

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Gloria Schmanek

SUBJECT: Early Council Packet

DATE: November 20, 2012

Approved



Date

11/20/12

**EARLY DISTRIBUTION COUNCIL PACKET FOR
DECEMBER 4, 2012**

Please find attached the Early Distribution Council Packet for the December 4, 2012 Council Meeting.

3.x Amendment to Meyers Nave Agreement for Legal Services Related to the Fiscal Reform Plan.

Recommendation:

- (a) Adopt a resolution authorizing the City Attorney to negotiate and execute a second amendment to the agreement with Meyers, Nave, Riback, Silver & Wilson for legal services in connection with employment, labor, and pension reform, increasing contract amount by \$950,000 for a total amount not to exceed \$1,200,000, subject to appropriation of funds as recommended below.
- (b) Adopt the following Appropriation Ordinance amendments in the General Fund:
 - (1) Increase the city-wide appropriation to the City Attorney's Office for Fiscal Reform Plan Outside Legal Counsel by the amount of \$1,000,000; and,
 - (2) Decrease the Fiscal Reform Plan Implementation Earmarked Reserve by the amount of \$1,000,000.

CEQA: Not a Project; File No. PP10-033(e), Services that involve no physical changes to the environment. (City Attorney's Office/City Manager's Office)

3.x Agreement with Renne Sloan Holtzman and Sakai for Consulting Services Relating to Labor Relations.

Recommendation:

- (a) Adopt a resolution authorizing the City Manager to execute the first amendment to the Agreement with Renne Sloan Holtzman & Sakai, LLP for labor consulting services in connection with labor matters, increasing the contract amount by \$400,000, not to exceed \$650,000, and extending the contract term to December 31, 2014.

- (b) Adopt the following Appropriation Ordinance amendments in the General Fund:
 - (1) Increase the city-wide appropriation for Labor/Employee Relations Consulting Funding in the amount of \$350,000; and,
 - (2) Decrease the Fiscal Reform Plan Implementation Earmarked Reserve in the amount of \$350,000.

CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (City Manager's Office)

3.x Defined Contribution Option Plan for New Employees in Unit 99.

Recommendation:

- (a) Approve an Ordinance amending Title 3 of the San Jose Municipal Code to add new Chapter 3.49 and amending various sections of Chapter 3.28 for the purposes of establishing an option between the Tier 2 Defined Benefit plan and a Defined Contribution 401(a) Plan that excludes participation in retiree healthcare, for Executive Management and Professional Employees (Unit 99), and who are hired on or after January 20, 2013.
- (b) Adopt a Resolution authorizing the City Manager to negotiate and execute the Adoption Agreement and Basic Plan Agreement for the Defined Contribution 401(a) Plan.

CEQA: Not a Project, File No. PP10-069(b), Personnel Related Decisions. (City Manager's Office)

4.x Sale of City-Owned Property at 500 South First Street.

Recommendation: Adopt a resolution:

- (a) Declaring the property located at 500 South First Street, comprised of a 33,284 square foot building on an approximately 19,023 square foot parcel, surplus to the needs of the City;
- (b) Approving an agreement between the City and Movimiento de Arte y Cultura Latino Americano for the sale of the property in the amount of \$1,400,000, \$650,000 to be paid in cash over a three-year period and \$750,000 to be paid in in-kind services over 20-year period; and
- (c) Authorizing the City Manager or her designee to execute the sale agreement, the deed, and all other documents necessary to complete the transaction.

CEQA: Exempt, File No. PP12-099. (Economic Development)

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


GLORIA SCHMANEK
Agenda Services Manager





Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
Jennifer A. Maguire

SUBJECT: SEE BELOW

DATE: November 15, 2012

COUNCIL DISTRICT: CITY-WIDE

SUBJECT: SECOND AMENDMENT TO MEYERS, NAVE, RIBACK, SILVER & WILSON LEGAL SERVICES AGREEMENT AND ADOPTION OF APPROPRIATION ORDINANCE AMENDMENTS IN THE GENERAL FUND FOR FISCAL REFORM PLAN LEGAL SERVICES

RECOMMENDATION

1. Adopt a resolution authorizing the City Attorney to negotiate and execute a second amendment to the agreement with Meyers, Nave, Riback, Silver & Wilson (Meyers, Nave) for legal services in connection with employment, labor, and pension reform, increasing the contract amount by \$950,000 for a total amount not to exceed \$1,200,000, subject to appropriation of funds as recommended below.
2. Adopt the following Appropriation Ordinance amendments in the General Fund:
 - A. Increase the city-wide appropriation to the City Attorney's Office for Fiscal Reform Plan Outside Legal Counsel by the amount of \$1,000,000; and,
 - B. Decrease the Fiscal Reform Plan Implementation Earmarked Reserve by the amount of \$1,000,000.

OUTCOME

On October 28, 2011, the City Attorney executed an agreement with the law firm of Meyers, Nave for a term ending June 30, 2012, in a total amount not to exceed \$100,000, to provide legal services for a wide array of labor relations and employment matters. A first amendment to the agreement was executed on April 26, 2012, which extended the term through June 30, 2013, modified the scope of services, and increased the amount of total compensation by \$150,000, for a total not-to exceed amount of \$250,000. The amended scope of services includes, but is not limited to, legal services relating to compensation and retirement benefits for future employees and modifications to current and/or retired employees' compensation and retirement benefits,

Subject: Second Amendment to Meyers, Nave, Riback, Silver & Wilson Legal Services Agreement and Adoption of Appropriation Ordinance Amendments in the General Fund for Fiscal Reform Plan Legal Services

Page 2

and Public Records Act matters. The scope of services includes representation of the City in the various Measure B litigation cases.

Execution of the second amendment to the agreement with Meyers, Nave will allow this law firm to continue to provide legal services related to employment, labor and pension reform. The increase to the Fiscal Reform Plan Outside Legal Counsel appropriation, if approved, will allow the City Attorney's Office to amend existing agreements with outside counsel to provide legal services on matters related to labor relations and pension reform as part of the City's Fiscal Reform Plan, specifically litigation in response to Measure B. Specifically, the appropriation increase of \$1.0 million will provide funding for increases to two contracts. In addition to the \$950,000 increase for Meyers, Nave, \$50,000 will be applied to a third amendment for the agreement with Ice Miller LLP.

BACKGROUND

The City Council in May 2011 approved a Fiscal Reform Plan to achieve savings and/or new revenues to eliminate the General Fund structural deficit, restore services to the January 2011 level, and to open facilities built or under construction within five years.

Significant legal services for labor relations and pension reform are required to support the implementation of the City's Fiscal Reform Plan. Outside counsel is providing legal advice on several labor and employment aspects of the Plan including, but not limited to, matters related to the pension ballot measure, compensation and retirement benefits for future employees, modifications to current employees' compensation and benefits, interpretation or application of written labor agreements, and litigation involving any of these issues.

ANALYSIS

The Association of Legal Professionals (ALP) represents the attorneys and other legal professionals in the Office of the City Attorney, except for the managing attorneys that are in Unit 99. Many of the labor and pension issues in the Fiscal Reform Plan are issues which have been and may continue to be part of the labor negotiations with ALP. Additionally, because ALP and Unit 99 attorneys are part of the City's retirement plan, we are required to use outside counsel.

The legal issues referenced above require attorneys with specialized expertise and extensive public sector experience. The City Attorney's Office will be retaining and/or continuing the services of several outside counsel firms for various legal services to support Fiscal Reform Plan implementation.

Management attorneys in the City Attorney's Office will coordinate and provide legal advice, as appropriate, on many of the labor and pension issues and will also provide oversight services for

November 14, 2012

Subject: Second Amendment to Meyers, Nave, Riback, Silver & Wilson Legal Services Agreement and Adoption of Appropriation Ordinance Amendments in the General Fund for Fiscal Reform Plan Legal Services

Page 3

outside counsel. When appropriate, certain other attorneys may provide legal services on matters where no conflicts of interest exist.

The City Attorney's Office recently released three Request for Qualifications to develop a pool of law firms that could provide advisory counsel and legal services on labor relations matters for all employee units in the City of San José. Law firms selected as a result of this Request for Qualifications process include Meyers, Nave for labor and related issues; Hanson Bridgett LLP for pension and related issues; and Ice Miller LLP for tax and related issues due to their extensive experience in each of the below areas.

Meyers, Nave was selected due to the firm's extensive experience with labor and employment matters. Their continued participation is essential for legal representation in matters concerning compensation and retirement benefits for future employees and modifications to current and/or retired employees' compensation and retirement benefits. Additional funding in the amount of \$950,000 is necessary in order to execute this amendment to the contract; increase the total compensation of the contract from \$250,000 to \$1.2 million; and to pay for approximately \$380,000 in bills for litigation services received between during the summer and early fall 2012.

Ice Miller LLP provides the City with advice on compliance with federal tax laws and regulations and changes and proposed changes in federal tax laws and regulations that may affect the San Jose Police and Fire and Federated Employee Retirement Plans and Retiree Health Care Trusts. Additional funding in the amount of \$50,000 is necessary to increase the total compensation from \$50,000 to \$100,000. Per the Municipal Code, the City Attorney is authorized to amend contracts with a total compensation of up to \$250,000.

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)

Since this memorandum meets Criterion 1, it will be posted on the City's website as part of the December 4, 2012 City Council Agenda.

November 14, 2012

Subject: Second Amendment to Meyers, Nave, Riback, Silver & Wilson Legal Services Agreement and Adoption of Appropriation Ordinance Amendments in the General Fund for Fiscal Reform Plan Legal Services

Page 4

COST SUMMARY/IMPLICATIONS

As part of the approval of the 2011-2012 Mid-Year Budget Review, the City Council approved the Fiscal Reform Plan Implementation Reserve in the General Fund to fund future ballot measures, polling, studies, potential litigation, and/or other items related to the implementation of the Fiscal Reform Plan. This memorandum recommends allocating \$1.0 million of the \$1.5 million earmarked reserve as included in the 2012-2013 Adopted Budget to the Fiscal Reform Plan Outside Legal Counsel, city-wide expense appropriation to provide for legal services in the current fiscal year. (It should be noted that the Administration is bringing forward a separate memorandum for Office of Employee Fiscal Reform related services, which recommends reducing the Fiscal Reform Implementation Reserve by \$350,000. If both recommendations are approved, \$150,000 will remain in the reserve for future use.)

1. Amount of Recommendation for increased Meyers, Nave contract:	\$950,000
Original Agreement – October 28, 2011	\$100,000
First Amendment – April 26, 2012	\$150,000
Proposed Second Amendment – November 27, 2012	\$950,000
TOTAL	\$1,200,000

In addition to the \$950,000 increase for Meyers, Nave, \$50,000 will be allocated to an agreement with Ice Miller LLP (increasing the total compensation amount from \$50,000 to \$100,000), if the recommended appropriation actions are approved. Per the Municipal Code, the City Attorney is authorized to amend contracts with a total compensation of up to \$250,000.

2. SOURCE OF FUNDING: General Fund – Fiscal Reform Plan Implementation Reserve

BUDGET REFERENCE

Fund #	Appn #	Appn. Name	Total Appn	Amt. of Recommendation	2012-2013 Adopted Budget Page	Last Budget Action (Date, Ord. No.)
001	3898	Fiscal Reform Plan Outside Legal Counsel	\$0*	\$950,000	IX-26	N/A*

* The recommendation in this memorandum would increase this appropriation by \$1.0 million.

HONORABLE MAYOR AND CITY COUNCIL

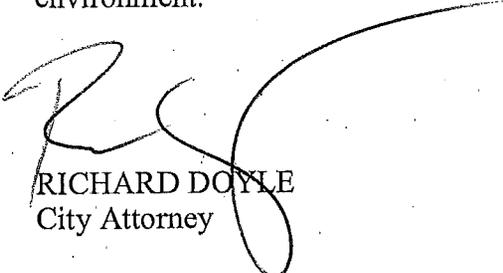
November 14, 2012

Subject: Second Amendment to Meyers, Nave, Riback, Silver & Wilson Legal Services Agreement and Adoption of Appropriation Ordinance Amendments in the General Fund for Fiscal Reform Plan Legal Services

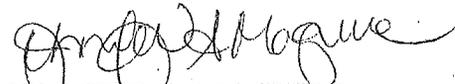
Page 5

CEQA

Not a Project; File No. PP10-066(e), Services that involve no physical changes to the environment.

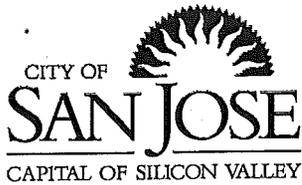


RICHARD DOYLE
City Attorney



JENNIFER A. MAGUIRE
Budget Director

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



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Alex Gurza
Jennifer Maguire

SUBJECT: First Amendment to Renne
Sloan Holtzman & Sakai, LLP
Labor Consulting Services Agreement

DATE: November 16, 2012

Approved

Date

11/19/12

RECOMMENDATION

It is recommended that the City Council:

1. Adopt a resolution authorizing the City Manager to execute the first amendment to the Agreement with Renne Sloan Holtzman & Sakai, LLP for labor consulting services in connection with labor matters, increasing the contract amount by \$400,000, not to exceed \$650,000, and extending the contract term to December 31, 2014.
2. Adopt the following Appropriation Ordinance amendments in the General Fund:
 - a. Increase the City-wide appropriation for Labor/Employee Relations Consulting Funding in the amount of \$350,000; and,
 - b. Decrease the Fiscal Reform Plan Implementation Earmarked Reserve in the amount of \$350,000.

OUTCOME

Execution of the first amendment to the agreement with Renne Sloan Holtzman & Sakai, LLP, and appropriation of this funding will allow the City Manager's Office to amend the existing agreement for continued labor consulting services, including assistance in developing labor negotiation strategies and providing assistance with other labor relations matters.

BACKGROUND

The City Council in May 2011, approved a Fiscal Reform Plan to achieve savings and/or new revenues to eliminate the General Fund structural deficit, restore services to the January 1, 2011 level, and to open facilities built or under construction within five years. Significant labor relations consulting services are required to support the implementation of the City's Fiscal

Reform Plan including, but not limited to, matters related to the pension ballot measure, potential arbitration matters, and labor negotiations.

On April 5, 2011, the City Manager executed an agreement with the law firm Renne Sloan Holtzman & Sakai, LLP for a term ending December 31, 2012, in a total amount not to exceed \$250,000, to provide labor consulting services for labor relations matters. The scope of services includes, but is not limited to, the developing of labor negotiating strategies for successor Memoranda of Agreements (MOAs) and the inclusion of the consultant as a member of the City's negotiating team and possible assignment as a lead negotiator.

ANALYSIS

Renne Sloan Holtzman & Sakai, LLP has extensive experience with police and fire labor negotiations, public sector labor law, and interest arbitration proceedings. The firm has provided negotiation and legal services to the City since approximately January 2005.

Renne Sloan Holtzman & Sakai, LLP is currently providing labor consulting services to the City and has assisted with the continued implementation of the Fiscal Reform Plan. The City anticipates the need for labor consulting services to assist with potential arbitration matters related to the implementation of second tier retirement benefits and other Fiscal Reform Plan items. Based on past arbitration cost experiences, it is anticipated that Renne Sloan Holtzman & Sakai, LLP's cost for supporting potential arbitration proceedings regarding the second tier retirement benefits with the San Jose Police Officers Association (SJPOA) and the International Association of Fire Fighters (IAFF), Local 230, will be approximately \$350,000. It is recommended to decrease the Fiscal Reform Plan Implementation earmarked reserve by \$350,000 and allocate the funds to the Labor/Employee Relations Consultant Funding City-wide appropriation to fund these services.

Renne Sloan Holtzman & Sakai, LLP is also assisting in current labor negotiations with the Association of Legal Professionals, a bargaining unit mainly comprised of attorneys in the City Attorney's Office. In addition, the City will be in negotiations with all eleven bargaining units over successor memoranda of agreement and there are not sufficient resources within the Office of Employee Relations to manage all of these negotiations. Assistance from Renne Sloan Holtzman & Sakai, LLP will be necessary to handle all of these negotiations. The estimated cost for this service is approximately \$50,000 which will be funded through the existing Labor/Employee Relations Consultant Funding City-wide appropriation.

Renne Sloan Holtzman & Sakai, LLP's continued participation, specialized services, and experience are essential for continuity and successful completion of these pending labor relations matters, upcoming labor negotiations, and arbitration matters.

EVALUATION AND FOLLOW-UP

There is no anticipated Council follow-up at this time.

PUBLIC OUTREACH/INTEREST

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

Although this memorandum does not meet any of the criteria listed above, it will be posted on the City's website as part of the December 4, 2012, City Council Agenda.

COORDINATION

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

COST SUMMARY/IMPLICATIONS

As part of the approval of the 2011-2012 Mid-Year Budget Review, the City Council approved the Fiscal Reform Plan Implementation Reserve in the General Fund to fund future ballot measures, polling, studies, potential litigation, and/or other items related to the implementation of the Fiscal Reform Plan. This memorandum recommends allocating \$350,000 of the \$1.5 million earmarked reserve as included in the 2012-2013 Adopted Budget to the Labor/Employee Relations Consultant Funding City-wide expense appropriation to provide for labor services in the current fiscal year. It should be noted that the City Attorney's Office is bringing forward a separate memorandum for Fiscal Reform related services, which recommends reducing the Fiscal Reform Implementation Reserve by \$1,000,000. If both recommendations are approved, \$150,000 will remain in the reserve for future use.

1. Amount of Recommendation for increased Renne Sloan Holtzman & Sakai LLP contract:	\$400,000
Original Agreement – May, 2011	\$250,000
Proposed First Amendment – November 27, 2012	\$400,000
TOTAL	\$650,000

2. Source of Funding: General Fund – Fiscal Reform Plan Implementation Reserve (\$350,000) and Labor/Employee Relations Consultant Funding City-wide expense appropriation (\$50,000)

BUDGET REFERENCE

Fund #	Appn #	Appn. Name	Total Appn	Adopted Budget (Page)	Last Budget Action (Date, Ord. No.)
001	3769	Labor/Employee Relations Consultant Funding	\$666,000*	IX-27	10/16/2012, Ord. No. 29163

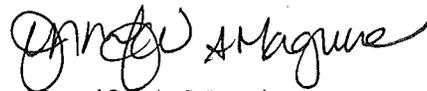
* Includes an increase of \$350,000 as recommended in this memorandum.

CEQA

Not a project; File No. PP10-066(e), Services that involve no physical changes to the environment.



Alex Gurza
Deputy City Manager



Jennifer A. Maguire
Budget Director

For questions please contact Alex Gurza, Deputy City Manager, at (408) 535-8150.



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Debra Figone

SUBJECT: Defined Contribution Plan Option
for New Employees in Unit 99

DATE: November 20, 2012

RECOMMENDATION

1. Approve an Ordinance amending Title 3 of the San Jose Municipal Code to add new Chapter 3.49 and amending various sections of Chapter 3.28 for the purposes of establishing an option between the Tier 2 Defined Benefit plan and a Defined Contribution 401(a) Plan that excludes participation in retiree healthcare, for Executive Management and Professional Employees (Unit 99), and who are hired on or after January 20, 2013.
2. Adoption of Resolution authorizing the City Manager to negotiate and execute the Adoption Agreement and Basic Plan Agreement for the Defined Contribution 401(a) Plan.

BACKGROUND

Unit 99 currently consists of Senior Staff, Executive Staff, senior managers under the City Manager's Appointing Authority, Council Office staff, and professional or management employees under the appointing authority of the City Attorney, City Auditor, and Independent Police Auditor. In addition, there are employees in Unit 99 in the City Clerk's office. There are currently approximately 214 full-time equivalent employees (FTEs) in Unit 99. Full-time employees in Unit 99 are a part of the Federated City Employees' Retirement System. Other employees, such as temporary employees and part-time employees are part of the City's defined contribution 457 PTC plan.

On June 5, 2012, voters passed Measure B, which set parameters for the creation of a second tier retirement program for new employees. Measure B allowed for either a defined benefit and/or defined contribution plan to be established. At the June 12, 2012, City Council Meeting, the Council voted to adopt a resolution approving a second tier defined pension benefit for new eligible employees hired on or after September 30, 2012, in the Federated City Employees' Retirement System.

Although the recommended benefit changes on June 12, 2012 for new employees in Unit 99 included a defined benefit in Tier 2, Council was advised in the Council memo that the City would be exploring a defined contribution plan that would provide new employees, who are hired directly into Unit 99, the option to elect a defined contribution plan in lieu of a defined benefit program. As such, the proposed ordinance and adoption agreement creates a defined contribution plan that will allow new eligible employees who are hired directly into Unit 99 a one-time election when the person is hired between the Tier 2 benefit option and the defined contribution 401(a) plan (Tier 3). Those employees who elect to participate in the Tier 3 defined contribution plan will not participate in the retiree healthcare plan at this time. The ordinance provides parameters for the defined contribution plan, while the specific plan requirements are contained in the Adoption Agreement.

ANALYSIS

As noted above, Measure B approved by the voters on June 5, 2012, set parameters for a second tier of retirement benefits for eligible new employees, which allowed for either a defined benefit or defined contribution plan.

Defined Benefit Plans

Eligible employees in both Tier 1 and Tier 2 in the Federated City Employees' Retirement System receive a defined benefit pension. A defined benefit plan is a plan that promises its recipients a set level of benefits during retirement. It is typically based on a formula that includes the number of years served and an employee's salary, multiplied by a preset figure.

The Tier 2 defined benefit plan established by the Council for employees hired into the Federated City Employees' Retirement System was a lower level benefit than the Tier 1 benefit currently provided. It provides for 2% for every year of service with a retirement age of 65. The current cost of the Tier 2 defined benefit program is 6.68% for the City and 6.68% for employee.

In addition to the pension benefit, employees who reach 15 years of service are eligible for a retiree healthcare benefit. The retiree healthcare benefit is 100% of the lowest cost plan single or family available to any City employee. The current contributions for the retiree healthcare benefit is 7.91% for the City and 7.26% for employees. However, these do not reflect the full Annual Required Contribution for retiree healthcare, which is significantly more than the current amount being contributed by the City and employees.

Defined Contribution Plans

A defined contribution plan is a plan to which the employer, and often the employee, contributes a defined amount to an individual account in the employee's name while the employee is in

HONORABLE MAYOR AND CITY COUNCIL

November 20, 2012

Subject: Defined Contribution Plan Option for New Employees in Unit 99

Page 3

active service, but which does not guarantee any set benefit. The amount available for retirement is based solely on the amount of money that has been saved, along with investment income credited to the employee's account. When the funds are spent by the retiree, the benefit is exhausted.

The City has a voluntary defined contribution plan (457 Deferred Compensation Plan) that employees can elect to participate in (with no City contribution).

New 401a Defined Contribution Plan

Under the proposed ordinance and Adoption Agreement, a defined contribution retirement benefit option for employees in Unit 99 will be established in accordance with Section 401(a) of the Internal Revenue Code. New employees to the City hired directly into Unit 99 on or after January 20, 2013, will have the ability to make the one-time election to participate in the defined benefit Tier 2 plan or the defined contribution plan (Tier 3). It is important to note that this option will be available to only new City employees hired directly into Unit 99 who have never previously been employed by the City. The election must be made when the employee is first hired.

Under the optional defined contribution plan, separate accounts will be created for each new employee in Unit 99 hired on or after January 20, 2013, who chooses to participate. Each separate participant in the defined contribution plan will be vested 100% in the account upon enrollment. This account can be recovered at the time of the participant's separation from City service. The 401(a) plan meets the qualifications to be in lieu of Social Security.

The City's current administrator for its defined contribution 457 plan is ING and it is planned that ING will also administer the 401(a) plan. The fiduciary trustees will be appointed by the City Manager at a later date. An amended contract with ING will be brought forward to Council prior to January 20, 2013.

Although Measure B allows for a maximum City contribution of 9%, the Adoption Agreement currently establishes the 401(a) with a City contribution of 3.75% and an employee contribution of 3.75%. If employees want to elect additional voluntary contributions into a deferred compensation plan, they would do so in the 457 plan. The contributions into the 401(a) plan do not count towards the IRS annual deferred compensation maximum that applies to the 457 plan.

Approval of the resolution would also authorize the City Manager to negotiate and execute the Adoption Agreement and Basic Plan Document for the Defined Contribution 401(a) Plan. The Adoption Agreement and the Basic Plan Document specify the specifics of the plan not outlined in the ordinance, such as the Plan Year, election period and contribution amount.

Benefits of a Defined Contribution Plan

With increasing retirement costs for both employees and the City, it is important to look for ways to reduce those costs, while still providing a retirement benefit that matches an employee's stage in their career and other personal considerations.

Defined contribution plans have the potential to significantly reduce retirement contribution costs for the City and employees. The following chart shows the comparison of costs for the Tier 2 defined benefit program and the proposed Tier 3 defined contribution option.

	Tier 2 Defined Benefit Current Contribution Rate (including retiree healthcare)	Tier 3 Defined Contribution Rate
City	14.59%	3.75%
Employees	13.94%	3.75%

As shown above, due to the decrease in the contributions for retirement benefits should an employee elect Tier 3, employees will have fewer deductions from their paychecks, and therefore, more take home pay than if they elected the Tier 2 defined benefit plan. It also allows some flexibility to provide more compensation in base pay to Tier 3 employees since a smaller amount of total compensation is allocated to retirement benefits.

In addition, there is no minimum vesting requirement (which is 5 years for the defined benefit pension plan and 15 years for retiree healthcare). Further, the increased portability of the defined contribution plan will allow for employees to rollover their accounts into another eligible plan if they choose to leave City service. This is a possible recruiting tool for those potential employees who are interested in the flexibility and portability of a defined contribution plan as opposed to a defined benefit plan. The defined contribution plan also may be more appealing for employees in the later stages of their career and/or who have retirement benefits elsewhere. This is particularly important as we continue with our Senior Staff recruitments.

It is also important to note that defined contribution plans do not create unfunded liabilities because the amount that will be paid to an employee has been contributed prior to the employee's separation from the City. The additional fiscal sustainability inherent in the defined contribution plan is in accordance with the provisions included in Measure B.

Setting up this defined contribution option for new City employees hired directly into Unit 99 provides them with an important choice and it will be important that communication and guidance is provided to these new employees as they make this important decision. We will

HONORABLE MAYOR AND CITY COUNCIL

November 20, 2012

Subject: Defined Contribution Plan Option for New Employees in Unit 99

Page 5

work closely with the Department of Retirement Services and the Department of Human Resources on this communication.

COORDINATION

This memorandum was coordinated with the City Attorney's Office and the Department of Human Resources.

CEQA

Not a Project, File No. PP10-069 (b), Personnel Related Decision.

A handwritten signature in black ink, appearing to read 'Debra Figone', with a long horizontal flourish extending to the right.

Debra Figone
City Manager

For more information, please contact Alex Gurza, Deputy City Manager at (408) 535-8155.



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Walesh

SUBJECT: SALE OF CITY-OWNED PROPERTY **DATE:** November 13, 2012
AT 500 SOUTH FIRST STREET

Approved  Date 11/14/12

RECOMMENDATION

Adopt a resolution:

- (a) Declaring the property located at 500 South First Street, comprised of a 33,284 square foot building on an approximately 19,023 square foot parcel, surplus to the needs of the City;
- (b) Approving an agreement between the City and Movimiento de Arte y Cultura Latino Americano (MACLA) for the sale of the property in the amount of \$1,400,000, \$650,000 to be paid in cash over a three-year period and \$750,000 to be paid in in-kind services over 20-year period; and
- (c) Authorizing the City Manager or her designee to execute the sale agreement, the deed, and all other documents necessary to complete the transaction.

OUTCOME

Movimiento de Arte y Cultura Latino Americano (MACLA) was founded in 1989 and has been a tenant at the property for 20 years. MACLA is an anchor institution in the City's South of First Area (SoFA) District. The purchase of the 500 South First Street property will accomplish multiple City goals including securing General Fund revenues, eliminating maintenance costs and strengthening Downtown San José as the creative and cultural center of Silicon Valley. MACLA intends to improve the facility, enhance the organization's program offerings, and facilitate private and foundation support for creative entrepreneurs. The purchase of the property will strengthen MACLA's ability to generate private and foundation funds.

BACKGROUND

About MACLA

MACLA is a contemporary arts organization that was founded in 1989 by a group of community leaders committed to supporting multicultural arts and artists. Programs offered by MACLA

November 13, 2012

Subject: Sale of 500 South First Street

Page 2

include visual arts, performing arts, as well as literary arts programs. Its contemporary arts programs are grounded in Chicano/Latino experience and aimed to engage people across cultures in civic dialogue and community transformation. The connecting of Latino and non-Latino audiences has been a distinctive feature of MACLA since its inception. A large portion of its programs are geared towards creating opportunities for interaction between cultures, experiences, audiences, new art forms, and emerging artists. MACLA works extensively with at-risk youth, providing art training opportunities, such as its notable Peapod Academy, which is a partnership between the Black Eyed Peas Foundation and Adobe Youth Voice. Annually, MACLA reaches approximately 30,000 San José residents.

As an outgrowth of its arts and cultural objectives, MACLA has collaborated closely with the community in the William-Reed Corridor, University, and Market-Almaden neighborhoods and beyond. This collaboration has resulted in a broad range of additional community development work.

500 South First Street

In 1998, the San José Redevelopment Agency (RDA) purchased the property at 500 South First Street from the Center for Employment Training (CET). Through this purchase a pre-existing lease with MACLA was conveyed to the RDA. The property consists of an approximately 38,300 square foot building on an approximately 19,000 square foot parcel. The building requires replacement of the roof and significant upgrade to building systems including electrical, mechanical, and plumbing systems. The second floor of the building can only be used for limited storage purposes; therefore the effective lease capacity of the building is restricted to the ground level.

In June 2011, the property was conveyed from the RDA to the City of San José. MACLA has remained a tenant of the building and pays an annual rent of \$1 under the City's below market rental policy. The Redevelopment Agency transferred the property to the City of San José in June of 2011. For several years, MACLA's Board had been discussing purchase of the building in order to invest in the facility and provide stability for MACLA's future. MACLA has been in many conversations with local and national foundations, and with City staff, in an effort to craft a possible purchase of the property. Section 4.20.080 of the City's Municipal Code allows the City to sell surplus property at a private negotiated sale to any non-profit corporation engaged in programs or projects that provide a direct benefit to the residents of the City of San José.

Beginning in 2007, due to the ongoing budget shortfall, the City Council directed staff to actively pursue the sale of surplus properties in order to generate revenues for the City. The direction for this strategy can be found in the 2007-2008 Mayor's March Budget Message and was incorporated into the General Fund Structural Deficit Elimination Plan that was released in November 2008. It was the City Council's direction to generate revenue to support City services as well as minimize the City's maintenance and liability costs through the sale of surplus City property.

ANALYSIS

An As-Is appraisal of the property was completed by Carneghi-Blum & Partners, Inc. (Carneghi) in March 2012. The appraisal identified the As-Is fee simple Fair Market Value for the property as \$1,400,000. Carneghi arrived at the value of \$1,400,000 using both a sales comparison approach of fee simple land if the building was demolished and the property was eventually developed for housing and an income approach based on market rate rents. Only the first floor of the building was included in determining value for the income approach since the second floor can only be used for limited storage without significant improvement.

Staff has determined that there are no other municipal purposes now or in the foreseeable future for which the property could be used and therefore there is no reason for the City to own and maintain the property. On October 29, 2012, in accordance with California Government Code Section 54222(d), staff prepared and distributed a notification to those local agencies of the availability of the 500 South First Street property for the following uses: development of housing for persons and families of low or moderate income; park, recreation, and open space; public school and/or enterprise zone purposes. Staff did not receive any offers in response to the notification letters.

Section 4.20.080 of the City's Municipal Code allows the City to sell surplus property to any non-profit corporation engaged in programs or projects which provide a direct benefit to the residents of the City of San José. MACLA has become a highly respected cultural organization providing innovative programming for residents of San José and Silicon Valley. MACLA contributes greatly to the fabric of the SoFA District, the adjacent William-Reed Corridor, and to the broader San José and Silicon Valley arts community.

MACLA is a financially sound non-profit 501c3 organization. According to MACLA'S most recently audited financial statements, its 2010-2011 Operating Budget was \$544,528. MACLA'S revenue streams are diversified between grants, donations, and earned income. The organization has generated an operating surplus over the past five years. MACLA has built a strong reputation among public and private funders for both its artistic programming and operational effectiveness and successfully leverages outside grant funding from national foundations such as the Ford Foundation, Packard Foundation, and Knight Foundation, among others.

MACLA'S Proposed Expansion

Building on MACLA'S commitment to artists, community members, and the growing vitality of Downtown San José, the project embodies the principles of creative placemaking. Through this property acquisition and renovation - led by artist/architect Teddy Cruz - MACLA aspires to provide local multicultural artists of color with a permanent place to create and showcase their art, enhance the experience of audience members and program participants, and bolster SoFA'S burgeoning reputation as an arts destination.

MACLA's vision for the property includes an expanded and updated ground floor space for exhibitions, a more efficient and aesthetically designed black box theater, administrative offices, classrooms, and commercial space such as a café, restaurant, or retail business related to the arts. The proposal also includes a reconfigured second floor consisting of a "Creative Entrepreneur Incubator" where multidisciplinary artists and arts-based businesses can create their work in a vibrant space.

MACLA is currently conducting a market feasibility study to determine the needs of small businesses, as well as developing a mixed-used model that will generate earned income and a financially stable operations model. Through its expansion, MACLA aims to serve the space and small business needs of the local creative sector, with a focus on creative entrepreneurs of color. Anticipated outcomes include an increase in small business activity and cultural vibrancy in the SoFA District.

Proposed Sale Achieves Multiple City Goals

The sale of the 500 South First Street property to MACLA achieves multiple City goals. The General Fund Structural Deficit Elimination Plan approved by the City Council in 2008 directed staff to sell surplus City property to generate revenue that could be used to pay for City services and eliminate costs for maintenance and liability. The City's Economic Strategy calls for the development of a distinctive set of sports, arts, and entertainment offerings aligned with the City's diverse, growing population; continuing to position Downtown as Silicon Valley's city center; nurturing the successes of local small businesses; and creating more walkable, vibrant, mixed-use environments to spur interaction and attract talent.

The sale of the surplus property to MACLA to expand its artist and creative entrepreneur services supports the vision and goals outlined in *Cultural Connection: San José's Cultural Plan for 2011-2020*, adopted by the City Council on February 1, 2011. The plan's strategic goals include: support the availability of diverse cultural spaces and places throughout the community; strengthen downtown San José as the creative cultural center of Silicon Valley; and enhance support for creative entrepreneurs and the commercial creative sector. MACLA's proposed project specifically addresses these goals by providing needed space for creative entrepreneurs and artists of multiple disciplines who are sole proprietors or small business owners. The needs of San José's artists and arts-based businesses can be well served by MACLA who has served this community, specifically Latino Artists for decades. Furthermore, Latino artists represent a growing segment of our creative economy. MACLA's project will enable access to resources specific to their needs, supporting cultural equity, and economic prosperity.

The City's partnership with MACLA will demonstrate to national and private foundations the City's continuing commitment to creatively assisting diverse cultural arts and creative placemaking. In turn, MACLA will be better positioned to leverage the City's investment for the external grants and donations needed to build-out MACLA's vision for the property.

Summary of Purchase and Sale Terms

The terms of the proposed sale are based on the \$1,400,000 fair market value established for the property in the March 2012 Carneghi appraisal. At closing, MACLA will provide a promissory Note to the City and the Note will be secured by a deed of trust on the property. MACLA will pay \$650,000 in cash payments as outlined in paragraph three of the "Summary of Terms" below. MACLA's obligation to pay the remaining \$750,000 will be offset through the provision of in-kind services over a twenty year Note period. For each year in the 20 year period, MACLA will receive \$37,500 in credit toward paying off this \$750,000 obligation under the Promissory Note, provided it has met its obligations to provide in-kind non-profit services at the site. Through this agreement San José will secure the services to the community of an anchor arts and cultural institution in SOFA for 20 years.

Such services will be delivered pursuant to a minimum annual operating budget of \$400,000 and must include substantial on-site cultural production amenities. The initial services categories will include visual arts, literary arts, and youth services. MACLA's programming will be reviewed annually by the Office of Cultural Affairs through reports obtained through its annual operating grant program. Beyond the broad parameters described above, the areas, categories, and minimum levels of in-kind services to be delivered shall be subject to annual approval of the City Manager or their designee.

The terms of the sale do not allow pre-payment of the \$750,000 amount to be paid by MACLA in the form of services. Further, if for whatever reason during the 20 year repayment term MACLA does not continue operation at the South First Street location, MACLA may only assign their in-kind repayment obligation to another non-profit to be approved by the City. If MACLA defaults on its repayment obligations, either the cash or in-kind services portions, the property can be sold under the City's Deed of Trust. If the property were purchased at foreclosure, the remaining value owed to the City will be paid in cash from available sale proceeds. In this way, the City secures both a permanent home for MACLA and 20 years of cultural arts programming in the SoFA District.

Currently the State Controller is conducting a review of properties transferred to the City from the RDA for the purposes of possibly ordering the return of certain properties to the RDA's successor agency. The return of the 500 South First Street property has not been noted as of interest to the state in the Controller's draft report. Closure of this issue to the satisfaction of both the City and MACLA will be a condition to closing the sale; it is expected this will occur when the State Controller issues its final report which is anticipated before the end of the year.

A Summary of Terms:

1. Price: \$1,400,000;
2. "As-Is" purchase, with 30-day period during which MACLA shall satisfy itself as to property condition; no obligations from the City to the purchaser concerning condition of the property;

3. Cash Payments in three installments totaling \$650,000 as follows:
 - a. \$20,000 deposit payable at closing,
 - b. \$315,000 payment due 12 months after closing, and
 - c. \$315,000 payment due 36 months after closing.
4. Remaining In-Kind Payments over a 20 year period totaling \$750,000.
 - a. Promissory Note in the amount of \$750,000 for 20 years; each year MACLA provides specified services \$37,500 is credited against the portion of remaining \$750,000 due under the Promissory Note.
 - b. A Deed of Trust secures the Promissory Note. MACLA cannot pre-pay this portion of the Promissory Note and the City secures 20 years of service from an anchor institution in SoFA. MACLA can only assign its in-kind repayment obligation to another non-profit and the selected non-profit must be approved by the City.
 - c. If MACLA defaults, the City remedy would be to foreclose under its Deed of Trust; sale proceeds would be paid to the City up to the amount of the outstanding amount on the Promissory Note at the time of the sale.

EVALUATION AND FOLLOW-UP

The terms of the proposed sale of the 500 South First property call for annual review of MACLA's budget. The annual review will provide the City with an audited account of MACLA's budget and a review of the programs and services delivered by the organization. The terms of the proposed agreement allow, if necessary or desired by MACLA, assignment to another non-profit if to be approved by the City.

POLICY ALTERNATIVES

Alternative #1 City retain ownership of the building and potentially sell in the future

Pros: If the City were to retain ownership of the building, it could in the future potentially sell the property for residential purposes, which may generate additional revenue.

Cons: The City would not accomplish the goals set out in *Cultural Connection: San José's Cultural Plan for 2011-2020*, adopted by City Council on February 1, 2011.

Reason for not recommending: The SoFA district has become the City's arts and cultural center Downtown. Should the property be sold for residential purposes, it is unclear if this would continue to be the case. The property is unlikely to be attractive for residential purposes in the short term as the site is small for residential development.

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 Criteria 1; the memorandum will be posted on the City's website for the November 27, 2012 City Council meeting.

COORDINATION

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

FISCAL/POLICY ALIGNMENT

The City's Economic Strategy calls for the development of a distinctive set of sports, arts, and entertainment offerings aligned with the City's diverse, growing population; continuing to position Downtown as Silicon Valley's city center; nurture the successes of local small businesses; and create more walkable, vibrant, mixed used environments to spur interaction and attract talent.

The sale of the surplus property to MACLA to expand its artist and creative entrepreneur services supports the vision and goals outlined in *Cultural Connection: San José's Cultural Plan for 2011-2020*, adopted by City Council on February 1, 2011.

COST SUMMARY/IMPLICATIONS

Under the proposed sale agreement, the City would receive cash payments of \$650,000 over a three-year period that would be recognized in the General Fund. The first installment of \$20,000 is anticipated to be received in 2012-2013. The sale proceeds would be used to help meet the revenue estimate from the sale of surplus property that is incorporated into the annual operating budget.

HONORABLE MAYOR AND CITY COUNCIL

November 13, 2012

Subject: Sale of 500 South First Street

Page 8

CEQA

File No. PP12-099, Exemption

/s/

KIM WALESH

Director of Economic Development

Chief Strategist

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