



County of Santa Cruz

GENERAL SERVICES DEPARTMENT

701 OCEAN STREET, SUITE 330, SANTA CRUZ, CA 95060-4073
 (831) 454-2210 FAX: (831) 454-2710 TDD: (831) 454-2123

BOB WATSON, DIRECTOR

June 7, 2002

AGENDA: June 25, 2002

Board of Supervisors
 County of Santa Cruz
 701 Ocean Street
 Santa Cruz, CA 95060

Recommendation of Award: Polo Grounds County Park Interim Dog Park, #01C1-016

Members of the Board:

At your June 4, 2002 Board meeting, bids were received for the Polo Grounds County Park Interim Dog Park Project. Your Board directed the General Services Department to review bids and return on or before June 25, 2002 with a recommendation of award.

As directed, the bids received for this project have been reviewed. During our bid review process, we determined that the apparent low bidder, Markowitz Construction, does not have a valid contractor's license in place at this time. This information has been verified with the State Contractor's Licensing Board. Therefore we have determined this bid to be non-responsive. After a review of the next lowest bid, we are confident that Bustichi Construction, Inc., with a bid of \$28,288, can accomplish the work to the County's satisfaction. Sufficient funds are available in Budget Indices 192140 and 192141 and Sub Object 6610, including a ten (10) per cent contingency.

On a separate but related item on your Board's Agenda today, your approval is being requested by the Parks Department for action which will complete the financing for this project.

It is therefore RECOMMENDED that your Board:

1. Award a contract to Bustichi Construction, Inc., in the amount of \$28,288 for the Polo Grounds County Park Interim Dog Park.
2. Authorize the Parks Director to notify the contractor and sign the contract agreements and associated documents on behalf of your Board; and
3. Authorize the Parks Director to approve change orders and encumber \$2,829 in addition to the contract amount to cover change order expenditures, as required.

Very truly yours,

BOB WATSON
 General Services Director

Very truly yours:

BARRY SAMUEL
 Director, Parks, Open Space and Cultural Services

RECOMMENDED:

SUSAN MAURIELLO

cc: Auditor-Controller, General Services Department, Parks, Open Space & Cultural Services, Bustichi Construction Inc. Attachments: ADM-29; Agreement

P:\Shared\Project Files\2001 Projects\01c1-016 Polo Grounds County Park Interim Dog Park\ROA Bustichi.doc

COUNTY OF SANTA CRUZ REQUEST FOR APPROVAL OF AGREEMENT

TO: Board of Supervisors
County Administrative Office
Auditor Controller

FROM: General Services Parks (Department)
BY: [Signature] (Signature) (Date)
Signature certifies that appropriations/revenues are available

AGREEMENT TYPE (Check One) Expenditure Agreement Revenue Agreement

The Board of Supervisors is hereby requested to approve the attached agreement and authorize the execution of same.

1. Said agreement is between the Parks, Open Spaces & Cultural Services (Department/Agency)
and Bustichi Construction, Inc., 48 Mt. Hermon Road, Scotts Valley, CA 95066 (Name/Address)

2. The agreement will provide contractor Services in connection with the Polo Grounds County
Park Interum Dog Park Project, #01c1-016

3. Period of the agreement is from June 75 2002 to project completion

4. Anticipated Cost is \$ 31,117 Fixed Monthly Rate Annual Rate Not to Exceed
contractor bid of \$28,288 plus contingency of \$2,829

5. Detail: On Continuing Agreements List for FY _____ Page CC-_____ Contract No: _____ OR 1st Time Agreement
 Section II No Board letter required, will be listed under Item 8
 Section III Board letter required
 Section IV Revenue Agreement

\$29,302 + \$1815 = \$31,117

6. Appropriations/Revenues are available and are budgeted in 192140 and 192141 (Index) 6610 (Sub object)
Fd 21-125-140 21-160-141

NOTE: IF APPROPRIATIONS ARE INSUFFICIENT, ATTACHED COMPLETED AUD-74 OR AUD-60

Appropriations are available and will be encumbered.
are not available and will be encumbered.

Contract No: 12810

By: [Signature]
Auditor-Controller Deputy

Date: 06/12/02

SUBJECT TO AUD 74/60

Proposal and accounting detail reviewed and approved. It is recommended that the Board of Supervisors approve the agreement and authorize
General S (Dept/Agency Head) to execute on behalf of the County (Department/Agency)

Date: 6/17/02

By: [Signature]
County Administrative Office

Distribution:

Board of Supervisors - White
Auditor Controller - Canary
Auditor-Controller - Pink
Department - Gold

State of California
County of Santa Cruz

_____ ex-officio Clerk of the Board of Supervisors of the County of Santa Cruz,
State of California, do hereby certify that the foregoing request for approval of agreement was ap-
proved by said Board of Supervisors as recommended by the County Administrative Office by an
order duly entered in the minutes of said Board on _____ 20__

ADM - 29 (8/01)
Title I, Section 300 Proc Man

By: Deputy Clerk

AUDITOR-CONTROLLER USE ONLY

CO _____ \$ _____
Document No. JE Amount Lines H/TL Keyed By Date

TC110
29 Auditor Description \$ _____ / _____
Amount Index Sub object User Code

GENERAL SERVICES DEPARTMENT
COUNTY OF SANTA CRUZ
STATE OF CALIFORNIA

CONTRACT No. _____

THIS AGREEMENT is entered into, this 25th day of June, 2002 by and between the COUNTY OF SANTA CRUZ, hereinafter called COUNTY, and Bustichi Construction, Inc. hereinafter called CONTRACTOR.

ARTICLE I. WITNESSETH, WHEREAS, the Board of Supervisors of said County has awarded a Contract to Contractor for performing the work hereinafter mentioned in accordance with the sealed proposal of said Contractor. NOW, THEREFORE, it is agreed as follows:

CONTRACTOR agrees with COUNTY, at the Contractor's own proper cost and expense, to do all the work and furnish all the labor, materials, equipment, and all utility and transportation services necessary to construct and complete in a good, professional and substantial manner and to the satisfaction of the COUNTY, the Polo Grounds County Park Interim Dog Park project in Santa Cruz County, in accordance with the Notice to Bidders, specifications and plans, special provisions, and bidder's proposal; the items and quantities of which are more particularly set forth in the Contractor's Proposal, therfor, on file in the Office of the County Clerk.

The Contractor shall begin the work within ten (10) calendar days after receiving the "Notice to Proceed" and shall diligently prosecute the same to completion before the expiration of 60 calendar days from the date of said "Notice to Proceed."

The work to be done is shown upon plans entitled "Polo Grounds County Park Interim Don Park", approved May 21, 2002, which said project plans are hereby made a part of this contract.

ARTICLE II. COUNTY hereby promises and agrees with CONTRACTOR to employ, and does hereby employ, CONTRACTOR to provide the materials and to do the work according to the terms and conditions herein contained. The said parties for themselves, their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained.

ARTICLE III. The statement of prevailing wages appearing in the General Prevailing Wage Rates is hereby specifically referred to and by this reference is made a part of this contract. It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the bid or proposal of said CONTRACTOR, then this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

ARTICLE IV. CONTRACTOR and COUNTY have reviewed and considered the principal test and secondary factors below and agree the CONTRACTOR is an independent contractor and not an employee of COUNTY. CONTRACTOR is responsible for all insurance (workers compensation, unemployment, etc.) and all payroll related taxes. By my signature hereunder, as CONTRACTOR, I certify that I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract. CONTRACTOR is not entitled to any employee benefits. COUNTY agrees that CONTRACTOR shall have the right to control the manner and means of accomplishing the result contracted for herein.

Principal Test: The CONTRACTOR rather than COUNTY has the right to control the manner and means **of** accomplishing the result contracted for.

Secondary Factors: (a) The extent of control which, by agreement, COUNTY may exercise over the details of the work is slight rather than substantial; (b) CONTRACTOR is engaged in a distinct occupation or business; (c) In the locality, the work to be done by CONTRACTOR is usually done by a specialist without supervision, rather than under the direction **of** an employer; (d) the skill required in the particular occupation is substantial rather than slight; (e) The CONTRACTOR rather than the COUNTY supplies the instrumentalities, tools and workplace; (f) The length of time for which CONTRACTOR is engaged is of limited duration rather than indefinite; (g) The method of payment of CONTRACTOR is by the job rather than by the time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of COUNTY; (i) CONTRACTOR and COUNTY believe they are creating an independent contractor relationship rather than an employer-employee relationship; and (j) the COUNTY conducts public business.

It is recognized that it is not necessary that all secondary factors support creation of an independent contractor relationship, but rather that overall there are significant secondary factors which indicate that CONTRACTOR is an independent contractor.

ARTICLE V. This Contract shall consist of the following documents, each of which is on file with the Santa Cruz County Clerk of the Board, and all of which are incorporated herein, and made a part of hereof by reference thereto: (a) This Agreement; (b) Guarantees; (c) Notice to Bidders, inviting sealed proposals; (d) Specifications entitled: Polo Grounds County Park Interim Dog Park; (e) Plans entitled: Polo Grounds County Park Interim Dog Park; (f) Bidder's Bond; (g) Accepted Proposal; (h) Performance Bond; (i) Payment Bond; (j) Certificate of Worker's Compensation Insurance; (k) Certificate of General Liability Insurance; (l) Certificate of Auto Liability Insurance.

ARTICLE VI. CONTRACTOR agrees to receive and accept the sum of \$28,288, subject to additions and deductions, as approved by the COUNTY, as full compensation for furnishing all materials and for doing all the work contemplated and embraced in this agreement; also for all loss or damage, arising out of the nature of the work aforesaid, or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the COUNTY, and for all risks of every description connected with the work; also for all expenses incurred by or in consequence of the suspension or discontinuance of work and for well and faithfully completing the work, and the whole thereof, in the manner and according to the plans and specifications, and the requirements of the Engineer.

ARTICLE VII. INDEMNIFICATION FOR DAMAGES. TAXES AND CONTRIBUTIONS.

CONTRACTOR shall exonerate, indemnify, defend, and hold harmless COUNTY (which shall include, without limitation, its officers, agents, employees and volunteers) from and against:

(1) Any and all claims, demands, losses, damages, defense costs, or liability of any kind or nature which COUNTY may sustain or incur or which may be imposed upon it for injury to or death of persons, or damage to property as a result of, arising out of, or in any manner connected with the CONTRACTOR'S performance under the terms of this Agreement, excepting any liability arising out of the sole negligence of the COUNTY. Such indemnification includes any damage to the person(s), or property(ies) of CONTRACTOR and third persons.

(2) Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to CONTRACTOR and CONTRACTOR'S officers, employees, and agents engaged in the performance of this Agreement (including, without limitation, unemployment insurance, social security, and payroll tax withholding.)

ARTICLE VIII. COUNTY CODE SECTION 2.37.107 TROPICAL WOOD Any bid, proposal, or other response to a solicitation for bid or proposal which proposes or calls for the use of any tropical hardwood or wood product in performance of the contract shall be deemed non-responsive. The contractor shall not provide any items in performance of this contract which are tropical hardwoods or tropical hardwood products. The County of Santa Cruz urges companies not to import, purchase, obtain, or use for any purpose, any tropical hardwood or tropical hardwood product. In the event any bidder or contractor fails to comply in good faith with any of the provisions of County Code Section **2.37.107**, the bidder or contractor shall be liable for liquidated damages in an amount equal to the bidder's or contractor's net profit under the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater. The contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the County upon demand and may be set off against any monies due to the bidder or contractor from any contract with the County.

ARTICLE IX. EOUAL EMPLOYMENT OPPORTUNITY. During the performance of this agreement, CONTRACTOR agrees as follows:

(1) During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical disability, medical condition (cancer related), marital status, pregnancy, age (over 18), sex, sexual orientation, veteran's status or any other non-merit factor unrelated to job duties. Contractors and Subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

(2) The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, physical or mental disability, medical condition

(cancer related), marital status, pregnancy, sex, sexual orientation, age (over 18), veteran status, or any other non-merit factor unrelated to job duties.

(3)The contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this contract.

IN WITNESS WHEREOF, COUNTY has caused these presents to be executed by its officers thereunto duly authorized and CONTRACTOR has subscribed same.

BUSTICHI CONSTRUCTION, INC

Date _____ By _____

Address: _____

Phone: _____

Fax: _____

COUNTY OF SANTA CRUZ

Date _____ By _____

ATTEST:

CLERK, BOARD OF SUPERVISORS

Approved as to insurances:

RISK MANAGEMENT

DATE

Approved as to form:

COUNTY COUNSEL

DATE