Councilmembers

From: Edric Kwan, Public Works Director / Town Engineer

Subject: Consider Resolution ____ - 2019 Authorizing the Town Manager to Execute an Agreement with the City of Lafayette to Partner in the 2019 Joint Moraga-Lafayette Surface Seal Project

Request

The Town of Moraga (Town) and the City of Lafayette (Lafayette) are planning to prepare two separate surface seal projects this year with construction cost estimates of \$1,400,000 and \$500,000, respectively. Rather than individually going out to bid on two separate projects, both agencies would benefit by combining the projects. Staff recommends entering into an agreement with Lafayette to partner in a joint surface seal project.

Background

On March 13, 2019, Town Council received and accepted the 2018 Pavement Management Report and provided direction to staff to continue current pavement management approaches which includes partnering with other agencies to reduce costs. Joint projects with local agencies reduce duplicate administration costs and increase quantities to reduce bid prices. This objective has been a recurring goal at the 2013 and 2014 Lamorinda Joint Council meetings and was part of the 2014 Town Mayor's Goals. In 2016, Moraga successfully completed the 2016 Joint Moraga-Lafayette Surface Seal project.

Discussion

The Town learned that Lafayette is planning to complete the same type of surface seal project that the Town is planning in 2019 and both agencies have been exploring combining forces to bid out a joint project. It has been determined that cost savings would be achieved due to reduced project administration costs and anticipated lower bid prices.

1 Each agency would be responsible for its own design, engineering, administration,
2 inspection, materials and testing costs. The Town will provide the Town's portion of
3 contract drawings and construction bid quantities to Lafayette for incorporation into the
4 contract documents. The Town has reviewed Lafayette's contract documents including
5 the specifications and has determined that they meet the Town's standards. Lafayette
6 will bid out the joint project and upon bid opening, both agencies will review the bids
7 received and timely notify each other if there is dissatisfaction with the bid results and
8 exercise the right to withdraw from the project. If both agencies accept the bid results,
9 Lafayette will approve the joint construction contract. The Town will reimburse
10 Lafayette for its fair share cost of improvements.

11
12 The Town has begun the design process and will be developing and refining the Town's
13 portion of the surface seal project to be within a construction cost estimate of
14 \$1,400,000. The Joint Moraga-Lafayette Surface Seal project is part of a multi-year
15 program that spans fiscal years (FY) 2018/19 to 2019/20 with design and a few
16 construction expenditures starting in FY 2018/19 and the bulk of construction
17 expenditures occurring in FY 2019/20.

18
19 The Lafayette City Council is scheduled to consider the Agreement regarding Joint
20 Pavement Maintenance Surface Seal Project 2019 (Attachment A) at their April 9
21 Council meeting. Staff recommends executing the attached agreement to enable
22 integration of the projects with an anticipated construction schedule of summer 2019.

23
24 **Fiscal Impact**

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26 Funding for the multi-year program is included in the Town's Capital Improvement
27 Program (CIP) as part of FY 2018/19 and FY 2019/20 Annual Pavement Management
28 Program (CIP 08-106), and includes \$1.4 million in construction plus a 15%
29 contingency, plus design, administrative and construction management costs.

30
31 **Alternatives**

- 32
33 1. Approve Resolution ____ - 2019 authorizing the Town Manager to execute an
34 Agreement with the City of Lafayette to partner in the 2019 Joint Moraga-
35 Lafayette Surface Seal project; or
36 2. Approve Resolution ____ - 2019 with modifications; or
37 3. Not approve Resolution ____ - 2019 and provide direction to staff.

38
39 **Recommendation**

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41 Approve Resolution ____ - 2019 authorizing the Town Manager to execute an
42 agreement with the City of Lafayette to partner in the 2019 Joint Moraga-Lafayette
43 Surface Seal project.

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45 **Report reviewed by:** Cynthia Battenberg, Town Manager

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1 **Attachments:**

- 2 **A.** Agreement Regarding Joint Pavement Maintenance Surface Seal Project 2019
- 3 **B.** Resolution ____ - 2019 Authorizing the Town Manager to Execute an Agreement
- 4 with the City of Lafayette to Partner in the 2019 Joint Moraga-Lafayette Surface
- 5 Seal Project

ATTACHMENT A

Agreement Regarding Joint Pavement
Maintenance Surface Seal Project 2019

**AGREEMENT REGARDING JOINT PAVEMENT
MAINTENANCE SURFACE SEAL PROJECT 2019**

This AGREEMENT REGARDING JOINT PAVEMENT MAINTENANCE SURFACE SEAL PROJECT 2019 (“**Agreement**”) is made and entered into this ____ day of _____, 2019 (the “**Effective Date**”), by and between the Town of Moraga (“**Moraga**”) and the City of Lafayette (“**Lafayette**”), both municipal corporations of the State of California. Moraga and Lafayette may be referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

RECITALS

A. Lafayette intends to proceed with pavement maintenance work in the form of a surface seal project on certain streets located with the City of Lafayette, as described in more detail in Exhibit A, attached hereto and incorporated herein by this reference (the “**Lafayette Surface Seal Work**”).

B. Moraga intends to proceed with pavement maintenance work in the form of a surface seal project on certain streets located within the Town of Moraga, as described in more detail in Exhibit B, attached hereto and incorporated herein by this reference (the “**Moraga Surface Seal Work**”).

C. Both Lafayette and Moraga intend to use local funding sources for Lafayette Surface Seal Work and Moraga Surface Seal Work, respectively.

D. In order to more effectively implement their projects and save project costs, the Parties desire to coordinate and cooperatively implement the Lafayette Surface Seal Work and the Moraga Surface Seal Work collectively in a Joint Pavement Surface Seal Project (the “**Project**”) and enter into a single construction contract for the Project.

TERMS

NOW, THEREFORE, the Parties in consideration of the mutual promises set forth in this Agreement, agree as follows:

1. Purpose of Agreement. The purpose of this Agreement is for the Parties to cooperatively implement the construction of the Project and for each Party to be responsible for the costs of Project within its jurisdiction.

2. Responsibilities of the Parties.

2.1 Lafayette. Lafayette agrees to do the following:

a) Be responsible for its own design, engineering, administration, inspection, materials and testing costs for the Lafayette Surface Seal Work;

b) Prepare bid documents, including bid schedule, contract, general conditions, and special provisions for the purpose of entering into a construction contract for the Project;

- i. Bid documents will utilize the City of Lafayette Standard Specifications (March 2013);
- ii. Lafayette reserves discretion as to form and language of bid and contract documents, subject to reasonable review and approval by Moraga in accordance with Section 2.2(c) below;

c) In Project bid documents, require the contractors for the Project to indemnify and hold harmless both Moraga and Lafayette and name both Moraga and Lafayette as additional insureds, with language that shall be reviewed and reasonably approved by Moraga as provided for in Section 2.2(c);

d) Incorporate Project design, plans, and construction quantities for Moraga Surface Seal Work, which shall be furnished by Moraga to Lafayette, in the bid documents;

e) Bid a construction contract for Project; notify Moraga of the lowest responsible bid submitted a responsive bid for the combined value of Project; notify Moraga if Lafayette is dissatisfied with the bids received and intends to exercise its right to withdraw from the Project; and, unless either party intends to withdraw pursuant to Section 11.1 below, award the construction contract to the lowest responsible bidder submitting a responsive bid;

f) Administer the Project construction contract in coordination with Moraga construction inspection and management personnel and be responsible for all costs associated with inspection, material testing, and construction management of the Lafayette Surface Seal Work;

g) Provide a financial accounting of the construction contract costs of the Project associated with the Moraga Surface Seal Work to Moraga (the "Moraga Costs"); and

h) Work cooperatively and in good faith with Moraga to implement the Project, including proportionate cost sharing in the event of any unforeseen costs regarding the Project.

2.2 Moraga. Moraga agrees to do the following:

a) Be responsible for its own design and engineering for the Moraga Surface Seal Work, using applicable technical provisions developed and furnished by Lafayette;

b) Timely provide contract drawings and construction bid quantities for the Moraga Surface Seal Work to Lafayette to be incorporated into contract documents for the Project. Such drawings and information to be consistent with a form to be specified by Lafayette;

c) Review and reasonably approve Project bid documents prepared by Lafayette as noted in Section 2.1(b) and (c) above in a timely manner;

d) Review the bids received and timely notify Lafayette if Moraga is dissatisfied with the bids received and intends to exercise its right to withdraw from the Project, as provided in Section 11.1 below;

e) Furnish and identify construction management personnel, who shall have authority to represent Moraga and make final decisions on all construction matters that may arise during the Project. These personnel shall administer the construction of the Moraga Surface Seal Work in coordination with Lafayette;

f) Be responsible for all costs associated with inspection, material testing, and construction management of the Moraga Surface Seal Work;

g) Reimburse Lafayette for the Moraga Costs within 30 days of receiving the financial accounting as provided in Section 2.1(g); and

h) Work cooperatively and in good faith with Lafayette to implement the Project, including proportionate cost sharing in the event of any unforeseen costs regarding the Project.

3. Mutual Indemnification.

3.1 Lafayette hereby agrees to indemnify, defend, assume all liability for and hold harmless Moraga and its officers, employees, agents and representatives, to the maximum extent allowed by law, from all actions, claims, suits, penalties, obligations, liabilities, damages to property, costs and expenses (including without limitation any fines, penalties, judgments, actual litigation expenses and attorneys' fees), environmental claims or bodily and/or personal injuries or death to any persons (collectively, "**Claims**"), to the extent arising out of or in any way connected with the Lafayette Surface Seal Work, except for Claims arising out of the Project construction, which shall be indemnified by the contractors pursuant to Section 2.1(c) above.

3.2 Moraga hereby agrees to indemnify, defend, assume all liability for and hold harmless Lafayette and its officers, employees, agents and representatives, to the maximum extent allowed by law, from all Claims to the extent arising out of or in any way connected with the Moraga Surface Seal Work, except for Claims arising out of the Project construction, which shall be indemnified by the contractors pursuant to Section 2.1(c) above.

4. No Waiver. The waiver by any Party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

5. Notices. Any notice or other communication ("**Notice**") which either Party may desire to give to the other Party under this Agreement must be in writing and may be given by any commercially acceptable means, including via first class Certified Mail, personal delivery or overnight courier, to the Party to whom the Notice is directed at the address of the Party as set forth below, or at any other address as that Party may later designate by Notice. Any Notice shall be deemed received immediately if delivered by hand, on the third day from the date it is postmarked if delivered by first-class mail, Certified

and postage prepaid, return receipt requested, and on the next business day if sent via nationally recognized overnight courier.

Lafayette: City of Lafayette
Attention: City Manager
P. O. Box 1968
Lafayette, CA 94549

Moraga: Town of Moraga
Attention: Town Manager
329 Rheem Boulevard
Moraga, CA 94556

6. Interpretation; Venue.

6.1 Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

6.2 Venue. This Agreement is made in Contra Costa County, California. The venue for any legal action in state court filed by any Party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Contra Costa. The venue for any legal action in federal court filed by any Party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California.

7. Third-Party Beneficiaries. Nothing contained in this Agreement shall be construed to create any rights in third parties and the Parties do not intend to create such rights.

8. Incorporation of Recitals. The recitals set forth above are true and correct and are incorporated into this Agreement as though fully set forth herein.

9. Severability. If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

10. Amendment of Agreement. This Agreement may be amended at any time by mutual Agreement of the Parties. Any amendment shall be in writing and signed by all Parties.

11. Termination.

11.1 If either Party is dissatisfied with the bids received, it reserves the right to withdraw from the Project by providing written notice to the other Party of its intent to withdraw. Such notice shall be provided a minimum of five (5) business days

prior to the date set for award of the contract for the Project. In that case, this Agreement shall be immediately terminated. In the event of termination pursuant to this Section 11.1, both Parties shall bear their own costs incurred up to the effective date of termination. Notwithstanding the foregoing, any costs associated with non-cancellable obligations accrued by Lafayette arising out of the Moraga Surface Seal Work shall be reimbursed by Moraga to Lafayette.

11.2 Except as provided in Section 11.1, neither Party may terminate this Agreement except due to an uncured material breach of the Agreement by the other Party. In the event of a material breach, the non-breaching Party must provide written notice of the breach to the breaching Party, and the breaching Party shall have thirty (30) calendar days from the date of the notice of material breach to cure. In the event of termination pursuant to this Section 11.2 due to Moraga's breach, Moraga shall pay Lafayette for all costs incurred up to the effective date of termination, including costs associated with non-cancellable obligations.

12. Entirety of Contract. This Agreement constitutes the entire Agreement between the Parties relating to the subject of this Agreement and supersedes all previous Agreements, promises, representations, understandings and negotiations, whether written or oral, among the Parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, this Agreement is executed by the Parties as of the Effective Date.

CITY OF LAFAYETTE, a municipal corporation

By: _____
Niroop Srivatsa, Interim City Manager

APPROVED AS TO FORM:

By: _____
Mala Subramanian, City Attorney

TOWN OF MORAGA, a municipal
corporation

By: _____
Cynthia Battenberg, Town Manager

APPROVED AS TO FORM:

By: _____
Michelle Kenyon, Town Attorney

EXHIBIT A

LAFAYETTE SURFACE SEAL WORK

[to be inserted]

EXHIBIT B

MORAGA SURFACE SEAL WORK

[to be inserted]

ATTACHMENT B

Resolution Authorizing the Town Manager to Execute an Agreement with the City of Lafayette to Partner in the 2019 Joint Moraga-Lafayette Surface Seal Project

BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA

In The Matter Of:

Authorizing the Town Manager to Execute)
an Agreement with the City of Lafayette to)
Partner in the 2019 Joint Moraga-)
Lafayette Surface Seal Project)

Resolution No. ____ - 2019

WHEREAS, one of the recommendations of the 2018 Pavement Management Report presented to Town Council on March 13, 2019 was to partner with other agencies to reduce costs; and

WHEREAS, the Town of Moraga (Town) and the City of Lafayette (Lafayette) are planning to prepare surface seal projects this year with construction cost estimates of \$1,400,000 and \$500,000 respectively; and

WHEREAS, rather than individually going out to bid on two separate projects, both agencies would benefit by combining projects to achieve cost savings due to anticipated lower bid prices from nearly doubling bid quantities and reduced administrative costs; and

WHEREAS, each agency will be responsible for its own design, engineering, administration, inspection, materials and testing costs; and

WHEREAS, the Town will provide the Town's portion of contract drawings and construction bid quantities to Lafayette for incorporation into the contract documents and specifications which meets Town standards; and

WHEREAS, Lafayette will bid out the joint project and upon bid opening, each agency will have the right to review the bids and exercise the right to withdraw from the project if there is dissatisfaction with the bid results; and

WHEREAS, if both agencies accept the bid results, Lafayette will approve the construction contract and the Town will reimburse Lafayette for its fair share cost of improvements for a total amount not to exceed \$1,610,000 (\$1,400,000 construction cost plus 15% in Contract Change Orders equivalent to \$210,000); and

WHEREAS, the 2019 Joint Moraga-Lafayette Surface Seal project is budgeted as part of the Pavement Management Program (CIP 08-106) for fiscal year 2018/19 (adopted) and fiscal year 2019/20 (programmed).

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Moraga hereby authorizes the Town Manager to execute an agreement with the City of Lafayette to partner in the 2019 Joint Moraga-Lafayette Surface Seal project.

PASSED AND ADOPTED by the Town Council of the Town of Moraga at a regular meeting held on April 10, 2019 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Roger N. Wykle, Mayor

Attest:

Marty C. McInturf, Town Clerk

DRAFT