

CITY OF OAKLAND 2008 OCT 30 PM 3:37
AGENDA REPORT

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: November 12, 2008

RE: **Resolution Authorizing The City Administrator, Or The City Administrator's Designee, To Increase the Change Order Limit by Two Hundred Eighty Thousand Dollars (\$280,000.00) On The Construction Contract With McGuire and Hester For The Oakland Bay Trail: Mandela Parkway Project, For A Total Contract Amount Not To Exceed One Million Five Hundred Sixty-Nine Thousand Three Hundred Six Dollars (\$1,569,306.00)**

SUMMARY

A resolution has been prepared authorizing the City Administrator, or the City Administrator's designee, to increase the change order limit by \$280,000 on the construction contract with McGuire and Hester for the Oakland Bay Trail: Mandela Parkway Project (Project No. G199010). In accordance with the project specifications, the construction contract with McGuire and Hester limits the total construction contract to \$1,289,306.00, which consists of a base contract of \$1,074,422.00 and \$214,884.00 in allowable change orders. With approval of this resolution, the amount of allowable change orders will be increased by a maximum of \$280,000.00 for a revised total contract amount not to exceed \$1,569,306.00.

The change order limit will allow streetscape improvements to be extended two additional blocks (along 8th Street, from Willow to Wood Streets, and along Wood Street, from 7th to 8th Streets) which will fully implement the original plans. Funding for the additional work is provided by the remaining construction contingency funds specific to this project. At the time of the original contract award to McGuire and Hester, the construction contingency could not be used to award the additional work. The base contract work is nearly complete and the amount of available construction contingency monies is sufficient to fund the additional work.

FISCAL IMPACT

Approval of this resolution will increase the change order limit on the contract with McGuire and Hester for the Oakland Bay Trail: Mandela Parkway Project (Project No. G199010), to a revised not-to-exceed amount of \$1,569,306.00. The original construction contract to McGuire and Hester was for \$1,074,422.00. Project specifications limit change orders to \$214,884.00 (20% of the original contract amount) for a not-to-exceed amount of \$1,289,306.00. To date, the net total

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of change orders to the contract is \$104,582.44, for a total amount of \$1,179,004.44. A final work scope and cost for the additional block along 8th Street is being negotiated and preliminary cost quotations for the proposed additional work are in the range of \$295,000 to \$384,000. The available construction contingency is \$390,000.00 and will be used to fund the additional work. The following sources will fund the additional work and all are specifically allocated to this project:

1.	\$46,767	State of California - Bay Trail (2159), Project No. G199040, Capital Project Management Organization (92270); allocated pursuant to Resolution No. 79393 C.M.S. in July 2005
2.	\$304,491	Congestion Mitigation and Air Quality (2164), Project No. G199050, Capital Project Management Organization (92270); allocated pursuant to Resolution No. 80013 C.M.S. in July 2006
3.	\$38,742	Measure B (2212), Project No. G199070, Capital Project Management Organization (92270); local match for federal grant G199050
	<hr/>	
	\$390,000	TOTAL AVAILABLE FOR CHANGE ORDER

The Contract Compliance fee and the Public Art fee have previously been allocated. There will be a minor increase in the ongoing maintenance of this streetscape project as a result of new trees, irrigation, additional pedestrian light fixtures, sidewalks and ramps, and signage. There are no funds available for the operations and maintenance of this project and staff will need to be drawn from other areas to perform the maintenance. The project will require on-going maintenance.

BACKGROUND

The additional streetscape work that is now proposed to be added to the project was a part of the original Mandela Parkway Project design concept. However, this portion of work was not included in the original construction contract because sufficient funding was required to be reserved for construction contingencies. With the original bid coming in lower than the engineer's estimate and with the original contract work nearing completion, the remaining construction contingency funds can now be allocated for the completion of the additional streetscape work.

Federal Department of Transportation guidelines are used to administer this project, and therefore the City's local business and employment programs are not applicable. At the time of the original contract award, the Department of Contracting and Purchasing determined that McGuire and Hester's bid complied with the federal Disadvantaged Business Enterprise (DBE) Program. With the proposed change order work, McGuire and Hester will be required to maintain compliance with the DBE Program. Additionally, McGuire and Hester is a certified local business and is compliant with the Equal Benefits Ordinance.

KEY ISSUES AND IMPACTS

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The work under the original contract is under construction but nearing completion. The current project completion date of the original construction contract is November 2008. The additional work will require a contract extension with a new anticipated completion date of March 2009. By increasing the change order limit at this time, construction of the project can continue with minimal interruption. Timely issuance of change order work will avoid adverse impacts on the construction schedule and the potential increase in costs to the City due to contractor's remobilization.

PROJECT DESCRIPTION

The project includes sidewalk repairs, accent paving at crosswalks, intersection bulbouts, landscaping and street trees, bicycle lanes, improved street lighting, traffic signal upgrades, historic markers and way-finding signage. The project area in the base contract encompasses Mandela Parkway, from 7th to 8th Streets, and 8th Street, from Union Street to Mandela Parkway. The additional work incorporates 8th Street, from Willow to Wood Streets, and Wood Street, from 7th to 8th Streets.

EVALUATION OF PAST PERFORMANCE

McGuire and Hester ranked "Satisfactory" overall for the Alameda Avenue Oakland Waterfront Bay Trail Project (C243911) which was completed in November 2007 (Attachment A).

SUSTAINABLE OPPORTUNITIES

Economic: The construction of the project will generate business tax, sales tax, and other revenues for the City.

Environmental: The project will recycle construction debris to the extent feasible. The project promotes bicycle and pedestrian modes of transportation to reduce vehicle emissions. Drip irrigation will be used for new street trees.

Social Equity: The project provides greater accessibility and safety to persons who depend upon non-motorized transportation access.

DISABILITY AND SENIOR CITIZEN ACCESS

All new physical improvements will comply with the Americans with Disabilities Act. The project will repair sidewalks, reconstruct curb ramps and provide detectable warning tiles, making them safer for senior citizens and person with disabilities.

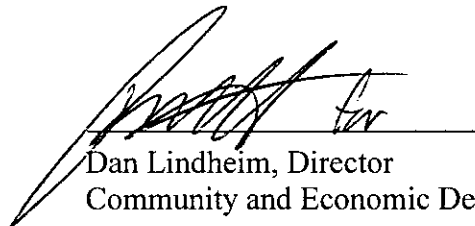
RECOMMENDATION AND RATIONALE

Staff recommends that the City Council approve the resolution authorizing the City Administrator, or the City Administrator's designee, to increase the change order limit by \$280,000.00 on the construction contract with McGuire and Hester for the Oakland Bay Trail: Mandela Parkway Project (Project No. G199010).

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council approve the resolution.

Respectfully submitted,



Dan Lindheim, Director
Community and Economic Development Agency

Reviewed by:
Michael Neary, P.E.
Deputy Director,
Department of Engineering and Construction

Prepared by:
Calvin Hao, CIP Coordinator
Project Delivery Division

APPROVED AND FORWARDED TO THE
PUBLIC WORKS COMMITTEE:



Office of the City Administrator

Attachment A: Contractor Performance Evaluation (Project C243911)

City of Oakland
Public Works Agency
CONTRACTOR PERFORMANCE EVALUATION

C243911

Project Title: Alameda Ave Oakland Waterfront Res
Work Order Number: TFS
Contractor: McGuire & Hester
Date of Notice to Proceed: June 16, 2007
Date of Notice of Completion: Nov 27, 2007
Date of Notice of Final Completion:
Contract Amount: Final contract amt: \$ 20,125
Evaluator Name and Title: James McGee Architectural Services

The City's Resident Engineer most familiar with the Contractor's performance must complete this evaluation and submit it to Manager, PWA Project Delivery Division, within 30 calendar days of the issuance of the Final Payment.

Whenever the Resident Engineer finds the Contractor is performing below Satisfactory for any category of the Evaluation, the Resident Engineer shall discuss the perceived performance shortfall at the periodic site meetings with the Contractor. An Interim Evaluation will be performed if at any time the Resident Engineer finds that the overall performance of a Contractor is Marginal or Unsatisfactory. An Interim Evaluation is required prior to issuance of a Final Evaluation Rating of Unsatisfactory. The Final Evaluation upon Final Completion of the project will supersede interim ratings.

The following list provides a basic set of evaluation criteria that will be applicable to all construction projects awarded by the City of Oakland that are greater than \$50,000. Narrative responses are required to support any evaluation criteria that is rated as Marginal or Unsatisfactory, and must be attached to this evaluation. If a narrative response is required, indicate before each narrative the number of the question for which the response is being provided. Any available supporting documentation to justify any Marginal or Unsatisfactory ratings must also be attached.

If a criterion is rated Marginal or Unsatisfactory and the rating is caused by the performance of a subcontractor, the narrative will note this. The narrative will also note the General Contractor's effort to improve the subcontractor's performance.

Assessment Guidelines:

Outstanding (3 points) – Performance among the best level of achievement the City has experienced.

Satisfactory (2 points) – Performance met contractual requirements.

Marginal (1 point) – Performance barely met the lower range of the contractual requirements or performance only met contractual requirements after extensive corrective action was taken.

Unsatisfactory (0 points) – Performance did not meet contractual requirements.

The contractual performance being assessed reflected serious problems for which corrective actions were ineffective.

OVERALL RATING:

Based on the weighting factors below, calculate the Contractor's overall score using the scores from the four categories above.

1. Enter Overall score from Question 7	<u>2</u>	X 0.25 =	<u>.5</u>
2. Enter Overall score from Question 13	<u>2</u>	X 0.25 =	<u>.5</u>
3. Enter Overall score from Question 18	<u>2</u>	X 0.20 =	<u>.4</u>
4. Enter Overall score from Question 22	<u>2</u>	X 0.15 =	<u>.3</u>
5. Enter Overall score from Question 28	<u>2</u>	X 0.15 =	<u>.3</u>

TOTAL SCORE (Sum of 1 through 5):

2

OVERALL RATING:

2

Outstanding: Greater than 2.5
Satisfactory: Greater than 1.5 & less than or equal to 2.5
Marginal: Between 1.0 & 1.5
Unsatisfactory: Less than 1.0

PROCEDURE:

The Resident Engineer will prepare the Contractor Performance Evaluation and submit it to the Supervising Civil Engineer. The Supervising Civil Engineer will review the Contractor Performance Evaluation to ensure adequate documentation is included, the Resident Engineer has followed the process correctly, the Contractor Performance Evaluation has been prepared in a fair and unbiased manner, and the ratings assigned by the Resident Engineer are consistent with all other Resident Engineers using consistent performance expectations and similar rating scales.

The Resident Engineer will transmit a copy of the Contractor Performance Evaluation to the Contractor. Overall Ratings of Outstanding or Satisfactory are final and cannot be protested or appealed. If the Overall Rating is Marginal or Unsatisfactory, the Contractor will have 10 calendar days in which they may file a protest of the rating. The Public Works Agency Assistant Director, Design & Construction Services Department, will consider a Contractor's protest and render his/her determination of the validity of the Contractor's protest. If the Overall Rating is Marginal, the Assistant Director's determination will be final and not subject to further appeal. If the Overall Rating is Unsatisfactory and the protest is denied (in whole or in part) by the Assistant Director, the Contractor may appeal the Evaluation to the City Administrator, or his/her designee. The appeal must be filed within 14 calendar days of the Assistant Director's ruling on the protest. The City Administrator, or his/her designee, will hold a hearing with the Contractor within 21 calendar days of the filing of the appeal. The decision of the City Administrator regarding the appeal will be final.

ATTACHMENT TO CONTRACTOR PERFORMANCE EVALUATION:

Use this sheet to provide any substantiating comments to support the ratings in the Performance Evaluation. Indicate before each narrative the number of the question for which the response is being provided. Attach additional sheets if necessary.

WORK PERFORMANCE

		Unsatisfactory	Marginal	Satisfactory	Outstanding	Not Applicable
1	Did the Contractor perform all of the work with acceptable Quality and Workmanship?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1a	If problems arose, did the Contractor provide solutions/coordinate with the designers and work proactively with the City to minimize impacts? If "Marginal or Unsatisfactory", explain on the attachment. Provide documentation.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	Was the work performed by the Contractor accurate and complete? If "Marginal or Unsatisfactory", explain on the attachment and provide documentation. Complete (2a) and (2b) below.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2a	Were corrections requested? If "Yes", specify the date(s) and reason(s) for the correction(s). Provide documentation.			Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
2b	If corrections were requested, did the Contractor make the corrections requested? If "Marginal or Unsatisfactory", explain on the attachment. Provide documentation.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	Was the Contractor responsive to City staff's comments and concerns regarding the work performed or the work product delivered? If "Marginal or Unsatisfactory", explain on the attachment. Provide documentation.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	Were there other significant issues related to "Work Performance"? If Yes, explain on the attachment. Provide documentation.				Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
5	Did the Contractor cooperate with on-site or adjacent tenants, business owners and residents and work in such a manner as to minimize disruptions to the public. If "Marginal or Unsatisfactory", explain on the attachment.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6	Did the personnel assigned by the Contractor have the expertise and skills required to satisfactorily perform under the contract? If "Marginal or Unsatisfactory", explain on the attachment.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7	Overall, how did the Contractor rate on work performance? The score for this category must be consistent with the responses to the questions given above regarding work performance and the assessment guidelines. Check 0, 1, 2, or 3.	0 <input type="checkbox"/>	1 <input type="checkbox"/>	2 <input checked="" type="checkbox"/>	3 <input type="checkbox"/>	

		Unsatisfactory	Marginal	Satisfactory	Outstanding	Not Applicable
TIMELINESS						
8	Did the Contractor complete the work within the time required by the contract (including time extensions or amendments)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	If "Marginal or Unsatisfactory", explain on the attachment why the work was not completed according to schedule. Provide documentation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9	Was the Contractor required to provide a service in accordance with an established schedule (such as for security, maintenance, custodial, etc.)? If "No", or "N/A", go to Question #8. If "Yes", complete (9a) below.			Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
9a	Were the services provided within the days and times scheduled? If "Marginal or Unsatisfactory", explain on the attachment and specify the dates the Contractor failed to comply with this requirement (such as tardiness, failure to report, etc.). Provide documentation.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10	Did the Contractor provide timely baseline schedules and revisions to its construction schedule when changes occurred? If "Marginal or Unsatisfactory", explain on the attachment. Provide documentation.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11	Did the Contractor furnish submittals in a timely manner to allow review by the City so as to not delay the work? If "Marginal or Unsatisfactory", explain on the attachment. Provide documentation.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12	Were there other significant issues related to timeliness? If yes, explain on the attachment. Provide documentation.				Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
13	Overall, how did the Contractor rate on timeliness? The score for this category must be consistent with the responses to the questions given above regarding timeliness and the assessment guidelines. Check 0, 1, 2, or 3.	0 <input type="checkbox"/>	1 <input type="checkbox"/>	2 <input checked="" type="checkbox"/>	3 <input type="checkbox"/>	

FINANCIAL

		Unsatisfactory	Marginal	Satisfactory	Outstanding	Not Applicable
14	Were the Contractor's billings accurate and reflective of the contract payment terms? If "Marginal or Unsatisfactory", explain on the attachment. Provide documentation of occurrences and amounts (such as corrected invoices).	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15	Were there any claims to increase the contract amount? If "Yes", list the claim amount. Were the Contractor's claims resolved in a manner reasonable to the City? Number of Claims: _____ Claim amounts: \$ _____ Settlement amount: \$ _____				Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
16	Were the Contractor's price quotes for changed or additional work reasonable? If "Marginal or Unsatisfactory", explain on the attachment. Provide documentation of occurrences and amounts (such as corrected price quotes).	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17	Were there any other significant issues related to financial issues? If Yes, explain on the attachment and provide documentation.				Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
18	Overall, how did the Contractor rate on financial issues? The score for this category must be consistent with the responses to the questions given above regarding financial issues and the assessment guidelines. Check 0, 1, 2, or 3.	0 <input type="checkbox"/>	1 <input type="checkbox"/>	2 <input checked="" type="checkbox"/>	3 <input type="checkbox"/>	

		Unsatisfactory	Marginal	Satisfactory	Outstanding	Not Applicable
COMMUNICATION						
19	Was the Contractor responsive to the City's questions, requests for proposal, etc.? If "Marginal or Unsatisfactory", explain on the attachment.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20	Did the Contractor communicate with City staff clearly and in a timely manner regarding:					
20a	Notification of any significant issues that arose? If "Marginal or Unsatisfactory", explain on the attachment.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20b	Staffing issues (changes, replacements, additions, etc.)? If "Marginal or Unsatisfactory", explain on the attachment.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20c	Periodic progress reports as required by the contract (both verbal and written)? If "Marginal or Unsatisfactory", explain on the attachment.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20d	Were there any billing disputes? If "Yes", explain on the attachment.				Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
21	Were there any other significant issues related to communication issues? Explain on the attachment. Provide documentation.				Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
22	Overall, how did the Contractor rate on communication issues? The score for this category must be consistent with the responses to the questions given above regarding communication issues and the assessment guidelines. Check 0, 1, 2, or 3.	0 <input type="checkbox"/>	1 <input type="checkbox"/>	2 <input checked="" type="checkbox"/>	3 <input type="checkbox"/>	

Contractor Evaluation Form

Contractor:

McGwire & Nestor

Project No.

024-3911

ERA

Unsatisfactory
Marginal
Satisfactory
Outstanding
Not Applicable

SAFETY

23	Did the Contractor's staff consistently wear personal protective equipment as appropriate? If "No", explain on the attachment.				Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
24	Did the Contractor follow City and OSHA safety standards? If "Marginal or Unsatisfactory", explain on the attachment.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
25	Was the Contractor warned or cited by OSHA for violations? If Yes, explain on the attachment.				Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
26	26. Was there an inordinate number or severity of injuries? Explain on the attachment. If Yes, explain on the attachment.				Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
27	Was the Contractor officially warned or cited for breach of U.S. Transportation Security Administration's standards or regulations? If "Yes", explain on the attachment.				Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
28	Overall, how did the Contractor rate on safety issues? The score for this category must be consistent with the responses to the questions given above regarding safety issues and the assessment guidelines. Check 0, 1, 2, or 3.	0 <input type="checkbox"/>	1 <input type="checkbox"/>	2 <input checked="" type="checkbox"/>	3 <input type="checkbox"/>	

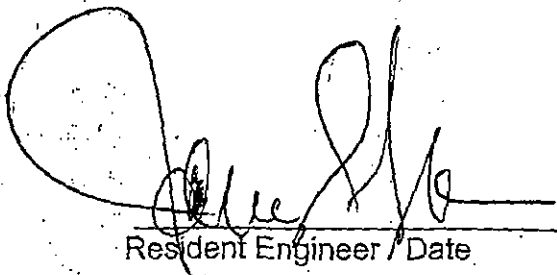
Contractors who receive an Unsatisfactory Overall Rating (i.e., Total Score less than 1.0) will be allowed the option of voluntarily refraining from bidding on any City of Oakland projects within one year from the date of the Unsatisfactory Overall Rating, or of being categorized as non-responsible for any projects the Contractor bids on for a period of one year from the date of the Unsatisfactory Overall Rating. Two Unsatisfactory Overall Ratings within any five year period will result in the Contractor being categorized by the City Administrator as non-responsible for any bids they submit for future City of Oakland projects within three years of the date of the last Unsatisfactory overall rating.

Any Contractor that receives an Unsatisfactory Overall Rating is required to attend a meeting with the City Administrator, or his/her designee, prior to returning to bidding on City projects. The Contractor is required to demonstrate improvements made in areas deemed Unsatisfactory in prior City of Oakland contracts.

The Public Works Agency Contract Administration Section will retain the final evaluation and any response from the Contractor for a period of five years. The City shall treat the evaluation as confidential, to the extent permitted by law.


COMMUNICATING THE EVALUATION: *The Contractor's Performance Evaluation has been communicated to the Contractor. Signature does not signify consent or agreement.*

Contractor / Date



Resident Engineer / Date

6/11/08



Supervising Civil Engineer / Date

Contractor:

McGuire & Aester

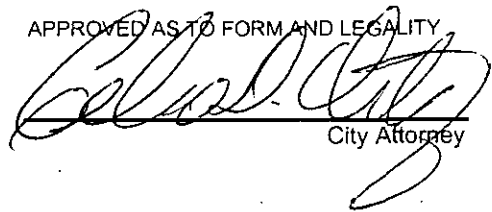
Project No.

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FILED
OFFICE OF THE CITY CLERK
OAKLAND
2008 OCT 30 PM 3:38

APPROVED AS TO FORM AND LEGALITY



City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

Introduced by Councilmember _____

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR, OR THE CITY ADMINISTRATOR'S DESIGNEE, TO INCREASE THE CHANGE ORDER LIMIT BY TWO HUNDRED EIGHTY THOUSAND DOLLARS (\$280,000.00) ON THE CONSTRUCTION CONTRACT WITH MCGUIRE AND HESTER FOR THE OAKLAND BAY TRAIL: MANDELA PARKWAY PROJECT FOR A TOTAL CONTRACT AMOUNT NOT TO EXCEED ONE MILLION FIVE HUNDRED SIXTY-NINE THOUSAND THREE HUNDRED SIX DOLLARS (\$1,569,306.00)

WHEREAS, the City Council approved Resolution No. 80925 C.M.S. in November 2007, awarding a construction contract for the Oakland Bay Trail: Mandela Parkway Project (Project No. G199010) to McGuire and Hester for \$1,074,422.00; and

WHEREAS, the project specifications limit the cumulative increase to this construction contract to \$214,884.00 and any spending above this limit requires the approval of the Council; and

WHEREAS, in order to construct additional improvements on 8th Street between Willow and Wood Streets and on Wood Street between 7th and 8th Streets, an increase to the change order limit by two hundred eighty thousand dollars (\$280,000.00) is necessary; and

WHEREAS, sufficient funds are available for the increased construction contract from existing construction contingency funding in the following sources:

1. \$46,767 State of California - Bay Trail (2159), Project No. G199040, Capital Project Management Organization (92270);
2. \$304,491 Congestion Mitigation and Air Quality (2164), Project No. G199050, Capital Project Management Organization (92270);
3. \$38,742 Measure B (2212), Project No. G199070, Capital Project Management Organization (92270); and

WHEREAS, due to the use of Federal grant funds, Department of Transportation (DOT) guidelines are used to administer this project and the City's Local Business Enterprise programs are not applicable to the contract; and

WHEREAS, McGuire and Hester will be required to maintain compliance with the federal Disadvantage Business Enterprise program; and

WHEREAS, the City lacks the equipment and qualified personnel to perform the necessary work and the City Council finds and determines that services under this contract will be temporary and the performance of this contract is in the public interest because of economy; 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 service; now, therefore, be it

RESOLVED: That the City Administrator, or the City Administrator's designee, is hereby authorized to increase the change order limit by two hundred eighty thousand dollars (\$280,000.00) on the construction contract with McGuire and Hester for the Oakland Bay Trail: Mandela Parkway Project (Project No. G199010) and to execute any amendments or modifications of said contract, within the limitations of the project specifications without return to Council; 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, _____, 2008

PASSED BY THE FOLLOWING VOTE:

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

NOES-
ABSENT-

ABSTENTION-

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California