



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: David Sykes
John Stufflebean
Jennifer A. Maguire

**SUBJECT: REPORT ON BIDS FOR SAN JOSE
ENVIRONMENTAL INNOVATION
CENTER PROJECT REBID**

DATE: May 12, 2011

Approved

Date

5/13/11

COUNCIL DISTRICT: 3

RECOMMENDATION

- a) Accept the report on bids and, subject to staff's evaluation of any protests and further report to City Council, award of contract for the San José Environmental Innovation Center (Project) ReBid to the lowest bidder, Applegate Johnston, Inc., to include the base bid of \$10,624,000 and Add Alternates #1 and 2 in the amount of \$470,935.
- b) Adopt a resolution authorizing the Director of Public Works to approve a contingency amount of \$1,330,000 for the Project, conditioned upon the necessary appropriation actions by City Council.
- c) Approve the third amendment to the master agreement for consultant services with Group 4 Architecture Research + Planning, Inc. (Group 4) for the Project, to modify the scope of services and increase the amount of compensation by \$187,000 for a total agreement amount not to exceed \$2,980,000.
- d) Adopt the following 2010-2011 Appropriation Ordinance and Funding Source Resolution amendments in the Integrated Waste Management Fund:
 1. Increase the Estimate for Earned Revenue by \$2,209,000
 2. Establish a Transfer from the Sewer Service and Use Charge Fund in the amount of \$1,539,454;
 3. Establish a Transfer from the Storm Sewer Operating Fund in the amount of \$200,000;
 4. Increase the appropriation for Household Hazardous Waste Las Plumas Facility by \$10,708,454;
 5. Decrease the appropriation to the Environmental Services Department for Non-Personal/Equipment by \$125,000; and
 6. Decrease the Reserve for the Environmental Innovation Center by \$6,635,000.

- e) Adopt the following 2010-2011 Appropriation Ordinance amendments in the Sewer Service and Use Charge Fund:
 - 1. Establish a transfer to the Integrated Waste Management Fund in the amount of \$1,539,454; and
 - 2. Decrease the Ending Fund Balance by \$1,539,454.

- f) Adopt the following 2010-2011 Appropriation Ordinance amendments in the Storm Sewer Operating Fund:
 - 1. Establish a transfer to the Integrated Waste Management Fund in the amount of \$200,000;
 - 2. Decrease the Ending Fund Balance by \$100,000; and
 - 3. Decrease the Non-Personal/Equipment appropriation to the Environmental Services Department by \$100,000.

OUTCOME

To implement the funding strategies for the Project, approval of the recommendation would enable staff to have funding appropriated to execute a construction agreement with the general contractor by June 30, 2011, prior to the closing of a New Markets Tax Credit (NMTC) financing transaction for the San José Environmental Innovation Center (EIC). Failure to finalize the agreement would preclude the City from participating in a potential NMTC transaction that could generate approximately \$6,000,000 in net proceeds for the benefit of the City to be used for the EIC. The grant of authority to the Director of Public Works would allow for the contingency reserve for this agreement to be established at a later date once funding is identified and appropriated.

BACKGROUND

The EIC is located at 1608 Las Plumas Avenue on a 4.2 acre site with an existing 46,000 square foot warehouse that was built in 1958. Staff proposes to apply for U.S. Green Building Council Leadership in Energy and Environmental Design (LEED) Silver certification, or better. The EIC also helps advance several of the City's Green Vision goals such as: retrofitting buildings to be green, creating clean tech jobs, diverting waste from landfills, and replacing streetlights with smart zero emission lights.

The City completed Phase I of the EIC in June 2010. Phase I includes several sustainable technologies such as an advanced stormwater mitigation system, pervious sidewalk pavements, and light-emitting diode (LED) streetlights. Phase II will renovate the existing warehouse to include: a Clean Tech Demonstration Center (CTDC) where innovators will test clean and renewable energy projects; conference space for environmental workshops and job trainings; and a Habitat for Humanity ReStore to sell discounted new, like new, and surplus construction materials. Additionally, Phase II will include the addition of a new 10,000 square foot permanent Household Hazardous Waste (HHW) drop-off facility for the convenient and safe disposal of hazardous household items by property owners. The CTDC is a component of the

City's Economic Development Strategy and Implementation Work Plan adopted by Council on April 27, 2010.

After receipt of the initial Phase II construction bids on February 24, 2011, staff concluded that due to the raised deficiency concerns and funding complexities, it was in City's best interest to reject all bids, repackage the bid proposals and rebid the project. On March 29, 2011, Council approved rejection of all prior bids. A rebid package was released on March 30, 2011 and was advertised for 30 days.

Construction is anticipated to begin in July 2011 with completion in September 2012.

ANALYSIS

There were nine bids received and opened on April 29, 2011. The results were as follows:

Contractor	Base Bid Amount	Add Alt. Total	Total Bid Amount	Variance Amount	Over/(Under) Percent
Engineer's Estimate	\$12,500,000	\$601,000	\$13,101,000	-	-
Best Contracting Services (Hayward)	\$12,444,000	\$662,150	\$13,106,150	\$5,150	0.04%
Big-D Pacific Builders (Pleasanton)	\$11,748,000	\$592,000	\$12,340,000	(\$761,000)	(5.81%)
BRCO Constructors Inc. (Loomis)	\$11,610,000	\$623,000	\$12,233,000	(\$868,000)	(6.63%)
Roebbelen Construction (El Dorado Hills)	\$11,498,000	\$596,604	\$12,094,604	(\$1,006,396)	(7.68%)
Zolman Construction (San Carlos)	\$11,350,000	\$650,000	\$12,000,000	(\$1,101,000)	(8.40%)
Hagensen Pacific Construction (San José)	\$11,298,000	\$645,000	\$11,943,000	(\$1,158,000)	(8.84%)
Gonsalves & Stronck Construction (San Carlos)	\$11,263,700	\$626,780	\$11,890,480	(\$1,210,520)	(9.24%)
Sausal Corporation (San Leandro)	\$11,078,400	\$498,700	\$11,577,100	(\$1,523,900)	(11.63%)
Applegate Johnston Inc. (Modesto)	\$10,624,000	\$680,388	\$11,304,388	(\$1,796,612)	(13.71%)

In addition to the base bid scope of work, the Project includes six Add Alternates:

- Add Alternate #1: Design-build tower;
- Add Alternate #2: Design-build entrance canopy;
- Add Alternate #3: Paint interior structure of existing warehouse;
- Add Alternate #4: Removed prior to bid by staff;

- Add Alternate #5: Re-compact base asphalt on half of Nipper Avenue;
- Add Alternate #5a: Add new base asphalt material to half of Nipper Avenue; and
- Add Alternate #6: Salvage items for Public Art reuse.

Add alternates #1 and #2 are key architectural features of the site and demonstrate green technologies such as emerging wind and solar power technologies. Add alternate #3 remediates flaking paint inside the existing warehouse. Add alternates #5 and #5a provide needed improvements for the adjoining street, Nipper Avenue, which is currently in disrepair and will be increasingly utilized for HHW collection events. Add alternate #6 assists in achieving LEED points and supports the City’s Zero Waste goal by reusing on-site construction demolition materials and reduces the cost of the materials for the site’s public art.

Contractor	Add Alt #1	Add Alt #2	Add Alt #3	Add Alt #5	Add Alt #5a	Add Alt #6
Engineer's Estimate	\$248,000	\$54,000	\$37,000	\$78,000	\$96,000	\$88,000
Best Contracting Services	\$281,700	\$63,500	\$46,250	\$91,700	\$89,000	\$90,000
Big-D Pacific Builders	\$261,000	\$95,000	\$40,000	\$600,000	\$87,000	\$49,000
BRCO Constructors Inc.	\$290,000	\$109,000	\$44,000	\$43,000	\$57,000	\$80,000
Roebbelen Construction	\$319,400	\$92,400	\$38,238	\$39,867	\$64,795	\$41,904
Zolman Construction	\$270,000	\$180,000	\$50,000	\$40,000	\$60,000	\$50,000
Hagensen Pacific Construction	\$294,000	\$87,000	\$45,000	\$52,000	\$73,000	\$94,000
Gonsalves & Stronck Construction	\$310,000	\$114,000	\$36,500	\$69,780	\$73,500	\$23,000
Sausal Corporation	\$244,100	\$74,800	\$38,400	\$35,600	\$21,600	\$84,200
Applegate Johnston Inc.	\$341,113	\$129,822	\$42,619	\$136,715	\$23,619	\$6,500

The period for the filing of bid protests ended on May 9, 2011. The bid of the lowest bidder, Applegate Johnston Inc., and the bids of the second and third lowest bidders, Sausal Corporation and Gonsalves & Stronck, were protested by Hagensen Pacific Construction, the fourth lowest bidder, which filed a protest claiming deficiencies regarding the listing of a subcontractor for the acoustical gypsum plastering scope of work. Staff is currently evaluating this protest and will report to Council the results of staff’s evaluation of this and any other protests by supplemental memorandum.

Accordingly, subject to staff’s evaluation of any protests and further report to City Council, staff presently recommends awarding the construction contract for base construction and Add

Alternates #1 and 2 to Applegate Johnston, Inc. as the lowest responsive and responsible bidder. Staff has confirmed the bid prices with the contractor and attributes the low bid submitted by Applegate Johnston to a very competitive construction environment.

The Department of Public Works has experience working with Applegate Johnston, Inc. and will be closely monitoring their performance throughout the schedule of this contract. Applegate Johnston, Inc. was awarded the construction contracts for Fire Station No. 19 in July 2008 and Fire Station #36 in January 2010. Fire Station No. 19 was completed with a schedule delay of 113 days pending final negotiations and Fire Station #36 is under construction and currently tracking seven months behind schedule. The reasons for both delays are tied to subcontractor performance. A subcontractor substitution request to replace one of the subcontractors for Fire Station #36 will be brought to Council before the July recess of 2011. A recovery schedule detailing the contractor's strategy to complete the project on-time for Fire Station #36 has also been requested. Additionally, it is a standard contractual right for the Department of Public Works to apply a daily liquidated damage charge to contractors who delay a project's completion beyond of the number of days prescribed in the project's schedule. In regards to the EIC, the subcontractor which will be the subject of the substitution request for Fire Station #36 is not a subcontractor listed in the bid submitted by Applegate Johnston, Inc.

It is necessary for the City to execute a construction contract before the end of June 2011 for the City to participate in the NMTC financing with organizations that have been previously awarded tax credits allocations from the US Department of Treasury. These organizations intend to commit as much of their current tax credits to a specific project by June 2011 to be competitive for the next round of allocations from the federal government. The estimated \$6,000,000 of net proceeds from the NMTC financing would fund the construction contingency, photovoltaic panels and car shelters, additional architectural services, and possibly additional Public Work soft costs.

In accordance with Council policy, at the time of award of a construction contract, each project shall include a reasonable provision for contingencies. In adopting the actions recommended, City Council would not be approving a contingency at the time of award but would be delegating authority to the Director of Public Works to approve a contingency of \$1,330,000, subject to further appropriations. The additional fees for Group 4 include: an added scope of services for add alternate items, obtaining additional LEED design and construction points with USGBC, coordination with the photovoltaic and car shelter contractor, coordination for the Public Art project, and a signage package for the EIC.

EVALUATION AND FOLLOW-UP

Staff will report on the investigation and analysis into the merits of any protests and possible modification of recommendations. Staff anticipates returning to Council in June 2011 to request the appropriation of funds for the remaining EIC project costs, and for execution of the closing documents necessary for the New Markets Tax Credit financing. Staff may also return to Council and the City of San José's Financing Authority Board to request approval to use the

Commercial Paper program to fund a portion of the project costs if this is deemed an appropriate interim or alternative source of financing.

PUBLIC OUTREACH/INTEREST

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

This action meets the first criteria above. To solicit contractors, this project was listed on the City’s Internet BidLine and advertised in the *San José Post Record*. Bid packages for all Department of Public Works construction projects were provided to various contractor organizations and builders’ exchanges. This memorandum will be posted on the City’s website for the May 24, 2011 Council agenda.

COORDINATION

This project and memorandum have been coordinated with the City Attorney’s Office, the Planning, Building and Code Enforcement Department, the Finance Department, and the Office of Economic Development.

COST IMPLICATIONS

To date, approximately \$12,000,000 has been expended on site acquisition, planning, environmental clearance, Phase I construction, utility improvements, architectural and engineering services for the EIC. Approximately \$10,600,000 is necessary to build an operational center; however, an additional \$6,700,000 will be necessary to fund the remaining EIC project costs.

Remaining Project Costs	Estimates	To Be Funded with Available Funds	To Be Funded with NMTC Proceeds
Phase II Construction			
Base Construction	\$10,624,000	\$10,624,000	
Add Alternates #1 & #2	\$470,935	\$470,935	
Phase II Construction Subtotal	\$11,094,935	\$11,094,935	
Photovoltaic (PV) Panels & Car Shelters	\$2,600,000		\$2,600,000

Total Contingency (12% Phase II & 10% PVs)	\$1,590,000 ¹	\$185,000	\$1,405,000
Public Art	\$192,000		\$192,000
Architectural Services (Group 4)	\$919,000		\$919,000
FY 11-12 PW Soft Costs (Phase II & PVs)	\$950,000	\$297,000	\$653,000
Total	\$17,345,935	\$11,576,935²	\$5,769,000³

¹ A minimum 12% construction contingency will be allocated by Public Works for this construction project. The typical contingency for retrofit projects is 15%, however, current funding limitations only allow for a 12% contingency. If unforeseen and necessary changes require a contingency higher than 12% for the proper completion of the Project, staff would need to identify additional funding sources and return to Council for approval of the appropriation. This action does not include funding for the 12% contingency and recommends delegation of authority to the Director of Public Works to approve a 12% contingency subject to appropriation of funds.

² Refer to Budget Reference section for breakdown of funding sources.

³ The remainder of the NMTC proceeds, approximately \$231,000, will be used to pay for the legal and accounting expenses incurred as a result of the NMTC transaction.

1. SOURCE OF FUNDING:

The funding from Integrated Waste Management Fund (Fund 423) for the construction of the EIC comes from a variety of funding sources including: funds currently appropriated for the Household Hazardous Waste Las Plumas Facility; a reserve established for the EIC Appropriation in the 2010-2011 Adopted Operating Budget; funds of \$2,000,000 from Recycle Plus hauler negotiations; a \$209,000 AB 939 Fee rebate from the County received in 2010-2011; and non-personal/equipment funds which are available due to lower than expected contract costs associated with the Integrated Billing System.

Revenue of \$2,209,000 million received during the current fiscal year is recommended to be recognized in the Integrated Waste Management Fund as part of this action. Of this, \$2,000,000 is a one-time payment made by Green Waste Recovery, Inc., as part of the agreement between that company and the City for solid waste services from July 1, 2010 through June 30, 2021, as approved by the City Council on June 22, 2010. An additional \$209,000 represents a rebate from the County of monies the County did not expend for the administration of the Household Hazardous Waste Program for the benefit of San José property owners.

The EIC's ReStore component supports AB 939 efforts to achieve a minimum 50% diversion for California by redirecting construction materials from landfills. ReStore also supports San José's Zero Waste goal to divert a minimum of 75% of materials by 2013 and zero waste 2022. Furthermore, the EIC's HHW facility provides Recycle Plus ratepayers one of the only safe and convenient ways to dispose of toxic materials which cannot be landfilled per California State law.

The funding utilized from the Sewer Service and Use Charge Fund (Fund 541) for the development of the permanent HHW facility represents the estimated cost to the City's sanitary sewer system from the potential mishandling or improper disposal of pollutants by San José property owners. Completing a permanent HHW facility provides the necessary infrastructure for the HHW program to offer the most effective way to avoid this waste from entering the City's sanitary sewer system. In 2008-2009, the County collected an estimated 1.6 million pounds of HHW from San José property owners, of which nearly half a million pounds could have polluted the City's sanitary sewer. This volume includes waste such as mercury, pharmaceuticals, and pesticides that are addressed as part of the sanitary sewer Pollution Prevention Program and for which the HHW program is the only legal means of disposal.

Funding from the Storm Sewer and Operating Fund (Fund 446) is also recommended for use for this project. Savings of \$100,000 are available in the Environmental Services Department non-personal/equipment appropriation for 2010-2011 because costs for a hydro modification project were lower than budgeted. In addition to this, the \$100,000 from the Storm Sewer Operating Fund Balance is recommended for use in the HHW facility project. A permanent HHW facility will benefit the storm sewer system by providing San José property owners with a convenient means of disposal for the most common household hazardous wastes including oil, paint, batteries, and universal wastes. These materials in small volume cause a disproportionately large pollution problem for City creeks and South San Francisco Bay.

Pursuant to Proposition 218, the HHW facility can only be available to property owners if the construction is funded exclusively from ratepayer revenue. Staff will return to Council with a more detailed analysis of whether the facility will have sufficient excess capacity to offer to San José residents who are not property owners, and/or customers from other cities in Santa Clara County. The proceeds from making the excess capacity at the facility available to non-ratepayers must benefit the utility rate funds to the extent these proceeds are not expended to pay for the operation and maintenance of the facility for the benefit of ratepayers.

If the City is unable to complete the NMTC financing, the City may want to consider using the City of San José's Financing Authority Commercial Paper program to fund some of the costs that have been allocated to NMTC proceeds. The use of such alternate financing would be for a reduced project scope. The source of repayment could be from a combination of the following revenues: AB939 Fees, utility rate payer funds, late fees, and other unrestricted funding sources. The term of the repayment would need to be analyzed further based on the cash flow projections of the repayment source but is anticipated to be less than ten years. Further, staff is continuing to pursue grant funding for the EIC construction and the City is a finalist for a \$4,000,000 grant with the Federal Economic Development Agency.

2. **OPERATING COST:** There are no cost implications to the General Fund as a result of this action. For a discussion of the total costs associated with this project, please see attachment of the May 21, 2010, staff report "Site Development and Programming Update for the San

José Environmental Innovation Center,” heard at the June 7, 2010 Transportation and Environment Committee meeting. Operating expenses of approximately \$292,300 per year include utilities, maintenance and operations, information technology, insurance, and a contingency reserve. Utility expenses cover a range of items including water, electricity and natural gas which are mitigated by energy efficient features of the EIC and, possibly, the installation of photovoltaic panels throughout the site. New operating expenses would be fully offset by rent from EIC tenants: HHW, ReStore, and the CTDC. In addition, the 2007-2008 Adopted Operating Budget included \$100,000 in on-going non-personal costs for maintaining the Las Plumas facility and a permanent full-time facility manager for the Environmental Services Department.

BUDGET REFERENCE

Fund #	Appn #	Appn. Name	Total Appn	Current Funding Available	2010-2011 Proposed Operating Budget Page	Last Budget Action (Date, Ord. No.)
<u>Total Funding for Agreement</u>				\$11,094,935		
<u>Funding Available</u>						
423	7275	Household Hazardous Waste Las Plumas Facility	\$11,614,454*	\$11,094,935	XI-47	10/19/2010 Ord.No. 28829*
<u>Total Funding Available for Agreement</u>				\$11,094,935		

* Currently, \$906,000 has been appropriated for the Household Hazardous Waste Las Plumas Facility. The remainder of this funding will be made available by the appropriation actions described in this memo. The sources for those appropriation actions are as follows:

- \$6,635,000 from the Reserve for EIC
- \$2,000,000 from unbudgeted Recycle Plus Hauler revenue in the form of a one-time negotiation payment
- \$1,539,454 from Sewer Service and Use Charge Fund Ending Fund Balance
- \$209,000 from the Integrated Waste Management Fund, which represents an AB939 County Rebate that was received in 2010-2011.
- \$125,000 of Environmental Services Department Non-Personal Equipment savings in the Integrated Waste Management Fund.
- \$100,000 of Environmental Services Department Non-Personal Equipment savings in the Storm Sewer Operating Fund.
- \$100,000 from Storm Sewer Operating Fund Ending Fund Balance.

HONORABLE MAYOR AND CITY COUNCIL

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CEQA

A CEQA Negative Declaration for the renovation for the EIC was adopted on December 1, 2009 (PP09-138).

/s/
DAVID SYKES
Acting Director of Public Works

/s/
JOHN STUFFLEBEAN
Director, Environmental Services


JENNIFER A. MAGUIRE
Budget Director

I hereby certify that there will be available for appropriation in the Integrated Waste Management Fund in the Fiscal Year 2010-2011 moneys in excess of those heretofore appropriated there from, said excess being at least \$2,209,000.


JENNIFER A. MAGUIRE
Budget Director

Attachment

ATTACHMENT

T&E AGENDA: 06-07-10
ITEM: d5



Memorandum

TO: TRANSPORTATION AND
ENVIRONMENT COMMITTEE

FROM: John Stufflebean
Paul Krutko

SUBJECT: SEE BELOW

DATE: May 21, 2010

Approved

Date

5/28/10

COUNCIL DISTRICT: 3

SUBJECT: SITE DEVELOPMENT AND PROGRAMMING UPDATE FOR THE SAN JOSÉ ENVIRONMENTAL INNOVATION CENTER

RECOMMENDATION

Accept this status report on site development and programming update for the San José Environmental Innovation Center.

OUTCOME

Update Council on the status of the site development and programming plans for the San José Environmental Innovation Center (EIC). The EIC is being developed as a living laboratory for innovators to demonstrate and deploy emerging technologies in renewable energy, energy efficiency, green building, and clean advanced transportation. Further, the EIC will integrate broad-spectrum workforce training opportunities for individuals seeking to enter the green economy. These program elements will create opportunities to stimulate economic growth, promote energy efficiency and reliability, and reduce waste going to the landfills. Finally, the Household Hazardous Waste (HHW) drop-off facility at the EIC will provide San José residents needed infrastructure to conveniently, safely, and legally dispose of common toxic residential waste. The EIC will significantly accelerate the City's progression toward seven Green Vision goals: Create 25,000 Clean Tech jobs; Reduce per capita energy use by 50%; Receive 100% of our electrical power from clean renewable sources; Build or retrofit 50 million square feet of green buildings; Divert and convert 100% of landfill waste to energy; Ensure that 100 percent of public fleet vehicles run on alternative fuels; and Plant 100,000 trees and replace streetlights with smart, zero-emission lighting.

BACKGROUND

In November 2006, the Staff vacated the City's sole permanent HHW drop-off facility due to the expansion of the Central Service Yard. The Environmental Services Department (ESD) acquired an abandoned City warehouse, located at 1608 Las Plumas Avenue, from the Housing Department with the intention of relocating the HHW drop-off operations to this site. After an extensive California Environmental Quality Act (CEQA) review process, an Environmental Impact Report was certified by the City Council, in June 2007. Design of the facility was completed in April 2009 and construction activities began in August 2009. The construction activities include: advanced storm water mitigation measures, grading and paving, security fencing and gated entries, and street lights. Also included with these improvements is the creation of an outdoor operation area that will enable the County to conduct temporary HHW drop-off events for the public beginning in July 2010. The construction of a permanent HHW building will not begin until the second phase of the project. Substantial completion of this first phase of the project is anticipated in June 2010.

Simultaneous to work on the first phase of the EIC project, staff has been designing the second phase, which includes the renovation of the existing 46,000 square foot building to house the Clean Technology Development Center, a construction materials reuse center, meeting and classroom space for green jobs training, and the construction of a new 7,000 square foot building to provide a permanent facility for HHW operations. The following three principal operations are envisioned for the EIC:

1. The Clean Technology Development Center (CTDC) will provide a continuum of commercialization services necessary to create a full clean technology innovation cluster - from technology innovation through incubation, demonstration to early stage manufacturing and market entry. The CTDC will provide laboratories, demonstration and deployment, and office space to enhance workforce development and facilitate collaboration between public and private sector partners for environmental business incubation purposes. Meeting and classroom space that may, in the future, be equipped with state-of-the-art teleconferencing and distance learning technologies, will be available for green jobs training programs and will serve as the facility's communications hub with regional partners. Based upon previous incubation programs in San José, it is estimated that the CTDC could result in 1,000 potential new jobs over a five-year period within the region.
2. A construction materials reuse center will provide a regional source for surplus and new construction materials to the public.
3. An HHW drop-off facility will provide a convenient avenue for residents to dispose of such materials legally. It is estimated that more than 25,000 drop-offs appointments will be accommodated at this facility annually (compared to the 11,000 drop-off appointments that are currently provided to San José residents at temporary one-day drop-off events run by the County).

In 2007, Staff and Habitat for Humanity began exploring opportunities to open a construction materials re-use center (ReStore) early in the design of the EIC. ReStore is a unique business

model that includes the development of extensive partnerships with large contractors and retailers that donate surplus new or nearly new construction materials, which are then sold to the general public at a significantly reduced price. This business approach emphasizes higher quality material and greater stock turnover than a traditional salvage yard operation. This model better supports the objectives of the EIC by attracting more public to the facility and offering more modern energy efficient construction material at significantly lower prices than other reuse operations. Not only are materials diverted from the landfills through this program, the proceeds from the sale of materials are then used to construct new homes for lower income families within the region. Habitat for Humanity operates ReStore facilities nationwide, with over twenty locations in California. A Restore operation at the EIC would be the first in the South Bay.

When completed, the EIC is anticipated to achieve at least the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Silver rating. Some of the innovative and sustainable design features include a modular wetland filtration unit to screen storm water pollutants prior to entering the storm drain system, pervious pavers and rubber tile sidewalks, light-emitting diode (LED) streetlights, waterless urinals, composting toilets, and energy efficient building lighting and HVAC systems. Staff is actively pursuing grants and other funding sources for additional sustainable features, such as rooftop and carport photovoltaic (PV) systems for energy production. These systems would provide operational savings and opportunities to integrate renewable power technologies with energy efficient systems demonstrated throughout the site. Installation of these features would facilitate achievement of a higher LEED rating.

In January 2010, the Administration completed a Program Prioritization Process, in which 550 Citywide programs were reviewed and ranked by teams of Staff and community stakeholders to inform the preparation of the 2010-2011 Proposed Operating Budget. The HHW program and the EIC were ranked in the highest priority tier of programs through this effort.

ANALYSIS

Site Development Status

In summer 2009, the City contracted with Group4 Architecture, Research and Planning (Group4), to develop the design and construction documents for the EIC. A CEQA Initial Study was publicly released and circulated in the fall and a Negative Declaration was adopted in December 2009. In March 2010, staff undertook an extensive value engineering process to reduce costs by modifying design elements that were deemed beneficial, though not critical to serve the essential needs of the facility, while maintaining the estimated cost of construction presented to the Transportation and Environment (T&E) Committee in September 2009.

Progress continues on developing the construction documents and completion is expected mid-July 2010. Staff is targeting a bidding process by fall 2010, to take advantage of the soft bidding climate. If base bid costs are lower than the project budget, or if grant funding is awarded, additional design elements, such as a monument tower, entry canopy, PV system, and living wall, could be funded. Staff is planning to award the project in fall 2010, with a construction

TRANSPORTATION AND ENVIRONMENT COMMITTEE

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start shortly thereafter. Due to the magnitude of the project, substantial construction is estimated to be complete in spring 2012, with full facility occupancy and operations beginning shortly afterwards.

The existing San José Family Shelter, located at 1590 Las Plumas Avenue, which is adjacent to the EIC, will be moving into a new facility in 2012 near the intersection of King Road and Dobbin Drive. Staff anticipates seeking Council approval in late June 2010 to purchase the property at 1590 Las Plumas Avenue for incorporation into the EIC campus with funds (\$2.3 million) included in the 2010-2011 Proposed Operating Budget specifically for this purpose. The revenue from the sale of this property will provide Family Supportive Housing with funding necessary to complete the construction of the new shelter facility. Staff has already completed CEQA review, a site assessment, and obtained an appraisal to purchase the property. Initial site operations will include the consolidated storage, maintenance, and distribution of the City's Public Litter Can program currently housed at the Las Plumas warehouse.

Owner / Tenant Structure

ESD and the Office of Economic Development (OED) have been working with their consultant, Business Cluster Development, to develop a proposed governance model and operation plan for the EIC. The details of the organizational structure are being finalized in a business plan to ensure the site meets the City's goals while minimizing liabilities. The preliminary plan will be completed shortly at which point staff will begin negotiations with the tenants to develop lease agreements. Given the varied uses of the EIC, a working committee with representation from the different tenants would likely address issues related to the shared space at the site. Input from the working committee will be helpful in determining the compatibility of short to medium-term uses of the shared spaces that may not be clean tech or workforce development related, such as conferences, meetings, and small businesses incubation activities. Staff anticipates bringing facility lease agreements to Council in late 2010 and bringing the organization structure considerations to Council in mid 2011.

Status of Economic Development Administration Grant and Other Funding

Staff has applied for several funding opportunities for construction of the EIC, including a \$4 million grant from the U.S. Department of Commerce Economic Development Administration (EDA) for construction of the CTDC space. Response from the EDA has been positive. The grant proposal received favorable review from the Investment Review Committee in the EDA Seattle Regional Office. Additional interest in the project has been indicated by the U.S. Deputy Assistant Secretary of Commerce for Economic Development, who was impressed by the project after his late 2009 tour of the EIC site.

OED and ESD are proactively pursuing additional funding for the EIC. In early May 2010, the City collaborated with Lawrence Berkeley National Laboratory (LBNL) to submit a regional proposal for the Energy Efficient Building Systems Regional Innovation Cluster (E-RIC) funding opportunity. The E-RIC grant is funded by the US Department of Energy (DOE), EDA, the National Institute of Standards and Technology (NIST), and the Small Business Administration (SBA). The funds from E-RIC would focus on developing systems-based approaches to researching, designing, building, operating, and demonstrating maximized energy

efficiency technologies for commercial and residential buildings. The co-applicants for the DOE-funded portion of the grant will research, develop, and test energy efficiency technologies. The co-applicants for the EDA-funded portion of the grant will integrate the technologies developed by the DOE Hub into a broader regional economic development initiative.

As the E-ERIC principal applicant and the lead for DOE-funded activities, LBNL formed a team of regional institutional and technology partners with which it will conduct DOE-funded research and development activities. In addition to LBNL, the DOE co-applicants include the National Renewable Energy Laboratory, Oakridge Labs, UC Berkeley, UC Davis, and Stanford. LBNL also conducted a competitive review process to select co-applicants for EDA-funded economic development activities. LBNL chose the City, above all other regional applicants, to be the EDA co-applicant lead. The other EDA co-applicants are San Francisco and the Sacramento Area Regional Technology Alliance (SARTA). The shovel-ready state of the EIC was a key reason for the selection of San José as the lead EDA co-applicant. Of the three regional EDA co-applicants, only the City has a facility that can demonstrate and deploy technologies developed by the Hub. In addition to \$3 million in energy efficiency and solar energy upgrades to the EIC, the City will, if awarded, gain significant leverage and be well positioned to pursue future federal and state funding opportunities for energy efficiency, green building construction and workforce development.

The E-ERIC concept brings together a strong partnership between local governments, non-profits, and the private sector, with the idea of producing sustained technology leadership and economic benefits, and specifically with the goal of increasing regional gross domestic product, eliminating gaps between the supply and demand for skilled workers, and enhancing the economic, technological, and commercial competitiveness of the US on the global stage. This grant application submission builds upon an EDA planning grant awarded in 2006, which produced a market analysis and conceptual facility design for an electronic transportation development center at the EIC.

The table below summarizes the funding opportunities that staff is pursuing for various aspects of the EIC.

Table 1: Funding Opportunities for the EIC

Funding Agency	Opportunity	Award Amount	Expected Award Date	Status
EDA	EDA American Recovery Program	\$4M	Fall 2010	Submitted by OED. Currently under review by EDA Seattle Regional Office. For EIC construction costs.
DOE, EDA, NIST, SBA	E-RIC Energy Regional Innovation Cluster	\$3M	September 2010	Submitted by OED as part of a joint proposal for a regional innovation cluster focused on energy efficiency systems and green building.
Environmental Protection Agency	Brownfield Clean-Up	\$200K	Fall 2010	Submitted by RDA. Under review by EPA. For groundwater treatment.
FY2011 Appropriations SBA/DOE	Earmark for San José Clean Tech Incubator project	\$500K	Fall 2010	Submitted by OED. Will be reviewed by Senate Appropriations Subcommittee in May-June 2010. For EIC construction costs.
California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA)	Qualified Energy Conservation Bonds (QECCB)	\$2,773,488	N/A	Under review by Finance Department. This will provide solar energy installations and measures that reduce energy consumption.
Electric Vehicle (EV) Charger Grant	DOE Infrastructure Development	4-6 EV chargers	2011	Awarded to Coulomb Technologies and provided to City for electric vehicle charging stations at public facilities.
DOE	Retrofit Ramp-Up	\$30M awarded to Retrofit California projects.	April 2010	Awarded. Staff is coordinating with L.A. County, the lead applicant, for possible use of award funds for energy efficiency retrofits at the EIC.

Identified Funding for EIC Construction

The EIC construction budget is estimated at \$14,135,000. Table 2 below outlines the funding sources allocated for this project which currently include Construction and Demolition Diversion Deposit Program (CDDD) reserves, a U.S. Department of Commerce EDA grant discussed previously in this report, and a variety of other ESD funds for the HHW facility.

The CDDD program was designed to provide a financial incentive for remodelers / contractors to recycling construction waste. In short, the City collects a deposit from those submitting applications for building permits. Those deposits are returned if the applicant recycles their construction and demolition debris with proof from a certified recycler. Ineligible deposits from the CDDD program, accumulating since 2001, are allocated in a specific reserve for the EIC in the 2010-2011 Proposed Operating Budget in the IWM Fund.

Table 2: Identified Funding for EIC Construction

Source of Funding	Amount
Reserve for EIC (Proposed 2010 – 2011 Operating Budget – Fund 423)	\$6,635,000
Pending EDA Funding Assistance	\$4,000,000
ESD Funding for HHW Facility	\$3,500,000
Total	\$14,135,000

Funding Strategy for HHW Facility Construction

Construction costs for the HHW building and associated site work at the EIC are estimated at \$3.5 million. Staff explored several different funding strategies, including loans, before identifying funds outlined in Table 3 for the construction, a considerably less expensive option than third-party financing. Budget adjustments to the 2010-2011 Operating Budget will be brought forward for Council Consideration to allocate this funding for the construction of the HHW building in Fall 2010. This HHW facility would be funded by City residential utility ratepayers. If other jurisdictions such as the County use the facility, the cost to use the facility would include the fully-loaded apportioned share of the capital improvement and operational costs. Any such lease payments would be considered revenue for services to residential utility rate payers.

Table 3: Identified 2010-2011 ESD Funding for HHW Facility Construction

Source of Funding	Fund	Amount
Recycle Plus Hauler Negotiation Payment	423	\$2,000,000
Las Plumas HHW Capital Appropriation	423	\$825,000
CalRecycle HHW Grant Award	423	\$250,000
Non-Personal/Equipment	423	\$225,000
Ending Fund Balance	541	\$100,000
Ending Fund Balance	446	\$100,000
Total		\$3,500,000

The above strategy includes the use of Storm Sewer Operating Fund and Sewer Service and Use Charge funds for the construction the HHW facility. Completing a permanent HHW facility is a necessary precursor to provide the capacity that can accommodate the additional residential drop-off appointments described in this budget proposal. The proper collection of HHW is an effective means for reducing the amount of toxins that enter the City's storm and sanitary systems, and prevent such materials from threatening both San Francisco Bay and local groundwater supplies. In 2008-2009, it is estimated that the County collected over 1.6 million pounds of HHW from San José residents, of which nearly 1.3 million pounds that could have polluted the City's storm and sanitary sewer systems if not handled and disposed of properly.

EVALUATION AND FOLLOW UP

Staff will return to Council on June 22, 2010 to request approval to purchase 1590/1600 Las Plumas Avenue (current San José Family Shelter site) and to allocate funds for the HHW Facility Construction. Additionally, staff plans to return to Council with the following actions: fall 2010 construction contractor award recommendations; late 2010 for approval of lease agreements with tenants; and mid-2011 for Council approval of the CTDC organizational structure.

PUBLIC OUTREACH/INTEREST

The criteria below do not apply to this staff report.

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

COORDINATION

This report had been coordinated with the Department of Public Works, and the Offices of the City Attorney and Economic Development, and the City Manager's Budget Office.

COST IMPLICATIONS

The Master Agreement with Group4, valued at \$2 million, currently includes a scope of work for design services for the EIC through the second phase of the project. The Master Agreement does not accommodate bid and award support services or construction administration. Should the need for additional services arise, which could occur if the EIC receives grant funding that targets additional improvements to the base design, staff will need to request approval to amend the Master Agreement to include a scope of work for additional services.

CEQA

A CEQA Negative Declaration for the renovation for the EIC, including the HHW facility, was adopted on December 1, 2009 (PP09-138). Additionally, a CEQA Mitigated Negative Declaration was adopted on February 24, 2010, for the purchase and use of the 1.76 acre San José Family Shelter property located at 1590/1600 Las Plumas Avenue (PP09-206).

/s/

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/s/

JOHN STUFFLEBEAN
Director, Environmental Services

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