



**COMMISSION
AGENDA MEMORANDUM**

Item No. 4i

ACTION ITEM

Date of Meeting December 13, 2016

DATE: December 5, 2016

TO: Ted Fick, Chief Executive Officer

FROM: Ralph Graves, Senior Director, Capital Development
Janice Zahn, Assistant Engineering Director, Construction Services

SUBJECT: Terminal 91 Tank Farm Cleanup Change Order 16

Amount of this request: \$0

Total estimated project cost: \$7,004,791

ACTION REQUESTED

Request Commission authorization for the Chief Executive Officer to execute Change Order 16 to Contract MC-0317586, Terminal 91 Tank Farm Cleanup, extending the contract duration by 280 days. This Change Order additionally includes a settlement of an amount not to exceed \$256,000, which will come from existing project contingency funds.

EXECUTIVE SUMMARY

The execution of this Change Order settles all disputes related to the project Work with the Contractor, Clearcreek Contractors, Inc. The Change Order includes a cost not to exceed \$256,000 and reconciles the Contract Completion Date with the actual completion date of the work by increasing the project duration by 280 days. The execution of this Change Order resolves all cost and time components for this contract. The final contract value will be \$3,293,000.

JUSTIFICATION

In support of the Century Agenda strategy to be the greenest port in North America, this project accomplishes environmental cleanup of Port property. The Port is required to complete cleanup action of Terminal 91 (T-91) in accordance with the 2012 Agreed Order. The purpose of the cleanup is to significantly reduce or eliminate the exposure of ecological and human receptors to soil contamination, ground water, and sediment, by significantly reducing or eliminating adverse effects on resources in the project site. The cleanup restores the site for future uses compatible with current industrial zoning.

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DETAILS

On March 6, 2014, the Port executed a construction contract with Clearcreek Contractors, Inc. for the amount of \$3,931,321.74 and a contract completion date of September 26, 2014. The contract duration was previously increased by 39 calendar days via executed change orders for a new completion date of November 4, 2014. Actual Substantial Completion was not achieved for the project until August 21, 2015, a project delay of 280 calendar days. Although completed late, the monitoring data obtained since the completion of the project are satisfactory. The project delays are attributable to a number of reasons. The primary cause is unexcused delay on the part of the contractor in completing the work and in submitting all required close-out documentation in a timely manner. In Dispute Resolution Proceedings, the Port acknowledged multiple differing site conditions that should have been compensated for during construction. These conditions added cost entitlement as well as time entitlement which need to be accounted for in the contract by issuing a Change Order. The time component of this change order includes days related to Port caused delay (approximately 30 days), concurrent delay (approximately 30 days), and Contractor caused delay (220 days). The cost component related to this change order include settlements on all outstanding disputes related to differing site conditions (Port risk > \$275,000), Bid Item quantity under and overrun adjustments (approximately \$228,000). The final settlement includes a credit back to the Port for impacts associated with Contractor-caused project schedule delay of approximately \$160,000.

Scope of Work

The T-91 Tank Farm Cleanup project restores the area affected by previous owners’ use of the property for distribution and storage of petroleum products, to other uses consistent with the current terminal operations. The work included the removal of old tank bases, pipelines, and contaminated soil from the affected areas. Additionally, the measures to contain and monitor any contamination which could not be removed were installed.

Schedule

<i>Activity</i>	
Commission design authorization	2012 Quarter 2
Design start	2012 Quarter 2
Commission construction authorization	2013 Quarter 3
Construction start	2014 Quarter 1
In-use date	2015 Quarter 3

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<i>Contract Cost Breakdown</i>	<i>Total</i>
<i>Original Contract Amount</i>	<i>\$3,931,321.74</i>
<i>Current Executed Change Order Amount</i>	<i>\$ 91,366.88</i>
<i>Current Bid item Adjustments</i>	<i>(\$985,445.01)</i>
<i>Current Contract Amount</i>	<i>\$3,037,243.61</i>
<i>Change Order #16 Not to Exceed Amount</i>	<i>\$ 256,000.00</i>
<i>Final Estimated Contract Amount with CO #16</i>	<i>\$3,293,000.00</i>
<i>Final Estimated Remaining Contract Contingency</i>	<i>\$1,038,321.74</i>

ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1 – Do not authorize the issuance of the Change Order, continue further Dispute Resolution processes.

Cost Implications: Additional staff soft costs, potential legal expenses.

Pros:

- (1) Further negotiation *may* reduce the amount of the settlement.

Cons:

- (1) Delays project closeout and increases Port costs to continue negotiations.
- (2) Creates a risk potential for litigation.

This is not the recommended alternative.

Alternative 2 – Authorize the issuance of the Change Order for the amount of \$223,306.82 and 280 calendar days. If executed, this will be the final Change Order on this project and settles all outstanding claims with the Contractor to close out the Contract.

Cost Implications: None

Pros:

- (1) Settles all claims with the Contractor and allow contract close-out to commence.

This is the recommended alternative.

FINANCIAL IMPLICATIONS

There is no additional funding being requested in this memo. The project has adequate contingency to cover this request.

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PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

August 6, 2013 – The Commission authorized the advertisement and execution of a major construction contract, and to self-perform using Port crews, to implement the cleanup action at Terminal 91.

December 4, 2012 – Commission authorized \$44,179,000 spending in 2013 for Environmental Remediation Liabilities.

March 27, 2012 – Commission authorized the Chief Executive Officer to execute Agreed Order No. DE 8938 with the Washington State Department of Ecology on the implementation of a Cleanup Action Plan and to address contamination in the Upland area of Terminal 91.

May 4, 2010 – Commission authorized the Chief Executive Officer to execute the 2010 agreed order with the Washington State Department of Ecology.