



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: 6.d

Title:

Recommendation to Approve Notice to Proceed and Contract Agreement for the 7th and Division Lift Station Construction Project

Presenter:

Tim Wilson

Meeting: Government Services Committee

Date: February 25, 2019

Proposed Cost: \$642,500

Budgeted Amount: \$724,000

Not Budgeted:

Executive Summary *(if not budgeted please explain):*

Staff is requesting approval of a Notice to Proceed and Contract Agreement by the City Council for the 7th and Division Construction Project. This agenda item is associated with the Notice to Award, and is a house keeping item for the IEPA procedure.

Bids were opened on October 23rd and have been reviewed by Staff and Trotter and Associates, Inc. and Marc Kresmery Construction from Elgin is the low bidder in the amount of \$642,500. Construction costs have been budgeted and we have received a preauthorized loan approval for IEPA.

At the November Government Services meeting, City Council approved the Notice of Intent. The IEPA has conducted their review of the bid, contract and associated loan documents. The IEPA has authorized the City to proceed with Marc Kresmery Construction on the project. Construction costs have been budgeted and we have received a preauthorized loan approval for IEPA.

These documents give Marc Kresmery Construction the direction to “Proceed” with the construction project which is anticipated to start this spring.

Attachments *(please list):*

*Contract Agreement *Notice to Proceed

Recommendation/Suggested Action *(briefly explain):*

Recommendation to Approve Notice to Proceed and Contract Agreement to Marc Kresmery Construction for the 7th and Division Lift Station Project in the amount of \$642,500 and a Resolution authorizing the Mayor and Clerk to execute the same on behalf of the City of St. Charles.

SECTION 00 52 00 AGREEMENT

THIS AGREEMENT is dated as the ____ day of _____ in the year **2019** by and between the City of St. Charles, Illinois (hereinafter called OWNER) and **Marc Kresmery Construction, LLC** (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK

CONTRACTOR shall complete all WORK as specified or indicated in the Contract Documents. WORK is generally described as follows:

A. Demolition

1. Concrete sidewalk.
2. Lift Station – pipe, pumps, control panel and enclosure, etc.

B. Site Work

1. Site grading and earthwork.
2. Paving and restoration.
3. Site piping (sanitary force main, sanitary sewer).
4. Site electrical and gas.
5. Stormwater pollution prevention plan (SWPPP).

C. Lift Station Replacement

1. Installation of a new lift station structure.
2. Installation of a new valve vault structure.
3. Installation of a new meter vault structure.
4. Installation of new lift station control panel, electrical support systems, and enclosure.

Article 2. ENGINEER

Trotter and Associates, Inc. of St. Charles, Illinois (hereinafter called ENGINEER) will assume all duties and responsibilities and will 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 TIME

All WORK shall be substantially complete within **Two Hundred Thirty (230) calendar days** after the date when the Contract Time commences to run as indicated in the Notice to Proceed and provided in Paragraph 2.03 of the General Conditions. All work shall be at Final Completion and ready for Final Payment in accordance with Paragraph 14.07 of the General Conditions within **Two Hundred Sixty (260) calendar days** of the date when Contract Time commences to run.

- A. Liquidated Damages. 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 time specified in Paragraph 3 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They 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 **Five Hundred dollars and zero cents (\$500.00)** for each day that expires after the time specified in Paragraph 3 for Substantial Completion until the work is fully operational and tested. The CONTRACTOR shall pay the OWNER an additional **Five Hundred dollars and zero cents (\$500.00)** for each day that expires after the time specified in Article 3 for final completion until the work is accepted by the OWNER. Aggregate damages for time expired, past the time of final completion shall then be **One Thousand dollars and zero cents (\$1,000.00)**. At the option of the ENGINEER and OWNER damage amounts may be deducted, on a monthly basis, from the contract balance.

- B. The contract time may be changed only by a change order. For each change order, CONTRACTOR shall submit to the Engineer for review, sufficient reason for delay to enable the Engineer to ascertain the necessity and reasonableness of the delay, and the allowability and eligibility of delay proposed.

Article 4. CONTRACT PRICE

OWNER shall pay CONTRACTOR for performance of the WORK in accordance with the Contract Documents in current funds as follows

- A. Payment shall be made on the basis of the monthly estimates of partial completion, approved by the ENGINEER, except as otherwise provided in the detailed specifications for each class of WORK.

- B. The contract price may be changed only by a change order. For each change order, CONTRACTOR shall submit to the Engineer for review, sufficient cost and pricing data to enable the Engineer to ascertain the necessity and reasonableness of costs and amounts proposed, and the allowability and eligibility of costs proposed.

Article 5. PAYMENT PROCEDURES

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

- A. Progress Payments. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER. All progress payments will be on the basis of the progress of the WORK estimated by the ENGINEER.
 - 1. Prior to Substantial Completion progress payments will be in an amount equal to 90% of the WORK completed, and 90% of materials and equipment not incorporated in the WORK but delivered and suitably stored, less in each case the aggregate of payments previously made.

2. Upon Substantial Completion and thereafter, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95% of the Contract Price, less such amounts as ENGINEER shall determine in accordance with Paragraph 14.07 of the General Conditions.

B. Final Payment. Upon final completion and acceptance of the WORK in accordance with Paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said Paragraph 14.07.

Article 6. CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representation:

- A. CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, WORK, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the WORK.
- B. CONTRACTOR has studied carefully all available reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the WORK which were relied upon by ENGINEER in the preparation of the Drawings and Specifications and which have been identified in the Supplementary Conditions.
- C. CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in Paragraph 6.2 as he deems necessary for the performance of the WORK at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by CONTRACTOR for such purposes.
- D. CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.
- E. CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.
- F. CONTRACTOR shall warrant that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, the OWNER shall have the right to annul the contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
- G. The award or execution of all subcontracts by a prime CONTRACTOR and the procurement and negotiation procedures used by such prime CONTRACTOR in awarding or executing subcontracts shall comply with:
 - 1. All provisions of federal, State and local law,
 - 2. All provisions of Illinois Administrative Code Title 35 Part 365 regarding fraud and other unlawful or corrupt practices;

3. All provisions of Illinois Administrative Code Title 35 Part 365 with respect to access to facilities, records and audit or records; and
 4. All provisions of Illinois Administrative Code Title 35 Part 365 that require a “Certification Regarding Debarment, Suspension, and Other Responsibility Matters” (EPA Form 5700-49) showing compliance with federal Executive Order 12549.
- D. CONTRACTOR shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. CONTRACTOR shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the CONTRACTOR to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

Article 7. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR are attached to this Agreement, made a part hereof and consist of the following:

- A. This Agreement (Pages 1 to 6, inclusive).
- B. Exhibits to this Agreement
- C. IEPA Guidelines
- D. Payment and Performance Bonds
- E. Notice of Intent to Award
- F. Notice of Award
- G. Notice to Proceed
- H. General Conditions
- I. Supplementary Conditions
- J. Section 00 43 43 - Wage Rates Form
- K. Specifications bearing the title “S. 7th Avenue & Division Street Lift Station – City of St. Charles, Illinois” as prepared by Trotter and Associates, Inc.
- L. Drawings, consisting of a cover sheet and all sheets as designated in SECTION 00 01 15 – List of Drawing Sheets, with each sheet bearing the title “S. 7th Avenue & Division Street Lift Station – City of St. Charles, Illinois” as prepared by Trotter and Associates, Inc.
- M. Addenda No’s 1 to 2, inclusive.
- N. CONTRACTOR’s Proposal (Pages 1 to 8, inclusive).
- O. Documentation submitted by CONTRACTOR prior to Notice of Award.
- P. Any modification, including Change Orders, duly delivered after execution of Agreement.

There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be altered, amended or repealed pursuant to Section 3.04 of the General Conditions.

Article 8. MISCELLANEOUS

- A. Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.
- B. No assignment by a party hereto of any rights under or interests in the Contract Documents 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.

- C. OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- D. All claims, counter-claims, disputes and other matters in question between the OWNER and the CONTRACTOR arising out of, or relating to this Agreement or the breach of it will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Illinois.

Article 9. OTHER PROVISIONS

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR.

This Agreement becomes effective as of _____, 2019.

OWNER
CITY OF ST. CHARLES, ILLINOIS

CONTRACTOR
MARC KRESMERY CONSTRUCTION, LLC

by _____
Raymond Rogina, Mayor

by _____
Marc Kresmery, Manager

(Corporate Seal)

(Corporate Seal)

Attested

Attested

by _____
Nancy Garrison, City Clerk

by _____
Deborah Ventre, Office Manager

(Notary Seal)

Address for Giving Notices

Address for Giving Notices

City of St. Charles
2 E. Main Street
St. Charles, IL 60174

Marc Kresmery Construction, LLC
1725 Weld Road
Elgin, IL 60123
847-429-0909

END OF SECTION 00 52 00

SECTION 00 55 00 – NOTICE TO PROCEED

Date: February 11, 2019

To: Marc Kresmery Construction, LLC
1725 Weld Road
Elgin, IL 60123
847-429-0909

Project: S. 7th Avenue & Division Street Lift Station – City of St. Charles, Illinois

Job Number: STC-112

Owner: City of St. Charles, IL

You are hereby notified that the contract time for the above referenced project commences to run on _____ . On this date you are to start performing your obligations under the Contract Documents. In accordance with Article 3 of the Agreement the dates of Substantial Completion shall be _____ and Final Completion shall be _____ .

You are required to return an acknowledged copy of this NOTICE TO PROCEED to the OWNER.

Dated this ____ day of _____, 2019.

Raymond Rogina, Mayor

ACCEPTANCE OF NOTICE TO PROCEED

Receipt of the above NOTICE TO PROCEED is hereby acknowledged by _____ this the ____ day of _____, 2019.

Name: _____
Title: _____

END OF SECTION 00 55 00

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