

F. Faiz

City Attorney

05 OCT 13 AM 10:20

OAKLAND CITY COUNCIL

RESOLUTION No. 80180 C.M.S.

Introduced by Councilmember _____

A RESOLUTION AUTHORIZING AN AGREEMENT WITH PRIVATE PROPERTY OWNERS TO ABATE AN IMMINENT HAZARD ON 21 DRURY COURT AND LOTS 15, 16, 13, AND 20 CLAREMONT KNOLLS IN THE OAKLAND HILLS, WAIVING FURTHER BIDDING AS PERMITTED UNDER OAKLAND MUNICIPAL CODE SECTION 2.04.050.I AND AUTHORIZING THE CITY ADMINISTRATOR TO INFORMALLY REBID OR NEGOTIATE IF NECESSARY, AND AWARD A CONSTRUCTION CONTRACT IN ACCORD WITH PLANS AND SPECIFICATIONS FOR WINTERIZATION WORK ASSOCIATED WITH THE ALVARADO ROAD LANDSLIDE WITHIN BUDGET IN AN AMOUNT NOT TO EXCEED THREE HUNDRED THOUSAND DOLLARS (\$300,000), WITHOUT RETURN TO CITY COUNCIL

WHEREAS, on April 2006 a landslide occurred on the properties located at 21 Drury Court and Lots 15, 16, 13, and 20 Claremont Knolls in the Oakland hills (“Properties”);

WHEREAS, the Properties are owned by two individuals and each private property owner (“Owner”) was notified of the existence of the slide and the need for monitoring and stabilizing the slide area; and

WHEREAS, this landslide constitutes a life safety hazard to both the residents living below the slide area on Alvarado Road and those in the surrounding community using Alvarado Road for public access, including limiting access for fire and emergency vehicles as defined by 2001 California Fire Code, Article 9, Section 902, as well as an imminent threat Alvarado Road itself, which is a public road; and

WHEREAS, On May 5, 2006 both Owners were notified of a need to produce and implement a temporary winterization plan prior to the onset of winter rains to minimize the possibility that additional rain may remobilize the slide; and

WHEREAS, temporary winterization efforts would provide all parties adequate time to

study the causation and produce a final long term stabilization plan for said slide, while protecting public health and safety and public facilities; and

WHEREAS, On July 21, 2006 the City declared the Properties a public nuisance based on California Civil Code Section 3479-3480 and sent a notice to abate the slide to each Owner ; and

WHEREAS, August 24, 2006 the City approved and issued a grading permit to the property owners to authorize them to construct a temporary winterization consisting of, but not limited to, installation of debris dams, removal of fallen debris, fiber rolls, plastic sheeting, subsurface hydroauger and surface drainage pipes, water pollution control measures, temporary railing, silt fencing, and debris flow barriers for the said area; and

WHEREAS, the City has made every effort to support and direct the Owners to expeditiously implement the Abatement Plan , but as of the date of this resolution no construction work has begun and this construction work is estimated to require four to six weeks to complete; and

WHEREAS, City staff wishes to perform only those repairs necessary to abate the imminent hazard to both the residents living below the slide area on Alvarado Road and those in the surrounding community using Alvarado Road for public access, including limiting access for fire and emergency vehicles as defined by 2001 California Fire Code, Article 9, Section 902, as well as to Alvarado road itself; and

WHEREAS, the Owners must agree to allow the City of Oakland onto the Properties and abate the hazard or the City will be required to secure entry through other means, including but not limited to applying for a court order to authorize entry onto the properties to do the work; and

WHEREAS, the City Council finds and determines that the services provided under any contracts authorized by this resolution are in the public interest because of economy and better performance, are of a technical and temporary nature and 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 hereby finds that the facts set forth in recitals to this resolution are true and correct, and establish the factual basis for authorizing the City Administrator to take action; and, be it

FURTHER RESOLVED: That the City Administrator is hereby authorized to enter into agreements with Owners to abate the imminent hazard and said agreements must include, at a minimum, the following provisions:

1. Owners shall be required to fully reimburse the City for any cost to abate the hazard or the City will file liens against their properties.

2. Owners shall be required to diligently prosecute any insurance claims and assign the City the proceeds of any successful claim.
3. Owners agree to defend, indemnify, and hold the City harmless and provide the City with releases and waivers for any claims or lawsuits arising out of or in any way connected to the slide and/or the abatement work; any and all such agreements shall be recorded.
4. Owners agree to expressly waive the protections of Civil Code section 1542, and expressly waive and release any rights or benefits arising thereunder, and, be it

FURTHER RESOLVED: That the City Administrator is directed to apply for a court order to authorize entry onto the Properties to do the Abatement work if the Owners do not voluntarily agree to allow the City to perform the Abatement work; and

FURTHER RESOLVED: That the City Administrator is directed to file property abatement liens to recover all of City's costs to do the work if the Owners do not voluntarily repay the City; and

FURTHER RESOLVED: That the City Council hereby finds that in order to limit life and public safety danger, and protect public facilities, the temporary abatement should be constructed as soon as possible; and, be it

FURTHER RESOLVED: That the construction of temporary winterization measures by the City do not absolve the Owners from studying the causes for the slide and the preparation of long term stabilization plans for the slide area, which are expected to be completed on or before October 15, 2007 by Owners; and, be it

FURTHER RESOLVED: That, pursuant to Oakland Municipal Code Chapter 2.04, Article 2.04.050.I.5, the City Council hereby finds that it is in the City's best interests to waive the regular advertising, competitive bid and award process because it would delay commencement of the necessary construction work into the 2006 rainy season; and, be it

FURTHER RESOLVED: That the City Council hereby authorizes the City Administrator to informally rebid or negotiate if necessary, and award a construction contract in accord with plans and specifications for winterization work associated with the Alvarado Road landslide affecting properties located at 21 Drury Court and Lots 15, 16, 13, and 20 Claremont Knolls in the Oakland hills Lots within budget in an amount not to exceed three hundred thousand dollars (\$300,000.00), without return to City Council; and, be it

FURTHER RESOLVED: Should one property owner go forward with the necessary winterization work on their property, then the City Administrator shall have the authority to deal with each property owner separately or to only act only with respect to the non-

conforming property owner; and be it

FURTHER RESOLVED: That all agreements authorized hereunder shall be reviewed and approved by the City Attorney for form and legality and shall be filed in the office of the City Clerk.

FURTHER RESOLVED: That the City Administrator is authorized to take any and all steps necessary to implement the agreements and actions authorized hereunder consistent with the terms of this resolution.

IN COUNCIL, OAKLAND, CALIFORNIA, OCT - 3 2006, 20

PASSED BY THE FOLLOWING VOTE:

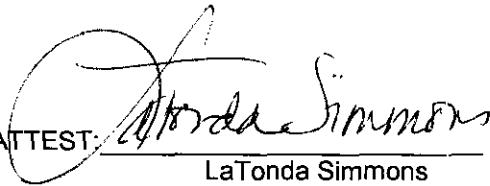
AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and ~~RESIDENT DE LA FUENTE~~ - 7

NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - De La Fuente - 1

ATTEST: 
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California