


## City of Alexandria, Virginia

## MEMORANDUM

DATE: OCTOBER 7, 2003

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER 

SUBJECT: CONSIDERATION OF APPROVAL OF INCREASE IN CONTRACT AMOUNT DUE TO DELAY CLAIM FOR MILL ROAD IMPROVEMENT PROJECT

---

**ISSUE:** City Council consideration of approval of an increase in the contract with Martin & Gass, Inc., due to contractors claim resulting from a 60-day delay in moving utilities and street lights during the Mill Road Realignment project. This increase, along with approved change orders to date, exceeds the "25% of fixed price contract" limit that the Purchasing Agent may approve (Section 3-3-50(a) of the City Code).

**RECOMMENDATION:** That Council approves the increase of the fixed price contract by \$96,000 to increase the total contract amount from \$2,063,711 to \$2,159,711.

**DISCUSSION:** The Mill Road realignment project was begun after the Transportation and Environmental Services Department (T&ES) negotiated agreements with Hoffman Development Corporation, Washington Metropolitan Area Transportation Authority (WMATA) and the Virginia Department of Transportation (VDOT) for transfers of land and financial contributions necessary to widen and straighten the right of way. Funding for the project was a combination of VDOT, City and contributed money. The project realigned Mill Road from Roberts Lane in the east to the Telegraph Road overpass in the west (Attachment 1).

The Purchasing Division issued bids and executed a contract with Martin & Gass, Inc., which was the lowest responsive and responsible bidder, on June 17, 2002, in the fixed price amount of \$1,676,349, or \$523,651 below the City Engineer's estimated project cost of \$2,200,000. The contract called for completion of the project within 120 days (October 14, 2002). The contract contained a liquidated damages amount of \$1,600 per day for each day's delay by the contractor beyond the specified completion date.

T&ES requested and the Purchasing Division approved change orders totaling \$387,362 during the course of the work that increased the total amount of the contract to \$2,063,711, an increase of 23%. A list of the change orders is in Attachment 2. These change orders were needed due to poor soil conditions (the site is a former landfill), and the relocation of utilities involving all of

the major utility companies including Dominion Virginia Power, Verizon, Comcast, Virginia American Water Company, Washington Gas and WMATA.

The exact location of the utilities was, in most instances, unknown at the time the project was bid which resulted in one utility company being forced to discontinue work to allow another company to move its infrastructure out of the impending path of the newly relocated utilities and forced the rerouting of utilities around existing water mains and/or old unused duct banks and lines. In addition, because the site was a former landfill, the contractor had to implement measures to achieve a stable soil base due to the poor soil conditions at the site. The unknown location of the utilities was unforeseen and with the poor soil conditions contributed to the additional project costs.

The contractor's claim for delay costs was the result of Dominion Virginia Power's failure to underground utilities and remove power poles and street lights from the middle of the completed roadway (the site where the median was to be constructed) in a timely manner. This failure to underground and remove the poles and streetlights resulted in the temporary shut down of the project for a period of 60 days, requiring the contractor to install temporary traffic management measures including jersey barriers. This temporary shut down extended the contract beyond the 120-day completion period.

At the completion of the project and acceptance of the work, the contractor submitted a claim in the amount of \$377,401 to recover alleged increased costs due to the delay caused by third parties. This was in addition to the \$387,362 in approved change orders. After extensive negotiations, the contractor agreed with the City that a fair and equitable settlement would result from approving 60 days compensable delay at the same \$1,600 per day rate the City would have charged the contractor under the liquidated damages clause of the contract. The contractor was informed that this \$96,000 settlement would require City Council approval. The contractor has agreed to the \$96,000 payment and has dropped its claim by \$281,401 in alleged delay costs.

The City Attorney has advised that he is conferring with outside counsel concerning the possibility of filing a claim against Dominion Virginia Power to recover the amount of the settlement with Martin and Gass, since in City staff's judgment it was largely Dominion Virginia Power's delays that triggered project delays.

**FISCAL IMPACT:** Both the change order costs of \$387,362 and the delay costs of \$96,000 will be funded according to the project's undergrounding utilities formula, under which 32% of costs are paid by the Hoffman Development Corporation Developer and the remaining 68% is divided between the City and VDOT, at 51% and 49%, respectively. The City's share (\$161,056) will come from Capital Improvement Program (CIP) funds approved and designated for the completion of the Mill Road Realignment project.

**ATTACHMENTS:**

- Attachment 1. Mill Road Realignment Map
- Attachment 2. Mill Road Project Change Order Listing

**STAFF:**

Richard J. Baier, Director, Transportation & Environmental Services  
Jack T. Pitzer, Purchasing Agent



## MILL ROAD PROJECT CHANGE ORDER LISTING

<u>DATE</u>	<u>CO#</u>	<u>REASON</u>	<u>AMOUNT</u>
9/4/02	1	To incorporate the requirements for various utility delays in accordance with Contractor's letters dated 7/23, 7/30 and 8/5/02.	\$13,876.43
9/4/02	2	To incorporate the requirements to adjust the contract quantity for increase of cut to fill (stockpile).	\$ 3,358.00
9/4/02	3	To adjust the contract quantity of GR-2 guardrails.	\$ 1,537.50
9/4/02	4	To incorporate the requirements for placement of geotextile fabric on yielding subgrade.	\$ 230.00
10/1/02	5	To account for a standby crew waiting for a survey to stakeout workable grades on 8/12 and 8/13, 2002.	\$ 7,510.97
10/4/02	6	To reconfigure the VP-4 switch pad and install 35' of additional concrete-encased conduit.	\$ 7,261.72
10/9/02	7	To reconfigure the storm sewer pipe runs to resolve unforeseen conflicts of a 20" water main.	\$ 2,546.86
10/15/02	8	To reconfigure the storm sewer pipe runs to resolve unforeseen conflicts with a Metro duct bank.	\$ 7,123.08
10/15/02	9	Additional concrete demolition and removal.	\$20,123.90

## MILL ROAD PROJECT CHANGE ORDER LISTING

<u>DATE</u>	<u>CO#</u>	<u>REASON</u>	<u>AMOUNT</u>
10/16/02	10	Eliminated storm sewer pipe and structures due to utility conflicts.	\$ 7,683.17
11/20/02	11	Utility delays that were encountered for four days in July 2002.	\$ 1,678.31
11/20/02	12	To furnish and install an additional 4' X 6' VA. Dominion Power concrete utility vault.	\$ 8,742.00
11/20/02	13	To reconfigure the storm sewer to correct utility conflict with the unidentified duct bank.	\$53,802.53
11/20/02	14	Utility delay encountered on 8/9/02. When attempting to install the 15" flex pipe, two additional water mains were discovered.	\$ 2,685.30
11/20/02	15	For pumping excess water from the subgrade on 8/29/02.	\$ 980.17
11/20/02	16	To reconfigure the storm sewer in order to correct a utility conflict.	\$19,488.06
11/20/02	17	To install ground rods for VA. Dominion Power in their vaults and switch pads.	\$ 7,803.90
11/20/02	18	For delay on 9/11/02 caused by Washington Gas at the intersection of Stovall Street and Mill Road..	\$ 3,243.78
11/20/02	19	Undercutting the roadway in various areas to achieve a stable base due to poor soils onsite.	\$10,346.35

## MILL ROAD PROJECT CHANGE ORDER LISTING

<u>DATE</u>	<u>CO#</u>	<u>REASON</u>	<u>AMOUNT</u>
11/20/02	20	Filling the undercut roadway with cement treated aggregate in various areas to achieve stable base due to poor soils on site.	\$103,530.90
12/18/02	21	To replace existing str. 158 with new DI-3B, L=8 Top.	\$ 1,272.66
12/18/02	22	To replace geotextile fabric on yielding subgrade.	\$13,763.20
12/18/02	23	To restrain the existing WMATA water main.	\$ 874.46
1/29/03	24	To reimburse contractor for providing additional Railroad protective liability insurance coverage.	\$ 8,819.06
2/20/03	25	To reimburse the contractor for providing and installing modified VDOT GR-2 double rail guardrail.	\$23,760.00
2/21/03	26	To reimburse contractor to field connect storm sewer at Structure 166 to existing manhole.	\$ 5,325.11
2/21/03	27	To reimburse to install two inch conduit without splice boxes, which were to be furnished by VA. Dominion Power.	\$10,696.10
2/21/03	28	To hand-form poured-in-place MB-7C concrete median barrier due to method of replacement required by WMATA plan changes.	\$ 8,482.78
3/18/03	29	To provide chain link fencing.	\$18,150.00
4/16/03	30	To provide fuel escalation costs for the remaining concrete and stripping work.	\$ 2,742.19

**MILL ROAD PROJECT CHANGE ORDER LISTING**

<u>DATE</u>	<u>CO#</u>	<u>REASON</u>	<u>AMOUNT</u>
4/16/03	31	To provide fuel escalation costs for remaining asphalt work.	\$6,161.32
4/16/03	32	Additional paving planning under Metro Bridge and Stovall intersections.	\$ 8,250.00
7/25/03	33	Due to unavailability of 3.5 caliper trees as specified in contract.	(\$13,326.41)
7/29/03	34	Reduction in price due to field measurement quantities.	(\$54,966.99)
8/14/03	36	To increase traffic maintenance, mobilization and de-mobilization costs and performance/ payment bonds costs.	\$63,805.52
<b>TOTAL AMOUNT OF CHANGE ORDERS</b>			<b>\$387,361.93</b>