

ATTACHMENT B

REVISED 6/17/08

Approved as to Form and Legality

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

**OAKLAND CITY COUNCIL**

*Mark P. Wald*  
City Attorney

08 JUN 23 AM 10:07

RESOLUTION No. 81397 = C.M.S.

Introduced by Councilmember \_\_\_\_\_

**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO  
NEGOTIATE AND EXECUTE A SETTLEMENT AGREEMENT WITH  
THE CALIFORNIA DEPARTMENT OF TRANSPORTATION  
RELATING TO THE CALDECOTT IMPROVEMENT PROJECT  
(FOURTH BORE)**

**WHEREAS**, the California Department of Transportation (CALTRANS) has proposed the Caldecott Improvement Project (PROJECT) in and around Highway 24 in and near the Caldecott Tunnel in order to provide a new, fourth bore; and

**WHEREAS**, the PROJECT was approved on September 12, 2007 via a Project Report and a Record of Decision has been posted by the Federal Highway Administration on August 29, 2007; and

**WHEREAS**, CALTRANS has determined that the PROJECT as described in the Project Report and Final Environmental Assessment/Environment Impact Report issued in September 2007, addresses impacts and necessary mitigation; and

**WHEREAS**, the CITY has expressed written and oral concerns to CALTRANS with respect to adequacy of the Final Assessment/Environmental Impact Report; and

**WHEREAS**, certain disputes have arisen between CALTRANS and the CITY with respect to adequacy of the Final Assessment/Environmental Impact Report. These are collectively referred to as the "Disputes"; and

**WHEREAS**, the Parties hereto desire to resolve the Disputes by CALTRANS agreeing to implement certain improvements/enhancements to further reduce the PROJECT impacts and provide other project-related benefits to the CITY, and the CITY by agreeing to release CALTRANS from any and all liability for damages, attorneys' fees, and costs, in connection with the Disputes; and

**WHEREAS**, based on the proposed Settlement AGREEMENT, the CITY will dismiss any pending actions and will waive any all claims or actions and will not join, finance or assist in any claims or actions, challenging or contesting CALTRANS' right to plan, design, construct and permanently operate the PROJECT, except as expressly provided in said AGREEMENT; now, therefore, be it

**RESOLVED**: that the City Administrator or her designee is hereby authorized to negotiate and execute a settlement AGREEMENT with CALTRANS relating to the PROJECT, in substantial conformity with the draft AGREEMENT submitted with the

June 17, 2008 agenda packet, and subject to review as to form and legality by the City Attorney, subject to the following revisions:

- 1) There will be mediation of disputes if there is no resolution at the Director of Caltrans and Mayor level;
- 2) For a Significant Matter, any party may elevate the dispute to the Director of Caltrans and Mayor level;
- 3) There shall be no off-haul trucks/vehicles between the hours of 9:00 pm – 7:00 am, except during the initial stages of tunneling when materials are unable to be stored/stockpiled within the tunnel;
- 4) Contra Costa Transportation Authority and Alameda County Congestion Management Agency shall vote approval for the Second Funding of \$2 million before expiration of the Tolling Agreement;
- 5) California Transportation Commission shall vote approval for the First Funding of \$2 million in the 2008 STIP before expiration of the Tolling Agreement;
- 6) Caltrans shall only enter private property for inspections prior to blasting operations with the permission of property owners/occupants;
- 7) Delete the following language on page 9, section 2(e)ii: "Tunnel Road between Hiller Drive and Caldecott Lane"; and be it

**FURTHER RESOLVED:** that the City Administrator or her designee be authorized to take any and all actions necessary to implement the settlement AGREEMENT, including but not limited to: executing any additional agreements, MOU's (including those with the Contra Costa Transportation Authority, Alameda County Congestion Management Agency), professional service agreements, and appropriation of funds, without return to the City Council.

IN COUNCIL, OAKLAND, CALIFORNIA, JUN 17 2008, 20\_\_

**PASSED THE FOLLOWING VOTE:**

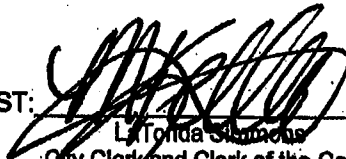
AYES – BROOKS, BRUNNER, CHANG, KERNIGHAN, ~~NADEL~~, QUAN, REID, AND PRESIDENT DE LA FUENTE **7**

NOES – **0**

ABSENT – **0**

ABSTENTION – **NADEL - 1**

ATTEST:



L. Tonda Simons  
City Clerk and Clerk of the Council  
of the City of Oakland, California