SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY

FIFTH AMENDMENT TO THE PERSONAL SERVICES CONTRACT

This FIFTH AMENDMENT TO THE PERSONAL SERVICES CONTRACT “FIFTH AMENDMENT”) is entered into as of October 1, 2014 by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic (the “Successor Agency”) and SHUTE, MIHALY & WEINBERGER LLP, a Limited Liability Partnership (“Outside Counsel” or “Contractor”).

RECITALS

A. In June 2010, the former Redevelopment Commission took a series of actions to approve the Candlestick Point/Hunters Point Shipyard Phase 2 development (the “Project”) including the approval of the Project’s Disposition and Development Agreement (“DDA”) with CP Development Co., LP (the “Developer”). In approving the DDA, the Commission also approved two land transfer agreements with several public agencies, including primarily the California Department of Parks and Recreation (“State Parks”) and the California State Lands Commission (“State Lands”) (collectively, “the Land Transfer Agreements”); and,

B. The DDA and a number of related binding agreements attached to or referenced in the text of the DDA establish a comprehensive set of enforceable obligations that collectively govern the completion of the Project. The DDA is a binding contractual agreement that provides for the transfer of land from the Successor Agency to developers, the developers’ and the Successor Agency’s rights and obligations relating to the construction of specified improvements, and the financing mechanisms for completing the Project.

C. Significant portions of both the Hunters Point Shipyard and Candlestick Point areas within the Project are either owned by State Parks or subject to the Public Trust and/or related use restrictions

D. The land use plan included in the DDA and consistent with the approved Redevelopment Plan requires that the Public Trust and State Parks land within the Project site be reconfigured.

E. The Office of Community Investment and Infrastructure (“OCII”), the City, and the Developer anticipated the need for specialized outside counsel to assist OCII in working through issues related to the Land Transfer Agreements, and per the DDA, costs associated with this work are reimbursed by the Developer.

F. The former Redevelopment Agency entered into a contract with Shute, Mihaly & Weinberger LLP on a sole source basis as outside counsel in 2008 (the “Contract”)
because of their unique qualifications to provide legal services to the Project on issues related to the Public Trust and State Parks.

G. Between 2009 and 2011 the former Redevelopment Commission authorized four amendments to the Contract to increase its amount to an aggregate of $1,250,000.

H. The Successor Agency’s Purchasing Policy, Section IX.(D) allows the Executive Director to solicit a proposal from only one source (“Sole Source”) under certain conditions. Based on Outside Counsel’s previous experience, it is uniquely qualified to perform the needed services and therefore the procurement for Outside Counsel meets the following Sole Source criteria from the Purchasing Policy: “The proposed contractor has previously provided the needed Goods or Services to the Agency and, in doing so, has performed satisfactorily and gained specific information and experience making the proposed Contractor uniquely qualified to provide the needed Goods or Services.”

I. Expenses for the Contract and Fifth Amendment are reimbursable from the Developer under the Phase 1 DDA, which is an enforceable obligation under the Redevelopment Dissolution Law Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) of the California Health and Safety Code. On December 14, 2012, the California State Department of Finance (“DOF”) issued a Final and Conclusive Determination under California Health and Safety Code § 34177.5 (i), that the Shipyard’s Phase 2 DDA is an enforceable obligations that survived the dissolution of the Agency. The Contract and Fifth Amendment are in furtherance of, and are necessary to complete OCI obligations under the Phase 2 DDA. The Contract and Fifth Amendment is shown on line HPSY 42 of the Recognized Obligation Payment Schedule (“ROPS”), which has been approved by the Oversight Board and will be included on each successive ROPS until expiration or termination of the Contract.

J. OCI staff now seeks authorization to enter into a Fifth Amendment to increase the Contract amount by $350,000, for a total aggregate amount not to exceed $1,600,000 (the “Fifth Amendment”). The Fifth Amendment is required to complete work related and necessary to implementing the Land Transfer Agreements.
AGREEMENT

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

1. The Contract Amount (“Contract Amount”) of $1,250,000 set forth on the cover page of the Contract is hereby increased by $350,000, for a revised Contract Amount not to exceed $1,600,000.

2. Exhibit A [Scope of Services] is hereby deleted in its entirety and replaced with Exhibit A attached hereto.

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

   “The maximum amount payable under this Contract shall not exceed One Million Six Hundred Thousand Dollars ($1,600,000) as set forth on the cover page as the Contract Amount.”

4. This Fifth Amendment constitutes a part of the Contract and any reference in any document to the Contract shall be deemed to include a reference to such Contract as amended hereby.

5. Except as otherwise amended hereby, all terms, covenants, conditions and provisions of the Contract shall remain in full force and effect.
IN WITNESS WHEREOF the Successor Agency and Contractor have executed this Contract as of the date first above written.

SHUTE, MIHALY & WEINBERGER LLP, a Limited Liability Partnership

By: ______________________________
William J. White, Partner
Federal Tax Identification_____________________

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

By: ______________________________
      Tiffany Bohee
      Executive Director

APPROVED AS TO FORM:

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

Authorized by Resolution No. 85-2014 adopted October 21, 2014

Attachments:

Attachment A: Scope of Services and Budget
FIFTH AMENDMENT

SCOPE OF SERVICES AND BUDGET

Outside Counsel will coordinate with Agency counsel to provide specialized legal services primarily involving the Public Trust and related land use and real estate issues in the redevelopment of Hunters Point Shipyard and Candlestick Point, including but not limited to the following:

1. Implementation of the Public Trust Exchange Agreement (“Exchange Agreement”) between the Agency, the California State Lands Commission (“State Lands”), the California Department of State Parks and Recreation (“State Parks”), the City and County of San Francisco (“City”), and the Port of San Francisco (“Port”); and the State Park Reconfiguration Agreement (“Park Agreement”) between the Agency, State Lands, and State Parks (collectively, “Agreements”), including:
   a. Actions required for completing all land conveyances required to implement the Agreements, such as (i) conveyances undertaken pursuant to the Agreements, (ii) the conveyance from other agencies, including the City and the U.S. Navy, to the Agency of lands subject to the Agreements, (iii) further conveyances of lands subject to the Agreements required to implement the Project, including the development of the Alice Griffith Replacement Projects; and (iv) coordination with City regarding federal Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) issues on or affecting lands subject to the Exchange Agreement and Park Agreement.
   b. Resolution of outstanding title issues related to the conveyances described in (a) above, including advising regarding title insurance, supervising title company work and deliverables, assisting in negotiations with potential claimants, and litigating quiet title and/or validating actions;
   c. Compliance with federal Land and Water Conservation Fund requirements;
   d. Compliance with California Environmental Quality Act (“CEQA”) and National Environmental Policy Act (“NEPA”);
   e. Advice on entitlements, including without limitation building permits, improvement plans, approvals under the Subdivision Map Act and associated plans and agreements, to ensure compliance with the Successor Agency’s rights and obligations under the Exchange Agreement and Park Agreement.

2. Assistance and legal advice regarding any litigation challenging the Project and related to the Agreements, and the implementation of settlement agreements arising therefrom.
3. Legal advice pertaining to trust consistency issues throughout the Project.

4. Assistance and legal advice in obtaining needed access to non-Agency property, including without limitation to State Lands, State Parks, and Port property, for pre- and post-development activities.

5. Assistance and legal advice pertaining to the Agency’s responsibility as trustee and other legal services as assigned by General Counsel.

Budget:

Fifth Amendment Amount = $350,000

Total Contract Amount including Fourth Amendment = $1,600,000