



REPORT

DATE: For the Agenda of June 7, 2002 **Item 104**

REPORT NO: HCR02-045

SUBJECT: Legal Services Contract

SUMMARY

Issue No. 1: Should the Housing Commission amend the contract for legal services with Detisch & Christensen by increasing the fiscal year 2002 maximum contract compensation by \$90,000 to cover legal costs resulting from ongoing litigation and unanticipated special assignments?

Recommendation No. 1: Approve an increase of \$90,000 to the current legal services contract with Detisch & Christensen, and authorize the Chief Executive Officer to amend the fiscal year 2002 budget accordingly.

Issue No. 2: Should the Housing Commission grant permission for the assignment and transfer of the existing legal services contract to the successor firm of Christensen, Schwerdtfeger & Spath, L.L.P. for the remaining term of the contract (one year plus an option for one additional year)?

Recommendation No. 2: Approve the assignment of the current legal services contract to Christensen, Schwerdtfeger & Spath, L.L.P. as allowed under Section 211 of the contract.

Fiscal Impact: For Recommendation No. 1, expenditure of up to \$90,000 more than the current \$500,000 contract limit. Funds are available in the fiscal year 2002 budget. Fiscal impact of Recommendation No. 2 is \$515,000 for fiscal year 2003, with a one-year renewal option.

Certificate of Funding Availability:

Certificate No.: 000041 and 03-023
Amount: \$90,000 (FY02) and \$515,000 (FY03)



Revenue Source: Various Sources
Division: Various Sources
Line Item: Legal Services

Previous Related Actions: The Housing Commission and Housing Authority approved a two-year contract with Detisch & Christensen, including an option to renew for up to three additional one-year periods, on May 7, 1999, and May 25, 1999, respectively.

Equal Opportunity Statement: Successor firm Christensen, Schwerdtfeger & Spath is not a Minority or Women Business Enterprise.

BACKGROUND

The Housing Commission has an ongoing need for General Counsel legal services. The scope of these services includes preparation and review of legal documents, attendance at meetings of the Housing Commission and Housing Authority, legal advice regarding the planning and development of low income housing programs, personnel and labor relations, management of low income housing programs, real estate legal services, and routine litigation.

As the result of a competitive request for qualifications conducted in 1999, Detisch & Christensen was awarded a contract to provide these specialized legal services to the Housing Commission.

DISCUSSION

Amendment to Current Legal Services Contract

The agreement for General Counsel legal services established a not-to-exceed compensation limit for fiscal year 2002 of \$500,000 based on budget estimates for each division of the Housing Commission. The agreement also provided the Chief Executive Officer with authority to increase that amount by up to ten percent. Due to ongoing litigation and unanticipated special assignments, the maximum compensation for fiscal year 2002 will be exceeded by approximately \$90,000, which is beyond the Chief Executive Officer's administrative authority to approve.

The requirement for additional funding is mostly due to the cost of handling ongoing, complex litigation relating to construction defect claims that includes such activities as court appearances, depositions and legal research. Detisch & Christensen is also involved in providing the legal framework for the Housing Commission's participation in a Joint Powers Agency to advance a model school project that includes the Housing Commission, Housing Authority, school district and the Redevelopment Agency. Finally, significant legal services are required in negotiating and preparing a Purchase and Sale Agreement for the development of a proposed office facility

site. These tasks and others, which could not have been anticipated earlier, have resulted in a significant increase in spending.

It is recommended that the current agreement be amended (Attachment 1) to increase the maximum contract compensation in the amount of \$90,000 to provide for uninterrupted legal services. Sufficient litigation reserves are available to fund this request.

Assignment of Current Contract for Legal Services to Successor Firm

The Housing Commission received notice of dissolution of the partnership of Detisch & Christensen on June 14, 2002, and the intention of Charles Christensen to form a successor firm named Christensen, Schwerdtfeger & Spath, L.L.P. Mr. Christensen has provided the majority of the Housing Commission's legal services since 1991.

To ensure continuity of legal services with respect to ongoing litigation and special assignments, it is recommended that the Housing Commission continue to retain the services of Mr. Christensen and his successor firm when it is established on June 15, 2002. Mr. Christensen has the specialized knowledge and expertise required to effectively attend to agency matters and related concerns.

As General Counsel for most of the past decade, Mr. Christensen has broad awareness of Housing Commission policy and familiarity with agency procedures. Sean Schwerdtfeger, who will join Mr. Christensen as a partner in the new firm, also has provided extensive legal services to the Housing Commission since 1995.

The current contract for legal services provides the Housing Commission the ability to assign the contract under Section 211 of the agreement. Specifically the Section 211 reads:

“The Contractor shall not assign any interest in the Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of the Commission. If, at any time, Charles B. Christensen is not able to provide the said legal service as Lead Counsel to the Commission, the Commission will reserve the right to terminate the contract.”

Further, San Diego Municipal Code Section 98.0301(d)(4) gives the Commission the authority to approve the assignment of rights in contracts. The Code Section allows the Commission the right to even approve assignments of contracts to new parties between the Authority and others, without Authority consent. Subsection (4) provides that the Commission can:

“Approve agreements assigning the rights and obligations of a party to a contract with the Housing Authority, to a new party.”

Accordingly, it is recommended that the current legal services contract with Detisch & Christensen be assigned to the new firm of Christensen, Schwerdtfeger & Spath (Attachment 2).

The scope of services of the new contract will be identical to the current contract, and legal services will continue to be provided to the Housing Commission at a rate of \$115 per hour, plus the current rate of the Consumer Price Index. The new firm's Statement for Public Disclosure is presented as Attachment 3 to this report.

ALTERNATIVES

1. Approve a contract amendment in an amount different than \$90,000 for ongoing legal services.
2. Issue a Request for Qualifications for legal services rather than assigning the current contract. This alternative is not recommended in view of continuity of litigation considerations and exemplary work of the contractor in representing the Housing Commission.

Submitted by,

Approved by,

Signature on File with Original Document

Carrol M. Vaughan
Chief Operating Officer

Elizabeth C. Morris
Chief Executive Officer

Attachment 1: Contract Amendment for Detisch & Christensen
Attachment 2: Contract Amendment - Assignability
Attachment 3: Statement for Public Disclosure