



MONITORING COMMITTEE REPORT

TITLE: REDUCTION OF RETAINAGE FROM SPRINTER MAINLINE CONTRACT

Time Sensitive  Consent

COMMITTEE RECOMMENDATION:

That the Board of Directors find that satisfactory progress is being made on the SPRINTER Mainline Project and authorize the Executive Director to amend the Contract, as necessary, and release any retention withheld from progress payments made after the Board's determination of satisfactory progress.

BACKGROUND INFORMATION:

The SPRINTER Mainline Construction contract contains provisions for retainage that comply with Public Contract Code 9203. Retainage, or retention, is typically withheld from each construction progress payment for use in disputed or incomplete work which the contractor fails to perform. It also provides an incentive to complete punch list work at the completion of the project in a timely manner. Release of final retention typically can not be made until a certificate of completion is filed after the work has been accepted.

Retention is required by Public Contract Code section 9203, which specifically requires that no less than 5% be withheld from progress payments. Public Contract Code section 9203 also permits a legislative body, such as NCTD's Board of Directors, to make progress payments in full, for actual work completed, upon 50% completion of the project, if the Board finds that satisfactory progress on the project is being made.

At the initiation of this Contract, NCTD withheld 10% retention from each invoice, and placed these funds in an escrow account in accordance with applicable law. West Coast Rail Constructors (WCRC) requested a reduction of this retention to 5% in June of 2006 and this request was approved by the Board. WCRC has now requested a further reduction of retention based on their progress in meeting our completion goals and by reaching an overall contract completion in excess of 90%.

NCTD staff recommends that SPRINTER Mainline Contract be amended, as necessary, and that the necessary actions be taken to reduce retention to the minimum amounts permitted by the Public Contract Code as an incentive to the contractor to continue in the manner in which they have been working thus far and as a show of good faith in meeting our goal of ability to begin revenue service by the end of the year. WCRC has been performing well and making good progress despite numerous changes in the design and field conditions and has expended considerable resources in acceleration and changed work, some of which is pending final pricing agreement.

There are currently no significant issues in dispute and contract change orders are within industry averages. The major factors typically evaluated in the reduction of retention are: (1) work progress and schedule, (2) potential disputes, and (3) quality of work. WCRC has been performing well on all three of these criteria, and continues to work toward their goal of finishing on

schedule with no claims. As stated above, Public Contract Code section 9203 requires that the Board make a finding that "satisfactory progress is being made." It is staff's opinion that WCRC is making satisfactory progress, and that this satisfactory progress has been made since the project was 50% complete

Further, it should be noted that if there is an issue of disputed work on the Project, NCTD has legal authority, pursuant to Public Contract Code section 7107 and the Contract, to segregate from retention, 150% of the amount of the disputed work, while the issue is being resolved.

The current contract value of the Mainline contract, including approved change orders, is \$221.6 million. If this item is approved, the District would release to WCRC any retention withheld from progress payments made after the Board's June 2006 action to reduce retention to 5%. If approved, the District would reduce the amount held in retention from approximately \$9.7 million to approximately \$5 Million.

**ATTACHMENT:** None

**FISCAL IMPACT:** None. The amounts withheld for retention are for work already performed, and are deposited by NCTD into an escrow account. A portion of these retained funds would simply be released to the contractor in accordance with this recommendation.

**COMMITTEE**

**REVIEW:**

12/6/07

The mainline construction contract provides for a minimum 5% retainage as per Public Contract Code 9203. The initial retainage for this contract was 10% which the Board reduced to 5% in June 2006 at WCRC's request. WCRC has reached an overall contract completion of over 90% and is requesting further reduction. Staff noted that WCRC is performing well and recommends approval. Total contract cost is approximately \$220 million and the retainage is currently \$9.7M. This action would reduce it to approx \$5M. Additionally, a performance bond is in place as further protection for the District.

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