

OAKLAND CITY COUNCIL

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

RESOLUTION No. 79165 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 73<sup>rd</sup> 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 73<sup>rd</sup> 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 73<sup>rd</sup> 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.

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**APR 19 2005**

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 20\_\_\_\_\_

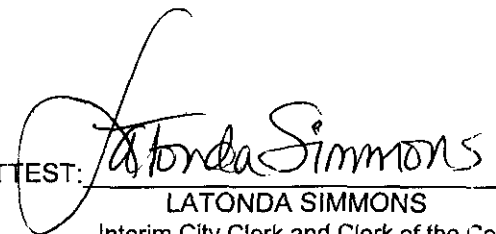
**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID and PRESIDENT DE LA FUENTE - 7

NOES- 0

ABSENT- 0

ABSTENTION- 0

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