

CIP DESIGN AND ENGINEERING MEMORANDUM
09-15

May 28, 2009

TO: Honorable Mayor Kathleen M. Novak and City Council Members

FROM: William Simmons, City Manager *WRS*
David Willett, Director of Public Works/Utilities *DW*
Raymond Reling, Chief Water Treatment Plant Operator *adw for*
Mark Hofmeister, Civil Engineer I *adw for*

SUBJECT: CR-66, Water Treatment Plant Clearwell Addition

RECOMMENDATION:

Attached to this memorandum is a Resolution which, if approved would:

1. Authorize the Mayor to execute the attached contract between the City of Northglenn and Jennison Construction Company, in the amount of \$1,583,783.00, to provide construction services in connection with the Water Treatment Plant Clearwell Addition;
2. Authorize \$158,378.00 as a 10% contingency and authorize the City Manager, on behalf of the City, to approve minor changes in the scope of work and execute relevant change orders up to the approved expenditure limit of \$1,742,161.00;
3. Authorize the City Manager to expend funds in the amount of \$15,000, in addition to the original bid amount and contingency, to provide field quality control testing during construction.
4. Authorize the City Manager to expend funds in the amount of \$20,000 in addition to the original bid amount and contingency, to design and install a new stand alone 800 amp breaker to operate the new clearwell pumps independent of the existing plant.
5. Authorize the City Manager to expend funds in the amount of \$25,000, in addition to the original bid amount and contingency, to provide software programming between the existing Supervisory Control Data Acquisition Control System (SCADA) iFix system and the new Water Treatment Plant controls and communication system.

The total project cost is \$1,802,161.00. Staff recommends approval of the proposed Resolution.

BACKGROUND:

The purpose of this project is to meet the Colorado Department of Public Health and Environment (CDPHE) regulations relating to disinfection contact times during peak flows at the Water Treatment Plant. The City must add the additional clearwell to comply with the contact time required by CDPHE. In addition, a redundant clearwell will allow for maintenance in the existing clearwell without the use of dive teams. The design includes a 330,000 gallon clearwell, pump station building, three vertical turbine pumps, overflow structure, meter vault and associated yard piping to be constructed to meet these regulations. The anticipated completion of the project is in March 2010.

On August 10, 2006, the City Council approved Staff Report 06-22 to execute a Professional Services Agreement (PSA) between the City and The Engineering Company (TEC) to complete the design of the Water Treatment Plant Clearwell /Administration Addition. The scope of the PSA included design services for an expansion of the existing clearwell and a new administration building for the Water Treatment Plant.

On May 24, 2007, the City Council approved two addendums to the PSA with resolutions 07-40 and 07-41. Resolution 07-40 (Addendum 1) included additional design services for increasing the size of the clearwell, adding a meter vault and adding an overflow structure. Resolution 07-41 (Addendum 2) added the construction administration services only for the administration building. To receive outstanding insurance monies per CIRSA requirements from the previous administration facility fire, it became necessary to split the

construction of the Administration Building and Clearwell Addition into two separate projects. Addendum 2 addressed additional costs for modifications to the existing project drawings and specifications to split the projects into two projects. The administration building construction was completed in 2007, but due to funding constraints, the Clearwell Addition construction was postponed.

On February 12, 2009, the City Council approved Resolution 09-19 that executed a professional services agreement between the City and TEC for design modifications to meet the current building code and construction administration services for the Clearwell Addition. The agreement was in the amount of \$167,492.00.

Construction

On May 12, 2009, the City accepted four (4) bids for the Water Treatment Plant Clearwell Addition. The apparent low bidder is Glacier Construction Company, with a bid of \$1,467,000.00. However, pursuant to Section 6-5-7(a) of the Northglenn Municipal Code, in determining the "lowest and best responsible bidder," the City will consider:

". . . in addition to price, the ability, capacity, and skill of the bidder to perform the contract or to provide the service required; whether the bidder can perform the contract or provide the service promptly or within the time specified without delay or interference; the character, integrity, reputation, judgment, experience, and efficiency of the bidder, the quality of the bidder's performance of previous contracts and services; the previous and existing compliance by the bidder with the ordinances and other laws relating to the contract or service; the sufficiency of the financial resources of the bidder; the quality and availability of the bidders supplies and contractual services and their adaptability to the particular use required; the ability of the bidder to provide future maintenance and service for the use of the subject of the contract; and the number and scope of conditions attached to the bid."

City staff is recommending that the apparent low bidder, Glacier Construction Company, not be selected as the "lowest and best responsible bidder" because the City currently has an outstanding claim against Glacier arising out of its construction of Bull Reservoir. More specifically, the City has a current allegation against Glacier that the construction of Bull Reservoir was below an acceptable standard of care. Therefore, under the criteria set forth in Section 6-5-7(a) quoted above, City staff is recommending that the contract not be awarded to Glacier Construction Company.

City Staff is recommending that "the lowest and best responsible bidder" is Jennison Construction Company with a bid amount of \$1,583,783.00. City Staff contacted the references submitted by Jennison Construction Company and determined the Contractor's past performance met the City's standards. Copies of the bid tabulation, the references, and standard construction agreement are attached.

Construction Testing

City Staff is requesting a testing allowance of \$15,000 to contract with a geotechnical firm to perform the required testing for the Facility. This includes performing soil and concrete testing for the construction of the Clearwell Addition

Electrical Allowance

During the design of the clearwell, an electrical evaluation of the existing switchgear was performed. It was determined that the existing switchgear is reaching the end of its life expectancy and a recommendation was made to install separate switchgear for the new clearwell. This would allow for treated water to continue to be pumped into the system in the event the existing switchgear failed. The staff is requesting an allowance of \$20,000 to design, purchase and install the stand alone 800 amp breaker.

Software Programming Allowance

The Contractor will install all the communication and instrumentation for the new Clearwell; however to insure that the new system coordinates with the existing SCADA and software, Staff is recommending that Integrated Solutions Engineering which has performed the previous software programming of the existing system be contracted to provide the necessary coordination with the existing system and the new system. Staff is requesting an allowance of \$25,000 to provide software integration between the existing SCADA system and

the new clearwell addition.

Total Project Cost

The total project budget is shown below:

Contractor Bid	\$1,583,783.00
10% Contingency	\$158,378.00
Testing Allowance	\$15,000.00
Electrical Allowance	\$20,000.00
Software Programming Allowance	\$25,000.00
Total Project Cost	\$1,802,161.00

During the past 30 years of operation, the City's plant has provided safe drinking water to the citizens of Northglenn in compliance with State and Federal drinking water regulations. The Water Treatment Plant is a critical component of the drinking water system and the Clearwell Addition will assist the City in maintaining continuous operations.

BUDGET/TIME IMPLICATIONS:

There is no impact on the General Fund. The 2009 Capital Improvement Budget includes an appropriation of \$2,200,000.00 for construction of the Water Treatment Plant Clearwell Addition from the Water and Sewer Fund in account #503.69264.000.3999.749.

STAFF REFERENCE:

Please contact Raymond Reling Chief Water Treatment Plant Operator at rreling@northglenn.org, or (303) 450-4049.

PREEO SILVERMAN GREEN & EGLE

**PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS AT LAW**

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**MARTIN J. GREEN
1951-2007**

Gil@Preeosilv.com

Also Licensed in California *
Also Licensed in Wyoming
and Wisconsin **
Also Licensed in New York***
Also Licensed in Illinois****

May 26, 2009

**VIA E-MAIL Cyhoffmann@hphclaw.com
AND U.S. MAIL**

Corey Hoffmann, Esq.
Hayes Phillips Hoffmann & Carberry, P.C.
1350 17th Street, Suite 450
Denver, CO 80202

Re: RFQ 2009-10 Water Treatment Plant Clearwell Addition
Our File No. 979047-1305

Dear Mr. Hoffman:

This letter is to follow up our telephone conversation on Friday, May 23, 2009, regarding our client, Glacier Construction, Inc. and the current bids pending on the above-referenced RFQ 2009-10 Water Treatment Plant Clearwell Addition. I am writing to you because of the high level of concern Glacier Construction has expressed to me regarding its involvement as the low bidder for the project and issues that have apparently arisen resulting from recent comments concerning the bid. Those concerns have been expressed by a representative of Northglenn directly to Glacier and by you in our telephone conversation as issues arising out of problems that were discovered in 2008 at the Bull Reservoir.

I must first of all mention that the information we have shows that the problems that have been identified at the Bull Reservoir were known to Northglenn in the summer of, 2008. These problems, which are apparently primarily design issues, do involve some aspect of Glacier Construction's work. However, for reasons completely unknown to Glacier, Glacier was never informed of the problems, nor was it asked to be involved in investigation of any issues related to its work until receiving the notice of claim from Benjamin Tracy, Northglenn's lawyer, on or about March 18, 2009. Glacier is a company that makes it a practice to promptly address issues that arise on any of its projects. It is a serious concern to Glacier that it was not notified until this spring of this issue, and then only in the context of a formal construction defect notice. Nevertheless, after receiving the notice, Glacier has taken aggressive steps to address the issues that have been raised within the context of the delayed notice and the current status of the project. Glacier representatives have attended site meeting and have been involved in analysis of the identified project issues. In addition,

Glacier promptly notified its insurance company and has been working with insurance representatives and experts to analyze the problem and determine the extent of Glacier's responsibility, if any, on the Bull Reservoir project. All of this represents both the professionalism and good faith of Glacier Construction and its desire to competently, responsibly and professionally address issues related to any of its projects.

Now, in regard to the Clearwell Project, recent events are even more disturbing. Glacier was prequalified as a bidder for the 2009 Water Treatment Plant Clearwell Addition Project in an e-mail dated April 13, 2009. In that e-mail, Mark Hofmeister, project engineer, notified Glacier that "your firm meets all the qualifications to bid on the 2009 Water Treatment Plant Clearwell Addition Project." No mention was made of any concerns or issues related to the Bull Reservoir Project. As a result, Glacier proceeded with its efforts to compile and submit a bid. As I am sure you and other representatives of Northglenn know, the bidding process requires time, effort and expense by any qualified bidder. In the process of bidding the Clearwell Addition Project, Glacier incurred over \$17,500 in costs. This amount does not include the costs incurred by its subcontractors, who also bid the project, only to Glacier. Glacier undertook this process and incurred these costs in reliance upon Northglenn's confirmation of Glacier as a qualified bidder.

Prequalification approval was received by Glacier on April 13, 2009. On May 12, 2009, it submitted its bid to Northglenn. When the bids were opened Glacier was identified as the low bidder for the project. Although Northglenn has been aware of the Bull Reservoir problem since the summer of 2008, it did not, at any time, make any statements to Glacier to the effect that the Bull Reservoir problem would impact Glacier's ability and right as the low responsible bidder to be awarded the contract for the Water Treatment Plant Clearwell Addition Project. Although in our telephone conversation on Friday you conveyed information concerning a conversation between Mark Hofmeister and Justin Whittaker concerning the "claim," the actual conversation did not occur in the manner you describe. Your description of that conversation was that Mark Hofmeister called Justin Whittaker to alert him to the fact that there was a claim and to let Justin know that he needed to be aware of the claim. While this comment in itself is vague and certainly does not convey any direct caution concerning the bid or the contract process for the Clearwell project, it also does not convey the entire context and substance of that conversation.

After our telephone conversation on Friday, I spoke with Justin Whittaker. Mr. Whittaker informed me that there was, in fact, a telephone conversation between Mark Hofmeister and himself wherein the claim was mentioned. However, that telephone conversation occurred in response to e-mails and telephone messages that Justin Whittaker sent to Mark wherein Justin raised various questions for Mark about the project. When Mark returned the call and did speak with Justin, there was ongoing conversation about the questions Justin had raised. In the midst of the conversation, Mark did make a comment that he wanted to give Justin a heads-up that he had heard there was an issue or claim. He then told Justin that he did not know any of the details of the claim because he is on the water side and not on the wastewater side. Justin responded by telling Mark that he had heard something about the issue but did not know any of the details, other than that the project was on Randy Wambsganss' desk and that Randy was working on it. In the conversation, nothing was said about whether it would be an issue for Glacier to bid or receive an award of the contract if Glacier were the successful low bidder. Having not received any specific warnings or other cautions, Glacier proceeded forward with the bid process and is now the low bidder on this project.

The above facts are presented to you for your consideration and that by the staff and city council as it reviews this matter. I have taken the time to provide you with this information because of the importance of this matter to Glacier Construction. In Glacier's view, it has met all of the qualifications to bid on this project and is the low responsible bidder for the project. It should be awarded the contract. Any other outcome will result in careful scrutiny by Glacier and the likelihood of a bid protest, followed by administrative and other legal action, as any other outcome would be unjust and improper.

If you wish to discuss this matter further, please let me know.

Very truly yours,

PREEO SILVERMAN GREEN & EGLE, P.C.



Gilbert R. Egle

GRE/ljl

cc: Randy Wambsganss

SPONSORED BY: MAYOR NOVAK

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-66
Series of 2009

Series of 2009

A RESOLUTION APPROVING THE CONSTRUCTION OF THE 2009 WATER TREATMENT PLANT CLEARWELL ADDITION, AND AUTHORIZING THE NECESSARY CONTRACTS TO ACCOMPLISH THE PROJECT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The City Council hereby approves the construction of the 2009 Water Treatment Plant Clearwell Addition (the "Project"), in an amount not to exceed \$1,802,161.00, and authorizes the following expenditures to accomplish the Project:

(a) The execution of an agreement between the City of Northglenn and Jennison Construction Company, Inc., attached hereto, for the construction of the Project in the amount of \$1,583,783.00 with a ten percent (10%) contingency of \$158,378.00 for a total contract amount not to exceed \$1,742,161.00; and

(b) Expenditures by the City Manager in the amount of \$15,000.00 to provide field quality control testing during construction; and

(c) Expenditures by the City Manager in the amount of \$20,000.00 to design and install a new stand alone 800 amp breaker to operate the new clearwell pumps independent of the existing plant; and

(d) Expenditures by the City Manager in the amount of \$25,000.00 to provide software programming between the existing Supervisory Control Data Acquisition Control System (SCADA) iFix system and the new Water Treatment Plant controls and communication system.

DATED at Northglenn, Colorado, this ____ day of _____, 2009.

KATHLEEN M. NOVAK
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

AGREEMENT

PROJECT NAME: 2009 Water Treatment Plant Clearwell Addition

PROJECT NUMBER: IFB 2009-10

PROJECT MANAGER: Mark Hofmeister

THIS AGREEMENT, made this ____ day of _____, 20__, by and between the City of Northglenn, hereinafter called "CITY", and Jennison Construction Company, Inc., hereinafter called "CONTRACTOR".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The CONTRACTOR will commence and complete the project named:

"2009 Water Treatment Plant Clearwell Addition"

2. The CONTRACTOR will furnish all of the materials, supplies, tools, equipment, labor supervision, and other services necessary for the completion of the PROJECT described herein.

3. The CONTRACTOR will provide performance and payment bonds and a certificate of insurance naming the City as an additional insured for purposes of said project within 10 days after the date of the NOTICE OF AWARD.

4. The CONTRACTOR agrees to perform all of the WORK described in the CONTRACT DOCUMENTS and comply with the terms therein for the sum of \$ 1,583,783.00, or as shown in the BID schedule. The CONTRACTOR will commence the work within 7 calendar days after the date of NOTICE TO PROCEED. The CONTRACTOR will complete the work within 177 working days after the date of NOTICE TO PROCEED unless the period for completion is extended otherwise by the CONTRACT DOCUMENTS.

5. The term "CONTRACT DOCUMENTS" means and includes all items as set forth in Section 1.01 of the General Conditions.

6. The CITY will pay to the CONTRACTOR in the manner and at such times as set forth in the General Conditions such amounts as required by the CONTRACT DOCUMENTS.

7. This AGREEMENT shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in TWO copies, each of which shall be deemed an original on the date first above written.

CITY:

City of Northglenn
By _____
Name Kathleen M. Novak Date _____
Title Mayor

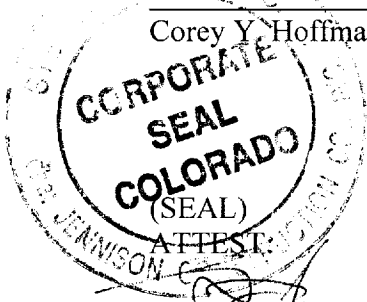
ATTEST:

Name Johanna Small, CMC Date _____
Title ~~Acting~~ City Clerk

(SEAL)

APPROVED AS TO FORM:

Corey Y. Hoffmann, City Attorney Date _____



Secretary Date _____
Name (Please Print or Type) Steve Jennison
Title Secretary

CONTRACTOR: Steve Jennison, Inc. d/b/a Jennison Construction Company, Inc.

By [Signature]
Name Steven C. Jennison Date 5/19/09
(Please Type or Print)

Title President
Address 8122 Southpark Lane #210 Littleton, CO 80120

CITY's CONTRACT # _____

Mark Hofmeister
Print Name of City's Project Manager



**CITY OF NORTHGLENN
FORMAL BID SUMMARY**

BID NUMBER: IFB 2009-10

PAGE 1 OF 2

BID NAME: Water Treatment Plant Clearwell Addition

DEPARTMENT: WTP

	RN civil construction	Jennison construction CO. INC.	PCL Family of companies	Glacier construction	
DATE DUE 5/12/09	BID RECEIVED: DATE: 5/12/09 TIME: 1:54pm	BID RECEIVED: DATE: 5/12/09 TIME: 1:55pm	BID RECEIVED: DATE: 5/12/09 TIME: 1:56pm	BID RECEIVED: DATE: 5/12/09 TIME: 1:59pm	BID RECEIVED: DATE: TIME:
TIME: 2:00 P.M.					
Total Bid price for addition project	\$1,680,000. ⁰²	\$1,583,783. ⁰²	\$1,856,000. ⁰²	\$1,467,000. ⁰⁰	
Bid Bond included	Yes	Yes	Yes	Yes	
Illegal Alien statement included	Yes	Yes	Yes	Yes	
Addendum	Yes	Yes	Yes	Yes	

Bridget K...
Buyer

Crystal Messick
City Clerk, Deputy

5/12/09
Date

Reference Check

Project: 2009 Water Treatment Plant Clearwell Addition
Consultant/Contractor: Jennison Construction Company
Date: 5/20/09
Page 1

Project Name:	Contact for Reference:	Contact Phone Number:	Reference:
Castle Pines Transfer Pump Station	Darwin Dyck	303-825-5999	Overall quality was good. The Project Manager Bill Cantaberry was easy to work with.
Cherry Creek Pump Station	Phil Richards	303-841-2058	City of Parker has used Jennison for several projects. The City and Jennison have a good working relationship.
Grey Zone Tank	Bob Bates	303-980-1212	Jennison does a good job and is very good with schedule.