



REPORT TO COUNCIL

City of Sacramento

10

915 I Street, Sacramento, CA 95814-2604
www.CityofSacramento.org

Consent
January 16, 2007

Honorable Mayor and
Members of the City Council

Title: Approval of Second Supplemental Agreement for Legal Services with
Shute, Mihaly & Weinberger, LLP

Location/Council District: Three

Recommendation: That the City Council authorize the City Attorney to enter into Second Supplemental Agreement for Legal Services Agreement with SHUTE, MIHALY & WEINBERGER, LLP, to provide specialized legal services to the City with respect to the matters of Service Employees International Union, United Healthcare Workers West v. City of Sacramento, et al., Sacramento Superior Court Case number 06CS00026 and Third District Court of Appeals case number C054087 in an amount not to exceed \$200,000.00. The matters involve a challenge to the City's approval of the Sutter Medical Center, Sacramento Project under the California Environmental Quality Act "CEQA".

Contact: Eileen Teichert

Department: Office of the City Attorney

Division: Citywide

Organization Number: 0500

Description/Analysis:

Issue: This report seeks authorization to contract for the continued legal services of CEQA counsel Shute, Mihaly & Weinberger to represent the City in the matters of Service Employees International Union, United Healthcare Workers West v. City of Sacramento and Sutter Health, Inc., et al., Sacramento Superior Court Case number 06CS00026 and Third District Court of Appeals case number C054087.

Policy Considerations: The efficient handling of the subject lawsuit and appeal challenging the City's certification of the EIR supporting the SMCS Project is in the best interest of the City. Retention of outside counsel knowledgeable in

Second Supplemental Agreement for Legal Services

CEQA, CEQA litigation and, importantly, the subject EIR and Superior Court action, promotes the efficient handling of the suit and the appeal on behalf of the City. The selected outside counsel will work with and under the supervision of the City Attorney's Office until the completion of the Superior Court action and the appeal.

Environmental Considerations: None. The agreement will not have a significant effect on the environment. (CEQA Guidelines § 15061(b)(3)).

Commission/Committee Action: None.

Rationale for Recommendation: Shute, Mihaly and Weinberger is familiar with the SMCS Project and has represented the City throughout the litigation of this matter. Their continued representation is needed to preserve the continuity of the representation of the City in the Superior Court action and the appeal to the Third District Court of Appeals.

Financial Considerations: None. Per agreement, all attorneys' fees paid by the City to Shute, Mihaly & Weinberger will be reimbursed by Sutter Health, Inc., the Real Party in Interest in this matter.

ESBD Considerations: Not applicable.

Respectfully submitted,


EILEEN TEICHERT
City Attorney

RECOMMENDATION APPROVED:

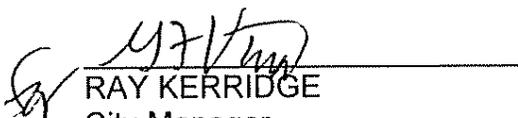

RAY KERRIDGE
City Manager

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Background

On December 6, 2005, the Sacramento City Council certified an Environmental Impact Report ("EIR"), adopted a Mitigation Monitoring Plan and approved the Sutter Medical Center, Sacramento Project ("Project"). The preparation of the EIR was supervised by Shute, Mihaly and Weinberger, LLC.

Shute, Mihaly & Weinberger, LLP brings and defends CEQA actions and provides consultation regarding CEQA issues on behalf of community groups, environmental organizations, and local and state government agencies. The firm has participated in drafting CEQA legislation, reviewing and commenting on proposed amendments to CEQA, and assisting the California Resources Agency in drafting the initial CEQA Guidelines following the adoption of CEQA.

On January 6, 2006, Service Employees International Union, United Healthcare Workers West ("SEIU") filed a petition for writ of mandate in the Sacramento Superior Court against the City of Sacramento and Sutter Health, Inc., case number 06CS00006, on the grounds the EIR and Project approval did not meet the requirements of CEQA ("Matter").

Sutter Health, Inc. requested the City retain Shute, Mihaly and Weinberger to represent it in the Matter. On March 6, 2006, the City entered into an Agreement for legal services with Shute, Mihaly and Weinberger to represent the City in the Matter in an amount not to exceed \$70,000. The City and Sutter also entered into an agreement whereby Sutter agreed to indemnify the City for all attorneys' fees and costs paid to Shute, Mihaly and Weinberger.

On August 16, 2006, this Agreement was amended by a First Amendment to the Agreement, increasing the maximum sum to be paid under the Agreement to \$90,000.

On September 1, 2006, the Superior Court issued a Judgment in the matter, granting portions of the Petition for Writ of Mandate. The Court held that the record did not contain sufficient underlying documentation of the analysis set forth in the EIR with respect to trip generation, parking and construction-related NOx emissions. The Court ordered Sutter and the City to suspend all project approvals and activities that could result in any change or alteration to the physical environment until the Court determines the City has complied with CEQA. The Court retained jurisdiction over the parties until it makes this determination. The parties are scheduled to appear before the Court on February 2, 2007 for a hearing on the determination.

On November 1, 2006, SEIU filed an appeal from the court's denial of certain portions of their Petition for Writ of Mandate in the Third District Court of Appeals, case number C054087.

Second Supplemental Agreement for Legal Services

The attorney's fees incurred to date have reached the maximum amount payable under the Agreement.

Attachment 2

Date: 01/16/07

Supplemental Agreement No.: 2

The City of Sacramento ("City") and Shute Mihaly and Weinberger, LLP ("Attorney"), as parties to that certain Agreement for Legal Services Agreement, including any and all prior supplemental agreements modifying said agreement (said agreement and supplemental agreements are hereafter collectively referred to as the "Agreement"), hereby supplement and modify the Agreement as follows:

1. Section A of the Recital to the Agreement dated March 6, 2006, is amended to read as follows:

"A. CITY is in need of ATTORNEYS to represent it in the matters of Service Employees International Union, United Healthcare Workers West v. City of Sacramento, Sacramento City Council (Respondents) and Sutter Health, Inc. a California non-profit corporation; Sutter Health-Sacramento Sierra Regional; and Sutter Medical Center, Sacramento, (Real Parties-in-Interest), Sacramento Superior Court Case Number 06CS00026, and Third District Court of Appeals case number C054087, 'the Matter'."

2. In consideration of the additional and/or revised services described above, Section 3 of the First Amendment to the Agreement for Legal Services entered into by the City and Attorney on August 16, 2006, is amended to read as follows:

"3. Subject to amendment by the parties, approved in writing in the manner required by law, the maximum payable by CITY to ATTORNEYS under this contract for services and expenses shall be \$200,000.00 (two hundred thousand dollars). CITY anticipates that this amount should be sufficient for ATTORNEYS to provide the services identified above; to the extent additional services and expenses are required on this Matter, an amendment authorizing the additional services and expenses shall be required. Services by ATTORNEYS in addition to services in connection with the Matter shall be at the discretion of CITY and compensation therefor shall be the subject of a separate and future agreement for legal services entered prior to the performance of such additional services."

Second Supplemental Agreement for Legal Services

Agreement's original not-to-exceed amount: \$70,000.00

Not-to-exceed amount prior to this supplemental agreement: \$90,000.00

Increase by this supplemental agreement: \$110,000.00

New not-to exceed amount including all supplemental agreements: \$200,000.00

3. Attorney warrants and represents that the person or persons executing this supplemental agreement on behalf of Attorney has or have been duly authorized by Attorney to sign this supplemental agreement and bind Attorney to the terms hereof.
4. Except as specifically revised herein, all terms and conditions of the Agreement shall remain in full force and effect, and Attorney shall perform all of the services, duties, obligations, and conditions required under the Agreement, as supplemented and modified by this supplemental agreement.

CITY OF SACRAMENTO
A Municipal Corporation

Attorney

By: _____

By: _____

Eileen Teichert, City Attorney

Print Name: _____

ATTEST:

City Clerk

RESOLUTION NO. 2007- _____

Adopted by the Sacramento City Council

**SECOND SUPPLEMENTAL AGREEMENT FOR LEGAL SERVICES WITH
SHUTE, MIHALY AND WEINBERGER, LLP.**

BACKGROUND

- A. On December 6, 2005, the Sacramento City Council certified an Environmental Impact Report ("EIR"), adopted a Mitigation Monitoring Plan and approved the Sutter Medical Center, Sacramento Project ("Project"). The preparation of the EIR was supervised by Shute, Mihaly and Weinberger, LLC.
- B. On January 6, 2006, Service Employees International Union, United Healthcare Workers West ("SEIU") filed a petition for writ of mandate in the Sacramento Superior Court against the City and Sutter Health, Inc ("Sutter") on the grounds the EIR and Project approval did not meet the requirements of CEQA ("Matter").
- C. On March 6, 2006, the City entered into an Agreement for legal services with Shute, Mihaly and Weinberger to represent the City in the Matter in an amount not to exceed \$70,000. The City and Sutter entered into an Agreement whereby Sutter agreed to indemnify the City for all attorneys' fees and costs paid to Shute, Mihaly and Weinberger.
- D. The Agreement was amended on August 16, 2006 by a First Amendment to the Agreement, increasing the maximum sum to be paid under the Agreement to \$90,000. The attorney's fees incurred to date have reached the maximum amount payable under the Agreement.
- E. The Superior Court retains jurisdiction over the parties to the Matter, pending a determination that the City has complied with CEQA.
- F. On November 1, 2006, SEIU filed an appeal in the Third District Court of Appeals from the Court's denial of certain portions of their Petition for Writ of Mandate.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The City Attorney is authorized to execute Supplemental Agreement No. 2 to the Agreement for Legal Services between the City of Sacramento and Shute, Mihaly and Weinberger, LLC, dated March 6, 2006 for additional legal services in the matters of Service Employees International Union, United Healthcare Workers West v. City of Sacramento, et al., Sacramento Superior Court Case number 06CS00026, and Third District Court of Appeals case number C054087, in an amount not to exceed \$200,000.00. The fees and costs incurred by the City as a result of this Agreement will be reimbursed by Sutter Health, Inc.

