

## MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, JANUARY 30, 1996

The Council of the City of San Jose convened in regular session at 9:30 a.m.

Present: Council Members: Diaz, Diquisto, Fernandes, Fiscalini, Johnson, Pandori, Powers, Shirakawa, Jr., Woody.

Absent: Council Members: Dando; Hammer (both excused).

Upon motion unanimously adopted, Council recessed to a Closed Session at 9:35 a.m. in Room 600 to (A) confer with Legal Counsel regarding existing litigation pursuant to Government Code Section 54956.9 Subsection (a) in the case of *Yates v. City of San José, et al.*; (B) to confer with Legal Counsel regarding anticipated litigation pertaining to the initiation of litigation pursuant to subdivision (c) of Section 54956.9 of the Government Code to discuss one matter; and (C) to confer with Labor Negotiator pursuant to Government Code Section 54957.6, City Negotiator, City Manager designee Mark Linder, pertaining to Operating Engineers, Local 3, Employee Organization.

By unanimous consent, Council reconvened from the Closed Session and recessed at 11:00 a.m. and reconvened at 1:35 p.m. in Council Chambers, City Hall.

Present: Council Members: Diaz, Diquisto, Fernandes, Fiscalini, Johnson, Pandori (entered the meeting at 1:45 p.m.), Powers, Shirakawa, Jr., Woody.

Absent: Council Members: Dando; Hammer (both excused).

### INVOCATION

Pastor Steve Hartman, Immanuel Presbyterian Church, delivered the invocation. (District 1)

### PLEDGE OF ALLEGIANCE

Vice Mayor Johnson led in the Pledge of Allegiance.

### ORDERS OF THE DAY

Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, the Orders of the Day and the Amended Agenda were approved. Vote: 8-0-3-0. Absent: Dando, Pandori; Hammer.

## **CEREMONIAL ITEMS**

- 5a Presentation of plaques to Marlvín Conley for 1 year 6 months service on the Senior Citizens Commission; to Daniel Orloff for 1 year 3 months service on the Parking Advisory Commission; and to Project Diversity Screening Committee members, Jimmie Carr for 2 years service, Rick Crosetti for 2 years service, Jan Gallimore for 1 year service, Jerrold Hiura for 2 years service, Stephen Hsieh for 2 years service, Eric Morley for 2 years service, and to Noelia Vela for 2 years service. (Mayor)**

Documents Filed: None.

Discussion/Action: Vice Mayor Johnson presented plaques to Marlvín Conley, Jimmie Carr, Rick Crosetti, Eric Morley, and Noelia Vela and thanked them for their service to the citizens of San José. Plaques for Daniel Orloff, Jan Gallimore, and Jerrold Hiura will be mailed as the honorees did not attend the meeting.

Council Member Woody left Council Chambers at this point in the meeting.

## **CONSENT CALENDAR**

Upon motion by Council Member Powers, seconded by Council Member Fiscalini and unanimously carried, the Consent Calendar was approved and the below listed actions were taken as indicated. Vote: 7-0-4-0. Absent: Dando, Pandori, Woody; Hammer.

### **Minutes for Approval**

**6a(1) Regular Meeting of December 5, 1995**

Documents Filed: Minutes of the Regular Meeting of December 5, 1996.

Discussion/Action: The Minutes were approved.  
Vote: 7-0-4-0. Absent: Dando, Pandori, Woody; Hammer.

**6a(2) General Plan Meeting of December 5, 1995**

Documents Filed: Minutes of the General Plan meeting of December 5, 1995.

Discussion/Action: The Minutes were approved.

Vote: 7-0-4-0. Absent: Dando, Pandori, Woody; Hammer.

**6a(3) Joint City Council/Redevelopment Agency Meeting of December 7, 1995**

Documents Filed: Minutes of the Joint City Council/Agency Board meeting of December 7, 1995.

Discussion/Action: The Minutes were approved.

Vote: 7-0-4-0. Absent: Dando, Pandori, Woody; Hammer.

**6a(4) Regular Meeting of December 12, 1995**

Documents Filed: Minutes of the Regular Meeting of December 12, 1995.

Discussion/Action: The Minutes were approved.

Vote: 7-0-4-0. Absent: Dando, Pandori, Woody; Hammer.

**Plans and Specifications**

**6d(1) TRACT NO. 8703 - Southwest corner of Glenview Drive and Rajkovich Way - Shapell Industries, Inc., a Delaware Corporation - 76 single family detached units. Adoption of a Resolution approving the final map for Tract No. 8703 (Country View Estates). CEQA: Resolution No. 59924. District 10. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated January 19, 1996, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 66407, entitled: "A Resolution of the Council of the City of San José Approving and Accepting Final Map of Tract No. 8703", was adopted.

Vote: 7-0-4-0. Absent: Dando, Pandori, Woody; Hammer.

**Contracts/Agreements**

**6e(1) Adoption of a resolution authorizing the City Manager to negotiate and execute a continuation agreement and second amendment to the consultant agreement with Campbell Aviation, Inc., extending the term by six (6) months, from July 1, 1994 to June 30, 1996. (Airport)**

Documents Filed: Memorandum from Director of Aviation, Ralph G. Tonseth, dated January 22, 1996, recommending approval of a continuation agreement and second amendment to the consultant agreement with Campbell Aviation Group, Inc.

Discussion/Action: Resolution No. 66408, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Continuation Agreement and Second Amendment to the Consultant Agreement With Campbell Aviation, Inc. Extending the Term to June 30, 1996", was adopted. Vote: 7-0-4-0. Absent: Dando, Pandori, Woody; Hammer.

- 6e(2) Approval of award of open purchase orders for supplies, materials, equipment, and services for FY 1995-96 #13, and authorization for the Director of General Services to execute the purchase orders. (General Services)**

Documents Filed: Memorandum from Director of General Services, Ellis M. Jones Jr., dated January 11, 1996, recommending award of said open purchase orders list, and authorize the Director of General Services to execute the purchase orders.

Discussion/Action: The award of open purchase orders List No. 13 for FY 1995-96 was approved and execution of the purchase orders authorized. Vote: 7-0-4-0. Absent: Dando, Pandori, Woody; Hammer.

- 6e(3) Approval of award of sole source purchase for two thousand (2,000) Biostack backyard composting bins for the Environmental Services Department to Smith and Hawken, manufacturer of the Biostack Backyard Recycling Bin, at a total cost of \$110,300, including tax and freight, and authorization for the Director of General Services to execute the purchase order. (General Services)**

Documents Filed: None.

Discussion/Action: This item was deferred to February 6, 1996.

- 6e(4) Report on bids and award of contract for the San José International Airport Shuttle Bus Access Road Project to the lowest responsive bidder, RGW Construction, Inc., in the amount of \$748,188, and approval of a contingency in the amount of \$75,000. CEQA: ND. (Public Works)**

Documents Filed: See Item 9c.

Discussion/Action: This item was renumbered to Item 9c. See Item 9c for Council action taken.

- 6e(5) Adoption of a resolution authorizing the City Manager to negotiate and execute a consultant agreement with Safe Moves to conduct the Fiscal Year 1995-96 Bicycle and Pedestrian Safety Education Program, in an amount not to exceed \$58,400. CEQA: Exempt. (Streets and Traffic)**

Documents Filed: Memorandum from Director of Streets and Traffic, Wayne K. Tanda, dated January 11, 1996, recommending approval of a consultant agreement with Safe Moves to conduct said Program.

Discussion/Action: Resolution No. 66409, entitled: "A Resolution of the Council of the City of San José Delegating to the City Manager the Authority to Negotiate and Execute An Agreement With Safe Moves to Conduct the FY 1995-96 Bicycle and Pedestrian Safety Education Program In An Amount Not to Exceed \$58,400", was adopted. Vote: 7-0-4-0. Absent: Dando, Pandori, Woody; Hammer.

**6e(6) Approval of an amendment to the employment agreement with Edith Ramirez to reflect a change in work schedule. (Fiscalini)  
(Rules Committee referral 1/24/96)**

Documents Filed: None.

Discussion/Action: The amendment to the employment agreement with Edith Ramirez was approved and its execution authorized. Vote: 7-0-4-0. Absent: Dando, Pandori, Woody; Hammer.

**6e(7) Approval of the substitution of El Camino Paving in place of Meridian Grading and Paving to perform the asphalt concrete paving work for the Silver Creek Linear Park Phase I Project. CEQA: ND. (Public Works)  
(Rules Committee referral 1/24/96)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated January 19, 1996, recommending Council approve the subcontractor substitution to perform said work.

Discussion/Action: The substitution of El Camino Paving in place of Meridian Grading and Paving was approved. Vote: 7-0-4-0. Absent: Dando, Pandori, Woody; Hammer.

**6e(8) Adoption of a resolution authorizing the Director of General Services:**  
**(a) to exercise the option to renew the landscape maintenance agreement at the Water Pollution Control Plant with Four Seasons Landscape and Maintenance, Inc., for the period February 1, 1996 to January 31, 1997, in an amount not to exceed \$292,000.**  
**(b) to exercise the option for renewal for the remaining three (3) option years based on the Consumer Price Index (CPI) adjustment and contingent upon Council appropriation of the funds thereto.**

**(General Services)**

**[Deferred from 1/23/96 - Item 6e(10)]**

Documents Filed: See Item 9e.

Discussion/Action: This item was renumbered to Item 9e. See Item 9e for Council action taken.

## **Routine Legislation**

**6f(1) Adoption of appropriation amendments in the Federal Drug Asset Forfeiture Fund establishing Police Department Non-personal and Equipment appropriations for a total amount of \$200,000. (City Manager's Office/Police)**

Documents Filed: (1) Memorandum from City Attorney, Joan R. Gallo, dated January 30, 1996, clarifying the intent of Federal guidelines applicable to expenditure of Federal drug asset forfeiture funds. (2) Memorandum from Chief of Police, Louis A. Cobarruviaz, dated January 11, 1996, recommending Council approve said appropriation ordinance amendments.

Discussion/Action: Ordinance No. 25034, entitled: "An Ordinance of the Council of the City of San José Amending Ordinance No. 24945 Which Appropriates Moneys in the Federal Drug Forfeiture Fund to Establish Police Department Appropriations in the Total Amount of \$200,000, For Non-Personal and Equipment Items Related to Drug Enforcement Activity; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. Vote: 7-0-4-0. Absent: Dando, Pandori, Woody; Hammer.

**6f(2) Adoption of a resolution authorizing the City Manager to distribute \$2,247.76 from the James Lick Trust Fund to Eastfield Ming Quong. (Finance)**

Documents Filed: Memorandum from Director of Finance, John V. Guthrie, dated January 11, 1996, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 66410, entitled: "A Resolution of the Council of the City of San José Authorizing the Distribution of Certain Accumulated Income in the James Lick Trust Fund in the Amount of \$2,247.76 to the Beneficiary, Eastfield Ming Quong", was adopted. Vote: 7-0-4-0. Absent: Dando, Pandori, Woody; Hammer.

**6f(3) Adoption of a resolution authorizing the reorganization of territory designated as McKee No. 115, which involves the annexation to the City of San José of 8.33 acres of land, located northwest corner of North Capitol Avenue and Mabury Road and the detachment of the same from the Central Fire District. CEQA: ND. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement, Gary J. Schoennauer, dated January 11, 1996, stating that in approving the reorganization proposal, the City Council must make the following findings: [a] That the unincorporated territory is within the City's Urban Service Area as adopted by the Local Agency Formation Commission (LAFCO); [b] That the County Surveyor has determined the boundaries of the proposal to be definite and certain, and in compliance with the LAFCO road annexation policies; [c] That the proposal does not split lines of assessment or ownership; [d] That the proposal does not create islands or areas in which it would be difficult to provide municipal services; [e] That the proposal is consistent with the City's adopted General Plan; [f] That the territory is contiguous to existing City limits; and [g] That the City has complied with all conditions imposed by LAFCO for inclusion of the territory in the City's Urban Service Area.

Discussion/Action: Resolution No. 66411, entitled: "Resolution of the Council of the City of San José Ordering the Reorganization of Certain Uninhabited Territory Designated as McKee No. 115 Subject to Liability for General Indebtedness of the City", was adopted. Vote: 7-0-4-0. Absent: Dando, Pandori, Woody; Hammer.

**6f(4) Acceptance of the Fourth Quarter 1995 San José Arena Authority Ticket Distribution Program Report. (San José Arena Authority)**

Documents Filed: Memorandum from Acting Executive Director, Chris Morrisey, dated January 11, 1996, recommending that the City Council accept said report.

Discussion/Action: Staff recommendation that the Fourth Quarter 1995 San José Arena Authority Ticket Distribution Program Report be accepted by the Mayor and City Council, was approved. Vote: 7-0-4-0. Absent: Dando, Pandori, Woody; Hammer.

**END OF CONSENT CALENDAR**

**COMMISSION, COMMITTEE, AND STANDING REPORTS**

**7a Report of the Committee of the Whole - December 7, 1995**

Documents Filed: Committee of the Whole report of December 7, 1995.

- (1) Five Year Economic Forecast and Revenue Projections 1997-2001. Attachments: (1) Copies of transparencies of the Forecast as presented by the City Manager's Budget Office. (2) Document entitled *Five Year Economic Forecast and Revenue Projections - 1997-2001 - For the General Fund and Capital Improvement Program*, dated November 1995

The Committee accepted the report on the Five Year Economic Forecast and Revenue Projections for 1997-2001 for the General Fund and Capital Improvement Program.

- (2) Fiscal Year 1996-97 Budget Priorities and Direction. Attachment: Memorandum from Mayor Hammer, dated December 1, 1995, transmitting the Mayor's budget direction for FY 1996-97 as mandated by Section 1204 of the *San José City Charter*.

The Committee accepted the review of the budget priorities and direction as contained in the Mayor's December 1, 1995 memorandum.

Discussion/Action: Upon motion by Council Member Fernandes, seconded by Council Member Powers and unanimously carried, the Committee of the Whole reports and actions of December 7, 1995 were accepted. Vote: 7-0-4-0. Absent: Dando, Pandori, Woody; Hammer.

## **7b Report of the Rules Committee - January 17, 1996**

Documents Filed: Rules Committee report of January 17, 1996.

- (1) Review of January 30 Council Agenda. Attachments: (1) Memorandum from Council Member Dando, dated January 10, 1996, recommending the Council (a) change Council Policy 0-24 on contracted services to promote competition and to evaluate the quality and cost of appropriate City services; (b) direct Staff to deliver and implement within 90 days a competitive process for certain City services and to present the findings to the Finance Committee; (c) request that the Mayor's New Realities Task Force identify several potential services in every City department with the exception of Police and Fire that could participate in a competitive model to provide better services at a lower cost; and (d) request that the City Administration develop a long-term permanent model for competition that has a clear bidding process which includes cost benefit and performance based evaluations. (2) Memorandum from Council Member Dando, dated December 16, 1995, transmitting correspondence requesting the City to provide the best services at the lowest costs through a competitive process.

The Committee recommended approval of the January 30, 1996 Council Agenda with one change.

- (2) Add New Items to January 23 Amended Council Agenda

The Committee recommended four additions and one change to the January 23, 1996 Amended Council Agenda.

- (3) The Public Record. Attachments: (1) Memoranda from City Clerk, Patricia L. O'Hearn, dated January 4, 1996 and January 11, 1996, listing items transmitted to the Administration and the items filed for the Public Record. (2) Memorandum from Assistant to the City Manager, Nina S. Grayson, dated January 16, 1996, summarizing the actions taken on those items transmitted to the Administration and those filed for the Public Record covering specified periods.
- (a) For the period ending 1/2/96
  - (b) For the period ending 1/9/96

The Committee recommended approval of the Public Records for the periods ending 01/02/96 and 01/09/96.

- (4) 1996 City-Sponsored State Legislation. Attachment: Memorandum from Director of Intergovernmental Relations, Georgiana Flaherty, dated January 12, 1996, recommending approval of specific City Sponsored State Legislation in 1996, and direction to the Administration to secure a spot bill for possible future legislation in the 1996 session on low-income housing tax credits.

The Committee recommended approval of City-sponsored legislation in 1996 on (a) Public use facility clients exemption from possessory interest taxation; and (b) Small housing project exemption from disposition and development agreements; and directed the City Administration to secure a spot bill for possible future legislation in the 1996 session on low-income housing tax credits.

- (5) Approve Legislative Report 96-01. Attachment: Memorandum from Director of Intergovernmental Relations, Georgiana Flaherty, dated January 12, 1996, recommending approval of Legislative Report 96-01 and the recommended City positions for each bill.

AB 317 (Hoge)  
Shopping Cart Retrieval  
Recommended City Position: OPPOSE

AB 545 (Mazzoni)  
Nuisance Abatement  
Recommended City Position: OPPOSE

AB 1392 (Conroy)  
Public Works  
Recommended City Position: OPPOSE

- (5) Approve Legislative Report 96-01. - (Cont'd.)

The Committee recommended approval of the Legislative Report and recommended City position for the bills.

- (6) Appointments to Project Diversity Screening Committee. Attachments: (1) Memorandum from City Clerk, Patricia L. O'Hearn, dated December 20, 1995, attaching the roster of Commissioners who have completed their terms on the Project Diversity Screening Committee. (2) Memorandum from Vice Mayor Johnson, dated January 16, 1996, recommending the appointment of two individuals to the Project Diversity Screening Committee. (3) Memorandum from Council Member Powers, dated January 17, 1996, nominating Think Ha to serve on the Project Diversity Screening Committee. (4) Memorandum from Council Member Fernandes, dated January 17, 1996, nominating Terry Gregory for appointment to the Project Diversity Screening Committee. (5) Memorandum from Council Member Fiscalini, dated January 12, 1996, nominating Jo-Lynn Otto as a candidate to serve on the Project Diversity Screening Committee for 1996-97.

The Committee recommended appointments to the Project Diversity Screening Committee for two year terms ending December 31, 1997 for Terry Gregory, Think Ha, Nancy Haggerty, Gloria Meeks, and Jo-Lynn Otto.

- (7) Council Referrals for Assignment to Appropriate Committee, Administration, or Council Appointee
- (a) Request for audit of Emergency Housing Consortium. Attachment: Memorandum from Council Member Shirakawa, Jr., dated January 9, 1996, requesting the City Auditor to conduct a financial audit of Emergency Housing Consortium.

The Committee continued this item to January 24, 1996 Rules Committee meeting and directed the City Auditor to return with an estimate of the time involved for his Office to conduct an audit of Emergency Housing Consortium.

- (8) City Council and Rules Committee meeting schedules

None presented.

- (9) Oral communications

None presented.

- (10) Adjournment

The meeting was adjourned at 3:25 p.m.

Discussion/Action: Upon motion by Council Member Fernandes, seconded by Council Member Powers and unanimously carried, the Rules Committee report and actions of January 17, 1996 were accepted. Vote: 7-0-4-0. Absent: Dando, Pandori, Woody; Hammer.

Council Member Woody returned to Council Chambers at this point in the meeting.

## **GENERAL GOVERNMENT**

### **9a Acceptance of status reports on Rounds 1, 2, and 3 of the Community Action and Pride Grants. (Parks, Recreation and Community Services)**

Documents Filed: None.

Discussion/Action: This item was deferred to February 6, 1996.

### **9b Report and approval of report and recommendations to conduct a Planning Study for the Rincon South Area. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement, Gary J. Schoennauer, dated January 12, 1996, recommending Council direct City Staff to proceed with the conduct of the reduced cost alternative Rincon South Area Study, and refer funding of the project to the 1996-97 City and Redevelopment Agency Budget Process.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, the report was accepted and City Staff directed to proceed with the reduced cost alternative for the Rincon South Area Study with the funding of the project referred to the 1996-97 City and Redevelopment Agency Budget Hearing Process. Vote: 8-0-3-0. Absent: Dando, Pandori; Hammer.

Council Member Pandori arrived at 1:45 p.m..

### **9c Report on bids and award of contract for the San José International Airport Shuttle Bus Access Road Project to the lowest responsive bidder, RGW Construction, Inc., in the amount of \$748,188, and approval of a contingency in the amount of \$75,000. CEQA: ND. (Public Works)**

Documents Filed: (1) Supplemental memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated January 22, 1996, recommending Council approve said contract award to the lowest responsive bidder, RGW Construction, Inc. (2) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated January 11, 1996, recommending Council approve said contract award to the low bidder

Discussion/Action: This item was renumbered from Item 6e(4). Director of Public Works, Ralph A. Qualls, Jr., stated for the record that the *24 percent MBE/WBE Requirements* as indicated on page 3 of the January 22, 1996 Staff report should be corrected to read *RGW Construction, Inc. has met this goal by attaining 22 percent MBE/WBE participation.* Slobodan Galeb, representing Galeb Paving, Inc., protested Staff's award recommendation and requested reconsideration of Galeb's bid proposal. Director of Affirmative Action/Contract Compliance, Steve Wing, noted the number of proposals and the bid results for the proposed project, and acknowledged that the apparent low bidder was Galeb Paving, Inc., however, Galeb failed to meet the mandated MBE/WBE participation goal and failed to submit adequate documentation of good faith efforts. He stated the Office of Affirmative Action/Contract Compliance indicated that the bid received from Galeb is non-responsive and recommends that the contract be awarded to the lowest responsive bidder. Upon motion by Council Member Shirakawa, Jr., seconded by Council Member Diaz and unanimously carried, the award of contract to RGW Construction, Inc., was approved and execution of the contract authorized. Vote: 9-0-2-0. Absent: Dando; Hammer.

- 9d**
- (1) Certification of the results of the examination of the Referendum Petition against Ordinance No. 25016 relating to Pick Your Part.**
  - (2) Discussion and consideration of Council action to either repeal Ordinance No. 25016 or to submit the Ordinance to the voters at the November Municipal Election or a Special Election.**
- (City Attorney's Office/City Clerk)**  
**(Orders of the Day 4a)**

Documents Filed: (1) Memorandum from City Attorney, Joan R. Gallo, dated January 29, 1996, setting forth the options and conditions under which Council may act on the referendum petition in accordance with State law. (2) Letter from Dwight M. Beattie, Registrar of Voters in and for the County Santa Clara, dated January 26, 1996, enclosing the results of the signature check on the *Referendum Against An Ordinance Passed By the City Council to the City Council of the City of San José, California* referendum petition.

Discussion/Action: Chuck Reed, representing Pick Your Part, requested that Council postpone for one month its decision to repeal or submit the Ordinance to the voters at either the November Municipal Election or a Special Election. San José resident Al Drost objected to the proposed location of the automobile dismantling facility. Council Member Pandori expressed support for the referendum or for delaying a decision for 30 days with the understanding that the City Council take action to inform the public of the sponsors of the referendum. He stated the referendum measure was sponsored by competitors of the automobile parts industry and not by residents of the area; therefore, the public should be made aware of major contributors and their contributions. He requested that the City Attorney take a look at the obligation of signature collectors to disclose major contributions and contributors to the referendum, as well as to identify legal issues associated with the contributions that should be reviewed. Upon motion by

Council Member Shirakawa, Jr., seconded by Council Member Powers and unanimously carried, the *Certificate to Referendum Petition* dated January 26, 1996, was certified; Council action on the consideration to either repeal Ordinance No. 25016 or to submit the Ordinance to the voters was deferred 30 days with direction given to the City Attorney to look at the possibility of signature gatherers disclosing major contributors to the referendum and associated legal issues. Vote: 9-0-2-0. Absent: Dando; Hammer.

9e

**Adoption of a resolution authorizing the Director of General Services:**

- (1) **To exercise the option to renew the landscape maintenance agreement at the Water Pollution Control Plant with Four Seasons Landscape and Maintenance, Inc., for the period February 1, 1996 to January 31, 1997, in an amount not to exceed \$292,000.**
- (2) **To exercise the option for renewal for the remaining three (3) option years based on the Consumer Price Index (CPI) adjustment and contingent upon Council appropriation of the funds thereto.**

**(General Services)**

**[Deferred from 1/23/96 - Item 6e(10)]**

Documents Filed: (1) Memorandum from Director of General Services, Ellis M. Jones Jr., dated January 5, 1996, recommending Council (a) exercise the option to renew the agreement with Four Seasons Landscape and Maintenance, Inc. for the period February 1, 1996 through January 31, 1997; and (b) authorize the Director of General Services to exercise the option for renewal for the remaining three (3) option years based on the Consumer Price Index adjustment and contingent upon Council appropriation of funds thereto. (2) Letter from the Treatment Plant Advisory Committee, dated January 12, 1996, recommending approval of the extension of the agreement with Four Seasons Landscape and Maintenance, Inc. (3) Letter from Roxana Rivera, Organizer, Service Employees' International Unit, SEIU Local 22, dated January 23, 1996, opposing the current proposal to renew the contract between Four Seasons Landscape and Maintenance, Inc. and the City of San José. (4) Memorandum from Council Members Diaz, Diquisto, and Shirakawa, Jr., dated January 30, 1996, recommending Council extend the current contract for not more than three months allowing time for Staff to study the issues and to initiate a new RFP process for the contract. (5) Supplemental memorandum from Director of General Services, Ellis M. Jones Jr., dated, January 29, 1996, recommending Council (a) exercise the option to renew the agreement with Four Seasons Landscape and Maintenance, Inc., for the period February 1, 1996 through January 31, 1997; (b) authorize the Director of General Services to exercise the option for renewal for the remaining three (3) options based on the Consumer Price Index adjustment and contingent upon Council appropriation of funds thereto; and (c) direct the Administration to report back to Council recommending corrective action, including possible termination of contract, if violations of the City contract or other situations warranting such action are discovered.

Discussion/Action: This item was renumbered from Item 6e(8). Director of General Services, Ellis M. Jones, Jr., stated City Staff, as directed by Council on January 23,

1996, reviewed the issues submitted in a letter from Roxana Riviera concerning alleged violations of California State Labor Code and Occupational Safety and Health regulations. He stated the class action lawsuit involving wages and pay is pending in Santa Clara County Superior Court; however, not included in the Staff memorandum is that the Office of Affirmative Action/Contract Compliance has completed a review of Four Seasons' adherence to prevailing wage requirements under the contract, and found no discrepancies. He stated the letter to the City from the Occupational Safety and Health Appeals Board in Sacramento, California (Cal-OSHA), submitted for Council's information, characterizes the citations as "...containing five items of a minor nature...", and that the Administration continues to recommend extending the contract for one year with Four Seasons. Jim Cumbra, representing Four Seasons Landscape spoke in support of the maintenance contract and responded to Council's questions related to allegations of labor infractions; and Roxana Rivera, representing SEIU Local 1877, elaborated on the contents of the January 23, 1996 letter in opposition to the current proposal to renew the contract with Four Seasons Landscape and Maintenance. WPC Division Manager, Ron Garner, stated City Staff developed a reporting system and the *Weekly Landscape Inspection Checklist* to ensure close monitoring and timely correction of any deficiencies identified in the four zones around the Plant. He stated the ratings assigned as a result of the inspections places the contractor's overall level of performance consistently within the 90th percentile, and that any deficiencies noted have been corrected promptly. Based on the satisfactory performance of Four Seasons thus far, he stated the renewal of the contract is warranted. Council Member Shirakawa, Jr., acknowledged the benefits of utilizing measurement systems to monitor the contractor's performance, but stated the issue for him is one of service versus compensation—85% performance level is unsatisfactory for a \$300,000 contract. He stated the unresolved complaints alleging poor employee relations and substandard employee benefits, as well as the cost and performance level of the contract must be addressed; for that reason, he and Council Members Diquisto and Diaz are recommending Council extend the current contract for not more than three months allowing time for staff to study both these issues and to issue a new Request For Proposal (RFP) for the contract, and to discuss as a separate matter the policy issues relative to acceptable performance standards. Council Member Fiscalini expressed confidence in Staff's ability to conduct evaluations pursuant to the agreement, to qualify the contractor according to established criteria set forth in the bid proposal, and to report to Council the results and recommendations, but noted the substance of today's discussion by the City Council is inappropriate and is sending the community the wrong message. He stated the best course of action for Council to pursue at this point in time is to approve the Staff recommendation. Council Member Pandori stated the role of contract administration is not meant for the City Council. Council Member Powers stated she preferred to exercise the option to renew the agreement for one year with no rollovers; thereby, approving items #1 and #3 of the Staff recommendation. Council Member Woody endorsed a six-month contract extension with Staff reporting back to Council. City Manager, Regina V.K. Williams reiterated the intent of the inspection checklist and the contractor's adherence to performance standards, and urged Council to consider those measurement tools in the context of contract compliance. Noting concern about unfounded allegations, she stated the result of Staff reviews of employee relations with management and compliance with prevailing wage

requirements has produced no violations by Four Seasons. She suggested that Council proceed either with the one-year or a six-month contract extension, but hold in abeyance the decision to issue the Request for Proposal until the Administration completes the performance evaluation, as the issuance of another RFP would not be in the best interest of the City. Upon motion by Council Member Shirakawa, Jr., seconded by Council Member Diquisto and carried to approve the recommendation as proposed in the January 30, 1996 memorandum which would extend the current contract for not more than six months with the Administration reporting back to Council on the results of the evaluation within three months, and then issue a new RFP for the contract, failed. Vote: 4-5-2-0. Noes: Fiscalini, Johnson, Pandori, Powers, Woody. Absent: Dando; Hammer. Upon motion by Council Member Fernandes, seconded by Council Member Fiscalini and carried, Resolution No. 66412, entitled: "A Resolution of the City of San José Authorizing the Director of General Services to Execute An Option to Renew Agreement With Four Seasons Landscape and Maintenance for the Water Pollution Control Plant For One Year", was adopted, and Staff recommendation approved as modified to extend the current contract one (1) year with Four Seasons Landscape and Maintenance, Inc., with direction to Staff to report back to Council within six (6) months with a performance appraisal of the contractor's work at the Plant and responses to the issues raised by Council regarding contents and issuance of the RFP. Vote: 8-0-3-0. Absent: Dando, Pandori; Hammer.

Council Member Pandori left the meeting.

## **FISCAL AFFAIRS**

### **10a PUBLIC HEARING and adoption of a resolution confirming the Report of Unpaid Recycle Plus Bills and direction to place a Special Assessment against the property secured by a lien with the County Recorder. (Finance)**

Documents Filed: (1) Supplemental memorandum from Director of Finance, John V. Guthrie, dated January 26, 1996, summarizing the results of the Administrative Hearing conducted at the offices of Utility Billing Services on January 24, 1996. (2) Memorandum from Director of Finance, John V. Guthrie, dated January 11, 1996, recommending Council adopt the resolution which confirms said report of the Director of Finance, and direct the Director of Finance to place a Special Assessment against the property secured by a lien with the Santa Clara County Recorder's Office. (3) Affidavit of Mailing of a Notice of Delinquency and Public Hearing, dated January 24, 1996, and attaching a copy of the Lien Candidate Certification of Mailing Group.

Discussion/Action: Vice Mayor Johnson opened the public hearing to consider the subject report and assessments. San José citizen Al Drost spoke against the proposed action. Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, the public hearing was closed and Resolution No. 66413, entitled: "A Resolution of the Council of the City of San José Confirming the

Report of Unpaid Recycle Plus Bills and Direction to Place a Special Assessment Lien Against Property”, was adopted. Vote: 8-0-3-0. Absent: Dando, Pandori; Hammer.

## **CLOSED SESSION REPORT**

Disclosure of Closed Session Actions of January 30, 1996 submitted by City Attorney, Joan R. Gallo

A. Pending Litigation - Settlement Authorized:

1. Case Name: *YATES v. CITY, et al.*

Substance of Settlement: Approval of Settlement of Action, City to Pay the Total Sum of \$45,000.

Council Vote: Ayes: Diaz, Diquisto, Fernandes, Fiscalini, Johnson, Powers, Shirakawa, Jr., Woody.

Noes: None.

Absent: Dando, Pandori; Hammer.

Disqualified: None.

## **ADJOURNMENT**

The Council of the City of San José adjourned at 3:05 p.m. in memory of Anthony Soto, Founder of C.E.T., to meet with the Redevelopment Agency Board in Joint Session on Thursday, February 1, 1996, 1:30 p.m., Council Chambers, City Hall.

**SUSAN HAMMER, MAYOR**

**ATTEST:**

**PATRICIA L. O’HEARN, CITY CLERK**