

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No. 4b

ACTION ITEM

Date of Meeting August 5, 2014

DATE: July 23, 2014

TO: Tay Yoshitani, Chief Executive Officer

FROM: Ralph Graves, Managing Director, Capital Development
Janice Zahn, Assistant Engineering Director – Construction Management Services
Paul Binting, Senior Port Counsel

SUBJECT: Consolidated Rental Car Facility Project Contract MC-0315405 Change Order
No. 1353 – Settlement of Elcon Request for Equitable, and No. 1354 – Settlement
of Turner’s Owner Caused Delay Claim

Amount of This Request:	\$0	Source of Funds:	Customer Facility Charges
Est. Total Project Cost:	\$377,346,515		
Est. State and Local Taxes:	\$25,394,336	Est. Jobs Created:	N/A

ACTION REQUESTED

Request Commission authorization to approve a global settlement and issue two associated change orders in the combined amount of \$11,273,500 to resolve all remaining claims associated with Consolidated Rental Car Facility (RCF) project. There is no additional funding associated with this request, as there is adequate project budget remaining to cover the expenditure.

SYNOPSIS

The Consolidated Rental Car Facility (RCF) opened May 17, 2012, and serves 13 rental car companies operating at Seattle-Tacoma International Airport. Since completion of the project, Port staff has been engaged in project close-out activities, which include the settlement of contractor claims.

Electrical Subcontractor’s Request for Equitable Adjustment

The Port received a certified claim on May 30, 2013, from the electrical subcontractor on the project. The claim supersedes all earlier claims and is in the amount of \$19,439,280, inclusive of interest. The claim documents state that the subcontractor incurred increased costs from a number of causes including impacts on labor productivity, increased field overhead, increased home office overhead, unresolved change orders, schedule delays, acceleration, and claim preparation. Port staff previously completed its review of the claim and validated parts of the claimed costs. Based on that review, the Port issued four Change Orders (1348, 1350, 1351, and

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

July 22, 2014

Page 2 of 5

1352) to date, totaling \$2,055,410 (excluding the GC/CM contractor's 7.4% fee). The Port and the electrical subsubcontractor have now reached a settlement on the disputed portions of the claim. Change Order No. 1353 in the amount of \$7,750,000 (excluding the GC/CM contractor's 7.4% fee) settles all remaining costs stemming from the electrical subcontractor's request for equitable adjustment. Including the GC/CM contractor's contractually agreed fee, the settlement total is \$8,323,500.

Turner Construction Company's Claim

The Port also received a certified Owner Caused Delay Claim from Turner Construction Company, the project's general contractor/construction manager, on September 9, 2011. That claim seeks a 191-day time extension and \$6,371,013 in additional costs. The claim documents list various design and existing-condition issues as the cause of the delay. The claim asserts that the Port was responsible for all of these issues. Port staff previously reviewed this claim and issued three change orders (846, 893, and 1108) which provided, in total, a 91-day Contract Time extension for concurrent, non-compensable schedule delays. The Port and Turner have now reached a settlement on the disputed portions of the claim. Change Order 1354 in the amount of \$2,950,000 (and no additional time extension) settles all remaining costs and time requests stemming from Turner's claim. This amount is not subject to any additional GC/CM fee.

The total anticipated payment under Change Orders No. 1353 and No. 1354, is \$11,273,500, excluding sales tax. Including sales tax, the total is \$12,344,483. As a result of earlier project savings and prior Commission authorizations, adequate budget exists to cover this requested expenditure. As a result, no additional funds are requested within this authorization request.

BACKGROUND

The Port constructed the RCF project utilizing the general contractor/construction manager (GC/CM) delivery methodology authorized under Washington law. Turner Construction Company was the GC/CM contractor for the project. During the course of the project, the Port issued a number of change orders to Turner, many of which related to the electrical system. The primary electrical subcontractor on the project, Elcon Corporation, claims that the amount of changed work was excessive, and that the added work caused an impact to its ability to efficiently perform the work. The Port received, through the GC/CM contractor, several notices during the construction of the project that the electrical subcontractor was suffering inefficiencies. Although earlier requests for equitable adjustment were submitted to the Port, those requests were superseded by a final, all-encompassing claim received in late May 2013. As noted above, the value of the claim is \$19,439,280, inclusive of interest. The Port denied Elcon's claim in large part, concluding that it was entitled to no more than \$1,572,298 for the claimed inefficiencies.

Separately, Turner claims that the amount of changed work as well as other project conditions beyond Turner's control caused delays and increased its costs on the project. The Port recognized that there were some excusable delays arising, in part, from issues for which the Port was responsible. In total, the Port issued three change orders to extend the Contract Time for a

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

July 22, 2014

Page 3 of 5

total of 91 calendar days. Turner formally submitted a certified claim on September 9, 2011. The value of this claim was \$6,371,013. The claim also included a request for a 191-day time extension. The Port denied Turner's request for additional compensation and additional time beyond the 91 days previously provided.

By agreement dated November 11, 2013, the Port, Turner, and Elcon agreed to arbitrate the outstanding claims before the three members of the Dispute Resolution Board, who had been retained by the Port and Turner at the commencement of the construction project. Through June 2014, the parties had engaged in substantial discovery, both formal and informal. The parties had also held several preliminary hearings before the arbitration panel related, primarily, to schedule-related issues. As of June 2014, the parties were on the eve of addressing, by motion, the order of arbitration proceedings and establishing specific hearing dates for, what was expected to be, several phases of arbitration hearings.

Recognizing that the parties would soon be required to firmly entrench their positions as the arbitration proceeded, the Port engaged with both Turner and Elcon to examine whether settlement was possible. These meetings began in March 2014 and stretched through early July 2014. Legal counsel for all parties were involved throughout the negotiations. In March and April, the Port and Elcon were able to resolve a significant number of unresolved change orders included in Elcon's claim. These agreements were reflected in three previous change orders totaling \$483,112 (excluding the GC/CM contractor's 7.4% fee). All of the parties were then able to agree on a global settlement of all outstanding claims on July 7 and 8, 2014, which settlement is documented in a written agreement specifically subject to Port Commission approval. Under the terms of that settlement, the Port will pay the electrical subcontractor \$7,750,000 on its remaining claim. The Port will also pay Turner \$2,950,000 on its claim. Turner is, by contract, also entitled to receive a markup of 7.4% on the amounts paid to the electrical subcontractor. The total value of the settlement, including the GC/CM contractor's fee but excluding sales tax, is \$11,273,500. Inclusive of sales tax, the amount is \$12,344,483.

FINANCIAL IMPLICATIONS

There are no financial implications.

Budget/Authorization Summary

The total RCF program budget, including both capital and expense components, is \$400,506,369 and the total RCF program authorization is \$417,006,000.

The following budget and authorization summary is for the RCF construction (CIP #C100266) and does not include rental car bus purchase (CIP #C800032).

Original Budget	\$360,793,256
Revised Scope	\$5,787,330
Program Savings	(\$12,211,704)

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

July 22, 2014

Page 4 of 5

Budget Transfers	\$12,777,633
Current Budget	\$367,146,515
Budget Increase	\$10,200,000
Revised Budget	\$377,346,515
Previous Authorizations	\$357,933,654
Authorization Transfers	\$21,583,501
Current request for Authorization	\$0
Total Authorizations, including this request	\$379,517,155
Remaining Budget to be Authorized	\$0

Source of Funds

The RCF construction project (CIP #C100266) is included in the 2014-2018 capital budget and plan of finance as a committed project. The source of funds for this project, as identified in the plan of finance, includes Customer Facility Charge (CFC) revenues, bonds backed by CFC revenues, and other Aviation sources.

A total of \$12,211,704 has been previously identified as savings for the RCF Construction project. The total anticipated payment for these two change orders, including sales tax, is \$12,344,483.00. In order to fully fund this payment, \$10,200,000 of previously identified savings will be returned to the project budget.

Contract Information

The following information relates to the RCF construction contract and competitive award:

Contract award date:	May 30, 2008
Original period of performance:	May 30, 2008, to April 1, 2011
Previous contract extensions:	333 Days
<u>Current Contract Completion Date:</u>	<u>February 28, 2012</u>
<u>Contract extension this change order:</u>	<u>0 Days</u>
Revised Contract Completion Date:	N/A
Original contract amount:	\$224,837,739.00
Previous Change Order Nos. 001 – 1352:	\$11,447,053.00
Current contract amount	\$236,284,792.00
<u>CO 1353 & 1354 Amount</u>	<u>\$11,273,500.00</u>
Revised contract amount:	\$247,558,292.00
Total Request, Change Orders No. 1353 & No. 1354	\$11,273,500.00

COMMISSION AGENDA

Tay Yoshitani, Chief Executive Officer

July 22, 2014

Page 5 of 5

ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1 - Approve the Settlement – This alternative resolves all outstanding claims against the Port on project placed into service over two years ago. It likewise frees Port project and construction management staff to focus forward on the more than \$1 billion of impending critical projects. The settlement will be paid fully from project savings and does not require authorization of additional funds. It likewise avoids the expenditure of substantial amounts in additional attorney, consultant and dispute resolution costs. **This is the recommended alternative.**

Alternative 2 - Reject the Settlement – This alternative will not resolve any of the nearly \$24 million in remaining claims on the project. Those claims will need to be resolved in arbitration, with all of the risks attendant in such a proceeding. Intensive discovery and arbitration hearings will likely extend over the next 12 months. The Port will be required to spend substantial additional amounts for attorneys and consultants in defense of the claims. Port staff will likewise be required to spend significant amounts of time assisting in the defense, participating in discovery and appearing at trial. This is not the recommended alternative.

ATTACHMENTS TO THIS REQUEST

None.

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

July 26, 2011, Item 6e, Extension to Contract Completion Date

May 22, 2012, Final Monthly Staff Briefing on the Consolidated Rental Car Facility Program.

December 10, 2013, Item 5f, Change Order No. 1348 - Electrical Cumulative Impact