



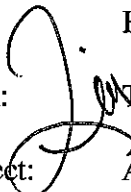
Berkeley Housing Authority

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Office of the Executive Director

Item 5B
CONSENT CALENDAR
November 17, 2011

To: Honorable Chair and Members of the Berkeley Housing Authority Board

From:  Tia M. Ingram, Executive Director

Subject: Authorizing the Executive Director to extend the contract with EJP/Praxis through June 30, 2012, and increase the contract authority by \$38,200, for a total not to exceed \$75,470.

RECOMMENDATION

Authorizing the Executive Director to execute a third amendment to the EJP/Praxis contract, extending the term through June 30, 2012, and increasing the contract authority by \$38,200, for a total not to exceed \$75,470.

BACKGROUND

BHA executed a Memorandum of Agreement (MOA) with the U.S. Department of Housing and Urban Development (HUD) in 2009 that required improvements in the management and physical condition of the 61 federally funded Low Income Public Housing units. Specifically, BHA was required to develop a plan (including financing) to rehabilitate the units, or dispose of the units by June 30, 2010. Unfortunately, some 16 months after the anticipated completion date – the project is not yet complete, and is not likely to be completed for another 12 months or more.

A disposition project is not a routine function for any public housing authority, and certainly not for an agency of our size. In fact, many larger Housing Authorities, with development staff, often contract for additional resources for larger, more complicated projects, or to supplement staff availability. We lack the internal expertise for such a project, and given that it will never be duplicated, it does not seem prudent to attempt to develop the expertise. Thus, we have relied on consultants to assist us.

EJP/Praxis responded to BHA's 2009 solicitation for a consultant to evaluate options for addressing the requirements in the MOA, and was awarded the contract. The first contract with EJP/Praxis had a term of March 26, 2009 – June 30, 2009 (Phase 1) and the second contract has an original term of October 1, 2009 – December 31, 2010 (Phase 2, extended twice now through December 31, 2011). As an example of extraordinary delays in the process, the original Developer RFQ was drafted in June 2010 and went through numerous iterations before it was released in May 2011. The consultants could not have anticipated in September 2009 all of the twists and turns the project would take.

EJP/Praxis has remained a critical player on the project, revising the Strategic Plan (March 2009); making an additional presentation to the BHA Board in April 2010 for newly appointed

Commissioners assisting with the development, evaluation and scoring of proposals from prospective developers (May 2011. In the second contract (the current contract), they are tasked to *assist* BHA in: negotiating a best and final offer, the business terms of the Development agreement, and review the master development agreement (October 2009-present); again, the term of this contract was extended through December 31, 2011. These various tasks were all included in the initial estimated project schedule, which called for completion by June 30, 2010. EJP/Praxis completed all of the tasks in the original contract (Inventory Removal Application, Developer RFP and Procurement Process) for the original fee with the exception of the final task: negotiating the DDA (Disposition Development Agreement). If “DDA” is replaced with “ENRA” (Exclusive Negotiating Rights Agreement) in the contract, EJP/Praxis will have satisfied all of the terms of the original contract for the original fee. The consultants did not anticipate an ENRA middle step prior to the DDA when they drafted the original proposal to the BHA.

EJP/Praxis has provided BHA invaluable assistance throughout this project, meeting or exceeding all expectations in terms of tangible deliverables, and providing technical assistance. It is important to note that while EJP/Praxis has always worked under a “fixed-fee” contract, it is estimated that BHA has benefitted from over 160 hours on this contract. It is difficult to determine when a task defined as “*assist*” is completed. Although one could argue that EJP/Praxis should be required to complete the project (by *assisting* BHA through execution of the Development agreement) – regardless of the hours required, it is not disputed that the project has taken much longer than anticipated, and that EJP/Praxis has not demanded payment outside the contract, nor have they reduced or limited their contributions to the project. There is currently a \$18,920 balance on the existing contract. It is important to note that EJP/Praxis has not billed BHA on this contract since December 2009, notwithstanding the fact that one or both members of the consulting team have traveled to Berkeley on four occasions to attend various meetings. The contract extension is mostly for new work through closing and transfer of the property. Most of the tasks are for monitoring and review of closing documents that occur post execution of the DDA.

STATUS

We are currently in negotiations with The Related Companies of California under an exclusive negotiations agreement. The negotiations are complicated, as we strive to achieve maximum revenue for BHA, while also creating a sustainable housing development, long-term. Weekly meetings are taking place, with an inordinate exchange of information and financial analysis of each decision point. EJP/Praxis is serving as the lead negotiator for BHA. This task, identified as “assist BHA with” is included in the current contract, with a current balance of \$18,920.

We now realize that the next phase, which will include the actual removal of the units from the HUD inventory, monitoring the business terms as identified in the Development agreement, and clearing HUD’s subsidy layering review – will be challenging, and will require outside assistance.

We could conduct a new solicitation and have EJP/Praxis and possibly others respond, but in the interest of time and continuity, and given the performance of EJP/Praxis to date, staff feels strongly that it is in the best interest of the project to increase compensation to EJP/Praxis, and retain them on the project through this next critical phase (we asked if the City had a staff person that could perform this function, and were advised they did not). Once again EJP/Praxis is proposing a fixed fee for this body of work, realistically better defined as “start of construction,” thus to avoid the need for any further extension/amendment.

FINANCIAL IMPLICATIONS

The FY 2011-12 budget includes \$114,320 in consultant costs associated with the repositioning project . All of these funds are reserved for existing contracts (including \$18,920 for EJP/Praxis). Approval of this contract, deemed critical, will be paid from initial proceeds from the disposition, or taken from the LIPH unrestricted reserve, which will reduce the anticipated balance on June 30, 2012 by \$38,200 to \$134,006.

CONTACT PERSONS

Tia M. Ingram, Executive Director, 981-5471

Carole Norris, Chair

Kathleen Sims, LIPH Disposition Project Manager

Attachments:

1. Resolution
2. Scope of Services

BERKELEY HOUSING AUTHORITY
RESOLUTION NO 11-_____

AMENDING THE OCTOBER 1, 2009 CONTRACT WITH EJP/PRAxis, PLANNING CONSULTANT FOR THE PUBLIC HOUSING DISPOSITION PROJECT, EXTENDING THE TERM THROUGH JUNE 30, 2012 AND INCREASING THE SPENDING AUTHORITY BY \$38,200, FOR A TOTAL NOT TO EXCEED \$75,470

WHEREAS, Berkeley Housing Authority was party to a Memorandum of Agreement (MOA) with the U.S. Department of Housing and Urban Development (HUD) that required certain goals be met within specific time frames; and

WHEREAS, the MOA required BHA to achieve "Standard" performer in the Public Housing Program, or submit a "disposition application" to HUD on or before December 31, 2009; and

WHEREAS, BHA, unable to achieve the "Standard" certification, engaged in a competitive process to procure a consultant to identify the options BHA could consider under a disposition project; and

WHEREAS, in December 2009, BHA submitted an "Inventory Removal Application" to the U.S. Department of Housing and Urban Development for the 61 units of Low Income Public Housing; and

WHEREAS, on December 22, 2010, HUD approved the Inventory Removal Application; and

WHEREAS, EJP/Praxis has assisted BHA in every phase of this project, including the current phase to select a developer; and

WHEREAS, BHA will need to supplement staff resources to negotiate the final decision points of the transaction, and to monitor same through the start of construction, including various submittals to, and approvals from HUD and the State.

NOW, THEREFORE BE IT RESOLVED, that the Executive Director is authorized to amend the October 1, 2009 contract with EJP/Praxis extending the term through June 30, 2012, and increase the budget authority by \$38,200 for an amount not to exceed \$75,470.

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Berkeley Housing Authority
Negotiate DDA / Monitor Developer Progress and Business
Terms

Task	Fee
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Negotiate Disposition and Development Agreement (September - December 2011)	\$9,760.00
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Assist BHA in Negotiating Terms of Agreement

Review Master Development Agreement Drafted by BHA Counsel

Monitor Developer Progress Through Construction Start (January - June 2012)	\$24,440.00
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Review Monthly Developer Progress in Meeting DDA Benchmarks
and Changes in Business Terms as Developer Completes
Due Diligence

Assist BHA in Submitting Amendment to Disposition Approval to SAC
Reflecting Final Business Terms and Submitting Subsidy
Layering Review to HUD SF

Review Closing Documents (Ground Lease, Seller's Note, AHAP,
RHCP Subordination Docs, Loan Agreements,
Supportive Service and Relocation Services Agreements, etc.)

Hourly Rate

Subtotal: Fees	\$34,200.00
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Project Expenses:

Travel	\$4,000.12
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Subtotal: Project Expenses	\$4,000.12
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Total Budget	\$38,200.12
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