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City Manager's Office

Memorandum

**TO: HONORABLE MAYOR
AND CITY COUNCIL**

FROM: Nadine Nader

SUBJECT: Early Council Packet

DATE: May 3, 2011

Approved

Date

5/3/11

EARLY DISTRIBUTION COUNCIL PACKET FOR MAY 17, 2011

Please find attached the Early Distribution Council Packet for the May 17, 2011 Council Meeting.

4.x Funding Commitment for the Taylor Oaks Apartments being Developed by For Future Housing, Inc.

Recommendation: Adopt a resolution:

- (a) Approving a funding commitment to For the Future Housing, Inc. or its designated affiliate for up to \$5,250,000 for an acquisition, rehabilitation and permanent loan funded from the Neighborhood Stabilization Program 2 ("NSP2"); and,
- (b) Authorizing the Director of Housing to negotiate and execute an amended consortium agreement with The Housing Trust of Santa Clara County under NSP2 in an amount up to \$5,250,000 for acquisition and construction rehabilitation of the 59-unit Taylor Oaks Apartments located at 2726-2738 Kollmar Avenue, in Council District 5.

CEQA: Exempt, File No. PP11-022. Council District 5. (Housing)

4.x Approval of Neighborhood Housing Services Of Silicon Valley's Plan to Address its HomeVenture Fund and Home Investment Partnership Obligations.

Recommendation:

- (a) Adopt a resolution:
 - (1) Authorizing the Director of Housing to release Neighborhood Housing Services of Silicon Valley's (NHSSV) \$1,300,000 HomeVenture Fund restricted capital grant, allowing the use of the funds for past operating expenses. In exchange NHSSV will commit to utilize \$1,300,000 in other grant proceeds within City of San José municipal boundaries;

- (2) Accepting NHSSV's proposal to repay the City \$1,917 per month over five years for its \$115,000 obligation in HOME Investment Partnership ("HOME") funds;
- (3) Authorizing the Director of Housing to negotiate and execute all documents related to the fulfillment of the conditions of these recommendations as adopted by the Council.
- (b) Adopt the following Appropriation Ordinance amendments in the Housing Trust Fund:
 - (1) Establish a Transfer to the Home Investment Partnership Program Fund by \$115,000; and
 - (2) Decrease the Ending Fund Balance by \$115,000.
- (c) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the Home Investment Partnership Program Fund:
 - (1) Increase the revenue estimate for Transfers by \$115,000; and
 - (2) Increase the appropriation to the Housing Department for the Loans and Grants project by \$115,000.

CEQA: Not a Project, File No. PP10-067(b), Non-Project Specific Funding Mechanism, Appropriation Ordinance. (Housing/City Manager's Office)

6.x Report on Bids and Award of Contract for the 2011 Slurry Seal Project.

Recommendation: Report on bids and award of contract for the 2011 Slurry Seal Project to the low bidder, Graham Contractors, Inc. in the amount of \$1,783,896 and approval of a five percent (5%) contingency in the amount of \$89,195. CEQA: Exempt, File No. PP11-035. (Transportation)

6.x Report on Bids and Award of a Construction Contract for the 2011 Remove and Replace Asphalt Concrete Pavement Project.

Recommendation: Report on bids and award of a construction contract for the 2011 Remove and Replace Asphalt Concrete Pavement Project to the low bidder, Top Grade Construction, Inc., in the amount of \$1,608,570, and approval of a five percent (5%) contingency in the amount of \$80,429. CEQA: Exempt, File No. PP11-035. (Transportation)

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: Leslye Corsiglia

SUBJECT: SEE BELOW

DATE: April 25, 2011

Approved

Date

5-3-11

COUNCIL DISTRICT: 5
SNI AREA: N/A

**SUBJECT: FUNDING COMMITMENT FOR THE TAYLOR OAKS APARTMENTS
BEING DEVELOPED BY FOR THE FUTURE HOUSING, INC.**

RECOMMENDATION

Adopt a resolution of the City Council:

1. Approving a funding commitment to For the Future Housing, Inc. ("FFH") or its designated affiliate for up to \$5,250,000 for an acquisition, rehabilitation and permanent loan funded from the Neighborhood Stabilization Program 2 ("NSP2"); and,
2. Authorizing the Director of Housing to negotiate and execute an amended consortium agreement with The Housing Trust of Santa Clara County ("HTSCC") under NSP2 in an amount up to \$5,250,000 for acquisition and construction rehabilitation of the 59-unit Taylor Oaks Apartments ("Project").

OUTCOME

Approval of the recommended action would assist the City in meeting the NSP2 requirement to set-aside a minimum of 25 percent of the \$25,000,000 grant awarded to the consortium, for housing targeted to Very Low-Income (VLI) households. Further, the recommended action would enable 58 units of affordable housing and one manager's unit to be acquired and rehabilitated in the City that will be affordable to Extremely Low-Income (ELI) and Very Low-Income (VLI) individuals and families with maximum incomes between \$21,750 and \$46,600 per year, respectively.

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Subject: Taylor Oaks Apartments

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BACKGROUND

The City formed a consortium with The Housing Trust of Santa Clara County (“HTSCC”) and successfully received \$25,000,000 in NSP2 funds. A Notice of Funding Availability (“NOFA”) was issued by the NSP2 Consortium for the use of these funds in February 2011. FFH was selected for an NSP2 award of \$5,250,000 after submitting a proposal in response to the NOFA. Along with other sources of funds, the NSP2 funds will assist in the acquisition of the property by FFH from a third party owner, and provide rehabilitation and permanent financing for the existing 59-unit Taylor Oaks apartments. The Housing Department will process a Request for Release of Funds to comply with the National Environmental Policy Act (“NEPA”) required for the use of NSP funds, since NSP is governed by the U.S. Department of Housing and Urban Development (HUD). The Housing Department anticipates receiving Authorization to use Grant Funds from HUD in May 2011.

The proposed project is located at 2727-2738 Kollmar Avenue, just east of Capital Expressway and approximately ¾ mile south of Highway 101. The area is primarily entry level single family residential homes and apartment complexes. The property is in close proximity to amenities such as schools, grocery stores and transportation.

The site consists of approximately 1.25 acres with apartments constructed in 1959. The existing buildings are in need of upgrade due to substantial deferred maintenance. The two and three story apartments contained in two buildings feature tuck under surface parking. The “soft story” parking condition is subject to failure during seismic activity. The site has been identified by the Department of Housing and Urban Development as within a census tract whose viability has been damaged by the economic effects of properties that have been foreclosed upon and abandoned. Due to this condition, the Project is a candidate to receive an NSP2 loan.

It should be noted that there are other apartment buildings in close proximity to the proposed project that are also in need of repair. However, the NSP2 budget and other financing constraints did not allow for additional buildings to be funded at this time.

ANALYSIS

The project will serve individuals and families between 30-50% of area median income (“AMI”) with incomes between \$21,750 and \$46,600 per year. The majority of the existing tenants will continue living at the property and be moved into newly renovated units as they become available. It is estimated that approximately 20 households will be permanently relocated. As consideration for the funding, 55-year affordability restrictions will be recorded on the property. Proposed unit mix, affordability based on percent of AMI, and rents will be as follows:

Type of Unit / AMI	Number of Units	Unit Size s.f.	Initial Net Rent/Month
Studio – 30% AMI	6	388	\$ 507
Studio – 45% AMI	10	388	\$ 779
1 BR - 50% AMI	14	480	\$ 925
2 BR – 50% AMI	28	605	\$ 1,111
Manager’s Unit – 2 BR	1	605	
Totals	59		

The scope of work for the building interior will consist of removing and replacing all interior trim, doors, hardware, cabinetry, tubs/showers, flooring, bath vanities, toilets, bath accessories, kitchens, appliances, and light fixtures as well as adding individual energy efficient package terminal air conditioning units. The existing manager’s unit and leasing office will be converted to a new recreation room with private office and leasing office. This space will include a new kitchen, bathroom and television with seating space. Resident amenities will be provided in this space.

The scope of work for the building exterior will consist of replacing all exterior deck coatings, aluminum windows, roof, entry doors, railings, stucco/plaster patching gutters & downspouts and paint. Additionally, all soft story parking conditions will be retrofitted with new concrete grade beams and new structural steel supports. Site work will consist of new landscaping, flat work in select common areas, new site fencing, and patching and resurfacing the paved areas.

It is expected that the rehabilitation will improve the useful life of the buildings by up to 20 years and will provide the tenants with highly improved housing conditions at lower than existing rents. The construction is expected to start in September 2011 and last approximately 12 months. Units will be rehabilitated in groups of 5-10 units to allow qualifying residents to be moved directly into finished units.

For the Future Housing, Inc. (FFH) will be the developer and will be responsible for acquiring financing, managing construction and ongoing management. While FFH is newly formed in April 2010 and this will be their first project, the principals of FFH have extensive backgrounds in development, finance, construction including rehabilitation, and project management. Three of the five principals, Jim Rendler, Marcus Griffin and Steve Massei have numerous years experience in affordable housing development. They have previous experience with ROEM Development Corporation, a well regarded developer client of the Housing Department.

The other principals of FFH, Steve Putnam and Mike Avila, are owners of MRC Construction (“MRC”), who will be the general contractor for the project. MRC is based in Campbell, California and has been in business since 2003. Acting as general contractor, MRC focuses primarily on multifamily housing development in the South Bay area. Since 2003, MRC has completed 13 projects, including 7 residential condominium projects containing 864 units, 4 apartment projects, including 3 rehab projects, containing 529 units, one single-family residence and one office building. Mr. Putnam and Mr. Avila have combined experience of 65 years in construction. It is expected that MRC, Mr. Putnam and Mr. Avila will provide completion

guarantees. They have satisfactory credit, and adequate net worth and liquidity to support their guarantees.

Project Financing

Approval of the City's funding commitment to FFH would result in sufficient financing commitments for the Taylor Oaks Project to enable the developer to apply for the other funding necessary for the project to proceed. This includes an application to the California Debt Limit Allocation Committee ("CDLAC") for a bond allocation award so that the City can issue multifamily housing bonds for this project. The Developer will also apply to the California Tax Credit Allocation Committee ("TCAC") for a 4% tax credits award and a TCAC State tax credits award.

The project will also utilize a commitment from Citibank for construction and permanent financing. An application will be made for a Federal Home Loan Bank (FHLB) Affordable Housing Program loan. If an FHLB award is received, funds would be used to pay down the City loan or provide additional project rehabilitation.

Estimated total project costs are \$12,568,000, which will be funded as follows:

1. A senior permanent loan using proceeds of a City issued tax-exempt bond of \$3,695,000
2. An NSP2 loan of \$5,250,000 from the City of San Jose. This loan will be repaid from residual receipts from cash flow. Additionally, \$258,000 of interest during construction will be deferred.
3. Tax credit investor equity in the amount of \$2,768,000.
4. The developer will defer developer fees of \$232,000.
5. The project will generate lease-up income of \$365,000.

Due to the deep affordability of the Project, the appraisal being prepared is expected to result in a combined loan to value that will be significantly higher than the City's loan-to-value ("LTV") maximum guideline of 100%. However, this result is considered acceptable since the Project is expected to have positive cash flow, which is considered a better measure of project financial viability by the lending industry than LTV.

Tenant Relocation

As this property will involve the acquisition of an existing rental property and the imposition of new affordability restrictions, some residents are expected to relocate. Since this project involves the use of Federal funds, Federal Relocation law will apply. The developer has engaged Overland, Pacific & Cutler (OPC), professional relocation consultants, to plan for the project's tenants that will be relocated. Since new rents will be lower than current rents, most tenants are expected to continue tenancy. The preliminary estimate is that up to 20 tenants will be relocated

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because their income will exceed program requirements. An updated estimate will be obtained as OPC completes its relocation plan. Staff will review the Relocation Plan and oversee FFH's relocation of tenants. Per Relocation law, the draft Relocation Plan will be presented to the City Council for approval prior to the start of construction and removal of the tenants.

Project Benefits

The Project will provide numerous benefits to its residents, the surrounding neighborhood, and the City: These are summarized below.

- The Project will provide tenants with improved housing conditions at lower rents than currently provided.
- The Project will provide beneficial resident services programs such as adult education, financial literacy and after school tutoring.
- Project rehabilitation will correct health and safety items at the property such as the "soft story" tuck under parking condition and extend the useful life of the buildings.
- The Project is only one of two multifamily rental project identified by the Housing Department that can be completed and occupied by the required completion and occupancy date of February 11, 2013 as required under the NSP2 guidelines.
- The Project adds 59 units of affordable very-low and extremely-low income housing to the City's affordable housing stock.
- The Project contributes to the goals of the City and the NSP2 program to help stabilize neighborhoods in census tracts whose viability has been damaged by the economic effects of properties that have been foreclosed upon and abandoned.

EVALUATION AND FOLLOW-UP

The Housing Department posts quarterly reports on the status of its subsidized construction projects to its website, www.sjhousing.org. If approved, the Taylor Oaks Apartments would be included in these reports.

POLICY ALTERNATIVES

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

Alternative #1: Deny or delay the requested funding commitment.

Pros: The funds being requested could be used for other affordable housing projects and programs, but only programs that meet the Neighborhood Stabilization Program guidelines to include being able to be in-service by February 11, 2013.

Cons: The subject project is one of two multifamily rental projects that are able to meet the NSP2 guideline requiring project construction completion and occupancy by the program deadline of February 11, 2013. Delaying funding of the project may result in a missed opportunity for NSP2 funding resources for multifamily housing.

Reason for not recommending: The proposed project will help to meet the demand for deeply affordable housing that is affordable to ELI and VLI households and will help the City to fulfill its affordable housing goals. Approval of this project financing will ensure that this very important affordable housing project will move ahead in a timely manner and will leverage NSP2 funds.

PUBLIC OUTREACH/INTEREST

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

Criterion 2: Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. (Required: E-mail and Website Posting)

Criterion 3: Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. (Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)

This item meets Criterion 1, Requires Council action on the use of public funds equal to \$1 million or greater. A copy of the City Council memo will be posted to the City's website.

COORDINATION

This memorandum was coordinated with the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

This expenditure 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, 2005-10* in providing units for very low- and extremely low-income households.

COST SUMMARY/IMPLICATIONS

1. COST OF PROJECT:

USES	AMOUNT
Property Acquisition	\$6,100,000
Hard Costs – Rehabilitation	2,517,960
Relocation of Tenants	1,095,261
Other Soft Costs	<u>2,855,310</u>
TOTAL	\$12,568,531*

* Of the total project costs, the City’s portion of the costs is \$5,250,000.

2. COST ELEMENTS OF CITY LOAN AMOUNT

USES	AMOUNT
Property Acquisition	<u>\$5,250,000</u>
TOTAL	\$5,250,000

2. SOURCES OF FUNDING: Fund 448 – Multi-Source Housing Fund

3. FISCAL IMPACT: No ongoing fiscal impact.

BUDGET REFERENCE

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

Fund #	Appn. #	Appn. Name	Total Appn.	Amt. For Contract	2011-12 Adopted Operating Budget	Last Budget Action (Date, Ord. No.)
448	3790	Recovery Act – Neighborhood Stabilization Program 2	\$8,973,940	\$5,250,000	N/A	10/19/2010 Ord. #28829

CEQA

Exempt, PP11-022.

/s/
 LESLYE CORSIGLIA
 Director of Housing

For questions, please contact LESLYE CORSIGLIA, Director of Housing, at 408-535-3851.

attachments

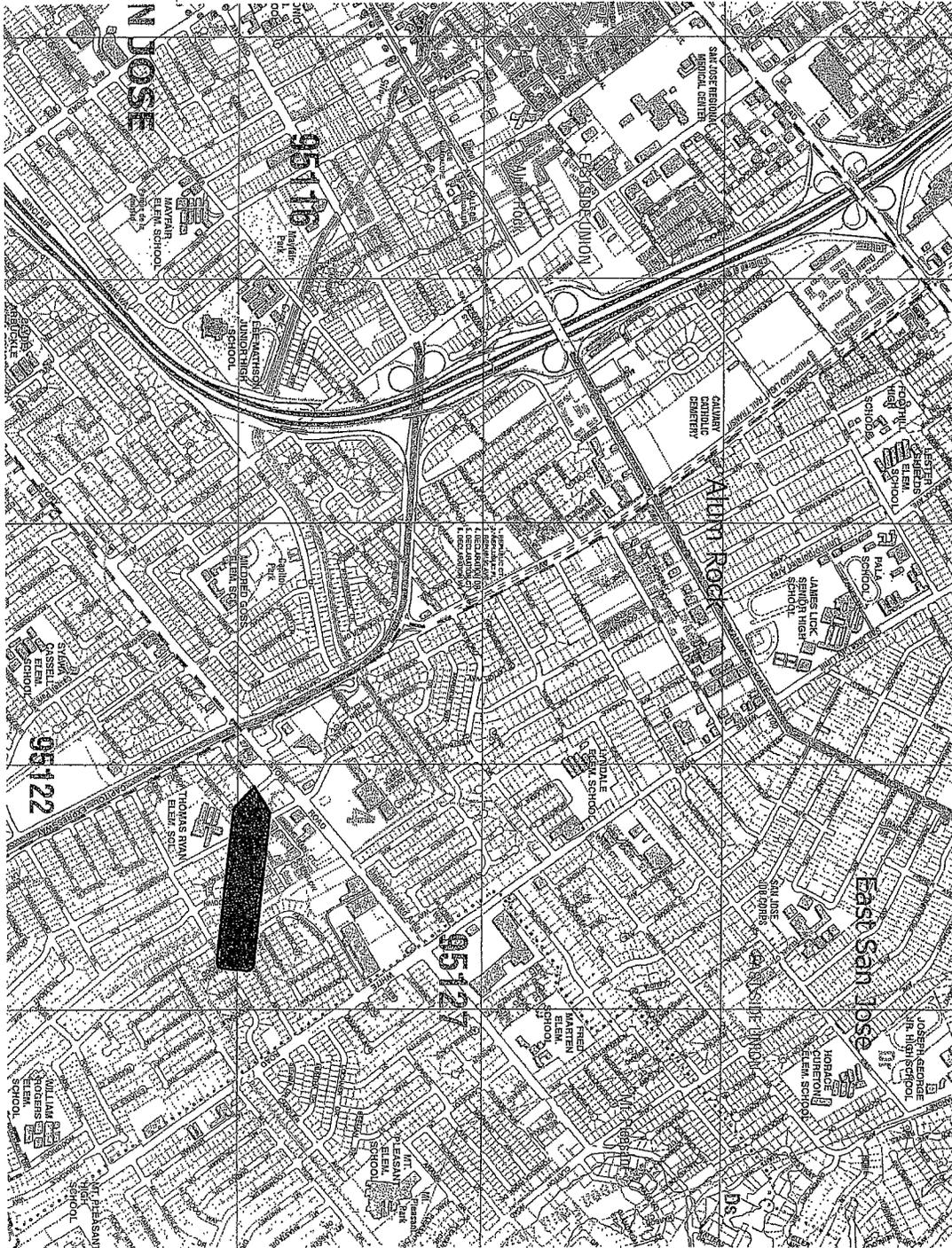
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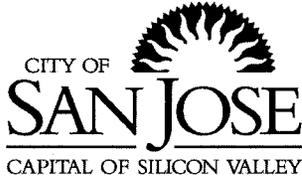
**Anticipated Project Timeline
Taylor Oaks Apartments**

Estimated City Council Approval of Funding Commitment	May 17, 2011
Application to California Debt Limit Allocation Committee (CDLAC)	May 20, 2011
Notification of Award from CDLAC	July 20, 2011
Estimated City Council Approval of Construction and Permanent Bond Financing	September 2011
Estimated Date of Loan Closing, Acquisition and Start of Construction	September 2011
Estimated Date of Completion of Project Rehabilitation and Full Occupancy	October 2012

ATTACHMENT 2

Taylor Oaks Map





Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Leslye Corsiglia
Jennifer A. Maguire

SUBJECT: SEE BELOW

DATE: April 25, 2011

Approved

Date

5/2/11

COUNCIL DISTRICT: City-wide
SNI AREA: All

SUBJECT: APPROVAL OF NEIGHBORHOOD HOUSING SERVICES OF SILICON VALLEY'S (NHSSV) PLAN TO ADDRESS ITS HOMEVENTURE FUND AND HOME INVESTMENT PARTNERSHIP OBLIGATIONS

RECOMMENDATION

It is recommended that the City Council adopt a Resolution:

- 1) Authorizing the Director of Housing to release Neighborhood Housing Services of Silicon Valley's (NHSSV) \$1,300,000 *HomeVenture Fund* restricted capital grant, allowing the use of the funds for past operating expenses. In exchange NHSSV will commit to utilize \$1,300,000 in other grant proceeds within City of San José municipal boundaries.
- 2) Accepting NHSSV's proposal to repay the City for its \$115,000 obligation in HOME Investment Partnership ("HOME") funds over five years with interest equivalent to the interest earned by the City's Investment Pool.
- 3) Authorizing the Director of Housing to negotiate and execute all documents related to the fulfillment of the conditions of these recommendations as adopted by the City Council.
- 4) Adoption of the following Appropriation Ordinance amendments in the Housing Trust Fund:
 - a. Establish a Transfer to the Home Investment Partnership Program Fund by \$115,000
 - b. Decrease the Ending Fund Balance by \$115,000
- 5) Adoption of the following Appropriation Ordinance and Funding Sources Resolution amendments in the Home Investment Partnership Program Fund:
 - a. Increase the revenue estimate for Transfers by \$115,000

- b. Increase the appropriation to the Housing Department for the Loans and Grants project by \$115,000

OUTCOME

The approval to authorize the Director of Housing to release from restrictions NHSSV's \$1.3 million *HomeVenture Fund* restricted capital grant will reduce the deficit in unrestricted net assets being carried by the nonprofit organization. This will greatly improve NHSSV's prospects for receiving additional grants from other sources that fund foreclosure prevention assistance, homeownership counseling, and other vital services to San José residents. This loss will be offset by the NHSSV's utilization of new grant proceeds to make homebuyer loans exclusively to San José residents.

Authorizing the loan from the Housing Trust Fund will keep the City in good standing with HUD, allow the City to remain eligible to receive federal funding for housing and community development programs, and provide NHSSV with sufficient time to repay the City.

BACKGROUND

Neighborhood Housing Services Silicon Valley is a congressionally-chartered NeighborWorks organization and a local 501(c)(3) nonprofit corporation specializing in programs and services that promote and support affordable homeownership and neighborhood revitalization in San José. In the mid-1990s, the City requested that NeighborWorks America support the establishment of a local affiliate in the City of San José and offered significant financial support to the organization. Since 1999, NHSSV has been the City's predominant nonprofit housing partner specializing in homebuyer education, counseling, and other mortgage and real estate-related services for low- and moderate-income homebuyers.

NHSSV is also a partner of the local "Don't Borrow Trouble Silicon Valley" campaign, designed to increase awareness and education about predatory lending practices in Silicon Valley. The organization has also been at the forefront of addressing the loan foreclosure issue. It currently operates a foreclosure prevention program with federal funding through the NeighborWorks America organization. NHSSV is also a partner in San José's Neighborhood Stabilization Program (NSP) II consortium. Since its inception, NHSSV has provided thousands of prospective homebuyers with pre-purchase homebuyer education and performed real estate and lending services for hundreds of first time homebuyers. NHSSV earns fees for lending and real estate brokerage services when assisted homebuyers close their loans.

City's Contribution to the *HomeVenture Fund*

On September 5, 2000, the City Council authorized the Housing Department to contribute up to \$2,000,000 to the NHSSV *HomeVenture Fund* from funds provided by the Redevelopment Agency in the form of a restricted capital grant. This action established the NHSSV

HomeVenture Fund as a capital account designed to provide deferred subordinate financing for home purchases by low- and moderate-income households. Since inception of the Fund, it has been successfully utilized to help over 160 low- and moderate- income households acquire homes within the City of San José. Out of this total, 108 were made to low-income households and 60 homes were purchased in Strong Neighborhoods Initiative (SNI) areas.

Since 2000, a number of actions have been taken to modify the amount of funds available for lending. Recent actions include an amendment to the *HomeVenture Fund* Agreement approved by City Council on June 19, 2007 to increase the City's total funding of this account to \$4.55 million. As described below, on October 30, 2007, the City Council approved another amendment to authorize the temporary transfer of up to \$1.3 million from the Fund to be used to offset a budget deficit that resulted in part from the City's reduction in operating fund subsidies to NHSSV.

NHSSV's HomeVenture Fund Obligation

On October 30, 2007, the City Council approved the Housing Department's recommendation to allow the transfer of \$1.3 million from the *HomeVenture Fund* to NHSSV's operating budget.

The funds were to be used for accrued administrative costs that were incurred by NHSSV over several years. As stated in the memorandum to the City Council supporting that action, it was the nonprofit organization's intention to replenish the capital account from two grants that NHSSV had been awarded from the Community Development Financial Institution (CDFI). In accordance with CDFI grant agreements, after successful completion of the three-year contract period, the grant funds were to become "unrestricted," and could be used to support other programs and services offered by NHSSV.

NHSSV was unable to replenish the capital account with the CDFI grant proceeds due to the soft housing market which impeded sales at its 17-unit Villa Almendra townhome development. This resulted in significant carrying costs for the organization. In order to avoid losing the property through foreclosure, NHSSV had used its CDFI grant funds to pay the loan and offset losses incurred by the project. As a result, NHSSV had to develop an alternative strategy to repay this \$1.3 million Home Venture Fund obligation.

NHSSV's HOME Obligation

One of the sources for the *HomeVenture Fund* is federal HOME funds administered by the City in which the Housing Department contributed to the Fund as lending capital for use by NHSSV. In 2009, the City of San José Housing Department was audited by HUD and was asked to implement stricter requirements to document administrative costs. In the course of the City's subsequent review of NHSSV's HOME-funded contract for the administration of HOME capital funds, it was determined that NHSSV was charging both HOME and the homebuyer for the staff costs associated with processing HOME funded loans. As a result NHSSV was bringing in

revenue in excess of the costs incurred for processing the loans. This is not allowed under HOME regulations. As a result, NHSSV is required to repay \$115,000 to the City's HOME account.

ANALYSIS

Proposed Plan to Address NHSSV's \$1.3 Million HomeVenture Fund Obligation

The actions recommended in this memorandum will authorize the Director of Housing to release from restriction NHSSV's \$1.3 million restricted capital grant which will reduce the deficit in unrestricted net assets being carried by the nonprofit organization. NHSSV is proposing to use new grant proceeds to make homebuyer loans exclusively to San José residents. One source of the grant proceeds is a CalHome grant recently awarded to NHSSV. Under the terms of NHSSV's CalHome grant, loans can be made to homebuyers purchasing property anywhere within Santa Clara County. NHSSV has agreed to use \$1.3 million in CalHome grant proceeds, or other funding sources not obligated to the City, exclusively for properties within the City of San José.

A new *HomeVenture Fund* agreement between the City and NHSSV will be created. The agreement will include modified conditions to facilitate improved conformance with requirements of the funding sources that contributed to the *HomeVenture Fund*. It will also allow NHSSV to charge administrative fees commensurate to the cost of processing loans issued from the Fund. This new agreement will retire the previous *HomeVenture Fund* agreement. The Housing Department is asking for City Council authorization for the Director of Housing to negotiate and execute the terms of this new agreement governing the utilization of the remaining fund balance and future repayments to the Fund.

Proposed Plan to Address NHSSV's HOME Fund Obligation

As previously noted, NHSSV is required to repay \$115,000 to the City's HOME account. NHSSV will pay the City from unrestricted grant proceeds and/or loan repayments in monthly installments over five years at which time the obligation will be repaid with interest. Interest on the outstanding balance will be assessed monthly at the rate equivalent to the interest earned by the City's Investment Pool Fund 1. In order to ensure that the City remains in good standing with HUD, the Housing Department is recommending that the City Council approve the transfer of \$115,000 from the Housing Trust Fund to the HOME Investment Partnership Program Fund in order to immediately resolve the repayment due to HUD.

EVALUATION AND FOLLOW-UP

The Housing Department will monitor NHSSV's performance in meeting its obligations through utilization of progress reports required in the new *HomeVenture Fund* agreement.

POLICY ALTERNATIVES

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

Alternative #1: *Do not approve NHSSV's plan to address its HomeVenture Fund and HOME obligations.*

Pros: If the plan is not approved, the City may be able to pursue other means for NHSSV replenish the *HomeVenture Fund*.

Cons: If the City does not accept NHSSV in lieu of requiring full repayment, NHSSV may cease to remain a viable entity. At best, it would be limited in its ability to obtain additional grant resources that directly benefit low- and moderate- income homebuyers in San José.

Reason for not recommending: NHSSV has been a long-time partner of the City and promotes affordable and responsible homeownership opportunities and education for prospective first time homebuyers. It is in the City's best interests to facilitate NHSSV's continued financial viability. It should be noted that the conditions that lead to NHSSV's *HomeVenture Fund* repayment obligations were spurred by the City's request to have NHSSV find new revenue sources in order to reduce the operating support required by the City. While the specific strategy of acquiring and developing land was not endorsed by the City as a means to increase operating support, the rapid deterioration of the residential real estate market was outside the control of NHSSV and was the primary reason for the agency's inability to meet its repayment obligation. Prior to accepting NHSSV's proposed repayment strategy, the Housing Department explored every viable repayment option before determining that the recommended strategy is the only feasible course of action.

PUBLIC OUTREACH/INTEREST

The recommended action meets Criterion #1 below. Therefore, this memo will be posted on the City's website for the May 17, 2011 Council agenda.

√ **Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater.

Criterion 2: Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City.

Criterion 3: Consideration of proposed changes to service delivery, programs, or staffing that may have impacts to community services and have been identified by staff, the Board or Council, or a community group that requires special outreach.

COORDINATION

This report has been prepared by the Housing Department in coordination with the Redevelopment Agency, the Finance Department, and the Office of the City Attorney.

COST SUMMARY/IMPLICATIONS

The actions recommended in this memorandum will authorize the Director of Housing to release from restriction NHSSV's \$1.3 million *HomeVenture Fund* restricted capital grant, which will reduce the deficit in unrestricted net assets being carried by the nonprofit organization.

In addition, the budget actions recommended as part of this memorandum will transfer \$115,000 from the Housing Trust Fund to the Home Investment Partnership Program Fund for repayment to the U.S. Department of Housing and Urban Development.

BUDGET REFERENCE

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

Fund #	Appn #	Appn. Name	Total Appn	Amount for Project	2010-2011 Adopted Operating Budget (Page)	Last Budget Action (Date, Ord. No.)
440	8999	Ending Fund Balance	\$1,426,652	\$115,000	N/A	12/07/10, Ord. No. 28860

HONORABLE MAYOR AND CITY COUNCIL

April, 25, 2011

Approval of NHSSV's Plan to Address HomeVenture Fund and HOME Investment Partnership Obligations

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CEQA

Not a project, PP10-067(b), Non-Project Specific Funding Mechanism, Appropriation Ordinance



JENNIFER A. MAGUIRE

Budget Director

/s/

LESLYE CORSIGLIA

Director of Housing

I hereby certify that there will be available for appropriation in the Home Investment Partnership Program Fund in the Fiscal Year 2010-2011 moneys in excess of those heretofore appropriated there from, said excess being at least \$115,000.



JENNIFER A. MAGUIRE

Budget Director

For questions, contact LESLYE CORSIGLIA, Director of Housing, at 408-535-3851.



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Hans F. Larsen

SUBJECT: 2011 SLURRY SEAL PROJECT

DATE: 04-25-11

Approved

Date

5/2/11

COUNCIL DISTRICT: Citywide

RECOMMENDATION

Report on bids and award of contract for the 2011 Slurry Seal Project to the low bidder, Graham Contractors, Inc. in the amount of \$1,783,895.75 and approval of a five percent (5%) contingency in the amount of \$89,194.79.

OUTCOME

Approval of this construction contract to Graham Contractors, Inc. will help maintain and preserve approximately 26 miles of arterial/collector streets and 46 miles of residential streets. Sealing these streets will extend their useful life and defer more costly repairs and rehabilitation. Approval of a five percent contingency will provide funding for any unanticipated work necessary for the proper completion of the project.

BACKGROUND

The Department of Transportation (DOT) annually schedules streets to be surface sealed as part of the City's Pavement Maintenance Program. Surface sealing is the process of applying approximately a one-quarter inch thick mixture of oil and aggregate to the existing surface of a street to protect it from the environment and provide a new wearing surface. When used on streets in "fair" or better condition, it is the most cost-effective way to preserve and extend the service life of a street.

This contract specifies a single surface seal on approximately 26 miles of arterial/collector streets and the final sealing layer of a double surface seal treatment on approximately 46 miles of residential streets. Information provided by the City's computerized Pavement Management System is used to identify candidate streets for sealing. The final list of streets to receive sealing is established using the following criteria:

- Streets in suitable condition for sealing
- Streets due or past due for maintenance based on prescribed maintenance cycles
- Streets with numerous maintenance requests
- Streets not affected by current or future street related projects
- Relative location of street segments to create multiple, continuous segments, consistency within neighborhoods, and project efficiency
- Appropriate distribution of street maintenance throughout the City over a multi-year period.

Attachment A contains the list of arterial/collector streets and Attachment B contains the list of residential streets designated to receive treatment. The list may be slightly altered as unforeseen circumstances arise or new information regarding other street-related projects becomes available.

It is noted that residential sealing program is focused on Council Districts 4 and 7 for the 2011 pavement maintenance program. This is due to the cyclical approach used by DOT to ensure the most efficient and consistent delivery of pavement maintenance work on residential streets.

DOT uses a typical maintenance practice of geographically rotating annual street sealing work in an effort to reduce mobilization costs and maximize mileage of streets maintained.

ANALYSIS

Bids for this project were received on April 7, 2011 with the following results:

Contractor	City	Bid Amount	Variance Amount	% Over/Under Estimate
California Pavement Maintenance Company	Sacramento	\$2,509,040.00	\$174,124.22	7.5% over
Project Engineer's Estimate	----	\$2,334,915.78	----	----
American Asphalt Repair and Resurfacing Co., Inc.	Hayward	\$2,250,679.00	-\$84,236.78	3.6% under
Valley Slurry Seal	Sacramento	\$2,126,579.00	-\$208,336.78	8.9% under
Intermountain Slurry Seal, Inc.	Sacramento	\$2,063,369.00	-\$271,546.78	11.6% under
Bond Blacktop, Inc	Union City	\$1,898,728.00	-\$436,187.78	18.7% under
Graham Contractors, Inc.	San Jose	\$1,783,895.75	-\$551,020.03	23.6% under

The bid documents have been evaluated and found to be in order. The low bid submitted by Graham Contractors, Inc., is \$1,783,895.75 and it is 23.6% under the Engineer's Estimate. The Project Engineer's Estimate for this project is \$2,334,915.78. The estimate is based on bids received from similar past projects and current estimated construction prices. The lower than expected bid from Graham Contractors, Inc. is a result of several factors, including the current economic situation and a very competitive bidding environment. The \$551,020.03 remaining from the project bid results will be used to address treatment of priority street locations in future projects.

Council Policy provides for a standard contingency of five percent on projects involving street sealing. Staff considers the standard contingency appropriate for this project.

Construction is scheduled to begin in July 2011 and will be completed before the end of November 2011.

EVALUATION AND FOLLOW-UP

The project is currently within budget and on schedule with a projected completion in November 2011. No additional follow up actions with the Council are expected at this time.

POLICY ALTERNATIVES

Not applicable.

PUBLIC OUTREACH/INTEREST

- ✓ **Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater; **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, 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 award memo will be posted on the City's website for the Council Agenda.

To solicit contractors this project was listed on the City's Internet Bid Line and advertised in the *San José Post Record* and bid packages for this construction project were also provided to

various contractor organizations and builders' exchanges. In addition, when the project commences, the contractor, as stated in the specifications, will provide advance notification regarding working hours, duration of project, and any appropriate schedule and lane closures to affected businesses and residents. To inform traveling motorists of upcoming construction activities and potential traffic delays, changeable message signs may be used on selected streets stating the schedule dates and time for work to occur on the street.

COORDINATION

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

FISCAL/POLICY ALIGNMENT

This project supports the Transportation and Aviation Services City Service Area goal to *Preserve and Improve Transportation Assets and Facilities* and aligns with the recommended Pavement Maintenance Core Service goal of improving the City's street pavement conditions and Pavement Condition Index (PCI) from a current network condition rating of "fair" (64 PCI) to a network condition of "good" (70 PCI). The project is also consistent with the Council-approved Budget Strategy General Principles section in that it projects vital core City services.

COST IMPLICATIONS

1. COST OF PROJECT:

Project Delivery/Development	\$178,389.58
Construction Contract	\$1,783,895.75
Contingency	<u>\$89,194.79</u>
TOTAL PROJECT COSTS:	\$2,051,480.12

2. COST ELEMENTS OF CONSTRUCTION CONTRACT:

Sealing	\$1,286,420.00
Striping/Markings	\$454,225.75
Police Traffic Control and Misc. Items	<u>\$43,250.00</u>
TOTAL CONSTRUCTION CONTRACT COSTS:	\$1,783,895.75

3. SOURCE OF FUNDING: 465 - Construction Excise Tax Fund

4. FISCAL IMPACT: This project will have no net operating and maintenance costs to the General Fund.

BUDGET REFERENCE

The table below identifies the fund and appropriation proposed to fund the contract recommended as part of this memo, including project delivery, construction, and contingency costs. 2011 Slurry Seal Project is 100% funded by State gas tax revenues.

Fund #	Appn #	RC #	Appn. Name	Total Appn	Amt. for Contract	2010-2011 Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
465	5216	167375	Gas Tax - Pavement Maintenance	\$8,671,000	\$1,783,895.75	V-869	02/08/2011, Ord. No. 28888
Total Current Funding Available =				\$8,671,000	\$1,783,895.75		

CEQA

Exempt, File No. PP11-035.

/s/

HANS F. LARSEN
Director of Transportation

For questions please contact Rene Cordero, Division Manager, at 277-8147.

Attachments

**ATTACHEMENT A
ARTERIAL/COLLECTOR STREETS**

CD	STREET NAME	FROM	TO	LENGTH
7	10TH ST S	NEEDLES DR	PHELAN AV	940
7	10TH ST S	PHELAN AV	ALMA AV E	1770
7	10TH ST S	ALMA AV	HUMBOLDT ST	1200
10	CAHALAN AV	BLOSSOM HILL RD	SANTA TERESA BL	4368
10	CAHALAN AV	COUNTY GATE	SANTA TERESA BL	1970
9	CHYNOWETH AV EB	PEARL AV	BIKE PATH	1452
9	CHYNOWETH AV EB	CHYNOWETH CT	1000' EAST OF CHYNOWETH CT	3058
10	CHYNOWETH AV WB	E END	CHYNOWETH CT	3105
10	CHYNOWETH AV WB	BIKE PATH	PEARL AV	1500
3	COLEMAN AV NB	HWY 880 BRIDGE	NEWHALL DR	1505
3	COLEMAN AV NB	MCKENDRIE ST	HWY 880 BRIDGE	690
3	COLEMAN AV SB	NEWHALL DR	HWY 880 BRIDGE	1471
3	COLEMAN AV SB	HWY 880 BRIDGE	MCKENDRIE ST	689
1	DE ANZA BL NB	PROSPECT RD	CORONADO DR	2239
2	HELLYER AV EB	DOVE ST	SILVER CREEK VALLEY RD	10962
2	HELLYER AV WB	SILVER CRK VLY RD	DOVE ST	9839
6	LEIGH AV	1650'N/HAMILTON	DE ROSE	1370
6	LEIGH AV	HAMILTON AV	1650'N/HAMILTON	1900
6	LEIGH AV	DE ROSE	SOUTHWEST EX	1115
8	NIEMAN BL	PLUMSTEAD WY	ABORN RD	1204
8	NIEMAN BL	PLUMSTEAD WY	CAPITOL EXP	900
6	PEARL AV	445' S/OF CAPITOL	BRANHAM LN	3200
6	PEARL AV	CAPITOL EX	445'S/CAPITOL	445
1	PROSPECT RD EB	500' E/OF LAWRENCE EX	LAWRENCE EX	500
1	PROSPECT RD WB	SARATOGA AV	LAWRENCE EX	1500
5	SAN ANTONIO ST E	JACKSON AV S	KING RD S	4003
5	SAN ANTONIO ST E	KING RD S	34TH ST S	740
5	SAN ANTONIO ST E	34TH ST S	33RD ST S	540
1	SAN TOMAS AQUINO RD	N PAYNE AV	E SARATOGA AV	1330
1	SAN TOMAS AQUINO RD	N HAMILTON AV	S PAYNE AV	2460
4	SUNCREST AV	PIEDMONT RD	BAY LAUREL LN	2405
4	SUNCREST AV	BAY LAUREL LN	BOULDER DR	5110
8	WHITE RD S	STUTZ WY	STEVENS LN	406
8	WHITE RD S	QUIMBY RD	STUTZ WY	1482
8	WHITE RD S	STEVENS LN	ABORN RD	2462

**ATTACHMENT B
RESIDENTIAL STREETS**

CD	STREET NAME	FROM	TO	LENGTH
7	ABERDEEN CT	HOLLY HILL DR	S END	400
4	ADOLFO DR	CARMINE WY	E END	1074
4	AGUA VISTA DR	PEACHWOOD DR	HOSTETTER RD	2130
7	ALGIERS AV	MCLAUGHLIN AV	CLEMENCE AV	660
4	AMBERWOOD CT	S END	AMBERWOOD LN	185
4	AMBERWOOD LN	AMBERWOOD CT	MORRILL AV	2500
4	ANNE MARIE CT	LARGO DR	S END	575
4	ARAUJO ST	TOWNSEND PK CR	SIERRA RD	1125
4	ASHEBORO CT	GORDY DR	EAST END	141
4	ASTRO CT	FLICKINGER AV	W END	105
4	ATTEBERRY LN	DEL FRANCO ST	OLD OAKLAND RD	340
7	AUDUBON DR	CLEMENCE AV	MCLAUGHLIN AV	640
7	AUDUBON DR	MCLAUGHLIN AV	SANTEE DR	780
4	AUTUMN GOLD DR	MARCROSS DR	RUE AVATI	1005
4	AUTUMNTREE CT	SILVERTREE DR	S END	495
4	AUTUMNVALE DR	LAKEWOOD DR	N CAPITOL AV	1090
4	AVATI CT	RUE AVATI	W END	120
4	BABE RUTH CT	BABE RUTH DR	N END	220
4	BABE RUTH DR	CAMARGO DR	BETHANY AV	1500
4	BADEN CT	WEXFORD DR	S END	185
7	BAGELY WY	BIKINI AV	S END	620
4	BAKER PL	RUE AVATI	E END	195
7	BALI CT	KILCHOAN WY	E END	275
7	BAYARD DR	MCLAUGHLIN AV	BIKINI AV	1030
7	BELLHURST AV	LUCRETIA AV	CLEMENCE AV	705
4	BETHANY CT	BETHANY AV	E END	100
4	BEWCASTLE CT	CAMARGO DR	E END	420
7	BIKINI AV	NISICH DR	KILCHOAN WY	2980
4	BLACKMORE CT	BABE RUTH DR	S END	425
7	BOA VISTA DR	KILCHOAN WY	W END	830
4	BOB WHITE PL	BRAEBRIDGE RD	N END	550
4	BRAEBRIDGE RD	RUE AVATI	OLDBRIDGE RD	500
4	BRAEBRIDGE RD	OLDBRIDGE RD	SIERRA RD	485
4	CALLE ARTIS	OLD OAKLAND RD	DEL FRANCO ST	320
4	CALOOSA CT	RUE AVATI	S END	485
4	CAMACHO WY	BABE RUTH DR	LARGO DR	855
7	CAMANO CT	MCLAUGHLIN AV	E END	290
4	CAMARGO CT	CAMARGO LN	E END	465
4	CAMARGO DR	CROPLEY AV	VIA ENCINITAS	1150
4	CAMARGO DR	CROPLEY AV	CATALDI DR	2295
4	CAPEWOOD CT	CAPEWOOD LN	S END	125
4	CARDINGTON DR	GUILDHALL DR	ROYALVALE WY	415
7	CARNELIAN DR	MCLAUGHLIN AV	CRUCERO DR	1484
4	CASTLETREE CT	FLICKINGER AV	W END	100
4	CATALDI DR	TRUDEAN WY	MORRILL AV	1030
7	CHAPEL HILL WY	LUCRETIA AV	MARTELLO DR	1095
4	CHAVEZ CT	CHAVEZ WY	SOUTH END	100
4	CHAVEZ WY	TOWNSEND AV	E END	1245
7	CLEMENCE AV	FAIR AV	950'N/FAIR AV	930
7	CLEMENCE AV	950'N/FAIR AV	WALNUT WOODS CT	952
7	CLEMENCE AV	WALNUT WOODS CT	N END	985
7	CLEMENCE CT	CLEMENCE AV	W END	185
4	CLEO SPRINGS CT	GORDY DR	N END	205
4	CLEO SPRINGS DR	GORDY DR	VENNUM DR	585

**ATTACHMENT B
RESIDENTIAL STREETS**

4	COHANSEY DR	MORRILL AV	CAMARGO DR	1085
4	COMMERCE DR	QUME DR	LUNDY AV	705
4	CORALTREE PL	SHADETREE LN	HOSTETTER RD	1285
4	CORPORATE CT	RINGWOOD AV	W END	385
7	COURTNEY AV	PHELAN AV	HOLLY HILL DR	360
7	CRESTON LN	MCLAUGHLIN AV	SANTEE DR	760
7	CRINAN DR	TRIPOLI AV	HOLLY HILL DR	1110
7	CRUCERO CT	CRUCERO DR	E END	417
7	CRUCERO DR	N END	BACCHUS DR	2600
4	DALTREY WY	BABE RUTH DR	BETHANY AV	980
7	DARWIN CT	E END	CRUCERO DR	415
4	DEFALCO WY	TOWNSEND PK CR	STANTON WY	640
4	DEL FRANCO ST	CALLE ARTIS	ATTEBERRY LN	835
4	DELUCA DR	DELUCA DR	LOO LN	655
4	DELUCA DR	SAJAK DR	MURPHY AV	975
7	DENAIR AV	LETITIA ST	BAYARD DR	1300
7	DERBE DR	TRIESTE WY	ROBERTS AV	225
4	DONOHUE CT	DONOHUE DR	W END	225
4	DONOHUE DR	DOXEY DR	SIERRA RD	1355
7	DORNOCH CT	KILCHOAN WY	E END	300
4	DOXEY CT	DOXEY DR	S END	340
4	DOXEY DR	FOUR OAKS RD	W END	445
4	DOXEY DR	FLICKINGER AV	RUE AVATI	970
4	DOXEY PL	FLICKINGER RD	E END	556
4	DRUMHEAD CT	RUE AVATI	W END	440
7	DUBERT LN	CRUCERO DR	SANTEE DR	730
7	DUDASH CT	MCLAUGHLIN AV	E END	150
7	DUNDEE CT	KILCHOAN WY	E END	340
7	DURNESS PL	GLENFINNAN DR	400'S/GLENFINNA	400
7	DURNESS PL	400'S/GLENFINNA	GLENFINNAN DR	1020
4	ELMTREE CT	ROYALTREE CR	N END	175
4	ESPRIT CT	FLICKINGER AV	S END	145
7	FAIR AV	LUCRETIA AV	MCLAUGHLIN AV	1365
4	FALLINGTREE DR	FLICKINGER AV	N CAPITOL AV	2180
4	FEASEL CT	WAYNE AVE	N END	180
4	FINEO CT	CHAVEZ WY	SOUTH END	94
4	FLICKINGER AV	HOSTETTER RD	LIBRETTO CT	3195
4	FLICKINGER AV	LIBRETTO CT	POETRY DR	1450
4	FORGETREE CT	SILVERTREE DR	E END	225
4	FOUR OAKS CT	FOUR OAKS RD	E END	185
4	FOUR OAKS RD	HOUNSLOW DR	HOSTETTER RD	2375
4	FOUR OAKS RD	SHADETREE LN	HOSTETTER RD	1360
4	FOUR SEASON CT	FOUR OAKS RD	E END	300
4	FROST DR	LUNDY AV	HOSTETER AV	1012
4	FUMIA CT	FUMIA PL	S END	611
4	FUMIA DR	WAYNE AVE	FUMIA PL	608
4	FUMIA PL	FUMIA DR	S END	473
4	FUMIA PL	FUMIA DR	FUMIA CT	406
7	GALVESTON AV	SUMMERSIDE DR	TULLY RD	1730
4	GARVEY PL	E END	WEXFORD DR	1485
7	GERMAINE CT	PHELAN AV	S END	365
4	GEYSER DRIVE	LEAFTREE CIR.	LUNDY AV	238
4	GILLIAN WY	LARGO DR	BABE RUTH DR	690
7	GLENA CT	KILCHOAN WY	E END	275
7	GLENFINNAN CT	GLENFINNAN DR	S END	175

**ATTACHMENT B
RESIDENTIAL STREETS**

7	GLENFINNAN CT	DURNESS PL	W END	351
7	GLENFINNAN DR	MCLAUGHLIN AV	DURNESS PL	875
4	GOLDENLAKE RD	RUE AVATI	SIERRA RD	1465
4	GOLDENTREE DR	FLICKINGER AV	HOSTETTER RD	1195
4	GOLDRUSH CT	GOLDENLAKE RD	N END	95
4	GORDY DR	LUNDY AV	ASHEBORO CT	785
4	GORDY DR	ASHEBORO CT	CLEOSPRINGS CT	940
7	GRANADA WY	MARIELLO DR	LUCRETIA AV	1080
4	GREENSBORO CT	WILLIAMSPORT DR	E END	580
7	GRENADINE WY	PHELAN AV	CHAPEL HILL WY	620
4	GROVETREE CT	HOSTETTER AV	S END	130
4	GUILDHALL DR	SIERRA WOOD DR	CARDINGTON DR	345
4	HADEOCK CT	WEXFORD DR	S END	205
4	HAMLET CT	OLIVETREE DR	N END	210
7	HEARTHSTONE WY	TRIESTE WY	SARABAND WY	835
7	HEARTHSTONE WY	HEARTHSTONE DR	LUCRETIA AV	140
7	HOLLY HILL DR	COURTNEY AV	MCLAUGHLIN AV	610
7	HOLLY HILL DR	KILCHOAN WY	E END	300
7	HOLLY HILL DR	KILCHOAN WY	MCLAUGHLIN AV	1340
7	HOPETON AV	MIDPINE AV	S END	490
7	HOPETON CT	HOPETON AV	E END	330
7	JENEANE MARIE CL	WINIFRED DR	WINIFRED DR	1065
7	JOE DIMAGGIO CT	CRUCERO DR	E END	430
4	JONESBORO CT	GORDY DR	END	165
4	JOYERIN CT	BRAEBRIDGE RD	S END	285
4	JOYNER CT	OLDBRIDGE RD	S END	460
4	JUAREZ CT	CROPLEY AV	N END	140
4	JUNEWOOD AV	CROPLEY AV	CAPEWOOD LN	1655
4	JUNEWOOD AV	CROPLEY AV	MORRILL AV	640
4	KESEY LN	DALTREY WY	MCCLUHAN WY	770
7	KILCHOAN CT	KILCHOAN WY	E END	350
7	KILCHOAN WY	TAPER LN	HOLLY HILL DR	1630
7	KINROSS WY	CRIENAN DR	S END	750
5	KOLLMAR DR	CAPITOL AV	STORY RD	912
4	LADYMUIR CT	FOUR OAKS RD	E END	130
4	LAKETREE CT	HOSTETTER RD	S END	135
4	LAKWOOD CT	LAKWOOD DR	S END	120
4	LARGO DR	CAMARGO DR	BETHANY AV	1005
7	LE COMPTE PL	ROBERTS AV	MISTFLOWER DR	215
7	LE COMPTE PL	MISTFLOWER DR	E END	430
4	LEAFTREE CR	CHAVEZ WY	CHAVEZ WY	1165
4	LEAFTREE CT	LEAFTREE CR	E END	250
7	LETITIA CT	DENAIR AV	S END	300
7	LETITIA ST	DENAIR AV	BIKINI AV	310
4	LIBRETTO CT	FLICKINGER AV	S END	408
4	LINDSAY ANN TR	WILLIAMSPORT DR	GREENSBORO CT	193
4	LOO LN	SAJAK AV	N END	185
4	LOO LN	CARMINE WY	S END	210
4	LOWNEY WY	DONOHUE DR	FLICKINGER AV	455
7	LUCRETIA CT	LUCRETIA AV	N END	230
7	MAGNOLIA TREE CT	FAIR AV	S END	204
7	MALDEN AV	TAPER LN	BOA VISTA DR	680
4	MANDEL CT	BRAEBRIDGE RD	S END	380
4	MARCCROSS DR	FLICKINGER AV	RUE AVATI	860
7	MARIELLO DR	HOLLY HILL DR	GRANADA WY	530

**ATTACHMENT B
RESIDENTIAL STREETS**

4	MAXWELL WY	TOWNSEND PK CR	DEFALCO	830
4	MAYALL CT	BABE RUTH DR	S END	440
4	MCCLUHAN WY	KESEY LN	BABE RUTH DR	655
7	MCQUESTEN DR	CRUCERO DR	SANTEE DR	760
4	MIDDLEBOROUGH CR	PEACHWOOD DR	PEACHWOOD DR	1890
7	MIDPINE AV	MCLAUGHLIN AV	DENAIR AV	750
4	MIGNON DR	PEACHWOOD DR	AGUA VISTA DR	1160
4	MINUET DR	CAPITOL AV	FLICKINGER AV	854
4	MINUTEMAN WY	GARVEY PL	HOSTETTER RD	265
4	MISSION SPRINGS CR	SAJAK AV	SAJAK AV	1695
4	MISSION SPRINGS CT	MISSION SPRINGS	N END	190
7	MISTFLOWER DR	LE COMPTE PL	220'S/LE COMPTE	220
7	MISTFLOWER DR	220'S/LE COMPTE	LUCRETIA AV	440
4	MONTAGE CT	FLICKINGER AV	S END	408
4	MONTCOURSE LN	PARKMONT DR	OYAMA DR	480
7	MORLEY CT	MCLAUGHLIN AV	E END	150
7	NEEDLES DR	SENTER RD	ROCK SPRING DR	565
4	NEW BEDFORD CT	WILLIAMSPORT DR	E END	470
7	NISICH CT	BIKINI AV	S END	190
7	NISICH DR	TULLY RD	E END	560
7	NISICH DR	BIKINI AV	BAGLEY WY	1176
4	NOBU DR	CARMINE WY	S END	280
7	NORDALE AV	ROCK SPRING DR	SENTER RD	575
4	NUNES DR	FLICKINGER AV	E END	650
7	NUT TREE PL	CLEMENCE AV	W END	105
4	NUTMEG CT	DONHUE DR	W END	220
4	OAK FLAT RD	FOUR OAKS RD	RIDGETREE WY	890
4	OLDBRIDGE RD	GOLDENLAKE RD	BRAEBRIDGE RD	585
4	OLDTREE CT	FALLINGTREE DR	S END	245
4	OLIVETREE DR	FALLINGTREE DR	SHADETREE LN	690
4	OROLETTE PL	RUE AVATI	E END	290
7	OSWEGO DR	ROBERTS AV	TRIESTE CT	240
7	OWSLEY AV	CLEMENCE AV	MCLAUGHLIN AV	650
7	OWSLEY AV	CLEMENCE AV	525'W/CLEMENCE	525
7	OWSLEY AV	525'W/CLEMENCE	LUCRETIA AV	190
4	OYAMA DR	SAJAK AV	MURPHY AV	1312
4	OYAMA PL	OYAMA DR	S END	545
7	PANOCHÉ AV	MCLAUGHLIN AV	E END	910
7	PANOCHÉ CT	PANOCHÉ AV	N END	202
4	PAOLO CT	DONOHUE DR	W END	225
4	PARKMONT CT	PARKMONT DR	E END	175
4	PARKMONT DR	SAJAK AV	MONTCOURSE LN	1036
4	PEACHWOOD CT	PEACHWOOD DR	E END	410
4	PEACHWOOD DR	HOSTETTER RD	AGUA VISTA DR	1755
4	PEACHWOOD PL	PEACHWOOD DR	S END	130
7	PEARSON CT	AUDUBON DR	S END	175
7	PHELAN CT	PHELAN AV	S END	120
7	PHELAN WY	PHELAN AV	W END	238
4	PINETREE CT	SILVERTREE DR	E END	100
7	PIPE DREAM CT	MCLAUGHLIN AV	E END	394
4	PLAZA AMERICAS	V CINCO DE MAYO	E END	305
4	PLAZA BANDERAS	V CINCO DE MAYO	E END	295
4	PLAZA CASITAS	N CAPITOL AV	N END	115
4	PLAZA CLAVELES	V CINCO DE MAYO	E END	285
4	POETRY DR	MINUET DR	FLICKINGER AV	310

**ATTACHMENT B
RESIDENTIAL STREETS**

7	POWELL CT	AUDUBON DR	S END	190
4	PRELUDE DR	GORDY DR	S END	900
4	PRIMO CT	RUE AVATI	W END	140
4	PROSPERITY CT	RUE AVATI DR	E END	508
4	PUTNEY CT	ROYALVALE WY	ROYALVALE WY	420
7	QUINN AV	SENER RD	E END	1305
4	RALENE CT	RALENE PL	N END	110
4	RALENE PL	RIDGETREE WY	S END	450
4	RAMSTREE DR	SHADOWTREE DR	HOSTETTER RD	1165
4	RENFREW CT	FOUR OAKS RD	E END	140
4	RIDGECLIFF CT	FOUR OAKS RD	E END	205
4	RIDGETREE WY	FOUR OAKS RD	STANWICH RD	430
4	RIDGETREE WY	STANWICH RD	FALLINGTREE DR	1880
4	RINGWOOD AV	MURPHY AV	865' N/MURPHY A	865
7	ROBERTS AV	100'N/LE COMPTE	260'S/LE COMPTE	360
7	ROBERTS AV	260'S/LE COMPTE	VINTAGE WY	350
7	ROBERTS AV	VINTAGE WY	PHELAN AV	1650
7	ROBERTS PL	ROBERTS AV	E END	325
7	ROCK SPRING DR	NEEDLES DR	NORDALE AV	610
7	ROCK SPRING DR	NEEDLES DR	E END	750
4	ROCKTREE CT	FALLINGTREE DR	S END	235
4	ROSARIO CT	ROSARIO DR	E END	180
4	ROSARIO DR	VIA ENCINITAS	CAMARGO DR	745
4	ROUNDLEAF CT	RUE AVATI	W END	120
4	ROYALTREE CL	FLICKINGER AV	FLICKINGER AV	1320
4	ROYALVALE WY	PUTNEY CT	LAKEWOOD DR	595
4	RUE AVATI	SIERRA RD	HOSTETTER RD	3160
4	SAJAK AV	LUNDY AV	TOWNSEND AV	1425
4	SAJAK AV	TOWNSEND AV	OYAMA DR	745
4	SAJAK AV	OYAMA DR	PARKMONT DR	400
7	SANTEE DR	S END	WINSLOW DR	1645
7	SARABAND WY	HEARTHSTONE DR	ROBERTS AV	500
4	SAWLEAF CT	MARCROSS DR	S END	380
4	SHADETREE LN	RIDGETREE WY	OLIVETREE DR	375
4	SHADETREE LN	OLIVETREE DR	CORALTREE PL	790
4	SHADOWTREE DR	W END	CORALTREE PL	970
4	SHADOWVALE WY	AUTUMNVALE DR	LAKEWOOD DR	770
7	SHORELAND DR	MCLAUGHLIN AV	BIKINI AV	1070
7	SHOREVIEW CT	BIKINI AV	E END	510
4	SILVERTREE DR	HOSTETTER RD	FLICKINGER AV	1460
7	SOGOL CT	TAJI CT	S END	290
7	SOGOL DR	TAJI CT	N END	40
4	SONNET CT	FLICKINGER AV	S END	408
7	SPOKANE DR	MCLAUGHLIN AV	BAYARD DR	960
4	STANTON WY	DEFALCO WY	TOWNSEND PK CR	880
4	STANWICH RD	RIDGETREE WY	S END	545
7	STONE GLEN CT	DURNESS PL	W END	348
4	STRATTON PL	TOURNEY DR	N END	520
7	SULTANA DR	MCLAUGHLIN AV	CLEMENCE AV	650
7	SUMMER BLOSSOM AV	BACHHUS DR	END	816
7	SUMMER BLOSSOM CT	SUMMER BLOSSOM AV	END	78
7	SUMMERSIDE DR	MCLAUGHLIN AV	LUCRETIA AV	1350
7	SUMMERSIDE DR	LUCRETIA AV	520'W/LUCRETIA	520
7	SUMMERSIDE DR	520'W/LUCRETIA	GALVESTON AV	425
7	SUNNYCREST CL	BIKINI AV	BIKINI AV	1475

**ATTACHMENT B
RESIDENTIAL STREETS**

7	SUZAY CT	NISICH DR	N END	500
4	SWANSTON WY	CAMARGO DR	COHANSEY DR	1085
7	TAHITI CT	TAPER LN	N END	190
7	TAJI CT	LUCRETIA AV	S END	580
7	TAJI DR	LUCRETIA AV	SOGOL CT	121
7	TAKA CT	KILCHOAN WY	E END	275
4	TAMBOUR WY	FALLING TREE DR	FLICKINGER AV	532
7	TAMI LEE DR	SANTEE DR	CRUCERO DR	755
4	TANAKA DR	TOWNSEND AV	SAJAK AV	750
7	TAPER CT	KILCHOAN WY	E END	280
7	TAPER LN	MCLAUGHLIN AV	260'E/MCLAUGHLI	260
7	TAPER LN	260'E/MCLAUGHL	100'W/BIKINI AV	750
7	TAPER LN	100'W/BIKINI AV	KILCHOAN WY	400
4	TERSINI CT	PRELUDE DR	N END	328
7	THAYER CT	SUNNYCREST CR	S END	330
7	THELMA WY	LUCRETIA AV	CLEMENCE AV	855
7	TOBAGO AV	BOA VISTA DR	TAPER LN	600
4	TOBIN DR	MORRILL AV	CAMARGO DR	835
4	TOURNEY DR	ULSTER DR	SIERRA RD	520
4	TOWNSEND AV	LUNDY AV	TOWNSEND PK CR	430
4	TOWNSEND AV	TOWNSEND PK CR	SAJAK AV	1805
7	TRIBSTE CT	OSWEGO DR	S END	390
7	TRIESTE WY	OSWEGO DR	DERBE DR	520
4	TRIMBLE RD	SIERRA WOOD DR	LAKEWOOD DR	735
4	TRIMBLE RD	LAKEWOOD DR	CAPTOL AV	1730
7	TRIPOLI AV	HOLLY HILL DR	CRINAN DR	650
4	TRUDEAN WY	CATALDI DR	BABE RUTH DR	1410
7	TURLEROCK DR	MCLAUGHLIN AV	TOBAGO AV	660
4	ULSTER DR	FLICKINGER AV	TOURNEY DR	605
4	VALHALLA CT	VALHALLA DR	S END	350
4	VALHALLA DR	MORRILL AV	CAMARGO DR	810
4	VENNUM DR	CLEO SPRINGS DR	FROST DR	500
4	VIA CINCO DE MAYO	N CAPITOL AV	CROPLEY AV	1185
4	VIA DEL CORONADO	VIA MONTEZ	JUNEWOOD AV	720
4	VIA DEL SOL	JUNEWOOD AV	VIA MONTEZ	1305
4	VIA ENCINITAS	JUNEWOOD AV	W END	335
7	VIA FERRARI AV	PANOCHÉ AV	STORY RD	855
4	VIA FLORES	V CINCO DE MAYO	S END	310
4	VILLAGETREE DR	FLICKINGER AV	E END	645
7	VINTAGE WY	LUCRETIA AV	ROBERTS AV	680
7	WALKER CT	PHELAN AV	S END	115
7	WALNUT WOODS CT	CLEMENCE AV	E END	425
7	WALNUT WOODS DR	CLEMENCE AV	LUCRETIA AV	920
7	WARFIELD WY	GALVESTON DR	SUMMERSIDE DR	1750
4	WAYNE AV	RINGWOOD AV	CITY LIMIT	500
4	WAYNE CIR	WAYNE AVE	WAYNE AVE	643
7	WELCH AV	NORDALE AV	NEEDLES DR	620
4	WEXFORD DR	AGUA VISTA DR	GARVEY PL	1400
4	WIDEN CT	VALHALLA DR	S END	380
7	WILL WOOL DR	QUINN AV	WOOL CREEK DR	1130
4	WILLIAMSPORT DR	GORDY DR	LUNDY AV	770
7	WINIFRED DR	LUCRETIA AV	JENEANE MARIE CL	500
7	WINSLOW DR	SANTEE DR	MCLAUGHLIN AV	760
4	WIZARD CT	FLICKINGER AV	E END	410
4	WOODRANCH CT	WOODRANCH RD	S. END	187

**ATTACHMENT B
RESIDENTIAL STREETS**

4	WOODRANCH RD	FOUR OAKS RD	SIERRA RD	872
7	WOOL CREEK DR	SENER RD	W END	3472
4	YANKEE POINT CT	MARCROSS DR	S END	375
4	YESLER CT	RIDGETREE WY	E END	275
4	ZORIA CR	FOUR OAKS RD	FOUR OAKS	1490



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Hans F. Larsen

SUBJECT: 2011 REMOVE AND REPLACE
PAVEMENT PROJECT

DATE: 04-25-11

Approved

Date

5/2/11

COUNCIL DISTRICT: Citywide

RECOMMENDATION

Report on bids and award of a construction contract for the 2011 Remove and Replace Asphalt Concrete Pavement Project to the low bidder, Top Grade Construction, Inc., in the amount of \$1,608,570, and approval of a five percent (5%) contingency in the amount of \$80,429.

OUTCOME

Approval of this construction contract to Top Grade Construction, Inc. will help maintain and preserve approximately 26 miles of the City's pavement network by preparing these streets for a surface seal. Preparing and sealing these streets will extend their useful life and defer more costly reconstruction expenses. Approval of a five percent (5%) contingency will provide funding for any unanticipated work necessary for the proper completion or construction of the project.

BACKGROUND

The Department of Transportation (DOT) annually schedules streets to be surface sealed as a preventive maintenance measure to extend their useful life and reduce long-term maintenance costs to the City. The process of surface sealing streets is typically performed through two separate projects: a Remove and Replace project and a Sealing Application project. Streets that are identified to receive a surface sealing treatment are surveyed for damage. If the survey indicates that a street has areas of pavement that have structurally failed, the street becomes part of the Remove and Replace project. The Remove and Replace project removes the structurally failed areas of pavement and replaces them with new asphalt concrete. The Sealing Application project then applies a new surface seal over the entire street.

Candidate streets for surface sealing are identified using information gathered from the City's pavement management system, the public, field investigations, and reviews of upcoming street

related projects. The final list of streets to receive sealing is established using the following criteria:

- Streets in suitable condition for sealing
- Streets due or past due for maintenance based on prescribed maintenance cycles
- Streets with numerous maintenance requests
- Streets not affected by current or future street related projects
- Relative location of street segments to create multiple, continuous segments, consistency within neighborhoods, and project efficiency
- Appropriate distribution of street maintenance throughout the City over a multi-year period

The 2011 Remove and Replace Asphalt Concrete Pavement Project will prepare approximately 26 miles of arterial streets throughout the City for final sealing application during the summer of 2011. Attachment A contains the list of streets designated to receive these treatments.

ANALYSIS

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

Contractor	City	Bid Amount	Variance Amount	Over/Under Engineer's Estimate
Granite Rock Company DBA Pavex Construction Division	San Jose	\$2,108,825	\$243,202	13.0%
Project Engineer's Estimate		\$1,865,623	----	----
Wattis Construction Co., Inc.	San Jose	\$1,858,625	-\$6,998	-0.40%
MCK Services, Inc.	Concord	\$1,847,999	-\$17,624	-1.0%
C.F. Archibald Paving, Inc.	Redwood City	\$1,832,090	-\$33,533	-1.8%
Bay Cities Paving and Grading Inc.	Concord	\$1,818,530	-\$47,093	-2.5%
G. Bortolotto & Co., Inc.	San Carlos	\$1,766,574	-\$99,049	-5.3%
Granite Construction Company	Watsonville	\$1,719,610	-\$146,013	-7.8%
O'Grady Paving, Inc.	Mountain View	\$1,699,465	-\$166,158	-8.9%
Top Grade Construction, Inc.	Livermore	\$1,608,570	-\$257,053	-13.8%

The apparent low bid at \$1,608,570 was submitted by Top Grade Construction, Inc. (Top Grade). However, Top Grade failed to include a signed Addendum No. 1 in its bid proposal. Without considering whether Top Grade's failure to include signed Addendum No. 1 could be waived as a minor irregularity, staff decided that Top Grade's bid proposal was non-responsive. On March 14, 2011, staff issued a Notice of Intent to Award Contract stating that the Director of DOT intended to recommend award of the contract to, O'Grady Paving, Inc. (O'Grady), the apparent second lowest bidder.

Upon further review by the Department, it was determined that the failure of Top Grade to submit a signed Addendum No. 1 was a minor irregularity that may be waived by the City. On April 6, 2011, staff issued a *Revised* Notice of Intent to Award Contract stating that the Director of DOT intended to recommend award of the contract to Top Grade. A copy of the Revised Notice of Intent to Award Contract is provided in Attachment B. Five days later, O'Grady sent a letter protesting the recommendation on the following grounds: (1) Top Grade failed to submit a signed Addendum No. 1 with its bid, and (2) City staff's decision to change its original recommendation to award the contract to O'Grady was "arbitrary, capricious, [and] unauthorized." A copy of the protest letter and the response letter from DOT staff is provided in Attachment C.

O'Grady's protest lacks merit. Staff's reconsideration of the initial intent to award was done in light of the well-established rule of competitive bidding that a public entity has the right to waive a minor irregularity in a bid proposal. An irregularity in a bid proposal is minor if it does not affect the amount of the bid or give a bidder an advantage or benefit not given to other bidders. A public entity may – but does not have to – waive a minor irregularity. Section 2-01.06 of the City's Standard Specifications state that, "the City may, in its sole discretion, waive any informalities or minor irregularities in the bid or proposal."

Based on a careful analysis of Addendum No. 1, staff concluded that Top Grade's failure to include a signed copy of the addendum in its bid proposal is a minor irregularity. Addendum No. 1 – which addressed the issue of providing San Jose Police Department reserve officers for traffic control – had no impact on the amount of the bids. When City staff issued the bid, the cost for providing reserve officers for traffic control was fixed at \$21,840 (\$52 per hour x 420 hours). City staff actually filled in this amount on item number 7 on the Schedule of Quantities. Thus, all bidders were required to bid \$21,840 for the work related to providing San Jose Police Department reserve officers for traffic control. Addendum No. 1 had absolutely no impact on the amount of this bid item.

Moreover, Addendum No. 1 clarified – but did not materially change – the scope of the work related to providing San Jose Police Department reserve officers for traffic. Addendum No. 1 deleted Sections 10-4.03 and 10.1-05 of the specifications, and added a new Section 10.1-05. The original language required the contractor to provide reserve officers for traffic control as directed by the Engineer. The new language maintains this requirement and simply clarifies various possible scenarios for the use of reserve officers for traffic control. The new language adds information about how to hire and pay reserve officers, makes reference to the \$52 rate of pay, and cross-references other sections of the specifications.

Staff's reconsideration of its initial recommendation was not "arbitrary," "capricious" or "unauthorized" as asserted by O'Grady in its protest letter. Although staff regrets any inconvenience that may have been caused by its initial recommendation, there is nothing that prohibits staff from reconsidering a recommendation based upon factors that it inadvertently overlooked in its initial analysis.

Additionally, the difference between Top Grade's bid and O'Grady's bid is \$90,985. Although DOT had already indicated that it intended to award the contract to O'Grady, City staff concluded that the most prudent course of action, especially during these fiscally difficult times, was to change its recommendation.

Therefore, it is the recommendation of the Director of DOT to waive Top Grade's failure to submit a signed copy of Addendum No. 1 as a minor irregularity and for City Council to award the contract to Top Grade.

Construction is scheduled to begin in June 2011 and will be completed in August 2011.

EVALUATION AND FOLLOW-UP

The project is currently within budget and projected to be completed in August 2011. No additional Council actions related to this project are expected at this time. DOT has solicited bids for the surface sealing application project and on May 17, 2011 will be bringing to City Council a recommendation for award of a contract to apply the final surface seal application to the same 26 miles of streets.

POLICY ALTERNATIVES

Alternative #1: Reject Top Grade's bid proposal and award the project to O'Grady Paving, Inc. in the amount of \$1,699,465 and approve a five percent (5%) contingency in the amount of \$84,973.

Pros: Adheres to the initial Notice of Intent to Award Contract to O'Grady.

Cons: Higher project costs based on O'Grady's bid price being \$90,895 more than Top Grade's bid price

Reason for not recommending: Staff's initial recommendation did not consider that Top Grade's failure to submit a signed Addendum No. 1 is a minor irregularity that can be waived by the City. The \$90,895 can be used for other critical pavement maintenance work.

Alternative #2: Reject all bids and re-bid the project.

Pros: Potential for lower bid prices.

Cons: Potential for higher bid prices; additional staff time and costs to re-bid the project; time needed to complete a new bid and award process would delay completion of the needed preparation work and not allow completion of the final surface sealing application on some or all of the streets until spring 2012.

Reason for not recommending: The bid prices received for this project are considered good and there is no certainty regarding the pricing of future bids. Rebidding the project and causing delays in implementation will result in an inefficient use of limited City resources in terms of staff time to perform another bid and award process and not being able to fully utilize the project delivery and inspection staffing as planned throughout the entire construction season. Not completing the final surface sealing on some or all of the streets would leave them exposed to the elements for another winter, resulting in additional deterioration and the potential need for additional preparation work.

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 award memo will be posted on the City's website for the Council Agenda.

To solicit contractors, this project was advertised in the *San José Post Record* and bid packages for this construction project were provided to various contractor organizations and builder's exchanges. In addition, when the project commences, the contractor, as stated in the specifications will provide advance notification regarding working hours, duration of project, and any appropriate schedule and lane closures to affected businesses and residents.

COORDINATION

This project and memorandum have been coordinated with the City Attorney's Office, and the City Manager's Budget Office.

FISCAL/POLICY ALIGNMENT

This project supports the Transportation and Aviation Services City Service Area goal to *Preserve and Improve Transportation Assets and Facilities* and aligns with the recommended Pavement Maintenance Core Service goal of improving the City's street pavement conditions from a current network condition rating of fair (64 PCI) to a network condition rating of good (70 PCI). The project is also consistent with the Council-approved Budget Strategy General Principles section in that it protects vital core City services.

COST IMPLICATIONS

I. COST OF PROJECT:

Project Delivery/Development	\$160,857
Construction Contract	\$1,608,570
Contingency	<u>\$80,429</u>
TOTAL PROJECT COSTS:	\$1,849,856

2. COST ELEMENTS OF CONSTRUCTION CONTRACT:

Adjust Manhole, Valves, Monuments	\$78,940
Induction Traffic Loop Replace	\$41,400
Remove and Replace AC Pavement	\$1,357,840
Temporary Striping/Markings	\$38,550
Compensation Adjustment for Price Index	\$70,000
Fluctuation for Paving Asphalt	\$70,000
Police Traffic Control and Misc. Items	<u>\$21,840</u>
TOTAL CONSTRUCTION CONTRACT COSTS	\$1,608,570

3. SOURCE OF FUNDING: 465 – Construction Excise Tax Fund

4. FISCAL IMPACT: This project will have no net operating and maintenance costs to the General Fund.

BUDGET REFERENCE

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

Fund #	Appn #	RC #	Appn. Name	Total Appn	Amt. for Contract	2010-2011 Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
465	6174	160366	Prop.1B-Pavement Maintenance	\$6,226,000	\$1,608,570	V-876	10/19/2010 Ord. No. 28829
Total Current Funding Available				\$6,226,000	\$1,608,570		

CEQA

Exempt, File No. PP11-035.

/s/

HANS F. LARSEN
Director of Transportation

For questions please contact Kevin O'Connor, Deputy Director, at 277-3028.

Attachments

ATTACHMENT A List of Streets

CD	STREET NAME	FROM	TO	LENGTH
7	10TH ST S	NEEDLES DR	PHELAN AV	940
7	10TH ST S	PHELAN AV	ALMA AVE	1770
7	10TH ST S	ALMA AV	HUMBOLDT ST	1200
10	CAHALAN AV	BLOSSOM HILL RD	SANTA TERESA BL	4368
10	CAHALAN AV	COUNTY GATE	SANTA TERESA BL	1970
9	CHYNOWETH AV EB	PEARL AV	BIKE PATH	1452
9	CHYNOWETH AV EB	CHYNOWETH CT	1000' EAST OF CHYNOWETH CT	3058
10	CHYNOWETH AV WB	E END	CHYNOWETH CT	3105
10	CHYNOWETH AV WB	BIKE PATH	PEARL AV	1500
3	COLEMAN AV NB	HWY 880 BRIDGE	NEWHALL DR	1505
3	COLEMAN AV NB	MCKENDRIE ST	HWY 880 BRIDGE	690
3	COLEMAN AV SB	NEWHALL DR	HWY 880 BRIDGE	1471
3	COLEMAN AV SB	HWY 880 BRIDGE	MCKENDRIE ST	689
1	DE ANZA BL NB	PROSPECT RD	CORONADO DR	2239
2	HELLYER AV EB	DOVE ST	SILVER CREEK VALLEY RD	10962
2	HELLYER AV WB	SILVER CRK VLY RD	DOVE ST	9839
6	LEIGH AV	1650N/HAMILTON	DE ROSE	1370
6	LEIGH AV	HAMILTON AV	1650N/HAMILTON	1900
6	LEIGH AV	DE ROSE	SOUTHWEST EX	1115
8	NIEMAN BL	PLUMSTEAD WY	ABORN RD	1204
8	NIEMAN BL	PLUMSTEAD WY	CAPITOL EXP	900
6	PEARL AV	445' S/OF CAPITOL	BRANHAM LN	3200
6	PEARL AV	CAPITOL EX	445'S/CAPITOL	445
1	PROSPECT RD EB	500' E/OF LAWRENCE EX	LAWRENCE EX	500
1	PROSPECT RD WB	SARATOGA AV	LAWRENCE EX	1500
5	SAN ANTONIO ST E	JACKSON AV S	KING RD S	4003
5	SAN ANTONIO ST E	KING RD S	34TH ST S	740
5	SAN ANTONIO ST E	34TH ST S	33RD ST S	540
1	SAN TOMAS AQUINO RD	N PAYNE AV	E SARATOGA AV	1330
1	SAN TOMAS AQUINO RD	N HAMILTON AV	S PAYNE AV	2460
4	SUNCREST AV	PIEDMONT RD	BAY LAUREL LN	2405
4	SUNCREST AV	BAY LAUREL LN	BOULDER DR	5110
8	WHITE RD S	STUTZ WY	STEVENS LN	406
8	WHITE RD S	QUIMBY RD	STUTZ WY	1482
8	WHITE RD S	STEVENS LN	ABORN RD	2462

ATTACHMENT B



Department of Transportation

HANS F. LARSEN - DIRECTOR

REVISED
NOTICE OF INTENT TO AWARD CONTRACT
2011 REMOVE AND REPLACE ASPHALT CONCRETE PAVEMENT

April 6, 2011

CPMS Project ID: 6696

Dear Bidders,

On March 10, 2011, the Department of Transportation opened bids for the above-referenced project. Bid results for this project are available on the City's Bid Hotline at: <https://cpms.sanjoseca.gov/pub/bidhotline/contracts/bidresults.cfm>

On March 14, 2011, the Department of Transportation issued a Notice of Intent to Award based on the results of that bid. Because the apparent low bidder, Top Grade Construction, failed to sign and return Addendum No. 1 with its bid, the Notice indicated that the Department of Transportation would recommend rejecting the bid as non-responsive. The Notice stated that the Department of Transportation would recommend awarding the contract to the second lowest bidder O'Grady Paving, Inc.

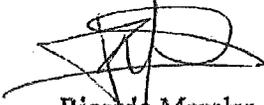
Upon review of its initial decision, the Department of Transportation has decided to change its recommendation. The Department has concluded that the omission of the signed addendum is waiveable as a minor irregularity. Addendum No. 1 clarified some of the requirements regarding traffic control at signalized intersections. None of these clarifications affected the bid price for this item of work – which was fixed in the Schedule of Quantities – or otherwise made a material change to the fundamental obligations with regard to providing traffic control at signalized intersections. As it is in the City's best interest to take the lowest bidder, the City has decided to recommend waiving the omission as a minor irregularity and awarding the contract to Top Grade Construction.

This letter serves to revoke the previous Notice of Intent to Award Contract dated March 14, 2011, and to replace it with this Revised Notice of Intent to Award Contract. The Director of Transportation intends to recommend the award to the low bidder, Top Grade Construction on or about May 3, 2011.

A bidder who wishes to protest this Notice of Intent may file a written protest with the Project Manager listed below within five (5) business days following the date this notice is issued. Protests must be received before 5:00pm on the fifth business day, and must include the following information:

- a) The name, address and telephone number of the protestor;
- b) The signature of the protestor or the protestor's representative;
- c) The name of the City Project as listed on the Notice to Contractors;
- d) A detailed statement of the legal and factual grounds of the protest, including copies of relevant documents; and
- e) The form of relief requested.

The City of San Jose appreciates your interest and effort in preparing and submitting a bid for this project.



Ricardo Morales
Department of Transportation
Infrastructure Maintenance Division
1404 Mabury Road
San Jose, CA 95133
Tel. Number: (408) 277-8149
Email Address: ricardo.morales@sanjoseca.gov

ATTACHMENT C



April 11, 2011

City of San Jose
Mr. Ricardo Morales
Dept. of Transportation
Infrastructure Maintenance Division
1404 Mabury Rd.
San Jose, CA 95133

RE: 2011 Remove and Replace Asphalt Concrete Pavement
Notice of Intent to Award

Dear Mr. Morales,

The purpose of this letter is to lodge a formal protest on behalf of O'Grady Paving, Inc. with the City of San Jose regarding the Revised Notice of Intent Issued on or about April 6, 2011, as referenced above.

On or about March 14, 2011, after a duly processed bidding procedure, the City of San Jose determined O'Grady Paving to be the successful bidder and issued a Notice of Intent to Award the contract to O'Grady Paving, Inc.

After issuing its Initial Notice of Intent to Award the contract, the City of San Jose engaged in an arbitrary, capricious and unauthorized process of reconsideration of the matter and has attempted to unlawfully deprive O'Grady Paving of the contract.

The bidding process has been designed and adopted to insure a fair and equitable process to provide all parties with an open and reliable system for awarding contracts. This process cannot be based on an arbitrary, capricious and unauthorized selection process. The specific requirements for bid submissions is and was based on sound well reasoned practices. In this matter, the City initially and properly determined the O'Grady bid to be the most complete and the bid which conformed to the required bid submissions requirements. Based on established guidelines, the Notice of Intent in favor of O'Grady was issued by the City of San Jose.

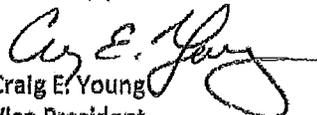


ASPHALT PAVING • GRADING

Now, after issuing it original Notice of Intent to Award the contract to O'Grady Paving, the City attempts to unlawfully depart from the standard bidding process procedures and attempts to deprive O'Grady Paving of it lawful right to the award of the contract.

The public contract code has been violated by the City. We expect the Notice of Intent to Award to Topgrade Const. be rescinded and the project be again awarded to O'Grady Paving, Inc.

Very truly yours,


Craig E. Young
Vice President

April 29, 2011

Mr. Craig E. Young
O'Grady Paving, Inc.
2513 Wyandotte Street
Mountain View, CA 94043

Re: 2011 Remove and Replace Asphalt Concrete Pavement Revised Notice of Intent to Award

Dear Mr. Young,

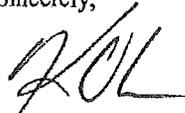
The purpose of this letter is to inform you of the decision made by the Department of Transportation (DOT) to reject the formal protest lodged by you on behalf of O'Grady Paving, Inc. in your April 11, 2011 letter and to proceed with the recommendation stated in the April 6, 2011 Revised Notice of Intent to Award Contract. In making this decision, please know that DOT has thoroughly considered all of the information, concerns, and requests expressed by O'Grady Paving in your protest letter and during our meeting on April 19, 2011.

Your protest is based on the following: (1) Top Grade Construction, Inc. failed to submit a signed Addendum No. 1 with its bid, and (2) DOT's decision to change its original recommendation to award the contract to O'Grady Paving was "arbitrary, capricious, [and] unauthorized." It is your opinion that Top Grade's failure to submit a signed Addendum No. 1 should not be waived as a minor bid irregularity and O'Grady Paving should be awarded the project or the project should be rebid.

Based on DOT's careful analysis of Addendum No. 1, it was concluded that Top Grade's failure to include a signed copy of the addendum in its bid proposal is a minor irregularity. It is a well established rule of competitive bidding that a public entity has the right to waive a minor irregularity in a bid proposal. Therefore, DOT's reconsideration of the original recommendation to award the contract to O'Grady Paving was not "arbitrary," "capricious" or "unauthorized."

DOT sincerely regrets any inconvenience that this may have caused O'Grady Paving and truly hopes that it will not affect any future interactions or work that may occur between the City and O'Grady Paving.

Sincerely,



KEVIN O'CONNOR
Deputy Director of Transportation

cc: Hans Larsen
Jim Ortbal
Ricardo Morales