



City and County of Denver

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Dennis J. Gallagher

Auditor

December 13, 2010

Bill Vidal, Manager of Public Works
David Fine, City Attorney
201 W. Colfax Avenue
Denver, CO 80202

Dear Mr. Vidal and Mr. Fine:

It is with extreme reluctance that I have signed Change Order # 7 in the amount of \$163,000.00 for contract CE71008 with New Design Construction. Frankly, if I had any other option I would not have signed this change order. I am extremely dissatisfied and troubled by the answers and 'justifications' I have been given for this and previous change orders on this contract.

Further to use the change order process to, in essence, make a legal settlement with a company is a subversion of our governmental processes and transparent governance – it circumvents City Council's authority and responsibility in such matters. Moreover, I have been informed that this settlement with New Design is for work on a variety of contracts *above and beyond CE71008*. Additionally, using the Change Order process to handle legal settlements of multiple contracts wreaks havoc on the City's accounting process, depreciation schedules and the accuracy of the CAFR itself.

Moreover, I find it reprehensible that the city can be held hostage for over a million dollars out of fear of litigation. The cumulative dollar amount for change orders on this contract is \$1,000,500.47 for a contract originally bid at less than \$5,000,000. Now, as previously noted it is impossible, with the documentation I have been provided, to tell how much of that amount is actually for work or legitimate change orders associated with CE71008. However on every level I find this outrageous. Is there any *real* justification for the dollars paid to this company over and above the original bid?

So, while I have signed this change order, I intend to dig much deeper into this situation. I will get to the bottom of this.

Sincerely,

Dennis J. Gallagher

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City Auditor

cc: Chris Newitt, President of City Council

To promote open, accountable, efficient, and effective government by performing impartial reviews and other audit services that provide objective and useful information to improve decision making by management and the people.

We will monitor and report on recommendations and progress towards their implementation.