

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

**RESOLUTION NO. 2023-107**

**RESOLUTION TO FIND THAT EMERGENCY CONDITIONS CONTINUE TO EXIST THAT DO NOT PERMIT A DELAY RESULTING FROM A COMPETITIVE SOLICITATION FOR BIDS; AND AUTHORIZE THE CITY MANAGER TO NEGOTIATE AND AWARD AN EMERGENCY CONSTRUCTION CONTRACT, TO A YET TO BE DETERMINED RESPONSIBLE CONTRACTOR, FOR THE LAKE CHABOT ROAD UPSLOPE REPAIR PROJECT, PROJECT NO. 2023.4020; TO AUTHORIZE THE CITY MANAGER TO NEGOTIATE AND APPROVE INDIVIDUAL CHANGE ORDERS UP TO 5% OF THE AWARDED CONTRACT AMOUNT; TO AUTHORIZE THE CITY MANAGER TO NEGOTIATE AND APPROVE CUMULATIVE CHANGE ORDERS UP TO 10% OF THE AWARDED CONTRACT AMOUNT**

**WHEREAS**, the 2022-2023 winter storms caused severe erosion to the upslope hillside of Lake Chabot Road depositing falling boulders onto the roadway below and exposing a structural threat to two residential Astor Court properties above the erosion site; and

**WHEREAS**, on April 3, 2023, the City Council by Resolution No. 2023-033 proclaimed a local emergency related to persistent storm damage; and

**WHEREAS**, on July 17, 2023, the City Council initially declared an emergency under California Public Contract Code Section 22050 such that the emergency will not permit a delay resulting from a competitive solicitation for bids, and that the action on July 17 was necessary to respond to the emergency; and

**WHEREAS**, since July 17, 2023, staff has continued to assess and negotiate with prospective contractors the scope of work necessary to abate and repair the emergency conditions that existed on July 17 during the initial declaration; and

**WHEREAS**, the City Engineer has determined the existing condition, if subjected to winter storms, will continue to endanger support to the above structures; and

**WHEREAS**, FEMA representatives have visited the erosion site, documented the scope of damage and proposed repair, and are anticipated to register the damage eligible for repair funds; and

**WHEREAS**, the schedule to complete repairs before potential 2023-2024 winter storms cannot be achieved with standard competitive solicitation and award procedures, therefore, an emergency continues to exist for the timely repairs to be completed; and

**WHEREAS**, in order to expedite the delivery of public projects on schedule and on budget, provide that subcontractors and workers are paid in a timely fashion, avoid as much as possible costly delay claims, and insure that the City completes projects and products that are to the City's highest standards, the City Council finds that providing authorization to negotiate and approve change orders is in the best interest of public health, safety and welfare.

**NOW, THEREFORE**, the City Council of the City of San Leandro does **RESOLVE** as follows:

- That the Recitals above are true and correct and adopted by the City Council; and
- That said City Council finds by four fifths vote that an emergency under Public Contract Code Section 22050 continues to exist, based on substantial evidence set forth here and in the minutes of its meeting, as well as the substantial evidence set forth in the July 17 initial declaration and the associated minutes of that meeting, and that the emergency will not permit a delay resulting from a competitive solicitation for bids, and that this action is necessary to respond to the emergency; and
- That the City Manager or her designee is authorized to negotiate and award an emergency construction contract, to a yet to be determined responsible contractor; and
- That the City Manager or her designee is authorized to negotiate and approve individual change orders up to a maximum of 5% of the awarded contract amount; and
- That the City Manager or her designee is authorized to negotiate and approve cumulative change orders up to a maximum of 10% of the awarded contract amount; and
- That the City Manager or her designee is authorized to take all actions necessary to effect the intent of this Resolution, including the repair or replacement of land or facilities as described here and in the attached staff report, and to take any directly related and immediate action required by this emergency, and to procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts.

Introduced by Councilmember \_\_\_\_\_ and passed and adopted this 5<sup>th</sup> day of September 2023, by the following vote:

**AYES:** (0)

**NOES:** (0)

**ABSENT:** (0)

**ATTEST:** \_\_\_\_\_  
 Kelly B. Clancy, CMC  
 City Clerk