

**THIS STAFF REPORT COVERS CALENDAR ITEM NO.: 9  
FOR THE MEETING OF: October 8, 2009**

**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 convert the Contractor's Fee from a mark-up on direct costs to a fixed fee and other related changes.

**SUMMARY:**

- On March 12, 2009, the TJPA Board approved the award of the CM/GC contract, to Webcor/Obayashi, J.V. Under the contract, Webcor/Obayashi would bid, direct, and coordinate the construction of the phase I elements of the Transit Center. Webcor/Obayashi's compensation for this work would be 7.81% of the cost of the competitively bid subcontractor trade packages. The contract assumed a Phase I construction value of between \$500,000,000 and \$600,000,000. Contract Modification #1 added an enforceable SBE goal to the contract. Contract Modification #2 added scope and budget for shoring wall and buttress testing to be performed by Webcor/Obayashi under pre-construction services. Contract Modification #3 extended the period of time that TJPA has to request the payment and performance bonds required by the contract, from 120 days to 240 days after contract award.
- On October 15, 2008, the TJPA applied for a loan through the Transportation Infrastructure Finance and Innovation Act (TIFIA) program administered by the U.S. Department of Transportation (USDOT).
- In the process of reviewing the TJPA's application TIFIA inquired about the structure of the CM/GC contract and indicated that the TJPA would need to make certain amendments to the contract for the costs under the CM/GC contract to be eligible for federal reimbursement.
- On September 17, 2009, the USDOT TIFIA Credit Council recommended approval of the TJPA's Phase I loan application in the amount of \$171 million. In order to make the CM/GC contract eligible for reimbursement from the TIFIA loan or other federal transportation funding programs, the CM/GC contract must be restructured to conform to federal requirements.
- To ensure that construction costs associated with the CM/GC contract are eligible for federal transportation program funding, TJPA staff has negotiated a contract modification with Webcor/Obayashi to convert the CM/GC contract from a markup on sub-contractor costs to a fixed fee of \$39,050,000 to be billed at a rate of 7.81% of the construction costs. This change will not alter the cost of constructing the Transit Center, the CM/GC's responsibilities, or the TJPA's liabilities under the contract.

- By making this contract modification now, the TIFIA loan agreement and related documents will not require an exclusion of the CM/GC contract as an eligible project cost.

**EXPLANATION:**

In our application for a TIFIA loan, the TJPA compiled extensive documentation for review by USDOT's TIFIA Joint Programs Office including copies of the Architect and CM/GC contracts, cost estimates and risk analysis that underlay the Phase I baseline budget and funding plan, and numerous other items. Over a period of eleven months, the TJPA responded to questions from the TIFIA staff on our application, project scope and management procedures.

In August 2009, the USDOT inquired about the structure of the contract between the TJPA and Webcor/Obayashi. Specifically, they indicated that the markup on subcontractor costs constituted a "cost-plus percentage of cost" contract, a form of contract precluded under Federal Transportation Administration (FTA) procurement guidelines, FTA Circular 4220.1F.

TJPA maintained that the CM/GC Agreement was not structured as a cost-plus-percentage of cost contract. Although the CM/GC compensation would be based on a markup on the actual Trade Subcontracts, both the rate of the markup and the underlying subcontractor trade work would be competitively bid. This structure, plus various safeguard provisions in the Agreement would distinguish the original agreement from the prohibited "cost plus percentage of cost" contract. TJPA contended that the CM/GC Agreement, with specific provisions protecting against inflated fees and costs, met the intent and spirit of the FTA procurement guidelines.

Nonetheless, in order to ensure that the Webcor/Obayashi contract costs for \$500 - \$600 Million would be considered eligible for reimbursement by the TIFIA loan and other federal transportation assistance programs, we agreed to modify the contract with Webcor/Obayashi. After drafting proposed amendments and reviewing them with USDOT staff and counsel, we initiated negotiations with Webcor/Obayashi to bring their contract into compliance with FTA contracting requirements. Webcor/Obayashi has agreed to the proposed contract amendment.

Under the proposed amendment, the mark-up of 7.81% on an anticipated construction value of \$500,000,000 will be converted to an equivalent fixed fee of \$39,050,000 and other related modifications.

**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, to change the Contractor's Fee from a mark-up on subcontractor services to a fixed fee and other related changes.

**ENCLOSURE:**

1. Resolution
2. Contract Amendment

**TRANSBAY JOINT POWERS AUTHORITY  
BOARD OF DIRECTORS**

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

WHEREAS, On January 17, 2008, the Transbay Joint Powers Authority (TJPA) Board adopted Resolution No. 08-002 approving the use of Integrated Project Delivery for the Phase I Construction of the Transbay Transit Center and authorizing the Executive Director to issue a Request for Qualifications for a Construction Manager/General Contractor (CM/GC); 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, which is part of the Transbay Transit Center Program; and

WHEREAS, The CM/GC will perform construction services consistent with those of a general contractor to coordinate, bid, and manage all construction work through subcontractors and provide construction administration and management services for the Phase I construction of the Transbay Transit Center; and

WHEREAS, On February 12, 2009, TJPA received and opened publicly three competitive Cost Proposals; and

WHEREAS, TJPA determined that the joint venture of Webcor Builders and Obayashi Corporation (Webcor/Obayashi) was the responsible bidder submitting the lowest responsive bid; 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, CM/GC Services for the Construction of the Transbay Transit Center Building and Related Structures, Phase I, to Webcor/Obayashi; and

WHEREAS, Federal transportation program assistance in the form of grants and loans is an essential element of the Phase I funding plan; and

WHEREAS, The lowest cost debt financing available to the TJPA is provided under the Transportation Infrastructure Finance and Innovation Act (TIFIA) administered by the United States Department of Transportation; and

WHEREAS, Certain modifications to the CM/GC contract with Webcor/Obayashi are needed to make costs of the contract eligible for reimbursement under federal transportation assistance programs; and

WHEREAS, The TJPA has drafted and reviewed proposed modifications with the USDOT and negotiated with Webcor/Obayashi to implement these modifications; now, therefore, be it,

RESOLVED, That the TJPA Board of Directors authorizes amending Contract No. 08-04-CMGC-000, 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, to convert the CM/GC Markup on subcontractor services to a Fixed Fee of \$39,050,000 and other related changes.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of October 8, 2009.

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

**AGREEMENT**  
**AMENDMENT NO. 04**  
**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. 04, the TJPA and the CM/GC hereby modify the Agreement dated March 17, 2009 (the "Agreement"), only to the extent expressly provided in this Amendment No. 04. 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.** The Federal Transit Administration ("FTA") has required certain changes to the Agreement to secure Federal funds for the Project. This Amendment incorporates the changes necessary to comply with FTA requirements and other modifications necessary to accommodate such changes and to retain clarity and consistency.

**Terms and Conditions**

**1. Modifications to Agreement (Section 00 05 20).** The parties acknowledge and agree that the Agreement (Contract Section 00 05 20), at paragraphs 2.05, 2.06, 2.07, 5.01, 5.04, 6.01, and 6.02, is hereby modified to provide as follows. For purposes of convenience, the changes to the original language are indicated by redline strikeout (deletions) or underline (additions), in the attached document (Exhibit A), which is incorporated here by reference as if set forth in full.

**2.05** Trade Subcontractors – Trade Work Packages. The CM/GC, in consultation with the Architect and the TJPA, shall prepare a Trade Work Package plan outlining the logical, seamless, and distinct Trade Work Packages for all scopes of work. The Trade Work Package plan shall at a minimum present the number of packages, a description of the scope of work for each package, the sequence and schedule for procurement, the Architect's Estimate for each Trade Work package, and an outreach plan. The Trade Work Package plan shall be subject to the TJPA's written approval. The CM/GC shall be responsible for the cost of any scope of Work which the CM/GC neglects or fails to include in the Trade Work Packages; the CM/GC, however, may apply CM/GC Contingency funds to such costs (see Article 6 below).

The CM/GC shall develop and manage the master Project CPM schedule for inclusion in every Trade Work Package and shall develop and include in the Trade Work Package that portion or subset of the master Project schedule that applies to that trade.

The CM/GC shall include the TJPA's standard Contract Documents and General Conditions in the Trade Packages, and will consult with the TJPA to incorporate applicable Federal Transit Administration (FTA) requirements into the Trade Packages. The CM/GC shall develop Supplementary General Conditions (with

the TJPA's participation and approval) that address the trade subcontracts, schedule for trade subcontracts, and the responsibilities of all parties under the CM/GC with the agreed-upon procurement method. Awarded trade subcontracts shall not include any CM/GC construction contingency, allowances, or other items which are included in the CM/GC Fee (see Article 5 below). Only those Administrative Code provisions and those Contract provisions between the TJPA and the CM/GC that normally apply to San Francisco public work subcontracts will apply to the Trade Work Package subcontracts. Under no circumstances shall the terms of any subcontract provide for payment on a cost-plus-percentage-of-cost basis or any other basis prohibited under Federal law, as set forth in 49 CFR Part 18.

In conducting procurement and award of Trade Work subcontracts, the CM/GC shall follow the applicable procurement requirements and procedures set forth in local, State, and Federal law and guidelines. The Federal procurement rules and guidelines are set forth in Federal Transit Administration Circular 4220.1F, the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, in the FTA Best Practices Procurement Manual, and at 49 CFR Part 18 and Part 26. The CM/GC shall assure that the procurement of subcontractors shall be without regard to race, gender, religion, affiliation, or sexual orientation.

The TJPA will modify the CM/GC's Contract by adding to it the awarded Trade Work Packages, thereby increasing the CM/GC's scope of work and the value of the Contract up to the Contract Sum.

**2.06** Trade Subcontractors – Competitive Procurement. Except under limited circumstances as provided below, the CM/GC shall assure full and open competition for the procurement of all Trade Subcontractors. In doing so, the CM/GC shall follow a two-step process: (1) pre-qualification and (2) competitive bid.

1. **Pre-Qualification of Trade Subcontractors:** The CM/GC and the TJPA will jointly develop pre-qualification standards for all trade contracts. The CM/GC will issue RFQs and evaluate responses to establish a pool of no fewer than three pre-qualified trade subcontractors for each trade package, subject to the approval of the TJPA. Only pre-qualified Trade Subcontractors will be allowed to bid, provided that the CM/GC does not preclude potential bidders from qualifying during the solicitation period. The TJPA, with the assistance of the CM/GC, will resolve any protests or disputes relating to the pre-qualification process.
2. **Trade Subcontractor Bid Packages:** The CM/GC will receive sealed bids from pre-qualified Trade Subcontractors, including any bidder who qualifies during the solicitation period. The CM/GC shall require a 5% bid security in conformance with 18 CFR 18.36(h)(1). Representatives from the TJPA will be present to receive the bids to ensure a fair and equitable process. The CM/GC will consult the TJPA before rejecting any bids.

The determination as to whether a Trade Package subcontract will be awarded, rebid, or rescope/repackaged, shall be made with reference to the independent cost estimate issued by the Architect. If awarded, the CM/GC will award a Trade Work Package subcontract to the responsible bidder submitting the lowest responsive bid, except in those limited instances as provided in Article 2.07, below.

**2.07** Trade Subcontractors – Alternate Procurement Procedures. The CM/GC, with the approval of the TJPA, may select and utilize a procurement procedure other than competitive low bid for specified Trade Work Packages. Any alternate procurement procedures must conform to the standards, limited circumstances, and requirements of 49 CFR 18.36, as may be amended from time to time, and Federal Transit Administration Circular 4220.1F, as may be amended or revised from time to time. The following procurement procedures are acceptable, subject to the prior approval of the TJPA which shall not be unreasonably withheld provided that the CM/GC establishes the criteria under law:

1. Small purchase procedures (49 CFR 18.36(d)(1));
2. Competitive proposals, including value-based selection/competitive negotiation (49 CFR 18.36(d)(3));
3. Noncompetitive (sole source) proposals (49 CFR 18.36(d)(4));

For each subcontract to be awarded under this paragraph, the CM/GC, in consultation with the TJPA, shall perform a cost or price analysis to determine the reasonableness of the proposed subcontract price with reference to the Architect's Estimate for such Trade Work.

**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 Dollars and No Cents (\$600,000,000.00). 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 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 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 45,000 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 45,000 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 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. Refer to Attachment 1 to this AGREEMENT for categories of Work included under Direct Costs.
2. The CM/GC Fee will be a Fixed Fee of \$39,050,000. 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 paragraph. 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 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 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 Fee (see Attachment 1 to this AGREEMENT) and will not include any of this Work in any of the Trade Packages.

3. 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), so long as the Direct Costs in excess of \$500,000,000 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.
- 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, such 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 TJPA shall not be responsible for any CM/GC Fee on any bond premium costs. For any Phase II Performance and Payment Bonds, the TJPA shall reimburse the CM/GC its actual costs as a Reimbursable Expense.

#### **5.04** Prompt Payment to Trade Subcontractors.

- A. Requirement. The CM/GC shall comply with the prompt payment to subcontractors requirements set forth in 49 CFR Section 26.29 and with all provisions of State law relating to the payment of subcontractors.
- B. Payment for Satisfactory Work. The CM/GC shall make payment to each Trade Subcontractor for satisfactory performance of its subcontract no later than thirty (30) days after receipt of payment from the TJPA.
- C. Payment of Retainage. The CM/GC shall make full payment to each Trade Subcontractor, within thirty (30) days after the subcontractor's Work is satisfactorily completed, of all retainage withheld by the CM/GC pursuant to the relevant subcontract. Accordingly, the TJPA shall pay to the CM/GC the incremental retainage held under the Contract General Conditions (Section 00 07 00), Article 9, for the Work of such Trade Subcontractor upon certification by the CM/GC as to the retainage amount. (49 CFR 26.29(b)(3).)
- D. Reduced retainage. If the TJPA reduces retainage under the Contract Documents (see General Conditions Section 00 07 00, ¶9.03), the CM/GC must proportionately reduce retainage for its Trade Subcontractors.

**6.01** The TJPA Project budget includes a CM/GC Contingency equal to four percent (4%) of the Direct Costs of the Work, an amount which shall not exceed \$20,000,000. In the event that TJPA approves Direct Costs in excess of \$500,000,000 (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 07 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.

**2. Modifications to Contract General Conditions (Section 00 07 00).** The parties acknowledge and agree that the General Conditions (Contract Section 00 07 00), at paragraphs 1.03 and 3.01, is hereby modified to provide as follows.

Paragraph 1.03 is amended only for the purposes of adding a new subparagraph L:

**1.03 MEANING AND INTENT OF CONTRACT DOCUMENTS**

- L. An item of Work shall be deemed reasonably inferable from the Contract Documents if it is a required component of a specific assembly. Such assembly must be indicated in the plans and/or specifications with sufficient detail to determine quantities and be necessary for the proper execution and completion of the Work.

Paragraph 3.01 is amended only for the purpose of added subparagraph D:

**3.01 GENERAL RESPONSIBILITIES**

- D. Review of Contract Documents. The CM/GC will be acting as a knowledgeable and experienced contractor in carrying out its responsibilities under the Contract Documents. The TJPA acknowledges and agrees that except with respect to any portions of the Work to be provided on a design-build basis, the CM/GC is not acting, and does not purport to act, as a design professional. Except with respect to those portions of the Work to be provided on a design-build basis, the

CM/GC is not required to ascertain that the plans and specifications are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. The CM/GC, however, shall promptly report to the TJPA any nonconformity discovered or made known (or which reasonably should have been known). When the CM/GC provides portions of the work on a design-build basis, the Architect shall be responsible for the final coordination of the CM/GC's design work with the Architect's plans and specifications.

IN WITNESS WHEREOF, the parties hereto have executed this contract Amendment No. 04 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

\_\_\_\_\_  
Address

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

\_\_\_\_\_  
City, State, ZIP

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Webcor/Obayashi, Joint Venture  
Company Name

\_\_\_\_\_  
Federal Employer ID Number