

RESOLUTION NO. 2022-156

A RESOLUTION OF THE CITY COUNCIL OF MARINA AWARDING A CONSTRUCTION CONTRACT FOR THE CITY OF MARINA- Dr. MARTIN LUTHER KING Jr. SCULPTURE GARDEN PROJECT TO MONTEREY PENINSULA ENGINEERING (MPE), OF MARINA, CA. FOR THE TOTAL BID IN THE AMOUNT OF \$401,830; AND ALLOCATING AND APPROPRIATING ADDITIONAL FUNDING IN THE AMOUNT OF \$328,835.50; AND AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACT DOCUMENTS SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY; AND AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXPEND UP TO AN ADDITIONAL 10% OF THE CONTRACT AMOUNT FOR CONSTRUCTION CONTINGENCIES AND TO EXECUTE ALL CONSTRUCTION CHANGE ORDERS ON BEHALF OF THE CITY; AND AUTHORIZING THE FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES.

WHEREAS, on November 16, 2021 the Marina City Council adopted Resolution No. 2021-119 receiving and approving FY 2021-2022 and FY2022-23 Capital Improvement Program (CIP). Included in the list of FY2021-2022 CIP projects is the Dr. Martin Luther King Jr. Statue project, CIP No. APF2125; and

WHEREAS, the Dr. Martin Luther King Jr. sculpture was commissioned by artist Barrington McClean and then donated to the City by Leonard and Carrie Paige in a ceremony with Mayor Jim Perrine in 2002. Since that time the sculpture was first displayed in a sculpture garden off of the entrance road into the Marina Airport; and

WHEREAS, in 2008 the sculpture and sculpture garden were removed and placed into storage at the Marina Airport; and

WHEREAS, at a Special City Council meeting in June 2020 the City Council acknowledged receipt of funds from private citizens and the Marina Foundation with their assistance in raising funds for restoring the sculpture and replacing broken pieces of the sculpture garden, with the City also participating in contributing funds; and

WHEREAS, the sculpture has now been fully restored by the artist, Barrington McClean and its attached panels have been restored by Art Monuments in Hayward. The restoration work was paid fully from donation funds by the Marina community; and

WHEREAS, staff engaged the Wallace Group through the existing on-call contract to develop plans for the siting, amenities, and accessibility of the sculpture near the library.

WHEREAS, on October 18, 2022, the City Council adopted Resolution No. 2022-129 receiving a presentation on the on the final design and approving the advertising and call for bids for the construction of the Dr. Martin Luther King Jr. Sculpture Garden project.

WHEREAS, this an approved CIP project with funding amount of \$ 250,000 (FY 2021-2022); and

WHEREAS, the City Planning Division determined that this action, awarding a construction contract and executing the Project to be Categorically Exempt under CEQA Guidelines per Article 19, Section 15304, Minor Alterations to Land; and

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

1. Award a construction contract for the for the City of Marina-Dr. Martin Luther King Jr. Sculpture Garden Project to MPE of Marina, CA, for Total Bid 2 in the amount of \$401,830; and
2. Allocate and appropriate additional funding in the amount of \$328,835.50 to project account APF2125 for a total funding of \$578,835.50; and
3. Authorize the City Manager to execute contract documents, **Exhibit A**, subject to final review and approval by the City Attorney; and
4. Authorize the City Manager or designee to expend up to an additional 10% of the contract amount for potential construction contingencies and to execute all construction change orders on behalf of the City; and
5. 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 20th day of December 2022, by the following vote:

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

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: Biala

ABSTAIN: COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

A9 FORM OF CONTRACT

FOR

City of Marina - Dr. Martin Luther King Jr. Sculpture Garden

THIS AGREEMENT, made and entered into this _____ 2022, by and between The City of Marina, a municipal corporation of the State of California, hereinafter called "City of Marina" or "City" and _____ "Contractor,"

W I T N E S S E T H:

FIRST: Contractor hereby covenants and agrees to furnish and provide all labor, materials, tools, appliances, equipment, plant and transportation, and all other things required or necessary to be furnished, provided or done, and build, erect, construct and complete the work at the time and in the manner provided, and in strict accordance with the plans and specifications therefore, for PROJECT adopted by the Council of the City of Marina on December 20, 2022.

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. These Specifications;
- h. The California State Standard Specifications and Standard Details 2018; and
- i. 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.

(\$ _____)

The undersigned Contractor further agrees to so plan the work and to prosecute it with such diligence that said work, and all of it, shall be completed on or before the expiration of the time specified in the



Special Provisions after execution of the contract on behalf of the City of Marina and the receipt from the City of Marina of a notice to proceed with the work.

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

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

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

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

EIGHTH: The Contractor agrees at all times during the progress of the work to carry with insurance carriers approved by the City of Marina full coverage workmen's compensation and public liability insurance in the form and to the extent called for in Section 7-1.06 of the Standard Specifications, State of California, 2018 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:

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



ELEVENTH:

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

TWELFTH:

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



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

CONTRACTOR

CITY OF MARINA

By: _____

By: Layne P. Long, City Manager

Print Name: _____

Date: _____

Address: _____

Date: _____

APPROVED AS TO FROM:

By: _____

Heidi Quinn, City Attorney

By: _____

Date: _____

Date: _____

ATTESTED:

By: _____

Anita Shepherd-Sharp
Deputy City Clerk

Date: _____

Resolution No. 2022-_____



December 13, 2022,

Item No. **10g(2)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of December 20, 2022

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-,
AWARDING A CONSTRUCTION CONTRACT FOR THE CITY OF
MARINA- Dr. MARTIN LUTHER KING Jr. SCULPTURE GARDEN
PROJECT TO MONTEREY PENINSULA ENGINEERING (MPE), OF
MARINA, CA. FOR THE TOTAL BID IN THE AMOUNT OF \$401,830;
ALLOCATING AND APPROPRIATING ADDITIONAL FUNDING IN THE
AMOUNT OF \$328,835.50; AND AUTHORIZING THE CITY MANAGER
TO EXECUTE CONTRACT DOCUMENTS SUBJECT TO FINAL REVIEW
AND APPROVAL BY THE CITY ATTORNEY; AND AUTHORIZING THE
CITY MANAGER OR DESIGNEE TO EXPEND UP TO AN ADDITIONAL
10% OF THE CONTRACT AMOUNT FOR CONSTRUCTION
CONTINGENCIES AND TO EXECUTE ALL CONSTRUCTION CHANGE
ORDERS ON BEHALF OF THE CITY; AND AUTHORIZING THE
FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND
BUGETARY ENTRIES.**

REQUEST:

It is requested that the City Council consider approving Resolution No. 2022-, for the following actions:

1. Awarding a construction contract for the City of Marina-Dr. Martin Luther King Jr. Sculpture Garden Project to MPE of Marina, CA for Total Bid 2 in the amount of \$401,830; and
2. Allocating and appropriating additional funding in the amount of \$328,835.50 to project account APF2125 for a total funding of \$578,835.50; and
3. Authorizing the City Manager to execute contract documents, **EXHIBIT A**, subject to final review and approval by the City Attorney; and
4. Authorizing the City Manager or designee to expend up to an additional 10% of the contract amount for potential construction contingencies and to execute all construction change orders on behalf of the City; and
5. Authorizing the Finance Director to make necessary accounting and budgetary entries.

BACKGROUND:

On November 16, 2021, the Marina City Council adopted Resolution No. 2021-119 receiving and approving FY 2021-2022 and FY2022-23 Capital Improvement Program (CIP). Included in the list of FY2021-2022 CIP projects is the Martin Luther King Statue project, CIP No. APF2125. The project name was changed to Dr. Martin Luther King Jr. Sculpture Garden project.

The Dr. Martin Luther King Jr. sculpture was commissioned by artist Barrington McClean and then donated to the City by Leonard and Carrie Paige in a ceremony with Mayor Jim Perrine in 2002. Since that time the sculpture was first displayed in a sculpture garden near the entrance road into the Marina Airport. In 2008 the sculpture and sculpture garden were removed and placed into storage at the Marina Airport.

At a Special City Council meeting in June 2020 the City Council acknowledged receipt of funds from private citizens and the Marina Foundation with their assistance in raising funds for restoring the sculpture and replacing broken pieces of the sculpture garden, with the City also participating in contributing funds.

The sculpture has now been fully restored by the artist, Barrington McClean and its attached panels have been restored by Art Monuments in Hayward. The restoration work was paid fully from donation funds by the Marina community.

Staff engaged the Wallace Group through the existing on-call contract to develop plans for the siting, amenities, and accessibility of the sculpture near the library.

On October 18, 2022, the City Council adopted Resolution No. 2022-129 receiving a presentation on the on the final design and approving the advertising and call for bids for the construction of the Dr. Martin Luther King Jr. Sculpture Garden project.

ANALYSIS:

On December 16, 2022, two (2) sealed bids were received, opened, and were publicly read via live video feed for the project.

Following is the tabulation of bids received:

Name of Company and Address	GRAND TOTAL BID	TOTAL BID 1	TOTAL BID 2
Monterey Peninsula Engineering (MPE) Marina, CA	\$460,262.00	\$444,262.00	\$401,830.00
TYMAN Construction, Inc. Marina, CA	\$663,415.49	\$646,865.49	\$533,769.49

Grand Total Bid is the sum of bid items 1-23 which includes the provisions of installation of natural lawn and artificial turf. This is used for determining the lowest, responsive, and responsible bid.

Total Bid 1 is Grand Total Bid minus Deductive Alternate Bid 1, this is the awarded amount if the City select option with artificial turf. Total Bid 2 is Grand Total Bid minus Deductive Alternate Bid 2, this the awarded amount if the City select option natural lawn.

The Landscape Architect provided an analysis of natural lawn versus artificial turf. Options were analyzed based on initial cost, resistance to gophers and rodents, maintenance requirements, and overall environmental impact

Initial Cost: The initial cost to install artificial turf is 11% higher than the cost to install natural sod for the lawn area.

Resistance to Gophers: Both materials require some form of rodent (gopher/ground squirrel) deterrent per visual evidence of rodent infestation existing in the area. For natural lawn, CritterMaxx may be applied through the irrigation system. This is a 100% organic product (comprised of castor oil and water) and intended to repel not harm, to protect the landscape against gophers and other small rodents. Artificial turf may experience undulation, dips, and in rare cases, visible surface impacts due to rodent activity. The artificial turf manufacturer recommended the installation of underground wire mesh to protect artificial turf in areas with high gopher activity.

Maintenance:

Natural lawn requires mowing every 1-2 weeks, regular watering (maintenance of irrigation system), and fertilizing. The gopher deterrent, CritterMaxx requires the product to be ordered, monitored, and refilled on a regular basis to be effective. A 2.5-gallon container should serve the project for 1-2 years. Artificial turf requires occasional sweeping and washing (requiring use of water), for aesthetic grooming and periodic removal of dirt/organic matter for sanitary clean-up and to minimize potential for weed growth. After 15-18 years of service life, artificial turf needs to be removed, disposed of, and replaced. In the future, it is possible that artificial turf recycling programs may become available but are not easily accessible at this time.

Environmental Impact:

Natural lawn will require the use of potable water. Recycled water is not available to the project at this time but may be available in the future. Based on calculations for the Marina climate, drought-tolerant lawn type, and high-efficiency irrigation equipment, the estimated total water use for the natural lawn is 58,919 gallons per year, or 25.9 inches per square foot per year. While some evaporation is expected, water will also be consumed by plants and/or returned to soil/groundwater. Regular mowing with gas-powered mowers is expected every 1-2 weeks and fertilizer applied every 3-6 months. As a natural, living, material, the natural lawn sequesters carbon throughout its lifetime which can offset impacts of carbon released during mowing operations.

Artificial turf is derived from petroleum-based products, with energy and carbon impacts inherent in the manufacturing. Other environmental challenges related to artificial turf includes heat build-up in direct sun conditions, as well as potentially introducing microplastics and PFAS chemicals through fiber loss over time. PFAS chemicals do not break down in the environment and do get carried into soil and waterways. According to the CDC, more research is necessary to assess the human health effects of exposure to PFAS.

The artificial turf specified includes a bio-based backing which replaces 60% of the petroleum-based polyol with renewable soybeans and is manufactured in the US, in Dalton, Georgia. The specified product also utilizes Heat Block technology to keep it about 20% cooler than most turf products, but plastic sitting in direct sun will build-up heat. A wash down using water via hose or irrigation system can be employed to keep it cool.

Overall, as a living material, natural lawn is more environmentally friendly, actively sequestering carbon during a prolonged lifespan and through use of natural and organic materials for implementation and maintenance.

Based on environmental impact and initial cost, the bid with the natural lawn (Total Bid 2), is recommended. The Engineer's Opinion of Probable Construction Cost for this project with natural lawn is \$281,000.

FISCAL IMPACT:

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

Estimated Expense	Amount
Construction Contract	\$401,830.00
Construction Contingency Allowance (10%)	\$40,183.00
Construction Management and Inspection Allowance	\$ 45,436.00
Project Management, Surveys, Engineering & Misc. Expenses	\$ 91,386.50
Total Estimated Expenditure	\$ 578,835.50

This is an approved CIP project with funding amount of \$ 250,000 (FY 2021-2022).
To award this construction contract, \$328,835.50 is requested to be allocated and appropriated to the project accounts APF2125.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City Planning Division determined that this action, awarding a construction contract and executing the Project to be Categorically Exempt under CEQA Guidelines per Article 19, Section 15304, Minor Alterations to Land.

CONCLUSION:

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

Respectfully submitted,

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

REVIEWED/CONCUR:

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

Layne P. Long
City Manager
City of Marina