



# Memorandum

**TO:** MAKING GOVERNMENT WORK  
BETTER COMMITTEE

**FROM:** Sara L. Hensley

**SUBJECT:** SEE BELOW

**DATE:** 11-09-05

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Approved

Date

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Council District: 3  
SNI Area: N/A

**SUBJECT: UPDATE ON NORTHSIDE COMMUNITY CENTER OPERATIONS**

## **RECOMMENDATION**

It is recommended that the Making Government Work Better Committee:

1. Provide direction as to preferred terms for funding certain operating expenses for Filipino-American Senior Opportunities Development Council ("Fil-Am SODC") in an amount not to exceed \$58,354; and
2. Accept the status report related to documentation regarding operations at JTS Northside Community Center than has been requested by the City but not yet received from the Fil-Am SODC.

## **BACKGROUND**

At the October, 2005 meeting of the Making Government Work Better Committee, staff was directed to: 1) draft an Agreement for payment of up to \$58,354 to Filipino American Senior Opportunities Development Council to fund certain operating expenses; and 2) submit an update on the status of documentation requested by the City, but not yet received from Fil-Am SODC. This information was to be provided to the Committee at its November meeting.

## **ANALYSIS**

### ***Draft Agreement***

As requested by the MGWB Committee, the City Attorney's Office has prepared a draft

agreement with Filipino American Senior Opportunities Development Council, setting forth proposed terms for distribution of \$58,354 to Fil-Am SODC. The draft agreement generally follows the format of the HNVF grant agreements. The Committee requested that staff develop funding details to present for the Committee's consideration. A copy of the draft Agreement is attached as Exhibit A.

There are several issues that we would like to bring to the attention of the Committee:

- 1) The draft agreement provides for a maximum monthly payment of \$4,000 to Fil-Am SODC toward payroll expenses<sup>1</sup>. This amount is based upon a "gap" figure approximately equal to \$12,000 per quarter that was mentioned at the October Committee meeting. It is also in response to comments made by Committee members that the \$58,354 should be paid out gradually rather than all in one lump sum.
- 2) Staff discussed various methods in which the agreement could be structured. The underlying desire was to develop an agreement that would be as administratively simple as possible for Fil-Am SODC. The proposed term of the draft agreement is through the end of the 2005-2006 fiscal year, terminable upon 30 days notice without cause. The draft also provides that that each month, certain specified costs related to the operation of Northside Community Center may be reviewed by the City for payment in order of priority. First priority is to pay up to \$4000 per month (up to \$32,000 for the term of the agreement) toward Basic Monthly Payroll Expenditures if Fil-Am's SODC's revenues are less than Fil-Am SODC's Basic Monthly Payroll Expenditures, as described below. The agreement also provides that payment from the \$58,354 may be made for certain other costs described below under "Other Payments" and that there shall be a quarterly review of expenses to determine if line items adjustments need to be made among eligible expense categories.
  - a) "**Basic Monthly Payroll Expenditure**". The draft Agreement compares Fil-Am's monthly revenue statement against a pre-determined amount which approximates Fil-Am SODC's estimated monthly payroll costs including payroll taxes. The City estimates that \$18,218 per month equals the monthly payroll expenditures incurred by Fil-Am SODC at the staffing levels in place during September 2005. This amount was calculated from documented payroll costs delivered by Fil-Am SODC to the City for the first fiscal quarter of 2005-2006 and was based upon the Committee's stated desire to help support salary expenditures at current levels, but not to pay for an increase in Fil-Am SODC's salary expenditures.

If the Fil-Am SODC's verified receipts for the prior month are less than the Basic Monthly Payroll Expenditure amount (\$18,218), then the City would process a payment to Fil-Am in the amount of the shortfall up to the maximum monthly amount of \$4,000. If monthly revenues exceed \$18,218 in a given month, then no payment would be made for that month toward payroll expenditures. If the monthly maximum amount is

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<sup>1</sup> Payroll expenses shall include salary, benefits and applicable payroll taxes for those employees on payroll as of September 30, 2005.

insufficient to cover Fil-Am SODC's payroll costs, then the expenditure may be carried forward to subsequent months.

The advantage of comparing revenues to an established expenditure level is to limit the administrative burden on both Fil-Am and the City by requiring only the production of revenue information on a monthly basis.

- b) **Other Payments Available from the \$58,354 Grant.** The draft agreement also provides that the City may make payments from the unused portion of the general fund dollars to pay for Fil-Am SODC's 50% monthly share of the utility costs at the Northside Community Center with a set aside to be used for this purpose of \$22,000. A review of utility records indicates that the amount of Fil-Am SODC's monthly obligation ranges from \$1,600 to \$2,000; however, utility costs are anticipated to rise. With only 8 months left in the fiscal year, the proposed allocation of up to \$22,000 should be more than adequate to cover Fil-Am SODC's share of utility costs. It is recommended that the remaining funds (\$4,354) be allocated to costs incurred by Fil-Am SODC for the following items (i) tuition costs for City-approved training on financial standards and corporate governance for Board Members and executive staff, (ii) the direct costs incurred by Fil-Am SODC to prepare and distribute community surveys to determine the community needs for the City's Northside neighborhood area and the Japantown Redevelopment Area, or (iii) the direct costs of developing and distributing marketing programs detailing the available programs, services, events, rental opportunities and hours of service at the Northside Community Center. It is further recommended that funds for Board training and the enhanced marketing efforts be expended within the first three months of the agreement in order to enhance the organizational capacity as quickly as possible.
- c) **Healthy Neighborhood Venture Fund Grant.** Staff recommends that the draft agreement require Fil-Am SODC to complete and submit the documentation necessary for issuance of its 2005-2006 Healthy Neighborhoods Venture Fund (HNVF) Grant, before any payments would be made from the \$58,354. As background, the City awarded an HNVF grant to Fil-Am for FY 2005-2006, in an amount not to exceed \$173,204. As of the date of this memorandum, the City has been unable neither to finalize Fil-Am's HNVF agreement nor to issue any payments to Fil-Am, because Fil-Am has not provided the necessary documentation<sup>2</sup>.

Fil-Am's cash position will quickly improve if it provides the documentation necessary for the City to complete the 2005-2006 HNVF Grant Agreement. Because it will also lessen the need to draw from the City's \$58,354 grant for salary costs, staff believes that

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<sup>2</sup> Numerous meetings have been held with Fil-Am representatives to discuss outstanding information. Staff met with the Executive Director on October 25 to review the outstanding HNVF information. While Fil-Am has submitted preliminary information, the documentation is still not complete. Staff is continuing to work with the Executive Director of Fil-Am to obtain the required information.

it may be prudent to require Fil-Am to complete the requirements for the HNVF grant, before drawing upon the \$58,354.

To avoid potential duplication of payments, the \$58,354 grant will not be available to pay costs which are covered by another public agency funding source of Fil-Am SODC or the City's Healthy Neighborhoods Venture Fund grant discussed below.

- d) *Proposed Distribution of General Fund Dollars.* As outlined above, staff is recommending the following breakdown for the use of the \$58,354 general fund dollars:

| <b>Expense</b>              | <b>Monthly Expense</b>   | <b>Cap for term of agreement</b>                 |
|-----------------------------|--|--|
| Payroll                     | Up to \$4,000 if gap exists  | \$32,000   |
| Training/Marketing/Outreach |  | \$4,354  |
| Utilities                   | No monthly cap is identified given that expenses are expected to fluctuate greatly month to month. | \$22,000 or remaining unused balance of \$58,354 |
|                             | <b>Total</b>   | <b>\$58,354</b>                                  |

In making this recommendation, staff considered Fil-Am SODC's obligation to meet both payroll obligations and its contractual obligation to the City to cover 50% of utility costs. In addition, staff considered Council's previous direction to increase the organizational capacity of Fil-Am SODC through Board training, marketing and outreach.

*It is important to note that in the event that the entire \$58,354 were to be made available for salary expenditures, there would be no other source of City funds to underwrite activities such as Board training, community outreach and marketing. In addition, Fil-Am SODC has struggled to meet its obligation to cover utility costs when its portion was only 25%. Under the existing agreement, that obligation increased to 50% of the total utility costs as of July 1, 2005. Consequently, the ability of Fil-Am SODC to fulfill their contractual obligation to pay 50% of the utility costs for the facility if the general fund dollars (\$58,354) are used to support salaries is questionable. The Department of Parks, Recreation and Neighborhood Services does not have the funds in its budget to assume Fil-Am SODC's 50% share of utility costs. Consequently, an alternative source of funding must be identified to ensure costs are covered. The \$58,354 in general funds awarded to Fil-Am SODC for support of site operations is considered to be an appropriate source of funds for this use. For this reason, staff is recommending that in the event that no gap in payroll exists in a particular month, that the next priority for the use of the \$58,354 general fund dollars given to covering Fil-Am SODC's 50% share of utility costs so that the center can remain open and available to the public.*

### ***Outstanding Documentation – City Auditor’s Office***

Enclosed as Attachment B is a letter from the City Auditor’s Office sent to Fil-Am SODC on October 27, 2005 regarding materials and information that have been requested from Fil-Am SODC since July but that have still not been received. The letter also requests additional items required to answer the questions asked at the October meeting by Making Government Work Better Committee members. Please note that this list only includes items the City Auditor’s Office has requested of Fil-Am SODC.

### ***Outstanding Documentation – Department of Parks, Recreation and Neighborhood Services***

The Department of Parks, Recreation and Neighborhood Services began meeting with representatives from Fil-Am SODC in July. At that time, staff reviewed the direction from the Council committee and requested that a variety of materials related to operations at JTS Northside be provided by Fil-Am SODC. Since that time, multiple meetings<sup>3</sup> have taken place in which sample forms and other resource materials have been provided to Fil-Am to assist them in their efforts; however, at this point, there is still requested information outstanding. In addition to the HNVF information noted earlier, the following items have not yet been received:

1. Program plan for facility operations at Northside;
2. Revised budget for FY2005-06;
3. Employee Roster indicating source of funding and salary schedule;
4. Consultant agreements;
5. Schedule of Full Board meetings for 2005-06;
6. Facility Rental Policies and Procedures

### ***Inquiry from the Grand Jury***

On November 1, 2005, the Department of Parks, Recreation and Neighborhood Services received an email from members of the 2005-06 Civil Grand Jury regarding the recent audit of JTS Northside Community Center. In particular, the Grand Jury has expressed interest in meeting with the Director to discuss actions that are planned to track and monitor the activities of Fil-Am SODC. A meeting with three representatives of the Civil Grand Jury has been scheduled for Monday, November 14.

## **CONCLUSION**

Per the Committee's direction, staff has prepared a draft agreement that would provide a mechanism to allocate previously-awarded general fund dollars to Fil-AM SODC in support of certain operational expenses at the JTS Northside Community Center. This agreement provides

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<sup>3</sup> Staff has met with Fil-Am representatives on a monthly basis since the MGWB Committee approved the 18-month workplan (July 29, August 18, October 7, October 25. The September meeting was cancelled due to the illness of the mother of Fil-Am SODC’s Executive Director.)

for a grant in an amount not to exceed \$58,354 for the remainder of the fiscal year provided that there is a revenue shortfall that impacts the ability of Fil-Am SODC to meet payroll expenses.

In drafting this agreement, staff has attempted to address not only the Committee's concerns regarding payroll expenses but also the contractual obligation for utility costs. In addition, the proposed agreement seeks to advance previous direction from the Committee regarding the need for board training, marketing and improved outreach efforts.

While staff is committed to a successful outcome, Fil-Am SODC's continued financial difficulties and failure to submit documentation is problematic. As noted in the October staff report, the level of service provided at JTS Northside is significantly lower than at other City facilities. At the time of the City Auditor's original report, the vacancy rate of the facility was approximately 67%. A more recent review indicates that the vacancy rate is now approximately 80%.

While it is true that Fil-Am SODC has experienced financial difficulties, the level of support from the City's HNVF grant program has decreased only 12% over the past year. In comparing first quarter HNVF program participant data supplied by Fil-Am SODC, there has been a dramatic decrease in the units of service provided in the two core programs funded through the HNVF grant program:

| <b>Core Service</b> | <b>1<sup>st</sup> qtr.<br/>04-05</b> | <b>1<sup>st</sup> qtr.<br/>05-06</b> | <b>% change</b> |
|---------------------|--------------------------------------|--------------------------------------|-----------------|
| Case Management     | 1726.5                               | 1127                                 | -35%            |
| Veteran Services    | 672                                  | 339                                  | -50%            |

Without additional analysis, it is difficult to determine the cause for this disparity. However, it does seem to suggest that funding for staffing is not the primary cause and that other factors such as outreach, marketing, and programming may be affecting the participation rate at the center.

The budget submitted by Fil-Am SODC for fiscal year 2005-06 includes a very aggressive fundraising campaign. As such, it is anticipated that Fil-Am SODC resources will be focused on fundraising activities rather than marketing and site programming for the immediate future. As a result, it is likely that service delivery will continue to be minimal and that residents of the JTS Northside neighborhood will be underserved. The Department of Parks, Recreation and Neighborhood Services believes that residents of the Northside neighborhood should enjoy the same opportunities as residents of other neighborhoods. As such, in the event that Fil-Am SODC is not able to make significant improvements in both their financial capacity *and service delivery* by the end of the 2005 calendar year, it is Department's recommendation that the City pursue alternative operation of the JTS Northside Community Center.

Two options to consider include: 1) Assignment of operational responsibility to the City with Fil-Am SODC and the City entering into an agreement to reserve specified time slots for use by

Fil-Am SODC at the facility<sup>4</sup> becoming a major tenant of the facility; or 2) Inclusion of JTS Northside Community Center in the upcoming Facility Re-use Strategy. Of these two options, staff strongly recommends Option 2 as the City continues to experience its own financial difficulties. The Facility Re-Use option would allow for a neighborhood-driven prioritization and input process to help determine the most appropriate programming for JTS Northside Community Center. Moreover, because the Facility Re-Use Strategy is intended to foster collaboration, this option could also potentially result in an opportunity for Fil-Am SODC to downsize and partner with another organization in order to remain at the site. In this way, some of the financial pressure of the organization could be diminished enabling the organization to refocus its effort on providing quality programming.

However the Committee chooses to proceed, staff remains committed to working collaboratively with Fil-Am SODC and the residents of the Northside neighborhood to ensure that JTS Northside Center is available to the community and provides the highest quality of programming possible.

SARA L. HENSLEY  
Director of Parks, Recreation and  
Neighborhood Services

Cc: Attachment A – Proposed Agreement  
Attachment B – Letter to Fil-Am SODC dated 10/27/05

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<sup>4</sup> PRNS will bring forward for City Council approval the agreement if the intent is to allow Fil-Am to use the Center at rates less than the fees that would otherwise apply under the City's Fees and Charges Resolution

AGREEMENT BETWEEN THE CITY OF SAN JOSÉ AND FILIPINO-AMERICAN  
SENIOR OPPORTUNITIES DEVELOPMENT COUNCIL, INC.  
(SAN JOSE GENERAL FUND)

THIS AGREEMENT is made and entered into this \_\_\_ day of \_\_\_\_\_, 2005, by and between the CITY OF SAN JOSÉ, a municipal corporation of the State of California (hereinafter referred to as "City"), and FILIPINO-AMERICAN SENIOR OPPORTUNITIES DEVELOPMENT COUNCIL, INC. , a California non-profit corporation, (hereinafter referred to as "Grantee").

THE PARTIES HEREBY AGREE AS FOLLOWS:

**SECTION 1. RECITALS:**

The purpose for which this Agreement is made and all pertinent recitals are listed on **EXHIBIT A**, entitled "RECITALS," which is attached hereto and incorporated herein.

**SECTION 2. TERM OF AGREEMENT:**

The term of this Agreement shall commence on \_\_\_\_\_ and shall expire on June 30, 2006, unless sooner terminated in accordance with the terms of this Agreement. Regardless of the date of execution of this Agreement, this Agreement is effective as of \_\_\_\_\_. This Agreement shall automatically expire upon termination or expiration of the Northside Use Agreement, as further defined in Exhibit A.

**SECTION 3. PAYMENTS TO GRANTEE:**

City agrees to pay Grantee an amount to partially offset reasonable costs incurred by Grantee for salaries of Grantee's employees for time spent by such employees in operating the Northside Community Center or for other expenses specified in Exhibit B to the extent funds are available, a sum of money not to exceed FIFTY EIGHT THOUSAND THREE HUNDRED AND FIFTY FOUR DOLLARS (\$58,354.00), subject to the terms and conditions set forth in **EXHIBIT B** entitled, "PAYMENTS TO GRANTEE," which is attached hereto and incorporated herein. Every three (3) months after execution of this Agreement, City and Grantee shall review the payments made hereunder to determine if an adjustment is needed in the proportion of the Grant Award allocated to the categories identified on Exhibit B. If it is mutually agreed by the parties that an adjustment is needed, the parties shall enter into a written amendment to this Agreement. If requested, Director shall report to the Making Government Work Better Committee, the results of this quarterly review.

**SECTION 4. FINANCIAL REPORT:**

On a monthly basis, Grantee shall provide to the City the information as specified in detail on **EXHIBIT C** which is attached hereto and incorporated herein.

**SECTION 5. GENERAL GRANT CONDITIONS:**

Grantee shall comply with all terms, conditions, and requirements of the Use Agreement as it may hereafter be amended by City. This Agreement is further subject to Grantee's compliance with the requirements set forth in **EXHIBIT D** entitled, "GENERAL GRANT CONDITIONS," which is attached hereto and incorporated herein.

**SECTION 6. INSURANCE AND BONDING:**

Grantee shall, prior to implementation of the Project, certify insurability subject to City approval as specified in **EXHIBIT E** entitled, "INSURANCE REQUIREMENTS," which is attached hereto and incorporated herein. City's Risk Manager may, at his or her discretion, waive any and all insurance requirements in **EXHIBIT E**.

**SECTION 7. PROGRAM COORDINATION:**

- A. CITY: The Director of Parks, Recreation and Neighborhood Services (hereinafter "DIRECTOR"), or his/her designee, shall be the City official responsible for this grant and shall render overall supervision of the progress and performance of this Agreement by City. All services agreed to be performed by City shall be under the overall direction of the DIRECTOR.
- B. GRANTEE: Grantee shall designate a project director who shall have overall responsibility for the progress and execution of this Agreement. Additionally, Grantee shall immediately notify City should circumstances or conditions subsequent to the execution of this Agreement require a substitute project director. Project director and Grantee staff will fully cooperate with the DIRECTOR relating to the project, areas of concern, and the impact of project on residents of City.
- C. NOTICES: All notices or other correspondence required or contemplated by this Agreement shall be sent to City at the following address:

Grants Program/Administrative Services  
Parks, Recreation and Neighborhood Services  
City of San José  
200 East Santa Clara Street

San José, CA 95113-1905

All notices or other correspondence required or contemplated by this Agreement shall be sent to Grantee at address appearing below the Grantee signature line of this Agreement.

**SECTION 8. OBLIGATION OF GRANTEE:**

Grantee agrees to the following:

**A. Organization of Grantee:**

1. Prior to execution of this agreement, Grantee shall provide City with information regarding the corporate status of its organization and evidence of that Grantee is in good standing .

**B. Fiscal Responsibilities of Grantee:**

Grantee shall:

1. Appoint and submit to City the name of a fiscal contact who shall be responsible for the financial and accounting activities of the Grantee, including the receipt and disbursement of Grantee funds.
2. Establish and maintain a system of accounts that shall conform to generally accepted principles of accounting for budgeted funds. Such system of accounts shall be subject to review and approval of City.
3. Document all costs by maintaining complete and accurate records of all financial transactions, including but not limited to, contracts, invoices, time cards, cash receipts, vouchers, canceled checks, bank statements and/or other official documentation, evidencing in proper detail the nature and propriety of all charges.
4. Submit monthly financial reports at the end of each month as outlined in **EXHIBIT B**, in such form as City shall require.
5. Certify insurability subject to City approval as outlined in **EXHIBIT E**.
6. Submit to City at such times and in such forms as City may require, such statements, records, reports, data, and information pertaining to matters covered by this Agreement.

**C. Records, Reports and Audits of Grantee:**

1. **Establishment and Maintenance of Records.** Grantee shall maintain records, including but not limited to, books, financial records, supporting documents, statistical records, personnel, property, and all other pertinent records sufficient to reflect properly:

- a. All direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Agreement; and
  - b. All other matters covered by this Agreement. Such records shall be maintained in accordance with requirements now or hereafter prescribed by the City.
2. Preservation of Records. Grantee shall preserve and make available its records:
- a. for the period of four (4) years from the date of final payment to Grantee under this Agreement; or
  - b. for such longer period, if any, as may be required by applicable law; or
  - c. if this Agreement is completely or partially terminated, for a period of four (4) years from the date of any resulting final settlement.
3. Examination of Records and Facilities. At any time during normal business hours, and as often as may be deemed necessary, Grantee agrees that City, and/or any of its respective authorized representatives shall have access to and the right to examine any of its plants, offices and/or facilities engaged in performance of this Agreement and all its records with respect to all matters covered by this Agreement. Grantee also agrees that the City, or any of its authorized representatives shall have the right to audit, examine, and make excerpts or transcripts of and from such records, and to make audits of all contracts and subcontracts, invoices, payrolls, records of personnel, conditions of employment, materials, and all other data relating to matters covered by this Agreement. City may examine records or facilities pursuant to this Section throughout the term of this Agreement and
- a. for a period of four (4) years after final payment under this Agreement; or,
  - b. for such longer period as may be required by applicable law; or
  - c. if this Agreement is completely or partially terminated, for a period of four (4) years from the date of any resulting settlement.
4. Audits:
- a. Independent Audits.
    - (1) Grantee shall submit an agency audit that conforms to generally accepted auditing standards and that includes the following components:
      - A. Balance Sheet or Statement of Financial Position;
      - B. Statement of Support, Revenue and Expenses and Changes in Fund Balances or Statement of Activities;
      - C. Statement of Functional Expenses;

- D. Independent Auditor's Report. If the audit includes a Management Letter, this must also be submitted to the City.
- E. Schedule of Government Financial Assistance which identifies the gross amounts of grants obtained from the City and other governmental sources and shows the amount received and disbursed under each grant during the audited fiscal year; and
- F. Report on Compliance and on Internal Control over Financial Reporting based on an Audit of Financial Statements performed in Accordance with Government Auditing Standards indicating that a review of internal controls was performed and identifying material weaknesses and/or reportable conditions, if any.

(2) If Grantee expends \$500,000 or more in a year in Federal awards, Grantee shall submit an audit report that conforms to the requirements of OMB Circular A-133 for Non-Profit Institutions.

(3) The Grantee's contract with its independent auditor shall require that the audit ascertains and determines that no services provided by the Grantee under this Agreement are duplicative of services provided to another agency from which Grantee receives funding and are not being reimbursed from funding received from another agency.

(4) Grantee shall also submit a written agency management response to the findings of the Internal Control Report, if required.

(5) Grantee shall obtain three (3) bids for an outside auditor to conduct the agency audit. The agreement with an outside auditor can span a term of multiple years but it is highly recommended that the Grantee rotate independent auditors every three years.

(6) Grantee shall enter into an agreement with an outside auditor no later than sixty (60) days before the end of each Fiscal Year calling for a financial and compliance audit of Grantee's Fiscal Years that are covered by this Agreement. The written agreement may be in the form of an engagement letter prepared by the auditor and approved by Grantee.

(7) An audit report must be completed and sent to the City's Parks, Recreation and Neighborhood Services Department, Administrative Services Division within one hundred and fifty (150) days of the end of each of the Grantee's Fiscal Years covered by this Agreement. If this Agreement expires or is terminated on a date that occurs after the period covered by the foregoing audit, Grantee shall deliver an audit report within one hundred and fifty (150) days after the expiration or termination of this Agreement auditing the period not covered by the prior audit. The Grantee's Fiscal Year ends on June 30.

(8) Should Grantee not enter into an agreement with an outside auditor or should an audit not be done on a timely basis, the City, at its discretion, may enter into an Agreement with an independent auditor to do the audit at Grantee's expense.

(9) The Grantee shall submit to the City copies of management letters the auditor prepares for the Grantee as part of the audit engagement.

(10) All audits must be performed by Certified Public Accountants currently certified and licensed to practice in the State of California. Grantee must have Auditor's proof of current licensing on file in Grantee's office. Grantee must submit to the City's Parks, Recreation and Neighborhood Services Department, Administrative Services Division a copy of Auditor's certification to practice in California with the audit.

- b. City Audits. The City may perform an independent audit. Such audits may cover programmatic as well as fiscal matters. Grantee will be afforded an opportunity to respond to any audit findings, and have the responses included in the final audit report.
- c. Disallowed Costs. Grantee is liable for repayment of disallowed costs as determined by City. Disallowed costs may be identified through audits, monitoring or other sources. Grantee shall be afforded the opportunity to respond to any adverse findings that may lead to disallowed costs. DIRECTOR shall make the final determination of disallowed costs.

D. Contracting and Assignability Requirements:

- 1. Duties under this Agreement shall not be delegated or assigned by Grantee nor shall any of the work or services to be performed hereunder be subcontracted to third parties except to the extent and in the manner approved by the Director.

E. Independent Contractor:

1. It is understood and agreed by and between the parties hereto that Grantee, its employees, agents, contractors, and sub-contractors in the performance of this Agreement, shall act as and be an independent contractor and not an agent or employee of City. It is further understood and agreed by and between the parties hereto that, as an independent contractor, Grantee shall obtain no rights to retirement benefits or other benefits which accrue to City employees, and expressly waives any claims it may have to such rights.
2. Certain Policy Matters. It is understood and agreed by and between the parties hereto that Grantee in the performance of this Agreement, shall not act, nor is it at any time authorized to act, as the agent or representative of City in any matter involving or affecting local, state or federal policy. Grantee agrees that it will not in any matter hold itself out as the agent or representative of City or act in such a fashion as would give the impression to a reasonable person that Grantee is acting in such a capacity in such matters.

F. Compliance with Laws:

1. Grantee shall become familiar and comply and cause all its subcontractors and employees, if any, to become familiar and comply with all applicable federal, state and local laws, ordinances, codes, regulations and decrees, including but not limited to, those rules and regulations detailed in **EXHIBIT D**, which is attached hereto and incorporated herein. Failure of Grantee to, in any manner, observe and adhere to the law and regulation, as described herein and as amended, shall in no way relieve Grantee of its responsibility to adhere to such law and regulation, and Grantee herein acknowledges this responsibility.
2. All activities of Grantee under this Agreement shall benefit San José residents. Grantee shall be responsible for verifying, in a manner satisfactory to City, that project and activities meet the above requirements.

G. Grant Recipient Training:

1. Grantee shall attend City training session(s) on complying with the requirements of this Agreement as required by the City.

H. Other Funding:

1. Grantee shall notify City in writing when it has received funding for this project from other sources, or when funding for this project from other sources has been augmented or decreased.

**SECTION 9. MONITORING AND EVALUATION:**

- A. City may monitor Grantee's performance under the Use Agreement and this Agreement. Grantee shall provide on a monthly basis as provided in Exhibit B, the Financial Reports described on Exhibit B and shall otherwise cooperate with City in furnishing all data, statements, records, information, and reports necessary for City to monitor, review and evaluate Grantee's performance. City shall have the right to request the services of an outside agent to assist in any such evaluation.
- B. At any time during normal business hours, and as often as City deems necessary, Grantee agrees that City or its authorized representatives shall have access to and the right to examine any of its plants, offices and/or facilities engaged in performance of this Agreement and all its records with respect to all matters covered by this Agreement.

**SECTION 10. AMENDMENTS:**

Unless otherwise authorized by this Agreement, amendments to this Agreement shall be requested in writing by the party desiring such revision, and any such adjustment to this agreement shall be determined and effective only upon the mutual agreement in writing of the parties hereto. Notwithstanding anything contained in this Agreement to the contrary, DIRECTOR shall have the authority on behalf of City to amend this Agreement provided such amendment does not result in an increase or decrease in the dollar amount set forth in SECTION 3 herein.

**SECTION 11. INDEMNIFICATION AND HOLD HARMLESS:**

Grantee shall indemnify and hold harmless City, its officers, employees, elected officials, and agents against all suits, actions, claims, causes of action, costs, demands, judgments, damages, liens and/or liabilities arising from:

- A. Any noncompliance by Grantee with applicable federal, state and local laws, ordinances, codes, regulations and decrees as further set forth in Subsection F of Section 8;
- B. Any torts committed by Grantee in performing, or failing to perform, any of the work or services embraced by this Agreement;
- C. Grantee's performance under the Use Agreement or this Agreement, including Grantee's failure to comply with or carry out any of the provisions of this Agreement.

This section shall survive termination of this Agreement.

**SECTION 12. WHEN RIGHTS AND REMEDIES WAIVED:**

In no event shall any payment by City or any acceptance of payment by Grantee hereunder constitute or be construed to be a waiver by City or Grantee of any breach of covenants or conditions of this Agreement or any default which may then exist on the part of City or Grantee, and the making of any such payment or the acceptance of any such payment while any such breach or default exists, shall in no way impair or prejudice any right or remedy available to City or Grantee with respect to such breach or default.

**SECTION 13. SUSPENSION OR TERMINATION OF PAYMENT AND WORK OR EXPENDITURES:**

DIRECTOR may, without prior notice to Grantee, at any time in his or her absolute discretion, elect to suspend or terminate payment to Grantee, in whole or in part, terminate work or expenditures by Grantee, under this Agreement, or not to make any particular payment under this Agreement in the event of any of the following occurrences:

- A. If Grantee (with or without knowledge) has made any material misrepresentation of any nature with respect to any information or data furnished to City in connection with the project;
- B. If there is pending litigation with respect to the performance by Grantee of, any of its duties or obligations under this Agreement, which may jeopardize or adversely affect the undertaking of or the carrying out of, the project;
- C. If Grantee, without having obtained City approval, has taken any action pertaining to the project, which requires City approval;
- D. If Grantee is in default under any provisions of this Agreement or the Use Agreement;
- E. If Grantee makes improper use of grant funds;
- F. If Grantee fails to comply with any of the terms and conditions of this Agreement in such a manner as to constitute material breach thereof;
- G. If Grantee submits to City any report that is incorrect or incomplete in any respect.

**SECTION 14. TERMINATION OF AGREEMENT:**

- A. Director shall have the right to terminate this Agreement:

1. without cause, by giving not less than thirty (30) days' written notice of termination;
  2. for the reasons set forth in Subsections A through G of Section 13, immediately upon written notice.
- B. Unearned payments under this Agreement may be suspended or terminated by DIRECTOR upon refusal by Grantee to accept any additional conditions that may be imposed by City at any time.
- C. Upon suspension or termination, Grantee shall:
1. Immediately turn over to City any and all copies of studies, reports and other data, whether or not completed, prepared by Grantee or its subcontractors, if any, in connection with this Agreement. Such materials shall become property of City. Grantee, however, shall not be liable for City's use of incomplete materials nor for City's use of complete documents if used for other than the services contemplated by this Agreement.
  2. Promptly pay to City any unexpended grant monies on hand and any unauthorized expenditures of the grant monies.
  3. Return all personal property to which City has title, to a place and in a manner directed by City. If City directs the return of said personal property at the end of the term of this Agreement, or if the City terminates this Agreement prior to the expiration of the term, City shall pay the cost for such return of all personal property to which City has title, to the place and in the manner directed by the City. If Grantee terminates this Agreement prior to the expiration of the term, Grantee shall pay the costs for such return of all personal property to which City has title, to the place and in the manner directed by City. The foregoing provisions regarding disposition of property notwithstanding, the City may, by written notification to Grantee, authorize Grantee to retain such personal property, in which event title to such personal property shall vest in Grantee unless City otherwise directs.

**SECTION 15. INTEGRATED DOCUMENT:**

This Agreement embodies the entire Agreement between City and Grantee. No verbal agreements or conversations with any officer, agent or employee of City prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial and unauthorized information and in no way binding upon City.

**SECTION 16. SEVERABILITY OF PROVISIONS:**

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby, if such remainder would then continue to conform to the terms and requirements of applicable law.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first hereinabove set forth.

APPROVED AS TO FORM:

"City"  
CITY OF SAN JOSÉ, a municipal corporation

By: \_\_\_\_\_  
Senior Deputy City Attorney

By: \_\_\_\_\_  
Director  
Parks, Recreation and Neighborhood  
Services

"Grantee"  
FILIPINO-AMERICAN SENIOR  
OPPORTUNITIES DEVELOPMENT  
COUNCIL, INC. a California non-profit  
corporation

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT A**

**RECITALS**

WHEREAS, Grantee operates the Northside Community Center through an Agreement with the City entitled “**AGREEMENT BETWEEN CITY OF SAN JOSE AND FILIPINO-AMERICAN SENIOR OPPORTUNITIES DEVELOPMENT COUNCIL, INC. FOR USE OF NORTHSIDE COMMUNITY CENTER FACILITIES**” as it may be amended, revised or superceded from time to time (“Use Agreement”) for the purpose of providing support services to youth, seniors or other at-risk populations in the community at the Northside Community Center;

WHEREAS, City desires to make available an amount not to exceed \$58,354 in City's funds to provide partial support of certain salary expenses incurred by Grantee in operating the Northside Community Center and for other specified expenditures, as more particularly described as the Project in **EXHIBIT B**, Payments to Grantee, during the time period as set forth in Section 2, Term of Agreement, herein.

**EXHIBIT B**  
**PAYMENTS TO GRANTEE**

Basic Monthly Payroll Expenditure Comparison

- 1.01 Grant Award. The Grant Award shall be comprised of an amount not to exceed FIFTY EIGHT THOUSAND THREE HUNDRED AND FIFTY FOUR DOLLARS (\$58,354.00) for the period from the date identified in Section 2, through June 30, 2006.
- 1.02 Payments to Grantee. City agrees to provide partial support to Grantee for the payroll expenditures incurred by Grantee in direct operational costs for the Northside Center, a sum of money not to exceed the amount of the Grant Award set forth above. Such sum shall be paid by City to Grantee to partially compensate Grantee for the cost of hours worked by employees of Grantee upon eligible activities as described below.

Payment to Grantee will be made on a monthly basis, subject to Grantee's satisfactory performance under this Agreement, in an amount not to exceed \$4000 per month (an amount not to exceed \$32,000 in the aggregate through the term of this Agreement). Payment by the City shall also be contingent upon Grantee's delivery to City of a Financial Report, in form and substance acceptable to City, and upon delivery of copies of cancelled checks providing evidence that Grantee has paid the applicable state and federal payroll taxes in a timely manner for all salary expenditures paid by Grantee in the prior month.

1.03 Calculation of the Monthly Payment to Grantee. The actual amount paid to Grantee each month shall be determined as follows:

City shall review the Financial Report delivered and certified as accurate by Grantee for the prior month. If the Financial Report shows that Grantee's cash receipts for the prior month were less than the Basic Monthly Payroll Expenditure (as defined below), City shall pay to Grantee the lesser of (i) the amount that the Basic Monthly Payroll

Expenditure exceeds the month's cash receipts or (ii) \$4000 which is the maximum monthly amount permitted under this Agreement. (Note: cash receipts counted for this purpose are receipts available for expenditure on payroll expenses.) If the \$4000 monthly maximum amount is insufficient to cover the difference between revenues and the Basic Monthly Payroll Expenditures for a month, Grantee may carry that amount over to future months and be applied toward the \$4000 monthly maximum if the full amount is not used in a subsequent month.

Basic Monthly Payroll Expenditures: The Basic Monthly Payroll Expenditure is \$18,218 per month. This amount approximates the average monthly payroll expenditures incurred by Grantee for time spent by Grantee's employees on activities necessary to the operation of the Northside Community Center, at the same staffing level as in effect during September 2005. The Basic Monthly Payroll Expenditure was calculated from documented payroll expenditures delivered by Grantee to the City for the first quarter of FY 2005-2006.

**Payments for Other, Non Payroll Costs.** To the extent that the Grant Award funds are available, City may directly apply a portion of the Grant Award, on a monthly basis, to reimburse City for Grantee's share of the monthly utility costs for the Northside Community Center. The parties agree that Twenty Two Thousand Dollars (\$22,000) of the Grant Award shall be allocated toward payment of such utility costs.

Up to \$4354, in the aggregate, shall be allocated to reimburse Grantee for the following reasonable expenditures, provided they are incurred during the first three months of the term of this Agreement<sup>1</sup> (i) tuition costs for City-approved training on financial standards and corporate governance for Board Members and executive staff, (ii) the direct costs to prepare and distribute community surveys to determine the

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<sup>1</sup> Funds for these purposes would only be available only for costs incurred during the first three months of the Agreement due to the need for Fil-Am SODC to quickly address each of these areas.

community needs for the City’s Northside neighborhood area and the Japantown Redevelopment Area, and (iii) the direct costs to develop and distribute marketing programs detailing the available programs, services, events, rental opportunities and hours of service at the Northside Community Center. No payment shall be made hereunder for costs covered under an agreement with another public agency, nor for costs covered by another agreement with the City, including without limitation, the HNVF grant agreement.

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The installments are outlined in the Payment and Report schedule below:

| Installment | Report(s) Due                       | Due Date                                     | Payment  |
|-------------|-------------------------------------|--|--|
| 1           | First Month’s Financial Report      |  | First installment of grant award, for payroll expenditures if any, will be processed 20 days after City’s acceptance of Grantee’s first monthly Financial Report covering the full calendar month immediately preceding execution of this Agreement. |
| 2           | Subsequent Monthly Financial Report | 10 days after the end of each calendar month | Each subsequent monthly installment of the grant award for payroll expenditures, if any, will be processed 20 days after City’s acceptance   |

|  |  |  |  |
|--|--|--|--|
|  |  |  | of Grantee's monthly<br>Financial Report covering the<br>previous calendar month |
|--|--|--|--|

If any payment is made hereunder to Grantee for allowable Non Payroll costs, as set forth above, payment shall be paid within 30 days of submission of invoice to City, accompanied by supporting documentation, all in form and substance acceptable to City.

Grantee shall maintain documents including but not limited to paid invoices which may be reviewed by the City to ensure that the expenditures reported on the financial reports were incurred and paid for properly under this Agreement. In making such determination, City may rely upon the certification by Grantee that the items appearing on said statement and supporting data are eligible items for payment under this program and Agreement, and such determination by City shall in no way constitute a waiver by City of its right to recover from Grantee the amount of any money paid to Grantee on any item which is not eligible for payment under the program and this Agreement.

Grantee shall follow the principals and provisions of the Policy and Procedures Manual for HNMF Grants as though set forth herein, to the extent that they are not inconsistent with the terms of this Agreement, except that the provisions of the HNMF Manual related to tobacco (Sections 1.10, 1.11, and 1.12) shall not apply to this Agreement. Furthermore, the provisions of this Agreement regarding the timing and calculation of payment of the grant funds shall supersede the provisions of Section 3.00 of the HNMF Manual regarding the timing of payment and calculation of HNMF funds. A copy of the HNMF Manual is attached for convenience.

RD:BKJ  
11/8/05

**EXHIBIT C**

**FINANCIAL REPORT**

The Financial Report to be delivered by Grantee to City on a monthly basis is a statement showing the total cash receipts received by Grantee during the prior calendar month, certified as accurate by two authorized representatives of Grantee. The statement should also identify all sources of the funds. If Grantee asserts that some of the months cash receipts should not be counted for purposes of this Agreement, because those funds are restricted in a manner that prevent Grantee from using them for salary expenditures, Grantee shall provide a summary of such restrictions and any supporting documentation, all in form and substance acceptable to Director

## **EXHIBIT D**

### **GENERAL GRANT CONDITIONS**

1.01 All salaries paid with the grant funds hereunder shall be for services for needed support services to youth, seniors or other at-risk populations in the community.

1.02 Americans with Disabilities Act of 1990. Grantee shall comply with the applicable provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disability in employment and in public accommodations and commercial facilities and defines the range of conditions that qualify as disabilities, and the reasonable accommodations that must be made to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities.

1.03 Political Reform Act. Grantee shall comply with the applicable provisions of the Political Reform Act of 1974, as amended, relating to conflicts of interest (codified in California Government Code Section 87000, et seq.) and with the City's Code of Ethics, set forth in City Council policy 0-15. Grantee will promptly advise City of the facts and circumstances concerning any disclosure made to it or any information obtained by it relating to conflicts of interest.

1.04 Equal Employment Opportunity. In providing the work and services herein specified, Grantee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, actual or perceived gender identity, or national origin. Grantee shall take action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, actual or perceived gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Grantee shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal

Government or the City setting forth the provisions of this non-discrimination clause. Grantee shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, actual or perceived gender identity, or national origin. Grantee shall incorporate the foregoing requirements of this paragraph 1.07 in all of its contracts for program work, and will require all of its contractors for such work to incorporate such requirements in all subcontracts for program work.

1.05 Conflict of Interest. No officer, employee, or agent of City who exercises any functions or responsibilities with respect to this City grant or to the services and work to be performed by Grantee pursuant to this Agreement, during such officer's, employee's, or agent's tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

Grantee shall incorporate or cause to be incorporated in every contract required to be in writing a provision prohibiting such interest pursuant to the purposes of this section.

1.06 Copyrights. If this Agreement results in a book or other copyrightable material, the author is free to copyright the work, but City reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, all copyrighted material and all material that can be copyrighted.

1.07 Patents. Any discovery or invention arising out of or developed in the course of work aided by this Agreement shall be promptly and fully reported to City for determination as to whether patent protection on such invention or discovery will be sought and how the rights in the invention or discovery, including the rights under any patent issued thereon, shall be disposed of and administered, in order to protect the public interest.

1.08 Political Activity.

- a. Partisan Activity Prohibited. No funds provided in this Agreement shall be used for any partisan political activity or to further the election or defeat of any candidate for public office; nor shall they be used to provide services, or for the employment or assignment of personnel, in a manner supporting or resulting in the identification of programs conducted pursuant to this Agreement, with the following: (1) any partisan or non-partisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election

for public or party office; (2) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or (3) any voter registration activity. Grantee shall comply with City's Lobbying Ordinance, set forth in Chapter 12.12 of the San Jose Municipal Code.

b. Lobbying. Grantee shall comply with City's Lobbying Ordinance, set forth in Chapter 12.12 of the San Jose Municipal Code.

1.09 Guidelines On Church-Related Activities.

GRANTEE shall not expend any portion of the Grant Award for religious purposes and the Scope of Services funded by the Grant Award must not in any way convey a religious message. Any portion of the Grant Award used for a religious purpose or to convey a religious theme will be deemed a disallowed cost pursuant to Section 6 of this Agreement.

1.10 Each Grantee's employees and volunteers who directly supervise minors in the performance of the Grant Services shall undergo a criminal background check as provided in the California Penal Code Section 11105.3.

1.11 If Grantee conducts Grant Services on school campuses, Grantee shall, prior to commencing its services on one (1) or more school campuses, have first obtained appropriate written permission from an authorized school district representative to do so. Grantee shall promptly inform City Representative in writing that it has obtained the school district's permission. The term of the operational agreement with the school district shall be for the duration of Grantee's services on the school district's campuses. Grantee shall provide City Representative with a copy of Grantee's operational agreement with each school district. Grantee shall notify City Representative in the event that a school district terminates, amends or suspends the operational agreement with Grantee. Grantee's failure to have and to maintain an operational agreement with each school district in which Grantee conducts its Grant Services shall, in addition to all other remedies available to City, constitute grounds for City to withhold payment of the Grant Award.

RD:BKJ  
11/8/05

**EXHIBIT E**

**2005-2006 INSURANCE REQUIREMENTS**

Grantee, at Grantee's sole cost and expense, and for the full term of this grant or any renewal thereof, shall obtain and maintain the insurance required under the Northside Use Agreement, as it may be amended or revised from time to time.



# Memorandum

**TO:** Making Government Work  
Better Committee

**FROM:** Gerald A. Silva,  
City Auditor

**SUBJECT:** *ESTIMATE OF WHAT PORTION OF THE  
\$58,000 IN GENERAL FUND SUPPORT IS  
NEEDED TO COVER FIL-AM SODC'S  
CURRENT PAYROLL AND PAYROLL TAX  
EXPENSES*

**DATE:** November 3, 2005

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## Background

The Making Government Work Better Committee (MGWB) requested that the City Auditor's Office work with PRNS and the City's Attorney's Office to estimate what portion of the \$58,000 of General Fund support is needed to cover Fil-Am SODC's current payroll and payroll tax expenses. In conducting this work, we met with PRNS and the Attorney's Office to review Fil-Am SODC's first quarter expenses and revenues. We conducted this analysis in accordance with Government Auditing Standards. Overall, we found that Fil-Am SODC's current revenue should be sufficient to cover all payroll expenses.

## Analysis

In order to perform this analysis, we had to make the following assumptions:

- The City of San Jose's General Fund award to Fil-Am SODC of \$58,000 was not used to estimate the revenues.
- Total Fil-Am SODC salary expenses per pay period would remain unchanged with the reduced salary levels incurred during the end of the first quarter.
- Total expenses incurred during the first quarter of 2005-06 will remain unchanged for the remainder of 2005-06.
- Fil-Am SODC will sign the HNVF agreement and receive reimbursement for first quarter expenses (on average \$43,300) during the second quarter; and
- Fil-Am SODC will fundraise on average \$32,569 per quarter.

Given these assumptions, we estimate that Fil-Am SODC's total revenues will average \$32,630 per month. Conversely, salary expenses for a two pay period month will average \$18,218. Other expenses per month will average \$19,396. Therefore, if salary is made the first priority expense, Fil-Am SODC's current revenue should be sufficient to cover all payroll expenses. However, Fil-Am SODC may not be able to cover all of its non-payroll expenses as shown in the following table.

|                                       | Auditor's Estimate |
|---------------------------------------|--------------------|
| Salary For a 2 Pay Period Month       | \$ (18,218)        |
| Remaining Expenses for 1 Month        | \$ (19,396)        |
| Total Expenses                        | \$ (37,614)        |
| Revenue for 1 Month                   | \$ 32,630          |
| Residual Monthly Expenses Not Covered | \$ (4,984)         |

We should note that any revenues in addition to what we have projected will reduce the amount of residual Fil-Am SODC expenses not covered. Likewise, any additional expenses beyond the \$37,614 in our estimate will increase the residual expenses not covered. Furthermore, if Fil-Am SODC fails to sign its HNMF agreement with the City of San Jose, it will only have sufficient cash flow to cover its payroll expenses.

Lastly, if Fil-Am SODC is successful in raising revenues to match or exceed our projected expenses, the \$58,000 General Fund award will be available to meet other critical needs of the organization, such as board training, market surveys, and utilities.

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Gerald A. Silva  
City Auditor

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