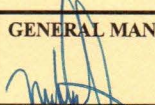
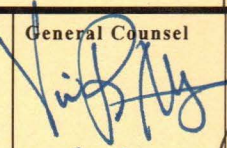
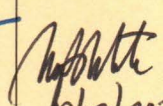
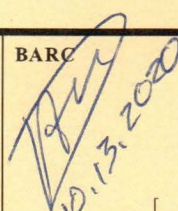
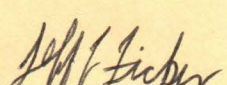




EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL:  10/14/2020		GENERAL MANAGER ACTION REQ'D: Yes		
DATE: 9/18/2020		BOARD INITIATED ITEM: No		
Originator/Prepared by: Jeff Ficker Dept: Strategic Engineering	General Counsel  10/13/20 []	Controller/Treasurer  10/13/2020 []	District Secretary []	BARC  10.13.2020 []
Signature/Date: 10-13-20 				

Request Board Authorization for Change Order on Contract No. 20LT-110, Train Control Room Multiplex and Speed Encoding(NS MUX)

PURPOSE:

To authorize the General Manager to execute Change Order No. 8 for Contract No. 20LT-110, Train Control Room Multiplex & Speed Encoding - New Station MUX Project (NS MUX), in the amount of \$4,345,615.00 and a 905-calendar day Contract Time extension in full and final settlement of all claims and disputes and a general release from the Supplier for this Change Order.

DISCUSSION:

In December of 2007, the Board of Directors authorized the General Manager to award Contract No. 20LT-110, NS MUX Project, to Alstom Signaling, Inc. The base contract amount was \$8,487,765.00, with three Options for an additional 14 Station locations for an added value of \$9,384,637.00. The scope of work under this Contract is to provide labor, equipment, tools, materials, services, and testing operations necessary for the development and installation of Multiplex and Speed Encoding hardware and software. This NS MUX technology upgrades the original analog system to a digital-based train control system.

The original Contract completion was scheduled 2010 for the base contract. In 2015 the Board of Directors authorized a 2300-day time extension, which moved the completion date to June of 2018. The Board also authorized the General Manager to exercise all the Contract Options. In October of 2016, the District met with Alstom to agree on terms for exercising Options A, B, and C. All Options were exercised on March 17, 2017.

In June 2018, Alstom submitted a Notice of Potential claim for \$9,806,355.75, including a request for time extension of 1455 days. Subsequently, under Alstom's protest the District provided two no-cost Change Orders for time extensions, Contract Change Order (CCO) 2 and CCO 6. Several workshops and a series of meetings were held to resolve Alstom's claim.

Following a series of meetings from June through August of 2020 both parties agreed to resolve the outstanding claims, providing compensation for escalation and a time extension allowing for the completion of the project. A comprehensive agreement was reached which addressed all components of Alstom's claims, and included Alstom's acceptance of a general release indemnifying the District from all claims and potential claims through December 1, 2020. As part of the settlement, the District has agreed to a partial descope of the Daly City Station, eliminating the commissioning portion of this work.

A CCO in the agreed amount of \$4,345,615.00 is required to resolve all outstanding claims and disputes involving additional compensation and/or time extension known or unknown arising from the Project through December 1, 2020 as noted above. This Change Order provides for the following components;

- **Full and Final Settlement** – This CCO provides for full and final settlement and total compensation for all costs for changes, protested Change Orders, protested Change Notices, claims, and Notices of Potential Claims related to the performance of the work up to December 1, 2020 with the exception noted below:
 - Additional Alstom scope is required as the result of track changes made by BART after the designs for C40, C50 and A90 were completed. A single crossover has been added at both C40 and C50 locations. The NS MUX at A90, which was previously in revenue service as a terminal station, was taken out of service during Warm Spring Station construction. The A90 design as a terminal station is no longer valid since A90 is now a through station and the track links to Warm Spring Station. Changes to the hardware, software and CDRL documents at these 3 locations must occur to allow the NS MUX to be put into revenue service.
- **Time Extension** – The District will grant a 905-calendar day-time extension and remove intermediate Milestones and associated potential Liquidated Damages.

- **General Release** – The Supplier has agreed to a general release which indemnifies, defends and holds the District harmless from any and all claims, losses, damages related to the changes, claims and potential claims it may have with the work related to the Contract and CCO 8.
- **Escalation** – This CCO provides for escalation costs associated with the approximately 15 years between NTP, the exercising of Options, and the proposed completion date in June 2023.

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 the General Counsel will approve this Change Order as to form prior to execution.

CAPITAL FISCAL IMPACT:

Funding in the amount of \$4,345,615 for the Change Order 8 for Contract No.20LT-110 is included in the total project budget for FMS# 20LT-000 – NS MUX Project. The total cost is broken down as follows:

COST	% of Award	CO Totals	Contract Amount
Original Contract Award Amount			\$8,487,765.00 .. A
Optional Contract Line			\$9,384,637.00 .. B
Other than Board Authorized C.O.'s	0.84%	\$71,681.00	
Board Authorized Change Orders	0.0%	\$9,384,637.00	
Requested Change Orders	51.25%	\$4,345,615.00	
Subtotal of all Change Orders (Optional	52.09%	\$4,417,296.00	C
Contract Line Number Not Included in this amount)			
Revised Contract Amount:			\$22,289,698.00 (A+B+C)

The table below lists funding assigned to the referenced project since 03/31/2006 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	Fund Description	Category	Threshold
3015	FTA 5307 & 5337 CA-2019-126-00	Federal	\$ 1,600,000.01
3020	FTA 5307-5337 CA 2020-247-00	Federal	\$ 2,512,000.00
3602	FTA CA-54-0007-00 FY13 Cap Imp	Federal	\$ 10,757,483.73
3603	FTA 5337 CA-54-0023-00	Federal	\$ 5,213,100.68
3605	FTA 5337 CA-54-0041-00	Federal	\$ 1,080,000.01
3607	FTA 53307/5307 CA-2016-77-00	Federal	\$ 2,139,915.19
3609	FTA 5307/5337 CA-2017-029-00	Federal	\$ 1,876,322.84
347W	FTA GRANT NO CA03-0729	Federal	\$ 1,022,118.61
347X	FTA CA-05-0211-00 FY06	Federal	\$ 2,312,672.06
347Z	FTA CA-05-0216-00 FY07	Federal	\$ 859,049.19
352W	FY04 CAP ASST PGM CA-9	Federal	\$ 2,557,512.14
352X	FY05 CAP ASST PGM CA-9	Federal	\$ 1,216,128.00
353G	CA-05-0224-FY08 CAP IMPROVEMNT	Federal	\$ 5,121,447.02
353K	CA-05-0236 FG MOD-FY09	Federal	\$ 1,835,469.23
6015	BRIDGE TOLL ALLOC 09387201	Local	\$ 628,824.75
6213	REGIONAL MEAS 2 08382301	Local	\$ 903,075.94
6214	RM2 - Match to 53G, 54G & 54J	Local	\$ 1,058,410.29
6302	B-Toll AB664 FY12-13 13408004	Local	\$ 1,525,000.00
6303	MTC B-Toll AB664 FY 13-14	Local	\$ 524,137.59
8205	1995 SALES TAX REV BON	BART	\$ 9,838.40
8207	1999 SALES TAX REV BON	BART	\$ 65,616.90
8301	98 BOND INTEREST(06E-5	BART	\$ 162,290.41
8523	CAP SURCHRG-STATN 2 ST	BART	\$ 692,669.15
8524	FY2012 Operating Capital Alloc	BART	\$ 399,931.08
8525	FY 2013 Operating Cap Alloc	BART	\$ 379,137.59
8529	FY 2015 Operating Capital Allo	BART	\$ 1,350,136.42
8530	FY16 Operating Capital Alloc	BART	\$ 67,554.00
8532	FY2018 Operating Capital Alloc	BART	\$ 2,447,000.00
8534	FY2020 Operating Capital Alloc	BART	\$ 628,000.00
8801	CAP.INT.TRANSF&EQ SLS	BART	\$ 152,295.00
226D	1995 SALES TAX REVENUE	BART	\$ 218,801.00
226I	1999 S/T REV DEBT SERV2	BART	\$ 89,381.00
801C	INTEREST EARNING FM G.	BART	\$ 24,073.00
801E	INSTALLMENT RECEIVABLE	BART	\$ 30,903.00
850N	CAPITAL IMPROVEMENT AL	BART	\$ 104,357.00
850W	FY00-06 CAPITAL ALLOCA	BART	\$ 1,867.02
850Z	CAPITAL MAINTEN. ALLOC	BART	\$ 123.79
851M	W.DUBLIN/PLEAS.LAND SA	BART	\$ 936,978.71
851W	FY07-11 CAPITAL ALLOCA	BART	\$ 1,049,866.28
Grand Total:			\$ 53,553,487.03

As of 10/01/2020, \$53,533,487.03 is the total budget for this project. BART has expended \$42,462,370.72 committed \$6,268,537.36 and reserved \$39,904.00 to date. This action will commit \$4,345,615.00 leaving an available fund balance of \$437,059.95 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 may elect not to authorize the General Manager to execute this Change Order. Failure to issue this Change Order would lead to claims, potential legal action, significant additional cost, and further delays to the project.

RECOMMENDATION:

Recommend that the Board approve the following motion:

MOTION:

The General Manager is authorized to execute Change Order No. 8 for Contract No. 20LT-110, NS MUX Project, in the amount of \$4,345,615.00.

EXECUTIVE DECISION DOCUMENT

ATTACHMENT #1

CHANGE ORDER SUMMARY

BACKGROUND

Name of Contractor: Alstom Signaling, Inc.
Contract No./NTP: 20LT-110 / March 21, 2008
Contract Description: Procurement of Train Control Multiplex (MUX) and Speed Encoding System
Percent Complete as of 10/08/2020: 42% Installed (11 out of 26)

<u>COST</u>	<u>% of Award</u>	<u>CO Totals</u>	<u>Contract Amount</u>
Original Contract Award Amount			\$8,487,765.00 (A)
Optional Contract Line			\$9,384,637.00 (B)
Other than Board Authorized C.O.s	0.84%	\$71,681.00	
Board Authorized C.O.s	<u>0.0%</u>	<u>\$0.00</u>	
Requested C.O.s	51.25%	\$4,345,615.00	
Subtotal of all Change Orders	52.09%	\$4,417,296.00 (C)	
<u>Revised Contract Amount:</u>			\$22,289,698.00 (A)+(B)+(C)

SCHEDULE

Original Contract Duration: 1,525 CD (1,063 WD)
Time Extension Due to Approved COs: 4,645 CD
Revised Contract Duration: 5,550 CD

SMMARY REASON FOR THESE CHANGE ORDER(S)

This CCO provides for full and final settlement and total compensation for all costs for changes, protested Change Orders, protested Change Notices, claims, and Notices of Potential Claims related to the performance of the work up to December 1, 2020 with the exception noted below and including a time extension of 905 Calendar Days:

Additional Alstom scope is required as the result of track changes made by BART after the designs for C40, C50 and A90 were complete. A single crossover has been added at both C40 and C50 locations. The NS MUX at A90, which was previously in revenue service as a terminal station, was taken out of service during Warm Spring Station construction. The A90 design as a terminal station is no longer valid since A90 is now a through station and the track links to Warm Spring Station. Changes to the hardware, software and CDRL documents at these 3 locations must occur to allow the NS MUX to be put into revenue service.