

RESOLUTION NO. 2017-77

A RESOLUTION OF CITY COUNCIL OF THE CITY OF MARINA RESCINDING THE AWARD OF A LANDSCAPE MAINTENANCE SERVICES CONTRACT TO LEONARD ANTHONY VALENTI INCORPORATED DBA COMMERCIAL ENVIRONMENTAL LANDSCAPE; AND AWARDING THE LANDSCAPE MAINTENANCE SERVICES CONTRACT TO MIKE DAVIS LANDSCAPE SERVICES OF MORGAN HILL, CALIFORNIA AS THE LOWEST RESPONSIBLE BIDDER; AUTHORIZING THE FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES; AND AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACT DOCUMENTS ON BEHALF OF CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY

WHEREAS, at the special meeting of October 23, 2012, the City Council adopted Resolution No. 2012-164, determine that New Image Landscaping with a bid of \$17,520, is the lowest responsive and responsible bidder for the contract for landscape maintenance services and on that basis awards the contract for those services to New Image Landscaping of Fremont, California for the Monterey Bay Estates, Seabreeze, Marina Woods, and Cypress Cove II Landscape and Lighting Maintenance Districts and the Locke Paddon Community Facilities District and authorizing City Manager to execute the Agreement on behalf of City subject to final review and approval by the City Attorney, and;

WHEREAS, at the regular meeting of August 6, 2014, the City Council adopted Resolution No. 2014-90, approving Amendment No. 1 to the Agreement between City of Marina and New Image Landscape Company of Fremont, California, to extend the amended contract two years and decrease the compensation payable to the Contractor by \$3,240.00, and;

WHEREAS, at the regular meeting of October 21, 2014, the City Council adopted Resolution No. 2014-113, approving Amendment No. 2 to the Agreement between City of Marina and New Image Landscape Company of Fremont, California, to increase the compensation payable to the Contractor by \$6,540 for landscape maintenance of the Marina Branch Library, and;

WHEREAS, at the regular meeting of February 17, 2016, the City Council adopted Resolution 2016-22, approving Amendment No. 3 to the Agreement between City of Marina and New Image Landscape Company of Fremont, California, to extend the contract agreement to the end of Fiscal Year 16/17 and increase the compensation payable to the Contractor by \$660, and;

WHEREAS, at the regular meeting of December 6, 2016, the City Council adopted Resolution 2016-148, authorizing advertising and call for bids for landscape maintenance services of three (3) landscape maintenance assessment districts, one (1) community facility district and the Marina Branch Library, and;

WHEREAS, on April 20, 2017, sealed bids were received, opened and publicly read for the landscape maintenance services contract. Three bids were received as follows: Commercial Environment Landscape (\$20,280/annually), Mike Davis Landscape Services (\$21,024/annually), New Image Landscape Company (\$24,720/annually) , and;

WHEREAS, at the regular meeting of May 2, 2017, the City Council adopted Resolution 2017-41, awarding the landscape maintenance services contract to Leonard Anthony Valenti Incorporated dba Commercial Environmental Landscape (CEL) as the lowest responsive and responsible bidder, and;

WHEREAS, the lowest bidder at the time of award was CEL with a bid of \$20,280. This bid was reviewed and found to be responsive and staff has not identified issues concerning Commercial Environmental Landscape's responsibility to perform the work of the contract, and;

WHEREAS, per Section 8 of the Contract Agreement, the contractor agrees to comply with the insurance requirements as detailed in Section 7-1.06 of the Standard Specifications, State of California, 2010 Edition. CEL has not provided the required insurance coverage to date, and;

WHEREAS, per section A2.10 of the Contract Specifications, the City provided a letter to CEL on July 21, 2017 rescinding the contract award to CEL for failure to furnish the insurance certificates requested as outlined in the Specifications, and;

WHEREAS, therefore staff recommends that the City Council, after consideration, find Mike Davis Landscape Services the lowest responsive and responsible bidder and on that basis award the contract for landscape maintenance services for the three Landscape Maintenance Districts, the one Community Facilities District and the Marina Branch Library to Mike Davis Landscape Services of Morgan Hill, California, and;

WHEREAS, should the City Council approve this request, Section A2.10 of the Contract Specifications allows for the retention of the proposal guarantee of \$2,028 provided by CEL as liquidated damages for the cost of rescinding the contract and awarding to the next lowest responsive and responsible bidder, and;

WHEREAS, the cost of the maintenance services will be paid from assessments imposed on each of the three Landscape Maintenance Districts, the one Community Facilities District and the Marina Branch Library, whose approved FY 2017/18 Budgets contain appropriations for this purpose. Sufficient funds are available in all Special Districts to cover the difference in the costs between the two lowest bids.

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

1. Rescind award of the Landscape Maintenance Services Contract to Leonard Anthony Valenti Incorporated dba Commercial Environmental Landscape of Gilroy, California; and
2. Award the Landscape Maintenance Services Contract to Mike Davis Landscape Services of Morgan Hill, California as the lowest responsible bidder; and
3. Authorize the Finance Director to make necessary accounting and budgetary entries; and
4. Authorize the City Manager to execute contract documents on behalf of the City subject to final review and approval by the City Attorney.

Resolution No. 2017-77

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PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 2nd day of August 2017, by the following vote:

AYES: COUNCIL MEMBERS: Amadeo, Morton, O'Connell, Brown, Delgado

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

LANDSCAPE MAINTENANCE SERVICES AGREEMENT

**CYPRESS COVE II, SEABREEZE, MONTEREY BAY ESTATES, LOCKE PADDON
COMMUNITY FACILITIES DISTRICT, MARINA BRANCH LIBRARY**

THIS AGREEMENT, made and entered into this _____ 2017 by and between the City of Marina, a municipal corporation of the State of California, hereinafter called "City of Marina" or "City" and Mike Davis Landscape Services of Morgan Hill, California, "Contractor,"

W I T N E S S E T H:

Landscape Maintenance Services

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 **PROJECT** adopted by the Council of the City of Marina on _____.

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. Accepted Proposal;
- b. Proposal Guaranty Bond;
- c. Contract Agreement;
- d. Performance Bond;
- e. Bond for Labor and Material;
- f. Proposal Supplement Including an Experience Statement and List of Proposed Subcontractors;
- g. City of Marina Specifications for the Landscape Maintenance Services;
- h. State of California Department of Transportation Standard Specifications;
- i. City of Marina Standard Specifications, Design Standards, Standard Plans (2010 Edition); and
- j. Insurance.

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 prices as set forth in the Proposal of said Contractor for the work to be constructed and completed under this Agreement, which prices shall be considered as though repeated herein.

Twenty-One Thousand and twenty-four dollars, annually

(\$ 21,024.00/ annually, payable monthly in the amount of \$1,752.00 each month in accordance with the Contractor's A 3 Proposal Form (Page A.3-1) attached hereto.)

Unless otherwise provided, the term of this Agreement shall begin on the date of its full execution and shall expire on June 30, 2019, unless extended by amendment or terminated earlier as provided in the City of Marina Specifications for the Landscape Maintenance Services.

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 7-1.06 of the Standard Specifications, State of California, 2010 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 regarding Public Works and Public Agencies.

TENTH:

Local hiring for public works: Unless such provision would conflict with a state or federal law or regulation applicable to a particular contract for public works or improvement, all city contracts for public works or improvement subject to competitive bidding requirements shall contain provisions pursuant to which the contractor promises to make a good faith effort, to include but not limited to requesting the assistance of local labor union hiring halls or other community resources designated by the city, to hire qualified individuals who are residents of the Monterey Bay area in sufficient number so that no less than eighty percent of the contractor's total construction work force, including any subcontractor work force, measured in labor work hours, is composed of Monterey Bay area residents.

Required documentation: The contractor shall keep an accurate record on a standardized form showing the name, place of residence, type classification, hours employed, proof of journey person or apprenticeship status, per diem wages and benefits of each person employed by the contractor, and the contractor's subcontractors, on the specific public works project, including full-time, part-time, permanent and temporary employees and make such records available to the city, upon request, within five working days. The contractor shall keep, and provide to the city, on forms acceptable to the city, an accurate record documenting compliance with this chapter. Such records shall include: a listing by name and business address of all local recruitment sources contacted by the contractor, the date of the local recruitment contact and the identity of the person contacted, the trade and classification and number of hire referrals requested, the number of local hires made as a result of the contact, the identity and business address of the person(s) hired pursuant to the contact.

Forms submitted under penalty of perjury: All forms required under this chapter shall be attested to as true as to the information set forth therein and shall be submitted under penalty of perjury.

Binding on subcontractors: The good-faith local hiring provisions of this chapter shall bind the contractor both with respect to persons hired directly by the contractor and to all persons hired by the contractor's subcontractors. The contractor shall be responsible for assuring that all subcontractors document such compliance by submitting the forms required by Section 13.02.020 to the city. The contractor shall include the following language and a copy of this chapter as may be amended from time-to-time in all contracts with contractor's subcontractors:

"This contract is for labor or materials for a City of Marina public works project. As a subcontractor on a City project, you are required to comply with all of the requirements of the Marina local hiring preference ordinance, Marina Municipal Code, Chapter 13.02, attached hereto and incorporated herein by reference. Failure to comply with the provisions of the local hiring preference ordinance may subject the contractor and/or subcontractor to criminal prosecution and shall subject the contractor and/or subcontractor to disqualification from eligibility for City of Marina contracts."

ELEVENTH: With the exception that this section shall in no event be construed to require indemnification by the Contractor to a greater extent than permitted by law, the Contractor shall defend, indemnify and save harmless the City of Marina, including its officers, directors, agents (excluding agents who are design professionals), and employees, and each of them, from any and all claims, demands, causes of action, damages, costs, expenses, actual attorney's fees, losses or liabilities, in law or in equity, of every kind and nature whatsoever, arising out of or in connection with the Contractor's performance of this contract for:

A. Bodily injury, including but not limited to, bodily injury, sickness or disease, emotional injury or death to persons, including, but not limited to, the public, any employees or agents of the Contractor, the City of Marina or any other contractor; and

B. Damage to property of anyone including loss of use thereof, caused or alleged to be caused in whole or in part by any negligent or otherwise legally actionable act or omission of the Contractor or anyone directly or indirectly employed by the Contractor or anyone for whose acts the Contractor may be liable.

Nothing contained in this section shall be construed to require any such insurer which has named the City as additional insured to indemnify the City for losses attributable to the active negligence or willful misconduct of the City of Marina, its officers, agents, independent contractors or employees who are directly responsible to the City.

TWELVTH: 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.

THIRTEENTH: The City is subject to laws relating to public agencies which are part of this contract as though fully set forth herein. Contractor shall comply with laws relating to the work.

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:_____

Print Name: Mike Davis, President

Layne P. Long, City Manager

Date:_____

Address: _____

Date:_____

APPROVED AS TO FORM:

By:_____

Robert Wellington, City Attorney

By:_____

Date:_____

Date:_____

ATTESTED:

Anita Shepherd-Sharp, Deputy City Clerk

Date:_____

Resolution No. 2017-____

July 20, 2017

Item No. **8g(2)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting of
August 2, 2017

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2017-,
RESCINDING THE AWARD OF A LANDSCAPE MAINTENANCE
SERVICES CONTRACT TO LEONARD ANTHONY VALENTI
INCORPORATED DBA COMMERCIAL ENVIRONMENTAL
LANDSCAPE OF GILROY , CALIFORNIA; AND AWARDING THE
LANDSCAPE MAINTENANCE SERVICES CONTRACT TO MIKE
DAVIS LANDSCAPE SERVICES OF MORGAN HILL, CALIFORNIA AS
THE LOWEST RESPONSIBLE BIDDER; AUTHORIZING THE
FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND
BUDGETARY ENTRIES; AND AUTHORIZING THE CITY MANAGER
TO EXECUTE CONTRACT DOCUMENTS ON BEHALF OF CITY
SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY
ATTORNEY**

REQUEST:

It is recommended that the City Council:

1. Adopting Resolution No. 2017-, rescinding award of the Landscape Maintenance Services Contract to Leonard Anthony Valenti Incorporated dba Commercial Environmental Landscape of Gilroy, California; and
2. Awarding the Landscape Maintenance Services Contract to Mike Davis Landscape Services of Morgan Hill, California as the lowest responsible bidder; and
3. Authorizing the Finance Director to make necessary accounting and budgetary entries; and
4. Authorizing the City Manager to execute contract documents on behalf of the City subject to final review and approval by the City Attorney.

BACKGROUND:

At the special meeting of October 23, 2012, the City Council adopted Resolution No. 2012-164, determine that New Image Landscaping with a bid of \$17,520, is the lowest responsive and responsible bidder for the contract for landscape maintenance services and on that basis awards the contract for those services to New Image Landscaping of Fremont, California for the Monterey Bay Estates, Seabreeze, Marina Woods, and Cypress Cove II Landscape and Lighting Maintenance Districts and the Locke Paddon Community Facilities District and authorizing City Manager to execute the Agreement on behalf of City subject to final review and approval by the City Attorney.

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On April 20, 2017, sealed bids were received, opened and publicly read for the landscape maintenance services contract.

Three bids were received as follows:

- | | |
|------------------------------------|-------------------|
| • Commercial Environment Landscape | \$20,280/annually |
| • Mike Davis Landscape Services | \$21,024/annually |
| • New Image Landscape Company | \$24,720/annually |

At the regular meeting of May 2, 2017, the City Council adopted Resolution 2017-41, awarding the landscape maintenance services contract to Leonard Anthony Valenti Incorporated dba Commercial Environmental Landscape (CEL) as the lowest responsive and responsible bidder.

ANALYSIS:

The lowest bidder at the time of award was CEL with a bid of \$20,280. This bid was reviewed and found to be responsive and staff has not identified issues concerning Commercial Environmental Landscape's responsibility to perform the work of the contract.

Per Section 8 of the Contract Agreement, the contractor agrees to comply with the insurance requirements as detailed in Section 7-1.06 of the Standard Specifications, State of California, 2010 Edition. CEL has not provided the required insurance coverage to date.

Per section A2.10 of the Contract Specifications, the City provided a letter to CEL on July 21, 2017 rescinding the contract award to CEL for failure to furnish the insurance certificates requested as outlined in the Specifications.

Therefore staff recommends that the City Council, after consideration, find Mike Davis Landscape Services the lowest responsive and responsible bidder and on that basis award the contract for landscape maintenance services for the three Landscape Maintenance Districts, the one Community Facilities District and the Marina Branch Library to Mike Davis Landscape Services of Morgan Hill, California.

FISCAL IMPACT:

Should the City Council approve this request, Section A2.10 of the Contract Specifications allows for the retention of the proposal guarantee of \$2,028 provided by CEL as liquidated damages for the cost of rescinding the contract and awarding to the next lowest responsive and responsible bidder.

The cost of the maintenance services will be paid from assessments imposed on each of the three Landscape Maintenance Districts, the one Community Facilities District and the Marina Branch Library, whose approved FY 2017/18 Budgets contain appropriations for this purpose. Sufficient funds are available in all Special Districts to cover the difference in the costs between the two lowest bids.

CONCLUSION:

This request is submitted for City Council consideration and possible action.

Edrie Delos Santos, P.E.
Senior Engineer, Engineering Division
Public Works Department
City of Marina

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

