

**STAFF REPORT FOR CALENDAR ITEM NO.: 10
FOR THE MEETING OF: June 8, 2023**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorizing the Executive Director to execute Amendment No. 4 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 \$3,500,000 for a not-to-exceed amount of \$15,900,000, with no change to the overall Phase 1 Program Budget.

EXPLANATION:

Background

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 (CM/GC) 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.

Effective 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.

Effective March 1, 2022, the TJPA Board approved an Amendment No. 2 to the Agreement with Seyfarth, increasing the amount by \$4,000,000, for a total not-to-exceed amount of \$8,400,000; no other changes were made to the Agreement.

Effective December 8, 2022, the TJPA Board approved an Amendment No. 3 to the Agreement with Seyfarth, increasing the amount by \$4,000,000, for a total not-to-exceed amount of \$12,400,000; no other changes were made to the Agreement.

Amendment No. 4 to Legal Services Contract

As has been previously discussed in detail with the Board, there are a number of outstanding pending claims related to the CM/GC contract with WOJV for Phase 1 construction. The parties are continuing to meet in an attempt to resolve outstanding claims. The ultimate goal is to completely close-out the CM/GC contract and is the reason for the legal support effort as the TJPA has engaged in diligent and good faith claim review and resolution proceedings.

Accordingly, 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 \$3,500,000, increasing the total not-to-exceed amount to \$15,900,000 as per Amendment No. 4, attached hereto, and making certain changes to the rates for services and authorized team members.

The Agreement specifies the hourly billing rates for the Seyfarth team members authorized to bill for work on the project. The Agreement contemplates that on an annual basis, in conjunction with the TJPA's fiscal year, Seyfarth may request an increase in the billing rates in an amount not to exceed the Consumer Price Index (CPI) for San Francisco. In 2021 and 2022, Seyfarth did not request any increase in its billing rates. This year, Seyfarth proposes a 5% increase in certain billing rates and certain modifications in the specific team members authorized to work on the project. This requested rate increase is less than the aggregate CPI increase over the term of the Agreement. The Director of Design & Construction and TJPA staff recommend approval.

TJPA staff anticipates funding this contract amendment with Community Facilities District (CFD) funds, but the funding source may change based on availability of other sources.

No Change to Overall Phase 1 Program Budget

The proposed Amendment No. 4 to the Seyfarth Agreement does not change the overall Phase 1 Program Budget, which remains \$2,259.4 million.

RECOMMENDATION:

TJPA staff recommends that the TJPA Board: (1) Authorize the Executive Director to execute Amendment No. 4 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 \$3,500,000 for a not-to-exceed amount of \$15,900,000, in the form attached within the approved Phase 1 budget.

ENCLOSURES:

1. Resolution
2. Amendment No. 4 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, Effective 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, Effective March 1, 2022, the parties entered Amendment No. 2 to the Agreement, increasing the amount by \$4,000,000, for a total not-to-exceed amount of \$8,400,000; and

WHEREAS, Effective December 8, 2022, the parties entered Amendment No. 3 to the Agreement, increasing the amount by \$4,000,000, for a total not-to-exceed amount of \$12,400,000; 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 \$3,500,000, increasing the total not-to-exceed amount to \$15,900,000, and making certain changes to the rates for services and authorized team members; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute Amendment No. 4 to the Professional Services Agreement with Seyfarth, in the form presented, increasing the total amount of the contract by \$3,500,000 for a not-to-exceed amount of \$15,900,000 and making certain changes to the rates for services and authorized team members.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of June 8, 2023.

Secretary, Transbay Joint Powers Authority

Amendment No. 04
Professional Services Agreement between
the Transbay Joint Powers Authority and Seyfarth Shaw, LLP

THIS Amendment No. 4 to the Professional Services Agreement, 20-05-LEGAL-005, to provide legal services dated August 18, 2020, as first amended July 1, 2021, second amended March 1, 2022 and third amended December 8, 2022 (as amended, "Agreement") is now entered into as of the ___ day of June, 2023 in San Francisco, California, with an effective date of April 1, 2023, 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, and amend the hourly billing rates and titles/categories of Attorney team members under the Agreement.

Terms and Conditions

The TJPA and Attorney agree to amend Section 5 of the Agreement in its entirety to read as follows:

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 *Fifteen Million Nine Hundred Thousand Dollars (\$15,900,000)* ~~Twelve Million Four Hundred Thousand Dollars (\$12,400,000)~~. As the need for services arises, the services under this Agreement could end up to be substantially more or substantially less than the *Fifteen Million Nine Hundred Thousand Dollars (\$15,900,000)* ~~Twelve Million Four Hundred Thousand Dollars (\$12,400,000)~~ 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 *Fifteen Million Nine Hundred Thousand Dollars (\$15,900,000)* ~~Twelve Million Four Hundred Thousand Dollars (\$12,400,000)~~. The breakdown of the Attorney's fees appears in Appendix B, Fees (*as amended*).

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

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.

The TJPA and Attorney agree to amend Appendix B of the Agreement in its entirety as shown on the attached.

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:

Secretary, TJPA Board

**APPENDIX B
FEES**

(Revised effective 04/01/23)

Staff Name	Title/Role	Hourly Rate
Michael McKeeman	Partner	\$610
Greg Dulik	Partner	\$531
Patty Lee	Of Counsel	\$478
Jaime Raba	Of Counsel	\$405
Alexandra Drury	Associate	\$473
Harpo Sidhu	Associate	\$400
Charles Wall	Partner	\$610
Kimberly Baldwin	Paralegal	\$285
Richard Lutkus	Partner	\$480
Donald Featherstun	Partner	\$725
Additional Req'd staff**		

** And such other Seyfarth Personnel may be included as long as approved in writing and is within the approved contract budget.

Fees will be charged in increments of one-tenth of an hour. The firm will not charge any fee for: time spent preparing, processing, or reviewing the firm's own bills for services to TJPA; time spent in travel to/from attorney's home and either the firm's office or TJPA's office; time spent in travel outside the Bay Area.

TJPA will reimburse the firm for its reasonable and necessary actual costs incurred in the course of rendering services, consisting only of: costs of filing fees; fees fixed by law or assessed by public agencies (e.g., courts); messenger and overnight delivery services; postage; in-house photocopying/printing up to \$0.10 per page; and outside reproduction/binding/document preparation services.

The above hourly rates above shall include the following incidental expenses of the Attorney: toll telephone calls; charges for sending facsimiles; taxicab fares, transit fares, automobile rental fees, bridge tolls, or parking charges incurred to attend meetings or to travel to/from attorney's home and the firm's office; meals; secretarial services; Internet, computer, or charges the firm incurs related to electronic legal research.

The firm will not mark up out of pocket expenses.

Direct costs actually incurred by the Attorney in performing the Services are subject to reimbursement if such costs are pre-approved by TJPA in writing. Attorney will not mark up such allowable costs and a receipt or invoice must be submitted documenting allowable costs. Any allowable travel costs must be consistent with TJPA's Travel Policy.

On an annual basis, in conjunction with TJPA's fiscal year, the Attorney may request an increase in rates capped by San Francisco CPI, for TJPA to consider.