

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 19 – 2021

AUTHORIZING A MEMORANDUM OF UNDERSTANDING WITH THE ARTS COMMISSION FOR THE IMPLEMENTATION OF THE ART REQUIREMENT ON CITY PROPERTY IN MISSION BAY SOUTH, TRANSFERRING ART REQUIREMENT IN-LIEU FEES, WHICH INITIALLY TOTAL \$1,125,424, TO THE ARTS COMMISSION, AND APPROVING THE PUBLIC ART PROJECT PLAN FOR MISSION CREEK PARK; MISSION BAY SOUTH REDEVELOPMENT PROJECT AREA

WHEREAS, The City and County of San Francisco (“City”), acting through its Board of Supervisors, approved, by Ordinance No. 335-98 (Nov. 2, 1998), a Redevelopment Plan for the Mission Bay South Redevelopment Project (“Redevelopment Plan”), which has been amended from time to time and will expire on November 2, 2028; and,

WHEREAS, The Redevelopment Plan establishes a program for land use and development activities in the Mission Bay South Redevelopment Project Area (“Project Area”), supersedes the Planning Code, and provides the Redevelopment Agency of the City and County of San Francisco (“Former Agency”) with the authority to implement the Redevelopment Plan; and,

WHEREAS, Section 304.9 of the Redevelopment Plan establishes, among other things, that certain commercial development within the Project Area shall comply with the “Art Requirement” defined as:

The installation and maintenance of works of art costing an amount equal to 1 percent of the hard costs of initial construction (excluding therefrom the costs of Infrastructure and tenant improvements) of a Project for retail or commercial uses exceeding 25,000 gross square feet of floor area prior to the issuance of the first certificate of occupancy or such later time as may be determined by the Agency not to exceed one year thereafter; provided, however, that where the works of art are proposed to be included within an Open Space Parcel, such installation may occur any time prior to completion of the improvements to the Open Space Parcel. Such works may include sculpture, bas-relief, murals, mosaics, decorative water features, fountains, tapestries or other artwork and shall be located in and permanently affixed to a Project, its grounds or an Open Space Parcel or the surrounding area; and,

- WHEREAS, The City approved, by Ordinance No. 335-98 (Nov. 2, 1998), the Mission Bay South Interagency Cooperation Agreement (“ICA”) whereby the City agreed to assist and cooperate with the Former Agency in implementing the Redevelopment Plan. Section 2.2 (b) of the ICA provides, among other things, that the City’s assistance to the Former Agency may be included in “any memoranda of understanding or other agreements among the City Agencies or the City and the Agency that may be entered into in furtherance of this Agreement;” and,
- WHEREAS, The Former Agency and the Arts Commission of the City and County of San Francisco (“Arts Commission”) entered into the Mission Bay South Memorandum of Understanding (“1999 MOU”) dated January 4, 1999 (Attachment A to the Commission Memorandum accompanying this Resolution) to confirm the Arts Commission authority in reviewing and approving final designs for public structures and for private structures and works of art on City property and to establish a process whereby the Former Agency and Arts Commission would work cooperatively and expeditiously in reviewing and approving those matters within the Arts Commission’s authority in the Project Area; and,
- WHEREAS, Section 2.3 of the 1999 MOU states that the Arts Commission’s approval of any works of art on City property includes review and approval “by the Visual Arts Committee (or it[s] successor) and the Arts Commission,” but that its “process for selection of art and artists under its Public Art Program” does not apply to private development in the Project Area; and,
- WHEREAS, State law dissolved the Former Agency on February 1, 2012, Cal. Health and Safety Code §§ 34161 et seq. (“Redevelopment Dissolution Law”), and provided, among other things, that successor agencies assumed certain rights and obligations of the former Redevelopment Agency. In particular, state law requires successor agencies to fulfill enforceable obligations that the former redevelopment agencies had entered into prior to June 28, 2011 (“Enforceable Obligations”); and,
- WHEREAS, the Board of Supervisors, in its capacity as governing body of the Successor Agency, approved Ordinance No. 215-12 (Oct. 4, 2012) to implement Redevelopment Dissolution Law and established the Successor Agency Commission to which it delegated authority to exercise land use, development and design approval for “surviving redevelopment projects;” and,
- WHEREAS, OCII is the Successor Agency to the Former Agency, is a legal entity separate from the City, has assumed the remaining rights and obligations of the Former Agency, and has “succeed[ed] to the organizational status of the former redevelopment agency” with the authority “to complete any work related to an approved enforceable obligation,” Cal. Health & Safety Code § 34173 (g); and,

- WHEREAS, the Redevelopment Dissolution Law provides, among other things, that successor agencies may enter into contracts for the purpose of “winding down the redevelopment agency.” Cal. Health & Safety Code § 34177.3 (b) and “agreements necessary for the administration or operation of the successor agency.” Cal. Health & Safety Code § 34171 (d) (1) (F); and,
- WHEREAS, OCII has a continuing Enforceable Obligation to implement the Redevelopment Plan’s Art Requirement and has collected in-lieu fees from those private developers who elected not to provide a work of public art on the site of their development (“In-Lieu Art Fees”).
- WHEREAS, The In-Lieu Art Fees will fund public art that will be located on City property in the Project Area and therefore will be subject to the Arts Commission final design review authority as provided for in the 1999 MOU.
- WHEREAS, OCII seeks the services of the Art Commission for the administration and coordination of commissioning an artist or artist team to design, engineer, fabricate, transport, and install an artwork on City property in Mission Creek Park, located in the Project Area; and,
- WHEREAS, The Art Commission has presented a Public Art Project Plan (Attachment C to the Commission Memorandum accompanying this Resolution) for artwork in Mission Creek Park; and,
- WHEREAS, OCII may seek the services of the Art Commission for the administration and coordination of commissioning additional artists or artist teams to develop additional artwork proposals and fabricating additional artworks to be installed on other City property in Public Open Space, located in the Project Area; and,
- WHEREAS, Approval of the MOU with the Arts Commission is categorically exempt from the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Section 15303 because it involves the funding of the construction and location of small, new artwork structures on Mission Creek Park; now, therefore, be it
- RESOLVED, That the Successor Agency Commission, commonly referred to as the Commission on Community Investment and Infrastructure, (the “Commission”) authorizes the Executive Director to execute, substantially in the form of Attachment B to the Commission Memorandum accompanying this Resolution, a Memorandum of Understanding with the Arts Commission for the administration and coordination of commissioning an artist or artist team to design, engineer, fabricate and transport artwork to be installed on the Public Open Space in Mission Bay South; and, be it further
- RESOLVED, The Commission approves the Public Art Project Plan for artwork in Mission Creek Park; and, be it further

RESOLVED, That the Commission authorizes the transfer of the In-Lieu Art Fees to the Arts Commission to administer and commission artwork consistent with the MOU; and, be it further

RESOLVED, That the Commission authorizes the Executive Director to take all necessary actions to implement the MOU, including the appointment of OCII representatives to the Artist Qualification Panel and the Artist Review Panel.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of June 1, 2021.

Commission Secretary