

Commission on Community Investment and Infrastructure

RESOLUTION NO. 41-2013
Adopted August 20, 2013

AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN THE SAN FRANCISCO OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE, THE SUCCESSOR AGENCY TO THE SAN FRANCISCO REDEVELOPMENT AGENCY, AND THE CITY AND COUNTY OF SAN FRANCISCO, THROUGH ITS SAN FRANCISCO PLANNING DEPARTMENT FOR DESIGN REVIEW AND ENVIRONMENTAL REVIEW SERVICES, FOR A TERM OF TWO YEARS, AND FOR AN AMOUNT NOT TO EXCEED \$225,000 ANNUALLY, FOR FISCAL YEAR 2013-14 AND FISCAL YEAR 2014-15

WHEREAS, Prior to its dissolution, the Redevelopment Agency of the City and County of San Francisco (“Redevelopment Agency”) implemented numerous redevelopment plans approved by the Board of Supervisors and authorized under the California Community Redevelopment Law, Cal. Health & Safety Code §§ 33000 et seq. Under this state authority, the redevelopment plans established land use controls in project areas and did not generally rely on the San Francisco Planning Code or other local land use regulation, including Article 31 of the Administrative Code, unless a particular redevelopment plan required it; and,

WHEREAS, State law dissolved the Redevelopment Agency on February 1, 2012, Cal. Health and Safety Code §§ 34161 et seq. (“Redevelopment Dissolution Law”), and provided, among other things, that successor agencies assumed the rights and obligations of the former Redevelopment Agency (with the exception of certain affordable housing assets). In particular, state law requires successor agencies to fulfill enforceable obligations that the former redevelopment agencies had entered into prior to June 28, 2011 (“Enforceable Obligations”); and,

WHEREAS, The Board of Supervisors, in its capacity as governing body of the Successor Agency, approved Ordinance No. 215-12 (Oct. 4, 2012) to implement Redevelopment Dissolution Law and established the Successor Agency Commission to which it delegated the authority to exercise land use, development and design approval for “surviving redevelopment projects;” and,

WHEREAS, OCII is the Successor Agency to the Redevelopment Agency, is a legal entity separate from the City and County of San Francisco (“City”), has assumed the remaining rights and obligations of the former Redevelopment Agency, and has “succeed[ed] to the organizational status of the former redevelopment agency” with the authority “to complete any

work related to an approved enforceable obligation,” Cal. Health & Safety Code § 34173 (g); and,

WHEREAS, OCII has the continuing authority and obligation: (1) to exercise land use controls required under Enforceable Obligations (including the Mission Bay North Owner Participation Agreement (“OPA”), *available at* <http://www.sfredevelopment.org/index.aspx?page=243>, the Mission Bay South OPA, *available at* <http://www.sfredevelopment.org/index.aspx?page=244>, the Disposition and Development Agreement (“DDA”) for Hunters Point Shipyard (“HPS”) Phase 1, *available at* <http://www.sfredevelopment.org/index.aspx?page=160>, the DDA for Candlestick Point-HPS Phase 2 DDA, *available at* <http://www.sfredevelopment.org/index.aspx?page=186>, the Transbay Implementation Agreement, *available at* <http://www.sfredevelopment.org/index.aspx?page=54>, and other OPAs and DDAs for projects that are not yet complete, and (2) to enforce the land use controls under redevelopment plans and related development controls where the City has not requested the transfer of land use functions to the City. (These redevelopment plans include Zone 1 of the Transbay Redevelopment Plan, Zone 1 of the Bayview Hunters Point Redevelopment Plan, the HPS Redevelopment Plan, the Mission Bay North and South Redevelopment Plans, the Rincon Point-South Beach Redevelopment Plan, and the Bayview Industrial Triangle Redevelopment Plan. These redevelopment plans and related documents are generally available at <http://www.sfredevelopment.org/index.aspx?page=3>.); and,

WHEREAS, The Redevelopment Dissolution Law provides, among other things, that successor agencies may enter into contracts for the purpose of “winding down the redevelopment agency.” Cal. Health & Safety Code § 34177.3 (b). *See also* Cal. Health & Safety Code § 34171 (d) (1) (F) (defining enforceable obligations to include “agreements necessary for the administration or operation of the successor agency”); and,

WHEREAS, The OCII has a continuing need to review and approve development projects, including design and environmental review, as part of the wind down of redevelopment agencies and desires to use the services of the Planning Department for this purpose; and,

WHEREAS, OCII has negotiated a memorandum of understanding with the City, through its Planning Department, to perform design review and environmental services for the OCII, for a term of two years, commencing on July 1, 2013, for an annual amount of \$225,000. A copy of the memorandum of understanding is on file with the Secretary of the Commission (the “MOU”); and,

WHEREAS, OCII has provided (and will continue to provide) for the expenditures anticipated under the MOU in its Recognized Obligation Payment

Schedules (“ROPS”) that are required to be submitted semi-annually to the Oversight Board and the California Department of Finance (“DOF”) and in its annual budget that is approved by the Board of Supervisors; now, therefore, be it

RESOLVED, That the Executive Director is hereby authorized to execute a memorandum of understanding between OCII and the City and County of San Francisco, through its San Francisco Planning Department, substantially in the form of the MOU lodged with the Secretary of the Commission, to provide design review and environmental review services to the OCII, for a term of two years, and for an amount not exceed \$225,000 per Fiscal Year, for Fiscal Year 2013-2104 and Fiscal Year 2014-2015, subject to availability and approval of funds in the ROPS.

Exhibit A: Memorandum of Understanding between the Office of Community Investment and Infrastructure and the City and County of San Francisco, through its Planning Department.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of August 20, 2013.


Commission Secretary

July 30, 2013

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE (“OCII”), AS
THE SUCCESSOR AGENCY TO THE SAN FRANCISCO REDEVELOPMENT AGENCY,
AND
SAN FRANCISCO PLANNING DEPARTMENT
FOR
DESIGN REVIEW AND ENVIRONMENTAL SERVICES
Fiscal Years 2012/2013 and 2013/2014

This Memorandum of Understanding (“MOU”) is entered into between OCII and the San Francisco Planning Department (“Planning Department”) for the period of 2 years.

WHEREAS, prior to its dissolution, the Redevelopment Agency of the City and County of San Francisco (“Redevelopment Agency”) implemented numerous redevelopment plans approved by the Board of Supervisors and authorized under the California Community Redevelopment Law, Cal. Health & Safety Code §§ 33000 *et seq.* Under this state authority, the redevelopment plans established land use controls in project areas and did not generally rely on the San Francisco Planning Code or other local land use regulation, including Article 31 of the Administrative Code, unless a particular redevelopment plan required it; and

WHEREAS, state law dissolved the Redevelopment Agency on February 1, 2012, Cal. Health and Safety Code §§ 34161 *et seq.* (“Redevelopment Dissolution Law”), and provided, among other things, that successor agencies assumed the rights and obligations of the former Redevelopment Agency (with the exception of certain affordable housing assets). In particular, state law requires successor agencies to fulfill enforceable obligations that the former redevelopment agencies had entered into prior to June 28, 2011 (“Enforceable Obligations”); and

WHEREAS, the Board of Supervisors approved Ordinance No. 215-12 (Oct. 4, 2012) to implement Redevelopment Dissolution Law and established a mayoral-appointed commission to serve as the governing body of the Successor Agency and to exercise land use, development and design approval for “surviving redevelopment projects;” and

WHEREAS, OCII is the Successor Agency to the Redevelopment Agency, is a legal entity separate from the City and County of San Francisco (“City”), has assumed the remaining rights and obligations of the former Redevelopment Agency, and has “succeed[ed] to the organizational status of the former redevelopment agency” with the authority “to complete any work related to an approved enforceable obligation,” Cal. Health & Safety Code § 34173 (g); and

WHEREAS, OCII has the continuing authority and obligation: (1) to exercise land use controls required under Enforceable Obligations (including the Mission Bay North Owner Participation Agreement (“OPA”), available at <http://www.sfredevelopment.org/index.aspx?page=243>, the Mission Bay South OPA, available at <http://www.sfredevelopment.org/index.aspx?page=244>,

the Disposition and Development Agreement (“DDA”) for Hunters Point Shipyard (“HPS”) Phase 1, *available at <http://www.sfredevelopment.org/index.aspx?page=160>*, the DDA for Candlestick Point-HPS Phase 2 DDA, *available at <http://www.sfredevelopment.org/index.aspx?page=186>*, the Transbay Implementation Agreement, *available at <http://www.sfredevelopment.org/index.aspx?page=54>*, and other OPAs and DDAs for projects that are not yet complete, and (2) to enforce the land use controls under redevelopment plans and related development controls where the City has not requested the transfer of land use functions to the City. (These redevelopment plans include Zone 1 of the Transbay Redevelopment Plan, Zone 1 of the Bayview Hunters Point Redevelopment Plan, the HPS Redevelopment Plan, the Mission Bay North and South Redevelopment Plans, the Rincon Point-South Beach Redevelopment Plan, and the Bayview Industrial Triangle Redevelopment Plan. These redevelopment plans and related documents are generally available at <http://www.sfredevelopment.org/index.aspx?page=3>); and

WHEREAS, the Redevelopment Dissolution Law provides, among other things, that successor agencies may enter into contracts for the purpose “winding down the redevelopment agency.” Cal. Health & Safety Code § 34177.3 (b). *See also* Cal. Health & Safety Code § 34171 (d) (1) (F) (defining enforceable obligations to include “agreements necessary for the administration or operation of the successor agency”); and

WHEREAS, the OCII has a continuing need to review and approve development projects, including design and environmental review, as part of the wind down of redevelopment agencies and desires to use the services of the Planning Department for this purpose; and

WHEREAS, OCII has provided (and will continue to provide) for the expenditures anticipated under this MOU in its Recognized Obligation Payment Schedules (“ROPS”) that are required to be submitted semi-annually to the Oversight Board and the California Department of Finance (“DOF”) and in its annual budget that is approved by the Board of Supervisors.

Now, THEREFORE, OCII and the Planning Department agree as follows:

1. SERVICES TO BE PROVIDED.

- a. Environmental Review. Upon the request of OCII, the Planning Department will conduct environmental evaluations for OCII projects under the California Environmental Quality Act (“CEQA”) and the CEQA Guidelines (Cal. Code Regs., title 14, §§ 15000 *et seq.*). At the Executive Director’s or designee’s request, prior to the commencement of work, the parties shall describe in writing the scope of service and an estimated budget for the particular matter for which the Executive Director (or designee) has requested environmental review services from the Planning Department. The parties understand and agree that any such budget presented by the Planning Department reflects the Department’s belief that the estimated budget is realistic based on current information. But, the parties further understand and agree that due to the uncertainties and complexities involved in the particular project, those estimates are necessarily only an approximation of potential costs, and that they do

not constitute a minimum or a maximum fee quotation. In particular, a change in the anticipated scope of work could result in an adjustment of costs. The Planning Department will attempt to identify any critical assumptions in the scope of services and will apprise the OCII of any significant changes in its budget as environmental review progresses.

The environmental review services for projects within the Major Approved Development Projects areas (Mission Bay, Hunters Point Shipyard and Candlestick Point Shipyard, and Zone 1 of Transbay) will be provided in accordance with § 21000-21189.3 of the Public Resources Code and Title 14, Chapter 3, § 150000-15387 of the California Code of Regulations (*CEQA Guidelines*). While the Planning Department will be providing the environmental review services for these projects, the OCII will be the author and signatory of the environmental review documents. The environmental review services for projects outside the Major Approved Development Projects areas will be provided in accordance with existing Planning Department policies and practices and consistent with the *Environmental Review Guidelines*, under the direction of the City's Environmental Review Officer. The scope of environmental services would include, but not be limited to, determinations as to what level of CEQA analysis is appropriate, preparation of exemptions and mitigated negative declarations, review of environmental impact reports, and review of technical background studies. If an environmental impact report is necessary, it will be prepared by a CEQA consultant. If a mitigated negative declaration is necessary, it could be prepared by either a CEQA consultant or Planning Department staff, at the discretion of the OCII.

In order to facilitate execution of the environmental review services in a timely and organized fashion, the OCII commits to seeking early consultation from the Planning Department with respect to CEQA requirements and updating the City's Environmental Review Officer on a quarterly basis, or more frequently if needed, as to what services may be required over the course of the next six months.

- b. Design Review. Upon the request of OCII, the Planning Department will provide professional architectural and urban design review of development proposals, assist in the development and interpretation of architectural and urban design guidelines, provide technical knowledge of building codes and building material and construction methodology and costs, participate in public presentations, and perform related tasks. Design Review effort dedicated to OCII properties is anticipated not to exceed one thousand (1,000) hours on an annual basis. Should efforts result in substantially greater Planning Department staff time, provided by the 2 FTE Design Review planners (.5 of which is being supported by this MOU), terms of this MOU associated with this position support may require modification.

The designated position will be supervised within the Planning Department. However, the shared purpose will benefit both agencies, and may require physical accommodation and regular hours at OCII. Such arrangements will be defined by

agreement at a later time. Until such time, the position will be located in the Planning Department and supervised from there accordingly.

2. BUDGET AMOUNT.

a. Budget Components on an annual basis.

Environmental Review:	Not to exceed \$ 150,000
Design Review:	Not to exceed \$ 75,000
TOTAL	\$ 225,000

b. Changes in Budget. Unless OCII and the Planning Department agree by written amendment to this MOU, the budget for services to be provided under this MOU shall not exceed the amounts stated in this Section 2.

c. Unbudgeted Expenditures. The Planning Department must obtain written approval from OCII for any unbudgeted expenditures and services. OCII will not reimburse the Planning Department for unbudgeted expenditures and services incurred without prior written approval.

d. Budget Shortfalls. The Planning Department will notify OCII as soon as possible if the amounts budgeted in this MOU are insufficient to provide the agreed-upon services.

3. ASSIGNED STAFF TO OCII. The Planning Department will assign staff equivalent to .5 FTE to work on Design Review services described in Section 1 and will assign staff on an as-needed basis to provide Environmental Review services described in Section 1. The Planning Department staff assigned to Design Review and Environmental Review services will work at the following location: San Francisco Planning Department Offices at 1650 Mission Street.

4. DOCUMENTATION VERIFYING ACTUAL COSTS OF DIRECT SERVICES.

a. The Planning Department will document its personnel costs for services provided under this MOU in the following way:

- i. Hourly rate = salary + mandatory fringe benefits. Actual labor charges submitted as part of the Performing Department's billing must be supported by a City LDR or similar payroll report to verify the actual cost of employee salary and fringe benefits. Labor charges submitted must not be based on estimated FTE, a budgeted amount, or a percentage allocation that is not reviewed and approved in advance by the OCII as part of a Citywide cost allocation plan.
- ii. Hours worked on OCII tasks.
- iii. Classification number of position and title.
- iv. Identify tasks.
- v. Location of staff.

5. BILLING PROCEDURES.

- a. The Planning Department shall submit an invoice to OCII on a quarterly basis within 30 days of the end of the quarter (October 30, 2013 for Q1, January 30, 2014 for Q2, April 30, 2014 for Q3 and July 30, 2014 for Q4. not to exceed the budgeted amount for the fiscal year. The invoice shall describe the services provided and include sufficient information to determine the methodology used to determine the costs.
- b. For any given six-month period, OCII can only pay amounts approved by its Oversight Board and DOF on a ROPS for that fiscal period. OCII shall endeavor to budget and obtain DOF approval for amounts sufficient to pay the Planning Department in full within a timely fashion after the services are rendered and billed. To the extent OCII has insufficient authorization to pay a bill in full, OCII will endeavor to place any amount still owed on a future ROPS and to pay that amount when budget authority is available.
- c. The OCII will pay invoices or notify the Planning Department of any questions regarding the invoice within 30 days of receipt.

6. AMENDMENTS OR TERMINATION. This MOU may be amended by mutual agreement of both parties. This MOU may be terminated by either party with 30 days notice, subject to OCII payment of applicable costs incurred through the termination date.

7. DISPUTE RESOLUTION PROCEDURES. If the Planning Department has a billing dispute with the OCII, it must attempt to resolve it with the responsible OCII Manager. If the parties are unable to reach agreement, the dispute will be resolved with the OCII's Finance and Administration Deputy Director. If an agreement still cannot be reached, the Planning Department and the OCII Finance and Administration Deputy Director will meet with the Deputy Controller to finally resolve the matter.

This MOU has been entered into on the date(s) below.

Office of Community Investment and Infrastructure
Tiffany Bohee, Executive Director

Date

John Rahaim
Planning Director

Date