

**STAFF REPORT FOR CALENDAR ITEM NO.: 12
FOR THE MEETING OF: April 12, 2018**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Director of Design & Construction for the Transbay Transit Center, SF Public Works, to execute Amendment No. 5 to the Professional Services Agreement (Agreement) between the Transbay Joint Powers Authority (TJPA) and Turner Construction Company (Turner). Amendment No. 5 provides for the following: 1) an increase in the contract amount from \$72,500,000 to a total of \$75,000,000, and 2) extends the length of the contract one additional year to June 30, 2019.

EXPLANATION:

Under the Agreement, Turner is responsible for providing construction management oversight (CMO) of 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 services, quality assurance/quality control, inspection and testing, technical support, document control, cost control support, schedule support, claims resolution support, project communications, recordkeeping, progress reporting on a daily basis as needed and on a monthly basis as required, environmental monitoring, coordination with other agencies and affected entities and project closeout. The CMO contractor essentially serves as the TJPA's "eyes and ears" on the jobsite during construction by monitoring and documenting the progress of the Construction Manager/General Contractor (CM/GC) responsible for coordinating and managing the actual construction. These oversight services are necessary for any construction project. On a federally funded project, these 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. (Note that this contract was entered into prior to the official incorporation of the train box into the Phase 1 schedule). Two of the three options were exercised per the Board's action in June 2016, extending the term through June 30, 2018. There is one optional year left on the agreement.

Now that the CM/GC has surpassed its contractual Substantial Completion date, and informed the Board last month that Substantial Completion will now be at the end of June or possibly early July 2018, 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, change order and claims support and processing, support for the ongoing second and third shifts of work, neighborhood project coordination and any outreach support required as the Program nears the anticipated commencement of bus operations this summer. A one-year extension and an increase of \$2.5 million is recommended by TJPA staff.

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 (the "Project"). 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 of 46%, including Disadvantaged Business Enterprise utilization of 41%.

COST HISTORY:

The original amount of the Agreement, for the six year term, was \$38,500,000, while the amount included in the 2013 Phase 1 Program Budget was \$45,980,000. This higher, budgeted amount was authorized by the TJPA Board in July 2015. As the Phase 1 Program Budget was undergoing revisions in 2015 and 2016, two additional increases were approved by the TJPA Board, bringing the current contract amount to \$72,500,000. This amount assumed Substantial Completion in December 2017, and closeout of the CM/GC contract by June 30, 2018. The addition of over 6 months of unanticipated delays to the construction schedule and a CM/GC contractor that is currently being assessed liquidated damages since December 22, 2017 will require significantly more effort to perform the closeout functions of our CMO. Therefore, it is expected that it will take at least one additional year to finalize all claims and schedule issues related to this delay and the related claims. The CMO staffing plan does account for a significant ramp down by the completion of the punchlist activities in the field, then leaves a small core group to negotiate and resolve the anticipated claims. In conclusion, this schedule delay scenario was not anticipated at the time of the previous amendment #4 in 2016, but does need to be addressed on this current amendment #5 to be in the best interest of the TJPA.

This amendment #5 is proposed to be funded by the Program Reserve. Currently, the Program Reserve balance is \$90.8 million and will be reduced to \$88.3 million with the approval of this amendment.

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. 5 to the Professional Services Agreement between Turner and the TJPA to increase the fixed fee by \$2,500,000 to a total amount of \$75,000,000 and extend the contract term by one year to June 30, 2019.

ENCLOSURES:

1. Resolution
2. Amendment

**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, 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 Substantial Completion; and

WHEREAS, Amendment No. 5 to the Agreement specifies (1) an increase in the contract amount by \$2,500,000, for a total fixed fee of \$75,000,000, and (2) extends the contract by one year to June 30, 2019; 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. 5 to the Professional Services Agreement between the TJPA and Turner to increase the fixed fee by \$2,500,000, for a total fixed fee of \$75,000,000 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 April 12, 2018.

Secretary, Transbay Joint Powers Authority

**Amendment No. 05 to
Professional Services Agreement between
The Transbay Joint Powers Authority and Turner Construction Company**

THIS Amendment No. 5 to the Professional Services Agreement to provide Construction Management Oversight Services dated June 10, 2010 (“Agreement”) is entered into as of the ____ day of April, 2018 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. The TJPA and Contractor now desire to amend the Agreement. The sections of the Agreement that are to be amended by this Amendment No. 5 are: Article 2, Term of the Agreement and Article 5, Compensation.

I. The TJPA and Contractor intend that this Amendment No. 5 to the Agreement comply with the regulations of the United States Department of Transportation (“USDOT”).

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 *nine 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, ~~2019. 2018,~~ provided that (i) the TJPA shall have the right to extend this Agreement for an additional one year by providing to the Contractor written notice of such extension on or before the expiration of this Agreement, and (ii) any such extension shall be subject to and conditioned upon the written agreement of the Contractor and the approval of such extension by resolution adopted by the TJPA Board of Directors.

Article 5. Compensation

The Contractor shall perform all services for the Construction Management Oversight of the Project for a Fixed Fee of ~~Seventy two million, five hundred thousand and zero cents. (\$72,500,000.00).~~ *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