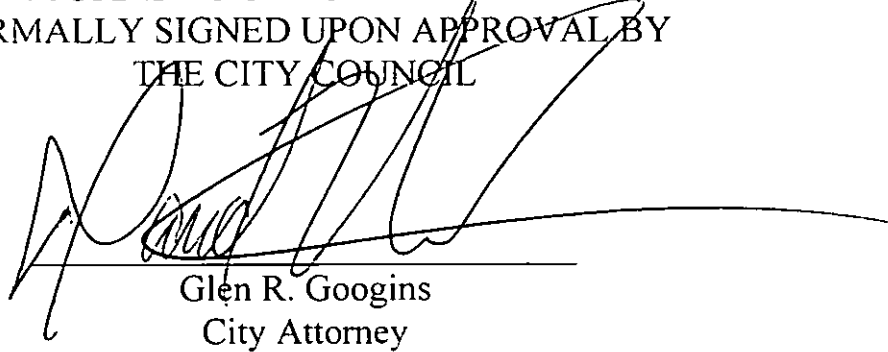


THE ATTACHED AGREEMENT HAS BEEN REVIEWED  
AND APPROVED AS TO FORM BY THE CITY  
ATTORNEY'S OFFICE AND WILL BE  
FORMALLY SIGNED UPON APPROVAL BY  
THE CITY COUNCIL



Glen R. Googins  
City Attorney

Dated: 8/29/14

FIRST AMENDMENT TO THE DESIGN BUILD AGREEMENT  
FOR THE ORANGE PARK PROJECT  
BETWEEN  
THE CITY OF CHULA VISTA AND  
WEBCOR BUILDERS

# **FIRST AMENDMENT TO THE DESIGN BUILD AGREEMENT FOR THE ORANGE PARK PROJECT**

This FIRST AMENDMENT TO THE Design Build Agreement dated JULY 23, 2013, for reference purposes only, is by and between the CITY OF CHULA VISTA, a chartered municipal corporation (“City”) AND WEBCOR BUILDERS (“Design Builder or DB”). Individually, the City and Webcor Builders may be referred to herein as “Party” and collectively as “Parties. This Agreement shall be deemed executed on the date the last party hereto affixes his/her signature hereto and is made with reference to the following facts:

## **RECITALS**

WHEREAS, the City and D/B entered into an agreement (“Original Agreement”) dated July 23<sup>th</sup> 2013 and approved by City Council Resolution 2013-143, whereby D/B provides design and construction services to the City for the construction of a fully functional park including the facilities and site-work; and

WHEREAS, the Original Agreement contained a guaranteed maximum price not to exceed amount of \$2,391,781; and

WHEREAS, As the design progressed and some of the complexities of this project became known, the actual GMP as determined at the 100% construction drawing stage exceeded the not to exceed amount in the original agreement; and

WHEREAS, D/B and City staff have met with the public, incorporated comments and value engineered the project to provide the best product at the most effective price; and

WHEREAS the parties now desire to amend the Agreement to increase the contract amount to incorporate the guaranteed maximum price of \$2,541,178.

NOW, THEREFORE, in consideration of the recitals and the mutual obligation of the parties set forth herein, the City and Webcor Builders agree to amend the Original Agreement as follows:

### **1. Article XI**

**Amend section 11.2.1 to read as follows:**

11.2.1 Not to Exceed Amount. The GMP shall not exceed \$ 2,541,178. Any costs incurred by D/B in excess of said GMP shall be the sole responsibility of the D/B, unless a Change Order is approved by the City pursuant to Article XIII of this Agreement or is otherwise permitted under the terms of the Original Agreement.

**Amend sections 11.2.1.1.6, 11.2.1.1.8, and 11.2.1.1.9 to read as follows:**

- 11.2.1.1.6 D/B Contingency Fund, \$123,846 which shall not exceed 8% of Hard Construction Costs. City controlled contingency shall be \$149,397
- 11.2.1.1.8 D/B Fixed Fee for the complete design and construction of the entire Project is \$110,531.02.
- 11.2.1.1.9 No more than \$148,498.62 for General Conditions.

2. **Article XXVI:**

**Amend section 26.2.8 to read as follows:**

26.2.8 *Builder's Risk.* To the extent commercially available, the City shall provide a policy of "all risk" Builders Risk Insurance. D/B shall add City and its respective elected officials, officers, employees, agents, and representatives to the policy as loss payees, to the extent such insurance is commercially available. Coverage will be provided for the Replacement Cost of Materials, Equipment and Fixtures destined to become a permanent part of the structure, and coverage will include Property in Transit and Property in Offsite Storage. D/B shall also add its construction contractor, and the construction contractor's subcontractors to the policy as additional named insureds or loss payees, to the extent their interest may appear. The limit for this policy shall be a minimum of \$ \$ 2,541,178 (GMP dollar amount to reflect project soft and hard costs). It shall be D/B's responsibility to bear the expense of any deductible. The Builders Risk coverage shall expire at the time such insured property is occupied by City, or a Notice of Completion is filed, whichever occurs first. Contractor and its Subcontractors will be solely responsible for any loss or damage to their personal property, including contractor's tools and equipment owned, used, leased or rented by the Contractor or Subcontractor.

3. **Exhibits**

**Remove and Replace Exhibits A and B with Revised Exhibits A and B attached hereto.**

4. **Scope of Amendment.** This 1st Amendment changes only those sections of the Original Agreement specifically identified in clauses 1, 2, and 3, above. No other changes to the Original Agreement are contemplated or intended by this 1st Amendment. The balance of the Original Agreement shall remain unchanged and in continue full force and effect.

[NEXT PAGE IS SIGNATURE PAGE]

**Signature Page To  
FIRST AMENDMENT TO THE DESIGN BUILD AGREEMENT FOR  
THE ORANGE PARK PROJECT**

IN WITNESS WHEREOF, City and Webcor Builders have executed this First Amendment to the Design Build Agreement for the Orange Park Project, dated August 2, 2013, thereby indicating that they have read and understood same, and indicate their full complete consent to its terms:

Dated: \_\_\_\_\_

City of Chula Vista

by: \_\_\_\_\_  
Gary Halbert, City Manager

Approved as to Form:

\_\_\_\_\_  
Glen Googins  
City Attorney

Dated: \_\_\_\_\_

Webcor Builders

by:  8.25.14  
Matt Johnson, Project Manager