

**STAFF REPORT FOR CALENDAR ITEM NO.: 15.3
FOR THE MEETING OF: March 12, 2020**

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 \$850,000 and extend the term through December 2020.

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, five 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.

Amendment 4. Approved by the TJPA Board in July 2018 to extend the term of the Agreement to November 2019 to provide support to TJPA in the absence of a CFO and to pursue debt refinancing. There was an increase of \$520,000 for a maximum compensation amount of \$4,804,920.

Amendment 5. Approved by the Executive Director in August 2019 to extend the term of the Agreement to June 30, 2020 to provide continued support in the refinancing efforts and as a bridge of time until a new Request for Proposals (RFP) had been completed and awarded. There was an increase of \$480,492 for a maximum compensation of \$5,285,412.

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, on the interim City Financing that closed in 2017, and now the refinancing of the TIFIA loan. TJPA has been pursuing refinancing since July 2019 and initially anticipated going to market in December 2019. The complicated nature of a new credit, tax allocation bonds, and a passive revenue stream has made the process longer than originally anticipated. TJPA now anticipates going to market by June 2020 as the process is fully scheduled.

Additionally, TJPA has released an RFP for Financial Consulting Services and an RFP for Financial Advisory Services. Both processes are underway, but will not be completed prior to the exhaustion of the currently available funds and time on the existing contract with Sperry. Staff recommends extending this contract by six months, from June 2020 to December 2020, to complete the refinancing efforts, and to provide time to conclude the RFP processes and transitional time at the conclusion of the RFP processes, if needed.

The maximum compensation for the base term under the Agreement as amended is \$5,285,412. Through January 2020, \$5,260,198, or 99 percent, has been expended. This amendment would increase the maximum compensation by \$850,000. Services are billed at hourly rates for actual hours.

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 \$850,000 and extend the term through December 2020.

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, exercising the option to extend 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, exercising the option to extend the term of the Agreement for an additional eight months, to November 9, 2018, with no increase in compensation; and

WHEREAS, On July 12, 2018, the TJPA and Sperry Capital entered into Amendment No. 4 to the Agreement, extending the term of the Agreement to November 30, 2019, with an increase in compensation of \$520,000; and

WHEREAS, On August 1, 2019, the TJPA and Sperry Capital entered into Amendment No. 5 to the Agreement, extending the term of the Agreement to June 30, 2020, with an increase in compensation of \$480,492; and

WHEREAS, The TJPA's efforts in refinancing the TIIFA loan is scheduled to conclude by June 2020 and the procurement of and transition to a new contract for Financial Consultants and Financial Advisors is in process but not yet complete; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute Amendment No. 6 to the Agreement for financial consulting services with Sperry Capital to modify the Agreement to increase the maximum compensation by \$850,000 and extend the term through December 2020.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of March 12, 2020.

Secretary, Transbay Joint Powers Authority

Amendment No. 06
Professional Services Agreement between
the Transbay Joint Powers Authority and Sperry Capital, Inc.

THIS Amendment No. 6 to the Professional Services Agreement to furnish Financial Consulting Services dated March 1, 2011, as assigned and novated June 1, 2013 and amended July 11, 2014, February 11, 2016, February 23, 2018, July 12, 2018, and August, 1, 2019 (“Agreement”) is entered into as of the 12th day of March 2020 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 December 31, 2020.

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 Six Million One Hundred Thirty-Five Thousand Four Hundred Twelve Dollars (\$6,135,412).

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

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

Approved as to Form by:

TJPA Legal Counsel

Date

Tax Identification Number: 94-3222765

Transbay Joint Powers Authority
Board of Directors

Resolution No.: _____

Adopted: _____

Attest: _____

Secretary, TJPA Board