

**STAFF REPORT FOR CALENDAR ITEM NO.: 11
FOR THE MEETING OF: June 8, 2017**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorizing the Executive Director to terminate the Agreement between the TJPA and the Artist Tim Hawkinson, compensate the artist the full amount of the artist fee, and consider future opportunities to enhance the TJPA's public art program.

EXPLANATION:

In May 2008, the TJPA approved the establishment of a public art program budget of \$4.75 million, and entered into an intergovernmental agreement with the San Francisco Arts Commission (SFAC) to manage and oversee the development of the public art program on the TJPA's behalf.

The SFAC established a Steering Committee whose purpose, among other things, was to recommend primary sites within the Transit Center where integral artworks could be developed, conduct an artist selection process, and recommend artists.

As a result of this process, in September 2009, the TJPA Board approved five artists, including Tim Hawkinson, to enter into Memoranda of Understanding with SFAC to develop conceptual proposals for specific sites in the new Transit Center. In March 2011, the TJPA Board approved the design proposal and budget for Mr. Hawkinson's sculpture, and authorized the Executive Director to execute a services agreement with Mr. Hawkinson for design development, construction documents, project administration and oversight of fabrication and installation ("Artist Agreement"), and a change order with Webcor-Obayashi to perform the fabrication, installation, and construction of the sculpture's dedicated foundation, structural slab, and base-isolator system. Shortly thereafter, the TJPA entered the Artist Agreement with Mr. Hawkinson. The TJPA has discretion to terminate the Artist Agreement at any time for convenience and without cause.

Mr. Hawkinson proposed a sculpture of a monumental guardian figure for the Transit Center. The 41-foot tall sculpture would be constructed of salvaged demolition materials from the former Transbay Terminal to reconstruct a welcoming figure for the new Transit Center.

The TJPA's budget of direct costs for Mr. Hawkinson's proposed sculpture was about \$949,000, which included demolition, concrete salvage, transportation and storage of salvaged pieces, rough shaping of pieces; concrete testing and scanning; construction of foundation for the sculpture; and fabrication and installation of the sculpture. The budget of direct costs also included a \$200,000 artist fee. The TJPA additionally expected to incur on the order of \$520,000 in support costs for Mr. Hawkinson's artwork; a portion of this amount would compensate SFAC under the intergovernmental agreement for services related to the artwork, such as coordination with the artist, development of a maintenance and conservation plan for the artwork, commissioning of the artwork, and related costs. Thus, the TJPA expected direct and indirect costs of about \$1.67 million for the artwork.

The Transit Center is in its final year of construction, during which the signature artworks must be completed and integrated into their respective environments. Despite years of effort on the part of the TJPA, SFAC, Mr. Hawkinson, the construction team, and others, bringing the concept to fruition has proven to be a particularly complex engineering task. Given the nature of the materials, the sculpture's size, and its location, the team has not succeeded in engineering an acceptable solution within the constraints of the TJPA's budget and schedule. Among other things, the cost to extricate and secure the salvaged concrete pieces during demolition and advance the engineering and materials studies were greater than expected; additional and unplanned engineering time would be required to adjust the figure's positioning and posture to faithfully replicate the sculpture's distinctive gestures and contrapposto. Furthermore, periodic engineering stability evaluations were deemed necessary that represent potential long term risks. The budget assumed a level of construction coordination and sequencing that are no longer achievable; for example, the equipment and cranes for shoring and excavation of the Transit Center are no longer on site and available for construction of the sculpture.

The current forecasted cost of the sculpture is more than \$3.7 million, and the artwork could not be delivered until after the construction of the Transit Center is complete. The loss of this signature artwork will be disappointing. But in light of budget and schedule realities, TJPA staff must recommend that the TJPA exercise its right under the Artist Agreement to cancel any further work on the sculpture.

Mr. Hawkinson has brought exceptional vision and effort to this commission. He was engaged in the project as early as 2009, or about 8 years ago. His Artist Agreement with the TJPA anticipated that the sculpture would be delivered in 2011, or about 6 years ago. The payment schedule for Mr. Hawkinson's artist fee likewise anticipated that he would have been compensated for his services 6 years ago. Despite the delayed time frame, Mr. Hawkinson has remained a committed partner on the project. Moreover, Mr. Hawkinson has provided services that exceed what was reasonably expected when his compensation schedule was established; he worked in good faith with the TJPA and construction team over the last several years without the benefit of compensation during prolonged periods of design development and construction document production in efforts to find an engineering solution to the constructability challenges as his payment schedule was linked to engineering milestones to be performed by others through outside contracts. Additionally, we understand that Mr. Hawkinson may have declined other art and professional development invitations based upon his belief that his sculpture was to be installed prior to the opening of the Transit Center. Based on these extraordinary efforts and because the TJPA finds no fault of Mr. Hawkinson in the present need to cancel the artwork, TJPA staff recommend that the TJPA compensate Mr. Hawkinson the full amount of the artist fee under the Artist Agreement.

With payment of the full amount of the artist fee, the TJPA will have incurred about \$840,000 of the about \$1.67 million budgeted for direct and indirect costs of the artwork. Thus, cancelling the effort at this time will allow the TJPA to preserve about \$830,000 of budgeted costs, and avoid an estimated more than \$2 million in costs in excess of budget for this artwork.

TJPA staff recommend that the agency continue to consider future opportunities to enhance the TJPA's public art program.

RECOMMENDATION:

TJPA staff recommends that the TJPA Board authorize the Executive Director to terminate the Agreement between the TJPA and the Artist Tim Hawkinson, compensate the artist the full amount of the artist fee, and consider future opportunities to enhance the TJPA's public art program

ENCLOSURES:

1. Resolution

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The Transbay Joint Powers Authority (TJPA) acknowledges the importance of art in making public spaces more enjoyable, reflecting the civic importance of public facilities, improving the quality of life in the community, and adding value to the user's experience of the public transportation system; and

WHEREAS, On September 10, 2009, the TJPA Board of Directors approved the selection of five signature artists, including Tim Hawkinson, for the Transbay art program and authorized the San Francisco Arts Commission (SFAC) to executed Memoranda of Understanding on behalf of the TJPA with the artists to develop conceptual proposals and corresponding budgets; and

WHEREAS, On March 10, 2011, the TJPA Board of Directors authorized the Executive Director to enter into an agreement for services with Mr. Hawkinson ("Artist Agreement") to create a landmark sculpture for the Transit Center at direct budgeted cost for the artwork of about \$949,000, and an artist fee of \$200,000. The TJPA additionally expected to incur on the order of \$520,000 in support costs for Mr. Hawkinson's artwork. Shortly thereafter, the TJPA entered the Artist Agreement with Mr. Hawkinson. The TJPA has discretion to terminate the Artist Agreement at any time for convenience and without cause; and

WHEREAS, The Transit Center is in its final year of construction, during which the signature artworks must be completed and integrated into their respective environments. Despite years of effort on the part of the TJPA, SFAC, Mr. Hawkinson, the construction team, and others, bringing the concept to fruition has proven to be a particularly complex task. The current forecasted cost of the sculpture is more than \$3.7 million, and the artwork could not be delivered until after the construction of the Transit Center is complete. Because TJPA staff have concluded that the sculpture cannot be delivered within the available budget and schedule, TJPA staff has regrettably recommended that the TJPA cancel any further work on the sculpture; and

WHEREAS, Mr. Hawkinson has brought exceptional vision and effort to this commission. He was engaged in the project as early as 2009, his Artist Agreement anticipated that the sculpture would be delivered in 2011, and the payment schedule for Mr. Hawkinson's artist fee likewise anticipated that he would have been compensated for his services 6 years ago. Despite the delayed time frame, Mr. Hawkinson has remained a committed partner on the project. Moreover, Mr. Hawkinson has provided services that exceed what was reasonably expected when his compensation schedule was established; he worked in good faith with the TJPA and construction team over the last several years in efforts to find an engineering solution to the constructability challenges. Based on these extraordinary efforts and because the TJPA finds no fault of Mr. Hawkinson in the present need to cancel the artwork, TJPA staff recommend that the TJPA compensate Mr. Hawkinson the full amount of the artist fee under the Artist Agreement; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to terminate the Artist Agreement between the TJPA and the Artist Tim Hawkinson, compensate the artist the full amount of the artist fee, and consider future opportunities to enhance the TJPA's public art program.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of June 8, 2017.

Secretary, Transbay Joint Powers Authority