

**STAFF REPORT FOR CALENDAR ITEM NO.: 9  
FOR THE MEETING OF: January 9, 2014**

**TRANSBAY JOINT POWERS AUTHORITY**

**BRIEF DESCRIPTION:**

Authorize the Executive Director to execute Amendment No. 29 to Agreement No. 08-04-CMGC-000 (Agreement) between the Transbay Joint Powers Authority (TJPA) and Webcor/Obayashi Joint Venture to increase the time for pre-construction services to 225,901 hours and adjust the contract sum accordingly.

**EXPLANATION:**

On January 17, 2008, the TJPA Board approved the use of Integrated Project Delivery for the construction of the Transbay Transit Center and Bus Ramps and authorized the Executive Director to issue a Request for Proposals (RFP) for a Construction Manager/General Contractor (CM/GC) to pre-qualify, bid and direct construction of the project. The CM/GC approach was selected over Design-Bid-Build and Design-Build contracting approaches to establish collaboration between the contractor and designers, improve the quality of design, optimize constructability, and provide flexibility in the scope, schedule and sequencing of construction.

On March 12, 2009, the TJPA Board awarded the CM/GC Agreement to Webcor/Obayashi, JV (W/O). Under the contract, W/O bids, directs, and coordinates the construction of the Phase 1 elements of the Transit Center on a time and materials basis at a blended rate of \$122 per hour for pre-construction services including design and constructability reviews, cost estimating and value management, outreach to and prequalification of subcontractors, and preparation of trade packages for bidding from the design documents prepared by the design team. In the CM/GC RFP, a projection of 45,000 hours of pre-construction services was stipulated in the bidding documents as a basis for comparing proposals and ultimately for the initial contract award. Under the contract, pre-construction services are authorized for specific task lists and time periods under notices to proceed establishing a not-to-exceed amount for the period.

At the time of the contract award, Phase 1 construction did not include the rail levels of the station, and the construction was planned to begin in September 2009. Construction was expected to take five years and the bidding of trade packages was to occur over a three year period. Subsequent to the award of the CM/GC contract, the schedule for completion of the design and start of construction was extended to allow additional time for the development of the design and to study constructability and value engineering opportunities.

On May 10, 2010, the TJPA Board adopted a Revised Baseline Budget and Schedule incorporating the construction of the train box into Phase 1. Concurrent with the decision to revise the plan for design and construction to anticipate the inclusion of the train box in the first phase of construction, W/O was nearing the initially stipulated limit on pre-construction hours. Consequently, on July 15, 2010, Amendment No. 6 to the contract with W/O was approved by the Board, increasing the number of pre-construction services hours to 110,800.

Following approval of Amendment No. 6, the schedule for design and bidding of Phase 1 construction was further refined, and on December 8, 2011, the TJPA Board approved Amendment No. 20, which increased the number of pre-construction services hours to 160,000, and incorporated the previously approved and completed Shoring Wall/Buttress Test expenditures into the pre-construction services contract amount.

The revised Phase 1 Baseline Budget approved by the Board on July 11, 2013 included an increase of approximately \$8,000,000 to the pre-construction services budget due to the extended design period and RVA update. These changes extended the bidding period, and therefore the pre-construction period, and added additional design review and cost estimating cycles. Thereafter, in Amendment No. 28 dated September 17, 2013, the TJPA increased the number of pre-construction hours to 178,425, bringing the total authorized pre-construction services amount to \$25,399,671.11.

By this Amendment No. 29, the TJPA increases the authorization for pre-construction services to a maximum of 225,901 hours, bringing the final, total not-to-exceed value to complete all pre-construction services to \$31,191,821, which is equal to the revised Phase 1 Baseline Budget. This shall cover all remaining pre-construction services required for the Transbay Transit Center Project including all direct hours and pre-construction subconsultants necessary for continued design review, constructability review, BIM modeling, cost estimating and value engineering, preparation of the remaining 39 bid packages and management of the bid process, and Small Business Enterprise outreach. Under the current planned bidding schedule, it is anticipated that pre-construction services will be concluded by December 31, 2015.

**RECOMMENDATION:**

Staff recommends that the TJPA Board of Directors authorize amending Contract No. 08-04-CMGC-000, CM/GC Services for the Construction of the Transbay Transit Center Building and Related Structures, with W/O to increase the cap for preconstruction services to 225,901 hours.

**ENCLOSURES:**

1. Resolution
2. Amendment No. 29

**TRANSBAY JOINT POWERS AUTHORITY  
BOARD OF DIRECTORS**

**Resolution No. \_\_\_\_\_**

WHEREAS, On January 17, 2008, the Transbay Joint Powers Authority (TJPA) Board approved the use of Integrated Project Delivery for the construction of the Transbay Transit Center and Bus Ramps to establish collaboration between the contractor and designers, improve the quality of design, optimize constructability, and provide flexibility in the scope, schedule and sequencing of construction; and

WHEREAS, On June 20, 2008, the TJPA issued a Request For Qualifications for TJPA Contract No. 08-04-CMGC-000, CM/GC Services for the Construction of the Transbay Transit Center Building and Related Structures including pre-construction services and construction administration services consistent with those of a general contractor; and

WHEREAS, On March 12, 2009, the TJPA Board adopted Resolution No. 09-004 authorizing the award of TJPA Contract No. 08-04-CMGC-000, Construction Manager/General Contractor Services for the Construction of the Transbay Transit Center Building and Related Structures, Phase 1, to the joint venture of Webcor Builders and Obayashi Corporation (Webcor/Obayashi); and

WHEREAS, Webcor/Obayashi bills a blended rate of \$122 per hour for pre-construction services including design and constructability reviews, cost estimating and value management, outreach to and prequalification of subcontractors, and preparation of trade packages for bidding from the design documents prepared; and

WHEREAS, At the time of award of the CM/GC contract, Phase 1 had a construction value of \$500,000,000, the assumed start of construction was to be September 2009, and the authorized number of pre-construction hours was 45,000; and

WHEREAS, On June 10, 2010, the TJPA Board adopted a Revised Baseline Budget and Schedule incorporating the construction of the train box into Phase 1; and

WHEREAS, Pre-construction hours were subsequently increased to 110,800 hours in Amendment No. 06 dated July 15, 2010, and to 160,000 hours in Amendment No. 20 dated December 8, 2011; and

WHEREAS, On July 11, 2013, the TJPA Board increased the Phase 1 Baseline Budget and this increase included an additional \$8 million for pre-construction services due to the extended design review and bidding period; and

WHEREAS, On September 27, 2013, the TJPA Executive Director approved Amendment No. 28, which increased the number of pre-construction hours to 178,425; and

WHEREAS, The full scope of CM/GC pre-construction services is forecast to be accomplished within 225,901 hours; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute Agreement Amendment No. 29 to increase the time for pre-construction services to 225,901 hours total and modify the contract sum accordingly.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of January 9, 2014.

\_\_\_\_\_  
Secretary, Transbay Joint Powers Authority

**AGREEMENT**  
**AMENDMENT No. 29**  
**BETWEEN**  
**TRANSBAY JOINT POWERS AUTHORITY**  
**AND**  
**WEBCOR/OBAYASHI, J.V.**

THIS AMENDMENT for AGREEMENT is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2014 by and between the TRANSBAY JOINT POWERS AUTHORITY (“TJPA”) and Webcor/Obayashi, J.V. (the “CM/GC”). By this Amendment No. 29, the TJPA and the CM/GC hereby modify the Agreement No. 08-04-CMGC-000 dated March 17, 2009 (the “Agreement”), as modified previously by Amendments Nos.1 through 28, only to the extent expressly provided in this Amendment No. 29. 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 Agreement No. 08-04-CMGC-000 to Webcor/Obayashi Joint Venture to perform pre-construction and construction services for the Transbay Transit Center Building and Related Structures Project. Pre-construction services authorized in the award were limited to a maximum of 45,000 labor hours at a blended rate of \$122/hour.

B. On July 15, 2010, the TJPA Board approved Amendment No. 06, increasing the scope of CM/GC pre-construction services up to 110,800 labor hours, following the incorporation of the design and construction of the Train Box rail levels into Phase 1 of the Transbay Transit Center Program.

C. On December 8, 2011, the TJPA Board approved Amendment No. 20, increasing the scope of CM/GC pre-construction services up to 160,000 hours and expressly including the previously approved Shoring Wall/Buttress Tests work in the pre-construction services amount, for a total authorized pre-construction services amount not-to-exceed \$23,151,821.11.

D. On July 11, 2013, the TJPA Board approved a revised Phase 1 Baseline Budget that included \$31,191,821 total for pre-construction services, a budget increase of approximately \$8,000,000 for this line item. On September 17, 2013, the TJPA Executive Director approved Amendment No. 28, increasing the number of labor hours from 160,000 to 178,425.

E. By this Amendment No. 29, the TJPA increases the authorization for pre-construction services to a maximum of 225,901 hours to equal the budgeted amount for pre-construction services and allow for all necessary labor hours and subconsultants to complete and close out pre-construction services.

**Terms and Conditions**

1. **Modifications to Agreement (Section 00 05 20).** The parties acknowledge and agree that the Agreement Articles 5.01 Contract Sum and 5.01 A, Pre-Construction Services are hereby modified to provide as follows. For purposes of convenience, the changes to the original language are indicated in underlined italics.

**5.01 Contract Sum.** The amount to be paid to the CM/GC for all Work performed under this AGREEMENT shall not exceed One Billion Twelve Million One Hundred Ninety-One Thousand Eight Hundred Twenty One Dollars and No Cents (\$1,012,191,821) ~~One Billion Four Million One Hundred Fifty One Thousand Eight Hundred Twenty One Dollars and Eleven Cents (\$1,004,151,821.11)~~. 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 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 225,901 ~~178,425~~ hours. The blended hourly rate includes all of the CM/GC's profit for Pre-Construction Services, and all costs incurred by the CM/GC, 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 225,901 ~~178,425~~ 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.

3. The Pre-Construction Services shall also independently include the SW/B Tests authorized in Amendment No. 02 and completed for a total sum of \$3,631,821.11. This total sum is not part of the 160,000 hours.

4. 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.

5. All Transbay Transit Center Project Pre-Construction Services, including but not limited to, all labor costs, subconsultants, and SW/B Tests shall be completed by December 31, 2015 for a final, total not-to-exceed value of \$31,191,821.

The individuals executing this Amendment No. 29 to the Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement Amendment No. 29 on the day first mentioned above.

TRANSBAY JOINT POWERS AUTHORITY

\_\_\_\_\_  
Maria Ayerdi-Kaplan  
Executive Director

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

\_\_\_\_\_  
Secretary, TJPA Board

Approved as to Form:

By \_\_\_\_\_  
TJPA Legal Counsel

WEBCOR/OBAYASHI JOINT VENTURE

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title