

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Matthew J. Fertal                      From: Keith G. Jones  
Dept: City Manager                      Dept: Public Works  
Subject: RECOMMENDATION TO              Date: January 12, 2010  
            AWARD CONTRACT FOR  
            POURED-IN-PLACE SURFACING  
            AT JARDIN DE LOS NINOS PARK

OBJECTIVE

To receive City Council approval to award the poured-in-place surfacing contract to R.E. Schultz Construction, for Jardin de los Ninos Park Project.

BACKGROUND

The Facilities Division has initiated the installation of play equipment at Jardin de los Ninos Park. Bids have been submitted for the surfacing portion of the project. This will include extension of the existing sidewalk increasing it from five feet in width to nine feet. Poured-in-place surfacing will utilize shredded recycled tire rubber as a cushion material and a half-inch virgin rubber color layer cap, consisting of a mix of 50% blue with 50% black granules. Surfacing will provide optimum wear, safety, and cushioning under all play components.

ANALYSIS

Staff followed the requirements of the California Public Contract Code in advertising and soliciting bids for this project. Specifications were prepared and sent to prospective bidders. Pursuant to Garden Grove Municipal Code Section 2.50.060, and based on the Public Work Department's recommendations, the Finance Director has determined that the following bids were responsive and were received as follows:

R.E. Schultz Construction	\$56,997.00
P.O. Box 6	
Silverado, CA 92676	
 Ortco Inc.	 \$63,413.00
2163 N. Glassell St.	
Orange, CA 92865	

R.E. Schultz Construction submitted the lowest responsive bid for the project. Staff has checked the references of R.E. Schultz Construction and found them to be satisfactory.

RECOMMENDATION TO AWARD CONTRACT  
FOR POURED-IN-PLACE SURFACING AT  
JARDIN DE LOS NINOS PARK  
January 12, 2010  
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FINANCIAL IMPACT

The cost of the poured-in-place surfacing is \$56,997.00. The project will be paid for with the Park Improvement Fee Fund (Fund 081). There is no impact to the General Fund.


COMMUNITY VISION IMPLEMENTATION

Safe clean medians, parks and landscaped areas are essential to meeting the quality of life element for a safe community as outlined in the Strategic Plan adopted by the City Council.

RECOMMENDATION

It is recommended that the City Council:

- Award the contract for the installation of poured-in-place surfacing at Jardin de los Ninos Park to R.E. Schultz Construction in the amount of \$56,997.00.
- Authorize the City Manager to execute the contract on behalf of the City.

  
KEITH G. JONES  
Public Works Director

By:   
Patricia Hayes  
Public Works Supervisor

Recommended for Approval

  
Matthew Fertil  
City Manager

Attachment: Agreement with R.E. Schultz Construction

## **SECTION 4 - AGREEMENT**

### **PROJECT AGREEMENT**

**THIS AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2010 by the CITY OF GARDEN GROVE, a municipal corporation, ("CITY"), and **R E Schultz Construction Services**, hereinafter referred to as ("CONTRACTOR").

### **RECITALS:**

The following recitals are a substantive part of this Agreement:

This Agreement is entered into pursuant to Garden Grove COUNCIL AUTHORIZATION, DATED \_\_\_\_\_.

CITY desires to utilize the services of CONTRACTOR to **Furnish All Labor, Material And Equipment For the Installation of Poured-In-Place Surfacing at Jardin de Los Ninos Park in Garden Grove.**

CONTRACTOR is qualified by virtue of experience, training, education, and expertise to accomplish services.

### **AGREEMENT**

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 4.0 **Compensation.** CONTRACTOR shall be compensated as follows:  
Compensation under this agreement shall be a Not to exceed (NTE) amount of Fifty Six Thousand Nine Hundred and Ninety-Seven Dollars (\$56,997.00) payable in arrears and in accordance with Proposal, which is attached as Attachment B, and is hereby incorporated by reference. Payment for work under this Agreement shall be made per invoice for work completed. All work shall be in accordance with Bid No. S-1051 and the Technical Specification and Addendums 1 and 2, which are attached as Attachment "A" and are hereby incorporated by reference.
- 4.1 **General Conditions.** CONTRACTOR certifies and agrees that all the terms, conditions and obligations of the Contract Documents as hereinafter defined, the location of the job site, and the conditions under which the work is to be performed have been thoroughly reviewed, and enters into this Contract based upon CONTRACTOR'S investigation of all such matters and is in no way relying upon any opinions or representations of CITY. It is agreed that this Contract represents the entire agreement. It is further agreed that the Contract Documents including the Notice Inviting Bids, Special Instructions to Bidders, if any, and Contractor's Proposal, are incorporated in this Contract by reference, with the same force and effect as if the same were set forth at length herein, and that CONTRACTOR and its subcontractors, if any, will be and are bound by any and all of said Contract Documents insofar as they relate in any part or in any way, directly or indirectly, to the work covered by this Contract.

**"Project"** as used herein defines the entire scope of the work covered by all the Contract Documents. Anything mentioned in the Specifications and not indicated in the Plans, or indicated in the Plans and not mentioned in the Specifications, shall be of like effect as if indicated and mentioned in both. In case of discrepancy in the Plans or Specifications, the matter shall be immediately submitted to City's Engineer, without whose decision CONTRACTOR shall not adjust said discrepancy save only at CONTRACTOR'S own risk and expense. The decision of the Engineer shall be final.

**4.2 Materials and Labor.** CONTRACTOR shall furnish, under the conditions expressed in the Plans and Specifications, at CONTRACTOR'S own expense, all labor and materials necessary, except such as are mentioned in the Specifications to be furnished by the CITY, to complete the project, in good workmanlike and substantial order. If CONTRACTOR fails to pay for labor or materials when due, CITY may settle such claims by making demand upon the surety to this Agreement. In the event of the failure or refusal of the surety to satisfy said claims, CITY may settle them directly and deduct the amount of payments from the Contract price and any amounts due to CONTRACTOR. In the event CITY receives a stop notice from any laborer or material supplier alleging non-payment by CONTRACTOR, CITY shall be entitled to deduct all of its costs and expenses incurred relating thereto, including but not limited to administrative and legal fees.

**4.3 Project.** The PROJECT is described as: **Furnish All Labor, Material And Equipment For the Installation of Poured-In-Place Surfacing at Jardin de Los Ninos Park in Garden Grove.**

**4.4 Plans and Specifications.** The work to be done is described in a set of detailed Plans and Specifications entitled: **Furnish All Labor, Material And Equipment For the Installation of Poured-In-Place Surfacing at Jardin de Los Ninos Park in Garden Grove.** Said Plans and Specifications and any revisions, amendments or addenda thereto are attached hereto and incorporated herein as part of this Contract and referred to by reference. The work to be done must also be in accordance with the General Provisions, Standard Specifications and Standard Plans of City which are also incorporated herein and referred to by reference.

**4.5 Time of Commencement and Completion.** CONTRACTOR agrees to commence the Project with TEN (10) calendar days from the date set forth in the "Notice to Proceed" sent by City and shall diligently prosecute the work to completion within sixty (60) calendar days from commencement of work excluding delays caused or authorized by the CITY as set forth in Sections 4.7, 4.8 and 4.9 hereof. The completion dates shall include any material delivery.

**4.6 Time is of the Essence.** Time is of the essence of this Contract. As required by the Contract Documents, CONTRACTOR shall prepare and obtain approval of all shop drawings, details and samples, and do all other things necessary and incidental to the prosecution of CONTRACTOR'S work in conformance with an approved construction progress schedule. CONTRACTOR shall coordinate the work covered by this Contract with that of all other contractors, subcontractors and of the CITY, in a manner that will facilitate the efficient completion of the entire work in accordance with Section 4.5 herein. CITY shall have complete control of the premises on which the work is to be performed and shall have the right to decide

the time or order in which the various portions of the work shall be installed or the priority of the work of other subcontractors, and, in general, all matters representing the timely and orderly conduct of the work of CONTRACTOR on the premises.

**4.7 Excusable Delays.** CONTRACTOR shall be excused for any delay in the prosecution or completion of the Project caused by acts of God; inclement weather; damages caused by fire or other casualty for which CONTRACTOR is not responsible; and act, neglect or default of CITY; failure of CITY to make timely payments to CONTRACTOR; late delivery of materials required by this CONTRACT to be furnished by CITY; combined action of the workers in no way caused by or resulting from default or collusion on the part of CONTRACTOR; a lockout by CITY; or any other delays unforeseen by CONTRACTOR and beyond CONTRACTOR'S reasonable control.

City shall extend the time fixed in Section 4.5 herein for completion of the Project by the number of days CONTRACTOR has thus been delayed, provided that CONTRACTOR presents a written request to CITY for such time extension within fifteen (15) days of the commencement of such delay and CITY finds that the delay is justified. CITY'S decision will be conclusive on the parties to this Contract. Failure to file such request within the time allowed shall be deemed a waiver of the claim by CONTRACTOR.

No claims by CONTRACTOR for additional compensation or damages for delays will be allowed unless CONTRACTOR satisfies CITY that such delays were unavoidable and not the result of any action or inaction of CONTRACTOR and that CONTRACTOR took all available measures to mitigate such damages. Extensions of time and extra compensation as a result of incurring undisclosed utilities will be determined in accordance with Section 9-103A of the State of California Department of Transportation Standard Specifications. The CITY'S decision will be conclusive on all parties to this Contract.

**4.8 Extra Work.** The Contract price includes compensation for all work performed by CONTRACTOR, unless CONTRACTOR obtains a written change order signed by a designated representative of CITY specifying the exact nature of the extra work and the amount of extra compensation to be paid all as more particularly set forth in Section 4.9 hereof. CITY shall extend the time fixed in Section 4.5 for completion of the Project by the number of days reasonably required for CONTRACTOR to perform the extra work, as determined by CITY'S Engineer. The decision of the Engineer shall be final.

**4.9 Changes in Project.**

**4.9.1** CITY may at any time, without notice to any surety, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Contract, including but not limited to changes:

- a. in the Specifications (including drawings and designs);
- b. in the time, method or manner of performance of the work;
- c. in the City-furnished facilities, equipment, materials, services or site; or
- d. directing acceleration in the performance of the work.

**4.9.2** A change order shall also be any other written order (including direction, instruction, interpretation or determination) from the CITY which causes any change, provided CONTRACTOR gives the CITY written notice stating the date, circumstances and source of the order and that CONTRACTOR regards the order as a change order.

**4.9.3** Except as provided in this Section 4.9, no order, statement or conduct of the CITY or its representatives shall be treated as a change under this Section 9 or entitle CONTRACTOR to an equitable adjustment.

**4.9.4** If any change under this Section 4.9 causes an increase or decrease in CONTRACTOR'S actual, direct cost or the time required to perform any part of the work under this Contract, whether or not changed by any order, the CITY shall make an equitable adjustment and modify the Contract in writing. Except for claims based on defective specifications, no claim for any change under paragraph (4.9.2) above shall be allowed for any costs incurred more than 20 days before the CONTRACTOR gives written notice as required in paragraph (4.9.2). In the case of defective specifications for which the CITY is responsible, the equitable adjustment shall include any increased direct cost CONTRACTOR reasonably incurred in attempting to comply with those defective specifications.

**4.9.5** If CONTRACTOR intends to assert a claim for an equitable adjustment under this Section 5.9, it must, within thirty (30) days after receipt of a written change order under paragraph (4.9.1) or the furnishing of a written notice under paragraph (4.9.2), submit a written statement to the CITY setting forth the general nature and monetary extent of such claim. The CITY may extend the 30-day period. CONTRACTOR may include the statement of claim in the notice under paragraph (4.9.2) of this Section 4.9.

**4.9.6** No claim by CONTRACTOR for an equitable adjustment shall be allowed if made after final payment under this Agreement.

**4.9.7** CONTRACTOR hereby agrees to make any and all changes, furnish the materials and perform the work that CITY may require without nullifying this Contract. CONTRACTOR shall adhere strictly to the Plans and Specifications unless a change therefrom is authorized in writing by the CITY. Under no condition shall CONTRACTOR make any changes to the Project, either in additions or deduction, without the written order of the CITY and the CITY shall not pay for any extra charges made by CONTRACTOR that have not been agreed upon in advance in writing by the CITY. CONTRACTOR shall submit immediately to the CITY written copies of its firm's cost or credit proposal for change in the work. Disputed work shall be performed as ordered in writing by the CITY and the proper cost or credit breakdowns therefore shall be submitted without delay by CONTRACTOR to CITY.

**4.10 Liquidated Damages for Delay.** The parties agree that if the total work called for under this Contract, in all parts and requirements, is not completed within the time specified in Section 4.5 herein, plus the allowance made for delays or extensions authorized under Section 4.7, 4.8 and 4.9 herein, the CITY will

sustain damage which would be extremely difficult and impractical to ascertain. The parties therefore agree that CONTRACTOR will pay to CITY the sum of two hundred and fifty dollars (\$250.00) per day for each and every calendar day during which completion of the Project is so delayed. CONTRACTOR agrees to pay such liquidated damages and further agrees that CITY may offset the amount of liquidated damages from any moneys due or that may become due CONTRACTOR under the Contract.

- 4.11 Contract Price and Method of Payment.** CITY agrees to pay and the CONTRACTOR agrees to accept as full consideration for the faithful performance of this Contract, subject to any subsequent additions or deductions as provided in approved change orders, the sum as itemized in the bid proposal. Progress payments shall be made to the CONTRACTOR per month for each successive month as the work progresses. The CONTRACTOR shall be paid such sum as will bring the total payments received since the commencement of the work up to ninety percent (90%) of the value of the work completed, less all previous payments, provided that the CONTRACTOR submits the request for payment prior to the end of the day required to meet the payment schedule. The CITY will retain ten percent (10%) of the amount of each such progress estimate and material cost until 30 days after the recordation of the Notice of Completion.

Payments shall be made on demands drawn in the manner required by law, accompanied by a certificate signed by the CITY'S Engineer, stating that the work for which payment is demanded has been performed in accordance with the terms of the Contract. Partial payments of the Contract price shall not be considered as an acceptance of any part of the work.

- 4.12 Substitution of Securities in Lieu of Retention of Funds.** Pursuant to California Public Works Contract Code Section 22300, the CONTRACTOR will be entitled to post approved securities with the CITY or an approved financial institution in order to have the CITY release funds retained by the CITY to ensure performance of the Contract. CONTRACTOR shall be required to execute an addendum to this Contract together with escrow instructions and any other documents in order to effect this substitution.

- 4.13 Completion.** CITY may require affidavits or certificates of payment and/or releases from any subcontractor, laborer or material supplier in connection with Stop Notices which have been filed under the provisions of the statutes of the State of California.

- 4.14 Contractor's Employee Compensation.**

- 4.14.1 General Prevailing Rate.** CITY has ascertained from the State of California Director of Industrial Relations, the general prevailing rate of per diem wages and the general prevailing rate for legal holiday and over time work in the locality in which the work is to be performed for each craft or type of work needed to execute this Contract, and copies of the same are on file in the Office of the City Engineer. The CONTRACTOR agrees that not less than said prevailing rates shall be paid to workers employed on this public works contract as required by Labor Code Section 1774 of the State of California.

**4.14.2 Forfeiture for Violation.** CONTRACTOR shall, as a penalty to the CITY, forfeit fifty dollars (\$50.00) for each calendar day or portion thereof for each worker paid (either by the CONTRACTOR or any subcontractor under it) less than the prevailing rate of per diem wages as set by the Director of Industrial Relations, in accordance with Sections 1770-1780 of the California Labor Code for the work provided for in this Contract, all in accordance with Section 1775 of the Labor Code of the State of California.

**4.14.3 Travel and Subsistence Pay.** Section 1773.8 of the Labor Code of the State of California, regarding the payment of travel and subsistence payments, is applicable to this Contract and CONTRACTOR shall comply therewith.

**4.14.4 Apprentices.** Section 1777.5, 1777.6 and 1777.7 of the Labor Code of the State of California, regarding the employment of apprentices is applicable to this Contract and the CONTRACTOR shall comply therewith if the prime contract involves thirty thousand dollars (\$30,000.00) or more or twenty (20) working days, or more; or if contracts of specialty contractors not bidding for work through the general or prime contractor are two thousand dollars (\$2,000.00) or more for five **(5)** working days or more.

**4.14.5 Workday.** In the performance of this Contract, not more than eight (8) hours shall constitute a day's work, and CONTRACTOR shall not require more than eight (8) hours of labor in a day from any person employed by him thereunder except as provided in paragraph (4.14.2) above. CONTRACTOR shall conform to Article 3, Chapter 1, Part 7 (Sections 1810 et seq.) of the Labor Code of the State of California and shall forfeit to the CITY as a penalty, the sum of twenty-five dollars (\$25.00) for each worker employed in the execution of this Contract by CONTRACTOR or any subcontractor for each calendar day during which any worker is required or permitted to labor more than eight (8) hours in any one calendar day and forty (40) hours in any one week in violation of said Article. CONTRACTOR shall keep an accurate record showing the name and actual hours worked each calendar day and each calendar week by each worker employed by CONTRACTOR in connection with the Project.

**4.14.6 Records of wages: Inspection.** CONTRACTOR agrees to maintain accurate payroll records showing the name, address, social security number, work classification, straight-time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by it in connection with the Project and agrees to require that each of its subcontractors does the same. All payroll records shall be certified as accurate by the applicable contractor or subcontractor or its agent have authority over such matters. CONTRACTOR further agrees that its payroll records and those of its subcontractors shall be available to the employee or employee's representative, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards and shall comply with all the provisions of Labor Code Section 1776, in general.



**4.15 Surety Bonds.** CONTRACTOR shall, upon entering into performance of this Agreement, furnish bonds in the amount of one hundred percent (100%) of the Contract price bid, to guarantee the faithful performance of the work, and the other in the amount of one hundred percent (100%) of the Contract price bid to guarantee payment of all claims for labor and materials furnished. This Contract shall not become effective until such bonds are supplied to and approved by the CITY.

**4.16 Insurance.**

**4.16.1** CONTRACTOR is also aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or undertake self-insurance with provisions of that Code and will comply with such provisions before commencing the performance of the work of this Contract.

**4.16.2** CONTRACTOR and all subcontractors will carry workers' compensation insurance for the protection of its employees during the progress of the work. The insurer shall waive its rights of subrogation against the CITY, its officers, agents and employees and shall issue a certificate to the policy evidencing same.

**4.16.3** CONTRACTOR shall at all times carry, on all operations thereunder, bodily injury, including death, and property damage liability insurance, including automotive operations bodily injury and property damage coverage; and builders' all risk insurance. All insurance coverage shall be in amounts specified by CITY in the Insurance Requirements and shall be evidenced by the issuance of a certificate in a form prescribed by the CITY and shall be underwritten by insurance companies satisfactory to CITY for all operations, subcontract work, contractual obligations, product or completed operations, all owned vehicles and non-owned vehicles. Said insurance coverage obtained by the CONTRACTOR, excepting workers' compensation coverage, shall name the CITY, its Officers, Agents, Employees, Engineers, and Consultants for this Contract, and all public agencies from whom permits will be obtained and their Directors, Officers, Agents and Employees, as determined by the CITY, as additional insured on said policies.

**4.16.4** Before CONTRACTOR performs any work at, or prepares or delivers materials to, the site of construction, CONTRACTOR shall furnish certificates of insurance evidencing the foregoing insurance coverage and such certificates shall provide the name and policy number of each carrier and policy and that the insurance is in force and will not be canceled without thirty (30) days written notice to CITY. CONTRACTOR shall maintain all of the foregoing insurance coverage in force until the work under this Contract is fully completed. The requirement for carrying the foregoing insurance shall not derogate from the provisions for indemnification of CITY by Contractor under Section 5.17 of this Contract. Notwithstanding nor diminishing the obligations of CONTRACTOR with respect to the foregoing, CONTRACTOR shall subscribe for and maintain in full force and effect during the life of this Contract, the following insurance in amounts not less than the amounts specified and issued by a company

admitted in California and having a Best's Guide Rate of A-, Class VII or better:

a)Workers' Compensation Insurance for the duration of the Agreement, Contractor and all subcontractors shall maintain coverage. A waiver of subrogation shall be provided against the CITY, its officers, agents, employees, engineers, and consultants.	In accordance with the Workers' Compensation Act of the State of California.
b) Commercial General Liability including mobile equipment, if any, written on a per occurrence basis;(Claims made and modified policies are not acceptable)	\$1,000,000 per occurrence, if any,
c) Automobile Liability including all owned, non-owned, leased, hired and mobile equipment, if any, written on a per occurrence basis;(Claims made and modified policies are not acceptable).	\$1,000,000 combined single limit

An Additional Insured Endorsement, **ongoing and completed operations**, for the policy under section 4.16.4 (b) shall designate **CITY, its officers, agents, employees, engineers, and consultants** as **additional insureds** for liability arising out of work or operations performed by or on behalf of the CONTRACTOR. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to city's requirements, as approved by the CITY.

An Additional Insured Endorsement for the policy under section 4.16.4 (c) shall designate **CITY, its officers, agents, employees, engineers, and consultants** as **additional insureds** for automobiles owned, leased, hired, or borrowed by the CONTRACTOR. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

For any claims related to this Agreement, CONTRACTOR's insurance coverage shall be **primary** insurance as respects to **CITY, its officers, agents, employees, engineers, and consultants**. Any insurance or self-insurance maintained by the **CITY, its officers, agents, employees, engineers, or consultants** shall be **excess** of the CONTRACTOR's insurance and **shall not contribute** with it.

CITY or its representatives shall at all times have the right to inspect and receive the original or a certified copy of all said policies of insurance,

including certificates. CONTRACTOR shall pay the premiums on the insurance hereinabove required.

**4.17 Risk and Indemnification.** All work covered by this Contract done at the site of the Project or in preparing or delivering materials to the site shall be at the risk of CONTRACTOR alone. CONTRACTOR agrees to save, indemnify and keep CITY, its Officers, Agents, Employees, Engineers, and Consultants for this Contract, and all public agencies from whom permits will be obtained and their directors, Officers, Agents and Employees harmless against any and all liability, claims, judgments, costs and demands, including demands arising from injuries or death of persons (CONTRACTOR'S employees included) and damage to property, arising directly or indirectly out of the obligations herein undertaken or out of the operations conducted by CONTRACTOR, save and except claims or litigation arising through the sole negligence or sole willful misconduct of CITY and will make good to reimburse CITY for any expenditures, including reasonable attorneys' fees CITY may incur by reason of such matters, and if requested by CITY, will defend any such suits at the sole cost and expense of CONTRACTOR.

**4.18 Termination.**

**4.18.1** This Contract may be terminated in whole or in part in writing by the CITY for its convenience, provided that the CONTRACTOR is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination. Termination of contract shall conform to Section 8-1.11 of the State of California, Department of Transportation Standard Specifications.

**4.18.2** If termination for default or convenience is effected by the CITY, an equitable adjustment in the price provided for in this Contract shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the CONTRACTOR at the time of termination may be adjusted to cover any additional costs to the CITY because of the CONTRACTOR'S default. The equitable adjustment for any termination shall provide for payment to the CONTRACTOR for services rendered and expenses incurred in accordance with section 8-1.11 of the State of California, Department of Transportation Standard Specifications.

**4.18.3** Upon receipt of a termination action under paragraph (4.18.1) or (4.18.2) above, the CONTRACTOR shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the CITY all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the CONTRACTOR in performing this Contract whether completed or in process.

**4.18.4** Upon termination under paragraphs (4.18.1) and (4.18.2) above, the CITY may take over the work and may award another party an agreement to complete the work under this Contract.

**4.19 Warranty.** The CONTRACTOR agrees to perform all work under this Contract in accordance with the CITY'S designs, drawings and specifications.

The CONTRACTOR guarantees for a period of one (1) year from the date of the notice of completion of the work that the completed work is free from all defects due to faulty materials, equipment or workmanship and that he shall promptly make whatever adjustments or corrections which may be necessary to cure any defects, including repairs or any damage to other parts of the system resulting from such defects. The CITY shall promptly give notice to the CONTRACTOR of observed defects. In the event that the CONTRACTOR fails to make adjustments, repairs, corrections or other work made necessary by such defects, the CITY may do so and charge the CONTRACTOR the cost incurred. The performance bond shall remain in full force and effect through the guarantee period.

The CONTRACTOR'S obligations under this clause are in addition to the CONTRACTOR'S other express or implied assurances provided under this Contract and in no way diminish any other rights that the CITY may have against the CONTRACTOR for faulty materials, equipment or work.

**4.20 Notices.** Any notice required or permitted under this Contract may be given by ordinary mail at the address set forth below. Any party whose address changes shall notify the other party in writing.

To CITY:                      City of Garden Grove  
                                    City Attorney  
                                    11222 Acacia Parkway  
                                    Garden Grove, California 92840

To CONTRACTOR: R E Schultz Construction Services  
                                    Attention: Richard E. Schultz  
                                    30171 Oak Lane  
                                    Silverado, CA 92676

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**IN WITNESS THEREOF**, these parties have executed this Project Agreement on the day and year shown below.

Date: \_\_\_\_\_

**"CITY  
CITY OF GARDEN GROVE**

By: \_\_\_\_\_  
City Manager

**ATTEST:**

\_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

**"CONTRACTOR"  
R E Schultz Construction Services**

Contractor's State Lic. No. 755160

Expiration Date: 10-31-10

By: 

Title: OWNER

Date: 12-16-09

Tax ID No. 33-0868564

If CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to the CITY.

**APPROVED AS TO FORM:**

  
Garden Grove City Attorney

ADDENDUM No. 1

Covering

CHANGE IN SPECIFICATIONS AND/OR PLANS

Date Issued: November 24, 2009

Date Effective: November 24, 2009

IFB No. S-1051

Contract: Provide all Labor, Materials, and Equipment for the installation of park play equipment and Pour-and Play Surfacing at Jardin de Los Ninos Park in Garden Grove.

INTENT

1. This addendum is issued prior to receipt of bids to provide for modifications in plans and/or specifications. Acknowledgment of this addendum shall be made and cost for work included in proposer's submittal.

1. The following are questions that were asked during the mandatory pre-bid meeting and site walk, which was held on Friday, November 20, 2009.

a. **Question:** What are the sequence of events for this project?

**Answer:** The sequence of events shall be as follows:

1. Site Grading
2. Concrete Sidewalk, Curb and Key and Aggregate Base Installation
3. Play Equipment Installation
4. Complete the site with Poured-in-Place Surfacing

b. **Question:** What work will be performed by the contractor installing the playground equipment?

**Answer:** The work to be done by the playground equipment installation contractor will be as follows:

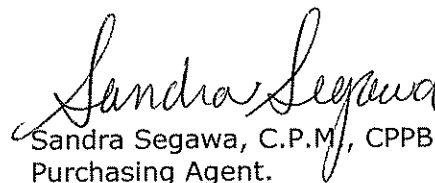
1. Will compact all open holes made for the playground equipment support posts and any trenches made prior to the installation of the poured-in-place surfacing.

c. **Question:** Who will install the concrete sidewalks, curbs and keys?

**Answer:** The successful bidder for IFB No. S-1051 will be responsible for the installation of sidewalks, curbs and keys.

3. The contractor is hereby notified that Addendum No. 1 must be acknowledged and submitted as part of the bid. Failure to do so could result in the City designating said bid as "Non Responsive". All other terms and conditions of the BID shall remain the same

Issued by:

  
Sandra Segawa, C.P.M., CPPB  
Purchasing Agent.

ADDENDUM No. 2

Covering

CHANGE IN SPECIFICATIONS AND/OR PLANS

Date Issued: November 30, 2009

Date Effective: November 30, 2009

IFB No. S-1051

Contract: Provide all Labor, Materials, and Equipment for the installation of park play equipment and Pour-and Play Surfacing at Jardin de Los Ninos Park in Garden Grove.

INTENT

1. This addendum is issued prior to receipt of bids to provide for modifications in plans and/or specifications. Acknowledgment of this addendum shall be made and cost for work included in proposer's submittal.
2. Please find attached a sketch that shows the elevations of the felt crosses that were placed at the job site. The site drains from east to west. Elevations have been established at the top of curbs at the undersidewalk drains at each end of the project.
3. The contractor is hereby notified that Addendums No. 1 and 2 must be acknowledged and submitted as part of the bid. Failure to do so could result in the City designating said bid as "Non Responsive". All other terms and conditions of the BID shall remain the same

Issued by:   
Sandra Segawa, C.P.M., CPPB  
Purchasing Agent.

**ATTACHMENT "A"**  
**IFB NO. S-1051**

**SCOPE OF WORK**

**Provide all labor, materials, and equipment for the installation of Poured-in-Place surfacing at Jardin de Los Ninos Park in Garden Grove**

SECTION 1	SCOPE
SECTION 2	SPECIAL INSTRUCTIONS
SECTION 3	REFERENCES
SECTION 4	PROJECT REQUIREMENTS
SECTION 5	QUALITY CONTROL
SECTION 6	TERMS AND CONDITIONS
SECTION 7	ENVIRONMENTAL



## 1.0

### SCOPE OF THE WORK:

- 1.1 The contractor shall be responsible for providing all material and labor to perform the following: demolition of existing landscape; grade site to receive new play equipment; install new sidewalk addition with surfacing key; add compacted aggregate base, cushion layer and color layer.

This project will take place at the following park:

Jardin de Los Ninos  
12631 Keel St.  
Garden Grove, CA

The objective includes the following: provide additional concrete surfacing for the Police Department to use for their vehicles; and provide a consistent fall surface of rubberized surfacing under all new equipment. The installation will additionally provide a way to recycle old tires as a subsurface base for the color coat layer.

### 1.2 WORK INCLUDES:

1. Removal and disposal of soil such that when the aggregate base and rubber layers are added, the top of the surface conforms to the necessary grade for the installed play components. All materials shall be disposed of off site in an appropriate manner.
2. Site preparations as necessary to provide proper installation and excellent adhesion of the poured-in-place material. Before rubber installation, the aggregate rock must be compacted to 95%. A concrete slurry coat shall be added to the upper layer to further prevent settling. Preparation of the site for surfacing shall occur after the installation of the play equipment.
3. Installation of the following:
  - a. Additional sidewalk area between the existing walkway and the south edge of the play surface will be 6.0" thick. Poured-in-place material shall be per manufacturer's instructions or **approved equivalent** and safety regulations. The play equipment shall be installed per Little Tikes' specifications. All installation of poured-in-place surfacing shall be per manufacturer's installation specifications. All rubber surfacing shall be firmly secured so that it cannot be pulled up from the playground surface.
4. Cleanup of the site Restore all damaged adjacent turf. Leave the area clean of waste and debris, after completion of the project.

## 2.0 SPECIAL INSTRUCTIONS

### 2.1 General

1. The Contractor shall be responsible for taking his own measurements for preparation of this bid and performance of the project.

2. The contractor shall commence work within ten (10) working days of the **Notice to Proceed** issued by the City.
3. The Contractor must accept responsibility for everything that is stored within the construction site. Prior to the completion and final acceptance of the project, the site shall be cleaned of any material or equipment.
4. Licenses, permits, and fees that may be required for this project are the sole responsibility of the Contractor. Any Contractor and subcontractor used, will be required to have a valid business license receipt from the City.
5. Each Contractor and subcontractor shall have the proper city and state license for the work performed. **The primary contractor for the entire project shall possess a valid Class A or General Contractor's B – C61/D12 (Synthetic Surfacing).**
6. All materials shall be on site prior to demolition/installation activity.
7. A 6' freestanding chain-link fence must enclose the work site. The entry points must be secured with a lock provided by the Contractor. A copy of the lock's key shall be provided to the City upon request.
8. USA Dig Alert notifications will be the Contractor's responsibility. They must be made at least 7-10 days in advance of demolition. They must remain current and valid during the entire project.
9. It shall be the responsibility of the Contractor to conduct all of his activities and operations within the rights-of-way provided by the City and or within the confines of the work site. It will be the responsibility of the Contractor to coordinate all work such as to minimize interfering with daily activities within the park's scheduled activities. Their operation shall give top priority to the park patron's safety.
10. The Contractor shall be responsible for the removal, transportation, and disposal of all material removed during project performance. No scrap, refuse, or debris is to be disposed of in City trash bins. During construction, the Contractor shall keep the site clean and free from all rubbish and debris. All walks and paving shall be broomed or washed down daily by 4:00 pm. If necessary, any cleanup done by the City will be deducted from the Contractor's bill. Costs will be based on current over time charges.
11. No Contractors will be recognized as such. All persons engaged in the construction work will be considered as employees of the Contractor and the Contractor will be held directly responsible for their work.
12. The Contractor shall be responsible and liable for all damages to the property of the City including damages done to irrigation systems, which is caused by the Contractor, subcontractors, or employees thereof, during the project and shall, at his own expense repair and/or replace all damaged property to its original condition. The City may withhold a

portion of any monies owed to the contractor until such a time as the damaged facilities are repaired or replaced to the satisfaction of the City representative. The damage shall also include repair to turf areas adjacent to the construction site.

13. All warranties specified in the basic requirements of this specification, shall be delivered in writing to the City prior to final acceptance of the project by the City and final payment.
14. Vandalism- The contractor is responsible for site security and any costs from vandalism and theft at the project site. The Contractor shall take adequate precautions to prevent graffiti and markings on concrete work. These precautions may include early pours, leaving men on the job, or other precautions as necessary. Any concrete vandalized, shall be removed and replaced to the satisfaction of the City representative, at no additional cost to the City. Grinding, patching or other remedies to correct the situation will not be accepted. Concrete replacement areas shall be from score mark or quick joint and full width of the concrete work, and all replacement areas shall be neatly cut with a concrete saw.
15. In the event of any damage or theft of his work or equipment, he is held to be responsible and liable for all costs in rectifying such damage or theft, and the City is held harmless.
16. The Contractor is requested to purchase as much of the materials as possible from suppliers/sources within the City of Garden Grove. All poured in place surfacing must be manufactured from California tire rubber. Verification must be provided before final payment will be made.

## **2.2 Environmental Requirements**

1. All application, material handling, and associated equipment shall conform to and be operated in conformance with OSHA safety requirements.
2. Comply with Federal, State, County and the City of Garden Grove Fire and safety requirements.
3. Advise the City of Garden Grove whenever work is expected to be hazardous to the City of Garden Grove employees and/or general public.
4. The contractor shall comply with all local sound control and noise level rules, regulations, and ordinance, which apply to any work performed pursuant to the contract.
5. Maintain fire extinguishers within easy access whenever power tools, soldering equipment, or torches are being used.
6. Provide adequate protection to park grounds against any damage and/or debris.

7. All areas around and in the park grounds must be kept free of debris daily as the work proceeds. Deposit all trash and debris into trucks or non-City containers daily. All materials removed shall be disposed of away from the site.
8. Upon completion of the work, the Contractor shall leave all surfaces in the park site free from accumulation of dirt and debris and shall also remove all job-related soil from walls, walks, and equipment.

### **3.0 REFERENCES**

- 3.1 Handbook for Public Safety, by the U.S. Consumer Product Safety Commission (C.P.S.C.).
- 3.2 Americans with Disabilities Act of 1990, Public Law 101-36, July 16, 1990.
- 3.3 American Society for Testing and Materials (ASTM) F1292-95.

### **4.0 PROJECT REQUIREMENTS**

#### **4.1 Demolition**

Prior to the on site demolition, the contractor shall secure the entire site with a 6' freestanding chain-link fence. Access points must be secured with a lock provided by the contractor. A copy of the lock's key will be provided to the City Representative upon request. Dig Alert must be notified at least seven days in advance of demolition. City staff will shut down the irrigation water at the construction site, at least one week in advance of operations. Coordinate this with the City Representative. During demolition, care must be taken not to damage the play structure, wall, backflow device, picnic tables or the adjacent sidewalk. The contractor shall, before completion of the project, make repairs at no additional cost, to the City. All excavated sand and soil shall be the contractor's responsibility to dispose of.

#### **4.2 Installation**

4.2.1 Poured In Place Installation Procedure- (Attachment "B")

### **5.0 QUALITY CONTROL:**

#### **5.1 Equal Materials:**

In this specification, where any reference is made to a brand name, make or model number, it shall be considered as a standard only. Any material or equipment meeting or exceeding the standard will be given consideration.

In order to avoid any misinterpretation, where anything other than that specified is intended to be bid, the prospective bidder must submit a sample of the material, along with any manufacturer's technical data.

Complete documentation shall be delivered prior to, but not later than, 2:00 p.m. on the bid due date. Any material testing required to determine quality level, shall be at Contractor's expense. The decision of determining whether the product meets or exceeds the standard, will belong entirely with the City of Garden Grove.

5.2 **Licenses Required:**

1. Class A, General Contractor's License or Class B, Building Contractor License
2. C-61/D-12 for Synthetic surfacing installation
3. City of Garden Grove Business License. Please call (714)-741- 5073 for information on how to obtain this license.

5.3 **Work Hours:**

- 5.3.1 The work hours at the job site are to be from 7:00 a.m.-4:30 p.m.

## 6.0 TERMS AND CONDITIONS

### 6.1 General

- 1) The Contractor shall attend a mandatory pre-bid conference. Date and time of the conference will be announced in this Invitation for Bid document.
- 2) The Contractor shall take his own measurements for preparation of this bid and performance of the project.
- 3) The successful bidder shall be on site and begin work within ten (10) calendar days after the full execution of the contract by the City and the Contractor. If additional time is required for delivery of materials or other valid reason, the start date shall be negotiated, subject to the approval of the Facilities Manager.
- 4) All material shall be on site prior to demolition/installation activity by the Contractor.
- 5) It shall be the responsibility of the Contractor to conduct all of his activities and operations within the rights-of-way provided by the City and/or within the confines of the work site.
- 6) The Contractor shall be responsible for the removal, transportation and disposal of all material removed during project performance. No scrap, refuse, or debris is to be disposed of in City trash bins.
- 7) Payment schedule shall be established by the Facilities Manager. It is the Public Works Department policy, to pay only for work that has been fully completed and accepted. A ten percent (10%) retention policy is practiced.

Any negotiation for payment for completion of a particular phase of the project, is subject to the approval of the Facilities Manager. Payment will be processed only after receiving an invoice for work completed.

- 8) The Contractor shall be responsible and liable for all damages to the property of the City, which is caused by the Contractor, subcontractors, or employees thereof, during the project and shall, at his own expense repair and/or replace all damaged property to its original condition.
- 9) All warranties specified in the basic requirements of this specification shall be delivered in writing to the City prior to final acceptance of the project by the City and final payment.

## **7.0 Environmental Requirements**

1. All application, material handling, and associated equipment shall conform to and be operated in conformance with OSHA safety requirements.
2. Comply with Federal, State, County and the City of Garden Grove Fire and safety requirements.
3. Advise the City of Garden Grove whenever work is expected to be hazardous to the City of Garden Grove employees and/or general public.
4. The contractor shall comply with all local sound control and noise level rules, regulations, and ordinance, which apply to any work performed pursuant to the contract.
5. Maintain fire extinguishers within easy access whenever power tools, soldering equipment, or torches are being used.
6. Provide adequate protection to park grounds against any damage and/or debris.
7. All areas around and in the park grounds must be kept free of debris daily as the work proceeds. Deposit all trash and debris into trucks or non-City containers daily. All materials removed shall be disposed of away from the site.
8. Upon completion of the work, the Contractor shall leave all surfaces in the park site free from accumulation of dirt and debris and shall also remove all job-related soil from walls, walks, and equipment.