



Legislation Text

File #: 21-1105, **Version:** 1

Recommendation to approve and authorize City Manager, or designee, to execute a Takeover Agreement with Nationwide Mutual Insurance Company, to complete construction of the Alamitos Beach Concession Building Project. (District 2)

On March 5, 2019, the City Council awarded a contract to Klassic Engineering and Construction, Inc. (KEC), for the construction of the Alamitos Beach Concession Building Project (Project) at 780 East Shoreline Drive, in the amount of \$5,681,000, with a 15 percent contingency in the amount of \$852,150, for a total contract amount not to exceed \$6,533,150.

The City issued a Notice to Proceed (NTP) to KEC on June 13, 2019. The initial deadline for completion of the project, was April 7, 2020, 300 calendar days after the NTP. Over the course of construction, the contract was amended to extend the Project completion date to October 13, 2020. However, despite the extended time and assistance from the City, KEC continued to have difficulties addressing the outstanding project submittals, submitting schedule documents in compliance with the Project specifications, mobilizing the necessary resources, resolving numerous deficiencies, and obtaining critical Project inspections and approvals.

On June 21, 2021, a notice to cure default was issued to KEC. The notice to cure default stipulated that KEC substantially complete the Project on or before July 25, 2021. On July 27, 2021, the City issued an extension to cure default thereby extending the time to cure to August 9, 2021. On August 9, 2021, the City issued a final extension to cure default by August 27, 2021.

KEC was unable to cure the default by the final extension date. The standard specifications of City contracts require both performance bonds and payment bonds and include provisions to terminate a contract when a contractor fails to perform the obligations of the contract fully and correctly. On August 27, 2021, the City declared KEC in default of the contract, terminated the contract with KEC, and made demand upon the surety, Nationwide Mutual Insurance Company (Surety), the bonding company for KEC, to perform and complete the Project. The City has been working closely with the surety to secure and monitor the site, address subcontractor concerns, and develop a plan to expeditiously finish the scope of the Project.

In an attempt to preserve the work completed and expedite completion of the Project, staff and the City Attorney negotiated the terms of a Takeover Agreement between the City and Surety. The agreement details how the surety will complete the project and includes the following terms:

- The existing contract, except where modified by the Takeover Agreement, remains in full force and effect.
- Surety will arrange for the completion of the Project by a competent and qualified Completion Contractor that meets the qualification requirements of the original contract.
- City will pay Surety, or its designee, all remaining contract amounts, according to the terms and conditions of the contract, and in accordance with the payment terms established in the contract.
- Surety will contract directly with the Completion Contractor. No contractual obligation will exist between the City and the Completion Contractor; however, all project activities will be coordinated with the City's representative.
- Surety must, to the extent provided in the contract, and as required by the performance bond, defend, and indemnify the City against acts and omissions of the Completion Contractor. Surety will contract with the Completion Contractor to complete the Project, including correction of defective work.

This matter was reviewed by Deputy City Attorney Erin Weesner-McKinley on October 5, 2021 and by Budget Management Officer Rhutu Amin Gharib on October 6, 2021.

City Council action is requested on October 19, 2021, to execute the Takeover Agreement to allow the Project to be completed in a timely manner.

The Takeover Agreement will not change the City's contractual obligation amounts for the project. Sufficient appropriation to administer completion of the project by Surety is currently budgeted in the Tidelands Operating Fund Group in the Public Works Department. This recommendation has no staffing impact beyond the normal budgeted scope of duties and is consistent with existing City Council priorities. The local job impact associated with this recommendation will not be known until Surety arranges for the completion of the Project by a competent and qualified Completion Contractor. Completion of the Project is anticipated in early 2022.

Approve recommendation.

ERIC LOPEZ
DIRECTOR OF PUBLIC WORKS

APPROVED:

THOMAS B. MODICA
CITY MANAGER