

**STAFF REPORT FOR CALENDAR ITEM NO.: 15  
FOR THE MEETING OF: September 13, 2018**

**TRANSBAY JOINT POWERS AUTHORITY**

**BRIEF DESCRIPTION:**

Authorizing the Executive Director to execute an amendment to the Professional Services Agreement for Legal Services (Agreement) with the Jones Day law firm to provide litigation support services in actions against the TJPA arising from the movement of 301 Mission Street, increasing the Agreement maximum compensation from \$10.7 million to \$15.7 million, and authorizing the transfer of \$5 million from Program Reserve to cover additional legal costs related to 301 Mission litigation.

**EXPLANATION:**

In December 2016, the TJPA Board of Directors authorized the Executive Director to award a contract to Jones Day to provide services to TJPA related to the 301 Mission litigation. The term of the contract is five years, with the option to extend for up to three years. As noted in the original staff report from December 8, 2016, the hourly rates are blended, which saves money on higher-level attorneys, and it is anticipated that a portion of the costs of the 301 Mission litigation will ultimately be paid or reimbursed by insurance companies for the TJPA's contractors and/or by the contractors themselves with a duty to indemnify TJPA. The initial compensation was set at \$500,000, with the understanding that the contract would be amended periodically to increase the compensation as appropriate. The following increases have been authorized thus far:

	<u>Increase</u>	<u>New Amount</u>
May 2017	\$1,500,000	\$2,000,000
September 2017	\$1,500,000	\$3,500,000
February 2018	\$2,200,000	\$5,700,000
June 2018	\$5,000,000	\$10,700,000

TJPA staff recommends increasing the maximum compensation in the Agreement by \$5,000,000 to a total of \$15.7 million at this time, and requests a transfer from Program Reserve to fund these expenditures while they are apportioned to Phase 1. The Jones Day costs are being tracked separately from other legal costs.

Eighteen percent of the actual costs thus far have been reimbursed by insurance companies, with substantially more expected over time.

**RECOMMENDATION:**

TJPA staff recommends that the TJPA Board authorize the Executive Director to execute Amendment No. 5 to the Legal Services Agreement with Jones Day to provide litigation support services, increasing the maximum compensation to \$15.7 million, and authorize the transfer of \$5 million from Program Reserve to cover additional legal costs related to 301 Mission litigation.

**ENCLOSURES:**

1. Resolution
2. Agreement Amendment No. 5

**TRANSBAY JOINT POWERS AUTHORITY  
BOARD OF DIRECTORS**

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

WHEREAS, The Transbay Joint Powers Authority (TJPA) requires legal representation in litigation concerning movement of the Millennium Project located at 301 Mission Street in San Francisco, including *Lehman, et al. v. TJPA, et al.*, San Francisco Superior Court No. CGC-16-553758, *Eng, et al. v. Millennium Partners I, Inc., et al.*, San Francisco Superior Court No. CGC-16-553574, and other actions that may be filed against the TJPA arising from the movement of 301 Mission; and

WHEREAS, On December 8, 2016, the TJPA Board authorized the Executive Director to enter into a contract for litigation support services (Agreement) with the law firm Jones Day; and

WHEREAS, The Agreement was amended January 30, 2017, to include representation of the Peninsula Corridor Joint Powers Board and Alameda-Contra Costa Transit District in the scope of services; and

WHEREAS, The initial authorized compensation was \$500,000, which may be adjusted as needed by the TJPA Board; and

WHEREAS, The authorized compensation was increased to \$2,000,000 by the TJPA Board on May 11, 2017; and

WHEREAS, The authorized compensation was increased to \$3,500,000 by the TJPA Board on September 14, 2017; and

WHEREAS, The authorized compensation was increased to \$5,700,000 by the TJPA Board on February 8, 2018; and

WHEREAS, The authorized compensation was increased to \$10,700,000 by the TJPA Board on June 14, 2018; and

WHEREAS, Legal services related to 301 Mission are needed as litigation continues; and

WHEREAS, TJPA Staff recommends increasing the authorized compensation to \$15,700,000 at this time; and

WHEREAS, Transferring \$5 million from Program Reserve will provide funds to cover the costs for additional legal services provided by Jones Day related to 301 Mission; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute an amendment to the Agreement with Jones Day increasing the authorized compensation to \$15,700,000; and be it further

RESOLVED, That the TJPA Board of Directors authorizes staff to transfer \$5 million from the Program Reserve for 301 Mission legal services.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of September 13, 2018.

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Secretary, Transbay Joint Powers Authority

**Amendment No. 5**  
**Agreement 462-LEGAL-1216 between**  
**the Transbay Joint Powers Authority and**  
**Jones Day**

This Amendment No. 5 to the Professional Services Agreement 462-LEGAL-1216 (First Amended Legal Services Agreement dated January 30, 2017 (“Agreement”)) is entered into as of \_\_\_\_\_, 2018, by and between the TRANSBAY JOINT POWERS AUTHORITY (“TJPA”) and JONES DAY (“Attorney”).

The TJPA and Attorney desire to increase the maximum compensation under the Agreement without changing the scope or deliverables under the Agreement. The TJPA and Attorney agree to amend Section 5 of the Agreement in its entirety to read as follows:

**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. At the time of execution of this Agreement it is unknown as to the amount 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 Seven Hundred Thousand Dollars (\$15,700,000). As the need for services increases, the services under this Agreement could end up to be substantially more than the \$15,700,000 stated herein, with no guarantee of a minimum amount, and the TJPA Board of Directors shall authorize increases accordingly.

All work under this Agreement shall be compensated on blended hourly or lump-sum basis, subject to the terms set forth in a particular RFS and agreed to by Attorney. Unless Attorney specifically agrees in writing to the contrary, any fee estimate, budget or projection of hours is not a commitment to perform the services within a fixed amount of time or for a fixed fee. The Attorney’s hourly rates appear in Appendix A. Blended hourly rates for Partner Attorneys include Counsel and Of Counsel. Any change in hourly rates in Appendix A 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 and/or his designee 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**

**ATTORNEY  
Jones Day**

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Mark Zabaneh  
Executive Director

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Daniel McMillan  
Partner

Transbay Joint Powers Authority  
Board of Directors

Jones Day  
555 South Flower Street  
Los Angeles, CA 90266

Resolution No. \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Attest:

Tax Identification No.: 34-0319085

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Secretary, TJPA Board

**Approved as to Form by:**

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TJPA Legal Counsel