

CITY OF DANA POINT
AGENDA REPORT

Reviewed By:	
DH	X
CM	X
CA	X

DATE: NOVEMBER 26, 2003

TO: CITY MANAGER/CITY COUNCIL

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

SUBJECT: AWARD OF A CONTRACT TO NOBEST, INCORPORATED FOR THE CONSTRUCTION OF SIDEWALK IMPROVEMENTS ON CROWN VALLEY PARKWAY BETWEEN PACIFIC COAST HIGHWAY AND CAMINO DEL AVION

RECOMMENDED ACTION:

That the City Council (1) award a contract to Nobest, Incorporated in the not-to-exceed amount of \$241,030 for the construction of sidewalk improvements on Crown Valley Parkway between Pacific Coast Highway and Camino Del Avion, provided that the City Manager or his designee may approve additional payment not to exceed twenty percent of this amount for change orders and contingencies; (2) approve the transfer of \$375,000 from the Citywide Sidewalk System Project, Account Number 11-99-30-1137-311, to the Crown Valley Landscaped Median Project, Account Number 11-99-30-1160-311; (3) authorize the expenditure of \$48,700 for construction management services for the construction of sidewalk improvements on Crown Valley Parkway between Pacific Coast Highway and Camino Del Avion; (4) authorize a purchase order to Goffman McCormick and Urban for materials testing and inspection services for a not-to-exceed fee of \$8,000; and (5) authorize the expenditure of \$5,000 for construction support services for the construction of sidewalk improvements on Crown Valley Parkway between Pacific Coast Highway and Camino Del Avion.

ISSUES:

City staff completed the design for sidewalk improvements on Crown Valley Parkway between Pacific Coast Highway and Camino Del Avion. The City Council authorized staff to advertise the project for construction bids on September 24, 2003. City staff advertised the project for construction bids and bids were received on October 30, 2003. Staff has determined the lowest responsive bid to be from Nobest, Incorporated and recommends that a contract be awarded for the construction of the project.

BACKGROUND:

On October 9, 2001, the Council approved the issuance of a Request for Proposal for design services for landscape improvements on Crown Valley Parkway between Pacific Coast Highway and Camino Del Avion. The City Council awarded a Consultant Services Agreement to David Volz Design on November 27, 2001 for the project.

David Volz Design, under the direction of City Council and City staff, completed the conceptual design for a median tree planting plan for Crown Valley between Pacific Coast Highway and Camino Del Avion. The plan proposed to be implemented in conjunction with existing eucalyptus trees. The City Council approved the conceptual design for the median tree planting for Crown Valley between Pacific Coast Highway and Camino Del Avion on September 24, 2003.

Approximately six existing eucalyptus trees have been removed as a result of damage and disease. Prior to removal of the six trees, the median contained thirty-four existing eucalyptus trees. Currently, twenty-eight remain since the removal of the six trees has been completed. Now that the damaged and diseased trees have been removed in the median, City staff will begin to implement the median tree planting plan. The overall plan for the future will be to eventually replace all of the existing eucalyptus trees with the recommended trees per the proposed plan. Existing eucalyptus trees will only be replaced when disease and damage cause their removal.

For this project to be successful, an enhanced maintenance effort will be implemented to revitalize the existing median grass utilizing dethatching techniques and seeding. The enhanced maintenance effort will be implemented conjunctively with the implementation of the proposed median tree planting plan.

The City finalized the design and prepared construction drawings for the replacement of existing 4 foot and 5 foot sidewalks with new sidewalks. The sidewalk improvements planned will install new 8 foot sidewalks, where possible, joining existing 8 foot sidewalks at either end of the project limits. Existing pedestrian ramps within the project limits will also be removed and replaced to ensure compliance with the latest requirements of the Americans with Disabilities Act (ADA). Council authorized the advertisement for construction bids on September 24, 2003, and staff advertised the project upon approval.

DISCUSSION:

Bids were received for the project and were opened by the City Clerk on October 30, 2003. Nine (9) bids were received as follows:

Nobest, Incorporated	\$	241,030.00
Southland Construction	\$	246,240.00
E.A. Mendoza	\$	248,100.00
Damon Construction	\$	261,230.00

EBS, Incorporated	\$	271,577.00
JDC, Incorporated	\$	285,830.00
Highland Construction	\$	296,835.00
Orion Contracting	\$	297,316.00
Jezowski and Markel	\$	488,990.00

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

Based on the bid results, staff recommends that Nobest, Incorporated be determined the lowest responsible bidder for the construction of sidewalk improvements on Crown Valley Parkway between Pacific Coast Highway and Camino Del Avion, and that a contract be awarded to them in the not-to-exceed amount of \$241,030.00, provided that the City Manager or his designee may approve additional payment not to exceed twenty percent of this amount for change orders and contingencies. The engineer's estimate for the project was \$296,000 and, therefore, the project bids were well below the estimate.

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 \$48,700 for construction management services. In addition, construction support services are also required, and it is recommended that the City Council authorize the expenditure of a not-to-exceed amount of \$5,000 for this purpose.

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 \$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:

None

STRATEGIC PLAN IMPLEMENTATION:

This action is in compliance with the Strategic Plan Initiative to maintain, modernize and beautify the City's infrastructure and neighborhoods.

FISCAL IMPACT:

In order to fund the sidewalk improvements on Crown Valley, the following budget is available under the Citywide Sidewalk System Project, Account Number 11-99-30-1137-311:

General Fund	\$ 625,000.00
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The total costs incurred on the project to date are as follows:

Project Management (Various)	\$ 4,467.00
Green Lantern Sidewalk Preliminary Design	\$ 10,000.00
ADA Transition Plan PM	\$ 24,500.00
Crown Valley ADA Improvements	\$ 10,000.00
Consolidated Reprographics	\$ 500.00
Disabled Access Consulting	\$ 20,000.00
National Access Consultants	<u>\$ 10,000.00</u>
TOTAL COSTS TO DATE (Citywide Sidewalk System Project)	\$ 79,467.00

The Crown Valley Landscaped Median Project also exists in the budget and the following budget is available for this project:

General Fund Carryover	\$ 135,000.00
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The total costs incurred on the Crown Valley Landscaped Median project to date:

Project Management/Administration/Design	\$ 42,926.00
Conceptual Design	\$ 64,705.00
Printing, CR	\$ 2,000.00
Surveying, Bush and Associates	\$ 20,840.00
PBS&J	<u>\$ 17,752.00</u>
TOTAL COSTS TO DATE (Crown Valley Landscaped Median Project)	\$ 148,223.00

Additional costs based on the recommended action are as follows:

Construction	\$ 241,030.00
Construction Management	\$ 48,700.00
Materials Testing/Soils	\$ 8,000.00
Construction Support Services	\$ 5,000.00
Contingency, 20%	<u>\$ 48,206.00</u>
Total Additional Project Costs	\$ 350,936.00

Since the City Council has decided that the work on Crown Valley will include an infill tree planting effort in the existing median and sidewalk improvements, it would be appropriate to use the Crown Valley Landscaped Median Project budget. Since the costs associated with the recommended action exceed the available budget in the Crown Valley Landscaped Median Project account, and the City has budgeted for Citywide Sidewalk System improvements elsewhere in the budget, staff recommends that Council authorize a transfer of \$375,000 from the Citywide Sidewalk System Project, Account Number 11-99-30-1137-311, to the Crown Valley Landscaped Median Project, Account Number 11-99-30-1160-311. After the transfer, the remaining budget in the Citywide Sidewalk System account is approximately \$170,000.

ALTERNATIVE ACTIONS:

1. City Council-directed alternative action.

ACTION DOCUMENTS:

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A. [Contract](#) Agreement..... 6

SUPPORTING DOCUMENTS:

None

Action Document A – Contract

CITY OF DANA POINT
CONTRACT AGREEMENT
FOR
**CROWN VALLEY SIDEWALK IMPROVEMENT
PROJECT**

IN THE CITY OF DANA POINT

This Contract Agreement is made and entered into for the above-stated project this 26th day of November, 2003, BY AND BETWEEN the City of Dana Point, as AGENCY, and Nobest, 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 two hundred forty-one and thirty dollars (\$241,030.00) provided that the City Manager or his designee may approve additional payment not-to-exceed twenty percent (20%) 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,

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

Individual
 Corporate Officer

Title
 Partners Limited
 General

 Other

DESCRIPTION OF ATTACHED DOCUMENT

Title of type of document

Number of Pages

Date of Document

Signer is representing:
Name of person or entity

Signer(s) other than named above