

## CITY COUNCIL

For City Clerk's Use:

☐ **APPROVED** ☐ **DENIED**

Reso No. \_\_\_\_\_ File No. \_\_\_\_\_

Ord No. \_\_\_\_\_

**Agenda Item No.: 6 Revised**  
**Date: August 15, 2012**

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Christopher W. McKinney, Director of Utilities

**SUBJECT:** RGP 87 – Sewer Outfall Mitigation Work

**RECOMMENDATION:**

The Utilities Department requests that Council: 1) Adopt Resolution No. 2012-135 authorizing the Mayor and City Clerk to execute a Public Improvement Agreement with Southland Paving, Inc. for the project titled "Regional General Permit (RGP) 87 – Sewer Outfall Mitigation Work at Kit Carson Park" in the amount of \$882,000.00 and 2) approve a budget adjustment in the amount of \$1,000,000.00.

**FISCAL ANALYSIS:**

Sufficient funds are located in the Wastewater CIP. The attached Budget Adjustment Request details the allocation of \$1,000,000 to this Sewer Outfall Mitigation Work project. This adjustment results in no net change to the overall Wastewater CIP.

**PREVIOUS ACTION:** Resolution 2006-51 certified a mitigation project to restore wetland habitat disturbed in the course of Outfall maintenance work.

**BACKGROUND:**

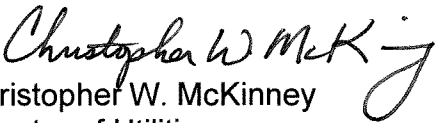
The Escondido sewer land outfall is approximately 14 miles in length, running along Escondido Creek from the HARRF to the San Elijo Lagoon in Encinitas. Through most of its length the land outfall is accessed via an unimproved maintenance road. Maintenance activities are required to ensure the continued safe and efficient operation of the land outfall. The department received from the jurisdictional agencies that would allow the City to conduct maintenance work. The agencies involved include the US Army Corps of Engineers, California Fish and Game, US Fish and Wildlife and the San Diego Regional Water Quality Control Board, among others. Some of that work along the outfall will impact habitats. Mitigation of those impacts is required by the agencies. This project, Sewer Outfall Mitigation Work at Kit Carson Park ("Park"), will take place at a 2.8-acre site within the Park that has been previously disturbed. The project will remove material that had been dredged from Sand Lake in the past and stockpiled on the site. The site will then be graded and planted with native vegetation to restore the area as a wetland.

Due to an environmental time restriction to perform the necessary work, September 15 through February 15, it was necessary to expedite the bidding and contract award phase of the project to

RGP 87 – Sewer Outfall Mitigation Work  
August 15, 2012  
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avoid losing another full year. Bids were opened on August 9, 2012. Southland Paving, Inc. was found to be the lowest responsive and responsible bidder.

Respectfully submitted,

  
Christopher W. McKinney  
Director of Utilities



CITY OF ESCONDIDO  
BUDGET ADJUSTMENT REQUEST

Date of Request: August 14, 2012  
Department: Utilities  
Division: Wastewater  
Project/Budget Manager: Craig Whittemore 4038  
Name Extension  
Council Date (if applicable): August 15, 2012  
(attach copy of staff report)

**For Finance Use Only**

Log # \_\_\_\_\_  
Fiscal Year \_\_\_\_\_  
\_\_\_\_ Budget Balances  
\_\_\_\_ General Fund Accts  
\_\_\_\_ Revenue  
\_\_\_\_ Interfund Transfers  
\_\_\_\_ Fund Balance

| Project/Account Description      | Account Number | Amount of Increase | Amount of Decrease |
|----------------------------------|----------------|--------------------|--------------------|
| Outfall Mitigation Project       | 557-807201     | 1,000,000          |                    |
| Outfall Maintenance              | 557-800079     |                    | 200,000 ✓          |
| HARRF Secondary Clarifier Rehab  | 557-807402     |                    | 100,000 ✓          |
| Land Outfall Cathodic Protection | 557-800299     |                    | 200,000 ✓          |
| Collection System Maintenance    | 557-800329     |                    | 500,000 ✓          |
|                                  |                |                    |                    |
|                                  |                |                    |                    |
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|                                  |                |                    |                    |
|                                  |                |                    |                    |
|                                  |                |                    |                    |

Explanation of Request:

To fund the mitigation project, to be done at Kit Carson Park, required by Regional General Permit (RGP) 87 as part of the Sewer Outfall Operations & Maintenance project.

**APPROVALS**

Christopher W. McK 08.14.2012  
Department Head Date City Manager Date  
Jodi Corbett 8/14/12  
Finance Date City Clerk Date

RESOLUTION NO. 2012-135

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  
SOUTHLAND PAVING, INC. FOR THE RGP 87 –  
SEWER OUTFALL MITIGATION WORK AT KIT  
CARSON PARK

WHEREAS, it is in the best interest of the public and sewer rate payers to perform required sewer outfall maintenance; and

WHEREAS, permits received for this work from the U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service state that maintenance work on the sewer outfall cannot begin until the construction on this Project has begun; and

WHEREAS, the City of Escondido published a public notice inviting bids for the RGP 87 – Sewer Outfall Mitigation Work at Kit Carson Park (the “Project”); and

WHEREAS, Southland Paving, Inc. was found to be the lowest responsive and responsible bidder; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to approve said bid 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 City Council accepts the recommendation of the Director of Utilities and finds Southland Paving, Inc. to be the lowest responsive and responsible bidder.

3. That the Mayor and City Clerk are therefore authorized to execute, on behalf of the City, a Public Improvement Agreement ("Agreement") with Southland Paving, Inc. A copy of the Agreement is attached as Exhibit "1" 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 **SOUTHLAND PAVING, 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

### RGP 87 MITIGATION

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 **eight hundred and eighty two thousand dollars (\$882,000)**.
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 **two-hundred and forty (240) 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 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

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: \_\_\_\_\_  
Diane Halverson, City Clerk

By: \_\_\_\_\_  
Sam Abed, Mayor

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY  
JEFFREY R. EPP, City Attorney

By: \_\_\_\_\_

**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.