

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

**Members of the Council:**

**SUBJECT: General Services and Fire Chief- Award a contract with Action Contractors, extend a contract term with BOA Architecture and transfer funding. Expenditure: \$878,655**

**RECOMMENDATION**

Recommendation of the General Services Director and the Fire Chief that City Council:

- 1) Reject the bid from Cedars Engineering as not responsible, reject the bid from Abeam Construction as non-responsive and reject the bid from S.H.E. Engineering as not responsible.
- 2) Award a contract with Action Contractors for \$748,830 with a 5% contingency of \$37,442 in engineering services for the Fire Station #3 Renovation (FEAP002) and the purchase and installation of a 2 unit shower and restroom trailer.
- 3) Approve a 10% project management fee of \$74,883, \$7,500 for communications, and \$5,000 for engineering services and \$5,000 rental of sleeping quarters.
- 4) Approve a contract amendment with BOA Architecture (C2006-178), to extend the contract term to March 31, 2009.
- 5) Transfer \$295,944 from FEAP-302-Fire Station #4 Renovation to FEAP-002- Renovation of Fire Station #3.

**FUNDING** Funding is available from FEAP 002- Fire Station #3 Renovation (\$572, 711) and FEAP 054 - Fire Station #3 Roof Replacement (\$ 10,000) and transfer from FEAP-302 –Fire Station #4 Renovation (\$295,944).

**BACKGROUND**

To accommodate female firefighters and satisfy Title 8, Sections 3364 and 3366 of the California Code of Regulations, City Fire Stations are being converted from communal sleeping quarters to individual sleeping areas including modification to restrooms and laundry facilities. The renovation will include a 1,057 square foot building expansion to adapt these changes.

Staff formally bid the project and received eleven (11) bids.

Cedars Engineering	\$ 658,000.00
Abeam Construction	\$ 687,570.00
S.H.E. Engineering	\$ 699,000.00
Action Contractors	\$ 723,830.00
CTAC, Inc.	\$ 741,079.00
AP Construction	\$ 763,064.72
Horizons Construction	\$ 856,100.00
SBS Corporation	\$ 916,615.04
Tek-Up Construction	\$ 993,000.00
States Link Construction	\$ 1,101,329.00

## ANALYSIS

Bids were reviewed for compliance with City Municipal Code Section 22.1.4 defining the requirements for Responsible Bidders and with Section 22.3.9(c)(1) defining non-responsive bidders.

On review of recent history of bids and past projects completed by the respective bidders the following information was obtained.

Cedars Engineering –

In 2006 Mr. Tony Rizk, President/RMO of Cedars Engineering, was issued a citation, from the California State Licensing Board for contracting without a license. He was ordered to pay a civil penalty to the State for the violation. (Attachment D)

Cedars Engineering was hired for oversight and general coordination of engineering and construction of a landslide remediation program for property at 3110 Carolwood Lane in Torrance. In 2005 Cedars filed a complaint against Mr. Earl Francis for breach of this contract. Mr. Francis filed an opposition to the complaint as Mr. Rizk was working without a license. Mr. Francis was awarded judgment and costs against Mr. Rizk (Case number SBA 05C01261) in 2006 by the Superior Court. This award and judgment was upheld by the Appellate Division of the Superior Court in January 2007. (Attachment E)

In addition work in the Carolwood Lane was not completed in a professional manner and remains incomplete due to various problems with work as it was performed. Caissons and wall included in the project were installed without a property survey resulting in their being located outside the intended property boundaries. The project now requires an easement from the northerly properties to allow the retaining structure to remain where it was installed. Additionally the drainage easement required in the project was originally to be provided at final inspection from the down slope property. However this property has since changed ownership and the easement not yet obtained. The project which was permitted in 2002 remains incomplete. (permits BLD02-02511 - BLD02-02517).

Furthermore, Cedars Engineering does not have the five years of experience for project of a similar size and scope as per the specifications, Notice Inviting Bids page 4. The contractor's license provided by Cedars Engineering was issued December 3, 2003 (Attachment F)

Based on this recent history staff finds Cedars Engineering not responsible as they do not meet provisions of the Torrance Municipal Code, Section 22.1.4. Lowest Responsible Bidder, specifically paragraphs b) through f) as shown below:

- b) The ability, capacity, facilities and skill of the bidder to perform the contract;
- c) The ability of the bidder to perform the contract within the time specified, without delay;
- d) The character, integrity, trustworthiness and reputation of the bidder;
- e) The competence, reputation and record of performance and experience of the bidder for the successful recent completion of similar work of comparable magnitude;
- f) The previous and existing compliance by the bidder with laws and ordinances relating to the type of work to be performed under the contract;

#### S.H.E. Construction –

S.H.E. Construction was awarded a contract in 2004, C2004-098, for Median Island Improvements - Hawthorne Blvd. Work on the contract was scheduled to begin in 2006. After work began the project experienced difficulties including numerous delays due to a lack of personnel, failure to repair damaged irrigation systems in a timely manner, and failure to properly maintain newly planted medians. Due to the number of problems during the project, S.H.E. Construction was unable to complete all work and a Notice of Cessation was filed with the County. Remaining work was completed by others. (Attachment G)

Based on this recent history staff finds S.H.E. Construction not responsible as they do not meet provisions of the Torrance Municipal Code, Section 22.1.4. Lowest Responsible Bidder, specifically paragraphs b) through e) and i) as shown below:

- b) The ability, capacity, facilities and skill of the bidder to perform the contract;
- c) The ability of the bidder to perform the contract within the time specified, without delay;
- d) The character, integrity, trustworthiness and reputation of the bidder;
- e) The competence, reputation and record of performance and experience of the bidder for the successful recent completion of similar work of comparable magnitude;
- i) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;

#### Abeam Construction –

Abeam Construction failed to acknowledge bid amendments 1 and 2. In accordance with Torrance Municipal Code Section 22.3.9(c)(1), staff recommends rejection of this bid as non-responsive. (Attachment C)

The next lowest base bid of \$723,830 was submitted by Action Contractors. Action Contractors has a history of completing work in a timely and professional manner. They have successfully completed several projects for the City of Torrance including renovation work to Fire Station #5 and renovation of Public Works administrative areas.

Total project costs excluding the design and abatement management services, with contract award to Action Contractors, are outlined below.

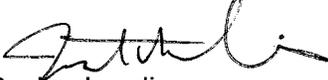
Construction (base bid)	\$723,830
Restroom/Shower Trailer	<u>\$25,000</u>
Construction Cost	\$748,830
Project Management Fee	\$74,883
5% contingency	\$37,442
Engineering Services	\$5,000
Communications	\$7,500
Sleeping quarters	\$5,000
Total	<u>\$878,655</u>
(Less available funds)	<u>(\$582,711)</u>
Appropriation	\$295,944

The shower/restroom trailer purchase price is similar to rental costs for an identical unit. By purchasing the trailer the City will be able to re-use the trailer in the future as needed.

Staff reviewed bidder's proposals, licensing, references and familiarity with projects of the same scope and size. The General Services Director and the Fire Chief recommend the City Council reject bids from Cedars Engineering and S.H.E. Construction as not responsible, reject the bid from Abeam Construction as non-responsive and award a contract to Action Contractors for \$748,830 with a 5% contingency and appropriate \$295,944 from FEAP302- Fire Station #4 Renovation and extend the contract term for BOA Architecture to March 31, 2009 to cover the construction phase of the project.

Respectfully submitted,

SHERYL BALLEW  
General Services Director

  
By Jon Landis  
Facility Services Manager

CONCUR:



Sheryl Ballew  
General Services Director

  
Rick Bongard  
Fire Chief

  
LeRoy J. Jackson  
City Manager

Attachment A: Action Contractor's Contract  
Attachment B: BOA Architecture Contract Amendment (C2006-178)  
Attachment C: Torrance Municipal Code Section 22.1.4 and 22.3.9(c)(1)  
Attachment D: Contractor's State License Board Letter- Tony Rizk  
Attachment E: Memorandum Judgment- Cedars Engineering/Tony Rizk  
Attachment F: Contractor's State License Information on #827991  
Attachment G: Memo regarding S.H.E. Engineering and Construction

## PUBLIC WORKS AGREEMENT

This PUBLIC WORKS AGREEMENT ("Agreement") is made and entered into as of June 17, 2008, by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and Action Contractors Inc., a California Corporation.

### RECITALS:

- A. The CITY wishes to retain the services of an experienced and qualified CONTRACTOR to furnish all labor, materials, tools, equipment and incidentals in accordance with the plans and specifications prepared for the City of Torrance by BOA Architecture;
- B. In order to obtain the desired services, The CITY has circulated a Notice Inviting Bids for Fire Station #3 Renovation, Notice Inviting Bids No. **2008-06** (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.

### 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 General Services 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 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 \$748,830 ("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 and 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 written 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**

Tom Kelly, Facility Services Project Coordinator 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:

Dennis Moreau  
Walt Sprowl

**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) Primary Bodily Injury with limits of at least \$500,000 per person, \$1,000,000 per occurrence; and
  - (b) Primary Property Damage of at least \$250,000 per occurrence; or
  - (c) Combined single limits of \$1,000,000 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 \$2,000,000 per occurrence.
  - (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.

Addresses for purpose of giving notice are as follows:

CONTRACTOR:                      Action Contractors inc.  
    17111 S. Broadway  
    Gardena, CA 90248  
  
    (310) 515-3806

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

Action Contractors Inc.  
A California Corporation

\_\_\_\_\_  
Frank Scotto, Mayor

By: \_\_\_\_\_  
Walt Sprowl  
Project Manager

ATTEST:

\_\_\_\_\_  
Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III  
City Attorney

By: \_\_\_\_\_

Attachments: Exhibit A: Bid

**EXHIBIT A**

**Bid**

**[To be attached]**

**BIDDER'S PROPOSAL**  
**B 2008-06**

Company: Action Contractors, Inc.  
 Base Bid: 723,800

**FIRE STATION #3 RENOVATION**

In accordance with the Notice Inviting Bids pertaining to the receiving of sealed proposals by the City Clerk of the City of Torrance for the above titled improvement, the undersigned hereby proposes to furnish all work to be performed in accordance with the Plans, Specifications and Contract Documents, prepared by BOA Architecture for the lump sum bid as set forth in the following schedules.

Item	Description	Prices written in words	Total Bid
1.	Base Bid per bid B2008- in its entirety	Seven Hundred Twenty Three Thousand Eight Hundred Thirty	723,800
2.	Bid Alternate #1 Portable Restroom/ Shower Trailer - Purchase	Twenty Five Thousand	\$ 25,000
2.	Bid Alternate #2 Portable Restroom/ Shower Trailer -Rental	Twenty Six hundred Thirty Three	\$ 2,633/mo.

Assignment of Contractor's values:

Item	Description	Total Amount
Division 01	General Requirements:	155,200
Division 02	Site Work:	64,000
Division 03	Concrete:	Inc.
Division 04	Masonry:	Inc.
Division 05	Metals:	Inc.
Division 06	Wood and Plastics:	110,400
Division 07	Thermal and Moisture Protection:	79,730
Division 08	Doors and Windows:	36,800
Division 09	Finishes:	84,400

Division 10	Specialties:	22,500
Division 11	Equipment: Not Used	3,150
Division 12	Furnishings:	
Division 13	Special Construction:	
Division 14	Conveying Systems: Not Used	
Division 15	Mechanical:	118,584
Division 16	Electrical:	49,000
<b>TOTAL</b>	<b>ALL ITEMS INCLUDED IN LUMP SUM BID</b>	<b>723,830</b>

The undersigned furthermore agrees to enter into and execute a contract, with necessary bonds, at the prices set forth herein and in case of default in executing such contract, with necessary bonds, the check or bond accompanying this bid and the money payable thereon shall be forfeited thereby to and remain the property of the City of Torrance.

The above prices include all work appurtenant to the various items as outlined in the specifications and all work or expense required for the satisfactory completion of said item.

The undersigned declares that it has carefully examined the Plans, Specifications, and Contract Documents, and has investigated the site of the work and is familiar with the conditions thereon.

Action Contractors, Inc.

*Dennis Moreau*  
Dennis Moreau/President

Contractor Name

Signer's Name and Title

Date: 3/19/08

License No. & Classification 652535 B, C36, C10

Address: 17111 S. Broadway, Gardena, CA 90248

The forms with the revised bid alternates are included with this addendum. Please use the attached revised bid proposal forms (2 pages) to submit your bid. All other required bid forms in the bid packet (i.e. affidavit, bid bond, references, etc.) still need to be submitted to be considered as complete bid.

In terms of the award of the contract using the base bid and the bid alternate; the base bid will be the starting point in determining the award of contract. Other criteria as stated in the standards for evaluation of bid will also factor into the contract award.

By Order Of

*Diane Megerdichian*

Diane Megerdichian  
Business Manager

February 27, 2008

**Please return this addendum with your bid proposal.**

I hereby acknowledge receipt of this addendum.

*Action Contractors, Inc.*  
Name of Company

*1711 S. Broadway*  
Address

*Garland* *VA* *90248*  
City State Zip Code

- C. Cover all stationary objects and surfaces not intended for removal or stripping of asbestos containing roofing mastics. Cover and render air-tight all air passageways, such as doors, windows, skylights, air circulating units, vents and registers in the work area, with plastic sheeting.
- D. Confine all debris associated with roofing removal activities and prevent dispersal into the facility structure.
- E. Utilize plastic sheeting catch devices secured at the structure foundation to contain incidental falling roofing debris if required.

Removal and Handling:

- F. The wetting solution shall be applied with airless spray or low pressure spray equipment to avoid displacement and dispersal of asbestos fibers. When cleaning roof surface do not use tools or device which would cause debris to become airborne i.e., brooms, blowers, high pressure rinse, etc. Adequately wet with amended water the area(s) to be worked prior to the initiation of the removal process. Amended water will be used continually throughout the work period to ensure that any asbestos-containing material exposed by manual force of saw cutting, is wet and remains wet until final disposal.
- G. All efforts shall be made to manually loosen and remove the roofing material limiting breaking and chipping.
- H. Roofing material may be cut into smaller, manageable sizes depending upon mode of transport and method of disposal.
- I. A penetrating encapsulant shall be used at all times during the cutting process to prevent asbestos fiber release.
- J. Encapsulate all broken corners and edges of Class 1 nonfriable asbestos-containing roofing materials. Place in bags. Double bag or place single bags in lined container. Label as non-friable asbestos.
- K. All non-friable roofing materials will be carried to the edge of the roof where off loading and transport will take place by means of a chute or hoist.
- L. Carefully lower asbestos-containing material that has been removed in unit(s) or section(s) to the ground or a lower floor without dropping, throwing, sliding, or otherwise damaging the asbestos-containing material.
- M. Roofing material must be immediately sealed into a leak tight container, covered drop box or plastic wrapping, 6 mil. thickness recommended.
- N. Immediately following removal of roofing materials from deck, apply amended water to entire exposed surface.
- O. Remaining wetted asbestos-containing waste materials, including plastic or wooded barriers, shall be placed in leak-tight containers or sealed plastic bags, 6 mil. thickness recommended.
- P. Maintain on-site storage of encapsulated materials or leak-tight containers within an enclosed storage area prior to transportation. Leak-tight containers and encapsulated material shall not be accessible to the general public and shall be locked when not in use.
- Q. All asbestos-containing waste material shall be placed in leak-tight containers that will not allow said material to escape while moving containers from work areas to disposal container to transport vehicle.

Comments: Remove all dimensional material (material capable of being lifted with a small pocket knife).

By Order Of

*Diane Megerdichian*  
 Diane Megerdichian  
 Business Manager

March 14, 2008

Please return this addendum with your bid proposal.

I hereby acknowledge receipt of this addendum.

*Action Contractors*  
 Name of Company  
*17111 S. Broadway*  
 Address  
*Carls* *CA* *92248*  
 City State Zip Code

STATE OF CALIFORNIA }  
 }  
 COUNTY OF \_\_\_\_\_ }

**CONTRACTOR'S AFFIDAVIT**

B 2008-06

**FIRE STATION #3 RENOVATION**

Dennis Moreau, being first duly sworn,  
 deposes and says:

1. That he/she is the President  
 Title

of Action Contractors, Inc.  
 Name of Partnership, Corporation, or Sole Proprietorship

hereinafter called "Contractor", who has submitted to the City of Torrance a proposal for the construction of:

2. That said proposal is genuine; that the same is not sham; that all statement of facts therein are true;
3. That such proposal was not made in the interest or behalf of any person, partnership, company, association, organization or corporation not named or disclosed;
4. That the Contractor did not, directly or indirectly, induce, solicit or agree with anyone else to submit a false or sham bid, to refrain from bidding, or to withdraw the bid, to raise or fix the bid price of the Contractor or anyone else, or to raise or fix any overhead, profit or cost element of the Contractor's price or the price of anyone else; and did not attempt to induce action prejudicial to the interest of the City of Torrance, or of any other bidder, or anyone else interested in the proposed contract;
5. That the Contractor has not in any manner sought by collusion to secure for itself an advantage over any other bidder or to induce action prejudicial to the interests of the City of Torrance, or of any other bidder or of anyone else interested in the proposed contract;
6. That the Contractor has not accepted any bid from any subcontractor or materialman through any bid depository, the bylaws, rules or regulations of which prohibit or prevent the Contractor from considering any bid from any subcontractor or materialman, which is not processed through said bid depository, or which prevent any subcontractor or materialman from bidding to any contractor who does not use the facilities of or accept bids from or through such bid depository;

**CONTRACTOR'S AFFIDAVIT (CONTINUED)**

7. That the Contractor did not, directly or indirectly, submit the Contractor's bid price or any breakdown thereof, or the contents thereof, or divulge information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, or to any individual or group of Individuals, except to the City of Torrance, or to any person or persons who have a partnership or other financial interest with said Contractor in its business.

Dated this 19<sup>th</sup> day of March, 2008.

Subscribed and Sworn to  
before me this 19 day  
of March, 2008.

*Dennis Moore*  
(Contractor)  
President  
\_\_\_\_\_  
(Title)

*Shirley K Lee*  
Notary Public in and for said  
County and State.  
(Seal)

LIST OF SUBCONTRACTORS

Page 1 of 2

The bidder is required to fill in the following blanks in accordance with the provisions of the Subletting and Subcontracting Fair Practices Act (Chapter 2 of Division 5, Title 1 of the Government Code of the State of California) and should familiarize itself with section 2-3 of the Standard Specifications for Public Works Construction.

Name Under Which Subcontractor is Licensed: F.J. Drywall, Inc.

License Number: 792710

Address of Office, Mill or Shop: 22138 S. Vermont Ave., Suite C

Percentage of Total Contract 4% Torrance, CA 90502

Specific Description of Sub-Contract: Accent Rain gutters & sheetmetal.  
Drywall, Taping & Finishing

Name Under Which Subcontractor is Licensed: Accent Rain gutters & Sheetmetal

License Number: 846962

Address of Office, Mill or Shop: 3845 Karen Ave.

Percentage of Total Contract 3% Long Beach, CA 90808

Specific Description of Sub-Contract: Gutters & sheetmetal.

Name Under Which Subcontractor is Licensed: Richard Grant

License Number: 321407

Address of Office, Mill or Shop: 2812 W. 232<sup>nd</sup> St.

Percentage of Total Contract 4% Torrance, CA 90505

Specific Description of Sub-Contract: Earthwork, excavation & Grading

Name Under Which Subcontractor is Licensed: Thomas Acoustics, Inc.

License Number: 578445

Address of Office, Mill or Shop: 7605 Monroe St.

Percentage of Total Contract 3% Paramount, CA 90723

Specific Description of Sub-Contract: Suspended ceiling

Name Under Which Subcontractor is Licensed: Essential Interiors, Inc.

License Number: 593248

Address of Office, Mill or Shop: 15624 Inglewood Ave.

Percentage of Total Contract 3% Lawndale, CA 90260

Specific Description of Sub-Contract: Carpet, resilient tile, blinds

Name Under Which Subcontractor is Licensed: Richmond Plastering, Inc.

License Number: 454093

Address of Office, Mill or Shop: 12102 Centopia St., Unit B

Percentage of Total Contract 2% Hawaiian Gardens, CA 90716

Specific Description of Sub-Contract: Plastering

Name Under Which Subcontractor is Licensed: Argus Contracting, Inc.

License Number: 802284

Address of Office, Mill or Shop: 2340 E. Artesia Blvd., Long Beach, CA 90805

Percentage of Total Contract 5%

Specific Description of Sub-Contract: Abatement

Subcontractors listed in accordance with the provisions of Section 2-3 must be properly licensed under the laws of the State of California for the type of work, which they are to perform. Do not list alternate subcontractors for the same work.

Page 1 of 2  
**REFERENCES**

(Work similar in magnitude and degree of difficulty completed by Contractor within the past three (3) years.)

1. Name (Firm/Agency): Boy's & Girl's Club of La Habra  
 Address: 1211 Faringer Way, La Habra, CA 90631  
 Contact Person: Mark Chavez Telephone No.: 562 691-2413  
 Title of Project: ADA Ramps & 2nd Floor Conversion  
 Project Location: Boy's & Girl's Club of La Habra  
 Date of Completion 6/07 Contract Amount:\$ 225,000.00
  
2. Name (Firm/Agency): City of Torrance  
 Address: 3031 Torrance Blvd., Torrance, CA 90503  
 Contact Person: Tom Kelly Telephone No.: 310 781-7101  
 Title of Project: Fire Station #5  
 Project Location: 3490 Del Amo Blvd., Torrance  
 Date of Completion 8/07 Contract Amount:\$ 459,000.00
  
3. Name (Firm/Agency): Far East National Bank  
 Address: 977 North Broadway, Los Angeles, CA 90012  
 Contact Person: Roger Galaz Telephone No.: 213 479-7950  
 Title of Project: Pasadena Branch Buildout  
 Project Location: 600 South Lake Ave., Pasadena, CA 91106  
 Date of Completion 12/07 Contract Amount:\$ 375,000.00
  
4. Name (Firm/Agency): City of Torrance  
 Address: 3031 Torrance Blvd., Torrance, CA 90503  
 Contact Person: Tom Kelly Telephone No.: 310 781-7101  
 Title of Project: Finance Dept. Renovation  
 Project Location: 3031 Torrance Blvd., Torrance, CA 90503  
 Date of Completion 10/14/05 Contract Amount:\$ 676,380.00

**REFERENCES**

If Contractor has not performed work for the City of Torrance within the last five (5) years, list all work done within said five years (attach additional sheets if necessary). Note if work was done as subcontractor [include only subcontract amount]:

Work Description & Contract Amount	Agency	Date Completed

Contractor's License No.: 652535 Class: B, C10, C36

- a. Date first obtained: 8/12/1992
- b. Has License ever been suspended or revoked? No  
If yes, describe when and why: \_\_\_\_\_
- c. Any current claims against License or Bond? No  
If yes, describe claims: \_\_\_\_\_

Type of entity (check one)

Incorporated  Partnership  Sole Proprietorship

If incorporated, in what state California

Federal Tax ID Number # 95-4118909

Principals in Company (List all - attach additional sheets if necessary):

<u>NAME</u>	<u>TITLE</u>	<u>LICENSE NO.</u> <u>(If Applicable)</u>
<u>Dennis Moreau</u>	<u>CEO/RMO/Pres..</u>	_____
<u>Patricia Moreau</u>	<u>Vice Pres.</u>	_____
_____	_____	_____

## AMENDMENT TO AGREEMENT

This Amendment to Agreement is made and entered into as of \_\_\_\_\_, 2008 by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and BOA Architecture, a California Corporation ("CONSULTANT").

### **RECITALS:**

- A. CITY and CONSULTANT entered into an Agreement on September 12, 2006, whereby CONSULTANT agreed to provide architectural design services for the renovation of Fire Station #3 per the Proposal dated July 26, 2006.
- B. The original Agreement was for a fifteen-month term.
- C. CITY is satisfied with the level of service provided by the CONSULTANT.
- D. Both parties wish to amend the agreement to extend the term of the agreement.

### **AGREEMENT:**

- 1. Paragraph 2 entitled "TERM" is amended to read in its entirety as follows:

#### **"2. TERM**

Unless earlier terminated in accordance with Paragraph 4 below, this Agreement will continue in full force and effect from the Effective Date through March 31, 2009."

- 2. The person(s) executing this Agreement on behalf of the CONSULTANT warrant that (i) the CONSULTANT is duly organized and existing; (ii) they are duly authorized to execute this Agreement on behalf of the CONSULTANT; (iii) by so executing this Agreement, the CONSULTANT 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 CONSULTANT is bound.

- 3. In all other respects, the Agreement dated September 12, 2006 between CITY OF TORRANCE and CONSULTANT is ratified and reaffirmed and is in full force and effect.

CITY OF TORRANCE,  
a Municipal Corporation

BOA Architecture  
a California Corporation

\_\_\_\_\_  
Frank Scotto, Mayor

By: \_\_\_\_\_  
Anthony Wu  
Executive Vice President

ATTEST:

\_\_\_\_\_  
Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III  
City Attorney

By: \_\_\_\_\_

## ATTACHMENT C

Torrance Municipal Code

**SECTION 22.1.4. LOWEST RESPONSIBLE BIDDER.**

(Added by O-3493)

The lowest responsible bidder will be determined after a consideration of the following factors:

- a) The lowest cost to the City;
- b) The ability, capacity, facilities and skill of the bidder to perform the contract;**
- c) The ability of the bidder to perform the contract within the time specified, without delay;**
- d) The character, integrity, trustworthiness and reputation of the bidder;**
- e) The competence, reputation and record of performance and experience of the bidder for the successful recent completion of similar work of comparable magnitude;**
- f) The previous and existing compliance by the bidder with laws and ordinances relating to the type of work to be performed under the contract;**
- g) The sufficiency of the bidder's financial resources as they relate to the ability of the bidder to perform the contract;
- h) The quality, availability and adaptability of the supplies and equipment to the particular use required;
- i) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;**
- j) The number and scope of conditions and exceptions attached to the bid by the bidder.

(emphasis added)

**SECTION 22.3.9. AWARD OF CONTRACTS.**

- a) Except as otherwise provided in this Article, contracts will be awarded by the City Council to the lowest responsible bidder.
- b) For the purpose of this Section, the lowest responsible bidder will be determined pursuant to the criteria set forth in Section 22.1.4. of this Chapter.
- c) The City is authorized to award contracts to the second lowest responsible bidder when:**
  - 1) The apparent lowest bidder is non-responsive due to defects, technicalities or informalities in their bid proposal or the required bonds and insurance documents; or**
  - 2) Any owner, officer or employee who has a proprietary interest in the apparent lowest bidder, has been disqualified, removed, debarred, or otherwise prevented from bidding on, or completing a federal, state, or local project because of a violation of law or a safety regulation.

(emphasis added)



NORWALK INVESTIGATIVE CENTER  
12501 EAST IMPERIAL HIGHWAY  
SUITE 630  
NORWALK, CA 90650  
(562)345-7610  
S F 2004014340

ATTACHMENT D

Citation #5200052094

DATE: 01/18/2006

EARL WILLIAM FRANCIS  
3119 CAROLWOOD LANE  
TORRANCE, CA 90505

SUBJECT: S F 2004014340  
TONY RIZK

Dear EARL WILLIAM FRANCIS:

We wish to take this opportunity to notify you of the disposition of your complaint.

After thorough investigation of your complaint, we are issuing a citation against the contractor for contracting without a license. The citation orders that the contractor pay a civil penalty to Contractors State License Board for the violation. This citation also orders the contractor to cease unlicensed contracting activity.

If the contractor appeals the citation, it will be scheduled for a hearing before an administrative law judge.

If the contractor does not appeal the citation but does not comply with it, the matter will be turned over either to a collection agency for collection of the fine or the District Attorney for prosecution for non-compliance with the citation.

Sincerely,

CARLOS MARQUEZ, ACTING  
Enforcement Supervisor

**FILED**  
 LOS ANGELES SUPERIOR COURT  
 JAN 16 2007  
 JOHN A. CLARKE, CLERK  
 BY *J. Eggleston*  
 J. EGGLESTON, DEPUTY

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

APPELLATE DIVISION OF THE SUPERIOR COURT  
 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

CEDARS ENGINEERING, LLC,  
 Plaintiff and Appellant,  
 v.  
 EARL FRANCIS,  
 Defendant and Respondent.

) No. BV 026342  
 ) Torrance Trial Court  
 ) No. 05C01261  
 ) MEMORANDUM JUDGMENT

This cause having been submitted for decision, and fully considered, judgment is ordered as follows:

The order and judgment are affirmed. Defendant to recover costs on appeal. Plaintiff and appellant Cedars Engineering, LLC (plaintiff or Cedars) appeals from an order granting defendant and respondent Earl Francis' (defendant's) motion for judgment on the pleadings. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On May 11, 2005, plaintiff filed a complaint against defendant for breach of contract, quantum meruit, and account stated. According to the complaint, defendant retained plaintiff, a limited liability company, "for oversight and general coordination for the engineering and construction of a land slide remediation program for the real

///

1 property known and described as 3119 Carolwood Lane, Torrance California.”<sup>1</sup> The  
 2 unpaid balance due for the work performed was \$19,820.47. A copy of the written  
 3 contract,<sup>2</sup> signed by defendant, and an invoice were attached to the complaint.

4  
 5 <sup>1</sup>Unless otherwise indicated, quoted material, including errors, is as reflected in the original  
 6 text.

7 <sup>2</sup>The contract states in part:

8 “Cedars Engineering, LLC (Cedars) intends to provide oversight and general coordination  
 9 for the engineering and construction of a landslide remediation program and associated work to  
 10 protect the homes impacted the landslide and participating in this program.

11 “The scope of work is based on the following:

- 12 • Draft Geotechnical Investigation and Repair Recommendations for the Carolwood  
 Lane Landslide, dated September 18, 2001 prepared by Stoney-Miller Consultants,  
 Inc.
- 13 • Geotechnical Investigation for the landslide, dated August 4, 1998, prepared by Dale  
 Hinkle, P.E., Inc.
- 14 • Dale Hinkle, P.E., Inc. design dated 11/28/01
- 15 • Budgetary construction cost submitted by DMM Inc, January 2002
- 16 • Budgetary construction cost submitted by MESA Construction, Inc., February 2002.”

17 “**SCOPE OF WORK** [¶] Our proposal includes project oversight and supervision. This  
 18 includes the construction and engineering contractors including all labor, equipment and materials  
 19 necessary to assist in the design and the construction of the scope of work. The construction  
 20 oversight phase is based on continuous uninterrupted work with 1-each crew working 1-each 8-hour  
 21 shift, 5-days per week and 1-mobilization. Our scope of work includes the following: [¶] **TASK A.**  
 22 **Remediation Design.** Cedars will work with Dale Hinkle Inc., his structural engineering sub-  
 23 contractor, and the construction contractors to complete the geotechnical evaluation and design of  
 24 a remedial program that will protect the homeowners, minimize further damage to the above  
 25 properties and be consistent with and not aggravate the overall landslide condition. Cedars will offer  
 26 suggestions to reduce project costs, however, the final design will be the full responsibility of the  
 27 homeowners. [¶] **TASK B. Solution Implementation.** Based on the design effort, Cedars will  
 28 coordinate the implementation of the proposed solutions. Our approach is a base project that  
 includes caissons, tiebacks and grade beams, with an option to allow for final grading and site clean-  
 up. . . .”

29 The following “**TERMS AND CONDITIONS**” are relevant:

- 30 “1. Cedars, its representatives and employees will work with all the homeowners involved,  
 31 Dale Hinkle and his sub consultants, as well as the construction contractors.
- 32 2. Each homeowner will enter into a contract with Cedars by signing this document.
- 33 3. Upon contract signature, each homeowner will trust to Cedars in initial deposit payment  
 34 of \$85,000.
- 35 4. The homeowners will continue to pay for the engineering design and permitting from the  
 36 group joint fund account. Cedars will pay the construction contractors from the Cedars trust  
 37 account.
- 38 5. If the final repair cost exceeds the deposited amount, the homeowners will be fully

1 On June 30, 2005, defendant filed an answer denying the allegations and raising  
 2 affirmative defenses. On December 16, 2005, defendant filed a motion for judgment on  
 3 the pleadings, on the ground that plaintiff was an unlicensed contractor and was barred  
 4 from seeking damages or equitable relief by Business and Professions Code<sup>3</sup> section  
 5 7031.<sup>4</sup> Plaintiff failed to allege in the complaint that it was a licensed contractor.<sup>5</sup>

6 On December 30, 2005, plaintiff filed an opposition to defendant's motion for  
 7 judgment on the pleadings.<sup>6</sup> Plaintiff stated that the issue of whether a contractor's

8 \_\_\_\_\_  
 9 responsible for the balance due in equal amounts, payable to Cedars.

10 6. If the final repair costs is less than the deposited amount, Cedars will be paid \$5,000 and  
 50% of the remaining balance, payable in equal parts from the accounts of each homeowner.

11 [¶] . . . [¶]

12 12. Excess payments due to Cedars shall be paid within 15 days of notice of such invoice.  
 Interest will be charged on all past due accounts at 2% per month or the highest rate allowed by law.  
 13 In the event legal action must be instituted to enforce payment, the homeowners agree to pay Cedars  
 Engineering, LLC for all attorney fees and court costs. Any additional costs incurred by Cedars will  
 14 be charged to the homeowners at actual cost plus 2% overhead and 10% profit.

15 13. Cedars carries liability insurance to cover its personnel during work hours. The contracts  
 will be required to maintain adequate business licenses, liability and professional insurance,  
 16 employment compensation, and other insurance, as needed."

17 <sup>3</sup>All further statutory references are to the Business and Professions Code unless otherwise  
 indicated.

18 <sup>4</sup>Section 7031, subdivision (a) provides in relevant part: "Except as provided in subdivision  
 19 (e) [which is not applicable in this case], no person engaged in the business or acting in the capacity  
 20 of a contractor, may bring or maintain any action, or recover in law or equity in any action, in any  
 court of this state for the collection of compensation for the performance of any act or contract  
 21 where a license is required by this chapter without alleging that he or she was a duly licensed  
 contractor at all times during the performance of that act or contract, regardless of the merits of the  
 22 cause of action brought by the person, . . ."

23 <sup>5</sup>In its opening brief, plaintiff states that "[i]t is the position of Cedars that it is not a licensed  
 24 contractor and being a licensed contractor was not needed to perform the supervision of the landslide  
 slope repairs . . . ."

25 <sup>6</sup>Plaintiff filed the declaration of Tony Rizk (Rizk), the "Owner and Principal of Cedars  
 26 Engineering, LLC," in support of its opposition to defendant's motion. Rizk declared that, "[i]n  
 27 order to repair landslide damages for homes on Carolwood Lane, Torrance, California, 7  
 homeowners including myself, and Defendant, Earl Francis, banded together as homeowners to  
 28 make landslide and slope repairs to save our homes. After initial homeowner meetings, it was  
 decided that Defendant, Earl Francis would act as 'coordinator' and 'overseer' of slope repairs and

1 license was required in this case was a question of fact, not a question of law. Plaintiff  
 2 maintained that it did not need a contractor's license because it acted merely as an agent  
 3 for defendant and the other homeowners in supervising and coordinating the repairs  
 4 done by licensed contractors.

5 On January 18, 2006, the court heard and submitted the matter. Later, the court  
 6 granted defendant's motion. The minute order reflects the court's ruling as follows: "1)  
 7 QUESTIONS OF LICENSURE OF PLAINTIFF IS ON THE FACE OF THE  
 8 PLEADINGS A QUESTION OF LAW: [¶] 2) THE CONTRACT DICTATES  
 9 PLAINTIFF WAS ENGAGING IN SERVICES FOR WHICH A CONTRACTOR'S  
 10 LICENSE IS REQUIRED. [¶] THEREFORE, THE MOTION IS GRANTED.  
 11 JUDGMENT IS AWARDED FOR DEFENDANT PLUS COST." The clerk's notice of  
 12 entry of judgment was served by mail on January 18, 2006. Plaintiff filed a timely  
 13 notice of appeal from the order and judgment.

#### 14 CONTENTIONS ON APPEAL

15 Plaintiff's contentions on appeal are as follows: "1) it is a question of fact whether  
 16 [plaintiff's] conduct required it to be a licensed contractor, 2) that construction managers  
 17 (the role being obtained by Plaintiff through its principle, Tony Rizk), need not be a  
 18 licensed contractor, 3) Business and Professions Code §7053 provides an exception to  
 19 the contractors license requirement."

#### 20 DISCUSSION

21 The grounds for a motion for judgment on the pleadings are the same as for a  
 22 \_\_\_\_\_  
 23 contact various construction experts, engineers, construction companies, etc., to make the  
 24 determination about how the slope could be repaired. After months of investigation and finally  
 25 obtaining approval by the city, the homeowners determined that it was better to have myself act as  
 26 'coordinator' or 'overseer' and my company Cedars Engineering would be used for that purpose.  
 27 The 7 homeowners entered into a written agreement with Cedars Engineering and construction  
 28 workers. All homeowners acted as owner/builder for submitting plans and obtaining permits for the  
 slope repair." Further, "[p]laintiff, Cedars Engineering was only the agent on behalf of all 7  
 homeowners as they agreed in order to save their homes." Attached to the declaration as exhibits  
 were a "MEMORANDUM OF UNDERSTANDING," signed by the homeowners, and a "REPAIR  
 PROJECT ACTION PLAN."

1 demurrer. (*Hejmadi v. AMFAC, Inc.* (1988) 202 Cal.App.3d 525, 535-536.) "In ruling  
2 on a common law motion for judgment on the pleadings made by a defendant, a trial  
3 court determines what has been called a pure question of law [citations], but what is in  
4 fact a mixed question of law and fact that is predominantly legal: does the plaintiff's  
5 complaint state facts sufficient to constitute a cause of action against the defendant?  
6 [Citations.] In so doing, the trial court generally confines itself to the complaint and  
7 accepts as true all material facts alleged therein. [Citation.]" (*Smiley v. Citibank* (1995)  
8 11 Cal.4th 138, 145-146.) The court may also consider written instruments attached to  
9 the pleading and properly incorporated therein by reference. (*Burnett v. Chimney Sweep*  
10 (2004) 123 Cal.App.4th 1057, 1064.) If facts in the attached exhibits contradict the facts  
11 alleged, the facts in the exhibits take precedence. (*Holland v. Morse Diesel Internat.,*  
12 *Inc.* (2001) 86 Cal.App.4th 1443, 1447.) On appeal, the trial court's order on a motion  
13 for judgment on the pleadings is independently reviewed by the appellate court.  
14 (*Smiley, supra*, 11 Cal.4th at p. 146.)

15 Plaintiff contends that whether its activities required a contractor's license is a  
16 question of a fact that cannot be decided by the trial court as a matter of law. In this  
17 case, plaintiff is incorrect. "If the plaintiff's pleadings admit the contract accurately  
18 describes the services to be performed, the court may conclude as a matter of law those  
19 services require license. [Citations.]" (*Executive Landscape Corp. v. San Vicente*  
20 *Country Villas IV Assn.* (1983) 145 Cal.App.3d 496, 499, fn. 2.) We view plaintiff's  
21 incorporation of the written contract into the complaint as an admission that the contract  
22 accurately describes the services performed by plaintiff.<sup>7</sup>

23 The facts alleged establish that plaintiff performed the type of work for which a  
24 contractor's license is required. The term "contractor" is defined in section 7026 as "any

---

25  
26 <sup>7</sup>Our view is supported by the record on appeal. At the hearing on the motion, plaintiff's  
27 counsel conceded that the contract accurately described what his client was hired to do. In addition,  
28 plaintiff states in its opening brief, "By having the contract attached to the complaint as an exhibit,  
the language of the contract also should be considered as a factual allegation by Plaintiff against  
Defendant."

1 person who undertakes to or offers to undertake to, or purports to have the capacity to  
2 undertake to, or submits a bid to, or does himself or herself or by or through others,  
3 construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any  
4 building, highway, road, parking facility, railroad, excavation or other structure, project,  
5 development or improvement, or to do any part thereof, . . ." Further, section 7056, as  
6 far as it applies to this case, provides that a license is required for projects in connection  
7 with fixed works "requiring specialized engineering knowledge and skill, including . . .  
8 flood control, . . . land leveling and earthmoving projects, excavating, grading,  
9 trenching, paving and surfacing work and cement and concrete works in connection . . ."  
10 therewith. (*Vallejo Development Co. v. Beck Development Co. et al. (Vallejo)* (1994) 24  
11 Cal.App.4th 929, 939.)

12 Here, the type of work contemplated by the agreement clearly was of the type for  
13 which a license was required. Plaintiff agreed "to provide oversight and general  
14 coordination for the engineering and construction of a landslide remediation program  
15 and associated work to protect the homes impacted by the landslide and participating in  
16 this program." The project entailed designing a plan for repairing the landslide, and then  
17 implementing that plan. The contract stated that plaintiff would work "with Dale Hinkle  
18 Inc., his structural engineering sub-contractor, and the construction contractors to  
19 complete the geotechnical evaluation and design of a remedial program that will protect  
20 the homeowners, minimize further damage to the above properties and be consistent  
21 with and not aggravate the overall landslide condition."

22 Plaintiff's contention, however, is that the agreement did not require plaintiff to  
23 act in the capacity of a contractor. Plaintiff argues that its act of overseeing and  
24 supervising the licensed contractors and providing general coordination for the project  
25 does not require a license. We disagree.

26 The mere execution of a contract for which a party undertakes to do a covered  
27 activity by itself, or through others, is an act done in the capacity of a contractor. (See  
28 *Vallejo, supra*, 24 Cal.App.4th at p. 940.) In *Vallejo*, the court stated that "even if VDC

1 [a "master-builder"] performed only administrative and oversight functions with respect  
2 to the actual installation of infrastructure improvements, it nevertheless acted 'in the  
3 capacity of' a general engineering contractor by performing those functions in  
4 fulfillment of contractual obligations owed to the owners of property on which the  
5 improvements were installed. [¶] . . . [¶] The fact that VDC subcontracted with licensed  
6 contractors to provide the actual labor, equipment and materials to construct the  
7 infrastructure improvements is irrelevant. Section 7026 plainly states that both the  
8 person who provides construction services himself and one who does so 'through others'  
9 qualifies as a 'contractor.' The California courts have also long held that those who  
10 enter into construction contracts must be licensed, even when they themselves do not do  
11 the actual work under the contract. [Citations.] [Fn. omitted.]" (*Id.* at pp. 940-941; see  
12 also *Contractors Labor Pool, Inc. v. Westway Contractors, Inc.* (1997) 53 Cal.App.4th  
13 152, 164-165 ["Acting 'by or through others' to improve property for purposes of the  
14 Contractors' State License Law entails directing or supervising the work  
15 performed, . . ."].)

16 Plaintiff's reliance on *Dorsk v. Spivack* (*Dorsk*) (1951) 107 Cal.App.2d 206 and  
17 *Wallich v. Salkin* (*Wallich*) (1963) 219 Cal.App.2d 157 are misplaced. In *Dorsk*, the  
18 defendant appealed from a judgment following a jury trial. The reviewing court applied  
19 the substantial evidence standard, and found that substantial evidence supported the  
20 jury's finding that the plaintiff acted in his capacity as a supervising employee of  
21 defendant, and not as a contractor. (*Id.* at p. 209.) Under that standard, the court views  
22 the evidence in favor of the judgment, and draws all reasonable inferences and resolves  
23 evidentiary conflicts in its favor. (*Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660.)  
24 However, in an appeal from the court's ruling on a motion for judgment on the  
25 pleadings, this court independently reviews the pleading. (*Smiley v. Citibank, supra*, 11  
26 Cal.4th at p. 146.)

27 Notwithstanding the different standard of review on appeal, *Dorsk* is  
28 distinguishable on its facts. In *Dorsk*, the plaintiff was hired and paid a flat fee to

1 supervise the construction of the property owner's apartment building. (*Dorsk, supra*,  
2 107 Cal.App.2d at p. 207.) In holding that substantial evidence supported the judgment  
3 for the plaintiff, the court emphasized "[t]he fact that subcontractors were responsible to  
4 and paid by the [property owner] rather than by the [plaintiff], and that [the property  
5 owner] was on the job daily, apparently overseeing the work, lends support to the view  
6 that [the plaintiff] was a supervising employee rather than a general contractor." (*Id.* at  
7 p. 208.)

8         Here, plaintiff's contractual agreement entailed more than mere supervisory  
9 duties. Plaintiff's duties included working with contractors to "complete the  
10 geotechnical evaluation and design of a remedial program . . .," "offer suggestions to  
11 reduce project costs[,] and "coordinate the implementation of the proposed solution."  
12 The contract required each homeowner to make an initial deposit of \$85,000 into a trust  
13 account to be held by plaintiff. The contract provided that the contractors were to then  
14 be paid by plaintiff from "the Cedars trust account." Additionally, if the final repair  
15 costs were lower than the initial deposit amount, plaintiff was entitled to be paid \$5,000,  
16 plus 50 percent of the remaining balance. Therefore, plaintiff was to pay the contractors,  
17 and had a financial incentive tied to the final cost of the project. The contract also  
18 provided that plaintiff "carr[ie]d liability insurance to cover its personnel during work  
19 hours." It is clear that plaintiff's duties were substantially more akin to those of an  
20 unlicensed contractor than merely an employee hired to supervise the construction.

21         In *Wallich*, which was another appeal from a judgment, the court did not reach  
22 the issue of whether a contractor's license was required in order for the plaintiff to  
23 recover. The plaintiff was a licensed architect who designed the building, and  
24 subsequently supervised its construction for the defendant. (*Wallich, supra*, 219  
25 Cal.App.2d at pp. 159-160.) The court held that supervising the construction of the  
26 building was inherently within the scope of the plaintiff's capacity as an architect. (*Id.*  
27 at pp. 161-163.) Thus, the architect, who did not hold a contractor's license, was  
28 entitled to relief. In so holding, the court noted, "In view of our determination on this

1 issue, it becomes unnecessary for us to pass upon the question of . . . whether the  
2 agreement was of such a variety that it might have been performed by one who was  
3 neither an architect nor technically an employee in the usual sense of the term." (*Id.* at  
4 p. 163.) The court did not address whether the plaintiff would have been entitled to seek  
5 relief for performing the same duties had he not been a licensed architect and the  
6 designer of the building. Therefore, the holding of *Wallich* is not applicable to this case.

7 Finally, plaintiff contends that it is subject to the statutory exception from the  
8 license requirement under section 7053. Section 7053 provides in relevant part: "[T]his  
9 chapter does not apply to any person who engages in the activities herein regulated as an  
10 employee who receives wages as his or her sole compensation, does not customarily  
11 engage in an independently established business, and does not have the right to control  
12 or discretion as to the manner of performance so as to determine the final results of the  
13 work performed."

14 This contention is without merit. As discussed *ante*, plaintiff's conduct was more  
15 akin to that of a contractor as opposed to an employee. Plaintiff's compensation was not  
16 based on wages, but on the final cost of the project. Aside from the contract's term that  
17 the final design of the project would be the full responsibility of the homeowner, the  
18 contract did not place any limitations on plaintiff's discretion as to the manner of  
19 performance. Each homeowner entered into a contract with plaintiff, and plaintiff was  
20 responsible for paying the contractors. It could not be reasonably determined from the  
21 facts alleged that plaintiff merely acted as an employee of defendant.

22 We conclude that the contract between plaintiff and defendant describes the  
23 duties of a contractor, and the court properly found that plaintiff required a license as a  
24 matter of law. Plaintiff's failure to allege in the pleading that it was a duly licensed  
25 contractor precluded legal or equitable relief, and the trial court properly granted  
26 defendant's motion for judgment on the pleadings.

27 ///

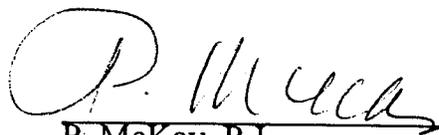
28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

The order and judgment are affirmed. Defendant to recover costs on appeal.

  
Wasserman, J.

We concur.

  
P. McKay, P.J.

  
Lager, J.



# Department of Consumer Affairs Contractors State License Board



<b>01</b> CONSUMERS	<b>02</b> CONTRACTORS	<b>03</b> APPLICANTS	<b>04</b> JOURNEYMEN	<b>05</b> PUBLIC WORKS	<b>06</b> BUILDING OFFICIALS	<b>07</b> GENERAL INFO
------------------------	--------------------------	-------------------------	-------------------------	---------------------------	---------------------------------	---------------------------

## WHAT YOU CAN DO

- About CSLB
- CSLB Newsroom
- Board and Committee Meetings
- Disaster Information Center
- CSLB Library
- Frequently Asked Questions
- Online Services
  - Check A License or HIS Registration
  - Filing a Construction Complaint
  - Processing Times
  - Check Application Status
  - Search for a Surety Bond Insurance Company
  - Search for a Workers' Compensation Company
- How to Participate

## CONTRACTOR'S LICENSE DETAIL

**⚠ DISCLAIMER:** A license status check provides information taken from the license database. Before relying on this information, you should be aware of the following limitations.

- CSLB complaint disclosure is restricted by law (B&P 7124.6). If this entity is subject to put complaint disclosure, a link for complaint disclosure will appear below. Click on the link or obtain complaint and/or legal action information.
- Per B&P 7071.17, only construction related civil judgments reported to the CSLB are disclosed.
- Arbitrations are not listed unless the contractor fails to comply with the terms of the arbitration.
- Due to workload, there may be relevant information that has not yet been entered onto the license database.

**License Number:** 827991 **Extract Date:** 06/10/2008  
**Business Information:** CEDARS ENGINEERING CONSTRUCTION INCORPORATED  
 1255 B SARTORI AVENUE  
 TORRANCE, CA 90501  
 Business Phone Number: (310) 320-7417

**Entity:** Corporation  
**Issue Date:** 12/03/2003  
**Expire Date:** 12/31/2009

**License Status:** This license is current and active. All information below should be reviewed.

CLASS	DESCRIPTION
A	<a href="#">GENERAL ENGINEERING CONTRACTOR</a>
B	<a href="#">GENERAL BUILDING CONTRACTOR</a>

**Bonding:** CONTRACTOR'S BOND  
 This license filed Contractor's Bond number **10140451** in the amount of **\$12,500** with the bonding company [AMERICAN CONTRACTORS INDEMNITY COMPANY](#).

**Effective Date:** 11/13/2007  
[Contractor's Bonding History](#)  
**BOND OF QUALIFYING INDIVIDUAL**  
 1. The Responsible Managing Officer (RMO) TONY ADEL RIZK certified that he/she owns 10 percent or more of the voting stock/equity of the corporation. A bond of qualifying individual not required.

**Effective Date:** 11/17/2004

BQI's Bonding History

**Workers'  
Compensation:**

This license has workers compensation insurance with the  
STATE COMPENSATION INSURANCE FUND

**Policy Number:** 092-0000472

**Effective Date:** 01/01/2005

**Expire Date:** 01/01/2009

Workers' Compensation History

**Miscellaneous  
Information:**

DATE	DESCRIPTION
09/23/2004	HAZ CERTIFICATION REMOVED

Personnel listed on this license (current or disassociated) are listed on other licenses.



[Consumers](#) | [Contractors](#) | [Applicants](#) | [Journeymen](#) | [Public Works](#) | [Building Officials](#) | [General Info](#)  
[CSLB Home](#) | [Conditions of Use](#) | [Privacy](#) | [Contact CSLB](#)

Copyright © 2007 State of California

**Contract Number: C2004-098**

**Contractor: S.H.E. Construction**

**Project: Hawthorne Boulevard Landscape Project**

#### **SECTION 22.1.4. LOWEST RESPONSIBLE BIDDER.**

**b) The ability, capacity, facilities and skill of the bidder to perform the contract;**

A "responsible" contractor has the capacity to provide adequate number of employees to perform the contract.

Adequate number of personnel: It was evident that S.H.E. Construction did not provide adequate number of personnel for the size/magnitude of the project. The landscape project was 1.5 miles in length. On most working days, S.H.E. Construction had anywhere from three to seven employees on the construction site. In an effort to keep the project moving in a timely manner, the City hired inspector asked S.H.E. Construction if more personnel could be dedicated to this project. There was no response or adjustment made in personnel.

**c) The ability of the bidder to perform the contract within the time specified, without delay;**

A "responsible" contractor has the ability to utilize/budget time wisely. There was a concern with S.H.E. Construction in the last construction project that may have affected the project completion.

Traffic Control: During the project, safe and proper traffic control was an issue. S.H.E. Construction asked that each of the subcontractors provide traffic control. Because there were several subcontractors, each time a new subcontractor came to the work site they needed to be trained on set up of traffic control. The on-site inspector had to regularly meet with subcontractors regarding safe and proper traffic control. Because the subcontractor's personnel were not adept in set up and removal of traffic control, this affect the amount of work that could be done each day. Since the project was rather lengthy, set up and removal of traffic control could take two hours to perform. Personnel worked on traffic control when they could be performing other tasks.

**d) The character, integrity, trustworthiness and reputation of the bidder;**

A "responsible" contractor would provide well-organized schedule and have reliable attendance for the job site.

Scheduling/Attendance: Due to scheduling issues, S.H.E. Construction was not able to consistently have personnel on the job site. There were numerous days where no work was conducted. In addition, there were a number of "NO SHOW" days where the contractor did not inform the City nor the outside inspector that they would not be working. These days are costly to the City particularly when we hired an outside inspector and the City needs to pay for the inspector's time (usually a three hour minimum).

Billing: The City and S.H.E. Construction did have a difference of opinion over payment of Traffic Control. Since the Caltrans Traffic Control Plan was approved after the City hired S.H.E. Construction, the City agreed to pay for additional traffic control equipment that was required by Caltrans. A disagreement over payment of monthly traffic control occurred when S.H.E. Construction submitted invoices that included an over-billing of traffic control labor charges. The City informed S.H.E. Construction that we would agree to pay for traffic control equipment but not labor charges for days that there was no activity on the job site.

**e) The competence, reputation and record of performance and experience of the bidder for the successful recent completion of similar work of comparable magnitude;**

Timely repair of damaged irrigation: During the demolition phase of construction, an irrigation main line was broken; S.H.E. Construction first claimed it was not their responsibility to make repairs. Then after numerous reminders from the inspector and weeks that passed by, S.H.E. Construction repaired the broken main line. A "responsible" contractor would have accepted responsibility of the broken line and would have made the repairs in a day or two.

Incomplete Project: With outstanding tasks still yet to be performed, S.H.E. Construction failed return to the job site after written and verbal requests to do so. Since S.H.E. Construction was unable to complete the Hawthorne Boulevard landscape project, a Notice of Cessation was filed with the County.

**h) The quality, availability and adaptability of the supplies and equipment to the particular use required;**

Adequate number of personnel: As stated in Section b) above, S.H.E. Construction did not provide adequate number of personnel for the size or

magnitude of the project. On most working days, S.H.E. Construction had anywhere from three to seven employees on the construction site. In an effort to keep the project moving in a timely manner, the City hired inspector asked S.H.E. Construction if more personnel could be dedicated to this project. There was no response or adjustments made in personnel.

**i) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;**

Proper Maintenance of Job Site: As detailed in the contract, S.H.E. Construction failed to uphold its responsibility of upkeep of the newly planted medians. There were numerous pallets of concrete pavers, empty tree boxes and containers, and asphalt that remained in the medians for weeks. Without proper attention to the medians, weeds also began to grow in the medians. This failure to maintain the landscape areas required the City to hire another contractor to clean/debris and replace dead/missing plant material.

A "responsible" contractor would uphold the contract and perform proper maintenance of the job site.