

CITY OF DANA POINT
AGENDA REPORT

Reviewed By:	
DH	X
CM	X
CA	X

DATE: FEBRUARY 19, 2008

TO: CITY MANAGER/CITY COUNCIL

FROM BRAD FOWLER, DIRECTOR OF PUBLIC WORKS AND ENGINEERING SERVICES

SUBJECT: AWARD OF A CONTRACT TO C.S. LEGACY CONSTRUCTION, INC. FOR THE CONSTRUCTION OF THE PACIFIC COAST HIGHWAY ROADWAY IMPROVEMENTS PROJECT

RECOMMENDED ACTION:

That the City Council (1) approve the Contract Documents entitled "Pacific Coast Highway Roadway Improvements Project"; (2) award a contract to C.S. Legacy Construction, Inc. for construction of the Pacific Coast Highway Roadway Improvements Project, provided that the City Manager or his designee signs and administers subject contract and may approve additional payment not-to-exceed fifteen percent of the contract award amount for change orders and contingencies; and (3) authorize expenditures for construction management services, soils and material testing, and construction design support for the Project as noted in the Fiscal Impact Section.

ISSUES:

City staff completed the design of the Council budgeted Pacific Coast Highway Roadway Improvements Project and advertised the project for construction bids. Bids have been received and evaluated, and staff has determined the lowest responsible and responsive bid to be from C.S. Legacy Construction, Inc., and recommends that a contract be awarded for the construction of the project, Action Document A.

BACKGROUND:

The City Council approved a resolution on February 8, 2006 for an application to OCTA for grant funding to beautify the existing asphalt medians on Pacific Coast Highway. Successful attainment of the competitive grant was predicated upon providing drought tolerant medians and improving pedestrian and bicycle travel ways. The scope of the project, submitted with the application, provided for a simple design involving live palm trees, artificial turf and cobblestone. The City secured grant funds for the project of up to \$500,000 for the project, depending upon the cost share percentage.

On April 17, 2007, the City Council decided to alter the design concept to delete the use of artificial turf and utilize more grouted cobblestone, landscape areas, boulders and more palm trees. A copy of the approved landscape concept is attached as Supporting Document B. City staff completed the design for the project, incorporating the revised concept, and advertised the project for construction bids.

DISCUSSION:

Bids for the Pacific Coast Highway Improvements Project were received for the project and were opened by the City Clerk on February 4, 2008 at 2:00 P.M.. Eleven (11) bids were received as follows:

<u>Rank</u>	<u>Company Name</u>		<u>Bid Amount</u>
1	CS Legacy Construction, Inc.	\$	621,146.30
2	Belaire West Landscape, Inc.	\$	623,414.00
3	Palomar Grading & Paving	\$	669,900.59
4	International Pavement Solutions	\$	671,650.60
5	Bonsall Construction	\$	674,110.09
6	PALP Inc., Excel Paving	\$	723,936.05
7	Griffith Company	\$	752,800.45
8	All American Asphalt	\$	773,773.00
9	Hillcrest Contractors Inc.	\$	779,094.15
10	Sequel Contractors, Inc	\$	783,875.10
11	RJ Noble Company	\$	806,923.92

The detailed bid documents are available in the Public Works Department.

Based upon the bid results, City staff is recommending that C.S. Legacy Construction, Inc. be determined the lowest responsible bidder and that a contract be awarded to them in the not-to-exceed amount of \$621,146.30. The recommendation also authorizes the City Manager or his designee to approve additional payment not-to-exceed fifteen percent of this amount for change orders and contingencies. This higher than usual contingency amount is due the uncertainty of unearthing undocumented underground utilities and limited information concerning the old CALTRANS underground roadway.

It is important to note that C.S. Legacy Construction, Inc. has received exceptional ratings from all references that were contacted. Also, the recent residential construction slowdown has resulted in considerably more bidders with much lower bid amounts for this landscape work.

In order to administer the project, several consultants are planned to be utilized as outlined in the Fiscal Impact Section. The recommended action requests funding to provide the required administration.

There is a detailed explanation of the project funding included in the Fiscal Impact section.

NOTIFICATION/FOLLOW-UP:

Goffman McCormick and Urban
Psomas
PBS&J
GMU
C.S. Legacy Construction, Inc.

STRATEGIC PLAN IMPLEMENTATION:

In compliance with the Strategic Plan Initiative to maintain, modernize and beautify the City’s infrastructure and neighborhoods.

FISCAL IMPACT:

The City Council approved FY08 & FY09 Capital Improvement Projects Fund budget for this project. The current available balance in the project account (#1207) after pre-design and design-related expenditures is approximately \$1.08 million*. Anticipated costs based on the recommended action are as follows:

Construction	<u>\$621,146.30</u>
Contingency, 15%	<u>\$ 93,171.95</u>
Construction Inspection (PBS&J/Others As-Needed)	<u>\$ 81,932.00</u>
Materials Testing/Soils (GMU)	<u>\$ 30,000.00</u>
Construction Support Services(Psomas)	<u>\$ 47,634.00</u>

Total Anticipated Project Costs **\$ 873,884.25**

*The \$1.08 million dollar available budget is sufficient to cover the costs of the project and should result in a savings of \$200,000-\$300,000 at project completion. It is important to also note that the budget shown herein reflects a reduction in anticipated grant funds from \$500,000 to approximately \$350,000 due to the low bid received and the required cost share percentage of reimbursement.

ALTERNATIVE ACTIONS:

1. Other Council-directed action.

ACTION DOCUMENTS:

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A. Contract Agreement	5
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SUPPORTING DOCUMENTS:

Page No.

B. [Landscape Rendering](#) 13

Action Document A – Contract

CITY OF DANA POINT
CONTRACT AGREEMENT
FOR

**PACIFIC COAST HIGHWAY
ROADWAY IMPROVEMENTS PROJECT**

IN THE CITY OF DANA POINT

This Contract Agreement is made and entered into for the above-stated project this _____ day of _____, 20____, BY AND BETWEEN the City of Dana Point, as CITY, and C.S. Legacy Construction, Inc. , as CONTRACTOR.

WITNESSETH that CITY and CONTRACTOR have mutually agreed as follows:

ARTICLE I

The Contract Documents for the aforesaid project shall consist of the Notice Inviting Sealed Bids, Instructions to Bidders, Proposal, General Specifications, Standard Specifications, Special Provisions, Construction Plans, and all referenced specifications, details, standard drawings, and appendices; together with this Contract Agreement and all required bonds, insurance certificates, permits, notices, and affidavits; and also including any and all addenda or supplemental agreements clarifying, or extending the work contemplated as may be required to ensure its completion in an acceptable manner. All of the provisions of said contract documents are made a part hereof as though fully set forth herein.

ARTICLE II

For and in consideration of the payments and agreements to be made and performed by CITY, CONTRACTOR agrees to furnish all materials and perform all work required for the above-stated project, and to fulfill all other obligations as set forth in the aforesaid Contract Documents.

ARTICLE III

CONTRACTOR agrees to receive and accept the prices set forth in the Proposal as full compensation for furnishing all materials, performing all work, and fulfilling all obligations hereunder. Said compensation shall cover all expenses, losses, damages, and consequences arising out of the nature of the work during its progress or prior to its acceptance including those for well and faithfully completing the work and the whole thereof in the manner and time specified in the aforesaid contract documents; and also including those arising from

actions of the elements, unforeseen difficulties or obstructions encountered in the prosecution of the work, suspension or discontinuance of the work, and all other unknowns or risks of any description connected with the work. Said compensation shall not exceed Six Hundred Twenty One Thousand, One Hundred and Forty Six Dollars and Thirty Cents (\$621,146.30), provided that the City Manager or his designee may approve additional payment not-to-exceed fifteen percent (15%) of this amount for change orders and for contingencies.

ARTICLE IV

CITY hereby promises and agrees to employ, and does hereby employ, CONTRACTOR to provide the materials, do the work and fulfill the obligations according to the terms and conditions herein contained and referred to, for the prices aforesaid, and hereby contracts to pay the same at the time, in the manner, and upon the conditions set forth in the contract documents.

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

The CONTRACTOR assures CITY that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. §§ 12101 et seq.)

ARTICLE V

CONTRACTOR acknowledges the provisions of the State Labor Code requiring every employer to be insured against liability for worker's compensation, or to undertake self-insurance in accordance with the provisions of that code and certifies compliance with such provisions.

CONTRACTOR further acknowledges the provisions of the State Labor Code requiring every employer to pay at least the minimum prevailing rate of per diem wages for each craft classification or type of worker needed to execute this Contract as determined by the Director of Labor Relations of the State of California.

ARTICLE VI

CONTRACTOR hereby agrees to comply with the State Labor Code and acknowledges that, in accordance with Labor Code Section 3700, he/she/it will be required to secure the payment of compensation to his/her/its employees.

ARTICLE VII

CONTRACTOR acknowledges that, in accordance with Labor Code Section 1777.5, he/she/it will be held responsible for compliance with the provisions of this Section for all apprentice-able occupations.

ARTICLE VIII

CONTRACTOR hereby waives for himself/herself/itself and for CONTRACTOR's Subcontractors any right CONTRACTOR may now or in the future possess in relation to this Contract and these Contract Documents and the work thereunder, to utilize the provisions of Civil Code Section 47(b) in any action, proceeding, or prosecution pursuant to California False Claims Act, Government Code Section 12650 *et seq.*

ARTICLE IX

CONTRACTOR acknowledges and agrees that CONTRACTOR must have all appropriate CONTRACTOR's licenses. CONTRACTOR further warrants and represents that he/she/they has/have the appropriate CONTRACTOR's license to pursue the work hereunder. CONTRACTOR's failure to have or maintain all appropriate licenses during the entire term of this Contract, or any period thereof, shall be cause for the immediate and summary termination of this Contract by CITY. CONTRACTOR shall be liable for all CITY's costs to complete the work and this Contract.

ARTICLE X

Hazardous Waste or Other Unusual Conditions. If the Contract involves digging trenches or other excavations that extend deeper than four feet (4') below the surface, CONTRACTOR shall promptly, and before the following conditions are distributed, notify CITY, in writing, of any:

- A. **Hazardous Waste.** Material that CONTRACTOR believes may be material that is hazardous waste, as defined in Health and Safety Code Section 25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
- B. **Differing Conditions.** Subsurface or latent physical conditions at the site differing from those indicated.
- C. **Unknown Physical Conditions.** Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided in the Contract.

CITY shall promptly 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 CONTRACTOR's costs of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in this Contract.

In the event that a dispute arises between 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 Contract, but shall proceed with all work to be performed under the Contract. CONTRACTOR shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

ARTICLE XI

Any notices which either party may desire to give to the other party under this Contract 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, certified mail, postage prepaid, return receipt requested, 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:

CITY OF DANA POINT
Attention: City Clerk
33282 Golden Lantern # 203
Dana Point, CA 92629

To CONTRACTOR:

C.S. Legacy Construction, Inc.
Attn: Gregg Strumpf
13263 Yorba Ave.
Chino, CA 91710

ARTICLE XII

The 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 Contract and also govern the interpretation of this Contract. Any litigation concerning this Contract shall take place in the municipal, superior, or federal district court with jurisdiction over the CITY.

ARTICLE XIII

Nothing contained in this Contract shall create any contractual relationship between any Subcontractor and the CITY. CONTRACTOR covenants and agrees that he/she has made himself/herself aware of Public Contract Code Sections 4100 *et seq.* pertaining to the identification and use of Subcontractors in the bid submitted and CONTRACTOR is fully aware and knowledgeable of the liability to the CONTRACTOR for violations of said Sections of the Public Contract Code.

ARTICLE XIV

CONTRACTOR is and shall at all times remain as to the CITY a wholly independent contractor. The personnel performing the services under this Contract 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 Contract. 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 Contract. Except for the fees and other payments paid to CONTRACTOR as provided in the Contract, CITY shall not pay salaries, wages, or other compensation or indemnification to CONTRACTOR for injury or sickness arising out of performing services hereunder.

ARTICLE XV

CONTRACTOR agrees to protect, indemnify, defend and hold harmless CITY and all of its officers, agents and employees from any claims, demand or causes of action, including related expenses, attorney's fees, and costs, based on, arising out of, or in any way related to the work undertaken by CONTRACTOR hereunder.

ARTICLE XVI

CONTRACTOR agrees to endorse general and umbrella liability coverage required herein to include the City as additional insured under the insurance coverage required here using standard ISO endorsement number CG 20 10 attached to an ISO-CGL policy with an edition date of 1991 or earlier and which does not limit the scope of coverage for the additional insured to vicarious liability or to the additional insured's supervision of a given project and which allows coverage to apply to the additional insured to the full extent provided by the policy. In no event will the CONTRACTOR use an additional insured endorsement with an edition date of 1993 or later. CONTRACTOR also agrees to require all contractors, subcontractors and anyone else involved in any way with the project contemplated by this Contract Agreement to do likewise.

ARTICLE XVII

This Contract is entered into for the sole benefit of CITY and CONTRACTOR, and their successors, transferees, and assigns. No other person shall have any right of action based upon any provision of this Contract and no third party beneficiaries shall be created thereby.

ARTICLE XVIII

If any term, provision, condition, or covenant of this Contract, or the application thereof to any party or circumstances, shall to any extent be held invalid or unenforceable, the remainder of the instrument, or the application of such term, provision, condition, or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of the Contract as amended shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE XIX

This Contract may be executed in multiple counterparts, each of which so fully executed counterpart shall be deemed an original. No counterpart shall be deemed an original or deemed or presumed delivered unless and until the counterpart executed by the other party to this Contract is in the physical possession of the party seeking enforcement thereof.

ARTICLE XX

This Contract contains the complete, final, entire, and exclusive agreement between the parties with respect to the subject matter hereof, and no waiver, alteration, or modification of any of the modification, amendment, or alteration in violation hereof shall be void.

ARTICLE XXI

CONTRACTOR affirms that the signatures, titles and seals set forth hereinafter in execution of this Contract Agreement represent all individuals, firm members, partners, joint venturers, and/or corporate officers having principal interest herein.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Contract Agreement to be executed in duplicate by setting hereunto their names, titles, hands, and seals this _____ day of _____, 20__.

CONTRACTOR: _____

(Title)

Contractor's License No. 826870 Class A, B, C-27

Federal Tax Identification No. _____

CONTRACTOR'S SIGNATURE MUST BE NOTARIZED. SEE FOLLOWING PAGE FOR NOTARY ACKNOWLEDGEMENT.

CITY OF DANA POINT

By: _____
Doug Chotkevys, City Manager

ATTEST:

By: _____
Kathy M. Ward, City Clerk

APPROVED AS TO FORM:

By: _____
Patrick Munoz, City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA }
 }
COUNTY OF _____ }

On _____, 200__ before me, _____, personally appeared _____, personally known to me or __ proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

(Notary Seal)

WITNESS my hand and official seal.

Notary Public

OPTIONAL INFORMATION

Though law does not require the data below, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER DOCUMENT

DESCRIPTION OF ATTACHED

- Individual
- Corporate Officer

Title
 Partners Limited
 General

Title of type of document

Other

Number of Pages

Signer is representing:
Name of person or entity _____

Date of Document

Signer(s) other than named above

SUPPORTING DOCUMENT B: Landscape Rendering

