



## Memorandum

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**TO:** Public Safety, Finance, and Strategic  
Support Committee

**FROM:** Sharon Erickson,  
City Auditor

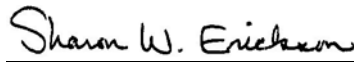
**SUBJECT:** Review of 101 San Fernando  
Apartment Project

**DATE:** April 4, 2008

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Please accept the attached report, *Review of the 101 San Fernando Disposition and Development Agreement*, summarizing audit work completed in 2007. Our audit found that the developer, Forest City Development, owed the City's Redevelopment Agency additional monies for ground rent, relocation assistance and audit costs. Based on our findings the developer agreed to make additional payments to the Redevelopment Agency. The issues identified in this audit were discussed at the August 9, 2007 meeting of the Redevelopment Agency Board.

Respectfully submitted,



Sharon W. Erickson  
City Auditor

0665M-b  
SE:bh

# *Memorandum*

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**TO:** Harry Mavrogenes,  
Executive Director, Redevelopment  
Agency

**FROM:** Steve Hendrickson,  
Interim Deputy City Auditor

**SUBJECT:** REVIEW OF THE 101 SAN FERNANDO  
DISPOSITION AND DEVELOPMENT  
AGREEMENT

**DATE:** April 1, 2008

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This memorandum summarizes the City Auditor's review of the City of San Jose's Disposition and Development Agreement (DDA) for the 101 San Fernando Apartment Project (Project).

Since completing construction of the Project in 2000, the Redevelopment Agency (RDA) and the F.C. Third Street Associates, L.P. (Forest City) were involved in several ongoing disputes in closing out the Project and in the calculation for the annual Ground Rent, including, among other things, Forest City's claim that \$418,000 should be reimbursed by the RDA for Forest City's off-site infrastructure improvements. At the request of the RDA, in February 2006, the Auditor's Office added to its Workplan an Audit of the Disposition and Development Agreement (DDA) and Ground Lease for the Project. The objective of the audit was to determine if the RDA was receiving the payments it was entitled to under the DDA and Ground Lease.

In accordance with the City Auditor's 2006-07 Audit Workplan, we reviewed the DDA and Ground Lease between the RDA and Forest City for the Project and provided our preliminary draft report to the RDA in March of 2007. In response to our work, Forest City paid the Agency \$33,255 and \$113,483 in Ground Rent<sup>1</sup> due for 2002, 2003 and 2004 respectfully. However, in addition to these ground rent payments, we also found that Forest City still owed the Agency approximately \$790,000 for relocation assistance, other ground rent due, and our auditing costs. Given this information, the RDA incorporated our preliminary findings into their negotiations with Forest City.

For several months, the RDA staff and Forest City worked towards resolving these disputes in a manner that would address both the RDA's and Forest City's claims. They mutually agreed that if the RDA refunded the Series 1998A Variable Rate Demand Multifamily Housing Revenue Bonds, the resulting cost savings from the refunding would be sufficient to resolve the outstanding disputes.

Under this agreement, the RDA issued 2007 Series A Refunding Bonds with a lower annual financing cost than the 1998 Bonds. As a result, Forest City's Net Project Cash Flow is

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<sup>1</sup> Ground rent due includes late charges and interest.

expected to increase which should enhance their ability to pay the required Ground Rent in the future.

As part of this arrangement, Forest City also agreed to pay to the RDA \$550,480 for outstanding Ground Rent, \$120,000 for the Issuers Fee<sup>2</sup> and an annual fee equal to one-eighth of one percent (0.125%) times the outstanding par amount of the 2007 Bonds (initially \$47,500). Lastly, Forest City also committed to paying \$219,174 of the remaining cost of issuing the 2007 Bonds. The table below summarizes the economic benefit derived to the RDA from this arrangement.

	Amount
2002 Ground Rent	\$ 33,255
2003 and 2004 Ground Rent Payment	\$ 113,483
Other Outstanding Ground Rent Payment	\$ 550,480
Issuer Fee	\$ 120,000
<i>Financial Advisor</i>	\$ (35,000)
<i>Bond Counsel</i>	\$ (37,500)
Total Benefit	\$ 744,718

The RDA successfully issued the 2007 Bonds on September 4, 2007 to the satisfaction of Forest City and the RDA.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our finding and conclusions based on our audit objectives.



Steven M. Hendrickson,  
Interim Deputy City Auditor

0665M  
SH:bh

<sup>2</sup> Of the \$120,000 paid by Forest City to the RDA for the Issuer Fee, the RDA will pay \$37,500 for Bond Counsel and \$35,000 for the Financial Advisor.