

**STAFF REPORT FOR CALENDAR ITEM NO.: 8.3
FOR THE MEETING OF: June 19, 2015**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to amend the Professional Services Agreement with Sheppard, Mullin, Richter & Hampton LLP to provide legal counsel related to retail analysis for a term through December 31, 2016, with no change in contract amount.

EXPLANATION:

The Transbay Transit Center will be a major transportation station serving tens of thousands of travelers, commuters and residents on a daily basis. The TJPA wishes to achieve significant retail destination status for the new Center. A retail consultant under the Pelli Clarke Pelli architectural contract has been working directly with TJPA and the architect to determine an appropriate mix of retail that is viable, contributes to operational revenues, and effectively co-exists with transit operations.

To assist in these efforts, in September 2009 TJPA entered into an agreement with Sheppard, Mullin, Richter & Hampton LLP (SMRH), specialized legal counsel with experience in complex master-lease retail and mixed-use development projects. SMRH was selected through a competitive request for proposals process. The firm in conjunction with Charles Sullivan of the City Attorney's Office will provide legal counsel and assist with the drafting of the Request for Proposals, the evaluation of responses, and the negotiation of the Master Lease Agreement and Operating Contract.

The contract is for a maximum of \$200,000, of which 37 percent has been billed thus far. Through no fault of SMRH, the planned schedule for their scope of work was deferred as TJPA and the architects continued refining the design of the retail areas of the Transit Center. The contract term has thus been amended twice: in September 2009 to extend to September 2010, and in September 2010 to extend to December 2014. TJPA staff recently consulted with the City Attorney on the strategy for retail and operations, and while the City Attorney will work on the Master Lease Agreement and Operating Contract, the City Attorney's office recommended keeping SMRH on board to assist TJPA and the City Attorney moving forward.

The scope of work and the budget remain unchanged through this contract amendment. The staffing included in 2009 has changed slightly, to reflect firm retirements and attorney experience. SMRH is still offering a discounted rate to TJPA.

RECOMMENDATION:

Authorize the Executive Director to amend the Professional Services Agreement with Sheppard, Mullin, Richter & Hampton LLP to provide legal counsel related to retail analysis for a term through December 31, 2016, with no change in contract amount.

ENCLOSURES:

1. Resolution
2. Amendment No. 3

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The Transbay Joint Powers Authority (TJPA) wishes to achieve significant retail destination status for the new Transbay Transit Center; and

WHEREAS, The TJPA desires to retain specialized legal counsel with experience in complex master-lease retail and mixed-use development projects; and

WHEREAS, In September 2009 the TJPA entered into an agreement with Sheppard, Mullin, Richter & Hampton LLP, providing for a term of one year and compensation not to exceed \$200,000, and further providing the TJPA with an option to extend the agreement for an additional year with the agreement of Sheppard, Mullin, Richter & Hampton LLP; and

WHEREAS, In September 2010 the TJPA extended the agreement for an additional year, without changing the scope or maximum amount under the agreement; and

WHEREAS, In September 2011 the TJPA extended the agreement through December 31, 2014, without changing the scope or compensation under the agreement; and

WHEREAS, The planned schedule for the scope of work was deferred as the retail portion of the Transit Center was undergoing continued refinement to the design; and

WHEREAS, The City Attorney recommends TJPA continue to retain the services of Sheppard, Mullin, Richter & Hampton LLP to provide counsel related to contracting for retail and future operations management; and

WHEREAS, The TJPA thus desires to extend the agreement with Sheppard, Mullin, Richter & Hampton LLP for a term through December 31, 2016, without changing the scope or maximum amount under the agreement; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute Amendment No. 3 to the Agreement with Sheppard, Mullin, Richter & Hampton LLP to provide legal counsel related to retail analysis for a term through December 31, 2016, with no change in contract amount.

I hereby certify that the forgoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of June 19, 2015.

Secretary, Transbay Joint Powers Authority

Amendment No. 03
Professional Services Agreement between
the Transbay Joint Powers Authority and
Sheppard Mullin Richter & Hampton LLP

THIS Amendment No. 3 to the Professional Services Agreement to furnish retail counsel services dated September 10, 2009, as amended September 9, 2010, as further amended September 8, 2011 (“Agreement”) is entered into as of the _____ day of _____, 2015 in San Francisco, California, by and between **Sheppard Mullin Richter & Hampton LLP** (“Contractor”), and the **Transbay Joint Powers Authority** (“TJPA”).

The TJPA and Contractor desire to extend the term of the Agreement without changing the scope, price, or deliverables under the Agreement. The TJPA and Contractor agree to amend Section 2 of the Agreement in its entirety to read as follows:

2. Term of the Agreement.

Subject to Section 1, the term of this Agreement shall be from the Effective Date of the Agreement through December 31, 2016, as described in Section 3 below.

The TJPA and Contractor also agree to amend Appendix B of the Agreement as attached. All other provisions of the Agreement shall remain in full force and effect. In particular, there shall be no change to the maximum compensation described in Section 5 of the Agreement.

**TRANSBAY JOINT POWERS
AUTHORITY**

CONTRACTOR
Sheppard Mullin Richter & Hampton LLP

Maria Ayerdi-Kaplan
Executive Director

Signature

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

Printed Name

Tax Identification Number

Secretary, TJPA Board

Approved as to Form by:

TJPA Legal Counsel

**APPENDIX B
FEES**

Staff Name	Staff Function	Rate/Hour
Joan Story	Leasing/Transactions Specialist and Team Leader	\$608
Katharine Allan	Associate	\$536

The above discounted hourly rates shall include all incidental expenses of the Contractor, including the costs of toll telephone calls, document binding, filing fees, express mail, delivery charges, courier service, in - and out-of-house photocopying, charges for sending facsimiles, transportation, travel, automobile rental, taxicab fares, parking, meals, secretarial services, printing, photographs, renderings, maps, Internet, computer, overhead, administration, and other costs and charges incurred by the Contractor or the Contractor's subcontractors