September 2, 2014
REVISED


This Amended and Restated Memorandum of Understanding (“Amended MOU”) is entered into between OCI and the San Francisco Planning Department (“Planning Department”) (“Parties”) for the period of 3 years.

WHEREAS, prior to its dissolution, the Redevelopment Agency of the City and County of San Francisco (“Redevelopment Agency”) implemented numerous redevelopment plans approved by the Board of Supervisors and authorized under the California Community Redevelopment Law, Cal. Health & Safety Code §§ 33000 et seq. Under this state authority, the redevelopment plans established land use controls in project areas and did not generally rely on the San Francisco Planning Code or other local land use regulation, including Article 31 of the Administrative Code, unless a particular redevelopment plan required it; and

WHEREAS, state law dissolved the Redevelopment 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 the rights and obligations of the former Redevelopment Agency (with the exception of certain affordable housing assets). 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 approved, in its capacity as the legislative body of the Successor Agency, Ordinance No. 215-12 (Oct. 4, 2012) to implement Redevelopment Dissolution Law and established a mayoral-appointed Successor Agency Commission to which it delegated authority to exercise land use, development and design approval for “surviving redevelopment projects;” and

WHEREAS, OCI is the Successor Agency to the Redevelopment Agency, is a legal entity separate from the City and County of San Francisco (“City”), has assumed the remaining rights and obligations of the former Redevelopment 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, OCI has the continuing authority and obligation: (1) to exercise land use controls required under Enforceable Obligations (including the Mission Bay North Owner Participation Agreement (“OPA”), available at http://www.sfocii.org/index.aspx?page=243, the Mission Bay South OPA, available at http://www.sfocii.org/index.aspx?page=244, the Disposition and Development Agreement (“DDA”) for Hunters Point Shipyard (“HPS”) Phase 1, available at
WHEREAS, the Redevelopment Dissolution Law provides, among other things, that successor agencies may enter into contracts for the purpose “winding down the redevelopment agency.” Cal. Health & Safety Code § 34177.3 (b). See also Cal. Health & Safety Code § 34171 (d) (1) (F) (defining enforceable obligations to include “agreements necessary for the administration or operation of the successor agency”); and

WHEREAS, OCII has a continuing need to review and approve development projects, including design and environmental review, as part of the wind down of redevelopment agencies and desires to use the services of the Planning Department for this purpose; and

WHEREAS, OCII has provided (and will continue to provide) for the expenditures anticipated under this MOU in its Recognized Obligation Payment Schedules (“ROPS”) that are required to be submitted semi-annually to the Oversight Board and the California Department of Finance (“DOF”) and in its annual budget that is approved by the Board of Supervisors; and

WHEREAS, OCII and the Planning Department entered into a MOU dated July 20, 2013 for design and environmental review services, as approved by the Successor Agency Commission on August 20, 13 (Resolution No. 41-2013) (“Original MOU”); and,

WHEREAS, Earlier this year, the Golden State Warriors (“GSW”) announced their intention to purchase Blocks 29 to 32 in the Mission Bay South Redevelopment Project Area (“Mission Bay South”) for the development of approximately 1 million square feet of arena, office and retail uses (“GSW Pavilion Project”) and the GSW Pavilion Project will require design and environmental review that will exceed the scope of work and budget of the Original MOU, including preparation of an appropriate environmental review analyses and related documents, which will result in fulfillment of the requirements pursuant to the California Environmental Quality Act (“CEQA”); and,

WHEREAS, The term of the Original MOU is for two fiscal years, of which the first year has finished and OCII desires to extend the term of the Original MOU for an additional fiscal year to ensure adequate staffing from the Planning Department for the next two fiscal years for design and environmental review services for projects not related to the GSW Pavilion Project; and,
WHEREAS, As a result, OCII and the Planning Department are proposing to amend and restate the previously approved Original MOU. The Amended MOU extends the term of the Original MOU through Fiscal Year 2015-2016 and provides an additional budget amount not to exceed $225,000 to continue to provide the scope of work in the Original MOU for an additional fiscal year, for total aggregate amount of $675,000, and would include additional scope of work for the Planning Department for environmental and design review for the GSW Pavilion Project; and,

WHEREAS, The Planning Department and GSW will enter into a direct payment arrangement whereby the GSW would directly reimburse the Planning Department for environmental and design review for the GSW Pavilion Project, for an estimated total amount of approximately $480,000; provided, however, that OCII will retain its oversight and responsibility as lead agency for purposes of compliance with CEQA; and,

Now, THEREFORE, OCII and the Planning Department agree as follows:

1. SERVICES TO BE PROVIDED.
   a. Environmental Review. Upon the request of OCII, the Planning Department will conduct environmental evaluations for OCII projects under the California Environmental Quality Act (“CEQA”) and the CEQA Guidelines (Cal. Code Regs., title 14, §§ 15000 et seq). The scope of environmental services would include, but not be limited to, determinations as to what level of CEQA analysis is appropriate, preparation of exemptions and mitigated negative declarations, review of environmental impact reports, and review of technical background studies. If an environmental impact report is necessary, it will be prepared by a CEQA consultant. If a mitigated negative declaration is necessary, it could be prepared by either a CEQA consultant or Planning Department staff, at the discretion of the OCII, subject to the availability of Planning Department staff.

   i. At the Executive Director’s or designee’s request, prior to the commencement of work, the parties shall describe in writing the scope of service and an estimated budget for the particular matter for which the Executive Director (or designee) has requested environmental review services from the Planning Department. The parties understand and agree that any such budget presented by the Planning Department reflects the Department’s belief that the estimated budget is realistic based on current information. But, the parties further understand and agree that due to the uncertainties and complexities involved in the particular project, those estimates are necessarily only an approximation of potential costs, and that they do not constitute a minimum or a maximum fee quotation. In particular, a change in the anticipated scope of work could result in an adjustment of costs. The Planning Department will attempt to identify any critical assumptions in the scope of services and will apprise the OCII of any significant changes in its budget as environmental review progresses.
ii. The environmental review services for projects within the Major Approved Development Projects areas (Mission Bay, Hunters Point Shipyard and Candlestick Point Shipyard, and Zone 1 of Transbay) will be provided in accordance with § 21000-21189.3 of the Public Resources Code and Title 14, Chapter 3, § 150000-15387 of the California Code of Regulations (CEQA Guidelines). While the Planning Department will be providing the environmental review services for these projects, the OCII will be the author and signatory of the environmental review documents.

aa. GSW Pavillion Project. The Planning Department will provide an Environmental Review Coordinator to oversee the CEQA process and provide environmental review services for the GSW Pavilion Project as outlined in Attachment A, which also describes the respective roles of OCII and the Planning Department in this process. In addition, the Planning Department, under the oversight of OCII, will direct the work of the environmental consultant and any sub-consultants, including development of an appropriate scope of work for the environmental review process as well as for any required background technical studies. The Planning Department anticipates environmental review process will cost $420,086.

iii. The environmental review services for projects outside the Major Approved Development Projects areas will be provided in accordance with existing Planning Department policies and practices and consistent with the Environmental Review Guidelines, under the direction of the City’s Environmental Review Officer.

iv. In order to facilitate execution of the environmental review services in a timely and organized fashion, the OCII commits to seeking early consultation from the Planning Department with respect to CEQA requirements and updating the City’s Environmental Review Officer on a quarterly basis, or more frequently if needed, as to what services may be required over the course of the next six months.

b. Design Review. Upon the request of OCII, the Planning Department will provide professional architectural and urban design review of development proposals, assist in the development and interpretation of architectural and urban design guidelines, provide technical knowledge of building codes and building material and construction methodology and costs, participate in public presentations, and perform related tasks. Design Review effort dedicated to OCII properties is anticipated not to exceed one thousand (1,000) hours on an annual basis. Should efforts result in substantially greater Planning Department staff time, provided by the 2 FTE Design Review planners (.5 of which is being supported by this MOU), terms of this MOU associated with this position support may require modification.
The designated position will be supervised within the Planning Department. However, the shared purpose will benefit both agencies, and may require physical accommodation and regular hours at OCII. Such arrangements will be defined by agreement at a later time. Until such time, the position will be located in the Planning Department and supervised from there accordingly.

i. GSW Pavilion Project. The Planning Department will provide professional architectural and urban design review of the GSW Pavilion Project consistent with the scope of work described above. The Planning Department anticipates design review process will cost $60,240.

2. BUDGET AMOUNT:
As the Planning Department will be paid directly by the GSW for design and environmental work, as described in Section 5 below, no budget is included in this section for the GSW Pavilion Project.

a. Non-GSW Budget Components on annual basis.

<table>
<thead>
<tr>
<th>TASKS</th>
<th>Fiscal Year 2013-2014</th>
<th>Fiscal Year 2014-2015</th>
<th>Fiscal Year 2015-2016</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non- GSW Environmental Review</td>
<td>$150,000</td>
<td>$150,000</td>
<td>$150,000</td>
<td>$450,000</td>
</tr>
<tr>
<td>Non- GSW Design Review</td>
<td>$75,000</td>
<td>$75,000</td>
<td>$75,000</td>
<td>$225,000</td>
</tr>
<tr>
<td>TOTAL/Fiscal Year</td>
<td>$225,000</td>
<td>$225,000</td>
<td>$225,000</td>
<td>$675,000</td>
</tr>
</tbody>
</table>

b. Changes in Budget. Unless OCII and the Planning Department agree by written amendment to this MOU, the budget for services to be provided under this MOU shall not exceed the amounts stated in this Section 2.

c. Unbudgeted Expenditures. The Planning Department must obtain written approval from OCII for any unbudgeted expenditures and services. OCII will not reimburse the Planning Department for unbudgeted expenditures and services incurred without prior written approval.

d. Budget Shortfalls. The Planning Department will notify OCII as soon as possible if the amounts budgeted in this MOU are insufficient to provide the agreed-upon services.
e. **ROPS**: Under the Dissolution Law, the Agency’s ability to pay invoices is subject to the DOF’s authorization of such payment on the Agency’s Recognized Obligation Payment Schedule (“ROPS”). The ROPS is a schedule of obligations that is approved by the Oversight Board to the OCII. ROPS are currently submitted to DOF for approval every six months, four months prior to its effective date. Thus, any invoices that fall outside of a pre-approved ROPS are subject to DOF’s authorization and may be subject to a delay of up ten months before consideration and payment or rejection in accordance with the Dissolution Law. DOF has approved the expenditures under this MOA on the ROPS for July 2014 through December 2014 (ROPS 2014-15A, lines 4. OCII will continue to include the expenditures for this MOU on all future ROPS necessary to provide expenditure authority for the term of the MOU.

3. **ASSIGNED STAFF TO OCII.** The Planning Department will assign staff equivalent to .5 FTE to work on Design Review services described in Section 1.b will assign staff on an as-needed basis to provide Environmental Review services described in Section 1.a, and will assign staff for the GSW Pavilion Project per Attachment A to this Amended MOU. The Planning Department staff assigned to Design Review and Environmental Review services will work at the following location: San Francisco Planning Department Offices at 1650 Mission Street.

4. **DOCUMENTATION VERIFYING ACTUAL COSTS OF DIRECT SERVICES.**

   a. The Planning Department will document its personnel costs for services provided under this MOU in the following way:

      i. Hourly rate = salary + mandatory fringe benefits. Actual labor charges submitted as part of the Performing Department’s billing must be supported by a City LDR or similar payroll report to verify the actual cost of employee salary and fringe benefits. Labor charges submitted must not be based on estimated FTE, a budgeted amount, or a percentage allocation that is not reviewed and approved in advance by the OCII as part of a Citywide cost allocation plan.

      ii. Hours worked on OCII tasks.

      iii. Classification number of position and title.

      iv. Identify tasks.

      v. Location of staff.

5. **BILLING PROCEDURES.**

   a. **Non-GSW Billing**

      i. The Planning Department shall submit an invoice to OCII on a quarterly basis within 30 days of the end of the quarter (e.g., October 30, 2013 for Q1, January 30, 2014 for Q2, April 30, 2014 for Q3, July 30, 2014 for Q4, etc) not to exceed the budgeted amount for the fiscal year. The invoice shall describe the services provided and include sufficient information to determine the methodology used to determine the costs.
ii. For any given six-month period, OCII can only pay amounts approved by its Oversight Board and DOF on a ROPS for that fiscal period. OCII shall endeavor to budget and obtain DOF approval for amounts sufficient to pay the Planning Department in full within a timely fashion after the services are rendered and billed. To the extent OCII has insufficient authorization to pay a bill in full, OCII will endeavor to place any amount still owed on a future ROPS and to pay that amount when budget authority is available.

iii. The OCII will pay invoices or notify the Planning Department of any questions regarding the invoice within 30 days of receipt.

iv. The Planning Department hourly rates billed to OCII for services provided for non-GSW billing will be based on salary + mandatory fringe benefits. Actual labor charges submitted as part of the Planning Department’s billing must be supported by a City LDR or similar payroll report to verify the actual cost of employee salary and fringe benefits. Labor charges submitted must not be based on estimated FTE, a budgeted amount, or a percentage allocation that is not reviewed and approved in advance by the OCII as part of a Citywide cost allocation plan.

b. GSW Billing

   i. The Planning Department shall execute a direct payment arrangement with GSW whereby GSW will directly reimburse, subject to OCII review, the Planning Department for OCII’s environmental and design review for the GSW Pavilion Project, for an estimated amount of $480,326. The eventual amount will be based on a time and material basis and may exceed the estimated amount. OCII will assist in outreach to the GSW for any past due invoices, but will not be responsible for any outstanding amounts due to the Planning Department. The Planning Department shall reserve the right to withhold any publications due to late or non-payment by GSW.

   ii. The Planning Department shall provide a quarterly time and materials invoice to GSW. The invoice shall request payment in full within 30 business days. If payment is not received by the Planning Department within 30 business days from the date of the invoice, the Planning Department will send a notice to GSW and may initiate its standard Collections process to seek payment. The Planning Department may halt any further work on the project until payment of any outstanding balance is received in full.

   iii. The Planning Department hourly rates billed to GSW for services provided for GSW billing will be based on salary + mandatory fringe benefits + standard overhead.
6. AMENDMENTS OR TERMINATION. This MOU may be amended by mutual agreement of both parties. This MOU may be terminated by either party with 30 days notice, subject to OCII payment of applicable costs incurred through the termination date.

7. DISPUTE RESOLUTION PROCEDURES. If the Planning Department has a billing dispute with the OCII, it must attempt to resolve it with the responsible OCII Manager. If the parties are unable to reach agreement, the dispute will be resolved with the OCII’s Finance and Administration Deputy Director. If an agreement still cannot be reached, the Planning Department and the OCII Finance and Administration Deputy Director will meet with the Deputy Controller to finally resolve the matter. The Planning Department and OCII shall comply with this internal dispute resolution procedure prior to filing any claim or commencing litigation to resolve any billing dispute.

This MOU has been entered into on the date(s) below.

_______________________  ________________
Office of Community Investment and Infrastructure  Date
Tiffany Bohee, Executive Director

Approved as to form:

By: _____________________  
James B. Morales
Interim General Counsel and Deputy Director

_______________________  ________________
John Rahaim  Date
Planning Director

Approved as to form:
DENNIS J. HERRERA
CITY ATTORNEY

By: _____________________  
Kate Stacy
Deputy City Attorney
ATTACHMENT A

SCOPE OF SERVICES FOR GSW PAVILION PROJECT PLANNING SUPPORT

I. PARTIES’ ROLES AND RESPONSIBILITIES

A. San Francisco Planning Department (Planning Department)

1. OCII is the lead agency responsible for conducting an adequate environmental review of the GSW Project and that the Planning Department staff will assist OCII in preparing this review. As such, final decisions with respect to environmental impact determinations presented in environmental documents published for the GSW Project reside with OCII. As lead agency, OCII shall serve as the primary contact for the Project Sponsor for purposes of the EIR. Unless otherwise directed, the GSW Project Manager shall receive copies of all written communication related to the EIR.

2. The Planning Department shall provide an Environmental Review Coordinator to oversee the CEQA process through completion. The Environmental Review Coordinator will report to OCII’s GSW Project Manager, as discussed below, who will be the primary contact at OCII.

3. Planning Department, under the oversight of OCII, shall direct the work of the environmental consultant and any sub-consultants, including development of an appropriate scope of work for the environmental review process as well as for any required background technical studies. The Environment Review Coordinator and the GSW Project Manager will meet regularly to provide direction to Planning Department staff and to the environmental consultants and all sub-consultants. The environmental scope of work shall be based upon the complete and stable project description provided by Project Sponsor.

4. The Planning Department shall notify OCII and obtain concurrence prior to directing any consultant work that is outside of the agreed upon scope of work or that would require the use of contingency funds.

5. The Planning Department will work with OCII and the Project Sponsor to develop a Master Project Schedule that prioritizes the GSW Project.

6. Consultant submittals shall be provided to the Planning Department at the same time as any review copies are provided to OCII and/or the Project Sponsor.
7. The Planning Department and OCII shall determine what comments or feedback to provide to the consultants regarding their work or submittals. The Planning Department shall coordinate the submittal of comments to the consultant team. However, no comments shall be provided to the consultants by the Planning Department without prior OCII approval.

8. The EIR Coordinator, transportation planner, and the GSW Project Manager shall participate in regular environmental review status meetings for this project with the consultants and core staff from the other agencies to ensure the environmental review Master Project Schedule is met.

9. Pursuant to CEQA, public notification and public participation are required as part of the environmental review process for the GSW Project. The Planning Department shall assist OCII with compliance regarding all notice requirements set forth in CEQA and the CEQA Guidelines. The Planning Department, in consultation with OCII and its legal counsel, shall assist OCII, which will make final determinations about appropriate public notification procedures. OCII intends to retain, under its 2013 Agreement with the City Attorney’s Office, the City Attorney’s Office for certain Project-related matters.

10. All time-sensitive submittals shall clearly indicate expected deadlines for the completion of environmental review and should be preceded by advance consultations with OCII staff to facilitate timely processing and avoid last-minute submittals.

B. OCII

1. OCII shall serve as the primary contact for the Project Sponsor for purposes of the EIR.

2. OCII shall provide a dedicated GSW Project Manager for the environmental review process. The GSW Project Manager will be responsible for coordination of the responsibilities of OCII and the Planning Department as specified in this Agreement.

3. The GSW Project Manager or designee shall participate in regular environmental review status meetings with the consultants and the Planning Department to ensure the Master Project Schedule is maintained.

4. To assist the Planning Department in the environmental evaluation process, OCII or the Project Sponsor may be required to provide supplemental data or studies, as determined by Planning Department staff in consultation with OCII, to address potential impacts with respect to historical resources, soils, transportation, biological resources, wind, shadows, noise, air quality, or other environmental topic areas. Lack of
response to required data requests in the time line specified by the Planning Department shall result in delays to the Master Project Schedule. OCII shall assist in ensuring that the Project Sponsor responds in an appropriate time to information requests from the Planning Department to meet the Master Project Schedule.

5. Consultant submittals shall be provided to the Planning Department at the same time as any review copies are provided to OCII and/or the Project Sponsor. To allow for coordination between OCII and City agency responses, OCII and Project Sponsor comments on such submittals shall be provided to the Planning Department and not to the consultants directly, pursuant to time lines specified in the Master Project Schedule. OCII’s comments shall be provided to the Planning Department in advance of the deadline for providing feedback to the consultants as specific in the Master Project Schedule.

6. Pursuant to CEQA, public notification and participation are required as part of the environmental review process for the GSW Project. OCII shall comply with all notice requirements set forth in CEQA and the CEQA Guidelines.

7. All time-sensitive submittals shall clearly indicate expected deadlines for the completion of environmental review and should be preceded by advance consultations with the Planning Department staff to facilitate timely processing and avoid last-minute submittals.