

130509



To Mayor
6/16/15

1940.15-1

May 21, 2015

MEMORANDUM

06/01/15 15:32:55
Procurement Division

TO: James R. McCain, Jr.
Corporation Secretary/Assistant General Counsel

THROUGH: C. Ronald Belton, Assistant to the Mayor/Chief Financial Officer

FROM: Thomas G. McKnight *TG* *TK*
Capital Improvement Construction Manager

SUBJECT: Paul Avenue Drainage Outfall Improvements
Contractor: Besch & Smith Civil Group, Inc.
Contract No: 9889

Forwarded herewith for execution is Change Order No. 3 for subject project.

Original Contract Amount	\$529,802.68
Previous Change Order No. 1-2	\$42,104.70
Change Order No. 3	\$8,814.66
Total Revised Contract Amount.....	\$580,722.04
Account Number	See attached

This office recommends the Change Order be approved by your office, the Office of General Counsel, and Mayor Brown, in accordance with Executive Order No. 13-05.

- Attachments: 1. Change Order
2. Back-up Information
3. Legal Request Memorandum

TGM:lw



CHANGE ORDER TRACKING SHEET

Description of Project	Paul Ave Drainage Outfall Imp.	
Change Order Number	3	PLEASE KEEP THIS FORM WITH THE ATTACHED CHANGE ORDER
Contract Number	9889	

	Action	Date Received	Date Signed	Date Forwarded	Signature	Days
1	Date Initiated	N/A	N/A	5/14		
1A						
2	Contractor Execution		5/14			
3	Construction Management	5/7				
4	Using Agency	5/14/15	5/18/15	5/18/15	[Signature]	4
5	JEA (if applicable)					
6	City Engineer	5/21/15	5/21			
7	C/O Review	5/21/15	5/21/15			
8	Director of Public Works	5/21	5/21			
9	Admin/Finance Clerk	5/29	5/29	5/29	[Signature]	
10	Buyer	6/1	6/2	6/2	[Signature]	
11	Chief of Procurement					
12	Director Finance					
13	Asst. General Counsel					
14	CAO/Mayor					
15	Asst. General Counsel					
	Total Processing Days:					

Attention Change Order reviewers and signatories:
 Please assist in expediting this change order by reviewing, signing, and forwarding immediately to the next step. Thank you in advance for your efforts to reduce contract change order processing times.

James M. Robinson, P.E.
 Director of Public Works

CITY OF JACKSONVILLE
DEPARTMENT OF PUBLIC WORKS
ENGINEERING DIVISION
CONSTRUCTION CHANGE ORDER

Change Order No. Three (3) Date November 21, 2014

Description of Project Paul Avenue Drainage Outfall Improvements

Name of Contractor Besch & Smith Civil Group, Inc.

Contractor's Address 345 Cumberland Industrial Court, St. Augustine, FL 32095

Contract No. 9889

Account No. PWCP462SD-06505-PW0446-01 Original Contract \$529,802.68 ✓

+ Previous Change Orders 1-2 \$42,104.70 ✓ + Change Order No. 3 \$8,814.66 ✓

*See attached appendix for additional listings.

Bid Number CP-0006-13 TOTAL REVISED CONTRACT \$580,722.04 ✓

Original Construction Completion Date February 3, 2014

Revised Construction Completion Date June 9, 2014

Original Contract Expiration Date June 3, 2014

Revised Contract Expiration Date July 14, 2015

In compliance with General Conditions of above-referenced contract, CONTRACTOR and OWNER do both hereby agree that the CONTRACTOR shall make the following changes, additions or deletions to the Work specified in the plans and specifications: See attached. CONTRACTOR and OWNER further agree that this change order represents the final change order for this Project and therefore CONTRACTOR expressly releases and waives any request, action, or legal claim for any additional compensation for work performed, materials, or other costs related to the Project which are not included in this change order. Add 280 non compensable calendar days to contract expiration date.

Justification: See attached.

The Issuing Authority has looked over cost and pricing data for this change order and has determined that this change order is necessary and all costs are reasonable.

Accepted for Contractor Besch & Smith Civil Group, Inc/

Signed Nicole Besch Attest Eddie Smith

Title President Title Vice President

Date 5/6/15 Date 5/6/15

Signed Construction Management By Thomas G. McKnight 5.11.15

Issuing Authority Capital Improvement Construction Manager

Signed Right-of-Way and Grounds Maintenance By Mark Lytle 5-18-15

Using Division Div/Department Head

Chief Engineering & Construction Mgmt Div William D. [Signature] 5/21/15 Assistant Counsel James R. McCaig 6-8-15

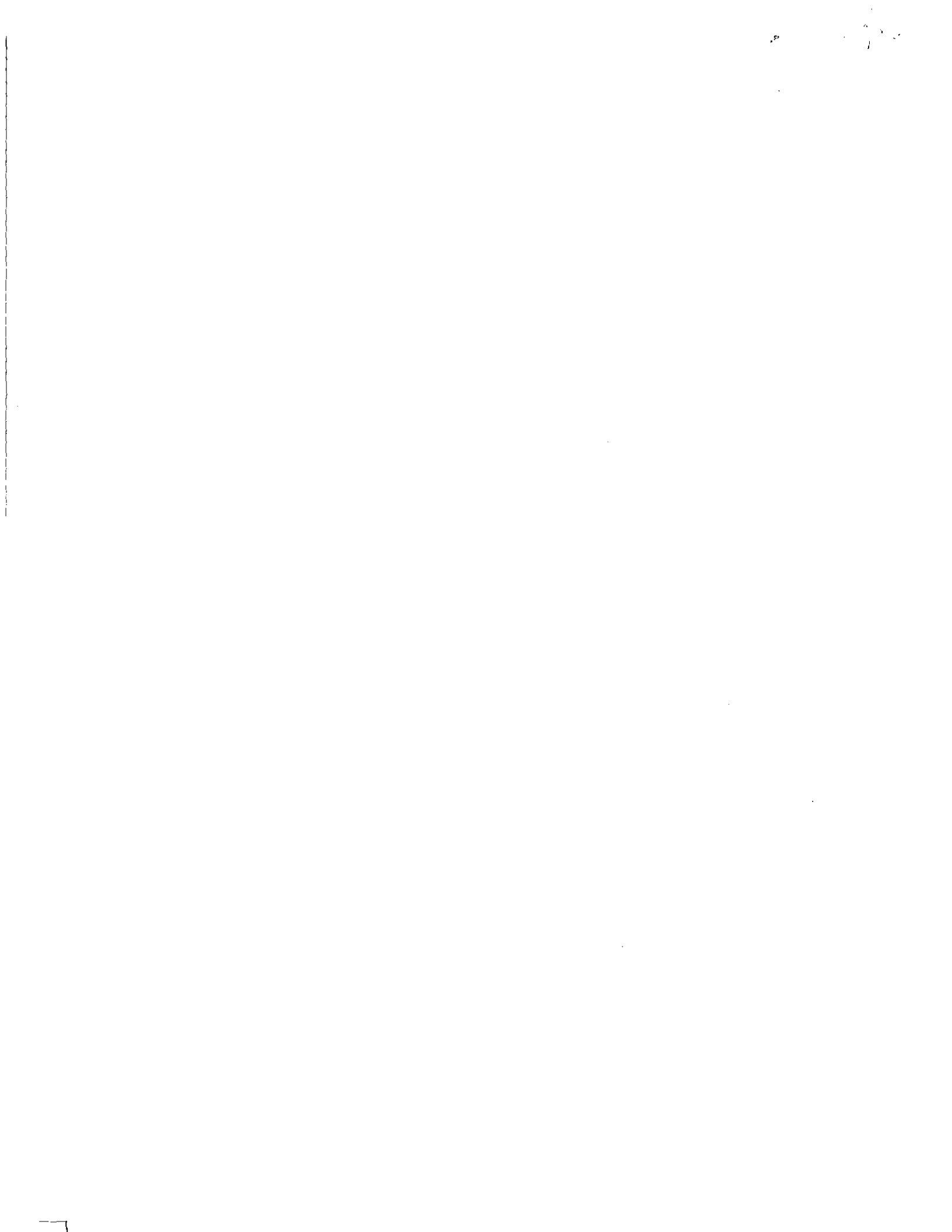
Director of Public Works [Signature] 5/21/15 Mayor Alvin Brown 6/15/15

Chief of Procurement [Signature] 6/9/15 Corporation Secretary James R. McCaig 6-16-15

Director of Finance C. Ronald Peltier 6/15/15 Cleveland Ferguson III
Deputy Chief Administrative Office
For: Mayor Alvin Brown
Under Authority of:
Executive Order No. 2015-01



9889 c/o 3
AB



CITY CONSTRUCTION DISPUTE REVIEW BOARD

IN RE: PAUL AVENUE DRAINAGE OUTFALL IMPROVEMENTS
Contract No.: 9889

CLAIMANT: Besch & Smith Civil Group, Inc.

The above-captioned cause came on for hearing before the City Construction Dispute Review Board (the "Board") on Wednesday, March 4, 2015. Claimant, Besch & Smith Civil Group, Inc. ("Claimant" or "CONTRACTOR") appeared through Eddie and Nicole Smith. Respondent, City of Jacksonville ("Respondent" or "City") appeared and was represented by Chris Garrett, Assistant General Counsel. The Board members present were Chairman William Joyce, P.E.; Ron Price, P.E.; Gary Sneddon, P.E.; and Michael B. Wedner, Senior Assistant General Counsel.

The principal issues before the Board concerned erosion problems on the captioned Project. That Project concerned excavating, widening and realignment of a drainage ditch that had been in place for a good 50-60 years. It was widened from five feet to eight feet, and its outer edge was moved during the work to within five feet of the existing buildings.

The costs in issue were incurred after substantial completion of the project. The problem to be fixed was that sod kept getting undermined and washing out, principally due to the presence of multiple downspouts from buildings at the site which generated high flows. Significantly, the downspouts were not shown on the plans for the project. Other adverse factors were overgrown conditions within the ditch, and a narrow work space.

During Claimant's attempts to address the problem, the Claimant sent a request for information to the City, and there was a considerable delay in the City responding. This allowed the conditions to degenerate. While the City provided some testimony that the delay in response did not take the entire 94 days claimed by the Claimant, the more persuasive and convincing evidence shows that the delay in response nevertheless was substantial and did contribute to the erosion worsening.

There were significant issues and difficulties in evaluating the Claimant's claim. Invoices regarding the erosion repairs were not provided. Little information showed when various aspects of the repair work was done. Few specifics were provided as to pegging of the sodding placed, and no documentation was provided as to the prices and costs Claimant incurred. For instance, no unit price for cubic yards of fill was brought before the Board. Rather, single sums were stated with insufficient supporting documentation.

It appears from the evidence received that Claimant attempted to remedy the erosion problems on seven different occasions. Ultimately, a suitable end treatment was determined which included affixing flexible pipe to roof drains and going to the ditch. The documentation provided does not specifically indicate particulars as to each of the seven respective cures attempted, such as which materials and techniques were utilized on each occasion, and at what places.

Several provisions in the general conditions for the project apply to this situation.

Section 20.11.4, provides in pertinent part:

"The CONTRACTOR assumes full responsibility for having familiarized itself with the nature and extent of the Contract Documents, Work, locality, and local conditions that may in any manner affect the work to be done."

In this instance, that would entail seeing and considering the presence of the numerous downspouts which were not reflected on the project drawings.

Similarly, Section 20.31.1, provides in pertinent part:

"The CONTRACTOR shall supervise and direct the work efficiently and with its best skill and attention and shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. It shall be the CONTRACTOR'S responsibility to carefully study and compare the Contract Documents and to check and verify all figures shown thereon and all field measurements."

In addition, Section 20.15.1 requires that the CONTRACTOR was to provide the ENGINEER certified copies of test results of materials or articles to be incorporated in the work for approval. So it was also as to samples of the materials being submitted for approval. This was not done, and there was some conflicting testimony as to the suitability of the materials at the hearing.

Further, Section 20.65.1 addresses prevention, control and abatement of erosion and water pollution. It places upon the CONTRACTOR the obligation to take additional steps and make suitable provisions to minimize siltation and erosion, and to prepare and submit a turbidity control plan in detail to the ENGINEER for approval. Such plan was not prepared and submitted based upon the matters brought before the Board for consideration.

It appears nothing was placed around the downspouts for temporary control during construction, such as hay bales, rocks, gravel, geogrid or plastic tubes. The plastic tubes solution was not hit upon until late in the remedial efforts.

Based on the information provided to the Board, it appears the Claimant submitted an unduly low bid for erosion control (\$820.98). On a job of this nature, however, it would be normal to see from 2.5% to 5% being bid for erosion control. Using a 4% figure would have indicated \$22,000 should have been included. This tends to support the notion that the CONTRACTOR substantially under-evaluated the amount of erosion control which would be required, given the presence of the multiple downspouts and the fact that the edge of the ditch was being moved much closer to the existing buildings.

The evidence before the Board indicates neither the Claimant nor the City gave adequate

consideration to the presence and complications introduced relating to the downspouts. As indicated, the downspouts were not shown on the pertinent drawings, and the City took a considerable amount of time in responding to Claimant's inquiries on how to deal with the problem. This Board concluded that the designer should have seen and done something more on the Project drawings about the downspouts, which likely could have prevented or at least yielded a much quicker resolution of the erosion problems.

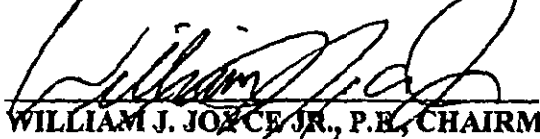
The Board further determined there is responsibility for the difficulties upon both the Claimant and the City. It should not have taken seven times to hit upon an appropriate solution. In the Board's view, the City should bear a responsibility for the costs incurred as to three of the seven incidents, and the CONTRACTOR should bear the responsibility for the four others. In addition, the City did receive benefit from the CONTRACTOR providing to the City 100% of the sod used by virtue of sod being reused in the repairs, as opposed to being hauled off entirely. Because insufficient supporting information and receipts to document costs were provided by the Claimant, the Board applied figures based upon categories bid, such as for crew costs, amount of time for each respective necessary repair, and hourly rates multiplied by the number of hours which should have been sufficient. Based on those computations, the Board determined that the City should bear responsibility as to the repairs made necessary in the total amount of \$7,810.66. In addition, the CONTRACTOR should receive \$1,004.00 for the value of sod the City received. That yields a City responsibility of \$8,814.66 to be paid to the CONTRACTOR.

Based upon similar calculations, the CONTRACTOR is responsible for four of the seven episodes, at a cost amounting to \$10,414.22. The Claimant's and the City's respective amounts total \$19,228.88, which the Board concluded would be a reasonable basis upon which to address the present controversy.

In light of the above, the Board recommends awarding the Claimant \$8,814.66 (\$7,810.66 + \$1,004.00) for the extra work necessitated to solve the erosion problems at the site following the City's determination that the Claimant had substantially performed its contract obligations.

Unanimously approved and respectfully submitted this 17 day of April, 2015, nunc pro tunc as of the date of oral rendering on March 4, 2015.

CITY CONSTRUCTION DISPUTE REVIEW BOARD


WILLIAM J. JOYCE JR., P.E., CHAIRMAN

Copies to:
Eddie and Nicole Smith, Besch & Smith Civil Group, Inc.
Christopher M. Garrett, Assistant General Counsel

