

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 16 - 2016

**AUTHORIZING A SEVENTH AMENDMENT TO THE LEGAL SERVICES
CONTRACT WITH SHUTE, MIHALY & WEINBERGER LLP, A LIMITED
LIABILITY PARTNERSHIP, TO INCREASE THE CONTRACT AMOUNT BY
\$450,000, FOR A TOTAL AGGREGATE AMOUNT NOT TO EXCEED \$2,400,000, TO
PROVIDE SPECIALIZED LEGAL SERVICES RELATED TO PUBLIC TRUST AND
STATE PARK ISSUES FOR THE CANDLESTICK POINT AND HUNTERS POINT
SHIPYARD PHASE 2 PROJECT; HUNTERS POINT SHIPYARD AND BAYVIEW
HUNTERS POINT REDEVELOPMENT PROJECT AREAS**

- WHEREAS, In June 2010, the Redevelopment Agency of the City and County of San Francisco (“Redevelopment Agency”) 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 (the “Developer”). In approving the DDA, the Commission also approved two land transfer agreements with several public agencies, including primarily the California Department of Parks and Recreation (“State Parks”) and the California State Lands Commission (“State Lands”) (collectively, “the Land Transfer Agreements”); and,
- WHEREAS, The DDA is a binding contractual agreement that provides for the transfer of land from the Office of Community Investment and Infrastructure (“OCII”), acting as the Successor Agency to the Redevelopment Agency, to developers. The DDA provides the developers’ and the OCII’s rights and obligations relating to the construction of specified improvements, and the financing mechanisms for completing the Project; and,
- WHEREAS, The DDA is an enforceable obligation under the Redevelopment Dissolution Law, Part 1.85 (commencing with Section 34170) of the California Health and Safety Code. On December 14, 2012, the California State Department of Finance (“DOF”) issued a Final and Conclusive Determination under California Health and Safety Code § 34177.5 (i), that the DDA is an enforceable obligation that survived the dissolution of the Redevelopment Agency; and,
- WHEREAS, Significant portions of both the Hunters Point Shipyard and Candlestick Point areas within the Project are either owned by State Parks or subject to the Public Trust and/or related use restrictions; and,
- WHEREAS, State Parks owns most property in the Candlestick Point State Recreation Area. 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 land; and,

- WHEREAS, The DDA requires that the reconfiguration of Public Trust and State Parks land within the Project site. The Land Transfer Agreements implement this requirement; and,
- WHEREAS, OCII, the City, and the Developer anticipated the need for specialized outside counsel to assist OCII in working through issues related to the Land Transfer Agreements, and per the DDA, costs associated with this work are reimbursed by the Developer; and,
- WHEREAS, The Redevelopment Agency entered into a contract with Shute, Mihaly & Weinberger LLP on a sole source basis as outside counsel in 2008 (the “Contract”) because of their unique qualifications to provide legal services to the Project on issues related to the Public Trust and State Parks; and,
- WHEREAS, Between 2009 and 2014 the Contract was amended five times to increase its aggregate amount to \$1,600,000; and,
- WHEREAS, On April 7, 2015, the Commission on Community Investment and Infrastructure (“Commission”) approved a sixth amendment to increase the Contract amount by \$350,000, for a total aggregate amount not to exceed \$1,950,000. Outside Contractor has performed satisfactorily under the contract and OCII staff now desires to enter into a seventh amendment; and,
- WHEREAS, OCII staff now seeks authorization to enter into a seventh amendment to increase the Contract amount by \$450,000, for a total aggregate amount not to exceed \$2,400,000 (the “Seventh Amendment”). The Seventh Amendment is required to continue work related to implementing the Land Transfer Agreements; and,
- WHEREAS, The fees and expenses authorized under the Contract and this Seventh Amendment have been, and will be, reimbursable from the Developer under the DDA, The Contract and Seventh Amendment are in furtherance of, and are necessary to complete OCII obligations under the DDA. The Contract and Seventh Amendment is shown on line HPSY 42 of the Recognized Obligation Payment Schedule (“ROPS”), which has been approved by the Department of Finance and will be included on each successive ROPS until expiration or termination of the Contract; and
- WHEREAS, Authorization of the Seventh Amendment to provide specialized legal services to assist OCII in the implementation of the DDA and Land Transfer Agreements is an Agency administrative activity that will not result in direct or indirect physical changes in the environment, and is not a “Project” as defined in the California Environmental Quality Act (“CEQA”), pursuant to CEQA Guidelines Section 15378(b)(5); and,
- WHEREAS, This Commission now desires to approve the Seventh Amendment; and, now therefore, be it

RESOLVED, That this Commission authorizes the Executive Director to enter into a Seventh Amendment to the Contract with Shute, Mihaly & Weinberger LLP., substantially in the form of the document accompanying this resolution, to implement the DDA and the Land Transfer Agreements.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of March 15, 2016.

Commission Secretary



450-0222016-002

Agenda Item **No. 5(f)**
Meeting of March 15, 2016

MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Tiffany Bohee, Executive Director

SUBJECT: Authorizing a Seventh Amendment to the Legal Services Contract with Shute, Mihaly & Weinberger LLP, a Limited Liability Partnership, to increase the contract amount by \$450,000, for a total aggregate amount not to exceed \$2,400,000, to provide specialized legal services related to public trust and state park issues for the Hunters Point Shipyard Phase 1 and Candlestick Point and Hunters Point Shipyard Phase 2 project; Hunters Point Shipyard and Bayview Hunters Point Redevelopment Project Areas

EXECUTIVE SUMMARY

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 (the "Developer"). In approving the DDA, the Commission also approved two land transfer agreements with several public agencies, including primarily the California Department of Parks and Recreation ("State Parks") and the California State Lands Commission ("State Lands") (collectively, "the Land Transfer Agreements").

Edwin M. Lee
MAYOR

Tiffany Bohee
EXECUTIVE DIRECTOR

Mara Rosales
CHAIR

Miguel Bustos
Marily Mondejar
Leah Pimentel
Darshan Singh
COMMISSIONERS

The Land Transfer Agreements act together to consolidate the current patchwork of property interests and land use restrictions within the Project site, reconfigure ownership boundaries consistent with planned future development, and guide the sequence in which parcels are transferred. A primary function of the Land Transfer Agreements is to reconfigure the areas impressed with the public trust – a designation that strictly limits development potential (the "Public Trust").

On May 6, 2008, the former Redevelopment Commission authorized a Legal Services Contract ("Contract") with Shute, Mihaly & Weinberger LLP ("Shute Mihaly" or "Outside Counsel") in the amount of \$250,000 to assist the former Redevelopment Agency, now the Office of Community Investment and Infrastructure ("OCII"), with developing and implementing the Land Transfer

One S. Van Ness Ave.
5th Floor
San Francisco, CA
94103

415 749 2400

Agreements. Between 2009 and 2011 the former Redevelopment Commission authorized four amendments to the Contract to increase its amount to an aggregate of \$1,250,000. On October 21, 2014, the Commission on Community Investment and Infrastructure authorized OCII to enter into a fifth amendment to increase the Contract amount by \$350,000, for a total aggregate amount not to exceed \$1,600,000. On April 7, 2015, the Commission on Community Investment and Infrastructure authorized OCII to enter into a sixth amendment to increase the Contract amount by \$350,000, for a total aggregate amount not to exceed \$1,950,000. As a result of significant work performed under this contract for the reconfiguration and improvement of Candlestick Point State Recreation Area under the Land Transfer Agreements, development of the Candlestick Stadium and other Candlestick Point property pursuant to the Land Transfer Agreements and the DDA, and planning for future transfers at Candlestick Point and Hunters Point Shipyard, OCII staff now seek authorization to enter into a seventh amendment to increase the Contract amount by \$450,000, for a total aggregate amount not to exceed \$2,400,000 (the "Seventh Amendment"). The Seventh Amendment is required to complete work related and necessary to implementing the Land Transfer Agreements.

Staff recommends authorizing the Executive Director to enter into a Seventh Amendment to the Legal Services Contract with Shute, Mihaly & Weinberger LLP to assist OCII in resolving public trust, parks and related issues for the Candlestick Point and Hunters Point Shipyard Phase 2 project in the amount of \$450,000, for a total aggregate amount not to exceed \$2,400,000.

BACKGROUND

The Project covers approximately 702 acres along the southeastern waterfront of San Francisco. The DDA establishes the Developer's rights to develop within the parameters of the collective project documents that include agreements, plans, and other documents (the "Project Documents") and the other requirements and conditions set forth in the DDA, and sets forth the Developer's obligations related to development. The DDA is the primary legally binding document between OCII and the Developer that obligates the Developer to comply with the terms of the various Project documents. The Project is divided into major phases – large sub-areas of the Project ("Major Phase"), and sub-phases areas comprised of four to six blocks of development ("Sub-Phase"). Development of each Major Phase and Sub-Phase requires OCII approval.

In January 2014, the Commission approved the Developer's first Major Phase application for Major Phase 1 Candlestick Point ("Major Phase 1 CP"), composed of five Sub-Phases that include the entirety of the Alice Griffith public housing replacement units as well as Candlestick Point ("CP") Center, a mixed-use regional retail center that will serve as the primary anchor of all development at Candlestick Point. In March 2014, the OCII Director approved the Developer's Sub-Phase CP-01 application, and Sub-Phase CP-01 is now under construction. Sub-Phase CP-01 includes four blocks of development that will be the site of 325 residential units, 100% of which are below market rate, and 209 of which are Alice Griffith public housing replacement units. The first two buildings within CP-01 are estimated to be complete by September 2016.

In December 2014, pursuant to the Land Transfer Agreements, the DDA, and an agreement between OCII and the City and County of San Francisco, OCII completed a consolidated closing by which OCII acquired the Candlestick Stadium site, reconfigured the Public Trust on the site, and transferred a portion of it to the Developer. Since that time, OCII has been engaged in the subdivision and development process on this land, consistent with the Land Transfer 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 or subject to the Public Trust (and/or related use restrictions). 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 may be owned by the State as trustee for the people of California, 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 open space or recreation uses. Land subject to the Public Trust is generally prohibited from being conveyed or used except for purposes consistent with the Public Trust; at the Project site, this includes restrictions on lease terms and revenue-generating uses. In general, Public Trust Land may not be used for housing or general commercial/office uses. 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."

In addition, 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 Park land.

The land use plan included in the DDA, and consistent with the approved Redevelopment Plan, requires that the Public Trust be lifted from and applied to substantial portions of land within the Project, and that the CPSRA be reconfigured; the Land Transfer Agreements address this need. The Land Transfer Agreements were executed in 2011, and contemplated a number of phases in order to reach a final reconfiguration of the Public Trust and State Parks land within the Project site. The initial phase was largely completed in July 2014 and included land needed for the replacement of the Alice Griffith public housing. The second phase was completed in December 2014. Land included in the Public Trust is located throughout the Project site and the reconfiguration of the Public Trust will continue in phases for the duration of the Project. State Parks land is likewise located around the Project site and included in four phases, one of which is complete. The next phase reconfiguring State Parks land is scheduled to be completed in May 2016. Transfers of State Parks land will occur as development of the Project requires it, and so may not be complete until the Project is nearing full build-out.

OCII and the Developer anticipated the need for specialized outside counsel to assist OCII in working through issues related to the Land Transfer Agreements, and per the DDA, costs associated with this work are reimbursed by the Developer. Accordingly, in 2008 the former Redevelopment Agency contracted with Shute Mihaly as outside counsel on a sole source basis because of their unique 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, and notably, 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.

Proposed Seventh Amendment

Staff seeks to enter into a Seventh Amendment to the Contract with Shute Mihaly. This amendment is needed because of the significant work performed under this contract for the reconfiguration and improvement of CPSRA under the Land Transfer Agreements, development of the Candlestick Stadium and other Candlestick Point property pursuant to the Land Transfer Agreements and the DDA, and planning for future transfers at Candlestick Point and Hunters Point Shipyard. The proposed Contract will assist OCII in implementing the Land Transfer Agreements, including but not limited to the following tasks:

- Actions required for completing all land conveyances required to implement the Land Transfer Agreements;
- Resolution of outstanding title issues related to land conveyances pursuant to the Land Transfer Agreements;
- Compliance with federal, state, and local requirements as they relate to land included in the Land Transfer Agreements;
- Advice on entitlements related to land included in the Land Transfer Agreements;
- Legal advice pertaining to development and Public Trust consistency issues throughout the Project;
- Assistance and legal advice in obtaining needed access to non-Agency property under the jurisdiction of State Lands and State Parks, and;
- Assistance and legal advice pertaining to OCII's ongoing responsibility as trustee of land designated as within the Public Trust, including management and accounting of Public Trust revenues.

The Seventh Amendment is included as Exhibit A, which also includes a detailed scope of work.

Source of Funding

Expenses resulting from the Seventh Amendment are reimbursable by the Developer under the DDA. On December 14, 2012, the California State Department of Finance issued a Final and Conclusive Determination under California Health and Safety Code § 34177.5 (i), that the DDA is an enforceable obligation that survived the dissolution of the former Redevelopment Agency. The Seventh Amendment is in furtherance of, and is necessary to complete OCII's obligations under the DDA. The Contract is shown in the Recognized Obligation Payment Schedule ("ROPS"), which has been approved by the Oversight Board, and will be included on each successive ROPS until expiration or termination of the Seventh Amendment.

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 ("Sole Source") under certain conditions, including when, "The proposed Contractor has previously provided the needed Goods or Services to the Agency 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 indicated above, since 2008 Shute Mihaly has been counsel first to the former

Redevelopment Agency and now for OCII on issues related to the Land Transfer Agreements and has performed satisfactorily prior to and under their existing contract. Further, Shute Mihaly's expertise and accumulated knowledge of the Project's Public Trust related matters continues to be critical to the implementation of the Project's development.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

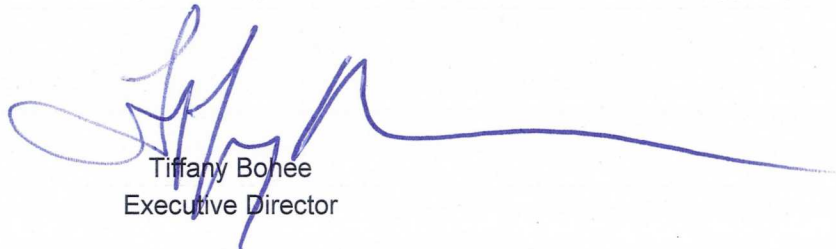
Authorization of the Seventh Amendment to provide specialized legal services to assist OCII in the implementation of the DDA and Land Transfer Agreements is an Agency administrative activity that will not result in direct or indirect physical changes in the environment, and is not therefore a "Project" as defined in the California Environmental Quality Act ("CEQA"), pursuant to CEQA Guidelines Section 15378(b)(5).

STAFF RECOMMENDATION

Shute Mihaly's continued support to OCII is necessary to ensure that OCII's interests as they relate to Public Trust, State Park, and related land assembly and land use 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 a Seventh Amendment to the Legal Services Contract with Shute, Mihaly & Weinberger LLP, to increase the contract amount by \$450,000, for a total aggregate amount not to exceed \$2,400,000, for the purposes of implementing the Land Transfer Agreements.

(Originated by Tamsen Drew, Senior Project Manager, Candlestick Point/Hunters Point Shipyard)



Tiffany Bohee
Executive Director

Exhibit A: Seventh Amendment to the Legal Service Contract with Shute, Mihaly Weinberger, LLP

SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY

SEVENTH AMENDMENT TO THE LEGAL SERVICES CONTRACT

This SEVENTH AMENDMENT TO THE LEGAL SERVICES CONTRACT (“SEVENTH AMENDMENT”) is entered into as of March ____, 2016 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 and Infrastructure, a public body, corporate and politic (the “Agency” or “OCII”) and SHUTE, MIHALY & WEINBERGER LLP, a Limited Liability Partnership (“Outside Counsel” or “Contractor”).

RECITALS

- A. In June 2010, the Redevelopment Agency of the City and County of San Francisco (“Former Agency”) approved a series of actions related to 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 (the “Developer”). In approving the DDA, the Commission also approved two land transfer agreements with several public agencies, including the California Department of Parks and Recreation (“State Parks”) and the California State Lands Commission (“State Lands”) (collectively, “the Land Transfer Agreements”). The DDA expressly incorporates the implementation of the Land Transfer Agreements as obligations of the Former Agency and Developer.
- B. The Former Agency entered into a contract with Shute, Mihaly & Weinberger LLP on a sole source basis as outside counsel in 2008 (the “Contract”) because of their unique 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 in negotiating with the State Lands Commission.
- C. Between 2009 and 2014 the Contract was amended five times to increase its amount to an aggregate of \$1,600,000.
- D. On April 7, 2015, the Commission on Community Investment and Infrastructure (“Commission”) approved a sixth amendment to increase the Contract amount by \$350,000, for a total aggregate amount not to exceed \$1,950,000. Outside Counsel has performed satisfactorily under the contract and OCII staff now desires to enter into a seventh amendment.
- E. The fees and expenses authorized under the Contract and this Seventh Amendment have been, and will be, reimbursable from the Developer under the DDA because they are in furtherance of, and are necessary to complete, OCII obligations under the DDA. The Contract and Seventh Amendment is shown on line 42 of the Recognized Obligation Payment Schedule for the period January 1 through June 30, 2016 (“ROPS 15-16B”).

(“ROPS”), which the Department of Finance (“DOF”) has approved, and also appears on line 42 of ROPS 16-17, which OCII has submitted to DOF for approval.

- F. This Seventh Amendment increases the Contract amount by \$450,000, for a total aggregate amount not to exceed \$2,400,000, and revises other provisions to reflect current Agency contract requirements.

AGREEMENT

ACCORDINGLY, for good and valuable consideration, the amount and sufficiency of which is hereby acknowledged, the Agency and Outside Counsel agree as follows:

1. The Contract Amount (“Contract Amount”) of \$1,950,000 set forth on the cover page of the Contract is hereby increased by \$450,000, for a revised Contract Amount not to exceed \$2,400,000.

2. Section 2 [Term] is deleted in its entirety and the following is substituted in lieu thereof:

“The term of this Contract shall begin on the Effective Date and end on the earlier of completion of services or termination by either party as provided by the Contract; provided, however, that the insurance and indemnity provisions in this Contract shall continue to remain in effect according to their terms.”

3. The first sentence of Section 3, subsection (a) [Maximum Amount Payable] is deleted in its entirety and the following is substituted in lieu thereof:

“The maximum amount payable under this Contract is no more than Two Million Four Hundred Thousand Dollars (\$2,400,000) as described above as the Contract Amount.”

4. The first sentence of Section 4, subsection A [Charges and Billing Procedures] is deleted in its entirety and the following is substituted in lieu thereof:

“Outside Counsel acknowledges that the Redevelopment Dissolution Law, Cal. Health & Safety Code §§ 34170 et seq. requires the Agency to make expenditures consistent with state-approved Recognized Obligation Payment Schedules (“ROPS”), which establish six month fiscal periods for expenditures and identify the enforceable obligations that qualify for payment.”

5. Section 4, subsection A (2) is deleted in its entirety and the following is substituted in lieu thereof:

“Billings shall be monthly and received by the Agency within 30 days after the month in which the services are provided.”

6. Section 11 [Insurance] is deleted in its entirety and the following is substituted in lieu thereof:

“INSURANCE

A. Outside Counsel must procure and maintain for the duration of the Contract, including any extensions, insurance against claims for injuries to person or damages to property which may arise from or in connection with the performance of the work under this Contract by the Outside Counsel, its agents, representatives, employees or subcontractors. If the Outside Counsel maintains additional coverages and/or higher limits than the minimums shown in this Section 11, the Agency requires and shall be entitled to the additional coverage and/or the higher limits maintained by the Outside Counsel.

B. Minimum Scope of Insurance. Coverage shall be at least as broad as:

- (1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01).
- (2) Insurance Services Office Automobile Liability coverage (form number CA 00 01- any auto).
- (3) Workers’ Compensation insurance as required by the State of California and Employers’ Liability insurance.
- (4) Professional Liability insurance covering all negligent acts, errors and omissions of Outside Counsel performed within the scope of Outside Counsel’s representation of Agency.

C. Minimum Limits of Insurance. Outside Counsel shall maintain limits no less than:

- (1) General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this Contract or the general aggregate limit shall be twice the required occurrence limit.
- (2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- (3) Workers’ Compensation and Employers’ Liability: Workers’ Compensation limits as required by the State of California and Employers’ Liability limits of \$1,000,000 for bodily injury by accident and \$1,000,000 per person and in the annual aggregate for bodily injury by disease. (Required only if Contractor has employees).

- (4) Professional (errors and omissions) Liability Insurance: \$2,000,000 per claim and in the annual aggregate. If the Outside Counsel's Professional Liability Insurance is "claims made" coverage, these minimum limits shall be maintained by the Outside Counsel for no less than five (5) years beyond completion of the Scope of Services.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Agency. At the option of the Agency, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to the Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees; or Outside Counsel shall provide a financial guarantee satisfactory to the Agency guaranteeing payment of losses and related investigations, claim administration and defense expenses.

E. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- (1) "The Successor Agency to the San Francisco Redevelopment Agency, the City and County of San Francisco and their respective commissioners, members, officers and employees" are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of Outside Counsel; products and completed operations of Outside Counsel; premises owned, occupied or used by Outside Counsel; or, if applicable, automobiles owned, leased, hired or borrowed by Outside Counsel.
- (2) For any claims related to this Contract, Outside Counsel's insurance coverage shall be primary insurance as respects to the Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents, and employees. Any insurance or self-insurance maintained by the Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents, and employees shall be in excess of Outside Counsel's insurance and shall not contribute with it.
- (3) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents or employees.
- (4) Outside Counsel's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- (5) Each insurance policy required by this clause must be endorsed to state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Agency.
- (6) Outside Counsel hereby grants to the Agency a waiver of any right to subrogation which any insurer of said Outside Counsel may acquire against the Agency by virtue of the payment of any loss under such insurance. Outside Counsel agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Agency has received a waiver of subrogation endorsement from the insurer.
- (7) If any of the required policies provide coverage on a claims-made basis:
 - a. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - b. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the contract of work.
 - c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Outside Counsel must purchase "extended reporting" coverage for a minimum of five years after completion of contract work.
- F. Acceptability of Insurers. Insurance is to be placed with insurers with a current A. M. Best's rating of no less than A:VII, unless otherwise approved by the Agency.
- G. Verification of Coverage. Outside Counsel shall furnish the Agency with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements may be on forms provided by the Agency. All certificates and endorsements are to be received and approved by the Agency before work commences. The Agency reserves the right to require complete, certified copies of all required insurance policies, including endorsements demonstrating the coverage required by these specifications at any time.
- H. Subcontractors. Outside Counsel shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each

subcontractor. All coverages for subcontractors shall be subject to all the requirements stated herein.”

7. Insert the following text as Section 22:

“22. COMPLIANCE WITH SMALL BUSINESS ENTERPRISE PROGRAM

If Outside Counsel intends to utilize subcontractors and/or sub-consultants in the provision of Contract services, it must consult with the Agency General Counsel to determine compliance with the Agency’s Small Business Enterprises (“SBE”) Program. The SBE Program was adopted by Agency Resolution No. 82-2009 and requires consideration in awarding contracts in the following order: 1) Project Area SBEs, 2) San Francisco-based SBEs (outside an Agency Project Area), and 3) All other SBEs. Non San Francisco-based SBEs should be used to satisfy participation goals only if Project Area SBEs or San Francisco-based SBEs are not available, qualified, or if their bids or fees are significantly higher than those of non San Francisco-based SBEs.

Under the SBE Program, the Outside Counsel, in awarding subcontracts, must make good faith efforts to achieve SBE participation of 50 % for professional, personal services, and construction contracts; provided, however, that this goal may vary depending on the extent of subcontracting opportunities under the Agency contract and the availability of SBE subcontractors capable of providing goods or services required by the contract; and provided further, that the Agency has the sole discretion to modify the 50 % SBE participation goal consistent with the SBE Program, as specified in the SBE Agreement.

The Agency relies on the information that a business may have provided to qualify under another public entities’ business certification program in determining whether that business qualifies as an SBE under the Agency’s SBE Program. Those other programs include: City and County of San Francisco Local Disadvantaged Business Enterprises (LBE) certification, *information available at <http://sfgov.org/cmd/lbe-certification>*; and State of California – Small Business Enterprises certification, *information available at <http://www.dgs.ca.gov/pd/Programs/OSDS/GetCertified.aspx>*. The Agency retains the discretion, however, to determine if the information provided for those other programs meets SBE eligibility under the Agency’s SBE Program.”

8. Renumber Section 22 [Miscellaneous Provisions] as Section 23 and revise the name of the Agency in subsection A. to read: “Successor Agency to the Redevelopment Agency.”
9. Delete Exhibit A [Sixth Amendment Scope of Services and Budget] in its entirety and replace with Exhibit A [Seventh Amendment Scope of Services] attached hereto.

10. This Seventh Amendment constitutes a part of the Contract and any reference in any document to the Contract shall be deemed to include a reference to such Contract as amended hereby.
11. Except as otherwise amended hereby, all terms, covenants, conditions and provisions of the Contract shall remain in full force and effect.

IN WITNESS WHEREOF the Successor Agency and Outside Counsel have executed this Contract as of the date first above written.

**SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO,**
a public body, corporate and politic

By: _____
Tiffany Bohee
Executive Director

SHUTE, MIHALY & WEINBERGER LLP

By: _____
William J. White
Partner

APPROVED AS TO FORM:

By: _____
James B. Morales
General Counsel

Attachment A: Scope of Services

ATTACHMENT A

SEVENTH AMENDMENT

SCOPE OF SERVICES

Outside Counsel will coordinate with Successor Agency counsel and the City Attorney's Office to provide specialized legal services primarily involving Successor Agency enforceable obligations on properties subject to the Public Trust doctrine, the Hunters Point Shipyard/Candlestick point Title Settlement, Public Trust Exchange and Boundary Line Agreement and the Candlestick point State Recreation Area Reconfiguration, Improvement, and Transfer Agreement (collectively, "Agreements"); the complex title history of the Hunters Point Shipyard /Candlestick Point project area ("Project Area"); and related land use and real estate issues in the redevelopment of the Project Area, including but not limited to the following:

1. Advice and representation regarding the implementation of the Agreements including without limitation:
 - a. Negotiation and coordination of future closing phases under the Agreements, including the engagement of title insurer, title review and negotiation of title insurance, advice and representation in activities required to clear exceptions on title, coordination of development of legal descriptions, negotiation, preparation, and implementation of deeds, memoranda of correction to the Agreements, and other documents or agreements required for and ancillary to such closing phases.
 - b. Advice regarding due diligence environmental inquiries, including inquiries required to resolve issues under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), on or affecting lands the Successor Agency may acquire under the Agreements and coordination with the City Attorney's Office regarding the results of such inquiries and any further actions required.
 - c. Advice regarding the effect of the Agreements and the Public Trust on the ongoing CERCLA process for the clean-up of Yosemite Slough.
 - d. Advice and representation regarding any needed amendments to the Agreements.
 - e. Undertaking, as and if necessary, quiet title and validation litigation regarding the lands subject to and/or acquired under the Agreements, potentially in coordination with the other parties to Agreements.
 - f. Advice regarding the Successor Agency's responsibilities under the Agreements and under the Public Trust generally.
2. Advice and representation regarding acquisition and management of lands subject to and/or acquired under the Agreements and associated lands, including without limitation:

- a. Provision of assistance to the Successor Agency in negotiation and coordination of acquisition from other parties, including the United States Navy, the San Francisco Housing Authority, and private parties, of lands subject to the Agreements or required for the development of such lands, including title review and negotiation of title insurance, advice and representation in activities required to clear exceptions on title, and coordination regarding due diligence environmental inquiry as described in paragraph 1.b above.
 - b. Negotiation and preparation of easements, leases, licenses, rights of entry, and similar documents or agreements granting other parties access to Successor Agency lands subject to and/or acquired under the Agreements and providing for the maintenance and management of such lands and improvements thereon.
 - c. Negotiation and preparation of easements, leases, licenses, rights of entry, and similar documents granting the Successor Agency access to other parties' lands subject to the Agreement, or required for the development of lands subject to and/or acquired under the Agreement, and documents assigning such rights.
 - d. Advice regarding the inventory, title history, and Public Trust status of Successor Agency lands in the Project Area.
3. Advice and representation regarding the entitlement of lands subject to and/or acquired under the Agreements, including without limitation:
 - a. Advice and representation in City entitlement processes, including
 - i. The subdivision of lands subject to and/or acquired under the Agreements, including representing the Successor Agency in the subdivision process, ensuring such subdivision is consistent with the Successor Agency's responsibilities under the Agreements and the public trust, coordinating such subdivision with closings under the Agreements, and negotiating and preparing documents required for and ancillary to such subdivision.
 - ii. The vacation of streets and easements on or adjacent to lands subject to and/or acquired under the Agreements, including negotiating and assisting in the drafting of City vacation legislation and amendments thereto, and providing advice and representation in the implementation of such legislation.
 - b. Advice and representation regarding needed approvals by the Bay Conservation and Development Commission, the National Park Service, and other State and federal agencies, relating to lands subject to and/or acquired under the Agreements.
 - c. Advice regarding Sub-Phase and Major Phase approvals of lands subject to and/or acquired under the Agreements.
4. Other tasks as assigned by Successor Agency counsel.