

**CITY OF EL PASO, TEXAS  
AGENDA ITEM  
DEPARTMENT HEAD'S SUMMARY FORM**

CITY CLERK DEPT.  
2011 JUL 20 AM 9:25

**DEPARTMENT:** Engineering and Construction Management

**AGENDA DATE:** July 26, 2011

**CONTACT PERSON NAME AND PHONE NUMBER:** R. Alan Shubert, P.E., City Engineer X4423

**DISTRICT(S) AFFECTED:** Citywide

**SUBJECT:**

That the City Engineer is authorized to notify M Lee Corp. of El Paso, Texas, that the City is terminating Contract No. 2011-211 for default pursuant to the provisions of Section 6.9.1 of the General Conditions of the Contract, due to contractor's failure to provide Performance and Payment Bond forms that meet the contract requirements and that the termination shall be effective as of July 26, 2011.

**BACKGROUND / DISCUSSION:**

The Engineering and Construction Management Department recommended the construction award to M Lee Corp. at City Council May 31, 2011 and City Council approved the award. Since then the Engineering and Construction Management Department has been working with M Lee Corp. to get a contract in place. One of the contract requirements is that M Lee Corp. provide payment and performance bonds that meet the City's general conditions of the bid specifications. M Lee Corp. was provided a final cure letter to address the deficiencies July 7, 2011 with a final deadline of July 21, 2011. The company did not meet the deadline. The Engineering and Construction Management Department is requesting an emergency procurement to J.A.R. Concrete, Inc. dba J.A.R. Construction, Inc. for the construction of four additional cells at the Clint Landfill as capacity will be reached by February, 2012. JAR would have been the next lowest bidder after M Lee Corp. although the bids are now expired. The construction contract is 210 consecutive calendar days from notice to proceed to final completion.

**PRIOR COUNCIL ACTION:**

City Council approved the construction award of Solicitation No. 2011-211 for Clint Cell Lining Cells 7-10 Re-Bid to M Lee Corp. May 31, 2011.

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

N/A

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

**DEPARTMENT HEAD:**



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

*Information copy to appropriate Deputy City Manager*

**RESOLUTION**

**WHEREAS**, on May 31, 2011, the City awarded Solicitation No. 2011-211 to M Lee Corp. of El Paso, Texas, for the construction of Clint Cell Lining Cells 7-10 (Re-Bid) for the Environmental Services Department; and

**WHEREAS**, the City Council finds that M Lee Corp. is in default of the provisions of the Contract because M Lee Corp. has failed to provide a Performance and Payment Bond in conformance with the requirements of the General Conditions of Contract (Section 5.13) and the Information for Bidders (page 1-B-5, paragraph 10) as set forth in the Solicitation and on the forms provided on page II-B-1 of the Solicitation; and

**WHEREAS**, pursuant to Section 6.9.1 of the General Conditions of Contract (Right of Owner to Terminate Contract) as set forth in the Solicitation, the City is authorized to terminate the Contract in the event of default; and

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

That the City Engineer is authorized to notify M Lee Corp. of El Paso, Texas, that the City is terminating Contract No. 2011-211 for default pursuant to the provisions of Section 6.9.1 of the General Conditions of the Contract, due to contractor's failure to provide Performance and Payment Bond forms that meet the contract requirements and that the termination shall be effective as of July 26, 2011.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

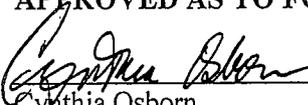
**THE CITY OF EL PASO**

\_\_\_\_\_  
John F. Cook  
Mayor

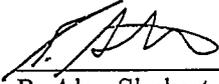
**ATTEST:**

\_\_\_\_\_  
Richarda D. Momsen  
City Clerk

**APPROVED AS TO FORM:**

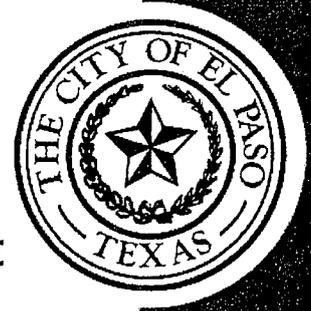
  
\_\_\_\_\_  
Cynthia Osborn  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
R. Alan Shubert, P.E.  
City Engineer

Dedicated to Outstanding Customer Service for a Better Community

**SERVICE SOLUTIONS SUCCESS**



## Engineering & Construction Management

July 21, 2011

91 7108 2133 3932 7269 8260

M. Lee Corp., Attn: Daniel Contreras  
8001 N. Mesa Street, Suite E-132  
El Paso, Texas 79932

Mr. Contreras,

On May 31, 2011, the El Paso City Council awarded contract No. 2011-211 for the Clint Landfill Cell Lining of Cells 7 through 10 to M. Lee Corporation. On July 7 the City Engineering Department sent you a letter of notification that the bonding information provided by you did not satisfy the General Conditions of the contract and that you that you would be allowed ten (10) working days (until July 21) from the date of that letter to remedy this discrepancy. Specifically you did not meet the General Conditions of the Contract (Section 5.13), paragraph 10 (page 1-B-5) of the Information for Bids and did not conform with the Performance Bond and Payment Bond Forms provided in the bid documents on page II-B-1.

Under Section 6.9.1 (Right of Owner to Terminate Contract) of the Contract, the City may terminate the Contract for default in the event that any provisions of this Contract are violated by the Contractor upon ten working days notice to the Contractor.

As this deadline has passed without our receipt of the required information from you, we will be recommending to the City Council that you be deemed in default of this contract at the City Council meeting of July 26, 2011.

Respectfully,

Richard Bristol  
Capital Improvement Program Manager



Engineering & Construction Management  
Two Civic Center Plaza – 5<sup>th</sup> Floor · El Paso, Texas 79901  
Phone (915) 541-4622 · Fax (915) 541-4799

Mayor  
John F. Cook

### City Council

*District 1*  
Ann Morgan Lilly

*District 2*  
Susie Byrd

*District 3*  
Emma Acosta

*District 4*  
Carl L. Robinson

*District 5*  
Dr. Michiel R. Noe

*District 6*  
Eddie Holguin Jr.

*District 7*  
Steve Ortega

*District 8*  
Cortney Carlisle Niland

City Manager  
Joyce A. Wilson