

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

**RESOLUTION NO. 13-2015
Adopted March 17, 2015**

AUTHORIZING, PURSUANT TO THE TRANSBAY IMPLEMENTATION AGREEMENT, AMENDMENT NO. 2 TO THE MEMORANDUM OF AGREEMENT WITH THE SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY TO EXPAND THE SCOPE OF PROJECT MANAGEMENT AND CONSTRUCTION SERVICES AND TO INCREASE THE BUDGET BY AN ADDITIONAL AMOUNT NOT TO EXCEED \$1,200,000 FOR A TOTAL AGGREGATE AMOUNT OF \$4,679,541 FOR CONSTRUCTION OF THE REALIGNMENT OF THE FOLSOM STREET OFF-RAMP; TRANSBAY REDEVELOPMENT PROJECT AREA

WHEREAS, The Transbay Redevelopment Project Area ("Project Area") was adopted in 2005 with the purpose of redeveloping 10 acres of property owned by the State of California (the "State-owned parcels") and generating funding for the Transbay Joint Powers Authority ("TJPA") to construct the new Transbay Transit Center. The Transbay Redevelopment Project Area Implementation Agreement ("Implementation Agreement") is an enforceable obligation, as finally and conclusively determined by the California Department of Finance, that requires the OCII to, among other things, "execute all activities related to the implementation of the Transbay Redevelopment Plan, including but not limited to, activities related to major infrastructure improvements"; and,

WHEREAS, One of the key infrastructure improvements needed in the Project Area is the realignment of the Folsom Street Off-Ramp (the "Project"). Realigning this off-ramp is a major component of the infrastructure work called for in the Implementation Agreement and will create a better pedestrian environment and allow OCII to work with the selected development team to develop Block 8 to its full potential. Construction of the residential development on Block 8 is scheduled to begin in 2015, after the realignment of the off-ramp has been completed; and,

WHEREAS, On April 30, 2013, the Commission authorized a personal services contract with the San Francisco County Transportation Authority ("SFCTA") in an amount not to exceed \$365,585 to complete design phase documentation for the realignment of the Folsom Street Off-Ramp. On November 19, 2013, the Commission authorized a Memorandum of Agreement ("MOA") with SFCTA for the construction phase services required to deliver the completed realignment of the off-ramp in the amount of \$2,883,900. The costs in the MOA were set based on the best available information at the time; and,

WHEREAS, On February 17, 2015, the Commission approved Amendment No. 1 to the MOA to adjust line items to the Project budget and increase the project reserves in an amount not to exceed \$595,641. The adjustments were to the following categories: 1) design phase cost over-runs in the amount of \$66,841, 2) pre-construction services cost over-runs in the amount of \$77,787, 3) construction contract over-run in the amount of \$180,468, 4) construction phase staffing and fee over-runs in the amount of \$33,698, and 5) construction phase cost over-runs in the amount of \$236,847 for a total amendment amount of \$595,641; and,

WHEREAS, Amendment No. 1 to the MOA, including the five categories of cost over-runs above in the amount of \$595,641 did not include funding to dispose of additional soils containing hazardous levels of lead. The disposition and funding of these soils was under discussions with the California Department of Transportation (“Caltrans”); and,

WHEREAS, Neither the MOA nor Amendment No. 1 to the MOA provided funds for the removal and disposal of contaminated materials at the site of the Project (“Project Site”). The SFCTA, however, reviewed the list of known hazardous materials sites compiled pursuant to Government Code Section 65962.5 (commonly referred to as the Cortese List); the list did not include the Project Site. . The SFCTA’s contractor arranged for the sampling and testing of materials at the Project Site to determine whether they were contaminated. The analytical test results, per the TestAmerica Laboratories, Inc. Analytical Reports of November 18, 2014, November 26, 2014, and December 19, 2014 were conducted as required for disposal of the soils excavated within the Project and indicates the presence of lead contamination that exceeds limits for ordinary landfill disposal. OCII and SFCTA are accepting and relying on the contamination profiles and analytical data used to characterize the contaminated materials in furtherance of developing a “waste profile”; and,

WHEREAS, The SFCTA’s contractor has excavated one area of lead-contaminated materials and has stockpiled it on the Project Site, pending its removal. The contractor has appropriately covered the stockpile, which is preventing some of the work from being completed as it is in the way of construction. The second area of lead-contaminated soil has not yet been excavated, but has tested positively to contain lead. This material originates from soil found below the off-ramp and within an “island” between off-ramps, but within the Project Site. Both of the two areas are classified as California hazardous material, Class 1; and,

WHEREAS, There is a possibility that below some of second confirmed area of contamination, which has not yet been excavated, is concrete street base of the former Fremont Street. This area is below the stockpile and is presently inaccessible; and,

WHEREAS, Over the past three months, the SFCTA, TJPA, and OCII staff worked with Caltrans to understand the facts relating to the condition of the Project site at the start of the off-ramp construction. After a review of their records and interviews with personnel, Caltrans asserts that no imported soil was placed on the site except for topsoil, and therefore the contamination was not placed by Caltrans during the West Approach Seismic Safety Project completed in 2005; and,

WHEREAS, After extensive discussions with the SFCTA, TJPA, and Caltrans, OCII Staff concludes that the most efficient way of disposing of the contaminated materials is to truck the materials to an appropriate disposal facility; and,

WHEREAS, OCII and the SFCTA have considered different options to deal with the soils, but have determined that the only available option is to transport the materials to an appropriate disposal facility. The contaminated materials are not uncommon to projects on the State Highway system such as this Project. This Amendment #2 (“Amendment”) authorizes the SFCTA to take necessary actions and modify existing contracts to dispose of the contaminated materials. In addition and to the extent necessary to complete the Project, the Amendment allows for the disposal of either contaminated materials or the concrete street base (if present) that may be discovered in the area described in the Recitals above; and,

- WHEREAS, The contaminated materials are proposed to be disposed of at a facility located in Buttonwillow, CA and operated by Clean Harbors Environmental Services, Inc. ("Clean Harbors"), a publicly traded company and the largest environmental disposal company in North America; and,
- WHEREAS, SFCTA's contractor is required to comply with Section 14-11, Hazardous Waste and Contamination, of the Caltrans Standard Specifications when dealing with the contaminated materials. This section requires compliance with the handling, storage, and disposal of hazardous waste under 22 CA Code of Regulations Division 4.5.
- WHEREAS, OCII staff has considered the potential liability from handling, storing, and transporting the contaminated materials and disposing of them at Clean Harbors. Given the SFCTA's contractual provisions that governs and mitigates liability for hazardous waste, and the capacity of Clean Harbors to properly store the contaminated materials, liability is considered mitigated to manageable levels. OCII concurs with the SFCTA to move forward with the disposal as described further in the revised Appendix A to the MOA.
- WHEREAS, The work needed to transport the contaminated materials is to be performed at force account (time and materials) since some of the material is in the ground and its exact quantity is only estimated. There is approximately 3,000 cubic yards of contaminated soils or 5,500 tons that need to be removed from the site at a cost of \$742,000. Additionally, there are \$8000 in costs to import clean fill to replace the contaminated materials at the Project Site; and,
- WHEREAS, Additional costs include sampling and testing soils, lead handling training for the general contractor personnel, and maintaining stockpiles in compliance with regulatory standards. The cost for these services is estimated at \$50,000; and,
- WHEREAS, The budget for this force account work is not certain since some of the contaminated materials have not yet been excavated. Therefore, the budget for the removal of contaminated materials includes a contingency of 25% for a total cost estimate to properly dispose of the contaminated materials at \$1,000,000; and,
- WHEREAS, Some of the construction activity has been delayed due to the location of the contaminated soil, and cannot proceed until the soils have been removed. The SFCTA estimates that this delay will add approximately ten weeks to the Project schedule. This contract extension has carrying costs directly associated with the contaminated materials that have an impact on overhead, idle equipment cost, and extension of staffing time needed to oversee the Project. The cost of the contract extension is approximately \$18,100 per week. The carrying costs assume that the contaminated soils can be removed from the site by the fourth week of March 2015 with a budget for the contract extension of \$156,620. Staff recommends adding a 15 day contingency to the budget in the event the excavation and off-haul of the in-place soils take longer than expected due to the availability of certified hazardous waste haulers. The SFCTA and the SFCTA's construction management firm are entitled to compensation for carrying costs for the entire contract extension and Staff recommends adding a 10 day contingency to the budget. With the working day contingencies, the contract extension carrying costs is recommended to be budgeted at \$200,000. The contract completion date would be extended from the end of April 2015 to the first week of July 2015; and,
- WHEREAS, The overall cost to dispose of the materials, including contract extension carrying costs and contingencies is estimated to be up to \$1.2M; and,

WHEREAS, Expenditures for the reconfiguration of the Folsom Street Off-Ramp are included in OCII's approved Recognized Obligation Payment Schedule for the July to December 2014 and January to June 2015 and July 2015 to December 2015 periods ("ROPS 14-15A", "ROPS 14-15B", and "ROPS 15-16A" respectively) as Item #106 and there is sufficient funds available for this Amendment No. 2;

WHEREAS, On October 2, 2008, the SFCTA determined that the Project was categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Section 15302 (Replacement or Reconstruction) and continues to rely on this determination for the activities authorized under this Amendment No. 2. Now therefore, be it

RESOLVED, That the Commission hereby approves Amendment No. 2 to the MOA with the SFCTA for the Realignment of the Folsom Street off-ramp including funding of the MOA project reserves needed to pay for project costs related to contaminated materials and contract extension carrying costs; and,

RESOLVED, That the Commission hereby authorizes the Executive Director to enter into any and all ancillary documents or take any additional actions necessary to implement the Contract: provided, however, that the actions do not materially increase the liability of OCII.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of March 17, 2015.



Commission Secretary