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CITY OF OAKLAND



ONE FRANK OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
John Russo
City Attorney

(510) 238-3601
FAX: (510) 238-6500
TDD: (510) 839-6451

June 21, 2011

HONORABLE CITY COUNCIL
Oakland, California

Subject: *Hayward-Baker, Inc. v. BBI Construction Co. Inc., et al.*
(Boathouse)
BBI Construction Co. Inc. v. City of Oakland, et al. (Studio
One)
Alameda County Superior Court Case Nos. RG08416061 &
RG09436256 (and related actions)

City Attorney's File No. 26931 – PWA (*Breach of Contract*)

President Reid and Members of the City Council:

Pursuant to Section 401 of the Charter, the City Attorney has prepared and requests your approval of a resolution authorizing compromise and settlement of the above-entitled action. Due to the risk of an adverse jury verdict under the circumstances settlement is recommended in the aggregate sum of Seven Hundred Sixty-eight Thousand Five Hundred Two Dollars and No Cents (\$768,502.00) payable to Plaintiffs as follows:

- \$734,502.00 payable to BBI-Con, Inc; and
- \$34,000 payable to BBI-Con, Inc. and Bay City Paving & Grading, Inc.

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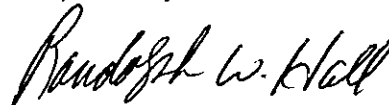
Subject: *Hayward Baker, Inc v. BBI Construction Co., Inc. and related cases*

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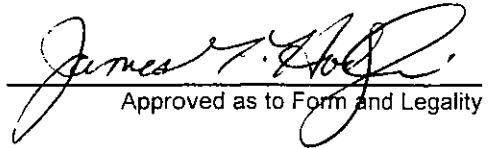
This action arises from contracting disputes at the *Boathouse and Studio One* projects. This matter was heard in closed session on May 17, 2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John A. Russo". The signature is written in a cursive, flowing style.

JOHN A. RUSSO
City Attorney

Attorney Assigned:
JAMES F. HODGKINS


Approved as to Form and Legality

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RESOLUTION No. _____ C.M.S.


JFH

RESOLUTION 1) TO AUTHORIZE AND ALLOCATE ONE HUNDRED FORTY-EIGHT THOUSAND FOUR HUNDRED NINETY-EIGHT DOLLARS AND NO CENTS (\$148,498.00) OF MEASURE DD SERIES 2003A UNALLOCATED INTEREST FUNDS TO THE LAKE MERRITT MUNICIPAL BOATHOUSE PROJECT (NO. C241911) AND 2) TO RE-ALLOCATE THE REMAINING UNUSED MEASURE DD SERIES 2003A INTEREST FUNDS OF ONE HUNDRED FORTY-THREE THOUSAND NINE HUNDRED SEVENTY-SIX DOLLARS AND NO CENTS (\$143,976.00) FROM STUDIO ONE ART CENTER REHABILITATION PROJECT (NO. C244710) TO LAKE MERRITT MUNICIPAL BOATHOUSE PROJECT (NO. C241911) AND USE ADDITIONAL FUNDS AS REQUIRED TO COMPROMISE AND SETTLE THE CASES OF HAYWARD-BAKER, INC. V. BBI CONSTRUCTION CO. INC., ET AL. AND BBI CONSTRUCTION CO. INC. V. CITY OF OAKLAND, ET AL. ALAMEDA COUNTY SUPERIOR COURT CASE NOS. RG08-416061 AND RG09-436256 IN THE TOTAL AMOUNT OF \$768,502 AS A RESULT OF CONTRACTING DISPUTES AT THE BOATHOUSE AND STUDIO ONE PROJECTS. (OFFICE OF PUBLIC WORKS - OPW)

WHEREAS, funding is available in the amount of one hundred forty-three thousand nine hundred seventy-six dollars and no cents (\$143,976.00) of previously allocated and unspent Measure DD Series 2003A interest funds from Studio One Art Center Rehabilitation Project No. C244710, Capital Project Management Organization 92270, Account 78811, and

WHEREAS, funding is available in the amount of one hundred forty-eight thousand four hundred ninety-eight dollars and no cents (\$148,498.00) from Measure DD Series 2003A unallocated interest funds, Capital Project Management Organization 08721, Account 44113; therefore now be it

RESOLVED: That the City Council approves the allocation of one hundred forty-eight thousand four hundred ninety-eight dollars (\$148,498.00) of Measure DD Series 2003A unallocated interest funds, under Capital Project Management Org. 08721, Account 44113, for the Lake Merritt Municipal Boathouse Project, City Project No. C241911, for settlement of construction claims; and be it

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

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FURTHER RESOLVED: That the City Council approves the re-allocation of the remaining unused Measure DD Series 2003A interest funds of one hundred forty-three thousand nine hundred seventy-six dollars (\$143,976.00) from Studio One Art Center Rehabilitation Project No. C244710, to Lake Merritt Municipal Boathouse Project No. C241911 and be it.

FURTHER RESOLVED: That the City Attorney is authorized and directed to compromise and settle the cases of Hayward-Baker, Inc. v. BBI Construction Co. Inc., et al. and BBI Construction Co. Inc. v. City of Oakland, et al. City Attorney's File No. 26931, using the aforementioned funds and additional funding as required and be it

FURTHER RESOLVED that the sum of Seven Hundred Thirty-four Thousand Five Hundred Two Dollars and No Cents (\$734,502.00) be made payable to BBI-Con, Inc.; that the sum of Thirty-Four Thousand Dollars and No Cents (\$34,000.00) be made payable to BBI-Con, Inc and Bay City Paving & Grading, Inc.; and be it

FURTHER RESOLVED: That the City Attorney is further authorized and directed to take whatever steps as may be necessary to effect said settlement.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2011

PASSED BY THE FOLLOWING VOTE:

AYES- DE LA FUENTE, KERNIHGAN, NADEL, BRUNNER, SCHAAF, BROOKS, KAPLAN and PRESIDENT REID
NOES-
ABSENT-
ABSTENTION-

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