

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 30 – 2017

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

WHEREAS, In August 2010, the San Francisco Board of Supervisors approved amendments to the Hunters Point Shipyard Redevelopment Plan and the Bayview Hunters Point Redevelopment Plan, together with related documents and agreements governing redevelopment within the Plan areas (the “Project Documents”); and,

WHEREAS, In June 2010, the former Redevelopment Agency 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”); and,

WHEREAS, As of February 1, 2012, the San Francisco Redevelopment Agency was dissolved in accordance with California Health and Safety Code §§ 34170 *et seq.* (the “Redevelopment Dissolution Law”), and 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) (the “Successor Agency” or “OCII”) is completing the enforceable obligations of the Former Agency in the Project Area, under the authority of the Redevelopment Dissolution Law and under San Francisco Ordinance No. 215-12 (Oct. 4, 2012) (establishing the Successor Agency Commission (“Commission”) and delegating to it state authority under the Redevelopment Dissolution Law); and,

WHEREAS, 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 former Redevelopment Agency; and,

WHEREAS, The DDA establishes rights and obligations of the Developer and OCII, respectively, concerning development of the Project, within the parameters of the Project Documents. In particular, the DDA provides for the consolidation and transfer of lands within the Project area from OCII to Developer for development of the Project; and,

- WHEREAS, Significant portions of both the Hunters Point Shipyard and Candlestick Point areas within the Project are either owned by the California Department of Parks and Recreation (“State Parks”) or are current or former tidelands subject to the public trust for commerce, navigation, fisheries (the “Public Trust”) and administered by the California State Lands Commission (“State Lands”), or are similarly restricted lands administered by the City and County of San Francisco (“City”); 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 OCII, the City or other parties the right to use and occupy State land; and,
- WHEREAS, The overall purpose of the Public Trust is to protect, maintain, and use Trust lands to advance the public’s interest in commerce, navigation, fisheries, and regional recreation/open space uses. State law generally prohibits Trust lands from being transferred or used except for purposes consistent with the Public Trust, however, in some instances, the State may remove certain lands from the Public Trust if the State Legislature determines that the lands are no longer useful for Trust purposes and other lands are placed under the Trust; and,
- WHEREAS, The DDA requires that its parties enter into two agreements with State Parks and State Lands, respectively, for the reconfiguration of Public Trust and State Parks land within the Project site to accommodate contemplated development, consistent with applicable State laws governing the particular lands being reconfigured (collectively, the “Land Transfer Agreements”); 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, OCII’s costs associated with this work are reimbursed by the Developer; and,
- WHEREAS, The former Redevelopment Agency entered into a contract with Shute, Mihaly & Weinberger LLP on a sole-source basis as outside counsel in 2008 to assist in matters related to the Land Transfer Agreements; and,
- WHEREAS, Since that time, Shute Mihaly has ably assisted OCII in negotiating and executing the Land Transfer Agreements and concluding two phases of Trust land exchanges and one phase of State Parks land exchange contemplated thereunder; and,
- WHEREAS, The next phase reconfiguring State Parks land is scheduled to be completed by the end of 2017, and the reconfiguration of the Public Trust and State Parks lands will continue in phases for the duration of the Project; and,
- WHEREAS, Shute Mihaly’s role has necessarily evolved since first entering the 2008 legal services contract, and staff believe both OCII and Shute Mihaly would benefit from entering into a new legal services contract (“Contract”) with an updated scope of work that allows Shute Mihaly’s continued work on issues related and necessary to implementing the Land Exchange Agreements and readying the Project area for development; and,

WHEREAS, The fees and expenses authorized under this Contract are reimbursable to the Agency 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 DOF has approved; and,

WHEREAS, Authorization of the Contract to provide specialized legal services 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 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 Contract; and, now therefore, be it

RESOLVED, That this Commission authorizes the Executive Director to enter into a legal services contract with Shute, Mihaly & Weinberger LLP, substantially in the form attached hereto as Exhibit A, to provide specialized legal services related to the implementation of the Land Transfer Agreements guiding the reconfiguration of real property ownership within the Hunters Point Shipyard Phase 1 and the Candlestick Point and Hunters Point Shipyard Phase 2 development projects.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of September 19, 2017.

Commission Secretary

Exhibit A: Legal Services Contract with Shute, Mihaly Weinberger, LLP

SUCCESSOR AGENCY
TO THE REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO

LEGAL SERVICES CONTRACT

Outside Counsel: Shute, Mihaly & Weinberger LLP
Address: 396 Hayes Street, San Francisco, CA 94102-4421
Telephone: (415) 552-7272
Facsimile: (415) 552-5816
Lead Attorney: William J. White, Esq.
Effective Date: September 30, 2017
Project/Case: Bayview Hunters Point and Hunters Point Shipyard Redevelopment
Project Areas
Contract Amount: \$1,500,000
Agency Attorneys: James B. Morales, Agency General Counsel
Aaron J. Foxworthy, Agency Deputy General Counsel

This LEGAL SERVICES CONTRACT (“**Contract**”) is entered into as of September 30, 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 and Infrastructure, a public body existing under the laws of the State of California (“**Agency**”) and SHUTE, MIHALY & WEINBERGER LLP, a limited liability partnership (“**Outside Counsel**”).

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., LLC (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. As of February 1, 2012, the Former Agency was dissolved in accordance with California Health and Safety Code §§ 34170 *et seq.* (the “**Redevelopment Dissolution Law**”), and the Agency is completing the enforceable obligations of the Former Agency in the Project area, under the authority of the Redevelopment Dissolution Law and under San Francisco Ordinance No. 215-12 (Oct. 4, 2012) (establishing the Successor Agency and delegating to it state authority under the Redevelopment Dissolution Law); and,
- C. 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 Former Agency; and,
- D. To fulfill its obligations under the DDA and complete the actions contemplated by the Land Transfer Agreements, the Agency requires legal expertise in matters of State law governing the contemplated transfers, and in matters of land use entitlement, real estate transactions and redevelopment law related to the implementation of the transfers; and,
- E. The Agency has selected Outside Counsel, through the Sole-Source Method described in the Agency’s Purchasing Policy, because Outside Counsel is highly qualified to provide the required legal services, and has unique previous experience in representing the Agency in these matters; and,
- F. The fees and expenses authorized under this Contract are reimbursable to the Agency by the Developer under the DDA because they are in furtherance of, and are necessary to complete, the Agency’s obligations under the DDA. The Contract is reflected on line 42 of the Recognized Obligation Payment Schedule (“**ROPs**”) for the period of July 1, 2017 through June 30, 2018, which the Department of Finance has approved.

NOW, THEREFORE, the Agency and Outside Counsel agree as follows:

1. SCOPE OF SERVICES

Outside Counsel will provide legal services involving the Agency’s enforceable obligations, primarily concerning State Parks properties or properties subject to the Public Trust doctrine; the Land Transfer Agreements (which are further identified in Exhibit A); the complex title history of the Hunters Point Shipyard and Bayview Hunters Point Redevelopment Project area (“**Project Areas**”); and related land use entitlement, real estate transactions and redevelopment law issues, including but not limited to the following, and all as more particularly described in Exhibit A:

- a) Advice and representation regarding the implementation of the Agreements;
- b) Advice and representation regarding acquisition and management of lands subject to and/or acquired under the Agreements and associated lands;
- c) Advice and representation regarding the entitlement of lands subject to and/or acquired under the Agreements;

- d) Other tasks as assigned by Agency Counsel.

2. TERM

The term of this Contract shall begin on the Effective Date and end on the earlier of: (a) three years from the Effective Date; (b) the expiration of funds available under the Contract; or (c) 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. COMPENSATION, PERSONNEL AND BILLING RATES

A. Maximum Amount Payable. The maximum amount payable under this Contract is no more than \$1,500,000.00, as set forth above as the Contract Amount. Outside Counsel shall notify the Agency General Counsel before the Contract Amount is reached as to whether this Contract should be amended to increase the Contract Amount.

B. Service Providers. Outside Counsel's initial billing rates, and specific personnel, if applicable, and categories of personnel (e.g., associate, paralegal) assigned to this Contract are set forth in Exhibit B hereto. If specific attorneys are assigned to this Contract at the request of the Agency, there shall be no change in these attorneys, without the prior consent of the Agency.

C. Notice of Changes in Hourly Rates. Outside Counsel shall provide notice to the Agency of any changes to the hourly rates listed in Exhibit B at least thirty (30) days prior to the effective date of such change in any hourly rate.

D. Taxes. No payroll or employment taxes of any kind will be withheld or paid by the Agency on behalf of Outside Counsel. The Agency will not treat Outside Counsel as an employee with respect to the contract services for any purpose, including federal and state tax purposes. Outside Counsel understands and agrees that it is Outside Counsel's responsibility to pay all taxes required by law, including self-employment social security tax. The Agency will issue an IRS 1099 Form, or other appropriate tax reporting document, to Outside Counsel for the Contract services.

E. Benefits. Outside Counsel will not be eligible for, and will not participate in, any health, pension, or other benefit of Agency, which exists solely for the benefit of the Agency employees during the Contract Term.

4. CHARGES AND BILLING PROCEDURES

- A. 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 ROPS, which establish six-month fiscal periods for expenditures and identify the enforceable obligations that

qualify for payment. Accordingly, Outside Counsel shall adhere to the following billing procedures:

- (1) Billings are to be directed to the Agency General Counsel.
- (2) Billings shall be monthly and received by the Agency within 30 days after the month in which the services are provided.
- (3) Invoices shall be accompanied with the following information:
 - (i) a summary, listing names of attorneys and paralegals who worked on the matter, total hours for each and their hourly rates to be determined in accordance with Exhibit B;
 - (ii) number of hours worked per attorney or paralegal, on a daily basis;
 - (iii) brief description of actual work done, by each person (detailed narratives are not necessary), on a daily basis; and
 - (iv) travel and living expenses, which shall be itemized separately to indicate travel, lodging, business meetings, meals, taxi/limousines, and other specific expenses.
- (4) Payments made by Outside Counsel to others, including other firms, experts or witnesses, for services in connection with the matter shall be included in the statement and supporting invoices shall be attached to the billing.
- (5) If two or more matters are being handled for the Agency, separate invoices shall be prepared for each matter.
- (6) Charges for attorney time during travel are reimbursable at one-half of the hourly rate unless such time is actually used in performing services for the Agency, provided, however, that the Agency shall provide prior approval of any travel outside of the City and County of San Francisco ("City") and that the following travel-related expenses are not chargeable to the Agency:
 - a. automobile rental fees incurred to attend meetings;
 - b. taxicab fares incurred from Outside Counsel's respective offices to an employee's place of residence; and
 - c. parking expenses incurred by an employee who takes his/her vehicle to work in order to attend meetings.

B. Other Expenses. Unless specifically reflected as an allowable cost on Exhibit B, the Agency will not pay extra or overhead costs for:

- (1) administrative or clerical services including secretarial, docket, word processing, accounting, library, or other clerical time;
- (2) “opening file” administrative charges;
- (3) time charges for preparing bills and statements or case calendars;
- (4) mark-ups for LEXIS/WESTLAW searching or document reproduction; and
- (5) other similar internal operating or overhead costs.

C. The Agency reserves the right at its option to receive copies of receipts, invoices, and bills relating to any costs or expenses billed to the Agency.

6. NO PERSONAL LIABILITY

No member, official or employee of the Agency shall be liable personally to Outside Counsel or any successor in interest in the event of any default or breach by the Agency or for any amount which may become due to Outside Counsel or any successor or on any obligation under the terms of this Contract.

7. ASSIGNMENT OF CONTRACT

Outside Counsel shall not assign this Contract, or any part thereof, without the prior express written consent of the Agency.

8. NON-FEDERAL LABOR STANDARDS

Outside Counsel agrees that any employees performing work or services for Outside Counsel shall be paid not less than the prevailing wage rate and shall be subject to the same hours and working conditions and shall receive the same benefits provided for similar work or services performed in San Francisco. Outside Counsel further agrees that the inclusion of the above provisions in this Contract shall not be construed to relieve Outside Counsel or any subcontractor from the pertinent requirements of any applicable Federal labor standards provisions; and, provided, further, that the limitations, if any, in these non-Federal labor standards provisions upon hours per day, per week, or per month which the employees engaged on the work covered by this Contract may be required to work thereon shall not be exceeded. Where minimum rates of pay required under State or local law are higher than the minimum rates of pay required by or set forth in applicable Federal labor standards, said State or local minimum rates shall be the applicable minimum rates of pay for such classifications.

9. INDEMNIFICATION

To the fullest extent allowable by law, Outside Counsel shall hold harmless, defend at its own expense and indemnify the Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees against any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, arising directly or indirectly from all acts or omissions to act of contractor or its officers, agents or employees in rendering services under this contract, except to the extent such liability, claims, losses, damages or expenses arises from the Agency's gross negligence or willful acts. In addition to Outside Counsel's obligation to indemnify Agency, Outside Counsel specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Agency, the City and County of San Francisco and their respective Commissioners, members, officers and employees from any claim which falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Outside Counsel by Agency and continues at all times thereafter. This section does not apply to contracts for construction design services provided by a design professional, as defined in California Civil Code Section 2782.8.

10. INDEPENDENT CONTRACTOR

Outside Counsel hereby declares that it is engaged in an independent business and agrees to perform its services as an independent contractor and attorney in fact for the Agency, not as an agent or an employee of the Agency. Outside Counsel has and hereby retains the right to exercise full control and supervision of the services and work to be provided under this Contract and full control over the employment, direction, compensation and discharge of all persons assisting it in the performance of the services and work hereunder. Outside Counsel agrees to be solely responsible for all matters relating to payment of employees, including, but not limited to, compliance with all federal, state and local payroll tax and withholding requirements, workers' compensation requirements and all regulations governing such matters. Outside Counsel agrees to be solely responsible for its own acts and those of its subordinates and employees during the term of this Contract.

11. 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 Article 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 Employer's 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 the 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 Employer's Liability: Workers' Compensation limits as required by the State of California and Employer's 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 Outside Counsel 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 a 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’s Risk Manager.

G. Verification of Coverage. Outside Counsel shall furnish the Agency with certificates of insurance and with original endorsements effecting 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.

12. RECORDS, REPORTS AND AUDITS

A. Records

(1) Records shall be established and maintained in accordance with Agency requirements with respect to all matters covered by this Contract. Except as otherwise authorized by the Agency, such records shall be maintained for a period of four years from the date of the termination of the Contract; provided, however, that records that are the subject of audit findings shall be retained for four years or until such audit findings have been resolved, whichever is later.

(2) All costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Contract shall be identified clearly and readily accessible.

B. Reports and Information

At such times and in such forms as the Agency may require, there shall be furnished to the Agency or its designated representative such statements, records, reports, data, and information as the Agency may request pertaining to matters covered by this Contract.

C. Audits and Inspections

At any time during normal business hours and as often as the Agency may deem necessary, there shall be made available to the Agency or its representatives for examination of all records with respect to all matters covered by this Contract. Outside Counsel will permit the Agency to audit, examine and make excerpts or transcripts from such records, and to make copies of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Contract.

13. CONFLICTS OF INTEREST

Except for approved eligible administrative or personnel costs, no employee, agent, contractor, officer or official of the Agency who exercises any functions or responsibilities with respect to this Contract or who is in a position to participate in a decision making process or gain inside information with regard to it, shall obtain a personal or financial interest in or benefit from any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom they have family or business ties, during his or her tenure or for one year thereafter. The term "Outside Counsel" includes the members, employees, officers (including board members, if any) agents and subcontractors of Outside Counsel. In order to carry out the purposes of this section, Outside Counsel shall incorporate, or cause to be incorporated, in all contracts and subcontracts relating to activities pursuant to this Contract, a provision similar to that of this section. If the Agency determines that Outside Counsel is a "consultant" within the meaning of the Agency's Conflict of Interest Code, Outside Counsel must complete the required disclosure forms, which will be provided by the Agency.

14. OUTSIDE COUNSEL'S DUTY OF LOYALTY

In addition to the duty of loyalty that California law imposes on attorneys towards their clients, Outside Counsel agrees to abide by the Agency's duty of loyalty, which appears at Section IX. H. (Prohibited Activities of Present and Former Employees, Commissioners and Consultants) of the Agency's Personnel Policy and which states in part the following: "Unless approved in advance in writing by the Agency, no present or former employee, commissioner or consultant of the Agency shall knowingly act for anyone other than the Agency in connection with any particular matter in which the Agency is a party, or has a direct and substantial interest, and in which he or she participated personally and substantially as an Agency employee, commissioner or consultant whether through decisions, recommendations, advice, investigation or otherwise. Violation of this section by a present employee, consultant or commissioner may, in the case of an employee or consultant, be grounds for discharge or termination of the consultant contract, and in the case of a commissioner, be considered misconduct in office pursuant to California Health and Safety Code Section 33115."

15. LIMITATIONS ON CONTRIBUTIONS

Through execution of this Contract, Outside Counsel acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the Agency for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) the Mayor or members of the Board of Supervisors, (2) a candidate for Mayor or Board of Supervisors, or (3) a committee controlled by such office holder or candidate, at any time from the commencement of negotiations for the Contract until the later of either the termination of negotiations for such Contract or six months after the date the Contract is approved. Outside Counsel acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Outside Counsel further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Outside Counsel's board of directors; Outside Counsel's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Outside Counsel; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Outside Counsel. Additionally, Outside Counsel acknowledges that Outside Counsel must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

Finally, Outside Counsel agrees to provide to the Agency the names of each member of Outside Counsel's board of directors; Outside Counsel's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Outside Counsel; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Outside Counsel.

16. CONFIDENTIALITY/PROPERTY OF AGENCY

All of the reports, information, data or other materials prepared or assembled by Outside Counsel under this Contract, including Outside Counsel's opinions and conclusions based upon such items, are confidential. Outside Counsel agrees that such reports, information, opinions or conclusions shall not be made available to or discussed with any individual or organization, including the news media, without the prior written approval of the Agency. Unless otherwise stated in the Scope of Services, all such reports, information, data or other materials and work product shall become the property of the Agency.

17. NONDISCRIMINATION

There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation, disability (including HIV or AIDS status) or other protected class in the performance of this Contract. Outside Counsel will ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation, disability (including HIV or AIDS status).

Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship; and provision of any services or accommodations to clients or the general public.

18. EQUAL EMPLOYMENT OPPORTUNITY

A. Outside Counsel acknowledges that the Agency is committed to diversity in the workplace. Accordingly, Outside Counsel agrees that its employment program will include recruiting from a broad and diverse pool of applicants (consistent with the firm's size and hiring needs) and that it will maintain liaison with minority and woman law student and professional organizations. Outside Counsel agrees to establish and maintain a written policy on diversity, equal opportunity hiring and retention and nondiscrimination which encourages diversity and prohibits discrimination; to have an established and clear internal process for receiving and responding to complaints of discrimination; and to designate one or more persons as responsible within the firm for general issues related to achieving a diverse workplace---recruiting, retention and training.

B. Outside Counsel will, in all solicitations or advertisements for employees placed by it or on its behalf, state it is an equal opportunity employer.

C. Outside Counsel will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

D. Outside Counsel agrees not to discriminate in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, and shall comply fully with all provisions of the Agency's Nondiscrimination in Contracts Policy ("Policy"), adopted by Agency Resolution No. 175-97, as such Policy may be amended from time to time. The City and County of San Francisco has certified Outside Counsel as being in compliance with Chapter 12B of the San Francisco Administrative Code (The "Equal Benefits Ordinance") available at <http://sfgov.org/cmd/directory-12b-compliant-firms> (as of September 1, 2017). Accordingly, the Agency deems this certification under the Equal Benefits Ordinance as compliance with the Policy.

E. Outside Counsel shall provide all services to the public under this Contract in facilities that are accessible to persons with disabilities as required by state and federal law.

B. If requested by the Agency, Outside Counsel agrees to provide regular reports on its efforts to achieve meaningful diversity.

19. JOINT VENTURE/CO-COUNSEL PROVISION

A. Outside Counsel acknowledges that the Agency is committed to promoting contracting opportunities for Small Business Enterprises. Accordingly, if this Contract extends to more than one matter, the Agency may request from time to time that Outside Counsel enter into joint venture or co-counsel relationships to represent the Agency. Outside Counsel agrees to consider such requests in good faith and to attempt to negotiate such relationships unless conflicts or other reasonable impediments prohibit it.

B. If this Contract is or becomes part of a joint venture or co-counsel arrangement, then the Agency shall designate Lead Counsel and the working relationship and allocation of responsibility desired by the Agency by separate letter of instructions, which shall be deemed incorporated herein. It is expected that Lead Counsel and additional Counsel will consult and cooperate with the other and each will defer to the other in each's area of expertise and responsibility.

20. COMPLIANCE WITH MINIMUM COMPENSATION POLICY AND HEALTH CARE ACCOUNTABILITY POLICY

Outside Counsel agrees, as of the date of this Contract and during the term of this Contract, to comply with the provisions of the Agency's Minimum Compensation Policy and Health Care Accountability Policy (the "Policies"), adopted by Agency Resolution 34-2009, as such policies may be amended from time to time (See Exhibit C "Minimum Compensation Policy" and Exhibit D "Health Care Accountability Policy"). Such compliance includes providing all "Covered Employees," as defined under Section 2.7 of the Policies, a minimum level of compensation and offering health plan benefits to such employees or to make payments to the City and County of San Francisco's Department of Public Health, or to participate in a health benefits program developed by the City and County of San Francisco's Director of Health.

21. 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. 43-2015 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:// sfgsa.org/index.aspx?page=5364](http://sfgsa.org/index.aspx?page=5364); and State of California – Small Business Enterprises certification - <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.

22. TERMINATION

The Agency may terminate this Contract at any time without cause upon written Notice of Termination to the Outside Counsel; provided, however, that in the event of such termination, the Agency shall compensate the Outside Counsel for work completed to the satisfaction of the Agency as of the date of such notice or the date of termination specified in and directed by such notice.

23. MISCELLANEOUS PROVISIONS

A. Notices

All notices, demands, consents or approvals required under this Contract shall be in writing and shall be deemed given when delivered personally, when received by facsimile transmission, or three (3) business days after being deposited in the U.S. Mail, first class postage prepaid, return receipt requested, addressed as follows:

If to the Agency:	Successor Agency to the San Francisco Redevelopment Agency 1 South Van Ness Avenue, 5 th Fl. San Francisco, CA 94103 Attention: Agency General Counsel
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If to Outside Counsel:	Shute, Mihaly & Weinberger LLP 396 Hayes Street San Francisco, CA 94102 Attention: William J. White, Esq.
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or to such other addresses as the parties may designate by notice as set forth above.

B. Time of Performance

- (1) Time is of the essence in the performance of all the terms and conditions of this Contract.

- (2) All performance and cure periods expire at 5:00 P.M., San Francisco, California time, on the applicable date.
- (3) A performance or cure date which otherwise would be a Saturday, Sunday or Agency holiday shall be extended to the next Agency working day.

C. Successors and Assigns

This Contract shall be binding upon and inure to the benefit of the successors and assigns of the Agency and Outside Counsel. Where the term "Outside Counsel" or "Agency" is used in this Contract, it shall mean and include their respective successors and assigns; provided, however, that the Agency shall have no obligation under this Contract to, nor shall any benefit of this Contract accrue to, any unapproved successor or assign of Outside Counsel where Agency approval of a successor or assign is required by this Contract.

D. Modification, Waiver and Amendment

Any modification, waiver or amendment of any of the provisions of this Contract must be in writing and signed by both the Agency and Outside Counsel.

E. Entire Contract

This Contract represents the complete agreement between the parties as to the matters described herein, and there are no oral understandings between Outside Counsel and the Agency affecting this Contract not set forth herein. This Contract supersedes all previous negotiations, arrangements, agreements and understandings between Outside Counsel and the Agency with respect to the subject matter hereof.

F. Severability

If any provision of this Contract shall be determined to be illegal or unenforceable, such determination shall not affect any other provision and all such other provisions shall remain in full force and effect.

G. Governing Law

This Contract shall be governed by the laws of the State of California. It is the responsibility of the Outside Counsel to be informed of local, state and federal laws and requirements applicable to this Contract and to perform all work in compliance with those laws and requirements.

H. Headings

Titles of parts or sections of this Contract are inserted for convenience only and shall be disregarded in construing or interpreting its provisions.

I. Attorneys' Fees

In any action or proceeding arising out of this Contract, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

J. Authority

The undersigned represents and warrants that he or she has full power and authority to enter into this Contract and to bind the parties in accordance with its terms.

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

OUTSIDE COUNSEL:

AGENCY:

By: _____

William J. White
Partner

By: _____

Nadia Sesay
Interim Executive Director

APPROVED AS TO FORM:

James B. Morales, General Counsel

By: _____

Aaron J Foxworthy
Deputy General Counsel

Exhibit A: Scope of Services
Exhibit B: Personnel and Billing Rates
Exhibit C: Minimum Compensation Policy
Exhibit D: Health Care Accountability Policy

EXHIBIT A

Outside Counsel (Shute Mihaly) Scope of Services

Outside Counsel will coordinate with Agency Counsel to provide specialized legal services involving Agency enforceable obligations, primarily 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, "Land Transfer Agreements"); the complex title history of the Hunters Point Shipyard/Bayview Hunters Point Redevelopment Project Areas; and related land use and real estate issues in the redevelopment of the Project Areas, including but not limited to the following:

1. Assist Agency Counsel in developing in-depth knowledge of Land Transfer Agreement process and related actions;
2. Advice and representation regarding potential reentitlement of portions of the Project Areas, and consistency thereof with Land Transfer Agreements and applicable state law;
3. 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 Agency may acquire under the Agreements.
 - 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, including amendments to legislation authorizing or otherwise affecting 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 Agency's responsibilities under the Agreements and under the Public Trust generally.
- 4. 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 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 Agency lands subject to and/or acquired under the Agreements and associated lands, 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 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 associated lands, and documents assigning such rights.
 - d. Advice regarding the inventory, title history, and Public Trust status of Agency lands in the Project Area.
- 5. 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 and associated lands, including representing the Agency in the subdivision process, ensuring such subdivisions are consistent with the 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 and associated lands, 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 State and federal environmental, land use and conservation agencies relating to lands subject to and/or acquired under the Agreements and associated lands.
 - c. Advice regarding Sub-Phase and Major Phase approvals of lands subject to and/or acquired under the Agreements and associated lands.
6. Other tasks as assigned by Agency Counsel.

In providing its legal services, Outside Counsel will take direction from Agency project staff and Agency Counsel. Outside Counsel's coordination with Agency Counsel includes copying a member of the Agency Counsel's office on substantive legal communications with Agency staff and with City staff (including the City Attorney's Office), including the transmission of communication from third parties but not including routine communications, such as requests to schedule phone calls or meetings.

Exhibit B

Outside Counsel Billing Rates

Outside Counsel will bill time monthly on a straight hourly basis in accordance with the following billing rates, as may be amended from time to time pursuant to the provisions of the Contract.

CURRENT BILLING RATES:

Partner	\$375
Jr. Partner	\$345
Associate III	\$330
Associate II	\$315
Associate I	\$270
Paralegal	\$145
Law Clerk	\$95

RATES FOR DISBURSEMENTS:

Travel	at cost
Telephone	no cost
Copies	\$0.10/page
Incoming Facsimiles	no cost
Outgoing Facsimiles	\$1.00/page
Mailing/FedEx	at cost

Exhibit C

MINIMUM COMPENSATION POLICY (MCP) DECLARATION

What the Policy does. The Office of Community Investment and Infrastructure (OCII) (Successor Agency to the San Francisco Redevelopment Agency) adopted the Minimum Compensation Policy (MCP), which became effective on September 25, 2001. The MCP requires contractors and subcontractors to provide the following to their employees covered by the MCP on OCII contracts and subcontracts for services: for Commercial Business MCP the wage rate is \$13.64 per hour effective January 1, 2017; for Nonprofit MCP the wage rate is \$13.00 per hour effective July 1, 2016. The Minimum Compensation rate is adjusted on January 1 each year. In addition, the San Francisco minimum wage will increase to \$14.00 on July 1, 2017. All contractors (both for-profit and non-profit) in San Francisco will need to comply with the minimum wage of July 1, 2017. Furthermore, 12 paid days off per year (or cash equivalent) and 10 days off without pay per year shall be offered.

The OCII may require contractors to submit reports on the number of employees affected by the MCP.

Effect on OCII contracting. For contracts and amendments signed on or after September 25, 2001, the MCP will have the following effect:

- in each contract, the contractor will agree to abide by the MCP and to provide its employees the minimum benefits the MCP requires, and to require its subcontractors subject to the MCP to do the same.
- if a contractor does not provide the MCP minimum benefits, OCII can award a contract to that contractor only if the contract is exempt under the MCP, or if the contract has received a waiver from OCII.

What this form does. Your signed declaration will help OCII's contracting practice. Sign this form if you can assure OCII that, beginning with the first OCII contract or amendment you receive after September 25, 2001 and until further notice, you will provide the minimum benefit levels specified in the MCP to your covered employees, and will ensure that your subcontractors also subject to the MCP do the same.

If you cannot make this assurance now, please do not return this form.

For more information, please see the complete text of the MCP, available from the OCII's Contract Compliance Department at (415) 749-2400 or <http://sfocii.org/policies-and-procedures>.

Routing. Return this form to: Contract Compliance Department, Office of Community Investment and Infrastructure (Successor to the San Francisco Redevelopment Agency), 1 South Van Ness, Fifth Floor, San Francisco, CA 94103.

Declaration

Effective with the first OCII contract or amendment this company receives on or after September 25, 2001, this company will provide the minimum benefit levels specified in the MCP to our covered employees, and will ensure that our subcontractors also subject to the MCP do the same, until further notice. This company will give such notice as soon as possible.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Signature

Date

Print Name

Company Name

Phone

Exhibit D

HEALTH CARE ACCOUNTABILITY POLICY (HCAP) DECLARATION

What the Policy does. The Office of Community Investment and Infrastructure (“OCII”) (as Successor Agency to the Redevelopment Agency) adopted the San Francisco Health Care Accountability Policy (the “HCAP”), which became effective on September 25, 2001. The HCAP requires contractors and subcontractors that provide services to OCII, contractors and subcontractors that enter into leases with OCII, and parties providing services to tenants and sub-tenants on OCII property to choose between offering health plan benefits to their employees or making payments to OCII or directly to their employees.

Specifically, contractors can either: (1) offer the employee minimum standard health plan benefits approved by the OCII Commission; (2) pay OCII \$4.65 per hour for each hour the employee works on the covered contract or subcontract or on property covered by a lease (but not to exceed \$186 in any week) and OCII will appropriate the money for staffing and other resources to provide medical care for the uninsured (rates and amounts effective July 1, 2016 and subject to annual change).

The OCII may require contractors to submit reports on the number of employees affected by the HCAP.

Effect on OCII contracting. For contracts and amendments signed on or after September 25, 2001, the HCAP will have the following effect:

- in each contract, the contractor will agree to abide by the HCAP and to provide its employees the minimum benefits the HCAP requires, and to require its subcontractors to do the same.
- if a contractor does not provide the HCAP’s minimum benefits, OCII can award a contract to that contractor **only if** the contract is exempt under the HCAP, or if the contract has received a waiver from OCII.

What this form does. Your signed declaration will help OCII’s contracting practice. Sign this form if you can assure OCII that, beginning with the first OCII’s contract or amendment you receive after September 25, 2001 and until further notice, you will provide the minimum benefit levels specified in the HCAP to your covered employees, and will ensure that your subcontractors also subject to the HCAP do the same. If you cannot make this assurance now, please do not return this form.

For more information, please see the complete text of the HCAP, available from the OCII’s Contract Compliance Department at: (415) 749-2400.

Routing. Return this form to: Contact Compliance Department, Office of Community Investment and Infrastructure (Successor to the San Francisco Redevelopment Agency), 1 South Van Ness Avenue, Fifth Floor, San Francisco, CA 94103.

Declaration

Effective with the first OCII contract or amendment this company receives on or after September 25, 2001, this company will provide the minimum benefit levels specified in the HCAP to our covered employees, and will ensure that our subcontractors also subject to the HCAP do the same, until further notice. This company will give such notice as soon as possible.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Signature

Date

Print Name

Company Name

Phone