

Resolution No. 2023-XXX N.C.S.
of the City of Petaluma, California

RATIFYING AWARD OF CONTRACT, ACCEPTING COMPLETION OF THE EMERGENCY RESTORATION OF THE ELLIS CREEK WATER RECYCLING FACILITY OUTFALL RELOCATION PROJECT AS PERFORMED BY COASTSIDE CONCRETE & CONSTRUCTION, INC., AND AUTHORIZING RELEASE OF THE 10% RETENTION AND FINDING THIS ITEM HAS BEEN ADDRESSED IN A PREVIOUSLY CERTIFIED ENVIRONMENTAL IMPACT REPORT AND NO SEPARATE, SUBSEQUENT, OR SUPPLEMENTAL REVIEW IS WARRANTED

WHEREAS, the City of Petaluma owns and operates the Ellis Creek Water Recycling Facility, located at 3890 Cypress Drive, Petaluma California; and

WHEREAS, the City of Petaluma awarded a contract to NBC Construction & Engineering, Inc., to complete the Ellis Creek Water Recycling Facility Outfall Relocation Project on August 8, 2022; and

WHEREAS, NBC Construction & Engineering Inc. was unable to complete the project as specified, and demobilized from the site ending on October 26, 2022; and

WHEREAS, the condition of the site on October 26, 2022, did not meet the requirements of the various permits for the project, San Francisco Regional Water Quality Control Board - Section 401 Water Quality Certification, California Department of Fish and Wildlife - Streambed Alteration Agreement, Army Corps of Engineers - Section 404 Nationwide Permit and Bay Conservation and Development Commission - Regionwide Permit 2; and

WHEREAS, restoration was required to maintain continued operation of the Ellis Creek Water Recycling Facility, to reduce the danger to the City's property and surrounding environment, and to bring the site conditions into compliance with permit requirements; and

WHEREAS, the immediacy of the restoration did not allow sufficient time to bid the project through standard procedures; and

WHEREAS, pursuant to Petaluma Municipal Code Section 4.04.050, the City's bidding requirements, "may be dispensed ... when an emergency requires that an order be placed with the nearest available source of supply; and

WHEREAS, Public Works staff deemed the stabilization work an emergency; and

WHEREAS, "It has been held that where competitive proposals work an incongruity and are unavailing as affecting the final result, or where competitive proposals do not produce any advantage, or where it is practically impossible to obtain what is required and to observe such form, competitive bidding is not applicable." (Graydon v. The Pasadena Redevelopment Agency (1980) 104 Cal. App. 3d 631, 636); and

WHEREAS, the initial project was put out to bid but nobody responded; and

WHEREAS, due to the narrow permit windows and the fact that nobody originally bid on the project, it would have been unavailing to place this emergency work out for bid and have the project be completed within the permit window; and

WHEREAS, City staff prepared a scope of services and obtained a quote from Coastside Concrete & Construction Inc. for the Emergency Restoration of Ellis Creek Water Recycling Facility Outfall (“Emergency Restoration Project”); and

WHEREAS, the quote submitted by Coastside Concrete & Construction Inc. was found by staff to be fair and reasonable and satisfies the requirements for the project; and

WHEREAS, staff has verified that Coastside Concrete & Construction, Inc., possess a valid California Contractor’s License, Class A (General Engineering Contractor), number 995338 that qualifies the Contractor to perform the project; and

WHEREAS, an Environmental Impact Report (EIR) for the ECWRF (State Clearinghouse #2001052089) was certified on August 5, 2002, by City Council as Resolution No. 2002-135, with addenda prepared in 2004, 2005, 2006, 2007, and twice in 2016; and

WHEREAS, on August 1, 2022, the City Council certified the Water Recycling Facility and River Access Improvements Environmental Impact Report Outfall Relocation Addendum, and adopted a Mitigation Monitoring Plan; and

WHEREAS, the FY 22/23 Capital Improvement Program (CIP) budget is sufficient to complete the Emergency Restoration Project; and

WHEREAS, the City of Petaluma reserves the right to seek reimbursement of funds due to the inability of NBC Construction & Engineering Inc. to complete the Ellis Creek Water Recycling Facility Outfall Relocation Project; and

WHEREAS, in accordance with the City of Petaluma Charter and Municipal Code, California Public Contract Code Section 21321, and other applicable laws, City staff executed two emergency purchase orders for the Emergency Restoration Project, with a time and materials combined total not to exceed \$98,576.40; and

WHEREAS, City staff have inspected the Emergency Restoration Project and determined that it has been completed in accordance with the emergency purchase order requirements; and

WHEREAS, Coastside Concrete & Construction, Inc., has submitted a total and final invoice in the amount of \$77,920.52.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Petaluma as follows:

1. Declares that the above recitals are to be true and correct and are incorporated into this resolution as findings of the City Council.
2. In accordance with the City of Petaluma Charter and Municipal Code, City Council finds that the restoration project constitutes emergency work and/or was unavailing to bid out the work pursuant to Graydon v. The Pasadena Redevelopment Agency (1980) 104 Cal. App. 3d 631 and therefore ratifies awarding the contract for the Restoration of the Ellis Creek Water Recycling Facility Outfall, to Coastside Concrete & Construction, Inc.
3. Coastside Concrete & Construction Inc.’s Emergency Restoration Project in the amount of \$77,920.52, the amount of the time and materials is accepted as complete.

4. The City Clerk is hereby authorized and directed to file a Notice of Completion concerning the Project with the Sonoma County Clerk's Office within ten (10) days of the date of this Resolution.
5. Staff is hereby authorized and directed to release all undisputed retention not subject to pending change orders within sixty (60) days of the date of this Resolution and in accordance with the terms of the emergency purchase orders, the Petaluma City Charter, California Public Contract Code Section 7107 and applicable law.

Under the power and authority conferred upon this Council by the Charter of said City.

REFERENCE:

I hereby certify the foregoing Resolution was introduced and adopted by the Council of the City of Petaluma at a Regular meeting on the 6th day of March 2023, by the following vote:

Approved as to
form:

City Attorney

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

City Clerk

Mayor