



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Kim Welsh

**SUBJECT:** SEE BELOW

**DATE:** November 8, 2011

Approved

Date

11/18/11

**SUBJECT: APPROVAL OF A COOPERATION AGREEMENT BETWEEN THE SANTA CLARA VALLEY WATER DISTRICT AND THE CITY OF SAN JOSE FOR THE ESTABLISHMENT OF PROCEDURES FOR REAL PROPERTY TRANSACTIONS.**

## RECOMMENDATION

It is recommended that the City Council adopt a resolution authorizing the City Manager to:

- (a) Execute the Cooperation Agreement with the Santa Clara Valley Water District for the establishment of procedures for completing real property transactions;
- (b) Negotiate the form of all standardized conveyance templates reflecting the terms of the Cooperation Agreement for use in implementing the Cooperation Agreement; and
- (c) Negotiate and execute an amendment to the Cooperation Agreement incorporating those templates into the Cooperation Agreement.

## OUTCOME

Approval of the delegation of authority to execute this Cooperation Agreement with the Santa Clara Valley Water District will provide a framework to streamline the transfer of property rights between the two agencies.

## BACKGROUND

The City of San Jose (City) and the Santa Clara Valley Water District (District) routinely acquire and convey real property rights for their respective projects and operations. Both the City and the District recognize the need to streamline the processing of transactions between the agencies by establishing procedures and standardized templates for the transfer of property rights.

The proposed Cooperation Agreement which has been jointly drafted by City and District staff, supports the mutual objective of working together more efficiently by streamlining real estate transactions between the City and the District.

## **ANALYSIS**

In order to streamline the process of transferring property rights between the City and the District, staff developed the proposed Cooperation Agreement which captures the spirit and desire to mutually work together in meeting the goals and objectives of each agency. The overriding theme throughout the Cooperation Agreement is to work together on projects in a more efficient and effective manner by standardizing agreement language and whenever possible utilizing standardized documents that transfer property rights from one agency to the other.

A general summary of the provisions of the Cooperation Agreement includes the following:

1. **Definitions** – Both entities agree on general terminology that will be used in conveyance documents.
2. **Form of Conveyance of Property Interests** – The entity acquiring a real property interest for their funded project will identify the preferred type of property rights for their needs. Terms of title shall be as-is. The entity acquiring a real property interest may obtain and pay for title insurance at their sole discretion.
3. **Due Diligence** – The acquiring entity shall determine the extent of pre-acquisition environmental due diligence that it will complete at its expense; otherwise property interests generally will be acquired on an “as is” basis, with a release of the conveying entity from claims, liabilities, damages, and losses etc. associated with a proposed conveyance.
4. **Remediation of Known Hazardous Materials** – Both entities agree that costs of remediation shall be borne by the conveying entity up to the value to be received from the acquiring entity and that the acquiring entity has the right to refuse the transfer of real property interests or it may choose to pay the remediation costs above and beyond the value of a property.
5. **Valuation of Properties** – The Cooperation Agreement establishes a process to resolve different appraised values in order to establish the value to be received for properties believed to be worth more than \$25,000. For nominal value properties (those with a market value of \$25,000 or less), the method of establishing valuation will be based upon staff estimates of approximate value; again, the Cooperation Agreement delineates the procedure for resolving differing staff estimates of approximate value if they occur.

6. **Closing Mechanics; Prorations** – The acquiring entity shall determine whether to use a third party escrow. Any recurring costs will be prorated. Title and escrow fees shall be paid by the acquiring entity.
7. **Representations and Warranties** – Except as may be agreed on an extraordinary basis, neither City nor District make any representations or warranties as to properties that are, or that may be, subject to the provisions of this Agreement.
8. **Efficient Meet and Confer Planning and Follow Up Meetings** – City and District staff agree to meet regularly to cooperatively exchange information about planned or anticipated City/District real estate transactions, prepare schedules for completion of transactions, completion of mass appraisal if and when appropriate, and to combine or package transactions for governing body approval whenever possible.
9. **Form of Transfer Documents** – City and District agree to cooperate to develop a set of standardized conveyance templates (right of way agreements, purchase and sale agreements, grant deeds, quitclaim deeds, easements, rights of entry, licenses, and permits) for use in implementing the Cooperation Agreement; it is contemplated that such templates, once developed, would be incorporated into the Cooperation Agreement by amendment thereto.
10. **Implementation of Agreement** – The Cooperation Agreement does not obligate either entity to complete any transfer of a property interest, delegate authority to either entity's staff to complete any such transaction, waive or otherwise modify any requirement of law or policy which is applicable to any such transaction, or waive or limit rights under condemnation law.

The Cooperation Agreement obligates City and District staff to work together in good faith to achieve the intent of the Cooperation Agreement, which is to provide a standard framework within which the transfer of property interests may be accomplished between the entities in the ordinary course of business. The final decision as to whether or not to transfer or accept the transfer of a property interest, and the terms and conditions applicable thereto will be within the discretion of the City Council or the District's Board of Directors and their respective delegates.

11. **Termination** – The Cooperation Agreement may be terminated by action of either the City Council or by the District's Board.
12. **Independent of Other Agreements** – The Cooperation Agreement is not intended to govern the process to transfer property rights that are subject to prior project-specific arrangements or agreements.

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

Staff continues to work on the development of jointly approved real estate forms for use in transactions between the City and the District. The City Attorney's Office will review and approve the real estate documents as to form prior to their usage.

### **PUBLIC OUTREACH/INTEREST**

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

The Cooperation Agreement does not meet any of the above criteria; however, this memorandum will be posted on the City's website for the November 29, 2011 Council agenda.

### **COORDINATION**

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

### **FISCAL/POLICY ALIGNMENT**

This agenda item is consistent with the Office of Economic Development core service of providing assistance, information, outreach, and development facilitation services to catalyze private investment, job growth, and revenue generation.

### **COST SUMMARY/IMPLICATIONS**

There are no costs directly associated with the recommended action.

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**CEQA**

Not a project; File No. PP10-066(g), Memorandum of Understanding, (No physical changes)

/s/

KIM WALESH

Director of Economic Development

Chief Strategist

For questions please contact Nanci Klein, Deputy Director at (408) 535-8184.