

THIS STAFF REPORT COVERS CALENDAR ITEM NO.: 7.2
FOR THE MEETING OF: December 10, 2009

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to execute Amendment No. 2 to the professional services agreement between the Transbay Joint Powers Authority and Macias, Gini & O'Connell, LLP, exercising the option to extend the term of the agreement for one year and increase the total compensation not to exceed \$270,000.

SUMMARY:

On January 18, 2007, following a competitive procurement process, the TJPA Board authorized the Executive Director to award a contract to Macias, Gini & O'Connell, a certified public accounting firm, to provide independent auditing services for the Transbay Transit Center Program. The agreement was for a maximum of \$154,269 and for a term not to exceed three years, with the option to extend the term for two additional years (for a total maximum of \$270,000 for the entire five-year period) by mutual agreement of the parties. Last year, in October of 2008, the TJPA Board authorized exercising one of the option years and the contract compensation was increased by the option price of \$56,344.

Macias, Gini & O'Connell has completed four fiscal year audits for the TJPA. Fred Clarke, TJPA Chief Financial Officer, and TJPA financial staff thus recommend that Macias, Gini & O'Connell continue to provide independent auditing services through the Fiscal Year 2010 audit, after which a request for proposals for future auditing services will be issued.

The option years were priced in the original agreement. Extending the contract for the final fiscal year audit will increase the compensation to a total maximum compensation not to exceed \$270,000. All other provisions of the agreement will remain the same.

RECOMMENDATION:

Staff recommends that the Board authorize the Executive Director to execute Amendment No. 2 to the agreement with Macias, Gini & O'Connell, LLP, exercising the option to extend the term of the agreement for one year and increase the total compensation not to exceed \$270,000.

ENCLOSURES:

1. Resolution
2. Amendment No. 2 to Agreement

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, On January 18, 2007, in Resolution No. 07-004, the Transbay Joint Powers Authority (TJPA) Board of Directors resolved to authorize the Executive Director to execute a professional services agreement (Agreement) with Macias, Gini & O'Connell, LLP (MGO), for independent auditing services for a three-year term and a maximum compensation of \$154,269, with the option to extend the agreement for two years and accordingly increase the maximum compensation by the option prices in the agreement; and

WHEREAS, On October 17, 2008, in Resolution No. 08-037, the TJPA Board resolved to authorize the Executive Director to approve Amendment No. 1 to the Agreement with MGO, extending the term for an additional year and increasing the maximum compensation to \$210,613; and

WHEREAS, Macias, Gini & O'Connell has completed four fiscal year audits for the TJPA and their services have been provided in a satisfactory manner; and

WHEREAS, The TJPA Chief Financial Officer and staff desire to extend the term of the Agreement for an additional fiscal year audit and increase the compensation of the Agreement not to exceed \$270,000, as provided for in the original Agreement; 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. 2 to the Agreement for independent auditing services with Macias, Gini & O'Connell, LLP, to modify the Agreement to extend the term for an additional year and increase the maximum compensation not to exceed \$270,000.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of December 10, 2009.

Secretary, Transbay Joint Powers Authority

Amendment No. 02
Professional Services Agreement between
the Transbay Joint Powers Authority and Macias Gini & O'Connell LLP

THIS Amendment No. 1 to the Professional Services Agreement to furnish independent auditing services dated January 18, 2007 ("Agreement") is entered into as of the _____ day of December, 2009 in San Francisco, California, by and between **Macias Gini & O'Connell LLP** ("Contractor"), and the **Transbay Joint Powers Authority** ("TJPA").

The Agreement is for a three-year term and a maximum compensation of \$154,269, with an option to extend the term for up to two additional years for a maximum compensation of \$270,000. The TJPA and Contractor previously extended the term by one year and increased the compensation by \$56,344. The TJPA and Contractor hereby agree to amend the term of the Agreement for one (1) additional year, and to amend the maximum compensation amount of the Agreement under the one-year extended term to \$270,000. This Amendment No. 1 does not change the scope or deliverables under the Agreement and does not change the maximum compensation of \$270,000 under the optional five-year term. 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, January 22, 2007.

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; provided, however, that the total compensation under this Agreement shall not exceed \$270,000 (the "Maximum Amount"). 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 to remain fixed during the entire term of the Agreement, including any option periods, except for reasonable cost of living increases.

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.

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

**TRANSBAY JOINT POWERS
AUTHORITY**

Maria Ayerdi-Kaplan
Executive Director

CONTRACTOR
Macias Gini & O'Connell LLP

David Bullock
Signature
David Bullock
Printed Name
68 - 0300457
Tax Identification Number