



MEMORANDUM

Date: June 23, 2014

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator

A handwritten signature in black ink, appearing to be "CHH", is written over the printed name "C.H. Huckelberry".

Re: **Select Development: Contractor for La Cañada: River to Ina Roads**

This project has been the subject of a number of recent media reports related to nonpayment of subcontractors by Select Development.

Attached is a June 13, 2014 memorandum from the Department of Transportation, as well as a letter previously directed to the contractor.

The project contractor is at the end of their contract time as of July 1; and assuming no additional time is provided as a result of weather delays, the County will begin assessing liquidated damages until the project is complete. Liquidated damages are financial penalties due to delay and inconvenience and additional cost by the contractor to the County for continuing to monitor the construction work, as well as other factors. These liquidated damage penalties will be assessed at a rate of \$2,500 per day.

CHH/anc

Attachment

c: John Bernal, Deputy County Administrator for Public Works
Priscilla Cornelio, Director, Department of Transportation

CCM



MEMORANDUM

DATE: June 13, 2014
TO: C.H. Huckelberry, County Administrator
FROM: Priscilla S. Cornelio, P.E., Director *PC*
SUBJECT: Select Development – La Cañada: River Road to Ina Road

Pima County Transportation (PCDOT) has been monitoring the Select Development (Select) and sub-contractor/suppliers payment issue for several months. Our contract is with Select, and in close coordination with the Procurement Department, we have followed the process for non-payment of sub-contractor by referring the sub-contractor to the Prime Contractor (Select) and then to the bonding company that has posted bond for the Prime. PCDOT has made contact with the Prime to remind them of their responsibility of timely payment of their sub-contractors and suppliers. PCDOT is not able to confirm if the non-payment to the sub-contractor is due to a contractor/sub-contractor contract dispute since we are not privy to that information.

PCDOT has consulted with Procurement and Legal Counsel regularly to review the options to ensure sub-contractors and suppliers are receiving payment. Since our contract is with Select and not the sub-contractors, our options are to continue to notify Select and remind them of their contractual obligation. Attached is a June 5, 2014 letter requesting proof of payment to sub-contractors/suppliers prior to releasing monthly payments to Select.

The Arizona Department of Transportation (ADOT) and Federal Highway Administration (FHWA) are also aware of the issues and have contacted us to confirm our process on this issue since the project is federally funded. On Wednesday, June 11, 2014, we met with FHWA, ADOT and Pima County Procurement to coordinate future efforts. PCDOT will be contacting all sub-contractors and suppliers through a brief questionnaire to inquire if they have received payment and request them to provide us with the last 6 months of payment history on all three Select projects. This letter and questionnaire will be sent on Monday, June 16, 2014.

PCDOT received verification of payment from Select to Blue Diamond for work completed through April for the La Cañada project; therefore, we released the May estimate for that project. We will require proof of payment before releasing the June estimate.

C.H. Huckelberry, County Administrator
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PCDOT will continue to work closely with Procurement to ensure resolution as quickly as possible within the limits of our contract with Select.

PSC:AO:dg

Attachment

c: John M. Bernal, Deputy County Administrator
Mark Koskiniemi, Procurement
Ana Olivares, Deputy Director
Rick Ellis, Transportation Engineering Division Manager
Thomas Kilargis, Field Engineering Division Manager



DEPARTMENT OF TRANSPORTATION
201 NORTH STONE AVENUE, FOURTH FLOOR
TUCSON, ARIZONA 85701-1207

PRISCILLA S. CORNELIO, P. E.
DIRECTOR

(520) 724-6410
FAX (520) 724-6439

June 5, 2014

Select Development & Construction, Inc
Brian Neal, President
5401 S. Arcadia Ave.
Tucson, AZ 85706

**Subject: PCDOT #4LCRRI: La Cañada ~ River to Ina
Subcontractors/Suppliers Payment**

Dear Brian,

During our telephone conversation today, Thursday, June 5, 2014, you could not tell me when Select Development would be paying past due amounts to Blue Diamond Contracting. You stated that you will contact me later this afternoon with a firm response as to when Select Development will issue payment, even though you stated last week on Thursday, May 29, 2014, that Select Development will have this situation taken care of by the middle of this week. In addition, you had no regards to my directive to have this situation taken care of by Wednesday June 4, 2014 stating, that was my deadline, not yours!

It has been Select Development's contention that issues of nonpayment is between Select Development and their subs and suppliers. Although Pima County's contract is with Select Development, Pima County does have an obligation to assure that subcontractors and suppliers receive payment in a timely manner which goes far beyond referring them to the payment bond. First, the contract between Pima County and Select Development states that failure to make prompt payment to subcontractors or suppliers for material or labor shall constitute default of the contract. Second, the fact that all your contracts are federally funded and the subcontractors receiving late payments are DBE's fall under the federal guideline for prompt payment.

Pima County is giving Select Development notice that as of today, Pima County will not release payments to Select Development until Pima County Field Engineering receives either proof of payment from your subcontractors and suppliers or a letter from Select Development stating the reasons why a subcontractor or supplier has not been paid. This is in accordance with Section 109-2, Scope of Payments, from the Standard Specifications for Public Improvements, 2003, Edition, which states:

"The contractor shall pay all subcontractors and material suppliers in a timely manner. The right of the contractor to receive payment is conditioned on the contractor furnishing evidence that subcontractors and material suppliers have been paid. The agency may at any time require lien waivers or releases of claims as evidence."

It is Pima County's objective to have a good working relationship with all Contractors resulting in a successful completion of a construction project. However, Pima County will not hesitate to exercise its rights within the contract to assure that all companies participating on our projects are paid in a timely manner.

Sincerely

A handwritten signature in black ink, appearing to read 'A. Schiavone', written over a horizontal line.

**Anthony V. Schiavone, CPM
Department of Transportation, Field Engineering
Contract Administrator**

**Cc: Ana Olivares, PCDOT Deputy Director
Hal Gilbreath, County Attorney's Office
Mark Koskiniemi, PC Procurement
Rick Ellis, PCDOT Design Engineering**