

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

DEPARTMENT: Engineering Department
AGENDA DATE: December 2, 2008
CONTACT PERSON/PHONE: R. Alan Shubert, City Engineer Ext. No. 4423
DISTRICT(S) AFFECTED: 3
PROJECT NAME/SOLICITATION NO. Cedar Grove Sidewalks Improvements – Termination of Contract

SUBJECT:

That the City Engineer is authorized to:

1. Notify Tirayan Construction [Tirayan] and its surety, Western Surety Company, that the City of El Paso is terminating Bid No. 2008-185 for the construction the Cedar Grove Sidewalks Improvements project, pursuant to General Conditions 6.9 due to the default of Tirayan;
2. File a claim with Western Surety Company, making demand that Western Surety Company perform the remaining work of the project.
3. That the City Manager is authorized to sign any take over agreements or related documents necessary to accomplish the intent of the Resolution.

BACKGROUND / DISCUSSION:

The Cedar Grove Sidewalks Improvements project was substantially completed on September 26, 2008. Since then the City has attempted to obtain completion of the remaining work, including all outstanding items on the punch list and all necessary closeout documentation, by Tirayan. Tirayan ceased all communication with the City and has made no effort to complete the work of this project. 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 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 contract. The City still holds \$11,051.78 in retainage and \$8,566.40 of completed work not invoiced 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 awarded bid number 2008-185 on June 10, 2008.

AMOUNT AND SOURCE OF FUNDING: The project is funded by: FY 2004 General Obligation Bonds

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:** _____

RESOLUTION

WHEREAS, on June 10, 2008, the City of El Paso awarded Bid No. 2008-185 to Tirayan Construction ["Contractor"] for the construction of a project known as the Cedar Grove Sidewalks Improvements in the amount of \$92,088.00 to be performed within forty consecutive workdays from the date of the notice to proceed.

WHEREAS, on July 16, 2008, the city issued a Notice to Proceed to Contractor; and

WHEREAS, on September 26, 2008, a Certificate of Substantial Completion was issued for the project and a list of items to be completed or corrected ["incomplete work"] was attached thereto and provided to Contractor

WHEREAS, Contractor has failed to respond to phone calls, email, or written communication requesting completion of the work; and

WHEREAS, on October 17, 2008, the City of El Paso sent a certified letter to Contractor giving Contractor notice of the City's intent to terminate the contract for default if within ten days, Contractor did not make satisfactory arrangements to correct the items on the above mentioned list of incomplete work; and

WHEREAS, Contractor has failed to respond to the October 17, 2008 notice; and

WHEREAS, Contractor has failed to complete or correct the items on the list of incomplete work; and

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

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

1. The City Engineer shall notify Tirayan Construction and its surety, Western Surety Company, that the City of El Paso is terminating Bid No. 2008-185 to Tirayan for the construction of a project known as Cedar Grove Sidewalks Improvements, pursuant to General Conditions 6.9, Right of Owner to Terminate the Contract, due to the default by Tirayan and that the termination shall become effective immediately upon service of the notice of termination upon Tirayan and Western Surety Company.

2. The City Engineer shall file a claim with Western Surety Company based on the default of Tirayan Construction and make demand that the surety perform the remainder of the work of the Cedar Grove Sidewalks Improvements project in accordance with the terms and conditions of Bid No. 2008-185.

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 this Resolution.

PASSED AND APPROVED THIS _____ **day of** _____, **2008.**

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Mark Shoemith
Assistant City Attorney



for R. Alan Shubert, P.E.
City Engineer