

CITY OF LAGUNA NIGUEL

AGENDA ITEM CITY COUNCIL

FEBRUARY 20, 2018

TO: Honorable Mayor and Council Members

FROM: Nasser Abbaszadeh, Director of Public Works/City Engineer

SUBJECT: Notice of Completion for the Construction of Bear Brand, Clipper Cove, Park Vista and Seminole Park Monument Signs Project – Cash Contract No. 17-02

SUMMARY: The Construction of Bear Brand, Clipper Cove, Park Vista and Seminole Park Monument Signs Project has been completed in accordance with the plans and specifications. It is now appropriate to file the Notice of Completion, authorize release of the 5% retention thirty-five (35) days after recordation, and execute the Final Closeout Agreement.

BACKGROUND/ANALYSIS

The Construction of Bear Brand, Clipper Cove, Park Vista and Seminole Park Monument Signs Project was advertised informally. The construction estimate was \$60,000 and the City's Municipal Code allows informal bids for projects under \$125,000. The contract was awarded to A Good Sign & Graphics Co. in the amount of \$64,500. There was one change order for \$826 for enhanced caps for the signs.

The project included construction of park monument signs at the four parks similar to the signs already constructed at Beacon Hill, Ocean Breeze and Yosemite Parks. Each sign is double sided and constructed with poured-in-place concrete and masonry veneer.

The project was completed on February 8, 2018.

FISCAL IMPACT

The total project cost is \$65,326.

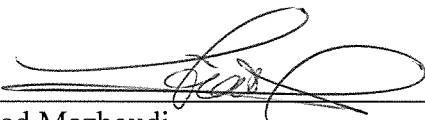
The project fund budget was \$100,677 which is adequate to cover the total construction cost of \$65,326.

RECOMMENDATION

That the City Council:


- a. Accept as complete the Construction of Bear Brand, Clipper Cove, Park Vista and Seminole Park Monument Signs Project - Cash Contract No. 17-02 in the amount of \$65,326;
- b. Authorize recordation of the Notice of Completion for said project;
- c. Authorize the release of the 5% retention thirty five (35) days after the recordation date of the Notice of Completion to the extent allowed by State Law; and
- d. Approve the Final Closeout Agreement and authorize its execution by the City Manager.

**PREPARED
BY:**



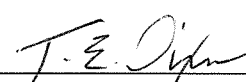
Ziad Mazboudi
Engineering Services Manager

**REVIEWED
BY:**



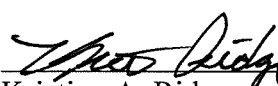
Nasser Abbaszadeh
Director of Public Works/City Engineer

**REVIEWED
BY:**



Terry Dixon
City Attorney

**REVIEWED
BY:**



Kristine A. Ridge
City Manager

ATTACHMENTS:

- A. Notice of Completion
- B. Final Closeout Agreement

ATTACHMENT A
NOTICE OF COMPLETION

City Clerk
City of Laguna Niguel
30111 Crown Valley Parkway
Laguna Niguel, CA 92677

No Fee, Exempt per GC6103

NOTICE OF COMPLETION

Notice is hereby given that the following public improvements have been completed and accepted by the City Council of the City of Laguna Niguel on February 20, 2018.

Notice of Completion for the Construction of Bear Brand, Clipper Cove, Park Vista and Seminole Park Monument Signs Project – Cash Contract No. 17-02

(Brief Description of Improvements)

Bear Brand, Clipper Cove, Park Vista and Seminole Park, Laguna Niguel

(General Location of improvements)

City of Laguna Niguel

(Owner of Property/Address)

A Good Sign & Graphics Company

(Contractor)

2110 S. Susan Street, Santa Ana, CA 92704

(Address)

This Notice of Completion is executed under authority of a directive from the City Council of the City of Laguna Niguel.

Nasser Abbaszadeh, Director of Public Works/City Engineer
City of Laguna Niguel

I, Nasser Abbaszadeh, declare under penalty of perjury that I am the Director of Public Works/City Engineer, of the City of Laguna Niguel, that I am familiar with the facts stated in the foregoing Notice of Completion executed for and on its behalf, and that I have read the foregoing Notice of Completion and know the contents thereof to be true.

Dated: _____, 2018

Nasser Abbaszadeh, Director of Public Works/City Engineer
City of Laguna Niguel

Executed in Laguna Niguel, California

ATTACHMENT B

FINAL CLOSEOUT AGREEMENT

**FINAL CLOSEOUT AGREEMENT AND
RELEASE OF ALL CLAIMS**

THIS FINAL CLOSEOUT AGREEMENT AND RELEASE OF ALL CLAIMS is made as of the 20th day of February 2018, by and between the City of Laguna Niguel hereinafter referred to as "Agency"; and A Good Sign & Graphics Company, a Company, hereinafter referred to as "Contractor".

RECITALS:

1. Contractor and Agency entered into a Contract on or about 18th day of July, 2017 pursuant to which Contractor was to construct the Bear Brand, Clipper Cove, Park Vista and Seminole Park Monument Signs Project – (Cash Contract No. 17-02), (hereinafter referred to as "Contract No.17-02").
2. No change orders to Contract No. 17-02 were issued by Agency to Contractor.
3. The total amount to be paid by Agency to Contractor pursuant to the Contract and is \$65,326.
4. Contractor and Agency desire to enter into this "Final Closeout Agreement and Release of All Claims" (hereinafter referred to as the "Agreement and Release") to provide for the completion of the Contract, the payment of all unpaid funds and the resolution of any and all outstanding claims.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and covenants herein contained, the parties hereto agree as follows:

1. The Contractor, for and in consideration of the payment of \$302,388 and the release by Agency of claims against Contractor, does hereby for itself and for each of its owners, partners, successors and assigns, release, acquit and forever discharge the Agency, and each of its officers, employees, agents, servants, consultants, successors and assigns, from any and all claims, demands, debts, obligations, liabilities, actions, damages, losses, costs, and expenses including attorneys fees and other litigation costs, known or unknown, suspected or unsuspected, which have been or might be asserted against Agency relative to or arising out of the following:
 - a. The performance of the terms and conditions of Contract No. 17-02 to construct Bear Brand, Clipper Cove, Park Vista and Seminole Park Monument Signs.
 - b. Change Orders to the Contract No. 17-02, as approved by Agency and Contractor;

- c. The claims for extension of time to complete the work required by Contract No.17-02;
- d. Claims, known or unknown, of subcontractors of Contractor relating to the Contract No. 17-02 and no Change Orders, inclusive.

Excepted from this Agreement and Release is the payment by Agency of the retained cash in the amount of \$3,266.30 and the release of bonds to guarantee labor and materials payment and faithful performance.

2. The Agency, for and in consideration of the Contractor's completion of work required by Contract No.17-02 and Contractor's release of claims against the Agency, does hereby for itself and for each of its assigns and successors, release, acquit and forever discharge Contractor, and each of its officers, employees, agents, servants, consultants, successors and assigns, from any and all claims, demands, debts, obligations, liabilities, actions, damages, losses, costs, and expenses including attorneys fees and other litigation costs, known or unknown, suspected or unsuspected, which have been or might be asserted against Contractor relative to or arising out of the following:

- a. Contract No. 17-02;
- b. Change Orders to the Contract No. 17-02, as approved by Agency and Contractor; and

Excepted from this Agreement and Release is the completion by Contractor of all work required by Contract No.17-02 and the warranties required by the Contract as specified in paragraph 13 herein.

3. Nothing contained in this Agreement and Release shall release, waive, discharge or alter the rights, privileges and powers of the Agency or the duties, liabilities and obligations of the Contractor and its surety with respect to the work required by Contract No. 17-02.

4. All work required by Contract No.17-02 shall be completed to acceptable standards and tolerances as is required by Contract No.17-02.

5. Upon execution of this Agreement and Release, the Agency agrees to immediately file and record a Notice of Completion with the County Recorder's Office to begin the statutory lien and stop notice period. The Agency agrees that the execution of this Agreement and Release commences the running time of any warranty or guarantee periods specified in the Contract.

6. The Agency and Contractor agree that the Contractor is not liable for any damages, including liquidated damages, for delay or for failure to complete the work specified in

Contract No. 17-02 within the working days and time extensions allowed under Contract No.17-02.

7. The presently retained amount of \$3,266.3 is five percent (5%) of the total adjusted contract price of \$65,326 for Contract No.17-02. Said retention monies shall be released to the Contractor pursuant to State lien and stop notice law at the expiration of the lien/stop notice period of thirty-five (35) calendar days after recordation of the Notice of Completion by the County Recorder's Office.

8. Contractor and Agency agree that the total adjusted contract price and time of performance for Contract No. 17-02 is as follows:

ORIGINAL CONTRACT PRICE	\$64,500
CHANGE ORDERS	\$826
FINAL ADJUSTED CONTRACT PRICE	\$65,326

The final completion date of the work required by Contract No. 17-02 is the 8th day of February 2018.

9. It is understood and agreed by the parties hereto that the facts with respect to which the foregoing release is given may hereafter turn out to be other than or different from the facts now known to be or believed by said parties to be true, and the parties hereto expressly assume the risk of the facts turning out to be different than they now so appear, and agree that the foregoing release shall be, in all respects, effective and not subject to termination or rescission by and such difference in facts.

10. The parties hereby expressly waive any and all rights the parties have or may have under California Civil Code Section 1542, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release which if known by him must have materially affected his settlement with the debtor."

11. It is understood and agreed by the parties that this settlement is a compromise of doubtful and disputed claims, and that the releases made by the Contractor and Agency herein are not to be construed as an admission or admissions of liability on the part of either party and that the parties deny liability thereof and intend merely to avoid litigation and to buy their peace. The parties agree that they will forever refrain and forebear from commencing, instituting or prosecuting any lawsuit, action or other proceeding against the other party based on, arising out of, or in any way connected with the claims released by this Agreement and Release.

12. The Contractor hereby releases and agrees to indemnify the Agency for all claims of its subcontractors and suppliers, including those for delay and impact costs resulting from the delays in the completion of the project.

13. The terms of this Agreement and Release do not excuse the Contractor from the provisions of Contract No. 17-02, which provide for certain warranties and guarantees of the work required to be performed pursuant to Contract No. 17-02. Contractor shall repair and replace any and all improvements that are damaged or fail and shall maintain the original Faithful Performance Bond in full force and effect for the entire warranty period.

14. The Contractor represents and warrants to the Agency that the Contractor has not assigned or transferred or purported to assign or transfer to any person, firm, corporation, association or entity any of the rights, claims, demands, debts, obligations, liabilities, actions, damages, losses, costs, expenses and warranties that are the subject of this Agreement and the Contractor agrees to indemnify and hold harmless the Agency against, without limitation, any and all rights, claims, demands, debts, obligations, liabilities, actions, damages, losses, costs, expenses, warranties and other claims, including attorneys' fees, arising out of or connected with any such assignment or transfer or purported assignment or transfer.

15. The parties acknowledge that they have been represented by counsel of their own choice in connection with the preparation and execution of this Agreement and Release, and that they understand and voluntarily consent and agree to each and every provision contained herein.

16. The parties declare and represent that no promise, inducement or agreement, not herein expressed, has been made to the parties and that this Agreement and Release contains the entire agreement among the parties hereto. Any modification or amendment to this Agreement and Release will be effective only if it is in writing and signed by all parties to this Agreement and Release.

17. The persons executing this Agreement and Release represent and warrant that the execution and performance of the terms of this Agreement and Release have been duly authorized by all requisite corporate, partnership, individual, or other entity requirements and that said persons have the right, power, legal capacity and authority to execution and enter into this Agreement and Release.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

"AGENCY"

CITY OF LAGUNA NIGUEL

By: _____

Print Name: _____

Title: _____

ATTEST:

Eileen Gomez,
City Clerk

**APPROVED AS TO FORM BY THE
CITY ATTORNEY FOR THE
CITY OF LAGUNA NIGUEL,
CALIFORNIA**

Terry E. Dixon, Esq.
City Attorney

"CONTRACTOR"

A Good Sign & Design Company
a California corporation

By: _____

Print Name: _____

Title: _____

By: _____

Print Name: _____

Title: _____

[Signatures of corporate officials must be notarized.]