

MAR 21 2018

Contract Number 007963	Contract Title SR520 Eastside Transit and HOV Project	Federal Aid Number (AC)NH-0520(046)
Change Order Number 116	Change Description Change order 116 Project closeout settlement	Date
Region SR520 Program	Project Engineer Brian Dobbins	Phone Number 206-770-3518
Prime Contractor / Design-Builder Eastside Corridor Constructors		

- Ordered by Engineer under the terms of Section 1-04.4 of the Standard Specifications or the RFP
- Change proposed by Contractor / Design-Builder

**Evolution & Description Of Change**

**General Description of the Change**

As mutually agreed by WSDOT and the Design Builder (D-B), Eastside Corridor Constructors (ECC), this change order resolves all costs, time, delay, impacts, inefficiencies, and risk associated with all issues except for those specifically listed as excluded in this document.

**Primary elements resolved by this change order:**

- 1. The dispute regarding Substantial Completion and associated liquidated damages.
- 2. The dispute regarding Physical Completion, Completion and any potential associated liquidated damages.
- 3. The dispute regarding the Fish Passable Culverts for stream channels for culverts A, C, F & G.
- 4. The dispute regarding the tie-in with the Floating Bridge and Landings Project.

**Evolution of the Change**

This change was initiated to settle outstanding issues and disputes between WSDOT and the Design Builder.

This holistic approach to this change was reviewed and endorsed by SR 520 Program, HQ Construction and FHWA. It was agreed that there was value in providing resolution to these outstanding issues that had impacts to the project delivery schedule and cost.

**Substantial Completion, Physical Completion and Completion Milestones** - These milestones were initially impacted by causes as documented and settled under change order #94 "QPGL dispute settlement". As a result of that change order new dates for these milestones were extended from the original Contract as follows:

- Substantial Completion December 31, 2014
- Physical Completion May 31, 2015
- Completion August 30, 2015

However, the Design-Builder was not able to accomplish the work within the newly established milestone dates realizing the actual completion dates as follows:

- Substantial Completion September 8, 2015
- Physical Completion September 8, 2015
- Completion (pending)

*(Continued on next page "Change Record Continuation")*

Distribution By:

**Project Office**

- Copy of Change Records & Change Order w/Backup - Project Engineer
- Copy of ONLY Change Order - Prime Contractor / Design-Builder
- Electronic Copy of Change Records & Change Order w/Backup - State Construction Office
- Original of Change Records & Change Order w/Backup - Region Construction Office

**Region**

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Change Record – Continuation  
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The late delivery resulted in calculated Liquidated Damages (LDs) for both milestones totaling \$7,275,000. The D-B disagreed that LDs were owed, citing change order #94 supplemental language inserted on sheet 3 of 8 General Provisions Section 1-08.4(1) Prosecution of Work.

*“The Design-Builder and WSDOT will work cooperatively and collaboratively with the appropriate caliber and quantity of Project resources to timely and efficiently close-out the Project. Cooperation and collaboration are defined to include, but not limited to, making reasonable effort to: 1) provide traffic closures for Project work where possible; 3) participate in executive partnering (including rapid escalation and resolution of disputes); and 4) expediting NCR/NCI close-out and concentrating on those documents necessary for WSDOT record files.”*

The D-B interpreted the language in CO #94 as nullifying the resulting LDs, as both WSDOT and ECC were working together on closing out the Project. The D-B also felt the schedule was impacted due to WSDOT’s denial to allow traffic closures in July 2015.

WSDOT disagreed with the D-B’s position on the reasons for not meeting the revised milestone dates.

This change order resolves this dispute over liquidated damages, and as part of this settlement, WSDOT has agreed that no liquidated damages will be assessed to the D-B.

Fish Passable Culverts - During the Project’s three-year warranty for stream performance, four of the eight fish passable culverts failed the stream performance criteria as they no longer exhibit a low flow channel. WSDOT serial letter 7065 directed the D-B to repair the culverts by adaptive management as required by Technical Requirement Section 2.8.4.4.2. The D-B replied they are not responsible for the performance of the stream channel as WSDOT’s Request for Proposal (RFP) required them to design the channels with Washington Department of Fish & Wildlife (WDFW’s) 2003 Design of Road Culverts for Fish Passage Manual, Stream Simulation Design Option. The D-B contends that the 2003 Manual contained a flaw in the recommended design approach which was discovered in 2013, after construction of the culverts. In 2013, WDFW released their Water Crossing Design Guidelines, an update of the 2003 Design of Road Culverts for Fish Passage Manual documenting how stream channels designed under the 2003 guidelines are flattening across the culvert width. The D-B’s position is that they cannot be held responsible for design flaws inherent to WDFW’s design methodology, making WSDOT responsible for stream repairs. As part of this settlement WSDOT agreed to take on the responsibility to repair the failed culverts.

Tie-In with Floating Bridge & Landings Project (FB&L) - In January 2012, WSDOT and the D-B negotiated and executed change order #9 “Westend Transition Work” that changed the final horizontal and vertical alignment of SR520 EB and WB mainlines so they would match and transition to new work contained in the adjacent FB&L Project. The change order required the D-B to design and construct the SR520 mainline and associated features in accordance with the “ultimate configuration as presented in the FB&L Project and as provided in pages 9 & 10 of CO#9”. However, during review of a later version of the D-B’s design plans made after the FB&L award, it became apparent the vertical profile of the mainline, as shown in the D-B’s revised plans, no longer matched what was required by change order #9, which was the ultimate configuration included in the FB&L contract. Numerous meetings and correspondence between both project teams ultimately led the D-B to assure WSDOT the issue would be corrected in the field by the D-B during construction. However, the D-B proceeded to construct the paving without correcting the non-conforming vertical geometry that was previously identified. Separate as-built field surveys were performed by ECC, WSDOT and KGM (FB&L Design-Builder) and all confirmed the paving elevations differed by 0.57 feet from the surface elevation required in change order

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#9. ECC contended the paving was within “contractual tolerance” of ECC’s Released for Construction (RFC) design elevations and ultimately denied responsibility for fixing the non-conforming work.

In order to avoid delays on the FB&L contract and to mitigate potential damages, WSDOT directed the FB&L Design-Builder, to remove the PCCP paving constructed by ECC in the tie-in location and rebuild to change order #9 requirements. WSDOT sought credit from ECC for all costs associated with KGM’s reconstruction of the tie-in.

The Disputes Review Board (DRB) hearing on this issue was held May 30- 31, 2017. The Board’s recommendations were published June 30, 2017 and found in favor of ECC. The D-B considered this issue resolved; however, WSDOT did not concur. As part of this settlement, WSDOT considers this issue resolved.

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**Basis of Cost & Justification:**

In a meeting held on September 13, 2017, WSDOT and the D-B settled the four issues described above. The settlement includes a \$1,000,000 payment by ECC to WSDOT to resolve ECC's responsibilities for these issues. As a result, a new pay item will be authorized by this change order to provide that credit payment to WSDOT. Below is a description of each of the settled issues:

Substantial Completion, Physical Completion and Completion Milestones - HQ Construction Office helped in the resolution and settlement of this issue. As part of this settlement, no liquidated damages will be assessed to ECC.

Fish Passable Culverts – Since, the design changes needed to adequately address the stream issues for the culverts in question may be inconsistent with the original contract design requirements, WSDOT decided to take the responsibility for the design and construct the remediation for lack of low flow channel in the stream beds to settle this issue.

Tie-In with FB&L Project – Although WSDOT disagreed with the DRB's recommendations on this issue and has previously notified the DRB and ECC of its position, WSDOT considers this issue resolved as part the settlement terms of this change order.

**Contract Time:**

This change order does not impact contract time.

**Prior Approvals:**

Region/Program Level - Dave Becher 9/13/2017 Settlement Meeting with ECC and on 12-26-2017  
Headquarters Construction Level - 9/13/2017 Settlement Meeting with ECC.

**List Attachments:**

Change order No. 116 (Approved)  
Change Order No. 116 Checklist  
Approval Documentation

**Distribution By:**

Project Office

Copy of Change Records & Change Order w/Backup - Project Engineer  
Copy of ONLY Change Order - Prime Contractor / Design-Builder  
Electronic Copy of Change Records & Change Order w/Backup - State Construction Office  
Original of Change Records & Change Order w/Backup - Region Construction Office

Region

Original of Change Records & Change Order w/Backup - State Construction Office

**CHANGE ORDER-CHECKLIST**

1/2

Cont. #: 7963..... Cont. Title: SR 520 Eastside Transit and HOV..... C.O. #: 116..... C.O. Title: Project Closeout Settlement.....	If yes, State Construction Office Approval Required
<b>I. Executed by the State Construction Office</b>  1. Cost or credit equal to or exceeding \$500,000.*1, *3 <span style="float:right"><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</span> 2. Change in the contract documents beyond the scope, intent or termini of the original contract.*2 <span style="float:right"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> 3. Any proposed revision or deletion of work that affects the condition of award requirements. (Must be coded "CO" in CCIS, includes changes to goal or commitment) <span style="float:right"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> 4. Change in contract time greater than 30 working days, or a change in contract time not related to any change order.*1 <span style="float:right"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>	
<b>II. Executed by the Region</b>  5. Determination of impacts and/or overhead. <span style="float:right"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> 6. Change to Contract Provisions or Standard Plans. <span style="float:right"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> 7. Material or product substitution. (Excludes materials associated with Std. Specification Sections 6-07, 8-01, 8-02, 8-12, 8-18 & 8-20) <span style="float:right"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> 8. Structural design change in the roadway section. (Requires concurrence from designer) <span style="float:right"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> 9. Determination of changed condition. (Section 1-04.7 of the Standard Specifications) <span style="float:right"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> 10. Settlement of a claim. (Section 1-09.11(2) of the Standard Specifications) <span style="float:right"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> 11. Repair of damage regarding "acts of God" or "acts of the public enemy or of government authorities". (Section 1-07.13 of the Standard Specification) <span style="float:right"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> 12. Structural change to structures) <span style="float:right"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>	

**Approvals obtained:**

Project Engineer: Brian Robbins..... Date: 11/15/2017.....

Region: Dave Recher..... Date: 12/26/2017.....

State Construction Office: Derek Case..... Date: .....

State Materials Lab: ..... Date: .....

Other (Local Agency, FHWA, Surety, etc.): ..... Date: .....

**To be completed by the Project Engineer :**

CO Reason(s) (See "2008 Codes and Definitions" on State Construction Office web page): AB, 05, CE, DS, RS.....

Change Order Prepared By: Brian Robbins..... Date: 11/2/2017.....

Has change been entered as lesson learned?  Yes  No      Has design documentation been updated?  Yes  No

Is this project under full FHWA stewardship oversight (Project Of Division Interest)? \*1       Yes  No

**To be completed by the Region :**

Is the change eligible for Federal participation where applicable?  Yes  No

Change Order Reviewed by: Julie Schurman..... Date: 3/19/2018.....

\*1 Change (Cost or Credit) greater than \$200,000 or greater than 30 days on Projects of Division Interest (PODI) requires FHWA approval. (see Construction Manual - Chapter 1-00.10, Chapter SS 1-04.4, and State Construction Office web page)

\*2 Per RCW 47.28.050, any change beyond \$7,500 that is beyond the original scope shall go through the competitive bidding process.

\*3 Engineering error changes over \$500,000 requires reporting (See reporting instructions & template on State Construction Office web page)

This form represents the minimum information required by the State Construction Office. If you wish to supplement this information, you may do so on a separate sheet of paper.

**SR 520 Corridor Program: Change Order Page 2 - Checklist Supplement**

Cont. #:   
 C.O. #:

**To be completed by the Project Engineer:**

Does this change order require coordination with other SR 520 Projects / Program Areas?  Yes  No

Coordination has taken place with:

Contract Project (identify your project):

Pontoon	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Name: <input type="text" value="N/A"/>	Date: <input type="text"/>
Pontoon Mitigation	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Name: <input type="text" value="N/A"/>	Date: <input type="text"/>
Pontoon Moorage	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Name: <input type="text" value="N/A"/>	Date: <input type="text"/>
Eastside HOV	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	Name: <input type="text" value="N/A"/>	Date: <input type="text"/>
Evans Creek	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Name: <input type="text" value="N/A"/>	Date: <input type="text"/>
FB&L	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Name: <input type="text" value="N/A"/>	Date: <input type="text"/>
WCB	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Name: <input type="text" value="N/A"/>	Date: <input type="text"/>
WABN	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	Name: <input type="text" value="N/A"/>	Date: <input type="text"/>

Identified risk has been entered into the SR 520 Risk Management Database:  Yes  No  N/A

Risk ID Number (if pending, identify as Pending):

Project Risk ID No.:   
 Project Risk ID No.:   
 Project Risk ID No.:

**To be coordinated with Program Finance, Budget and Controls Group:**

Program Funding Concurrence?  Yes  No      Funding Concurrence Obtained on:

Is Sales Tax Included in CO Cost?  Yes  No      Is sales tax deferred?  Yes  No

Max Payment Curve Changes discussed with:       Date:

Third Party Agreements discussed with:       Date:

**Coordination with Others:**

Design / Technical Lead:      Name:       Date:

Maintenance:      Name:       Date:

Environmental Commitments:      Name:       Date:

**WASHINGTON STATE  
DEPARTMENT OF TRANSPORTATION  
CHANGE ORDER**

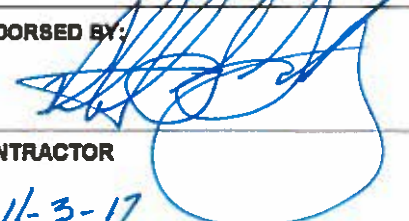
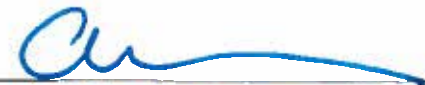
DATE: 10/31/17  
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CONTRACT NO: 007963 FEDERAL AID NO:  
CONTRACT TITLE: SR 520, EASTSIDE TRANSIT AND HOV PROJECT A DESIGN  
CHANGE ORDER NO: 116 PROJECT CLOSEOUT SETTLEMENT

PRIME CONTRACTOR: XXXXXXXXXX EASTSIDE CORRIDOR CONSTRUCTORS  
585 W BEACH ST  
P O BOX 50085  
WATSONVILLE CA 95077-5085


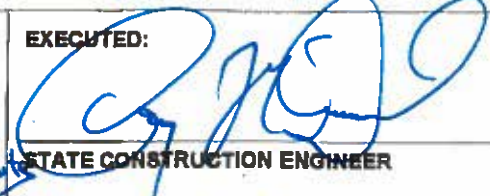

Ordered by Engineer under the terms of Section 1-04.4 of the Standard Specifications

Change proposed by Contractor

ENDORSED BY:  CONTRACTOR 11-3-17 DATE	SURETY CONSENT:  ATTORNEY IN FACT 11/6/17 DATE
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ORIGINAL CONTRACT AMOUNT: 306,278,000.00  
 CURRENT CONTRACT AMOUNT: 363,596,293.51  
 ESTIMATED NET CHANGE THIS ORDER: -1,000,000.00  
 ESTIMATED CONTRACT TOTAL AFTER CHANGE: 362,596,293.51

Approval Required:  Region  Olympia Service Center  Local Agency

<input checked="" type="checkbox"/> APPROVAL RECOMMENDED  PROJECT ENGINEER 3.19.18 DATE	<input type="checkbox"/> EXECUTED  STATE CONSTRUCTION ENGINEER March 21, 2018 DATE
<input checked="" type="checkbox"/> APPROVAL RECOMMENDED REGIONAL ADMIN:  BY: SR 520 Director of Construction March 19, 2018 DATE	<input type="checkbox"/> EXECUTED OTHER APPROVAL WHEN REQUIRED 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:

**DESCRIPTION:**

This change order, as mutually agreed between WSDOT and Eastside Corridor Constructors (ECC), resolves outstanding Project issues as described.

**GENERAL:**

This credit change order compensates WSDOT in full for the issues included in this agreement.

For ECC and WSDOT, all issues, protests and disputes known as of the date of this change order are fully resolved; except for those issues specifically listed in the Exceptions section of this change order.

All impacts directly or indirectly related to cumulative effects of changes or clarifications made to the Contract Work are settled.

ECC and WSDOT release one another from any and all known disputes, claims or further protests regarding known issues, including but not limited to the following:

1. The dispute regarding Substantial Completion and Associated Liquidated Damages;
2. The dispute regarding Physical Completion, Completion and Associated Liquidated Damages;
3. The dispute regarding the Fish Passage and Stream Channel for Culverts A, C, F, and G; and
4. The dispute regarding the Tie-In with the Floating Bridge & Landings (FB&L) Project.

WSDOT's claims and ECC's protests related to the above issues are resolved by this change order. In consideration of this resolution, the parties agree to a reduction in the Contract payment of One Million dollars.

**CONSTRUCTION CRITERIA:**

This change order deletes General Provisions Section 1-08.9(1).

In addition, this change order supplements Technical Requirements Section 2.14.5.6 Final Hydraulics Report with the following:

WSDOT will assume ownership of the Design-Builder's design files (plans and details) for the Fish Passage and Stream Channel for Culverts A, C, F, and G (Microstation design files) without additional compensation. Upon



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transmittal of the Final Hydraulics Report to WSDOT, the Design-Builder agrees to allow WSDOT full and unrestricted use of the design files, to use as WSDOT deems appropriate. WSDOT takes full responsibility for its use of such design files and ECC shall have no responsibility or liability in connection with WSDOT's use of such design files.

**RELEASE:**

This change order does not absolve or alter the parties' respective Contractual obligations and responsibilities under the Contract, except as described herein, including but not limited to those associated with warranty obligations, defective Work or future latent defects.

Unless specifically excluded, by signing this change order:

ECC agrees and certifies that any and all known claims and/or disputes of whatsoever kind or nature known relating to the Project are satisfied in full and the State of Washington is hereby released and discharged in full from said prime contractor or subcontractor claims and/or disputes.

WSDOT agrees that any and all known claims and/or disputes of whatsoever kind or nature relating to the Project are satisfied in full and ECC is hereby released and discharged in full from said claims and disputes.

WSDOT agrees that the final performance evaluation for the Project will be assigned to the Eastside Corridor Constructors JV (ECC) entity alone and not to Granite Construction Company nor PCL Construction Services, Inc.

**Exceptions:**

ECC remains obligated to timely complete the remaining Work (as described below) under the Contract with regard to final project completion including warrantee work, final records/paperwork, resolve outstanding deviations and defects. WSDOT will work with ECC in good faith to facilitate completion of the remaining Work items below in an efficient manner.

The following is an all-inclusive list of all issues specifically excluded from this change order. The items in the list are not resolved. Inclusion in the list below does not constitute an acknowledgement by WSDOT that entitlement to, or credit for, a particular issue exists. WSDOT and ECC reserve all rights and defense in connection with the following items:

- Completion of Plant Establishment obligations (Completion by June 1, 2018)
- Correct/repair Evergreen Point Road Lid Drainage (Completion by December 31, 2017)
- Repair/replace damaged surface treatment at the 92nd Avenue Kiss and Ride (Completion by December 31, 2017)
- Seal joints at Evergreen Point Road (Completion by December 31, 2017)
- Resolution of Electrical System issues at the 84th Avenue lid, 92nd Avenue lid, and Evergreen Point Road lid (Completion by April 1, 2018)
- Demonstrate adequacy of the Underlid Lighting for the 84th Avenue and 92nd

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Avenue lids (Engineering Analysis is currently scheduled to be completed by December 31, 2017)

ECC is not released from claims related to warranty work or latent defects in the Work unknown as of the date of this change order.

**MEASUREMENT:**

There is no specific unit of measurement for the new lump sum credit item "CO#116 Project Closeout Settlement".

**PAYMENT:**

The lump sum credit item "CO#116 Project Closeout Settlement" in the credit amount of One Million dollars (\$1,000,000) shall be full and final settlement and resolution of all issues described in this change order. The total amount of this lump sum credit change order will be processed in full as part of the next regular pay period.

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<b>CONTRACT NO: 007963</b>				<b>CHANGE ORDER NO: 116</b>			
ITEM NO	GROUP NO	STD ITEM	ITEM DESCRIPTION	UNIT MEASURE	UNIT PRICE	EST QTY CHANGE	EST AMT CHANGE

1071	01		CO#11C PROJECT CLOSEOUT SETTLEMENT	L.S.	-1,000,000.00	1.00	-1,000,000.00
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-1,000,000.00  
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