

STAFF REPORT FOR CALENDAR ITEM NO.: 16
FOR THE MEETING OF: May 12, 2022

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorizing the Executive Director to execute an amendment to the Professional Services Agreement with the law firm Seyfarth Shaw, LLP to provide legal services related to Phase 1 construction close-out, increasing the total amount of the contract by \$4,000,000 for a not-to-exceed amount of \$8,400,000, and making an associated amendment to the FY21-22 Capital Budget for Phase 1 and transfer of Program Reserves.

EXPLANATION:

In 2020, the TJPA issued an RFP for legal services, seeking expertise to provide a full range of legal services for the TJPA, including general counsel; land use, land acquisition, real estate and redevelopment law; labor and employment law, including human resources advice; construction law; public transit/transportation law; environmental law; public contracting law including federal and State of California procurement requirements and compliance; legislative matters; risk management; intellectual property; public and private finance; and litigation services in all these areas, on an if-and-as-needed basis. As a result of that competitive procurement process, in August 2020, the TJPA Board approved professional services agreements with a bench of six firms that ranked most highly in their respective practice areas for the legal services needed now and in the near future as the Transbay Program advances Phase 2.

Among the bench of firms, the TJPA entered a Professional Services Agreement dated August 18, 2020 (Agreement) with the law firm Seyfarth Shaw, LLP (Seyfarth) to provide legal services related to the close-out of Phase 1. Seyfarth's services are focused on efforts to close-out claims by trade subcontractors under the Construction Manager/General Contractor agreement with Webcor/Obayashi Joint Venture (WOJV) to build Phase 1 (the transit center and its related components). Seyfarth is representing the TJPA in dispute resolution proceedings and mediation, as well as litigation related to the claims and associated matters.

The Agreement with Seyfarth is for a term of five years. The Agreement set an initial not-to-exceed amount for Seyfarth's services of \$4,000,000. The Agreement explains, however, that at the time of execution of the Agreement, the TJPA and Seyfarth did not know with certainty the amount and type of legal services the TJPA may require, and that the actual need for services could be substantially more or less than that budgeted amount.

On July 1, 2021, consistent with the TJPA Board's Procurement Policy, the TJPA entered Amendment No. 1 to the Agreement with Seyfarth, increasing the amount by \$400,000, for a total not-to-exceed amount of \$4,400,000; no other changes were made to the Agreement.

The Director of Design & Construction for the Transit Center, Ron Alameida (San Francisco Public Works), and TJPA staff recommend increasing the maximum compensation under the Agreement by an additional \$4,000,000, increasing the total not-to-exceed amount to \$8,400,000; no other changes to the Agreement are proposed at this time.

TJPA staff recommends transferring \$4,000,000 from Phase 1 Program Reserves for the increase in the not-to-exceed amount of the Seyfarth Agreement. The proposed Amendment to the Seyfarth Agreement and transfer of funds from Program Reserves does not change the overall Phase 1 Program Budget, which remains \$2,259.4 million.

TJPA staff recommends increasing the FY21-22 Capital Budget for Phase 1 by \$1,500,000, to \$24,200,000; this amendment will allow services under the amended Seyfarth Agreement to proceed through the remainder of the current fiscal year. Expected services in the next fiscal year are reflected in next fiscal year's proposed budget.

RECOMMENDATION:

TJPA staff recommends that the TJPA Board: (1) Authorize the Executive Director to execute Amendment No. 2 to the Professional Services Agreement with the law firm Seyfarth Shaw to provide legal services related to Phase 1 construction closeout, increasing the total amount of the contract by \$4,000,000 for a not-to-exceed amount of \$8,400,000, in the form attached; (2) Amend the FY21-22 Capital Budget for Phase 1 to add \$1,500,000, increasing the total amount to \$24,200,000; and (3) Transfer \$4,000,000 from Phase 1 Program Reserves for the above actions.

ENCLOSURES:

1. Resolution
2. Amendment No. 2 to Professional Services Agreement with Seyfarth Shaw

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The Transbay Joint Powers Authority (TJPA) has primary jurisdiction with respect to all matters concerning the financing, design, development, construction, and operation of the Transbay Program; and

WHEREAS, The TJPA requires legal representation related to the close-out of construction of Phase 1 of the Transbay Program; and

WHEREAS, As the result of a competitive procurement, the TJPA Board of Directors authorized the Executive Director to enter a Professional Services Agreement with the law firm Seyfarth Shaw, LLP (Seyfarth) dated August 18, 2020 (Agreement) to provide legal services related to the close-out of Phase 1 of the Transbay Program, with an initial compensation not-to-exceed \$4,000,000; and

WHEREAS, On July 1, 2021, the parties entered Amendment No. 1 to the Agreement, increasing the amount by \$400,000, for a total not-to-exceed amount of \$4,400,000; and

WHEREAS, The Director of Design & Construction for the Transit Center, Ron Alameida (San Francisco Public Works), and TJPA staff recommend increasing the maximum compensation under the Agreement by an additional \$4,000,000, increasing the total not-to-exceed amount to \$8,400,000; and

WHEREAS, TJPA staff also recommends amending the FY21-22 Capital Budget for Phase 1 to add \$1,500,000, increasing the total amount of the FY21-22 budget to \$24,200,000; and

WHEREAS, TJPA staff recommends transferring \$4,000,000 from Program Reserves for the increase in the not-to-exceed amount of the Seyfarth Agreement; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorize the Executive Director to execute Amendment No. 2 to the Professional Services Agreement with Seyfarth, in the form presented, increasing the total amount of the contract by \$4,000,000 for a not-to-exceed amount of \$8,400,000; and, be it

FURTHER RESOLVED, That the TJPA Board of Directors approve an amendment to the FY21-22 Capital Budget for Phase 1 to add \$1,500,000, increasing the total amount to \$24,200,000; and, be it

FURTHER RESOLVED, That the TJPA Board of Directors approves a transfer of \$4,000,000 from Program Reserves for the above actions.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of May 12, 2022.

Interim Secretary, Transbay Joint Powers Authority

Amendment No. 02
Professional Services Agreement between
the Transbay Joint Powers Authority and Seyfarth Shaw, LLP

THIS Amendment No. 2 to the Professional Services Agreement, 20-05-LEGAL-005, to provide legal services dated August 18, 2020, as first amended July 1, 2021 (as amended, "Agreement") is entered into as of the ___ day of March, 2022 in San Francisco, California, by and between **Seyfarth Shaw, LLP** ("Attorney"), and the **Transbay Joint Powers Authority** ("TJPA").

Recitals

The TJPA and Attorney desire to increase the maximum compensation under the Agreement. The TJPA and Attorney agree to amend Section 5 of the Agreement in its entirety to read as follows:

Terms and Conditions

5. Compensation

a. 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. At the time of execution of this agreement, 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 *Eight Million Four Hundred Thousand Dollars (\$8,400,000)* ~~Four Million Four Hundred Thousand Dollars (\$4,400,000)~~. As the need for services arises, the services under this Agreement could end up to be substantially more or substantially less than the *Eight Million Four Hundred Thousand Dollars (\$8,400,000)* ~~Four Million Four Hundred Thousand Dollars (\$4,400,000)~~ stated herein, with no guarantee of a minimum amount.

b. All work under this Agreement shall be compensated on an hourly fee basis, subject to any maximum price set forth in a particular RFS. In no event shall the total compensation under this Agreement exceed *Eight Million Four Hundred Thousand Dollars (\$8,400,000)* ~~Four Million Four Hundred Thousand Dollars (\$4,400,000)~~. The breakdown of the Attorney's fees appears in Appendix B, Fees.

c. Hourly rates for services are to remain fixed during the entire contract period, including any option periods, pursuant to Appendix B.

d. 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 the 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.

e. 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

ATTORNEY: Seyfarth Shaw LLP

Adam Van De Water
Executive Director

Michael T McKeeman
Attorney
Seyfarth Shaw LLP
560 Mission Street, 31st Floor
San Francisco, CA 94105

Approved as to Form by:

TJPA Legal Counsel

Date

Tax Identification Number: 36-2152202

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

Interim Secretary, TJPA Board