



# Memorandum

**TO: HONORABLE MAYOR AND  
CITY COUNCIL**

**FROM: Paul Krutko**

**SUBJECT: See Below**

**DATE: June 10, 2010**

Approved

Date

6/9/10

Council District: 3

**SUBJECT: ADOPTION OF A RESOLUTION ALLOWING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AMENDMENTS TO THE AMENDED AND RESTATED OPTION AGREEMENTS WITH COLEMAN AIRPORT PARTNERS LLC FOR THE FORMER FMC PROPERTY LOCATED AT 1125 COLEMAN AVENUE TO ALLOW A 90-DAY EXTENSION OF THE OPTION PERIOD.**

## RECOMMENDATION

Adoption of a Resolution allowing the City Manager to negotiate and execute amendments to two Amended and Restated Option Agreements with Coleman Airport Partners LLC for the former FMC property located at 1125 Coleman Avenue to allow a 90-day extension of the option period.

## OUTCOME

Approval of the proposed resolution will allow the developers and the City to extend the existing Option Agreements. During the proposed extension period, the City will review a request from the developers to modify the terms of the existing Option Agreements for possible consideration by the Council. In the interim, the developers will continue to market the site for office, R&D, hotel and retail development. The ultimate goal is to develop the property in a manner that maximizes job and revenue creation as soon as possible. Staff will return to Council to request approval of amended Option Agreements if the parties successfully conclude negotiations.

## BACKGROUND

In 2005, the City of San Jose purchased the 74.8 acre property located at 1125 Coleman Avenue from FMC in support of the Airport expansion project. The property is now known as the Airport West property. The City's intent was to purchase only 52 acres of the property to

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support the Airport expansion program. FMC was unwilling to sell the City a portion of the site. In order to assist the Airport, the City acquired the additional 23.23 acres. The Airport required significant land for construction lay down, interim parking and, at the time, off-Airport rental car operations. The long-term intention was to develop the entire site for economic development purposes to support job and revenue generation.

In May 2008, the City Council approved a Memorandum of Understanding (MOU) between the City and Coleman Airport Partners LLC that outlined the price, option period and uses on the 75 acre property. Approved uses included the development of a proposed Earthquakes Major League Soccer Stadium on 14 acres of the site. The balance of the site would include 1.5 million square feet of office, R&D, 300 hotel rooms and 95,000 square feet of retail space. On May 5, 2009 the City Council approved an amendment to the two option terms for the property in recognition of the global economic downturn. The option payment schedule currently in place for the two economic development parcels include: \$1 million to be paid June 30, 2010; \$2.5 million to be paid June 30, 2011; and \$3.5 million to be paid June 30, 2012. Coleman Airport Partners has indicated to staff that economic conditions related to the construction of new office R&D projects remains poor and has requested a 90-Day extension of the Option Agreements to allow the City to consider the developer's proposal to modify the current terms of the Amended and Restated Option Agreements.

### **ANALYSIS**

Due to continued weak global economic conditions construction of new office, and R&D space throughout the country and Silicon Valley remains extremely low. The County Assessor has recently shared that more property owners are seeking reassessments of their property than at any other time in the last 20 years and the property tax roll for Santa Clara County will actually be negative (approximately 1.5% for the first time in 20 years). Virtually no new construction of office product is taking place in Silicon Valley. Exceptions exist for a very few investments like the @First Brocade development for projects that were financed prior to the global economic meltdown. The current vacancy rate for office, and R&D space across Silicon Valley stands at 19.4 %. San Jose's vacancy rate for the most recent quarter is 21.4%. Office, and R&D space is leasing at 2002 rates and companies are taking advantage of the low costs and the abundance of existing vacant buildings to accommodate company real estate needs.

Coleman Airport Partners continues to express a strong desire to develop the Airport West property. Ed Storm and Deke Hunter, Lew Wolff and John Fisher comprise Coleman Airport Partners. Ed Storm and Deke Hunter are the developers of the @First Brocade project and have a proven track record in the development of high-quality office, R&D buildings and of working productively with leading Silicon Valley companies. The developers continue to believe that the Airport West property is a premiere business location given the property's location adjacent to the Airport, near a future Bay Area Rapid Transit (BART) station, at the gateway to Downtown San Jose, and given the large size of the property. The developers continue to market the property and have noted an up tick in interest in the property, but believe that given the weak economic conditions and the glut of available property, serious progress toward developing the

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site will likely not occur for the next 18-24 months. Therefore the developers are asking the City to consider a proposal to modify the current option payment schedule in recognition of the prolonged economic downturn.

Staff recommends extending the current June 30, 2010 option deadline by 90-days to consider this proposal for a variety of reasons. If Council approves staff's request to extend the existing option for 90-days, staff will return to the City Council within the 90 day period for review and approval of any proposed new option terms.

### **CONCLUSION**

Approval of the proposed resolution allowing the City Manager to Negotiate and Execute Amendments to the Option Agreements with Coleman Airport Partners LLC for the former FMC Property for a 90-Day Extension will enable City staff to consider the developer's proposal for a modification to the current option terms and recommend a course of action to the City Council.

### **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office and the Budget Office.

### **POLICY ALTERNATIVES**

**Alternative:** An alternative to approving the proposed extension to the existing Amended and Restated Option Agreements, the City Council could terminate the existing Amended and Restated Options and Purchase and Sale Agreements with Coleman Airport Partners.

**Pros:** The City's budget already contains an allocation for payment of the debt-service associated with the Airport West Property. The City could put the Property out for a Request for Proposals (RFP) either in the near-term or at such time when the real estate and financial market improves.

**Cons:** Given market conditions, it is highly unlikely the City will be able to maintain the purchase price negotiated for the property. Speculative development for office space is not currently taking place in San Jose or the Silicon Valley. Efforts to seek a new developer for the property at this time will likely result in decreased revenues and a longer development time for the Airport West Property.

**Reason for not recommending:** Coleman Airport Partners LLC has the credibility and capacity to develop the Airport West Property. Coleman Airport Partners LLC is already actively marketing the property. Financial and real estate markets have not yet fully recovered but are beginning to show some signs of improvement, but new construction is not yet taking place. Many companies are utilizing this time to take advantage of substantial savings for existing properties in San Jose/Silicon Valley. Any action by the City to reappraise and enter into a new purchase agreement for the site now or in the near future may likely result in decreased revenues to the City.

### **COST IMPLICATIONS**

Given uncertainty regarding option payments the Annual Budget does not currently incorporate option payments from the developer. As a result, the 90-day extension of the option will not necessitate a budget rebalancing action. If option payments are received in the future, budget adjustments will be brought forward to recognize these funds.

### **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)**

The proposed amendment to the existing Amended and Restated Option Agreements does not meet the criterion listed above. This memorandum has been posted on the City's website for review by interested parties.

### **FISCAL/POLICY ALIGNMENT**

This project is consistent with applicable City Council policies to add revenue and jobs.

### **CEQA**

CEQA – EIR Resolution No 71716, File No: PP08-093

/s/

**PAUL KRUTKO,**  
Chief Development Officer