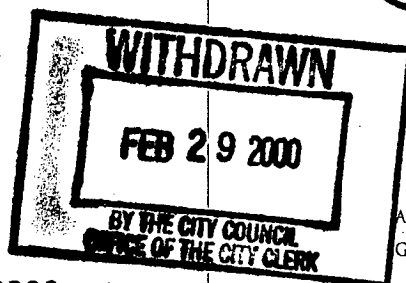




# Capital City Golf

"The Exceptional Public Golf Experience"

1.10



ANN WEAVER  
GOLF MANAGER

CITY OF SACRAMENTO  
8325 RIVER ROAD  
SACRAMENTO, CA 95832  
TEL 916.433.6307  
FAX 916.433.6317

February 22, 2000

City Council  
Sacramento, California

Honorable Members in Session:

**SUBJECT: AMEND UTILITY DEPARTMENT STORM DRAINAGE CIP BUDGET (PN:WI66) AND HAGGIN OAKS DRAINAGE AND IRRIGATION PROJECT (PN:OB56) CONTRACT AWARD TO KEY TURF CONSTRUCTION FOR AN AMOUNT NOT TO EXCEED \$3,841,471.**

### LOCATION AND COUNCIL DISTRICT:

Council District 2.

### RECOMMENDATION:

It is recommended that the City Council appropriate additional Utility funds and accept the bid from Key Turf Construction, with selected additive and deductive alternates for an amount not to exceed \$3,841,471.

**CONTACT PERSON:** Ann Weaver, Golf Manager, 433-6315  
Andy A. Hunt, Senior Engineer, 264-1408

**FOR COUNCIL MEETING OF:** February 29, 2000

### SUMMARY

Bids were received from five (5) contractors and opened by the City Clerk on February 9, 2000. The low bidder was Key Turf Construction with a bid of \$4,151,276. Key Turf Construction met the ESBD goals. It is therefore proposed to award the contract to Key Turf Construction for an amount not to exceed \$3,841,471.46, which includes the selection and deletion of optional items identified in the bid.

#### CAPITAL CITY GOLF AFFILIATES:

ALISTER MACKENZIE GOLF COURSE AT HAGGIN OAKS • ARCADE CREEK GOLF COURSE AT HAGGIN OAKS • BARTLEY CAVANAUGH GOLF COURSE  
BING MALONEY 18-HOLE GOLF COURSE • BING MALONEY EXECUTIVE 9 GOLF COURSE • WILLIAM LAND 9-HOLE GOLF COURSE  
TEE TIME RESERVATIONS 916.264.TIME(8463)



City Council  
February 18, 2000  
Contract Award (PN:OB56)

**COMMITTEE/COMMISSION ACTION**

None.

**BACKGROUND INFORMATION**

The Haggin Oaks Drainage and Irrigation Project will address several issues. First , it will reduce drainage/flooding impacts in the Hagginwood residential area by creating a detention area on the Alister MacKenzie Golf Course at Haggin Oaks. Second, it will help Capital City Golf remain competitive by automating the irrigation system, installing continuous cart paths and support facilities, and enhancing the historical significance of the Alister MacKenzie Golf Course

Bids were received from six contractors, as follows:

<b>Contractor</b>	<b>Bid Amount \$</b>
Key Turf Construction	\$4,151,276
DAYLEN	\$4,237,433
Environmental Golf	\$4,963,937
Evergreen Corp.	\$5,461,832
SEMA	\$5,922,095

The golf course architect's estimated cost was including all alternates was \$4,252,076. The estimated completion date is Fall 2000.

**FINANCIAL CONSIDERATIONS**

The total estimated cost for this project, including all design, construction, inspection and administration is \$4,400,000. On November 23, 1999, Council approved a loan in an amount not to exceed \$3.4 million from the Risk Management Fund to be paid back by the Golf Fund within 30 years at Pool A interest. The Utilities Department is contributing an amount equal to the agreed upon drainage portion of the project in an approximate amount of \$1.4 million. The current budget for the Utilities portion of the project is \$774,811. Additional funding of \$750,000 will be required to complete this project. It is recommended that funds for this project be appropriated from the Storm Drainage Fund Contingency Reserve (425-710-7012-4999), in which there is a balance of \$13,179,392 as of February 18, 2000. This appropriation represents a 2.7% impact on rates in order to restore the fund contingency. The Department of Utilities anticipates a sufficient fund balance at the end of the fiscal year that a rate increase will not be necessary.

There are sufficient funds in the project to award the contract and to complete the project.

**ENVIRONMENTAL CONSIDERATIONS**

On November 23, 1999 Council ratified the Negative Declaration and adopted the Mitigation Reporting Plan for this Project.

**POLICY CONSIDERATION**

This action is consistent with Chapter 58, Article III, Section 58.304 of the City Code concerning award of contract.

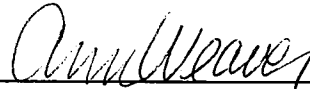
**ESBD CONSIDERATIONS**

This project included participation goals of 10% for emerging and small business enterprises as required by Ordinance 99-007 and Resolution 99-055, relating to ESBD participation goals and policies, adopted by the City Council on February 9, 1999. The responsive low bidder, Key Turf Construction is a provisionally certified ESBD and exceeded the ESBE goals with a participation level of 88%.

Respectfully submitted,



Gary Reents, Manager  
Engineering Services - Dept. of Utilities



Ann Weaver  
Golf Manager

RECOMMENDATION APPROVED:

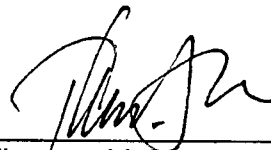


for Robert P. Thomas  
City Manager

APPROVED:



for Jim Sequiera, Director  
Department of Utilities



Thomas V. Lee  
Deputy City Manager

# RESOLUTION NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF \_\_\_\_\_

RESOLUTION AMENDING THE APPROPRIATION OF FUNDS FOR THE STORM DRAINAGE CIP AND AWARDING OF THE HAGGIN OAKS DRAINAGE AND IRRIGATION PROJECT CONTRACT

NOW THEREFORE, BE IT RESOLVED BY THE SACRAMENTO CITY COUNCIL THAT:

1. THE FUNDING FOR THE HAGGIN OAKS DETENTION PROJECT (425-500-WI66-4820) IS INCREASED BY \$750,000 TO A TOTAL OF \$1,524,811.
2. THE CITY MANAGER AND CITY CLERK ARE AUTHORIZED TO EXECUTE A CONTRACT WITH KEY TURF CONSTRUCTION FOR THE HAGGIN OAKS DRAINAGE AND IRRIGATION PROJECT (PN:OB56) FOR AN AMOUNT NOT TO EXCEED \$3,841,471.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

FOR CITY CLERK USE ONLY

RESOLUTION NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

1.10

LAW OFFICES

**KIMBLE, MACMICHAEL & UPTON**

A PROFESSIONAL CORPORATION

FIG GARDEN FINANCIAL CENTER

5260 NORTH PALM AVENUE, SUITE 221

FRESNO, CALIFORNIA 93704

JOSEPH C. KIMBLE (1910-1972)  
THOMAS A. MACMICHAEL (1920-1990)

OF COUNSEL  
MARY ANN BLUMM  
ERIC A. AMADOR

MAILING ADDRESS:

P. O. BOX 8489

FRESNO, CALIFORNIA 93792-8489

TELEPHONE (559) 435-8500

FAX (559) 435-1500

E-MAIL: [info@kimulaw.com](mailto:info@kimulaw.com)

WEB: [www.kimulaw.com](http://www.kimulaw.com)

File #9039.00

RON WALLACE UPTON  
ROBERT E. BERGIN  
EFFREY G. BOSWELL  
DEVEN D. MCGEE  
ROBERT E. WARD  
ROBERT H. SCRIBNER  
MICHAEL E. MOSS  
MARK D. MILLER  
MICHAEL F. TATHAM  
RICHARD LEE  
TYLER THARPE  
V. VIA HALKOUSIS COYLE  
BRETT SUTTON  
MICHAEL J. JURKOVICH  
DOUGLAS V. THORNTON  
ROBERT W. BRANCH  
RONALD J. POOL  
JISAN K. HATMAKER  
DOUGLAS TUCKER  
ERIAN W. ENOS  
GREGORY A. CHAMBERS

February 23, 2000

**VIA FACSIMILE AND CERTIFIED MAIL**

City Clerk  
City of Sacramento  
915 "T" Street  
Sacramento, CA 95814

Ann Weaver  
Golf Manager  
Department of Utilities  
City of Sacramento  
1395 35<sup>th</sup> Avenue  
Sacramento, CA 95822

Re: Protest of Bid Award for Drainage and Irrigation Project  
Alister MacKenzie Golf Course at Haggin Oaks

Dear Sir or Madam:

This firm has been retained by Daylen Inc. ("Daylen") in regard to the award of the project referred to as Drainage and Irrigation Project Alister MacKenzie Golf Course at Haggin Oaks ("Project"). Daylen bid on the Project on February 9, 2000. This letter is intended as notice, pursuant to Sacramento City Ordinance 97-018, of Daylen's protest of the bid award and request for hearing on this protest.

Daylen protests the bid award to Key Turf Construction, Inc. ("Key Turf") because Daylen submitted the lowest responsive bid of any responsible bidder. As such, pursuant to the requirements of competitive bidding on public contracts, Daylen should have been awarded the Project contract.

Daylen submitted the lowest responsive bid from a responsible bidder as follows:

1. Daylen submitted the only bound bid and as such the only responsive bid.
2. Daylen's bid was lower than the bid submitted by Key Turf. Key Turf's bid was \$4,320,585.17 but Daylen's bid was \$4,237,433.15. Key Turf's

## KIMBLE, MACMICHAEL &amp; UPTON

City Clerk - City of Sacramento  
Ann Weaver  
February 23, 2000  
Page 2

bid, however, was improperly manipulated by reducing the amount bid for "mobilization" after the bids had been opened. It was this improper reduction that resulted in the conclusion that the Key Turf bid was the lowest.

In regard to the requirement that the bids be bound, that requirement appears in the Standard Specifications for Public Works Construction, City of Sacramento, June 1989, at Section 2-5. That section reads, in pertinent part:

"The City Clerk shall furnish to each prospective bidder a Proposal Form, which when properly completed and executed may be submitted as his bid. Bids not presented on the Proposal Form will be rejected.

"The Proposal Form is bound in a book together with a Notice to Contractors, Special Provisions, and the Contract. Neither the Proposal Form or any portion of said book shall be detached therefrom. . . ."

Thus, the only bids which may be accepted are those submitted on the Proposal Form which is bound with the Notice to Contractors, Special Provisions, and the Contract. The Daylen, Inc. proposal was the only bid meeting that requirement.

In regard to the reduction of the Key Turf bid following opening of the bids, such a procedure is in violation of the Standard Specifications for Public Works Construction for the City of Sacramento. Specifically, paragraph 3.3 of said specifications permits modification of the amount bid only in the form of correction for mathematical errors within the framework of paragraph 2-6. Errors which may be corrected pursuant to Paragraph 2-6 are errors in addition, subtraction, multiplication and division that are apparent on the face of the proposal. The reduction for overbidding on an item, here "mobilization," does not fit within those parameters.

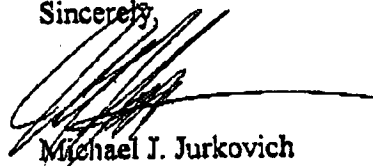
In addition to being in violation of the City's bidding rules, such a reduction constitutes an improper manipulation of the bid process following submission of the bids and is an affront to the competitive bidding laws. To award the contract in violation of the public policy of competitive bidding renders the contract award void. (See *Miller v. McKimmon* (1942) 20 Cal.2d 83; see also *First Street Plaza Partners v. City of Los Angeles* (1998) 65 Cal.App.4<sup>th</sup> 650 .) In fact, if the City's rules permitted such bid tampering, those rules would be void as against public policy.

KIMBLE, MACMICHAEL & UPTON

City Clerk – City of Sacramento  
Ann Weaver  
February 23, 2000  
Page 3

Please notify this office of the place and time of the hearing for this protest.

Sincerely,



Michael J. Jurkovich

MJJ/ls

cc: Daylen, Inc.

LAW OFFICES

**KIMBLE, MacMICHAEL & UPTON**

A PROFESSIONAL CORPORATION

FIG GARDEN FINANCIAL CENTER  
5260 NORTH PALM AVENUE, SUITE 221  
FRESNO, CALIFORNIA 93704

MAILING ADDRESS:

P. O. BOX 9489  
FRESNO, CALIFORNIA 93792-9489

February 28, 2000

JOSEPH C. KIMBLE (1910-1972)  
THOMAS A. MacMICHAEL (1920-1990)

OF COUNSEL  
MARY ANN BLUHM  
ERIC A. AMADOR

TELEPHONE (559) 435-5500

FAX (559) 435-1500

E-MAIL: [kmu@kmulaw.com](mailto:kmu@kmulaw.com)

WEB: [www.kmulaw.com](http://www.kmulaw.com)

File #9039.00

JON WALLACE UPTON  
ROBERT E. BERGIN  
JEFFREY G. BOSWELL  
STEVEN D. MCGEE  
ROBERT E. WARD  
ROBERT H. SCRIBNER  
MICHAEL E. MOSS  
MARK D. MILLER  
MICHAEL F. TATHAM  
W. RICHARD LEE  
D. TYLER THARPE  
SYLVIA HALKOUSIS COYLE  
S. BRETT SUTTON  
MICHAEL J. JURKOVICH  
DOUGLAS V. THORNTON  
ROBERT W. BRANCH  
DONALD J. POOL  
SUSAN K. HATMAKER  
DOUGLAS TUCKER  
BRIAN W. ENOS  
GREGORY A. CHAMBERS

**VIA PERSONAL DELIVERY**

City Clerk  
City of Sacramento  
915 "I" Street  
Sacramento, CA 95814

Ann Weaver  
Golf Manager  
Department of Utilities  
City of Sacramento  
1395 35<sup>th</sup> Avenue  
Sacramento, CA 95822

Re: Supplement to Protest of Bid Award for Drainage and Irrigation Project  
Alister MacKenzie Golf Course at Haggin Oaks

Dear Sir or Madam:

Enclosed is a check for \$250.00 as a deposit for the bid protest hearing on the bid protest filed by Daylen, Inc. ("Daylen"), by letter of February 23, 2000. That protest is set forth again below, with some additional information relating to the identity of the protesting bidder and subject contract. This additional information is in supplement to the earlier submitted bid protest.

The address and telephone number of Daylen, Inc. is:

Daylen, Inc., 2559 South East Avenue, Fresno, California 93706, telephone (559) 233-3345, fax (559) 233-2086.

Communications may be directed to this firm in lieu of Daylen, Inc.

While the bid project is as referred to above, the project is referred to in the bidding materials by the numbers, PN: OB56 and 418-500-OB56-4820. The bids were to be received before 2:00 p.m. Wednesday, February 16, 2000. The bid was requested by the Engineering Services Division of the City of Sacramento.



City Clerk – City of Sacramento  
Ann Weaver  
February 28, 2000  
Page 2

Daylen protests the bid award to Key Turf Construction, Inc. (“Key Turf”) because Daylen submitted the lowest responsive bid of any responsible bidder. As such, pursuant to the requirements of competitive bidding on public contracts, Daylen should have been awarded the Project contract.

Daylen submitted the lowest responsive bid from a responsible bidder as follows:

1. Daylen submitted the only bound bid and as such the only responsive bid.
2. Daylen’s bid was lower than the bid submitted by Key Turf. Key Turf’s bid was \$4,320,585.17 but Daylen’s bid was \$4,237,433.15. Key Turf’s bid, however, was improperly manipulated by reducing the amount bid for “mobilization” after the bids had been opened. It was this improper reduction that resulted in the conclusion that the Key Turf bid was the lowest.

In regard to the requirement that the bids be bound, that requirement appears in the Standard Specifications for Public Works Construction, City of Sacramento, June 1989, at Section 2-5. That section reads, in pertinent part:

“The City Clerk shall furnish to each prospective bidder a Proposal Form, which when properly completed and executed may be submitted as his bid. Bids not presented on the Proposal Form will be rejected.

“The Proposal Form is bound in a book together with a Notice to Contractors, Special Provisions, and the Contract. Neither the Proposal Form or any portion of said book shall be detached therefrom. . . .”

Thus, the only bids which may be accepted are those submitted on the Proposal Form which is bound with the Notice to Contractors, Special Provisions, and the Contract. The Daylen, Inc. proposal was the only bid meeting that requirement.

In regard to the reduction of the Key Turf bid following opening of the bids, such a procedure is in violation of the Standard Specifications for Public Works Construction for the City of Sacramento. Specifically, paragraph 3.3 of said specifications permits modification of the amount bid only in the form of correction for mathematical errors within the framework of paragraph 2-6. Errors which may be corrected pursuant to Paragraph 2-6 are errors in addition, subtraction, multiplication and division that are apparent on the face of the

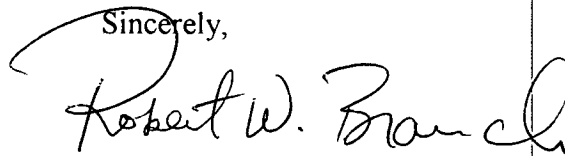
City Clerk – City of Sacramento  
Ann Weaver  
February 28, 2000  
Page 3

proposal. The reduction for overbidding on an item, here “mobilization,” does not fit within those parameters.

In addition to being in violation of the City’s bidding rules, such a reduction constitutes an improper manipulation of the bid process following submission of the bids and is an affront to the competitive bidding laws. To award the contract in violation of the public policy of competitive bidding renders the contract award void. (See *Miller v. McKinnon* (1942) 20 Cal.2d 83; see also *First Street Plaza Partners v. City of Los Angeles* (1998) 65 Cal.App.4<sup>th</sup> 650 .) In fact, if the City’s rules permitted such bid tampering, those rules would be void as against public policy.

If Daylen can provide any additional information to assist in your review of this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Robert W. Branch". The signature is written in black ink and is positioned above the typed name.

Robert W. Branch

RWB/caa