

CONTRACT CHANGE ORDER No. 254
City of Sunnyvale
Sunnyvale Civic Center Modernization Phase 1
Public Works Project No. 5020160

ITEM: Global Settlement For Additional Work.

Hensel Phelps ("Contractor") is hereby directed to make the herein described changes from the plans and specifications or do the following work not included in the plans and specifications of this contract. All new work herein described shall be done in accordance with the applicable provisions of the plans and specifications, except as specifically modified by this Contract Change Order.

DESCRIPTION OF CHANGE:

1. This Change Order, along with Exhibit "A" attached hereto (Negotiated Global Settlement PCO Log), fully and completely settles and resolves Contractor's Notice of Additional Work (PCO-1460 T&M Tags) dated April 19, 2023, Contractor's Telephone and Data Cabling Claim letter dated December 8, 2022, and Contractor's Government Code Claim No. 22-23-038, dated December 8, 2022 (collectively the "Claims"), which are all hereby settled and released by Contractor.
2. The City of Sunnyvale ("City") agrees to additional compensation to Contractor of \$3,600,000.00.
3. Additionally, Contractor shall be paid the remaining balance of the original Project Contingency (\$737,208.92) and the remainder of the original Project Unforeseen & Hazardous Soil Contract Allowances (\$56,500) pursuant to the following four (4) terms and conditions which are consistent with prior discussions between the City and Contractor:

a. Schedule Milestone Extensions

The Schedule Milestones are revised as follows:

A = Emergency Operations Center (EOC) Addition =	September 09, 2022
B = New City Hall =	March 14, 2023
C = Department of Public Safety (DPS) Tenant Improvements =	December 8, 2023
(The work to install the new fire rated frame, door, and hardware at Hallway 1058 is excluded from this Milestone.)	
Site Work Substantial Completion=	December 29, 2023
Project (Phase 6) Substantial Completion=	January 29, 2024
Final Acceptance =	within 60 calendar days of Project (Phase 6) Substantial Completion

b. Deferred Warranty Start Dates

The following systems will have a deferred warranty start date:

- 1) Council Chamber AV Systems
- 2) Redwood Conference Table AV Systems
- 3) Interior Signage at City Hall
- 4) North Canopy Entrance Doors

CONTRACT CHANGE ORDER No. 254
City of Sunnyvale
Sunnyvale Civic Center Modernization Phase 1
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- 5) Granite Podium Stairs
- 6) BMS and Air Source Heat Pump (ASHP)
- 7) City Hall Emergency Power System
(Generator, PV & BESS)

c. Resolution of Disputed Punch List Items

The following two (2) punch list items are closed with no action needed from Contractor's Trade Partners:

- 1) Elevation of the North Terrace Trees (Buildup ID-6836)
- 2) Podium Stair Metal Cap Flashing (Buildup ID-6870)

Contractor agrees to perform the following three (3) corrective actions to close the following punch list items:

- 1) Void at Exterior Facade Joint Above Level 1 (Buildup ID-7104).
Contractor to install continuous closure angle.
- 2) Stainless Steel Blades at Passenger Elevators (Buildup ID-7403).
Contractor to caulk joints at Car #2 on level 03.
- 3) Level 1 Stone Vanier Transition at Curtain Wall Along C/L-7.
Contractor to install flashing at joint to seal off the gap.

d. Additional Project Enhancements

Contractor is not including cost to support the following Project enhancements. Note that some of these requested enhancements are not needed to support City operations. Contractor will work with the City to generate formal estimates for these scopes of work should the City deem them necessary.

- 1) SOC Additional Dirt for Site Grading. Current mitigation strategy is to utilize soil stockpiles from a local City project and bill down the remaining Contract Allowance for Contaminated Soils.
- 2) Road Work Elevation Improvements Along Olive & All America Way. Recommended mitigation strategy is to grind and overlay, per Bid Documents, and over pave road surface to align with curb and gutter line. Bike lane cross section grade at 5% is acceptable.
- 3) Enhanced Council Chamber AV Program for Broadcasting. Recommended mitigation strategy is to engage outside, third party, firm to support KMVT requirements.

CONTRACT CHANGE ORDER No. 254
City of Sunnyvale
Sunnyvale Civic Center Modernization Phase 1
Public Works Project No. 5020160

- 4) Exterior Monument Signage Revisions to Conform to City Standards.
Recommended mitigation strategy is to leave elements alone as they conform to the Bid Documents.

The following four (4) scopes of work are included within this Change Order:

- 1) DPS enhanced crime lab door security.
 - 2) DPS additional privacy film.
 - 3) Enhanced City Hall duress system.
 - 4) Accessible walk path transitions at the wildflower area north of Olive Ave.
4. Contractor and the City release each other for and from all delay, disruption or liquidated damage claims for costs arising from the Claims and the claims set forth in the Claims.

Notwithstanding the above, time shall be the essence regarding the Schedule Milestone Extensions stated in Section 2.a. above. In accordance with Specifications provisions relating to liquidated damages, including, but not limited to, Section 11244.00-21, Section 007213-7.15 and 007213-7.16, and Section 007300-8.1 (collectively "Liquidated Damages Specifications Provisions"), if Contractor fails to complete, within the revised timeframes fixed for such completion, the entire work mentioned in Section 2.a. above, Contractor shall become liable to Owner for liquidated damages in accordance with the Liquidated Damages Specifications Provisions.

5. Contractor warrants and represents that it is presently aware of the following claims or potential claims occurring on or before the date of this Change Order that could serve as the basis of a claim by a third party:
- Claim by Hilltop Asbestos Abatement Corporation regarding bond.
 - Claim by AMPCO North, Inc. regarding removal of additional furniture.
 - Claim by AMPCO North, Inc. regarding increased wage rates.
 - Claim by AMPCO North, Inc. regarding dump fees.

Contractor agrees to indemnify and hold the City harmless from any and all claims filed or otherwise asserted against the City by Contractor, its subcontractors, or anyone else performing work on Contractor's behalf for any work performed by any party on the Project, including, but not limited to, the claims or potential claims referenced above..

6. Subject to the provisions above, Contractor does forever release and discharge the City, its successors, assigns, officers, employees, attorneys, agents, consultants and each of them from any and all claims, demands, controversies, causes of action, obligations, liabilities, expenses, costs, attorneys' fees and damages of whatever nature or character of any kind, whether in law or equity, whether past, present or future, whether known or

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City of Sunnyvale
Sunnyvale Civic Center Modernization Phase 1
Public Works Project No. 5020160

unknown, suspected or unsuspected, now possessed or hereinafter acquired, arising out of or related in any way to the Claims.

7. Subject to the provisions above, the City does forever release and discharge Contractor, its successors, assigns, officers, employees, attorneys, agents, consultants and each of them from any and all claims, demands, controversies, causes of action, obligations, liabilities, expenses, costs, attorneys' fees and damages of whatever nature or character of any kind, whether in law or equity, whether past, present or future, whether known or unknown, suspected or unsuspected, now possessed or hereinafter acquired, arising out of or related in any way to the Claims.
8. In connection with the releases set forth above and except as provided below, Contractor and the City each waive all rights as to the Claims under the provisions of California Civil Code Section 1542, which states:

A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Contractor and the City, with the advice of counsel, knowingly and voluntarily waive any protection to which it may be entitled under California Civil Code Section 1542 and further waive any protection that may exist under any comparable or similar statutes or principles of law under any and all states of the United States or of the United States, and covenants not to assert any claims in violation of this waiver.

9. This Change Order contains the entire agreement between Contractor and the City and supersedes all prior agreements, discussions, negotiations, understandings and proposals of the parties.
10. Counsel for Contractor and the City have reviewed and participated in the drafting of this Change Order. Consequently, the normal rule of construction that ambiguities shall be resolved against the drafter shall not be used or applied in the interpretation of this Change Order.
11. Contractor represents that it has not heretofore assigned or transferred, nor purported to assign or transfer, to any person or entity the Claims or any portion thereof or any interest therein that is subject to the release provisions of this Change Order.
12. This Change Order does not constitute an admission of wrongdoing, contract or statutory violation, or liability on the part of any party to this Change Order.
13. This Change Order shall not be considered precedential in any other context.
14. If any term of this Change Order is held to be invalid or unenforceable, the remaining portions of the Change Order shall continue to be valid to the fullest extent permitted by

CONTRACT CHANGE ORDER No. 254
City of Sunnyvale
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Public Works Project No. 5020160

law. The invalid or unenforceable term(s) shall be deemed amended and limited to the extent necessary to permit the maximum enforceability or validation of the term(s) herein.

15. The undersigned parties represent that they have read and understand the terms of this Change Order, and that they are authorized to execute this Change Order on behalf of their principles.

REFERENCES: Government Code Claim No. 22-23-038, dated 12/08/2022
Hensel Phelps Letter - Claim-Telephone and Data Cabling, dated 12/08/2022
Hensel Phelps Letter - Notice of Additional Work (PCO-1460 T&M Tags), dated 04/19/2023

COST OF CHANGE: \$4,394,208.92

This Contract Change Order constitutes full and complete compensation for all labor, equipment, materials, overhead, extended overhead, profit, any and all indirect costs and time adjustments required to perform the above described change. This Change Order is not effective until approved by the Owner.

ACCEPTED:

Hensel Phelps
Project Manager:

By: _____
Charlie Robben

Date: _____

City of Sunnyvale
Authorized Staff:

By: _____
Kent Steffens
City Manager

Date: _____

RECOMMENDED FOR ACCEPTANCE:

Jacobs
Construction Manager:

By: _____
Bob Deliso

Date: _____