



MEMORANDUM

TO: CITY COUNCIL

FROM: GEOFF ENGLISH, PUBLIC WORKS DIRECTOR

SUBJECT: CONSIDERATION OF AGREEMENT AND MUTUAL RELEASE
TERMINATING THE AGREEMENT WITH J&P CONSTRUCTION
REGARDING THE HERITAGE SQUARE PARK RESTROOM PROJECT

DATE: FEBRUARY 23, 2016

RECOMMENDATION:

It is recommended the City Council approve an Agreement and Mutual Release, in a form approved by the City Attorney, terminating the Agreement with J&P Construction and authorize the Mayor to execute the Agreement.

IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:

No payments have been made or are proposed to J&P Construction for the Heritage Square Park Restroom Project. There will be some minor costs to the City in rebidding the project.

BACKGROUND:

On April 30, 2015, the City issued a Notice of Award of Agreement to J&P Construction ("J&P") for the procurement, delivery and installation of a pre-fabricated restroom building within Heritage Square Park and an Agreement for the construction of the restroom was executed. Under the terms of the Agreement, J&P was to complete the project within ninety days. To date, the restroom has not been procured and consequently there has been no work performed.

As part of the routine "submittal" review process, common to most capital improvement projects, J&P Construction submitted plans for the proposed pre-fabricated restroom building as required in the bidding documents. The design plans for the pre-fabricated restroom were developed through a public review effort and were intended to be consistent with the historical nature and design of the buildings adjacent to Heritage Square Park. A California-based pre-fabricated building supplier provided a template for the restroom design plans that were used for bidding purposes. Bidders were allowed to submit bids from other sub-contractors that produce pre-fabricated restrooms as long as the substituted plans met the specifications outlined in the City's bidding documents. This "or equal" substitution is a common practice in public project bidding unless specifically prohibited in the advertized bidding documents.

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Upon review of the J&P submitted “or equal” pre-fabricated restroom plans, it was determined that they did not sufficiently meet the design plan requirements and specifications. Numerous back-and-forth discussions between the City’s former Capital Project Engineer, and Jeff Ploutz, owner of J&P about changes to the “or equal” pre-fabricated restroom design plans to meet the City’s specifications resulted in substantial project delays. Recently, and after several plan iterations, it was determined that the modified “or equal” plans were sufficiently consistent with the original design plans and specifications. As a result, the design submittal was finally approved.

Unfortunately, the manufacturer of the “or equal” pre-fabricated restroom has requested an additional \$35,000 from J&P to pay for what they consider to be costs over and above their original bid. J&P has not been able to successfully negotiate with their sub-contractor and has requested that their Agreement with the City of Arroyo Grande for the Heritage Square Park restroom project be terminated.

ANALYSIS OF ISSUES:

Due to J&P’s inability to procure a pre-fabricated restroom that meets the City’s specifications at their original quoted price, J&P has failed to perform the work set forth in the Agreement. The Agreement contains a termination provision that provides a detailed and prolonged process where notice is provided to the contractor of the City’s intent to terminate and the contractor is given the opportunity to perform. Should the contractor’s failure to perform continue, the City must provide a notice to terminate, which also gives the contractor’s surety the opportunity to step in and complete the work. Rather than proceed with the termination process and the associated delay in completing the project, staff has spoken to J&P and they are willing to voluntarily walk away from the project, subject to execution of an Agreement and Mutual Release.

In addition to a prolonged delay, staff believes that proceeding with the termination provision in the Agreement will result in a heightened need for City staff oversight and potentially incur significant additional legal fees associated with the termination process. In order to expedite the termination and to do so in the most cost effective manner, it is recommended the City Attorney prepare an Agreement and Mutual Release with J&P, which will terminate the Agreement and allow the City to move forward expediently with a rebid of the project.

ALTERNATIVES:

The following alternatives are provided for City Council consideration:

1. Approve an Agreement and Mutual Release in a form approved by the City Attorney and authorize the Mayor to execute the Agreement;
2. Direct staff to provide a notice to terminate and give the contractor’s surety the opportunity to step in and complete the work; or
3. Provide other direction.

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ADVANTAGES:

Terminating the Agreement with J&P will allow the City to quickly sever its relationship with J&P and get the project back on track.

DISADVANTAGES:

Once the City terminates the Agreement with J&P, the City will need to rebid the project, which will require additional costs and staff time.

ENVIRONMENTAL REVIEW:

Not applicable.

PUBLIC NOTIFICATION AND COMMENTS:

The Agenda was posted in front of City Hall on Thursday, February 18, 2016 and on the City's website on Friday, February 19, 2016.

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