



**SACRAMENTO
HOUSING AND REDEVELOPMENT
AGENCY**



6

May 8, 1990

Budget and Finance Committee
of the City Council
Sacramento, CA

Honorable Members in Session:

SUBJECT: Amendment to Agreement with Shute, Mihaly &
Weinberger for Litigation Services Relating to the
Housing Trust Fund Ordinance

SUMMARY

The attached report is submitted to you for review and
recommendation prior to consideration by the Housing Authority
and City Council of the City of Sacramento.

RECOMMENDATION

This staff recommends approval of the attached resolutions
approving the amendment.

Respectfully submitted,

ROBERT E. SMITH
Executive Director

TRANSMITTAL TO COMMITTEE:

JACK R. CRIST
Deputy City Manager

Attachment



SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY



May 22, 1990

City Council and
Housing Authority of the
City of Sacramento
Sacramento, California

Honorable Members in Session:

SUBJECT: Amendment to Agreement with the Firm of Shute,
Mihaly & Weinberger for Litigation Services
Relating to the Housing Trust Fund Ordinance

SUMMARY

The attached resolution authorizes the Executive Director to execute an amendment to the agreement for litigation services with the law firm of Shute, Mihaly & Weinberger. The amendment would increase the compensation by an amount not to exceed \$80,000.

BACKGROUND

On May 2, 1989, the Agency entered into a written agreement with the firm of Shute, Mihaly & Weinberger for litigation services relating to a lawsuit filed against the City to enjoin the housing trust fund commercial development fee ordinance. The current agreement limits Shute, Mihaly & Weinberger's maximum compensation for services to \$90,000.

Although in September, 1989, the U.S. District Court granted the City a summary judgment on all issues, an appeal of the ruling has been filed by the plaintiff, Commercial Builders of Northern California, now being joined by Pacific Legal Foundation. The Pacific Legal Foundation also served the City with a second lawsuit to enjoin the ordinance, as applied to a specific project, which suit they have, for the present, withdrawn. The Pacific Legal Foundation (PLF) is an organization incorporated for the purpose of participating in litigation affecting public policy. A PLF attorney was co-counsel in the recent Nollan case in which the U.S. Supreme Court ruled to strengthen the "nexus" requirements necessary to justify development exactions imposed by local governments. This case plays a prominent role in the arguments in the two cases filed against the City ordinance.

SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

City Council &
Housing Authority of the
City of Sacramento
May 22, 1990
Page 2

The Agency has expended the \$90,000 maximum specified in the agreement for litigation services concerning the two legal actions. Since these cases are not yet resolved, it is necessary to amend the contract. The \$80,000 requested in this report is adequate to cover the current costs and the foreseeable additional costs for the current lawsuit and appeal.

It is anticipated that oral arguments on the appeal of the ruling on the first lawsuit will be heard this summer, and that the Ninth Circuit, U.S. Court of Appeals will issue a decision by the end of the summer. If the case is later appealed to the U.S. Supreme Court, significantly more legal fees will be required. However, if the case goes to the Supreme Court, it is likely that other jurisdictions that have enacted development fee ordinances (e.g. Boston, San Francisco) would file amicus curiae briefs and contribute to the legal defense.

FINANCIAL DATA

To date, a total of \$90,000 has been paid under the Agreement with Shute, Mihaly & Weinberger. This report recommends authorization of an additional \$80,000 to be paid from the City Housing Trust Fund.

To date, approximately \$370,000 in commercial development fees have been collected and deposited into the City housing trust fund. Approximately \$100,000 of this fund is reserved pending an infill development proposal that may be eligible to receive reimbursement of fees paid. On April 24, 1990, the City Council approved payment of \$20,000 in trust fund revenues for legal services related to technical amendments to the ordinance, and \$21,578 in trust fund revenues to pay for economic consulting to update the nexus study that provides required justification for the development fee. Sufficient funds remain to cover the \$80,000 requested in this report.

In the event that the ordinance is invalidated, the Agency would likely have to repay housing trust fund revenues used to pay for this contract amendment.

SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

City Council &
Housing Authority of the
City of Sacramento
May 22, 1990
Page 3

ENVIRONMENTAL REVIEW

CEQA: Exempt per Section 15378(b)(3).

NEPA: Not applicable

MBE/WBE EFFORTS

This is an amendment to an existing agreement.

POLICY IMPLICATION

The action proposed in this staff report is consistent with the previously approved policy and there are no policy changes being recommended.

VOTE AND RECOMMENDATION OF COMMISSION

At its meeting of _____, the Sacramento Housing and Redevelopment Commission adopted a motion recommending approval of the attached resolution. The votes were as follows:

AYES:

NOES:

ABSENT:

SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

City Council &
Housing Authority of the
City of Sacramento
May 22, 1990
Page 4

RECOMMENDATION

The staff recommends that you adopt the attached resolutions: 1) authorizing execution of an amendment to the agreement with Shute, Mihaly & Weinberger; 2) authorizing the City Finance Director to distribute \$80,000 from the Housing Trust Fund to cover the costs of the amended agreement; and 3) authorizing amendment of the budget to accept a transfer of \$80,000 from the City Housing Trust Fund.

Respectfully submitted,



ROBERT E. SMITH
Executive Director

TRANSMITTAL TO COUNSEL:

WALTER J. SLIPE
City Manager

F:\DKT\Staff\SHUTE.1

RESOLUTION NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

DISTRIBUTION OF HOUSING TRUST FUND REVENUES

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SACRAMENTO:

Section 1: The Finance Director is authorized to distribute \$80,000 of City Housing Trust Fund revenue to the Housing Authority of the City of Sacramento for payment for litigation services related to the City Housing Trust Fund development fee ordinance to be provided under contract by Shute, Mihaly & Weinberger.

MAYOR

ATTEST:

CITY CLERK

p:\share\reso\htfsmw.cc

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____

RESOLUTION NO.

ADOPTED BY THE HOUSING AUTHORITY OF THE CITY OF SACRAMENTO

ON DATE OF _____

AMENDMENT TO AGREEMENT WITH THE FIRM OF SHUTE, MIHALY & WEINBERGER

BE IT RESOLVED BY THE HOUSING AUTHORITY OF THE CITY
SACRAMENTO:

Section 1: The Executive Director is authorized to amend the budget by accepting a transfer of \$80,000 from the City Housing Trust Fund to be used for litigation services related to the City Housing Trust Fund and development fee ordinance.

Section 2: The Executive Director is authorized to amend the Agreement for Legal Services with Shute, Mihaly & Weinberger to increase the maximum compensation payable under the contract by an amount not to exceed \$80,000 for litigation services related to the City Housing Trust Fund and development fee ordinance.

CHAIR

ATTEST:

SECRETARY

p:\share\reso\htfsmw.has

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____

FIRST AMENDMENT TO
AGREEMENT FOR LITIGATION

THIS FIRST AMENDMENT to the Agreement attached as Exhibit "A" is entered into this 2nd day of September, 1989, by and between the HOUSING AUTHORITY OF THE CITY OF SACRAMENTO and the HOUSING AUTHORITY OF THE COUNTY OF SACRAMENTO, public agency (herein referred to as "AUTHORITY"), and the law firm of SHUTE, MIHALY & WEINBERGER, engaged in the practice of law in the City of Sacramento, State of California (herein referred to as "Counsel").

WHEREAS, the parties entered into an Agreement for legal services dated May 2, 1989, (the "Agreement") for litigation services relating to the lawsuit to enjoin the housing trust fund ordinance; and

WHEREAS the parties desire to amend the Agreement to modify the amount of compensation payable to Counsel;

, Therefore,

IT IS AGREED that the Agreement shall be amended as follows:

1. Subsection (c) of Section 3, Compensation, Reimbursement and Method of Payment, shall be amended as follows:

"(c) Maximum Compensation and Reimbursement

"It is expressly understood and agreed that in no event shall the total compensation and reimbursement to be paid under this Agreement exceed the maximum sum of NINETY THOUSAND DOLLARS (\$90,000.00) for all the services under this Agreement."

2. Except as modified herein, all other terms and provisions of the Agreement shall remain the same and unchanged.

IN WITNESS WHEREOF, the parties hereto have entered into this Amendment as of the date first above written.

HOUSING AUTHORITY OF THE CITY OF SACRAMENTO and the HOUSING AUTHORITY OF THE COUNTY OF SACRAMENTO

APPROVED AS TO FORM:

[Signature]
Agency Counsel

APPROVED BY FINANCE:

[Signature]
Finance Department

Account Code: 4223
Organization: 2650
Cost Center: B00200

MW

APPROVED:

[Signature]
Organization

BY [Signature]
ROBERT E. SMITH
Executive Director

SHUTE, MIHALY & WEINBERGER

BY: [Signature]
Marc B. Mihaly

Federal Tax ID: 94-2647744

154WPP(788)

AGREEMENT FOR LEGAL SERVICES

THIS AGREEMENT, entered into May 2, 1989, by and between the HOUSING AUTHORITY OF THE CITY OF SACRAMENTO and the HOUSING AUTHORITY OF THE COUNTY OF SACRAMENTO, public corporations (hereinafter collectively referred to as the "Authority"), and the law firm of SHUTE, MIHALY & WEINBERGER, engaged in the practice of law in the City of Sacramento, State of California (hereinafter referred to as "Counsel").

IT IS MUTUALLY AGREED, as follows:

1. SCOPE OF SERVICES

Marc B. Mihaly, a partner in counsel's law firm, shall perform all services under this Agreement, but only as requested by the Authority's General Counsel.

Counsel's services shall include actions as trial attorney for any lawsuits against the City or County of Sacramento relating to the adoption of the Housing Trust Fund Ordinance.

TIME OF PERFORMANCE

The services of Counsel shall commence upon execution of this Agreement and shall be performed at such time or times as may be necessary to assist the expeditious completion of any such lawsuits.

3. COMPENSATION, REIMBURSEMENT AND METHOD OF PAYMENT

Counsel shall be compensated at the following hourly rates for services actually performed by Counsel:

(a) Compensation

- (1) For the services of Marc B. Mihaly at the rate of \$160 per hour;
- (2) For the services of an junior associate attorney at the rate of \$115 per hour;
- (3) For the services of an senior associate attorney at the rate of \$140 per hour;
- (4) For the services of a senior planner at the rate of \$100 per hour;

(4) For the services of a junior planner or paralegal at the rate of \$60 per hour; and

(5) For the services of a law clerk at the rate of \$35 per hour.

(b) Reimbursement

In addition to the Compensation provided above, the Agency shall reimburse Counsel monthly for the following expenses:

Court filing costs, witness fees, long distance telephone calls and telegrams, expenses of service of process, court reporter's charges and jury fees, and similar costs relating to routine litigation and generally chargeable to a client; provided however, such expenses shall not include normal office operating expenses.

(c) Maximum Compensation and Reimbursement

It is expressly understood and agreed that in no event shall the total compensation and reimbursement to be paid under this Agreement exceed the maximum sum of FORTY THOUSAND DOLLARS (\$40,000.00).

(d) Statements

As a condition to any payment to Counsel under this Agreement, Counsel shall submit to the Authority in duplicate the following statements:

(1) Monthly Statement

A monthly statement of account which clearly sets forth by date the items of work performed by Counsel during the proceeding month and the status of all current activities.

(2) Requested Statements

Counsel shall provide a bill to Agency no later than ten (10) days following a written request received from the Agency. Agency is entitled to similar requests at intervals of no less than thirty (30) days following the initial request.

EMPLOYMENT OF OTHER COUNSEL, SPECIALISTS OR EXPERTS

Counsel will not employ or otherwise incur an obligation to pay other counsel, specialists or experts for services in connection with this Agreement without the prior written approval of the Authority.

TERMINATION OF AGREEMENT AND LEGAL SERVICES

This Agreement and all legal services to be rendered hereunder may be terminated at any time by written notice from either party, with or without cause. In such event, all finished and unfinished documents, pleadings, exhibits, project data, reports and evidence shall be the Authority's property and shall be delivered to it or to any party it may designate. In the event of such termination, Counsel shall be paid for all satisfactory work completed at the time of termination.

INTEREST OF COUNSEL

Counsel (including partners, associates and professional employees) covenants that it does not now have any interest and shall not acquire any interest, direct or indirect, in the area covered by the activity or project, which would conflict in any manner or degree with the performance of his services hereunder. Counsel further covenants that in the performance of his duties hereunder no person having any such interest shall be employed.

MALPRACTICE INSURANCE

Counsel shall have malpractice insurance coverage in the amount of ONE MILLION ~~FIVE HUNDRED THOUSAND~~ DOLLARS (\$1,500,000) at all times during the life of this Agreement.

INDEMNIFICATION

Counsel shall indemnify and hold harmless the Authority from any liability, court costs or attorneys fees resulting from Counsel's services under this Agreement.

RECEIPT

Authority hereby acknowledges receipt of a copy of this Agreement

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

APPROVED AS TO FORM:

[Signature]
General Counsel

HOUSING AUTHORITY OF THE CITY
OF SACRAMENTO
HOUSING AUTHORITY OF THE
COUNTY OF SACRAMENTO

BY: *[Signature]*
ANDREW J. PLESCIA
Acting Executive Director

APPROVED:

[Signature]
Finance Department

SHUTE, MIHALY & WEINBERGER

BY: *[Signature]*
Marc B. Mihaly

Account Code: 4223 4222
Organization 2650 2455
Cost Center: 300200 A01034

Federal Tax ID: 94-2647744

APPROVED:

[Signature]
Organization

54WPP(473)