

CUYAHOGA COUNTY CONVENTION FACILITIES DEVELOPMENT CORPORATION  
SPECIAL MEETING OF THE BOARD OF DIRECTORS  
December 21, 2022  
CLEVELAND, OHIO

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**Attendees at the Meeting** (attendees attended both remotely via Zoom as well as in person):

Directors: Matt Carroll, Majeed Makhlouf, Trevor McAleer, Michael Obi, Timothy Offtermatt, and Mayor Bradley Sellers. Roshonda Smith arrived shortly after the meeting began. Jeff Epstein and David Gilbert did not attend.

Staff: George A. Hillow, Executive Director and Julie Valyn, Financial Analyst.

Guests of the Board: Ellis Katz of Project Management Consultants LLC; Jeff Appelbaum and Courtney Flowers of Thompson Hine LLP. Marty Burgwinkle of Turner, Bob France from Stifel, and Ron King and Steve Wells from ASM.

**Special Meeting of the Board of Directors.** At 9:08 a.m. on Friday, April 29, 2022, a Regular Meeting (the "April Regular Meeting") of the Board of Directors (the "Board") of the Cuyahoga County Convention Facilities Development Corporation (the "CCCFDC") commenced. Mr. Makhlouf presided as Vice-President of the Board.

Mr. Makhlouf called the meeting to order and Ms. Valyn called the roll. Mr. Makhlouf declared a quorum of the Board present.

**Design Build Agreement**

Mr. Appelbaum referenced the progress made getting under contract and moving forward with the Convention Center Expansion Project. At the last regular meeting of the Board, it was agreed that the Board would call a special meeting to consider the proposed Turner Design-Build Agreement and Guaranteed Maximum Price (GMP) Amendment once documentation was completed and a proposed GMP was fully negotiated. Mr. Appelbaum reviewed the progress of that effort, and the challenges presented in finalizing a GMP within the previously established \$49 million Project Budget, including addressing high levels of inflation and supply chain uncertainty. The Project Team, led by Messrs. Katz, King, and Campo succeeded in overcoming those challenges, leading to a final GMP of approximately \$39.8 million without compromising any of the originally anticipated project scope. Today Mr. Appelbaum is asking the Board to approve the following to be executed by Mr. Hillow on behalf of the Board (1) the Turner Design-Build Agreement, which is the contract that governs the relationship between CCCFDC and Turner, including all rights, responsibilities and remedies of the parties, including liquidated damages if the project is not completed on time and (2) the GMP Amendment, which is the document which sets forth the guaranteed maximum price and includes all of the pricing and scope details in exhibits. Mr. Appelbaum acknowledged the assistance in this effort provided by his partner, Pat Sweeney, who is retiring, and whose contributions over the years was recognized by several members of the Board.

Mr. Offtermatt asked how scope changes work in the agreement, given pricing issues and what contingency was available to address such issues. Mr. Appelbaum stated that the guaranteed maximum price has a contingency for the design builder's use and then there is a separate contingency for CCCFDC's use. The guaranteed maximum price is around \$39.8 million and that is all the work Turner guarantees, including work of the architect of record and all construction cost. Above that, from \$39-49 million is furniture, fixtures and equipment, professional fees and insurance and other items including an owner's contingency, so if CCCFDC decides it wants to add items it can be funded from the owner's contingency. If the design builder's contingency is not used, it also reverts to CCCFDC for possible use to fund added scope if desired.

Mr. Appelbaum mentioned that one of the reasons to have this special meeting now is that Turner has taken bids from its subcontractors who are holding their prices for only a limited time. Once that GMP Amendment is executed, Turner takes that price risk, among other elements of risk.

Mr. Makhlof asked about equitable adjustment clauses. Mr. Appelbaum stated that this is a tight contract and that most risks are on the contractor. This contract is limited in timing, with construction beginning in March and having only a one year duration, so the risks associated with a longer term contract is mitigated.

Mr. Katz also talked about early award contracts as well that will not only keep on schedule but also mitigate other aspects of risk. Risk is also lowered because most work involves interiors renovation which is not weather dependent.

Mr. Appelbaum spoke about the bridging design build project delivery system and how it helped make this project possible, since the same schedule and cost guarantee could never have been achieved using a traditional closed bidding system.

#### GMP Amendment

Mr. Katz used a slide deck to describe the status of the GMP Amendment including work performed by our design and construction teams to reconcile the GMP proposal submitted by Turner. He described the comprehensive “page-turn” process. He indicated that tomorrow the PMC team will meet with the landmarks commission to obtain additional required approval.

The precise amount of the GMP is \$39,804,857, that includes “cost of the work” of \$37,427,492, fee, contingency and certain other components. Turner cannot go over the GMP without an approved change order. If they go under, the difference is returned.

Messrs. Makhlof and McAleer asked follow-up questions about contingency that Mr. Katz and Mr. Appelbaum addressed.

Mr. Burgwinkle spoke about diversity business and workforce goals. He described outreach meetings that will be held in January-April of 2023 and a certification workshop.

Mr. McAleer asked for a list of the workshops to be provided. Mr. Burgwinkle said that would be available and public notices would be sent. Mr. Carroll added to the discussion about diversity.

#### Design Build Agreement and GMP Amendment

Mr. Makhlof asked for a motion to approve the request to sign the Agreement and the GMP Amendment. The motion was made by Mr. Offtermatt and seconded by Mayor Sellers. A roll call vote was then taken. Board Members Sellers, Makhlof, Offtermatt, Obi, Carroll and Smith voted yes. (Board Members Epstein and Gilbert were absent).

Mr. Makhlof stated that the motion passed. He recognized everyone who worked to get to this phase including Mayor Sellers. He also thanked the community, Mr. Hillow, the legal team, and the County. He stated that it is important to remember we are not building the building for the sake of it, but that it is important to think about the vision of putting “heads in beds” to help the community.

#### Adjournment.

There being no other items of business, a motion to adjourn the meeting was made, seconded and passed, and the Special Meeting was adjourned at 9:46 a.m.