COUNCIL AGENDA: 05-23-06
ITEM: 5.4

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Katy Allen

SUBJECT: **CITY OF SAN JOSÉ / SAN JOSÉ UNIFIED SCHOOL DISTRICT EXCHANGE OF PROPERTY**

DATE: 05-11-06

Approved

Date 5/11/06

COUNCIL DISTRICTS: 2, 3, 6 and 10

REASON FOR REPLACEMENT

The replacement memorandum correctly reflects the final terms of the Agreements reached with the District.

RECOMMENDATION

Adoption of a resolution authorizing the City Manager to negotiate and execute with San Jose Unified School District (SJUSD):

a. An Exchange Agreement providing for the exchanges of various property interests, with payment to SJUSD as just compensation in an amount not to exceed $559,000 for transfers to the City; and

b. As part of the Exchange Agreement, a Joint Use Agreement providing for the joint and public use of a portion of City's Roosevelt Park for a softball field constructed by SJUSD, and of a portion of SJUSD property adjacent to the reconstructed Roosevelt Community Center for joint and public use of a parking lot, and containing 3 year renewable options; and

c. An Option Agreement providing the conditions under which SJUSD could exercise an option for restricted fee title for the Empire Gardens School Site, and the conditions under which City could exercise the option for restricted fee title to an expanded site for the Ellington Branch Library site; and

d. An Amendment to Lease for the Ellington Branch Library with the San José Unified School District to expand the site to approximately 0.90 acres, pending the exercise of the option for restricted fee title to the site; and

e. Authorizing the Director of Public Works to execute all other documents necessary to complete the exchanges.

CEQA: Ellington Branch Library, Exempt, File No. PP05-167
Roosevelt Park, Mitigated Negative Declaration, File No. PP03-397
Rajkovich Property, Exempt, File No, PP05-160
Empire Gardens School, Exempt, File No. PP04-029
Canoas Elementary School, EIR Resolution No. 67894

OUTCOME

The exchange agreement and related agreements will provide the City additional land to that currently leased by the City which will be utilized for reconstruction of the Joyce Ellington Branch Library, as well as an option to acquire restricted fee title to this property; property for construction of the Roosevelt Community Center and related access and parking; and an approximately 5.16 acre parcel which the City intends to transfer to the County of Santa Clara in exchange for properties necessary for the widening of Branham Lane and Snell Avenue. The District will receive an option to acquire restricted fee title to the property underlying Empire School, City-owned property which underlies a portion of Canoas Elementary School, and use of a portion of Roosevelt Park to continue the existing softball field adjacent to San Jose High Academy.

EXECUTIVE SUMMARY

These proposed agreements will implement the transfer, options to acquire, or joint use of eight properties including five properties currently owned by the District to the City, and three properties currently owned by the City to the District. The exchange of interests in these properties will provide each party with better ability to control sites on which its facilities are located, and will enable certain capital projects to proceed.

Fee ownership of four properties will be transferred. Ownership of three properties (20th Street north of Santa Clara Street, a portion of 21st Street and an approximate 5.16 acre parcel commonly known as the "Rajkovich" property) will be transferred from the District to the City. Fee ownership of the currently vacated Blue Jay Drive will be transferred from the City to the District.

The City will grant the District an option to acquire the currently City-owned site leased by the District upon which they have built Empire Garden School subject to completion of actions by the California Department of Toxic Substances Control and certain deed restrictions as desired by the City. The area leased by the City from the District at Grant School will be expanded to allow for reconstruction / expansion of Joyce Ellington Branch Library, and the District will

grant the City an option to acquire that site subject to certain deed restrictions as desired by the District and the District exercising its option to purchase the Empire Gardens School site.

Through a Joint Use Agreement, the District will be able to utilize a portion of City-owned property for use as a soft ball field adjacent to San Jose High Academy, and the City will be able to utilize District-owned property parking which will be appurtenant to the City's new Roosevelt Community Center.

Both the District and City benefit by acquiring property rights necessary for their facilities, including rights to the City for expansion of Joyce Ellington Branch Library, parking for Roosevelt Community Center and land to be exchanged with the County allowing for widening of Branham Lane and Snell Avenue.

BACKGROUND

By letter dated November 29, 2004, SJUSD representatives requested the City exchange various parcels of land, in order to resolve various outstanding property and title issues between the City and the District. In addition, the City has been interested in working with the District to obtain some of the District's property to proceed with reconstruction of some library and community center facilities.

Staff has worked with SJUSD representatives for several months to arrive at those parcels which would be part of the proposed exchange, and to determine a mutually fair and beneficial means of valuing each parcel to be part of the exchange.

ANALYSIS

a. SJUSD Requested Transfers

SJUSD has requested transfers of certain properties to facilitate its operations and management of its sites.

1. Empire Gardens School Site.

Empire Gardens School has been located on a site owned by the City which has been leased to SJUSD continuously since July 1, 1959. Currently, SJUSD leases the property from the City under a long term ground lease extending to June 30, 2048. SJUSD is interested, at the appropriate time, in obtaining a restricted fee title to this site.

Part of Empire Gardens School is located on a 3.3-acre site that is located in the southwestern corner of the approximately 40-acre Watson Park site (portion of

APN No. 249-64-001). Environmental conditions on the Watson Park site are currently under investigation due to the operation of an incinerator in the early 1900s. The investigation is being overseen by the California Department of Toxic Substances Control (DTSC) pursuant to a voluntary cleanup agreement executed by the City. The waste characterization will be complete in late September, and additional time may be required to develop and implement a workplan to address any contamination that may be found. Because the waste characterization may reveal material information pertaining to the condition of the school site as well as the regulatory requirements that may govern cleanup and future use of the site, both City and District staff concur that transfer of fee title would be premature at this point in time.

Instead of an immediate transfer of title to this site, staff is recommending that the City enter into an Option Agreement, so that when the required investigation and remedial action, if any, are complete, and DTSC has provided site certification ("no further action letter"), the District would have the option to acquire restricted fee title if it desires to do so given all the available information at that time. The Option Agreement will provide the City with the ability to impose a deed restriction limiting use to school, education, community center, recreation, park, open space, or similar uses, whether public or private to the extent such is consistent with any restrictions imposed by DTSC (if any). Exercise of the option by the District may require the District to take title to the site subject to such additional deed restrictions and long-term operation and maintenance agreement as DTSC may require prior to certification of the Watson Park site.

The recommended Option Agreement also includes the grant of an option to the City to acquire restricted fee title to the Joyce Ellington Branch Library site. The City's option to acquire the branch library site would arise only if the District exercises its option to acquire the school site. This part of the proposed transaction is discussed in further detail below.

2. Canoas Elementary School and Blue Jay Drive

A portion of Canoas Elementary School has been constructed on vacated Blue Jay Drive which is owned by the City. This portion of vacated Blue Jay Drive will be transferred in fee to SJUSD.

3. Roosevelt Park – Softball Field

The District has constructed a softball field on a portion of Roosevelt Park, pursuant to a temporary use agreement with the City. Under a proposed Joint Use Agreement, the parties will agree to joint use of the softball field for renewable three year terms, in exchange for City and public use of a site adjacent to the new Roosevelt Community Center for parking. The District has already constructed

the softball field and has agreed to joint use of that facility in an existing agreement, which use will be continued in the new Joint Use Agreement proposed for this transaction.

To comply with the City's Charter limitation on alienation of parks in Section 1700, the Joint Use Agreement will contain three year renewable options to continue the joint use of the facilities granted to the other, subject to the condition that each party maintains joint and public use of its facility.

b. City Requested Transfers

1. Joyce Ellington Branch Library Site.

The City plans to reconstruct and expand Joyce Ellington Branch Library, located at 491 E. Empire Street. The library currently occupies approximately six-tenths of an acre leased from San José Unified School District at its Grant Elementary School site. The lease presently has an expiration date of August 31, 2025, and may be renewed at the City's option for another 49 years to 2074. The expansion of the library requires the current acreage be increased to approximately nine-tenths of an acre.

In order to enter into a balanced transaction for the parcels, and in view of the fact that SJUSD cannot appropriately take title to the Empire Gardens School site at this point in time, it is proposed that the City have an option to take restricted fee title to the branch library site, which option could only be exercised if SJUSD chose to exercise its option to take fee title to the Empire Gardens School site. The Option Agreement will provide the District with the ability to restrict the use of the Joyce Ellington Branch Library site to public or private library, education, community center, recreation, park, open space, or similar municipal uses. To enable the reconstruction of the Ellington Branch Library to proceed, the parties will enter into a lease amendment that expands the area leased to the City for the Library.

Thus, the agreements between the parties will enable construction of the branch library to proceed immediately, while also preserving the ability of each party to obtain restricted fee title to the respective sites on which the school and library are located.

It should be noted that each party is obligated to the other to provide full disclosure of the condition of the sites subject to the options for conveyance of title, and if such options are exercised, each party takes the respective properties "as is," with all faults, and with knowledge of the environmental condition of the respective parcels.

2. Roosevelt Community Center

The City plans to build a new 32,000 square foot multi-purpose community center adjacent to Roosevelt Park. In order to accommodate the location of the new structure, 20th Street north of Santa Clara Street needs to be vacated and the underlying fee transferred to the City for construction of a portion of the new building. The Exchange Agreement will provide for the transfer of the fee to the 20th Street parcel from SJUSD to the City for development and construction of the community center and a 0.15 acre portion of 21st Street for City access to appurtenant Roosevelt Community Center parking with reservation of an easement to SJUSD for ingress and egress to San Jose High Academy.

Additionally, the proposed Joint Use Agreement will allow the City to develop parking for the Roosevelt Community Center on a 0.651 parcel owned by SJUSD. In essence, the City and the District are each constructing public facilities for joint use on the other party's property, on or near Roosevelt Park. Under the Joint Use Agreement, each party maintains title to the underlying fee of the property. In the case of the joint use softball field, as noted earlier, the underlying fee cannot be transferred without a vote of the people.

3. Rajkovich Property

Finally, the Exchange Agreement provides for the City to take ownership of the Rajkovich property. This property is owned by SJUSD and is deed restricted for use as an ecological park. The restriction provides that this parcel is to be enclosed by a six-foot fence and use limited to groups of children accompanied by adults. The City would take the property subject to the restriction, and the present plan is to transfer the property to the County.

The City's transportation plan requires widening of Branham Lane for a distance of approximately 4,450 feet west of Snell Avenue and widening of Snell Avenue for a distance of approximately 2,700 feet south of Branham Lane. The properties required for both widenings are owned by the County of Santa Clara. Acquisition of the Rajkovich property, with a subsequent exchange by the City to the County, serves as partial compensation for the County properties required for the street widenings at Snell and Branham. Staff is presently determining whether the County will accept the Rajkovich property as presently deed-restricted.

4. Compensation for Exchanges

The intent of both SJUSD and City has been to assure that the exchange of properties is equitable to both entities. Where the parcels are being leased to the other party, each party is obtaining an option to acquire fee title. The District's option is exercisable when adequate information is available for the District to

make an informed decision. The City can exercise its option on the Ellington Branch Library site if the District decides to take fee title to the Empire Gardens School site. In the meantime, both parties have existing leases on the others property that extend for several decades.

The Roosevelt Park softball field site and the Roosevelt Community Center parking lot site are subject to a Joint Use Agreement, where each party retains the underlying fee but makes its facility available to the other party for public use.

Underlying fee title to two streets is being exchanged – one to SJUSD for Blue Jay Drive, and one to the City for the Roosevelt Community Center. The District will retain an easement for ingress and egress to its property over the portion of the street being conveyed to the City for access to the Community Center and the parking lot.

SJUSD will transfer to the City the Rajkovich property, which is subject to a deed restriction for use as an outdoor park by supervised children, and as so restricted, would be eventually transferred to the County in connection with an upcoming transaction pertaining to widening of Snell and Branham.

The properties to be received by the City from SJUSD comprise more acreage (7.1 acres) than the acreage to be transferred to the District (4.7 acres). Staff has analyzed estimates of value using two methodologies, viewing the properties with encumbrances and without encumbrances, and depending on the analysis, there can be a range of values assigned to each parcel. However, in view of the significant public benefits that each party derives from the exchange, staffs of both the City and SJUSD have determined that payment of $559,000 from the City to SJUSD in addition to the properties to be exchanged constitutes Just Compensation. The community benefits include:

- SJUSD benefits:
  - An option to acquire fee title with a restricted use condition, to property upon which Empire Gardens School is located, eliminating the need for maintenance of the existing property lease and/or renewals, and potentially providing long-term stability as to the use of the area for the school.
  - Use of City property for a joint use softball field, in renewable three year terms, pursuant to a Joint Use Agreement with the City.
  - Fee title to Blue Jay Drive over which a portion of Canoas Elementary School has been constructed.
  - Termination of maintenance of an approximate 0.651 acre property and a 0.15 acre parcel adjacent to Roosevelt Park, with joint use parking facilities to be built and paid for by the City adjacent to the renovated Community Center, pursuant to a Joint Use Agreement with the City.

- Termination of responsibility as underlying fee owner of 20th Street, while retaining an easement for access to its parcel.
- Termination of maintenance of the approximate 5.15 acres Rajkovich property.

- City benefits:
  - An option to acquire fee title to approximately 0.5985 acres currently leased to the City and to an additional approximate 0.3033 acres for a total of 0.9018 acres for redevelopment / construction of Joyce Ellington Branch Library, with an interim lease amendment permitting reconstruction to go forward until the conditions are met to exercise the option for restricted fee title.
  - Fee title to 20th Street for development and construction of a portion of Roosevelt Community Center.
  - Use of an approximate 0.651 acre property adjacent to Roosevelt Park for development of park parking facilities.
  - Fee title with an easement for ingress and egress back to the District to a portion of vacated 21st street, for access to the Roosevelt Community Center public parking facilities.
  - Fee title with deed restrictions limiting use to an ecological park open to escorted children, to approximately 5.15 acres which the City plans to exchange with the County of Santa Clara for the Branham/Snell street widening project.

Reconstruction – expansion of Joyce Ellington Branch Library, construction of a new Roosevelt Community Center and widening of Branham Lane and Snell Avenue are each City-approved projects. Inability to secure land for these projects is estimated to increase construction costs by one quarter million dollars ($250,000) per month.

Exhibits identifying each property are attached as follows:

PROPERTY EXHIBIT	PROPERTY NUMBER	CITY TO DISTRICT	DISTRICT TO CITY	PROPOSED USE
A	1		Portion of 249-34-001	Joyce Ellington Branch Library
B	2		20th Street North of Santa Clara Street	Roosevelt Community Center
B	3		Portion of 467-11-041	Parking appurtenant to Roosevelt Community Center
B	7	Portion of 467-12-013		San José High Academy Soft Ball Field
B	8		Portion of vacated 21st Street	Ingress / egress from 21st Street to Roosevelt Community Center Parking

C	4		583-08-027	To be exchanged with Santa Clara County for portions of properties needed for widening of Branham Lane and Snell Avenue
D	5	Portion of 249-64-001		Empire Garden School
E	6	Vacated Blue Jay Drive		Canoas Elementary School

ALTERNATIVES

Several alternatives were evaluated including:

- Creating a reversionary clause for those properties for which fee ownership is being exchanged. The proposed clause would require that should the District's school use or the various proposed City uses (Roosevelt Community Center, ingress/egress to its parking) ever change, the property would revert to the original owner. This clause would have precluded the ability of the District to use property should a school be temporarily or permanently closed) and it may have precluded the City from using property for other future municipal purposes. Thus, such a provision is not included in documents which will allow for fee ownership property transfers.

- Providing permanent property rights to the District for development of softball fields adjacent to San Jose Academy. As the site is part of a larger City-owned park, permanent rights could only be conveyed subject to voter approval. The conclusion was to transfer the property rights through a renewable use agreement.

- Transfer of fee ownership of property owned by the City currently leased to the District upon which Empire Gardens School has been constructed. The site and adjacent City-owned property is currently being reviewed by the California Department of Toxic Substances Control [DTSC]. Until the DTSC completes its analysis, future obligations of the City as current owner and potential obligations of the District will be unknown. Continued lease with an option exercisable by the District best addresses this issue.

PUBLIC OUTREACH

- Joyce Ellington Branch Library: Eight community meetings were held in 2004 and 2005 regarding the design of the new Joyce Ellington Branch Library.

- Roosevelt Community Center: Extensive community input was gathered during the development of the Master Plan Amendment for the Roosevelt Multi-Service project. A total of 39 community and technical meetings were held, resulting in unanimous approval

of the Roosevelt Park Master Plan amendment at the final community meeting on May 5, 2003. City Council approved the Master Plan in January 2004.

- Branham Lane and Snell Avenue street widenings: The Departments of Public Works and Transportation have met with the VEP Community Association many times over the past two years to discuss the scope and the status of the Branham Lane Improvement Project. VEP set up a committee to work with Public Works and DOT on a "Wish List" of items to include in the project scope of work for the construction project, budget permitting. Through several working meetings with the committee, VEP voted on and adopted the "wish list" so that the project can move smoothly through the design process, with known community priorities.

COORDINATION

This memorandum and agreement have been coordinated with the Departments of Library; Planning, Building and Code Enforcement; Parks, Recreation and Neighborhood Services; Transportation; City Manager's Budget Office; City Attorney's Office and the San José Unified School District.

COST IMPLICATIONS

- $559,000 to be paid by the City to the San José Unified School District
- $75,000 City real estate processing expenditures, including cost of title report, Phase I Environmental Analysis, survey and staff time
- $100,000 Estimated Escrow Costs.

The above costs are to be shared equally (1/3 each) by the Department of Transportation (Branham / Snell street widening project), Library (Joyce Ellington Branch reconstruction / expansion) and PRNS (new construction of Roosevelt Community Center and appurtenant parking).

BUDGET REFERENCE

Fund #	Appn. #	Appn. Name	RC #	Total Appn.	2005-2006 Adopted Budget Page	Last Budget Action (Date, Ord. No.)
429	6863	Branham Lane Improvements	115602	3,247,000	V - 1038	10/18/05, Ord. No. 27580
471	4789	Roosevelt Community Center Multi-Service	128872	14,453,000	V - 948	10/18/05, Ord. No. 27580
472	6877	Land Acquisition	142302	1,243,000	V - 455	10/18/05, Ord. No. 27580
		Total		**18,943,000**		

CEQA

Ellington Branch Library, Exempt, File No. PP05-167
Roosevelt Park, Mitigated Negative Declaration, File No. PP03-397
Rajkovich Property, Exempt, File No, PP05-160
Empire Gardens School, Exempt, File No. PP04-029
Canoas Elementary School, EIR Resolution No. 67894
San José High Academy, Mitigated Negative Declaration, File No. PP03-397

Katy Allen

KATY ALLEN
Director, Public Works Department

For questions please contact DAVE SYKES, ASSISTANT DIRECTOR, at 408-535-8300.

NS:dr
Attachments

EXHIBIT A

Item #1 - Ellington Branch Library Expansion of Grant Elementary School site from 0.6 acre to 0.9 acre for construction of Library

Legend

Subject Site

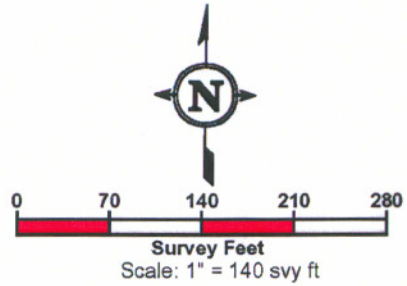

EXHIBIT B

Item #8 - Abandonment of 0.15 acre of 21st St. to construct City's parking lot
Item #7 - City will transfer 0.56 acre of Roosevelt Park to SJUSD for construction of softball field
Item #3 - SJUSD will transfer 0.60 acre of San Jose High Academy to City for construction of parking lot
Item #2 - Abandonment of 0.45 acre of 20th St. to construct City's Roosevelt Community Center

Legend

Subject Sites

0 85 170 255 340
Survey Feet
Scale: 1" = 170 svy ft

EXHIBIT C

Item #4 - Rajkovich Property
APN 583-08-027
SJUSD will transfer
5.16 Acres to City

Legend

Subject Site

N

0 85 170 255 340

Survey Feet

Scale: 1" = 170 svy ft

EXHIBIT D

Item #5 - Empire Gardens Elem. School
APN 249-64-001
Watson Park Transfer of leased property to District for newly constructed elementary school of 3.36 Acres

Legend

Subject Site

0 85 170 255 340
Survey Feet
Scale: 1" = 170 svy ft

EXHIBIT E

Item #6 - Canoas Elementary School
APN 455-13-039
Blue Jay Drive Transfer of 0.533 Acre vacated street where school building currently exists

Legend

Subject Site

N

0 70 140 210 280

Survey Feet
Scale: 1" = 140 svy ft