

# City of Calistoga

## Staff Report

**TO:** Honorable Mayor and City Council  
**FROM:** Dylan Feik, City Manager  
**DATE:** February 20, 2018  
**SUBJECT:** Consideration of a Resolution Authorizing the City Manager to sign a Settlement Agreement against WMB Contractors for Liquidated Damages Regarding the Monhoff Center Restoration Project.

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1 **ISSUE:** Consideration of a Resolution Authorizing the City Manager to sign a  
2 Settlement Agreement against WMB Contractors for Liquidated Damages Regarding  
3 the Monhoff Center Restoration Project.  
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5 **RECOMMENDATION:** Adopt Resolution.  
6

7 **BACKGROUND:** The Monhoff Center Restoration Project (“Project”) was awarded to  
8 WMB General Contractors on August 2, 2016, and a Notice to Proceed was issued on  
9 August 30, 2016. Pursuant to the Notice to Proceed, the Project was to be substantially  
10 completed within 90 calendar days of August 30, 2016. Therefore, the Contract  
11 completion date was November 29, 2016.  
12

13 Per Section 00500 (Contract for Construction) of the Contract between the City and  
14 WMB (“Contract”), the Contract “may be amended only by written instrument.”  
15 Similarly, per the Contract’s Change Order Procedure (Section 01035), changes in the  
16 Time of Completion called for under the Contract are to be done through a change  
17 order.  
18

19 Portions of the Project’s scope of work changed during the course of construction.  
20 Termite and mold damage, new service panels, new electrical and perimeter wall  
21 repairs all led to additional work that was not originally contemplated by the Contract.  
22 The City approved a total of 10 change orders on the Project, and WMB requested an  
23 additional 72 days to complete the work. All additional time that was requested by  
24 WMB through a change order as required by the Contract as approved by the City. The  
25 final change order approved by the City listed the total time for completion of the Project  
26 as 162 days.  
27

28 The City Building Official issued a Temporary Certificate of Occupancy on June 29,  
29 2017, which put the time of substantial completion of the Project at 303 days, 141 days  
30 beyond the approved time of construction. Per the Contract, liquidated damages are

31 set at \$800 for every calendar days' delay beyond the time prescribed to complete the  
32 work.

33  
34 The City Manager and City Attorney approached WMB to discuss a settlement for  
35 liquidated damages rather than pursue litigation. Currently, the City has \$46,409.80 in  
36 retention, and \$10,079.80 is currently unpaid on the Contract, for a total of \$56,489.60  
37 (collectively the "Retained Funds").

38  
39 Within 30 days of the effective date of the Settlement Agreement, the City shall issue  
40 and deliver a check to WMB from the Retained Funds for \$16,489.60. The City shall  
41 withhold and keep \$40,000 of the Retained Funds, which shall constitute the Settlement  
42 Payment.

43

44 **ATTACHMENTS:**

- 45 1. Draft Resolution  
46 2. Settlement Agreement

**RESOLUTION NO. 2018-XXX**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, AUTHORIZING THE CITY MANAGER TO SIGN A SETTLEMENT AGREEMENT AGAINST WMB CONTRACTORS FOR LIQUIDATED DAMAGES REGARDING THE MONHOFF CENTER RESTORATION PROJECT**

**WHEREAS**, the Monhoff Center Restoration Project (“Project”) was awarded to WMB General Contractors on August 2, 2016, and a Notice to Proceed was issued on August 30, 2016. Pursuant to the Notice to Proceed, the Project was to be substantially completed within 90 calendar days of August 30, 2016; and

**WHEREAS**, the Contract completion date was November 29, 2016; and

**WHEREAS**, portions of the Project’s scope of work changed during the course of construction due to termite and mold damage, new service panels and electrical and perimeter wall repairs, resulting in a total of 10 change orders; and

**WHEREAS**, due to these change orders, WMB requested an additional 72 days to complete the work; and

**WHEREAS**, the Project was 141 days beyond the approved time of construction; and

**WHEREAS**, the City has \$46,409.80 in retention, and \$10,079.80 is currently unpaid on the Contract, for a total of \$56,489.60 (collectively the “Retained Funds”); and

**WHEREAS**, within 30 days of the effective date of the Settlement Agreement, the City shall issue and deliver a check to WMB from the Retained Funds for \$16,489.60; and

**WHEREAS**, the City shall withhold and keep \$40,000 of the Retained Funds, which shall constitute the Settlement Payment; and

**NOW, THEREFORE, BE IT HEREBY RESOLVED** that the City Council does hereby authorize the City Manager to sign the Settlement Agreement on behalf of the City.

**PASSED AND ADOPTED** by the City Council of the City of Calistoga on this **20<sup>th</sup> of February, 2018** by the following vote:

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**

\_\_\_\_\_  
**CHRIS CANNING, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**Kathy Flamson, City Clerk**