



SAN DIEGO
HOUSING
COMMISSION

HOUSING AUTHORITY REPORT

DATE ISSUED: March 28, 2011

REPORT NO: HAR11-015

ATTENTION: Members of the San Diego Housing Authority
For the Agenda of April 19, 2011

SUBJECT: General Counsel Contract Revision

REQUESTED ACTION:

Approval of the revised contract between the Housing Commission and Christensen & Spath LLP, General Counsel to the Housing Commission.

STAFF RECOMMENDATION:

1. That the Housing Authority approve a contract revision with an increase of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000) for legal services in FY 2011 (Attachment 1). The current contract between the Housing Commission and Christensen & Spath is a five (5) year contract with a not to exceed annual amount of \$600,000 per year with authority for the President & Chief Executive Officer (CEO) to increase the annual amount by \$200,000 per year. This revision would bring the annual amount for FY2011 to \$1,050,000.
2. That the Housing Authority amend the contract to include a not to exceed annual amount of \$800,000 per year with authority for the President & Chief Executive Officer (CEO) to increase the annual amount by \$200,000 per year.
3. That the Housing Authority approve a revision to the FY2011 budget to transfer funds from Contingency Reserves to fund the FY2011 contract amendment.

The Housing Commission Board unanimously approved these recommendations on February 18, 2011 and March 18, 2011.

SUMMARY:

In May and June of 2009, the Housing Commission and the Housing Authority, respectively, approved the legal services contract between the Housing Commission and Christensen & Spath LLP. The Housing Authority modified the Housing Commission's approval of the contract by only approving a base contract amount of \$600,000 per year and authorized the President and Chief Executive Officer (CEO) to approve an increase of up to \$200,000 in any year for non routine services needed. In February of 2011, the CEO approved an increase of \$200,000 in accordance with the terms of the prior authorizations by both the Housing Commission and Housing Authority bringing the total contract amount for FY 2011 to the sum of \$800,000.

Any further increase in the contract amount for the FY 2011 period requires the approval of the Housing Commission Board and the Housing Authority.

As of January 31, 2011, Christensen & Spath had billed the Commission for six (6) billing periods in the amount of \$598,480 for fees and costs, after credits extended by Christensen &

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Spath of \$22,463 as professional courtesy. While it is expected that the amount of services for the balance of the year will be less than for the first part of the year, the Commission is still involved in complex litigation concerning the Churchill Hotel, and other pending non routine matters. The anticipated monthly average billing is approximately \$85,500 per month to include the pending litigation and expected trial in Superior Court and current appeal in the Court of Appeal, the refinancing of three Commission properties, and the office building, services concerning the inclusionary ordinance, the anticipated additional acquisitions of low income properties by the Commission as well as the normal legal services rendered by General Counsel.

The Commission will be acquiring additional properties under the Housing Authority approved financing plan and legal services will be needed to prepare purchase and sale agreements, escrow instructions, review of title reports, preparation of covenants affecting the real property to rent and occupancy restrict the units, and other documents associated with the acquisitions. These are complex, protracted real estate transactions.

General Counsel is working with the City Attorney's Office on Inclusionary matters and has successfully defended a case in federal bankruptcy court with the City Attorney and the City's outside counsel, involving the YMCA. Other litigation may be forthcoming in connection with that matter.

During the first part of the fiscal year, General Counsel settled a case against Caltrans for inverse condemnation and received a settlement in excess of \$1.23 million dollars. The settlement was achieved by General Counsel without trial and without any formal discovery. The settlement is sufficient to recoup all the attorneys fees and expert fees incurred in filing the case and negotiating the settlement with Caltrans and, importantly, to perform sound retrofitting on the site.

Additional non routine services performed by General Counsel during the first six months of FY 2011 included:

- (1) Extensive personnel matters amounting to \$33,191 in fees;
- (2) Litigation related matters involving the Churchill Hotel. This involved successfully defending a request for a preliminary injunction against a foreclosure initiated by the Commission on its \$4.25 million dollar note and deed of trust secured by the Churchill Hotel, after the owner breached its contract with the Commission that had been approved by the City Council. The litigation concerning this historical SRO Hotel included handling the appeal to the District Court of Appeal, successfully arguing for the denial of two writs in the Court of Appeal filed by the owner of the Churchill Hotel, prosecuting a complaint for judicial foreclosure against the owners of the Churchill Hotel, winning two summary adjudication motions in the trial court and now defending a cross complaint brought by the owner of the Churchill Hotel. Going forward a trial will be scheduled and discovery must be undertaken and the appeal of the denial of the preliminary injunction is still pending in the Court of Appeal. The Churchill litigation is expected to continue at the same pace during the second half of FY 2011 and into FY2012.

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In addition, together with the City Attorney and the City's outside counsel, General Counsel caused an abstention in Federal Bankruptcy Court in the case filed by 550 West Broadway vs. the City of San Diego, the Redevelopment Agency of the City of San Diego and the San Diego Housing Commission, et. al.

(3) General Counsel has defended subpoenas requesting private and personal information concerning Section 8 tenants, which may not be disclosed under applicable federal law; and General Counsel has overseen the successful defense of a personal injury case at the Belden Apartment Complex. The cost of all of these litigation related services during the first six months of the year, including the Churchill litigation, was in excess of \$145,000;

(4) The FHA and FNMA financing of former public housing units during FY 2011 amounted to \$60,936 in fees. This included the formation of three Limited Liability Companies wholly owned and controlled by the Housing Commission and the legal work to process three separate loans of multiple properties through FHA, including two closings in Los Angeles. The refinancing included complicated issues of subordination of the rights of reverter to the satisfaction of HUD and dealing with complicated title issues on numerous properties;

(5) General Counsel was involved in matters with the City Attorney's office concerning numerous inclusionary matters. These included the variances for the Costa Verde projects, which had been the subject of litigation with the City and the developer, and other matters involving the inclusionary ordinance, resulting in fees of approximately \$24,000. This does not include the cost of drafting routine inclusionary housing documentation;

(6) Acquisitions of several projects, including Mariner's Village, the Mercado, Vista Grande, Arbor Village and the Courtyard Apartment complexes, amounted to slightly in excess of \$77,000 in legal fees during the period in question. These were complicated acquisitions, many involving ground leases and tax credit financing. There were other non routine services as well. In total these services amounted to approximately \$338,000, including the amounts listed above.

Going forward in FY 2011 and FY 2012, General Counsel will continue to be involved in the following non routine matters:

1. Continued prosecution and defense of the Churchill Litigation in the San Diego Superior Court and the Court of Appeal. A trial is scheduled in August of 2011.
2. Work concerning the refinancing of three (3) SDHC properties, in accordance with prior approvals of the Housing Authority, potentially through FHA. These projects are the Maya Apartments, the Courtyard Apartments and Mariner's Village.
3. Drafting documentation to acquire up to four more low income properties in accordance with prior Housing Authority approved Financing Plan;
4. Continuing to assist the Commission staff with labor and personnel matters;
5. Legal services in connection with the refinancing of the Smart Corner Office Building during FY 2011; and,
6. Other litigation matters as they arise, including, without limitation, a potential continuation of the 550 West Broadway matter in state court.

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In addition, the Housing Commission has an ongoing requirement for routine legal services. The scope of these normal services include the preparation of legal documentation, attendance at the Housing Commission and Housing Authority meetings, preparation of resolutions, legal advice concerning planning, financing, development, management of affordable housing programs, real estate transactions, drafting of contracts for procurement of services and supplies, advice on Brown Act issues, advice on potential conflicts of interest, public record requests, drafting of density bonus agreements and terminations, drafting of documentation required by the inclusionary ordinance, drafting of documentation concerning condominium conversion relocation agreements, advice on loan portfolio administration, advice concerning HOME and CDBG regulations, Section 8 program advice and routine litigation.

The volume of legal work continues to be very substantial. Christensen & Spath LLP charges the Commission at rates substantially below market rates: \$150.00 per hour for its two partners, Mr. Christensen and Mr. Spath. Associates are billed at either \$145.00 or \$140.00 per hour depending upon the number of years of experience. Christensen & Spath offered the Housing Commission a professional courtesy monthly discount of over four (4%) percent of its billings as a professional courtesy during the first six months of this year.

As in earlier years of this contract, it is anticipated that the legal work needed through the fiscal year will exceed the amount available in the existing contract. Staff is recommending that the Housing Commission amend the contract to increase it by a sum of \$250,000, to bring the maximum not to exceed amount for FY 2011 to the sum of \$1,050,000. For FY 2012, the maximum not to exceed amount is expected to be about \$800,000, unless there are unanticipated legal issues and the Housing Commission Board has recommended that the base contract not to exceed amount for FY 2012, and thereafter, be increased to \$800,000.00 with the ability of the Chief Executive Officer to increase the same by an additional \$200,000 per year based upon unanticipated legal issues, as is currently allowed.

FISCAL CONSIDERATIONS:

With approval of the proposed budget revision, the projected expenses will be funded with Housing Commission contingency reserves. The proposed FY 2012 budget will include sufficient funds for a not to exceed amount of \$800,000.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

The Housing Commission approved the Legal Agreement with Christensen & Spath LLP on May 15, 2009 and the Housing Authority modified the agreement before approving the agreement on June 16, 2009. On March 19, 2010 the Housing Commission approved and forwarded to the Housing Authority a request for increase in the FY 2010 contract amount of \$200,000. That matter was approved by the Housing Authority on April 6, 2010. On February 18, 2011, the Housing Commission Board considered and recommended an increase of \$250,000 in the FY 2011 contract amount. On March 18, 2011, the Housing Commission unanimously approved and forwarded to the Housing Authority a revision to the base contract to include a not to exceed amount of \$800,000 per year for the remaining years of this contract, plus the ability of the CEO to increase that amount by the \$200,000 per year for unanticipated legal services.

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ENVIRONMENTAL REVIEW:

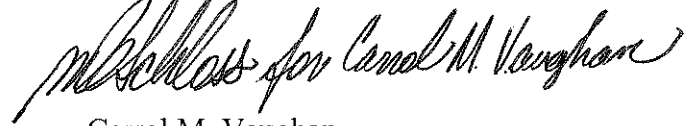
This activity is not a project within the meaning of the California Environmental Quality Act (CEQA) pursuant to Section 15060(c) (3) of the State CEQA guidelines. This activity is also exempt from review under the National Environmental Policy Act as no federal funds are involved.

Respectfully submitted,



Maurcell Gresham
Procurement & Contract Compliance Manager
Business Services

Approved by,



Carrol M. Vaughan
Executive Vice President &
Chief Operating Officer

Attachment: 1- Legal services Contract Amendment No. 4

Distribution of these attachments may be limited. Copies are available for review during business hours at the Housing Commission offices at 1122 Broadway, main lobby.

FOURTH AMENDMENT TO AGREEMENT BETWEEN

SAN DIEGO HOUSING COMMISSION

AND

CHRISTENSEN & SPATH LLP

THAT AGREEMENT, entered into on or about the 1st day of July 2009 between the

Commission: SAN DIEGO HOUSING COMMISSION
 1122 Broadway, Suite 300
 San Diego, California 92101

and the Contractor: CHRISTENSEN & SPATH LLP
 550 West C Street, Suite 1660
 San Diego, CA 92101
 (619) 236-9343

is hereby amended as follows, by this FOURTH AMENDMENT:

SECTION 104. b., the first paragraph only, is amended to read as follows:

b. Maximum Compensation

- 1. The total compensation for all services performed under this Agreement during the term of the Agreement shall not exceed the sum of TWO MILLION EIGHT HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$2,850,000.00) through FY 2012, which includes an increase in FY2012 of the base amount of the AGREEMENT to \$800,000.00, except as approved by the CEO of the COMMISSION and as permitted under the Housing Authority Resolutions that approved this AGREEMENT and amendments thereto. Contractor acknowledges that the Commission is under no obligation to compensate Contractor for services rendered or expenses accrued under this AGREEMENT in excess of the maximum compensation specified above, subject to the power of the CEO to increase the maximum amount. This maximum not to exceed amount includes an increase in the compensation limit for FY 2011 of TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00) for extraordinary services rendered and/or to be rendered in connection with the continued prosecution and defense of the Churchill Litigation in the San Diego Superior Court and the Court of Appeal; the refinancing of the Maya Apartments, the Courtyard Apartments and**

Mariner's Village; drafting documentation to acquire up to four more low income properties; continued legal assistance concerning labor and personnel matters; legal services in connection with the refinancing of the Smart Corner Office Building during FY 2011; and, other litigation matters as they arise, including, without limitation, a potential continuation of the 500 West Broadway matter in state court.

This addition brings the contractual limit to \$1,050,000 for FY 2011. This amendment also brings the contractual annual base not to exceed limit to \$800,000.00 for FY2012. In each fiscal year after FY 2012 the annual base not to exceed contract limit shall be \$800,000 per year. It shall be the responsibility of the Contractor to monitor its activities to ensure that the scope of services specified in Contract Attachment No. 2 (Specifications) may be completed and no charges accrued in excess of the maximum compensation during the extended term of this Agreement. In the event that the work required cannot be completed within the amount specified, in any year of the contract, or it appears that the maximum compensation may be exceeded before the extended term of the Agreement expires, Contractor shall notify the Commission. The CEO or designee shall continue to have the right to increase the maximum annual amount of the contract in subsequent fiscal years in accordance with the terms of the Agreement and the prior Housing Authority Resolutions by a not to exceed the sum of \$200,000 in each fiscal year.

Except as expressly amended herein the AGREEMENT shall remain in full force and effect and unaltered and unamended by this FOURTH AMENDMENT.

IN WITNESS WHEREOF, the parties have caused this FOURTH AMENDMENT to be executed on the day and year first above written.

COMMISSION:
SAN DIEGO HOUSING COMMISSION

By: _____ Dated: _____, 2011
Carrol Vaughan
Executive Vice President and Chief Operating Officer

CONTRACTOR:
CHRISTENSEN & SPATH LLP

By:  _____ Dated: 4/5, 2011
Managing Partner
Charles B. Christensen