

CITY COUNCIL AUDIT SUBCOMMITTEE

Regular Meeting Minutes for Wednesday, July 21, 2010

A Regular Session of the City Council Audit Subcommittee was held July 21, 2010, in the City Hall Council Chambers at 120 Vista Avenue. In accordance with Government Code Section 54954.2(a) the agenda for this meeting was posted for public inspection on July 16, 2010.

CALL TO ORDER Mayor Barbieri called the meeting to order at 7:30 p.m. with the Pledge of Allegiance.

ROLL CALL Present: Mayor Dean Barbieri, Vice Mayor John Chiang and Judge Ken Kawaichi (ret.)

Staff: City Administrator Geoff Grote, City Clerk Ann Swift, Retired Public Works Director Larry Rosenberg and Recording Secretary Chris Harbert

PUBLIC FORUM There were no speakers for the public forum.

APPROVAL OF MINUTES **Resolved**, that the City Council Audit Subcommittee approves as submitted its meeting minutes of July 8, 2010.

Moved by Chiang, Seconded by Kawaichi

Ayes: Barbieri, Chiang, Kawaichi

Noes: None

Absent: None

SCOPE OF WORK REPORT The Subcommittee members reported on their review of background documentation for Task 2 scope of work assignments related to the Application of City policy to the Piedmont Hills Underground Assessment District.

a. Explanation of the engineering process for the district including the use of multiple firms (Kawaichi). Judge Kawaichi summarized the contents of Exhibit 18-Engineering Reports and Correspondence in explaining why over the course of time, three different engineers became involved in the project. Basically, time pressures and limited funds were contributing factors. The first engineer (Harris & Associates) felt in 2008 that it could not perform the remaining, required tasks for the amount of money originally agreed upon in 2003 and 2005. In November 2008, Robert Gray & Associates was then retained to do the remaining engineering work for the amount originally budgeted for this work. The third engineer was the City Engineer -- who at one time was from Harris & Associates and then later from Coastland Engineering. During the report, it was noted that it took the City of Oakland approximately one year to approve the "Resolution of Consent," thus contributing to the time delay.

b. Timeline of expenditures including the development of "rock issue" (Chiang). The Vice Mayor summarized his comparison of project bids as they related to rock work costs as well as his investigation of the actual amount of

rock removed over the course of the project. During his report, the following issues were highlighted: (1) under its the contract, Valley Utility could have charged the City twice the amount for rock excavation than it actually billed; (2) project plans erroneously calculated the required amount of linear feet of trenching -- the plans specified 13,706 linear feet while the actual footage was 15,770 ; (3) approximately 60.5% of project trenching encountered hard rock -- an extraordinary amount when compared to other utility undergrounding projects in Piedmont; (3) the calculation of "construction credits" for rock work and the delay between when these change orders were issued/work proceeded and when the City actually received the invoices for this rock work complicated the process by which staff could compare the amount of money being expended in relation to the remaining project balance -- costs were occurring but being billed in arrears. For example, the cost of rock excavation for the period from August 31 through September 11 was \$219,000 but the City Engineer (Coastland Engineering) did not receive this invoice until September 22 and City staff received the billing on September 25. This cost accounting system is ineffective and a better process should be developed to avoid this type of situation in the future; and (4) the project contingency was exhausted by September 11 and by October 1, 2009, the project was \$156,000 "in the red."

c. Available alternatives at the time rock was discovered (Chiang).

The Vice Mayor summarized the options discussed by the City Council in December 2009/February 2010. Noting in particular the following estimated costs to the City if the Council had terminated the project at the following stages (these costs include potential litigation by district property owners, bond holders, project contractor, public safety expenditures associated with making City streets passable and negotiations with PG&E for services rendered):

-- Early August 2009	\$1.6 Million
-- November 30, 2009	\$4.7 Million
-- January 31, 2010	\$5+ Million

It was also acknowledged that suspending the project was not a viable option for a variety of legal, economic and practical reasons.

The Vice Mayor also suggested the Audit Subcommittee address in its final report the fact that under existing City policy, there was no legal way that the City could have required the property owners in the Hills District to pay for project cost overruns.

d. Timeline for seeking legal counsel, notification of the City Council and notification of the public (Barbieri). The City Administrator stated that he was advised early in the process by the City Clerk and Public Works Director that rock was being encountered but the cost at that stage was not alarming nor the circumstance unusual -- similar situations had occurred with two previous undergrounding projects which had ended up being completed within budget. However by September, concern escalated and staff was examining the project

budget to look for cost savings to off-set rock expenses. In late October, staff reassessed the financial condition of the project, recognized that the project contingency had been depleted and at the end of October informed Mayor Friedman of the situation. At that time, Mayor Friedman and the City Administrator retained legal counsel. At the November 2 Closed Session, he and the Mayor advised the City Council that the project was out of funds. Initially, staff advised the Council that it would cost approximately \$300,000-\$400,000 to complete the project. However, because billings were being received two weeks after-the-fact as well as problems with calculating/applying construction credits, staff re-assessed the amount necessary to complete the project and recommended on December 7, 2009, that the Council appropriate \$1.4 Million. This amount was greater than the Council anticipated, was based on negotiations with Valley Utility and was believed to be sufficient by staff to complete the project. This would likely have been the case had it not been discovered in early February that there were significant errors in the plans regarding the actual amount of linear feet of trenching required. The project was much larger than the original specifications and bid documents had indicated. Therefore, a second Million dollar appropriation was required in February to complete the project.

The Mayor stated that a mediation session has been scheduled between the City and the project engineers' errors & omissions defense counsel.

Public Testimony

Rick Schiller inquired why staff failed to realize the project's deteriorating financial condition earlier in the process, failed to recognize that by negotiating a "time and materials" contract with Valley to address the rock issue, it removed any incentive for Valley to perform the work quickly, felt that Harris & Associates fees were excessive and reiterated his belief that Valley Utility was not the proper contractor for the project.

RECOMMENDATIONS

The Subcommittee acknowledged that it had completed the first two task assignments, with the third and final assignment being the preparation of its final report and recommendations. It was agreed that each Subcommittee member would draft his section of the final report independently, covering his specific task assignments and emphasizing responses given to the questions received from the public (listed in July 8 meeting minutes). It was further suggested that recommendations be highlighted with "bullet points" so that they can be combined and assembled into one section of the final report.

NEXT MEETING

Thursday, September 23 at 7:30 p.m. to review the draft Final Report and Recommendations.

ADJOURNMENT

There being no further business, Mayor Barbieri adjourned the meeting at 9:10 p.m.