

RESOLUTION NO. 967

A RESOLUTION AUTHORIZING THE CITY ATTORNEY AND OUTSIDE COUNSEL TO FILE AN ACTION AGAINST O.J.C. CO., CONTECH, INC. HEARTSTONE OF OKLAHOMA, INC. AND EMPLOYERS MUTUAL CASUALTY COMPANY, AND BITUMINOUS INSURANCE CO. IN TULSA COUNTY DISTRICT COURT SEEKING RECOVERY FOR A FIGURE IN EXCESS OF \$75,000.00 FOR ISSUES INVOLVING THE HILLSIDE PARK RETAINING WALL PROJECT (ALSO KNOWN AS THE TIGER HILL WALL, LOCATED AT THE SOUTHWEST CORNER OF 9TH STREET AND EAST KENOSHA STREET) AND DIRECTING THE CITY ATTORNEY AND OUTSIDE COUNSEL TO PREPARE AND FILE NECESSARY DOCUMENTS TO INITIATE AN ACTION AGAINST THE PARTIES REFERENCED HEREIN, AS WELL AS ANY OTHER MATERIAL PARTY

WHEREAS, On January 9, 2012, the City entered into a Professional Consultant Agreement with O.J.C. Co. Consulting Engineers to evaluate and design a pre-manufactured concrete block retaining structure to be constructed at Hillside Park, located at the southwest corner of 9th street and East Kenosha Street, in Broken Arrow, Oklahoma; and

WHEREAS, after receiving O.J.C.'s design for the Project, the City engaged in a public competitive bid process to purchase the required number and size of manufactured large segmented blocks with Tulsa Dynaspan Inc. being the successful bidder; and

WHEREAS, on or about April 18, 2012, after a separate public competitive bid process, the City entered into a prime contract with Contech, Inc. to perform the excavation, block installation, drainage construction, backfill, and compaction of the Project; and

WHEREAS, Contech, Inc. entered into a contract with Heartstone, Inc. to install the blocks that would make up the retaining wall for the project; and

WHEREAS, as a consequence of the joint negligence of the parties involved, the City has incurred substantial expense in having the wall inspected and analyzed; and

WHEREAS, expert reports identifying both the defects were obtained by the City and provided to the parties identified above in the design and construction and methods of remedying those defects; and

WHEREAS, the City will also incur substantial expense in remedying and repairing the wall; and

WHEREAS, the aforementioned damages to the City are in excess of \$75,000.00; and

WHEREAS, the Legal Department recommends that the City Council initiate an action against O.J.C. Co., Contech, Inc. Heartstone of Oklahoma, Inc. and Employers Mutual Casualty Company, and Bituminous Insurance Co. and any other material party for the recovery of such damages.

NOW, THEREFORE, BE IT RESOLVED that the City Attorney and outside Counsel be, and is hereby directed to file an action and all other necessary documents against the parties identified above and any other material party in Tulsa County District Court seeking recovery in excess of \$75,000.00 for issues involving the Hillside Park Retaining Wall Project; and

ADOPTED and APPROVED by the Mayor of the Council of the City of Broken Arrow, Oklahoma this 20th day of December, 2016.

MAYOR

ATTEST:

(seal) City Clerk

REVIEWED as to form and legality this 20th day of December, 2016.

City Attorney