



DENNIS J. HERRERA
City Attorney

DONNELL W. CHOY
Deputy City Attorney

DIRECT DIAL: (415) 554-4736
E-MAIL: donnell.choy@sfgov.org

MEMORANDUM

TO: Claudine Cheng, President
Members,
Treasure Island Development Authority

FROM: Donnell Choy
Deputy City Attorney

DATE: July 23, 2004

RE: Appointment of New Executive Director to the Treasure Island Development
Authority

We write in response to President Claudine Cheng's request for advice regarding the process for appointing a new Executive Director for the Treasure Island Development Authority (TIDA). We understand that there will be a vacancy in the position of Executive Director of TIDA because the incumbent intends to resign to take another position with the City.

SHORT ANSWER

The TIDA Board of Directors has two options for selecting a new Executive Director: (1) amend TIDA's existing agreement with the San Francisco Redevelopment Agency to allow the Redevelopment Agency to hire a person selected by the TIDA Board as the new Executive Director, or (2) appoint the Executive Director and enter into a contract directly with the new Director, fixing the terms of employment and compensation of the Director.

BACKGROUND

TIDA is a separate entity from San Francisco, established by the City under State law, much like the San Francisco Redevelopment Agency. In 1997, the California legislature enacted the Treasure Island Conversion Act of 1997 (the "Act"), which amended the California Redevelopment Law (Section 33000 et seq. of the California Health and Safety Code) and the Burton Act (Section 2.1 to Chapter 1333 of the Statutes of 1968), to consolidate in TIDA the powers essential to reuse of former Naval Station Treasure Island (the "Base"). The Act vests TIDA with both redevelopment authority over the Base and, as to those portions of the Base that are subject to the public trust for commerce, navigation and fisheries (commonly known as the "tidelands trust"), the authority to administer the trust for such property.

Memorandum

TO: Claudine Cheng, President
Members,
Treasure Island Development Authority

DATE: July 23, 2004

PAGE: 2

RE: Appointment of New Executive Director to the Treasure Island Development Authority

In 1998, as authorized by the Act, the City's Board of Supervisors designated TIDA as the redevelopment agency and local reuse authority for the Base.¹ Consistent with the Act, the Board resolution grants TIDA all of the rights, privileges, immunities, authorities and duties granted to redevelopment agencies.

Under the California Redevelopment Law, TIDA has the authority to select, appoint and employ such permanent and temporary officers and employees as it requires, including an executive director, and to determine their qualifications, duties, benefits and compensation, subject only to the conditions and restrictions imposed by the Board of Supervisors on the expenditure or encumbrance of budgetary funds appropriated to TIDA. (Section 33126 of the California Health and Safety Code.) TIDA may also, consistent with the California Redevelopment Law, contract with any other agency, including San Francisco, for the furnishing of any necessary staff services associated with or required by redevelopment and that may be performed by the staff of such an agency. (Section 33127 of the California Health and Safety Code.)

In the past, TIDA has contracted with San Francisco for all of TIDA's staff needs. The agreement between TIDA and the City provided that the Executive Director of the Mayor's Treasure Island Project Office would also serve as the Executive Director of TIDA. In connection with the budget for TIDA for the current 2004-2005 fiscal year, TIDA and the City's Board of Supervisors recently approved terminating that agreement and entering into a replacement agreement with the San Francisco Redevelopment Agency. As a result, TIDA has entered into a new agreement with the San Francisco Redevelopment Agency for TIDA's staffing needs (the "Agency Agreement"). The Agency Agreement lists the employees who will perform work for TIDA. The term of the Agency Agreement is for an initial six months, and continues thereafter on a month-to-month basis not to exceed one year, unless both the TIDA Board of Directors and the Redevelopment Agency agree in writing to extend the term further.

Under the current Agency Agreement, the Redevelopment Agency agrees to hire all of the named employees from the Mayor's Treasure Island Project Office, including the Executive Director of TIDA, if those employees resigned from the City within a certain period following the effective date of that agreement.

The Mayor recently appointed TIDA's Executive Director, Annemarie Conroy, to be the Director of the City's Office of Emergency Services. We understand that Ms. Conroy has

¹ In 1997, the Board had previously adopted a resolution authorizing the incorporation of TIDA and approving its articles of incorporation and bylaws. The Act recognized TIDA as an existing agency, and authorized the Board to give TIDA the powers of a redevelopment agency and a trustee of the tidelands trust.

Memorandum

TO: Claudine Cheng, President
Members,
Treasure Island Development Authority

DATE: July 23, 2004

PAGE: 3

RE: Appointment of New Executive Director to the Treasure Island Development Authority

announced that she will accept that position and that she intends to resign as TIDA's Executive Director. Accordingly, there will be a vacancy in the position of the Executive Director. The President of the TIDA Board, as well as other City policymakers, have asked about how that position could be filled.

ANALYSIS

The process for selecting a new Executive Director for TIDA is governed by the Act, the California Redevelopment Law, the Board resolution designating TIDA as the redevelopment agency and reuse authority for the Base, and TIDA's articles and bylaws.

Neither the Act, the Board resolution designating TIDA as the redevelopment agency for the Base, nor TIDA's articles or bylaws specifies the procedures for selecting an Executive Director. As mentioned above, the Act and the Board resolution vest TIDA with all of the rights, privileges, immunities, authorities and duties granted to redevelopment agencies. As described above, redevelopment agencies such as TIDA have the flexibility to employ such staff as they may require, subject to the appropriation of funds by the legislative body, or contract with other agencies to perform required services.

Thus, the TIDA Board of Directors has two options to select a new Executive Director: (1) it may amend the existing agreement with the Redevelopment Agency to have the Redevelopment Agency hire another person selected by the TIDA Board as the new TIDA Executive Director, or (2) it may exercise its authority to enter into an agreement with the new Director. Under either alternative, the TIDA Board would have to approve the new Executive Director.²

1. Amendment of Agency Agreement with the Redevelopment Agency

The Agency Agreement states that TIDA has asked the Redevelopment Agency "to enter into this Agreement to achieve certain administrative efficiencies while the Authority explores means of hiring directly its own employees." (Agency Agreement, p. 2.) Under the Agency

² In this memorandum we address only the procedure for appointing an Executive Director for TIDA, and not the qualifications for such a position. While neither the California Redevelopment Law, the Act, the Board resolution designating TIDA as the redevelopment agency for the Base, nor TIDA's articles or bylaws set forth any particular qualifications for the Executive Director, any person TIDA selects to serve as Executive Director would be subject to the conflict of interest laws governing public officials, some of which may disqualify particular persons from serving.

Memorandum

TO: Claudine Cheng, President
Members,
Treasure Island Development Authority

DATE: July 23, 2004

PAGE: 4

RE: Appointment of New Executive Director to the Treasure Island Development Authority

Agreement, the Redevelopment Agency has agreed to hire a list of TIDA personnel. (Exhibit A to the Agency Agreement.) The list includes Annemarie Conroy as the Executive Director.³

The Agency Agreement also states that the list of personnel will be offered employment "[e]xcept as otherwise mutually agreed by the Authority and the Executive Director of the [Redevelopment] Agency. (Agency Agreement, p. 3, ¶ 3.)

Because the Agency Agreement authorizes the hiring of personnel if both TIDA and Redevelopment Agency Executive Director agree, they may amend the Agency Agreement to provide that they will hire another person to be the Executive Director.

2. Direct Employment of Executive Director by TIDA

In the alternative, TIDA may exercise its authority under its Bylaws to "appoint," "prescribe powers and duties", and "fix ... compensation" for an Executive Director.' (Article V, Section 2(b) of the TIDA Bylaws.) TIDA may do so by entering into an employment agreement with the Executive Director. Typically, employment agreements set a term, state whether the employee is at will, set forth the employee's duties, fix the employee's compensation and benefits, and set terms for termination of the agreement.

If TIDA enters into an employment agreement with the new Executive Director, it would need to establish a system for issuing a paycheck and making necessary deductions. Under newly enacted legislation, TIDA may give its employees health benefits through the City's Health Service System by passing a resolution authorizing the benefits and setting TIDA's contribution. (Administrative Code Sections 16.700, 16.701.) To provide pension benefits, TIDA would need to contract with the state Public Employee's Retirement System, which could take six or more months to accomplish.

In addition, depending on the facts and circumstances, there are limitations on TIDA's authority to contract that could be implicated by a direct employment agreement. For example, the Act and TIDA's articles require Board of Supervisors approval by resolution for any contract to which TIDA is a party with a term in excess of 10 years or which exceeds \$1,000,000. Generally, a public agency employment contract would not exceed either threshold.

³ In fact, the Agency Agreement uses the term "Deputy Executive Director." But we understand from the Redevelopment Agency that this term is used only to be consistent with Redevelopment Agency classifications for its employees (to avoid confusion with the Redevelopment Agency's Executive Director), and that it is intended to mean the Executive Director position for TIDA.

Memorandum

TO: Claudine Cheng, President
Members,
Treasure Island Development Authority

DATE: July 23, 2004

PAGE: 5

RE: Appointment of New Executive Director to the Treasure Island Development
Authority

If TIDA enters into an individual employment contract, TIDA should cause the Agency Agreement to be amended to recognize the direct contract and the authority of the new Executive Director.

Please let me know if you have any further questions about the procedures for selecting a new Executive Director.

cc: Mayor Newsom
Members, Board of Supervisors
James Morales, General Counsel, San Francisco Redevelopment Agency