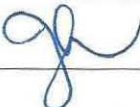




Contract Number 007895	Contract Title Lewis and Clark Bridge - SUPERSTRUCTURE Painter	Federal Aid Number ARRA-0433(010)
Change Order Number 10	Change Description Negotiated Settlement	Date 1/21/2021
Region Southwest	Project Engineer Joanna Lowrey, P.E. 	Phone Number 360-442-1346
Prime Contractor / Design-Builder Odyssey-Geronimo Joint Venture		
<input checked="" type="checkbox"/> Ordered by Engineer under the terms of Section 1-04.4 of the Standard Specifications or the <input type="checkbox"/> Change proposed by Contractor / Design-		
Evolution & Description Of Change <p>This change order provides payment to Odyssey-Geronimo Joint Venture (OGJV) for the claims in Thurston County case number 15-2-01349-9, between the Washington State Department of Transportation (WSDOT) and Odyssey-Geronimo Joint Venture (OGJV) as described in the settlement agreement effective December 15, 2020.</p> <p>The new lump sum item, "CO10 Negotiated Settlement" is added to the contract.</p>		

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

DOT Form 422-002

Revised 10/2019

Region

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

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION
CHANGE ORDER

DATE: 01/07/21
PAGE 1 of 7

CONTRACT NO: 007895 FEDERAL AID NO: ARRA-BH-0433(010)
CONTRACT TITLE: SR 433, LEWIS AND CLARK BRIDGE SUPERSTRUCTURE PAIN
CHANGE ORDER NO: 10 NEGOTIATED SETTLEMENT

PRIME CONTRACTOR: [REDACTED] ODYSSEY/GERONIMO JV
2435 W PIKE ST 15342-1160
PO BOX 188
HOUSTON PA 15342-0188

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

ENDORSED BY:

Signature on file

CONTRACTOR SIGNATURE

Signature on file

DATE

1-25-21

SURETY CONSENT:

ATTORNEY IN FACT

DATE

ORIGINAL CONTRACT AMOUNT: 33,774,714.00
CURRENT CONTRACT AMOUNT: 0.00
ESTIMATED NET CHANGE THIS ORDER: 3,500,000.00
ESTIMATED CONTRACT TOTAL AFTER CHANGE: 0.00

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

Signature on file

Signature on file

SIGNATURE

4 Feb 2021

DATE

10 Feb 2021

DATE

Signature on file

OTHER APPROVAL WHEN REQUIRED

REGIONAL ADMINISTRATOR SIGNATURE

SIGNATURE

DATE

04 Feb 21

DATE

REPRESENTING

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION
CHANGE ORDER

DATE:01/07/21
PAGE 2 of 7

CONTRACT NO:007895

CHANGE ORDER NO: 10

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 OF WORK

This change order provides payment for the Settlement Agreement, effective December 15, 2020, between the Washington State Department of Transportation (WSDOT) and Odyssey-Geronimo Joint Venture (OGJV) in connection with Thurston County Case No. 15-2-01349-9 Odyssey-Geronimo vs. State of Washington. The Settlement Agreement is included in this change as pages 4 of 7 through 7 of 7.

MEASUREMENT

No specific unit of measure will apply to the lump sum item.

PAYMENT

The lump sum price for "CO10 Negotiated Settlement" in the amount of \$3,500,000.00 shall be full pay to fully comply with the Settlement Agreement.

CONTRACT TIME

Contract time is not affected by this change order.

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION
CHANGE ORDER

DATE: 01/07/21
PAGE 3 of 7

CONTRACT NO: 007895				CHANGE ORDER NO: 10		
ITEM NO	GROUP NO	STD ITEM	UNIT OF MEASURE	UNIT PRICE	EST QTY CHANGE	EST AMT CHANGE

ITEM NO	GROUP NO	STD ITEM	UNIT OF MEASURE	UNIT PRICE	EST QTY CHANGE	EST AMT CHANGE
1003	01			0.00	0.00	1,750,000.00
ITEM DESCRIPTION: "CO10-SETTLEMENT AGREEMENT"						
1004	02			0.00	0.00	1,750,000.00
ITEM DESCRIPTION: "CO10-SETTLEMENT AGREEMENT"						

AMOUNT TOTAL

3,500,000.00
=====

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement), effective December 15, 2020 (Effective Date), is entered into by and between the State of Washington (State), by and through its agency the Washington State Department of Transportation, (WSDOT), and Odyssey-Geronimo Joint Venture (OGJV); hereinafter collectively referred to as the Parties.

The Parties stipulate and acknowledge as follows:

A. OGJV filed a lawsuit in Thurston County Superior Court (Case No. 15-2-01349-9) alleging breach of contract by WSDOT (“the Litigation”), quantum meruit, and claims for declaratory judgment. These claims relate to the contract between the Parties for WSDOT Project No 7895, SR 433 Lewis & Clark Bridge Superstructure Painting (the “Project”). WSDOT denies OGJV’s allegations.

B. The Parties engaged in alternative dispute resolution in the form of three facilitated mediation sessions conducted in October and December of 2020. The third and final mediation session on December 15, 2020, resulted in a negotiated resolution which is embodied in this Agreement.

C. The Parties, by and through this Agreement, intend to fully and finally settle, release and resolve the Litigation and all other outstanding matters between the parties.

WHEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Payment.** As settlement of the above-referenced claims, WSDOT shall pay to OGJV Three Million Five Hundred Thousand and 00/100 Dollars (\$3,500,000.00) (Settlement Amount). The Settlement Amount shall be paid by WSDOT to OGJV via wire transfer. Upon receipt of the Settlement Amount by OGJV, WSDOT payment obligation shall be discharged. WSDOT shall use best efforts to expedite payment.

2. **Dismissal of Litigation.** Upon the execution of this Agreement, the Parties may notify the Thurston County Superior Court of settlement of the Litigation and suspend all further activity in Case No. 15-2-01349-9. Upon payment of the Settlement Amount as set forth in Paragraph 1 above, OGJV agrees to dismiss the Litigation with prejudice and without award of additional attorneys fees, expert expenses, or costs to either party.

3. **Release of Claims by WSDOT.** Upon payment of the Settlement Amount as set forth in Paragraph 1 above, WSDOT agrees to release OGJV from any and all claims, known or unknown, asserted or unasserted, accrued or unaccrued, whether sounding in contract or tort, at law or in equity, including but not limited to any claims for indemnification, defense or contribution that arise or could arise out of, or otherwise relate in any way to the Project and/or the Litigation.

4. **Release of Claims by OGJV.** Upon receipt of the Settlement Amount as set forth in Paragraph 1 and dismissal of the Litigation as set forth in Paragraph 2, OGJV agrees

to release WSDOT from any and all claims related to the Project and/or the Litigation or the underlying claims. OGJV further agrees to release WSDOT from any and all claims, known or unknown, asserted or unasserted, accrued or unaccrued, whether sounding in contract or tort, at law or in equity, including but not limited to any claims for indemnification, defense or contribution that arise or could arise out of, or otherwise relate in any way to the Project and/or Litigation.

5. **Enforcement.** The terms of this Agreement shall be subject to enforcement, in the case of any actual or alleged breach thereof, via arbitration with Judge Bruce Hilyer (Ret.) of Hilyer Dispute Resolution, as arbitrator. Any decision rendered by Judge Hilyer pursuant to such arbitration shall be final, binding and without appeal. The prevailing party in any such arbitration shall be entitled to an award of reasonable attorneys' fees and costs.

6. **Further Assurances.** The Parties agree to cooperate with one another in good faith, to execute any further documents, and to take any additional action reasonably necessary to implement the terms of this Agreement.

7. **No Admission of Liability.** The Parties agree that neither the making of this Agreement nor anything contained in this Agreement shall be construed or considered to be an admission of liability, wrongdoing, responsibility or misconduct by either of the Parties. Rather, this Agreement is merely a negotiated resolution between the Parties.

8. **Binding Effect.** This Agreement is binding upon and shall inure to the benefit of the Parties hereto and their respective members, managers, officers, elected officials, representatives, agents, employees, subsidiaries, assigns, attorneys, affiliates, predecessors and successors in interest.

9. **Expenses.** Each party shall be responsible for its own expenses, costs, and attorneys' fees relating to the making and execution of this Agreement and the Litigation.

10. **Severability.** If any portion of this Agreement is held or determined to be invalid or unenforceable, the remaining provisions shall continue in full force and effect as if this Agreement had been executed with the invalid or unenforceable portion eliminated, and any invalid or unenforceable portion shall thereafter be interpreted so as to render such provision valid and enforceable, while also adhering as closely as reasonably possible to the Parties' intent hereunder.

11. **Entire Agreement.** This Agreement contains the entire agreement between the Parties and all terms of this Agreement are contractual and not a mere recital, subject to further documentation in accordance with Paragraph 16.

12. **Execution by Counterpart.** This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute the same Agreement. The Parties agree that facsimile or portable document format (PDF) signatures shall have the full force and effect of original signatures.

13. **Voluntary Agreement.** The undersigned, on behalf of the Parties, declare and represent that they fully understand the terms of this Agreement and voluntarily enter into the same.

14. **Signature Authority.** The individuals signing this Agreement on behalf of each party represents that they have the authority to respectively bind that party concerning this Agreement. WSDOT certifies and warrants that it has received the approval of any and all public agencies, officials, boards, committees and/or representatives necessary to bind WSDOT to this Agreement. Each party further represents that it has been independently represented by counsel of its own choice and that it has made a full investigation into the facts giving rise to the Litigation and this Agreement. This Agreement shall be construed neutrally in accordance with its plain meaning, rather than in favor of or against any party, inasmuch as both Parties have been represented by independent counsel, each of whom has had a full opportunity to be heard.

15. **Claims Not Assigned.** The Parties warrant they have not assigned or transferred their claims to any other party in any way.

16. **Additional Documentation.** The Parties agree to execute any additional documentation necessary to effectuate this Agreement, including but not limited to a final settlement agreement and mutual release executed by the Parties.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement effective as of the date set forth above:

By: s/ Joshua P. Weir
David D. Palay, WSBA# 50846
Joshua P. Weir, WSBA# 49819
Attorneys for Defendant
State of Washington

By: _____
Ian H. Frank
Nora E. Loftus
Attorneys for Plaintiff
Odyssey-Geronimo Joint Venture

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Joshua P. Weir, WSBA# 49819
Attorneys for Defendant
State of Washington


Nora E. Loftus
Attorneys for Plaintiff
Odyssey-Geronimo Joint Venture