

STAFF REPORT FOR CALENDAR ITEM NO.: 7.3
FOR THE MEETING OF: April 12, 2012

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Approve the Third Amendment to the Agreement between the Transbay Joint Powers Authority (TJPA) and Pelli Clarke Pelli Architects, Inc. (PCPA) for the Transbay Transit Center Building and Related Structures (Project) that revises Paragraph 4.2.5 of the Agreement to require that the geotechnical consultant of PCPA be directly liable to TJPA for negligent errors and omissions, as opposed to “directly liable to TJPA for any errors and omissions.”

EXPLANATION:

PCPA provides design and construction administration services to the TJPA for the Transbay Transit Center under Agreement No. 07-04-TTC-000 as twice amended (Agreement). Paragraph 4.2.5 of the Agreement addresses generally responsibility for geotechnical services. In particular, it provides that PCPA shall provide geotechnical services through a consultant, and that the consultant shall be “directly liable to the TJPA for any errors and omissions.” PCPA engaged Arup North America (Arup) as the geotechnical consultant for the Project.

TJPA staff recommend a revision to Paragraph 4.2.5 of the Agreement to clarify that Arup is directly liable to the TJPA for Arup’s “negligent” errors and omissions. Under a negligence standard, Arup would be responsible for damages that result from its failure to exercise the standard of care in the design professional industry for the provision of geotechnical services (i.e., reasonable or customary care). This revision is consistent with state law (California Civil Code section 2782.8) and industry standards. The revised language is in the interest of TJPA because it makes clear that the referenced obligations of Arup are consistent with state law and the professional standard of care in the industry and would permit insurance coverage for Arup’s negligent errors and omissions.

RECOMMENDATION:

Approve the Third Amendment to the Agreement between TJPA and PCPA revising Paragraph 4.2.5 to provide that the geotechnical consultant shall be directly liable to TJPA for negligent errors and omissions.

ENCLOSURES:

1. Resolution
2. Amendment

**TRANSBAY JOINT POWER AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The TJPA entered into Agreement No. 07-04-TTC-000 with Pelli Clarke Pelli Architects, Inc. (PCPA) for the Transbay Transit Center Building and Related Structures Project as twice amended (Agreement); and

WHEREAS, Paragraph 4.2.5 of the Agreement requires, among other things, that PCPA's geotechnical consultant be "directly liable to the TJPA for any errors and omissions;" and

WHEREAS, It is in the interest of TJPA to clarify and confirm that the referenced obligations of the geotechnical consultant are consistent with state law, the professional standard of care in the industry, and insured; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute Amendment No. 3 to the Agreement between the TJPA and PCPA to add the word "negligent" before "errors and omissions" in Paragraph 4.2.5 of the Agreement to conform the Agreement to state law and the professional standard of care in the industry and to permit insurance coverage for the negligent errors and omissions of PCPA's geotechnical consultant.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of April 12, 2012.

Secretary, Transbay Joint Powers Authority

**AGREEMENT
AMENDMENT NO. _____
BETWEEN
THE TRANSBAY JOINT POWERS AUTHORITY
AND
PELLI CLARKE PELLI ARCHITECTS, INC.**

THIS AMENDMENT to AGREEMENT is entered into as of the ____ day of _____, 2012 by and between the TRANSBAY JOINT POWERS AUTHORITY (“TJPA”) and Pelli Clarke Pelli Architects, Inc. (the “Architect”).

By this Amendment No. _____, the TJPA and the Architect hereby modify the Agreement dated May 15, 2008 (the “Agreement”), as amended, only to the extent expressly provided in this Amendment No. _____. All other terms and conditions of the Agreement, as amended, shall remain in full force and effect.

RECITALS

A. Under Article 4.2.5, as amended, of the Agreement, Architect is, among other things, required to enter into a Subconsultant Agreement containing certain specific provisions with its geotechnical subconsultant, including a provision that the geotechnical subconsultant shall be directly liable to the TJPA.

B. Architect is finalizing negotiations on a Subconsultant Agreement with Arup North America Limited (“Arup”) for Civil Engineering and Other Scopes and on another Subconsultant Agreement with Arup for Geotechnical Services. Arup’s services include the shoring wall and buttress services (including services related to the adjacent 301 Mission property) that are required by the Agreement and prior Amendments to the Agreement (the “SW&B Design”). Arup has requested that the TJPA modify the Agreement in Article 4.2.5 by adding the word “negligent” before “errors and omissions” and that Architect provide a parallel modification in the Arup Subconsultant Agreement for Geotechnical Services.

C. The TJPA and Architect agree to modify the Agreement on the terms set forth in this Amendment. Architect agrees to finalize the Subconsultant Agreements on the terms set forth in this Amendment.

TERMS AND CONDITIONS

1. The fourth and fifth sentences of Article 4.2.5 of the Agreement are revised by adding the word “negligent” before “errors and omissions” so that they read as follows:

“Rather, the geotechnical subconsultant shall be directly liable to the TJPA for any negligent errors and omissions. The Architect shall require in its geotechnical subconsultant agreement that the subconsultant shall be directly liable to the TJPA for any negligent errors and omissions, that the subconsultant carry professional liability insurance in the same amount as required of the Architect

under Article 12 of this Agreement, and that the TJPA shall be a named third-party beneficiary of such agreement.”

These revisions to Article 4.2.5 of the Agreement shall be effective retroactively as of June 26, 2008, the date of the Arup Subconsultant Agreement for Geotechnical Services.

2. Except as otherwise provided herein, the Agreement, as amended remains in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this contract Amendment No. _____ 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

PELLI CLARKE PELLI ARCHITECTS, INC.

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

Fred W. Clarke, III
Printed Name

Executive Vice President and Senior Principal
Title

Pelli Clarke Pelli Architects, Inc.
Company Name

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06-1228461
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