

**THIS STAFF REPORT COVERS CALENDAR ITEM NO.: 8
FOR THE MEETING OF: November 1, 2010**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Amending Contract No. 08-04-CMGC-000, Construction Manager/General Contractor (CM/GC) Services for the Construction of the Transbay Transit Center Building and Related Structures, with the joint venture of Webcor Builders and Obayashi Corporation (Webcor/Obayashi) to update the terms of the Agreement to incorporate the construction of the rail levels of the Transit Center in the Project in a "bottom-up" sequence; to clarify the scope of construction; to revise the construction schedule and CM/GC fee; and to modify related contract language.

SUMMARY:

- On June 2, 2006, the Board adopted the phasing strategy for the Transbay Program and construction of the Transbay Transit Center.
- On March 12, 2009, the TJPA Board approved the award of the CM/GC contract, to Webcor/Obayashi. Under the contract, Webcor/Obayashi would bid, direct, and coordinate the construction of the Phase 1 elements of the Transit Center. Consistent with their bid, Webcor/Obayashi's compensation for construction services was set at 7.81% of the direct costs of trade work subcontractors.
- At the time of the contract award, the projected Phase 1 construction value was \$500,000,000, and the assumed start of construction was September 2009. Construction was expected to take five years and the bidding of trade packages was to occur over a three year period.
- On June 11, 2009, the TJPA Board authorized Staff to direct the design team under Pelli-Clarke-Pelli Architects, Inc. (PCPA) to include design of the below-grade levels of the Transit Center in the Phase 1 construction of the Transit Center.
- On October 8, 2009, the TJPA Board approved Amendment 4 to the Agreement converting Webcor/Obayashi's compensation from a markup of 7.81% of direct costs to a Fixed Fee of \$39,050,000 – equivalent to 7.81% of \$500,000,000 – to conform to the requirements of the United States Department of Transportation (USDOT) prior to the closing of the debt financing agreement with the TJPA under the Transportation Infrastructure Finance and Innovation Act (TIFIA).
- On January 28, 2010, the FRA announced the award of \$2.25 billion in ARRA funding to the State of California, including \$400 million to the TJPA for the construction of the train box.
- On May 13, 2010, the TJPA Board adopted a Revised Baseline Budget and Schedule incorporating the construction of the train box in Phase 1. Under the revised schedule,

the construction of the Transit Center will take seven years, and the bidding of construction trade packages will extend over five years as the construction proceeds.

- Staff recommends that the TJPA Board of Directors authorize an Amendment to the Agreement with Webcor/Obayashi to incorporate the train box construction and the "bottom-up" sequence in Phase 1 construction; to extend the construction schedule to seven years; to increase the projected construction value to \$910,000,000; to increase the Fixed Fee for CM/GC services to \$71 million; to clarify the scope of construction; and to modify related contract language.

BACKGROUND:

Because funding for construction of only the bus elements of the Transit Center was available at the time the TJPA and Webcor/Obayashi entered into the initial Agreement, the parties contemplated that the construction of Phase 1 of the Transit Center would be "top-down," with the above-grade levels constructed prior to the below-grade levels. This timing of construction was reflected in several provisions of the Agreement.

The TJPA has now secured funding to construct the below grade levels of the Transit Center in Phase 1 using a "bottom-up" construction sequence. Incorporating the additional scope in Phase 1 requires revising the description of the scope and sequencing of construction, adjusting the construction duration, and modifying the Fixed Fee for CM/GC construction services to reflect the expanded scope and value of construction.

EXPLANATION:

Project Phasing

In 2005-2006, the TJPA, in consultation with the Program Management and Program Controls team (PMPC), conducted a Value Engineering analysis to secure the greatest benefit to the Transbay Program from the funds committed to date. The principal outcome of this process was a recommendation to split the Transbay Program into two phases: in Phase 1, the TJPA planned to construct drilled caisson foundations and other improvements in the Transit Center to allow for future construction of the train box – the Rail Concourse and Rail Platform levels. As part of Phase 1, the TJPA would then construct the elements of the Program necessary for bus operations – construction of the temporary terminal, demolition of the existing Transbay Terminal and bus ramps, and construction of the above-grade levels of the Transit Center, the bus ramps, and bus storage. Phase 2 involved construction of the rail extension for Caltrain commuter rail and California High Speed Rail (DTX) and the rail levels of the Transit Center using a "top down" construction methodology. At its June 2, 2006 meeting, the TJPA Board adopted this phased implementation strategy.

When the American Recovery and Reinvestment Act (ARRA) was announced in February of 2009, the TJPA reevaluated the design approach given the prospect of additional funding to expand the scope of Phase 1 construction. In consideration of the probability that the TJPA could secure funds through ARRA and recognizing the significant benefits of constructing the rail levels of the Transit Center in the first phase of construction, the TJPA Board, on June 11,

2009, the TJPA Board authorized Staff to direct PCPA to proceed with design of the Transit Center with the expectation that the construction of the below-grade levels would be included in Phase 1.

On January 28, 2010, the FRA announced the award of \$2.25 billion in ARRA funding to the State of California including \$400 million to the TJPA for the construction of the rail levels of the Transbay Transit Center. This award made it possible for the TJPA to formally incorporate the construction of the train box in Phase 1. On May 13, 2010, the TJPA Board adopted a Revised Phase 1 Baseline Budget and Schedule reflecting the change. Under the revised schedule, the construction of the Transit Center will take seven years and the bidding of construction trade packages will extend over five years as the construction proceeds.

Agreement Terms

The proposed revisions to the Agreement incorporate the "bottom-up" sequence of construction of the Transit Center and clarify the building elements to be delivered in Phase I. The expansion of the scope of construction necessitates the revision of other key terms of the Agreement. The Contract is extended to seven years. The total Contract Sum is increased to \$994,517,600, representing the sum of the Pre-Construction Services Fee (up to \$13,517,600) that is unchanged from the original Agreement, the revised projected Direct Costs of anticipated Trade Work subcontracts (\$910,000,000), and the revised CM/GC Construction Services Fixed Fee (\$71,000,000).

The Amendment provides a mechanism for adjusting the rate of disbursement of the CM/GC Fixed Fee to address variability in the Direct Costs should Trade Work bid results be lower than anticipated or should additional funding become available to increase the scope of construction. The Amendment also provides for the early disbursement, of a portion of the unspent CM/GC Contingency at the TJPA's sole discretion should construction progress more rapidly than anticipated and reduce the need for a portion of the contingency.

RECOMMENDATION:

Staff recommends that the TJPA Board of Directors authorize Amending Contract No. 08-04-CMGC-000, Construction Manager/General Contractor ("CM/GC") Services for the Construction of the Transbay Transit Center Building and Related Structures, with the joint venture of Webcor Builders and Obayashi Corporation (Webcor/Obayashi) to update the terms of the Agreement to incorporate the construction of the rail levels of the Transit Center in the Project in a "bottom-up" sequence; to clarify which elements are now included in Phase I and Phase II of construction; to revise the construction schedule to seven years and CM/GC Fixed Fee to \$71,000,000; and to modify related contract language.

ENCLOSURE:

1. Resolution
2. Amendment

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The Transbay Transit Center will be a landmark intermodal transit center supporting rail and bus operations; and

WHEREAS, On June 2, 2006, the Board adopted a phasing strategy for the Transbay Program and construction of the Transbay Transit Center; and

WHEREAS, In Phase 1, the TJPA planned to construct the above-grade levels of the Transit Center for bus operations using a “top down” construction methodology, and in Phase 2 construct the rail extension for Caltrain commuter rail and California High Speed Rail (DTX) and the below-grade rail levels of the Transit Center (train box); and

WHEREAS, On March 12, 2009, the TJPA Board approved the award of the Construction Manager/General Contractor (CM/GC) contract, to Webcor/Obayashi, Joint Venture, to bid, direct, and coordinate the construction of Phase 1; and

WHEREAS, At the time of the contract award, the projected direct costs of trade work subcontractors for Phase 1 of construction was \$500,000,000, the assumed start of construction was September 2009, the expected duration of construction was five years, and the bidding of trade packages was to occur over a three year period; and

WHEREAS, Consistent with their bid, Webcor/Obayashi’s compensation for construction services was set at 7.81% of the \$500,000,000 direct costs of trade work subcontractors, or \$39,050,000; and

WHEREAS, On June 11, 2009, the TJPA Board authorized Staff to direct the design team under Pelli Clarke Pelli Architects, Inc. (PCPA) to include design of the below-grade levels of the Transit Center in the Phase 1 construction of the Transit Center; and

WHEREAS, On October 8, 2009, the TJPA Board approved Amendment 4 to the Agreement converting Webcor/Obayashi’s compensation from a markup of 7.81% of direct costs to a Fixed Fee of \$39,050,000-equivalent to 7.81% of \$500,000,000- to conform to the requirements of the United States Department of Transportation (USDOT) prior to the closing of the debt financing agreement with the TJPA under the Transportation Infrastructure Finance and Innovation Act (TIFIA); and

WHEREAS, On January 28, 2010, the Federal Railroad Administration announced the award of \$2.25 billion in ARRA funding to the State of California including \$400 million to the TJPA for the construction of the train box; and

WHEREAS, On May 13, 2010, the TJPA Board adopted a Revised Baseline Budget and Schedule incorporating the construction of the train box in Phase 1. Under the revised schedule,

the direct costs of trade work subcontractors for Phase 1 is projected to be \$910,000,000, the construction of the Transit Center will take seven years, and the bidding of construction trade packages will extend over five years as the construction proceeds; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute an Amendment to the Agreement with Webcor/Obayashi, Joint Venture, to incorporate construction of the train box and the "bottom-up" sequence in Phase 1; to modify the projected construction value to \$910,000,000 and increase Webcor/Obayashi's Fixed Fee for CM/GC services to \$71 million; to modify the construction schedule to seven years; to clarify the scope of construction; and to modify related contract language.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of November 1, 2010.

Secretary, Transbay Joint Powers Authority

AGREEMENT
AMENDMENT NO. 08
BETWEEN
TRANSBAY JOINT POWERS AUTHORITY
AND
WEBCOR/OBAYASHI, J.V.

THIS AMENDMENT for AGREEMENT is entered into as of the ____ day of _____, 20____ by and between the TRANSBAY JOINT POWERS AUTHORITY ("TJPA") and Webcor/Obayashi, J.V. (the "CM/GC"). By this Amendment No. 08, the TJPA and the CM/GC hereby modify the Agreement dated March 17, 2009 (the "Agreement"), as modified by Amendment No. 01 through Amendment No. 06, only to the extent expressly provided in this Amendment No. 08. All other terms and conditions of the Agreement shall remain in full force and effect.

Recitals

A. On March 12, 2009, the TJPA Board awarded the Agreement to the CM/GC to perform pre-construction and construction services for the Transbay Transit Center Building and Related Structures Project (the "Project").

B. In June 2009, the TJPA Board approved a resolution authorizing staff to direct Pelli Clarke Pelli Architects, Inc., to continue the design of the Transit Center with the expectation that the rail levels would be incorporated into Phase 1 construction, and in August 2009, the TJPA applied for High Speed Rail (HSR) funding under the American Recovery and Reinvestment Act (ARRA) to fund construction of the rail levels of the Transit Center in Phase 1.

C. On January 28, 2010, United States Department of Transportation ("USDOT") Secretary LaHood announced his intent to allocate \$400 million for construction of the Train Box in the Transbay Transit Center, which was confirmed by letter from the USDOT on March 29, 2010, and on May 13, 2010, the TJPA board approved the Revised Phase 1 Baseline Budget and Schedule incorporating the ARRA funding and the construction of the Train Box rail levels of the Transit Center into Phase 1 of the Transbay Transit Center Program.

D. By Amendments No. 05 and 06 to this Agreement, the TJPA authorized extended pre-construction services to include the Train Box in Phase 1 construction and to transition to a "bottom-up" construction sequence.

E. By this Amendment No. 08, the TJPA incorporates the revised descriptions of Phase 1 and Phase 2 construction and the resulting changes in the Contract Sum, the Fixed Fee for Construction Services, the duration of construction services, and the CM/GC Contingency funds, and modifies other related terms and conditions.

Terms and Conditions

1. The parties acknowledge and agree that the Agreement (Contract Section 00 05 20) is hereby modified as follows. For convenience of the parties, the modified Contract

provisions are below, indicated with ~~strickthrough~~ for deleted words and underline for added words:

ARTICLE 1 – WORK

1.01 The Project. The Project shall consist of utility relocation, and demolition of the existing structure and ramps, and construction of the Transbay Transit Center Building, the Bus Ramps connecting the Transit Center Building to the Bus Storage Facilities and the West Approach to the Oakland-San Francisco Bay Bridge, and the interconnection and coordination with the CalTrain Downtown Extension (DTX), High Speed Rail, and the Transbay Tower. The Project is located over four blocks (from Fremont to Second Streets) between Mission and Natoma Streets in the City and County of San Francisco.

The new Transit Center Building and Bus Ramps will have six levels: (1) a Train Station Passenger Platform Level, (2) a Train Mezzanine Level, (3) a Ground Level, (4) a Concourse Level, (5) an Elevated Bus Level, and (6) a Park Level. The Train Station Passenger Platform Level (Level (1)) and the Train Mezzanine Level (Level (2)) are the below grade levels of the Transit Center Building and are together sometimes referred to as the "Train Box". The construction shall be in two Phases.

Phase I: The elements of the Project constructed in Phase I shall include (i) all above-grade elements of the Transit Center Building, (ii) the Bus Ramps, (iii) utility relocation, and (iv) the Train Box. Phase I construction of the Train Box shall include the structural core and shell of the Train Box from column line 1 through approximately three feet East of column line 35, and column lines A through J; this is roughly from the throat structure at Natoma Street to the East side of Beale Street. Phase I construction of the Train Box shall also include at the Train Platform (B2) and Lower Concourse (B1) Levels: (i) those elements necessary to support the above-grade elements of the Transit Center Building, including but not limited to utility (PG&E) vaults, generator rooms, and service rooms; (ii) those elements required for life safety, including egress, illumination, fire detection, fire alarm, and sprinklers, including those items that are design-build; and (iii) rough-ins, penetrations, and sleeves only for Information Technology, Communications, Security, Signage, and Specialty Lighting packages (the "Phase I Late Packages"). The construction of the Phase I elements shall consider, allow, and provide for the integration and/or expansion of building systems and vertical circulation systems to be constructed in Phase II. The scope of Phase I construction shall also allow for the Phase II construction of the Train Box extension to column line 45, the Phase I Late Packages, and the overall build-out and finishes for the Train Platform (B2) and Lower Concourse (B1) Levels.

Phase II: The elements of the Project constructed in Phase II shall include the extension of the Train Box East of approximately three feet East of column line 35 to the East side of Main Street (column line 42) and all below-grade build-out of and finishes for the Train Platform (B2) Level and the Lower Concourse (B1) Level. Phase II construction shall result in a complete Train Box, including build-out and finishes, from column line 1 to column line 42, and column line A to column line J, as well as the throat structure south of column line J, as a functional component of the Transit Center Building.

~~**Phase I:** The elements of the Project constructed in Phase I shall include all above grade elements of the Transit Center Building, the Bus Ramps, and the ground slab and foundation systems necessary to support the ground slab system for the entire Project. The scope of Phase I construction shall allow for the future construction of the below-grade elements of the Transit Center Building. The design and construction of the Phase I elements shall consider, allow, and provide for the integration and/or expansion of building systems and vertical circulation systems to be constructed in Phase II.~~

~~**Phase II:** The elements of the Project constructed in Phase II shall include all below grade elements of the Transit Center Building. Phase II construction shall result in a complete Train Box, including the Train Station Passenger Platform Level (Level (1)) and the Train Mezzanine Level (Level (2)), as a functional component of the Transit Center Building.~~

~~The scope of this AGREEMENT includes services only for Phase I of the Project. Upon mutual agreement of the TJPA and the CM/GC, the TJPA may add to the scope of Work all or any portion of Pre-Construction and/or Construction Services for Phase II of the Project, by written modification to this AGREEMENT.~~

1.02 [no change]

1.03 [no change]

1.04 Integrated Project Delivery. Integrated Project Delivery provides a mechanism to enable the early engagement of the CM/GC so that the CM/GC can work with the TJPA and its Project designers to provide a better designed and constructed Project. Early engagement of the CM/GC also allows for early starts in the construction sequence, as the design is proceeding. Under the Integrated Project Delivery method, the CM/GC will provide Pre-Construction Services in coordination with the TJPA and its Project designers, will select trade subcontractors through pre-qualification and competitive bid, and will coordinate, manage, and oversee construction of the Project through Final Completion.

The CM/GC acknowledges and agrees that the TJPA has retained design professionals under three separate agreements for (a) utility relocation (the "UR Engineer") (b) demolition (the "Demolition Engineer") and (c) the design of the Transit Center Building and Related Structures (the "Architect"). The CM/GC further acknowledges and agrees that coordination and execution of the utility relocation, the demolition, and the construction of the Transit Center Building and Related Structures are all a part of the services under this Contract.

As a member of the Integrated Project Delivery team, the CM/GC further acknowledges and agrees that the Project is funded through various sources of public funds, including but not limited to Federal grants and loans. The CM/GC may be required as part of its regular administrative duties to respond to requests by the TJPA to prepare reports, respond to inquiries, provide cost and pricing information, and/or collect construction workforce, labor, materials or other construction-related data necessary to meet the requirements of the funding agencies. Such cooperation and/or reporting, being in the best interests of the Project, shall be considered a part of the CM/GC's regular duties under this Agreement and shall not be considered extra work or extra contractual services.

Under this approach, the CM/GC will provide Pre-Construction Services (Article 2) and Construction Services (Article 3) as set forth below. The CM/GC acknowledges and agrees, however, that the specific scope of work for both Pre-Construction and Construction Services for this Project is currently undefined and will be developed and finalized incrementally as the Project progresses. The services outlined below are intended as summary descriptions of the types of services that the CM/GC may perform as part of its scope of work. Scopes of work shall be incorporated into this AGREEMENT in an incremental fashion as the Project progresses, at which time the TJPA will authorize the CM/GC to proceed with such services.

1.05 [no change]

ARTICLE 4 - CONTRACT TIME

4.01 Completion Dates. The TJPA will issue separate Notices To Proceed (NTPs) for Pre-Construction and Construction Services. The NTPs for Pre-Construction Services shall identify specific tasks or scope and shall include appropriate completion dates specific to the NTP. For Construction Services, the Work ~~will~~ shall be Substantially Complete within ~~4,825~~ 2,555 consecutive calendar days (approximately ~~five~~ seven years), beginning with and including the official date of the Notice To Proceed with Construction Services, as established by the EXECUTIVE DIRECTOR, and Finally Complete in accordance with Article 9 of the General Conditions (Section 00 08 00) within 90 consecutive calendar days after the TJPA issues a Notice of Substantial Completion. The parties acknowledge and agree that the initial seven-year period of Construction Services constitutes the construction duration for Phase I Work as described in Article 1, above. The TJPA may incorporate Phase II Work into the initial seven-year period of Construction Services under the time extension and change order provisions of the Contract General Conditions (Section 00 08 00) and as provided in Article 5, below.

ARTICLE 5 – CONTRACT SUM

5.01 Contract Sum. The amount to be paid to the CM/GC for all Work performed under this AGREEMENT shall not exceed ~~Six Hundred Million~~ Nine Hundred Ninety-Four Million Five Hundred Seventeen Thousand Six Hundred Dollars and No Cents (~~\$600,000~~ \$994,517,600). The Contract Sum is comprised of the following: (A) the Pre-Construction Services Fee and (B) the Construction Services Fee of (1) the aggregate value of the awarded Trade Work subcontracts (Direct Costs) and (2) the CM/GC Construction Services Fixed Fee (the "CM/GC Fixed Fee"). This not-to-exceed amount does not include any payments made to the CM/GC for allowed and approved expenditures from the CM/GC Contingency, described in Article 6 of this

AGREEMENT, or Reimbursable Expenses, as described below. In the event that during the bidding of Trade Work Packages, the TJPA determines that the budgeted amount for the Trade Packages will or most likely will be exceeded, the TJPA shall have the right to direct the re-bid of certain Trade Packages to reduce the cost and shall, if necessary, have the right to terminate the Contract for its convenience. If, upon Final Completion of the Work, the final Contract Sum (less the Pre-Construction Services Fee and Contingency Payments) is less than the budgeted amount, the difference between the final Contract Sum and the not-to-exceed amount will accrue to the benefit of the TJPA.

The TJPA will adjust the value of the Contract Sum during the course of the Project to reflect the amount of: (a) the cost of Pre-Construction Services, (b) awarded Trade Work Subcontracts plus CM/GC Fixed Fee, and (c) any other changes in the Work that affect the value of the Contract.

- A. Pre-Construction Services. The CM/GC will be paid for Pre-Construction Services based on the blended rate of \$122 (One Hundred Twenty-Two Dollars)/hour as set forth in the CM/GC's Project Fee Proposal Schedule (attached as Attachment B to this AGREEMENT), up to a maximum of 110,800 hours. The blended hours rate includes all of the CM/GC's profit for Pre-Construction Services, and all costs incurred by the CM/GC profit for Pre-Construction Services, including but not limited to any materials, payroll, overhead and administrative costs, travel and living expenses, licenses, insurance, incidents, and any other fees or expenses incurred by CM/GC in providing Pre-Construction Services.
1. The TJPA, at its sole discretion, will assign Pre-Construction phase Work to CM/GC. The TJPA makes no representation that all 110,800 hours will be required for Pre-Construction Services during the course of the Project.
 2. The blended hourly rate shall apply to all members of CM/GC's team who provide Pre-Construction Services. Payment for Pre-Construction Services will be subject to CM/GC providing the TJPA with sufficient back-up documentation demonstrating to the TJPA's reasonable satisfaction that services were performed justifying payment at the agreed-upon hourly rate.
- B. Construction Services. CM/GC will be paid for Construction Services on the Direct Costs of the Work, as described in subparagraph B.1, below, plus the CM/GC Fixed Fee for overhead, profit, and general conditions, as described in subparagraph B.2, below.
1. Direct Costs of the Work include, but are not limited to, the total costs for all awarded Trade Packages, plus approved change order work and all or any part of Phase I or II construction (refer to Article 1, above). Refer to Attachment 1 to this AGREEMENT for categories of Work included under Direct Costs. Refer to Article 1 for the scope of phased Work under this Agreement.
 2. The CM/GC Fixed Fee will be a Fixed Fee of ~~\$39,050~~ Seventy-One Million Dollars and No Cents (\$71,000,000.00). Provided the CM/GC satisfactorily completes the authorized Work to be performed within the initial seven-year Contract Time, and provided the Contract is not otherwise terminated under Contract General Conditions (Section 00 08 00), Article 14, the TJPA shall pay the CM/GC Fixed Fee in full by the end of the initial seven-year Contract Time even if (i) the approved Direct Costs of the Work completed within the initial seven-year Contract Time are less than \$910,000,000 and/or (ii) the Work to be performed within the initial seven-year Contract Time is completed sooner. TJPA shall pay the CM/GC Fixed Fee incrementally as the Work progresses, at a rate based on the amount of approved Direct Costs, as provided below in this paragraph 5.01B.
~~The CM/GC Fee shall be invoiced at a rate of 7.81% of approved Direct Costs, provided that the total CM/GC Fee amount shall not exceed the Fixed Fee amount stated in the first sentence of this subparagraph 5.01B(2). The invoice rate shall remain in effect throughout the term of this Contract, as may be extended by written modification to include Phase II construction.~~

The CM/GC Fixed Fee includes all of CM/GC's overhead, profit, and general conditions fee for administering and coordinating Construction Services. Attachment 1 allocates to the CM/GC and

to the TJPA certain anticipated costs. Other general condition costs which may or may not be specifically identified in Attachment 1 and which fall under the following categories of costs shall be the responsibility of the CM/GC and included in its Fixed Fee: (i) all field and home/regional office personnel including but not limited to principals, project managers, superintendents, supervisory foremen, estimators, project engineers, detailers, drafts persons, schedulers, consultants, watchpersons, payroll clerks, administrative assistants, and secretaries; (ii) all field and home/regional office expenses including but not limited to field trailers, parking, storage sheds, office equipment and supplies, telephone service, long-distance telephone calls, fax machines, computers and software, internet and e-mail services, temporary utilities, sanitary facilities and services, janitorial services, small tools and equipment with a cost under \$1,000 each, portable scaffolding, blocking, shoring equipment, job vehicles, security and fencing, conformance to all regulatory requirements including safety equipment and compliance with safety regulations, safety programs and meetings, cartage, warranties, record documents, and all related maintenance costs; (iii) administrative functions including but not limited to reviewing, coordinating, distributing, processing, posting, recording, estimating, negotiating, scheduling, schedule updating and revising, expediting, surveying, engineering, drawing, detailing, carting, cleaning, protecting the Work, and other incidental Work; and (iv) costs of insurance (including all premiums).

The CM/GC will perform all categories of Work included in the CM/GC Fixed Fee (see Attachment 1 to this AGREEMENT) and will not include any of this Work in any of the Trade Packages.

3. The CM/GC shall invoice the CM/GC Fixed Fee as follows: (a) at a rate of 8.2% of approved Direct Costs for the Trade Packages awarded through the award of the structural steel and decking (superstructure) Trade Package (representing approximately 55% of the aggregate Trade Packages for Phase I construction) and (b) following award of the Superstructure Trade Package, the TJPA may in its sole discretion periodically adjust the invoice rate based on the value of the Trade Packages awarded and to be awarded, prorated such that the CM/GC Fixed Fee will be paid within the initial seven-year Contract Time, so long as the Work to be completed within the Contract Time is Substantially Complete as required under Article 4.
4. For any approved Direct Costs in excess of \$910,000,000, for construction services to be completed within the initial seven-year Contract Time, the TJPA shall equitably adjust the CM/GC Fixed Fee to accommodate the additional scope; in such event the invoice rate shall equal 3.5% of those approved Direct Costs.
5. For any approved Direct Costs less than or equal to \$910,000,000, for work to be performed beyond the initial seven-year construction Contract Time, the TJPA shall equitably adjust the CM/GC Fixed Fee to accommodate the additional time; in such event the invoice rate shall equal 4.31% of the Direct Costs of all Work performed during the extended period. Any time extension(s) under this subparagraph 5.01B(5) shall be granted by written modification to this Agreement prior to the expiration of the initial seven-year construction Contract Time and shall not exceed two years from the expiration of the initial seven-year construction Contract Time. Work performed beyond the initial seven-year period and two-year extension period, under approved time extension, shall be considered change order work and payable in conformance with Contract General Conditions (Section 00 08 00), Article 6.
6. For any approved Direct Costs in excess of \$910,000,000, to be performed beyond the initial seven-year construction Contract Time, there shall be no further adjustments to the CM/GC Fixed Fee. In such event, the TJPA shall adjust the Contract Sum in conformance with the time and change order provisions under the Contract General Conditions (Section 00 08 00), Article 6.
7. At the time of award of the final Phase I Trade Package, if the total Direct Costs are less than \$500,000,000, the TJPA may at its sole option and discretion either (a) add Direct Costs to bring the Contract Sum to \$500,000,000 or (b) negotiate with the CM/GC an equitable adjustment to the CM/GC Fee. If at any time the total Direct Costs are or

~~anticipated to be greater than \$500,000,000, the TJPA may at its sole option and discretion to either (a) not proceed with Work associated with Direct Costs in excess of \$500,000,000 or (b) negotiate with the CM/GC a mutually agreeable fixed CM/GC Fee for the CM/GC services associated with the additional approved Direct Costs in conformance with 49 CFR 18.36(f). The CM/GC acknowledges and agrees that the TJPA may make adjustments to the Fixed Fee under subparagraphs 5.01B(4), (5), and (6) above, only so long as increases in Direct Costs or Contract Time are not a result of any action or inaction of the CM/GC or could not have been reasonably avoided by the CM/GC through the exercise of due care and would constitute a material breach of the Contract Documents. The CM/GC further acknowledges and agrees that the Contract General Conditions (Section 00 08 00), Article 6, provisions for a CM/GC mark-up on change orders shall apply only to those approved Direct Costs in excess of \$910,000,000, to be performed beyond the initial seven-year construction Contract Time or as extended under paragraph 5.01B(5), above.~~

- C. Reimbursable Expenses. The TJPA will reimburse the CM/GC for the actual, approved costs of copying and binding the Trade Packages, for permits and specified fees (see Attachment 1 to this AGREEMENT). To be eligible for reimbursement, these and other reimbursable costs must have the prior written approval of the TJPA. The CM/GC shall not be entitled to any markup or fee on Reimbursable Expenses.
- D. Bond Premiums. For the ~~Phase I~~ Performance and Payment Bonds (each in the amount of \$600,000,000 (see paragraph 9.03)), the TJPA shall reimburse the CM/GC's actual ~~Phase I~~ Performance and Payment Bond premium costs, up to the amount stated by the CM/GC in its Cost Proposal. The CM/GC shall provide riders or additional bonds, in a form and by a surety acceptable to the TJPA, such that 100% of the approved Direct Costs plus the CM/GC Fixed Fee is covered by Performance and Payment Bonds as provided below (see paragraph 9.03). The TJPA shall not be responsible for any CM/GC Fee on any bond premium costs. For any ~~Phase II~~ additional Performance and Payment Bonds, the CM/GC shall obtain competitive premium rates and the TJPA shall reimburse the CM/GC its actual costs as a Reimbursable Expense.

ARTICLE 6 – CM/GC CONTINGENCY

- 6.01 The TJPA Project budget includes a CM/GC Contingency equal to four percent (4%) of the Direct Costs of the Work (the aggregate sum of awarded Trade Packages), an amount which shall not exceed ~~\$20,000,000~~ Thirty-Six Million Four Hundred Thousand Dollars and No Cents (\$36,400,000.00). In the event that TJPA approves Direct Costs in excess of ~~\$500,000,000~~ \$910,000,000 (as provided under paragraph 5.01B(3)), the TJPA shall increase the CM/GC Contingency in proportion to the increase in approved Direct Costs. The CM/GC Contingency is not a design contingency, and is not to be used for changes in the scope of the Work or for upgrades in the quality of the Work as reflected in the Contract Documents. In general, it is to be used for coordination of items necessary to complete the Work, *i.e.* the cost to complete Work that was inadvertently omitted from trade package(s) but the cost of which would have been a cost to the Project had it been included originally. The CM/GC Contingency is also intended to cover the following categories of costs in connection with the Work:
- A. Coordination issues or other disputes by and between Trade Subcontractors arising from conflicts in the Contract Documents that the CM/GC should have recognized during Pre-Construction Services (made in its capacity as a contractor and not a design professional), requiring revisions and/or reorganization of the Work in the field;
- B. Additional costs, not covered by bonds, attributable to the insolvency of a subcontractor or supplier;
- C. Costs incurred for the correction of damaged, defective or non-conforming work, provided that CM/GC shall be required to make all reasonable good faith efforts to first obtain such costs from any and all responsible trade contractors and/or any applicable insurance.
- D. Costs for overtime to maintain or accelerate the Project Schedule, unless such acceleration is required by TJPA for the TJPA's benefit, provided that CM/GC shall be required to make all reasonable good faith efforts to first obtain such costs from any and all trade contractors responsible for such delay(s).

- E. Costs for actual delays incurred as a result of Non-Compensable, Unavoidable Delays as provided under paragraph 7.02 of the Contract General Conditions (Section 00 08 00) and as properly documented as a delay to critical path activities.
- 6.02. The costs of the Work identified in Paragraph 6.01, above, will be paid for exclusively from the CM/GC Contingency, to the extent funds are available. The CM/GC may apply for use of the CM/GC Contingency by written request to the TJPA. The TJPA will confirm that the Contingency is being used for the purposes set forth in this Article and may issue approval in writing, which approval will not be unreasonably withheld. CM/GC will not be entitled to a markup or fee on any expenditure from the CM/GC Contingency.
- 6.03. Any and all costs identified in Paragraph 6.01, above, that exceed the CM/GC Contingency amounts set forth above (as may be reduced in conformance with paragraph 6.05 below), will be the responsibility of CM/GC and will not be chargeable to the TJPA. CM/GC will continue to perform the Work at no additional cost to the TJPA until the Work is complete.
- 6.04. As an incentive for CM/GC to perform in the best interest of the contracting parties and for the overall success of the Project, the TJPA shall pay the CM/GC 50% of the unspent amount of the CM/GC Contingency, once the Project is accepted as Finally Complete and provided all conditions for payment are satisfied. This paragraph 6.04 shall remain in effect even in the event of early disbursement of the CM/GC Contingency under paragraph 6.05, below. In the event of early disbursement, the available balance of CM/GC Contingency upon Final Completion shall be reduced in conformance with paragraph 6.05, below.
- 6.05 The TJPA may disburse a portion of unspent CM/GC Contingency, at its sole discretion prior to Final Completion (see paragraph 6.04, above), provided that there are sufficient funds available in accordance with the guidelines set forth below to adequately cover the CM/GC's completion of the Work and provided that the CM/GC is proceeding with the Work in a manner consistent with the TJPA's intent of maintaining an Integrated Project Delivery approach to the Project, as provided in Article 1, above. Any disbursement under this paragraph 6.05, shall be made 50% to the TJPA and 50% to the CM/GC.
- A. 50% Completion: Provided that there is at least 75% of the CM/GC Contingency amount remaining at the time that the Work is 50% complete, TJPA may disburse unspent CM/GC Contingency amounts in excess of 75% of the CM/GC Contingency amount.
- B. 75% Completion: Provided that there is at least 60% of the CM/GC Contingency amount remaining at the time that the Work is 75% complete, TJPA may disburse unspent CM/GC Contingency amounts in excess of 60% of the CM/GC Contingency amount.
- C. 90% Completion: Provided that there is at least 50% of the CM/GC Contingency amount remaining at the time that the Work is 90% complete, TJPA may disburse unspent CM/GC Contingency amounts in excess of 50% of the CM/GC Contingency amount.
- D. Substantial Completion: Provided that there is at least 25% of the CM/GC Contingency remaining at the time that the Work is Substantially Complete, TJPA may disburse unspent CM/GC Contingency amounts in excess of 25% of the CM/GC Contingency amount.

ARTICLE 9 – INDEMNITY, INSURANCE, BONDS, AND DAMAGES

- 9.03 Bonds. The CM/GC shall furnish and maintain (1) a corporate surety bond to guarantee the faithful performance of the Contract ("Performance Bond") and (2) a corporate surety bond to guarantee the payment of labor, materials, supplies, and equipment used in the performance of the Contract ("Payment Bond"), each in an amount not to exceed \$600,000,000, with the CM/GC as Principal and the TJPA as sole obligee, in the form provided by the TJPA (Contract Document Section 00 61 00), in conformance with the bond requirements under the General Conditions (Section 00 08 00, Article 10) (together, the "~~Phase I~~ Performance and Payment Bonds"). The CM/GC shall furnish the ~~Phase I~~ Performance and Payment Bonds within 150 days of the award of the CM/GC Contract, or within 14 days of the request by the TJPA, whichever is earlier. Failure to submit timely Performance and Payments Bonds shall result in a forfeiture of the CM/GC's Bid Bond.
- A. ~~—~~ In the event that, ~~upon mutual agreement of the parties,~~ the TJPA authorizes Direct Costs in excess of \$600,000,000, ~~adds Phase II Work to the scope of this AGREEMENT,~~ the CM/GC shall furnish either (1) a rider or other appropriate instrument to increase the penal sums of the Phase I

Performance and Payment Bonds and to incorporate Phase II Work or (2) furnish new Phase II Performance and Payment Bonds in an amount to be determined by the TJPA and from a surety acceptable to the TJPA.

~~B. In the event that either party opts not to proceed with Phase II Work under this AGREEMENT, the CM/GC shall complete the Work of all awarded Trade Packages in conformance with the terms and conditions of the Contract Documents; the exercise of such option by the CM/GC shall not itself constitute Grounds for Default under the Contract General Conditions (Section 00-08-00), Article 14, or the Bonds already furnished.~~

IN WITNESS WHEREOF, the parties hereto have executed this contract Amendment No. 08 on the day first mentioned above.

TRANSBAY JOINT POWERS AUTHORITY

Maria Ayerdi-Kaplan
Executive Director

Transbay Joint Powers Authority

Transbay Joint Powers Authority
Board of Directors
Resolution No. _____
Adopted: _____
Attest:

Secretary, TJPA Board

Approved as to Form:

Dennis J. Herrera, City Attorney

By _____
Deputy City Attorney

CM/GC

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 55, the TJPA’s statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance

with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

Authorized Signature

Printed Name

Title

Webcor/Obayashi, Joint Venture

Company Name

Address

City, State, ZIP

Phone Number

Federal Employer ID Number