

MEMORANDUM

DATE: DECEMBER 16, 2004 CH6990

TO: AGENCY COMMISSIONERS

FROM: ROBERT R. OVROM, CHIEF EXECUTIVE OFFICER

RESPONSIBLE  
PARTIES: CURT HOLGUIN, DEPUTY CITY ATTORNEY  
LILLIAN BURKENHEIM, PROJECT MANAGER

SUBJECT: INCREASE OF WORK ORDER AMOUNT FOR THE LAW FIRM OF FOX &  
SOHAGI BY \$ 25,000 (FROM \$245,000 TO \$ 270,000) FOR LITIGATION  
AND SETTLEMENT SERVICES RELATED TO DEVELOPER'S  
PERMITLESS DEMOLITION OF HISTORIC "GIESE RESIDENCE",  
DEVELOPER'S SUBSEQUENT LAWSUIT AGAINST AGENCY AND CITY,  
AND SUBSEQUENT SETTLEMENT OF THAT LAWSUIT  
CHINATOWN REDEVELOPMENT PROJECT AREA  
CD1

RECOMMENDATION

That the Agency, subject to City Council review and approval, authorize the Chief Executive Officer, or designee, to increase the work order amount for the law firm of Fox & Sohagi ("Fox & Sohagi") in the amount of \$25,000 (from \$245,000 to \$270,000) for additional legal services related to the litigation and settlement of Palmer Boston Street Properties II vs. City of Los Angeles and Community Redevelopment Agency (USDC Case No. CV03-6402-SVW), currently in the United States Federal District Court - Central District of California.

SUMMARY

The Illegal Demolition Of The Giese Residence

In June 2002, Palmer Boston Street Properties II ("Palmer") filed an application with the Agency for clearance of a permit to allow demolition of a 19<sup>th</sup> century residential building known as the "Giese Residence" located near the southeast corner of Figueroa Street and Cesar Chavez Avenue in the Chinatown Redevelopment Project Area ("Project Area"). A map of the Project Area showing the location of the Giese Residence is appended hereto as "Attachment A". The demolition of the Giese Residence was sought to develop Phase II of Palmer's luxury residential project known as "Orsini II". Agency staff determined that the Giese Residence was potentially historically significant, and accordingly, that an Environmental Impact Report ("EIR") must be prepared before a clearance of the demolition permit could be issued.

On October 31, 2002, Agency staff advised Palmer's legal counsel of its EIR determination. However, Palmer disagreed and refused to prepare the EIR based on the contrary conclusions of its own historic consultant.

On April 19, 2003, Palmer's crews demolished the Giese Residence without a permit and without prior preparation of an EIR. Just two days prior to this demolition, a team of historic preservationists, Agency staff, and City officials had met to finalize a plan to have the Giese Residence relocated at no expense to Palmer.

On November 18, 2003, the Board of Building & Safety Commissioners voted to invoke the City's Scorched Earth Ordinance ("Ordinance") against Palmer for the permitless demolition of the Giese Residence. The Ordinance was enacted to deter precisely this type of preemptive illegal demolition of historic structures. The Ordinance was imposed on the Orsini II site for the maximum 5-year period specified therein. Thus, the development of Palmer's Orsini II project was effectively banned for five years.

#### The Litigation Against The Agency And City

On September 8, 2003, Palmer filed a complaint against the Agency and City in Federal District Court. Palmer alleged the Agency violated its procedural due process, substantive due process, and equal protection rights under the US Constitution. As grounds for these allegations, Palmer contended that the Agency: (i) failed to timely act on Palmer's application for the demolition permit; (ii) refused to issue a Mitigated Negative Declaration for the proposed demolition, instead of requiring an EIR; (iii) failed to itself prepare and certify that EIR for the proposed demolition; and (iv) exposed Palmer to substantial risk of civil and criminal liability arising out of the public nuisance created by the dangerous conditions of the Residence. Palmer demanded \$10 million in damages against the Agency and the City, and an injunction against the City's continued application of the Ordinance to the Orsini II site.

The Agency engaged Fox & Sohagi as outside litigation counsel to defend against this complaint. Fox & Sohagi submitted an initial budget estimate of \$75,000 to handle the litigation (Attachment B hereto).

On October 20, 2003, the Agency filed a Motion to Dismiss the lawsuit. The Court denied this Motion (as well as the City's Motion to Dismiss) and instructed both parties to answer Palmer's complaint. This denial put in motion the document-producing, deposition-intensive, time-consuming, and expensive discovery stage of the lawsuit. Additionally, on February 9, 2004, the Court imposed an extremely short 2-month period for the parties to prepare Motions for Summary, oppositions thereto, and replies to the opposition.

On March 8, 2004, the Agency filed its Motion for Summary Judgment on the procedural and substantive due process claims. If granted, the Agency is dismissed from the lawsuit without need to go to trial. The Court granted the Agency's Motion with respect to the Palmer's equal protection claim. The Court denied the Agency's Motion with respect to Palmer's substantive due process claim, but indicated it was disposed to granting it once the Court ruled on limited additional discovery issues.

Contemporaneous with the Agency's (and City's) filing of Motions for Summary Judgment, Palmer commenced settlement negotiations of the lawsuit. These negotiations started as bilateral Palmer-City negotiations because the chief remedy sought by Palmer was release from the City's Scorched Earth ban on the Orsini II site. The negotiations evolved into trilateral Palmer-City-Agency negotiations as the Agency needed to present its requirements for settlement. It is unlikely that

Palmer would have commenced settlement negotiations without the Court's granting (in part) the Agency's Motion for Summary for Summary Judgment.

#### The First Budget Increase

On June 3, 2004, the Agency Board approved a budget increase of \$170,000 for Fox & Sohagi (from \$75,000 to \$245,000) to pay for the unexpectedly accelerated and hostile discovery and trial preparation stages of the lawsuit; and for future services to negotiate a settlement of the lawsuit. The \$170,000 increase was approved because several unique and unexpected factors combined to significantly increase Fox & Sohagi's initial \$75,000 budget estimate. These factors were: (i) the trial judge's compressed time schedule imposed on the parties; (ii) Palmer's multiple and lengthy document demands on the Agency; (iii) Palmer's document demands on third parties (which required Fox & Sohagi's review); and (iv) Palmer's numerous and hostile discovery disputes. A copy of the first Revised Budget Estimate of \$245,000 is on Attachment C hereto.

#### The Settlement Agreement Ending The Litigation

On July 19, 2004 the Agency, City and Palmer executed a settlement agreement resolving three Palmer lawsuits, the 5 year ban on development of the Orsini II project, and multiple contentious issues among the parties ("Settlement Agreement"). Fox & Sohagi (working long hours with Agency and City staff) successfully negotiated and drafted the Settlement Agreement. This Agreement is unique in that Palmer (the suing plaintiff) agreed to pay the Agency and City to settle the lawsuit. In summary, the Agreement: (i) obligated Palmer to dismiss the federal lawsuit against the Agency and City as well as his two state lawsuits against the City; (ii) obtained for the Agency a Palmer obligation to construct \$200,000 of streetscape improvements adjacent to the Orsini II project site; (iii) obtained for the City a \$200,000 Palmer cash contribution to mitigate Orsini II impacts on the surrounding area; (iv) obtained for the community 100 permanent and 60 interim parking spaces, as well as a set of Palmer design improvements to the proposed Orsini II (and the built Orsini I) to create a more pedestrian-friendly environment; and (v) obligated Palmer to submit Orsini II through the discretionary review processes of both the City and Agency.

#### The Second Budget Increase

Since the Settlement Agreement was executed, several additional and unforeseen events occurred which require a \$ 25,000 budget increase. These were:

(1) Palmer's Revision of Project -- in September 2004, Palmer revised the "Project" to add Orsini III (described in BACKGROUND section) to Orsini II. This revision required substantial additional work of Fox & Sohagi to assist Agency staff in reviewing newly drafted "Project" documents including the revised MND and its subsidiary documents (e.g., new traffic study, new site plan).

(2) Palmer's Errors in CEQA Documentation -- in reviewing the revised MND, Fox & Sohagi found multiple errors and deficiencies which, left uncorrected, will subject the revised "Project" to legal challenge. Such legal challenges would be directed at the Agency and City if they issue discretionary approvals for the revised "Project" based on a deficient MND. Accordingly, Fox & Sohagi spent substantial time in preparing technical and legal comments for the Agency's "comment letter" on the MND.

(3) Parties' Need For Settlement Manager -- the complex and timeline-oriented nature of the Settlement Agreement required that someone monitor and manage the parties' performances of settlement-related activities. The Agency and City wished Fox & Sohagi to perform that role with substantial attorney time required for interacting with the parties, interpreting their obligations under the Settlement Agreement, drafting letters which clarified those obligations, and assembling a record confirming Agency compliance with its obligations.

(4) Additional Legal Work To Implement Settlement -- Based on the above, Agency and City Attorney staff anticipate the following additional work for Fox & Sohagi: (i) at least one additional round of review and critique of a further revised MND and its constituent documents; (ii) continued counsel on implementation of the parties' duties under the Settlement Agreement; and (iii) continued assistance in resolving disputes with Palmer such as the current dispute over who "caused" the Project to be revised and the impact of such revision on the Settlement Agreement's timeline.

As a result of (1) through (3) above, Fox & Sohagi has exceeded its \$245,000 Budget by approximately \$9,000. Accordingly, Agency staff asked Fox & Sohagi to prepare a Revised Budget of \$25,000 (from \$245,000 to \$270,000) to complete the "implementation stage" of the Settlement Agreement (Attached D 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

June 3, 2004 - Agency approved of \$170,000 increase in work order amount of Fox & Sohagi (from \$75,000 to \$245,000) for Palmer Boston Properties II vs. City of Los Angeles and Community Redevelopment Agency

July 9, 2004 -- City Council approval of \$170,000 increase in work order amount of Fox & Sohagi (from \$75,000 to \$245,000) for Palmer Boston Properties II vs. City of Los Angeles and Community Redevelopment Agency

## SOURCE OF FUNDS

Chinatown General Revenue.

## PROGRAM AND BUDGET IMPACT

Existing funds will be used that are currently set aside in Chinatown Response to Development Opportunities (CH9990) for unanticipated legal expenses. Since resources have already been set aside in the current budget for this purpose there will be no net impact to the FY 05 Budget and Work Program.

## ENVIRONMENTAL REVIEW

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

## BACKGROUND

### Palmer’s Recent Projects

Palmer has built or is currently building several luxury housing projects in the City of Los Angeles. These include: (i) the completed Orsini I project, a 297 unit, 4 story rental complex (with ground level retail and subterranean parking) located on the southwest corner of Figueroa Street and Cesar E. Chavez Avenue; (ii) the planned Orsini II project, a 600 plus unit, 4 story project (also with ground level retail and subterranean parking) to be located on the southeast corner of Figueroa Street and Cesar E. Chavez Avenue; and (iii) the planned Orsini III project, a 300 unit luxury rental complex (with ground level retail and subterranean parking) to be located on the northeast corner of Figueroa Street and Cesar E. Chavez Avenue. Palmer’s other luxury rental unit projects include the completed Medici project (near Eighth Street and the Harbor Freeway); the under construction Piero project (near Sixth and Bixel Streets); and the planned Visconti project in City Center West.

### The Giese Residence

This lawsuit concerns Palmer’s illegal demolition of a residential structure known as the “Giese Residence,” formerly located at 840-844 West Cesar E. Chavez Avenue. The property is located within the Chinatown Redevelopment Project Area.

According to the historical evaluation prepared by Palmer’s own expert Roger Hathaway, the Giese Residence was originally built in the 1880s, during a period known to City historians as the “Boom of the Eighties.” The builders were the noted Beaudry Brothers. The architectural style is known as “Queen Anne” or “Queen Anne cottage.” In 1914, the original residence was incorporated into a larger building as the upper story of a 4-unit apartment building, an event that Hathaway considered in itself “historic.”

In 1981, the Giese Residence was recognized as potentially eligible for listing in the National Register of Historic Places in an architectural/historical survey prepared for CRA by the same Roger Hathaway. In February 2002, Hathaway again surveyed the Giese Residence (this time for Palmer) and surrounding buildings, and again concluded in his report that “This building does appear to qualify for listing in the California Register of Historic Places.”

In June 2002, Hathaway again observed in a follow-up report that “the original residence must be regarded as a prime example of the “Boom of the Eighties” architecture in Los Angeles,” and “an example of hillside residential architecture as pioneered by the Beaudry Brothers.” However, Hathaway also stated in his June 2002 report that he was now persuaded that the Giese Residence would no longer qualify as eligible for listing due to deterioration and vandalism occurring since his

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February 2002 report. This conclusion was disputed by others, setting the stage for the dispute between Agency staff and Palmer on the level of CEQA review required prior to the Residence's demolition.

Robert R. Ovrom  
Chief Executive Officer

By:

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Richard L. Benbow  
Chief Operating Officer

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

Attachment A – Site Map Showing “Giese Residence”  
Attachment B – Fox & Sohagi Initial Budget  
Attachment C – Fox & Sohagi First Revised Budget  
Attachment D – Fox & Sohagi Second Revised Budget