

EXECUTIVE SUMMARY

DATE ISSUED: March 5, 2010 **REPORT NO:** HCR 10-027
ATTENTION: Chair and Members of the Housing Commission
For the Agenda of March 19, 2010
SUBJECT: Revision to the Housing Commission's Contract with General Counsel

SUMMARY:

In May and June 2009, the Housing Commission and the Housing Authority, respectively, approved the legal services contract between the Housing Commission and Christensen & Spath LLP. This approval allowed for a base contract amount of \$600,000 per year and authorized the Chief Executive Officer (CEO) to approve an increase of up to \$200,000 in any year for extraordinary services needed. In October 2009, the CEO approved such a contract revision for FY 2010. The contract between the Housing Commission and Christensen & Spath LLP is a five year contract with a not-to-exceed annual amount of \$800,000.

It was stipulated by the Housing Authority that any increase beyond the authorized maximum annual amount of \$800,000, would require further approval by the Housing Commission Board and the Housing Authority. As of March 1, 2010, the Housing Commission has paid Christensen & Spath LLP the sum of \$649,427 dollars. The amount paid has been over eight (8) billing periods, with an average monthly cost of \$81,178. It is anticipated that by the end of the current fiscal year, the Housing Commission will incur expenditures beyond the authorized maximum amount of \$800,000. In order to ensure sufficient funding for anticipated legal services for the balance of the fiscal year, an increase of \$200,000 is recommended.

The anticipated work to be performed includes extraordinary services in connection with the Real Estate Financing Plan, the approval of the FNMA loans, the Sandford Hotel acquisition and Owner Participation Agreement with the Redevelopment Agency, the Arbor Village, Riverwalk, and Chollas Creek projects, funding of the FNMA loans, and leases for the Smart Corner Office Building first and second floors. There is also pending litigation.


STAFF RECOMMENDATION:

That the Housing Commission approve and forward to Housing Authority a contract revision with an increase of Two Hundred Thousand and no/100 dollars (\$200,000.00) for legal services in FY 2010 for a maximum compensation amount of \$1,000,000.

FISCAL CONSIDERATIONS:

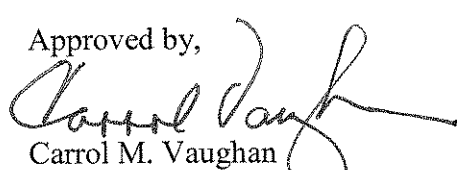
The projected expenses will be funded with Housing Commission Legal Services Reserve Funds.

Respectfully submitted,



Mirta Schloss
Program Manager

Approved by,



Carrol M. Vaughan
Executive Vice President &
Chief Operating Officer

REPORT

DATE ISSUED: March 5, 2010

REPORT NO: HCR10-027

ATTENTION: Chair and Members of the Housing Commission
For the Agenda of March 19, 2010

SUBJECT: Revision to the Housing Commission's Contract with General Counsel

REQUESTED ACTION:

Approval of the amended Housing Commission's Contract with General Counsel.

STAFF RECOMMENDATION:

That the Housing Commission approve and forward to the Housing Authority a contract revision with an increase of Two Hundred Thousand and no/100 dollars (\$200,000) for legal services in FY 2010. The current contract between the Housing Commission and Christensen & Spath LLP is a five year contract with a not-to-exceed annual amount of \$800,000.

BACKGROUND:

In May and June 2009, the Housing Commission and the Housing Authority, respectively, approved the legal services contract between the Housing Commission and Christensen & Spath LLP. This approval allowed for a base contract amount of \$600,000 per year and authorized the Chief Executive Officer (CEO) to approve an increase of up to \$200,000 in any year for extraordinary services needed. In October 2009, the CEO approved such a contract revision for FY 2010.

It was stipulated, by the Housing Authority, that any increase beyond the authorized amount of \$800,000 would require further approval by the Housing Commission Board and the Housing Authority. As of March 1, 2010, the Housing Commission has paid Christensen & Spath LLP the sum of \$649,427 dollars. The amount paid has been over eight (8) billing periods, with an average monthly cost of \$81,178. It is anticipated that by the end of the current fiscal year, the Housing Commission will incur expenditures beyond the authorized maximum amount of \$800,000. In order to ensure sufficient funding for anticipated legal services for the balance of the fiscal year, an increase of \$200,000 is recommended.

DISCUSSION

The Housing Commission has an ongoing requirement for legal services. The scope of these services includes preparation and review of complex legal documents, attendance at meetings of the Housing Commission and Housing Authority, and legal counsel regarding the planning, financing, development and management of affordable housing programs, complex real estate transactions and routine litigation. From time-to-time, General Counsel is requested to handle special projects and non-routine litigation.

The volume of legal work continues to be very substantial and mostly related to work being done with the Real Estate Department, including financing, acquisitions, and Smart Corner leasing.

Christensen & Spath LLP have traditionally charged the Housing Commission rates substantially below the market, ranging from \$140 to \$150 per hour with additional discounts of almost 3%, in aggregate, on the Housing Commission's monthly bills.

It is anticipated that the legal work needed by the end of the fiscal year will exceed the maximum compensation stipulated in the legal services contract for FY2010. Staff is recommending that the Housing Commission Board revise the contract for FY2010, to reflect an increase of \$200,000 for a maximum compensation amount of \$1,000,000. Upon approval by the Housing Commission Board, Housing Authority approval will be requested to amend the contract.

FISCAL CONSIDERATIONS:

The projected expenses will be funded with Housing Commission Legal Services Reserve Funds.

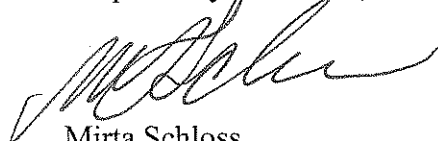
PREVIOUS COUNCIL and/or COMMITTEE ACTION:

The Housing Commission approved the Legal Contract award to Christensen & Spath LLP on May 15, 2009 and the Housing Authority on June 16, 2009.

ENVIRONMENTAL REVIEW:

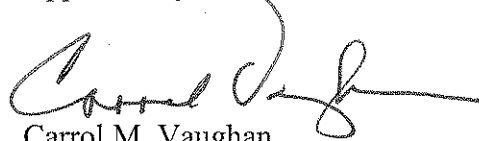
This activity is not a project within the meaning of the California Environmental Quality Act (CEQA) pursuant to Section 15060(c) (3) of the State CEQA guidelines. This activity is also exempt from review under the National Environmental Policy Act as no federal funds are involved.

Respectfully submitted,



Mirta Schloss
Board & Executive Function
Program Manager

Approved by,



Carrol M. Vaughan
Executive Vice President &
Chief Operating Officer

Attachment: 1. Housing Commission Revised Legal Contract Maximum Compensation for FY2010

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.

**SECOND 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 SECOND AMENDMENT:

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

b. Maximum Compensation

The total compensation for all services performed under this Agreement during the term of the Agreement shall not exceed the sum of TWO MILLION TWO HUNDRED AND NO/100 DOLLARS (\$2,200,000.00) through FY 2012, as approved by the CEO of the COMMISSION and as permitted under the Housing Authority Resolution that originally approved this AGREEMENT. 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 a second increase in the compensation limit for FY 2010 of TWO HUNDRED THOUSAND AND NO100 DOLLARS (\$200,000.00) for extraordinary services rendered and/or to be rendered in connection with potential litigation and claims. Expenditures will be incurred concerning the Real Estate Financing Plan, the FNMA loans, the Sandford Hotel acquisition, the Sandford Hotel OPA with the Redevelopment Agency, the Arbor Village Riverwalk, and Chollas Creek issues, Ad Hoc Committee meetings, Standing Committee issues, and funding of the FNMA loans, leases for the Smart Corner Office Building second floor. There is also pending litigation, including the Maya Apartment Project.

This addition brings the contractual limit to \$1,000,000 for FY 2010. 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, 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 Housing Authority Resolution.

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

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

COMMISSION:
SAN DIEGO HOUSING COMMISSION

By: _____
Carrol Vaughan
Title: Executive Vice President and Chief Operating Officer

CONTRACTOR:
CHRISTENSEN & SPATH LLP
A California Limited Liability Partnership

By: _____
Managing Partner
Charles B. Christensen