

**THIS STAFF REPORT COVERS CALENDAR ITEM NO.: 7.3
FOR THE MEETING OF: October 17, 2008**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Approving Amendment #1 to Intergovernmental Agreement #2 between the Transbay Joint Powers Authority (TJPA) and the City and County of San Francisco, Department of Public Works (DPW), providing that DPW will reimburse TJPA for street resurfacing work on Folsom Street between Main and First streets. The aggregate amount of DPW's reimbursement of street resurfacing shall not exceed \$400,000. The work must be completed and DPW must make the reimbursement within two (2) years.

REPORT:

Under Intergovernmental Agreement #2, approved by the Board on January 17, 2008, DPW is providing professional engineering, survey and mapping services to the TJPA to facilitate the design and review of various aspects of the Temporary Terminal Project (Project). Among other things, DPW is providing the TJPA engineering and construction support services towards the resurfacing of certain streets surrounding the Temporary Terminal (Howard, Main, Folsom and Beale).

Folsom Street between Main and First streets was programmed for resurfacing in the DPW 5-Year Paving Plan.

In order to achieve TJPA's and DPW's goals and to reduce administrative and overhead costs, TJPA and DPW propose that the TJPA perform and oversee the resurfacing work, but that TJPA and DPW apportion the costs of the resurfacing work. In particular, the TJPA would fund the resurfacing of Howard, Main and Beale streets, and DPW would fund the resurfacing of Folsom Street between Main and First streets.

The TJPA would bill DPW for the resurfacing of Folsom Street between Main and First streets on a cost reimbursable basis. The aggregate amount of DPW's payments for the resurfacing of Folsom Street would not exceed \$400,000 (four hundred thousand dollars). The resurfacing work must be completed and DPW must reimburse TJPA for the work within two years.

The staff has negotiated an Amendment #1 to Intergovernmental Agreement #2 with DPW, and DPW has signed the proposed amendment.

RECOMMENDATION:

The staff recommends that the Board authorize the Executive Director to execute the Amendment #1 to Intergovernmental Agreement #2 in the form attached to this report.

ATTACHMENTS:

1. Resolution
2. Amendment #1 to Intergovernmental Agreement #2

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The Transbay Joint Powers Authority (TJPA) requires the resurfacing of Folsom, Main, Howard and Beale streets around the Temporary Terminal for the Transbay Transit Center Program; and

WHEREAS, The City and County of San Francisco, Department of Public Works (DPW) is responsible for roadway resurfacing design and maintenance within the City and County of San Francisco, and DPW programmed Folsom Street between Main and First streets for resurfacing in its 5-Year Paving Plan; and

WHEREAS, The TJPA and DPW have entered into an Intergovernmental Agreement #2 for professional engineering, survey and mapping services; and

WHEREAS, Under Intergovernmental Agreement #2, DPW has provided final design drawings and specifications for the resurfacing of Folsom, Main, Howard and Beale streets; and

WHEREAS, The TJPA has requested and received bids for the Temporary Terminal, including the resurfacing of Folsom, Main, Howard, and Beale streets, consistent with DPW's drawings and specifications; and

WHEREAS, Staff for TJPA and DPW recommend that it would achieve both agencies' goals and reduce administrative and overhead costs if the TJPA performs and oversees the street resurfacing work and the TJPA and DPW apportion the cost of the resurfacing work; and

WHEREAS, Staff for TJPA and DPW recommend that it would be equitable for the TJPA to fund the resurfacing of Howard, Main and Beale streets and DPW to reimburse TJPA for the resurfacing of Folsom Street between Main and First streets; and

WHEREAS, In order for DPW to take advantage of available funding, the resurfacing of Folsom Street must be completed and DPW must make the reimbursement payment within two years; and

WHEREAS, Staff has reviewed DPW's proposal and negotiated an Amendment #1 to the Intergovernmental Agreement #2 for Professional Engineering, Survey and Mapping Services; and

WHEREAS, Staff recommends that the Board approve the Amendment #1; now, therefore, be it

RESOLVED, That the Board authorizes the Executive Director to execute the Amendment #1 to Intergovernmental Agreement #2 with DPW, authorizing TJPA to provide the resurfacing services on Folsom Street between Main and First streets in exchange for a maximum reimbursement from DPW of \$400,000.

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 #1 TO INTERGOVERNMENTAL AGREEMENT #2
between
TRANSBAY JOINT POWERS AUTHORITY
and
CITY AND COUNTY OF SAN FRANCISCO, DEPARTMENT OF PUBLIC WORKS
for
Professional Engineering, Survey and Mapping Services
for the
Transbay Transit Center Program

This Amendment #1 to the Intergovernmental Agreement #2, IGA-08-005-DPW ("Amendment"), is entered into as of the _____ of October, 2008, by and between the Transbay Joint Powers Authority ("TJPA"), a joint powers authority, and the City and County of San Francisco, Department of Public Works ("DPW") (each individually a "Party" and, collectively, the "Parties").

RECITALS

THIS Amendment is entered into with reference to the following facts and circumstances:

- A. The Parties previously entered into that certain Intergovernmental Agreement IGA-08-005-DPW between the TJPA and DPW, as of the 17th day of January, 2008 ("Agreement"), which established the terms and conditions by which DPW would provide certain professional engineering, survey and mapping services to the TJPA.
- B. Exhibit A, Section A.3 of the Agreement describes the engineering and construction support services DPW would provide towards the resurfacing of certain streets surrounding the Temporary Terminal (Howard, Main, Folsom and Beale).
- C. The TJPA has requested and received bids for the Temporary Terminal, including the resurfacing of Howard, Main, Folsom and Beale streets. The bidding procedure and contract award for said resurfacing work is consistent with the competitive bidding requirements set forth in the San Francisco Municipal Code and applicable federal and state laws.
- D. The Parties intend that the TJPA will perform and oversee the resurfacing work, but that the Parties will apportion the costs of the street resurfacing, whereby the TJPA will fund the resurfacing of Howard, Main and Beale streets and DPW will fund the resurfacing of Folsom Street between Main and First streets, the location of which is shown in Exhibit A to this Amendment.
- E. The Parties desire to enter into this Amendment to provide for DPW reimbursement to the TJPA for the resurfacing of Folsom Street between Main and First streets.
- F. Section 11 of the Agreement provides that the Parties may amend or modify the Agreement by written agreement of both Parties.

NOW, THEREFORE, the Parties agree as follows:

AMENDMENT TO AGREEMENT

1. All capitalized terms set forth herein shall have the meaning as set forth in the Agreement, except for those terms that are expressly defined herein.

2. The service to be performed by the TJPA under this Amendment to the Agreement is the resurfacing of Folsom Street between Main and First streets ("Resurfacing Services"), as depicted in Exhibit A. The TJPA may perform the Resurfacing Services through a contractor and any subcontractors, selected at the TJPA's sole discretion, that may be awarded the contract for the Temporary Terminal. DPW shall not have the ability to direct how the Resurfacing Services are to be performed, specify the location where the Resurfacing Services are to be performed, or establish set hours or days for performance of the Resurfacing Services.

3. The TJPA shall complete the Resurfacing Services, and DPW shall compensate TJPA for the Resurfacing Services, within two (2) years from the Effective Date of this Amendment.

4. The TJPA agrees to adhere and be subject to the provisions of all applicable federal, state, and local laws.

5. The Parties agree that DPW shall reimburse the TJPA for the Resurfacing Services, subject to the following provisions. The TJPA's award of the contract for the Temporary Terminal shall be consistent with the competitive bidding requirements of the San Francisco Municipal Code. The TJPA will bill DPW on a cost reimbursable basis. The aggregate amount of DPW's payments for the Resurfacing Services shall not exceed \$400,000.00 (four hundred thousand dollars). Invoices should provide detail of the dates, hours worked, and classification of staff, and should include copies of contractor invoices, copies of certified payrolls, and other non-labor costs supporting the invoice. DPW shall make a good faith effort to reimburse the TJPA within forty-five (45) days following receipt of a proper invoice from the TJPA. DPW shall notify the TJPA in writing of any disputed amounts. The Parties shall negotiate any disputed amounts in good faith.

6. The TJPA agrees that it shall require contractors performing Resurfacing Services to conform to the uniform insurance requirements established by the Risk Manager for the City and County of San Francisco, including, but not limited to, adding the City and County of San Francisco as an additional insured to such policies. TJPA shall provide proof of such insurance prior to reimbursement for Resurfacing Services under this Amendment.

7. The TJPA agrees to maintain hard copies of all documents relating to expenditures and disbursements related to this Amendment for three (3) years from the date of DPW's final payment to the TJPA under this agreement.

8. The TJPA shall defend, indemnify and hold harmless DPW and its officers, directors, employees and agents from any and all claims and liabilities related to or as a result of the TJPA's performance of this Agreement to the extent caused by the negligence, recklessness, or willful misconduct, acts or omissions of the TJPA its employees or subcontractors. DPW shall indemnify and defend the TJPA and any of its employees performing services for DPW from all suits, actions, and legal proceedings against the TJPA resulting from the willful misconduct or negligent acts or omissions of DPW or of any employee acting in the employee's official

capacity as an officer of DPW. The Parties understand and agree that this provision is additive to, and is not intended to replace, the indemnity provisions in Section 16 of the Agreement.

9. No Other Modifications. Except for the provisions set forth in this Amendment, all other provisions of the Agreement remain unchanged and in full force and effect.

(Signature Block on Following Page)

IN WITNESS WHEREOF, the PARTIES hereto have caused this Amendment to be executed on the date(s) indicated by their respective officers duly authorized on their behalf.

TRANSBAY JOINT POWERS AUTHORITY

DATED: _____,
2008

By: _____
Maria Ayerdi-Kaplan, Executive Director

Resolution
No. Adopted: _____

By: _____
Attested by: Nila Gonzales, Secretary

DEPARTMENT OF PUBLIC WORKS

DATED: _____,
2008

By: _____
Edward D. Reiskin, Director

APPROVED AS TO FORM FOR TJPA

DATED: _____,
2008

By: _____
Deborah L. Keeth,
Shute, Mihaly & Weinberger LLP

APPROVED AS TO FORM FOR DPW

DATED: _____,
2008

BY: _____
Andrew W. Garth
Deputy City Attorney

Exhibit A

Map of Streets to be Resurfaced

