ESCONDIDO
City of Choice

CITY COUNCIL

For City Clerk's Use:
☐ APPROVED ☐ DENIED
Reso No. _____ File No. _____
Ord No. _____

Agenda Item No.: 16
Date: August 18, 2010

TO: Honorable Mayor and Members of the City Council

FROM: Lori Vereker, Director of Utilities

SUBJECT: Declaration of a Utility Emergency and Award of Contract to Replace a Water Main on 9TH Avenue between Juniper Street and South Broadway

RECOMMENDATION:

It is requested that Council adopt Resolution No. 2010-137 declaring that, pursuant to the terms of Section 20168 of the California Public Contract Code, the City Council may forego normal bidding procedures and pass a resolution by four-fifths vote declaring that public interest and necessity demand the immediate expenditure to safeguard life, health, or property.

FISCAL ANALYSIS:

Funding for this emergency water main work is available in the Capital Improvement Budget fiscal year 2010/2011. As of the writing of this staff report some of the water services have yet to be completed so a final cost for the work is not yet known. However, the final cost is expected to be below $300,000.

BACKGROUND:

During the execution of the fiscal year 2009/ 2010 City Street Maintenance Program, the water main on 9th Avenue failed causing outages and the temporary abandonment of the pavement project in that area. After the second failure, it was deemed that further unplanned interruptions in water service would be unacceptable and constitutes a threat to the health of the affected residents and damage to the newly paved road. Immediate action was taken to replace the defective water main. Local contractor Shaw Equipment Rental, Inc. was able to mobilize immediately and replace the water main and services on a time and material basis.

Respectfully submitted,

Lori Vereker
Director of Utilities

Neil Greenwood
Utilities Project Construction Manager

RESOLUTION NO. 2010-137

16.

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 ON AN EMERGENCY BASIS FOR REPLACEMENT OF A WATER MAIN ON NINTH AVENUE BETWEEN SOUTH BROADWAY AND JUNIPER

WHEREAS, pursuant to California Public Contract Code ("Contract Code") Section 20168, the City Council may forego normal bidding procedures and pass a resolution by a four-fifths vote declaring that public interest and necessity demand the immediate expenditure to safeguard life, health, or property; and

WHEREAS, pursuant to Contract Code Section 22050, in order to bypass the public bidding process by authorizing resolution, the governing body shall make a finding based on substantial evidence, set forth in the minutes of its meeting, that the emergency will not permit a delay resulting from a competitive solicitation for bids and that the proposed action is necessary to respond to the emergency; and

WHEREAS, the Director of Utilities, in consultation with the City Manager, has determined that recent failures of the water system on 9th Avenue constitute a potential public health risk due to possible contamination, requiring immediate action; and

WHEREAS, the Director of Utilities has determined that additional water main failures could cause additional damage to City property and the surrounding low lying private property; and

WHEREAS, The Director of Utilities has recommended that emergency funds be expended on the proposal from Shaw Equipment Rentals, Incorporated, to immediately

start water main replacement work; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to authorize the emergency expenditure of an amount not to exceed three hundred thousand dollars ($300,000);

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 Council accepts the determination by the Director of Utilities that the continued failure of the water main on 9th Avenue is a public health emergency, that additional failures could cause more damage to property, that this emergency will not permit the delay that would result from a competitive bidding process and that the proposed action is necessary to respond to the emergency requiring immediate repair of the water main.

3. That the Mayor and City Council accepts the recommendation of the Director of Utilities that it is in the best public interest to authorize the Director of Finance to issue a Purchase Order to Shaw Equipment Rentals, Incorporated, in an amount not to exceed $300,000, to fund this emergency Public Improvement Agreement ("Agreement").

4. That the Mayor and City Clerk are authorized to execute, on behalf of the City, an Agreement with Shaw Equipment Rentals, Incorporated. 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 _____, 2010, in the County of SAN DIEGO, State of California, is by and between **THE CITY OF ESCONDIDO** (hereinafter referred to as "CITY"), and **Shaw Equipment Rentals Incorporated** (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

EMERGENCY WATER MAIN REPLACEMENT ON 9TH AVENUE BETWEEN JUNIPER STREET AND SOUTH BROADWAY

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 **the TIME AND MATERIAL COSTS NOT TO EXCEED THREE HUNDRED THOUSAND DOLLARS ($300,000).**

4. The work shall be commence **IMMEDIATELY and not stop excepting Sundays and nights until the lines have been replaced**.

5. Time is of the essence. If the work is not completed in accordance with Paragraph 4 above, it is understood that the CITY will suffer damage. It being impractical and infeasible to determine the amount of actual damage(s), in accordance with Government Code Section 53069.85, it is agreed that CONTRACTOR shall pay to CITY as fixed and liquidated damages, and not as a penalty, the sum(s) indicated in the LIQUIDATED DAMAGES SCHEDULE below for each calendar day of delay until work is completed and accepted. This amount shall be deducted from any payments due to or to become due to CONTRACTOR. CONTRACTOR and CONTRACTOR'S surety shall be

liable for the amount thereof. Time extensions may be granted by the CITY as provided in the General Conditions.

Liquidated damages schedule:

If the overall project is delayed **one (1) calendar day or more through the fault of the contractor in the opinion of the CITY'S UTILITIES CONSTRUCTION MANAGER, the CITY will mobilize another contractor to continue with the work and.**

Acknowledged: _____
Initials of Principal

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 that **$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

CONTRACTOR

By: _____
Signature

_____
Print Name

_____
Title

By: _____
Signature*

_____
Print Name

_____
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.