

**CITY OF EL PASO, TEXAS  
REQUEST FOR COUNCIL ACTION (RCA)**

**DEPARTMENT:** Engineering Department  
**AGENDA DATE:** June 24, 2008  
**CONTACT PERSON/PHONE:** R. Alan Shubert, City Engineer Ext. No. 4423  
**DISTRICT(S) AFFECTED:** 1  
**PROJECT NAME/SOLICITATION NO.** Westside Community Park & Recreation Center – Termination of Contract

**SUBJECT:**

1. That the City Engineer is authorized to: 1. notify SamCorp General Contractors and Hartford Fire Insurance Company that the City of El Paso is terminating Bid No. 2005-256 for the construction the Westside Community Park & Recreation Center project, pursuant to General Conditions 6.9; 2. to file a claim with Hartford Fire Insurance Company, notifying Hartford Fire Insurance Company of the City of El Paso's intent to look to the surety for performance
2. That the City is authorized to sign any take over agreements or related documents necessary to accomplish the intent of the Resolution.

**BACKGROUND / DISCUSSION:**

The Westside Community Park and Recreation Center was substantially completed on December 5, 2007. Since then, City had been working with SamCorp General Contractors on completing all outstanding items on the punch list and all necessary closeout documentation. As of April 15, 2008, they have stopped all communication with the City and therefore the City intends to file a claim with the Surety to have the Surety take over the performance of the project pursuant to the Performance Bond issued for the project. In order for the Surety to take over, the City must terminate the contract the contract and file a formal claim with the Surety. The resolution presented authorizes the City Manger and City Engineer to follow all the steps required to allow for the completion of the project. The City still holds \$152,516.72 in retainage as guarantee that the work will be completed. Once the work is completed, the retainage will be paid out to the Surety Company in accordance with the contract.

**PRIOR COUNCIL ACTION:**

City Council previously awarded Bid No. 2005-256 on November 15, 2008

**AMOUNT AND SOURCE OF FUNDING:**

The project is funded by: 2000 QOL

**BOARD / COMMISSION ACTION:**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:** \_\_\_\_\_

(Example: if RCA is initiated by Financial Services, client department should sign also)

*Information copy to appropriate Deputy City Manager*

**APPROVED FOR AGENDA:**

**CITY MANAGER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

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**RESOLUTION**

**WHEREAS**, on November 15, 2005, the City of El Paso awarded Bid No. 2005-256 to SamCorp General Contractors (SamCorp) for the construction of a project known as the Westside Community Park & Recreation Center; and

**WHEREAS**, on December 19, 2005, a Notice to Proceed was issued; and

**WHEREAS**, on March 6, 2007, a partial Certificate of Substantial Completion was issued for the recreation center portion of the project and a list of items to be completed or corrected was attached thereto and provided to SamCorp; and

**WHEREAS**, on December 5, 2007, a Certificate of Substantial Completion was issued for the whole project (the recreation center and the park) and a list of items to be completed or corrected was attached thereto and provided to SamCorp; and

**WHEREAS**, on May 2, 2008, a 1 year walkthrough was conducted for the project and a list of items to be completed or corrected was prepared; and

**WHEREAS**, SamCorp has failed to complete or correct the items on the various lists; and

**WHEREAS**, since April 15, 2008, there has been no communication between the City of El Paso and SamCorp; SamCorp has failed to respond to phone calls, email, or written communication; and

**WHEREAS**, on June 10, 2008, the City of El Paso sent a certified letter to SamCorp giving them notice of the City's intent to terminate the contract for default if, within 10 (ten) days, SamCorp did not make satisfactory arrangements to correct the items on the above mentioned lists; and

**WHEREAS**, SamCorp has failed to respond to the June 10, 2008 notice; and

**WHEREAS**, pursuant to the contract between the City of El Paso and SamCorp General Contractors, General Conditions 6.9, Right of Owner to Terminate the Contract, the city possesses the right to terminate the contract in the event of default by the contractor and a failure to cure such default after receiving notice thereof.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO THAT:**

1. The City Engineer notify SamCorp General Contractors and Hartford Fire Insurance Company that the City of El Paso is terminating Bid No. 2005-256 to SamCorp General Contractors for the construction of a project known as Westside Community Park & Recreation Center, pursuant to General Conditions 6.9, Right of Owner to Terminate the Contract, due to default by SamCorp General

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Contractors and that the termination shall become effective immediately upon delivery of notice.

2. The City Engineer shall file a claim with Hartford Fire Insurance Company, as the surety for SamCorp General Contractors, notifying Hartford Fire Insurance Company of the City of El Paso's intent to look to the surety for performance in accordance with the terms and conditions of Bid No. 2005-256 to SamCorp General Contractors for the construction of a project known as Westside Community Park & Recreation Center.
3. The City Manager is authorized to sign any take over agreements or related documents upon approval by the City Attorney's Office and the City Engineer and to take any actions necessary to accomplish the intent of the Resolution.

**PASSED AND APPROVED THIS \_\_\_\_ day of \_\_\_\_\_, 2008.**

**CITY OF EL PASO**

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John F. Cook  
Mayor

ATTEST:

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Richarda Duffy Momsen  
City Clerk

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APPROVED AS TO FORM:

APPROVED AS TO CONTENT:




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Cynthia Osborn  
Assistant City Attorney




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R. Alan Shubert  
City Engineer

JOHN COOK  
MAYOR



CITY COUNCIL  
ANN MORGAN LILLY, DISTRICT 1  
SUSANNAH M. BYRD, DISTRICT 2  
VACANT, DISTRICT 3  
MELINA CASTRO, DISTRICT 4  
RACHEL QUINTANA, DISTRICT 5  
EDDIE HOLGUIN JR., DISTRICT 6  
STEVE ORTEGA, DISTRICT 7  
BETO O'ROURKE, DISTRICT 8

ALAN SHUBERT, P.E.  
CITY ENGINEER

ENGINEERING DEPARTMENT

June 10, 2008

Via Facsimile and Certified Mail

Mr. Steven M. Sambrano, President  
SamCorp General Contractors  
1201 N. Mesa, Suite I  
El Paso, TX 79902  
Fax: (915) 534-9184

Richard L. Levesque  
The Hartford  
Senior Bond Claim Manager  
P.O. Box 889  
Gig Harbor, WA 98335  
Fax: (866) 235-6173

RE: Westside Community Park & Recreation Center, Contract No. 2005-256  
Principal: SamCorp General Contractors  
Bond No: 46 BCS DE5233

Dear Sirs:

This letter shall serve as your official Notice that SamCorp General Contractors (SamCorp) is in default of the above referenced contract. More specifically, SamCorp is in default of, but not limited to, General Conditions 5.15.2, 5.15.3, 5.17.2, 6.10.1.4, 6.10.1.5, 6.10.1.6, and 6.10.1.7, in that SamCorp has failed to provide a functionally complete project by its failure to complete the entire work contemplated by the contract documents. SamCorp has discontinued the prosecution of the work and has failed to resume work within a reasonable time after notice to do so. SamCorp has failed to complete the remaining punch list and warranty items for the project after notice to do so.

The outstanding punch list and warranty items include:  
From the original punch list:

- Complete set up of the flood warning siren.

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Letter: to Samcorp General Contractors/The Hartford  
Re: Westside Community Park & Recreation Center, Contract No. 2005-256  
Principal: SamCorp General Contractors  
Bond No: 46 BCS DE5233

June 10, 2008

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From the one year warranty inspection punch list:

- Repair of intercom system and ambient music controls.
- Repair of video surveillance system.
- Installation of motor for basketball support system and modification of support.
- Repair of score board on south wall of gym.
- Repair of bleacher retractor system.
- Repair of architectural light at reception area.
- Adjustment of automatic door sensor.
- Weather seal for external auxiliary doors.
- Covers for light fixture at weight room.

Pursuant to 6.9.1, General Conditions of the contract, SamCorp has (10) consecutive calendar days from delivery of this notice to make satisfactory arrangements to correct the above listed items. If SamCorp fails to make satisfactory arrangements, it is the intent of the City of El Paso to immediately terminate the contract for default and serve notice upon Hartford Fire Insurance Company to take over and perform the contract pursuant to the performance bond issued for this project.

Please notify me immediately in writing, if you have any questions.



R. Alan Shubert  
City Engineer

Cc: Cynthia Osborn, Assistant City Attorney  
Sam Rodriguez, Engineering Division Manager

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