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Debbie Ruane
Director of Real Estate Development
San Diego Housing Commission
1122 Broadway
San Diego, CA 92101

Subject: Selection of NorthMarq for Financial Services

Dear Ms. Ruane:

Per your request the following is an outline of the procurement process used in connection with the selection of NorthMarq. As you can see the procurement process used complies with the applicable procurement rules and regulations as discussed in this letter opinion.

On April 7, 2008, the SDHC issued a Request for Proposals for "Financing Services". It was published in La Prensa, San Diego Voice & Viewpoint, San Diego Union Tribune and on the SDHC website. In addition, 80 packages were mailed to commercial lending institutions in San Diego. During the proposal period fourteen (14) packages were distributed to interested firms. In response to that RFP, five (5) responses were received. Those responses were all reviewed by Keyser Marston. The Selection Committee of the Commission, including Tony Yip, a Commissioner and Sal Salas, Chair of the Commission interviewed the shortlisted group of two (2) entities, Citi Community Capital and Red Capital. The parties executing the proposal for Citi were Gardiner Champlin, as a Director, and Martin J. Meagher, as a Director.

The other entities that presented responses included U.S. Bank, Fannie Mae with a limited proposal [only recourse, which was not acceptable] as well as Pacific Housing Advisors. U.S. Bank was not selected for interview at that time since it indicated that it wouldn't be able to provide financing until the portfolio had seasoned for a year. Fannie Mae submitted a limited response in the \$25,000,000 range for financing which did not meet the needs of the Commission [and did not offer non recourse financing]. Pacific Housing Advisors stated that it would not be able to deal with the issues concerning the "reverter" which eliminated it from consideration. In addition, the Pacific Housing Advisors proposal included loan products from Citi Community Capital, which later withdrew from the market.

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Red Capital and Citi Community Capital were interviewed by the Selection Committee. Thereafter the Selection Committee recommended the retention of Citi Community Capital for the financial services services. The HC approved the recommendation on October 31, 2008 and the HA approved the selection on November 18, 2008.

The day after the selection of Citi, the CEO of the Commission was informed that the Citi Community Capital was laying off numerous employees, including the two principals for the project, Meagher and Champlin, and that Citi would be unable to provide the services and the financing.

Then the Commission elected to work with the second ranked responder in the RFP, Red Capital [Red]. The SDHC and Red worked for months trying to put together a proposal to lenders for financing, but no significant progress was made and the relationship was voluntarily terminated by the Commission and Red, for lack of progress.

At this time, the Commission also contacted U.S. Bank, since a year had now elapsed, to see if it was interested in providing interim financing, since U.S. Bank had previously responded to the RFP. Short term financing was arranged through U.S. Bank. Long term financing was not available from U.S. Bank.

At about this time, having worked its way through each of the entities that had applied to the RFP for financial services, NorthMarq, with the same principals that previously interviewed and submitted the response on behalf of Citi Community Capital approached the Commission and indicated that it was available to provide the financial services that Citi Community Capital had previously proposed for long term financing.

General Counsel to the Commission informed the Commission staff that under the terms of the Commission's procurement policy, the Commission was legally entitled to deal with NorthMarq, and specifically the two (2) principals that they had previously interviewed and selected as part of the RFP process with Citi Community Capital.

Under the SDHC procurement policy, once the RFP had been issued and published and the SDHC had worked its way through the qualified responders to the RFP, it was and is the opinion of the General Counsel for the Commission that the Commission was and is legally authorized to deal with qualified financial service providers on a competitive proposal basis, in accordance with the provisions of SDHC Procurement Policy at Section 3.4 A. This is true because (i) there was an adequate method of evaluating the technical proposal; and, (ii) the Commission had already solicited a sufficient number of qualified sources as referenced above. Further, selection of a qualified financial service provider is not appropriate through a sealed bid process. That process is normally utilized for construction contracts, per Procurement Policy Section 3.3. Specifically, the sealed bid process should not be utilized for professional services under the policy. For the foregoing reasons, all of the requirements of the SDHC Procurement policy were met to allow the Commission to contract with NorthMarq under the provisions of Section 3.4 A.

In this case, upon being contacted by NorthMarq, with the very same two individuals that had previously been chosen to provide the services for Citi Community Capital and that

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were part of the initial RFP process and who signed the original proposal to the Commission for the financial services, General Counsel for the Commission opined that the Commission could enter into a contractual arrangements with NorthMarq, subject to HC and HA Board approval. The process of approving NorthMarq's retention is part of the approval of the Financing Plan that has already been approved by the Housing Commission Board and is scheduled to be heard by the Housing Authority Board on October 13, 2009.

If you have questions or comments, please do not hesitate to contact me.

Sincerely



Charles B. Christensen
General Counsel
San Diego Housing Commission