

## RESOLUTION NO. 106-2009

*Adopted October 6, 2009*

**AUTHORIZING A FIRST 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 \$200,000, FOR A TOTAL CONTRACT AMOUNT NOT TO EXCEED \$450,000; 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 with Shute, Mihaly & Weinberger LLP (“Shute Mihaly”) in the amount of \$250,000 to assist the Agency with analysis of public trust title and public trust exchange, negotiating strategies, and administrative and legislative advocacy to address the complex conditions facing new development at the Shipyard / Candlestick Point Project.
2. Since the May 6, 2008 effective date of the legal services contract, Shute Mihaly has encountered a number of complexities in the negotiations with the State Lands Commission and the State Department of Parks and Recreation (“State Parks Department”), and has spent an unexpected amount of resources drafting and negotiating legislation related to the project. To date, Shute Mihaly has (1) provided the Agency with extensive legal assistance related to public trust and state park 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) assisted the Agency in the preparation and drafting of authorizing legislation, which involved extensive negotiations with the State Lands Commission, State Parks Department, interested stakeholders, members of the State Legislature and Legislative Counsel; (3) retained and directed 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; and (4) assisted the Agency in better understanding the actions necessary to ensure compliance with Federal Land and Water Conservation Fund requirements.
3. 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. Furthermore, given the schedule for the review and approval of the Shipyard / Candlestick Point 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.

4. The Agency, City, and HPS Development Co., LP and CP Development Co., LP, a joint venture between Lennar/BVHP Partners, 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 budget for the Shipyard / Candlestick Project’s predevelopment costs. Under the Amended and Restated Exclusive Negotiations and Planning Agreement (“ENPA”), 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 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. 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.
5. Agency staff and the Mayor’s Office of Economic and Workforce Development recommend authorizing the Executive Director to negotiate and enter into a First Amendment to the Legal Services Contract (“First Amendment”) with Shute Mihaly to assist the City and Agency in resolving public trust and parks issues for the Shipyard / Candlestick Point Project in the amount of \$200,000, for a total contract amount not to exceed \$450,000.
6. Authorization of the First Amendment with Shute Mihaly 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 the 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 execute a First 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 at the Shipyard / Candlestick Point Project in the amount of \$200,000, for a total contract amount not to exceed \$450,000, substantially in the form lodged with the Agency General Counsel.

**APPROVED AS TO FORM:**



*for* James B. Morales  
Agency General Counsel