

**THIS STAFF REPORT COVERS CALENDAR ITEM NO.: 7.2
FOR THE MEETING OF: October 17, 2008**

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 Macias, Gini & O'Connell, LLP, exercising the option to extend the term of the agreement for one year and increase the total compensation by the option price of \$56,344.

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.

Macias, Gini & O'Connell has completed two fiscal year audits for the TJPA and is currently working with the TJPA in the audit of Fiscal Year 2008. The contract budget was priced by fiscal year audit; thus the contract will be completed following completion of the FY08 audit.

The TJPA is currently implementing a new financial system and TJPA CFO Fred Clarke has noted that changing auditors during or following the implementation of a new system is difficult. Mr. Clarke and TJPA financial staff thus recommend that Macias, Gini & O'Connell continue to provide independent auditing services through Fiscal Year 2009.

The option years were priced in the original agreement, and extending the contract for one fiscal year will increase the compensation by \$56,344, for a total maximum compensation of \$210,613. All other provisions of the agreement will remain the same.

RECOMMENDATION:

Staff recommends that the Board authorize the Executive Director to execute Amendment No. 1 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 by the option price of \$56,344.

ENCLOSURES:

1. Resolution
2. Amendment No. 1 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 unanimously resolved to authorize the Executive Director to execute a professional services agreement with Macias, Gini & O'Connell, LLP, 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, Macias, Gini & O'Connell has completed two fiscal year audits for the TJPA and is currently working with the TJPA on the audit of Fiscal Year 2008, the final year under the currently approved contract budget; and

WHEREAS, The TJPA Chief Financial Officer and staff desire to extend the term and compensation of the agreement for an additional fiscal year audit at a cost of \$56,344; 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 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 by the option price of \$56,344 for a total maximum compensation of \$210,613.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of October 17, 2008.

Secretary, Transbay Joint Powers Authority

Amendment No. 01
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 October, 2008 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 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 \$210,613. 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 four (4) years from the Effective Date of the Agreement, January 22, 2007; provided (i) TJPA shall have the right to extend this Agreement for one (1) additional year by providing to Contractor written notice of such extension on or before the expiration of this Agreement, as extended by this Amendment No. 1, (ii) any such extension shall be subject to and conditioned upon the written agreement of Contractor and the approval of such extension by resolution adopted by the TJPA's Board of Directors, and (iii) if this Agreement is so extended, the Maximum Amount (as defined in Section 5) shall be changed to be \$270,000.

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 \$210,613 (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. Authority 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 Authority 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

Signature

Printed Name

Tax Identification Number