

CITY COUNCIL

For City Clerk's Use:

☐

APPROVED

☐

DENIED

Reso No. _____

File No. _____

Ord No. _____

Agenda Item No.: 8

Date: December 19, 2012

TO: Honorable Mayor and Members of the City Council

FROM: Jo Ann Greenberg, City Librarian
Jerry Van Leeuwen, and Director of Community Services

SUBJECT: Public Improvement Agreement with J.P. Witherow Roofing Project for Library "Lift & Reset" Tile Roof Project

RECOMMENDATION:

It is requested that Council adopt Resolution No. 2012-189 approving a public improvement agreement with J.P. Witherow Roofing Company in the amount of \$124,348 plus a 5% contingency (\$6,200) for a total of \$130,548 for the Library "Lift & Reset" Tile Roof Project, at the Escondido Public Library and Technology Center, 239 S. Kalmia Street.

FISCAL ANALYSIS:

The Library "Lift & Reset" Tile Roof Project was approved in the 2011/12 – 2015/16 Five Year Capital Improvement Program and Budget in the amount of \$250,000.

CORRELATION TO THE CITY COUNCIL ACTION PLAN:

This item relates to the Council's Action Plan regarding Image and Appearance.

PREVIOUS ACTION:

Money was approved by City Council in the amount of \$250,000 as part of the Capital Improvement Program to move forward with a Library Roofing Project.

BACKGROUND:

The Escondido Public Library and Technology Center and its roof is at least 34 years old; patch work has been done on the roof over the years but the original roof membrane under the tile needs to be replaced and reset. Bid proposals were solicited for the Library and Technology Center Roofing Project in November 2012. After consideration of formal proposals, the firm of J.P. Witherow Roofing Company was selected as the best roofing company for the project and approved by the City Attorney's office.

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The bid results were as follows:	Best Contracting	\$216,000.00
	Sylvester Roofing	156,000.00
	AOS Superior Roofing	143,000.00
	Commercial & Industrial	135,844.00
	Witherow Roofing	124,348.00

The engineers estimate was \$128,000.00

Respectfully submitted,



Jo Ann Greenberg, City Librarian



Jerry Van Leeuwen, Director of Community Services

RESOLUTION NO. 2012-189

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 J.P. WITHEROW
ROOFING COMPANY

WHEREAS, the City Council has allocated funding for the Library "Lift & Reset"
Tile Roof Project; and

WHEREAS, a notice inviting bids for the Library "Lift & Reset" Tile Roof Project
was duly published, and pursuant to said notice, J.P. Witherow Roofing Company
submitted a bid; and

WHEREAS, J.P. Witherow Roofing Company was determined to be the lowest
responsive and responsible bidder; and

WHEREAS, the City Council desires at this time and deems it to be in the best
public interest to award this Public Improvement Agreement ("Agreement") to J.P.
Witherow Roofing Company.

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

1. That the above recitations are true and correct.
2. That the City Council accepts the recommendation of the Director of
Community Services.

3. That the Mayor and City Clerk are authorized to execute, on behalf of the City, an Agreement with J.P. Witherow Roofing Company, attached as Exhibit "A" to this Resolution and 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 **J. P. Witherow** (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

LIBRARY "LIFT & RESET" TILE ROOF 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 **One-hundred-twenty-four-thousand-three-hundred-forty-eight Dollars (\$124,348.00)**.
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 **twenty (20) working 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

Liquidated damages schedule:

Acknowledged:

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- (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: _____
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

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.