

CITY OF GARDEN GROVE

INTER-DEPARTMENT MEMORANDUM

To:	Matthew J. Fertal	From:	Keith G. Jones
Dept:	City Manager	Dept:	Public Works
Subject:	RECOMMENDATION TO AWARD CONTRACT FOR PLAY EQUIPMENT INSTALLATION AND SURFACING REPAIR AT FAYLANE PARK	Date:	April 13, 2010

OBJECTIVE

To receive City Council approval to award Ortco Inc., the contract for the installation of play equipment and surfacing repair at Faylane Park.

BACKGROUND

In 2009 a portion of the play structure and surfacing at Faylane Park were destroyed in a fire started by vandals. Playground equipment has been purchased to repair the structure. Quotes for the replacement of structure components and repair of surfacing have been obtained.

ANALYSIS

Staff followed the requirements of the California Public Contract Code in advertising and soliciting bids for the 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:

Ortco Inc. 2163 N. Glassell Ave. Orange, CA 92865	\$9,950.40
Linnert Builders 1675 N Shaffer St. Orange, Ca 92867	\$13,003.09
R.E. Schultz P.O. Box 6 Silverado, CA	\$13,220.00

RECOMMENDATION TO AWARD
CONTRACT FOR PLAY EQUIPMENT
INSTALLATION AND SURFACING
REPAIR AT FAYLANE PARK
April 13, 2010
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Ortco Inc. submitted the lowest responsive bid for the replacement of the playground equipment and the repair of rubber surfacing. Staff has checked the references of Ortco Inc. and found them to be satisfactory.

FINANCIAL IMPACT

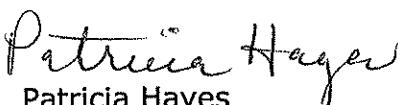
The cost of the replacement of playground equipment and repair of the surfacing is \$9,950.40. The installation will be paid from Park Improvement Funds (Fund 081). There is no impact to the General Fund.

RECOMMENDATION

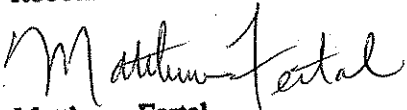
It is recommended that the City Council:

- Award the contract for the replacement of playground equipment and repair of surfacing at Faylane Park to Ortco Inc. in the amount of \$9,950.00.
- 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 Fertal
City Manager

Attachment: Agreement with Ortco Inc.

CONSTRUCTION CONTRACT
(under \$30,000.00)

THIS AGREEMENT is made this _____ day of _____, 2010, by the **CITY OF GARDEN GROVE**, a municipal corporation, ("CITY") and **Ortco, Inc.**, here in after referred to as "CONTRACTOR".

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Garden Grove COUNCIL AUTHORIZATION, DATED _____.
2. CITY desires to utilize the services of CONTRACTOR to **Provide all Labor, Materials, and Equipment for the Removal and Installation of playground equipment (supplied by the City) and rubberized surfacing at Faylane Park located at 11700 Seacrest Drive, Garden Grove, CA.**
3. CONTRACTOR is qualified by virtue of experience, training, education and expertise to accomplish services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term and Termination.** The term of the agreement shall be for period of **thirty (30) calendar days from full execution** of the agreement or completion of the project which ever occurs first. This agreement may be terminated by the CITY without cause. In such event, the CITY will compensate CONTRACTOR for work performed to date in accordance with fee schedule (Attachment "A"). Contractor is required to present evidence to support performed work completion.
2. **Services to be Provided.** The services to be performed by CONTRACTOR shall consist of tasks as set forth in the Proposal. The Proposal is incorporated herein by reference. The Proposal and this Agreement do not guarantee any specific amount of work.
3. **Compensation.** CONTRACTOR shall be compensated as follows:
 - 3.1 **AMOUNT.** Compensation under this agreement shall be the Not To Exceed (NTE) amount of Nine Thousand Nine Hundred Fifty Dollars and 40/100 (\$9,950.40), in arrears and in accordance with proposal in Attachment A.

- 3.2 Payment. For work under this Agreement, payment shall be made per invoice for work completed. For extra work not a part of this Agreement, a written authorization by CITY will be required, and payment shall be based on schedule included in Proposal (Attachment A).
- 3.3 Records of Expenses. CONTRACTOR shall keep complete and accurate records of all costs and expenses incidental to services covered by this Agreement. These records will be made available at reasonable times to CITY.
- 3.4 Termination. CITY shall have the right to terminate this agreement, without cause, by giving thirty (30) days written notice of termination. If the Agreement is terminated by CITY, then the provisions of paragraph 3 would apply to that portion of the work completed.

4. Insurance requirements.

- 4.1 COMMENCEMENT OF WORK. CONTRACTOR shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the CITY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the CITY of any material change, cancellation, or termination at least thirty (30) days in advance.
- 4.2 WORKERS COMPENSATION INSURANCE. During the duration of this Agreement, CONTRACTOR and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable.
- 4.3 INSURANCE AMOUNTS. CONTRACTOR shall maintain the following insurance for the duration of this Agreement:
- (a) Commercial general liability in an amount of \$1,000,000.00 per occurrence: **claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A- Class VII or better, as approved by the CITY.
 - (b) Automobile liability in an amount of \$1,000,000.00 per occurrence: **claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.

An **On-Going and Completed Operations Additional Insured Endorsement** for the policy under section 4.3 (a) shall designate CITY, it's officers, officials, employees, agents, and volunteers 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 4.3 (b) shall designate CITY, it's officers, officials, employees, agents, and volunteers 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 CITY, it's officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, it's officers, officials, employees, agents, and volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

5. **Non-Liability of Officials and Employees of the City.** No official or employee of CITY shall be personally liable to CONTRACTOR in the event of any default or breach by CITY, or for any amount which may become due to CONTRACTOR.
6. **Non-Discrimination.** CONTRACTOR covenants there shall be no discrimination against any person or group due to race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.
7. **Independent Contractor.** It is agreed to that CONTRACTOR shall act and be an independent contractor and not an agent or employee of the CITY, and shall obtain no rights to any benefits which accrue to CITY'S employees.
8. **Compliance with Law.** CONTRACTOR shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

9. **Notices.** All notices shall be personally delivered or mailed to the below listed address, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process.
- a. (Contractor)
Ortco, Inc.
2163 N. Glassell Avenue
Orange, CA 92865
 - b. (Address of City) (with a copy to):
City of Garden Grove Garden Grove City Attorney
11222 Acacia Parkway 11222 Acacia Parkway
Garden Grove, CA 92840 Garden Grove, CA 92840
10. **CONTRACTOR'S PROPOSAL.** This Agreement shall include CONTRACTOR'S proposal or bid which shall be incorporated herein by reference. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.
11. **Licenses, Permits, and Fees.** At its sole expense, CONTRACTOR shall obtain a Garden Grove Business License, all permits, and licenses as may be required by this Agreement.
12. **Familiarity with Work.** By executing this Agreement, CONTRACTOR warrants that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the facilities, difficulties, and restrictions of the work under this Agreement. Should Contractor discover any latent or unknown conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY of this and shall not proceed, except at CONTRACTOR'S risk, until written instructions are received from CITY.
13. **Time of Essence.** Time is of the essence in the performance of this Agreement.
14. **Limitations Upon Subcontracting and Assignment.** The experience, knowledge, capability, and reputation of CONTRACTOR, its principals and employees were a substantial inducement for CITY to enter into this Agreement. CONTRACTOR shall not contract with any other entity to perform the services required without written approval of the CITY. This Agreement may not be assigned voluntarily or by operation of law, without the prior written approval of CITY. If CONTRACTOR is permitted to subcontract any part of this Agreement, CONTRACTOR shall be responsible to CITY for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and CITY. All persons engaged in the work will be

considered employees of CONTRACTOR. CITY will deal directly with and will make all payments to CONTRACTOR.

15. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.

16. **Prevailing Wages.** The CITY has been advised that the Prevailing Wages Law applies to the work. CONTRACTOR shall be responsible for CONTRACTOR's compliance in all respects with the prevailing wage rates to all the laborers involved, and with California Labor Code Section 1770 et seq., including the keeping of all records required by the provisions of Labor Code Section 1776 and the implementing administrative regulations. The CITY shall be a third party beneficiary of the forgoing covenant with rights to enforce the same as against the CONTRACTOR.

17. **Indemnification.** CONTRACTOR agrees to protect, defend, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with performance of the Agreement by CONTRACTOR, CONTRACTOR'S agents, officers, employees, subcontractors, or independent contractors hired by CONTRACTOR. The only exception to CONTRACTOR'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence of CITY, or any of its elective or appointive boards, officers, agents, or employees.

This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR.

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(Agreement Signature Block On Next Page)

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

Date: _____

**"CITY"
CITY OF GARDEN GROVE**

By: _____
City Manager

ATTESTED:

City Clerk

Date: _____

**"CONTRACTOR"
Ortco, Inc.**

By: 

Name: Lynn Alan ORTCO

Title: President

Date: 3/23/10

Tax ID No. 33-0494654

Contractor's License: 657695

Expiration Date: 10/31/10

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

APPROVED AS TO FORM:


Garden Grove City Attorney

3/30/2010
Date

ATTACHMENT "A"

ORTCO, INC.

License #657695
 2163 N. Glassell Ave.
 Orange, CA 92865
 714-998-3998
 714-998-3996 fax
 patty@ortcoplays.com

QUOTE

DATE	QUOTE #
3/4/2010	2010-89

NAME / ADDRESS
CITY OF GARDEN GROVE P.O. BOX 3070 GARDEN GROVE, CA 92842

PROJECT
FAYLANE PARK

ITEM	DESCRIPTION	QTY	COST	TOTAL
DEMO	DEMO OF EXISTING RUBBER AND REPAIR BASE AS NEEDED	536	1.90	1,018.40
DEMO	DEMO OF EXISTING EQUIPMENT	1	500.00	500.00
INSTALL	INSTALLATION OF PLAY & PARK STRUCTURE EQUIPMENT-SUPPLIED BY CITY	1	2,000.00	2,000.00
RUBBER EX	<p>PROVIDE AND INSTALL 50% COLOR/50% BLACK SPECTRAPOUR PLAYGROUND SURFACING PER PLANS AND SPECIFICATIONS. SURFACING TO BE INSTALLED PER SPECS AT A 3" THICKNESS PAD TO MEET CPSC STANDARDS AND ASTM F 1292-04 FOR IMPACT ATTENUATION. SPECTRAPOUR IS AN I.P.E.M.A. CERTIFIED MANUFACTURER. PRICE IS FOR RUBBER SURFACING AND INSTALLATION ONLY AND EXCLUDES SITEWORK, SUB-BASE MATERIALS, ASPHALT, CONCRETE, BORDERS, CURBS, SUB-BASE AND COMPACTION.</p> <p>SQUARE FOOTAGES ARE ESTIMATED BASED UPON DRAWINGS SUBMITTED TO ORTCO, INC.. ACTUAL AREAS TO BE SURFACED FREQUENTLY VARY, THEREFORE ESTIMATE IS PRICED ON A PRICE/S.F. BASIS. PERIMETERS WHICH REQUIRE A TURNED-DOWN EDGE ALSO REQUIRE ADDITIONAL SQUARE FEET OF SURFACING AND WILL BE INCLUDED INTO NET AREA. FINAL BILLING SHALL REFLECT ACTUAL AREA SURFACED (NET AREA SURFACED), INCLUDING TURNED-DOWN EDGES. ORTCO, INC. IS A CERTIFIED SPECTRAPOUR INSTALLER.</p> <p>530 SF= 50% BLACK/25% GREEN/25% TAN; 6 SF=50% BLACK/50% GREEN=== TO MATCH EXISTING AS CLOSE AS POSSIBLE</p> <p>TEMPORARY FENCE INCLUDED PREVAILING WAGE INCLUDED</p>	536	12.00	6,432.00
UPON ACCEPTANCE OF THIS QUOTE, PLEASE SIGN AND FAX TO 714-998-3996. THANK YOU				TOTAL \$9,950.40

SIGNATURE _____