

HART Board of Directors STAFF SUMMARY FOR SUBMISSION OF AGENDA ITEM

Board or Committee Action Requested:



Action/Approval



Information



Follow-up

Date: October 3, 2019

Title: Request Approval for Consolidated Resolution Agreement Change Orders
Contract No. CT-HRT-1500503 - West Oahu Station Group Construction (WOSGC)
Contract No. CT-HRT-1600152 - Kamehameha Station Group Construction (KHS GC)

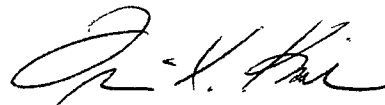
Staff Contact: Francis X. (Frank) Kosich
Director of Design and Construction

Summary:

Request the Board's approval for a Consolidated Resolution Agreement for WOSGC and KHS GC Contract Change Orders in exchange for the full and final resolution of all outstanding or potential Nan, Inc. claims, requests for additional compensation, and items that are not included in this agreement (canopies and works associated; other changes that are yet to be fully defined; and changes in process that are time-sensitive.) The total cost for both contracts are \$18.2M.

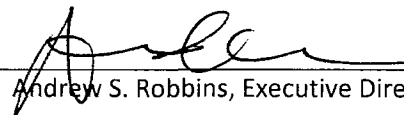
HART previously forecasted for these Change Orders within the budget line item, and sufficient funding is available in the Project budget. Unallocated contingency is not required for this change.

Prepared by:



Francis X. Kosich, Director of Design and Construction

Reviewed by:



Andrew S. Robbins, Executive Director and CEO

HART CONTRACT MODIFICATION

SUBMISSION TO THE HART PROJECT OVERSIGHT COMMITTEE FOR REVIEW

Date of Project Oversight Committee (POC) Meeting: October 3, 2019

Name of Contract: CT-HRT-1500503 - West Oahu Station Group Construction (WOSG)

CT-HRT-1600152 - Kamehameha Station Group Construction (KHSG)

Amount of Change Request: WOSG - \$11,329,993

KHSG - \$6,870,007

Checklist of documents



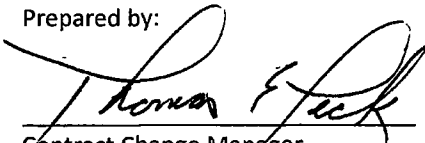
Contract Information

Description of Change and Rationale (Summary of the Change)

Change Control Committee – FOM Approval (Signature Page)

Change Order or Contract Amendment Approval as to Form and Legality

Prepared by:



Contract Change Manager

Print Name: Thomas Peck

EXECUTIVE DECISION DOCUMENT (EDD)

Title: WOSGC/KHSGC Consolidated Resolution Agreement		Action Required: Provide direction/authorization to negotiate a Consolidated Resolution with Nan, Inc. for WOSGC and KHSGC			
Initiator: Frank Kosich	Date: September 18, 2019	Decision Impact	<input checked="" type="checkbox"/> Cost	<input checked="" type="checkbox"/> Schedule	

1 DESCRIPTION OF THE CONTRACT/PROJECT

- Kamehameha Station Group Construction (KHSGC): Contract No. CT-HRT-1600152 Nan Inc.
- West O'ahu Station Group Construction ("WOSGC"): Contract No. CT-HRT-1500503 Nan Inc.

2 REQUEST

CEO/Contracting Officer approval is requested for authority to negotiate a consolidated resolution agreement between Nan, Inc. and the Honolulu Authority for Rapid Transit (HART), with a commercial value between **\$16.3M** and **\$19.5M**, pursuant to the terms set forth in the Consolidated Resolution Terms (Exhibit A, attached), in exchange for the full and final resolution of all outstanding issues including; changes, claims, time impacts, and any other issues or requests for compensation as identified in the Consolidated Resolution Terms (Exhibit A, attached), with the exception of station canopy related issues, in process Contract Change Orders, and any future merited changes that may arise prior to Contract Closeout. If approved, this EDD will increase the West O'ahu Stations Group Construction (WOSGC) and Kamehameha Highway Stations Group Construction (KHSGC) combined Contract sums. The benefit to HART to enter into this agreement includes:

- A resolution of the contractor claims and requests for additional compensation contained in Exhibit A, the Consolidated Resolution Terms
- Avoidance of future litigation fees, consultant fees, and accumulating interest fees
- Elimination of future claims and project delays due to change order processing
- Mutual cooperation between Nan, Inc. and HART for the remaining construction work and for a more expeditious project closeout
- Mutual agreement on substantial completion dates will support HART's Interim Opening goals

This proposed increase is subject to HART Board approval.

3 BACKGROUND

Executive Summary:

COMMERCIAL RESOLUTION

The current Nan, Inc. WOSGC and KHSGC Proposed Change Order (PCO) logs carry a combined value of **\$49,175,860** (WOSGC \$21,061,606; KHSGC \$28,114,254). HART's Change Management documentation, in various stages of the Change Management process, supports a value of **\$5,898,115** (WOSGC \$3,656,461; KHSGC \$2,241,654). See Exhibit B, WOSGC Section 1 and KHSGC Section 1, attached.

HART has determined that a consolidated resolution value between **\$16.3M** and **\$19.5M** would be fair and reasonable for this resolution agreement. The proposed consolidated resolution shall increase the WOSGC and KHSGC Contract Sums in exchange for the full and final resolution of the aforementioned inclusions.

Proposed Commercial Resolution Background:

(a) Substantiated Compensation:

(1) \$5,898,115 (WOSGC \$3,656,461; KHSGC \$2,241,654) of the proposed Consolidated Resolution value is generated from substantiated changes/claims supported by previous Change Management documentation and Contract requirements.

(b) Exposure Analysis:

(1) Changes/claims exposure:

HART has reviewed the claims and requests for compensation from Nan, Inc, that were originally determined to have no merit, or are new requests where a merit evaluation was pending, in order to establish if HART is subject to exposure related to these changes/claims. The review produced the following findings:

\$10,455,997 (WOSGC \$5,956,241; KHSGC \$4,499,756) of Nan, Inc's request for compensation is determined to have potential exposure to HART.

(2) Litigation/Consultant exposure:

Potential exposure related to attorney fees, expert witness fees, and consultant costs has been estimated to be \$3.2M in the case that a litigated settlement would occur in 12 months. The objective is to pay a portion of the exposure value, in a settlement environment, in order to avoid a larger cost if resolution were sought through litigation. The range proposed to be included in the consolidated resolution value is between \$0M and \$3.2M. See Exhibit B – Consolidated Resolution Summary, attached.

(3) Maximum Exposure:

HART's maximum exposure could be in excess of **\$55M** including interest, litigation, and consultant exposure. See Exhibit B- Consolidated Resolution Summary, page 5, Exposure Considerations - attached.

(4) Realistic Exposure:

A more realistic exposure could be between **\$18.8M and \$22M**. This is supported by the HART exposure analysis and the HART Risk Management System's register as of August, 2019. It is approximately 35% of HART's total maximum exposure. See Exhibit B - Consolidated Resolution Summary, page 5, Exposure Considerations – attached.

Commercial Consolidated Resolution Conclusion:

- Based on the substantiated changes/claims and the potential exposure, described herein, a consolidated resolution value between **\$16.3M and \$19.5M** in exchange for the resolution of all contractor change requests and claims (with the exception of station canopy related claims, and Contract Change Orders in process), the avoidance of litigation/consultant costs, and an agreement on substantial completion dates supportive of HART's Interim Opening, would be a reasonable outcome of the negotiations. Reference Table 3.0 below and Exhibit B, section 1 - Consolidated Resolution Summary, attached.

Table 3.0	Est. Full exposure	Realistic exposure**	Settlement low value	Settlement high value
Claims (max exposure interest)	\$ [REDACTED]	\$ [REDACTED]		
Substantiated Value			\$ [REDACTED]	\$ [REDACTED]
Exposure Value			\$ [REDACTED]	\$ [REDACTED]
SUBTOTALS	\$ [REDACTED]		\$ [REDACTED]	\$ [REDACTED]
Litigation/Consultant Exposure	\$ [REDACTED]	\$ [REDACTED]	\$ -	\$ [REDACTED]
TOTALS	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

**Realistic exposure is derived from the HART Risk management system

Recommended/Requested Approach:

If this EDD is approved, HART staff will conclude negotiations with Nan, Inc. based on the Consolidated Resolution Terms, including an increase, in total, to the WOSGC and KHSGC Contract sums between **\$16.3M and \$19.5M**. Acknowledging that it is subject to HART Board approval, HART seeks authority to reach a mutual agreement on the proposed Consolidated Resolution Terms for both the WOSGC and KHSGC contracts.

4 (CONTRACT/COMPLIANCE) REQUIREMENTS

- Not applicable.

5 SUMMARY OF IMPACTS

- Not applicable

6 LIST OF EXHIBITS/ATTACHMENTS

Exhibit A – Consolidated Resolution Terms (WOSGC and KHSGC Contract Change Order language)

Exhibit B – Consolidation Resolution Assessment

- > Consolidated Resolution Summary
- > WOSGC
 - Section 1 - Substantiated Changes/Claims
 - Section 2 – Hart Potential Exposure Changes and Claims
 - Section 3 – Other issues resolved with this agreement
- > KHSGC
 - Section 1 - Substantiated Owner Changes
 - Section 2 – Hart Potential Exposure Changes and Claims
 - Section 3 – Other issues resolved with this agreement

7 ROUTING TO AFFECTED/STAKEHOLDER DIVISIONS

Routing No.	Person	Due Date	Initial	Date	Proposal Affects (Check all that Apply)
1	Frank Kosich				<input type="checkbox"/> Operating Budget <input type="checkbox"/> Capital Budget
2	Dean Matro				<input type="checkbox"/> Administrative Services
3	Cheryl Morgan				<input checked="" type="checkbox"/> Budget and Finance
4	Nathaniel Meddings				<input type="checkbox"/> Civil Rights
5					<input checked="" type="checkbox"/> Design & Construction
6					<input type="checkbox"/> Government Relations
7					<input type="checkbox"/> Labor Agreement
8					<input type="checkbox"/> Legal Counsel
9					<input type="checkbox"/> Operations & Maintenance
10					<input type="checkbox"/> Planning, Utilities, Permits, Right of Way
11					<input checked="" type="checkbox"/> Project Controls
12	Sam Carnaggio				<input type="checkbox"/> Public Information
13	Ruth Lohr				<input type="checkbox"/> Quality Assurance
					<input type="checkbox"/> System Safety & Security
Remarks: Add routing reviewer as necessary.					
<input type="checkbox"/> Approved <input type="checkbox"/> Denied					Andrew S. Robbins Executive Director and CEO
					Date



**Request Approval for
Consolidated Resolution Agreement**

**Contract No. CT-HRT-1500503
West Oahu Stations Group Construction Contract
and
Contract No. CT-HRT-1600152
Kamehameha Highway Station Group Contract**

October 3, 2019

Purpose

- These change orders request the approval for a Consolidated Resolution to resolve listed outstanding claims, requests for changes, impacts and issues, and extend the substantial completion dates.
- The total cost for both contracts is \$18.2M.
 - **WOSG:** The cost is \$11,329,993
The contract will increase from \$75,814,449 to \$87,144,442
 - **KHSG:** The cost is \$6,870,007
The contract will increase from \$124,284,262.86 to \$131,154,269.86
- These additional funds will come out of budgeted allocated contingency for the west-side, and the total cost of the Project without finance costs remains at \$8.165 billion.

West O'ahu Station Group Construction Background

- Nan, Inc. was awarded the WOSGC contract on July 20, 2015, for \$56,088,470.
- The contract was originally for 29 months, and work is currently expected to run through January 31, 2020.
- Thirty-two change orders have been issued to date for a total cost of \$19,725,979.
- Most of the increased costs were due to design and interface changes and time delay.
- The current value of the contract is \$75,814,449.

Kamehameha Highway Station Group Construction Background

- Nan, Inc. was awarded the KHSG contract on December 22, 2015, for \$115,805,845.
- The contract was originally for 32 months, and work is currently expected to run through April 30, 2020.
- Forty-three change orders have been issued to date for a total cost of \$8,478,417.86.
- Most of the increased costs were due to design and interface changes.
- The current value of the contract is \$124,284,262.86.

Change Order Considerations

- Proposed WOSGC Contract Change Order (CCO) No. 00033 and KHS GC Contract Change Order (CCO) No. 00044 are based on the outcome of negotiations with Nan, Inc. to resolve listed outstanding change orders, requests for changes, claims, and issues.
- Negotiated amount is based on both substantiated changes, claims, and potential HART exposure to changes and claims.

Benefits to HART

- Elimination of future claims and project delays.
- Avoidance of future litigation fees, consultant fees, and interest accumulation.
- Cooperation between Nan, Inc., and HART for the remaining construction work and for expeditious project closeout.
- Mutual agreement on substantial completion dates will support HART's Interim Opening goals.

Requested Action

- Approve WOSGC and KHS GC Contract Change Orders in the combined amount of \$18.2M in exchange for the full and final resolution of all outstanding or potential Nan, Inc. claims, requests for additional compensation, and items that are not included in this agreement (canopies and works associated; other changes that are yet to be fully defined; and changes in process that are time-sensitive.)
- HART previously forecasted for these Change Orders within the budget line item, and sufficient funding is available in the Project budget. Unallocated contingency is not required to be used for this change.
- There is no change in the Project Budget of \$8.165 billion.
- **Affirmation**
These change orders has been reviewed and approved by Executive Decision Document dated _____ and is fully documented. Approval by _____, over objection/with objection.

Mahalo!

