

CITY OF DANA POINT
AGENDA REPORT

Reviewed By:	
DH	<u>X</u>
CM	<u>X</u>
CA	—

DATE: MAY 1, 2018

TO: CITY MANAGER/CITY COUNCIL

FROM: MIKE ROSE, DIRECTOR OF GENERAL SERVICES

SUBJECT: AWARD OF A CONTRACT FOR THE COMMUNITY CENTER RENOVATION PROJECT 2018

RECOMMENDED ACTION:

That the City Council:

- 1) Award a contract to Optima RPM, Incorporated for the Community Center Renovation Project 2018 (Action Document A).
- 2) Authorize the City Manager or his designee to sign the contract documents and to approve additional expenditures for change orders, contingencies, and other project costs as noted in the Fiscal Impact Section.
- 3) Allocate funds in the net amount of \$642,696.00, including a 10%contingency, in the Facilities Improvement Fund (Fund 12) to pay for the project.

BACKGROUND:

The over 30 year old Dana Point Community and Senior Center has been experiencing the effects of ongoing deferred maintenance and is in need of significant renovation. The existing roof is well beyond its expected functional lifespan and is leaking in several locations. The building interiors, including cabinetry, lighting, and flooring have degraded and are in need of replacement; and the front reception counter needs accessibility accommodations to better serve the community. This project was designed to replace the roof with a new 20-year warranted waterproofing roofing system, and to revitalize the interior community and senior activity spaces with a fresh new look.

DISCUSSION:

A major renovation of the Community and Senior Center has been in a “planning phase” for many years. Last year, a smaller-scale project was completed that included new paint

in the gymnasium, along with new bleachers, a new operable dividing wall, and resurfacing of the gym floor. With this current project, staff is looking to make significant improvements to the other public areas throughout the building. Future potential projects include reutilizing the existing stage area more effectively and renovating the Community Services Staff area. Improvements included in this project can be broken down by area as follows:

1. Entry way and main hallway

The main reception counter will be remodeled to incorporate two heights for accessibility to better serve our diverse community. This will include new counter tops, new roll-up doors, a new reception desk area and cabinetry, and an interactive kiosk for the public to sign up for recreation classes onsite.

The hallway area will also be renovated with a new design that incorporates a warm craftsman style look with a “beach” feel. The new heavy-traffic flooring system includes a two-color epoxy with a wave pattern that extends down the hallway, providing a “water meets the sand” look and feel. Along with the flooring, new paint and LED lighting fixtures will accentuate the new look to our community center.

2. Youth Activity and Dance Room

Room A will get a new multi-purpose wood dance floor, paint, cabinets, window coverings, and LED lighting.

3. Senior Lunch Room

Room B will get a new epoxy floor that will withstand the multi-purpose (repeated set up and tear down) function of this room, paint, cabinets, window coverings, and LED lighting.

4. Senior Center Kitchen

The kitchen will get a new, health code compliant utilitarian epoxy floor, along with paint, ceiling tiles, and LED light fixtures.

5. Senior Center Lounge

The area currently known as the “Senior Lounge” has been an underutilized space for many years. This project will provide new carpet, paint, ceiling tiles, and LED lighting, in addition to some new furniture; this is designed to make this space more “usable” as a multi-purpose area.

6. Arts & Crafts Studio

Room C will get a new epoxy floor that will withstand the multi-purpose (repeated set up and tear down) function of this room, paint, cabinet doors, window coverings, and LED lighting.

7. Building-Wide Improvements

HVAC - The recent Facilities Condition Assessment predicts that the City could spend up to \$400,000 in HVAC costs alone, before the end of 2019. Staff is requesting \$150,000 to replace the oldest, out-of-date and end-of-life HVAC equipment during this project. This will include the following:

- a. Two (2) 4-ton packaged air conditioner and gas furnace systems
- b. One (1) 4-ton packaged rooftop heat pump
- c. Two (2) 4-ton gas heat rooftop package units
- d. Two (2) 12.5-ton packaged gas heat units with economizers
- e. One (1) 7.5 Ton packaged gas heat unit with economizer

This will effectively begin our transition to preventive maintenance and prevent ongoing responsive calls for maintenance service. In future years we will continue to replace the remaining equipment as it ages out of useful life.

Solar Power – The Community Center is equipped with an array of solar cells intended to locally generate clean energy and reduce our dependence on utility power. This solar system will need to be removed in order to complete the roofing project. Staff will direct our contractor to perform a complete evaluation of the system to ensure that it remains as efficient as possible when it is reinstalled.

Project plans and detailed specifications were developed and extensively published for bid in: Dodge Data & Analytics, Ebidboard, The Blue Book Building & Construction Network, and Construction Bid Source. Even with this broad outreach, only one bid for the Community Center Renovation Project was received by the City Clerk's Office and opened on April 5, 2018:

1	Optima RPM, Inc.	\$603,088.00
---	------------------	--------------

The Engineer's Estimate on this project was generated by our contract project manager and was set at \$697,894. This bid was evaluated, and staff has determined that Optima RPM, Inc. qualifies as a responsive/responsible bidder and recommends that a contract (Action Document A) be awarded for the construction of the project in the amount of \$603,088.00. It is important to note that Optima RPM has successfully completed two previous renovation projects at City Hall including the recent Police Services Renovation Project.

FISCAL IMPACT:

Proposed expenditures based upon the Recommended Action for this Project are noted below:

Community Center Renovation Base Construction Costs	\$ 603,088.00
HVAC	\$ 150,000.00
Solar System Removal/Re-installation	\$ 25,000.00
Contingency (10%)	\$ 77,808.00
Contract Project Management	\$ 35,000.00
TOTAL	\$ 890,896.00
Lawsuit Settlement Proceeds	\$(248,200.00)
Net Project Costs	\$ 642,696.00

As noted in the chart above, the City received proceeds from a lawsuit settlement of \$248,200.00 that was restricted for the purpose of offsetting construction costs on specific portions of this project. This project was listed in Fund 12 of the adopted budget. The Council transferred \$2 Million to this fund earlier this fiscal year to begin funding the backlog of deferred maintenance on City facilities. Given that, to remain in compliance with the settlement terms, this project must be completed by November 2018, a budget adjustment of \$890,896.00 is requested for account 12-99-30-0000-3030, with \$642,696.00 from Fund 12 unassigned fund balance and \$248,200 from the lawsuit proceeds.

NOTIFICATION AND FOLLOW-UP:

Optima RPM, Inc.

ALTERNATIVE ACTIONS:

Other Council-directed action.

ACTION DOCUMENTS:

PAGE #

A. [Contract](#) 5

SUPPORTING DOCUMENTS:

None

ACTION DOCUMENT A**CITY OF DANA POINT****CONTRACT AGREEMENT**

FOR

DEL OBISPO COMMUNITY CENTER RENOVATION PROJECT 2018

IN THE CITY OF DANA POINT

This Contract Agreement is made and entered into for the above-stated project this _____ day of _____, 20____, BY AND BETWEEN the City of Dana Point, as AGENCY, and _____, as CONTRACTOR.

WITNESSETH that AGENCY and CONTRACTOR have mutually agreed as follows:

ARTICLE I

The Contract Documents for the aforesaid project shall consist of the Notice Inviting Sealed Bids, Instructions to Bidders, Proposal, General Specifications, Special Provisions, Contract Plans, and all referenced specifications, details, standard drawings, and appendices; together with this Contract Agreement and all required bonds, insurance certificates, permits, notices, and affidavits; and also including any and all addenda or supplemental agreements clarifying, or extending the work contemplated as may be required to ensure its completion in an acceptable manner. All of the provisions of said contract documents are made a part hereof as though fully set forth herein.

ARTICLE II

For and in consideration of the payments and agreements to be made and performed by AGENCY, CONTRACTOR agrees to furnish all materials and perform all work required for the above-stated project, and to fulfill all other obligations as set forth in the aforesaid Contract Documents.

ARTICLE III

CONTRACTOR agrees to receive and accept the prices set forth in the Proposal as full compensation for furnishing all materials, performing all work, and fulfilling all obligations hereunder. Said compensation shall cover all expenses, losses, damages, and consequences arising out of the nature of the work during its progress or prior to its acceptance including those for well and faithfully completing the work and the whole thereof in the manner and time specified in the aforesaid contract documents; and also including those arising from actions of the elements, unforeseen difficulties or obstructions encountered in the prosecution of the work, suspension or discontinuance of the work, and all other unknowns or risks of any description connected with the work. Said compensation shall not exceed \$six hundred and three thousand and eighty-eight dollars (\$603,088), provided that the City Manager or his designee may approve additional payment for change orders per the City Council authorized not-to-exceed contingency amount. The total contract amount includes the alternate bid item amount for Bid Item #111.

ARTICLE IV

AGENCY hereby promises and agrees to employ, and does hereby employ, CONTRACTOR to provide the materials, do the work and fulfill the obligations according to the terms and conditions herein contained and referred to, for the prices aforesaid, and hereby contracts to pay the same at the time, in the manner, and upon the conditions set forth in the Contract Documents.

The CONTRACTOR shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Contract. The CONTRACTOR shall at all times observe and comply with all such laws and regulations. The AGENCY, and its officers, employees, and agents shall not be liable at-law or in-equity occasioned by failure of the CONTRACTOR to comply with this Section.

The CONTRACTOR assures AGENCY that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. §§ 12101 et seq.)

ARTICLE V

CONTRACTOR acknowledges the provisions of the State Labor Code requiring 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 certifies compliance with such provisions.

CONTRACTOR further acknowledges the provisions of the State Labor Code requiring every employer to pay at least the minimum prevailing rate of per diem wages for each craft classification or type of worker needed to execute this Contract as determined by the Director of Labor Relations of the State of California.

Contractors are required to meet provisions of California Senate Bill 584 for the payment of Department of Industrial Relations (DIR) established prevailing wages. This applies to all public projects as defined in California Code 22002 for contracts exceeding \$1,000.00. Contractor's shall register with the DIR in accordance with California Labor Code section 1771.1(a) and 1725.5, and will be subject to compliance monitoring and enforcement by the DIR, subject to section 1771.4. Contractors must submit certified payrolls electronically to DIR. By signing this Contract, Contractor is indicating that they have registered with DIR online at www.dir.ca.gov.

ARTICLE VI

CONTRACTOR hereby agrees to comply with the State Labor Code and acknowledges that, in accordance with Labor Code Section 3700, he/she/it will be required to secure the payment of compensation to his/her/its employees.

ARTICLE VII

CONTRACTOR acknowledges that, in accordance with Labor Code Section 1777.5, he/she/it will be held responsible for compliance with the provisions of this Section for all apprenticeable occupations.

ARTICLE VIII

CONTRACTOR hereby waives for himself/herself/itself and for CONTRACTOR's Subcontractors any right CONTRACTOR may now or in the future possess in relation to this Contract and these Contract Documents and the work thereunder, to utilize the provisions of Civil Code Section 47(b) in any action, proceeding, or prosecution pursuant to California False Claims Act, Government Code Section 12650 *et seq.*

ARTICLE IX

CONTRACTOR acknowledges and agrees that CONTRACTOR must have all appropriate CONTRACTOR's licenses. CONTRACTOR further warrants and represents that he/she/they has/have the appropriate CONTRACTOR's license to pursue the work hereunder. CONTRACTOR's failure to have or maintain all appropriate licenses during the entire term of this Contract, or any period thereof, shall be cause for the immediate and summary termination of this Contract by AGENCY. CONTRACTOR shall be liable for all AGENCY'S costs to complete the work and this Contract.

ARTICLE X

Hazardous Waste or Other Unusual Conditions. If the Contract involves digging trenches or other excavations that extend deeper than four feet (4') below the surface, CONTRACTOR shall promptly, and before the following conditions are distributed, notify AGENCY, in writing, of any:

- A. Hazardous Waste.** Material that CONTRACTOR believes may be material that is hazardous waste (as defined in Health and Safety Code Section 25117), which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
- B. Differing Conditions.** Subsurface or latent physical conditions at the site differing from those indicated.
- C. Unknown Physical Conditions.** Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided in the Contract.

AGENCY shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in CONTRACTOR's costs of, or the time required for, performance of any part of the work may issue a change order under the procedures described in this Contract.

In the event that a dispute arises between AGENCY and CONTRACTOR whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the CONTRACTOR's cost of, or time required for, performance of any part of the work, CONTRACTOR shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. CONTRACTOR shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

ARTICLE XI

Any notices which either party may desire to give to the other party under this Contract must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To CITY:

CITY OF DANA POINT
Attention: City Clerk
33282 Golden Lantern # 203
Dana Point, CA 92629

To CONTRACTOR:

ARTICLE XII

The AGENCY and CONTRACTOR understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Contract and also govern the interpretation of this Contract. Any litigation concerning this Contract shall take place in the municipal, superior, or federal district court with jurisdiction over the AGENCY.

ARTICLE XIII

Nothing contained in this Contract shall create any contractual relationship between any Subcontractor and the AGENCY. CONTRACTOR covenants and agrees that he/she has made himself/herself aware of Public Contract Code Sections 4100 *et seq.* pertaining to the identification and use of Subcontractors in the bid submitted and CONTRACTOR is fully aware and knowledgeable of the liability to the CONTRACTOR for violations of said Sections of the Public Contract Code.

ARTICLE XIV

CONTRACTOR is and shall at all times remain as to the AGENCY a wholly independent CONTRACTOR. The personnel performing the services under this Contract on behalf of CONTRACTOR shall at all times be under CONTRACTOR's exclusive direction and control. Neither AGENCY nor any of its officers, employees, or agents shall have control over the conduct of CONTRACTOR or any of CONTRACTOR's officers, employees, or agents, except as set forth in this Contract. CONTRACTOR shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the AGENCY. CONTRACTOR shall not incur or have the power to incur any debt, obligation, or liability whatever against AGENCY, or bind AGENCY in any manner.

No employee benefits shall be available to CONTRACTOR in connection with the performance of this Contract. Except for the fees and other payments paid to CONTRACTOR as provided in the

Contact, AGENCY shall not pay salaries, wages, or other compensation or indemnification to CONTRACTOR for injury or sickness arising out of performing services hereunder.

ARTICLE XV

CONTRACTOR agrees to protect, indemnify, defend and hold harmless AGENCY and all of its officers, agents and employees from any claims, demand or causes of action, including related expenses, attorney's fees, and costs, based on, arising out of, or in any way related to the work undertaken by CONTRACTOR hereunder.

ARTICLE XVI

CONTRACTOR agrees to endorse general and umbrella liability coverage required herein to include the AGENCY as additional insured under the insurance coverage required here using standard ISO endorsement number CG 20 10 with an edition date of 1993 or earlier and which does not limit the scope of coverage for the additional insured to vicarious liability or to the additional insured's supervision of a given project and which allows coverage to apply to the additional insured to the full extent provided by the policy. In no event will the CONTRACTOR use an additional insured endorsement with an edition date of 1993 or later. CONTRACTOR also agrees to require all contractors, subcontractors and anyone else involved in any way with the project contemplated by this Contract Agreement to do likewise.

ARTICLE XVII

This Contract is entered into for the sole benefit of AGENCY and CONTRACTOR, and their successors, transferees, and assigns. No other person shall have any right of action based upon any provision of this Contract and no third party beneficiaries shall be created thereby.

ARTICLE XVIII

If any term, provision, condition, or covenant of this Contract, or the application thereof to any party or circumstances, shall to any extent be held invalid or unenforceable, the remainder of the instrument, or the application of such term, provision, condition, or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of the Contract as amended shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE XIX

This Contract may be executed in multiple counterparts, each of which so fully executed counterpart shall be deemed an original. No counterpart shall be deemed an original or deemed or presumed delivered unless and until the counterpart executed by the other party to this Contract is in the physical possession of the party seeking enforcement thereof.

ARTICLE XX

This Contract contains the complete, final, entire, and exclusive agreement between the parties with respect to the subject matter hereof, and no waiver, alteration, or modification of any of the modification, amendment, or alteration in violation hereof shall be void.

ARTICLE XXI

CONTRACTOR affirms that the signatures, titles and seals set forth hereinafter in execution of this Contract Agreement represent all individuals, firm members, partners, joint venturers, and/or corporate officers having principal interest herein.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Contract Agreement to be executed in duplicate by setting hereunto their names, titles, hands, and seals this _____, day of _____, 20__.

CONTRACTOR: _____

(Title)

Contractor's License No. _____ Class _____

Federal Tax Identification No. _____

CONTRACTOR'S SIGNATURE MUST BE NOTARIZED. SEE FOLLOWING PAGE FOR NOTARY ACKNOWLEDGEMENT.

CITY OF DANA POINT

By: _____
Mark Denny, City Manager

ATTEST:

By: _____
Kathy M. Ward, City Clerk

APPROVED AS TO FORM:

By: _____
Patrick Munoz, City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____ before me, _____,
Date Here Insert Name and Title of the Officer

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____