



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Paul Krutko
Scott P. Johnson

SUBJECT: Acquisition of the FMC Property

DATE: January 5, 2005

Approved

Date 1/13/05

COUNCIL DISTRICT: City-Wide

**SUBJECT: APPROVAL TO ADD THE CITY PROPERTY LOCATED AT
REMILLARD COURT AS ADDITIONAL COLLATERAL FOR URBAN
DEVELOPMENT (HUD) SECTION 108 LOAN.**

RECOMMENDATION

Approval to add the City Property located on Remillard Court adjacent to Interstate 280 to the north, Remillard Court to the east, Story Road to the south, and Coyote Creek to the west as additional collateral for the Housing and Urban Development (HUD) Section 108 loan for the purchase of 74.87 acres of property located at 1125 Coleman Avenue.

BACKGROUND

On May 18, 2004 the City Council approved a Term Sheet and authorized staff to negotiate an agreement with FMC Corporation for the purchase of 74.87 acres of property located at 1125 Coleman Avenue. Council also authorized staff to submit a Housing and Urban Development (HUD) Section 108 loan to support the purchase of 23.23 acres of the 74.87 acres of the FMC property. On August 17, 2004 the City Council approved the Purchase Agreement with FMC Corporation and authorized the City Manager on behalf of the City to complete the acquisition of 23.23 acres of the FMC property and negotiate and execute the loan documents with HUD for the Section 108 loan.

On December 14, 2004 HUD indicated that the City's loan request was approved, subject to certain conditions. The purpose of this memorandum is to highlight the conditions of approval and outline additional requirements related to the Section 108 loan.

ANALYSIS

On December 14, 2004 HUD approved a loan to the City of San Jose to support the City's acquisition of 23.23 acres of the FMC property (the "Phase II Property") that in turn will assist the City in securing the 74.87 acres located at 1125 Coleman Avenue. HUD routinely requires standard actions by the City such as the submittal of reports and inspections and the approval of the repayment schedule. As a standard requirement HUD requires that the City pledge its CDBG allocations and states that if the City cannot make debt service payments, HUD may use the CDBG allocation to ensure that debt service is repaid. In addition, the City can provide other payment or real property to secure the Section 108 loan. The Redevelopment Agency has been awarded three other Section 108 loans with similar requirements. The City loan will be placed and administered by a Trustee previously selected by HUD.

HUD provides a certain amount of flexibility to municipalities with Section 108 loans. Section 108 loans carry an interest rate of 20 basis points over the three-month LIBOR which is determined quarterly. The term of HUD loans is 20 years. On an annual basis, the City can elect to maintain a variable rate or choose to lock in a fixed rate for the remaining term of the loan by placing City's loan in a pool of loans to be sold to a specific investor. If the City maintains the variable rate, the City may pay off the HUD loan with two weeks notice. If the City elects to convert the loan to a fixed rate and the City then determines to pay off the loan, the loan would have to be defeased by depositing the payoff amount in an escrow account that would be used to make the remaining regularly scheduled loan payments until the bonds can be called (ten years after the sale of the loan pool). Staff would conduct a cost-effectiveness analysis prior to any fixed rate conversion or loan prepayment. Finance Department staff will be required to monitor the loan, review the required principal and interest payments, and coordinate payments with the loan trustee.

As identified in the August 17, 2004 memo to Council, the City will pledge the 23.23 acres of the FMC property as security for the Section 108 loan and HUD will hold a first lien position on the property. City staff has identified that lease revenues and sales tax revenues will be the primary source of repayment for the loan. The conservative proforma developed for the project identifies the potential for a shortfall in the first few years of debt service payments. In order to proactively plan for any such shortfall, the Department of Aviation has agreed and the Council approved on August 17, 2004, a potential loan for \$3.75 million. The Airport loan can be used for debt service payments and for required infrastructure improvements.

Additionally, HUD requires that the land pledged for the project provide HUD with an 80% loan to value ratio. In other words, an appraisal conducted by a certified appraiser must show the value of the land held as collateral by HUD must be 20% greater than the loan amount. The City negotiated with FMC to purchase the land for \$25 per square foot. The 20% increase in value required by HUD results in a required value of \$32.50, including funds associated with closing costs. As a result, a second appraisal was conducted in December of 2004 for just the Phase II Property to be purchased through the Section 108 loan and held as collateral by HUD. Smith and Associates prepared the appraisal. Smith evaluated the property's current value to be roughly

\$29.50 a square foot. Given the very short time frame since the property was appraised for the purpose of negotiating with FMC, the valuation shows the positive investment made by the City but is not sufficient to satisfy HUD's requirement for an 80% loan to value ratio.

As a result, HUD requires that the City pledge an additional piece of land as collateral. Office of Economic Development (OED) staff working with staff from the departments of Finance, Public Works and the Environmental Services Department were able to identify the approximately 17 acre Remillard property as a property with no outstanding debt and no near term uses that would be negatively impacted by the use of the property as additional collateral. The Remillard property is currently vacant and has been appraised for \$4.6 million. The site was originally used for a city-owned waste landfill until closure in 1969. Future uses of the site have not been finalized. The additional collateral is only required until such time that the 23.23 acres located on Coleman Avenue can be reappraised and a value of \$32.50 achieved on the property. The Remillard property can also be released as collateral when the City has paid sufficient principal payments such that the differential between the 80% loan to value has been achieved. At such a time the process for HUD to release additional collateral takes approximately 3 to 4 months.

HUD has delivered its standard loan guarantee and note for the City to execute. The documents contain standard lender provisions including the waiver of notice and hearing for defaults under the loan guaranty and the note. Because the CDBG allocations are already pledged to HUD as additional security of the loan under the note there should be no defaults so long as there are CDBG funds allocated to the City. HUD also has indicated that it is its practice to notify and work with the local agency in cases of default notwithstanding the waiver provisions in the loan documents.

PUBLIC OUTREACH

Purchase of the 74.87 acres of land at 1125 Coleman has been the subject of two previous reports to City Council. Staff completed a National Environmental Protection Agency (NEPA) review of the project, which also required public notice.

COORDINATION

This memorandum has been reviewed by the City Attorney's Department, the Environmental Services Department, and General Services Department.

COST IMPLICATIONS

There are no costs associated with using the Remillard Property as additional security for the purchase of the 1125 Coleman Avenue property. Costs associated with the purchase of the

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Coleman Avenue property have been reviewed and approved by the City Council on May 18, 2004 and August 17, 2004. A portion of the loan proceeds will be used to reimburse the City for appraisal and consultant costs associated with obtaining the Section 108 Loan.

CEQA

Resolution No. 71716, PDC 98-12-104.



PAUL KRUTKO

Director, Office of Economic Development



SCOTT P. JOHNSON

Director, Finance Department