ORANGELINE HIGH SPEED MAGLEV

AGENDA REPORT

TO: Members of the Orangeline Development Authority Executive Committee and City Manager Steering Committee

FROM: Albert Perdon, Executive Director

DATE: July 23, 2008

SUBJECT: **Review DLA Piper Agreement**

RECOMMENDATION

That the Authority Board Executive Committee and City Manager Steering Committee review the revised Legal Services Agreement with DLA Piper LLP.

SUMMARY

At its meeting of July 9, 2008, the Authority Board gave conditional approval to the DLA Piper agreement, contingent upon Executive Committee review. Based upon comments received and further discussions between DLA Piper and Authority Staff, DLA Piper has made several refinements to the agreement. The revised agreement is shown in Attachment A.

The key feature of the original agreement that is retained in the refined agreement is:

1. DLA Piper assumes full risk for its costs; payment for services provided will come from fees derived from the RFP process, including Proposer registration payments, fees collected from registrants who elect to submit proposal, deposits from Proposers who submit proposals, and payment from selected Developer Consortia.

Features of the original agreement that are changed in the refined agreement are:

1. The term to complete the initial (Phase 1) scope of work, from start to financial closing, is extended from January 2009 to June 2009; the additional time in the schedule reflects the need to provide more time to notify and attract interested Proposers, additional time for review by the Authority and City Managers of important policy issues and documents, and to add one additional step in the process (Request for Qualifications and selection of a short list of Proposers).
2. Continuing services are anticipated to extend beyond the initial period of work, to include the entitlement and predevelopment period (Phase 2) and the development and construction period (Phase 3), subject to the mutual desire of DLA Piper and the Authority to continue such engagement.
3. Creation of an Advisory Board is a new feature.
4. A new feature of the refined agreement is, “You will also assist us to explore possibilities for seed or venture capital for the Project.”

5. Capped fees are changed to budgeted fees and some adjustments to the budgeted fee amounts are made; the total budget is increased by $375,000, increasing the total budget, exclusive of incentive fees, to $2,515,000.
6. The following provision is added: “If for any reason there should be inadequate registrants or SOQs, the parties will mutually agree in good faith how to otherwise fund the legal costs;”

Comments were received from South Gate City Manager Ron Bates on the DLA Piper agreement presented in the July 9, Board Report (#8), as well as reports #9 and # 10. Attachment B presents the comments and the Authority’s responses.

Attachment A

DLA Piper US LLP
1251 Avenue of the Americas, 27th Floor
New York, New York 10020-1104
www.dlapiper.com

July ~~3,~~17, 2008	

VIA EMAIL
PRIVILEGED AND CONFIDENTIAL

Mr. Albert Perdon
Executive Director
Orangeline Development Authority
16401 Paramount Boulevard
Paramount, CA 90723

Re: Service and Fee proposal for the Orangeline High Speed Maglev Corridor Development Project

Dear Mr. Perdon:

Thank you for your email of July 1, 2008 informing us that you have selected DLA Piper US LLP ("DLA Piper") as the law firm with whom you would like to ~~negotiate~~finalize an agreement to provide legal services to the Orangeline Development Authority (the "Authority") as it undertakes the Orangeline High Speed Maglev Corridor Development Project (the "Project") through Public Private Partnership Agreements. On behalf of DLA Piper, we are delighted to present you, as requested, with our proposal to represent the Authority in its undertaking the Project, as more specifically described below.

I. THE PROJECT

We understand that the Authority is preparing to issue a formal Request for Proposals from infrastructure and real estate developer consortia (the "Developer RFP") and to negotiate agreements with selected consortia ("Developer Consortia") that will participate in undertaking the Project. In connection with the Developer RFP and related milestones~~, the~~. The Authority is seeking legal services related to the Developer RFP~~ and~~, the formation of a public private partnership ("PPP") among the interested parties and the completion of the Project.

We also understand from Mr. Kyle Leingang, Legal Advisor to the Executive Director, that the Authority would like DLA Piper to propose terms for representing the Authority in connection with both the real estate development and infrastructure aspects of the ~~anticipated Developer RFP~~Project, including (1) the construction and operation of the Orangeline High Speed Maglev transport system within Los Angeles and Orange Counties, and (2) the development of residential, commercial and other real estate improvements centered around the currently-planned 18 stations along the 108 mile Maglev corridor.

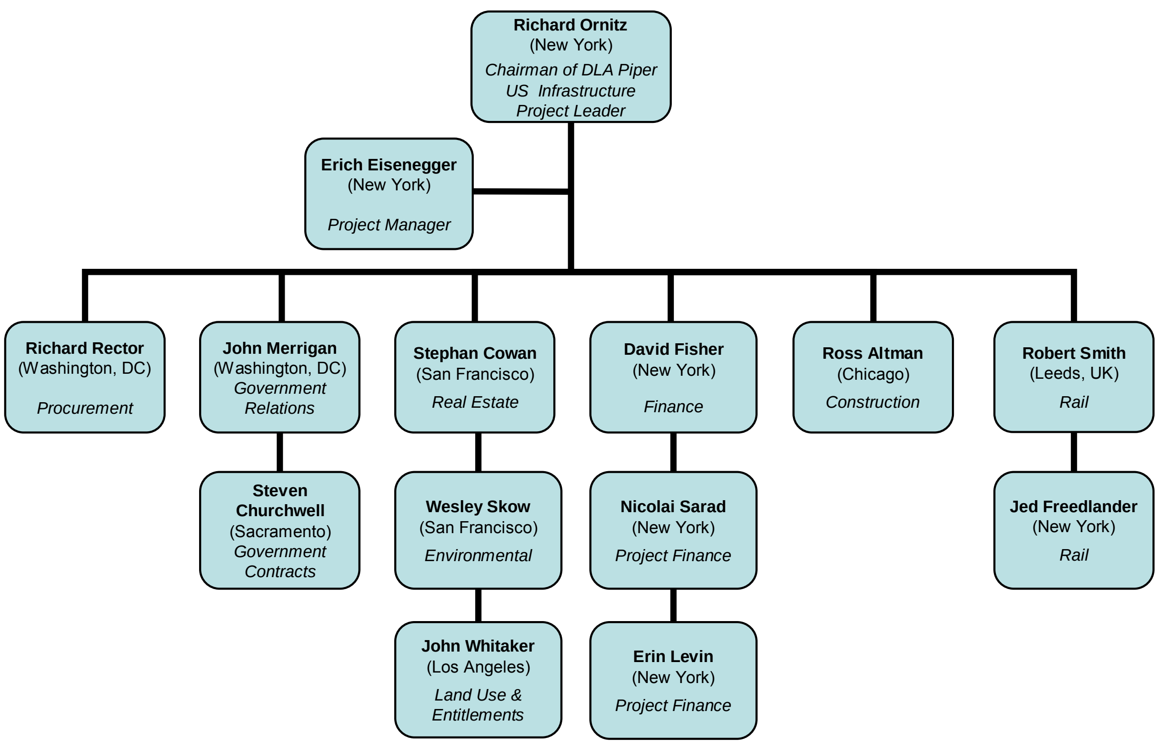
You have asked us to: (i) prepare a proposed legal services project outline and budget with a concentration on risk allocation issues, (ii) identify the names and rates of specific attorneys that would work on ~~this project~~the Project, (iii) suggest any alternative billing proposal for consideration by the

Authority and (iv) confirm that we are prepared to work on an expedited format if we should be formally retained by the Authority as outside counsel for the Project.

We recognize the importance of this ~~project~~Project for the Authority and also the US infrastructure market, and understand that it requires a form of contracting and financing that is relatively new in the US market. We very much wish to assist you to close this important transportation and real estate development project, and are honored to have a chance to do so.

II. DLA PIPER'S PROPOSED TEAM

In staffing transactions such as the Project, we employ leanly staffed multi-disciplinary teams of attorneys drawn from areas such as infrastructure finance, real estate, public finance, corporate and securities, environmental, construction, government affairs and other departments on an as-needed basis. In this tradition, we propose the following core team members for the Authority who will oversee their own respective associates as necessary~~ (current rates of attorneys are in attached Standard Engagement Letter)~~:



The Project's legal team will be led by the Chairman of DLA Piper's US Infrastructure Group, Richard Ornitz, who has 30 years global experience in infrastructure, and the Senior Associate in DLA Piper's US Infrastructure Group, Erich Eisenegger, both of whom will take ultimate responsibility for the management of the relationship between DLA Piper and the Authority. Each will be a hands-on working lawyer.

The other individuals on the chart are experts in their respective fields and will be responsible for day-to-day activities in their discipline. They will take active roles in their respective areas of expertise or be available on an as-needed basis in connection with specific issues. Overall, we believe this team provides the Authority a winning combination of:

- Lawyers with substantial U.S. and international experience in the successful structuring, documenting and financing of PPP projects in the transport and rail industry;
- Lawyers experienced in real estate, government affairs, regulatory compliance, private finance of major infrastructure projects, project finance and the statutory regime under which the Project is being promoted; and
- Attorneys experienced in advising governmental authorities, sponsors and financial institutions in the creation of complex and tax-efficient structures for infrastructure projects.

V. SCOPE OF WORK

We understand that you would like us to initially assume that the first phase of the Project ("~~Bidding~~ Phase 1") will last from the immediate issuance of the preliminary "Concept Paper"[1] through ~~January, 2009 (three to four months past the current proposal submission deadline of October 11, 2009~~June, 2009. Phase 2 of the Project is the entitlement and predevelopment period ("Phase 2") and Phase 3 of the Project is the development and construction period ("Phase 3").

Because of our extensive experience, particularly in each of rail, real estate and government procurement, we believe it best to be involved in not just the documentation but also the early stages of the development and design of the

[1] We consider the current Draft "Request for Proposals" to be, in fact, more of a "Concept Paper", designed to inform prospective investors about the Project and solicit registrations of prospective Developer Consortia who, upon registration, will receive a more fully developed "RFQ" and "RFP".

Project. At this preliminary juncture we see the following four distinct phases of work during which our services will be required for the Project (the "Scope of Work"):

~~Phase~~Period 1. Project Design and Issue of Concept Proposal (July 11-~~August~~September 11, 2008). This ~~phase~~period includes from DLA Piper the following specific scope of services:

- Assistance in selection of a Development Advisor and a Financial Advisor ~~to~~for the Project;
- Immediate clarification and refinement of the current "Concept Paper";
- Review of existing plans and studies of the Project;
- Understanding of the Authority's core objectives;
- Initial meetings with Authority and City Managers;
- Creation of an initial stakeholder analysis;
- Preliminary concepts for a land use credit system along the Maglev Corridor (the "Land Use Credit System")
- Refinement of the proposed procurement process and development of a ~~more detailed RFP for issuance immediately after the registration date (August 11th, 2008)~~first draft RFQ;
- Review of enabling legal framework;
- Recommendations for creation of an Advisory Board;
- Understanding of projected financials relating to the Project;
- ~~Review~~Refinement of a target project timeline and appropriate milestones; and
- Recommendations from above of necessary critical success adjustments, if any.

~~Phase~~Period 2. Refinement of Key Components~~ and Issuance of Full RFP Documents (August 11 – October 11~~/Issuance of RFQ Documents/Receive SOQs/Selection of Short Listed Bidders (September 12 – December 20th, 2008). This phase includes from DLA Piper the following specific scope of services:

- Registration Agreements due September 11, 2008;
- Refine the land use credit system;

- Create Advisory Board and receive input;
- ~~Questions and answers to Developer RFP documentation;~~Refine participation of Authority member cities;
- ~~Refinement of~~Refine structure of ~~the~~ Project and enabling requirements;
- Finalize and issue RFQ documents;
- Question and answer sessions with interested registrants;
- Receive Submission of Qualifications and payments (“SOQs”);
- Further meetings regarding SOQ matters;
- Evaluation of, and issuance of notification to, short listed bidders; and
- Develop RFP documents further.

Period 3. Issuance of RFP, Refinement of Land Use Credit System, Receipt of RFP bids (December 21, 2008 – April 11, 2009). This phase includes from DLA Piper the following specific scope of services:

- Refine RFP documents;
- Finalize Land Use Credit System;
- Finalize City participation in Land Use Credit System;
- ~~Creation of an appropriate risk allocation chart;~~Determine required enabling regulations and legislation;
- Initial design ~~and drafting~~ of core concession/PPP ~~agreement(s)~~agreements;
- Issuance of RFP documents;
- ~~Advice~~Advise on ~~the~~ appropriate ~~forms~~form of business entities and relationships~~ for agreements with qualified Developer Consortia;~~ ;
- ~~Advice~~Advise on ~~all~~ regulatory compliance requirements~~, disclosures and requirements pertaining to PPP Arrangements; and~~ and disclosures;
- Further meetings and question and answer sessions with short listed bidders;

- Further develop enabling framework and Land Use Credit System; and
- Receipt of RFPs and Deposits.

~~Phase 3. Consortia Team Selection, Negotiation and Document Closing (October 11 – January,~~Period 4. Selection of Preferred Bidders (April 12 – May 30, 2009). This phase includes from DLA Piper the following specific scope of services:

- Evaluation of ~~the feasibility of~~responses and financial proposals ~~and responses~~ to the ~~Developer~~ RFP;
- Question and Answer meetings with RFP responders;
- Refinement of enabling framework and land use credit system;
- Final clarifications to and from RFP bidders;
- ~~Selection of and negotiation with preferred Developer Consortia;~~Designation of Preferred Bidders for each real estate developers consortia for 18 stations and Maglev consortia.

Period 5. Final Negotiations with Preferred Bidders, Document Signing and Financial Closing (June 1 – July 31, 2009). This phase includes from DLA Piper the following specific scope of services:

- ~~Final negotiations with selected Developer Consortia;~~ Negotiating and finalizing core documents with Preferred Bidders;
- ~~Advising on all related core PPP documentation;~~Finalization of enabling framework and Land Use Credit System;
- Advising on all financial documentation;
- ~~Resolution of final issues before execution of PPP documentation ("PPP Documents");~~

~~Phase 4. Agreement Closing to Financial Closing (January, 2009 through Financial Closing).~~ ~~This phase includes from DLA Piper the following specific scope of services:~~

- Advising Authority on all infrastructure, real estate-related and financial project documentation ("Project Documents")~~.~~;
- ~~Tyoical~~Typical closing opinions, certificates~~, etc.; and~~;

- Resolution of all final issues before execution of PPP documentation ("PPP Documents");

- Signing of final PPP documentation with Developer Consortia ("Document Closing")~~.~~;

- Fulfillment of all Closing Conditions (if any)~~.~~; and

- Financial Closing.

Period 6. Post-Phase ~~5. Post- Closing~~1 Services (Post-Financial Closing through Construction Period). This ~~phase includes~~period would include from DLA Piper, if continued to be engaged by the Authority, the following specific scope of services:

- Advising Authority on ~~specific issues, as requested.~~

- ~~Dispute Resolution~~Phases 2 and 3 of the Project, detailed scope and terms to be refined Post-Financial Closing as a new mandate;

- Milestone monitoring;

- Quality ~~Compliance~~compliance;

- Final documentation each Phase; and

- ~~Final Documentation, as necessary~~Financial closings.

~~We would perform the services in this Phase 5 on a transactional billing and/or incentive fee arrangement, on a case by case basis, to be paid through Developer Consortia's funding of the Project.~~

IV. DLA PIPER PROPOSED FEE STRUCTURE

Having served as counsel to numerous developers in PPP projects, we understand the significant development costs of bidders to projects such as the Project, particularly prior to their selection by the Authority as the preferred bidders. ~~We envision~~You expect the bidders' registration payments and fees to bid on the Project to cover a substantial portion of our initial legal costs, with the awarded Developer Consortia covering the balance of DLA Piper's ~~invested time~~fees through their deposits as well as obligations provided in the final PPP documentation obligating the Developer Consortia to pay ~~as~~ such. You will also assist us to explore possibilities for seed or venture capital for the Project. We have sought to structure our compensation methodology with ~~that~~this in mind, and an alignment of our interests.

We offer below a blended billing arrangement, incorporating elements of ~~capped~~budgeted fees, transaction rates, and incentive fees, through the Financial Closing and thereafter as needed. The fees proposed below for the various ~~Phases~~Project periods are based on our experience in similar transactions and on the assumptions set out below.

(a) ~~Phase~~Period 1 Fees (July 11-~~August~~September 11, 2008).

For the scope of services and time of ~~Phase~~Period 1 noted above, we will invoice for the time spent ~~on Phase 1 of the transaction~~ applying our standard transactional rates, ~~subject to a cap of $150,000.~~with an estimated budget of $250,000 to $325,000. An invoice for our work during ~~Phase~~Period 1 will be presented to the Authority for payment immediately after the ~~August~~September 11th, 2008 registration date. Invested time beyond the ~~fee cap~~budget for ~~Phase~~Period 1 will be paid ~~at Financial Closing,~~from the bid deposits at the end of Period 3, along with 10% of the value of the total time spent on the Project in ~~Phase~~Period 1, which "premium" shall be contingent on the ~~consummation of Financial Closing at the end of Phase 4, and shall be payable in addition to the Incentive Fees referred to in paragraph (e) below.~~receipt of bid deposits at the end of Period 3.

(b) ~~Phase~~Period 2 Fees (~~August 11- October 11,~~September 12- December 20, 2008).

We will invoice at our standard transactional rates for the time spent on ~~Phase~~Period 2 in accordance with a mutually agreed rolling budget of $350,000-$550,000, as per the scope of our services to be performed during ~~Phase~~Period 2 noted above. Invoices for our work during ~~Phase~~Period 2 will be presented monthly to the Authority for payment ~~on October 31, 2008~~thirty days from invoice from the Developer Consortia ~~deposits~~registration fees and SOQ payments.

~~(c) Phase 3 Fees (October 11 – Document Closing).~~
(c) Period 3 Fees (December 21, 2008 – April 11, 2009).

We will charge for our services ~~from and after the October 11th Developer RFP response deadline (as may be delayed) through the Document Closing~~for Period 3 on an hourly basis applying our standard transactional rates~~.~~, with an estimated budget of $600,000 to $750,000. We shall provide an invoice for such fees monthly, such payment to be made twenty days from invoice from the Developer Consortia registrations, SOQ payments and RFP deposits ~~and Developer Consortia payment provisions in the PPP documentation~~.

~~(d) Phase 4 Fees (Document Closing through Financial Closing(s).~~
(d) Period 4 Fees (April 12 – May 30, 2009).

We will charge for our services from and after ~~the Document Closing through the Financial Closing(s)~~receipt of the RFP responses through selection of Preferred Bidders on an hourly basis applying our standard transactional rates, with an estimated fee for this period of $150,000 to $200,000, payable on May 30, 2009 from bidder deposits.

(e) Period 5 Fees (June 1 – July 31, 2009).

We will charge for our services in this Period on an hourly basis applying our standard transactional rates, with an estimated closing budget of $600,000 to $750,000, payable at Financial Closing from winning bidder deposits and the consortia agreements. In addition, on achieving the Financial Close of the transaction, we will receive an Incentive Fee equal to ~~0.0015~~0.015% – ~~0.0025~~0.025% of the total capital required for the Project (the "Incentive Fee"). This Incentive Fee shall be contingent on and payable upon achievement of Financial Closing of Phase 1 and shall be in addition to the premium referred to in paragraph (a) above. Such Incentive Fee will be paid at Financial Closing from the Developer's Consortia funding of the Project.

(~~e~~f) ~~Phase 5~~Period 6 Fees (~~As needed~~Phases 2 and 3 from Financial Closing through Construction Completion).

If each of the Authority and DLA Piper shall desire to continue DLA Piper's representation of the Authority after Phase 1 of the Project, then the Authority and DLA Piper shall mutually agree at the closing of Phase 1 to the appropriate scope of work and terms for Phases 2 and 3 of the Project, to be determined. We will charge for our services from and after Financial Closing at our normal transactional rates, plus an appropriate incentive fee at subsequent closings.

(~~f~~g) Summary of Proposed Fees. For the sake of clarity, please find below a summary of the above fee structures.

PROJECT

~~**Phase**~~**Period**	**Fees**	**Payment Date**	**Incentive Fees**
~~Phase~~Period 1 July – ~~August~~September 11th, 2008	Standard transactional rates ~~capped at~~ ; budget of $~~150,000~~250,000 to $325,000.	~~August~~September 15, 2008, paid out of Consortia registrations.	Time over ~~cap~~budget (“Invested Time”) plus 10% of total Phase I time, payable at ~~Financial Closing.~~end of Period 3.
~~Phase~~Period 2 ~~August 11-October 11, 2008~~ September 12-December 20, 2008	Standard transactional rates and budget of $350,000-$~~550,000, depending on Scope of Services.~~550,000.	~~October 31, 2008,~~Payable monthly on 20 days, paid out of Consortia ~~deposits~~registrations.	N/A
~~Phase~~Period 3 ~~October 11,~~December 21, 2008 – ~~January 31,~~April 11, 2009	~~Transactional Rates~~Standard transactional rates and budget of $600,000-$~~750,000, depending on Scope of Services~~750,000.	~~Document Closing Date~~Payable monthly on 20 days, paid out of Consortia registrations, SOQ payments and RFP deposits ~~(or Financial Closing)~~.	N/A
Period 4 Selection of Preferred Bidders (April 12-May 30, 2009)	Standard transactional rates and a budget of $150,000 - $200,000.	Payable on May 30, 2009 from bidder payments and deposits	Premium from Phase 1, if any, as above.
~~Phase 4~~Period 5 ~~Document Closing – Financial Closing~~ June 1– July 31, 2009	~~Transactional Rates~~Standard transactional rates and budget of $600,000-$~~750,000, depending on Scope of Services~~750,000.	Financial Closing Date, paid out of funding of Consortia deposits and Developer Consortia investments.	Incentive Fee of ~~0.0015~~0.015 – ~~0.0025$~~0.025% of total project capital payable at Financial Closing payable from project ~~financing~~funding.

~~Phase 5~~Period 6 Financial Closing - Construction	~~Normal hourly~~Standard transactional rates, pre-approved budgets ~~as required~~and scope of work.	Monthly or through fundings of Project.	Incentive Fees as above if staged Financial Closing(s).

(~~g~~h) Disbursements

Our fees will include internal costs such as communications, photocopying, etc. Third party costs, including travel, accommodation, delivery services, corporate, and UCC searches or filings, etc., will be invoiced as a disbursement to the Authority at ~~DLA Piper's~~ cost.

(~~h~~i) Invoicing

We will invoice our fees monthly in arrears, payable in accordance with the timeframe enumerated above.

(~~i~~j) Assumptions on which Fee Arrangements and Budgets Are Based

The proposed budgets during ~~Phases~~Periods 1-5 of the Project are based upon the following assumptions:

(i) DLA Piper is representing the Authority and not the individual cities under the Authority, and reports to the Board of Directors and Executive Committee of the Authority.

(ii) The envisioned ~~capped fee and~~ budgets for each of the Phases are based on the assumption that the time frames noted are maintained. Should there be a material extension of the time of a Phase the applicable budget will, by mutual agreement, be revised proportionately to the extended time and scope.

(~~ii) There are no material~~iii) The current Scope of Work is relatively broad. Material additions to the Scope of Work ~~and any work not specifically identified thereon will only be included in the services if it is related to or necessary for the provision of such specifically identified services~~will require a mutually agreeable budget adjustment.

(~~iii~~iv) The Authority will provide all the relevant materials required to carry out our due diligence review on behalf of the Authority either by way of a dedicated physical or electronic data room, cd-rom or similar procedure including all relevant documentation.

(~~iv~~v) The Authority will receive Registration Fees from each bidder in the amount of $15,000 on or about ~~August~~September 11, 2008, ~~the appropriate~~and RFQ fees of at least $50,000 in October, 2009, the necessary portion of which will be reserved for and used to pay ~~the Phase 1 fee~~DLA Piper's fully budgeted legal fees. If for any reason there should be inadequate registrants or SOQs, the parties will mutually agree in good faith how to otherwise fund the legal costs;

(~~v~~vi) The Authority will receive a deposit from each bidding Developer Consortia proposal on or about ~~October~~April 11, ~~2008,~~2009, the ~~appropriate~~necessary portion of such deposits to be reserved for and used to pay all of DLA Piper's continuing full legal fees~~ for Phases 2 and 3, and at least a portion of Phase 4 (together with any Project funding at Financial Closing)~~.

(~~vi~~vii) The final PPP Documents will contain provisions obligating the Developer Consortia to pay all of the outstanding legal fees of the Authority, including the incentive fee at Financial Closing.

(~~vii~~viii) It is assumed, given the ~~land use credit system~~Land Use Credit System, that there will be several successful Developer Consortia bidders (up to 18) selected by the Authority for the station real estate development project aspects.

(~~viii~~ix) Budgeted fees will be updated periodically to reflect the realities of DLA Piper's scope of work, time frame of the Project, and success of the Developer RFP.

VII. DLA PIPER'S PROPOSED CONTROLS AND METHODOLOGY

DLA Piper's proposed methodology for monitoring the progress of the work and ensuring compliance with established budgets and targets has the three following central tenets:

(a) *Dedicated Core Team with Clearly Defined Areas of Responsibility and Identified Lines of Authority*. Inefficiencies in staffing, the failure to create specific task driven responsibilities, and a lack of management oversight represent the central drivers of fee inflation in the provision of legal services on large, complex transactions. DLA Piper has specifically designed its team to drastically minimize this risk to the Project. The management team will be dedicated to ensuring continuity from the most senior partner to the most junior associate throughout the course of the transaction.

(b) *Best Practice Cost Management Technology and Accounting and Billing Policies*. DLA Piper employs the best available cost-management and accounting technology and software used in law firms today — and it constantly works to ensure that the firm's technology remains state-of-the-art. Additionally, DLA Piper management has imposed rigorous accounting and billing policies on each member of the legal staff. These policies include daily time recording by all timekeepers with descriptive narratives of the work accomplished, bi-weekly generation of electronic accounting reports for partners with billing or account management responsibilities, the enforcement of monetary penalties on attorneys that fail to adhere to internal accounting policies, and rigorous oversight of billing activities by accounting and management professionals. Additionally, any partner with billing or account management responsibilities can, in real-time, determine online the accrued costs and expenses as of that point in time. These best practices will allow the management team for this Project to rapidly identify any divergences from the anticipated budget and respond accordingly. In addition, it will allow the management team to keep the Authority fully informed of accrued fees and costs on a regular basis.

(c) *Technology, Transparency and Communications.* DLA Piper embraces the use of technology in delivering legal services to our clients. This embrace provides us and our clients certain competitive advantages. It allows us to:

(i) efficiently, cost-effectively, and rapidly make available large volumes of documentation and other materials to our clients through the employment of eRooms;

(ii) reach our clients or be able to be reached by our clients 24/7/365 whether we are in the office, at home, or traveling through either our VoIP telephone network or our Blackberries—all through the dialing of a single phone number; and

(iii) access email or documents on our servers from almost anywhere in the world, including Los Angeles, San Francisco, New York and the United Kingdom, through our robust VPN network.

We anticipate being in constant contact with key representatives of the Authority as issues arise. Because of this constant ~~communications~~communication, we will be able to identify and defuse issues or problems before they can negatively impact the budget or the timeline.

We look forward to having the opportunity to demonstrate first-hand how our experience and expertise can advance the interests of the Authority and the people of

California, and we thank you for your ~~consideration~~selection of our firm to partner with you on this exciting and innovative project. We are proud to be your counsel.

If the scope of the services we are to render to Authority, and terms of the engagement, are satisfactorily described above, please indicate your agreement by executing the enclosed copy of this letter and returning it to us. Thereafter, unless we agree in writing to alter these arrangements, we will assume that these terms are acceptable to you for this matter.

If you have any questions concerning our proposal, please do not hesitate to contact Richard Ornitz at (212) 335-4811 or Erich Eisenegger at (212) 335-4974.

Very truly yours,

Richard Ornitz, Partner
~~and the Orangeline Development Authority Project team~~
DLA Piper US LLP

I have read the above letter and agree and accept the terms and conditions set forth therein.

Orangeline Development Authority

Date: July ___, 2008

By:____

Name:______________________________________

Title:_______________________________________

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Document comparison done by Workshare Professional on Thursday, July 17, 2008 5:00:56 PM

Input:	
Document 1	interwovenSite://NEWYDMS/NEWY1/8257469/1
Document 2	interwovenSite://NEWYDMS/NEWY1/8257469/2
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
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Moved to	
Style change	
Format change	
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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	211
Deletions	145
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	358

Attachment C

Authority Response to Comments from Ron Bates to Authority City Managers

Managers,

As you may recall, I requested that you review items #8, #9 and #10 on the last Orangeline Agenda prior to the Authority Executive Committee Meeting which should be scheduled within the next week or two. At the BOD meeting, I requested that action be delayed to give City staff more time to review the above items.

Some of the following might be considered at the Executive Committee Meeting:

Item #9 recommends that "the Orangeline Development Authority BOD approving release of the request for proposals from infrastructure and real estate developers and investors."

a. The attorneys, DLA Piper LLP, recommend in an attachment to item #8 that the information in the agenda presented as an RFP be repackaged as a concept paper and then be circulated first as a concept paper followed by an RFP or followed by an RFQ and RFP as suggested at the Authority meeting.

As now proposed, the Request for Proposals (RFP) process includes the following steps:

1. **Project Design and Issue of RFP Concept Proposal and Proposer Registration**
2. **Refinement of Key Components and Issuance of Request for Qualifications (RFQ) Documents/Receive Statement of Qualifications (SOQ)/Selection of Short-listed Proposers**
3. **Issuance of RFP, Refinement of Land Use Credit System and Receipt of Proposals**
4. **Selection of Preferred Proposers**
5. **Final Negotiations with Preferred Proposers, Document Signing and Financial Closing**

b. Item #10 recommends the "extension to the term of the agreement" with ARCADIS. A reading of the ARCADIS agreement outlines many of the same responsibilities for ARCADIS that are being described in the proposed new RFP, item #9. While action on the ARCADIS agreement was postponed, a clear delineation between the responsibilities of ARCADIS and the "infrastructure and real estate developers and investors" RFP is needed.

The role of ARCADIS is evolving and will likely focus on the technical tasks that the Authority must perform as the project moves into subsequent phases. ARCADIS will likely serve as an extension of the Authority staff and not as the "Developer" envisioned in the prior contract. The details of the ARCADIS work program are yet to be defined.

Item #8 recommends that "the Authority BOD of the Orangeline Development Authority approving the legal services agreement with DLA Piper LLP." While the general consensus supports the qualifications and experience of the recommended firm, a better understanding of the proposed agreement is necessary.

a. It is suggested that the legal work necessary to secure funding is estimated at $1.5 to $2.25 million, but it may not be clear that if funding is secured based on a $20 billion project, that the attorney firm would receive a $3 to $5 million "incentive fee" in addition to their standard fees.

Terms noted above are correct.

b. DLA Piper recognizes the synergy between the transportation and land-use elements of the Project and the importance of capturing a portion of the increased values the Project will produce. Cities and Redevelopment Agencies may have a lot to say in this regard. We would not want to suggest that the Authority's legal agreement is in anyway dependent on the Authority being given any land use right within a City.

There is no linkage between the legal agreement with DLA Piper and land use rights within a city being given to the Authority; DLA Piper fully recognizes this as well.

c. What happens if the Consortia submitting an RFP are less than 10 and the minimum of $150,000 in basic legal fees is not generated? What entity makes up the difference?

DLA Piper bears full risk for any difference between revenue derived from the RFP process and their costs. The Authority and the member cities bear no risk; DLA Piper fully understands this.

d. The "Rules of Professional Conduct" were not attached to the agreement. What is the noticing requirement before concluding the legal agreement without cause: 30, 60, 90 days etc.?

The "Rules of Professional Conduct" referenced in the engagement letter can be found on the California Bar Association website at:
http://www.calbar.ca.gov/state/calbar/calbar_extend.jsp?cid=10158

DLA Piper and the Authority may terminate the agreement by giving reasonable notice to the other party.

e. Do we all understand that the Attorney Fees for DLA Piper range primarily between $410 and $850 per hour?

This is correct.

f. The agreement did not address billing in 6 minute increments. Is this information in the "Rules of Professional Conduct?"

DLA Piper will bill in accordance with normal industry practices.

g. Who specifically at the Authority will authorize attorney work, review the bills and approve (future) payments?

The Authority Board on recommendation of the Executive Director and the Director of Finance; the Board Audit Committee will perform post-audits.

h. Perhaps the Authority should fully understand the "conflicts of interest" it is waving.

As set forth in the DLA Piper engagement letter, and absent a waiver from the Authority, DLA Piper is not permitted to represent future clients on matters that are the same or substantially related to the matter in which they represent the Authority. The Authority waives all conflicts of interest and consents to DLA Piper's current and future representation of other clients even though the Authority and its affiliates' interests are adverse to those of these clients.

i. Does the Authority want to have DLA Piper involved in the selection of the "Financial Advisor to the Project?"

The Authority is maintaining the option to seek support from DLA Piper in securing the services of a financial advisor. The Authority, not DLA Piper, will make the selection of such financial advisor.

j. The Authority should probably talk with the Cities in detail before considering a "land use credit system."

The Authority fully intends to not only talk to the cities but to engage the Cities in formulating the land use credit program. The draft land use credit system described in the Board report was intended to initiate the development of the program with full city participation and eventual approval.

k. What happens if the "Developer Consortia deposits" are not sufficient to cover the projected $350,000 to $500,000 phase 2 legal fees?

DLA Piper bears the full

cost risk of expenses not recovered from RFP fees, deposits and consortia agreements.

l. Same question as above for phase 3 and 4 legal fees.

Same as above.

m. As one CM, I am concerned about paying full standard transactional rates between $410 and $850 per hour and an "incentive fee" between $3 million and $5 million on top of the transactional rates.

The transactional rates are competitive based upon what we would expect for the nature of the legal services being provided for a project of this size and significance, and based upon the range of rates charged by the firms that proposed under the competitive procurement for legal services. The rates are in relation to the value of the services being performed, the relative sophistication of DLA Piper and the Authority, the difficulty of the task and the skill requisite to perform the service properly, and to other factors. The "incentive fee" is judged to be justified based on the risk that is being taken by DLA Piper – risk that is primarily controlled by the Authority and not by DLA Piper. Additionally, the incentive fee is justified by the value that DLA

Piper brings to enable the Authority to attract $20 billion in private investment.

n. Some of the "Assumptions on which Fee and Budgets Are Based," may be unrealistic. What is the appropriate portion of the registration fees that will be reserved for the Attorney's? What if no "land use credit system" is developed? What if consortia deposits are not sufficient to cover the Attorney's phase 2 and 3 charges?

DLA Piper has first call on all registration fees. Their expenses not covered by registration fees will be covered by additional amounts secured from subsequent deposits, fees and consortia agreements.

The Authority and DLA Piper will explore all possible options for attracting the $20 billion of private investment needed to make the Project happen. A land use credit system appears to be a viable option, one that attracts investment now without having to rely on other parties and that mitigates potential risks to member cities of the Project not going forward. The Authority and DLA Piper will explore other strategies, including government grants and other options that further mitigate risks for member cities.

Hope these thoughts help and I will look forward to a discussion of these items before action of the Authority Board.