

Study Session Date: 03/19/07



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Dan McFadden

SUBJECT: Supplemental - March 19
Downtown Study Session

DATE: March 13, 2007

Approved

Ray Wine

Date

3/13/07

COUNCIL DISTRICT:
SNI AREA:

REASON FOR SUPPLEMENTAL

The materials distributed on Friday, March 9, 2007, did not include the signed "Letter of Agreement" that was referenced in the "Purpose of Study Session" section of the original memo.

Dan McFadden
Deputy City Manager

For questions please contact Dan McFadden at (408) 535-8120

Signed "Letter of Agreement"

This letter agreement outlines the goals, framework, roles and responsibilities related to the proposed expansion and renovation of the City-owned San José McEnery Convention Center ("Center"), including the development of a financing plan to fund the proposed expansion and renovation. This is not a binding agreement, but is intended to guide the staffs of the City of San José ("City"), the Redevelopment Agency of the City of San José ("RDA"), the San José Convention and Visitors Bureau ("CVB") and Team San José ("TSJ"). The parties acknowledge that the City Council or the RDA Board have the final decision-making authority with respect to the matters covered by this letter agreement.

I. Purpose

The parties wish to explore the feasibility of expansion and renovation of the Center in terms of the environmental impacts, cost to construct including the cost of financing, available financing mechanisms, ongoing operating and maintenance costs of the Center and the increased cost of operating the renovated and expanded Center. The parties acknowledge that the primary reason for the renovation and expansion of the Center is to maximize the economic impact potential of the Center in terms of booking events which attract delegates who are likely to spend money in San José for lodging, meals and other expenses during the course of these events. However, the parties also acknowledge that the desire to maximize the economic potential of the Center must be balanced against other interests of the City, including environmental impacts, and the costs of construction, financing and ongoing operating and maintenance.

The parties also understand and agree that exploration of the feasibility of the expansion and renovation of the Center, as outlined below, will be an evolving process depending on a variety of factors including but not limited to: (1) the willingness of the hotels in San José to be taxed for such purpose; (2) the sufficiency of the tax revenues to secure the issuance of bonds required to construct the renovation and expansion of the Center as proposed; (3) the likelihood of a court validating the proposed tax to be imposed on San José hotels, as described below.

II. Proposed Project Description

A. **Current Center.** The current Center, constructed in 1989, currently encompasses 1.2 million gross square feet ("sf"), consisting of 143,000 net sf of exhibition space, a 22,000 net sf ballroom, 27,500 net sf of breakout meeting rooms, 80,000 sf in South Hall and 1,200 parking spaces.

B. **Proposed Master Plan.** The parties agree that a Master Plan for the future development of the Center will be prepared. The starting point for the Master Plan will be the proposed renovation and expansion described in the economic feasibility analysis accepted by the City Council on August 6, 2002, which included the following: the renovation of the existing Center space to a competitive Class-A quality level as well as an expansion of the Center to 300,000 net sf of exhibition space; a total of 90,000 net sf of ballroom space; a

total of 70,000 net sf of breakout meeting room space; and additional parking spaces. The parties acknowledge that the goal is to renovate and expand the Center as described above to be a competitive Class-A Center and that this standard will be defined through the Master Plan process. The parties further acknowledge that the construction of the Proposed Project can affect the operations of the Center and that during the development of the Master Plan, the parties will work to develop a construction and operations plan that is agreeable to all parties. The parties further acknowledge that the number of additional parking spaces will need to be addressed during the Master Plan process and that the revenues from the Convention Center parking will be addressed as part of the development of the financing plan for the Proposed Project.

C. Phased Master Plan. The parties acknowledge that the improvements to the Center as contemplated by the Proposed Master Plan are to be phased. The proposed phasing for purposes of this analysis, is as follows:

1. Phase I. Phase I includes the components listed below.
 - a. Adding a new 35,000 sf ballroom; adding 20,000 sf of new breakout meeting space; and adding additional parking spaces on the site currently occupied by the former Martin Luther King Library and the Center drop-off area;
 - b. Converting the existing ballroom at the Center to exhibition space; and
 - c. Renovating and upgrading the existing exhibit hall, meeting space and public circulation areas to a competitive Class-A quality level.
2. Phase II. Phase II includes the following components.
 - a. Expanding the footprint of the Center to Balbach Street, ultimately bringing the facility to approximately 300,000 sf of net exhibition space, 90,000 net sf of ballroom space, 70,000 net sf of break-out meeting space, and the necessary parking for such space.
 - b. The parties agree to continue discussions in an effort to create a feasible plan to fund the costs to construct Phase II of the Master Plan at the earliest possible date.

D. Proposed Project. The Proposed Project outlined in this Letter Agreement is Phase I of the Master Plan. Assuming the Master Plan is approved by the City

Council, the development of a financing plan for Phase II of the Master Plan will be the subject of future review as to the feasibility of proceeding with construction.

E. **Deferred Maintenance.** The Proposed Project will include deferred maintenance of the Center in order to support the Center's renovation and expansion. However, the source of funding for the deferred maintenance and the ongoing maintenance of the Center will be addressed during the development of the Master Plan and the financing plan for the Proposed Project. The parties acknowledge that TSJ has engaged a consultant to review the deferred maintenance of the Center and that the resulting "Asset Review Report" will be the starting point for discussions regarding how to address the deferred maintenance of the Center. The parties agree that the objective is to minimize if not eliminate the use of hotel special tax funds on any deferred maintenance items that are not directly impacted by the construction of the Proposed Project.

F. **Benchmarks.** The benchmark for the quality of the expansion and renovation of the Center is that the Center be a competitive Class-A convention center and that this standard will be defined through the Master Plan process. Additionally, the renovation and expansion of the Center will be consistent with the City's "Green Building" policies.

III. *Financing*

A. **Financing Mechanisms.** The City, with the assistance of its bond counsel and its financial advisor, will investigate the legal and financial feasibility of funding the Proposed Project through the issuance of bonds secured by a hotel special tax. The particular mechanics of the hotel special tax will need to be developed, including whether the hotel special tax could be imposed through the formation of a community facilities district pursuant to existing procedures authorized by law or alternatively, whether the hotel special tax would be imposed by a City ordinance to be adopted by the City Council. In either case, the hotel special tax would be subject to an election and approval by a two-thirds margin of the eligible voters.

In general, it is intended that the hotel special tax would be imposed on occupied hotel rooms (and not on the transient) at the rate of 1% during the first fiscal year of the tax, 2% during the second, 3% during the third, and 4% of the room rent thereafter. The hotel operator may pass through such tax to the hotel guest, but it is separate from and therefore would not be considered part of the City's existing transient occupancy taxes. It is intended that the payment of the hotel special tax proceeds would be paid to the City along with the hotel operator's collection of the City's transient occupancy taxes.

B. Bond Issuance. In preparation of issuance of the proposed Bonds, the City with the assistance of its bond counsel and financial advisor will develop a financing plan for the issuance of municipal bonds secured by the hotel special tax. The parties acknowledge that it is the City's intent to seek court validation of the proposed Bonds prior to issuance.

The City, in the development of the financing plan, may consider various mechanisms to provide credit enhancement for the proposed Bonds or to maximize the hotel special tax revenues available for the design and construction of the Proposed Project. These mechanisms may include the issuance of lease revenue bonds or the provision of other legally available funds in addition to the hotel special tax proceeds as a source of funding. However, the parties acknowledge that the financing plan will be developed in consideration of the various existing funding priorities and budgetary constraints of the City and the RDA. The parties also agree that the final financing plan shall be acceptable to those hotels voting for the hotel special tax prior to such vote.

C. Expenditure of Hotel Special Tax Funds. The City recognizes the desire of the self-taxing San Jose hotels to restrict the expenditure of the proceeds of the hotel special tax to debt service and other amounts necessary to service the bonds and to establish a reserve for replacement funding for Phase I, unforeseen Phase I expansion items, Phase II expansion costs, and/or early retirement of Phase I debt. The parties will make reasonable efforts to review, discuss, and meet these objectives during the course of meetings of the Oversight Committee.

IV. Concept Design and Budget

In order that the financial feasibility and the environmental impacts of the Proposed Project may be assessed, the RDA, with the input of the Design Review Committee, will coordinate the development of the Master Plan for the Center, the concept design and budget for Phase I of the Master Plan and architectural renderings and other materials that may be used in describing and explaining the scope of both phases of the proposed Master Plan. The parties acknowledge that the RDA funds in the amount of \$500,000, have been appropriated to fund the RDA's expense of retaining architectural services to prepare the above.

RDA will also be responsible for coordinating the environmental review of the Master Plan with the City's Department of Planning, Building and Code Enforcement.

V. Participation by Stakeholders

A. Management of Proposed Project. The parties acknowledge that the Center is a City-owned facility and that the revenues of the proposed hotel special

tax, if approved and upon agreement of all the parties on concept design, budget, and financing plan, and implemented, would be public funds. Accordingly, the City Manager's Office will have overall management responsibility for the Proposed Project.

B. Oversight Committee. In light of the complexity of determining the feasibility of the Proposed Project, the Project demands the input and participation of all of the various stakeholders to be successful. An Oversight Committee will be formed comprised of the following participants: City Manager's Office; RDA; City Finance Department; the Office of Economic Development; TSJ, as current operator of the Center; CVB (representing the interests of the San Jose Hotels). CVB's Project Manager, Strategic Advisory Group, may also participate in the Oversight Committee meetings as CVB's advisor. A list of the individual representatives is set forth in Appendix A. The City Manager, RDA Executive Director, and CVB President each in his discretion may appoint additional or alternative representatives to the Oversight Committee. The Oversight Committee will work on a consensus basis in making its recommendations to the RDA Board and to the City Council.

The City Attorney's Office/RDA General Counsel will attend Oversight Committee meetings in order to provide advice to the Oversight Committee.

C. Hotel Industry. A group of five individuals, representing the San José hotel industry, will be invited to attend the Oversight Committee meetings in order to participate in the process of developing the Proposed Project and Master Plan so that the Oversight Committee has the benefit of their hotel industry expertise.

D. Architect Recommendation Committee ("ARC"). A committee will be assembled to review the responses of the RDA's request for proposals for design architects for the Proposed Project. This committee will by majority vote select the design architect to be recommended to the RDA Board and City Council. The committee's membership will include the RDA Executive Director; RDA Division Manager; RDA Project Manager; City's Chief Development Officer; CVB President, and three hotel representatives.

E. Design Review Committee ("DRC"). A committee will be assembled to periodically review the selected architect's design of the Proposed Project and to provide the committee's input with respect to the functionality of the proposed design. The committee's voting membership will include the RDA Executive Director; RDA Division Manager; RDA Project Manager; City's Chief Development Officer; CVB President, and three hotel representatives. The parties acknowledge that the functionality of the Center's interior is a key concern to the hotel industry, CVB and TSJ and that, given the location of the Center, the aesthetics of the

Center's exterior and envelope are key concerns of the City and RDA. During the Master Plan process, the parties will endeavor to place the interior's functionality as primary over aesthetic issues and in this regard, will seek the guidance of the hotel industry during the Master Plan process. Similarly, the parties will endeavor to place the aesthetics of the Center's exterior and envelope as an important consideration during the Master Plan process. However, the parties further acknowledge and agree that the design of the Center's exterior and interior need to work together as a whole.

VI. Roles and Responsibilities

In the course of participation in the Proposed Project as contemplated in this letter agreement, the parties will have the following roles and responsibilities.

A. City.

1. City Manager's Office. As referenced above, the City Manager's Office will have overall management and responsibility for the Proposed Project. The City Manager may assign various City staff to complete tasks related to the Proposed Project.

2. City Finance Department. The City Finance Department will be responsible for retaining the services of a financial advisor and working with the Oversight Committee to develop the financial feasibility analysis of issuing bonds in a sufficient amount to fund the Proposed Project. Assuming all parties determine that Project's financial feasibility is sufficient to proceed with issuance of the proposed Bonds and the issuance of the proposed Bonds is validated by the court, the Finance Department will coordinate the issuance of the proposed Bonds, including the selection of underwriters.

3. City Attorney's Office. The City Attorney's Office will advise the Oversight Committee with respect to legal issues related to the Proposed Project, including the City's imposition of the hotel special tax and the likelihood of prevailing in a validation action. The City Attorney's Office will retain the services of a bond counsel to assist in this effort and in the event the issuance of the proposed Bonds is validated by the court, to serve as a bond counsel for the issuance of the proposed Bonds.

B. RDA.

The RDA will coordinate with the ARC and DRC to oversee the selection of the design architect for the Proposed Project and the design architect's work. At the

time of entering into this agreement, the method of delivering the Proposed Project has not yet been determined. This will be a matter to be reviewed by the Oversight Committee; however, the parties recognize that the award of construction contract for a public project such as the Proposed Project is subject to legal requirements. In any event, construction administration of the Proposed Project will be handled by the City or the RDA depending on which entity issues the contract.

C. CVB.

1. Feasibility Analysis Assistance. CVB will provide information regarding the interests and viewpoints of the San José Hotel industry. As requested by the City Manager, CVB will periodically report to the Oversight Committee regarding the likelihood that the San José Hotels would vote in favor of the hotel special tax by the required vote. CVB, at its expense, has retained the services of its Project Manager. The City Manager will review with CVB the scope of the Project Manager's scope of work in order to determine whether to recommend to the City Council, to the extent legally possible, that CVB be reimbursed from the proposed Bonds for any portion of the compensation paid to the Project Manager.

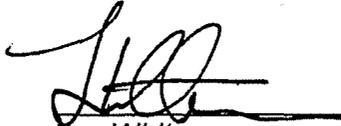
2. Information to San José Hotel Industry. CVB will provide information to the San José Hotel Industry concerning the review being undertaken regarding the possible imposition of the hotel special tax and the proposed expenditure of the hotel special tax revenues. CVB recognizes and agrees that in the event that an election is conducted for the imposition of the hotel special tax, CVB must comply with legal limitations on the use of public funds to advocate a position with respect to the imposition of the proposed tax.

D. TSJ.

TSJ, as operator of the Center under contract with the City ("Operating Agreement"), will provide input with respect to the Proposed Project. Any amendment of the existing contract between the City and TSJ related to operation of the Center as renovated and expanded will need to be handled in accordance with the Operating Agreement and City procedures for amending contracts to address additional services.

Please sign below acknowledging your concurrence with the terms of this letter agreement.

- City of San Jose



Les White
City Manager

Date: 3/5/07

- City of San Jose Redevelopment Agency



Harry Mavrogenes
Executive Director

Date: March 5, 2007

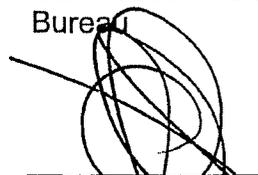
- Team San Jose



Dan Fenton, Chairman

Date: 3/6/07

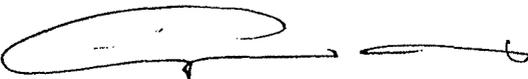
- San Jose Convention & Visitors Bureau



Dan Fenton, President & CEO

Date: 3/6/07

- Fairmont Hotel San Jose



Cyril Isnard, General Manager

Date: 03/06/07

- Marriott Hotel San Jose



Cliff Clark, General Manager

Date: 3/6/07

Appendix A
Oversight Committee Members

Member	Organization
Les White	City Manager
Dan McFadden	Deputy City Manager
Scott Johnson	Finance Director
Julia Cooper	Deputy Finance Director
David Persselin	Debt Administrator
Paul Krutko	Chief Development Officer
Harry Mavrogenes	RDA Executive Director
Bill Ekern	RDA Division Manager
Sharon Jones	RDA Project Manager
Dan Fenton	San Jose CVB & Team San José
China Ziegenbein	Team San José

Advisors to CVB

Jeff Sachs	Strategic Advisory Group (CVB Project Manager)
Tony Peterman	Strategic Advisory Group (CVB Project Manager)

City Attorney & RDA General Counsel

Other attorneys may be assigned as needed.

Rick Doyle	City Attorney and RDA General Counsel
Danielle Kenealey	Chief Deputy City Attorney