MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Tiffany Bohee, Executive Director

SUBJECT: Consenting to Former Successor Agency Commissioner Theodore Ellington’s Work with the Golden State Warriors regarding the Development of an Arena and Event Center under The Mission Bay South Owner Participation Agreement; Mission Bay South Redevelopment Project Area

EXECUTIVE SUMMARY

Mr. Theodore Ellington served as a Successor Agency Commissioner from December 2012 until July 3, 2014. During his tenure, Mr. Ellington participated in decisions regarding development in the Mission Bay South Redevelopment Project Area under the Owner Participation Agreement between the Successor Agency and the Master Developer, FOCIL-MB, LLC (“OPA”). The Golden State Warriors have acquired real property in the Project Area that is subject to the OPA and have stated their intent to seek Agency Commission approval for the development of an arena, office and retail uses (“Warriors’ Project”) at the site. Under the Agency’s duty of loyalty, a former commissioner is required to obtain the Agency’s consent to work on a matter in which the Successor Agency has a direct and substantial interest and in which the former commissioner participated personally and substantially. Mr. Ellington has requested that the Successor Agency consent to his work on behalf of the Golden State Warriors in approving, under the OPA, the Warriors’ Project, which has not yet been subject to review and approval by the Successor Agency.

Staff recommends that the Commission consent to Mr. Ellington’s work for the Golden State Warriors.

DISCUSSION

All commissioners and employees of the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, also known as the Office of Community Investment and Infrastructure, (“Successor Agency” or “OCII”) are subject to a permanent ban on certain types of post-service activities and a two-year ban on lobbying the Commission. Under Section IX.H. of the Successor Agency Personnel Policy, OCII Commissioners, employees, and consultants are permanently banned from representing any person -- other than the Successor Agency -- in connection with a “particular matter” if 1) the Agency is a party or has a “direct and substantial interest” in the same “matter;” and 2) the commissioner, employee, or consultant “participated personally and substantially” as an Agency commissioner, employee, or consultant in the matter.
The Agency Policy defines “participation” as including, but not limited to, involvement in “decisions, recommendations, advice, and investigations.” The Agency Commission may waive this permanent ban on certain post-service activities. Although the Agency Policy does not establish a standard for waiving the permanent ban, the former Redevelopment Commission granted waivers of this permanent ban where they would not create the potential for undue influence or unfair advantage. In addition to the permanent ban, Agency Commissioners and employees are prohibited for two years after terminating their Agency service from “appear[ing] before the Agency Commission for any purpose except to represent himself, herself, or the Agency.” Agency Personnel Policy, Section IX.H.2. This two year ban on lobbying is not subject to a waiver.

The Mission Bay South OPA establishes a comprehensive regulatory framework for the review and approval of development projects. The OPA applies to the original Master Developer and to subsequent purchasers of property and is assigned to new owners through an Assignment, Assumption, and Release Agreement. The OPA requires, among other things, that the developer to submit its overall plans for development in “Major Phases” of one or more land use blocks. The OCII Commission approves each Major Phase and Combined Basic Concept and Schematic Design (“Schematic Design”) applications for individual development projects within a Major Phase.

The Golden State Warriors (“GSW”) intend to develop Blocks 29 - 32 in Mission Bay South with an arena, offices, and retail uses. The blocks are privately owned parcels subject to the South Plan, OPA, Design for Development, and other associated documents. The approval process for the Warriors Project will generally follow the standard Mission Bay process and will include Commission approval of a new Major Phase to identify the location of specific uses and massing, Combined Basic Concept and Schematic Designs (“Schematic Designs”) for each building and private open spaces, and other actions.

Mr. Theodore Ellington served as an OCII Commissioner from December 2012 until July 3, 2014, when he resigned. During his tenure as an OCII Commissioner, Mr. Ellington participated in several Commission decisions involving projects subject to the Mission Bay South OPA, including Major Phase approvals, Schematic Designs, bond financings, OPA amendments, and a redevelopment plan amendment. On April 29, 2014, OCII presented, at a special meeting, an informational item to the Successor Agency Commission about the Warriors’ Project and described the approval process for the project. To date, OCII has not taken any action or made any decisions regarding the Warriors’ Project.

Mr. Ellington has requested, under the OCII Personnel Policy, that the OCII Commission consent to his work in representing GSW in its activities to obtain approval of the Warriors’ Project in the Mission Bay South Redevelopment Project Area under the OPA. Mr. Ellington, as an OCII Commissioner, participated only in an informational workshop on the Warriors’ Project and resigned before the Successor Agency took any actions or made any decisions about the Warriors’ Project. In light of the limited involvement of the Commission to date in the Warriors’ Project, staff does not believe that Mr. Ellington’s work on behalf of GSW will provide an undue influence to GSW or pose a conflict of interest that could adversely OCII, particularly in light of
the Agency Policy that is not subject to waiver and that bars Mr. Ellington from lobbying the Commission for the next two years.

(Originated by James Morales Interim General Counsel & Deputy Director)

[Signature]

Tiffany Bohee
Executive Director