



MEMORANDUM

May 8, 2020

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

FROM: Michael Martin 
Acting Executive Director

SUBJECT: Request Retroactive Authorization to Modify Construction Contract No. 2810R Hazardous Building Materials Abatement Project - Building 49, and Cranes 14 & 30 at Pier 70 to Extend the Completion Date

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution

Executive Summary

Port staff requests Port Commission authorization to extend the completion date for Contract No. 2810R (the "Contract"), Hazardous Building Materials Abatement at Building 49 and Cranes 14 & 30 at Pier 70 ("the Project") by 33 days for unavoidable delay. Port staff has assessed \$82,200 in liquidated damages for 235 days of contractor-caused delay.

The Port's Executive Director approved the original contract award to Asbestos Management Group, Inc. ("AMG") in the amount of \$290,950 under her delegated authority to execute contracts of less than \$600,000 in value. The Contract involved removal of hazardous materials (e.g. asbestos, lead-based paint), application of a specified encapsulating coating, and disposal of other hazardous structures and equipment remaining from former shipbuilding operations at Pier 70. The Project site is shown in Exhibit A.

The adjusted Contract duration was 159 Calendar days (90 days to substantial completion, 9 days to complete work added by change order, and 60 days to final completion). AMG completed the work in 427 days, resulting in 268 days of delay.

THIS PRINT COVERS CALENDAR ITEM NO. 9A

Port staff has determined that 235 days of delay were “avoidable” under the Contract and has assessed \$82,200 in liquidated damages for those avoidable delays. AMG has accepted Port staff’s assessment of liquidated damages and executed a Final Settlement and Release of Claims.

Port staff has determined that 33 days of delay were “unavoidable” under the Contract and has granted a 33-day extension. This extension is subject to ratification by the Port Commission under Section 6.22(h)(2) of the City’s Administrative Code, which requires retroactive approval by the Port Commission of extensions that exceed 10% of the original Contract duration.

Strategic Objectives

This Project implements the following strategies in the Port’s 2019 – 2023 Strategic Plan:

- **Evolution:** The Project improved Port open space, providing publicly desired amenities and activities, and supporting the broader Crane Cove Park construction.
- **Renewal:** The Project rehabilitated historic resources in the Union Iron Works Historic District at Pier 70.
- **Sustainability:** The Project removed and encapsulated hazardous materials in Building 40, Cranes 14 & 30, and other artifacts, which will be on display in Crane Cove Park, to prevent exposure to hazardous materials and allow safe use in a public setting.
- **Stability:** By diligently seeking payment relief under the contract the proposed item serves to safeguard the Port’s budget while closing out the completed project.

Background

The Contract was originally advertised on June 10, 2018 and received no bids. It was re-advertised on August 21, 2018, and three bids were received. AMG was the lowest responsive, responsible bidder, with a total bid price of \$264,500. On September 5, 2018, the Contract was awarded to AMG for \$264,500 with a construction schedule of 90 calendar days for substantial completion and 60 calendar days for final completion.¹ The Port issued a Notice to Proceed on November 15, 2018.

During the course of the work, Port staff discovered that AMG had failed to correctly apply an encapsulating coating specified in the Contract. On March 12, 2019, Port staff issued a “Non-compliance Report” directing AMG to immediately correct the faulty work. On March 19, 2019, AMG committed to submit a corrective action plan within one week. After a week, Port staff did not receive a plan from AMG, and on March 26, 2019, Port staff issued a letter to AMG restating the non-compliant status of the work and reiterating that the liquidated damages amounts specified in the Contract would apply. On April 1, 2019, AMG submitted a proposed corrective action plan. However, Port staff determined that it would not adequately correct the deficient work, and rejected the

¹ The substantial completion deadline was subsequently extended 9 days to accomplish additional work requested by Port and added to the contract by change order no. 1.

plan. On April 25, 2019, AMG and Port staff agreed on a plan to correct the deficient work, which required AMG to properly apply the specified coatings for encapsulation.

AMG's corrective action proceeded intermittently, including working weekends. In order to avoid additional deficient performance, Port staff increased its level of inspection, and was present every day that AMG worked. Inspections were more frequent to ensure that each layer of coating met the required thickness as specified by the Contract. From February 24, 2019 through October 31, 2019, Port staff provided AMG with a weekly report that clearly stated: (1) the progress and (2) the number of days elapsed beyond the approved Contract duration.

On October 31, 2019, Port staff determined that AMG had corrected the deficient work and achieved substantial completion. Thereafter, the Contract allowed AMG 60 days to achieve final completion. AMG did not achieve final completion until January 15, 2020, resulting in an additional 16 days of delay.

In short, Contract No. 2810R was delayed 268 days. For the reasons discussed below, Port staff has determined that 33 days of delay were "unavoidable" and granted an extension subject to commission approval. Following negotiations with Port staff, AMG has acknowledged that the remaining 235 days of delay were "avoidable" and agreed to the Port's assessment of \$82,200 in liquidated damages.

Reasons for Determining Unavoidable Delay

Section 6.22(h) of the City Administrative Code allows for retroactive approval by the Port Commission to increase the Contract duration beyond 10 percent of the original Contract schedule under specific circumstances. This allows staff the flexibility to negotiate modifications to the schedule without causing further delays to a project, and then seek Port Commission approval when the work is complete, and the timeline is known.

Port staff has found that the following delays were unavoidable:

1. The color specified for the third and final coat of the specified 3-part encapsulating coating referenced an unusual paint product, not readily matched by color formula. This resulted in a delay of 24 days while Port staff worked with the coating supplier to identify a color match to the designer's specifications, obtain and confirm sample "brush-outs" in the specified color, and have the final coating material tinted and delivered to AMG.
2. The Contract originally allowed for 3 rain days. AMG requested and, based on Port staff's records of documented rain days that prevented work, Port staff agreed to an additional 4 days' delay due to inclement weather.
3. During a portion of the time that work was underway, AMG was required to limit its work to weekend days to avoid conflict with ongoing Crane Cove Park construction. Port staff found that AMG was entitled to an additional 5-day extension due to limiting work to weekend days during this time.

Port staff finds that no basis exists to assess liquidated damages for these delays.

San Francisco Local Business Enterprise Requirement

The Project was funded primarily by a grant from the U.S. Department of Commerce – Economic Development Administration (EDA). The City cannot apply LBE preferences when state or federal funds are used under Administrative Code Section 14B.8(0). Consequently, there are no Local Business Enterprise subcontracting goals for the Project.

Funding

The Project has been successfully completed within the authorized funding amount. After assessment of liquidated damages, the total Project cost is \$207,554. The Project was completed under one of a series of contracts and one of several funding sources that comprise the \$36.4 Million budget to construct Crane Cove Park. The Project and federal funding have been referenced in previous staff reports² and summary tables, the most recent of which is attached as Exhibit B.

The EDA grant was to fund 90% of the total Project cost with the Port providing a 10% match. The EDA grant prohibits use of funds for unspecified contingency. The funding sources for the Project were established as follows:

Fund Title	Amount
EDA Funds (CP0157)	\$238,050
GO Bond Funds-Crane Cove Park (10% Port match+10% contingency)	\$52,900
Total	\$290,950

With the addition of scope and fees under Contract Change Order #1 and assessment of liquidated damages, the Project expenditures are as follows:

Final Project Expenditures	Amount
Bid Amount for original Project	\$264,500
Change Order #1	\$25,254
Liquidated Damages	(\$82,200)
Total Expenditure	\$207,554

²“Request Authorization to Advertise Bids for Construction Contract No. 2813, 19th St. Extension and Georgia Street”, 1/10/20; “Request Authorization to Award Construction Contract No. 2812, Park Improvements and 19th Street Parking Lot”, 11/8/19; “Informational Presentation on the Status of the Pier 70 Crane Cove Park Project”, 9/7/18.

Schedule

The modified Project schedule is as follows:

Executive Director's Approval to Award	September 5, 2019
Notice to Proceed	November 15, 2018
Original Substantial Completion	February 12, 2019
Adjusted Substantial Completion for Change Order #1	February 21, 2019
Actual Substantial Completion	October 31, 2019
Original Final Completion (60 days after substantial completion)	December 30, 2019
Actual Final Completion	January 15, 2020

A graphic timeline illustrating the impact of delays on the Project schedule and the resultant calculation of liquidated damages is provided in Exhibit C.

Conclusion

The Project has been successfully completed within the approved budget. Due to weather, coordination issues, color specification for coating, and correction of deficient work, the Contract experienced 268 days of delay. Of these 268 days, Port staff has found that 235 days resulted from "avoidable delay," and 33 days are attributable to "unavoidable delay". Port staff has assessed (and AMG has agreed to) \$82,200 in liquidated damages for avoidable delay.

Recommendation

Port staff now requests Port Commission approve Port staff's 33-day extension of the original contract duration due to unavoidable delay.

Prepared by: Carol Bach, Environmental Affairs Manager
Planning & Environment Division

For: Diane Oshima, Assistant Deputy Director,
Planning & Environment Division

Attachments:

Exhibit A: Site Location and Layout

Exhibit B: Crane Cove Park Contracts Summary

Exhibit C: Original vs. Revised Schedule

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 20-23

- WHEREAS, On September 5, 2019, the Port Executive Director authorized the award of Contract No. 2810R, Hazardous Materials Abatement of Building 49 and Cranes 14 & 30, Pier 70 Project (“Project”) to Asbestos Management Group (“Contractor”); and
- WHEREAS, The Project scope consisted of removing lead-based paint, asbestos, and other hazardous materials from certain structures (Building 49, Cranes 14 & 30) and historic shipyard equipment, demolishing and removing other structures and debris, and applying an encapsulating coating on painted surfaces of Building 49, Cranes 14 & 30; and
- WHEREAS, During construction, the original contract schedule for completion was delayed by four factors: 1) the Port’s delayed specification of coating color, 2) weather, 3) a brief period of restricted work days, and 4) Contractor’s correction of deficiency in application of the specified lead encapsulating coating; and
- WHEREAS, Section 6.22(h) of the City’s Administrative Code authorizes the Port Commission to retroactively approve time extensions for unavoidable delay greater than 10% of the original contract amount; and
- WHEREAS, Port staff has found that 33 days of delay to achieve substantial completion were unavoidable due to weather, coordination issues, and color specification for coating, and that no basis exists to assess liquidated damages for this delay; and
- WHEREAS, Port staff requests authorization of an extension of time of 33 calendar days to the original contract duration due to unavoidable delay; and
- WHEREAS, Port staff has assessed \$82,200 of liquidated damages against the Contractor for 235 days’ avoidable delay in accordance with the contract specifications and as described in the accompanying staff report; now, therefore be it
- RESOLVED, That, for the reasons set forth in the foregoing staff report, the Port Commission hereby approves an extension of 33 days to Contract No. 2810R, Hazardous Materials Abatement of Building 49 and Cranes 14 & 30, Pier 70 Project for unavoidable delays, and further, the Port Commission hereby ratifies all actions taken by the Port staff in furtherance of such extension.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of May 12, 2020.

Secretary

EXHIBIT A: Site Location and Layout



EXHIBIT B: Crane Cove Park Contracts Summary (1/10/20)

Contract No.	Description	Status	Funding Source	Estimated/Actual Construction Cost
2740	Surcharging and Site Preparation	Complete	2008 Clean & Safe Neighborhood Parks General Obligation Bond	\$4.7 million
2781	Park improvements, 19th Street parking lot, Building 49, hazardous materials abatement	Bids rejected	N/A	N/A
2812	Construct park improvements and 19th Street parking lot	Under construction, complete Spring 2020	2008 and 2012 Clean & Safe Neighborhood Parks General Obligation Bond, Port Capital	\$17.8 million
2813	Construct new 19th St extension and Georgia St	Advertised March 9, 2020	Federal Grant & Port Capital	\$4.3 million
2810R	Hazardous materials abatement for Building 49	Complete, pending Port Commission authorization	EDA Federal Grant (90%)	\$260,000
2814	Building 49 Partial Rehabilitation	Bids rejected May 2019	2008 and 2012 Clean & Safe Neighborhood Parks General Obligation Bond, Port Capital	To be determined once scope is reduced

EXHIBIT C

