

APPROVED

REPORT OF GENERAL MANAGER

NO. 13 -034

DATE February 20, 2013

FEB 20 2013

C.D. 2

**BOARD OF RECREATION
& PARK COMMISSIONERS**

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: NORTH HOLLYWOOD MULTI-PURPOSE INTERGENERATIONAL CENTER AT TIARA STREET - NEW BUILDING AND LANDSCAPING (PRJ1543B) (W.O. #E170240F) PROJECT -CHANGE ORDER RESULTING FROM A PROPOSED SETTLEMENT OF CONTRACTOR DELAY CLAIMS TO CONTRACT NO. 3352

R. Adams _____
H. Fujita _____
V. Israel _____

K. Regan _____
*M. Shull *[Signature]*
N. Williams _____

as amended

[Signature]
General Manager

Approved _____

Disapproved _____

Withdrawn _____

RECOMMENDATIONS:

That the Board:

General manager of Recreation and Parks

1. Authorize the ~~Department of Public Works, Bureau of Engineering (BOE), City Engineer~~ to enter into a Settlement and Release Agreement, substantially in the form shown in the attached North Hollywood Multipurpose Center Settlement and Release Agreement (SARA, Attachment 2), subject to the approval of the City Attorney as to form;
2. Subsequent to the execution of said Agreement, authorize the City Engineer to negotiate and execute change order(s), in an amount not-to-exceed \$160,000, to settle Landshapes, Inc.'s delay claims through the date of execution of the SARA; and,
3. Authorize a one-time project exception to Board of Recreation and Park Commissioners (Board) policy, to allow the General Manager to issue a cumulative change order(s) in an amount not exceeding 30% of the construction contract value.

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SUMMARY:

The North Hollywood Multi-Purpose Intergenerational Center – New Building and Landscaping (PRJ1543B) (W.O.#E170240F) project, located at 11480 West Tiara Street, Los Angeles, California 91601, is a specified Proposition K project, which is presently in construction. The scope includes the construction of a new 2,100 square foot, one-story, wood framed building with a multi-purpose room, lobby area, storage and equipment rooms, restrooms, staff office/ranger sub-station, and break room. The 1.5 acre site includes: landscaping and outdoor amenities, including a children's play area with rubberized surfacing, decomposed granite walking paths, new turf areas, a trellis, benches, gaming tables, solar-powered lighting, outdoor fitness exercise equipment stations, picnic tables, drinking fountains, landscaping, irrigation, shade structures, perimeter fencing, a trash enclosure, and a new asphalt concrete parking lot.

The Board awarded the North Hollywood Multi-purpose Intergenerational Center - New Building and Landscaping project to the lowest responsive, responsible bidder, Landshapes, Inc., on June 6, 2011 (Board Report No. 11-144) in the amount of \$1,977,700. Construction Contract No. 3352 was executed on June 23, 2011. The Board Office issued the Notice-To-Proceed on August 1, 2011. Landshapes, Inc., mobilized ten days later on August 11, 2011, beginning the first day of the construction project, originally scheduled to last 270 calendar days with an expected completion date of May 6, 2012, followed by a 90 day landscape maintenance period. Landshapes, Inc., is currently projecting to finish the project on April 13, 2013, which is 329 calendar days behind schedule.

The construction project is approximately 87% complete as of the time of writing of this Report. To date, 40 change orders, totaling \$191,329 which represents 9.6% of the construction contract value, have been executed, a normal change order percentage for a project of this size and complexity at this stage of construction completion.

The matter now before the Board is to allow the City Engineer to enter into a Settlement and Release Agreement with Landshapes, Inc., and subsequently, negotiate Change Order No. 53 (Attachment No. 1), in the amount of \$160,000 to settle any and all delay claims made by Landshapes, Inc., to date, with said Settlement and Release Agreement not considered to be an admission by any party to the contract. The amount of said proposed settlement surpasses the authority limit of the General Manager to approve Change Orders, and thus requires Board approval (Board Report No. 06-136).

Change Order No. 53 is the result of negotiations between the Bureau of Engineering (BOE) and Landshapes, Inc., to settle claims arising from disputes regarding financial compensation for alleged time delays and extension of completion for the project. In summary, the original claim revolved around Landshapes, Inc.'s assertions of time delay due to the approval of a soils compaction report and delay due to changes to foundations/footings comprising of additional

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reinforcement to accommodate pipe penetrations. A number of correspondences were exchanged, and over the course of negotiations, it was agreed upon by both parties to enter into a more global Settlement and Release Agreement (SARA) (Attachment No. 2) which resolves all time related delays from the start of the construction project to the time of execution of the SARA. The SARA settles all time impacts associated with (1) All pending change orders currently agreed to with respect to cost but not time, (2) All change order requests currently in negotiation, and (3) All previously denied change order requests that might result in the issuance of a change order. Additionally, the SARA establishes the field office overhead rate to be used for all future change order requests where there is a potential time delay caused by the City, a payment schedule for the time delay, an affirmation that liquidated damages still apply to contractor caused delays from the execution date of the SARA, a mutual agreement on delivery and response time to submittals and request for information (RFIs), and a commitment to holding monthly executive meeting with an effort to partner to complete the project by the agreed upon completion date.

The execution of Change Order No. 53 in a not-to-exceed amount of \$160,000 will bring the to-date cumulative change order total to \$351,703 or 17.7% of the construction contract value. In accordance with Board Report No. 06-136, the General Manager's authority to issue change orders cannot exceed a cumulative amount of 25% of the construction contract value without seeking Board approval. It is recommended for this particular construction contract to make a one-time exception to authorize the General Manager to issue change orders in the cumulative amount to not exceed 30% of the construction contract value. The General Manager will still be required to seek Board authorization for any single change order that exceeds \$100,000 in value. BOE does not foresee that an additional 7.5% in change orders will be issued for this project, which would bring it to the 25% change order limit. However, in order to be efficient at partnering and expediting changes as they occur in the field, this one time project specific exception allows the General Manager and BOE to negotiate and issue change orders without the time delay of returning to the Board for every incremental change order that exceeds 25% of the construction contract value.

Sufficient funds are available from the following fund and account for the change order.

FUNDING SOURCE
Quimby

FUND/DEPT./ACCT. NO
302/89/460K-TS

FISCAL IMPACT STATEMENT:

There is no associated fiscal impact to the Department's General Fund for this Board Report.

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This report was prepared by Gary Lam, Project Manager, Recreation and Cultural Facilities Program, Bureau of Engineering; and reviewed by Neil Drucker, Program Manager, Recreational and Cultural Facilities Program, Bureau of Engineering; Deborah Weintraub, Chief Deputy City Engineer, Bureau of Engineering; and Michael A. Shull, Assistant General Manager, Department of Recreation and Parks.

City of Los Angeles – Department of Public Works – Bureau of Engineering

CHANGE ORDER

Project Title NORTH HOLLYWOOD MULTIPURPOSE CENTER AT TIARA STREET			Project No. 1543B	Change Order No. 53	File No. 8-8-1	Page 1 of 2
Work Order Number E170240F	Contract Number 3352	Bid Item No. N/A	Subject Compensable & Non-compensable Time Extension			
Contractor LANDSHAPES			Plan Reference			
<input type="checkbox"/> Changed/Unforeseen Conditions <input checked="" type="checkbox"/> Errors and Omissions <input type="checkbox"/> Change in Scope		Schedule Activity N/A	Specification Reference N/A			

1. Reason for Change:

This Change Order compensates the Contractor (Landshapes), its subcontractors, and suppliers at all tiers for the net difference of all City and contractor caused delays incurred on the project, in accordance with the terms of the Settlement Agreement executed by the City and Landshapes on February 20, 2013, see attachment.

2. Description of Change:

As part of the Settlement Agreement, the City agreed to compensate Landshapes a lump sum amount of \$160,000.00 for all City caused delays from the start of the project through the date of execution of the Agreement. As a part of the \$160,000 compensation, the City agreed to extend the contract completion date by 172 compensable calendar days (at a field office overhead rate of \$930.23 per calendar day) and 157 non-compensable calendar days for a total time extension to the contract of 329 calendar days.

The Settlement Agreement covers the time impacts of all previously issued change orders, change order requests received, Requests for Information (RFI's), late Submittal reviews, delays due to Permits, etc., identified prior to the date of the Agreement. Since it would be difficult to attribute specific time impacts to each and every delay activity, it was agreed that:

- (1) All pending change orders currently settled with respect to cost, but not time (including CO's #2, 15, 22, 27, 30, 41, 44 and 46);
- (2) All change order requests currently in negotiation (including COR's #5, 9, 11, 26, 29, 38, 39, 48, 49, and 55); and
- (3) All previously denied change order requests that might result in the issuance of a change order(s) (including COR's #46, 50, and 54);

as well as, any other outstanding change order in existence upon execution of the Agreement is covered with respect to time by the Agreement and the Contractor, all subcontractors, and suppliers shall not be entitled to any further compensation for delay or extension of time.

3. Change in Contract Amount:EXTRA COST- AGREED PRICE

ADD (LS)
\$160,000.00

Payment of this Change Order will be as follows:

- 62.5% (\$100,000.00) via separate invoice with January 2013 progress payment.
- 12.5% (\$20,000.00) via separate invoice with February 2013 progress payment.
- 12.5% (\$20,000.00) via separate invoice with March 2013 progress payment.
- 12.5% (\$20,000.00) via separate invoice with April 2013 progress payment.

CHANGE ORDER

Project Title NORTH HOLLYWOOD MULTIPURPOSE CENTER AT TIARA STREET			Project No. 1543B	Change Order No. 53	File No. 8-8-1	Page 2 of 2
Work Order Number E170240F	Contract Number 3352	Bid Item No. N/A	Subject Compensable & Non-compensable Time Extension			
Contractor LANDSHAPES			Plan Reference			
<input type="checkbox"/> Changed/Unforeseen Conditions <input checked="" type="checkbox"/> Errors and Omissions <input type="checkbox"/> Change in Scope		Schedule Activity N/A	Specification Reference N/A			

4. Change in Contract Duration:

The CPM activity number for this change order is "CO 053."

The activity description is "Time Extension Thru April 13, 2013."

The duration for this activity is 329 calendar days.

The predecessor and successor activities are ID # 11400 (FS) and ID #11410 (FS), respectively.

Extend Activity ID #11410 "MS#2 Final Completion" from May 6, 2012 to April 13, 2013.

Cost and Schedule Control Summary

Original Contract Amount	\$ 1,977,700.00	Original Contract Duration	270	Calendar Days
Previous C.O.'s Add/(Deduct)	\$ 181,380.00	Previous C.O.'s Add/(Deduct)	7	Calendar Days
This C.O. Add/(Deduct)	\$ 160,000.00	This C.O. Add/(Deduct)	329	Calendar Days
Revised Contract Amount	\$ 2,319,080.00	Revised Contract Duration	606	Calendar Days
<input checked="" type="checkbox"/> B&A <input type="checkbox"/> Emergency Contract		Revised Contract Completion Date	4/13/13	

The compensation (time and cost) set forth in this Change Order comprises the total compensation due the CONTRACTOR, all Subcontractors, and all Suppliers, for the work or change defined in this Change Order, including impact on the unchanged work. By signing the Change Order, the CONTRACTOR acknowledges and agrees on behalf of himself, all Subcontractors, and all Suppliers, that the stipulated compensation includes payment for all work contained in the Change Order, plus all payment interruptions of schedules, extended field overhead costs, delay, and all impact, ripple effect or cumulative impact on all other work under this Contract. The signing of the Change Order indicates that the Change Order constitutes full mutual accord and satisfaction for the change, and that the time and cost under the Change Order constitutes the total equitable adjustment owed the CONTRACTOR, all Subcontractors, and all Suppliers, as a result of the change. The CONTRACTOR on behalf of himself, all Subcontractors, and all Suppliers, agrees to waive all rights, without exception or reservation of any whatsoever to file any further claim related to this Change Order. No further claim or request for equitable adjustment of any type shall rise out of or as a result of this Change Order or the impact of this Change Order on the remainder of the work under this Contract.

SUBMITTED BY: _____
CONSTRUCTION MANAGER

DATE: _____

APPROVED BY: _____
CONTRACTOR

DATE: _____

APPROVED BY: _____
SENIOR OR PRINCIPAL ENGINEER

DATE: _____

North Hollywood Multi-Purpose Center

SETTLEMENT AND RELEASE AGREEMENT

Landshapes and the City of Los Angeles, a municipal corporation, hereinafter referred to as "City," in consideration of the terms, covenants and conditions set forth herein, agree as follows. Landshapes and City may be referred to herein individually as a "Party" or collectively as "Parties."

RECITALS

A. Nature and Effect of Agreement

This settlement and release agreement (the "Settlement Agreement") constitutes a compromise and settlement by the Parties, of Landshapes demands as presented to the City arising from the disputes described in Paragraph B and a release given by Landshapes to City relinquishing any and all claims related to disputes described in Paragraph B. By executing this Settlement Agreement, each of the Parties intends to and does hereby extinguish the obligations, if any, heretofore existing between them in relation to, and arising from, those disputes. This Settlement Agreement is not, and shall not be deemed to be, an admission by either Party for any purpose.

The City and Landshapes, with Landshapes representing all subcontractors and suppliers at all tiers on Contract No. C-3352, further hereby agree that all outstanding Change Order Requests (COR), claims, and Requests for Equitable Adjustment (REA) seeking compensation for delays caused by the City relative to the "North Hollywood Multi-Purpose Center at Tiara Street" project through the date of execution of this Settlement Agreement are hereby resolved through the execution of this Settlement Agreement.

B. Nature and Status of Disputes

i. Construction of North Hollywood Multi-purpose Intergenerational Center

The Board of Recreation and Parks, hereinafter referred to as "Board," awarded the North Hollywood Multi-purpose Intergenerational Center – New Building and Landscaping project to the lowest responsive, responsible bidder, Landshapes, on June 6, 2011 (BR No. 11-144) in the amount of \$1,977,700. Construction Contract No. 3352, hereinafter referred to as "Contract," was executed on June 23, 2011. The Board Office issued the Notice-to-Proceed on August 1, 2011. Landshapes mobilized ten days later on August 11, 2011, beginning the first day of the construction project, originally scheduled to last 270 calendar days with an expected completion date of May 6, 2012, followed by a 90 day landscape maintenance period. This completion date was extended to May 13, 2012 via Change Order #1.

Since commencement of this project, Landshapes has submitted two Time Impact Analysis' (TIA) as well as other claims seeking financial compensation for delays, as well as time extension for the completion of this project. Per Landshapes current schedule, the completion of the Contract work will be delayed by 329 calendar days, resulting in a revised contract completion date of April 13, 2013, followed by a 90-calendar day maintenance period.

SETTLEMENT TERMS

1. Delays. The City agrees to compensate Landshapes in the amount of \$160,000.00 which constitutes the final negotiated settlement for the contractor and all subcontractors and suppliers, for all time impact related costs resulting from this project, including Landshapes' Time Impact Analysis (TIA) #1, dated March 12, 2012, Time Impact Analysis (TIA) #2, dated November 15, 2012, and any other outstanding claims relating to time impact in existence at the time the Settlement Agreement is executed. The City further agrees to extend the contract completion date by 329 calendar days to April 13, 2013. Landshapes and all subcontractors and suppliers agree to waive any and all rights of claims and protests of, or related to, Contract No. C-3352 regarding time for matters occurring, up to, and including the date of execution of this Settlement Agreement.

2. Pending Change Orders & Request for Change Orders. The purpose of this Agreement is to settle all claims for time impacts and delays associated with all known change orders to date (including change order numbers 1 through 54); all submitted change order requests to date (including change order request numbers 1 through 55); and all other time impacts and delays associated with items or issues known to date (including RFI's, Submittals, Permits, etc.), but not captured by a change order request or change order as of the date of execution of this Agreement. The time impacts of any new issues that arise after the date of execution of this Agreement, which extend the contract completion date beyond April 13, 2013, are not covered by this Agreement, and will be resolved on their own merits.

3. Future Change Orders. For future change order requests with potential time delays that would impact the project's critical path and extend the contract completion date beyond April 13, 2013, Landshapes agrees to submitting a full and complete TIA with each proposal in accordance with the contract requirements, within 2 weeks of each proposal request. The City agrees to review and settle the time impacts of the proposed change order in a timely manner, and to extend the contract completion date, if so warranted, with the issuance of the change order.

4. Field Office Overhead Rate. Landshapes and the City agree to use a field office overhead rate for Landshapes of \$930.23 per calendar day for all future change orders that include a compensable time extension.

5. Liquidated Damages. As part of this Agreement, the City will not seek Liquidated Damages for any delay occurring between commencement of the construction project, and April 13, 2013. Beginning with the April 1, 2013 progress payment, the City will withhold monies due on each progress payment for Liquidated Damages, in the amount of \$1,500.00 per calendar day, for any delays to the project's completion date of April 13, 2013, that is not justified by a change order.

6. Payment. City shall pay Landshapes 62.5 percent (62.5%) of the agreed settlement amount with the January 2012 progress payment, but in turn requires that Landshapes prepare a separate invoice for this 62.5 percent (62.5%) of the settlement amount. Landshapes will then submit separate invoices for 12.5 percent (12.5%) of the agreed settlement amount with each subsequent progress payments requests for February, March, and April 2013, each of which shall be paid within thirty (30) days of an approved submission.

7. Project Schedule. Within one week of execution of this Agreement, Landshapes and the City agree to jointly develop an acceptable "schedule to complete" that shows a project completion date of April 13, 2013, followed by a 90-day maintenance period. This schedule will be updated weekly by Landshapes, used as the two-week look-ahead schedule for the project, and discussed at the weekly progress meetings. It is agreed that all previously raised delays and time impacts are covered and settled by this Agreement and no further monthly updates for past schedules are required. Landshapes will be required to submit monthly schedule updates for the new "schedule to complete" in a Bar Chart format that consists of a listing of the remaining tasks with projected end dates and critical path logic ties. The City commits to reviewing such submittals within seven (7) working days.

The landscaping establishment and maintenance periods will remain as per the original contract, with a 49-day establishment period during construction, followed by a 90-day maintenance period after final field acceptance of the project by the BCA Inspector.

8. Pending Submittals. Landshapes agrees to furnish all remaining submittals for the project by February 15, 2013. The City commits to reviewing and responding in writing each submittal within seven (7) working days.

9. Future Requests for Information (RFI's). Landshapes agrees to give as much advance notice as possible on future RFI's, and commits to providing RFI's at least three (3) days in advance whenever feasible. The City commits to returning comments on RFI's within three (3) working days. If the RFI is urgent, the City commits to responding within one (1) working day, except where such RFI is received on a Friday or the day prior to a holiday.

10. Executive Monthly Meeting. City and Landshapes agree to hold an executive monthly meeting the second Tuesday of each month, beginning February 2013 and concluding April 2013. If the project is delayed for any reason, subsequent monthly meetings will be held, as necessary, until completion of the project. The meetings will be held from 9:30 am to 10:30 am at the project site, 11480 Tiara Street, North Hollywood.

11. Partnering. The City and Landshapes agree to partner and work together through open and honest communication, mutual respect, trust, and cooperation to complete this project by no later than April 13, 2013. The City and Landshapes also commit to maintaining focus on continuing the work necessary to complete the project within the April 13, 2013 timeframe, maintaining a cooperative and positive attitude, and resolving issues in a fair and timely manner, as per the Project Issues Resolution Ladder process.

12. Mutual Release. Landshapes hereby compromises, settles, releases and relinquishes any and all past, or present claims, demands, obligations, or causes of action for amounts owed or claimed to be owed, compensatory or punitive damages, costs, losses, expenses, and compensation, whether based on tort, contract, or other theories of recovery, that Landshapes now has or may hereafter have against City, City's predecessors and successors in interest, and City's boards, officers, agents, and employees, as of the Effective Date arising from or in any way related to the disputes referred to herein, and agrees that this compromise and settlement shall constitute a release and a bar to all such claims. This release set forth in this Section does not apply to new matters that may arise in the future that are not related to the disputes referred to herein.

City hereby compromises, settles, releases and relinquishes any and all past, or present claims, demands, obligations, or causes of action for amounts owed or claimed to be owed, compensatory or punitive damages, costs, losses, expenses, and compensation, whether based on tort, contract, or other theories of recovery, that City now has or may hereafter have against Landshapes, Landshapes predecessors and successors in interest, and Landshapes boards, officers, agents, and employees, as of the Effective Date arising from or in any way related to the disputes referred to herein, and agrees that this compromise and settlement shall constitute a release and a bar to all such claims. This release set forth in this Section does not apply to new matters that may arise in the future that are not related to the disputes referred to herein. Notwithstanding the foregoing, this release does not waive the direct costs and associated mark-up claims from any change order requests previously denied or not yet executed. Additionally, bond and insurance costs are excluded from this release pursuant to Division 01-General Requirements 27.11, and 2.

- (a) Parties acknowledge and agree that the settlement, release and discharge provided in this Settlement Agreement applies to any and all claims for injuries, damages, or losses to each party, its officers, agents, and employees, and to its property, real or personal (whether those injuries, damages, or losses are known or unknown, foreseen or unforeseen, or patent or latent) that each party may have against one another arising from the disputes referred to herein, and parties hereby waive application of California Civil Code Section 1542, which states:

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

13. Indemnification. Landshapes undertakes and agrees to defend, indemnify, and hold harmless the City of Los Angeles and any of its boards, officers, agents, employees, assigns and successors in interest, from and against all suits and causes of action, claims, losses, demands, and expenses, including, but not limited to, attorneys’ fees and costs of litigation, damage or liability of any nature whatsoever arising in any manner by reason of or incident to its performance of the contract between the City of Los Angeles and Landshapes or its sub-contractors, as they pertain to Contract Number C-3352.

14. Conditions of Execution. Each Party acknowledges and warrants that its execution of this settlement and release is free and voluntary.

15. Entire Agreement. This Settlement Agreement contains the entire agreement between the parties.

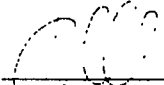
16. Effective Date. This Settlement Agreement shall become effective immediately on execution by Landshapes and City. Venue over any disputes arising from or related to the terms and conditions, or performance of, this Settlement Agreement shall lie in the State of California, County of Los Angeles.

17. Governing Law. This Settlement Agreement is entered into, and shall be construed and interpreted, in accordance with the laws of the State of California.

This Agreement does not limit or void any liability or obligations included in the contract documents. All provisions of the Contract shall remain in effect.

THE UNDERSIGNED HEREBY DECLARE (S) THAT THIS SETTLEMENT AND RELEASE HAS BEEN CAREFULLY READ AND IS FULLY UNDERSTOOD. The Parties hereto have caused this Settlement Agreement to be executed by their respective duly authorized representatives.

LANDSHAPES

By: 

Cynthia Lee
Partner

Date: 2-5-13

CARMEN A. TRUTANICH, City Attorney

THE CITY OF LOS ANGELES

By: _____
Daniel W. Kreinbring
Deputy City Attorney

By: _____
Deborah Weintraub
Department of Public Works

Date: _____

Date: _____