



THE CITY OF SAN DIEGO

## Redevelopment Agency's Report

DATE ISSUED: April 22, 2009

REPORT NO.: RA-09-13

ATTENTION: Honorable Chair and Members of the Redevelopment Agency  
Docket of April 28, 2009

SUBJECT: Second Amendment to the Agreement for Legal Services with Kane, Ballmer  
& Berkman

### REQUESTED ACTION:

Approve the Second Amendment to the Agreement for as-needed Special Legal Services between the Redevelopment Agency and Kane, Ballmer & Berkman to allow an additional amount of \$1,090,000 to the maximum amount that may be expended under said contract.

STAFF RECOMMENDATION: Approve the requested action.

### SUMMARY:

Since 1972, the Redevelopment Agency of the City of San Diego has engaged the services of highly specialized and experienced legal counsel to assist the City Attorney's Office in handling complex issues associated with the California Community Redevelopment Law (Cal. Health & Safety Code 33000, et. seq.). Currently these services are provided by the law firm of Kane, Ballmer & Berkman in accordance with an agreement for as-needed services ["Agreement"] which was adopted by the Redevelopment Agency on April 2, 2007 under Resolution Number R-04124.

The firm of Kane, Ballmer & Berkman was selected as a result of a Request for Qualifications (RFQ) issued in 2006 by the Office of the City Attorney and the Redevelopment Agency of the City of San Diego. The criteria used in ranking the firms which responded to the RFQ included competitiveness of fees, redevelopment expertise, responsiveness and commitment to equal employment opportunity. Based on the stated criteria, the firm of Kane, Ballmer & Berkman was the unanimous choice of the selection panel. While ranked as one of the preeminent Redevelopment firms in California, Kane, Ballmer & Berkman proposed the lowest fees in terms of hourly rates of all the firms that responded to the RFQ. Kane, Ballmer & Berkman has extensive, specific experience in the issues that face the Redevelopment Agency and can draw from their knowledge and involvement in redevelopment projects throughout the state to provide expert and up to date legal services to the Agency.

On April 8, 2008, the Agency adopted the First Amendment to the Agreement to increase the maximum compensation by \$1,145,000 for a total compensation of \$3,035,000 (Resolution No. 04251). The three-year Agreement is effective through the end of March 2010. While the agreement may be extended for two (2) additional one (1) year periods with approval of the Redevelopment Agency Board, no extensions of time are proposed at this time.

The proposed amendment would increase the maximum compensation currently permitted under the Agreement by \$1,090,000 for a cumulative maximum amount of \$4,125,000.

CCDC and the City's Redevelopment Division anticipate expenditures for the remainder of the term of the Agreement to exceed the amount that was previously estimated. SEDC anticipates being able to stay within their current allocation through the remainder of the term of the Agreement.

Since the Agreement has been in place, CCDC has spent much of its anticipated allocation on special counsel services required for some very complex projects, including the 7<sup>th</sup> and Market Street project, the San Diego Marriott Ballpark Village and several affordable housing projects.

The City's Redevelopment Division has spent the majority of its allocation to date on litigation services associated with the Mercado site in Barrio Logan and the Grantville Redevelopment Plan. Special legal counsel services provided under the subject Agreement has also been utilized on the North Park, City Heights and the Naval Training Center Redevelopment Project Areas. Minor expenditures have also accrued in the North Bay, San Ysidro and College Community Redevelopment Project Areas.

It is anticipated that SEDC, CCDC and the City's Redevelopment Division will continue to need the specialized legal services that Kane, Ballmer & Berkman provides in coordination with the City Attorney's Office. The services provided include legal assistance in the negotiation and preparation of development agreements, assistance with litigation, support for redevelopment plan adoptions and amendments, and consultation on significant redevelopment matters. Kane, Ballmer & Berkman also provide timely information and guidance to SEDC, CCDC and the City's Redevelopment Division in regards to new legislation affecting redevelopment agencies. All services provided are carried out under the direction of the City Attorney's Office.

CCDC expects to continue the use of the specialized legal counsel for the San Diego Marriott Ballpark Village, 9<sup>th</sup> and Broadway, 15<sup>th</sup> and Commercial, COMM 22, Pier, and Mason Hotel as well as several affordable housing projects. It is also anticipated that CCDC will use the Kane, Ballmer & Berkman services for the Civic Center Complex Exclusive Negotiation and Disposition and Development Agreements provided the City of San Diego decides to pursue said project.

The City's Redevelopment Division will continue to require the legal services provided by Kane, Ballmer & Berkman due to ongoing litigation associated with the Mercado site in the Barrio Logan Redevelopment Project Area and current litigation between the Agency and the San

Diego State University Foundation in the College Community Redevelopment Project Area. Additionally, funds are expected to be needed to address current and future projects in the following redevelopment project areas: City Heights, North Bay, San Ysidro, Crossroads, North Park, Naval Training Center, Grantville and Barrio Logan. Additional funds are also anticipated to be spent to address current issues associated with the Affordable Housing Program.

FISCAL CONSIDERATIONS:

The following table summarizes the maximum expenditures currently allowed under the Agreement as amended by the First Amendment adopted on April 8, 2008:

**Table 1: Maximum Expenditures Allowed under Agreement**

	Total Contract Authorization as Approved by the Agency March 07	Additional Funds Authorized per First Amendment	Total Funds Authorized with the First Amendment April 08
SEDC	\$615,000	\$200,000	\$815,000
CCDC	\$600,000	\$300,000	\$900,000
City	\$675,000	\$645,000	\$1,320,000
<b>Total</b>	\$1,890,000	\$1,145,000	\$3,035,000

The following table shows approximate expenditures on this contract through February of this year:

**Table 2: Expenditures through and including February 2009**  
**Fiscal Years 2007 - 2009**

	Actual Expenditures 3/07 – 2/09
SEDC	\$ 454,000
CCDC	\$ 900,000
City	\$ 1,161,000
<b>Total</b>	\$ 2,515,000

All expenditures to date have been within the approved budgets for Fiscal Years 2007, 2008 and 2009.

The following table shows the authorized maximum expenditures to date as well as the proposed increase and its allocation:

**Table 3: Current and Proposed Maximum Expenditures**  
**Fiscal Years 2007 – 2010**

	Total Authorization as Approved by the Agency March 07	Additional Funds Authorized per First Amendment April 08	Total Funds Authorized with the First Amendment	Additional Funds Proposed to be Authorized with the Second Amendment	Total Funds Authorized with Approval of the Proposed Second Amendment
SEDC	\$615,000	\$200,000	\$815,000	n/a	\$815,000
CCDC	\$600,000	\$300,000	\$900,000	\$540,000	\$1,440,000
City	\$675,000	\$645,000	\$1,320,000	\$550,000	\$1,870,000
<b>Total</b>	<b>\$1,890,000</b>	<b>\$1,145,000</b>	<b>\$3,035,000</b>	<b>\$1,090,000</b>	<b>\$4,125,000</b>

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

On February 9, 2009, the CCDC Board recommended approval of the proposed second amendment to the Agreement.

EQUAL OPPORTUNITY CONTRACTING

An analysis of the Work Force Report submitted by Kane, Ballmer & Berkman on March 23, 2009, did not indicate under-representation of female employees or employees from under-represented ethnic groups. As such, and, in accordance with standard City practices, an Equal Opportunity Plan was not required.

COMMUNITY PARTICIPATION & PUBLIC OUTREACH EFFORTS:

None with this action.

KEY STAKEHOLDERS: Kane, Ballmer & Berkman, a private law firm.

Respectfully submitted,

---

Janice L. Weinrick  
Deputy Executive Director  
Redevelopment Agency

---

William Anderson  
Assistant Executive Director  
Redevelopment Agency

Attachment: Agreement by and between the Redevelopment Agency and Kane,  
Ballmer & Berkman to provide Special Legal Counsel, as amended