

TO: James L. App, City Manager
FROM: Doug Monn, Public Works Director
SUBJECT: Cancel Award of Contract for Sherwood Park Phase 1A
DATE: February 21, 2006

NEEDS: For the City Council to consider terminating for convenience the contract awarded to Wysong Construction for Phase 1A of the Sherwood Park Master Plan and award it to the next responsible bidder, Newton Construction.

- FACTS:**
1. On November 21, 2005, three bids were received for construction of Phase 1A of Sherwood Park ranging from \$1,055,325.00 to 1,100,450.00.
 2. The bid of \$1,055,325.00 submitted by Wysong Construction was initially determined to be a responsive low bid. However, after review of Wysong's performance on other City Projects, most recently Centennial Park, staff has observed that the contractor has problems staffing projects, submitting and/or adhering to construction schedules and completing the projects in a timely manner.
 3. The City's bid documents for the Sherwood Project reference the CalTrans Standard Specifications. Section 8-1.11 of the documents provides for the agency to "terminate the contract at any time upon a determination ... that termination of the contract is in the best interest of the [City]."
 4. Further, the Standard Specs set forth the process of providing written notice to the contractor that staff is recommending the contract be terminated effective upon City Council action, based upon the City's determination that termination is in the City's best interest and stating the facts. The written notice was delivered to the Contractor by 1st class and Certified Mail on February 1, 2006.
 5. The termination for convenience process entitles Wysong Construction to request repayment for costs related to preparation for the Sherwood Park project, such as any non-refundable bond premiums, subject to submittal of a claim accompanied by proof that said costs were incurred (receipts). Wysong Construction has provided the City with labor and performance bonds and evidence of insurance for the project. Should the City Council terminate the contract prior to issuance of a Notice to Proceed, Wysong Construction is entitled to receive a refund of the majority of the bond costs (\$14,438.00), less a possible administrative fee from the surety. Wysong may seek other costs incurred in preparing for the project. Staff has no way of determining what, if any, potential claim may be incurred. As a result, staff is recommending that City Council not allocate any funding to offset any potential claims until it is determined if any exist.
 6. The second low bid for the Sherwood Park project was submitted by Newton Construction in the amount of \$1,092,729.00. To complete the project, City Council would need to allocate \$40,000.00 from available funding sources to award a contract for the project.

**ANALYSIS
AND**

CONCLUSION: The project specifications establish that the contract for Sherwood Park Master Plan Phase 1A may be terminated for convenience. Staff has expressed a concern the project may not be constructed in a time frame or manner that serves the best interest of the

public if Wysong is allowed to proceed. Whereas, Phase 1A of the Sherwood Park Master Plan will set the trend for all other subsequent phases of the Park Master Plan, it would seem prudent to terminate the present contract and proceed with an alternate contractor.

POLICY

REFERENCE: Section 8-1.11 of the CalTrans Standard Specifications incorporated into the contract for Sherwood Phase 1A

Fiscal

Impact: The December 20, 2006 bid award did not provide enough funding to cover the contract cost for the next bidder on this project or the funding necessary to cover the bond costs for Wysong Construction. A General Fund appropriation of \$40,000.00 will be required to pay any termination claim and award the contract to Newton Construction.

OPTIONS:

- a. Approve Resolution No. 06-xx:
 - 1) Terminating for the City's convenience, the contract with Wysong Construction for Phase 1A of the Sherwood Park Master Plan; and
 - 2) Authorizing the City Manager to enter into a contract with Newton Construction in the amount of \$1,092,729.00 for Phase 1A of the Sherwood Park Master Plan; and
 - 3) Appropriating an additional \$40,000.00 to cover the increased cost of the contract.
- b. Amend, modify, or reject the above option.

Attachments

- 1) Resolution

RESOLUTION NO. 06-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
TERMINATING THE CONTRACT WITH WYSONG CONSTRUCTION,
AWARDING THE CONTRACT TO NEWTON CONSTRUCTION, AND
ALLOCATING ADDITIONAL FUNDS FOR THE SHERWOOD PARK PLAYGROUND STRUCTURE
UPGRADES, PHASE 1A OF THE SHERWOOD PARK MASTER PLAN

WHEREAS, on December 20, 2005, City Council did award a contract to Wysong Construction in the amount to \$1,055,385.00 for the construction of Phase 1A of the Sherwood Master Plan; and

WHEREAS, City Council determined in the best interest of the City to terminate the contract for the City's convenience in accordance with the contract documents; and

WHEREAS, City Council has also determined it in the best interest of the City to re-award the contract to Newton Construction in the amount of \$1,092,700; and

WHEREAS, the budget for the project requires an additional \$40,000.00 to cover the cost of construction and potential termination costs.

THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. The City Council of the City of El Paso de Robles authorizes a transfer of \$12,000 from General Fund Reserves to the Park Development Impact Fee Fund as follows:

| | |
|------------------|-------------|
| 100-000-5899-000 | \$ (12,000) |
| 216-000-4899-000 | \$ 12,000 |

SECTION 2. The City Council of the City of El Paso de Robles approves a supplemental budget appropriation from Park Development Impact Fee Fund in the amount of \$40,000.00 to budget account 216-910-5452-426.

SECTION 3. The City Council of the City of Paso Robles does hereby terminate the contract for Sherwood Park Playground Structure Upgrades with Wysong Construction in the amount of \$ 1,055,325 for the City's convenience.

SECTION 4. The City Council of the City of Paso Robles does hereby award the contract for Sherwood Park Playground Structure Upgrades to Newton Construction in the amount of \$1,092,700.00.

SECTION 4. The City Council of the City of Paso Robles does hereby authorize and direct the City Manager to execute an agreement with Newton Construction for Sherwood Park Playground Structure Upgrades.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 21stst day of February 2006 by the following vote:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Cathy David, Deputy City Clerk