



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Katy Allen  
Sara L. Hensley

**SUBJECT:** ANIMAL CARE CENTER  
PROJECT

**DATE:** 03-10-04

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Approved

Date

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Council District: Citywide

## **REASON FOR ADDENDUM**

In order to maintain progress on this project, staff recommends that Council approve this item at its March 16, 2004 meeting.

## **RECOMMENDATION**

Adoption of a resolution authorizing the City Manager to negotiate and execute any necessary agreements with Travelers Casualty & Surety Company, the surety for Dennis J. Amoroso Construction Company, Inc., and any construction contractor for completion of the Animal Care Center Project at no additional cost to the City beyond \$1,087,000 and including the authority to negotiate liquidated damages.

CEQA: Negative Declaration, H01-003.

## **BACKGROUND**

On June 4, 2002, Council awarded the Animal Care Center Project, in the amount of \$9,579,000 to Dennis J. Amoroso Construction Company, Inc. ("DJA"). The project includes the construction of a 45,000 square foot facility to house the new Animal Services Division of the Parks, Recreation and Neighborhood Services Department. The project began construction in July 2002, and the contractual completion date for the project was November 7, 2003. Currently the project is approximately 90% complete.

The City terminated DJA on March 2, 2004 because of DJA's failure to perform various of its obligations under the construction contract. The same day, the City made a written demand on Travelers Casualty & Surety Company ("Travelers") to perform its obligations to complete the project pursuant to the performance bond.

Once the City terminated DJA, Travelers started working with the City on a plan to complete the project. This has included Travelers contacting the subcontractors who worked for DJA about continuing to perform work on the project. It has also included Travelers performing a walk through of the project site with general contractors who are interested in completing the project.

### **ANALYSIS**

The performance bond for the project obligates Travelers to complete the project. When a public works contract is terminated because of lack of performance and the completion of the project is tendered to the surety, the project may be completed without further competitive bidding.

There are two basic approaches that Travelers can take to meet its obligations under the performance bond. Under one approach, Travelers would tender money to the City for the City to hire a new contractor to complete the project. This approach necessitates the City entering into an agreement or agreements with Travelers and a new general contractor to complete the project.

Alternatively, Travelers can directly contract with the new completion contractor. This approach would only necessitate the City entering into one or more agreements with Travelers. Travelers has thus far indicated to the City that it intends to meet its obligations to complete the project using this approach. Staff believes that this is an appropriate way to proceed on this project given the amount of work remaining.

Staff is requesting the City Council to authorize the City Manager to negotiate and execute one or more agreements with Travelers, and if need be, with any new general contractor, as necessary for the completion of the project. The terms of any such agreements will address such issues as a completion schedule, the payment of moneys from the City to Travelers or vice versa, and how to handle construction defects in the project and change orders from the City. Importantly, the totality of any agreements negotiated and executed by the City Manager could not require the City to pay for completion of the project more than the amount currently appropriated for the project, which is \$1,087,000.

The payment of liquidated damages will also need to be addressed in any agreement with Travelers given that the project is so far behind schedule. The City has incurred significant additional costs as a result of the project not yet being completed. The delegation of authority being requested would include the authority of the City Manager to negotiate the liquidated damages if appropriate in the furtherance of completing the project.

### **PUBLIC OUTREACH**

Not applicable.

**COORDINATION**

This memorandum was coordinated with the Planning, Building and Code Enforcement Department, City Attorney's Office and the City Manager's Budget Office.

**COST IMPLICATIONS**

There are no additional costs to the City relating to this agreement, except for added City staff costs necessary for administering the agreement.

**CEQA**

Negative Declaration, H01-003.

KATY ALLEN  
Director, Public Works Department

SARA L. HENSLEY  
Parks, Recreation and  
Neighborhood Services Department

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