



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** June 18, 2019

**TO:** Christine Daniel, City Manager

**FROM:** Andrew Clough, Public Works Director

**SUBJECT:** **Resolution Of The City Council Of The City Of Emeryville Determining that the Bid Protest Filed By Bay Construction, Is Without Merit, Authorizing The City Manager To Execute A Contract With Marina Landscape Inc. In An Amount Not To Exceed \$567,849 For Construction Of The 40<sup>th</sup> Street/San Pablo Avenue Median Rehabilitation Project, Project No. EPW 105-18, CIP No. 16475033, And Appropriating In Fiscal Year 2018/2019 Amounts Of \$200,000 From The General Capital Fund (Fund 475) From The 2019/2020 Project Budget**

### RECOMMENDATION

Staff recommends that the City Council of the City of Emeryville adopt the above referenced resolution.

### BACKGROUND

The Capital Improvement Program adopted by the City Council in June 2016 includes funding for the 40<sup>th</sup> Street/San Pablo Avenue Median Rehabilitation Project (CIP No. 16475033). As described this project proposes to replace the existing trees and landscaping on the 40<sup>th</sup> Street medians and to replace the existing groundcover and other understory plantings without impacting the existing trees on the San Pablo Avenue medians.

On May 5, 2015, the City Council adopted Resolution No. 15-39 authorizing the City and EAH Housing (EAH) to jointly apply for Affordable Housing and Sustainable Communities (AHSC) funding which included \$100,000 for median improvements at 40<sup>th</sup> Street and San Pablo Avenue.

As described in the AHSC application, the 40<sup>th</sup> Street and San Pablo Avenue median improvements include "...new Bay Friendly landscaping along the existing median islands on 40th Street and on San Pablo Avenue. On the 40th Street medians, the project includes the removal of the existing trees and plantings, the replacement of the existing soil with good horticultural topsoil, irrigation modifications, new trees, new Bay Friendly plantings and mulching. On the San Pablo Avenue medians, the project includes the removal of the existing plantings, regrading, amending and aeration of the existing topsoil, irrigation modifications, new Bay Friendly plantings and mulching.

The application was successful, and a \$100,000 grant to the City for the Median Improvements Project was approved.

On June 6, 2017, the City Council adopted Resolution No. 17-75 authorizing the execution of a standard agreement with the California Department of Housing and Community Development (HCD) as required by the AHSC program. Design services for this project were initiated on July 10, 2018 when the City Council adopted Resolution 18-99 authorizing the City Manager to enter into a Professional Services Agreement with Callander and Associates in the amount of \$106,565.

## **DISCUSSION**

On April 16, 2019 City Council authorized the City Engineer to advertise the project for public bidding. Four (4) responsive bids were received on May 28, 2019 and Marina Landscape Inc. submitted the lowest bid in the amount of \$567,849.

On May 30, 2019, the Public Works Department staff received a letter of bid protest from Bay Construction, the third lowest bidder, claiming that the lowest two bids the City received should be disqualified. The bid protest was premised on the assumption that irrigation lines must be installed by the directional bore method, and that since the two lowest bidders did not list a boring subcontractor to perform the work, they were not qualified to do the work. (See Exhibit B.) However, the lowest bidder, Marina Landscape Inc., has a Class A General Engineering Contractor license, which allows Marina Landscape Inc. to perform the directional boring work itself. Furthermore, the plans clearly allow for the work to be performed by means and methods other than directional boring. (See Exhibit E.) Contrary to Bay Construction's assertion in the bid protest, at this time the City's engineers find no reason to exclude any means and method of irrigation pipeline installation, and the plans do not place any constraint on the means and methods. During construction, field investigations and exploratory potholing will be used to determine an acceptable means and methods for installing the pipeline.

Section 2-1.48 "Bid Protests" of Part B of the project documents describes the bid protest process for the project which requires City Council to consider the merits of the protest at the time of project award. (See Exhibit D.) Bay Construction has met the timeliness and content requirements of this section and has been informed in writing that City Council will consider this issue at the June 18, 2019 meeting.

Staff's recommendation is to find that the bid protest is without merit and to authorize the City Manager to execute a contract with Marina Landscape, Inc. to construct the project.

## **FISCAL IMPACT**

The newly adopted Capital Improvement Program identifies \$900,000 as appropriated to the budget for this Project (Project No. 16475033) with \$300,000 in General Capital Funds (Fund 475) becoming available in fiscal year 2019/2020. The full contract amount must be appropriated at the time of contract award so it is necessary at this time to make \$200,000 in 2019/2020 General Capital funds available in fiscal year 2018/2019.

The following estimated project costs have been identified:

Estimated Costs:

Design and Construction Support (Callander & Associates)	\$ 106,000
Construction Contract (Marina Landscape Inc.)	\$ 567,849
EBMUD Recycled Water Service	\$ 30,000
Caltrans Encroachment Permit	\$ 2,500
Construction Inspection & Testing	\$ 30,000
Construction Engineering Support	\$ 5,000
Contingency Amount	\$ 58,651
<b>Estimated Total Cost</b>	<b>\$ 800,000</b>

Funding Sources for CIP Project No. 16475033:

Existing:

General Capital Fund (Fund 475 – FY 2018/2019)	\$ 500,000
General Capital Fund (Fund 475-FY 2019/2020)	\$ 300,000
Affordable Housing & Sustainable Communities Grant	\$ 100,000
<b>TOTAL</b>	<b>\$ 900,000</b>

Proposed

General Capital Fund (Fund 475-FY 2018/2019)	\$ 700,000
General Capital Fund (Fund 475-FY 2019/2020)	\$ 100,000
Affordable Housing & Sustainable Communities Grant	\$ 100,000
<b>TOTAL</b>	<b>\$ 900,000</b>

**STAFF COMMUNICATION WITH THE PUBLIC**

N/A

**CONCLUSION**

Staff concludes that it is in the public's interest for City Council to adopt the above stated resolution.

**PREPARED BY:** Michael Roberts, Senior Civil Engineer, Public Works

**APPROVED AND FORWARDED TO THE  
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



Christine Daniel, City Manager

## **ATTACHMENTS**

- Draft Resolution
- Exhibit A – Marina Landscape Inc. Construction Contract
- Exhibit B – Bay Construction Letter of Bid Protest
- Exhibit C – Public Works Department Response to Bay Construction Bid Protest
- Exhibit D – Excerpt from Part B (Bid Protest Procedures)
- Exhibit E – Relevant Excerpt from Plans