



**COMMISSION
AGENDA MEMORANDUM**

Item No. 4f

ACTION ITEM

Date of Meeting May 23, 2017

DATE: May 15, 2017

TO: David Soike, Interim Chief Executive Officer

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

SUBJECT: Terminal 117 Upland and Sediment Cleanup Project - Change Order 23

Amount of this request: \$0

Total estimated project cost: \$17,500,000

ACTION REQUESTED

Request Commission authorization for the Chief Executive Officer to execute Change Order 23 to Contract MC-0317218, Terminal 117 Upland and Sediment Cleanup, for the amount of \$1,327,842.22 and to extend the contract duration by 540 days. No additional funds are being requested.

EXECUTIVE SUMMARY

The execution of this Change Order settles all cost and time disputes related to the project with the Contractor, IMCO General Construction for the amount of \$1,327,842.22. As part of the settlement, this Change Order also reconciles the Contract Completion Date with the actual completion date of the work by increasing the project duration by 540 days. The final contract value will be \$12,927,469.08. The purpose of the cleanup was to significantly reduce or eliminate the exposure of ecological and human receptors to sediment and soil contamination and thereby reduce or eliminate adverse effects on resources in the project site. Subsequently, the cleanup allows for a full range of future site uses, including public access and habitat restoration. The original engineer's estimate for the construction contract was \$16.5 million, out of the overall approved budgeted amount of \$18.2 million. This settlement will be paid from the approved budget and no additional funds are needed.

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's Terminal 117 cleanup site (T-117) is an Early Action Area (EAA) within the larger Lower Duwamish Waterway Superfund project. The Port was required to complete cleanup action of Terminal 117 (T-117) consistent with the Administrative Settlement Agreement and Order on Consent that the Port

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entered into with the U.S. Environmental Protection Agency (EPA) on June 8, 2011 (the “2011 Order”).

DETAILS

On January 11, 2013, the Port executed a construction contract with IMCO General Construction for the amount of \$10,494,915.00 and a contract completion date of May 26, 2014. Actual Substantial Completion was not achieved for the project until November 17, 2015, a project delay of 540 calendar days. Although completed late, the monitoring data obtained post-physical completion of the project work were found to be satisfactory by the EPA. The Contractor and Port had several issues in disputes and entered into the specified contract Dispute Resolution process to resolve these disputes. An agreement was reached between the contractor and Port staff that requires a change order to be issued. Although there were multiple issues in dispute, a single change order is being executed to expedite closeout of the contract.

The Port acknowledged multiple differing site conditions that occurred during construction in the form of buried unidentified hazardous materials, density of excavated materials and the unexpected amount of required over-excavation. These conditions resulted in added cost and time to be resolved with the contractor. The time component of this change order includes days related to Port caused delay (approximately 99 days), concurrent delay (approximately 50 days), and Contractor caused delay (351 days). The primary cause of the unexcused Contractor caused delay is in failing to complete the in-water work during the 2013-14 season, requiring a return to complete the work during the 2014-15 season (a 247 day delay). The cost component related to this change order include settlements on all outstanding disputes related to differing site condition with the discovery of unknown buried hazardous materials (Port risk > \$990,000), and Bid Item quantity under and overrun adjustments (Port risk > \$1,500,000). The final settlement additionally includes a credit back to the Port for impacts associated with Contractor-caused project schedule delay of approximately \$225,000.

Scope of Work

The overall goal of the T-117 cleanup was to significantly reduce or eliminate the exposure of ecological and human receptors to sediment and soil contamination and thereby reduce or eliminate adverse effects on resources in the project site. Subsequently, the cleanup allows for a full range of future site uses, public access and habitat restoration.

Schedule

Activity

Commission design authorization	2010 Quarter 2
Design start	2011 Quarter 1
Commission construction authorization	2012 Quarter 4
Construction start	2013 Quarter 1

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In-use date	2015 Quarter 1
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<i>Contract Cost Breakdown</i>	<i>Total</i>
<i>Original Contract Amount</i>	<i>\$10,494,915.00</i>
<i>Current Executed Change Order Amount</i>	<i>\$ 547,195.41</i>
<i>Current Bid item Adjustments</i>	<i>\$ 557,216.46</i>
<i>Current Contract Amount</i>	<i>\$11,489,918.18</i>
<i>Change Order #23</i>	<i>\$ 1,327,842.22</i>
<i>Final Contract Amount with CO #23</i>	<i>\$12,927,169.09</i>
<i>Final Unused Construction Contingency</i>	<i>\$ 166,708.91</i>

ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1 – Do not authorize the issuance of the Change Order, and 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 and potentially higher settlement amount.

This is not the recommended alternative.

Alternative 2 – Authorize the issuance of the Change Order for the amount of \$1,327,842.22 and 540 calendar days. If executed, this will be the final Change Order on this project and settles all outstanding claims between Port and the Contractor to close out the Contract.

Cost Implications: None. Contract can begin closeout.

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.

ATTACHMENTS TO THIS REQUEST

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None

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

- August 24, 1999 – The Commission approved the purchase and sale agreement for the acquisition of the Malarkey Asphalt Property at a cost of \$176,400 and implementation of required environmental cleanup measures on adjoining Port property at a cost not to exceed \$800,000.
- August 24, 2004 – The Commission approved execution of the Memorandum of Agreement (Cost Allocation) between the Port and the City of Seattle for Malarkey Early Action Area.
- October 11, 2005 – The Commission approved execution of (1) Administrative Settlement Agreement and Order on Consent for Removal Action T-117 Early Action Area; and, (2) Administrative Settlement Agreement and Order on Consent for the T-117 Upland Investigation.
- June 27, 2006 – The Commission (1) approved execution of Administrative Settlement Agreement and Order on Consent for Time Critical Removal Action in the T-117 Upland Area; (2) directed staff to develop a work plan to expand the cleanup options in the T-117 Upland Area and (3) amended the 2006 project-wide authorization expenditure in the amount of \$6,000,000.
- October 27, 2008 – The Commission authorized the Chief Executive Officer to Sign a Settlement, Indemnity and Release Agreement with the Malarkey Parties, the Duwamish Parties, the City of Seattle and King County regarding T-117 Site and Lower Duwamish Site Cleanup Costs, and Natural Resource Damage Liability.
- November 30, 2009 – The Commission approved the authorization to perform pollution remediation activities relating to environmental reserve funds in 2010.
- May 24, 2010 – The Commission approved execution of Administrative Settlement Agreement and Order on Consent for Removal Design/Removal Action at the T-117 Early Action Area.
- June 1, 2010 – The Commission authorized Chief Executive Officer to execute a Category III professional services contract to provide consultant services and support for planning and pre-design; design services, construction and monitoring support, and post-construction monitoring for the 2011 Order.
- May 24, 2011 – The Commission authorized Chief Executive Officer to execute an Administrative Settlement Agreement and Order on Consent for the Removal Action

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Implementation at Terminal 117, an Early Action Area for the Lower Duwamish Waterway Superfund.

- December 6, 2011 – The Commission authorized \$56,500,000 for the 2012-2016 Environmental Remediation Liability Program, including spending of \$23,600,000 for environmental liabilities in 2012.
- October 29, 2012 – The Commission approved the advertisement and execution of a Major Construction Contract and consultant support for the Terminal 117 Cleanup.