

Statesman

Judge denies request to block Waller Creek Tunnel contract termination

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A judge Monday declined to block Austin from belatedly terminating its contract with Waller Creek Tunnel builder S.J. Louis — allowing the cancellation to stand, for now, as the city's response to what it called massive flaws in the tunnel.

However, the firm's breach of contract lawsuit will proceed.

The city contends that for its portion of the \$161 million downtown flood control tunnel, S.J. Louis used shoddy concrete and missed a tunnel liner and structural rebar in some places. Because of that, city officials said, the tunnel lost two-thirds of its buffer zone of extra safety capacity and probably has a shortened life expectancy.

The city sent the firm a letter in February demanding the return of \$22 million of its \$48 million payment to S.J. Louis and threatening to terminate its contract. It followed up with a notice of termination March 5.

In response, S.J. Louis sued, asking for a temporary injunction to block the contract termination. The firm argued that the city can't terminate a contract that has been complete for three years.

BACKGROUND: Waller Creek Tunnel wasn't built right, won't function fully, city says

S.J. Louis disputes that its work was defective. But if the city believes the tunnel is flawed and wants damages, the firm said, it should let a court sort that out before declaring the contract terminated. Its lawyers said a termination would kill the firm's future business because it would have to disclose that on bids for jobs.

“A termination of contract is very rare. It is also very serious,” said Mary Jeanne Anderson, a construction surety expert who testified Monday.

Lawyers for the city said they need to terminate the contract to try to collect on the firm’s bond for the project. Moreover, media coverage has already made it so that the circumstances of the case are available to anyone who wants to look, they said, so the future employers can weigh the situation for themselves.

The American-Statesman broke the news this month that the massive tunnel, designed to funnel water between Waterloo Park and Lady Bird Lake to lift a large swath of downtown out of the creek’s flood plain, has severe structural problems.

City officials said the tunnel still meets its basic mission of controlling the creek’s banks up to a 100-year-flood. But it’s unclear how much the flaws could affect capacity for larger floods.

MORE: City: Waller Creek Tunnel works, despite fight over construction flaws

Austin and S.J. Louis have been tussling over the tunnel issues since even before it was officially completed in 2015. S.J. Louis made various repairs to the original work at the city’s request. The city said the build didn’t meet its specifications. The firm said the city mismanaged the process and failed to provide information and access to the site.

Ultimately, the city accepted the work as complete.

“They’ve done all the repairs they’re going to do,” Daniel Richards, an attorney representing the city, told the court. Richards said emails between the city and the contractor in February 2015 ended in a stalemate, with an S.J. Louis representative writing, “I guess we shall see who has better attorneys.”

Judge Scott Jenkins denied S.J. Louis’ request for a temporary injunction to halt the termination but called the case an unusual one. “I can’t remember when I’ve had this fact pattern,” he said.

Tom Watkins, a lawyer for S.J. Louis, said the case will continue.

“We will proceed with trial on the cause of action, which is breach of contract,” he said. “At the end of the day, they will owe us money, and everyone will understand that result.”