



THE CITY OF SAN DIEGO

DATE ISSUED: February 17, 2010

REPORT NO.: RA-10-09

ATTENTION: Honorable Chair and Members of the Redevelopment Agency
Docket of February 23, 2010

SUBJECT: Third Amendment to the Agreement with Kane, Ballmer & Berkman for As-Needed Special Legal Services

REQUESTED ACTIONS:

Approve the Third Amendment to the Agreement for As-Needed Special Legal Services between the Redevelopment Agency and Kane, Ballmer & Berkman to:

- (1) extend the term of the Agreement through March 2012;
- (2) increase the total compensation that may be expended under said agreement by \$1,700,000 for a maximum total of \$5,825,000; and,
- (3) make certain additional revisions to the Agreement, including updating the fee schedule and expense reimbursement provisions.

Authorize the City Chief Financial Officer, as delegated, to appropriate, encumber and expend tax increment funds of up to \$850,000.

STAFF RECOMMENDATION:

Approve the requested actions.

BACKGROUND:

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 approved by the Redevelopment Agency Board 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

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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 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). A Second Amendment, which raised the compensation limit to \$4,125,000, was subsequently approved by the Agency on April 28, 2009 (Resolution No. 04393). All other terms of the original Agreement remain unchanged. The Agreement, as it currently stands, is set to expire in March of 2010 and allows for two 1-year extensions.

DISCUSSION:

The proposed amendment would (1) increase the maximum compensation currently permitted under the Agreement by \$1,700,000 for a cumulative maximum amount of \$5,825,000; (2) extend the term of the Agreement through March of 2012; and, (3) amend provisions related to the fee schedule and allowed billable expenses.

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 7th & Market, Navy Broadway Complex, Ballpark Village, Smart Corner and several affordable housing projects. Special counsel services were also utilized for the Health and Human Services funding agreements and amendments to the Centre City Planned District Ordinance.

To date, SEDC has required the use of special counsel for processing amendments to redevelopment plans and the Hilltop/Euclid, Ouchi Courtyards, Imperial Avenue Corridor, Valencia Business Park and Market Creek Plaza projects.

The City's Redevelopment Division has spent a large share 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 have also been utilized to support specific redevelopment projects in the North Park, City Heights and the Naval Training Center Project Areas. Minor expenditures have also accrued in the North Bay, San Ysidro and College Community Project Areas.

The following table shows approximate expenditures on the subject special legal counsel services since the inception of the Agreement through November of 2009:

Table 1: Expenditures through and including November 2009
Fiscal Years 2007 – 2010

	Actual Expenditures 3/1/07 – 11/30/09
SEDC	\$538,000
CCDC	\$1,307,000
City	\$1,435,000
Total	\$3,280,000

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 (CAO). 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, training and guidance to the CAO, 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 to use special legal counsel for several affordable housing projects including Hotel Metro, COMM22, 15th / Commercial, 9th / Broadway, Hotel Sandford, former Atmosphere site, YMCA and others currently undergoing due diligence. It is also anticipated that CCDC will use Kane, Ballmer & Berkman’s services for the Gaslamp Renaissance Hotel, Horton Plaza, Monarch School and North Embarcadero Visionary Plan projects as well as processing an amendment to the Centre City Redevelopment Plan.

SEDC anticipates the need for special legal counsel for redevelopment plans’ merger and amendments, and negotiations for complex development agreements.

The City’s Redevelopment Division will continue to require the legal services provided by Kane, Ballmer & Berkman for ongoing litigation within the Barrio Logan Redevelopment Project Area (Mercado site and Chuey’s Numero Uno). Additional support from Kane, Ballmer & Berkman is expected to be needed for implementation of several affordable housing projects including Verbena, La Entrada, La Adalba, Mission Apartments and Village Green. It is also expected that special legal counsel will also be used to process amendments to adopted redevelopment plans and ongoing general and project-specific issues to ensure full and timely compliance with all of the Agency’s obligations.

As noted above, the proposed amendment would also extend the term of agreement through March of 2012 and would memorialize what expenses incurred in the normal course of business may be billed to the Agency.

FISCAL CONSIDERATIONS:

The following table summarizes the maximum expenditures currently allowed under the Agreement as well as the proposed increase and its allocation:

Table 2: Current and Proposed Maximum Expenditures

	<i>Original Agreement Expenditure Cap</i>	<i>Additional Funds Authorized per First Amendment APR 08</i>	<i>Additional Funds Authorized per Second Amendment MAY 09</i>	<i>Current Expenditure Cap</i>	<i>Proposed Additional Funds</i>	<i>Maximum Funds with Approval of Third Amendment</i>
SEDC	\$615,000	\$200,000	0	\$815,000	\$150,000	\$965,000
CCDC	\$600,000	\$300,000	\$540,000	\$1,440,000	\$850,000	\$2,290,000
City	\$675,000	\$645,000	\$550,000	\$1,870,000	\$700,000	\$2,570,000
Total	\$1,890,000	\$1,145,000	\$1,090,000	\$4,125,000	\$1,700,000	\$5,825,000

All expenditures to date have been within the approved budgets for Fiscal Years 2007 – 2010.

There have been no impacts to the City’s General Fund to date nor would any impacts result from the proposed actions. Funds for the remainder of Fiscal Year 2010 in the amount of \$850,000 are proposed to be encumbered at this time and are available within the Project Areas’ carryover and FY2010 capital projects budgets. Of these funds, \$500,000 are to be allocated to CCDC and \$350,000 are to be allocated to the Redevelopment Division. SEDC does not need additional funds encumbered at this time. These expenditures were taken into account when determining each Project Area’s ability to fund its CDBG repayment to the City and its estimated portion of the State’s ERAF Take and will not impact the Agency’s ability to make the CDBG repayment to the City or the FY 2010 ERAF Payment at such time it becomes legally obligated to do so. Subsequent years’ funding will be appropriated in future Agency budgets and encumbered on an as-needed basis provided the City Comptroller certifies that funds are, or will be, on deposit in the City Treasury.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None

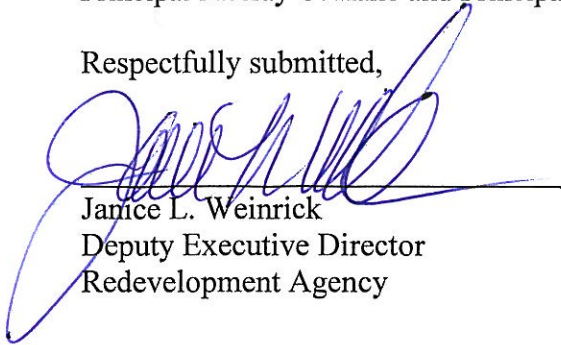
EQUAL OPPORTUNITY CONTRACTING: The Agreement is subject to the City’s Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

ENVIRONMENTAL REVIEW: This activity is statutorily exempt from CEQA pursuant to State CEQA Guidelines, Section 15262.

COMMUNITY PARTICIPATION & PUBLIC OUTREACH EFFORTS: None with this action.

KEY STAKEHOLDERS: Kane, Ballmer & Berkman, a private law firm, including Senior Principal Murray O. Kane and Principals Susan Apy and Susan Cola.

Respectfully submitted,



Janice L. Weinrick
Deputy Executive Director
Redevelopment Agency



William Anderson
Assistant Executive Director
Redevelopment Agency

- Attachment:
- (1) Agreement for Legal Services by and between the Redevelopment Agency and Kane, Ballmer & Berkman to provide Special Legal Counsel, as amended
 - (2) Proposed Third Amendment to the Agreement by and between the Redevelopment Agency and Kane, Ballmer & Berkman