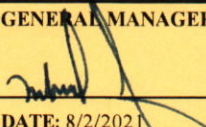
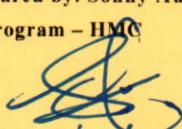
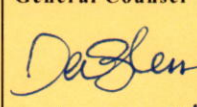
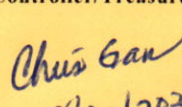
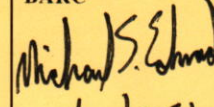




EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL:  8/17/2021		GENERAL MANAGER ACTION REQ'D: Approve and forward to Board of Directors		
DATE: 8/2/2021		BOARD INITIATED ITEM: No		
Originator/Prepared by: Sonny Au Dept: Capital Program – HMC Signature/Date:  8/27/2021	General Counsel  8/30/2021 []	Controller/Treasurer  8/30/2021 []	District Secretary []	BARC  8/30/2021 []

Invitation for Bid (IFB) No. 9085, Hayward Maintenance Complex (Phase 2), Mainline Trackwork Procurement, Change Order No. 002 for Termination of Contract in Part by BART

PURPOSE:

To obtain Board authorization for the General Manager to execute Change Order No. 002 for IFB No. 9085, Hayward Maintenance Complex (Phase 2), Mainline Trackwork Procurement, with voestalpine Railway Systems Nortrak, Inc. for termination of contract in part by BART.

DISCUSSION:

On July 23, 2020, the Board of Directors authorized the award of IFB No. 9085, Hayward Maintenance Complex (Phase 2), Mainline Trackwork Procurement, to voestalpine Railway Systems Nortrak, Inc. (Nortrak) in the contract amount of \$2,030,850. The Contract was awarded to Nortrak on August 3, 2020. The Contract provides for the procurement of special trackwork, concrete ties and switch machines that are needed for the future construction of the Northern/Southern Mainline Connectors as part of the East Vehicle Storage Yard.

Subsequent to the Contract award, BART project staff conducted value engineering and a series of yard optimization studies with BART stakeholders, including Maintenance & Engineering, Rolling Stock & Shops, Operations Planning, and Transportation. Based on the findings from these studies, BART project staff identified opportunities to save costs and increase operating efficiencies. In order to realize these opportunities, BART project staff determined the modifications to the original design and scope of the East Vehicle Storage Yard that would be required. In March 2021, BART executive staff elected to accept the design modifications.

Under the modified design, the Southern Mainline Connector will be removed, and the Northern Mainline Connector will be re-aligned in order to mitigate impacts to the Hayward Test Track and other existing nearby facilities. By modifying the Connectors, BART project staff determined that the special trackwork and concrete ties to be procured under the Contract are no longer needed. As a result, and as provided for in Contract Special Provisions C-10.1, Termination for Convenience, BART project staff decided to terminate the Contract in part, and notified Nortrak on April 23, 2021, of the intent to do so, directing Nortrak to stop work on the Contract and submit a claim setting forth the actual and direct damages incurred as a result of the partial termination.

On June 13, 2021, after additional communications between BART project staff and Nortrak to negotiate a settlement amount for a partial termination claim, Nortrak provided written notice to BART to offer a reduced claim in the amount of \$275,000 to settle all actual and direct damages, including material cancellation fees, restocking fees, operating inefficiencies, administrative costs, and engineering costs. BART project and procurement staff have reviewed Nortrak's offer and accepted the offer based on the determination that it is fair and reasonable. The Contract was terminated in part effective July 16, 2021, through written notice to Nortrak.

As a result of the partial termination, this Change Order, based on \$414,954 for procurement of only the switch machines and \$275,000 for the partial termination claim by Nortrak, will revise the Contract amount to \$689,954 from the original Contract amount of \$2,030,850. The descoping of the procurement for special trackwork and concrete ties under this Change Order will result in a credit to the District of \$1,340,896.

Pursuant to Board Rule 5.2-3, change orders that involve a substantial alteration in the obligations of either the District or the contractor require Board approval. The Procurement Department will review this Change Order prior to execution for compliance with procurement guidelines. The Office of the General Counsel will approve the Change Order as to form prior to execution.

FISCAL IMPACT:

Change Order No. 002 is a credit to the Contract. The credit will be utilized to support other funding needs in the Project.

ALTERNATIVES:

The Board can elect not to authorize the execution of this Change Order. If this Change Order is not executed, the procurement of the special trackwork and concrete ties will proceed. Since these materials are no longer needed for the Project, BART staff will need to store and maintain the materials for an indefinite period of time, which will result in increased operating and Project costs. In addition, the credit from this Change Order will not be made available to support the additional design costs needed to complete the East Vehicle Storage

Yard modified design.

RECOMMENDATION:

That the Board approve the following motion:

MOTION:

The General Manager is authorized to execute Change Order No. 002 for IFB No. 9085, Hayward Maintenance Complex (Phase 2), Mainline Trackwork Procurement, with voestalpine Railway Systems Nortrak, Inc. for termination of contract in part by BART.

EXECUTIVE DECISION DOCUMENT

ATTACHMENT #1

CHANGE ORDER SUMMARY

1. BACKGROUND

Name of Contractor: voestalpine Railway Systems Nortrak, Inc.
Contract No. / NTP: Invitation for Bid No. 9085 / August 3, 2020
Contract Description: Hayward Maintenance Complex (Phase 2), Mainline Trackwork Procurement
Percent Complete
as of 8/20/2021: 0%

2. COST

	<u>% of Award</u>	<u>CO Totals</u>	<u>Contract Amount</u>
Original Contract Award Amount:			\$2,030,850
Change Orders:	0%	\$0.00	
Other than Board Authorized CO's:	0%	\$0.00	
Pending Change Order No. 002:	(66.03%)	(\$1,340,896)	
Subtotal of all Change Orders:	(66.03%)	(\$1,340,896)	
Revised Contract Amount:			\$689,954

3. SCHEDULE

Original Contract Duration:	345 Days
Time Extension to Date:	0 Days
Time Extension Due to Approved CO's:	0 Days
Revised Contract Duration:	345 Days

4. SUMMARY REASON FOR THIS CHANGE ORDER

This Change Order will terminate the Contract in part since the special trackwork and concrete ties are no longer needed under the modified design to the East Vehicle Storage Yard. As a result of the termination, only switch machines will be procured through the Contract.