

CITY OF OAKLAND

AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 DEC -3 PM 6:19

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: December 15, 2009

RE: **Resolution Rejecting All Bids and Waiving Any Further Advertising and Bidding and Authorizing The City Administrator to Negotiate Starting with the Lowest Bidder to Award a Construction Contract for the Lion Creek Restoration Project for an For An Amount Not To Exceed Five Hundred Forty Thousand Dollars (\$540,000.00) Without Returning to Council**

SUMMARY

A resolution has been prepared authorizing the City Administrator to reject all bids received for the construction of the Lion Creek Restoration Project, to waive further competitive bidding, and to negotiate starting with the lowest bidder to award a contract for the construction of the Lion Creek Restoration Project, for an amount not to exceed five hundred forty thousand dollars (\$540,000.00) without returning to Council.

The Lion Creek Restoration Project (Project) consists of landscaping and irrigation in the newly created creek and wetland channel that is currently under construction by the Alameda County Flood Control and Water Conservation District (District). The Project also includes installation of an Americans with Disabilities Act (ADA) accessible pedestrian trail and interpretive signage.

This resolution has been prepared to address irregularities in the bid process and cost effectiveness, and the time constraints that require the expedited construction and completion of the Lion Creek Restoration Project. The six bid proposals received on November 19, 2009, from McGuire and Hester, Bay Construction, B-side, McNabb Construction, Beliveau, and Clearly Bros. were all either deemed non-responsive, or exceeded the engineer's estimated cost of \$536,000. Additionally, the California State Parks office has recently requested that the City expedite expenditure of grant funds in order to move up the grant completion deadline to January 2010 from the original date of July 2010. Staff is currently negotiating with the State in order to reach a compromise completion deadline of March 2010.

Staff proposes that Council reject all bids and authorize the City Administrator to negotiate starting with the lowest bidder to award a contract that will meet or be lower than the engineer's estimate of cost as well as meet the City's local business and employment program requirements, without return to Council.

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FISCAL IMPACT

The total project construction engineer's estimate is \$536,000. The funding source for the capital improvements are as follows:

- \$234,500 - California State Department of Parks and Recreation, Habitat Conservation Fund, Riparian Grant Fund (2134), Lion Creek Restoration Project-HCF Riparian (C300410)
- \$179,000 - California State Department of Parks and Recreation, Habitat Conservation Fund, Trails Grant Fund (2134), Lion Creek Restoration Project-HCF Trails (C300510)
- \$126,500 - Measure DD Series B Fund (5321), Project C244860.

The City and the District will share maintenance responsibilities for the project as detailed in a Cooperative Agreement between the City and the District that was approved on July 7, 2009, per Council Resolution No. 82136 C.M.S. The City's maintenance responsibilities include landscaping, park amenities, and transition structures linking the flood control channel to the new natural channel. The project has been designed to minimize on-going maintenance responsibilities. The landscaping is comprised of low, slow-growing, drought-tolerant native vegetation that should need only minimal pruning and no irrigation after the three-year establishment period. The bid specifications include three years of project maintenance to be conducted by the contractor. The bid specifications also include an option to negotiate a bid alternate to extend project maintenance to five years.

BACKGROUND

The Lion Creek Restoration Project is implemented as part of the larger effort to redevelop the housing and park in the residential community formerly known as Coliseum Gardens, now known as Lion Creek Crossings. The Project will be built in the newly constructed Lion Creek Crossings Park and includes 1.5 acres of new creek and wetland habitat including a natural creek channel, widening a section of the District-owned flood control channel to improve flood flow capacity, diverting upstream and tidal waters into the new natural creek and wetland, and construction of a pedestrian bridge, pathway, and interpretive signage. The goals of the Project are to improve water quality, create creek, wetland, and native plant habitat, and create an attractive public amenity with access for recreation and educational opportunities. The Project will serve the local neighborhood including the new Lion Creek Crossings housing development that surrounds the park, and local schools.

The Project is being constructed in two phases. Phase I, currently under construction by the District, includes all earthwork, slope stabilization measures, widening of the downstream portion of the channel for increased flood capacity, and construction of the structures necessary to connect the new earthen restoration channel to the existing flood control channel. This Phase

is estimated for completion in the end of December. Phase II, to be constructed by the City, includes irrigation, landscaping, construction of an ADA accessible pedestrian trail, and interpretive signage. A copy of the final project conceptual drawing is attached. (*Attachment A*)

On July 20, 2004 staff was authorized to proceed with the Lion Creek Restoration Project per Council Resolution No. 78750 C.M.S. authorizing the expenditure of \$500,000 in Measure DD Creek Restoration funds. The implementation of the Lion Creek Restoration Project was further authorized by the following resolutions:

- Resolution No. 78816 C.M.S. on September 21, 2004 to apply for, accept, and appropriate \$500,000 in grant funds from the Habitat Conservation Fund Program of the California Wildlife Protection Act of 1990.
- Resolution No. 79018 C.M.S. on January 18, 2005 to accept and appropriate \$579,000 in mitigation funds from Union Pacific Railroad and \$70,000 in mitigation funds from the Oakland Army Base.
- Resolution No. 79485 C.M.S. on September 20, 2005 to apply for, accept and appropriate \$200,000 in grant funds from the Habitat Conservation Fund Program of the California Wildlife Protection Act of 1990.
- Resolution No. 82136 C.M.S. on July 7, 2009 to enter into an Agreement with the Alameda County Flood Control and Water Conservation District and to authorize the expenditure of up to an additional \$395,000 in Measure DD Creek Restoration Funds.

On November 19, 2009, the City Clerk received six bids for the project:

| | |
|---------------------------------------|--------------|
| McGuire and Hester | \$437,300.00 |
| Bay Construction | \$499,000.00 |
| B-Side, Inc. | \$500,000.00 |
| McNabb Construction, Inc. | \$548,800.00 |
| Beliveau Engineering Contractors Inc. | \$572,900.00 |
| Clearly Bros. Landscape Inc. | \$607,000.00 |

The engineer's estimate was \$536,000.00.

Bay Construction protested the bid, stating that the lowest bidder, McGuire and Hester, did not include all the required information in the bid submittal. The bid specifications required that bid submittals include both the name and the certification number of an arborist. McGuire and Hester did not provide the name or certification number and Bay Construction did not provide the certification number. As a result both bidders were deemed "unresponsive."

The first "responsive" bidder was Beliveau, the fifth highest bidder. Beliveau's bid not only exceeded the engineer's estimate but was more than \$135,000.00 higher than the lowest bidder, McGuire and Hester, a difference of more than 24%.

KEY ISSUES AND IMPACTS

Staff proposes that Council reject all bids and authorize the City Administrator to negotiate starting with the lowest bidder to award the construction contract for the Lion Creek Restoration Project in an amount not to exceed \$540,000.00. Oakland Municipal Code, Title 2, Section 2.04.050.I (2) and (5) allows waiver of competitive bidding when bidding would be unavailing or it is in the best interests of the City to waive bidding.

Staff has evaluated the bids and the language in the bid specifications and has found irregularities regarding requirements about the listing of subconsultants, including information about arborists. The lowest bidders did not provide all the required information and therefore were deemed "non-responsive." The first "responsive" bidder was Beliveau, the fifth highest bidder. Beliveau's was more than \$135,000.00 higher than the lowest bidder.

Finally, the City recently received a letter from California State Parks requesting that the City expedite the expenditure of grant funds in order to move up the grant completion deadline to January 2010 from the original deadline of July 2010. Staff is currently negotiating with the State in order to reach a compromise completion deadline. It important to expedite the award of a construction contract for the Lion Creek Restoration project so that elements of the project funded by this grant may be completed by the grant deadline.

Staff believes that rejecting all bids and authorizing the City Administrator to negotiate starting with the lowest bidder to award a contract will allow the project to remain cost effective and allow the City to meet the California State Parks grant deadline.

The contractor awarded the construction contract will be required to meet the City's Local/Small Local Business Enterprise and local trucking programs. Additionally, the contractor will be required to have 50% of the work hours performed by, and 50% of all new hires be Oakland residents. Staff will seek to maximize LBE/SLBE participation in any negotiated bid.

Upon approval of the resolution, construction would be scheduled to begin in January 2010. The contract specifies \$1,400.00 in liquidated damages per calendar day if the construction is not completed by contract termination.

PROJECT DESCRIPTION

The scope of work for the Lion Creek Restoration project consists of the creation of 1.5 acres of new creek and wetland habitat adjacent to an existing County flood control channel in the new Lion Creek Crossings Park. The project is being constructed in two phases. Phase I, currently under construction by the District, includes all earthwork, slope stabilization measures, widening of the downstream portion of the channel for increased flood capacity, and construction of the structures necessary to connect the creek and wetland to the existing flood control channel.

Phase I is estimated for completion by the end of December 2009. The request to award this contract is to construct Phase II of the project that includes irrigation, landscaping, construction of an adjacent ADA accessible pedestrian trail, and interpretive signage.

SUSTAINABLE OPPORTUNITIES

Economic: The construction of the project will generate jobs for a local Oakland contractor and may increase property values in the area surrounding the project.

Environmental: The construction of the project will improve water quality, create new creek and wetland habitat, and will help the City comply with the requirements of its Nation Pollutant Discharge Elimination System (NPDES) municipal stormwater discharge permit.

Social Equity: The project will enhance the aesthetic quality of the Lion Creek Crossings Park that services the surrounding Lion Creeks Crossings, Oakland Housing Authority development project and the surrounding neighborhood. The project also provides recreational and educational opportunities for local residents and schools, and increases the flood flow capacity of the creek channel.

DISABILITY AND SENIOR CITIZEN ACCESS

The project will provide full access to persons with disabilities and senior citizens. It will comply with the Americans with Disabilities Act and will conform to all requirements related to disability and senior citizen access.

RECOMMENDATION AND RATIONALE

Staff recommends that the City Council approve the resolution authorizing the City Administrator to reject all bids received for the construction of the Lion Creek Restoration Project, to waive further competitive bidding, and to negotiate starting with the lowest bidder to award a contract for the construction of the Lion Creek Restoration Project for an amount not to exceed five hundred forty thousand dollars (\$540,000.00).

Sufficient funding is currently available for the project. Negotiation, starting with the lowest bidder to award the construction contract will allow the project to remain cost effective and will allow the work to be completed prior to the California State Parks, Habitat Conservation Fund Riparian grant deadline. The contractor that is awarded the construction contract will be required to meet all City requirements.

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that the City Council approve the resolution.

Respectfully submitted,

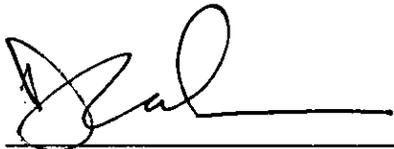


Walter S. Cohen, Director
Community and Economic Development Agency

Reviewed by:
Michael Neary, P.E., Deputy Director
Community and Economic Development Agency

Prepared by:
Lesley Estes, Watershed Program Supervisor
Watershed and Stormwater Management

APPROVED AND FORWARDED
TO THE PUBLIC WORKS COMMITTEE:



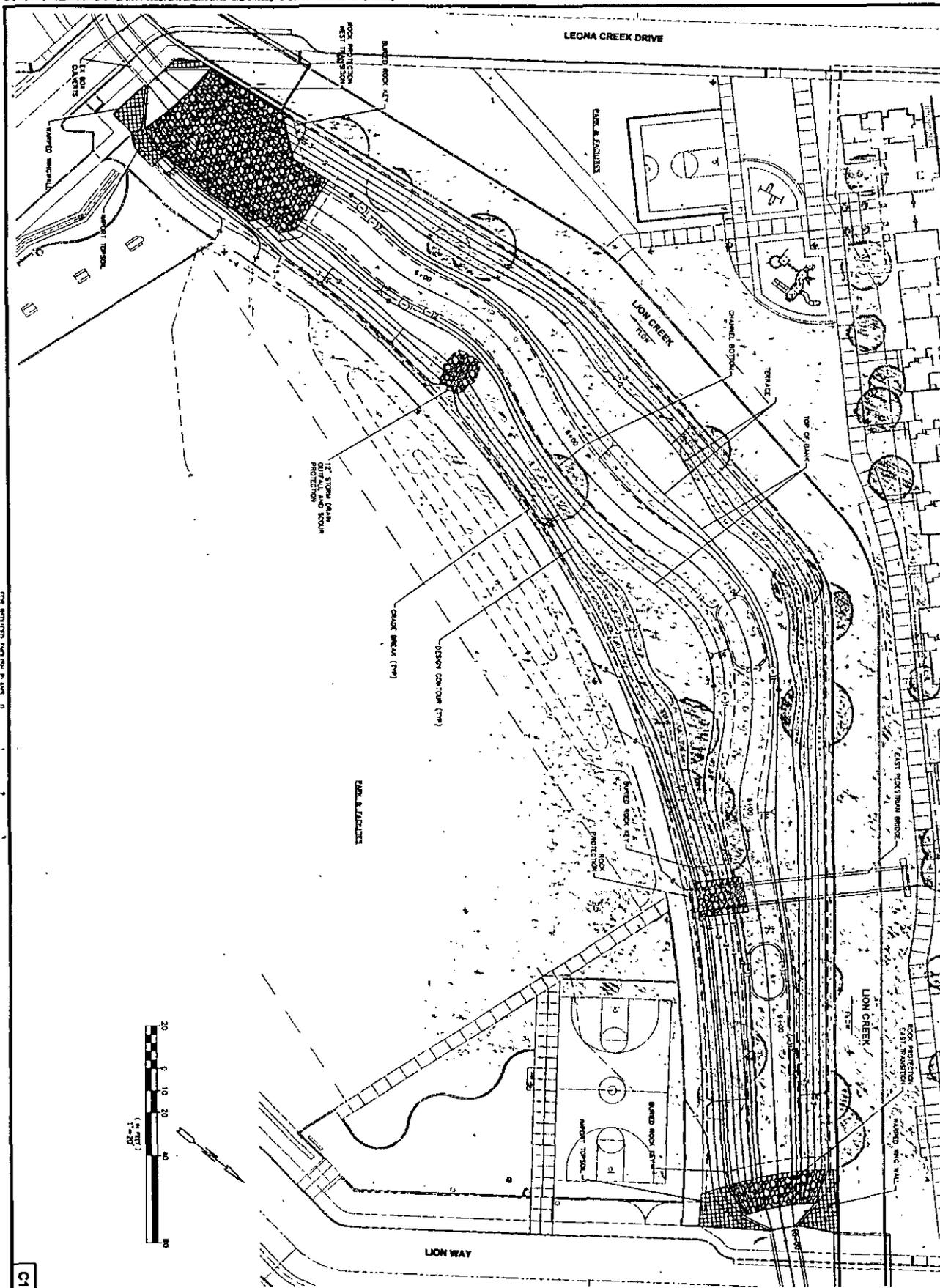
Office of the City Administrator

Attachment A: Final Lion Creek Project Conceptual Drawing

Item: _____
Public Works Committee
December 15, 2009

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| CONSTRUCTION | REVIEWED BY: | DATE: | SURVEY | REVIEWED BY: | DATE: |
| MAINTENANCE | | | TRAFFIC | | |
| REAL ESTATE | | | ENVIRONMENTAL | | |

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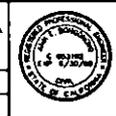
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CB-598
5 OF 28

DATE: 06/24/08
DRAWN BY: J.S. SHAW
CHECKED BY: J.T. COOPER
PROJECT: FC 12-180

COUNTY OF ALAMEDA ★ PUBLIC WORKS AGENCY
LION CREEK (LINE J) RESTORATION
 BETWEEN UPRR & UPSTREAM OF LION WAY
NATURALIZED CHANNEL
GRADING PLAN & LAYOUT

PWA PUBLIC WORKS AGENCY
 1400 EAST 14TH AVENUE, SUITE 200
 OAKLAND, CA 94612
 (415) 761-2000
 WWW.PWA.AG



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FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 DEC -3 PM 6:19

OAKLAND CITY COUNCIL

Approved as to Form and Legality

Oakland City Attorney's Office

Resolution No. _____ C.M.S.

Introduced by Councilmember _____

RESOLUTION REJECTING ALL BIDS AND WAIVING ANY FURTHER ADVERTISING AND BIDDING AND AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE STARTING WITH THE LOWEST BIDDER TO AWARD A CONSTRUCTION CONTRACT FOR THE LION CREEK RESTORATION PROJECT FOR AN AMOUNT NOT TO EXCEED FIVE HUNDRED FORTY THOUSAND DOLLARS (\$540,000.00) WITHOUT RETURNING TO COUNCIL

WHEREAS, City Council has directed staff to implement the Lion Creek Restoration Project per the following resolutions:

- Council Resolution No. 78750 C.M.S. on July 20, 2004 authorizing the expenditure of \$500,000 in Measure DD funds,
- Council Resolution No. 78816 C.M.S. on September 21, 2004 authorizing staff to apply for, accept, and appropriate \$500,000 in grant funds from the Habitat Conservation Fund Riparian Program of the California Wildlife Protection Act of 1990,
- Resolution No. 79018 C.M.S. on January 18, 2005 authorizing staff to accept and appropriate \$579,000 in funds from Union Pacific Railroad and \$70,000 in funds from the Oakland Army Base,
- Resolution No. 79485 C.M.S. on September 20, 2005 authorizing staff to apply for, accept and appropriate \$200,000 in grant funds from the Habitat Conservation Fund Trails Program of the California Wildlife Protection Act of 1990,
- Council Resolution No. 82136 C.M.S. on July 7, 2009 authorizing the City to enter into an Agreement with the Alameda County Flood Control and Water Conservation District and to authorize the expenditure of an additional \$395,000 in Measure DD Creek Restoration Funds; and

WHEREAS, construction bids for the Lion Creek Restoration Project were received on November 19, 2009; and

WHEREAS, bid proposals were received from McGuire and Hester, Bay Construction, B-side, McNabb Construction, Beliveau Engineering Contractors Inc., Clearly Bros. Landscape Inc.; and

WHEREAS, all six bid proposals were either deemed non-responsive or exceeded the engineer's estimate of cost of \$536,000; and

WHEREAS, it is necessary to expedite the completion of several project elements prior to the expiration of the California State Parks, Habitat Conservation Fund Riparian Program Grant on June 30, 2010; and

WHEREAS, waiving further advertising and bidding and authorizing the City Administrator to negotiate, starting with the lowest bidder, to award a contract will allow the project to stay cost-effective and to meet the State Grant deadline; and

WHEREAS, there are sufficient funds in the project budget for the construction work and contingencies totaling \$540,000.00 within the California State Parks, Habitat Conservation Fund Riparian Program Grant Fund (2134), Lion Creek Restoration Project (C300410), and within the California State Parks, Habitat Conservation Fund Trails Program Grant Fund (2134), Lion Creek Restoration Project (C300510), and within the Measure DD Series B Fund (5321); and

WHEREAS, the City's Municipal Code, Title 2, Section 2.04.050.I (2) and (5) allows waiver of competitive bidding when bidding would be unavailing or it is in the best interests of the City to waive bidding; and

WHEREAS, the contractor will be required to meet the requirements of the City's L/SLBE, the Local Trucking, Local Employment and Apprenticeship Programs; and

WHEREAS, the City lacks the equipment and qualified personnel to perform the necessary work and the City Council finds and determines that the performance of this contract is in the public interest because of economy; and

WHEREAS, the City Council finds that services under this contract are of a professional, technical or scientific and temporary nature; and

WHEREAS, the City Administrator has determined 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 pursuant to Oakland Municipal Code Section 2.04.050.I.5 and based on the reasons stated herein and in the City Administrator's report accompanying this resolution, the City Council hereby finds and determines that it is in the City's best interests to waive further advertising and bidding for the construction contract for the Lion Creek Restoration Project (Project No. C244860) and so waives the requirements; and be it

FURTHER RESOLVED: That the City Administrator is hereby authorized to reject all bids and negotiate starting with the lowest bidder and award a construction contract for the Lion Creek Restoration Project (Project No. C244860) in an amount not to exceed five hundred forty thousand dollars (\$540,000.00) without returning to Council; and be it

FURTHER RESOLVED: The contractor selected will be required to meet the City's local business and employment program and other contracting requirements; and be it

FURTHER RESOLVED: That the City Administrator, or his designee, is authorized, on behalf of the City of Oakland, to negotiate, apply for, accept, submit and execute all documents, including, but not limited to, applications, contracts, amendments, payment requests, and related actions for the completion of these projects; and be it

FURTHER RESOLVED: That the City Council hereby approves the plans and specifications for the Lion Creek Restoration Project; and be it

FURTHER RESOLVED: That the amount of the bond for faithful performance, equal to the amount of the contract, and the amount for a bond to guarantee payment of all claims for labor and material furnished and for the amount due under the Unemployment Insurance Act, equal to the amount of the contract with respect to such work are hereby approved; and be it

FURTHER RESOLVED: That the contract shall be reviewed and approved by the City Attorney for form and legality.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST:

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