



# AGENDA REPORT

## CITY OF SAN CLEMENTE

### City Council Meeting

910 Calle Negocio  
2nd Floor  
San Clemente, California  
www.san-clemente.org

**Meeting Date:** 2/7/2023

**Agenda Item:** 6G

**Department:** Public Works

**Prepared By:** Amir K. Ilkhanipour, Principal Civil Engineer

**Subject:**

**CONSTRUCTION CONTRACT AWARD TO DIAMOND CONSTRUCTION FOR THE AVENIDA MONTALVO CANYON AND TRAIL IMPROVEMENT, CIP PROJECT NO. 16004**

**Fiscal Impact:**

The estimated construction cost of \$289,600 is within the available approved project budget of \$495,656 from the Local Drainage Facilities Fund, CIP Project No. 16004.

**Summary:**

Staff recommends approval of a construction contract with Diamond Construction in the amount of \$180,000 for the Avenida Montalvo Canyon and Trail Improvement.

**Background:**

Montalvo Canyon drains an area of approximately 360 acres of a watershed in the southwest portion of the City, as shown on Attachment 1. The outlet near the ocean has experienced some erosion issues and needs improvements to prevent further erosion of the bluff. Engineering consultants performed sediment and hydrological studies and have recommended the installation of gabion baskets that provide the least environmental impact for erosion control.

Prior to construction, environmental permits had to be secured with the Regional Water Quality Control Board (RWQCB), Army Corps of Engineers, California Department of Fish and Game and a Coastal Development Permit (CDP) from the California Coastal Commission. As part of the permit from RWQCB, the City is required to purchase a mitigation credit in the amount of \$24,600 from the San Luis Rey Mitigation Bank for the project's impacts of 0.04 acre. The CDP has also required the City to perform and maintain (for 5 years) 0.13 acres of habitat restorations in the vicinity of the project per a Habitat Management Plan, upon completion of the project. Staff will solicit bids for this habitat restoration work and will return to the City Council for contract approval at a later time.

The construction bid package was advertised for competitive bidding on the PlanetBids website. Six bids were received on January 17, 2023, ranging from \$180,000 to \$656,230, as shown on Attachment 2. The lowest responsive bidder was Diamond Construction of La Habra, California at \$180,000. Generally, the construction management and inspection cost is approximately 10% of the construction. However, since full-time monitoring for 60 working days is required, the construction management and inspection cost exceeds the typical 10%. The construction management and inspection services are provided by PdM Consulting, Inc., one of the consultants from the City's On-call Engineering Services list.

Based on the low base bid, the construction and mitigation cost is estimated as follows:

Purchasing Mitigation Credit for Project	\$ 24,600
Construction Management, Administration	58,300
Construction Contract	180,000
Contingency (15%)	27,000
Total Estimated Construction Costs	\$289,900

As required by City Policy and State Law, the Contractor will be required to provide performance and payment bonds simultaneously with execution of the construction contract (Attachment 3). Project plans and specifications are on file in the City Clerk's Office.

***Recommended Actions:***

**Staff Recommendation**

1. Approve the Plans and Specifications for the Avenida Montalvo Canyon and Trail Improvement, CIP Project No. 16004;
2. Approve, and authorize the Public Works Director/City Engineer to execute, Contract No. C23-05, by and between the City of San Clemente and Diamond Construction, in the amount of \$180,000, for the Avenida Montalvo Canyon and Trail Improvement, CIP Project No. 16004; and
3. Approve, and authorize the Public Works Director/City Engineer to execute, Agreement For Sale of Mitigation Credits San Luis Rey Mitigation Bank by and between the City of San Clemente and Wildlands SLR Holdings I, LLC., in the amount of \$24,600, for the Avenida Montalvo Canyon and Trail Improvement, CIP Project No. 16004

***Attachment:***

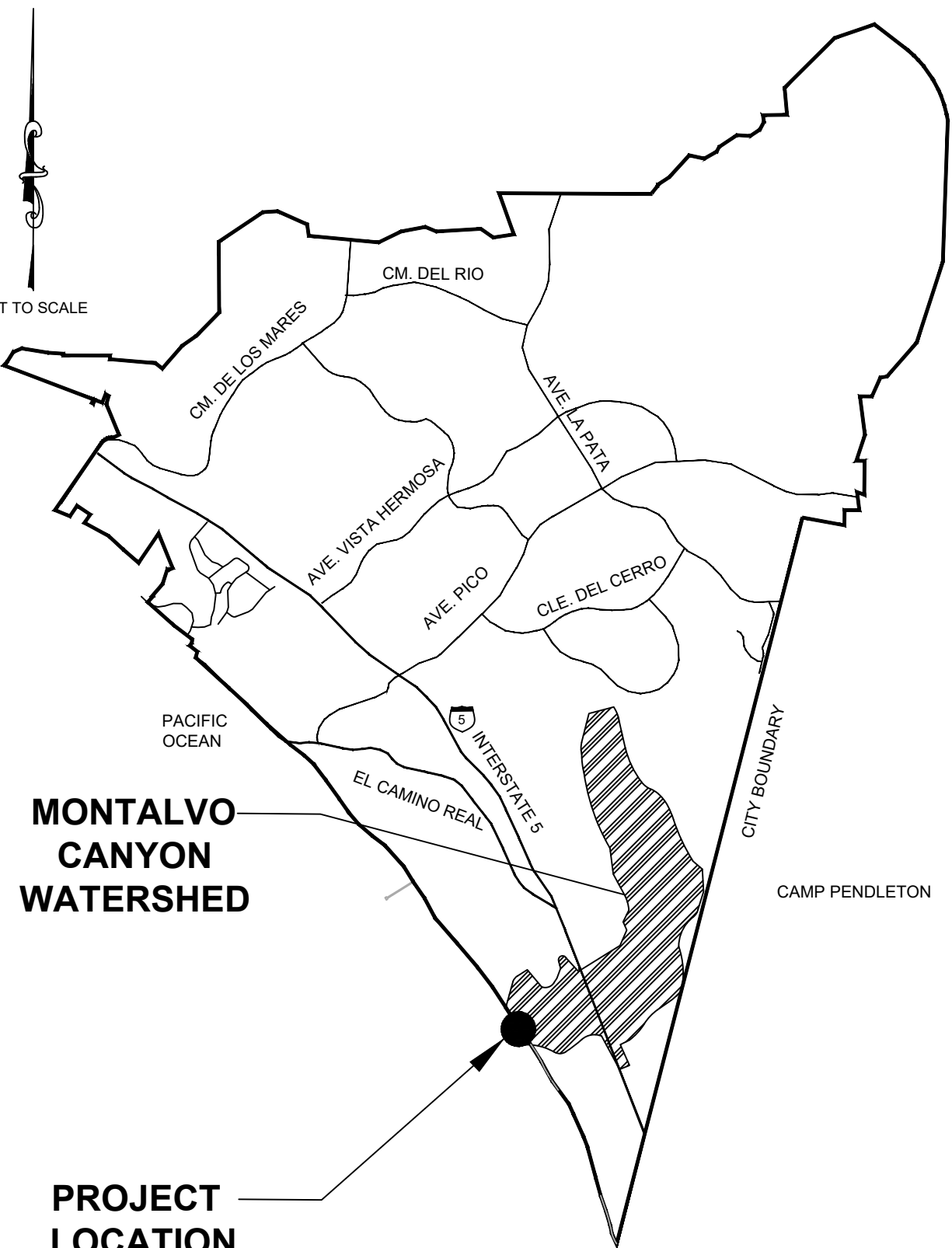
1. Location Map
2. Bidders' List
3. Draft Diamond Construction Contract (without attachments)
4. Draft Agreement for Sale of Mitigation Credits

***Notification:***

None.



NOT TO SCALE



**MONTALVO  
CANYON  
WATERSHED**

**PROJECT  
LOCATION**

S:\cu\public\CMMS\GIS\Users\Joke Ohana\CAD\Location Plan (Admin Report).dwg Tuesday, January 24, 2023 3:10:42 PM



*City of San Clemente*  
910 Calle Negocio, Suite 100  
San Clemente, CA 92673  
Tel (949) 361-6100  
Fax (949) 361-8316

**LOCATION MAP**  
**Montalvo Canyon and**  
**Trail Improvements**  
**PN 16004**

City of San Clemente

Bid Results for Project AVENIDA MONTALVO CANYON AND TRAIL IMPROVEMENTS, Project No. 16004 (Project No. 16004)

Issued on 12/22/2022

Bid Due on January 17, 2023 2:00 PM (PST)

Vendor Name	Address	City	State	Zip	Bid Amount	Format
Diamond Construction	921 N Harbor blv #622	La Habra	CA	90631	\$180,000.00	Electronic
GCI Construction, inc.	1031 Calle Recodo, Suite D	San Clemente	CA	92673	\$386,589.00	Electronic
Wright Construction Engineering Corp	2625 S Santa Fe Ave	San Marcos	CA	92069	\$389,996.25	Electronic
Zusser Company, Inc.	528 Palisades Drive Suite 504	Los Angeles	CA	90272	\$457,440.00	Electronic
R E Schultz Construction, Inc.	1767 N. Batavia	Orange	CA	92865	\$494,140.00	Electronic
Jilk Heavy Construction, Inc.	500 S Kraemer Blvd., Suite 380	Brea	CA	92870	\$656,230.00	Electronic

## CONTRACT

THIS CONTRACT is made this \_\_\_\_ day of \_\_\_\_\_, 2023, in the County of Orange, State of California, by and between the City of San Clemente hereinafter called City, and Diamond Construction, hereinafter called Contractor. City and the Contractor for the considerations stated herein agree as follows:

**ARTICLE 1. SCOPE OF WORK.** The Contractor shall perform all Work within the time stipulated the contract and shall provide all labor, materials, equipment, tools, utility services, and transportation to complete all of the Work required in strict compliance with the Contract Documents as specified in Article 5 below for the following Project:

**AVENIDA MONTALVO CANYON AND TRAIL IMPROVEMENTS, PROJECT NO. 16004**

The Contractor and its surety shall be liable to City for any damages arising as a result of the Contractor's failure to comply with this obligation.

**ARTICLE 2. TIME FOR COMPLETION.** The Work shall be commenced on the date stated in City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within sixty (60) Working Days from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

**ARTICLE 3. CONTRACT PRICE.** City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of One Hundred Eighty Thousand Dollars (\$180,000). Payment shall be made as set forth in the General Conditions.

At any time during the term of the Contract, City may, pursuant to the terms and provisions of the Contract Documents, request that the Contractor perform additional work. Contractor shall not perform, nor be compensated for, additional work without written authorization from the City pursuant to the terms and provisions of the Contract Documents.

**ARTICLE 4. LIQUIDATED DAMAGES/EARLY COMPLETION INCENTIVE.** In accordance with Government Code section 53069.85, it is agreed that the Contractor will pay City the sum of \$1,000 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event that Liquidated Damages are not paid, the Contractor agrees City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Article does not exclude recovery of other damages specified in the Contract Documents.

**ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.** The "Contract Documents" include the following:

Notice Inviting Bids  
Instructions to Bidders  
Bid Form

SECTION 00500  
CONTRACT

Contractor's Certificate Regarding Workers' Compensation  
Bid Bond  
Designation of Subcontractors  
Information Required of Bidders  
Noncollusion Declaration form  
Iran Contracting Act Certification  
Public Works Contractor Registration Certification  
Contract  
Performance Bond  
Payment Bond  
General Conditions  
Special Conditions  
Technical Specifications  
Addenda  
Plans and Drawings  
Approved and fully executed change orders  
Any other documents contained in or incorporated into the Contract

The Contractor shall complete the Work in strict accordance with all of the Contract Documents.

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. This Contract shall supersede any prior agreement of the parties.

**ARTICLE 6. PROVISIONS REQUIRED BY LAW.** Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of applicable federal, state and local laws, rules and regulations, including, but not limited to, the provisions of the California Labor Code and California Public Contract Code which are applicable to this Project.

**ARTICLE 7. INDEMNIFICATION.** Contractor shall provide indemnification as set forth in the General Conditions.

**ARTICLE 8. PREVAILING WAGES.** Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at City of San Clemente Public Works Department or may be obtained online at <http://www.dir.ca.gov/dlsr>. and which must be posted at the job site.

IN WITNESS WHEREOF, this Contract has been duly executed by the above-named parties, on the day and year above written.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed on the respective dates set forth opposite of their signatures.

SECTION 00500  
CONTRACT

**CITY OF SAN CLEMENTE**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

**ATTEST:**

\_\_\_\_\_  
CITY CLERK of the City of  
San Clemente, California

**APPROVED AS TO FORM:  
BEST BEST & KRIEGER**

\_\_\_\_\_  
City Attorney

**APPROVED AS TO AVAILABILITY  
OF FUNDING:**

\_\_\_\_\_  
Finance Authorization

**DRAFT**

\_\_\_\_\_  
("CONTRACTOR")

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

**END OF CONTRACT**

**AGREEMENT FOR SALE OF MITIGATION CREDITS  
SAN LUIS REY MITIGATION BANK**

**USACE File No. SPL-2017-00772-LOB  
RWQCB File No. R9-2019-0226**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023 by and between WILDLANDS SLR HOLDINGS I, LLC, a Delaware limited liability company (“Bank Sponsor”) and CITY OF SAN CLEMENTE, a municipal corporation (“Project Proponent”) as follows:

**RECITALS**

A. Bank Sponsor has developed the San Luis Rey Mitigation Bank (“Bank”) located in San Diego County, California; and

B. The Bank has been developed pursuant to a Bank Enabling Instrument entered into by and between Bank Sponsor, United States Army Corps of Engineers (“USACE”), and California Department of Fish and Wildlife (“CDFW”); and

C. Bank Sponsor has received the approval of the USACE and CDFW to operate the Bank as a mitigation bank with wetland waters of the United States/State credits, waters of the United States/State credits and buffer credits for sale as compensation for the loss of waters of the United States, waters of the State and/or State jurisdictional habitats; and

D. Project Proponent is seeking to implement the project described on Exhibit “A” attached hereto (“Project”), which would unavoidably and adversely impact waters of the United States and/or waters of the State thereon, and seeks to compensate for such impacts by purchasing compensatory credits from Bank Sponsor; and

E. Project Proponent has received authorization under Regional Water Quality Control Board (“RWQCB”) Section 401 Water Quality Certification No. R9-2019-0226 to purchase 0.04 acre of Re-established River: Wetland Waters of the U.S./State credits from the Bank; and

F. Project Proponent desires to purchase from Bank Sponsor and Bank Sponsor desires to sell to Project Proponent 0.04 acre of Re-established River: Wetland Waters of the U.S./State credits from the Bank.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. Bank Sponsor hereby agrees to sell to Project Proponent and Project Proponent hereby agrees to purchase from Bank Sponsor 0.04 acre of Re-established River: Wetland Waters of the U.S./State credits (the “Credits”) for the purchase price of \$24,600.00 (“Purchase Price”). The Purchase Price for said Credits shall be paid by wire transfer of funds according to written instructions by Bank Sponsor to Project Proponent, or by check payable to “**Wildlands**



**SLR Holdings I, LLC.**” Upon receipt of the Purchase Price, Bank Sponsor will deliver to Project Proponent an executed Bill of Sale in the form attached hereto as Exhibit “B.”

2. The sale and transfer herein is not intended as a sale or transfer to Project Proponent of a security, license, lease, easement, or possessory or non-possessory interest in real property, nor the granting of any interest of the foregoing.

3. Project Proponent shall have no obligation whatsoever by reason of the purchase of the Credits, to support, pay for, monitor, report on, sustain, continue in perpetuity, or otherwise be obligated or liable for the success or continued expense or maintenance in perpetuity of the Credits sold, or the Bank. As required by law, Bank Sponsor shall monitor and make reports to the appropriate agency or agencies on the status of any Credits sold to Project Proponent. Bank Sponsor shall be fully and completely responsible for satisfying any and all conditions placed on the Bank or the Credits, by all state or federal jurisdictional agencies.

4. The Credits sold and transferred to Project Proponent shall be nontransferable and non-assignable, and shall not be used as compensatory mitigation for any other Project or purpose, except as set forth herein.

5. Project Proponent must deliver the Purchase Price to Bank Sponsor within 30 days of the date of this Agreement. After the 30-day period this Agreement will be considered null and void and Bank Sponsor shall have no further obligations hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**BANK SPONSOR:**

**WILDLANDS SLR HOLDINGS I, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**PROJECT PROPONENT:**

**CITY OF SAN CLEMENTE,** a municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM: BEST  
BEST & KRIEGER

\_\_\_\_\_  
City Attorney

**Exhibit "A"**

**DESCRIPTION OF PROJECT  
TO BE  
MITIGATED**

The Project proposes to install a concrete cutoff wall and gabion stream bank armoring system, relocate the existing earthen channel, and relocate a public trail. Permanent stream channel impacts will be mitigated through the purchase of 0.04 acre of re-established riverine wetland credits from the San Luis Rey Mitigation Bank in Oceanside, CA. The Project is located within the City of San Clemente, Orange County, California at the southwest end of the Plaza de la Playa cul-de-sac. The Project center reading is located at latitude 33.407555 and longitude - 117.60831.

\*\*\*\*\*

DRAFT

**Exhibit “B”**

**BILL OF SALE**

**Contract # SLRMB-23-\_\_\_**

**USACE File No. SPL-2017-00772-LOB**

**RWQCB File No. R9-2019-0226**

In consideration of \$24,600.00, receipt of which is hereby acknowledged, WILDLANDS SLR HOLDINGS I, LLC, a Delaware limited liability company (“Bank Sponsor”) does hereby bargain, sell and transfer to CITY OF SAN CLEMENTE, a municipal corporation (“Project Proponent”) 0.04 acre of Re-established River: Wetland Waters of the U.S./State (riparian re-establishment) credits for the Montalvo Canyon Erosion Repair Project, in the San Luis Rey Mitigation Bank in San Diego County, California, developed and approved under the authority of the United States Army Corps of Engineers and California Department of Fish and Wildlife.

Bank Sponsor represents and warrants that it has good title to the Credits, has good right to sell the same, and that they are free and clear of all claims, liens, or encumbrances.

DATED: \_\_\_\_\_

WILDLANDS SLR HOLDINGS I, LLC, a Delaware limited liability company

By: \_\_\_\_\_

Name:

Its: