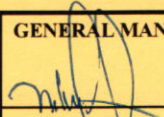


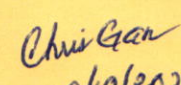
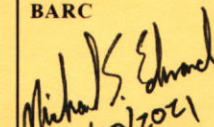




EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL:  10/20/21		GENERAL MANAGER ACTION REQ'D: Approve and forward to Board of Directors		
DATE: 10/15/2021		BOARD INITIATED ITEM: No		
Originator/Prepared by: Sonny Au Dept: Capital Program – HMC Signature/Date:  10/18/21	General Counsel  10/19/2021 []	Controller/Treasurer  10/19/2021 []	District Secretary []	BARC  10/20/2021 []

Contract No. 01RQ-150, Hayward Maintenance Complex Project, Central Warehouse, Change Order No. 093 for Settlement of All Compensable Delay Claims

PURPOSE:

To obtain Board authorization for the General Manager to execute Change Order No. 093 for Contract No. 01RQ-150, Hayward Maintenance Complex Project, Central Warehouse, with Clark Construction, to settle all claims for compensation due to delays for an amount not to exceed \$3,599,000.

DISCUSSION:

On March 8, 2018, the Board of Directors authorized the award of Contract No. 01RQ-150, Hayward Maintenance Complex Project, Central Warehouse to Clark Construction (“Contractor”) in the amount of \$49,838,100. The Contract is for the construction of the new Central Warehouse, which will serve as the central logistical facility for BART.

Following the commencement of the Contract Work, there were differing site conditions, such as disposal of soils with elevated levels of contaminants, as well as design changes, such as changes to the water distribution system required to meet City of Hayward standards, that required redesigning and resequencing significant portions of the Work. This contributed to a delay of approximately ten months to the Substantial Completion of the Contract. Subsequent to the events causing a delay, the Contractor submitted Notices of Potential Claim for compensation on the basis that certain delays not caused by the Contractor shall be compensable, as provided for in the Contract documents. BART project staff is requesting Board authorization for an amount of \$3,599,000 to settle all compensable delay claims with the Contractor.

Pursuant to Board Rule 5-2.3, change orders involving expenditures greater than \$200,000

require Board approval. The Procurement Department will review this Change Order prior to execution for compliance with procurement guidelines. The Office of General Counsel will approve the Change Order as to form prior to execution.

FISCAL IMPACT:

The table below lists funding assigned to Project No. 01RQ000 since 02/01/2011 and is included to track funding history against spending authority. Funds needed to meet this request will be expended from the following sources:

Fund Number	Description	Source	Threshold
3007	FTA CA-90-X236-00	Federal	\$26,304,311.36
3017	FTA 5307 & 5337 CA2020-086-00	Federal	\$10,513,660.02
3521	FTA – AATC Settlement Proceeds	Federal	\$29,252,901.58
5602	H-Speed Rail HST1A-A-1415-02	State	\$22,699,999.99
8524	FY2012 Operating Capital Alloc	BART	\$3,525,602.08
8526	FY2014 Operating Capital Alloc	BART	\$2,382,278.31
8529	FY2015 Operating Capital Alloc	BART	\$16,486,604.33
8530	FY2016 Operating Capital Alloc	BART	\$12,199,837.00
8531	FY2017 Operating Capital Alloc	BART	\$9,865,523.79
8532	FY2018 Operating Capital Alloc	BART	\$4,004,324.90
8533	FY2019 Operating Capital Alloc	BART	\$2,628,422.02
8534	FY2020 Operating Capital Alloc	BART	\$930,526.41
8536	FY2022 Operating Capital Alloc	BART	\$5,000,000.00
656E	VTa TRAFFIC CONGEST.RL	Local	\$11,600,000.00
656K	VTa – HMC Program	Local	\$8,250,000.00
657A	VTa Real Estate Contribution	Local	\$41,350,000.00
881B	Program Income from Cap Funds	BART	\$367,140.00

Grand Total:	\$207,361,131.79
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As of 09/30/2021, \$207,361,131.79 is the total budget for this project. BART has expended \$200,470,004.85; committed \$1,263,995.04; has associated revenue of \$254,640 and reserved \$90,245.84 to date. This action will commit \$3,599,000, leaving an available fund balance of \$2,192,526.06 in these fund sources for this project.

The Office of the Controller/Treasurer certifies that funds are currently available to meet this obligation.

This action is not anticipated to have any Fiscal Impact on unprogrammed District reserves.

ALTERNATIVES:

The Board can elect not to authorize the execution of this Change Order. Failure to issue this Change Order may lead to claims by the Contractor for compensation due to delays as well as possible legal action, thus potentially increasing the final cost to the District.

RECOMMENDATION:

That the Board approve the following motion:

MOTION:

The General Manager is authorized to execute Change Order No. 093 for Contract No. 01RQ-150, Hayward Maintenance Complex Project, Central Warehouse, with Clark Construction, to settle all claims for compensation due to delays for an amount not to exceed \$3,599,000.

EXECUTIVE DECISION DOCUMENT

ATTACHMENT #1

CHANGE ORDER SUMMARY

1. BACKGROUND

Name of Contractor: Clark Construction
Contract No. / NTP: 01RQ-150 / May 21, 2018
Contract Description: Hayward Maintenance Complex Project, Central Warehouse
Percent Complete as of: 10/14/2021 – 99.99%

2. COST

	<u>% of Award</u>	<u>CO Totals</u>	<u>Contract Amount</u>
Original Contract Award Amount:			\$49,838,100
Change Orders:			
Other than Board Authorized CO's:	7.07%	\$3,525,070	
Board Authorized Change Orders:	3.01%	\$1,500,000	
Pending Change Order No. 093:	7.22%	\$3,599,000	
Subtotal of all Change Orders:	17.30%	\$8,624,070	
Revised Contract Amount:			\$58,462,170

3. SCHEDULE

Original Contract Duration: 550 Days
Time Extension to Date: 313 Days
Time Extension Due to Approved CO's: 313 Days
Time Extension Due to This CO No. 093: 0 Days
Revised Contract Duration: 863 Days

4. SUMMARY REASON FOR THIS CHANGE ORDER

Following the commencement of the Contract Work, there were differing site conditions as well as design changes that required redesigning and resequencing significant portions of the Work. This Change Order No. 093 for an amount not to exceed \$3,599,000 will settle all compensable delay claims with the Contractor.