

MEMORANDUM

May 24, 2019

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Willie Adams, Vice President
Hon. Gail Gilman
Hon. Victor G. Makras
Hon. Doreen Woo Ho

FROM: Elaine Forbes
Executive Director

SUBJECT: Request for retroactive authorization to modify Construction Contract No. 2786, Pier 94 Backlands Improvement Project, to extend the substantial and final completion date

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution

Executive Summary

Port staff requests that the Port Commission authorize a contract modification to extend the substantial completion date of Construction Contract No. 2786, Pier 94 Backlands Improvement ("Project"), by an additional 77 calendar days. The requested time extension is in addition to a prior time extension of 15 days (10% of original contract duration) granted by Port staff due to unforeseen conditions. Under Section 6.22 of San Francisco Administrative Code, time extensions in excess of 10% of the original contract duration are subject to Port Commission approval. The original contract provided a duration of 150 calendar days for substantial completion of the work. A total of 242 days was required to substantially complete the work due to unusually wet weather season and other unforeseen site conditions beyond the contractor's control, as described in the Background section of this memorandum. Port staff has determined there is no basis to assess liquidated damages against the contractor for the delay.

Strategic Objectives

This Project supports the Port's Strategic Plan "Productive" objectives by creating leasable land parcels which will attract and retain tenants that build an economically viable Port.

THIS PRINT COVERS CALENDAR ITEM NO. 10B

Background

This Project has transformed the Pier 94 Backlands site from a construction rubble storage yard (Exhibit A, Photograph 1) into leasable lay-down storage space (Exhibit A, Photograph 2). The Project scope included grading and placement of existing recycled rock, soil stockpiles and clean fill to establish final project grades, construction of an asphalt-paved access road, repairs and replacement of stormwater drainage infrastructure, perimeter landscaping and lighting at the site. In addition, a 7.6-acre portion of the Project site is comprised of a former Class III regulated landfill area. As required by the Regional Water Quality Control Board, the Project scope also included placement of an engineered cap on this 7.6-acre area of the site to address potential water quality impacts associated with future site development and uses. The project is substantially complete and ready for leasing.

This construction Project contract was advertised for contract bids on March 18, 2018. The Port received four bids on April 17, 2018. On June 12, 2018, the Port Commission authorized the award of Construction Contract No. 2786, Pier 94 Backlands Improvement Project to Hoseley Corporation (“Hoseley” or “Contractor”), the lowest responsive, responsible bidder for \$7,665,903 (including a 10% contingency) with a construction schedule of 150 consecutive calendar days for substantial completion. (Port Commission Resolution 18-35).

Section 6.22(h) of the City Administrative Code allows staff to grant a contract time extension not exceeding 10 percent of the original schedule due to unavoidable delays, and beyond that, the Port Commission may grant retroactive approval to increase the contract duration beyond 10 percent of the original contract schedule. This allows staff the flexibility to negotiate modifications to the schedule without causing further delays to the Project, and then to seek Port Commission approval when the work is done, and the timeline is known.

Reasons for Project time extension:

- Hoseley submitted the lowest project bid on April 17, 2018 with an anticipated Notice to Proceed in June 2018. The Port Commission authorized the award of Contract on June 12, 2018. If award of the contract had proceeded without issues, Hoseley would have completed major Project work before the winter rainy season. However, Notice to Proceed was not issued until September 4, 2018, due to a delay in the Controller certifying the contract. The certification delay was mainly attributed to several technical glitches when the City switched to a new accounting system on July 1, 2018. This pushed the contract certification and the Project work into the winter rainy months which had negative impacts to the grading operation, stormwater drainage pipes placing, regulated landfill area capping, asphalt access road paving and other works.
- There were 54 rainy days recorded in San Francisco from November 2018 to March 2019. Per Project Manual, Section 00 72 00, 7.02 C.4, Contractor shall plan the Work to allow for 15 rainy days from November to March. The inclement weather delayed the Contractor’s work. Some of the construction work, such as

compaction and asphalt paving – which depend upon dry weather – required the Contractor to wait up to 7 days after rain for the ground to adequately dry to perform the specified work.

- During excavation of swales required for stormwater management, the Contractor discovered large and unforeseen amounts of trash and debris unsuitable for use as a backfill material for Project grading. This required the Contractor to screen the excavated material to separate trash and debris from usable soil, which took considerably more time than anticipated. Please see Photographs 3 and 4 in Exhibit A.
- Unforeseen delays were also caused by removal of debris from an existing storm water main pipe, which the Contractor found obstructed with concrete debris.

For the reasons cited above, Port staff has found no basis to assess liquidated damages against the Contractor for the construction delay. Port staff therefore requests authorization to execute a contract modification to extend the original contract duration of 150 calendar days for substantial completion by an additional 77 calendar days (in addition to Port staff's prior extension of 15 days). The requested contract modification would thus extend the substantial completion date from January 31, 2019 to May 3, 2019.

The contract was substantially completed on May 3, 2019 and is ready for leasing.

San Francisco Local Business Enterprise Requirement

CMD enforces the City's Administrative Code Chapter 14B, the Local Business Enterprise and Non-Discrimination in Contracting Ordinance. The ordinance establishes **10%** bid discounts for Local Business Enterprise (LBE) prime contractors and empowers CMD to set LBE subcontractor participation requirements based upon availability of LBE firms to complete the type of work included in the contract. Prior to contract bidding, CMD staff reviewed the Project scope and funding sources for this contract and determined a 20% LBE subcontractor participation requirement for the Project scope of work.

Hoseley's performance exceeded the 20% LBE subcontracting goal with more than 24% LBE subcontractor participation for this contract. In addition, Hoseley is a certified LBE prime contractor who self-performed approximately 61% of the contract work, resulting in approximately 85% of the work performed by certified LBE firms. Hoseley is an OBE-LBE. The Table below describes the LBE proposed subcontractors and actual work performed.

Firm	Type of Work	Proposed % Contract Work*	Proposed Amount of Contract Work	Actual % Contract Work	Actual Amount of Contract Work	LBE Type
Fontenoy Engineering	Wet Utilities	17.25%	\$1,162,900	16.95%	\$1,275,402	OBE
R&S Construction	Apron Concrete Channel	2.27%	\$152,500	1.97%	\$148,500	MBE
Esquivel Paving & Grading	Paving	4.40%	\$294,686	3.99%	\$300,188	MBE
Team North	Truck & Street Sweeper Service	4.42%	\$296,870	0.0%	\$0.00	WBE
HVYW8, Inc.	Trucking	0.0%	\$0.00	1.37%	\$103,410	WBE
Total		28.34%	\$1,906,956	24.29%	\$1,827,500	

**% of contract is based on CMD's calculation of the credited amount.*

Funding

The final Project expenditure details are shown below-

Contract Award	\$7,665,903 (including 10% contingency)
Contract Change Orders	\$ 559,469
Total Contract expenditure	\$7,528,472

The Project construction contract is fully funded from CPO-923-01

Schedule

The modified Project completion schedule is noted below:

Port Commission Authorization to Award	June 12, 2018
Notice to Proceed	September 4, 2018
Original Substantial Completion	January 31, 2019
Revised Substantial Completion	May 3, 2019
Revised Final Completion	June 2, 2019

Summary

Port staff requests Port Commission authorization to execute a contract modification to extend the original contract duration of 150 days for substantial completion by an additional 77 calendar days, which in addition to the Port staff's prior time extension of 15 days, totals 242 calendar days. Port staff determined that the additional time required to complete the Project was reasonable and justified.

The Contractor experienced delays in contract completion beyond 10% of the original contract duration for the Pier 94 Backlands project. The circumstances for the delay were due to unforeseen conditions beyond the contractor's control and, as a result, staff finds no basis to assess liquidated damages for such delay.

Prepared by: Ken Chu, Project Engineer

For: Rod Iwashita, Chief Harbor Engineer

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION NO. 19-22**

- WHEREAS, on June 12, 2018, the Port Commission adopted Resolution No.18-35, which authorized the award of Construction Contract No. 2786, Pier 94 Backlands Improvement Project to Hoseley Corporation (“Hoseley” or “Contractor”); and
- WHEREAS, the contract scope included grading and placement of existing recycled rock, soil stockpiles and clean fill to establish final project grades, construction of an asphalt-paved access road, repairs and replacement of stormwater drainage infrastructure, perimeter landscaping, lighting, and capping a former class III regulated landfill area; and
- WHEREAS, during the course of construction, the Contractor encountered unforeseen conditions and unavoidable delays as defined in the contract, that required additional time to complete the contract work; and
- WHEREAS, Section 6.22(h) of the City Administrative Code authorizes the Port Commission to approve time extensions greater than 10% of the original contract amount or duration, and such a time extension is permissible after completion of the contract when there is no basis to assess liquidated damages for the delay against the contractor; and
- WHEREAS, Port staff requests authorization of an extension of time of 77 calendar days to the original contract duration of 150 calendar days, which combined with Port staff’s prior extension of 15 calendar days, will extend the original contract substantial completion date by 92 days from January 31, 2019 to May 3, 2019; and
- WHEREAS, as described in the accompanying staff report, Port staff have determined that the delays in the completion of the contract were beyond the Contractor’s control and there is no basis to assess liquidated damages against the Contractor; now, therefore be it
- RESOLVED, that the Port Commission hereby authorizes Port staff to execute a contract modification to Contract No2786, Pier 94 Backlands Improvement Project, to extend the existing substantial completion date by an additional 92 days, and further, the Port Commission hereby ratifies all actions taken by the Port staff in furtherance of such contract modification.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of May 28, 2019.

Secretary

EXHIBIT A

Photograph 1, Site Before Construction



Photograph 2, Site After Construction



Photograph 3, Trench Excavation for 30" Storm Drain Pipe



Photograph 4, Stockpile of Screened Trash and Debris, Excavated from Swale 1

