

RESOLUTION NO. 41-2008

Adopted May 6, 2008

AUTHORIZING A LEGAL SERVICES CONTRACT WITH SHUTE, MIHALY & WEINBERGER LLP TO PROVIDE SPECIALIZED LEGAL SERVICES PRIMARILY RELATED TO PUBLIC TRUST AND STATE PARK ISSUES AT THE COMBINED HUNTERS POINT SHIPYARD / CANDLESTICK POINT DEVELOPMENT PROJECT FOR AN AMOUNT NOT TO EXCEED \$250,000; BAYVIEW HUNTERS POINT AND HUNTERS POINT SHIPYARD REDEVELOPMENT PROJECT AREAS

BASIS FOR RESOLUTION

1. In July 1997, the Board of Supervisors of the City and County of San Francisco ("Board") adopted, by Ordinance No. 285-97, a Redevelopment Plan for the revitalization of the Hunters Point Shipyard Redevelopment Project Area ("Shipyard"); in June 2006, the Board adopted, by Ordinance No. 113-06, a Redevelopment Plan for the Bayview Hunters Point Redevelopment Project Area, including land in Candlestick Point ("Candlestick Point").
2. On June 1, 1999, by Resolution No. 68-99, the Commission approved an Exclusive Negotiations Agreement with Lennar/BVHP LLC, a California limited liability company ("Developer"), for the redevelopment of the Shipyard.
3. On December 2, 2003, the Commission approved the Disposition and Development Agreement Hunters Point Shipyard Phase 1 ("Phase 1 DDA") with the Developer for a portion of the Shipyard identified as Parcel A-1 and Parcel B-1. On that same day, the Commission also approved the Amended and Restated Exclusive Negotiations Agreement ("Phase 2, Hunters Point Shipyard") (herein referred to as the "Agreement"), which sets forth the terms and conditions under which the Redevelopment Agency of the City and County of San Francisco ("Agency") and the Developer will negotiate one or more DDAs and related agreements for the remainder of the Shipyard or portions thereof.
4. On December 5, 2006, the Commission approved, by Resolution 159-2006, a First Amendment to the Agreement to: i) extend the term of the Agreement for the period covering December 3, 2006 through December 31, 2007 and ii) modify existing and establish new terms and conditions under which the Agency and the Developer would continue to negotiate one or more DDAs for the balance of the Shipyard or portions thereof.
5. On February 13, 2007, the Board passed, and, on February 15, 2007, the Mayor signed, Resolution No. 59-07, urging the Agency to amend the Agreement with the Developer to provide for the integrated planning and redevelopment of the

Shipyard Parcels A-3 and B through E ("Phase 2 Property") and certain property within the Candlestick Point Activity Node of the Bayview Hunters Point Redevelopment Project Area ("Shipyard / Candlestick Point Project").

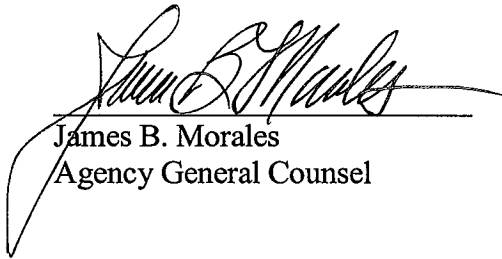
6. On May 1, 2007, the Commission authorized, per Resolution No. 42-2007, an Amended and Restated Exclusive Negotiations and Planning Agreement ("ENPA") with the Developer to provide, among other things, an option granting Lennar Communities, Inc. ("Lennar") additional exclusive negotiation rights for the proposed development of an integrated mixed-use project on the Shipyard and on City-owned property at the Candlestick Point area. In October 2007, Lennar exercised the option, which the Agency subsequently accepted.
7. Since the approval of the ENPA, the Agency, the Mayor's Office of Economic and Workforce Development, various departments of the City and County of San Francisco ("City"), and the Developer have been diligently negotiating the terms of a plan for the Shipyard / Candlestick Point Project with the goal of completing transaction documents in mid-2009.
8. Significant portions of the Shipyard and Candlestick Point are either owned by the State of California ("State") or subject to special State restrictions as a public trust. Under the law of public trust lands ("Public Trust Law"), the State owns and controls certain natural resources, such as tidal and submerged lands or those areas that were formerly tidal or submerged lands, for the purpose of protecting the public's interest in commerce, navigation, and fisheries ("Trust Lands"). In addition, the State Department of Parks and Recreation ("State Parks Department") owns the property situated within the Candlestick Point State Recreation Area. Existing State law restricts the sale or lease of State Parks for non-recreational purposes. State law further limits the types of agreements by which the State may grant the City or other parties the right to use and occupy State land.
9. The use of Trust Lands for the Shipyard / Candlestick Project requires specialized legal assistance to negotiate and finalize agreements with the State Lands Commission, the State Parks Department, the State Legislature, and other parties.
10. Shute, Mihaly & Weinberger LLP ("Shute Mihaly") is a local law firm that is uniquely qualified to provide legal services for public trust and parks issues related to the Shipyard / Candlestick Project. Since 1999, Shute Mihaly has worked on public trust issues related to the Shipyard. The firm drafted the two State statutes (the Hunters Point Shipyard Conversion Act and the Hunters Point Shipyard Public Trust Exchange Act) that govern the public trust lands at the Shipyard, and has worked closely with the State Lands Commission and the Attorney General's Office in establishing a public trust exchange for the Shipyard. The firm's prior work has involved in-depth legal and title analysis, negotiating strategies, and administrative and legislative advocacy that will be very helpful in addressing the complex conditions facing new development at the Shipyard / Candlestick Project.

11. The Agency, City, and Lennar anticipated the use of specialized outside counsel to assist in the negotiations over the public trust and state parks issues when they prepared the budget for the Shipyard / Candlestick Project's Predevelopment Costs. Under the ENPA, Lennar "shall pay or cause to be paid to the Agency all of the reasonable costs and expenses actually incurred by the Agency and City . . . in developing plans, performing community outreach, and in negotiating and seeking required approvals of the various documents contemplated by [the ENPA], including . . . agreements with the Navy, State Lands Commission, State Parks, . . . and any other governmental agencies required in connection with the use or transfer of the land . . . Project Predevelopment Costs shall include, without limitation, the fees and expenses of . . . such outside counsel . . . as the Agency or City may deem appropriate to negotiate the Transaction Documents." ENPA, Section 3.2 (b) at pages 21-22. The City, Agency and Lennar have negotiated and approved an estimated budget for "State Land" and "Outside Counsel" of \$560,000 for which Lennar will reimburse the Agency. Shute Mihaly has submitted a proposed budget for its services that will not exceed \$250,000.
12. Under the Agency's Interim Purchasing Policy and Procedures, non-competitive negotiations are allowed when "the item is available only from a single source," and competition is inadequate, because the award of a contract is infeasible under competitive bidding or negotiation procedures. (Policy at Page 6, Section IX.4.a. & c.). Shute Mihaly's continuing representation of the Agency and City is necessary to ensure that the Agency's position on public trust and related issues is adequately represented. Given the ambitious schedule for the review and approval of the Shipyard / Candlestick Project, the City and Agency will benefit from the expertise and efficiency provided by an outside counsel already familiar with the complex conditions and issues to be addressed. In this respect, the specialized services that the Agency needs on the public trust issues are available only from a single source, i.e., Shute Mihaly.
13. Agency staff and the Mayor's Office of Economic and Workforce Development recommend authorizing the Executive Director to negotiate and enter into a Legal Services Contract ("Contract") with Shute Mihaly to assist the City and Agency in resolving public trust and parks issues for the Shipyard / Candlestick Project for an amount not to exceed \$250,000.
14. Commission authorization of the Contract to provide specialized legal services for the proposed Shipyard / Candlestick Point mixed-use project is statutorily exempt from environmental review pursuant to Section 15262 of the California Environmental Quality Act ("CEQA") Guidelines (Feasibility and Planning Studies), because the Contract is only for the provision of legal services related to planning of the Trust Lands and State Parks.

RESOLUTION

ACCORDINGLY, IT IS RESOLVED by the Redevelopment Agency of the City and County of San Francisco that the Executive Director is authorized to execute a Legal Services Contract with Shute, Mihaly & Weinberger LLP, substantially in the form lodged with the Agency General Counsel, to provide specialized legal services primarily related to public trust and state park issues at the Shipyard / Candlestick Point Project for an amount not to exceed \$250,000.

APPROVED AS TO FORM:



James B. Morales
Agency General Counsel