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Sent to Council: APR 27 2010

by City Manager's Office

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Nadine Nader

SUBJECT: Early Council Packet

DATE: April 27, 2010

Approved [signature] Date 4-27-10

EARLY DISTRIBUTION COUNCIL PACKET FOR MAY 11, 2010

Please find attached the Early Distribution Council Packet for the May 11, 2010 Council Meeting.

3.x Business Tax Suspension Program.

Recommendation:

(a) Approve an Ordinance to provide for a temporary business tax suspension program with 35 or fewer employees that enter into a new lease or renew an existing lease between January 1 - June 30, 2010 and pay past due obligations owed the City.

(b) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:

  (1) Decrease the FY 2010 – 2011 revenue estimate for Licenses and Permits by $532,500; and

  (2) Increase the appropriation to the Finance Department for Personal Services for Business Tax Administration in the amount of $30,000.

CEQA: Not a Project. (Finance)

TO BE DISTRIBUTED SEPARATELY

4.x Neglected Vacant or Abandoned Buildings Ordinance.

Recommendation: Approve an ordinance amending Chapter 17.38, of Title 17 of the San José Municipal Code, to:

(a) Change the title of the Chapter from "Neglected Vacant Houses" to "Maintenance and Rehabilitation of Neglected Vacant or Abandoned Buildings" and expand the provisions of the existing ordinance to include any neglected vacant or abandoned buildings;

(b) Require all vacant or abandoned buildings to be rehabilitated within 180 calendar days after the building is vacant, unless the building meets certain maintenance or other requirements specified in the ordinance;

(c) Require all vacant or abandoned historic buildings or structures listed on the National Register of Historic Places, California Register of Historic Resources, or City of San José Register of Historic Landmarks to install and maintain an operating alarm system approved by the City's Fire Marshall; and

(d) Make other clarifying changes to the ordinance as described in the memorandum to Council.

CEQA: Exempt, CEQA Guidelines Section 15308, Actions by Regulatory Agencies for the Protection of the Environment. (Planning, Building and Code Enforcement)

6.x Award of Contract for the 2010 Proposition 1B Street Resurfacing Project.

Recommendation: Report on bids and award of contract for the 2010 Proposition 1B Street Resurfacing Project to the low bidder Top Grade Construction Inc. in the amount of $2,838,698, and approval of a 5% contingency in the amount of $141,935. CEQA: Exempt, File No. PP06-066. (Transportation)

<u>SJFA</u>

2. Approval of the Issuance of Bonds, Loan of Bond Proceeds, Authorization of a Ground Lease, and Related Documents, for the Fourth Street Apartments Project.

Recommendation:

(a) Adopt a resolution of the City Council to:

(1) Authorize the issuance of two series of tax-exempt multifamily housing revenue bonds designated as "City of San José Multifamily Housing Revenue Bonds (Fourth Street Apartments Project), Series 2010A-1" and , "City of San José Multifamily Housing Revenue Bonds (Fourth Street Apartments Project), Series 2010A-2" in a combined aggregate principal amount not to exceed $26,775,000 (the "Bonds");

(2) Approve a loan of Bond proceeds to Fourth Street Apartments, L.P. (the "Borrower"), a California limited partnership created by First Community Housing, Inc. (the "Developer") to finance the construction of Fourth Street Apartments located at 1460 North Fourth Street in San José (the "Site");

(3) Approve in substantially final form the Bonds, Trust Indenture, Loan Agreement, and Regulatory Agreement and Declaration of Restrictive Covenants; and

(4) Authorize the City Manager, Assistant Director of Finance, Treasury Division Manager, Debt Administrator, and Director of Housing, or their

designees, to execute and, as appropriate, to negotiate, execute and deliver these Bond documents and other related Bond documents as necessary.

(b) Adopt a resolution of the City of San José Financing Authority Board to:
  (1) Authorize the Executive Director of the City of San José Financing Authority, or designee, to acquire the Site from the Borrower and negotiate and execute a Ground Lease of the Site back to the Borrower for a term of up to 75 years with an annual rent of $1.00 for the first 65 years, to be increased at the time of full repayment of the City's construction/permanent loan; and
  (2) Authorize the Executive Director of the City of San José Financing Authority, or designee:
    (i) To negotiate and execute an agreement with the City of San José related to the ground lease revenues from the Project and the ultimate disposition of the Project Improvements and the Site, and
    (ii) To negotiate and execute a Declaration of Restrictive Covenants for the Development and Operation of Affordable Housing, given to and on behalf of the California Department of Housing and Community Development (HCD), an agency of the State of California, and any other documents reasonably required by HCD.

CEQA: Addendum to Final EIR for the North San José Area Development Policy, Resolution No. 72768, File No. PCD06-022. (Finance/Housing)

These items will also be included in the Council Agenda Packet with item numbers.

Nadine Nader (JD)
NADINE NADER
Assistant to the City Manager

COUNCIL AGENDA: 05/11/10
ITEM:

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: April 23, 2010

Approved Paul Krutko

Date 4/26/10

COUNCIL DISTRICT: Citywide
SNI AREA: All

SUBJECT: APPROVAL OF AN ORDINANCE AMENDING CHAPTER 17.38 - NEGLECTED VACANT HOUSES ORDINANCE

RECOMMENDATION

Approval of an ordinance amending San José Municipal Code Chapter 17.38, Neglected Vacant Houses Ordinance, to:

1) Change the title of the Chapter from "Neglected Vacant Houses" to "Maintenance and Rehabilitation of Neglected Vacant or Abandoned Buildings" and expand the provisions of the existing ordinance to include any neglected vacant or abandoned buildings;
2) Require all vacant or abandoned buildings to be rehabilitated within 180 calendar days after the building is vacant, unless the building meets certain maintenance or other requirements specified in the ordinance;
3) Require all vacant or abandoned historic buildings or structures listed on the National Register of Historic Places, California Register of Historic Resources, or City of San José Register of Historic Landmarks to install and maintain an operating alarm system approved by the City's Fire Marshall; and
4) Make other clarifying changes to the ordinance as described in this memorandum.

OUTCOME

In adopting the proposed ordinance, property owners of all vacant or abandoned buildings will be required to provide enhanced security and property maintenance for buildings that have been deemed neglected pursuant to the provisions of Chapter 17.38. In addition, once deemed neglected, the property owner will be required to register the vacant or abandoned building into the Neglected Vacant Housing Monitoring Program, which will allow the City of San José to recover costs associated with routine inspections of the property. Further, the Municipal Code amendments will include enhanced protection requirements for buildings that have been classified as historic.

BACKGROUND

The San José City Council adopted San José Municipal Code Chapter 17.38, Neglected Vacant Houses Ordinance ("Ordinance") in January 1994 for the purpose of establishing security and property maintenance standards for vacant houses. In addition, the Ordinance required a property owner found in violation of the security and maintenance standards to register the vacant house into the Neglected Vacant House Monitoring Program, which allowed the City to recover staff costs for monitoring the property for a minimum of six months. In amending the Ordinance, staff will now require that property owners of neglected vacant buildings be held to the same standards as property owners of neglected vacant houses. In addition, the amendment sets forth specific standards and protections to assist in the preservation of San José's vacant historic structures.

ANALYSIS

In adopting the Neglected Vacant Houses Ordinance, the City Council set forth specific security and property maintenance standards to ensure that vacant houses would not create a public nuisance. Many of the requirements currently set forth in Chapter 17.38 would apply to commercial, industrial and historic buildings in the proposed amended Ordinance, namely:

- The building(s) must be maintained in a secure manner so as to prevent unauthorized entry;
- The building(s) shall be maintained in a manner that does not create an unreasonable risk of fire, including the removal of weeds or other hazardous materials;
- The exterior of the property must be maintained free of debris, combustible materials, garbage and litter; and
- The property landscaping must be maintained, and graffiti must be removed promptly.

The proposed amended Ordinance would require that the property owner of any neglected vacant or abandoned structure maintain the property in "a manner, which minimizes the appearance of vacancy..." Further, the proposed Ordinance emphasizes that the property shall be kept in such condition as not to create the appearance of an unsecured, unoccupied structure or hazard to public safety.

Any person, which may include: (i) the property owner, (ii) a designated responsible party, should the property owner live more than sixty miles from the subject property, or (iii) any person that has an equitable, financial or fiduciary interest in the property (e.g., mortgage lender) that fails to maintain the property in accordance with the security and maintenance standards would be required to register the building as a Neglected Vacant Building. These individuals would be billed by the City of San José for inspection costs incurred by the Code Enforcement

Division for ensuring compliance with the security/maintenance standards set forth in the proposed amended Ordinance.

In addition, the amended Ordinance has been expanded to include the following additional features for vacant or abandoned buildings:

- Property owners will be required to maintain all vacant or abandoned buildings on the property in a secure manner, including garages, sheds and other accessory structures;
- Property owners of vacant or abandoned buildings may not have a building vacant longer than 180 calendar days unless an active building permit has been issued, the property is offered for sale, lease or rent, or is routinely monitored by the property owner or designated responsible agent and maintained in compliance with the security and maintenance standards;
- The definition of "Owner" is clarified to include any person, partnership, association, company, corporation, entity, financial institution, or fiduciary possessing a legal, promissory or equitable title or interest in the subject property;
- It requires that the property owner maintain any existing fire sprinkler systems and private fire hydrants unless allowed to be removed pursuant to written authorization by the City of San José's Fire Marshall;
- In an effort to minimize the blight effect of boarded windows and doors, visible from the public rights-of-way, property owners will be required to replace/repair broken windows and doors visible from the public rights-of-way;
- The property owner/responsible party will be required to post the name and phone number of the person(s) responsible for maintaining the property;
- All buildings that are vacant or abandoned and not maintained in accordance with the proposed amended Ordinance will be required to be registered into the Neglected Vacant House Monitoring Program.

Historic Property Protections

In an effort to safeguard San José's vacant and abandoned historic structures, in addition to the requirements described above, requirements have been added to the proposed amended Ordinance to preserve these buildings. Historic buildings have been defined as "any building or structure that is listed on (1) the National Register of Historic Places, (2) the California Register of Historic Resources, or (3) the City of San José Register of Historic Landmarks." In addition to the security and maintenance standards previously identified, vacant or abandoned historic buildings or structures would be required to have the following protections:

- The building or structure shall maintain an existing operating alarm system or install an operating alarm system within the property; and
- All operating alarm systems or installed alarm systems must be reviewed and approved by the City of San José's Fire Marshall.

Examples of alarm systems that may be required include security alarm systems, fire alarm systems, visual alarm systems, smoke detectors, or similar types of alarm systems as approved by the Fire Marshall.

The City of San José shall have the authority to require the property owner/responsible party to implement additional maintenance, security, fire prevention or other corrective or preventive measures as may be required to ensure that the building or structure does not constitute a public nuisance.

Review by Historic Landmarks Commission

On April 7, 2010, staff presented the proposed amended Ordinance to the City of San José's Historic Landmarks Commission (HLC). The Commissioners were pleased that the proposed amended Ordinance included additional protections for vacant and abandoned historic structures. The Commissioners provided a number of suggestions for Council consideration not currently in staff's recommendations, as follows:

1) Define "historic" buildings to include those not currently listed on the City of San Jose's Register of Historic Landmarks, such as "Structures of Merit," those in "Historic Districts," and those in "Conservation Areas;"
2) Allow individuals to identify properties not currently listed on the City of San José's Historic Inventory and proactively appear before the HLC to include them in the Neglected Vacant House Monitoring Program; and
3) Require that electronic monitoring and sprinklers be installed in all "historic" properties.

Staff is proposing the expansion of the City's Neglected Vacant Houses Ordinance to include all buildings, and believes that Structures of Merit (that have not been formally designated as historic at the federal, state or local level) will be adequately protected through the other amendments to Chapter 17.38 being proposed by staff.

Staff further believes that requiring electronic monitoring and a sprinkler system would also necessitate that the water and electrical systems are operating sufficiently to adequately protect the structures. Staff believes that the discretion provided to the Fire Marshall in reviewing and permitting the alarm systems, as proposed by the property owner, provides sufficient discretion to safeguard these structures utilizing appropriate measures.

PUBLIC OUTREACH/INTEREST

☐ **Criterion 1**: Requires Council action on the use of public funds equal to $1 million or greater. **(Required: Website Posting)**

☑ **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. **(Required: E-mail and Website Posting)**

☐ **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. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

As mentioned above, the proposed ordinance was discussed by the Historic Landmarks Commission. Members of the public had an opportunity to comment, as well.

This memorandum will be posted on the City's website, on the pending ordinance website, on the front page of the Code Enforcement Division webpage, and on the City's Historic Preservation Website. These postings allow property owners and other interested persons an opportunity to send comments to staff and participate in the Council meeting. The proposed ordinance was also emailed to groups and individuals on the Department's various email interest lists.

COORDINATION

This memorandum was coordinated with the Office of the City Attorney, the Fire Department and the Budget Office.

CEQA

Exempt, CEQA Guidelines Section 15308, Actions by Regulatory Agencies for the Protection of the Environment.

/s/
JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Michael Hannon, Code Enforcement Official, at (408) 277-4703.

COUNCIL AGENDA: 05-11-10
ITEM:

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Hans F. Larsen

SUBJECT: **2010 PROPOSITION 1B STREET RESURFACING PROJECT**

DATE: 04-19-10

Approved

Date 4/26/10

COUNCIL DISTRICT: Citywide

RECOMMENDATION

Report on bids and award of contract for the 2010 Proposition 1B Street Resurfacing Project to the low bidder Top Grade Construction Inc. in the amount of $2,838,698, and approval of a 5% contingency in the amount of $141,935.

OUTCOME

Approval of this construction contract will allow for approximately 8.7 miles of City streets to be resurfaced. Resurfacing these streets will improve their structure and ride quality, and extend the useful life of the streets in order to defer more costly reconstruction. Approval of a five percent contingency will provide funding for any unanticipated work necessary for the proper completion or construction of the project.

BACKGROUND

Over the last several years, the Pavement Maintenance Program has experienced large decreases in funding which have led to an estimated deferred maintenance backlog of approximately $249 million. Included in this backlog are approximately 425 miles of streets in poor condition and in need of resurfacing, of which about 350 miles are residential streets.

The State Proposition 1B funds will be utilized for this project to resurface approximately 8.7 miles of residential streets currently on the resurfacing backlog list. Resurfacing is the application of approximately two inches of asphalt concrete (AC) over the existing pavement resulting in a smooth surface and stronger road section. As part of the project, deteriorated areas of the pavement are repaired, damaged traffic loops are replaced, and the striping and markings are re-installed. The criteria below are used to identify the streets that will be resurfaced:

- Street conditions appropriate for specified treatment

- Streets due or past due for maintenance based on prescribed maintenance cycles (eight-year cycle for arterial/collector streets and ten-year cycle for residential streets)
- Streets with numerous maintenance requests or unique needs
- Streets with shared maintenance responsibilities with other jurisdictions
- Streets not affected by current or future street-related projects
- Continuity of street segments (create multiple, continuous segments)
- Appropriate distribution of street maintenance throughout the City

Attachment A contains the list of residential streets to be resurfaced. It should be noted that the list could be slightly altered as unforeseen circumstances arise or new information regarding other street-related projects becomes available.

ANALYSIS

Bids for this project were received on March 25, 2010 with the following results:

Contractor	City	Bid Amount	Variance Amount	% Over/Under Estimate
Interstate Grading & Paving, Inc.	South San Francisco	$3,492,812	$189,469	5.74%
Bay Cities Paving & Grading, Inc.	Concord	$3,377,460	$74,117	2.24%
Wattis Construction Co, Inc.	San Jose	$3,329,896	$26,553	0.80%
Engineer's Estimate		**$3,303,343**		
O'Grady Paving Inc.	Mountain View	$3,155,337	($148,006)	-4.48%
Granite Rock Company DBA, Pavex Construction Division	San Jose	$3,120,027	($183,316)	-5.55%
G. Bortolotto & Co., Inc.	San Carlos	$2,988,817	($314,525)	-9.52%
MCK Services, Inc.	Martinez	$2,985,010	($318,333)	-9.64%
Granite Construction Company	Santa Clara	$2,977,091	($326,252)	-9.88%
Gallagher & Burk, Inc.	Oakland	$2,896,315	($407,028)	-12.32%
Top Grade Construction, Inc.	Livermore	$2,838,698	($464,645)	-14.07%

The bid documents have been evaluated and found to be in order. The low bid submitted by Top Grade Construction, Inc. is 14.07% below the Engineer's Estimate. The Engineer's Estimate for this project is $3,303,343. The estimate was based on bids received from similar past projects, current estimated construction prices and with the consideration of an increase in asphalt price.

The bid is considered acceptable for the work involved in the project and staff recommends that the construction contract be awarded to Top Grade Construction, Inc.

Council Policy provides for a standard contingency of five percent on projects involving street resurfacing and sealing. Staff considers the standard contingency appropriate for this project.

Construction is scheduled to begin in June 2010 and will be completed in November 2010.

EVALUATION AND FOLLOW-UP

The project is currently within budget and on schedule with a projected completion in November 2010. No additional follow up actions with the Council are expected at this time.

POLICY ALTERNATIVES

Not applicable.

PUBLIC OUTREACH/INTEREST

✓ **Criterion 1**: Requires Council action on the use of public funds equal to $1 million or greater; **(Required: Website Posting)**

☐ **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. **(Required: E-mail and Website Posting)**

☐ **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. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This item meets Criterion 1: Requires Council action on the use of public funds equal to $1 million or greater. To solicit contractors this project was listed on the City's Internet Bid Line and advertised in the *San José Post Record*. Bid packages for this construction project were also provided to various contractor organizations and builder's exchanges.

This award memo will be posted on the City's website for the May 11, 2010 Council Agenda.

In addition, when the project commences, the contractor, as stated in the specifications will provide advance notification regarding working hours, duration of project, and any appropriate schedule and lane closures to affected businesses and residents. To inform traveling motorists of upcoming construction activities and potential traffic delays, changeable message signs may be used on selected streets stating the schedule dates and time for work to occur on the street.

COORDINATION

This memo has been coordinated with the City Attorney's Office, and the City Manager's Budget Office.

FISCAL/POLICY ALIGNMENT

This project is consistent with the Council-approved Budget Strategy Economic Recovery sections in that it will spur construction spending in our local economy. The project is also consistent with the Council-approved Budget Strategy General Principles section in that it protects vital core City services.

COST IMPLICATIONS

1.	COST OF PROJECT:	
	Project Delivery/Development	$340,644
	Construction Contract	$2,838,698
	Contingency	$141,935
	TOTAL PROJECT COSTS:	$3,321,277
2.	COST ELEMENTS OF CONSTRUCTION CONTRACT:	
	Adjust Manhole, Valves, Monuments	$134,900
	Traffic Signals and Electrical Work	$1,700
	Asphalt Concrete Pavement	$2,294,380
	Concrete Work	$217,080
	Traffic Striping/Markings	$23,278
	Police Traffic Control and Misc. Items	$7,800
	Slurry Seal Application	$99,560
	Fluctuations for Paving Asphalt (Binder) Compensation Adjustment for Price Index	$60,000
	TOTAL CONSTRUCTION CONTRACT COSTS:	$ 2,838,698

3. SOURCE OF FUNDING: 465 – Construction Excise Tax Fund

4. FISCAL IMPACT: This project has no net operating and maintenance costs to the General Fund.

BUDGET REFERENCE

Fund #	Appn #	RC#	Appn. Name	Total Appn	Amt. for Contract	2009-2010 Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
465	6174	158885	Proposition 1B Pavement Maintenance	$9,567,000	$2,838,698	V-990	10/20/2009, Ord. No. 28653
			Total Current Funding Available =	$9,567,000	**$2,838,698**		

CEQA

Exempt, File No. PP06-066

/s/

HANS F. LARSEN
Acting Director of Transportation

For questions please contact Rene Cordero, Division Manager, at 277-8147

Attachment

ATTACHMENT A

2010 Residential Resurfacing

CD	Street Name	From	To
1	ACAPULCO DR	FENIAN DR	WREN WY
2	BANGOR AV	ORCHARD PARK DR	HERMA ST
2	BANGOR AV	HERMA ST	TONOPAH DR
2	BRANHAM LN EAST	150 S/O BATTLE DANCE DR	GREY GHOST
2	BRANHAM LN EAST	BATTLE DANCE DR	150 S/O BATTLE DANCE DR
9	BRYAN AV	ALMADEN EX	CHERRY AV
6	BYERLEY AV	LINCOLN AV	GLEN UNA WY
9	CARDIN AV	WILLOWMONT AV	SHAW DR
7	CAS DR	LOS ARBOLES	EZIE ST
2	CHRIS DR	COPCO LN	ROHN WY
9	CHURCH DR	ELECTRA AV	MARKS AV
2	COLVILLE DR	BANGOR AV	ZILEMAN DR
2	COPCO LN	LEAN AV	CALPINE DR
9	CORNING DR	SHAW DR	CHAMBERS DR
9	CORNING DR	CHAMBERS DR	WILLOWMONT AV
9	ELECTRA AV	BRYAN AV	KIMBERLY DR
9	ESTELLE AV	THOMPSON AV	CARDIN AV
9	FAIRDELL DR	ANDALUISA WY	HUSTED AV
9	FAIRHAVEN CT	FAIRHAVEN DR	S END
9	FAIRHAVEN DR	INVICTA DR	OVERBROOK DR
9	GABLE LN	MARY JO WY	HARLOW WY
2	GRANDIN CT	COLVILLE DR	E END
9	HARLOW WY	GABLE LN	BLOSSOM HILL RD
9	HAUCK DR	ZISCH DR	INVICTA WY
9	HUGO LN	QUINLAN LN	ELECTRA AV
9	KIMBERLY CT	ELECTRA AV	W END
1	KINGSTON WY	MANITOBA DR	WESTMONT AV
4	LAKEWOOD DR	CROPLEY	SIERRAWOOD DR
9	LUPINE CT	FAIRHAVEN DR	S END
9	MARKS AV	BRYAN AV	WILLOWMONT AVE
9	MYRTLE AV	Overbrook Dr.	INVICTA WY
9	OVERBROOK DR	MYRTLE AV	HILLSDALE AV
10	PRINCE ROYAL PL	BRANHAM LN	N END
9	QUARTZ WY	MARKS AV	ELECTRA AV
1	RINCON AV	CITY LIMIT	SAN TOMAS AQUIN
2	ROHN WY (northside)	CHRIS DR	350 ' W/O CHRIS DR
10	ROYAL FOREST CT	BRANHAM LN	N END
10	ROYAL GROVE CT	BRANHAM LN	N END
9	THOMPSON AV	SHAW DR	ESTELLE AV
9	WILLOWDALE DR	WILLOWPARK DR	MERIDIAN AV

ATTACHMENT A

2010 Residential Resurfacing

CD	Street Name	From	To
9	WILLOWDALE DR	WILLOWVIEW DR	BLOSSOMVIEW DR
9	WILLOWGATE DR	WILLOWPARK DR	MERIDIAN AV
9	WILLOWMONT AV	ELECTRA AV	ZISCH DR
9	WILLOWOOD DR	WILLOWMONT AV	JACOB AV
9	WILLOWPARK DR	WILLOWMONT AV	JACOB AV
9	WILLOWVIEW DR	JACOB AV	WILLOWMONT AV
9	ZISCH DR	WILLOWMONT AV	MYRTLE AV

COUNCIL AGENDA: 5-11-10
ITEM:

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL
CITY OF SAN JOSE FINANCING AUTHORITY BOARD

FROM: Julia H. Cooper
Leslye Krutko

SUBJECT: SEE BELOW

DATE: April 12, 2010

Approved [signature] Date 4-20-10

COUNCIL DISTRICT: 3
SNI AREA: N/A

SUBJECT: APPROVAL OF THE ISSUANCE OF BONDS, LOAN OF BOND PROCEEDS, AUTHORIZATION OF A GROUND LEASE, AND RELATED DOCUMENTS, FOR THE FOURTH STREET APARTMENTS PROJECT

RECOMMENDATION

Adoption of a resolution of the City Council:

a. Authorizing the issuance of two series of tax-exempt multifamily housing revenue bonds designated as "City of San José Multifamily Housing Revenue Bonds (Fourth Street Apartments Project), Series 2010A-1" and , "City of San José Multifamily Housing Revenue Bonds (Fourth Street Apartments Project), Series 2010A-2" in a combined aggregate principal amount not to exceed $26,775,000 (the "Bonds");

b. Approving a loan of Bond proceeds to Fourth Street Apartments, L.P. (the "Borrower"), a California limited partnership created by First Community Housing, Inc. (the "Developer") to finance the construction of Fourth Street Apartments located at 1460 North Fourth Street in San José (the "Site");

c. Approving in substantially final form the Bonds, Trust Indenture, Loan Agreement, and Regulatory Agreement and Declaration of Restrictive Covenants; and

d. Authorizing the City Manager, Assistant Director of Finance, Treasury Division Manager, Debt Administrator, and Director of Housing, or their designees, to execute and, as appropriate, to negotiate, execute and deliver these Bond documents and other related Bond documents as necessary.

Adoption of a resolution of the City of San José Financing Authority Board:

a) Authorizing the Executive Director of the City of San José Financing Authority, or designee, to acquire the Site from the Borrower and negotiate and execute a Ground Lease of the Site back to the Borrower for a term of up to 75 years with an annual rent of $1.00 for the first 65 years, to be increased at the time of full repayment of the City's construction/permanent loan; and

b) Authorizing the Executive Director of the City of San José Financing Authority, or designee, (i) to negotiate and execute an agreement with the City of San José related to the ground lease revenues from the Project and the ultimate disposition of the Project Improvements and the Site, and (ii) to negotiate and execute a Declaration of Restrictive Covenants for the Development and Operation of Affordable Housing, given to and on behalf of the California Department of Housing and Community Development (HCD), an agency of the State of California, and any other documents reasonably required by HCD.

OUTCOME

Approval of the recommended actions will allow for the issuance of multifamily housing revenue bonds for the purpose of constructing 100 rental units, composed of 99 units that will be affordable for a period of at least 55 years and one unrestricted manager's unit. These apartments will serve residents with current annual incomes of $21,100 to $63,300, which are equivalent to 25% of area median income ("AMI") to 60% of AMI, adjusted for the number of bedrooms in each unit and the household sizes.

EXECUTIVE SUMMARY

The Developer has requested that the City issue tax-exempt multifamily housing revenue bonds in an aggregate principal amount not to exceed $26,775,000 for the purpose of lending the Bond proceeds to the Borrower, a California limited partnership created by the Developer. The Bonds will be neither rated nor credit-enhanced and will be structured as a private placement with U.S. Bank as the initial purchaser during the construction period. Upon meeting certain conditions to conversion, the California Community Reinvestment Corporation ("CCRC") will purchase up to $5,684,000 of the Series 2010A-1 Bonds in order to fund the permanent loan to the Borrower. The balance of the outstanding bonds will be redeemed as a condition to conversion. The Bond proceeds, together with other funds, will be used by the Borrower to finance the construction of 100 rental units to be known as Fourth Street Apartments (the "Project"). The project will also employ a ground lease structure between the City of San José Financing Authority (the "Authority") and the Borrower.

BACKGROUND

The Developer has requested that the City issue tax-exempt multifamily housing revenue bonds in an aggregate principal amount not to exceed $26,775,000 for the purpose of lending the Bond proceeds to the Borrower, a California limited partnership. The Bond proceeds, together with other funds, will be used by the Borrower to finance the construction of 100 rental units to be known as Fourth Street Apartments. The land upon which the improvements will be constructed will be owned by the Authority (the "Lessor"), a joint exercise of powers authority agency created by an agreement between the City of San José and the Redevelopment Agency of the City of San José. The Lessor will lease the site to the Borrower (the "Lessee") for a term of sixty-five (65) years with an option to extend for an additional ten (10) years.

Upon completion of the Project, the occupied rental units will be subject to the following affordability restrictions:

- 35 units at or below 25% of AMI;
- 15 units at or below 45% AMI;
- 25 units at or below 50% AMI;
- 15 units at or below 55% AMI;
- 9 units at or below 60% AMI; and
- 1 unrestricted manager's unit.

Of the Project's 100 units, 35% will be dedicated to occupancy by developmentally disabled individuals. The affordability and occupancy restrictions will remain for a period of at least 55 years. These affordability restrictions are inclusive of the affordability restrictions required under the ground lease between the Borrower and the Authority.

Given the financial market difficulties over the past year and a half, this project has endured many delays and is assembled with seven financing sources. The project originally was approved to close in fall 2008 with tax-exempt bonds to be issued through the California Housing Finance Agency ("CalHFA"). CalHFA stopped offering that product due to market stresses; thus, the Borrower has restructured the financing to issue bonds through the City.

On June 4, 2009, the Director of Finance, pursuant to Municipal Code Section 5.06.430, held a public hearing pursuant to the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") to receive public comment on the City's expressed intent to issue up to $30,000,000 in tax-exempt multifamily housing revenue bonds to finance the construction of the Project. On June 5, 2009, the Mayor approved Certificate No. 2009-4 which, among other things, authorized the Director of Housing to file an application with the California Debt Limit Allocation Committee ("CDLAC") for an allocation of up to $30,000,000 in private activity bonds. On July 24, 2009 the City submitted a request to CDLAC for an allocation of $26,775,000. On September 23, 2009, the City received an allocation from CDLAC for this amount.

The Bonds will be issued in two series: Series 2010A-1 and Series 2010A-2, in the respective approximate amounts of $5,684,000 and $17,316,000, for a total issuance amount of

$23,000,000, but in any event not to exceed $26,775,000. Bond proceeds will fund a portion of the total Project costs, estimated to be approximately $44.0 million. The estimated sources of funding during the construction, completion and lease-up period ("construction") versus the permanent period are shown in the following table. The permanent sources exceed the construction sources because some of the sources are available only for permanent financing.

City of San José
Fourth Street Apartments
Plan of Finance – Sources of Funding

Source	Construction	Permanent
Bonds Proceeds	$ 23,000,000	$ 5,684,000
City Loan	8,283,215	12,958,684
State of California – 1C Infill Grant	1,513,561	1,513,561
Tax Credit Equity	2,796,000	13,977,500
Deferred Developer Fee		637,469
Deferred Construction Interest	250,228	0
Income from Operations and General Partner Equity	250,000	250,000
TCAP Loan [(1)]	6,592,384	0
General Partner	100	100
HCD Multifamily Housing Program (MHP)	0	8,789,846
CalReuse	175,376	175,376
Total	$ 42,860,864	$ 43,986,536

(1) A loan of funds by the California Tax Credit Allocation committee pursuant to the American Recovery and Reinvestment Act. These funds act as "guarantee" of the MHP fund i.e., should the MHP loan not fund, the TCAP Loan funds will remain in the project.

These numbers reflect the approved City loan amount but do not include land cost, and assume that the Authority owns the land and enters into a long-term ground lease with the Developer as described below. The Developer is currently making decisions on business terms for the project's CCRC permanent bond loan and the outcome of these decisions will result in slight changes to the above amounts. Ground lease revenues and eventual ownership of leasehold improvements will accrue to the City. Site ownership will transfer from the Authority to the City upon repayment of all senior encumbrances.

A portion of the tax credit equity funds received at the permanent conversion of the bond loan and a portion of the City Loan will be used to retire the Series 2010A-2 Bonds at conversion. Upon meeting certain conditions of conversion, the Series 2010A-1 Bonds will be purchased by CCRC and will remain outstanding as a permanent loan after conversion and will be amortized over 30 years. The Borrower will, by Closing, elect to either 1) fix the permanent rate for 30 years, or 2) fix the permanent rate for 15 years where the rate would reset in year 16 (not to exceed the 15 year rate plus 4%). One of CDLAC's requirements is that the Bond closing must occur within the time period set by CDLAC. The Bond closing for this Project must occur by August 25, 2010. It is anticipated that the Bonds will close on or about May 13, 2010.

ANALYSIS

This portion of the report is divided into several sections to address the items in staff's recommendation to proceed with the Project financing. These sections include descriptions of Bond financing structure, Bond financing documents, City subordinate funding, Site ownership and ground lease structure, economic development benefits, financing team participants, and financing schedule,.

Bond Financing Structure

Overview of Multifamily Bond Financing

General As a brief summary, multifamily housing revenue bonds are issued to finance the development of certain rental apartment projects by private developers. The City issues the bonds and then loans the proceeds to the borrower. The bonds are typically issued as tax-exempt securities. The advantages of tax-exempt bonds to the borrower include below-market interest rates and long-term fixed rate financing – features not available in the conventional multifamily housing construction loan mortgage market. The bonds are limited obligations of the City, payable solely from loan repayments by the borrower and any credit enhancement.

Requirements for Tax-Exemption For multifamily housing revenue bonds to qualify for tax-exemption, federal law generally requires that either: (1) at least 20% of the units in the housing development must be reserved for occupancy by individuals and families whose income is 50% or less of area median income, or (2) at least 40% of the units must be reserved for occupancy by individuals and families whose income is 60% or less of area median income. This last restriction will be incorporated into the Regulatory Agreement for the Bonds.

Structure of the Bonds

Private Placement Structure The Bonds will not be rated or credit-enhanced and will be structured as a private placement with U.S. Bank ("Construction Lender") as the initial private placement purchaser during the construction period, and CCRC (the "Permanent Lender") as the private purchaser during the permanent period. CCRC will purchase the Series 2010A-1 Bonds upon meeting certain conditions to conversion to the permanent period. Pursuant to the City's policies regarding non-credit enhanced bonds, each Private Placement Purchaser will sign an Investor's Letter acknowledging that it is a "qualified institutional buyer" or an "accredited investor", that is, a large institutional investor who understands and accepts the risks associated with unrated bonds secured solely by the Project revenues. If the Private Placement Purchaser wishes to transfer the Bonds, the new bondholder must sign and deliver a similar Investor's Letter to the Trustee, unless the Bonds are assigned a rating of "AA" or higher by Standard & Poor's or "Aa" or higher by Moody's Investors Service ("Minimum Rating"). Pursuant to the Indenture, so long as the Bonds have not received the Minimum Rating, the Bonds will be held by a single bondholder (which shall also be the Bondholder Representative) in Authorized Denominations, for each series, equal to the amount of bonds outstanding for the respective series.

Principal Amount and Term Initially, the Bonds will be issued as interest-only floating rate tax-exempt bonds in an aggregate amount not to exceed $26,775,000. The Bonds will be issued in two Series: Series 2010A-1 and Series 2010A-2, in the respective approximate amounts of $5,684,000 and $17,316,000, for an estimated total issuance amount of $23,000,000, but in any event not to exceed $26,775,000. The date upon which the Project meets certain conditions of conversion to the permanent phase (the "Conversion Date"), including construction completion and lease-up, a portion of the tax credit equity and a portion of the City Loan will be used to payoff the Series 2010 A-2 Bonds. The Series 2010 A-1 Bonds, in the anticipated principal amount of $5,684,000, will be purchased by CCRC and will remain as a permanent loan to be fully amortized over 30 years from the Conversion Date.

Interest Rate During the construction period, anticipated to be 24 months, the Bonds will pay interest only at a variable rate. The interest rate will be equal to the greater of: a) 4.5%, or b) 1-month LIBOR plus 3.5% converted to Lender's non-bank qualified tax-exempt rate.

On and after the Conversion Date, interest will accrue on the Series 2010 A-1 Bonds at a fixed rate. That rate, depending upon the election of the Borrower, will remain in effect for either 30 years or for 15 years with rate adjustment in year 16. In either case, the initial fixed rate will be determined immediately prior to Bond closing.

Draw-Down Bond Structure The Bonds are structured as draw-down bonds for each Series of Bonds. Only a portion of Bond proceeds will be released to and held by the Trustee on the issuance date. U.S. Bank will purchase the Bonds incrementally as the Project is constructed and requests for payment are received, for an estimated total amount of $23,000,000, but in any event not to exceed $26,775,000. Series A-1 Bonds shall be funded before any Series A-2 Bonds are purchased.

Bond Financing Documents

The following is a brief description of each document the City Council and the Authority Board is being asked to approve and authorize the execution of. Copies of these documents will be available in the City Clerk's Office on or about April 23, 2010.

Trust Indenture The Bonds will be issued under a Trust Indenture (the "Indenture") between the City and Wells Fargo Bank, National Association, as the trustee (the "Trustee"). The Indenture is executed by the City Manager, or other authorized officers on behalf of the City, and attested by the City Clerk. Pursuant to the Indenture, the Trustee is given the authority to receive, hold, invest, and disburse the Bond proceeds and other funds established under the Indenture; to authenticate the Bonds; to apply and disburse payments to the Bondholders; and to pursue remedies on behalf of the Bondholders. The Indenture sets forth the guidelines for the administration, investment and treatment of investment earnings generated by each fund and account, and restrictions relating to any subsequent transfer of the Bonds. The Loan Agreement (described below) obligates the Borrower to compensate the Trustee for services rendered under the Indenture.

Loan Agreement This agreement (the "Loan Agreement") is among the City, U.S. Bank, and the Borrower. The Loan Agreement is executed by the City Manager or other authorized officer on behalf of the City. The Loan Agreement provides for the loan of the Bond proceeds to the Borrower for the construction of the Project and for the repayment of such loan by the Borrower. The loan is evidenced by two notes (the "Notes") in an amount that corresponds to the respective principal amount of each series of Bonds. The City's rights to receive payments under the Notes will be assigned to the Trustee, along with certain other rights under the Indenture, the Loan Agreement and the Note; however, certain reserved rights have been retained by the City, such as the City's right to indemnification.

Regulatory Agreement and Declaration of Restrictive Covenants This agreement (the "Regulatory Agreement") is among the City, the Trustee, and the Borrower. The Regulatory Agreement is executed by the City Manager, or other authorized officers on behalf of the City. The Regulatory Agreement contains certain covenants and restrictions regarding the Project and its operations intended to assure compliance with the Internal Revenue Code of 1986. The Regulatory Agreement restricts the rental of Project units (except for the one manager's units) to low-income residents for a period of at least 55 years as previously described.

City Subordinate Funding

An initial funding commitment of $9,875,000 was approved by the City Council on March 20, 2007 (Resolution No. 72768, File No. PDC06-022). On August 11, 2009, the City Council approved an increase in the total construction/permanent commitment amount to $13,984,579, including up to $1,186,123 in construction-period interest (Resolution No. 72768, File No. PCD06-022). That amount also takes into account that $2,190,000 is committed to reimburse the Borrower for land costs, assuming the City Council and the Authority approve the site acquisition and ground lease as described below. Per these approvals, the Housing Department will provide a loan to the Borrower in an amount not to exceed $13,894,579. The current estimated City loan amount of $12,958,684 is a source of funding as shown in the Plan of Finance Table above.

Site Ownership and Ground Lease Structure

The City proposes that the Authority take ownership of the Site from the Borrower and lease it to the Borrower at the time of Bond closing. This structure is proposed because of the potential long-term benefits of a ground lease, as discussed below, and because the City cannot allow encumbrances on its fee interest if it takes ownership of the Site and subsequently leases the ground back to the Borrower. The senior lender has indicated that it desires a security interest in both the fee and leasehold interests. The City is considering this request and is currently negotiating business terms in an effort to preserve project-specific affordability for the long-term. The Authority is permitted to allow encumbrances on land to which it takes title. Of the City's total approved commitment amount, $2,190,000 is allocable to the purchase of the Site, which the Borrower acquired with the City's acquisition loan funds. At the time of the Site's transfer to the Authority and the execution of the agreement between the City and the Authority, the City's loan commitment amount would then be reduced by the cost of the land.

The Authority would enter into a long-term ground lease of up to 75 years with the Borrower. Although terms of the lease would be finalized by the Executive Director, or designee, it is expected that the ground lease rent will be (a) $1 per year payable in advance at closing, plus (b) annual residual payments from Project cash flow commencing at repayment of the City's permanent loan.

It is to the City's benefit for the Authority to own the land and lease it to the Borrower. Such benefits include the potential for long-term control of the Site, including ownership of both the land and the building at the end of the lease term, provided there is no foreclosure by the senior lender. There is also the potential for future ground lease payments as revenues to the Housing Department. These potential benefits will be agreed to between the City and the Authority in the agreement to be entered into by both parties. Further, it is easier to enforce long-term affordability restrictions that are senior to other encumbrances with a ground lease structure than were the land owned by the Borrower, so the lease will likely enhance the City's ability to enforce long-term affordability on the Site.

<u>Economic Development Benefits</u>

By enabling the Project to start construction, San José will benefit economically. The Developer will pay City fees of approximately $1.4 million. The total local impacts for communities in the area are defined as benefits of the direct construction activity itself as well as the impact of local residents who earn money from the construction activity and spend part of it within the area. According to a 2009 study on the economic benefits to local areas for multifamily construction by the National Association of Homebuilders ("NAHB"), 100 units of this type of family housing are estimated to generate over $8 million of local benefits in the first year and approximately $2.6 million each year thereafter.

According to the NAHB metrics, it is also anticipated that proceeding with and completing the development of the Project will create 151 local jobs in San José in the first year, directly and indirectly, and 38 local jobs each year thereafter.

Financing Team Participants

The financing team participants consist of:

• City's Financial Advisor:	CSG Advisors, Inc.
• Bond Counsel:	Jones Hall
• Trustee:	Wells Fargo Bank, National Association
• Lender:	U.S. Bank, CCRC

All costs associated with the financial advisor, bond counsel and trustee are contingent on the sale of the Bonds and will be paid from Bond proceeds, City loan proceeds, and/or Borrower equity.

Financing Schedule

The current proposed schedule is as follows:

• Council Approval of Bond Documents	May 4, 2010
• Pre-Close and Close/Issue Bonds	May 11 and May 13, 2010
• CDLAC Deadline for Bond Issuance	August 25, 2010

EVALUATION AND FOLLOW-UP

This Memorandum presents the set of recommendations related to the City Council's approval of the issuance of the Bonds for the Fourth Street Apartments and requires no follow-up to the City Council. Once the Bonds close and construction of the Project commences, the Housing Department will provide updates in its Quarterly Production Updates to the City Council.

PUBLIC OUTREACH/INTEREST

☐ **Criterion 1**: Requires Council action on the use of public funds equal to $1 million or greater. **(Required: Website Posting)**

☐ **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. **(Required: E-mail and Website Posting)**

☐ **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. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This request does not meet any of the above criteria because a tax-exempt bond issuance specifically for a multifamily project does not use public funds the same way that a loan of City funds would. Instead, the method of notifying the community of the City's intent to issue tax-exempt private activity bonds is for the City Council to hold a Tax Equity and Fiscal Responsibility Act ("TEFRA") Hearing. The TEFRA Hearing was held on June 4, 2009 by the Director of Finance. The public hearing notice was published in the *San José Mercury News* on May 22, 2009.

COORDINATION

This report has been prepared by the Finance Department and the Housing Department in coordination with the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

This action is consistent with the City's *2007-2012 Five-Year Housing Investment Plan,* adopted by City Council on June 12, 2007, to increase the supply of affordable housing, and with the City's *Consolidated Plan 2005-2010* to provide housing units for very low- and extremely low-income households. This action is also consistent with the City's Policy 1-16, Policy for the Issuance of Multifamily Bonds, which requires the City to issue tax-exempt multifamily housing revenue bonds for projects within the City limits that also have a City loan or grant commitment, with certain limited exceptions.

COST SUMMARY/IMPLICATIONS

All issuance costs will be paid from Bond proceeds, City housing loan proceeds, and/or Borrower equity. The Bonds are tax-exempt obligations secured by mortgage loans payable from Project revenues. No payment of the Bonds will be paid from, or guaranteed through, the general taxing power of the City or any other City asset. The City will receive an issuance fee of approximately $82,500. The City will also receive an annual fee for monitoring the Bonds and the Regulatory Agreement. Under the City's Policy for the Issuance of Multifamily Housing Revenue Bonds, the annual fee is equal to one-eighth of one percent (0.125%) of the original principal amount of tax-exempt bonds issued during the construction period, or approximately $28,750. Upon conversion to permanent financing, the annual fee is reduced to the greater of 0.125% of the permanent bond amount ($7,105) or a flat fee of $7,500.

No appropriation of funds is required at this time. Compensation for the financing team participants (financial advisor, bond counsel, and trustee), as well as the costs of the financing, are contingent on the sale of the Bonds and will be paid from Bond proceeds, City loan proceeds, and/or Borrower equity.

CEQA

Addendum to Final EIR for the North San José Area Development Policy, Resolution No. 72768, File No PCD06-022.

/s/
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/s/
LESLYE KRUTKO
Director, Housing Department

For questions, please contact Julia Cooper, Assistant Director of Finance, at (408) 535-7011.