

ORDINANCE 2019-03-21-0216

AUTHORIZING THE EXECUTION OF A PROJECT CLOSEOUT AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND TURNER CONSTRUCTION COMPANY FOR THE CONSOLIDATED RENT A CAR FACILITY PROJECT AT SAN ANTONIO INTERNATIONAL AIRPORT.

* * * * *

WHEREAS, in May 2013, City Council approved a Construction Manager at Risk (CMR) contract with Turner Construction Company (Turner) in the amount of \$105,000,000.00 for the construction of a Consolidated Rent A Car (CONRAC) facility; and

WHEREAS, after the opening of the CONRAC, Turner filed certain claims for additional incurred costs due to extended contract days, general conditions and cost of work overruns and the City asserted certain contractual remedies against Turner for issues associated with the construction; and

WHEREAS, the City and Turner have agreed to settle these matters and closeout the CONRAC project amicably; and


WHEREAS, this Ordinance authorizes the execution of a Project Closeout Agreement between the City and Turner in an amount not to exceed \$995,000.00 for the CONRAC project; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

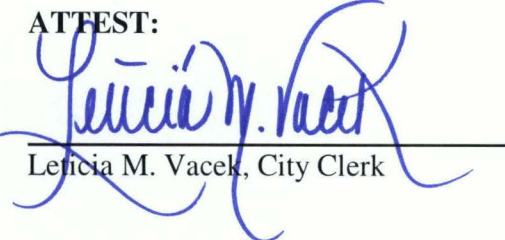
SECTION 1. The City Manager or designee is hereby authorized to execute a Project Closeout Agreement with Turner Construction Company in an amount not to exceed \$995,000.00 for the CONRAC Project, a copy of which is set out in **Exhibit 1**.

SECTION 2. This Ordinance shall be effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective on the en days after passage.

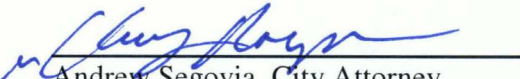
PASSED and APPROVED this 21st day of March, 2019.


M A Y O R
Ron Nirenberg

ATTEST:


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:


Andrew Segovia, City Attorney

Agenda Item:	12A (in consent vote: 5, 6, 7, 8, 9, 10, 11, 12A, 12B, 12C, 14, 16, 17, 18, 19, 20, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37A, 37B, 38A, 38B, 38C, 39A, 39B, 39C, 39D)						
Date:	03/21/2019						
Time:	09:59:57 AM						
Vote Type:	Motion to Approve						
Description:	Ordinance approving a negotiated project closeout agreement with Turner Construction Company for a \$995,000.00 payment to Turner Construction Company to resolve claims associated with the construction of the Consolidated Rental Car Facility.						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x			x	
Art A. Hall	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				x
Clayton H. Perry	District 10		x				

KRH
03/21/19
Item No. 12A

EXHIBIT 1

PROJECT CLOSEOUT AGREEMENT

This Project Closeout Agreement (hereinafter the "Agreement") is entered into between and among the City of San Antonio (hereinafter the "City" or "Owner"), a Municipal Corporation in the State of Texas, and Turner Construction Company ("Turner"), sometimes collectively referred to herein as the "Parties."

WHEREAS, the City and Turner entered into a Construction Manager at Risk Contract ("Contract") for the construction of the Consolidated Rental Car Facility (CONRAC) and other landside facilities at San Antonio International Airport (the "Project") pursuant to Ordinance No. _____; and

WHEREAS, the Parties have asserted certain claims against one another growing out of the Project, which claims are collectively referred to herein as the "Claims"; and

WHEREAS, bona fide disputes and controversies exist between the Parties with respect to the Claims, but the Parties desire to resolve all claims and causes of action which exist among them of any kind whatsoever and in any way related to the Claims amicably and without litigation; and

WHEREAS, This Agreement shall not constitute or be construed to be an admission on any part by either Party or as evidencing or indicating any admission of the truth or correctness of any claims asserted;

NOW THEREFORE, in consideration of the mutual promises and agreements herein contained, including the recitals set forth above, the receipt and sufficiency of which are hereby formally acknowledged, the Parties agree as follows:

1. This Agreement shall be effective upon the later of approval of this Agreement by City Council or the execution hereof by both parties ("Effective Date").

2. The City and Turner hereby agree to the following terms, in conjunction with all other terms and condition contained herein:

- a. Contractor Contingency. The City will restore the amount of Nine Hundred Ninety-Five Thousand and 00/100 Dollars (\$995,000.00) in contractor contingency for Turner's sole use for payment of all cost of work overruns, within thirty days of the Effective Date. The Parties agree that such sum is a negotiated settlement amount for cost of work overruns and all claims associated with use of contractor contingency and that such sum shall be entered into the PrimeLINK system by Turner and paid by City as a fixed price change order which fixed price change order shall not be subject to audit. Turner shall accept the \$995,000.00 as full compensation for any and all cost overruns and as full compensation for any claims associated with use of contractor contingency to pay for "Owner" requested change orders.
- b. Restroom Tile. City shall accept the CONRAC facility restroom floor tiles as installed by Turner as being substantially complete and release Turner from any further work associated with such restroom floor tiles.
- c. Utilities. The City will pay \$207,990.00 as full compensation for Change Order CP306 "Utility Allowance Overrun". This payment shall be made with funds outside of the Project GMP/CCL and shall be made within 30 days of the Effective Date.
- d. Additional Quick Turn Around facility ("QTA") Design Services. City shall issue an amendment to and pay TranSystems Corporation ("TranSystems") for additional QTA systems pre-commissioning and pre-testing services in the amount of \$32,170.00 and release Turner from any claims for the cost of such additional QTA design services.
- e. Change Orders. Except for CP306 Utility Allowance Overrun and CP-124C Low Beam Modification, City will pay \$712,783.18 for payment in full for all open change orders listed in *Exhibit 1*, within thirty days of the Effective Date. The aforementioned payment will be effectuated by the issuance of a new change order in the amount of \$712,783.18 reconciling all open change orders in Exhibit 1. Upon City paying Turner the aforementioned \$712,783.18, all open change orders, with the exception of CP306 and

CP-124C, in PrimeLINK shall be considered closed under the Contract.

- f. Withheld Amounts. Within thirty days of the Effective Date, City shall release and pay Turner the following amounts that were previously withheld from payment:
 - i. Liquidated damages in the amount of \$200,000.00 that City, in accordance with the term of the Contract, has withheld for liquidated damages from previous payments made to Turner; and
 - ii. Remaining acceleration payment In the amount of \$160,000.00 as final payment due under the acceleration agreement captured in Change Order 022.
- g. Extended Warranties. The QTA specialty system warranties shall be extended for an additional period of twelve months starting from the date the City, through validation by TranSystems, issues substantial completion for the repair of the QTA beams 4-PTB46 and 4-PTB47 and all damaged maintenance bay vehicle lifts on floors 2-4 of the QTA. This extended warranty shall include the fuel system, vacuum system, the oil system, the vehicle lift systems in the maintenance bays, and the air compressor system.
- h. Beam Repair. City shall have no responsibility for any costs associated with the design for or the construction associated with the CP124C Low Beam Modification. City agrees to enter into an agreement with TranSystems Corporation ("TranSystems") releasing TranSystems from liability for errors associated with the CP124C Low Beam design contingent upon TranSystems making full and complete payment to Turner for any and all costs associated with the design and construction of the CP124C Low Beam Modification.
- i. Terrazzo Repair. Turner shall diligently proceed with and fully complete all punch list items associated with the Terrazzo flooring in the Customer Service Center, QTA, Terminal B and the Skybridge set out on *Exhibit 2* by April 29, 2019. A punch list shall be considered completed at such time as TranSystems or the City validates and accepts such item as being fully completed. Other than the punch list work identified *Exhibit 2* the City accepts the Terrazzo flooring in the Customer Service Center, QTA, Terminal B and the Skybridge as-is.
- j. Punch List. Turner shall diligently proceed with and fully complete all punch list items set out on *Exhibits 2* and *3* by April 29, 2019. A punch list shall be considered

completed at such time as TranSystems or the City validates and accepts such item as being fully completed. Turner shall diligently proceed with and fully complete all punch list items set out on *Exhibits 2 and 3* by April 29, 2019. A punch list shall be considered completed at such time as TranSystems or the City validates and accepts such item as being fully completed. Notwithstanding the foregoing, the Parties acknowledge and agree that all items listed in Exhibit 4 hereto shall be removed from any punch list regardless of whether such items have been completed or are included in *Exhibits 2 and/or 3* and City shall not require performance of nor request or receive a credit for those items included in *Exhibit 4* unless otherwise noted in *Exhibit 4*.

- k. Failure of Turner to complete any and all of the punch list items, terrazzo repairs, or corrective work set in *Exhibits 2 and 3* by their respective completion dates as set out herein shall automatically result in the imposition of liquidated damages in the amount of \$400.00 per day for failure to timely attain final completion in the manner and in the amounts set out in the Contract. Under no circumstances shall Turner be assessed more than \$400.00 per day for failure to attain *Exhibits 2 and 3* (liquidated damages for *Exhibits 2 and 3* would be concurrent rather than stacked).

3. Notwithstanding the foregoing, except for the extended warranties set out in paragraph 2.g herein, this Agreement is in no way alters or relieves Turner of its warranty and indemnity obligations pursuant to the Contract which survive completion of the work thereunder and any implied warranties applicable by operation of law. Additionally, the City retains its audit rights under the Contract and the right to seek any corrective actions that may result from any audit findings.

4. Turner further acknowledges and agrees that Turner is fully responsible, at its sole cost, for all design, construction, inspection, permitting, testing, validation of conformance to design specifications, and acceptance for the following corrective work by April 29, 2019:

- a. Damage caused to the QTA structure by Turner during the repair of the QTA vehicle lifts; and
- b. Damage caused to the storm water line at the rent-a-car entry helix by Turner; and

5. The Parties hereby agree that, as of the Effective Date of this Agreement, except as required to fulfill the obligations established by this Agreement, no new or modifications to existing change orders, field work directives, change proposals or other changes in work are to be submitted or accepted.

6. Turner, for and on behalf of itself, all related companies, partnerships or joint ventures, with respect to each of them, their predecessors and successors, shall further, and does hereby, RELEASE, ACQUIT and FOREVER DISCHARGE the City of San Antonio, its Council members, officers, directors, assigns, representatives, agents, or employees, of and from any and all claims, damages, demands, liability, lawsuits, actions or causes of action, costs, losses, expenses, compensation and/or obligations, whether known or unknown, at law or in equity, which Turner has or may have against the City arising from or related in any way whatsoever to the Claims or the Project as a whole. It is the express intent of the Parties that this Agreement operate as a bar to any subsequent proceedings with respect to any claims, causes of action or lawsuits arising from or related to the Claims or the Project, perceived or actual that Turner may have incurred or accrued arising from or related to the Project.

7. City, its respective officers, directors, members, employees, agents, subcontractors, representatives and their respective successors, heirs and assigns, does hereby RELEASE, ACQUIT AND FOREVER DISCHARGE Turner and its respective officers, directors, members, employees, agents, representatives and their respective sureties, successors, heirs and assigns from any and all claims, damages, demands, liability, lawsuits, actions or causes of action, costs, losses, expenses, compensation and/or obligations, whether known or unknown, at law or in equity, which City has or may have against Turner arising from or related in any way whatsoever to the Claims or the Project as a whole, with the exception of those obligations established by this Agreement, such warranty and indemnity provisions of the Contract as survive completion of the work thereunder, and any implied warranties applicable by operation of law. It is the express intent of the Parties that this Agreement operate as a bar to any subsequent proceedings initiated by or on behalf of City with respect to any claims, causes of action or lawsuits arising from or related to the Claims or the Project,

perceived or actual that City may have incurred or accrued arising from or related to the Project, with the exception of those obligations established by this Agreement, such warranty and indemnity provisions of the Contract as survive completion of the work thereunder, and any implied warranties applicable by operation of law. The Parties expressly agree that Turner's obligations created by this Agreement and such warranty and indemnity obligations that survive the completion of the work under the Contract shall remain in full force and effect in accordance with the terms thereof.

8. It is understood and agreed by the Parties to this Agreement that it is executed for the sole purpose of compromising and settling the matters involved in and associated with the Claims and it is expressly understood and agreed, as a condition of the compromise, that this Agreement shall not constitute or be construed to be an admission on any part of either Party or as evidencing or indicating any admission of the truth or correctness of the Claims asserted. This Agreement is a satisfaction and accord of disputed claims relating to and arising out of the Claims.

9. The Parties understand and agree that any legal fees or costs expended shall be borne by the party incurring the same.

10. Both Parties acknowledge that the terms of this Agreement have been negotiated by the Parties hereto and that they have had the opportunity to review this settlement agreement for themselves and with their attorneys. By the execution hereof, the Parties hereto expressly warrant that they have read the Agreement, understand its terms, and are signing this Agreement of their own free will.

11. In making this Agreement, it is understood and agreed that the undersigned have relied wholly upon their own respective judgment, belief and knowledge of the nature, extent, and duration of any damages, as well as any liability question involved, the undersigned have not been influenced to any extent whatsoever in making this release by any representations or statements or any other matters made by the municipality, persons, firms, or corporations hereby released or by any person representing or acting for them, and that regardless of whether any representations have been made by any Party or any agent of any Party, the Parties hereto are entering into this Agreement based solely upon the terms contained herein. All Parties hereto expressly disclaim any and all past or oral

representations made by such Parties or their agents. This Agreement reflects the entire agreement of understanding between the Parties with respect to the foregoing subject matter.

12. Turner represents and warrants that it is the sole and lawful owner of all right, title and interest in and to every claim and other matter that Turner is purporting to release or settle by this Agreement and that Turner has not previously assigned or transferred, either by act or operation of law, to any party or entity, any claim or other matters released by this Agreement. It is further understood and specifically agreed that in the event that City is subjected to further claim, whether in law or in equity, by any person, firm, corporation or other entity, acting under any actual or purported right or subrogation, or assignment, Turner, whose claim such person asserts, will indemnify, hold harmless and defend the City from any such claim or demand.

13. The City represents and warrants that it is the sole and lawful owner of all right, title and interest in and to every claim and other matter that the City is purporting to release or settle by this Agreement and that the City has not previously assigned or transferred, either by act or operation of law, to any party or entity, any claim or other matters released by this Agreement.

14. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, insurers, sureties, administrators, legal representatives, corporations, partnerships, entities, successors or predecessors, directors, officers, employees, servants, assigns, attorneys or any one in privity with any of them.

15. This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are to be performed in Bexar County, Texas. Any actions arising out of this Agreement shall be brought in the State District Court of Bexar County, Texas.

16. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not effect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

17. In the event that this Agreement, or any provisions hereof, is construed or determined to be ambiguous by any court of law or arbitrator, then in that event, the Parties agree that each Party has contributed to the preparation of this Agreement and have jointly written or composed the clauses herein contained and that no Party hereto shall be given any advantage over the other Parties under the laws of construction of instruments based upon the authorship hereof.

18. Any person signing this Agreement on behalf of any type of legal entity, including, but not limited to, a corporation, partnership, limited partnership or joint venture, represents and warrants that the person signing has actual authority to sign this Agreement in order to bind the legal entity he or she represents, within the limits of the law, and further warrants that the legal entity has taken all internal actions necessary or appropriate to bind the legal entity to this Agreement.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have caused this Project Closeout Agreement to be executed by their duly authorized representatives as of the latter date set forth below.

Signatures to follow

CITY OF SAN ANTONIO

**TURNER CONSTRUCTION
COMPANY**

By: _____
City Manager

By: MSK _____

Date: _____

Title: VICE PRESIDENT / OFFICER

Date: 2.28.19 _____

APPROVED AS TO FORM:

City Attorney