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OAKLAND

2015 JUN 10 PM 4:03

# OAKLAND CITY COUNCIL

City Attorney

RESOLUTION No. 85727 C.M.S.

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

**RESOLUTION WAIVING ADVERTISING AND COMPETITIVE BIDDING AND INCREASING THE CHANGE ORDER LIMIT WITH MCGUIRE AND HESTER FOR THE CONSTRUCTION OF FOOTHILL/SEMINARY PUBLIC TRANSIT HUB STREETScape (PROJECT NO. C429610) FROM FIFTEEN PERCENT (15%) TO TWENTY-THREE PERCENT (23%) OF THE ORIGINAL CONTRACT AMOUNT**

**WHEREAS**, the City solicited bids from three contractors for the project and awarded a design-build contract to McGuire and Hester on January 27, 2012 in the amount of \$4,009,974.00 for the Foothill/Seminary Public Transit Hub Streetscape (Project No. C429610); and

**WHEREAS**, the project specifications allow a change order limit of fifteen percent (15%); and

**WHEREAS**, after award of the design-build contract to McGuire and Hester, the use of allocated funds for Foothill/Seminary Public Transit Hub Streetscape project became uncertain due to the “clawback” provision issued by State Controller; and

**WHEREAS**, to reduce the City’s liability due to uncertainty created by the “clawback” provision, the City suspended the construction of the Foothill/Seminary Public Transit Hub Streetscape project on October 29, 2012; and

**WHEREAS**, due to the suspension of the project, McGuire and Hester claimed additional compensation for changed market conditions and also for labor and material escalation costs; and

**WHEREAS**, sufficient funding is available in the project budget to cover cost increases in the following accounts:

- Central City East TA Bonds Series 20006A-Taxable Fund (5643); Engineering Design: Streets & Structures Organization (92242); Street Construction Account (57411); Project C429610 (\$847,294.00)
- Measure B:ACTIA Fund (2211); Engineering Design: Traffic / Parking Organization (92246); Street Construction Account (57411); Project C427910 (\$75,000.00)

**WHEREAS**, the City lacks the equipment and qualified personnel to perform the necessary work, and the performance of this contract is in the public interest because of economy or better performance; and

**WHEREAS**, the City Council finds and determines that the performance of this additional work shall not result in the loss of employment or salary by any person having permanent status in the competitive services; and

**WHEREAS**, Section 2.04.050 I.5 of the Oakland Municipal Code (the "OMC") authorizes the City Council to waive the advertising and competitive bidding requirements of Section 2.04.050 upon a finding and determination that it is in the best interests of the City to do so; now, therefore, be it

**RESOLVED:** That the City Council hereby finds and determines that pursuant to OMC Section 2.04.051 I.5, that it is in the best interests of the City to waive the advertising and competitive bidding requirements of the OMC and increase the change order limit for the contract with McGuire and Hester for the Foothill/Seminary Public Transit Hub Streetscape (Project No. C429610) from fifteen percent (15%) to twenty-three percent (23%) of the original contract amount, because it is vital the project to do so in order to: (1) allow staff to implement additional enhancement along with the original work as required by the bond expenditure agreement between Oakland Redevelopment Successor Agency (ORSA) and the City, and (2) maintain continuity and minimize costly delays and disruption during the middle of ongoing project construction and completion; and be it

**FURTHER RESOLVED:** That the City Council hereby authorizes the City Administrator, or his designee, to increase the change order limit for the contract with McGuire and Hester for the Foothill/Seminary Public Transit Hub Streetscape (Project No. C429610) from fifteen percent (15%) to twenty-three percent (23%) of the original contract amount.

**JUL 21 2015**

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_.

**PASSED BY THE FOLLOWING VOTE:**

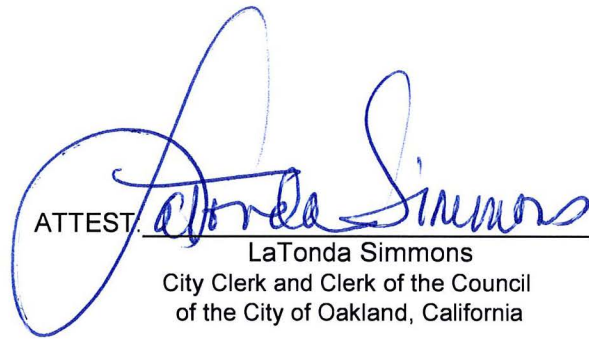
AYES - ~~BROOKS~~, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID, and  
PRESIDENT GIBSON MCELHANEY ✓

NOES - ∅

ABSENT - ∅

ABSTENTION - ∅

Excused - Brooks - 1

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