



Legislation Text

File #: 12-0607, **Version:** 1

Resolution for Approval of Settlement and Change Order #6 for the Construction Contract for the Box Hangar/SRE Building Project at the Ann Arbor Airport with CMA Design/Build Inc. (\$34,218.00)

This Resolution requests approval of change order #6 (copy attached) to the contract with CMA Design/Build Inc., d/b/a CMA Construction Services, Inc. ("CMA") for constructing the box hangars and SRE building at the Ann Arbor Airport which was originally approved by City Council on May 5, 2008. The total amount of the contract approved at that time was \$2,390,000.00. Of this amount, \$1,101,000.00 was for the local portion of the work; the remainder was for work that was funded with state and federal grant funds, including a local share of \$43,135.00.

As CMA failed to complete the project, the City terminated their contract and their bonding company, North American Specialty Insurance Co., stepped in to finish the work. CMA filed a lawsuit against the City requesting payment of a variety of outstanding claims for additional costs. A number of these claims were alleged to be the result of two stop work orders issued by Pittsfield Township during the project because of jurisdictional issues between the City and the Township relative to permits for different aspects of the project. Some of the claims were for changes in work that were valid but never processed for payment by CMA.

One of CMA's subcontractors on the project also filed a lawsuit against CMA, and the subcontractor's claims were assigned to two of its suppliers.

As a result of court ordered mediation, the City was able to settle all claims from the lawsuit through two change orders, one of which also resolves claims against CMA by its subcontractor that were included in CMA's claims against the City. Change order #5 in the amount of \$12,020.00 has been approved administratively because the cost does not exceed the approved contract value of \$1,101,000.00 for the locally funded portion of the project. Change order #6, covered by this Resolution, will exceed the approved contract amount by \$13,912.06 and, therefore, requires Council approval. This amount is well within the project contingency approved by Council so no project budget amendment or appropriation of funds is necessary.

The following additional work was included in change order #6:

- Additional permit expenses from Pittsfield Township
- Work to cover the gap between where DTE ended and the project began
- Winter work costs and other delay costs related to Pittsfield Township stop work orders.

Because the bonding company stepped in to finish the contract, payment of all remaining funds (including these two change orders) will be made directly to the bonding company. This payment arrangement is being memorialized in the terms of the settlement agreement and release for the lawsuit, as outlined in the attached "Settlement Proposal" dated April 23, 2012, and executed by CMA, the City and the bonding company, subject to approval by City Council. Your approval of the settlement terms, as outlined, is requested and is recommended.

The final payment of change orders #5 and #6 in the total amount of \$46,238.00 will resolve all issues in, or that could have been included in, the lawsuit *CMA Design/Build, Inc. v City of Ann Arbor*, Case No. 11-792-CK, and will release the City from any and all claims from the project. CMA will dismiss the lawsuit with prejudice.

All funding for the project, including the final change orders to settle the lawsuit, comes from the approved Airport project budget.

Prepared by: Matthew J. Kulhanek, Fleet & Facilities Manager

Reviewed by: Craig Hupy, Interim Public Services Area Administrator

Approved by: Steven D. Powers, City Administrator

Whereas, The City approved a project budget and construction contract to build box hangars and a snow removal equipment building at the Ann Arbor Airport on May 5, 2008;

Whereas, The City awarded a construction contract for this work to CMA Design/Build Inc., d/b/a CMA Construction Services, Inc.;

Whereas, CMA Design/Build Inc. failed to complete the project which resulted in the City terminating the contract and their bonding company, North American Specialty Insurance Co., stepping in to complete the work;

Whereas, CMA Design/Build Inc. filed a lawsuit against the City , *CMA Design/Build, Inc. v City of Ann Arbor*, Case No. 11-792-CK, for payment of claims for alleged changes to the work and/or additional or extra work;

Whereas, As a result of court ordered mediation the City and CMA Design/Build Inc. reached agreement on settlement of both the lawsuit brought by CMA against the City and claims presented by one of CMA's subcontractors in a separate lawsuit against CMA, some of which were included in the claims by CMA against the City for the total amount of \$46,238.00 to be paid through change orders #5 (\$12,020.00 for the subcontractor claims) and #6 (\$34,218.00 for the remainder of CMA's claims);

Whereas, Change order #5 was approved administratively because the value of the change order does not exceed the approved contract value; and

Whereas, Change order #6 and the settlement require City Council approval because change order #6 increases the approved contract amount by \$13,912.00;

RESOLVED, That change order #6 in the amount of \$34,218.00 be approved as presented;

RESOLVED, That the terms of the settlement agreement, as outlined in the Settlement Proposal dated April 23, 2012, be and is approved;

RESOLVED, That the City Administrator be authorized and directed to execute change order #6 to the construction contract with CMA Design/Build Inc.;

RESOLVED, That the City Attorney and City Administrator be authorized and directed to finalize and execute the settlement agreement and release and to prepare whatever other documents are

required to finalize the settlement and dismissal of *CMA Design/Build, Inc. v City of Ann Arbor*, Case No. 11-792-CK;

RESOLVED, That funding for the approved change order comes from project contingency funds previously approved in the Box Hangar and Snow Removal Equipment Building Project at the Ann Arbor Airport; and

RESOLVED, That the City Administrator be authorized to take the necessary administrative actions to implement this Resolution.