



CITY OF DEL REY OAKS

Staff Report

DATE: February 27, 2024

TO: Honorable Mayor and Members of City Council

FROM: John Guertin, City Manager

SUBJECT: Award of Contract for the Calfire Grant Funded Fire Prevention Project to Julian Tree Care

CEQA: The project is categorically exempt from the California Environmental Quality Act (CEQA) Guidelines Sections, Section 15304 (i) Minor Alteration to Land – Fuel management activities within 30 to 100 feet of structures to reduce the volume of flammable vegetation, provided that the activities will not result in the taking of endangered, rare, or threatened plant or animal species or significant erosion and sedimentation of surface waters. The understory fuel reduction is a minor alteration to land that involves fuel management activities within 30 to 100 feet of structures.

Recommendation

It is recommended that the City Council:

1. Accept Community Tree Service's request to withdraw their bid; and
2. Approve the Award of a Contract to the next lowest bidder Julian Tree Care in the amount of \$154,000 for the Del Rey Oaks Fire Prevention Program (Work Memorial Park) Project; and
3. Authorize the City Manager to approve additional expenditures up to \$30,800 (20% of the agreement value) in contract contingencies for potential additional services and unanticipated work that may arise, for a total amount not-to-exceed \$184,800; and
4. Authorize the City Manager to sign and execute the contract services agreement and potential future amendments to the agreement within the designated contingency amount, on behalf of the City Council.

Background

On February 28, 2023, the City Council approved Resolution #2023-01 authorizing the filing of an application for "California Climate Investment Fire Prevention Grant Program", for the Del Rey Oaks Fire Prevention Program. On September 29, 2023, the City was awarded \$317,931.90 in grant funding for the project.

The project is expected to reduce fire fuels along Work Memorial Park (from Via Verde to Fremont Blvd). The Treatment Influence Zone is approximately 41 acres in area, including proximity to over 300 homes. The project area is located near Highway 68 and the former Fort Ord, both of which are designated as high fire threat areas according to the Monterey County Community Wildfire Protection Plan.

Summary & Discussion

The bid opening for the Fuel Reduction contractor occurred on January 11, 2024. Four (4) bids were received (Tabulation of Bids – Attachment 1). Community Tree Services was the lowest responsive bidder. On January 23, 2024, the Council approved an agreement with Community Tree Services for the project. Since that time, Community ownership has determined that their proposal contained significant estimating errors and that they are unable to perform the required services for the amount bid. As a result, they have requested to withdraw their bid from consideration. Due to the significant discrepancy between Community's bid amount and the engineer's estimate for the project, staff recommends accepting the withdrawal of Community's proposal and proceeding with an award of contract to the next lowest responsible bidder, Julian Tree Care. The City will retain the bid bond of \$6,107 included with Community's proposal submittal.

Fiscal Impacts

The City has received the Grant Agreement (5GG22134) from the State of California CAL FIRE Program. The total amount of the grant is \$317,931.90. Within this amount the Fuel Reduction Treatment portion allocated is \$297,300. The \$184,800 for this agreement will be charged to the C.I.P. project account which is reimbursable by the grant. The proposed contract amount is fully budgeted within the project budget.

ATTACHMENTS:

- Attachment 1 – Tabulation of Bids
- Attachment 2 – Julian Tree Care Bid Package
- Attachment 3 – Contract Services Agreement
- Attachment 4 – January 23, 2024 Staff Report

Respectfully Submitted,

John Guertin
City Manager

Owner: CITY OF DEL REY OAKS
 Project: FIRE PREVENTION PROGRAM
 WORK MEMORIAL PARK

Bid Opening: January 11, 2024 11:00 AM

TABULATION OF BIDS



Description	Qty. / Unit	Community Tree Service Royal Oaks, CA Amount	Julian Tree Care Richmond, CA Amount	Rodriguez Tree Service Salinas, CA Amount	Topes Tree Service Pacific Grove, CA Amount
AREA 1 Create shaded fuel break condition, thin from below to reduce horizontal and vertical continuity of fuels within greenbelt area along northside of Via Verde from Canyon Del Rey Blvd to 996 Via Verde	Lump Sum	\$27,579.00	\$65,000.00	\$85,000.00	\$95,000.00
AREA 2 Create shaded fuel break condition, thin from below to reduce horizontal and vertical continuity of fuels within Work Memorial Park for the area along Rosita Rd and Angelus Way	Lump Sum	\$26,625.00	\$39,000.00	\$50,000.00	\$32,000.00
AREA 3 Create shaded fuel break condition, thin from below to reduce horizontal and vertical continuity of fuels within Work Memorial Park for the area along the southside of Canyon Del Rey from Hana Gardens to Safeway grocery store	Lump Sum	\$3,721.00	\$30,000.00	\$25,000.00	\$25,000.00
AREA 4 Create shaded fuel break condition, thin from below to reduce horizontal and vertical continuity of fuels along southside of Canyon Del Rey Blvd from City Hall to front entrance of Del Rey Park	Lump Sum	\$3,145.00	\$20,000.00	\$10,000.00	\$25,000.00
GRAND TOTAL:		\$61,070.00	\$154,000.00	\$170,000.00	\$177,000.00

PROPOSAL TO THE CITY OF DEL REY OAKS, CALIFORNIA

**FIRE PREVENTION PROGRAM
WORK MEMORIAL PARK**

NAME OF BIDDER Julian Cabrera
BUSINESS ADDRESS 561 Juliga Woods St Richmond CA 94804
PLACE OF RESIDENCE 561 Juliga Woods St Richmond CA 94804

GENERAL DESCRIPTION

The construction referred to herein is in the City of Del Rey Oaks, Monterey County, California, located within the corporate limits of the City of Del Rey Oaks, and is to be performed in accordance with the Special Provisions, Technical Specifications and the Contract annexed hereto and in accordance with the applicable sections of the 2015 Standard Specifications of the State of California, Department of Transportation.

TO THE CITY COUNCIL:

The undersigned, as bidder, declares that the only person or parties interested in this proposal as principals are those named herein; that this proposal is made without collusion with any other person, firm, or corporation; that he has carefully examined the location of the proposed work, the annexed proposed form of contract, and the plans therein referred to; and he proposes and agrees if this proposal is accepted, that he will contract with the City of Del Rey Oaks in the form of the copy of the contract annexed hereto, to provide all necessary machinery, tools, apparatus and other means of construction and to do all the work and furnish all the materials specified in the contract, in the manner and time therein prescribed, and according to the requirements of the Public Works Supervisor as therein set forth and that he will take in full payment there fore the following unit prices, to wit:



CITY OF DEL REY OAKS

BIDDING SCHEDULE

**FIRE PREVENTION PROGRAM
WORK MEMORIAL PARK**

AREA 1

Create shaded fuel break condition, thin from below to reduce horizontal and vertical continuity of fuels within greenbelt area along northside of Via Verde from Canyon Del Rey Blvd to 996 Via Verde

Work generally includes but not limited to:

- Mastication of shrubs and weeds
- Remove fallen, diseased, dead and hazardous trees
- Remove ivy and poison oak or any ladder fuel from live trees
- Haul and dispose of wood
- Install Silt Fence for sediment control along creek

Lump Sum Cost \$ 65,000

AREA 2

Create shaded fuel break condition, thin from below to reduce horizontal and vertical continuity of fuels within Work Memorial Park for the area along Rosita Rd. and Angelus Way

Work generally includes but not limited to:

- Mastication of shrubs and weeds
- Remove fallen, diseased, dead and hazardous trees
- Remove ivy and poison oak or any ladder fuel from live trees
- Haul and dispose of wood
- Install Silt Fence for sediment control along creek

Lump Sum Cost \$ 39,000

CITY OF DEL REY OAKS

BIDDING SCHEDULE

**FIRE PREVENTION PROGRAM
WORK MEMORIAL PARK**

AREA 3

Create shaded fuel break condition, thin from below to reduce horizontal and vertical continuity of fuels within Work Memorial Park for the area along the southside of Canyon Del Rey from Hana Gardens to Safeway Grocery store

Work generally includes but not limited to:

- Mastication of shrubs and weeds
- Remove fallen, diseased, dead and hazardous trees
- Remove ivy and poison oak or any ladder fuel from live trees
- Haul and dispose of wood

Lump Sum Cost \$ 30,000

AREA 4

Create shaded fuel break condition, thin from below to reduce horizontal and vertical continuity of fuels along southside of Canyon Del Rey Blvd. from City Hall to front entrance of Del Rey Park

Work generally includes but not limited to:

- Remove fallen diseased and dead trees
- Haul and dispose of wood

Lump Sum Cost \$ 20,000

TOTAL: \$ 154,000

Low bid will be based on the total amount.

In case of discrepancy between the unit prices and the extended amounts, unit prices shall prevail.

The quantities as set forth under the foregoing items are approximate only. The undersigned agrees that these quantities may be increased or decreased, or the relative amounts of the various items varied, without claim for damage, or loss of anticipated profit.

The undersigned has examined the location of the proposed work and is familiar with the Special Provisions, Technical Specifications and the local conditions at the place where the work is to be done. The undersigned has checked all the above figures and understands that the City will not be responsible for any errors or omissions on the part of the undersigned in making up this proposal.

The undersigned understands that the City reserves the right to reject any and all bids and to waive any informalities in bids received and may at its option make the award that in the judgment of the City is to the best interest of the City. Award of contract will be to the lowest responsible bidder.

It is agreed that this proposal may not be withdrawn within a period of **thirty (30) days** after the date set for the opening thereof.

Enclosed herein is a (bidder's bond, certified check, cashier's check) for the sum of One hundred and sixty thousand dollars being not less than ten (10) percent of the total amount of this proposal and the undersigned agrees that, in case of his default in executing the contract and the necessary bonds after award and due notice thereof, the said check or bond and the money payable thereon shall become and remain the property of the City as liquidated damages without proof of actual loss.

Attached hereto is a true and correct statement of Contractor's Subcontractors proposed to be used on the proposed public work.

Licensed in accordance with an act providing for the registration of Contractor,

License No.: 1009796

Name of Business: Julian Tree Care Inc

Full Legal Name of Licensee: Julian Cabrera

Organized as (check one)

Individual

Partnership

Corporation

Other: Describe _____

SIGN HERE

By

Julian C

Name and Title

BIDDER'S STATEMENT OF SUBCONTRACTORS

The undersigned submits herewith a list of subcontractors whom he proposes to employ on the work, with the proper firm name and business address of each.

N/A

Firm Name

Principal Name

Address

Portion of Work

Firm Name

Principal Name

Address

Portion of Work

Firm Name

Principal Name

Address

Portion of Work

Signed



WORK EXPERIENCE HISTORY

Work Experience History:

Job Name Midpeninsula Regional OpenSpace District
Owner Arianna Compton
Engineer/Representative Arianna Compton
Bid Cost 232,300 Date of Completion phase 1 12/1/23
Location 5050 El Camino Los Altos, CA 94022
Description of Work Tree removal, installation wattles strawbale, chipping

Work Experience History:

Job Name San Mateo Resource Conservation District
Owner Celieen Viehweg
Engineer/Representative Celieen Viehweg
Bid Cost 106,635.92 Date of Completion 10/30/23
Location Inew years Creek road, Pescadero CA 94060
Description of Work Trimming, Removal, Mastication

Work Experience History:

Job Name City of Richmond
Owner Mark Maltagliati
Engineer/Representative Mark Maltagliati
Bid Cost Plus 250,000 Date of Completion 05/20/15 - present
Location Various locations
Description of Work tree trimming, stump grinding, tree removal

BIDDER'S BOND

Bond No.
Pending

For: City of Del Rey Oaks
Monterey County, California

KNOW ALL MEN BY THESE PRESENTS,
THAT WE Julian Tree Care, Inc.

AS PRINCIPAL, and

The Ohio Casualty Insurance Company

AS SURETY,

are held and firmly bound unto the City of Del Rey Oaks, hereinafter called the City, in the penal sum of TEN PER CENT (10%) of the TOTAL AMOUNT OF THE BID of the Principal above named, submitted by said principal to the City of Del Rey Oaks, Monterey County, California, for the work described below, for the payment of which sum in lawful money of the United States, as well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents. In no case shall the liability of the surety hereunder exceed the sum of ten percent (10%) of the total amount of the bid.

THE CONDITION OF THIS OBLIGATION IS SUCH

that whereas the Principal has submitted the above-mentioned bid to the City of Del Rey Oaks for certain construction specifically described as follows, for which the bids are to be opened at City Hall - 650 Canyon Del Rey Boulevard, Del Rey Oaks California,
11:00am January 11, 2024, for Fire Prevention Program Work Memorial Park

(insert date of bid opening)

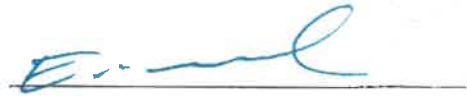
Canyon Del Rey Blvd to via north Rosita Rd and Angelus Way, Haul Grading to Sift and grocery store, City hall to Del Rey park. Remove trees, Haul wood, mastication, remove log and install Silt Fence.

(COPY HERE THE EXACT DESCRIPTION OF WORK INCLUDING LOCATION, AS IT APPEARS ON THE PROPOSAL)

NOW, THEREFORE, if the aforesaid Principal is awarded the contract and, within the time and manner required under the specifications, after the prescribed forms are presented to him for signature, enters into a written contract in the prescribed form, in accordance with the bid, then this obligation shall be null and void; otherwise, it shall be and remain in full force and virtue.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the surety shall pay all costs incurred by the Obligee in such suit, including a reasonable attorney's fee to be fixed by the court.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this eight day of January A.D.



BY: The Ohio Casualty Insurance Company



Julian Tree Care, Inc.
Principal

Acknowledgment in a Representative Capacity

State of OREGON

County of Douglas

This record was acknowledged before me on (date) January 4, 20 24

by (name(s) of individual(s)) ERIC VERKOTEREN as

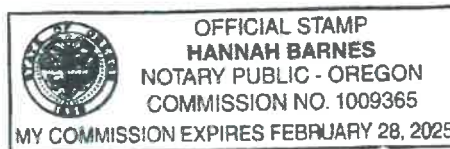
(type of authority) Attorney in Fact of (name of party on whose behalf

record was executed) The Ohio Casualty Insurance Company

H. Barnes

Notary Public - State of Oregon

Official Stamp



Document Description

This certificate is attached to page 2 of a Bidders Bond (title or

type of document), dated January 4, 20 24, consisting of 2 pages.



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8210042-992782

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Kevin Harvey, Eric Verkouteren

all of the city of Ten Mile state of OR each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 1st day of May, 2023.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

State of PENNSYLVANIA ss
County of MONTGOMERY

On this 1st day of May, 2023 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By: Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 4 day of January 2024



By: Renee C. Llewellyn, Assistant Secretary

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.

CITY OF DEL REY OAKS
AGREEMENT FOR FIRE PREVENTION PROGRAM
WORK MEMORIAL PARK PROJECT

THIS AGREEMENT (“Agreement”) is executed this _____, by and between the CITY OF DEL REY OAKS, a municipal corporation, (hereinafter “City”), and Julian Tree Care, (hereinafter “Contractor”), each of which is referred to herein as a “party,” and collectively referred to herein as the “parties”.

RECITALS

WHEREAS, the City wishes to engage Contractor to perform the services required by this Agreement as City does not have the capability to perform such work; and

WHEREAS, Contractor is customarily engaged in the business of providing the services required herein and is willing to provide such services on the following terms and conditions; and

WHEREAS, Contractor represents it is specially trained, experienced, and competent to perform the services required by this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the terms and conditions herein contained, the parties hereby covenant and agree as follows:

1. SERVICES

A. **Scope of Services.** Contractor agrees to provide to the City, as the scope of services under this Agreement, the services described in “Proposal” attached hereto and incorporated herein as Exhibit “A”.

B. **Amendment of Services.** The parties may make changes to the scope of services as defined in Section 1.A above. The parties shall agree in writing prior to commencement of any such changes.

2. COMPENSATION

A. **Total Fee.** The City agrees to pay and Contractor agrees to accept as full and fair consideration for the performance of this Agreement \$154,000.00. If the City determines the services set forth in the written invoice have not been performed in accordance with the terms of this Agreement, the City shall not be responsible for payment until the services have been satisfactorily performed.

B. **Invoicing.** Contractor shall submit written invoices to the City. Contractor’s invoices shall include a brief description of services performed.

3. AGREEMENT TERM

A. **Term.** The work under this Agreement shall commence on _____.

B. **Timely Work.** Contractor shall perform all services in a timely fashion. Failure to perform shall be deemed a material breach of this Agreement, and the City may terminate this Agreement with no further liability hereunder, or may authorize, in writing, an extension of time to the Agreement.

4. INDEPENDENT CONTRACTOR

A. **Independent Contractor.**

i. Contractor is an independent contractor. This Agreement does not create the relationship of employer and employee, a partnership, or a joint venture.

ii. No offer or obligation of permanent employment with the City or particular City department or agency is intended in any manner, and Contractor shall not become entitled by virtue of this Agreement to receive from the City any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. Contractor shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of Contractor's performance of services under this Agreement. In connection therewith, Contractor shall defend, indemnify and hold the City harmless from any and all liability, which the City may incur because of Contractor's failure to pay such taxes.

B. **Not an Agent of the City.** Nothing in this Agreement shall be interpreted so as to render the City the agent, employer, or partner of Contractor, or the employer of anyone working for or subcontracted by Contractor, and Contractor must not do anything that would result in anyone working for or subcontracted by Contractor being considered an employee of the City. Contractor is not, and must not claim to be, an agent of the City.

5. REPRESENTATIVES AND COMMUNICATIONS

A. **City's Representative.** The City appoints the individual named below as the City's contact person for the purposes of this Agreement.

Name: John Guertin
Title: City Manager
Address: 650 Canyon Del Rey Blvd. Del Rey Oaks, CA 93940
Telephone: (831) 394-8511

B. **Contractor's Representative.** Contractor appoints the person named below as its contract person for the purposes of this Agreement.

Name: _____
Title: _____
Address: _____
Telephone: _____

C. **Communications and Notices.** Any notice, report, or other document that either party may be required or may wish to give to the other must be in writing, unless otherwise provided for, and shall be deemed to be validly given to and received by the addressee, if delivered personally,

on the date of such personal delivery, if delivered by email, on the date of transmission, or if by mail, seven (7) calendar days after posting.

6. INDEMNIFICATION

Contractor hereby agrees to the following indemnification clause:

To the fullest extent permitted by law Contractor shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, designated agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against claims, loss, cost, damage, injury expense and liability (including incidental and consequential damages, court costs, reasonable attorneys' fees, litigation expenses and fees of experts, consultants or expert witnesses incurred in connection therewith and costs of investigation) to the extent they arise out of, pertain to, or relate to, the negligence, recklessness, or willful misconduct of Contractor, anyone directly or indirectly employed by Contractor, or anyone Contractor controls (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in part by the gross negligence or willful misconduct of such Indemnitee.

7. INSURANCE

Contractor shall submit and maintain in full force all insurance as described herein. Without altering or limiting Contractor's duty to indemnify, Contractor shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

A. Commercial General Liability Insurance including but not limited to premises, personal injuries, bodily injuries, property damage, products, and completed operations, with a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

B. Automobile Liability Insurance covering all automobiles, including owned, leased, non-owned, and hired automobiles, used in providing services under this Agreement, with a combined single limit of not less than \$1,000,000 per occurrence.

C. Workers' Compensation Insurance. If Contractor employs others in the performance of this Agreement, Contractor shall maintain Workers' Compensation insurance in accordance with California Labor Code section 3700 and with a minimum of \$1,000,000 per occurrence.

D. Other Insurance Requirements:

- i. The City shall be a named additional insured on Contractor's policy.
- ii. All insurance required under this Agreement must be written by an insurance company either:
 1. admitted to do business in California with a current A.M. Best rating of no less than A:VI;
 - or
 2. an insurance company with a current A.M. Best rating of no less than A:VII.

iii. Prior to the start of work under this Agreement, Contractor shall file certificates of insurance and endorsements evidencing the coverage required by this Agreement with the City Manager. Contractor shall file a new or amended certificate of insurance promptly after any change is made in any insurance policy that would alter the information on the certificate then on file, including, without limitation, the amount of coverages or the term of coverages.

iv. Neither the insurance requirements hereunder, nor acceptance or approval of Contractor's insurance, nor whether any claims are covered under any insurance, shall in any way modify or change Contractor's obligations under the indemnification clause in this Agreement, which shall continue in full force and effect. Notwithstanding the insurance requirements contained herein, Contractor is financially liable for its indemnity obligations under this Agreement.

v. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

8. PERFORMANCE STANDARDS

A. Contractor warrants that Contractor and Contractor's employees performing services under this Agreement are specially trained and experienced to perform the services described herein.

B. Contractor and its employees shall perform all services in a safe and skillful manner consistent with the highest standards of care, diligence and skill ordinarily exercised by professionals in similar fields. All services performed under this Agreement that are required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

C. Contractor shall furnish, at its own expense, all materials, equipment and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. Contractor shall not use the City premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement, the RFP, or Contractor's Estimate.

D. Contractor agrees to perform all work under this Agreement to the satisfaction of City and as specified herein. The City Manager or his or her designee shall perform an evaluation of the work. If the quality of work is not satisfactory, City in its discretion may meet with Contractor to review the quality of work and resolve the matters of concern.

9. CITY INFORMATION AND RESOURCES

A. **City Resources.** The City acknowledges that Contractor's ability to provide services in accordance with this Agreement may be dependent on the City providing available information and resources in a prompt and timely manner as reasonably required by Contractor. To the extent that the City fails to provide City resources, Contractor shall not be liable for any resulting delay in services, but in no event shall such delay or failure to provide City resources constitute a breach of this Agreement by the City, nor shall Contractor be entitled to extra compensation for same.

B. **Obligations of Contractor.** No reviews, approvals, or inspections carried out or supplied by the City shall derogate from the duties and obligations of Contractor, and all responsibility related to performance of services shall be and remain with Contractor.

10. OWNERSHIP AND USE OF MATERIALS

A. **Ownership of the Materials.** All data, studies, reports, calculations, field notes, sketches, designs, drawings, plans, specifications, cost estimates, manuals, correspondence, agendas, minutes, notes, audio-visual materials, photographs, models, software data, computer software (if purchased on the City's behalf) and other documents or products produced by Contractor under this Agreement (collectively, "the Materials") are and shall remain the property of the City even though Contractor or another party may have physical possession of them or a portion thereof. Contractor hereby waives, in favor of the City, any moral rights Contractor, its employees, vendors, successors or assignees may have in the Materials. Contractor agrees that all copyrights, which arise from creation of the work or services pursuant to this Agreement, shall be vested in the City and waives and relinquishes all claims to copyright or intellectual property rights in favor of the City.

B. **Delivery and Use of the Materials.** All Materials shall be transferred and delivered by Contractor to the City without further compensation following the expiration or sooner termination of this Agreement, provided that the City may, at any time prior to the expiration or earlier termination of this Agreement, give written notice to Contractor requesting delivery by Contractor to the City of all or any part of the Materials in which event Contractor shall forthwith comply with such request. The Materials created electronically must be submitted in a format and medium acceptable to the City. The Materials may be used by the City in any manner for the intended purpose or as part of its operations associated with the Materials.

11. DISPUTE RESOLUTION

The City Manager and Contractor shall make reasonable efforts to resolve any dispute by amicable negotiations and shall provide frank, candid, and timely disclosure of all relevant facts, information, and documents to facilitate negotiations.

If all or any portion of a Dispute cannot be resolved by good faith negotiations as set forth above within thirty (30) days either party may, by notice to the other party, submit the dispute for formal mediation to a mediator selected mutually by the parties. The cost of the mediation (including fees of mediators) shall be borne equally by the parties, and each party shall bear its own costs of participating in mediation. The mediation shall take place within the Monterey County.

Should either party not be satisfied with the outcome of the mediation, the matter may be submitted to a court of competent jurisdiction.

All claims by Contractor against the City for money or damages must comply with the Government Claims Act (California Government Code Sections 810 *et seq.*)

12. TERMINATION OF AGREEMENT

A. **Termination for Cause or Default.** The City reserves the right to immediately terminate this Agreement, in whole or in part, if Contractor defaults or fails to deliver the services in accordance with the terms and conditions of this Agreement. Such termination shall be in writing, shall set forth the effective date of termination, and may be issued without any prior notice. Without limitation, Contractor is in default of its obligations contained in this Agreement if Contractor:

- i. Fails to perform the required services within the term and/or in the manner provided under this Agreement;
- ii. Fails to observe or comply with the City's reasonable instructions;
- iii. Otherwise violates any provision of this Agreement.

13. LEGAL ACTION / VENUE

Should either party to this Agreement bring legal action against the other, the validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California, excluding California's choice of law rules. Venue for any such action relating to this Agreement shall be in the Monterey County Superior Court.

14. MISCELLANEOUS PROVISIONS

A. **Non-discrimination.** During the performance of this Agreement, Contractor shall not unlawfully discriminate against any person because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, either in Contractor's employment practices or in the furnishing of services to recipients.

B. **Acceptance of Services Not a Release.** Acceptance by the City of services to be performed under this Agreement does not operate as a release of Contractor from professional responsibility for the services performed.

C. **Headings.** The headings appearing herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of this Agreement. The headings are for convenience only.

D. **Entire Agreement.** This Agreement, including the Exhibits attached hereto, constitute the entire agreement between the parties hereto with respect to the terms, conditions, and services and supersedes any and all prior proposals, understandings, communications, representations and agreements, whether oral or written, relating to the subject matter thereof pursuant to Section 1B, "Amendment of Services". Any amendment to this Agreement will be effective only if it is in writing signed by both parties hereto and shall prevail over any other provision of this Agreement in the event of inconsistency between them.

E. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and may be signed in counterparts, but all of which together shall constitute one and the same Agreement.

F. **Multiple Copies of Agreement.** Multiple copies of this Agreement may be executed, but the parties agree that the Agreement on file in the office of the City's City Clerk is the version of the Agreement that shall take precedence should any difference exist among counterparts of this Agreement.

G. **Authority.** Any individual executing this Agreement on behalf of the City or Contractor represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.

H. **Severability.** If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability and indemnities shall survive termination of the Agreement for any cause. If a part of the Agreement is valid, all valid parts that are severable from the invalid part remain in effect. If a part of this Agreement is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

I. **Non-exclusive Agreement.** This Agreement is non-exclusive and both the City and Contractor expressly reserve the right to enter into agreements with other Contractors for the same or similar services, or may have its own employees perform the same or similar services.

J. **Assignment of Interest.** The duties under this Agreement shall not be assignable, delegable, or transferable without the prior written consent of the City. Any such purported assignment, delegation, or transfer shall constitute a material breach of this Agreement upon which the City may terminate this Agreement and be entitled to damages.

K. **Laws.** Contractor agrees that in the performance of this Agreement it will reasonably comply with all applicable federal, state and local laws and regulations. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the City of Del Rey Oaks.

L. **Exhibits.** The following Exhibit is incorporated herein by reference as if fully set forth: Exhibit A, Proposal from Julian Tree Care.

IN WITNESS WHEREOF, the parties enter into this Agreement on the day and year first above written in Del Rey Oaks, California.

CITY OF DEL REY OAKS

CONTRACTOR

John Guertin,
City Manager
Date: _____

Printed name
Date: _____



CITY OF DEL REY OAKS

Staff Report

DATE: January 23, 2024

TO: Honorable Mayor and Members of City Council

FROM: John Guertin, City Manager

SUBJECT: Award of Contract for the Calfire Grant Funded Fire Prevention Project to Community Tree Service

CEQA: The project is categorically exempt from the California Environmental Quality Act (CEQA) Guidelines Sections, Section 15304 (i) Minor Alteration to Land – Fuel management activities within 30 to 100 feet of structures to reduce the volume of flammable vegetation, provided that the activities will not result in the taking of endangered, rare, or threatened plant or animal species or significant erosion and sedimentation of surface waters. The understory fuel reduction is a minor alteration to land that involves fuel management activities within 30 to 100 feet of structures.

Recommendation

It is recommended that the City Council:

1. Approve the Award of a Contract to Community Tree Service in the amount of \$61,070 for the Del Rey Oaks Fire Prevention Program (Work Memorial Park) Project; and
2. Authorize the City Manager to approve additional expenditures up to \$12,214 (20% of the agreement value) in contract contingencies for potential additional services and unanticipated work that may arise, for a total amount not-to-exceed \$73,284; and
3. Authorize the City Manager to sign and execute the contract services agreement and potential future amendments to the agreement within the designated contingency amount, on behalf of the City Council.

Background

On February 28, 2023, the City Council approved Resolution #2023-01 authorizing the filing of an application for "California Climate Investment Fire Prevention Grant Program", for the Del Rey Oaks Fire Prevention Program. On September 29, 2023, the City was awarded \$317,931.90 in grant funding for the project.

The project is expected to reduce fire fuels along Work Memorial Park (from Via Verde to Fremont Blvd). The Treatment Influence Zone is approximately 41 acres in area, including proximity to over 300 homes. The project area is located near Highway 68 and the former Fort Ord, both of which are designated as high fire threat areas according to the Monterey County Community Wildfire Protection Plan.

Summary & Discussion

The bid opening for the Fuel Reduction contractor occurred on January 11, 2024. Four (4) bids were received (Tabulation of Bids – Attachment 1). Community Tree Services was the lowest responsive bidder. Although Community's bid is significantly lower than the other three received,

staff has confirmed with their management that they can perform the required services for the amount bid. Additionally, staff have contacted references for Community and are confident in their abilities to address the grant scope.

The project includes fire fuel clearing with hand crews and mechanical abatement depending on slope, accessibility, and density. An estimated 41 acres based on surface area will be treated. Community Tree Services intends to start mobilizing in early Spring. The target sites contain some of the heaviest areas of fine fuels, trees, shrubs and non-native vegetation. In addition, these areas are near residences, high intensity power lines, and community facilities including City Hall, parks, and churches. The fuel biomass in these areas contributes to increased fuel load and potential fire. By removal of hazardous fuels, a reduction in the frequency and intensity of wildfires will be realized along with a reduction in GHG emissions.

Fiscal Impacts

The City has received the Grant Agreement (5GG22134) from the State of California CAL FIRE Program. The total amount of the grant is \$317,931.90. Within this amount the Fuel Reduction Treatment portion allocated is \$297,300. Expenses for this agreement will be charged to the C.I.P. project account which is reimbursable by the grant. The proposed contract amount is fully budgeted within the project budget.

ATTACHMENTS:

- Attachment 1 – Tabulation of Bids
- Attachment 2 – Community Tree Services Bid Package
- Attachment 3 – Contract Services Agreement

Respectfully Submitted,

John Guertin
City Manager