



City Attorney's Office

# OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C.M.S.

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**RESOLUTION WAIVING FURTHER ADVERTISING, BIDDING AND THE CITY'S SMALL-VERY SMALL LOCAL BUSINESS ENTERPRISE PARTICIPATION REQUIREMENT AND AUTHORIZING THE CITY ADMINSTRATOR TO NEGOTIATE AND AWARD A CONSTRUCTION CONTRACT FOR AS-NEEDED PAVEMENT REHABILITATION SERVICES (PROJECT 1006105) TO GALLAGHER & BURK, THE LOWEST RESPONSIBLE BIDDER, IN ACCORDANCE WITH THE PROJECT PLANS AND SPECIFICATIONS AND CONTRACTOR'S BID IN AN AMOUNT NOT TO EXCEED FIVE MILLION, SEVENTY-TWO THOUSAND, FIVE HUNDRED AND THIRTY DOLLARS (\$5,072,530.00), WITHOUT RETURN TO COUNCIL, AND ADOPTING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS.**

**WHEREAS**, on September 30, 2021, the City Clerk received three bids for the 2021 As-Needed Pavement Rehabilitation Services Project (1006105): and

**WHEREAS**, the bids for the project were as follows: \$5,072,530 from Gallagher & Burk; \$5,269,205 from McGuire & Hester; \$5,695,775 from O.C. Jones & Sons; and \$5,303,700 from Teichert Construction; and

**WHEREAS**, all bids were deemed non-responsive due to not achieving 25% small or very small local business enterprise (S/VSLBE) participation; and

**WHEREAS**, Gallagher & Burk is otherwise deemed the lowest responsible bidder and staff recommends that the Council authorize the City Administrator to negotiate with the lowest responsible bidder, and if such negotiations are successful, award the contract for this project to Gallagher and Burk; and

**WHEREAS**, Oakland Municipal Code (OMC) section 2.04.050 requires advertising and competitive bidding for contracts for the purchase of services, supplies or combination required by the City in any one transaction which exceeds \$50,000, and the award to the lowest responsible, responsive bidder if award is made; and

**WHEREAS**, awarding this contract will freeze unit prices at the 2021 competitively-bid contract amounts, representing a cost advantage for the City versus new unit prices on the open market; and

**WHEREAS**, the Project is exempt from CEQA pursuant to Public Resources Code Section 711.4 and pursuant to CEQA Guidelines Sections 15183 (Projects Consistent with a Community Plan, General Plan or Zoning), 15301(c) (Existing Facilities, Highways and Streets), 15302 (Replacement or Reconstruction), 15303 (Small Structures), 15304(h) (minor alterations to land), and/or 15061(b)(3) (No Significant Effect on the Environment); each of the aforementioned provides a separate and independent basis for CEQA compliance; and

**WHEREAS**, the City Council finds and determines that the performance of this contract is in the public interest because of economy or better performance; and

**WHEREAS**, funding for this project will be available in the following project account as part of the current and anticipated FY 2021-22 CIP Budget: in Fund 5335 Measure KK, Organization 92246 Engineer Design Streets and Structures, Account 57411 Street Construction, and Project No. 1005420.

**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 that this contract is of a professional, scientific or technical nature; and

**WHEREAS**, Gallagher & Burk complies with all other local business enterprise and local trucking requirements; and

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

**RESOLVED:** That the City Council hereby waives the 25% S/VSLBE requirement and authorizes the City Administrator to negotiate with the lowest responsible bidder, and if negotiations are successful, award a construction contract to Gallagher & Burk in accordance with project plans and specifications for 2021 As-Need Pavement Rehabilitation Services and the contractor's bid schedule in the amount not to exceed Five Million, Seventy-Two Thousand, Five Hundred And Thirty Dollars (\$5,072,530.00), all dated September 30,2021, without return to Council; and be it

**FURTHER RESOLVED:** That the amount of the bond for faithful performance, (\$5,072,530.00); and the bonds to guarantee payment of all claims for labor and materials furnished and for the amount under the Unemployment Insurance Act, (\$5,072,530.00); with respect to such work are hereby approved; and be it

**FURTHER RESOLVED:** That the City Administrator, or designee, is hereby authorized to enter into a contract with Gallagher & Burk on behalf of the City of Oakland and to execute any amendments or modifications of the contracts within the limitations of the project specifications; and be it

**FURTHER RESOLVED:** That the plans and specifications prepared for this project, including any subsequent changes during construction, that will be reviewed and adopted by the Director of Transportation, or designee, are hereby approved; and be it

**FURTHER RESOLVED:** All other bids are rejected; and be it

**FURTHER RESOLVED:** That the Council hereby finds and determines that the Project is exempt from CEQA pursuant to Public Resources Code Section 711.4 and pursuant to CEQA Guidelines Sections 15183 (Projects Consistent with a Community Plan, General Plan or Zoning), 15301(c) (Existing Facilities, Highways and Streets), 15302 (Replacement or Reconstruction), 15303 (Small Structures), 15304(h) (minor alterations to land), and/or 15061(b)(3) (No Significant Effect on the Environment); each of the aforementioned provides a separate and independent basis for CEQA compliance: and be it

**FURTHER RESOLVED:** That the City Administrator or his designee shall file a Notice of Determination/Notice of Exemption with the Clerk of the County of Alameda for this project that is named in this resolution; and be it

**FURTHER RESOLVED:** That the contracts 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 - FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND PRESIDENT FORTUNATO BAS

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
ASHA REED  
City Clerk and Clerk of the Council of the  
City of Oakland, California