



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Dan McFadden

**SUBJECT:** SEE BELOW

**DATE:** August 2, 2006

Approved

Date

8/7/06

**SUBJECT: "THE USE OF THE REVENUE FROM NAMING OF CLUB AT THE HP PAVILION FOR COMERICA" AND "HP PAVILION AT SAN JOSE IMPROVEMENT STUDY"**

The attached memorandums are related. The H.P. Pavilion Management Advertising Plan from the Arena Authority provides the context for the proposed use of Naming Revenues in the memorandum from the City Managers Office.

Dan McFadden  
Deputy City Manager

For questions please contact Dan McFadden, Deputy City Manager, at (408) 535-8120.



COUNCIL AGENDA: 8-22-06  
ITEM: 4.3

# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Dan McFadden

**SUBJECT:** The Use of the Revenue from Naming of Club at the HP Pavilion for Comerica  
**DATE:** August 2, 2006

Approved

Date

8/2/06

## RECOMMENDATION

Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with San Jose Arena Management to place Comerica naming revenue in the approximate amount of \$175,000 per year in an account dedicated to: (1) analysis and planning for the enhancement of the Arena as per the "Applicable Standard" (2) the identification of improvements necessary to accommodate a National Basketball Association (NBA) franchise; and (3) devote the balance of funds not expended under (1) & (2) above to upgrade the Arena through the early establishment of the Enhancement Fund provided for in the Arena Management Agreement.

## OUTCOME

A detailed study and budget to support a program to update the Arena as per the "Applicable Standard" and to identify improvements necessary to accommodate an N.B.A. home team in the Arena.

## BACKGROUND

The H.P. Pavilion Advertising Plan that was presented to the Arena Authority Board in May 2006 included a graphics package for "branding" of the Pavilion Club area. Arena Management originally asserted that the revenues to be received were part of an enhanced sponsorship package for Comerica, and that building naming revenues were not owed to the City as a result of their arrangement with Comerica. Staff maintained that the arrangement included the naming of a portion of the Arena as defined in the Arena Management Agreement (A.M.A.), particularly because a placard was to be placed on the outside of the building at the Santa Clara Street entrance. As such, Staff asserted that at least part of the package constituted "naming" and the City was due 50% of the revenue from that part of the package in accordance with the A.M.A agreement provision noted below:

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*Associating a Name of a Company on a portion of the Building is a Naming Right (Compaq/ Arena Naming Agreement). Building Naming revenues should be split 50/50 after allowable expenses are deducted....matters relating to naming revenues and expenses are subject to arbitration. (6.03B A. M. A.)*

After discussion and review of the elements of the agreement between Arena Management and Comerica, staff believes that a fair apportionment between the “naming” and “sponsorship” portions of the Comerica package would generate \$175,000 per year for “naming” over a period of four years, plus a 3 year option, and that these funds should be shared equally by Arena Management and the City.

On July 26, 2006 Don Gralnek, Executive Vice President and General Counsel for the H.P. Pavilion, submitted the following letter for consideration by the City:

The Arena Management requests City to agree to share equally with Manager, using funds from naming rights payments made by Comerica, in the cost of conducting a study i) to analyze the areas in HP Pavilion that need to be updated to conform to the definition of the Applicable Standard as used in Management Agreement and ii) to identify those improvements in HP Pavilion to be made to accommodate an NBA Team playing its Home Games at HP Pavilion.

### ANALYSIS

In June 2003 an improvement study of HP Pavilion at San José by Sink Combs Dethlefs, the architects of HP Pavilion, was commissioned by the Arena Authority with the City and Arena Management sharing equally the cost of \$30,000 for the initial study. This study was based on the interest of the City, the Arena Authority, and Arena Management in identifying issues necessary to keep the Pavilion operating at the “Applicable Standard,” which is defined in the A.M.A.:

#### Applicable Standard

*A standard of performance operations (including bookings and) maintenance equal to or exceeding those generally applicable to contemporary comparable major arenas in the United States of which NBA and/ or NHL games are played. (1.04F A.M.A.)*

*Manager shall operate, and shall cause Manager’s subcontractors, concessionaires, vendors, licensees, users, broadcasters and others using the Arena Facilities to operate in conformance with the Applicable Standard. The purposes of this Management Agreement with respect to standards and criteria for bookings, performance or exhibition content, and the City Policies and Guidelines which may be established pursuant to Section 3.01 hereof with respect to interior advertising, facility appearance and service to patrons and visitors, are to establish and require performance by all personnel operating in the Arena Facilities meeting the Applicable Standard. (Section 4.02 A.M.A.)*

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The HP Pavilion is in its 14<sup>th</sup> year of operation. The A.M.A. provides that beginning in term year 16, the City and HP Pavilion Management will begin participating in the joint funding of an Enhancement Fund on a dollar for dollar matching basis, and that each could contribute up to a total of \$2,500,000 to the fund. The Enhancement Fund is to be used to maintain the competitive quality of the Arena.

It is staff's recommendation that rather than splitting the Comerica naming funds equally between the City and Arena Management; the funds, net of expenses, be deposited to the Enhancement Fund to be used as noted above in recommendation (1).

NBA/ Letter of Intent

*The Arena Management Agreement states that: It is the specific goal and objective of both City and Manager to obtain a National Basketball Association franchise (the NBA franchise) to play its home games in the Arena... Parties shall share equally any third party costs in the marketing of the Arena to the NBA. Manager and City will act in a timely and diligent manner and will use their best efforts to agree on general terms and conditions...to be presented to either the NBA or an NBA franchise ("Letter of Intent") and to prepare for successful marketing of Arena prior to any presentation to the NBA (3.03B AMA).*

A timely letter of intent will depend in part on the prior agreement between the City and Arena Management concerning the necessary modifications to the building, the assignment of costs, and the identification of revenues to offset these costs; hence, the request to devote part of the Comerica naming revenues to this purpose. As noted above in recommendation (2).

## **FISCAL POLICY ALIGNMENT**

Only seven of the 30 buildings in which the NHL plays were built prior to 1993. Under the A.M.A., Arena Management has assumed all the downside of the Arena operations; *Management shall pay, at its sole cost and expense, all operating losses (3.01 A.M.A.).*

In a very competitive environment, Arena Management must keep the building current because an outdated facility probably will not generate sufficient business to remain profitable. Under the A.M.A., the City is not obligated to fund specific enhancements, but is obligated to match Arena Management in contributing to the Enhancement Fund beginning in the 16<sup>th</sup> year. The City expects to receive over \$4.0 million this year and over \$6.0 million in "rent" per year beginning 2008. Through the life of the current contract ending in 2018, the City is to receive approximately \$100 million in revenue. Obviously, the City benefits directly by maintaining the quality of the facility.

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**COST SUMMARY IMPLICATIONS**

The Comerica naming is projected to generate \$700, 000 (less commission and installation costs) over four years, and an additional \$525,000 under an option for three additional years. The City would realize one half of that amount after expenses. Under the staff recommendation, the City's share of the naming funds would be matched by Arena Management and placed in the Pavilion Enhancement Fund. Staff's recommendation would accelerate the City's obligation under the A.M.A. in year 16 by two years.

**PUBLIC OUTREACH INTEREST**

Not Applicable

**COORDINATION**

This memo was reviewed by the Budget Director, General Services, and the City Attorney's Office.

**CEQA**

This is not a project



Dan McFadden  
Deputy City Manager

For questions please contact Dan McFadden, Deputy City Manager, at (408) 535-8120.

## San Jose Arena Authority

### Memorandum

**To:** HONORABLE MAYOR AND CITY COUNCIL  
**From:** Chris Morrisey  
**Subject:** HP Pavilion at San Jose Improvement Study  
**Date:** July 28, 2006

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#### **RECOMMENDATION**

Acceptance of the HP Pavilion at San Jose Improvement Study.

#### **BACKGROUND**

In May 2002, Sink Combs Dethlefs, the architects of HP Pavilion at San Jose, submitted a proposal to conduct an improvement study of HP Pavilion at San Jose. This study was based on the interest of the City, the Arena Authority and HP Pavilion Management in identifying issues in keeping the Pavilion operating at the "Applicable Standard" as defined in the Amended and Restated Arena Management Agreement.

In June 2003, the study was commissioned by the Authority with the City and HP Pavilion Management equally sharing the cost of the initial study of \$30,000.

#### **ANALYSIS**

During the course of study development, Sink Combs Dethlefs engaged a number of original Pavilion vendors, contractors and designers to determine what may be required for the Pavilion in the approaching years. Additionally, Sink Combs Dethlefs conferred with the Arena Authority and HP Pavilion Management to assist in the refinement of the report.

From their initial review, a number of Capital items were identified and were included in the May 2004 Sink Combs Dethlefs draft report to the Arena Authority. These items included the replacement of the scoreboard; the incorporation of an electronic fascia display; and the updating of the Pavilion sound system.

Since that time, the Arena Authority has responded in written form to the report and is currently waiting for a formal response to the report by HP Pavilion Management. Although the study is two years old, it is still an exceptional document to begin substantive dialogue on the future of significant Capital improvements and enhancements to the building.

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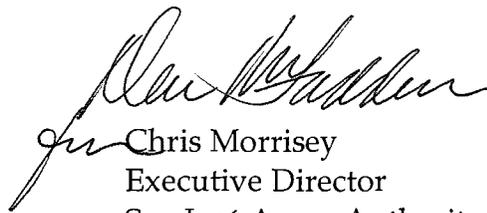
Please note that since the opening of the Pavilion, HP Pavilion Management has invested over 7.5 million dollars in Manager's Capital Enhancements. Additionally, beginning in the 11<sup>th</sup> term year of the Arena Management Agreement, HP Pavilion Management may propose Capital enhancements that are to be funded from the Pavilion Capital Reserve Fund.

For Fiscal Year 2006-07, the Arena Authority recommended and the City Council approved two Pavilion Capital enhancements submitted by HP Pavilion Management. They included the realignment and installation of the Sports Hall of Fame wall lighting for \$95,000 and the installation of removable locker stalls in the visiting dressing rooms for \$55,000.

Beginning in term year 16, the City and HP Pavilion Management will begin participating in the joint funding of a Pavilion Enhancement Fund. On a dollar for dollar matching basis, each could contribute up to \$2,500,000 to fund this program from term years 16-20. This is in addition to \$200,000 that HP Pavilion Management may deposit into the fund, with \$200,000 being reduced from the annual fixed fee rent obligation.

Following the City's annual \$200,000 contribution to the Pavilion Capital Reserve Fund from term years 1-10, HP Pavilion Management is solely responsible to contribute to the fund during term years 11-15. For reference, August 1, 2006 represents the beginning of term year 14. Additionally, beginning in term year 16 and continuing to term year 25, both the City and HP Pavilion Management will each fund the Capital Reserve Fund \$750,000.

Please contact me if you need additional information.

  
Chris Morrisey  
Executive Director  
San José Arena Authority