

AMENDMENT No. 1  
MEMORANDUM OF UNDERSTANDING  
(Central Shops)

THIS AMENDMENT OF THE MEMORANDUM OF UNDERSTANDING ( "**AMENDMENT No. 1**" ), by and between the City and County of San Francisco, through its Public Utilities Commission ("**SFPUC**"), the City and County of San Francisco General Services Agency's Office of Contract Administration ("**OCA**"), and the City and County of San Francisco General Services Agency's Real Estate Division ("**RED**" or collectively "**OCA**"), all three entities collectively defined as the "**Parties**" is dated for reference purposes only as of February ~~16~~ 2017 ("**Agreement Date**").

**RECITALS**

- A. On November 10, 2015, the Commission approved Resolution No. 15-0241, authorizing the General Manager to execute a Memorandum of Understanding (MOU) with the OCARED, establishing the terms and conditions of the jurisdictional transfer of the property at 1800 Jerrold in San Francisco (1800 Jerrold) to the SFPUC, subject to Board of Supervisors approval.
- B. The MOU required the SFPUC to incur or pay the projected reasonable and necessary costs of relocating Central Shops in the total amount of Seventy-Three Million Dollars Seven Hundred Thousand Dollars (\$73,700,000), ("**Transfer Price**").
- C. On December 8, 2015, the Commission approved Resolution No. 15-0265 revising the terms of the MOU to authorize the SFPUC to incur the cost of entering into property transactions for the property necessary for relocation of Central Shops, approved by the Board of Supervisors (Board Ordinance No. 0525-15). The City's Director of Property executed agreements for the acquisition of 555 Selby and 1975 Galvez ("**Acquisition Sites**") and for the lease of 450 Toland ("**Leased Site**").
- C. Amendment No. 1 to the MOU modifies the Transfer Price to Eighty-Two Million Dollars Two Hundred Seventy-Eight Thousand Dollars Four Hundred Twenty Nine Dollars (\$82,278,429), an increase of \$8,578,429.
- D. The City's Director of Property has determined that an additional \$2,200,000 may be required to secure possession of the Acquisition Sites from the existing tenants
- E. OCA agrees to contribute rent proceeds from the Acquisition Sites and Leased Site ("**Transfer Sites**") in the amount of \$900,000 ("**OCA Contribution**") toward the project. The contribution will be deducted from the final Balance Transfer.
- G. The Board of Supervisors adopted Ordinance 0008-16, authorizing the City to enter into the Project Development Agreement with Oryx Development LLC, dated March 21, 2016 (Contract No. 7994A) to undertake design and construction of Replacement Facilities for the relocation of Central Shops. The Agreement for Phase 1 was \$10,300,000.

H. The Board of Supervisors requires OCA to obtain Board approval to proceed with Phase 2, construction after the negotiated Guaranteed Maximum Price (“GMP”) is determined. The total project cost including Phase 1 was estimated at \$55,000,000 at the time of the initial Board approval. Total project cost under the GMP will be \$60,200,000, an increase of \$5,200,000. The variance in cost is due to 1) development of design and industrial equipment requirements, 2) unforeseen site conditions, 3) higher bids, and 4) escalation.

I. The SFPUC desires to include a contingency in the amount of \$2,025,000 (“City’s Contingency”) to evaluate options for expediting the schedule and for unforeseen conditions during construction.

J. The project requires the relocation of existing PG&E service within the Acquisition Sites, determined to be outside the Franchise Agreement and therefore a cost to the project, in an amount estimated to not exceed \$250,000. The relocation will require the issuance of an easement, subject to Board of Supervisors approval.

K. Subject to the Board of Supervisors’ approval of legislation required to implement the relocation of the Central Shops to the Acquisition Sites and Leased Site, and the Board’s approval of the jurisdictional transfer of 1800 Jerrold Avenue to the SFPUC, consistent with the terms of the MOU, as amended by Amendment No. 1, the SFPUC will transfer funds per the terms and conditions set forth in the MOU, as amended by Amendment No. 1.

NOW, THEREFORE, the Parties agree as follows:

#### AMENDMENT

1. **Recitals.** The foregoing recitals are true and correct and are incorporate herein by this reference.
2. **Section 3. Transfer Price; Allocation of Transfer Price; Timing of Transfer of Funds; Transaction Costs of the MOU** shall be replaced in its entirety by the following:

#### **Section 3. Transfer Price; Allocation of Transfer Price; Timing of Transfer of Funds; Transaction Costs**

- a. Transfer Price. In consideration for the jurisdictional transfer of the Transfer Site, and jurisdiction over the Acquisition Sites, the SFPUC shall incur or pay OCA an amount (“Transfer Price”) equal to \$82,278,429. The SFPUC has no obligation to pay any amount above the Transfer Price to OCA related to the relocations of Central Shops from the Transfer Site.
- b. Allocation of Transfer Price. SFPUC Funds will be expended in the following manner.
  - i. Expenditures in the amount of \$11,303,429 have been expended to acquire 555 Selby Street and 1975 Galvez Avenue.

- ii. Not to exceed \$2,200,000 to secure possession from the existing Tenants at 555 Selby and 1975 Galvez Avenue.
- iii. Not to exceed \$60,200,000 for the GMP under the Contract with Oryx for construction of a new maintenance shop building at Selby and Galvez; and tenant improvements at 450 Toland.
- iv. Not to exceed \$2,025,000 contingency for the Contract with Oryx, at SFPUC's General Manager's discretion, for expediting the schedule or for unforeseen conditions during construction.
- v. Not to exceed \$250,000 for the relocation of existing PG&E service at 1975 Galvez, subject to reimbursement to SFPUC if PG&E is not entitled to compensation to relocate its facilities.
- vi. No more than \$6,000,000 towards the cost of the ten-year lease of 450 Toland. This includes the deduction of rent proceeds from the lease of the Transfer Sites in the amount of \$900,000, as reflected in the final Balance Transfer under Section 5 of the MOU, as amended.
- vii. No more than \$300,000 for reimbursement of moving expenditures to OCA.

Any deviation to this allocation shall require the prior written approval of the SFPUC General Manager and the City's Controller, which shall not be unreasonably withheld.

- c. Timing of Transfer of Funds. The SFPUC has available funds appropriated in the amount of \$82,278,429 to be applied towards costs incurred and payment of the Transfer Price. Each future transfer is conditioned upon the SFPUC's approval of all demands for payment prior to the disbursement of funds by OCA for expenditures, including but not limited to, contracts, invoices, and construction draws and change orders, and the City Controller shall be consulted as is appropriate prior to funding transfers.
  - i. The SFPUC incurred the cost of \$11,303,429 for the acquisition of 555 Selby Street and 1975 Galvez Avenue on March 4, 2016.

The SFPUC shall incur the cost of acquiring the remaining term of the leasehold from the existing tenant at 1975 Galvez and relocations expenses for that tenant, and the tenant at 555 Selby, not to exceed \$2,200,000.

- ii. The SFPUC shall incur the cost of the Project Delivery Agreement for design and construction of new facilities in an amount not to exceed \$60,200,000. The SFPUC incurred the cost of \$10,300,000 for Phase 1. The SFPUC shall make an installment of half of Phase 2, \$24,950,000, upon issuance of the Notice to Proceed for Phase 2. The SFPUC shall make a second installment payment of \$24,950,000, upon 50% completion of construction.

- iii. The SFPUC shall incur the cost for the relocation of the existing PG&E service at 1975 Galvez, in an amount no greater than \$250,000, subject to reimbursement if it is determined that PG&E is not entitled to compensation to relocate the facilities located on that site.
  - iv. The SFPUC shall maintain a contingency in the amount of \$2,025,000 to be disbursed for the purpose of expediting the schedule or unforeseen conditions during construction.
  - v. The SFPUC shall incur the annual cost of the Leased Site, in an amount not to exceed \$1,900,000, prior to the vacation of the Transfer Site.
  - vi. The SFPUC shall pay the balance of the Transfer Price, or Four Million One Hundred Thousand (\$4,100,000), to OCA within ten (10) business days following Central Shop's and DTIS' vacation of the Transfer Site. Once the Transfer Price is fully paid, jurisdiction of the Transfer Site shall automatically transfer from GSA to the SFPUC, consistent with the terms of the Board of Supervisors authorization, and this MOU, as amended.
- d. Transaction Costs. Any costs charged by RED and any costs charged by the city Attorney's Office to negotiate and draft transaction documents related to and arising from the jurisdictional transfer of the Transfer Site and effect the Final Closing pursuant to Section 2 shall be borne by the SFPUC.
3. **Section 4 Rights and Obligations of the Parties** is amended only with the replacement of Sub-Section 4 b. to read as follows, with all other sub-sections to remain as provided in the MOU:
- 4 b. If OCA receives the transfer of funds according to the schedule set forth above, Central Shops and DT shall vacate the Transfer Site by the earlier of 60 days following issuance of both TCO's for the Acquisition Sites or July 31, 2018. OCA shall remove all Debris from the Transfer Site, except those items within a building, currently stored in service bays under a roof, or set forth on **Exhibit D**, before vacating the Transfer Site. For purposes of this Section, the term "**Debris**" shall include any other discarded equipment, vehicles, personal property, lumber, equipment, trash, rubbish, or building materials lying on or about the Transfer Site.
4. **Section 5 Termination Default** is amended only with the replacement of Sub-Section 5b. to read as follows, with all other sub-sections to remain as provided in the MOU:
- 5b. If OCA fails to attain TCOs for new locations by May 31, 2018, or if there is a delay in the construction schedule for the functionally equivalent facilities of more than 30 days, the SFPUC, at its option, may terminate this MOU by giving not less than thirty (30) days' notice to OCA and RED ("**Termination Notice**") and retain jurisdiction over the Acquisition Sites and control of the Lease Site, or may assume the rights and obligations under the agreements entered into by OCA to accomplish the completion of

the functionally equivalent facilities. Any such Termination Notice shall identify the effective date of the termination ("**Termination Date**"), which shall be a date not less than thirty (30) days after delivery of the Termination Notice to OCA and RED. Any funds paid by the SFPUC to OCA or RED as a portion of the Transfer Price shall be returned to the SFPUC, minus OCA's and RED's reasonable costs and expenses arising from and related to this MOU, the amounts paid under the Purchase and Sale Agreements for Acquisition Sites, the amounts paid under the Lease for the Leased Site, if any, and unrecoverable costs incurred upon termination of the agreements related to the improvements to be constructed on the Acquisition Sites or Lease Site, if any, no later than sixty (60) days following the Termination Date. Alternatively, in the SFPUC's sole discretion, the SFPUC may assume the rights and obligations under those agreements entered into by OCA for improvements to the Acquisition Sites or the Leased Site, for the relocation of Central Shops, or otherwise to recover the benefit of SFPUC expenditures.

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed as of the last date written below.

CITY AND COUNTY OF SAN FRANCISCO

**RED: REAL ESTATE DIVISION**  
Of the General Services Agency

By:   
John Updike, Director

Date: 2/16/17

**OCA: OFFICE OF CONTRACT ADMINISTRATION**  
Of the General Services Agency

By:   
Jael Fong, Director

Date: 2/16/2017

**PUBLIC UTILITIES COMMISSION**

By:   
Harlan L. Kelly, Jr., General Manager

Date: 2/16/17

**APPROVED BY:**

**PUBLIC UTILITIES COMMISSION**  
PURSUANT TO RESOLUTION NO. \_\_\_\_\_

By: \_\_\_\_\_  
Commission Secretary

Date: \_\_\_\_\_