



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

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

**SUBJECT:** SEE BELOW

**DATE:** 04-25-07

Approved

Date

4/27/07

**Council District:** 3

**SUBJECT: AGREEMENT BETWEEN THE CITY OF SAN JOSE AND 360 RESIDENCES LLC FOR PUBLIC ART FOR THE 360 SOUTH MARKET (360 RESIDENCES) DEVELOPMENT PROJECT AND ADOPTION OF APPROPRIATION ORDINANCE AND FUNDING SOURCES RESOLUTION AMENDMENTS IN THE GENERAL FUND**

## RECOMMENDATION

1. Adoption of a Resolution authorizing the City Manager to:
  - a. Execute an agreement between the City of San Jose ("City") and 360 Residences LLC, a Delaware Limited Liability Company ("Developer") for the Office of Cultural Affairs ("OCA") to administer the public art projects for the 360 Residences development located in the Market Gateway Redevelopment Area, in a total amount not to exceed \$50,000.
2. Adoption of the following Appropriation Ordinance and Funding Sources Resolution Amendments in the General Fund:
  - a. Increase the Public Art in Private Development Project appropriation by \$25,000.
  - b. Increase the estimate for Other Revenue by \$25,000.

## OUTCOME

The inclusion of public art as an element of 360 Residences will 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, in 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 resolution further established guidelines for public/private development projects that were consistent with Municipal Code Section 22.08.

The 2001 Public Art Master Plan recommended that the public art ordinance be amended to specify 1% for public art from project design and construction budgets from private development partnerships led by the City of San José and the SJRA. Although the amendment was not implemented, SJRA and OCA have adopted the standard of 1% for art for public/private developments.

Disposition and Development Agreements (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 360 Residences LLC (“Developer”) have entered into a Disposition and Development Agreement dated June 21, 2005 (the “Original DDA”), and amended on January 16, 2007 (the “DDA”), to develop a mixed use residential and retail project (“Project”) located at the northeast corner of South Market and San Salvador Streets.

Section 114 of the DDA requires Developer to expend not less than 1% of the Hard Project Cost, as defined in the DDA, for provision of public art, which will be facilitated by OCA.

Based upon estimated Hard Project Costs, a public art budget of \$990,000 has been allocated as follows: \$940,000 for design, fabrication and installation of artworks, which will be paid directly by the developer to the selected artist/s; and \$50,000 to the City for OCA Project facilitation costs (administration) including public outreach and facilitation of the City and SJRA review processes.

The \$50,000 will be a reimbursement from the developer to the City. It is expected that the first payment of \$25,000 will be received this fiscal year after the execution of the agreement and the second payment of \$25,000 is anticipated to be received in fiscal year 2007-2008 after the developer receives their certificate of occupancy.

In the event that design, fabrication and installation funds remain after the completion of the artwork, those funds will be deposited with the OCA for the development of future public art projects within downtown San Jose.

**PUBLIC OUTREACH**

- 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 May 15, 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 SJRA, the Manager's Budget Office 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	\$ 50,000
Artwork Construction (Developer Cost)	\$ 940,000
<b>Total Public Art Project Costs</b>	<b>\$ 990,000</b>

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2. **SOURCE OF FUNDING:** 001 - General Fund
3. **FISCAL IMPACT:** The Public Art Project at 360 Residences will be maintained by 360 Residences LLC or by the successor owner per agreement, and there will be no operating and maintenance costs impact to the General Fund.

**BUDGET REFERENCE**

The first payment of \$25,000 to the City from the developer will be received after the execution of the agreement, and the second payment of \$25,000 is anticipated to be received in fiscal year 2007-2008 after the developer receives their certificate of occupancy.

**CEQA**

Not a project.



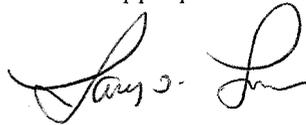
PAUL KRUTKO  
Chief Development Officer  
City Manager's Office



Larry D. Lisenbee  
Budget Director

For questions please contact BARBARA GOLDSTEIN, PUBLIC ART DIRECTOR, Office of Economic Development, 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 therefrom, said excess being at least \$25,000.



Larry D. Lisenbee  
Budget Director