

# MISSING EXECUTED LEGISLATION FORM

Resolution / Ordinance Number: 90012  
City Council Meeting Date DEC 05 2023  
Agenda Item No. 6.31  
Recorded Vote 8 AYES

**Status of Resolution/Ordinance:**

- Filed without signature  No signed version will be filed  
 Council amended legislation  No signed version will be filed

**Author Contact Information:**

Department Public Works Department  
Contact Person/Ext. Tanisha Thomas X 1400

Notes (if any)

Filed without city attorney signature

**B.D**



2023 NOV -3 AM 11:49

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

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 73<sup>rd</sup> 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 73<sup>rd</sup> 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