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Sent to Council:

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Nadine Nader

SUBJECT: Early Council Packet

DATE: October 19, 2010

Approved [signature] Date 10/19/10

EARLY DISTRIBUTION COUNCIL PACKET FOR NOVEMBER 2, 2010

Please find attached the Early Distribution Council Packet for the November 2, 2010 Council Meeting.

3.x Discussion and Action on a Policy Option Regarding Proposition 19.

Recommendation:

(a) Adopt an urgency ordinance of the City of San Jose implementing a moratorium on commercial uses that involve the cultivation, dispensation or distribution of marijuana or cannabis for any purpose should State Proposition 19 (Proposition 19 and entitled, "Legalizes Marijuana Under California But Not Federal Law. Permits Local Governments to Regulate and Tax Commercial Production, Distribution, and Sale of Marijuana. Initiative Statute.") pass; and,

(b) Approve an ordinance of the City of San Jose implementing a moratorium on commercial uses that involve the cultivation, dispensation or distribution of marijuana or cannabis for any purpose should State Proposition 19 (Proposition 19 and entitled, "Legalizes Marijuana Under California But Not Federal Law. Permits Local Governments to Regulate and Tax Commercial Production, Distribution, and Sale of Marijuana. Initiative Statute.") pass.

(City Manager's Office)

TO BE DISTRIBUTED SEPARATELY

4.x Actions Related to the Development of the North Fourth Street Apartments Project.

Recommendation:

(a) Adopt a resolution authorizing the Director of Housing to administer up to \$8,789,846 in the form of a revolving loan to First Community Housing's designated limited partnership in order to pass through up to \$8,789,846 in ARRA/TCAP awarded for the development of the North Fourth Street Apartments project to be made available to extremely low-income, very low-income, and low-income families.

(b) Adopt the following Appropriation Ordinance and Funding Source Resolution amendments in the Low and Moderate Income Housing Fund:

    (1) Increase the appropriation to the Department of Housing for the Loans, Grants and Site Acquisition project in the amount of \$6,592,385; and

    (2) Increase the estimate of Earned Revenue by \$6,592,385.

CEQA: Addendum to Final EIR for the North San José Area Development Policy, Resolution No. 72768, File No. PDC06-022. (Housing/City Manager's Office)

6.x Agreement with Kimley-Horn and Associates, Inc., for Airfield Design and Consultant Services.

Recommendation: Adopt a resolution authorizing the City Manager to negotiate and execute an agreement with Kimley-Horn and Associates, Inc., for airfield design and consultant services for the construction of Taxiway W from Taxiway D to Taxiway L, and for the reconstruction of Taxiways G and J, in an amount not to exceed \$1,730,000 for the period from November 1, 2010, through December 31, 2013. CEQA: Not a Project, File No. PP10-066(d), Consultant Services for Design /Study /Research /Inspection. (Airport/Public Works)

9.x Inclusionary Housing Requirements for New Rental Developments Meeting Certain Development Timelines.

Recommendation:

(a) Adopt a resolution approving an amendment to the joint City/Agency Inclusionary Housing Policy, applicable in Redevelopment Project Areas, that allows for the execution and recordation of a Satisfaction Agreement evidencing satisfaction of the inclusionary housing requirements for rental housing projects, including multi-phase projects, during the suspension of such requirements under the Policy, provided that the specific project meets specified criteria contained in the amendment to the Policy, including accelerated development timelines.

(b) Adopt a resolution authorizing the Director of Housing and the Executive Director of the Redevelopment Agency to negotiate and enter into Satisfaction

Agreements with eligible developers that detail the terms of the exemption and timelines for compliance.

CEQA: Resolution No. 65459 and Addendum thereto, File No. PP08-258.
(Redevelopment Agency/City Manager's Office)

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

/s/
NADINE NADER
Assistant to the City Manager

COUNCIL AGENDA: 11/2/10
ITEM:

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Leslye Krutko
Jennifer A. Maguire

SUBJECT: **SEE BELOW**

DATE: October 14, 2010

Approved

Date 10/19/10

COUNCIL DISTRICT: 3
SNI AREA: N/A

SUBJECT: **APPROVAL OF A TEMPORARY REVOLVING LOAN TO RECEIVE AND DISBURSE TAX CREDIT ASSISTANCE PROGRAM ("ARRA/TCAP") FUNDS FROM THE CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE ("CTCAC") TO FIRST COMMUNITY HOUSING'S AFFILIATE, FOR THE FOURTH STREET APARTMENTS PROJECT LOCATED AT 1460 NORTH FOURTH STREET**

RECOMMENDATION

It is recommended that the City Council adopt a resolution:

1. Authorize the Director of Housing to administer up to $8,789,846 in the form of a revolving loan to First Community Housing's ("FCH") designated limited partnership in order to pass through up to $8,789,846 in ARRA/TCAP awarded for the development of the North Fourth Street Apartments project ("Project") to be made available to extremely low-income ("ELI"), very low-income ("VLI"), and low-income ("LI") families.

2. Adopt the following Appropriation Ordinance and Funding Source Resolution amendments in the Low and Moderate Income Housing Fund:

   a) Increase the appropriation to the Department of Housing for the Loans, Grants and Site Acquisition project in the amount of $6,592,385; and

   b) Increase the estimate of Earned Revenue by $6,592,385.

OUTCOME

The City Council's approval of the recommended actions will allow the City to receive and then disburse additional funding up to $8,789,846 to FCH's legal affiliate for the construction of the Fourth Street Apartments project. Funds were authorized by the federal American Recovery and Reinvestment Act of 2009 ("ARRA") and are administered by the California Tax Credit Allocation Committee ("CTCAC"). FCH will incur the construction costs, invoice for the reimbursements, and receive the reimbursement of ARRA/Tax Credit Assistance Program (TCAP) funds from CTCAC. Once FCH receives funding from CTCAC, FCH will repay the initial costs provided by the City. The approval of this action will ensure that the Project can retain its ARRA/TCAP award, which is needed to fund construction costs. It does not change the City's existing commitment amount of its own funds to this Project.

BACKGROUND

The City Council approved funding for this Project, including the issuance of tax-exempt bonds in June 2010. The Project is located four blocks from light rail, plans to achieve a Build it Green score exceeding 150 points or a LEED Silver designation, and will serve 99 lower-income families, 35 of which will include developmentally-disabled residents, and one unrestricted manager's unit. The total City construction/permanent loan amount approved for this Project is up to $13,894,579 exclusive of land, which will be owned by the City and leased to the Project for up to 75 years. The total commitment amount for the project including land is $16,084,579.

After a long delay due to difficulty in assembling financing sources because of problems in the financial markets, the City issued tax-exempt bonds for this project in June 2010. The project is now under construction and is expected to be completed in late 2011.

In 2007, the Project received a Multifamily Housing Program ("MHP") permanent subordinate loan commitment of $8,789,846 from the State Department of Housing and Community Development. Because of uncertainty regarding the State's timely funding of its existing loan commitments due to the State's financial crisis in 2008 and 2009, conventional lenders and investors have generally required a backstop for State loan commitments for the past two years. To obtain such a backstop, FCH pursued ARRA/ TCAP funds that were authorized by the federal American Recovery and Reinvestment Act of 2009 ("ARRA") and are administered by the California Tax Credit Allocation Committee ("CTCAC"). The Project was awarded ARRA/TCAP funds on August 26, 2009 and has met all requirements to use ARRA/TCAP funds.

In addition to being used as a permanent loan backstop for the MHP permanent loan commitment, the ARRA/TCAP funds are also allowed to be used during construction. Assuming the MHP funds are available when needed at conversion to the permanent period financing, the ARRA/TCAP funds will be repaid by MHP. If not, the ARRA/TCAP funds remain allocated to the project, fulfilling its role as an MHP backstop.

CTCAC has requirements that ARRA/TCAP funds be disbursed to reimburse incurred construction costs. They also must flow through a project funder that has already paid for incurred costs. The regulations limit ARRA/TCAP loan disbursements to three—40% following construction loan closing as justified by costs, an additional 35% at 50% completion (or February 1, 2011, whichever comes first), and the remaining 25% between stabilized occupancy and conversion to permanent financing. There is no flexibility in the funding mechanism or the disbursement schedule. If program regulations are not followed, the ARRA/TCAP funds for that disbursement are lost, which would create a project funding gap.

ANALYSIS

This action does not change the City's approved commitment amount of its own funds to this Project. It only requests technical changes that enable the flow-through of federal Stimulus funds from the State to the Project.

Because the City has to-date funded approximately $6.5 million in hard and soft construction costs (exclusive of land costs) through its predevelopment and interim construction loans for this Project, at least a portion of the ARRA/TCAP funds must flow through the City. There are no other funders that have provided significant early financing to the project.

When ARRA/TCAP reimbursement funds are disbursed to the Borrower and subsequently transferred to the City, they must be credited towards the City Loan's principal balance. The funds will become co-mingled, as is required under that program's definition of being "used."

The City's funds would be, in effect, replenished by ARRA/TCAP and then redisbursed for new construction uses; there would be one 'revolution' of funds. For this reason, a revolving loan approval and system set-up is required.

The City's financial management system cannot accommodate a revolving loan without special approvals and set-up. The financial management system limits aggregate disbursements for a loan to the amount reflected in the loan agreement, regardless of actual loan balance and amounts that should be available—which will be going up with the ARRA pay-ins, and then down as those funds are also expended.

This request to approve a revolving loan facility decreases the City's risk. First and foremost, given that the City is the funder that must accept and pass through the ARRA/TCAP funds, failure to accommodate this requirement would result in the $8.8 million in ARRA/TCAP funds being recaptured by CTCAC, producing a large shortfall in the construction budget. There is no other source that could fill that gap. It is anticipated that approximately 75% of the $8.8 million allocation would be spent and reimbursed in 2010-2011 while the remaining 25% will be spent and reimbursed in 2011-2012. Second, by crediting ARRA funds to the City's loan balance, the City's early expenditures would be significantly reduced, and overall project risk would be shared with another source of funds. Third, the City issued tax-exempt bonds for this project. The use of ARRA/TCAP was assumed at closing. To risk this award in any way would seriously jeopardize the bonds' status as well as those of other funders' commitments.

In order to reduce risk and exposure to the City in this transaction, the City and the limited partnership will enter into a Cost Reimbursement Agreement ("Agreement") that documents the permitted business terms regarding use of the $8,789,846 in ARRA/TCAP funds, including the following limitations:

1) Total Exposure to the City – The City's loan balance at any one time, including credits and debits applied for the flow-through of ARRA funds, may not exceed $13,894,579, the total construction/permanent loan commitment to this Project. This condition is expected to be easily met.
2) Duration of the Agreement – The revolving of ARRA/TCAP funds will be time-limited, so this approval will terminate at the time of the project's conversion to its permanent period financing or October 31, 2012, whichever is sooner.

For these reasons, the Housing Department recommends approval of the change of the City's loan construction/permanent loan to a revolving loan for a limited time, as well as the appropriations actions that permit receipt of the ARRA/TCAP funds, for the Fourth Street Apartments project.

Specific revolving loan business terms and any associated document modifications will be approved by the Director of Housing through the City's Delegation of Authority as permitted under Chapter 5.06 of the San José Municipal Code.

EVALUATION AND FOLLOW-UP

If this action is approved, the City Council will later be able to track the project's construction status through the Housing Department's quarterly construction report available on-line at the Department's website: http://www.sjhousing.org/report/quarter.html.

In addition, business term changes will be summarized in quarterly reports to the City Council regarding the Director's use of her Delegation of Authority.

POLICY ALTERNATIVES

To arrive at this proposal, staff considered the following option:

Alternative #1: ***Deny the request to establish a revolving loan***

Pros: Considerable staff time to implement this recommended solution would be saved.

Cons: The project is currently financially feasible and under construction. The City has committed funds and helped stimulate job creation, which will continue to be supported by this action. It is estimated that a tax credit project of this size and type will create 151 local jobs in the first year and, directly and indirectly, create another 38 jobs per year every year thereafter because of multiplier effects. Rejecting this recommendation to establish a revolving loan facility for the project would risk the permanent loss of almost $8.8 million of ARRA/ TCAP funds already committed to the Project, making it impossible to complete the project on schedule. Also, disrupting the federal funds would seriously jeopardize the project's other funding sources, including tax-exempt bonds that the City issued for the Project. Further, the City has already disbursed $8.7 million for land and construction costs; therefore, enabling the Project to proceed by establishing this revolving loan fund will protect the City's funds already invested and spread risk among funding sources.

Reason for not recommending: The Project is already committed, closed and under construction. Taking this action to solve technical issues will enable it to retain almost $8.8 million in one-time federal funds in order to complete construction.

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: Requires Council action on the use of public funds equal to $1 million or greater. However, the appropriated funds, as recommended as part of this memorandum, are only the pass-through of federal funds to the project and the adjustment of the City's appropriations to accommodate this pass-through. It does not involve an increase in the City's funds committed to the project. This memorandum will be posted on the City's website for the November 2, 2010 City Council agenda.

COORDINATION

This report has been coordinated with the Office of the City Attorney and the Finance Department.

FISCAL/POLICY ALIGNMENT

This action is consistent with the Housing Department's *Five-Year Investment Plan for Fiscal Years 2007/08-2011/12* in increasing the supply of affordable housing, and with the City's *Consolidated Plan, 2009-10* in providing households units for very low- and extremely low-income households.

COST SUMMARY/IMPLICATIONS

1. **AMOUNT OF RECOMMENDATION:** **$8,789,846**

2. **COST OF PROJECT:**

CITY'S EXISTING COMMITMENT	AMOUNT
Construction/Permanent Loan to fund Hard & Soft Construction Costs	$12,708,456
Land Acquisition (now held by City)	$2,190,000
Capitalized Interest (up to)	$1,186,123
TOTAL	$16,084,579

Subject of this Memorandum:

CITY'S REVOLVING LOAN TO PASS THROUGH ARRA/TCAP	
Construction Costs:	
ARRA 2010-2011	$6,592,385
ARRA 2011-2012	$2,197,461
TOTAL	**$8,789,846**

TOTAL CITY COMMITMENT + ARRA PASS-THROUGH:	$24,874,425
Previous Years' Expenditures and Encumbrances	($16,084,579)
REMAINING COMMITMENT FOR REVOLVING LOAN	$8,789,846

3. **SOURCES OF FUNDING:** Fund 443 – Low and Moderate Income Housing Fund

4. **FISCAL IMPACT:** No ongoing fiscal impact.

BUDGET REFERENCE

The table below identifies the fund and appropriation proposed for the action recommended as part of this memorandum.

Fund #	Appn. #	Appn. Name	Total Appn. Needed	2010-2011 Proposed Operating Budget Page	Last Budget Action (Date, Ord. No.)
Funding Recommended					
443	0070	Loans, Grants and Site Acquisition	$6,592,385*		

*Only $6,592,385 of the $8,879,846 is recommended for appropriation as part of this memorandum to reflect the portion of funding that is expected to pass through the City in 2010-2011. Recommendations to appropriate the remaining amount, $2,197,461, will be brought forward for Council approval as part of the 2011-2012 budget process.

CEQA

CEQA: Addendum to Final EIR for the North San José Area Development Policy, Resolution No. 72768, File No. PDC06-022.

/s/

LESLYE KRUTKO
Director of Housing

Jennifer A. Maguire
JENNIFER A. MAGUIRE
Budget Director

I hereby certify that there will be available for appropriation in the Low and Moderate Income Housing Fund in the Fiscal Year 2010-2011 moneys in excess of those heretofore appropriated therefrom, said excess being at least $6,592,385.

Jennifer A. Maguire
JENNIFER A. MAGUIRE
Budget Director

For questions, please contact Leslye Krutko at 408-535-3851.

COUNCIL AGENDA: 11-02-10
ITEM:

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Katy Allen
William F. Sherry, A.A.E.

SUBJECT: SEE BELOW

DATE: October 12, 2010

Approved

Date 10/15/10

COUNCIL DISTRICT: Citywide

SUBJECT: AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR AIRFIELD DESIGN SERVICES FOR THE NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT

RECOMMENDATION

Adopt a resolution authorizing the City Manager to negotiate and execute an agreement with Kimley-Horn and Associates, Inc., for airfield design and consultant services for the construction of Taxiway W from Taxiway D to Taxiway L , and for the reconstruction of Taxiways G and J, in an amount not to exceed $1,730,000 for the period from November 1, 2010, through December 31, 2013.

OUTCOME

Adoption of this resolution authorizes the City Manager to enter into an agreement with Kimley-Horn and Associates, Inc. for airfield design services to provide 100% design for Phases 3, 4, 5 and 6 of the Taxiway W Extension Project, which includes the construction of Taxiway W from Taxiway D to Taxiway L, and the construction of existing cross Taxiways G, and J from Taxiway V to Taxiway W. Approval of the agreement will provide necessary resources for the design, project management, contract management and technical services to support the Airfield Improvement Plan and will allow the Airport to meet grant funding requirements.

BACKGROUND

The City Council approved a multi-year funding strategy for major airfield improvement projects in the 2010-2013 Airport Capital Improvement Program. The program includes the extension of Taxiway W, located on the west side of the Airport, which will provide a connection to Runway 30L–12R, to support potential future development of general aviation facilities.

Council adopted Resolution No. 74609 on September 30, 2008 approving the selection of Kimley-Horn and Associates, Inc., (KHA) to provide airfield design and consultant services for all planned phases of the Terminal B Apron Reconstruction and Taxiway W Extension projects at the Norman

Y. Mineta San José International Airport. The agreement was structured to support a continued phased approach to design and construction services and allows for discrete contracts to be issued for each phase of work as monies are available. This approach helps ensure quality performance by the consultant, better program continuity and the timely implementation of each phased element.

The City entered into an agreement with KHA for phase one of these projects on November 18, 2008, for an amount not to exceed $2,300,000. Phase one design and the construction has been completed. The scope of this agreement also included 30% design of Taxiway W from Taxiway B to Taxiway L, which is planned for construction in multiple phases in the future.

Council approved the agreement for the second phase of work, for airfield design and consultant services for the Taxiway W Reconstruction B-C Project, on January 26, 2010, for an amount not to exceed $400,000. The City entered into that agreement on February 22, 2010; the design work has been completed, and the project is under construction.

The City has accepted a grant offer from the Federal Aviation Administration (FAA) to cover 80.59% of the cost of this agreement. The balance will be covered by Airport funds.

ANALYSIS

The proposed third agreement is for an amount not to exceed $1,730,000. It will complete the design (30% to 100%) of Taxiway W: D to L, taxiways G and J and provide construction support services. Completion of the 100% design will put the City in a strong position to qualify for grant funding for the taxiway construction.

KHA has performed well with the contracts that have been executed to date and their costs have been very reasonable considering the complexities of the Taxiway W project. They continue to produce quality documents, meet time sensitive schedules, and are always available to support the City when needed during the construction process. Staff supports the continued use of KHA to provide further design and construction support services for additional phases of the Taxiway W Project.

EVALUATION AND FOLLOW UP

Staff will continue to pursue FAA and other federal grant funding for subsequent phases of the projects approved by Council in the Airport Capital Improvement Program. The exact number of phases and the terms for each contract will be subject to operational and construction constraints and availability of grant funding. As additional grant funding is secured, staff will return to Council for approval of additional design service contracts with Kimley-Horn and Associates as needed.

POLICY ALTERNATIVES

Alternative: Accomplish all work utilizing existing City staff.
Pros: Increased work options for current staff.

Cons: Existing City staff does not possess the expertise required.
Reason for not recommending: In-house resources do not include the appropriate technical capability, certification and production capability across the broad range of required expertise to forego outside assistance. Reliance solely on City resources could jeopardize the successful implementation of these projects and FAA grant funding.

Alternative: Solicit consultant services for each individual project.
Pros: Possibility of more competition and distribution of work.
Cons: Delay in project implementation as the process of solicitation through award for each project could take approximately six months.
Reason for not recommending: The two main projects identified in this contract will be designed and constructed in multiple phases over multiple years. Individual RFQs are not an efficient method of project delivery. Multiple designers on each project would create inefficiencies in design and implementation and add to the contract management workload, diverting staff away from design management.

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)**

COORDINATION

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

FISCAL/POLICY ALIGNMENT

The San José Municipal Code requires that capital projects at the Airport be consistent with the adopted Airport Master Plan. The facility development covered under this proposed agreement is expressly identified in the Master Plan as Projects "A-30" (Twy. W extension), "A-33" (Twy. G widening/strengthening), and "A-34" (Twy. J widening/strengthening), and is thereby consistent with the Master Plan pursuant to Municipal Code Section 25.04.210(B)(1).

This project is consistent with the Guiding Principals for Budget and Financial Management, Mayor's 2006-2007 Revised June Budget Message, in that it supports economic recovery and job creation and is supported with federal grants.

This project is consistent with several initiatives identified in the Economic Development Strategy adopted by Council in November 2003, and aligns most significantly with:

- Strategic Initiative #1: Build a World-Class Airport and Air Services.

COST SUMMARY/IMPLICATIONS

The cost of this agreement will be reimbursed through the $2,245,529 FAA Airport Improvement Program Grant Offer the City accepted on September 23, 2010. That grant covers the full cost of this proposed agreement as well as the associated costs for design management services to be provided by the City's Public Works Department.

1.	AMOUNT OF RECOMMENDATION	$ 1,730,000
2.	COST ELEMENTS OF AGREEMENT:	
	Basic Services	$ 1,230,000
	Additional Services	$ 500,000
	TOTAL AGREEMENT COST:	**$ 1,730,000**
3.	SOURCE OF FUNDING: 520 – Airport Capital Improvement Fund 526 - Airport Revenue Bond Improvement Fund	
4.	OPERATING COSTS: The project has been reviewed and was determined that it will have no significant adverse impact on the General Fund operating budget.	

BUDGET REFERENCE

The table below identifies the funds and appropriations proposed to fund the remaining project costs, including project delivery, construction and contingency costs as discussed in this memorandum.

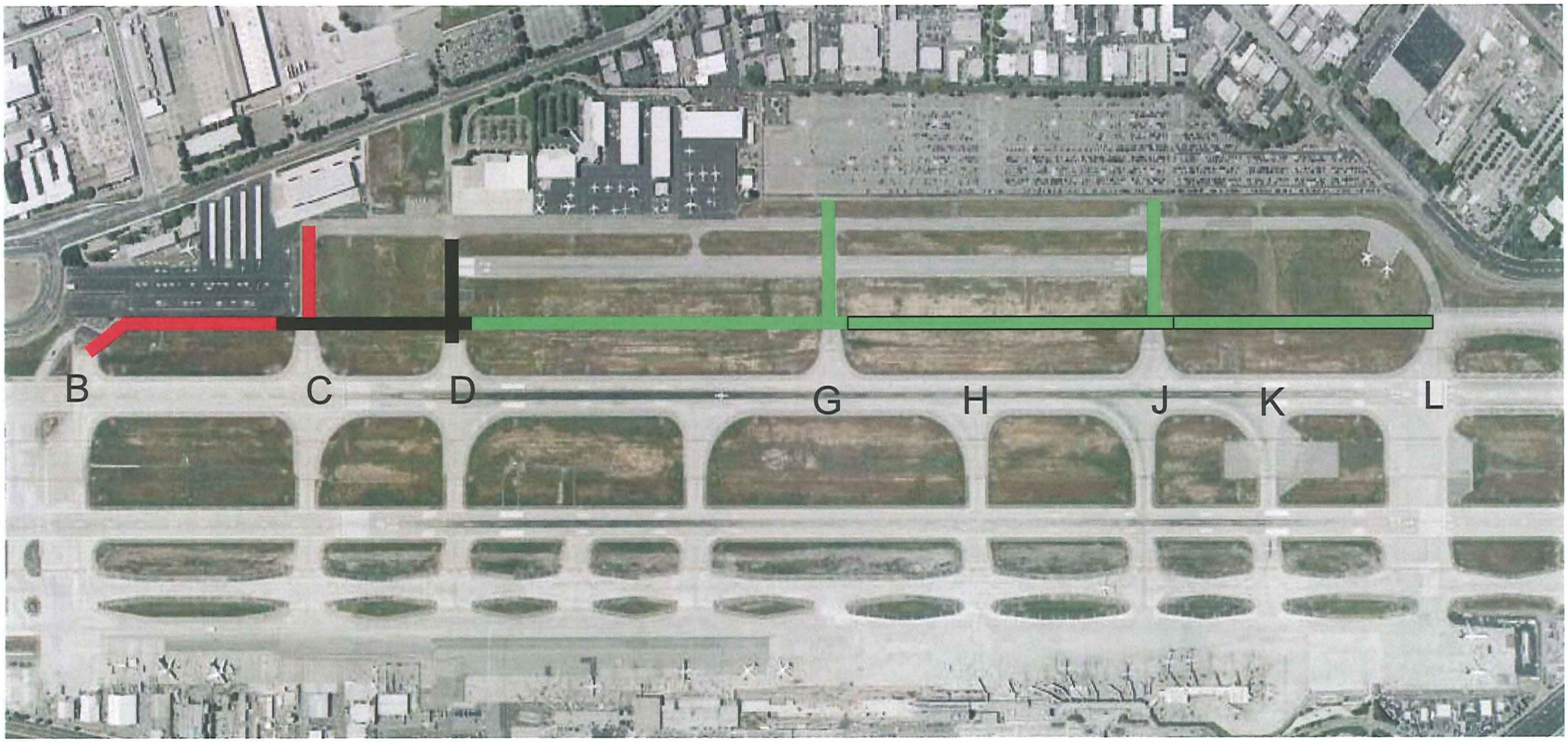
Fund #	Appn #	Appn. Name	Total Appn.	Amount For Contract	2010-2011 Adopted Capital Budget	Last Budget Action (Date, Ord. No.)
520	5254	Taxiway W Improvements	$9,902,000	$1,394,207	Page V-725	06/29/10, Ord. 28765
526	5254	Taxiway W Improvements	$ 898,000	$ 335,793	Page V-725	06/29/10, Ord. 28765
		Total	**$10,800,000**	**$1,730,000**		

CEQA

Not a project, File No. PP10-066(d), Consultant Services for Design/Study/Research/Inspection.

/s/	/s/
KATY ALLEN	WILLIAM F. SHERRY, A.A.E.
Director, Public Works Department	Director of Aviation
	Airport Department

Please direct questions to WILLIAM SHERRY, DIRECTOR OF AVIATION, at (408) 501-7669.



Phase 1 - Completed
Phase 2 – Under Construction
Phase 3 – KHA Agreement #3

Taxiway W Extension Project –
Kimley – Horn and Associates (KHA)
Agreement #3

9/29/10

COUNCIL AGENDA: 11-02-10
ITEM:

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR, CITY COUNCIL AND REDEVELOPMENT AGENCY BOARD

FROM: Debra Figone
Harry S. Mavrogenes

SUBJECT: **SEE BELOW**

DATE: October 12, 2010

SUBJECT: INCLUSIONARY HOUSING REQUIREMENTS FOR NEW RENTAL HOUSING DEVELOPMENTS MEETING CERTAIN DEVELOPMENT TIMELINES

RECOMMENDATION

It is recommended that the City Council and the Redevelopment Agency Board adopt resolutions:

1. Approving an amendment to the joint City/Agency Inclusionary Housing Policy, applicable in Redevelopment Project Areas, that allows for the execution and recordation of a Satisfaction Agreement evidencing satisfaction of the inclusionary housing requirements for rental housing projects, including multi-phase projects, during the suspension of such requirements under the Policy, provided that the specific project meets specified criteria contained in the amendment to the Policy, including accelerated development timelines.
2. Authorizing the Director of Housing and the Executive Director of the Redevelopment Agency to negotiate and enter into Satisfaction Agreements with eligible developers that detail the terms of the exemption and timelines for compliance.

OUTCOME

Approval of this recommendation will provide more certainty for developers of multi-phase rental projects in San José's Redevelopment Project Areas, providing them with the incentive to begin construction in the near term, and stimulating the economy by creating construction and construction-related jobs and generating fee and tax revenue for the City and the Redevelopment Agency. Four large housing projects in North San Jose are projected to create an estimated 8,819 jobs and pump $1.13 billion into the local economy over a five-year period and will result in $9 million in additional annual tax increment revenue by 2018.

BACKGROUND

As a result of a combination of the economic slowdown and the resulting restrictive lending environment that began in the fall of 2008, residential construction activity in San Jose has been stagnant. Over the past thirty years, building permits were issued each year for an average of more than 3,000 residential units (both multi-family and single-family). Compare this with building permits pulled in 2009, at 307, and for the first six months of 2010, at 306. The numbers are even more dramatic when you consider that the majority of these units were affordable housing projects financed in part by the City.

Many market-rate residential developers had been working for several years to prepare their projects for development and were ready to pull building permits when the market changed and financing became extremely difficult to obtain. Consequently, those developers put construction on hold to await a better, more stable market.

State law requires that 15% of all residential development in redevelopment project areas adopted after January 1, 1976 must be made available and affordable to low- and moderate-income households. To help satisfy the affordable housing requirement imposed by the State, the City Council and Agency Board jointly adopted an Inclusionary Housing Policy ("Policy") in the mid-1980s. The current Policy generally requires that 20% of all newly constructed housing units built in Redevelopment Project Areas be made affordable to low- or moderate-income households; several alternative methods of fulfilling the requirement are also included in the Policy. Since its adoption, over 1,030 units of affordable housing have been created in Project Areas as a result of this Policy and without any City or Agency funding.

In July 2009, a California Court of Appeals – in a case known as *Palmer/Sixth Street Properties L.P. v. City of Los Angeles* ("*Palmer*") – ruled that the requirements for rental housing set forth in the City of Los Angeles Inclusionary Housing Program violated the Costa-Hawkins Act, which was approved by the California Legislature in 1995. The Costa-Hawkins Act provides that landlords otherwise subject to rent control may set rents at market-rate whenever units are leased to a new tenant (known as "vacancy decontrol"). The ruling in *Palmer* called into question the validity of inclusionary housing requirements on rental housing projects.

On June 22, 2010, in response to *Palmer*, the City Council/Redevelopment Agency Board amended the Policy to temporarily suspend the applicability of affordable housing requirements for new rental housing developments until such time as the *Palmer* decision is reversed or modified by another court or by the State Legislature. Note that inclusionary requirements for for-sale housing were not impacted by the *Palmer* ruling, and remain in place.

ANALYSIS

Pending Rental Housing Developments in Project Areas

Several large housing developments proposed in Redevelopment Project Areas have obtained full entitlements and are ready to start construction in the near future if financial feasibility can be assured. These include, but may not be limited to, the following four projects located in North San Jose's Rincon de los Esteros Project Area:

- Fairfield Residential's Northpointe/Baypointe project, consisting of 704 rental apartments in three phases and 21,000 square feet of retail commercial space.
- Irvine Company's Crescent Park project, consisting of 1,750 rental apartments in five phases and a 5-acre park.
- Essex Property Trust's project at the Cadence site, consisting of 769 rental apartments in three phases and a 2.6-acre park.
- Equity Residential's Vista Montana project, consisting of 998 rental apartments in two phases and a 5-acre park.

Developers of large projects, many of which involve multiple phases, need certainty regarding financial feasibility in order to start the initial phases of development since significant infrastructure costs are usually incurred disproportionately in the initial phases.

A City/Agency team, with members from the Office of Economic Development, the Departments of Planning, Building and Code Enforcement, Transportation, and Housing, and the Redevelopment Agency, as well as the City Attorney and General Counsel, has met with the developers of the four identified projects. These developers have stated that they cannot initiate their projects unless they have certainty related to *Palmer*-related inclusionary housing requirements. This is concerning to them because they do not want to start construction of a project without having an understanding of the full cost of development; the uncertainty of a potential inclusionary requirement for a later phase may render the entire project infeasible. The developers agreed that, if the City provides certainty relative to inclusionary requirements, they would have the confidence to initiate construction now, rather than waiting until the economy is more stable.

Potential Freeze of Certain Impact Fees and Taxes

The developers are proposing to move large housing projects forward based on the certainty that inclusionary housing requirements will not be reinstated if *Palmer* is reversed and the developers comply with the phasing plan agreements with the City. They are similarly requesting certainty be provided with respect to impact fees and taxes. The developers have proposed that they not be subject to large fee or tax increases for the four projects noted above. Staff is currently studying this fee and tax proposal, and at this point is considering that only the storm and sanitary sewer connection fees are likely to be subject to significant increases in the next few years. Staff is already in the process of evaluating the infrastructure needs in light of the North San Jose Plan and the draft Envision 2040 General Plan. However, there may be policy and legal issues relating to whether the City will be able to pay the amount of any new fees that will not be paid by the developers pursuant to their proposal. Staff will continue to discuss this issue with the developers and will return to Council with a recommendation on this fee and tax proposal by December 2010.

Proposed Policy Change

Staff recommends that the City Council and Agency Board approve an amendment to the Policy providing that rental projects meeting certain definitions and requirements will continue to be exempted from inclusionary housing requirements under the Policy even if the *Palmer* decision is reversed.

Staff recommends that projects meeting the following minimum qualifications would be subject to this Amendment:

- Projects must be located in a Redevelopment Project Area subject to the Policy.
- Projects must involve new construction of 200 or more units.
- Developer must have obtained a development permit prior to September 1, 2010.
- Developer must pull building permits and commence construction of the project or its initial phase on or before September 30, 2011. In this context, "commence construction" means actual work on foundations, not demolition or site grading.
- All phases of a multi-phase project will be subject to a Phasing Plan approved by the Director of Housing and Executive Director of the Redevelopment Agency. If the project has two or three phases, it must commence construction of all phases no later than September 30, 2013. If it has four or more phases, it must commence construction of all phases no later than September 30, 2014. Each phase must be completed within 30 months. All Certificates of Occupancy must be received within the time period set forth in the Phasing Plan.
- Developers must execute a recordable Satisfaction Agreement with the City and Agency incorporating the above conditions, with said executed Agreement then being recorded.
- If a developer has previously entered into a recorded affordability agreement for a project or phase but has not yet pulled building permits, the Director of Housing is authorized to rescind that affordability agreement applicable to each phase as each phase commences construction.

Reason for Recommendation

Moving these projects forward now is a benefit to the City, creating construction jobs, indirect jobs in construction-related businesses, induced benefits generated as a result (including spending for materials and spending by construction workers), and increased fees and tax revenues. According to a July 2010 study entitled "The Economic Benefits of Housing in California," authored by the Center for Strategic Economic Research for the California Homebuilding Foundation, the projected number of units to be built in the four developments cited above could create an estimated 8,819 jobs and pump $1.13 billion into the local economy over a five-year period.

Staff also estimated potential increases in tax increment that could be generated by these potential units by comparing the County Assessor's Office baseline assessment values for those subject parcels against examples of valuations for new, unrestricted rental and ownership housing. Based on this research, the projected number of units to be built in the four developments cited above could create an estimated $9 million in additional annual tax increment revenue by 2018. This is particularly important to the Redevelopment Agency, which needs to build its increment base in order to offset recent increment drops.

While these figures are only estimates, there clearly will be a significant economic benefit from having large projects proceed during this real estate downturn.

Lastly, because there has been little development activity in the past two years, once employers begin to hire again, there will be a problem with housing supply and availability. When supply doesn't meet demand, rents increase and housing becomes less affordable. San Jose currently has a rental vacancy rate of approximately 4% (with a 5% vacancy rate considered balanced, where there is an adequate supply to meet demand); in recent days, rents have begun to inch up. By starting construction of these units now, housing supply will increase by several thousand units. It is expected that the first units will be ready for occupancy beginning in 2013 and the final units will be available by 2016. So, although these developments will not contain income restricted units, by virtue of their development they will help moderate rents in the general housing market.

EVALUATION AND FOLLOW-UP

Upon approval of these Policy amendments, the Housing Department will assign a project manager to oversee this program. The Housing Department and Redevelopment Agency will negotiate and execute Satisfaction Agreements with those developers able to comply with the conditions for such an exemption. The Housing Department will track and monitor the permit and construction progress of housing projects, and if requested, the City will record a document to evidence compliance with the Inclusionary Housing Policy if the construction deadlines are met. An Information Memo will be provided to the City Council once the Satisfaction Agreements have been completed to update the Council on the progress made.

POLICY ALTERNATIVES

To arrive at this proposal, staff considered the following options:

Alternative #1: ***Do not amend the Inclusionary Housing Policy as proposed.***

Pros: Should the *Palmer* decision be reversed before all phases of currently approved rental housing developments start construction, the latter phases of those projects would be subject to an Inclusionary Housing requirement and the City would gain additional affordable housing units.

Cons: Developers of approved multi-phase rental housing projects have indicated that they will not proceed with construction in the near term because of the uncertainty of whether the *Palmer* decision may be reversed, thereby precluding the economic benefits to the community and increased tax-increment revenue to the Agency and City that they would otherwise provide.

Reason for not recommending: While the integration of affordable housing units into new projects and developing neighborhoods remains a goal of the City and Agency, the current *Palmer* decision makes it unlikely that inclusionary rental units would be integrated into market-rate rental projects in the near term. The economic development and increased tax-increment benefits of getting approved rental housing projects underway sooner rather than later outweigh the possibility of adding units to the City's affordable housing stock. In addition, increased tax increment generates revenue for affordable housing because 20% of the increment can be used only for low- and moderate-income housing purposes.

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 project meets Criterion 2 above. Accordingly, this Memorandum will be posted on the City's website for the November 2, 2010 City Council meeting. The Policy change is agendized for discussion at the October 14, 2010 meeting of the Housing and Community Development Commission.

COORDINATION

Preparation of this report has been coordinated with the Office of the City Attorney and the Agency's General Counsel.

COST SUMMARY/IMPLICATIONS

None.

BUDGET REFERENCE

Not applicable.

CEQA

CEQA: Resolution No. 65459 and Addendum thereto, PP08-258

DEBRA FIGONE
City Manager

HARRY S. MAVROGENES
Executive Director

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