

AMENDMENT NO. 1
FOR
CONTRACT SERVICES AGREEMENT FOR

PROJECT NO. BP-06310

**BIG LEAGUE DREAMS
BASEBALL FACILITY CONSTRUCTION**

THIS CONTRACT SERVICES AGREEMENT (herein "Agreement"), is herein *AMENDED* and entered into this 9th day of August, 2006 by and between the CITY OF WEST COVINA, a municipal corporation, (herein "City") and MALLCRAFT, INC. (herein "Contractor"). The parties hereto agree as follows:

R E C I T A L S

A. City desires to identify and consider cost reduction measures (herein "VE Measures") in consideration to the construction of the **BIG LEAGUE DREAMS BASEBALL FACILITY CONSTRUCTION – PROJECT NO. BP-06310**. Contractor has represented to City that Contractor is qualified to perform said VE Measures services and will prepare and submit VE Measures proposal to City for same.

B. City desires to have Contractor perform said services on the terms and conditions set forth in the Agreement executed 29th day of June 2006.

NOW, THEREFORE, based on the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, City and Contractor hereby agree as follows:

Amendment 1. VE Measures

- 1.1 SCOPE OF SERVICES – In compliance with all terms and conditions of this Agreement, the Contractor shall provide VE Measures as specified in accordance with State Specifications – Section 5-1.14 Cost Reduction Incentives and as modified herein.
- 1.2 STATE SPECIFICATIONS - SECTION 5-1.14 shall be modified as follows and hereby incorporated into the Agreement: CONTRACTOR hereby acknowledges and accepts these modifications and affixes initials and date to these modifications.
- 1.3 INTEGRATION; AMENDMENT - IT IS UNDERSTOOD THAT THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES HERETO AFFECTING THIS AMENDMENT AND THE AGREEMENT ALONG WITH THIS AMENDMENT SUPERSEDES AND CANCELS ANY AND ALL PREVIOUS NEGOTIATIONS, ARRANGEMENTS, AGREEMENTS AND UNDERSTANDINGS, IF ANY, BETWEEN THE PARTIES, AND NONE SHALL BE USED TO INTERPRET THIS AGREEMENT.

5-1.14 COST REDUCTION INCENTIVE

. The Contractor may submit to the Engineer, in writing, proposals for modifying the plans, specifications or other requirements of the contract for the sole purpose of reducing the total cost of construction. The cost reduction proposal shall not impair, in any manner, the essential functions or characteristics of the project, including but not limited to service life, economy of operation, ease of maintenance, desired appearance, or design and safety standards.

. Cost reduction proposals shall contain the following information:

1. A description of both the existing contract requirements for performing the work and the proposed changes.
2. An itemization of the contract requirements that must be changed if the proposal is adopted.
3. A detailed estimate of the cost of performing the work under the existing contract and under the proposed change. The estimates of cost shall be determined in the same manner as if the work were to be paid for on a force account basis as provided in Section 9-1.03, "Force Account Payment."
4. A statement of the time within which the Engineer must make a decision thereon.
5. The contract items of work affected by the proposed changes, including any quantity variation attributable thereto.

. The provisions of this Section 5-1.14 shall not be construed to require the Engineer to consider any cost reduction proposal which may be submitted hereunder; proposed changes in basic design of a bridge or of a pavement type will not be considered as an acceptable cost reduction proposal; and the Department will not be liable to the Contractor for failure to accept or act upon any cost reduction proposal submitted pursuant to this section nor for any delays to the work attributable to any cost reduction proposal. If a cost reduction proposal is similar to a change in the plans or specifications, under consideration by the Department for the project, at the time the proposal is submitted or if the proposal is based upon or similar to Standard Specifications, standard special provisions or Standard Plans adopted by the Department after the advertisement for the contract, the Engineer will not accept the proposal, and the Department reserves the right to make the changes without compensation to the Contractor under the provisions of this section.

. The Contractor shall continue to perform the work in accordance with the requirements of the contract until an executed change order, incorporating the cost reduction proposal has been issued. If an executed change order has not been issued by the date upon which the Contractor's cost reduction proposal specifies that a decision thereon should be made, or such other date as the Contractor may subsequently have specified in writing, the cost reduction proposal shall be deemed rejected.

. The Engineer shall be the sole judge of the acceptability of a cost reduction proposal and of the estimated net savings in construction costs from the adoption of all or any part of the proposal. In determining the estimated net savings, the right is reserved to disregard the contract bid prices if in the judgment of the Engineer, those prices do not represent a fair measure of the value of work to be performed or to be deleted.

. The Department reserves the right where it deems such action appropriate, to require the Contractor to share in the Department's costs of investigating a cost reduction proposal submitted by the Contractor as a condition of considering the proposal. Where this condition is imposed, the Contractor shall indicate acceptance thereof in writing, and that acceptance shall constitute full authority for the Department to deduct amounts payable to the Department from any moneys due or that may become due to the Contractor under the contract.

. If the Contractor's cost reduction proposal is accepted in whole or in part the acceptance will be by a contract change order, which shall specifically state that it is executed pursuant to this Section 5-1.14. The change order shall incorporate the changes in the plans and specifications which are necessary to permit the cost reduction proposal or that part of it as has been accepted to be put into effect, and shall include any conditions upon which the Department's approval thereof is based if the approval of the Department is conditional. The change order shall also set forth the estimated net savings in construction costs attributable to the cost reduction proposal effectuated by the change order, and shall further provide that the Contractor be paid 40 ~~50~~ percent of that estimated net savings amount. The Contractor's cost of preparing the cost reduction incentive proposal and the Department's costs of investigating a cost reduction incentive proposal, including any portion thereof paid by the Contractor, shall be INCLUDED ~~excluded from~~ consideration in determining the estimated net savings in construction costs.

REH Blidex

Initials/Date

STANDARD SPECIFICATIONS SECTION 5

CONTROL OF WORK

- Acceptance of the cost reduction proposal and performance of the work thereunder shall not extend the time of completion of the contract unless specifically provided for in the contract change order authorizing the use of the cost reduction proposal.
- The amount specified to be paid to the Contractor in the change order which effectuates a cost reduction proposal shall constitute full compensation to the Contractor for the cost reduction proposal and the performance of the work thereof pursuant to the change order.
- The Department expressly reserves the right to adopt a cost reduction proposal for general use on contracts administered by the Department when it determines that the proposal is suitable for application to other contracts. When an accepted cost reduction proposal is adopted for general use, only the Contractor who first submitted that proposal will be eligible for compensation pursuant to this section, and in that case, only as to those contracts awarded to that Contractor prior to submission of the accepted cost reduction proposal and as to which the cost reduction proposal is also submitted and accepted. Cost reduction proposals identical or similar to previously submitted proposals will be eligible for consideration and compensation under the provisions of this Section 5-1.14 if the identical or similar previously submitted proposals were not adopted for general application to other contracts administered by the Department. Subject to the provisions contained herein, the State or any other public agency shall have the right to use all or any part of any submitted cost reduction proposal without obligation or compensation of any kind to the Contractor.
- This Section 5-1.14 of the specifications shall apply only to contracts awarded to the lowest bidder pursuant to competitive bidding.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first written above.

ATTEST:

By: Suzanne Russ, Assistant
City Clerk

CITY OF WEST COVINA,
a municipal corporation
By: [Signature]
Public Works Director/City Engineer

APPROVED AS TO FORM:

/s/Arnold M. Alvarez-Glasman
City Attorney

CONTRACTOR:

By: L.E. Hansen
(Print)

By: _____
(Print)

Signature: [Signature]

Signature: _____

Title: President

Title: _____

Address: _____

Address: _____

MALLCRAFT, INC.
2225 N. Windsor Avenue
Altadena, CA 91001