

CONTRACT CHANGE ORDER No. ###

**City of Sunnyvale
Sunnyvale Primary Facility - Package 2
Public Works Project No. UY-16/01-20**

ITEM: Extended Overhead Cost & Time Extension per settlement.

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:

This Change Order fully and completely settles and resolves Potential Change Order (PCO) 171.01, PCO 171.02, Updated PG&E Delay Cost letter from Overaa submitted on 12/15/2021, and Overaa's Government Code Claim No. 21-22-050 submitted on 12/16/2021 (collectively, "The Claim"), which are all hereby settled and released by Overaa. Specific terms are as follows:

1. The City agrees to additional compensation to Overaa of \$5,100,000.00.
2. The City and Overaa agree to an overall time extension of 743 days to extend the contractual date for project Substantial Completion to February 6, 2023, and revised Milestone B date to August 2, 2022.
3. Overaa and the City release each other for and from all delay, disruption or liquidated damage claims for costs arising from The Claim, and the claims set forth in The Claim. This release includes, but is not limited to, the Tesco Controls delay costs, the rental and operation of the temporary generator costs, IPS flood damage costs, and the Bypass No. 7 Extended costs, as itemized in Overaa's Government Code Claim.
4. Subject to the provisions above, Overaa does forever release and discharge 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 unknown, suspected or unsuspected, now possessed or hereinafter acquired, arising out of or related in any way to The Claim.
5. Subject to the provisions above, City does forever release and discharge Overaa, 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 Claim.
6. In connection with the releases set forth above and except as provided below, Overaa and City each waive all rights as to The Claim under the provisions of California Civil Code Section 1542, which states:

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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.

Overaa and 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.

7. The City and Overaa reserve all rights and defenses as to:
 - a) The cost of the bypass implemented by Overaa, beyond the time extension included in this settlement for the revised Milestone B date of 8/2/2022.
 - b) The claim of HGH Electric currently being reviewed by the City, not including any additional Direct or Indirect Overhead costs by Overaa.
 - c) Overaa's claim for COVID-19-driven costs as previously submitted.
 - d) Any delays past the revised Milestone B date of 8/2/2022 and Substantial Completion date of 2/6/2023 through the successful completion of the Clean Water Test.
 - e) Any claims of Tesco Controls not attributable to the "PG&E Delay" (i.e., non-time related claims). All costs associated with escalation or Indirect or Direct Overhead costs for Tesco Controls are settled through the revised Milestone B and project Substantial Completion dates included in this Change Order.
8. This Change Order contains the entire agreement between Overaa and City and supersedes all prior agreements, discussions, negotiations, understandings and proposals of the parties.
9. Counsel for Overaa and 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.
10. Overaa represents that it has not heretofore assigned or transferred, nor purported to assign or transfer, to any person or entity the Claim or any portion thereof or any interest therein that is subject to the release provisions of this Change Order.
11. 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.
12. This Change Order shall not be considered precedential in any other context.

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13. 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 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).
14. 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 dated 12/16/2021
Overaa Letter (Unifier CCOR-0786) – Updated PG&E Delay Cost,
dated 12/15/2021
PCO 171.02, dated 03/30/2021
PCO 171.01, dated 11/17/2020

COST OF CHANGE: \$5,100,000.00

CONTRACT TIME ADJUSTMENT: 743 Calendar Days

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:

C. Overaa & Co.
Project Manager:

By: _____
Nick Kebbas, Vice President

Date: _____

City of Sunnyvale:
Authorized Staff:

By: _____
Chip Taylor
Director of Public Works

Date: _____

RECOMMENDED FOR ACCEPTANCE:

PSOMAS
Construction Manager:

By: _____
Mike Redig, P.E.

Date: _____



City of Sunnyvale

Excerpt Meeting Minutes - Final Planning Commission

Monday, April 10, 2023

5:30 PM

Online and Bay Conference Room
(Room 145), City Hall,
456 W. Olive Ave.,
Sunnyvale, CA 94086

Special Meeting: Study Session - 5:30 PM | Public Hearing - 7:00 PM

7 P.M. PLANNING COMMISSION MEETING

CALL TO ORDER

Chair Pyne called the meeting to order at 7:40 PM.

PUBLIC HEARINGS/GENERAL BUSINESS

2. [23-0485](#) Forward a Recommendation to the City Council to Introduce an Ordinance to Add Chapter 19.71 of Title 19 of the Sunnyvale Municipal Code Creating a Residential Tenant Protections Programs (Study Issue)

Affordable Housing Manager Ernie Defrenchi presented the staff report.

Commissioner Weiss confirmed with Affordable Housing Manager Defrenchi and Senior Assistant City Attorney Rebecca Moon that the proposed ordinance will go into effect by early to mid-June 2023 if it is approved by City Council.

Commissioner Weiss suggested that relocation expenses for no-fault evictions should be dependent on the length of a tenant's residency. She also voiced her opinion that perhaps these expenses should apply only to larger companies rather than smaller units, or duplexes, triplexes, and fourplexes in which the landlord also resides. Affordable Housing Manager Defrenchi responded that according to state law, landlords are exempt from providing tenant protections in the form of relocation if the tenant they are evicting is within the first twelve months of their lease. He added that this requirement does not apply to duplexes, including owner-occupied duplexes, or Accessory Dwelling Units (ADU).

Commissioner Serrone confirmed with Affordable Housing Manager Defrenchi that the proposed ordinance will apply to all developments regardless of how long they have had their certificate of occupancy.

Commissioner Serrone discussed with Affordable Housing Manager Defrenchi the amount of time in which a landlord must return a tenant's deposit in the event of a no-fault just cause eviction.

Commissioner Serrone asked whether notices pertaining to the proposed ordinance will be offered in languages other than English. Affordable Housing Manager Defrenchi answered that such notices will include verbiage in languages other than English which will advise the reader that the notice is important and will require interpretation by a translator.

Commissioner Serrone inquired about how many days' notice a landlord must provide a tenant they are evicting under the proposed ordinance.

Commissioner Serrone confirmed with Affordable Housing Manager Defrenchi that tenants may hire a lawyer and sue their landlord if they do not receive relocation assistance equal to two months of rent.

Commissioner Serrone and Affordable Housing Manager Defrenchi discussed feedback from the stakeholders' outreach meeting regarding the consideration of relocation assistance in the form of moving costs in the event a landlord or property owner can provide a "like unit" within a reasonable distance of the current property.

Commissioner Serrone and Commissioner Howard received clarification from Affordable Housing Manager Defrenchi regarding the applicability of tenant protections as stipulated by state law.

Vice Chair Iglesias shared his concerns regarding the negative impacts that the requirement to provide tenant protections would have upon homeowners who are not profiting significantly from their tenants' rent. Affordable Housing Manager Defrenchi responded that the Planning Commission may recommend that the relocation assistance required of applicable landlords and property owners may be equivalent to one month of rent rather than two. He added that the staff recommendation is in alignment with the requirements of neighboring jurisdictions.

Vice Chair Iglesias confirmed with Affordable Housing Manager Defrenchi that the event in which a tenant is displaced because of a landlord or property owner moving a relative into the property would be considered a no-fault just cause eviction. Affordable Housing Manager Defrenchi explained that protections for this type of eviction would apply regardless of how long a development has had a certificate of

occupancy.

Commissioner Shukla proposed that the City should offer a web page or website that includes information on the proposed ordinance and lease documents that landlords may use containing verbiage associated with the proposed ordinance. Affordable Housing Manager Defrenchi stated that there is a plan in place to accommodate such a request, and he noted that community outreach meetings have been held to educate tenants, property owners, and residents about the proposed ordinance and what it entails.

Chair Pyne advocated for the comprehensibility of the proposed ordinance so that tenants may understand their rights. He asked whether the lease addendum containing information on the proposed ordinance will be made available in languages other than English. Affordable Housing Manager Defrenchi answered that while this may not be the case, the addendum will include verbiage in languages other than English which will advise the reader that the addendum is important and will require interpretation by a translator.

Vice Chair Iglesias confirmed with Affordable Housing Manager Defrenchi that the proposed ordinance would not affect tenants or landlords already in a lease.

Vice Chair Iglesias asked whether landlords might be incentivized to evict tenants prior to the completion of their twelve-month lease to avoid providing relocation assistance. Affordable Housing Manager Defrenchi answered that this is not a concern.

Chair Pyne opened the Public Hearing.

Janet Murdock, Sunnyvale resident and landlord, shared her concerns regarding the proposed ordinance and its requirement that twelve-month leases must be renewed indefinitely. She also detailed the negative impacts that this would have upon mom-and-pop fourplex owners such as herself.

Agnes Veith, Sunnyvale resident and Livable Sunnyvale Board member, emphasized the importance of providing tenant protections, commended staff on their efforts on the proposed ordinance, and urged the Planning Commission to authorize landlords to pay relocation assistance equal to two months of rent in the event of no-fault just cause evictions.

Chair Pyne closed the public hearing.

Commissioner Howard responded to earlier comments made by Vice Chair Iglesias. He also suggested that the lease addendum be made available in Spanish, if feasible. Lastly, he noted that the costs associated with relocation assistance would be proportional to the rent charged by landlords.

Commissioner Serrone asked whether a tenant and their landlord may agree to temporary relocation provisions that may contradict the relocation assistance required by the proposed ordinance. Affordable Housing Manager Defrenchi responded that this may be agreed upon as long as it is amenable to both parties.

Commissioner Serrone commented that it is worth considering different requirements depending on different property types or property owners. Affordable Housing Manager Defrenchi stated that the Planning Commission may make this recommendation if desired.

Commissioner Weiss proposed that the recommendations made by the Planning Commission exempt owner-occupied duplexes, triplexes, and fourplexes.

Vice Chair Iglesias spoke in agreement with comments made by Commissioner Serrone and Commissioner Weiss. He added that the proposed ordinance must consider the wide range of income levels across City residents.

Commissioner Shukla voiced her support of staff recommendations.

MOTION: Commissioner Howard moved and Commissioner Howe seconded the motion to approve Alternative 2 – Recommend that City Council: Introduce an Ordinance to add Chapter 19.71 (Residential Tenant Protections Ordinance) to Title 19 (“Zoning”) of the Sunnyvale Municipal Code creating a Residential Tenant Protections Programs with a modification.

The modification is stated below:

1.) If feasible, the lease addendum containing applicable information on the proposed ordinance must be made available to tenants in Spanish.

Commissioner Howard acknowledged that state law is what is informing the proposed ordinance and reiterated the importance of tenant protections when

considering the better financial position that a property owner is in.

Affordable Housing Manager Defrenchi advised that the City may not require landlords to provide leases and lease addendums to their tenants in Spanish. Commissioner Howard responded that this modification be accommodated only if feasible.

Commissioner Howe noted that the proposed ordinance may negatively impact operators of smaller rental properties and inhibit others from becoming landlords.

FRIENDLY AMENDMENT: Commissioner Howe proposed a friendly amendment to specify that a tenant can agree to waive their right to relocation assistance, equal to two months of rent, in exchange for other accommodations provided by the property owner (e.g., storage for their household items, differential rental payment for temporary lodging, guarantee that the tenant may return to their unit under the same lease terms, etc.), and any such arrangement must be memorialized in a written agreement signed by the tenant and their property owner.

FORMAL AMENDMENT: Commissioner Weiss moved and Commissioner Serrone seconded the motion to exempt owner-occupied duplexes, triplexes, and fourplexes from the tenant protections requirements posed by the proposed ordinance.

Commissioner Weiss stated that there is a difference between property owners who live in the properties they rent out and large real estate investors. For this reason, she emphasized the importance of distinct requirements for tenant protections offered by different property owners of various property types.

Commissioner Serrone spoke in agreement with comments made by Commissioner Weiss. He added that neighboring cities have a similar exemption in place already.

Commissioner Howard shared his concerns that such an exemption might further complicate the comprehensibility of the proposed ordinance especially among populations that do not speak English as a first language, if at all.

Chair Pyne voiced his agreement with concerns expressed by Commissioner Howard and stated he is not entirely in agreement with the categorization of neighboring cities.

The motion for the formal amendment failed by the following vote:

Yes: 2 - Commissioner Serrone
Commissioner Weiss

No: 5 - Chair Pyne
Vice Chair Iglesias
Commissioner Howard
Commissioner Howe
Commissioner Shukla

Chair Pyne summarized the original motion which is as follows:

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Chair Pyne spoke in support of the motion and thanked staff for the hard work they invested in the proposed ordinance which provides both tenant protections and property owner rights.

The motion carried by the following vote:

Yes: 6 - Chair Pyne
Commissioner Howard
Commissioner Howe
Commissioner Serrone
Commissioner Shukla
Commissioner Weiss

No: 1 - Vice Chair Iglesias

This recommendation will be forwarded to the City Council for consideration at the April 25, 2023 meeting.