MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Tiffany Bohee
Executive Director

SUBJECT: Authorizing a Fifth Amendment to the Legal Services Contract with Shute, Mihaly & Weinberger LLP, a Limited Liability Partnership, to increase the contract amount by $350,000, for a total aggregate amount not to exceed $1,600,000, to provide specialized legal services related to public trust and state park issues for the Candlestick Point and Hunters Point Shipyard Phase 2 project; Hunters Point Shipyard and Bayview Hunters Point Redevelopment Project Areas

EXECUTIVE SUMMARY

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”).

The Land Transfer Agreements act together to consolidate the current patchwork of property interests and land use restrictions within the Project site, reconfigure ownership boundaries consistent with planned future development, and guide the sequence in which parcels are transferred. A primary function of the Land Transfer Agreements is to reconfigure the areas impressed with the public trust – a designation that strictly limits development potential (the “Public Trust”).

On May 6, 2008, the former Redevelopment Commission authorized a Legal Services Contract (“Contract”) with Shute, Mihaly & Weinberger LLP (“Shute Mihaly” or “Outside Counsel”) in the amount of $250,000 to assist the former Redevelopment Agency, now the Office of Community Investment and Infrastructure (“OCII”), with developing and implementing the Land Transfer Agreements. 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. OCII 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.

Staff recommends authorizing the Executive Director to enter into a Fifth Amendment to the Legal Services Contract with Shute, Mihaly & Weinberger LLP to assist the Agency in resolving public trust, parks and related issues for the Candlestick Point and Hunters Point Shipyard Phase 2 project in the amount of $350,000, for a total aggregate amount not to exceed $1,600,000.
BACKGROUND

The Project covers approximately 702-acres along the southeastern waterfront of San Francisco. The DDA establishes the Developer’s rights to develop within the parameters of the collective project documents that include agreements, plans, and other documents (the “Project Documents”) and the other requirements and conditions set forth in the DDA, and sets forth the Developer’s obligations related to development. The DDA is the primary legally binding document between OCII and the Developer that obligates the Developer to comply with the terms of the various Project documents. The Project is divided into major phases – large sub-areas of the Project (“Major Phase”) – and sub-phases – areas comprised of four to six blocks of development (Sub-Phase”). Development of each Major Phase and Sub-Phase requires OCII approval.

In January 2014, the Commission approved the Developer’s first Major Phase application for Major Phase 1 Candlestick Point (“Major Phase 1 CP”), composed of five Sub-Phases that include the entirety of the Alice Griffith public housing replacement units as well as CP Center, a mixed-use regional retail center that will serve as the primary anchor of all development at Candlestick Point. In March 2014, the Director of OCII approved the Developer’s Sub-Phase CP-01 application, and Sub-Phase CP-01 is now under construction. Sub-Phase CP-01 includes four blocks of development that will be the site of 325 residential units, 100% of which are below market rate, and 209 of which are Alice Griffith public housing replacement units. The first two buildings within CP-01 are estimated to be complete by September 2016.

DISCUSSION

Need for Outside Counsel

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 – a map of the Project site is included as Attachment A. The Public Trust applies to tide and submerged lands or filled areas that were formerly tide or submerged lands, including large parts of the Project site. The lands may be owned by the State as trustee for the people of California, or by a local agency designated as trustee. The overall purpose of the Public Trust is to protect, maintain, and use these lands to advance the public’s interest in commerce, navigation, and fisheries. Land subject to the Public Trust is generally prohibited from being conveyed or used except for purposes consistent with the Public Trust; at the Project site, this includes restrictions on lease terms and revenue-generating uses. In general, Public Trust Land may not be used for housing or general commercial/office uses. State law recognizes special circumstances where the State may relinquish control and allow the conveyance of Trust Lands. In some instances, the State may remove the Public Trust from certain land if the State Legislature determines that the lands are no longer useful for trust purposes and other lands are placed under the trust—the process known as a “trust exchange.”

In addition, State Parks owns most property in the Candlestick Point State Recreation Area (“CPSRA”). State law restricts the sale or lease of State Parks land and limits the types of agreements by which the State may grant the City or other parties the right to use and occupy State land.
The land use plan included in the DDA and consistent with the approved Redevelopment Plan requires that the Public Trust be lifted from and applied to substantial portions of land within the Project, and that CPSRA be reconfigured; The Land Transfer Agreements address this need. The Land Transfer Agreements were executed in 2010, and contemplate a number of phases in order to reach a final reconfiguration of the Public Trust and State Parks land within the Project site. The initial phase was largely completed in July 2014 and included land needed for the replacement of the Alice Griffith public housing. The second phase is scheduled to be completed before the end of 2014. Land included in the Public Trust is located throughout the Project site and the reconfiguration of the Public Trust will continue in phases for the duration of the Project. State Parks land is likewise located around the Project site and included in four phases, one of which is complete. Transfers of State Parks land will occur as development of the Project requires it, and so may not be complete until the Project is nearing full build-out.

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. Accordingly, in 2008 the former Redevelopment Agency contracted with Shute Mihaly as outside counsel on a sole source basis because of their unique qualifications to provide legal services to the Project on issues related to the Public Trust and State Parks. The firm is highly regarded for its expertise in Public Trust law and its skill and experience in negotiating with State Lands, and notably, is retained by the Office of the City Attorney for assistance on issues related to the Public Trust. The City retained Shute Mihaly to assist in its successful negotiations with State Lands for the San Francisco Giants ballpark, Mission Bay, Treasure Island, and Seawall Lot legislation, and the former Redevelopment Agency retained the firm for its Rincon Point-South Beach Project.

**Proposed Fifth Amendment**

Staff seeks to enter into a Fifth Amendment to the Contract with Shute Mihaly primarily for the purposes of implementing the Land Transfer Agreements, including but not limited to the following tasks:

- Actions required for completing all land conveyances required to implement the Land Transfer Agreements;
- Resolution of outstanding title issues related to land conveyances pursuant to the Land Transfer Agreements;
- Compliance with federal, state, and local requirements as they relate to land included in the Land Transfer Agreements;
- Advice on entitlements related to land included in the Land Transfer Agreements;
- Assistance and legal advice regarding any litigation challenging the Project related to the Land Transfer Agreements;
- Legal advice pertaining to development and Public Trust consistency issues throughout the Project;
- Assistance and legal advice in obtaining needed access to non-Agency property under the jurisdiction of State Lands and State Parks, and;
· Assistance and legal advice pertaining to OCII’s ongoing responsibility as trustee of land designated as within the Public Trust, including management and accounting of Public Trust revenues.

The Fifth Amendment is included as Attachment B, which also includes a detailed scope of work.

**Source of Funding**

Expenses resulting from the Fifth Amendment are reimbursable by the Developer under the DDA. On December 14, 2012, the California State Department of Finance 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. The Fifth Amendment is in furtherance of, and is necessary to complete OCII’s obligations under the DDA. The Contract is shown in 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 Fifth Amendment.

**Sole Source Procurement**

Section IX (D) of OCII’s Purchasing Policy permits the Executive Director of OCII to solicit a proposal from only one source (“Sole Source”) under certain conditions, including when, “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.” As indicated above, since 2008 Shute Mihaly has been counsel first to the former Redevelopment Agency and now for OCII on issues related to the Land Transfer Agreements and has performed satisfactorily prior to and under their existing contract. Further, Shute Mihaly’s expertise and accumulated knowledge of the Project’s Public Trust related matters continues to be critical to the implementation of the Project’s development.

**Public Review**

The Fifth Amendment was presented to the Hunters Point Shipyard Citizens Advisory Committee (“CAC”) Planning and Development subcommittee on October 9, 2014 where it was unanimously approved. Staff will present the Fifth Amendment to the full CAC at its meeting on October 20, 2014, and will report the outcome of the meeting at the OCII Commission hearing on October 21, 2014.

**California Environmental Quality Act**

Authorization of the Fifth Amendment to provide specialized legal services to assist OCII in the implementation of the DDA and Land Transfer Agreements is an Agency administrative activity that will not have any direct physical effects on the environment and is not a “Project” as defined in California Environmental Quality Act (“CEQA”), Guidelines Section 15378(b)(5). The Fifth Amendment will allow and fund outside counsel to provide specialized legal services and will not independently result in significant physical effects on the environment.
CONCLUSION

Shute Mihaly's continued support to OCII is necessary to ensure that OCII's interests as they relate to Public Trust, State Park and related land assembly and land use matters is adequately represented. Furthermore, OCII has benefitted and will continue to benefit from the expertise, relationships, and efficiency provided by an outside counsel that is already familiar with complex conditions and issues required to be addressed.

OCII staff advises that the Commission authorize a Fifth Amendment to the Legal Services Contract with Shute, Mihaly & Weinberger LLP, to increase the contract amount by $350,000, for a total aggregate amount not to exceed $1,600,000, for the purposes of implementing the Land Transfer Agreements.

(Originated by Ethan Warsh, Assistant Project Manager, Candlestick Point/Hunters Point Shipyard)

Tiffany Bohot
Executive Director

Attachments:

Attachment A: Map of Lands Subject to the Land Transfer Agreements

Attachment B: Fifth Amendment to the Legal Service Contract with Shute, Mihaly Weinberger, LLP