

RESOLUTION NO. 2021-57

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA, AWARDING
THE CITY OF MARINA GENERAL BUILDING IMPROVEMENTS ON-CALL
CONTRACT TO WILLIAM A. THAYER CONSTRUCTION INC. OF SALINAS,
CALIFORNIA FOR AN ANNUAL CONTRACT AMOUNT NOT TO EXCEED
\$1,000,000.00, AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO
EXECUTE CONTRACT DOCUMENTS AND ALL WORK AND CHANGE ORDERS ON
BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE
CITY ATTORNEY

WHEREAS, at the regular meeting of May 21, 2019, the City Council of the City of Marina adopted Resolution No. 2019-54, receiving the proposed 2019-20 & 2020-21 Capital Improvement Program (CIP) budget, receiving staff presentation thereof, and providing direction towards the CIP budget adoption, and;

WHEREAS, currently the City does not have an on-call contract for building improvements to expedite the execution of the city-wide building maintenance, upgrades, and other related projects, and;

WHEREAS, this on-call contract is similar to a job order contract, which will augment the City staff, and provide a readily available work force to repair existing City's building infrastructure, conduct emergency repairs and new construction, as the City deems appropriate, and;

WHEREAS, the amount of work to be requested during the one year or optional additional twelve-month contract period cannot be well defined at the outset. Work shall be issued through Work Orders approved by the City Manager or his designee, and;

WHEREAS, At the regular meeting of April 20, 2021, the City Council of the City of Marina adopted Resolution No. 2021- 28, approving advertising and call for bids for the City of Marina General Building On Call Contract, and;

WHEREAS, On May 18, 2021, sealed bids were received, opened, and publicly read via live video feed for the City of Marina General Building Improvements On-Call Contract. Five (5) bids were received as follows: William A Thayer Constr. Inc of Salinas with a bid of \$11,193.00, Avila Brothers Inc of Monterey CA with a bid of \$17,388.67, Jacob Construction & Design, Inc of San Luis Obispo with a bid of \$27,920.32, Pueblo Construction Inc. of Santa Barbara with a bid of \$29,230.13 and Commercial Solution Group Inc. of Monterey CA with a bid of \$32,531.16, and;

WHEREAS, staff reviewed the five bids received and determined that William A. Thayer's bid of \$11,193.00 was the lowest responsible and responsive bid. The William A Thayer Constr. Inc. is a local company and has worked and successfully completed City projects in the past. William A Thayer Construction, Inc. is currently working with the City of Monterey on their job order contract similar to this on-call contract. Staff experience working with William A Thayer Construction Company is favorable and company's work quality is commendable, and;

WHEREAS, the hourly rates and percentages shown on the bid proposal will be used for estimating and issuance of work orders, and;

WHEREAS, the awarding of the proposed construction contract does not have fiscal impact and no minimum annual dollar value of work is guaranteed by the City during the terms of the contract. The William A Thayer Construction Inc. contract will be for a term of one (1) year with a not to exceed annual funding limit of \$1,000,000. The agreement will include an option for an additional one (1) year extension with a not to exceed annual funding limit of \$1,000,000. The total term of this agreement will not exceed two (2) years. The amount of work to be requested during the one year or optional additional year twelve-month contract period cannot be well defined at the outset. Work shall be issued through Work Orders, and;

WEREAS, Work Orders issued under this contract will be funded by its respective approved Capital Improvement Project funding. In the case of emergency repairs, staff will bring a budget appropriation recommendation to City Council for approval, and;

WHEREAS The action of awarding the contract for the City of Marina General Building Improvements on Call Contract is not a project under CEQA.

WHEREAS, each project that will be issued under the City of Marina General Building Improvements On-all Contract will require a CEQA determination and shall comply accordingly, and;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Marina does hereby:

1. Award the City of Marina General Building Improvements On-Call Contract to William A. Thayer Construction, Inc of Salinas, California for an annual contract amount not to exceed \$1,000,000, and an option for an additional one (1) year extension with a not to exceed annual funding limit of \$1,000,000 (**"EXHIBIT A"**), and,
2. Authorize the City Manager or his designee to execute contract documents and all work and change orders on behalf of the City subject to final review and approval by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 2nd day of June 2021, by the following vote:

AYES: COUNCIL MEMBERS: Medina Dirksen, Biala, Delgado

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: Burnett, Berkley

ABSTAIN: COUNCIL MEMBERS: None

ATTEST:

Bruce Delgado, Mayor

Anita Sharp, Deputy City Clerk

A9 FORM OF CONTRACT

Per Addendum No. 1

FOR

City of Marina General Building Improvements On Call Contract

THIS AGREEMENT, made and entered into this _____ day of _____ 20__, by and between The City of Marina, a municipal corporation of the State of California, hereinafter called "City of Marina" or "City" and _____ "hereinafter called Contractor,"

W I T N E S S E T H:

FIRST: Contractor hereby covenants and agrees to furnish and provide all labor, materials, tools, appliances, equipment, plant and transportation, and all other things required or necessary to be furnished, provided or done, and build, erect, construct and complete the work at the time and in the manner provided, and in strict accordance with the plans and specifications therefore, for the **City of Marina General Building Improvements On Call Contract** at the City of Marina, CA.

SECOND: It is expressly understood and agreed that this contract consists of the following documents, all of which are incorporated into this agreement and made a part hereof as fully and completely as if set forth herein verbatim, to wit:

- a. Signed and executed Bid and Proposal of Contractor, as accepted by City;
- b. Proposal Guaranty Bond;
- c. Performance and Payment Bond;
- d. Specifications for the project;
- e. Insurance;
- f. California Building Code and associated codes, latest edition adopted by the City;
- g. Standard Plans and Standard Specifications, Caltrans 2018 Edition;
- h. Plans, Technical Specifications, issued for each work orders;
- i. And this Agreement.

THIRD: That said Contractor agrees to receive and accept the following prices as full compensation for furnishing all materials and for doing all the work embraced and contemplated in this Agreement and as set forth in the Proposal adopted by the City of Marina, a true copy thereof hereto attached, also, for all loss or damage arising out of the nature of said work, or from the action of the elements or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until the acceptance thereof by the City of Marina and for all risk connected with the work, and for well and faithfully completing the work, and the whole thereof, in the manner and according to the said Plans and Specifications and the provisions of this Agreement, and the requirements of the Engineer under them, to wit:

The unit prices and percentages as set forth in the Proposal of said Contractor for the work to be constructed and completed under this Agreement. Work Orders are prepared and issued using the unit prices and percentages as set forth in the Proposal of said Contractor. This agreement is for a **not to exceed annual contract limit of one million dollars (\$1,000,000.00) and an option for an additional one (1) year extension with a not to exceed annual contract limit of one million dollars (\$1,000,000.00). The total term of this agreement will not exceed two (2) years. The amount of work to be requested during the one year or optional additional year contract period cannot be**

well defined at the outset. Work shall be issued through Work Orders. All issued Work Orders will become an Exhibit to this Agreement.

This Contract is for Contractor to perform "on-call" services or tasks and as such it is a standby agreement to assign work to the Contractor from time-to-time as needed and as appropriate. There is no minimum compensation for this engagement or for any work assigned pursuant to this On-Call Contract and no guarantee that any work will be assigned to Contractor during its term.

The undersigned Contractor further agrees to so plan the work and to prosecute it with such diligence that said work, and all of it, shall be completed on or before the expiration of the time specified in the Special Provisions after execution of the contract on behalf of the City of Marina and the receipt from the City of Marina of a notice to proceed with the work.

FOURTH: The City of Marina hereby promises and agrees with said Contractor to employ, and does hereby employ, said Contractor to provide the materials and to do the work according to the terms and conditions herein contained and referred to, for the price aforesaid, and hereby contracts to pay the same at the time, in the manner and upon the conditions set forth in the Specifications; and the said parties, for themselves, their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained.

FIFTH: No interest in this agreement shall be transferred by the Contractor to any other party, and any such transfer shall cause the annulment of this contract, so far as the City of Marina is concerned. All rights of action, however, for any breach of this contract are reserved to City.

SIXTH: Contractor shall keep harmless and indemnify the City of Marina, its officers and employees and agents, from all loss, damage, cost or expense that arises or is set up for infringement of patent rights of anyone for use by the City of Marina, its officers, employees or agents, of articles supplied by the Contractor under this contract, of which he is not entitled to use or sell. Contractor agrees to, at his own cost and expense, defend in court the City, its officers, agents and employees, in any action which may be commenced or maintained against them or any of them, on account of any claimed infringement of patent rights, arising out of this agreement.

SEVENTH: The Contractor agrees to immediately repair and replace all defective material and workmanship discovered within one year after acceptance of final payment by Contractor and to indemnify said City of Marina against all loss and damage occasioned by any such defect, discovered within said year, even though the damage or loss may not be ascertained until after the expiration thereof. Provided, however, that if such failure of the Contractor to perform should not, by reasonable diligence, be discoverable or discovered within said one year, then the obligation of the Contractor to repair and replace said defective material or workmanship shall continue until one year after the actual discovery thereof.

EIGHTH: The Contractor agrees at all times during the progress of the work to carry with insurance carriers approved by the City of Marina full coverage workmen's compensation and public liability insurance in the form and to the extent called for in Section 1.04 of Part C-Special Provisions. Edition. Such insurance policy shall contain an endorsement that the same shall not be canceled nor the amount of coverage be reduced until at least 30 days after receipt by the City of Marina by certified or registered mail of a written notice of such cancellation or reduction in coverage.

NINTH: Contractor agrees to comply with all applicable federal, state and municipal laws and regulations, including but not limited to California Labor Code Division 2, Part 7, Chapter 1.

TENTH:

- a. The City is subject to laws relating to public agencies which are part of this contract as though fully set forth herein.
- b. Contractor shall comply with City of Marina Municipal Code Chapter 13.02 Local Hiring for Public Works.
- c. Contractor shall comply with laws relating to the work.

ELEVENTH:

- a. To the full extent permitted by law, Contractor shall indemnify, defend (with independent counsel reasonably acceptable to the City) and hold harmless City, its Council, boards, commissions, employees, officials and agents ("Indemnified Parties" or in the singular "Indemnified Party") from and against any claims, losses, damages, penalties, fines and judgments, associated investigation and administrative expenses, and defense costs including but not limited to reasonable attorney's fees, court costs, expert witness fees and costs of alternate dispute resolution (collectively "Liabilities"), where same arise out of the performance of this Agreement by Contractor, its officers, employees, agents and sub-contractors, excepting only to the extent same result from the sole negligence, active negligence or willful misconduct of City, its employees, officials, or agents.
- b. All obligations under this section are to be paid by Contractor as incurred by City. The provisions of this Section are not limited by the provisions of sections relating to insurance including provisions of any worker's compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City, its employees and officials. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subcontractor, sub tier contractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance or subject matter of this Agreement. In the event Contractor fails to obtain such indemnity obligations from others as required here, Contractor agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder.
- c. If any action or proceeding is brought against any Indemnified Party by reason of any of the matters against which the Contractor has agreed to defend the Indemnified Party, as provided above, Contractor, upon notice from the City, shall defend any Indemnified Party at Contractor's expense by counsel reasonably acceptable to the City. An Indemnified Party need not have first paid for any of the matters to which it is entitled to indemnification in order to be so defended.
- d. This obligation to indemnify and defend City, as set forth herein, is binding on the successors, assigns, or heirs of Contractor and shall survive the termination of this Agreement or this Section.

TWELFTH:

ATTORNEY'S FEES. In the event of any controversy, claim or dispute relating to this Agreement or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney's fees and costs.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands the year and date first above written.

CONTRACTOR

CITY OF MARINA

By: _____

By: Layne P. Long, City Manager

Print Name: _____

Date: _____

Address: _____

Date: _____

APPROVED AS TO FROM:

By: _____

Robert Wellington, City Attorney

By: _____

Date: _____

Date: _____

ATTESTED:

By: _ Anita Shepherd-Sharp
Deputy City Clerk

Date: _____

Resolution No. 2020-_____

May 25, 2021

Item No. **8d(1)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of June 2, 2021

CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2021-, AWARDING THE CITY OF MARINA GENERAL BUILDING IMPROVEMENTS ON-CALL CONTRACT TO WILLIAM A. THAYER CONSTRUCTION INC. OF SALINAS, CALIFORNIA FOR AN ANNUAL CONTRACT AMOUNT NOT TO EXCEED \$1,000,000, AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE CONTRACT DOCUMENTS AND ALL WORK AND CHANGE ORDERS ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY

REQUEST:

It is requested that the City Council consider the following action:

1. Adopting Resolution No. 2021-, awarding the City of Marina General Building Improvements On-Call Contract to William A. Thayer Construction Inc. of Salinas, California for an annual contract amount not to exceed \$1,000,000, and an option for an additional one (1) year extension with a not to exceed annual funding limit of \$1,000,000 (“EXHIBIT A”), and,
2. Authorizing the City Manager or his designee to execute contract documents and all work and change orders on behalf of the City subject to final review and approval by the City Attorney.

BACKGROUND:

At the regular meeting of May 21, 2019, the City Council of the City of Marina adopted Resolution No. 2019-54, receiving the proposed 2019-20 & 2020-21 Capital Improvement Program (CIP) budget, receiving staff presentation thereof, and providing direction towards the CIP budget adoption. Several projects in the approved CIP are building related improvements (i.e. vertical infrastructure improvements).

At the regular meeting of April 7, 2020, the City Council of Marina adopted Resolution No. 2020-30, awarding Wallace Group the Program Management Services contract. This contract goal is to help the City deliver to completion CIP approved projects. Part of the tasking is the development of on call construction contracts, City of Marina Municipal Improvements On-Call Contract and General Building Improvements On-Call Contract.

The City Council of Marina adopted Resolution No. 2020-141 awarding the City of Marina Municipal Improvements On-Call Contract. This on-call contract is for the repair of the City’s infrastructures such as roadways, sewers, and related work.

This General Building On-Call contract is similar to the Municipal Improvements On-Call Contract and will augment the City staff and provide a readily available work force to repair and upgrade existing vertical infrastructures, including conducting emergency repairs and new construction as the City Council deems appropriate. In general, the work consists of, but is not limited to repair, replacement and construction of any structure, shelter, enclosure and miscellaneous associated work at such times and locations as required. On call contracts are utilized by neighboring agencies to respond to construction emergencies expeditiously and improve project delivery.

The Bid Schedule includes a Base Bid Schedule 1 to establish hourly rates for various construction trades, Base Bid Schedule 2 to establish the construction percentage mark up for general construction, sub-contractor, materials, equipment, and contractor's fee.

The Grand Total Bid is the sum of the base bid schedule 1 and base bid schedule 2. The Grand Total Bid amount will be used as a basis for determining the lowest responsive bid.

At the regular meeting of April 20, 2021, the City Council of the City of Marina adopted Resolution No. 2021-28, approving advertising and call for bids for the City of Marina General Building On Call Contract.

ANALYSIS:

On May 18, 2021, sealed bids were received, opened, and publicly read via live video feed for the City of Marina General Building Improvements On-Call Contract. Five (5) bids were received as follows:

Name of Company and Address	Base Bid Schedule 1	Base Bid Schedule 2	Grand Total Bid (BB 1+BB 2)
William A Thayer Constr. Inc Salinas, CA	\$ 3,693.00	\$ 7,500.00	\$ 11,193.00
Avila Brothers Inc. dba Avila Construction Co. Monterey, CA	\$ 4,388.67	\$ 13,000.00	\$17,388.67
Jacob Construction & Design, Inc. San Luis Obispo, CA	\$2,920.32	\$25,000.00	\$27,920.32
Pueblo Construction Inc. Santa Barbara, CA	\$3730.13	\$25,500.00	\$29,230.13
Commercial Solutions Group Inc. dba CSG Inc. Monterey, CA	\$4,531.16	\$28,000.00	\$32,531.16

Staff reviewed the five bids received and determined that William A. Thayer's bid of \$11,193.00 was the lowest responsible and responsive bid. The William A Thayer Constr. Inc. is a local company and has worked and successfully completed city projects in the past. William A Thayer Construction, Inc. is currently working with the City of Monterey on their job order contract similar to this on-call contract. Staff experience working with William A Thayer Construction Company is favorable and company's work quality is commendable.

The unit prices and percentages on the William A Thayer's bid are comparable to those of the City of Monterey job order contract unit prices and percentages and meeting the current County of Monterey prevailing wage rates.

The hourly rates and percentages shown on the bid proposal will be used for estimating and issuance of work orders.

Having an on-call contractor to perform General Building Improvements will help the City quickly respond to construction emergencies, deliver urgent projects on time, and possibly save costs. However, this on-call contract does not give the contractor exclusive rights to perform all work done by the City and the City retains the right to solicit bids for building improvements projects.

FISCAL IMPACT:

The awarding of the proposed construction contract does not have fiscal impact and no minimum annual dollar value of work is guaranteed by the City during the terms of the contract.

The construction contract with William A Thayer Construction, Inc will be awarded for a term of one (1) year with a not to exceed annual funding limit of \$1,000,000. The agreement will include an option for an additional one (1) year extension with a not to exceed annual funding limit of \$1,000,000. The total term of this agreement will not exceed two (2) years. The amount of work to be requested during the one year and optional year extension contract period cannot be well defined at the outset. Work shall be issued through Work Orders approved by the City Manager or his designee.

Work orders issued under this contract will be funded by respective approved Capital Improvement Project funding. In the case of emergency repairs, staff will bring a budget appropriation recommendation to City Council for approval.

California Environmental Quality Act (CEQA)

The action of awarding the contract for the City of Marina General Building Improvements on Call Contract is not a project under CEQA.

Each project that will be issued under the City of Marina General Building Improvements on Call Contract will require a CEQA determination and shall comply accordingly.

CONCLUSION:

Having the City of Marina General Building Improvements On-Call Contract in place will increase the City's efficiency in project delivery. Therefore, the request is submitted for City Council consideration and action.

Respectfully submitted,

Elvira Morla-Camacho, P.E., QSD
Project Management Services
Wallace Group

REVIEWED/CONCUR:

Brian McMinn, P.E., P.L.S.
Public Works Director/City Engineer
City of Marina

Layne P. Long
City Manager
City of Marina