

RESOLUTION NO. 36-2010

Adopted April 20, 2010

AUTHORIZING A SECOND AMENDMENT TO THE LEGAL SERVICES CONTRACT WITH SHUTE, MIHALY & WEINBERGER LLP TO PROVIDE SPECIALIZED LEGAL SERVICES PRIMARILY RELATED TO PUBLIC TRUST AND STATE PARK ISSUES IN THE CANDLESTICK POINT AREA OF THE BAYVIEW HUNTERS POINT AND HUNTERS POINT SHIPYARD REDEVELOPMENT PROJECT AREAS IN THE AMOUNT OF \$350,000, FOR A TOTAL CONTRACT AMOUNT NOT TO EXCEED \$800,000; BAYVIEW HUNTERS POINT AND HUNTERS POINT SHIPYARD REDEVELOPMENT PROJECT AREAS

BASIS FOR RESOLUTION

1. On May 6, 2008, the Agency Commission authorized, by Resolution No. 41-2008, a legal services contract ("Contract") with Shute, Mihaly & Weinberger LLP ("Shute Mihaly") in the amount of \$250,000 to assist the Redevelopment Agency of the City and County of San Francisco ("Agency") with analysis of public trust title, public trust exchange negotiations, and administrative and legislative support to address the complex conditions related to the proposed development at the Hunters Point Shipyard ("Shipyard") and Candlestick Point.
2. On October 6, 2009, the Agency Commission authorized, by Resolution No. 106-2009, a First Amendment to the Contract with Shute Mihaly to increase the total contract amount to \$450,000 in order to support the Agency and the City and County of San Francisco ("City") in the preparation, negotiations and adoption of authorizing legislation for the reconfiguration of the Candlestick Point State Recreation Area.
3. To date, Shute Mihaly has incurred unanticipated costs in connection with providing the following legal services to the Agency and the City, which include: (1) providing the Agency with extensive legal assistance related to public trust and State parks issues, including providing legal advice and assistance in connection with public trust and title matters relating to the proposed land exchanges at Candlestick Point and the Shipyard; (2) assisting the Agency in the preparation, drafting and adoption of authorizing legislation, which involved extensive negotiations with the State Lands Commission, Department of State Parks and Recreation, interested stakeholders, members of the State Legislature and Legislative Counsel; (3) retaining and directing consultants in the preparation of diagrams associated with the proposed concepts for the exchange and the initiation of a land appraisal that will be required for the exchange; (4) assisting the Agency in better understanding the actions necessary to ensure compliance with Federal Land and Water Conservation Fund requirements; (5) assisting the Agency and the City in providing legal assistance to ensure consistency with SB 792 and the Project's draft environmental impact report; and, (6) providing legal advice and assistance pertaining to the relocation of the existing artist tenants on the Shipyard.

4. Shute Mihaly's continuing representation of the Agency and the City is necessary to ensure that the Agency's position on public trust and related issues is adequately represented. Furthermore, given the schedule for the review and approval of the Hunters Point Shipyard / Candlestick Point Project, the City and the Agency will benefit from the expertise and efficiency provided by outside counsel that is already familiar with the complex conditions and issues to be addressed.
5. The Agency, the City, and CP Development Co., LP, a joint venture between Lennar-BVHP, LLC, Scala Real Estate Partners, LP, Hillwood Development Company, LLC, and Estein Management Corporation ("Developer") anticipated the use of specialized outside counsel to assist in the negotiations over the public trust and State park issues when they prepared the Project's pre-development budget. Under the Second Amended and Restated Exclusive Negotiations and Planning Agreement (as amended, the "Phase 2 ENA"), the Developer "shall pay or cause to be paid to the Agency all of the reasonable costs and expenses actually incurred by the Agency and the City ... in developing plans, performing community outreach, and in negotiating and seeking required approvals of the various documents contemplated by [the Phase 2 ENA], 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 the City may deem appropriate to negotiate the Transaction Documents. . . ." Phase 2 ENA, Section 3.2(b) at pages 21-22. As a result, the legal fees incurred by Shute Mihaly constitute predevelopment costs subject to the availability of funds, and are fully reimbursable by the Developer.
6. Agency staff recommends authorizing the Executive Director to negotiate and enter into a Second Amendment to the Contract ("Second Amendment") with Shute Mihaly to assist the City and the Agency in resolving public trust and parks issues for the Hunters Pont Shipyard Phase 2-Candlestick Point in the amount of \$350,000, for a total contract amount not to exceed \$800,000.
7. Authorizing the Second Amendment allows for a change in the terms of the Contract but will not change the activities to be conducted under the Contract. This action is an Agency administrative activity that is not a Project, as defined by the California Environmental Quality Act ("CEQA") Guidelines Section 15378(b)(5). The Second Amendment will not independently result in a physical change in the environment and is not subject to environmental review under CEQA.

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 Second Amendment to the Legal Services Contract with Shute, Mihaly & Weinberger LLP to provide specialized legal services primarily related to public trust, State park and related issues for the Hunters Point Shipyard / Candlestick Point Project in the amount of \$350,000, for a total contract amount not to exceed \$800,000, substantially in the form lodged with the Agency General Counsel.

APPROVED AS TO FORM:

for *Alena Chen*
James B. Morales
Agency General Counsel