



Contract Number 009573	Contract Title NE 132nd St Interchange Project	Federal Aid Number NA
Change Order Number 006R1	Change Description Utility Ambiguity <i>CP LH</i>	Date June 7, 2022
Region NWR/Megaprograms	Project Engineer Evelyn Pao	Phone Number 425-495-1577
Prime Contractor / Design-Builder Graham Contracting LTD		
<input checked="" type="checkbox"/> Ordered by Engineer under the terms of Section 1-04.4 of the Standard Specifications or the RFP <input type="checkbox"/> Change proposed by Contractor / Design-Builder		
Evolution & Description Of Change See pages 2 - 4 for Evolution and Description of Change.		

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DESCRIPTION OF WORK:

This is a WSDOT initiated Change Order in accordance with Section 1-04.4 of the RFP. This Change Order modifies RFP Section 1-07.17(3).2, Cost Responsibility, and adds Section 2.10.9.15, Northshore Utility District (NUD) Utilities, to clarify the proper billing procedure for Type #1 NUD sewer and water utility Work for this Project.

This Change Order resolves conflicting contract language in the RFP, clarifying that all utility relocation costs are to be included in the bid item "UTB 1397 Work" and incorporating new prices for the three areas of work reflecting all costs for both Type #1 and Type #2 utility work. The Design-Builder will be compensated by WSDOT for all utility relocation work under the contract bid items versus separate reimbursement from NUD. WSDOT will be reimbursed for all NUD responsible costs as established in bid item "UTB 1397 Work, Area B" and "UTB 1397 Work, Area C".

EVOLUTION OF CHANGE:

On September 17, 2021, the Design-Builder (DB) notified WSDOT of an ambiguity in the Contract regarding administration and reimbursement for costs of UTB 1397 Work.

In RFP Section 1-07.17(4), Payment To and Collection From Utility Owners, utility relocation reimbursement is categorized into two types: Type #1 utilities, which requires the Design-Builder to seek reimbursement directly from the utility owner, and Type #2 utilities, which the Design-Builder shall reimburse the Utility Owner for all Relocation costs.

RFP Section 1-07.17(3).2, Cost Responsibility, refers to Section 2.10, Utility and Relocation Agreement, which outlines Type #1 and Type #2 Utility Relocations. This section also references Agreement UTB 1397 (Appendix U) for scope of Work and requests that the Design-Builder include a lump sum bid for the Work under bid item "UTB 1397 Work". This bid item was originally intended to cover both Type #1 and Type #2 utility work for three separate work areas: Area A (State cost responsibility), Area B (NUD cost responsibility) and Area C (*Disputed cost responsibility between WSDOT and NUD) as defined in Agreement UTB 1397 between WSDOT and NUD.

RFP Section 2.10.1.2, Utility Type states, "All Utilities are classified as Type #1, except as noted in the Existing Utility Listing (Appendix U2)". However, in the Existing Utility Listing it shows that all NUD relocation facilities for both Area B and Area C are listed as Type #1 Utility relocation. Thus, the Design-Builder did not include Type #1 utility relocation costs for Areas B & C in their bid for utility work. The Design-Builder expected, instead, to seek reimbursement directly from NUD.

On September 30, 2021, per a response serial letter WSDOT requested a price breakdown from the Design Builder for each respective area, A, B and C as described in Utility Agreement UTB 1397.

On October 2, 2021, the Design-Builder provided their cost estimate with a breakdown for the following Areas:

- Area A = \$1.2M
- Area B = \$521,245
- Area C = \$1.138M

On October 12, 2021, the WSDOT Project Engineer agreed that there is an ambiguity in Chapter 1 of the Contract language. The requirement in Section 1-07.17(3).2, Cost Responsibility, to include all costs for bid item "UTB 1397 Work" conflicts with Section 1-07.17(4), Payment To and Collection from Utility Owners, which states that the Design-Builder will seek reimbursement directly from utility owner for all Type #1 utilities. Therefore, it can be interpreted both ways and is considered ambiguous.

In recognition of the conflict, the WSDOT Project Engineer requested that the Design-Builder revise their detailed price breakdown for each of the three work areas to reflect inclusion of all utility relocation costs and no longer seek reimbursement from NUD.

The Design-Builder responded with a total estimate of \$3,880,477.64 with the following breakdown:

- Area A (WSDOT responsible): \$585,215.42
- Area B (NUD responsible): \$1,249,557.24
- Area C (^{i*}Disputed cost responsibility between WSDOT and NUD): \$2,045,704.99

On February 23, 2022, the WSDOT Project Engineer met with NUD Utilities to review the revised unit prices for each Work Area (per Appendix U - UTB 1397 agreement). At the meeting, NUD representative Steph Dennehy provided verbal concurrence that the proposed prices were reasonable.

^{i*} Per Agreement UTB 1397 Section 3.6 Reservation of Rights:

3.6 Reservation of Rights

- 3.6.1 The term ‘Area C Work’ in this Section refers to the Parties’ disagreement over the cost allocation required to complete the Area C Work.
- 3.6.2 Notwithstanding the performance of the Area C Work or any payment by WSDOT to the DB Contractor or the UTILITY in connection with the Area C Work, WSDOT hereby reserves all rights, claims remedies and defenses of any kind that are available to WSDOT in connection with the Area C Work including, without limitation, any right of WSDOT to seek a judicial determination that WSDOT is not responsible for all or any portion of the costs incurred in completing the Area C Work. Upon final resolution of the Area C Work by judicial determination (a) any payment made by WSDOT to the DB Contractor or the UTILITY in connection with the Area C Work will be subject to refund, with interest at the applicable Interest Rate (as defined below) from the date of payment by WSDOT, to the extent such payment is required to be refunded to WSDOT pursuant to judicial order; (b) any amounts ultimately determined by resolution of the Area C Work pursuant to judicial determination or settlement between the Parties to be owed by UTILITY to WSDOT in connection with the performance of the Area C Work shall be paid within thirty (30) calendar days to WSDOT, with interest at the applicable Interest Rate from the date due until the date actually paid; and (c) the Parties will continue to be bound by and comply with the terms of any written agreement between them relating to the performance of the Area C Work except to the extent required otherwise by judicial order or written settlement of the Parties.
- 3.6.3 Notwithstanding the performance of the Area C Work or any payment by the UTILITY to WSDOT in connection with the Area C Work, the UTILITY hereby reserves all rights, claims, remedies and defenses of any kind that are available to the UTILITY in connection with the Area C Work, including, without limitation, any right of UTILITY to seek a judicial determination that the UTILITY is not responsible for all or any portion of the costs incurred in completing the Area C Work. Upon final resolution of the Area C Work by judicial determination: (a) any payment made by the UTILITY to WSDOT in connection with the Area C Work will be subject to refund with interest at the applicable Interest Rate (as defined below) from the date of payment by the UTILITY, to the extent such payment is required to be refunded to the UTILITY pursuant to judicial order; (b)

any amounts ultimately determined by resolution of the Area C Work pursuant to judicial determination or settlement between the Parties to be owed by WSDOT to the UTILITY in connection with the performance of the Area C Work shall be paid within thirty (30) calendar days to the UTILITY, with interest at the applicable Interest Rate from the date due until the date actually paid; and (c) the Parties will continue to be bound by and comply with the terms of any written agreement between them relating to the performance of the Area C Work except to the extent required otherwise by judicial order or written settlement of the Parties.

- 3.6.4 For purposes of this Section 3.6, the term “Interest Rate” shall mean interest from the date of entry at two (2) percentage points above the equivalent coupon issue yield, as published by the board of governors of the federal reserve system, of the average bill rate for twenty-six (26) week treasury bills as determined at the first bill market auction conducted during the calendar month immediately preceding the date of entry. The terms of this section shall remain in effect for a period of two (2) years after the termination of the Agreement.
- 3.6.5 Prior to final resolution of the cost allocation required to complete the Area C Work, the Parties agree to invoice each other for the Area C Work actual direct and related indirect costs, including overhead costs. The Area C Work invoice(s) shall be used in the determination of total amount owed by the Party or Parties upon final resolution of the Area C Work cost responsibilities, as described in Section 3.6 of this Agreement.

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Basis of Cost & Justification:

This Change Order modifies RFP Section 1-07.17(3).2, Cost Responsibility, and adds RFP Section 2.10.9.15, Northshore Utility District (NUD) Utilities, to clarify the proper billing procedures for Type #1 NUD sewer and water utility Work for this Project.

The original proposal price for this work was \$1,250,000.00. The new total for this work is \$3,880,477.64, which represents an increase of \$2,630,477.65. This added cost represents the value of work that the Design-Builder had expected to collect as direct reimbursement from NUD. The Work will be administered through the WSDOT contract as three separate bid items as provided in UTB 1397.

The increased contract cost will be offset by a reimbursement of at least \$1,249,557.24 from NUD Utilities for Area B with the potential of additional reimbursement pending the resolution of the disputed responsibility for Area C.

The WSDOT independent estimate for this change order is \$3,862,131.00 (including equipment, materials, labor, design, construction, mobilization, dewatering and traffic control) with the following breakdown:

- Area A (WSDOT responsible): \$490,720.00
- Area B (NUD responsible): \$1,100,176.00
- Area C (*Disputed cost responsibility between WSDOT and NUD): \$1,919,085.00
- Traffic Control (all 3 areas): \$352,150.00

Since the Design-Builder's estimate is within 10% of WSDOT's independent estimate, WSDOT accepted the Design-Builder's price proposal.

Contract Time:

This Change Order does not impact Contract Time.

Prior Approvals:

Project Engineer, Evelyn Pao approved on 10/20/2021
 Region, Lisa Hodgson approved on 03/17/2022
 HQ ASCE, Derek Case approved on 03/09/2022
 HQ ASCE, Jon Deffenbacher approved on 03/15/2022,
 HQ ASCE, Chris Christopher approved on 03/15/2022

List Attachments:

Change Order No. 006R1
 Attachment "A" - Design-Build Change Order Checklist
 Attachment "B" - Region Approval
 Attachment "C" - WSDOT HQ ASCE Approvals

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WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION
CHANGE ORDER

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CONTRACT NO: 009573 FEDERAL AID NO:
CONTRACT TITLE: I-405, NE 132ND STREET INTERCHANGE PROJECT
CHANGE ORDER NO: 6 R1 UTILITY AMBIGUITY
PRIME CONTRACTOR: XXXXXXXXXX GRAHAM CONTRACTING, LTD.
13555 SE 36TH ST SUITE 120
BELLEVUE WA 98006-1442

(X) Ordered by Engineer under the terms of Section 1-04.4 of the Standard Specifications
() Change proposed by Contractor

ENDORSED BY: <i>Signature on file</i> <small>Jonathon Harris (Apr 8, 2022 04:29 PDT)</small>	SURETY CONSENT:
CONTRACTOR SIGNATURE Apr 8, 2022 _____ DATE	ATTORNEY IN FACT _____ DATE

ORIGINAL CONTRACT AMOUNT: 50,444,111.00
CURRENT CONTRACT AMOUNT: 50,465,299.06
ESTIMATED NET CHANGE THIS ORDER: 2,630,477.65
ESTIMATED CONTRACT TOTAL AFTER CHANGE: 53,095,776.71

Signature Required: (X) Project Engineer (X) State Construction Engineer
(X) Regional Administrator () Other Agency

<i>Signature on file</i>	<i>Signature on file</i>
PROJECT ENGINEER SIGNATURE Apr 8, 2022 _____ DATE	STATE CONSTRUCTION ENGINEER SIGNATURE Apr 18, 2022 _____ DATE
<i>Signature on file</i> <small>Hovason</small>	OTHER APPROVAL WHEN REQUIRED
REGIONAL ADMINISTRATOR SIGNATURE Apr 13, 2022 _____ DATE	SIGNATURE _____ DATE _____ REPRESENTING _____

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All work, materials, and measurements to be in accordance with the provisions of the Standard Specifications and Special Provisions for the type of construction involved.

This contract is revised as follows:

Any references to provisions of Division 1 of the Standard Specifications contained herein shall be deemed to refer to the appropriate provisions of the Request for Proposal (RFP) and other Contract Documents. Any references to Prime Contractor or Contractor contained herein shall be deemed to refer to the Design-Builder.

DESCRIPTION OF WORK:

This is a WSDOT initiated Change Order in accordance with Section 1-04.4 of the RFP. This Change Order modifies RFP Section 1-07.17(3).2, Cost Responsibility, and adds Section 2.10.9.15, Northshore Utility District (NUD) Utilities, to clarify reimbursement party for Type#1 NUD sewer and water utility Work for this Project.

DESIGN REQUIREMENTS:

The preparation and approvals of the necessary Released for Construction Plans and Specifications for all of the work described herein shall be in accordance with the RFP and the approved Quality Management Plan.

CONSTRUCTION REQUIREMENTS:

The construction requirements for all items related to this Change Order shall be in accordance with the appropriate Standard Plan, RFP and Released for Construction Plans and Specifications as revised by this Change Order.

On page 109, Section 1-07.17(3).2, Cost Responsibility, on lines 7 and 8, delete "The lump sum Contract price for 'UTB 1397 Work' shall be full pay for performing the Work as indicated." and replace with "The lump sum Contract price for 'UTB 1397 Work, Area A', 'UTB 1397 Work, Area B', and 'UTB 1397 Work, Area C' shall be full pay for performing the work for all three areas A, B, and C as indicated in Agreement UTB 1397 (Appendix U)."

On page 2.10-19, after line 20, insert the following:

"2.10.9.15 Northshore Utility District (NUD) Utilities

All costs and schedule impacts for relocating NUD Utilities, per Utility Agreement UTB 1397, Design-Build Utility Relocation (Appendix U), shall be the Design-Builder's responsibility. Existing Utilities have been provided for the I-405/NE 132nd St Interchange Project indicating NUD Type#1 and Type #2 utilities (Appendix U). The Design-Builder shall include all NUD Type #1 and Type #2 utility costs in bid items 'UTB 1397 Work, Area A', 'UTB 1397 Work, Area B' and 'UTB 1397 Work, Area C' per their respective Area as indicated in Agreement UTB 1397."

This new pay item shall include all necessary labor, equipment, materials, traffic control and design for this Work.

This Change Order changes the Contract as follows:

Bid Item 3, "UTB 1397 Work" is reduced to zero.

MATERIALS REQUIREMENTS:

All documentation for approval and acceptance for material incorporated into this project through this Change Order shall be in accordance with Section 2.25 of the RFP prior to payment.

MEASUREMENT:

The unit of measurement for the new pay item of "UTB 1397 Work, Area A," will be Lump Sum (LS). One new pay item shall be established by this Change Order based on a lump sum dollar cost for the work completed.

The unit of measurement for the new pay item of "UTB 1397 Work, Area B," will be Lump Sum. One new pay item shall be established by this Change Order based on a lump sum dollar cost for the work completed.

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The unit of measurement for the new pay item of "UTB 1397 Work, Area C," will be Lump Sum. One new pay item shall be established by this Change Order based on a lump sum dollar cost for the work completed.

PAYMENT:

The following Bid Item is deleted:

Bid Item 3, "UTB 1397 Work" in the amount of \$1,250,000.00 is deleted and replaced with Bid Item "UTB 1397 Work, Area A", Bid Item "UTB 1397 Work, Area B", and Bid Item "UTB 1397 Work, Area C" as noted below.

The following Bid Items are added:

The new pay item, "UTB 1397 Work, Area A" for the lump sum of \$559,215.42 shall be full pay for all costs, including incidental costs, incurred by the Design-Builder due to the work described herein.

The new pay item, "UTB 1397 Work, Area B" for the lump sum of \$1,249,557.24 shall be full pay for all costs, including incidental costs, incurred by the Design-Builder due to the work described herein.

The new pay item, "UTB 1397 Work, Area C" for the lump sum of \$2,045,704.99 shall be full pay for all costs, including incidental costs, incurred by the Design-Builder due to the work described herein.

CONTRACT TIME:

This Change Order does not impact Contract Time.

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION
CHANGE ORDER

DATE: 04/05/22
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ITEM NO	GROUP NO	STD ITEM	UNIT OF MEASURE	UNIT PRICE	EST QTY CHANGE	EST AMT CHANGE
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0003	06	ITEM DESCRIPTION: UTB 1397 WORK L.S.		1,250,000.00	0.00	-332,558.75
0003	07	ITEM DESCRIPTION: UTB 1397 WORK L.S.		1,250,000.00	0.00	-118,333.75
0003	08	ITEM DESCRIPTION: UTB 1397 WORK L.S.		1,250,000.00	0.00	-773,107.50
Item 14	1002	ITEM DESCRIPTION: UTB 1397 WORK, AREA C L.S.		0.00	0.00	2,045,704.99
Item 15	1003	ITEM DESCRIPTION: UTB 1397 WORK, AREA B L.S.		0.00	0.00	1,249,557.24
Item 16	1004	ITEM DESCRIPTION: UTB 1397 WORK, AREA A L.S.		0.00	0.00	559,215.42

AMOUNT TOTAL

2,630,477.65
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CAPS - Brian Watts 6/28/2022