



## MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, DECEMBER 15, 2009

The Council of the City of San José convened in regular session at 9:30 a.m. in the Council Chambers at City Hall.

Present: Council Members - Campos, Chirco, Chu, Constant, Herrera, Kalra, Liccardo, Nguyen, Oliverio, Pyle; Reed.

Absent: Council Members - None.

Upon motion unanimously adopted, Council recessed at 9:33 a.m. to a Closed Session in Room W133, to confer with Legal Counsel pursuant to (A) to confer with Legal Council pursuant Government Code subsection (a) of Section 54956.9 with respect to existing litigation: (1) San José Silicon Valley Chamber of Commerce Political Action Committee, et al. v. City of San José; Names of Parties Involved: San José Silicon Valley Chamber of Commerce Political Action Committee, Compac Issues Fund, Sponsored by the San José Silicon Valley Chamber of Commerce, City of San José, San José Elections Commission and Does 1-10; Court: Superior Court of California, County of Santa Clara; Case No: 1-09-CV-146667; Amount of Money or Other Relief Sought: Challenge to SJMC 12.06.310; (B) to confer with Legal Counsel pursuant to Government Code subsection (c) of Section 54956.9 with respect to anticipated litigation in four (4) matters. (C) to confer with Legal Counsel pursuant to Government Code subsection (b) of Section 54956.9 with respect to anticipated litigation (Claim Not Filed) in one (1) matter. (D) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) International Association of Firefighters, Local 230; Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters. (2) Association of Legal Professionals of San José; Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; (3) Association of Building, Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI. (4) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW; (5) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement

## **CLOSED SESSION (Cont'd.)**

between City of San José and CEO; (6) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP; (7) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (8) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP; (9) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA. (10) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3; (11) San José Police Officers' Association; Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. How to obtain a copy of existing contract or MOA: web: [http://www.sanjoseca.gov/employee\\_relations/moa.asp](http://www.sanjoseca.gov/employee_relations/moa.asp); Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 11:15 a.m. and reconvened to Regular Session at 1:33 p.m. in the Council Chambers.

Present: Council Members - Campos, Chirco, Chu, Constant, Herrera, Kalra, Liccardo, Nguyen, Oliverio, Pyle; Reed.

Absent: Council Members - None.

## **INVOCATION (MAYOR)**

The Venerable Phap Chon provided the Invocation.

## **PLEDGE OF ALLEGIANCE**

Mayor Reed led the Pledge of Allegiance.

## **ORDERS OF THE DAY**

Upon motion by Council Member Herrera, seconded by Council Member Nguyen and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with Item 2.7(a) modified to state "*and execute*". (11-0.)

## CEREMONIAL ITEMS

### 1.1 **Presentation of a commendation to Westgate Team of Beautiful Day for their volunteer work to clean up the Alviso Community Garden. (Chu)**

Action: Mayor Reed and Council Members Chu and Constant recognized and commended the Westgate Team of Beautiful Day for their volunteer work to clean up the Alviso Community Garden.

### 1.2 **Presentation of a check from the Happy Hollow Foundation to the City of San José. (Mayor/Nguyen/Parks, Recreation and Neighborhood Services)**

Action: Mayor Reed and Council Member Nguyen accepted a generous donation from the Happy Hollow Foundation and Make a Wish Foundation to the City of San José. March 20, 2010 opening day for Happy Hollow.

### 1.3 **Presentation of the Applied Materials Silicon Valley Turkey Trot Mayor's Cup. (Mayor) (Rules Committee referral 12/09/09)**

Action: Mayor Reed accepted the "Turkey Trot Mayor's Cup" on behalf of the City of San José from Carl Guardino, Silicon Valley Leadership Group and Chris Landis, Akeena Solar.

## CONSENT CALENDAR

Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (11-0.)

### 2.1 **Approval of minutes.**

- (a) **Regular Minutes of November 3, 2009.**
- (b) **Special Minutes of November 5, 2009.**
- (c) **Joint/RDA Budget Planning Meeting of November 9, 2009.**
- (d) **Regular Minutes of November 10, 2009.**
- (e) **Regular Minutes of November 17, 2009.**
- (f) **Joint/San José Financing Authority Minutes of November 17, 2009.**

Documents Filed: (1) Regular Minutes dated November 3, 2009, November 10, 2009 and November 17, 2009. (2) Special Minutes dated November 5, 2009. (3) Joint/RDA Budget Planning Meeting dated November 9, 2009. (4) Joint/San José Financing Authority Minutes dated November 17, 2009.

Council Member Pyle pulled Item 2.1(b) from the Consent Calendar to provide correction on an error in the Special Minutes dated November 5, 2009.

## 2.1(b) (Cont'd.)

Council Member Pyle stated that her original memorandum directed Staff “to begin negotiations to change the retirement benefits”, but the Special Minutes dated November 5, 2009 stated: “to direct Staff to start negotiations to change the retirement benefits” and requested that the original wording be put back into the minutes. She also requested that Staff provide information to the full Council as soon as possible about the different strategies for a two tier system, the cost savings and the full funding of retirement accounts.

City Manager Debra Figone responded that currently Staff was negotiating with the bargaining units with the two tier system on the table and having the discussion with Council prior to the negotiation process would not be practical.

Director of Employee Relations Alex Gurza explained that the understanding of the direction to Staff was that there was merging of the memoranda from Council Member Pyle and from Mayor Reed. Director Gurza noted that Staff was working on parallel tracks and currently in negotiations with the Building Inspectors because the contract had recently expired.

Director Gurza stated that Staff will return to the full Council at a future date with information about a two tier system, the cost savings and the full founding of retirement accounts.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the City Council minutes were approved, with discussion modifications and amendments noted to Item 2.1(b), the Special Minutes dated November 5, 2009. *Note: The information requested by Council Member Pyle regarding the different strategies for a two tier system and the cost savings; and the full funding of the retirement accounts will be coming forward to the full City Council at a future date.* (11-0.)

## 2.2 Final adoption of ordinances.

- (a) **ORD. NO. 28674 – Amending Section 16.32.190 of Chapter 16.32 of Title 16 of the San José Municipal Code to reflect the streamlining of the cardroom license renewal procedure that was accomplished administratively under the revised Title 16, Ordinance No. 28517.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28674 executed on December 8, 2009, submitted by the City Clerk.

Action: Ordinance No. 28674 was adopted. (11-0.)

- 2.2 (b) **ORD. NO. 28676** – Amending Sections 19.32.120, 19.32.130, and 19.32.140 of Chapter 19.32 of Title 19 of the San José Municipal Code relating to agreements to construct public improvements prior to approval of a final subdivision map or parcel map; amending Sections 14.04.160 and 14.04.170 to increase the contracting authority of the Public Works Director without competitive bidding under specified circumstances; and repealing Section 14.04.490 and amending Section 14.04.510 of Chapter 14.04 of Title 14 of the San José Municipal Code relating to the reporting of Public Works Contracts and Change Orders to the Finance Department and Council.

Documents Filed: Proof of Publication of the Title of Ordinance No. 28676 executed on December 8, 2009, submitted by the City Clerk.

Action: Ordinance No. 28676 was adopted. (11-0.)

- (c) **ORD. NO. 28677** – Amending Sections 2.100.290 and 20.100.300 of Chapter 100 of Title 20 of the San José Municipal Code relating to recordation of Land Use Permits, and 20.120.510 of Chapter 120 of Title 20 of the San José Municipal Code relating to alternative means of compliance with General Development Plans.

Documents Filed: Proof of Publication of the Title of Ordinance No. 28677 executed on December 8, 2009, submitted by the City Clerk.

Action: Ordinance No. 28677 was adopted. (11-0.)

- (d) **ORD. NO. 28678** – Amending Chapter 12.06 of Title 12 of the San José Municipal Code to add Section 12.06.915 to require electronic filing of Campaign Disclosure Statements.

Documents Filed: Proof of Publication of the Title of Ordinance No. 28678 executed on December 8, 2009, submitted by the City Clerk.

Action: Ordinance No. 28678 was adopted. (11-0.)

- (e) **ORD. NO. 28679** – Rezoning certain real property situated between Los Esteros Road and Grand Boulevard (675 Los Esteros Road) from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District. PDC08-054

Documents Filed: Proof of Publication of the Title of Ordinance No. 28679 executed on December 8, 2009, submitted by the City Clerk.

Action: Ordinance No. 28679 was adopted. (11-0.)

- 2.2 (f) **ORD. NO. 28680** – Adding a new Section 20.200.1265 to Chapter 20.200 of Title 20 of the San José Municipal Code to define Supportive Housing and adding a new Section 20.200.1283 to Chapter 20.200 of Title 20 of the San José Municipal Code to define Transitional Housing, and to provide that those uses are and shall be treated as residential uses, subject only to those restrictions on residential uses applicable to the type of residential structure or use involved.

Documents Filed: Proof of Publication of the Title of Ordinance No. 28680 executed on December 8, 2009, submitted by the City Clerk.

Action: Ordinance No. 28680 was adopted. (11-0.)

- (g) **ORD. NO. 28682** – Amending various Sections of Chapter 6.64 of Title 6 of the San José Municipal Code to authorize the Chief of Police to cease the processing of any new applications for taxicab driver permits when certain economic indicators demonstrate a decline in the demand for taxicab services, with such authorization sunseting within three (3) years of taking effect unless extended by the City Council; to clarify the authorization of the Chief of Police to allow the transfer of permitted taxicab drivers between licensed taxicab companies; and to clarify provisions of Chapter 6.64 to ensure consistency throughout the Code.

Documents Filed: Proof of Publication of the Title of Ordinance No. 28682 executed on December 8, 2009, submitted by the City Clerk.

Action: Ordinance No. 28682 was adopted. (11-0. *First Reading: 10-1. Noes: Chu.*)

- 2.3 (a) **Request for an excused absence for Vice Mayor Chirco from the Regular Meeting of the Rules and Open Government Committee on December 2, 2009 due to a personal appointment. (Chirco)**
- (b) **Request for an excused absence for Council Member Liccardo from the Special Meeting of the City Council on December 3, 2009 due to illness. (Liccardo)**
- (Rules Committee referral 12/09/09)**

Documents Filed: (1) Memorandum from Vice Mayor Chirco, dated December 2, 2009, requesting an excused absence because of a personal appointment. (2) Memorandum from Council Member Liccardo, dated December 3, 2009, requesting an excused absence because of illness.

Action: The absences for Vice Mayor Chirco and Council Member Liccardo were excused. (11-0.)

- 2.4 Adopt a resolution of intention to set the time and date for the public hearing to disestablish the Willow Glen Business Improvement District, on January 12, 2010 at 1:30 p.m., as the date and time for the public hearing on the proposed elimination of the assessed levy. CEQA: Exempt, File No. PP08-048. Council District 6. (OED)**

Documents Filed: Memorandum from Chief Development Officer Paul Krutko, dated November 6, 2009, recommending adoption of a resolution.

Action: Resolution No. 75221, “A Resolution of the Council of the City of San José Declaring Its Intent to Disestablish the Willow Glen Business Improvement District Pursuant to the Parking and Business Improvement Area Law of 1989 and Setting a Date and Time for the Public Hearing”, was adopted. (11-0.)

- 2.5 (a) Reject all bids for the Installation of Potable and Non-Potable Water Services and Mains: 2009-2010 project.**
- (b) Adopt a resolution authorizing the Director of Public Works to:**
- (1) Award the contract for the Installation of Potable and Non-Potable Water Services and Mains: 2009-2010 project to the lowest responsive and responsible bidder in an amount not to exceed \$726,000; and**
  - (2) Decide any timely bid protest(s), make the City’s final determination as to the lowest responsive and responsible bidder, or to reject all bids and re-bid the project.**

**CEQA: Exempt, File No. PP05-130. (Environmental Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated November 23, 2009, recommending rejection of all bids and adoption of a resolution. (2) Letter from Chairperson Chuck Reed, the Treatment Plant Advisory Committee, dated December 9, 2009, stating concurrence with the Staff recommendation.

Action: All bids for the Installation of Potable and Non-Potable Water Services and Mains: 2009-2010 Project were rejected and Resolution No. 75222, entitled: “A Resolution of the Council of the City of San José Authorizing the Director of Public Works to Award a Construction Contract for the Installation of Potable and Non-Potable Water Services and Mains: 2009-2010 Project to the Lowest Responsive Bidder in An Amount Not To Exceed \$726,000”, was adopted. (11-0.)

- 2.6 Approve a Continuation Agreement with AEPC Group, LLC for consultant services for the preliminary design of the project entitled, “San José/Santa Clara Water Pollution Control Plant, Fiscal Year 2006-2007 Capital Improvement Program, Switchgear M5, Ring Bus, and Cable Replacement,” extending the term of the agreement which expired on March 31, 2009 to June 30, 2010 at no additional cost to the City. CEQA: Not a Project. (Environmental Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated November 23, 2009, recommending approval of a continuation agreement. (2) Letter from Chairperson Chuck Reed, the Treatment Plant Advisory Committee, dated December 9, 2009, stating concurrence with the Staff recommendation.

## 2.6 (Cont'd.)

Action: A Continuation Agreement with AEPC Group, LLC for consultant services for the preliminary design of the project entitled, "San José/Santa Clara Water Pollution Control Plant, Fiscal Year 2006-2007 Capital Improvement Program, Switchgear M5, Ring Bus, and Cable Replacement," extending the term of the agreement which expired on March 31, 2009 to June 30, 2010 at no additional cost to the City was approved. (11-0.)

- 2.7 (a) **Adopt a resolution authorizing the City Manager to negotiate "and execute" a Master Service Agreement related to the General Conditions and a Contract Work Authorization agreement related to Specific Conditions with Pacific Gas and Electric (PG&E) to conduct the Silicon Valley Energy Watch collaborative program and to receive funding in an amount not to exceed \$846,000 for the term January 1, 2010 through December 31, 2012.**
- (b) **Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:**
- (1) **Increase the appropriation to the Environmental Services Department for Personal Services by \$73,823.**
  - (2) **Increase the appropriation to the Environmental Services Department for Non-personal/Equipment by \$98,500.**
  - (3) **Increase the Estimate for Revenue from Local Agencies by \$172,323.**
- CEQA: Not a Project. (Environmental Services/City Manager's Office)**

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean and Budget Director Jennifer Maguire, dated November 23, 2009, recommending adoption of a resolution and appropriation ordinance and funding sources resolution amendments.

Action: Resolution No. 75223, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute A Master Service Agreement and Work Authorization with Pacific Gas and Electric for the Silicon Valley Energy Watch Program and To Accept Funding in An Amount Not To Exceed \$846,000"; Ordinance No. 28683, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the General Fund to the Environmental Services Department for Personal Services and Non-Personal Equipment; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" and Resolution No. 75224, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 74956 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2009-2010 to Adjust Revenues in the General Fund", were adopted. (11-0.)

- 2.8 **Approve the award of open purchase orders for supplies, materials, equipment and services for FY 2009-2010 #4 and authorize the Director of Finance to execute the purchase orders. CEQA: See Administration's memo to Council for specific CEQA clearance determinations on each recommended action. (Finance)**

## 2.8 (Cont'd.)

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated November 23, 2009, recommending approval of the award of open purchases orders and authorization for the Director of Finance to execute the purchase orders.

Action: The award of open purchase orders for supplies, materials, equipment and services for FY 2009-2010 #4 was approved and the Director of Finance was authorized to execute the purchase orders. (11-0.)

## 2.9 Adopt a resolution authorizing the Director of Finance to:

- (a) **Negotiate and execute the first amendment to the Access Control System Agreement with Electronic Technologies Corporation USA dba Ingersoll Rand (Ingersoll Rand) to increase the compensation up to \$450,000 for a revised not to exceed amount of up to \$792,712 in order to:**
  - (1) **Upgrade the existing access control system at the Norman Y. Mineta San José International Airport (approximately \$400,000); and,**
  - (2) **Increase maintenance time and materials by \$50,000 to \$100,000 for the initial two year term of the agreement.**
- (b) **Increase the contingency amount by \$50,000 from \$51,407 to \$101,407 to cover unanticipated in the system design and/or installation.**

**CEQA: Resolutions Nos. 67380 and 71451, File No. PP 09-195. (Finance)**

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated December 3, 2009, recommending adoption of a resolution.

Action: Resolution No. 75225, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Finance to Negotiate and Execute a First Amendment to the Agreement with Electronic Technologies Corporation USA DBA Ingersoll Rand for the Access Control System at Norman Y. Mineta San José International Airport", was adopted. (11-0.)

## 2.10 Adopt a resolution authorizing the City Manager, or designee, to:

- (a) **Submit a grant application to the State of California Resources Agency in the amount not to exceed \$350,000 for Environmental Enhancement and Mitigation Program grant funding for design and construction of the Highway 237 Bikeway Trail (Zanker Road to Coyote Creek) project and to make certain written assurances required as part of the grant application.**
- (b) **Accept any grant funds awarded to the City and negotiate and execute all necessary documents to any grant funding from the State to the City for the project.**

**CEQA: Exempt, File No. PP08-195. Council District 4. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated November 23, 2009, recommending adoption of a resolution.

**2.10 (Cont'd.)**

Action: Resolution No. 75226, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager, or Designee, To Submit a Grant Application to the State of California for Environmental Enhancement and Mitigation Program Grant Funding Under Section 164.56 of the Streets and Highways Code for the Design and Construction of Highway 237 Bikeway Trail (Zanker Road to Coyote Creek) Project in An Amount Not To Exceed \$350,000 and To Negotiate and Execute All Necessary Documents", was adopted. (11-0.)

**2.11 Adopt a resolution authorizing the City Manager, or designee, to:**

- (a) Submit a grant application to Caltrans in the amount not to exceed \$724,500 under the Bicycle Transportation Account program for the Coyote Creek Reach 3 (Hwy 237 Bikeway to Tasman Drive) Trail project.**
- (b) Accept any grant funds awarded to the City and negotiate and execute all necessary documents related to any grant funding from Caltrans to the City for the Project.**

**CEQA: Exempt, File No. PP03-230. Council District 4. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated December 1, 2009, recommending adoption of a resolution.

Action: Resolution No. 75227, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager or Designee to Submit an Application to the State of California Under the Bicycle Transportation Account Program for a Grant in the Amount Not to Exceed \$724,000 For the Coyote Creek Trail Reach 3 (Highway 237 Bikeway to Tasman Drive) Project, To Accept the Grant if Awarded and To Negotiate and Execute All Documents", was adopted. (11-0.)

**2.12 Approve a continuation agreement with Field Paoli, Inc., for consultant services for the Mayfair Community Center Project, extending the term from June 30, 2009 to December 31, 2009; and increasing the amount of compensation by \$7,500 for a total agreement amount not to exceed \$1,652,825. CEQA: Mitigated Negative Declaration, File No. PP06-024. Council District 5. SNI Area: Mayfair. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated November 23, 2009, recommending approval of a continuation agreement.

Action: A continuation agreement with Field Paoli, Inc., for consultant services for the Mayfair Community Center Project, extending the term from June 30, 2009 to December 31, 2009; and increasing the amount of compensation by \$7,500 for a total agreement amount not to exceed \$1,652,825 was approved. (11-0.)

**2.13 Adopt a resolution of intention to vacate a Public Service Easement within a private property at 3550 Snell Avenue and setting a public hearing on January 26, 2010 at 1:30 p.m. CEQA: Not a Project. Council District 7. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated November 23, 2009, recommending adoption of a resolution.

Action: Resolution No. 75228, entitled: “A Resolution of the Council of the City of San José Setting a Public Hearing To Consider Whether to Vacate a Public Service Easement Within a Private Property at 3550 Snell Avenue”, was adopted. (11-0.)

**2.14 Approve the first amendment to the consultant agreement with Financial Consulting Solutions Group, Inc. for the Storm Drainage, Sanitary Sewer Connection and Sewage Treatment Plant Connection Fees Study, extending the term of the agreement from December 27, 2009 to June 30, 2011, at no additional cost to the City. CEQA: Not a Project. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated November 23, 2009, recommending approval of the first amendment to the consultant agreement.

Public Comments: David Wall concurred with the Staff recommendations to hire a consultant.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the first amendment to the consultant agreement with Financial Consulting Solutions Group, Inc. for the Storm Drainage, Sanitary Sewer Connection and Sewage Treatment Plant Connection Fees Study, extending the term of the agreement from December 27, 2009 to June 30, 2011, at no additional cost to the City, was approved. (11-0.)

**2.15 (a) Adopt a resolution amending City Council Policy No. 1-18, “Operating Budget and Capital Improvement Program Policy,” to establish a ten percent construction contingency for Capital Improvement Program trail projects.**  
**(b) Adopt a resolution amending the authority delegated to the Director of Public Works under Resolution Nos. 72943 and 73532 (Streamlining the Award of Public Works Construction Contracts) to incorporate the contingency amounts specified in City Council Policy No. 1-18.**

**CEQA: Not a Project. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated November 23, 2009, recommending adoption of resolutions.

**2.15 (Cont'd.)**

Action: Resolution No. 75229, entitled: "A Resolution of the Council of the City of San José Approving Revisions to City Council Policy 1-18, Operating Budget and Capital Improvement Program Policy" and Resolution No. 75230, entitled: "A Resolution of the Council of the City of San José Amending the Authority Delegating to the Director of Public Works Under Resolution Numbers 72943 and 73532 (Streamlining the Award of Public Works Construction Contracts) To Incorporate the Contingency Amounts Specified in City Council Policy 1-18", were adopted. (11-0.)

- 2.16**
- (a) Approve an increase in the contingency budget for the Martin Park Landfill Gas Cutoff Wall Re-Bid Project in the amount of \$115,000 for a total contingency budget of \$238,000.**
  - (b) Approve Contract Change Order Number 3 in an amount of \$340,000 for a total contract amount of \$1,588,147 with Granite Rock Company, DBA Pavex Construction Division for the Martin Park Landfill Gas Cutoff Wall Re-Bid Project.**
  - (c) Approve an increase in the project delivery budget for the Martin Park Landfill Gas Cutoff Wall Re-Bid project in the amount of \$46,000 for a total project delivery budget of \$463,000.**
  - (d) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund for 2009-2010:**
    - (1) Increase the estimate for Revenue from the State of California by \$501,000.**
    - (2) Increase the appropriation to the Public Works Department for the Martin Park Landfill in the amount of \$501,000.**

**CEQA: Mitigated Negative Declaration, File No. H06-017, December 3, 2007. Council District 3. SNI Area: Five Wounds/Brookwood Terrace. (Public Works/Environmental Services/City Manager's Office)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, Director of Environmental Services John Stufflebean and Budget Director Jennifer Maguire, dated November 23, 2009, recommending approval of a increase in the contingency budget for Martin Park Landfill Gas Cutoff Project, approval of Change Order Number 3, approval of an increase in the project delivery budget for Martin Park Landfill Gas Cutoff Project and adoption of appropriation ordinance and funding sources resolution amendments.

Action: An increase in the contingency budget for the Martin Park Landfill Gas Cutoff Wall Re-Bid Project in the amount of \$115,000 for a total contingency budget of \$238,000, the Contract Change Order Number 3 in an amount of \$340,000 for a total contract amount of \$1,588,147 with Granite Rock Company, DBA Pavex Construction Division for the Martin Park Landfill Gas Cutoff Wall Re-Bid Project, an increase in the project delivery budget for the Martin Park Landfill Gas Cutoff Wall Re-Bid project in the amount of \$46,000 for a total project delivery budget of \$463,000 were approved;

**2.16 (Action Cont'd.)**

Ordinance No. 28684, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the General Fund for the Martin Park Landfill Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" and Resolution No. 75231, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 74956 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2009-2010 to Adjust Revenues in the General Fund", were adopted. (11-0.)

- 2.17 (a) Allow the consultant selection to be made without following the procedures set forth in the Qualifications Based Consultant Selection Policy (QBCS) with regard to selecting BFGC Architects Planners, Inc. (BFGC) to provide architectural services for the Fire Station No. 37 Project.**
- (b) Approval of an agreement with BFGC for architectural consultant services for the Fire Station No. 37 Project, from the date of execution to January 31, 2012, in an amount not to exceed \$256,000.**

**CEQA: Exempt, File Nos. PP08-050 & PP09-150. Council District 6. (Public Works/Fire)**

*Note: Item 2.17 was renumbered from Item 8.1.*

Documents Filed: Memorandum from Director of Public Works Katy Allen and Fire Chief Darryl Von Raesfeld, dated November 23, 2009, recommending approval of the agreement with BFGC Architects Planners, Inc. and approval of an agreement.

Action: An agreement with BFGC Architects Planners, Inc. for architectural consultant services for the Fire Station No. 37 Project, from the date of execution to January 31, 2012, in an amount not to exceed \$256,000 was approved. (11-0.)

- 2.18 Adopt a resolution authorizing the City Auditor to negotiate and execute a Third Amendment to the Agreement for Audit Services with Macias, Gini & O'Connell LLP to provide a financial audit of the Neighborhood Security Bond Projects Capital Projects Fund of the City for the period from inception through June 30, 2009 for a total one-time fee not to exceed \$49,600, for a total contract amount not to exceed \$2,954,940. (City Auditor)**

Documents Filed: Memorandum from City Auditor Sharon W. Erickson, dated December 4, 2009, recommending adoption of a resolution.

Action: Resolution No. 75232, entitled: "A Resolution of the Council of the City of San José Authorizing the City Auditor to Negotiate and Execute a Third Amendment to the Agreement for Audit Services with Macias, Gini and O'Connell, LLP to Provide a Financial Audit of the Neighborhood Security Bond Projects Fund of the City for the Period from Inception Through June 30, 2009, for a Total One Time Fee Not To Exceed \$49,500, for a Total Contract Amount Not To Exceed \$2,954,940", was adopted. (11-0.)

**END OF CONSENT CALENDAR**

## **STRATEGIC SUPPORT SERVICES**

### **3.1 Report of the City Manager, Debra Figone (Verbal Report)**

City Manager Debra Figone reported that the 2009/2010 Holiday Closure was scheduled from Thursday, December 24, 2009 through Friday, January 1, 2010, with City Hall back to business as usual on January 4, 2010. She added that during the furlough the City libraries and community centers will be open on reduced schedules.

### **3.2 Report of the Rules and Open Government Committee – December 2, 2009 Mayor Reed, Chair**

Action: Deferred to January 10, 2010 per City Clerk.

### **3.4 Accept the Mayor's Biennial Review of the Ethics Ordinances and provide direction to staff as outlined in the Mayor's Memo. (Mayor) (Rules Committee referral 11/4/09) (Deferred from 11/17/09 – Item 3.8 and 12/8/09 – Item 3.4)**

Documents Filed: (1) Memorandum from Mayor Reed, dated November 24, 2009, transmitting the recommendations of the 2009 Mayor's Biennial Review of the Ethics Ordinances. (2) Supplemental memorandum from Mayor Reed, dated December 4, 2009, recommending acceptance of Mayor's 2009 Biennial Review of the Ethics Ordinances with changes. (3) Memorandum from Mayor Reed, dated December 14, 2009, recommending acceptance of the 2009 Mayor's Biennial Review of the Ethics Ordinances Amended and Restated. (4) Memorandum from Council Members Kalra, Pyle and Chu, dated December 11, 2009, recommending approval the Mayor's memoranda with changes and clarifications. (5) Letter from People Acting in Community Together (PACT), dated December 13, 2009, expressing support to the recommendations from Mayor Reed. (6) Email from Hope Cahan, dated December 15, 2009, expressing support to the recommendations from Council Members Kalra, Pyle and Chu.

Mayor Reed provided meeting disclosures.

Mayor Reed explained his Amended and Restated memorandum, dated December 14, 2009.

Public Comments: Expressing comments on the Mayor's Biennial Review of the Ethics Ordinances, Mayor Reed's amended and restated memorandum, dated December 14, 2009 and the memorandum from Council Members Kalra, Pyle and Chu, dated December 11, 2009, were Ben Field, South Bay Labor Council, Mark Skeen, San José Firefighters, Skyler Porras, Joshua Barousse, Bob Brownstein, Richard Hobbs, Betsy Arroyo, Robert Lindley, Claudia Shope, Bill Guthrie, Local 393 Plumbers, Sandy Perry, Jeremy Barousse, Clark Williams, Tamon Norimoto, San José JAFL, Fred Hirsch, James Zahradka, Law Foundation of Silicon Valley and Erik Larsen, Local MEF 101.

Council Member Campos provided meeting disclosures.

### 3.4 (Cont'd.)

Note: Items 1 through 9, which are detailed in the amended and restated memorandum from Mayor Reed, dated December 14, 2009, were voted on separately by the City Council and noted below in "Action".

Extensive Council discussion followed.

Action: On a call for the question, the motions carried, the recommendations outlined in the memorandum from Mayor Reed, dated December 14, 2009, amended and restated, were approved, as modified: (1) Avoiding Conflicts of Interests Arising from Family Relationships: *Recommendations (a)-(c) Approved. Recommendation regarding Council Policy 0-32 referred to the Elections Commission and the Ethics Review Panel in parallel.* (9-2. Noes: Constant, Oliverio.) (2) Closing a Loophole in Lobbyist Registration and Disclosures: *Recommendation referred to the Elections Commission and the Ethics Review Panel in parallel.* (11-0.) (3) More Sunshine for Decision-Making Boards and Commissions: *Recommendation approved.* (11-0.) (4) Avoiding Policy by Surprise at Council Committees: *Recommendation approved.* (11-0.) (5) Process Improvements for "Revolving Door" Employment Restriction Waivers: *Recommendation approved.* (11-0.) (6) Improving Timely Disclosure of Calendars: *Recommendation approved.* (11-0.) (7) Protecting Public Participation in Council Hearings: *Recommendation approved. Referred to the Elections Commission and the Ethics Review Panel in parallel the concept of allowing, beyond the Brown Act, for public comments and debate about items on the Agenda during Orders of the Day even if the City Council is not debating any items during Orders of the Day.* (11-0.) (8) Limiting Anonymous Complaints to the Elections Commission: *Recommendation approved. Referred to the Elections Commission and the Ethics Review Panel in parallel consideration of whether the phrase "good cause" should include those who can demonstrate a substantial vulnerability to retaliation by the person who is the subject of the complaint and review and determine what additional situations would constitute "good cause" for providing anonymous tip line complaints for inclusion in the regulation.* (8-3. Noes: Campos, Kalra, Nguyen.) (9) Make Interest Arbitration Hearings Open to the Public: *Recommendation approved.* (11-0.)

### 3.5 **As recommended by the Rules and Open Government Committee on December 9, 2009 and as amended to include the City Attorney's Office in the legislative process to ensure positions are consistent with the Guiding Principles:**

- (a) **Accept the 2010 Legislative Guiding Principles and Advocacy Issues for the second year of the two-year Legislative Session in Sacramento and the 111<sup>th</sup> Congress.**
- (b) **Approve a streamlined process for responding to legislative proposals and legislation that would enable the staff to be responsive to bills considered in Sacramento and Washington, D.C.**

**(City Manager's Office)**

**[Rules Committee referral 12/09/09 – Item H(4)]**

Documents Filed: Memorandum from City Clerk Lee Price, dated December 9, 2009, transmitting the recommendations of the Rules and Open Government Committee.

### 3.5 (Cont'd.)

Action: Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, the recommendations of the Rules and Open Government Committee and as amended to include the City Attorney's Office in the legislative process to ensure positions are consistent with the Guiding Principles: (1) the 2010 Legislative Guiding Principles and Advocacy Issues for the second year of the two-year Legislative Session in Sacramento and the 111<sup>th</sup> Congress was accepted and (2) a streamlined process for responding to legislative proposals and legislation that would enable the staff to be responsive to bills considered in Sacramento and Washington, D.C., were approved. (7-0-4. Absent: Campos, Chirco, Chu, Constant.)

## COMMUNITY & ECONOMIC DEVELOPMENT

### 4.1 Report of the Community & Economic Development Committee – November 30, 2009 Council Member Pyle, Chair

Documents Filed: The Community & Economic Development Committee Report dated November 30, 2009.

Public Comments: David Wall expressed opposition to the Item (d)(9) of the Community & Economic Development Committee report on the investment activities of the Economic Development Catalyst Program.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the report of the Community & Economic Development Committee and the actions of November 30, 2009, were accepted. (6-0-5. Absent: Campos, Chirco, Chu, Constant, Kalra.)

- 4.2 (a) **Accept report on Request for Proposal for the purchase of a Multi-Family Loan Portfolio Management System and adoption of a resolution authorizing the Director of Finance to:**
- (1) **Execute an agreement with MK Partners, Inc. (Encino, CA) for the implementation of the Multi-Family Loan Portfolio Management System in an amount not to exceed \$246,700 including all professional and technical support services required to implement the system as well as hosting services that will be provided by Salesforce.com Inc. (San Francisco, CA) under a separate subscription agreement.**
  - (2) **Execute change orders not to exceed a contingency amount of \$40,000 to cover any unanticipated changes in the system design and implementation.**
  - (3) **Execute ten one-year options to renew the agreements for continued technical support and hosting services subject to annual appropriation of funding.**

**4.2 (b) Adopt the following Appropriation Ordinance amendments in the Low and Moderate Income Housing Fund (Fund 443) for 2009-2010:**

- (1) Decrease the Ending Fund Balance by \$286,700.**
- (2) Increase the Housing Department's Non-Personal/Equipment Appropriation in the amount of \$286,700.**

**CEQA: Not a Project. (Finance/City Manager's Office)**

**(Deferred from 11/3/09 – Item 2.5, et al, 12/1/09 – Item 4.4, and 12/8/09 – Item 4.7)**

Documents Filed: (1) Memorandum from Director of Finance Scott Johnson and Budget Director Jennifer Maguire, dated October 13, 2009, recommending the adoption of a resolution and appropriation ordinance amendments. (2) Supplemental memorandum from Director of Finance Scott Johnson, dated December 7, 2009, providing additional information regarding the outreach for the Request for Proposal and to address questions raised by Council at the November 3, 2009 City Council Meeting.

Motion: Council Member Liccardo moved approval of the Staff recommendations. Vice Mayor Chirco seconded the motion.

Council Member Oliverio noted he could not support the motion and explained that his no vote was based upon no park fees, no ongoing property tax and no building and construction taxes.

Public Comments: Matt Kaufman, MK Partners, spoke about the merits of the project. David Wall spoke in opposition to the Staff recommendations.

Action: On a call for the question, the motion carried, Resolution No. 75233, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Finance to Execute an Agreement with MK Partners, Inc. for a Multi-Family Loan Portfolio Management System" and Ordinance No. 28685, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the Low and Moderate Income Housing for the Housing Department's Non-Personal/Equipment; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption", were adopted. (8-1-2. Noes: Oliverio. Absent: Nguyen, Pyle.)

**4.3 Conduct a public hearing on the Historical Property Contract (California Mills Act No. MA09-007) between the City of San José and the owners of the Tommie Smith House, located at 55 N. Eleventh Street, (City Landmark No. HL08-181) (Brian Boguess, Property Owner) and adopt a resolution approving the contract. SNI: University. CEQA: Exempt. Council District 3. The Historic Landmarks Commission (HLC) recommends (5-0-1; Peak absent) that the City Council adopt a resolution approving Historical Property Contract File No. MA09-007. (Planning, Building and Code Enforcement)**

**[Deferred from 12/1/09 – Item 4.6(b)]**

Documents Filed: Memorandum from Historic Landmarks Commission Secretary Joseph Horwedel, dated December 3, 2009, transmitting the recommendation of the Historic Landmarks Commission.

#### 4.3 (Cont'd.)

Public Comments: Mayor Reed opened the public hearing. There was no testimony from the floor. Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Liccardo, seconded by Vice Mayor Chirco and carried unanimously, Resolution No. 75234, entitled: “A Resolution of the Council of the City of San José Approving a Historic Landmark Preservation Agreement with Brian Boguess for the Tommie Smith House Located at 55 North 11<sup>th</sup> Street (City Landmark No. HL09-181)”, was adopted. (8-0-3. Absent: Herrera, Nguyen, Pyle.)

#### 4.4 **Adopt a resolution designating and naming Winchester Boulevard as a Targeted Business Area. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Assistant Director of Planning, Building, and Code Enforcement Laurel Prevetti, dated December 3, 2009, recommending adoption of a resolution.

Action: Upon motion by Council Member Constant, seconded by Council Member Pyle and carried unanimously, Resolution No. 75235, entitled: “A Resolution of the Council of the City of San José Designating a Portion of Winchester Boulevard as a Targeted Business Area”, was adopted. (8-0-3. Absent: Herrera, Liccardo, Nguyen.)

#### 4.5 **Conduct a public hearing and consider an ordinance amending Title 20 of the San José Municipal Code, the Zoning Ordinance, to amend Section 20.100.500 of Chapter 20.100 Part 4 to add the North San José Area to the Director of Planning’s authorization to extend certain development permits for a discrete period of time and make other related clarifying changes. CEQA: North San José EIR Resolution No. 72768. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1). (Planning, Building and Code Enforcement)**

Documents Filed: (1) Memorandum from the Planning Commission Secretary Joseph Horwedel, dated December 3, 2009, transmitting the recommendation of the Planning Commission. (2) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated December 9, 2009, documenting the Staff’s assessment of the status or readiness of residential projects with planning permit approval in North San José. (3) Proof of Publication of Notice of Public Hearing, executed on November 20, 2009, submitted by the City Clerk. (4) Letter from Ed McCoy, Vice President, FF Development L.P., dated December 14, 2009, expressing support of the Planning Commission’s recommendation. (5) Email from Ed McCoy, Vice President, FF Development L.P., dated December 15, 2009, expressing concern about the supplemental memorandum from the Planning, Building and Code Department which excluded his project from Phase 1; he noted that the project should be given a time extension to allow it to move forward when the economy rebounds.

#### 4.5 (Cont'd.)

Motion: Council Member Constant moved approval of the Staff/Planning recommendations. Council Member Pyle seconded the motion.

Mayor Reed provided meeting disclosures.

Director of Planning, Building and Code Enforcement Joseph Horwedel responded to Council questions and comments.

Mayor Reed requested to amend the motion to direct Staff to return to Council on January 26, 2010 with an update. The amendment was accepted by Council Members Constant and Pyle.

Council Member Chu requested to amend the motion to direct Staff to disclose any additional actions necessary relevant to the "readiness" of residential projects with Planning Permit approval. The amendment was accepted by Council Members Constant and Pyle.

Mayor Reed opened the public hearing.

Public Comments: David Wall objected to the Staff recommendations.

Mayor Reed closed the public hearing.

Action: On a call for the question, the motion carried unanimously, the recommendation of the Planning Commission and Planning Director were approved, and Ordinance No. 28686, entitled: "An Ordinance of the City of San José Amending Section 20.100.500 of Chapter 20.100 of Title 20 of the San José Municipal Code to Allow for an Additional Extension of Development Permit Terms or a Reactivation of Certain Expired Development Permits for a Temporary Period of Time in the North San José Development Policy Area", was passed for publication. Staff was directed to return to Council on January 26, 2010 with an update and any additional actions necessary relevant to the "readiness" of residential projects with Planning Permit approval. (11-0.)

#### 4.6 **As recommended by the Community and Economic Development Committee on November 30, 2009, accept the progress report of the investment activities of the Economic Development Catalyst Fund. (Economic Development)** **[Community and Economic Development Committee referral 11/30/09 – Item D(9)]**

Action: Deferred to January 12, 2010 per Administration.

**4.7 Adopt resolutions:**

- (a) **Supplementing the authority previously granted to issue not to exceed \$13,600,000 of City of San José Multifamily Housing Revenue Bonds (Brookwood Terrace Family Apartments), Series 2009B (the “Bonds”) to allow such issuance in two series, with (i) the Series B-1 Bonds (the “Series B-1 Bonds”) issued fixed rate bonds directly placed with the U.S. Treasury Department (the “Treasury”), and (ii) the Series B-2 Bonds (the “Series B-2 Bonds”) issued either as a publicly offered variable rate demand bonds credit enhanced by a letter of credit from JP Morgan Chase (the “Bank”) or as variable rate bonds directly placed with the Bank; and authorizing the Assistant Director of Finance to negotiate and approve changes to the Bond Documents previously approved by the City Council and to negotiate and approve other documents necessary to enable to the issuance of the Bonds in two series.**
- (b) **Approving a request for disbursement of up to \$600,000 of the existing City construction/permanent loan funding commitment; and, authorizing the Director of Housing to negotiate and execute all documents to effectuate this disbursement.**

**CEQA: Mitigated Negative Declaration, File No. PDC08-038. Council District 3. SNI: Five Wounds/Brookwood Terrace. (City Attorney’s Office)**

Documents Filed: (1) Memorandum from City Attorney Richard Doyle, dated November 24, 2009, recommending adoption of a resolution. (2) Supplemental memorandum from Director of Housing Leslye Krutko and Assistant Director of Finance Julia Harper Cooper, dated December 11, 2009, providing an updated status on the financing for the Brookwood Terrace Family Apartments project.

Motion: Council Member Liccardo moved approval of the Staff recommendations. Council Member Constant seconded the motion.

As previously noted, Council Member Oliverio explained that his no vote was based upon no park fees, no ongoing property tax and no building and construction taxes.

Public Comments: David Wall objected to the Staff recommendations.

Action: On a call for the question, the motion carried, Resolution No. 75236, entitled: “A Resolution of the Council of the City of San José Supplementing Resolution Authorizing the Issuance of Multifamily Housing Revenue Bonds for Brookwood Terrace Family Apartments” and Resolution No. 75237, entitled: “A Resolution of the Council of the City of San José Approving the Disbursement of \$600,000 of the Existing Construction/Permanent Loan Funding Commitment and Authorizing the Director of Housing to Negotiate and Execute All Documents”, was adopted. (10-1. Noes: Oliverio.)

**4.8 Conduct a public hearing and adopt a resolution to vacate a portion of an existing 10-foot wide Public Utility Easement while reserving a Wire Clearance Easement over the area to be vacated, located at the rear of Lot 22 of Tract 1593 (1542 Larkspur Drive). CEQA: Not a Project. Council District 9. (Public Works)**

*Note: Item 4.8 was renumbered from Item 7.4.*

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated November 23, 2009, recommending adoption of a resolution.

Mayor Reed opened the public hearing.

Motion: Vice Mayor Chirco moved approval of the Staff recommendations. Council Member Pyle seconded the motion.

Public Comments: Don Billings stated that his property address was noted inaccurately on the location map and requested that it be corrected to read “1542 Larkspur Lane”.

Mayor Reed closed the public hearing.

Action: On a call for the question, the motion carried unanimously, Resolution No. 75238, entitled: “A Resolution of the Council of the City of San José Vacating a Portion of an Existing 10-Foot Wide Public Easement Located at the Rear of Lot 22 of Tract 1593 (1542 Larkspur Drive) and Reserving a Wire Clearance Easement Over the Entire Area Being Vacated”, was adopted, as amended, and the property address was corrected to read 1542 Larkspur Lane. (10-0-1. Absent: Oliverio.)

## **NEIGHBORHOOD SERVICES**

**5.2 As recommended by the Neighborhood Services and Education Committee on December 10, 2009, approve the Neighborhoods Commission Work Plan. (City Manager’s Office)  
[Neighborhood Services and Education Committee referral 12/10/09 – Item D(3)]**

Documents Filed: Memorandum from City Clerk Lee Price, dated December 11, 2009, transmitting the recommendations of the Neighborhood Services and Education Committee.

Action: Upon motion by Council Member Campos, seconded by Council Member Constant and carried unanimously, the Neighborhoods Commission Work Plan was approved. (10-0-1. Absent: Oliverio.)

## TRANSPORTATION & AVIATION SERVICES

- 6.2 Approve the second amendment to Utility Agreement No. 1390.1, between the California Department of Transportation and the City, to transfer the remaining agreement balance of \$4,230,000 to the City for the completion of the Highway 87 Detour II Sanitary Sewer Reconstruction Project – Phase II. CEQA: Mitigated Negative Declaration, File No. PP03-12-378. Council District 3. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated November 23, 2009, recommending approval of the second amendment to the agreement.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, the second amendment to Utility Agreement No. 1390.1, between the California Department of Transportation and the City, to transfer the remaining agreement balance of \$4,230,000 to the City for the completion of the Highway 87 Detour II Sanitary Sewer Reconstruction Project, Phase II, was approved. (10-0-1. Absent: Oliverio.)

## ENVIRONMENTAL & UTILITY SERVICES

- 7.1 Report on bids and award of contract for the MCC H1, MCC H2, MCC J1, and MCC J2 Replacement Project to the lowest responsive bidder, Dynalectric Company, in the amount of \$1,637,295; and approval of a budget contingency of 15%, for a total contingency amount of \$245,595. CEQA: Exempt, File No. PP04-03-079. (Environmental Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated November 23, 2009, recommending approval of the award of the contract to the lowest responsive bidder. (2) Letter from the Treatment Plant Advisory Committee Chair Chuck Reed, dated December 9 2009, stating concurrence with the Staff recommendations.

Director of Environmental Services John Stufflebean and City Attorney Richard Doyle responded to Council questions and comments.

Action: Upon motion by Council Member Campos, seconded by Council Member Liccardo and carried unanimously, the award of contract for the MCC H1, MCC H2, MCC J1, and MCC J2 Replacement Project to the lowest responsive bidder, Dynalectric Company, in the amount of \$1,637,295, with related contingency, was approved. (10-0-1. Absent: Herrera.)

- 7.2 Hold a public hearing on the application of Lam Hauling for a Commercial Solid Waste and Recyclables Collection Franchise, approve the ordinance granting the franchise, and approve the Commercial Solid Waste and Recyclables Collection Franchise Agreement for a term from February 12, 2010 to June 30, 2012 with the option of three one-year extensions. CEQA: Exempt, File No. PP08-228. (Environmental Services)**

## 7.2 (Cont'd.)

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean, dated November 23, 2009, recommending approval of an ordinance.

Public Comments: Mayor Reed opened the public hearing. There was no testimony from the floor. Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Nguyen and carried unanimously, Ordinance No. 28687, entitled: "An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to Lam Hauling", was passed for publication. (9-0-2. Absent: Herrera, Oliverio.)

- 7.3
- (a) **Adopt a resolution authorizing the City Manager to negotiate and execute a grant agreement with the Department of Energy to conduct the Solar America Initiative's Solar Market Transformation activities, for the term of January 1, 2010 through December 31, 2011, and to accept a grant in an amount not to exceed \$1,101,636.**
  - (b) **Adopt a resolution authorizing the City Manager to:**
    - (1) **Negotiate and execute an agreement with Santa Clara University to accept the donation of the use of the Solar Decathlon House for the term of January 1, 2010 through December 31, 2011, at a value of \$198,050.**
    - (2) **Negotiate and execute an agreement with the Redevelopment Agency for use of the site located at 155-193 East Santa Clara Street, which is valued at \$9,343 per month, for a period of up to two years, for the Green Vision Education and Demonstration Center.**
  - (c) **Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund for 2009-2010:**
    - (1) **Establish a City-Wide Expenses Recovery Act – Solar Market Transformation appropriation to the Environmental Services Department in the amount of \$1,101,636.**
    - (2) **Increase the estimate for Revenue from Federal Government – Recovery Act by \$1,101,636.**

**CEQA: Resolution 65459, File No. PP09-204. (Environmental Services/City Manager's Office)**

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean and Budget Director Jennifer Maguire, dated December 4, 2009, recommending adoption of resolutions and appropriation ordinance and funding sources resolution amendments.

### 7.3 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Council Member Nguyen and carried unanimously, Resolution No. 75239, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Grant Agreement with the U.S. Department of Energy for the Solar America Initiative’s Solar Market Transformation Special Project”; Resolution No. 75240, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute Agreements with Santa Clara University and the San José Redevelopment Agency for the Green Vision Education and Demonstration Center, as Part of the Solar America Initiative’s Solar Market Transportation Special Project”; Ordinance No. 28688, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the General Fund to the Citywide Environmental & Utility Services for the Recovery Act – Solar Market Transformation; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption” and Resolution No. 75241, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 74956 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2009-2010 to Adjust Revenues in the General Fund”, were adopted. (9-0-2. Absent: Herrera, Oliverio.)

### 7.4 **Conduct a public hearing and adopt a resolution to vacate a portion of an existing 10-foot wide Public Utility Easement while reserving a Wire Clearance Easement over the area to be vacated, located at the rear of Lot 22 of Tract 1593 (1542 Larkspur Drive). CEQA: Not a Project. Council District 9. (Public Works)**

Action: *Item 7.4 was renumbered to Item 4.8.*

## **PUBLIC SAFETY SERVICES**

- 8.1 (a) **Allow the consultant selection to be made without following the procedures set forth in the Qualifications Based Consultant Selection Policy (QBCS) with regard to selecting BFGC Architects Planners, Inc. (BFGC) to provide architectural services for the Fire Station No. 37 Project.**
- (b) **Approval of an agreement with BFGC for architectural consultant services for the Fire Station No. 37 Project, from the date of execution to January 31, 2012, in an amount not to exceed \$256,000.**

**CEQA: Exempt, File Nos. PP08-050 and PP09-150. Council District 6. (Public Works/Fire)**

Action: *Item 8.1 was renumbered to Item 2.17.*

## JOINT COUNCIL/REDEVELOPMENT AGENCY

The Council/Redevelopment Agency portion of the meeting convened at 5:00 p.m. to consider Item 9.1 in a joint session.

- 9.1 Approve a Memorandum of Understanding (MOU) by the City and Redevelopment Agency with San José Arena Management, LLC (Arena Manager) that sets forth general terms and the respective roles and responsibilities of the City and Arena Manager in their efforts to attract a National Basketball Association (NBA) franchise to locate in San José. CEQA: Exempt, File No. PP09-202. (City Manager's Office/ Redevelopment Agency)**

Documents Filed: (1) Memorandum from City Manager Debra Figone and Redevelopment Agency Executive Director Harry S. Mavrogenes, dated December 1, 2009, recommending approval of a Memorandum of Understanding. (2) Three executed copies of the Memorandum of Understanding dated December 15, 2009.

Motion: Council Member Constant moved approval of the Staff recommendations. Council Member Chu seconded the motion.

Public Comments: Don Gralnek, Executive Vice President/General Counsel, San José Sharks, expressed support to the Staff recommendations. David Wall stated that the City Auditor should be involved in this action.

Chief Development Officer Paul Krutko responded to Council questions and comments.

Action: On a call for the question, the motion carried unanimously, a Memorandum of Understanding (MOU) by the City and Redevelopment Agency with San José Arena Management, LLC (Arena Manager) that sets forth general terms and the respective roles and responsibilities of the City and Arena Manager in their efforts to attract a National Basketball Association (NBA) franchise to locate in San José, was approved. (11-0.)

The Joint/Redevelopment Agency Board portion of the meeting was adjourned at 5:04 p.m.

## OPEN FORUM

David Wall acknowledged the efforts of the Mayor and City Council for 2009 and expressed his support to the San José Police Department for keeping the residents safe.

## **ADJOURNMENT**

The Council of the City of San José was adjourned at 6:50 p.m. in memory of Jim Fox, noted San José downtown developer whose projects include many downtown landmarks such as the Hotel De Anza, One North First and the Sainte Claire Building. (Mayor)

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC  
City Clerk

smd/12-15-09 MIN

Access the video, the agenda and related reports for this meeting by visiting the City's website at <http://www.sanjoseca.gov/clerk/agenda.asp> or <http://www.sanjoseca.gov/clerk/MeetingArchive.asp>. For information on any ordinance that is not hyperlinked to this document, please contact the Office of the City Clerk at (408) 535-1266.

## JOINT REDEVELOPMENT AGENCY ITEMS

The Joint Redevelopment Agency Board convened at 5:06 p.m. to consider Items 8.1, 8.2, 8.3, 8.4 and 8.5 in a Joint Session.

### 8.1 Adoption of resolutions by the City Council and Redevelopment Agency Board:

- (a) **Accepting the Annual Report of Financial Transactions of community redevelopment agencies for FY 2008-09 for the purpose of forwarding the annual report to the State Controller, in accordance with Community Redevelopment Law, Section 33080.1.**
- (b) **Approving the Independent Auditor's Report On Internal Control Over Financial Reporting And On Compliance And Other Matters Based On An Audit Of Financial Statement Performed In Accordance With Government Auditing Standards, (Compliance Report) as required by Health and Safety Code 33080.1**

**CEQA: Not a Project. [MERGED]**

Documents Filed: Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated December 11, 2009, transmitting the Independent Auditor's Report of Financial Transactions.

Action: Upon motion by Vice Mayor Chirco, seconded by Council Member Campos and carried unanimously, Resolution No. 75242, entitled: "A Resolution of the Council of the City of San José (A) Approving the Annual Report of Financial Transactions of Community Redevelopment Agencies for Fiscal Year 2008-2009 and Directing Staff to Forward the Report to the State of California Controller in Accordance with Community Redevelopment Law Section 33081.1 and (B) Approving the Independent Auditor's Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statement Performed in Accordance with Government Auditing Standards, as Required by Health and Safety Code 33080.1" and Redevelopment Agency Board Resolution No. 5936, entitled: "A Resolution of the Board of Directors of the Redevelopment Agency of the City of San José Accepting the Annual Report of Financial Transactions of Community Redevelopment Agencies for FY2008-2009 for the Purpose of Forwarding the Annual Report to the State Controller, in Accordance with Community Redevelopment Law, Section 33080.1 and Approving the Independent Auditor's Report Based on an Audit of Financial Statement Performed in Accordance with Government Auditing Standards, as Required by Health and Safety Code 33080.1", were adopted. (11-0.)

- 8.2 (a) **Adoption of a resolution by the Redevelopment Agency Board approving an amendment to the Redevelopment Agency's FY 2009-10 Adopted Capital Budget, adding \$1,869,741 for City Support Services, and amending the FY 2009-10 Agency appropriations resolution.**
- (b) **Adoption of resolutions by the City Council and Redevelopment Agency Board authorizing the Executive Director and City Manager to negotiate and execute an amendment to the FY 2009-10 Cooperation Agreement for the Merged Redevelopment Project Area to make payments to the City for January and February 2010 City Services and project expenses.**

**CEQA: Not a Project. [MERGED]**

## 8.2 (Cont'd.)

Documents Filed: Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes and City Manager Debra Figone, dated December 10, 2009, recommending adoption of resolutions.

Action: Upon motion by Council Member Constant, seconded by Council Member Herrera and carried unanimously, Redevelopment Agency Board Resolution No. 5937, entitled: "A Resolution of the Board of Directors of the Redevelopment Agency of the City of San José Approving an Amendment to the Redevelopment Agency's FY 2009-2010 Adopted Capital Budget, Adding \$1,869,741 for City Support Services and Amendment the FY 2009-2010 Agency Appropriations Resolution"; Resolution No. 75243, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Amendment to the FY 2009-2010 Cooperation Agreement for the Merged Redevelopment Project Area to Make Payments to the city for January and February 2010 City Services and Project Expenses and Redevelopment Agency Board Resolution No. 5938, entitled "A Resolution of the Board of Directors of the Redevelopment Agency of the City of San José Authorizing the Executive Director and City Manager to Negotiate and Execute an Amendment to the FY 2009-2010 Cooperation Agreement for the Merged Redevelopment Project Area to Make Payments to the City for January and February 2010 City Services and Project Expenses", were adopted. (11-0.)

## 8.3 City Council and Redevelopment Agency Board consideration and approval of the Mayor's Redevelopment Agency Budget Message. (Mayor)

Documents Filed: (1) Supplemental memorandum from Mayor Reed, dated December 11, 2009, recommending approval of the Mayor's Budget Message released on November 20, 2009 with modifications. (2) Memorandum from Council Members Kalra and Nguyen, dated December 10, 2009, recommending that the Mayor's Budget Message be amended to direct the City Manager and Executive Director to prepare an analysis which is inclusive of the financing options proposed by Team San José as a means to initiate the Convention Center expansion during FY 2009-2010 as they complete the 45 day analysis called for by the Mayor and including other modifications. (3) Letter from Daniel Fenton, Team San José, dated December 14, 2009, transmitting a revised document for consideration over the next 45 days as City leaders discuss and evaluate funding strategies available for the Convention Center expansion and renovation. (4) Letter from Ron Johnson, Affordable Housing Network of Santa Clara County, dated December 13, 2009, expressing opposition to the current proposal that \$65M of affordable housing funds be used to pay the \$75M the State is demanding.

*NOTE: Items 8.3 and 8.4 were heard together.*

Mayor Reed outlined his recommendations from the Mayor's Budget Message released on November 20, 2009, the additional recommendations from his supplemental memorandum dated December 11, 2009 and direction to the Executive Director to move forward with obtaining bids for the Civic Auditorium Phase 2 but to defer the award of bids to the February 23, 2010 meeting.

### 8.3 (Cont'd.)

Public Comments: Commenting about using creative ways to support the Convention Center Expansion, reduction of the amount of money taken from affordable housing, lack of affordable housing in San José, the promotion of more jobs, the need for more affordable senior housing and support of the memorandum from Council Members Kalra and Nguyen, dated December 10, 2009, were: John Southwell, Hilton Hotel, Joe Kirchofer, Mid-Peninsula Housing, Bena Chang, Silicon Valley Leadership Group, Claudia Shope, Bob Brownstein, James Zahradka, Law Foundation of Silicon Valley, Myrtle Ferrande, Josh Lee, Sal Ventura, IBEW 332, Albert Roosma, Carpenter's Union, Joshua Barousse, Bruce Guthrie, James Silverwood, Affirmed Housing Group, Ulises Blaclutt, Luis Torres, Linda Dittes, AFSCME, Mike Daley, EAH Housing, William O'Connell, Sandy Perry, CHAM, Forrest Williams, Enrique Fernandez, Unite Here Local 19, Diane Driscoll, Cheryl Pollock, Robert Van Epps, Local 393, Ben Field, South Bay Labor Council, Doug Jones, United Healthcare Workers West (SEIU), Kathy Robinson, Maureen O'Malley-Moore, Destination: Home, Eddie Reyes, Iron Workers 372, Jim Peterson, Jose Garcia, Building Trades Council, Tamon Norimoto, Japan Community Congress, Stan Taylor, St. Lulie Billart Parish, Josh Ende, Local 510 and Fred Hirsh.

Motion: Council Member Constant moved approval of the memorandum from Mayor Reed, dated December 11, 2009, approving the Mayor's Budget Message dated November 20, 2009, with additional direction, including: direction to the Executive Director to move forward with obtaining bids for the Civic Auditorium Phase 2 but to defer the award of bids to the February 23, 2010 meeting. Council Member Oliverio seconded the motion.

Council Member Liccardo requested to amend the motion to direct Staff to explore and articulate a fully developed response to the question of whether the following listing founding sources are appropriate, in order of the following priority: (a) Redevelopment Agency budget itself – additional savings generated from cuts in projects. (b) City's Issuance of Commercial Paper, backed by the General Fund but with full reimbursement for costs by the Agency. (c) Additional borrowing from two of the funds as identified in the Mayor's Budget Message: (1) Fund 539, Sewage Treatment Plant Connection Fee (\$14.9M additional) (2) Fund 432, Ice Centre Revenue Fund (\$3.1M additional funds). (d) Temporary loans from other City funds (with interest paid by the Agency) namely current fund balances are in parenthesis. (1) Fund 423 Integrated Waste Management (\$8.7M); (2) Fund 541 Sewer Service and Use Charge (\$16.5M); (3) Fund 446, Storm Service Operating (\$8.3M); (4) Fund 418, Library Parcel Tax (\$3.5M); (5) Fund 426 Anti-Tobacco Master Settlement Agreement Revenue Fund (\$6.5M). Council Members Constant and Oliverio accepted the amendments. *Note: The following amendment was not accepted by Council Members Constant and Oliverio: "In addition to the \$10M that the Mayor has identified, at least another \$25M reduction in Housing Fund borrowing must be drawn from other sources under the proposal set out by Council Members Kalra and Nguyen".*

### 8.3 (Cont'd.)

Substitute Motion: Council Member Nguyen moved approval of the memorandum she cosigned with Council Member Kalra, all the amendments as requested by Council Member Liccardo and the supplemental memorandum from Mayor Reed with further amendments. Council Member Kalra seconded the motion.

Mayor Reed asked for an explanation between his supplemental memorandum and the memorandum from Council Members Nguyen and Kalra. Council Member Nguyen explained that affordable housing funding is a top priority in the joint memorandum from her and Council Member Kalra.

Vice Mayor Chirco left the meeting at 6:30 p.m.

Council Member Constant expressed objection to the substitute motion.

City Attorney Richard Doyle asked whether the direction from Mayor Reed with regard to the Executive Director to move forward with obtaining bids for the Civic Auditorium Phase 2 but to defer the award of bids to the February 23, 2010 meeting was included in the substitute motion. Council Members Nguyen and Kalra confirmed that the direction was included in the substitute motion.

Council Member Oliverio expressed support to the Mayor's memorandum and original motion.

Action: On a call for the question, the substitute motion, as amended carried and (1) That the Mayor's Redevelopment Budget Message be amended to direct the City Manager and Redevelopment Agency Executive Director to prepare an analysis which is inclusive of the financing options proposed by Team San José as a means to initiate the Convention Center expansion during FY 2009-2010 as they complete their 45 day analysis called for by the Mayor. (2) The Mayor's Redevelopment Budget Message was approved, as amended: (a) Initially require a loan from the 20% Affordable Housing Funds of no more than \$40M in Year 1 to help pay the Redevelopment Agency obligations to the State. (b) Accept the Mayor's proposal for the use of \$10M in other funds to pay the State. (c) Defer a final decision on any additional loans from the 20% Affordable Housing Funds to pay the State until the mid-year budget review in February 2010. (d) Direct Staff to inform the State at the required deadline that the Redevelopment Agency will pay the required \$62M in Year 1 and \$13M in Year 2. (e) Direct Staff to evaluate other sources of funds for the remainder of the obligation to the State (\$12M in Year 1 and \$13M in Year 2) and to include in this evaluation, issues of fairness, risk and cost of borrowing and to report back at the mid-year budget review. (3) In addition to the \$10M that the Mayor has identified, at least another \$25M reduction in Affordable Housing Fund borrowing must be drawn from other sources under the proposal set out by Council Members Kalra and Nguyen. (4) In addition to the other options that the Redevelopment Agency, City Staff and the City Attorney might explore, Staff was directed to explore the following options at a minimum and should articulate a fully developed response to the question of whether the funding source is an appropriate one. These funds are listed in

### 8.3 (Action Cont'd.)

order of priority: (a) Redevelopment Agency budget itself – additional savings generated from cuts in projects. (b) City's Issuance of Commercial Paper, backed by the General Fund but with full reimbursement for costs by the Agency. (c) Additional borrowing from two of the funds as identified in the Mayor's Budget Message: (1) Fund 539, Sewage Treatment Plant Connection Fee (\$14.9M additional) (2) Fund 432, Ice Centre Revenue Fund (\$3.1M additional funds). (d) Temporary loans from other City funds (with interest paid by the Agency) namely current fund balances are in parenthesis. (1) Fund 423 Integrated Waste Management (\$8.7M); (2) Fund 541 Sewer Service and Use Charge (\$16.5M); (3) Fund 446, Storm Service Operating (\$8.3M); (4) Fund 418, Library Parcel Tax (\$3.5M); (5) Fund 426 Anti-Tobacco Master Settlement Agreement Revenue Fund (\$6.5M); (6) Executive Director directed to move forward with obtaining of bids for the Civic Auditorium Phase 2 but the award of bids was deferred to February 23, 2010 meeting. (7-3-1. Noes: Constant, Oliverio; Reed. Absent: Chirco.)

### 8.4 Adoption of a resolution by the Redevelopment Agency Board:

- (a) **Authorizing the Executive Director to negotiate and execute contracts and make specified payments during the Interim Budget Period) December 16, 2009, through February 23, 2010.**
- (b) **Authorizing the Executive Director negotiate and execute additional contracts, without additional Board approval, in an amount not to exceed \$10,000 per contract, capped at a cumulative maximum amount of \$100,000 during the Interim Budget Period.**
- (c) **Approving adjustments to the FY 2009-10 Adopted Capital Budget and amendments to the FY 2009-2010 Agency appropriations resolution.**

Documents Filed: Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated December 10, 2009, recommending adoption of resolutions.

*Note: See Item 8.3 for detailed action.*

Action: On a call for the question, the motion carried unanimously, and Redevelopment Agency Board Resolution No. 5939 Redevelopment, entitled: "A Resolution of the Board of Directors of the Redevelopment Agency of the City of San José Authorizing the Executive Director to Negotiate and Execute Contracts and Make Specified Payments During the Interim Budget Period from December 16, 2009 through February 23, 2010 and Authorizing the Executive Director to Negotiate and Execute Additional Contracts, Without Additional Board Approval, In An Amount Not To Exceed \$10,000 per Contract, Capped at a Cumulative Maximum Amount of \$100,000 During the Interim Budget Period and Agency Board Resolution No. 5940, entitled: "A Resolution of the Board of Directors of the Redevelopment Agency of the City of San José Approving Adjustments to the FY 2009-2010 Adopted Capital Budget and Amendments to the FY 2009-2010 Agency Appropriations Resolution", were adopted. (10-0-1. Absent: Chirco.)

**8.5 Redevelopment Agency Board approval of:**

**(a) The Redevelopment Agency's Revised FY 2009-2010 Revenue, Capital and Operating Budgets; and,**

**(b) The Redevelopment Agency's Capital Improvement Program (CIP) for FY 2010-15.**

**(Deferred from 12/8/09 - Item 8.2)**

Action: Deferred to February 23, 2010.

The Council of the City of San José and Redevelopment Agency Board was adjourned at 6:48 p.m.