

RESOLUTION NO. 14-2009

Adopted February 3, 2009

AUTHORIZING A LEGAL SERVICES CONTRACT WITH KUTAK ROCK LLP TO PROVIDE SPECIALIZED LEGAL SERVICES PRIMARILY RELATED TO CONVEYANCE AND EARLY TRANSFER OF THE REMAINING NAVY OWNED PARCELS AT THE HUNTERS POINT SHIPYARD FOR AN AMOUNT NOT TO EXCEED \$475,000; 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”).
2. On June 1, 1999, by Resolution No. 68-99, the Agency Commission approved an Exclusive Negotiations Agreement with Lennar/BVHP LLC, a California limited liability company (“Lennar”), for the redevelopment of the Shipyard.
3. On December 2, 2003, the Agency Commission approved the Disposition and Development Agreement Hunters Point Shipyard Phase 1 (“Phase 1 DDA”) with Lennar for a portion of the Shipyard identified as Parcel A-1 and Parcel B-1. On that same day, the Agency 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 Lennar will negotiate one or more DDAs and related agreements for the remainder of the Shipyard or portions thereof.
4. On December 5, 2006, the Agency 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 Lennar 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 Lennar to provide for the integrated planning and redevelopment of Shipyard Parcels A-3 and B through E and certain property within the Candlestick Point Activity Node of the Bayview Hunters Point Redevelopment Project Area (“Shipyard-Candlestick Project”).

6. On May 1, 2007, the Agency Commission authorized, per Resolution No. 42-2007, a Second Amended and Restated Exclusive Negotiations and Planning Agreement (“ENPA”) with Lennar to provide, among other things, an option granting Lennar Communities, Inc. (“Lennar Communities”) 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 Communities exercised the option, which the Agency subsequently accepted.
7. As of August 29, 2008, HPS Development Co., LP, a Delaware limited partnership (“Developer”), acquired certain interests of Lennar, including its rights and obligations under the ENPA.
8. Since the approval of the ENPA, the Agency, the 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 Project with the goal of completing transaction documents in mid-2009.
9. The Agency and the Developer plan to commence negotiations for early transfer of the U.S. Department of the Navy (“Navy”) retained parcels of the former Hunters Point Naval Shipyard. The early transfer will involve complex negotiations pursuant to applicable Federal and State statutes, rules and regulations governing the remediation and early transfer of “Superfund” property under the Comprehensive Environmental Response, Compensation and Liability Act, including regulatory agreements (e.g., Administrative Order on Consent with the U.S. Environmental Protection Agency, the California Department of Toxics and Substance Control, California Department of Public Health, and other regulatory agencies (collectively, the “Regulators”)). The early transfer will also require analysis of insurance contracts and related financial assurance documents, risk allocation agreements with contractors and developers, cooperative agreements with the Navy and deeds that will include long term stewardship obligations and institutional controls.
10. The early transfer of the remaining Navy owned parcels requires specialized legal assistance to negotiate and finalize agreements with the Navy and other parties.
11. Kutak Rock LLP (“Kutak Rock”) is a local law firm that is uniquely qualified to provide legal services for early transfer issues related to the Shipyard-Candlestick Project. Since May 2000, it has provided legal services to the Agency and City in helping to negotiate with the Navy for the Hunters Point Shipyard Conveyance Agreement and related issues. To date, Kutak Rock has received approximately \$445,000 that Lennar has funded for this work on behalf of the Agency and City. The firm is highly regarded for its expertise in remediation and early transfer of government owned property and its skill in negotiating with the Navy.

12. The Agency, City, and Developer anticipated the use of specialized outside counsel to assist in potential early transfer negotiations when they prepared the budget for the Project's Predevelopment Costs. Under the ENPA, Developer "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 . . . 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.
13. Under the Agency's Interim Purchasing Policy and Procedures ("Policy"), 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. Kutak Rock has worked on conveyance of Parcel A at the Shipyard and issues related to the Shipyard for over eight years. The firm drafted the Conveyance Agreement that governs the conveyance of Parcel A at the Shipyard, and is working closely with the Navy and the Regulators in establishing the parameters of conveyance and early transfer of the remaining Navy owned parcels at the Shipyard. The firm's prior work has involved in-depth legal and title analysis, negotiating strategies, and advocacy that will be very helpful in addressing the complex conditions facing new developments at the Shipyard-Candlestick Project. Kutak Rock's continuing representation of the Agency and City is necessary to ensure that the Agency and City's positions on early transfer of Navy retained parcels at the Shipyard and related issues are adequately represented. Furthermore, 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 complex conditions and issues to be addressed. In this respect, the specialized services that the Agency needs on the early transfer issues are available only from a single source, i.e., Kutak Rock.
14. Agency staff and the Office of Economic and Workforce Development recommend authorizing the Executive Director to negotiate and enter into a Legal Services Contract ("Contract") with Kutak Rock to assist the City and Agency in resolving early transfer issues of the remaining Navy owned parcels for the Shipyard-Candlestick Project for an amount not to exceed \$475,000.
15. Commission authorization of the Contract to provide specialized legal services for the proposed Shipyard-Candlestick 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 the early transfer of

remaining parcels at the Shipyard. The Contract will allow and fund outside counsel to provide specialized legal services and will not independently result in significant physical effects on the environment.

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 Kutak Rock LLP, substantially in the form lodged with the Agency General Counsel, to provide specialized legal services primarily related to early transfer issues at the Shipyard-Candlestick Project for an amount not to exceed \$475,000.

APPROVED AS TO FORM:



for James B. Morales
Agency General Counsel