



City of La Quinta

CITY / SA/ HA/ FA MEETING DATE: February 17, 2015

AGENDA CATEGORY:

ITEM TITLE: APPROVE CONTRACT CHANGE ORDERS AND SETTLEMENT AGREEMENT WITH ARCH INSURANCE COMPANY, ACCEPT THE ADAMS STREET BRIDGE PROJECT, AND APPROPRIATE FUNDS FROM TRANSPORTATION DEVELOPMENT IMPACT FEES

BUSINESS SESSION:

CONSENT CALENDAR: 10

STUDY SESSION:

PUBLIC HEARING:

RECOMMENDED ACTION:

Approve Contract Change Order Nos. 14, 24, 29, 31-36 and the settlement agreement with Arch Insurance Company; accept the Adams Street Bridge Project; and appropriate \$94,000 from Transportation Development Impact Fees.

EXECUTIVE SUMMARY:

- In 2011, the City awarded FTR International a construction project to build the Adams Street Bridge across the White Water Channel.
- In early 2012, FTR International abandoned the project in the middle of construction and filed for bankruptcy. Per the requirements of the contract specifications, FTR's surety company, Arch Insurance (Arch), was required to complete construction of the bridge project.
- In July 2012, Arch hired Granite Construction to complete the project. The City subsequently withheld certain payments and in October 2013, Arch filed suit against the City. The City and Arch have been negotiating a settlement so the City may accept the completed project.
- The Contract Change Orders (CCOs) and settlement agreement were prepared in accordance with City Council direction, and have been executed by Arch.

FISCAL IMPACT:

Original Contract Amount:	\$8,287,990.43
Contract Quantity Adjustments:	\$116,041.74
CCOs 1-35:	\$510,319.70
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Final Contract Amount:	\$8,914,351.87
Less Liquidated Damages (105 Working Days):	(\$357,000)
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Total Compensation:	\$8,557,351.87
Compensation Paid to Date:	\$7,109,773.72
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Remaining Compensation:	\$1,447,578.15
Settlement of Liquidated Damages	\$289,000.00
CCOs 1-35 (unpaid balance)	\$296,825.51
Release of Retention	\$861,752.64
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Amount of Contract Funds Available to Complete:	\$1,447,578.15

PROJECT FUNDING

Approved Funding:	\$12,856,611
Total Cost (if settlement is approved):	<u>(\$13,227,560)</u>
Shortfall	(\$ 370,949)

The Adams Street Bridge construction was funded with a combination of federal and local funds, with the Coachella Valley Association of Governments (CVAG) providing 75 percent of the local funding. Staff has discussed the approximate \$371,000 shortfall with CVAG, and CVAG staff has agreed to process 75 percent of the shortfall as an eligible project cost upon receipt of the City's final invoice. The remaining 25 percent, or approximately \$94,000, is available in the Transportation Developer Impact Fee fund.

BACKGROUND/ANALYSIS:

The Adams Street Bridge Project (Project No. 2006-06) replaced the low-water crossing just south of Blackhawk Way with a four-lane, all-weather bridge with raised sidewalks for improved vehicular and pedestrian safety. FTR International was awarded the initial construction contract in May 2011 after a competitive bidding process. FTR was set to install the bridge columns in the channel in early 2012 when they abandoned the project without notice to the City. Per the contract specifications, FTR's surety, Arch, was required to complete the project.

In July 2012, Arch retained Granite Construction to complete the bridge, which opened to traffic in September 2013. Prior to Arch's takeover of the project, FTR had several outstanding claims for additional work, which were transferred to Arch as the successor to FTR.

The outstanding CCOs (summarized in Attachment 1) and settlement agreement (Attachment 2) with Arch will settle all claims by Arch and Arch's contractors, FTR International and Granite Construction. The major areas of disagreement concerned the City's assessment of penalties for completing the project more than six months after the project was originally scheduled to be complete (i.e., "Liquidated Damages") as well as additional payment the contractor requested for excavation and demolition work not shown on the plans and specifications. The CCOs also contain payment for additional work that was verified and recommended for approval by the City's contract administrator, TYLin.

In November 2013, the project was 100 percent complete and ready for acceptance by the City. Upon approval of the settlement agreement and acceptance of the project by City Council, one half of the retention in the amount of \$430,876.32 will be released to Arch. The remaining retention of \$430,876.32 would be released 35 days following the recorded Notice of Completion.

ALTERNATIVES:

Disapproval of the settlement agreement and outstanding CCOs would not allow the project to be closed out and would likely lead to a lawsuit. Therefore, staff does not recommend this alternative.

Report prepared by: Ed Wimmer, P.E., Principal Engineer

Report approved for submission by: Timothy R. Jonasson, P.E.

Public Works Director/City Engineer

Attachments: 1. Contract Change Order Summary
 2. Settlement Agreement

ADAMS STREET BRIDGE IMPROVEMENT PROJECT
Summary - Contract Change Order Nos. 14, 24, 29, 31-36

CCO #	DESCRIPTION	DATE TO CONTRACTOR	CCO AMOUNT	DATE SIGNED BY ARCH
14	Various adjustments to the bridge abutment quantities to meet field conditions	02/05/2014	\$13,536.20	1/26/2015
24	Additional work to add stamped concrete on the bridge deck and D.G. in the bridge approaches.	11/11/2013	\$19,785.60	1/26/2015
29	Increase IID conduit size through bridge deck due to a change in IID standards since design of project.	02/24/2014	\$58,091.00	1/26/2015
31	Credit for changes to the retaining wall construction and the elimination of a portion of the water line work that was performed by CVWD	02/26/2014	-\$7,512.37	1/26/2015
32	Credit for City inspection fees for work performed outside of regular work hours	02/26/2014	-\$19,498.52	1/26/2015
33	Additional work performed by the bridge contractor in order to accommodate undergrounding of IID distribution lines at both bridge approaches.		\$142,900.00	1/26/2015
34	Additional work to relocate 18" PVC Sewer for CVWD.		\$36,510.00	1/26/2015
35	Additional excavation required to provide a safe side slope per OSHA standards for change in soil type.		\$38,520.00	1/26/2015
36	Bid Item Adjustments & Liquidated Damages		-\$357,000.00	1/26/2015

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter the "Release") is entered by and between CITY OF LA QUINTA ("City") and ARCH INSURANCE COMPANY ("Arch") (collectively referred to as the "Parties") with reference to the following facts:

Recitals

A. Arch issued a payment and performance bond to FTR International, Inc. ("FTR") for the construction project known as the Adams Street Bridge Improvements Project (the "Project"), which is owned by the City.

B. FTR abandoned the Project and the City held FTR in default. On March 9, 2012, the City terminated its contract with FTR for the Project. The City then made demand upon Arch, pursuant to Arch's obligations under the performance bond, to complete the Project.

C. On or about July 2, 2012, the City and Arch executed a Takeover Agreement (the "Agreement") by which Arch agreed to take over and complete the Project.

D. On or about January 22, 2013, the City notified Arch that the City would assess liquidated damages on the Project.

E. On October 23, 2013, Arch filed a lawsuit against the City, entitled *Arch Insurance Company v. City of La Quinta*, Riverside County Superior Court Case No. PSC 1301939 (the "Action"). The Action alleged that the City improperly assessed liquidated damages for the Project.

F. Throughout the course of construction of the Project, Arch has requested that the City agree to certain Contract Change Orders ("CCO") relating to the work performed. Those CCO requests are not the subject of the Action, or any other pending legal action against the City. By this Release, the City and Arch intend to settle all matters relating to the Action and also to settle all present and future CCO requests by Arch relating to the Project.

Terms of Settlement

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the Parties agree as follows:

1. Obligations of City.

a. Concurrently with the execution of this Release, the City shall execute the CCOs identified as CCO #14, CCO #24, CCO #29, CCO #31, CCO #32, CCO #33, CCO #34, CCO #35, and CCO #36 in the forms as are attached hereto as Exhibit 1.

b. Upon receipt of Arch's progress payment request, the City shall release to Arch fifty percent (50%) of the Project retention in the amount of \$430,876.32 and progress payments in the amount of \$585,825.51. The City shall release to Arch the remaining fifty percent (50%) of the Project retention, in the amount of \$430,876.32, thirty-five (35) days after recordation of the Notice of Completion for the Project.

2. Obligations of Arch

a. Concurrently with the execution of this Release, Arch shall execute the CCOs identified as CCD #14, CCO #24, CCO #29, CCO #31, CCD #32, CCO #33, CCO #34, CCO #35, and CCO #36 in the forms as are attached hereto as Exhibit 1.

b. Within five (5) business days of the full execution of this Release, Arch shall file a request for dismissal with prejudice of the entire Action.

3. Accounting

The Parties agree that the following constitutes the final Project accounting upon which this Agreement and the CCO's are based:

Original Contract Amount:	\$8,287,990.43
Contract Quantity Adjustments:	\$ 116,041.74
Contract Change Orders:	\$ 510,319.70
Final Contract Amount:	\$8,914,351.87
Less Liquidated Damages (LD's) (105 Working Days): (\$357,000)	
Total Compensation:	\$8,557,351.87
Amount Paid to Date:	\$7,109,773.72
<u>Amount Due to Contractor:</u>	\$1,447,578.15
Retention Withheld:	\$ 861,752.64
Previously Withheld LD"s to be Returned:	\$ 289,000.00
Pending Contract Change Orders:	\$ 296,825.51
<u>Amount of Contract Funds Available to Complete:</u>	\$1,447,578.15

4. No Admission of Fault.

This Release is a compromise and settlement of disputed claims. Nothing in this Release shall be interpreted, used, or construed as an admission of fault or wrongful conduct of any kind by any of the Parties.

5. Release.

(a) In consideration for the agreements as set forth herein, Arch, on behalf of itself and its owners, heirs, successors, assigns, insurers, lenders, lien holders, attorneys, agents, and other representatives does hereby release the City, and its councilmembers, mayors, officials, boards, commissions, managers, employees, attorneys, insurance companies, agents, and other representatives, from any and all claims, actions and causes of action, obligations, liabilities, indebtedness, breaches of duty, claims for injunctive and other equitable relief, suits, liens, losses, costs or expenses, including attorneys' fees, of any nature whatsoever, known or unknown, fixed or contingent, arising out of the claims made in the Action, or arising from the Project, including but not limited to any future CCO requests or requests for additional monies due for work on the Project.

(b) Waiver of Civil Code Section 1542: By releasing and forever discharging claims both known and unknown as above provided, Arch expressly waives any rights under California Civil Code section 1542, which provides:

"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."

Arch waives and relinquishes any rights and benefits which it has or may have under section 1542 of the Civil Code of the State of California. Arch has performed a full and complete investigation of the facts pertaining to the settlement. Nevertheless, Arch acknowledges that it is aware that it may hereafter discover facts in addition to or different from those which it now knows or believes to be true with respect to the subject matter of this Release, but it is Arch's intention hereby to fully and finally forever settle and release any and all matters, disputes and differences, known or unknown, suspected and unsuspected, which now exist, may exist or heretofore have existed, as against the City, arising out of the claims made in the Action and, in furtherance of this intention, the release herein given shall be and remain in effect as a full and complete general release notwithstanding discovery or existence of any such additional or different facts.

6. Entire Agreement.

This Release sets forth the entire agreement of the Parties and supersedes any and all prior agreements or understandings, if any, between them pertaining to the subject matter hereof, and shall not be modified or altered except by a subsequent written agreement signed by the parties. This Release shall be binding upon and inure to the benefit of the Parties, their respective representatives, shareholders, officers, directors, employees, affiliates, successors, heirs and assigns.

7. Warranty.

The Parties hereby expressly warrant and represent that they have not transferred or assigned or attempted to transfer or assign any of the claims released hereunder. The persons signing this Release hereby warrant that they have the power and authority to bind any party on whose behalf this Release is signed.

8. Controlling Law.

This Release shall be interpreted and construed in accordance with the laws of the State of California, without giving regard to principles of choice of law.

9. Attorneys' Fees and Costs.

The Parties shall bear all of their own respective costs and attorneys' fees incurred relating to the matters encompassed in this Release.

10. Severability

. If any provision and/or part of this Release is held, determined, or adjudicated to be invalid, unenforceable or void for any reason, each such provision shall be severed from the remaining provisions of the Release and shall not affect the validity and enforceability of such remaining provisions.

11. Counterparts.

This Release may be executed in counterparts and by facsimile or other electronic transmission.

12. Review of Release.

The Parties each acknowledge and represent that they have read this Release, have had the opportunity to consult with their respective attorneys concerning its contents and consequences, that the Release is being executed solely in reliance on their respective judgment, belief and knowledge of the matters set forth herein and on the advice of their respective attorneys.

13. Neutral Interpretation.

The Parties agree that all parts of this Release shall in all cases be construed as a whole according to their fair meaning and shall not be construed strictly for or against any party hereto.

14. Modification.

This Release shall not be modified, amended or supplemented unless such modifications, amendments or supplements are in writing and signed by each party to this Release.

15. Enforceability Under CCP § 664.6

The Parties agree that this agreement is fully enforceable under California Code of Civil Procedure section 664.6, and that the Court may enter judgment pursuant to this Agreement under that section, The Parties consent that the Court retain jurisdiction over the Parties to enforce the settlement notwithstanding any dismissals that are filed in the Action, The Parties further agree to request that the Court retain jurisdiction to enforce the settlement, hi any action to enforce this agreement, including a motion filed pursuant to Code of Civil Procedure section 664.6, the prevailing party is entitled to recover attorney's fees and costs incurred in enforcing this agreement against any party that breaches this agreement.

IN WITNESS WHEREOF, the parties have executed this Release on the date set forth below.

CITY OF LA QUINTA

Date: , 2015

By:

Its:

Date: Feb. 5 , 2015

ARCH INSURANCE COMPANY

By: 

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Its: Assistant Vice President

