

DATE SUBMITTED 07/12/17
 SUBMITTED BY COMMUNITY DEVELOPMENT DIRECTOR
 DATE ACTION REQUIRED 07/19/17

COUNCIL ACTION (x)
 PUBLIC HEARING REQUIRED ()
 RESOLUTION ()
 ORDINANCE 1ST READING ()
 ORDINANCE 2ND READING ()
 CITY CLERK'S INITIALS (*AB*)

**IMPERIAL CITY COUNCIL
 AGENDA ITEM**

SUBJECT: DISCUSSION/ACTION: CAMBRIA PARK OPTION 3 UPGRADE
 APPROVAL OF THE CAMBRIA PARK AGREEMENT BETWEEN THE CITY OF IMPERIAL AND VR CAMRIA, INC

DEPARTMENT INVOLVED: COMMUNITY DEVELOPMENT/COMMUNITY SERVICES

BACKGROUND/SUMMARY:
 As part of the Conditions of Approval the developer shall dedicate and develop a basic park site for public park uses. The basic park shall include, as a minimum, landscape area, picnic areas, and child play area with playground equipment. After several discussions, staff made a recommendation to upgrade the park that is consistent with the City of Imperial General Plan-Parks and Recreation Element Goals and that can potentially have a lasting impact on the future of public health.

The cost of the basic park site, options 3 upgrade, and the difference are as follows:

Basic Park	Option 3 Upgrade	Difference (City)
\$165,760.60	\$557,412.00	\$391,651.40

Since the park upgrade will be done pursuant to a contract, the public improvement work is subject to prevailing wage under Labor Code 1720. The Project Builder must also comply with statutory requirements relating to certified copies of payroll and maintenance records, availability for inspection of same, and requirements relating to employment of apprentices.

FISCAL IMPACT: *Park Impact Fees* ~~\$392,251.00~~
 \$391,651.40
 CM

F.O. INITIALS: *(A)*

STAFF RECOMMENDATION:
 Staff recommends approval of the Cambria Park Agreement option 3 upgrade

MANAGER'S RECOMMENDATION: MANAGER'S INITIALS *(A)*

MOTION:

SECONDED: APPROVED () REJECTED ()
 AYES: DISAPPROVED () DEFERRED ()
 NAYES:
 ABSENT: REFERRED TO:

Victoria Ranch
Cambria Parksite
Spread

Project Name: Cambria Parksite

+C1:M33J24C1C1:M34

Location: City Of Imperial

7/14/2017 13:13

No. Of Acres:

No. Of Units

No. Of Buildings 1

Project Type: Park Site



Recommended Subcontractor Selection

Project Cambria Parksite	Plan	Option 3 (Kompan) - Approved by City			Option 4		Comments
		Qty	Unit \$	Prevailing Wage	Qty	Unit \$	
Fees							*City to pay for all signage including monument
							City notified that reg. of bathroom w/ Dept of Ind. Rel. required.
	Building Permit	1	\$500.00	\$500.00	1	\$500.00	\$500.00
	Electrical IID Permit Fee	1	\$950.00	\$950.00	1	\$950.00	\$950.00
Consultant Fees							
	Civil (Carlos)	1	\$6,500.00	\$6,500.00	1	\$6,500.00	\$6,500.00
	Architectural						
	Soils Inspections			\$7,200.00			Historical Estimate
	Staking			\$1,500.00			Historical Estimate
	Contract Preperation	1	\$600.00	\$600.00	1	\$600.00	\$600.00
Grading							
	Wet Utility (Radco)	1	\$8,000.00	\$29,350.00	1	\$8,000.00	\$8,000.00
	Dry Utilitty (Watson)	1	\$17,000.00	\$23,800.00			Estimate...no response form Watson 8 Days
	Concrete	1	\$11,584.00	\$23,168.00	1	\$6,164.00	\$6,164.00
	Landscaping (includes 100 square ft of playground bark)	1	\$47,774.00	\$81,367.00	1	\$47,774.00	\$47,774.00
	Play Ground Equpt - shade - delivery - install - tax.	1	\$93,596.04	\$122,027.04		\$49,000.00	\$49,000.00
	Grading			\$6,500.00			Per Daryl Brady, the updated PW Proposal pending soon...
	Bath Room	1	\$70,000.00	\$70,000.00	1		RadCo
	Plumbing	1	\$5,500.00	\$10,199.00			Per Ali Carns this # is not to change, already prevailing wage...
	Playground Bark	1	\$8,666.00	\$8,666.00	1	\$8,666.00	\$8,666.00
	Shade - Matl - Install - Tax	1	\$58,575.22	\$75,837.09			
	Temporary Fence	1	\$1,092.00	\$1,528.80	1	\$1,092.00	\$1,092.00
	Benches & Trash	3	\$6,500.00	\$6,500.00	3	\$6,500.00	\$6,500.00
	Supervision	1	\$15,000.00	\$21,000.00	1	\$15,000.00	\$15,000.00
Sub Total				\$497,192.93			
	Contingency	10%	\$34,573.73	\$49,719.29		\$15,014.60	\$15,014.60
	Additonal Cost Requested by City		\$10,500.00	\$10,500.00			
Total			\$396,910.99	\$557,412.22		\$165,760.60	\$165,760.60

AGREEMENT FOR CONSTRUCTION CAMBRIA PARK

This agreement, made and entered into between the City of Imperial, a municipal corporation, hereinafter referred to as “City” and VR Cambria, Inc., hereinafter referred to as “Builder.”

WITNESSETH:

WHEREAS, the property is more particularly described in the attached Exhibit “A”.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein, City and Builder agree as follows:

- 1. Contract Amount and Schedule of Payments-**The cost of completion of the basic park site at the Project is \$165,760.60. The cost of completion of the “Option 3 (Kompan)” version of the park site at the project, constructed using prevailing wages, is \$557,412.00. As payment for the requested upgrade of the Project, City agrees to pay the difference, in the amount of \$391,651.40 (Three Hundred Ninety-Two Thousand Two Hundred and Fifty-One Dollars), between the basic and the desired upgraded version. This \$391,651.40 is the Contract Amount. City will pay the Contract Amount according to the following schedule:
 - 40% of Contract Amount when Builder orders playground equipment for the Project. This amount is \$156,660.56.
 - 5% of Contract Amount when Builder orders pre-fabricated bathroom for the Project. This amount is \$19,582.57
 - 10% of Contract Amount when Builder completes grading of the Project. This amount is \$39,165.14
 - 10% of Contract Amount when underground utilities are installed by Builder. This amount is \$39,165.14
 - 10% of Contract Amount when playground equipment is installed by Builder. This amount is \$39,165.14
 - 15% of Contract Amount when landscaping is completed by Builder. This amount is \$58,747.71
 - 10% of Contract Amount at final inspection. This amount is \$39,165.14

City shall make timely payments to Builder for that portion of the work on the Project satisfactorily performed in the preceding month completed in accordance with the schedule set forth above and as approved by Builder, Architect, and City.

- 2. Prevailing Wages-**Not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which this contract is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in Chapter 1 (commencing with Section 1720) or Part 7, Division 2 of the labor code, shall be paid to all workers employed on this work. Should the prevailing wage rate be increased, decreased, or eliminated a corresponding adjustment shall be made to the price which shall reflect the effect of that change in or elimination of the prevailing wage rate. A copy of the applicable rate of per diem wages is on file in the office of the City Clerk, 420 South Imperial Avenue, Imperial, California. The Project Builder must also comply with statutory requirements relating to certified copies of payroll and maintenance records, and availability for inspection of same. Project Builder must also comply with statutory requirements relating to employment of apprentices.
- 3. Schedules-**For purposes of scheduling the work, Builder may periodically develop and modify Project schedule(s). Builder retains the right to modify said schedule(s), change work sequence and priorities, and to otherwise schedule the work so as to achieve timely Project completion, so long as such modifications, changes in sequence, etc. are not arbitrary and capricious, and do not unduly delay completion of the Project. The Project shall be completed no later than December 15, 2017.
- 4. Time Extensions-**If Builder is delayed in the performance of the Project by conditions that could not be foreseen by Builder and/or that are beyond the reasonable control of Builder, then City shall grant Builder a reasonable extension of time to complete the Project; Builder will apply in writing for such an extension within a reasonable time of communicating the commencement of the delay.
- 5. Safety-**Builder agrees to comply with prevailing federal, state, and local safety regulations.
- 6. Supervision and Authority-**Builder shall provide at all times competent and continuous supervision of its work on the Project. Supervisory personnel shall understand and be knowledgeable of their scope of work on the Project, including plans, specifications, and other contract documents as appropriate, and be able, with reasonable fluency, to understand and communicate in English with Builder's job superintendent.
- 7. Suspension-**Builder may, for its convenience or by direction, suspend its work on the Project, either in whole or in part, at any time upon written notice to City stating the nature, effective date, and anticipated duration of such suspension. The Contract Amount shall be reasonably adjusted if the cost of the Project is increased or decreased by reason of such suspension to the extent that Builder provides reasonable evidence of increased costs and also notifies City of costs within 30 days of Builder's issuance of the notice of suspension of work.

- 8. Indemnification-**To the fullest extent permitted by law, City and Builder agree to save, indemnify, defend and hold harmless each other from any and all liability, claims, suits, actions or any injury or damage of any kind whatsoever incurred in relation to or arising out of performance of this agreement and attributable to the fault of the other. Following a determination of the percentage of fault and or liability by agreement between the parties or a court of competent jurisdiction, the party responsible for liability to the other will indemnify the other party to this agreement for the percentage of liability determined as set forth in this section.
- 9. Attorney's Fees -**In the event of any action arising out of or concerning interpretation or enforcement of this Agreement, the prevailing Party in any such proceedings shall be entitled to reasonable attorney's fees incurred, together with costs of the proceedings, and expert witness fees, if any.
- 10. Termination for Convenience-**In the event the City directs Builder to terminate all of its work prior to Project completion, then an equitable settlement for work performed by Builder prior to such termination will be made with Builder for the work completed. Builder may also be entitled to prospective or lost profits, consequential damages, reliance damages, and nominal damages as appropriate under applicable California law.
- 11. Termination by Contractor-**Builder shall have the right to terminate its work on the Project upon the occurrence of any of the following:
1. Provided that the City has not commenced reasonable action to remove any order of a court within the 90 day period, the Project is stopped for 90 consecutive days, through no fault or act of Builder, any subcontractor, or any agent or employee of Builder or subcontractor, due to an issuance of an order of a court or other public authority having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable.
 2. The City fails to perform any material obligation under the Agreement and fails to cure such default within 30 days, or the City has not commenced to cure such default within 30 days where such cure will require a reasonable period beyond 30 days and diligently prosecutes the same to completion, after receipt of notice from Builder stating the nature of such default(s).
Repeated suspensions by the City, other than such suspensions as are agreed to by Builder in writing, which in the aggregate unreasonably delay completion of the Project by Builder.
- 12. Severability-**Any provision of this Agreement determined to be violation of any law applicable thereto shall be deemed revised to the extent necessary to bring it into compliance with applicable law, but that shall not affect the validity and enforceability of all other provisions hereof that are otherwise valid.
- 13. Governing Law and Exclusive Jurisdiction-**This Agreement shall be deemed to have been made in and shall be interpreted under the laws of the State of California.

Jurisdiction and venue are hereby agreed to be exclusively in the court of the county where the Project is located, State of California, and the parties hereby acknowledge agree that such jurisdiction and venue are proper and reasonable.

14. Entire Agreement and Integration-This Agreement, any contract documents referenced, and the applicable Project specifications contain the entire understanding of the parties hereto with respect to the subject matter contained herein, and supersede all prior and contemporaneous agreements, understandings, and negotiations and no evidence of prior agreements, understandings, and negotiations shall govern or be used to construe or modify this Agreement. No modification or alteration shall be deemed effective unless in writing and signed by the parties hereto.

Builder and City have carefully and completely read this entire Agreement, understand their rights and obligations contained therein, and certify that they sign having full and complete authority after having the opportunity to consult with their legal counsel.

The parties agree that this agreement shall be recorded in the official records of the Imperial County Recorder's office.

Builder shall, at their sole expense, obtain all permits, including, but not limited to, any necessary encroachment permits.

IN WITNESS WHEREOF, the parties hereto set their hands this ____ day of July 2017.

CITY:
City of Imperial

DEVELOPER:
VR Cambria, Inc.

By _____
Stefan T. Chatwin, City Manager

By _____
J.B Lessley

ATTEST:

By _____
Debra Jackson, City Clerk