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OFFICE OF THE CITY CLERK  
OAKLAND

# AGENDA REPORT

**TO:** JOHN A. FLORES  
INTERIM CITY ADMINISTRATOR

**FROM:** Brooke A. Levin

**SUBJECT:** Foothill/Seminary Public Transit  
Hub Streetscape

**DATE:** May 13, 2015

City Administrator  
Approval

Date

6/9/15

**COUNCIL DISTRICT:** 6

## **RECOMMENDATION**

Staff recommends that the City Council adopt a:

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.

## **OUTCOME**

Approval of this resolution will authorize the City Administrator to execute change orders for up to 23% of the original design-build contract with McGuire and Hester for the Foothill/Seminary Public Transit Hub Streetscape Project for a total contract amount of \$4,932,268.00 due to the suspension of project construction as a result of the state clawback of redevelopment funding in 2012. This resolution will increase the change order limit by \$320,798.00.

This action will allow this project to be completed in accordance with plans and specifications approved and implement additional scope using the former Redevelopment Agency funds authorized by City Council under Resolution No. 83370 C.M.S., dated May 17, 2011.

## **BACKGROUND/LEGISLATIVE HISTORY**

The Foothill Seminary Public Transit Hub Streetscape project was awarded to McGuire and Hester on January 27, 2012, as a design-build project in the amount of \$4,009,974.00. At the time of award, the project plans were at 35 percent design. During development of the plans from 35 to 100 percent, some design elements changed which increased the project cost. In addition, the project construction was suspended on the October 29, 2012 for a period of 16 months due to State Controller's "clawback" provision on use of former Oakland Redevelopment

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Agency funds. Due to this suspension, McGuire and Hester claimed additional compensation for change in market conditions and also labor and material escalation costs. Staff has analyzed the actual material and construction cost changes over this time period and agrees that the changes are real and reasonable.

The project specifications allow a 15 percent change order limit. A summary of additional work on this project is as follows:

- 1) **Change Order Work Identified to Date:** Additional work totaling a \$568,081.00 (14.17%) has been identified to date and includes work associated with additional design services, work suspension, labor and material escalation, increased area to be paved, extra street furniture, and unanticipated work.
- 2) **Anticipated Change Order Work Identified to Date:** Additional and potential work identified to date, totaling \$179,894.00 (4.48%), is anticipated at this time. This amount will be used to authorize changes for anticipated work, including Walnut Plaza modifications, fire hydrant relocations, and relocation of traffic signal controller, and construction of bulb-outs at the intersection of Foothill Blvd with 62<sup>nd</sup> Avenue and 63<sup>rd</sup> Avenue.
- 3) **Contingency:** The requested change order limit is 23 percent. With the items identified above, approximately \$174,319.00 (4.35%) will available to cover unforeseen conditions.

### ANALYSIS

Adoption of the resolution will allow staff to authorize work associated with unforeseen conditions and implement additional work that is required to successfully complete the project.

In February 2014, the bond expenditure agreement between Oakland Redevelopment Successor Agency (ORSA) and the City was executed which transferred all ORSA excess bond funds to the City to complete dozens of projects, including this one. At that time, the staff was directed by Oakland Redevelopment Successor Agency (ORSA) to proceed with construction of the project. On June 16, 2014, the City lifted the suspension of construction and directed McGuire and Hester to proceed with construction of the project.

Section 2.04.050 I 5 of the Oakland Municipal Code (the "OMC") authorized the City Council to waive the advertising and competitive bidding requirements of OMC Section 2.04.050 upon a finding and determination that it is in the best interests of the City to do so. It is in the best interests of the City to waive the advertising and competitive bidding requirements of OMC Section 2.04.050 because it will (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 project construction.

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**PUBLIC OUTREACH/INTEREST**

A portion of additional change order work being implemented is in response to community and public requests.

**COORDINATION**

Staff has fully coordinated this project with AC Transit and other utility companies (PG & E, EBMUD, AT&T, Comcast). The Office of the City Attorney and Controller's Bureau were consulted in preparation of this report.

**COST SUMMARY/IMPLICATIONS**

1. AMOUNT OF RECOMMENDATION/COST OF PROJECT:

<b>COST ELEMENT</b>	<b>AMOUNT</b>
Original Contract with McGuire and Hester Council Authorization per Resolution No. 83370 C.M.S.	\$4,009,974.00
Original change order amount per project specifications (15%)	\$ 601,496.00
Additional change order amount being requested for City Council Approval (8%)	\$ 320,798.00
<b>TOTAL CONTRACT COST</b>	<b>\$4,932,268.00</b>

2. COST ELEMENTS OF AGREEMENT/CONTRACT: \$4,932,268.00

3. SOURCE OF FUNDING:

<b>FUNDS ARE AVAILABLE IN:</b>	<b>AMOUNT</b>
Original Design-Build Contract Amount: Central City East TA Bonds Series 20006A-Taxable Fund (5643); Engineering Design: Streets & Structures Organization (92242); Street Construction Account (57411); Project C429610	\$4,009,974.00
Cost Increase: 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
Cost Increase: Measure B:ACTIA Fund (2211); Engineering Design: Traffic/Parking Organization (92246); Street Construction Account (57411); Project C427910	\$75,000.00
<b>TOTAL CONTRACT FUNDS</b>	<b>\$4,932,268.00</b>

4. FISCAL IMPACT:

Approval of this resolution will authorize the City Administrator to execute change orders up to twenty-three percent (23%) of the original construction contract amount with McGuire and Hester for the Foothill/Seminary Public Transit Hub Streetscape (Project No. C429610) for a total contract amount of \$4,932,268.00.

**SUSTAINABLE OPPORTUNITIES**

**Economic:** This proposed work will enhance the mixed commercial area on Foothill between Brookdale and 60<sup>st</sup> Ave. and help to attract more businesses on Foothill Blvd. and the surrounding area.

**Environmental:** The contractor will be required to make every effort to reuse clean recyclable concrete product. A Storm Water Pollution Prevention Plans (SWPPP) has been prepared for the project and registered with Storm Water Control Board (SWCB). Contractor is required to comply with requirement of SWPPP throughout the project.

**Social Equity:** Construction of Foothill/Seminary Public Transit Hub Streetscape project will enhance the area around within the project limit and attract businesses. This will create employment opportunities for the surrounding neighborhood.

**CEQA**

The project does not require the change in the roadway alignment or construct new roadway. It only rehabilitates and enhances the existing roadway. Therefore, it is exempt from CEQA studies.

For questions regarding this report, please contact Gus Amirzehni, Engineering Design and Right-of-Way Manager, 510-238-6601.

Respectfully submitted,



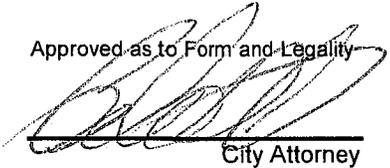
BROOKE A. LEVIN  
Director, Oakland Public Works

Reviewed by:  
Michael Neary, P.E., Assistant Director,  
OPW, Bureau of Engineering and Construction

Reviewed by:  
Gus Amirzehni, P.E., Division Manager  
Engineering Design and R.O.W.

Prepared by:  
Jaime Heredia, P.E., Supervising Civil Engineer  
Engineering Design and R.O.W. Management Division

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June 23, 2015



City Attorney

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# OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ 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.

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 -

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