

Council Meeting of
December 20, 2011

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

**Subject: Public Works – Approve settlement agreement and general release for the Walteria Reservoir Slope Stability Project, C.I.P. No. I-95.
Expenditure: None.**

RECOMMENDATION

Recommendation of the Public Works Director that City Council approve a Settlement Agreement and General Release that would terminate the public works agreement with MG Construction & Development, Inc. (C2010-226) to provide construction for the Walteria Reservoir Slope Stability Project, C.I.P. No. I-95.

Funding

Not applicable.

BACKGROUND/ANALYSIS

The project involved the stabilization of the slope behind and between the office buildings at 25690 Crenshaw Boulevard, at the base of the Walteria and Ben Haggott reservoirs. This location has experienced surficial slope failures, resulting in a geotechnical investigation and recommendation for slope stabilization. A surficial failure means that the top two feet of dirt of the surface of bedrock gave way. The overall slope is stable bedrock. This project was previously bid in May 2007 with a soiled nail wall method (Schedule A) as the lone stabilization construction method, and all bids were subsequently rejected due to the bids being substantially higher than the engineer's estimate and project budget. Those bids ranged from \$607,000 to \$1,500,000.

Consequently, two additional stabilization methods were designed to make the project more cost effective. The second method involved the construction of two retaining block walls with reinforced compacted fill and the third method involved reinforced compacted fill with layers of geo-textile wire mesh. We provided contractors all three alternative slope stabilization methods to bid on, with the lowest alternative bid being selected.

The project was publicly advertised on August 29, 2010 and September 1, 2010, and twelve bids were received on September 30, 2010. The public works agreement

was awarded to MG Construction & Development, Inc. (MG Construction) on November 9, 2010 for an amount not to exceed \$341,965.80 with a 10% contingency of \$34,196.58 for a reinforced compacted fill slope.

A temporary right-of-way agreement was obtained by City staff to access the parking lot at the office buildings at 25690 Crenshaw Boulevard. This agreement required negotiations with the owners to determine the limits to the access and protection of the property. During this time, MG Construction informed the City that they could no longer obtain the geo-textile wire mesh at the bid price and would not be able to complete this project for their original bid of \$341,965.80 and requested an additional \$100,000. MG Construction currently has problems with another City contract and staff now recommends cancelling this contract.

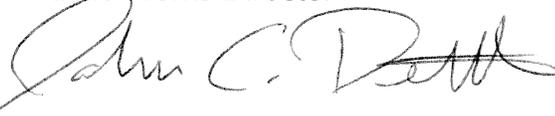
MG Construction has agreed to terminate the contract and accept the previously paid sum of \$15,615.69 as full payment for mobilization and permitting.

Public Works staff will continue to monitor and maintain the slope. The remaining project funds will be used to survey and construct a fence between the Walteria Reservoir site and 25690 Crenshaw Boulevard. The remaining fund balance in the project will be returned to the Water Enterprise Fund.

Staff is recommending the City Council approve the Settlement Agreement and General Release with MG Construction.

Respectfully submitted,

ROBERT J. BESTE
Public Works Director


By: John C. Dettle, P.E.
Engineering Manager

CONCUR:


Robert J. Beste
Public Works Director


for LeRoy J. Jackson
City Manager

Attachments: A. Settlement Agreement and General Release
B. Public Works Agreement C2010-226

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("Agreement") is entered into by and between the City of Torrance ("City"), on the one hand, and MG Construction and Development, Inc. ("MG") on the other (collectively, the "Parties").

- I. The City awarded a contract to MG for the Waleria Reservoir Slope Stability Project ("Project") at the City Council meeting of November 9, 2010;
- II. Issues that were unanticipated by the City and MG have come up that have delayed the Waleria Reservoir Slope Stability Project;
- III. The City and MG wish to terminate the contract for the convenience of both parties and desire to fully compromise and settle all disputes between them, including all issues and claims that have or could have been raised relating to the Project.

AGREEMENT

Therefore, in consideration of the promises, covenants, warranties and representations set forth below, the parties agree as follows:

1. Settlement and Costs. Each party shall pay its own attorneys' fees, costs, and expenses incurred in connection with the settlement and compromise of all claims pursuant to this Agreement.
2. Payment to MG. MG has been previously paid the sum of \$15,615.69 by the City. The adequacy of this sum as consideration for this Agreement is acknowledged. No other payments will be made to MG.
3. Non-admission of Liability. By entering into this Agreement, it is understood by all Parties that no Party admits that it breached any duty, obligation or agreement, or engaged in any illegal, tortious or wrongful activity. Nothing in this Agreement shall constitute precedence or evidence in any other proceeding, with the exception that this Agreement shall be admissible evidence in any proceeding to enforce the terms hereof.
4. Release of All Persons and Companies by MG. For MG and MG's successors, and assignees MG hereby releases and discharges the City and its predecessors, successors, subsidiaries, assigns, officers, agents, servants, employees, attorneys, insurers, and sureties from any and all liabilities, obligations, claims, actions, causes of action, and demands of any kind or nature that have accrued as of the date of this Agreement, whether known or unknown, that MG or its heirs, successors, or assigns had, now have, or may have against City or their predecessors, heirs, successors, servants, employees, agents, attorneys, or assigns, whether any such claim or matter has or might have been asserted, including, but



not limited to, those arising out of, based on, or in any way connected with the Walteria Reservoir Slope Stability Project and damages resulting therefrom.

5. Release of All Persons and Companies by City. For City and City's successors, and assignees City hereby releases and discharges the MG and its predecessors, successors, subsidiaries, assigns, officers, agents, servants, employees, attorneys, insurers, and sureties including SureTec Insurance Company from any and all liabilities, obligations, claims, actions, causes of action, and demands of any kind or nature that have accrued as of the date of this Agreement, whether known or unknown, that City or its heirs, successors, or assigns had, now have, or may have against MG or their predecessors, heirs, successors, servants, employees, agents, attorneys, or assigns, whether any such claim or matter has or might have been asserted, including, but not limited to, those arising out of, based on, or in any way connected with the Walteria Reservoir Slope Stability Project and damages resulting therefrom.
6. Warranty of No Assignments. MG warrants and represents that:
- (a) The MG has neither made nor suffered to be made, nor will make, any assignment or transfer of any right, claim, demand, cause of action, debt, lien, contract, agreement, promise, representation, tort, damage, costs, attorneys' fees, monies due on accounts, obligation, judgment, or liability covered by this Agreement;
 - (b) There are no liens, claims for liens, or assignments in law or equity of or against the foregoing, including any Workers' Compensation, medical, or attorneys' claims or liens; and
 - (c) The MG is the sole and absolute legal and equitable owner of all the claims related to this lawsuit;

The foregoing warranties or representations are consideration for this Agreement, the failure or breach of which shall entitle City, at its sole option, to render this Agreement voidable and require MG to return all the consideration paid.

7. Reliance Upon Own Judgment. MG warrants and represents that it relied upon MG's own judgment and that of legal counsel regarding the proper, sufficient, and agreed-upon consideration for the terms and provisions of this Agreement, and that no statements or representations, implied or expressed, made by City or its agents, employees, officers, directors, or legal representatives have influenced or induced MG to execute this Agreement. MG assumes the risk of any mistake of fact, or facts, which are unknown to MG relating in any way to this Agreement.
8. Waiver of Unknown Claims. Each party hereto expressly understands and acknowledges that it is possible that unknown losses or claims exist or that present losses may have been underestimated in amount or severity. Each party hereto expressly accepts and assumes the risk of such unknown or underestimated losses or claims. The parties expressly waive the provisions of California Civil Code section 1542 which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The consequences of the foregoing waiver have been explained to each of the parties by counsel. Each of the parties acknowledges that it may hereafter discover facts different from, or in addition to, those which are now known or believed to be true with respect to any matter within the scope of the releases, and each of the parties agrees that this Agreement and each of the releases contained in it shall be and remain effective in all respects, notwithstanding any such different or additional facts.

9. No Other Inducements: The undersigned further declares and represents that no promise, inducement, or agreement not herein expressed has been made to the undersigned, and that this Release contains the entire agreement between the parties, and that the terms of this Agreement are contractual and not a mere recital.

The terms and conditions of this Agreement shall constitute the entire agreement in compromise and settlement of the dispute as to City and any other claims and matters that MG could have asserted against City.

10. Agreement Governed by California Law. This Agreement is to be governed by the laws of the State of California.
11. Binding on Successors and Assigns. All terms and conditions of this Agreement and its exhibits shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.
12. Negotiated Agreement. The Parties hereto acknowledge that the terms of this Agreement were negotiated and drafted by both Parties with the assistance of counsel. Accordingly, any rule of construction to the effect that any ambiguity is to be construed against the drafting party shall not be applied to the interpretation of this Agreement.
13. Authority of Signatory. The person(s) executing this Agreement on behalf of the MG warrant that (i) the MG is duly organized and existing; (ii) they are duly authorized to execute this Agreement on behalf of the MG; (iii) by so executing this Agreement, the MG is formally bound to the provisions of this Agreement; and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the MG is bound.
14. Covenant regarding no other actions MG covenants and represents that MG has not filed any complaints or charges or lawsuits against the City or any of its officers, employees, agents, or affiliated and related entities or their officers, employees or agents, with any federal, state or local governmental agency or any court.

- 15. Captions. The captions used herein are for convenience and identification purposes only and are not part of this Agreement.

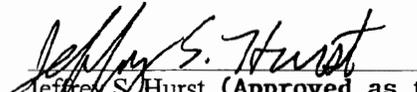
THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ THIS AGREEMENT, UNDERSTAND IT AND ARE VOLUNTARILY ENTERING INTO IT.

MG CONSTRUCTION AND DEVELOPMENT, INC.

DATED: September 1, 2011


Gerald Caruthers

DATED: September 1, 2011


Jeffrey S. Hurst (Approved as to form and content, only.)
Monteleone & McCrory, LLP
Attorneys for MG Construction and Development, Inc.

CITY OF TORRANCE

Dated: _____

Frank Scotto, Mayor

ATTEST:

Sue Herbers, City Clerk

APPROVED AS TO FORM ONLY:

JOHN L. FELLOWS III
City Attorney

By: _____
Patrick Q. Sullivan
Assistant City Attorney

PUBLIC WORKS AGREEMENT

This PUBLIC WORKS AGREEMENT ("Agreement") is made and entered into as of November 9, 2010 (the "Effective Date"), by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and MG Construction & Development, Inc., a California corporation ("CONTRACTOR").

RECITALS:

- A. The CITY wishes to retain the services of an experienced and qualified CONTRACTOR to construct the Walteria Reservoir Slope Stability Project, C.I.P. No. I-95;
- B. In order to obtain the desired services, The CITY has circulated a Notice Inviting Bids for the construction of Walteria Reservoir Slope Stability Project, Notice Inviting Bids No. B2010-17 (the "NIB"); and
- C. CONTRACTOR has submitted a Bid (the "Bid") in response to the NIB. CONTRACTOR represents that it is qualified to perform those services requested in the Plans and Specifications. Based upon its review of all Bids submitted in response to the NIB, The CITY is willing to award the contract to CONTRACTOR.

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AGREEMENT:

1. SERVICES TO BE PERFORMED BY CONTRACTOR

CONTRACTOR will provide the services and install those materials listed in the Plans and Specifications, which are on file in the Public Works Department. The NIB and the Plans and Specifications are made a part of this Agreement. A copy of the Bid is attached as Exhibit A.

2. TERM

Unless earlier terminated in accordance with Paragraph 4 below, this Agreement will continue in full force and effect for one year from the Effective Date.

3. COMPENSATION

A. CONTRACTOR's Fee.

For services rendered pursuant to this Agreement, CONTRACTOR will be paid in accordance with CONTRACTOR's Bid; provided, however, that in no event will the total amount of money paid the CONTRACTOR, for services initially contemplated by this Agreement, exceed the sum of

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\$341,965.80 ("Agreement Sum"), unless otherwise first approved in writing by the CITY.

B. Schedule of Payment.

Provided that the CONTRACTOR is not in default under the terms of this Agreement, upon presentation of an invoice, CONTRACTOR will be paid monthly, within 30 days after the date of the monthly invoice.

4. TERMINATION OF AGREEMENT

A. Termination by CITY for Convenience.

1. CITY may, at any time, terminate the Agreement for CITY's convenience and without cause.
2. Upon receipt of written notice from CITY of such termination for CITY's convenience, CONTRACTOR will:
 - a) cease operations as directed by CITY in the notice;
 - b) take actions necessary, or that CITY may direct, for the protection preservation of the work; and
 - c) except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.
3. In case of such termination for CITY's convenience, CONTRACTOR will be entitled to receive payment for work executed; and costs incurred by reason of such termination, along with reasonable overhead and profit on the work not executed.

B. Termination for Cause.

1. If either party fails to perform any term, covenant or condition in this Agreement and that failure continues for 15 calendar days after the nondefaulting party gives the defaulting party notice of the failure to perform, this Agreement may be terminated for cause; provided, however, that if during the notice period the defaulting party has promptly commenced and continues diligent efforts to remedy the default, the defaulting party will have such additional time as is reasonably necessary to remedy the default.
2. In the event this Agreement is terminated for cause by the default of the CONTRACTOR, the CITY may, at the expense of the CONTRACTOR and its surety, complete this Agreement or cause it to be completed. Any check or bond delivered to the CITY in connection with this Agreement, and the money payable thereon, will be forfeited to and remain the property of the CITY. All moneys due the CONTRACTOR

under the terms of this Agreement will be retained by the CITY, but the retention will not release the CONTRACTOR and its surety from liability for the default. Under these circumstances, however, the CONTRACTOR and its surety will be credited with the amount of money retained, toward any amount by which the cost of completion exceeds the Agreement Sum and any amount authorized for extra services.

3. Termination for cause will not affect or terminate any of the rights of the CITY as against the CONTRACTOR or its surety then existing, or which may thereafter accrue because of the default; this provision is in addition to all other rights and remedies available to the CITY under law.

C. Termination for Breach of Law.

In the event the CONTRACTOR or any of its officers, directors, shareholders, employees, agents, subsidiaries or affiliates is convicted (i) of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of a contract or subcontract; (ii) under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a public consultant or contractor; (iii) under state or federal antitrust statutes arising out of the submission of bids or proposals; or (iv) of violation of Paragraph 19 of this Agreement; or for any other cause the CITY determines to be so serious and compelling as to affect CONTRACTOR's responsibility as a public consultant or contractor, including but not limited to, debarment by another governmental agency, then the CITY reserves the unilateral right to terminate this Agreement or to impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it deems proper. The CITY will not take action until CONTRACTOR has been given notice and an opportunity to present evidence in mitigation.

5. FORCE MAJEURE

If any party fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform, then that party's performance shall be excused for a period equal to the period of such cause for failure to perform.

6. **RETENTION OF FUNDS**

CONTRACTOR authorizes the CITY to deduct from any amount payable to CONTRACTOR (whether or not arising out of this Agreement) any amounts the payment of which may be in dispute or that are necessary to compensate the CITY for any losses, costs, liabilities, or damages suffered by the CITY, and all amounts for which the CITY may be liable to third parties, by reason of CONTRACTOR's negligent acts or omissions or willful misconduct in performing or failing to perform CONTRACTOR's obligations under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by CONTRACTOR, or any indebtedness exists that appears to be the basis for a claim of lien, the CITY may withhold from any payment due, without liability for interest because of the withholding, an amount sufficient to cover the claim. The failure of the CITY to exercise the right to deduct or to withhold will not, however, affect the obligations of CONTRACTOR to insure, indemnify, and protect the CITY as elsewhere provided in this Agreement.

7. **THE CITY'S REPRESENTATIVE**

The Public Works Director is designated as the "City Representative," authorized to act in its behalf with respect to the work and services specified in this Agreement and to make all decisions in connection with this Agreement. Whenever approval, directions, or other actions are required by the CITY under this Agreement, those actions will be taken by the City Representative, unless otherwise stated. The City Manager has the right to designate another City Representative at any time, by providing notice to CONTRACTOR.

8. **CONTRACTOR REPRESENTATIVE(S)**

The following principal(s) of CONTRACTOR are designated as being the principal(s) and representative(s) of CONTRACTOR authorized to act in its behalf with respect to the work specified in this Agreement and make all decisions in connection with this Agreement:

Gerald Caruthers, President

9. **INDEPENDENT CONTRACTOR**

The CONTRACTOR is, and at all times will remain as to the CITY, a wholly independent contractor. Neither the CITY nor any of its agents will have control over the conduct of the CONTRACTOR or any of the CONTRACTOR's employees, except as otherwise set forth in this Agreement. The CONTRACTOR may not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the CITY.

10. BUSINESS LICENSE

The CONTRACTOR must obtain a City business license prior to the start of work under this Agreement, unless CONTRACTOR is qualified for an exemption.

11. OTHER LICENSES AND PERMITS

CONTRACTOR warrants that it has all professional, contracting and other permits and licenses required to undertake the work contemplated by this Agreement.

12. FAMILIARITY WITH WORK

By executing this Agreement, CONTRACTOR warrants that CONTRACTOR (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, CONTRACTOR warrants that CONTRACTOR has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services set forth in this Agreement. Should CONTRACTOR discover any latent or unknown conditions that will materially affect the performance of the services set forth in this Agreement, CONTRACTOR must immediately inform the CITY of that fact and may not proceed except at CONTRACTOR's risk until written instructions are received from the CITY.

13. CARE OF WORK

CONTRACTOR must adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and other components to prevent losses or damages, and will be responsible for all damages, to persons or property, until acceptance of the work by the CITY, except those losses or damages as may be caused by the CITY's own negligence.

14. CONTRACTOR'S ACCOUNTING RECORDS; OTHER PROJECT RECORDS

Records of the CONTRACTOR's time pertaining to the project, and records of accounts between the CITY and the CONTRACTOR, will be kept on a generally recognized accounting basis. CONTRACTOR will also maintain all other records, including without limitation specifications, drawings, progress reports and the like, relating to the project. All records will be available to the CITY during normal working hours. CONTRACTOR will maintain these records for three years after final payment.

15. INDEMNIFICATION

CONTRACTOR will indemnify, defend, and hold harmless CITY, the City Council, each member thereof, present and future, its officers, agents and employees from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever, including, but not limited to, those arising from breach of contract, bodily injury, death, personal injury, property damage, loss of use, or property loss however the same may be caused and regardless of the responsibility for negligence. The obligation to indemnify, defend and hold harmless includes, but is not limited to, any liability or expense, including defense costs and legal fees, arising from the negligent acts or omissions, or willful misconduct of CONTRACTOR, its officers, employees, agents, subcontractors or vendors. It is further agreed, CONTRACTOR's obligations to indemnify, defend and hold harmless will apply even in the event of concurrent negligence on the part of CITY, the City Council, each member thereof, present and future, or its officers, agents and employees, except for liability resulting solely from the negligence or willful misconduct of CITY, its officers, employees or agents. Payment by CITY is not a condition precedent to enforcement of this indemnity. In the event of any dispute between CONTRACTOR and CITY, as to whether liability arises from the sole negligence of the CITY or its officers, employees, agents, subcontractors or vendors, CONTRACTOR will be obligated to pay for CITY's defense until such time as a final judgment has been entered adjudicating the CITY as solely negligent. CONTRACTOR will not be entitled in the event of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

16. NON-LIABILITY OF THE CITY'S OFFICERS AND EMPLOYEES

No officer or employee of the CITY will be personally liable to CONTRACTOR, in the event of any default or breach by the CITY or for any amount that may become due to CONTRACTOR.

17. INSURANCE

- A. CONTRACTOR must maintain at its sole expense the following insurance, which will be full coverage not subject to self insurance provisions:
1. Automobile Liability, including owned, non-owned and hired vehicles, with at least the following limits of liability:
 - a. Combined single limits of \$2,000,000 per occurrence.
 2. General Liability including coverage for premises, products and completed operations, independent contractors, personal injury and contractual obligations with combined single limits of coverage of at

least \$3,000,000 per occurrence, with an annual aggregate of no less than \$5,000,000.

3. Workers' Compensation with limits as required by the State of California and Employers Liability with limits of at least \$1,000,000.
- B. The insurance provided by CONTRACTOR will be primary and non-contributory.
 - C. The CITY of Torrance, the City Council and each member thereof, members of boards and commissions, every officer, agent, official, employee and volunteer must be named as additional insureds under the automobile and general liability policies.
 - D. CONTRACTOR must provide certificates of insurance and/or endorsements to the City Clerk of the City of Torrance before the commencement of work.
 - E. Each insurance policy required by this Paragraph must contain a provision that no termination, cancellation or change of coverage can be made without thirty days notice to the CITY.
 - F. CONTRACTOR must include all subcontractors as insureds under its policies or must furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors will be subject to all of the requirements of this Paragraph 17.

18. SUFFICIENCY OF INSURERS

Insurance required by this Agreement will be satisfactory only if issued by companies admitted to do business in California, rated "B+" or better in the most recent edition of Best's Key Rating Guide, and only if they are of a financial category Class VII or better, unless these requirements are waived by the Risk Manager of the CITY ("Risk Manager") due to unique circumstances. In the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the CITY, the CONTRACTOR agrees that the minimum limits of any insurance policies and/or the performance bond required by this Agreement may be changed accordingly upon receipt of written notice from the Risk Manager; provided that CONTRACTOR will have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of the CITY within 10 days of receipt of notice from the Risk Manager.

19. CONFLICT OF INTEREST

- A. No officer or employee of the CITY may have any financial interest, direct or indirect, in this Agreement, nor may any officer or employee participate in any decision relating to the Agreement that effects the officer or employee's financial interest or the financial interest of any corporation, partnership or association in which the officer or employee is, directly or indirectly interested, in violation of any law, rule or regulation.
- B. No person may offer, give, or agree to give any officer or employee or former officer or employee, nor may any officer or employee solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any way pertaining to any program requirement, contract or subcontract, or to any solicitation or proposal.

20. NOTICE

- A. All notices, requests, demands, or other communications under this Agreement will be in writing. Notice will be sufficiently given for all purposes as follows:
1. Personal delivery. When personally delivered to the recipient: notice is effective on delivery.
 2. First Class mail. When mailed first class to the last address of the recipient known to the party giving notice: notice is effective three mail delivery days after deposit in an United States Postal Service office or mailbox.
 3. Certified mail. When mailed certified mail, return receipt requested: notice is effective on receipt, if delivery is confirmed by a return receipt.
 4. Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account: notice is effective on delivery, if delivery is confirmed by the delivery service.
 5. Facsimile transmission. When sent by fax to the last fax number of the recipient known to the party giving notice: notice is effective on receipt. Any notice given by fax will be deemed received on the



next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

6. Addresses for purpose of giving notice are as follows:

CONTRACTOR: MG Construction & Development,
Inc.
8900 Eton Avenue #C
Canoga Park, California 91304
Fax: (818) 773-7350

CITY: City Clerk
City of Torrance
3031 Torrance Boulevard
Torrance, CA 90509-2970
Fax: (310) 618-2931

- B. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified, will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.
- C. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

21. PROHIBITION AGAINST ASSIGNMENT AND SUBCONTRACTING

This Agreement and all exhibits are binding on the heirs, successors, and assigns of the parties. The Agreement may not be assigned or subcontracted by either the CITY or CONTRACTOR without the prior written consent of the other.

22. INTEGRATION; AMENDMENT

This Agreement represents the entire understanding of the CITY and CONTRACTOR as to those matters contained in it. No prior oral or written understanding will be of any force or effect with respect to the terms of this Agreement. The Agreement may not be modified or altered except in writing signed by both parties.

23. INTERPRETATION

The terms of this Agreement should be construed in accordance with the meaning of the language used and should not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply.

24. SEVERABILITY

If any part of this Agreement is found to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in conflict with any applicable laws, but the remainder of the Agreement will remain in full force and effect.

25. TIME OF ESSENCE

Time is of the essence in the performance of this Agreement.

26. GOVERNING LAW; JURISDICTION

This Agreement will be administered and interpreted under the laws of the State of California. Jurisdiction of any litigation arising from the Agreement will be in Los Angeles County, California.

27. COMPLIANCE WITH STATUTES AND REGULATIONS

CONTRACTOR will be knowledgeable of and will comply with all applicable federal, state, county and city statutes, rules, regulations, ordinances and orders.

28. WAIVER OF BREACH

No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default will impair the right or remedy or be construed as a waiver. A party's consent or approval of any act by the other party requiring the party's consent or approval will not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and will not be a waiver of any other default concerning the same or any other provision of this Agreement.

29. ATTORNEY'S FEES

Except as provided for in Paragraph 15, in any dispute, litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party will be awarded reasonable attorney's fees, together with any costs and expenses, to resolve the dispute and to enforce any judgment.

30. EXHIBITS

All exhibits identified in this Agreement are incorporated into the Agreement by this reference.

31. CONTRACTOR'S AUTHORITY TO EXECUTE

The persons executing this Agreement on behalf of the CONTRACTOR warrant that (i) the CONTRACTOR is duly organized and existing; (ii) they are duly authorized to execute this Agreement on behalf of the CONTRACTOR; (iii) by so executing this Agreement, the CONTRACTOR is formally bound to the provisions of this Agreement; and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the CONTRACTOR is bound.

CITY OF TORRANCE,
a Municipal Corporation

MG Construction & Development, Inc.
A California Corporation

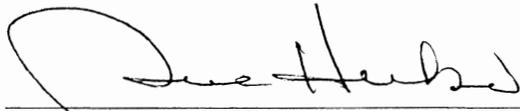


Frank Scotto, Mayor

By: 

Gerald Caruthers, President

ATTEST:



Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: 

Attachments: Exhibit A: Bid

Created: 4/16/97
Revised: 3/3/99
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BID SCHEDULE C
REINFORCED COMPACTED FILL

Item No.	Approx. Qty.	Unit of Measure	Item Description	Unit Price	Total Bid
1	1	LS	MOBILIZATION (5% MAX. OF CONTRACT BID)	20,000	20,000
2	1	LS	CONSTRUCTION SURVEYING	4,500	4,500
3	1	LS	CONSTRUCTION BMPs AND SWPPP	33,700	33,700
4	17,500	SF	CLEARING AND GRUBBING	35¢	6,125-
5	1	LS	REMOVE PORTION OF EXISTING WROUGHT IRON FENCE AND REPLACE AFTER COMPLETION OF CONSTRUCTION	1,350	1,350
6	1	EA	REMOVE EXISTING TRASH ENCLOSURE AND REPLACE IN KIND AFTER COMPLETION OF CONSTRUCTION	4,250	4,250
7	5,100	CY	EXCAVATE, DISPOSE OFF SITE AND KEY AND BENCH SOIL FOR REINFORCED COMPACTED FILL CONSTRUCTION AND SLOPE RE-GRADING	20.10	102,510
8	735	LF	FURNISH AND INSTALL SUBDRAIN COLLECTION PIPING	12-	8,820-
9	5,600	CY	FURNISH AND PLACE REINFORCED COMPACTED FILL	15-	84,000 ¹⁰ 47,100
10	6,281	SY	FURNISH AND INSTALL WELDED WIRE REINFORCEMENT	1.80 2.00	11,305.80 12,562
11	25	SF	CONSTRUCT 4" THICK CONCRETE SPLASH PAD	15-	375-
12	370	LF	REMOVE EXISTING PARKING LOT CURB AND CONSTRUCT 2' CONCRETE CURB AND GUTTER	44-	16,280-
13	20	LF	CONSTRUCT 4' CONCRETE SWALE	20-	400-
14	40	LF	CONSTRUCT 4" DIA. CURB DRAIN PIPES	15-	600-
15	17,500	SF	FURNISH AND INSTALL PARKING LOT SLURRY SEAL, AND REPLACE IN KIND STRIPING AND PAVEMENT MARKING	70¢	12,250-
16	17,500	SF	HYDROSEEDING	.18¢	3,150-
17	1	LS	IRRIGATION (SPRINKLER) SYSTEM MODIFICATIONS	7,600	7,600

Item No.	Quantity	Unit of Measure	Description	Unit Price	Total Bid
18	1	LS	PLANTING, TREE REPLACEMENT, AND OTHER LANDSCAPING WORK	2,500-	2,500
19	1	LS	90 DAY PLANT ESTABLISHMENT AND MAINTENANCE	1,500	1,500
20	17,500	SF	SUPPLY AND INSTALL EROSION PROTECTION FABRIC AND POST CONSTRUCTION BMPs	90¢	15,750-
21	1,000	CY	ADDITIONAL EXCAVATION AND RECOMPACTION AS DIRECTED BY ENGINEER	\$ 5.00	5,000

BID SCHEDULE C

TOTAL BID PRICE \$ ~~305,065.80~~ \$ 341,965.80 ^{PP} 

(Figures)*

TOTAL BID PRICE: ~~Three hundred five thousand sixty five dollars and eighty cents~~ PP
 (Words)* five dollars and eighty cents ^{PP} 

*BID MAY BE REJECTED IF TOTAL IS NOT SHOWN IN FIGURES AND WORDS.

B2010-17

