



Meeting Date: 06-12-07

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input checked="" type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other

Prepared By Michael Henderson, Deputy Public Works Director

Agenda Item No. 0-4

Reviewed By: City Manager MMH Holmberg AA Finance SU Director of Public Works Ortega

DATE: June 6, 2007

TO: City Council

FROM: Michael Henderson, Deputy Public Works Director MA

SUBJECT: Change Order #26 to Contractor -Duininck Brothers for River Ridge Golf Course-Ph. II

RECOMMENDATION

That City Council approve and authorize the City Manager to sign Change Order #26 in the amount of \$846,500 for Project Specification No. PW06-05 for River Ridge Golf Course – Ph. II as final sum owed to Contractor for resolution of all project cost.

DISCUSSION

The City's Public Works Department and the City's Attorney has met with Contractor, Duininck Brothers and reached a final resolution for all outstanding cost owed for River Ridge Golf Course – Ph II in the sum of \$846,500. This is covered by issuance of Change Order #26.

This settlement amount is to be compensation for extra dirt, to manipulate the dirt to affect drying, extra curb and cart paths.

FINANCIAL IMPACT

The original cost of the project was \$6,673,502.94 with \$332,655.38 in earlier change orders, this change order is in the amount of \$846,500, which brings the total project cost to \$7,852,658.32. The funds for this change order are in the proposed FY2007-2009 CIP budget for Project Number 026901 River Ridge Golf Course.

Attachment #1 - Change Order
#2 – Settlement Agreement

CHANGE ORDER NO. CO0026

FINAL ADJUSTMENT

BACKGROUND

A. Contractor claims entitlement from the City to compensation over and above the amount currently provided in the Contract as of April 27, 2007 for (1) certain actions of the City which Contractor claims delayed Contractor's performance of the Contract; (2) bringing to the Project extra dirt; (3) extra effort required to manipulate dirt that the City supplied to the Project which contained moisture content greater than that which Contractor expected; and (4) additional work performed under the terms of the contract consisting of additional cart path and curbing for safety and bridge redesign requested by the City.

B. The parties, by this Change Order, intend to finally resolve all the issues among them pertaining to the Contract.

CHANGE ORDER

The provisions of the Change Order are as follows.

1. Within thirty (30) days of the date of full execution of this Change Order, the City will pay to the Contractor the sum of \$846,500. This sum represents full and complete payment for all existing and possible claims (except for claims to amounts that the City is obligated to pay pursuant to the terms of the Contract as amended by previous change orders, including retention held by the City), including all claims referenced in paragraph A above.

2. Effective upon the full satisfaction of the terms and conditions of this Change Order, the Contractor and its shareholders, owners, partners, affiliates, subsidiaries, members, successors, assigns, directors, officers, representatives, agents, and employees release and

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ATTACHMENT # 2
 1 OF 4

forever discharge the City, City councilmembers, officers, managers, employees, consultants, successors, predecessors, assigns, representatives, employees, insurers, and other agents, from any and all actions, causes of action, suits, debts, liens, liabilities, demands, damages, losses, costs or expenses related to, in any way, or in connection with the Project. With respect to these such matters, the Contractor waives and releases all claims unknown and known and waives all rights of Civil Code section 1542 which reads:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

This release bars the Contractor from commencing or pursuing any legal action against the City arising out of such claims and may be raised in defense of any such actions, including prosecution of any actions based upon the claim of Contractor filed on or about January 18, 2007, with the City's City Clerk.

3. This Change Order does not relieve the Contractor from obligations under the Contract except as set forth herein and does not modify the terms and conditions of the Contract, except as set forth herein. Specifically, all contract warranties and obligations related to completed work remain in full force and effect. In addition, all Contractor's responsibilities under the Contract with respect to payment of laborers, materialmen, and suppliers of equipment remain in full force and effect, and Contractor affirms that it will indemnify and defend the City against any claims arising as a result of Contractor's failure to pay laborers or materialmen or to pay the cost of equipment used on the project.

4. Under the Contract and previous change orders, Contractor is to provide sprigging in certain designated areas. The cost of this work is included in the Contract as amended by previous change orders. As of April 27, 2007, Contractor is released from all work remaining on

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the Project, except as follows: Sprigging will be accomplished by subcontractors and suppliers of Contractor at Contractor's expense. The City will provide supervision. The cost of this work is included in the Contract amount as amended by change order as of April 27, 2007.

5. The City will record a notice of completion within five (5) days of the later of execution of this Change Order or completion of sprigging.

6. The Parties each represent and warrant that the execution, delivery and performance by each of them of this Change Order has been duly authorized to the extent such authorization is required, and requires no further approval from any third party or any other party that has not already given such approval.

7. Any person executing this Change Order on behalf of any party hereto hereby personally represents and warrants to all other parties that he/she has the authority to execute this Change Order on behalf of, and to fully bind such party.

8. This Change Order contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments or understandings related hereto, if any, are hereby merged herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Change Order have been made by any party hereto.

9. This Change Order has been jointly negotiated and drafted. The language of this Change Order shall be construed as a whole according to its fair meaning, and not strictly for or against any of the Parties hereto.

10. This Change Order may be executed in counterparts and by facsimile signatures, and all taken together shall become effective and binding upon the Parties at such time as the signatories hereto have affixed their signatures. All counterparts so executed shall constitute one

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Change Order, binding upon all Parties, notwithstanding that all the Parties are not signatories to the original or the same counterpart.

11. The Parties agree to execute such other documents and to take such other action as may be reasonably necessary to carry out the terms and purposes of this Change Order.

12. It is agreed that this Change Order, together with the releases, shall be binding upon and inure to the benefit of the heirs, executors, administrators, personal representatives, successors in interest and assigns of the respective Parties hereto.

13. Each party shall bear its own costs and attorneys' fees incurred as a result of or in connection with the matters presented at mediation. However, the prevailing party in any action to enforce this Change Order shall be awarded costs and attorneys' fees.

May __, 2007

DUININCK BROTHERS, INC.

May __, 2007

CITY OF OXNARD

Edmund F. Sotelo, City Manager

May __, 2007

CITY OF OXNARD

Project Engineer

APPROVED AS TO FORM:

May 29, 2007

CITY OF OXNARD

Alan Holmberg, Assistant City Attorney

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ATTACHMENT # 2
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