

**THIS STAFF REPORT COVERS CALENDAR ITEM NO.: 9
FOR THE MEETING OF: March 12, 2009**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to execute Amendment No. 1 to the professional services agreement between the Transbay Joint Powers Authority and Nancy Whelan Consulting, exercising the option to extend the term of the agreement for two years and increase the total compensation by the option price of \$1,602,812.

SUMMARY:

On October 27, 2006, following a competitive procurement process, the TJPA Board authorized the Executive Director to award a contract to Nancy Whelan Consulting (NWC) to provide financial consulting services for the Transbay Transit Center Program. The agreement was for a maximum of \$1,800,000 and for a term not to exceed three years, with the option to extend the term for two additional years by mutual agreement of the parties.

Nancy Whelan Consulting, as both NWC and as part of the joint venture Transbay Financial Consultants, has been providing services to the TJPA since 2001. Services provided by the firm have been instrumental in securing full funding for Phase 1 of the Transbay Transit Center Program. NWC scope of work includes: managing the grant application and reporting processes, monitoring Program cash flow and budget requirements, preparing annual budgets with TJPA staff, legislative and governmental liaison and support services, and TIFIA loan application and support.

The option years were priced during negotiations of the original contract and reflect annual escalation of 5 percent. The pricing was further refined in subsequent recent negotiations. Extending the contract for two years will increase the compensation by \$1,602,812, for a total maximum compensation of \$3,402,812. All other provisions of the agreement will remain the same. Staff recommends that Nancy Whelan Consulting continue to provide these financial consulting services for the two additional option years.

RECOMMENDATION:

Staff recommends that the Board authorize the Executive Director to execute Amendment No. 1 to the agreement with Nancy Whelan Consulting, exercising the option to extend the term of the agreement for two years and increase the total compensation by the option price of \$1,602,812.

ENCLOSURES:

1. Resolution
2. Amendment No. 1 to Agreement

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, On October 27, 2006, in Resolution No. 06-030, The Transbay Joint Powers Authority (TJPA) Board of Directors resolved to authorize the Executive Director to execute a professional services agreement with Nancy Whelan Consulting for financial consulting services for a three-year term and a maximum compensation of \$1,800,000, with the option to extend the agreement for two years; and

WHEREAS, Nancy Whelan Consulting has been providing excellent and instrumental services to the TJPA; and

WHEREAS, The option years were priced prior to the award of the original contract and pricing was subsequently refined in recent negotiations; and

WHEREAS, TJPA Staff desires to extend the term and compensation of the agreement for an additional two years at a cost of \$1,602,812; and

WHEREAS, Such change to the term and compensation requires an amendment to the agreement, but does not change the scope or deliverables under the agreement; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute Amendment No. 1 to the agreement for financial consulting services with Nancy Whelan Consulting to modify the Agreement to extend the term for an additional two years and increase the maximum compensation by the option price of \$1,602,812 for a total maximum compensation of \$3,402,812.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of March 12, 2009.

Secretary, Transbay Joint Powers Authority

Amendment No. 01
Professional Services Agreement between
the Transbay Joint Powers Authority and Nancy Whelan Consulting

THIS Amendment No. 1 to the Professional Services Agreement to furnish financial consulting services dated October 27, 2006 ("Agreement") is entered into as of the ____ day of March, 2009 in San Francisco, California, by and between **Nancy Whelan Consulting** ("Contractor"), and the **Transbay Joint Powers Authority** ("TJPA").

The Agreement is for a three-year term and a maximum compensation of \$1,800,000, with an option to extend the term for up to two additional years. Option year pricing was provided during negotiations and has been further refined. The TJPA and Contractor hereby agree to amend the term of the Agreement for two (2) additional years, and to amend the maximum compensation amount of the Agreement under the extended term to \$3,402,812. This Amendment No. 1 does not change the scope or deliverables under the Agreement. In particular, the parties make the following two amendments to the Agreement:

The TJPA and Contractor agree to amend Section 2 and Section 5 of the Agreement in their entirety to read as follows:

2. Term of the Agreement. Subject to Section 1, the term of this Agreement shall not exceed five (5) years from the Effective Date of the Agreement, October 31, 2006.

5. Compensation. All work under this Agreement shall be compensated on an hourly basis, subject to any maximum price set forth in a particular NTP. In no event shall the total compensation under this Agreement exceed \$3,402,812. The breakdown of Contractor's hourly rates appears in Appendix B, "Compensation for Services," attached hereto and incorporated by reference as though fully set forth herein.

Hourly rates are subject to cost of living adjustments on January 1 of each year in which this Agreement is in effect according to any increase or decrease in the Consumer Price Index (CPI) as published by the United States Department of Labor, Bureau of Labor Statistics since January 1 of the previous year. The CPI applicable this contract is All Urban consumers, San Francisco-Oakland-San Jose, California. In addition, each January 1, such hourly rates shall be subject to negotiated increases. The negotiation process will begin in October of each preceding year. Negotiated increases in hourly rates shall remain in effect for the remainder of the Agreement unless renegotiated. Requests for adjustments to rates require a written request along with sufficient justification. Justification may include elevations in job classification, demonstrated increase in management and technical expertise, performance based increases, or increases in the fair market value of the services.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from the Contractor and approved by the Executive Director as being in accordance with this Agreement. TJPA may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall TJPA be liable for interest or late charges for any late payments.

The TJPA and Contractor also agree to amend Appendix B, "Compensation for Services", in the form attached hereto. All other provisions of the Agreement shall remain in full force and effect.

**TRANSBAY JOINT POWERS
AUTHORITY**

CONTRACTOR
Nancy Whelan Consulting

Maria Ayerdi-Kaplan
Executive Director

Signature

Printed Name

Tax Identification Number

**APPENDIX B
COMPENSATION FOR SERVICES**

Contractor: Nancy Whelan Consulting			
Costs for the fourth year of service			
Detail Description of Cost Elements			
1. Direct Labor	Estimated Hrs	Rate/Hour	Estimated Cost
Principal	1200	\$102.13	\$122,556
Senior Associate 1	660	\$78.80	\$52,008
Senior Associate 2	780	\$67.93	\$52,985
Associate	600	\$49.50	\$29,700
Analyst	600	\$40.50	\$24,300
Total Direct Labor	3,840		\$281,549
2. Labor Overhead	O.H. Rate	x Base =	Estimated Cost
Principal	.80	\$122,556	\$98,045
Senior Associate 1	.80	\$52,008	\$41,606
Senior Associate 2	.80	\$52,985	\$42,388
Associate	.80	\$29,700	\$23,760
Analyst	.80	\$24,300	\$19,440
Total Labor Overhead			\$225,240
	Total Direct Labor and OH		\$506,789
3. Fixed Fee	.10		\$50,679
4. Other Direct Costs			\$5,000
5. Subconsultants			\$200,000
6. Total			\$762,468
Costs for the fifth year of service			
Detail Description of Cost Elements			
1. Direct Labor	Estimated Hrs	Rate/Hour	Estimated Cost
Principal	1200	\$112.60	\$135,120
Senior Associate 1	660	\$86.87	\$57,334
Senior Associate 2	780	\$74.89	\$58,414
Associate	600	\$54.57	\$32,742
Analyst	600	\$44.65	\$26,790
Total Direct Labor	3,840		\$310,400
2. Labor Overhead	O.H. Rate	x Base =	Estimated Cost
Principal	.80	\$135,120	\$108,096
Senior Associate 1	.80	\$57,334	\$45,867
Senior Associate 2	.80	\$58,414	\$46,731
Associate	.80	\$32,742	\$26,194
Analyst	.80	\$26,790	\$21,432
Total Labor Overhead			\$248,320
	Total Direct Labor and OH		\$558,720
3. Fixed Fee	.10		\$55,872
4. Other Direct Costs			\$5,250
5. Subconsultants			\$220,502
6. Total			\$840,344
	Two Year Total		\$1,602,812

Subconsultant Firms	Estimated Amount Year 1	Estimated Amount Year 2	Total
Northcross, Hill & Ach, Inc.	\$75,000	\$82,688	\$157,688
Robert L. Kuo Consulting	\$15,000	\$16,538	\$31,538
Gray-Bowen	\$25,000	\$27,563	\$52,563
Thompson Coburn	\$85,000	\$93,713	\$178,713
Total	\$200,000	\$220,502	\$420,502