



Sent to Council:

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JUN - 1 2010

by City Manager's Office

# Memorandum

**TO: HONORABLE MAYOR  
AND CITY COUNCIL**

**FROM: Nadine Nader**

**SUBJECT: Early Council Packet**

**DATE: June 1, 2010**

Approved

Date

6-1-10

## **EARLY DISTRIBUTION COUNCIL PACKET FOR JUNE 15, 2010**

Please find attached the Early Distribution Council Packet for the June 15, 2010 Council Meeting.

- 3.x Approval of Implementation of Terms Contained in the City's Last, Best and Final Offer to the City Association of Management Personnel, International Federation of Professional and Technical Engineers, Local 21, (CAMP).**

**Recommendation:** Adopt a resolution approving the implementation of the terms of the City's Last, Best and Final Offer for employees represented by the City Association of Management Personnel, International Federation of Professional and Technical Engineers, Local 21, (CAMP), effective June 27, 2010. CEQA: Not a Project. (City Manager's Office)

**TO BE DISTRIBUTED SEPARATELY – SUNSHINE WAIVER WILL BE REQUESTED**

- 3.x Approval of Implementation of Terms Contained in the City's Last, Best and Final Offer to the Association of Engineers and Architects, International Federation of Professional and Technical Engineers, Local 21, Units 41/42 And Unit 43 (AEA).**

**Recommendation:** Adopt a resolution:

- (a) Approving the implementation of the terms of the City's Last, Best and Final Offer for employees represented by the Association of Engineers and Architects, International Federation of Professional and Technical Engineers, Local 21, Unit 041 and 042, effective June 27, 2010.

- (b) Approving the implementation of the terms of the City's Last, Best and Final Offer for employees represented by the Association of Engineers and Architects, International Federation of Professional and Technical Engineers, Local 21, Unit 043, effective June 27, 2010.

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

**TO BE DISTRIBUTED SEPARATELY – SUNSHINE WAIVER WILL BE REQUESTED**

- 3.x Approval of Implementation of Terms Contained in the City's Last, Best and Final Offer to the International Brotherhood of Electrical Workers, Local No. 332 (IBEW).**

**Recommendation:** Adopt a resolution approving the implementation of the terms of the City's Last, Best and Final Offer for employees represented by the International Brotherhood of Electrical Workers, Local No. 332 (IBEW), effective June 27, 2010.

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

**TO BE DISTRIBUTED SEPARATELY – SUNSHINE WAIVER WILL BE REQUESTED**

- 3.x Compensation and Benefits for Executive Management and Professional Employees in Unit 99 and Unrepresented Employees.**

**Recommendation:** Adopt a resolution approving the terms for compensation and benefits for executive management and professional employees in Unit 99 and unrepresented employees, effective June 27, 2010. CEQA: Not a Project. (City Manager's Office)

**TO BE DISTRIBUTED SEPARATELY – SUNSHINE WAIVER WILL BE REQUESTED**

- 3.x Approval of Implementation of Terms Contained in the City's Last, Best and Final Offer to the Association of Maintenance Supervisory Personnel (AMSP).**

**Recommendation:** Adopt a resolution approving the implementation of the terms of the City's Last, Best and Final Offer for employees represented by the Association of Maintenance Supervisory Personnel (AMSP), effective June 27, 2010. CEQA: Not a Project. (City Manager's Office)

**TO BE DISTRIBUTED SEPARATELY – SUNSHINE WAIVER WILL BE REQUESTED**

**3.x Library Parcel Tax Rates for 2010-2011.**

**Recommendation:** Adopt a resolution increasing the Library Parcel Tax rates for Fiscal Year 2010-2011 by 1.79% over the Fiscal Year 2009-2010 rates and approving the placement of the Library Parcel Tax on the Fiscal Year 2010-2011 Santa Clara County Property Tax Roll. CEQA Not a Project, File No. PP10-067 (a), specific funding mechanism – adjustment to rates. (Finance)

**TO BE DISTRIBUTED SEPARATELY – SUNSHINE WAIVER WILL BE REQUESTED**

**3.x Sewer Service and Use Charge Rates for 2010-2011.**

**Recommendation:**

- (a) Hold a public hearing on proposed 2010-2011 Sewer Service and Use Charges and proposed maximums for rate increases in 2011-2012 and 2012-2013; and direct staff to return during the 2011-2012 and 2012-2013 budget cycles with recommendations regarding rate increases in 2011-2012 and 2012-2013 consistent with staff recommended maximum rate increases for those years;
- (b) Adopt a resolution setting the following Sewer Service and Use Charge and Storm Sewer Service Charge rates for 2010-2011:

<u>Category</u>	<u>2010-2011 Monthly Rates</u>
Single-Family Residential	\$32.86
Multi-Family Residential	\$18.79 per unit
Mobile Home	\$18.83 per unit
Non-Monitored Commercial and Industrial	See Attachment A
Monitored Industrial	See Attachment A

<u>Category</u>	<u>2010-2011 Monthly Rates</u>
Single Family Residential and Duplex	\$7.64
Mobile Home	\$3.83 per unit
Residential Condominium	\$4.18 per unit
Large Multi-Family Residential (5 or more units)	\$4.18
Small Multi-Family Residential (3-4 units)	\$14.51
Commercial, Institutional, and Industrial	See Attachment B

CEQA: Statutorily Exempt, File No. PP10-067 (a), CEQA Guidelines Section 15273 - Rates, Tolls, Fares, and Charges. Council Districts 2, 4, 7 and 8. (Environmental Services)

**TO BE DISTRIBUTED SEPARATELY – SUNSHINE WAIVER WILL BE REQUESTED**

**3.x Municipal Water System Water Rate Increases for 2010-2011.**

**Recommendation:**

- (a) Hold a public hearing on proposed 2010-2011 San José Municipal Water System potable water rates and charges;
- (b) Adopt a resolution increasing the San José Municipal Water System potable water rates and charges by 3.75% effective July 1, 2010.

CEQA: Statutorily Exempt, File No. PP10-067 (a), CEQA Guidelines Section 15273 - Rates, Tolls, Fares, and Charges. Council Districts 2, 4, 7 and 8. (Environmental Services)

**TO BE DISTRIBUTED SEPARATELY – SUNSHINE WAIVER WILL BE REQUESTED**

**3x Approve the 2010-2011 Operating and Capital Budgets for the City of San José and Schedule of Fees and Charges.**

**Recommendation:**

- (a) Adopt a resolution approving the Operating Budget for 2010-2011 for the City of San José, the Capital Budget for 2010-2011 for the City of San José, and the Five Year Capital Improvement Program for 2011-2015 for the City of San José as revised by the Mayor's Budget Message and directing the City Manager to prepare final documents for adoption.
- (b) Adopt a resolution establishing the Schedule of Fees and Charges for 2010-2011.
- (c) Adopt a resolution amending Resolution No. 66629 to revise the term of the loan from the Sewage Treatment Plant Connection Fee Fund to the General Fund for construction of the fiber optic conduit installation project to extend the repayment date from June 30, 2011 to June 30, 2013.
- (d) Approve an Ordinance to allow construction and demolition diversion deposits no longer eligible for refund to be transferred to the General Fund.
- (e) Approve an Ordinance repealing Part 33 of Chapter 4.80 of the San José Municipal Code in order to eliminate the Anti-Tobacco Master Settlement Agreement Revenue Fund, to remove the expenditure restrictions, and to provide for the transfer of moneys in the Anti-Tobacco Master Settlement Agreement Revenue Fund to the General Fund.
- (f) Adopt a resolution amending Council Policy 1-18 to delete Section 20 relating to the Healthy Neighborhoods Venture Fund Spending Plan.
- (g) Approve an ordinance deferring expenditures and/or appropriations for public art projects at the San José International Airport during 2010-2011 and for the fiscal years thereafter until the first annual budget adopted by City Council after total passenger activity at the Airport reaches 12.2 million passengers per year, except as follows:
  - (1) The 2010-2011 budget shall include a one-time allocation of \$70,000 to enable public art staff to provide supervision of a contracted art technician

- and to seek sponsorships for public art operations and potential future commissions;
- (2) This deferral shall not apply to any public art projects at the Airport where the City has already executed an agreement with an artist.
- (h) Adopt a resolution to repeal Resolution No. 75331 and set forth the Master Parking Rate Schedule to:
- (1) Add a special event rate (\$5-7) for the Market/San Pedro Square Garage for evening and weekend day events.
  - (2) Add a new rate option (\$1 per hour) for Parking Meter District 5 – Arena/Diridon Area.
  - (3) Increase the meter rate in Parking Meter District 2 – East Santa Clara Street Neighborhood; Parking Meter District 3 – Japantown Neighborhood; and Parking Meter District 4 – First and Younger Neighborhood from \$0.50 per hour to up to \$1 per hour.
  - (4) Extend the hours of operation in Parking Meter District 3 – Japantown Neighborhood by one hour from the current 9 am - 5 pm, to 9 am - 6 pm.
  - (5) Remove the Second/San Fernando Lot (Block 2) and Market/San Carlos Lot (Block 8) and eliminate the Casa del Pueblo Validation Program from the Master Parking Rate Schedule resolution.
- (i) Approve an ordinance amending Chapter 11.40 of Title 11 of the San José Municipal Code to modify the Parking Meter Arena/Diridon Area Parking Meter District and the Downtown Business Parking Meter District. (Transportation)

**TO BE DISTRIBUTED SEPARATELY – SUNSHINE WAIVER WILL BE REQUESTED**

**3.x Municipal Regulations and Enforcement Pertaining To Medicinal Use of Cannabis.**

**Recommendation:** Adopt a Medical Marijuana Ordinance. (City Manager's Office/Police/Planning, Building and Code Enforcement)

**TO BE DISTRIBUTED SEPARATELY – SUNSHINE WAIVER WILL BE REQUESTED**

**4.x Report on Bids and Award of Contract for the Downer-Canoas Interceptor Rehabilitation Project.**

**Recommendation:** Report on bids and award of contract for the Downer-Canoas Interceptor Rehabilitation project to the low bidder, Pipenology Inc., in the amount of \$3,182,432, and approval of a contingency in the amount of \$318,000. CEQA: Exempt, File No. PP09-052, dated March 13, 2009. Council Districts 6 and 10. (Public Works)

**5.x Community Center Reuse Policy Amendments.**

**Recommendation:**

- (a) Adopt a resolution to amend Council Policy 7-12 (Community Center Reuse) to allow for greater opportunities to place service providers at Reuse sites.
- (b) Approve suspension of competitive solicitation requirements under Policy 7-12 for 12 months and grant authority to the Director of Parks, Recreation, and Neighborhood Services to extend suspension of requirements for an additional 12 months, if determined necessary.
- (c) Authorize the Director of Parks, Recreation, and Neighborhood Services to enter in to direct negotiations with potential service providers for Reuse facilities pursuant to Municipal Code Section 4.12.235, "Unique Services Purchases."

CEQA: Not a Project, File No. PP10-068, changes to existing policies that involve no physical changes to the environment. (Parks, Recreation and Neighborhood Services)

**5.x Nature Education Facilities Grant Program Applications.**

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

- (a) Submit grant applications for the four projects identified in Table 2 of this memorandum in the total amount not to exceed \$25,500,000 under the Nature Education Facilities Grant Program administered by the Office of Grants and Local Services within the California State Department of Parks and Recreation;
- (b) Accept any grants funds awarded to the City for the limited purpose of completing CEQA clearance, and negotiate and execute all necessary documents to implement the grant awards to complete CEQA clearance; and
- (c) Return to Council at a future date for authorization to negotiate and execute all necessary documents to implement the grant awards.

CEQA: Statutorily Exempt, File No. PP10-066, CEQA Guidelines Section 15262, Feasibility and Planning Studies

**7.x Setting the Wholesale Discount for Recycled Water Industrial Use.**

**Recommendation:** Adopt a resolution setting the wholesale discount for recycled water used for industrial and agricultural purposes at \$325 per acre foot compared to Santa Clara Valley Water District rate for untreated water, effectively increasing the rate for industrial and agricultural recycled water effective July 1, 2010 from \$175 per acre-foot to \$195 per acre foot. CEQA: Not a Project, File No. PP10-067 (a), increases or adjustments to fees, rates and fares. (Environmental Services)

**7.x Agreement with Reclamation For Reimbursement of South Bay water Recycling Phase 1B Costs.**

**Recommendation:** Adopt a resolution authorizing the City Manager to negotiate and execute a Grant Agreement with the U.S. Bureau of Reclamation to receive up to \$260,000 upon execution of the agreement, and up to an additional \$20,440,000 subject to appropriation of federal funds, in reimbursement for up to twenty-five percent of eligible costs incurred in the Phase 1B expansion of the South Bay Water Recycling facilities. CEQA: Final EIR for the San José Nonpotable Reclamation Project, Resolution No. 64667 (File No. PP-91-090; SCH# 1992013071) and Addenda thereto and Negative Declaration for South Bay Water Recycling Program-Phase 1B, File No. PP00-072. NEPA: Final Environmental Assessment/Finding of No Significant Impact, for Revised South Bay Water Recycling Program Phase 1B (FONSI #97-03-MP) and Categorical Exclusion for South Bay Water Recycling Phase 1B (March 19, 2009). (Environmental Services)

**7.x Report on Bids and Award of Contract for the Motor Control Center Phase II Replacement Project.**

**Recommendation:** Report on bids and award of contract for the Motor Control Center Phase II Replacement Project to the lowest responsive and responsible bidder, Blocka Construction, in the amount of \$1,020,000; and approval of a budget contingency of 15% contract amount of \$153,000. CEQA: Exempt, File No. PP04-03-079. (Environmental Services/Public Works)

**7.x Report on Bids and Award of Contract for the Switchgear M1, M2 & M3 Replacement Design-Build Project.**

**Recommendation:** Report on bids and award of contract for the Switchgear M1, M2 & M3 Replacement Design-Build Project to the low bidder, Rosendin Electric, in the amount of \$8,386,978; and approval of a contingency of 15% of the contract amount, in the amount of \$1,258,047. CEQA: Exempt, File No. PP04-03-079. (Environmental Services/Public Works)

**9.x San José Arena Management Agreement.**

**Recommendation:** Approve the Third Amendment to Amended and Restated San José Arena Management Agreement Between the City of San José and San José Arena Management, LLC. (Economic Development)

**JOINT CITY OF SAN JOSÉ CITY COUNCIL/FINANCING AUTHORITY/AGENDA:**

**Actions Related to Orvieto Family Apartments.**

**Recommendation:**

- (a) Adopt a resolution of the City Council:
  - (1) Repealing Resolution No. 71579 of the City Council adopted on November 17, 2009;
  - (2) Authorizing the issuance of tax-exempt multifamily housing revenue bonds in two series designated as "City of San José Multifamily Housing Revenue Bonds (Orvieto Family Apartments), Series 2010B-1 and Series 2010B-2" in the aggregate principal amount not to exceed \$14,200,000 (individually, the "Series B-1 Bonds", the "Series B-2 Bonds" and collectively, "Bonds");
  - (3) Approving a loan of Bond proceeds to Orvieto Family Apartments, L.P., a California limited partnership (the "Borrower"), for financing a portion of the costs of constructing the Orvieto Family Apartments (the "Project") located at 80 Montecito Vista Drive in the City of San José (the "City");
  - (4) Approving in substantially final form the Series B-1 Senior Trust Indenture with Wells Fargo Bank, National Association, as Trustee (the "Trustee"), the Series B-2 Subordinate Trust Indenture with JP Morgan Chase Bank, N.A., as Bondowner Representative (the "Bondowner Representative"), the Series B-1 Financing Agreement among the City, the Borrower and the Trustee, the Series B-2 Loan Agreement among the City, the Borrower and the Bondowner Representative, Regulatory Agreement among the City, the Borrower and the Trustee, the Intercreditor Agreement among the City, the Trustee, Freddie Mac and the Bondowner Representative, the Bond Purchase Agreement among the City, the Borrower and RBC Capital Markets as Underwriter of the Series B-1 Bonds, and the Official Statement; and
  - (5) Authorizing the City Manager, Assistant Finance Director, 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.
  - (6) Authorizing the Director of Housing, to negotiate and execute an agreement with the City of San José Financing Authority (the "Authority") related to the groundlease revenues of the Project and ultimate disposition of the Project improvements and the Site.
- (b) Adopt a resolution of the City of San José Financing Authority Board (the "Authority Board"):
  - (1) Repealing Resolution No. 93 of the Authority Board adopted on November 17, 2009;
  - (2) Authorizing the Executive Director of the Authority, or designee, to acquire the Project site (the "Site") from the Borrower and, with the

Director of Housing, negotiate and execute a ground lease of the Site back to the Borrower for a term of up to 99 years with such other terms to be negotiated by the Executive Director of the Authority and the Director of Housing.

- (3) Authorizing the Executive Director of the Authority and Director of Housing to negotiate and execute an agreement with the City related to the ground lease revenues from the Project and the ultimate disposition of the Project improvements and the Site.

CEQA: Resolution No. 72877, Goble Lane Environmental Impact Report, File No. PP09-086. (Finance)

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

A handwritten signature in cursive script that reads "Nadine Nader" followed by a circled initial "GN".

NADINE NADER  
Assistant to the City Manager



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Katy Allen

**SUBJECT: DOWNER-CANOAS  
INTERCEPTOR REHABILITATION**

**DATE:** 05-24-10

Approved

Date

6/1/10

**COUNCIL DISTRICTS:** 6 & 10

## RECOMMENDATION

Report on bids and award of contract for the Downer-Canoas Interceptor Rehabilitation project to the low bidder, Pipenology Inc., in the amount of \$3,182,432, and approval of a contingency in the amount of \$318,000.

## OUTCOME

Approval of this construction contract will allow the Downer-Canoas Interceptor Rehabilitation project to be constructed. Approval of a ten percent contingency will provide funding for any unanticipated work necessary for the proper construction of the project.

## BACKGROUND

The Downer-Canoas sanitary sewer system collects sewer flows generated in residential and mixed-use neighborhoods of South San José and directs them north in an interceptor sewer that parallels Canoas Creek, east of Route 87 and south of Communication Hill. The City also operates a chemical injection station linked to the interceptor to decrease odors and corrosion in the system. An anticipated by-product of the chemical dosing program is a precipitate that tends to settle to the bottom of the interceptor during low flow conditions. The precipitate resembles dark, coarse sand.

In the spring of 2007, a condition assessment survey combined with temporary flow monitors identified potential capacity constraints along the southern portion of the sewer due to an accumulation of grit, debris and precipitate. City staff initiated a sewer cleaning project to restore the capacity of the sewer without taking the line out of service. Using sonar technology and specialized cleaning equipment, the accumulated sediment was removed from an 8,000 foot section of the sewer.

Following the cleaning project, additional video and sonar inspections further downstream identified ground water infiltration, pipe corrosion and an accumulation of grit and debris (map attached). In order to restore the design capacity of the sewer system, the Downer-Canoas Interceptor Rehabilitation Project was developed. The project will clean and rehabilitate approximately 8,700 linear feet of 42-inch and 48-inch diameter reinforced concrete pipe. The project will utilize a trenchless rehabilitation method to minimize the impacts associated with traditional open excavation construction. The project will also rehabilitate 25 manholes to prevent ground water infiltration.

Construction is scheduled to begin in July 2010, with completion in March 2011.

**ANALYSIS**

Bids were opened on May 4, 2010, with the following results:

<u>Contractor</u>	<u>Base Bid</u>	<u>Variance Amount</u>	<u>Over/(Under) Percent</u>
Michels Corporation dba Michels Pipeline Construction (Salem, OR)	\$4,218,498	\$748,498	22
Andes Construction, Inc. (Oakland, CA)	3,697,550	227,550	7
Insituform Technologies, Inc. (Chesterfield, MO)	3,641,936	171,936	5
<b>Engineer's Estimate</b>	<b>3,470,000</b>	--	--
Spiniello Companies (Pomona, CA)	3,369,080	(100,920)	(3)
Pipenology, Inc. (Rocklin, CA)	3,182,432	(287,568)	(8)

The low bid submitted by Pipenology Inc., in the amount of \$3,182,432, is eight percent below the Engineer's Estimate. The difference in bids can be attributed to the highly competitive bidding environment. Staff considers the low bid submitted for this project to be competitive and reasonable for the work to be performed and recommends award of contract to Pipenology Inc.

Council Policy provides for a standard contingency of ten percent on Public Works projects involving the construction of underground utilities. Staff considers the standard contingency appropriate for this project.

### **EVALUATION AND FOLLOW-UP**

This project is currently within budget and on schedule. No additional follow-up with the Council is 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 and staffing that may have impact 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 Criteria 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 Jose Post Record*. Bid Packages for this project were provided to various contractor organizations and builder's exchanges.

Informational construction signs will be posted along the project limits. In addition, residents and businesses will be notified a minimum of two times. The first written notice will be within seven calendar days prior to any construction operation and the second written notice will be 48 hours prior to construction.

### **COORDINATION**

This project has been coordinated with the Departments of Transportation, Finance, Planning, Building and Code Enforcement, the City Manager's Budget Office, Caltrans, the County of Santa Clara and the Santa Clara Valley Water District.

### **FISCAL/POLICY ALIGNMENT**

This project is consistent with the Council-approved Budget Strategy to continue with capital investments that spur construction spending in our local economy. This project will also reduce operating and maintenance costs for this trunk sewer.

**COST SUMMARY/IMPLICATIONS**

1.	AMOUNT OF RECOMMENDATION/COST OF PROJECT:	
	Project Delivery	\$1,190,000*
	Construction	3,182,432
	Contingency	<u>318,240</u>
	<b>TOTAL PROJECT COSTS</b>	<b>\$4,690,672</b>
	Prior Year Expenditures	483,444
	<b>REMAINING PROJECT COSTS</b>	<b>\$4,207,228</b>

\* Project Delivery Includes \$535,570 for design services and \$654,430 for Construction Management and Inspection Services.

2. COST ELEMENTS OF CONSTRUCTION CONTRACT  
(See Attached Schedule of Quantities)
3. SOURCE OF FUNDING: 545- Sewer Service and Use Charge Capital Improvement Fund
4. OPERATING COST: The operating and maintenance costs associated with this project are minimal in comparison with the costs of the existing system. They will have no significant impact on the General Fund operating budget.

**BUDGET REFERENCE**

Fund #	Appn #	Appn. Name	RC #	Total Appn.	Amt. for Contract	2008-2009 Adopted Capital Budget (Page)	Last Budget Action (Date, Ord.No.)
<b>Remaining Project Costs</b>				<b>\$4,207,228</b>			
<b>Current Funding Available</b>							
545	6444	Inflow and Infiltration Reduction	144755	\$5,000,000	\$3,182,432	V-67	N/A
<b>Total Current Funding Available</b>				<b>\$5,000,000</b>	<b>\$3,182,432</b>		

HONORABLE MAYOR AND CITY COUNCIL

05-24-10

**Subject: Downer-Canoas Interceptor Rehabilitation**

Page 5

**CEQA**

CEQA: Exempt, PP09-052, dated March 13, 2009.

Planning has issued a statement of exemption for this project.

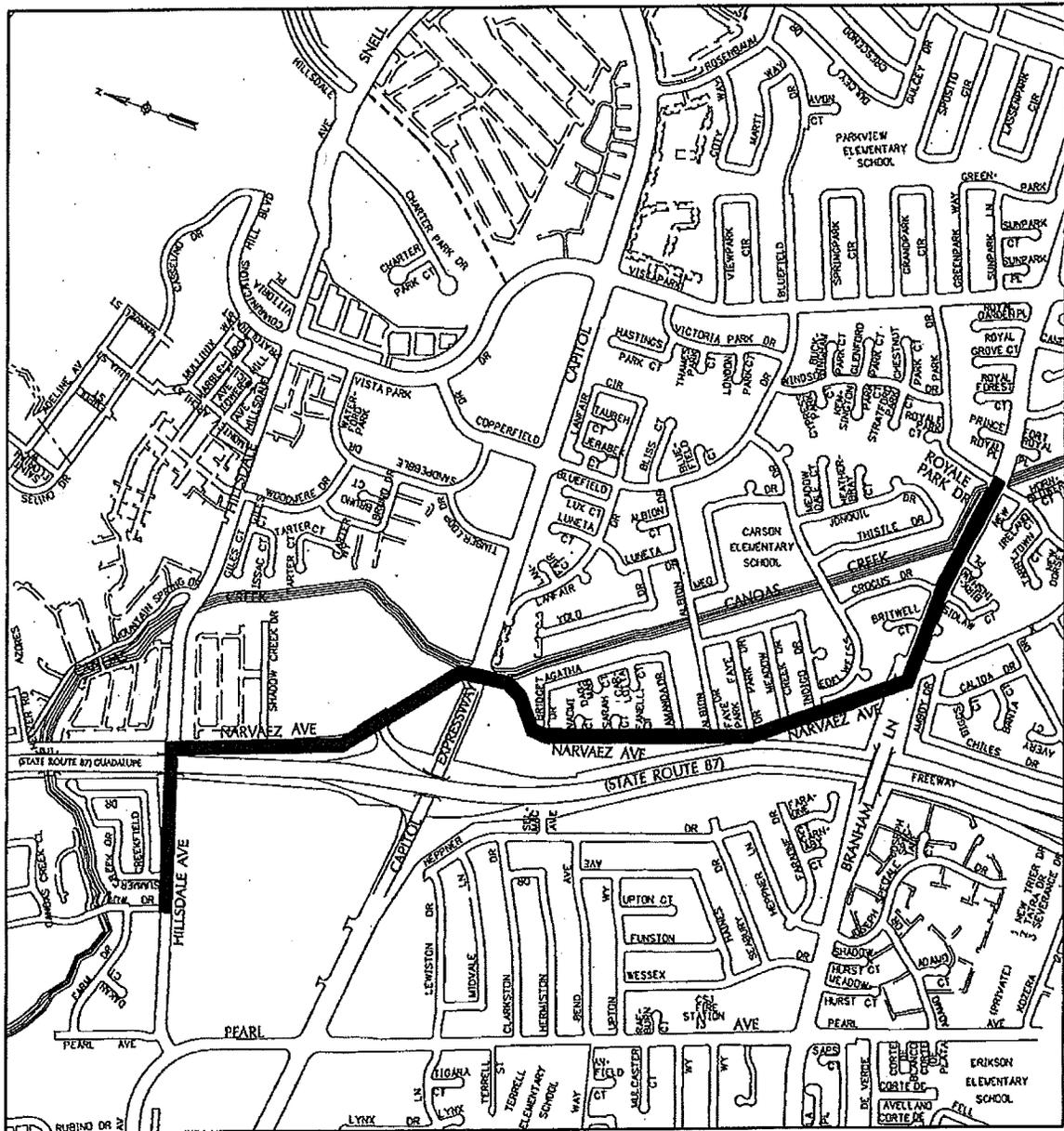
/s/

KATY ALLEN  
Director, Public Works Department

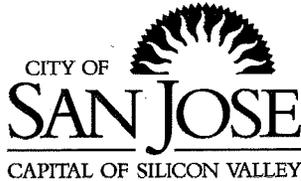
For questions, please contact TIMM BORDEN, DEPUTY DIRECTOR, PUBLIC WORKS DEPARTMENT, at 408-535-8499.

JA:OG  
Attachment

# DOWNER-CANOAS INTERCEPTOR REHABILITATION



LOCATION MAP  
N.T.S.



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Albert Balagso

**SUBJECT:** REUSE POLICY AMENDMENTS

**DATE:** May 26, 2010

Approved

Date

6/1/10

## RECOMMENDATION

1. Adopt a resolution to amend Council Policy 7-12 (Community Center Reuse) to allow for greater opportunities to place service providers at Reuse sites.
2. Approve suspension of competitive solicitation requirements under Policy 7-12 for 12 months and grant authority to the Director of Parks, Recreation, and Neighborhood Services (PRNS) to extend suspension of requirements for an additional 12 months, if deemed necessary.
3. Authorize the Director of PRNS to enter into direct negotiations with potential service providers for Reuse facilities pursuant to Municipal Code Section 4.12.235, "Unique Services Purchases."

## BACKGROUND

In April 2008, staff presented a business case for seeking alternative service providers to address the closure of community centers and the loss of services due to budget cuts. Consequently, City Council adopted Policy 7-12 which codified Reuse as a key means for seeking alternative services providers due to multiple years of budget constraints and proposals to avoid closure of community centers. Council Policy 0-41 (Service Delivery Evaluation Policy) and its companion Policy 0-29 (Public Private Competition Policy) which guides the competition process are exempted in this case due to the prohibition of Policy application to service eliminations caused by budget cuts.

Staff was directed at the March 30, 2010 City Council meeting to return to Council with recommendations regarding policy considerations outlined in the Joint Memorandum dated March 26, 2010 from Council Members Campos and Kalra. The memo emphasized the need to ensure that funding be maintained for the hub sites, and it also provided recommendations that may facilitate the process for Reuse alternatives for the 21 sites recommended for closure in the 2010-11 Proposed Budget. PRNS submitted a Manager's Budget Addendum #11 on May 19, 2010, that outlined recommendations regarding "highest-need" indicators, "highest-need" rankings, and preliminary recommendations to amend Council Policy 7-12 and proposed waivers to related policies.

May 26, 2010

Subject: REUSE POLICY AMENDMENTS

Page 2

An amended Council Policy 7-12 (ATTACHMENT) proposed herein will help mitigate the impact to the community and alleviate the administrative burden to the City and organizations interested in operating Reuse sites. It will result in selecting qualified service providers within weeks, rather than months, of Council approval as would be required through the competitive process contemplated by the Reuse Policy as is.

## ANALYSIS

The recommendations outlined in this memorandum identify the changes appropriate to minimize the administrative barriers to aid the City in identifying operators for the 21 proposed Reuse facilities and negotiate services in an efficient and expeditious manner.

### Approve the Proposed Changes to Council Policy 7-12 (Reuse).

- a. Suspend competitive solicitation requirement under Policy 7-12 for 12 Months and grant authority to the Director of PRNS to extend suspension of requirements for an additional 12 months, if deemed necessary.

Suspension of full competitive solicitation requirements in the Reuse policy for 12 months will enable the City to readily identify and easily enter into direct negotiations with qualified organizations or operators. This recommendation would follow the provisions of San José Municipal Code, Title 4, Chapter 4.12.235 "Unique Services Purchases." The Unique Services Purchases procurement practice can be applied when City Council finds that an unusual or unique situation exists that makes the application requirements for competitive processes lengthy, complex and contrary to the public interest. The impending closure of an additional 21 City facilities make this a unique situation that impacts San Jose residents.

#### 4.12.235 Unique services purchases.

The procurement authority may initiate a procurement for unique professional or other services where the procurement authority determines that an unusual or unique situation exists that make the application of the requirements for competitive procurement of a services agreement contrary to the public interest. Any special procurement under this section shall be made with such competition as is practicable under the circumstance. A written determination of the basis for the procurement and for the selection of the particular contractor shall be included by the Procurement authority in the department files.

- b. Delete Service Provider Priority Use Evaluation Criteria

Eliminating the priority use evaluation criteria in the Reuse policy (Service Provider Criteria section, page 6) that awards First Priority to recreation uses, and Second Priority to non-recreation uses, would give substantial latitude to potential service providers to determine the set of services that they would provide to the public, but would encourage

the provision of a pre-determined minimum set of community serving services, subject to final approval by the City. The consideration and selection of service provider uses would continue to be subject to community priorities. PRNS will also consider matching Reuse Sites with providers funded through San Jose B.E.S.T. and Healthy Neighborhoods Venture Fund, subject to the availability of available space.

c. Revise Council Policy 7-12 to Allow Qualified For-Profit Service Providers and a Tiered Approach to Cost-Sharing

Staff recommends Council Policy 7-12 be revised to allow qualified for-profit entities to provide services at Reuse facilities under a modified Reuse agreement that maintains a minimum of free, or other reduced-cost services (at or below City's standard fees and charges), and to require City approval of higher, for-profit fee structures to avoid possible out-pricing of the existing low income users of the surrounding community.

Staff also recommends Council Policy 7-12 be revised to allow a tiered approach to cost-sharing of facility expenses between service providers and the City, similar to existing User Type I/II/III Department Fees and Charges structures. The City Auditor report, *Audit of Community Center Staffing*, noted that PRNS may be missing potential rental income by granting free use of Reuse facilities, especially in newer, larger facilities. The recommendation to authorize the Director to adopt a tiered approach to cost sharing would establish defined triggers that would provide free use of City Reuse sites where services are provided at no charge and where revenue generating activities will not occur, and would trigger facility use fees and the full or partial sharing of maintenance and utility facility expenses commensurate with the square footage used by the service provider's programs. If approved, the actual details of the tiered fee structure will be developed by the Reuse Property Management Team based upon criteria developed in coordination the City Attorney and other internal and external stakeholders, as appropriate.

**NEXT STEPS**

If Council adopts the recommendations as proposed, staff will begin an implementation strategy to locate qualified service providers. This implementation strategy will include immediate contacts with interested providers, an assessment of their capacity and financial disposition, and their ability to provide appropriate and adequate services to communities identified pursuant to the highest-need rankings described in the May 19, 2010 Manager's Budget Addendum. Thereafter, the City will exercise the same streamlined process for finding service providers for the remaining facilities on the 2010-2011 adopted Reuse list.

May 26, 2010

**Subject: REUSE POLICY AMENDMENTS**

Page 4

In addition, staff will coordinate with the Department of Planning, Building and Code Enforcement on the Reuse sites being considered for specific uses to determine permitting, Building, and/or Fire Code issues upfront. To the extent the issues can be resolved before a provider is under contract, then the buildings will be ready for reuse. Otherwise, any improvements would become part of the agreement between the provider and the City.

### **COORDINATION**

This memorandum has been coordinated with the Office of the City Manager, Planning, Building, and Code Enforcement, Purchasing, Public Works - Real Estate, the City Auditor, and the City Attorney.

### **CEQA**

Not a project, File No. PP10-068, changes to existing policies that involve no physical changes to the environment.

/s/

ALBERT BALAGSO  
Director, Parks, Recreation  
and Neighborhood Services

ATTACHMENT: Amended Council Policy 7-12

City of San José, California

COUNCIL POLICY

TITLE SEE BELOW	PAGE 1 of 11	POLICY NUMBER 7-12
EFFECTIVE DATE April 22, 2008	REVISED DATE	
APPROVED BY COUNCIL ACTION		

TITLE

~~FREE~~ USE OF COMMUNITY CENTER REUSE SITES IN EXCHANGE FOR SERVICES THAT PRIMARILY BENEFIT SAN JOSE RESIDENTS

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BACKGROUND

In November of 2000, the voters of San José approved a \$228 million General Obligation Bond issuance known as "Measure P" to acquire property and construct improvements for parks, trails, and recreation facilities in San José. This bond measure which funds the renovation of various recreation amenities including nine community centers by 2010 will almost double the amount of community center square footage the Department of Parks, Recreation, and Neighborhood Services (PRNS) must manage with limited increases in Staff.

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Consequently, the San Jose City Council approved a Community Center Reuse Plan that allows PRNS to vacate ~~older, less-used~~ community center facilities and centralize services, programs, and Staff at the newer, larger, more efficient centers built with Measure P funds, while maintaining community service priorities in vacated facilities.

This Community Center Reuse Policy allows ~~Santa Clara County based for-profit~~, nonprofit, neighborhood associations, school districts, and other government agencies or community service providers (collectively referred to as Service Providers) to use PRNS recreation facilities designated as Community Center Reuse sites in some cases at no cost in exchange for services that primarily benefit San José residents.

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PURPOSE

To establish the policy of the City of San José and communicate guidelines for the use of Community Center Reuse sites by ~~Santa Clara County based~~ Service Providers in some cases at no charge in exchange for services that primarily benefit San José residents.

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POLICY

Through this Community Center Reuse Policy, the City Council authorizes the PRNS Director to enter into property use agreements for community or neighborhood centers designated by City Council as Reuse Facilities, with Service Providers who demonstrate

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City of San José, California

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	2 of 15	7-12

to the Director that they will provide a minimum of needed free, low-cost, fee-for-service, sliding scale, or cost reimbursement programs, services, and activities that primarily benefit San José residents.

~~In exchange for providing a minimum level of those services, the property use agreement shall not require the Service Provider to pay facility use fees (such as hourly room fees), and shall also provide that the City shall pay for the cost of routine building maintenance, major systems repair, and normal utility use for the facility.~~

The PRNS Director, through a Community Center Reuse Property Management Team or other such designated Staff, will manage community and Service Provider outreach for Community Center Reuse sites, the selection of Service Providers, negotiation and enforcement of property use agreements, and facility operations' management.

Before Staff makes a Community Center Reuse site available for use under this Community Center Reuse Policy, the City shall evaluate and approve the condition of the facility, evaluate potential use by other City departments, and shall make any initial repairs deemed appropriate prior to use, in the City's sole discretion. If the PRNS Director determines the cost of repair or operation to be prohibitive, or determines that use of the facility by other City departments is advantageous, the Director may recommend to City Council the removal of a facility from the list of Community Center Reuse sites.

Service providers shall be selected through an open and competitive process (except during the period of Temporary Suspension of Competitive Process described at the end of this Policy) with the goal to maximize the benefit to San José residents. Service Providers shall be selected on criteria evaluating the activities, programs, and services in a Community Center Reuse site that accomplish one or more of the following objectives, and priorities.

- Services that support the PRNS Vision, Mission, and Core Services. The focus of the Department of Parks, Recreation, and Neighborhood Services is to provide City services, programs, and activities that include, but are not limited to, recreation, therapeutic, youth, and senior programs and services; programs, services, or activities that promote healthy lifestyles; early recreation childhood classes; after school activities; summer camps; meals for seniors; and youth intervention
- Provide quality services and activities free-of-charge or at reduced rates which are defined as at or below City standard fees and charges and which may include fee-for-service (cost per unit of service), sliding scale based upon income guidelines and proof of income, or cost recovery programs (no profit or markup

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~~other than reasonable administrative costs), services, and activities, that are complementary or in addition to services provided by City Staff.~~

- Build relations between the public sector and the community
- Address emerging needs and improve programs to meet existing needs
- Foster and leverage support from volunteers and active communities

**MAJOR CONSIDERATIONS IN EVALUATING AND SELECTING SERVICE PROVIDERS**

1. Initially, the term of each property use agreement will be not more than three (3) years for facilities located on City parks unless City Council determines that the property use agreement complies with City Charter 1700.1, in which case the initial term may be up to 5 years, which may be renewed by the Director. The initial term for facilities not located on City parks shall be not more than 5 years, which may be renewed by the Director. ~~ector which may be withhold in the Director's discretion. Since a number of Community Center Reuse sites are located on public parks, this three year period is consistent with Article XVII, Section 1700 of the City Charter, which allows leases, permits, or licenses without a vote of the electorate for any building or structure situated on a park if the term of each such lease or permit does not exceed three (3) years.~~
2. The Service Provider must demonstrate that it can provide its own operational materials.
3. The Service Provider must demonstrate that it can maintain and replace all furniture, equipment, and fixtures that it supplies.
4. Service Providers who bring non-City resources for capital investment, operating funds, or both, used to further the public's interest will be given greater consideration in the selection process.
5. The PRNS Director, or his/her designee, is authorized to (i) solicit potential Community Center Reuse Service Providers which shall be subject to an open and competitive process unless during a temporary suspension of such requirement as described at the end of this Policy; (ii) to evaluate and select responses to the solicitation process; to (iii) negotiate, execute, and extend property use agreements on the City's behalf on terms consistent with this policy; and (iv) to terminate any property use agreement on the City's behalf.
6. The Service Provider shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government, including the Departments of Parks, Recreation and Neighborhood Services requirements for

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FREE USE OF COMMUNITY CENTER REUSE SITES IN EXCHANGE FOR SERVICES THAT PRIMARILY BENEFIT SAN JOSÉ RESIDENTS ... [2]

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FREE USE OF COMMUNITY CENTER REUSE SITES IN EXCHANGE FOR SERVICES THAT PRIMARILY BENEFIT SAN JOSÉ RESIDENTS ... [3]

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City of San José, California

TITLE SEE BELOW	PAGE	POLICY NUMBER
	4 of 15	7-12

Background Check/ Fingerprinting for Employees/Volunteers and Tuberculosis (TB) testing.

7. The PRNS Director may request from City Council the removal of a facility from the Community Center Reuse list. The PRNS Director is authorized to require a different use of a facility if the Director determines that use of the facility by other City departments is advantageous or in response to natural, technological, and human-caused disasters. This includes, for example, immediate use of a Community Center Reuse site to shelter displaced residents affected by such disasters.

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8. The City Council, at any time, may add a facility or may remove a facility from the Community Center Reuse list if the Council determines such action is in the best interest of the City. Community Center Reuse site occupants shall be provided no less than a 90-day written notice to vacate the property. Such requests to add a facility to the Reuse list shall be referred to the City Manager, and it is the responsibility of the City Manager, as a first step, to obtain input, feedback, and report to the Neighborhood Services & Education Committee of the policy issues, workload impacts, cost implications, and other pertinent information associated with completing/addressing the addition of a facility to the Community Center Reuse list, before obtaining City Council approval. City Council may immediately add facilities to the Community Center Reuse list without going through the Neighborhood Services & Education Committee if Council finds that adding the facility or facilities to the Reuse list is urgently needed to respond to a budget crisis.

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Without limitation of any other policy, three City Council policies apply to facility use:

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- Policy 7-1, Below Market Rate Rental Policy
- Policy 7-8, Long-Term Use of City Parklands for Private Enterprise Purposes
- Schedule of Fees for the Use of Parks and Recreational Facilities

The terms of use of Community Center Reuse sites pursuant to the Reuse Policy shall be the responsibility of the PRNS Director, shall supersede Council Policy 7-1, which directs the Public Works Department to provide oversight for review and negotiations of City-owned leases and or property use agreements; Policy 7-8, Long-Term Use of City Parklands for Private Enterprise Purposes, which establishes guidelines for City parklands use involving commercial or non-profit recreation and commercial or non-profit non-recreation; and shall also supersede any explicitly inconsistent provisions in the fees and charges established by the Schedule of Fees for the Use of Parks and Recreational Facilities.

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PROPERTY CRITERIA

City Council shall designate sites as Community Center Reuse sites available to be used by qualified Service Providers if one or more of the following criteria is met:

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City of San José, California

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1. The facility usage is significantly below capacity because the City does not intend to provide staffing and/or to fully program activities in the building in the immediate future, but the facility will be retained for a future public purpose.
2. It is anticipated that the date that future City programming of the facility would occur at or near full capacity is far enough into the future to justify an interim use.
3. An existing lease or sublease agreement, the source of funding used for the original acquisition, or any construction work on the facility or any financing related to the facility, does not preclude the facility or property from legally being occupied for the desired use.
4. The property or facilities are not scheduled to be surplusd.

In addition, City Council may add a facility to the Reuse list if City Council finds that adding the facility or facilities to the Reuse list is urgently needed to respond to a lack of operational funding due to a significant budget crisis faced by the City.

SERVICE PROVIDER CRITERIA

The expected level of financial capability and expertise of a Service Provider increases with that Provider's proposed scope of services, activities, and the potential liability assumed by the Service Provider. A Service Provider should be incorporated or have other formal legal status; comply with the City's insurance requirements as determined by the Risk Manager; demonstrated experience in providing the proposed services; and adequate financial resources before the City would consider awarding rights to program an entire Community Center Reuse site.

However, the City also desires to make Reuse sites available for scheduled use by less formally organized groups for community meetings and similar activities. The Director, through the PRNS Property Management Team or such other designated Staff, shall establish a process for less formally organized groups to submit requests for time in a Community Center Reuse site, which shall be reserved on an as-available basis, and subject to reasonable terms and conditions as established by the Director. These uses can include, for example, daytime and evening meetings, monthly meetings, and community events. The Director may establish other requirements for longer term uses.

Both for-profit and nonprofit organizations are eligible to operate or provide services at Reuse sites. The fees charged by the City may vary and the City may impose market rate facility rental or payment of full or partial costs (utilities, maintenance, etc.) depending upon the level of fees charged to the public by the Service provider for services provided at the Reuse site, and/or based on the square footage used by the

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*City of San José, California*

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Service Provider's programs. The Director is authorized to adopt a tiered approach to cost sharing between the City and service providers that would establish defined triggers that:

- I. Provide free use including City-funding of the costs for maintenance and utilities where a nonprofit or for-profit Service Provider provides free services to the public, or services at a cost at or below the City's standard fees for similar programs.
- II. Require Service Providers to pay for use of the facility at such rates as are established by the Director and the Director may base such fees upon the level of fees charged to the public by the service provider. The Reuse fees and charges established by Director for a Reuse service provider who charges more than the City's standard fees for similar programs may be below, equal or exceed the City's standard facility use fees as Director reasonably determines but shall be equitably applied to other service providers charging similar fees. The Director may also require the user of a Reuse Facility to pay maintenance and utility costs commensurate with the square footage used by the Service Provider's programs if the fees charged to the public are higher than those described in Paragraph I above. Square footage costs shall be defined by City using City General Services square footage maintenance and utilities costs formula.

~~Santa Clara County based For-profits, nonprofits, neighborhood associations, school districts, other government agencies, and other community service providers may operate or provide services at Reuse sites at no charge if they are selected by the Director after an open and competitive selection process, and have been determined as the entity offering the most beneficial level and type of services at the facility based on criteria outlined in this policy, and further provided that they meet the following qualifying criteria approved by City Council.~~

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1. ~~Service Providers shall provide services at the rates described in Section I above, either singly or through a written agreement with another community service provider that primarily benefit San Jose residents. "Community services" are to be defined broadly to include, but not limited to programs, services, and activities that align to the PRNS Mission, Vision, and Core Services; these services identified in Attachment I(a); services identified during past Community Center Reuse public input sessions; and other services that may be identified by future Community Center Reuse public input sessions.~~

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The Service Provider Community Center Reuse solicitation materials developed may prioritize the service needs for facilities in a manner different than those set forth above, as determined by the Director, based upon factors such as special needs in the surrounding community, changing circumstances, and additional

*City of San José, California*

TITLE SEE BELOW	PAGE	POLICY NUMBER
	7 of 15	7-12

community services identified through future community input and City Staff review.

2. Proof of recognized legal status such as certificate of good standing, articles of incorporation, recorded limited partnership agreement, 501 (c) (3) nonprofit status from the Internal Revenue Service or the California State Franchise Tax Office or similar proof. A nonprofit organization may provide a letter indicating they are exempt under Internal Revenue Code 501(c)(3) or State Franchise Tax Code 23701(d), 23701(f), or 23701(w). (If the tax letter is for the national or state organization, the City needs proof that the local chapter is an affiliate.)
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3. A copy of federal income tax returns if the Service Provider is required to file them.
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4. If the Service Provider is not registered with any state, the Service Provider must have a constitution or by-laws that clearly state that the objectives of the organization are of a non-profit, non-commercial nature. The City may require an individual to be legally responsible before the City allows access to the Community Center Reuse site. City Staff may provide information for obtaining routine meeting or special event commercial group liability insurance coverage.
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5. A Neighborhood Association must be an organized body with adopted by-laws and governed by Officers. The City may require an individual to be legally responsible before the City allows access to the Community Center Reuse site. City Staff may provide information for obtaining routine meeting or special event commercial liability insurance coverage.
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6. Demonstrated capacity and financial capability to perform or deliver the desired services in a format determined by the Community Center Reuse Property Management Team.
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7. To initially request use of space, the Service Provider must submit the following information in a format prescribed by the Community Center Reuse Property Management Team. The Service Provider's expected level of filing requirements would increase or decrease with the Provider's proposed scope of services and activities, and the potential liability assumed by the Service Provider.
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- a. The program's objective and a time frame for implementation, if applicable.
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- b. A profile of the clients served, including client residency information.
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- c. An outline of the program and proposed service(s) to be offered.
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- d. If a non profit, a copy of organization's IRS Form 990, Return of Organization Exempt From Income Tax to include a contact person for the use of the Community Center Reuse site, organization chart, Board of Directors or Officers, their contact information, their role in the organization, and management and key staff, including their length of service.
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City of San José, California

TITLE SEE BELOW	PAGE	POLICY NUMBER
	8 of 15	7-12

e. For-profit Service Providers shall provide a copy of the required IRS tax return for the form of business structure.

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f. A current certified financial audit including sources of funding and any constraints applied to funds.

g. Evidence of adequate public liability and property damage insurance for the Service Provider's contents and/or other insurance as determined by the City's Risk Manager.

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h. The City may review the Service Provider's past performance under any other City programs or contracts including, but not limited to: CAP Grants, CDBG, and San José BEST.

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i. The source and amount of City grants either applied for or awarded within the previous year including but not limited to CAP Grants, CDBG, and San Jose BEST.

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8. The free use or any use at a cost less than the City's standard facility use fees and charges provided for in this Community Center Reuse Policy is not available for Service Providers engaged in political activities (excluding nonpartisan use for polling sites, voter registration, or voter education) or to religious organizations that would use the City's premises to promote sectarian or religious purposes.

SERVICE PROVIDER SELECTION PROCESS

The PRNS Director is authorized to administratively solicit Service Providers through an open and competitive process or during a Temporary Suspension of Competitive Process, such special procurement process permitted under Municipal Code Section 4.12.235, to generate facility use proposals, to thereafter select Service Providers and to negotiate and execute property use agreements consistent with this Reuse Policy. The PRNS Director is also authorized to extend property use agreements and to terminate property use agreements when deemed by the Director to be appropriate, without requiring City Council approval. The Director, however, may provide administrative reports from time to time to the City Council and the City Manager concerning Service Provider use of Community Center Reuse sites.

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Requests for facility use in response to the selection process will be evaluated periodically. Staff will place Service Providers who successfully meet the Community Center Reuse Policy criteria on a pre-qualified Service Provider list, and will use the list to negotiate with and assign facilities based on the type of space desired, space available, time availability, and services proposed. However, a pre-qualified Service Provider list generated without a competitive process during a Temporary Suspension of Competitive Process, shall expire upon the end of such temporary suspension.

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ANNUAL REPORTING REQUIREMENTS OF SERVICE PROVIDERS

The PRNS Director, through the Community Center Reuse Property Management Team or such other designated Staff, may request annual performance measurement data and/or program, service, or activity evaluation reports in a form and on such frequency as specified in the property use agreement. The Director may use the results of such annual performance reviews to determine a Service Provider's continued occupancy.

TERMS OF OCCUPANCY

The PRNS Director will develop and modify from time to time, a property use agreement form for Community Center Reuse Service Providers in consultation with the City Attorney's Office. The property use agreement will set forth the terms and conditions of the facility use for Community Center Reuse Service Providers. Nothing in these guidelines shall be construed to limit the terms specifically set forth in any agreement.

The terms and conditions of the property use agreement shall be determined by the PRNS Director but may include the following:

1. The provision of office supplies, operational materials, and the provision, maintenance, and replacement of furniture, equipment, and fixtures provided by the Service Provider shall be the responsibility of the Service Provider.
2. The provision, maintenance, and replacement of City-owned furniture, equipment, and fixtures based upon Normal Wear and Tear shall be the responsibility of the City.
3. Community Center Reuse sites shall be left in the same condition when vacated, as when the Service Provider moved in, allowing for Normal Wear and Tear. If improvements were made to the facility, the City may choose to keep the facility improvements. Normal Wear and Tear may include, but not be limited to faded paint; the natural wearing down of carpet or drapes because of normal use or aging; worn hinges on doors or locks; holes or dings in walls from missing door stops; broken plumbing pipes, unless damaged by the Service Provider; and central drain problems not caused by the Service Provider's incorrect disposal of items.
4. If the Service Provider conducts a fee generating or fundraising event as defined by the City Fees and Charges Resolution, the Service Provider shall agree that all net proceeds from the event shall be used towards subsidizing or reducing costs of programs and services to the community from the facility, and may include acquiring equipment, supplies, and services that will enhance and/or expand services to the community.

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City of San José, California

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	10 of 15	7-12

5. Any changes in the type or level of services provided by the Service Provider may result in a re-evaluation of the property use terms.

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6. The Service Provider shall provide all necessary proof of insurance coverages, which can be supplied by the provider and/or through an umbrella organization, as required by the City's Risk Manager prior to occupancy, during the term of property use agreement, and at renewal of the property use agreement.

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7. The Service Provider shall not be entitled to relocation benefits as a result of its occupancy or removal from the Community Center Reuse site unless such benefits are required by law.

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8. The Service Provider will be responsible for paying any possessory interest tax, which may be due because of the occupancy. Nonprofit groups may qualify for exemption from possessory interest taxes. For more information, please contact the Santa Clara County Assessor's Office.

9. The PRNS Director, through the Community Center Reuse Property Management Team or such other designated Staff, shall reserve the right to establish and require a refundable cleaning/damage deposit not to exceed \$500 for the term of the property use agreement. The Director can establish the refundable cleaning deposit based upon the size of the facility, type of users and uses, past history of use, revised from time to time, and made available to the public.

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10. Utilization of the Community Center Reuse site shall be for the exclusive use of the designated Service Provider(s). The Service Provider(s) shall not assign or transfer any interest in the Community Center Reuse site without the prior written consent of City.

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11. The Service Provider shall ~~not be responsible for Community Center Reuse routine site building maintenance, major systems repair, and utilities including exterior grounds of the facility, except to~~ provide building maintenance or to repair damage that is the result from the Service Provider's excessive use or events.

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The City will provide a minimum level of building maintenance service consisting of two days of custodial service per week subject to City Council appropriation if the Service Provider provides free services or services at or below City's standard fees and charges. This includes servicing recycle stations, spot vacuuming and mopping, and restroom service. No direct custodial service will be applied to staff areas except recycle stations and restrooms. Routine repairs that are a result of normal wear and tear on the facility will also be completed.

Service Provider fees and charges will be developed pursuant to the triggers identified under the heading "SERVICE PROVIDER CRITERIA" above.

City of San José, California

TITLE SEE BELOW	PAGE	POLICY NUMBER
	11 of 15	7-12

Preventive maintenance consistent with the majority of other City facilities will also be included. Enhanced maintenance requested above the City's minimum level of service may result in additional costs to the Service Provider. The Property Management Team may inspect the Community Center Reuse site from time to time to ensure that the facility is properly maintained.

- 12. The Service Provider shall hold the City harmless against claims if the City needs to temporarily shutdown the Community Center Reuse site to perform major system repairs, such as replacement of air conditioning systems.

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No alterations or improvements, including capital improvements and installations of additional phone lines, T1 lines, and electrical lines shall be made to the Community Center Reuse site without the City's prior written approval. If the City provides written approval, the Service Provider shall be responsible for obtaining all City permits through the City of San José Public Works Department necessary for the construction of any alterations or improvements. Service Provider will be responsible for meeting all permit requirements at no cost to the City of San Jose.

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- 13. The Service Provider will not be required to make any capital improvements. If capital improvements are required for the proposed use of a facility, the City, in its sole discretion, may elect to make such improvements, terminate further property use negotiations, or terminate the property use agreement.

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If the Service Provider proposes to fund the capital improvements, the City may consider such requests. The City may review and consider all capital improvement requests pursuant to the City's Capital Improvement Program process. Any obligation on the part of the City to expend funds shall be subject to appropriate City approvals and must be set forth in a written agreement and shall be subject to appropriation of funds by City Council, which shall be made in City's sole discretion.

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- 14. Service Provider(s) shall cooperate if the City requires, prior to and during the term of the property use agreement, the submission of such additional information as may be reasonably requested by City.

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TITLE¶  
FREE USE OF COMMUNITY  
CENTER REUSE SITES IN  
EXCHANGE FOR SERVICES THAT  
PRIMARILY BENEFIT SAN JOSÉ  
RESIDENTS [10]  
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**TERMINATION**

In addition to termination for cause, Community Center Reuse site property use agreements may be terminated by the PRNS Director or the Service Provider(s) at any time for any reason upon no less than a 90-day written notice. The PRNS Director is authorized to terminate a property use agreement sooner than 90 days in response to a declared City emergency.

*City of San José, California*

TITLE SEE BELOW	PAGE	POLICY NUMBER
	12 of 15	7-12

TEMPORARY SUSPENSION OF COMPETITIVE SOLICITATION PROCESS

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City Council declares that the requirements that City staff select service providers under this Policy through an "open and competitive process" set forth under the Heading "Policy", shall be temporarily suspended for 12 months commencing upon the date of adoption of this Policy to allow the City to respond to the City's budget crisis and to reduce the impact of the proposed closure of 21 additional community centers in the proposed 2010/2011 budget. Pursuant to San José Municipal Code, Title 4, Chapter 4.12.235 "Unique Services Purchases", City Council finds that due to the magnitude of the budget crisis faced by the City as of the date of this Policy, an unusual or unique situation exists that makes the application requirements for competitive procurement lengthy, complex and contrary to the public interest in the selection of Service Providers under this Policy. Therefore, during this 12 month period (as it may be extended as provided below), the Director may select Service Providers in Reuse Facilities through a special procurement made consistent with Chapter 4.12.235 with such competition as is practicable under the circumstances. The Director shall comply with the additional requirements of Municipal Code Section 4.12.235, which is set forth in full below.

S.J. M.C. 4.12.235 Unique services purchases.

The procurement authority may initiate a procurement for unique professional or other services where the procurement authority determines that an unusual or unique situation exists that make the application of the requirements for competitive procurement of a services agreement contrary to the public interest. Any special procurement under this section shall be made with such competition as is practicable under the circumstance. A written determination of the basis for the procurement and for the selection of the particular contractor shall be included by the Procurement authority in the department files.

The Director is also authorized to extend the Temporary Suspension of Competitive Process under this Policy, for an additional 12 months if the Director finds that the City a budget crisis continues to be of sufficient magnitude that an unusual or unique situation exists that makes the application of the requirements for competitive procurement lengthy, complex and contrary to the public interest in the selection of Service Providers under this Policy.

City staff shall have latitude to permit a wide range of services to the public by Service Providers, subject to final approval by the PRNS Director. The consideration and selection of Service Providers would continue to be subject to criteria evaluating the activities, programs, and services as outlined

*City of San José, California*

TITLE SEE BELOW

PAGE

13 of 15

POLICY NUMBER

7-12

Any reference to a "competitive process" in this Policy shall be deemed modified by this Temporary Suspension Of Competitive Solicitation Process during the period that the Temporary Suspension remains in effect.

**Attachment I(a)**

**Service Provider Guidelines**

~~Service Providers shall be selected on criteria evaluating the activities, programs, and services in a Community Center Rouse site that accomplish one or more of the following priorities for meeting unmet needs in the City.~~

~~• First Priority~~

~~Service Provider uses that directly support the Vision, Mission, and Core Services of Parks, Recreation, and Neighborhood Services and provide quality, low cost, fee-for-service, sliding scale, or cost reimbursement programs, services, and activities to the residents of San José that are complementary or in addition to services provided by City Staff.~~

~~• Second Priority~~

~~Service Provider uses that support the delivery children and youth programs, health and human services, arts and cultural activities, and other areas. The services listed below are not in order of priority.~~

~~I. Developing Children and Youth~~

- ~~• Early Childhood and Preschool (School Readiness, Language, and Social Skills)~~
- ~~• Physical and Emotional Well-Being~~
- ~~• Responsibility and Citizenship~~
- ~~• Career Aspirations and Support~~
- ~~• Promoting healthy lifestyles (tobacco prevention, health and fitness, and other activities)~~
- ~~• Building healthy social networks and cross-generational connections (celebration of diversity and opportunities for cross-cultural connections within neighborhoods)~~
- ~~• Building the resiliency and protective assets of youth (help youth to develop the ability to recover quickly from setbacks and enable them to avoid risks to remain healthy and productive — i.e., in school, home, and the community.)~~

~~II. Assisting Seniors and Disabled~~

- ~~• Transportation~~
- ~~• Care Planning (Information and Referral)~~
- ~~• Recreation, Nutrition, and Fitness~~

~~III. Counseling & Support~~

City of San José, California

TITLE SEE BELOW	PAGE	POLICY NUMBER
	14 of 15	7-12

- ~~• Violence (Domestic Abuse and Gangs)~~
- ~~• Substance Abuse (Alcohol and Drugs)~~
- ~~• Immigration (Status, Language, Education, and Access)~~
- ~~• Grief (Trauma and Bereavement)~~

~~IV. Access to Healthcare for Uninsured or Lower Income Individuals/Households~~

- ~~• Physical (Primary Care and Health Insurance)~~
- ~~• Mental (Adult and Family Mental Health)~~

~~V. Enhancing Adult Living Skills~~

- ~~• Basic and Intermediate English~~
- ~~• Employment (Obtaining, Holding, and Advancement)~~
- ~~• Financial Management (Budgeting, Saving for Home, Education, and Retirement)~~
- ~~• Effective Parenting (Preschool, School Age, Preparing for Adulthood)~~
- ~~• Nutrition and Fitness (Diet, Exercise, Disease Prevention, Recreation)~~

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~~VI. Neighborhood and Community Leadership and Capacity Building~~

- ~~• Nonprofit Organizations (Resident Representation in Governance, Planning and Delivery of Services, Capacity for Measuring Outcomes)~~
- ~~• Neighborhoods and Communities (Neighborhood Services Projects and Volunteer Opportunities)~~

~~VII. Neighborhood Appearance~~

- ~~• Anti Litter~~
- ~~• Anti Graffiti~~
- ~~• Neighborhood Beautification~~

~~VIII. Public Safety~~

- ~~• Community and Neighborhood Watch~~
- ~~• Gang Awareness, Prevention, Intervention~~

~~IX. Basic Human Needs for Lower Income Individuals or Households~~

- ~~• Shelter, both temporary and transitional~~
- ~~• Affordable Housing and Housing Assistance~~
- ~~• Food Meeting Basic Nutritional Needs~~
- ~~• Clothing To Meet Basic Needs for Clothing~~
- ~~• Dependent Care for Children, Elderly, Infirm, and Disabled~~

~~X. Environmental Benefit~~

- ~~• Environmental Awareness, Outreach and Education~~
- ~~• Recycling Programs and Sustainable Activities~~
- ~~• Watershed/Water Quality~~
- ~~• Air Quality and Urban Forest~~

~~XI. Arts, Culture, and Sports~~

- ~~• Arts, Culture, Sports, Entertainment, and Community Events~~
- ~~• Arts, Culture, and Sports Activities and Organizations~~

*City of San José, California*

**TITLE** SEE BELOW

**PAGE**

15 of 15

**POLICY NUMBER**

7-12

- ~~Information Technology~~
- ~~Multi-media (Text, Audio, Still Images, Animation, Video, Interactivity)~~
- ~~Facilities Support~~

~~XII. Economic Development~~

- ~~Local and Regional Economic Development Activities and Organizations~~
- ~~Chambers of Commerce~~
- ~~Workforce Training and Career Services~~
- ~~Neighborhood Business Districts~~

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TITLE FREE USE OF COMMUNITY CENTER REUSE SITES IN EXCHANGE FOR SERVICES THAT PRIMARILY BENEFIT SAN JOSÉ RESIDENTS	PAGE 2 of 11	POLICY NUMBER
	EFFECTIVE DATE	REVISED DATE
APPROVED BY		

TITLE FREE USE OF COMMUNITY CENTER REUSE SITES IN EXCHANGE FOR SERVICES THAT PRIMARILY BENEFIT SAN JOSÉ RESIDENTS	PAGE 3 of 11	POLICY NUMBER
	EFFECTIVE DATE	REVISED DATE
APPROVED BY		

Subject to the availability of facility space, the City Council hereby intends to support Service Providers without payment of facility use fees in exchange for community services that primarily benefit San José residents, in the following order of service priority:

First Priority

Service Provider uses that directly support the Vision, Mission, and Core Services of Parks, Recreation, and Neighborhood Services or are complementary or in addition to services provided by City Staff.

Second Priority

Service Provider uses that support the delivery of children and youth programs, health and human services, arts and cultural activities, and other areas.

See **Attachment I(a)** for a detailed description of community service uses.

TITLE FREE USE OF COMMUNITY CENTER REUSE SITES IN EXCHANGE FOR SERVICES THAT PRIMARILY BENEFIT SAN JOSÉ RESIDENTS	PAGE 4 of 11	POLICY NUMBER
	EFFECTIVE DATE	REVISED DATE
APPROVED BY		

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1. The City Council has designated the recreation facility a Community Center Reuse site.

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TITLE FREE USE OF COMMUNITY CENTER REUSE SITES IN EXCHANGE FOR SERVICES THAT PRIMARILY BENEFIT SAN JOSÉ RESIDENTS	PAGE 5 of 11	POLICY NUMBER
	EFFECTIVE DATE	REVISED DATE
APPROVED BY		

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TITLE FREE USE OF COMMUNITY CENTER REUSE SITES IN EXCHANGE FOR SERVICES THAT PRIMARILY BENEFIT SAN JOSÉ RESIDENTS	PAGE 6 of 11	POLICY NUMBER
	EFFECTIVE DATE	REVISED DATE
APPROVED BY		

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TITLE FREE USE OF COMMUNITY CENTER REUSE SITES IN EXCHANGE FOR SERVICES THAT PRIMARILY BENEFIT SAN JOSÉ RESIDENTS	PAGE 7 of 11	POLICY NUMBER
	EFFECTIVE DATE	REVISED DATE
APPROVED BY		

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TITLE FREE USE OF COMMUNITY CENTER REUSE SITES IN EXCHANGE FOR SERVICES THAT PRIMARILY BENEFIT SAN JOSÉ RESIDENTS	PAGE 8 of 11	POLICY NUMBER
	EFFECTIVE DATE	REVISED DATE
APPROVED BY		

The Community Center Reuse Property Management Team or such other Staff appointed by the Director will work to provide community input and participation in the evaluation of Service Provider's proposals.

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TITLE FREE USE OF COMMUNITY CENTER REUSE SITES IN EXCHANGE FOR SERVICES THAT PRIMARILY BENEFIT SAN JOSÉ RESIDENTS	PAGE 9 of 11	POLICY NUMBER
	EFFECTIVE DATE	REVISED DATE
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TITLE FREE USE OF COMMUNITY CENTER REUSE SITES IN EXCHANGE FOR SERVICES THAT PRIMARILY BENEFIT SAN JOSÉ RESIDENTS	PAGE 10 of 11	POLICY NUMBER
	EFFECTIVE DATE	REVISED DATE
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TITLE	PAGE	POLICY NUMBER
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FREE USE OF COMMUNITY CENTER REUSE SITES  
IN EXCHANGE FOR SERVICES THAT  
PRIMARILY BENEFIT SAN JOSÉ RESIDENTS

11 of 11

EFFECTIVE DATE

REVISED DATE

APPROVED BY



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Albert Balagso

**SUBJECT:** SEE BELOW

**DATE:** 05-24-10

Approved

Date

5-27-10

**COUNCIL DISTRICT:** Citywide  
**SNI AREA:** n/a

**SUBJECT: GRANT APPLICATIONS FOR PROPOSITION 84 – NATURE  
EDUCATION FACILITIES GRANT FUNDS**

## RECOMMENDATION

Adoption of a resolution authorizing the City Manager or designee to:

- a. Submit grant applications for the four projects identified in Table 2 of this memorandum in the total amount not to exceed \$25,500,000 under the Nature Education Facilities Grant Program administered by the Office of Grants and Local Services (OGALS) within the California State Department of Parks and Recreation (DPR);
- b. Accept any grants funds awarded to the City for the limited purpose of completing CEQA clearance, and negotiate and execute all necessary documents to implement the grant awards to complete CEQA clearance;
- c. Return to Council at a future date for authorization to negotiate and execute all necessary documents to implement the grant awards.

## OUTCOME

City Council approval of the recommendations in this memorandum will authorize the City Manager, or designee, to apply for Nature Education Facilities grant funding for the projects identified in Table 2 in this memorandum; accept any grants funds awarded to the City for the limited purpose of completing CEQA and to negotiate and execute all necessary documents to implement the grant awards to complete CEQA clearance; and return to Council at a later date for authorization to negotiate and execute all necessary documents to implement the grant awards.

## **EXECUTIVE SUMMARY**

Reimbursable grant funding of approximately \$93 million is being made available state-wide through the Parks and Nature Education Facilities chapter in Proposition 84. This competitive grant program will provide grant funds for the construction and renovation of nature education facilities, buildings, structures and exhibit galleries that preserve collections, inspire and educate the public. Applications for funding will be sorted into five tiers based on grant amount with a minimum request of \$25,000 to a maximum request of \$7 million for each project. Applications are due to the DPR on or before July 1, 2010.

Staff is recommending four projects to be submitted for this grant. These projects have been carefully selected based on the grant guidelines and incorporate partnership opportunities with local non-profit agencies that can provide or are currently providing nature education to the residents in the City of San José.

## **BACKGROUND**

On November 7, 2006, the voters approved the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84). Proposition 84 authorizes the state to sell \$5.4 billion in general obligation bonds for safe drinking water, water quality and supply, flood control, waterway and natural resource protection, water pollution and contamination control, water conservation efforts, and park improvements.

Chapter 8, Subsection 75063 (b) of Proposition 84 included \$93 million for competitive grants for nature education facilities. The intent of the grant program is to educate the public about the impacts of climate change and population growth which pose significant challenges to California's environmental resources. The Nature Education Facilities Program (Program) will award competitive grants for development projects that will increase public understanding and knowledge of California's resources.

On March 1, 2010, the Program application guide was released. The applications are due on July 1, 2010.

## **ANALYSIS**

The Program is a competitive grant program that will provide funds for the development, including construction and renovation, of nature education facilities, buildings, structures, and exhibit galleries that present collections to inspire and educate the public. The Program will provide funds to projects that include focused learning about the natural environment that inspires environmental stewardship and meet one of the following objectives:

- Combine the study of natural science with preservation, demonstration, and education programs that serve diverse populations

- Provide collections and programs related to the relationship of Native American cultures to the environment
- Conduct marine wildlife conservation research

The following are the eligible project types:

- Facilities and buildings
- Exhibit galleries and interpretive exhibit space including freestanding interpretive exhibits (indoor or outdoor)
- Outdoor structures used for nature education, e.g., arbors, ramadas, pavilions
- Marine research facilities and marine research equipment

The grant performance period began on July 1, 2009 and extends to June 30, 2017. A total of \$93 million in funds is available for the Program. The minimum grant amount is \$25,000 while the maximum grant amount is \$7,000,000 for each project. The Program has five funding tiers, based on the grant amount requested as shown in Table 1. However, the funds listed for each tier are estimates only and may change based on the quality and quantity of applications received in each tier. In addition, the entire amount of reserve funds will be dispersed across the tiers to ensure sufficient funds are available to award quality projects statewide.

<i>Tier</i>	<i>Grant Request Amount</i>	<i>Total Awards</i>
A	\$3,000,001 to \$7,000,000	\$ 42,000,000
B	\$1,000,001 to \$3,000,000	\$ 24,000,000
C	\$500,001 to \$1,000,000	\$ 10,000,000
D	\$100,001 to \$500,000	\$ 5,000,000
E	\$25,000 to \$100,000	\$ 2,000,000
	Reserve Funds	\$ 10,000,000
	<b>Total Funds Available</b>	<b>\$ 93,000,000</b>

OGALS will assess the relative value of the wide range of project types eligible under this program. Applications will be reviewed within their respective tiers to allow projects similar in size and scope to be scored competitively against each other.

Only projects that will provide nature education programming and fit the grant guidelines were selected for recommendation in this memorandum. Staff recommends submission of four proposed projects up to a total amount of approximately \$25.5 million as set forth below in Table 2. The grant amounts requested for each project could change as staff prepares the grant application, but the total requested will be within the \$25.5 million cap.

<b>Table 2</b>			
<i>No.</i>	<i>Project</i>	<i>Description</i>	<i>Estimated Amount (\$)</i>
1	Happy Hollow Park and Zoo Amphitheater and Bat Exhibit	Construct a new amphitheater and a bat exhibit	7,000,000
2	Alum Rock Park Log Cabin and Youth Science Institute (YSI) Building Improvements	Renovation of the Log Cabin and improvements to the YSI Building	4,500,000
3	Friends of Guadalupe Gardens Building Improvements	Expand the existing building as per master plan	7,000,000
4	Family Camp Nature Center	Construct a new multipurpose building to replace existing dining hall	7,000,000
<b>Total</b>			<b>\$25,500,000</b>

**Commitments**

In the event that DPR awards grant funding for any of the four projects listed above, the City will be first required to enter into a CEQA Pending contract. This contract is for the sole purpose of completing CEQA and monies under this contract will not exceed 10% of the grant amount. The City is obligated to pay any additional monies required to complete CEQA compliance. If the City does not complete CEQA compliance within twelve months from the grant award announcement, DPR may rescind the grant award.

Once CEQA compliance is cleared the City will need to enter into a second written grant agreement that will commit the City to the following for each of the awarded Projects as shown in Table 3 if the City desires to continue to receive and implement the grant. Staff will come to City Council for consideration of approval of the grant agreements for construction at that time.

<b>Table 3</b>	
<i>Commitment</i>	<i>Approach for Addressing</i>
City shall execute a grant agreement with the State by 06/30/12.	Staff will take all necessary steps to execute the grant agreement before the deadline.
City is responsible for any increase in project cost.	City will address funding shortfall, if any, through local funding and other grant sources. Staff will notify the City Council if additional funding beyond the allocated budget will be required due to unforeseen circumstances.
City will advance its own funds to complete the project.	This is consistent with most grant programs. Funds to advance the cost of the project will be appropriated through

<b>Table 3</b>	
<b><i>Commitment</i></b>	<b><i>Approach for Addressing</i></b>
	the annual budget process or through a separate City Council memorandum. The City will request reimbursements for expenses incurred on a quarterly basis, or sooner if necessary, to replenish the City funds that advance the money.
The City shall have sufficient funds to operate and maintain the project.	The City will not incur any operations and maintenance costs associated with three of the four projects. The fourth project, Family Camp Nature Center operational costs will be part of the Family Camp overall annual budget and it is anticipated that these costs will be 100% offset by revenues.
City must continue the use of the project(s) for at least 30 years or will have to return the grant funds and pay additional penalties	The City owns the land for the projects except for the Family Camp Nature Center and intends to operate these facilities for at least 30 years. Family Camp is leased from the Department of Forestry and staff is working to renew the lease with a 20 year option with a subsequent option to renew for additional 10 years.
Comply with CEQA	This requirement is consistent with City Policy and Procedures, and the City shall comply with this requirement.
Compliance with the funding deadlines (NOTE: Project must be completed by the deadline in order to receive full funds awarded.)	All projects need to be constructed by December 2016 and final reimbursement packages submitted by March 31, 2017. The City is well positioned to complete any grant funded project within the deadline.
Record a Memorandum of Unrecorded Grant Agreement (MUGA) i.e. record a notice on the title of the Project property owned by the City stating that the property use has restrictions due to the grant contract with DPR	The City shall comply with this requirement by recording a notice on the title for parcels owned by the City on which the Project will be built. A sample MUGA is shown in Attachment A.

As part of the grant application process, the City is required to adopt a resolution (see Attachment B) in substantially the same form as the sample resolution provided in the grant guidelines and to make certain commitments, assurances, and certifications described in this memorandum. The resolution will be submitted along with the applications to OGALS.

## POLICY ALTERNATIVES

### *Alternative #1: Do Nothing*

**Pros:** Does not require staff time in the preparation of an application package.

**Cons:** Inconsistent with City Council's approach of seeking grant funds to develop projects when feasible. The City loses an opportunity to seek grant funds of up to \$25.5 million for the identified projects.

**Reason for not recommending:** The identified projects are well suited for this funding source and not pursuing funds would be inconsistent with the Council's preferred approach.

## 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 action meets criterion 1. This memorandum will be posted on the City Council Agenda website for the June 15, 2010 Council agenda. City Staff will continue to do outreach efforts in support of these projects.

## COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the City Manager's Budget Office, the Department of Public Works, Finance Department, and the Department of Building, Planning and Code Enforcement.

## FISCAL/POLICY ALIGNMENT

All projects are consistent with the Council-approved Budget Strategy for Economic Recovery. If selected for funding, the projects will spur construction spending in our local economy. These projects align with long-term Greenprint priorities as well as short-term sustainability priorities.

**COST SUMMARY/IMPLICATIONS**

As with many other grant programs, the City will be required to provide upfront funding for each awarded project and seek reimbursement for eligible costs from the State as funds are expended and at the completion of the project. Staff will present City Council with a funding strategy if awarded.

The City will not incur any increased operations and maintenance costs associated with three of the four projects. The fourth project, Family Camp Nature Center operational costs will be part of the Family Camp overall annual budget and it is anticipated that these costs will be 100% offset by revenues.

**BUDGET REFERENCE**

Not applicable

**CEQA**

Statutorily Exempt, File No. PP10-066, CEQA Guidelines Section 15262, Feasibility and Planning Studies

/s/

ALBERT BALAGSO  
Director of Parks, Recreation and  
Neighborhood Services

For questions please contact Matt Cano, Acting Deputy Director at 408-535-3580.

Attachment A: Sample Memorandum of Unrecorded Agreement (MUGA)  
Attachment B: Sample Resolution

**Attachment A: Sample of Memorandum of Unrecorded Grant Agreement (MUGA)**

Recording requested by, and when recorded)  
 return to: State of California )  
           Department of Parks and Recreation )  
           Grants and Local Services Division )  
           1416 9th Street, Room 918 )  
           Sacramento, CA 95814 )  
           Space above this line for Recorder's use

County:  
APN:

***Memorandum Of Unrecorded Grant Agreement***

This Memorandum of Unrecorded Grant Agreement (Memorandum), dated as of \_\_\_\_\_ (current date), is recorded to provide notice of an agreement between the State of California, acting by and through the Department of Parks and Recreation ("DPR"), and the CITY OF SAN JOSE.

RECITALS

- A. On or about \_\_\_\_\_ (date grant contract was signed by DPR), DPR and the CITY OF SAN JOSE entered into a certain Grant Agreement No. \_\_\_\_\_ (grant contract number), pursuant to which DPR granted to CITY OF SAN JOSE certain funds for the acquisition or improvement of certain real property, more particularly described in attached Exhibit A (legal description of the land) and incorporated by reference (the "Real Property").
- B. Under the terms of the Grant Agreement, DPR reserved certain rights with respect to the Real Property acquired or improved with the grant funds.
- C. CITY OF SAN JOSE desires to execute this Memorandum to provide constructive notice to all third parties of certain rights reserved by DPR under the Grant Agreement.

NOTICE

- The Real Property (including any portion of it or any interest in it) may not be sold or transferred without the written approval of the State of California, acting by and through the Department of Parks and Recreation (DPR), or its successor, provided that such approval shall not be unreasonably withheld as long as the purposes for which the Grant was awarded are maintained.
- For additional terms and conditions of the Grant, reference should be made to the Grant Agreement which is on file with the DPR located at: Office of Grants and Local Services (OGALS)  
 1416 9th Street, Room 918  
 Sacramento CA 95814

OGALS:		GRANTEE:	
By:		By:	
Signature	Date	Signature	Date
Printed Name and Title		Printed Name and Title (AUTHORIZED REPRESENTATIVE or designee)	

RESOLUTION OF THE  
SAN JOSE CITY COUNCIL OF SAN JOSE  
Approving the Applications for  
NATURE EDUCATION FACILITY PROGRAM FUNDS  
*Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection  
Bond Act of 2006*

WHEREAS, the State Department of Parks and Recreation has been delegated the responsibility by the Legislature of the State of California for the administration of the Nature Education Facilities Program, setting up necessary procedures governing the Application; and

WHEREAS, said procedures established by the State Department of Parks and Recreation require the City of San José to certify by resolution the approval of application(s) before submission of said application(s) to the State; and

WHEREAS, the City of San José will consider entering into a contract with the State of California to complete the PROJECT (S) IN ACCORDANCE WITH STATE AND LOCAL LAWS;

NOW, THEREFORE, BE IT RESOLVED that the SAN JOSE CITY COUNCIL hereby:  
Approves the filing of applications for the (List of projects) and

1. Certifies that said City of San José has or will have available, prior to commencement of any work on the project(s) included in this application, the sufficient funds to complete the project should this grant be awarded; and
2. Certifies that the City of San José has or will have sufficient funds to operate and maintain the project(s); and
3. Certifies that the City of San José has reviewed, understands, and agrees to the General Provisions contained in the contract shown in the Grant Administration Guide; and
4. Certifies that these project(s) are consistent with the applicable city or county, or appropriate planning document, as the case may be; and
5. Delegates the authority to CITY MANAGER or DESIGNEE to conduct all negotiations and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the project; and
6. Return to City Council once CEQA is completed for each project for Council consideration of approving grant agreements to implement the grant awards for construction of the projects.

7. Agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines.

Approved and adopted the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

I, the undersigned, hereby certify that the foregoing Resolution Number \_\_\_\_\_ was duly adopted by the SAN JOSE CITY COUNCIL following a roll call vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
(Clerk or Board Secretary)



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** John Stufflebean

**SUBJECT:** RECYCLED WATER INDUSTRIAL  
USE DISCOUNT FOR 2010-2011

**DATE:** 05-24-10

Approved

Date

6-1-10

**COUNCIL DISTRICTS:** City-wide

## RECOMMENDATION

Adopt a resolution setting the wholesale discount for recycled water used for industrial and agricultural purposes at \$325 per acre foot compared to Santa Clara Valley Water District rate for untreated water, effectively increasing the rate for industrial and agricultural recycled water effective July 1, 2010 from \$175 per acre-foot to \$195 per acre foot.

## OUTCOME

Approval of this rate resolution will allow South Bay Water Recycling (SBWR) to reduce the discount offered to industrial and agricultural customers of recycled water by \$20 per acre foot (AF) from \$345/AF to \$325/AF when compared to the wholesale rate charged by the Santa Clara Valley Water District for untreated water, raising the effective industrial rate from \$175/AF to \$195/AF. Based on current usage, this will increase revenues from the sale of recycled water by approximately \$50,000 per year in 2010-2011.

## BACKGROUND

The City is the administering agency for the San José/Santa Clara Water Pollution Control Plant (Plant) and SBWR, which provides approximately 10,000 AF per year of recycled water to water retailers in San José, Santa Clara, and Milpitas. On March 4, 1997, San José City Council adopted resolution 67182 setting the rate for recycled water used for industrial and agricultural use at \$20/AF, representing a discount of \$220/AF as compared to the untreated water rate set by the Santa Clara Valley Water District (SCVWD) which at that time was \$240/AF. This discount was designed to encourage industrial and agricultural use of recycled water by making it significantly less costly than potable water.

Year	SCVWD* Untreated Water Rate	SBWR Irrigation Discount	SBWR Irrigation Rate	SBWR Industrial Discount	SBWR Industrial Rate
1997-1998	\$240	\$60	\$180	\$220	\$20
2003-2004	\$405	\$225	\$180	\$385	\$20
2004-2005	\$405	\$165	\$240	\$365	\$40
2007-2008	\$520	\$165	\$355	\$365	\$155
2008-2009	\$520	\$145	\$375	\$345	\$175
2009-2010	\$520	\$125	\$395	\$345	\$175
<b>2010-2011**</b>	<b>\$520</b>	<b>\$105</b>	<b>\$415</b>	<b>\$325</b>	<b>\$195</b>

\*All discounts and rates in dollars per acre-foot (\$/AF)

\*\*Proposed

As shown in the table above, over the next seven years the SCVWD untreated water charge rose to \$405/AF, increasing the resultant discount for industrial and agricultural use to \$385/AF. On June 15, 2004, San José City Council adopted resolution 72167 fixing the discount offered for industrial and agricultural use at \$365/AF compared to the SCVWD untreated water charge for a resultant rate at that time of \$40/AF. By 2008 SCVWD water rates increased to \$520/AF and on June 17, 2008 the Council adopted Resolution No. 74448 further reducing the industrial and agricultural discount to \$345/AF so that the resultant industrial and agricultural rate was \$175/AF. The same resolution implemented a three-year phased reduction of the discount offered for recycled water used for irrigation purposes, from \$165/AF during 2007-2008 to \$105/AF beginning on July 1, 2010, raising the rate for irrigation water for the 2010-2011 fiscal year to \$415/AF. This proposed action would again reduce the discount for recycled water used for industrial and agricultural purposes by \$20/AF beginning July 1, 2010 effectively raising the industrial/agricultural rate for 2010-2011 to \$195/AF.

**ANALYSIS**

Recycled water has been widely used in the SBWR service area for over ten years, with more than 600 customers using in excess of 10,000 AF per year annually (over 9 million gallons per day). In view of the growing acceptance of recycled water, the current discount rate appears to be greater than that needed to encourage recycled water use. The reduction in the discount is necessary to bring the revenue from the sale of recycled water closer to the service delivery cost. It is anticipated that this rate structure will continue to provide sufficient incentive for customers to use recycled water as well as allowing the SBWR program to reach cost recovery. For example, in the service area of the San José Municipal Water System (Muni), the proposed industrial rate for recycled water, including retailer markup, will still represent a savings of over 50% when compared with the cost of potable water.

**POLICY ALTERNATIVES**

**Alternative #1:** Do not change the discount for industrial and agricultural use of recycled water.

**Pros:** Industrial and agricultural customer recycled water bills will not increase.

**Cons:** The tributary agencies of the San José/Santa Clara Water Pollution Control Plant will

continue to subsidize the use of recycled water by industrial and agricultural customers.

**Reason for not recommending:** The City and Plant tributary agencies have directed staff to recover an increasingly greater share of the cost of operating South Bay Water Recycling so that additional funds can be made available for other Plant improvements.

### **PUBLIC OUTREACH/INTREST**

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater.  
**(Required: Website Posting)**
- ✓ **Criteria 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)**
- Criteria 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 issue was discussed with the South Bay Water Recycling retailers at their May meeting.

### **COORDINATION**

This memo was coordinated with the City Attorney's Office, and the City Manager's Budget Office. This item is scheduled to be heard by the Treatment Plant Advisory Committee (TPAC) on June 10, 2010.

### **COST SUMMARY/IMPLICATIONS**

A \$20/AF decrease in the discount provided to industrial and agricultural customers with an effective date of July 1, 2010, is estimated to generate \$50,000 in additional revenue to the Treatment Plant Operating Fund in 2010-2011. The resultant rate increases for 2010-2011 is consistent with Council Policy that programs be self-supporting whenever possible. The recommended rate increase is reflected in the 2010-2011 Proposed Operating Budget.

### **BUDGET REFERENCE**

Not applicable.

HONORABLE MAYOR AND CITY COUNCIL

05-24-10

**Subject: Recycled Water Industrial Use Discount For 2010-2011**

Page 4

**CEQA**

Not a Project, File No. PP10-067 (a), Increases or Adjustments to Fees, Rates & Fares.

/s/

JOHN STUFFLEBEAN

Director, Environmental Services

For questions please contact Mansour Nasser, Deputy Director, at (408) 277-4218.



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** John Stufflebean

**SUBJECT:** SEE BELOW

**DATE:** 05-24-10

Approved

Date

6-2-10

**COUNCIL DISTRICTS:** City-wide

**SUBJECT: GRANT AGREEMENT WITH RECLAMATION FOR REIMBURSEMENT OF SOUTH BAY WATER RECYCLING PHASE 1B COSTS**

## RECOMMENDATION

Adopt a resolution authorizing the City Manager to negotiate and execute a Grant Agreement with the U.S. Bureau of Reclamation (Reclamation) to receive up to \$260,000 upon execution of the agreement, and up to an additional \$20.44 million subject to appropriation of federal funds, in reimbursement for up to twenty-five percent (25%) of eligible costs incurred in the Phase 1B expansion of the South Bay Water Recycling facilities.

## OUTCOME

Approval of the proposed Grant Agreement with Reclamation will allow the City of San José as administering agency of the San José /Santa Clara Water Pollution Control Plant (Plant) to receive the maximum authorized federal share of in eligible local funds previously expended (\$82.8 million) on South Bay Water Recycling (SBWR) Phase 1B costs, or approximately \$20.7 million, if all federal funding for the Agreement is appropriated.

## BACKGROUND

In September 1995, the City and Reclamation executed Cooperative Agreement 5-FG-20-12650 allowing Reclamation to reimburse the City up to \$35 million of the \$140 million cost of South Bay Water Recycling—Phase 1A, a project to divert up to 15 million gallons per day of Plant effluent for irrigation and industrial use. Federal reimbursement of up to 25% of eligible project costs was authorized by Section 1607, “San José Area Reclamation and Reuse Program of Title XVI of the federal “Reclamation Projects Authorization and Adjustment Act of 1992” (PL102-575). Originally funded by a \$1.75 million appropriation, the Agreement was modified annually through 2009 as Congress appropriated between \$0.4 and \$3.8 million for a total reimbursement

of \$31.65 million. In April 2010 Council approved a new Cooperative Agreement R10AC20R43, which included an additional \$3.35 million in federal reimbursement for new projects (over and above the 25% authorized limit) in lieu of reimbursement of remaining Phase 1A costs.

In June 2000, the Council approved an additional \$100 million for the "Revised South Bay Action Plan," with \$82.5 million included in the 2001-2005 Capital Budget for the Phase 1B project to expand the SBWR system and increase its reliability. Since these projects were also authorized under PL102-575, the City sought reimbursement for the 25% federal share of eligible Phase 1B costs through the Title XVI program. However, since Congress had not yet appropriated sufficient funds to reimburse the City for Phase 1A costs, Reclamation declined to modify Agreement 5-FG-20-12650 to include Phase 1B costs and refused to serve as lead agency to certify compliance of Phase 1B projects with the National Environmental Policy Act (NEPA), a prerequisite for receiving federal funds.

Nevertheless, between 2000 and 2009 the City expended \$82,855,553 on Phase 1B facilities including more than 40 miles of recycled water pipeline, two reservoirs and various reliability improvements. The Phase 1B projects are listed below: projects:

<u><b>Project</b></u>	<u><b>Cost</b></u>
SBWR Phase 1B Implementation	\$9.4 million
Santa Clara Pipelines	\$7.4 million
Milpitas Pipelines	\$10.7 million
Silver Creek Pipeline	\$21.0 million
Zone 3 Reservoir and Pipelines	\$21.3 million
Remote Pump Stations Reliability Improvements	\$5.2 million
Transmission Pump Station Reliability Improvements	\$0.6 million
SJ10 Recycled Water Main	\$1.4 million
Coleman Avenue Connector	\$0.7 million
San José -Santa Clara Intertie	\$2.2 million
<u>Recycled Water Retrofits</u>	<u>\$3.0 million</u>
<b>Total Phase 1B Project Costs</b>	<b>\$82.9 million</b>

After further discussion with Reclamation Mid-Pacific Region Title XVI Program staff, on January 28, 2009, the City formally asked Reclamation to review the Phase 1B environmental documentation and to make a determination about its eligibility for federal funding. On March 19, 2009 Reclamation issued a Categorical Exclusion certifying that "providing Federal funding for these [projects] would not create any impacts" thereby allowing the City to seek federal reimbursement for Phase 1B costs. On February 11, 2010 the City Manager submitted Form 424 "Application for Federal Assistance" to the Reclamation and subsequently provided additional details validating the City's financial accounting system and verifying the eligibility of Phase 1B project costs.

### ANALYSIS

In response to the City's request for federal assistance, Reclamation has agreed to obligate the Congressional FY10 appropriation of \$260,000 in a new Grant Agreement that will allow them to reimburse the City for the federal share of Phase 1B costs, up to \$20.7 million. In doing so, Reclamation confirms the importance of recycled water as both a sustainable water supply and a means of protecting the south Bay environment.

After executing the proposed Grant Agreement, the City will be able to invoice Reclamation for reimbursement of the obligated amount (\$260,000) and to seek further Congressional appropriation on an annual basis, up to a total of \$20.7 million. Under the Plant Master Agreements for Wastewater Treatment, all grant amounts received will be credited to the Treatment Plant Tributary Agencies for capital projects on the basis of the agencies' participation in the Phase 1B program for which the grant is being received. In lieu of appropriating additional Phase 1B reimbursement funds, Reclamation may offer to provide additional federal funding for new recycled water projects - up to 100% of authorized project costs -if the City agrees to accept the additional funds in lieu of reimbursement for past project costs.

### EVALUATION AND FOLLOWUP

Having prepared and organized the Phase 1B invoices by project, staff will monitor the availability of reimbursement funds to ensure that invoices are submitted in a timely manner and the City receives the maximum amount to which it is entitled. In addition, staff will be meeting to determine which new SBWR extensions or system improvements should be proposed for construction in advance of the announcement of a new Reclamation Water Reuse Program.

### POLICY ALTERNATIVES

**Alternative #1:** Do not execute a Grant Agreement for reimbursement of Phase 1B expenditures.

**Pros:** No effort will be made to seek additional Congressional appropriation.

**Cons:** The City will lose up to \$20.7 million in reimbursement funds that can be used to pay for future capital projects.

**Reason for not recommending:** Federal funds are needed to help pay for renovation of the San José /Santa Clara Water Pollution Control Plant and expand the South Bay Water Recycling system which can increase revenues by reaching additional customers.

### PUBLIC OUTREACH



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

- ✓ **Criteria 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)**
- Criteria 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)**

During 1998 and 1999 a Citizens' Advisory Committee including representatives of the Sierra Club, the League of Women Voters, the Silicon Valley Chamber of Commerce and other stakeholders met regularly to evaluate extensions to the recycled water systems. Also, in 2000 the cities of San José, Santa Clara, and Milpitas held public meetings on the use of recycled water. In addition, staff members from the cities of San José (San José Municipal Water), Santa Clara and Milpitas, and San José Water Company have attended monthly meetings to review South Bay Water Recycling planning and operations.

### **COORDINATION**

This memo was coordinated with Planning, the City Attorney's Office, and the City Manager's Budget Office. This item is scheduled to be heard by the Treatment Plant Advisory Committee (TPAC) on June 10, 2010.

### **COST IMPLICATIONS**

Once the proposed Grant Agreement is executed and the City provides Reclamation with \$1.04 million in reimbursable Phase 1B invoices the Plant can receive up to \$260,000 in obligated funds. The remaining funds, up to \$20.7 million, can be obtained by submitting eligible invoices in future years as Congress earmarks additional funds to the Title XVI program. Alternatively, if Reclamation makes additional funds available through a process similar to its 2009 American Recovery and Reinvestment Act (ARRA) Water Reclamation and Reuse Program, the City may receive up to 100% federal funding to construct new recycled water facilities in lieu of receiving equivalent reimbursement for Phase 1B costs. Budget appropriation actions to recognize the \$20.7 million grant will be brought forward at a later date as funds are received.

### **BUDGET REFERENCE**

Not applicable.

HONORABLE MAYOR AND CITY COUNCIL

05-24-10

**Subject: Grant Agreement with Reclamation For Reimbursement of SBWR Phase 1B Costs**

Page 5

**CEQA**

Final EIR for the *San Jose Nonpotable Reclamation Project*, Resolution No. 64667 (File No. PP-91-090; SCH# 1992013071) and Addenda thereto and Negative Declaration for *South Bay Water Recycling Program-Phase 1B*, File No. PP00-072.

**NEPA**

Final Environmental Assessment/Finding of No Significant Impact, for *Revised South Bay Water Recycling Program Phase 1B* (FONSI #97-03-MP) and Categorical Exclusion for South Bay Water Recycling Phase 1B (March 19, 2009).

/s/

JOHN STUFFLEBEAN

Director, Environmental Services

For questions please contact Mansour Nasser, Deputy Director, at (408) 277-4218.



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** John Stufflebean  
Katy Allen

**SUBJECT:** SEE BELOW

**DATE:** 05-24-10

Approved

Date

6-1-10

**COUNCIL DISTRICT:** City-Wide

**SUBJECT: REPORT ON BIDS AND AWARD OF CONTRACT TO THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER, BLOCKA CONSTRUCTION FOR THE SAN JOSÉ/SANTA CLARA WATER POLLUTION CONTROL PLANT, 2009-2010 CAPITAL IMPROVEMENT PROGRAM, MOTOR CONTROL CENTER PHASE II REPLACEMENT PROJECT**

## RECOMMENDATION

Report on bids and award of contract for the Motor Control Center Phase II Replacement Project to the lowest responsive and responsible bidder, Blocka Construction, in the amount of \$1,020,000; and approval of a budget contingency of 15% contract amount (\$153,000).

## OUTCOME

Approval of this construction contract will provide for the replacement of four aging motor control centers (MCC) at the Plant and improve the Plant's electrical reliability. Approval of a 15% contingency will provide funding for any unforeseen conditions and contingent work that is required for the satisfactory completion of the project as contemplated by the construction contract.

## BACKGROUND

In 2004, a study of the Plant's electrical system was completed. The study recommends that several MCC's be replaced. An MCC is an assembly of electrical components to control and distribute power to motors and other electrical devices. The Plant currently has a total of 42 MCCs. 22 of these MCC are programmed to be replaced over the next five to ten years.

The MCC Phase II Replacement Project will replace 4 MCC's that control cooling tower pumps, sump pumps, exhaust fans, lighting panels, and air handlers. The old design and deterioration of the four MCCs have made it necessary to replace them in order to increase the reliability of the

05-24-2010

**Subject: Award of Contract for MCC Phase II Replacement Project**

Page 2

Plant electrical system. This project is part of a series of projects aimed at upgrading the Plant's electrical reliability

### ANALYSIS

The project was advertised for bid and a total of five bids were received and opened on May 6, 2010 with the following results:

<u>Contractor</u>	<u>City</u>	<u>Bid Amount</u>	<u>Variance Amount</u>	<u>Over/(Under) Percent</u>
Anderson Pacific	Santa Clara	\$1,369,000	\$77,085	6%
<b>Engineers Estimate *</b>		<b>\$1,291,915</b>		
Rosendin Electric	San José	\$1,115,000	\$176,915	(14%)
Blocka Construction	Fremont	\$1,020,000	\$271,915	(21%)
Contra Costa Electric	Martinez	\$987,000	\$304,915	(24%)
Monterey Mechanical	Oakland	\$974,000	\$317,915	(25%)

\* The original Engineers Estimate was \$2,194,305. During the bidding process an arithmetic error was found in the calculation for Engineer's Estimate for the project and has been revised since.

The first and second low bids submitted by Monterey Mechanical and Contra Costa Electric did not include an executed copy of Addendum No. 1 to the Plans and Specifications for the project. As a result, staff determined that the bids were non-responsive. The third low bid submitted by Blocka Construction was determined to be in order and is 14% below the Engineer's Estimate. As such, staff determined that Blocka Construction staff is the lowest responsive and responsible bidder.

The median and average bid amounts are 21 percent and 15 percent lower then the Engineer's Estimate, respectively. Considering the current steep competition in the construction industry in the Bay Area, staff considers the bid proposal submitted by Blocka Construction a reasonable price for the work involved.

A 15% contingency is appropriate for this project and consistent with council policy since this is most similar to a remodel project. This 15% contingency is expected to cover for any unanticipated tasks necessary for proper completion of this work.

### EVALUATION AND FOLLOW-UP

The project is currently within budget with a projected completion of October 2012. Should additional changes to the project be required due to change orders executed beyond the appropriated contingency, staff will bring forward those changes for approval by Council.

### POLICY ALTERNATIVES

**Alternative # 1:** Reject all bids and drop the project.

**Pros:** Ability to fund alternative capital projects.

**Cons:** Continued use of existing degraded electrical distribution system poses a great risk to reliable operation of the plant.

**Reason for not recommending:** If this project is not implemented, the Plant's electrical distribution system is susceptible to failure which could lead to the Plant's inability to distribute power and treat wastewater, causing severe damage to electrical distribution system and equipment from flooding, and potential discharge of untreated wastewater into the bay.

**Alternative # 2:** Reject all bids and have staff complete this project.

**Pros:** Plant's staff is familiar with the equipment and Plant conditions, and could provide a design and installation more efficiently.

**Cons:** The Plant's staff time will be substantially increased to design and install the MCCs.

**Reason for not recommending:** Existing Plant staffing cannot support the additional design and construction effort required to procure and install the MCCs.

### PUBLIC OUTREACH / INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater; **(Required: Website Posting)**
- Criteria 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)**
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This action meets criteria 1 above. A Notice-to-Contractors inviting qualified firms to submit bids was published by the City Clerk's Office in the San José Post Record, and by the City's Project Manager on the Environmental Services Department website and Public Works Department Bid Hotline. Bid documents were also sent to the Builder's Exchanges of the surrounding Bay area cities and counties. This memo will be posted on the City's website for the June 15 Council Agenda

### COORDINATION

This project and memorandum have been coordinated with the City Manager's Budget Office, and the City Attorney's Office. This item is scheduled to be heard at the June 10, Treatment Plant Advisory Committee (TPAC) meeting.

**FISCAL/POLICY ALIGNMENT**

This project is consistent with the Council approved Budget Strategy to focus on rehabilitating aging Plant infrastructure, improve efficiency, and reduce operating costs. This project is also consistent with the budget strategy principle of focusing on protecting our vital core services.

**COST SUMMARY/IMPLICATIONS**

1.	AMOUNT OF RECOMMENDATION:	<b>\$1,020,000</b>
2.	COST OF PROJECT	
	Project Delivery*	\$ 260,000
	Construction	\$ 1,020,000
	Contingency	<u>\$153,000</u>
	<b>TOTAL PROJECT COSTS</b>	<b>\$ 1,433,000</b>
	Prior Year Expenditures	\$0
	<b>REMAINING PROJECT COSTS</b>	<b>\$ 1,433,000</b>

\*Includes consultant services costs of \$62,969

3. SOURCE OF FUNDING: 512 – San José-Santa Clara Treatment Plant Capital Fund.
4. OPERATING COST: Existing funds are available for this project. No additional appropriation action is required. The proposed operating and maintenance costs of this project have been reviewed and it has been determined that the project will have no impact to the Treatment Plant Operations and Maintenance budget.

**BUDGET REFERENCE**

The table below identifies the fund and appropriations proposed to fund the contract recommended as part of this memo and remaining project costs, including project delivery, construction, and contingency costs.

HONORABLE MAYOR AND CITY COUNCIL

05-24-2010

Subject: Award of Contract for MCC Phase II Replacement Project

Page 5

Fund #	Appn #	Appn. Name	RC #	Total Appn.	Amt. for Contract	Adopted 2009-2010 Capital Budget Page	Last Budget Action (Date, Ord. No.)
				<b>\$1,433,000</b>	<b>\$1,020,000</b>		
512	4341	Plant Electrical Reliability	158365	\$20,900,000	<b>\$1,020,000</b>	V-147	6-23-2009, Ord. No. 28593
<b>Total Current Funding Available</b>				<b>\$20,900,000</b>	<b>\$1,020,000</b>		

**CEQA**

Exempt, PP04-03-079

/s/

KATY ALLEN

Director, Public Works Department

/s/

JOHN STUFFLEBEAN

Director, Environmental Services

For questions, please contact Bhavani Yerrapotu, Division Manager, Environmental Services, at 945-5321.



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** John Stufflebean  
Katy Allen

**SUBJECT:** SEE BELOW

**DATE:** 05-24-10

Approved

Date

6-1-10

**COUNCIL DISTRICT:** City-Wide

**SUBJECT: REPORT ON BIDS AND AWARD OF CONTRACT TO THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER, BLOCKA CONSTRUCTION FOR THE SAN JOSÉ/SANTA CLARA WATER POLLUTION CONTROL PLANT, 2009-2010 CAPITAL IMPROVEMENT PROGRAM, MOTOR CONTROL CENTER PHASE II REPLACEMENT PROJECT**

## RECOMMENDATION

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## OUTCOME

Approval of this construction contract will provide for the replacement of four aging motor control centers (MCC) at the Plant and improve the Plant's electrical reliability. Approval of a 15% contingency will provide funding for any unforeseen conditions and contingent work that is required for the satisfactory completion of the project as contemplated by the construction contract.

## BACKGROUND

In 2004, a study of the Plant's electrical system was completed. The study recommends that several MCC's be replaced. An MCC is an assembly of electrical components to control and distribute power to motors and other electrical devices. The Plant currently has a total of 42 MCCs. 22 of these MCC are programmed to be replaced over the next five to ten years.

The MCC Phase II Replacement Project will replace 4 MCC's that control cooling tower pumps, sump pumps, exhaust fans, lighting panels, and air handlers. The old design and deterioration of the four MCCs have made it necessary to replace them in order to increase the reliability of the

05-24-2010

**Subject: Award of Contract for MCC Phase II Replacement Project**

Page 2

Plant electrical system. This project is part of a series of projects aimed at upgrading the Plant's electrical reliability

### ANALYSIS

The project was advertised for bid and a total of five bids were received and opened on May 6, 2010 with the following results:

<u>Contractor</u>	<u>City</u>	<u>Bid Amount</u>	<u>Variance Amount</u>	<u>Over/(Under) Percent</u>
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\* The original Engineers Estimate was \$2,194,305. During the bidding process an arithmetic error was found in the calculation for Engineer's Estimate for the project and has been revised since.

The first and second low bids submitted by Monterey Mechanical and Contra Costa Electric did not include an executed copy of Addendum No. 1 to the Plans and Specifications for the project. As a result, staff determined that the bids were non-responsive. The third low bid submitted by Blocka Construction was determined to be in order and is 14% below the Engineer's Estimate. As such, staff determined that Blocka Construction staff is the lowest responsive and responsible bidder.

The median and average bid amounts are 21 percent and 15 percent lower then the Engineer's Estimate, respectively. Considering the current steep competition in the construction industry in the Bay Area, staff considers the bid proposal submitted by Blocka Construction a reasonable price for the work involved.

A 15% contingency is appropriate for this project and consistent with council policy since this is most similar to a remodel project. This 15% contingency is expected to cover for any unanticipated tasks necessary for proper completion of this work.

### EVALUATION AND FOLLOW-UP

The project is currently within budget with a projected completion of October 2012. Should additional changes to the project be required due to change orders executed beyond the appropriated contingency, staff will bring forward those changes for approval by Council.

### POLICY ALTERNATIVES

*Alternative # 1:* Reject all bids and drop the project.

**Pros:** Ability to fund alternative capital projects.

**Cons:** Continued use of existing degraded electrical distribution system poses a great risk to reliable operation of the plant.

**Reason for not recommending:** If this project is not implemented, the Plant's electrical distribution system is susceptible to failure which could lead to the Plant's inability to distribute power and treat wastewater, causing severe damage to electrical distribution system and equipment from flooding, and potential discharge of untreated wastewater into the bay.

*Alternative # 2:* Reject all bids and have staff complete this project.

**Pros:** Plant's staff is familiar with the equipment and Plant conditions, and could provide a design and installation more efficiently.

**Cons:** The Plant's staff time will be substantially increased to design and install the MCCs.

**Reason for not recommending:** Existing Plant staffing cannot support the additional design and construction effort required to procure and install the MCCs.

### PUBLIC OUTREACH / INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater; **(Required: Website Posting)**
- Criteria 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)**
- Criteria 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 action meets criteria 1 above. A Notice-to-Contractors inviting qualified firms to submit bids was published by the City Clerk's Office in the San José Post Record, and by the City's Project Manager on the Environmental Services Department website and Public Works Department Bid Hotline. Bid documents were also sent to the Builder's Exchanges of the surrounding Bay area cities and counties. This memo will be posted on the City's website for the June 15 Council Agenda

### COORDINATION

This project and memorandum have been coordinated with the City Manager's Budget Office, and the City Attorney's Office. This item is scheduled to be heard at the June 10, Treatment Plant Advisory Committee (TPAC) meeting.

**FISCAL/POLICY ALIGNMENT**

This project is consistent with the Council approved Budget Strategy to focus on rehabilitating aging Plant infrastructure, improve efficiency, and reduce operating costs. This project is also consistent with the budget strategy principle of focusing on protecting our vital core services.

**COST SUMMARY/IMPLICATIONS**

1.	AMOUNT OF RECOMMENDATION:	<b>\$1,020,000</b>
2.	COST OF PROJECT	
	Project Delivery*	\$ 260,000
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	Contingency	<u>\$153,000</u>
	<b>TOTAL PROJECT COSTS</b>	<b>\$ 1,433,000</b>
	Prior Year Expenditures	\$0
	<b>REMAINING PROJECT COSTS</b>	<b>\$ 1,433,000</b>

\*Includes consultant services costs of \$62,969

3. SOURCE OF FUNDING: 512 – San José-Santa Clara Treatment Plant Capital Fund.
4. OPERATING COST: Existing funds are available for this project. No additional appropriation action is required. The proposed operating and maintenance costs of this project have been reviewed and it has been determined that the project will have no impact to the Treatment Plant Operations and Maintenance budget.

**BUDGET REFERENCE**

The table below identifies the fund and appropriations proposed to fund the contract recommended as part of this memo and remaining project costs, including project delivery, construction, and contingency costs.

HONORABLE MAYOR AND CITY COUNCIL

05-24-2010

Subject: Award of Contract for MCC Phase II Replacement Project

Page 5

Fund #	Appn #	Appn. Name	RC #	Total Appn.	Amt. for Contract	Adopted 2009-2010 Capital Budget Page	Last Budget Action (Date, Ord. No.)
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512	4341	Plant Electrical Reliability	158365	\$20,900,000	<b>\$1,020,000</b>	V-147	6-23-2009, Ord. No. 28593
<b>Total Current Funding Available</b>				<b>\$20,900,000</b>	<b>\$1,020,000</b>		

**CEQA**

Exempt, PP04-03-079

/s/  
 KATY ALLEN  
 Director, Public Works Department

/s/  
 JOHN STUFFLEBEAN  
 Director, Environmental Services

For questions, please contact Bhavani Yerrapotu, Division Manager, Environmental Services, at 945-5321.



# Memorandum

**TO:** HONORABLE MAYOR, CITY  
COUNCIL AND REDEVELOPMENT  
AGENCY BOARD

**FROM:** Debra Figone  
Harry S. Mavrogenes

**SUBJECT:** **THIRD AMENDMENT TO THE  
AMENDED & RESTATED SAN  
JOSE ARENA MANAGEMENT  
AGREEMENT**

**DATE:** June 1, 2010

---

**Council District:** 3  
**SNI AREA:** NA

## RECOMMENDATION

It is recommended that the City Council and Redevelopment Agency Board adopt resolutions approving the Third Amendment to Amended and Restated San Jose Arena Management Agreement between the City of San Jose, Redevelopment Agency and the San Jose Arena Management, LLC (SJAM).

## OUTCOME

The Third Amendment addresses the private development of additional parking adjacent to HP Pavilion at San Jose (Arena) that will support the successful operation of that facility and reduce on a one-for-one basis the current City obligation to make available 3,175 off-site parking spaces within one-third of a mile and 6,350 off-site spaces within one-half of a mile from the Arena. In addition, the Third Amendment modifies the Amended and Restated Agreement to more specifically address the obligations of the City and Arena Management in regards to other parking and access issues in the eventuality that a Major League baseball (MLB) stadium, high speed rail station and/or BART station are constructed within the Diridon Area. The construction of additional parking and collaboration on accessibility issues are important actions to support the Arena as a major economic generator in the Downtown.

For the purposes of the obligations contained in this Third Amendment, the Redevelopment Agency is a signatory. The Redevelopment Agency is not a party to the Amended and Restated Agreement.

## EXECUTIVE SUMMARY

SJAM is requesting that the City and Agency support the development of additional on-site parking on a site adjacent to the HP Pavilion (see Exhibit 2 Lot E). SJAM is in the process of acquiring this site privately but may need City or Agency assistance in completing the land

June 1, 2010

**Third Amendment to Amended & Restated SJAM**

Page 2

assembly necessary. SJAM will provide the funds necessary to complete the acquisition. The construction of the additional on-site parking will also be paid for with private funds. Additional on-site parking will be operated by SJAM and all revenues generated will be revenue to SJAM. Additional parking constructed as a result of this Amendment will reduce the City's obligation to provide off-site parking on a one-for-one basis.

The Third Amendment also modifies the Amended and Restated Agreement in the following ways:

- Currently SJAM operates Lot D (see Exhibit 2) through an agreement with the Agency. This agreement provides for a notice to vacate provision of 12 months; the Third Amendment increases the notice period to 24 months, except in the case if the land is needed for the development of BART for which the notice provision would remain at 12 months;
- The City agrees to require that a Transportation and Parking Management Plan (TPMP) and construction mitigation plan be prepared for a MLB Stadium, high speed rail station and/ BART station if such a project receives a transfer of property from the City or Agency;
- City will use its best efforts to ensure parking is available to Arena customers in the event of overlapping events between the Arena and a professional MLB stadium;
- The additional on-site parking contemplated to be constructed under the terms of this Amendment, along with the current on-site parking, will be made available by SJAM to the general public on days and times other than are needed for an Arena event;
- The City or the Agency agree to provide a funding commitment to complete the Autumn Street alignment from Julian Street to Santa Clara Street (Exhibit 4) as a part of the transfer or prior to the transfer by the City or Agency of property for a MLB stadium; and
- The City agrees to work with SJAM on specific traffic improvements that will maintain the capacity of the Park and Autumn intersection at a specified level if a professional MLB stadium is constructed.

**BACKGROUND**

HP Pavilion at San Jose opened in September 1993. Since that time, San Jose Arena Management LLC has operated the facility under a management agreement. This agreement has been amended and restated several times to reflect changing circumstances with the goal to maintain the Arena as one of the best facilities of its type in the nation. Such amendments can be expected given that the Arena is nearing its twentieth year of operation.

The current Amended and Restated Agreement includes a number of obligations that the City previously agreed to in regards to the provision of parking and traffic management for the Arena. In particular the Agreement contains City obligations in regards to on-site parking, off-site

June 1, 2010

**Third Amendment to Amended & Restated SJAM**

Page 3

parking and the creation and maintenance of a Transportation and Parking Management Plan (TPMP) in support of Arena operations. For example, the City is obligated to provide parking to Arena employees at no cost to SJMA.

**ANALYSIS**

Key elements of the proposed Third Amendment include provisions pertaining to the following:

***Additional Parking***

Over the last 18 months, a series of discussions have led to the negotiation of the Third Amendment that is being proposed by this action. The City, Agency and SJAM agree that an important enhancement to the Arena "asset" would be the creation of additional on-site parking. Recognizing the City and Agency's current financial position and funding priorities, SJAM is interested in pursuing the construction of additional on-site parking with private funds. As shown in Exhibit 2, the proposed site (Lot E) is adjacent to the existing Arena parking lots and the Arena. The City, Agency and SJAM jointly investigated the possibility of constructing additional parking on the existing Arena parking lots. It was determined that it would be more cost efficient to construct additional parking on the proposed site. Construction of a parking structure on the existing arena parking lot would yield a lower net number of new spaces as the building structure of a garage would reduce the number of spaces currently on the surface lot.

The proposed Third Amendment provides a procedure through which SJAM will first attempt to acquire the needed property privately. If that is not possible, the City and Agency would consider seeking Council and Board approval of steps to assist the acquisition process including eminent domain if necessary. The cost of acquisition will be the financial obligation of SJAM. SJAM will operate the additional parking and retain all revenues generated from that operation.

The proposed Third Amendment also provides that additional parking developed as a result of this Amendment will reduce the City's current obligation to provide off-site parking within a third and within a half a mile from the Arena entrance on Santa Clara Street on a one-for-one basis. The current City obligation is to make available 3,175 off-site parking spaces within one-third of a mile and 6,350 off-site spaces within one-half of a mile from the Arena.

The Third Amendment also specifies that the proposed additional parking and the current on-site parking will be made available to the general public on other than Arena event days or during the day when the Arena event is in the evening. SJAM has the right to charge the public for parking during those times and to retain all revenues collected.

***Lot D***

SJAM currently uses this Agency owned property across Santa Clara Street from the Arena for parking purposes. This use agreement provides for SJAM to vacate this property upon 12 months notice if needed for development. The proposed Third Amendment requires notice of 24

months, except in the event the property is needed for the BART project. If the City or Agency proposes to transfer Lot D for private development, the 24 month provision would apply and the City or Agency is agreeing to conduct a public proposal process in which SJAM will be invited to participate.

***Project Transportation and Parking and Management Plans***

Through the proposed Third Amendment, the City is agreeing contractually to impose the requirement on a MLB stadium project, high speed rail station and BART station that those projects prepare Transportation, Parking and Management Plans (TPMP) similar in scope and detail to the one that the Arena currently operates under if the City or Agency convey land for that project. The Amendment also spells out City Council oversight through the Transportation and Environment Committee over the initial approval and subsequent amendment of such TPMPs.

***Overlapping Events***

The proposed Third Amendment recognizes that if a MLB stadium is constructed, there will be certain days on which there will be events scheduled in the stadium that may be occurring at the same time as events in the Arena. It provides that the City will use its best efforts to provide parking that is available to Arena patrons. The City agrees to develop and include specific measures in the baseball TPMP that will address the City's current off-site obligation to make parking available to the Arena. That TPMP would also include reasonable measures to avoid overlapping events when possible and to facilitate cooperation between the operators of the MLB stadium and the Arena.

***Autumn Street***

The proposed Third Amendment requires the City or Agency to propose funding for the realignment of Autumn Street from Julian Street to Santa Clara Street (Phase 2) prior to the transfer of any publicly owned property for a MLB stadium or through the actual transfer agreement. The City and the Agency are actively seeking funds for this project. While the current Supplemental Environment Impact Report for a proposed MLB stadium assumes completion of this project prior to completion of a MLB stadium, the Amendment includes an additional contractual commitment to SJAM to fund the project.

***Park Avenue and Autumn Street Intersection***

The proposed Amendment contemplates that special attention will be paid to the design, alignment and potential reconstruction of this key intersection that will be vital in maintaining a high level of vehicular and pedestrian capacity to and from the Arena and the proposed stadium (75% of its current capacity).

June 1, 2010

**Third Amendment to Amended & Restated SJAM**

Page 5

**FISCAL/POLICY ALIGNMENT**

The proposed amendment has limited impact on the City and Agency financially. The proposed additional parking to be developed on Lot E is to be financed entirely with private funds from SJAM. To the degree, the City or Agency would need to be involved in the acquisition of land; those costs will be reimbursed by SJAM.

Funds for the preparation and management of the new TPMPs contemplated by this amendment will be identified from those projects if and when they ever come to fruition.

As noted above, the City and Agency are actively seeking funding from federal, state and regional sources for the Autumn Street Phase 2 project. Funding for work necessary to enhance the Park Avenue and Autumn Street intersection will be sought from similar sources, as well as City and Agency resources (if available) and through the project budget for the construction of the MLB stadium in accordance with the Guiding Principles adopted by the City Council for that project.

**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, or staffing that may have impacts to community services and have been identified by staff, the Board or Council, or a community group that requires special outreach.

This item meets Criterion 1 above as it may require Council or Board action in the future on the use of public funds equal to \$1 million or greater. The City or the Agency is agreeing to provide a funding commitment to complete the Autumn Street alignment from Julian Street to Santa Clara Street (Exhibit 4) as a part of the transfer or prior to the transfer by the City or Agency of property for a MLB stadium. This project is estimated to cost in excess of \$10M. This memorandum will be posted to the City's website for the June 15, 2010, City Council Agenda.

**COORDINATION**

This memo has been coordinated with the City Attorney's Office and the Department of Transportation.

MAYOR, CITY COUNCIL, AGENCY BOARD

June 1, 2010

**Third Amendment to Amended & Restated SJAM**

Page 6

**CEQA**

Not a project, PP10-066, Amendment to an existing agreement.



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DEBRA FIGONE  
City Manager



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HARRY S. MAVROGENES  
Executive Director

Attachments:

- Third Amendment to Amended and Restated San Jose Management Agreement Among the City of San Jose, The Redevelopment Agency of the City of San Jose and the San Jose Arena Management, LLC
- Exhibit 1 - Map of the Diridon Area
- Exhibit 2 - Concept Plan for Additional Parking
- Exhibit 3 - TPMP Framework
- Exhibit 4 – Map of Autumn Street Right-of-Way

For questions please contact Paul Krutko, Chief Development Officer, at (408) 535-8179.

**THIRD AMENDMENT TO AMENDED AND RESTATED  
SAN JOSE ARENA MANAGEMENT AGREEMENT AMONG  
THE CITY OF SAN JOSE, THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE  
AND  
SAN JOSE ARENA MANAGEMENT, LLC**

THIS THIRD AMENDMENT TO AMENDED AND RESTATED SAN JOSE ARENA MANAGEMENT AGREEMENT ("THIRD AMENDMENT") is made and entered into as of \_\_\_\_\_, 2010, among the CITY OF SAN JOSE, a municipal corporation ("City"), The REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE ("Agency"), and SAN JOSE ARENA MANAGEMENT, LLC, a Delaware Limited Liability Company ("Manager"). The obligations of Manager hereunder are guaranteed by the San Jose Sharks LLC, a Delaware Limited Liability Company, as set forth in Attachment 12.

**RECITALS**

A. WHEREAS, Manager, City and the Agency have entered into an agreement (the "Agreement to Enter"), dated October 24, 1991, which provided for the design and construction of the Arena Facilities.

B. WHEREAS, City and Manager entered into the Amended and Restated San Jose Arena Management Agreement ("Agreement") as of December 2000.

C. WHEREAS, on January 13, 2004 City and Manager entered into a First Amendment to the Management Agreement and an Addendum to the Management Agreement.

D. WHEREAS, on August 17, 2007 City and Manager entered into a Second Amendment to the Management Agreement as well as City and Manager also entered into a Capital Enhancement Agreement.

E. WHEREAS, the purpose and intent of this Third Amendment is to provide definitions, criteria, and procedures to be used pursuant to the Agreement to address potential impacts (both physical and environmental) of certain future Projects in the Diridon Area so such Projects do not materially adversely affect the rights and obligations of the Manager and City with respect to the parking circulation and traffic provisions of the Agreement.

F. WHEREAS, the purpose and intent of this THIRD AMENDMENT is to set forth the intent of the parties to work collaboratively toward the development of parking to be located adjacent to the Arena [Lot E].

G. WHEREAS, the parties acknowledge that the intent of the parties is to ensure the effectiveness and competitiveness of Arena through the term of the Agreement and this THIRD AMENDMENT advances that basic goal.

## AGREEMENT

**NOW, THEREFORE**, in consideration of the premises, and of the terms, covenants and conditions herein contained, the parties mutually agree as follows:

**Section 1.** Agency as Party. Agency is not a party to the original Agreement, however to the extent, and only to the extent, this THIRD AMENDMENT includes rights and obligations with respect to Agency, Agency shall be a party.

**Section 2.** Conflicts. It is expressly agreed among and intended by the parties that in event of a conflict or inconsistency between provisions of the Agreement and this THIRD AMENDMENT, the provisions of this Amendment shall control and govern such conflict or inconsistencies;

**Section 3.** Existing Parking. On-Site Parking shall be managed by Manager for the benefit of the Arena and other parking patrons during the term of the Agreement, as may be extended by the mutual agreement of the parties;

**Section 4.** Definitions. Unless otherwise defined in this Amendment, all terms used in this THIRD AMENDMENT shall be defined by the definitions set forth in the Agreement. **The following Definitions are added to Article I Section 1.04. References and Definitions to read as follows:**

- A. **"Transfer"** means sale, assignment, exchange, grant, or contribution of real property.
- B. **"Diridon Area"** means the geographical area described in Exhibit 1 attached hereto.
- C. **"Project"** means the proposed baseball stadium, proposed High Speed Rail Station and, proposed BART station. (we may need to further define these projects).

**Section 5.** Additional On-site Parking.

- A. Parties agree that it is in the best interest of the parties to provide for the future vitality and viability of the Arena and to continue to realize economic benefits which the Arena provides to the Manager and the City of San Jose community. To that end, this THIRD AMENDMENT is intended to increase on-site parking available to the public and to customers of Arena ("Additional Parking"). Specifically, City and Manager agree such Additional Parking be provided in the area immediately North of Arena bounded by Julian Street, West St. John Street, and Montgomery Street ("Additional Parking Area" or Lot E).
- B. Parties agree that the concept plan as set forth in Attachment 19 is the basis for development of the Additional Parking on Lot E. Parties acknowledge that the plan shown in Exhibit 2 includes use of Montgomery Street right-of-way and that this right-of-way would not be included in the Additional Parking project if the expense of including such right-of-way exceeds the benefits.
- C. Based on mutually acceptable timelines, but no later than October 1, 2010, City, Agency and Manager will enter into negotiations for an agreement to detail the cooperation between and responsibility of the parties with respect to surface parking and any

subsequent parking structure for such Additional Parking. The agreement shall address the following matters:

1. As soon as possible, Manager will acquire or attempt to acquire fee title to real property described in Exhibit 2 attached hereto in the Additional Parking Area (Acquisition Parcels) using funds provided by Manager. After Manager has made good faith efforts to acquire real property in such Additional Parking Area and has not successfully acquired fee title to any such real property the City or Agency upon request of the Manager and subject to the approval of the City Council or Agency board, will make good faith efforts to acquire fee title to such designated real property based on fair market value determined by an appraiser mutually selected the parties. The purchase price and appraisal costs shall be paid with funds advanced by Manager no later than thirty (30) days after City request for the funds. If the City or Agency is unable to acquire any Acquisition Parcels by negotiation upon terms and conditions acceptable to the City and Agency, the City and Agency's staff will recommend to the City Council or Agency Board, as appropriate, that City Council or Agency Board use eminent domain power to acquire the Acquisition Parcel or Parcels. Nothing contained herein shall be construed to mean that the City or Agency is agreeing or has agreed to exercise the right of eminent domain, which rights shall be exercised only in the sole discretion of the City Council or Agency Board and only after the City or Agency has adopted a Resolution of Necessity pursuant to Code of Civil Procedure Section 1245.210 *et seq.* for the relevant Acquisition Parcel and has established pursuant to law that:

- (a) The public interest and necessity require the development;
- (b) The development is planned and located in the manner that will be most compatible with the greatest public good and the least private injury; and
- (c) The property sought to be acquired is necessary for the development.

In the event the City or Agency adopts a Resolution of Necessity, the City or Agency shall use its best efforts to complete the acquisition within the time set agreed to by the parties.

2. Any Transfer of the title to such real property so acquired by City or Agency to Manager, will be subject to reimbursement to City/Agency of actual third party costs customarily incurred in such acquisition and transfer including but not limited to fees and taxes.
3. Upon mutual agreement of the parties but timed to coincide no later than transfers pursuant to Section 4 (C)(2), City or Agency will transfer all of its interests in all rights-of-way and excess properties it owns/acquires or may own or acquire in Additional Parking Area if such transfer assists development and financing of Additional Parking or operation/efficiency of such Additional Parking. Manager shall pay fair market value for all such real property interests transferred by City or Agency as determined by an appraisal mutually agreed to

by the parties except to the extent of any street rights of way that by operation of law revert to the adjacent property owners. The final purchase price for such transfer shall be as agreed to by the Parties.

4. Upon the Manager acquiring fee title to the property for the Additional Parking, the Manager at its expense shall construct surface parking containing approximately 250 spaces in the Additional Parking Area (Lot E). If neither the City nor Agency provides any financial assistance for construction of the parking structure on Lot E, the decision regarding whether and when to construct the parking structure on Lot E will be made by Manager. Manager shall comply with all applicable government regulations in the construction of any surface parking or parking structure on Lot E.
5. If the City is provides financial assistance for the construction of a parking structure on Lot E the parties shall mutually agree to a schedule for construction of the additional parking and for the expected opening of this Additional Parking. It is agreed by the parties that at least in all instances during the term of the Agreement as amended and extended Manager shall operate the Additional Parking.
6. It is the intent of the parties that Manager will be responsible to finance the construction of the surface lot and any parking structure on Lot E. If Manager develops Additional Parking without City or Agency financial assistance, Manager shall operate the Additional Parking and all revenues received from such Additional Parking shall belong to Manager until such time as Manager transfers such Additional Parking to a third party including without limitation City or Agency. Upon any such transfer the transferee shall be subject to all the provisions of the Agreement as amended from time to time.
7. Any parking developed as Additional Parking on Lot E will be counted as off-site spaces pursuant to Section 15.02 A of the Agreement to reduce the amount of off-site spaces to be provided by the City on a one for one basis.

**Section 6.** Property identified as 5A and also referred to as Lot D (522 or 540 W. Santa Clara Street). Manager shall have the exclusive right to use and manage, for parking purposes, the 5A property at the S.W. corner of Santa Clara Street and Autumn Street consisting of some 78,000 square feet of land owned by Agency during the term of this Agreement as extended, subject to City's Right to terminate Manager's use upon 24 months prior written notice from City to Manager for the sole purpose of transferring fee title for a public development project or for private development to a private developer selected pursuant to the public proposal process referred to below. Said notice period is reduced to 12 months if the Lot D property is needed for the BART project. If the Lot D property is proposed to be transferred for private development, prior to the Transfer, City or Agency will conduct a public proposal process in which Manager shall be invited to participate. As of date of this Third Amendment, there are no commitments by City or Agency to any private party with respect to future use and control of Lot D.

**Section 7. Transportation, Parking and Management Plan (TPMP).** In the event that the City or Agency Transfers real property for the construction of a Project (as defined in Section 3 above) in the Diridon Area, City or Agency will include in any document of Transfer of property a requirement for a TPMP and a construction mitigation plan for the proposed Project. The baseball TPMP will be reviewed on a periodic and as needed basis by a TPMP committee which will include representatives from the City and the entity operating the Ballpark. The baseball TPMP will be similar to the Arena TPMP described in section 15.03 of the Agreement and will be coordinated with, be consistent with and not be in conflict with the Arena TPMP. The Manager may serve as an ex-official member of the baseball TPMP committee. City and Manager will provide leadership and follow-through on Event Operations Committee to implement an extensive communications program for both Arena and other event producers to encourage parties to use routes and parking facilities that would minimize conflicts with each other. Exhibit 3 attached hereto, contains a required framework for the TPMPs. The baseball TPMP and any substantive amendment to the baseball TPMP shall be approved, if at all, after a public hearing before the City Council's Transportation and Environment Committee. Amendments and updates to the baseball TPMP will be as needed in order to conform to changed circumstances provided that any such amendment to the baseball TPMP shall be consistent with and not in conflict with the Arena TPMP. The costs of administration and management of the TPMPs shall be addressed and provided for in the TPMPs.

**Section 8. Overlapping events.** City and Agency acknowledge that the Agreement establishes that Arena patrons are to have access to available parking for Arena events. City further acknowledges the obligations of section 15.02 of the Agreement to use best efforts to provide parking which is available to Arena patrons and the application of such obligations to and during such overlapping events. City as part of the required baseball TPMP will specifically address methods and programs to meet its off-site parking obligations referred to in section 15.02. In addition, the baseball TPMP will include reasonable measures to avoid to the maximum extent practicable overlapping events and to facilitate cooperation among the parties in minimizing any adverse affects should an overlapping event be unavoidable. More specifically, with respect to conditions arising when there are overlapping events, Baseball TPMP will contain provisions detailing operation and management plans, procedures, programs and actions that will result in the safe and efficient movement of vehicles, bicyclists, and pedestrians throughout Diridon Area.

**Section 9. Public Parking.** During the term of the Agreement, Manager hereby agrees to make available parking spaces in the Additional Parking and the On-site Parking for parking by the general public other than on an Event Days, in accordance with, and subject to the terms and conditions of the Parking Operations Plan to be updated and incorporated into the Arena TPMP prior to completion of the Additional Parking. On Event Days where the event has an evening starting time, Manager will work with City to make On-Site Parking and Additional Parking available to the public up to a reasonable time before the event begins and in a manner that does not interfere with Arena patrons. Manager may impose charges for such public parking and shall retain all revenues collected from such charges.

**Section 10. Autumn Street Realignment.** The Baseball SEIR assumes Autumn Street to be realigned to a new right of way as shown on Exhibit 4 attached hereto prior to the opening of the proposed baseball stadium. City or Agency staff, as the case may be, shall include in future capital budgets to be presented to the City Council or Agency Board sufficient funds to construct this realignment project. City or Agency will provide a funding commitment to complete and open to the

public the Autumn Street realignment either prior to the transfer of property by the City or Agency for a baseball stadium or through the property Transfer agreement to transfer said property.

**Section 11. Design and operation of Autumn Parkway/Park Avenue.** If a Ball park is constructed as part of any reconfigured Autumn Parkway at Park, the City will make its best efforts to design, construct and operate the intersection and immediately adjacent corridors in a manner as to maximize the safe and efficient flow of vehicular, bicycle, and pedestrian traffic to efficiently serve the Diridon Area, the Arena and the Ballpark provided that the Autumn Parkway/Park Avenue intersection shall not be reconfigured in a manner so as to reduce traffic capacity measured against the existing intersection capacity of greater than 25%. In so doing, City will consider all geometric design, traffic control devices, and operational strategies to maximize the capacity of the intersection in a balanced manner to meet all intersection demands and to not create significant increases in delays for Arena customers on non-overlapping Arena event days. The City will also utilize separate analyses of traffic and pedestrian requirements and movements so as to ensure that the final design and operation of the intersection will result in maximized operations and the most efficient movement of vehicles and pedestrians through the intersection, particularly during simultaneous events. This analysis and design process will take place sufficiently in advance of the construction documents to allow meaningful review and analysis by Manager prior to completion of construction documents.

More specifically, the City will consider the use of various approaches and tools to achieve the intended result of an intersection that functions effectively and efficiently, including, but not limited to:

- Review of traffic analysis and needs in the development of various design alternatives to determine the best final design for the intersection;
- Use of the most technologically advanced traffic signal systems and controls
- Event based traffic signal timing and operation;
- Event based traffic control elements such as lane closures and police traffic control to maximize capacity needs;
- Bicycle and Pedestrian design treatments to maximize capacity and flow and to minimize delay to vehicular movements.

Manager will be given advance notice of the commencement of the above process and is encouraged to provide input and suggestions to City throughout the process of intersection design and the development of operational strategies with the goal of achieving the best overall function of the intersection for the Diridon Area, the Arena and the Ballpark

**Section 12. Arbitration.** Any dispute between Parties pursuant to this Third Amendment or with respect to any matter herein shall be resolved, if requested, by a Party hereto, by Arbitration pursuant to Section 30.13.

IN WITNESS WHEREOF, the parties have executed this Management Agreement as of the day, month and year first above written.

APPROVED AS TO FORM:

\_\_\_\_\_  
RICHARD DOYLE  
City Attorney

**"AGENCY"**

THE REDEVELOPMENT AGENCY OF THE  
CITY OF SAN JOSE

By: \_\_\_\_\_

**"CITY"**

CITY OF SAN JOSE, a municipal  
corporation

By: \_\_\_\_\_  
City Clerk

**"MANAGER"**

SAN JOSE ARENA MANAGEMENT LLC, a  
Delaware limited liability company

By: \_\_\_\_\_  
President and Chief  
Executive Officer

EXHIBIT 1

DIRIDON/ARENA AREA MAP



**EXHIBIT 2**



## EXHIBIT 3

# Framework for Project Transportation and Parking Management Plans

## ARTICLE I - INTRODUCTION

### **Section 1 - Background**

In the event the City or Agency transfers property for a Ballpark in the Diridon Area of San Jose, a Transportation and Parking Management Plan (TPMP) will be developed and implemented to ensure effective and efficient ingress and egress to the venue. The TPMP will include plans and provisions to manage overlapping events that occur with events at the Arena. The Ballpark TPMP will be developed in advance of the opening of the Ballpark and in sufficient time to implement strategies and plans effectively on opening day.

In the event the City cooperatively transfers property for a High Speed Rail Project or Station or a BART Project or Station in the Diridon Area of San Jose, a Transportation and Parking Management Plan (TPMP) will be developed and implemented prior to the opening of such project to ensure effective and efficient ingress and egress to these projects. The scope of a Transit TPMP for these projects will recognize that the transportation and parking demands are significantly different for these projects than for a typical event type venue (e.g. arena or ballpark). The scope of these Transit TPMP's will include provisions to effectively manage demands that may occur as a result of overlapping events at the Arena. Article III of this document provides a more detailed framework of the elements that would be included for the Transit TPMP's.

### **Section 2 - Background and Purpose**

It will be the responsibility of the project owner to develop the Project TPMP's. To ensure proper coordination, the City will engage appropriate stakeholders in the Diridon Area to provide input on the development of any TPMP.

The purpose of a TPMP is to establish the operational strategies and plans to:

- A. Advance the goal that customers traveling to and from the Projects, and to and from the Arena have a positive transportation experience, including travel during overlapping events.
- B. Promote effective, efficient and safe use of the entire transportation system, including the highway and local street network, the parking system in the Diridon Area and the core of Downtown, the extensive transit network, and bicycle and pedestrian facilities.
- C. Minimize traffic and parking intrusion into surrounding neighborhoods so as to minimize negative impacts on these neighborhoods.

- D. Ensure consistency between the goals and policies/programs of the various TPMP's within the Diridon Area including the Arena TPMP and promote effective advance planning and communication among the responsible entities to minimize conflicts among venues in the Diridon Area and maximize the best use of the transportation and parking system through effective advanced communication strategies (e.g. using electronic and print media to post notices, maps, alerts) and directional signage. Coordinate TPMP's for all Projects with existing TPMP's in the Diridon Area to create a consistent and integrated approach to transportation and parking management and operations.

## **ARTICLE II. BALLPARK TPMP**

### **Section 1 – Project Facility Description and Funding Plan for TPMP**

- A. The Ballpark will be located in the Diridon Area of Downtown San Jose at the northwest corner of Autumn Street and Park Avenue. Other relevant facility information will be included in this section during the development of the TPMP.
- B. The TPMP will include a description of the funding plan for capital projects, if any and operating expenses for the Ballpark TPMP.

### **Section 2 – Diridon Area Events Operations Committee**

The purpose of the Operations Committee is to ensure that events at the venues in the Diridon Area (e.g. Ballpark and Arena) are planned and managed from a transportation and parking perspective, in accordance with this TPMP and all other TPMP's that are or would be in effect (e.g. Arena TPMP). The Operations Committee would consider, as necessary, more detailed operating procedures as events are prepared for and managed on a monthly basis, including the monitoring of the performance of the transportation and parking system and the necessary operational adjustments. The Operations Committee would be comprised of representatives from both public and private entities, would be led by the City's Department of Transportation, and would include representatives from the City's Police Department, Ballpark Management, HP Pavilion Management, the Arena Authority and potentially other community or interested parties including other project owners. Communication tasks will be executed for all overlapping events that occur between the Ballpark and Arena and will include advance customer communications and information plans for overlapping events between Ballpark and Arena.

### **Section 3 – Traffic, Transit, Bicycle and Pedestrian Management and Operations**

The TPMP will include strategies and plans intended to promote a positive transportation experience for event patrons, effectively manage and reasonably minimize congestion on local streets to the extent possible, maximizing utilization of the extensive parking network in the Diridon Area and the core of Downtown, encouraging

broad use of the extensive transit, bicycle and pedestrian system serving the Ballpark, and protecting adjacent neighborhoods from intrusion. The following elements will be included in the TPMP:

- A. Descriptions of the improvements and refinements to the transportation and parking system designed to support Ballpark and overlapping event venue operations.
- B. Descriptions of the role and function of the City's Traffic Management Center, including the coordination and operation of the Traffic Signal System, the Dynamic Motorist Information System, and the Downtown Parking Guidance System. This Sub-Section would include detailed maps of all the Traffic Signal Systems serving the Ballpark area and Arena for overlapping events and descriptions of the primary traffic circulation routes similar to Attachment B in the Arena TPMP, including maps of the primary ingress and egress routes that will be encouraged and used. If certain intersections are not already included, documentation would be provided to confirm that the Project TPMP would include expansion of the City's existing TSMP Program to encompass all the identified signalized intersections. This Sub-Section would also include locations of the all the changeable message signs serving the Ballpark area and Arena for overlapping events similar to Attachment C in the Arena TPMP and address the need for and the means to provide new changeable message signs, if any, to assist traffic circulation on days with overlapping events .
- C. Descriptions of the basic categories of events, based upon the expected characteristics for various event types, including overlapping events. Descriptions of the corresponding operations plans for events based upon expected transportation mode choice characteristics, and start and end times of major Ballpark events. All scenarios will assume major events at both venues and additional plans will adjust for smaller events or lower ticket sales/attendance. In the event of overlapping events, this Sub-Section will include operational plans that address each of the following event characteristics and implement the transportation management plans for each of the following categories:
  - 1. Ballpark and Arena event starting and ending at the same time.
  - 2. Ballpark event starting in advance of but not ending before start of an Arena event. Ballpark event starting in advance and ending close to the start of an HP Pavilion event.
  - 3. Ballpark event starting after Arena event, including where Arena events ends close to start of ballpark event.
  - 4. Ballpark event ends shortly before an event begins at Arena.
- D. Description of required temporary street closures and access restrictions.
- E. Description of off-site traffic control plans to direct vehicular and pedestrian traffic at locations with significant vehicle and pedestrian volumes.
- F. Description of guide sign plan to direct guests to Ballpark on major access routes.

- G. Description of ground transportation (e.g. taxi, shuttle) and passenger loading zones.
- H. Description of significant pedestrian corridors, including routes from the parking facilities in the greater downtown area.
- I. Description of transit services to the Ballpark, including potential shuttle connections to downtown parking facilities.
- J. Description of the Bicycle Master Plan and bicycle network that accesses the Ballpark, including available bicycle parking.
- K. Description of the Public Information and Advance Customer Communication Plan for overlapping events at the Ballpark and Arena to promote carpooling, transit use, bicycling, walking and more use of remote, low cost and potential free parking.

#### **Section 4 – Parking Management and Operations**

The TPMP will include strategies and plans intended to manage and meet the parking demand and facilitate convenient access to and from parking facilities located in the Diridon Area and core of Downtown San Jose to serve the Ballpark, and the Arena during overlapping events. The parking components of this section will be developed with a specific aim to protect neighborhoods adjacent to the Ballpark from intrusion. The following elements will be included in the TPMP:

- A. Description of parking characteristics for different types of Ballpark events similar to those set forth in ARTICLE II, Section 3B above.
- B. Description of total projected parking demand and supply/inventory to be used for Ballpark events, including all of the overlapping event scenarios described under Section III, Sub-Section 3B.
- C. Description of the parking plan for employees of the Ballpark on event days.
- D. Description of designated limousine and charter bus parking for Ballpark events.
- E. Description of Dynamic Message Signs and Static Parking Guide signs that will be used to direct motorists to parking facilities serving the Ballpark.
- F. Description of the Residential Permit Parking Program and parking patrols designed to protect adjacent neighborhoods from parking intrusion.
- G. Description of the Public Information and Advance Customer Communication Plan for overlapping events at the Ballpark and Arena to promote carpooling, transit use, bicycling, walking and more use of remote low cost and potential free parking.
- H. Description of methods and plan to accommodate the need for both Arena and ballpark parking during overlapping events.

**ARTICLE III. Framework for Diridon Area Transit Project TPMP's (High Speed Rail and BART) ("Transit TPMP")**

This Transit TPMP framework will also recognize that these transit projects will function in a significantly different manner than a typical event based venue (e.g. Arena or Ballpark). Transit TPMP's will include strategies and plans intended to provide:

- A. efficient access for users of the transit projects that effectively manage and reasonably minimize congestion on local streets to the extent possible;
- B. utilize the parking network established as part of the final project development and consistent with the certified Environmental Impact Report;
- C. encourage broad use of the extensive transit, bicycle and pedestrian system serving the Diridon Area; and
- D. protect adjacent neighborhoods from intrusion.

Any Transit TPMP will be developed with the presumption that the Project description will include the findings and mitigation measures adopted regarding parking and traffic impacts of the Project as set forth in the certified environmental documents for the Transit Project.

**Section 1. - BART**

The BART project would be expected to operate with predictable and relatively consistent levels of transportation and parking demand and the constructed transportation system at project opening would be expected to handle the demands. For example, the established and developed transportation and parking system would be intended to function without the need for additional traffic control beyond the City's traffic and signage systems, given the predictable and relatively consistent demand patterns.

**Section 2. - High Speed Rail**

The High Speed Rail project would also be expected to operate with predictable and relatively consistent levels of transportation and parking demand and the constructed transportation system at project opening would be expected to handle the demands. The exception in comparison to the BART project is that the High Speed Rail project would have higher peak demands around holiday periods (e.g. Thanksgiving, Christmas, New Years) and appropriate strategies and plans will be included in the TPMP to manage those demands accordingly.

### **Section 3. – Elements in Transit TPMP**

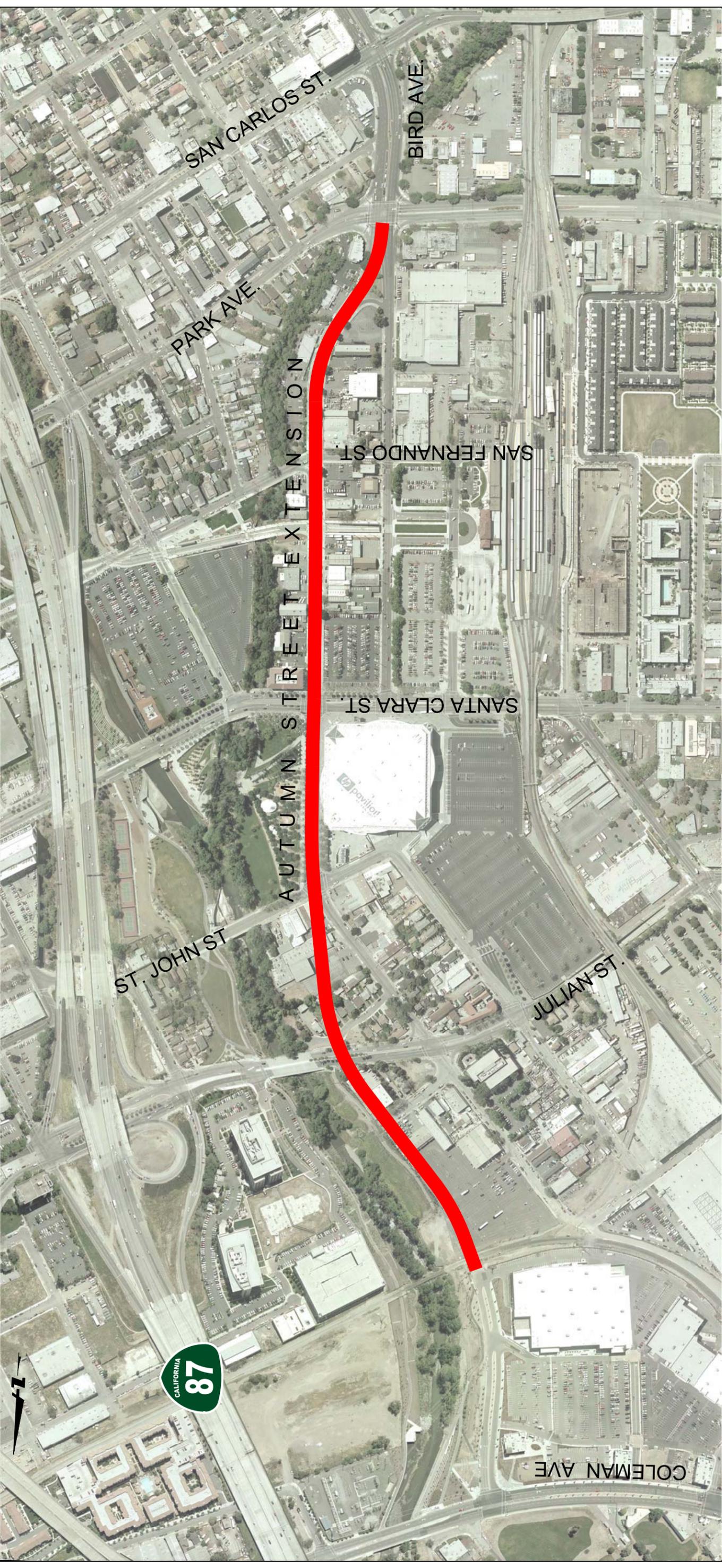
The following elements will be included in any Transit TPMP:

- A. Descriptions of the improvements and refinements to the transportation and parking system designed to support the projects and any overlapping demands with event venue operations (e.g. Arena and Ballpark).
- B. Descriptions of the role and function of the City's Traffic Management Center, including the coordination and operation of the Traffic Signal System, the Dynamic Motorist Information System, and the Downtown Parking Guidance System. This Sub-Section would include detailed maps of the primary traffic circulations routes, including maps of the primary ingress and egress routes that will be encouraged.
- C. Descriptions of the expected characteristics in terms of peak demands, including during when events may be occurring at the Arena and/or Ballpark.
- D. Description of guide sign plan to direct transit users on major access routes.
- E. Description of ground transportation (e.g. taxi, shuttle) and passenger loading zones.
- F. Description of significant pedestrian corridors, including routes from the parking facilities that would be expected to be used by the transit projects.
- G. Description of connecting transit services to these new transit systems, including potential shuttle and automated people mover connections to remote parking facilities.
- H. Description of the Bicycle Master Plan and bicycle network that accesses the transit projects, including available bicycle parking.
- I. Description of the Public Information and Advance Customer Communication Plan for holiday periods for High Speed Rail users to promote carpooling, transit use, bicycling, walking and remote parking.
- J. Description of parking characteristics for the transit projects
- K. Description and analyses of parking demands and supply/inventory to be used for the transit projects.
- L. Description of Dynamic Message Signs and Static Parking Guide signs that will be used to direct motorists to parking facilities serving the transit projects.
- M. Describe Residential Permit Parking Program and parking patrols designed to protect adjacent neighborhoods from parking intrusion.

#### **Article IV. Performance Monitoring and Revisions to the TPMP's**

All TPMP's developed and implemented to manage transportation and parking for event based venues and transit projects are expected to be dynamic documents that evolve based upon the changing operation of the venues/events, Transit Projects and the Diridon Area. The TPMP's will be reviewed and updated every three years and as necessary. Significant policy and major programmatic changes (e.g. changing major route approaches, modifications to large parking supplies to meet event and transit project demands) would follow the revision process described in Section 7 of the Third Amendment to the Agreement. Minor operational changes would occur at an administrative level with reasonable coordination with the Diridon Area Events Operations Committee as referenced in Article II, Section 2 of this TPMP Framework.

The Project Owner, in consultation with the City, and the assistance of the Diridon Area Events Operations Committee, will on a periodic and as needed basis, review the performance of the TPMP's and the major operational scenarios contemplated in the TPMP's. The performance review will be based on current data to be collected and analyzed pursuant to this process and will include items such as traffic volumes for major corridors, transit ridership, parking occupancy and availability, and the effectiveness of traffic control operations through observation and evaluation.



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	REVISIONS	DATE

**AUTUMN STREET EXTENSION CONCEPTUAL PLAN LINE**



DEPARTMENT OF TRANSPORTATION  
 SAN JOSE, CALIFORNIA

DESIGNED BY: N. CAM  
 CHECKED BY: Z. KHATTAB  
 PROJ MGR: MAY 2010  
 DATE: SCALE: 1" = 400'  
 SHEET NO. 1 OF 1

HANS F. LARSEN  
 ACTING DIRECTOR

FILE NO. \_\_\_\_\_



# Memorandum

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

**FROM:** Julia H. Cooper  
Leslye Krutko

**SUBJECT:** SEE BELOW

**DATE:** May 27, 2010

Approved

Date

5-28-10

**COUNCIL DISTRICT:** 7  
**SNI AREA:** N/A

**SUBJECT: APPROVAL OF THE ISSUANCE OF BONDS, LOAN OF BOND  
PROCEEDS AND RELATED DOCUMENTS FOR THE ORVIETO  
FAMILY APARTMENTS AND REPEALING PRIOR RESOLUTION**

## RECOMMENDATION

Adoption of a resolution of the City Council:

- (a) Repealing Resolution No. 71579 of the City Council adopted on November 17, 2009;
- (b) Authorizing the issuance of tax-exempt multifamily housing revenue bonds in two series designated as "City of San José Multifamily Housing Revenue Bonds (Orvioto Family Apartments), Series 2010B-1 and Series 2010B-2" in the aggregate principal amount not to exceed \$14,200,000 (individually, the "Series B-1 Bonds", the "Series B-2 Bonds" and collectively, "Bonds");
- (c) Approving a loan of Bond proceeds to Orvioto Family Apartments, L.P., a California limited partnership (the "Borrower"), for financing a portion of the costs of constructing the Orvioto Family Apartments (the "Project") located at 80 Montecito Vista Drive in the City of San José (the "City");
- (d) Approving in substantially final form the Series B-1 Senior Trust Indenture with Wells Fargo Bank, National Association, as Trustee (the "Trustee"), the Series B-2 Subordinate Trust Indenture with JP Morgan Chase Bank, N.A., as Bondowner Representative (the "Bondowner Representative"), the Series B-1 Financing Agreement among the City, the Borrower and the Trustee, the Series B-2 Loan Agreement among the City, the Borrower

May 27, 2010

Subject: Orvieto Family Apartments

Page 2

and the Bondowner Representative, Regulatory Agreement among the City, the Borrower and the Trustee, the Intercreditor Agreement among the City, the Trustee, Freddie Mac and the Bondowner Representative, the Bond Purchase Agreement among the City, the Borrower and RBC Capital Markets as Underwriter of the Series B-1 Bonds, and the Official Statement; and

- (e) Authorizing the City Manager, Assistant Finance Director, 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.
- (f) Authorizing the Director of Housing, to negotiate and execute an agreement with the City of San José Financing Authority (the "Authority") related to the groundlease revenues of the Project and ultimate disposition of the Project improvements and the Site.

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

- a) Repealing Resolution No. 93 of the Authority Board adopted on November 17, 2009;
- b) Authorizing the Executive Director of the Authority, or designee, to acquire the Project site (the "Site") from the Borrower and, with the Director of Housing, negotiate and execute a ground lease of the Site back to the Borrower for a term of up to 99 years with such other terms to be negotiated by the Executive Director of the Authority and the Director of Housing.
- c) Authorizing the Executive Director of the Authority and Director of Housing to negotiate and execute an agreement with the City related to the ground lease revenues from the Project and the ultimate disposition of the Project improvements and the Site.

### **OUTCOME**

Approval of the recommended actions will allow for the issuance of multifamily housing revenue bonds for the purpose of financing a portion of the costs of constructing 92 one-, two- and three-bedroom family apartment units, 91 of which will be affordable for 55 years, with 1 unrestricted manager's unit.

### **EXECUTIVE SUMMARY**

In accordance with the requirements under the City's Policy for Issuance of Multifamily Housing Revenue Bonds, ROEM Development Corporation (the "Developer") has requested that the City issue tax-exempt multifamily housing revenue bonds for the purpose of lending the bond proceeds to Orvieto Family Apartments, L.P. (the "Borrower") in an aggregate amount up to \$14,200,000. The proceeds of the loan, together with other funds, will finance a portion of the

May 27, 2010

Subject: Orvieto Family Apartments

Page 3

costs of constructing 92 one-, two- and three-bedroom family apartment units to be known as the Orvieto Family Apartments. The incomes for future residents are expected to range from \$22,300 to \$57,300.

The Bonds will be issued in two series. The Series B-1 Bonds, in the currently estimated amount of \$7,760,000, will be publicly-offered fixed rate bonds secured by a credit enhancement agreement with Freddie Mac and maturing in approximately 19 years. During the Project's construction lease-up period, Freddie Mac will be secured by a letter of credit from J.P. Morgan Chase Bank ("J.P. Morgan"). The Series B-2 Bonds, in the currently estimated amount of \$6,440,000, will be variable rate, draw down bonds purchased by J.P. Morgan Chase. The Series B-2 Bonds will be repaid in full in two installments from tax credit investor equity payments.

The City Council and Authority Board originally approved the issuance of bonds for the Project and a ground lease at its meeting of November 17, 2009. Due to a subsequent change in the tax credit investor and the existence of a funding gap for the Project, the bonds could not issued within the timeframe allowed by the California Debt Limit Allocation Committee ("CDLAC"). Reapplication to CDLAC was made under the current proposed structure in which the funding gap has been addressed.

## **BACKGROUND**

***Borrower.*** The Project's borrower, Orvieto Family Apartments, L.P., is a California limited partnership (the "Borrower"). The Borrower will consist of: (1) Eden Housing, Inc., a California non-profit affordable housing developer, or an affiliate thereof, as the Managing General Partner, (2) the Developer, or an affiliate thereof, and (3) Aegon USA Realty Advisors, or an affiliate thereof.

***Project Overview.*** The Project involves new construction of 92 one, two and three bedroom family apartment units to be known as the Orvieto Family Apartments (the "Project"). Upon completion of the Project, 25 percent of the affordable units (23 units) in the Project will be initially rented to families with incomes that do not exceed 30 percent of the area median income ("AMI"); 15 percent of the affordable units (14 units) will be rented to families with incomes that do not exceed 45 percent of AMI; and 59 percent of the affordable units (54 units) will be rented to families with incomes that do not exceed 50 percent of AMI. One of the Project's 92 units will be an unrestricted manager's unit. The rental restrictions for the Project will remain for a period of 55 years.

***City Loan for the Project.*** On December 16, 2008, the City Council approved an acquisition loan in the amount of \$3,680,000 to acquire the subject site. In March 2009, the Borrower bought the site for \$3,680,000. On May 19, 2009, the City Council took the final action needed to enable this project to obtain other financing by approving a construction/permanent loan of up to \$11,228,000 for the Project. On January 21, 2010, pursuant to the Housing Director's delegation of authority, (a) the construction/permanent loan was increased by \$1,200,000 to a total of

\$12,428,000 and (b) accrued interest on the acquisition loan interest was capitalized to an amount of up to \$164,138.

**City as Issuer of Multifamily Housing Bonds.** The City's Policy for Issuance of Multifamily Housing Revenue Bonds requires that if the Housing Department makes a project loan, the City must be the issuer of tax-exempt multifamily housing revenue bonds for the purpose of lending the bond proceeds to the project.

**Sources of Project Funding.** The Bonds will be structured as two series in the aggregate amount of \$14,200,000. Bond proceeds will fund a portion of the total Project costs, which are estimated at approximately \$26,882,043. The estimated sources of funding for the Project's construction/lease-up period and its permanent period are as follows:

<u>Source</u>	<u>Construction</u>	<u>Permanent</u>
Bond Proceeds	\$14,200,000	\$7,760,000
Interim Bond Paydown	(3,925,905)	--
City Loan	9,652,138	9,652,138
Accrued Interest (City Loan)	216,603	216,603
Tax Credit Equity	4,580,555	8,328,282
Interest Income	32,258	32,258
Deferred Funding of Reserves	268,394	--
Lease-Up Income	0	382,304
Deferred Developer Fee	1,858,000	510,458
<b>Total</b>	<b>\$26,882,043</b>	<b>\$26,882,043</b>

The City loan amount does not include \$2,940,000 attributable to the land cost as it is contemplated that the Authority will own the land and will enter into a long-term ground lease to the Developer.

Tax credit equity funds received pursuant to a limited partnership agreement between the Borrower and Aegon USA Realty Advisors (or an affiliated entity) are anticipated to be used to fully pay the Series B-2 Bonds in two installments: (1) by an estimated \$3,925,905 during Project construction and (2) by an estimated \$2,514,095 following Project completion and lease-up (expected to occur by August 1, 2012). Following Project completion and lease-up, only the Series B-1 Bonds will remain outstanding.

**Financing History of Project – Key Dates.** On May 22, 2009, the Director of Housing submitted an application to CDLAC for an allocation of up to \$14,200,000 in private activity bonds for the Project, pursuant to the Directors of Housing and Finance's Joint Authority under San José Municipal Code Section 5.06.425. On July 6, 2009, the Director of Finance, pursuant to Municipal Code Section 5.06.430, held a TEFRA Hearing to receive public comment on the City's expressed intent to issue an amount not to exceed \$16,500,000 in tax-exempt multifamily housing revenue bonds to finance the construction of the Project. On July 22, 2009, the City received a private activity bond allocation of \$14,200,000 from CDLAC as requested. On

May 27, 2010

Subject: Orvieto Family Apartments

Page 5

November 17, 2009, the City Council approved the issuance of \$14,200,000 of bonds under the July 22, 2009 CDLAC allocation, however, the bonds were never issued due to a change in tax credit investor and funding gap for the Project. On March 26, 2010, the Director of Housing re-submitted an application to CDLAC for an allocation of up to \$14,200,000 in private activity bonds for the Project. On May 26, 2010, the City received the private activity bond allocation as requested based on CDLAC staff recommendation. On June 1, 2010, the Director of Finance, pursuant to Municipal Code Section 5.06.430, is scheduled to hold a new a TEFRA Hearing to receive public comment on the City's expressed intent to issue an amount not to exceed \$14,200,000 in tax-exempt multifamily housing revenue bonds to finance the construction of the Project.

CDLAC will require that the bond closing for the Project occur by approximately August 24, 2010, or such later date as provided in the CDLAC Resolution adopted on May 26, 2010. It is anticipated that the Bonds will close on or about July 14, 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 the Bond financing structure, Bond financing documents, the City funding, financing team participants, financing schedule, Site ownership and groundlease structure.

### Bond Financing Structure

#### Overview of Multifamily Bond Financing

**General** As a brief summary, multifamily housing revenue bonds are issued to finance qualifying rental apartment projects by private developers. The City issues the bonds and then loans the proceeds to the developer/borrower. The bonds are typically issued as tax-exempt securities. The advantages of tax-exempt bonds to developers include below-market interest rates, long-term financing and low income housing tax credits – features not available in the conventional multifamily housing mortgage loan market. The Bonds are limited obligations of the City, payable solely from loan repayments by the Borrower.

**Requirements for Tax-Exemption** For multifamily housing revenue bonds to qualify for tax-exemption, federal law generally requires that one of two affordability restrictions must apply: either (1) at least 20 percent of the units in the housing development must be reserved for occupancy by individuals and families of very-low income (50% of area median income) or (2) at least 40 percent of the units must be reserved for occupancy by individuals and families of low income (60% of area median income). The restriction in clause (2) is expected to be incorporated into the Regulatory Agreement and Declaration of Restrictive Covenants for the Project.

May 27, 2010

Subject: Orvieto Family Apartments

Page 6

### **Structure of the Bonds**

**Issuance in Two Series.** The Bonds will be issued in two series. The Series B-1 Bonds will provide construction and permanent financing for the Project. The Series B-2 Bonds will provide only construction financing.

**Series B-1 Bonds: Public Offering/Credit Enhancement** The Series B-1 Bonds will be publicly-offered and credit-enhanced. The Series B-1 Bonds will be secured by a credit enhancement agreement from Freddie Mac. As Freddie Mac does not take construction and lease-up risk, the Borrower has arranged for Freddie Mac, during the Project's construction and lease-up period, to be secured by a letter of credit issued by JP Morgan Chase Bank. The Series B-1 Bonds will be rated "AAA" by Standard & Poor's based on its current assessment of Freddie Mac. RBC Capital Markets Corporation will underwrite and market the Series B-1 Bonds.

**Series B-2 Bonds: Bank Purchase/Draw Down Bonds/Unrated** The Series B-2 Bonds will be purchased directly by JP Morgan Chase Bank as draw down bonds. At issuance, only a small amount of Series B-2 Bonds proceeds will be released and held by the Trustee to fund Project costs. JP Morgan Chase Bank will purchase the Series B-2 Bonds incrementally as the Project is constructed and requests for payment have been made. Interest accrues on the B-2 Bonds only as proceeds are drawn down. The Series B-2 Bonds will not be rated.

**Principal Amount and Term** The Bonds will be issued as tax-exempt bonds in an aggregate amount not to exceed \$14,200,000. The Series B-1 Bonds and Series B-2 Bonds are expected to be issued in the amount of \$7,760,000 and \$6,440,000, respectively.

The Series B-1 Bonds are expected to mature in 2019. Starting in 2013 or 2014, the Series B-1 Bonds will repay principal annually on the basis of a 35 year amortization. At maturity in 2019, the Series B-1 Bonds will have a "balloon" balance which will need to be refinanced through a new series of bonds and/or paid from another source.

The B-2 Bonds are expected to mature by August 1, 2012 and will be repaid fully in two installments from tax credit investor equity payments: (1) by an estimated \$3,925,905 during construction and (2) by an estimated \$2,514,095 following completion and lease-up.

The final dates, principal amounts and other financial terms for the Bonds are subject to change based on final pricing information.

**Interest Rate** The Series B-1 Bonds will pay a fixed interest rate, not to exceed 7.5%, through maturity. The Series B-2 Bonds will pay a variable rate that is set by formula under the B-2 Series Bond documents.

May 27, 2010

Subject: Orvieto Family Apartments

Page 7

### **Bond Financing Documents**

The following is a brief description of each document the City Council is being asked to approve and authorize the execution of. Copies of these documents will be posted to the City's agenda website on or about June 3, 2010. Staff recommends that the City's Assistant Director of Finance or other authorized officer of the City be authorized to execute the agreements on behalf of the City as described below ("Authorized Officers"). As modifications may be required prior to the closing, staff also recommends that the Authorized Officers each be authorized to execute the final version of each of these agreements and the Official Statement as may be modified upon consultation with the City Attorney's Office.

**Series B-1 Senior Trust Indenture** The Series B-1 Bonds will be issued under a Trust Indenture (the "Senior Indenture") between the City and Wells Fargo Bank, National Association, as the trustee (the "Trustee"). The Senior Indenture is executed by the Assistant Director of Finance, or other authorized officer on behalf of the City, and attested by the City Clerk. The Senior Indenture set forth the terms of the Series B-1 Bonds, including the interest rate, final maturity and redemption provisions. The Senior Indenture establishes various funds and accounts for the deposit of Series B-1 Bond proceeds and repayment sources. Pursuant to the Senior Indenture, the Trustee is given the authority to receive, hold, invest and disburse the Series B-1 Bond proceeds and other funds; to authenticate the Series B-1 Bonds; to apply and disburse payments to the Bondholders; and to pursue remedies on behalf of the Series B-1 Bondholders. The Senior 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 Senior Indenture provides that the Borrower will compensate the Trustee for services rendered thereunder.

**Series B-2 Subordinate Trust Indenture** The Series B-2 Bonds will be issued under a Subordinate Trust Indenture (the "Subordinate Indenture") between the City and JP Morgan Chase as Series B-2 Bondowner Representative (the "Bondowner Representative"). The Subordinate Indenture is executed by the Assistant Director of Finance, or other authorized officer on behalf of the City, and attested by the City Clerk. The Subordinate Indenture sets forth the terms of the Series B-2 Bonds, including the interest rate, final maturity and repayment provisions. The Subordinate Indenture establishes various funds and accounts for the deposit of Series B-2 Bond proceeds and repayment sources. The Subordinate Indenture sets forth the guidelines for the administration of each fund and account, and restrictions relating to any subsequent transfer of the Series B-2 Bonds. The Indenture provides that the Borrower will compensate the Bondowner Representative for services rendered thereunder.

**Financing Agreement** This agreement (the "Financing Agreement") is among the City, the Trustee and the Borrower and pertains to the Series B-1 Bonds. The Financing Agreement is executed by the Assistant Director of Finance or other authorized officer on behalf of the City. The Financing Agreement provides for the loan of the Series B-1 Bond proceeds to the Borrower for the construction of the Project and for the repayment of such loan by the

May 27, 2010

Subject: Orvieto Family Apartments

Page 8

Borrower. The City's rights to receive payments under the Financing Agreement will be assigned to the Trustee, along with certain other rights under the Senior Indenture and Intercreditor Agreement; however, certain reserved rights have been retained by the City, such as the City's right to indemnification.

**Loan Agreement** This agreement (the "Loan Agreement") is among the City, JP Morgan Chase Bank and the Borrower, and is executed by the Assistant Director of Finance or other authorized officer on behalf of the City. The Loan Agreement provides for the loan of Series B-2 Bond proceeds to the Borrower for the construction of the Project and for the repayment of such loan by the Borrower – which repayment will be funded from tax credit equity payments. The loan will be evidenced by a Note. The interest of the City in receiving payments and other rights under the Subordinate Indenture, the Loan Agreement and the Note, will be assigned to the Bondowner Representative; 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 Assistant Director of Finance and the Director of Housing, 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 Federal tax and State bond law requirements. The Regulatory Agreement restricts the rental of Project units (excepting one manager's unit) to low- or very-low income families for a period of 55 years.

**Intercreditor Agreement** This agreement (the "Intercreditor Agreement") is among the City, the Trustee, the Borrower, Freddie Mac and JPMorgan Chase Bank. This document is executed by the Assistant Director of Finance or other authorized officer on behalf of the City. The Intercreditor Agreement assigns the exclusive right to exercise all rights and remedies (other than the City's reserved rights) under the Financing Agreement and the Borrower's loan documents with JP Morgan Chase and Freddie Mac: (1) to JP Morgan Chase during the Project's construction and lease-up period and (2) to Freddie Mac at the Project's permanent phase.

**Bond Purchase Agreement** This agreement ("Purchase Agreement") is among the City, the Borrower and RBC Capital Markets Corporation (the "Underwriter"), under which the Underwriter will purchase the Series B-1 Bonds. The Purchase Agreement sets forth certain representations and warranties of the City and the Borrower, the documents to be executed at closing, and the conditions that may allow the Underwriter to cancel its purchase of the Bonds. This document is executed by the Assistant Director of Finance or other authorized officer on behalf of the City.

**Official Statement** This document is the public offering statement for the issuance of the Series B-1 Bonds. This document is executed by an authorized officer of the Borrower. The City does not execute the Official Statement. This document is prepared by the Underwriter's

May 27, 2010

**Subject: Orvieto Family Apartments**

Page 9

counsel. This document describes the terms and structure of the Series B-1 Bonds, the flow of funds, Project and the security for the Series B-1 Bonds. The City will not circulate the Official Statement until JP Morgan Chase and Freddie Mac have issued their final credit approvals. During the marketing period for the Series B-1 Bonds, the Official Statement will be issued in preliminary form. After the Series B-1 Bonds are sold, the final pricing information will be included and the Official Statement will become "final".

*A copy of the draft preliminary Official Statement, in substantially final form, will be posted on the agenda website on or about June 3, 2010. If any Councilmember has any personal knowledge that any of the material information in the Official Statement is false or misleading, he or she should promptly advise City staff of the matter; City staff, bond counsel and the financial advisor will be available at the Council meeting on June 15, 2010 to address any questions, issues and/or concerns.*

### **Financing Team Participants**

The financing team participants consist of:

- City's Financial Advisor                      Ross Financial
- Bond Counsel                                      Quint & Thimmig LLP
- Trustee    Wells Fargo Bank, National Association
- Underwriter                                        RBC Capital Markets Corporation

All costs associated with the Financial Advisor, Bond Counsel, Trustee and Underwriter are contingent on the sale of the Bonds and are expected to be paid from tax credit equity funds advanced at Bond closing, or another available funding source.

### **Financing Schedule**

The current proposed schedule is as follows:

- Council Approval of Bond Documents              June 15, 2010
- Distribute Preliminary Official Statement        June 16, 2010
- Price the Series B-1 Bonds                            June 23, 2010
- Pre-Close and Close Bonds                         July 12 and 14, 2010
- CDLAC Deadline for Bond Closing                August 24, 2010

It is possible that requirements of an additional source of funds that the City is seeking could delay the Bond pricing and closing into August. Staff has requested up to a \$525,000 grant from the State of California Department of Toxic Substances to pay for project soil remediation clean-up costs. If awarded, the City would substitute grant funds for previously-approved Low and Moderate Income Housing Funds funding this project, thereby reducing the level of City resources to be spent on the Project. A separate City Council memo will be submitted for approval to accept the grant award and will contain more details.

May 27, 2010

Subject: Orvieto Family Apartments

Page 10

### **City Loan Commitment**

On May 19, 2009, via Resolution No. 74913, the City Council approved a loan to the Borrower of up to \$11,228,000 to finance a portion of the costs of constructing the Project and to provide a permanent mortgage. On January 21, 2010, under the Housing Director's delegation of authority, the construction/permanent loan was increased by \$1,200,000 and accrued interest of up to \$164,138 of accrued interest was capitalized.

Since the November 17, 2009 City Council meeting, the Borrower has identified the availability of State tax credits in the amount of approximately \$2,000,000 as an additional funding source for the Project. This funding source is expected to be confirmed at the California Tax Credit Allocation Committee's meeting on June 9, 2010.

When the City Council originally approved the issuance of bonds for the Project on November 17, 2009, the staff report indicated that the City would not permit the issuance of bonds if a funding gap existed. At present, it does not appear that a funding gap exists.

### **Ground Lease of Project Site**

As was approved originally by the City Council and Authority Board on November 17, 2009, 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 the ground lease provides certain long-term benefits, 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 Site back to the Borrower. The senior lender has indicated that it will require a security interest in both the fee and leasehold. The Authority, by contrast, is permitted to allow encumbrances on land to which it takes title. Of the City's approved loan amount, \$2,940,000 is allocable to the purchase of the unimproved Site (the amount of the acquisition loan less site infrastructure improvements), 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 Resolution would allow for a long-term ground lease of up to 99 years, with such shorter term as the Executive Director of the Authority and the Director of Housing are able to negotiate with the tax credit equity investor and other financial parties to the Orvieto transaction. In addition, the Authority Resolution would allow the Executive Director of the Authority and the Director Housing to negotiate terms relating to ground lease rent, annual residual payments from Project cash flow and other matters.

It is to the City's benefit for the Authority to own the land and lease it to the Project. 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. Further, the City's long-term affordability restrictions will remain senior to other

May 27, 2010

Subject: **Orvieto Family Apartments**

Page 11

encumbrances with this ground lease structure—which is a superior lien position compared to the land being owned by the Borrower—so the lease enhances the City’s ability to enforce long-term affordability on the Site.

### **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 Orvieto Family Apartments and requires no follow-up to the City Council. Once the Bonds close, anticipated in mid-July 2010 and the construction of the Project commences, the Housing Department will provide updates in its Quarterly Production Updates to the City Council.

### **PUBLIC OUTREACH**

- 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. Instead, the method of notifying the community of the City’s intent to issue tax-exempt private activity bonds is for the City Finance Department to hold a Tax Equity and Fiscal Responsibility Act (TEFRA) Hearing. The TEFRA Hearing initially was held on July 6, 2009 and will be re-held on June 1, 2010, both times by the Director of Finance. The public hearing notice was published in the *San José Mercury News* on June 19, 2009 for the July 6, 2009 hearing and May 10, 2010 for the June 1, 2010 hearing.

### **COORDINATION**

This report has been prepared by the Finance Department in coordination with the Housing Department and 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 IMPLICATIONS**

All costs of the Project will be paid from Bond proceeds, City loan proceeds, tax credit equity, income from operations, and deferred developer fee. 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 most likely from tax credit equity at Bond closing.

The Bonds are tax-exempt obligations secured by a first priority lien against the Borrower's leasehold interest in the 1.71-acre site located at 80 Montecito Vista Drive and the improvements thereon, a first priority lien against the Authority's fee interest in the site in favor of JP Morgan Chase Bank during the Project's construction phase and, in the case of the Series B-1 Bonds, a Freddie Mac credit enhancement agreement. No payment of the Bonds will be paid from or guaranteed through the general taxing power of the City or any other City asset.

From this Bond issuance, the City will receive an issuance fee of approximately \$60,500. The City will also receive an annual fee for monitoring the Bonds and the Regulatory Agreement. Under current City policy, the annual fee is equal to one-eighth of a point (0.125%) of the original principal amount of the Bonds (approximately \$17,750 per year). The total of these bond fees to be paid to the City will be approximately \$380,000 over the life of the Bonds.

### **BUDGET REFERENCE**

This section is not applicable to the issuance of Bonds requested in this staff report.

### **CEQA**

Resolution No. 72877, Goble Lane Environmental Impact Report, file number PP09-086

/s/  
JULIA H. COOPER  
Assistant Director of Finance

/s/  
LESLYE KRUTKO  
Director, Housing Department

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