Meeting Date: **1/7/2014**

Report Type: Review

Report ID: 2013-00729

City of SACRAMENTO

10

City Council Report
915 I Street, 1st Floor
www.CityofSacramento.org

Title: (Agreement/Contract for Review and Information) Contract Award and Naming Artivio Guerrero Park

Location: 6000 61st Street, District 6

Issue: Park naming, awards of contracts in excess of $100,000 and bid protests require City Council action.

Recommendation: Review report recommending 1) a Motion considering the bid protest filed by Olympic Land Construction on the Park Site FB2 Project, adopting the findings of fact and recommended determination issued by the hearing examiner on the bid protest, and denying the bid protest; 2) approving construction plans and specifications for the Artivio Guerrero Park Project, awarding the contract to J.M. Slover Inc., and authorizing the City Manager or City Manager's designee to execute the contract with J.M. Slover Inc. for an amount not to exceed $2,188,823; 3) a Resolution approving the naming of Park Site FB2 as Artivio Guerrero Park; and 4) continue to January 14, 2014 for approval.

Contact: C. Gary Hyden, Supervising Landscape Architect, (916) 808-1949; Tin-Wah Wong, Associate Landscape Architect, (916) 808-5540, Department of Parks and Recreation

Presenter: None

Department: Parks & Recreation Department
Division: Park Development Services
Dept ID: 19001121
Attachments:
01-Description/Analysis
02-Background
03-Location Map
04-Park Site FB2 Master Plan
05-Resolution
06-Contract Site FB2 (JM Slover)
07-Letter-Bid Extension JM Slover
08-Protest Letter-Olympic 9-19-13
09-Bid Protest Decision - Case No B14190021002
10-Slover letter 9-19-13

City Attorney Review

Approved as to Form
Gerald Hicks
12/20/2013 4:09:31 PM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
12/16/2013 12:46:35 PM

Approvals/Acknowledgements

Department Director or Designee: Jim Combs - 12/18/2013 4:32:24 PM

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Description/Analysis

Issue Detail: Park Site FB2 is a 2.5 acre neighborhood park located at 6000 61st Street in Council District 6. Staff recommends that Park Site FB2 be named Artivio Guerrero Park, which is consistent with the City of Sacramento Facility Naming Policy (Resolution 2008-112). Development of the park was competitively bid through the City's public process. JM Slover Inc. was determined to be the lowest responsive and responsible bidder. A bid protest was filed by the second lowest bidder, Olympic Land Construction, as discussed in more detail in the Rationale for Recommendation section of this report. The City Code requires the City Council to consider and decide the bid protest prior to awarding the contract. Staff recommends that the City Council deny the bid protest based on the determination made by an independent hearing examiner that heard the bid protest, and award the contract to JM Slover Inc., as the lowest responsive and responsible bidder.

The park improvements will consist of entrance gates; limited onsite parking; covered tot lot and adventure playgrounds; a covered group picnic area; a basketball half-court; a skate plaza; sculpture area; an interactive water mister area; walkways with fitness stations and seating areas; an open turf area; and landscaping and automatic irrigation.

A summary of the project background, a location map, and master plan are included as attachments to this report.

Policy Considerations: Providing parks and recreation facilities is consistent with the City's strategic plan to enhance livability in Sacramento's neighborhoods by expanding park, recreation, and trail facilities throughout the City. This is also part of the Park Development Process for park planning as stated in the *2005-2010 Parks and Recreation Master Plan*.

Sacramento City Code Chapter 3.60 identifies the general guidelines for completing contracts for public projects and procedures for bidding and issuing contracts over $100,000.

The City Council Rules of Procedure require contracts over $1,000,000 to be submitted for review 10 days before adoption.

Naming this park site Artivio Guerrero Park is consistent with the City of Sacramento Facility Naming Policy (Resolution 2008-112).

Economic Impacts: This park construction project, which totals $2,188,823, is expected to create 14.9 total jobs (9 direct jobs and 5.9 additional jobs through indirect and induced activities). Furthermore, it will create $1,865,173 in total economic output ($1,207,194 of direct output and another $657,979 of output through indirect and induced activities).

Environmental Considerations:

California Environmental Quality Act (CEQA):

The Environmental Services Manager has reviewed this project and determined that it is exempt from the provisions of CEQA pursuant to sections 15303 and 15304 of the CEQA Guidelines (Title 14 Cal. Code Reg. § 15000 et seq.). Projects exempt under Section 15303 involve the construction and location of limited number of new, small facilities or structure. Projects exempt under Section 15304 include new gardening or landscaping.

Sustainability: The Park Site FB2 project has been reviewed for consistency with the goals, policies, and targets of the City's Sustainability Master Plan (SMP), the Parks and Recreation Sustainability Plan, and the 2030 General Plan. The project will advance the goals, policies, and targets of these plans by improving the health of residents through access to a diverse mix of wellness and recreation activities. The park improvements are also consistent with sustainable design through the use of water efficient irrigation, recycled materials, drought-tolerant plantings to minimize water use, and use of local vendors.

Commission/Committee Action:
On August 1, 2013, the naming of Park Site FB2 Artivio Guerrero was reviewed and supported by the Parks and Recreation Commission.

Rationale for Recommendation: The formal bid process for the Park Site FB2 project was posted in accordance with City Code 3.60 and Administrative Policy Instruction #48. The project bids were opened on August 21, 2013. Staff received seven bids and the results are listed below:

CONTRACTOR	Base Bid	Additive Alternates	Total Bid	SBE %
JM SLOVER Inc.	$2,188,823	$62,635	$2,251,458	90.4
OLYMPIC LAND CONSTRUCTION	$2,379,746	$73,155	$2,452,901	79.9
DIEDE CONSTRUCTION	$2,388,690	$80,490	$2,469,180	21.3
GOODLAND LANDSCAPE CONSTRUCTION	$2,473,488	$60,400	$2,533,888	72.7
BOBO CONSTRUCTION	$2,536,500	$83,000	$2,619,500	27.0
SIERRA VALLEY CONSTRUCTION	$2,693,858	$80,235	$2,774,093	90.5
ENVIROMENTAL LANDSCAPE SOLUTIONS	$2,763,515	$90,098	$2,853,614	100.0

The Engineer's Estimate for this project was $2,168,177. Bids were opened on August 21, 2013 and JM Slover Inc. was the apparent lowest bidder. Olympic Land Construction, the second lowest bidder, requested to review the listing of JM Slover's subcontractors and inquired why Ross Recreation was not listed. Landscape Structures, the manufacturer of AquaFlex and PebbleFlex resilient surfacing has certified Ross Recreation to oversee installation of its product and would not warranty the product without use of a certified installer.

JM Slover Inc. admitted that it failed to list a subcontractor for the AquaFlex and PebbleFlex surfacing, but it would self-perform the work. Public Contract Code Section 4106 provides that if a subcontractor is not listed in a bid, then the prime contractor must self-perform the work because the bidder cannot later add a subcontractor not listed in its bid. JM Slover Inc. arranged to hire Tom Blanchard as its employee to install the material so that the manufacturer, Landscape Structures, would issue the warranty. Tom Blanchard owns Blanchard Construction, which is Ross Recreation's installer of the PebbleFlex and AquaFlex material.

Olympic Land Construction filed a bid protest on September 26, 2013, contending that JM Slover was not a certified installer of Aquaflex and PebbleFlex and that JM Slover's bid should be rejected. In accordance with the bid protest procedures specified in the City Code, a bid protest hearing before an independent hearing examiner was scheduled on October 14, 2013 at the Institute of Administrative Justice, McGeorge School of Law.

Following the hearing, the hearing examiner issued a written decision setting forth the hearing examiner's findings of fact and conclusions of law, and a recommended determination of the bid protest. In summary, the hearing examiner determined that JM Slover Inc. demonstrated that it can self-perform the installation of the PebbleFlex and AquaFlex product by hiring an employee who is a certified installer of the material. A copy of the hearing examiner's November 7, 2013 decision is attached.

Section 3.60.530 of the City Code requires the City Council to consider and decide the bid protest prior to awarding the contract. Section 3.60.540 of the City Code allows the City Council to either adopt the findings of fact and recommended determination of the hearing examiner, or conduct additional proceedings (including reviewing a recording or transcript of the hearing and/or hearing additional testimony) to make its own determination.

Staff recommends that the City Council deny the bid protest based on the hearing examiner's determination.

Financial Considerations: The total estimated cost of the project is $2,998,889**.** Funding consists of $149,000 from Park Development Impact Fee (Fund 3204), and $2,849,889 from the 2006 Parks Bond Act Statewide Park Development and Community Revitalization program (Prop 84) also known as Proposition 84 Grant (Fund 3704). Development of parks creates an ongoing cost for park maintenance and utilities based on the size of the park. The annual maintenance cost for these additional 2.5± acres of park development is approximately $5,500 per acre or $13,750±. The Department of Parks and Recreation will absorb added maintenance and water/ utility costs within their existing approved budget. The department will continue to be challenged to maintain services within existing resources, by implementing efficiencies and other service level adjustments as necessary.

Emerging Small Business Development (ESBD): The selection of contractors for this project followed City established guidelines for inclusion of ESBD firms. At an SBE/EBE percentage total of 90.4%, J.M. Slover, Inc. and their subcontractors are well above the City's required 20% ESBD rate.

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Background:

Park Site FB2 is a 2.5 acre neighborhood park located at 6000 61st Street in Community Plan Area 5 (PA5). The District 6 Council Office is proposing that the park site FB2 be named Artivio Guerrero Park.

Mr. Artivio Guerrero passed on January 25, 2013. He was a dedicated and active member of the community.

Artivio was born on February 21, 1932 in Sheridan, Wyoming and was a veteran of the United States Air Force and a retiree of the Sacramento Army Depot.

Artivio was a cherished computer science teacher at St. Peter's and John Paul II Catholic Elementary Schools for many years.

Driven by his compassion to help others, Artivio was a dedicated servant to the Saint Vincent de Paul Society for over 35 years and served as the President of the Sacramento Council from 1978-1984.

Artivio was also an active member of his community and dedicated time to serve on the Fruitridge Manor Neighborhood Association, All Congregations Together (ACT), and served on the board for Clara's House.

Artivio was a loving husband of 52 years to his wife Martha, a devoted and much loved father to his daughters Ana Maria and Teresa, and an amazing grandfather to his grandchildren Lucca and Mia.

On January 29, 2013, the Sacramento City Council passed a resolution memorializing Artivio Guerrero as an expression of the Mayor and Council's deepest sympathy to his bereaved family.

Park Site FB2 is an undeveloped 2.5 acre neighborhood park site located at 6000 61st Street in the Fruitridge/Broadway Community Plan Area 5 (PA5). This site was privately owned as the Manor Recreation & Swimming Club until the City purchased the property in 2009. The original infrastructure (buildings, parking lot and pool) has been removed and the site is currently vacant.

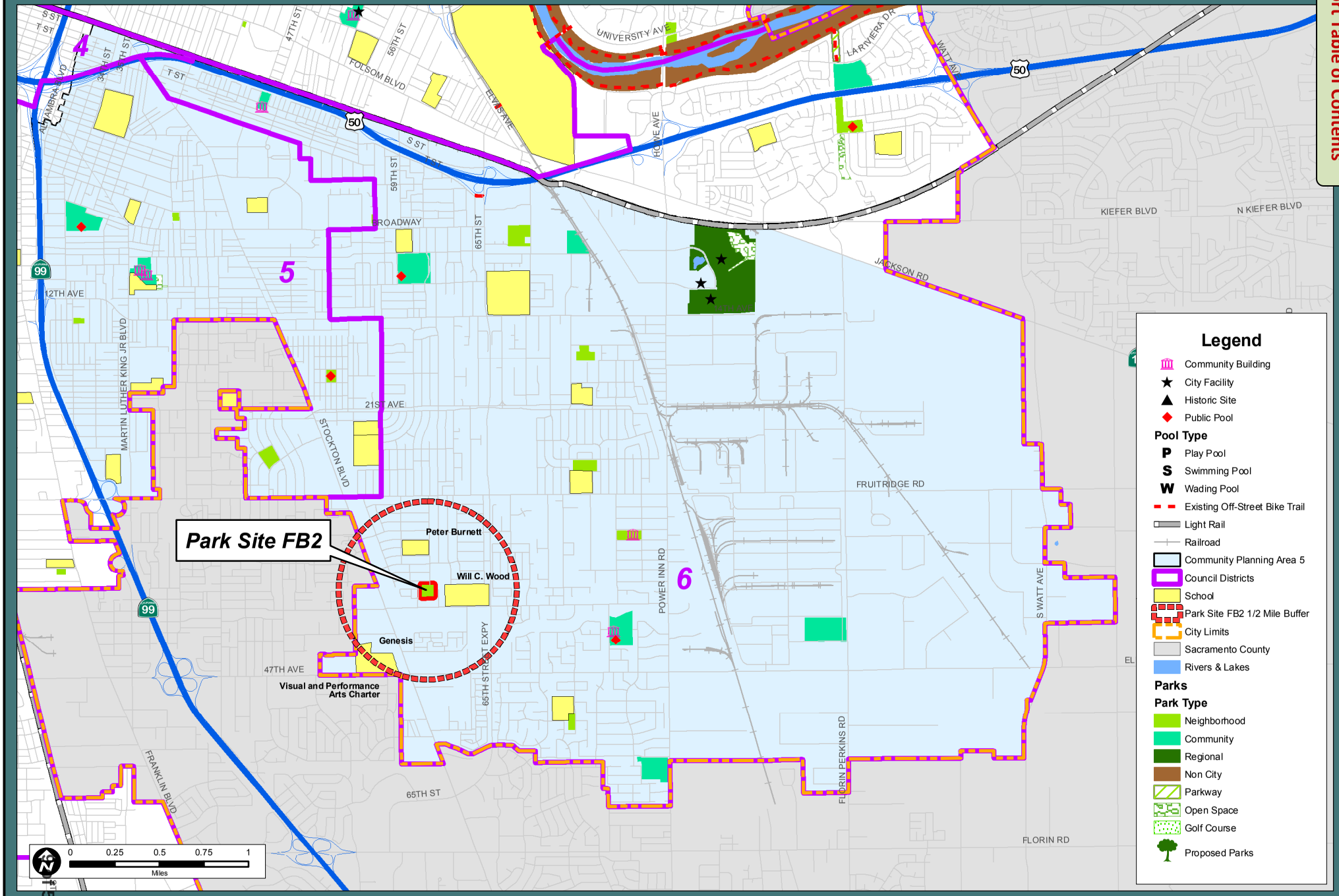
The Park site FB2 Master Plan was approved by the City Council on March 20, 2012.

Elements of the Master Plan include of entrance gates; limited onsite parking; covered tot lot and adventure playgrounds; a covered group picnic

area; a basketball half-court; a skate plaza; sculpture area; an interactive water mister area; walkways with fitness stations and seating areas; an open turf area; and landscaping and automatic irrigation.

In August 2012, the City Parks and Recreation Department received the executed agreement from the California Department of Parks and Recreation completing the award of $2,849,889.00 for Park Site FB2 from the 2006 Parks Bond Act Statewide Park Development and Community Revitalization program (Prop 84).

City of Sacramento
Department of Parks and Recreation
Park Site FB2 (Manor Recreation Swim Club)



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PUBLIC ART

BEGINNER LEVEL SKATE PARK

INTERPRETIVE SIGNAGE

WATER MISTER

ADVENTURE PLAY AREA

LOW WATER USE PLANTING

AUGUST 2011

PARK SITE FB2 DEVELOPMENT

The City of Sacramento
Parks and Recreation Department

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RESOLUTION NO. 2014-

Adopted by the Sacramento City Council

NAMING OF PARK SITE FB2 "ARTIVIO GUERRERO PARK"

BACKGROUND

A. Park Site FB2 is a 2.5 acre neighborhood park site located at 6000 61st Street in Council District 6. This site was previously the Manor Recreation & Swimming Club until the City purchased the property in 2009. The original infrastructure (buildings, parking lot and pool) has been removed and the site is currently vacant. The receipt of a state grant will now allow for this park site to be developed.

B. "Park Site FB2" is a working park name used by staff and is not the official name of the park.

C. Artivio Guerrero passed away on January 25, 2013. The Council Member for District 6 is proposing that Park Site FB2 be named "Artivio Guerrero Park" to recognize and honor Artivio Guerrero who has contributed significantly to the community.

D. On August 1, 2013, the Parks and Recreation Commission supported naming Park Site FB2 as "Artivio Guerrero Park".

E. Naming this park site "Artivio Guerrero Park" is consistent with the City of Sacramento Facility Naming Policy adopted by City Council on February 26, 2008 (Resolution 2008-112).

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. Park Site FB2 shall be named "Artivio Guerrero Park".

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AGREEMENT
(Construction Contract Over $25,000)

THIS AGREEMENT, dated for identification JANUARY 14, 2014, is made and entered into between the CITY OF SACRAMENTO, a municipal corporation ("City"), and
JM SLOVER, INC., 1630 LOTUS ROAD, PLACERVILLE, CA 95667 ("Contractor"), in the amount of TWO MILLION ONE HUNDRED EIGHTY-EIGHT THOUSAND EIGHT HUNDRED TWENTY THREE DOLLARS AND NO CENTS ($2,188,823.00).

The City and Contractor hereby mutually agree as follows:

1. CONTRACT DOCUMENTS

The Contract Documents, sometimes also referred to as the "Contract," consist of the following items, which are hereby incorporated by reference as if set forth in full in this Agreement:

The Notice to Contractors
The Proposal Form submitted by the Contractor
The Instructions to Bidders
The Emerging and Small Business Enterprise (ESBE) Requirements
The Requirements for the Non-Discrimination in Employee Benefits by City Contractors Ordinance and the Declaration of Compliance
California Labor Code Relating to Apprentices on Public Works
The City's Reference Guide for Construction Contracts
The Addenda, if any
This Agreement
The Standard Specifications
The Special Provisions
The Plans and Technical Specifications
The drawings and other data and all developments thereof prepared by City pursuant to the Contract
Any modifications of any of the foregoing made or approved by City, including but not limited to duly authorized change orders.

Unless specifically noted otherwise, references to the "Standard Specifications" shall mean and refer to the Standard Specifications for Public Construction of the City of Sacramento approved by the Sacramento City Council on June 4, 2007 (Resolution No. 2007-350), and any subsequent amendments thereto approved by the Sacramento City Council or the Sacramento City Manager. Work called for in any one Contract Document and not mentioned in another is to be performed and executed as if mentioned in all Contract Documents. The table of contents, titles and headings contained in the Contract Documents are provided solely to facilitate reference to various provisions of the Contract Documents and in no way affect or limit the interpretation of the provisions to which they refer.

2. DEFINITIONS

Unless otherwise specifically provided herein, all words and phrases defined in the Standard Specifications shall have the same meaning and intent in this Agreement.

3. AGREEMENT CONTROLS

In the event of a conflict between any of the terms and conditions set forth in this Agreement and the terms and conditions set forth in other Contract Documents, the terms and conditions set forth in this Agreement shall prevail, except that the provisions of any duly authorized change order shall prevail over any conflicting provisions of this Agreement.

4. SCOPE OF CONTRACT

Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor, material and transportation necessary to perform and complete in a good and workmanlike manner to the satisfaction of City, all the Work called for in the Contract Documents entitled:

ARTIVIO GUERRERO PARK (L19801100)

including the Work called for in the following alternative bid items described in the Proposal Form:

THERE ARE NO ADDITIVE ALTERNATES AWARDED WITH THIS PROJECT

Contractor agrees to perform such Work in the manner designated in and in strict conformity with the Contract Documents.

5. CONTRACT AMOUNT AND PAYMENTS

City agrees to pay and Contractor agrees to accept, as complete payment for the above Work, in accordance with the schedule and procedures set forth in the Contract Documents and subject to deductions, withholdings and additions as specified in the Contract Documents, a total sum that shall not exceed the total bid amount set forth in Contractor's Proposal Form. In addition, subject to deductions, withholdings and additions as specified in the Contract Documents, payment for individual items of the Work shall be computed as follows:

(A) For items of the Work for which a lump sum price is specified in Contractor's Proposal Form, Contractor shall be paid the lump sum price(s) specified in Contractor's Proposal Form; and

(B) For items of the Work for which a unit price is specified in Contractor's Proposal Form, Contractor shall be paid the sum computed at such unit price, or computed at a different price if such different price is determined by City in accordance with the Standard Specifications, based on the actual amount of each such item performed and/or furnished and incorporated in the Work; provided that in no event shall the total sum for a unit price item exceed the total bid amount set forth for such item in the Contractor's Proposal Form, unless authorized by Change Order.

6. PROGRESS PAYMENTS

Subject to the terms and conditions of the Contract, City shall cause payments to be made upon demand of Contractor as follows:

(A) On or about the first of the month, the Engineer shall present to the Contractor a statement showing the amount of labor and materials incorporated in the Work through the twentieth (20) calendar day of the preceding month. After both Contractor and Engineer approve the statement in writing, and the City's labor compliance officer provides written approval, the

City shall issue a certificate for ninety-five (95) percent of the amount it shall find to be due, subject to any deductions or withholdings authorized or required under the Contract or any applicable Laws or Regulations.

(B) No inaccuracy or error in said monthly estimates shall operate to release Contractor from damages arising from such Work or from enforcement of each and every provision of the Contract Documents, and City shall have the right subsequently to correct any error made in any estimate for payment.

(C) Contractor shall not be paid for any defective or improper Work.

(D) The remaining five (5) percent of the value of the Work performed under the Contract, if unencumbered and subject to any deductions or withholdings authorized or required under the Contract or any applicable Laws or Regulations, shall be released not later than sixty (60) days after completion and final acceptance of the Work by City. Acceptance by Contractor of the final payment shall constitute a waiver of all claims against the City arising under the Contract Documents, except for disputed claims in stated amounts that the Contractor specifically reserves in writing, but only to the extent that the Contractor has complied with all procedures and requirements applicable to the presentation and processing of such claim(s) under the Contract Documents. Contractor shall be entitled to substitute securities for retention or to direct that payments of retention be made into escrow, as provided in Public Contract Code Section 22300, upon execution of the City's Escrow Agreement for Security Deposits in Lieu of Retention.

(E) The parties agree that, for purposes of the timely progress payment requirements specified in Public Contract Code Section 20104.50, the date that the City receives a statement jointly approved by the Contractor and the Engineer as provided above shall be deemed to constitute the date that City receives an undisputed and properly submitted payment request from the Contractor. Progress payments not made within 30 days after this date may be subject to payment of interest as provided in Public Contract Code Section 20104.50.

7. RETENTION OF SUMS CHARGED AGAINST CONTRACTOR

When, under the provisions of this Contract or any applicable Laws or Regulations, City is authorized or required to withhold, deduct or charge any sum of money against Contractor, City may deduct and retain the amount of such charge from the amount of the next succeeding progress estimate(s), or from any other moneys due or that may become due Contractor from City. If, on completion or termination of the Contract, sums due Contractor are insufficient to pay City's charges, City shall have the right to recover the balance from Contractor or its Sureties.

8. COMMENCEMENT AND PROSECUTION OF WORK

Contractor shall commence the Work not later than fifteen (15) working days after the date of the written Notice to Proceed from City to Contractor and shall diligently prosecute the Work to final completion. The phase "commence the Work" means to engage in a continuous program on-site including, but not limited to, site clearance, grading, dredging, land filling and the fabrications, erection, or installation of the Work. The Notice to Proceed shall be issued within fifteen (15) calendar days following execution of the Agreement by the City and the filing by Contractor of the required Bonds and proof of insurance, provided that the Engineer may delay issuance of the Notice to Proceed if the Engineer determines in the Engineer's sole discretion that conditions on

the site of the Work are unsuitable for commencement of the Work. After the Notice to Proceed is issued, the continuous prosecution of Work by Contractor shall be subject only to Excusable Delays as defined in this Agreement.

9. TIME OF COMPLETION

The entire Work shall be brought to completion in the manner provided for in the Contract Documents on or before NINETY (90) WORKING days and 90 (Ninety calendar days) for plant establishment from the date of the Notice to Proceed (hereinafter called the "Completion Date") unless extensions of time are granted in accordance with the Contract Documents.

Failure to complete the entire Work by the Completion Date and in the manner provided for in the Contract Documents shall subject Contractor to liquidated damages as provided in this Agreement. Time is and shall be of the essence in the performance of the Contract and the Work.

10. PAYMENTS DO NOT IMPLY ACCEPTANCE OF WORK

The payment of any progress payment, or the acceptance thereof by Contractor, shall not constitute acceptance of the Work or any portion thereof and shall in no way reduce the liability of Contractor to replace unsatisfactory work or material, whether or not the unsatisfactory character of such work or material was apparent or detected at the time such payment was made.

11. ACCEPTANCE NOT RELEASE

Contractor shall correct immediately any defective or imperfect work or materials that may be discovered before final acceptance of the entire Work, whether or not such defect or imperfection was previously noticed or identified by the City. The inspection of the Work, or any part thereof, shall not relieve Contractor of any of its obligations to perform satisfactory work as herein specified.

Failure or neglect on the part of City or any of its officers, employees or authorized agents to discover, identify, condemn or reject defective or imperfect work or materials shall not be construed to imply an acceptance of such work or materials, if such defect or imperfection becomes evident at any time prior to final acceptance of the entire Work, nor shall such failure or neglect be construed as barring City from enforcing Contractor's warranty(ies) or otherwise recovering damages or such a sum of money as may be required to repair or rebuild the defective or imperfect work or materials whenever City may discover the same, subject only to any statutes of limitation that may apply to any such claim.

12. CITY'S RIGHT TO TAKE POSSESSION OF THE WORK IN WHOLE OR IN PART

The City shall have the right at any time to enter upon the Work and perform work not covered by this Contract, or to occupy and use a portion of the Work, prior to the date of the final acceptance of the Work as a whole, without in any way relieving Contractor of any obligations under this Contract.

13. NO WAIVER OF REMEDIES

Neither the inspection by City, its officers, employees or agents, nor any certificate or other approval for the payment of money, nor any payment for, nor acceptance of the whole or any part of the Work by City, nor any extensions of time, nor any position taken by City, its officers,

employees or its agents shall operate as a waiver of any provision of the Contract Documents nor of any power herein reserved to City or any right to damages herein provided, nor shall any waiver of any breach of this Agreement be held to be a waiver of any other or subsequent breach. All remedies provided in the Contract Documents shall be taken and construed as cumulative; in addition to each and every other remedy herein provided, the City shall have any and all equitable and legal remedies that it would in any case have.

14. WARRANTY

Except as otherwise expressly provided in the Contract Documents, and excepting only items of routine maintenance, ordinary wear and tear and unusual abuse or neglect by City, Contractor warrants and guarantees all Work executed and all supplies, materials and devices of whatsoever nature incorporated in or attached to the Work, or otherwise provided as a part of the Work pursuant to the Contract, to be absolutely free of all defects of workmanship and materials for a period of one year after final acceptance of the entire Work by the City. Contractor shall repair or replace all work or material, together with any other work or material that may be displaced or damaged in so doing, that may prove defective in workmanship or material within this one year warranty period without expense or charge of any nature whatsoever to City.

In the event that Contractor shall fail to comply with the conditions of the foregoing warranty within ten (10) days after being notified of the defect in writing, City shall have the right, but shall not be obligated, to repair, or obtain the repair of, the defect and Contractor shall pay to City on demand all costs and expense of such repair. Notwithstanding anything herein to the contrary, in the event that any defect in workmanship or material covered by the foregoing warranty results in a condition that constitutes an immediate hazard to public health or safety, or any property interest, or any person, City shall have the right to immediately repair, or cause to be repaired, such defect, and Contractor shall pay to City on demand all costs and expense of such repair. The foregoing statement relating to hazards to health, safety or property shall be deemed to include both temporary and permanent repairs that may be required as determined in the sole discretion and judgment of City.

In addition to the above, the Contractor shall make a written assignment of all manufacturer's and other product warranties to the City, prior to completion and final acceptance of the Work by City.

The Contractor's Performance Bond shall secure the performance of the Contractor's obligations under this Section 14, and the Contractor and its Surety shall be jointly and severally liable for these obligations.

15. LIQUIDATED DAMAGES IF WORK NOT COMPLETED ON TIME

(A) The actual fact of the occurrence of damages and the actual amount of the damages that City would suffer if the entire Work, and/or any specified portion thereof, were not completed within the time(s) specified herein are dependent upon many circumstances and conditions that could prevail in various combinations, and for this reason, it is impracticable and extremely difficult to fix the actual damages. Damages that City would suffer in the event of such delay include: loss of the use of the project; expenses of prolonged assignment to the project of an architectural and/or engineering staff; prolonged costs of administration, inspection, and supervision; increased operational expenses and/or impaired operation of other facilities dependent upon completion of the project; and the loss and inconvenience suffered by the public

within the City of Sacramento by reason of the delay in the completion of the project or portion thereof. Accordingly, the parties agree, and by execution of this Agreement, Contractor acknowledges that it understands and agrees, that the amount(s) set forth herein as liquidated damages reflect the parties' best efforts at the time of entering into the Contract to estimate the damages that may be incurred by City and the public due to the Contractor's delay in completion of the Work and/or any specified portion thereof, and shall be presumed to be the amount of damages sustained by the failure of Contractor to complete the entire Work and/or any specified portion thereof within the time(s) specified herein.

(B) Contractor shall pay liquidated damages to City for failure to complete the entire Work by the Completion Date (as extended in accordance with the Contract Documents, if applicable) in the amount of ONE THOUSAND ($1,000.00) DOLLARS for each calendar day after the Completion Date (as extended in accordance with the Contract Documents, if applicable), continuing to the time at which the entire Work is completed. Such amount is the actual cash value agreed upon by the City and Contractor as the loss to City and the public resulting from Contractor's default.

The parties agree, and by execution of this Agreement, Contractor acknowledges that it understands and agrees, that the foregoing provisions provide for the imposition of liquidated damages from the Completion Date (as extended in accordance with the Contract Documents, if applicable) until the date of completion of the entire Work as determined by the Engineer in accordance with Section 8-4 of the Standard Specifications, whether or not the Work or any portion thereof is claimed or determined to be substantially complete prior to such date of completion.

THE FOLLOWING ADDITIONAL LIQUIDATED DAMAGES PROVISION(S) APPLY IF CHECKED:

☐ In addition to the liquidated damages specified above, Contractor shall pay additional liquidated damages to City for failure to complete the portion of the Work specified below by the milestone date specified below (as such milestone date may be extended in accordance with the Contract Documents, if applicable). The amount of such additional liquidated damages shall be either *[check one]*:

☐ a lump sum amount of _____, OR

☐ the daily amount of _____ for each calendar day after such milestone date (as extended in accordance with the Contract Documents, if applicable), continuing to the time at which such portion of the Work is completed.

Such amount is the actual cash value agreed upon by the City and Contractor as the additional loss to City and the public resulting from Contractor's default.

Portion of the Work	Milestone Date
_____	_____
_____	_____

CONTRACTOR'S ACKNOWLEDGMENT:_____

☐ In addition to the potential damages described above, failure to complete the entire Work within the time(s) specified herein may expose the City to penalties or fines and/or may negatively affect the availability of project funding. In recognition of these potential damages, in addition to the liquidated damages specified above, Contractor shall pay additional liquidated damages to City in the lump sum amount of _____ if the entire Work is not completed by _____. Such amount is the actual cash value agreed upon by the City and Contractor as the additional loss to City and the public resulting from Contractor's default.

CONTRACTOR'S ACKNOWLEDGMENT:_____

(C) In the event Contractor shall become liable for liquidated damages, City, in addition to all other remedies provided by law, shall have the right to withhold any and all payments that otherwise would be or become due Contractor until the liability of Contractor under this section is finally determined. City shall have the right to use and apply such payments, in whole or in part, to reimburse City for all liquidated damages due or to become due to City. Any remaining balance of such payments shall be paid to Contractor only after discharge in full of all liability incurred by Contractor under this section or otherwise under any provision of the Contract Documents or any applicable Law or Regulation. If the sum so retained by City is not sufficient to discharge all such liabilities of Contractor, Contractor shall continue to remain liable to City until all such liabilities are satisfied in full. No failure by City to withhold any payment as specified above shall in any manner be construed to constitute a release of any such liabilities nor a waiver of the City's right to withhold payment for such liabilities.

16. INDEMNITY AND HOLD HARMLESS

(A) Contractor shall defend, hold harmless and indemnify the City, its officers, employees, and agents, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, whether arising on or off the site of the Work, including, but not limited to, any fees and/or costs reasonably incurred by City's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform the Work by the Contractor, any subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder, or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense to the extent arising from (i) the sole negligence or willful misconduct of, or defects in design furnished by, City, its agents, servants, or independent contractors who are directly responsible to City, or (ii) the active negligence of City.

(B) The existence or acceptance by City of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of City's rights under this Section 16, nor shall the limits of such insurance limit the liability of Contractor hereunder. The provisions of this Section 16 shall survive any expiration or termination of the Contract.

17. CONTRACTOR SHALL ASSUME RISKS

Until the completion and final acceptance by City of all Work under this Contract, the Work shall be under Contractor's responsible care and charge, and Contractor, at no cost to City, shall rebuild, repair, restore and make good all injuries, damages, re-erections, and repairs occasioned or rendered necessary by accidental causes of any nature, to all or any portions of the Work.

18. GENERAL LIABILITY OF CONTRACTOR

Except as otherwise herein expressly stipulated, Contractor shall perform all the Work and furnish all the labor, materials, tools, equipment, apparatus, facilities, transportation, power and light, and appliances, necessary or proper for performing and completing the Work herein required in the manner and within the time herein specified. The mention of any specific duty or liability of Contractor shall not be construed as a limitation or restriction of any general liability or duty of Contractor, and any reference to any specific duty or liability shall be construed to be solely for the purpose of explanation.

19. INSURANCE

During the entire term of this Contract and until completion and final acceptance of the Work as provided in the Contract Documents, Contractor shall maintain in full force and effect the insurance coverage described in this section.

Full compensation for all premiums that Contractor is required to pay for the insurance coverage described herein shall be included in the compensation specified for performance of the Work under the Contract. No additional compensation will be provided for Contractor's insurance premiums.

It is understood and agreed by the Contractor that its liability to the City shall not in any way be limited to or affected by the amount of insurance coverage required of or carried by the Contractor.

(A) Minimum Scope and Limits of Insurance Coverage

(1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars ($1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

(2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars ($1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the Contractor.

(3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars ($1,000,000). The Worker's Compensation policy shall include a waiver of subrogation.

(B) Additional Insured Coverage

(1) Commercial General Liability Insurance: The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of Contractor, products and completed operations of Contractor, and premises owned, leased or used by Contractor. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

(2) Automobile Liability Insurance: The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

(C) Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

(1) Contractor's insurance coverage shall be primary insurance as respects City, its officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officials, employees or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.

(2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, employees or volunteers.

(3) Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(4) City will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

(D) Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 19 must be declared to and approved by the City Risk Management Division in writing prior to execution of this Agreement.

(E) Verification of Coverage

(1) Contractor shall furnish City with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded

to the City representative designated by City. Copies of policies shall be delivered to the City on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

(2) The City may withdraw its offer of contract or cancel the Contract if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. The City may withhold payments to Contractor and/or cancel the Contract if the insurance is canceled or Contractor otherwise ceases to be insured as required herein.

(F) Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.

20. FAILURE TO MAINTAIN BONDS OR INSURANCE

If, at any time during the performance of this Contract, Contractor fails to maintain any item of the bonds and/or insurance required under the Contract in full force and effect, Contractor shall immediately suspend all work under the Contract and notify City in writing of such failure. After such notice is provided, or if City discovers such failure and notifies Contractor, the City thereafter may withhold all Contract payments due or that become due until notice is received by City that such bonds and/or insurance have been restored in full force and effect and that the premiums therefor have been paid for a period satisfactory to the Division of Risk Management. Contractor shall not resume work until notified by City to do so, and the City shall have no responsibility or liability for any costs incurred by Contractor as a result of such suspension of Work.

In addition to the foregoing, any failure to maintain any item of the required bonds and/or insurance at any time during the performance of this Contract will be sufficient cause for termination of the Contract by City.

The Contractor shall be solely responsible for, and shall defend, indemnify and hold harmless the City, its officers, employees and agents against and from, any and all damages, claims, losses, actions, costs or other expenses of any kind incurred by any party as a direct or indirect result of any suspension of Work or termination of the Contract under the provisions of this Section.

21. EXCUSABLE DELAYS

For the purpose of these Contract Documents, the term "Excusable Delay" shall mean, and is limited to, delay caused directly by: acts of God; acts of a public enemy; fires; inclement weather as determined by the Engineer; riots; insurrections; epidemics; quarantine restrictions; strikes; lockouts; sitdowns; acts of a governmental agency; priorities or privileges established for the manufacture, assemble, or allotment of materials necessary in the Work by order, decree or otherwise of the United States or by any department, bureau, commission, committee, agent, or administrator of any legally constituted public authority; changes in the Work ordered by City insofar as they necessarily require additional time in which to complete the Work; the prevention of Contractor from commencing or prosecuting the Work because of the acts of others, excepting Contractor's subcontractors or suppliers; or the prevention of Contractor from commencing or prosecuting the Work because of a Citywide failure of public utility service.

The term "Excusable Delay" shall specifically not include: (i) any delay that could have been avoided by the exercise of care, prudence, foresight and diligence on the part of Contractor; (ii) any delay in the prosecution of any part of the Work that does not constitute a Controlling Operation, whether or not such delay is unavoidable; (iii) any reasonable delay resulting from time required by City for review of any Contractor submittals and for the making of surveys, measurements and inspection; and, (iv) any delay arising from an interruption in the prosecution of the Work on account of reasonable interference by other Contractors employed by City that does not necessarily prevent the completion of the entire Work within the time specified. Excusable Delays, if any, shall operate only to extend the Completion Date (not in excess of the period of such delay as determined by City) and shall not under any circumstances increase the amount City is required to pay Contractor except as otherwise provided in these Contract Documents.

22. CONTRACTOR TO SERVE NOTICE OF DELAYS

Whenever Contractor foresees any delay in the prosecution of the Work, and in any event as soon as possible (not to exceed a period of ten (10) calendar days) after the initial occurrence of any delay that Contractor regards as or may later claim to be an Excusable Delay, the Contractor shall notify the Engineer in writing of such delay and its cause, in order that the Engineer: (i) may take immediate steps to prevent if possible the occurrence or continuance of the delay; or (ii) if this cannot be done, may determine whether the delay is to be considered excusable, how long it continues, and to what extent the prosecution and completion of the Work are delayed thereby. Said written notice shall constitute an application for an extension of time only if the notice requests such an extension and sets forth the Contractor's estimate of the additional time required together with a full description of the cause of the delay relied upon.

After the completion of any part or whole of the Work, the Engineer, in estimating the amount due Contractor, will assume that any and all delays that may have occurred in its prosecution and completion were not Excusable Delays, except for such delays for which the Contractor has provided timely written notice as required herein, and that the Engineer has found to be excusable. Contractor shall not be entitled to claim Excusable Delay for any delay for which the Contractor failed to provide such timely written notice.

23. EXTENSION OF TIME

If the Contractor complies with Section 22, above, and the Engineer finds a delay claimed by the Contractor to be an Excusable Delay, the Contractor shall be allowed an extension of time to complete the Work that is proportional to the period of Excusable Delay determined by the Engineer, subject to the approval by City of a change order granting such time extension. During a duly authorized extension for an Excusable Delay, City shall not charge liquidated damages against the Contractor for such delay.

If the City extends the time to complete the Work as provided herein, such extension shall in no way release any warranty or guarantee given by Contractor pursuant to the provisions of the Contract Documents, nor shall such extension of time relieve or release the sureties of the Bonds provided pursuant to the Contract Documents. By executing such Bonds, the Sureties shall be deemed to have expressly agreed to any such extension of time. The granting of any extension of time as provided herein shall in no way operate as a waiver on the part of City of its rights under this Contract, excepting only extension of the Completion Date for such period of Excusable Delay as may be determined by the Engineer and approved by a duly authorized change order.

24. NO PAYMENT FOR DELAYS

No damages or compensation of any kind shall be paid to Contractor or any subcontractor because of delays in the progress of the Work whether or not such delays qualify for extension of time under this Agreement; except that this provision shall not preclude the recovery of damages for a delay caused by the City that is unreasonable under the circumstances and that is not within the contemplation of the parties, provided that the Contractor timely submits all such written notice(s) and fully complies with such other procedures as may be specified in the Contract Documents or any Laws or Regulations for Contractor to claim damages for such delay.

25. CHANGES IN THE WORK

Changes in the Work authorized or directed in accordance with the Contract Documents and extensions of time of completion made necessary by reason thereof shall not in any way release any warranty or guarantee given by Contractor pursuant to the provisions of the Contract Documents, nor shall such changes in the Work relieve or release the Sureties on Bonds provided pursuant to the Contract Documents. By executing such Bonds, the Sureties shall be deemed to have expressly agreed to any such change in Work and to any extension of time made by reason thereof.

26. TERMINATION AFTER COMPLETION DATE

In addition to any other rights City may have, if any services or work required under the Contract (including but not limited to punch list items) are not completed as of the Completion Date (as adjusted by any extensions of time for Excusable Delays granted pursuant to the Contract Documents), City may terminate the Contract at any time after the Completion Date (as adjusted by any extensions of time for Excusable Delays granted pursuant to the Contract Documents), by providing a written notice to Contractor specifying the date of termination. Such notice also may specify conditions or requirements that Contractor must meet to avoid termination of the Contract on such date. If Contractor fails to fulfill all such conditions and requirements by such termination date, or, if no such conditions or requirements are specified, Contractor shall cease rendering services and performing work on such termination date, and shall not be entitled to receive any compensation for services rendered or work performed after such termination date. In the event of such termination, Contractor shall remain liable to City for liquidated damages incurred for any period of time prior to the termination date.

In addition to any other charges, withholdings or deductions authorized under the Contract or any Laws or Regulations, if City terminates the Contract pursuant to this section, City may withhold and deduct from any payment and/or retention funds otherwise due Contractor any sum necessary to pay the City's cost of completing or correcting, or contracting for the completion or correction of, any services or work under the Contract that are not completed to the satisfaction of the City or that otherwise are deficient or require correction as of such termination date, including but not limited to incomplete punch list items. Such costs shall include all of the City's direct and indirect costs incurred to complete or correct such services or work, including the City's administrative and overhead costs. If the amount of payment(s) and/or retention funds otherwise due the Contractor are insufficient to pay such costs, City shall have the right to recover the balance of such costs from the Contractor and/or its Surety(ies).

27. TERMINATION FOR CONVENIENCE

Upon written notice to the Contractor, the City may at any time, without cause and without prejudice to any other right or remedy of the City, elect to terminate the Contract for the convenience of City. In such case, the Contractor shall be paid (without duplication of any items, and after deduction and/or withholding of any amounts authorized to be deducted or withheld by the Contract Documents or any Laws or Regulations):

(A) For Work executed in accordance with the Contract Documents prior to the effective date of termination and determined to be acceptable by the Engineer, including fair and reasonable sums for overhead and profit on such Work;

(B) For reasonable claims, costs, losses, and damages incurred in settlement of terminated contracts with subcontractors, suppliers, and others; and

(C) For reasonable expenses directly attributable to termination.

Contractor shall not be paid for any loss of anticipated profits or revenue for any Work not performed prior to termination, nor for any economic loss arising out of or resulting from such termination, except for the payments listed in this section. Contractor's warranty under Section 14 of this Agreement shall apply, and Contractor shall remain responsible for all obligations related to such warranty, with respect to all portions of the Work performed prior to the effective date of the termination for convenience pursuant to this section. The City shall be entitled to have any or all remaining Work performed by other contractors or by any other means at any time after the effective date of a termination for convenience pursuant to this section.

28. TERMINATION FOR BREACH OF CONTRACT

If Contractor abandons the Work under this Contract, or if the Contract or any portion of the Contract is sublet or assigned without the consent of the City, or if the Engineer determines in the Engineer's sole discretion that the conditions of the Contract in respect to the rate of progress of the Work are not being fulfilled or any part thereof is unnecessarily delayed, or if Contractor violates or breaches, or fails to execute in good faith, any of the terms or conditions of the Contract, or if Contractor refuses or fails to supply enough properly skilled labor or materials or refuses or fails to make prompt payment to subcontractors for material or labor, or if Contractor disregards any Laws or Regulations or proper instruction or orders of the Engineer, then, notwithstanding any provision to the contrary herein, the City may give Contractor and its Sureties written notification to immediately correct the situation or the Contract shall be terminated.

In the event that such notice is given, and, in the event such situation is not corrected, or arrangements for correction satisfactory to the City are not made, within ten (10) calendar days from the date of such notice or within such other period of time as may be specified by the City in the notice, the Contract shall upon the expiration of said period cease and terminate. In the event of any such termination, City may take over the Work and prosecute the Work to completion, or otherwise, and the Contractor and its Sureties shall be liable to City for any cost occasioned City thereby, as hereinafter set forth.

In the event City completes the Work, or causes the Work to be completed, no payment of any kind shall be made to Contractor until the Work is complete. The cost of completing the Work, including but not limited to, extra costs of project administration and management incurred by City, both direct or indirect, shall be deducted from any sum then due, or that becomes due, to

Contractor from City. If sums due to Contractor from City are less than the cost of completing the Work, Contractor and its Sureties shall pay City a sum equal to this difference on demand. In the event City completes the Work, and there is a sum remaining due to Contractor after City deducts the costs of completing the Work, then City shall pay such sum to Contractor. The Contractor and Contractor's Sureties shall be jointly and severally liable for all obligations imposed on Contractor hereunder.

No act by City before the Work is finally accepted, including, but not limited to, exercise of other rights under the Contract, actions at law or in equity, extensions of time, payments, assessments of liquidated damages, occupation or acceptance of any part of the Work, waiver of any prior breach of the Contract or failure to take action pursuant to this section upon the happening of any prior default or breach of Contractor, shall be construed to be a waiver or estoppel of the City's right to act pursuant to this Section upon any subsequent event, occurrence or failure by Contractor to fulfill the terms and conditions of the Contract. The rights of City to terminate the Contract pursuant to this Section and pursuant to Sections 26 and 27 are cumulative and are in addition to all other rights of City pursuant to the Contract and at law or in equity.

29. CONTRACTOR BANKRUPT

If Contractor should commence any bankruptcy proceeding, or if Contractor is adjudged a bankrupt, or if Contractor makes any assignment for the benefit of creditors, or if a receiver is appointed on account of Contractor's insolvency, then the City may, without prejudice to any other right or remedy, terminate the Contract and complete the work by giving notice as provided in Section 28 above.

30. SURETIES' OBLIGATIONS UPON TERMINATION

If the City terminates the Contract pursuant to Section 28 or Section 29 above:

(A) The Surety under Contractor's performance bond shall be fully responsible for all of the Contractor's remaining obligations of performance under the Contract as if the Surety were a party to the Contract, including without limitation Contractor's obligations, as provided in the Contract Documents, to complete and provide a one-year warranty of the entire Work, pay liquidated damages and indemnify, defend and hold harmless City, up to the full amount of the performance bond.

(B) The Surety under Contractor's payment bond shall be fully responsible for the performance of all of the Contractor's remaining payment obligations for work, services, equipment or materials performed or provided in connection with the Work or any portion thereof, up to the full amount of the payment bond.

31. ACCOUNTING RECORDS OF CONTRACTOR

During performance of the Contract and for a period of three (3) years after completing the entire Work, Contractor shall maintain all accounting and financial records related to the Contract and performance of the Work in accordance with generally accepted accounting practices, and shall keep and make such records available for inspection and audit by representatives of the City upon reasonable written notice.

32. USE TAX REQUIREMENTS

During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

(A) Use Tax Direct Payment Permit: For all leases and purchases of materials, equipment, supplies, or other tangible personal property used to perform the Agreement and shipped from outside California, the Contractor and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit from the California State Board of Equalization ("SBE") in accordance with the applicable SBE criteria and requirements.

(B) Sellers Permit: For any construction contract and any construction subcontract in the amount of $5,000,000 or more, Contractor and the subcontractor(s) shall obtain sellers permits from the SBE and shall register the jobsite as the place of business for the purpose of allocating local sales and use tax to the City. Contractor and its subcontractors shall remit the self-accrued use tax to the SBE, and shall provide a copy of each remittance to the City.

(C) The above provisions shall apply in all instances unless prohibited by the funding source for the Agreement.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the date set for opposite their names.

CONTRACTOR

Under penalty of perjury, I certify that the taxpayer identification number and all other information provided here are correct.

DATE 9/17/13

BY _____
John M. Slover
Print Name
President
Title

BY _____
Terresa L. Slover
Print Name
Sec. / CFO
Title
20-3963906
Federal ID#
377-4592-4
State ID#
125125
City of Sacramento Business Operation Tax Certificate No. (City will not award contract until Certificate Number is obtained)

Type of Business Entity *(check one)*:

_____ Individual/Sole Proprietor
_____ Partnership
_X_ Corporation
_____ Limited Liability Company
_____ Other (*please specify:* _____)

CITY OF SACRAMENTO
a municipal corporation

DATE _____

BY _____
For: _____
City Manager

Original Approved As To Form:

_____
City Attorney

Attest:

_____
City Clerk

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JM SLOVER INC
Building Greener Communities Since 1990

November 15, 2013

City of Sacramento
Department of Parks and Recreation
915 I Street, 3rd Floor
Sacramento, CA 95814

Attn: Mr. C. Gary Hyden

Re: Artivio Guerrero Park Project (L19801100)

Dear Mr. Hyden,

This letter is to serve as a guarantee that we, JM Slover Inc., will extend our bid in the amount of $2,188,823.00 for the above referenced project until January 28th, 2014.

We look forward to working with you on this project.

Please feel free to contact me if you should have any questions or need any additional information.

Sincerely,
JM Slover Inc.

Terresa L. Slover
Secretary / CFO

Cc: Sheryl Patterson, Tim Hopper and Tin-Wah Wong

1630 Lotus Road · Placerville, CA 95667 · (530) 621-4815 · Fax (530) 621-4869
E-mail: jmslover@wildblue.net · Cont. License No. 615956

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OLYMPIC
LAND-CONSTRUCTION

2442 North Avenue
Sacramento, CA 95838
SBE Certified 2507
Lic. #424828
(916) 972-7148
(916) 921-9257
Fax (916) 927-5769

September 19, 2013

Protesting Contractor:
Olympic Land Construction
2442 North Ave.
Sacramento, CA 95838
Phone (916) 972-7148
Fax (916) 927-5769

Re; Artivio Guerrero Park (PN: L19801100)
Bid Transaction Number: B14190021002
Bid Date 8-21-2013
Department: Parks & Recreation

To Whom It May Concern,

In regards to the bid opening of Artivio Guerrero Park with the City of Sacramento which took place Wednesday August 21, 2013. This project requires and specifies Aquaflex and Pebbleflex Resilient Surfacing. The only certified installer of this resilient surfacing specified is Ross Recreation. Immediately following the opening of all proposals Alex Kallergis with Olympic Land Construction requested subcontractors listed by the low bidder JM Slover. The City representative opening the bids read all subcontractors JM Slover listed and did not read out Ross Recreation as the subcontractor performing the resilient surfacing. At that time Jeffrey Smith, also with Olympic Land Construction, again specifically asked did JM Slover list Ross Recreation? The City rep said, "No." at the same time the employee for JM Slover attending, who was sitting near us, replied "No, Creekmore." for the project. Craig Creekmore (Recreation Science) was on their subcontractor list, but is not a certified installer of the specified resilient surfacing. Prior to submitting the proposal Olympic Land Construction received direct instruction from Landscape Structures, the manufacturer of Aquaflex and Pebbleflex surfacing materials, that Ross Recreation is their ONLY certified installer of said material in our region. Ross Recreation's quote specified, "Aquaflex and Pebbleflex surfacing materials must be installed by us (Ross Recreation) for Manufacturer Warranty". (Per City of Sacramento proposal document FM 440 Sub-Contractor Participation, "All other subcontractors who perform work, labor, or render service in an amount in excess of one-half of 1 percent of the total bid amount shall be listed". "The inclusion of false information or the omission of required information will render the bid non-responsive"). Ross Recreation would be well over the required one-half of 1 percent of the total bid amount.

Cont.

OLYMPIC
LAND-CONSTRUCTION

2442 North Avenue
Sacramento, CA 95838
SBE Certified 2507
Lic. #424828
(916) 972-7148
(916) 921-9257
Fax (916) 927-5769

September 19, 2013

On Monday September 16, 2013 all companies who submitted a proposal for the Artivio Guerrero Park received an email from Tim Hopper stating "Please see attached. JM Slover, Inc. is the apparent low, responsible bidder. Verified by city attorney. JM Slover will self-perform some of the work."

Finally, on Tuesday September 17, 2013 Olympic Land Construction called Landscape Structures again and asked can anyone self-perform the installation of their product. The sales rep for Landscape Structure said, "Anyone installing that product must be a certified installer". Olympic asked- who is certified to install in the Sacramento Area? and she again stated the only company certified in this area is Ross Recreation.

It was brought to our attention that JM Slover will self-perform the resilient surfacing using the installers, who were at the time of bid opening and still currently employed by Blanchard Construction, Ross Recreation's contracted second tier installer, under JM Slover's own payroll. All contractors bidding on the same project must have fair and equal opportunities from City of Sacramento specified manufacturers.

Olympic Land Construction believes this to be unequal in business trade with a public entity and violates the rules of the fair bidding procedure.

1) Olympic Land Construction claims that contractors who did not submit a subcontractor to perform resilient playground surfacing at the time of bid opening must be disqualified.

2) Olympic Land Construction contests the City staff recommendation to award this contract to JM Slover, Inc.

Thank you,

Peter Kallergis
Owner
Olympic Land Construction

Jeff Smith

From: Tim Hopper <THopper@cityofsacramento.org>
Sent: Monday, September 16, 2013 10:15 AM
To: jmslover@wildblue.net; Terresa Slover; Jeff Smith; estimating@diedeconstruction.com; robert@constructionoffices.com; cbobo@boboconstructioninc.com; 'Shawn Lanza'; darryl@els-green.com
Cc: Tin-Wah Wong
Subject: Artivio Gerrero bid results
Attachments: BID ANALYSIS & NOAR.pdf

Please see attached. JM Slover, Inc. is the apparent low, responsible bidder. Verified by city attorney. JM Slover will self-perform some of the work.

Tim Hopper
Contracts & Compliance Specialist
Department of General Services
5730 24th Street., Bldg. 1
Sacramento, CA 95822
Phone: 1.916.808.8173
Email: thopper@cityofsacramento.org

Jeff Smith

From: Chris Tait <chris@rossrec.com>
Sent: Tuesday, September 17, 2013 2:32 PM
To: Jeff Smith
Cc: Tom Blanchard; Bob Hanes; Chris Tait
Subject: Pebbleflex Installers
Attachments: Pebbleflex Info .pdf; ATT00001..htm

Jeff,
Please see LSI's published information on Installation and Certified Installers.
Blanchard Construction and its surfacing personnel have been LSI certified and are the only one's certified in Northern California. There are also LSI certified installers in Southern California and Arizona as well.
The installation must be done by certified installers for the Warranty to be valid.
Chris

Chris Tait
Ross Recreation
707 538-3800
chris@rossrec.com
Quality Products & Service since 1973

Landscape Structures
Cut - Sheet

Industry Best

The product is superior. The service is exceptional.

	PebbleFlex Safety Surfacing System	Traditional Poured-in-Place Surfacing
Wear Surface	The PebbleFlex wear surface is composed of two sizes of aliphatic polyurethane spheres (pebbles), chemically bonded with a compatible two-part aliphatic polyurethane binder. The two-part binder provides more control of the curing process. This matrix is installed at an average thickness of 3/8", is UV stable and abrasion resistant yet porous enough to eliminate standing water. A vast majority of rain water surface drains when properly installed.	Traditional poured-in-place surfacing uses an EPDM or a TPV granule; neither of which is compatible (doesn't bond) with the binder. Nor are they as UV stable as PebbleFlex. They use either a one-part aromatic binder (least expensive) or a one-part aliphatic binder, thus eliminating some control of the curing process, resulting in surfaces with limited service life.
Grout	In high-wear areas a proprietary highly abrasion resistant grout is applied to the surface for added durability.	This is an exclusive product of PebbleFlex. No other surfacing provider has anything like it.
Impact	The impact-attenuating layer is composed of a 1-1/8" thick layer of a recycled SBR rubber matrix bonded over a recycled closed-cell foam base. The foam is bonded together with heat and is basically inert—not susceptible to any degradation. The thickness of the foam is dependent upon the fall height requirements. A chemically compatible two-part aromatic primer is applied between each layer.	Traditional poured-in-place surfacing uses only SBR rubber as their impact-attenuating layer. It is very difficult to get a consistent 3" layer of SBR. The surface will have hard spots and soft spots. The one-part aromatic binder will degrade if in continual contact with water. The system is less dimensionally stable.
Colors	The pebbles are available in 15 solid colors and five standard color blends making the combinations virtually infinite.	Not available in as many colors, nor are the colors as brilliant as PebbleFlex. Because EPDM and TPV are not UV light-stable colors, they fade rapidly.
Testing	The PebbleFlex system has been tested per the ASTM F1292 Standard to accommodate fall heights to 12'. The system also complies with the ASTM F1951 Accessibility Standard and other standards relating to flame ignition, skid resistance and UV stability.	Some poured-in-place surfacing options are not tested to a 12' fall height.
Installation	The PebbleFlex system can be installed over concrete, asphalt or compacted aggregate base. The foam layer is easy and quick to install. The 1-1/8" SBR layer is much easier to install with consistent density than the 3" used by others for 8' fall heights. Because the pebbles are consistent and round, they trowel much easier than granules and use water-based lubricant as opposed to diesel fuel. PebbleFlex is installed by factory-certified installers that work for Landscape Structures. This simplifies the contract, eliminating subcontractor complications.	Traditional poured-in-place providers do not recommend installing their product over a compacted aggregate base. Subcontractors are often used who are not held responsible for their installation.
Maintenance	PebbleFlex surfacing should be inspected at the same time as the playground equipment. We recommend cleaning the surface at least once a year with a pressure washer and mild detergent. We also recommend applying a clear coat of our two-part aliphatic polyurethane over the entire surface every two or three years – this will greatly extend the life of the system.	Pressure washing of older EPDM surfaces can often result in damage to the surface. Most EPDM surfacing suppliers don't offer maintenance instructions.
Warranty	PebbleFlex is warranted for five years against natural deterioration and manufacturing defects and includes maintaining the impact attenuation requirements.	Competitor's warranties vary significantly. We have seen warranties of up to 10 years, but do not know what they are warrantying. Some do not warrant their fall height at all.

R•SS
Recreation Equipment

Ross Recreation Bid Cover Letter

To: Contractors Bidding | Date: 8/19/13

Re: Guerrero Park | Bid Date: 8/21/13

1. SPECIFIED BID ITEMS: Ross Recreation will provide quotes for SOME of the specified items on the project noted above.
2. We will quote the LANDSCAPE STRUCTURES Play Equipment that is specified. WE WILL NOT QUOTE PLAY EQUIPMENT FROM ANY OTHER SPECIFIED MANUFACTURERS. We are not bidding Installation except for Aquaflex and Pebbleflex Surfacing Materials that must be installed by us for Manufacturer Warranty.
3. Please note that it is the responsibility of the **General Contractor** bidding to verify quantities and request clarifications and/or corrections if necessary.
4. Ross Recreation is providing (7) quotes for the bidding project:
   a. Quote 00009132 – Pebbleflex Surfacing as specified
   b. Quote 00009133 – Aquaflex Surfacing as specified
   c. Quote 00009137 – Decorative Log Benches as Spec'd
   d. Quote 00009138 – Bike Racks by LSI as Specified
   e. Quote 00009134 – Fitness Stations by LSI as Spec'd
   f. Quote 00009140 – Play Equipment by LSI as Spec'd
   g. Quote 00009139 – Soccer Goals from Scoremaster
5. Please consider ALL NOTES on each quote when bidding.
6. See expiration dates on quotes. PRICES MAY INCREASE IF THE ORDER IS PLACED AFTER PRICING HAS EXPIRED. It is the responsibility of the General Contractor bidding the project to adjust their bid to accommodate anticipated pricing if Ross Recreation's scope of work is to be ordered after the quotes have expired.
7. Project consists of numerous custom items that may take 14-16 weeks to fabricate. A prompt submittal and ordering process is necessary to meet your completion date.

Please e-mail me with questions. Thank you for your attention and we look forward to working with you this project.

Chris Tait, Ross Recreation Equipment, 707-538-3800
chris@rossrec.com

Ross Recreation Equipment

Building Community since 1973

Prepared By	Chris Tait
Address	P.O. Box 861 Folsom, CA 95763
E-mail	chris@rossrec.com
Phone	707 538-3800
Fax	707 538-3826

Quote Number	00009132	Quote Date	8/19/2013
Project	Guerrero Park	Expiration Date	9/19/2013
Opportunity Name	Guerrero Park PF	Lead Time	6-8 weeks
Quote Name	Guerrero Park PF		

Bill To Name	TBD	Ship To Name	TBD
Customer Credit Terms	100% On Order	City/County Tax Rate	Sacramento County/ Sacramento 8.50%

Quantity	Product	Product Description	Sales Price	Total Price
1.00	Install- Surfacing	Installation of PF Surfacing	$42,464.00	$42,464.00
1.00	PebbleFlex Surfacing	PebbleFlex Surfacing 1,566 SF of 1-1/2" Thickness 2,956 SF of 2-1/2" Thickness	$59,520.00	$59,520.00

4522

Materials Amount	$59,520.00
Tax Amount	$5,059.20
Labor Total	$42,464.00
Freight	$7,224.00
Total	$114,267.20

Notes to Customer

Security provided by GC if necesary;
An adequate dumpster is required by GC for packaging and waste;
New Concrete Sub-Base needs 28 days of cure time before commencement of PF surfacing installation.

Signature _____

Name _____

Title _____

Date _____

Ross Recreation Equipment

Building Community since 1973

Prepared By	Chris Tait
Address	P.O. Box 861 Folsom, CA 95763
E-mail	chris@rossrec.com
Phone	707 538-3800
Fax	707 538-3826

Quote Number	00009133	Quote Date	8/19/2013
Project	Guerrero Park	Expiration Date	10/19/2013
Opportunity Name	Guerrero Park AF	Lead Time	6-8 weeks
Quote Name	Guerrero Park AF		

Bill To Name	TBD	Ship To Name	TBD
Customer Credit Terms	100% On Order	City/County Tax Rate	Sacramento County/ Sacramento 8.50%

Quantity	Product	Product Description	Sales Price	Total Price
1.00	Aquaflex Surfacing	Aquaflex Surfacing 3/8" Porous, 471 SF	$6,248.00	$6,248.00
1.00	Install- Surfacing	Installation of AF Surfacing	$4,457.00	$4,457.00

Materials Amount	$6,248.00
Tax Amount	$531.08
Labor Total	$4,457.00
Freight	$758.00
Total	$11,994.08

Notes to Customer

Security provided by GC if necesary;
An adequate dumpster is required by GC for packaging and waste;
New Concrete Sub-Base needs 28 days of cure time before commencement of AF surfacing installation.

Signature _____

Name _____

Title _____

Date _____

CITY OF SACRAMENTO

THIS FORM MUST BE SUBMITTED WITH THE SEALED BID PROPOSAL

ONLY THE BASE BID NUMBERS ARE TO BE USED IN THE ESTIMATED DOLLAR VALUE

CITY OF SACRAMENTO SUBCONTRACTOR and ESBE PARTICIPATION VERIFICATION

To be eligible for award of this contract, the bidder shall list any business entity used to attain the ESBE goal. Additionally, all other subcontractors who perform work, labor, or render service in an amount in excess of one-half of 1 percent of the total bid amount shall be listed. In the case of bids for the construction of streets and highways, including bridges, subcontractors whose subcontract value exceeds one-half (0.5) of one percent of the total bid or ten thousand dollars ($10,000), whichever is greater, shall be listed. Estimated dollar values shall be provided for all work / services listed. The inclusion of false information or the omission of required information will render the bid non-responsive. **READ THE ABOVE REQUIREMENT CAREFULLY**

Name of Prime Contractor:		**BASE BID Amount:**	Date:
Business Entity or Subcontractor Name and Location	Indicate EBE or SBE (subject to verification)	Items of Work and/or Description of Work or Service Subcontracted or Materials to be provided to complete contract	Estimated Dollar Value of Work / Services Provided **FOR BASE BID**

FM 440 (Rev. 2/25/04)

COPY AND ATTACH ADDITIONAL SHEETS AS NECESSARY

Page ___ of ___

EBE AND SBE CERTIFICATION STATEMENTS ARE DUE BY THE CLOSE OF BUSINESS TWO DAYS AFTER BID OPENING TO: TIM HOPPER, ADMINISTRATIVE OFFICER, DEPARTMENT OF PARKS & RECREATION FOR BID TO BE RESPONSIVE

The work to be performed under this contract shall be done in accordance with the Standard Specifications of the City of Sacramento, adopted June 2007, referred to herein as "Standard Specifications" as modified by these Special Provisions, which shall apply to all work.

i. Standard Specification 1-23 Engineer shall also mean Landscape Architect as defined in Standard Specification Section 1-33.

ii. Standard Specifications Section 2-9 SUBCONTRACTORS:

If a prime Contractor fails to specify to a subcontractor, or, if a prime Contractor specifies more than one (1) subcontractor for the same portion of work to be performed under the Contract which portion exceeds one-half of one percent of the prime Contractor's total bid, the prime contractor agrees that he or she is fully qualified to perform that portion himself or herself, and that the prime contractor shall perform that portion himself or herself. If after award of the Contractor such prime Contractor shall, except as provided in Section 4107 or 4109 of the Act, the subcontract any portion of the work, such prime Contractor shall be subject to the penalties specified in Section 4111 of the Act.

Contractor shall perform with his own organization and with the assistance of workers under his immediate superintendent, work of a value not less that twenty percent (20%) of the value of all work in the Contract. The value of any work subcontracted shall be determined by multiplying the number of units subcontracted of any item as determined from the Landscape Architect's Estimate by the unit price.

iii. Standard Specifications Section 5-4 COOPERATION OF CONTRACTOR

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UNIVERSITY OF THE
PACIFIC
McGeorge School of Law

November 7, 2013

~Sent via U.S. Mail and Email~

Sheryl Patterson
Senior Deputy City Attorney
915 I Street, 4th Floor
Sacramento, CA 95814
spatterson@cityofsacramento.org

Pantelis (Peter) Kallergis
Owner, Olympic Land Construction
2442 North Avenue
Sacramento, CA 95838
owner@olympicland.com

John Slover
CEO, JM Slover
1630 Lotus Road
Placerville, CA 95667
jmslover@wildblue.net

Institute for
Administrative Justice

3200 Fifth Avenue
Sacramento, CA 95817
www.mcgeorge.edu
Tel 916.739.7049
Fax 916.669.3005

RE: Decision on Administrative Appeal with Finding of Fact and Recommended Determination; Bid Protest Hearing - Artivio Guerrero Park
Olympic Land Construction
Case No.: B14190021002

Dear Ms. Patterson:

Enclosed please find the Decision on Administrative Appeal with Finding of Fact and Recommended Determination from Hearing Officer Joy Redmon. This administrative hearing was held on October 14, 2013.

Sincerely,

Lynette McPherson
Paralegal 916.739.7052

Enclosure

INSTITUTE FOR ADMINISTRATIVE JUSTICE
UNIVERSITY OF THE PACIFIC
McGEORGE SCHOOL OF LAW
3200 Fifth Avenue
Sacramento, CA 95817
Telephone: (916) 739-7049

CITY OF SACRAMENTO

BID PROTEST HEARING
ARTIVIO GUERRERO PARK

In the matter of:	)	
	)	
OLYMPIC LAND CONSTRUCTION,	)	Case Number: B14190021002
Protesting Bidder	)	
	)	
and	)	**DECISION ON ADMINISTRATIVE APPEAL WITH FINDING OF FACT AND RECOMMENDED DETERMINATION**
	)	
CITY OF SACRAMENTO,	)	
Awarding Agency	)	
	)	

I. INTRODUCTION

The bid protest by Olympic Land Construction (Olympic) concerning the City of Sacramento's proposed award of the Artivio Guerrero Park (Park), L19801100, to JM Slover Inc., was heard before Joy Redmon, hearing examiner for the Institute for Administrative Justice, University of the Pacific's McGeorge School of Law, on October 14, 2013, in Sacramento, California.[1]

II. APPEARANCES

Pantelis Kallergis, owner of Olympic, Jeffrey Smith, estimator and project manager of Olympic, and Alexandros Kallergis, general manager of Olympic, appeared on behalf of the protesting bidder, Olympic. Sheryl Patterson, senior deputy city attorney, appeared on behalf of the awarding agency, City of Sacramento (City). Also present on behalf of the City were Gary Hyden, supervising landscape architect for the City; Tim Hopper, contracts and compliance specialist, for the City; and Tin-Wah Wong, landscape architect for the City. Terresa Slover,

[1] The impartial hearing examiner was appointed pursuant to Sacramento City Code section 3.60.520.

secretary and CFO, and John Slover, CEO of JM Slover Inc. (Slover), appeared on behalf of Slover. Each party presented oral closing arguments and the matter was then submitted for decision.

III. JURISDICTION AND SCOPE OF REVIEW

Section 3.60.520 of the Sacramento City Code (SCC) sets forth the procedures for bid protest hearings before a hearing examiner appointed by the city council. The protesting bidder has the burden of showing the existence of all facts necessary to support the bid protest. The hearing examiner shall issue a written decision that includes findings of fact and a recommended determination of the bid protest based upon those findings of fact. Section 3.60.530 provides that after the hearing examiner issues a decision, the city council shall consider the protest at a public meeting. The council may hear the bid protest as part of the council's consideration of the award of the contract to which the bid relates, or it may hear the bid protest as a separate item. Section 3.60.540 states that "[t]he scope of the bid protest considered by the city council shall be limited to the issues and evidence set forth in the bid protest." The section lists various procedures that the City may exercise, in its discretion, before taking final action on the bid protest.

IV. ISSUE PRESENTED FOR HEARING

Should the JM Slover Inc. bid be rejected because Slover is not a certified installer of AquaFlex and PebbleFlex Resilient Surfacing and therefore would have to sub-contract with a certified installer who was not listed in its bid submission?

V. BACKGROUND

On Wednesday, August 21, 2013, Olympic and Slover both submitted a bid package in response to the Request for Proposals (RFP) issued by the City for the Artivio Guerrero Park project (Project). Bidders were required to use form FM440 to identify subcontractors. Specifically, the form indicates that, "all…subcontractors who perform work, labor, or render service in an amount in excess of one-half of 1 percent of the total bid amount shall be listed."

In addition to other requirement, the RFP specified using PebbleFlex surfacing system for playgrounds and AquaFlex Non-Porous Surfacing. *See RFP pp. 51-56 of 159.* It is undisputed that in order for the manufacturer's warranty of the forgoing products to be effective, they must be installed by a certified installer. Prior to the bid submission, representatives from Olympic contacted Landscape Structures, the manufacturer of the PebbleFlex and AquaFlex and were told that Ross Recreation is the only certified installer of the listed products in the northern California region. Accordingly, Olympic listed Ross Recreation on the FM440 as the subcontractor it intended to use to install the PebbleFlex and AquaFlex product.

At the bid opening, Slover was identified as the low bidder. Immediately following the bid opening, Olympic requested that a representative from the City read off the subcontractors listed by Slover. Slover did not list Ross Recreation on the FM440.

Tim Hopper, the City's contracts and compliance specialist, testified at the hearing that the day after the bid opening he received a telephone call from Terresa Slover who indicated that Slover inadvertently left the subcontractor it intended to use for the PebbleFlex and AquaFlex off their FM440 (but had included the cost for installation) and wanted to know if it could amend its bid to include Ross Recreation. Mr. Hopper said he needed to consult with the City's attorney and would get back to her. The following day, after consulting with City staff, Mr. Hopper notified Slover that it could not amend its bid but that if pursuant to the RFP, it could self-perform the work. If Slover elected to self-perform, the City would require documentation that the installation of the PebbleFlex and AquaFlex would be done to include the manufacturer's warranty.

According to Mr. Slover, after receiving this information from the City, he contacted Tom Blanchard of Blanchard Construction, who is Ross Recreation's contracted second tier installer. It is undisputed that Tom Blanchard is a certified installer of PebbleFlex and AquaFlex. Mr. Slover asked Mr. Blanchard if he would agree to install the PebbleFlex and AquaFlex as an hourly employee of Slover on this project. According to Mr. Slover, Mr. Blanchard said he would have to consult with the manufacturer. Thereafter, Mr. Blanchard notified Mr. Slover that he would agree to be an hourly employee of Slover for the installation of the PebbleFlex and AquaFlex.

On September 16, 2013, the City notified companies that had submitted proposals for the Project that Slover was the apparent low, responsible bidder and that it would self-perform some of the work.

Thereafter, Mr. Slover sent a letter to Mr. Hopper confirming that his company would self-perform the installation of PebbleFlex and AquaFlex. Additionally, Elaine Harkess, contract administrator for Landscape Structures Inc., the products' manufacturer, sent a letter addressed to, "City of Sacramento" dated September 19, 2013, indicating that it, "will honor the warranty on PebbleFlex and AquaFlex installed according to manufacturer's specifications by a Manufacturer Certified PebbleFlex/AquaFlex Installer." Further, Mr. Blanchard sent a letter to Mr. Hopper dated September 20, 2013, indicating that he is a Manufacturer's Certified Installer for Landscape Structures PebbleFlex and AquaFlex and that he agreed to work for Slover on the Project as an hourly employee.

On September 19, 2013, Olympic sent a letter to the City regarding the Project. In the letter, Olympic asserted that prior to the bid opening and again after the presumptive award of the bid to Slover, Landscape Structures continued to inform Olympic that only Ross Recreation is a certified installer of PebbleFlex and AquaFlex. Based upon that representation from Landscape Structures, Olympic asserted its belief that this constituted an unequal business trade with a public entity and violates the rules of the fair bidding procedure. Olympic requested that Slover be disqualified because it did not submit a subcontractor to perform resilient playground surfacing at the time of the bid opening and contested the award to Slover on that ground. This letter was considered a bid protest.

On October 2, 2013, Mr. Hopper returned a letter to Olympic reiterating its intent to award the contract to Slover. The City informed Olympic that on September 19, 2013, it

received confirmation that Slover would self-perform that portion of the work utilizing an employee who was a certified installer of PebbleFlex and AquaFlex. The City also stated that Slover sent the City a letter citing Public Contract Code section 4106 that allows the prime contractor to self-perform the work when a subcontractor is not listed if they meet the qualifications. Based upon the information the City received from Slover, Mr. Blanchard, and Landscape Solutions, the City determined it had no right to reject Slover's bid.

Olympic requested the matter be set for hearing and the hearing was conducted on October 14, 2013.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The City asserts that the California Public Contract Code permits Slover to self-perform the installation of the playground surface. According to the City, despite Slover's original intention to subcontract that portion of the work, it has established to the City's satisfaction that an hourly employee of the company will complete the installation to the manufacturer's specifications thereby maintaining the products' warranty. Accordingly, Slover is the low responsible bidder.

Section 4104(a)(1) of the Public Contract Code states that a bid must include:

> The name and location of the place of business of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement…in an amount in excess of one-half of 1 percent of the prime contractor's total bid…

Section 4106 of the Public Contract Code provides:

> If a prime contractor fails to specify a subcontractor…[for a particular portion of] work to be performed under the contract in excess of one-half of 1 percent of the prime contractor's total bid, the prime contractor agrees that he or she is fully qualified to perform that portion himself or herself, and that prime contractor shall perform that portion himself or herself.
>
> If, after award of contract, the prime contractor subcontracts, except as provided for in Sections 4107 or 4109, any such portion of the work, the prime contractor shall be subject to the penalties named in Section 4111.

It is undisputed that the installation of the PebbleFlex and AquaFlex surfacing material will constitute more than one-half of 1 percent of Slover's total bid. It is also undisputed that Slover failed to identify a subcontractor to install that material. The legal question is whether or not Slover can self-perform the installation of the surfacing material and ensure the applicability of the manufacturer's warranty as required by the RFP.

Section 4106 of the Public Contract Code specifically provides that if the contractor fails to specify a subcontractor the prime contractor agrees that he is fully qualified to perform the work. In this case, the prime contractor is Slover. Mr. Slover, the owner of Slover, testified that to ensure the applicability of the manufacturer's warranty, he has secured the services of Tom Blanchard, a certified installer, to work as an employee of Slover on this project. Therefore, the City asserts that Slover as a company and prime contractor can self-perform the installation pursuant to Public Contract Code section 4106.

It is clear to the hearing examiner that at the time of the bid submission, Slover had not intended to self-perform the surfacing work. Once the omission of including a subcontractor for the installation of the playground surface was discovered, Slover was given the option by the City of demonstrating its ability to self-perform. Mr. Slover testified that on behalf of the company, he contacted Mr. Blanchard. Had Mr. Blanchard not agreed to work as an employee of Slover, the company may not have been able to demonstrate its ability to meet the requirements of the RFP. That is not what occurred here, however, because Mr. Blanchard did agree to work as an employee of Slover. The Public Contract Code authorizes Slover to self-perform. The City, however, did not rest on Slover's representation alone. Rather, the City requested and received assurances from Mr. Blanchard and Landscape Solutions confirming both that Mr. Blanchard would work as an employee and that the manufacturer's warranty would be in effect if the products in question were installed by a certified installer. Accordingly, the hearing examiner finds that Slover demonstrated its ability to self-perform the playground surfacing portion of the Project as permitted by both the RFP and the Public Contract Code section 4106.

The hearing examiner also notes that during the hearing, the City put Slover on notice that it intends to carefully watch to ensure that Slover does not utilize the services of a subcontractor to install the playground surfacing material. The Special Provisions section of the RFP specifically states that, "[i]f after award of the Contractor [sic] such prime Contractor shall, except as provided in Section 4107 or 4109 of the Act, the [sic] subcontract any portion of the work, such prime Contractor shall be subject to the penalties specified in Section 4111 of the Act. Accordingly, the hearing examiner notes that Slover has a financial disincentive to deviate from the representations it has made to the City regarding the employment relationship it has between itself and Mr. Blanchard.

Despite the forgoing, Olympic essentially asserts three arguments to be considered: 1) The conduct described above constitutes "bid chiseling" and is prohibited under the Public Contract Code; 2) Mr. Blanchard owns his own company and cannot serve as an employee of Slover for this project; and 3) the warranty letter from the manufacturer is too general to be relied upon as an assurance that the product will be under warranty if installed by Slover. The hearing examiner will address each allegation individually.

Bid Chiseling: Olympic submitted a portion of a book entitled California Construction Law. It excerpted a portion regarding Bid Shopping, Bid Peddling, and Bid Chiseling. The book states in relevant part:

> "Bid Chiseling" describes the attempts of the prime contractor to obtain lower sub-bids after the prime contract has been awarded. "Bid Chiseling" is prohibited by the Public Contracts Code, and is made difficult by the requirement that the bid include the names of subcontractors who will perform more than one half of one (.05%) of the prime contract....

Based upon the authority relied upon by Olympic, bid chiseling occurs when a prime contractor attempts to obtain a lower sub-bid after the contract has been awarded. Slover did not attempt to obtain a lower sub-bid after the prime contract had been awarded. Rather, when Slover realized that it omitted its intended subcontractor and was informed by the City that it could not list one after the bid opening, it was left with no alternative but to self-perform the installation. According to the undisputed testimony of Mrs. Slover, because of the tax implications of hiring Mr. Blanchard as an employee, it will likely cost the company more money to install the playground surfaces than it would have cost to utilize the services of a subcontractor. The hearing examiner finds that in this situation, Slover's conduct does not constitute bid chiseling.

Blanchard's Ability to Work as an Employee: Olympic asserted that Blanchard owns his own construction company and therefore cannot be an hourly employee of Slover on this project. Olympic did not provide any legal authority to support this contention. The hearing examiner finds that the fact that Mr. Blanchard owns his own company does not preclude him from working as an employee of Slover for this project. Therefore, this is not a basis upon which to disqualify Slover.

Warranty Letter: Olympic argued that the letter from Elaine Harkess of Landscape Structures is not specific enough and therefore should not be relied upon as verification that the manufacturer's warranty will be in effect if Slover installs the playground surfacing. Olympic is correct that the letter does not specifically state that if Mr. Blanchard installs the PebbleFlex and AquaFlex material on behalf of Slover that the warranty will be in effect. The hearing examiner finds that there is not requirement that the letter be so specific to be operative. First, Mr. Slover testified that Landscape Structures provided this letter after being made aware of the specific situation that occurred here; namely that Mr. Blanchard would be working for Slover. The hearing examiner is persuaded that this testimony is credible because the letter is dated September 19, 2013, it is addressed to the City of Sacramento, and it specifically references the Guerrero Park Project. This warranty letter was deemed sufficient by the City and the hearing examiner agrees.

In conclusion, the hearing examiner finds that Slover's bid should not be rejected. The Public Contract Code permits it to self-perform a portion of the Project. The City required Slover to establish it its satisfaction that it can self-perform and that manufacturer's warranty would be effective for the PebbleFlex and AquaFlex material. The letters from Mr. Blanchard and Landscape Solutions confirmed that fact for the City. The hearing examiner agrees.

VII. RECOMMENDED DETERMINATION

The hearing examiner has made the following findings:

The City demonstrated that Slover can self-perform the installation of the PebbleFlex and AquaFlex through the use of an hourly employee, who is a certified installer of the above named material.

Accordingly, the hearing examiner recommends that Olympic's bid protest be denied.

Date: November 7, 2013

Joy Redmon, Hearing Examiner
Institute for Administrative Justice
Pacific McGeorge School of Law

PROOF OF SERVICE VIA EMAIL & U.S. MAIL

I, Lynette McPherson, declare as follows:

I am employed in the County of Sacramento, California, the county where the mailing took place; I am over the age of 18 years and not a party to the within action. My business address is 3455 Fifth Avenue, Sacramento, California 95817. I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service.

On November 7, 2013, I served a copy of the following document:

DECISION ON ADMINISTRATIVE APPEAL WITH FINDING OF FACT AND RECOMMENDED DETERMINATION
Bid Protest Hearing
Artivio Guerrero Park
Olympic Land Construction
Case No.: B14190021002

on the persons named below by following ordinary business practice, placing a true copy thereof enclosed in a sealed envelope for collection and mailing with the United States Postal Service where it would be deposited for first class delivery, postage fully prepaid, that same day in the ordinary course of business, and via email, addressed as follows:

Pantelis (Peter) Kallergis
Owner, Olympic Land Construction
2442 North Avenue
Sacramento, CA 95838
owner@olympicland.com

Sheryl Patterson
Senior Deputy City Attorney
915 I Street, 4th Floor
Sacramento, CA 95814
spatterson@cityofsacramento.org

John Slover
CEO, JM Slover
1630 Lotus Road
Placerville, CA 95667
jmslover@wildblue.net

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on November 7, 2013, in Sacramento, California.

Lynette McPherson, Paralegal
Institute for Administrative Justice
McGeorge School of Law

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JM SLOVER INC
Building Greener Communities Since 1990

September 19, 2013

City of Sacramento
Department of General Services, Procurement Division
5730 24th Street, Bldg. 1
Sacramento, CA 95822

Attn: Mr. Tim Hopper

Re: Artivio Guerrero Park (L19801100) – PebbleFlex Surfacing Installation

Dear Mr. Hopper,

In reference to JM Slover Inc. self-performing the installation of the PebbleFlex Surfacing supplied by Landscape Structures through their Consultant, Ross Recreation, please see the attached letter from Landscape Structures dated September 19th, 2013. The letter clearly states that Landscape Structures will honor the warranty on the PebbleFlex and AquaFlex Surfacing when installed by a Manufacturer's Certified Installer. We will be installing these products as a Certified Installer per the attached letter dated September 20th, 2013 and signed by Tom Blanchard.

I can be reached anytime for further discussion if necessary.

Sincerely
JM Slover Inc.

John M. Slover

1630 Lotus Road · Placerville, CA 95667 · (530) 621-4815 · Fax (530) 621-4869
E-mail: jmslover@wildblue.net · Cont. License No. 615956

landscape structures

September 19, 2013

RE: Guerrero Park, City of Sacramento

To City of Sacramento:

Landscape Structures Inc. will honor the warranty on PebbleFlex® and AquaFlex® installed according to manufacturer's specifications by a Manufacturer Certified PebbleFlex/AquaFlex Installer.

All warranty claims must be submitted and processed according to the terms of the warranty in effect at the time of installation.

Sincerely,

Elaine Harkess
Contract Administrator

601 7th St. South, Delano, MN 55328. Tel 763.972.3391, 888.4FUNLSI, Fax 763.972.3185, playlsi.com

Terresa Slover

From: "Chris Tait" <Chris@rossrec.com>
Date: Thursday, September 19, 2013 1:00 PM
To: "Terresa Slover" <tslover@wildblue.net>
Attach: PebbleFlex Installer Letter.pdf
Subject: LSI Letter

Terresa,
Here's LSI's letter concerning using certified installers and covering the product warranty.
Chris

September 20, 2013

City of Sacramento
Department of General Services, Procurement Division
5730 24th Street, Bldg. 1
Sacramento, CA 95822

Attn: Mr. Tim Hopper

Re: Artivio Guerrero Park (L19801100) – PebbleFlex Surfacing Installation

Dear Mr. Hopper,

This letter is to state that I, Tom Blanchard, am a Manufacturer's Certified Installer for Landscape Structures PebbleFlex and AquaFlex Surfacing Material and I have agreed to work for JM Slover Inc. on the Artivio Guerrero Park Project as their hourly employee. With this being said, JM Slover Inc. will be self-performing the installation of the PebbleFlex / AquaFlex Surfacing.

Sincerely,

Tom Blanchard