



City Council Memorandum

City of Arts & Innovation

TO: HONORABLE MAYOR AND CITY COUNCIL **DATE: MAY 14, 2024**

FROM: PARKS, RECREATION AND COMMUNITY SERVICES DEPARTMENT **WARD: 7**

SUBJECT: FIND MILLSTEN ENTERPRISES, INC. IN DEFAULT OF THE CONTRACT FOR THE CONSTRUCTION OF WALKING PATH IMPROVEMENTS AT LA SIERRA PARK PROJECT – BID NO. 7761

ISSUE:

Consider finding Millsten Enterprises, Inc. in default of the Contract for the Construction of the Walking Path Improvements at La Sierra Park Project – Bid No. 7761

RECOMMENDATIONS:

That the City Council:

1. Find Millsten Enterprises, Inc. in default of the Contract for the Construction of the Walking Path Improvements at La Sierra Park Project – Bid No. 7761, as required by the Contract documents;
2. Approve the acceptance of funds from the Contractors Surety, Liberty Mutual Surety into the General Fund;
3. Authorize the City Manager, or designee, to terminate Millsten Enterprises, Inc.'s. right to perform under the Contract by issuing a written notice of termination for default to the Contractor and its Surety, Liberty Mutual Surety; and
4. Authorize City Manager, or designee, to execute any agreements or documents necessary to carry out the contract termination and effectuate the completion of the project, including documents and agreements needed to carry out the Surety's obligations under the contract and performance bond.

BACKGROUND:

On December 14, 2021, the City Council awarded a construction contract (Contract) to Millsten Enterprises, Inc. (Millsten) in the amount of \$246,070 for the construction of the Walking Path Improvements at La Sierra Project. This project included the installation of concrete and

decomposed granite ADA walking paths throughout the park, in addition to t-ball field improvements, grading, drainage, and other minor modifications.

The Contract with Millsten was executed on February 28, 2022. Subsequently, City of Riverside Parks, Recreation and Community Services Department (PRCSD) staff issued a Notice to Proceed for submittals, material lists, and shop drawings on March 29, 2022, and a Notice to Proceed with construction on April 11, 2022, which assigned the official start date of construction as April 18, 2022. The Contract provides 90 calendar days to complete the work for a completion date of July 17, 2022.

Millsten encountered delays throughout the project and was unable to perform the work within the allotted time. Some additional time was provided for City approved change order work. Substantial Completion was given to Millsten on August 9, 2022, as the concrete & decomposed granite pathways, irrigation modifications, and t-ball field improvements were mostly completed, putting them behind schedule 17 days.

A Punchlist was issued with remaining work on August 11, 2022.

On September 7, 2022, a second Punchlist was issued to Millsten after a site inspection noted work still remaining.

On September 22, 2022, a third Punchlist was issued to Millsten after a site inspection noted work still remaining.

On September 30, 2022, a fourth Punchlist was issued to Millsten after a site inspection noted work still remaining.

On October 14, 2022, (83 calendar days beyond contract completion date), Millsten was notified in writing that remaining work hadn't been completed or completed to City standards as specified in the contract documents and were given a 14 day notice (till October 28, 2022) to complete the remaining work or their bonding agency would be notified of the default.

On November 22, 2022, a claim was filed on the performance bond with Liberty Mutual Surety.

After multiple reviews and negotiations throughout 2023, Liberty Mutual Surety notified the City that Millsten had agreed to come back out and replace some failed concrete that they had installed but refused to complete any other work within the remaining Punchlist scope. Liberty Mutual Surety, however, stated they would work with the City and pay for a contractor of the City's choosing to complete the remaining grading, drainage, and seeding work.

On January 24, 2024, while the City was awaiting updated Certificate of Insurance and Riverside Business Tax Licenses from Millsten, Liberty Mutual Surety notified PRCSD staff that Millsten had already completed the concrete replacement work in early November 2023. After a site inspection, it was identified that Millsten did in fact complete the replacement work but violated City policies and procedures by conducting construction activities on City-owned land without prior authorization or approval.

DISCUSSION:

As required of all City of Riverside (City) Contracts for Public Works Construction, the Contract

requires that Millsten purchase a Performance Bond and a Payment Bond as a measure to protect the City if Millsten is unable to complete the work. If Millsten defaults on the Contract, the Performance Bond ensures that the work is still completed through a surety while the Payment Bond ensures that vendors and subcontractors are paid for the supplies and work provided for the project, also through a surety. Payment Bonds are required by state law.

Section 1109 of the Riverside City Charter states that “Every project for the construction and/or improvement of public buildings, works, streets, drains, sewers, utilities, parks or playgrounds, and every purchase of supplies or materials for any such project, when the total expenditures required for the same exceed \$50,000 shall be let by the City Council.” Therefore, as the awarding authority for the Contract, the City Council must find Millsten in default of the Contract to proceed with the process.

Informal bids have already been received by various contractors to complete the remaining work for approximately \$9,375.00. However, as a provision of the Contract, the awarding authority must first find Millsten in default of the Contract and terminate Millsten’s right to perform under the Contract by issuing a written notice of termination for default to Millsten and its Surety before the Surety can intervene. Therefore, as the awarding authority for the Contract, the City Council must find Millsten in default of the Contract to proceed with the process.

Under the contract terms, the Surety is obligated to assume responsibility for completing the project. Therefore, staff will seek to recover the costs of completing the project, including any additional costs resulting from Millsten’s default on the contract, from the Surety through the performance bond.

The Surety has been communicative and cooperative with the City in relation to having the remaining contract work completed per City standards.

The Purchasing Manager and City Attorney’s Office concurs with the recommendation to find Millsten Enterprises, Inc. in default of the contract and terminate Millsten Enterprises, Inc.’s. right to perform under the Contract.

STRATEGIC PLAN ALIGNMENT:

The work contributes to the “Arts, Culture and Recreation” priority of the Envision Riverside 2025 Strategic Plan, which aims to provide diverse community experiences and personal enrichment opportunities for people of all ages.

The work contributes to goals 1.3, to improve parks, recreational amenities, open space, and trail development, and fulfill critical lifecycle and facility maintenance needs, and goal 1.4, to prioritize safety at parks, trails, arts, cultural and recreational facilities.

1. **Community Trust** – This project is in alignment with the Parks, Recreation and Community Services Comprehensive Master plan which was developed with extensive community input and support. In addition, the public is able to track project progress through PRCS’s CIP tracking map located on the City’s website.
2. **Equity** – This project was established primarily for the senior and physically limited demographic in this community to provide ADA accessible low impact recreational opportunities.

3. **Fiscal Responsibility** – The purchasing of all services for this project was in accordance with Purchasing Resolution No. 23914. Also, the CDBG grant funding obtained for this project required no City “match”.
4. **Innovation** – The Parks, Recreation and Community Services Department collaborated with existing La Sierra Park users to establish the design and layout of the project that best met the community’s needs.
5. **Sustainability & Resiliency** – This project contributes to improving existing City facilities and amenities, which encourages and provides access to healthy exercise opportunities, and improves the overall quality of life for all City of Riverside residents.

FISCAL IMPACT:

The total fiscal impact of this action is \$9,375. The project currently has enough funding to be completed. Upon receipt of the settlement funds, in the amount of \$9,375, the funds will be deposited into the General Fund.

Prepared by:	Jordan Maus, Parks Project Manager
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Approved as to form:	Phaedra A. Norton, City Attorney