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OAKLAND

2017 NOV 21 PM 3:55

# AGENDA REPORT

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Jason Mitchell  
Director, OPW

**SUBJECT:** Begin Plaza Acceptance of Claim  
Fund and Construction Contract  
Amendment

**DATE:** November 13, 2017

City Administrator Approval

Date:

11/21/17

## RECOMMENDATION

**Staff Recommends That City Council Adopt a Resolution Authorizing the City Administrator or Designee To 1) Accept, Appropriate and Allocate Professional Errors & Omission Claim of Funds In the Amount Of Two Hundred Forty-One Thousand Dollars (\$241,000.00) For The Begin Plaza Renovation Project (No. 1001028) and 2) Waive Further Competitive Bid Processes and Amend the On-Call Construction Contract With McGuire & Hester By An Amount Not-To-Exceed Two Hundred Sixty-Five Thousand Dollars (\$265,000.00) Increasing the Contract from Seven Hundred Seventy-Five Thousand Dollars (\$775,000.00) to One Million Forty Thousand Dollars (\$1,040,000.00).**

## EXECUTIVE SUMMARY

The (Bishop Floyd) Begin Plaza Renovation Project (Project) was awarded a Housing Related Parks Program Grant in February 2014 under Resolution No. 84831 C.M.S. The site is located at the corner of Martin Luther King Jr. Way and San Pablo Ave. in Council District 3 (see **Attachment 1-- Location Map**). The project scope required demolition of existing high wall structures and renovated the plaza into a park providing seating area, pathways, game and picnic tables, open space, play area, lighting and landscaping.

The project scope was substantially completed on June 30, 2016. However, after substantial completion, the consultant brought to the attention of the City that certain components of the play area as designed did not meet specific California Playground Safety Code and American Society for Testing & Materials (ASTM) standards. As a result, the play area remained unusable.

The consultant and the City have come to an agreement regarding the corrective scope and cost due to the design deficiencies. The approval of the proposed resolution will allow the City to receive funds from the consultant's insurance and expand the construction contract capacity to complete the corrective work for the play area.

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Public Works Committee  
December 5, 2017

## **BACKGROUND / LEGISLATIVE HISTORY**

In October 2013, the California Department of Housing and Community Development released notice of funding availability for the FY 2013-14 Housing Related Parks Program (HRPP). City applied and received grant funds of \$2.063 million distributed among three qualified City projects per Council Resolution No. 84831 C.M.S. approved in February 2014. Begin Plaza Renovation project received \$990,900. HRPP grant agreement was finalized in December 2014 and project completion was required by June 2016.

The project began with extensive community outreach and design process in 2015. The construction was awarded to McGuire & Hester, Inc. (M&H), an On-Call contractor, in early 2016 and the project was substantially completed in June 2016 to meet the grant timeline.

M&H was awarded an on-call construction contract in July 2013 under Resolution No. 84487 C.M.S. in an amount not-to-exceed \$500,000. In March 2016, Council approved Resolution No. 84831 C.M.S. increasing the contract to \$775,000 to construct the Begin Plaza project and other projects.

After the project was substantially completed, the consultant discovered deficiencies in the play area fence design and the missing safety requirements which resulted in the play area uncertifiable for use and being currently secured under temporary fencing. The deficiencies are: incorrect fence height and rail spacing and protective barriers required along the street side due to the configuration of the play area entry. The remaining park areas are open for public use.

## **ANALYSIS AND POLICY ALTERNATIVES**

Since the discovery of the deficiencies, the consultant and the City reviewed various design options and analyzed requirements to determine the necessary corrective measures. The consultant eventually turned the issue into an insurance claim under professional liability coverage. Staff continued to work with the consultant's legal representative and agreed upon a design solution and the cost to complete the corrective scope. Staff recommend that the corrective work be performed by the same contractor who completed the project renovation due to their understanding of the project and site conditions as well as to maintain the warranty and guarantee for the work.

### *Professional Design Claim:*

The agreed design revision and corrective scope of work will allow the City to resolve and rectify the code deficient fencing and safety requirements necessary for the Begin Plaza play area to be usable. The agreed amount is sufficient to complete the construction work. The agreement represents a satisfactory resolution to ensure the play area meets California Safety Inspection requirements. Without the corrective work, the play area is unusable and represents a liability for the City.

numerous meetings and design discussions which resulted in the community-provided input to develop the project.

### **COORDINATION**

The Office of the City Attorney and the Budget Bureau has reviewed this report and legislation.

### **SUSTAINABLE OPPORTUNITIES**

***Economic:*** The construction by a local firm will provide economic benefits to the local community through material purchase and construction activities.

***Environmental:*** The construction work will be performed in conformance with City's construction contract requirements and specifications utilizing best management practices to protect the environment such as storm water protection measures, construction waste recycling and reduction requirements, and other measures to protect the environment.

***Social Equity:*** The corrective scope will complete the tot lot and allow use by children and parents in the neighborhood. The project area is experiencing housing growth and the open space and play area will provide the needed recreational and open space needed in an urban area. The surrounding housing developments incorporate affordable housing and indirectly generated the funding to renovate the Begin Plaza, which will serve users of all economic background. The proposed work will complete a City asset to provide equitable access for parents, children, and people of all ages. The play area is designed to meet American with Disabilities Act (ADA) requirements and provides equitable access.

### **CEQA**

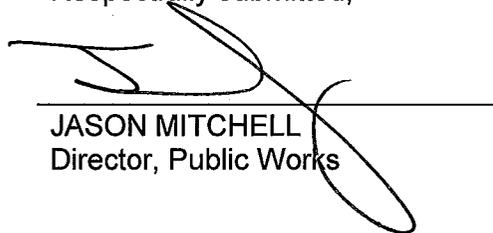
The Bishop Floyd Begin Plaza is exempt from the California Environmental Quality Act (CEQA) under Section 15301 ("Existing Facilities") and Section 15302 ("Replacement or Reconstruction") of the CEQA Guidelines which allows restoration and rehabilitation of deteriorated or damage structures, facilities to meet current standards and replacement or reconstruction of structures/facilities where the improvements will be on the same site and substantially remain the same use purpose.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the City Council adopt the proposed resolution to authorize the City Administrator or designee to accept professional error and omissions claim of funds in the amount \$241,000.00, waive further competitive bid processes, and amend the on-call construction contract with McGuire & Hester by an amount not-to-exceed two hundred sixty-five thousand dollars (\$265,000) increasing the contract from seven hundred seventy-five thousand dollars (\$775,000.00) to one million forty thousand dollars (\$1,040,000.00) to complete the Begin Plaza Renovation Project (No. 1001028).

For questions regarding this report, please contact Lily Soo Hoo, Project Manager II, Project Delivery Division, (510)-238-6604.

Respectfully submitted,



JASON MITCHELL  
Director, Public Works

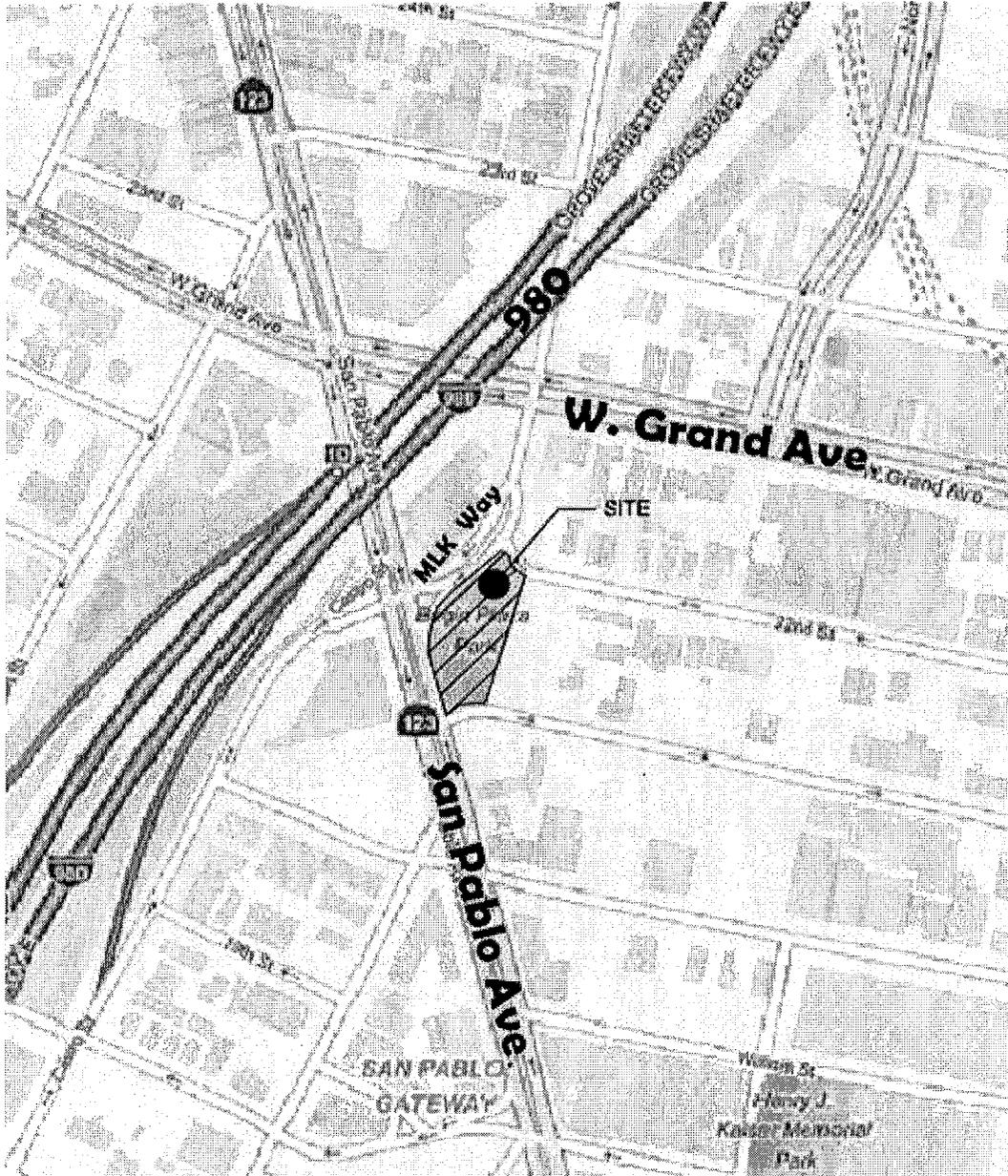
Reviewed by:  
Danny Lau, Assistant Director  
Bureau of Design and Construction

Prepared by:  
Lily Soo Hoo, Project Manager II  
Project Delivery Division

*Attachment A: Location Map*

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**Attachment A**  
**Begin Plaza Renovation Project**  
**(No. 1001028)**

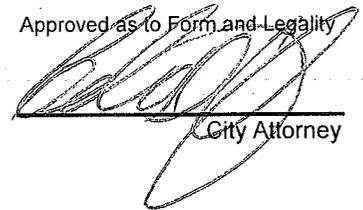


Location Map Not to scale

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Approved as to Form and Legality



City Attorney

## OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C.M.S.

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

**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR DESIGNEE TO 1) ACCEPT, APPROPRIATE AND ALLOCATE PROFESSIONAL ERRORS & OMISSION CLAIM OF FUNDS IN THE AMOUNT OF TWO HUNDRED FORTY-ONE THOUSAND DOLLARS (\$241,000.00) FOR THE BEGIN PLAZA RENOVATION PROJECT (NO. 1001028) AND 2) WAIVE FURTHER COMPETITIVE BID PROCESSES AND AMEND THE ON-CALL CONSTRUCTION CONTRACT WITH MCGUIRE & HESTER BY AN AMOUNT NOT-TO-EXCEED TWO HUNDRED SIXTY-FIVE THOUSAND DOLLARS (\$265,000.00) INCREASING THE CONTRACT FROM SEVEN HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$775,000.00) TO ONE MILLION FORTY THOUSAND DOLLARS (\$1,040,000.00)**

**WHEREAS**, the City passed Resolution No. 84784 C.M.S. in January 2014 authorizing the City to apply for, accept, and appropriate a State of California, Department of Housing and Community Development (HCD) - Housing Related Parks Program (HRPP) grant in an amount up to \$2,250,000 for three projects, including the Bishop Floyd Begin Plaza (Begin Plaza) project located at Martin Luther King Jr. Way and San Pablo Avenue, and

**WHEREAS**, the City applied and was awarded \$2,063,400 from the grant, and

**WHEREAS**, the City entered into an agreement with the State of California HCD in December 2014 receiving grant funds; and

**WHEREAS**, Begin Plaza Renovation was allocated \$990,900 for the project; and

**WHEREAS**, McGuire and Hester, Inc. has an existing on-call construction awarded in July 2013 under Resolution No. 84487 C.M.S. in an amount not-to-exceed \$500,000 and amended in March 2016 by Council Resolution No. 84831 C.M.S. increasing the contract to \$775,000 for the construction of the Begin Plaza Improvement and other projects, and

**WHEREAS**, the City contracted with McGuire and Hester, Inc. in March 2016 for the construction of the Begin Plaza Renovation project; and

**WHEREAS**, the project was substantially completed when deficiencies in the design were discovered for the play area rendering the play area uncertifiable; and

**WHEREAS**, the City has negotiated an agreement with the consultant firm representative for the corrective work necessary to the play area and will need to implement the corrective work; and

**WHEREAS**, OMC Section 2.04.050.I.5 provides an exception to the advertising and competitive bidding requirements of the OMC upon a finding and determination by the City Council that it is in the best interests of the City to do so; and

**WHEREAS**, the City finds that by utilizing the same construction firm, McGuire & Hester, Inc., for the corrective work will ensure continuity and integrity of the construction warranties; and

**WHEREAS**, the contractor, McGuire and Hester, Inc., is the contractor of record for the project and has in-depth knowledge of the project scope and site conditions; and

**WHEREAS**, the City Council finds and determines based on the representations set forth in the City Administrator's report accompanying this Resolution that the construction contract approved hereunder is temporary in nature; and

**WHEREAS**, the City lacks the equipment and qualified personnel to perform the necessary work, that 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 contract shall not result in the loss of employment or salary by any person having permanent status in the competitive services; now, therefore, be it

**RESOLVED:** That the City Council finds and determines that for the conditions described in above whereas clauses, it is in the best interest of the City to waive further advertising and competitive bidding per OMC Section 2.04.050.I; and be it

**FURTHER RESOLVED:** That the City accept, appropriate, and allocate the funds paid for by the consultant's insurance in the amount of two hundred forty-one thousand dollars (\$241,000.00) for the Begin Plaza project and said funds to be allocated to the existing Project (No. 1001028) in a Fund and Award No. (TBD), Capital Org. (No. 92270); and be it

**FURTHER RESOLVED:** That the City Administrator, or Designee, is authorized to amend the on-call construction contract with McGuire & Hester by an amount not-to-exceed two hundred sixty-five thousand dollars (\$265,000.00) increasing the contract from seven hundred seventy-five thousand dollars (\$775,000.00) to one million forty thousand dollars (\$1,040,000) to complete the necessary corrective work in accordance with the project plans and specifications; and be it

**FURTHER RESOLVED:** That the City Administrator, or Designee, is authorized to execute any amendments or modifications of the contract within the limitations of the project specifications; and be it

**FURTHER RESOLVED:** That the contractor shall comply with all City contracting and compliance program requirements that apply to this contract, including Local Business

Enterprise and Small Local Business Enterprise (LBE/SLBE) participation and be verified by the Contracts and Compliance Division; and be it

**FURTHER RESOLVED:** That the contractor shall amend and provide a faithful performance bond and a bond to guarantee payment of all claims for labor and materials furnished for the amount of 100% of the contract price due under the Unemployment Insurance Act prior to execution of the contract; and be it

**FURTHER RESOLVED:** That the contract shall be reviewed and approved by the City Attorney for form and legality prior to execution and placed on file in the Office of the City Clerk.

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

**PASSED BY THE FOLLOWING VOTE:**

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

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