

RESOLUTION NO. 2010- 108 R

A resolution rescinding the award of the 2009-10 Rehabilitation/Overlay Project (Anaqua Ave., Industrial Dr., Circle St., Imperial Dr. and Cozzi Circle) to 4-Big Construction & Enterprises, LLC, of Zapata, Texas; and declaring an effective date.

WHEREAS the City Council of the City of Victoria awarded the 2008-2009 Sidewalk Project Phase II to 4-Big Construction & Enterprises of Zapata, Texas ("4-Big") by resolution dated September 15, 2009, and

WHEREAS 4-Big has been paid \$81,281.24 to date to complete the 2008-2009 Sidewalk Project Phase II in accordance with the terms of the Agreement between Owner and Contractor dated October 1, 2009, and

WHEREAS 4-Big, through its agent, has notified the City of Victoria on six separate occasions between March 18, 2010 and May 14, 2010 that it was unable to proceed on the 2008-2009 Sidewalk Project Phase II because of a lack of funds, and

WHEREAS the City of Victoria has received notice from two separate subcontractors that they have not been paid by 4-Big for work performed on the 2008-2009 Sidewalk Project Phase II, and

WHEREAS 4-Big did not complete the work on the 2008-2009 Sidewalk Project Phase II before the project time expired on April 30, 2010, causing 4-big to incur liquidated damages each day until the project is complete, and

WHEREAS as of the date of this resolution, 4-Big has not completed work on the 2008-2009 Sidewalk Project Phase II, and

WHEREAS the City Council of the City of Victoria awarded the 2009-2010 Rehabilitation Overlay Project to 4-Big Construction & Enterprises of Zapata, Texas ("4-Big") by resolution dated November 17, 2009, and

WHEREAS the City of Victoria notified 4-Big of the award on December 3, 2009, and requested execution of contract documents within 10 days, and 4-Big was unable to execute the contract documents until March 22, 2010, and

WHEREAS the City of Victoria gave 4-Big notice to proceed on the 2009-2010 Rehabilitation Overlay Project on April 19, 2010, which required construction to begin within 10 days and to be completed within 210 days, and

WHEREAS as of the date of this resolution, 4-Big has not begun construction on the 2009-2010 Rehabilitation Overlay Project, and

WHEREAS the City Council of the City of Victoria, in consideration of the foregoing, hereby finds that 4-Big is unable to complete the 2009-2010 Rehabilitation Overlay Project in accordance with the terms of the Agreement between Owner and Contractor dated March 22, 2010, and

WHEREAS the City Council of the City of Victoria finds that any attempt by 4-Big to perform its obligations on the 2009-2010 Rehabilitation Overlay Project would subject the citizens of the City to unreasonable construction delays and could potentially result in streets being unusable for the foreseeable future, and

WHEREAS the City Council of the City of Victoria hereby finds it to be in the best interest of the citizens of the City of Victoria to prevent 4-Big from beginning construction on the 2009-2010 Rehabilitation Overlay Project by rescinding its award and repudiating the contract;

IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF VICTORIA, TEXAS:

1.

The City Council of the City of Victoria hereby rescinds its award to 4-Big Construction & Enterprises, LLC of Zapata, Texas, of the 2009-10 Rehabilitation/Overlay Project (Anaqua Ave., Industrial Dr., Circle St., Imperial Dr. and Cozzi Circle) in the amount of \$878,275.00, and repudiates the Agreement between Owner and Contractor related to the 2009-10 Rehabilitation/Overlay Project.

2.

The City Manager is authorized and directed to notify 4-Big Construction & Enterprises of this resolution and to take such other actions as necessary to prevent commencement of construction on said project.

3.

This resolution shall become effective immediately upon adoption.

PASSED, this the **6TH** day of **JULY**, 2010.


AYES: **5**

NAYS: **0**

ABSTENTIONS: **0**

APPROVED AND ADOPTED, this the **6TH** day of **JULY**, 2010.





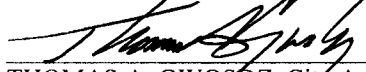
WILL ARMSTRONG, Mayor of the
City of Victoria, Texas

ATTEST:



SCARLET SWOBODA, City Secretary

APPROVED AS TO LEGAL FORM:



THOMAS A. GWOSDZ, City Attorney

Distribution: Legal Department
 Public Works

Copies Sent: **JULY 7, 2010**