

**STAFF REPORT FOR CALENDAR ITEM NO.: 9
FOR THE MEETING OF: January 12, 2017**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to execute Amendment No. 5 to the Professional Services Agreement for retail counsel services with Sheppard, Mullin, Richter & Hampton LLP to extend the term of the agreement through December 31, 2017, and increase the amount of compensation by \$60,000 to a total of \$280,000.

EXPLANATION:

The Transbay Transit Center will be a major regional transportation station serving tens of thousands of travelers, commuters, and residents on a daily basis. The Transit Center is also being planned as a significant retail destination with over 100,000 square feet of commercial space. A retail consultant under the Pelli Clarke Pelli Architects contract worked directly with the TJPA and the architect to develop an appropriate mix of retail that will be viable, contribute to operational revenues, and effectively coexist with transit operations.

To assist in these efforts, in September 2009, the 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 procurement process; the City Attorney also recommended SMRH for this work. The firm was engaged to provide legal counsel and assist with the drafting of a Request for Proposals (RFP) for an entity to manage the retail leasing and operation and maintenance of the Transit Center, the evaluation of responses to the RFP, and the negotiation of an agreement with the selected firm.

However, through no fault of SMRH, the planned schedule for the firm's scope of work was deferred, as the TJPA and the architect continued refining the design of the retail areas of the Transit Center, which extended the procurement process. Thus, the TJPA Board of Directors authorized the Executive Director to amend the agreement with SMRH three times: in September 2010 to extend the term to September 2011, in September 2011 to extend the term to December 2014, and again in June 2015 after a pause in work to extend the term to December 2016. A fourth amendment to SMRH's agreement was executed by the Interim Executive Director in May 2016, increasing the maximum compensation to \$220,000, of which 95 percent has been billed thus far.

SMRH has continued providing services in support of the procurement process, assisting with development of a Request for Qualifications for a Master Retail Lessor/Facilities Operator/Event Programmer, issued in 2014, and the subsequent RFP for a Master Lessee, issued in early 2016, as well as participating in negotiations with respondents to the RFP.

Negotiations continue, and the TJPA expects to bring a recommended firm to manage the retail leasing and operation and maintenance of the Transit Center to the TJPA Board of Directors in early 2017. The operating agreement with the selected firm is anticipated to be completed in the first quarter of 2017. Amendment No. 5, therefore, would extend the term of the agreement by one additional year to December 31, 2017, and increase the maximum compensation under the

agreement by \$60,000 to a total of \$280,000, to allow SMRH to continue to provide retail counsel services. SMRH will continue to offer a discounted rate to the TJPA.

RECOMMENDATION:

Authorize the Executive Director to execute Amendment No. 5 to the Professional Services Agreement for retail counsel services with Sheppard, Mullin, Richter & Hampton LLP to extend the term of the agreement through December 31, 2017, and increase the contract amount by \$60,000 to a total of \$280,000.

ENCLOSURES:

1. Resolution
2. Amendment No. 5

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The Transbay Joint Powers Authority (TJPA) wishes the Transit Center to become a significant retail destination; and

WHEREAS, The TJPA requires 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 (SMRH), 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 SMRH; 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 the process to retain the entity that will manage the Transit Center retail and operations and maintenance was extended; and

WHEREAS, As a result, the agreement with SMRH has been amended three times to extend the term, without change to the scope or compensation under the agreement, with the current term expiring on December 31, 2016; and

WHEREAS, SMRH has continued to assist with the procurement, including reviewing the Request for Qualifications and responses, providing recommendations regarding issuing the Request for Proposals (RFP), reviewing the RFP and respondents' proposals, assisting with negotiations, preparing term sheets, and will prepare the agreement with the selected firm; and

WHEREAS, In May 2016 a fourth amendment to the agreement increased the amount of compensation to \$220,000, without changing the scope under the agreement; and

WHEREAS, The City Attorney recommends that TJPA continue to retain the services of SMRH to provide counsel related to contracting for retail and future operations management; and

WHEREAS, The TJPA thus desires to extend the agreement with SMRH through December 31, 2017, and increase the compensation to \$280,000 without changing the scope under the agreement; now, therefore, be it

RESOLVED, that the TJPA Board of Directors authorizes the Executive Director to execute Amendment No. 5 to the Agreement with Sheppard, Mullin, Richter & Hampton LLP to provide legal counsel related to retail management negotiations through December 31, 2017, and increase the compensation by \$60,000 to a total of \$280,000.

I hereby certify that the forgoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of January 12, 2017.

Secretary, Transbay Joint Powers Authority

Amendment No. 05
Professional Services Agreement between
the Transbay Joint Powers Authority
and Sheppard, Mullin, Richter & Hampton LLP

THIS Amendment No. 5 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, June 19, 2015, and May 4, 2016 (“Agreement”) is entered into as of the 1st day of January 2017, 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 and increase the maximum compensation under the Agreement, without changing the scope 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, as described in Section 3 below through December 31, 2017.

The TJPA and Contractor also agree to amend Section 5 of the Agreement in its entirety to read as follows:

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 Two Hundred Eighty Thousand Dollars (\$280,000). The breakdown of the Contractor’s fees appears in Appendix B, “Fees”. Hourly rates for services are to remain fixed during the contract period.

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
Sheppard, Mullin, Richter & Hampton LLP**

Mark Zabaneh
Executive Director

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

Attest:

Secretary, TJPA Board

Approved as to Form by:

TJPA Legal Counsel

Signature

Printed Name

Tax Identification Number