

**ACTION SHEET
CITY COUNCIL MEETING OF 01/28/09
ITEM FROM FINANCE COMMITTEE MEETING OF 01/20/09**

ISSUE:

8. BID OPENINGS:

B. BID NO. 09/21/B – EAST DE VARGAS PARK RENOVATION AND AGREEMENT BETWEEN OWNER AND CONTRACTOR; WESTWIND LANDSCAPE CONSTRUCTION, INC. (BEN GURULE)

FINANCE COMMITTEE ACTION: APPROVED AS CONSENT ITEM

Requested approval of Bid No. 09/21/B for East DeVargas park renovation and agreement between owner and contractor with Westwind Landscape Construction, Inc. in the amount of \$203,105.82. Budget is available in project fund.

SPECIAL CONDITIONS OR AMENDMENTS:

STAFF FOLLOW UP:

VOTE:	FOR	AGAINST	ABSTAIN
COUNCILOR WURZBURGER			
COUNCILOR CALVERT			
COUNCILOR CHAVEZ			
COUNCILOR DOMINGUEZ			
CHAIRPERSON ORTIZ			

DISK fc1/fcmissue

**ACTION SHEET
ITEM FROM THE
PUBLIC WORKS/CIP AND LAND USE COMMITTEE MEETING
OF
MONDAY, JANUARY 12, 2009**

ITEM 12

CIP PROJECT #489 – EAST DE VARGAS PARK – RENOVATION

- REQUEST FOR APPROVAL OF AWARD OF BID 09/21/B AND AGREEMENT BETWEEN OWNER AND CONTRACTOR TO WESTWIND LANDSCAPE CONSTRUCTION INC. IN THE AMOUNT OF \$203,105.82 (BEN GURULE)

PUBLIC WORKS COMMITTEE ACTION: Approved on consent

SPECIAL CONDITIONS OR AMENDMENTS:

STAFF FOLLOW UP:

VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON BUSHEE			
COUNCILOR CALVERT	X		
COUNCILOR CHAVEZ	X		
COUNCILOR ROMERO	X		
COUNCILOR TRUJILLO	X		

City of Santa Fe, New Mexico

memo

DATE: January 12, 2009

TO: Public Works, CIP & Land Use Committee

VIA: Robert Romero, Public Works Department Director *HR*
Chris Ortega, Engineering Division Director *CO*
Martin Valdez, Community Facilities Section Manager *MV*
Fabian Chavez, Parks, Trails & Water Shed Division Director *FC*

FROM: Ben Gurule, Project Administrator *BG*

ISSUE:

CIP Project #489 – East de Vargas Park Renovation

- Request approval to Award Bid #09/21/B and Agreement between Owner and Contractor (ABOC) to Westwind Landscape Construction Inc. (\$203,105.82) for renovations to East de Vargas Park.

SUMMARY:

On December 11, 2008 the Purchasing Office received three (3) bids for the aforementioned project. The Bid Results are as follows:

Westwind Landscape Construction, Inc.		
Albuquerque	Base Bid Plus Tax	\$203,105.82
Lee Landscapes		
Albuquerque	Base Bid Plus Tax	\$248,904.68
AIC General Contractor, Inc.		
Albuquerque	Base Bid Plus Tax	\$259,670.64

The Public Works Department has reviewed the low bid and determined that the low bidder, Westwind Landscape Contractors understands the complete scope of the work and has submitted a qualified bid.

Memo Page 2
PW, CIP & LU Committee
January 12, 2009
Re: East de Vargas Park Renovations
Award of Bid #09/21/B

The Public Works Department is recommending approval to Award Bid #09/21/B and ABOC (Exhibit A) in the amount of \$203,105.82 (inclusive of applicable Gross Receipts Taxes) to Westwind Landscape Contractors.

The Scope of Work is consistent with the Parks Master Plan approved by the City Council on November 14, 2007 (Please refer to Exhibit B).

Schedule

Finance Committee	January 21, 2009
City Council	January 28, 2009
Notice-to-Proceed	February 02, 2009
Estimated Construction Timeline (60 days)	February – April 2009

Budget

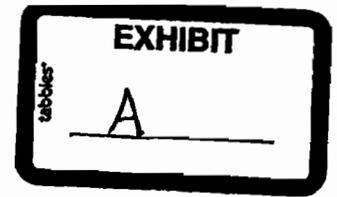
Funds in the amount of \$512,000 are available from the Parks (Master Plan) Bond Initiative approved in March 2008 - (Business Unit #32312.572970). \$256,000 is earmarked (reserved) for West de Vargas Park.

ACTION:

Please recommend to the Finance Committee approval to Award Bid #09/21/B and Contract in the amount of \$203,105.82 to Westwind Landscape Contractors.

Attachments:	Exhibit A:	Agreement between Owner and Contractor
	Exhibit B:	Scope of Work Description
	Exhibit C:	Summary of Contracts

xc/Shirley Rodriguez, Purchasing
Project File



CITY OF SANTA FE
CAPITAL IMPROVEMENTS PROGRAM

AGREEMENT BETWEEN
OWNER AND CONTRACTOR

CIP PROJECT #489
EAST DE VARGAS PARK RENOVATION

This Agreement is entered into this _____ day of _____, 2009 by and between the CITY OF SANTA FE, herein known as the Owner, and WESTWIND LANDSCAPE CONSTRUCTION, INC. herein known as the Contractor.

For the following:

PROJECT: EAST DE VARGAS PARK RENOVATION
PROJECT NO.: 489
ARCHITECT OF RECORD: SITES SOUTHWEST, LLC
121 TIJERAS NE, SUITE 3100
ALBUQUERQUE, NM 87102

DISTRIBUTION:

OWNER _____
CONTRACTOR _____
ARCHITECT _____
USER AGENCY _____
OTHER _____

RECITALS

WHEREAS, the Owner, through its Governing Body, is authorized to enter into a construction Contract for the project; and

WHEREAS, the Owner has let this Contract according to the established State and Local Purchasing procedures for contracts of the type and amount let; and

WHEREAS, construction of this Project was approved by the Governing Body of the City of Santa Fe at its meeting of _____ 2009.

The OWNER and the CONTRACTOR agree:

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of: this Agreement, the Conditions of the Contract (General, Supplementary, and other Conditions), the Drawings, the Specifications, all Addenda issued prior to and all Modifications issued after execution of this Agreement. These documents form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein.

ARTICLE 2 THE WORK

The Contractor shall perform all the work required by the Contract Documents for CIP Project #489 – East de Vargas Park Renovation (Bid # '09/21/B).

ARTICLE 3 TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The work to be performed under this Contract shall be commenced not later than ten (10) consecutive calendar days after the date of written Notice to Proceed. Substantial Completion shall be achieved no later than sixty (60) calendar days after the date of written Notice to Proceed, except as hereafter extended by valid written Change Order by the Owner.

ARTICLE 4 TERM POSSESSION

The project site, all the work and materials and equipment to be incorporated therein including storage off or on site shall be under the sole custody or control of the Contractor or any of Subcontractors or Sub-subcontractors throughout the duration of the Contract Time and until issuance of the Substantial Completion Certificate.

ARTICLE 5
CONTRACT SUM

The Owner shall pay the Contractor in current funds for the performance of the work, subject to additions and deductions by Change Order as provided in the Contract Documents, the Contract Sum of two hundred three thousand, one hundred five dollars and eighty two cents (\$203,105.82).

The Contract Sum is determined as follows:

Base Bid	\$188,169.84
Gross Receipts Tax (7.9375%)	<u>14,935.98</u>
TOTAL	\$203,105.82

ARTICLE 6
PROGRESS PAYMENTS

Based upon Application for Payment submitted to the Owner by the Contractor and Certificates for Payment issued by the Owner, the Owner shall make progress payments on account of the Contract sum to the Contractor as provided in the Contract documents for the period ending the last day of the month as follows:

Not later than twenty-one (21) days following the end of the period covered by the Application for Payment, ninety five (95%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the work and ninety five percent (95%) of the portion of the Contract sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment, less the aggregate of previous payments made by the Owner; and upon substantial completion of the entire work, a sum sufficient to increase the total payments to ninety eight percent (98%) of the Contract sum, less such amounts as the Owner shall determine for all incomplete work and unsettled claims as provided in the Contract documents.

ARTICLE 7
LIQUIDATED DAMAGES

Should the Contractor neglect, refuse, or otherwise fail to complete the work within the Contract Time or any extension in the Contract thereof, the Contractor agrees to pay to the Owner the amount of Two Hundred Fifty Dollars (\$250) per consecutive calendar days of delay until the work is completed and accepted or until voided pursuant to the provisions of the General Conditions of the Contract, not as a penalty, but as liquidated damages for such breach of the Contract.

ARTICLE 8
FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract sum, shall be paid by the Owner to the Contractor within twenty-one (21) calendar days after all deficiencies to the Contract document that were noted during the Substantial Completion Inspection and listed on the attachment to the Certificate of Substantial Completion have been corrected, and provided the Contract has been fully performed and a final Certificate for Payment has been issued by the Owner. In addition, the Contractor shall provide to the Owner a certified

statement of Release of Lien (AIA Document G706A or approved form), Consent of Surety, Warranty from Prime Contractor, Warranties from Suppliers and Manufacturers, training sessions, equipment/operating manuals, and as-built drawings.

ARTICLE 9
SCHEDULE

The Contractor shall, within five (5) days after the effective date of Notice to Proceed, prepare and submit five (5) copies of a progress schedule covering project operations for the (30) day Contract period. This progress schedule shall be of the type generally referred to as a Critical Path Method (CPM), Critical Path Schedule (CPS), and Critical Path Analysis (CPA), and other similar designations. The CPM shall be used to control the timing and sequences of the project. All work shall be done in accordance with the CPM Planning and Scheduling. A written statement of explanation shall be submitted with the progress schedule. All costs incurred by the contractor to implement the CPM shall be borne by the Contractor, and are part of their Contract (See Article 4.10, Progress Schedules of Section 00700, General Conditions of the Contract).

ARTICLE 10
GENERAL AND SPECIAL PROVISIONS

- 10.1 This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of New Mexico as the same from time to time exist.
- 10.2 Terms used in this Agreement which are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.
- 10.3 The Contractor shall defend, indemnify, and hold harmless the Owner against any and all injury, loss, or damage, including, without limitation, costs of defense, court costs and attorney's fees, arising out of the acts, errors, or omissions of the Contractor.
- 10.4 An enumeration of the Contractor's Liability Insurance requirements appears in the General Conditions of the Contract for construction. Insurance requirements are also described in the Instructions to the Bidder section of the Project Manual. Contractor shall maintain adequate insurance in at least the maximum amounts which the Owner could be liable under the New Mexico Tort Claims Act and shall provide proof of such insurance coverage to the City. It is the sole responsibility of the Contractor to be in compliance with the law.
- 10.5 This Agreement shall not become effective until: (1) approved by the Governing Body; and (2) signed by all parties required to sign this Agreement.
- 10.6 The Contractor and the Contractor's agents and employees are independent contractors performing professional and technical services for the Owner and are not employees of the Owner. The Contractor and the Contractor's agents and employees shall not accrue leave, retirement, insurance, bonding, use of Owner's vehicles, or any other benefits afforded to employees of the Owner as a result of this Agreement.
- 10.7 The Contractor shall not subcontract any portion of the services to be performed under this Agreement without prior written approval of the Owner.

- 10.8 The Contractor shall maintain detailed time records which indicate the date, time and nature of services rendered. These records shall be subject to inspection by the Owner, the Department of Finance and Administration and the State Auditor. The Owner shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Owner to recover excessive illegal payments.
- 10.9 The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Owner for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Owner, this Agreement shall terminate upon written notice being given by the Owner to the Contractor. The Owner's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.
- 10.10 The Contractor warrants that the Contractor presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under this Agreement.
- 10.11 The Contractor hereby warrants that the Contractor is in compliance with the Americans with Disabilities Act, 29 CFR 1630.
- 10.12 The Contractor, upon final payment of the amounts due under this Agreement, releases the Owner, the Owner's officers and employees, and the City of Santa Fe from all liabilities and obligations arising from or under this Agreement, including, without limitation, all damages, losses, costs, liability, and expenses, including, without limitation, attorney's fees and costs of litigation that the Contractor may have.
- 10.13 The Contractor agrees not to purport to bind the Owner to any obligation not assumed herein by the Owner, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.
- 10.14 Notices. Any and all notices provided for hereunder shall be in writing and shall be deemed delivered, given and received when (i) personally delivered, or (ii) 5 days after the same are deposited in the United States mail, postage prepaid, registered or certified mail return receipt requested, addressed to the applicable party at the address indicated below for such party or at such other address as may be designated by either party in a written note to the other party.

OWNER
City of Santa Fe
Engineering Division
P.O. Box 909
Santa Fe, New Mexico 87504-0909

CONTRACTOR
Westwind Landscaping Construction, Inc.
2739 Vassar Place NE
Albuquerque, NM 87107
New Mexico License #032209

- 10.15 **Gender, Singular/Plural.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.
- 10.16 **Captions and Section Headings.** The captions and section headings contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope and conditions of this Agreement.
- 10.17 This document shall be executed in no less than three (3) counterparts, each of which shall be deemed an original.
- 10.18 **Certificates and Documents Incorporated.** All certificates and documentation required by the provisions of the Agreement shall be attached to this Agreement at the time of execution, and are hereby incorporated by reference as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.
- 10.19 **Separability.** If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.
- 10.20 **Waiver.** No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by the party making the waiver and addressed to the other party; nor shall any custom or practice which may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of either party to insist upon the performance by the other party in strict accordance with the terms hereof. Further, the waiver by any party of breach by the other party of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.
- 10.21 **Entire Agreement.** This Agreement represents the entire Contract between the parties and except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this Contract, and all such conditions, understandings, and agreements have been merged into this written Agreement. No prior conditions, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Agreement.
- 10.22 **Interchangeable Terms.** For purposes of all provisions within this Agreement and all attachments hereto, the terms "Agreement" and "Contract" shall have the same meaning and shall be interchangeable.
- 10.23 **Words and Phrases.** Words, phrases, and abbreviations which have well-known technical or trade meanings used in the Contract documents shall be used according to such recognized meaning. In the event of a conflict, the more stringent meaning shall govern.
- 10.24 **Relationship of Contract Documents.** The Contract Documents are complementary, and any requirement of one Contract Document shall be as binding as if required by all.

- 10.25 Pursuant to Section 13-1-191, NMSA 1978, reference is hereby made to the Criminal Laws of New Mexico (including Sections 30-14-1, 30-24-2, and 30-41-1 through 30-41-3, NMSA 1978) which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code (Sections 13-1-28 through 13-1-199, NMSA 1978) imposes civil and criminal penalties for its violation.
- 10.26 By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the Owner and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.
- 10.27 Pursuant to Section 13-4-11. NMSA 1978, Reference is hereby made to the Minimum Wage on Public Works; weekly payments; posting wage scale; withholding funds.

ARTICLE 11
NEW MEXICO TORT CLAIMS ACT

By entering into this Agreement, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et Seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

This Agreement is entered into as of the day and year first written above.

OWNER: CITY OF SANTA FE

DAVID COSS, MAYOR

DATE

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

CONTRACTOR:

BY: _____
RICHARD G. BROWN

TITLE: VICE PRESIDENT

DATE: _____

NM TAXATION AND REVENUE CRS
NO. 02-174276006

CITY OF SANTA FE BUSINESS REG.
NO. 08- 00032656

APPROVED AS TO FORM:



FRANK D. KATZ, CITY ATTORNEY

APPROVED:

DAVID N. MILLICAN, FINANCE
DEPARTMENT DIRECTOR



October 2007

De Vargas Park West/East	Capital Improvement Costs
Council District 2 Acreage 2.93	

Master Plan - Central - Page 8

Continue the River Trail through both parts of this park - The best place to site the trail is in the space left by the narrowing of Alameda Street. Assume 1460 if 8'-wide paved trail at \$175/lf.	255,500.00
Assure safe bicycle crossing at all streets - Engineering	?
Install Drinking Fountain in both parts of the park	7,000.00
Restore a working acequia through both parts of the park from the acequia at the State Land Office to Our Lady of Guadalupe Church - 10,000.00 to restore acequia - unknow costs for water rights.	10,000.00
Sub-tota	272,500.00
Design & Inflation Contingencies @ 25%	68,125.00
Total:	340,625.00

2007 Park Assessment Needs

Parks Advisory Committee Recommendation - Adequate

Currently under contract with Sites SW for landscape design & ADA Requirements. A final construction costs estimates will be provided at a later date.	12,000.00
Upgrade Irrigation System to ICC Control System	500,000.00 will cover renovation & construction costs.
Renovate Park Pathways	
Renovate Retainer Walls	
Plant vegetation	
Upgrade Backflow Preventer with Hot Box	
Install (2) New Water Fountain	
Replace Parking Lot Security Lighting	
Repair Small Punch Bowl w/drain	
Reseed entire Park 87,120 SF	
Repair Ramada	
Plant (10) Trees	
Sub-tota	512,000.00
Total:	512,000.00



Minimum

ADA Compliance to Pathways and Hardscapes	150,000.00
Sub-tota	150,000.00
Design & Inflation Contingencies @ 25%	37,500.00
Total:	187,500.00





**City of Santa Fe
Summary of Contracts, Agreements, & Amendments**

Section to be completed by department for each contract or contract amendment

1 FOR: ORIGINAL CONTRACT or CONTRACT AMENDMENT

2 Name of Contractor Westwind Landscape Construction, Inc.

3 Complete information requested Plus GRT
 Inclusive of GR

Original Contract Amount: \$203,105.82

Termination Date: May 5, 2009

Approved by Council Date: _____

or by City Manager Date: _____

Contract is for:

Amendment # _____ to the Original Contract# _____

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: _____

Approved by Council Date: _____

or by City Manager Date: _____

Amendment is for:

4 History of Contract & Amendments: (option: attach spreadsheet if multiple amendments) Plus GRT

Inclusive of

Amount \$ 203,105.82 of original Contract# _____ Termination Date: 05/05/2009

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: \$ 203,105.82



City of Santa Fe
Summary of Contracts, Agreements, & Amendments

5 Procurement Method of Original Contract: (complete one of the lines)

RFP# RFB #09/21/B Date: December 11, 2008

RFQ [] Date:

Sole Source [] Date:

Other

6 Procurement History: single project contract
example: (First year of 4 year contract)

7 Funding Source: Parks Master Plan Bond BU/Line Item: 32312.57297

8 Any out-of-the ordinary or unusual issues or concerns:
(Memo may be attached to explain detail.)

9 Staff Contact who completed this form: Frank M. Archuleta
Phone # -6766

10 Certificate of Insurance attached. (if original Contract) []

Submit to City Attorney for review/signature
Forward to Finance Director for review/signature
Return to originating Department for Committee(s) review or forward to City Manager for review
and approval (depending on dollar level).

To be recorded by City Clerk:

Contract #

Date of contract Executed (i.e., signed by all parties):

Note: If further information needs to be included, attach a separate memo.

Comments: