

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

**AUTHORIZING A CHANGE ORDER TO THE CONTRACT FOR THE COMMUNITY
BASEBALL DIAMOND PROJECT, PUBLIC CONTRACT NO. C14501607**

WHEREAS, City staff prepared construction bid documents and advertised for construction of the Petaluma Community Baseball Diamond Project (“Project”); and

WHEREAS, in accordance with the City of Petaluma Charter and Municipal Code, California Public Contract Code Section 20162, and other applicable law, City staff solicited bids for the Project; and

WHEREAS, bids were received and opened on March 17, 2022, in accordance with applicable law; and

WHEREAS, on April 18, 2022, the City Council awarded the contract to construct the Project to the lowest responsible bidder, O.C. Jones & Sons, Inc. (“OCJ”) for a base bid of \$4,838,311.00 (“Contract”); and

WHEREAS, during construction, a dispute arose as to OCJ’s performance of a portion of the work, in particular the lime treatment of soils; and

WHEREAS, OCJ halted work on the Project as the City considered the necessity of additional testing of lime treated soils to determine OCJ’s compliance with Contract requirements; and

WHEREAS, OCJ submitted a claim for \$198,862.29 in extra costs related to the delay to the Project and demanding and requesting a time extension of 79 days; and

WHEREAS, pursuant to its obligations under Public Contract Code section 9204, OCJ and City staff met and conferred; and

WHEREAS, City Staff issued a written statement determining that portions of OCJ’s claim were meritorious and other portions remained disputed; and

WHEREAS, City Staff and OCJ engaged in further negotiations to resolve the remaining disputed portion of OCJ’s claim; and

WHEREAS, settlement under the proposed terms would be the most expeditious and cost effective path forward to completing the Project; and

WHEREAS, compliance with the California Environmental Quality Act (CEQA) for this project was completed on October 18, 2010, when City Council adopted the Initial Study and

Mitigated Negative Declaration for East Washington Park (MND) and the MND included and analyzed the impacts of this project and determined that this project will not have a significant adverse effect on the environment.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Petaluma hereby:

1. Declares that the above recitals are true and correct and are incorporated into this Resolution as findings of the City Council.
2. Finds that staff has determined that the reasonable value of the undisputed portion of OCJ's claim is \$85,042.59.
3. Finds that the cost of continuing litigation of the disputed portion of OCJ's claim will likely exceed the amount of OCJ's compromise offer for the disputed portion of its claim.
4. Finds that settlement under the proposed terms will avoid the cost of further litigation which poses some risk of an adverse judgement against the City.
5. Finds that it is in the best interest of the City to resolve the entire dispute by issuing a lump sum payment of \$104,509.36 to OCJ and extending the Contract Time by eighty-three (83) working days to November 20, 2023 as stated in **Exhibit A**, Contract Change Order #3.
6. Approves the project budget to increase the Contract Price by \$104,509.36, and to extend the Completion Date to November 20, 2023.
7. Authorizes and directs the City Manager to execute a Change Order on behalf of the City of Petaluma to effectuate the foregoing.

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 7th day of August 2023, by the following vote:

Approved as to form:

City Attorney

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

City Clerk

Mayor

Exhibit A: Contract Change Order #3 (CCO #3)