



450-0232020-002

Agenda Item **No. 5(b)**
Meeting of August 18, 2020

MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Nadia Sesay, Executive Director

SUBJECT: Authorizing an amendment extending the term of an existing legal services contract with Shute, Mihaly & Weinberger, LLP, a California Limited Liability Partnership, by providing for termination upon expenditure of the total contract amount of \$1,500,000, to continue to provide specialized legal services related to implementation of land transfer agreements guiding the reconfiguration of real property ownership in the Hunters Point Shipyard Phase 1 and Candlestick Point and Hunters Point Shipyard Phase 2 Development Projects; Hunters Point Shipyard and Bayview Hunters Point Redevelopment Project Areas

EXECUTIVE SUMMARY

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MAYOR

Nadia Sesay
EXECUTIVE DIRECTOR

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On September 19, 2017, the Successor Agency Commission adopted Resolution No. 30-2017 authorizing a three-year Legal Services Contract with Shute, Mihaly & Weinberger LLP ("SMW Contract"), to advise on the implementation of land exchanges between the State of California, the City and County of San Francisco ("City"), and the Office of Community Investment and Infrastructure ("OCII") within the Hunters Point Shipyard and Bayview Hunters Point Redevelopment Project Areas. These exchange agreements ensure that the reconfiguration of property ownership and subsequent development under the Hunters Point Shipyard ("HPS") Phase 1 and Candlestick Point/HPS Phase 2 Disposition and Development Agreements ("DDAs") are consistent with state public lands statutes requiring certain lands be subject to specified public uses. The SMW Contract replaced a previous contract, also with SMW, initially entered into in 2008, for legal advice relating to the Public Trust and the land exchanges.

OCII continues to require advice under the SMW Contract. Several land exchanges under the exchange agreements will not conclude until later in the future, and development oversight activities affecting the exchange agreement lands within the Phase 1 and Candlestick Point/HPS Phase 2 projects are on-going. Such actions include Subdivision Map Act processing, preparation of utility and access easements, and negotiation of temporary and long-term property licenses and leases for pre-construction maintenance and construction activities.

Thus, OCII wishes to extend the term of the SMW Contract, to expire upon the exhaustion of authorized Contract funds. The SMW Contract is in the total amount of \$1.5 million. Since September 2017, OCII has paid approximately \$320,000 to Shute Mihaly. Thus, with the proposed extension, the SMW Contract would remain active until expenditure of the remaining approximately \$1,180,000 Contract balance.

Staff recommends authorizing the Executive Director to amend the Legal Services Contract with Shute, Mihaly & Weinberger LLP and extend the agreements' termination date to the date of the expiration of the total contract amount, or \$1,500,000.

BACKGROUND

Significant portions of both HPS and Candlestick Point are either owned by the State for recreational purposes or subject to state law limiting uses to those consistent with navigation, commerce, fishery, natural resource or general public recreational uses (the "Public Trust"). State Parks owns most property in the Candlestick Point State Recreation Area ("CPSRA"). State law restricts the sale or lease of Public Trust lands and State Parks lands, and limits the types of agreements by which the State may grant the City or other parties the right to use and occupy State Parks land or Public Trust lands.

To address these requirements OCII, the City, relevant state agencies and private parties (including CP Development Co., LLC, "Developer") negotiated land transfer agreements that direct the phased reconfiguration of property ownership within HPS and Candlestick Point to allow subsequent residential, commercial and open space development consistent with state public lands laws. To date, the parties have concluded two phases of Public Trust land exchanges, and one phase of State Parks land exchanges. Transfers of Public Trust lands and State Parks lands will occur as development progresses within the Hunters Point Shipyard Phase 1 and Candlestick Point/HPS Phase 2 Projects ("Projects").

In addition, OCII, the City, Developer, and the State has been engaged in the subdivision and development process on lands already exchanged. These activities must be processed consistent with the exchange agreements and the applicable state public lands laws.

DISCUSSION

Need for Outside Counsel

The land exchanges contemplate a series of property transfers and boundary adjustments to reach a final reconfiguration of Public Trust lands, State Parks lands and developable lands within the Project sites. Each of these transfers require complex technical knowledge and it would be in OCII's best interest to have existing outside counsel continue with these transfers.

In addition to the phased exchanges themselves, related land use entitlement and real estate actions must be completed, both in preparation for contemplated exchanges and to facilitate development once exchanges have occurred. These actions include Subdivision Map Act processing, preparation of utility and access easements, and negotiation of temporary and long-term property licenses and leases for pre-construction maintenance and construction activities. These activities must be consistent with the exchange agreements and state public lands laws, and must be completed within the contemplated timeframes for land exchange or post-exchange development.

Proposed Extension of Legal Service Contract

To address the above-described legal needs, the Commission authorized the SMW Contract in September 2017, initially contemplated terminate upon the earlier of three years or the exhaustion of the \$1.5 million contract amount. Thus, the current SMW Contract will expire in September 2020.

OCII continues to require advice under the SMW Contract, and therefore proposes to extend the term of the existing contract, to terminate upon exhaustion of available contract funds. As of July 2020, the remaining contract funds total approximately \$1,180,000.

Additionally, the current pandemic has slowed down meetings, design field work, and construction. Because of these delays, the previously expected land transfer dates, and land-use approvals, have been pushed out beyond 2020. An amended agreement will cover required legal services during this new extended period.

Source of Funding

The fees and expenses authorized under this Contract are reimbursable to OCII by the Developer under the DDA because they are in furtherance of, and are necessary to complete, OCII's obligations under the DDA. The Contract is reflected on lines 23 and 42 of the Recognized Obligation Payment Schedule.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

Authorization to amend the existing Legal Services Contract that assists OCII in the implementation of the DDA and Land Transfer Agreements is an administrative activity that will not result in direct or indirect physical changes in the environment, and is not therefore a "Project" as defined in the California Environmental Quality Act ("CEQA"), pursuant to CEQA Guidelines Section 15378(b)(5).

STAFF RECOMMENDATION

Staff recommends authorizing the Executive Director to amend the existing Legal Services Contract with Shute, Mihaly & Weinberger LLP to provide for termination upon exhaustion of available contract funds, in order to allow SMW to continue to advise OCII on the implementation of the land exchanges and related issues within the Project areas.

(Originated by Aaron Foxworthy, Deputy General Counsel)

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Nadia Sesay
Executive Director