



450-2662017-002

Agenda Item **5(b)**
Meeting of September 19, 2017

MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Nadia Sesay, Interim Executive Director

SUBJECT: Authorizing a Legal Services Contract with Shute, Mihaly & Weinberger, LLP, a Limited Liability Partnership, for an amount not to exceed \$1,500,000 and a three-year term beginning September 30, 2017, to provide specialized legal services related to implementation of Land Transfer Agreements guiding the reconfiguration of real property ownership within 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

Since May 2008, the San Francisco Redevelopment Agency, and after dissolution the Office of Community Investment and Infrastructure ("OCII"), have engaged the law firm of Shute, Mihaly & Weinberger LLP to advise on the negotiation and implementation of land exchanges between the State of California, the City and County of San Francisco ("City"), and OCII concerning lands within the Hunters Point Shipyard Phase 1 and Candlestick Point/Hunters Point Shipyard Phase 2 development project areas ("Project Areas"). The exchanges are necessary to reconfigure property ownership within the Project Areas to be consistent with proposed development therein.

The exchanges are required by, and subject to, state laws restricting the usage and transferability of certain state-owned or managed lands within the Project Areas. In addition to the exchanges themselves, related actions are necessary to prepare the lands for exchange and, thereafter, for development. These actions may 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. All activities must be consistent with state law and leave the subject lands ready for phased development that will occur over an up-to thirty year time period, lending complexity to the exchange agreements and their implementation.

Shute Mihaly's expertise in the applicable state laws, and their assistance to OCII in negotiating and executing the land exchanges, has been critical in OCII's efficient implementation of the agreements. As such, both the former Redevelopment Agency and OCII have extended Shute Mihaly's 2008 legal services contract, including as recently as March 2016.

However, because Shute Mihaly's role has necessarily evolved since first entering the 2008 legal services contract, staff believe it is appropriate to discontinue that contract and enter into a new legal services contract, with an updated scope of work that allows work to continue on issues

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related and necessary to implementing the land exchanges and readying the Project Areas for development. The new contract is proposed to be awarded on a sole-source basis in light of the contractor's experience and expertise with the subject matter. The new contract is proposed to be awarded for an amount not to exceed \$1,500,000. This amount is calculated in part based on the average monthly expenditure over the last 16 months of the previous legal services contract, multiplied over the 36-month term of this proposed contract, with a 20% overall increase to account for unique legal issues staff anticipate arising in the next 12 to 18 months.

Staff recommends authorizing the Executive Director to enter into a Legal Services Contract with Shute, Mihaly & Weinberger LLP to assist OCII in continuing to implement land exchanges, resolving and addressing public trust, parks and related issues for the Candlestick Point and Hunters Point Shipyard Phase 2 project in an amount not to exceed \$1,500,000.

BACKGROUND

In June 2010, the former Redevelopment Commission took a series of actions to approve the Candlestick Point/Hunters Point Shipyard Phase 2 development (the "Project") including the approval of the Project's Disposition and Development Agreement ("DDA") with CP Development Co., LP (now CP Development Co., LLC, the "Developer"). The Project covers approximately 702 acres along the southeastern waterfront of San Francisco. The DDA establishes the Developer's development rights and obligations within the parameters of the Hunters Point Shipyard Redevelopment Plan and the Bayview Hunters Point Redevelopment Plan and related documents and agreements governing redevelopment within the Plan areas (the "Project Documents").

In approving the DDA, the former Redevelopment Commission also approved two land transfer agreements with the City, the California Department of Parks and Recreation ("State Parks") and the California State Lands Commission ("State Lands") (collectively, the "Land Transfer Agreements"). The Land Transfer Agreements establish a series of property transfers or boundary adjustments that consolidate and reconfigure property ownership within the Project site consistent with planned future development, and guide the sequence in which these actions occur. The primary function of the Land Transfer Agreements is to reconfigure State Parks lands and current or former tidelands administered by State Lands that are subject to the public trust doctrine, which limits land usage to that consistent with commerce, navigation, fisheries or regional recreation/open space uses (the "Public Trust").

In December 2014, pursuant to the Land Transfer Agreements, the DDA, and an agreement between OCII and the City, OCII and the other applicable property owners completed a consolidated closing by which OCII acquired the Candlestick Stadium site, reconfigured the lands subject to the Public Trust on the site, and transferred a portion of this site to the Developer. Since that time, OCII has been engaged in the subdivision and development process on this land, all of which must be processed consistent with the Land Transfer Agreements and the relevant state laws bearing on those agreements.

Additional land, currently owned by State Parks and subject to the Land Transfer Agreements, is required for the development of the Candlestick Stadium site and the rest of Candlestick Point. Meanwhile, the Developer is in the planning phase for the acquisition, subdivision, and development of Hunters Point Shipyard, which is also subject to the Land Transfer Agreements.

DISCUSSION

Need for Outside Counsel

Significant portions of both the Hunters Point Shipyard and Candlestick Point areas within the Project are either owned by State Parks for recreational purposes or subject to the Public Trust. State Parks owns most property in the Candlestick Point State Recreation Area ("CPSRA"). State law restricts the sale or lease of State Parks land

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.

The Public Trust applies to tide and submerged lands, or filled areas that were formerly tide or submerged lands, including large parts of the Project site. The lands are owned by the State in trust for the people of California and administered by State Lands, or by a local agency designated as trustee. The overall purpose of the Public Trust is to protect, maintain, and use these lands to advance the public's interest in commerce, navigation, fisheries, and regional recreation/open space uses. State law generally prohibits the transfer or use of Trust lands for purposes inconsistent with these core purposes, e.g., for housing or general commercial/office uses unrelated to the core purposes of the Trust. State Lands assures that proposed uses are consistent with the Trust by requiring limited-term leases for use of Trust lands and by monitoring revenue generation to be revenues are used for Trust-consistent purposes. However, state law recognizes special circumstances where the State may relinquish control and allow the conveyance of Trust lands. In some instances, the State may remove the Public Trust from certain land if the State Legislature determines that the lands are no longer useful for Trust purposes and other lands are placed under the Trust. This is achieved through a process known as a "trust exchange."

The Land Transfer Agreements, executed in 2011, are designed to effectuate a "trust exchange" and a reconfiguration of the CPSRA consistent with applicable state laws. This will be achieved through a series of property transfers and boundary adjustments to reach a final reconfiguration of the Public Trust and State Parks lands within the Project site. To date, the parties have concluded two phases of Trust land exchanges contemplated under the Land Transfer Agreements. Reconfiguration of additional Trust lands throughout the Project Areas will continue in phases for the duration of the Project, dictated in part by the progression of development within the Project Areas. State Parks land is likewise located around the Project site and transfer thereof is planned in four phases, one of which is complete. The next phase reconfiguring State Parks land is scheduled to be completed by the end of 2017. Transfers of State Parks land will occur as development progresses, and also may not be complete until the Project is nearing completion.

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. All of these activities must be consistent with the Land Transfer Agreements and underlying state laws, and must be completed within the contemplated timeframes for land exchange or post-exchange development.

Proposed Legal Service Contract

In 2008 the former Redevelopment Agency engaged Shute Mihaly as outside counsel to assist in negotiating and implementing the Land Transfer Agreements. The parties anticipated the need for specialized outside counsel, and per the exclusive negotiating agreement in place at the time, and later per the executed DDA, costs associated with Shute Mihaly's work are reimbursed by the Developer.

The 2008 legal services contract has been extended several times. However, outside counsel's role has necessarily evolved since first entering the 2008 contract, and staff believe it is appropriate to discontinue that contract and enter into a new legal services contract (the "Contract"), with an updated scope of work that allows work to continue on current issues related and necessary to implementing the land exchanges and readying the Project Areas for development. In addition, since the last extension of the 2008 contract, OCII has retained additional legal staff to work with outside counsel in implementing the Land Transfer Agreements, which is reflected in the Contract's revised scope of work. The Contract is attached as Exhibit A to the accompanying Resolution, and the Scope of Work is an exhibit thereto.

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 line 42 of the Recognized Obligation Payment Schedule for the period of July 1, 2017 through June 30, 2018, which the Department of Finance ("DOF") has approved.

Sole-Source Procurement

Section IX (D) of OCII's Purchasing Policy permits the Executive Director of OCII to solicit a proposal from only one source under certain conditions, including when, "(t)he proposed contractor has previously provided the needed Goods or Services to OCII and, in doing so, has performed satisfactorily and gained specific information and experience making the proposed Contractor uniquely qualified to provide the needed Goods or Services."

As with the 2008 contract, staff recommend awarding the proposed Contract on a sole-source basis because of Shute Mihaly's qualifications to provide legal services to the Project on issues related to the Public Trust and State Parks. The firm is highly regarded for its expertise in Public Trust law and its skill and experience in negotiating with State Lands. Notably, it is retained by the Office of the City Attorney for assistance on issues related to the Public Trust. The City retained Shute Mihaly to assist in its successful negotiations with State Lands for the San Francisco Giants ballpark, Mission Bay, Treasure Island, and Seawall Lot legislation, and the former Redevelopment Agency retained the firm for its Rincon Point-South Beach Project. Furthermore, Shute Mihaly's expertise and accumulated knowledge of the Project, the Land Transfer Agreements and their implementation make the firm uniquely qualified to advise OCII staff on these matters.

Given the long duration of actions contemplated under the Land Transfer Agreements, the proposed contract term of three years will save on staff costs and staff and Commission time necessary to process extensions of a shorter-term contract (as arose during the previous contract).

Staff is proposing a contract amount not to exceed \$1,500,000, which Staff anticipates will be sufficient for approximately three years of legal services, the typical limit for on-going services contracts under OCII's purchasing policy. This amount was calculated using the average monthly expenditure over the last 16 months of the previous contract and multiplying that amount over the 36-month term for this Contract. This contract amount also includes an additional 20%, anticipated to account for costs of negotiating revisions to the Land Transfer Agreements to accommodate the Developer's proposed revisions to the Shipyard land use program (currently scheduled for Commission consideration in mid-2018).

CALIFORNIA ENVIRONMENTAL QUALITY ACT

Authorization of the Legal Services Contract to assist 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

Shute Mihaly's continued legal services are necessary to ensure that OCII's interests, as they relate to Public Trust, State Parks, and related land assembly, land use entitlement and real estate matters, are adequately and efficiently represented. Furthermore, OCII has benefitted and will continue to benefit from the expertise, relationships, and efficiency provided by an outside counsel that is already familiar with complex conditions and issues required to be addressed.

OCII staff recommends that the Commission authorize the Legal Services Contract with Shute, Mihaly & Weinberger LLP, for a contract amount not to exceed \$1,500,000, for the aforementioned legal services.

(Originated by Aaron Foxworthy, OCII Deputy General Counsel)

A handwritten signature in blue ink, appearing to read 'Nadia Sesay', with a stylized flourish extending to the right.

Nadia Sesay
Interim Executive Director