

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

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

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**DATE: JULY 23, 2003**

**TO: CITY MANAGER/CITY COUNCIL**

**FROM: LAWRENCE D. PIERCE, INTERIM DIRECTOR OF PUBLIC WORKS AND ENGINEERING SERVICES**

**SUBJECT: AWARD OF CONTRACT TO ALL AMERICAN ASPHALT FOR CONSTRUCTION OF THE ARTERIAL ROADWAY RESURFACING PROJECT PHASE I, FISCAL YEAR 2003-2004**

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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 \$936,392.00 for construction of the Arterial Roadway Resurfacing Project Phase I, Fiscal Year 2003-2004, provided that the City Manager or his designee may approve additional payment not to exceed fifteen percent of this amount for change orders and contingencies; (2) authorize the expenditure of \$149,995 for construction management services for the construction of the Arterial Roadway Resurfacing Project Phase I, Fiscal Year 2003-2004; (3) authorize a purchase order to Goffman McCormick and Urban for materials testing and inspection services for a not-to-exceed fee of \$20,000; and (4) authorize a purchase order to Psomas for construction support services for a not-to-exceed fee of \$17,000.

**ISSUES:**

City staff completed the design of the Arterial Roadway Resurfacing Project Phase I, Fiscal Year 2003-2004. City staff advertised the project for construction bids and bids were received on July 8, 2003. Staff has determined the lowest responsive bid to be from All American Asphalt and recommends that a contract be awarded for the construction of the project.

**BACKGROUND:**

The City Council authorized the design for the rehabilitation of the following two arterials:

1. Niguel Road between Pacific Coast Highway and Camino Del Avion
2. Golden Lantern between Dana Point Harbor Drive and Pacific Coast Highway

The project involves street rehabilitation, traffic control, striping and other improvements. The City was required to solicit permits from the State of California Department of Transportation for both segments based on work in Pacific Coast Highway.

The City is also obligated under the American with Disabilities Act (ADA) to modify curb ramps at all intersections in the project area. ADA requirements dictate that all curb ramps must be modified to match current Federal standards for curb ramps.

**DISCUSSION:**

Bids were received for the project and were opened by the City Clerk on July 8, 2003. Five (5) bids were received as follows:

All American Asphalt	\$ 936,392.00
Silvia Construction, Incorporated	\$ 1,032,656.78
RJ Noble Company	\$ 1,043,568.25
Palp, Incorporated dba Excel Paving Company	\$ 1,046,905.90
Sequel Contractors, Incorporated	\$ 1,077,230.05

A detailed listing of the bids is available in the Public Works Department.

Based on the bid results, staff recommends that All American Asphalt be determined the lowest responsible bidder and that a contract be awarded to them in the not-to-exceed amount of \$936,392.00. 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.

The references listed by All American Asphalt have been contacted and no negative reports were received. In addition, All American Asphalt has successfully completed several projects in recent years for the City of Dana Point.

PBS&J is available to provide construction administration and inspection for the project. It is recommended that the City Council authorize the expenditure of a not-to-exceed amount of \$149,995.00 for construction management services.

During construction, materials testing will be required to certify the materials delivered and placed in the field. Goffman McCormick and Urban submitted a proposal for this work, and staff recommends that Council consider the issuance of a purchase order to this firm in the not-to-exceed amount of \$20,000.

Psomas has submitted a proposal for construction support services and staff recommends that Council authorize the expenditure of a not-to-exceed fee of \$17,000.

The City has secured funding from the Orange County Transportation Authority (OCTA) for both segments under the Arterial Highway Resurfacing Program (AHRP). The City has

executed all documentation for the procurement of funding. The City expects to receive approximately \$300,000 for this project in grant funding.

### **NOTIFICATION/FOLLOW-UP**

All American Asphalt  
 PBS&J  
 Goffman McCormick and Urban

### **STRATEGIC PLAN IMPLEMENTATION**

In compliance with the Strategic Plan 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:**

Total available funding is as follows:

FY2002-2003 CIP Budget (General Fund)	\$ 486,873.00
FY2003-2204 CIP Budget (General Fund)	\$ 1,176,100.00
AHRP Funds for Street of the Golden Lantern	\$ 100,000.00
AHRP Funds for Niguel Road	<u>\$ 198,900.00</u>
<b>Total funding available</b>	<b>\$ 1,961,873.00</b>

Project costs to date are as follows:

Design, Psomas	\$ 380,332.00
Project Management, PBSJ	\$ 59,088.00
Cultural Resource Studies, LSA	\$ 8,600.00
Printing, CR	<u>\$ 1,450.00</u>
<b>Total Project Costs to Date</b>	<b>\$ 449,470.00</b>

Additional project costs per the recommended action are as follows:

Construction	\$ 936,392.00
15% Contingency	\$ 140,459.00
Material Testing	\$ 20,000.00
Construction Administration	\$ 149,995.00
Construction Support, Psomas	<u>\$ 17,000.00</u>
<b>Total Additional Project Costs</b>	<b>\$ 1,263,846.00</b>

With the additional project costs, the total estimated cost of the project based on the bid received is \$1,713,316. Therefore, there is sufficient budget to complete the project.

**ALTERNATIVE ACTIONS:**

- 1. Do not construct the project at this time.
- 2. Other action as directed by the City Council

**ACTION DOCUMENTS:**

**PAGE**

A. <a href="#">Contract</a> Agreement.....	5
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**SUPPORTING DOCUMENTS:**

None

**Action Document A – Contract**

CITY OF DANA POINT

CONTRACT AGREEMENT  
FOR**ARTERIAL ROADWAY RESURFACING PROJECT PHASE I, FY 2003-2004**ON STREET OF THE GOLDEN LANTERN  
(FROM DANA POINT HARBOR DRIVE TO PACIFIC COAST HIGHWAY)  
AND  
ON NIGUEL ROAD  
(FROM PACIFIC COAST HIGHWAY TO CAMINO DEL AVION)

IN THE CITY OF DANA POINT

This Contract Agreement is made and entered into for the above-stated project this 23rd day of July, 2003, BY AND BETWEEN the City of Dana Point, as AGENCY, and All American Asphalt, as CONTRACTOR.

WITNESSETH 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 Nine Hundred Thirty-Six Thousand Three Hundred Ninety-Two Dollars \$936,392.00 provided that the City Manager or his designee may approve additional payment not-to-exceed 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 in-equity 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.

AGENCY 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 AGENCY 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 AGENCY:	CITY OF DANA POINT Attention: City Clerk 33282 Golden Lantern # 203 Dana Point, CA 92629
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To CONTRACTOR:	All American Asphalt Mr. Jerry Le Bouef 400 E. Sixth Street Corona, CA 92878
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#### ARTICLE XII

The AGENCY 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 AGENCY.

#### 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, 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. \_\_\_\_\_ 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: \_\_\_\_\_  
Susan A. Ramos, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Patrick Munoz, City Attorney

