



Construction Company (the Contractor), was issued a Notice to Proceed of November 6, 2017 resulting in a Substantial Completion of March 6, 2018. Contracts were issued to the contractor along with all pertinent construction documents required for use during the project.

### **Breach of Contract Items**

Throughout the execution of the contract the contractor continually exhibited neglect towards its responsibilities of the contract specifications and requirements. These negligent acts were documented and relayed to the contractor through various means including but not limited to: progress meetings, in-formal email transactions, verbal onsite/offsite interactions, formal deficiency letters to the contractor, Stop Work Notices, and letters notifying the issued bonding company. Within the following section, the above noted negligence will be described in detail and correlated back to support the recommendations for termination of the contract with following the factors set forth in Section 13 - City's Right to Terminate Contract of the contract documents.

- Section 13.1.6 - If at any time the Engineer shall certify in writing to the City that the performance of the Work under this Contract is being unnecessarily delayed.
- &
- Section 13.1.7 - if at anytime the Engineer shall certify in writing to the city that the Contractor is willfully violating any of the conditions or covenants of this contract.

During the course of the project the contractor failed to produce and maintain an appropriate Project Schedule for the project as laid out in the Deficiency Letter dated January 30, 2018 (Exhibit A-1). The contractor produced "look ahead" project schedules for following meetings in February after this letter was issued, however the Contractor failed to meet the staffing allocations noted or maintain the dates forecasted to date. This relaying of project schedules and not maintaining them put the City of Broken Arrow Parks Department in significant hardship coordinating the upcoming user group soccer and baseball seasons. Resultant of these negligence, the following issues resulted:

- As seen within the Exhibit C graph showing the onsite contractor personnel, excluding superintendent, there was an inconsistency to the staffing levels resulting in a failure to properly staff the project. Some of the key points on the failing of staffing are as follows:
  - o As noted in the Exhibit A-1 January 30, 2018 letter, the irrigation subcontractor did not start installing irrigation equipment until January 18, 2018, 73 days into the contract.
  - o Noted distinct gaps in time where no contractor personnel were on site at various times through the project, not individually concerning, however accumulatively problematic on the entire contract.
  - o Significant drop off in personnel during the week of February 19, total labor onsite was cut in half for both irrigation and fencing sub-contractors. The irrigation contractor had no personnel onsite between March 12 and April 2, with the fencing contractor having sporadic staffing levels as well during this time.
- The BA Soccer group had to reschedule/cancel games, shift field allocations into other portions of the complex, and had to play on fields that had incomplete and deficient work on them. This was prevalent on the north section where fencing debris surrounded the fields and the contractor left fencing conditions that were safety issues to players in direct opposition to City of Broken Arrow directives issued to the contractor.
- On February 12, 2018, the City of Broken Arrow issued to Hoey Contractors a Stop Work Notice for the

work pertaining to the northern portion of soccer fields irrigation system installation due to concerns of impacting the soccer season. The contractor had not reasonably shown an appropriate schedule, or met dates in said schedule, to ensure the City that the irrigation would be complete by the season start date. This reduction of scope of work will impact the Parks Department in future labor and property in that the existing irrigation system was demolished early on in the project and there are currently no means to irrigate this portion of grass fields.

- The City of Broken Arrow Parks Department crews were forced to step in and perform labor to the contract in direct response to the contractors failings in maintaining the schedule and staffing levels. These parks forces enacted debris cleanup, earthwork/grading, backfilling of fencing posts, sod placement and adjustment, and final irrigation backfill and grading on the south soccer fields. These actions were notified to the contractor and its bonding agency in a letter dated March 7, 2018 (Exhibit A -3).

In summation, pertaining to Section 13.1.6, the contractor failed to properly maintain an adequate staffing level to appropriately complete the project as well as failed to maintain its truant submitted project schedule.

- Section 13.1.8 - If at any time the Engineer shall certify in writing to the City that the Contractor is executing work in bad faith or otherwise not in accordance with the terms of this contract.

Quality of work installed by the Contractors sub-contractors, has been an issue documented throughout the project in direct violation with stipulations outlined within Section 6.0 - Contractors Duties and Responsibilities Regarding the Work. These noted deficiencies have been documented within the same means as noted above in regards to the project staffing, but also in formal deficiency reports (Exhibit A-4), Engineer of Record Construction Observation Reports (Exhibit E), daily onsite observations/communications, and onsite deficiency meetings with upper management of both parties (Exhibit F-6). This neglect to follow project specifications can be noted within the following specific instances where these deficiencies were documented:

- The first noted contract deficiency was relayed within the first onsite meeting with Hoey Construction and its sub-contractors; see Exhibit F-1 - Progress meeting minutes. Construction debris cleanup was a struggle through the project to such a degree that it was documented to be a public safety concern on numerous occasions. Debris from the existing fencing and irrigation demolition was spread throughout the project site in public areas consistently, with the contractor ignoring regular requests from the onsite Contract Administrator to clean the debris up as required by project specifications. See Exhibit B-3 and B-4 for email correspondence highlighting these concerns; City forces ended up cleaning up a significant portion of these noted items as stated in the letter dated March 7, 2018. Even as the Stop Work Notice was issued, the site still contained this fencing debris surrounding the south soccer and baseball fields as well as the contractors unsecured laydown areas.
- During regular periods through the contract, the Engineer of Record performed construction observations reports on project elements at the City's request. These reports can be found in Exhibit E. These reports were promptly shared with the Contractor for resolution of the noted issues within the report. The reports highlight the continual execution of work in bad faith or otherwise not in accordance with the terms of the contract and specifications. As of the issuance of the Stop Work Notice of April 19, the majority of the issues outlined in all three observations reports had yet to be resolved. The most significant observation report is #3 dated March 20, 2018. This report noted over 5 pages of deficient conditions resulting from the installation of the south soccer irrigation system.
- On April 4, 2018, City personnel in coordination with the Engineer of Record performed a site observations report reviewing the current conditions of the fencing portion of work for the project, Exhibit A-4. This report contains 24 pages of deficient conditions resulting from improper installation

as well as noted areas where installation has yet to take place. The report alludes to the same deficiencies in general throughout the breadth of work referring to a general disregard for the project specifications. The items noted within this report, for the most part, had not been addressed by the contractor as of the day of the Stop Work Notice of April 19, 2018.

In summation, pertaining to Section 13.1.8, the current installed product by Hoey Construction has significant deficiencies requiring greater amounts of personnel onsite working than was allocated at the time of the Stop Work Notice on April 18, 2018. The above conditions as well as the lack of project staffing, diminishing communications, and continued deficient installation of work were all factors leading up to the issuance of the Stop Work Notice of April 19, 2018.

- Section 13.1.9 - If the work be not substantially completed within the time named for its completion, or within the time to which such completion date may be extended.

As described above under section 13.1.6, the Contractor has failed to maintain its own supplied construction schedule as well as meet the contract requirements of substantial completion by March 6, 2018. As of the Stop Work Notice of April 19, 2018, the contract time was 44 days past substantial completion. In combination with the breadth of work remaining to install and in conjunction with the current deficiencies list, at the current personnel allocations being provided to the project at the time of the Stop Work Notice it would be another 30 to 45 days to complete the work remaining before a substantial completion could be established. See Exhibit B-6, where these stipulations had been relayed to the contractor previously in response to a request for substantial completion.

## **Conclusion and Recommendations**

In summation of the above report information, the Contractor has exhibited neglect in executing the Contract #166028 in terms of Section 13; 13.1.6, 13.1.7, 13.1.8, & 13.1.9. It is the recommendation of The Engineering and Construction Department to execute Section 13 termination proceedings with Hoey Construction on this contract. If approved, the following steps will be taken:

- The City shall issue intent to terminate contract letter with requirement to respond within (5) days of Contractors intentions.
- If no satisfactory agreement is reached, the contract will be terminated.
- The City will execute a final pay application to the Contractor with “as built” quantities established through project evaluation.
  - o Project Funds Remaining
    - The current installed values have been established as shown in Exhibit H, the pending liquidated damages have been withheld to the sum of 44 days at \$1,000 per day as well as the applicable 5% retainage has been withheld to further assist the completion of the contract.
    - An additional withholding on the project is an issue with outstanding installation of barrier netting along the far south side of the soccer complex. The existing netting was not to be removed as part of this construction project; however, in December 2017 the fencing contractor removed approximately 1200 linear feet of netting stating to the City that they would replace this with new netting at no cost to the City. This was further documented within an email from Hoey Construction; Exhibit B-1. To date this

installation has not taken place and no netting material was onsite at the time of stop work notice. The scope of work to install this netting has been estimated with a material cost ~\$5,500 with installation of ~\$4,500. Thus \$10,000 will be withheld from the contract to cover these costs and will be applied to the Liquidated Damages totals.

- During the execution of the Stop Work Notice of April 19, 2018, materials pertaining to the construction of the project were seized; Exhibit G. These materials will be released to the contractor/agency finishing the work.
- After applying the current installed values, withholding the liquidated damages, withholding the additional netting costs, and applying the 5% retainage, the total expended contract costs are \$573,177.09 (once approved for payment of pay application 4); leaving \$251,630.61 to finalize the project; see Exhibit H.
  - It's important to note that there is a pending change order for approximately \$6,700 for additional gates on the project; however at the time of stop work notice, the required documents were not turned in as well as the gates installed were not quality acceptable.
- The contractors bonding agency will then be notified of the termination and notified of our request for them to finish the outstanding contract requirements.

If the bonding agency fulfills the obligations, we anticipate that the remaining work on this contract can be completed between the soccer seasons starting in June and complete Mid July.

## Exhibits attached

- A- Official Letters Issued to Contractor
- B- Emails from COBA to Contractor outlining Deficiencies and Concerns
- C- On-site Personnel for ISSC Soccer and Baseball Imp.
- D- Weekly Construction Reports & Photos
- E- Engineer Observation Reports
- F- Project Meeting Agendas
- G- Stop Work Notice April 19
- H- Final Pay Application to Hoey Construction

**Cost:** \$0

**Funding Source:** 2011 General Obligations Bond

**Requested By:** Alex Mills - Engineering and Construction Director

**Approved By:** Michael L. Spurgeon, City Manager

**Attachments:** Exhibits A-H for Contract #166028 Termination Recommendations

**Recommendation:**

Staff recommends termination of the construction contract #166028 Indian Springs Sports Complex Baseball and Soccer Improvements with Hoey Construction.