

MEMORANDUM

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DATE: JUNE 21, 2007 C9 2120

TO: AGENCY COMMISSIONERS

FROM: CECILIA V. ESTOLANO, CHIEF EXECUTIVE OFFICER

RESPONSIBLE PARTIES: DAVID RICCITIELLO, REGIONAL ADMINISTRATOR
JENNY SCANLIN, PROJECT MANAGER
CURTIS S. KIDDER, AGENCY GENERAL COUNSEL

SUBJECT: AUTHORIZATION TO INCREASE A PURCHASE ORDER BY \$390,000 (FROM \$752,000 TO \$1,142,000) FOR KELLY, LYTTON & VANN, LLP, TO PROVIDE LEGAL SERVICES RELATED TO CONDEMNATION OF THE KRAMER METALS PROPERTIES LOCATED AT 944-1010 EAST SLAUSON AVENUE FOR THE SLAUSON-CENTRAL SHOPPING CENTER PROJECT IN THE COUNCIL DISTRICT NINE CORRIDORS SOUTH OF THE SANTA MONICA FREEWAY RECOVERY REDEVELOPMENT AREA
DOWNTOWN REGION (CD9)

RECOMMENDATIONS

That the Agency, subject to City Council review and approval, authorize the Chief Executive Officer, or designee, to execute an amendment to the purchase order with Kelly, Lytton and Vann, LLP ("Kelly Lytton") increasing the budget by \$390,000 (from \$752,000 to an amount not to exceed \$1,142,000) for legal services related to the condemnation of the Kramer Metals properties located at 944-1010 East Slauson Avenue for the Slauson Central Shopping Center Project.

SUMMARY

In January 2005, a purchase order in the amount of \$250,000 was issued to Jackson & Associates to acquire through eminent domain the property owned by defendants, Kramer Metals and Stanley Kramer ("Kramer") for the development of a shopping center site in the Slauson-Central area. The condemned property is located at 944-1010 East Slauson Avenue (the "Kramer Property"). That budget was to cover: 1) assessment and development of the Superior and Federal Court cases; 2) pretrial pleadings and motions for the two cases; 3) discovery for the two cases; 4) trial preparation and trial of the condemnation proceedings; 5) all writs and appeals not handled by City Attorney's office, and 6) lawsuit related expenses, including payment for various expert witnesses.

Later in 2005, David Cunningham, the principal attorney litigating the cases on behalf of the Agency, moved from Jackson & Associates to Kelly Lytton and Kelly Lytton substituted in as attorney of record for the Agency in the Kramer litigation.

In June 2006, the Board approved an increase of \$502,000 to the purchase order for acquisition of the Kramer Metals property. That budget increase was necessary to cover extraordinary legal work necessitated by the litigation tactics employed by Kramer, challenging virtually all actions taken by the Board, including the approval of the Resolution of Necessity, litigating almost all issues raised, such as the Agency's right to take and all valuation matters, appealing all adverse rulings of the Superior Court and filing a separate action in Federal District Court regarding many of the same issues raised in the Superior Court action.

A budget increase of \$390,000 is necessary to cover legal services incurred related to various additional delay tactics employed by Kramer between May and December 2006 in relation to the property valuation trial, and to cover anticipated legal services for (i) claims for interest on the funds on deposit with the Superior Court, (ii) the trial on Kramer's loss of business goodwill, (iii) relocation-related issues, and (iv) application for a writ of removal to remove Kramer from the Kramer Property.

It should also be noted that Kelly Lytton also represents the Agency in the condemnation action to acquire the adjacent property (1040 East Slauson Avenue) owned by M&A Gabae. That matter was settled after the right-to-take trial was resolved in favor of the Agency. The attorney for M&A Gabae has indicted that they intend to pursue an appeal of a number of issues, including the proper date of valuation of the property. Kelly Lytton has a budget of \$400,000 for that litigation.

RE

June 1, 2006 - Agency approval of budget increase of \$502,000 (from \$250,000 to \$752,000) for Kelly, Lytton & Vann for legal services related to condemnation for the Kramer Property

June 2, 2005 – Agency approval of budget increase of \$100,000 (from \$250,000 to \$350,000) for Jackson & Associates for legal services related to condemnation for the Kramer Property

January 20, 2005 – Agency approval of budget increase of \$175,000 (from \$75,000 to \$250,000) for Jackson & Associates for legal services related to condemnation proceedings and Federal Complaint

July 15, 2004 – Agency adoption of Resolution of Necessity to initiate condemnation proceedings to acquire the Kramer Property for the Slauson Central Shopping Center Project

SOURCE OF FUNDS

C9 City AB1290 Funds

PROGRAM AND BUDGET IMPACT

There is no impact on the City's General Fund from the proposed action. This action is consistent with the FY07 Work Program and Budget for Work Objective C92120 (Slauson Central Retail Plaza) as well as the Five-Year Implementation Plan for Council District Nine Corridors South of the Santa Monica Freeway Recovery Redevelopment Project Area. Funds are currently available in the C92120 work objective.

ENVIRONMENTAL REVIEW

The recommendation action does not constitute a project as defined by the California Environmental Quality Act (CEQA).

BACKGROUND

The Project

The Project will be located on an approximately six-acre site within the Goodyear Industrial Tract and will be developed with approximately 80,000 square feet ("sq.ft.") of retail space including a 59,000 sq.ft. grocery store, 19,000 sq.ft. of additional retail space, a 2,000 sq.ft. educational training center, and parking for over 400 cars. The Project also includes a substantial community benefit program. In addition to creating retail uses serving nearby residents, other tangible benefits of the Project include increased sales tax revenues and improved employment opportunities for residents in the surrounding neighborhood. The Project will facilitate the cleanup of a currently contaminated brownfields site and create a safe, modern and attractive community-serving commercial facility in place of the current blighted land uses. As a result of the Project, the current physical blighting conditions will be eliminated. Additionally, the Project will stabilize local businesses, provide local shopping opportunities for residents, and provide new employment opportunities. Construction of the Slauson Central Shopping Center is anticipated to begin in 2008.

Summary of Litigation

1. Background and procedural history prior to valuation jury trial

In July 2004, the Agency Board passed a Resolution of Necessity to acquire the Kramer Property. A Complaint for Eminent Domain was then filed in Los Angeles Superior Court seeking to condemn the approximately four acre parcel, a portion of which was then being used as a scrap metal yard by Kramer and other portions of which were being used by 14 tenants for various businesses. The Agency also deposited \$2.6 million, the then appraised fair market value of the property, with the court, thereby locking in the valuation date of the property.

Since the commencement of the eminent domain action, Kramer has vigorously challenged virtually all of the issues raised in the litigation. In the trial on the Agency's right to take the Kramer Property, Kramer challenged, among other things, the sufficiency of the Resolution of Necessity. The court agreed with Kramer that the Resolution did not precisely conform to the requirements of the Code of Civil Procedure and issued a ruling dismissing the case unless the Agency corrected the Resolution. The Agency Board corrected the Resolution at its meeting of May 5, 2005, and the Right to Take trial resumed on July 25, 2005 and concluded on September 23, 2005. The Superior Court issued its ruling in November 2005, affirming the Agency's right to take the Kramer Property for the Project and issued a lengthy statement of decision addressing several legal challenges raised by Kramer to the Project.

Kramer also filed an action in 2005 in Federal District Court challenging the Agency's determination in the Resolution of Necessity that the Project will be a public use of his property

and that the project area is blighted. The Agency prevailed at the trial court level and the Federal Court of Appeal affirmed the trial court's ruling.

In January 2006, Kramer and M&A Gabaei raised a number of issues with the Superior Court, but all of their contentions were dismissed by the court. Specifically, the court ruled that (i) Kramer was not entitled to either inverse condemnation or pre-condemnation damages, (ii) the date of value was the stipulated-to date of value of September 8, 2004, (iii) that M&A Gabaei had standing as a lessee to claim an apportioned share of the just compensation awarded for the Kramer Property, but that M&A Gabaei has no separate claim, or standing to assert a separate claim against the Agency.

2. Significant events since the last amended budget that generated unforeseen litigation related activity

Since May 2006, there have been a number of significant events:

- Kramer Rejected Agency's Last, Final Offer: Kramer rejected the Agency's final, last offer and instead demanded \$11 million for his property and related interests and a reservation of his appellate rights in regard to the property valuation date.
- Valuation Trial Moved to Long-Cause Calendar: The Superior Court transferred the valuation trial to the long cause calendar due to the number of potential witnesses listed by defendants. The May 30, 2006 trial date was vacated and no trial date was scheduled on the long cause calendar because no courtroom was available.
- Certification of Proposition 90 for the November Ballot: Proposition 90 was certified on June 27, 2006, and contained, among other provisions, a retroactivity clause that might have implicated the Kramer Litigation.
- Kramer Requested Settlement Meeting: Kramer met with Agency staff on August 18, 2006, to discuss settlement. Kramer Metals demanded \$18 million for his property based on his contention that Proposition 90 would pass and the Agency would be prohibited from condemning his property. Agency staff rejected Kramer's demand and indicated that the Agency was still unwilling to consider Kramer Metals' prior demand of \$11 million with a reservation of appellate rights.
- Trial Commenced as Long-Cause: On August 23, 2006, Judge Warren Ettinger was assigned the Kramer Metals matter for trial. Motions in Limine were argued and taken under submission by the Court on September 21, 2006. A jury pool was sworn in on September 22, 2006.
- Stanley Kramer Appeared on "Today in LA": On September 21, 2006, Kramer and his attorney, Allison Burns, appeared on "Today in LA", the morning news show on KNBC, and made potentially prejudicial statements regarding the Agency's acquisition of the Kramer Property.
- Court Vacated Trial Date: The Agency's counsel brought the statements made by Kramer and his attorney on "LA Live" to the attention of the Court and

requested that an appropriate instruction be crafted to assure that the jury was not tainted and to curtail further comments to the media about the facts of the case during the course of the trial.

On September 22, 2006, after viewing the interviews on his own, the Court ordered that none of the parties or their counsel make further media comments. Following a briefing on the issue of a trial continuance until after the November elections, the Court vacated the trial date and scheduled a status conference for November 9, 2006.

3. Jury verdict for real property valuation and post-trial related activity

The valuation trial was held in December 2006, and the jury awarded Kramer \$4,830,000, the amount of the Agency's trial appraisal of the Kramer Property. Kramer had sought an award of \$6,640,000, including severance damages. The jury found against Kramer on the issue of severance damages. Since the jury sided with the Agency on the valuation issue, Kramer did not receive an award of attorney's fees and litigation costs, which likely would have exceeded \$1 million. Only the loss of business goodwill and an apportionment of the award, if any, between Kramer and M&A Gabae remain as issues in the litigation.

On February 9, 2007, the Agency met with Kramer and his counsel in order to mediate a global settlement of the Kramer Litigation, including resolution of any appellate issues. Kramer rejected any settlement proposal that did not include a right of first refusal for Kramer to acquire the Project once built. Consequently, the mediation terminated and the parties must now prepare to complete the goodwill valuation trial, which is currently scheduled for August 20, 2007.

SERVICES AND PROPOSED AMENDED BUDGET:

In January 2005, the Board approved an increase to the purchase order for the condemnation of the Kramer Property in the amount of \$175,000 (from \$75,000 to \$250,000). That budget provided for a scope of services from "Assessment & Development" through trial.

In June 2006, the Board approved a budget increase of \$502,000 (from \$250,000 to \$752,000) that was intended to cover anticipated litigation costs to completion of the valuation trial. At that time, the valuation trial was scheduled for May 30, 2006 on the short cause calendar. As noted above, Kramer then engaged a number of litigation tactics that resulted in the trial being removed from the short-cause calendar, placed on the long-cause calendar and delayed until November 2006. Such tactics generated unanticipated additional attorneys fees and litigation-related expenses of \$200,000 from June through December 2006.

It is anticipated that the cost of completing the goodwill business valuation trial and any enforcement related post-trial motions will cost \$140,000 for the balance of 2007. This is in addition to the \$200,000 generated from the delay tactics occurring from June 2006 through December 2006. Thus, staff anticipates an appropriate budget amendment of \$390,000 will complete the Kramer Litigation. The Outside Counsel Committee, in May 2007, approved the increase of \$390,000 to the purchase order for Kelly Lytton legal services in connection with the completion of the Kramer Litigation.

Specifically, the increase to the purchase order will be used for the following activities:

(1) The cost of the long cause trial and related legal motions before Judge Warren Ettinger from June 2006 through December 2006;

(2) Legal work related to any claim for additional interest on the funds on deposit. The CRA contends that Kramer is not entitled to such interest because Kramer has remained in possession of the property. Kramer's demand for interest will likely exceed \$400,000;

(3) The trial on goodwill;

(4) Relocation-related issues; and,

(5) Writ work to remove Kramer Metals from the Kramer Property.

EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION

Kelly, Lytton & Vann is bound by the Agency's Equal Opportunity Program and Living Wage policies.

Cecilia V. Estolano
Chief Executive Officer

By:

Glenn F. Wasserman
Chief Operating Officer

There is no conflict of interest known to me that exists with regard to any Agency officer or employee concerning this action.