



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: August 18, 2020

Agenda Item LET
Approvals:
City Manager ES
Dept. Head DR
Attorney _____
Finance JH

Department: Utilities
Prepared By: David Rebensdorf, Utilities Director DR

Subject: **CONSTRUCTION CONTRACT AWARD TO SCW CONTRACTING CORP. FOR THE WELL FILTER PLANT REHABILITATION, CHEMICAL STORAGE BUILDING, PROJECT NO. 16408.**

Fiscal Impact: Yes. The project was budgeted for \$1,500,000. Due to an estimated total project cost of \$1,855,270, a supplemental appropriation in the amount of \$355,270 is recommended from the Water Fund Depreciation Reserve. The proposed \$355,270 supplemental appropriation will reduce the Water Fund Depreciation Reserve from \$4,218,376 to \$3,863,106.

Summary: Staff recommends approval of a construction contract with SCW Contracting Corp. for \$1,359,000 for the Well Filter Plant Rehabilitation Chemical Storage Building. Staff also recommends approval of a Second Amendment to the Professional Services Agreement with AKM Consulting Engineers for engineering construction support related services.

Background: The City's Well Filter Plant (Plant) is located adjacent to the Municipal Golf Course and housed in a building constructed in the 1970's. The City's wells were the only source of water supply until the 1960's when Joint Regional Water Supply System (formerly Tri Cities Water District) was formed to build and operate a water system to supply imported water from Metropolitan Water District to the City. Currently, two City wells provide approximately six percent of the City's supply and are critical in the event of an emergency imported water outage. Chemicals used to treat well water are gaseous chlorine and are recommended to be changed to liquid along with a new building to store and mix the chemicals. Due to current regulations regarding the use of gaseous chlorine, either replacement of the chlorine gas scrubber system and containment building is required or switching to a more environmentally friendly and safer system for the public and employees is required if the City desires to continue well operations. Due to the previously mentioned benefits, the change to liquid chlorine is recommended and is consistent with improvements previously implemented at the City's Water Reclamation Plant for the treatment of recycled water.

The project consists of installing a new chemical treatment system, a new building, removal of the chlorine gas scrubber and gaseous system, replacement of aging equipment providing for return water of the Plant process water, and a mixing system in Reservoir Number One. The mixing system will provide improved water quality along with the switch to liquid chemicals that will align the water quality similar to water imported from Metropolitan Water District.

Discussion: Plans and specification for the project improvements were prepared by AKM and advertised on Planet Bids for public bidding on May 13, 2020 and 14 bids were received on June 16, 2020. Bids ranged from \$1,359,000 to \$2,403,600, as shown on Attachment 2. The low bid was submitted by SCW Contracting Corp. of Fallbrook, CA. for \$1,359,000.

Based on the low bid, project costs are estimated as follows:

Engineering Design and Project Management	\$ 142,270
Construction Management, Inspection and Materials Testing	150,000
Construction	1,359,000
Construction Contingency (15%)	204,000
Total Estimated Project Cost	\$1,855,270

The estimated cost of the project exceeds the project budget of \$1,500,000 and a supplemental appropriation is needed to construct this project. The increase in project cost is due to building modifications to improve aesthetics as recommended by the City's Design Review Subcommittee, adding the mixer at Reservoir Number One to improve water quality which was required by the State Water Resources Control Board and replacement of equipment for the return water of the Plant process water. These improvements were not anticipated at the time the project was budgeted.

As required by City Policy and State Law, the Contractor will be required to provide performance and payment bonds simultaneously with execution of the construction contract. A warranty bond will also be required prior to City Council acceptance of the project. Staff recommends approval of a construction contract with SCW Contracting Corp.

On November 20, 2018, City Council awarded a Professional Services Agreement to AKM for engineering and design services for the Plant Chemical Building. During design, the following additional rehabilitations to support the Plant operation were identified: 1) Replacement of aged mechanical and electrical equipment of the pump station providing for discharge of return water from the Plant and; 2) Addition of a mixer and chemical treatment to existing Reservoir One to maintain water quality since the Plant discharges treated water to Reservoir One prior to distribution to the City's system. To perform design of the additional services, a First Amendment in the amount of \$28,888 was approved on April 16, 2019 to AKM's agreement by the City Council.

A Second Amendment in the amount of \$53,132 for AKM is recommended for additional design services and construction period design support services. The additional scope of work includes: modified architectural design required by City Planning and the Design Review Subcommittee to improve aesthetics, resubmittals required by regulatory agencies for permit approvals, shop drawing review and approval of contractor's equipment/material submittals, final inspection, and preparation of an operation manual. The proposed Second Amendment will increase

the Agreement from \$126,853 to \$179,985 (an increase of \$53,132) and extend the contract term to December 30, 2022.

Recommended

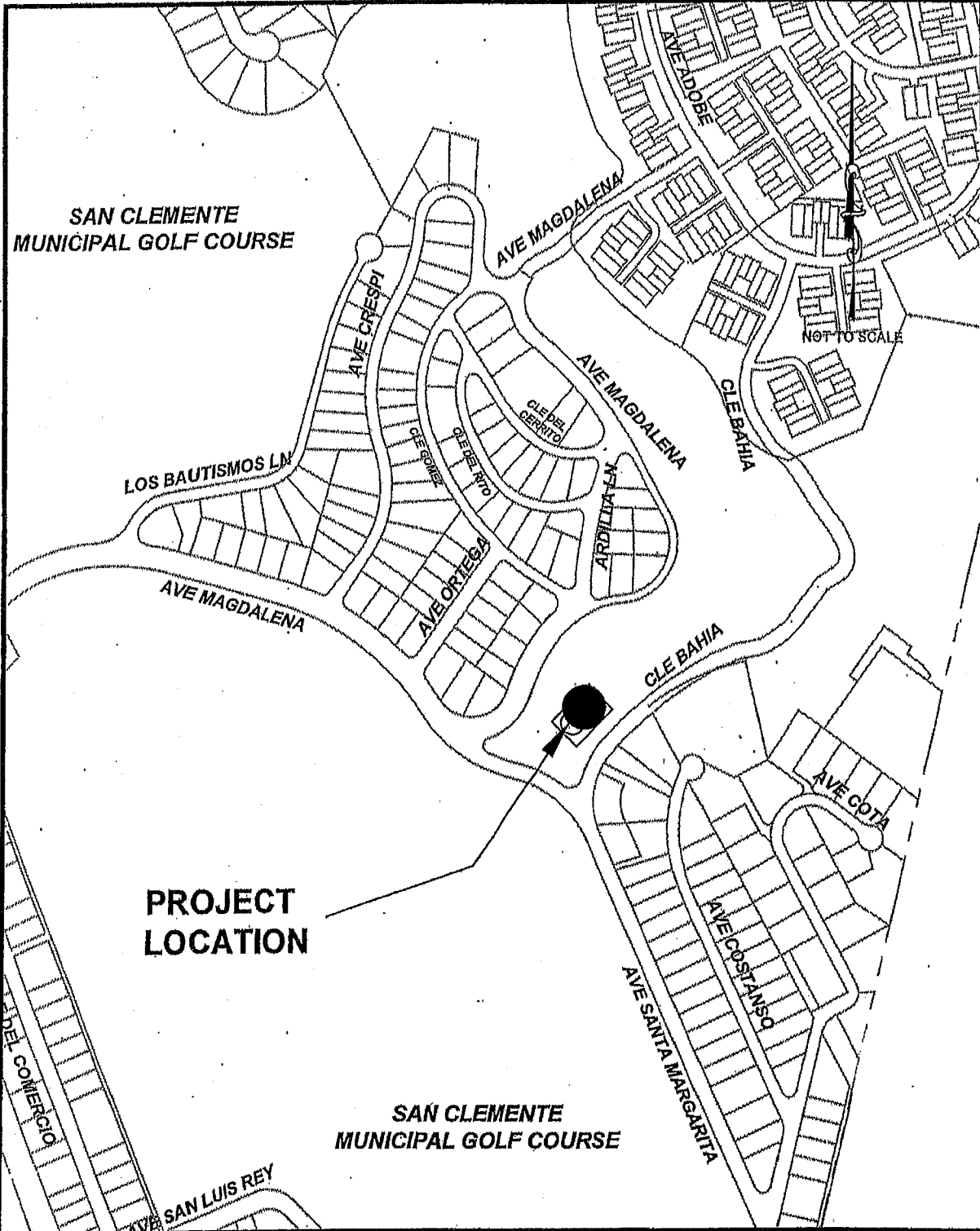
Action: STAFF RECOMMENDS THAT the City Council:

1. Approve the Plans and Specifications for Well Filter Plant Rehabilitation Chemical Storage Building, Project No. 16408;
2. Approve a supplemental appropriation in the amount of \$355,270 from the Water Fund Depreciation Reserve to Account No. 052-466-45300-000-16408;
3. Approve and authorize the Mayor to execute, Contract _____, by and between the City of San Clemente and SCW Contracting Corp. providing for construction of the Well Filter Plant Rehabilitation Chemical Storage Building, Project No. 16408, in the amount of \$1,359,000; and
4. Approve and authorize the Mayor to execute a Second Amendment to Contract C18-67 by and between the City of San Clemente and AKM to increase the contract amount from \$126,853 to \$179,985.

Attachments:

1. Location Map.
2. Bidder's Listing.
3. Construction Contract between City of San Clemente and SCW Contracting Corp. providing for construction of the Well Filter Plant Rehabilitation Chemical Storage Building, Project No. 16408.

Notification: None.



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City of San Clemente

910 Calle Negocio, Suite 100
San Clemente, CA 92673
Tel (949) 381-6100
Fax (949) 381-8316

LOCATION MAP

**Well Water Treatment Plant
Chemical Storage Building
PN 16408**

BIDDER'S LISTING

Attachment 2

BID OPEN TIME: 2:00:00 PM

BID OPEN DATE: 6/16/2020

SUBJECT:

Bid Opening: WATER FILTER PLANT
REHABILITATION & CHEMICAL STORAGE
BUILDING PROJECT NO. 16408

No. of Bids: 14

Company Information	Bid Bond	No Addendums	Amount
SCW Contracting Corp. Fallbrook, CA	YES	N/A	\$1,359,000.00
R2BUILD Laguna Hills, CA	YES	N/A	\$1,442,400.00
Jennette Company Inc. San Diego, CA	YES	N/A	\$1,489,200.00
Environmental Construction, Inc. Woodland Hills, CA	YES	N/A	\$1,497,330.00
Pacific Hydrotech Corp. Perris	YES	N/A	\$1,527,100.00
Tharsos Inc. La Mesa, CA	YES	N/A	\$1,589,000.00
GSE Construction Company Inc. Livermore, CA	YES	N/A	\$1,634,300.00
Stanek Constructors Carlsbad, CA	YES	N/A	\$1,646,000.00
MMC, Inc. La Palma, CA	YES	N/A	\$1,654,000.00
Cora Constructors Inc. Palm Desert, CA	YES	N/A	\$1,843,000.00
Callagua, Inc. Yorba Linda, CA	YES	N/A	\$1,885,635.00
Houalla Enterprises, Ltd. Newport Beach, CA	YES	N/A	\$1,912,272.00
GRFCO, Inc. Brea, CA	YES	N/A	\$2,028,000.00
Nationwide Contracting Services, Inc. Fountain Valley, CA	YES	N/A	\$2,403,600.00

AGREEMENT FOR CONSTRUCTION OF PUBLIC WORKS

This Agreement for Construction of Public Works (**WELL FILTER PLANT REHABILITATION, CHEMICAL STORAGE BUILDING, PROJECT NO. 16408**) (the "Agreement") is made and entered into on this ____ day of _____, 2020, between the City of San Clemente, a California municipal corporation, (the "City") and SCW Contracting Corp. ("Contractor") (collectively referred to as the "Parties").

RECITALS

- A. The City of San Clemente has adopted the Uniform Public Construction Cost Accounting Procedures Act (Public Contract Code § 22000 et seq.), (the "Act") and has selected Contractor pursuant to the procedures authorized by the Act.
- B. City desires to have Contractor perform and Contractor desires to provide the public works of improvement described within this Agreement.
- C. The City is entering into this contract for work to be performed, for compensation in the amount of \$1,359,000.00.

COVENANTS

Based upon the foregoing Recitals and in consideration for the mutual promises and covenants contained herein, the Parties agree as follows:

SECTION 1: SCOPE OF WORK.

Contractor agrees to perform all tasks necessary to construct and/or install or cause to be constructed and/or installed the Work identified in the Plans and Specifications for Well Filter Plant Rehabilitation, Chemical Storage Building, City Project No. 16408 in accordance with the terms and conditions contained both herein and in all other Contract Documents.

SECTION 2: INTENT OF CONTRACT DOCUMENTS.

The intent of the Contract Documents is to prescribe a complete work of improvement which Contractor shall perform or cause to be performed in a manner acceptable to the Engineer and in full compliance with all codes and the terms of this Agreement. Contractor shall complete a functional or operable improvement or facility, even though the Contract Documents may not specifically call out all items of work required for the Contractor to complete its tasks, incidental appurtenances, materials, and the like. If any omissions are made of information necessary to carry out the full intent and meaning of the Contract Documents, Contractor shall immediately seek approval of the Engineer for furnishing detailed instructions. Further, prior to commencing performance of any work hereunder, Contractor shall cooperate with and assist the City to identify and make any refinements to the description and scope of the work that may be necessary to

achieve City's goals hereunder. In the event of any doubt or question arising regarding the true meaning of any of the Contract Documents or any portion thereof, reference shall be made to the Engineer whose decision thereon shall be final.

SECTION 3: TERMS AND CONDITIONS OF PERFORMANCE.

All work performed under this Agreement shall comply with the current edition of that document entitled "Standard Specifications For Public Works Construction," published by Building, News, Inc. (the "Standard Specifications"), which is incorporated herein by this reference as if set forth in full, except the following provisions of the Standard Specifications are hereby amended as follows:

A. Section 1-2 of the Standard Specifications, entitled "Definitions," is hereby amended as follows:

"Agreement" - This signed Agreement for Construction of Public Works as well as all Contract Documents.

"Board" - The City Council of the City of San Clemente or its designee.

"Contract Documents" - include but are not limited to: the Contract Addenda (which pertain to the contract documents), notice inviting bids, instruction to bidders; bid (including documentation accompanying the Bid and any post-bid documentation submitted prior to the Notice of Award); when attached as an exhibit to the Contract, the Bonds; the general conditions; permits from other agencies; the Project Specifications, the Special Provisions; the Plans; the Standard Plans; Standard Specifications, Reference Specifications; and all modifications issued by City after the execution of the Contract, and all of the exhibits to this Agreement which are incorporated herein by this reference as if set forth in full.

B. Section 2-4 of the Standard Specifications entitled "Security," is hereby amended to read in its entirety as follows:

2.4 Security and Indemnity.

2-4.1 Security to Guarantee Performance and Payment.

At the time Contractor executes this Agreement, Contractor shall furnish to City bonds, letters of credit, or other security acceptable to City in City's sole and absolute discretion (hereinafter "Security Instruments") as follows:

- (i) A Security Instrument securing Contractor's faithful performance of all of the Works of Improvement in the amount of one hundred percent (100%) of the estimated construction costs (the "Faithful Performance Security Instrument").

- (ii) A Security Instrument guaranteeing the payment to subcontractors and other persons furnishing labor, materials, and/or equipment with respect to the Works of Improvement in an amount equal to one hundred percent (100%) of the estimated construction costs (the "Labor and Materials Security Instrument").

This Agreement shall not be operative until such Security Instruments are supplied to and approved by City in accordance herewith.

2-4.2 Security Instrument For Warranty Period.

In addition to the Security Instruments referenced in paragraph 2-4.1 above, prior to the City Council's acceptance of the Work and recordation of a Notice of Completion, Contractor shall deliver a Security Instrument warranting the accepted Work for a period of one (1) year following the date of acceptance (the "Warranty Period"), with the amount of such Security Instrument to be equal to twenty-five percent (25%) of the estimated construction cost or a suitable amount determined by the Engineer (the "Warranty Security Instrument"). In lieu of delivering a Warranty Security Instrument, Contractor may elect to utilize its Faithful Performance Security Instrument to warrant the Work for the Warranty Period, in which case the City shall continue to hold the Faithful Performance Security Instrument for the Warranty Period. Contractor shall be deemed to have elected to utilize its Faithful Performance Security Instrument for the Warranty Period if Contractor has not delivered a Warranty Security Instrument to the City prior to the City Council's acceptance of the Work.

2-4.3 Release of Security Instrument.

City shall release the Faithful Performance Security Instrument upon Contractor's written request after acceptance of the Work and Contractor's delivery of the Warranty Security Instrument. City shall release the Labor and Materials Security Instrument upon Contractor's written request after the Work has been accepted and after passage of the time within which lien claims are required to be made pursuant to Article 3 (commencing with Section 3114) of Chapter 2 of Title 15 of Part IV of Division 3 of the California Civil Code. If any lien claim or claims have been timely filed, City shall hold the Labor and Materials Security Instrument until such claim or claims have been resolved, Contractor has provided a statutory bond, or otherwise as required by applicable law. City shall release the Warranty Security Instrument upon Contractor's written request after the expiration of the warranty period, provided no claims are outstanding at that time regarding defective work.

2-4.4 Form of Security Instruments.

All Security Instruments shall meet the minimum requirements of Code of Civil Procedure Section 995.660 as specified below, and otherwise shall be in a

form acceptable to the City Attorney:

- (i) Any insurance company acting as surety shall be authorized to transact surety insurance in the state of California, shall demonstrate to the satisfaction of the City that its assets exceed its liabilities in an amount equal to or in excess of the amount of the bond, and shall provide to the City the following:
 - (a) The original, or a certified copy of the unrevoked appointment, power of attorney, bylaws, or other instrument entitling or authorizing the person who executed the bond to do so;
 - (b) A certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner;
 - (c) A certificate from the clerk of the Orange County Clerk of the Court that the certificate of authority of the insurer has not been surrendered, revoked, canceled, annulled, or suspended or, in the event that it has, that renewed authority has been granted; and
 - (d) Copies of the insurer's most recent annual statement and quarterly statement filed with the Department of Insurance;
- (ii) Payments under the Security Instrument shall be required to be made (and, with respect to bonds, litigation shall be required to be instituted and maintained) in the County of Orange, State of California;
- (iii) Each Security Instrument shall have a minimum term of one (1) year after the deadline for Contractor's completing the Work, in accordance with paragraph 2.1 herein;
- (iv) The Security Instrument shall reference Contractor's obligations under this Agreement, shall be irrevocable, and shall include as an additional secured obligation the responsibility to compensate City for all of City's attorney's fees and litigation expenses reasonably incurred in enforcing its rights under the Security Instrument.

2-4.5 Indemnity.

Contractor shall indemnify, defend, and hold harmless City and City's officers, employees, and agents and the Redevelopment Agency of the City of San Clemente and its officers, employees, and agents from and against any and all claims, demands, liabilities, losses, obligations, damages, causes of action, or any

proceedings of any kind or nature, including without limitation worker's compensation claims, in any way arising or alleged to arise out of Contractor's performance or failure to perform the Work described herein. Said indemnity obligation shall apply to personal injury, death, property damage, economic loss, and any other monetary damage or penalty to which City may be subjected, whether or not the injury, damage, or loss is covered by insurance.

C. Section 6-8 of the Standard Specifications, entitled "Completion and Acceptance," is hereby amended to read in its entirety as follows:

6-8 Completion and Acceptance, Defective Work.

6-8.1 Completion.

Contractor shall make an initial request for final inspection after initial completion of the Work. After inspection, the Engineer will inform the Contractor, in writing, of all items found by Engineer to be incomplete or not in compliance with this Agreement. After the Contractor has completed these items, the procedure for final inspection shall then be the same as specified above for the Contractor's initial request for final inspection. If after two (2) "final" inspections, items are found by Engineer to be incomplete or not in compliance with this Agreement or any of the requirements contained or referenced herein, City may require Contractor, as a condition of City performing further field inspections, to submit to the Engineer a detailed written statement of the work performed subsequent to the date of the previous inspection at which such items were found to be incomplete or not in compliance with this Agreement.

The Parties shall follow the above steps until such time as Engineer determines that the Work has been satisfactorily completed in accordance with all terms and condition of this Agreement. Upon such determination, City shall order recordation of the Notice of Completion.

6-8.2 Acceptance.

Thirty-five (35) days after the Notice of Completion is recorded (or in the event of any lien claims are filed against the Project arising out of Contractor's activities hereunder, on such date Contractor has finally satisfied, discharged, or obtained a release of such claim), City shall accept Contractor's Work.

6-8.3 Defective Work.

Contractor shall repair, reconstruct, replace or otherwise make acceptable any and all Work found by Engineer to be defective or not in accordance with the Agreement. Final acceptance of the Work shall not constitute a waiver by City of any defective work subsequently discovered.

D. Section 7-2.2 of the Standard Specifications, entitled "Labor," is hereby amended to add, to the end of the first paragraph:

The Contractor shall not employ, or permit to be employed, any undocumented aliens (i.e., persons who are not citizens or nationals of the United States) to perform any portion of the Work.

E. Section 7-3. of the Standard Specifications, entitled "Liability Insurance," is hereby amended to read in its entirety as follows:

Contractor shall furnish to City a policy or certificate of liability insurance indicating compliance with the following minimum insurance requirements within ten (10) working days after Contractor's receipt of the Notice of Award and Contractor shall maintain such insurance in effect during the entire term of this Agreement:

- A. Workers' compensation insurance as required under Section 7-4 of the Standard Specifications.
- B. Comprehensive general liability, personal injury and property damage liability, contractual liability, independent contractor's liability, and automobile liability insurance, with minimum combined liability limits of One Million Dollars (\$1,000,000) per occurrence for all covered losses, and Two Million Dollars (\$2,000,000) in the aggregate. Any deductible or self-insured retention in excess of Five Thousand Dollars (\$5,000) shall be declared to the City and requires the prior approval of the City's Risk Manager. Each such policy of insurance shall:
 - (1) Be issued by a good and solvent insurance company reasonably acceptable to the City which company holds a current policyholder's alphabetic and financial size category rating of not less than A VIII, according to the current Best's Key Rating Guide or a company of equal financial stability which is approved in writing by City's Risk Manager;
 - (2) Name and list on the Certificate of Insurance and the Endorsement as additional insureds the City and its officers, employees, and agents and, if the City's Risk Manager so requires, the City of San Clemente Redevelopment Agency and its officers, employees, and agents (an endorsement shall accompany the insurance certificate naming such additional insureds);
 - (3) Specify that it acts as primary insurance and that no insurance held or owned by City (or if applicable, the Redevelopment Agency) shall be called upon to cover a loss under said policy;

- (4) Contain a clause substantially in the following words: "It is hereby understood and agreed that this policy of insurance may not be cancelled or materially changed except upon thirty (30) days prior written notice to City of such cancellation or material change as evidenced by a return receipt for a registered letter;"
- (5) Cover the operations of Contractor pursuant to the terms of this Agreement; and
- (6) Be written on an occurrence and not a claims made basis.

Except as provided for in Subsection 6-10 of the Standard Specifications, Contractor shall save, keep, and hold harmless City, its officers, and agents from all damages, costs or expenses in law or equity that may at any time arise or be set up because of damages to property, or a personal injury received by reason of or in the course of performing work, which may be caused by any willful or negligent act or omission by Contractor, any of Contractor's employees or agents, or any subcontractor. City will not be liable for any accident, loss or damage to the Work prior to its completion and acceptance except as provided for in Subsection 6-10.

The cost of this insurance shall be included in Contractor's bid.

F. Section 7-8.6 of the Standard Specifications, entitled "Water Pollution Control," is hereby amended to read in its entirety as follows:

7-8.6 Water Pollution Control.

If applicable, Contractor shall be required, at its sole expense, to obtain coverage under the NPDES General Construction Permit and comply with all terms and conditions thereto. Information regarding this permit can be obtained from the State Water Board's website at:
http://www.swrcb.ca.gov/water_issues/programs/stormwater/construction.shtml.
In addition, the Contractor shall comply with the City of San Clemente's Municipal Code Section 13.40, entitled Storm Water Runoff Control Ordinance. Contractor is required to employ and maintain Best Management Practices (BMPs) consistent with the Storm Water Runoff Control Ordinance, Sections 7 & 8 of the City's Local Implementation Plan, and the most recent version of the Countywide Construction Guidance Manual. All reference documents are available on the City's website or by calling the Environmental Section at (949) 361-6143.

G. Section 9-3.2 of the Standard Specifications, entitled "Partial and Final Payment," is hereby amended to read in its entirety as follows:

9-3.2 Partial and Final Payment.

As a condition of receiving monthly progress payments, Contractor shall, prior to the tenth of the month, submit to City an invoice specifying the work performed during the previous month and Contractor's allocated dollar value for that work.

Within fifteen (15) days of receipt of the invoice, the Engineer shall make an approximate measurement of the work performed to the closure date and as basis for making monthly payments, estimate its value based on Contract Unit Prices or as provided for in Section 9-2 of the Standard Specifications (the "Progress Estimate"). When the Work has been satisfactorily completed, the Engineer will determine the quantity of work performed and prepare the final estimate.

Within fifteen (15) business days of the City's approval of the Engineer's Progress Estimate, Contractor shall receive partial payments in the amount of the Progress Estimate less five percent (5%) which will be deducted and retained by the City. Notwithstanding the foregoing, the total retention proceeds retained by the City shall not exceed five percent (5%) of the total Contract amount.

Notwithstanding anything herein to the contrary, in the event any of Contractor's insurance as required pursuant to this Agreement or any of the Contract Documents expires during the term of this Agreement, City shall withhold any payment due to Contractor hereunder until such time as Contractor obtains replacement insurance that meets all of the applicable requirements hereunder and submits certificates and endorsements evidencing such insurance to City.

Notwithstanding anything herein to the contrary, (i) the limitations on retention shall not apply to amounts withheld or deducted from payment as liquidated damages pursuant to Section 6-9 of the Standard Specifications; and (ii) no progress payment made to the Contractor or its sureties will constitute a waiver of liquidated damages under Section 6-9 of the Standard Specifications.

Contractor shall not be entitled to any payments over and above the Unit Price or the total Contract Price.

As provided in Sections 10263 and 22300 of the California Public Contract Code, the Contractor may substitute securities for any monies withheld by the Agency to ensure performance under the Contract.

SECTION 4: MISCELLANEOUS.

4.1 No Duty to Third Parties.

This Agreement is intended to benefit only the Parties hereto. This Agreement is not

intended to and does not create any liability or obligation or duty to any person, group, or entity not a Party to this Agreement. Neither City nor Contractor intend to create any third party beneficiary rights in this Agreement in any Contractor, Subcontractor, member of the general public, or any other person, group or entity.

4.2 Notice.

Every notice, demand, request, or other document or instrument delivered pursuant to this Agreement shall be in writing, and shall be either personally delivered, sent by Federal Express or other reputable overnight courier, sent by facsimile transmission with the original subsequently delivered by other means, or sent by certified United States mail, postage prepaid, return receipt requested, to the addresses set forth below, or to such other address as a Party may designate from time to time:

To City:

City of San Clemente
City Hall
910 Calle Negocio
San Clemente, CA 92673
Attention: City Manager
cc: City Engineer
Telephone: (949) 361-8322
Fax: (949) 361-8285

To Contractor:

SCW Contracting Corp.
Peter Kogler
2525 N. Old Hwy 395
Fallbrook, CA 92028
760-728-1308 ext. 1115

4.3 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

4.4 Legal Action.

Any Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

4.5 No Partnership.

The Parties to this Agreement renounce the existence of any form of joint venture or partnership between them and agree that nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as making the Parties joint venturers or partners.

4.6 Entire Agreement.

This Agreement constitutes the entire understanding and agreement of the Parties and integrates all of the terms and conditions mentioned herein or incidental hereto with respect to the subject matter hereof, and supersedes all negotiations or previous agreements between the Parties with respect to all or part of the subject matter hereof.

4.7 Amendment.

This Agreement may be amended in writing at any time by the mutual consent of the Parties. No amendment shall have any force or effect unless executed in writing by the Parties.

4.8 Objective Construction.

This Agreement reflects the negotiated agreement of the Parties. Accordingly, this Agreement shall be construed as if all Parties jointly prepared this Agreement and no presumption against one Party or the other shall govern the interpretation or construction of any of the terms of this Agreement by virtue of the preparation or authorship of this Agreement.

4.9 Waivers.

All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of the Party to be charged. No waiver shall be effective unless it is in writing and signed as required herein.

4.10 Severability.

If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of the Agreement shall continue in full force and effect, unless and to the extent that the rights and obligations of any Party would be materially altered or abridged by such interpretation.

4.11 Applicable Law.

This Agreement shall be construed and enforced in accordance with the laws of the State of California. Any and all actions filed by any Party to enforce any rights or obligations created by this Agreement shall be filed in a court of competent jurisdiction in the State of California.

4.12 Attorneys' Fees.

In the event of any legal action arising out of: (1) disputes concerning whether the Work performed conforms with the Plans and Specifications; (2) disputes concerning whether the Work performed is defective; or (3) disputes concerning enforcement of warranty obligations, the prevailing Party in such action shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees and costs. Attorneys' fees shall include attorneys' fees on any appeal, and in addition, a Party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, including the taking of depositions and discovery, and all other necessary costs incurred in the litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to final judgment.

4.13 Reasonableness.

Each of the Parties and its agents, employees, attorneys, and consultants shall act reasonably in exercising any rights and taking any actions pursuant to this Agreement.

4.14 Corporate Authority.

The persons executing this Agreement on behalf of the Parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that, by so executing this Agreement, the Parties hereto are formally bound to the provisions of this Agreement.

SECTION 5: LABOR CODE COMPLIANCE.

5.1 Registration Requirement.

Pursuant to Labor Code section 1771.1, no contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations. Furthermore, Contractor is hereby notified that no contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations. By signing this Agreement Contractor certifies that Contractor, and all subcontractors, hold current and valid registrations with the Department of Industrial Relations.

5.2 Compliance Monitoring.

Pursuant to Labor Code section 1771.4, Contractor is hereby notified that this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

End of Text

CITY OF SAN CLEMENTE

By: _____

Its: _____

Dated: _____, 20____

ATTEST:

CITY CLERK of the City of
San Clemente, California

Approved as to form
BEST BEST KRIEGER:

City Attorney

APPROVED AS TO AVAILABILITY
OF FUNDING

By: _____
Finance Authorization

("CONTRACTOR")

License Number: _____

By: _____

Its: _____

Dated: _____, 20____

WORKER'S COMPENSATION INSURANCE CERTIFICATION
WELL FILTER PLANT REHABILITATION, CHEMICAL STORAGE BUILDING
City Project No. 16408

Sections 1860 and 1861 of the California Labor Code require every Contractor to whom a Public Works Agreement is awarded to sign and file with the Awarding Body the following statement:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

Dated: _____, 20____

SCW Contracting Corp.
Contracting Firm

By: _____

Title

Address

CERTIFICATE THAT NO WORKERS' COMPENSATION INSURANCE
IS REQUIRED (ALTERNATE /IF APPLICABLE)

I hereby certify that Contractor has no employees, that no employees will perform services with respect to the Project that it is the subject of this Agreement, and, accordingly, that no workers' compensation insurance need be maintained pursuant to applicable provisions of law. Contractor hereby agrees to indemnify, defend, and hold harmless the City of San Clemente and all of its officials, employees, and agents from and against any and all claims, liabilities, and losses relating to personal injury or death, economic losses, and property damage arising out of Contractor's failure to provide such worker's compensation insurance.

Dated: _____, 20__

Contracting Firm

By: _____

Title

Address

WARRANTY FORM

WELL FILTER PLANT REHABILITATION, CHEMICAL STORAGE BUILDING
City Project No. 16408

We hereby guarantee to the City of San Clemente the work that we have constructed for a period of one (1) year after the date of acceptance.

We agree that if any of the equipment should fail due to any reason other than improper maintenance or improper operation, if any pipe or appurtenances should develop leakage, or if any settlement of fill or backfill occurs, or should any portion of the work fail to fulfill any of the requirements of the Specifications, we will, within five (5) days after written notice of such defects, commence to repair or replace the same together with any other work which may be damaged or displaced in so doing.

In the event of our failure to comply with the above mentioned conditions within a reasonable time after being notified, or should the exigencies of the case require repairs or replacements to be made before we can be notified or respond to notification, we do hereby authorize the City of San Clemente to proceed to have the defect repaired and made good at our expense, and we will pay the cost therefor upon demand.

The warranty provided herein shall not be in lieu of, but shall be in addition to any warranties or other obligations otherwise imposed by the Contract Documents and by law.

Dated: _____, 20____

SCW Contracting Corp.
Contracting Firm

By: _____

Title

Address
