



AGENDA REPORT

Meeting Date: December 21, 2010

Item Number: F-25

To: Honorable Mayor & City Council

From: Ara Maloyan, Deputy City Engineer *M*
Anne Zaworski, Principal Civil Engineer *AZ*

Subject: APPROVAL OF CLOSE-OUT AGREEMENT DATED DECEMBER 21, 2010 BETWEEN THE CITY OF BEVERLY HILLS AND SEMA CONSTRUCTION, INC.; AND
ACCEPTANCE OF THE CONTRACT WORK FOR THE REPLACEMENT OF COLDWATER CAÑON RESERVOIR BY SEMA CONSTRUCTION, INC. IN THE FINAL AMOUNT OF \$23,160,292.82 AND AUTHORIZATION OF CITY CLERK TO RECORD NOTICE OF COMPLETION

Attachments:

1. Close-Out Agreement dated December 21, 2010
2. Notice of Completion
3. Aerial Photo

RECOMMENDATION

Staff recommends that the "City Council move to approve the attached Close-Out Agreement, accept the described work with SEMA Construction, Inc. (SEMA) and authorize the City Clerk to record the attached Notice of Completion".

INTRODUCTION

This report provides information to the City Council for approval of the Project Close-Out Agreement, acceptance of the contract work in the final amount of \$23,160,292.82 and authorization for the recordation of the Notice of Completion by the City Clerk with Los Angeles County Recorder.

DISCUSSION

On February 6, 2007, a contract was awarded to SEMA on the basis of sealed competitive bids received from pre-qualified bidders (in accordance with §20101 of the Public Contract Code) for the Replacement of Coldwater Cañon Reservoir Replacement Project. Construction commenced May 14, 2007.

The core objective of the Coldwater Cañon Reservoir Replacement project was to replace the existing eighty-two year old 7.25 million gallon (MG) potable water reservoir

with a new 8.3MG reservoir and construct a neighborhood passive park on the roof of this new buried reservoir.

Construction on the Coldwater Cañon Reservoir Replacement Project was substantially completed in June 2010. However, it has taken almost five months to complete the final comprehensive punch list. At this time, City staff, Black and Veatch Corporation (project deputy inspectors), and Tetra Tech, Inc. (project design engineers), have inspected the work and have assured that the work has been completed according to the plans and specifications approved for this project.

FISCAL IMPACT

The original contract construction purchase order, which included a \$1,805,650 contingency allowance, was \$24,262,150. Construction change orders in the amount of \$807,331.05 and the deletion of bid items in the amount of \$103,538.23 resulted in an increase in expenditures of \$703,792.82. Therefore, the total revised contract amount is \$23,160,292.82 as noted below.

Original Contract Amount (Incl. Change Order No. 1)	\$ 22,456,500.00
Change Orders 2-39	<u>\$ 807,331.05</u>
	\$ 23,263,831.05
Deleted Bid Items	<u>(\$ 103,538.23)</u>
Final Contract Amount	\$ 23,160,292.82

Change Order No. 1 in the amount of \$400,000 (approved by Council at the same meeting at which the construction contract was awarded on February 6, 2007) covered SEMA's anticipated costs associated with delaying the start time of all hauling activities for the project from 8:00 am as was indicated on the contract documents to 9:00 am as was dictated by the Final Environmental Impact Report.

Change Order Nos. 2-38 covered unanticipated costs associated with changes to the plans/design; changed field conditions; additional water quality analyzing stations; and increased State and County sales and use taxes. Change Order No. 39 (the last and final change order) in the amount of \$325,000 was processed in conjunction with the attached Close-Out Agreement to settle all disputed claims that were outstanding at the end of the project. All of the aforementioned Change Orders amounted to approximately 3.6% of the original contract amount.

The current amount paid to SEMA on the contract is \$21,995,195.13 with a 5% retention of \$1,165,097.69, due to be paid 35 days after the recordation of the Notice of Completion.

The City funds for this project were provided from the "Replace Coldwater Cañon Reservoir" account, which was funded by a combination of Water Enterprise and Bond (07-R-12266) monies.

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ACCOUNT NUMBER	FUNDING SOURCE	AMOUNT PAID	RETENTION EARNED	P.O. BALANCE
35-80-0576-85040	Water Enterprise and 07-R-12266 monies	\$ 21,995,195.13	\$ 1,165,097.69	\$ 1,101,857.18
TOTALS		\$ 21,995,195.13	\$ 1,165,097.69	\$ 1,101,857.18



David Gustavson
Approved By

Attachment 1

CLOSE-OUT AGREEMENT

THIS CLOSE-OUT AGREEMENT (this "Agreement") is entered into as of _____, 2010, by and between THE CITY OF BEVERLY HILLS, a California municipal corporation ("City"), and SEMA CONSTRUCTION INC., a California corporation ("Sema").

R E C I T A L S:

A. City and Sema entered into that certain Agreement dated February 6, 2007 (including any and all amendments thereto, the "Construction Contract").

B. Except as expressly provided below, City and Sema intend to settle all Sema claims against City under or in connection with the Construction Contract, and terminate the obligations of City under the Construction Contract.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

A G R E E M E N T:

1. Settlement of Disputed Claims; Close-Out Payment. Within ten (10) business days after the execution and delivery of this Agreement by City and Sema and the delivery by Sema to City of final lien releases from all Sema subcontractors (including, without limitation, architects, engineers, and consultants) engaged by Sema in connection with the work described in the Construction Contract which are conditioned only upon payment of the sum specified therein and which are otherwise satisfactory to City, City shall deliver to Sema a check in the amount of Three Hundred Twenty-Five Thousand and 00/100 Dollars (\$325,000.00), made payable to "Sema Construction Inc.", by Federal Express to Sema Construction Inc., 6 Orchard, Suite 150, Lake Forest, CA 92630, Attn: Bradley J. Spies (the "Close Out Payment"). Sema hereby stipulates and agrees that the Close Out Payment represents City's full and complete satisfaction of all obligations of City to Sema under or pursuant to the Construction Contract, including, without limitation, any claims Sema has asserted against City, and any claims Sema may still have but has not yet asserted against City, but excluding any obligation the City may have to release to Sema the \$1,165,097.69 of funds held in Escrow Account No. 119289000 at U.S. Bank National Association (the "Excluded Obligation").

2. Release. Sema hereby irrevocably agrees that upon City's delivery of the Close-Out Payment, City and its officers, directors, agents, representatives and employees, shall be automatically released from all claims, causes of action, demands, damages, liens, liabilities, losses, costs and expenses (including reasonable attorneys' fees) arising under the Construction Contract or related directly or indirectly to the project or work described therein (the "Sema Release"), excluding the Excluded Obligation.

3. California Civil Code Section 1542. Sema waives all rights and benefits that would otherwise be provided to it by the provisions of California Civil Code Section 1542 with respect to the Sema Release. California Civil Code Section 1542 provides that:

“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.”

In connection with such waiver, Sema acknowledges that it may later discover facts different from, or in addition to, those that it knows, or believes, to be true with respect to the Sema Release, and it agrees that, in such event, the Sema Release shall nevertheless remain effective in all respects notwithstanding the discovery of such different or additional facts.

4. Entire Agreement; Amendments. This Agreement is the entire, integrated agreement between City and Sema with respect to the subject matter hereof, and supersedes all prior and contemporaneous oral and written agreements and discussions. This Agreement may be amended only by an agreement in writing signed by the parties.

5. Governing Law. This Agreement shall be construed in accordance with the laws of the State of California.

6. Attorneys' Fees. In the event of litigation directly or indirectly arising out of or related to this Agreement, the prevailing party shall be entitled to have its attorneys' fees, costs and expenses paid by the non-prevailing party.

7. Interpretation. The terms and provisions of this Agreement shall be interpreted according to their fair meaning and shall not be interpreted for or against either party on the basis of draftsmanship because the parties have cooperated in the drafting and preparation of this Agreement.

8. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

9. Further Assurances. Each party shall execute and deliver such additional documents and other assurances, and shall do such additional acts and things, reasonably necessary in connection with the performance of its obligations hereunder and to carry out the intent of the parties.

10. Successors and Assigns. Neither party may assign its rights or delegate its obligations under this Agreement, in whole or in part. Except for the foregoing, each of the terms and provisions contained herein shall inure to the benefit of, and shall be binding upon, the parties and their respective heirs, personal representatives, successors and assigns.

11. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and when taken together shall constitute one agreement, which shall be binding upon, and effective against, the parties.

IN WITNESS WHEREOF, City and Sema have executed this Close-Out Agreement as of the date first above written.

CITY:

CITY OF BEVERLY HILLS,
a California municipal corporation

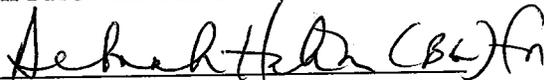
By: _____

JIMMY DELSHAD,
Mayor

ATTEST:

BYRON POPE,
City Clerk

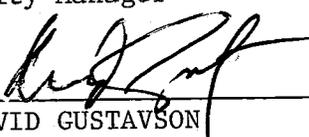
APPROVED AS TO FORM:



LAURENCE S. WIENER,
City Attorney

APPROVED AS TO CONTENT:

JEFFREY KOLIN
City Manager

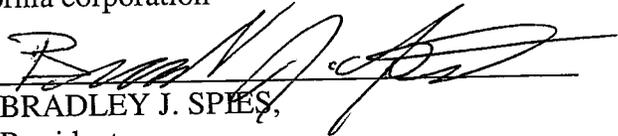


DAVID GUSTAVSON
Director of Public Works &
Transportation

SEMA:

SEMA CONSTRUCTION INC.,
a California corporation

By: _____


BRADLEY J. SPIES,
President

By: _____


STEVEN R. GRAVES,
Secretary

STATE OF Colorado

COUNTY OF Arapahoe

} ss.

On 13th of December, 2010, before me, Stavon R. Graves

Bradley J. Spies and

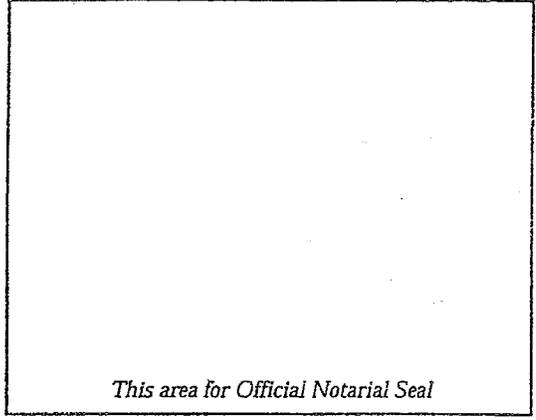
PERSONALLY APPEARED _____

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature [Handwritten Signature]

My Commission expires 9/28/13



This area for Official Notarial Seal

Attachment 2

THIS DOCUMENT IS OFFICIAL BUSINESS
OF THE CITY OF BEVERLY HILLS AND
ENTITLED TO FREE RECORDING UNDER
SECTION 6103 OF THE GOVERNMENT CODE

Requested by _____

AFTER RECORDING MAIL TO:

CITY CLERK'S OFFICE
Room 290, City Hall
455 North Rexford Drive
Beverly Hills, CA 90210

Space above this line for recorder's use

NOTICE OF COMPLETION

Notice is hereby given that:

1. The undersigned is owner of the interest or estate stated below in the property hereinafter described.
2. The full name of the undersigned is **City of Beverly Hills**
3. The full address of the undersigned is **455 North Rexford Drive, Beverly Hills, CA 90210**
4. The nature of the title of the undersigned is: **In fee.**
5. The full names and addresses of all persons who hold title with the undersigned are:
None
6. A work of improvement on the property hereinafter described was completed on December 21, 2010
7. The name of the contractor, if any, for such work of improvement was
SEMA Construction Inc.
8. The property on which said work of improvement was completed is in the City of **Beverly Hills**, County of **Los Angeles**, State of **California**, as is described as:
Replacement Of Coldwater Cañon Reservoir within the City of Beverly Hills
9. The street address of said property is 1098 N. Beverly Drive

Dated: _____

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES }

Signature of }
Owner or Owners }

Byron Pope, being duly sworn, says: That he is the City Clerk
of the **City of Beverly Hills**, the corporation that executed the foregoing notice as owner of the aforesaid interest or estate
in the property therein described; that he makes this verification of behalf of said corporation; that he has read said notice
and knows the contents thereof, and that the facts therein stated are true.

Signature of
Corporate Officer
Named Above X _____

Attachment 3

