MEMORANDUM OF LAW

DATE: September 8, 1987

TO: Mr. Stephen G. Harding, Executive Vice President, Southeast Economic Development Corporation

FROM: City Attorney

SUBJECT: Southcrest Redevelopment Project, RFQ for 252 Corridor

The City Attorney's Office has been requested by the Southeast Economic Development Corporation ("SEDC") Corporate Counsel Larry Marshall to review the process and procedures followed to date in respect to securing development proposals for the 252 Corridor. We accepted this request and provide this analysis because Larry Marshall has recused himself as a result of a conflict. ╒See his letter to you dated June 3, 1987, and letter to me dated July 31, 1987.σ Our review is for the sole and exclusive purpose of determining whether the process, procedures and actions (employed to date) represent a conflict of interest on the part of one or more of the participant SEDC Board members and officers. You are further concerned, as are we, whether there also exists the appearance of sufficient conflict as to subject the proceedings to legal challenge and adverse scrutiny.

You have provided us, for our review, the minutes of the SEDC Board and the Projects & Development Committee (of the Board) for the past three years. We also have reviewed several consulting agreements with Reese A. Jarrett wherein he was to provide services not unlike that of an Executive Vice President, but only during a transitional period. Finally, we have received and reviewed several letters from Larry Marshall which, when taken together, represent a fairly concise summary of the matter in question. Since we are relying upon the above-cited documents, we attach them hereto and incorporate them herein as though fully set forth.

The matter of conflict of interest encompasses a broad range of statutory, regulatory, and policy guidelines. Essentially,

they are conflicts of a financial and contractual nature, or those with an appearance of impropriety.

The financial aspect is governed by the Political Reform Act of 1974, as amended ╒California Government Code Sections 81000 - 91015σ. The contractual aspect is governed by California

Government Code Section 1090 et.seq. Lastly, the appearance of impropriety is governed by San Diego City Council Policy No. 000-4 ┌appended hereto as Attachment Aσ.

Based upon our review of the documents provided to us, our discussions with SEDC staff and counsel, and review of the above-cited statutory and policy guidelines, it is our opinion that a conflict exists in regard to several of the participants, and abstention at this point cannot sanitize the actions taken to date. Our opinion is founded upon all of the extant statutes and Council policy cited above. For the purpose of this legal memorandum to you, however, we need only rely on what we perceive to be a violation of Council Policy 000-4, which governs not only specifically identifiable conflict of interest actions and situations, but also covers appearances of such. We also find circumstances and actions which, when narrowly construed, persuade us that the Political Reform Act of 1974 may have been violated; however, for purposes of this memorandum, we need not delve into the Political Reform Act aspects of conflict to reach our conclusion since Council Policy 000-4 is most immediately applicable.

The various participants in this process did, at one point or another, participate in the formulation of, discussion about, or making of decisions in respect to the Southcrest Redevelopment Project, 252 Corridor. Even though some of them may not have formally voted upon any given phase of the process, they did participate in discussions at one time or another for project purposes. We cannot overemphasize that the operative phrase is "participate in discussion". ┌See California Government Code Section 87100.σ

At this point in time, it appears that the only legally appropriate action available to you is to wipe the slate clean and start anew, without the slightest participation of any of the Board members who may have a conflict. We are informed that the RFQ process has not yet been completed and that starting over at this time could have very little impact on the timeframe envisioned for the 252 Corridor. There are additional benefits that would flow from a restructuring and restart of the process, in addition to resolving the conflict of interest problem. All responders will enjoy an equal opportunity to submit bids and proposals to a Board or a Projects & Development Committee that

is free of conflict. And all responders will once again be eligible to submit requested proposals untainted by previous actions.

We are informed that there may be one or two responding

organizations that claim they are, at this time, free of any conflict. Without addressing the merits of such claim(s), it is our opinion that eliminating a substantial number of responders from the process rather than voiding the process and starting anew would be inequitable and not representative of a fair and impartial bid program.

JOHN W. WITT, City Attorney
By
Jack Katz
Chief Deputy City Attorney

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Attachments
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