

Commission on Community Investment and Infrastructure

RESOLUTION NO. 11-2014

Adopted Match 4, 2014

APPROVING A MEMORANDUM OF UNDERSTANDING WITH THE SAN FRANCISCO OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT TO PROVIDE WORKFORCE COMPLIANCE SERVICES TO THE OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE IN FISCAL YEARS 2013-14 AND 2014-15 FOR A TOTAL AGGREGATE AMOUNT NOT TO EXCEED \$278,792.00

WHEREAS, Prior to its dissolution, the Redevelopment Agency of the City and County of San Francisco (“Redevelopment Agency”) implemented numerous redevelopment plans under the California Community Redevelopment Law, Cal. Health & Safety Code §§ 33000 *et seq.* (“CRL”) and entered into enforceable obligations for development consistent with these plans. Mission Bay North Owner Participation Agreement (“OPA”) (1998); Mission Bay South OPA (1998); Disposition and Development Agreement (“DDA”) for Hunters Point Shipyard (“HPS”) Phase 1 (2003), DDA for Candlestick Point-HPS Phase 2 DDA (2010), and Transbay Implementation Agreement (2006) (“Major Approved Development Projects); and,

WHEREAS, On February 1, 2012, state law dissolved the Redevelopment Agency and established successor agencies to fulfill the remaining enforceable obligations of former redevelopment agencies. Cal. Health & Safety Code §§ 34170 *et seq.* (“Redevelopment Dissolution Law”); and,

WHEREAS, The Board of Supervisors of the City and County of San Francisco (“Board of Supervisors”) delegated its authority, under Redevelopment Dissolution Law, as the Successor Agency to the Redevelopment Agency to the Office of Community Investment and Infrastructure (“OCII”) and authorized OCII to act in place of the former Redevelopment Agency Commission to implement, and approve contracts for, the Major Approved Development Projects and Retained Housing Obligations and to “take any action that the Redevelopment Dissolution Law requires or authorizes on behalf of the Successor Agency and any other action that the Commission deems appropriate consistent with the Redevelopment Dissolution Law to comply with such obligations, including . . . authorizing additional obligations in furtherance of enforceable obligations. . . .” Ordinance No. 215-12 (Oct. 4, 2012); and,

WHEREAS, The California Department of Finance (“DOF”) has finally and conclusively determined, under Cal. Health & Safety Code § 34177.5 (j), that certain development and funding obligations underlying the Major Approved Development Projects are enforceable obligations that have survived the dissolution of the Redevelopment Agency. Letter, S. Szalay, Local Government Consultant, DOF, to T. Bohee, Executive Director, OCII (Dec. 14, 2012) (Hunters Point Shipyard Phases 1 and 2); Letter, S. Szalay, Local Government Consultant, DOF, to T. Bohee, Executive Director, OCII (April 15, 2013) (Transbay); Letter, Justyn Howard, Assist. Program Budget

Manager, DOF, to T. Bohee, Executive Director, OCII (Jan. 24, 2014) (Mission Bay South and North). OCII also has pending with DOF a Request for a Final and Conclusive Determination that its Replacement Housing Obligation under Senate Bill No. 2113 (“SB 2113”) is an enforceable obligation; and,

WHEREAS, the Redevelopment Agency required in its enforceable obligations for the Major Approved Development Projects that developers and contractors use good faith efforts to employ local residents as a certain percentage of its construction workforce hires. See e.g. CP-HPS Phase 2 DDA, Section 14.2.1 and Exhibit X-A and X-B (applying an amended Bayview Hunters Point Employment and Contracting Policy (“BVHP ECP”) and requiring good faith efforts to employ 50% of construction workforce hires by trade and by hours from the Bayview Hunters Point (“BVHP”), surrounding areas, and San Francisco with first consideration to BVHP residents); Letter re HPS Phase 1 DDA (establishing that HPS DDA Phase 1 will comply with the BVHP ECP, as revised by Exhibit X-B of the CP-HPS Phase 2 DDA); and the Mission Bay South and North OPAs, Attachment H, Schedule 1 (Construction Work Force), (establishing goal of 50% of total hours worked in each trade for participation by San Francisco residents) (collectively, the “Good Faith Local Hiring Requirements”); and,

WHEREAS, the Redevelopment Agency imposed the Good Faith Local Hiring Requirements on a contract-by-contract basis, but established a consistent practice of measuring good faith compliance; and,

WHEREAS, the City and County of San Francisco has adopted hiring goals for local residents in certain public works projects. San Francisco Administrative Code § 6.22 (g) (“Mandatory Local Hiring Policy”). These goals are mandatory and currently require a participation level of 30% of all project work hours within each trade performed by local residents, with no less than 15% of all project work hours within each trade performed by disadvantaged workers. Moreover, at least 50% of the project work hours performed by apprentices within each trade shall be performed by local residents, with no less than 25% of project work hours performed by apprentices within each trade to be performed by disadvantaged workers; and,

WHEREAS, the Redevelopment Dissolution Law provides, among other things, that successor agencies may enter into new contracts “in compliance with an enforceable obligation that existed prior to June 28, 2011” and “may create enforceable obligations to conduct the work of winding down the redevelopment agency,” which includes work to fulfill enforceable obligations, Cal. Health & Safety Code § 34177.3 (a) & (b); and,

WHEREAS, OCII has continuing obligations to review and approve development projects required under the Enforceable Obligations and to ensure compliance with the Good Faith Local Hiring Requirements; and,

WHEREAS, CityBuild, an employment program under the Workforce Development Division of the Office of Economic and Workforce Development, provides

workforce training and job placement services to San Francisco residents interested in pursuing a career in the construction industry and also assists contractors that have been awarded projects in San Francisco with fulfilling their local hiring obligations (“Construction Workforce Compliance Services”). CityBuild is currently implementing a comprehensive workforce development plan as the placement partner in Transbay, Mission Bay and the Southeast Sector (Bayview Hunters Point Shipyard), but has not been able to implement fully the compliance monitoring services due to limited capacity; and,

WHEREAS, OCII desires to use the Construction Workforce Compliance Services of OEWD to assist it in monitoring and ensuring compliance with the Good Faith Local Hiring Requirements for its Major Approved Development Projects and other Enforceable Obligations; and,

WHEREAS, OCII will fund the MOU through developer reimbursement of actual billed hours and through other available funds, subject to the approval of expenditures on the Recognized Obligation Payment Schedules (“ROPS”) that OCII submits every six months to the Oversight Board and the California Department of Finance (“DOF”). NOW THEREFORE BE IT

RESOLVED, by the Office of Community Investment and Infrastructure (“OCII”) that the Executive Director is authorized to execute the Memorandum of Understanding between OCII and the San Francisco Office of Economic and Workforce Development, substantially in the form that is attached to this Resolution, to provide construction workforce compliance services that are authorized under the Major Approved Development Projects and Retained Housing Obligations.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of March 4, 2014.

Attachment: Memorandum of Understanding with San Francisco Office of Economic and Workforce Development (“OEWD”), including Exhibits A-D

Natasha Jones

Commission Secretary

DRAFT December 20, 2013

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE (“OCII”), AS
THE SUCCESSOR AGENCY TO THE SAN FRANCISCO REDEVELOPMENT AGENCY,
AND
SAN FRANCISCO OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT
 (“OEWD”)
FOR
CONSTRUCTION WORKFORCE COMPLIANCE SERVICES
Fiscal Years 2013/2014 and 2014/2015

This Memorandum of Understanding (“MOU”) is entered into between OCII and OEWD for a period of 18 months.

WHEREAS, prior to its dissolution, the Redevelopment Agency of the City and County of San Francisco (“Redevelopment Agency”) implemented numerous redevelopment plans under the California Community Redevelopment Law, Cal. Health & Safety Code §§ 33000 *et seq.* (“CRL”) and entered into contracts and other obligations for development consistent with these plans. *See e.g.* the Mission Bay North Owner Participation Agreement (“OPA”) (1998), available at <http://www.sfredevelopment.org/index.aspx?page=243>, the Mission Bay South OPA (1998), available at <http://www.sfredevelopment.org/index.aspx?page=244>, the Disposition and Development Agreement (“DDA”) for Hunters Point Shipyard (“HPS”) Phase 1 (2003), available at <http://www.sfredevelopment.org/index.aspx?page=160>, the DDA for Candlestick Point-HPS Phase 2 DDA (2010), available at <http://www.sfredevelopment.org/index.aspx?page=186>, and the Transbay Implementation Agreement (2006), available at <http://www.sfredevelopment.org/index.aspx?page=54> (collectively, the “Major Approved Development Projects”);and

WHEREAS, under the CRL, the Redevelopment Agency had the authority to specify in contracts for redevelopment projects that “project area residents, if available, shall be employed for a specified percentage of each craft or type of workmen [sic] needed to execute the contract or work.” Cal. Health & Safety Code § 33422.3; and

WHEREAS, the Redevelopment Agency required in its disposition and development agreements, owner participation agreements, and other contracts for the Major Approved Development Projects that developers and contractors use good faith efforts to employ local residents as a certain percentage of its construction workforce hires. *See e.g.* CP-HPS Phase 2 DDA, Section 14.2.1 and Exhibit X-A and X-B, *attached as Exhibit A* (applying an amended Bayview Hunters Point Employment and Contracting Policy (“BVHP ECP”) and requiring good faith efforts to employ 50% of construction workforce hires by trade and by hours from the Bayview Hunters Point (“BVHP”), surrounding areas, and San Francisco with first consideration to BVHP residents); Letter re HPS Phase 1 DDA , *attached as Exhibit B* (establishing that HPS DDA Phase 1 will comply with the BVHP ECP, as revised by Exhibit X-B of the CP-HPS Phase 2 DDA); and the Mission Bay South and North OPAs, Attachment H, Schedule 1 (Construction

Work Force), *attached as Exhibit C* (establishing goal of 50% of total hours worked in each trade for participation by San Francisco residents) (collectively, the “Good Faith Local Hiring Requirements”; and

WHEREAS, the Redevelopment Agency imposed these local hire provisions on a contract-by-contract basis, but established a consistent practice of measuring good faith compliance, which is described in Exhibit X-A of the CP-HPS Phase 2 DDA and in the “Construction Workforce Hire Policy,” *attached as Exhibit D*; and

WHEREAS, the City and County of San Francisco has adopted hiring goals for local residents in certain public works projects. San Francisco Administrative Code § 6.22 (g) (“Mandatory Local Hiring Policy”). These goals are mandatory and currently require a participation level of 30% of all project work hours within each trade performed by local residents, with no less than 15% of all project work hours within each trade performed by disadvantaged workers. Moreover, at least 50% of the project work hours performed by apprentices within each trade shall be performed by local residents, with no less than 25% of project work hours performed by apprentices within each trade to be performed by disadvantaged workers; 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, 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, among other things, the authority to “implement, modify, enforce and complete the surviving redevelopment projects, including, without limitation, the Major Approved Development Projects, the Retained Housing Obligations, and all other enforceable obligations;” and

WHEREAS, OCII is a public 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, the Redevelopment Dissolution Law provides, among other things, that successor agencies may enter into new contracts “in compliance with an enforceable obligation that existed prior to June 28, 2011.” Cal. Health & Safety Code § 34177.3 (a); and

WHEREAS, the OCII has continuing obligations to review and approve development projects required under the Enforceable Obligations and to ensure compliance with the Good Faith Local Hiring Requirements; and

WHEREAS, CityBuild, an employment program under the Workforce Development Division of the Office of Economic and Workforce Development, provides workforce training and job placement services to San Francisco residents interested in pursuing a career in the construction industry and also assists contractors that have been awarded projects in San Francisco with fulfilling their local hiring obligations (“Construction Workforce Compliance Services”). CityBuild is currently implementing a comprehensive workforce development plan as the placement partner in Transbay, Mission Bay and the Southeast Sector (Bayview Hunters Point Shipyard), but has not been able to implement fully the compliance monitoring services due to limited capacity; and

WHEREAS, OCII desires to use the Construction Workforce Compliance Services of OEWD to assist it in monitoring and ensuring compliance with the Good Faith Local Hiring Requirements for its Major Approved Development Projects and other Enforceable Obligations; and

WHEREAS, OCII will fund the MOU through developer reimbursement of actual billed hours and through other available funds, subject to the approval of expenditures on the Recognized Obligation Payment Schedules (“ROPS”) that OCII submits every six months to the Oversight Board and the California Department of Finance (“DOF”).

Now, THEREFORE, OCII and the OEWD agree as follows:

1. CONSTRUCTION WORKFORCE COMPLIANCE SERVICES TO BE PROVIDED.
 - a. For Major Approved Development Projects and other Enforceable Obligations excluding the Hunters Point Shipyard Phase 1 DDA and the Candlestick-Hunters Point Shipyard Phase 2 DDA, OEWD (and its CityBuild program) will provide the Construction Workforce Compliance Services that are described as the responsibilities of the Compliance Officer and CityBuild in the Construction Workforce Hire Policy, attached as Exhibit D to this MOU.
 - b. For the Hunters Point Shipyard Phase 1 DDA and the Candlestick-Hunters Point Shipyard Phase 2 DDA, OEWD (and its CityBuild program) will provide the Construction Workforce Compliance Services that are described as the responsibilities of the Compliance Officer and CityBuild in Section VII of the BVHP ECP, as amended by Exhibit X-B of the Phase 2 DDA, attached as Exhibit A to this MOU.
 - c. Alternatively, OEWD will provide Construction Workforce Compliance Services similar to those under the City’s Mandatory Local Hiring Policy for those Major Approved Development Projects and Enforceable Obligations in which OCII does not apply the Good Faith Local Hiring Requirements. In those cases, OCII will cooperatively work with OEWD to establish appropriate procedures and standards based on the Mandatory Local Hiring Policy.

2. BUDGET AMOUNT.

- a. Budget for 1 FTE providing Workforce Compliance Services to OCII projects.

January 1, 2014 through June 30, 2014	Not to exceed \$59,597 for Major Approved Projects <u>Not to exceed \$30,000 for Retained Housing Obligations</u>
TOTAL	\$89,597

July 1, 2014 through June 30, 2015	Not to exceed \$129,195 for Major Approved Projects <u>Not to exceed \$ 60,000 for Retained Housing Obligations</u>
TOTAL	\$189,195

- b. Subject to ROPS and annual budget authority. Amounts available are subject to OCII receiving sufficient expenditure authority in its annual budget approved by the Board of Supervisors and in its 6-month expenditure authorizations approved by the California Department of Finance. OCII will notify OEWD immediately of any deficiencies in these budget authorizations
- c. Changes in Budget. Unless OCII and OEWD 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.
- d. Unbudgeted Expenditures. The OEWD must obtain written approval from OCII for any unbudgeted expenditures and services. OCII will not reimburse OEWD for unbudgeted expenditures and services incurred without prior written approval.
- e. Budget Shortfalls. OEWD will notify OCII as soon as possible if the amounts budgeted in this MOU are insufficient to provide the agreed-upon services.

3. TERM.

The Term of this Agreement shall be from January 1, 2014 through June 30, 2015.

4. ASSIGNED STAFF TO OCII.

OEWD will assign staff equivalent to 1 FTE to work on Construction Workforce Compliance Services described in Section 1.

5. DOCUMENTATION VERIFYING ACTUAL COSTS OF DIRECT SERVICES.

- a. OEWD will document its personnel costs for services provided under this MOU in the following way:
- Hourly rate = salary + mandatory fringe benefits. [Actual labor charges submitted as part of OEWD'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.

- ii. Hours worked on OCII tasks.
- iii. Classification number of position and title.
- iv. Identify tasks.

6. BILLING PROCEDURES.

- a. OEWD shall submit an invoice to OCII on a quarterly basis within 30 days of the end of the quarter (April 30, 2014 for Q1, July 30, 2014 for Q2, October 30, 2014 for Q3 and January 30, 2015 for Q4) not to exceed the budgeted amount for the fiscal year. The invoice shall describe the services provided by project, and include sufficient information to determine the methodology used to determine the invoiced amounts.
- b. OEWD costs in implementing this MOU on the Candlestick Point - Hunters Point Shipyard Phase 2 Project shall be deemed "Agency Costs" under the Candlestick Point – Hunters Point Shipyard Phase 2 Interagency Cooperative Agreement ("ICA".) The ICA further requires that such Agency Costs be invoiced to the Agency within six (6) months of the date such costs are incurred. Any costs that are not invoiced to the Agency within twelve (12) months from the date incurred shall not be recoverable, and therefore will not be paid.
- c. For any given six-month period, OCII will pay only the amounts approved by its Oversight Board and DOF on a ROPS for that fiscal period. OCII shall endeavor to obtain DOF approval for amounts sufficient to pay OEWD 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.
- d. Subject to funding and expenditure authority availability, OCII will pay invoices or notify OEWD of any questions regarding the invoice within 30 days of receipt. When funding for work is premised upon reimbursement received by OCII from a third party (e.g. a developer), OCII reserves the right to delay payment to OEWD until the third party reimbursement has been received.

7. REPORTING. OEWD shall produce workforce compliance reports, as requested and as needed by OCII, including but not limited to, monthly, quarterly and annual reports on the status of workforce compliance for projects identified under Section 1.

8. 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.

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

Office of Community Investment and Infrastructure
Tiffany Bohee, Executive Director

Date

Office of Economic and Workforce Development
Rhonda Simmons, Director of Workforce Development

Date

Authorized by Commission on Community Investment and Infrastructure
Resolution No. ____
Adopted on _____