

RESOLUTION NO. 4264

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH
SHIMMICK CONSTRUCTION COMPANY INC. FOR A COST NOT TO EXCEED
\$49,389,620.00 FOR THE CONSTRUCTION OF THE WASTEWATER
TREATMENT PLANT, 5.5 MGD UPGRADE AND EXPANSION**

WHEREAS, the City Long Term Wastewater Treatment Plant Plan includes the upgrading and expansion of the existing City Wastewater Treatment Plant ("WWTP"); and

WHEREAS, the City received and opened sealed bids for the Construction of the WWTP, 5.5 MGD Upgrade and Expansion, at 2:00 pm on March 18, 2008; and

WHEREAS, Staff reviewed the bids and has determined that the lowest bidder, Shimmick Construction Company Inc., was responsive and is qualified to perform the desired work; and

WHEREAS, based on the bid price and work history, Staff recommends the bid be awarded to Shimmick Construction Company Inc., in the amount of \$49,389,620.00 for the Construction of the Wastewater Treatment Plant, 5.5 MGD Upgrade and Expansion.

NOW THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Soledad that:

Section 1. The City Council hereby awards the bid for the Construction of the Wastewater Treatment Plant, 5.5 MGD Upgrade and Expansion, to the lowest responsible bidder, Shimmick Construction Company Inc., in an amount not to exceed \$49,389,620.00; and,

Section 2. The City Council hereby accepts the bid for the Screw Press System Procurement Contract to the lowest responsible bidder, Huber Technology Inc., for \$506,620 and the bid for the Filtration System Procurement Contract to the lowest responsible bidder, Schreiber LLC, for \$1,258,000, and per the contract documents for the Construction of the Wastewater Treatment Plant, 5.5 MGD Upgrade and Expansion, Shimmick Construction Company Inc. will execute agreements with Huber Technology Inc. for the Screw Press System Procurement for \$506,620 and Schreiber LLC for the Filtration System Procurement for \$1,258,000; and,

Section 3. The City Council authorizes the City Manager to enter into a Contract with Shimmick Construction Company Inc. in the form attached hereto as Exhibit "A," and by this reference incorporated herein, subject to minor modification thereof. The City Manager or her designee is directed to reject all other bids in writing.

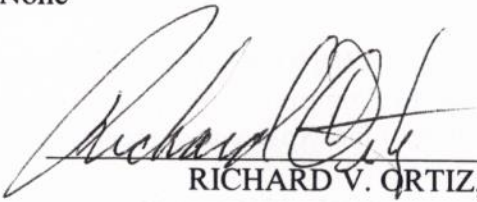
PASSED AND ADOPTED by the City Council of the City of Soledad at a regular meeting duly held on the 16th day of July 2008, by the following vote:

AYES, and in favor thereof, Councilmembers: Martha Camacho, Juan Saavedra, Patricia Stephens, Mayor Pro Tem Christopher Bourke, Mayor Richard Ortiz

NOES, Councilmembers: None

ABSENT, Councilmembers: None

ABSTAIN, Councilmembers: None


RICHARD V. ORTIZ, Mayor

ATTEST:


ADELA P. GONZALEZ, City Clerk

Section 00500

AGREEMENT

THIS AGREEMENT is by and between CITY OF SOLEDAD, California (herein called Owner) and Shimmick Construction Co. Inc. (herein called Contractor).

Owner and Contractor, in consideration of the mutual covenants herein set forth, agree as follows:

ARTICLE 1 – WORK.

1.01. Contractor shall complete all Work as specified or indicated in the Contract Documents based on the acceptance by Owner of Contractor's Bid.

The Work is generally described as follows:

Construction of a wastewater treatment plant, 5.5 million gallons per day, located at 34520 Morisoli Road, Soledad, California 93960.

The Work includes, but is not limited to, installation, assembly, and connection of new treatment equipment; construction of concrete structures; installation of underground site piping and utilities, interior piping, valves, meters, vaults, conduits, wiring, power systems, control systems, security system, pipe supports; site grading and paving work; gates and fences; process tanks; back-up generators; SCADA and surveillance system, and construction of pre-engineered metal buildings.

The treatment process includes pretreatment consisting of perforated plate screening and vortex grit removal, secondary treatment consisting of four-stage biological nutrient removal process and clarification, tertiary treatment consisting of flocculation, filtration and ultra-violet disinfection, and residuals treatment consisting of sludge stabilization and screw press sludge dewatering. On-site chemical feed systems include coagulant, floc-aid polymer, sodium hypochlorite, sodium acetate, and screw press polymer. Auxiliary facilities include return activated sludge/waste activated sludge (RAS/WAS) pump station, scum pump station, decant pump station, reclaimed water pump station, storm water drain pump stations, filter influent pump station and flow equalization tank, screw press feed pump station, dewatered sludge pump station, operations building, blower and electrical building, reclaimed water supply system, standby generator, and miscellaneous yard structures.

Exhibit "A"

The filtration and screw press systems have been procured by the City under separate contracts. The Owner intends to assign filtration and screw press system supply contracts to the Contractor on the Project.

ARTICLE 2 – ENGINEER.

2.01. The Project has been designed by Black & Veatch Corporation, 2999 Oak Road, Suite 490, Walnut Creek, California 94597, who is referred to in the Contract Documents as Engineer. Engineer, and its duly authorized agents, are to act as Owner's representatives, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3 - CONTRACT TIMES, LIQUIDATED DAMAGES, DELAY COMPENSATION.

3.01. Time of the Essence.

A. All time limits for Milestones, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

3.02. Contract Times.

A. The Contract Times shall be as indicated in the Contractor's Bid. The Work shall be substantially completed on or before the date indicated in the Contractor's Bid, and completed and ready for final payment in accordance with Paragraph 14.07.B of the General Conditions on or before the date indicated in the Contractor's Bid.

3.03. Liquidated Damages.

A. Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 3.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner \$4,000 for each calendar day that expires after the time specified in Paragraph 3.02 for Milestones and Substantial Completion until the Work is substantially completed. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract

Times or any proper extension thereof granted by Owner, Contractor shall pay Owner \$6,000 for each calendar day that expires after the time specified in Paragraph 3.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

B. After **execution of a contract with Procurement Contractors** assignment, Liquidated Damages contained as part of the City of Soledad Screw Press Procurement Contract and the City of Soledad Filtration Procurement Contract shall benefit the Contractor. For delays caused in whole by the procurement equipment supplier, liquidated damages will be assessed as specified in the applicable Procurement Contract assigned to the Contractor.

C. The liquidated damages set forth herein shall not be accumulative. If Substantial Completion of the Work is not met within the time specified for final completion of all Work, the liquidated damages shall continue to be at the rate or rates specified for default on Substantial Completion until Substantial Completion is attained. If the Work is not then finally completed, the rate or rates specified for default on final completion shall apply until final completion is attained.

D. Owner shall have the right to deduct the liquidated damages from any money in its hands, otherwise due, or to become due, to Contractor, or to initiate applicable dispute resolution procedures and to recover liquidated damages for nonperformance of this Contract within the time stipulated.

3.04. Delay Compensation.

A. Delay compensation will not be paid for delays due to weather conditions, strikes, shortages of materials, acts of God, acts or neglect by utility owners or other contractors, or other reasons that are not within Owner's control.

ARTICLE 4 – CONTRACT PRICE.

4.01. Owner shall pay Contractor, in current funds, for furnishing the Work described in Article 1 in accordance with the Contract Documents as indicated in the Contractor's Bid, for the total lump sum base bid amount of: _____

Forty nine million, three hundred eighty nine thousand, six hundred twenty
dollars. (words) (\$ 49,389,620.00 (figures))

ARTICLE 5 – PAYMENT PROCEDURES.

5.01. Submittal and Processing of Payments.

A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

B. As payments are made by Contractor on the assigned contracts in accordance with the Milestones specified in the Procurement Documents, Contractor shall include such payments as line items in Contractor's Applications for Payment.

5.02. Progress Payments; Retainage.

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer, on or about the 20th day of each month during performance of the Work. All progress payments will be on the basis of the progress of the Work measured by the Schedule of Values established in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in Division 1, General Requirements.

B. Prior to Substantial Completion, Owner will retain from progress payments, less the aggregate of payments previously made and less such amounts as Engineer shall determine or Owner may withhold in accordance with Paragraph 14.02.B.5 of the General Conditions, an amount equal to the following percentages:

1. Until the Work is 50 percent completed, retainage will be 10 percent of Work completed.
2. If the Work is 50 percent completed as determined by Engineer, and if the character and progress of the Work are satisfactory to Owner and Engineer, Owner, on recommendation of Engineer, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage on account of Work subsequently completed.
3. Retainage will be 10 percent of the value of materials and equipment that are not incorporated in the Work but are delivered, suitably stored, and accompanied by documentation satisfactory to Owner as provided in Paragraph 14.02.A.1 of the General Conditions. Stored materials and equipment retainage will be released when the materials and equipment are incorporated in the Work.

4. Retainage will not be applied to payments made on the assigned procurement contracts in accordance with the Milestones specified in the Procurement Documents. Owner will pay Contractor in full for payments made by Contractor on the assigned procurement contracts.

C. Upon Substantial Completion, Owner may release a portion of the retainage to Contractor, retaining at all times an amount sufficient to cover the cost of the Work remaining to be completed.

D. The reduction or termination of additional retainage will not be initiated at any time if the Work is behind schedule; and, subsequent to reducing retainage, the full retainage of payments authorized may be reinstated any time the Work falls behind schedule.

E. Consent of the Surety shall be obtained before any retainage is paid by Owner. Consent of the Surety, signed by an agent, must be accompanied by a certified copy of such agent's authority to act for the Surety.

F. Owner may accept securities negotiable without recourse, condition, or restrictions, or an irrevocable letter of credit, in lieu of all or part of the retainage. The securities or letter of credit offered in lieu of retainage shall be acceptable to Owner's legal counsel before any retainage is released.

5.03. Final Payment.

A. Upon completion and acceptance of the Work in accordance with Paragraph 14.07.A of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in Paragraph 14.07.B of the General Conditions.

ARTICLE 7 – CONTRACTOR'S REPRESENTATIONS.

7.01. In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Contractor is familiar with and is satisfied as to all Federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Contractor has studied all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General Conditions and reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in Paragraph 4.06 of the General Conditions.

E. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including application of the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by Contractor, and safety precautions and programs incident thereto.

F. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Drawings, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

I. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 – CONTRACT DOCUMENTS.

A. The Contract Documents which comprise the entire agreement between Owner and Contractor concerning the Work consist of the following:

1. This Agreement.
2. Performance and Payment Bonds.
3. General Conditions.
4. Supplementary Conditions.
5. California State Revolving Fund Loan Program Construction Contract Requirements and Boilerplate.
6. Specifications. Including;
 - Appendix A – California Regional Water Quality Control Board NOI Acknowledgement
 - Appendix B – Geotechnical Boring Location Maps and Boring Logs / Field Explorations
 - Appendix C – City of Soledad, Filtration System Procurement Contract - Technical Specifications and Documents - June 4, 2007
 - Appendix D – Schreiber Technical Information Submittal for Soledad, CA (Filtration System)
 - Appendix E – City of Soledad, Screw Press System Procurement Contract - Technical Specifications and Documents - July 19, 2007
 - Appendix F – Huber Contractor Information Package for Soledad, CA (Screw Press System)
7. Drawings consisting of 254 sheets, with each sheet bearing the following general title:

CITY OF SOLEDAD WWTP
5.5 MGD UPGRADE AND EXPANSION

Sheet titles are listed on Sheet G-001.

8. Addenda 1 through 2 .

9. Exhibits to this Agreement, enumerated as follows:

A-1. Contractor's Bid.

A-2. Notice to Proceed.

~~A-3. Assignment of Contract; Consent to Assignment; And
Acceptance of Assignment for City of Soledad Screw
Press System Procurement Contract~~

~~A-4. Agreement to Assignment by Seller's Surety for City of
Soledad Screw Press System Procurement Contract~~

~~A-5. Assignment of Contract; Consent to Assignment; And
Acceptance of Assignment for City of Soledad
Filtration System Procurement Contract~~

~~A-6. Agreement to Assignment by Seller's Surety for City of
Soledad Filtration System Procurement Contract~~

10. Equipment Questionnaire.

11. Instrumentation and Control System Supplier Questionnaire.

12. The following, which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto:

a. Work Change Directives.

b. Change Orders.

c. Field Orders.

B. There are no Contract Documents other than those listed in this Article.

C. The Contract Documents may be amended, modified, or supplemented only as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 9 – PROCUREMENT CONTRACTS.

9.01. The procurement contracts for City of Soledad Screw Press System Procurement and the City of Soledad Filtration System Procurement ~~are hereby assigned to Contractor by Owner, and Contractor accepts such assignment have~~ **been accepted by Owner and shall be awarded by Owner. Contractor agrees to execute the agreement for Goods and Special Services including Phase I and Phase II as indicated in Procurement Contracts; example forms for Contract agreement of procurement contracts are bound in the Procurement Contract Documents (Section 00500).** Contractor assumes responsibility for the performance of each Procurement Contractor as a Subcontractor or Supplier, and for the work included in the procurement contracts. ~~Notwithstanding this assignment and transfer, the guarantees and warranties specified in the procurement contracts are intended for the benefit of Owner and Contractor, and may be enforced by either party.~~ Owner will provide Contractor with a ~~conformed~~ copy of the ~~assigned contracts~~ **following procurement contractor's bid proposals:**

A. Screw Press System Bid Proposal Submitted by Huber Technology Inc., August 7, 2007.

B. Filtration System Bid Proposal Submitted by Schreiber, July 2007.

ARTICLE 10 – MISCELLANEOUS.

10.01. Terms.

A. Terms used in this Agreement will have the meanings indicated in the General Conditions and Supplementary Conditions.

10.02. Assignment of Contract.

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law); and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03. Successors and Assigns.

A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners,

successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04. Severability.

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05. Business Addresses.

A. The business address of Contractor given herein and the address of Contractor's office in the vicinity of the Work are both hereby designated as the places to which all notices, letters, and other communication to Contractor will be mailed or delivered. The address of Owner appearing herein is hereby designated as the place to which all notices, letters, and other communication to Owner shall be mailed or delivered. Either party may change its address at any time by an instrument in writing delivered to Engineer and to the other party.

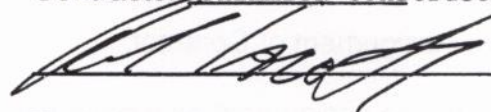
IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. One counterpart each has been delivered to Owner, Contractor, Surety, Screw Press System Procurement Seller, City of Soledad Filtration System Procurement Seller, and Engineer.

This Agreement will be effective on July 16, 2008.

Owner: CITY OF SOLEDAD

Contractor: Shimmick Construction Co. Inc.

By Clifton W. Price



By Paul Cocotis

Title: Public Works Director

Title: President

Address for giving notices
City of Soledad

Address for giving notices

City Hall

8201 Edgewater Drive #202

248 Main Street

Oakland, CA 94621

Soledad, California, 93960

Contractor's License No. 594575

Expiration Date 05/31/2010

Joint Venture

Contractor: _____

By _____

Title: _____

Address for giving notices

Contractor's License No. _____

Expiration Date _____

End of Section

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