

CITY COUNCIL

For City Clerk's Use:

☐ **APPROVED** ☐ **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 13

Date: August 10, 2011

TO: Honorable Mayor and Members of the City Council

FROM: Lori Vereker, Utilities Director

SUBJECT: Bid Award for the Secondary Clarifiers Rehabilitation Project

RECOMMENDATION:

It is requested that Council adopt Resolution No. 2011-109 authorizing the Mayor and City Clerk to execute an agreement with Stanek Constructors Incorporated ("Stanek") of Escondido in the amount of \$443,700 for the Secondary Clarifiers Rehabilitation Project (the "Project") at the Hale Avenue Resource Recovery Facility.

FISCAL ANALYSIS:

This Project is budgeted within the Wastewater Capital Improvements Budget.

PREVIOUS ACTION:

At the City Council meeting on December 8, 2010 the procurement of the replacement mechanical equipment for the secondary clarifiers was approved in the amount of \$406,516. The equipment was purchased to match that of two other existing secondary clarifiers and the required time to manufacture and deliver was approximately six months.

BACKGROUND:

The Project is for the installation of the pre-purchased mechanical equipment to rehabilitate two secondary clarifiers that were built in 1984.

The City of Escondido received three sealed bids in response to its advertisements for sealed bids for the Project. The Engineer's estimate for the Project was \$450,000. Sealed bids were received and opened by the City Clerk on July 21, 2011, with the following results:

- | | |
|--|---------------------------|
| 1) Industrial Coatings & Restoration, Oceanside. | \$415,000 (Bid withdrawn) |
| 2) Stanek Constructors, Inc., Escondido. | \$443,700 |
| 3) Filanc Construction, Inc., Escondido. | \$461,279 |

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Following the bid opening, the City reviewed the bid proposals submitted. The low bid submitted by Industrial Coatings & Restoration ("Industrial") was found to be non-responsive due to the lack of required specialty experience and a non-responsive bid bond. Industrial withdrew its bid before being notified of the Staff's bid analysis because Industrial misunderstood the project scope and does not perform the work required by the Project. After reviewing Stanek's bid materials, Staff determined that they were the lowest responsive and responsible bidder.

Respectfully submitted,



Lori Vereker
Director of Utilities



Neil Greenwood
Utilities Construction Manager

RESOLUTION NO. 2011-109

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
STANEK CONSTRUCTORS INCORPORATED,
FOR THE SECONDARY CLARIFIERS
REHABILITATION PROJECT AT THE HALE
AVENUE WASTEWATER PLANT

WHEREAS, the Escondido City Council authorized an invitation for bids for the
Secondary Clarifiers Rehabilitation project (the "Project"); and

WHEREAS, the City of Escondido opened sealed bids for the Project on July 21,
2011; and

WHEREAS, the apparent low bidder, Industrial Coatings and Restoration,
misinterpreted the scope of the Project and requested to withdraw their bid; and

WHEREAS, the Director of Utilities has accepted the withdrawal of the bid from
Industrial Coatings and Restoration and determined Stanek Constructors Incorporated
("Stanek") to be the lowest responsive and responsible bidder and recommends
awarding the bid in the amount of \$443,700 to Stanek; and

WHEREAS, this City Council desires at this time and deems it to be in the best
public interest to award this contract to Stanek;

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 recommendation of the Director of Utilities and finds Stanek to be the lowest responsive and responsible bidder.

3. That the Mayor and City Clerk are authorized to execute, on behalf of the City, a Public Improvement Agreement ("Agreement") with Stanek 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 Stanek Constructors, Inc. (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

SECONDARY CLARIFIERS REHABILITATION PROJECT

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 **Four Hundred Forty Three Thousand Seven Hundred Dollars (\$443,700.00)**.
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 **sixty (60) calendar days** from the date specified in the Notice to Proceed.
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

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. (a) 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:
 - (1) 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**.
 - (2) Course of Construction / Builder's Risk Insurance See 5.2 of General Conditions.
 - (3) 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:
 - (A) Automotive and truck where operated in amounts as above
 - (B) Material hoist where used in amounts as above
 - (4) Workers' Compensation Insurance.
- (b) 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.

(c) 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. Public Contract Code Section 22300 permits the substitution of securities for any monies withheld by a public agency to ensure performance under a contract. At the request and expense of the CONTRACTOR, securities equivalent to the amount withheld in retention by the CITY, then the subcontractor shall receive the identical rate of interest received by the CONTRACTOR on any retention monies withheld shall be deposited with the public agency, or with a state or federally chartered bank in California as the escrow agent, who shall then pay such monies to the CONTRACTOR. The City retains the sole discretion to approve the bank selected by the CONTRACTOR to serve as escrow agent. Upon satisfactory completion of the contract, the securities shall be returned to the CONTRACTOR. Securities eligible for investment shall include those listed in Government Code Section 16430 or bank or savings and loan certificates of deposit. The CONTRACTOR shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

In the alternative, under Section 22300, the CONTRACTOR may request CITY to make payment of earned retentions directly to the escrow agent at the expense of the CONTRACTOR. Also at the CONTRACTOR's expense, the CONTRACTOR may direct investment of the payments in securities, and the CONTRACTOR shall receive interest earned on such investment upon the same conditions as provided for securities deposited by CONTRACTOR. Upon satisfactory completion of the contract, CONTRACTOR shall receive from the escrow agent all securities, interest and payments received by escrow agent from CITY pursuant to the terms of Section 22300. If CONTRACTOR elects to receive interest on moneys withheld in retention by CITY, CONTRACTOR shall, at the request of any subcontractor, make that option available to the subcontractor regarding any monies withheld in retention by the CONTRACTOR from the subcontractor. If the CONTRACTOR elects to receive any interest on any monies withheld in retention by the Owner, then the subcontractor shall receive the identical rate of interest received by the CONTRACTOR on any retention monies withheld from the subcontractor by the CONTRACTOR, less any actual pro rata costs associated with administering and calculating that interest. In the event the interest rate is a fluctuating rate, the rate for the subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the subcontractor. If the CONTRACTOR elects to substitute securities in lieu of retention, then, by

mutual consent of the CONTRACTOR and subcontractor, the subcontractor may substitute securities in exchange for the release of monies held in retention by CONTRACTOR. This shall apply only to those subcontractors performing more than five percent (5%) of the CONTRACTOR'S total bid. The CONTRACTOR shall not require any subcontractor to waive any provision of this section.

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. CONTRACTOR agrees to enroll in and begin use of the United States Department of Homeland Security's ("DHS") E-Verify program ("E-Verify") within thirty (30) days of the execution of this Agreement to confirm employment eligibility of all of CONTRACTOR'S potential new hires. CONTRACTOR agrees and understands that E-Verify enrollment requires CONTRACTOR to sign a Memorandum of Understanding ("MOU") with DHS which provides the E-Verify terms of use. Any violation of the MOU by CONTRACTOR is grounds for DHS' termination of CONTRACTOR'S participation in the E-Verify program. Any such termination by DHS shall constitute grounds for City's immediate termination of this Agreement.
14. The terms "Project Documents" and/or "Contract Documents" where used, shall refer to those documents include 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: _____
Sam Abed, 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.