

**STAFF REPORT FOR CALENDAR ITEM NO.: 11
FOR THE MEETING OF: February 14, 2019**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Director of Design & Construction for the Transbay Transit Center, SF Public Works, to execute Amendment No. 6 to the Professional Services Agreement (“Agreement”) between the Transbay Joint Powers Authority (“TJPA”) and Turner Construction Company (“Turner”) for Construction Management Oversight services on the Transbay Transit Center project (the “Project”). Amendment No. 6 provides for the following: (1) an increase in the contract amount from \$75,000,000 to a total of \$78,000,000; and (2) extends the length of the contract one additional year to June 30, 2020.

EXPLANATION:

Under the Agreement, Turner is responsible for providing construction management oversight (“CMO”) for (1) the demolition of the former Transbay Terminal and roadway ramps (complete); (2) the relocation of utilities, and (3) the construction of the new Transbay Transit Center and Bus Ramp. Specifically, Turner’s CMO services include: preconstruction surveys, project communications, meetings/meeting minutes, recordkeeping, progress reporting on a daily basis as needed and on a monthly basis as required, quality assurance/quality control, document control, cost control support, schedule support, claim support, inspection and testing, technical support, environmental monitoring, coordination with other agencies and affected entities, and project closeout. Turner essentially serves as the TJPA’s “eyes and ears” on the jobsite during construction, contract close-out and claim resolution. Turner is charged with monitoring and documenting the progress, actions and requests of the Construction Manager/General Contractor (CM/GC) with respect to the above items, who in turn is responsible for coordinating and managing the actual construction in the field. These CMO services are necessary for any construction project, however, on a federally funded project, these CMO services must be performed by a contractor that is independent of the contractor performing the construction work.

The original Agreement had a term of six years with options to extend for an additional three one-year periods. The three additional one-year periods have been exercised through Amendment No. 5, extending Turner’s services under the Agreement through June 30, 2019. Due to: (1) the Girder Remediation effort at Fremont Street, the associated review of the girders at First Street and the review of other structural components at the Project; (2) delays to Substantial Completion and Final Completion of the Project; and (3) the recent filing of lawsuits by the CM/GC against the TJPA, events which have all occurred subsequent to the approval of Amendment No. 5, the TJPA has determined that there is an immediate need for additional funding and an additional one year of support by Turner.

When preparing the CMO budget in conjunction with Amendment No. 5, the Girder Remediation effort at Fremont Street and the associated review of the girders at First Street and the review of other structural components at the Project was not contemplated. In short, Amendment No. 5 is insufficient to cover Turner’s costs associated with the services being

provided in conjunction with the above items, which have been ongoing since September 25, 2018. In addition to Turner's direct costs associated with the above items, Turner has retained two independent consultants to assist with the investigation related to the Girder Remediation effort. Turner has retained LPI (Robert Vecchio) to perform sampling and testing and ISI to perform all non-destructive testing and inspections. Both LPI and ISI's services have been retained through Turner to ensure independence from the Project's design team and contractor team.

When Amendment No. 5 was approved on April 12, 2018, the CM/GC represented that Substantial Completion would be achieved in June or July of 2018. Ultimately, Substantial Completion was achieved on August 12, 2018, resulting in a contractual Final Completion date of November 12, 2018 (90 days after Substantial Completion). However, as of the date of Substantial Completion, the CM/GC represented that a significant amount of 'Work To Complete' the Project would extend beyond the contractual Final Completion date of November 12, 2018. As of the date of this report, the CM/GC anticipates achieving Final Completion, *i.e.*, the completion of all commissioning, punch list and outstanding contract work, by April 1, 2019. In parallel with the delay to the completion of the physical work, the CM/GC's paperwork to actually closeout its trade subcontracts remains incomplete. As of the date of this report, there are only 2 of the 42 trade subcontracts closed-out. The CM/GC's anticipated Final Completion date is approximately 5 months beyond the contractual Final Completion date of November 12, 2018 and well beyond what was expected at the time Amendment No. 5 was approved. The TJPA requires Turner's services and support through Final Completion and the close-out of the trade subcontracts.

Finally, the lawsuits filed by the CM/GC against the TJPA shortly after the fissures in the steel girders first materialized has necessitated the need for additional Turner services. The TJPA, and its legal counsel, Seyfarth Shaw, require Turner's services to support the TJPA in its defense and pursuit of claims related to the delayed completion of the Project. For instance, Turner will assist in document searches and collection and claim analysis and presentation under the direction of the TJPA's legal counsel. Defending against the lawsuits will require a significant amount of effort by Turner and is a key driver in the one year extension to the CMO contract.

For the reasons stated above, there is a need to extend the contract term and increase the compensation to adequately cover CMO responsibilities of contract administration for the extended timeframe, including special inspections and testing related to the Girder Remediation effort, extended services through Final Completion and support for dispute resolution. Therefore, a one-year extension and an increase of \$3.0 million is recommended by TJPA staff to the CMO contract via this Amendment No. 6.

PROCUREMENT HISTORY:

On January 15, 2010, the TJPA issued a Request for Proposals (RFP) for CMO Services for the Transbay Transit Center and Related Structures. On February 19, 2010, the TJPA received six proposals in response to the RFP. A selection committee evaluated the written proposals for technical merit. Based on the selection committee's evaluation scores, the TJPA invited four firms for interviews. Following the interviews, the selection committee ranked Turner the

highest, determining that it was the best qualified to perform the required services.

On June 10, 2010, following contract negotiations, the TJPA Board authorized the Executive Director to execute the Agreement with Turner to provide CMO services for the Project.

The CMO RFP had a Small Business Enterprise (SBE) utilization goal of 35%. Turner exceeded this goal in its proposal by including multiple certified SBE subcontractors at a level of 39%. Through December 2017, Turner has achieved an SBE utilization rate of 46%, including a Disadvantaged Business Enterprise utilization rate of 41%.

COST HISTORY:

Amendment No. 5 to the Agreement, which covered the contract time through June 30, 2019 and the budget of \$75,000,000, assumed a Substantial Completion in June or July, 2018 and a Final Completion milestone of September, 2018. The fissures in the two girders over Fremont street were identified on September 25, 2018. The additional scope of CMO support needed as per this requested Amendment No. 6 is being driven by three factors. For purposes of explaining the cost drivers, here is a breakdown of the requested \$3.0M. This amount is to be funded by the Program Reserve, but no items related to the girder remediation will be paid with City Financing. Girder remediation costs will generally be financed via Land Sales proceeds.

- 1) The largest cost impact to the CMO contract since Amendment No. 5 is due to the Girder Remediation effort at Fremont Street, the associated review of the girders at First Street and the review of other structural components at the Project. The total cost to the CMO contract for services related to this item is calculated to be approximately **\$1,800,000**. Of this amount approximately \$1,500,000 relates to incurred and future costs for LPI and ISI's services. The balance of this amount relates to Turner's direct costs for Quality Assurance and oversight staffing. At the time of this report, the full effort of remediation support is not known and may require additional funding depending on the extent of future building-wide investigation & inspection scope.
- 2) The second largest cost impact to the CMO contract is due to the extended support services required to address the continued delay to Final Completion and trade subcontract closeout. When Amendment No. 5 was executed, the conservative Final Completion date was the end of 2018. It is now assumed that Final Completion will be achieved in early to mid-2019. Final Completion has been delayed by, among other items, (1) delays to trade subcontractor work (most notably the Southwest ceiling panel installation, MEP systems commissioning and site work final completion) requiring the CMO to provide additional field oversight, (2) late submissions of trade subcontractors providing their final change order requests extending the CMO's time to process; and (3) delays in submitting final closeout documents from trade subcontractors. Additional staff through Final Completion and the close-out the CM/GC contract is estimated at **\$800,000**.
- 3) Finally, the WOJV lawsuits filed shortly after the fissures were found in the Fremont Street bus deck girders have also added to the support needed by Turner. Turner is

supporting the TJPA and its counsel in the defense and pursuit of claims related to the delayed completion of the Project. For instance, Turner is assisting in document searches and collection and claim analysis and presentation under the direction of the TJPA's legal counsel. This effort is estimated at **\$400,000**.

All three of these items have added to the unanticipated activities required of Turner to perform its required duties since Amendment No. 5.

RECOMMENDATION:

TJPA staff recommends that the TJPA Board authorize the Director of Design & Construction for the Transbay Transit Center, SF Public Works, to execute Amendment No. 6 to the Professional Services Agreement between Turner and the TJPA for Construction Management Oversight services which increases the fixed fee by \$3,000,000 to a total amount of \$78,000,000 and extends the contract term by one year to June 30, 2020.

ENCLOSURES:

1. Amendment
2. Resolution

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, On June 10, 2010, the Transbay Joint Powers Authority (TJPA) Board of Directors authorized the Executive Director to execute a Professional Services Agreement (Agreement) with Turner Construction Company (Turner) for Construction Management Oversight services for a six year term and a maximum compensation of \$38,500,000, with options to extend the Agreement for three additional one-year periods; and

WHEREAS, On July 1, 2014, the Agreement was amended by Amendment No. 1 mutually agreed upon by the TJPA and by Turner to revise Appendix B, Calculation of Charges, in order to update the Base Hourly Rate for construction management oversight staff; and

WHEREAS, On July 9, 2015, the TJPA Board of Directors authorized Amendment No. 2 to the Agreement in order to revise the fixed fee by \$7,480,000, for a total fixed fee of \$45,980,000, consistent with the Board-approved July 2013 Phase 1 Program Budget; and

WHEREAS, On September 10, 2015, the TJPA Board of Directors authorized Amendment No. 3 to the Agreement in order to revise the fixed fee by \$11,200,000, for a total fixed fee of \$57,180,000; and

WHEREAS, On June 9, 2016, the TJPA Board of Directors authorized Amendment No. 4 to the Agreement in order to (1) increase the contract amount by \$15,320,000, for a total fixed fee of \$72,500,000, consistent with the Board-approved updated Phase 1 Program Budget, (2) extend the contract by two years to June 30, 2018 and (3) reduce the fee percentage charged beyond June 30, 2016 from 9% to 7%, and

WHEREAS, On April 12, 2018, the TJPA Board of Directors authorized Amendment No. 5 to the Agreement that specified (1) an increase in the contract amount by \$2,500,000, for a total fixed fee of \$75,000,000, and (2) extended the contract by one year to June 30, 2019; and

WHEREAS, Turner has been providing satisfactory construction management oversight services for the construction of the Transbay Transit Center and Related Structures, which includes independently monitoring and documenting progress by the Construction Manager/General Contractor (CM/GC) and its subcontractors performing the construction work; and

WHEREAS, These services will continue to be needed for an extended duration due to the CM/GC requiring additional time to achieve Final Completion, Contract Closeout and the vital remediation of the Girder issue; and

WHEREAS, Amendment No. 6 to the Agreement specifies (1) an increase in the contract amount by \$3,000,000, for a total fixed fee of \$78,000,000, and (2) extends the contract by one year to June 30, 2020; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Director of Design & Construction for the Transbay Transit Center, SF Public Works, to execute Amendment No. 6 to the Professional Services Agreement between the TJPA and Turner for Construction Management Oversight services to increase the fixed fee by \$3,000,000, for a total fixed fee of \$78,000,000 and extend the term by one year.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of February 14, 2019.

Secretary, Transbay Joint Powers Authority

**Amendment No. 06 to
Professional Services Agreement between
The Transbay Joint Powers Authority and Turner Construction Company**

THIS Amendment No. 6 to the Professional Services Agreement to provide Construction Management Oversight Services dated June 10, 2010 (“Agreement”) is entered into as of the ____ day of February, 2019 in San Francisco, California, by and between Turner Construction Company (“Contractor”), and the Transbay Joint Powers Authority (“TJPA”).

Recitals

A. On January 15, 2010, the TJPA issued a Request for Proposals (“RFP”) No. 09-08 for Construction Management Oversight (“CMO”) Services for firms or individuals with expertise in construction management of similar facilities.

B. On February 19, 2010, Contractor submitted a proposal in response to TJPA’s RFP, which was reviewed and evaluated by the TJPA’s Selection Committee, which determined the Contractor’s proposal to be the highest-ranked proposal, and TJPA subsequently negotiated a professional services agreement with the Contractor.

C. On June 10, 2010, the TJPA Board of Directors adopted Resolution No. 10-017, which authorized the Executive Director to execute the Agreement with the Contractor for CMO Services for a term not to exceed six years, with the option to extend for three additional one-year periods, and an amount not to exceed \$38,500,000.

D. On July 1, 2014, the TJPA Executive Director executed Amendment No. 1 to the Agreement with the Contractor to revise Appendix B, Calculation of Charges.

E. On July 9, 2015, the TJPA Board authorized the Executive Director to execute Amendment No. 2 to the Agreement with the Contractor to revise Article 5, Compensation, increasing the not-to-exceed amount to \$45,980,000.

F. On September 10, 2015, the TJPA Board authorized the Executive Director to execute Amendment No. 3 to the Agreement with the Contractor to revise Article 5, Compensation, increasing the not-to-exceed amount to \$57,180,000.

G. On June 9, 2016, the TJPA Board of Directors authorized Amendment No. 4 to the Agreement which (1) increased the contract amount by \$15,320,000, for a total fixed fee of \$72,500,000, (2) extended the contract by two years to June 30, 2018 and (3) reduced the fee percentage charged beyond June 30, 2016 from 9% to 7%.

H. On April 12, 2018, the TJPA Board of Directors authorized Amendment No. 5 to the Agreement which (1) increased the contract amount by \$2,500,000, for a total fixed fee of \$75,000,000 and extended the contract by one year until June 30, 2019.

I. The TJPA and Contractor now desire to amend the Agreement. The sections of the Agreement that are to be amended by this Amendment No. 6 are: Article 2, Term of the Agreement and Article 5, Compensation.

Terms and Conditions

Now, therefore, the TJPA and the Contractor agree to amend the following sections of the Agreement to read as follows (*changes are in strikethrough and italics*):

Article 2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be for *ten years total* ~~six years, plus two years pursuant to the TJPA's exercise of its option to extend this Agreement for an additional two one year periods~~, from the Effective Date of the Agreement, as described in Section 3 below. Accordingly, this Agreement shall be effective until June 30, 2020, ~~2019~~.

Article 5. Compensation

The Contractor shall perform all services for the Construction Management Oversight of the Project for a Fixed Fee of *Seventy-eight million and zero cents (\$78,000,000)* for the period ending June 30, 2019. The specific scope of work from July 1, 2019 to June 30, 2020 will extend contract support services, services related to the final mitigation effort and any support necessary related to the pending litigation. However, at this time the level of support for these items has not yet been defined and the additional compensation is therefore not included in the above. A future amendment will be submitted as necessary. ~~Seventy five million dollars and zero cents (\$75,000,000.00).~~

All other provisions of the Agreement shall remain in full force and effect.

TRANSBAY JOINT POWERS AUTHORITY

TURNER CONSTRUCTION COMPANY

By: Ronald Alameida
Title: Director of Design & Construction
for the Transbay Transit Center,
SF Public Works

By: Lisa A. Ballantyne
Title: Vice President, General Manager
Turner Construction Company
300 Frank H. Ogawa Plaza, Suite 510
Oakland, CA 94612

Transbay Joint Powers Authority
Board of Directors
Resolution No. _____
Adopted: _____
Attest:

Secretary, TJPA Board

Approved as to Form by:

_____ TJPA Legal Counsel