

## Board of County Commissioners

## Staff Report

Matters from Staff Agenda item #\_\_\_

Meeting Date: October 18, 2016

Presenter: Brian Schilling

Submitting Dept: Engineering - Pathways

Subject: Change Order No. 1 for the South Park Loop Pathway Connector Construction

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### **Statement / Purpose:**

Consider approval of Change Order No. 1 for the South Park Loop Pathway Connector (3 Creek to Melody) construction with CM Owen Construction to extend the contract time by 14 days for substantial completion and to June 30, 2017 for final completion, and removal or delay of “non-critical” items from substantial completion requirements.

### **Background / Description (Pros & Cons):**

Teton County has contracted with CM Owen Construction to construct the South Park Loop Pathway Connector between 3 Creek Ranch and Melody Ranch. The contract specifies substantial completion on October 14, 2016 and final completion on October 28, 2016.

On October 4, CM Owen submitted a request to extend the contract time, placing substantial completion at November 15, 2016 and final completion at April 30, 2017. Teton County Engineering (TCE) staff requested additional documentation from CM Owen in order to support this request, and this was received on October 6. TCE staff have reviewed the request and feel that an extension of 14 days is justifiable due to weather delays and some of the concerns cited by the contractor, but that the 32-day extension requested is not supported. (Please see attached documents for correspondence and detailed information).

Change Order No. 1 also proposes to remove “non-necessary” items from the substantial completion requirements. These include the concrete work at South Park Ranch Road, all landscaping, topsoil and seeding, all tree mitigation planting and irrigation, and construction of check dams. Substantial completion will consist of all components necessary for paving the entire pathway and will include installation of the crossing beacons, crosswalk striping, safety railing, signage, and any needed repair or replacement to erosion control devices such as silt fence. Substantial completion is set for October 28, 2016. Final completion for all items except tree mitigation planting is set for November 18, 2016, and final completion for the tree mitigation is set for June 30, 2017.

### **Statement of Strategic Intent addressed by this item (Identify BCC goals accomplished/addressed):**

#### **Environmental Stewardship**

- Support an integrated and efficient multi-modal transportation system
- Partner and collaborate with local, state, federal and other agencies

#### **Economic Sustainability**

- Partner to develop economic vitality consistent with community values as expressed in the Comprehensive Plan
- Deliver efficient government services to ensure the safety and welfare of residents and visitors

### **Attachments:**

1. Correspondence and supporting documentation
2. Change Order No. 1

### **Fiscal Impact:**

There is a moderate fiscal impact to the proposed change order. The contract specifies that liquidated damages of \$500/day will start on October 14 if the project is not deemed to be at substantial completion. Extending the contract dates to October 28 would result in a delay to the start of collecting liquidated damages of 14 days, or a total of \$7000 reduction in damages owed to the County. Liquidated damages will be suspended for the “winter shutdown” (while work is not possible due to winter conditions) and recommenced in spring 2017 when the winter shutdown is lifted. Ongoing delay of the project could result in increased costs for construction administration, testing, and construction observation, but these are expected to be minor.

**Staff Impact:**

Teton County Engineering staff has been, and will continue to be, impacted due to the extended time frame of the project. Gordon Gray will be performing construction observation for a longer period of time and during more difficult weather conditions (which requires increased observation). TCE staff have already seen increased time on the project for contract negotiations and coordination with the contractor. The delays have had a substantial impact on the amount of time TCE staff have had to commit to the project.

**Legal Review:**

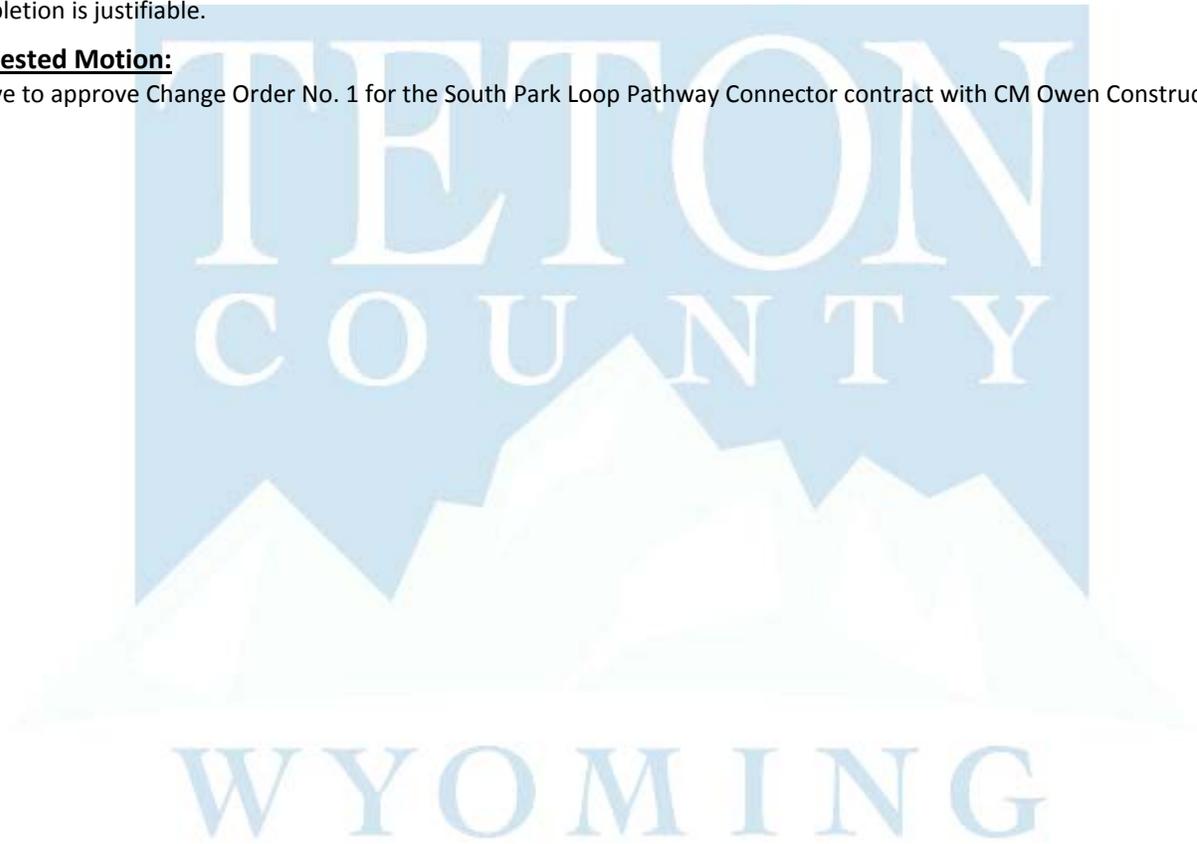
As of the time this staff report was submitted, the Change Order had not been reviewed or approved by the County Attorney.

**Recommendation:**

Staff recommends approval of the Change Order No. 1 to the CM Owen Construction contract. For reasons outlined in the letter from TCE to CM Owen dated October 10, TCE staff feel that an extension of up to 14 days for substantial completion is justifiable.

**Suggested Motion:**

I move to approve Change Order No. 1 for the South Park Loop Pathway Connector contract with CM Owen Construction.





# ENGINEERING

Sean E. O'Malley, PE, Teton County Engineer - Director of Public Works

Engineering Manager

Amy Ramage, PE

Engineering Technician

Gordon Gray

Interim Floodplain Administrator

Kurt Stout, PE

JH Community Pathways Coordinator

Brian Schilling

Sanitarian / Engineering Technician

Gabe Klamer

October 10, 2016

Mr. Steve Keatley

CM Owen Construction

PO Box 278

Wilson, WY 83014

Delivery via email: [steve@cmowenconstruction.com](mailto:steve@cmowenconstruction.com)

**RE: Response to your letters dated October 4<sup>th</sup> and 7<sup>th</sup> requesting a change in contract time**

Dear Mr. Keatley,

This letter is in response to your request for an extension to the contract time for both the Path 22 and South Park Pathway projects. County Engineering staff and Mr. Dufault have met and discussed this request. While some additional detail was provided as requested in your follow up letter, there was no information regarding specific weather dates or specific time periods of delay for tasks. Based on our review, we agree that there have been delays due to weather and some of the items mentioned in the letter that entitle you to an amendment to contract days, but not an entire month, as requested. We have addressed your specific items as redline comments on your letter (attached).

We have concluded that you are entitled to 7 weather days (from begin project – October 8): 9/22, 9/23, 9/30, 10/3, 10/4, 10/5, 10/6.

We intend to recommend that the Board of County Commissioners approve contract change orders for both projects with an additional two weeks to reach substantial completion as proposed in the dates below. *The South Park Project has also been adjusted to allow 3 weeks between substantial and final completion to allow for extra items.* From a practical and historical standpoint, we feel that it is unlikely that paving can occur much beyond the end of October and meet the required specifications.

REVISED CONTRACT DATES

**Path 22**

**Substantial Completion: October 28, 2016**

**Final Completion for items other than Bid Alternate: November 11, 2016**

**Final Completion for Bid Alternate: June 30, 2017**

**South Park Loop Path**

**Substantial Completion: October 28, 2016**

**Final Completion for items other than landscaping/trees: November 18, 2016**

**Final Completion for landscaping/trees: June 30, 2017**

ITEMS NEEDED TO MEET SUBSTANTIAL COMPLETION

Items required for projects to be substantially complete per Article 15.03:

<b>PATH 22</b>	
<b>ITEMS FOR SUBSTANTIAL COMPLETION</b>	
<b>NECESSARY</b>	<b>NOT NECESSARY</b>
PAVED IN ENTIRETY RAILING COMPLETE	ALL BID ALTERNATE WORK TOPSOIL/SEEDING STRIPING/SIGNAGE

<b>SOUTH PARK LOOP PATH</b>	
<b>ITEMS FOR SUBSTANTIAL COMPLETION</b>	
<b>NECESSARY</b>	<b>NOT NECESSARY</b>
PAVED IN ENTIRETY CROSSING BEACONS COMPLETE AND FUNCTIONAL CROSSWALK STRIPING RAILING COMPLETE SIGNAGE SILT FENCE REPAIRED/REPLACED	SOUTH PARK RANCH ROAD CONCRETE WORK ALL LANDSCAPING, TOPSOIL, SEEDING TREE PLANTING HOLD UNTIL SPRING PER RECOMMENDATIONS ROCK DAMS

NOTE: All items listed as "NOT NECESSARY" in the table above shall be completed as soon as reasonably possible, however these items are not considered necessary for the pathway to be functional and therefore shall be completed by the final completion dates listed above.

All erosion control devices shall be properly in place over the course of the winter no matter the status of the completion of the project(s).

LIQUIDATED DAMAGES

This change order will be heard before the Board of County Commissioners for approval. The next regular meeting of the Board is scheduled for October 18<sup>th</sup>. Liquidated damages will NOT be assessed for the dates of October 14<sup>th</sup> -18<sup>th</sup> while this matter is pending final approval.

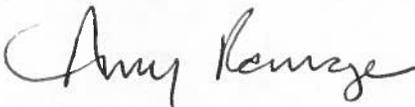
If the contract is amended as recommended above, and if the above substantial and final completion dates are not met and there are no further change orders, liquidated damages will begin accruing as outlined in Article 4 of the Agreement between Owner and Contractor.

Work shall continue under liquidated damages to the point at which it is determined by the Owner/Engineers that work can no longer reasonably proceed due to winter conditions. At this point the project(s) shall be under winter shutdown. Liquidated damages will NOT accrue over winter shutdown, but will begin to accrue again in the spring once the Owner/Engineers determine working conditions can commence in the spring. The winter shutdown does NOT preclude any miscellaneous work that is not driven by temperature/weather related specifications from occurring.

We propose a meeting to talk through these issues on **Tuesday October 11, at 9 am** at County Engineering. Please confirm if this time will work for you.

Thank you for your efforts on these projects and we look forward to getting them completed as soon as possible.

Sincerely,

A handwritten signature in cursive script that reads "Amy Ramage".

Amy Ramage, PE  
Teton County Engineering Department Manager

Attachments: Responses to letter dated 10/7/2016

cc: David Owen, Sean O'Malley, Gabe Klamer, Gordon Gray, Brian Schilling



## CM Owen Construction

P.O. BOX 278  
WILSON, WYOMING 83014  
307-733-2693 or 208-787-6936 -- FAX 208-787-6938

7 October 2016

Teton County  
Teton County Engineering,  
320 South King Street,  
Jackson, Wyoming 83001

Attention : Amy Ramage P.E.

Subject:

Justification of time extension request for South Park Loop Bike Path and Rt 22 Interconnection Bike Path

Per your email of 5 October in reply to our letters of 4 October 2016 please find examples and specific issues that we feel demonstrates our justification for requesting an extension of time for both Rt. 22 Interconnecting Bike Path and South Park Loop Bike Path.

This document is intended to be a statement of fact and situation as of this date:

**Rt. 22 Interconnecting Bike Path**

Delay and Additional Works:

1- CMO was required to realign the bike path at the intersection of Spring Gulch Rd as an "as built" field design to achieve a smooth connection to existing bike path.

*This item was a negligible delay and was a matter of simply matching to recently placed infrastructure.*

2- Repair/Removal and reinstallation of a 48 inch culvert late in the construction program. Irrigation water as of this writing is still not fully off and it appears that work cannot commence for a number of days until water subsides. Impact yet unknown.

*This item is removed from substantial completion. Final completion required by 6/30/2017*



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3- Alternate bike path final document issuance late in construction project. Duration of works yet to be determined considering late in season subject to weather impacts.

*This item is removed from substantial completion. Final completion required by 6/30/2017*

4- Disposal of spoil material that Teton County originally required remaining on site impacted progress and slowed work, subsequently time was required to load and transport the material.

*Contractor responsibility to coordinate material management. Allow 1 day. Accomodated within extension.*

### Third Party Delays:

The Keystone Walls were always the critical path of the Rt. 22 Interconnecting Bike Path project as without the walls finished backfill and obtaining sub grade is impossible ,further laying of crush rock and subsequently asphalt installation.

*Understood. General contractor responsibility to coordinate subs.*

The subcontractor for the walls on Rt. 22 Interconnecting Bike Path (Wind River) failed to mobilize on schedule, failed to furnish adequate crews and failed to keep original agreed upon schedule during good weather and ideal working conditions knowing prior to mobilization that their work was critical path.

*Understood. General contractor responsibility to coordinate subs.*

While CMO readily admits that the actions of the subcontractor are indeed the responsibility of the prime CMO made all information about the conduct of the subcontractor transparent to Teton County and unfortunately was unsuccessful in locating a firm that had the available manpower and schedule slack to allow them to assume the scope assigned to Wind River either partially or in full.

### **South Park Loop Bike Path**

#### Additional Works:

1- The issuance of the final design drawings for the South Park Ranch Road Intersection:



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307-733-2693 or 208-787-6936 -- FAX 208-787-6938

- Delay of concrete contractor who was scheduled for 19 SEP and now delayed due to other projects and no firm ETA for these works.

Acknowledged. This item is removed from substantial completion. Final completion required by 11/18/2016.

2- Grand Teton South design changes will extend the scope of work yet to be determined total impact.

Acknowledged. Accomodated in 2 week extension.

3- Changes in driveway approach philosophy, task durations not yet established

Not clear on what this means. All approaches were intended to be paved in design drawings.

4- Mailbox redesign twice due to original design not practical for post office or patrons requiring additional materials and labor to perform the task to the Post Office's satisfaction.

This was not a critical path item.

5- Additional paving works at Melody Ranch bike path.

Acknowledged. Accomodated within the 2 week extension.

### Delay in Works:

1- Migratory bird issue delayed start of the work from ~Sta 75+50 to 111+42 which represents approximately 1/3 of the overall project. This caused delay in clearing and grubbing, obtaining sub grade and commencement work on Wall C.

Teton County has previously offered time extension on this issue.

Acknowledged. Although CM Owen did not have crews available anyway and have said that at the time. Accomodated within the 2 week extension.

2- No staging area was available and caused delay of equipment mobilization as well as lay down and staging area for material for clearing and grubbing until obtained by CMO from a private property owner.

Staging and material handling is General Contractor responsibility.

3- The 10 inch culvert at ~Sta 2+50 delayed placement of material due to culvert elevation issues.

Acknowledged. Within the 2 week extension.

4- Recurrent changes and modification issues at the Dennis Clark property as well as having to remove material install geotech material and re-compact due to irrigation on site.

Given insufficient personnel and equipment, no significant delays occurred that impacted the critical path and overall project completion.



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5- Charter and Century Link while cooperative were slow to action relocations.

Additional excavation of a trench for Charter was required to bury their cable when removed from an LVE pole that was subsequently late in removal due to Charter not having the equipment to move the cable from one pole to another at the intersection of South Park Ranch Road. **General Contractor's responsibility.**

Minimal standby time was incurred when the issue whether or not to add the installation of a culvert at Wall A. It was determined not to install the culvert,

**Acknowledged. Within the 2 week extension.**

6- Weather having delayed final crush and paving in the eastern end of the project has resulted in deferring the installation of the irrigation system and planting of trees and willows. The justification to wait on this work is to prevent the irrigation contractor from destroying the already established and existing sub grade thus causing further repeated works.

**Minor weather delays are acknowledged within the 2 week time extension.**

**Landscaping and tree planting have been removed from substantial completion.**

### Third Party Delays:

The Keystone Walls were always a critical path of the project as without the walls finished backfill is impossible and obtaining sub grade is impossible to obtain compaction and further laying of crush rock and subsequently asphalt installation.

The subcontractor for the walls on South Park Loop failed to mobilize on schedule, failed to furnish adequate crews and failed to keep original agreed upon schedule during good weather and ideal working conditions.

CM Owen forecast delays in this work by the wall subcontractor and removed the scope from the wall subcontractors scope of work when they suffered delays in other wall works.

**Understood. General Contractor responsibility to coordinate subs.**



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Then CMO suffered in the timely delivery of material from the vendor for the concrete wall. CMO has prosecuted the work and prepared the excavation in anticipation of the delivery of materials.

### **Efforts to go forward and expedite work:**

CMO in an effort to expedite work is currently organizing labor crews to execute hand work on both projects and has recently spent ~\$20,000 USD for a skid steer mounted topsoil conveyor to speed the installation of topsoil and finishing after paving.

CMO has sought permission from Teton County and has been approved to work a 7 day schedule in effort to substantially complete the project and insure it is safe for use.

It is anticipated that during the next 3 to 4 weeks paving, fencing, safety equipment, signage and painting can be accomplished on both projects. All efforts will be made for 100% completion but as discussed at the Rt. 22 Interconnecting Bike Path meeting this morning there are major and minor aspects that may not be possible to complete this work season.

Regards,

A handwritten signature in black ink that reads "Steven Keatley". The signature is written in a cursive style and is underlined.

Steven Keatley for

CM Owen Construction

cc: David Owen

## *Exhibit 1 – Correspondence and Supporting Documentation*

1. *First email from CM Owen to TC Engineering requesting time extension. Referenced letter included in Change Order No. 1.*

**From:** Steve Keatley [<mailto:steve@cmowenconstruction.com>]  
**Sent:** Tuesday, October 04, 2016 12:48 PM  
**To:** Gordon Gray <[ggray@tetonwyo.org](mailto:ggray@tetonwyo.org)>  
**Cc:** Amy Ramage <[aramage@tetonwyo.org](mailto:aramage@tetonwyo.org)>; David Owen <[david@cmowenconstruction.com](mailto:david@cmowenconstruction.com)>  
**Subject:** SOUTH PARK LOOP - 04OCT2016

Gordon

Please find attached a letter requesting time extension and projected work progress.

Regards

Steve Keatley

CM Owen Construction

Mobile: 307-880-0019

[Steve@cmowenconstruction.com](mailto:Steve@cmowenconstruction.com)

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2. *Email reply from TC Engineering to CM Owen requesting additional information for extension documentation.*

**From:** Amy Ramage  
**Sent:** Wednesday, October 05, 2016 4:10 PM  
**To:** Steve Keatley <[steve@cmowenconstruction.com](mailto:steve@cmowenconstruction.com)>  
**Cc:** David Owen <[david@cmowenconstruction.com](mailto:david@cmowenconstruction.com)>; Gabe Klamer <[GKlamer@tetonwyo.org](mailto:GKlamer@tetonwyo.org)>; Gordon Gray <[ggray@tetonwyo.org](mailto:ggray@tetonwyo.org)>; Sean O'Malley <[somalley@tetonwyo.org](mailto:somalley@tetonwyo.org)>; Brian Schilling <[bschilling@tetonwyo.org](mailto:bschilling@tetonwyo.org)>; Dave Dufault <[ddufault@nelsonengineering.net](mailto:ddufault@nelsonengineering.net)>  
**Subject:** Request for contractual change for time extension for Path 22 and South Park Path

Steve,

We are evaluating your request for a change to the contract times on both pathway projects. In order to do so, we will need more specific details on the reason for request for a change in contract time. Please refer to Article 4.05 "Delays in Contractor's Progress", Article 11.05 "Change of Contract Time" and 11.06 "Change Proposals" of the General Conditions of both contracts for applicable contractual requirements and procedures. The requested change to the contract time will have to be brought before the Board of County Commissioners and therefore needs solid evidence explaining the reasons for the request.

I look forward to your prompt attention to this matter so we can address this issue as soon as possible.

Thank you,

Amy Ramage, PE  
Teton County Engineering Dept. Manager  
320 S. King St.

PO Box 3594  
Jackson, WY 83001  
307.732.8574

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3. *Email reply from CM Owen to TC Engineering providing additional information. Referenced letter included in Change Order No. 1.*

**From:** Steve Keatley [<mailto:steve@cmowenconstruction.com>]  
**Sent:** Thursday, October 06, 2016 3:40 PM  
**To:** Amy Ramage <[aramage@tetonwyo.org](mailto:aramage@tetonwyo.org)>  
**Cc:** David Owen <[david@cmowenconstruction.com](mailto:david@cmowenconstruction.com)>  
**Subject:** Extension of contract time - SPL and Rt 22 Bike Path Projects

Amy

Per our discussion today and your email of yesterday please find attached as promised:

Regards

Steve Keatley

CM Owen Construction

Mobile: 307-880-0019

[steve@cmowenconstruction.com](mailto:steve@cmowenconstruction.com)

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4. *Email reply from TC Engineering to CM Owen – response to request for contract time extension. Referenced letter included in Change Order No. 1.*

**From:** Amy Ramage  
**Sent:** Monday, October 10, 2016 9:07 AM  
**To:** Steve Keatley <[steve@cmowenconstruction.com](mailto:steve@cmowenconstruction.com)>  
**Cc:** David Owen <[david@cmowenconstruction.com](mailto:david@cmowenconstruction.com)>; Sean O'Malley <[somalley@tetonwyo.org](mailto:somalley@tetonwyo.org)>; Brian Schilling <[bschilling@tetonwyo.org](mailto:bschilling@tetonwyo.org)>; Gabe Klamer <[GKlamer@tetonwyo.org](mailto:GKlamer@tetonwyo.org)>; Gordon Gray <[ggray@tetonwyo.org](mailto:ggray@tetonwyo.org)>  
**Subject:** RE: Extension of contract time - SPL and Rt 22 Bike Path Projects

Steve,

Please see the attached letter which is in response to your request for an extension of contract time. We are proposing to have a meeting at 9 am tomorrow at County Engineering to discuss this further with you. Please let us know if that time works for you.

Amy Ramage, PE

Teton County Engineering Dept. Manager

320 S. King St.

PO Box 3594

Jackson, WY 83001

307.732.8574

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**Change Order No. 1**

Date of Issuance: 10/18/2016  
 Owner: Teton County  
 Contractor: CM Owen Construction  
 Engineer: Nelson Engineering  
 Project: South Park Loop Connector Pathway  
 Project

Effective Date: 10/14/2016  
 Owner's Contract No.:  
 Contractor's Project No.:  
 Engineer's Project No.: 15-257-02  
 Contract Name: South Park Loop Connector Pathway  
 Project

The Contract is modified as follows upon execution of this Change Order:

Description: Time extension requested by Contractor. Seven days due to weather delays have been documented during the course of the project through 10/8/2016. Additional delays are also documented due to extra work required by unforeseen conditions and due to County initiated postponement of portions of the work due to considerations of adjustments to construction plans.

Attachments: Letter dated 10/10/2016 from County Engineering detailing this proposal. Letters dated 10/4 and 10/7 from CM Owens Construction.

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price:  \$ 1,192,383.87	Original Contract Times: Substantial Completion: <u>October 14, 2016</u> Ready for Final Payment: <u>October 28, 2016</u> days or dates
[Increase] [Decrease] from previously approved Change Orders No. ___ to No. ___:  \$ <u>NO CHANGE</u>	[Increase] [Decrease] from previously approved Change Orders No. ___ to No. ___: Substantial Completion: <u>No previous Change Orders</u> Ready for Final Payment: _____ days
Contract Price prior to this Change Order:  \$ <u>NO CHANGE</u>	Contract Times prior to this Change Order: Substantial Completion: <u>October 14, 2016</u> Ready for Final Payment: <u>October 28, 2016</u> days or dates
[Increase] [Decrease] of this Change Order:  \$ <u>NO CHANGE</u>	[Increase] [Decrease] of this Change Order: Substantial Completion: <u>October 28, 2016</u> Ready for Final Payment: <u>June 30, 2017</u> days or dates
Contract Price incorporating this Change Order:  \$ <u>NO CHANGE</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>October 28, 2016</u> Ready for Final Payment: <u>June 30, 2017</u> days or dates

<b>RECOMMENDED:</b>	<b>ACCEPTED:</b>	<b>ACCEPTED:</b>
By: _____ Engineer (if required)	By: _____ Owner (Authorized Signature)	By: _____ Contractor (Authorized Signature)
Title: _____	Title _____	Title _____
Date: _____	Date _____	Date _____