



DATE: August 7, 2023

TO: Honorable Mayor and Members of the City Council through City Manager

FROM: Jonathan Sanglerat, MS, PE – Engineering/CIP Manager, Public Works and
Utilities Department (PW&U)
Gina Benedetti-Petnic, PE – Asst. Director, PW&U
Christopher J. Bolt, MPA, PE, CPM, ICMA-CM – Director, PW&U

SUBJECT: Resolution Authorizing a Change Order to the Contract for the Community
Baseball Diamond Project, Public Contract No. C14501607

RECOMMENDATION

It is recommended that the City Council: 1. Pay \$104,509.36. to O.C. Jones & Sons, Inc. to settle its dispute with the City. 2. Extend the contract time by eighty-three (83) working days to November 20, 2023, for O.C. Jones & Sons, Inc. to complete the Project.

BACKGROUND

City's dispute with the general contractor for the Community Baseball Diamond Project, O.C. Jones & Sons, Inc. (OCJ), arose out of OCJ's failure to meet some of the requirements of the project specifications and other Contract documents. Specifically, the required site soils were not lime treated to a depth of 18 inches below the finished subgrade. Moreover, the quality of the lime treatment did not meet the design intent of the project as shown by the Quality Control/Quality Assurance (QA/QC) testing.

On January 12, 2023, OCJ submitted a Public Contract Code Section 9204 Claim seeking payment for alleged extra work in the amount of \$198,862.29 and a time extension of 79 days. City staff and OCJ engaged in the required meet and confer conference on April 27, 2023. During the meet and confer, OCJ proffered an alternative interpretation of a provision of the Contract which counsel opined a trier of fact could find reasonable under certain circumstances.

On May 9, 2023, as required by PCC 9204, the City issued a written statement identifying the portion of the claim that remained in dispute and the portion that it had determined was undisputed, and further explaining that the City cannot agree to compensate OCJ for project delays caused by OCJ's defective work and/or OCJ's failure to perform other work while the lime treatment work was being evaluated and remediated and that it is not responsible for the overhead costs incurred

by OCJ and its subcontractor. Further, OCJ's claim includes OCJ's work to remove and replace drains in the lime-treated soil that the City did not authorize OCJ to install pending resolution of the lime treatment issues. Therefore, the City refused to pay OCJ for the time it spent on those tasks.

Nevertheless, in an effort to resolve the entirety of OCJ's claim, the City initiated an offer to pay \$85,042.59 to O.C. Jones comprised of the following:

1. Direct cost for OCJ's work (not including work related to the drains): \$25,350.75
2. Direct cost for Granite Rock's work and supervision of that work: \$57,291.84 + \$2,400

DISCUSSION

In response to the City's May 9, 2023, statement, OCJ on May 11, 2023, transmitted a settlement counteroffer agreeing to settle its entire claim in exchange for payment by the City of half of the remaining balance at issue or \$56,910, together with a waiver of liquidated damages.

FINAL SETTLEMENT AGREEMENT TERMS

Following additional meet and confer at the staff level, the parties reached an agreement that City staff now recommends to the Council:

1. Settlement Amount OCJ has agreed to accept to settle this dispute is \$104,509.36.
2. OCJ agrees to waive:
 - Overhead component related to extra costs and days: \$59,250
 - The remainder of its claimed direct costs: \$35,102.66
3. Other settlement terms include:
 - City will grant eighty-three (83) additional working days to complete the Project on or before November 20, 2023.
 - Effective date of the settlement agreement is July 21, 2023.
 - This settlement concludes the City's Public Contract Code Section 9204 obligations.
 - Section 1542 of the California Civil Code, and any similar law, statute, provision, or policy of any other state, is hereby expressly waived by O.C. Jones and Petaluma as to the claims that are released by this settlement.

RECOMMENDED FURTHER HANDLING

Staff recommends the City Council authorize payment of \$104,509.36 to O.C. Jones to settle the dispute and extend the contract time by 83 working days to November 20, 2023, to complete the project, and to authorize staff to issue a change order to the contract to effectuate these terms.

COUNCIL GOAL ALIGNMENT

The proposed action supports the following Council goals, objectives, and work plan items by continuing to implement the original phase of construction of the Petaluma Community Sports

Fields. This project supports the following: Spaces and Places That Inspire, Objective 5 – Improve Existing Parks, Park Infrastructure, and Reimagine New Spaces for Play #154. Prioritize completion of all phases of the Petaluma Community Sports Field project.

CLIMATE ACTION/SUSTAINABILITY EFFORTS

This proposed action supports the above goals, upgrades the existing Petaluma Community Sports Fields, creates a new baseball field, and encourages additional recreational activities. The use of artificial turf does not need watering or fertilizer, and the turf material is recycled from pre-consumer and post-industrial materials.

ENVIRONMENTAL REVIEW

Compliance with the California Environmental Quality Act (CEQA) for this project was completed on October 18, 2010, when the City Council adopted the Initial Study and Mitigated Negative Declaration for East Washington Park (MND). The MND included and analyzed the impacts of this project and determined that this project will not have a significant adverse effect on the environment.

FINANCIAL IMPACTS

The execution and payment of this settlement agreement, which will be documented in Contract Change Order #3 (CCO#3), will not exceed the current project budget. However, the project will need to have a budget adjustment at a later date as CCO#3, described in this staff report, will use up most of the remaining construction contingency, and there are still outstanding change orders that will need to be resolved between the City and OCJ. Below is a breakdown of the agreed-upon change orders to date as well as the original approved budget and contingency.

Current Agreed to Change Orders	Amount	Brief Description
CCO#1	\$141,603.22	Soil Amendment and Environmental Protection (Pre-construction)
CCO#2	\$ 47,974.51	Bid Quantity Adjustment & Additional Non-Bid Work
CCO#3	\$104,509.36	Lime Treatment Claim Settlement
TOTAL	\$294,087.09	

Itemized Budget Breakdown	FY 22/23 Approved CIP
Uses	Total Project Budget
Planning/Environmental	\$ 26,000
Land & Easements	\$ -
Design	\$ 525,000
Legal Services	\$ -
Administration	\$ -
Construction Contracts	\$4,907,000
Construction Management	\$ 115,000
Contingency	\$ 300,000
CIP Overhead	\$ 24,000
TOTAL	\$5,897,000

Funding Sources	FY 22/23
Parkland Impact Fees	\$5,543,000
Traffic Impact Fees	\$ 200,000
General Fund-Measure U	\$ 154,000
TOTAL	\$5,897,000

ALTERNATIVES

If the Council does not authorize this resolution, claimant OC Jones will likely file a lawsuit in Sonoma County Superior Court, which will result in escalated costs, additional legal fees, and staff time.

ATTACHMENTS

1. Resolution
2. Exhibit A to Resolution: Contract Change Order #3 (CCO#3)