

**CITY OF DANA POINT  
AGENDA REPORT**

Reviewed By:	
DH	_____
CM	_____
CA	_____

**DATE: APRIL 23, 2003**

**TO: CITY MANAGER/CITY COUNCIL**

**FROM: GENIA GARCIA, ACTING DIRECTOR OF COMMUNITY DEVELOPMENT**

**SUBJECT: WEED ABATEMENT PROGRAM, AWARD CONTRACT  
FF#0240-50/WEED ABATEMENT/  
CONTROL/WEED ABATEMENT PROGRAM 2003**

**RECOMMENDED ACTION:** That the City Council award the 2003 Weed Abatement Contract to Pete's Trucking.

**DISCUSSION:** On March 12, 2003, the City Council authorized Staff to release bid packets to contractors to abate weeds in the City. A notice inviting bids was published in two newspapers and bid packets were sent to two (5) contractors. A total of two (2) bids were returned to the City.

Bids were received from Salinas Tree Preservation, located in Placentia, and Pete's Trucking, located in Capistrano Beach, (the City's 2002 weed abatement contractor). Bids were analyzed in five (5) areas: cost breakdown, experience in weed abatement, manpower, contract requirements, and equipment to complete the project.

Applying these criteria to the two (2) bids, the firm of Pete's Trucking had the lowest overall cost. The difference in the two (2) firms is the overall cost to complete the Weed Abatement Program. Pete's Trucking has demonstrated ability to complete the contract, as the City's contractor for several years.

The firm of Pete's Trucking appears to have adequate manpower and equipment to complete the weed abatement program within the established time frame. Given these factors, Staff feels that Pete's Trucking is a responsible bidder.

Staff recommends awarding the contract for weed abatement to Pete's Trucking. This office has verified current insurance requirements and valid contractor's license for Pete's Trucking.

**NOTIFICATION AND FOLLOW-UP:** The City Clerk’s office posted notices of the meeting tonight. Also, notice of tonight’s meeting was sent to each bidder.

**FISCAL IMPACT:** The City Council has allocated a total of fifteen thousand (\$15,000.00) dollars for weed abatement purposes. Costs will be applied to properties requiring weed abatement, and recovered by the City.

**ALTERNATIVE ACTIONS:** None.

**ACTION DOCUMENTS:** **PAGE NO.**

A. [Weed Abatement Contract Agreement between City of Dana Point and Pete's Trucking](#) ..... 3

**SUPPORTING DOCUMENTS:**

B. [Summary of Bids](#) ..... 16

**AGREEMENT BETWEEN THE CITY  
OF DANA POINT AND PETE'S TRUCKING  
FOR WEED ABATEMENT SERVICES  
DURING THE 2003 WEED  
ABATEMENT PROGRAM**

This Agreement, made and entered into this 23rd day of April, 2003 by and between the City of Dana Point, a municipal corporation of the State of California, ("City"), and Pete's Trucking, a corporation authorized to do business in California, ("Contractor").

**WITNESSETH  
RECITALS**

A. Purpose. For the purpose of removing vegetative growth and/or debris from private properties that, when dry or in the opinion of the City, is a fire hazard or nuisance within the City, a Weed Abatement Program has been established.

B. Authority. Under the authority set forth in California Government Code Section 39501 et seq. and pursuant to Resolution of the City Council of Dana Point, the Director of Community Development has been directed to enforce the laws and be responsible for administering the Weed Abatement Program and is also given the authority to designate his assistant or assistants to aid in the administration of the program.

C. Method. The removal of fire hazards or fire nuisance as described in the Government Code will be accomplished by discing under, removal by hand labor and hauling to an approved dump, or by a combination of the aforementioned operations, and other approved method that is included within the provisions of a written contract and approved by the Director of Community Development/Designee.

D. Time Period. The program will commence on or about May 8th, 2003, and will be completed on or about June 30th, 2003.

E. Director of Community Development. The Director of Community Development or his/her Designee, will organize the program and supervise the cleaning operations.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties do hereby agree as follows:

1.0 Definitions: The following words and phrases are used as defined terms throughout the AGREEMENT, and each defined term shall have the meaning set forth below, unless specifically otherwise defined within this AGREEMENT.

1.1 "AGREEMENT" means this Agreement for Weed abatement services between the City of Dana Point and (Name of Contractor).

1.2 "A.P. Maps" shall mean the same as Weed Abatement Maps. A.P. is defined as "Assessor's Parcel".

1.3 "Approved" shall mean the approval of work by the Director of Community Development/Designee.

1.4 "Bidder" shall mean party or firm to do Weed Abatement cleaning.

1.5 "City" shall mean the City of Dana Point, a California Municipal Corporation.

1.6 "Contractor" shall mean (Name of Contractor).

1.7 "Days" as used in this Agreement will be understood to mean working days (Monday through Saturday) - excluding Sundays and holidays.

1.8 "Designee" shall mean the City Inspector in charge of Weed Abatement area as designated by the Director of Community Development.

1.9 "Director of Community Development" of Dana Point shall mean Supervisor of the Weed Abatement Program (supervises entire program).

1.10 "Improvements" shall mean fences, walls, sidewalks, buildings, vehicles, etc.

1.11 "Lot" shall mean the same as parcel.

1.12 "Parcel" shall mean the plot of land described by an Assessor's Parcel Number.

1.13 "Parkway" shall mean the area between the curb and sidewalk.

1.14 "Perimeter" shall mean the following:

(a) Outside boundary of a parcel;

(b) Outside boundary of a community where improvements meet wildland or unimproved area.

1.15 "Program" shall mean the City of Dana Point Weed Abatement Program.

1.16 "Reports" shall mean all reports required by the City or Contractor for Weed Abatement.

1.17 "Rubbish" shall mean all rubbish, refuse, and dirt upon parkways, sidewalks or private property in the City which could endanger public safety by creating a fire hazard, not to be confused with cutting or trimmings that result during the cleaning of a lot or parcel by Contractor.

1.18 "Weed Abatement Maps" shall mean the Map pages of the type obtained from originals provided by the Assessor's Office of the County of Orange.

1.19 "Weeds" shall mean all weeds growing upon streets, sidewalks, or private property in the City as defined by Government Code Section 39561.

1.20 "Workday" shall mean not less than eight (8) hours per day (not including lunch or breaks). No workday shall commence before 7:00 a.m.

1.21 "Workweek" shall mean not less than forty (40) hours per week (Monday through Saturday, excluding Sundays and holidays).

## 2.0 Insurance Requirements and Indemnification.

2.1 Contractor shall file with the City, prior to commencement of work required by this AGREEMENT, a certificate of insurance stating that the coverages required by this paragraph and Paragraph 3.0 et seq. are in effect. This certificate shall contain the following clauses:

(a) "It is agreed that this policy shall not be canceled, non-renewed or reduced in scope of coverage until after 30 days written notice has been given to City."

(b) "City is added as an additional insured as respects operations of the named insured performed under AGREEMENT with the City."

(c) "It is agreed that any insurance maintained by the City shall apply in excess of and not contribute with, insurance provided by this policy."

2.2 Contractor shall supply within seven (7) days upon notice by the City evidence of insurance in the form of certificates of worker's compensation insurance and public liability and property damage with companies and with limits of coverage satisfactory to the City Attorney. It shall also be necessary for the City to be shown as an additional insured and a 30-day written notice of cancellation be provided.

### 2.3 Indemnification.

Contractor shall indemnify, protect, defend and hold harmless the City, its officers, agents, and employees, from and against any and all claims, demands, loss or liability of any kind or nature which the City, its officers, agents and employees may sustain or incur or which may be imposed upon them or any of them for injury to, or death of person; or damage to property arising out of or in any manner connected with the negligence or lack of care of Contractor, Contractor's officers, agents, subcontractors or employees in the performance of this Agreement. This provision shall include any and all claims arising from sub-contractors retained by Contractor.

## 3.0 Types of Insurance and Policy Provisions.

### 3.1 Liability:

Contractor shall maintain in full force during the terms of this Agreement the following types of insurance:

(a) Comprehensive general liability insurance, containing a broad form property damage endorsement.

(b) Comprehensive automobile liability insurance, including coverage for the owned, non-owned, and hired automobiles.

(c) Contractual liability insurance.

### 3.2 Casualty:

Entire limits of liability maintained shall be certified, but in no event shall limits be less than specified as follows:

### 3.3 Coverages and Limits:

Coverage	Minimum Limit
Worker's Compensation and Employers Liability	Statutory
Comprehensive General Liability including broad form property damage	\$1,000,000 combined single limit each occurrence
Comprehensive Auto Liability including the owned, non-owned and hired automobiles	\$1,000,000 combined single limit each occurrence
Contractual Liability	\$500,000 combined single limit each occurrence

3.4 Any aggregate limitation of liability shall be separate as to the risks arising out of the subject matter of this AGREEMENT.

#### 4.0 Permits.

4.1 Contractor shall supply, at Contractor's own expense, all licenses and permits, including City permits and pay all fees necessary to complete the work specified herein.

#### 5.0 Cleaning Period.

5.1 Contractor agrees to commence the project on the date specified by the City and shall diligently prosecute it to completion on or by June 30, 2003.

#### 6.0 Liquidation Damages.

6.1 Pursuant to Government Code Section 53069.85, Contractor agrees that one-hundred fifty dollars (\$150.00) per day for each working day beyond the specified time period required to complete the work is a fair and reasonable estimate of the damages which the City will suffer because of the Contractor's delay; therefore, it is agreed by both parties hereto that said amount shall be a charge against Contractor and shall be deducted as liquidated damages from any amounts due Contractor under this Agreement if work is not completed on schedule.

#### 7.0 Unsatisfactory Performance Provision.

7.1 The Director of Community Development/Designee shall inspect the work and judge the performance of Contractor pursuant to all

Weed Abatement work. If the work done pursuant to this AGREEMENT is: incomplete and/or unsatisfactory; Contractor fails to provide the services specified in the schedule supplied by City; or if a lesser number of hours of service than eight hours per day and forty hours per week is provided by the Contractor, the amount payable under this AGREEMENT shall be reduced by \$19.00 per hour, for each Designee involved to correct the problem or any fraction of an hour that service is provided. This provision shall apply to any down-time on the part of Contractor, when performance deficiencies exceed 15% of the work scheduled in any given day, based on an 8-hour work day, regardless of its origin (including, but not limited to, lack of sufficient manpower, machinery or parts; equipment failure; absence of supervisory personnel or inadequate replacement for equipment or manpower, unless the deficiency is the direct result of an act of God, i.e., rain, fire, flood, as determined by the City).

#### 8.0 Pay Scale.

8.1 Contractor agrees to pay to any laborer or workman employed by said Contractor in the execution of the work, not less than the prevailing rate for his job on existing and applicable job classifications as have been determined by the State of California. These rates are on file in the Office of the Clerk of the Board of Supervisors of the County of Orange.

#### 9.0 Per Diem.

9.1 The rates specified in Paragraph 8.1 above are based upon a working day of eight (8) hours, and in the event that laborers, workmen or mechanics are employed less than eight (8) hours per day, the rates of per diem wages shall be deemed to be that fraction of the foregoing rates that the number of hours of employment bears to eight (8).

#### 10.0 Responsibility of Contractor As Independent Contractor and Employer.

10.1 Contractor shall be responsible for the cost of regular pay to employees and shall also pay all federal and state payroll taxes. Contractor and all Contractors' employees shall be deemed independent contractor's and are not to be considered for any purpose to be employees of the City.

10.2 Contractor shall be considered an independent contractor and not an agent of or an employee of the City. Contractor, Contractor's employees, agents or subcontractors do not qualify for worker's compensation or other fringe benefits of any kind offered by City.

10.3 Contractor agrees that Contractor shall pay to any laborer or mechanic employed by Contractor the prevailing rate of per diem wages and rates for overtime work.

10.4 Pursuant to Labor Code Section 1775, Contractor shall forfeit to City the sum of fifty dollars (\$50.00) for each calendar day, or portion thereof, for each workman paid less than the pay scale provided herein.

10.5 Eight (8) hours of labor shall constitute a legal day's work. Contractor agrees to and shall comply with applicable Labor Code Sections regarding legal day's work and overtime.

10.6.1 In the performance of the terms of this AGREEMENT, Contractor agrees not to engage in nor permit such subcontractors as Contractor may employ from engaging in discrimination in employment of persons because of the race, color, national origin or ancestry, sex or religion of such persons. Violation of this provision may result in the imposition of penalties in accordance with Labor Code Section 1735.

10.7 Attention is directed to the provision of Labor Code Section 1777.5 concerning employment of apprentices. Said section requires contractors or subcontractors employing tradesman in any apprenticeable occupation to apply to the applicable joint apprenticeship committee for a certificate of approval and fixing the ratio of apprentices to journeymen used on the contract. Contractor may be required to make contributions to apprenticeship programs. Contractor and any subcontractors shall also comply with Labor Code Section 1777.6 in the employment of apprentices. For information relative to apprenticeship standards, contact Director of Industrial Relations, San Francisco, California, or Division of Apprenticeship Standards Branch Office.

11.0 Contractor Guarantee of Work.

11.1 Contractor guarantees and agrees to indemnify the City for one year against all loss due to defective workmanship performed on the project. This guarantee is in addition to and not intended as a limitation of any other warranty, expressed or implied.

12.0 Approval or Work.

12.1 All work and materials shall be subject to inspection by the Designee and if not satisfactory, must be reported in writing to the Director of Community Development by the Designee.

13.0 Agreed Price and Payments to Contractor.

13.1 Agreed Price. Contractor shall be entitled to compensation for services rendered in accordance with Contractor's bid, and as awarded by the City Council on April 23, 2003. A copy of said Proposal and Bid is attached hereto and incorporated herein by reference as Exhibit "A."

13.2 At the expiration of fifteen (15) calendar days after commencing work, and at fifteen (15) day intervals thereafter, Contractor shall submit invoices in triplicate to the City's Director of Finance and Administration, showing the type of work performed and the amount of money claimed under this AGREEMENT. The claim, after acceptance and approval by the Director of Community Development/Designee will be processed for payment in accordance with established procedures by the City's Director of Finance and Administration.

13.3 City shall withhold 10% of each billing submitted hereunder. Said sums withheld shall be paid to Contractor upon termination of this AGREEMENT in the event and to the extent Contractor has successfully complied with the terms of this Agreement.

14.0 Coordination of Specifications.

14.1 The Specifications and Notice Inviting Bids, the Contractor's Proposal and Bid, and this written AGREEMENT between City and Contractor shall constitute this AGREEMENT. The Bid Specifications and Notice Inviting Bids are attached hereto and incorporated herein by reference as Exhibit "B". The Contractor's Proposal and Bid are attached hereto and incorporated herein by reference as Exhibit "A."

14.2 These documents shall constitute one and the same and are intended to be read together and to require a complete and finished piece of work, including all labor and equipment necessary for the proper execution and completion thereof. Anything called for in any one of said documents shall be deemed to be required equally as if called for in all. Whatsoever is necessary to complete the work properly shall be performed by Contractor, whether specifically set out in the contract or not. All sections of this AGREEMENT shall be read and interpreted as constituting a whole and not as an aggregation of individual parts, and whatever is specified in one section shall be construed as applying to all sections.

15.0 Contractor's Examination of Agreement and Documents incorporated therein.

15.1 Contractor hereby certifies that he/she has examined carefully the Specifications, Proposal and all other AGREEMENT documents. Contractor's submission of a proposal shall be considered conclusive evidence that Contractor has investigated and is satisfied as to the conditions to be encountered in respect to the character, quality, and quantities of work to be performed and materials to be furnished, and the requirements of this AGREEMENT, specifications and other documents incorporated herein. \_\_\_\_\_(initial)

16.0 Audit of Contractor's Records.

16.1 City shall have the right to require an audit of the Contractor's records pertaining to this AGREEMENT. All records, tax returns and data of any nature, whether or not directly related to this AGREEMENT, shall be made available for audit at the request of the Director of Community Development/Designee. The cost of said audit shall be born by Contractor if the results of such audit reveal a discrepancy of more than 2% between billings to the City and proper billings as determined by such audit for any one-month period. Any audit adjustments in favor of the City, whether or not in excess of the 2% discrepancy limit, shall be immediately due and payable by Contractor to City together with a penalty of 5% compounded monthly from the month to which the adjustment is related to the date of the end of the period under audit.

17.0 Records of Contractor.

17.1 Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by Contractor in accordance with generally accepted accounting principles. Contractor shall make available its accounts, records, books and data to City upon forty-eight (48) hours notice by City to Contractor. All invoices, billing for services performed shall be accompanied by detailed statement supporting the charges.

18.0 Termination of Contract.

18.1 The City reserves the right to terminate this AGREEMENT at any time due to lack of work, lack of appropriate machinery, lack of manpower, lack of appropriated funds, illegal acts or violation of any provision of the Agreement. This AGREEMENT shall be considered terminated one year from the date that work commenced.

19.0 Conflict of Interest.

19.1 City policy and applicable State law prohibits its public employees and officers from engaging in activities involving conflict of interest. Contractor shall not, during the period of this AGREEMENT, employ any City employee or officer for any purpose, or take any action that would result in a conflict of interest.

20.0 Defective and Deficient Work.

20.1 Contractor agrees that all work which is determined by the Designee to be defective or deficient in any of the requirements of the specifications shall be remedied immediately, or within a time approved by the Director of Community Development/Designee, by the Contractor at Contractor's own and sole expense in a manner acceptable to the Director of Community Development/Designee. Failure to rectify defective or deficient work shall be cause for termination of this AGREEMENT.

21.0 Supervision by Contractor and Representative.

21.1 Supervision. Contractor shall be responsible for providing qualified supervision in all areas of operations. Supervision will be provided at the expense of Contractor. The supervisor designated by the contractor will make necessary reports and work directly with the area inspector in planning and scheduling of work.

21.2 Contractor's representative or agent who can read, speak and understand the English language shall at all times be present at the job site during the course of the cleaning operations. Contractor's representatives or agent shall have full authority to act for Contractor in all matters relative to Weed Abatement cleaning operations. Contractor's representative or agent shall further have the authority to sanction repairs when mechanical breakdowns occur.

22.0 Scope of Work to be Performed.

22.1 The scope of work includes those lots or parcels declared a public nuisance by the City Council, which have not been abated prior to the Director of Community Development's ordering Contractor to perform such clean-up. A list of said lots are attached hereto and incorporated herein as Exhibit "C."

22.2 All scheduling of cleaning operations will be determined by the Director of Community Development/Designee. At any time during the cleaning operations, should a controversy arise as to the number of lots cleaned, the amount of work done or still to be completed, or the sizes of

parcels cleaned by Contractor, the matter will be studied and explained fully and the parties hereto agree that the final decision shall be made by the Director of Community Development.

22.3 Work orders shall be provided by the Director of Community Development/Designee on a daily or "as needed" basis. Contractor shall be responsible for thoroughly filling out and signing the work orders as jobs are complete and submitting same to the Inspector for review, approval and signature. Information on such orders shall include, but not be limited to, names of laborers, equipment used, and time spent.

22.4 A daily report for billing purposes shall be prepared in triplicate by the Inspector utilizing forms provided by the City. This report shall describe the property, by Assessor Parcel Number, upon which work has been accomplished and indicate completely the extent of work performed and must be signed by Contractor and Inspector before payment will be made.

23.0 Complaints and Reports of Damage.

23.1 Contractor shall be responsible for promptly answering inquiries and complaints by the City relative to any work, charges, damage or any other questions that may arise as a result of Weed Abatement operations by contractor.

23.2 Contractor shall promptly notify the Director of Community Development/Designee of any damage to private property as a result of Weed Abatement operations, and remedy such at Contractor's own and sole expense immediately or within a time approved by the Director of Community Development/Designee.

24.0 General Operating Conditions.

24.1 Contractor agrees not to start work before 7:00 a.m. and not to work later than 6:00 p.m. on any workday. No workweek shall exceed six (6) days per week and no work shall occur on Sundays or Holidays without the express written permission of the Director of Community Development/Designee.

24.2 All transportation of equipment and personnel to and from the job site shall be arranged by Contractor, at Contractor's own and sole expense.

24.3 Contractor shall be responsible for making available sanitary facilities for all personnel under the control of the Contractor. Aforementioned sanitary facilities shall meet the standards of State and local laws.

24.4 Contractor shall make arrangements with the Director of Community Development/Designee for parking sites for Contractor's equipment at night and on Sundays or holidays. Equipment shall not be parked or stored on private property without the express permission of the property owner.

24.5 Contractor agrees that under no condition shall Contractor or Contractor's agent or workmen remove any item or items from any private property except that which has been authorized in writing by the City.

24.6 Contractor is required to provide sufficient personnel and operable equipment during weed abatement cleaning as deemed necessary by the City. Removal of any such equipment designated to the Weed Abatement Program without immediate replacement must be approved by the Director of Community Development/Designee.

24.7 Contractor agrees that downtime of the tractors, discs, transports and/or dump trucks due to mechanical failure which exceeds 15% per each work day shall be considered excessive pursuant to Paragraph 7.1 of this AGREEMENT. Contractor shall, at Contractor's own and sole expense, be required to provide replacement equipment that meets minimum specifications when downtime exceeds 15% per each workday.

25.0 Termination of Operations.

25.1 Final authorization to terminate weed Abatement operations will be made by the Director of Community Development.

26.0 Notices.

26.1 Any and all notices, demands, invoices, and written communications shall be conclusively deemed to have been received by the addressee: upon personal delivery to the addresses set forth below, or five (5) days after the deposit thereof in the United States Mail, postage prepaid and properly addressed as noted below:

CITY:

CITY OF DANA POINT  
33282 Street of the Golden Lantern  
Dana Point, California 92629  
Attn: Director of Community Development

CONTRACTOR:

Pete's Trucking  
26812 Calle Juanita  
Capistrano Beach, California 92624

CITY

\_\_\_\_\_  
Doug Chotkevys  
City Manager

Attest:

\_\_\_\_\_  
Susan A. Ramos  
City Clerk

\_\_\_\_\_  
Pat Munoz  
City Attorney

CONTRACTOR

By: \_\_\_\_\_  
Dory Sanchez

Its: \_\_\_\_\_

(Notary Block)

**WEED ABATEMENT SUMMARY OF BIDS APRIL 4, 2003**

CONTRACTOR	<b>SALINAS</b>	<b>Pete's Trucking</b>	
	\$	\$	
hand work	0.0500	0.0450	
5 lots cleared in 2002			
14,290 square feet x bid =	\$ 714.50	\$ 643.05	Pete's lower by \$ 71.45
Bid for discing by lot size			
A	\$ 115.00	\$ 120.00	
B	\$ 139.00	\$ 140.00	
C	\$ 157.00	\$ 160.00	
D	\$ 163.00	\$ 165.00	
E	\$ 165.00	\$ 165.00	
discing in 2002			
2 A lots x bid =	\$ 230.00	\$ 240.00	Salinas lower by \$10
1 B lot x bid =	\$ 139.00	\$ 140.00	Salinas lower by \$ 1
rubbish hauling	\$ 40.00	\$ 39.99	
no rubbish removed in 2002			

**OVERALL Bid Difference Pete's is lower by \$ 60.45**

insurance requirement	yes	yes
references	yes	yes
license requirement	yes	yes
equipment	yes	yes
subcontractors	yes	no

*Weed/bid03 difference*  
Rev: April 09, 2003