

## MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, SEPTEMBER 24, 2013

The Council of the City of San José convened in Regular Session at 9:30 a.m. in the Council Chambers at City Hall.

Present: Council Members - Campos, Chu, Herrera, Kalra, Khamis, Liccardo, Oliverio, Rocha; Reed.

Absent: Council Members - Constant, Nguyen. (Excused)

### STRATEGIC SUPPORT SERVICES

#### 3.2 Accept Labor Negotiations Update.

Documents Filed: Association of Building, Mechanical and Electrical Inspectors (A.B.M.E.I.) “Items of Negotiations: Interests and Issues”, dated September 20, 2013.

Employee Relations Executive Analyst Marco Mercado presented a brief report on negotiations with the Association of Building, Mechanical and Electrical Inspectors (A.B.M.E.I.)

### CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:34 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel pursuant to Government Code Section 54956.9(d)1) with respect to existing litigation: (1) Gonzales-Guerrero, Javier v. City, Brian Johst, Mark Stephens, et al; Names of Partie(s) Involved: Javier Gonzales-Guerrero, City of San José, Brian Johst, Mark Stephens, Gary Petrakovitz and Tim Stephens; Court: United States District Court, Northern District of California; Case No.: CV12-03541 PSG; Amount of Money or Other Relief Sought: Damages According to Proof; (2) Stand for San José, et al. v. City, et al.; Names of Parties Involved: Stand for San José and Eileen Hannan; City of San José; City Council of the City of San José; Redevelopment Agency of the City of San José; Diridon Development Authority; Court:

## CLOSED SESSION (Cont'd.)

Santa Clara County Superior Court; Case No.: 1-11-CV-214196; Amount of Money or Other Relief Sought: Injunctive Relief. (3) Stand for San José, et al. v. City, et al.; Names of Partie(s) Involved: Stand for San José; Eileen Hannan; Michelle Brenot; Robert Brown; and Robert Shields; City of San José; City Council of the City of San José; Successor Agency to the Redevelopment Agency of the City of San José; Successor Agency Oversight Board; Diridon Development Authority; Does 1 through 10, inclusive; Athletics Investment Group, LLC; Does 1 through 20, inclusive; Court: Superior Court of California, County of Santa Clara; Case No: 1-13-CV-250372; Amount of Money or Other Relief Sought: Writ of Mandamus and Complaint for Declaratory Relief and Injunction Relief and for Attorney's Fees; (B) to confer to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI. (2) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA. (3) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP. (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP. (5) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO. (6) International Association of Firefighters, Local 230 (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters. (7) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW. (8) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (9) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3. (10) San José Police Officers' Association (SJPOA); Nature of Negotiations: Salaries, Hours, Working Conditions, etc; Name of Existing Wages Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (11) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc. Web: <http://www.sanjoseca.gov/employeerelations/moa.asp>; Telephone for Employee Relations: 408-535-8150.

## **CLOSED SESSION (Cont'd.)**

By unanimous consent, Council recessed from the Closed Session at 10:55 a.m. and reconvened to Regular Session at 1:33 p.m. in the Council Chambers.

Present: Council Members - Campos, Chu, Herrera, Kalra (1:38 p.m.), Khamis, Liccardo, Oliverio (1:50 p.m.), Rocha; Reed.

Absent: Council Members - Constant, Nguyen. (Excused)

## **INVOCATION (DISTRICT 8)**

Tribal Councilwoman Gloria E. Arellano-Gomez of the Muwekma Ohlone Tribe provided the Invocation.

## **PLEDGE OF ALLEGIANCE**

Mayor Reed led the Pledge of Allegiance.

## **ORDERS OF THE DAY**

Upon motion by Council Member Herrera, seconded by Council Member Khamis and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with Items 1.3 and 1.4 to be heard together. (7-0-4. Absent: Constant, Kalra, Nguyen, Oliverio.)

## **CEREMONIAL ITEMS**

### **1.1 Presentation of a proclamation for Native American Day as we celebrate September 28, 2013 in the City of San José, to acknowledge and honor the history and heritage of Native American cultures and their contributions to our society. (Herrera)**

Mayor Reed and Council Member Herrera recognized September 28, 2013 as Native American Day to acknowledge and honor the history and heritage of Native American cultures and their contributions to our society.

**1.2 Presentation of a commendation to the College of Adaptive Arts for providing valuable educational experiences and opportunities for adults with differing abilities. (Chu)**

Mayor Reed and Council Member Liccardo recognized the College of Adaptive Arts for providing valuable educational experiences and opportunities for adults with differing abilities.

**1.3 Presentation of a proclamation declaring September 22, 2013 as “Fall Prevention Awareness Day” in the City of San José. (Khamis)**

Mayor Reed and Council Member Khamis recognized September 22, 2013 as “Fall Prevention Awareness Day” in the City of San José.

**1.4 Presentation of a proclamation declaring September 22-28, 2013 as “Active Aging Week” in the City of San José. (Khamis)**

Mayor Reed and Council Member Khamis recognized September 22-28, 2013 as “Active Aging Week” in the City of San José.

## **CONSENT CALENDAR**

Upon motion by Council Member Herrera, seconded by Council Member Khamis and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (9-0-2.)

**2.1 Approval of minutes.**

- (a) Regular Minutes of May 7, 2013**
- (b) Joint Council/San José Financing Authority Minutes of May 7, 2013**
- (c) Minutes of the 2013-2014 Budget Study Sessions dated May 8 – May 10, 2013**
- (d) Regular Minutes of May 14, 2013**
- (e) Study Session Minutes on the Public Safety Data Applications of May 16, 2013**
- (f) Regular Minutes of May 21, 2013**

Documents Filed: (1) Regular Minutes of May 7, 14, and 21, 2013. (2) Joint Council/San José Financing Authority Minutes of May 7, 2013. (3) Minutes of the 2013-2014 Budget Study Sessions dated May 8 – May 10, 2013; (4) Study Session Minutes on the Public Safety Data Applications dated May 16, 2013.

Action: The Council Meeting Minutes were approved. (9-0-2. Absent: Constant, Nguyen.)

- 2.2 (a) **ORD. NO. 29310 – An ordinance of the City of San José amending Section 12.05.040 of Chapter 12.05 of Title 12, amending sections 12.06.295, 12.06.510, 12.06.910, 12.06.915 and 12.06.1010 of Chapter 12.06 of Title 12, and adding Section 12.06.215 of Chapter 12.06 of Title 12 of the San José Municipal Code relating to elections and municipal campaign and officeholder contributions.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29310 executed on September 20, 2013, submitted by the City Clerk.

Action: Upon motion by Council Member Herrera, seconded by Vice Mayor Nguyen, and carried, Ordinance No. 29310 was adopted. (9-0-2. Absent: Constant, Nguyen.)

- 2.3 (a) **Rules and Open Government Committee Report of September 4, 2013. (Mayor)**  
(b) **Transportation and Environment Committee Report of September 9, 2013. (Liccardo)**  
(c) **Rules and Open Government Committee Report of August 28, 2013. (Mayor)**

Documents Filed: (1) The Rules and Open Government Committee Report dated September 4 and August 28, 2013. (2) The Transportation and Environment Committee Report dated September 9, 2013.

Action: The Council Committee Reports were approved. (9-0-2. Absent: Constant, Nguyen.)

2.4 **Mayor and Council Excused Absence Requests.**

**No Report.**

2.5 **City Council Travel Reports.**

**No Report.**

2.6 **Report from the Council Liaison to the Retirement Boards.**

**No Report.**

- 2.7 (a) **Approve a Third Amendment to the agreement with Fairbank, Maslin, Maullin, Metz & Associates, Inc. to increase the contract amount by \$143,571 for a total amount not to exceed \$695,751, reduce the Employee Survey cost, and amend the scope to add additional surveys to be conducted in the current fiscal year.**

**2.7 (Cont'd.)**

**(b) Adopt the following 2013-2014 Appropriation Ordinance Amendments in the General Fund:**

- (1) Increase the city-wide appropriation to the City Manager's Office for: Ballot Measure Polling by \$11,200; and**
- (2) Decrease the city-wide appropriation to the City Manager's Office for: Employee and Community Surveys by \$11,200.**

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

Documents Filed: Joint memorandum from Director of Communications, David Vossbrink and Budget Director Jennifer Maguire, dated September 3, 2013, recommending adoption of appropriation ordinance amendments.

Action: A Third Amendment to the agreement with Fairbank, Maslin, Maullin, Metz & Associates, Inc. to increase the contract amount by \$143,571 for a total amount not to exceed \$695,751, reduce the Employee Survey cost, and amend the scope to add additional surveys to be conducted in the current fiscal year, was approved, and Ordinance No. 29313, entitled: "An Ordinance of the City of San José Amending Ordinance No. 29271 to Appropriate Monies in the General Fund: Citywide – Strategic Support for Ballot Measure Polling; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. (9-0-2. Absent: Constant, Nguyen.)

**2.8 As recommended by the Transportation and Environment Committee on September 9, 2013, approve an ordinance amending Sections 9.10.2010 and 9.10.2020 of Chapter 9.10 of Title 9 of the San José Municipal Code to update the single-use carryout bag regulations to eliminate the automatic increase to the required minimum charge for recycled content paper bags, and make other technical and clarifying changes. CEQA: San José Single-use Carry Bag Ordinance EIR, Resolution No. 75688, File No. PP09-193, as addended by File No. PP13-078. (Environmental Services)**

**[Transportation and Environment referral 9/9/13 – Item D(1)]**

Documents Filed: (1) Memorandum from Acting City Clerk Toni Taber, dated September 12, 2013, transmitting the recommendations of the Transportation and Environment Committee. (2) Letter from Save the Plastic Bag Coalition Counsel Stephen L. Joseph, dated April 18, 2013.

Action: Ordinance No. 29314, entitled: "An Ordinance of the City of San José Amending Sections 9.10.2010 and 9.10.2020 of Chapter 9.10 of Title 9 of the San José Municipal Code Relating to Single-use Carry-out Bags", passed for publication. (9-0-2. Absent: Constant, Nguyen.)

- 2.9 (a) (1) **Ratify the submittal of two separate grant applications to the California Department of Transportation (Caltrans) for the Highway Safety Improvement Program (HSIP) grant program:**
- (a) **\$900,000 for the North First Street Bicycle Lane Improvements from Brokaw Road to State Route 237 with a required City local match of \$105,000; and**
  - (b) **\$704,000 for the Park Avenue Bicycle Lane Improvements between Hedding Street and Market Street with a required City local match of \$81,100.**
- (2) **Authorize the City Manager to accept the grant award(s) and negotiate and execute any documents to effectuate the grant(s), including the authority to negotiate and execute any documents that increase the amount of the grant awarded or require an increase in the local match of funds from the City for the projects, subject to the appropriation of funds.**
- (b) **Adopt the following 2013-2014 Appropriation Ordinance and Funding Sources Resolution Amendments in the Building and Structure Construction Tax Fund:**
- (1) **Increase the Estimate for Earned Revenue in the amount of \$1,604,000;**
  - (2) **Decrease the Ending Fund Balance - Transportation Grants Reserve appropriation in the amount of \$186,100 to provide the required City local match;**
  - (3) **Establish an appropriation to the Department of Transportation for the North First Street Bicycle Lane Improvements project in the amount of \$1,005,000; and**
  - (4) **Establish an appropriation to the Department of Transportation for the Park Avenue Bicycle Lane Improvements project in the amount of \$785,100.**

Documents Filed: Joint memorandum from Director of Transportation Hans Larsen and Budget Director Jennifer Maguire, dated September 3, 2013, recommending adoption of a resolution and appropriation ordinance and funding sources resolution amendments.

Action: Ordinance No. 29315, entitled: “An Ordinance of the City of San José Amending Ordinance No. 29271 to Appropriate Monies in the Building and Structure Construction Tax Fund for the North First Street Bicycle Lane Improvements Project and for the Park Avenue Bicycle Lane Improvements Project: and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”; Resolution No. 76798, entitled: “A Resolution of the Council of the City of San José Authorizing the City manager to Ratify the Submittal of Two Grant Applications to the California Department of Transportation for the Highways Safety Improvement Program and to Accept any Grant Awards and Negotiate and Execute any Documents Necessary to Effectuate the Grants”; and Resolution No. 76799, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 76677 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2013-2014 to Adjust Revenues in the Building and Structure Construction Tax Fund”, were adopted. (9-0-2. Absent: Constant, Nguyen.)

- 2.10 (a) Approve travel by Councilmember Khamis to Dublin, Ireland on October 12-17, 2013, to attend the Dublin Sister City Delegation. Source of Funds: District 10 Council Office Budget. (Khamis)**
- (b) Request for an excused absence for Councilmember Khamis from the Study Session on October 15, 2013 and the Joint City-County Meeting on October 18, 2013 due to Authorized City Business: Dublin Sister City Delegation. (Khamis)**

Documents Filed: Memorandum from Council Member Khamis, dated September 13, 2013, requesting approval of a travel request.

Action: The travel request was approved. (9-0-2. Absent: Constant, Nguyen.)

- 2.11 (a) Approve the San José McEnery Convention Center’s Grand Opening events as a City Council sponsored Special Event; and**
- (b) Approve and accept donations from various individuals, businesses or community groups to support the event.**
- CEQA: Not a Project. (Constant)**

Documents Filed: Memorandum from Acting City Clerk Toni Taber, dated September 19, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Action: The San José McEnery Convention Center’s Grand Opening as a City Council Sponsored Special Event was approved and authorization to accept donations from various individuals, businesses or community groups to support the event, was approved. (9-0-2. Absent: Constant, Nguyen.)

- 2.12 (a) Approve the Shred-A-Thon and E-Waste Collection Day as a City Council sponsored Special Event; and**
- (b) Approve and accept donations from various individuals, businesses or community groups to support the event.**
- CEQA: Not a Project. (Constant)**

Documents Filed: Memorandum from Acting City Clerk Toni Taber, dated September 19, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Action: The Shred-A-Thon and E-Waste Collection Day as a City Council Sponsored Special Event was approved and authorization to accept donations from various individuals, businesses or community groups to support the event, was approved. (9-0-2. Absent: Constant, Nguyen.)

**END OF CONSENT CALENDAR**



## STRATEGIC SUPPORT SERVICES

### 3.1 Report of the City Manager, Debra Figone (Verbal Report)

Assistant City Manager Ed Shikada announced that City Manager Debra Figone is currently attending the International City/County Management Association 99th Annual Conference held in Boston and is receiving on behalf of the City of San Jose a Certificate of Excellence from the ICMA Center for Performance Measurement for superior performance management efforts.

### 3.3 Approve a settlement in the amount of \$4,950,000 and authorize the City Attorney to execute a Settlement Agreement to settle the case of Javier Gonzales-Guerrero v. City of San José and various individual officers. CEQA: Not a Project; File No. File No. PP10-066h, Settlement Agreements. (City Attorney's Office)

Documents Filed: Memorandum from City Attorney Richard Doyle, dated September 9, 2013, recommending approval of a settlement.

City Attorney Richard Doyle provided an overview of the settlement.

Action: Upon motion by Council Member Khamis, seconded by Council Member Herrera, and carried unanimously, a settlement in the amount of \$4,950,000 and authorization of the City Attorney to execute a Settlement Agreement to settle the case of Javier Gonzales-Guerrero v. City of San José and various individual officers, was approved. (9-0-2. Absent: Constant, Nguyen.)

### 3.4 Approve the following actions regarding Si Se Puede Academy, Brilliant Minds Elementary and RS-Jackson Ave. School Project:

- (a) Hold a Tax Equity and Fiscal Responsibility Act (TEFRA) Hearing for the issuance of \$35,000,000 of tax-exempt 501(c)(3) revenue bonds by the California Municipal Finance Authority;
- (b) Adopt a resolution approving the issuance of tax-exempt revenue bonds, by the CMFA, on behalf of Launchpad Development Company, in an aggregate principal amount not to exceed \$35,000,000 (Bonds) to:
  - (1) Finance and refinance the acquisition, construction, improvements and equipping of certain charter school educational facilities in San José, identified as the Si Se Puede Academy (2249 Dobern Avenue), Brilliant Minds Elementary (2962 Story Road) and RS-Jackson Ave. School (70 S. Jackson St.);
  - (2) Pay certain expenses incurred in connection with the issuance of the Bonds; and
  - (3) Fund all or a portion of a reserve fund deposit and capitalized interest.

CEQA: Not a Project, File No. PP10-069(a), Organizational and Administrative Activities. Council District 5. (Finance)

### 3.4 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Finance Julia H. Cooper, dated September 12, 2013, recommending adoption of a resolution. (2) Supplemental memorandum from Director of Finance Julia H. Cooper, dated September 20, 2013, recommending dropping the proposed action. (3) Statement and Declaration of Conflict of Interest Form from Council Member Liccardo, dated September 18, 2013, disclosing he shares living expenses with a Rocketship employee.

Action: Dropped per the Request of California Municipal Finance Authority.

- 3.5 (a) **Adopt a resolution authorizing the City Manager to select and purchase certain City property and liability insurance policies for the period from October 1, 2013 to October 1, 2014, at a total cost not to exceed \$1,500,000 for all policies, with the following insurance carriers, subject to the appropriation of funds:**
- (1) **Lexington Insurance Company, (Boston, MA) for Property Insurance, including Boiler & Machinery;**
  - (2) **QBE Insurance Corporation, (New York, NY) to provide the following coverage:**
    - (a) **Airport Owners and Operators Liability including War Risks & Extended Perils Coverage (Primary and Excess); and**
    - (b) **Police Aircraft Hull & Liability including War Risks & Extended Perils.**
  - (3) **St Paul/Travelers Insurance Company, (Hartford, CT) for Automobile Liability (Airport fleet vehicles including Shuttle Buses, and the San José-Santa Clara Regional Wastewater Facility (fleet vehicles) and Airport Shuttle Bus physical damage;**
  - (4) **Indian Harbor Insurance Company, (Stamford, CT) for Secondary Employment Law Enforcement Professional Liability.**
- (b) **Adopt the following 2013-14 Appropriation Ordinance amendments in the Convention and Cultural Affairs Fund:**
- (1) **Increase the Insurance Expenses appropriation to the Finance Department for Insurance Expenses by \$70,000;**
  - (2) **Decrease the Ending Fund Balance by \$70,000.**
- CEQA: Not a Project, File No. PP10-066(a), Agreements and Contracts. (Finance/City Manager's Office)**

Documents Filed: (1) Letter from Chairperson Chuck Reed, the Treatment Plant Advisory Committee, dated August 15, 2013, stating concurrence with the Staff recommendation. (2) Joint memorandum from Director of Finance Julia H. Cooper and Budget Director Jennifer Maguire, dated September 3, 2013, recommending adoption of a resolution and appropriation ordinance amendments.

Director of Finance Julia H. Cooper responded to questions from Council.

**3.5 (Cont'd.)**

Action: Upon motion by Council Member Khamis, seconded by Council Member Herrera and carried unanimously, Ordinance No. 29316, entitled: “An Ordinance of the City of San José Amending Ordinance No. 29271 to Appropriate Monies in the Convention and Cultural Affairs Fund for the Insurance Expenses; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”; and Resolution No. 76800, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Select and Purchase Insurance Policies for the Period October 1, 2013 to October 1, 2014 at a Cost Not to Exceed \$1,500,000”, were adopted. (9-0-2. Absent: Constant, Nguyen.)

- 3.6 (a) Adopt a resolution authorizing the City Manager to disburse funds received from the United States Department of Health and Human Services for the Early Retiree Reinsurance Program (ERRP) in the amount of \$2,798,589 to offset future Blue Shield medical plan premium increases for the City, Retirement Funds and active employees and retirees (plan participants) in the 2013 calendar year. Funds will be disbursed to the City, Retirement Funds and Blue Shield plan participants in accordance with the percentage distribution of the premium costs for Blue Shield over the last five years.**
- (b) Adopt the following 2013-2014 Appropriation Ordinance and Funding Sources Resolution amendments in the Benefits Fund:**
- (1) Eliminate the Early Retirement Reinsurance Program Reserve in the amount of \$2,793,988;**
  - (2) Decrease the estimate for Transfer of City Funds to the Benefits Fund for Health Plan Premiums by \$986,503;**
  - (3) Establish a Transfer to the: Federated Retirement Fund in the amount of \$637,798;**
  - (4) Establish a Transfer to the: Police and Fire Retirement Fund in the amount of \$845,454;**
  - (5) Establish an appropriation to the Human Resources Department for: ERRP Blue Shield Active Employee Premium Reductions in the amount of \$328,834; and**
  - (6) Decrease the Ending Fund Balance in the amount of \$4,601.**

**CEQA: Not a Project, File No. PP10-069(b), Personnel Related Decisions. (Human Resources/City Manager’s Office)**

Documents Filed: Joint memorandum from Deputy City Manager Alex Gurza and Budget Director Jennifer Maguire dated September 3, 2013, recommending adoption of a resolution and appropriation ordinance and funding sources resolution amendments.

Deputy City Manager Alex Gurza responded to questions from Council.

### 3.6 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, Ordinance No. 29317, entitled: “An Ordinance of the City of San José Amending Ordinance No. 29271 to Appropriate Monies in the Benefit Fund for the Federated Retirement Fund, for the Police and Fire Retirement Fund, and for the Early Retiree Reinsurance Program (ERRP) Blue Shield Active Employee Premium Reductions; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”; Resolution No. 76801, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Disburse Funds Received from the United States Department of Health and Human Services for the Early Retiree Reinsurance Program”, and Resolution No. 76802, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 76677 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2013-2014 to Adjust Revenues in the Benefit Fund”, were adopted. (9-0-2. Absent: Constant, Nguyen.)

## COMMUNITY & ECONOMIC DEVELOPMENT

### 4.1 As recommended by the Community and Economic Development Committee on August 26, 2013:

- (a) **Endorse the Advisory Committee on Permanent Governance’s recommendation to City Council to select the School of Arts and Culture of MHP as the permanent operator of the Mexican Heritage Plaza.**
- (b) **Adopt a resolution authorizing the City Council to negotiate and execute an agreement with the School of Arts and Culture at MHP, from July 1, 2014 to June 30, 2029, to receive funding in the amount not to exceed \$450,000 annually for years one through five, and \$425,000 annually thereafter, subject to the annual approval of the Operating Budget by City Council.**

**CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical change to the environment. (Economic Development/Public Works)**  
**[Community and Economic referral 8/26/13 – Item D(4)]**

Documents Filed: (1) Joint memorandum from Mayor Reed and Council Member Campos, dated September 20, 2013, approving recommendations as outlined by the Community and Economic Development Committee. (2) Memorandum from Acting City Clerk Toni Taber, dated September 12, 2013, transmitting the recommendations of the Community and Economic Development Committee.

Deputy City Manager Norberto Duenas introduced the Advisory Committees’ recommendations, and Director of Cultural Affairs Kerry Adams Hapner provided a presentation on the School of Arts and Culture of Mexican Heritage Plaza (MHP).

#### 4.1 (Cont'd.)

Public Comments: Offering support to the Committees' recommendations to select the School of Arts and Culture as the permanent operator of the MHP, were Tamara Alvarado and Ninfa Cycus (School of Arts and Culture); Armando Castellano (Castellano Family Foundation), Arturo Magana (Los Lupenos de San José), Rose Amador (La Raza Roundtable), Esther Peralez-Dieckmann, Connie Martinez (Silicon Valley Creates), Omar Tomes, Peter Allen and Gabriel Pinto.

Motion: Council Member Campos moved approval of the memorandum of September 20, 2013 he coauthored with Mayor Reed. Council Member Herrera seconded the motion.

Action: On a call for the question, the motion carried, and Resolution No. 76803, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with the School of Arts and Culture at Mexican Heritage Plaza, from July 1, 2014 to June 30, 2029, to Receive Funding in the Amount Not to Exceed \$450,000 Annually for Years One through Five, and \$425,000 Annually Thereafter, Subject to the Annual Approval of the Operating Budget by City Council", was adopted. (8-1-2. Noes: Oliverio. Absent: Constant, Nguyen.)

#### 4.2 As recommended by the Rules and Open Government Committee on September 18, 2013 and outlined in the memo previously submitted to the Rules and Open Government Committee:

- (a) **Discussion and direction to staff regarding an amendment to the North San José Traffic Impact Fee Incentive Program to:**
  - (1) **Increase the total square footage available for the incentive program to 4 million square feet;**
  - (2) **Reduce the Traffic Impact Fee to \$2.00/sf for any build-to-suit Office/R&D campus of over 1 million square feet that obtains planning and building approvals by December 31, 2014; and**
- (b) **Direct the City Manager to return in the FY 2014-15 budget process, with the total amount of tax revenues generated by the qualifying projects from sources such as the Building and Structures fee, Utility tax, or Business Cooperation Program, and with the recommendations for amounts of those tax revenues that could be transferred to the North San José transportation fund.**

Documents Filed: (1) Joint memorandum from Mayor Reed and Council Members Herrera, Kalra, Liccardo and Rocha, dated September 20, 2013, approving an amendment with additional direction. (2) Memorandum from Mayor Reed, dated September 23, 2013, offering additional recommendations. (3) Memorandum from Council Member Chu, dated September 23, 2013, offering suggestions for covering the cost of the reduced Traffic Impact Fee. (4) Memorandum from Council Member Rocha, dated September 24, 2013, offering additional recommendations. (5) Replacement memorandum from Acting City Clerk Toni Taber, dated September 20, 2013, transmitting the recommendations of the Rules and Open Government Committee. (6) Joint memorandum from Director of Economic Development/Chief Strategist Kim Welsh and Director of Planning, Building and Code Enforcement Joseph Horwedel, dated September 20, 2013.

## 4.2 (Cont'd.)

Mayor Reed provided an introduction to the amendment to the North San José Traffic Impact Fee Incentive Program.

Motion: Council Member Liccardo moved approval of Council Member Rocha's memorandum of September 24, 2013, with amendments as indicated below in "Action". The motion was seconded by Council Member Rocha.

Council Member Chu expressed opposition to the motion on the floor, citing he would only support an incentive program that doesn't touch the general fund and stressed a significant need for transportation improvements in San José.

Action: On a call for the question, the motion carried, the Staff's recommendations were accepted, with additions as outlined in Council Member Rocha's memorandum of September 24, 2013, with amendments to the memorandum as follows:

- (1) Paragraph 2: Emphasize that this is not a waiver of the urban design guidelines and any modifications will require Council approval;
  - (2) Paragraph 4: Correct a typographical error in the second line to read: "Defer action on the recommendations in the staff memo dated September 20th, and bring back the recommendations contained in that staff memorandum at the same time they bring back ordinance language...".
  - (3) Paragraph 4b, after the term 'Community Facilities District', add the words "or other financing mechanism for public improvements";
  - (4) Add a new Paragraph 6: "Direct staff to reach out, communicate with VTA staff to explore implementation of a Regional fee that would more equitably support transportation improvements".
- (8-1-2. Noes: Chu. Absent: Constant, Nguyen.)

## NEIGHBORHOOD SERVICES

- 5.1 (a) **Hold a Public Hearing and take public comment on a Substantial Amendment to the City's FY 2013-14 Annual Action Plan to:**
- (1) **Replace 2011 homeless census results with those from the 2013 Homeless Census and Survey;**
  - (2) **Add a Tenant-Based Rental Assistance program funded by the HOME Investment Partnership Program for up to five homeless veterans of the armed forces;**
  - (3) **Add an enumeration of infrastructure and other community improvements funded by the Community Development Block Grant program to be undertaken in the Mayfair, Five Wounds/Brookwood Terrace, and Santee neighborhoods for a total amount of \$1,430,750; and**

**5.1 (Cont'd.)**

- (a) (4) **Add \$250,000 and a unit count of up to six to the HOME-funded Habitat for Humanity acquisition/ rehabilitation program for low-income homebuyers.**
- (b) **Adopt a resolution approving that Substantial Amendment to the FY 2013-14 Annual Action Plan.**

**CEQA: Exempt, File No. PP13-088. (Housing)**

Documents Filed: (1) Memorandum from Director of Housing Leslye Corsiglia, dated September 3, 2013, recommending taking public comment on a Substantial Amendment to the City's FY 2013-14 Annual Action Plan. (2) Supplemental memorandum from Director of Housing Leslye Corsiglia dated September 23, 2013, summarizing public comments received, including revisions made to the draft document.

Action: Upon motion by Council Member Herrera, seconded by Council Member Khamis, the motion carried unanimously, with public comments accepted regarding the Substantial Amendment to the City's FY 2013-14 Annual Action Plan to: (1) Replace 2011 homeless census results with those from the 2013 Homeless Census and Survey; (2) Add a Tenant-Based Rental Assistance program funded by the HOME Investment Partnership Program for up to five homeless veterans of the armed forces; (3) Add an enumeration of infrastructure and other community improvements funded by the Community Development Block Grant program to be undertaken in the Mayfair, Five Wounds/Brookwood Terrace, and Santee neighborhoods for a total amount of \$1,430,750; (4) Add \$250,000 and a unit count of up to six to the HOME-funded Habitat for Humanity acquisition/ rehabilitation program for low-income homebuyers approved; and Resolution No. 76804, entitled: "A Resolution of the Council of the City of San José approving a Substantial Amendment to the FY 2013-2014 Annual Action Plan", was adopted. (9-0-2. Absent: Constant, Nguyen.)

- 5.2 (a) Hold a Public Hearing on and an approval of an amendment to the Citizen Participation Plan to reflect the recent creation of the Housing and Community Development Commission and to make a change to the definition of a "Minor Amendment" to the Consolidated Plan or Annual Action Plan.**

- (b) **Adopt a resolution approving that Citizen Participation Plan amendment.**

**CEQA: Not a Project, File No. PP10-069, City Organizational and Administrative Activities. (Housing)**

Documents Filed: (1) Memorandum from Director of Housing Leslye Corsiglia, dated September 3, 2013, recommending taking public comment on an amendment to the Citizen Participation Plan. (2) Supplemental memorandum from Director of Housing Leslye Corsiglia dated September 23, 2013, summarizing public comments received, including revisions made to the draft document (3) Two Proof of Publication of Notices of a Public Hearing, both executed on August 23, 2013 submitted by the City Clerk.

## 5.2 (Cont'.d)

Public Comment: Mayor Reed opened the public hearing. There was no testimony from the floor. Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Rocha, seconded by Council Member Herrera and carried unanimously, the approval of an amendment to the Citizen Participation Plan to reflect the recent creation of the Housing and Community Development Commission and to make a change to the definition of a “Minor Amendment” to the Consolidated Plan or Annual Action Plan, was approved, and Resolution No. 76805, entitled: “A Resolution of the Council of the City of San José Approving the Amendment to the Citizen Participation Plan”, was adopted. (9-0-2. Absent: Constant, Nguyen.)

## ENVIRONMENTAL & UTILITY SERVICES

### 7.1 **Approve a Consultant Agreement with Brown and Caldwell to provide engineering services for the Digester and Thickener Facilities Upgrade Project at the San José-Santa Clara Regional Wastewater Facility (formerly known as the San José/Santa Clara Water Pollution Control Plant). This agreement will be effective from the date of execution to December 31, 2019, for a total amount not to exceed \$12,017,526. CEQA: Statutorily Exempt, File No. PP10-066(d), Consultant Services for Design. (Environmental Services)**

Documents Filed: (1) Letter from Treatment Plant Advisory Committee Chair Chuck Reed, dated September 12, 2013, stating concurrence with the Staff recommendations. (2) Memorandum from Environmental Services Director Kerrie Romanow, dated August 26, 2013, recommending approval of a consultant agreement. (3) Supplemental memorandum from Environmental Services Director Kerrie Romanow, Director of Public Works David Sykes and Budget Director Jennifer Maguire, dated September 13, 2013, recommending approval of appropriation ordinance amendments.

Action: Deferred to October 8, 2013 Per Administration.

- 7.2 (a) **Approve a Master Services Agreement with MWH Americas, Inc., for Program Management Consultant Services at the San José-Santa Clara Regional Wastewater Facility, (formerly known as the San José/Santa Clara Water Pollution Control Plant), for a term beginning from the date of execution through September 30, 2018, including up to two, one-year extension options, in an initial amount not to exceed \$7,295,000, and a maximum agreement amount not to exceed \$39,000,000, subject to the appropriation of funds.**
- (b) **Adopt a resolution authorizing the City Manager to exercise the City’s option to extend the agreement for up to two, one-year terms, subject to the appropriation of funds.**



7.2 (Cont'd.)

(c) **Adopt the following 2013-2014 Appropriation Ordinance Amendments in the San José-Santa Clara Treatment Plant Capital Fund:**

- (1) **Decrease the Energy Generation Improvements appropriation in the amount of \$2,372,000; and**
- (2) **Decrease the New Biosolids Facility appropriation in the amount of \$2,000,000; and**
- (3) **Increase the Program Management appropriation to the Environmental Services Department in the amount of \$4,372,000.**

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

Documents Filed: (1) Joint memorandum from Director of Public Works David Sykes, Environmental Services Director Kerrie Romanow, and Budget Director Jennifer Maguire, dated August 26, 2013, recommending approval of appropriation ordinance amendments. (2) Supplemental memorandum from Environmental Services Director Kerrie Romanow, Director of Public Works David Sykes and dated September 20, 2013, providing analysis of concerns regarding the MWH Americas, Inc.

Director of Public Works David Sykes presented information regarding the consultant, MWH Americas, Inc.

Public Comments: Daniel McConville, representing MWH Americas spoke in support of MWH offering Consultant Services at the San José-Santa Clara Regional Wastewater Facility.

Motion: Council Member Kalra moved approval of taking the motion tabled from last week regarding this agreement off the table. Council Member Oliverio seconded the motion.

Action: Upon motion by Council Member Kalra, seconded by Council Member Oliverio, a Master Services Agreement with MWH Americas, Inc., for Program Management Consultant Services at the San José-Santa Clara Regional Wastewater Facility, (formerly known as the San José/Santa Clara Water Pollution Control Plant), for a term beginning from the date of execution through September 30, 2018, including up to two, one-year extension options, in an initial amount not to exceed \$7,295,000, and a maximum agreement amount not to exceed \$39,000,000, subject to the appropriation of funds, was approved, and Ordinance No. 29318, entitled: "An Ordinance of the City of San José Amending Ordinance No. 29271 to Appropriate Monies in the San José – Santa Clara Treatment Plan Capital Fund for the Program Management; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. (9-0-2. Absent: Constant, Nguyen.)

## **PUBLIC SAFETY SERVICES**

- 8.1 (a) Approve an award for the purchase of two 1500 Gallon-Per-Minute Fire Engines to Hi-Tech Emergency Vehicle Services, Inc. (Oakdale, CA), for a total amount not to exceed \$1,134,194, including training, warranty, delivery and sales tax, and authorize the City Manager to execute the purchase order;**
- (b) Purchase fire engines, subject to the terms and conditions of the bid, for a period of seven years, subject to the appropriation of funds.**
- CEQA: Not a Project, File No. PP10-066(c), Contract Award for purchase of supplies and equipment. (Finance)**

Documents Filed: Memorandum from Director of Finance Julia H. Cooper, dated September 3, 2013, recommending approval of an award and purchase of additional fire engines.

Successor Agency Managing Director Richard A. Keit offered a presentation on the plan.

Senior Deputy City Attorney Tom Murtha responded to questions from Council and offered that if the Oversight Board requires any changes to this plan, a memorandum will be brought forth before it proceeds to the Department of Finance.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera, the motion carried unanimously, and an award for the purchase of two 1500 Gallon-Per-Minute Fire Engines to Hi-Tech Emergency Vehicle Services, Inc. (Oakdale, CA), for a total amount not to exceed \$1,134,194, including training, warranty, delivery and sales tax, and authorize the City Manager to execute the purchase order; and to Purchase fire engines, subject to the terms and conditions of the bid, for a period of seven years, subject to the appropriation of funds, was approved. (9-0-2. Absent: Constant, Nguyen.)

## **REDEVELOPMENT – SUCCESSOR AGENCY**

- 9.1 Presentation of the Long Range Property Management Plan (LRPMP) to the Successor Agency Board and direction to Successor Agency staff prior to submittal of the LRPMP to the Oversight Board. CEQA: Not a Project, File No. PP10-069(a), Staff Reports/Assessments/Annual Reports/Informational Memos that involve no approvals of any City Actions. (Successor Agency)**

Documents Filed: Memorandum from Successor Agency Managing Director Richard A. Keit, dated September 12, 2013, presenting a long range property management plan.

Successor Agency Managing Director Richard A. Keit offered a presentation and responded to questions.

Action: No action taken. To be presented for approval to the Oversight Board to the Successor Agency of the Redevelopment Agency on October 10, 2013.

- 9.2 (a) **Approving the Administrative Budget for January 1 through June 30, 2014.**  
 (b) **Approving the Recognized Obligation Payment Schedule 13-14B (ROPS 5) and authorizing payment of expenditures for items on ROPS 13-14B, which details the obligations of the Successor Agency for the period of January 1, 2014 through June 30, 2014.**

**CEQA: Not a Project, File No. PP10-067(b), Appropriation Ordinance. (Successor Agency)**

Successor Agency Managing Director Richard A. Keit offered a presentation and responded to questions.

Action: Upon motion by Council Member Herrera, seconded by Council Member Khamis and carried unanimously, Successor Agency Resolution No. 7025, entitled: “A Resolution of the Successor Agency of the Redevelopment Agency of the City of San José Approving the Administrative Budget for January 1 through June 30, 2014”, and Successor Agency Resolution No. 7026, entitled: “A Resolution of the Successor Agency of the Redevelopment Agency of the City of San José Approving the Recognized Obligation Payment Schedule 13-14B (ROPS 5) and Authorizing Payment of Expenditures for Items on ROPS 13-14B, which Details the Obligations of the Successor Agency for the Period of January 1, 2014 through June 30, 2014”, were adopted. (9-0-2. Absent: Constant, Nguyen.)

**NOTICE OF CITY ENGINEER’S PENDING DECISION ON FINAL MAPS**

In accordance with Sec. 19.16.140d of the San José Municipal Code, this is notice of the City Engineer's pending decision on the following Final Maps:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>	<u>Proposed Decision</u>
10179	South side of West Taylor St., approx. 230 feet E/o Elm St.	6	De Nardi Group	5 Lots/ 4 Units	SFD	Approval

**ADJOURNMENT**

The Council of the City of San José adjourned at 4:43 p.m. in memory of Robert Coelho, known to his family and friends as “Bob.” Bob dedicated his life to serving others. He served in the U.S. Army for 2 years; he mentored many people in the moving and storage industry during his 50 year career; coached his son’s little league team and served as President of Almaden Little League. He coached youth basketball and helped coach Leland High School’s varsity basketball team for 4 years. He was the founding member of both Almaden Kiwanis and Almaden Cares, two of Almaden’s leading service organizations, as well as co-founder of the Champs Foundation, helping underprivileged youth attend summer camp. Bob was a man who loved life and cared deeply for others. Bob passed away peacefully at home in San José on August 10, 2013. (Khamis)

Minutes Recorded, Prepared and Respectfully Submitted by,

Toni J. Taber, CMC  
Acting City Clerk

**rmk/9-24-13MIN**