

**STAFF REPORT FOR CALENDAR ITEM NO.: 10.3  
FOR THE MEETING OF: July 12, 2018**

**TRANSBAY JOINT POWERS AUTHORITY**

**BRIEF DESCRIPTION:**

Authorize the Executive Director to amend the professional services agreement for financial consulting services (Agreement) between the Transbay Joint Powers Authority (TJPA) and Sperry Capital, to increase the Agreement by \$520,000 and extend the term through November 2019.

**EXPLANATION:**

In March 2011, the TJPA Board of Directors authorized the Executive Director to award the Agreement to Nancy Whelan Consulting (NWC) to perform financial consulting services for the Transbay Program. The maximum compensation under the Agreement was \$4,284,920 and the original term was not to exceed five years, with an option to extend the term for up to three additional years by mutual agreement of the parties.

In June 2013, by mutual agreement of the TJPA, NWC and Sperry Capital, the agreement was assigned and novated to Sperry Capital, a subcontractor under NWC. Subsequently, three amendments to the Agreement have been approved:

Amendment 1. Approved in July 2014, adding provision of advice regarding municipal securities and serving as TJPA's Qualified Independent Representative (QIR) to the Agreement scope of work, in connection with TJPA interest rate swap transactions and complying with the Dodd-Frank Act and Commodities Future Trading Commission rules and regulations.

Amendment 2. Approved by the TJPA Board in February 2016 to exercise the option to extend the term of the Agreement for an additional two years, to March 2018. There was no increase in the about \$4.3 million maximum compensation, although the original Agreement contemplated a potential increase of about \$2.7 million to cover the three year extension option.

Amendment 3. Approved in February 2018 to exercise the option to extend the term of the Agreement to November 9, 2018 as completion of Phase 1 extended past the planned Substantial Completion date. There was again no increase in the maximum compensation.

Sperry Capital has been successfully performing as TJPA's financial advisor under the contract since 2013. In particular, Sperry Capital principals have been invaluable in advising on the three amendments to TJPA's TIFIA loan, on the Bridge Loan that closed in 2015, and on the interim City Financing that closed in 2017. The firm continues to provide compliance assistance related to outstanding debt, as well as financing strategy and advice for Phase 2.

In addition, in 2016, NWC Partners became a subcontractor to Sperry Capital, bringing partner Mary Pryor back to the project after a three-year hiatus at the request of TJPA Chief Financial Officer (CFO) Sara DeBord. Ms. Pryor, previously with NWC, had been intricately involved

with all financial and procurement aspects of the Transbay Program from 2004 to 2013. Ms. Pryor has broad knowledge of the project, in particular in regard to Program and fiscal year budgets, grants, financial policies, and TJPA's financial accounting system. Her experience includes capital and operations budgeting; financial plan development; cash flow management; federal funding administration, including FTA grants, FRA grants, and TIFIA loans; New Starts process strategy and implementation; and federal procurement management. Ms. Pryor has provided interim staff support for several transit agencies in the Bay Area, and is familiar with the regional planning and funding environment. Since 2016 she has been assisting TJPA staff with grant applications, management and reporting; budget preparation; financial policy revisions; and strategies for seeking full funding for Phase 2.

Ms. DeBord is leaving the position of CFO at the end of July 2018. With her unique and deep familiarity with the project, Ms. Pryor has agreed to lead the TJPA finance team on a part-time interim basis and provide the TJPA with financial advice while a replacement is sought. Sperry Capital will also be assisting with various tasks during the vacancy, such as debt and investment management. Staff thus recommends extending the Sperry Capital contract, with NWC Partners continuing as a subcontractor, to November 2019. Staff believes that with their sets of expertise, Sperry Capital and NWC Partners are best positioned to assist the TJPA in these efforts.

The maximum compensation for the base term under the Agreement is \$4,284,920. Although the Agreement contemplated an increase in compensation if the option periods were exercised, no additional compensation was required. Through April 2018, \$3,949,264, or 92 percent, has been expended. This amendment would increase the maximum compensation by \$520,000 for the extended term—an estimated \$220,000 for support while the CFO position is vacant, and \$300,000 that would cover consultant work associated with a potential debt refinancing that the finance team is discussing. If the refinancing is not pursued, this amount would not be needed. Services are billed at hourly rates for actual hours, and both firms have been very efficient in providing services, stretching the original contract budget by more than two years.

**RECOMMENDATION:**

Authorize the Executive Director to amend the professional services agreement for financial consulting services between the TJPA and Sperry Capital, to increase the Agreement by \$520,000 and extend the term through November 2019.

**ATTACHMENTS:**

1. Resolution
2. Amendment

**TRANSBAY JOINT POWERS AUTHORITY  
BOARD OF DIRECTORS**

**Resolution No. \_\_\_\_\_**

WHEREAS, Following a competitive procurement process, on March 10, 2011, in Resolution No. 11-009 the Transbay Joint Powers Authority (“TJPA”) Board of Directors resolved to authorize the Executive Director to execute a professional services agreement (“Agreement”) with Nancy Whelan Consulting (“NWC”) for financial consulting services for a five-year term beginning March 1, 2011 with maximum compensation of \$4,284,920, and the option to extend the agreement for up to three additional years; and

WHEREAS, On June 1, 2013, the contract was assigned and novated to Sperry Capital to perform the services under the Agreement, and as such, they accepted the duties, rights and responsibilities under the Agreement as Contractor, and receive the benefits under the Agreement as Contractor; and

WHEREAS, On July 11, 2014, the TJPA and Sperry Capital entered into Amendment No. 1 to the Agreement, in which Sperry Capital agreed to act as a qualified independent representative to TJPA with respect to swap transactions in accordance with relevant provisions of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act and relevant Commodities Future Trading Commission regulations; and

WHEREAS, On February 11, 2016, the TJPA and Sperry Capital entered into Amendment No. 2 to the Agreement, extending the term of the Agreement from five years to seven years, through March 2018, with no increase in compensation; and

WHEREAS, On February 23, 2018, the TJPA and Sperry Capital entered into Amendment No. 3 to the Agreement, extending the term of the Agreement for an additional eight months, to November 9, 2018, with no increase in compensation; and

WHEREAS, Mary Pryor was an associate for NWC and provided extensive financial consulting services to the project from 2004 to 2013, and as a principal in NWC Partners returned to the project in 2016 as a subcontractor to Sperry Capital; and

WHEREAS, The TJPA Chief Financial Officer position will be vacant after July 2018 and Ms. Pryor has agreed to lead the TJPA finance team on an interim basis and provide the TJPA with financial advice while a replacement is recruited, and Sperry Capital will provide additional services that were previously performed by the CFO as well, and NWC Partners and Sperry Capital are excellently and uniquely qualified to ensure that finance-related matters are handled while the CFO position is vacant; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute Amendment No. 4 to the Agreement for financial consulting services with Sperry Capital to modify the Agreement to increase the maximum compensation by \$520,000 and extend the term through November 2019.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of July 12, 2018.

\_\_\_\_\_  
Secretary, Transbay Joint Powers Authority

**Amendment No. 04**  
**Professional Services Agreement between**  
**the Transbay Joint Powers Authority and Sperry Capital, Inc.**

THIS Amendment No. 4 to the Professional Services Agreement to furnish Financial Consulting Services dated March 1, 2011, as amended July 11, 2014, February 11, 2016, and February 23, 2018 (“Agreement”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2018 in San Francisco, California, by and between **Sperry Capital, Inc.** (“Contractor”), and the **Transbay Joint Powers Authority** (“TJPA”).

**Recitals**

The TJPA and Contractor desire to extend the term of the Agreement and increase the maximum compensation under the Agreement. The TJPA and Contractor agree to amend Section 2 and Section 5 of the Agreement in its entirety to read as follows:

**Terms and Conditions**

**2. Term of the Agreement.** Subject to Section 1, the term of this Agreement shall extend from the Effective Date of the Agreement, March 1, 2011, to November 30, 2019.

**5. Compensation**

All work under this Agreement shall be compensated on an hourly basis, subject to any maximum price set forth in a particular NTP. In no event shall the total compensation under this Agreement exceed Four Million Eight Hundred Four Thousand Nine Hundred Twenty Dollars (\$4,804,920).

Hourly rates for services are to remain fixed during the entire contract period, including any option periods, except for reasonable cost of living increases approved by TJPA.

No charges shall be incurred under this Agreement nor shall any payments become due to the Contractor until the Services required under this Agreement are received from Contractor and approved by the Executive Director as being in accordance with this Agreement. The TJPA may withhold payment to the Contractor in any instance in which the Contractor 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**

**CONTRACTOR: Sperry Capital, Inc.**

\_\_\_\_\_  
Mark Zabaneh  
Executive Director

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

\_\_\_\_\_  
Secretary, TJPA Board

**Approved as to Form by:**

\_\_\_\_\_  
TJPA Legal Counsel

\_\_\_\_\_  
James Martling  
Principal  
Sperry Capital, Inc.  
Three Harbor Drive, Suite 101  
Sausalito, CA 94965

\_\_\_\_\_  
Date

Tax Identification Number: 94-3222765