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PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA
ACTION ITEM

Item No. 5c
Date of Meeting April 23, 2013

DATE: **May 31**, 2013
TO: Tay Yoshitani, Chief Executive Officer
FROM: Ralph Graves, Managing Director, Capital Development Division
Janice Zahn, Assistant Engineering Director
SUBJECT: Change Order No. 097 for the East Marginal Way Grade Separation Project,
Contract MC-0316219, CIP C800237

Amount of This Request: \$492,000.00
Source of Funds: Project Construction Contingency
Est. State and Local Taxes: \$0.00 **Est. Jobs Created:** None

ACTION REQUESTED:

Request **(1) Ratification of \$232,159 for costs already incurred in excess of current authorization for the East Marginal Way Grade Separation project; (2) additional authorization in the amount of \$1,637,841 to complete outstanding work on the project for a total project authorization of \$55,456,171; and (3)** authorization for the CEO to issue Change Order Number 097 for the project's Contract MC-0316219 in the amount of \$492,000 and for a time extension of 126 working days to the contract duration.

SYNOPSIS:

The purpose of this project was to construct a new vehicular overpass structure to separate vehicular traffic from rail traffic at the intersection of lower Spokane Street and East Marginal Way. The project includes:

- Pavement improvements at the existing street connections
- Realignment of a portion of Spokane Street surface street to pass under the new overpass
- Installation of an earthquake drain system under the retained fill
- Utility relocation and construction of a water quality vault

This change order provides the compensation for the indirect expenses related to the Port-caused delays that caused damages to the contractor, Mowat Construction Company. Any direct expenses related to these impacts have been paid for by previously issued change orders. The total delay is the result of two distinct impacts:

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1. Design revisions to the west intersection due to designer errors delayed the contractor's work as well as a redesign of the south intersection due to ongoing permitting issues with the Union Pacific Railroad (UPRR) and design revisions from the City of Seattle.
2. Reconstruction of a 21" diameter water main that was required by the City of Seattle (reference Change Order No. 54).

This change order will be issued for the fixed amount of \$492,000 and a time extension of 126 working days. The value of the change order is the result of analysis of the claim as well as independently performed assessments of Port-caused impact and additional cost escalation related to further dispute resolution processes.

The source of funds for this change order will come from the existing contract construction contingency, requiring no additional funds. The contract currently has an executed change order rate of 7.84%, which becomes 10.54% after execution of this change order. This change order is the final change order associated with this construction contract.

Project closeout and budget reconciliation is difficult due to the age of this project, the multiple sources of funds, and the complexity of expenditures. Once staff determines the exact status of budget and expenditures we may need to return to Commission for additional authorization.

BACKGROUND:

The East Marginal Way Grade Separation project is a roadway improvement project near the East Marginal Way/South Spokane Street intersection. The grade separation is a complex geometry bridge structure that moves surface traffic above both Burlington Northern/Santa Fe and Union Pacific Railroad tracks. The completed project services north, south and eastbound traffic, improving freight mobility for Terminals 5, 18, and 30 as well as providing safer transit for all traffic with the elimination of railroad crossings in this vicinity.

Mowat Construction Company was the low bidder with contract execution on October 26, 2009. The base contract amount is \$18,250,482.70 with a contract completion date of September 15, 2011.

The grade separation is open to traffic in its final interim configuration. Remaining administrative items between the Port and the City of Seattle include a memorandum of understanding and final acceptance letters from Seattle Department of Transportation (SDOT) and Seattle Public Utilities (SPU). Commission authorization for a follow-on construction project to put the East Marginal Way Grade Separation (EMWGS) in its final configuration will be requested once the south intersection design changes can be agreed upon by the Port, UPRR and City of Seattle.

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CHANGE ORDER DESCRIPTION:

The following information relates to the pending change order scope and cost:

Change Order No. 097

Provide compensation for unreasonable schedule impacts to the Mowat Construction Company (MCC), due to delays from the Union Pacific Railroad as well as redesign efforts on the south and west intersections. The contract time would be extended by 126 working days due to these impacts. The time established for substantial completion of the work would be extended to 570 working days. Mowat Construction Company would be compensated in the amount of \$492,000 for these impacts.

This compensation settles all costs and time extensions related to the Port's impact to the Mowat Construction Company on the East Marginal Way Grade Separation project.

PROJECT JUSTIFICATION:

Due to complications with the railroads and numerous design changes, MCC's work was delayed, causing them to incur additional time and costs for field equipment, extended field office overhead, and home office overhead. This amounts to 126 working days of compensable delay. This project utilized a Seattle DOT contract format that uses "working days" as opposed to calendar days, which do not equate to each other. The 126 working days associated with this contract equates to 294 calendar days.

The contractor presented a delay claim to the Port of \$681,835.58 for direct and indirect expenses related to the delay. The resulting change order value is the result of a settlement between MCC and the Port based on analysis of the claim as well as independently performed assessments of Port-caused impact and additional cost escalation related to further dispute resolution processes.

FINANCIAL ANALYSIS:

The funds to pay for this change order are part of the project construction contingency funds that were included in previously approved authorizations of \$50,700,000. The project authorization includes grants from both Freight Mobility Strategic Investment Board (FMSIB) and the American Reinvestment and Recovery Act (ARRA). No additional project funds are being requested as a result of this change order.

CONTRACT INFORMATION:

The following information relates to the contract and competitive award:

Contract award date:	October 23, 2009
Original period of performance:	November 30, 2009 – September 15, 2011
Previous contract extensions:	0 Working Days
Contract extension this change order:	126 Working Days
Current Contract Completion Date:	July 6, 2012

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FINANCIAL INFORMATION:

Original contract amount:	\$18,250,482.70
Previous Change Orders Executed:	\$1,430,967.45
<u>Current contract amount</u>	<u>\$19,681,450.15</u>
This request, Change Order No. 97	\$492,000
Subtotal Construction Costs	\$20,173,450.15
<u>Anticipated sales tax @ 9.5%</u>	<u>\$0.00</u>
Revised Contract Amount	\$20,173,450.15

OTHER DOCUMENTS ASSOCIATED WITH THIS REQUEST:

None

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS:

- January 24, 2012, the Commission authorized the issuance of Change Order Number 054 for the not-to-exceed amount of \$371,000 for the replacement of the existing 20-inch diameter water main that runs adjacent to the project site.
- May 18, 2010, the Commission authorized the issuance of Change Order Number 015 for the not-to-exceed amount of \$430,000 for the disposal of contaminated soil excavated from the site.
- March 24, 2009, the Commission authorized an increase of \$17,200,000 for a total project authorization of \$50,700,000 and authorized advertisement, bid and award of the construction project.
- March 6, 2006, the Commission granted staff project-wide authorization for the East Marginal Way Grade Separation project with a total project authorization of \$34,500,000.