

RESOLUTION NO. 146-2010

Adopted December 7, 2010

AUTHORIZING A THIRD 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 FOR THE HUNTERS POINT SHIPYARD PHASE 2 - CANDLESTICK POINT PROJECT IN THE AMOUNT OF \$250,000, FOR A TOTAL CONTRACT AMOUNT NOT TO EXCEED \$1,050,000 AND TO CONSENT TO SHUTE, MIHALY & WEINBERGER LLP'S CONCURRENT REPRESENTATION OF THE SIERRA CLUB IN UNRELATED MATTERS; HUNTERS POINT SHIPYARD AND BAYVIEW HUNTERS POINT 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 ("Outside Counsel") 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 Hunters Point Shipyard and Candlestick Point ("Project").
2. On October 6, 2009, the Agency Commission authorized, by Resolution No. 106-2009, a First Amendment to the Contract ("First Amendment") with Outside Counsel 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. On April 20, 2010, the Agency Commission authorized, by Resolution No. 36-2010, a Second Amendment to the Contract ("Second Amendment") with Outside Counsel to increase the total Contract amount to \$800,000 in order to support the Agency and City in the ongoing negotiations with the State Parks Department and State Lands Commission related to the Project.
4. Since the May 6, 2008, effective date of the Contract, the October 6, 2009 effective date of the First Amendment, and the April 20, 2010 effective date of the Second Amendment: (1) Outside Counsel has provided the Agency with extensive legal assistance primarily related to State 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 and in furtherance of the development of the Phase 1 and Phase 2 portion of the Hunters Point Shipyard ("Shipyard") and the Candlestick Point area of Bayview Hunters Point; (2) Outside Counsel has assisted the Agency in the preparation and drafting of

authorizing legislation, which involved extensive negotiations with the State Lands Commission, Department of State Parks and Recreation (“State Parks Department”), interested stakeholders, members of the State Legislature, and Legislative Counsel; (3) Outside Counsel has retained and directed consultants in the preparation of diagrams, surveys, and legal descriptions associated with the proposed concepts for the exchange and the preparation of a land appraisal that will be required for the exchange with the State; (4) Outside Counsel has assisted the Agency in better understanding the actions necessary to ensure compliance with Federal Land and Water Conservation Fund requirements including assistance with the preparation of required NEPA environmental documents and a federal appraisal; (5) Outside Counsel has assisted the Agency in better understanding the requirements associated with the relocation of the existing artist tenants on the Shipyard; (6) Outside Counsel has assisted the Agency in the preparation of the Draft Environmental Impact Report, Comments and Responses Document, and CEQA appeal responses for the proposed integrated redevelopment of the Shipyard and Candlestick Point; (7) Outside Counsel has assisted the Agency with title matters related to Hunters Point Shipyard and Candlestick Point for the purpose of vacating streets and easements; (8) Outside Counsel has provided advice and prepared documentation required for Coastal Zone Management Act consistency and a Bay Plan Amendment for the Project; and (9) Outside Counsel has provided advice regarding litigation challenging the Project.


5. Outside Counsel’s continuing representation of the Agency and the City is necessary to ensure that the Agency’s position on public trust, state park, land assembly, and related land use issues are adequately represented.
6. The Candlestick Point - Hunters Point Shipyard Phase 2 Disposition and Development Agreement between the Agency and CP Development Co., LP, a joint venture between Lennar-BVHP, LLC and affiliates of Scala Real Estate Partners, LP, Hillwood Development Company, LLC, and Estein Management Corporation (“Developer”) requires the Developer to reimburse the Agency for the cost of Outside Counsel.
7. Both the Agency and the Sierra Club are longstanding clients of Outside Counsel. The Sierra Club has recently filed litigation against the Agency concerning the Project. *Sierra Club v. City and County of San Francisco, et al*, (Superior Ct., S.F. City and County, No. CGC-10-503180, petition filed Sept. 2, 2010) (“Litigation”). Outside Counsel does not represent the Sierra Club in connection with the Project or the Litigation, but only in a number of current matters that are unrelated to the Project (“Club Matters”). The Sierra Club has retained other counsel to represent it in the Litigation. This Resolution authorizes the Agency’s consent to Outside Counsel’s concurrent representation of the Agency and the Sierra Club so long as Outside Counsel does not represent the Sierra Club in connection with the Project or the Litigation. Outside Counsel has already received the Sierra Club’s consent to concurrent representation.

8. Agency staff recommend authorizing the Executive Director to enter into a Third Amendment to the Contract ("Third Amendment") with Outside Counsel to assist the City and Agency in resolving public trust, state parks issues, and related matters for the Hunters Point Shipyard Phase 2 - Candlestick Point in the amount of \$250,000, for a total Contract amount not to exceed \$1,050,000.
9. Authorization of the Third Amendment with Outside Counsel allows for a change in the terms of the agreement and will not independently result in a physical change in the environment. This action is an Agency administrative activity that is not a project as defined by California Environmental Quality Act ("CEQA") Guidelines Section 15378(b)(5) 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 1) execute a Third 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 Phase 2 - Candlestick Point Project in the amount of \$250,000, for a total Contract amount not to exceed \$1,050,000, substantially in the form lodged with the Agency General Counsel and 2) to consent to Shute, Mihaly & Weinberger LLP's concurrent representation of the Agency with regard to the Project and the Litigation and its representation of the Sierra Club with regards to Club Matters, subject to the limitations described above.

APPROVED AS TO FORM:



James B. Morales
Agency General Counsel