



**SACRAMENTO  
HOUSING AND REDEVELOPMENT  
AGENCY**



9

September 27, 1988

Budget and Finance Committee  
of the City Council  
Sacramento, CA

Honorable Members in Session:

**SUBJECT:** 18th and L Streets Development Project -  
Reimbursement of Costs to Montross Barber Investments  
and Execution of a Contract for Professional Services  
with David Mogavero & Associates

SUMMARY

The attached report is submitted to you for review and recommendation prior to consideration by the Redevelopment Agency of the City of Sacramento.

RECOMMENDATION

The staff recommends approval of the attached resolution approving execution of necessary documents.

Respectfully submitted,

*William H. Edgar*

WILLIAM H. EDGAR  
Executive Director

TRANSMITTAL TO COMMITTEE:

*Jack R. Crist*

JACK R. CRIST  
Deputy City Manager

Attachment



**SACRAMENTO  
HOUSING AND REDEVELOPMENT  
AGENCY**



September 15, 1988

Redevelopment Agency of the  
City of Sacramento  
Sacramento, California

Honorable Members in Session:

**SUBJECT:** 18th & L Streets Development Project - Reimbursement of  
Costs to Montross Barber Investments and Execution of a  
Contract for Professional Services with David Mogavero &  
Associates

**SUMMARY**

The Redevelopment Agency is requested to reimburse Montross Barber Investments (MBI) and David Mogavero & Associates for expenses incurred related to the 18th and L Streets development project.

**BACKGROUND**

On May 17, 1988, by Resolution No. RA 88-045, the Agency rescinded previous agreements with MBI related to the multi-family housing project on the block bounded by 18th, 19th, K and L Streets and directed staff to attempt to work out a settlement with MBI regarding costs incurred by MBI.

During the period in which the Agency and MBI attempted to come to terms regarding the housing project, MBI incurred substantial costs including architectural fees, interest payments on the undeveloped project parcel, real estate taxes and legal fees.

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These costs amounted to approximately \$343,000. MBI argued that it incurred these expenses in reliance on the Agency's commitment to finance the project. Agency staff strongly disagrees with that assertion. The Agency has no legal obligation to pay any of these costs given the fact that our Owner Participation Agreement was never executed. In essence, MBI proceeded without Agency concurrence. Nevertheless, Agency staff recognizes the fact that MBI did, in fact, expend considerable effort, albeit unsuccessfully, to resolve the various outstanding project issues. Thus, MBI and Agency staff have agreed on a settlement of \$100,000.

For this amount, MBI has agreed to release all claims it may wish to bring against the Agency for project costs and damages. (A copy of the Release Agreement is attached as Exhibit "A.") Additionally, the staff agreed to enter into a contract (attached as Exhibit "B") with the Architect, David Mogavero & Associates, for the amount of \$42,000 for completion of work on the Project. (The payment to the Architect would satisfy MBI's remaining obligation to the architectural firm for work performed on the subject project. MBI's balance to the Architect was approximately \$50,000 for the balance of the contract.) Mr. Mogavero has agreed to consider the contract with the Agency as settlement regarding the Project and to complete the plans and specifications. In exchange, the Agency will acquire the completed construction drawings and specifications for the 52-unit housing project (which have an estimated value of \$100,000). Additionally, the Agency will receive all documents drafted by MBI's attorney concerning MBI's negotiations with Panattoni, Oates and Massie for the construction of a foundation for the housing project. (It is our understanding that Panattoni, Oates and Massie intend to proceed with the office development on the southwest corner of 19th and L Streets, and will fulfill their obligation to deed the parcel on the southeast corner of 18th and L Streets to the Agency.) According to the terms of the Mutual Recision Agreement attached as Exhibit "C", the following must occur before the Agency will make payment to MBI or Mogavero:

1. Delivery of all construction drawings and specifications for the elderly housing project to the Agency;
2. Delivery of all legal work-in-progress concerning the project to the Agency;

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3. Execution of an agreement between the Agency and David Mogavero and Associates for architectural services related to the project;
4. Execution of the attached release statement by MBI.

## POLICY IMPLICATIONS

The Agency has no explicit policy governing the payment to developers with whom negotiations have been discontinued. In this instance, staff recommends the suggested payments only because of the considerable good faith exhibited by MBI over the course of negotiations and the value of the plans. The action recommended is completely discretionary on the Agency's part and is tied to the specifics of this case. It should not be considered precedent setting in any way.

## ENVIRONMENTAL REVIEW

Adoption of the attached resolution has no environmental implications and does not require an environmental determination..

## FINANCIAL DATA

The recommended payments of \$100,000 to MBI and \$42,000 to David Mogavero and Associates will be funded by cost center A00890, Fund 102, which is the Northeast Neighborhood account. A total of \$152,548 is available in this cost center. Approval of the recommended action will leave \$10,548 available in this cost center.

## VOTE AND RECOMMENDATION OF COMMISSION

At its regular meeting of September 19, 1988, the Sacramento Housing and Redevelopment Commission adopted a motion recommending approval of the attached resolution. The votes were as follows:

AYES: Pettit, Sheldon, Simon, Simpson, Wiggins, Wooley, Yew  
NOT PRESENT TO VOTE: Amundson  
NOES: None  
ABSTAIN: Strong  
ABSENT: Moose

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## RECOMMENDATION

Staff recommends adoption of the attached resolution which authorizes the Executive Director to enter into an agreement with MBI to rescind all previous agreements between MBI and the Agency and enter into an agreement with David Mogavero and Associates for architectural services to complete the plans and specifications for the 18th and L Street project.

Respectfully submitted,

*William H. Edgar*  
WILLIAM H. EDGAR  
Executive Director

TRANSMITTAL TO COUNCIL:

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WALTER J. SLIPE  
City Manager

Contact Person: Thomas V. Lee, 440-1355

0152C

# RESOLUTION NO.

ADOPTED BY THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

ON DATE OF

AUTHORIZING THE EXECUTIVE DIRECTOR TO  
EXECUTE AGREEMENTS WITH MONTROSS BARBER INVESTMENTS  
AND MOGAVERO AND ASSOCIATES RELATING TO  
THE 18TH AND "L" STREETS PROJECT

WHEREAS, the Agency rescinded all contracts with Montross Barber Investments relating to the proposed multi-family project at 18th and L Streets (the "Project") by Resolution RA 88-045; and

WHEREAS, without the Agency's concurrence, Montross Barber incurred substantial costs in an effort to bring to fruition the development of the Project; and

WHEREAS, the Agency desires possession of all legal documents prepared in regard to the Project; and

WHEREAS, the Agency desires that Mogavero and Associates complete the construction plans regarding the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO:

Section 1: The Executive Director is authorized to pay Montross Barber the amount of \$100,000 (Cost Center A00890) provided that the following conditions precedent are fulfilled:

1) Montross Barber Investments executes the attached release which absolves the Agency from any claims Montross Barber Investments may have against it;

2) Montross Barber Investments provides the Agency with all documents prepared by their attorney regarding the Project; and

3) Mogavero and Associates executes a contract for the completion of construction plans related to the Project.

Section 2: The Executive Director is authorized to execute a contract in the amount of \$42,000 (Cost Center A00890) with Mogavero and Associates for the completion of the construction plans for the Project.

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CHAIR

ATTEST:

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SECRETARY

1100WPP2(142)

(5a)

## RELEASE

This instrument is executed on \_\_\_\_\_, 1988, by Michael Montross on behalf of Montross Barber Investments (MBI) whose address is 2050 Pioneer Court, Suite 204, San Mateo, CA 94403, herein called "releasor."

NOW, THEREFORE, in consideration of the attached Rescission Agreement, the releasor agrees as follows:

1. The releasor, on behalf of himself and MBI, and assigns; hereby fully releases and discharges the Redevelopment Agency of the City of Sacramento and its assigns and successors (hereinafter the "Agency") from all rights, claims, demands, damages, actions and causes of action whatsoever including such as have arisen or may arise in the future by reason of or in any manner having arisen out of losses or damages which the releasor alleges or may in the future allege to have incurred as a result of the contracts identified in the attached Rescission Agreement or the housing projects planned for the block bounded by 18th, 19th, K and L Streets in Sacramento, California between the dates of January 1984 and the date of their Release.

2. This release, notwithstanding Section 1542 of the California Civil Code, which provides that "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor," releases all injuries, damages or losses to releasor's person and property, real or personal, whether known, unknown, foreseen, unforeseen, patent or latent which releasor may have against the Agency. Releasor understands and acknowledges the significance and consequences of such specific waiver of Section 1542, and hereby assumes full responsibility for any injuries, damages, or losses that he has or may incur from the above-mentioned loan and agreement.

3. The releasor has read this release, fully understands the meaning and consequences of its execution and has elected to do so freely and voluntarily. The releasor, in executing this release, does not rely on any inducements, promises, or representations made by the Agency or any other governmental entity and his representatives or his counsel.

Executed on the date first mentioned above, in the County of \_\_\_\_\_, State of California.

\_\_\_\_\_  
MICHAEL MONTROSS  
Montross Barber Investments Inc.

154WP (07)

WITNESS DECLARATION

I, the undersigned witness, hereby certify that Michael Montross, in my presence, acknowledged that he has read and fully understood the meaning and consequences of the foregoing release, and signed the same in my presence, in the County of \_\_\_\_\_, State of California.

Dated:

BY \_\_\_\_\_  
WITNESS

APPROVED BY Attorney for Releasor:

\_\_\_\_\_

## ARCHITECTURAL CONTRACT

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_ in the year Nineteen Hundred and Eighty-eight by and between the REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, hereinafter called the Owner, and MOGAVERO AND ASSOCIATES, hereinafter called the Architect.

Whereas, the Owner intends to build a 52 unit senior housing facility on property located at 18th and L Streets, Sacramento, CA (the "Project"); and

WHEREAS, the Architect is ready, willing and able to prepare the final construction plans and specifications for the Project.

NOW, THEREFORE, the Owner and Architect, in consideration of the mutual promises and benefits flowing to the parties hereto as hereinafter stated, agree as follows:

The Architect agrees to perform for the Owner the work and the professional services as hereinafter stated. The Owner agrees to pay the Architect for such services a fee of FORTY TWO THOUSAND DOLLARS AND NO CENTS (\$42,000.00) for the completed final construction plans and specifications for the Project.

The parties further agree to the following stipulations and conditions:

1. THE ARCHITECT'S SERVICES

(a) Architect shall completely perform all services under this Section 1 no later than \_\_\_\_\_, 1988.

(b) The Architect's professional services shall consist of the necessary conferences; the preparation of estimates, the completion of working drawings, detailed specifications, large-scale and full-size detail drawings.

(c) The Architect shall proceed with the preparation of working drawings, specifications, large-scale and full-size detail drawings for architectural, structural, plumbing, heating, electrical, and other mechanical work; detailed estimates, and all other data needed for letting construction contracts for the proposed structure and the utilities to serve same.

(d) The Architect shall design the work in strict compliance with all applicable laws and in strict compliance with all applicable state and local codes.

(e) All plans and specifications shall bear the signature and seal of the Architect. One set of specifications bearing the signatures and seals of structural, electrical, and

mechanical engineers licensed in the State of California shall be furnished to the Owner. Structural drawings shall bear the signature and seal of a structural engineer licensed in the State of California. Electrical drawings shall bear the signature and seal of an electrical engineer licensed in the State of California. Mechanical drawings shall bear the signature and seal of a mechanical engineer licensed in the State of California. The Architect is fully responsible for all plans and specifications for the Project.

(f) The Architect is responsible for the calculating in detail of all structural, mechanical, and electrical work, including but not limited to the furnishing to the Owner of life-cycle-costing and energy consumption analyses, for the purpose of ascertaining and verifying (1) adequacy and correctness of equipment specified or shown on the drawings and (2) that the plans and specifications do not violate sound and accepted engineering principles; and

(1) To confirm that there has been ample provision in the entire structural system for expansion and contraction, including but not limited to building frames, the roof system, gravel stops, gutters, roof expansion joints, metal flashing and metal counter flashing, roof decks, and masonry walls; and

(2) To confirm that there has been ample provision in the mechanical work for expansion and contraction.

(g) The Architect agrees to prepare drawings, specifications, and other documents in which he designates completely, definitely, and clearly the methods and materials of construction of the Project. The Architect shall call for no result unless he has furnished complete, definite, and clear drawings and specifications as to the methods and materials to be used in producing the said result.

(h) The Architect shall design the work in such manner that, provided the work is installed in accordance with the methods and materials of construction shown or called for in the contract documents, the building will be free from leaks.

(i) The Architect acknowledges and agrees that the Owner does not undertake to approve or pass upon matters of design and that the Owner, therefore, assumes no responsibility for design. The Architect acknowledges and agrees that the approval or acceptance of plans and specifications by the Owner is limited to the function of determining whether there has been compliance with instructions issued to the Architect regarding general layout of space. The Owner does not undertake to inquire

into the adequacy, fitness, suitability, or correctness of engineering or architectural design. The Architect agrees that no approval of plans and specifications by any person, body, or agency shall relieve him of the responsibility for the adequacy, fitness, suitability, and correctness of architectural and engineering design and for designing the work in accordance with sound and accepted engineering and architectural principles.

2. ESTIMATES. The Architect shall complete, execute and deliver to the Owner a true budget of the cost of the Project.

3. DEFINITION OF THE COST OF THE WORK. The cost of the Project as herein referred to means the total cost to the Owner to construct the Project.

4. PAYMENT. Agency shall pay Architect the sum of \$42,000.00 within fourteen (14) days after the Architect has delivered to Agency the final construction plans and specifications for the Project.

5. PROPRIETARY STATEMENT. All design calculations, designs, drawings, specifications, or other data, or documents produced hereunder by the Architect, his engineers, or his consultants shall be delivered to the Owner and title thereto shall vest in the Owner. Reproducible copies of tracings of all original designs and drawings and copies of specifications and other technical data shall be furnished to the Owner without cost upon his request whether the work for which they are made be executed or not. Owner shall not be under any obligation to use the services of the Architect during the construction of the Project. Owner may modify the construction plans and specifications as Owner determines necessary.

6. ASSIGNMENT. The Architect hereby agrees that the Architect shall not assign this contract to another Architect without the Agency's prior written consent.

7. STANDARD OF PROFESSIONAL SERVICES.

(a) The Architect by the execution of this contract agrees that Architect is possessed of that degree of care, learning, skill, and ability which is ordinarily possessed by other members of his profession and further contracts that in the performance of the duties herein set forth he will exercise such degree of care, learning, skill, and ability as is ordinarily employed by architects under similar conditions and like circumstances and shall perform such duties without neglect, and shall not be liable except for failure to exercise such degree of care, learning, skill, and ability.

(b) Any other provisions in this contract to the contrary notwithstanding, the Architect shall receive no fee for account of increases in cost resulting from change orders caused by oversight of the Architect.

8. REVIEW OF WORK OF ARCHITECT. The Architect agrees that the Owner is at liberty to engage consultants for the purpose of checking, reviewing, and commenting upon the work, design or supervision of the Architect and his engineering consultants. The Owner is hereby authorized to deliver a certified copy of this contract to architects or engineers, or both, as selected by the Owner for the foregoing purposes, and such delivery will constitute the unqualified consent and agreement on the part of the Architect and his engineering consultants to the checking, reviewing, and commenting upon the work, design, or supervision of the Architect and his engineering consultants.

9. TERMINATION WITHOUT CAUSE. The Owner may at any time, and for any reason or without any reason or cause, terminate this contract by written notice to the Architect specifying the termination date which shall be effective within seven (7) days from the date to be stated by the Owner in the notice to the Architect and in the event of termination under this provision the Owner shall pay to the Architect any fee properly due for services already properly performed prior to the effective date of their termination. In the event of such termination the Architect shall have no claim in excess of what is allowed in this Article 9 for any sum of money, however denominated, as a result of or relating to such termination.

10. TERMINATION FOR CAUSE. In the event the Architect through any cause fails to perform any of the terms, covenants, or provisions of this contract on his part to be performed, or if he for any cause fails to make progress in the work hereunder in a reasonable manner or if the conduct of the Architect impairs or prejudices the interest of the Owner or the Architect violates any of the terms, covenants, or provisions of this contract, the Owner shall have the right to terminate this contract by giving notice in writing of the fact and date of such termination to the Architect, and all drawings, specifications, and other documents relating to the design or supervision of the work shall be surrendered forthwith by the Architect to the Owner, PROVIDED HOWEVER: That in such case the Architect shall receive equitable compensation for such services as shall in the opinion of the Owner have been satisfactorily performed by the Architect up to the date of termination of this contract, such compensation to be fixed by the Owner, and PROVIDED FURTHER: that the Owner may take over the work to be done hereunder and may prosecute the same to completion by contract or otherwise, and the Architect shall be liable to the Owner for any excess cost occasioned the Owner thereby. The parties agree that the decision of the Owner in regard to the matter set forth in this Article 10 shall be final.

11. HOLD HARMLESS CLAUSE. The Architect shall indemnify and hold the Owner harmless for any liability to others as a result of Architect's services under this contract.

12. FULL PERFORMANCE. The Owner and the Architect hereby agree to the full performance of the conditions and stipulations contained herein.

Executed as of the day and year first above written.

OWNER:

REDEVELOPMENT AUTHORITY OF  
THE CITY OF SACRAMENTO

ARCHITECT:

MOGOVERO & ASSOCIATES

BY

\_\_\_\_\_  
WILLIAM H. EDGAR  
Executive Director

BY

\_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Authority Counsel

APPROVED:

\_\_\_\_\_  
Finance Department

Account Code: \_\_\_\_\_

Organization: \_\_\_\_\_

Cost Center: \_\_\_\_\_

APPROVED:

\_\_\_\_\_  
Organization

154WPP(162)

## MUTUAL RECISSION AGREEMENT

This Agreement is entered into this \_\_\_\_\_, day of \_\_\_\_\_, 1988, by the REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, hereinafter referred to as "Agency" and MONTROSS BARBER INVESTMENTS, INC., hereinafter referred to as "MBI".

RECITALS

WHEREAS, on June 10, 1986, Agency authorized a development and disposition agreement and an owner participation agreement with MBI relating to housing projects in and about 18th, 19th, L and K Streets, in Sacramento;

WHEREAS, MBI has indicated that it no longer wishes to proceed with the housing projects; and

WHEREAS, on May 17, 1988, Agency rescinded the resolution which authorized the agreements between the Agency and MBI for the housing projects.

NOW, THEREFORE, Agency and MBI agree as follows:

1. Agency and MBI hereby consent and agree to rescind all the agreements, approved by Agency Resolution RA 86-030 and all other oral or written agreements between the parties relating to the proposed housing projects in and about L, K, 18th and 19th Streets, Sacramento, CA. A copy of such resolution is attached hereto and incorporated herein by reference.

2. The Agency shall pay to MBI ONE HUNDRED THOUSAND DOLLARS (\$100,000) upon the fulfilment of all the following conditions precedent: (a) delivery to the Agency of all the construction drawings, plans and specifications for a 52 unit senior citizen housing project to be located at 18th and L Streets, Sacramento, (the Plans), (b) assignment of any parking agreement MBI may have with PANATTONI, OATES & MASSIE DEVELOPMENT COMPANY, and (c) upon execution of an agreement between the Agency and MOGAVERA AND ASSOCIATES for architectural services relating to the Plans.

