

RESOLUTION NO. 2015-83

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA AWARDING THE CONTRACT TO COMMUNITY TREE SERVICE'S OF WATSONVILLE, CALIFORNIA, FOR THE MARINA EQUESTRIAN CENTER TREE TRIMMING PROJECT; INCREASING APPROPRIATIONS IN FY2015-16 BUDGET, NATIONAL PARKS SERVICE (NPS) FUND 25, DEPARTMENT 282 – EQUESTRIAN CENTER; AUTHORIZING FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES, AND; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT DOCUMENTS ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY

WHEREAS, at the regular meeting of May 19th, 2015, the City Council adopted Resolution No. 2015-32 authorizing advertising and call for bids for the Marina Equestrian Center Tree Trimming Project, and;

WHEREAS, on June 18th, 2015, three (3) sealed bids were received, opened and publicly read for the project, and;

WHEREAS, the apparent responsive and responsible low bidder is Community Tree Service in the amount of \$13,950.00, and;

WHEREAS, a contingency fund, not to exceed \$2,790.00, is requested to provide for unforeseeable occurrences, and;

WHEREAS, the estimated cost with contingency to complete the tree trimming is \$16,740. Adequate funding is available in FY 2015-16 Budget, NPS Fund 25, Dept. 282 – Equestrian Center in Fund/Department Balance. An amount of \$16,740 of available Fund/Department Balance will be appropriated and costs recorded to FY2015-16 Budget, NPS Fund 25, Dept. 282 – Equestrian Center, Tree Trimming, Account No. 25.282.65890.8200.

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

1. Award the contract to Community Tree Service of Watsonville, California, for the Marina Equestrian Center Tree Trimming Project;
2. Increase appropriations in FY 2015-16 Budget, National Parks Service (NPS) Fund 25, Department 282 – Equestrian Center;
3. Authorize Finance Director to make necessary accounting and budgetary entries, and;
4. Authorize the City Manager to execute all contract documents on behalf of the City, subject to review and approval by the City Attorney.

PASSED AND ADOPTED, at a regular meeting of the City Council of the City of Marina, duly held on the 14th day of July, 2015, by the following vote:

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

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

**CITY OF MARINA
AGREEMENT FOR THE MARINA EQUESTRIAN CENTER TREE TRIMMING
PROJECT**

THIS AGREEMENT, made and entered into this _____ day of _____, 2015, by and between Marina, a municipal corporation of the State of California, hereinafter called "City," and **Community Tree Service** of Watsonville, California, hereinafter called "Contractor,"

WITNESSETH:

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, deconstruct and complete the work at the time and in the manner provided, and in strict accordance with the specifications therefore, for the **Marina Equestrian Center Tree Trimming Project**, City of Marina, CA.

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

- a. Notice Inviting Sealed Proposals;
- b. Instructions to Bidders and General Conditions;
- c. Signed and executed Bid and Proposal of Contractor, as accepted by City;
- d. The aforesaid Plans and Specifications;
- e. Standard Plans and Standard Specifications, City of Marina, State of California - Standard Specifications Standard Plans
- f. Special Provisions of the Contract
- g. And this Agreement.

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

\$13,950.00

Thirteen Thousand Nine Hundred and Fifty Dollars

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. Such insurance policy shall contain an endorsement that the same shall not be canceled nor the amount of coverage be reduced until at least 30 days after receipt by the City of Marina by certified or registered mail of a written notice of such cancellation or reduction in coverage.

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

TENTH:

(a) The City is subject to laws relating to public agencies which are part of this contract as though fully set forth herein.

(b) Contractor shall comply with City of Marina Municipal Code Chapter 13.02 Local Hiring for Public Works.

(c) Contractor shall comply with laws relating to the work.

ELEVENTH:

(a) Other than in the performance of professional services by a design professional, which shall be solely as addressed by subsection (b) below, and 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 attorneys 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 that resulting from the sole negligence, or willful misconduct of City, its employees, officials, or agents.

(b) To the fullest extent permitted by law (including without limitation California Civil Code Sections 2782.8), when the services to be provided under this Agreement are design professional services to be performed by a design professional, as that term is defined under said section 2782.8, Contractor shall indemnify, protect, defend (with independent counsel reasonably acceptable to the City) and hold harmless City and any Indemnified Party for all Liabilities regardless of nature or type that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor, or the acts or omissions of an officer, employee, agent or subcontractor of the Contractor, excepting only liability arising from the sole negligence, active negligence or willful misconduct of City.

(c) 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.

(d) 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.

(e) 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: 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

By: _____

Print Name: _____

Address: _____

Date: _____

CITY OF MARINA

By: _____

Layne Long, City Manager

Date: _____

APPROVED AS TO FORM:

By: _____

City Attorney

Date: _____

ATTESTED:

By: _____

Anita Sharp, Deputy City Clerk

Date: _____

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of July 14, 2015

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2015-,
AWARDING THE CONTRACT TO COMMUNITY TREE SERVICE OF
WATSONVILLE, CALIFORNIA, FOR THE MARINA EQUESTRIAN
CENTER TREE TRIMMING PROJECT; INCREASING
APPROPRIATIONS IN FY2015-16 BUDGET, NATIONAL PARKS
SERVICE (NPS) FUND 25, DEPARTMENT 282 – EQUESTRIAN
CENTER; AUTHORIZING FINANCE DIRECTOR TO MAKE
NECESSARY ACCOUNTING AND BUDGETARY ENTRIES; AND,
AUTHORIZING THE CITY MANAGER TO EXECUTE THE
CONTRACT DOCUMENTS ON BEHALF OF THE CITY SUBJECT TO
FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY**

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2015- , awarding the contract to Community Tree Service of Watsonville, California, for the Marina Equestrian Center Tree Trimming Project;
2. Increasing appropriations in FY 2015-16 Budget, National Parks Service (NPS) Fund 25, Department 282 – Equestrian Center;
3. Authorizing Finance Director to make necessary accounting and budgetary entries, and;
4. Authorizing the City Manager to execute all contract documents on behalf of the City, subject to final review and approval by the City Attorney.

BACKGROUND:

At the regular meeting of May 19th, 2015, the City Council adopted Resolution No. 2015- authorizing advertising and call for bids for the Marina Equestrian Center Tree Trimming Project.

On June 18th, 2015, three (3) sealed bids were received, opened and publicly read for the project. The bids are as follows:

| | |
|------------------------|-------------|
| Community Tree Service | \$13,950.00 |
| Tope's Tree Service | \$14,900.00 |
| Arbor Works | \$16,600.00 |

ANALYSIS:

The apparent responsive and responsible low bidder is Community Tree Service in the amount of \$13,950.00. A standard contingency fund, of 20% not to exceed \$2,790.00, is requested to provide for unforeseeable occurrences.

A Draft Contract for services is attached (“**EXHIBIT A**”)

FISCAL IMPACT:

Should the City Council approve this request, the estimated cost with contingency to complete the tree trimming is \$16,740. Adequate funding is available in FY 2015-16 Budget, NPS Fund 25, Dept. 282 – Equestrian Center in Fund/Department Balance.

\$16,740 of available Fund/Department Balance will be appropriated and costs recorded to FY2015-16 Budget, NPS Fund 25, Dept. 282 – Equestrian Center, Tree Trimming, Account No. 25.282.65890.8200.

CONCLUSION:

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

Respectfully submitted,

Daniel Paolini, CBO
Interim Chief Building Official
City of Marina

REVIEWED/CONCUR:

Theresa Szymanis, AICP CTP
Acting Director, Community Development Department
City of Marina

Layne P. Long
City Manager
City of Marina