

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Katy Allen

**SUBJECT:** SEE BELOW

**DATE:** 06-01-09

Approved



Date

6/8/09

**COUNCIL DISTRICT:** 7

**SUBJECT: SEVEN TREES COMMUNITY CENTER & BRANCH LIBRARY HEARING  
ON REQUEST FOR SUBSTITUTION OF SUBCONTRACTOR**

## RECOMMENDATION

- (a) ADMINISTRATIVE HEARING to consider the request of Gonsalves & Stronck Construction Company (G&S), the general contractor on the new Seven Trees Community Center and Branch Library Project (Seven trees), to substitute itself and/or another subcontractor for General Development Industries, Inc. (GDI), the listed subcontractor for the concrete work.
- (b) If the City Council approves the request for substitution, adoption of a resolution authorizing the Director of Public Works to approve a specific subcontractor to be substituted for GDI once G&S identifies a new subcontractor.

## BACKGROUND

On May 20, 2008, the City awarded a \$25,670,567 contract to Gonsalves & Stronck Construction Company (G&S), to construct the Seven Trees Community Center and Library Project. The Project is the second joint facility consisting of a library and community center funded under the Library and Parks Bond. It is located at 3590 Cas Drive within the Solari Park 12 acre site in Council District 7. The construction is approximately 30 percent complete as of March 31, 2009.

In its bid, G&S listed General Development Industries, Inc. (GDI) as the subcontractor who would perform the concrete work. Section 2-1.15B of the City of San José Standard Specifications prohibits G&S from substituting another subcontractor for GDI unless the City first consents to the substitution for one of the reasons enumerated therein.

On March 26, 2009, G&S requested permission from the City to substitute itself and/or another subcontractor to be named later for GDI. G&S based its request on the assertion that GDI – after having performed some of the concrete work – was refusing to perform its subcontract. Pursuant to the requirements of Section 2-1.15B of the City of San José Standard Specifications, the City

HONORABLE MAYOR AND CITY COUNCIL

06-01-09

**Subject: Seven Trees Community Center & Branch Library - Substitution of Subcontractor**

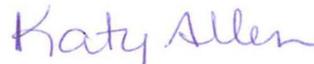
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sent GDI a letter on March 27, 2009, giving GDI notice of G&S's substitution request and the reason for the request. On April 3, 2009, the City received a letter from GDI stating that it did not consent to the substitution and disputing G&S's stated reasons for requesting the substitution.

When the listed subcontractor submits written objections – as GDI 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 should be submitted concurrently to the City and the other party by 5:00 PM on May 28, 2009.

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.

Attachments: Exhibits

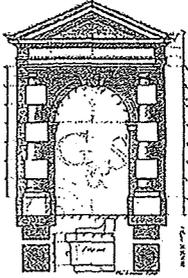
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*Seven TreesSubcontr substitution Memo 06\_16\_09rev01.doc*

**Community Center and Branch Library**  
Schedule of Events due to Subcontractor Substitution

(CSJ: City of San Jose, DPW; G&S: Gonsalves and Stronck - GENERAL CONTRACTOR; GDI: General Development Industries - SUBCONTRACTOR)

Exhibit	Date of Occurance:	Letter FROM:	Letter TO:	ISSUE
<b>A. Subcontractor Substitution</b>				
<b>A1</b>	March 26, 2009	G&S	CSJ	Letter informing CSJ that GDI has chosen not to prosecute their contract work for more than 1 week according to std. specs sect. 2-1.15B.
<b>A2</b>	March 27, 2009	CSJ	GDI	Informing that G&S is requesting to substitute GDI on the basis of std. specs sect. 2-1.15B, item 1c subcontractor fails or refuses to perform its subcontract.
<b>A3</b>	April 3, 2009	GDI	CSJ	Objects to substitution, claims delays in invoices, failed to pay GDI Jan. inv. for \$122,000. GDI has filed a Stop Notice, claims extra work gone unprocessed and unpaid.
<b>A4</b>	May 20, 2009	CSJ	GDI /G&S	Public Works has requested each party to present the City with a full written explanation, along with all supporting documentation, and identified a tentative council hearing date.



**GONSALVES & STRONCK**  
Construction Company, Inc.

March 26, 2009

City of San Jose  
200 E. Santa Clara St. 6<sup>th</sup> Floor  
San Jose, Calif. 95113

Attn: Mr. Domenic Onorato

Re: City of San Jose / Seven Trees Community Center and Branch Library  
General Development Industries

Dear Mr. Onorato,

As you know, our subcontractor; General Development Industries (GDI), has chosen not to man and prosecute their contracted work at hand for more than one week. We have notified GDI that their inactions are delaying the completion of our project. We have repeatedly requested that GDI pay their respective subcontractors, materialmen, suppliers, vendors, etc. in accordance with funding Gonsalves & Stronck Construction Company, Inc. has provided GDI, and for GDI to provide evidence of such corresponding payments.

Such corresponding GDI subcontractor, materialmen, supplier, vendor, etc. have not been provided to Gonsalves & Stronck Construction Company, Inc. We intend to hold GDI accountable for all costs due to their actions and inactions related to our subcontract agreement.

We would like nothing more than for General Development Industries to perform diligently and complete the Seven Trees Community Center and Branch Library Project in accordance with our contract/schedule. GDI has defaulted on our General Subcontract Provision D- Time.

We now find ourselves forced to intervene in the prosecution of GDI subcontract work, for the greater good of the project.

Accordingly, per the City of San Jose Department of Public Works Standard Specifications 2-1.15B, we hereby request the approval of the City of San Jose to perform the remainder of General Development Industries' work scope, if necessary, with Gonsalves and Stronck and other subcontractor forces as may be deemed necessary by Gonsalves & Stronck.

Thank you for your consideration.

A1

Sincerely,  
  
Ken Gendotti  
Project Executive

*Certified letter  
went out 3/28/09  
@ 10 AM  
Thank you  
Tina*

Via Certified Mail and Fax (707) 528-1721

March 27, 2009

Mr. Rob Ring  
General Development Industries, Inc.  
650 Larkfield Center, Suite D,  
Santa Rosa, CA 95403

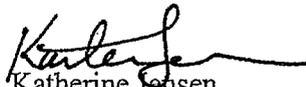
Mr. Ring:

SUBJECT: SEVEN TREES COMMUNITY CENTER & BRANCH LIBRARY

This is to inform you that on March 26, 2009 we received a request from the general contractor, Gonsalves and Stronck Construction Co., Inc., for the subject project requesting to substitute General Development Industries, Inc. The basis for the substitution is Section 2-1.15B, item 1(c) of the City of San José Standard Specifications, which allows the substitution, when the subcontractor listed in the bid after having had a reasonable opportunity to do so fails or refuses to perform its subcontract.

If you object to the substitution, please submit your written objection to the City within 5 working days from the date of this letter. Failure to file this written objection will constitute your consent to the substitution. Please call me at (408) 535-8350 if you have any questions.

Sincerely,

  
Katherine Jensen  
Division Manager

KJ:do

Attachment: Letter from Gonsalves and Stronck Const. Co., Inc. (Mar. 26, 2009)

Cc: Public Works, CFAS Division – Rodney Rapson & Danny Tsao  
City Attorney's Office – Glenn Schwarzbach  
Equality Assurance Office – Stephanie Menzies  
Gonsalves and Stronck Construction, Inc. – Ken Gendotti

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**GENERAL DEVELOPMENT INDUSTRIES  
P.O. BOX 4343  
SANTA ROSA, CA 95402**

April 3, 2009

Ms. Katherine Jensen  
City of San Jose  
City Facilities Architectural Services  
200 E. Santa Clara St., 6<sup>th</sup> floor,  
San Jose, CA 95113

Sent via  
Email to  
Demonic Onorato  
4/3/09

**RE: Seven Trees Community Center and Branch Library  
Your letter Dated March 27, 2009**

Dear Ms. Jensen,

I strongly object to the substitution of General Development Industries with another subcontractor on the project mentioned above. General Development Industries had performed its work properly and ahead of schedule. The Contractor, Gonsalves and Stronck Construction Company, Inc. has continuously delayed payment of its invoices and has now halted payment of the balance of its January payment in an amount of over \$122,000.00. We have continually attempted to secure this payment short of filing of a Stop Notice. Gonzalves and Stronck further offered to pay my outstanding invoices via joint check and has refused to sign the joint check agreement nor provide any joint checks.

You are now in receipt of our Stop Notice. A substantial portion of amount of this Stop Notice is for extra work performed on the project.

Furthermore, General Development Industries has requested mediation or some other form of dispute resolution and these requests were never responded to.

Finally, prior to the Architectural Inspection that took place on March 18, 2009 Gonsalves and Stronck had my subcontractor on the jobsite performing

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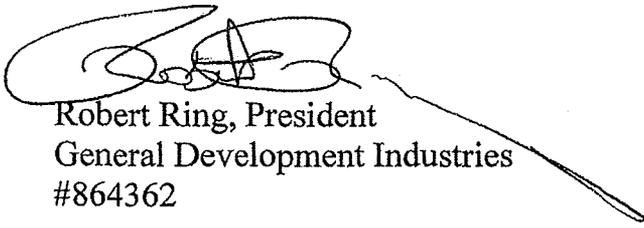
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DPW-CFAS

work . This should clearly indicate that they never had an intention to honorably resolve this payment issue.

We look forward to any assistance we can from your office in the effort to resolve this payment issue so we can continue with the project.

Thank you,



Robert Ring, President  
General Development Industries  
#864362

cc: Ken Gendotti, Gonsalves and Stronck Construction Company, Inc.  
Demonic Onorato, Project Manager, City of San Jose  
Mikel Bryan, attorney

Encl.

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**Certified Mail and Faxed**

May 20, 2009

General Development Industries, Inc.  
P.O. Box 4343, Santa Rosa, CA 95402  
650 Larkfield Center, Suite D, Santa Rosa, CA 95403 (certified mail address)  
(Attention: Rob Ring, Fax no. 707-528-1721)

Gonsalves & Stronck Construction Co., Inc.  
1000 Washington Street, San Carlos, CA 94070-5319  
(Attention: Ken Gendotti, Fax no. 650-802-2970)

Gentlemen:

**SUBJECT: SEVEN TREES COMMUNITY CENTER & BRANCH LIBRARY  
NOTICE OF HEARING ON CONTRACTOR'S REQUEST FOR  
CONTRACTOR SUBSTITUTION**

The purpose of this letter is to notify both parties that the City of San Jose, Dept. of Public Works has tentatively set a hearing date of June 16, 2009 to consider the request of the general contractor, Gonsalves & Stronck Construction Company (G&S), to substitute itself, or any other contractor that it deems appropriate, for General Development Industries, Inc. (GDI), the listed subcontractor for the building concrete work on the above referenced project. As required by the San Jose Municipal Code and Standard Specifications, this hearing will be conducted before the City Council.

On March 26, 2009, G&S requested permission from the City of San Jose to substitute GDI. This request is based on Section 2-1.15B item 1(c) of the City of San José Standard Specifications, which allows the substitution when the subcontractor listed in the bid fails or refuses to perform its subcontract. On March 27, 2009, the City sent a letter to GDI notifying of the substitution request by G&S. On April 3, 2009, the City received a letter from GDI stating that it did not consent to the substitution and disputed G&S's stated reasons for requesting the substitution.

Section 2-1.15B of the City of San Jose Standard Specifications requires the City to conduct a hearing if a subcontractor objects to a general contractor's request for substitution. The issue at this hearing will be whether GDI has failed or refused to perform its subcontract.

In order to assist the City in resolving the above issue, Public Works requests each party to present the City with a full written explanation, along with all supporting documentation, of their position with regard to the above issue and any rebuttal to the other party's position. Public Works requests that the written explanation, exclusive of supporting documents, be no longer than five (5) pages. The written explanation, along with supporting documents, should be submitted to the City by 5 PM 5 working days after this notice. City will distribute the written explanation and supporting documents to the other parties the following day.

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Name: Gonsalves & Stronck Construction Company, Inc. & General Development Industries, Inc.  
Subject: Seven Trees Community Center and Branch Library – Subcontractor Substitution  
Date: 05/20/09  
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Please direct all submissions to the City to:

CITY OF SAN JOSE, Dept. of Public Works  
City Facilities Architectural Services Division  
200 East Santa Clara Street, 6<sup>th</sup> Floor  
San Jose, CA 95113  
Attention: Domenic Onorato

Nothing in this notice shall be construed to relieve the general contractor from meeting all of its obligations under the contract for the subject project, including those related to project schedule.

Please call me at (408) 535-8350 if you have any questions.

Sincerely,

  
Katherine Jensen  
Division Manager

KJ:do

Cc: Public Works, CFAS Division (Domenic Onorato, Rodney Rapson and Danny Tsao)  
City Attorney's Office