

APPROVED AS TO FORM AND LEGALITY

DRAFT

CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO:

(1) WAIVE ADVERTISING AND COMPETITIVE BIDDING TO INCREASE THE EXISTING CONSTRUCTION CONTRACT WITH PACIFIC STATES ENVIRONMENTAL CONTRACTORS, INC., FOR THE 73RD AVENUE SOIL REMEDIATION PROJECT BY AN AMOUNT NOT-TO-EXCEED SIXTY-SIX THOUSAND, FIVE HUNDRED THREE DOLLARS AND FIFTY CENTS (\$66,503.50), BRINGING THE ORIGINAL CONTRACT AMOUNT OF TWO HUNDRED TWENTY-NINE THOUSAND NINE HUNDRED DOLLARS (\$229,900.00) TO A TOTAL CONTRACT AMOUNT OF TWO HUNDRED NINETY-SIX THOUSAND FOUR HUNDRED THREE DOLLARS AND FIFTY CENTS (\$296,403.50); AND

2) ADOPT APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS.

WHEREAS, on December 11, 2007, City Council approved the purchase of the vacant parcel at 710 73rd Avenue (Site) per Resolution 2007-0084 C.M.S.; and

WHEREAS, in 2003, two of the original property owners, Honeywell International Inc. and Purex Industries, Inc., entered into a 30-year agreement with the California Department of Toxic Substance Control (DTSC) to perform groundwater remediation, and be financially responsible for operations, maintenance, and reporting at the Site; and

WHEREAS, the agreement with DTSC and the original property owners requires that the City of Oakland (City) be responsible for any additional remediation work if there was further site contamination or if cleanup by the owners were deemed insufficient by DTSC; and

WHEREAS, in the early part of 2015, the State of California Regional Water Quality Control Board (RWQCB) discovered polychlorinated biphenyls (PCBs), a known carcinogen, being discharged into Arroyo Viejo Creek from the Site and 700 73rd Avenue belonging to Union

Pacific Railroad which required the City to perform a site characterization plan to investigate hazardous material impacts coming from the Site; and

WHEREAS, during the Fall of 2017, DTSC, RWQCB and the Environmental Protection Agency received the City's Removal Action Workplan (RAW) to excavate soils contaminated with PCBs and replace in-kind with clean soil at the Site; and

WHEREAS, on November 2018, the City Administrator awarded a contract in the amount of \$229,900.00 to Pacific States Environmental Contractors, Inc. (Contractor), the lowest responsive and responsible bidder, to perform remedial action at the Site with a Notice To Proceed with construction on March 11, 2019 contingent upon approval of the RAW by DTSC; and

WHEREAS, site remediation work has not commenced because staffing issues at DTSC have delayed their approval of the RAW since 2017; and

WHEREAS, final approval by DTSC of the City's RAW is anticipated in December 2023; and

WHEREAS, the unforeseen delay in commencing the work has resulted in additional reviews and supplemental mandates in 2022 from DTSC such as a land use covenant, interim specialized dust control plan, and special truck bed liners; and

WHEREAS, the Contractor's original contract amount in 2018 must be increased by change order to account for construction cost inflation and additional remediation measures mandated by DTSC from \$229,900.00 to \$296,403.50 in order to avoid further delays or disruption to the project; and

WHEREAS, re-advertising and re-bidding the project would further delay the project without assurance it would yield a lower price in this challenging bidding climate; and

WHEREAS, Oakland Municipal Code Title 2, Chapter 2.0, Article I, Section 2.04.050.I.5 provides an exception to this advertising and competitive bidding requirement when specifically authorized by the City Council after a finding and determination that it is in the best interests of the City; and

WHEREAS, there are sufficient funds for the increased contract amount in the 73rd Avenue Soil Remediation Project (1000165); Coliseum Tax Allocation Fund Series 2006B-T (5656) Project Management Organization (92270); Structures and Improvements Account (57311); Coliseum Program (SC12); 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 construction contract increase is exempt from CEQA pursuant to CEQA Guidelines Section 15162 and 15163 (no further environmental review required); Section

15060(c)(2) (no direct or reasonably foreseeable indirect physical change in the environment); Section 15061(b)(3) (no significant effect on the environment); Section 15183 (projects consistent with a community plan, general plan, or zoning), Section 15301 (existing facilities), Section 15302 (replacement or reconstruction), and Section 15309 (inspections), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance; 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 it is in the best interest of the City to waive further advertising and competitive bidding in accordance with Oakland Municipal Code Section 2.04.050.I.5 because of the reasons set forth above and in the staff report that accompanies this Resolution; and be it

FURTHER RESOLVED: That the City Council authorize the City Administrator to increase the original contract amount of \$229,900.00 to a total of \$296,403.50; and be it

FURTHER RESOLVED: That the City Administrator is hereby authorized to approve any subsequent amendments or modifications of the contract within the limitations of the project specifications, extensions, payment requests, applications for permits, agreements and execute all related actions for the completion of the said project without return to the City Council; and be it

FURTHER RESOLVED: That the plans and specifications prepared for this project, including any subsequent changes during construction, will be reviewed, and adopted by the Director of Oakland Public Works, or designee, are hereby approved; and be it

FURTHER RESOLVED: That the Council finds that the project is exempt from CEQA pursuant to CEQA Guidelines Section 15162 and 15163 (no further environmental review required); Section 15060(c)(2) (no direct or reasonably foreseeable indirect physical change in the environment); Section 15061(b)(3) (no significant effect on the environment); Section 15183 (projects consistent with a community plan, general plan, or zoning), Section 15301 (existing facilities), Section 15302 (replacement or reconstruction), and Section 15309 (inspections); each of the aforementioned provides a separate and independent basis for CEQA compliance; and be it

FURTHER RESOLVED: That the City Administrator or designee shall file a Notice of Determination/Exemption with the Clerk of the County of Alameda on the project named in this Resolution; 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 – FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND
PRESIDENT FORTUNATO BAS

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

Asha Reed
City Clerk and Clerk of the Council
of the City of Oakland, California