

**STAFF REPORT FOR CALENDAR ITEM NO.: 7.3**  
**FOR THE MEETING OF: September 8, 2011**

**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, 2014, with no change in maximum compensation.

**EXPLANATION:**

The Transbay Transit Center will be a major transportation hub 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 provided some initial services during the fourth quarter of 2009, such as assisting in assessing whether a Request for Qualifications and/or Request for Proposals for entities to enter into a Master Lease Agreement and/or Operating Contract associated with the retail opportunities in and around the Transbay Transit Center would be advisable to the TJPA, and drafting an initial Request for Qualifications. Future services will include working with the TJPA and the retail consultant to finalize the RFQ/RFP, evaluation of responses, negotiation of Master Lease Agreement and/or Operating Contract, and evaluation of opportunities for public and/or private financing for capital costs for Public Park and Retail construction costs.

The contract is for a maximum of \$200,000, of which 17 percent has been billed thus far. The contract had an initial one year term with an option to extend for one year; the option was exercised in September 2010 and the current term concludes in September 2011. Through no fault of SMRH, the planned schedule for their scope of work has been deferred as TJPA and the architects continue refining the design of the retail areas of the Transit Center. The TJPA wishes to keep SMRH under contract to perform the scope of work once the retail design has been finalized.

The scope of work and the budget remain unchanged through this contract amendment. SMRH has agreed to keep hourly rates for the partners assigned to the TJPA frozen at their 2009 discounted level.

**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, 2014, with no change in maximum compensation.

**ENCLOSURES:**

1. Resolution
2. Amendment No. 2

**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 compensation under the agreement; and

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

WHEREAS, The TJPA desires to extend the agreement for a term through December 31, 2014, without changing the scope or compensation under the agreement; and

WHEREAS, Sheppard, Mullin, Richter & Hampton LLP has indicated their agreement with this extension; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute Amendment No. 2 to the Agreement with Sheppard, Mullin, Richter & Hampton LLP to provide legal counsel related to retail analysis for a term through December 31, 2014, with no change in maximum compensation.

I hereby certify that the forgoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of September 8, 2011.

\_\_\_\_\_  
Secretary, Transbay Joint Powers Authority

**Amendment No. 02**  
**Professional Services Agreement between**  
**the Transbay Joint Powers Authority and**  
**Sheppard Mullin Richter & Hampton LLP**

THIS Amendment No. 2 to the Professional Services Agreement to furnish retail counsel services dated September 10, 2009, as amended September 9, 2010 ("Agreement") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011 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. Through no fault of the Contractor, the retail elements of the project are undergoing continued refinement to the design of the retail portion of the Transit Center. As the design of the retail portion experiences ongoing refinement, and the planned schedule for the scope under this Agreement has been put on hold, 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 30, 2014, as described in Section 3 below.

The parties also agree to amend Appendix B, "Fees", as attached hereto.

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**

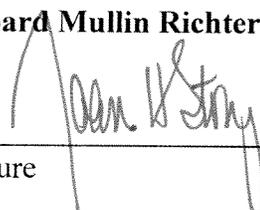
\_\_\_\_\_  
Maria Ayerdi-Kaplan  
Executive Director

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

\_\_\_\_\_  
Secretary, TJPA Board

**CONTRACTOR**

**Sheppard Mullin Richter & Hampton LLP**

  
\_\_\_\_\_  
Signature

Joan H. Story  
\_\_\_\_\_  
Printed Name

95-1463164  
\_\_\_\_\_  
Tax Identification Number

**APPENDIX B  
FEES**

Staff Name	Staff Function	Rate/Hour
Joan Story	Leasing/Transactions Specialist and Team Leader	\$535
David Madway	Redevelopment Specialist	\$570
Robert Thompson	Development/Land Use Specialist and RFPs/RFQs	\$605
Katharine Allan	Associate	\$435
	First Year Associate	\$275
	Second Year Associate	\$350

The above 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.