



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Paul Krutko  
Larry D. Lisenbee

**SUBJECT:** SEE BELOW

**DATE:** January 3, 2007

Approved

*Deanna Jahnke*

Date

*1/9/07*

COUNCIL DISTRICT: 3

**SUBJECT: AGREEMENT BETWEEN THE CITY OF SAN JOSE AND CITY FRONT SQUARE LLC FOR PUBLIC ART FOR PHASE ONE AND PHASE TWO OF THE CITY FRONT SQUARE PROJECT**

## RECOMMENDATION

1. Approval of an agreement between City Front Square LLC, a Delaware Limited Liability Company ("Developer") and the City of San Jose ("City") for the Office of Cultural Affairs ("OCA") to administer the public art projects for the Block 8 development, in a total amount not to exceed \$273,500: \$136,000 for Phase One, and \$137,500 for Phase Two of the public art projects.
2. Adoption of the following Appropriation Ordinance and Funding Sources Resolution Amendments in the General Fund:
  - a. Establish an appropriation to the Office of Economic Development for the Public Art in Private Development project in the amount of \$136,000.
  - b. Increase the estimate for earned revenue by \$136,000.

## OUTCOME

The inclusion of public art as an element of the City Front Square Project at the northeast corner of South Market and West San Carlos Streets will help to enhance the building's status as a downtown landmark, and add to downtown's rich visual landscape.

## **BACKGROUND**

As provided in Resolution 3606 of the Board of Directors of the Redevelopment Agency dated December 15, 1992, for public/ private developments funded by the Redevelopment Agency of the City of San José (“SJRA”) through Disposition and Development Agreements (DDAs), the SJRA shall attempt to obtain a commitment from the developer of up to 2% of the cost of development for public art.

The 2001 Public Art Master Plan recommended that the public art ordinance be amended to specify 1% of design and construction costs be allocated for public art from private development projects when the SJRA was financially involved through a DDA or an Owner Participation Agreement or were selling property. Although the ordinance amendment was not implemented, SJRA and OCA, as a matter of practice, have followed the standard of 1% of design and construction costs for art for public/private developments.

DDAs entered into by the SJRA and Developers usually provide that the Developers will coordinate with OCA to facilitate their art projects, and the San José Arts Commission reviews private development public art projects for final approval.

## **ANALYSIS**

The SJRA and City Front Square LLC and Casa Del Pueblo Preservation L.P. have entered into a Disposition and Development Agreement dated June 27, 2006 (the “Original DDA”) to develop a mixed use residential and retail project (“Project”) located at the northeast corner of South Market and West San Carlos Streets, also referred to as Block 8.

The DDA requires the Developer to expend not less than 1% of the Hard Project Cost, as defined in the DDA, of the For-Sale Component of the Project for provision of public art, which will be administered by OCA.

Based upon estimated Hard Project Costs for Phase One of the For-Sale Component of the Project, a public art budget of \$908,000 has been allocated for Phase One as follows: \$772,000 for design, fabrication and installation of artworks, which will be paid directly by the developer to the selected artist/s; and \$136,000 to the City for OCA project facilitation costs (administration) including artist selection, public outreach and project management.

For Phase Two, a public art budget of \$916,500 has been allocated as follows: \$779,000 for design, fabrication and installation of artworks, which will be paid directly by the developer to the selected artist/s; and \$137,500 to the City for OCA project administration.

In the event that design, fabrication and installation funds are not fully spent after the completion of the Phase One artwork, those funds will be carried forward to Phase Two for a period of 36 months. If, at that time, Phase Two has not been initiated, the carry forward funds will be deposited with the OCA for the development of future public art projects within downtown San

Jose. Additionally, in the event that design, fabrication and installation funds remain after the completion of the Phase Two artwork, those funds will be deposited with the OCA for the development of public art projects within downtown San Jose. The current appropriation request of \$136,000 represents Public Art Administration for Phase One only. Phase Two will begin during or after Fiscal Year 2007-08.

### **PUBLIC OUTREACH/INTEREST**

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

While this agreement is under the \$1 million threshold, this memorandum is posted on the City's website for the January 23, 2007 Council Agenda.

The OCA will include public outreach as a key component of its project development.

### **COORDINATION**

This memo has been coordinated with the Redevelopment Agency and the City Attorney's Office.

### **FISCAL/POLICY ALIGNMENT**

This project is consistent with the Economic Development Strategy Initiative to position Downtown as a unique creative and cultural center of Silicon Valley, and to communicate a compelling, consistent identify for San José.

**COST SUMMARY/IMPLICATIONS**

**1. COST OF PROJECT:**

Project Delivery	\$ 136,000
Artwork Construction (Developer Cost)	\$ 772,000
<b>Total Public Art Project Costs</b>	<b>\$ 908,000</b>

**2. SOURCE OF FUNDING:** General Fund (Revenue from Developer)

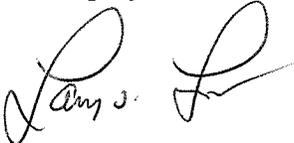
**3. FISCAL IMPACT:** The Public Art Project at Block-8 will be maintained by the City Front Square LLC or by the successor owner per agreement, and there will be no operating and maintenance costs impact to the General Fund.

**BUDGET REFERENCE**

Fund #	Appn #	Appn. Name	Total Appn	Amt. for Contract	2006-2007 Adopted Budget Page	Last Budget Action (Date, Ord. No.)
001	TBD	Public Art in Private Development	\$136,000	\$136,000	N/A	N/A

**CEQA**

Not a project.



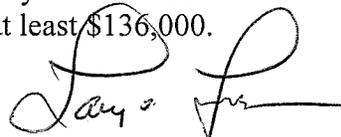
LARRY D. LISENBEE  
Budget Director



PAUL KRUTKO  
Director, Office of Economic Development

For questions please contact Barbara Goldstein, Public Art Director, at 408-277-5144 ext. 27.

I hereby certify that there will be available for appropriation in the General Fund in the Fiscal Year 2006-2007 moneys in excess of those heretofore appropriated there from, said excess being at least \$136,000.



LARRY D. LISENBEE  
Budget Director