COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF LOS ANGELES, CA

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M E M O R A N D U M

DATE: DECEMBER 16, 2004 HW2600

TO: AGENCY COMMISSIONERS

FROM: ROBERT R. OVROM, CHIEF EXECUTIVE OFFICER

RESPONSIBLE PARTIES: CURT HOLGUIN, DEPUTY CITY ATTORNEY
HELMI HISSERICH, REGIONAL ADMINISTRATOR

SUBJECT: INCREASE OF PURCHASE ORDER AMOUNT FOR LAW FIRM OF DEMETRIOU, DEL GUERCIO, SPRINGER & FRANCIS BY $100,000 (FROM $75,000 TO $175,000) FOR LITIGATION AND SETTLEMENT SERVICES RELATED TO ULLMAN INVESTMENTS LTD. AND LARRY WORCHELL VS. AGENCY, CITY AND MTA (LASC CASE NO. BS 0877745)
HOLLYWOOD REDEVELOPMENT PROJECT AREA
CD13

RECOMMENDATION

That the Agency, subject to City Council review and approval, authorize the Chief Executive Officers or designee to increase the purchase order amount for the law firm of Demetriou, Del Guercio, Springer and Francis by $100,000 (from $75,000 to $175,000) for additional legal services related to litigation and settlement of Ullman Investments Ltd. and Larry Worchell v. Community Redevelopment Agency, City of Los Angeles, and Metropolitan Transit Authority (LASC Case No. BS 0877745) currently in the Superior Court – County of Los Angeles.

SUMMARY

The Plan Amendment And Its Final EIR

In December 2001, the Agency proposed a First Amendment (“First Amendment”) to the Hollywood Redevelopment Plan (“Plan”) to restore the power of eminent domain to the Hollywood Redevelopment Project Area (“Project Area”). The First Amendment was also intended to make technical corrections to the Plan. The First Amendment did not establish any new policies, standards or limitations on development in the Project Area.

On September 17, 2002, Public Resources Code Sec. 21090 (“Redevelopment Plans Deemed A Single Project”) was amended to create various types of EIRs for redevelopment plans, and to specify labeling of those EIRs. (See BACKGROUND.) One newly created type of EIR was a “project EIR” which is intended to: (i) evaluate in detail proposed redevelopment plans which

describe anticipated redevelopment projects which implement such plans; but (ii) conduct further detailed CEQA analysis of those redevelopment projects (when actually submitted) unless the conditions of CEQA Guidelines Sec. 15162 are met. Guidelines Sec. 15162 eliminates the need for a subsequent EIR for a project unless there are substantial changes in the project or the circumstances under which the project was undertaken, or new information becomes available which was not known at the time the EIR for the project was certified. This Guidelines Sec. implements Public Resources Code Sec. 21166.

On March 13, 2003, the Agency Board certified a Final EIR for the First Amendment ("Final EIR"). The Final EIR described three development scenarios for the Project Area, each assuming different development patterns (and each using different development densities). These three development scenarios assumed a development project on the block bounded by Hollywood Boulevard, Vine Street, Selma Avenue, and Argyle Avenue ("Project Site"). The Final EIR analyzed in detail the direct and indirect environmental impacts of this development project on the Project Site to the extent of information then available to Agency staff.

The Final EIR was labeled "project EIR" because it was intended to: (i) evaluate in detail three future development scenarios for the Project Area; but (ii) minimize CEQA review of later submitted development projects which implemented those scenarios, including one on the Project Site. Thus, the Final EIR met the definition of "project EIR" in amended Sec. 21090. Prior to Sec. 21090's amendment, however, this EIR (then in the "Draft EIR" stage) was labeled a "program EIR". This was because CEQA Guidelines Sec. 15168 mandated that a redevelopment EIR be treated like a "program EIR" (i.e., a series of actions that constitute one large project) and Sec. 21090 had not yet been expanded to include other types of EIRs for redevelopment plans.

The Project And Its Addendum To The Final EIR

In May 2001, the Agency and MTA issued a joint Request for Proposals ("RFP") for redevelopment of the Project Site. The Site includes both parcels owned by "Petitioners" (defined below) and parcels owned by MTA which are used for the entrance to its Metro Red Line station. The team of Legacy Partners 2480 LLC and Gatehouse Hollywood Development LP (collectively, "Developer") responded to the RFP, along with other companies.

On September 20, 2002, the Agency and MTA executed an Exclusive Right to Negotiate Agreement ("ENA") with the Developer. During the ENA period, an 806,000 square foot commercial, retail and residential mixed-use project was negotiated for the Project Site ("Project"). The Project includes: (i) up to 300 apartment and 100 condominium units with approximately 452,000 square fee of total floor area; (ii) up to 400 hotel rooms with approximately 254,000 square feet of floor area; (iii) up to 100,000 square feet of retail or other commercial floor area; and (iv) up to approximately 1,160 parking spaces. Restoration of the Agency's power of eminent domain (through the First Amendment) is needed to assemble the land for the Project Site. A diagram of the Project Site showing the Project's proposed uses is set forth on Attachment "A" hereto.

On December 4, 2003, the Agency Board adopted an Addendum to the Final EIR ("Addendum") to document the increased size of the Project, and establish that a Subsequent EIR was not required. The Addendum was prepared under authority of CEQA Guidelines Sec. 15164(a) which allows addendums to previously certified EIRs if "some changes or additions are

necessary but none of the conditions in Guidelines Sec. 15162 calling for preparation of subsequent EIRs have occurred." The Addendum provides a detailed analysis of the Project's significant environmental impacts (in the context of the anticipated project's impacts already identified in the Final EIR). The Addendum's analysis demonstrates that the Project did not trigger any of the conditions of Sec. 15162 which would have required preparation of a subsequent EIR. (See statement of those conditions above.)

The City And MTA Roles In The Project

On January 13, 2004, the City Council approved the Project by approving the two Disposition and Development Agreements ("DDAs") which implement it, and adopting the Agency's CEQA findings about the correctness of the Addendum.

On June 26, 2003, the MTA authorized its CEO to enter into a joint development agreement with the Agency to develop the Project, and ground lease its parcels to the Developer subject to satisfaction of certain conditions. On May 25, 2004, the MTA approved conceptual site plans for the Project and a modification of its land swap with the Developer. On this same day, the MTA (acting as a responsible agency under CEQA) adopted findings and a statement of overriding considerations consistent with the Addendum's conclusions and the Agency's CEQA findings and statement of overriding considerations.

The Lawsuit Against The Agency, City And MTA

On January 9, 2004, Ullman Investments Ltd. and Larry Worchell ("Petitioners") filed a writ of mandamus action in the Superior Court against the Agency. This action is aimed at invalidating the Addendum and DDA approvals, and mandating preparation of an EIR for the Project. This action alleges that the Agency violated CEQA in the following ways:

(1) The Final EIR is, in reality, a "program EIR" because it does not analyze the site-specific environmental impacts of the subsequently proposed Project.

(2) The Final EIR was wrongly labeled a "project EIR" in order to avoid significant CEQA review of the subsequently proposed Project.

(3) An Initial Study leading to an EIR for the subsequently proposed Project should have been prepared (rather than the Addendum to the Final EIR which was prepared).

(4) The Addendum to the Final EIR documents numerous significant environmental impacts of the Project, which requires that an EIR be prepared to evaluate and mitigate those impacts.

The Agency engaged Demetriou, Del Guercio, Springer and Francis (the "Demetriou Firm") as outside counsel to defend against Petitioners' writ action. The Demetriou Firm submitted an initial budget estimate of $75,000 to handle the pre-trial stage of this action, including preparation of the Administrative Record. The initial budget is on Attachment "B" hereto.

During the pre-trial period, the Demetriou Firm established three Agency defenses to Petitioners' allegations. First, Petitioners are barred by the statute of limitations from challenging the "project EIR" label of the Final EIR. This is because they failed to challenge it during this EIR's administrative hearing process and failed to sue during the statutory period

following this EIR's certification. Second, the Final EIR is nonetheless a "project EIR". Third, substantial evidence supports the Agency's determinations that none of the legal requisites (under Sec. 15162) for preparing a subsequent EIR for the Project occurred. Therefore, the Addendum was the proper environmental review document for the Project.

The Need To Increase Outside Counsel Fees To Defend The Lawsuit

The Demetriou Firm's initial budget needs to be increased because: (i) the discovery stage of this litigation generated several unique and unexpected cost increases; (ii) the trial preparation stage of this litigation used up almost its entire budgeted amount in preparing for a December 12, 2004 trial date; and (iii) settlement negotiations began, which generated their own unique and unexpected cost increases. The unique and unexpected cost increases were due to:

(1) Petitioners' Amendments To Writ Action -- Petitioners' twice sought to amend their writ action to add allegations against the City's approval of the Addendum and the DDAs, and to add MTA as a defendant. As a result, the Demetriou Firm had to negotiate amendments of the write petition, participate in additional settlement meetings, and coordinate and process stipulations and orders regarding the briefing schedule, hearing date, and length of briefs.

(2) City and MTA Requests For Assistance -- As the Project was Agency-initiated (and the DDAs were Agency-negotiated), the City requested the Demetriou Firm to prepare and coordinate all pleadings as "joint Agency-City pleadings" and prepare the City's portion of the Administrative Record. Since the Demetriou Firm was already preparing the joint Agency- City Administrative Record, the MTA also requested the Firm to prepare its portion of that Record so there would be only one Record at trial. The Demetriou Firm did so.

(3) Unorthodox Administrative Record -- Petitioners demanded that the Agency exclude in the Administrative Record many documents referenced in the Final EIR for the First Amendment to the Hollywood Redevelopment Plan. Normally, these documents would be properly included in that Record. In total, the Demetriou Firm identified approximately 11,0000pages of documents that would normally have been included in the Record. However, to avoid expensive pleadings and hearings over this demand, the Demetriou Firm negotiated an agreement with Petitioners to delete these documents (but be able to cite from them as if they were in the Record). The City and MTA agreed with this solution and all signed a stipulation with Petitioners to that effect.

(4) Unusually Lengthy Administrative Record -- The Administrative Record for this writ action reaches back 18 years to the 1986 Plan adoption by the Agency Board. Thus, it includes voluminous documents related to this Plan adoption as well as the 2003 Plan amendment and Final EIR, and the 2004 Project and DDA approvals (with related Addendum to that EIR). In all, the Demetriou Firm evaluated over 14,000 pages of documents to determine whether such documents should be included in the Administrative Record. Without the solution discussed above, the Record would have contained approximately 11,000 pages. The Record ultimately certified consisted of 159 documents consisting of 6,197 pages.

(5) Complex Settlement Negotiations -- Petitioners' and Developers' unexpected decision to attempt settlement has required the Demetriou Firm to attend or monitor negotiations and review and critique settlement proposals and related documents (e.g., Purchase Agreements and a Confidentiality Agreement). A draft Settlement Agreement is anticipated from these

negotiations in the next 30 days which will require legal review and consultation by the Demetriou Firm.

For the above reasons, the initial $75,000 pre-trial budget was completely expended and approximately $65,000 of the $100,000 budget increase being sought has already been expended. (The Revised Budget of the Demetriou Firm showing this $100,000 amount is on Attachment C hereto.) The Revised Budget has been transmitted to the City Attorney's Outside Counsel Review Committee for review and approval.

RE

November 15, 2001 -- Agency approval of Authorization to Execute Contracts with 25 Law Firms To Serve As Agency Outside Legal Counsel for a Three Year Period.

January 29, 2002 -- City Council approval of Authorization to Execute Contracts with 25 Law Firms To Serve As Agency Outside Legal Counsel for a Three Year Period.

SOURCE OF FUNDS

Hollywood Tax Increment.

PROGRAM AND BUDGET IMPACT

Section 12.21 of the DDAs provides that the Developer shall indemnify the Agency for its attorney costs and fees related to litigation which challenges the "environmental review conducted for the Project and the Agency's actions related thereto under CEQA." Thus, the entire $175,000 amount of the Revised Budget will be reimbursed to the Agency by the Developer.

ENVIRONMENTAL REVIEW

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

BACKGROUND

The Robert Blue Vs. Agency And City Lawsuit

On July 17, 2003, Robert B. Blue, Betty L. Blue, David Morgan and others ("Blue Plaintiffs") filed a validation action in Superior Court challenging the Agency's and City's adoption of the First Amendment. The Blue Plaintiffs contend that the legal pre-requisites for a redevelopment project area no longer existed in Hollywood (i.e., blight and economic infeasibility of private development without a redevelopment project area). On August 8, 2004, a one day trial was held on this validation action without decision by Judge Andria Richey. Judge Richey asked for additional briefing by the parties on the economic infeasibility issue.

On November 11, 2004, Judge Richey issued a trial ruling in the CRA's favor on all issues. However, all defendant parties believe that the Blue Plaintiffs will appeal this trial ruling. This appeal would probably not be heard until summer or fall of 2005, thus keeping the Project in

“legal limbo” until that time. This is because of the legal uncertainty of utilizing the Agency’s restored power of eminent domain to assemble the Project Site while a judicial appeal involving that power is still under consideration. For these reasons, the Petitioners and Developer have commenced negotiations to settle Petitioners’ lawsuit by way of Developer acquisition of Petitioners’ parcels which lie within the Project Site.

The Amended Public Resources Code Sec. 21090

Section 21090 (“Redevelopment Plans Deemed A Single Project – Exceptions”) was amended by State Urgency measure on September 17, 2002. It now reads:

(a) An environmental impact report for a redevelopment plan may be a master environmental impact report, program environmental impact report, or a project environmental impact report. Any environmental impact report for a redevelopment plan shall specify the type of environmental impact report that is prepared for the redevelopment plan.

(b) If the environmental impact report for a redevelopment plan is a project environmental impact report, all public and private activities or undertakings pursuant to, or in furtherance of, a redevelopment plan shall be deemed to be a single project. However, further environmental review of any public or private activity or undertaking pursuant to, or in furtherance of, a redevelopment plan for which a project environmental report has been certified shall be conducted if any of the events specified in Sec. 21166 have occurred.

Robert R. Ovrom
Chief Executive Officer

By:

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Richard L. Benbow
Chief Operating Officer

There is no conflict of inter4est known to me, which exists with regard to any Agency officer or employee concerning this action.

Attachment A – Diagram Showing Project Site
Attachment B – Initial Budget of the Demetriou Firm
Attachment C – Revised Budget of the Demetriou Firm