



**SAN RAFAEL**  
THE CITY WITH A MISSION

Agenda Item No: 4.I

Meeting Date: June 15, 2020

**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

Department: Public Works

Prepared by: Bill Guerin,  
Director of Public Works

City Manager Approval: \_\_\_\_\_

**TOPIC: PUBLIC SAFETY CENTER STREET RESURFACING**

**SUBJECT: A RESOLUTION AWARDING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION AGREEMENT FOR THE PUBLIC SAFETY CENTER STREET RESURFACING PROJECT, CITY PROJECT NO. 11377, TO ERA CONSTRUCTION, INC. IN THE AMOUNT OF \$539,899, AND AUTHORIZING CONTINGENCY FUNDS IN THE AMOUNT OF \$90,101, FOR A TOTAL APPROPRIATED AMOUNT OF \$630,000.**

**RECOMMENDATION:** Adopt the resolution awarding and authorizing the City Manager to execute a construction agreement with ERA Construction, Inc. in the amount of \$539,899, and authorizing contingency funds in the amount of \$90,101.

**BACKGROUND:** In December 2017, the City Council awarded a construction contract for the erection of the Public Safety Center (PSC) located on property bounded by Fifth Avenue, C Street, D Street, and Via Sessi. Most of these streets needed pavement rehabilitation prior to construction of the PSC, however, because of heavy construction equipment utilizing these streets over many months, the pavement has sustained additional damage requiring rehabilitation at this time. Furthermore, as part of the PSC project, C Street and D Street, both of which are one-way streets in the Downtown area, will be converted to two-way streets between Fifth Avenue and First Street or Second Street as the case may be.

In addition to roadway rehabilitation, the project will include the following elements:

- A small concrete retaining wall at the end of Via Sessi to better support the street;
- A concrete bulb-out with curb ramps on the southwest corner of Fifth Avenue at D Street (i.e., Police annex corner) to comply with Americans with Disabilities Act (ADA) law. The bulb-out will also improve visibility of pedestrians crossing the both streets; and
- Slurry seal pavement treatment of Fifth Avenue between D Street and Mt. Tamalpais Cemetery located in Sun Valley. This work was originally planned for a future project but will take advantage of economies of scale by combining it with the PSC resurfacing project at this time. Installation of a slurry seal does not trigger ADA upgrades.

**FOR CITY CLERK ONLY**

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Disposition:

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The project was advertised in accordance with San Rafael’s Municipal Code on May 19, 2020.

**ANALYSIS:** On June 3, 2020, the following bids were received and read aloud:

<b><u>NAME OF BIDDER</u></b>	<b><u>Amount</u></b>
ERA Construction, Inc.	\$539,744.00
Maggoria and Ghilotti, Inc.	\$557,000.00
VSS International, Inc.	\$647,000.00
Team Ghilotti, Inc.	\$705,141.00
J.A. Gonsalves & Son	\$796,969.69

ERA Construction, Inc. made a minor mathematical error in their bid, which was read as \$539,744.00, but determined to be \$155.20 under the true bid of \$539,899.20. ERA Construction, Inc. has accepted this adjustment to their bid.

The construction bids have been reviewed by Public Works staff and the low bid of \$539,899 from ERA Construction, Inc., was found to be responsive, responsible, and within available funding. The recommended Resolution awards the construction contract to ERA Construction, Inc.

A timely bid protest was submitted by the second lowest bidder contending that the low bid was insufficient for lack of a signature by two corporate officers. Staff has rejected the protest as meritless. Although the low bid has only one signature, the person signing the bid holds the corporate offices of Owner/President and Secretary/Treasurer, and his single signature qualifies as the required signature by the two corporate officers.

**PUBLIC OUTREACH:** If the City Council approves this project to proceed, Public Works will perform outreach using various social media channels, the City website, and changeable message signs located at nearby intersections.

**FISCAL IMPACT:** In addition to the \$539,899 contract amount, staff recommends the City Council approve a contingency amount of \$ 90,101 for a total of \$ 630,000. Staff proposes to fund construction of this project utilizing Gas Tax fund (Fund #206) in an amount of \$585,000, and Traffic Mitigation Fund (Fund #246) in an amount of \$45,000. Appropriations in the City’s Gas Tax fund and Traffic Mitigation fund for project number 11377 shall be increased by \$585,000 and \$45,000, respectively.

A portion of the improvements associated with the project are identified in San Rafael’s 2020 General Plan which is noted in General Plan Exhibit 21, Item 22 (i.e., Upgrade Traffic Signal System). In order to convert C Street and D Street to two-way streets, modifications to the traffic signals on Fourth Street are necessary along with signing and striping. Projects noted in this section of the General Plan are eligible to be funded with Traffic Mitigation Funds.

**OPTIONS:** The City Council has the following options to consider relating to this matter:

1. Adopt the resolution as presented.
2. Do not award the contract and direct staff to rebid the project. If this option is chosen, rebidding will delay construction by approximately two months, however, the pavement work and conversion of the one-way streets to two-way streets will not likely be completed before the PSC is opened to the public.
3. Do not award the contract and provide direction to staff.

**RECOMMENDED ACTION:**

Adopt the resolution.

**ATTACHMENTS:**

1. Resolution Awarding Construction Agreement to ERA Construction, Inc.
2. Draft Construction Agreement with ERA Construction, Inc.

**RESOLUTION NO.**

**A RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AWARDING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION AGREEMENT FOR THE PUBLIC SAFETY CENTER STREET RESURFACING PROJECT, CITY PROJECT NO. 11377, TO ERA CONSTRUCTION, INC. IN THE AMOUNT OF \$539,899, AND AUTHORIZING CONTINGENCY FUNDS IN THE AMOUNT OF \$90,101, FOR A TOTAL APPROPRIATED AMOUNT OF \$630,000.**

**WHEREAS**, on the 3rd day of May 2020, pursuant to due and legal notice published in the manner provided by law, inviting sealed bids or proposals for the work hereinafter mentioned, as more fully appears from the Affidavit of Publication thereof on file in the office of the City Clerk of the City of San Rafael, California, the City Clerk of said City did publicly open, examine, and declare all sealed bids or proposals for doing the following work in said City, to wit:

**“Public Safety Center Street Resurfacing”**

**City Project No. 11377**

in accordance with the plans and specifications therefor on file in the office of the Department of Public Works; and

**WHEREAS**, the bid of \$539,899 from ERA Construction Inc. at the unit prices stated in its bid, was and is the lowest and best bid for said work and said bidder is the lowest responsible bidder; and

**WHEREAS**, staff requests contingency funding in the amount of \$90,101;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL RESOLVES** as follows:

1. The bid of ERA Construction Inc. is hereby accepted at the unit prices stated in its bid, and the contract for said work and improvements is hereby awarded to ERA Construction Inc. at the stated unit prices.
2. The City Manager is authorized and directed to execute a contract with ERA Construction Inc. for the bid amount, subject to final approval as to form by the City Attorney, and to return the bidder's bond upon the execution of the contract.

3. City Gas Tax Fund #206 and City Traffic Mitigation Fund #246 for City Project No. 11377 will be increased for the project by \$585,000 and \$45,000, respectively.
4. The Director of Public Works is hereby authorized to take any and all such actions and make changes as may be necessary to accomplish the purpose of this resolution.

I, **Lindsay Lara**, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of said City held on Monday, the 15th day of June 2020 by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

File No.: 16.01.297

LINDSAY LARA, City Clerk

## Contract

This public works contract ("Contract") is entered into by and between the City of San Rafael ("City") and ERA Construction, Inc. ("Contractor"), for work on the Public Safety Center Street Resurfacing Project ("Project").

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal to perform the Work to construct the Project. On June 15, 2020, City authorized award of this Contract to Contractor for the amount set forth in Section 4, below.
2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the documents listed below. The definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, including this Contract.
  - 2.1 Notice Inviting Bids;
  - 2.2 Instructions to Bidders;
  - 2.3 Addenda, if any;
  - 2.4 Bid Proposal and attachments thereto;
  - 2.5 Contract;
  - 2.6 Payment and Performance Bonds;
  - 2.7 General Conditions;
  - 2.8 Special Conditions;
  - 2.9 Project Plans and Specifications;
  - 2.10 Change Orders, if any;
  - 2.11 Notice of Award;
  - 2.12 Notice to Proceed;
  - 2.13 Uniform Standards All Cities and County of Marin (available online at: <https://www.marincounty.org/-/media/files/departments/pw/engineering/2018-ucs-complete-set.pdf?la=en>); and
  - 2.14 The following: No Other Documents
3. **Contractor's Obligations.** Contractor will perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, supplies, tools, equipment, transportation, onsite facilities, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to diligently prosecute and complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents, and in full compliance with Laws.
4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor \$539,899.20 ("Contract Price") for all of Contractor's direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, taxes, insurance, bonds and all overhead costs, in accordance with the payment provisions in the General Conditions.
5. **Time for Completion.** Contractor will fully complete the Work for the Project within 30 calendar days from the commencement date given in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.
6. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of \$500 per day for each day of unexcused delay in

completion, and such liquidated damages may be deducted from City's payments due or to become due to Contractor under this Contract.

**7. Labor Code Compliance.**

**7.1 General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance, as further specified in Article 9 of the General Conditions.

**7.2 Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.

**7.3 DIR Registration.** City may not enter into the Contract with a bidder without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations to perform public work pursuant to Labor Code § 1725.5, subject to limited legal exceptions.

**8. Workers' Compensation Certification.** Pursuant to Labor Code § 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code § 3700 which require 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 on this Contract."

**9. Conflicts of Interest.** Contractor, its employees, Subcontractors and agents, may not have, maintain or acquire a conflict of interest in relation to this Contract in violation of any City ordinance or requirement, or in violation of any California law, including Government Code § 1090 et seq., or the Political Reform Act, as set forth in Government Code § 81000 et seq. and its accompanying regulations. Any violation of this Section constitutes a material breach of the Contract.

**10. Independent Contractor.** Contractor is an independent contractor under this Contract and will have control of the Work and the means and methods by which it is performed. Contractor and its Subcontractors are not employees of City and are not entitled to participate in any health, retirement, or any other employee benefits from City.

11. **Notice.** Any notice, billing, or payment required by or pursuant to the Contract Documents must be made in writing, signed, dated and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF file. Notice is deemed effective upon delivery, except that service by U.S. Mail is deemed effective on the second working day after deposit for delivery. Notice for each party must be given as follows:

**City:**

City Clerk's Office  
1400 Fifth Avenue, Room 209  
San Rafael, CA 94901  
Attn: City Clerk

Copy to: Director of Public Works  
Email: [Bill.Guerin@cityofsanrafael.org](mailto:Bill.Guerin@cityofsanrafael.org)

**Contractor:**

Name: ERA Construction, Inc.  
Address: 1220 Marin Avenue  
City/State/Zip: San Pablo, CA 94806  
Phone: 510-830-5955  
Attn: Enrique Avila  
Email: mich1064@aol.com

12. **General Provisions.**

- 12.1 **Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's and City's lawful heirs, successors and permitted assigns.
- 12.2 **Third Party Beneficiaries.** There are no intended third-party beneficiaries to this Contract.
- 12.3 **Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Marin County Superior Court, and no other place. Contractor waives any right it may have pursuant to Code of Civil Procedure § 394, to file a motion to transfer any action arising from or relating to this Contract to a venue outside of Marin County, California.
- 12.4 **Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 12.5 **Integration.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor.
- 12.6 **Severability.** If any provision of the Contract Documents is determined to be illegal, invalid, or unenforceable, in whole or in part, the remaining provisions of the Contract Documents will remain in full force and effect.
- 12.7 **Iran Contracting Act.** If the Contract Price exceeds \$1,000,000, Contractor certifies, by signing below, that it is not identified on a list created under the Iran Contracting Act, Public



Contract Code § 2200 et seq. (the “Act”), as a person engaging in investment activities in Iran, as defined in the Act, or is otherwise expressly exempt under the Act.

**12.8 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporation Code § 313. If Contractor is a partnership, a signature from a general partner with authority to bind the partnership is required.

*[Signatures are on the following page.]*

The parties agree to this Contract as witnessed by the signatures below:

**CITY:**

Approved as to form:

s/ \_\_\_\_\_

s/ \_\_\_\_\_

Jim Schutz, City Manager

Robert F. Epstein, City Attorney

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

s/ \_\_\_\_\_

\_\_\_\_\_  
Lindsay Lara, City Clerk

Date: \_\_\_\_\_

**CONTRACTOR:**

\_\_\_\_\_ Business Name

s/ \_\_\_\_\_

Seal:

\_\_\_\_\_  
Name, Title

Date: \_\_\_\_\_

Second Signature (See Section 12.8):

s/ \_\_\_\_\_

\_\_\_\_\_  
Name, Title

Date: \_\_\_\_\_

\_\_\_\_\_  
Contractor's California License Number(s) and Expiration Date(s)

END OF CONTRACT