

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

**RESOLUTION AUTHORIZING AWARD OF CONTRACT FOR THE OAK HILL MUNICIPAL
WELL PROJECT (C67501611) TO WELL INDUSTRIES INC.**

WHEREAS, the Restructured Agreement for Water Supply between the City of Petaluma and Sonoma Water establishes a local water production capacity goal for Petaluma; and

WHEREAS, the City of Petaluma has agreed to have sufficient local water supply in order to maintain the ability to deliver up to 40% of the maximum monthly water demand in case of emergency or drought; and

WHEREAS, in evaluating potential groundwater well locations, the Oak Hill Well Site was selected as the recommended well site for the City's next groundwater well project; and

WHEREAS, the City prepared an Initial Study/Proposed Mitigated Negative Declaration (IS/MND) for the project in accordance with the requirements of the California Environmental Quality Act of 1970, as amended ("CEQA"), and state and local guidelines implementing CEQA; and

WHEREAS, the City prepared a Mitigation Monitoring and Reporting Program (MMRP), attached hereto, to ensure compliance with the mitigation measures identified and proposed in the IS/MND; and

WHEREAS, the City adopted the IS/MND and MMRP for the project and approved the project at the September 12, 2022, City Council meeting; and

WHEREAS, in accordance with the City of Petaluma Charter and Municipal Code, California Public Contract Code Section 20162, and other applicable laws, City staff prepared construction bid documents and solicited bids for the Oak Hill Municipal Well Project; and

WHEREAS, the project was bid on Friday, July 28, 2023, and four (4) bids were received and opened on Thursday, August 17, 2023, in accordance with applicable law; and,

WHEREAS, the lowest responsible bid for the Project was submitted by Well Industries Inc. from Chico, CA for \$558,515.00; and

WHEREAS, it has been determined that Well Industries Inc., satisfies the bidding requirements for the Project; and

WHEREAS, NorCal Pump, the third lowest bidder filed a protest of Well Industries, Inc's (WII) bid, the protest letter is attached to the staff report as Exhibit 3; and

WHEREAS, NorCal's protest letter alleges three deficiencies in Well Industries Inc.'s bid. 1.) That Well Industries is not responsible 2.) That Well Industries did not notarize the Site Visit Affidavit and 3.) That Well Industry did not provide the Statement of Qualifications within 24 hours of being found the apparent low bidder; and

WHEREAS, in Section 18 of the Notice Inviting Bids document: the City expressly reserves its rights to evaluate bid compliance and to waive minor bidding errors: “The City reserves the right to reject any or all bids, to waive any minor irregularity in a bid, and to make awards to the lowest responsive, responsible bidder as it may best serve the interest of the City; and

WHEREAS, a public entity's discretion to waive inconsequential informalities or Irregularities, is well-established under California law: “[I]t is further well-established that a bid which substantially conforms to a call for bids may, though it is not strictly responsive, be accepted if the variance cannot have affected the amount of the bid or given the bidder an advantage or benefit not allowed other bidders or, in other words, if the variance is inconsequential.” (*Bay Cities Paving & Grading, Inc. v. City of San Leandro* (2014) 223 Cal.App.4th 1181, 1188 (“*Bay Cities*”)); and

WHEREAS, in general, issues of responsiveness are determined by looking exclusively at the face of the bid, (*Great West Contractors, Inc. v. Irvine Unif. Sch. Dist.* (2010) 187 Cal. App.4th 1425, 1453) and therefore, allegations that go beyond the face of the bid are generally not relevant for determining responsiveness; and

WHEREAS, allegations of non-responsiveness must be evaluated from a practical, rather than speculative or hyper-technical perspective, and based on the public interest: “They must also be viewed in light of the public interest, rather than the private interest of a disappointed bidder. It certainly would amount to a disservice to the public if a losing bidder were to be permitted to comb through the bid proposal...of the low bidder after the fact, [and] cancel the low bid on minor technicalities, with the hope of securing acceptance of his, a higher bid. Such construction would be adverse to the best interests of the public and contrary to public policy.” (*Bay Cities*, supra, at 1189; internal quotation marks omitted.); and

WHEREAS, in regards to NorCal Pump’s first allegation, Well Industries (WII) has provided information on projects from 2008 to 2023 showing multiple public works well drilling projects ranging from \$101,000 to \$618,000; and City staff contacted the awarding bodies for work that WII performed, who attested to satisfactory quality and completion of project; and WII maintains all the required licenses to perform the project. This demonstrates WII’s ability to perform the Project work, and therefore WII is found to be responsible; and

WHEREAS, in regards to NorCal Pump’s second allegation, the Site Visit Affidavit does not bind the signer and its purpose is to ensure that a contractor has visited the location of the Project and can ask questions related to location, while the document was not notarized it was signed by a representative of WII and whether or not WII Notarized the Site Visit Affidavit does not provide WII an advantage nor is there any evidence that this disadvantaged any of the other bidders; and

WHEREAS, in regards to NorCal Pump’s third allegation, the Statement of Qualifications only required, “The apparent low Bidder shall submit a Statement of Qualifications as specified herein as a submittal to the City within 24 hours of the bid opening.” and not providing this information timely is not a material deviation because it was only a requirement on the low bidder and not the other bidders, and therefore it could not have benefited WII or prejudiced the other bidders; and

WHEREAS, as Well Industries is responsible and because the alleged defects in their bid were immaterial, staff are recommending that the City Council reject NorCal Pump’s protest and award to WII as the low bidder; and

WHEREAS, as explained in the Protest Response Letters, attached to the staff report as attachments four and five the protest lacks merit as WII is responsible and the alleged defects did not provide an advantage to WII nor is there any evidence that it disadvantaged the other bidders; and

WHEREAS, the Public Works Director has found this project to be substantially complex due to the number of resources needed to complete the project including the number of days, workers, and labor; the tasks needed to complete the project; and specialty contractor work needed to complete the project; and the size and impact of the project. Therefore, this is a unique project that is not regularly performed and requires a higher retention amount than five percent.

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

1. Declares that the above recitals are true and correct and are incorporated into this Resolution as findings of the Petaluma City Council.
2. Finds that this Project has complied with the California Environmental Quality Act (“CEQA”) pursuant to Title 14, the California Code of Regulations (“CEQA Guidelines”) with City Council’s adoption of the IS/MND and MMRP for the project on September 12, 2022.
3. Finds that NorCal Pump’s bid protest lacks merit and rejects NorCal Pump’s bid protest for the reasons stated in both the City’s Protest Response Letter and Well Industries Inc’s Response Letter, Attachments 4 and attachments 5 respectively, which are incorporated into this Resolution.
4. Finds that this Project is substantially complex due to the number of tasks needed to complete the project; the number of resources and specialty contractor work needed to complete the project (including well drilling, number of days, workers, equipment, and labor); and the size and impact of the project (will require groundwater work, site restoration).
5. In accordance with the City of Petaluma Charter and Municipal Code, California Public Contract Code Section 20162, and other applicable law, waives any and all non-conformance in the bid of Well Industries Inc., for the Oak Hill Municipal Well Project (C67501611) and find the bid of \$558,515.00 to be the lowest, responsive bid and further finds that Well Industries Inc., is the lowest responsible bidder.
6. Awards the contract for the Oak Hill Municipal Well Project (C67501611) to Well Industries Inc., in the amount of \$558,515.00, the amount of the lowest responsive bid, conditioned on Well Industries Inc.’s timely execution of the project contract and submitting all required documents, including but not limited to, executed bonds, certificates of insurance, and endorsements, in accordance with the project bid documents.
7. Directs staff to issue a notice of award to Well Industries, Inc.
8. Authorizes and directs the City Manager to execute the project contract on behalf of the City of Petaluma upon timely submission by Well Industries Inc., of the signed project contract and all other required documents, including but not limited to, executed bonds, certificates of insurance, and endorsements, in accordance with the project bid documents.
9. Approves a construction contract contingency of \$145,485.

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 18 th day of September 2023, by the following vote:	Approved as to form:
		<hr/> City Attorney
AYES:		
NOES:		
ABSENT:		
ABSTAIN:		
ATTEST:	<hr/> City Clerk	<hr/> Mayor