

CITY OF DANA POINT
AGENDA REPORT

Reviewed By:	
DH	X
CM	X
CA	X

DATE: SEPTEMBER 24, 2003

TO: CITY MANAGER/CITY COUNCIL

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

SUBJECT: AWARD OF A CONTRACT TO BELAIRE WEST LANDSCAPE, INCORPORATED FOR THE CONSTRUCTION OF IMPROVEMENTS AT DEL OBISPO PARK AS PART OF THE GENERAL PARK REHABILITATION PROGRAM

RECOMMENDED ACTION:

That the City Council (1) award a contract to Belaire West Landscape, Incorporated in the not-to-exceed amount of \$808,865.05 for construction of the General Park Rehabilitation at Del Obispo Park Project, 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) approve the transfer of \$50,000 from the Sycamore Creek Trail Project, Account Number 11-99-30-1136-311, to the General Park Rehabilitation Program, Account Number 11-99-30-1156-311, to fund a portion of the General Park Rehabilitation at Del Obispo Park Project; (3) approve the transfer of \$300,000 from the Park Development Fund to the General Park Rehabilitation Program, Account Number 11-99-30-1156-311; (4) authorize the expenditure of \$64,132 for construction management services for construction of Improvements at Del Obispo Park as part of the General Park Rehabilitation Program; (5) authorize a purchase order to Goffman McCormick and Urban for materials testing and inspection services for a not-to-exceed fee of \$9,500; and (6) authorize a purchase order to Borthwick Guy and Bettenhausen for construction support services for a not-to-exceed fee of \$8,000.

ISSUES:

City staff completed the design of Improvements at Del Obispo Park as part of the General Park Rehabilitation Program. The City Council authorized staff to advertise the project for construction bids. City staff advertised the project for construction bids and bids were received on September 16, 2003. Staff has determined the lowest responsive bid to be from Belaire West Landscape, Incorporated and recommends that a contract be awarded for the construction of the project.

BACKGROUND:

The General Park Rehabilitation Program was established by the City Council to provide a mechanism for the City to rehabilitate parks within the City's control. The City owns and operates 20 parks currently and plans for the construction of several others.

The City completed a comprehensive survey of the existing parks and has identified Del Obispo Park as the park with the most need for rehabilitation. Necessary improvements include:

1. Re-grading all three baseball fields, including the reconstruction of the infield and placement of brick dust and replanting grass in the outfield of all three fields.
2. Replacement of the entire irrigation system for the ballfields and adjacent Community Center planting areas which has numerous deficiencies and problems.
3. Replacement of the entire fencing system for site fencing which includes fencing around the three baseball fields, existing batting cages and exterior fencing at the Community Center.
4. Replacement of the entire parking lot and walkway lighting system including the electrical system. New light fixtures to match the Sycamore Creek Trail Project will be utilized.
5. Reconstruction of portions of the park walkway system to improve access for the disabled and to accommodate grading activities.
6. Replacement of aged landscaping that will be impacted by the installation of the new irrigation system.
7. Installation of an enhanced drainage system to control runoff from the parking lot, ballfields and Community Center property.

Del Obispo Park is one of the most heavily utilized parks in the entire City of Dana Point. The primary use of the park is for baseball, including youth baseball activities. The next season of baseball for the youth starts in mid-February 2004 with the start of team try-outs and practice.

Based on the need for improvements in Del Obispo Park and the youth baseball schedule, it was critical that staff move quickly to advertise, bid and construct numerous improvements in the park prior to mid-February 2004. With that in mind, staff completed the design and advertised the project for construction bids based on the City Council's direction on August 27, 2003.

DISCUSSION:

Bids were received for the project and were opened by the City Clerk on September 16, 2003. Three (3) bids were received as follows:

Belaire West Landscape, Incorporated	\$ 808,865.05
DMA Contracting	\$ 857,739.77
Terra Cal Construction	\$ 897,401.44

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

Based on the bid results, staff recommends that Belaire West Landscape, Incorporated be determined the lowest responsible bidder for the General Park Rehabilitation at Del Obispo Park Project, and that a contract be awarded to them in the not-to-exceed amount of \$808,865.05, 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.

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 \$64,132 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 \$9,500.

Borthwick Guy and Bettenhausen has submitted a proposal for construction support services and staff recommends that Council authorize the expenditure of a not-to-exceed fee of \$8,000.

There is a detailed explanation of the project funding included in the Fiscal Impact Section. The City has budgeted effectively to allow this project to move forward at this time.

NOTIFICATION/FOLLOW-UP:

Belaire West Landscape
Borthwick Guy and Bettenhausen
Goffman McCormick and Urban

STRATEGIC PLAN IMPLEMENTATION

In furtherance of the Strategic Plan Initiative to maintain, modernize and beautify the City's infrastructure and neighborhoods, this project implements the needed improvement in Del Obispo Park.

FISCAL IMPACT:

Funding provided under the current General Park Rehabilitation Program is as follows:

General Funds	\$ 1,200,000.00
Total Funding	\$ 1,200,000.00

Estimated project costs to date are as follows:

David Volz, Restroom Rehab Design	\$ 48,121.00
Borthwick, Guy and Bettenhausen	\$ 16,500.00
PBS&J, Project Management	\$ 15,768.00
Consolidated Reprographics, Printing	\$ 1,000.00
RJM Design Group	\$ 20,000.00
RJM Design Group	\$ 10,000.00
PBS&J, As Needed PM	\$ 34,500.00
FBA Engineering, Del Obispo Park	\$ 13,000.00
Design in Motion	\$ 4,500.00
Ann Christoph	\$ 5,000.00
Bush and Associates	\$ 7,450.00
Goffman, McCormick and Urban	\$ 1,200.00
Ty-Lin, Structural	\$ 5,000.00
Total Project Costs To Date	\$ 182,039.00

Remaining Funds: **\$ 1,017,961.00**
(General Park Rehabilitation Program)

The project also involves the connection of the trail system between the new Sycamore Creek Trail (Alipaz ROW Landscaping) and Del Obispo Park. Therefore, staff recommends that \$50,000 is transferred and utilized from the Sycamore Creek Trail Project to fund a portion of the General Park Rehabilitation at Del Obispo Park Project.

There is approximately \$500,000 available in the Park Development Fund. Staff recommends that Council authorize the transfer of \$300,000 from the Park Development Fund to the General Park Rehabilitation Program, Account Number 11-99-30-1156-311, to offset a portion of the capital costs.

In summary, the following funding is available to fund the General Park Rehabilitation at Del Obispo Park Project:

General Park Rehabilitation Program (Remaining Funds)	\$ 1,017,961.00
Park Development Fund (Recommended Portion of Funding)	\$ 300,000.00

Sycamore Creek Trail Project (Recommended Portion of Funding)	\$ 50,000.00
Total Available Funding (Various Sources)	\$ 1,367,961.00

Additional costs based on the recommended action are as follows:

Construction, Belaire West Landscape	\$ 808,865.05
Construction Management	\$ 64,132.00
Materials Testing/Soils	\$ 9,500.00
Construction Support	\$ 8,000.00
Contingency, 10%	\$ 80,886.51
Total Additional Project Costs	\$ 971,383.56
Remaining Available Budget	\$ 396,577.44

The City has numerous park rehabilitation projects that need to be completed citywide. In order to save money for those projects, City staff took the following steps to reduce the expenditure from the General Park Rehabilitation Program budget:

1. Determined the funding from the Sycamore Creek Trail Project that should be applied to the General Park Rehabilitation at Del Obispo Park Project. The amount that was determined is \$50,000, and the recommendation is to transfer that amount.
2. Determined the funding from the Park Development Fund that could be applied to the General Park Rehabilitation at Del Obispo Park Project. The amount that was determined is \$300,000, and the recommendation is to transfer that amount.

There is sufficient budget to fund the recommended action.

ALTERNATIVE ACTIONS:

1. Other Council directed actions.

ACTION DOCUMENTS:

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SUPPORTING DOCUMENTS:

None

Action Document A – Contract

CITY OF DANA POINT
CONTRACT AGREEMENT
FOR
**GENERAL PARK REHABILITATION PROJECT
AT DEL OBISPO PARK**

IN THE CITY OF DANA POINT

This Contract Agreement is made and entered into for the above-stated project this 24th day of September, 2003, BY AND BETWEEN the City of Dana Point, as AGENCY, and Belaire West Landscape, Incorporated, 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 Eight Hundred and Eight Thousand Eight Hundred Sixty-Five Dollars and Five Cents (\$808,865.05) provided that the City Manager or his designee may approve additional payment not-to-exceed ten percent (10%) 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.

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:

Cathy Catlett, Interim 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

Title
 Partners Limited
 General

Other

Signer is representing:
Name of person or entity

DESCRIPTION OF ATTACHED

Title of type of document

Number of Pages

Date of Document

Signer(s) other than named above