



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Paul Krutko
Scott Johnson
Larry D. Lisenbee

**SUBJECT: FMC PHASE II PROPERTY
ACQUISITION**

DATE: June 16, 2006

Approved

Date

6/16/06

COUNCIL DISTRICT: City-wide

RECOMMENDATION

Adoption of the following Fiscal Year 2005-06 Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:

1. Increase the revenue estimate for Other Revenue by \$25,093,930.
2. Establish a City-wide FMC Phase II Property Acquisition appropriation in the amount of \$25,093,930.

OUTCOME

The recommended appropriation actions will allow the proper financial recording of the FMC Phase II Property acquisition.

BACKGROUND

On August 24, 2004, the City Council approved a Purchase Agreement with FMC for the purchase of 51.54 acres of property located at 1125 Coleman Avenue (FMC Phase I Property). On the same day the Council authorized up to two years following the close of escrow of the FMC Phase I Property for the City Manager to complete the acquisition of up to 23.23 additional acres (FMC Phase II Property), for a total additional price not to exceed \$25,297,475. Council also authorized the City Manager to negotiate and execute a United States Department of Housing and Urban Development (HUD) Section 108 Loan to pay the costs of the FMC Phase II Property acquisition.

On September 9, 2004, the City executed an Agreement for Purchase and Sale of Real Property with FMC Corporation (the "Purchase Agreement"), which included the purchase by the City of the FMC Phase II Property. Given that the Phase II Property was subject to environmental

mitigation by FMC, the City agreed to make an initial deposit and then subsequently pay the remaining balance of the purchase price when FMC received the appropriate environmental approvals from the State (the "Closing Condition"). The FMC Phase II property was to be acquired with a loan from HUD. The HUD loan was to be secured with a deed of trust on the FMC Phase II Property and the City's CDBG future entitlements.

ANALYSIS

On April 24, 2006, the City received notice from FMC that it had obtained the approvals from the State Department of Toxic Substance Control (DTSC) which constituted the Closing Condition under the Purchase Agreement. As specified in the Purchase Agreement, the City was required to purchase the Phase II Property within 30 days of receiving such notice.

Consequently, on May 5, 2006, the City requested the acquisition funds from HUD, and on May 17, 2006, received \$25,093,930 of HUD Section 108 Loan proceeds. Those proceeds were wired from HUD to the City's HUD Loan Custodian, Union Bank, and deposited in the Guaranteed Loan Funds Account established in accordance with the HUD Loan Agreement. On May 24, 2006, the City wired \$25,093,930 to First American Title Company to pay the remainder of the FMC Phase II land purchase price and other related escrow costs. The net purchase costs were \$25,285,418, and \$61,487 remains in the City's Guaranteed Loan Funds Account at Union Bank. These remaining funds can be used in the future to pay debt service on the HUD Loan or to pay additional costs associated with acquisition of the FMC Phase II Property.

The appropriation recommendations specified above will insure that the HUD Section 108 Loan is properly recognized as a potential liability of the City General Fund and that the FMC Phase II Property is recorded as a City asset.

Debt Service Payment

Debt service on the HUD Loan will initially be paid from a \$2,000,000 Brownfields Economic Development Initiative (BEDI) Grant obtained in conjunction with the HUD Loan. Although the interest rate paid on the HUD Loan changes on a monthly basis, staff estimates that the BEDI Grant will be sufficient to pay debt service through FY 2006-07 and a portion of FY 2007-08.

Staff anticipates that lease revenues and sales tax revenues generated by interim uses (25-30 year time horizon) of the FMC Phase II Property will ultimately be the primary source of repayment for the HUD Loan. The Office of Economic Development is exploring a variety of potential interim uses for the FMC Phase II Property, and has been working with the Department of Aviation to develop interim uses for the combined FMC Phase I and FMC Phase II Properties. The overall strategy is to craft an interim use plan that complements both current Airport activities and future development of Research and Development, hotel and retail facilities which will support air travel and provide significant additional revenue to the City. Although City staff developed a set of conservative assumptions underlying the proforma for the purchase of the

FMC Phase II Property, it is conceivable that additional funds will be required to support debt service during the early years of the interim use period.

To protect the General Fund, on August 24, 2004, the City Council authorized an Airport loan in an amount not to exceed \$3,735,000, to support HUD Loan debt service payments in the event that revenues generated by interim uses are insufficient. In order to comply with federal law regarding revenue diversion, any Airport funds borrowed for debt service on the HUD Loan are proposed to be paid back over a set term of 13.5 years with interest. The City may borrow Airport funds for debt service payments on the HUD Loan only after Airport revenues have been applied to all other uses required under the airline leases and the Master Trust Agreement for the issuance of Airport bonds. Staff projects that Airport funds will be available for debt service on the HUD Loan if needed. However, in the unlikely event that Airport funds are not available, the City's General Fund will be obligated to pay debt service on the HUD Loan.

ALTERNATIVES

Not applicable.

PUBLIC OUTREACH

Not applicable.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office.

COST IMPLICATIONS

The appropriation adjustments recommended in this memorandum reflect the receipt of \$25,093,930 in loan proceeds from HUD and the accompanying use of these funds for the acquisition of the FMC Phase II Property in the General Fund. There is no net impact on the General Fund.

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CEQA

Resolution No. 71716. File No. PDC98-12-104.


SCOTT P. JOHNSON
Director of Finance


PAUL KRUTKO
Office of Economic Development Director


for LARRY D. LISENBEE
Budget Director

For questions please contact David Persselin, Debt Administrator, at (408) 535-7000.

I hereby certify that there will be available for appropriation in the General Fund in the Fiscal Year 2005-2006 moneys in excess of those heretofore appropriated there from, said excess being at least \$25,093,930.


for LARRY D. LISENBEE
Budget Director