

RESOLUTION NO. 2024-95

A RESOLUTION OF THE CITY COUNCIL OF MARINA AWARDING A CONSTRUCTION CONTRACT FOR THE CITY OF THE 2024 CITYWIDE STREET REPAIR: PHASE 1 RESIDENTIAL STREETS RECONSTRUCTION PROJECT TO MONTEREY PENINSULA ENGINEERING OF MARINA, CA FOR THE TOTAL BID IN THE AMOUNT OF \$7,222,216.55; AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACT DOCUMENTS AND ALL CHANGE ORDERS 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

WHEREAS, at the regular meeting of June 20, 2023, the City Council of the City of Marina adopted Resolution No. 2023-66, receiving a presentation on the City's Pavement Management Program for Fiscal Years 23/24, 24/25 and 25/26. As part of the staff presentation, the City's annual street resurfacing project was introduced with Senate Bill 1 Road Maintenance and Rehabilitation Account funds, Measure X and General Fund funding for roadway maintenance.

WHEREAS, at the regular meeting of June 4, 2024, the City Council adopted Resolution No. 2024-52, approving advertising and call for bids for the 2024 Citywide Street Reconstruction Project, and;

WHEREAS, on August 15, 2024, four (4) sealed bids were received, opened, and were publicly in-person. Following is the tabulation of bids received: Monterey Peninsula Engineering (\$7,222,216.55), Teichert Construction (\$7,383,156.00), McKim Corporation (\$8,061,086.74), and Granite Rock Construction (\$8,767,060.00), and;

WHEREAS, Grand Total Bid is the sum of Base Bid (bid items 1-43) and Bid Additive Alternates 1A and 1B. Using this information, Monterey Peninsula Engineering has been determined by staff to be the lowest responsive and responsible bidder, and;

WHEREAS, following is the estimated expenditure to execute the project to completion: Construction Costs (\$7,222,216.55), Contingency (\$1,083,332.48), Construction Management & Administration (\$704,907.33), Construction Design Support (\$35,056.00), totaling \$9,045,512.36, and;

WHEREAS, should the Council approved this request, there are sufficient funds in the Project CIP budget and Dunes CFD budget. The approved CIP project funding amount for Fiscal Year 23/24 is \$10,645,740 in the City's CIP Project Account XAPR1801 for Phase 1 (Reconstruction) and Phase 2 (Slurry). With the approved project budget of \$599,410 for Phase 2 Slurry Construction, the remaining balance is adequate to fund the Phase 1 Reconstruction Project, and;

WHEREAS, the City of Marina determined the project is exempt from the California Environmental Quality Act (CEQA) Guidelines per Article 19, Section 15301, Class 1 because the project is consisting of repair and maintenance of existing public structures and facilities with no expansion of use.

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

1. Award a construction contract for the 2024 Citywide Street Repair: Phase 1 Residential Streets Reconstruction to Monterey Peninsula Engineering of Marina, CA for the total bid in the amount of \$7,222,216.55; and
2. Authorize the City Manager to execute contract documents and all change orders subject to final review and approval by the City Attorney; and
3. Authorize the Finance Director to make necessary accounting and budgetary entries.

PASSED AND ADOPTED, at a regular meeting of the City Council of the City of Marina, duly held on the 4th day of September 2024, by the following vote:

AYES: COUNCIL MEMBERS: McAdams, Visscher, Delgado

NOES: COUNCIL MEMBERS: None

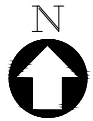
ABSENT: COUNCIL MEMBERS: McCarthy, Biala

ABSTAIN: COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk



ABDY WAY
ANDREW CIRCLE
COSKY DRIVE
COSKY DRIVE
CRIVELLO ROAD
DREW STREET
ELBA CIRCLE
ELLEN COURT
EUCALYPTUS STREET
EVERETT CIRCLE
EVERETT DRIVE
GLORIA CIRCLE
GRANT STREET
HIBBING CIRCLE
JEAN CIRCLE
JERRY COURT
LARSON COURT
MARINA DRIVE
MICHAEL DRIVE
MORTIMER LANE
O'SULLIVAN COURT
PADDON PLACE
PEPPERTREE PLACE
PLEASANT CIRCLE
REDWOOD CIRCLE
RIDGEVIEW AVENUE
WHITE CIRCLE
WHITNEY PLACE
ZANETTA DRIVE



LOCATION MAP

NTS



PUBLIC WORKS DEPARTMENT

CITY OF MARINA

211 HILLCREST AVENUE

MARINA, CALIFORNIA 93933

PH: (831) 884-1212

FAX: (831) 384-0425



**CITYWIDE STREET
REPAIR: PHASE 1 -
RESIDENTIAL STREETS
RECONSTRUCTION**
CIP APR1801

SCALE: NONE

EXHIBIT A

08/28/2024

A9 FORM OF CONTRACT

**CITY OF MARINA
CONSTRUCTION SERVICES AGREEMENT
CITYWIDE STREET REPAIR:
PHASE 1- RESIDENTIAL STREETS RECONSTRUCTION
PROJECT NO. APR1801**

This CONSTRUCTION SERVICES AGREEMENT ("Agreement") is made and effective [insert date], by and between the City of Marina, a municipal corporation ("City"), and [insert contractor name] _____ ("CONTRACTOR"), License Number _____. In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

TERM

This Agreement shall commence on [insert date] and shall remain and continue in effect until tasks described herein are completed, but in no event later than [insert date], unless sooner terminated pursuant to the provisions of this Agreement.

SCOPE OF WORK

CONTRACTOR shall perform within the time set forth in the project specifications and shall furnish all labor, materials, equipment, tools, utility services, and transportation and perform and complete all services required in connection with the construction of the Citywide Street Repair, Phase 2 – Slurry Seal (hereinafter "Project").

By entering into this Agreement, CONTRACTOR acknowledges that there may be other contractors on the site whose work will be coordinated with that of its own. CONTRACTOR expressly warrants and agrees that it will cooperate with other contractors and will do nothing to delay, hinder, or interfere with the work of other separate contractors, the City, the Construction Manager, the Architect, or utilities. CONTRACTOR also expressly agrees that, in the event its Work is hindered, delayed, interfered with, or otherwise affected by a separate contractor, its sole remedy will be a direct action against the separate contractor. To the extent allowed by law, CONTRACTOR shall have no remedy, and hereby expressly waives any remedy against the City, the Construction Manager, or the Architect on account of delay, hindrance, interference or other events caused by a separate contractor.

PERFORMANCE

CONTRACTOR shall at all times faithfully, competently and to the best of its ability, experience, and talent perform all tasks described herein. CONTRACTOR shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of CONTRACTOR hereunder in meeting its obligations under this Agreement.

CONTRACTOR shall conform to the rules and regulations pertaining to safety established by the California Division of Industrial Safety. CONTRACTOR further agrees to take all necessary precautions for the safety of its employees and shall comply with all applicable provisions of federal, state and local regulations, ordinances and codes. CONTRACTOR shall be responsible for erecting and properly maintaining at all times as required by the conditions and progress of the Work, all necessary safeguards for the protection of workers and the public and shall post danger signs warning against known or reasonably foreseeable or unusual hazards.



CONTRACTOR shall possess at the time of commencing Work and throughout the Project duration, a Contractor's License, issued by the State of California, which is current and in good standing.

CONTRACTOR shall ensure that any subcontractor working on the Project possesses at the time of commencing Work and throughout the Project duration, a Contractor's License, issued by the State of California, which is current and in good standing.

CONTRACTOR shall obtain a valid City Business License and shall maintain said Business License for the term of this Agreement and any extensions.

CONTRACTOR shall keep itself informed of State and Federal laws and regulations that in any manner affect those employed by CONTRACTOR or in any way affect the performance of its service pursuant to this Agreement. CONTRACTOR shall at all times observe and comply with all such laws and regulations. City, and its officers, employees, and agents shall not be liable at law or in equity occasioned by failure of CONTRACTOR to comply with this Section.

CONTRACTOR agrees to comply with all the applicable provisions of Sections 1777.5 and 1777.6 of the Labor Code, which Sections are hereby specifically referred to, incorporated herein by reference and made a part hereof as though set forth at length herein.

CONTRACTOR agrees that in the performance of this Agreement or any sub-agreement hereunder, neither CONTRACTOR nor any person acting on CONTRACTOR's behalf shall refuse to employ or refuse to continue in any employment or discriminate against any person on the basis of race, religious creed, color, national origin, ancestry, disability, medical condition, genetic information, marital status, sexual orientation, sex, gender identity, gender expression, military or veteran status or age. Harassment in the workplace is not permitted in any form. CONTRACTOR further agrees to comply with all laws with respect to employment when performing this Agreement.

CONTRACTOR shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in the Project Specifications.

To ensure performance, CONTRACTOR shall provide Faithful Performance and Labor and Material/Payment Bonds in favor of City, each in the amount of one hundred percent (100%) of the value of the Agreement.

CONTRACTOR declares and warrants that no undue influence or pressure shall be used against or in concert with any officer, employee or agent of the City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial agreement or financial inducement. No officer, employee or agent of the City shall receive compensation, directly or indirectly, from CONTRACTOR, or from any officer, employee or agent of CONTRACTOR, in connection with the award of this Agreement or any Work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling City to any and all remedies at law or in equity.

REGISTRATION REQUIREMENTS

CONTRACTOR shall be registered with the Department of Industrial Relations ("DIR") of the State of California to be eligible to work on this Project. CONTRACTOR shall ensure registration with the DIR that is active and in good standing.

This Project shall be subject to compliance monitoring and enforcement by the DIR.



CONTRACTOR is not subject to public works requirements (including registration with the DIR) if the public works project is under \$1,000, unless the City knows that the same CONTRACTOR will be awarded total project costs in excess of \$1,000 for a given year.

CONTENTS OF REQUEST FOR PROPOSAL AND PROPOSAL

CONTRACTOR is bound by the contents of City's Request for Proposal on file at the Public Works Department Contents of the CONTRACTOR's proposal, available on file at the Public Works Department and incorporated herein by this reference. In the event of conflict, the requirements of City's Request for Proposal and this Agreement shall take precedence over those contained in CONTRACTOR's proposal.

CITY MANAGEMENT

The Public Works Director shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by CONTRACTOR, but not including the authority to enlarge the Scope of Work or change the compensation due to CONTRACTOR. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents that enlarge the Scope of Work or change CONTRACTOR's compensation, subject to Section 7 hereof.

PAYMENT

City agrees to pay CONTRACTOR monthly, in accordance with the Proposal on file at the Public Works Department based upon actual time spent on the above tasks. THIS AMOUNT SHALL NOT EXCEED _____, which sum shall include all costs, if any, for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

The City Manager's contract authority is limited to \$24,999.99, which includes all costs. Contracts, including any amendments or change orders that exceed the total threshold, shall require City Council approval. Any contracts, including contract amendments or change orders that exceed the total threshold, which do not have City Council approval, shall be void.

CONTRACTOR shall submit invoices monthly for actual Work performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for Work provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of CONTRACTOR's fees, it shall give written notice to CONTRACTOR within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

Retention of securities: Public Contract Code Section 22300 permits the substitution of securities for any monies withheld by a public agency to ensure performance under a contract, at the request and expense of CONTRACTOR.

Final Payment: Final payment, constituting the entire unpaid balance of the Agreement Sum, shall be paid by the City to the CONTRACTOR no sooner than thirty-five (35) days after a Notice of Completion has been recorded, unless otherwise stipulated in the Notice of Completion, provided the Work has then been completed, the Agreement fully performed, and a final Certificate for Payment has been issued by the Architect.



INSPECTION

City shall at all times have the right to inspect the Work and materials. CONTRACTOR shall furnish all reasonable aid and assistance required by City for the proper examination of the Work and all parts thereof. Such inspection shall not relieve CONTRACTOR from any obligation to perform said Work strictly in accordance with the specifications or any modifications thereof and in compliance with the law.

CONTRACTOR'S FAILURE TO PROCURE COMPLETION OF PROJECT

In the event CONTRACTOR fails to furnish tools, equipment, or labor in the necessary quantity or quality, or fails to prosecute the Work or any part thereof contemplated by this Agreement in a diligent and workmanlike manner, and if CONTRACTOR for a period of three (3) calendar days after receipt of written demand from City or its designated representative to do so, fails to furnish tools, equipment, or labor in the necessary quantity or quality, and to prosecute its Work and all parts thereof in a diligent and workmanlike manner, or after commencing to do so within said three (3) calendar days, fails to continue to do so; then City may exclude the CONTRACTOR from the premises, or any portion thereof, and take possession of said Project premises or any portion thereof, together with all material and equipment thereon, and may complete the Work contemplated by this Agreement or any portion of said Work, either by furnishing the tools, equipment, labor or material necessary, or by letting the unfinished portion of said Work, or the portion taken over by the City to another contractor or by a combination of such methods. In any event, the procuring of the completion of said Work, or the portion thereof taken over by the City, shall be a charge against the CONTRACTOR, and may be deducted from any money due or becoming due to CONTRACTOR from the City, or the CONTRACTOR shall pay the City the amount of said charge, or the portion thereof unsatisfied. The sureties provided for under this Agreement shall become liable for payment should CONTRACTOR fail to pay in full any said cost incurred by the City.

SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

City may at any time, for any reason, without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon CONTRACTOR at least thirty (30) days prior written notice. Upon receipt of said notice, CONTRACTOR shall immediately cease all Work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

In the event this Agreement is terminated pursuant to this Section, City shall pay to CONTRACTOR the actual value of the Work performed up to the time of termination, provided that the Work performed is of value to City. Upon termination of the Agreement pursuant to this Section, CONTRACTOR will submit an invoice to City pursuant to Section 7.c.

DEFAULT OF CONTRACTOR

CONTRACTOR's failure to comply with the provisions of this Agreement shall constitute a default. In the event CONTRACTOR is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating CONTRACTOR for any Work performed after the date of default and can terminate this Agreement immediately by written notice to CONTRACTOR. If such failure by CONTRACTOR to make progress in the performance of Work hereunder arises out of causes beyond CONTRACTOR's control, and without fault or negligence of CONTRACTOR, it shall not be considered a default.



If the City Manager or designee determines CONTRACTOR is in default in the performance of any of the terms or conditions of this Agreement, they shall cause to be served upon CONTRACTOR a written notice of the default. CONTRACTOR shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event CONTRACTOR fails to cure its default within such period of time, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

OWNERSHIP OF DOCUMENTS

CONTRACTOR shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of Work under this Agreement. CONTRACTOR shall maintain adequate records of Work provided in sufficient detail to permit an evaluation of Work. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. CONTRACTOR shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records at CONTRACTOR's office; shall permit City to make copies and transcripts there from as necessary; and shall allow inspection of all Work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained at City Hall for a minimum period of five (5) years after receipt of final payment.

Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the Work to be performed pursuant to this Agreement shall become the sole property of City and may be used, reused, or otherwise disposed of by City without the permission of CONTRACTOR. With respect to computer files, CONTRACTOR shall make available to City, at City's office and upon reasonable written request by City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

RECORD AUDIT

In accordance with Government Code, Section 8546.7, for expenditures of funds greater than \$10,000, records of both City and CONTRACTOR shall be subject to examination and audit by the Auditor General for a period of three (3) years after final payment.



INDEMNIFICATION

CONTRACTOR shall indemnify, defend with legal counsel approved by City, and hold harmless City, its officers, employees, agents and volunteers (collectively, City) from and against all liability, loss, damage, expense, cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with CONTRACTOR's negligence, recklessness or willful misconduct in the performance of Work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole or active negligence or willful misconduct of the City. Should conflict of interest principles preclude a single legal counsel from representing both City and CONTRACTOR, or should City otherwise find CONTRACTOR's legal counsel unacceptable, then CONTRACTOR shall reimburse the City its costs of defense, including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation. The CONTRACTOR shall promptly pay any final judgment rendered against the City (and its officers, employees, agents and volunteers) with respect to claims determined by a trier of fact to have been the result of the CONTRACTOR's negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

CONTRACTOR obligations under this section apply regardless of whether such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by City. However, without affecting the rights of City under any provision of this Agreement, CONTRACTOR shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of CONTRACTOR will be for that entire portion or percentage of liability not attributable to the active negligence of City.

INSURANCE

Prior to the beginning of and throughout the duration of the Work, CONTRACTOR and its subcontractors shall maintain insurance in conformance with the requirements set forth in the Project Specifications. CONTRACTOR will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth herein, CONTRACTOR agrees to amend, supplement or endorse the existing coverage to do so.

CONTRACTOR acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to CONTRACTOR or its subcontractors in excess of the limits and coverage identified in this Agreement and which is applicable to a given loss, claim or demand, will be equally available to City.

INDEPENDENT CONTRACTOR

CONTRACTOR is and shall at all times remain as to City a wholly independent contractor. The personnel performing the Work under this Agreement on behalf of CONTRACTOR shall at all times be under CONTRACTOR's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of CONTRACTOR or any of CONTRACTOR's officers, employees, or agents, except as set forth in this Agreement. CONTRACTOR shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. CONTRACTOR shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner.



No employee benefits shall be available to CONTRACTOR in connection with the performance of this Agreement. Except for the fees paid to CONTRACTOR as provided in the Agreement, City shall not pay salaries, wages, or other compensation to CONTRACTOR for performing Work hereunder for City. City shall not be liable for compensation or indemnification to CONTRACTOR for injury or sickness arising out of performing Work hereunder.

Any and all employees or sub-contractors of CONTRACTOR under this Agreement, while engaged in the performance of any Work required by CONTRACTOR under this Agreement, shall be considered employees or sub-contractors of CONTRACTOR only and not of City. Any and all claims that may arise under the Workers' Compensation Act on behalf of said employees or sub-contractors, while so engaged and all claims made by a third party as a consequence of any negligent act or omission on the part of the CONTRACTOR's employees or sub-contractors, while so engaged in any of the Work provided for or rendered herein shall not be City's obligation.

PREVAILING WAGE

Wage rates for this Project shall be in accordance with the "General Wage Determination Made by the Director of Industrial Relations Pursuant to California Labor Code, Part 7, Chapter 1, Article 2, Sections 1770, 1773 and 1773.1", for Monterey County. Wage rates shall conform with those posted by CONTRACTOR and at the Project site. The following Labor Code sections are hereby referenced and made a part of this Agreement:

Section 1775 - Penalty for Failure to Comply with Prevailing Wage Rates.

Section 1777.4 - Apprenticeship Requirements.

Section 1777.5 - Apprenticeship Requirements.

Section 1813 - Penalty for Failure to Pay Overtime.

Sections 1810 and 1811 - Working Hour Restrictions.

Section 1775 - Payroll Records.

Section 1773.8 - Travel and Subsistence Pay.

Section 1778 — Kickbacks.

Section 1779, 1780 — Acceptance of Fees.

Section 1771.4 — Certified Payroll.

Pursuant to the Labor Code, City is required to withhold from any progress payments owed to CONTRACTOR any amount that has been forfeited as penalties, or as wages owed to employees who have not been paid the prevailing wage for Work performed. This allows the intervention by the Division of Labor Standards Enforcement, which is headed by the State Labor Commission, in a contractor's lawsuit for recovery of amounts withheld by an awarding body. All withheld wages and penalties will be transferred to the Labor Commissioner for disbursement in those cases where a contractor fails to bring a lawsuit for amounts withheld within ninety (90) days after completion of the public works contract and formal acceptance of the job by the awarding body. The Labor Commissioner is then permitted to intervene in any lawsuit brought by CONTRACTOR against an awarding body for recovery of amounts withheld.

NO BENEFIT TO ARISE TO CITY OFFICERS AND EMPLOYEES

No officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for Work to be performed in connection with the Project performed under this Agreement.



CONFLICT OF INTEREST

CONTRACTOR shall at all times avoid conflicts of interest, or the appearance of conflicts of interest, in the performance of this Agreement.

CONTRACTOR covenants that neither they nor any officer or principal of their firm have any interest in, or shall acquire any interest, directly nor indirectly, which will conflict in any manner or degree with the performance of their services hereunder. CONTRACTOR further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent, or subcontractor. CONTRACTOR further covenants that CONTRACTOR has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area and further covenants and agrees that CONTRACTOR and/or its subcontractors shall provide no service or enter into any agreement or agreements with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area prior to the completion of the Work under this Agreement.

If City determines CONTRACTOR comes within the definition of Contractor under the Political Reform Act (Government Code §87100 et seq.), CONTRACTOR shall complete and file and shall require any other person doing Work under this Agreement to complete and file a "Statement of Economic Interest" with CITY disclosing CONTRACTOR's and/or such other person's financial interests.

NO WAIVER OF BREACH/TIME

The waiver by CITY of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement. Time is of the essence in carrying out the duties hereunder.

CONFIDENTIAL INFORMATION/RELEASE OF INFORMATION

All information gained by CONTRACTOR in performance of this Agreement shall be considered confidential and shall not be released by CONTRACTOR without City's prior written authorization. CONTRACTOR, its officers, employees, agents, or sub-contractors, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the Work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided CONTRACTOR gives City notice of such court order or subpoena.

CONTRACTOR shall promptly notify City should CONTRACTOR, its officers, employees, agents, or sub-contractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the Work performed thereunder or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent CONTRACTOR and/or be present at any deposition, hearing, or similar proceeding. CONTRACTOR agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by CONTRACTOR. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.



SUBSURFACE HAZARDOUS MATERIALS

In the event trenches or other excavations extend deeper than four (4) feet below the surface, CONTRACTOR shall promptly, and before the following conditions are disturbed, notify the City in writing of any:

Material CONTRACTOR believes may be hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II or Class III disposal site in accordance with the provisions of existing law;

Subsurface or latent physical conditions at the site differing from those indicated; or

Unknown physical conditions at the Project site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the Work or the character provided for in the Agreement.

Upon receipt of said notification, City will investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the CONTRACTOR's cost of or the time required for performance of any part of the Work, the City will issue a change order under the procedures described in the Specifications.

In the event a dispute arises between the City and CONTRACTOR whether the conditions materially differ, or involve hazardous waste or cause a decrease or increase in the CONTRACTOR's cost of or time required for performance of any part of the Work, CONTRACTOR shall not be excused from any scheduled completion date provided for by the Agreement, but shall proceed with all Work to be performed under the Agreement. CONTRACTOR shall retain any and all rights provided either by Agreement or by law which pertain to the resolution of disputes and protests between the contracting parties.

LIQUIDATED DAMAGES

Pursuant to Government Code Section 53069.85, if Work is not completed within the Agreement time or in strict accordance with the Project Schedule, it is understood, acknowledged and agreed that the City will suffer damage. It is therefore agreed CONTRACTOR shall pay to the City the \$4,000 for each and every working day of delay beyond the Agreement Term, or beyond any completion schedule, construction schedule or Project milestones established in or pursuant to the Project Schedule, or beyond the time indicated in the Project Schedule for any individual Agreement activity.

CONTRACTOR expressly understands, acknowledges and agrees that such Liquidated Damages can and shall be imposed if the CONTRACTOR does not meet each and every aspect of any activity schedule, completion schedule, construction schedule or Project milestones established in or pursuant to the Project Schedule. If the City accepts Work or makes any payment under this Agreement after a default by reason of delays, the acceptance of such Work and/or payment(s) shall in no respect constitute a waiver or modification of any provisions regarding Agreement Time, a completion schedule, the Project Schedule or the accrual of liquidated damages. In the event the same is not paid, the CONTRACTOR further agrees that City may deduct the amount thereof from any money due or that may become due the CONTRACTOR under the Agreement. This Section does not exclude recovery of damages under provisions of the Agreement Documents and is expressly in addition to the City's ability to seek other damages.



Parties will meet and agree on a Project schedule. Liquidated damages may be assessed if any individual activity duration exceeds the time indicated for that activity on the Project Construction Schedule.

WARRANTY

In addition to any and all warranties provided or implied by law or public policy, CONTRACTOR warrants that all Work (including but not limited to all equipment and materials supplied in connection therewith) shall be free from defects in design and workmanship, and that CONTRACTOR shall perform all Services in accordance with all applicable engineering, construction and other codes and standards, and with the degree of high professional skill normally exercised by or expected from recognized professional firms engaged in the practice of supplying services of a nature similar to the Services in question. CONTRACTOR further warrants that, in addition to furnishing all tools, equipment and supplies customarily required for performance of Work, CONTRACTOR shall furnish personnel with the training, experience and physical ability, as well as adequate supervision, required to perform the Services in accordance with the preceding standards and the other requirements of this Agreement. In addition to all other rights and remedies which City may have, City shall have the right to require, and CONTRACTOR shall be obligated at its own expense to perform, all further services which may be required to correct any deficiencies which result from CONTRACTOR's failure to perform any Services in accordance with the standards required by this Agreement. Moreover, if, during the term of this Agreement (or during the one (1) year period following the term hereof), any equipment, goods or other materials or Services used or provided by CONTRACTOR under this Agreement fail due to defects in material and/or workmanship or other breach of this Agreement, CONTRACTOR shall, upon any reasonable notice from City, replace or repair the same to City's satisfaction. Unless otherwise expressly permitted, all materials and supplies to be used by CONTRACTOR in the performance of the Services shall be new and best of kind.

CONTRACTOR hereby assigns to City all additional warranties, extended warranties, or benefits like warranties, such as insurance, provided by or reasonably obtainable from suppliers of equipment and material used in the Services.

CLAIM PROCEDURES UNDER PUBLIC CONTRACT CODE SECTION 9204

CONTRACTOR shall comply with the procedure set forth in Public Contracts Code section 9204 for any claim, as that term is defined therein, for one or more of the following: 1) a time extension, including, without limitation, for relief from damages or penalties for delay, 2) payment of money or damages arising from Work done pursuant to this Agreement, and/or 3) payment of an amount disputed by the City under this Agreement.

NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, by first class mail, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

TO CITY:
Layne Long
City Manager
City of Marina
211 Hillcrest Ave
Marina, CA 93933



TO CONTRACTOR:.....
.....
.....

Notice is effective on the date of personal service, or 5 days following deposit in a United States mailbox, or date of postmark. The parties may agree to notice by email. The parties may agree to notice by email.

THIRD-PARTY BENEFICIARIES

Nothing contained in this Agreement shall be construed to create, and the parties do not intend to create, any rights in third parties.

ASSIGNMENT

CONTRACTOR shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Subject to the foregoing, all terms of the Agreement will be binding upon, enforceable by and inure to the benefit of the parties and their successors and assigns.

GOVERNING LAW

City and CONTRACTOR understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in Monterey County, or the federal district court with jurisdiction over the City. CONTRACTOR agrees not to commence or prosecute any dispute arising out of or in connection with this Agreement other than in the aforementioned courts and irrevocably consents to the exclusive personal jurisdiction and venue of the aforementioned courts.

ATTORNEY'S FEES AND COURT VENUE

Should either party to this Agreement bring legal action against the other (formal judicial proceeding, mediation or arbitration) the party prevailing in such action shall be entitled to reasonable attorney's fees, which shall be fixed by the judge, mediator or arbitrator hearing the case, and such fee shall be included in the judgment together with all costs.

AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of CONTRACTOR warrants and represents that they have the authority to execute this Agreement on behalf of the CONTRACTOR and the authority to bind CONTRACTOR to the performance of its obligations hereunder.

ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. Any modification or amendment to this Agreement must be in writing.

WAIVER

Neither City nor CONTRACTOR shall be deemed to have waived any obligation of the other, or to have agreed to any modification to this Agreement unless it is in writing, and signed by the party giving the waiver.



INTERPRETATION OF CONFLICTING PROVISIONS

In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

SEVERABILITY

If any term of this Agreement is held invalid by a court of competent jurisdiction or arbitrator the remainder of this Agreement shall remain in effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF MARINA

.....
Date: _____ By: _____
Department Director

.....
Date: _____ By: _____
City Manager

CONTRACTOR

.....
Date: _____ By: _____
Authorized Agent
Approved as to form:

.....
Date: _____ By: _____
City Attorney



August 19, 2024

Item No. **10d(1)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of September 4, 2024

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2024-,
AWARDING A CONSTRUCTION CONTRACT FOR THE CITY OF THE
2024 CITYWIDE STREET REPAIR: PHASE 1 RESIDENTIAL STREETS
RECONSTRUCTION PROJECT TO MONTEREY PENINSULA
ENGINEERING OF MARINA, CA FOR THE TOTAL BID IN THE AMOUNT
OF \$7,222,216.55; AUTHORIZING THE CITY MANAGER TO EXECUTE
CONTRACT DOCUMENTS AND ALL CHANGE ORDERS 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 approving Resolution No. 2024-, for the following actions:

1. Awarding a construction contract for the 2024 Citywide Street Repair: Phase 1 Residential Streets Reconstruction to Monterey Peninsula Engineering of Marina, CA for the total bid in the amount of \$7,222,216.55; and
2. Authorizing the City Manager to execute contract documents and all change orders subject to final review and approval by the City Attorney; and
3. Authorizing the Finance Director to make necessary accounting and budgetary entries.

BACKGROUND:

At the regular meeting of June 20, 2023, the City Council of the City of Marina adopted Resolution No. 2023-66, receiving a presentation on the City's Pavement Management Program for Fiscal Years 23/24, 24/25 and 25/26. As part of the staff presentation, the City's annual street resurfacing project was introduced with Senate Bill 1 Road Maintenance and Rehabilitation Account funds, Measure X and General Fund funding for roadway maintenance.

At the regular meeting of June 4, 2024, the City Council adopted Resolution No. 2024-52, approving advertising and call for bids for the 2024 Citywide Street Reconstruction Project (see **EXHIBIT A**).

ANALYSIS:

On August 15, 2024, four (4) sealed bids were received, opened, and were publicly in-person. Following is the tabulation of bids received:

Name of Company and Address	GRAND TOTAL BID
Monterey Peninsula Engineering Marina, CA	\$ 7,222,216.55 (Lowest Bid)
Teichert Construction Pleasanton, CA	\$ 7,383,156.00
McKim Corporation Gilroy, CA	\$ 8,061,086.74
Granite Rock Company San Jose, CA	\$ 8,767,060.00

Grand Total Bid is the sum of Base Bid (bid items 1-43) and Bid Additive Alternates 1A and 1B.

Using this information, Monterey Peninsula Engineering has been determined by staff to be the lowest responsive and responsible bidder.

FISCAL IMPACT:

Following is the estimated expenditure to execute the project to completion.

Estimated Expense	Amount
Construction Contract	
- Base Bid	\$ 6,803,945.05
- Bid Additive Alternates (Abdy Way, Peppertree Place)	\$ 418,271.50
- Total Construction Contract	\$7,222,216.55
Construction Contingency Allowance (15%)	\$1,083,332.48
Construction Management and Administration	\$ 704,907.33
Construction Design Support (As-needed)	\$ 35,056.00
Total Estimated Expenditure	\$ 9,045,512.36

Should the Council approved this request, there are sufficient funds in the Project CIP budget and Dunes CFD budget. The approved CIP project funding amount for Fiscal Year 23/24 is \$10,645,740 in the City's CIP Project Account XAPR1801 for Phase 1 (Reconstruction) and Phase 2 (Slurry). With the approved project budget of \$599,410 for Phase 2 Slurry Construction, the remaining balance is adequate to fund the Phase 1 Reconstruction Project.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City of Marina determined the project is exempt from the California Environmental Quality Act (CEQA) Guidelines per Article 19, Section 15301, Class 1 because the project is consisting of repair and maintenance of existing public structures and facilities with no expansion of use.

CONCLUSION:

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

Respectfully submitted,

Edrie Delos Santos, PE
Public Works Department
City of Marina

REVIEWED/CONCUR:

Nourdin Khayata, P.E.
Interim Public Works Director/City Engineer
City of Marina

Layne P. Long
City Manager
City of Marina