



To: MAYOR AND COUNCIL

Agenda Item #: VIII. E.

From: Chad A. Millner, PE, Director of Engineering

Action

Discussion

Date: March 17, 2015

Information

Subject: Project Update - Promenade Phase 4 Contract

Action Requested:

Approve Option #3 changing the project scope for a rebid

Information / Background:

On Feb. 17, the council awarded the Promenade Phase 4 Project to Meisinger Construction in the amount of \$1,268,550.00. A copy of the staff report is attached. On Feb. 24, we received a letter from Meisinger Construction notifying us of a significant mathematical error in their bid. They are requesting we return their bid and bid bond (\$63,427.50). A copy of the letter is also attached. Signed contracts and copies of their insurance have not been submitted.

Representatives from the city, contractor, and design team met on Mar. 2, with legal counsel to discuss the request. Reduced profit margins, construction schedule, construction creativity, sub-contractor management and the bid bond were discussed. The parties were not able to develop a plan in which Meisinger Construction would complete the project.

Please recall we received three bids ranging from \$1.27 to \$1.53 million. Those bids expire on Apr. 5. Also recall the low bidder was 10% above the engineers estimate and additional funding was used from Park Dedication and TIF Funds to cover the overage.

Much work has been completed thus far to get the project to this point and we feel this project is important to our park system in the SE part of Edina. We considered the following options prior to making a recommendation.

Option #	Description	Benefits	Costs	Financial Costs
1	Award to 2 nd Lowest Bidder	1. Keeps project on schedule 2. No re-bidding impacts	1. Project is further out of budget 2. Increase in use of limited park dedication and TIF funding	\$1,585,139.23 = \$1,443,339.23 + \$141,800 (Professional Services)
2	Rebid with same project scope and bid documents	1. City sees all benefits of project	1. Due to time lost to re-bid, project cost most likely higher than the 2 nd lowest bidder 2. Increased use of limited park dedication and TIF funding	\$1.6 to \$1.9 M Total Project Cost
3	Rebid with smaller project scope	1. City sees most project benefits 2. Project closer if not within original budget	1. Lesser scope project	\$1.2 to \$1.45 M Total Project Cost

Staff is recommending Option #3 to rebid the project with a smaller scope to reduce impacts to limited funding sources. This option would complete the majority of the original project along the water feature while removing, modifying, or reviewing the following.

- Realign the stream bed and trail to remove 3 bridges
- Remove 2 porous pavers and bench areas
- Reduce pond size by 10-20%
- Review pond bottom materials
- Remove habitat garden or native plantings
- Reduce tree transplants and new trees in habitat garden area
- Modify construction schedule to give contractors more flexibility
- Review color and stamp pattern – may be similar substitutes for less cost

Attached is an exhibit showing the project changes listed above for our discussion.

It will cost the City approximately \$15,000 in professional services to re-work the bidding documents for Option #3. Legal counsel for the contractor has stated they are willing to litigate if the City tries to pull the bid bond. Our legal counsel feels we may win this case but that the time and expense may be greater than the value of the bid bond. Negotiations for a cash settlement have been ongoing. The contractor has verbally committed to a \$10,000 cash settlement to cover a portion of the re-work.

Attachments:

1. Item VIII.E. Request for Purchase from the February 17, 2015 City Council Meeting
2. Letter dated February 24, 2015 from Meisinger Construction
3. Option #3 Redlined Plansheet

REQUEST FOR PURCHASE IN EXCESS OF \$20,000/CHANGE ORDER



To: MAYOR AND CITY COUNCIL

Agenda Item #: VIII. E.

From: Ross Bintner, PE, Environmental Engineer

The Recommended Bid is

Within Budget

Not Within Budget

Date: February 17, 2015

Subject: Request for Purchase – Authorize Award of Bid for Promenade Phase 4, Associated Professional Services, and Termination of Agreement

Date Bid Opened or Quote Received:
February 5, 2015

Bid or Expiration Date:
NA

Company:

Meisinger Construction
Peterson Companies
Sunram Construction

Amount of Quote or Bid:

\$1,268,550.00
\$1,443,339.23
\$1,532,970.00

Recommended Quote or Bid:

Meisinger Construction

\$1,268,550.00

General Information:

In addition to the Award of Bid for Promenade Phase 4, you are authorizing:

1. Engineering Services
2. Specialty Engineering Services
3. Termination of Cooperative Agreement with Nine Mile Creek Watershed District

Promenade Phase 4 (Engineering Contract ENGI4-8, CIP item 15-172) was bid on February 5. Costs came in 10% above the engineers estimate presented at the January 6 Council work session.

Staff recommends award of the base bid to Meisinger Construction. The base bid includes natural rock for the sides of the pond and channel, with colored, stained and formed concrete for the channel and pond bottoms. Bid alternatives were included to give options for material type of the stream or pond bottom.

Staff has reviewed the qualifications of Meisinger Construction and has determined that they are qualified to complete the project. They have project experience with the Met Council and City of Minneapolis, among others.

Purchase agreement examples for Oxymoron by Stillman (\$25,250) and Sand Hill Cranes by Dehne (\$6,500) are attached and total \$31,750. The only appropriate funding source is park dedication fees. Due to the bid coming in over budget, staff is not recommending purchase of public art with this project.

Regional stormwater infiltration was removed from the project scope due to low level soil contamination issues and a confining clay layer in deep soil samples limiting infiltration. This portion of the project was

subject to a cooperative agreement with Nine Mile Creek Watershed District, attached is letter to terminate that agreement.

Hennepin County Environmental Response Fund (ERF) grant funding has been approved for soil remediation and related specialty professional services. The County is finalizing the grant agreement. This item will come to Council at a future city council meeting.

Two tables below describe total costs and funding sources. Funding sources are consistent with the CIP and January 5 Council work session numbers with the \$119,513 overage split between park dedication and tax increment funding sources.

CONSTRUCTION PHASE COST	Cost	Recommended Funding Source:
Water feature and public art nodes	\$465,261	7171 France park dedication fees HRA/Centennial Lakes TIF district
Landscaping, public lighting, electric controls and irrigation.	\$389,342	
Pedestrian walk, crossings, and associated grading and wall.	\$199,910	
Stormwater, Soils remediation and disposal, wildlife habitat plantings.	\$202,469	Stormwater utility Hennepin County ERF Grant
Cost Reimbursable by 71 France Agreement	\$11,568	71 France Developer
SUBTOTAL CONSTRUCTION	\$1,268,550	
URS Inc. – Construction Professional Services	\$105,000	7171 France park dedication fees HRA/Centennial Lakes TIF district
Barr Engineering - Specialty Professional Services (Soils and Habitat Planting)	\$36,800	Hennepin County ERF Grant Stormwater utility
TOTAL	\$1,410,350	

FUNDING BY SOURCE	Funding	Notes:
Park Dedication	\$640,000	Eqv. To 128 Units @ \$5000 each \$60,000 over CIP-127 estimate
Tax Increment Funds (TIF) / HRA	\$519,513	\$59,513 over CIP-127 estimate
Utility Fund – Storm	\$200,269	Classified as outside rate study
Grants and Donations	\$39,000	Hennepin County ERF Grant
Reimbursable to 71 France Developer	\$11,568	71 France Developer
TOTAL	\$1,410,350	

This request for purchase has an HRA companion item due to the HRA/TIF funding source.

Attachment:

- ~~Engineering Services URS (Item #1)~~
- ~~Specialty Professional Services BARR (Item #2)~~
- ~~Termination of Agreement with Nine Mile Creek Watershed (Item #3)~~
- ~~Example Public Art Work Purchase Agreements (Items #4,5)~~
- ~~Select Plan Sheets (Item 6)~~

MEISINGER CONSTRUCTION

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February 24, 2015

Mr. Greg Brown
URS Corporation
100 South 5th Street
Suite 1500
Minneapolis, MN 55402

Mr. Chad Millner
City of Edina

Re: Promenade Improvements Phase 4
City of Edina

Dear Greg and Chad,

On Thursday February 5, 2012 Meisinger Construction Company submitted a bid for the Promenade Phase 4 Improvements amount of \$1,268,550.00 that consisted of a unit price bid form. As we informed you, we have only yesterday found a significant mathematical error in our bid that regrettably requires us to request that the City of Edina return our bid and our bid bond to us. We informed you in our e-mail and phone call yesterday that we made an inadvertent clerical mistake and that this letter would be forthcoming.

Let us explain the honest mistake we made so you can understand that our request to withdraw our bid and to have our bid bond returned is made with a valid reason. In our bid process we received bids from subcontractors. We then carried those bids we wanted to use through to our own bid worksheets to compute our bid price. We then carried our bid price over to the City's bid form, inserted the unit price and extensions in the form. The last number we fill in was mobilization, which is the difference between the bid price we computed on our bid worksheets less the extended unit prices.

Now that you understand our process, this is what happened. Our subcontractor Tier One Construction submitted a proposal using the unit price bid form supplied by the City to give us pricing on the formliner, pavers, retaining wall, and boulders. Attachment 1 is bid we received from Tier One. Tier One gave us a price of "12969.60" for the boulders, based on a unit price of \$162.12 per ton. At 800 tons, they should have quoted \$129,696, not \$12,969.60. Clearly, they misplaced a decimal point making their price for the 800 tons of landscape boulders understated by a significant amount.

When we prepared our bid worksheet, we used the \$12,969.60 amount quoted by Tier One for boulders, not realizing that Tier One made this mistake. Attachment 2 is our bid worksheet. On the page marked with a triangled-3 in the upper right hand corner, you see that we included Tier One costs for formliner (\$77,386), mobilization (\$2,500), and boulders (\$12,969.60) at \$92,856. We then used that figure to determine our total bid

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price (the number at the bottom of the page marked with a triangled-3 is carried through to the first page of Attachment 2). Our bid price was thus understated because we should have used \$129,696 for the boulders, not \$12,969.60. We didn't understand that Tier One had misplaced a decimal point until just yesterday.

With our bid price set, we then filled out the City's bid form working backwards from our bid price. We filled in the unit prices, made the extensions, and then subtracted those amounts from the bid price to determine the mobilization. By working backwards in this manner, we used the correct unit price for boulders, but this ended up shorting us on mobilization because our bid price was set at the lower amount using the \$12,969.60 extended figure provided by Tier One instead of the \$129,696 figure they should have transcribed.

Because of the above mentioned errors we wish to withdraw our bid and have our bid bond returned. The mistake is clerical in nature and is not an error of judgment on our part. The error is significant, approximately \$100,000, which is a significant amount relative to the size of the project and represents our profit on the project. It would be unjust to hold us to such an inequitable bid. We brought this mistake to your attention as soon as possible, and feel that allowing us to withdraw our bid would have no prejudicial effect on the City.

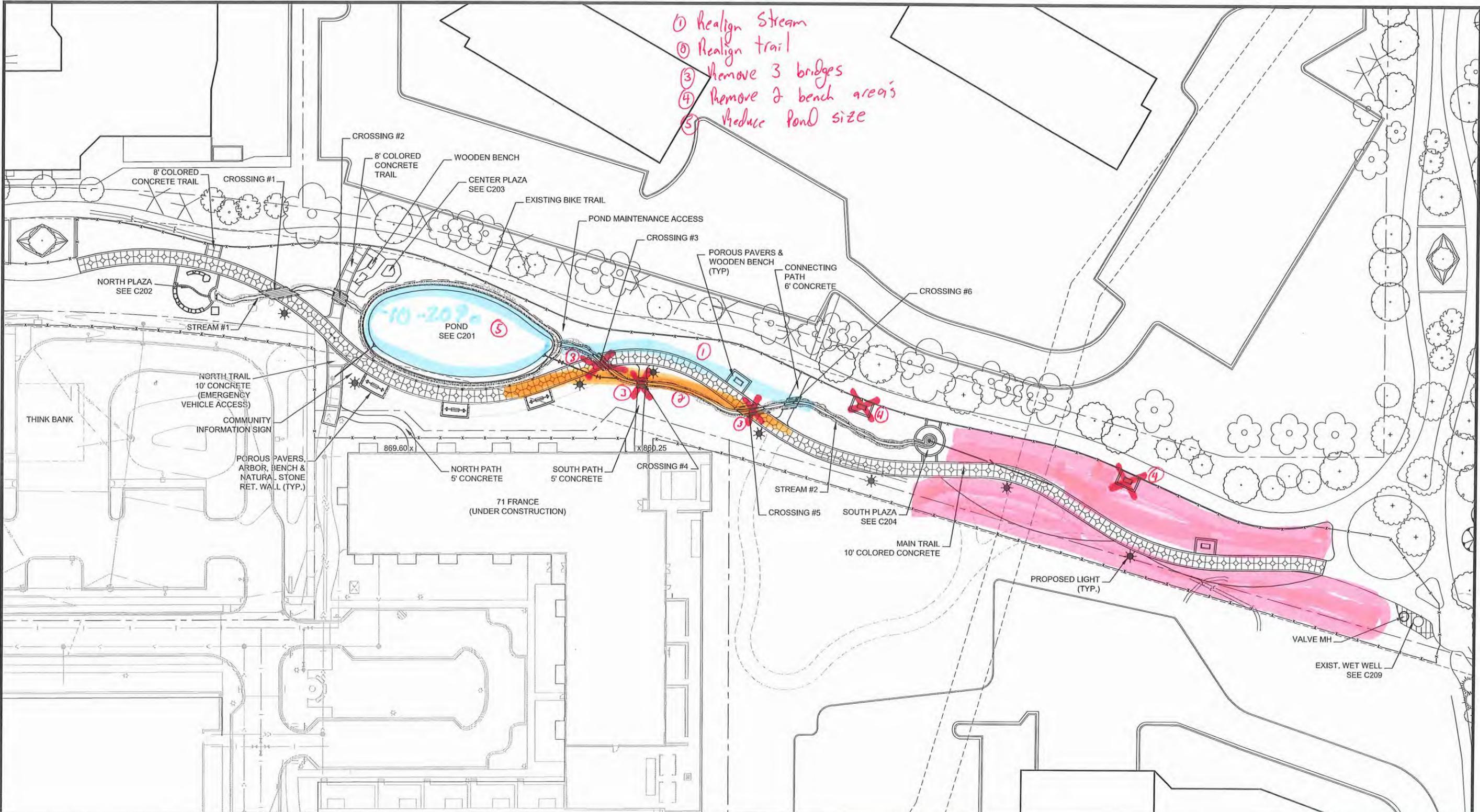
We also now see that the other bidders had significantly larger amounts for their mobilization than we did. A bid review meeting with the City and URS would have been welcome as it may have resulted in us discerning this mistake even earlier than we did.

As mentioned above, we regret that this mistake occurred, but appreciate your consideration of our request. As the bid information we have provided is confidential and includes sensitive information, we would appreciate it if you would maintain its confidentiality and return it to us along with our bid and bid bond. If you have any questions please feel free to call.

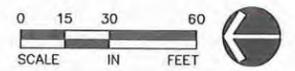
Very Truly Yours
Meisinger Construction Company Inc

Thomas M Meisinger
President

- ① Realign Stream
- ② Realign trail
- ③ Remove 3 bridges
- ④ Remove 2 bench areas
- ⑤ Reduce pond size



SITE PLAN



DESIGN FILE: 31811419	REV. NO.	BY	DATE	REVISIONS DESCRIPTION
DRAWN BY: IMB				
DESIGN BY: KGR				
CHKED. BY: GSB				
DWG. NAME: PROM4-SI01.dwg				
DATE: 01-21-2015				



FIFTH STREET TOWERS
100 SOUTH FIFTH STREET, SUITE 1500
MINNEAPOLIS, MINNESOTA 55402
612.370.0700 TEL
612.370.1378 FAX
WWW.URSCORP.COM

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

Gregory S. Brown
GREGORY S. BROWN
DATE: 01-21-2015 MN LIC. NO. 22814



PROMENADE IMPROVEMENTS
PHASE 4
SITE PLAN

CITY CONTRACT NO. ENG 14-8
IMPROVEMENTS NOS. A-251 & STS-401

SHEET NO.
C102
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