

**CITY OF OAKLAND
COUNCIL AGENDA REPORT**

2005 MAR 31 PM 1:24

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Public Works Agency
DATE: April 12, 2005

RE: RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO AWARD CONTRACT TO UNDERGROUND CONSTRUCTION COMPANY, INC., IN AN AMOUNT NOT TO EXCEED \$9,282,964.45 FOR CONSTRUCTION OF UNDERGROUND UTILITY DISTRICT NO. 233, ON MACARTHUR BOULEVARD (FROM 73RD AVENUE TO THE SAN LEANDRO CITY LINE) ("DISTRICT"), \$1,673,000.00 TO BE PAID BY THE CITY OF OAKLAND AND THE REMAINDER (TOTALING \$7,609,942) TO BE PAID BY PG&E, SBC AND COMCAST); OR, ALTERNATIVELY, WAIVING FURTHER BIDDING REQUIREMENTS AND AUTHORIZING THE CITY ADMINISTRATOR TO REJECT ALL BIDS, AND NEGOTIATE, AWARD AND EXECUTE A CONTRACT TO CONSTRUCT THE DISTRICT FOR AN AMOUNT WITHIN EACH ENTITY'S BUDGET STARTING WITH THE LOWEST, RESPONSIBLE BIDDER, WITHOUT RETURN TO COUNCIL

SUMMARY

A resolution has been prepared for Council to authorize the City Administrator to award and execute a City of Oakland construction contract with Underground Construction Company, Inc. in an amount not to exceed \$9,282,964.45 for construction of Underground Utility District No. 233 on MacArthur Boulevard (from 73rd Avenue to the San Leandro city border) Project, to be paid collectively by the City, PG&E, SBC and Comcast. The City's costs would be \$1,673,022 paid out of City of Oakland's Municipal Capital Improvement funds (Fund 5500); PG&E's costs would be \$4,330,430 paid out of Pacific Gas and Electric 20A funds; SBC's costs would be \$1,908,754 paid out of SBC 32A funds; and, Comcast's costs would be \$1,370,758.45 paid out of Comcast funds. The project is located in Council District 7 and Council District 6.

Alternatively and if Underground Construction Company does not hold prices bid last June, the resolution authorizes the City Administrator to reject all bids and negotiate a contract for construction of Underground District No. 233 starting with the lowest responsible bidder, Underground Construction Company.

This is a revised report. The differences from the previous report dated 9/14/04 are as followings:

- Reduction in overall cost of the project, by \$323,914, because Comcast has decided to pull some of its work from the City's contract.
- Increase in City cost by \$2,000 to reflect recalculation of the surface restoration work.

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- Underground Construction has held bid prices for 10-months since bid opening. It is checking its subcontractor bid prices and will inform the City whether Underground Construction can hold the original bid price. City Administrator requests authorization to negotiate with Underground Construction, the responsive low bidder, if it will not hold the original bid price.
- Written acknowledgement from PG&E that it is required to pay its actual costs for undergrounding PG&E facilities under the City's franchise agreement.
- Agreement by SBC to enter into separate payment and indemnity agreements with the City to provide a secure funding commitment and agree to assume liability for the contractor's work on their facilities. The agreements are under review by SBC. Staff will provide an oral update to the Committee.
- Comcast's agreement to enter into the construction agreement with the City and contractor, under which Comcast will agree to provide its portion of project funding and assume liability for the contractor's work on its facilities.

These changes are incorporated in the revised resolution submitted to the Committee.

Underground Construction Company, Inc. is the responsible low bidder.

Funds are available for the City's portion of the contract work, which totals \$1,673,022.00. The project cost may overrun the current projected cost. Therefore the City has negotiated with SBC, PG&E and Comcast to assume liability for the claims and cost overruns related to installation of their facilities.

This project is consistent with the Mayor and City Council Goals to Improve Oakland's Neighborhoods and to Maintain and Enhance Oakland's Physical Assets.

Staff recommends that the resolution be approved, and that the City Administrator be authorized to award the contract if the contractor holds his original bid price. If the contractor does not hold his original bid price, staff recommends that: 1) the City Council waive bidding requirements because recent changes in the marketplace indicate that further competitive bidding will not result in an overall bid for the work within the project budget, and 2) the City Administrator be authorized to reject all project bids received in June, 2004 and to negotiate a contract for construction of the underground district starting with the responsible low bidder, Underground Construction Company, Inc.

FISCAL IMPACT

The City of Oakland budget for the project contract is indicated in the chart below. Additional funds that are needed for the project contract will be carried by PG&E, SBC and Comcast as indicated below.

Funding Source	Fund No.	Project No.	Amount
City of Oakland	5500	C211740	\$1,673,022.00
PG&E 20A Funds	N/A	N/A	\$4,330,430.00
SBC 32A Funds	N/A	N/A	\$1,908,754.00
Comcast Reimbursement Funds per Franchise Agreement	5500	TBD	\$1,370,758.45
Total for Contract			\$9,282,964.45

The utilities will not deposit funds with the City. PG&E and SBC will make progress payments directly to the contractor based on jointly-approved progress payments. Comcast will reimburse the City for jointly-approved progress payments to the contractor upon the City's payment of the contractor.

Based on the above arrangement, it is proposed that the City execute a construction contract in the amount \$9,282,964.45, which covers the cost of all project work for the City, PG&E, SBC and Comcast, although the City's budgeted portion of the work is only \$1,673,022.00. The City's construction budget is \$2,000,000.00. The City has already procured streetlight materials for installation on this project. The City will erect the streetlights and pull the wires at an estimated labor cost of approximately \$250,000 using City forces. These funds are available in Project C211740.

The required allocations for Public Art and Contract Compliance will be set-aside in the appropriate accounts in Project C211740.

The City bid the work by unit pricing. The City's portion of the construction contingency is \$20,000 (1.1% of the contract amount). This construction contingency is included in the construction amount. The City's portion of the contingency is adequate because we do not expect changes to go beyond the City's portion of the contract amount.

Contract City Portion	\$1,673,022
City Forces Portion	\$251,692
Public Arts (1.5%)	\$25,095
Contract Compliance (3.0%)	\$50,191
Total which is budgeted	\$2,000,000

The City, PG&E, SBC and Comcast, collectively, have the funds to meet all the project costs. The collective project budget has sufficient funds to cover the construction, contingency and construction management costs of the project provided there are no significant claims or cost overruns.

There are significant additional ongoing City maintenance costs anticipated for the project. The project will add approximately 200 pedestrian lights to the City streetlight inventory. Based on the current annual estimate for maintenance and operations cost of \$130 per light, the project will require increasing the budget for PWA Electrical by \$26,000.

BACKGROUND

PWA Electrical designed the engineering composite drawings, prepared specifications for the City work, and compiled specifications from PG&E, SBC and Comcast for their work. The 'engineering composite drawings' are a set of plans that combine and coordinate the City streetlight design, PG&E's power distribution system, SBC's telephone system and Comcast's cable system. The project budget is set forth in a Public Utilities Commission format (Form B) and shows the cost breakdown for each party for the joint trenches and common facilities in the project.

All utilities approved the plans, specifications and bid documents before the project was bid and have approved the current project budget. See Attachments A, B and C for the approval letters. The City issued a Notice Inviting Bids in early May of 2004 for construction of Underground Utility District No. 233 located on MacArthur Boulevard from 73rd Avenue to the City of San Leandro border. The bid invitations were sent to 535 contractors holding an "A" or "C10" License per the PWA Database & Contract Compliance Database, the Outreach and Builder Exchange and the Oakland Tribune. On June 21, 2004, the City Clerk received eight bids for the project as follows:

Bidders	Location	Bid Amounts
St. Francis Electric	San Leandro, CA	\$5,869,065.89
Underground Construction	Benicia, CA	\$9,606,878.45
West Valley Construction	Campbell, CA	\$9,888,726.67
A.R.B Inc.	Lake Forest, CA	\$10,101,829.60
Ranger Pipelines	San Francisco, CA	\$10,174,294.60
Mitchell Engineering	San Francisco, CA	\$10,978,070.00
Manuel Brothers Inc.	Green Valley, CA	\$11,188,575.89
Shimmick Brothers, Inc	Hayward, CA	N/A

At the time of the agenda report, there are no bidders in Oakland who can do this type of work on a large scale.

The Local and Small Local Business Enterprise Programs (L/SLBE) require contractors bidding on City-funded projects to have 20% Local and Small Local Business participation.

St. Francis Electric was initially the lowest bidder, with a bid of \$5,869,065.89, but requested and was granted withdrawal of its bid on June 22, 2004, due to a mathematical error.

Underground Construction Company became the lowest bidder at \$9,606,878.45. Contract Compliance has determined that Underground Construction Co. meets the L/SLBE requirement. This contractor has 20.25% L/SLBE participation in its bid, which slightly exceeds the 20% L/SLBE requirement.

The project location, MacArthur Boulevard between 73rd Avenue and the San Leandro city line, has businesses and residences along both sides of the street and a high volume of both foot and

vehicular traffic. The project involves removal of the aerial facilities including power, telephone, cable TV, and streetlights and installation of those facilities underground. The project includes restoration of the street surface to its existing condition.

The project meets the City Council Budget Priorities to Maintain and Enhance Oakland's Physical Assets by improving the physical appearance, livability and integrity of this neighborhood, and supports the City Council Budget Priority to Improve Oakland's Neighborhood by improving pedestrian and public access areas, and the general aesthetics of the commercial and residential neighborhood.

It is proposed that the City execute a construction contract for the entire project, inclusive of the PG&E, SBC and Comcast work under which the City will be separately responsible for paying the contractor and for inspections, acceptance, approval of progress payments and change orders for their portions of the work.

KEY ISSUES AND IMPACTS

Secure Project Funding, Utility Liability & Risk of Claims

First, this project involves designs and specifications for four entities: City of Oakland, PG&E, SBC and Comcast. PG&E and SBC are regulated by the Public Utilities Commission, while Comcast is bound by its Franchise Agreement with the City. The City will inspect the joint trench as well as the substructure (duct banks and foundations) for streetlights. But, the City is not authorized to carry out inspections and acceptance of work for the two utilities and Comcast involved. Therefore, inspection and acceptance functions normally carried out by City staff must be performed by the utilities and Comcast. The result is that there is a risk of claims against the City for injuries or damages resulting from contractor's work for one of the utilities or Comcast. Utilities' and Comcast's designs, specifications and construction work are not, however, within the City's power to control, ameliorate or resolve.

Second, none of the utilities and Comcast is willing to deposit funds with the City. The City has, therefore, been negotiating for months with the utilities and Comcast to secure some type of enforceable agreement for project funding since the City will be responsible for the actual construction contract.

Third, the City unlike PG&E, SBC or Comcast, is subject to certain labor and public contracting laws and principles that make the City potentially liable for subcontractor payment claims and project laborer wages that the contractor fails to satisfy to the extent that contractor progress payments are not properly charged.

PG&E and SBC will pay the contractor directly as work proceeds upon City and PG&E/SBC-approved progress payments. This could result in payment processing gaps during which payment claims may be filed and not properly withheld against the contractor progress payments.

To minimize the risk of funding shortages and City liability for utilities and Comcast claims, the City has secured the following:

- A promise from Comcast (Letter of Intent, dated September 28, 2004) in which Comcast agrees to indemnify, defend and hold harmless the City for Comcast-related design or construction claims, and to pay Comcast's project costs for this project;
- A letter from PG&E, dated February 18, 2005, in which PG&E acknowledges that the City's Franchise agreement setting forth PG&E indemnity and payment obligations, generally, applies to this underground project;
- As a term of the construction agreement, the contractor will be required and Underground Construction Company has indicated willingness, to limit the City's financial obligation to the contractor to the City's cost of work (\$1,673,022.00) and to release and hold harmless the City from any claims related to work performed for the utilities. The contractor will also be required to name each of the utilities as additional insureds on insurance and bonds.

Indemnity and payment agreements have been prepared and submitted to SBC. These agreements were under review by SBC at the time of printing. Staff will provide an oral update on these negotiations to the committee and/or City Council.

Project Schedule

The project will break ground in the summer of 2005 and it will consist of two parts: (1) substructure installation by the contractor and (2) installation of facilities by the utility companies, Comcast and PWA Electrical.

- **The Substructure Installation:** The contractor will install the substructure in 440 working days in three phases (areas).
 - **1st Phase (1st Area):** San Leandro City Line to 98th Avenue
 - **2nd Phase (2nd Area):** 98th Avenue to 82nd Avenue
 - **3rd Phase (3rd Area):** 82 Avenue to 73 Avenue

The contract stipulates \$1,000 in liquidated damages for each day that the contract work is delayed.

- **The Installation of Facilities:** As the contractor completes installing each phase (area) of the substructure, PG&E and SBC will install their own power and telephone lines. PWA Electrical will then install the streetlights. When the entire substructure is complete in all three phases (areas) Comcast will install its cable. When all the new underground is completed, tested and fully operational, the aerial lines and poles will be removed by SBC and PG&E. This project will be scheduled for completion by the end of 2008.

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Negotiation of Project Contract, Starting With Lowest Responsible Bidder

In addition to authorization to award to Underground Construction Company, Inc., PWA seeks alternative authorization that would reject all bids and allow the City Administrator to negotiate, award and execute a project contract within the overall, collective project budget, starting with the lowest responsible bidder, without return to the City Council. The Council would also be asked to waive further competitive bidding requirements to eliminate unnecessary administrative burden and delay.

PWA has requested that Underground Construction Company, Inc. hold the bid it submitted on June 21, 2004, to expedite award of the contract and implementation of the project. The contractor has the request under consideration and had not provided a firm response as of the date this report was printed. An update will be provided at the Council meeting.

Current market conditions indicate that implementation of another bid competition is not likely to result in an overall bid within the collective project budget of City, PG&E, SBC and Comcast. It would be administratively burdensome, and needlessly and substantially delay the project to conduct another bid competition if Underground Construction Company, Inc. decides not to hold its bid.

SUSTAINABLE OPPORTUNITIES

Economic: This contract will generate jobs in the local economy. The prime contractor and subcontractors are Bay Area companies. They met the requirements of local participation as the City has determined that companies that have domicile in the City provide 20.25% of the contract value. The undergrounding project will help support the local businesses.

Environmental: The project will enhance the general aesthetics of the environment by the removal of overhead power, telephone and cable TV cables and facilities. About 100 wood poles will be removed. The new holiday circuits on the pedestrian lights will provide the opportunity to liven up the area during major festivities.

Social Equity: The project elements including the removal of aerial lines, communication splice boxes and power supplies mounted on wood poles will aid in making pedestrian walking a safer and more pleasant experience. The resurfacing of the sidewalk and streets, to restore to its original state, will enhance the aesthetics of the community and thereby encourage residents to shop in their neighborhood. This will improve the local economy and support commercial businesses.

DISABILITY AND SENIOR CITIZEN ACCESS

This project involves reconstruction of some curb ramps that meet the Federal Americans with Disabilities Act, to the extent allowed by funds available, making them safe and usable for senior citizens and persons with disabilities. The MacArthur Streetscape Project, which will follow the undergrounding project, will resume with the reconstruction of curb ramps. The new streetlights

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will improve lighting in this major roadway. The new pedestrian streetlights will add to the security and aesthetics of the street.

RECOMMENDATION AND RATIONALE

Staff recommends that the City Council approve the revised resolution, authorizing award of a construction contract to Underground Construction Company, Inc. in the amount of \$9,282,964.45, if there are no changes in bid prices. Underground Construction Company has met L/SLBE requirements, and the project budget will have sufficient funds to cover the contract work provided PG&E, SBC and Comcast fulfill their commitment and pledges to the City to pay for their costs and change orders.

If Underground Construction Company does not hold its bid price submitted last June, staff alternatively recommends that the City Council authorize the City Administrator to reject all bids submitted last June and negotiate a contract to construct Underground Utility District No. 233, starting with the lowest responsible bidder, Underground Construction Company, Inc., because current market conditions indicate that completion of another bid competition would not result in a bid within the project budget.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends approval of the resolution.

Respectfully submitted,



RAUL GODINEZ II, P.E.

Director, Public Works Agency

Reviewed by:

Bruce Saunders, Assistant Director

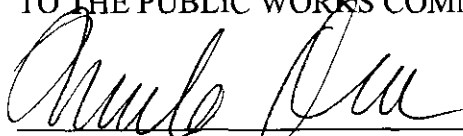
Department of Infrastructure and Operations

Prepared by:

Vernon Chang, Interim Manager

Electrical Services Division

APPROVED AND FORWARDED
TO THE PUBLIC WORKS COMMITTEE:



OFFICE OF THE CITY ADMINISTRATOR

**Underground Utility District No. 233
(From 73rd Avenue to the San Leandro Line)
(Project No. C211740)**

Attachment A - Project Schedule, dated 3/10/05

Attachment B - St. Francis Electric's Withdrawal of Bid, dated 6/22/04

Attachment C – SBC Letter approving 1) contractor's bid, and 2) contractor to proceed, and requesting additional and accurate cost information, dated 8/16/04

Attachment D – PG&E Letter agreeing to pay the “electric utility share of the work” with certain limits provided the project is approved by PG&E, dated 8/16/04

Attachment E – Comcast Letter agreeing to reimburse “reasonable costs” in an amount not to exceed “*estimated* costs plus 5%,” dated 8/19/04

Attachment F – Contract Compliance & Employment Services Review, dated 7/29/04

Attachment G – PG&E Letter stating their policy and Franchise Agreement with the City require them to pay their share of the cost of the project, dated 2/18/05

Attachment H – Comcast Letter of Intent, dated 9/28/04

Attachment I – SBC Agreements 1) Letter of Intent, dated _____, and 2) Payment Agreement and Indemnity Agreement, dated _____ {If completed by date of submittal}



Attachment B

June 22, 2004

City of Oakland
Office of City Clerk
1 Frank H. Ogawa Plaza
First Floor, Suite 101
Oakland, CA. 94612

Attn: City Clerk

RE: Underground Utility District No. 233 / MacArthur Blvd. Streetscape
Project # C211710

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2004 JUN 22 PM 12:00

Gentlemen,

St. Francis Electric, Inc. respectfully withdraws our bid for the project referenced above, due to a mathematical error.

We hereby execute notification with this letter.

Sincerely,
ST. FRANCIS ELECTRIC

Robert Spinardi
President

ATTACHMENT D



***Pacific Gas and
Electric Company***

August 16, 2004
Paul Chan
Public Works Department
City of Oakland

Dear Mr. Chan:

I have reviewed the bid documents from the low bidder for the Macarthur Boulevard underground project. Pending approval for the bid award by the Oakland City Council and subsequent project approval by PG&E for the Macarthur Boulevard Undergrounding, PG&E will be responsible for paying the electric utility share of the work performed by the successful contractor. Payments will be made for work completed and invoiced on a unit cost basis. One note, the city summary sheet, indicates that PG&E is responsible for all of the service panel conversion charges. Per the CPUC provisions for rule 2D, PG&E will pay for panels for which the contract charge is \$1,500 or less. For those panels on which the conversion cost is greater than \$1,500, PG&E will pay only \$1,500.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sterling Pflaum".

Sterling Pflaum
Project Manager



Comcast Cable Communications, Inc.
2000 Technology Court
Richmond, CA 94806

ATTACHMENT E

August 19, 2004

Mr. Paul Chan, P.E.
City of Oakland - Public Works Agency
Municipal Service Center
7101 Edgewater Drive
Oakland, CA 94621-3001

Re: Notice of Intention to Install Underground Facility
Location: MacArthur Blvd Underground Utility District No. 233

Dear Mr. Chan:

This letter is written in response to your request for Comcast's Agreement to Reimburse the City of Oakland for the above referenced project.

Comcast is interested in participating in the joint trench with respect to the above referenced project. In agreeing to participate, Comcast agrees to reimburse the City of Oakland for the reasonable costs to construct the trench in an amount not to exceed the estimated costs plus 5%.

Please feel free to call me if you have any questions.

Very truly yours,

Bruce Muller
Construction Manager

BM/mka

**Contract Compliance and
Employment Services Division
Office of the City Manager**

Memorandum

Date: July 29, 2004
From: Deborah Barnes, CC&ES Manager *Deborah Barnes*
To: Gwen McCormick, Contract Administration Supervisor
Regarding: Underground Utility District No. 233 / MacArthur Streetscape

Contract Compliance & Employment Services reviewed six bids for the above referenced project. The listed contractors met the twenty percent requirement.

Company Name	LBE	SLBE	Total
Underground Construction	1.67%	18.58%	20.25%
West Valley Construction	0.00%	28.25%	28.25%
Manuel Brothers, Inc.	2.34%	28.30%	30.65%

The following contractors did not meet the twenty percent requirement.

ARB, Inc.	0.00%	18.37%	18.37%
Ranger Pipelines	0%	19.79%	19.79%
Mitchell Engineering	0.00%	0.00%	0.00%

CC:

Contract Compliance and Employment Services Evaluation FormProject No.: C211710Project Name: Underground Utility District No.233 / MacArthur StreetscapeContractor: Underground Construction Company, Inc.Engineer's Estimate: 12,000,000.00Contractor's Bid Amount: 9,606,878.45Over/Under the Engineers Estimate: 2,393,121.55Bid Discounted Amount: \$192,137.57Discount Points: 2%Discounted Bid Price: \$9,414,740.881. Did the 20% requirements apply? YES2. Did the contractor meet the 20% requirement? YES

a)	% of LBE	<u>1.67%</u>
b)	% of SLBE	<u>18.58%</u>
c)	Total	<u>20.25%</u>

3. Did the contractor meet the Trucking requirement? YESa) % of Local Trucking 100.00%4. Did the contractor receive bid discount points? YES
(If yes, list the points received) 2%

5. Additional Comments.

This contractor met the minimum requirements.

6. Date evaluation completed and returned to Contact Admin./Initiating Dept.

7/29/2004ReviewingOfficer:Date: 7/29/2004Approved By:Date:July 29, 2004

LBE/SLBE Participation Bidder 1

Project Name: Underground Utility District No.233 / MacArthur Streetscape

Project No.: C211710		Engineers Estimate: 12,000,000.00			Under/Over Engineers Estimate: 2,393,121.55						
Discipline	Prime & Subs	Location	Cert. Status	LBE	SLBE	LOCAL TRUCKING	TOTAL LBE/SLBE	TOTAL Dollars	For Tracking Only		
									Ethn	MBE	WBE
PRIME	Underground Construction Company, Inc.	Benicia	UB					7,661,847.45			
Saw cutting	Bayline Concrete	Oakland	CB		170,288.00		170,288.00	170,288.00	H	\$170,288.00	
Import/concrete AC disposal	Specialty Crushing	Oakland	CB		147,840.00		147,840.00	147,840.00			
Trucking	S&S Trucking	Oakland	CB		738,563.00	738,563.00	738,563.00	738,563.00	H	\$738,563.00	
Compact Testing	Consolidated Engineering Laboratories	Oakland	CB	38,200.00			38,200.00	38,200.00			
Concrete	AJW Construction	Oakland	CB		727,870.00		727,870.00	727,870.00	H	\$727,870.00	
Asphalt	Gallgher & Burk	Oakland	CB	78,192.00			78,192.00	78,192.00			
Rebar Cages	Coliseum Steel Products	Oakland	CB	18,720.00			18,720.00	18,720.00			
Concrete for Streetlights Foundations	RMC Pacific Materials	Oakland	CB	25,358.00			25,358.00	25,358.00			
Project Totals				160,470.00	1,784,561.00	738,563.00	1,945,031.00	9,606,878.45		\$1,636,721.00	\$0.00
				1.67%	18.58%	100%	20.25%				
Requirements: The 20% requirements is a combination of 10% LBE and 10% SLBE participation. An SLBE firm can be counted 100% towards achieving 20% requirements. LBE firms can only be counted up to 10% of the total contract amount.				LBE 10% MAX CREDIT	SLBE 10%	TRUCKING 20%	LBE/SLBE 20%	Ethnicity AA = African American A = Asian C = Caucasian H = Hispanic NA = Native American O = Other			
Legend LBE = Local Business Enterprise SLBE = Small Local Business Enterprise Total LBE/SLBE = All Certified Local and Small Local Businesses NPLBE = NonProfit Local Business Enterprise NPSLBE = NonProfit Small Local Business Enterprise								UB = Uncertified Business CB = Certified Business MBE = Minority Business Enterprise WBE = Women Business Enterprise			

Contract Compliance and Employment Services Evaluation Form

Project No.: C211710

Project Name: Underground Utility District No.233 / MacArthur Streetscape

Contractor: West Valley Construction

Engineer's Estimate: 12,000,000.00Contractor's Bid Amount: 9,783,150.67Over/Under the Engineers Estimate: 2,216,849.33Bid Discounted Amount: \$195,663.01Discount Points: 2%Discounted Bid Price: \$9,587,487.661. Did the 20% requirements apply? YES2. Did the contractor meet the 20% requirement? YES

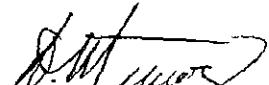
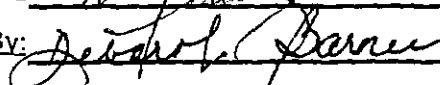
a)	% of LBE	<u>0.00%</u>
b)	% of SLBE	<u>28.25%</u>
c)	Total	<u>28.25%</u>

3. Did the contractor meet the Trucking requirement? YESa) % of Local Trucking 100.00%4. Did the contractor receive bid discount points? YES
(If yes, list the points received) 2%

5. Additional Comments.

This contractor met the minimum requirements.

6. Date evaluation completed and returned to Contact Admin./Initiating Dept.

7/29/2004Reviewing
Officer:Date: 7/29/2004Approved By:Date:July 29, 2004

LBE/SLBE Participation Bidder 2

Project Name: Underground Utility District No.233 / MacArthur Streetscape

Project No.: C211710		Engineers Estimate: 12,000,000.00				Under/Over Engineers Estimate: 2,216,849.33					
Discipline	Prime & Subs	Location	Cert. Status	LBE	SLBE	LOCAL TRUCKING	TOTAL LBE/SLBE	TOTAL Dollars	For Tracking Only		
									Ethn	MBE	WBE
PRIME Conduit Supplier	West Valley Construction	Cambell	UB					6,346,598.67			
	Herning Underground Supply	Hayward	UB					370,000.00			
Saw cutting	Owens Concrete Sawing	Oakland	CB		339,000.00		339,000.00	339,000.00	C		\$339,000
Electrical	Ray's Electric	Oakland	CB		924,479.00		924,479.00	924,479.00			
Vaults	Utility Vault	Pleasanton	UB					303,203.00			
Trucking	William Trucking	Oakland	CB		772,000.00	772,000.00	772,000.00	772,000.00	AA	\$772,000	
Concrete	AJW Construction	Oakland	CB		727,870.00		727,870.00	727,870.00	H	\$727,870	
Project Totals				0.00	2,763,349.00	772,000.00	2,763,349.00	9,783,150.67		\$1,499,870	\$339,000
				0.00%	28.25%	100.00%	28.25%				
Requirements: The 20% requirements is a combination of 10% LBE and 10% SLBE participation. An SLBE firm can be counted 100% towards achieving 20% requirements. LBE firms can only be counted up to 10% of the total contract amount.				LBE 10% MAX CREDIT	SLBE 10%	TRUCKING 20%	LBE/SLBE 20%	Ethnicity AA = African American A = Asian C = Caucasian H = Hispanic NA = Native American O = Other			
Legend	LBE = Local Business Enterprise SLBE = Small Local Business Enterprise Total LBE/SLBE = All Certified Local and Small Local Businesses NPLBE = NonProfit Local Business Enterprise NPSLBE = NonProfit Small Local Business Enterprise			UB = Uncertified Business CB = Certified Business MBE = Minority Business Enterprise WBE = Women Business Enterprise							

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Contract Compliance and Employment Services Evaluation Form

Project No.: C211710

Project Name: Underground Utility District No.233 / MacArthur Streetscape

Contractor: Manuel Brothers, Inc.

Engineer's Estimate: 12,000,000.00

Contractor's Bid Amount: 11,301,364.77

Over/Under the Engineers Estimate: 698,635.23

Bid Discounted Amount: \$339,040.94

Discount Points: 3%

Discounted Bid Price: \$10,962,323.83

1. Did the 20% requirements apply? YES

2. Did the contractor meet the 20% requirement? YES

a)	% of LBE	<u>2.34%</u>
b)	% of SLBE	<u>28.30%</u>
c)	Total	<u>30.65%</u>

3. Did the contractor meet the Trucking requirement? N/A

a)	% of Local Trucking	<u>0.00%</u>
----	---------------------	--------------

4. Did the contractor receive bid discount points? YES
(If yes, list the points received) 3%

5. Additional Comments.

This contractor met the twenty percent requirement and received a one percent bid discount.

6. Date evaluation completed and returned to Contact Admin./Initiating Dept.

7/29/2004

Reviewing
Officer:

D. Munoz

Date: 7/29/2004

Approved By:

David S. Baume

Date:

July 29, 2004

LBE/SLBE Participation Bidder 5

Project Name: Underground Utility District No.233 / MacArthur Streetscape

Project No.: C211710		Engineers Estimate: 12,000,000.00			Under/Over Engineers Estimate: 698,635.23						
Discipline	Prime & Subs	Location	Cert. Status	LBE	SLBE	LOCAL TRUCKING	TOTAL LBE/SLBE	TOTAL Dollars	For Tracking Only		
									Etho	MBE	WBE
PRIME	Manuel Brothers, Inc.	Grass Valley	UB					7,837,564.77			
Saw Cut	Owen's	Oakland	CB		120,000.00		120,000.00	120,000.00			
Electrical	Ray's Electric	Oakland	CB		1,046,800.00		1,046,800.00	1,046,800.00			
Trucking	Williams Trucking	Oakland	CB		1,350,000.00	1,350,000.00	1,350,000.00	1,350,000.00	AA	\$1,350,000.00	
Concrete	AJW	Oakland	CB		682,000.00		682,000.00	682,000.00	H	\$682,000.00	
Paving	Gallagher & Burk	Oakland	CB	265,000.00			265,000.00	265,000.00			
Project Totals				265,000.00	3,198,800.00	1,350,000.00	3,463,800.00	11,301,364.77		\$2,032,000.00	\$0.00
				2.34%	28.30%	100.00%	30.65%				
Requirements: The 20% requirements is a combination of 10% LBE and 10% SLBE participation. An SLBE firm can be counted 100% towards achieving 20% requirements. LBE firms can only be counted up to 10% of the total contract amount.				LBE 10% MAX CREDIT	SLBE 10%	TRUCKING 20%	LBE/SLBE 20%	Ethnicity AA = African American A = Asian C = Caucasian H = Hispanic NA = Native American O = Other			
Legend	LBE = Local Business Enterprise SLBE = Small Local Business Enterprise Total LBE/SLBE = All Certified Local and Small Local Businesses NPLBE = NonProfit Local Business Enterprise NPSLBE = NonProfit Small Local Business Enterprise			UB = Uncertified Business CB = Certified Business MBE = Minority Business Enterprise WBE = Women Business Enterprise							

Contract Compliance and Employment Services Evaluation Form

Project No.: C211710

Project Name: Underground Utility District No.233 / MacArthur Streetscape

Contractor: ARB, Inc

Engineer's Estimate: 12,000,000.00

Contractor's Bid Amount: 10,479,599.60

Over/Under the Engineers Estimate: 1,520,400.40

Bid Discounted Amount: \$0.00

Discount Points: 0%

Discounted Bid Price: \$10,479,599.60

1. Did the 20% requirements apply? YES

2. Did the contractor meet the 20% requirement? NO

a)	% of LBE	<u>0.00%</u>
b)	% of SLBE	<u>18.37%</u>
c)	Total	<u>18.37%</u>

3. Did the contractor meet the Trucking requirement? NO

a) % of Local Trucking 0.00%

4. Did the contractor receive bid discount points? NO
(If yes, list the points received) 0%

5. Additional Comments.

This contractor did not meet the 20% SLBE/LBE and the 20% trucking requirement. Therefore this bid should be rejected.

6. Date evaluation completed and returned to Contact Admin./Initiating Dept.

7/29/2004

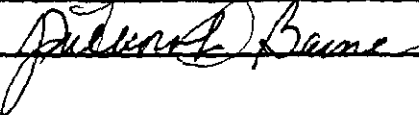
Reviewing

Officer:

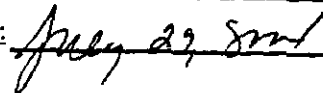


Date: 7/29/2004

Approved By:



Date:



LBE/SLBE Participation Bidder 3

Project Name: Underground Utility District No.233 / MacArthur Streetscape

Project No.: C211710		Engineers Estimate: 12,000,000.00				Under/Over Engineers Estimate: 1,520,400.40						
Discipline	Prime & Subs	Location	Cert. Status	LBE	SLBE	LOCAL TRUCKING	TOTAL LBE/SLBE	TOTAL Dollars	For Tracking Only			
									Ethn	MBE	WBE	
PRIME	ARB, Inc	Lake Forest	UB					8,215,599.60				
Panel Conv.	Ray's Electric	Oakland	CB		875,000.00		875,000.00	875,000.00				
MTL	Specialty Crushing	Oakland	CB		200,000.00		200,000.00	200,000.00				
Concrete	AJW	Oakland	CB		850,000.00		850,000.00	850,000.00	H	\$850,000.00		
Trucking	Poli Trkss							89,000.00				
Saw Cut	Del Secco	Hayward	UB					250,000.00				
Project Totals				0.00	1,925,000.00	0.00	1,925,000.00	10,479,599.60		\$850,000.00	\$0.00	
				0.00%	18.37%	0.00%	18.37%					
Requirements: The 20% requirements is a combination of 10% LBE and 10% SLBE participation. An SLBE firm can be counted 100% towards achieving 20% requirements. LBE firms can only be counted up to 10% of the total contract amount.				LBE 10% MAX CREDIT	SLBE 10%	TRUCKING 20%	LBE/SLBE 20%	Ethnicity AA = African American A = Asian C = Caucasian H = Hispanic NA = Native American O = Other				
Legend LBE = Local Business Enterprise SLBE = Small Local Business Enterprise Total LBE/SLBE = All Certified Local and Small Local Businesses NPLBE = NonProfit Local Business Enterprise NPSLBE = NonProfit Small Local Business Enterprise				UB = Uncertified Business CB = Certified Business MBE = Minority Business Enterprise WBE = Women Business Enterprise								

Contract Compliance and Employment Services Evaluation Form

Project No.: C211710

Project Name: Underground Utility District No.233 / MacArthur Streetscape

Contractor: Ranger Pipelines

Engineer's Estimate: 12,000,000.00

Contractor's Bid Amount: 10,303,464.60

Over/Under the Engineers Estimate: 1,696,535.40

Bid Discounted Amount: \$0.00

Discount Points: 0%

Discounted Bid Price: \$10,303,464.60

1. Did the 20% requirements apply? YES2. Did the contractor meet the 20% requirement? NO

a)	% of LBE	<u>0.00%</u>
b)	% of SLBE	<u>19.79%</u>
c)	Total	<u>19.79%</u>

3. Did the contractor meet the Trucking requirement? YESa) % of Local Trucking 100.00%4. Did the contractor receive bid discount points? NO
(If yes, list the points received) 0%

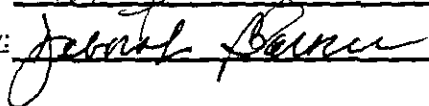
5. Additional Comments.

This contractor did not meet the 20 percent requirements and should be rejected.

6. Date evaluation completed and returned to Contact Admin./Initiating Dept.

7/29/2004

Reviewing

Officer: Date: 7/29/2004Approved By: Date: July 29, 2004

LBE/SLBE Participation Bidder 4

Project Name: Underground Utility District No.233 / MacArthur Streetscape

Project No.: C211710		Engineers Estimate: 12,000,000.00			Under/Over Engineers Estimate: 1,696,535.40						
Discipline	Prime & Subs	Location	Cert. Status	LBE	SLBE	LOCAL TRUCKING	TOTAL LBE/SLBE	TOTAL Dollars	For Tracking Only		
									Ethn	MBE	WBE
PRIME	Ranger Pipelines	SF	UB					8,264,735.60			
Trucking	CJC Trucking	Oakland	CB		150,000.00	150,000.00	150,000.00	150,000.00	AA	\$150,000.00	
Concrete	AJW	Oakland	CB		784,250.00		784,250.00	784,250.00	H	\$784,250.00	
Electrical	Ray's Electric	Oakland	CB		924,479.00		924,479.00	924,479.00			
Saw Cut	Bayline	Oakland	CB		180,000.00		180,000.00	180,000.00	H	\$180,000.00	
Project Totals				0.00	2,038,729.00	150,000.00	2,038,729.00	10,303,464.60		\$1,114,250.00	\$0.00
				0.00%	19.79%	100.00%	19.79%				
Requirements: The 20% requirements is a combination of 10% LBE and 10% SLBE participation. An SLBE firm can be counted 100% towards achieving 20% requirements. LBE firms can only be counted up to 10% of the total contract amount.				LBE 10% MAX CREDIT	SLBE 10%	TRUCKING 20%	LBE/SLBE 20%	Ethnicity AA = African American A = Asian C = Caucasian H = Hispanic NA = Native American O = Other			
Legend	LBE = Local Business Enterprise SLBE = Small Local Business Enterprise Total LBE/SLBE = All Certified Local and Small Local Businesses NPLBE = NonProfit Local Business Enterprise NPSLBE = NonProfit Small Local Business Enterprise			UB = Uncertified Business CB = Certified Business MBE = Minority Business Enterprise WBE = Women Business Enterprise							

Project No.: C211710

Project Name: Underground Utility District No.233 / MacArthur Streetscape

Contractor: Mitchell Engineering

Engineer's Estimate: 12,000,000.00

Contractor's Bid Amount: 14,795,075.87

Over/Under the Engineers Estimate: -2,795,075.87

Bid Discounted Amount: \$0.00

Discount Points: 0%

Discounted Bid Price: \$14,795,075.87

1. Did the 20% requirements apply? YES

2. Did the contractor meet the 20% requirement? NO

a)	% of LBE	<u>0.00%</u>
b)	% of SLBE	<u>0.00%</u>
c)	Total	<u>0.00%</u>

3. Did the contractor meet the Trucking requirement? NO

a)	% of Local Trucking	<u>0.00%</u>
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4. Did the contractor receive bid discount points? NO
(If yes, list the points received) 0%

5. Additional Comments.

This bid should be rejected due to none compliance.

6. Date evaluation completed and returned to Contact Admin./Initiating Dept.

7/29/2004

Reviewing
Officer:



Date: 7/29/2004

Approved By:



Date:

July 29, 2004

LBE/SLBE Participation Bidder 6

Project Name: Underground Utility District No.233 / MacArthur Streetscape

Project No.: C211710		Engineers Estimate: 12,000,000.00				Under/Over Engineers Estimate: -2,795,075.87					
Discipline	Prime & Subs	Location	Cert. Status	LBE	SLBE	LOCAL TRUCKING	TOTAL LBE/SLBE	TOTAL Dollars	For Tracking Only		
									Ethn.	MBE	WBE
PRIME	Mitchell Engineering Marinship	SF	UB					12,545,075.87 2,250,000.00	H	\$2,250,000.00	
Project Totals				0.00 0.00%	0.00 0.00%	0.00 #REF!	0.00 0.00%	14,795,075.87		\$2,250,000.00	\$0.00
Requirements: The 20% requirements is a combination of 10% LBE and 10% SLBE participation. An SLBE firm can be counted 100% towards achieving 20% requirements. LBE firms can only be counted up to 10% of the total contract amount.				LBE 10% MAX CREDIT	SLBE 10%	TRUCKING 20%	LBE/SLBE 20%	Ethnicity AA = African American A = Asian C = Caucasian H = Hispanic NA = Native American O = Other			
Legend		LBE = Local Business Enterprise SLBE = Small Local Business Enterprise Total LBE/SLBE = All Certified Local and Small Local Businesses NPLBE = NonProfit Local Business Enterprise NPSLBE = NonProfit Small Local Business Enterprise				UB = Uncertified Business CB = Certified Business MBE = Minority Business Enterprise WBE = Women Business Enterprise					

ATTACHMENT G



Pacific Gas and
Electric Company

Charles R. Lewis, IV
Attorney at Law

77 Beale Street
San Francisco, CA 94105

Mailing Address
PO Box 7442
San Francisco, CA 94120

415.973.6610
Fax: 415.973.0516
E-Mail: cr12@pge.com

February 18, 2005

John Russo, City Attorney
City of Oakland
250 Frank H. Ogawa Plaza
Oakland, CA 94612

Re: Proposed Undergrounding Project, MacArthur Boulevard, Oakland

Dear John:

For many months, the City and PG&E have been making final arrangements for the construction of the MacArthur Boulevard Undergrounding Project. This project, which extends three and a half miles along MacArthur Blvd from 73rd Avenue in Oakland (near Eastmont Mall) to the San Leandro border (at 109th Avenue), will replace the existing overhead electric, telephone and cable television lines with underground utility lines. The City, which will be constructing street improvements at various locations along the project, has elected to act as trenching agent to hire the excavation contractor and coordinate the work. The City has selected Underground Construction Inc. (UCI) as the trenching and construction contractor. PG&E has had considerable experience with UCI and has worked with this firm on numerous undergrounding projects. The MacArthur Boulevard Project will include more than 33,000 feet of trench and substructures at a total cost of \$9.60 million. According to the approved composite drawings and the "Form B" cost allocations, PG&E's share of this cost will be 44 percent or \$4.25 million. The purpose of this letter is to provide assurances that PG&E is ready to work with the City and the other utilities to complete this project and that PG&E will timely pay its share of the undergrounding project costs.

Allow me to provide some background for this and similar joint projects. As with any utility undergrounding project, the MacArthur Boulevard project involves four parties – PG&E electric lines, SBC telephone, Comcast cable TV, and City streetlights – and one of the four is designated as the project coordinator. In this case, because of the other street improvements that will be constructed in conjunction with the project, the City of Oakland elected to coordinate the project. The project coordinator hires trenching and construction contractor, manages the schedule, collects the shares from the other trench participants and pays the bills. In this case, the City will direct the work of UCI. Under this arrangement, as each section of the work is complete (trenching and substructure installation), the respective utilities inspect the work and confirm that the construction is consistent with the plan and meets the requirements of the California Public Utilities Commission for underground construction (CPUC General Order 128). Then, the project coordinator (the City) sends out bills to each of the other utilities based on the Form B cost breakdown for that section of the trench and each utility pays the City.

I understand that as project coordinator, the City is concerned that the other utilities might not pay their Form B shares and leave the City "holding the bag." I can assure you that for PG&E this cannot and will not be the case. I confidently make this assurance for several reasons – our long history of undergrounding projects in Oakland and throughout the state, our Oakland Franchise Agreement, the state utility franchise law, and the tariff rules of the California Public Utilities Commission.

First, PG&E and the City of Oakland have used this same arrangement for past projects – one utility acts as project coordinator and collects the Form B shares from the other utilities as each trench section is completed. In most cases, PG&E or SBC has acted as project coordinator and collected the Form B shares from the City. However, the City has also performed the duties of project coordinator in the past. Most recently, on the

February 18, 2005

Pershing-LaSalle Project, the City again acted as the project coordinator, managed the contractor and collected the respective shares from each utility. In that case, PG&E paid its share in accordance with the approved Form B without problem and without any special agreement other than our existing franchise agreement and the rules of the CPUC. PG&E intends to do the same with the MacArthur Boulevard Project.

The second reason for my assurance is PG&E's Electric Franchise with the City of Oakland (Oakland Ord. No. 3577, as amended Ord. No. 7788). This franchise was adopted pursuant to the City Charter. PG&E has always complied with that agreement, including making annual franchise payments to the City. Section 9 of that franchise agreement provides, in pertinent part:

PAYMENT FOR WORK DONE BY CITY. In the event during the term of this franchise City shall provide . . . that all or any part of the work of restoring the portion of any street affected or damaged by any opening or excavation made, or work done by [PG&E], in, upon, along, across, under or over said street pursuant to this franchise, shall be done and performed by City, and in the event City shall have *done and performed said work . . .* [PG&E], by acceptance of this franchise, agrees to pay City the actual cost of said work . . . (Oakland Ord. No. 3577, § 9.)

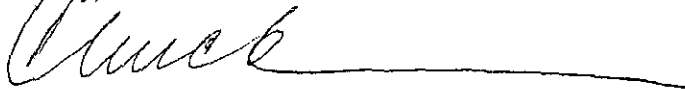
Third, the Oakland Franchise Agreement (Oakland Ord. No. 3577, § 13) as well as the California Public Utility Code (Cal. Pub. Util. Code § 6296) require that PG&E reimburse the City for any costs that it incurs in conjunction with the franchise. PG&E intends to comply with our existing franchise with the City of Oakland and the state law and pay its share of the MacArthur Boulevard undergrounding project cost.

Finally, PG&E is performing this underground conversion work pursuant to Electric Tariff Rule 20.A of the CPUC (Rule 20—Replacement Of Overhead With Underground Electric Facilities). Rule 20.A requires PG&E to underground at ratepayer expense, all overhead lines within approved districts that meet the Commission's public interest criteria and for which the City has adopted authorizing resolutions. In this case, the City of Oakland has authorized this underground district, the district meets the public interest criteria of the CPUC and PG&E intends to comply and to pay its share of the project cost. Frankly, if we failed to timely pay our Form B share, the City has a simple, quick and effective remedy — make a phone call to the Consumer Protection and Safety Division of the CPUC.

PG&E has completed numerous other Rule 20 projects in cooperation with the City of Oakland. In fact, PG&E has undergrounded more than \$50 million of overhead lines in Oakland since the adoption of Rule 20 by the CPUC. As previously stated, in some cases, PG&E was the project coordinator and collected the shares from the other trench participants, including the City. In other cases, SBC (formerly PacBell) or others, including the City, acted as project coordinator. All of these projects were constructed with nothing more formal than the approved composite drawing and the Form B cost allocation. In all cases, PG&E paid its share of the project costs. PG&E intends to do so with the proposed MacArthur Boulevard Project.

I understand that UCI's bid is still firm. I also understand that if the City gives the word, all the parties, including PG&E are ready to begin work this spring. PG&E's Governmental Relations Department has been actively supporting this Project and is ready to fund a special "ground breaking" event. I hope that, with this assurance, we can proceed with this project and we can both take our turn with the golden shovel at the ground breaking without further delay.

Sincerely,



CHARLES R. LEWIS, IV

CRL, IV:bb

ATTACHMENT H

Letter of Intent

Project : Construction of Underground Utility District No. 233, MacArthur Boulevard & 73rd Avenue to City of San Leandro Border

Contractor: Underground Construction Company, Inc.

Participants: Pacific, Gas & Electric, SBC, Comcast, City of Oakland

Amount: Total Contract Amount \$9,282,964.45


Utility Cost: \$1,370,758.45

I, the undersigned and a duly authorized representative of **Comcast** (hereafter "Utility"), represent on behalf of Utility its intent to participate in the above-referenced underground construction project and contract as follows:

- 1) Utility expresses its intent to sign the prime construction agreement; and
- 2) Utility expresses its intent to pay the above-referenced amount to the City or the contractor for Utility's share of the construction project costs on a timely basis as payments become due and owed to the contractor; and
- 3) Utility expresses its intent to pay to City or contractor an additional five percent (5%) over and above the above-referenced amount to cover change orders requested by Utility on a timely basis as payments become due and owed to the contractor; and
- 4) Utility expresses its intent to cooperate with City on this project to maintain the costs for Utility work within the above-referenced Utility cost and will accede to a City-approved order process; and
- 5) Utility expresses its intent to indemnify, release and hold harmless the City of Oakland for any claims for additional construction or other costs or damages or injuries related to any designs or specifications reviewed and approved by Utility prior to publication of bids or award of the above-referenced construction contract, or during construction of the project; and
- 6) Utility expresses its intent to indemnify, release and hold harmless the City of Oakland for any claims for additional construction or other costs or damages or injuries related solely to construction or installation of Utility's facilities or equipment or other Utility work.

It is understood that the written expression of the above promises shall be included in the construction contract, which may be fully executed by the parties upon award of the contract by the Oakland City Council.

Utility: Comcast

By: 

Print Name: Bruce Muller

Title: Construction Manager

Date: 9/28/04

OAKLAND CITY COUNCIL

FILED
OFFICE OF THE CITY CLERK
OAKLAND

RESOLUTION No. _____ C. M. S.

2005 MAR 31 PM 1:24

INTRODUCED BY COUNCILMEMBER _____

2/3 vote required



RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO AWARD CONTRACT TO UNDERGROUND CONSTRUCTION COMPANY, INC., IN AN AMOUNT NOT TO EXCEED \$9,282,964.45 FOR CONSTRUCTION OF UNDERGROUND UTILITY DISTRICT NO. 233, ON MACARTHUR BOULEVARD (FROM 73RD AVENUE TO THE SAN LEANDRO CITY LINE) ("DISTRICT"), \$1,673,022.00 TO BE PAID BY THE CITY OF OAKLAND AND THE REMAINDER (TOTALING \$7,609,942.45) TO BE PAID BY PG&E, SBC AND COMCAST; OR, ALTERNATIVELY, WAIVING FURTHER BIDDING REQUIREMENTS AND AUTHORIZING THE CITY ADMINISTRATOR TO REJECT ALL BIDS AND NEGOTIATE, AWARD AND EXECUTE A CONTRACT TO CONSTRUCT THE DISTRICT FOR AN AMOUNT WITHIN EACH ENTITY'S BUDGET STARTING WITH THE LOWEST, RESPONSIBLE BIDDER, WITHOUT RETURN TO COUNCIL

WHEREAS, the Underground Utility District No. 233 (from San Leandro City Line to 73rd Avenue) is an underground project which is consistent with the City Council Budget Priorities to Maintain and Enhance Oakland's Physical Assets by improving the physical appearance, livability and integrity of this neighborhood, and supports the City Council Budget Priority to Improve Oakland's Neighborhood by enhancing pedestrian and public access areas, and the general aesthetics of the neighborhood commercial district; and

WHEREAS, the Underground Utility District No. 233 (from San Leandro City Line to 73rd Avenue) replaces the aerial wires and cables with underground facilities, replaces the existing streetlights with new lights, and install new pedestrian level lights with holiday circuits. The project will render the project area safer from overhead electrical and communication facilities and will beautify the neighborhood. These elements provide sustainable opportunities to the local economy, environment and social equity for the MacArthur Boulevard neighborhood. The project will also install, to the extent allowed by funds available, a number of ADA ramps that meet the federal Americans with Disabilities Act requirements; and

WHEREAS, PWA Electrical designed the engineering composite drawings, prepared specifications for the City work, and compiled specifications from PG&E, SBC and Comcast for their work and each of the utilities approved the plans, specifications and bid documents before the project was bid and have approved the current project budget; and

WHEREAS, on May 4, 2004, Notices to Bidders were sent to 535 contractors, with License "A" or "C10", per PWA database and Contract Compliance database and the Outreach

and Builder Exchange. On May 5, 2004, the project was advertised in the Oakland Tribune to solicit bids; and

WHEREAS, on June 21, 2004, the City Clerk received eight bids and determined that Underground Construction Company is the responsible low bidder with the amount of \$9,282,964.45. Underground Construction Co. has 20.25% SLBE/LBE participation in its bid, which exceeds the 20% SLBE/LBE requirement; and

WHEREAS, the City, PG&E, SBC and Comcast will independently and separately pay for joint trench and their separate construction costs as follows: City of Oakland: \$1,673,022.00; PG&E: \$4,330,430.00; SBC: \$1,908,754.00; Comcast: \$1,370,758.45; and

WHEREAS, the City has sufficient funds to cover its portion of the construction contract and a 1.1% contingency with a budget of \$2,000,000, out of which the City's contract cost is \$1,673,022.00; and

WHEREAS, City forces will be used to complete a portion of the work at a cost of \$251,692.00, and the Public Arts contribution of 1.5% is \$25,095.00, and the Contract Compliance contribution of 3.0% is \$50,191.00; and

WHEREAS, PG&E has agreed that it is obligated to pay for its undergrounding costs, \$4,330,430.00, under the City's franchise agreement, and agrees to make progress payments directly to the contractor upon jointly-approved progress payments; and

WHEREAS, the City is negotiating with SBC regarding an agreement(s) for payment commitment and terms to cover SBC costs, \$1,908,754.00, and a change order process, and indemnity commitment, and SBC intends to make progress payments directly to the contractor; and

WHEREAS, Comcast has agreed to enter into the prime construction agreement to commit to its project costs, \$1,370,758.00, and has agreed to reimburse the City on demand for payments made by the City to the contractor for Comcast's joint costs or work; and

WHEREAS, as a term of the construction agreement, the Contractor will be required and has agreed to limit the City's liability to the cost of the City's work, to release and hold harmless the City from any and all claims related to the utilities' work, and to name City, PG&E, SBC and Comcast on insurance and bonds as additional insureds and parties; and

WHEREAS, PWA has requested that Underground Construction Company, Inc. to hold the bid it submitted on June 21, 2004; and

WHEREAS, current market conditions indicate that completion of another bid competition is not likely to result in an overall bid within the separate and collective project budgets of City, PG&E, SBC and Comcast, and would, therefore, be administratively burdensome and needlessly and substantially delay the project; and

WHEREAS, the City lacks the equipment and qualified personnel to perform the necessary work, and the City Council finds and determines that the performance of this contract is in the public interest because of economy and that services under this contract will be temporary; 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 the City Administrator is authorized to award a contract for the Underground Utility District No. 233 (from San Leandro City Line to 73rd Avenue) to Underground Construction Company, Inc. in accordance with the terms of its bid therefore, in an amount not-to-exceed Nine Million Two Hundred and Eighty Two Thousand Nine Hundred Sixty-Four Dollars and Forty Five Cents (\$9,282,964.45), subject to the following conditions:

1. Comcast enters into an agreement(s) with the City that commits them to pay Comcast's joint and separate project costs and provides for the indemnification, release and hold harmless of the City from any and all claims related to SBC designs, specifications and work ordered, inspected, approved or accepted by SBC; and
2. SBC enters into an agreement(s) with the City that commits them to pay SBC joint and separate project costs and provides for the indemnification, release and hold harmless of the City from any and all claims related to SBC designs, specifications and work ordered, inspected, approved or accepted by SBC; and
3. Contractor agrees to hold the bid prices firm. If Contractor fails to hold the bid prices firm, Council authorizes the City Administrator to negotiate with the low bidders, beginning with Underground Construction Company, Inc. on increases in bid prices; and
4. Contractor agrees to limit City's liability to the cost of the City's work, agrees to release and hold harmless the City from any and all claims for payment, damages or injuries related to the utility work, and agrees to name the City, PG&E, SBC and Comcast on insurance and bonds as additional insureds and parties; and be it

FURTHER RESOLVED: That the plans and specifications prepared by the Director of Public Works for this project are hereby approved; and, be it

FURTHER RESOLVED: That the amount of the bond for faithful performance of one hundred percent (100%) of the bid amount, and the amount for a bond to guarantee payment of all claims for labor and materials furnished and for the amount due under the Unemployment Insurance Act, equal to the bid amount (100%), with respect to such work are hereby approved; and be it

FURTHER RESOLVED: That, for the reasons described herein and in the accompanying City Administrator's Council Agenda Report, pursuant to Oakland Municipal Code, Chapter 2.04, Sections 2.04.050.I.2 and 5, the City Council hereby finds and determines that further competitive bidding would be unavailing and it is, therefore, in the best interests of the City to waive further competitive bidding; and, be it

FURTHER RESOLVED: That, alternatively, if Underground Construction Company, Inc. does not hold the bid price submitted on June 21, 2004, the City Council hereby authorizes the City Administrator to reject all bids and negotiate, award and execute a contract within the separate and collective budgets of City, PG&E, SBC and Comcast for construction of Underground Utility District No. 233, starting the lowest responsible bidder, without return to the City Council; and, be it

FURTHER RESOLVED: That the Contract shall be reviewed and approved by the City Attorney and placed on file in the Office of the City Clerk; and, be it

FURTHER RESOLVED: That the approval of this Resolution requires a two-thirds vote of the Council members.

339201

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID and PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
Interim City Clerk and Clerk of the Council
of the City of Oakland, California