

**STAFF REPORT FOR CALENDAR ITEM NO.: 7.3
FOR THE MEETING OF: March 8, 2012**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Approve the Second Amendment to the Intergovernmental Agreement between the Transbay Joint Powers Authority (TJPA) and the San Francisco Planning Department (Department) to (1) require the Planning Department to complete the Transit Center District Plan (TCDP) EIR and the TCDP on a prescribed schedule that will result in a Planning Commission hearing to consider certification of the EIR and approval of the TCDP in May 2012; (2) increase the compensation to the Department by \$73,565 for preparation of the EIR and the TCDP conditioned on meeting the schedule for preparation of the TCDP and EIR; (3) extend the term of the Agreement to December 31, 2012; and (4) provide for regular monthly meetings between TJPA and the Department to cooperate in preparation of the EIR and the TCDP.

EXPLANATION:

In early 2006, the San Francisco Mayor's Interagency Working Group on the Transbay Terminal Program published its report proposing new financing sources for the Transbay Transit Center Program. The report recommended that the City and County of San Francisco adopt a Transbay Transit Center District Plan (TCDP) with the Transbay Transit Center Project as the focal point. The primary purpose of the TCDP was to create additional mechanisms for financing the Transbay Project. The report proposed the creation of a Mello-Roos Community Facilities District and the imposition of new development impact fees on commercial and residential development in the District, among others. The TCDP was also projected to provide the entitlements for the Transbay Transit Tower on Parcel T adjacent to the new Transit Center. The entitlements are necessary to sell Parcel T for development, producing revenue to the TJPA for construction of the new Transit Center.

On September 20, 2007, the TJPA and the Department entered into an Intergovernmental Agreement (Agreement) under which the TJPA agreed to fund the Department's work to develop a land-use and implementation plan for the TCDP and an Environmental Impact Report (EIR) for the TCDP. The primary purpose of the TCDP is to create additional mechanisms for financing the Transbay Transit Center Program (Program). The Department's land-use planning is expected to be used as the basis for an amendment to the City and County of San Francisco's General Plan. The City's adoption of the TCDP could result in significant benefits to the Program, including the provision of land-use analysis necessary to update the TJPA's funding projections and financial benefits from development in the Transbay District and of TJPA properties. Under the Agreement, the Department issues and manages contracts to provide land-use plans, environmental review, and a nexus study to support development impact fees to finance the Program and other infrastructure in the TCDP, and implement those plans for the TCDP. The Agreement further provided that the Department would study the potential for

generating additional revenue for the TJPA from development in the vicinity of the Caltrain Station at 4th & King.

Unforeseen coordination with other City departments and offices as well as property owners and TJPA consultants has been required, justifying a funding increase for the Department's services under the Agreement. In July 2010, the TJPA Board approved the First Amendment to the Agreement increasing the maximum compensation under the Agreement, \$730,000, by \$145,000, for a total maximum compensation of \$875,000. The First Amendment also extended the Agreement for an additional year, to October 31, 2011. Additionally, the First Amendment established a process for monthly meetings between the TJPA and its consultants and the Department and its consultants to discuss the nexus study and the other plans, studies, and reports currently underway.

The Planning Department was unable to meet the deadlines imposed by the First Amendment for preparation of the TCDP and TCDP EIR. Further, the Department requested that the TJPA provide additional funding of \$73,565 for completion of the EIR. Because the prompt completion of the TCDP and TCDP EIR is crucial for funding the Transbay Project and for securing entitlements for the Transit Tower, the TJPA Staff recommends that the Board authorize an increase in the total compensation permitted under Section 5 of the Agreement, already increased from \$730,000 to \$875,000 by the First Amendment, to \$948,565, an increase of \$73,565, on condition that the Planning Department meet a schedule for preparation of the TCDP EIR and TCDP that will result in the Planning Commission's consideration of the EIR and TCDP in May 2012. To allow the Planning Department to complete work on the TCDP, the EIR, and the 4th & King study, the Second Amendment extends the term of the Agreement to December 31, 2012. Finally, the Second Amendment provides a specific schedule for monthly meetings between the TJPA Staff and consultants and the Department to expedite the preparation of the TCDP and EIR.

RECOMMENDATION:

Approve the Second Amendment to the Agreement between TJPA and Department to (1) require the Planning Department to complete the TCDP and TCDP EIR on a prescribed schedule that will result in a Planning Commission hearing to consider certification of the EIR and approval of the TCDP in May 2012; (2) increase the compensation to the Department by \$73,565 for its preparation of the EIR and TCDP conditioned on the Department's meeting the schedule for preparation of the EIR and TCDP; (3) extend the term of the Intergovernmental Agreement to December 31, 2012; and (4) provide for monthly meetings between TJPA and the Department to cooperate in preparation of the EIR and TCDP.

ENCLOSURES:

1. Resolution
2. Amendment

**TRANSBAY JOINT POWER AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The Transbay Joint Powers Authority (TJPA) is a joint powers agency organized and existing under the laws of the State of California; and

WHEREAS, The San Francisco Planning Department (Department) is a department of the City and County of San Francisco; and

WHEREAS, The Department is preparing the Transbay District Center Plan (TCDP) and the TCDP Environmental Impact Report (EIR), the primary purpose of which is to create additional funding mechanisms for financing the Transbay Transit Center Program (Program) and to establish entitlements for a tower on Caltrans Transfer Parcel T (Transit Tower); and

WHEREAS, On September 20, 2007, the TJPA Board authorized an intergovernmental agreement with the Department authorizing the Department to perform planning studies for development of the TCDP and an EIR for the TCDP for a three-year term and maximum compensation not to exceed \$730,000; and

WHEREAS, In July 2010 the Board approved the First Amendment to the Agreement establishing a schedule for the Department to complete the TDCP and TCDP EIR, increasing the maximum compensation under the Agreement to \$875,000 and extending the term of the Agreement for a year; and

WHEREAS, The Planning Department was unable to meet the deadlines imposed by the First Amendment to complete the TCDP and TCDP EIR; and

WHEREAS, The Department has requested that the TJPA provide additional funding of \$730,565 for completion of the TCDP and TCDP EIR and extend the schedule for completion of the TCDP and TCDP EIR; and

WHEREAS, The prompt completion of the TCDP and TCDP EIR are crucial for funding the Transbay Project and for securing entitlements for the Transit Tower; now, therefore, be it

RESOLVED, That the Board authorizes the Executive Director to execute the Amendment to the Agreement between the TJPA and the Department to (1) require the Planning Department to complete the TCDP EIR and the TCDP on a prescribed schedule that will result in a Planning Commission hearing to consider certification of the EIR and approval of the TCDP in May 2012; (2) increase the compensation to the Department by \$73,565 for preparing the EIR and the TCDP conditioned on the Department's meeting the schedule for preparation of the EIR and TCDP; (3) extend the term of the Intergovernmental Agreement to December 31, 2012; and (4) provide for monthly meetings between TJPA and the Department to cooperate in preparation of the EIR and TCDP.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of March 8, 2012.

Secretary, Transbay Joint Powers Authority

**SECOND AMENDMENT TO INTERGOVERNMENTAL AGREEMENT BETWEEN
THE TJPA AND THE SF PLANNING DEPARTMENT**

Recitals

A. In early 2006, the San Francisco Mayor's Interagency Working Group on the Transbay Terminal Program published its report proposing new financing sources for the Transbay Transit Center Program. The report recommended that the City and County of San Francisco adopt a Transbay Transit Center District Plan ("TCDP") with the Transbay Transit Center Project as the focal point. The primary purpose of the TCDP was to create additional mechanisms for financing the Transbay Project. The report proposed the creation of a Mello-Roos Community Facilities District and the imposition of new development impact fees on commercial and residential development in the District, among others.

B. On September 20, 2007, the Transbay Joint Powers Authority ("TJPA") and the San Francisco Planning Department ("Department") entered into an intergovernmental agreement ("Agreement") under which the TJPA agreed to fund the Department's work to develop a land-use and implementation plan for the TCDP.

C. Paragraph 25 of the Agreement allows for its modification by written instrument executed and approved according to the TJPA's requirements.

D. On July 15, 2010, the TJPA and the Department approved the First Amendment to Intergovernmental Agreement Between the TJPA and the SF Planning Department ("First Amendment") modifying Section 2, Term of the Agreement and Appendix A of the Agreement regarding the TCDP Schedule and compensation to provide mechanisms for additional funding for the Transbay Project by (1) extending the term of the Agreement; (2) increasing the compensation to the Department for its services in developing the TCDP; and (3) enhancing the TJPA's and the Department's cooperation in developing the TCDP by allowing the TJPA to review and comment on TCDP documents before those documents are circulated to other agencies or the public. Specifically, the Department indicated in the First Amendment that it anticipated completion of the following tasks by the dates indicated:

- (1) Draft nexus study for the development impact fees proposed in the Draft TCDP - August 2010
- (2) Draft EIR/EIS for the TCDP - October 2010
- (3) Final Plan for the TCDP - March 2011
- (4) General Plan and Planning Code/Zoning Map Ordinances for the TCDP - in March 2011
- (5) Planning Commission certification of Final EIR/EIS for the TCDP - in March 2011
- (6) Board of Supervisors approval of TCDP - May 2011

E. This Second Amendment to Intergovernmental Agreement Between the TJPA and the SF Planning Department (“Second Amendment”) further modifies Section 2, Term of the Agreement and the deadlines for the Department’s performance of the tasks set forth in Recital D above; Section 5, Compensation; and Appendix A of the Agreement regarding the TCDP Schedule and compensation. All other provisions of the Agreement and First Amendment not in conflict with this Second Amendment shall remain the same and in full force and effect.

Agreement

Now, THEREFORE, the parties agree as follows:

1. Conditioned on the Department’s timely performance of the tasks listed below under Section 2 of this Second Amendment, the TJPA shall increase the total compensation permitted under Section 5 of the Agreement, already increased from \$730,000 to \$875,000 by the First Amendment, by \$73,565 to \$948,565, and the compensation to the Department in the Proposed Scope of Work and Costs of Appendix A of the Agreement shall be increased as follows:

4. Financial Analysis – increase from \$70,000 to \$83,660 (\$13,660) for additional costs of the nexus study for the development impact fees for the TCDP

9. Environmental Impact Analysis – increase from \$250,000 to \$266,925 (\$16,925) for changes in the Tower Project design, to include land use (\$1,000), access (\$6,000), and additional parking scenario (\$1,000); \$3,675 for a MUNI transit delay analysis; and \$5,250 for analysis of cumulative conditions for the intersections of Essex/Folsom and Essex/Harrison.

x. Health Risk Analysis – add \$35,000 for air quality modeling of Transit Tower construction impacts and Transit Center operational impacts.

y. Visual Impact Analysis – add \$7,980 for creation of close-range graphic images of Transit Tower needed for environmental review.

The compensation permitted under Section 5 of the Agreement may be increased if (i) the TJPA or any developer under contract with the TJPA changes the project description for the Transbay Transit Tower, or (ii) additional analysis of the Transit Tower is required by law.

2. On conditions that the TJPA increases the compensation to the Department under Section 1 of this Second Amendment following approval by the TJPA Board of Directors at its Board Meeting scheduled for March 8, 2012, and the TJPA responds timely and completely to the Department’s requests for information, the parties agree to the following schedule.

- a. The Department publishes a Final Nexus Study by December 15, 2011.
- b. The Department publishes Comments and Responses on or before May 10, 2012.
- c. The Planning Commission holds a public hearing to certify the EIR and approve the TCDP, Planning Code Amendments and General Plan Amendments on or before May 24, 2012.
- d. The Department presents the Planning Code/Zoning Map Ordinances for the TCDP to the Board of Supervisors on or before May 31, 2012.

This schedule may be modified if (i) the TJPA or any developer under contract with the TJPA changes the project description for the Transbay Transit Tower, (ii) additional analysis of the Transit Tower is required by law; (iii) the Planning Commission extends the dates of its hearings on the TCDP, Planning Code Amendments or General Plan Amendments; or (iv) if the Planning Department, after consultation with the TJPA, determines that additional analysis or studies must be performed to comply with CEQA.

- 3. Section 2 of the Agreement is amended to read as follows:

Subject to Section 1, this Agreement shall expire on December 31, 2012; provided that: (i) TJPA shall have the right to extend this Agreement for an additional year by providing to Department written notice of such extension on or before the expiration of this Agreement, and (ii) any such extension shall be subject to and conditioned upon the written agreement of Department and the approval of such extension by resolution adopted by the TJPA's Board of Directors.

- 4. The Department shall provide the TJPA with an update of the progress on the EIR at least once per week, shall meet with TJPA representatives on the first Tuesday of each month at 2 pm at the Planning Department at 1650 Mission Street, and relevant Department staff shall meet informally with TJPA representatives on an as-needed basis, to allow the TJPA to:

- a. monitor the Department's performance under the schedule provided in this Second Amendment;
- b. review and comment on drafts of documents and studies, including, but not limited to, drafts of the EIR for the TCDP;
- c. monitor, provide input to, and assist in the preparation of all administrative drafts of the nexus study for the development impact fees for the TCDP and ensure that that proceeds of the fees are providing the benefits to the Transbay Project contemplated in the report of the Mayor's Interagency Working Group; and
- d. provide input on all TCDP issues relevant to the Transbay Project.

THIS Second Amendment shall become effective on the date it is executed by the Parties.

I, Maria Ayerdi-Kaplan, on behalf of and under the authority vested in my by the TJPA Board of Directors, am authorized to and do modify the Agreement under the terms and conditions set forth above.

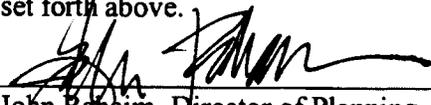
Maria Ayerdi-Kaplan, Executive Director

Dated: _____

APPROVED AS TO FORM:

By _____
Andrew W. Schwartz, Counsel for TJPA

I, John Rahaim, on behalf and under the authority vested in me by the City and County of San Francisco, am authorized to and do modify the Agreement under the terms and conditions set forth above.



John Rahaim, Director of Planning

Dated: 2-27-12

APPROVED AS TO FORM:

By 

Deputy City Attorney