



Sent to Council:

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City Manager's Office

Memorandum

**TO: HONORABLE MAYOR
AND CITY COUNCIL**

FROM: Nadine Nader

SUBJECT: Early Council Packet

DATE: April 19, 2011

Approved

Nadine Nader

Date

4/19/11

EARLY DISTRIBUTION COUNCIL PACKET FOR MAY 3, 2011

Please find attached the Early Distribution Council Packet for the May 3, 2011 Council Meeting.

3.x Settlement with Licking Enterprises, Inc./ Purchase of Property at 1157 East Taylor Street and Adoption of Appropriation Ordinance Amendments in the Construction Excise Tax Fund.

Recommendation:

- (a) Approve a settlement and authorize the City Attorney to execute a Settlement Agreement and Release to settle the case of Licking v. City of San Jose. The settlement includes \$2,104,000 for purchase of property for the Route 101/Mabury interchange and attorney fees, payment of \$1,000,000 for loss of business goodwill at the time that the City takes possession of the property, plus estimated closing costs of \$13,200, for a total amount of \$3,117,200.
- (b) Adopt the following 2010-2011 Appropriation Ordinance amendments in the Construction Excise Tax Fund:
 - (1) Establish an appropriation to the Department of Transportation for the Route 101/Mabury Acquisition project in the amount of \$1,021,200; and
 - (2) Decrease the Ending Fund Balance by \$1,021,200.

CEQA: EIR Resolution No. 74195.1, File No. PP09-186. (City Attorney)

4.x Final Public Hearing and Approval of the Annual Action Plan FY 2011-2012.

Recommendation:

- (a) Hold a final public hearing regarding the approval of the City's Annual Action Plan 2011-12 and take public comment.
- (b) Adopt the 2011-2012 Annual Action Plan, including the FY 2010-2011 funding recommendations for the Community Development Block Grant (CDBG) Program, the HOME Investment Partnership Program (HOME), the Housing

Opportunities for People with HIV/AIDS (HOPWA) Program, and the Emergency Shelter Grant (ESG) Program.

- (c) Adopt a resolution authorizing the Director of Housing to negotiate and execute all non-capital agreements and contracts not requiring CEQA review and to negotiate all capital project agreements and contracts, including any amendments or modifications, for the expenditure of CDBG, ESG, HOME and HOPWA funds on behalf of the City.
 - (d) Authorize the Housing Department to submit the FY 2011-2012 Annual Action Plan to the U.S. Department of Housing and Urban Development (HUD), which makes the City eligible to receive and distribute approximately \$15,400,000.
- CEQA: Not a Project, File No. PP10-067, Non-Project Specific Funding Mechanism. (Housing)

5.x Actions Related to the Tamien Specific Plan Area Purchase and Sale Agreement.

Recommendation:

- (a) Adopt a resolution authorizing the City Manager to negotiate and execute a Purchase and Sale Agreement (PSA) with the Santa Clara Valley Transportation Authority (VTA) for 3.5 acres of VTA Excess Property located at Lick Avenue near Pepitone Avenue and Goodyear Street, San Jose, California, within the Tamien Station Area, for an amount not to exceed \$4,500,000 and credits under the Parkland Dedication and Park Impact Ordinances and to execute any documents required to complete the transaction.
- (b) Adopt the following Appropriation Ordinance amendments in the Construction Tax & Property Conveyance Tax Fund: Council District 3 (Fund 380):
 - (1) Establish an appropriation to the Parks, Recreation and Neighborhood Services Department in the amount \$985,000 for the Tamien Specific Plan Area Park Improvements;
 - (2) Decrease the Reserve: Tamien Specific Plan Area Park Improvements by \$325,000; and
 - (3) Decrease the Reserve: Roosevelt Hockey Rink Cover by \$660,000.
- (c) Adopt the following Appropriation Ordinance amendments in the Construction Tax & Property Conveyance Tax Fund: Council District 6 (Fund 384):
 - (1) Establish an appropriation to the Parks Recreation and Neighborhood Services Department in the amount of \$50,000 for the Tamien Specific Plan Area Park Improvements; and
 - (2) Decrease the Reserve: Tamien Specific Plan Area Park Improvements by \$50,000.
- (d) Adopt the following Appropriation Ordinance amendments in the Subdivision Park Trust Fund (Fund 375):
 - (1) Establish an appropriation to the Parks Recreation and Neighborhood Services Department in the amount \$3,465,000 for the Tamien Specific Plan Area Park Improvements.
 - (2) Decrease the Reserve: Tamien Specific Plan Area Park Improvements by \$505,000.

(3) Decrease the Reserve: Future PDO/PIO Projects by \$2,960,000.
CEQA: Exempt, File No PP10-023. Council District 3. SNI: Washington. (Parks,
Recreation and Neighborhood Services/City Manager's Office)

**7.x Report on Bids and Award of Contract for the Padres Drive Sanitary Sewer
Rehabilitation Project.**

Recommendation: Report on bids and award of contract for the Padres Drive Sanitary
Sewer Rehabilitation project to the low bidder, McGuire and Hester, in the amount of
\$1,799,192 and approval of a contingency in the amount of \$180,000. CEQA: Exempt,
File No. PP08-259, dated November 14, 2008. Council District 6. (Public Works)

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

/s/
NADINE NADER
Assistant to the City Manager



Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Richard Doyle
Jennifer A. Maguire

SUBJECT: SEE BELOW

DATE: April 14, 2011

SUBJECT: SETTLEMENT WITH LICKING ENTERPRISES, INC./ PURCHASE OF PROPERTY AT 1157 EAST TAYLOR STREET AND ADOPTION OF APPROPRIATION ORDINANCE AMENDMENTS IN THE CONSTRUCTION EXCISE TAX FUND

RECOMMENDATION

- A. Approve a settlement and authorize the City Attorney to execute a Settlement Agreement and Release to settle the case of Licking v. City of San Jose. The settlement includes \$2,104,000 for purchase of property for the Route 101/Mabury interchange and attorney fees, payment of \$1,000,000 for loss of business goodwill at the time that the City takes possession of the property, plus estimated closing costs of \$13,200, for a total amount of \$3,117,200.
- B. Adopt the following 2010-2011 Appropriation Ordinance amendments in the Construction Excise Tax Fund:
 1. Establish an appropriation to the Department of Transportation for the Route 101/Mabury Acquisition project in the amount of \$1,021,200; and
 2. Decrease the Ending Fund Balance by \$1,021,200.

OUTCOME

Settle disability discrimination lawsuit alleging a wrongful denial of rezoning, and purchase of the subject property for future freeway interchange, including payment for loss of business goodwill.

BACKGROUND

Dr. John Licking, a practicing dentist in Sunnyvale, purchased the property at 1157 East Taylor Street in 2001, with the intent of establishing a large scale rehabilitation facility on the property. The property was zoned R-1, which would only allow a small facility of six or less persons.

April 14, 2011

Subject: Settlement with Licking Enterprises, Inc/Purchase of Property at 1157 East Taylor Street

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Dr. Licking applied for a rezoning of the property to R-M, which would allow larger facilities with a Conditional Use Permit. The application for a zoning change was consistent with the City's General Plan (medium high density residential – 12-20 dwelling units per acre) and the application was recommended by the Planning Department staff.

In the context of opposition from the surrounding community, former Councilmember Cindy Chavez issued a memorandum recommending denial of the rezoning as premature, since the property was being considered for inclusion in a future freeway interchange, or alternatively for an expansion to Watson Park.

On September 16, 2002, the rezoning application was denied by the City Council.

Licking unsuccessfully pursued remedies with the U.S. Department of Housing and Urban Development, and then initiated this lawsuit on February 5, 2007. The lawsuit alleges that the City's denial of the rezoning was based on discrimination against disabled individuals. In particular, the suit claims that since almost all conforming rezoning applications are approved, the denial of this application was the result of animosity toward recovering alcoholics and drug abusers, as reflected in the sentiments of community members. The lawsuit alleged that the City's explanation for denial was a pretext for the real discriminatory motivation.

During the course of litigation, it became apparent that the freeway interchange project at Route 101 and Mabury Road / Taylor Street was likely to proceed, and the subject property would be needed for construction of that interchange. The 101/Mabury interchange has been identified as an important transportation improvement to provide access to the planned Berryessa BART Station (proposed for completion in 2018). Therefore, the parties agreed to negotiate a settlement of the lawsuit through the purchase of the property by the City. The City's acquisition of the property for the 101/Mabury interchange demonstrates a local commitment to the project and can assist in securing regional transportation grants.

Previously, the parties tentatively agreed to a purchase of the property for the sum of \$2,096,000, including all fees, agreed to lease the property back to the rehabilitation facility until it was needed for the freeway project, and agreed to arbitrate the value of future business loss including any relocation expense. The price was based on the appraised value of the property and the agreement was approved by the City Council on October 27, 2009. However, the parties failed to fully execute the agreement when a dispute arose surrounding the legal representation of Plaintiff. Subsequently, the parties, with new counsel in place, agreed to mediate the value of future business loss and relocation expenses, and based on consultant's valuation of the business, arrived at a negotiated sum of \$1 million, to be paid at the time the City takes possession of the property.

The parties have tentatively agreed to the following terms: The City will purchase the property for \$2,023,000 which is approximately the appraised value of the property,

assuming that the property had been rezoned. A payment of \$81,000 will be made to Plaintiff's former attorney in full settlement of his claims for fees. In addition, the City will be responsible to pay closing costs related to the purchase of the property, in an amount estimated at \$13,200. The City will lease the property back to Dr. Licking's facility, LifeChoices, for \$1 per month, pursuant to a ground lease. When the City needs the property for construction of the freeway interchange, no sooner than October 1, 2014, the City will give six months notice for LifeChoices to vacate the property, and the lease will terminate. To compensate the owner for projected economic and relocation losses to the business due to the vacation of the property, the City will pay Licking Enterprises \$1,000,000 at the time written notice is provided to LifeChoices to vacate the property.

ANALYSIS

In view of the ultimate need for the property for the freeway project, a resolution of the discrimination lawsuit by purchasing the property and compensating the owner for loss of goodwill is reasonable. The leaseback of the property for a nominal sum satisfies the plaintiff with regard to the alleged discrimination, which the City denies, without the expenditure of additional funds.

The settlement is reasonable in light of the inherent risks and costs of litigation and also addresses a potential City need for the property in the future. This settlement is made as a compromise of a disputed claim, and the City is not admitting that it is legally liable for any amounts claimed.

EVALUATION AND FOLLOW-UP

No additional follow up actions with the City Council are expected at this time.

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 memorandum was included in the Early Distribution packet, as it requires Council action on the use of public funds equal to \$1 million or greater. This memorandum and the settlement agreement are posted on the City's website for the May 3, 2011 Council Agenda.

COORDINATION

The settlement has been coordinated with the Department of Transportation and the Department of Planning, Building and Code Enforcement.

COST SUMMARY/IMPLICATIONS

The settlement will cost a total of \$3,117,200. The recommended appropriation actions included in this memorandum will increase the current allocation from \$2,096,000 to \$3,117,200.

BUDGET REFERENCE

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

Fund #	Appn #	Appn. Name	Total Appn.	Amount for Settlement	2010-2011 Adopted Capital Budget (Page)	Last Budget Action (Date, Ord. No.)
Current Funding Available						
429	7150	Route 101/Mabury Acquisition Project	\$2,096,000	\$2,096,000	V – 820	06/29/2010, Ord. No. 28765
Additional Funding Recommended						
465	7150	Route 101/Mabury Acquisition Project	\$1,021,200*	\$1,021,200		
Total Funding for Settlement			\$3,117,200	\$3,117,200		

* The recommended increase to the Route 101/Mabury Acquisition Project appropriation will be offset by a decrease to the Ending Fund Balance in the Construction Excise Tax Fund which currently has a balance of \$3,508,513.

HONORABLE MAYOR AND CITY COUNCIL

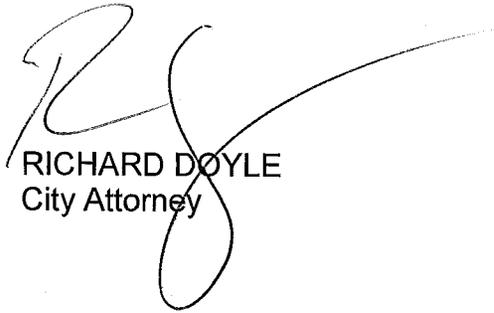
April 14, 2011

Subject: Settlement with Licking Enterprises, Inc/Purchase of Property at 1157 East Taylor Street

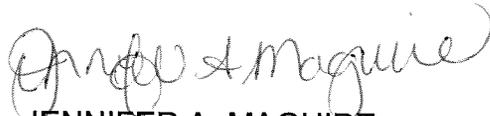
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CEQA

EIR Resolution No. 74195.1, File No.PP09-186.

A large, stylized handwritten signature in black ink, consisting of a large 'R' and 'D' connected together.

RICHARD DOYLE
City Attorney

A handwritten signature in black ink that reads 'Jennifer A. Maguire'.

JENNIFER A. MAGUIRE
Budget Director

For questions please contact Richard Doyle, City Attorney at (408) 535-1900.



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Leslye Corsiglia

SUBJECT: SEE BELOW

DATE: April 11, 2011

Approved

Date

4/15/11

COUNCIL DISTRICT: City-Wide
SNI AREA: N/A

**SUBJECT: FINAL PUBLIC HEARING AND APPROVAL OF THE ANNUAL
ACTION PLAN FY 2011-2012**

RECOMMENDATION

It is recommended that the City Council:

1. Hold a final public hearing regarding the approval of the City's Annual Action Plan 2011-12 and take public comment;
2. Adopt the 2011-2012 Annual Action Plan, including the FY 2010-2011 funding recommendations for the Community Development Block Grant (CDBG) Program, the HOME Investment Partnership Program (HOME), the Housing Opportunities for People with HIV/AIDS (HOPWA) Program, and the Emergency Shelter Grant (ESG) Program.
3. Adopt a resolution authorizing the Director of Housing to negotiate and execute all non-capital agreements and contracts not requiring CEQA review and to negotiate all capital project agreements and contracts, including any amendments or modifications, for the expenditure of CDBG, ESG, HOME and HOPWA funds on behalf of the City.
4. Authorize the Housing Department to submit the FY 2011-2012 Annual Action Plan to the U.S. Department of Housing and Urban Development (HUD), which makes the City eligible to receive and distribute approximately \$15,400,000.

OUTCOME

The Mayor and City Council's approval of the Annual Action Plan 2011-2012 will enable the City to finalize and submit to HUD these federally-mandated documents by the May 15, 2011 deadline. By approving the Annual Action Plan, the City will be eligible to receive and distribute approximately \$15,400,000 in entitlement funds in FY 2011-2012.

BACKGROUND

In 2010, the City adopted a Five-Year Consolidated Plan for the period FY 2010-2015. The Consolidated Plan assesses the City's current housing market; analyzes demographic, ethnic, and socio-economic conditions; and identifies populations within the City who have the greatest community and housing needs, including seniors, families, persons who are homeless or at risk of homelessness, and persons with disabilities. It also defines the City's priority needs, strategies, and objectives for reducing the most prevalent barriers to housing and services in our community. For each year of the Five-Year Consolidated Plan, the jurisdiction must submit an Annual Action Plan outlining the jurisdiction's one-year plan for achieving the goals outlined in the Five-Year Plan.

On March 22, 2011, the City Council conducted a public hearing on the draft Consolidated Plan – Annual Action Plan FY 2011-2012.

The City of San José participated in a countywide collaboration to develop this cycle's Five-Year Consolidated Plan. From a broader set of shared regional objectives developed through the collaboration, the City subsequently refined and prioritized six major goals to meet both regional and local priorities:

- 1) Assist in the creation and preservation of affordable housing for lower-income and special needs households;
- 2) Support activities to end homelessness;
- 3) Support activities that assist with basic needs, eliminating blight, and/or strengthening neighborhoods;
- 4) Expand economic opportunities for low-income households;
- 5) Promote fair housing choice; and,
- 6) Promote environmental sustainability.

In order to meet these goals, the City provides federal funding to local agencies and community-based organizations that work in these priority areas. The Annual Action Plan contains a complete list of agencies that have been recommended for federal funding in FY 2011-12 and an outline of the process used to develop these recommendations.

ANALYSIS

This Memorandum requests the City Council to approve the Annual Action plan as presented. As of the date this Memorandum was submitted, no public comments had been received on the draft Plan.

As of April 11, 2011, the Housing Department had not received the final allocation amounts for its federal programs because the federal FY 2011 budget had not yet been approved. As a result, HUD has not determined the final allocation levels for CDBG, HOME, HOPWA and ESG. Based on President Obama's and HUD's most recent budget proposals, the Housing Department anticipates, at a minimum, a decrease in both the CDBG and HOME funding levels by 8.24%

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and 9% respectively, over the 2010 levels. Based on this projection, staff is preparing for a \$15,400,000 total allocation, which is the amount that Housing staff has submitted in the Action Plan budget. If substantially deeper cuts are passed, staff will return to the City Council with alternate allocation strategies.

EVALUATION AND FOLLOW-UP

Since the public comment period for the FY 2011-12 Annual Action Plan closes on April 14, 2011, which is after the submission deadline for this memorandum, a summary of all public comments, City's responses, and any recommended amendments to the draft Five Year Consolidated Plan and the Annual Action Plan will be distributed to the City Council in the form of a Supplemental Memorandum prior to the May 3, 2011 meeting in which the City Council will consider approval of the final Plan documents. In the fall of 2012, the City will use the Consolidated Annual Performance and Evaluation Report (CAPER) to report on its progress in achieving the goals identified in this FY 2011-2012 Action Plan.

POLICY ALTERNATIVES

Not Applicable.

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)**

Federal regulations stipulate that jurisdictions hold at least two public hearings to receive public comment for the Consolidated Plan's Annual Action Plan. The City of San José routinely holds more public hearings than required by the federal government. This year, the City planned a total of four public hearings on the FY 2011-2012 Annual Action Plan. The City sent individual announcements of these public hearings to over 450 organizations and individuals concerned about affordable housing and community development issues, as well as placing an announcement in the San Jose Mercury News. These notices were also translated into Spanish, Vietnamese, and Chinese and published in La Oferta, Thoi Bao and China Press newspapers.

The City's four planned public hearings are as follows:

1. Housing and Community Development Advisory Commission (HCDC) special meeting – February 22, 2011
2. San José City Council meeting - March 22, 2011
3. Housing and Community Development Advisory Commission (HCDC) meeting - April 14, 2011
4. San José City Council meeting - May 3, 2011

Due to the lack of quorum at the regular HCDC meeting on February 10th, a special HCDC meeting was held on February 22 in order to open the public comment period. An additional public hearing will be held at the HCDC retreat on April 23rd for HCDC approval of the Annual Plan 2011-12.

All public comments provided to the City either verbally or in writing will be included in the appendices of the documents when submitted to HUD.

COORDINATION

Preparation of this report has been coordinated with the Department of Planning, Building, and Code Enforcement, the Department of Environmental Services, and the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

The timely submittal of the Annual Action Plan to HUD enables the City to become eligible to receive and distribute approximately \$16,300,000 in entitlement funds for FY 2011-2012.

COST SUMMARY/IMPLICATIONS

With an approved Consolidated Plan, the City will be eligible to receive housing and community development funds--including CDBG, HOME, HOPWA and ESG funds--from the federal government in the amount of approximately \$15,400,000 for FY 2011-2012.

BUDGET REFERENCE

Not applicable.

HONORABLE MAYOR AND CITY COUNCIL

April 11, 2011

Subject: Final Public Hearing of the Consolidated Annual Action Plan 2011-2012

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CEQA

Not a Project, File No. PP10-067, Non-Project Specific Funding Mechanism.



LESLYE CORSIGLIA
Director of Housing

For questions please contact Leslye Corsiglia, Director of Housing at (408) 535-3851



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Norberto Duenas
Kim Walesh
Jennifer A. Maguire

SUBJECT: SEE BELOW

DATE: 04-11-11

Approved

Date

4/18/11

COUNCIL DISTRICT: 3
SNI AREA: Washington

SUBJECT: TAMIEN PURCHASE AND SALE AGREEMENT AND ADOPTION OF APPROPRIATION ORDINANCE AMENDMENTS FOR THE TAMIEN SPECIFIC PLAN AREA PARK IMPROVEMENT PROJECT

RECOMMENDATION

- a. Adoption of a resolution authorizing the City Manager to negotiate and execute a Purchase and Sale Agreement (PSA) with the Santa Clara Valley Transportation Authority (VTA) for 3.5 acres of VTA Excess Property located at Lick Avenue near Pepitone Avenue and Goodyear Street, San José, California, within the Tamien Station Area for an amount not to exceed \$4,500,000 and credits under the Parkland Dedication and Park Impact Ordinances and to execute any documents required to complete the transaction.
- b. Adoption of the following Appropriation Ordinance amendments in the Construction Tax & Property Conveyance Tax Fund: Council District 3 (Fund 380):
 1. Establish an appropriation to the Parks, Recreation and Neighborhood Services Department in the amount \$985,000 for the Tamien Specific Plan Area Park Improvements; and
 2. Decrease the Reserve: Tamien Specific Plan Area Park Improvements by \$325,000; and
 3. Decrease the Reserve: Roosevelt Hockey Rink Cover by \$660,000.
- c. Adoption of the following Appropriation Ordinance amendments in the Construction Tax & Property Conveyance Tax Fund: Council District 6 (Fund 384):

1. Establish an appropriation to the Parks Recreation and Neighborhood Services Department in the amount of \$50,000 for the Tamien Specific Plan Area Park Improvements; and
 2. Decrease the Reserve: Tamien Specific Plan Area Park Improvements by \$50,000.
- d. Adoption of the following Appropriation Ordinance amendments in the Subdivision Park Trust Fund (Fund 375):
1. Establish an appropriation to the Parks Recreation and Neighborhood Services Department in the amount \$3,465,000 for the Tamien Specific Plan Area Park Improvements; and
 2. Decrease the Reserve: Tamien Specific Plan Area Park Improvements by \$505,000; and
 3. Decrease the Reserve: Future PDO/PIO Projects by \$2,960,000.

OUTCOME

City Council approval of the recommendations will authorize the purchase of 3.5 acres of real property for the development of a Greenprint priority new park project in an underserved area of the City, Tamien Station Area.

EXECUTIVE SUMMARY

As identified through the Tamien Area Specific Plan, the Strong Neighborhoods Initiative process and the City's Greenprint Update process, placing a park in the Tamien Station area has been a long term strategic priority for the City and the residents of the area. This memorandum provides for the purchase of 3.5 acres of land by the City from VTA in order to make this park a reality. As part of the proposed deal, the 3.5 acres will be defined as two parcels for ease of reference. The first, referred to as the "Phase I Property" consists of 2.04 acres and proposed to be purchased by the City by providing VTA with \$4.5 million and 38 future parkland dedication credits. The second, referred to as the "Phase II Property" consists of 1.46 acres and would be purchased by the City by providing VTA with 213 units of future parkland development credits and the opportunity for VTA to reappraised as described below.

The entire 3.5 acres would be owned by the City as a result of the proposed purchase (Phase I and Phase II properties). The City is in preliminary discussions with Rocketship Charter School to potentially sell and lease a portion of the Phase I Property for the development of a school, play area and parking lot. The Phase II property is subject to re-appraisal by VTA within five years from the effective date of the agreement. Depending upon the price of the re-appraisal and depending upon the status of VTA's development approvals at the site, there is a possibility that the City will need to provide all or a portion of the Phase II property back to VTA, pay additional cash to retain the Phase II property and/or provide VTA with additional parkland dedication credits. These alternatives are described in further detail in the analysis section of this memorandum.

BACKGROUND

VTA is the owner of approximately sixteen and one half (16.5) acres ("VTA Tamien Station Property") near the Tamien Caltrans Station along Highway 87 and Alma Avenue in the City. The 16.5 acres consist of approximately 10.47 acres on the east side of Highway 87 and 6.03 acres on the west side of Highway 87. VTA's Board on October 1, 1998 declared a portion of the VTA property consisting of approximately 6.05 acres on the east side of Highway 87 as "Excess Property". A map of the VTA Excess Property on the east side of Highway 87 is depicted in Attachment A of this memorandum.

VTA anticipates jointly developing or selling VTA Excess Property and potentially a larger portion of the VTA Tamien Station Property at a future date for a development project that includes multi-family residential units consisting of apartments, condominiums and townhouses ("VTA Project"). City is interested in purchasing approximately 3.5 acres of VTA Excess Property for the development of a recreation facility to serve the existing and future residents of the Tamien Station area, with the intention that approximately 2.04 acres of the property be developed at City's discretion, and approximately 1.46 acres of the property be developed no earlier than five years from the effective date of the PSA subject to the terms and conditions described below.

In 2006, Green Valley Corporation (GVC) sought entitlements from the City for the development of the Tamien Towers project that included 12 townhomes and twin mid-rise buildings of multi-family residential units on private property located at Lick Avenue and West Alma Avenue south of the Tamien Station area and east of Highway 87. As part of GVC's entitlement process for the project, the City, VTA, and GVC entered into an agreement on April 21, 2006 entitled "Three Party Agreement Re: Conditions of Approval and Disposition of Parkland Fees in Lieu of Parkland Dedication in Connection with the Tamien Towers Project" (Original Three Party Agreement). The Original Three Party Agreement satisfied GVC parkland obligation for its project by providing partial funding to VTA in the amount of \$1.4 million held in an escrow account for the construction of a parking garage replacing displaced parking due to the location of the future park. The Original Three Party Agreement states that if the money in escrow is not used to build the parking garage within five (5) years of the effective date, the City can request the \$1.4 million to be disbursed to City as parkland fees. City has notified the escrow agent of our intention to have the \$1.4 million and interest minus escrow fees disbursed to the City shortly after May 1, 2011. These funds will then be credited to the Subdivision Park Trust Fund. Should the escrow funds not be received and deposited into the Subdivision Parks Trust Fund by May 2, 2011, the Tamien PSA action will be deferred to a future Council Agenda.

As defined in the City's Parkland Dedication Ordinance (PDO), San José Municipal Code, Section 19.38, residential developers are required to dedicate land, improve parkland, and/or pay a parkland fee in lieu of dedication for neighborhood and community parklands. For projects of 50 units or less, the City can only request the associated in-lieu fees from developers. The parkland fees are in-lieu of a requirement for developers to dedicate land for park purposes at the rate of three undeveloped acres for every 1,000 new residents added to the City by new residential development. Fees in-lieu of land dedication are deposited into, and accounted for, in the Subdivision Park Trust Fund.

The acquisition and development of a park in the Tamien Station area has been identified as a Greenprint 2009 Update priority project. Staff has conducted community meetings relative to this site with the most recent held in April 2011. Through those meetings, desired amenities were discussed and include a broad range of activities, most importantly to have a park that serves the entire community with amenities such as a small running track and sports fields.

ANALYSIS

Smith & Associates, Inc., on behalf of VTA, prepared an appraisal of the VTA Excess Property dated January 20, 2006 in which it determined the then "As Is" market value for highest and best use as approximately \$75.00 per square foot. The same consultant prepared an appraisal of the 3.5 acres park property dated March 31, 2010 in which it determined that the then "As Is" market value for highest and best use as approximately \$45.00 per square foot. City and VTA staff have been negotiating a PSA and have arrived at a negotiated value for the purpose of completing this transaction in the time frame desired by the City at \$58.00 per square foot. The parties have agreed, subject to Council approval, for the City to pay to VTA for the 3.5 acres a combination of Four Million Five Hundred Thousand Dollars (\$4,500,000) in cash and Two Hundred Fifty-One (251) PDO/PIO Credits, with the ability for VTA to request a reappraisal of part of property, as follows:

A. Phase I Property: For payment of the 2.04 acres of the property referred in Attachment B as Phase I Property:

1. Cash Payments: totaling \$4,500,000 paid at close of escrow (including \$1.4 million currently in escrow that was previously set aside to build a parking garage).
2. Park Fee Credits: Thirty-eight (38) units of PDO/PIO credits for market rate multi-family (5+) residential units. The PDO/PIO credits may be used for any future residential project on the VTA Tamien Station Property. If a different category of housing units are developed on VTA Tamien Station Property and VTA wishes to apply the credits to those units, all credits under this section will be converted to land acreage.

The cash payment of \$4,500,000 and 38 units of PDO/PIO credits for 2.04 acres of land is the equivalent of \$58.00 per square feet.

B. Phase II Property: For payment of the remaining 1.46 acres of the property referred to in Attachment C as Phase II Property:

1. Park Fee Credits: 213 units of PDO/PIO credits for market rate multi-family (5+) residential units. The PDO/PIO credits may be used for any future residential project on the VTA Tamien Station Property. If a different category of residential units are developed on VTA Tamien Station Property and VTA wishes to apply the credits to those units, all credits under this section will be converted to land acreage.

The 213 units of PDO/PIO credits for 1.46 acres of land is the equivalent of \$45.00 per square feet.

C. VTA Reappraisal Option:

1. VTA, at its sole discretion, may request a re-appraisal of the Phase II Property at anytime within five (5) years of the agreement. All costs associated with the re-appraisal will be at the sole cost of VTA. The selected appraiser will provide a re-appraised market value of the Phase II Property which will contain a calculation showing the per square foot value of the Phase II Property based on the highest and best use. The Re-Appraisal will be made using an assumption that the Phase II Property and Phase I Property are one continuous parcel.
2. Upon 5 years from the effective date of the PSA, VTA and City will review the (i) re-appraised price (New Price) and (ii) number of residential units (Units) approved under the applicable zoning for the VTA Tamien Station Property. The new appraised price will be no less than \$45.00 per square foot and, if VTA has not completed an appraisal upon 5 years from the effective date, then the new appraised price will be equal to \$45.00 per square foot.
3. Based upon the "New Price" and "Units" described above, the following scenarios will be available:
 - a. If the Units exceeds 213 and the New Price is \$45.00 per square foot or less, then no further action need to be taken and the City will retain permanent ownership of Phase II Property;
 - b. If the Units exceeds 213 and the New Price exceeds \$45 per square foot, then the following alternatives are available, at the discretion of City:
 - i. City will provide additional PDO credits to VTA based on the new appraised price as long as the number of PDO credits provided to VTA does not exceed the number of approved Units;
 - ii. For any PDO credits that cannot be provided because they would exceed the approved Units, City, at its discretion, shall either pay VTA for the additional land in cash or return a portion of land to VTA.
 - c. If the approved Units are equal to zero, City shall do one of the following, at it's discretion:
 - i. Pay for entire 1.46 acres at the New Price, or
 - ii. Return the entire 1.46 acres to VTA, or
 - iii. A combination of the above.
 - d. If the approved Units are between 213 and zero, City will do one of the following, at it's discretion:
 - i. Pay VTA cash value difference between Units approved and 213 units, at rate of New Price;

- ii. Return land to VTA based on the difference in required acreage dedication between 213 units and new Units approved;
- iii. A combination of the above.

Staff believes the proposed deal is fair for both the City and VTA. VTA is the owner of the property and is under no obligation to sell the property. Previous appraisals have shown that the market value for the property has decreased significantly from approximately \$75.00 per square in feet in 2006 to \$45.00 per square feet in 2010. VTA has indicated that it prefers to wait out the downturn and be in a better position to sell the property in the future at a higher market value. The City would like to purchase the 3.5 acres now and begin development of an identified Greenprint priority project in an underserved area. Therefore, staff has negotiated a deal that allows the City to take ownership of the 3.5 acres immediately through a combination of cash payment and PDO credits, with the ability for VTA to reappraised part of the property and received additional compensation, PDO credits, or partial return of the property.

As noted above, there is a possibility that the City would need to return all, or a portion of, Phase II Property to VTA depending upon the results of the re-appraisal and whether or not VTA has development approvals for the property within five years. If this occurs, then the City could be left with only a 2.04 acre parcel as opposed to the 3.5 acre parcel. City staff will continue to work with VTA staff to mitigate this possibility as much as possible.

In addition to the above, the City is in preliminary discussions with Rocketship Charter School to explore the possibility of selling and/or leasing approximately one acre of the Phase I Property (the 2.04 acre parcel) for the construction of a school, play area and parking lot. The potential terms of the deal could include the construction by Rocketship Charter School of a playground and parking lot to jointly serve the school and the park. Staff has not yet formed a final recommendation regarding this potential deal. Staff anticipates concluding the discussions with Rocketship Charter School and, if applicable, completing the appropriate environmental analysis and presenting the proposed deal to City Council for its consideration by the end of 2011.

EVALUATION AND FOLLOW UP

With City Council approval of this transaction, staff will begin a series of community meetings and apply for Proposition 84 grant funding to support further acquisition and development of the park site. As part of the meetings, the interest expressed by Rocketship Charter School to purchase a portion of the property and enter in a long term lease with the City will be discussed. Pending the results of this process, staff will return to City Council with specific recommendations on the sale and lease of a portion of the Phase I property to the charter school.

The escrow funds, which are anticipated to be received and deposited into the Parks Trust Fund by May 2, 2011, will be recommended to be recognized and allocated to the Reserve: Future PDO/PIO Projects as part of the Year-End Amendments to the 2010-2011 Appropriation Ordinance process.

POLICY ALTERNATIVES

Alternative #1: Do not approve the PSA

Pros: The real estate value of the property may remain lower than its peak in 2006. Subdivision Park Trust Funds may continue to accrue interest and a lower purchase price may be negotiated.

Cons: Land values may increase beyond the negotiated value and the City may not have funding available for the entire 3.5 acres. A Greenprint priority project in an underserved area of the City will continue to be deferred.

Reason for not recommending: Does not support Greenprint priorities and does not support the City Council adopted San Jose Economic Strategy 2010-2015.

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 Council action meets Criterion 1. A community meeting was held to discuss the future plans for this park on May 9, 2009. The topic was discussed at the VTA Board of Directors meeting on October 7, 2010 with the terms in this Memorandum and the PSA approved by the VTA Board of Directors. This memo was posted on the City's website as an agenda item prior to the City Council meeting on May 3, 2011.

COORDINATION

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

FISCAL/POLICY ALIGNMENT

This Project is consistent with the Council-approved Greenprint 2009 Update providing parkland to the underserved Central / Downtown Planning Area. Annual operations and maintenance costs are less than \$10,000 for weed abatement and fence rental to secure the site. Due to the nominal

amount, these costs do not significantly impact the General Fund and will be absorbed by the Parks, Recreation and Neighborhood Services Department.

COST SUMMARY/IMPLICATIONS

1. AMOUNT OF RECOMMENDATION: \$4,500,000
2. COST OF AGREEMENT: None
3. SOURCE OF FUNDING: 380 – Construction Tax & Property Conveyance Tax Fund:
 Council District 3 (\$985,000)
 384 – Construction Tax & Property Conveyance Tax Fund:
 Council District 6 (\$50,000)
 375 – Subdivision Park Trust Fund (\$3,465,000)
 Total - \$4,500,000
4. FISCAL IMPACT: This project has been reviewed and is anticipated to have no adverse impact on the General Fund.

BUDGET REFERENCE

Fund #	Appn. #	Appn. Name	RC #	Total Appn. Amount	Amount for Contract	Adopted Budget Page	Last Budget Action (Date, Ord. No.)
Total Project Cost				\$4,500,000			
<u>Recommended Funding Sources*</u>							
380	8244	Reserve: Tamien Specific Plan Area Park Improvements		\$325,000		V-359	6/29/10 28765
380	8180	Reserve: Roosevelt Hockey Rink Cover		\$660,000		V-359	6/29/10 28765
384	8244	Reserve: Tamien Specific Plan Area Park Improvements		\$50,000		V-400	6/29/10 28765
375	8149	Reserve: Tamien Specific Plan Area Park Improvements		\$505,000		V-544	6/29/10 28765
375	8845	Reserve: Future PDO/PIO Projects		\$2,960,000 **		V-544	3/1/11 28894
<u>Total Current Funding Available</u>				<u>\$4,500,000</u>			

* Included in this memorandum are recommendations to allocate funding totaling \$4,500,000 from five reserves for the purchase of land for the Tamien Specific Plan Area Park Improvements project.

HONORABLE MAYOR AND CITY COUNCIL

04-11-11

Subject: Tamien Purchase and Sale Agreement and Adoption of Appropriation Ordinance Amendments

Page 9

** The Future PDO/PIO Reserve in the Subdivision Park Trust Fund totals \$21,734,465; however, only \$2,960,000 will be used for the purchase of land for the Tamien Specific Plan Area Park Improvements project. Upon final disbursement to the City, Escrow funds will be deposited into the Future PDO/PIO Reserve. Should the Escrow funds not be received and deposited into the Parks Trust Fund by May 2, 2011, the Tamien PSA action will be deferred to a future Council Agenda.

CEQA

Exempt, File No. PP10-023.

/s/

NORBERTO DUENAS
Deputy City Manager/Acting Director of
Parks, Recreation and Neighborhood Services

/s/

KIM WALESH
Director of Office of Economic Development
Chief Strategist

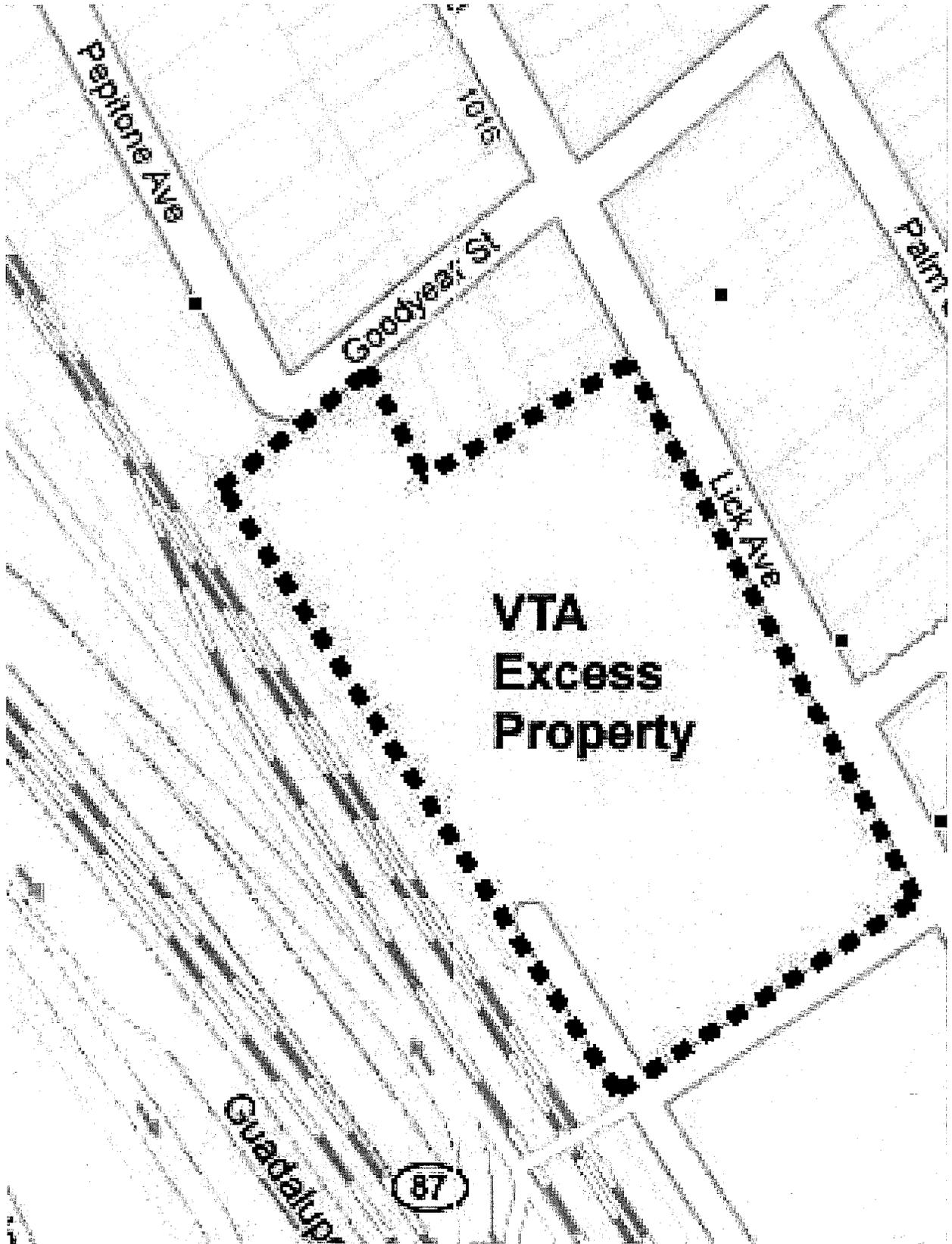


JENNIFER A. MAGUIRE
Budget Director

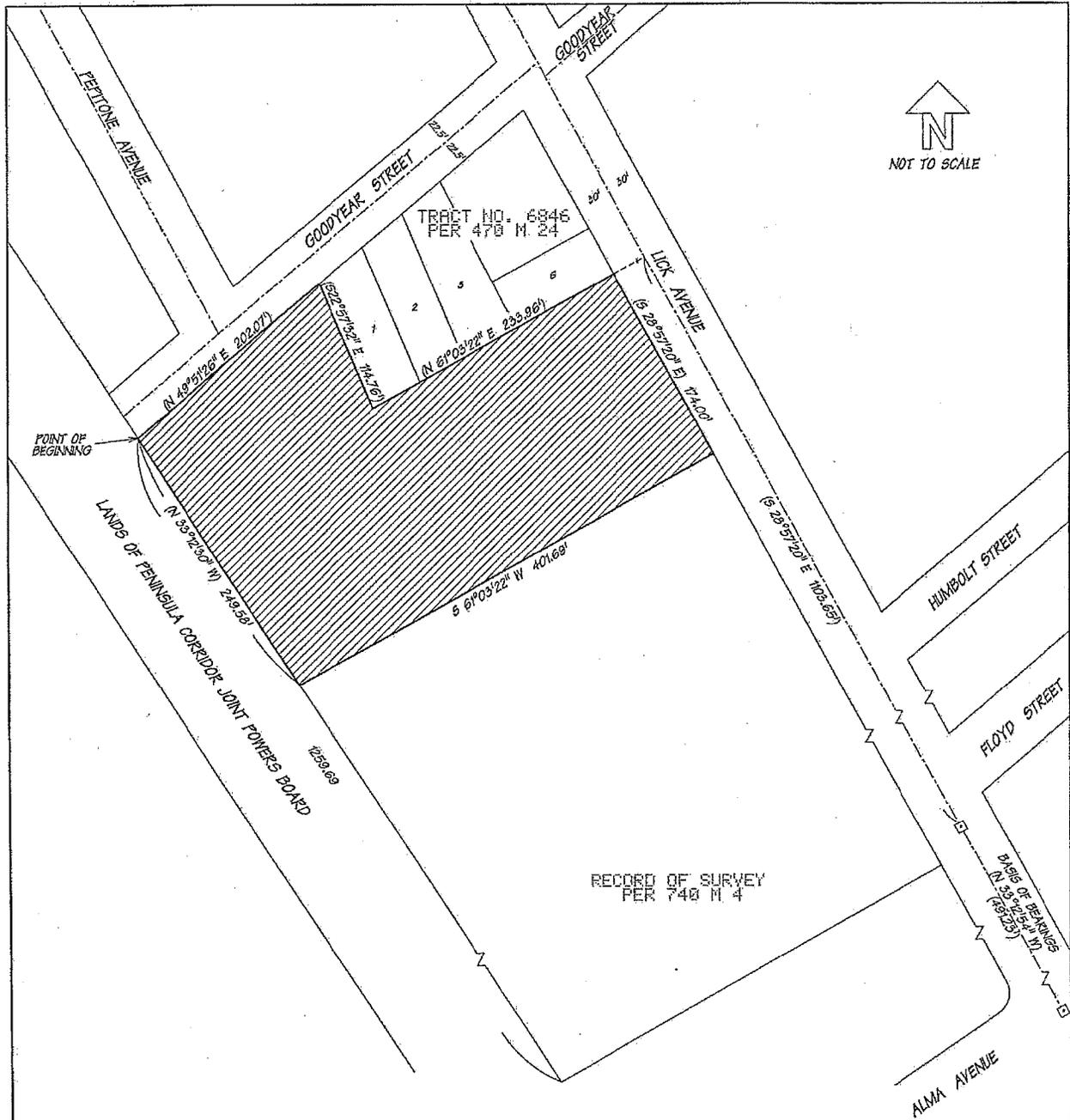
For questions please contact Matt Cano, Division Manager, at 408-535-3580.

Attachment

ATTACHMENT A



ATTACHMENT B
(Phase I Property)



NOT TO SCALE

TRACT NO. 6846
PER 478 M 24

RECORD OF SURVEY
PER 740 M 4

POINT OF BEGINNING

LANDS OF PENINSULA CORRIDOR JOINT POWERS BOARD

LEGEND

() RECORD INFORMATION PER 740 M 4



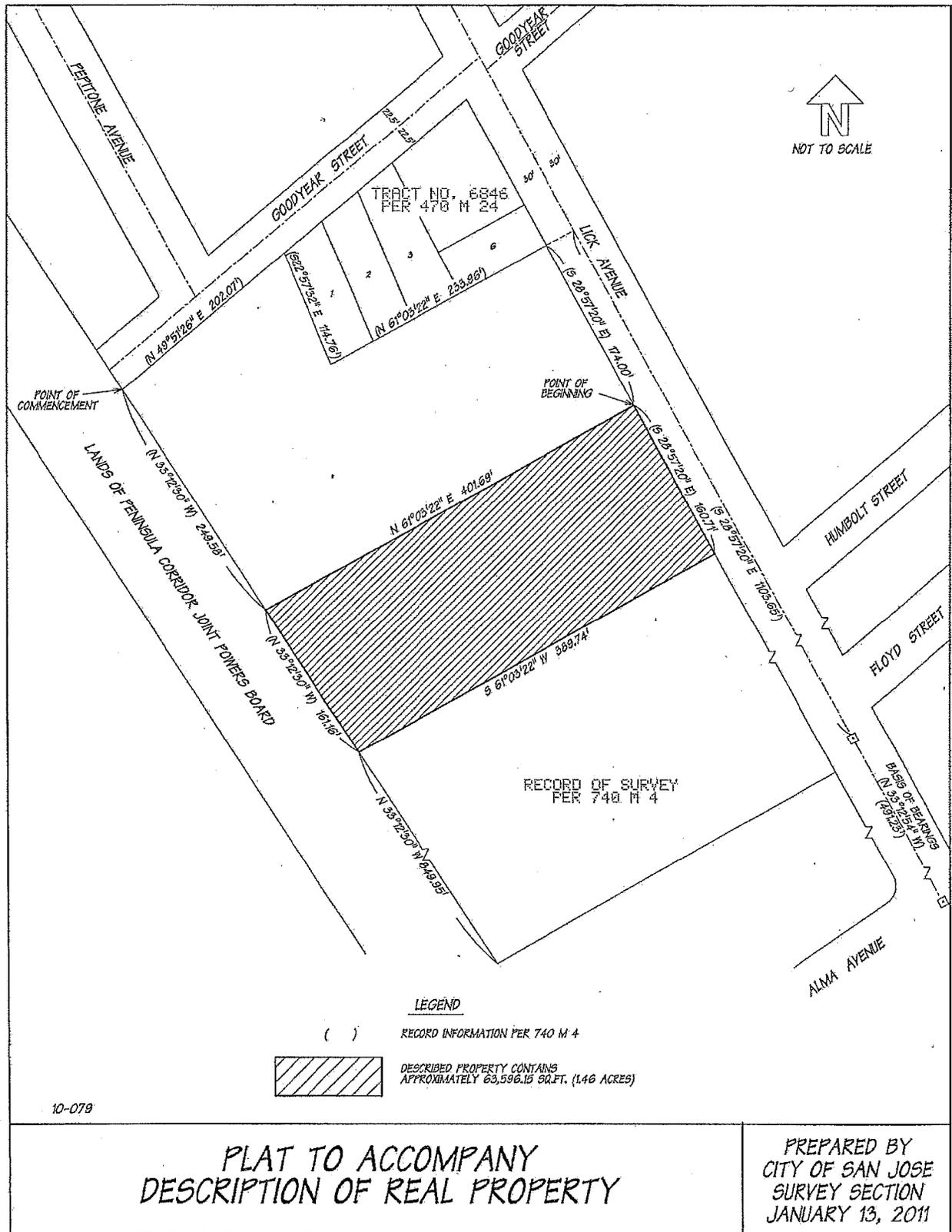
DESCRIBED PROPERTY CONTAINS
APPROXIMATELY 88,862.40 SQ.FT. (2.04 ACRES)

10-079

PLAT TO ACCOMPANY
DESCRIPTION OF REAL PROPERTY

PREPARED BY
CITY OF SAN JOSE
SURVEY SECTION
JANUARY 13, 2011

ATTACHMENT C
(Phase II Property)

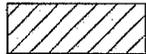


NOT TO SCALE

LEGEND

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RECORD INFORMATION PER 740 M 4

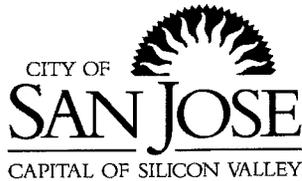


DESCRIBED PROPERTY CONTAINS APPROXIMATELY 63,596.15 SQ.FT. (1.46 ACRES)

10-079

PLAT TO ACCOMPANY
DESCRIPTION OF REAL PROPERTY

PREPARED BY
CITY OF SAN JOSE
SURVEY SECTION
JANUARY 13, 2011



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: David Sykes

**SUBJECT: PADRES DRIVE
SANITARY SEWER
REHABILITATION PROJECT**

DATE: 04-11-11

Approved

Date 4/18/11

COUNCIL DISTRICT: 6

RECOMMENDATION

Report on bids and award of contract for the Padres Drive Sanitary Sewer Rehabilitation project to the low bidder, McGuire and Hester, in the amount of \$1,799,192 and approval of a contingency in the amount of \$180,000.

OUTCOME

Approval of this construction contract will enable the Padres Drive Sanitary Sewer Rehabilitation project to proceed which will improve the sanitary sewer reliability in the area. Approval of a ten percent contingency will provide funding for unforeseen conditions during the construction of the project.

BACKGROUND

The sewer mains on Padres Drive, Hervey Lane and Minnesota Avenue (map attached) have required frequent maintenance in recent years. Three segments along this sewer main are currently on the Department of Transportation's High Priority Cleaning List.

Remote video inspection of these sewers revealed numerous cracks, broken pipes, accumulating debris, and offsets at pipe joints. These defects were partially attributed to the highly expansive clay soil generally found in this area. In addition, pipe lines in this area were built with a flat slope which causes a slow flow and stagnation of sewage in the system.

This project will replace 2,840 feet of clay pipe with high density polyethylene (HDPE) pipe which is more flexible and can accommodate the soil movement in this area. Related work will also include the installation of 17 new manholes and rehabilitation of 2 existing manholes.

In addition, this project will include the construction of a new pump station, electrical and control panels, and a force main and valve system at the intersection of Bird and Minnesota Avenues to address the flat slope conditions.

Construction is scheduled to begin in June 2011. Due to the typical time for the procurement of the pumps and control panels, and time required to coordinate with PG&E and AT&T, the completion date for this project is projected to be in June 2012.

ANALYSIS

Bids were opened on March 10, 2011, with the following results:

<u>Contractor</u>	<u>Bid Amount</u>	<u>Variance Amount</u>	<u>Over/(Under) Percent</u>
J.F. Shea Construction, Inc. (Walnut, CA)	\$3,266,000	\$1,487,536	84%
Sanco Pipelines, Inc. (Campbell, CA)	2,390,708	612,244	34%
Stoloski & Gonzalez, Inc. (Half Moon Bay, CA)	2,370,643	592,179	33%
J & M, Inc. (Livermore, CA)	2,261,225	482,761	27%
Pacific Underground Construction, Inc. (San Jose, CA)	2,097,092	318,628	18%
Ranger Pipelines, Inc. (San Francisco, CA)	2,001,878	223,414	13%
Precision Engineering, Inc. (San Francisco, CA)	1,996,681	218,217	12%
J. W. Ebert Corporation (San Jose, CA)	1,892,202	113,738	6%
McGuire and Hester (Oakland, CA)	1,799,192	20,728	1%
Engineer's Estimate	1,778,464	---	---

Submitted bids varied from 1% to 84% over the Engineer's Estimate. Seven out of eight bids are within a very competitive range of 34% above the Engineer's Estimate and less. The low bid submitted by McGuire and Hester is one percent above the Engineer's Estimate. Staff considers this reasonable for the work involved.

Council Policy provides for a standard contingency of ten percent on public works projects involving utilities. The standard contingency is appropriate for this project.

EVALUATION AND FOLLOW-UP

This project is expected to be completed in June 2012. No additional follow-up actions are expected at this time.

POLICY ALTERNATIVES

Since the low bid is within one percent of the Engineer's Estimate and is deemed reasonable, no alternative is considered at this time.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This item meets Criterion 1: Requires Council action on the use of public funds equal to \$1 million or greater. This project was listed on the City's Internet Bid Line and advertised in the *San José Post Record*. Bid packages for all Department of Public Works construction projects are routinely provided to a standard list of various contractor organizations and builders' exchanges. This memorandum will be posted on the City's website for the May 3, 2011 Council agenda.

COORDINATION

This project has been coordinated with Council District 6 and the Departments of Planning, Building and Code Enforcement, Transportation, City Manager's Budget Office, City Attorney's Office and the Office of Risk Management.

FISCAL/POLICY ALIGNMENT

This project is consistent with the Council-approved Budget Strategy Economic Recovery section in that it will spur construction spending in our local economy.

COST SUMMARY/IMPLICATIONS

1. AMOUNT OF RECOMMENDATION/COST OF PROJECT: \$1,799,192

Project Delivery	\$650,000 *
Construction	1,799,192
Contingency	<u>180,000</u>

TOTAL PROJECT COSTS **\$2,629,192**

Prior Year Expenditures 180,311

REMAINING PROJECT COSTS **\$2,448,881**

- Project delivery includes \$240,000 for Planning and Design Services, \$120,000 for Construction Management, \$230,000 for Inspection Services, and \$60,000 for Project Management and support during bid and close-out phases.

2. COST ELEMENTS OF CONSTRUCTION CONTRACT:

3. SOURCE OF FUNDING: 540 – Sanitary Sewer Connection Fee Fund
545 – Sewer Service and Use Charge Capital Improvement Fund.

4. OPERATING COST: The proposed operating and maintenance costs of this project have been reviewed and it has been determined that the project will have no significant adverse impact on the General Fund operating budget.

BUDGET REFERENCE

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

Fund #	Appn. #	Appn. Name	RC #	Total Appn.	Amt. For Contract	2010-2011 Adopted Capital Budget (Page)	Last Budget Action (Date, Ord. No.)
Remaining Project Costs				\$2,448,881			
Current Funding Available							
545	4271	Miscellaneous Rehabilitation Projects	151145	\$4,985,000	\$1,000,000	Capital V-81	10/19/10, Ord. No. 28829

HONORABLE MAYOR AND CITY COUNCIL

04-11-11

Subject: Padres Drive Sanitary Sewer Rehabilitation Project

Page 5

540	4272	Miscellaneous Projects	151145	\$1,247,000	\$799,192	Capital V-71	10/19/10, Ord. No. 28829
Total Current Funding Available				\$6,232,000	\$1,799,192		

CEQA

CEQA: Exempt, File No. PP08-259, dated November 14, 2008.

/s/

DAVID SYKES
Acting Director, Public Works Department

For questions please contact MICHAEL O'CONNELL, ACTING DEPUTY DIRECTOR, at
(408) 535-8300.

MO:TN:MN:ea
Attachment
Proj.ID:#5504

PADRES SANITARY SEWER REHABILITATION



MAP 99

LOCATION MAP
N.T.S.

STATEMENT OF EXEMPTION

FILE NO. PP08-259

LOCATION OF PROPERTY Padres Drive, between Creek Drive and Hervey Lane;
Hervey Lane, between Padres Drive and Minnesota
Avenue; Minnesota Avenue, between Bird and W. Alma
Avenues

PROJECT DESCRIPTION Padres Drive Sanitary Sewer Rehabilitation Project to
replace approximately 2,900 linear feet of existing 6-inch
vitrified clay sewer pipe with new 6-inch vitrified clay
sewer pipe and to rehabilitate 15 sanitary sewer manholes
within the public right-of-way and along an easement on a
Santa Clara Valley Water District parcel. All construction
work will occur within existing previously disturbed/
trenched areas with no excavation into previously
undisturbed soils. No trees will be removed or disturbed by
this project and all construction activities/vehicles will
avoid riparian areas and the dripline of any existing trees.

ASSESSOR'S PARCEL NUMBER Public Right-of-Way and APN 434-19-038

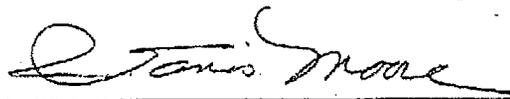
CERTIFICATION

Under the provisions of Section 15302(c) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

15302. Replacement or Reconstruction

Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. Examples of this exemption include but are not limited to:
(c) Replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity.

Joseph Horwedel, Director
Planning, Building and Code Enforcement



Deputy

Date: November 14, 2008

Project Manager: Mathew Nguyen, DPW