



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Paul Krutko
Jennifer A. Maguire

SUBJECT: ACCEPTANCE OF BEQUEST

DATE: March 22, 2010

Approved

Date

4/2/10

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

- 1) Adoption of the following Appropriation Ordinance and Funding Sources Resolution amendments in the Gift Trust Fund for Public Art in City Hall from the estate of Alba Joyce Martini:
 - a) Increase the estimate for Earned Revenue by \$100,000; and
 - b) Establish an appropriation to the Office of Economic Development for The Albino, Erminia and Alba Joyce Martini Memorial Fund In the amount of \$100,000.
- 2) Appoint the Arts Commission to oversee the use of the funds in compliance with the terms of the will.

OUTCOME

Through the recognition of this gift, the City would create interior statuary at City Hall and provide ongoing funding for the maintenance of this artwork and arts and cultural activities.

BACKGROUND

In February 2010, the City of San José received a bequest in the amount of \$100,000 from the estate of Alba Joyce Martini. The bequest was given with the following conditions:

- o That the Council appropriate the money to "The Albino, Erminia and Alba Joyce Martini Memorial Fund;"
- o That a committee be appointed to oversee the distribution of the funds;
- o That the principle be invested and income only be used for the following: net income up to the first ten years shall be used for purchase and installation inside San José City Hall of an appropriate statuary to be selected by the City; and

- That additional income and all income thereafter from said fund of \$100,000 be used for "any cultural, historical and educational project for the benefits of the citizens of the City of San Jose."

ANALYSIS

- It is anticipated that the bequest for The Albino, Erminia and Alba Joyce Martini Memorial Fund, would earn adequate interest during the first ten years to be used to create a modest work of sculpture within City Hall. Staff from the Office of Cultural Affairs Public Art Program will work with the Arts Commission to develop a proposal to purchase or commission statuary for installation inside City Hall that will meet the terms of the bequest. Thereafter, the Office of Cultural Affairs, with the advice of the Arts Commission, will include plans for the use of interest from the Bequest in its annual work plan.

EVALUATION AND FOLLOW-UP

During the first ten years of the bequest, the Public Art Program will report on the use of The Albino, Erminia and Alba Joyce Martini Memorial Fund during the programs annual report submitted to the City Council as an information memorandum. Thereafter, the use of the interest generated in the Fund will be included in the Office of Cultural Affairs annual arts grants budget process.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City.
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach.

This memorandum does not meet any of the criteria above. However, this memo will be posted on the City's website for the April 13, 2010, City Council agenda.

COORDINATION

This item has been coordinated with the City Attorney's Office and the Finance Department.

FISCAL/POLICY ALIGNMENT

This project is consistent with the Economic Development Strategy's vision of San Jose as a unique creative and cultural center of Silicon Valley and as the world's most livable big city, with diverse and distinctive qualities of life.

COST SUMMARY/IMPLICATIONS

This memorandum recommends to recognize this gift and appropriate funding in the Gift Trust Fund. These funds would remain in the Gift Trust Fund for the first ten years to accrue sufficient interest; all earnings thereafter would be used for any cultural, historical and educational project for the benefits of the citizens of the City of San José.

CEQA

Not a Project.

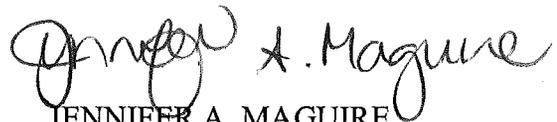


PAUL KRUTKO
Chief Development Officer



JENNIFER A. MAGUIRE
Budget Director

I hereby certify that there will be available for appropriation in the Gift Trust Fund in the Fiscal Year 2009-2010, monies in excess of those heretofore appropriated there from, said excess at least \$100,000.



JENNIFER A. MAGUIRE
Budget Director

For questions, please contact BARBARA GOLDSTEIN, PUBLIC ART DIRECTOR
at (408) 277-5144, ext 27.

Attachment: Bequest documents

NICHOLAS PASTORE
J. MICHAEL FITZSIMMONS

ROBERT G. ZELENKA
KELLY M. LAUGHRIN
LISA JEONG CUMMINS

OF COUNSEL

C. MICHAEL SMITH

CAMPBELL, WARBURTON, FITZSIMMONS,
SMITH, MENDELL & PASTORE
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

64 WEST SANTA STREET
SAN JOSE, CALIFORNIA 95113-1806

TELEPHONE (408) 295-7701
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MAILING ADDRESS
POST OFFICE BOX 1867
SAN JOSE, CALIFORNIA 95109-1867

FRANK V. CAMPBELL (1892-1971)
FRANK L. CUSTER (1902-1962)
ALFRED B. BRITTON, JR. (1919-1991)
AUSTEN D. WARBURTON (1917-1995)
RALPH E. MENDELL (1927-2006)

February 2, 2010

Colleen Winchester, Sr. Deputy City Attorney
City of San Jose
200 East Santa Clara Street
16th Floor Tower
San Jose, CA 95113-1905

Re: Estate of Alba Joyce Martini

Dear Ms. Winchester:

Enclosed is a check payable to the City of San Jose in the total amount of \$100,000.00. Pursuant to the Order of Final Distribution the enclosed funds are to be utilized for the purpose described in paragraph 9 (g) on page 5 of the Order, which was signed by Judge Thomas Cain on January 21, 2010, a copy of which is enclosed. Also enclosed is a Distributee's Receipt form evidencing your receipt of the enclosed check which I need The City of San Jose's authorized representative to sign, date and return to me in the enclosed envelope.

Upon execution and return to me of the Receipt, you are authorized to negotiate the enclosed check.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

CAMPBELL, WARBURTON, FITZSIMMONS,
SMITH, MENDELL & PASTORE


Robert G. Zelenka

RGZ:cf
Enclosures
cc: John A. Diquisto

1 Robert G. Zelenka, Esq., State Bar No. 115344
Campbell, Warburton, Fitzsimmons,
2 Smith, Mendell & Pastore
A Professional Corporation
3 64 West Santa Clara Street
Post Office Box 1867
4 San Jose, California 95109-1867
(408) 295-7701
5 (408) 295-1423 (facsimile)

6 Attorneys for Executor
John A. Diquisto
7

(ENDORSED)
FILED

2010 JAN 21 AM 10:13

David H. Yamasaki, Clerk of the Superior Court
County of Santa Clara, California
By: _____
Deputy Clerk

8
9 **IN THE SUPERIOR COURT OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF SANTA CLARA**

11
12 Estate of) CASE NO. 1-08-PR-164024
13 ALBA JOYCE MARTINI,) ORDER APPROVING FIRST AND FINAL
14 Deceased.) ACCOUNT AND REPORT OF EXECUTOR,
15) PETITION FOR SETTLEMENT, FOR
16) ALLOWANCE OF STATUTORY
17) EXECUTOR'S AND ATTORNEY'S
18) COMPENSATION, AND FINAL
19) DISTRIBUTION OF ESTATE
20)
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28)
DATE: January 21, 2010
TIME: 9:00 a.m.
DEPT: 3

19 Petitioner JOHN A. DIQUISTO, as Executor of the Estate of ALBA JOYCE MARTINI,
20 deceased, having heretofore filed his First and Final Account and Report, Petition for Settlement,
21 for Allowance of Statutory Executor's and Attorney's Fees, and for Final Distribution, and the
22 report and petition coming on regularly this day for hearing, the Court finds:

- 23 1. All notices have been given as required by law;
- 24 2. All facts as set forth in the report and petition are true and correct;
- 25 3. The decedent, ALBA JOYCE MARTINI, died testate on September 5, 2008, in the
26 City of San Jose, Santa Clara County, California and was a resident of the City of San Jose, Santa
27 Clara County, California, at the time of her death.
- 28 4. Decedent's Will dated April 23, 1980, was admitted to probate by order of this Court

Order Approving First and Final Account

1 on October 9, 2008. JOHN A. DIQUISTO qualified as Executor of decedent's Will and Letters
2 Testamentary were issued to petitioner on November 12, 2008; petitioner was granted authority
3 to administer the estate without court supervision under the Independent Administration of
4 Estates Act; petitioner's authority to so administer the estate has not been revoked and at all
5 times since then he has been and is now the Executor of decedent's estate.

6 5. The first and final account and report covers the period from September 5, 2008 to
7 December 7, 2009, inclusive. The account and report are full, verified, true and correct, and
8 should be settled, allowed, and approved as filed. All acts and transactions of the personal
9 representative during the period of the account are truly shown and should be approved.

10 6. Notice of petition to administer estate has been given as required by law, and an
11 affidavit showing due publication was filed with the Clerk of this Court. Notice to Creditors has
12 been published for the period and in the manner prescribed by law. More than four months have
13 elapsed since the issuance of Letters Testamentary. The Executor has fully complied with
14 Probate Code §§9050 through 9054 and the time for filing claims expired on March 12, 2009.
15 Notice of administration has been given to each reasonably ascertainable creditor, and the time
16 for filing claims has expired as to all creditors, including those given notice of administration.

17 7. No creditor's claims were filed or presented against the estate.

18 8. No personal property taxes were due and payable by the estate.

19 9. No Federal or California Estate Tax Returns were required to be filed and none have
20 been filed for the estate.

21 10. All California and Federal Income Taxes due and payable by the estate have been
22 paid and any necessary final returns will be filed on the close of the estate.

23 11. The estate is in a condition to be closed.

24 12. All debts of decedent and of the estate and all expenses of administration have been
25 paid, except closing expenses, executor's fees and costs advanced by petitioner's attorneys.

26 13. The whole of the estate is the decedent's separate property.

27 14. Petitioner has performed all duties required of him as executor of the estate. All
28 costs of administration except compensation to petitioner and his attorneys have been paid and

1 the estate is in a condition to be closed. The sum reasonably necessary to pay closing expenses is
2 \$20,000.00 and the executor should be authorized to withhold that sum from distribution.

3 15. The Executor, JOHN A. DIQUISTO, is entitled to a statutory commission of
4 \$27,514.17.

5 16. CAMPBELL, WARBURTON, FITZSIMMONS, SMITH, MENDELL & PASTORE
6 the Executor's attorneys are entitled to a statutory fee of \$27,514.17.

7 17. CAMPBELL, WARBURTON, FITZSIMMONS, SMITH, MENDELL & PASTORE
8 incurred costs in the sum of \$923.00 for which they are entitled to reimbursement as follows:

9 Filing Fee (Petition for Probate)	\$320.00
10 Publication Costs for Notice of Petition	\$145.00
11 Certified Copies - Letters Testamentary	\$103.00
12 Filing Fee (Petition for Final Distribution)	<u>\$355.00</u>
13 TOTAL COSTS EXPENDED	\$923.00

14 18. All allegations of the petition not specifically set forth in the foregoing findings are
15 true.

16 19. Said report and petition should be allowed and settled and distribution ordered as
17 prayed.

18 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that:

- 19 1. Notice to creditors of said estate has been given as required by law;
- 20 2. The report and petition is hereby approved, allowed and settled;
- 21 3. All acts and transactions of the executor during the period of account are hereby
22 confirmed and approved;

23 4. The Executor, JOHN A. DIQUISTO, is hereby authorized and directed to pay to
24 himself for ordinary services rendered in administering the estate a statutory commission of
25 \$27,514.17;

26 5. The Executor is hereby authorized and directed to pay to CAMPBELL,
27 WARBURTON, FITZSIMMONS, SMITH, MENDELL & PASTORE the sum of \$27,514.17 in
28 full payment of statutory attorney's fees;

1 The principal sum shall be held intact with income therefrom to be used for the charitable
2 purposes of this beneficiary.

3 (g) One Hundred Thousand Dollars (\$100,000.00) shall be distributed to the CITY OF
4 SAN JOSE for the establishment of a memorial fund to be thereafter known as THE ALBINO,
5 ERMINIA and ALBA JOYCE MARTINI MEMORIAL FUND. Said fund shall be administered
6 by the City of San Jose with the principal to be invested and income only to be used for the
7 following purposes: the net income for up to the first ten years shall be used for the purchase and
8 installation inside the San Jose City hall an appropriate statuary to be selected by the City, said
9 statuary to be marked with an appropriate plaque as a memorial to ALBINO, ERMINIA and
10 ALBA JOYCE MARTINI. Additional income and all income thereafter from said fund of One
11 Hundred Thousand Dollars (\$100,000.00) shall be applied by the City for cultural, historical and
12 educational projects for the benefit of the citizens of San Jose, The City Council shall appoint
13 an advisory committee with reference to the expenditure of said income, and all distributions
14 shall be in the name of this memorial fund.

15 Under the terms of Paragraph TWELFTH of the decedent's will, all of the rest and
16 residue of the decedent's estate should be divided in two equal shares and distributed as follows:

17 (a) One (1) share shall to be distributed to THE INSTITUTE FOR MEDICAL
18 RESEARCH of Santa Clara County, for the establishment of a memorial fund to be
19 thereafter known as THE ALBINO, ERMINIA and ALBA JOYCE MARTINI
20 MEMORIAL FUND. Said fund shall be administered by said beneficiary with the
21 principal to be invested and only the income therefrom to be used for research in the fields
22 of geriatrics, heart and circulatory problems and cancer. All distributions from this fund
23 shall be in the name of this memorial fund.

24 (b) One (1) share shall be distributed to THE COMMUNITY FOUNDATION OF
25 SANTA CLARA COUNTY, for the establishment of a memorial fund to be thereafter
26 known as THE ALBINO, ERMINIA and ALBA JOYCE MARTINI MEMORIAL FUND.
27 Said fund shall be administered by said beneficiary with the principal to be invested and
28 only the income therefrom to be used for the charitable purposes of said foundation. All

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distributions from this fund shall be in the name of this memorial fund for decedent's family.

10. The property to be distributed, as specified on Exhibit "A", Schedule IV of the First and Final Account, consists of the following assets, subject to the disbursements aforesaid:

(a) Cash in the sum of \$1,374,149.49.

11. Any other property of the estate whether not now known or hereafter discovered that may belong to the estate or in which the decedent or the estate may have any interest shall be distributed as set forth above.

DATED: JAN 21 2010

THOMAS Wm. CAIN
JUDGE OF THE SUPERIOR COURT