

CITY COUNCIL

For City Clerk's Use:

☐ **APPROVED** ☐ **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 8
Date: July 21, 2010

TO: Honorable Mayor and Members of the City Council

FROM: Edward N. Domingue, Director of Engineering Services
Robert J. Zaino, Deputy Director of Engineering Services

SUBJECT: Budget Adjustment and Bid Award for Mercado and Grand Avenue Lighting Project 2010

RECOMMENDATION:

It is requested that Council accept the apparent low bid from Dick Miller, Inc. as the lowest responsive and responsible bid by adopting Resolution No. 2010-119 authorizing the Mayor and the City Clerk to execute a Public Improvement Agreement with Dick Miller, Inc. in the amount of \$2,185,920.29 for the Mercado and Grand Avenue Lighting Project 2010; and approve a budget adjustment in the amount of \$600,000 to fully fund the contract award and construction support costs.

FISCAL ANALYSIS:

This project will be funded from a Smart Growth Incentive Program (SGIP) grant from SANDAG in the amount of \$1,320,000; and \$471,000 from the remaining balances in CIP Project Account Numbers 108-644503 and 108-647706, approved in prior year CIP budgets for this project. To complete the project funding, an additional \$600,000 (207-627601 Street Maintenance - \$300,000; 120-662804 Traffic Signal & Intersections - \$200,000; and 206-607001 Storm Drain - \$100,000) will be added via a budget adjustment as part of the award of this construction contract.

PREVIOUS ACTION:

The original consulting agreement with EDAW, Inc. in the amount of \$51,142.08 was approved by City Council on May 14, 2008, by adoption of Resolution No. 2008-98. A project status report and second amendment to the consulting agreement with EDAW, Inc. in the amount of \$24,005 was approved by City Council on February 5, 2009.

BACKGROUND:

Grand Avenue will be improved from Quince Street to Pine Street with full street improvements by installing new paving, curb, gutter, sidewalk, tree lights, pedestrian street lights, string lights, colored concrete, paver stones, diagonal parking, median improvements, and landscaping. Along Grand Avenue from Centre City Parkway to Maple Street; and, from Juniper Street to Valley Boulevard, new

pedestrian lights will be installed, completing pedestrian lighting on Grand Avenue in the central downtown area. In addition, missing street trees will be replaced between Juniper Street and Valley Boulevard as well as new LED uprights installed. The intersection of Quince Street and Grand Avenue will be also be signalized and Quince Street from Grand Avenue to Valley Parkway will be completely rehabilitated and finished with an AC overlay.

The Engineer's estimate for the project is \$2,389,120.

On, July 1, 2010, the City of Escondido received nine sealed bids in response to its advertised request for bids on this project. The bids were opened by the City Clerk with the following bid results:

(1) Dick Miller, Inc.	\$2,185,920.29
(2) HMS Construction, Inc.	\$2,240,000.00
(3) Southland Paving, Inc.	\$2,247,312.80
(4) 3D Enterprises, Inc.	\$2,276,000.00
(5) Wier Construction Corporation	\$2,299,781.05
(6) HAR Construction, Inc.	\$2,371,382.60
(7) Patriot General Engineering, Inc.	\$2,409,831.00
(8) Palm Eng. Const. Co., Inc.	\$2,584,961.00
(9) Sim J. Harris	\$2,628,500.00

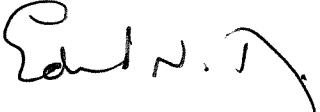
Following the bid opening, staff reviewed the submitted bid proposals. The apparent low bidder at bid opening, Dick Miller, Inc., did not indicate meeting the DBE requirement or provide a good faith effort explanation. Subsequent to the bid opening, but within the allowable time in the project specifications, a goals/good faith effort that met the project requirements were submitted by Dick Miller, Inc., and approved by City staff.

Also subsequent to the bid opening two protest letters were filed against the apparent low bidder. The items addressed in the letters and the City's determinations related thereto are as follows:

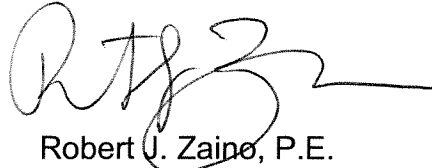
1. No surveyor listed - *not required to be listed as work is less than 0.5% of project.*
2. Lack of/improper completion of Under-utilized Disadvantaged Business Enterprise (UDBE) documents - *as noted above, the apparent low bidder submitted, within the allowable time, a goals/good faith effort that met the project requirements.*
3. Unbalanced bid items - *staff determined that there is not a material disadvantage to the City for the bid items in question.*

4. Specialty item subcontractor staffing - *the subcontractor in question, CDE Electric, holds a valid contractor's license from the State of California for work of this type and staffing levels by the subcontractor are not relevant to the City's decision to award a bid to the prime contractor.*

Respectfully submitted,



Edward Domingue, P.E.
Director of Engineering Services



Robert J. Zaino, P.E.
Deputy Director of Engineering Services

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RESOLUTION NO. 2010-119

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AUTHORIZING THE MAYOR AND CITY CLERK
TO EXECUTE, ON BEHALF OF THE CITY, A
PUBLIC IMPROVEMENT AGREEMENT WITH
DICK MILLER, INC. FOR THE MERCADO AND
GRAND AVENUE LIGHTING PROJECT 2010

WHEREAS, the City Council authorized an invitation for bids for the Mercado and Grand Avenue Lighting Project 2010 ("Project") including detailed plans and specifications; and

WHEREAS, the City of Escondido opened the sealed bids for the Project on July 1, 2010; and

WHEREAS, the Director of Engineering Services recommends awarding the bid to the lowest bidder, Dick Miller, Inc. of San Marcos; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to accept the bid by Dick Miller, Inc. of San Marcos for the Project;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true.
2. That the Mayor and City Clerk are authorized to execute, on behalf of the City, a Public Improvement Agreement ("Agreement") with Dick Miller, Inc. of San Marcos for the Project. A copy of the Agreement is attached as Exhibit "A" and is incorporated by this reference.

PUBLIC IMPROVEMENT AGREEMENT

This "Agreement", dated the _____ day of _____, 20____, in the County of SAN DIEGO, State of California, is by and between **THE CITY OF ESCONDIDO** (hereinafter referred to as "CITY"), and Dick Miller, Inc. of San Marcos (hereinafter referred to as "CONTRACTOR").

The CITY and the CONTRACTOR, for the consideration stated herein, agree as follows:

1. The complete contract includes all of the Project Documents described in the General Conditions, which are incorporated by reference. The Project Documents are complementary, and what is called for by any one shall be as binding as if called for by all.
2. CONTRACTOR shall perform, within the time set forth in Paragraph 4 of this Agreement, everything required and reasonably inferred to be performed, and shall provide and furnish all the labor, materials, necessary tools, expendable equipment, and all utility and transportation services as described in the complete contract and required for construction of

MERCADO AND GRAND AVENUE LIGHTING PROJECT 2010

All of said work to be performed and materials to be furnished shall be completed in a good workmanlike manner, free from defects, in strict accordance with the plans, drawings, specifications and all provisions of the complete contract as hereinabove defined. The CONTRACTOR shall be liable to the CITY for any damages and resulting costs, including consultants' costs, arising as a result of a failure to fully comply with this obligation, and the CONTRACTOR shall not be excused with respect to any failure to so comply by any act or omission of the Architect, Engineer, Inspector, or representative of any of them, unless such act or omission actually prevents the CONTRACTOR from fully complying with the requirements of the Project Documents, and unless the CONTRACTOR protests at the time of such alleged prevention that the act or omission is preventing the CONTRACTOR from fully complying with the Project documents. Such protest shall not be effective unless reduced to writing and filed with the CITY within **three (3) working days** of the date of occurrence of the act or omission preventing the CONTRACTOR from fully complying with the Project documents.

3. CITY shall pay to the CONTRACTOR, as full consideration for the faithful performance of the contract, subject to any additions or deductions as provided in the Project documents, the sum of **Two Million One Hundred Eighty Five Thousand Nine Hundred Twenty and Twenty Nine cents Dollars (\$2,185,920.29)**.
4. The work shall be commenced on or before the twenty-first (21st) day after receiving the CITY'S Notice to Proceed and shall be completed within **One Hundred Forty (140) working days** from the date specified in the Notice to Proceed.

- Liquidated damages schedule:

Acknowledged:

6. In the event CONTRACTOR, for a period of **ten (10) calendar days** after receipt of written demand from CITY to do so, fails to furnish tools, equipment, or labor in the necessary quantity or quality, or to prosecute said work and all parts thereof in a diligent and workmanlike manner, or after commencing to do so within said **ten (10) calendar days**, fails to continue to do so, then the CITY may exclude the CONTRACTOR from the premises, or any portion thereof, and take possession of said premises or any portion thereof, together with all material and equipment thereon, and may complete the work contemplated by this Agreement or any portion of said work, either by furnishing the tools, equipment, labor or material necessary, or by letting the unfinished portion of said work, or the portion taken over by the CITY to another contractor, or demanding the surety hire another contractor, or by any combination of such methods. In any event, the procuring of the completion of said work, or the portion thereof taken over by the CITY, shall be a charge against the CONTRACTOR, and may be deducted from any money due or to become due to CONTRACTOR from the CITY, or the CONTRACTOR shall pay the CITY the amount of said charge, or the portion thereof unsatisfied. The sureties provided for under this Agreement shall become liable for payment should CONTRACTOR fail to pay in full any said cost incurred by the CITY. The permissible charges for any such procurement of the completion of said work should include actual costs and fees incurred to third party individuals and entities (including, but not limited to consultants, attorneys, inspectors, and designers) and actual costs incurred by CITY for the increased dedication of time of CITY employees to the Project.
7. To the fullest extent permitted by law, the CONTRACTOR agrees to and does hereby agree to fully defend, indemnify and hold the CITY, its governing board, officers, agents, Project design team members (architect and consulting engineers), consultants, attorneys, and employees harmless of and from each and every claim, assertion, action, cause of action, arbitration, suit, proceedings, or demand made, and every liability, loss, judgment,

award, damage, or expense, of any nature whatsoever (including attorneys' fees, consultant costs), which may be incurred by reason of:

- (a) Asserted and/or actual liability arises from claims for and/or damages resulting from damages for:
 - (1) Death or bodily injury to persons.
 - (2) Injury to, loss or theft of tangible and/or intangible property/ e.g. economic loss.
 - (3) Any other loss, damage or expense arising under either (1) or (2) above, sustained by the CONTRACTOR upon or in connection with the work called for in this Project, except for liability resulting from the sole active negligence, or willful misconduct of the CITY.
- (b) Any injury to or death of any person(s) or damage, loss or theft of any property caused by any act, neglect, default or omission of the CONTRACTOR, or any person, firm, or corporation employed by the CONTRACTOR, either directly or by independent contract, arising out of, or in any way connected with the work covered by this Agreement, whether said injury or damage occurs on or off City property.
- (c) Any and all liabilities, claims, actions, causes of action, proceedings, suits, administrative proceedings, damages, fines, penalties, judgments, orders, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements, arising out of any violation, or claim of violation of the San Diego Municipal Storm Water Permit (Order No. 2001-01), and updates or renewals, of the California Regional Water Quality Control Board Region 9, San Diego, which the CITY might suffer, incur, or become subject by reason of or occurring as a result of or allegedly caused by the construction, reconstruction, maintenance, and/or repair of the work under this Agreement.

The CONTRACTOR, at CONTRACTOR's own expense, cost, and risk shall defend any and all actions, suit, or other proceedings that may be brought or instituted against the CITY, its governing board, officers, agents or employees, on any such claim, demand or liability, and shall pay or satisfy any judgment that may be rendered against the CITY, its governing board, officers, agents or employees in any action, suit or other proceedings as a result thereof.

- 8. CONTRACTOR shall take out, prior to commencing the work, and maintain, during the life of this contract, and shall require all subcontractors, if any, of every tier, to take out and maintain:
 - (a) General Liability and Property Damage Insurance as defined in the General Conditions in the amount with a combined single limit of not less than **\$3,000,000 per occurrence**.
 - (b) Course of Construction / Builder's Risk Insurance. See Article 5.2 of General Conditions.

- (c) Insurance Covering Special Hazards: The following special hazards shall be covered by rider or riders to the above-mentioned public liability insurance or property damage insurance policy or policies of insurance, or by special policies of insurance in amounts as follows:
 - (1) Automotive and truck where operated in amounts as above
 - (2) Material hoist where used in amounts as above
 - (d) Workers' Compensation Insurance.
 - (e) Each insurance policy required above must be acceptable to the City Attorney, as follows:
 - (1) Each policy must name the CITY specifically as an additional insured under the policy on a separate endorsement page, with the exception of the workers' compensation and the Errors and Omissions policies.
 - (2) Each policy must provide for written notice within no more than thirty (30) days if cancellation or termination of the policy occurs. Insurance coverage must be provided by an A.M. Best's A-rated, class V carrier or better, admitted in California, or if non-admitted, a company that is not on the Department of Insurance list of unacceptable carriers.
 - (3) All non-admitted carriers will be required to provide a service of suit endorsement in addition to the additional insured endorsement.
 - (f) In executing this Agreement, CONTRACTOR agrees to have completed insurance documents on file with the CITY within 14 days after the date of execution. Failure to comply with insurance requirements under this Agreement will be a material breach of this Agreement, resulting in immediate termination at CITY's option.
9. This Agreement is subject to California Public Contract Code Section 22300, which permits the substitution of securities for any monies withheld by the City under this Agreement, and permits the CONTRACTOR to have all payments of earned retentions by the City paid to an escrow agent at the expense of the CONTRACTOR.
10. Each and every provision of law and clause required by law to be inserted in this Agreement or its attachments shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not currently inserted, then upon application of either party the Agreement shall forthwith be physically amended to make such insertion or correction, without further changes to the remainder of the Agreement.
11. The complete contract as set forth in Paragraph 1 of this Agreement constitutes the entire Agreement of the parties. No other agreements, oral or written, pertaining to the work to be performed, exists between the parties. This Agreement can be modified only by an amendment in writing, signed by both parties and pursuant to action of the Escondido City Council.

12. CONTRACTOR shall comply with those provisions of the Labor Code requiring payment of prevailing wages, keeping of certified payroll records, overtime pay, employment of apprentices, and workers' compensation coverage, as further set forth in the General Conditions, and shall file the required workers' compensation certificate before commencing work.
13. The terms "Project Documents" and/or "Contract Documents" where used, shall refer to those documents included in the definition set forth in the General Conditions made a part hereof.

IN WITNESS WHEREOF, this Agreement has been executed on behalf of CITY by its officers thereunto authorized and by CONTRACTOR, the date and year first above written.

CITY OF ESCONDIDO
a municipal corporation
201 North Broadway
Escondido, CA 92025

By: _____
Marsha Whalen, City Clerk

By: _____
Lori Holt Pfeiler, Mayor

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY
JEFFREY R. EPP, City Attorney

By: _____

CONTRACTOR

By:

Signature

By:

Signature*

Print Name

Print Name

Title

Title

(Second signature required only for corporation)

By:

Signature**

Print Name

Title

(CORPORATE SEAL OF CONTRACTOR, if
corporation)

Contractor's License No.

Tax ID/Social Security No.

*If CONTRACTOR is a corporation, the first signature must be by one of the following officers of the corporation: Chairman of the Board, President, or any Vice President.

**If CONTRACTOR is a corporation, the second signature must be by a different person from the first signature and must be by one of the following officers of the corporation: Secretary, any Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer.