



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen

SUBJECT: SEE BELOW

DATE: 05-28-09

Approved

Date

5/29/09

COUNCIL DISTRICT: Citywide

**SUBJECT: HAPPY HOLLOW PARK & ZOO – ZOO AND ATTRACTIONS
SUBSTITUTION OF SUBCONTRACTOR**

REASON FOR ADDENDUM

In order to maintain the schedule for this project, staff requests Council approval at its June 9, 2009 meeting.

RECOMMENDATION

Administrative hearing to consider the request of West Bay Builders, Inc., the general contractor on the Happy Hollow Park & Zoo – Zoo and Attractions project, to substitute Jensen Corporation for Green Growth Industries, Inc., the listed subcontractor for the landscape, irrigation and green roof work.

BACKGROUND

On November 20, 2007, the City Council awarded a contract to West Bay Builders, Inc. (WBB), to construct the Happy Hollow Park & Zoo – Zoo and Attractions project for just over \$39 million. The project is currently approximately 80 percent complete.

In its bid, WBB listed Green Growth Industries, Inc. (GGI), as the subcontractor who would perform the landscape, irrigation and green roof work for the project. Section 2-1.15B of the City of San José Standard Specifications prohibits WBB from substituting another subcontractor for GGI unless the City first consents to the substitution for one of the reasons enumerated therein.

On May 5, 2009, WBB requested permission from the City to substitute Jensen Corporation for GGI. WBB based its request on the assertion that GGI refused to procure a requested bond at WBB's expense and to enter into the written contract presented to it by WBB. Pursuant to the requirements of Section 2-1.15B of the City of San José Standard Specifications, the City sent

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Subject: Happy Hollow Park & Zoo Substitution of Subcontractor

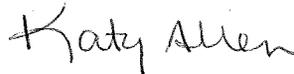
Page 2

GGI a letter on May 7, 2009, giving GGI notice of WBB's substitution request and the reasons for the request. On May 8, 2009, the City received a letter from GGI stating that it did not consent to the substitution and disputing WBB's stated reasons for requesting the substitution.

When the listed subcontractor submits written objections – as GGI has done here – Section 2-1.15.B.1 of the Standard Specifications requires the City to conduct a hearing on the matter. Section 14.04.520 of the San José Municipal Code requires that the City Council conduct the hearing.

Public Works has requested each party to present the City with a full written explanation, along with all supporting documentation, of their respective positions with regard to the above issues and any rebuttal to the other party's position. Public Works requested that the written explanation, exclusive of supporting documents, be no longer than five (5) pages and any rebuttal to the other party's position be no longer than two (2) pages. The written explanation, along with supporting documents, and rebuttal were to be submitted concurrently to the City and the other party by 5 PM on May 26, 2009. Both parties submitted these documents in a timely manner. Staff is currently reviewing the documents.

Staff will make a recommendation in a supplemental memo that it will provide on or about June 2, 2009, after staff has reviewed the packages submitted by both parties.



KATY ALLEN

Director, Public Works Department

For questions please contact DAVID SYKES, ASSISTANT DIRECTOR, at (408) 535-8300.

Attachment

KJ:gr