



110-0042020-002

Agenda Item **No. 5(c)**
Meeting of June 16, 2020

MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Nadia Sesay, Executive Director

SUBJECT: Authorizing the Executive Director to execute a Memorandum of Understanding with the San Francisco Planning Department for design review and environmental review services, subject to annual appropriation of funds

EXECUTIVE SUMMARY

In August 2013, the Office of Community Investment and Infrastructure as the Successor Agency to the San Francisco Redevelopment Agency (“OCII”) entered into a Memorandum of Understanding with the San Francisco Planning Department (“Planning Department”) to provide design review and environmental review services for OCII projects (“MOU”). In 2014, the Commission authorized an Amended MOU to include design and environmental review services for the Golden State Warriors event center, office and retail uses project (“GSW Event Center Project”). and authorized separate payment directly to the Planning Department by the Golden State Warriors (“GSW”). In 2016 and 2018, respectively, the Commission approved a Second Amendment and a Third Amendment to the MOU to extend the duration of the MOU while maintaining a similar scope of services. The MOU’s maximum annual budget amount since 2013 has been \$225,000. The Third Amendment to the MOU expires on June 30, 2020.

OCII and the Planning Department seek to enter into a new MOU that will be multi-year and will provide for a budget through the approval an annual fiscal year budget by the Commission and the Board of Supervisors. This MOU would allow the Planning Department to continue to provide OCII with as-needed environmental and design review services, and to assist in mitigation monitoring and reporting for the GSW Event Center Project.

London N. Breed
MAYOR

Nadia Sesay
EXECUTIVE DIRECTOR

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CHAIR

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The Planning Department and GSW would continue their direct payment arrangement through which GSW reimburses the Planning Department for environmental review services for the GSW Event Center Project without an OCII pass-through. The MOU would be funded through developer reimbursements and other available funds as approved in the Recognized Obligation Payment Schedules ("ROPS") and annual budgets.

Staff recommends that the Commission authorize the Executive Director to enter into a Memorandum of Understanding with the San Francisco Planning Department.

BACKGROUND

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 California Community Redevelopment Law. Under 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.

As successor to the Redevelopment Agency, OCII retains the obligation to implement the redevelopment plans in the Major Approved Development Projects (the Hunters Point Shipyard – Candlestick Point Project, Transbay Transit Center Project, and the Mission Bay Project) pursuant to master development agreements and other agreements. The implementation of these projects includes exercising land use authority under these obligations. In addition, OCII is required to enforce the land use controls under other redevelopment plans and related development controls where OCII has not delegated its land use functions and authority to the City, such as the Rincon Point-South Beach Redevelopment Plan, which expires on January 5, 2021, and the Bayview Industrial Triangle Redevelopment Plan, which expires on June 30, 2020.

Redevelopment Dissolution Law provides, among other things that OCII may enter into contracts as part of its implementation of its enforceable obligations. OCII has a continuing need to review and approve development projects, including design and environmental review. To this end, OCII negotiated a memorandum of understanding with the City, through its Planning Department, to assist in performing design review and environmental services for a term of two years, which commenced on July 1, 2013, for an annual amount of \$225,000. The annual amount of \$225,000 included \$150,000 for environmental review services and \$75,000 for design review services. Since 2013, under the terms of the original MOU and its amendments, the Planning Department has provided design review and environmental review services to OCII on Major Approved Development Projects and other redevelopment plan areas.

GSW Event Center Project and Amended MOU

On September 12, 2014, the Commission authorized an Amended MOU that extended its term by one fiscal year and expanded the Planning Department's scope of work to provide environmental and design review services for the GSW Event Center Project, also known as the Event Center and Mixed-Use Development at Mission Bay Blocks 29-32. At that time, the Planning Department and GSW entered into a payment arrangement through which GSW continues to directly reimburse the Planning Department for staff review of the GSW Event Center Project.

At the same time, the Amended MOU extended the original scope and annual budget of \$225,000 to fund continued non-GSW design and environmental review services on various OCII projects through Fiscal Year 2016. The original MOU and the Amended MOU covered three fiscal years (Fiscal Year 2014, Fiscal Year 2015 and Fiscal Year 2016).

Second and Third Amendments to the MOU

In the latter portion of 2015, the City and OCII approved the GSW Event Center Project. During the construction and implementation phases of the project, and pursuant to the Event Center and Mixed-Use Development at Mission Bay Blocks 29-32 Subsequent Environmental Impact Report and the California Environmental Quality Act ("CEQA"), GSW is required to comply with the Event Center and Mixed-Use Development at Mission Bay Blocks 29-32 Mitigation Monitoring and Reporting Program ("MMRP").

In August 2016, the Commission approved a Second Amendment to extend the term of the MOU two years to provide environmental and design review services through Fiscal Year 2018 at an annual amount not to exceed \$225,000. Under the Second Amendment to the MOU, Planning Department staff, under the supervision of OCII, also provided environmental review services tracking and reviewing GSW's compliance with the MMRP through the separate payment arrangement.

In June 2018, the Commission approved a Third Amendment to extend the term of the MOU two years, through Fiscal Year 2020. The maximum annual amount of \$225,000 and the general scope of services remained consistent since the original MOU was entered into in 2013. The Third Amendment expires on June 30, 2020.

The MOU

The proposed MOU would carry over the scope of work included in the original MOU and its amendments. It would continue to allow Planning Department staff to perform MMRP tracking and review related to the GSW Event Center Project. OCII will fund the MOU through developer reimbursements of actual billed hours and through other available funds as approved in the ROPS and

annual budgets. The amount of the budget for implementation of the MOU in a particular year will be determined through the Commission's review and approval of the annual fiscal year budget.

Prioritization Policies

The MOU confirms that, pursuant to several agreements, such as the Planning Cooperation Agreement (Candlestick Point and Phase 2 of the Hunters Point Shipyard), the Hunters Point-Interagency Cooperation Letter Agreement, the Mission Bay North and the Mission Bay South Interagency Cooperation Agreements, and the Delegation Agreement for the Transbay Redevelopment Project Area, the Major Approved Development Projects are priority projects that shall be treated with expeditious processing.

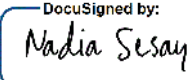
CALIFORNIA ENVIRONMENTAL QUALITY ACT

Authorization of entering into this MOU with the Planning Department is an administrative activity that will not directly cause any physical change in the environment and is not a project pursuant to CEQA as defined under CEQA Guidelines Section 15378(b)(5). In addition, authorization of the MOU does not have the potential for independently causing a significant effect on the environment and therefore is not subject to CEQA pursuant to State CEQA Guidelines Section 15061 (b)(3).

STAFF RECOMMENDATION

Staff recommends the Commission authorize the Executive Director to execute a Memorandum of Understanding with the San Francisco Planning Department for design review and environmental review services, subject to annual appropriation of funds.

(Originated by José Campos, Manager of Planning and Design Review)

DocuSigned by:

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Nadia Sesay
Executive Director

Attachment A: Memorandum of Understanding between OCII and San Francisco Planning Department for Environmental and Design Review Services Fiscal Years 2020/2021 and 2021/2022

June 16, 2020

**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
ENVIRONMENTAL AND DESIGN REVIEW SERVICES**

This Memorandum of Understanding, dated as of _____, 2020 (“MOU”), is entered into by and between the City and County of San Francisco (“City”), acting by and through the San Francisco Planning Department (“Planning Department”), and the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, hereafter referred to as the Office of Community Investment and Infrastructure (“Successor Agency” or “OCII” and together with Planning Department, the “Parties”).

WHEREAS, Prior to its dissolution, the Redevelopment Agency of the City and County of San Francisco (“Redevelopment Agency” or “Former 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 assumed the rights and obligations of the former Redevelopment Agency (with the exception of certain affordable housing assets), including fulfillment of 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, The Planning Department and the Redevelopment Agency executed several agreements providing that projects subject to the Enforceable Obligations receive expeditious review and approval because they are priority projects for the City. These agreements include the Planning Cooperation Agreement (Candlestick Point

and Phase 2 of the Hunters Point Shipyard) at page 4 (June 3, 2010) (finding that there is a “compelling public policy basis to expedite the review and permitting process for Project Applications”), the Hunters Point-Interagency Cooperation Letter Agreement at page 2 (Feb. 2, 2005) (providing that the Redevelopment Agency and the City “will diligently and expeditiously process all submissions and applications . . . for permits, approvals, agreements and other entitlements for the project”), and the Mission Bay South and Mission Bay North Interagency Cooperation Agreements (Nov. 16, 1998) (providing that City Agencies will treat redevelopment as a “priority project . . . with a need for expeditious processing of Major Phase and other plan reviews, design and construction document reviews [and] permit applications (together, these agreements are referred to as the “Expeditious Processing Agreements”). In addition, the Planning Department and the Redevelopment Agency entered into the Delegation Agreement for the Transbay Redevelopment Project Area to establish a working group to communicate on an ongoing basis to ensure the timely, collaborative, and competent review of all projects in Zone 1 and Zone 2 of the Transbay Redevelopment Project Area; and

WHEREAS, OCII is the Successor Agency to the Redevelopment Agency, is a legal entity separate from the 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”), the Mission Bay South OPA, the Disposition and Development Agreement (“DDA”) for Hunters Point Shipyard (“HPS”) Phase 1, the DDA for Candlestick Point-HPS Phase 2 DDA, the Transbay Implementation Agreement, 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, and the Rincon Point-South Beach Redevelopment Plan. These redevelopment plans and related documents are generally available at <https://sfocii.org/home>.); 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, 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, The Golden State Warriors (“GSW”) obtained entitlements to, and developed Blocks 29 to 32 in the Mission Bay South Redevelopment Project Area (“Mission Bay South”) consisting of approximately 1 million square feet of arena, office and retail uses (“GSW Event Center Project”) and the GSW Event Center Project requires continued environmental review related to mitigation monitoring and reporting, which will result in fulfillment of the requirements pursuant to the California Environmental Quality Act (“CEQA”). GSW is currently proposing to expand the GSW Event Center Project to include a hotel and residential building on Blocks 29 to 32 in Mission Bay South, the implementation of which, if approved, would require continued environmental review related to mitigation monitoring and reporting; and

WHEREAS, In accordance with the foregoing, OCII and the Planning Department are proposing this MOU for design and environmental review services provided by the Planning Department, and would include a scope of work for the Planning Department to continue environmental review for the GSW Event Center Project, and any proposed expansions of the GSW Event Center Project; and

WHEREAS, The Planning Department and GSW currently have a direct payment arrangement whereby GSW directly reimburses the Planning Department for environmental review for the GSW Event Center Project, which the Planning Department and GSW will amend to reflect this Third Amendment; provided, however, that OCII will retain its oversight and responsibility as lead agency for purposes of compliance with CEQA; 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 CEQA and the CEQA Guidelines (Cal. Code Regs., title 14, §§ 15000 et seq). 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, mitigation monitoring and reporting, 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 OCII, subject to the availability of Planning Department staff. For environmental review services, projects subject to the Expedious Processing Agreements shall receive Planning Department staffing priority.

At the request of the Executive Director of OCII (“Executive Director”), or her or his designee, 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. Both 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, both 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 OCII of any significant changes in its budget as environmental review progresses.

- i. Major Approved Development Projects. 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.
 - a. GSW Event Center Project. Under OCII supervision, and reporting to OCII as lead agency, the Planning Department will provide staff to oversee the GSW Event Center Project relating to the on-going review and tracking of the fulfillment of mitigation requirements, including the review of technical reports and progress reports, and any proposed expansions of the GSW Event Center Project.
- ii. In order to facilitate execution of the environmental review services in a timely and organized fashion, 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. This consultation will include OCII providing a list of priorities for processing to the

Planning Department if OCII requests environmental review services from the Planning Department for more than one project at any given time.

- 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 are anticipated not to exceed one thousand (1,000) hours on an annual basis. The designated design review staff 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. Planning Department Services for Budget Planning and ROPS Preparation. OCII shall work collaboratively with the Planning Department to establish the budget and anticipated expenditures for environmental and design review services in the ROPS. The Planning Department will assist with preparation of the annual budget by providing prior fiscal year expenditures for environmental and design services. OCII will include the cost of the Planning Department's services in OCII's annual budget and ROPS as needed.
- b. Subject to ROPS and Annual Budget Authority. Amounts available are subject to OCII receiving sufficient expenditure authority in its annual budget approved by the Board of Supervisors and in its expenditure authorizations approved by the California Department of Finance. OCII will notify the Planning Department immediately of any deficiencies in these budget authorizations.
 - i. 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.
 - ii. 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. STAFF ASSIGNED TO OCII. The Planning Department will assign staff on an as needed basis 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.

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 (as defined in Section 5.a.iv and 5.b.iii) + 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. Description of tasks performed.

5. BILLING PROCEDURES.

a. Non-GSW Billing

- i. The Planning Department shall submit an invoice to OCII on a quarterly basis within 30 days of the end of the quarter (e.g., October 30, 2020 for Q1, January 30, 2021 for Q2, April 30, 2021 for Q3, July 30, 2021 for Q4. etc.) 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.
- ii. For any given fiscal year, 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.
- iii. OCII will pay invoices or notify the Planning Department of any questions regarding the invoice within 30 days of receipt.
- iv. The Planning Department hourly rates billed to OCII for services provided for non-GSW billing will be based on salary + mandatory fringe benefits. Actual labor charges submitted as part of the Planning 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 OCII as part of a Citywide cost allocation plan.

b. GSW Billing

- i. The Planning Department has executed a direct payment arrangement with GSW whereby GSW will directly reimburse, subject to OCII review, the Planning Department for OCII's environmental and design review for the GSW Event Center Project, Invoices will be based on a time and material basis. OCII will assist in outreaching to the GSW for any past due invoices, but will not be responsible for any outstanding amounts due to the Planning Department. The Planning Department shall reserve the right to withhold any certifications of completeness of mitigation requirements due to late or non-payment by GSW.
 - ii. The Planning Department shall provide a quarterly time and materials invoice to OCII and OCII shall forward invoices to GSW. The invoice shall request payment in full within 30 business days. If payment is not received by the Planning Department within 30 business days from the date of the invoice, the Planning Department will send a notice to GSW and may initiate its standard Collections process to seek payment. The Planning Department may halt any further work on the project until payment of any outstanding balance is received in full.
 - iii. The Planning Department hourly rates billed to GSW for services provided for GSW billing will be based on salary + mandatory fringe benefits + standard overhead.
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' advance, written 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 OCII, it must attempt to resolve the billing dispute with the responsible OCII Manager. If the Parties are unable to reach agreement, the dispute will be resolved with OCII's Finance and Administration Deputy Director. If an agreement still cannot be reached, the Planning Department and OCII Finance and Administration Deputy Director will meet with the Deputy Controller to finally resolve the matter. The Planning Department and OCII shall comply with this internal dispute resolution procedure prior to filing any claim or commencing litigation to resolve any billing dispute.

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

Office of Community Investment and Infrastructure
Nadia Sesay, Executive Director
Approved as to form:

Date

By: _____
James B. Morales
General Counsel and
Deputy Director

San Francisco Planning Department
Richard Hillis, Planning Director

Date

Approved as to form:
DENNIS J. HERRERA
CITY ATTORNEY

By: _____
Kate Stacy
Deputy City Attorney