

**CITY OF DANA POINT**  
**AGENDA REPORT**

<b>Reviewed By:</b>	
<b>DH</b>	<b>X</b>
<b>CM</b>	<b>X</b>
<b>CA</b>	<b>X</b>

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**DATE: MARCH 8, 2006**

**TO: CITY MANAGER/CITY COUNCIL**

**FROM BRAD FOWLER, DIRECTOR OF PUBLIC WORKS AND ENGINEERING SERVICES**

**SUBJECT: AWARD OF CONTRACT TO ALL AMERICAN ASPHALT FOR COAST HIGHWAY ASPHALT STREET REPAIRS BETWEEN DOHENY PARK ROAD AND CAMINO CAPISTRANO**

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**RECOMMENDED ACTION:**

That the City Council (1) award a contract to All American Asphalt in the not-to-exceed amount of \$1,977,977.00 for the construction of the Arterial Roadway Resurfacing Project on Coast Highway between Doheny Park Road and Camino Capistrano, provided that the City Manager or his designee may approve additional payment not to exceed ten percent of this amount for change orders and contingencies; (2) authorize the expenditures for various construction support, administration and management expenditures as outlined in the Fiscal Impact Section of this report; (3) authorize the use of available funding as outlined in the Fiscal Section to cover the costs for this project, and direct staff to make necessary funding transfers.

**ISSUES:**

The plans and specifications for the Arterial Roadway Resurfacing Project – Coast Highway were completed and the project was advertised for construction bids. Bids have been received and staff recommends award of a contract as noted in the Recommended Action. The question before the City Council is whether to approve award of the Coast Highway street repair work to All American Asphalt at the competitively bid price.

**BACKGROUND:**

On November 24, 1999, the Orange County Transportation Authority (OCTA) notified all Orange County cities of a call for projects under the Arterial Highway Rehabilitation Program (AHRP). The AHRP was developed in response to the need for all Orange County cities to address rehabilitation of their arterial street systems. On June 26, 2000, the OCTA Board of Directors approved over \$1,000,000 in AHRP funding for the City of Dana Point over the next few years

for rehabilitating several arterial street segments, part of which is funding this repair project. The AHRP is a federally funded program which requires that the State of California Department of Transportation's (Caltrans') processes and procedures be followed. There is extensive documentation needed for Caltrans' review and approval.

The engineering firm of Psomas was retained to complete all of the currently scheduled project designs for rehabilitation of arterial roadways under the AHRP. One of the streets that was included as part of the design effort is Coast Highway between Doheny Park Road and Camino Capistrano.

In conjunction with this project, the City is also making several key drainage improvements to remove street ponding issues in several locations that were identified after last year's heavy rain period.

**DISCUSSION:**

Bids were received for the project and were opened by the City Clerk on February 28, 2006. One (1) bid was received as follows:

All American Asphalt	\$ 1,977,977.00
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A detailed listing of the bid results is available in the Public Works Department.

Based on the bid results and the evaluation thereof, City staff has determined that the bid received from All American Asphalt was competitive and represents a fair price in the current market despite being the only bid. The bid received from All American Asphalt was 7 percent higher than the engineer's estimate, and the difference was a result of escalating material costs, primarily asphalt paving due to the rising cost of petroleum products. Materials pricing alone has escalated by 12-15% in the last twelve months. Unfortunately, the high volume of public work has reduced the number of bidders over the last year as well, adding to higher costs.

If the City were to rebid the project, the cost of the work would increase based on confirmed market trends and material costs. Further, the City has secured grant funding for the project that is time sensitive. The City must award a contract by the middle of April 2006 to avoid loss of \$326,532 of grant funds.

Staff has contacted other agencies that have used All American Asphalt and found that they have completed similar construction projects satisfactorily. Furthermore, All American Asphalt has completed several projects for the City of Dana Point in the last four years and has done so satisfactorily. Therefore, staff recommends that the Council award a contract to All American Asphalt in the not-to-exceed amount of \$1,977,977, provided that the City Manager or his

designee may approve additional payment not to exceed ten percent of this amount for change orders and contingencies.

In addition, staff recommends that the Council authorize the various complementary project expenditures as noted in the Fiscal Impact Section.

The project is expected to take about four months to complete. The Contractor will need to complete the work in stages to limit the impact to the public. The Contractor will complete hardscape and drainage improvements in advance of paving work in each stage. Traffic Control Plans have been included with the project that includes project signage citywide to notify our residents of the work.

**NOTIFICATION/FOLLOW-UP:**

All American Asphalt  
OCTA

**STRATEGIC PLAN IMPLEMENTATION:**

Under the Strategic Planning Initiative to maintain, modernize and beautify the City's infrastructure and neighborhoods, this project implements the tactical element of upgrading and maintaining roads and bridges.

**FISCAL IMPACT:**

The costs of design and management for this project, up to this point, were covered under a previous phase of the Arterial Roadway Resurfacing Project.

**Arterial Roadway Resurfacing Project – Stonehill Drive**

The City Council has approved the following budget for the project in Fiscal Year 2003/2004 for the Arterial Roadway Resurfacing Project – Coast Highway:

General Fund:	\$ 1,296,936.00
AHRP Funding:	<u>\$ 326,532.00</u>
Total Available Coast Highway Budget:	\$ 1,623,468.00

This original cost estimate was prepared in 2003. The project has been delayed due to the extensive utility work by San Clemente and SCWD in the roadway, requiring completion before this project could start. The remaining budget after design expenditures is approximately \$1,510,000.

Based on the lowest responsive bidder construction cost, the following total project costs are anticipated:

Construction	\$ 1,977,977.00
Construction Management	\$ 114,598.00
Materials Testing/Soils	\$ 39,500.00
Construction Support Services	\$ 5,500.00
Contingency, 10%	\$ <u>197,797.70</u>

**Total Project Costs** \$ 2,335,372.70

As noted in the Discussion Section, the project is under funded due to the escalation in material costs that has plagued agencies nationwide and the addition of concrete asphalt drainage improvements identified after last year's heavy rains. In order to fully fund this project, City staff recommends the use of fund savings from two recently completed projects, namely the Salt Creek Ozone Treatment Facility and the Annual Roadway Resurfacing Project FY 04/05. Notices of Completion were filed for both projects, and remaining funds were directed to be transferred to the Capital Improvement Program (CIP) reserves. By way of the Recommended Action, City staff recommends that the money now be transferred into the Arterial Roadway Resurfacing Project – Coast Highway (CIP #1185) to fully fund the work.

Therefore, in summary, the following budget transfers to the Arterial Roadway Resurfacing Project – Coast Highway (CIP #1185) are recommended to allow this project to move forward:

SUMMARY OF RECOMMENDED CIP PROJECT TRANSFERS		
No.	Project/Reserve	Amount
1.	Salt Creek Ozone Treatment Facility savings CIP #1154 (Remaining funds originally directed to be sent to the CIP reserves)	\$ 390,000
2.	Annual Roadway Resurfacing Project FY 04/05 savings CIP #1154 (Remaining funds originally directed to be sent to the CIP reserves)	\$ 170,000
3.	Annual Minor Drainage Improvements CIP #1195	\$ 125,000
4.	Annual Sidewalk ADA Improvements CIP #1193	\$ 50,000
5.	Annual Sidewalk Repair Improvements CIP #1200	\$ 100,000
<b>TOTAL FUNDING TRANSFERS</b>		<b>\$ 835,000</b>

With the proposed funding transfers shown above, there is adequate funding to construct the project.

**ALTERNATIVE ACTIONS:**

1. Other alternatives as determined by the City Council

**ACTION DOCUMENTS:**

**PAGE #**

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**SUPPORTING DOCUMENTS:**

None

**Action Document A – Contract**

CITY OF DANA POINT  
CONTRACT AGREEMENT  
FOR  
**ARTERIAL HIGHWAY REHABILITATION PROGRAM (AHRP)  
COAST HIGHWAY**

IN THE CITY OF DANA POINT

This Contract Agreement is made and entered into for the above-stated project this 8<sup>TH</sup> day of March, 2006, BY AND BETWEEN the City of Dana Point, as AGENCY, and All American Asphalt, as CONTRACTOR.

WITNESSED that AGENCY 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, 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 AGENCY, 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 one million nine hundred seventy-seven thousand nine hundred seventy-seven dollars and zero cents (\$1,977,977), 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

AGENCY 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 AGENCY, and its officers, employees, and agents shall not be liable at-law or inequity occasioned by failure of the CONTRACTOR to comply with this Section.

#### 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 apprenticeable 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 AGENCY. CONTRACTOR shall be liable for all AGENCY'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 AGENCY, 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.



### ARTICLE XIII

Nothing contained in this Contract shall create any contractual relationship between any Subcontractor and the AGENCY. 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 AGENCY 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 AGENCY 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 AGENCY. CONTRACTOR shall not incur or have the power to incur any debt, obligation, or liability whatever against AGENCY, or bind AGENCY 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, AGENCY 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 AGENCY 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 AGENCY 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, execu-  
tors, 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 \_\_\_\_\_, 2006.

CONTRACTOR: \_\_\_\_\_

\_\_\_\_\_  
(Title)

Contractor's License No. \_\_\_\_\_ Class \_\_\_\_\_

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:

\_\_\_\_\_  
Elizabeth Ehring, 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  
\_\_ Individual  
\_\_ Corporate Officer

DESCRIPTION OF ATTACHED

\_\_\_\_\_  
Partners            Title  
                          \_\_ Limited  
                          \_\_ General  
  
\_\_ Other  
\_\_\_\_\_

\_\_\_\_\_  
*Title of type of document*

\_\_\_\_\_  
*Number of Pages*

Signer is representing:  
Name of person or entity  
\_\_\_\_\_

\_\_\_\_\_  
*Date of Document*

\_\_\_\_\_  
*Signer(s) other than named above*