

ORDINANCE NO. 2012- 3601

AN ORDINANCE TO AUTHORIZE THE EXPENDITURE AND DIRECT THE SAFETY SERVICE DIRECTOR TO SIGN CHANGE ORDER NUMBER 5 WITH HM MILLER FOR COMPLETION OF THE FREMONT UPLAND RESERVOIR AND DECLARING AN EMERGENCY.

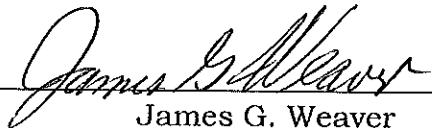
BE IT ORDAINED BY THE COUNCIL, CITY OF FREMONT, STATE OF OHIO:

SECTION 1. Change Order Number 5 has been agreed to and negotiated between the City of Fremont and HM Miller and is attached as Exhibit A. The change order is for the not to exceed contract price of \$3,288,609.00.

SECTION 2. Fremont City Council hereby authorizes the Safety Service Director to sign Change Order Number 5 between HM Miller and the City of Fremont for the not to exceed contract price of \$3,288,609.00.

SECTION 3. The immediate operation of the provisions of this ordinance is necessary for the preservation of the health, safety, and welfare of the citizens of Fremont, said emergency being the need for HM Miller to return to the jobsite and complete the work on the reservoir as soon as possible.

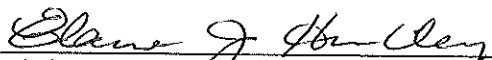
This ordinance, provided it receives a two-thirds yea or nay vote of all the members elected to the Fremont City Council, is hereby declared to be an emergency measure and this ordinance shall be in full force and effect from and after its passage by the Council of the City of Fremont, approval by the Mayor, and publication and posting as required by law.

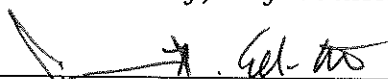

James G. Weaver
President of Council

PASSED: 9-6-12

Effective date: 9-6-12

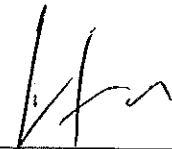
YEAS: 5 NAYS: 1 1 abstain


Elaine J. Huntley, City Council Clerk


James H. Ellis III, Mayor

ORDI747

Approved as to form:



James F. Melle, Director of Law
City of Fremont, Ohio

The City of Fremont, Ohio – H.M. Miller Construction Co. – Raw Water Reservoir

Change Order 5

This change order is executed in furtherance of the June 26, 2012, Memorandum of Understanding (MOU) between the Owner, City of Fremont (Owner or City), and Contractor, H.M. Miller Construction Co., Inc. (HMM), which is incorporated by reference (**Attachment A**).

- A. HMM will complete the scopes of work listed in the attached “Supplemental Bottom Grading Plan” (prepared by Arcadis U.S., Inc., marked “For Approval 8/3/2012,” (**Attachment B**) subject to the exclusions and qualifications that follow below (collectively the “SOW”).
- B. Owner shall be required to secure all required Ohio Department of Natural Resources’ approvals. Owner represents and warrants that the approvals have been received and that Contractor may proceed with the work as provided for in this change order.
- C. The substantial completion date for the SOW and all work under the Contract shall be amended to November 30, 2012, weather permitting and conditioned upon the City securing the supplementary loan approvals required to fund the completion of the work. The final completion date for the SOW and all work under the Contract shall be amended to December 31, 2012, weather permitting and conditioned upon the City securing the supplementary loan approvals required to fund the completion of the work. The revised dates may be equitably adjusted pursuant to the contract to account for additional extra work, adverse weather that materially impedes progress, delays in funding approval, and other factors not the fault or responsibility of HMM that delay or hinder progress of the work.
- D. Owner shall pay HMM for the SOW detailed in this change order based on the attached summary of lump sums costs dated August 29, 2012, without credit or set-off against lump sum line items, based on percentages of completion. The summary of costs is attached incorporated into this change order by reference. (**Attachment C**). The HMM agreed lump sum not to exceed price is \$2,629,859.00, exclusive of time and material and unit price contingency items for floor stabilization with barrier totaling an additional not to exceed amount of \$658,750.00 for stabilization up to 9” deep using dolo or calciment stabilization at a rate of 10% by unit weight and the installation of barrier ovetop to protect liner components. HMM acknowledges that the tasks listed in this change order are sufficient to complete the SOW.
- E. The \$658,750.00 contingency items for stabilization of the floor shall be billed and paid as an “allowance item” based on time and material rates or unit costs as detailed below to the extent that such work is performed. The Owner shall retain any unused portion of the floor stabilization contingency allowance.
- F. With respect to the SOW and the contingency items for floor stabilization with barrier only, the terms of this change order shall take precedence and in all instances control in the event of any conflict between the terms of this change order and any other terms or

provisions of the Contract Documents or the Supplemental Bottom Grading Plan prepared by Arcadis U.S., Inc., marked "For Approval 8/3/2012,".

- G. Jerry O'Kenka, acting on behalf of and directed by the Owner, shall issue field directives to HMM to permit HMM to complete the SOW, including work under the contingency allowance. Mr. O'Kenka's field directives may include, among other things, instructions regarding the nature and extent of floor and subgrade stabilization. HMM shall be entitled to rely upon and act according to the verbal and written directions from Mr. O'Kenka and other involved City officials and from the Owner's consultants Brown & Caldwell and Arcadis. In the event that there is a conflict in instructions or directives provided by Mr. O'Kenka versus instructions or directives from Arcadis or Brown & Caldwell, or compared to what is reflected in any Arcadis plans and specifications, then the Mr. O'Kenka's instructions or directives shall control. HMM assumes no responsibility relative to any aspect of the project design, and the Owner shall have no recourse against or right of contribution from HMM in the event of design or engineering problems, issues, or claims attributable to the field work orders, instructions, or directives referenced in this paragraph, or resulting loss or damages.
- H. The parties reserve all of their claims and defenses, including those related to HMM's pending change order requests, claims for additional payment related to change order 4 for both extra work and increased project time, claims in the lawsuit HMM filed against the City, and all claims pending in the mediation and under the MOU.
- I. At the time of execution of this Change Order 5, the Owner has only encumbered \$500,000.00 from the City's general fund to pay for the SOW required under this change order. The Owner anticipates receiving approval on a loan from OWDA for the remaining \$2,788,609.00 on or after September 27, 2012. HMM is authorized and agrees to perform SOW up to the encumbered value of \$500,000.00. Once HMM completes that value, then HMM (in its sole discretion) shall be entitled to stop work until the Owner confirms to HMM that the remaining funds are approved for payment under the loan fund and properly encumbered to timely pay HMM for remaining work in accordance with this change order. Conversely, the City may order HMM to cease work if its loan application is not approved, and in such case the City will have no further liability to HMM for SOW work beyond payment of no more than \$500,000 for the work performed by HMM up to the date of the cease work order. HMM will use its good faith efforts to measure and quantify work performed on a daily basis and promptly share this information with the Owner so that the parties can monitor and estimate when HMM will have completed \$500,000.00 in work. In the event the City is unable to timely encumber the funds necessary to allow HMM to complete the Change Order 5 work in 2012, then HMM will provide the City with estimated costs to winterize the project and the parties will meet and in good faith negotiate a change order to allow HMM to winterize the project and extend out the date of project completion.
- J. Payments will be made to HMM as described in the MOU on 30 day intervals as the work is performed under this change order. Any disputes regarding payment will be resolved between the Owner and HMM. If payment is delayed for any reason, then the parties commit to schedule a dispute resolution session with Don Gregory to help resolve the dispute as contemplated by the MOU.

- K. HMM's price includes:
- 1) Remobilize to site.
 - 2) Re-grade and fine grade existing slopes prior to liner installation to maintain Best Management Practices (BMP) and to remove ruts and erosion.
 - 3) Complete lining of slopes, anchor trench excavation and backfill, and place existing onsite materials (liner, rock, and sand) on slopes. Please note the following requested modifications to the prior direction from the City regarding the placement of rock on slopes:
 - a. Based on recent surveys by HMM, HMM believes there is enough material to perform this task as long as the City's "top rock" level is allowed to be raised, as there is a shortage of this material. There is however an abundance of extra bottom rock.
 - b. All extra bottom rock (not needed on slopes) will be placed in fish reefs or around inlet or outlet structures. The price above assumes that HMM can use existing haul roads to place this extra bottom rock and that the haul roads will not be modified related to placement of baffles around the pump inlet.
 - c. The parties agree that the rock line may vary and there may not be a uniform rock-line. Changes to the rock-line will be made at the discretion of HMM in consultation with the City.
 - 4) Re-grade and fine grade the uncompleted floor prior to liner installation. Perform necessary cut and fill and compaction to get the floor to subgrade or below for liner while making certain that transitions between the prior completed grades and final completed grades do not exceed 6%. Prices assume that smooth liner will be used on all floor areas and textured liner will be used only on the embankment side slopes. Complete installation of liner on remaining floor continuing to use a liner subcontractor approved by ODNR and the City.
 - 5) Intentionally deleted
 - 6) De-winterize and tie into existing buried liner. HMM includes labor to expose and remove as necessary (up to 5') any piece of damaged GCL from the buried end and clean and re-grade so lining can be continued. HMM has not included removal of liner greater than 5' wide in its price. If such removal is necessary, then HMM and the City, in consultation with Brown & Caldwell, will examine the on-site conditions and review and allocate responsibility on a case-by-case basis. In the event the parties are unable to resolve the issue of responsibility, then the parties will involve mediator Don Gregory to help resolve the dispute. Should the additional work be compensable for HMM, then HMM will provide a price to furnish extra GCL material and the additional cost will be added to HMM's contract via work change directive or change order. This cost can only be determined and priced once extent and quantity determined.
 - 7) HMM's price includes necessary support equipment for the liner subcontractor and the City's leak detection crews including: skid steers, forklifts, generator, and water trucks.

8) Install onsite cover soil. This will be comprised of existing onsite soil piles and removal of portions of existing haul roads to supplement potential deficiencies in cover soil quantities.

a. HMM's price includes two "rock pickers" and a 4-wheel drive low ground pressure vehicle to accommodate cover soils and rock placing activities.

9) Furnish and install materials for walking path installation as well as material to correct deficiencies in grades (created by Trucco) on top of the reservoir prior to trail installation.

10) Reseed disturbed areas around outside edge of walking path as well as non-lined slopes, ramp areas, and staging area.

11) Miscellaneous erosion control, including best management practices to clean any swales and on the roads on the side of the existing parking lot.

12) 2012 wage increases.

13) Repair leaks in liner discovered by leak detection company which are determined to be caused by HMM or our subcontractors.

14) Demobilization.

15) Pumping of reservoir rain water (using the system currently being supplied and controlled by the City).

16) HMM will grade and compact the remaining floor. Undulations in the material are acceptable, but sharp edges are not. If the compacted floor continues to rut after compaction, or if the floor is not accepted by Brown & Caldwell, then stabilization or drying will be necessary and shall be paid under the floor stabilization allowance. At the direction of the City, HMM will first attempt to disc and dry material and be paid for this work at the time and material rates shown on the Summary of Costs dated August 29, 2012. Should disc and dry prove unsuccessful, or if otherwise directed by the City, then HMM will use chemical stabilization on an area by area basis, and shall be paid for this work at the unit rates shown in the Summary of Costs dated August 29, 2012.

HMM's price excludes:

- 1) Intentionally deleted.
- 2) Re-working or grading of existing swales.
- 3) Soils testing (to be performed as necessary by City).
- 4) Liner QAQC (to be performed by City's consultant).
- 5) Leak detection (to be performed by City's consultant).
- 6) Intentionally deleted.

- 7) Existing further rock, virgin rock removal, or dental treatment is excluded unless added to the contract via a change order.
- 8) Remedy existing parking lot subgrade deflection problems or asphalt pavement, including any "build up" or reseed or topsoil which may be required. HMM will provide a price, if desired, once a decision is made as to how the condition will be remedied and engineered and stamped plans are provided. HMM has no liability for the condition of the pavement or subgrade.
- 9) Filling of reservoir.
- 10) Purchase or import of materials not already delivered to site (except 304 for bike path).

Except as specifically provided in this change order, the Owner and HMM reserve all of their rights, claims, and defenses under the contract documents, HMM's Complaint, and at law.

H.M. Miller Construction Co. Summary of Costs
August 29, 2012
Fremont Water Reservoir Phase I Final Construction

Schedule of Costs from 8/10/2012 Proposal :

Reference #	Lump Sum Item Of Work	Lump Sum Price
4	Site Cut and Fill GPS	\$ 112,500.00
3	Place #3 on Slope (first phase)	\$ 12,500.00
3	Double Handle #3 for last phase	\$ 23,000.00
3	Place #3 for Last Phase	\$ 25,000.00
3	Place Slope Protection	\$ 115,000.00
3	Double Handle Slope Protection for Last Phase	\$ 78,859.00
3	Place Slope Protection in Last Phase	\$ 142,000.00
3	Place Slope Protection in Reefs / Outlet	\$ 204,000.00
3	Place 12" Sand on Slopes	\$ 17,800.00
3	Place City piled top Rock	\$ 45,000.00
3	Relocate City piled rock for phase 2	\$ 21,000.00
3	Place City piled rock phase 2	\$ 34,000.00
3	Double handle sand for slopes / last phase	\$ 20,000.00
3	Place sand on last phase of slopes	\$ 21,000.00
4,2	Fine Grade Floor slopes / Proof Roll	\$ 86,700.00
8	Cut Material from / stockpile existing floor for cover	\$ 120,000.00
8	place cover soil from piles	\$ 85,000.00
3,4	Double handle Cover soil for phase 2	\$ 120,000.00
3,4	Cut material from existing Haul Roads for Cover	\$ 115,000.00
4	Remove inboard haul ramp / Leave modify Outboard	\$ 35,000.00
8	Place cover soil phase 2 (From stockpile outside resv)	\$ 68,500.00
Entire Change	Added Bond	\$ 30,000.00
	Haul Topsoil from offsite to site / stockpile	\$ 86,000.00
	Survey	\$ 42,000.00
9	Walking Path	\$ 65,000.00
11	Misc Erosion Control	\$ 10,000.00
10	Reseed and Topsoil disturbed	\$ 52,000.00
1,14	Remobilize / General conditions	\$ 113,300.00
15	Pumping	\$ 79,500.00
15	4" Underdrains w/ Discharge	\$ 35,200.00
3,13	Liner	\$ 615,000.00
	Lump Sum Subtotal	\$ 2,629,859.00

FLOOR STABILIZATION CONTINGENCY ITEMS

16	* Stabilization with Barrier / Contingency	\$ 658,750.00	This item is an Owner Risk Add Allowance
	* This price = 17.8 acres at \$37,008.42 / acre		
	* Also could be used for drying on T&M basis as follows :		
	Operator Rate =	\$73.86 per hour	Overtime = \$ 91.22 per hour
	Labor Rate =	\$59.80 per hour	Overtime = \$ 75.75 per hour
	Stabilizer Rate =	\$210.00 per hour	
	All other Equipment Will be Billed and Paid On an Hourly Rate Basis Using Blue Book Rates		
	All other labor and operator costs will be billed and paid based on HMM's prevailing wage and hour rates with taxes and burden included.		
	Total Price with Contingency =	\$ 3,288,609.00	