

**Bay Area Infrastructure Financing Authority
(BAIFA)**

December 21, 2022

Agenda Item 3c - 22-1796

**BAIFA Resolution No. 41
Delegation of Authority Regarding Settlement of Claims and Lawsuits and Contracts for
Legal Services**

Subject:

A request that the Bay Area Infrastructure Financing Authority (BAIFA) approve BAIFA Resolution No. 41: 1) authorizing the General Counsel or designee to allow, compromise, or settle claims and actions against the local public entity and execute any resulting agreement, provided the amount to be paid pursuant to the agreement to accept, compromise or settle does not exceed fifty thousand dollars (\$50,000); 2) authorizing the Chief Financial Officer or designee to make payment on said allowance, compromise or settlement, upon request by General Counsel or designee; 3) authorizing the General Counsel or designee to negotiate and execute agreements for legal services in an amount not to exceed the General Counsel's delegated authority as set forth in Metropolitan Transportation Commission Resolution No. 4546; and 4) directing the General Counsel to report to BAIFA any action taken under the authority of the proposed resolution.

Background:

Government Code section 935.4 authorizes a public entity to authorize an employee to allow, compromise, or settle a claim against the local public entity if the amount to be paid pursuant to the acceptance, compromise or settlement does not exceed fifty thousand dollars (\$50,000).

Government Code section 949 allows a public entity to delegate the authority to settle a legal action. Upon written order from the authorized employee, the fiscal officer is to pay the amount as required by the allowance, compromise or settlement of the claim or action. Claims or actions above fifty thousand dollars (\$50,000) require action by the Commission to allow, settle, or compromise the claim. The best practice is to have a separate resolution governing settlement and payment of claims and actions. Since the Office of General Counsel oversees and manages claims and actions, staff recommends delegating such authority to the General Counsel. The Chief Financial Officer should be authorized to make payment on any settlement agreement that does not exceed fifty thousand dollars (\$50,000) upon request by the General Counsel. Finally, staff recommends authorizing the General Counsel to execute legal service agreements in an amount not to exceed the Executive Director's authority for executing contracts, which is currently two hundred thousand dollars (\$200,000) as set forth in BAIFA Resolution No.1 (and see also BATA Resolution No. 46), and in an amount not to exceed the General Counsel's

authority for executing legal service contracts as set forth in Metropolitan Transportation Commission Resolution No. 4546, which is also two hundred thousand dollars (\$200,000). Outside legal counsel serves as an extension of the Office of General Counsel, and to ensure no inadvertent waiver of the attorney work product doctrine, the General Counsel should retain outside legal services. The General Counsel will report to the Authority on a quarterly basis any action taken under the proposed resolution. For any contracts or amendments that would exceed the delegated authority, the General Counsel will seek authority from BAIFA prior to executing the contract or amendment.

Issues: None.

Recommendations:

Staff recommends that the Authority approve BAIFA Resolution No. 41 for approval: 1) authorizing the General Counsel or designee to allow, compromise, or settle claims and actions against the local public entity and execute any resulting agreement, provided the amount to be paid pursuant to the agreement to accept, compromise or settle does not exceed fifty thousand dollars (\$50,000); 2) authorizing the Chief Financial Officer or designee to make payment on said allowance, compromise or settlement, 3) authorizing the General Counsel or designee to negotiate and execute agreements for legal services in an amount to exceed the General Counsel's delegated authority as set forth in Metropolitan Transportation Commission Resolution No. 4546; and 4) directing the General Counsel to report any action taken under the authority of the proposed resolution to BAIFA.

Attachments:

- BAIFA Resolution No. 41



Therese W. McMillan

Date: December 21, 2022
Referred By: BAIFA

ABSTRACT

Resolution No. 41

This resolution authorizes the General Counsel or designee to reject, allow, compromise, or settle claims and actions against the Bay Area Infrastructure Financing Authority (BAIFA) and execute any resulting agreement, provided the amount to be paid pursuant to the agreement to allow, compromise or settle does not exceed fifty thousand dollars (\$50,000); authorizes the Chief Financial Officer or designee to make payment on said allowance, compromise or settlement, upon request by General Counsel or designee and authorizes the General Counsel or designee to negotiate and execute agreements for legal services in an amount not to exceed the General Counsel's authority as set forth in Metropolitan Transportation Commission Resolution No. 4546. Any actions taken by the General Counsel under the authority of this Resolution shall be reported to BAIFA on a quarterly basis.

Further discussion of this subject is contained in the BAIFA Summary Sheet dated December 21, 2022.

Date: December 21, 2022
Referred By: BAIFA

RE: Rejection, Allowance, Compromise or Settlement of Claims and Actions And Delegated Authority For Contracting for Legal Services

BAY AREA INFRASTRUCTURE FINANCING AUTHORITY
RESOLUTION NO. 41

WHEREAS, pursuant to Government Code section 935.4, the Bay Area Infrastructure Financing Authority (BAIFA) may authorize an employee to allow, compromise, or settle a claim against the local public entity if the amount to be paid pursuant to the acceptance, compromise or settlement does not exceed fifty thousand dollars (\$50,000); and

WHEREAS, pursuant to Government Code section 935.4, the Chief Financial Officer may make payment in the amount for which a claim has been allowed, compromised, or settled upon request by the authorized employee; and

WHEREAS, pursuant to Government Code section 949, BAIFA may delegate authority to the General Counsel to settle pending actions; and

WHEREAS, to ensure no inadvertent waiver of confidential materials protected by the attorney work product doctrine, BAIFA desires the General Counsel to retain outside legal counsel services; and

WHEREAS, the Metropolitan Transportation Commission adopted MTC Resolution No. 4546 on October 26, 2022 to authorize the General Counsel or designee to reject, allow, compromise, or settle claims and actions against MTC and execute any resulting agreement, provided the amount to be paid pursuant to the agreement to allow, compromise or settle does not exceed fifty thousand dollars (\$50,000); authorize the Chief Financial Officer or designee to make payment on said allowance, compromise or settlement, upon request by General Counsel or designee and authorize the General Counsel or designee to negotiate and execute agreements for legal services in an amount not to exceed the Executive Director's authority as set forth in MTC Resolution No. 3619; and

WHEREAS, BAIFA desires to increase efficiency in the management and disposition of claims and litigation; and

NOW, THEREFORE, BE IT RESOLVED, that BAIFA authorizes the General Counsel or designee to reject, allow, compromise, or settle claims and actions against the local public entity and to negotiate and execute any resulting agreement, provided the amount to be paid pursuant to the agreement to allow, compromise or settle does not exceed fifty thousand dollars (\$50,000); and be it further

RESOLVED, that the Chief Financial Officer or designee is authorized to make payment on said allowance, compromise or settlement, upon request by the General Counsel or designee; and be it further

RESOLVED, that the General Counsel or designee is authorized to negotiate and execute agreements for legal services and related purchase orders, in an amount not to exceed the General Counsel's authority as set forth in MTC Resolution No. 4546 as it exists or may be amended or revised, that the General Counsel shall seek authority from BAIFA prior to executing any agreements or amendments for legal services that exceed the authority granted by this Resolution, and that this Resolution shall supersede any resolutions or other policies and procedures that conflict with this authority; and

RESOLVED, that any action taken by the General Counsel or designee shall be reported to BAIFA on a quarterly basis.

BAY AREA INFRASTRUCTURE FINANCING AUTHORITY

Alfredo Pedroza, Chair

The above resolution was entered into by
The Bay Area Infrastructure Financing Authority
at a duly called and noticed meeting held in
San Francisco, California and at other remote
locations, on December 21, 2022.