THIRD AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT FOR CANDLESTICK POINT AND HUNTERS POINT SHIPYARD PHASE 2 (CP/HPS2 DDA)

SUMMARY

The Third Amendment to the CP/HPS2 DDA (Third Amendment) focuses on confirming and facilitating the updated development program (Updated Program) for the Non-Stadium Alternative under the DDA, as it applies to Phase 2 of the Hunters Point Shipyard (Shipyard Site), and lesser changes to Candlestick Point (Candlestick Site).

The Updated Program is based on a revised street and block layout for the Shipyard Site, prepared in consultation with Adjaye & Associates, which reflects the historic shipyard grid and building typology, and includes a revised proposal for individual land uses within the Shipyard Site, while generally maintaining the overall level of development within the Shipyard Site. Other amendments include:

- Clarification that 172 residential units and up to 71,000 square feet of commercial uses initially planned for HPS Phase 1 would instead be built in HPS Phase 2;
- Clarification of Developer construction and maintenance obligations for privately owned open spaces;
- Requirements for appropriate development of historic Dry Dock 4;
- Inclusion of Building 813 within OCII's enforceable obligation to transfer former Navy lands within Shipyard Site to Developer at Sub-Phase Approval;
- Inclusion of a provision requiring payment in-lieu of property taxes in the event that the Developer or a Vertical Developer conveys or leases a Lot to a tax-exempt entity;
- Conforming amendments to map exhibits and certain sections of the DDA to reflect the Updated Program, including consolidation of Major Phases and Sub-Phases at the Shipyard and Candlestick Sites;
- Conforming amendments to the DDA exhibits, including the Transportation Plan, Infrastructure Plan, Parks & Open Space Plan, Sustainability Plan and DRDAP; and
- Negotiated increase to Agency Costs reimbursement.

The changes described here are those contained in the Third Amendment itself. Changes to the various exhibits to the DDA, such as the BMR Housing Plan, Community Benefits Plan, Financing Plan, Transportation Plan, Infrastructure Plan, etc. are described in their respective Memorandum Attachments.

DETAILED OVERVIEW OF THIRD AMENDMENT (BY SECTION)

§1. Non-Stadium Alternative (Section 1.1.2 of DDA)

- Confirm Stadium Termination Event has occurred, and confirm Developer's specific land use entitlement as proposed under the Updated Program for the CP/HPS2 Project (table on following page):

CP/HPS2 PROJECT UPDATED PROGRAM

	2010		**2018**	
CPHPS2 Dwelling Units	**10,500**	**UNITS**	**10,672**	**UNITS**
Artist Studio	255,000	SF	255,000	SF
Community Use	100,000	SF	100,000	SF
FAC/Performance Venue/Event Space	75,000	SF	75,000	SF
	10,000	SEATS	10,000	SEATS
Hotel	150,000	SF	270,000	SF
Institution	0	SF	410,000	SF
R&D/Office	3,150,000	SF	4,415,000	SF
Regional Retail	635,000	SF	735,000	SF
Neighborhood Retail	250,000	SF	351,000	SF
Maker Space	0	SF	75,000	SF
	4,615,000	**SF**	**6,686,000**	**SF**
Marina	300	SLIPS	300	SLIPS
Water Taxi	NO		YES	

§2. Development Transfer (Addition of Section 1.2.5 of DDA)

- Conversion and Transfer of Non-Residential Uses
  - The HPS and BVHP Redevelopment Plans, as amended, establish development limitations consistent with the square footages in the foregoing table. The Plans also allow for adjustments to the specified nonresidential square footages and conversion amongst permitted uses, subject to Commission approval and to the adjustments or conversions remaining within the overall nonresidential limit for each Plan area. In addition, the Plans, as amended, allow for the transfer of up to 118,500 square feet of research and development/office space from the Shipyard Site to the Candlestick Site, subject to OCII Commission approval. To the extent such adjustments are approved by the Commission, the Third Amendment allows for the automatic “truing up” of the square footage entitlement established in Section 1.2.2 of the DDA.

- Additional Units
  - Confirming the relocation of 172 Units initially planned for Shipyard Phase 1, including 18 inclusionary units affordable at 80% AMI, to the CP/HPS2 Project. Additional Inclusionary Units will be tracked independently of CP/HPS2 below market rate units.

- Commercial Space; Phase 1 and Phase 2
  - Allows limited transfer of commercial space back to HPS Phase 1 to the extent desired by parties and Phase 1 Developer.

§3. Proportionality (Section 1.5 of DDA)

- Amended to include reference to privately owned publicly accessible open space (POPOS) in relation to proportional delivery of parks and open space.

§4. Initial Major Phase and Sub-Phase (Section 3.4.1 of DDA)

- Since the adoption of the DDA, OCII has issued Major Phase and Sub-Phase approvals for the Initial Major Phase and Sub-Phase. These conforming changes reflect the current status of the Initial Major Phase and Sub-Phase.

§5. Mid-Block Breaks and POPOS (Addition of Sections 7.10 and 7.11 to DDA)

- Mid-block breaks are privately owned rights of way that promote pedestrian movement through the Project Site. This section clarifies Developer's obligations regarding the design, construction, operation, repair, reconstruction and maintenance of the mid-block breaks.

- Addition of definition of "POPOS" – privately owned public open space – and Developer's obligations regarding construction, repair, reconstruction and maintenance of same, and remedies for failure to complete approved POPOS.

§6. Preservation Guidelines (Addition of Section 8.2 to DDA)

- Addition of requirements, per the Project FEIR, that rehabilitation work on Dry Dock 4 be subject to Preservation Guidelines consistent with Secretary of the Interior standards for historic structures, and attaching those Guidelines to the DDA.

§7. Deed Restrictions for Non-Stadium Alternative (Section 11.6 of DDA)

- Confirming amendments to the DDA to reflect elimination of Stadium Alternative, reduced number of Major Phases and Sub-Phases at the Shipyard.

§8. Agency Costs (Section 19.2 of the DDA)

- Changes the calculation of costs reimbursable to OCII by Developer, providing an increase in such reimbursement. The amended provision compensates OCII for employee's salaries, on an hourly basis for time dedicated to the CP/HPS2 Project, plus an escalating percentage of that amount, starting at 100% in the initial year after the effective date of the Third Amendment, and rising to 185% in the third year after the effective date and thereafter, which percentage will compensate OCII for the cost of benefits and overhead incurred for that employee.

§9. Building 813 (Addition of Section 6.4 to the DDA)

- Currently, the DDA requires that OCII convey to Developer all real property it owns (or acquires) within each Sub-Phase upon the OCII's approval of Developer's application for that Sub-Phase, with the exception of property to be retained by a public entity (defined as *Public Property* in the DDA). Under the existing DDA, Building 813 was considered Public Property as it was intended to be rehabilitated, jointly with the City, for use as a center for business incubation. However, neither the Agency nor the City intend to pursue this use for Building 813, which would entail substantial public investment for the rehabilitation and conversion of the building and for operations thereafter, funding for which is not available. Accordingly, the Third Amendment clarifies that the Building 813

Site is no longer Public Property as defined in the DDA, and this section provides for its conveyance to Developer for development of the Project similar to all other former Navy property within the Shipyard Site. Like all other property in the Shipyard Site to be conveyed to Developer, conveyance of the Building 813 would not impact the taxing entities given the economic tax benefit of redeveloping the building. Its reuse in accordance with the HPS Plan would increase the amount of revenues to the taxing entities by rehabilitating an otherwise chronically dilapidated building without public expenditure.

- Furthermore, the Developer has offered to undertake additional obligations under the Third Amendment that would further compensate for the loss of Building 813. In place of the City/Agency business incubation center, Developer will provide 75,000 gross square feet of Maker Space (defined in the Third Amendment) within the Shipyard Site, and will improve to Warm Shell-condition (defined in the Third Amendment) and make available 65,000 square feet of Community Facilities Space within the Project. Space available for maker uses, generally considered to be small-scale production uses typically with a retail component, and Community Facilities Space, is more likely to be filled by local businesses, particularly given Developer's obligation to market the availability of both Maker Space and Community Facilities Space to local residents and businesses for at least a year before leasing the spaces. OCII staff's estimate of the cost to Developer of implementing these programs is approximately $25 million dollars, including Warm Shell construction costs and foregone retail rents for the Maker Space, which is greater than the estimated value of Building 813 for use as commercial space (its intended use under the CP/HPS2 Project).[1]

§10 Preservation Alternative (Section 18.2 of the DDA)

- Conforming changes acknowledging elimination of stadium alternative.

§11 Payment In Lieu of Taxes (Addition of Section 4.1.1 of the DDA)

- To the extent Developer wishes to Transfer a Lot to an entity that is exempt from the payment of property taxes, or to the extent a Vertical Developer wishes to sell or lease space to same, an agreement with OCII would be required that provides for reimbursement to OCII of property taxes otherwise applicable to the Lot being Transferred or space leased. This ensures that OCII remains able to collect sufficient funds to meet its tax increment financing obligations.

§12 Final Public Improvements (Section 26.7 of the DDA)

- Conforming changes acknowledging adjustment to number of Major Phases.

§13 Development Plan (Exhibit A-B-B to the DDA)

- Revised to reflect Updated Program.

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[1] This estimate is conservative, and does not include extraordinary cost of demolition for Building 813, assumed to be at least $2M, and also does not include cost of entitlement, costs of infrastructure, or other costs that would impact value of Building 813 were it not subject to OCII's obligation to convey to Developer an instead developed separate from the CP/HPS2 Project.

§14 Conforming Amendments to DDA Exhibits (included with Third Amendment)

- Updates Exhibit B to the DDA (Definitions) to include those defined terms established by the Third Amendment.
- Acknowledges that certain Exhibits to the Original DDA are also being amended by this Third Amendment to reflect the Updated Program, are attached to the Third Amendment, and thereby incorporated into the DDA.

§15 Conforming Amendments to DDA Exhibits (Separately Provided)

- Acknowledges that certain Exhibits to the Original DDA are being separately amended and restated in their entirety to reflect the Updated Program, and once approved by the Agency and the City (as required) are incorporated into the DDA.

§16 Miscellaneous Provisions; Effectiveness.

- General legal provisions added, consistent with previous amendments to the DDA.
- Pursuant to the Effective Date provisions, the Third Amendment may become effective prior to the effectiveness of the Redevelopment Plan Amendments, for example, if those amendments are subject to lawsuit or referendum. If that were to occur, the parties would only be obligated to enforce those provisions of the DDA, as amended by the Third Amendment, that remain consistent with the Redevelopment Plans then in effect, which staff expect would be the following:

  - Section 1.2.2 (Non-Stadium Alternative Updated Program).
    - Development program on Candlestick Site would remain applicable (7,218 Dwelling Units, 635,000 square feet of regional retail, 125,000 square feet of neighborhood retail, 50,000 square feet of community use, 150,000 square feet of office, 150,000 square feet of hotel, 75,000 square feet of entertainment space).
    - Portions of development program on the Shipyard Site would remain applicable (3,454 Dwelling Units; 4,265,000 sq. ft. of R&D/office; 125,000 sq. ft. neighborhood retail).
    - Housing affordability requirements would remain applicable.
  - Section 1.2.5(c) would continue to allow limited transfer of commercial space back to HPS Phase 1 to the extent desired by parties and Phase 1 Developer.
  - Section 3.4.1(a) and (b) (Initial Major and Sub-Phases). Proposed consolidation of Major Phases and Sub-Phases at the Candlestick Site and Shipyard Site (to the extent consistent with HPS Plan Map 5) would remain applicable.
  - Section 4.1.1 (Payment In-Lieu of Taxes). Requirement for PILOT agreement or waiver would remain applicable.
  - Section 6.4 (Conveyance of Building 813 Site). Conveyance of Building 813 to Developer would remain applicable.
  - Sections 7.10 and 7.11 (Mid-Block Breaks and POPOS). Construction and maintenance obligations of Developer, and remedies therefor, would remain applicable. Approval of particular POPOS would be subject to consistency with Redevelopment Plans.

- Section 8.2(d) (Preservation Guidelines). Rehabilitation standards for Dry Dock 4 would remain applicable.

- Section 11.6 (Deed Restrictions). Consistency changes would remain applicable.

- Section 18.2 (Preservation Alternative). Consistency changes would remain applicable.

- Section 19.2 (Agency Costs). Changes to formulation of reimbursable Agency Costs would remain applicable.

- Section 26.7 (Final Public Improvements). Consistency changes would remain applicable.

- DDA Exhibits:

    - Below-Market Rate Housing Plan. Amendments would remain applicable.
    - Community Benefits Plan: Amendments would remain applicable.
    - Financing Plan Amendments. Consistency changes would remain applicable.
    - Conforming amendments to DRDAP would remain applicable.
    - Conforming amendments to Infrastructure Plan, Transportation Plan, Parks and Open Space Plan, Phasing Plan and Schedule of Performance would remain applicable to the extent Infrastructure and Improvements identified therein are consistent with applicable Redevelopment Plan.