

STAFF REPORT FOR CALENDAR ITEM NO.: 11
FOR THE MEETING OF: February 12, 2015

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Amending the Professional Services Agreements for Legal Services with the current bench of law firms providing services in their respective practice areas on an as-needed basis, to increase the total compensation under all bench agreements to a not-to-exceed value of \$15,000,000.

SUMMARY:

On September 13, 2012, the TJPA Board approved the execution of Professional Services Agreements for Legal Services with the following bench of law firms:

- Shute, Mihaly & Weinberger LLP, general counsel
- Seyfarth Shaw LLP, construction counsel
- Renne Sloan Holtzman Sakai LLP, labor and employment counsel
- Nixon Peabody LLP, public and private finance counsel

Each firm has an agreement to provide legal services in their respective practice areas on an as-needed basis for five year terms, with the option to extend each for three additional years, with total compensation across all bench agreements not to exceed \$8,000,000. The bench of law firms was selected through a competitive Request for Proposals (RFP) process conducted in May and June 2012.

Moving into the construction phase of the project, the bench was established to ensure access to the various areas of law necessary to complete the project, such as construction law, finance law to support securing funding to complete Phase 1 and Phase 2, and counsel with experience in labor law to assist with the Project Labor Agreement and human resources (HR) since TJPA had just become its own employer of record. Other necessary practice areas include land use, land acquisition and land sales, real estate and redevelopment law; public agency law; intergovernmental relations; environmental law; public contracting law including federal and State of California procurement requirements and compliance; and litigation services in all these areas, on an if-and-as-needed basis.

Work is authorized via written Requests for Services (RFS) and billed hourly at the rates included in each respective agreement. As of February 1, 2015, \$7.67 million has been authorized for the bench overall, and through December 31, 2014, \$6.74 million has been billed. The amount included in the Program budget for legal services is \$29.7 million, with \$16.2 million committed under previous and current agreements to-date. Thus, the requested increase for the bench authorization is well within the Program's legal services budget. A breakdown of the type of legal advice and amounts authorized and billed by the bench from September 2012 through December 2014 by firm follows:

Firm	Practice Areas	Authorized	Billed
Shute, Mihaly & Weinberger	General counsel; real estate (including Community Facilities District); redevelopment dissolution and successor; environmental; professional services procurement and contracting; public agency law; intergovernmental relations	\$4,646,000	\$3,972,263
Seyfarth Shaw	Design and construction procurement and contracting; construction litigation	\$2,539,000	\$2,315,716
Nixon Peabody	Financing, including TIFIA and other debt	\$275,000	\$249,733
Renne Sloan Holtzman Sakai	Labor, including Project Labor Agreement, and HR-related laws and regulations	\$208,373	\$206,009
Total		\$7,668,373	\$6,743,721

As with all large and complex construction projects, construction counsel is vital to ensure that work continues uninhibited, construction claims are addressed and defended against promptly, and risk exposure is minimized. At the time of initially establishing the bench, the level of legal effort required to defend the construction claims was unknown. To date, this effort has been vital in preserving the TJPA's contractual rights and hence achieving the best outcome for the project. The future legal effort required will be dependent on the outcome of the current claims. In addition, construction counsel assists with construction procurement and related design matters. More than twenty construction trade subcontracts have been awarded since construction counsel has been brought on board, totaling over \$600 million. Construction counsel has also been involved in the significant research effort to properly develop the contract documents and obtain FTA approval for the alternative construction procurement delivery methods such as the Design-Build/Design-Assist method currently being successfully used on the Exterior Awning trade package and proposed to be used for the Glass Curtain Walls and Metal Ceiling trade packages, unanticipated at the time the bench was established.

Other legal services not necessarily foreseen at the time the bench was established include extensive engagement with the San Francisco Office of Community Investment and Infrastructure related to the sale of the former State-owned parcels, extensive engagement with the City and County of San Francisco on the adoption of the Transit Center District Plan, including the formation of the Community Facilities District for assessment of a Special Tax, and the negotiation and administration of various agreements with adjoining property owners for connections to the Transit Center. Bench legal counsel has been instrumental in ensuring the close of the sale of the Salesforce property in March of 2013 and Block 6 in October 2013. In addition, we are scheduled to close on Block 9 on February 10, and Blocks 5 and 8 in September and October 2015 respectively. Counsel is involved in negotiations with developers to sell Parcel F as well. TJPA counsel has also taken the lead role in the eminent domain litigation filed by the City on behalf of the TJPA, with one case left remaining. These real estate transactions are complex and have raised numerous legal issues all of which have been successfully addressed thus far. Borrower counsel services were also required for the negotiation and close of the interim bridge financing in the amount of \$171 million that was needed in lieu of drawing down early on the TIFIA loan, as well as negotiation of two amendments to the TIFIA loan that

were required for the interim financing.

Staff anticipates that the TJPA will continue to require the services provided by each of the law firms on the bench, and recommends an increase in the maximum compensation for the bench of \$7,000,000, for a total compensation under all bench agreements not-to-exceed \$15,000,000.

RECOMMENDATION:

TJPA staff recommends that the TJPA Board authorize the Executive Director to amend the Professional Services Agreements for Legal Services with the bench of law firms providing services in their respective practice areas for a total compensation under all bench agreements not-to-exceed \$15,000,000.

ENCLOSURES:

1. Resolution

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The Transbay Joint Powers Authority (TJPA) is ultimately responsible for the Transbay Program, including the Transbay Transit Center and associated facilities, the Caltrain Downtown Rail extension, associated land acquisition, and for assisting the successor entity to the San Francisco Redevelopment Agency with the Transbay Redevelopment Plan, and requires legal services to fulfill this responsibility; and

WHEREAS, On May 15, 2012, the TJPA issued a Request for Proposals (RFP) for Legal Services to provide a broad range of general and specialized legal advice and representation; and

WHEREAS, The TJPA received nineteen responses to the RFP that met all minimum requirements; and

WHEREAS, A selection committee evaluated proposals and interviewed ten firms, and ranked four of those firms with the highest scores in four respective practice areas; and

WHEREAS, Those four firms and practice areas are Shute, Mihaly & Weinberger LLP (SMW) – general counsel, Seyfarth Shaw LLP (Seyfarth) – construction counsel, Renne Sloan Holtzman Sakai LLP (RSHS) – labor/employment counsel, and Nixon Peabody LLP (Nixon) – public/private finance counsel; and

WHEREAS, On September 13, 2012 in Resolution No. 12-024, the TJPA Board of Directors authorized the Executive Director to execute Legal Services Agreements with SMW, Seyfarth, RSHS and Nixon (Attorneys) for terms of five years each, with an option to extend each agreement for up to three years, and maximum compensation under all of the agreements together not to exceed \$8,000,000; and

WHEREAS, As of February 1, 2015, \$7.67 million of the \$8 million total compensation for the bench has been authorized, with \$6.74 million spent; and

WHEREAS, \$13.5 million remains to be committed in the Program legal services budget, and the services provided by the Attorneys continue to be required; and

WHEREAS, TJPA desires to increase the total compensation under all of the Legal Services Agreements together not to exceed \$15,000,000; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to amend the Legal Services Agreements with the Attorneys, to increase the total compensation across all the agreements together not to exceed \$15,000,000.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of February 12, 2015.

Secretary, Transbay Joint Powers Authority