

Exhibit	<u>B</u>
Port Commission	
Meeting of	<u>April 23, 2013</u>

THIRD CORRECTED COPY

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

ACTION ITEM

Item No. 5b

Date of Meeting April 23, 2013

DATE: **May 20, 2013**

TO: Tay Yoshitani, Chief Executive Officer

FROM: Ralph Graves, Managing Director, Capital Development Division
Janice Zahn, Assistant Engineering Director

SUBJECT: Change Order No. 085 for the Offsite Roadway Improvements and SR-99 Bridge Seismic Upgrade Contract **MC-0316568**, CIP 100266 as part of the Consolidated Rental Car Facility (CRCF) Program

Amount of This Request: \$492,000

Source of Funds: Project Construction Contingency

Est. State and Local Taxes: \$0.00

Est. Jobs Created: None

ACTION REQUESTED:

Request Commission authorization for the Chief Executive Officer to issue Change Order Number 085 for Contract **MC-0316568**, Offsite Roadway Improvements and SR-99 Bridge Seismic Upgrade (ORI) project, to extend the contract completion date **153 days** from May 24, 2012, to **October 24, 2012**, for concurrent delays and for the amount of \$492,000 to settle all open claims by the contractor on matters related to this project. The existing construction contingency will be used to pay for this change order. No additional funds are requested.

SYNOPSIS:

This project renovated and improved municipal, Port and Washington State Department of Transportation (WSDOT) roadways in the vicinity of the new Rental Car Facility (RCF), including SR-518, International Boulevard (SR-99), S. 160th Street, Host Road and the North Airport Expressway (NAE).

During the course of construction, the Port added the fabrication and installation of roadway signs to the contract that the contractor completed on October 24, 2012. At the same time, the contractor was completing base contract work, thus the time extension is concurrent and non-compensable. The change order fixed amount of \$492,000 provides final compensation in settlement of all open issues on the project, including the contractor's claim against the Port for loss of productivity, and disputed costs associated with schedule impacts and the hauling and disposal of unsuitable/contaminated materials. It is based on analysis of the claims as well as

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independently performed assessments of Port-caused impacts and potential additional cost related to further dispute resolution processes.

The source of funds for this change order is the existing contract construction contingency, requiring no additional funds.

The claims resulted from varying site conditions including the discovery of contaminated and unsuitable soils, and inadequate as-built documentation for utilities and roadway conditions. Schedule delays and other direct and indirect expenses related to these impacts have been paid for by previously issued change orders. However, in addition to the loss of productivity, the contractor is still protesting the extent of schedule impacts and final costs associated with hauling and disposing of unsuitable and contaminated soils.

BACKGROUND:

The current contract completion date is May 24, 2012. The Contractor achieved Substantial Completion on October 24, 2012. The completion of the project was delayed due to added scope and the contractor's inability to complete pickup work and punchlist activities. An analysis of the project's last five construction bulletins and associated requests for information, as cited by the contractor as open issues preventing them from completing the work on time, revealed that there was concurrent delay through August 9, 2012, resulting in a non-compensable 77-day delay to the project completion date.

In addition, this change order for \$492,000 settles all open issues on the project for which the contractor is currently requesting \$772,416 calculated as follow:

Open Issue	Contractor Position	Port Position
Loss of Productivity	\$692,028.00	\$445,058.00
Schedule Impacts	\$37,160.00	\$0.00
Unsuitable/Contaminated Soils Removal	\$43,228.00	\$0.00
Total	\$772,416.00	\$445,058.00

After the Port presented its final case on each matter, including the assessed entitlement for loss of productivity at \$445,058, the contractor agreed to accept the Port's offer of \$492,000 to settle the remaining issues.

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CHANGE ORDER DESCRIPTION:

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

Change Order No. 085

This compensation settles all costs and time extensions related to the Port's impact to Midmountain Contractors Inc. on the Consolidated Rental Car Facility Offsite Roadway Improvements and SR-99 Bridge Seismic Upgrade project.

This change order constitutes full, complete and equitable settlement of all claims, past, present and future, by the contractor pursuant to the contract and prosecution of the work. Midmountain Contractors Inc. shall be compensated in the amount of \$492,000 for these impacts.

PROJECT JUSTIFICATION:

Due to complications with the varying site and unforeseen conditions and numerous design changes, Midmountain Contractors Inc.'s work was delayed, causing the company to incur additional time and costs for loss of productivity and dissolution of supervision. The proposed change order value is the result of a settlement between Midmountain Contractors Inc. and the Port based on analysis of the claims as well as independently performed assessments of Port-caused impacts and potential additional cost related to further dispute resolution processes.

FINANCIAL ANALYSIS:

The funds to pay for this change order are part of the \$18,775,000 authorization previously approved for the CRCF Program's Offsite Roadway Improvements and SR-99 Bridge Seismic Upgrade. 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:	May 28, 2010
Original period of performance:	May 28, 2010 through March 28, 2012
Previous contract extensions:	57 Days
Contract extension this change order:	153 Days
Current Contract Completion Date:	October 24, 2012

FINANCIAL INFORMATION:

Original contract amount:	\$7,627,485.00
Previous Change Orders Executed:	\$2,525,438.17
<u>Current contract amount</u>	<u>\$10,151,923.17</u>
This request, Change Order No. 85	\$492,000.00
Revised contract amount:	\$10,643,923.17

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OTHER DOCUMENTS ASSOCIATED WITH THIS REQUEST:

None.

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS:

- February 22, 2011, the Commission authorized the issuance of Change Order Number 008 for the not-to-exceed amount of \$970,000 to haul and dispose of additional contaminated and geotechnically unsuitable soil.