



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** John Stufflebean

**SUBJECT:** SEE BELOW

**DATE:** 1-24-11

Approved 

Date 2/3/11

**SUBJECT: MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY AND HABITAT FOR HUMANITY OF SILICON VALLEY FOR THE DEVELOPMENT OF LEASE TERMS FOR THE ENVIRONMENTAL INNOVATION CENTER**

## RECOMMENDATION

Adopt a resolution authorizing the City Manager to negotiate and execute a Memorandum of Understanding between the City of San Jose and Habitat for Humanity, Silicon Valley regarding their intent to develop lease terms to occupy 15,000 square feet at the San Jose Environmental Innovation Center to operate a building materials reuse store.

## OUTCOME

The proposed action will allow staff to begin negotiations with Habitat for Humanity, Silicon Valley (Habitat) towards bringing a retail outlet where quality used and surplus building materials are sold at a fraction of normal prices. If the City and Habitat are able to reach mutually agreeable terms for a ground lease, the City would be in a better position to reach Green Vision goals for waste diversion and job creation, in addition to generating additional sales tax for the City. A lease with Habitat could also make the EIC a more attractive investment in the City's efforts to evaluate the feasibility of securing additional funding from the sale of New Markets Tax Credits.

## BACKGROUND

In 2007, the Environmental Services Department (ESD) acquired an abandoned City warehouse, located at 1608 Las Plumas Avenue, from the Housing Department with the intention of relocating a household hazardous waste (HHW) drop-off operation to this site. After an extensive California Environmental Quality Act (CEQA) review process, an Environmental Impact Report

was certified by the City Council, in June 2007. The first phase included the design and construction of a temporary HHW facility which was completed in early 2010 and several drop-off events have already taken place at the site.

Contemporaneous with the first phase, the Administration also proceeded with the second phase, which includes the renovation of the existing 46,000 square foot building to house the Clean Technology Development Center, a construction materials reuse center, meeting and classroom, space for green jobs training, and the construction of a new 7,000 square foot building to provide a permanent facility for HHW operations. The City will open bids for this renovation in February 2011, with selection and award anticipated in late spring 2011. Construction is expected to take approximately 13 months to complete. The following three principal operations are contemplated for the EIC:

1. The Clean Technology Development Center (CTDC)
2. A construction materials reuse store construction materials to the public
3. A permanent HHW drop-off facility

City staff approached Habitat for Humanity to explore opportunities to open a ReStore Facility at the EIC in early 2007. Further, the City's 2008 Zero Waste Strategic Plan identified construction and demolition reuse as an important resource for contractors and residents. As part of the January 2010 Program Prioritization Process, in which 550 Citywide programs were reviewed and ranked by teams of Staff and community stakeholders to inform the preparation of the 2010-2011 Proposed Operating Budget, the EIC was identified in the highest priority tier of programs.

The Administration hired Business Cluster Development in 2009 to complete an operational plan for the site and its proposed principal tenants, including Habitat. The Transportation and Environment Committee reviewed the operational plan in June 2010. Additional background on the construction of the EIC and proposed operational plans can be found at the following links:  
[http://www.sanjoseca.gov/clerk/CommitteeAgenda/TE/20090914/TE20090914\\_d3.pdf](http://www.sanjoseca.gov/clerk/CommitteeAgenda/TE/20090914/TE20090914_d3.pdf)  
[http://www.sanjoseca.gov/clerk/CommitteeAgenda/TE/20090914/TE20090914\\_d3attb.pdf](http://www.sanjoseca.gov/clerk/CommitteeAgenda/TE/20090914/TE20090914_d3attb.pdf)

In May of 2010, the Administration updated the Transportation and Environment Committee on the status of the EIC project which included a plan to return with terms for lease agreements for the City Council's consideration. A lease with Habitat would be the first of three principal EIC lease agreements to be negotiated in the coming year.

[http://www.sanjoseca.gov/clerk/CommitteeAgenda/TE/20100607/TE20100607\\_d5.pdf](http://www.sanjoseca.gov/clerk/CommitteeAgenda/TE/20100607/TE20100607_d5.pdf).

## **ANALYSIS**

Habitat utilizes a unique business model that includes the development of partnerships with large contractors and retailers that donate surplus new or nearly new construction material which Habitat then sells to the general public at a significantly reduced price. This business approach

emphasizes higher quality material and greater stock turnover than a traditional salvage yard operation. This concept better supports the objectives of the EIC by attracting more public to the facility and offering more modern energy efficient construction material. Staff identified Habitat as the only experienced retailer using this business strategy, and they successfully operate ReStores nationwide, with over twenty in California including Oakland and Sacramento. A Restore at the EIC would be the only operation of its kind in the South Bay.

The following outlines a preliminary list of issues that would need to be addressed in the MOU:

- Timing and process for negotiating lease terms and conditions
- Timing and process for obtaining appraisals(s)
- Consideration for the tenant improvements to be completed by Habitat
- Requirements for tenant improvements completed by Habitat, including permits
- Term of lease for seven (7) or more years including grounds for termination.
- Indemnification and insurance requirements

Identified Funding for EIC Construction

The EIC construction budget is estimated at \$14,135,000. Table 1 below outlines the funding sources allocated for this project which currently include Construction and Demolition Diversion Deposit Program (CDDD) reserves, anticipated revenue from a proposed sale of New Markets Tax Credit (NMTC), and a variety of other ESD funds for the HHW facility. The CDDD program was designed to provide a financial incentive for remodelers / contractors to recycling construction waste. In short, the City collects a deposit from those submitting applications for building permits. Those deposits are returned if the applicant recycles their construction and demolition debris with proof from a certified recycler. Ineligible deposits from the CDDD program, accumulating since 2001, are allocated in a specific reserve for the EIC in the 2010-2011 Adopted Operating Budget in the IWM Fund. This reserve fund along with the NMTC funding, currently under evaluation, is to be used to fund the ReStore and the CTDC.

**Table 1**

Reserve for EIC (Proposed 2010- 2011 Operating Budget - Fund 423)	\$6,635,000
Pending NMTC Funding Assistance	\$4,000,000
ESD Funding for HHW Facility (Residential Utility Ratepayers)	\$3,500,000
<b>Total</b>	<b>\$14,135,000</b>

Alignment with City Green Vision

The proposed Habitat ReStore would promote goals #1 Create 25,000 Clean Tech Jobs and #5 Divert 100% of the waste from landfill and convert waste to energy. The Restore operation is dependent on receiving donated used and new construction materials that would otherwise be

destined for disposal. By making this service available to the local community at a reduced cost, the City can decrease waste and encourage more efficient and green home rebuilding in San Jose. Habitat utilizes a small number of paid staff to run their operation who will also provide training to residents and volunteers on how to construct and rebuild in cost-effective green ways.

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

The City Manager will execute an MOU which will establish a workplan for negotiations. This MOU will not obligate the City to lease the proposed site to Habitat, but will establish the process for pursuing negotiations. Staff anticipates returning in 90 days with a final lease for Council's consideration.

### **PUBLIC OUTREACH/INTEREST**

This recommendation does not meet any of the criteria identified below.

- 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)**

### **COORDINATION**

This memorandum was coordinated with the City Manager's Budget Office, and the Offices of Economic Development and the City Attorney, and the Public Works Department/ Real Estate Division.

### **COST SUMMARY IMPLICATIONS**

The City will receive monthly rent payments at the commencement of the proposed lease with Habitat sometime around Fall of 2012 based upon the current estimated completion of construction. The final lease rate will be a per square foot and the revenue will be used to cover the City's maintenance costs associated with the Restore at the EIC and will be budgeted

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specifically for this purpose in the Integrated Waste Management Fund (Fund 423). In addition, this project would produce sales tax revenue for the General Fund.

**CEQA**

Mitigated Negative Declaration for San José Environmental Innovation Center adopted 12/1/09,  
File No. PP09-138

/s/

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For questions please contact Jo Zientek, Deputy Director, at (408) 535-8557.