

**STAFF REPORT FOR CALENDAR ITEM NO.: 12
FOR THE MEETING OF: August 8, 2019**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Extending the term for the current bench of law firms providing services in their respective practice areas on an as-needed basis by one year, and increasing the maximum compensation allowed for the bench.

EXPLANATION:

Following a 2012 RFP process, the TJPA Board approved the execution of Professional Services Agreements for Legal Services with the following bench of law firms:

- Shute, Mihaly & Weinberger LLP, real estate, 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. In 2017, the first 2-year extension was exercised with Board approval. Additionally, work is authorized via written Requests for Services (RFS) and billed hourly at the rates included in each respective agreement. The total compensation across all bench agreements was originally capped at \$8 million; in March 2015, the TJPA Board authorized an increase to \$10 million, in May 2016 an increase to \$15 million was authorized, and in September 2018 an increase to \$17 million was authorized. Of the \$17 million, \$16.78 million has been expended and committed. At this time, it is anticipated that an additional \$3 million is needed to complete the FY19-20 fiscal year and remaining term of the contracts on the bench. This additional increase to \$20 million as the maximum compensation, may be subject to change, depending upon the amount of legal work necessary for closeout of the project.

Each of the agreements does require an extension, however; each with expiration dates as shown below:

Shute, Mihaly & Weinberger LLP	8/31/19
Seyfarth Shaw LLP	9/18/19
Renne Sloan Holtzman Sakai LLP assigned to Renne Public Law Group, LLC	8/31/19
Nixon Peabody LLP	9/20/19

RECOMMENDATION:

TJPA staff recommends that the TJPA Board authorize the Executive Director to extend the term of each agreement under the current bench of law firms for an additional and final year and increase the total compensation by \$3 million under all of the agreements together not to exceed \$20,000,000.

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 (SMW) – real estate, general counsel; Seyfarth Shaw (Seyfarth) – construction counsel; Renne Sloan Holtzman Sakai (RSHS) assigned to Renne Public Law Group (Renne) – labor counsel; and Nixon Peabody (Nixon) – public/private finance counsel; and

WHEREAS, On September 13, 2012, the TJPA Board of Directors authorized the Executive Director to create a bench of firms and 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, On March 12, 2015, the TJPA Board authorized an increase to the maximum compensation under all of the agreements together not to exceed \$10,000,000; and

WHEREAS, On May 12, 2016, the TJPA Board authorized an increase to the maximum compensation under all of the agreements together not to exceed \$15,000,000; and

WHEREAS, On September 14 ,2017, the TJPA Board authorized the Interim Executive Director to amend the Legal Services Agreements with the Attorneys, to extend the term of each Agreement by two years; and

WHEREAS, On September 13, 2018, the TJPA Board authorized an increase to the maximum compensation under all of the agreements together not to exceed \$17,000,000; and

WHEREAS, The services provided by the Attorneys continue to be required, and TJPA desires to extend the terms for the four Legal Services Agreements by one year each at this time; and, with a \$3 million increase to the maximum compensation under all of the agreements together not to exceed \$20,000,000; 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 extend the term of each Agreement by one year; and, be it

FURTHER RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to amend the Legal Services Agreements with the Attorneys, to increase the authorized budget across all the agreements together not to exceed \$3,000,000.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of August 8, 2019.

Secretary, Transbay Joint Powers Authority

Amendment No. 02
Legal Services Agreement between
the Transbay Joint Powers Authority and Shute, Mihaly & Weinberger LLP

THIS Amendment No. 2 to the Legal Services Agreement, 12-02-LEGAL-001, to provide legal services dated September 1, 2012 (“Agreement”) is entered into as of the ____ day of August, 2019 in San Francisco, California, by and between **Shute, Mihaly & Weinberger LLP** (“Attorney”), and the **Transbay Joint Powers Authority** (“TJPA”).

The TJPA and Attorney desire to extend the term of the Agreement, and in particular agree to amend Section 2 of the Agreement as follows (deletions shown in strikethrough, additions shown in italics):

2. Term

Subject to Section 1, the term of this Agreement shall be for ~~seven~~ *eight* years from the Effective Date of the Agreement, September 1, 2012, ~~provided that (i) the TJPA shall have the right to extend this Agreement for an additional one year by providing to the Attorney 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 the Attorney and the approval of such extension by resolution adopted by the TJPA Board of Directors.~~

The Attorney is part of a bench of four legal firms. On March 12, 2015, ~~and~~ *May 12, 2016, and August 8, 2019*, the TJPA Board authorized an increase to the maximum compensation authorized for the bench. Accordingly, Section 5 of the Agreement is amended, for reference, as follows (deletions shown in strikethrough, additions shown in italics):

5. Compensation

The Attorney shall perform all services on an as-needed basis, based on RFS that may be issued by the TJPA from time to time. Four law firms have been authorized to enter into similar agreements for distinct legal practice areas, and the TJPA Board has authorized the expenditure of a total of ~~\$15,000,000~~ *\$20,000,000* for all services to be performed by all four law firms over the next ~~seven~~ *eight* years. At the time of execution of these agreements, it is unknown as to the amount and type of legal work that may arise. Accordingly, for purposes of convenience only, the total compensation under this Agreement is set at an amount not to exceed ~~One Million Dollars (\$1,000,000)~~ *Thirteen Million, Two Hundred Thousand Dollars (\$13,200,000)*. As the need for services arises, the services under this Agreement could end up to be substantially more or substantially less than the ~~\$1,000,000~~ *\$13,200,000* stated herein, with no guarantee of a minimum amount.

The TJPA shall set forth in each task order issued: (1) the scope of work, and (2) the amount of compensation. All work under this Agreement shall be compensated on an hourly or lump-sum basis, subject to the terms set forth in a particular RFS. The Attorney’s hourly rates appear in Appendix B, “Fees”. Any change in hourly rates in Appendix B shall be subject to approval of TJPA.

No charges shall be incurred under this Agreement nor shall any payments become due to the Attorney until the Services required under this Agreement are received from Attorney and approved by the Executive Director as being in accordance with this Agreement. The TJPA may withhold payment to the Attorney in any instance in which the Attorney has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall the 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

Mark Zabaneh
Executive Director

Transbay Joint Powers Authority
Board of Directors
Resolution No. _____
Adopted: _____
Attest:

Secretary, TJPA Board

ATTORNEY
Shute, Mihaly & Weinberger LLP

Signature

Printed Name

Tax Identification Number

Amendment No. 03
Legal Services Agreement between
the Transbay Joint Powers Authority and Seyfarth Shaw LLP

THIS Amendment No. 3 to the Legal Services Agreement, 12-02-LEGAL-002, to provide legal services dated September 1, 2012 (“Agreement”) is entered into as of the ____ day of August, 2019 in San Francisco, California, by and between **Seyfarth Shaw LLP** (“Attorney”), and the **Transbay Joint Powers Authority** (“TJPA”).

The TJPA and Attorney desire to extend the term of the Agreement, and in particular agree to amend Section 2 of the Agreement as follows (deletions shown in strikeout, additions shown in italics):

2. Term

Subject to Section 1, the term of this Agreement shall be for ~~seven~~ *eight* years from the Effective Date of the Agreement, September 19, 2012, ~~provided that (i) the TJPA shall have the right to extend this Agreement for an additional one year by providing to the Attorney 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 the Attorney and the approval of such extension by resolution adopted by the TJPA Board of Directors.~~

The Attorney is part of a bench of four legal firms. On March 12, 2015, ~~and~~ *May 12, 2016, and August 8, 2019*, the TJPA Board authorized an increase to the maximum compensation authorized for the bench. Accordingly, Section 5 of the Agreement is amended, for reference, as follows (deletions shown in strikeout, additions shown in italics):

5. Compensation

The Attorney shall perform all services on an as-needed basis, based on RFS that may be issued by the TJPA from time to time. Four law firms have been authorized to enter into similar agreements for distinct legal practice areas, and the TJPA Board has authorized the expenditure of a total of ~~\$15,000,000~~ *\$20,000,000* for all services to be performed by all four law firms over the next ~~seven~~ *eight* years. At the time of execution of these agreements, it is unknown as to the amount and type of legal work that may arise. Accordingly, for purposes of convenience only, the total compensation under this Agreement is set at an amount not to exceed ~~One Million Dollars (\$1,000,000)~~ *Five Million, Three Hundred Fifty-Nine Thousand Dollars (\$5,359,000)*. As the need for services arises, the services under this Agreement could end up to be substantially more or substantially less than the ~~\$1,000,000~~ *\$5,359,000* stated herein, with no guarantee of a minimum amount.

The TJPA shall set forth in each task order issued: (1) the scope of work, and (2) the amount of compensation. All work under this Agreement shall be compensated on an hourly or lump-sum basis, subject to the terms set forth in a particular RFS. The Attorney’s *current* hourly rates appear in Appendix B, “Fees”. Any *further* change in hourly rates in Appendix B shall be subject to approval of TJPA.

No charges shall be incurred under this Agreement nor shall any payments become due to the Attorney until the Services required under this Agreement are received from Attorney and approved by the Executive Director as being in accordance with this Agreement. The TJPA may withhold payment to the Attorney in any instance in which the Attorney has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall the 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

Mark Zabaneh
Executive Director

Transbay Joint Powers Authority
Board of Directors
Resolution No. _____
Adopted: _____
Attest:

Secretary, TJPA Board

ATTORNEY
Seyfarth Shaw LLP

Signature

Printed Name

Tax Identification Number

PROFESSIONAL SERVICES AGREEMENT
APPENDIX B
FEES

Payments for legal services are subject to all provisions of the Legal Services Agreement, including Sections 1 and 4-7. Except as specified in an RFS, the TJPA will pay for professional services at the rates indicated below, which shall not be changed during the term of the Legal Services Agreement.

A. In addition to charges for professional services set forth in an RFS, the TJPA shall reimburse Attorney for its reasonable and necessary actual out-of-pocket expenses incurred in the course of rendering such services, consisting only of costs of toll telephone calls, document binding, filing fees, express mail, delivery and courier services, in-house photocopying up to \$.10 per page, and outside reproduction services at actual cost. No mark up or surcharges shall be added to outside service costs. Any single out-of-pocket expenditure in excess of \$2,000.00, including expert fees and costs, are subject to advance approval by the Executive Director.

B. Attorney shall render services in an efficient and cost-effective manner and shall staff meetings, hearing, proceedings only as absolutely necessary. In no event shall Attorney bill, nor shall TJPA pay, more than the amount set forth in the Agreement or a specific RFS. Charges for preparing, processing or reviewing bills are not payable or reimbursable under this Agreement. Attorney shall keep the TJPA apprised of the cumulative total of all bills and notify the TJPA in writing immediately upon determining that accumulated time bills and expenses are within \$10,000.00 of the amount set forth in an RFS.

C. TJPA shall not be billed for the following:

- travel outside of the San Francisco Bay Area unless requested by the TJPA
- time spent in travel from Attorney's home or office to San Francisco
- time spent in travel on TJPA-approved travel outside of the San Francisco Bay Area
- taxicab or transit fares or automobile rental fees incurred to attend meetings
- taxicab or transit fares or automobile rental fees incurred from Attorney's office to an employee's residence
- parking expenses incurred to attend meetings
- meals for working overtime
- secretarial overtime
- cost of receiving facsimiles
- cost of emails for transmission of documents

Travel that is requested of the Attorney by the TJPA may be reimbursed under the Agreement per the Travel, Business and Relocation Policy for TJPA Consultants updated October 2009.

Hourly Rates

Donald G. Featherstun	-\$ 525.00	\$590
Bennett D. Greenberg	-\$ 500.00	\$555
Michael T. McKeeman	-\$ 500.00	\$580
Patty Lee	-\$ 390.00	\$455
Richard Lutkus	-\$ 415.00	\$480
Stanley Bloch	-\$ 710.00	\$710
Laura Arago	-\$ 195.00	\$215
Gregg Dulik	-\$ 500.00	\$505
Alexandra Drury	-\$ 420.00	\$425

Amendment No. 02
Legal Services Agreement between
the Transbay Joint Powers Authority and Renne Public Law Group LLP
(assigned from Renne Sloan Holtzman Sakai LLP)

THIS Amendment No. 2 to the Legal Services Agreement, 12-02-LEGAL-003, to provide legal services dated September 1, 2012 (“Agreement”) is entered into as of the ____ day of September, 2019 in San Francisco, California, by and between **Renne Public Law Group LLP** (assigned from Renne Sloan Holtzman Sakai LLP) (“Attorney”), and the **Transbay Joint Powers Authority** (“TJPA”).

The TJPA and Attorney desire to extend the term of the Agreement, and in particular agree to amend Section 2 of the Agreement as follows (deletions shown in strikeout, additions shown in italics):

2. Term

Subject to Section 1, the term of this Agreement shall be for ~~seven~~ *eight* years from the Effective Date of the Agreement, September 1, 2012, ~~provided that (i) the TJPA shall have the right to extend this Agreement for an additional one year by providing to the Attorney 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 the Attorney and the approval of such extension by resolution adopted by the TJPA Board of Directors.~~

The Attorney is part of a bench of four legal firms. On March 12, 2015, ~~and~~ *May 12, 2016 and August 8, 2019*, the TJPA Board authorized an increase to the maximum compensation authorized for the bench. Accordingly, Section 5 of the Agreement is amended, for reference, as follows (deletions shown in strikeout, additions shown in italics):

5. Compensation

The Attorney shall perform all services on an as-needed basis, based on RFS that may be issued by the TJPA from time to time. Four law firms have been authorized to enter into similar agreements for distinct legal practice areas, and the TJPA Board has authorized the expenditure of a total of ~~\$15,000,000~~ *\$20,000,000* for all services to be performed by all four law firms over the next ~~seven~~ *eight* years. At the time of execution of these agreements, it is unknown as to the amount and type of legal work that may arise. Accordingly, for purposes of convenience only, the total compensation under this Agreement is set at an amount not to exceed One Million Dollars (\$1,000,000). As the need for services arises, the services under this Agreement could end up to be substantially more or substantially less than the \$1,000,000 stated herein, with no guarantee of a minimum amount.

The TJPA shall set forth in each task order issued: (1) the scope of work, and (2) the amount of compensation. All work under this Agreement shall be compensated on an hourly or lump-sum basis, subject to the terms set forth in a particular RFS. The Attorney’s hourly rates appear in Appendix B, “Fees”. Any change in hourly rates in Appendix B shall be subject to approval of TJPA.

No charges shall be incurred under this Agreement nor shall any payments become due to the Attorney until the Services required under this Agreement are received from Attorney and approved by the Executive Director as being in accordance with this Agreement. The TJPA may withhold payment to the Attorney in any instance in which the Attorney has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall the 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

Mark Zabaneh
Executive Director

Transbay Joint Powers Authority
Board of Directors
Resolution No. _____
Adopted: _____
Attest:

Secretary, TJPA Board

ATTORNEY
Renne Public Law Group LLP

Signature

Printed Name

Tax Identification Number

Amendment No. 02
Legal Services Agreement between
the Transbay Joint Powers Authority and Nixon Peabody LLP

THIS Amendment No. 2 to the Legal Services Agreement, 12-02-LEGAL-004, to provide legal services dated September 1, 2012 (“Agreement”) is entered into as of the ____ day of September, 2019 in San Francisco, California, by and between **Nixon Peabody LLP** (“Attorney”), and the **Transbay Joint Powers Authority** (“TJPA”).

The TJPA and Attorney desire to extend the term of the Agreement, and in particular agree to amend Section 2 of the Agreement as follows (deletions shown in strikeout, additions shown in italics):

2. Term

Subject to Section 1, the term of this Agreement shall be for ~~seven~~ *eight* years from the Effective Date of the Agreement, September 21, 2012, ~~provided that (i) the TJPA shall have the right to extend this Agreement for an additional one year by providing to the Attorney 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 the Attorney and the approval of such extension by resolution adopted by the TJPA Board of Directors.~~

The Attorney is part of a bench of four legal firms. On March 12, 2015, ~~and~~ *May 12, 2016, and August 8, 2019*, the TJPA Board authorized an increase to the maximum compensation authorized for the bench. Accordingly, Section 5 of the Agreement is amended, for reference, as follows (deletions shown in strikeout, additions shown in italics):

5. Compensation

The Attorney shall perform all services on an as-needed basis, based on RFS that may be issued by the TJPA from time to time. Four law firms have been authorized to enter into similar agreements for distinct legal practice areas, and the TJPA Board has authorized the expenditure of a total of ~~\$15,000,000~~ *\$20,000,000* for all services to be performed by all four law firms over the next ~~seven~~ *eight* years. At the time of execution of these agreements, it is unknown as to the amount and type of legal work that may arise. Accordingly, for purposes of convenience only, the total compensation under this Agreement is set at an amount not to exceed One Million Dollars (\$1,000,000). As the need for services arises, the services under this Agreement could end up to be substantially more or substantially less than the \$1,000,000 stated herein, with no guarantee of a minimum amount.

The TJPA shall set forth in each task order issued: (1) the scope of work, and (2) the amount of compensation. All work under this Agreement shall be compensated on an hourly or lump-sum basis, subject to the terms set forth in a particular RFS. The Attorney’s hourly rates appear in Appendix B, “Fees”. Any change in hourly rates in Appendix B shall be subject to approval of TJPA.

No charges shall be incurred under this Agreement nor shall any payments become due to the Attorney until the Services required under this Agreement are received from Attorney and approved by the Executive Director as being in accordance with this Agreement. The TJPA may withhold payment to the Attorney in any instance in which the Attorney has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall the 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

Mark Zabaneh
Executive Director

Transbay Joint Powers Authority
Board of Directors
Resolution No. _____
Adopted: _____
Attest:

Secretary, TJPA Board

ATTORNEY
Nixon Peabody LLP

Signature

Printed Name

Tax Identification Number