



DATE / JUN 16 2005

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CRA File No. 4789  
Council District: 1 ✓  
Contact Person: David Riccitiello  
(213) 977-1794

Honorable Council of the City of Los Angeles  
John Ferraro Council Chamber  
200 N. Spring Street  
Room 340, City Hall  
Los Angeles, CA. 90012

Attention: John White, Office of the City Clerk

**COUNCIL TRANSMITTAL:**

Transmitted herewith, is a Board Memorandum adopted by the Agency Board on June 16, 2005, for City Council review and approval in accordance with the "Community Redevelopment Agency Oversight Ordinance" entitled:

**VARIOUS ACTIONS RELATED TO:**

INCREASE OF WORK ORDER AMOUNT FOR THE LAW FIRM OF FOX & SOHAGI BY \$22,000 (FROM \$270,000 TO \$292,000) FOR LITIGATION AND SETTLEMENT SERVICES RELATED TO THE DEMOLITION OF HISTORIC "GIESE RESIDENCE", DEVELOPER'S LAWSUIT AGAINST AGENCY AND CITY, SETTLEMENT OF THE LAWSUIT, AND SUBSEQUENT IMPLEMENTATION OF THE SETTLEMENT AGREEMENT FOR THE LAWSUIT, CHINATOWN REDEVELOPMENT PROJECT AREA.

**RECOMMENDATION**

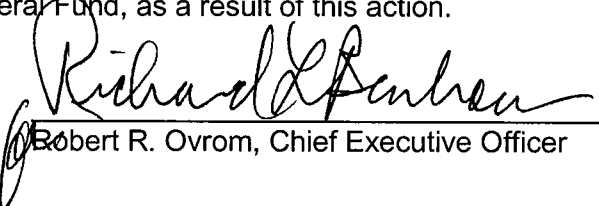
That City Council approves recommendation(s) on the attached Board Memorandum.

**ENVIRONMENTAL REVIEW**

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

**FISCAL IMPACT STATEMENT**

There is no fiscal impact to the City's General Fund, as a result of this action.

  
Robert R. Ovrom, Chief Executive Officer

cc: John White, Office of the City Clerk (9 copies-three hole punched)  
Lisa Johnson,  
Scott Eritano, Office of the CAO  
Paul Smith, Ivania Sobalvarro, Office of the CLA  
Renata Simril, Office of the Mayor  
Neil Blumenkopf, Office of the City Attorney

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MEMORANDUM

DATE: JUNE 16, 2005 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 \$22,000 (FROM \$270,000 TO \$292,000) FOR LITIGATION AND SETTLEMENT SERVICES RELATED TO THE DEMOLITION OF HISTORIC "GIESE RESIDENCE", DEVELOPER'S LAWSUIT AGAINST AGENCY AND CITY, SETTLEMENT OF THE LAWSUIT, AND SUBSEQUENT IMPLEMENTATION OF THE SETTLEMENT AGREEMENT FOR THE 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 \$22,000 (from \$270,000 to \$292,000) for additional legal services related to the settlement of the litigation titled Palmer Boston Street Properties II vs. City of Los Angeles and Community Redevelopment Agency (USDC Case No. CV03-6402-SVW).

SUMMARY

The law firm of Fox and Sohagi has represented the Agency throughout the litigation, settlement and implementation of the settlement related to the lawsuits filed by the developer of the Orsini project, Palmer Boston Properties following City Council action against the developer for demolishing an historic 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.

Over a weekend in mid April 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. This resulted in the development of Palmer's Orsini II project being 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 (MND) 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 litigation counsel to defend against this complaint. Fox & Sohagi submitted a preliminary budget estimate of \$75,000 to handle the litigation (Attachment B hereto).

On March 8, 2004, the Agency and City filed Motions for Summary Judgment. The Court granted (in part) the Agency's Motion for Summary Judgment allowing for the deposition of sitting Councilmember Reyes pending its final determination on the one remaining cause of action pled against the Agency. Almost simultaneously, Palmer requested 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 Palmer would not have commenced settlement negotiations without the Agency leading the strong charge and obtaining the summary judgment ruling.

#### 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 (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 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 Agency's discretionary review consisted of a determination to approve (or not) a residential use on the Orsini II site, which is designated "commercial" by the Chinatown Redevelopment Plan. Palmer proposes to develop 566 luxury rental units with 27,000 square feet of street-level commercial space and a 1,245 space subterranean parking garage on that site ("Project").

### The Second Budget Increase

Following execution of the Settlement Agreement, several unforeseen events occurred which required a \$25,000 budget increase. These were: (i) Palmer's addition of Orsini III (described in BACKGROUND) to the Project MND requiring that Fox & Sohagi review the revised MND and its subsidiary documents for the Project; (ii) Palmer's errors in revising the Project MND, requiring that Fox & Sohagi prepare letters outlining the legal deficiencies; and (iii) the City/Agency request that Fox & Sohagi serve as settlement manager to monitor the parties' performance of their respective obligations under the Settlement Agreement (e.g. Palmer's tardy submission of bridge design to City Cultural Affairs Commission). As a result of these events, Fox & Sohagi exceeded its \$245,000 Budget by approximately \$9,000. Accordingly, Agency staff asked the firm 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 Proposed Budget Increase

During the period leading to (and including) Agency Board consideration of the Project's discretionary approval, several unforeseen events occurred which now require a \$22,000 budget increase. This budget increase is the final increase because the Agency Board approved the Project on May 19, 2005. The events which required unanticipated legal work from Fox & Sohagi were: (i) flawed CEQA documentation for the Project (i.e., a legally deficient revised MND, and a missing Mitigation Monitoring and Reporting Program); (ii) three Board Meetings required to grant the Project's discretionary approval (the Settlement Agreement described only one Meeting); (iii) Palmer's accusations of Agency breach of the Settlement Agreement (with the need for legal responses thereto); and (iv) Agency Board requests to Fox & Sohagi for additional legal research and advice (e.g., would proposed Board actions on the Project's discretionary determination constitute breach of the Settlement Agreement and companion legal issues dealt with in closed session). The Board approved the discretionary residential use for the Project site at its third

meeting on Orsini II (May 19, 2005). As a result of these events, Fox & Sohagi exceeded its \$270,000 budget by approximately \$22,000. Accordingly, Agency staff asked the firm to prepare a Revised Budget of \$292,000 (from \$270,000 to \$292,000) to cover payment of the above-described legal work (Attachment E hereto).

## 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 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

July 14, 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

December 16, 2004 - Agency approval of \$25,000 increase in work order amount of Fox & Sohagi (from \$245,000 to \$270,000) for Palmer Boston Properties II vs. City of Los Angeles and Community Redevelopment Agency.

March 1, 2005 - City Council approval of \$25,000 increase in work order amount of Fox & Sohagi (from \$245,000 to \$270,000) 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 ongoing Orsini II project, a 566 luxury rental 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

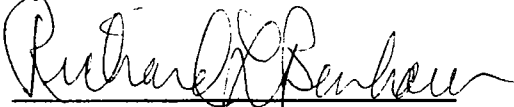
This lawsuit derives from Palmer's illegal demolition of a historic residential structure known as the "Giese Residence," formerly located at 840-844 West Cesar E. Chavez Avenue, within the Chinatown Project Area. According to the historical evaluation prepared by Palmer's own expert Roger Hathaway, 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 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:



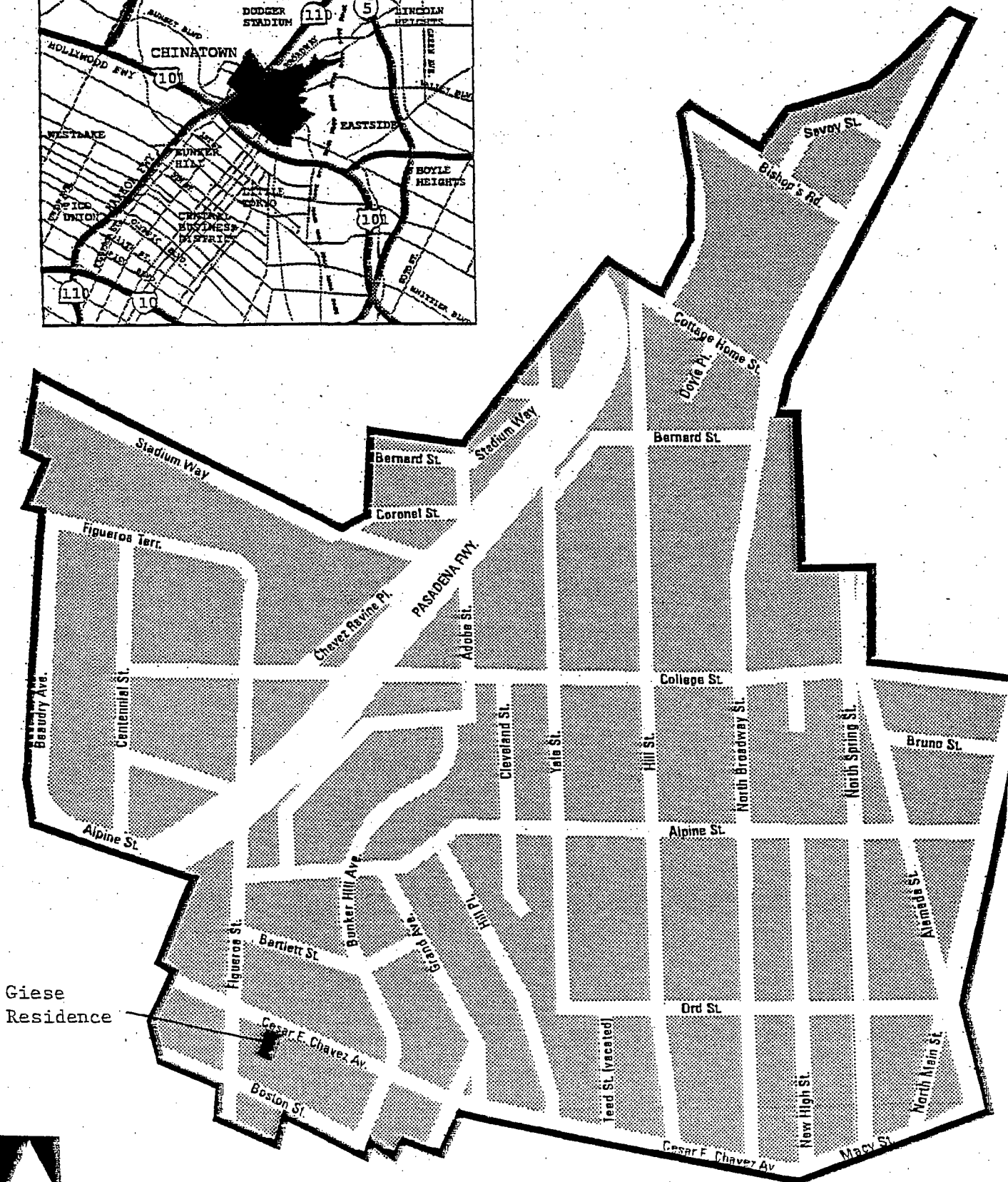
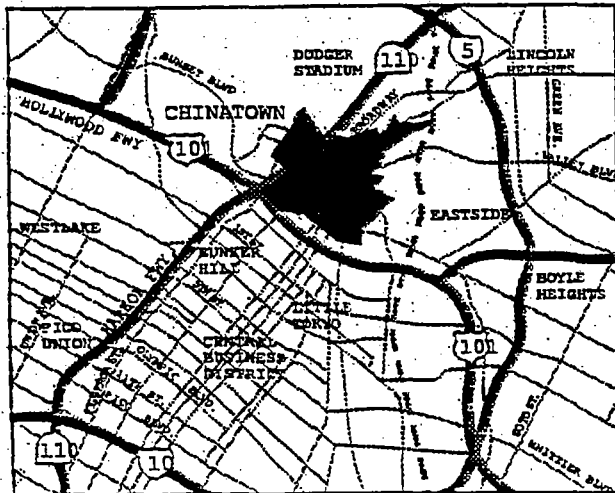
Richard L. Benbow  
Chief Operating Officer

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
- Attachment E – Fox & Sohagi Third Revised Budget



ATTACHMENT A



Giese Residence



ATTACHMENT B

**ESTIMATED BUDGET  
FOR LITIGATION SERVICES**

LAW FIRM: FOX & SOHAGI, LLP  
CASE NAME: Palmer v. CRA, et al.

CONTRACT #: \_\_\_\_\_  
PURCHASE ORDER #: \_\_\_\_\_



L100	Assessment & Development	<u>20</u>	<u>\$ 5,000</u>
L200	Pre-Trial Pleadings & Motions 12(b)6	<u>100</u>	<u>25,000</u>
L300	Discovery	<u>50</u>	<u>12,500</u>
L400	Trial Preparation & Trial	<u>130</u>	<u>32,500</u>
L500	Appeal	_____	_____
L600	Expenses*	_____	_____
<b>TOTALS</b>		<u><u>300</u></u>	<u><u>\$75,000</u></u>

\* Attach receipts to bill.

CERTIFIED CORRECT:

DATE: September 23, 2003

DEBORAH J. FOX

**ESTIMATED BUDGET  
FOR LITIGATION SERVICES**

LAW FIRM: FOX & SOHAGI, LLPCONTRACT #: 502373CASE NAME: Palmer v. CRA, et al.

PURCHASE ORDER #: \_\_\_\_\_

CATEGORY	HOURS	BUDGET
L100 Assessment & Development	40	\$ 10,000.00
L200 Pre-Trial Pleadings & Motions	200	50,000.00
L300 Discovery	350	87,500.00
L400 Trial Preparation & Trial	390	97,500.00
L500 Appeal		
L600 Expenses*		
<b>TOTALS</b>	<b>980</b>	<b>\$245,000.00</b>

\* Attach receipts to bill.

CERTIFIED CORRECT:

DATE: March 24, 2004

3/24/04  
*Deborah J. Fox*

DEBORAH J. FOX

EXHIBIT A

ATTACHMENT D

ESTIMATED BUDGET  
FOR LITIGATION SERVICES

LAW FIRM: Fox & Sohagi, LLP  
CASE NAME: Palmer v. CRA, et al.

CONTRACT #: 502373  
PURCHASE ORDER #: 04-0407

CATEGORY	HOURS	BUDGET
L100 Assessment & Development	110	31,000
L200 Pre-Trial Pleadings & Motions	200	50,000
L300 Discovery	350	87,500
L400 Trial Preparation & Trial	404	101,500
L500 Appeal		
L600 Expenses*		
TOTALS	1,064	270,000

\* Attach receipts to bill.

Commencement of Work Date: \_\_\_\_\_

Estimated Completion Date: \_\_\_\_\_

CERTIFIED CORRECT:

DATE: November 29, 2004

ATTACHMENT E

**ESTIMATED BUDGET  
FOR LITIGATION SERVICES**

LAW FIRM: Fox & Sohagi, LLP

CONTRACT #: 502373

CASE NAME: Palmer v. CRA, et al.

PURCHASE ORDER #: 04-0407

CATEGORY	HOURS	BUDGET
L100 Assessment & Development	180	53,000
L200 Pre-Trial Pleadings & Motions	200	50,000
L300 Discovery	350	87,500
L400 Trial Preparation & Trial	404	101,500
L500 Appeal		
L600 Expenses*		
<b>TOTALS</b>	<b>1134</b>	<b>292,000</b>

\* Appear receipts to bill.

Commencement of Work Date: \_\_\_\_\_

Estimated Completion Date: \_\_\_\_\_

CERTIFIED CORRECT

DATE May 2, 2005