

**STAFF REPORT FOR CALENDAR ITEM NO.: 15.5
FOR THE MEETING OF: March 12, 2020**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Director of Design & Construction for the Transit Center Project, San Francisco Public Works, to execute Amendment No. 9 to the Professional Services Agreement (Agreement) between the Transbay Joint Powers Authority (TJPA) and Turner Construction Company (Turner) for Construction Management Oversight (CMO) services on the Transit Center Project (the Project) to increase the amount by \$2,000,000 for a total Agreement amount of \$83,500,000. Of the total recommended increased amount, \$800,000 will be paid in full by F4 Transbay Partners, LLC (F4) under an existing escrow agreement established as part of the Purchase and Sale Agreement between the TJPA and F4. The remaining \$1,200,000 is related to girder repair costs that will be paid in full from Webcor/Obayashi's retention being withheld by the TJPA.

EXPLANATION:

Over the past nine years, Turner has provided CMO services on the Project, including oversight of the demolition of the former Transbay Terminal and roadway ramps, relocation of utilities, and construction of the Salesforce Transit Center (transit center) and bus ramp. Turner's CMO services include preconstruction surveys, quality assurance/quality control, inspection and testing, recordkeeping, progress reporting, document control, cost control support, schedule support, claims support, environmental monitoring, coordination with other agencies and affected entities, and project closeout.

Essentially serving as the TJPA's "eyes and ears" on the jobsite during construction, contract close-out, and claims resolution, Turner is charged with monitoring and documenting the progress, actions, and requests of the Construction Manager/General Contractor (CM/GC), who in turn is responsible for coordinating and managing the actual construction in the field. Turner is also tasked with monitoring and coordinating with neighboring construction projects to minimize their impacts to the transit center. CMO services are necessary for any construction project, and on a federally funded project, they must be performed by a contractor that is independent of the contractor performing the construction work.

Since the Agreement was executed in 2010, eight amendments have been executed to account for required CMO services needed during construction; to extend the length of services to align with the CM/GC's revised construction schedule; and to fund additional work that was unforeseen at the time the Agreement was executed, for instance, work associated with extensive analysis, inspections, and remediation of two fractured structural steel girders in the transit center. The technical analysis of the steel girders was undertaken by a specialized lab, LPI Labs, under Turner's contract. All work associated with remediation was subject to review and acceptance of an independent peer review panel established by the Metropolitan Transportation Commission (MTC).

Amendment No. 8 increased the not-to-exceed Agreement amount by \$500,000 and was processed in accordance with the Executive Director's delegated authority to utilize Program Reserve for construction-related activities. This amount was necessary to cover additional costs incurred by Turner in the performance of CMO services related to the MTC Peer Review Panel's inquiries regarding the fractured structural steel girders. The current not-to-exceed Agreement amount is \$81,500,000, and the current term expires on June 30, 2020.

Amendment No. 9 would increase the not-to-exceed Agreement amount by \$2,000,000 with Program Reserve funds covering (a) costs of \$1,200,000 incurred by LPI for services that were required to satisfy the MTC Peer Review Panel's inquiries above and beyond the original request to the TJPA Board and (b) \$800,000 for CMO services related to coordination/oversight for construction of the Parcel F tower, proposed relocation of the transit center's cooling tower vent (pending a future TJPA Board action), and the Parcel F pedestrian bridge to Salesforce Park.

Structural Steel Girder Remediation

On September 25, 2018, fissures were discovered on the flanges of two steel girders in the ceiling of the third level bus deck over Fremont Street. The transit center was closed, and remediation began. The remediation work comprised not only the actual repair of the girders but also a series of technical analyses on the steel and an exhaustive facility-wide review. All work associated with the remediation was subject to review and acceptance by the MTC Peer Review Panel.

In February 2019, LPI's root-cause analysis of the steel fractures was underway. This work involved numerous tests on the steel samples taken from girders over both Fremont and First streets, including tensile testing, electronic microscopy, metallographic analysis, and macrostructure and microstructure examinations, among others. LPI's work also involved presentations to the TJPA Board and a final root-cause analysis report.

Amendment No. 6, approved by the TJPA Board in February 2019, increased the contract amount to pay for services required through June 30, 2020, including the ongoing analysis by LPI, the cost of which was estimated at approximately \$1,500,000. At the time of Amendment No. 6's execution, staff noted that the full effort of remediation support was not known and might require additional funding depending on the extent of an ongoing building-wide investigation and given the unknown nature of additional requests by the MTC Peer Review Panel.

Now, all investigations are complete and LPI's final report has been issued. Additionally, all comments from the MTC Peer Review Panel have been considered by LPI and addressed, as necessary, in LPI's final report. In addition, MTC provided the mayors of San Francisco and Oakland with their final letter on February 26, 2020, which includes the completed and last documents from the Peer Review Panel. The final cost for LPI's services is \$3,200,000. The additional costs of \$1,700,000 over the initial estimate have been primarily driven by the building-wide investigation, analysis and testing requested by the MTC Peer Review Panel. Of these additional costs, \$500,000 was funded under Amendment No. 8, leaving a balance of \$1,200,000 to be funded under this Amendment No. 9, subject to the requested TJPA Board

approval to shift Program Reserve to the TJPA's Construction Contingency for payment to LPI.

While the funding of the girder repair costs, which include LPI's costs, initially requires the utilization of Program Reserve, the TJPA is seeking reimbursement of these costs from the CM/GC, Webcor/Obayashi, Joint Venture (WOJV). Currently, these costs have been issued to WOJV as a unilateral deductive change order to WOJV's Contract Sum. If liability for the failed steel girders is determined to be WOJV's responsibility, these costs would ultimately be recovered from WOJV and its trade subcontractors and/or result in a reduction in the amount owed by the TJPA to WOJV under the CM/GC Agreement.

Coordination with the Parcel F Development

F4, the developer of the property located to the south of the transit center commonly known as Parcel F, is proceeding with the development of a tower on Parcel F following approval from the SF Planning Department. This Parcel F tower directly adjoins the transit center, and its excavation depth will match that of the transit center's train box. CMO oversight and constructability review services are required to ensure that impacts are minimized or eliminated as a result of the construction of the Parcel F tower, construction of the pedestrian bridge connection to Salesforce Park (scope previously approved via the Purchase and Sale Agreement) and construction of proposed vent relocation (pending a future TJPA Board meeting approval).

The TJPA seeks to amend its Agreement with the CMO to cover independent oversight, constructability review and quality assurance services related to the construction of the Parcel F tower, pedestrian bridge, and vent relocation. Turner's significant institutional knowledge of the transit center facility will be extremely valuable during this construction process.

All costs associated with performing the identified duties of the CMO related to the construction of the Parcel F tower, pedestrian bridge, and vent relocation will be reimbursed via an escrow account that is already set up with the developers of Parcel F.

Contract History

Following a formal procurement process, on June 10, 2010, the TJPA Board of Directors adopted Resolution No. 10-017, authorizing the Executive Director to execute the Agreement with Turner for CMO services for a term not to exceed six years, with the option to extend for three additional one-year periods, and an amount not to exceed \$38,500,000. Since then, eight amendments to the Agreement have been executed, as follows:

On July 1, 2014, the TJPA Executive Director executed Amendment No. 1 to the Agreement with the Contractor to revise Appendix B, Calculation of Charges to update the Base Hourly Rate for Turner staff.

On July 9, 2015, and on September 10, 2015, the TJPA Board authorized the Executive Director to execute Amendment No. 2 and Amendment No. 3, respectively. Amendment No. 2 increased the not-to-exceed amount to \$45,980,000 to align with the amount for CMO services in the July 2013 Phase 1 Baseline Budget. Amendment No. 3 increased the not-to-exceed amount to \$57,180,000. At that time, a revised Phase 1 Baseline Budget was being prepared. The amendment was executed to ensure that Turner's essential quality assurance and contract

oversight functions under the Agreement were funded until the revised budget was presented to and approved by the TJPA Board of Directors. When presenting Amendment No. 3 to the Board in September 2015, staff noted that CMO services associated with the structural steel trade package (awarded in 2013) had required additional offsite special inspections that were not anticipated in Turner's scope and that additional services associated with ongoing second and third shifts of work, waterproofing, claims resolution and partnering had been required. The revised Phase 1 Baseline Budget to be presented would include another increase in the fixed fee for CMO services to accommodate these additional services.

The Board approved a revised Phase 1 Baseline Budget on June 9, 2016, and authorized Amendment No. 4 to the Agreement to (1) increased the contract amount by \$15,320,000, for a total fixed fee of \$72,500,000, (2) extended the contract by two years to June 30, 2018, to coincide with the then-scheduled date of commissioning of the transit center, and (3) reduced the fee percentage charged beyond June 30, 2016, from 9% to 7%.

In March 2018, the CM/GC informed the TJPA Board that Substantial Completion would be achieved at the end of June or in early July 2018. On April 12, 2018, the TJPA Board authorized Amendment No. 5 to the Agreement to (1) increased the contract amount by \$2,500,000, for a total fixed fee of \$75,000,000, and extended the contract by one year until June 30, 2019, to fund contract administration for the extended timeframe, including special inspections, change order and claims support and processing, support for the ongoing second and third shifts of work, and neighborhood project coordination and outreach.

Between September 2018 and July 2019, the transit center was closed for the repair of two structural steel girders and facility-wide inspections. Amendment No. 6, approved by the TJPA Board and executed on February 14, 2019, extended the term of the Agreement by one year, through June 30, 2020, and increased the contract amount by \$3,000,000, for a total fixed fee of \$78,000,000 to cover additional services related to (1) the girder remediation effort at Fremont Street, the associated review of the girders at First Street, and the review of other structural components of the Project; (2) delays to Substantial Completion and Final Completion of the Project; and (3) the recent filing of lawsuits by the CM/GC against the TJPA.

Amendment No. 7, executed by the TJPA on June 28, 2019, added \$3,000,000 to the Agreement, for a total fixed fee of \$81,000,000, to fund CMO services related to the extended duration of the CM/GC's closeout and litigation through June 30, 2020.

Amendment No. 8, executed on January 15, 2020, increased the not-to-exceed Agreement amount by \$500,000 and was processed in accordance with the Executive Director's delegated authority to utilize Program Reserves for construction related activities. The current not-to-exceed Agreement amount is \$81,500,000, and the current term expires on June 30, 2020.

Amendment No. 9 seeks to increase the not-to-exceed Agreement amount by \$2,000,000 to cover (a) costs of \$1,200,000 incurred by LPI for additional services that were required to satisfy the MTC's Peer Review Panel's inquiries above and beyond the original request to the Board and (b) \$800,000 for CMO services for independent oversight, constructability review and quality assurance services related to the construction of the Parcel F tower, pedestrian bridge and

vent relocation along with any other associated oversight related to their construction activities. Timing of this item is requested now so that the CMO team can provide constructability review and feedback in order for the vent relocation scope to be finalized and prepared for a future Board meeting approval.

RECOMMENDATION:

TJPA staff recommends that the TJPA Board authorize the Director of Design & Construction for the Transit Center Project, San Francisco Public Works, to execute Amendment No. 9 to the Professional Services Agreement between Turner and the TJPA for Construction Management Oversight services to increase the amount by \$2,000,000 for a total fixed fee of \$83,500,000.

ENCLOSURES:

1. Resolution
2. Amendment

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, On June 10, 2010, the Transbay Joint Powers Authority (TJPA) Board of Directors authorized the Executive Director to execute a Professional Services Agreement (Agreement) with Turner Construction Company (Turner) for Construction Management Oversight services for a six-year term and a maximum compensation of \$38,500,000, with options to extend the Agreement for three additional one-year periods; and

WHEREAS, On July 1, 2014, the Agreement was amended by Amendment No. 1 mutually agreed upon by the TJPA and by Turner to revise Appendix B, Calculation of Charges, in order to update the Base Hourly Rate for construction management oversight staff; and

WHEREAS, On July 9, 2015, the TJPA Board of Directors authorized Amendment No. 2 to the Agreement in order to increase the fixed fee by \$7,480,000, for a total fixed fee of \$45,980,000, consistent with the Board-approved July 2013 Phase 1 Program Budget; and

WHEREAS, On September 10, 2015, the TJPA Board of Directors authorized Amendment No. 3 to the Agreement in order to increase the fixed fee by \$11,200,000, for a total fixed fee of \$57,180,000; and

WHEREAS, On June 9, 2016, the TJPA Board of Directors authorized Amendment No. 4 to the Agreement in order to (1) increase the contract amount by \$15,320,000, for a total fixed fee of \$72,500,000, consistent with the Board-approved updated Phase 1 Program Budget, (2) extend the contract by two years to June 30, 2018, and (3) reduce the fee percentage charged beyond June 30, 2016 from 9% to 7%; and

WHEREAS, On April 12, 2018, the TJPA Board of Directors authorized Amendment No. 5 to the Agreement that specified (1) an increase in the contract amount by \$2,500,000, for a total fixed fee of \$75,000,000, and (2) extended the contract by one year to June 30, 2019; and

WHEREAS, On February 14, 2019, the TJPA Board of Directors authorized Amendment No. 6 to the Agreement which (1) increased the contract amount by \$3,000,000, for a total fixed fee of \$78,000,000, and (2) extended the contract by one year until June 30, 2020; and

WHEREAS, On June 28, 2019, the TJPA authorized Amendment No. 7 to the Agreement, which increased the contract amount by \$3,000,000, for a total fixed fee of \$81,000,000; and

WHEREAS, On January 15, 2020, the TJPA authorized Amendment No. 8 to the Agreement which increased the contract amount by \$500,000, for a total fixed fee of \$81,500,000; and

WHEREAS, Turner has been providing satisfactory construction management oversight services for the construction of the Transit Center Project and Related Structures, which include independently monitoring and documenting progress by the Construction Manager/General Contractor (CM/GC) and its subcontractors performing the construction work; and

WHEREAS, These services will continue to be funded due to the required vital support and completion of the steel girder repair testing, building monitoring and final report analyses, and also for services for independent oversight, constructability review and quality assurance services related to the construction of the Parcel F tower, pedestrian bridge, and vent relocation; and

WHEREAS, Amendment No. 9 to the Agreement specifies an increase in the contract amount by \$2,000,000, for a total fixed fee of \$83,500,000; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Director of Design & Construction for the Transit Center Project, San Francisco Public Works, to execute Amendment No. 9 to the Professional Services Agreement between the TJPA and Turner for Construction Management Oversight services to increase the fixed fee by \$2,000,000, for a total fixed fee of \$83,500,000.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of March 12, 2020.

Secretary, Transbay Joint Powers Authority

**Amendment No. 9 to
Professional Services Agreement between
The Transbay Joint Powers Authority and Turner Construction Company**

This Amendment No. 9 to the Professional Services Agreement to provide Construction Management Oversight Services dated June 10, 2010 (“Agreement”) is entered into as of the ____ day of March 2020 in San Francisco, California, by and between Turner Construction Company (“Contractor”), and the Transbay Joint Powers Authority (“TJPA”).

Recitals

A. On January 15, 2010, the TJPA issued a Request for Proposals (“RFP”) No. 09-08 for Construction Management Oversight (“CMO”) Services for firms or individuals with expertise in construction management of similar facilities.

B. On February 19, 2010, Contractor submitted a proposal in response to TJPA’s RFP, which was reviewed and evaluated by the TJPA’s Selection Committee, which determined the Contractor’s proposal to be the highest-ranked proposal, and TJPA subsequently negotiated a professional services agreement with the Contractor.

C. On June 10, 2010, the TJPA Board of Directors adopted Resolution No. 10-017, which authorized the Executive Director to execute the Agreement with the Contractor for CMO Services for a term not to exceed six years, with the option to extend for three additional one-year periods, and a contract amount not to exceed \$38,500,000.

D. On July 1, 2014, the TJPA Executive Director executed Amendment No. 1 to the Agreement with the Contractor to revise Appendix B, Calculation of Charges.

E. On July 9, 2015, the TJPA Board authorized the Executive Director to execute Amendment No. 2 to the Agreement with the Contractor to revise Article 5, Compensation, increasing the not-to-exceed amount to \$45,980,000.

F. On September 10, 2015, the TJPA Board authorized the Executive Director to execute Amendment No. 3 to the Agreement with the Contractor to revise Article 5, Compensation, increasing the not-to-exceed amount to \$57,180,000.

G. On June 9, 2016, the TJPA Board of Directors authorized Amendment No. 4 to the Agreement which (1) increased the contract amount by \$15,320,000, for a total fixed fee of \$72,500,000, (2) extended the contract by two years to June 30, 2018, and (3) reduced the fee percentage charged beyond June 30, 2016 from 9% to 7%.

H. On April 12, 2018, the TJPA Board of Directors authorized Amendment No. 5 to the Agreement which (1) increased the contract amount by \$2,500,000, for a total fixed fee of \$75,000,000, and (2) extended the contract by one year until June 30, 2019.

I. On February 14, 2019, the TJPA Board of Directors authorized Amendment No. 6 to the Agreement which (1) increased the contract amount by \$3,000,000, for a total fixed fee of \$78,000,000, and (2) extended the contract by one year until June 30, 2020.

J. On June 28, 2019, the TJPA authorized Amendment No. 7 to the Agreement which increased the contract amount by \$3,000,000, for a total fixed fee of \$81,000,000

K. On January 15, 2020, the TJPA authorized Amendment No.8 to the Agreement which increased the contract amount by \$500,000, for a total fixed fee of \$81,500,000

L. The TJPA and Contractor now desire to further amend the Agreement. The section of the Agreement that is to be amended by this Amendment No. 9 is Article 5, Compensation.

Terms and Conditions

Now, therefore, the TJPA and the Contractor agree to amend the following sections of the Agreement to read as follows (*changes are in strikethrough and italics*):

Article 5. Compensation

The Contractor shall perform all services for the Construction Management Oversight of the Project for a Fixed Fee of *Eighty-three million, five-hundred thousand dollars and zero cents (\$83,500,000.00)* ~~Eighty one million, five hundred thousand and zero cents (\$81,500,000)~~ for the period ending June 30, 2020. The specific scope of work through June 30, 2020 will fund contract support services related to LPI’s lab testing and report efforts regarding the girder repair mitigation, and also Parcel F Quality Assurance and Constructability support necessary for the developer’s proposed tower construction, pedestrian bridge and vent relocation.

All other provisions of the Agreement shall remain in full force and effect.

TRANSBAY JOINT POWERS AUTHORITY

TURNER CONSTRUCTION COMPANY

By: Ronald Alameida
Title: Director of Design & Construction
for the Transbay Transit Center,
SF Public Works

By: Lisa A. Ballantyne
Title: Vice President, General Manager
Turner Construction Company
300 Frank H. Ogawa Plaza, Suite 510
Oakland, CA 94612

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

Secretary, TJPA Board

Approved as to Form by:

_____TJPA Legal Counsel