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City Attorney

# OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C.M.S.

Introduced by Councilmember \_\_\_\_\_

**RESOLUTION REJECTING ALL BIDS, WAIVING FURTHER ADVERTISING AND COMPETITIVE BIDDING, AUTHORIZING THE CITY ADMINISTRATOR, OR DESIGNEE, TO NEGOTIATE, AWARD AND EXECUTE A CONSTRUCTION CONTRACT WITHOUT RETURN TO COUNCIL FOR AN AMOUNT NOT TO EXCEED EIGHT MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$8,700,000.00) IN THE OPEN MARKET FOR THE CONSTRUCTION OF THE RAINBOW RECREATION CENTER RENOVATION AND EXPANSION PROJECT (NO. 1000854) IN ACCORDANCE WITH THE PROJECT PLANS AND SPECIFICATIONS**

**WHEREAS**, the Rainbow Recreation Center was identified as a priority project in the FY11-13 Park Project Prioritization list approved by Council under Resolution No. 83725 C.M.S. in February 2012; and

**WHEREAS**, on May 17, 2011 the City Council approved Rainbow Recreation Center project as one of six projects to apply for Round 2 of the Proposition 84, the Clean Water, Parks and Coastal Protection Act competitive grant in Resolution No. 83367 C.M.S.; and

**WHEREAS**, in October 2013 the City was awarded and entered into an agreement with the State of California Department of Parks & Recreation receiving Proposition 84 grant funds for the project; and

**WHEREAS**, on March 1, 2016 the City Council approved Resolution No. 86028 C.M.S. allowing staff to apply for, accept and appropriate grant funds from the California Department of Housing and Community Development for the 2015 Housing Related Parks Program (HRPP) for the Rainbow Recreation Center; and

**WHEREAS**, on October 4, 2016 the City Council approved Rainbow Recreation Center as one of two projects to apply for the Proposition 40 California Youth Soccer and Recreation Development Program in Resolution No. 86407 C.M.S.; and

**WHEREAS**, in November 2016 the Measure KK General Obligation Bond was approved by the voters of Oakland to fund \$600 million of vital infrastructure improvements and anti-displacement and affordable housing projects; and

**WHEREAS**, in February 2017 the City entered into Agreement with the State of California Department of Housing and Community Development receiving grant funds for the project; and

**WHEREAS**, on June 19, 2017 the City Council approved Rainbow Recreation Center in the list of projects commencing with the first Measure KK bond issuance in Resolution No. 86779 C.M.S.; and

**WHEREAS**, on September 1, 2017 the City advertised the Rainbow Recreation Center Renovation & Expansion Project No. 1000854 for bid and 2 bids were received in the amounts of \$10,795,000 and \$11, 282,000 by the City Clerk on September 28, 2017; and

**WHEREAS**, in October 2017 the City is in the process of entering an Agreement with the State of California Department of Parks & Recreation receiving Youth Soccer grant funds for the project; and

**WHEREAS**, both bids were deemed non-responsive as the contractors did not meet the City's Local and Small Local Business Enterprise program as reviewed by the Contracts and Compliance Unit and both bids were significantly over the construction estimate of \$8,200,000; and

**WHEREAS**, OMC Section 2.04.050.I.5 provides an exception to the advertising and competitive bidding requirements of the OMC upon a finding and determination by the City Council that it is in the best interests of the City to do so and Section 2.04.050.J states that if no valid bids are received after advertising as required, the City Administrator may proceed to hire or have the services performed or purchase the supplies in the open market; and

**WHEREAS**, advertising and competitive re-bidding will delay the construction project which is to be completed and opened to the public by December 31, 2018 before grant funds expiration;

**WHEREAS**, the City Council finds and determines based on the representations set forth in the City Administrator's report accompanying this Resolution that the construction contract approved hereunder is temporary in nature; and

**WHEREAS**, the City lacks the equipment and qualified personnel to perform the necessary work, that the performance of this contract is in the public interest because of economy or better performance; and

**WHEREAS**, the City Council finds and determines that the performance of this contract shall not result in the loss of employment or salary by any person having permanent status in the competitive services; now, therefore, be it

**RESOLVED:** That all bids are hereby rejected; and be it

**FURTHER RESOLVED:** That the City Council finds and determines that it is in the best interest of the City to waive further advertising and competitive bidding per OMC Section 2.04.050.I.5 and per Section 2.04.050.J that the City Administrator may proceed to hire or have

the services performed or purchase the supplies in the open market since no valid bids are received after advertising as required, and be it

**FURTHER RESOLVED:** That the City Administrator, or Designee, is authorized to negotiate, award and execute a construction contract without return to Council for the construction of Rainbow Recreation Center Renovation and Expansion Project No. 1000854 for an amount not to exceed of Eight Million Seven Hundred Thousand Dollars (\$8,700,000) contingent upon the availability of funding in accordance with the project plans and specifications; and be it

**FURTHER RESOLVED:** That the City Council hereby approves the plans and specifications, including any subsequent changes during construction consistent with the approved design, that will be reviewed and adopted by the Assistant Director of the Oakland Public Works Department for this project; and be it

**FURTHER RESOLVED:** That the City Administrator, or Designee, is authorized to execute any amendments or modifications of the contract within the limitations of the project specifications; and be it

**FURTHER RESOLVED:** That the successful contractor shall comply with all City contracting and compliance program requirements that apply to this contract, including Local Business Enterprise and Small Local Business Enterprise (LBE/SLBE) participation and be verified by the Contracts and Compliance Division; and be it

**FURTHER RESOLVED:** That the successful contractor shall provide faithful performance bond and a bond to guarantee payment of all claims for labor and materials furnished and for the amount of 100% of the contract price and due under the Unemployment Insurance Act prior to execution of the contract; and be it

**FURTHER RESOLVED:** That the contract shall be reviewed and approved by the City Attorney for form and legality prior to execution and placed on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California