

THIS STAFF REPORT COVERS CALENDAR ITEM NO.: 7.3
FOR THE MEETING OF: December 10, 2009

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to execute Amendment #8 to the Request for Services #1 to Shute, Mihaly & Weinberger LLP to increase the budgeted amount by \$244,213 for a total of \$2,884,213.

SUMMARY:

In April 2005, the Transbay Joint Powers Authority (TJPA) Board of Directors authorized the Executive Director to execute a Legal Services Agreement (“Agreement”) with Moscone, Emblidge & Quadra LLP and its team of law firms, including Shute, Mihaly & Weinberger LLP (SMW), providing that the law firms will furnish legal advice and litigation services to the TJPA at a cost not to exceed \$3,000,000. The original contract term was three years; in January 2008 the Board authorized the Executive Director to execute an amendment to the agreement extending the term by another three years.

Under the terms of the Agreement, the TJPA issues Requests for Services (RFS) to the various law firms. The RFS with SMW identifies the legal services that SMW will provide to the TJPA, including services relating to land acquisition and land use matters, CEQA compliance, provision of day-to-day legal advice, and attendance at TJPA Board meetings. The original RFS amount was \$425,000. The Board has previously authorized the following amendments to the RFS, increasing the total budgeted amount to \$2,640,000:

- July 21, 2005 — increase to \$725,000
- March 16, 2006 — increase to \$1,425,000
- September 20, 2007 — increase to \$1,705,000
- July 10, 2008 – increase to \$2,020,000
- January 8, 2009 – increase to \$2,330,000
- June 11, 2009 – increase to \$2,640,000

The most recent RFS amendment, in June 2009, provided funding through December 2009, the first half of fiscal year 2009-10. This new amendment will provide funding through April 2010. It is anticipated that billings could average \$50,000 or more per month if various land acquisition matters proceed to eminent domain actions. This will be the final RFS amendment under the current legal contract, as this fully authorizes the complete \$3,000,000 contract amount; the balance of the \$3 million has been spent or is appropriated for legal expenditures by the other law firms in the consortium. A new RFP for legal services will be released early in 2010.

Staff recommends the approval of this amendment to increase the maximum approved amount of the Request for Services to SMW by \$244,213 for work through April 2010. The attached Resolution authorizes the TJPA Executive Director to execute Amendment #8 to Request for Services #1, increasing the maximum amount by \$244,213 to \$2,884,213.

ENCLOSURES:

1. Resolution
2. Amendment #8 to Request for Services #1

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, In Resolution No. 05-007 the Transbay Joint Powers Authority (TJPA) Board of Directors: (1) authorized the Executive Director to execute a Legal Services Agreement with Moscone, Emblidge & Quadra LLP and its team of law firms for advice and litigation services for a term of three years at a cost not to exceed \$3,000,000; (2) required the Executive Director to present to the TJPA Board of Directors any Request for Services in excess of \$150,000; and (3) approved the Legal Services Agreement dated as of April 1, 2005, containing Request for Services #1 to Shute, Mihaly & Weinberger LLP (SMW) in the amount of \$425,000; and

WHEREAS, On July 21, 2005 in Resolution 05-011 the TJPA Board of Directors approved Amendment #1 to Request for Services #1 to SMW, increasing the budgeted amount of Request for Services #1 to \$725,000; and

WHEREAS, On March 16, 2006 in Resolution 06-004 the TJPA Board of Directors approved Amendment #2 to Request for Services #1 to SMW, increasing the budgeted amount of Request for Services #1 to \$1,425,000; and

WHEREAS, On February 15, 2007 in Resolution 07-006 the TJPA Board of Directors approved Amendment #3 to Request for Services #1 to SMW, to furnish day to day legal advice as needed and attend TJPA Board of Directors meetings without any change to the budgeted amount; and

WHEREAS, On September 20, 2007 in Resolution 07-029 the TJPA Board of Directors approved Amendment #4 to Request for Services #1 to SMW, increasing the budgeted amount of Request for Services #1 to \$1,705,000; and

WHEREAS, On July 10, 2008 in Resolution 08-031 the TJPA Board of Directors approved Amendment #5 to Request for Services #1 to SMW, increasing the budgeted amount of Request for Services #1 to \$2,020,000; and

WHEREAS, On January 9, 2009 in Resolution 09-002 the TJPA Board of Directors approved Amendment #6 to Request for Services #1 to SMW, increasing the budgeted amount of Request for Services #1 to \$2,330,000; and

WHEREAS, On June 11, 2009 in Resolution 09-023 the TJPA Board of Directors approved Amendment #7 to Request for Services #1 to SMW, increasing the budgeted amount of Request for Services #1 to \$2,640,000; and

WHEREAS, An increase of \$244,213 in the Request for Services #1 to SMW for work related to land acquisitions and other land use matters and as needed day to day legal advice and attendance at TJPA Board meetings would be within the maximum contract amount of the Legal Services Agreement, and would allow the firm to continue working on the matters set forth therein; now, therefore, be it

RESOLVED, That the TJPA Board authorizes the Executive Director to execute Amendment #8 to Request for Services #1 to SMW to increase the maximum approved amount under Request for Services #1 from \$2,640,000 to \$2,884,213.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of December 10, 2009.

Secretary, Transbay Joint Powers Authority

**Transbay Joint Powers Authority
Amendment #8 to Request for Services #1
Shute, Mihaly & Weinberger LLP**

The scope of services in Request for Services #1 to Shute, Mihaly & Weinberger LLP, approved by the TJPA Board of Directors on July 21, 2005 in Resolution No. 05-011, is hereby increased to the amounts shown below. All other provisions of the Request for Services #1 (as amended by RFS Amendments #1-7), and the Legal Services Agreement and Master Description of Services dated April 1, 2005, as amended by Agreement Amendments #1 and #2, shall remain in full force and effect.

Land acquisition and land use matters	\$ 162,800
Day-to-day legal advice/attendance at Board meetings	\$ 81,413
Total increase in approved contract amount	\$ 244,213
Total approved contract amount	\$ 2,884,213

AUTHORIZED:

DATE: _____

Maria Ayerdi-Kaplan, Executive Director
Transbay Joint Powers Authority

ACCEPTED:

DATE: _____

Andrew W. Schwartz
Shute, Mihaly & Weinberger LLP