

RESOLUTION NO. 2023-112

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING A MAINTENANCE SERVICES AGREEMENT BETWEEN THE CITY OF MARINA AND DELLA MORA, SHEET METAL & AIR CONDITIONING, INC. TO REPLACE THE PUBLIC SAFETY BUILDING HVAC UNIT, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENTS ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY.

WHEREAS, the roof mounted heating unit for the Public Safety building has failed and needs to be replaced to meet the needs of the City's police and fire staff who work in the building; and

WHEREAS, funding was allocated in the current Capital Improvement Program (CIP) budget to address this need; and

WHEREAS, Della Mora Sheet Metal & Air Conditioning provided the lowest of three quotes to perform the work at a cost of \$56,268; and

WHEREAS, Della Mora Sheet Metal & Air Conditioning holds all appropriate licenses to perform this work and has performed HVAC services for City facilities in the past with good results; and

WHEREAS, funds in the amount of \$70,000 have been allocated in the current CIP budget to cover the cost of the replacement (project APF2310); and

WHEREAS, replacement of existing facilities is an exemption per Section 15301 of the California Environmental Quality Act (CEQA).

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Marina does hereby adopting resolution No. 2023-:

1. Approving a maintenance services agreement between the City of Marina and Della Mora Sheet Metal & Air Conditioning, Inc. of Marina, California to replace the public safety building heating, ventilating, and air conditioning (HVAC) unit **(EXHIBIT A)**; and
2. Authorizing the City Manager to execute the agreements on behalf of the City subject to final review and approval by the City Attorney; and

PASSES AND ADOPTED, by the City Council of the City of Marina at a regular meeting duly held on the 7th day of November 2023 by the following vote:

AYES, COUNCIL MEMBERS: Visscher, Biala, Medina Dirksen, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: McCarthy

ABSTAIN, COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

**AGREEMENT FOR HVAC MAINTENANCE SERVICE
BETWEEN THE CITY OF MARINA
AND DELLA MORA, SHEET METAL & AIR
CONDITONING, INC.**

THIS AGREEMENT ("Agreement" or "Contract") is made and entered into on _____

2023 by and between the City of Marina, a California charter city, hereinafter referred to as "CITY" and Dela Mora, Sheet Metal & Air Conditioning, Inc., a California corporation, hereinafter referred to as CONTRACTOR. If there is a conflict among any contract documents the provisions of this Agreement between City and Contractor shall take precedence.

WITNESSETH

WHEREAS, CITY desires to employ the services of CONTRACTOR to provide services as described in CONTRACTOR's Proposal, dated November 11, 2023, and attached hereto as **Exhibit A** and by this reference made a part hereof.

WHEREAS, CONTRACTOR has provided a quote to perform the services referenced and described in Exhibit A.

NOW, THEREFORE, for, in consideration of the promises and other good and valuable considerations, and subject to the terms hereinafter contained, CITY and CONTRACTOR agree as follows:

1. SCOPE OF WORK

CONTRACTOR shall perform the Work described in Exhibit A in accordance with the Terms and Conditions of this Contract. The CONTRACTOR and any subcontractor must be registered with the Department of Industrial Relations (DIR) and notice is provided that this contract is subject to compliance monitoring and enforcement by the DIR.

2. TIME OF PERFORMANCE

CONTRACTOR shall commence Work immediately upon written notice to proceed by CITY. This Agreement will continue in effect for twelve months from the date first written above unless either CITY or CONTRACTOR provides not less than 60 days' prior written notice of itsintention to terminate the Agreement.

Time is of the essence in the performance of CONTRACTOR'S obligations under this Contract.

City of Marina

AGREEMENT BETWEEN CITY AND CONTRACTOR

3. COMPENSATION AND PAYMENT

- a. Payment. In consideration for materials furnished and services rendered, CITY shall pay CONTRACTOR in accordance with the provisions specified in Exhibit A.

Contract Price - CITY shall pay CONTRACTOR as full consideration for faithful performance of this Contract the following amount which shall be the "Contract Price" \$56,268.00. Extraordinary Work will be approved in advance and in writing by the CITY and charged in on a "time and materials" basis.

CONTRACTOR shall make his/her records available to the City upon request in order to substantiate any additions or deductions to the Contract Price related to Contractor's costs.

- b. Prevailing Wage Rates.

(1) As required by §§1770 et seq. of the California Labor Code, the CONTRACTOR shall pay not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations. Copies of such prevailing rate per diem wages are on file at the office of the CITY, which copies shall be made available to any interested party on request. The CONTRACTOR shall post a copy of such determination.

{2) As provided in §1775 of the California Labor Code, the CONTRACTOR shall, as a penalty of the CITY, forfeit \$50.00 for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director for such work or craft in which such worker is employed for any public work or craft in which such worker is employed for any public work done under the CONTRACTOR by it or by any subcontractor under it.

- c. Retention and Inspection of Payroll Records. As required under the provisions of §1776 of the California Labor Code, each CONTRACTOR and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day

City of Marina

AGREEMENT BETWEEN CITY AND CONTRACTOR

and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. The payroll records of the CONTRACTOR and each subcontractor shall be certified and shall be submitted to directly to the Labor Commissioner in accordance with the direction of the DIR (when thee-reporting system is active and available). Records must be available for inspection at all reasonable hours at the principal office of the CONTRACTOR under certain specified conditions.

- d. Apprentices. Attention is directed to §§1777.5, 1777.6, and 1777.7 of the California Labor Code and Title 8, California Code of Regulations §§200 et seq. To insure compliance and complete understanding of the law regarding apprentices, and specifically the required ratio thereunder, the CONTRACTOR (and subcontractors) should, where some question exists, contact the Division of Apprenticeship Standards prior to commencement of the work. Responsibility for compliance with this paragraph lies with the CONTRACTOR. The CITY'S policy is to encourage the employment and training of apprentices on its public works contracts as may be permitted under local apprenticeship standards.
- e. Working Hours. The CONTRACTOR shall comply with all applicable provisions of §§1810 to 1815, inclusive, of the California Labor Code relating to working hours. The CONTRACTOR shall, as a penalty to the CITY, forfeit \$25.00 for each worker employed in the execution of the Contract by the CONTRACTOR or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one (1) calendar week, unless such worker receives compensation for all hours worked in excess of eight (8) hours at no less than 1-1/2 times the basic rate of pay.

4. INTERPRETATION

This Contract, together with the Exhibits attached hereto, and all documents, drawings, specifications and instruments specifically referred to herein and made a part hereof shall constitute the entire Contract between the parties, and no other proposals, conversations, bids, memoranda, or other matter shall vary, alter, or interpret the terms hereof. The captions in this Contract are for the convenience of the parties in identification of the several provisions and shall not constitute a part of this Contract nor be considered interpretative thereof.

Failure of either party to exercise any opinion, right or privilege under this Contract or to demand compliance as to any obligation or covenant of the other party shall not constitute a waiver of any such right, privilege or option, or of the performance thereof, unless waiver is expressly required in such event or is evidenced by a properly executed instrument.

City of Marina

AGREEMENT BETWEEN CITY AND CONTRACTOR

5. INDEPENDENT CONTRACTOR

- a. In accordance with the provisions of California Public Contract Code §3300, the CITY has determined that the CONTRACTOR possesses Valid Class C-4, C-20, and C-43 Contractor licenses at the time that this Contract is executed. Failure to possess the specified license shall render this contract void.
- b. CONTRACTOR shall be an independent CONTRACTOR in all its activities hereunder. CONTRACTOR is not to be considered CITY'S employee for any purpose, including but not limited to the accrual of any employee benefits. CONTRACTOR is not authorized to represent CITY or otherwise bind CITY in any dealings between CITY and any third parties.
- c. All employees furnished by CONTRACTOR to perform the work hereunder shall be deemed to be CONTRACTOR'S employees exclusively and shall be paid by CONTRACTOR for all services in this connection, including but not limited to the accrual of any employee benefits. CONTRACTOR shall be responsible for all obligations and reports covering Social Security, Unemployment Insurance, Workman's Compensation, Income Tax and other reports and deductions required by any applicable State or Federal law.
- d. The work to be performed by CONTRACTOR shall be under the general direction of CITY'S Public Works Director/City Engineer or his/her designee and shall be limited to the Scope of Work of this Contract. CITY may direct CONTRACTOR as to what work is to be done, the sequence in which it is to be performed and a schedule indicating start dates and/or completion dates, but shall not be responsible for or direct the means, methods or equipment whereby the work is to be accomplished.

6. SUBCONTRACTS AND ASSIGNMENTS

- a. Subcontractor. CONTRACTOR shall not assign or subcontract any portion of the services required under this Contract without prior written authorization of CITY. City is entering into this Contract in reliance upon the stated experience and qualifications of the Contractor and any subcontractors. Accordingly, Contractor shall not assign, hypothecate or transfer this Contract or any interest therein directly or indirectly, by operation of law or otherwise without the prior written consent of City. Any assignment, hypothecation or transfer without said consent shall be null and void, and shall be deemed a substantial breach of contract and grounds for default in addition to any other legal or equitable remedy available to the City.
- b. Assignment of Antitrust Actions in Awarding Body. In accordance with §4551 of the Government Code, the CONTRACTOR and subcontractors shall conform to the following requirements. In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, the CONTRACTOR or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 commencing with §16700 of Part 2 of Division 7 of the Business and Professions Code).

7. TERMINATION

- a. CITY, or CONTRACTOR with sixty days' written notice, may terminate this Contract without cause at any time. Any termination shall become effective in the manner specified in the Notice of Termination and shall be without prejudice to any claim, which CITY may have against CONTRACTOR or CONTRACTOR may have against CITY. CITY shall reimburse CONTRACTOR only for the work performed to date of termination, and for expenses which were reasonably incurred and necessary costs of termination and protection of property.
- b. In the event of a termination for default of CONTRACTOR, CONTRACTOR shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the amount to be paid on this Contract exceeds the cost of finishing the Work, including the cost for additional managerial and administrative services and any other costs and damages CITY may suffer, that excess amount shall be paid to CONTRACTOR. If the expense, compensation, costs, and damages exceed any unpaid balance, CONTRACTOR and its sureties, if any, shall be liable for and shall pay the difference to CITY.

- c. Notwithstanding the above, the total amount due CONTRACTOR upon termination will not exceed the total compensation stated in Exhibit A.

8. FORCE MAJEURE

CONTRACTOR shall not be liable for failure or delay in delivery of services or delivery of goods due to Acts of God; war; civil commotion; labor disputes or strikes (including labor disputes and strikes involving employees of CONTRACTOR); fire, flood, or other casualty; governmental actions, priorities, or regulations; supplier or CONTRACTOR delay; or any cause beyond CONTRACTOR'S reasonable control whether of similar or dissimilar nature than those enumerated. CONTRACTOR shall have such additional time within which to perform the Work as may be reasonably determined as the result of any of the above causes.

9. INDEMNIFICATION

To the maximum extent permitted by law, the CONTRACTOR shall fully indemnify, hold harmless, protect and defend the CITY, its officers, employees, agents, representatives and their successors and assigns ("Indemnitees") from any against any and all demands, liability, loss, suit, claim, action, cause of action, damage, cost, judgment, settlement, decree, arbitration award, stop notice, penalty, loss of revenue, and expense (including fees of accountants, attorneys, experts, or other professionals, and costs of investigation, mediation, arbitration, litigation and appeal) in law or in equity, of every kind and nature whatsoever, arising out of or in connection with, resulting from or related to, or claimed to be arising out of the work performed by CONTRACTOR, or any of its officers, agents, employees, subcontractors, sub-subcontractors, design consultants, or any person for whose acts any of them may be liable, regardless of whether such claim, suit or demand is caused or alleged to be caused, in part, by an Indemnitee, including but not limited to:

- A. Bodily injury, emotional injury, sickness or disease, or death to any person;
- B. Infringement of any patent rights, license, copyright or intellectual property which may be brought against the CONTRACTOR or CITY arising out of CONTRACTOR'S work, for which the CONTRACTOR is responsible.
- C. Stop notices and claims for labor performed or materials used or furnished to be used in the work ,including all incidental or consequential damages resulting to CITY from such stop notices and claims;
- D. Failure of CONTRACTOR or its subcontractors to comply with the provisions for insurance;

- E. Failure to comply with any applicable law, statute, code, ordinance, regulation, permit or order;
 - F. Misrepresentation, misstatement, omission with respect to any statement made in or any document furnished by the CONTRACTOR in connection herewith;
 - G. Breach of any duty, obligation, or requirement under the Project Manual, bid documents, or contract documents;
 - H. Failure to provide notice to any party as required by the contract documents;
 - I. Failure to protect the property of any utility provider or adjacent property City; or
 - J. Failure to make payment of all employee benefits.
- 10.** This indemnity provision is effective regardless of any prior, concurrent, or subsequent active or passive negligence by Indemnitees, except that, to the limited extent mandated by California Civil Code Section 2782, the CONTRACTOR shall not be responsible for liabilities which arise from the sole negligence or willful misconduct of Indemnitees or arise from the active negligence of CITY.
- 11. WARRANTIES**
- a. CONTRACTOR warrants that all Work shall strictly comply with the provisions of this Contract and all specifications and drawings referred to in this Contract or thereafter furnished by CITY and shall be free from defects in construction and workmanship and in any design or engineering furnished by CONTRACTOR. CONTRACTOR further warrants that all materials, equipment, and supplies furnished by CONTRACTOR for the Work shall be new, merchantable, of the most suitable grade, and fit for their intended purposes. Without limitation of any other rights or remedies of CITY, if any defect in the Work in violation of the foregoing warranty appears within the period set forth below, CONTRACTOR shall upon receipt of written notice of such defect, promptly furnish, at no cost to CITY, all labor, equipment and materials at the job site necessary to correct such defects and cause the Work to comply fully with the foregoing warranties.
 - b. CONTRACTOR'S warranties set forth in "10.a." above shall extend for a period of 12 months after the date of final completion of the Work.
 - c. All labor, equipment, and materials furnished by CONTRACTOR pursuant to "10.a." above to correct defects shall be warranted by CONTRACTOR in accordance with the warranties set forth in "10.a." above for a period of 12 months from the date of completion of such corrections.

- d. If CONTRACTOR is notified of any defects in the Work and fails to promptly cure such defects, CITY shall have the right to cure or to have such defects cured at CONTRACTOR'S cost and expense, and CONTRACTOR shall promptly reimburse CITY for such costs and expenses.

12. INSURANCE

a. Workers' Compensation

- (1) In accordance with provisions of §1860 of the California Labor Code, the CONTRACTOR'S attention is directed to the requirement that, in accordance with the provisions of §3700 of the California Labor Code, every Contractor will be required to secure the payment of compensation of his or her employees.
- (2) In accordance with the provisions of §1861 of the California Labor Code, each Contractor to whom a public works contract is awarded shall sign and file with the awarding body the following certification prior to performing the work of the contract: "I am aware of the provisions of §3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

- b. Without limiting its liability to CITY, CONTRACTOR shall place and maintain with responsible insurance carriers the following insurance. Prior to commencing work under this Contract, CONTRACTOR shall deliver to CITY certificates of insurance evidencing coverage in accordance with this Article and an obligation to which shall provide thirty calendar days' notice to CITY in the event of a material change in coverage or cancellation. As to the insurance set out in Paragraphs (2) and (3) below, CONTRACTOR shall have CITY named as additional insured and CONTRACTOR shall provide a certificate of insurance to CITY before work is started.

- (1) Worker's Compensation and Employer's Liability Insurance. Workers' Compensation in compliance with the applicable State and Federal laws.

Employer Liability limit \$1,000,000.

- (2) Commercial General Liability Insurance including Blanket Contractual; Broad Form Property Damage; Completed Operations and Independent Contractor's Liability all applicable to Personal Injury, Bodily Injury and Property

Damage to a combined single limit of \$2,000,000 each occurrence subject to \$4,000,000 annual aggregate for Completed Operations and Personal Injury other than Bodily Injury and Products/Completed Operations shall apply separately with respect to each project away from CONTRACTOR'S owned or rented premises.

- {3) Comprehensive Automobile liability Insurance including owned, hired and non-owned automobiles, Bodily Injury and Property Damage to a combined single limit of \$1,000,000 each occurrence.

13. UNEMPLOYMENT INSURANCE AND TAXES

CONTRACTOR shall have full and exclusive liability for the payment of any and all taxes and contributions for unemployment insurance, old age retirement benefits and similar pensions, and annuities which may now or hereafter be imposed by the United States, any state, or any local governmental authority, whether measured by the wages, salaries, or remuneration paid to persons employed by CONTRACTOR or otherwise, for the Work. CONTRACTOR shall comply with all Federal and State laws on such subjects, including all rules and regulations and shall maintain suitable forms, books and records, and save CITY free and harmless from, and hereby indemnifies CITY and against, liability for the payment of any and all such taxes, excises, assessments, or other charges levied by any governmental authority on or because of the Work, including, without limitation, the use of any equipment, supplies or materials pursuant to this Contract.

14. DISCLOSURE OF INFORMATION

No news release, including photographs and films, public announcement, denial or confirmation shall be made by CONTRACTOR concerning subject matter of this Contract, or any phase of any program hereunder, without the prior written approval of CITY.

15. SEVERABILITY

It is understood and agreed by the parties hereto that if any part, term, or provision of this Contract is held illegal or in conflict with any law of the State where made or having jurisdiction over any of the parties hereto, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular part, term, or provisions held to be invalid.

16. CHANGES

- a. Preference for Materials. Notwithstanding any other provision of Exhibit A or specifications to the contrary, any reference to any material, item of equipment or type of construction by manufacturer's name, make, catalogue number,

service or other proprietary identification shall be interpreted as establishing a standard of quality and shall not be construed as limiting competition. CONTRACTOR may furnish any equal material, product, or service if the CITY so approves.

If the CONTRACTOR wishes to propose a substitute or equal item for any specified by brand or trade name, he shall in writing notify the CITY of his intent to do so and at this time submit to the CITY an itemized list of the item or items he proposes setting forth the various manufacturers, names and such other information he has available. Unless this notification is given, the CONTRACTOR shall provide only the items specified by brand or trade name. If notification is so given the CITY, within fourteen (14) calendar days the CONTRACTOR shall supply data to the CITY to substantiate the proposed substitution or equal. The CITY will then decide whether the proposed substitution or equal is in fact equal in quality and utility to the specified trade or brand name items. It is agreed that the decision of the CITY in this matter shall be final and that if the CITY determines that the proposed substitution is not equal to that specified, the CONTRACTOR shall provide equipment which meets the specifications at the price specified in the CONTRACTOR'S proposal.

- b. Changes. CITY, without invalidating this Contract, may direct changes within the general scope of work required by this Contract by altering, adding to and/or deducting from the work to be performed. If any changes under this clause, whether directed or otherwise, cause an increase or decrease in CONTRACTOR'S cost of, or the time required for, the performance of the work under this Contract, CONTRACTOR shall notify CITY within five (5) working days of the date of occurrence of any such change. CONTRACTOR shall submit detailed justification of time and cost impacts for review and approval of Contract. After mutual agreement has been reached by the parties, an equitable adjustment will be made to the contract time or price, and the Contract will be modified in writing accordingly. All such changes in the work shall be in writing and shall be performed subject to the provisions of this CONTRACT.

17. INSPECTION AND ACCEPTANCE

- a. All equipment and materials furnished to CITY, and workmanship performed by CONTRACTOR or its lower-tier subcontractors shall be subject to final inspection, tests, and acceptance by CITY or its representatives upon completion of all Work. CITY may also inspect and reject any materials, equipment, or workmanship at any time during the performance of the Work. CITY'S inspections shall not relieve CONTRACTOR from its obligation to comply with the requirements of this Contract. CITY reserves the right to charge to CONTRACTOR any additional cost of inspection or test when material or workmanship is not ready at the time

specified by the CONTRACTOR for inspection or test, or when re-inspection or retesting is necessitated by prior rejection. The failure of CITY to inspect or test, or to discover defective material or workmanship, shall not prejudice the rights of CITY upon the final inspection.

- b. CONTRACTOR, at its expense, shall promptly correct any workmanship which does not comply with the requirements of this Contract, and shall promptly repair or replace any material or equipment (except material or equipment furnished by CITY) which is defective or does not conform to the Contract requirements, prior to resubmitting the Work for acceptance. If CONTRACTOR fails to repair or replace rejected equipment or material, or correct rejected workmanship promptly, CITY, at its option, may repair, replace or correct the defective workmanship, equipment or material, and all costs and expenses of CITY in correcting the defective Work shall be the responsibility of CONTRACTOR and shall be paid to CITY on demand. Instead of requiring correction, removal, or replacement of defective Work, CITY may accept the Work in its defective or unapproved state and a Contract amendment shall be issued to incorporate any unnecessary revisions to the Contract documents, including an appropriate reduction to the Contract price.
- c. CONTRACTOR acknowledges that the CITY or its representatives may also inspect any materials, equipment, or workmanship at any time during the performance of the Work.

18. SUSPENSION OF WORK

- a. CITY may, at any time, suspend performance of all or any part of the Work by giving not less than five working days written notice to CONTRACTOR. The suspension may be continued by CITY for a period up to sixty (60) calendar days during which period CITY may at any time, by written notice, require CONTRACTOR to resume performance of the Work. If at the end of the sixty-day period of suspension CITY has not required a resumption of Work, that portion of the Work which has been suspended may be terminated by either party pursuant of the provisions of this paragraph. CONTRACTOR shall be compensated in accordance with, and shall follow the procedures specified in, paragraph 7 above.
- b. CITY shall not be liable for any damages, anticipated profits, or costs incurred with respect to suspended Work during any period of suspension, except for costs which (i) are incurred for the purpose of safeguarding the Work, materials, and equipment in transit or at the job site, (ii) are incurred for such CONTRACTOR personnel or rented equipment which are maintained at the job

site, or (iii) are other reasonable and unavoidable costs of shutting down the Work or reassembling personnel and equipment.

19. NOTICE OF THIRD PARTY CLAIMS AGAINST THE CONTRACTOR

The CONTRACTOR shall give the CITY immediate notice of any suit or action filed, or any claims made, against the CONTRACTOR arising out of the performance of this Contract or any lower-tier subcontracts. The CONTRACTOR shall furnish immediately to the CITY copies of all documents received by the CONTRACTOR pertinent to such actions, suit or claim, pre-lien notices, notifications of liens, and/or stop notices.

20. DISPUTE RESOLUTION

Duty to Meet and Confer: If any dispute arises between the parties as to proper interpretation or application of this Agreement, the parties shall first meet and confer in a good faith attempt to resolve the matter between themselves. Representatives of each party will personally meet and attempt in good faith to resolve the dispute.

Venue and jurisdiction for any legal proceeding between the parties shall lie in the Superior Court for the County of Monterey and the law of California shall govern.

Resolution of Claims. Public Contract Code §20104 et seq. shall apply to resolution of claims for time extension of \$375,000 or less. "Claim" means a separate demand by the CONTRACTOR for (i) payment of money or damages arising from work done by, or on behalf of, the CONTRACTOR pursuant to this contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (ii) an amount the payment of which is disputed by the CITY.

- 21. NON DISCRIMINATION/UNLAWFUL EMPLOYMENT PRACTICES.** In accordance with Government Code §12940 and Labor Code §1735 it shall be a violation of this Agreement, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California: (a) For CONTRACTOR, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

City of Marina

AGREEMENT BETWEEN CITY AND CONTRACTOR

- 22. 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.
- 23. ASSIGNMENT.** City is entering into this Contract in reliance upon the stated experience and qualifications of the Contractor and its Subcontractors. Accordingly, Contractor shall not assign, hypothecate or transfer this Contract or any interest therein directly or indirectly, by operation of law or otherwise without the prior written consent of City. Any assignment, hypothecation or transfer without said consent shall be null and void, and shall be deemed a substantial breach of contract and grounds for default in addition to any other legal or equitable remedy available to the City.
- 24. PERMITS.** The Contractor shall provide, procure and pay for all licenses, permits, and fees, required by the City or other government jurisdictions or agencies necessary to carry out and complete the Work. No other compensation shall be paid to the Contractor for these items or for delays caused by non-City inspectors or conditions set forth in the licenses or permits issued by other agencies.
- ZS. INDEX OF ATTACHMENTS**

The following Exhibit is incorporated herein and made a part thereof:

Exhibit A - Scope of Work

(Signature Page Follows.)

City of Marina

AGREEMENT BETWEEN CITY AND CONTRACTOR

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

CONTRACTOR

By: _____

Print Name: _____

Date: _____

Address: 3332 Paul Davis Drive #1
Marina, CA 93933

APPROVED AS TO FORM:

By: _____
Heidi Quin, Interim City Attorney

Date: _____

CITY OF MARINA

By: _____
Layne P. Long, City Manager

Date: _____

Address: 211 Hillcrest Avenue
Marina, CA 93933

By: _____

Date: _____



"Proposal"

Della Mora Heating, Sheet Metal
& Air Conditioning, Inc.
3332 Paul Davis Dr. #1
Marina, CA 93933
Lic #696294

PH:(831) 883-4500 email:main@dellamorahvac.net

PROPOSAL SUBMITTED TO:

City of Marina: Marina Police Department
211 Hillcrest Ave
Marina CA 93933

Attn: Ed Meachum

Ph. (831) 884-1209

Email: emeachum@cityofmarina.org

Date: 11/1/2023

JOB LOCATION: Replace existing 20 ton Trane Rooftop Package unit, at above address.

We are pleased to have this opportunity to propose to provide labor, materials, equipment, insurance and transportation in order to complete the following Scope of Work:

Option#1: Replace existing 20 ton Rooftop Package unit with new Trane 20 ton package unit, at above address

- Power down and discharge unit
- Disconnect, power, controls, ductwork, gas and condensate on existing unit
- Disconnect unit from existing curb structure
- Schedule crane lift with customer. This will require marking out a designated space for crane.
- Remove and dispose of existing unit. Dispose of refrigerant in accordance to California and EPA standards.
- Replace unit with Matching and approved replacement unit.
- New Unit to have special anti sea air corrosive coating
- Provide and install new adapter curb (only if necessary)
- Secure unit to structure curb.
- Reconnect existing electrical, controls, gas, duct, and condensate to new unit
- Fabricate new transition fittings, Flex Connectors and sun screen shield to connect new unit to existing ductwork (if unit is side discharge. If unit is down discharge this will not be necessary)
- Install new duct fittings and sun shield
- Secure new fittings and seal all new seams water tight
- Provide and install Factory provided Economizer on new unit
- Perform start up and operations tests

The Total NOT TO EXCEED Cost for the above Option #1 scope of work is: \$56,268.00 due upon completion of the above stated work.

Note: There are high efficiency options for this unit at additional costs

In addition to items which are not included above, this proposal DOES NOT

INCLUDE the following: Permits or Fees; Hazardous Material Identification or Removal; Roofing or Patching; Carpentry Including Hole Cutting or Framing; Metal Roofing, Siding or Soffits; Structural Supports; Title 24 Documentation; Painting, Paint Prep or Primer; Structural framing and modifications; Modifications or repair of existing fire dampers and sensors Overtime or After Hours Work.

November 1, 2023,

Item No. **10g(5)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of November 7, 2023

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2023-,
APPROVING A MAINTENANCE SERVICES AGREEMENT BETWEEN
THE CITY OF MARINA AND DELLA MORA, SHEET METAL & AIR
CONDITIONING, INC. TO REPLACE THE PUBLIC SAFETY BUILDING
HVAC UNIT AND AUTHORIZING THE CITY MANAGER TO EXECUTE
THE AGREEMENT ON BEHALF OF THE CITY SUBJECT TO FINAL
REVIEW AND APPROVAL BY THE CITY ATTORNEY, AND
AUTHORIZING THE FINANCE DIRECTOR TO MAKE NECESSARY
ACCOUNTING AND BUDGETARY ENTRIES.**

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2023-, approving a maintenance services agreement between the City of Marina and Della Mora Sheet Metal & Air Conditioning, Inc. of Marina, California to replace the public safety building heating, ventilating, and air conditioning (HVAC) unit (**EXHIBIT A**); and
2. Authorizing the City Manager to execute the agreements on behalf of the City subject to final review and approval by the City Attorney; and

BACKGROUND:

The roof mounted heating unit for the Public Safety building has failed and needs to be replaced to meet the needs of the City's police and fire staff who work in the building. Funding was allocated in the current Capital Improvement Program (CIP) budget to address this need.

ANALYSIS:

Staff obtained three quotes to replace the units as follows:

Della Mora, Marina, CA	\$56,268
Airtron Heating and AC, San Jose, CA	\$76,200
Monterey Bay Heating and Cooling, Gonzalez, CA	\$92,400

Della Mora Sheet Metal & Air Conditioning holds all appropriate licenses to perform this work and has performed HVAC services for City facilities in the past with good results. All work will be performed at prevailing wage rates.

FISCAL IMPACT:

Funds in the amount of \$70,000 have been allocated in the current CIP budget to cover the cost of the replacement (project APF2310).

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

Replacement of existing facilities is an exemption per Section 15301 of the California Environmental Quality Act (CEQA).

CONCLUSION:

This request is submitted for City Council consideration and action.

Respectfully submitted,

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

Layne Long
City Manager
City of Marina