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CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. 90940 C.M.S.

A RESOLUTION WAIVING FURTHER ADVERTISING AND COMPETITIVE BIDDING UNDER OMC SECTION 2.04.050(I)(2), AUTHORIZING OPEN-MARKET AWARD UNDER OAKLAND MUNICIPAL CODE (OMC) SECTION 2.04.050(J), ISSUING A LIMITED RESTRICTED WAIVER UNDER OMC SECTION 2.22.050 AND A WAIVER UNDER OMC SECTION 2.23.030(B), AND AUTHORIZING THE CITY ADMINISTRATOR TO AWARD A PURCHASING CONTRACT TO MARTIN MARIETTA MATERIALS, INC. IN AN AMOUNT NOT TO EXCEED \$1,000,000 PER YEAR FOR TWO (2) YEARS, WITH ONE (1) ADDITIONAL TWO-YEAR OPTION IN AN AMOUNT NOT TO EXCEED \$1,000,000 PER YEAR, FOR A TOTAL NOT-TO-EXCEED \$4,000,000 OVER FOUR (4) YEARS, IN ACCORDANCE WITH SPECIFICATION NO. 25-745-00/RFQ 339527 AND THE CONTRACTOR'S PRICE QUOTATION DATED JULY 8, 2025, WITHOUT RETURN TO COUNCIL, ADOPTING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS AUTHORIZING A ONE-TIME PAYMENT IN THE AMOUNT OF \$250,000 TO PAY OUTSTANDING INVOICES

WHEREAS, the Oakland Department of Transportation performs pavement construction and maintenance requiring the purchase of hot mix asphalt (HMA) including 3/8" and 1/2" aggregate sizes; and

WHEREAS, procuring such materials is essential to meet the in-house mileage goals of the 5-Year Paving Plan (5YP) authorized by Resolution No. 88975 C.M.S.; and

WHEREAS, the City conducted a request for quotations (Specification No. 25-745-00/RFQ 339527) to select the lowest responsive and responsible bidder and the most qualified contractor to provide materials necessary for asphalt concrete pavement construction; and

WHEREAS, after advertising Specification No. 25-745-00/RFQ 339527, no valid bids were received; and under OMC Section 2.04.050(I)(2) the Council may waive further competitive bidding as impracticable, unavailing, or impossible, and under OMC Section 2.04.050(J) the City Administrator may proceed to purchase supplies in the open market; and

WHEREAS, the City of Oakland Municipal Code (OMC) Chapter 2.04, Purchasing System, Section 2.04.050, Bid Procedure, Item J, states that, "If no valid bids are received after advertising as required, the City Administrator may proceed to hire or have the services performed or purchase the supplies in the open market"; and

WHEREAS, OMC Chapter 2.22 generally prohibits City contracts with Border Wall Entities; however, OMC Section 2.22.050 authorizes a Limited Restricted Waiver upon findings that there is no other qualified responsive compliant vendor or that the City would otherwise be unable to obtain essential goods on a reasonable basis; and

WHEREAS, OMC Chapter 2.23 generally prohibits contracting for certain services related to federal immigration enforcement, but OMC Section 2.23.030(B) authorizes a waiver upon findings that no reasonable compliant alternative exists to obtain essential goods on a reasonable basis, with documentation and annual reporting required by OMC Section 2.23.050; and

WHEREAS, Section 2.22.050 provides criteria for waiving Chapter 2.22 that include situations where there is no other qualified responsive bidders, proposers, or prospective vendors or providers that comply with the requirements of Chapter 2.22 to perform the applicable contract, or as determined in writing by the City Administrator, the City would otherwise be unable to obtain essential goods or services on a reasonable basis; and

WHEREAS, OMC Chapter 2.23 establishes prohibitions wherein the City "shall not enter into a new contract or amend or extend an existing contract with any contractor that provides Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), or the Department of Health and Human Services, Office of Refugee Resettlement (HHS/ORR) with any "data broker," "extreme vetting," or "detention facilities" services"; and

WHEREAS, Section 2.23.030 provides criteria for waiving Chapter 2.23 that include situations where there is no other qualified responsive bidders, proposers, or prospective vendors or providers that comply with the requirements of Section 2.23.030 to perform the applicable contract, or as determined in writing by the City Administrator, the City would otherwise be unable to obtain the essential goods or services on a reasonable basis; and

WHEREAS, the City negotiated with a list of preferred vendors on the open market for a contract to purchase paving materials in accordance with Specification No. 25-745-00/RFQ 339527); and

WHEREAS, a multi-year purchasing contract streamlines the procurement of essential materials for paving; and

WHEREAS, the contract provides a not-to-exceed limit and does not guarantee any amount of purchases or payments; and

WHEREAS, funds for the purchase of paving materials are available in the FY 2025-27 Budget in Funds 2215 (Measure F Vehicle Registration Fee), 2218 (Measure BB Local Streets and Roads), 2219 (Measure BB Bike and Pedestrian), 2230 (State Gas Tax), 2232 (Gas Tax Road Maintenance and Rehabilitation Account), and 5342 (Measure U 2022 Affordable Housing and Infrastructure Bond); Org 92242 (Engineer Design: Streets and Structures); Projects 1005420 and

1003469, and that funding for option years are subject to funding availability in the future budget cycles; and

WHEREAS, the City purchased materials from Martin Marietta, Inc. in summer 2025 under City Administrator purchasing authority prior to knowledge of potential OMC Section 2.22 violations by the vendor; and

WHEREAS, 3/8" HMA is essential for pothole repair and traffic calming requiring immediate, proximate supply and that OakDOT also requires 1/2" HMA purchases from Martin Marietta on occasion to maintain redundancy if a compliant vendor is unable to supply timely; alternatives either lack availability, have prohibitive minimum batch sizes, or are beyond a 15-mile operational radius; now, therefore, be it

RESOLVED: That the Council hereby finds and determines pursuant to OMC Section 2.04.050.I that it is in the best interests of the City to award a purchasing contract on the open market to Martin Marietta Materials, Inc. in accordance with Specification No. 25-745-00/RFQ 339527 and the Contractor's Bid; and be it

FURTHER RESOLVED: The City Council waives further advertising and competitive bidding pursuant to OMC Section 2.04.050(I)(2) and authorizes an open-market award pursuant to OMC Section 2.04.050(J), in accordance with Specification No. 25-745-00/RFQ 339527 and the Contractor's price quotation dated July 8, 2025; and be it

FURTHER RESOLVED: The Council issues a Limited Restricted Waiver under OMC Section 2.22.050 solely to permit purchases from Martin Marietta Materials, Inc. of hot mix asphalt in 3/8" and 1/2" aggregate sizes for time-sensitive operations within a 15-mile radius of City operations yards, upon findings that no other qualified responsive compliant vendor can provide these essential goods on a reasonable basis as required for City operations; and be it

FURTHER RESOLVED: The Council waives OMC Section 2.23.030 for this contract, upon findings under OMC Section 2.23.030(B) that there is no reasonable compliant alternative able to provide the essential goods on a reasonable basis; and be it

FURTHER RESOLVED: That Council waives OMC Chapter 2.22 and 2.23 based on the criteria that (1) there is no other qualified responsive bidders, proposers, or prospective vendors or providers that comply with the requirements of Chapter 2.22 to perform the applicable contract, or the City would otherwise be unable to obtain essential goods or services on a reasonable basis; and (2) there is no other qualified responsive bidders, proposers, or prospective vendors or providers that comply with the requirements of Section 2.23.030 to perform the applicable contract, or the City would otherwise be unable to obtain the essential goods or services on a reasonable basis; and be it

FURTHER RESOLVED: That the City Administrator is authorized to execute a purchasing contract not to exceed \$1,000,000 per year for two (2) years, with one (1) additional two-year option at \$1,000,000 per year, for a total not-to-exceed \$4,000,000, without return to Council and in accordance with Specification No. 25-745-00/RFQ 339527 and the Contractor's Bid; and be it

FURTHER RESOLVED: That the City Administrator shall have the option to renew the purchasing contract for two (2) additional one-year terms in an amount not to exceed One Million dollars (\$1,000,000) per year without returning to Council, for a total four-year contract amount not to exceed Four Million dollars (\$4,000,000); and be it

FURTHER RESOLVED: That the City Administrator or designee is hereby authorized to extend the purchasing contract on a month-to-month basis after the initial extension options are exhausted until a new contract can be executed; and be it

FURTHER RESOLVED: That the City Administrator or designee is hereby authorized to pay outstanding invoices from Martin Marietta, Inc. in an amount up to \$250,000; and be it

FURTHER RESOLVED: The Council finds this action not a project under CEQA Guidelines §15378(b)(2); alternatively, the action is exempt under §15301; and be it

FURTHER RESOLVED: That the contract and amendments authorized hereunder shall be reviewed and approved as to form and legality by the City Attorney and a fully executed copy of the contract shall be placed on file in the office of the City Clerk.; and be it

FURTHER RESOLVED: That the contract and amendments authorized shall be reviewed and approved by the City Attorney for form and legality and shall be placed on file in the office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROWN, ~~FIFE~~, GALLO, ~~HOUSTON~~, ~~JENKINS~~, RAMACHANDRAN, UNGER, AND
WANG - 5

2 NOES - Fife, Houston

ABSENT - 0

ABSTENTION - 0

1 Excused: Jenkins

ATTEST:

ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California