

STAFF REPORT
COUNCIL MEETING DATE:
June 25, 2012

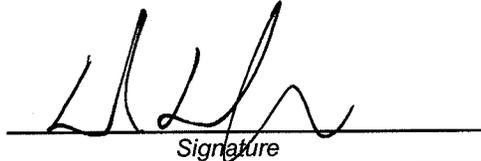
ITEMS FOR COUNCIL CONSIDERATION:

Close-Out of City Maintenance Project No. 15027, Linden Avenue/Street Maintenance 79

Report prepared by: Charlie Ebeling, Public Works Director
Department: Public Works


Signature

Reviewed by
City Manager:


Signature

ACTION **NON-ACTION** **STAFF RECOMMENDATION:**

Recommendation: That the City Council receive this staff report and to authorize the Mayor to sign the Closeout Agreement and Release of Claims for City Maintenance Project 15027, Linden Avenue/Street Maintenance 79 with Newton Construction. The City Council also should authorize the City Clerk to release the Performance Bond ASB059 in the amount of \$74,700 for this project.

Sample Motion:

Part A: I move that the City Council receive this staff report and to authorize the Mayor sign the Closeout Agreement and Release of Claims for City Maintenance Project 15027, Linden Avenue/Street Maintenance 79 with Newton Construction.

Part B: I also move that the City Council should authorize the City Clerk to release the Performance Bond ASB059 in the amount of \$74,700 for this project and accept the project as complete.

I. BACKGROUND:

In November of 2010 after hearing testimony from Downtown business owners, the Tree Advisory Board, the Architectural Review Board, and City Staff; the City Council directed staff to prepare bid documents for the replacement of street trees, curb, gutter and sidewalk at four Linden Avenue locations. These four locations are located in sensitive, high profile areas in the

downtown corridor. As such, timing, aesthetic consistency, and pedestrian safety were placed at the forefront of the project planning. The identified sidewalk, curb, and gutter locations were cracked and lifted due to the root structures of adjacent street trees and present potential risk for pedestrian travel, specifically with respect to the American Disability Act requirements (ADA). On February 27 of this year, the City Council awarded the construction contract to Newton Construction in the amount of \$74,700.

II. DISCUSSION:

The project scope included replacement of six trees and approximately 200 lineal feet of curb, gutter, and sidewalk within the Downtown. Additionally, all tree wells within the project area received decorative grates and upgraded electrical outlets for holiday lighting and special events.

During the entire construction phase of this project, access to local businesses was maintained and all businesses remained open during the construction process. Newton Construction and the Public Works Department coordinated all construction activities with effected businesses and City departments, to reduce any potential negative impacts from their work activities. The project was completed within the working days allocated by the contract. There were no injuries to the contractor or to the general public as a direct result of the project.

During construction, several underground electrical and water lines were exposed which were not previously identified. The City's Landscaping Maintenance Company -Venco Western - responded immediately to any broken pipe that was found during the course of this project.

A portion of the sidewalk near the previous Austin's Hardware store near Seventh Street did not meet the current ADA guidelines for cross slope. The Public Works Department decided to expand Newton Construction's contract to replace the sidewalk area to meet current ADA standards. This was the only change to the project.

II. POLICY:

Per the project Specifications, the contractor and the City need to sign the Closeout Agreement and Release of Claims to finalize the project contract. The Public Works Department is satisfied that the Contractor completed the project per the project plans and specifications.

III. FINANCIAL CONSIDERATIONS:

The Engineer's Estimate for total construction was \$98,000.00. The lowest responsible bid was \$74,700.00. With the one change order, the total cost of the project totaled \$80,312.00. This project was funded by Measure D reserves.

IV. ATTACHMENTS:

Attachment A – Closeout Agreement and Release of Claims

ATTACHMENT A

RECEIVED

JUN 11 2012

CLOSEOUT AGREEMENT AND RELEASE OF CLAIMS

CITY OF CARPINTERIA

THIS AGREEMENT AND RELEASE OF CLAIMS (Agreement) is made in Carpinteria, California, this JUNE 2012 day of, by and between the City of Carpinteria, (City), and NEWTON CONSTRUCTION & MGMT INC. (Contractor).

KNOW ALL PERSONS BY THESE PRESENTS:

1. That the undersigned, as the authorized representative of Contractor, and for each of its successors, assigns and partners, for and in consideration of SEVENTY FOUR THOUSAND SEVEN HUNDRED (\$74,700.00), for the original Contract amount, and the sum of FIVE THOUSAND SIX HUNDRED TWELVE (\$5,612.00) for Contract Change Orders Nos.(1) through ONE (1), receipt of which is acknowledged, does release and forever discharge City, and each of its successors, assigns, council members, officers, agents, servants, volunteers and employees, from any and all rights, claims, causes of action, demands, debts, obligations, liabilities, actions, damages, costs and expenses (including but not limited to attorneys', paralegal and experts' fees, costs and expenses) and other claims, which may be asserted against City by reason of any matter or thing which was the subject matter of or basis for:

A. The performance of all terms and conditions of that certain agreement dated MAR 5, 2012, for City, project described as 15027/A2011-005 LINDEN AVENUE CONCRETE REPAIR PROJECT.

B. Change Orders Nos. one (1) through ONE (1), as approved by the parties, pertaining to Purchase Order No. and shown in Payment Request No. (), dated.

2. Nothing contained in this Agreement shall waive or alter the rights, privileges, and powers of City or the duties, liabilities and obligations of Contractor and its surety(ies) in respect to any portion of the Contract.

3. City has received the following claims from Contractor NONE. Except as expressly provided in this section, City has received no other claims from Contractor.

4. Upon execution of this Agreement, City agrees to promptly record a Notice of Completion with the Santa Barbara County Recorder.

5. Contractor and City agree that the total adjusted Contract Price and time of performance after the execution of change orders, is as follows:

Original Contract Price \$ 74,700.00
Original Calendar Days 60 days
Adjusted Contract Price \$ 80,312.00
Adjusted Calendar Days 60 days

6. The current amount owing to Contractor is:

Adjusted Contract Price: \$ 80,312.00
Less: Amount Previously Paid (Request Nos. 1 through 2) \$(72,250.80)
Retention \$(8,031.20)
BALANCE: \$ 8,031.20

The retention will be released to Contractor at the expiration of thirty-five (35) calendar days after the date of recording a Notice of Completion with the Santa Barbara County Recorder or when all stop notices have been released, whichever last occurs. The release provided pursuant to this Agreement shall not apply to Contractor's right to the retention amount until and to the extent such amounts are received by Contractor.

7. It is understood and agreed by Contractor that the facts with respect to which the release provided pursuant to this Agreement is given may turn out to be other than or different from the facts as now known or believed to be, and Contractor expressly assumes the risk of the facts turning out to be different than they now appear, and agrees that the release provided pursuant to this Agreement shall be, in all respects, effective and not subject to termination or rescission by any such difference in facts and Contractor expressly waives any and all rights it has or may have under California Civil Code Section 1542, which provides as follows:

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

8. The release made by Contractor is not to be construed as an admission or admissions of liability and Contractor denies any such liability. Contractor agrees that it will forever refrain and forebear from commencing, instituting or prosecuting any lawsuit, action or other proceeding against City based on, arising out of, or in any way connected with the subject matter of this release.
9. Except as specifically provided in this Agreement, the Contractor releases City from all claims, including but not limited to those of its Subcontractors for all delay and impact costs, if any.
10. The Contractor represents and warrants to City that Contractor has not assigned or transferred or purported to assign or transfer to any person, firm, corporation, association or entity any of the rights, claims, warranties, demands, debts, obligations, liabilities, actions, causes of action, damages, costs, expenses and other claims and Contractor agrees to indemnify and hold harmless City, its successors, assigns, council members, officers, agents, servants, volunteers and employees, from and against, without limitation, any and all rights, claims, warranties, demands, debts, obligations, liabilities, actions, causes of action, damages, costs, expenses and other claims, including but not limited to attorneys', paralegal and experts' fees, costs and expenses arising out of or connected with any such assignment or transfer or purported assignment or transfer.
11. The parties acknowledge that they have been represented by counsel of their own choice in connection with the preparation and execution of this Agreement. The parties acknowledge and represent that they understand and voluntarily consent and agree to each and every provision contained in this Agreement.
12. The persons executing this Agreement represent and warrant to the other party that the execution and performance of the terms of this Agreement have been duly authorized by all individual, corporate, partnership, or other entity requirements and that such persons have the right, power, legal capacity and authority to execute and enter into this Agreement.
13. The parties further acknowledge and represent that no promise, inducement or agreement, not expressed in this Agreement, have been made and that, with respect to the matters considered, this Agreement contains the entire agreement among the parties and that the terms of the Agreement are contractual and not a mere recital.

APPROVED AS TO FORM:

CITY OF CARPINTERIA
a Municipal Corporation

City Attorney

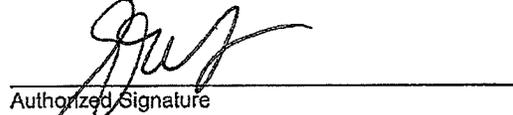
Mayor

APPROVED AS TO CONTENT:



City Engineer

CONTRACTOR:



Authorized Signature

PRESIDENT

Title

ATTEST:

City Clerk