OCII
office of
COMMUNITY INVESTMENT
and INFRASTRUCTURE

128-0132017-002

Agenda Item **Nos. 5(a), (b), & (c)**
Meeting of October 3, 2017

MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Monica Davis Stean, Human Resources & Administrative Services Manager

SUBJECT: Amending Resolution No. 27-2017 governing classifications of positions and compensation schedules for Successor Agency staff to establish compensation for the position of Executive Director of the Successor Agency to the Redevelopment Agency of the City and County of San Francisco (Discussion and Action) (Resolution No.34-2017)

Appointing Nadia Sesay as Executive Director of the Successor Agency to the Redevelopment Agency of the City and County of San Francisco (Discussion and Action) (Resolution No. 35-2017)

Authorizing execution of an employment agreement with Nadia Sesay for the position of Executive Director of the Successor Agency to the Redevelopment Agency of the City and County of San Francisco (Discussion and Action) (Resolution No.36-2017)

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EXECUTIVE SUMMARY

The Successor Agency to the Redevelopment Agency of the City and County of San Francisco (commonly known as the "Office of Community Investment and Infrastructure" or "OCII") proposes three actions related to the appointment of Nadia Sesay as the Executive Director: 1) amending Resolution No. 27-2017 governing OCII classifications of positions and compensation schedules (the "Salary Resolution") to establish an appropriate compensation for the position of Executive Director; 2) appointing Nadia Sesay to the position of Executive Director under the authority granted to the Successor Agency Commission (commonly known as the Commission on Community Investment and Infrastructure) (the "Commission") in Ordinance No. 215-21 (Oct. 4, 2012), the Salary Resolution, and the OCII Personnel Policy; and 3) authorizing the execution of an employment agreement between OCII and Ms. Sesay for the purpose of establishing certain terms and conditions of employment.

DISCUSSION

In January 2017, Tiffany Bohee resigned as the OCII Executive Director. On January 17, 2017, the Commission held a closed session, appointed Nadia Sesay as the Interim Executive Director beginning January 23rd, 2017, and publicly reported on that appointment at the conclusion of the closed session. Recently, the Commission held another closed session to discuss the appointment of a permanent Executive Director and directed staff to prepare the necessary documents for the appointment of Ms. Sesay at the Commission meeting scheduled for October 3, 2017.

Salary Resolution

The Salary Resolution establishes rates of pay for all OCII classifications, including those positions in bargaining units subject to labor agreements and those covering unrepresented classes of employees, including the Executive Director. The Salary Resolution constitutes a "publicly available pay schedule" for purposes of compliance with Section 20636 of the California Government Code. The Salary Resolution includes a table of comparable City classes that OCII uses as benchmarks for OCII salaries and provides the Executive Director with the appointment authority for all OCII classifications except for the Executive Director position itself, which is subject to the appointment authority of the Commission.

The Salary Resolution currently establishes that the compensation for the Executive Director is tied to the City classification for Special Assistant 22, a classification without specific job functions. Ms. Sesay has requested that the Commission consider a higher salary commensurate with the significant responsibilities of the OCII Executive Director. OCII's Human Resources Division has reviewed the City's classification levels and determined that the existing City benchmark of Special Assistant 22 (Job Code 1381) for OCII Executive Director should be changed to the City's Department Head classification levels. In particular, Department Head V (Job Code 0965) has been identified as a benchmark to reflect the significant decisions, budget authority, and impact on the public for which the OCII Executive Director is responsible. Department Head V has a salary range of $236,392 to $301,678.

OCII has a current annual budget of over $500 million and is responsible for approving significant public and private development in three major areas of the City that are subject to master development agreements. In addition to the winding down of redevelopment activities under Redevelopment Dissolution Law, the Executive Director is responsible for managing the development and financing of public infrastructure, private commercial and residential development, and affordable housing in Candlestick Point, Hunters Point Shipyard, Mission Bay and Transbay. Notably, OCII plays a significant role in funding and producing affordable housing and is responsible for sponsoring over 6000 units of affordable housing either through direct subsidy on stand-alone affordable housing sites or through inclusionary housing requirements. These tasks are undertaken under the constraints of the Redevelopment Dissolution Law by a diverse staff of real estate, finance, planning, legal and contract compliance professionals. In managing OCII, the Executive Director, with approval of the Commission, has centralized authority over all aspects of the development, planning, and finances related to the completion of redevelopment activities.

Accordingly, the classification and salary for the Executive Director position is proposed for revision to align with the City's Department Head job classification series to reflect the high degree of OCII's organizational complexity, the nature and number of functions and programs, and the types of positions that the Executive Director must manage.

Appointment of the Executive Director

Under Redevelopment Dissolution Law, OCII has the authority to enter into contracts to conduct the work of winding down a redevelopment agency, including hiring staff and acquiring necessary professional administrative services. Cal. Health & Safety Code § 34177.3 (b).

Ordinance No. 215-12 (Oct. 4, 2012) established the Commission's authority under the auspices of the Redevelopment Dissolution Law, delegated the Board of Supervisors' jurisdiction over redevelopment matters to the Commission, and authorized the Commission to take the following actions related to the Executive Director:

> The Commission shall appoint an Executive Director who shall be the chief executive of the Successor Agency and who shall have the responsibility for the day-to-day management of all the affairs and activities of the Successor Agency. The Commission shall fix the salary of the Executive Director. The Executive Director shall serve at the pleasure of the Commission. The Executive Director shall possess the administrative and executive skills necessary to perform the duties of the office. The Commission may delegate to the Executive Director any of its duties it deems appropriate.

Section 6 (f) of Ordinance No. 215-12. In addition, the Salary Resolution authorizes the Commission to appoint the Executive Director "subject to the provisions of any employment agreement." Section 1 of Resolution No. 27-2017.

The Commission has interviewed Nadia Sesay for the Executive Director position, finds her to be highly qualified for the position in light of her experience as the City's Director of Public Finance and OCII's Interim Executive Director, and now seeks to appoint her to a permanent position effective October 3, 2017.

Employment Agreement

A draft employment agreement between the Agency and Ms. Sesay is proposed for Commission review and approval. It provides specific terms and conditions of employment that are based on prior employment agreements with Redevelopment Agency executive directors, see e.g. Redevelopment Agency Resolution No. 88-2007 (Aug. 14, 2007), but that differs from previous contracts in terms of salary, length of the contract, explicit acknowledgement of the at-will nature of the position, and amount of severance pay. To the extent that the employment agreement does not address a specific aspect of employment, the Agency Personnel Policy, Salary Resolution, and applicable law govern the employment relationship between OCII and the Executive Director. A draft copy of the employment agreement is attached to this memorandum.

California Environmental Quality Act

Amending the Salary Resolution, appointing the Executive Director, and authorizing an employment agreement are administrative activities of OCII and are not projects as defined by the California Environmental Quality Act Guidelines Section 15378(b)(5). This administrative activity would not independently result in a significant physical effect on the environment.

Staff recommends approval of the resolutions accompanying this memorandum.

MDStean

Monica Davis Stean
Human Resources & Administrative Services Manager

Attachment 1: Nadia Sesay Employment Agreement

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT is entered into as of this 3rd day of October 2017, by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO (commonly known as the OFFICE OF COMMUNITY INVESTMENT & INFRASTRUCTURE)("OCII" or "AGENCY") and Nadia Sesay ("Employee") on the following terms and conditions.

RECITALS

A. OCII is the successor to the Redevelopment Agency of the City and County of San Francisco ("Former Agency"), is a public body separate from the City and County of San Francisco, succeeds to the organizational status of the Former Agency, and retains the authority of the Former Agency to the extent necessary to fulfill the enforceable obligations of the Former Agency in compliance with the Redevelopment Dissolution Law, Cal. Health & Safety Code §§ 34170 et seq. and San Francisco Ordinance No. 215-12 (Oct. 4, 2012).

B. OCII is responsible for complying with the obligations to wind down redevelopment activities and completing the enforceable obligations associated with redevelopment project areas that were in existence at the time of dissolution of the Former Agency, including Transbay, Mission Bay North, Mission Bay South, Hunters Point Shipyard, and the Candlestick Point area of the Bayview Hunters Point areas (the "Redevelopment Program").

C. OCII has the authority to enter into contracts to conduct the work of winding down a redevelopment agency, including hiring staff and acquiring necessary professional administrative services. Cal. Health & Safety Code § 34177.3 (b).

D. The Board of Supervisors established, by Ordinance No. 215-12 (Oct. 4, 2012), the Mayoral-appointed Successor Agency Commission (commonly known as the Commission on Community Investment and Infrastructure) (the "Agency Commission") as the policy body of the Agency and authorized it to appoint an Executive Director who shall be the chief executive of the Agency and who shall have the responsibility for the day-to-day management of all the affairs and activities of the Agency. Ordinance No. 215-12 further provides that the Executive Director shall serve at the pleasure of the Agency Commission, which may delegate to the Executive Director any of its duties as it deems appropriate.

E. Employee has worked for the City and County of San Francisco ("City") since October 8, 1998 including 12 years as the Director of Public Finance. In addition, Employee served as the chair of the Oversight Board of the City and County of San Francisco from its inception in March 2012 until January 2017. On January 17, 2017, the Agency Commission appointed Employee as the Agency Interim Executive Director. The Agency, desiring to avail itself of Employee's long and valuable training and experience, has determined it necessary and convenient and in the best interest of the Agency to obtain and assure itself of the continued services of Employee by entering into a written agreement for a fixed period of time and by providing specific terms and conditions of employment described in this Employment Agreement.

NOW, THEREFORE, the Agency and the Employee do hereby agree as follows:

1. SCOPE OF EMPLOYMENT

Agency hereby designates, appoints and employs Employee to serve the Agency, and the Employee agrees to accept such designation, appointment and employment in the capacity of Executive Director of the Agency. As Executive Director, the Employee shall assist the Agency Commission in the development of policy and shall be charged with effectively and responsibly administering such policy and the business and activities of the Agency including the formulation and execution of the Redevelopment Program for the City and County of San Francisco, all in accordance with the resolutions adopted by the Agency Commission, the provisions of the California Community Redevelopment Law, as amended by the Redevelopment Dissolution Law, the Agency By-Laws, the Agency rules and regulations, the Agency's policies and procedures, the Agency's Executive Director job description, and all other applicable laws and regulations, all subject to the direction and control of the Agency Commission.

The employment relationship between the Agency and Employee shall be governed by the Agency Resolution Establishing Classifications of Positions and Compensation Schedules and the Agency Personnel Policy, except as is provided herein. The Employee will have full authority with respect to all personnel action regarding all other Agency employees, including but not limited to the authority to hire, terminate and reassign, subject only to the Agency Personnel Policy and applicable law and labor agreements.

2. TERM OF EMPLOYMENT and TERMINATION OF AGREEMENT

2.1 Term

Except in the case of earlier termination as hereinafter specifically provided, the initial term of this Agreement shall commence on October 3, 2017, and shall continue for a period terminating October 3, 2022.

2.2 Termination & Severance

A. Employee is an at will employee serving at the pleasure of the Commission under the authority of Ordinance No. 215-12.

B. The Commission may terminate this agreement at any time, with or without cause, by a majority vote of its members. Notice of termination shall be provided to Employee in writing. Termination as used in this section shall also include a request by the Commission that Employee resign.

C. In the event the Commission terminates the Employee during such time that Employee is willing and able to perform the Executive Director's duties under this Agreement, and the Separation is not "For Cause" as defined below, Commission agrees to pay Employee a lump sum cash payment equal to eight (8) months' base salary. In exchange for severance pay, Employee agrees that at the time of payment of the severance Employee will execute a release of all claims related to Employee's employment

D. Termination For Cause.

(1) Upon the occurrence of any of the following, the Agency shall have the right to terminate this Agreement by giving written notice to the Employee of the proposed termination; the reasons therefore, including a copy of the charges and materials upon which it is based, and the right to respond, either orally or in writing :

a. Any breach or neglect of duty by the Employee in the course of her employment as Executive Director under this Agreement, unless waived by the Agency in writing; or

b. Any illegal or unlawful conduct by the Employee.

(2) It is understood and agreed by the parties hereto the Agency will exercise good faith in finding a breach or neglect of duty by the Employee.

(3) In the event the Commission terminates Employee for cause, this agreement shall terminate immediately and Employee shall be entitled to only the compensation accrued up to the date of termination, and such other termination benefits and payments as may be required by law. Employee shall not be entitled to any severance benefits.

(4) Notwithstanding the foregoing, the Employee shall be reinstated and the notice of termination rescinded if in the judgement of the Agency Commission, exercised in good faith, any such breach or neglect is susceptible of cure and is cured within thirty (30) days of the delivery of notice by the Agency.

E. Termination By Employee

Employee may terminate this Agreement upon not less than thirty (30) days written notice to the Agency.

F. Termination for Disability

Should the Employee be unable to perform the essential functions and duties hereunder on account of disability, notwithstanding being afforded "reasonable accommodation" as required by the Americans With Disabilities Act and the California Fair Employment and Housing Act, the Agency shall have the right, on sixty (60) days' notice to Employee to, terminate this Agreement. Upon any such termination, Employee shall receive, in addition to the compensation she is otherwise entitled to, eight (8) months' severance as described in Section 2.2(c). However, if, prior to the date specified in such notice for termination, Employee's incapacity shall have ceased and Employee shall have taken up and performed her duties hereunder, Employee shall be entitled to resume her employment hereunder as though such notice had not been given.

G. Termination if Agency Becomes Defunct

In the event that for any reason the Agency shall become "Defunct" (as defined below) this Agreement may be terminated by either the Agency or the Employee upon ninety (90) days' written notice, such termination to be effective no sooner than the date that the Agency becomes Defunct. Upon any such termination, Employee shall receive in addition to compensation to which she is otherwise entitled, eight (8) months' severance as described in Section 2.2(c) hereunder. "Defunct" shall mean the activities of the Agency have ceased, or the loss of funding, or the activities of functions of the Agency have substantially changed, but shall not include the transfer of the existing activities and functions of the Agency to a successor or assign.

3. SALARY

For all services rendered by Employee hereunder, the Agency agrees to pay Employee at the rate of the Executive Director Classification, Step 3 ($269,048 per year) per the Agency's Resolution Establishing Classifications of Positions and Compensation Schedules (Resolution No.34-2017), payable at the times and in the manner established for payment of salaries for all Agency employees. Employee shall be entitled to the percentage increase in base salary granted to and received by Local 21 employees of the Agency under their labor agreement. Any other increase in step or raises in salary during the term of this Agreement shall be consistent with the standards of the Personnel Policy except that the Agency Commission shall have the authority to review and approve the increase.

4. ANNUAL LEAVE AND BENEFITS

4.1 Vacation Leave

Upon the effective date of this Agreement, Employee shall be immediately entitled to use up to twenty (20) days of paid vacation leave and, effective the first day of the first full pay period of the second year of this Agreement, shall begin accruing additional vacation credit of twenty (20) days per year. Except for the first year of the Agreement, the paid vacation leave set forth above shall be credited Employee pursuant to the procedures used by the Agency to credit such leave to other Agency employees; provided, however, that employee's accrual of vacation credit shall not be subject to the limitations of Section VI. A. 2. g. of the Personnel Policy.

4.2 Benefits

Employee shall be qualified for and entitled to, and shall receive sick leave, personal leave, holidays, health and dental insurance retirement benefits, Workers Compensation, deferred compensation, and all other statutory and non-statutory benefits granted to and received from time to time by Local 21 employees of the Agency.

The Agency shall make available group life insurance to Employee on the same terms and conditions as it makes such insurance available to other employees. In addition, the Agency shall provide Employee, at the expense of the Agency, additional life insurance coverage in the amount of One Hundred Thousand Dollars ($100,000.00) for the term of employment hereunder, subject to qualification and medical examination of Employee. The provision of such life insurance shall be subject to the Agency's ability, based on good faith efforts, to obtain such insurance at "standard" premium rates.

5. EXPENSES

5.1 Expenses Incurred in the Performance of Duties

The Agency shall pay any expenses incurred by Employee, not to exceed Five Thousand Dollars ($5,000.00) per annum, in performing her duties under this Agreement in accordance with the Internal Revenue Code and policy and procedures established by the Agency for payment of employee expenses.

5.2 Parking and Equipment

The Agency shall provide Employee with a parking space for the duration of employment, subject to the Employee's payment of parking costs charged to other employees.

The Agency shall also provide Employee with a cellular telephone or reimbursement for the business use portion of personal cell phone and laptop. Operation expenses of such telephone shall be paid by the Agency for the cost of any personal calls.

6. RESTRICTIONS

Subject to the specific exceptions stated in the Section 6, during the term of this agreement, Employee shall devote her best efforts and her entire working time to further the interests of the Agency and to carry out her duties as Executive Director of the Agency as described hereunder. Employee agrees that during the term of her employment by the Agency, she will not perform any compensated professional services for any other firm, association, corporation, governmental agency, or other persons or entities without the express written consent of the Agency Commission, which consent shall not be unreasonably withheld.

7. MISCELLANEOUS PROVISIONS

7.1 Compliance with Laws

Employee shall comply with all governmental laws, ordinances, rules and regulations, and all orders and directives relating to the services to be performed hereunder.

7.2 Agreement Binding Upon Successor

Agency agrees that all obligations assumed by it pursuant to this Agreement shall be binding upon the Agency, its successors and assigns. Employee agrees that this Agreement may not be assigned by her. Agency and Employee agree that this Agreement may be amended only by the mutual written Agreement of both parties.

7.3 Indemnification

Agency agrees and does, to the fullest extent permitted by law, hereby indemnify and hold Employee harmless from and against any and all damage, loss, liability and expense (including without limitation reasonable expenses of investigation and reasonable attorneys' fees that may be charged by counsel chosen solely by Employee, and expenses in connection with any action, claim, suit or proceeding, including any expenses incurred in connection with the enforcement of the rights of Employee under this Agreement) to which Employee may be subjected as a result of a claim made or threatened and arising out of or attributable to, directly or indirectly, Employee's employment by the Agency.

8. ENTIRE AGREEMENT, EFFECTIVE DATE, SEVERABILITY

This Agreement, together with the Agency's rules, regulations and policies, including the Agency's Personnel Policy (collectively, the "Policies"), constitutes the complete agreement of the parties with respect to the subject matters referred to herein and supersedes all prior or contemporaneous oral or written promises or agreements relating to such subject matters. To the extent inconsistent with the Policies, the terms of this Agreement shall supersede the Policies. The effective date of this Agreement is October 3, 2017. The invalidity or enforceability of any provision of this Agreement shall not affect the validity, legality, or enforceability of the remainder of this Agreement, it being intended that all rights and obligations of the parties hereunder shall be enforceable to the fullest extent permitted by law.

9. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Authorized by Agency Resolution No. 36-2017, adopted October 3, 2017.

SUCCESSOR AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO

By_______________________________

MARILY MONDEJAR
Commission President

APPROVED AS TO FORM:

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JAMES B. MORALES
Agency General Counsel

EMPLOYEE:

____

NADIA SESAY