The following transcript is provided for your convenience, but does not represent the official record of this meeting. The transcript is provided by the firm that provides closed captioning services to the City. Because this service is created in real-time as the meeting progresses, it may contain errors and gaps, but is nevertheless very helpful in determining the gist of what occurred during this meeting.

>> Mayor Reed: Good morning. I want to call the City Council meeting to order for June 23rd, 2009. We are getting started early today, because we have a very long agenda for the last meeting of the fiscal year. So far, we're running pretty much on schedule, just completed the closed session portion of the agenda. We will start this portion of the agenda with the invocation. Councilmember Oliverio will introduce the invocators.

>> Councilmember Oliverio: Good morning. Mayor Reed and councilmembers, I have the pleasure and privilege of presenting the St. Christopher's choir. St. Christopher's is located in Willow Glen on Curtner and Bookson Avenues. It's been there over 50 years. And today the St. Christopher's Choir will be singing "Spirit of God." Thank you. [singing] [applause]

>> Mayor Reed: Thank you. Our next item is the pledge of allegiance. If everybody can just turn around. Please stand for the pledge of allegiance. [pledge of allegiance]

>> Mayor Reed: Thank you very much for the invocation. Great way to close out our fiscal year. Next item is orders of the day. I have changed to agenda item 2.32, section A, we have to modify to read, where it says "low bidder" has to be "lowest responsive bidder." That's item 2.32. Any other changes to the agenda or agenda order? No. We have a motion, Councilmember Pyle to move the orders of the day. All in favor. [ayes]

>> Mayor Reed: Opposed, there none opposed, those are approved. Let me just note that we are taking things out of order in order to get them in the proper order. We have to -- we have some agreements to consider and then we have some budget actions, namely the appropriations actions that we have to do Before we can move, head into the rest of the agenda so we're getting all those done early and then we'll work our way through the redevelopment agency agenda and then back to the rest of the city agenda. With anticipation of getting some time done today. Before we get to tomorrow. We have a long agenda, lot of items on it. So the next item is, closed session report. City Attorney.

>> City Attorney Doyle: Mr. Mayor, the council just came out of closed session. There's no report today.

>> Mayor Reed: All right. We will take up item 3.9 regarding agreements with MEF and CEO. City Manager.

>> City Manager Figone: Yes, staff is actually making a presentation. So as they come forward, there will be an amended recommendation which our employee relations director, Alex Gurza will highlight for council at the end. And the reason for the amended recommendation is the turn of events during the ratification process which Alex will highlight. Before he gets started though, I do want to thank the negotiating teams which Alex will comment on, as well as the City's team. They've done a wonderful job. Thank you.

>> Alex Gurza: Good morning mayor, members of city council, Alex Gurza, Director of Employee Relation. With me is Jennifer Schembri from my staff. Gina Donnelly would be here today, but unfortunately she's out ill this morning. We are happy to be here this morning with good news for the council in our discussions with AFSCME, MEF and CEO. We did achieve a tentative agreement last week on a true zero wage freeze. MEF and CEO are two of the four bargaining units that had previously scheduled 1.5 general wage increases. The tentative agreement includes forgoing that 1.5 general wage increase and in addition to freezing the 5% step increases for one year for those employees that are eligible. For both MEF and CEO that's a savings of $6 million in all funds. And $3.8 million of that is in the General Fund. I think most importantly, this savings saves jobs and services. There are approximately 46 jobs that are saved through this tentative agreement. So we have a little bit of mixed results on the ratification. MEF and the membership did ratify the agreement so that is good news and MEF is the largest bargaining unit in the city. So the bulk of that $6 million savings that I mentioned previously does come from the MEF agreement. Unfortunately, CEO membership did not ratify. It was extremely close vote that occurred yesterday. After hearing it we contacted CEO and asked them if there was any possibility to take another vote. CEO contacted us late in the day yesterday, and informed us that they have decided to vote, again, on the tentative agreement. And so we'll be going through this a little later, but we're going to recommend to the council that you approve the MEF item and then approve the CEO item contingent upon a positive result that we're hoping for on another ratification vote later this week. These are the services that have been preserved and the jobs saved through this agreement with AFSCME. As you see at the total there at the bottom, there are approximately the 46 jobs that have been saved, and this is in addition to the items that the council approved last week, that preserved important services such as the community centers and the bulk of the library hours. So this

is in addition to that. And it, again, restores the remaining library hours, other important services at the library, City Hall custodial, code enforcement, et cetera, you can see through the list. The items that are in yellow are the proposals that include CEO represented positions. Out of that total of 46, there are three CEO represented positions. In the risk management administrative staffing, it is one of those two that is a CEO represented position. And in the Clerk's office, contract support staffing it is both of those positions. So if it does not end up ratifying by the end of the week, those three positions would, unfortunately, still be eliminated. But we are hopeful that the membership in the revote, that it will ratify and preserve those important services. We would like to take a moment to thank the tremendous work of the AFSCME team. We've met together simultaneously with both MEF and CEO. Generally speaking in contract negotiations we do those separately but if Yolanda Cruz, the president of MEF, Peggy Martinez, the vice president, and then for CEO, president Trish Glassy, vice president Bernadette Kava, and assisted by Keith Uriartes, the AFSCME organizing director, as well as Linda Didis, for the business agent. They worked very, very hard in our discussions and worked tirelessly over these last few days to reach an agreement that we're very happy about. We'd like to end the fiscal year on a little note of what awaits us in terms of negotiations. We have a lot of opportunities coming up in the next year to negotiate with our bargaining units. And we have two contracts that we're still work on that expire at the end -- or actually three contracts that expire at the end of this fiscal year. As you can see the first three there, and it progresses into 2010 where almost all of our contracts will be coming up. There are only two contracts that extend to 2011, and that is the AFSCME groups MEF and CEO. But we will have a lot of opportunity to work together with our bargaining units in trying to continue working on the fiscal challenges that confront the city. So we'd like to end with an amended recommendation for your consideration on the items today. So there's going to be a slide up here in just a second, I think. Okay so this item A, B and C is in the recommendation of the memo. Our recommendation is that the council approve item A, that item B, be approved contingent upon ratification by this Friday, and item --

>> Mayor Reed: Excuse me. Alex I'm not sure that everybody up here can see it. Some of the screens are up and some of them are still on discussion. I'm going to make sure all the councilmembers can see it one way or the other.

>> City Manager Figone: I think if you reduce the size of the screen, okay, there you go.

>> Mayor Reed: Okay, yeah. Everybody get to it? Recommendations are on the small screen, left side, and then bring it up. It's still showing discussion, just shrink, and then -- okay, sorry. I think everybody's got it up now.

>> Alex Gurza: Okay. Very quickly, again, to go over, it's we're recommending approval of item A, item B be contingent on receiving word that CEO ratified the agreement by this Friday. And item C contains all the appropriations that are necessary to restore the services and positions. So attached to the council memo are three scenarios. Scenario 1 was if both ratified. That obviously did not occur as of now. So that's -- set that aside. We are recommending today that you approve scenario 2. Those are the positions and services to be restored based on the -- on the MEF tentative agreement. And then, that you approve scenario 3, also contingent upon ratification by this Friday. So that is our amended recommendation to the council, and we'd be happy to answer any questions.

>> Mayor Reed: Is there a motion to approve the amended recommendations. On the motion, Councilmember Liccardo.

>> Councilmember Liccardo: Thank you. I just wanted to thank Yolanda Cruz and Trish glassy and the respective teams for stepping up, showing leadership during a very difficult time, showing that in these tough times we need to come together. And by doing so we are able to save over 40 jobs. I think it's good as can be expected in tough times like this. So thanks to them, thanks also to our negotiating team for making this work. I know we're at the 11th hour and I appreciate the perseverance.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you mayor. I also wanted to extend my thanks to Alex, Jennifer, Gina and Aricelli and the rest of the team that really I know must be working very hard on our behalf. I want to thank Deb for taking the time out. I know you cleared your schedule and took some time out to really show some strong leadership in supporting our bargaining team and also showing our bargaining unit leadership that we were

respectful of their time and respectful of their energy and commitment in coming forward to try to reach an agreement. I certainly want to thank Yolanda Cruz and Trish glassy and the bargaining teams from AFSCME. I know that it hasn't been easy and I know that when you take a leadership position, oftentimes, you know, you take a lot of the criticism, and a lot of the stress, and I'm hopeful that the CEO vote will be successful later this week. But whether it is or not, I think that both you and your teams have really done a tremendous amount of work. And you know, it's easy for us as councilmembers to go to the community and say, we saved library hours or we saved this or that, the reality is we didn't do it. It's our bargaining unit and the leadership of the unions that did it. And so I just wanted to offer that thanks for giving us the opportunity to serve our communities in the best possible way. Thank you.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I wanted just to add my thanks to the chorus to all the involved parties, both on the management side and especially to Yolanda. I know this was a really tough time for her, and there was a lot of personal stress that she went through going through this, and helping us navigate it. And that's not to minimize the work of the other folks in the unions because I know they worked really hard, too. But I know that it took a personal toll on her and we appreciate all your hard work and the willingness of all the members of MEF to join us in this solution.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. I just wanted in addition to all the other comments to praise the same words, wanted to thank the negotiating teams on all sides. I wanted to thank all the union members who voted yes for recognizing our fiscal constraints and I wanted to thank you for in the presentation for putting up the jobs we saved. You know, as I said I think in a prior meeting that 99% of any cost savings we could get through these types of situations are going to save jobs. That in turn that are for our -- to take care of our San José residents so thank you to all involved.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I did want to say, too, I really, really appreciate the Herculean effort that all of you, particularly Yolanda and Trish, have put into making this happen. This is absolutely amazing. It really speaks to my heart when I see the value that you place upon each other. And you all bonded together, and you helped those who were basically in threat. You not only helped them, but you helped the community, as well. There's a lot of children out there that will be visiting libraries that will be open for them, that can thank you for that. And as councilmember Pierluigi said, you are the ones that we need to thank. You are the ones. And believe me, I will let my district know that. Thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you. I also want to say thank you to the union members and the union leadership. I want to also recognize that Yolanda Cruz and Trish Glassy, your leadership is exceptional. The fact that you were able to come to the table, work with staff and come to an agreement that would also benefit not only the union members but the residents of the City of San José, and that is to be commended. That is a skill that is -- I believe something that we don't all possess. But I'm confident that as we move forward, it's a skill that you will definitely be able to share with the rest of your membership as you continue to groom them in leadership roles. But thank you for all of your efforts, your work, it is greatly appreciated. And the residents are going to be benefiting this coming fiscal year from your leadership. Thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I want to add my thanks to our negotiating team, to Yolanda Cruz and Trish Glassy. I think it's a wonderful moment that we can find a solution and we have everybody come to the table and not only save jobs but protect valuable services, crime prevention, libraries, all of the things that our citizens really, really care about. And I just really thank you for the effort that you've made and the leadership in that high standard that you've set for others to follow. Thank you.

>> Mayor Reed: Councilmember Chirco.

>> Councilmember Chirco: Thank you. I know I've missed a lot in the last six months. But I'm looking forward to coming back. But I did want to add a word of thanks. Yolanda and Trish, for your leadership, which has not been an easy job. And I want to thank city staff, your members, and our community, you really do exemplify what public service is about. And I'm proud and honored to partner with such leadership and commitment to our community. So thank you so much.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. I also wanted to add my thanks to the negotiation team, the leadership, as well as the members. Thank you very much.

>> Mayor Reed: Thank you. I'd like to add my thanks to the leadership of MEF, CEO and our own negotiating team. These things don't happen without a lot of hard work and it was a long and difficult road. So I want to thank the leadership for getting us here. And I want to thank the MEF members for saving the jobs to their co-workers and the services that they deliver day in and day out to the city. I think that's the conclusion. I don't have any cards -- do I have cards? City Clerk.

>> Lee Price: Thank you, Mr. Mayor, members of the council, I'd like to take a quick opportunity -- if you would put the list up, please. I'd just like to take a quick opportunity to recognize the three CEO folks that are represented here in yellow. Two of the folks are in my office, the City Clerk contracts program is two people. Additional person in risk. You know, contract processing and risk management aren't, you know, sexy glitzy items. They're not things that the public thinks about. But internally to this organization these positions are critical. As we have looked at the impact of losing these positions over the last several weeks, my office has met with department heads, the City Manager's office numerous times. And as we look at how this organization will continue to do the work that we need to do every day, day in and day out, for every department, we realize that there will be a significant shift. There will be a large learning curve. Departments will need to come to the table to get the work done. And this is all seamless to the council, seamless to the public. But it's important services. And the three individuals that have been waiting for several weeks to see the outcomes, you know, they come to work every day. And they've done their job and they continue to do their job beautifully, without complaints. And I just want to say thank you to them. Because they've had to put up with this, and this hasn't been easy for anybody. We all had to put up very ugly proposals, but we all did our best. But in many cases, some of our proposals were really lousy and this was one of them. I took a gamble and you know, it -- it just has been really tough on the employees. But I just want to recognize them for that and however this turns out, you know, our office and all of your partner offices, we're going to continue to do the best work that we can do to support the mayor and the council. Thank you.

>> Mayor Reed: Any other comments on this item? We have a motion to approve the modified recommendations. All in favor? [ayes]

>> Mayor Reed: Opposed, none opposed, that's approved. Now we can proceed to the item 3.4, which is described as various budget actions but it's a little more specific than that. It's adoption of amendments to the annual appropriations ordinance and funding sources resolution for operating capital funds to reflect estimated '08-'09 revenue receipts, expenses and encumbrances. I say that just to remind everybody, we already had the budget decision, that was last week. Now we're trying to get everything in place where we can move forward with the appropriate appropriations. City Manager.

>> City Manager Figone: Thank you, Mr. Mayor. Actually, I have a few comments which I was going to share in the City Manager's report-out, but I think it will have more relevance now. This and your next item are budget-related. I do think, though, as a backdrop, it's important to bear in mind that while the council is wrestling with our local problems, doing a fantastic job of it, the last item that you heard is an indication of what the city is doing to deal with its own problems, we have the State budget issue looming over us. And staff was on a conference call with the League of California Cities the other day, so I just want to give you a flavor for where we're at and what jeopardy this city is still in because of the State's budget. There are a number of proposals under consideration

that would borrow or take local revenues to close the state's $24 billion budget deficit. The governor has proposed triggering proposition 1A which would allow the state to borrow local dollars. Under this scenario the State would take up to $20 million from San José and would have up to three years to repay the loan with interest. The governor is also proposed borrowing a portion of the local sales tax under proposition 42, which would cost the city another $6 million in the coming fiscal year. Since the State will have difficulty repaying any money it borrows there is no guarantee that cities would be held harmless under any of these scenarios. The joint budget conference committee has so far rejected borrowing local property taxes or the local portion of sales tax on gasoline. However along with the governor and the Legislative Analyst's office, it has supported taking a local share of the highway user's tax. Under the various competing highway users tax proposals, San José would lose about $16 million in the coming fiscal year and additional losses in the following years. The budget conference committee has also recommended a $350 million shift in redevelopment agency funds in each of the next two fiscal years, including '08-'09, a move that would cost our redevelopment agency a total of $39 million. The city and the RDA continue to work both individually as well as with a number of coalitions around the state to oppose these efforts. The state controller has warned that without an adopted budget that is credible to the financial community, the state will be unable to borrow to meet its cash flow needs and will be out of money on July 29th. We will follow up with an info memo and keep you apprised of progress at the state level, but I do think it's important to bear this in mind as we proceed to resolve our local issues. Thank you, mayor.

>> Mayor Reed: Thank you. I'd just like to adds to that that I have signed on to a letter with nine out of the ten big-city top-10 city mayors to the governor and legislature and it looks like I'll be going on a personal mission tomorrow with the big 10 mayors on this budget item to try to preserve our funding sources, as well. All right. So anything else on 3.4? We have a motion to approve. All in favor? Ayes.

>> Mayor Reed: All opposed? None opposed, that's approved. Next item we're going to take three items together which are all interrelated. We'll vote on them separately but I'll take any comments or hearings on item 3.5, 9.1 and 9.2, which is part of a joint session with redevelopment agency. Because it's our annual appropriation ordinance, for funding and sources resolution for this fiscal year budget resolution establishing the fiscal year appropriations limit and a resolution accepting recovery act grant. That's one item and then we have the fiscal year '09-'10 cooperation agreement between the City of San José and the redevelopment agency, 9.1 and redevelopment agency fiscal year '08-'09 and revenue appropriations actions 9.2. What I'll do is take comments on all three of those at the same time and then we'll just vote on them individually. So comments or staff presentation on any of those three items? I have no cards from the public on that. City Manager or --

>> City Manager Figone: There are no staff presentations, mayor.

>> Mayor Reed: Okay. Well, we worked this stuff out for a very long time in past meetings. Is there a motion? Motion to approve item 3.5 is the first item. That motion is to approve that. All in favor? [ayes]

>> Mayor Reed: Opposed, none opposed, that's approved. Item 9.1. Motion is to approve 9.one. All in favor? [ayes]

>> Mayor Reed: Opposed, none opposed, that's approved. Item 9.2. Motion is to approve, 9.2. All in favor? Opposed? None opposed, that's approved. Continuing with the joint agency -- redevelopment agency and city items, we have some joint items which we'll take up next. Starting with 8.1. Which is authorization to submit an application to design and build expansion of the convention center. This is a new opportunity that's opened up to us as a result of state legislative action during this year. And while we get our staff switched here, we'll get the redevelopment agency staff in place, I'd just like to wish the agency very well on this item. Looks like an opportunity for us to be more efficient and save some money. We've had some good experience in the past. We have a motion to approve from Councilmember Liccardo. Seconded by Councilmember Constant. I'm just stalling a little bit to let the staff have a chance to sit down. [Laughter]

>> Mayor Reed: Okay. We have a motion to approve. Staff. Executive director.

>> Harry Mavrogenes: Just urge your approval of this, and I believe it will help us tremendously in moving ahead with the convention center project. So we will make that application as soon as you authorize us.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thanks. I just wanted to say, I'm thrilled to see that we have the opportunity to move in this direction. I know we've discussed the possibility several times over the last year so that we've been talking about the convention center expansion and I'm glad that the state has given us the opportunity to do this. I think it's going to provide us a chance to save quite a bit of money, and get absolutely the most building for the buck, which is something we really need right now. And I urge all my colleagues to approve.

>> Mayor Reed: One other thing. As we go through this process, this is not clear what the process is really going to be to get this approval because this is new, so staff should feel free to call on me to talk to the governor or whomever we need to talk to at the state level, if that's appropriate. And at the right time I'm sure you will. Councilmember Pyle.

>> Councilmember Pyle: I just wanted to bring out the facts that this also will keep people employed. Harry, do you have any idea how many jobs this might represent?

>> Harry Mavrogenes: In terms of construction jobs I would imagine at least three or 400 people. During the construction period and then obviously, permanently, it gives us convention center operates better, it will have more activity going on.

>> Councilmember Pyle: Exactly.

>> Harry Mavrogenes: So ongoing job creation as well.

>> Councilmember Pyle: Great, thank you.

>> Mayor Reed: I think that's the comment on that item. I have no cards from the public on this item. Is that correct? None. All right. We have a motion to approve. All in favor? [ayes]

>> Mayor Reed: Opposed, none opposed, that's approved. Next item is 8.2. Construction contract for San José convention center roof replacement project and related appropriation.

>> Harry Mavrogenes: Mr. Mayor, members of the board we're pleased to present this item as well. The bids have come in significantly under the engineer's estimate and we recommend your approval.

>> Mayor Reed: We have a motion to approve. All in favor, opposed, none opposed, that's approved. Item 8.4, award of a contract to Pentano Excavating, Inc. for demolition of two buildings related to Hoffman Via Monte neighborhood center project. Councilmember Pyle.

>> Councilmember Pyle: Move to approve. Thank you.

>> Mayor Reed: Is that in your council district?

>> Councilmember Pyle: Yes, it is. The reason we want to keep this moving along very quickly, in addition to all, is because we don't want to encourage blight, we certainly don't want to bring back people into the neighborhood that we've spent so much time trying to move out, get out of the neighborhood. So this will keep us on a straight level playing field.

>> Mayor Reed: Okay. We have a motion to approve. All in favor? [ayes]

>> Mayor Reed: Opposed, none opposed, that's approved. Item 8.5 is the second amendment to the agreement with ELS Architecture and Urban Design for the Civic Auditorium Montgomery Theater. Motion is to approve. I would just like to note that Niederlander has stepped in and signed a contract with Team San José to promote great live music in the civic auditorium, and that would not be possible without the work of the redevelopment agency in getting the building into a condition where it could support top-quality acts. This is parts of that work. We have a motion to approve. All in favor? [ayes]

>> Mayor Reed: Opposed, none opposed, that's approved. Now those were the joint items with the city. We'll step back on the redevelopment agency agenda numerically to the consent calendar. Is there anything from the consent calendar that anybody wants to pull for discussion? We have a motion to approve the consent calendar. All in favor? [ayes]

>> Mayor Reed: Opposed, none opposed, that's done. Item 3.1, is approval and agreement with the San José downtown association for promotional and marketing consulting services. Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. I wanted to amend the recommendation and move that recommendation from the June 19th memorandum from Councilmember Pyle, yourself and myself, and I wanted to amend it in two small ways. Specifically, the second but point under recommendation, rather than approval of marketing planned deliverables, et cetera, change the word "approval" to" review" and then in the last paragraph of the recommendation the last sentence where it reads "such campaigns and materials will be reviewed and approved by the communications work group, prior to approval of the executive director." I'd like to eliminate the words, "and approved" and make that motion.

>> Second.

>> Mayor Reed: There is a second. So we have a motion to approve with those modifications, the language from the memorandum. I'd just like to commend San José downtown association for their efforts going back decades supporting the vitality of downtown. The PBID, the property business improvement district, is just the latest example of great achievements that we've gotten. And I love the farmers market, always have, and I love to shop there. But there's a challenge, and we have to continue to rethink our marketing. I know they just started something new recently, their dining program which was as had a great success. So I know that they'll be creative in working with our coordinating marketing effort that everybody wants to see. I think they'll have a positive influence on other people doing marketing as well. So I'm going to support the motion as amended, with the language as amended. Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. Just a few questions, and I'm not sure if you have all the answers, but if you don't you can get those to me. In the memo, we're looking at -- excuse me -- over half a million for marketing, is that correct?

>> Abi Magamfar: Councilmember, Abi Magamfar. It is correct, it's in pool of two different campaigns. One is $400,000 for marketing and 125,000 for public space program.

>> Councilmember Campos: And how are we going to be -- are there going to be measurements so that we know what the money is being used for so that it reports back to the board?

>> Abi Magamfar: Yes, there is. We have established measurements and also criteria that we regularly review with the downtown association and they do provide a quarterly report which we forward to the board.

>> Councilmember Campos: Okay, thank you. And then I know on page 3 of the staff memo, it indicates that part of the contract calls for the downtown association to develop a new year-round media campaign. So currently right now they do not have a year-round media campaign. So is this -- this is something new to the contract?

>> Abi Magamfar: It's relatively new. The campaigns that they have, it's event-driven throughout the year. The purpose of this new addition is to have a regular campaign that continues year-round.

>> Councilmember Campos: Okay. And then another question that I had was, so in listening to your comments, I guess the director receives about $134,000 in annual salary, that is not included in this, it's a separate pot of money?

>> Abi Magamfar: That's correct.

>> Councilmember Campos: To the director?

>> Abi Magamfar: That's correct, it's a different pool of funding.

>> Councilmember Campos: Question to that and maybe it's appropriate on this particular item, or not. But I noticed that the executive director is also getting the salary increased by 19%. And the reasoning for that?

>> Abi Magamfar: I'm sorry, I'm not familiar with that --

>> Councilmember Campos: If you could get that back to me, I'd appreciate that. I just kind of want to understand why we're increasing that particular contract by 19%. That's a lot of money. So you can get back to me on that. And then the other question, I know that as we enter into this agreement, help me understand who will be -- actually be at the table? Is it just the downtown association or will there be other entities that will be part of this working group?

>> Abi Magamfar: The working group -- perhaps Michelle McGurk can explain what it is.

>> Councilmember Campos: I'd appreciate that.

>> Mayor Reed: Why don't we get that direct from Michelle.

>> Michelle McGurk: Councilmember, the working group is comprised of staff from the Redevelopment Agency, the City Manager's office, including the Office of Economic Development, and then all of the contractors who receive funding from both the city side and the agency side, for marketing the City of San José, so that would be the chamber of commerce, Convention and Visitors Bureau and the downtown association, per direct from the city attorney's office, those meetings will be open and subject to the sunshine requirements. And there are a few other groups that we've met with and had discussions with who would like to attend those meetings and provide input on marketing, including the arts round table and the San José restaurant association.

>> Councilmember Campos: So is the hope that by including all these other groups, and coming up with a bigger vision for downtown as far as marketing, that we would eliminate duplications of how we're marketing and spending resources, which is funding to other agencies?

>> Yes, it would increase collaboration and use our resources more effectively, as well as eliminate any duplication and also allow us to look at various practices and see how they fit with best practices from around the country, how -- how can we, you know, is there something that we've been doing for a long period of time, is it still effective in this day and age? And so each of the groups as we've met with them developing this process since the first budget direction from the council back in March of 2008, they've been very enthusiastic about relooking at their own marketing and finding new ways to work together.

>> Councilmember Campos: Thank you for that. First of all, I know that Councilmember Liccardo, you're probably much closer to this than I am, so good job, in being able to work with them as the councilmember representing downtown. And I look forward to being able to see the results of our investment as a city and an agency board. And my last comment is I believe we need to disclose if our office talked to anyone. And my office did talk to the San José restaurant and entertainment association and Tom Sagal. Thank you.

>> Abi Magamfar: Mr. Mayor, if I may follow up. In respect to the councilmember's question on the 19% salary increase, the contract does not contemplate any increase for the downtown association executive director salary. However we will reconfirm that and follow up.

>> Councilmember Campos: Okay, thank you. I may have gotten misinformation.

>> Harry Mavrogenes: And also, the board of the association reviews their director's performance and salary. It is not us but I don't believe at all that that's been increased in several years. So I don't think that's correct.

>> Councilmember Campos: Thank you.

>> Harry Mavrogenes: But we'll check and get back to you.

>> Councilmember Campos: I appreciate that, thank you.

>> Mayor Reed: The communications working group is to report regularly to the Community and Economic Development committee. I think the first report is scheduled for September 29th. And Councilmember Pyle chairs that committee. Councilmember Pyle.

>> Councilmember Pyle: Thank you. I'm really thrilled to see this coming before us today. This is exciting. And as a city I think we need to have a marketing program that's focused, that's thoughtful, and that's inclusive. This is all of those. While I understand that the group specifically identified for the communications working group all received funding for marketing, I would also like to make sure that the meetings are open to other groups such as the arts, retail, entertainment, and restaurant groups. So I understand from my previous questions that this is acceptable, and so I appreciate that. But some of the things that have come about as a result of all of this hard work, I just love. I love the starlight cinema, the third space entertainment, the fan come galleries, that we wouldn't be able to see some of the talent that's here locally, the sofa street market, all of that is just wonderful and we hope to continue with that and many more innovations. Thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks, mayor. I just wanted to ask Abi a couple of clarifying questions. One, with regard to the question raised by Councilmember Campos about year round media campaign, it's currently the case that the downtown association does advertise whether it's downtown ice or farmers market, they're advertising year round.

>> Abi Magamfar: That is correct.

>> Councilmember Liccardo: Okay, maybe you could just clarify what's new or unique about this effort.

>> Abi Magamfar: The intention Councilmember Liccardo is that we'll work with the downtown association to develop additional campaigns that would close the gap between those event-driven type of marketing between Downtown Ice and Music in the Park and holiday events.

>> Councilmember Liccardo: Okay, thanks, Abi. Secondly, the amount of agency contribution to the downtown association as part of this contract has actually been reduced quite a bit over the years, hasn't it? At one time it was close to $1 million, about $900,000.

>> Abi Magamfar: You're correct, councilmember. Back in 2004, 2005, the contract was up to almost $950,000.

>> Councilmember Liccardo: Thank you.

>> Abi Magamfar: And it has been reduced over the years.

>> Councilmember Liccardo: I say that to illustrate a point, that what we're getting out of this agency in terms of vibrancy in the downtown particularly at a time when we know people don't have the resources to be traveling, to be taking vacations and so forth, to be able to take their son or daughter to Downtown Ice, to the ice rink, to be able to listen to blues on Post Street, part of Post Street, and watch a movie afterward, and participate in farmers market, all these things are wonderful amenities for our community, and I think we're getting a bargain. I want to say thank you for your hard work and all the hard work of the downtown association.

>> Mayor Reed: I think that concludes the discussion. We have a motion to approve the language as amended. All in favor? [ayes]

>> Mayor Reed: Opposed, none opposed, that's approved. 6.1, amendments to agreements or the tree establishment services. Motion is to approve. All in favor? [ayes]

>> Mayor Reed: Opposed? None opposed, that's approved. 6.2 is an agreement with David J. Powers and Associates for preparation of analysis for Autumn Street improvement project. Motion to approve, all in favor? [ayes]

>> Mayor Reed: Opposed, none opposed, that's approved. 7.1 is First Amendment to the reimbursement agreement with Stion Corporation. I have a request from Stion to speak. Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. First I'd like to make a motion to approve. The recommendation.

>> Mayor Reed: Okay, we have a motion to approve and a second.

>> Councilmember Kalra: Thank you. And secondly I just want to thank Stion Corporation. I had an opportunity to visit their facilities, and I think we should all be very excited to have a company like Stion in San José. I want to thank Chet Farris, CEO, Chedney Kai, the CFO, Vineet Dharmadhikari, the chief operations officers, and Frank Yang, the manager of business development, who are all here in the council chambers today, for their commitment to San José. I know that I have had the opportunity not only to tour the facilities, which really was fantastic, but even to give an award to Vineet at a conference where Stion was awarded as one of the top clean tech companies, emerging clean tech in the country. So I'm very hopeful that with this release of funds to allow them to purchase capital, and with their projection of being able to get commercial production before the end of the year, that they will fulfill their commitment of having at least 100 employees. And more importantly, I think this gives us an opportunity to show our commitment to Stion, and to show our commitment to the mayor's Green Vision of creating those clean tech jobs. And so again, I just want thank the Stion Corporation, and thank you, Chet, for your commitment, and I certainly would ask everyone to approve this recommendation and so that Stion can continue to do the great work that they're doing and hopefully access some of those funds I know the federal and otherwise that they are trying to gain access to. Thank you, Mayor.

>> Mayor Reed: Thank you. I'd like to have Chet Farris speak. We love to brag about our solar companies, so if you're the world's best at something, make sure we know about it.

>> Chet Farris: Okay. Thank you, Mr. Mayor, and distinguished councilmembers. I wanted to take this opportunity to thank the City of San José for their continued support in consideration of the amended agreement between the city and Stion. Despite the tremendous problems in the financial markets in late 2008, we were able to secure enough funding to continue our development work, albeit at somewhat a reduced scale, our first increment of production build out. We were able to avoid a large-scale reduction in force but nevertheless have been forced to live within our means. That is why we have asked you to consider this amended agreement. Despite that downturn we made significant progress, both technically, and as I mentioned, our first increment of production will be fully online within the next eight to 12 weeks. We expect commercial product to be available before the end of this year. I'd also like to take this opportunity to bring to your attention and thank some very special individuals at the redevelopment agency and at the risk of butchering their last names I'll address them by first name. Harry, John, Abi, Leslie and of course Mr. Sunshine himself, Don Burris and would like to thank their staff for their ongoing supports. They have in fact been instrumental in helping us coordinate with different portions of city government and the planning and permitting departments and making sure we stay on track and on budget. I would also like to thank Ash Kalra, who recently toured the facility, for taking time out of his busy schedule to meet with the management team, to look at what we were doing, and to offer his personal commitment to our support. Our plans over the next few years call out for building out this 110,000 square foot facility located in the Edenvale area. The production capacity would be roughly a hundred megawatts. To put that in perspective, that's equivalent to roughly 33,000 homes that would be solar powered per year from that production output, and for those who have a better sense of area, that equates to roughly 150 acres of panels per year. With this will come hundreds of new jobs direct at Stion and as many indirect or sustained jobs as a result of increased use of service providers and other vendors in the area. We believe strongly we have a compelling business model and a highly differentiated product offering. We have managed in just three years from our inception, with less than one tenth of the money that has been spent by many of our competitors, developing this very high-performance thin film product can be produced at very, very low cost. When I last addressed this council, I mentioned that I built factories throughout the world. I felt that San José under the careful supervision of the mayor, of Mayor Reed and this council, is an extraordinary supportive and forward-looking city. Today I would like to restate that position, and ask for your continued support as we grow. Thank you for your consideration.

>> Mayor Reed: Thank you. And thank you for your investment in San José. We may have some questions. I don't know. So just stay here for a minute. Councilmember Liccardo.

>> Councilmember Liccardo: Thank you. I also want to thank good folks at Stion for their willingness to invest here in San José and of course I thank Mr. Sunshine. You may have a difficult time living down that nickname. Nonetheless, I want to ask a larger question stepping back from this. And let me just preface it by saying, I'm sure that from all indications, Stion is an exciting company with a lot of great potential. So I will be the first to concede that. But obviously, even Stion had a very difficult time in the capital markets, as we would expect, given what's happened over the last nine to 12 months. And certainly, from the folks I talk to in this industry, out of the hundreds of companies in the solar space right now in California, most of them are going to fail in the next three to five years. I mean, that's just the reality of an industry shake-out, as a lot of players are in the mix now. So the question I have is, how -- do we rely upon any expert or experts in the industry that really help us navigate what must be a very confusing field of potentially great companies, and many companies that are simply not going to be able to make it because they're not going to get to the next round of financing?

>> Abi Magamfar: Councilmember, Abi Magamfar. We received dozens of requests for funding and assistance at the redevelopment agency, and many of them are solar companies. We do have a process that we go through. We have a panel of review panel of experts, that we consult with, all of the recommendations to make sure that the type of industry and emergent technology that we are talking about, it is something that has future, and with that expertise we make the recommendation to the board for approval of the recommendation.

>> Councilmember Liccardo: Thanks Abi. And that panel, are they consultants or people in the industry?

>> Abi Magamfar: They are mainly people in the industry.

>> Councilmember Liccardo: Great, thank you very much.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. Thank you, Mr. Farris. Just a quick question, on the Website last mentioned was June '07 was a series B round. Do you need series C to continue or where are you at?

>> Chet Farris: No, we had closed our series C round in February of this year. We chose not to publish it. I think given the financial times and where we are at in our product development we have been fairly stealthy and will do our major announcements later this year as the product becomes available.

>> Councilmember Oliverio: And then when would your Website be a little bit more visible, October?

>> Chet Farris: By the third quarter, you'll surely see a tremendous increase in the visibility of Stion.

>> Councilmember Oliverio: Okay, thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thanks, mayor. Chet, thanks for your kind words. Again, thanks for your commitment to San Jose, and thank you for the new moniker that you've given Don Burris. I think we'll have fun with that.

>> Chet Farris: Thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you. Don't go away yet, please. Thank you, Mr. Farris. I was fascinated by the fact that you have an intellectual property base consisting of 66 patent filings.

>> That's correct.

>> Councilmember Pyle: That's phenomenal. Did you do this over a period of many years, or --

>> Chet Farris: The company was founded in mid 2006, so that I.P. base was initiated since that time and will probably reach 100 by the end of this year.

>> Councilmember Pyle: And these are all registered with the United States Patent Office?

>> Chet Farris: They've all been registered and filed with the U.S. Patent, and in many cases foreign patent filings, as well.

>> Councilmember Pyle: You are playing a huge role in making San José the top patent city in the United States.

>> Chet Farris: More the achievement of the lawyers.

>> Councilmember Pyle: You are, thank you. Thank you very much.

>> Chet Farris: Thank you very much.

>> Mayor Reed: As noted in the staff report, Stion has been stalled by the capital market, so they're not able to grow as fast as they had projected or planned. And that is unfortunately very common to our clean tech companies that many of them like Stion are waiting for Department of Energy loan guarantees and paperwork to be processed which we hope will be soon. There are supposedly announcements coming soon, but it's hard to move the federal government. When I was in Washington my last trip I spent a lot of time with the Department of Energy. It's clear they understand the necessity to move these application quickly but in the change of administration they had a lot of top people that hadn't even been appointed yet. Hopefully they're beginning to move them but they understand and I talked to Senator Feinstein and senator Boxer and they've both talked to secretary Chu about the importance of processing these loan guarantees to us as well as other parts of California so we can hope that those will happen soon. I'll be going back to Washington in September. If they're not done yet, we'll go back to the Department of Energy. It's important not just to Stion, but to the health of our local economy. We have many companies that would expand, have markets, have products, profitable companies that could expand, but the access to capital has just been gone over the last many months. So we're hopeful the DOE will help break that logjam and keep these companies growing, and Stion will undoubtedly be one of them, and we are looking forward to seeing them hire a lot of people here in San José. Anything else on that? We have a motion to approve. All in favor. [ayes]

>> Mayor Reed: Opposed? None opposed, that's approved. Our next item is 7.2. Amendment to the sublease and co-sponsorship operating agreement with San José State University Research Foundation, and then 7.3 is a related item, ratification of the incorporation of San José Biocenter as a nonprofit corporation. I have had a couple of conversations with our San José State people, I met with president Whitmore and we've had a long collaboration on these issues. That will continue. They're very much interested in working with us as we modify some of these arrangements. That will help them and help us. So I think we're moving forward with these, in collaboration with San Jose State University and the many companies that are part of the incubator program. Councilmember Kalra did you want to speak on this item?

>> Councilmember Kalra: Yes. I'd move the recommendation forward. And just want to thank San Jose State university and, as well as the management of the biocenter, you've already heard how successful this model is, has become. And I just look forward to a continued positive relationship with the university and with the management of the biocenter to really continue to create jobs and opportunities for our residents and for our city. Thank you.

>> Mayor Reed: I'd just like to point out that our incubators have been some of the best in the world over the last few years. We've had a lot of companies that have come through our incubator program that have raised more than $1 billion in private equity as they have grown and outgrown the incubators, so we are looking forward to

continued success in that area as we try to do it in the most efficient way and most effective way. We have a motion to approve. All in favor? [ayes]

>> Mayor Reed: Opposed, none opposed, so that was 7.1. We need a -- 7.2, we need a separate motion on -- the ratification of the incorporation of San José biocenter. We have a motion to approve, all in favor? [ayes]

>> Mayor Reed: Opposed, none opposed, that's approved. I think that concludes the redevelopment agency's agenda for the fiscal year, right?

>> Harry Mavrogenes: Thank you, mayor.

>> Mayor Reed: All right, take next week off. Or at least Tuesday of next week. We need to convene the San José Financing Authority to consider one item, which is item 2 on the agenda, funding related to renewable energy.

>> Move to approve.

>> Mayor Reed: We have a motion to approve. All in favor? [ayes]

>> Mayor Reed: Opposed? None opposed, that's approved. Now we'll work our way back to the early numbers on the city agenda. Starting with the consent calendar. We have a motion to approve the consent calendar, items that councilmembers would pull off to discuss, Councilmember Herrera.

>> Councilmember Herrera: 2.3.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: 2.18.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: 2.41.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: 2.6 and 2.28.

>> Mayor Reed: Any others? Any requests from the public to speak on any? No, all right. We have a motion to approve the balance of the consent calendar. Councilmember Kalra, did you have another one?

>> Councilmember Kalra: Yeah, the -- I don't have the number right in front of me. The one with the Cottle -- the Cottle development.

>> Mayor Reed: Cottle road development?

>> Councilmember Kalra: Yes.

>> Mayor Reed: It's a very long consent calendar.

>> Councilmember Kalra: I know.

>> Mayor Reed: All right, we'll call that one by name, instead of by number.

>> Councilmember Kalra: Thank you.

>> Mayor Reed: So motion is to approve the balance.

>> Councilmember Kalra: Got it, 2.25.

>> Mayor Reed: Motion on the balance, all in favor? [ayes]

>> Mayor Reed: Opposed? None opposed, those are approved. Start back with item 2.3. Councilmember Herrera wanted to discuss that one.

>> Councilmember Herrera: Thank you, mayor.

>> Mayor Reed: Let me see what -- let me tell the public which one that is.

>> Councilmember Herrera: Thompson Creek.

>> Mayor Reed: Excused absences.

>> Councilmember Herrera: 2.30, Thompson Creek and Sierra Creek bank erosion and repair project.

>> Mayor Reed: I'm sorry, I misunderstood you. Then let's not start with that one. Try to start at the beginning, 2.6 is the first one, then, Pierluigi Oliverio wanted to speak on that one.

>> Councilmember Oliverio: Yes, thank you, mayor. This is a settlement of a software implementation gone wrong. We've been dealing with this for multiple years. I'm glad to see it be resolved. But I would say that our new policy of allowing to do pilots before you procure and commit would avoid these types of situations, so I'm glad that we now have a -- some leeway in policy to do pilots before procuring. So I make a motion to approve.

>> Mayor Reed: Motion to approve 2.6. All in favor? [ayes]

>> Mayor Reed: Opposed? None opposed, that's approved. 2.18 would be the next in number, next in order, and that one is actions related to history San José.

>> Councilmember Campos: Thank you, mayor. First of all, I'm not sure why this was placed on the consent calendar. Since we know that this is an important item that the council has been following, and that we actually talked about this at an open session at one time. First of all, we know that history San José is a great educational component to the residents of the City of San José. And probably also serves as an attraction for people that are outside of San José want to see some of our past history. What I was glad to see was a supplemental memo you issued yesterday, really, outlining a process for history San José in order to create a long term strategy for them in there -- to maximize the revenue. We know that the city has been very committed to this by continuing to increase revenue to history San José so that they can be successful. What I'm not comfortable with, and maybe you can give me some feedback on this, is why, at this time, would we increase the revenue, it's almost doubling it, for nine years, without having a benchmark or having an opportunity for it to come back to the council so that history San José can report back what they've been able to do and how they're going to be able to increase their revenue so that the city doesn't continue to have to increase the subsidy towards them?

>> Peter Jensen: Peter Jensen, general services director. The comparison to the prior contract amendment, which is I think we need to talk about doubling the amount, that's what you're referring to. In December 2007, the council directed staff to increase the annual subsidy to $875,000 a year, based on an analysis of the cost of operations as separated from programming, and so that's been the amount of subsidy the last two fiscal years. And then council also directed us to come back to you for '09-'10 with an amended agreement which is what this is. Our analysis at this point is that the 875 remains an accurate amount for operations and that's why we've recommended it. But as you can see, with this proposal, what we'd like to do in the agreement is, really be able to set, as you say, have them work with QOBS and score to really kind of develop a strategic plan, look at both what services can be delivered for that amount and also, what's the overall financial sustainability picture for the organization. So the agreement does allow the council to make changes to the amount of the appropriation, in its appropriation decisions in budget years. But for now, we're recommending that we stay with the 875 basically to stay consistent with the direction we got from council in December of '07.

>> Councilmember Campos: And I appreciate those comments. But I think that, and I've heard this over and over from the City Manager that next year is going to be a challenging year. So I'd like to be able and City Manager if you want to comment, I think it's appropriate to go ahead and grant this amount. What I'm uncomfortable is the nine years. I think what would be appropriate is to say for the next year, to come back, around the budget time, that we are -- like we are now, and review that, and at that time, I think that we would have ample of time to see what their strategic plan plan is on how they're able to continue to produce revenues.

>> Mayor Reed: City Manager has a comment on that.

>> City Manager Figone: Yes, I think that would be fine, in fact, councilmember, mayor and councilmembers, I think we do have an opportunity to come back to you before you're at this stage. We are actively reviewing all of our nonprofits, and I think it will be important to not only advance the status of history San José but others who we might also find are at some risk. So I think that's an excellent recommendation.

>> Councilmember Campos: So are you suggesting, when you say "come back earlier," is that like mid year budget?

>> City Manager Figone: Possibly mid year, or maybe early spring, to preview for you where we're at with our nonprofits, and specifically with History San Jose, absolutely, your request, we can be more directly focused. But I do think as we work with our nonover the course of the year, there might be others who we'll want to talk to you about.

>> Councilmember Campos: Okay, thank you. I don't know if you have any other comments to add to that. I think the nine years feels just very locked in with this moving target of our city budget.

>> Peter Jensen: The only comment I had is I think the plan of a nonprofit strategic engagement committee is to come back, and working through the auditor, do a comprehensive report, and then pick out certain organizations that we needed to do more follow-up on. So I think that January is the target for that. So you'd see History San Jose as a part of that.

>> Councilmember Campos: Okay, thank you.

>> Mayor Reed: City Attorney should comment on the "subject to appropriations" language in the recommendation.

>> City Attorney Doyle: I'm looking at the main memo, on the first paragraph, the recommendation, this is an authorization to have the City Manager negotiate and execute an agreement. It would be subject to appropriation, even if you had a nine-year term, every year you'd have to come back to council to get that appropriation. So you will always have the chance to review it. It's not an automatic extension. It only extends if the council appropriates the amount of money.

>> Councilmember Campos: Thank you.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I was also just a little bit surprised to see it on the consent calendar after we'd had so many discussions in prior times. But I do want to say that I think History San Jose is one of the best-kept secrets in the city, and we need to figure out how to make sure it's not a secret. I continually go to events there and talk to people, and I'm surprised by how many people are surprised by the fact that this is the first time that they've been there. I think it's also important that as we talk about History San Jose that we continue to separate the duties that they do for us, like maintain our collection, as separate discussions. Because to me, that's not a subsidy. That's a fee for service. And I know that they manage -- I don't even know how many individual pieces of things. I've done my tours there and gone through it, and that really -- I think we do a disservice to them when we talk about that part as a subsidy because they're doing work for us maintaining our historical collection. That's not to say that in the other areas, there's not areas for improvement. I know Alita's

here, and she knows that we're continuing to strive for ways to do things better, and I know their board is really engaged. But I think we really have to find a way to unlock that secret. I don't know what the answer is, but I just want to make sure that we're all continuing to push for that, because I think if you compare some of the other similar venues in other cities, and how much traffic they seem to get versus what we're getting and how many people know, I grew up in Michigan, and while Greenfield village is a lot larger and has a lot more in its collection, so to speak, everybody in the state of Michigan knows about that location. People go to Michigan just for that or travel within Michigan for it. And I'd really like to see our history park turn into that type of destination. And I just don't know what the answer is. And I think we have a lot of work to get there but I think we do need to separate the discussions of what we subsidize so to speak in operations versus what we pay for, for the services that they provide us.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: Thank you. And I appreciate the comments shared by Councilmember Constant, that History San Jose is definitely a hidden jewel in our inner city. But if I can just make a small clarification for Councilmember Campos, this contract was a really unique cjntract. It's a 20-year contract. And I think that the language here shows that there were many years where this is going to be, and in 17, 20, 18, it really gives History San Jose a perspective in termination of establishing their long-term financial goals. Because they know that they can't rely solely on the city to continue to operate, and that they need to include efforts in terms of raising money on their own through private corporations and companies in order to sustain their operating cost. And so -- and I know that we have had essential conversations in terms of increasing the allocations, and we understand that that's what's needed. But I think the language here is sufficient for all of us to understand that you know, this is just to help them establish their long term financial terms, thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you. I think what I was hoping to be able to accomplish was so that they didn't have to come back and wonder, every year, whether they're going to have the funding. That's pretty, I think that's a hard way to operate for nine years, wondering subject to the council whether they're going to approve it this year or not approve it. And what I was hoping is that we could at least giver them some certainty by understanding what their game plan is, in relationship to the city's, so that there was more certainty towards their financial future, so that they would not have to look every year to whether the city would be approving their funding. And that was my intention of my comments.

>> City Attorney Doyle: Councilmember Campos, yes, I appreciate that. This is the way we do contracts, generally. And the way we do it is the California state constitution only allows you to incur an obligation where you, on an annual basis, subject to your appropriation, say, you could only spend money you have on an ongoing basis. It's called the debt limitation requirement. So incurring multiyear obligations, you have to have this subject to appropriation language in there. So it really, it essentially is a certainty. I think your concern is the amount and making sure they have a plan. And we're all comfortable with it.

>> Councilmember Campos: A plan for them so that they will have something to fall on if the money's not there.

>> City Attorney Doyle: My only point was, just making sure every year it comes back as part of the budget process.

>> Councilmember Campos: I want to make sure they're whole so their organization can continue to thrive and be able to serve the residents and the City of San José without having the uncertainty whether they're going to be approved. So if we can help them with the strategic plan that they're comfortable with, then they'll not have to put all of their hopes into year-by-year. Thank you. With that I would move for approval.

>> Mayor Reed: We have a motion to approve, that is item 2.18 regarding History San Jose. All in favor, opposed, none opposed, that's approved. Our next item in order is 2.25. The actions related to the Cottle transit village. Councilmember Kalra, you wanted to speak on that one.

>> Councilmember Kalra: Thank you, mayor. I just had a couple of questions on it. One of the questions I had is, in looking at some of the maps, the focus maps that were provided, it looks like in the map, and I want to -- the map that covers the Cottle area, appears at least, to go up Monterey. And I was wondering, you know, if it was narrowed to just apply for the specific Cottle transit village, or is it -- is it going to be a separate -- the bottom line is, how is it determined on what area to apply for in the whole scheme of things? Because it looks like there's a lot of different areas in San José were considered, and specific to Cottle, it went up Monterey on those sites.

>> Joe Horwedel: Councilmember Kalra, Joe Horwedel, Director of Planning, Building, and Code Enforcement. The focus map sets are in the packets. The arial photos, those are the existing focus areas, and as the city and VTA applied for those in 2007, so what we are proposing today is to add an area, essentially would go onto the map to add the Hitachi Lowe's site to those maps.

>> Councilmember Kalra: The map I saw said potential, potential PDA, proprietary development area. Let's see, page -- yeah, it's -- page 2, it's 2 of 8 on planned land use. And it does show Cottle Road and it does show the Blossom Hill Caltrain station, but there's a dashed line around it showing proposed PDA area. Has that somehow been advanced since then to be now officially a PDA area, a PDA?

>> Joe Horwedel: So what we would be doing is expanding this. When the VTA did the original submittals, they were looking at corridors as opposed to broader sites. That's why you see them as an even width. So we're actually going to create that, recognize the full boundary of that mixed use area.

>> Councilmember Kalra: Okay, so they'll just expand it and incorporate it beyond just literally along the corridor?

>> Joe Horwedel: Right.

>> Councilmember Kalra: And include the development itself?

>> Joe Horwedel: Correct.

>> Councilmember Kalra: Is there any more specificity as far as the financial and technical assistance that we'd be able to get to the focus program, not just in regards to Cottle, but just in general, what kind of assistance would we be getting from there?

>> Joe Horwedel: The funding that the council recognized several weeks ago for the Diridon study area, about three quarters of a million dollars that we received through the programs as a result of the work we had done several years ago. So there are substantial dollars that are available that we are anticipating, as we move forward with the general plan update and working on our villages and corridors concept, that that's going to be one of the sources of funds to do those specific neighborhood plans. And so we're trying to get the ground set with this submittal. We -- to be able to compete for dollars, to do some more of those type of planning efforts like we're doing in Diridon.

>> Councilmember Kalra: So essentially, since it's -- the deveopment may be consistent with other goals of other regional agencies we can essentially offset costs we would otherwise have to spend ourselves --

>> Joe Horwedel: Correct.

>> Councilmember Kalra: -- in the development with the focus funds.

>> Joe Horwedel: It helps offset money that either we would have to compete in the General Fund process, and it allows us to do, to fund those exercises with other dollars.

>> Councilmember Kalra: Okay, thank you. And with that I'd make a motion to approve the resolution.

>> Second.

>> Mayor Reed: Motion is to approve. All in favor? [ayes]

>> Mayor Reed: Opposed, none opposed, that's approved. Next one is 2.28, Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, Mayor Reed. I understand the TPAC committee has approved this, and it is now to council. I'm just not sure, while during a recession with the highest unemployment rate since 1941, I need to increase the cost to maintain those services of janitorial, landscaping and security guards. We appear to be receiving those services today, as-is, and I don't see again why, when we have the discretion, why we have to increase the cost of government. We just increased the sewer rates and I think most residents would say, hey, that's fine if you are going to buy me a sewer but I don't think they're really in kind to these types of things so I'll be registering a no vote, thank you.

>> Mayor Reed: Is there a motion? We have a motion to approve by councilmember somebody, probably Vice Mayor Chirco gets the call, I think She was closest to me anyway. Further discussion on that? All in favor? [ayes]

>> Mayor Reed: Opposed, one oppose, two opposed, Oliverio and Constant opposed, that is approved. 2.30 is next in order. We didn't get a motion on 2.3. So let's take a motion to approve 2.3 and to reconsider 2.30. We have a motion to do so. All in favor? [ayes]

>> Mayor Reed: Opposed? None opposed, okay, that approves 2.3 and 2.30. Councilmember Herrera wants to speak on that one.

>> Councilmember Herrera: Thank you, mayor. I wanted to thank the city's Public Works department in their efforts to work collaboratively with the Santa Clara Valley Water District, and the Santa Clara Valley Water District for including these in their stream maintenance program and working to move these projects forward in a timely manner. I know the residents of District 8 will be really grateful for this collaborative effort to repair the eroded river banks at Everdale and Farnsworth Drive, and with that I'll move that the city council approve this item.

>> Mayor Reed: Motion is to approve. All in favor, opposed, none opposed, 2.30 is approved. 2.41 is -- Councilmember Liccardo wanted to speak on that one.

>> Councilmember Liccardo: Thanks Mayor. Ed, thank you very much for your efforts in pushing this along, Albert, thank you for all your efforts as well. I know most of in occurs in your department and I think probably in Jim's as well.

>> Mayor Reed: I'm sorry, Councilmember Liccardo. I didn't identify what this was. It's a public-private partnerships update.

>> Councilmember Liccardo: Yeah. So I appreciate the progress that's been made so far. I had a question about policy number 75, which we've revised the naming of city-owned land and facilities. The policy doesn't seem to explicitly authorize this or preclude it, but I imagine that there may be some facilities in which we'd want to have a term, a defined period of time, in which we would allow a naming agreement to occur and then we may want to solicit other sponsors if we're talking about ongoing maintenance for instance. And I just wanted to be sure that this policy actually allows and contemplates that some facilities may not be named forever, but for, say, five years. Is that consistent with your understanding of the policy?

>> Albert Balagso: Councilmember Liccardo, Albert Balagso, director of Parks, Recreation, and Neighborhood Services. Actually, 7.5 is being returned to staff to do more work, you're not approving it today. That is one of the things that we can take into consideration is a sponsorship so say an organization wants to buy a sponsorship and name a facility, that could be a possibility. What the Rules Committee asked us to do is to go back and give a more clear criteria of how naming would be done and what would be eligible. So we can take that into consideration as we bring it back. And we would not be bringing it back 'til perhaps the fall.

>> Councilmember Liccardo: Okay, great. And then any RFPs that we might have for -- whether it's the hockey rink or a park or anything like that, all those would just go straight through typical committee to council or would

some of those be -- would some of those simply be entered into by the City Manager? I'm just trying to understand how we know when these things are happening.

>> Albert Balagso: Correct. With your approval of 1-17 it delegates us authority for the City Manager to authorize the naming of the interior. So, say, Roosevelt center for example --

>> Councilmember Liccardo: I'm sorry, I missed -- let me back up. My question was asking more generally about the private partner, private-public partnership, not just about naming, I'm sorry.

>> Ed Shikada: Thank you, Councilmember Liccardo, members of the council, Ed Shikada, Deputy City Manager. We have got basically myself, as a point of contact for any new partnership concepts. We've got a pretty good system in place now that can help flesh out the various issues that will come into play. But we are absolutely interested in examining and working with anyone who is interested in partnering with the city.

>> Councilmember Liccardo: Are there any one or two major obstacles that we still have to remove before we can move forward with some of these opportunities?

>> Ed Shikada: Well, I'd say that every one of these partnerships has their own uniqueness to them. Whether it be our own policies that may be seen as an obstacle from the prospective partner's vantage point, but mentioning in terms of the system, I think our commitment and the council has certainly shown a willingness to look at what those individual issues may be, and ultimately make a decision on whether it's in the interest of the city as well as the interests of the partners to proceed.

>> Councilmember Liccardo: Thanks. I know particularly in these tough times the ability to be innovative with opportunities like this is really going to be critical. So I appreciate your efforts to push this forward. I move to approve.

>> Mayor Reed: We have a motion to approve. Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, Mayor Reed. Reading through this, I found that both Palmea Park and Motiso Park were both two parks where somebody wanted to take it off the city's hands and maintain it for free. And I think if you bring that to any resident, they go, "that's great." And the reality is, we have such a backlog of maintenance in our parks that we could easily take those resources and put them in any other parks that exist in the city. So I'm finding one of the obstacles being the fact that we are mandating them to pay prevailing wage for something they're going to do for us for free. I mean, the simpleton argument makes a lot of sense to the resident: You're going to give this to me for free and maintain it for me so it's all pretty? That's great. I mean, when I voted for the Palmea Park Barbacia development, one of the main reasons to vote for that for the council was that this park was going to be maintained by them. So I obviously made my point that I believe that whomever wants to take care of that park should be able to do it, as long as it's done in a safe manner, which we supervise that it's being maintained in a certain agreement. So did you want to comment on that at all, Ed or --

>> Ed Shikada: Certainly, councilmember. Reflecting back on the prior council discussion on the prevailing wage issue as it relates to donated services, I think the key distinction that we made in our staff presentation, the feedback from stakeholders, that in particular, developers' development tied maintenance agreements were of concern. And so given that the prevailing wage exception -- or I'm sorry -- the exception for prevailing wage as it relates to donated services of parks, specifically carved out development. There's a concern that in the interest of securing the development approvals, that the applicants would certainly be willing to take on the maintenance responsibility, and so given that that was a part of their expectation going into a development application, a waiver of a city policy specifically prevailing wage was not something that we wanted to put on the table.

>> Councilmember Oliverio: That's a viewpoint I don't agree with. I understand that it can be conveyed, it's like a favor to the city, but yes, it is. The same way when we build market rate housing, they pay property tax and park fees and crimp fees, and all that other stuff to make it balance out, since housing is quite a drain. So City Attorney, by accepting this report and rescinding policy 1A and accepting a revised policy to come back later, are we even touching this topic at all of the prevailing wage for volunteer services, or no, that is just a separate council direction?

>> Mayor Reed: City Attorney.

>> City Attorney Doyle: I've been paying attention to an e-mail. You can repeat the question? Sorry. You caught me.

>> Mayor Reed: Multitasking. He's working on the next agenda item.

>> Councilmember Oliverio: Our City Attorney is very diligent. He has lots of things he is working on, absolutely. So my question for you is, accepting staff report, policy 1A and then having staff come back with a revised policy 1.17, does that touch at all my concerns about requiring prevailing wage for these developers who want to maintain parks or property management groups, HOA or anything --

>> City Attorney Doyle: No, I think I should add, and I think, Ed, and my staff are coming back with a comprehensive prevailing wage policy. Right now, it is really undefined. And I think we need council direction as to when and in what cases there may be exceptions. And that's something that we've been working on at a staff level and will be back to council probably in the fall.

>> Councilmember Oliverio: Okay, that's for another date.

>> City Attorney Doyle: Your action today doesn't affect.

>> Councilmember Oliverio: Fair enough and you know my concerns. Okay, thank you.

>> Mayor Reed: Any other questions on it? Pulled off the consent calendar Or City Clerk, we do have a motion. Sorry I forgot. All in favor? [ayes]

>> Mayor Reed: Opposed, none opposed, that's approved. I believe that concludes everything on the consent calendar that everybody wanted to speak to, unless I missed one. Looks like I did not, so that concludes the consent calendar. Taking us to item 3.1, which is report of the City Manager, I believe she has no additional report.

>> City Manager Figone: No additional report, Mayor.

>> Mayor Reed: 3.2 is report of the Rules and Open Government Committee for June 3rd, 2009. Motion is to approve. All in favor? [ayes]

>> Mayor Reed: Opposed, none opposed, that's approved. 3.6 is not before 2:00. Fortunately we are not there yet. Making good progress so that takes us to 3.8, the independent police auditor consultant contract item. Staff. City Manager.

>> City Manager Figone: Mr. Mayor, we have no presentation. You have two options in front of you. And we're happy to answer questions. Heather Ruiz, our assistant director of human resources, is here to answer council questions.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I'd like to move for approval of part -- I got to make sure I get the right one here -- of part B, which I believe would be $6900. Rather than the part A, which would be $27,800.

>> Mayor Reed: So you're referring to the two alternatives recommendations that staff has --

>> Councilmember Pyle: Uh-huh, Bob Murray.

>> Mayor Reed: Recommendation B.

>> Councilmember Pyle: Yes.

>> Mayor Reed: Is there a second?

>> Councilmember Pyle: Do I have a second?

>> Mayor Reed: Second on that motion, that would be Bob Murray and associates. Yes, we need a second. There's a second on that. All right, staff, I know you did some searching for search firms. Before we get into the discussion, could you just talk a little bit about your process of how you got to here, with these two out of however many you were dealing with?

>> Absolutely. I'm happy to. Heather Ruiz, deputy director of human resources. Thank you, Mr. Mayor. We have a process any time there's a executive search that the city wishes to engage in we have a list of qualified vendors that were established previously through an open RFP process. We maintain that list. Any time we have a search that we'd like to go out for, we send a request for a quote to a list of five of those approved vendors. Those that respond to the quote, as long as we get at least three quotes responsive, we review them for a number of different criteria. We review them for, obviously, the cost being one factor, their experience with relevant recruitments, their experience with the city, their track record and history with us, and with performing different recruitments for the city, as well as their methodology, each recruitment firm has a slightly different approach style, executive search is one of those things that is very individualized, depending on the firm and the principals in that firm that you're dealing with. So we evaluate the firms based on those criteria and recommend a selection. We work in conjunction with the departments, in this case with the council, whoever is going to be heading up that search. And in this case we provided two alternate recommendations to the council. Bob Murray is under contract with the City to conduct this search. There was not a successful placement out of the first search that they conducted, and they're willing to, as per their contract, conduct a new search which would mean going out to, you know, a new opening, new posting, looking at candidates some and doing that within the original professional fee and would only charge us for expenses. The other recommended alternative is to engage with a different search firm is that is the desire of the council and we provided a recommendation of Avery as the alternative search firm. Did that answer your question?

>> Mayor Reed: Thank you. Vice Mayor Chirco.

>> Councilmember Chirco: Yes, again, I missed so much of the IPA process because of my health issues, but I know in the staff memo it talks about Avery as having a particular methodology that would prove beneficial in the IPA process. And I know that the first process -- I'm going to call it flawed. And while I realize that the Bob Murray bid is $6900, I'd like to know what we paid him for the first process.

>> I don't have the data in front of me in terms of what we paid for the first time around so I'll have to get back to you but he did engage in a contract with a professional fee. Let me see if I have that.

>> Councilmember Chirco: It's probably not --

>> It's usually about in line. Most of the firms are very similar so it's probably about in line with the other firms in terms of the total amount. I'd have to go back with accounts payable to look at exactly what we paid for the first process, including expenses and everything.

>> Councilmember Chirco: Well, not having been here during the process, I look at it more through the eyes of a community member. And the first process was not successful. And I'm going to put some of that responsibility on background and presentation of materials. So what I would like to do is make a substitute motion to move that Avery be given the contract, based on the previous experience with Bob Murry. That's not saying that they're bad or good, but to start with a clean sheet and begin the process anew. Now, I realize that is $20,000 more. But I think this is a critical process which we need to begin with a clean slate and start the process afresh. So that would be my substitute motion if I can get a second.

>> Mayor Reed: We did get a second to the substitute motion so the motion on the floor is to work -- yes, Councilmember Campos. So substitute motion is to go with Avery and associates. Councilmember Liccardo.

>> Councilmember Liccardo: I'm a little naive in all this. But I'm just kind of wondering why we need to have a consultant at all. I don't pretend that everyone's looking on monster.com for IPA jocks. But it seems to me that there are probably common publications out there in this field, wouldn't be hard for us to figure out what they are. Why can't we just put out the ads and in a tough time like this I think we'll probably get a good field. We already know the people that we reached out to last time. So we've already got a pretty good field and maybe we want to do a little more search so let's just put out a couple of ads in some publications or you know, and move on.

>> Mayor Reed: City Manager has --

>> City Manager Figone: If I can help answer that. I think there's a couple of reasons councilmember. One, because the job title isn't a common one out there. We will have individuals likely apply who think they're a good fit. And so that the due diligence around the individual, the initial screening, and then I think in this case, although many times a consultant can do a paper screening pretty effectively, I really do think that the consultant will need to spend time talking to individuals to determine if it really is a good fit for San José. So there is that labor-intensive part of this, and it's not that our staff couldn't do it, but given the downsizing that's gone in HR and everything else that they're facing in terms of managing the transitions in this organization, I do think that the council would benefit from the use of a consultant for that finding of the matches which won't be obviously in paper screening, and then the follow-up interviews that any of the consultant would do, but we think that Bill Avery, if the council were to go that way, is particularly good at.

>> Councilmember Liccardo: Thanks, Deb. The other question I had, I know Heather, you've responded to this question for a member of my staff, I wanted to ask it myself as well. Because I look at the options here, and I see both Alliance and CPS have experience in actually recruiting IPAs, one in Eugene and one here in San Jose in 2004, and they're both less expensive than Avery, whereas Avery doesn't have experience, and they're more expensive. So when I look at this, I'm wondering why we don't go with Alliance or APS, and I understand there's some relationship we have with Avery that gives us some confidence. But it seems to me we also have some relationship with CPS as well. So it's just not obvious to me.

>> Yes, absolutely, I'm happy to speak to that. It is definitely when it comes to executive search firms one of those situations where they are all qualified. We have had experience with all of the firms. There is a definite distinction in terms of style, approach, methodology for the firms, and we feel that Avery's approach, based on what City Manager shared, is more complementary to this particular recruitment, in that they do very extensive screening and outreach with candidates in qualifying them. They also are very good with coming up with that candidate profile really understanding from the council in this case what the needs are. In terms of the other two, we have worked with them on previous recruitments. CPS conducted as a firm conducted the IPA for the City of San José the last time around, although the principal who conducted that is no longer with CPS. So I don't know, they didn't provide any additional information, and I don't believe that they've done, to my knowledge, any other recruitments of this type. That principal has gone off and opened their own business and they were one that declined to respond to this RFP and it was just a matter of workload for their firm at the time. They didn't have the opportunity to do that. So in terms of the relevant qualifying factors would I put CPS and Avery equivalent in that CPS had some experience as a firm but not the specific person. And again it really comes down to that methodology and the approach that we 30 that Avery would be -- would be better at for this particular recruitment.

>> Councilmember Liccardo: So is what I'm hearing, is you believe Avery would be more thorough?

>> Yes.

>> Councilmember Liccardo: Okay, thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I'm going to be supporting the substitute motion and while I think that both firms have had -- we've had experience with both and there's probably no perfect firm, I think that given some of the things that happened with the last recruitment, I think we -- I think we should change firms and start

fresh with a new firm. I think it's important that this process be perceived as most objective and that we take this very seriously to make sure that the community can support this next process. And I would hope that having this consulting firm will make sure that any possible conflict will be taken care of at the very beginning of the process, that the thoroughness that we're talking about with Avery, I think we need that, we exactly need that going forward, so thank you.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: You know, I hear the comments about starting with a fresh start, and some of the inferences of the issues with the consultant. But I don't think the consultant did anything that -- wrong or improper. You know, you can argue all you want about our roles in it, what we did in it but I think they did their job and I'm more inclined to support the first motion.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I agree with comments that the Vice Mayor made in regards to moving forward with a new search firm. I don't think there was anything intentionally done by Bob Murray, clearly I think given staff's indication of past work, that's been successful, there's no indication, no reason to believe we can't work with them again in the future. But I think at this time, given the processes that already occurred, as well as admitted mistakes by everyone, I think it would be appropriate for a different firm. However, looking at the options here, and kind of along the same lines as Councilmember Liccardo, begin the fact, and this may just be the nature of the business, given that there haven't been that many searches for this type of position, so it's hard to find firms that had that kind of experience, there's a worry, at least that I had, of going with a firm that has no experience. So you talked a little bit about the methodology, I don't know there's any more specificity you can give as to why the particular methodology that Avery offers is that much better to overcome even the mitigated experience of the other two firms.

>> Sure, I'm happy to. They do an extensive process at the front end around what I would call sort of vetting the candidates or backgrounding having that conversation that the City Manager referred to with the candidates. So once the candidates apply they do more than just a paper screening of those applications looking at the resumes as to whether or not they meet qualifications. They have extensive conversations with the applicant on the front end of the process, and that's part of what they do as their standard process, talking to them about the relevant experience on their resume, how they feel that that relates to the particular position in the city. And as I mentioned before they do have a very good ability to sort of get from a diverse group of people what is our candidate profile, what is the description, what are we looking for and then evaluate those candidates based on those conversations for those qualities. So again, it is something that's a little bit hard to define because it's a very soft skill. But they have an excellent ability to do that.

>> Councilmember Kalra: And the other firms, they don't have the same type methodology? I assume they would want to do the same thing ultimately, is to take into account the diverse views we may have up here and put them into one profile. Is it simply the methodology or is it the dashes because I imagine the intended goal is the same of any search firm.

>> Sure, I think all the firms have a goal of successful placement and getting at that information. Some of the other firms that we worked with do more of a paper screening initially and present the resumes to the council based on a paper screenings only, which doesn't provide you as much of a wealth of information about the candidates as you're making your first determinations in terms of the screening of the candidates. And then they follow up after that with additional information. So you're making some initial decisions based on a little bit less information than I believe that Avery provides and would provide to the council.

>> Councilmember Kalra: And is there any -- oftentimes we'll see bids and so on and there's a scoring system. Was there anything like that that was used, whether it be an objective scoring system or some kind of subjective parameters that were used to come to the conclusion that Avery would be the best?

>> There is a scoring process that was gone through in the original RFP in terms of grouping the group of qualified vendors. At this point, any time we use those qualified vendors, it is much more of a subjective scoring

system. We do use the criteria that I mentioned and that are listed in the memo in terms of their experience, their qualifications, their experience with relevant recruitments. Obviously price is a factor. So we look at all of those in terms of doing that. But there was a very objective scoring process when we originally went out for the list of qualified vendors, and that's how these candidates got into that grouping of qualified vendors that we can go to for any particular recruitment.

>> Councilmember Kalra: And in the chart summary it indicates previous experience with police auditor or other like recruitments. How broad, when you say other like recruitments, are you talking about any kind of oversight-type positions?

>> In the chart that's listed in the memo we specifically only listed those particular recruitments that were police auditor or police oversight specific. All of the firms did have relevant experience when it comes to general city auditor type positions or other law enforcement type positions which we felt both were sort of relevant matches, if you are looking at that, although unique and different each one of them. But we listed in the chart those that only had very specific either police oversight or auditor-type recruitments, and that is a very limited field, as you mentioned. So there's just not a lot of recruitments that go on in this field.

>> Councilmember Kalra: Thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I would just like to say a couple of things. Number 1, I don't think Bob Graham wouldn't have said, I'll do the search free of charge or I will waive my fee, if he didn't mean it. And secondly, there is nothing more important when you're in this type of business than your reputation. And I get the sense that he's trying to regain that. And then the second part some is it unusual for any firms of this nature to every ask applicants to fill out a job application? And the reason I ask that is because on that job application, I believe on page 1, it asks, do you have any relatives that work for the City of San José, would I be correct with that?

>> Correct. It is not on the application. It is one of the supplemental questions that we consistently ask in terms of -- for open recruitment. Generally it is not standard practice to have candidates fill out a formal application in executive recruitments. It's more of a resume.

>> Councilmember Pyle: Right. But Mr. Graham has got that in his head now. He knows, I have to ask that question, I have to get it answered one way or the other. For all we know Avery could have the same problem and your recommendation was that you felt that, how did you put it? We feel either firm is qualified and would conduct a high quality search for the IPA position. So that was a big part of my reasoning, and I really did never give you a sales pitch here. But if you feel the qualifications are pretty simpatico, why would we pay the higher cost, especially in these times? I truly think Mr. Graham wants to get his reputation back, and I think we would be safe with him, because he did produce quality, qualified people in his search. So I think because of the one mistake, in my -- from my perspective, he deserves another chance. Thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you. First of all, I appreciate the Vice Mayor's comment and her insight, since she wasn't a part of the process to the extent that the rest of the council. That's why I seconded it. And so I will be supporting, you know, the motion that the Vice Mayor put on the table. I think that it is an opportunity for us to move forward. I appreciate, Heather, all your information that you gave the council, on why you made these two recommendations. And for me, it is very clear that Avery is going to be very thorough and that they're going to do the extra legwork that you believe is necessary for us to get the best candidates as we move forward.

>> Mayor Reed: I'm going to be supporting the motion. On April 28th the council approved a fairly detailed process for moving forward on this, and that included retaining a consultant, having this meeting to consider all the consultants, and then that consultant is going to be back to us with some other work before we get into the screening of the candidates process, as well. So this is consistent of what we said we wanted to do in April. So I'm going to support the motion for Avery and Associates. Any further discussion on this? All in

favor? Opposed? One, two, three opposed, Oliverio, Constant and Pyle opposed, that motion carries. I think we can do one more thing before the break for lunch, and that's the soccer memorandum of understanding. And then we'll take a recess for lunch and take up the rest of the agenda, since this is not an agreement, it's not a lease, it's pursuit of an agreement or lease. Maybe we can get it done here quickly. City Manager.

>> City Manager Figone: Paul, do we have a presentation or just here to answer questions?

>> Mayor Reed: Let me just -- let me do a time-check with my councilmembers. I don't know how many people are going to have questions on this. This is not a new thing. One, two, you can come back after lunch?

>> Paul Krutko: I think I have the very next item after this, mayor, which is Wia program.

>> Mayor Reed: I don't think there's anybody in the public that's here to speak to this, so why don't we take this up after lunch, that will be easier. You can have the time at that point. We'll adjourn until 1:30, we'll take up the ceremonial items and start making our way through the rest of the agenda. Thank you very much.

>> Lee Price: Mr. Mayor, members of council, just a reminder, we do have lunch for you today in the pantry.

City of San José afternoon council meeting June 23rd, 2009.

>> Mayor Reed: Good afternoon. I'd like to call the San José city council back into session a little bit ahead of schedule that's good because we started at 8:00 this afternoon. We're going to take up first our ceremonial items and we're about ready to start item 4.2, the memorandum of understanding for soccer practice field. And then we have item 3.6 which we will take up not before 2:00 and then we'll work our way through the rest of the agenda. But first we'll start with the ceremonial items. I'd like to start with inviting Councilmember Constant to join me at the podium with Sergeant Luan Nguyen and officer Manny Vasquez. If they're here I'd like for them to come on down. If they're not here yet, we'll wait.

>> Councilmember Constant: Okay.

>> Mayor Reed: How about Councilmember Herrera and representatives of Evergreen Business and Professional Association item. I do have Councilmember Herrera. Evergreen Business and Professional Association members, come on down. Today we're commending the Evergreen Business and Professional Association for the successful high school seniors scholarship program.

>> Councilmember Herrera: Thank you, mayor, and Carla Evans, president of the Evergreen Business and Professional Association, Roger Cryer, Edwina Silvestri and Marilyn Leonard, and also Eric Osgarden, have joined us here from the Evergreen Business and Professional Association. And I'm really pleased today to be part of presenting this commendation to them. They make -- Evergreen business and Professional Association makes many important contributions to the Evergreen community. This association represents companies in over 20 different fields. Everything from advertising to health, to construction and community services. Since 1996, this association has demonstrated its dedication to the economic growth of Evergreen. But they have been just as involved in the broader Evergreen community. Their support extends beyond improving conditions for business in Evergreen. They most recently have demonstrated their commitment by creating a scholarship program for graduating high school seniors. This annual program means to provide financial support and broader educational opportunities to minority students graduating from Silver Creek and Evergreen valley high schools. It is for this commitment to our community and expanding opportunities for Evergreen youth that I would like to ask Mayor Reed to present them with a commendation today. [applause]

>> Thank you very much. I'm not going to say too much here other than to say thank you so much, it's so nice to be recognized. We've been, many of us here have been active in the association for a long time. We pride ourselves in keeping Evergreen as beautiful as we can. And growing the community, the business community of Evergreen in a healthy manner. I want to thank the council for your tremendous work and particularly in the focus to going green in San José. I think that's really a wonderful focus and I commend you for your attention to the arts, and the focus of going green. Mayor Reed.

>> Mayor Reed: Thank you very much. [applause]

>> Mayor Reed: I'd like to invite Councilmember Liccardo and members of the children's discovery museum kids cafe to join us at the podium. As we commend the children's discovery museum for their efforts to model zero waste products in an easy and understandable manner, which has helped move the city towards our Green Vision goal of zero waste going into our landfills.

>> Councilmember Liccardo: We're here to celebrate a wonderful accomplishment in partnership with our city. Our environmental services department, our award winning environmental services department has been working with the children's discovery museum over the last year to implement a zero waste program. The kids cafe which is within the wonderful children's discovery museum is run with the assistance of Hope Rehabilitation Services, which is an organization that's dedicating -- dedicated to helping members of our community with developmental challenges to be able to live and fully participate in the working world. Now the cafe manager is Vicki Yoshihara, who is here, and Vicki was given the task of converting whatever they were doing at the kids' cafe to a zero waste operation. So she immediately embraced the challenge. She had the cafe switch over to compostable food service wear, a three system waste, beginning to look at other waste opportunities. And this was a great education opportunity, not only folks who worked there at the museum of course but for the 300,000 guests particularly the kids since that's the folks they serve the most, 300,000 kids come in every year to the

children's discovery museum. Now before I tell you about the great statistics I want to introduce who's up here. We have Vicki Yoshihara and Patricia Narcisso, who handles development over at the children's discovery museum, and Autumn Guttierez is behind the camera. And two members of the team, over at the kids' cafe, Melanie Rasira and Rajinder Singh. They do the miraculous job of making this all happen. Now, here's the great results: 81% diversion for all cafe waste, and more impressively only a 2% contamination in their food waste organics collection stream. That's something that John Stufflebean would love to be able claim for our city. That's an extraordinary rate! [applause]

>> Councilmember Liccardo: So at this time, I'd like to ask the mayor at this time to provide the commendation to Vice and her team and to recognize them for their extraordinary work and to show the rest of the city and the rest of the country that it doesn't matter how young you are. Everyone can participate in the Green Vision that we've set out, and we're going to accomplish great things together. [applause]

>> Hi, I just want to say thank you so much, I'm thrilled to accept this award on behalf of kids cafe and hope environmental services. Little did we know what we were getting ourselves into when we rose to the challenge. I too challenge the city to go green. And it's a wonderful thing. My staff worked so hard, so they're so happy to be here to accept this award. [applause]

>> Mayor Reed: I'd like to invite Councilmember Pyle and Albert Balagso to join us at the podium. We don't have council meetings in the month of July, so we're taking this opportunity to declare July as parks and recreation month. Councilmember Pyle has some more information about that.

>> Councilmember Pyle: Good afternoon. By the designation of July as recreation and parks month we honor the San José Parks, Recreation, and Neighborhood Services for promoting healthy lifestyles as we just witnessed with heather, building our community and encouraging livable neighborhoods. The Parks, Recreation, and Neighborhood Services department helps to preserve and protect the natural and cultural resources of San José, and generate opportunities for people to come together, and experience a sense of community, through fun, creational pursuits. All San José residents should recognize the social, physical, mental, economic, developmental, environmental, and community benefits, provided by our Parks, Recreation, and Neighborhood Services department. So I urge you to get involved and discover what programs, facilities and events the Parks, Recreation, and Neighborhood Services department has to offer for all of you this summer. And mayor, with that, may we present to you Albert, congratulations for doing a fantastic job.

>> Albert Balagso: Thank you.

>> Councilmember Pyle: We really appreciate it. [applause]

>> Mayor Reed: I'm sure that all of our councilmembers will be out in the parks somewhere during the month of July. I know I will. Now I'd like to invite Councilmember Constant to join us with Sergeant Luan Nguyen and Officer Manny Vasquez, please join us at the podium as we commend these two officers for their excellent work in protecting their fellow passengers from a potentially dangerous situation, during a flight from Vietnam to San Francisco, while the officers were on vacation, I think that's called a busman's holiday or something like that. Councilmember Constant.

>> Councilmember Constant: Thank you. It's my honor to have these two officers here with us today. We have Chief Davis, who's also here to support them. I wanted to point out, Luan and I not only did we go to the police academy together, but we were actually partners for a while. So it's even more special to be able to do this today. You know, Sergeant Nguyen and Officer Vasquez had a great vacation in Vietnam. And on their way back, they were taking a plane from Taipei to San Francisco Airport. And then they heard what many people hope they never hear over the PA system in the plane, and that was the pilot asking for anyone with law enforcement experience to help. And while most people on the plane were cowering, not knowing what the heck was going on, these two guys got up and identified themselves to the pilot to see what they could do. And again, not only were they on vacation, but they weren't even in our country, they were over the Pacific ocean. There had been a passenger who had created quite a disturbance on board. He started choking another passenger, had become very violent and disruptive. In fact, in the struggle he actually kicked and broke the interior window on the airplane. And fortunately they have more than one pane of glass on those windows. But these two officers went

into action and were able to not only subdue the passenger, which was desperately needed, but they had to restrain them for four and a half hours. Because believe it or not, I was surprised, airplanes don't have any method of restraining passengers. So they restrained him by brute force for four and a half hours until the plane landed in San Francisco. This is an incredible story of how our officers go the extra mile even when they're not in our country an that we couldn't let this go by without recognizing these two officers for the work that they did to make sure that that plane made it back to San Francisco safe and that nobody on that plane was injured. So thank you very much, we have a commendation for both of you from the mayor and the entire city council! [applause]

>> Citizens of San José, Mr. Mayor, members of the city council, chief Davis, on behalf of my partner and myself, we'd like to thank you for this award and for your continuous support, and I can say that probably the things we did on that plane were a result of our training. And thank you very much to all of you. [applause]

>> Mayor Reed: I'd like to invite Ramya, for being a finalist in the national spelling bee, to come on down and join us here. It is a national rigorous competition. Being a finalist is a very big deal. Councilmember Constant has some details of her competition.

>> Councilmember Constant: Thank you, mayor. I've had the fortunate experience of being able to come up here many times and highlight the achievements of the student of District 1. Ramya Auroprem is the exemplar of the youth we have today and we're very proud to have her a student -- she actually recently graduated from Joaquin Miller School, which is in District 1, right on the Cupertino border. She has had a profound interest in linguistics and language and is fluent in Tamil and is studying French. So she is quite accomplished. She was fortunate enough to represent us and her school in the national spelling bee, the 82nd annual Scripps national spelling bee in Washington, D.C. The timing was perfect. As you know the San José rep we had the spelling bee which I had gone to to to see the performance right before hearing of her great accomplishments. She was able to compete nationally. She competed against 293 spellers, which consisted of 150 boys and 143 girls who had all won regional spelling bees throughout the nation. This is the largest field of spellers in the history of the event. She successfully spelled words that I can't even pronounce. So I don't know if I'm going to even attempt that. Let's just say, they have a lot of consonants and vowels and they're long. She competed against ten other finalists and finished fifth place overall in the nation. We are very proud of her, not only in District 1 but throughout the City of San José and we offer you today a commendation on behalf of the mayor and the entire city council. Great job! [applause]

>> Councilmember Constant: Maybe she can pronounce some of the words for us.

>> I just want to say I'm very glad to be here today, thank you very much for inviting me, I'm really honored, so thank you very much. [applause]

>> Mayor Reed: I think we're now ready to turn to item 4.2, the memorandum of understanding for soccer practice field at airport West property.

>> Paul Krutko: Thank you, mayor, Paul Krutko.

>> Mayor Reed: Before we do this, Paul let me see if I've got everything. I think I missed something. Yes, before we get into the business, I'll just have you take a seat for a second, Paul, because you're going to adjourn the meeting today, in memory of Joan Doss, a board member of the League of Women Voters, San José, Santa Clara, and the Willow Glen neighborhood association as well as active members of the Norcal Golden Retriever Rescue Association, the AAUW and Friends of the Cambrian Library. She was also a civil rights worker in the 1960s traveling to the South and working on a hot line to help address civil rights violations. Joan is survived by her sons Tom and Phil. We will also adjourn the meeting in memory of Tyrone Cheng, a recreation program specialist who passed away on April 22nd, 2009. Tyrone had dedicated 34 years to Parks, Recreation, and Neighborhood Services department most recently in the clean slate program. His passion was to mentor encourage and support youth to become productive members of the society. So we honor their passing and they will be remembered. Councilmember Chirco.

>> Councilmember Chirco: I'd like to acknowledge several members of the League of Women Voters that are here. I know that was a big part of Joan's life and she was very active. I don't know if her sons Tom and Phil are here. But I know our office has been in contact with them, and they were grateful that we were honoring their mother's memory like this. So thank you all for coming in honor of Joan Doss.

>> Mayor Reed: Albert Balagso has some comments about Tyrone.

>> Albert Balagso: Thank you, Mayor Reed and members of the council. Tyrone worked for the City of San José34 years and he was still working for the City of San José at his passing. He was a person who just really had a passion for working with young people, not just any -- any youth but he wanted those that had challenges in their lives, challenges at home, challenges in their school, challenges in their neighborhoods, the list of facilities that he worked at included Hank Lopez, Mayfair, Gardner, Olinder, Solari, Seven Trees, and Camden. So you can see the areas he loved to work in. If I didn't put him in one of those areas he complained. He said the other kids don't need me. That was his passion, his calling. He did -- he passed on to the better life, but he did it doing what he loved doing. To the -- right to the end. So thank you in adjourning this meeting on behalf of him.

>> Mayor Reed: Thank you. All right, we will now move on back to the business of the afternoon. Item 4.2, the memorandum of understanding of the soccer field at airport west property. Before we get into that, I just want to disclose that my staff and I met with Keith Wolff and Ed Storm in preparation for this meeting. Paul Krutko will lead off the presentation.

>> Paul Krutko: Thank you, Mayor. Paul Krutko, chief development officer. Mayor, I really don't have a presentation. Let me just tee the item up. What is before you today is a memorandum of understanding to allow the earthquakes to develop an interim practice facility on a portion of our property at the former FMC site, away we call Airport West. This acreage is separate from the acreage that is moving forward with the development of the office buildings, the hotels and the soccer parcel. This is the 9.3 acres that is at the very back of the property. So they've approached us, they were looking at other cities nearby, to locate their practice facility. We think the idea of them locating their practice facility adjacent to where the stadium's going to be built is an excellent idea. They will be able to use that facility wile they continue to play in Santa Clara, until the new stadium is built. We also, in this memo, provide council with information that we are looking at the opportunity to build out our larger regional soccer facility that was allocated for under measure P on this site, we think that's a good opportunity to explore the combination of the earthquakes practice facility and our regional facility could be an excellent opportunity. These are something we are investigating myself and director Balagso we intend to bring this back to you when you come back from your recess in early fall. We're available for any questions.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. Albert, we've talked about this at elect and I appreciate your responsiveness to my questions. As you know, I'm concerned about what the exit strategy should be should VTA need this site for BART. And so I would just ask, I want to first make clear on the record if, in fact, we utilize any of this site, for regional soccer complex, we are not necessarily creating park land for purposes of the city charter, is that right?

>> Paul Krutko: No, and I'll answer the question affirmatively, and if Albert will come up here, if I'm saying this wrong. This is a recreation facility, will not be covered under disposal park land charter .

>> Councilmember Liccardo: That is your understanding as well, Albert? Thank you. I know that folks at VTA are obviously concerned about whether or not this site could become unalienable once it's utilized as a soccer site. And certainly, I hope that whatever agreement is reached, that there is something provision for what might happen, eight, ten years from now, whenever it might be when the site might be needed for another use. In any event, I'll make a motion to support the staff recommendation at this time.

>> Mayor Reed: Okay, we have a motion to approve the staff recommendation. Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I just had a quick question for you. Is there any possibility that this site could be the site for a future regional soccer complex for kids? Because you have such a huge lack of space downtown for --

>> Paul Krutko: Well, Albert will help with you this. The particular facility that we're evaluating and want to bring back a full analysis to council on, would be for more older youth, and adult play. That was what the facility that we were looking to fund under measure P was identified for.

>> Albert Balagso: That's correct. The first priority we had was try to get adult play off of the local parks --

>> Councilmember Pyle: I understand that but once the earthquakes are here, and playing, and all of that, is there a possibility that what will be used as practice field by the earthquakes could become fields for kids?

>> Paul Krutko: We'll -- let's speak -- let'sing be clear for you. The earthquakes are developing a field that is primarily for the most part I think maybe with rare occasions if there are if we have national teams come here or something like that, that grass field will be dedicated for training purposes for the earthquakes. They need a dedicate training facility. What Albert and I are exploring are adjacent to that, the notion of adding four fields.

>> Councilmember Pyle: Yeah.

>> Paul Krutko: Adjacent to that. And clearly in a tournament situation, I think for the most part we anticipate the fields would be used for adult play, and for older youth. But there will be opportunities when we might have tournaments, where younger players would have access to that facility. But as Albert's explained it to me, one of the challenges we have is on our other fields throughout the city, we're mixing those older players with the youth players. And what we're trying to do is move the older players into a different environment.

>> Councilmember Pyle: Great. I think it's wonderful opportunity. Thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you. Actually, you answered some of my questions, so let me see if I can follow up regarding Councilmember Pyle. So the vision is, to be able to first of all define older youth. What age are you talking about?

>> Albert Balagso: High school age, young adults --

>> Councilmember Campos: 14 and up?

>> Albert Balagso: 14 and up.

>> Councilmember Campos: So what you're hoping to do is create space and fields for older youth and adults so that our parks that are set within the community would be for our younger youth?

>> Albert Balagso: That's correct.

>> Councilmember Campos: 5 to 14 or however old they start playing soccer. So that helps me. The other question I wanted to follow up on is with Councilmember Liccardo when he talked about what VTA wanted. And you said you're going to come back to us in probably August or September with an analysis of what we can and can't do there. So my question to you is, as you go into this MOU in negotiations with the earthquakes, what is the framework of looking at a partnership with them in relationship to this bigger sports complex?

>> Paul Krutko: Thank you for the question. This MOU that's before you today deals specifically with the practice facility. So we would be bringing back a subsequent MOU, but we thought that we should inform the council that we're having these early discussions, and that's why we included the information here. There are -- there are distinct advantages, and we have to consider them and go through the legal analysis, but there may be a distinct advantage, much like we talked about the convention center today, earlier today, about a design-build concept,

there may be distinct cost savings we can achieve by entering into a partnership with the earthquakes to have them build the facility, and then have it be run under an operating lease with the city. So they would essentially design-build it for us, we would then have -- that would be our asset and then we would enter into an operating lease, they could generate significant revenues for the city. So that's -- those are the kind of options we're trying to explore.

>> Councilmember Campos: Well, I encourage those options and those discussions because it sounds like it would really benefit both parties and then benefit us as a city when we're talking about saving revenues and being able to produce revenues as well. Thank you.

>> Mayor Reed: Any other questions on this? We have a motion to approve. All in favor?

>> Paul Krutko: Mayor, just wanted to --

>> Mayor Reed: You want to snatch victory from the jaws of defeat or defeat from the jaws of victory?

>> Paul Krutko: I learned that early in my career. I just want to introduce David Arellado. He runs the team. He's right there.

>> Mayor Reed: All in favor? [ayes]

>> Mayor Reed: Opposed, none opposed, congratulations. Now 2:00, we're going to take up item 3.6, the fiduciary governance models of the city's retirement plans. I think we have some staff moving around here. I think -- make sure everybody's here. Are we ready to go on that? Okay, looks like we have everybody that needs to.

>> City Manager Figone: Mayor, Chris shippey, assistant City Manager will take the lead on this item.

>> Mayor Reed: All right, we'll wait until everybody gets in place, if you want. Ready to go? Okay, Chris shippey.

>> Yes we are sir, thank you. Mayor, members of the city council, several months back you asked the City Manager to take a look at the governance model of the two retirement boards, and to make recommendations on restructuring the boards to add independent members with financial and investment experience. The City Manager was also directed to include outreach to affected stakeholders as part of that process. Staff retained the service of cortex applied research to accomplish these directives and cortex is an internationally recognized firm experienced with governance structures in any number of different pension plans in United States and Canada. Based on their review of relevant documentation, interviews with stakeholders, and industry best practices, cortex developed the report that's in the agenda package. And I'd now like to introduce Tom Inuchi, the president of cortex who will provide the report and its context. Tom.

>> Thank you, Christine. Mayor Reed, I am Tom Inuchi, the president of cortex, I'm joined by my pattern who should be here momentarily, Dr. John poore who is the founder of the firm. Cortex is a founding firm that specializes in pension fund governance. We've been observing and consulting to pension funds over the past 20 years and we're very pleased to be here to share our findings in connection with the governance of the San José retirement systems. We will try to keep our presentation brief and leave sufficient time for questions and answers. Before getting to our findings, I think it's important to provide some background about pension plans and cortex's mandate in this project. It's important to understand that there are four critical drivers of success for any pension system, or pension plan. And those are as follows: First is benefit policy. Meaning the design of the pension benefits, whether it's defined benefit, defined contribution or a combination of the two, how generous those benefits should be, et cetera. Number two is funding policy. How those benefits are funded, by whom, and to what extent. And number three is investment policy, how the assets are invested, what is the -- what are the asset classes we're going to invest in, what are the investment strategies, structures, et cetera. And number four are the governance models of the retirement systems. All four drivers must be well designed for success. If even one of those drivers is ill conceived or not properly managed, it threatens the long term health of the entire retirement system. Eventually it will suffer financially, it may even potentially unravel if any of the investments are not prudent, or if the governance model and structure is not appropriate. So all four drivers must be functioning properly. Cortex was retained in this assignment to assess only the fourth piece, the fourth driver, the governance

model. Of the San José retirement systems. Arguably, the governance model or the governance structure is the most important driver in the sense that it provides the framework within which all the other decisions get made. It's a logical place to begin, if one is trying to step back and reassess the entire governance structure or the entire pension system. Unfortunately, the governance models tend to get relatively less attention than the other issues, but again, they are equally important and that's where we focused our attention in this process. Now, what exactly do we mean by the governance model? We've prepared this diagram which summarizes much of our thoughts and findings that you'll find in our full report. But whether we talk about the governance model of the retirement system, what we're referring to is the identification of the stakeholders or the governance model identifies the stakeholders in the retirement system and what their interests are in that system. It sets out how those interests will be protected and it sets out how the retirement system will be administered, how the benefits will be administered and how the investments will be administered. A strong governance model is one that recognizes all of the stakeholders in the system, and their interests, their legitimate interest in that retirement system. It sets out how those interests will be protected and it sets out how the retirement system -- I'm sorry. It provides strong protection for all stakeholders, and it provides for an effective administrative body, i.e. a retirement board, to run the retirement system. What we mean by an effective retirement body or effective retirement board is it has the resources it needs to administer the system and very importantly it can be held accountable for the performance of the board and the system. In the case of the San José retirement systems, the two systems, federated and police and fire, this same model applies. The stakeholders, there are multiple stakeholders in this particular retirement system or both retirement systems. One ever the active and retired members of the system, they have a legitimate interest in the system because they have contributed financially to the retirement systems, and therefore, they have a legitimate interest in knowing that their benefits are secure, that those benefits will be paid, in the amount that's owed to them, and in a timely basis. They do have a legitimate interest in the system. The taxpayers are another critical stakeholder in the retirement systems. Although often overlooked in retirement systems across North America. They have a legitimate interest because, in a typical defined benefit plan, which is what we have here in San José, the taxpayer ultimately serves as the final or ultimate financial guarantor of the benefits. And what we mean by that is, if it should happen that there are insufficient assets to pay the benefits to the members, as those benefits come due, it is ultimately the taxpayer who will have to step up and make up the difference in these systems. They will do that either through increased taxes, or through a reduction in services, one way or another. So that's a critical piece to understand, in the governance model, that this particular stakeholder group, i.e., the taxpayers, do have a legitimate, also have a legitimate interest in the success of these two retirement systems due to the financial guarantee that they effectively provide to the systems. And the city and council are also stakeholders because they are the representatives of the taxpayer in this process. If the stakeholders, it is important to realize, are not confident that their interest are effectively being in the system, it's logical and it happens time and time again that the stakeholders will take whatever steps they can to build that comfort level to ensure in fact that their interest will be protected. They will do that which scrutinizing more closely the decisions of the retirement boards, they will try to bet involved in those decisions, they may try to assume some of those decisions, they may try to assume some of the authority. Unfortunately this will lead to we've seen a dysfunctional decision making process and a severe strain on stakeholder relations amongst all these stakeholder groups. With respect to the accountable the third box on the right, an accountable administrative body, our review found that currently, under the current governance model, there is no single entity in San José that is -- that can be held truly accountable for the performance of the system. In fact, the different responsibilities, the authority and the resources, for administering the two retirement systems, is in effect shared between the retirement boards and in fact city administration. City Manager's office in particular. In effect, no one body has both the authority and the resources to truly administer all aspects of the retirement systems. That arises because in a typical system, that we see throughout North America, the retirement system board would normally have the authority to hire its own staff, for instance, direct that staff, would have the authority to hire the service providers, and the vendors that it needs, to carry out its responsibilities. That's not the case here in San José. The way the current structure is. And it's understandable given some of the other things I've mentioned. the city has retained some of the authority, administrative authority with respect to the retirement systems, specifically I'm referring to the ability to hire and direct the staff and some of the vendors. The reason for that is because, as I said, because of the lack of safeguards, the city feels I'm comfortable with assuming, actually giving up that authority to the retirement system, therefore has been engaged in some of these administrative functions of the two retirement boards. So the key weakness we found in our review is in fact in the center of the diagram, the accountability safeguards. There are insufficient, in our opinion, safeguards in the current model to provide the different stakeholder groups with the comfort level they need to -- and particularly the city, it doesn't provide the city enough comfort to in fact give up some of these authorities and allow for a truly accountable administrative

body. So in developing our recommended governance model, what we realize is that by simply recommending a model, with additional, more effective safeguards, that would actually protect, better protect all of the stakeholder groups we can dramatically improve the effectiveness of the entire governance mole. You will see that in our report. We have recommended approximately 20 different safeguards to be instituted in the current model. Some of those safeguards already exist, some of them we're simply suggesting they need to be refined and expanded and some of those safeguards are brand-new. You can see on the slide I've listed approximately 10 of the safeguards which we've suggested that we believe are the critical safeguards that everyone should be interested in. There are ten others in the report that you can review more in detail in the report. But I'll work quickly through the safeguards, the key safeguards that need to be implemented. And I'll start from the right-hand side. Safeguards that are needed to protect the taxpayer. The taxpayer is the ultimate financial guarantor of the pension benefits. We believe that as an appropriate safeguard to protect that financial interest, it is reasonable to expect that the city would be able to appoint, on behalf of stakeholders, a majority of the members of the two retirement boards. That provides that level of comfort that the city on behalf of the stakeholder has some meaningful control over the composition of the retirement board. We've also suggested that boards, the retirement boards should not be able to advocate for benefit enhancements. We suggested that the true role of the retirement boards is fiduciary in nature, meaning they're really only responsible for administering the benefits that have already been determined by the stakeholders. And to do that they should be an expert, arm's length independent board and they shouldn't have an interest in the actual design or level of the benefits and they should be advocating for benefit improvements or enhancements over time. Third and very important, and this is a provision that already exists, but we've emphasized it, the city should have as a safeguard the ability to approve or establish the broad investment objectives of the two retirement systems and those should be stated in the municipal code. That's currently the case. However the current -- what we're suggesting is that there's been a lot of new thinking and development by way of the types of objectives that would make sense for these two types of boards. We would suggest that the city establish within some city department some greater expertise and resources who can think through what would be the most appropriate investment and funding objectives that would West about serve all of the stakeholder groups in the two systems and recommend all those periodically to the city council for approval . Your current objectives are somewhat unique in the industry in that the current objective in the municipal code which are given to the retirement boards to achieve is to minimize the contributions to the different funds, to the two funds. That objective is a little unusual. administration costs but not envelope the investment, the contributions. In order to minimize the contributions, it implies the funds are being encouraged to take on significant investment risk. That may not be in the best interest of either -- of the members or the taxpayers. So we're simply suggesting that we clarify that the city has a duty to really think through those broad investment objectives and then approve them and give them to the two retirement boards and direct them to achieve those objectives. Turning to the far left side of the chart, safeguards for members and retirees. The biggest safeguard to protect the interests of the members and the retirees is the fact that the city through the taxpayers ultimately guarantees the benefits. That really is the strongest safeguard for the membership. However, it's not foolproof. That guarantee only has value for the members and the retirees as long as the city is solvent. So the members and retirees still have an interest in making sure that they remain solvent and that this retirement system doesn't actually put the city into undue financial hardship and puts the city in a position in which they may not be able to some day in the future honor the promise made with respect to these two systems. The second safeguard for the membership is that the board is and will continue to be under our recommended model subject to the fiduciary duty of loyalty. And what that means is that the retirement boards, each retirement board for each system would have a primary duty of loyalty to the members and beneficiaries of those planned. They could not legally as a whole. And this concept is often not well understood. The fiduciary duties owed to the membership only arise in connection with the benefits that have already been promised. So the current board members or future board members would only have the fiduciary duty to ensure that the members get the benefits that have been promised to them to date. There is no such thing as a fiduciary duty to the membership or retirees to create or enhance new benefits in the future. The future duty only arises once a benefit is created. And we're simply saying that that's a safeguard that protects the membership. Their fiduciary protections arise once the benefit is created by council in consultation with the stakeholders. We're also suggesting that contrary to the current model the members would be because they have an interest in the system, they've contributed to the system as a safer guard they would be able under our recommended model to elect trustees directsly to each board, without city council approval. Under the current model they actually can't do that. They recommend trustees and city council approves and may choose not to approve the recommended candidates. As a further safeguard for the membership we suggested under the new model or recommended model that the members and the retirees may and should have the option of appointing independent expert trustees to look after their interests, their fiduciary

interests on the retirement system. That also is an option that's not currently available under the current model. Under the current model members and retirees must elect from amongst their membership individuals to serve on the boards for their behalf. Under the recommended model they would be free, they wouldn't be forced to, they would be able to go out and identify independent experts to represent them on the board. Then you'll see in the center of the diagram we have other safeguards which benefit all stakeholders. And we've identified two of them. At least a majority of each board under our recommended model, the majority of the board which would be appointed by city council would be required to be both independent of the city and would be required to have relevant expertise. That not only benefits the city and protects the City's interest, we believe it is also good for the membership and the retirees. So that benefits all stakeholders. Similarly, the board members would be subject -- would continue to be subject to the fiduciary duty of prudence. Meaning every decision they make would need to be held to a high standard of care in that process. Again, that's currently the case. We would continue to maintained that safeguard. That benefits all stakeholders groups. So that is the summary of the model we've used in our report and what we've recommended. Essentially what we're saying is that without proper accountability safeguards, to protect and adequately assure all stakeholders that their interest will in fact be managed and protected, we believe that the performance of the retirement system will suffer because the accountable administrative body will -- is unlikely to have sufficient authority and resources to carry out its duties. And we've identified ten such safeguards here. There are another ten safeguards in the report. Now, in arriving at this recommended model, we felt we didn't need to make very radical or changes, we tried to build upon the basic elements of the current model. You see that we're still recommending maintaining two separate retirement boards, the active and retired individuals on those boards, representing their fiduciary interests, we've actually tried to enhance the involvement of the active and retired members in this new model, by giving them the ability to elect individuals directly to each board, without having to get approval from the city council, and we've in the new model given the members and retirees the ability to elect individuals wore not necessarily active or retired members but in fact are independent and should have relevant expertise to bring to the table. We have also under the new model simply added safeguards that require that a majority of the trustees will have relevant and deep experience and expertise that we think benefits all stakeholders, in particular, it should give comfort to city council which in turn would allow city council to perhaps share or give back some of the authority to the retirement boards to administer all aspects of the retirement system. So to summarize, how would the two board compositions look different? What is the current composition compared to the recommended composition? You'll see that they're not terribly different. We still have seven members under the current board structure on the left. We have two members who are recommended by the active members. All members by the way are ultimately appointed by city council. But currently two members are recommended by the active members. One member is recommended by the retired members. Two councilmembers also serve on the board recommended by the mayor. One civil service R is recommended by the civil service commission. In addition you have one public member representing the federated board and in case of police and fire you have one city administration member who is recommended by City Manager. the recommended structure on the right which is cortex's recommendation is somewhat simpler. You have two members continue to be selected by the active members, however, this time again, they are appointed directly to the board by the active membership, one member is selected and put on the board directly by the retired member and we are suggesting four members being selected by city council. Still giving you a board of seven, so two boards of seven. Now, I've mentioned a few times that we're suggesting that at least a majority of the board, each board as appointed by city council should have relevant expertise and experience. And through our outreach, I think there may have been some confusion as to exactly, or some questions as to exactly what does that mean that members should have relevant expertise and experience. We have suggested certain areas that we feel would fit the bill. These are individuals who we believe don't necessarily have hands on technical expertise in picking stocks and bonds in fact we're actually discouraging that you pick such individuals. What we're recommending is that you find individuals with very high level experience in strategic positions, strong judgment and deep experience in relevant industries. And some of those individuals might include senior executives of insurance or banks who have been responsible for asset liability operations, because fundamentally, it is just that, an asset and liability business. And you can find individuals in the private sector or elsewhere who have similar experience managing relevant professional experience, audit, accounting, legal, actuarial, investment, risk management, any of those backgrounds would be very relevant, very useful to have represented on those two boards. Potentially academics in the fields of finance, actuarial science, law, accounting or senior executives in financial operating firms, benefit delivery, technology, operational businesses, custody backgrounds. In this way, by selecting individuals that cross this spectrum of experience and background you will have boards who can federal see and the member service delivery and benefit aspects of these two systems. So we have not suggested as some people may have inferred that we should be filling these boards

with investment experts. In fact you'll see we don't mention experts in the report we are looking for high level executives who have overseen large complex organizations. We believe, by again we mentioned that there are five or four key drivers to a successful pension plan. One of them and we think it's the foundation is the governance model. By establishing an effective governance model along with strong benefit policy, funding policy and investment policy, we think you will position these boards for long term success in the following areas. Better investment performers in the long run, better performers in the benefit delivery functions of both boards and the general administration of both systems. When we issued our draft report to the stakeholders, we got a lot of good feedback but there was a theme that came through from a number of stakeholders that they would really appreciate more time to review and discuss the draft report. And there seemed to be looking for additional outreach. So if the city council would be open to the idea of allowing for more outreach and discussion and input into their recommended model and findings, this draft work plan might give you some sense of how that might work. The stakeholder outreach meetings could be conducted over the next three months, July, August and September. Any comments received in stakeholders could be incorporated into the final report with recommendations coming back to city council in August or September and the City Attorney, it would be very important that the City Attorney review the final report and any recommendations and analyze any of the necessary municipal code changes that might arise out of the recommended model. That would hatch in July, August or September. City council could expect to receive a final report in October with an implementation plan as well as all the proposed changes to the municipal code. The municipal code changes would take effect possibly by the end of November. The recruitment proceed for new trustees if the new model is accepted or adopted could occur between January of this year by February 1st, 2010. So early in the new year. And that completes our brief summary of the report. And we'd be happy to eight any questions.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. First of all I wanted to thank the members from cortex applied research, not only for their report but for the time that you spent discussing this with me and during the interview process and the feed impact process and the presentation. It helped me out quite a bit. On the overall issue of the retirement boards and where we've been and where we're going, first I wanted to say again how much appreciation I have that the council has spent so many time talking about the retirement boards over the last year to 18 months. I think it's something that if you look back historically, with the city councils, it's kind of unprecedented how much attention the boards have received. And everything we have been talking about and doing has really been geared towards ensuring that our retirees have security when they leave the City of San José's employment. And I think that is truly a laudable goal. I think as was outlined in the presentation, what we're talking about is not a revolution in the sense of completely discarding the boards as they exist but more of an evolution, that respects the membership on the boards of the active and retiree members. But as was pointed out clearly, gives them the option if they choose and quite frankly only if they choose to have surrogates on the board. It retains basically the appointment of four members by the city council, or the City Manager, which has been the practice on both boards, although in slightly different models. I think that it -- the movement towards people who have expertise in asset liability management is a critical step for both of our retirement plans. I think it affords us the ability to allow our systems to become much more profitable in a sense, to perform much better, and to provide greater insurance to our active employees and the retirees as they think about their retirement years. And it will also have the benefit of reducing the exposure to our General Fund in the unfunded liabilities that occur when funds don't federal as well as they should. I think the other thing that's been really interesting that has come of this, and we really haven't even done that in the year or so that we've been talking about the boards, is really having the regular reports to the council which, in effect, is a report to the taxpayers and residents of the San José, that there is a regularly scheduled meeting to talk about and talk with the trustee members, to talk about what those goals and objectives and what we hope to achieve with our retirement boards, and I think that's something that's critically important to both sides of the equation, the employee retirees and the council taxpayers on the other side. I think also this really is going to put Russell and any of his successors in a very much better position. Because right now he is stuck in having to serve dual masters, actually three masters which haven't always been in congruence with each other and where the direction and pressures for performance have been. And I think once we are able and if we are able to change the governance composition, spinning it off to its own entity will be very good to the plan. Because as I have been more and more exposed to the pension role, it's been very apparent that our plan is different than the rest . It's very unique and one of the things that made it most unique was how the retirement director, who they reported to, who they reported to and how they functioned in our job. I don't think you could pay me enough to do Russell's job. So maybe we'll make it easier on him in the

future if this is to progress. I am sure you have all had the opportunity to read the memo that I authored along with Mayor Reed, Councilmembers Kalra, Liccardo and Herrera. The four of us councilmembers that are on the memo are the four that have the -- I odn't know if it's the opportunity or the task or the punishment, one of the three depending on where you're sitting, on which month, to serve on those retirement boards. We like the direction that this going, but we also recognize that it's important that we go through a full stakeholder outreach to make sure everybody understands the intricacies of what this report suggests and what the outcome could likely be if this is approved. So I would like to make a motion to move forward the memo that I just referenced.

>> Mayor Reed: We have a motion to approve recommendations with the direction outlined in the memo.

>> Councilmember Constant: And then I just hope that the -- the rest of our colleagues will support this nothing that the he next 90 days of stakeholder outreach and the subsequent probably, bring a change to both of our retirement systems, thank you .

>> Mayor Reed: City Attorney.

>> City Attorney Doyle: The time line may need a little bit more adjustment for voter approval.

>> Councilmember Constant: And I think that's all the more reason to have this 90-day period to give it a critical look, thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks, mayor, Rick you scared me a moment there when you talked about charter changes. Are you speaking directly about the composition of the board or --

>> City Attorney Doyle: There's only two, there is one that the first issue has to do with the composition of the board and appointment. The charter provides that all the commissioners are appointed by charter, excuse me, by the council, so to the extent we deviate away from that, and we delegate problems --

>> Councilmember Liccardo: Do you delegate that authority to --

>> City Attorney Doyle: We'd have to look at that. Right now there are -- you know, the charter sets up, it gives the council the power to establish the retirement board, but there is a separate provision in a different part of the charter that says all commissions set up by council, the members shall be appointed by the council. So I don't know how we get beyond that, but we haven't fully vetted that. There is another provision that requires that the city attorney provide legal advice to councils, commissions and boards. And to the extent that the model calls for independence on that, it may raise some questions.

>> Mayor Reed: Thank you, Rick. Tom, thank you for your work. I think the recommendations really seem to be pointing us in the right direction. I had a couple of questions about some details, and I was hoping you could help educated me a bit. On page 23, there was a description, assertion that the city Muni code should discourage investments in ventures, and I think there's a suggestion that maybe because of the involvement of the council or for whatever reason, that we've been actually identifying investments within the city or that benefits the city in some way. And the question I have is, do you see something in the structure either of the board or of the Muni code that is actually encouraging us to make those kinds of investments, or -- because I'm not familiar with what's happening on the other side, on the police and fire board. I'm not aware of what all the investments are. Are we investing a lot in San José land or anything like that?

>> No, this -- that recommendation was not in reaction or response to anything that's currently happening here in San José. That reflects simply what we found, and it's been a lot of thought, research and discussion around this whole area of economically targeted investing throughout the United States, throughout North America. And it was simply a recommendation of reflecting good practice that should in the future these -- either of these retirement boards wish to pursue a strategy of economically targeted investing, we found experience at other systems that can be very problematic. It raises many fiduciary ethical public relations risks to the system and the benefits associated with such strategies, the research suggested that it's questionable, it's difficult to really see

the benefits of such strategies. And to avoid any -- and now that there isn't an issue this would be a good time to actually introduce the concept, and perhaps consider embedding that concept into the governance model for these two retirement systems.

>> Councilmember Liccardo: Okay, that's helpful, it's not an existing problem it's just looking forward.

>> No, not at all.

>> Councilmember Liccardo: Okay. The one item that does seem to point to what may be an existing problem was the reference to the SRBR on page 8. And you know, I may be looking at the wrong, realize I had an early draft so I may have been pointed to that -- I'm sorry, 18, that's it. Yes, it's on the top of page 18. And I think essentially what I see here is suggesting that paws there's a benefit certainly to participants in the plan, to receive the upside of a good year, in terms of returns, that is, better than typical returns, because the SRBR provides additional cash at the end of the year, and if it's a very bad year, as we've experienced very recently, the taxpayers are pick up the tab, next year to the tune of about $50 million and ongoing in the future, that there is inherently a disposition that is too risk taking in this plan. Is that fair?

>> That's correct. The SRBR is what some might call represents asymmetric risk and return. The risk is borne by the taxpayers and the city and if there are returns or upside, it accrues to the members, sorry, to the retirees. And in the long run that's very problematic when you're continually chopping off the good years and the taxpayer's forced to fund the bad years, eventually the financial health of the system, this will build up and cause significant financial hardship over time for the retirement system. So yes, that's an accurate description of the point.

>> Councilmember Liccardo: Sort of heads I win tails you lose approach. So is it fair to say that we're seeing some of that today, as we look at the unfunded liability that we currently have in both claims?

>> Yes, it is, the SRBR would be a contributor to the financial deterioration of the system.

>> Councilmember Liccardo: I was reading last week that on the GM board, General Motors, UAW gets a seat, and UAW did not appoint a member. They appointed I think it was an industry analyst to represent the UAW on the board. Are we seeing that trend more and more from private sector unions?

>> That is a growing trend in the -- what's referred as the Taft Hartley world, the unions, auto workers, et cetera where these unions have realized that yes, we could be better served by putting experts to representative our legitimate fiduciary interests on these boards so you are seeing this trend in the Taft Hartley world. In other countries such as Canada it is even more common in Canada to unions to be putting experts independent members, independent to the extent possible on these boards to again represent their interests.

>> Councilmember Liccardo: And appointees still representative the interests of those union members insofar as -- they're still trustees, the fiduciary under the plan but --

>> Under law, that's correct. Under law their duty is to the members and the beneficiaries that's correct. .

>> Councilmember Liccardo: I'm speaking from the councilmember perspective, I know I would rather have an expert on the board than me. And you know, I've had graduate school classes in securities law and finance and I know I'm not qualified to be on this board. No matter how many seminars I go to. I'd rather have the subject matter expert there. I'm hoping that we all move that way collectively. I think that's what's in the best interests of the retirees and of the taxpayers April and so you know I'm hopeful that this is going to collectively get us moving in the same direction when we all see that we have the same interest leer in mind ultimately is assuring that we've got a retirement plan that's going to be there for our retirees when we need it but not only for those who are there today but those who are there 20 years from now. Thank you very much for all your hard work.

>> You're most welcome.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you mayor, I too serve on the police-fire retirement board and I was happy to do so at the mayor's request but I would also be happy not to be serving and have someone take my place who has that expertise. I think that's a very important part of this of getting those experts on there that can serve to protect the city, the taxpayers, and our retirees' interests. But I think the whole structure of the board talks about, I think the making this independent and having a single point of accountability because now we really don't have that. We've got various -- all of our interests sort of colliding in some respects. And I think having this board be independent, I think, really guarantees the retirees. And the city. And the taxpayers that the board will work in the best interests of all of those things. So I think that independence is very important, and I really appreciate cortex bringing us best practices and how we can move forward to really change the governance so it is going to do what we all need it to do. And I also look forward to hearing input from all the various stakeholders. I'm hopeful that once they take a look at all of these issues that they're going to come to similar conclusions. So look forward to having this -- having that feedback and moving on to the next stage.

>> Thank you very much.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor and thanks Tom for the report and for the presentation, as one of the folks that was interviewed, I'm not sure if it was my answer to the questions that convinced you to have experts on the board. But I think it's important however it's a well written report, but it's pretty meaty. There are a lot of really substantive changes. And as with any substantive changes, it certainly takes a lot of outreach and it takes a lot of time and energy to really make sure that the stakeholders and other folks in the community really understand what the implications of the changes would be. And so I'm glad -- I was glad to sign on to the memo to allow for more time to have that opportunity and would just, you know, ask that as much as possible, that the affected members and retirees, and their representatives at least have ample opportunity to communicate with you as they have a greater opportunity now to absorb the substance of the report and, as I'm sure all of us will, over if next three months, if the motion's approved to have an opportunity for all of us to kind of jump into it a little bit more now that we're putting this budget cycle behind us. And I look forward to the dialogue as well as to hear back from the community and the stakeholders as to questions and concerns so thank you very much for your work on this.

>> You're most welcome.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: Thank you. First of all I wanted to thank staff for providing the answers to the questions that were posed in the memo dated April 13th, 2009, by Councilmember Kalra and myself. It is much appreciated. And then Tom thank you very much for the extensive presentation. I think both the written work and the oral presentation was just outstanding. So I only have two short questions. In your report you recommended that the recruitment of new members should extend as far as the West region of the country. I was wondering if you can speak briefly as to the rationale behind the recommendation. I guess the logic hind this is to set up the stakeholders, these are the employees of the City of San José. I was wondering why we wanted to go way beyond the city and the state to recruit new members. I assume it's to go in search for people who have expertise in this area as to at least retirement services but --

>> Well, the recommendation in that regard was not so much to require council to look outside of San José but rather, not to limit yourselves to the city and county of San José. The reason for that is ultimately the challenge ahead of you should you adopt this model is to find, for eight individuals, who are both qualified, have the time availability, are independence, and also, do not have conflicts of interest vis-a-vis their day-to-day work job, which can be difficult. So the -- our concern was the probability of finding eight individuals who meet all those criteria here within the city, might be difficult. We're suggesting here within the city but you should not limit yourselves that you should cast your net as wide as reasonable, to allow you to find those individuals who meet those criteria, and you really do want to achieve all four of those criteria. Actually there are five, interest, time availability, experience and expertise, and independence. And I think the city might find that it won't be necessarily easy to finds eight individuals that meet those criteria.

>> Councilmember Nguyen: Thank you, I think I understand that, I think it gives us the flexibility of going beyond our city.

>> Exactly.

>> Councilmember Nguyen: And then the other question I had was, you stated here, you gave us some examples in terms of the different retirement system that we can look at in terms of comparison. And I think the closest that we have here is San Diego. Have you looked at any other local jurisdictions in terms of the geographics that's closer to San José, like San Francisco, any other models that's closer to San Jose than just San Diego?

>> I'm sorry, have we looked at other models?

>> Councilmember Nguyen: Other retirement models that are similar to what you're posing, closer to San José that is geographic, I see San Diego as the closes that you've listed in your report .

>> That's right. We've looked at a dozen or so California systems, some of them here in the vicinity, so City and County of San Francisco would be one ever them, many of the local counties, Sonoma County, Alameda County, et cetera. And I think you'll find that, and again when we identified these systems that we looked to for best practices we were looking to identify individual practices or structures of some these systems had that we thought would be useful to incorporate into your model. But if we look at systems like the City and County of San Francisco, the retirement board in San Francisco does have the authority to hire, direct, and oversee the director and the staff who report directly to the board of retirement, as one example. They do have independent individuals with relevant expertise, they have currently somebody with like -- somewhat contrary to my earlier points, but investment experience at the partnership level, individuals with real estate backgrounds serving on the board. So yes, even other California systems we could have identified a number of them, do have -- share some of the characteristics that we've incorporated into our recommended model.

>> Councilmember Nguyen: Great, thank you very much.

>> You're welcome.

>> Mayor Reed: My concern and what turned into a real interest in modifying our governance model started in 2004 when San Diego melted down. What was thought to be a fairly well-run city turned out to teeter on the edge of bankruptcy. Mayor resigned. City Manager resigned. City Attorney was replaced. All the pension board members were replaced. And federal investigations, bond rating was suspended, inability to issue bonds, basically they were almost forced into bankruptcy, haven't had to go into bankruptcy but it all came out of conflicts of interest in their pension system. Which created huge, huge liability. So that got my attention back in 2004. So we've been at this a long time. And while we're no -- by no means anywhere near where San Diego was, we don't want to go there. And so I think there's a real interest and a real need to do something on the governance model. I want to thank cortex for the good work they've done I think when people sit down and study it, most of us are going to end up in the same place, I think, when we get done with the outreach. So I will be supporting the motion. I want to take some public testimony at this time. Might as well have a seat. I don't have very many speaker cards. Ross Signorino, Bob winenger and Bob Brownstein. Those are the three cards I have. Please come on down. Anybody else wants to speak on this item, please get your cards in .

>> Ross Signorino: Thank you, Mr. Mayor, members of the council. We paid half a billion dollars for this place, and it's very hard to read up here but it's not as bad as our pension funds, I have to say. I heard a lot of funds being used up here, retirement board, safeguards, bad years, good years. And then the best one I like best of all that the speaker always mentioned is stakeholders. Taxpayers. We are included in the stakeholders. Not the recipients of the fund or retirement, but we, if something comes up, bad years, good years, we pay. Okay? No matter what, we put into the retirement fund when it's good years. We put into the retirement fund again whether it's bad years. And this is our General Fund that this all comes out of. But the one term he did not use and should have used and maybe the taxpayers have a right to say this and think this, hey dumbies you got us into this. When these contracts were arranged what were you thinking? That this was going to go on and on and on and on? Those were the days my friend, we thought they'd never end. You should sing that song all the time,

really. You have to consider too, from now on, take the payers, stakeholders interest at heart. That's the taxpayers. That from now on, when we write contracts like these, let's make sure that there's some provision that we can safeguard ourselves. One of the terms that was used here, safeguard again, that we could protect ourselves during the bad times. That's the way these contracts should be written and this is the way we give and take a little bit. So the lessons I hope are learned, San Diego, Mr. Mayor, you brought that out very well, we didn't go that far. Was close to it. Who knows, in the years that come we're not out of business --

>> Mayor Reed: Sorry your time is up.

>> Thank you very much.

>> Mayor Reed: Bob Lininger, retired employees association and I appreciate your efforts here. And the memo of June 18th which we basically support with a custom of comments. I think anyone would welcome this this difficult, complex investment environment more expertise, some independence, fresh analysis of the conflict of interest that would be in here that would affect the ability to manage the funds in a prudent manner. So we support that. Like to think we could proceed that in the next period of time, let's do it right and comprehensive rather than just do it fast. And I 30 to say that we're just going to absolutely be here on a final report in October, may work but you're going to go out to taxpayers. We have a lot of things in this report that we think should be modified, we have some alternatives we want to try to develop and work in a collaborative manner with the staff and the consultant. But don't just limit yourself to final report in October. You've got to get some stuff in here. This is complicated business. So we stand regarded to work with you on that. I'd gist like to make a couple of comments here, I would like to have a minute or two extra, I've got 2600 members, I'm the only one speaking for the association here, I don't think SRBR belongs in this report. This consultant talked about four drivers and he said he was going to talk about the governance driver. That's an investment or policy driver or funding driver. I don't think that belongs in here. The SRBR has been categorized as the 13th big paycheck, a big bonus when it is a small account, 10% of an excess small pensions. And I think you should -- I ask you two things. To exclude this SRVR from this analysis, this governance driver, and number 2, I'd like to have you emphasize in this report, your final sentence, additional comments to be forwarded to the council, and factored into the final recommendations. To make sure these folks over here in the next 90 or additional time if we need it, understand they haven't made recommendations today --

>> Mayor Reed: I'm sorry, your time is up but we have another 90 days at least. Please giver us your written comments Bob if you didn't get them all in today. Bob Brownstein.

>> Bob Brownstein: Mayor Reed, members of the council, I would urge you to exercise some caution when someone suggests that you have an overenthusiastic faith in experts and that they will solve all your problems. As we all know, the record of financial experts in the United States over the last year has been somewhat unimpressive. And we also know that the problems simply was not those who picked stocks and bonds but was in fact the senior executives in the insurance companies, the senior executives in the banks, and the academics and the executives who waved them on. I call your attention to the testimony of Alan Greenspan and his testimony to Congress in October, pricing system has evolved combining the best insights of mathematicians, and finance experts supported by major advances in computers and communications technology. A Nobel Prize was awarded for the discovery of the pricing model that underpins much of the advance in derivitives markets. There modern risk management paradigm held sway for decades. The whole intellectual edifice however collapsed in the summer of last year. The whole intellectual edifice collapsed in the summer of last year. Be cautious, when someone says, the team that has the worst batting average since the great depression is going to take you to the World Series. Thank you. [applause]

>> Mayor Reed: That concludes the public testimony. We have a motion to approve recommendations based on the memorandum. Any further discussion on this? Staff have anything to add? I think we're done. All in favor? [ayes]

>> Mayor Reed: Opposed? None opposed, that completes that item. We'll see you back in 90 days or so. We've been jump being offing around on the agenda but I believe the next item on the agenda is 4.3, workforce investment act fund for the federal and state workforce investment act grants.

>> City Manager Figone: Staff is here to answer any questions, mayor.

>> Mayor Reed: My only comment is, get the money. We can spend it on something very useful. Is there a motion? Motion is to approve. All in favor? [ayes]

>> Mayor Reed: Opposed? None opposed, that's approved. Item 4.4 is administrative citation fines schedule amendment. There's no presentation on that. Motion is to approved. All in favor, owned, none opposed, that's approved. Item 4.5, preliminary Alum Rock form based zoning design standards and guidelines. Okay, I think there's a presentation. We did have a general plan discussion on this but it was general. These are actually the zoning form based guidelines.

>> Good afternoon. Carol Hamilton, the Department of Planning, Building, and Code Enforcement. The preliminary Alum Rock form based zoning standards and guidelines that are before you this afternoon have been a team effort by planning staff, the redevelopment agency, the Department of Transportation, the city attorney's office, and our consultant, Roma design. We have also received significant input from the community from community residents, property owners, and the development community. This input has been primarily positive. It's affirmed the importance of the type of pedestrian and transit oriented development that the form based zoning proposes to encourage. It also has provided constructive criticism that has enabled us to refine and improve the standards. We are hoping, as this proposal moves forward, to the drafting of afternoon ordinance, that we can continue to work closely with the community to refine the standards to ensure that they are as good as they can be. This is the first form based zoning that the city will probably be bringing forward to the council, there are others in the works, but this one is likely to come forward first. Form based zoning emphasizes the physical form of development, the height and placement of buildings, it especially focuses on the relationship of buildings to the public realm, in this case the public street. And it -- form based zoning provides detailed development standards that are intended to establish a very predictable and consistent pattern of development. The form based -- the goals for the Alum Rock form based zoning are to set a vision for a very vibrant pedestrian and transit oriented commercial street, the keys elements of this are a very wide sidewalk, well-designed commercial space at the ground floor with residential development above. The second goal is to establish clear development standards to achieve the vision, and then finally, to streamline the process for development as it comes through for the City's development review process. Currently, the zoning, the patch work of zoning that's in place in this study area, does not support the City's goals for transit oriented development, and as a result of that, almost every project that has come through in the past decade has required a rezoning. We're hoping that this form based zoning will allow development to avoid the expensive and time consuming process of rezoning. One of the really positive aspects of applying a form based zoning to this area right now is not only the bus rapid transit project that has the potential to make this a premier transit street but also the opportunity sites. We have a number of sites on this street that are underdeveloped and are very prime candidates for the type of mix used and transit oriented development that we hope to see here. And this is one of them. This is the PW site at the corner of Jackson Avenue and Alum Rock. And this VTA has prepared some photo simulations, that shows the mixed use development that we're hoping to see the commercial development at the ground floor, with two to four stories of residential above, and just a really active pedestrian environment. And we are very excited about this vision and we are asking this afternoon that the city council affirm that we're on the right course with the proposed development standards and direct us to prepare an ordinance establishing the Alum Rock form based zoning district for this study area.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you. First of all, thank you for that presentation. It was very precise. I think you hit just about every point that I was going to hit. So I'll keep my comments very concise. First of all I want to thank staff for your commitment in working with the bigger vision to be able to come up with guidelines as we move forward in this form based zoning. I want to thank the Planning Department, I want to thank Roma design, I want to thank the redevelopment agency, and the staff that has worked on that, City Attorney and I know you were all thanked earlier. But there were a lot of different stakeholders at the table. The developers that participated in this, the community that participated in this, the businesses, the neighbors, it goes on and on and on. And we did extensive outreach for many years. So the vision that we bring to the full council has been a thoughtful, thorough process. So I'm encouraged by staff's excitement about this. I'm very excited about this. I think this is an opportunity for us as the City of San José to create vibrant business districts not only on Alum

Rock but as we move forward in the City of San José. Look at this simulation right here is pretty exciting when we think about the opportunities to really transform Alum Rock, to what people have referred to the good old days when there was public transportation and people were roaming the streets and walking and sitting and enjoying the amenities within their community. So I'm really looking forward to that. I also wanted to ask staff as we move forward that we encourage the Department of Transportation to work very closely with VTA, valley transportation authority, in addressing the limited parking that will be available as we move forward. And I know we've talked about that several times. The other thing that I've wanted to bring up in a public setting was the conversations I've had where various companies and organizations about the opportunities to create visual art in this avenue. And I am hoping that you can address that as we move forward, in showcasing art as we've done here at City Hall, with the open space we have here, and how that would play into being counted as frontage retail, and the requirement. And I don't know if you can answer that now, or is it something that we should just ask you to look at?

>> We don't -- we have not looked at that yet, but I'm sure that we can take that into consideration in the frontage requirement, so that there is some encouragement for public art. Not that we would want to replace retail with art. But to the extent that that could be given a little bit of a bonus in the requirements to encourage I think we definitely could work something like that into the standard as we move forward.

>> Councilmember Campos: And I appreciate that. I know that was one of the concerns that came up with one of the developers about, as we move forward in this vision, that really making it unique, as we think about the different entities that are currently there, we have the Mexican heritage plaza as we continue to move forward with the Cesar Chavez walk that we just adopted a couple of months ago, enhancing a theme of a walkable, livable, visual community. So I'm hoping that you can actually add that. And then the -- the last thing that I wanted to share with my colleagues, is that as we embarked on this, was really to create a tool that would not only serve Alum Rock, but that would be able to serve other parts of the city as we think about our neighborhood business districts. We constantly talk about livable, walkable communities and we talk about people being able to walk out their front door and have all the amenities right there at their fingertips. That they continue to build out the San José for the future in the next 20 years, 30 years, 40 years. So I'm excited about this. With that, I would ask that my colleagues accept the staff's draft standards and guidelines, and I would encourage you to continue working with the community and the different developers and also looking at what we can add in for public art.

>> Mayor Reed: That was a motion?

>> Councilmember Campos: That was a motion and I -- thank you.

>> Mayor Reed: Do we have a second to the motion? We do, thank you. I want to commend everybody that's been involved in this because I know it's taken a long time with Councilmember Campos and her staff and the redevelopment staff and the planning staff have been engaged with the community for a multiyear effort. It's not necessarily easy to do this over this large an area but we can look around the city and see what's happened on places like the Alameda, Lincoln Avenue and San Carlos, we can see the progress we've made in some of our neighborhood business districts and we aspire for those things to happen on Alum Rock as well. When we commend everyone for ensuring that we take a strong stand to get commercial, this is not just about converting property and recruiting residential and building, the importance of the commercial it can't be understated in accomplishing what we intend to accomplish. I think it's important to do that, you get the right kind of retail. We know that you can build it but they won't necessarily come. The facilities available for retail really terms whether or not you get a vibrant retail operation going in any given area. So with that I'm going to support the motion. Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I just wanted to say how exciting this is to see this project happen on the Alum Rock corridor in East San José and commend the my councilmember colleague, hope to see more of this on the east side where bussing rapt transit and work towards this village concept that we're all working towards with wonderful neighborhoods, jobs in retail and where we work in our communities.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: You know mayor, I also just wanted to note to staff, thank you for working very close with my office on the bigger vision. And working very close with my chief of staff Ryan Ford. He's put a lot of time and energy into this project, knowing this was a priority for me before I left office and I wanted to thank him, as well.

>> Mayor Reed: I have one card from the public to speak on this item, Ross Signorino.

>> Ross Signorino: Thank you, Mr. Mayor, members of the council. That was pretty quick, Mr. Mayor, getting the card I should think. Mr. Mayor, you said the right words. That was really something. All this development that's going on it really has beautified the city and it makes you very proud to be part of San José, living here, at least. And what you mentioned about the Alameda and so on, I go there a lot, in that area. And I see it, and it just stands out. It's beautiful to see and it's something you can be proud of in inviting people from the city of San José, first of all I must comment on this display you have up here, this rendition that at first, I thought it was Santana Row, border's bookstore. I guess it's not. The remarks that were made by Councilmember Campos bring back the good old days when you can roam the streets and talk with your neighbors, and so on. That's a great feeling. Thank you.

>> Mayor Reed: That concludes the public testimony. We have a motion to approve. All in favor? [ayes]

>> Mayor Reed: Opposed, none opposed, that's approved. Reflection item is 5.2, actions related to the Healthy Neighborhood Venture Fund. Council has previously taken budget action on this. This was an item that was referred from a previous meeting for some additional work with additional input from our healthy neighborhood venture fund leadership committee, and Councilmember Chirco chairs that committee, or used to chair that committee. Still douse chair that committee. Did you want to speak on this first, or do you want to hear from staff first, Councilmember Chirco?

>> Councilmember Chirco: I'd like to make a motion after we hear from staff.

>> Mayor Reed: Okay. Staff report on the work that's been done since we took this up in the budget hearings.

>> Albert Balagso: Thank you, Albert Balagso, Parks, Recreation, and Neighborhood Services, and with me is Suma and angel Rios who oversees San José B.E.S.T. I wanted to start out by pressing my comments on the item before you with San José B.E.S.T. and to give you a little bit of history back to a few years ago or actually a year ago, we had an uptick in gang violence that resulted in the gang task force, mayor's gang task force taking on a community plan to address the problems woe were having. the result of that was bringing to council a strategic work plan that council approved in September of 2008. And with the strategic work plan does is really allows us to or facilitates the direction of our goals and objectives towards the services that ought to be put to bear on the problems that we have. With that being said, and making a long story short, the result of the efforts of San José B.E.S.T, the gang have been 25% decrease in gang remitted crimes in the City of San José. It's been this model that we've utilized since 1993 that has allowed us to deploy and redeploy whatever the trend may be. That being said two years ago we embarked on a process to look at the health neighborhood venture funds, the technical term unknown as resulted based accountability. with that the council had approved a strategic work plan back in October of 2008, eight which we utilized to issue an RFP, and bring the results forward to you. In getting to that point of issuing that RFP, we dedicated two years of time and resources of engaging the nonprofit community, in crafting this. Is it the process that received the consensus all the way down the line, change is dull and I can't tell you that we're all there but we made every concerted effort of engaging everything we could to get this process forward. What it basically does is presses reset as we did with San José B.E.S.T. in 1993. it says here is the strategic plan, here is how we advance forward and funning and aligning this work plan to achieve the healthy seniors and healthy youth in the City of San José. These are recommendations of actions that are before you today and we'd like to have -- forward that for your consideration. Is thank you.

>> Mayor Reed: Vice Mayor Chirco. I do have some cards from the public to speak ago well.

>> Councilmember Chirco: What I'd like to do is make a motion. And if I can get a second I'd like to speak to the motion after the public speakers.

>> Mayor Reed: Okay.

>> Councilmember Chirco: My motion is to move the staff's recommendation with direction to for staff to return to the health neighborhood left over at the end of the contracting process. And so I --

>> Mayor Reed: We do have a motion and second. Do you wants to speak to that after we take public testimony?

>> Councilmember Chirco: Yes, I do.

>> Mayor Reed: Why don't we take the public testimony now. Why don't you come on down when I call your name. I actually only have three cards. Patricia Gardner, Quinn Vung and Jeff bornafield.

>> Thank you, mayor, I particularly want to thank Councilmember Chirco and Councilmember Campos for being part of a committee who's had a two-year process. The council is here in support of the staff and the leadership committee's recommendation and we are here because it has been a two-year process with clearly defined criteria with a new plan. We all knew that some programs would be funded and some programs would be not. Stakeholders were involved. It is hard to cut programs. For the last two weeks I've watched $14 million in nonprofit dollars leave our community for vital community services. It is tough let me tell you. We always try to find a place where everybody wins, that is one of our tag lines. In this case, I'm not sure that's possible but what is possible is to fund those programs that applied and to fund them at the amount of money that we need to provide our services. And for that we appreciate the healthy neighborhoods communities reevaluation of this year's criteria to recommendation due to the economic need. It doesn't fill all the gaps , it doesn't mead all the needs and we're sorry. But it is the best plan, that this committee has been able to do with a lot of input and a lot of leadership. And it is -- I really want to be here in strong support of Judy, much Nora, and of the entire staff and leadership team who've given this hours of thought and we appreciate that.

>> Mayor Reed: Quinn Vung and then Jeff bornafeld.

>> Hi, my name is Quinn Vong, executive director of Ican. With respect to the HNVF leadership committee that has approved the 53 projects I would like to ask the council to maybe consider another option. Which is start with the 53 projects. But go on with the intention to fund more projects, and direct staff to use last year's funding to bring the share the pain environment that we're in today. Why do we need to fund more projects? Because special populations like Vietnamese people which account for 10 percent of San José are not served. The blind people are not served, there's still projects out there like CCPY that suffer from the arbitrary scoring but the mistake was not discovered in time. So I would like -- my biggest fear I appreciate hearing Councilmember Chirco you know suggesting that but my biggest fear is that if you don't give clear direction on bringing down those inflated asks, given the economic crisis out there please make an exception. It is a national -- it is an economic disaster of national scale. So please make exceptions to help your partners to serve the public better. Thank you.

>> Mayor Reed: Jeff bornafelt.

>> I also want to thank the council and all the people who have worked on this. This is not an easy sometime and we have spent two years working on this. The process we are currently implementing. Actually we are not implementing the process that we spent two years working on. We are implementing the start of a process, and I support that, and I do want us to get to results-based accountability, I want us to be able to know that what the city invests you can actually see the results of that. My only concern is that when that was implemented or set in motion, no one foresaw the economic situation we would be facing now. The county is considering funding moor current plan goes through and only if I understand the 52. I'm not suggesting you don't do that but we do need to look at how many agencies are prying or the two to 400%, actually are going to be granted 2 to 400% increases when in fact you went back and asked the contracts to because of the economic hardship so that jobs would not be lost, so that employment and services could be continued. Well, under the current strategy, 40%, 25 projects are going to be cut that have been funded in the past. I know in our particular agency that's five jobs, that's five real people doing real work who will not be able to based on this. So all we're asking is that you do instruct the staff to use the reality of the economic circumstances to actually look at how can people justify those 2 to 400% increases? It is not in step with our current reality. I know that when it was put in motion seemed like a great idea

but unfortunately we're still dealing with large organizations that have professional grant writing skills competing against small organizations where a few people do most of that kind of work. So please do hear the thanks, I wouldn't want to be sitting in many of your seats but just know that I'm sitting out here doing the same thing figuring out which staff members are going to be cut which programs which --

>> Mayor Reed: Sorry your time is up.

>> Thank you very much.

>> Mayor Reed: Vice Mayor Chirco, did you want to speak to the motion?

>> Councilmember Chirco: Yes, I would like to. I just wanted to make a statement. This has been a long and arduous process. I wanted to thank the council of nonprofits as well as all the individual nonprofits that have really partnered with us along the way. And I remember talking with Patricia Gardner when we started, and kind of the financial realities of what this would mean. And I think she eloquently spoke to it earlier about not being able to fund, not to mention the economic reality. All of our nonprofit partners are a valuable asset to our community. Every person our nonprofit serves and their stores pull at their heart strings. I've set this at the AN and sometimes they're heart breaking. And they are part of our community as are our nonprofit partners. Unfortunately, we have limited resourced and cannot fund them all. The vice chair of the healthy neighborhood leadership committee, Councilmember Campos, I think Councilmember Campos said it well when she said, this is really the most difficult committee to serve on because it really does pull at your heart.

>>> There is just no way we have the financial resources to fund every need and every ask. This is a process that has taken over two years and it is looking at the San José strategic plan, and the needs called out by the city. So again, I would ask for your support in the motion.

>> Mayor Reed: All right, Councilmember Nguyen.

>> Councilmember Nguyen: Thank you, I just have a couple of questions, and then some comments. Is first question is, as it's outlined in the memo, there are a couple of nonprofit-os who actually request funding and the increase is actually about as allied to by Jeff, 200 to 300 percent, is this common practice, is this something that we've seen in the past in just one fiscal year that an organization jumps that large of a portion in terms of the funding request?

>> Albert Balagso: Councilmember Nguyen, when we issued out the RFP, objective we had was to put a program out or a request in that were consistent with the objectives within the strategic plan. And to put a budget and a proposal forward that would achieve those goals. We also increased the amount, or the maximum amount, that was $250,000. So we afforded the opportunity for the agency to expand the program or build a program around the model that would achieve that goal. It's not unusual, but it's the basis that we issued the RFP in, that we crafted this model forward, working those two years.

>> Councilmember Nguyen: Yes, I'm just a little taken back by the large percentage of increase given the financial constraints that we're dealing with, and again, I can empathize with a nonprofit organization, smaller ones who expressed that they have smaller projects that can use a little bit of that money to continue to stay afloat while some of the larger nonprofits receive a bigger chunk of money just to expand the number of clientele and services that they provide. So that's the base for my questions. But since that's something that's in our RFP criteria, that's a policy there is nothing we can do about that. My second question is, in addition to the criteria that have been outlined in the application process, was the ability to provide specific cultural and ethnic services given consideration by the committee?

>> Parks, Recreation, and Neighborhood Services, yes, cultural competency was had some value assistant in the selection criteria.

>> Councilmember Nguyen: And then I just wanted to make some comments. I wanted to thank Vice Mayor Chirco and Councilmember Campos for serving on the Healthy Neighborhood Venture Fund committee and the members of the community, each time the council gets an opportunity to vote on the allocation of available

Healthy Neighborhood Venture Fund funds we always find ourselves confronting different dilemma and this year is no different situation. Let me make it clear that I definitely don't want too undermine the hard work that has gone on. Maintaining the integrity of the funding allocation program, however I empathize with, acknowledge the amazing work that they're doing as all of us up here do. However, again speaking for the smaller ethnic nonprofit organizations, I think that not being able to fund a smaller portion for them so that we can keep them afloat is really a tragedy, and let me speak specifically about the two Vietnamese organizations that applied of the 65 applications that we received, I have seen firsthand the impressive work that have done by the international children assistance at work or ICAN or VIVO, these organizations have done extremely good work to serve the Vietnamese in the Vietnamese American communities. And for these organizations, the only two Vietnamese organizations not to receive even a portion of their requested funds really braves grave concerns for me, as alluded by the executive director of ICAN, the Vietnamese American communities represents a growing percentage of the community, dire need of social and programming services among its low income and Viatnamese population. I'm just really concerned that if these two organizations at least one of them ICAN in particular receive not any kind of funding this year we are losing valuable services and programs that cater to this growing population. Now I understand such arguments have been made among some of the applicants for other Asian-American organizations which stated that they also provide similar services that cater to the Asian American community but I beg to differ that statement, number 1, is we have specific cultural needs that other Asian American organizations might not have, certain expertise or knowledge about. And I think that when we look at specific ethnic community, I mean ethnic organizations, especially with ICAN, they can provide the type of services that cater specifically to the Vietnamese American community, ace have seen them done over the years. So in speaking in support of the Vice Mayor's motion, I hope that she consider a friendly amendment that we go back, reevaluate some of the organizations that requested the amount of funding that exceeded 200 to 300 percent, perhaps look at some of the smaller organizations in particular to ICAN and see if we can allocate a spall portion of that to help them stay afloat just for one year and then they understand that next year is going to be challenging and I hope that they will work with city staff to come up with a proposal that caters to the criteria and the needs that have been outlined in the application process. So that would be a friendly amendment. And I don't know, let me just finish by saying that in these really difficult times, I hope that the nonprofit community think about sharing some of their financial constraints and help to, you know, share the pie, so that some of their smaller nonprofit counterparts can survive temporarily, and then we can maybe come up with a plan to -- you know to help them move forward in the future. But it just really saddened me to see if we don't do something, that we will see these smaller ethnic organizations be washed away into oblivion rather than help them to stay afloat temporarily. So that would be my friendly amendment to the motion.

>> Second.

>> Mayor Reed: We'll see if Vice Mayor Chirco wishes to accept the amendment.

>> Councilmember Chirco: Well I'd like to respectfully not accept the friendly amendment just in honoring the work that's been done by all of the nonprofits for the two-year process that we got to the new procedures and policies that are in place. I know when I first got on the HNVF with all due respect, it was a mess. And it was not very pleasant. And I really am reluctant to see that time come about again. I know that there was significant reduction to allow for I think it's 15 more organizations to be funded. This is an extremely difficult decision, because lives depend on the decisions we're making. But if we start carving away at the work that's been done, we will have the work collapse. And we will wind up with where we were three years ago, and that was not a very pretty place to be. So with all due respect, and apologies, I can't accept the friendly amendment.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you. I just wanted to repeat some comments that I've made in the past, as it relates to us using money that we give to community based organizations in the various forms that they exist. And the one question that doesn't seem to be evaluated is, does the organization being funded provide a service that alleviates the City of San José from providing a service? In other words, what do -- what does the City of San José, how does it benefit by giving that money, versus putting it into the General Fund to provide a service? And that concerns me, because there are a lot of very worthy causes on this list. And the list goes on and on, that do a lot of things. But there are a lot of things that, quite frankly, are well out of the purview of a local government. And when we can't meet our obligation to provide local government services to our taxpayers, and then we take on

other obligations that aren't within our purview, I think we're doing a disservice. Whether the money is HNVF or any other money that we give to a nonprofit. So I think that is something that should be in the evaluation criteria, and I know I've brought that up in meeting after meeting. I think it's important because we have struggled to try and meet demand for city services, and we can't do it. We see years in front of us where we won't be able to meet the need for city services, yet we fund services that are outside the realm of the city. And I just think that that is something that we shouldn't be doing. I will admit, a lot of these do provide services that overlap with city services and relief us of providing a service and I think that's where our money should go.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you. First of all, I want to recognize the Vice Mayor. She is correct about when she took leadership on this, there were many holes in the process. And through her leadership, she was able to bring some sense to the process, along with staff. And that's where we're here today. So I want to commend her for that. And it has been an honor to serve with her on the committee as her vice chair on the committee. But staff, I wanted to go to the end of the motion that the Vice Mayor talked about. And that is if there are any potential savings, you will identify it and you will bring it back to the committee. I ask this question at the committee level, but I want to take it one step further, to be able to understand the time frame that you're working with, on when that will come back to the committee so we will understand what savings are available to fund additional nonprofits that are not receiving money right now.

>> Albert Balagso: Councilmember Campos that would come back in the fall, late September, early October. We have to get off the contracting cycle, and get the checks into the hands of the agencies that are approved for funding. Once that's completed, then we can free up that money and bring that back to the leadership committee for consideration, if anything is left over.

>> Councilmember Campos: And what would be the opportunities of funding spaller agencies that maybe did not receive funding through this process, but that are qualified to be able to serve the community?

>> Albert Balagso: That's where we would bring it back to the leadership committee for consideration and perhaps direction on which way we might go.

>> Councilmember Campos: I just want to understand. Does that mean it's up to the committee to decide who receives that funding or will there be criteria that you will present to the committee to be able to use against the agencies that have not been funded?

>> Albert Balagso: It would be both.

>> Councilmember Campos: Okay, so we're looking at September-October?

>> Albert Balagso: Yes.

>> Councilmember Campos: I wanted my colleague to know that we hear your concerns, and this is a very difficult process for all of us. I'm hopeful that staff will come back in September-October with savings from the other nonprofits that they're not using the money which would give us an opportunity as a committee to be able to review that, and fund additional agencies that are currently not being served. I guess what I would ask the staff in that criteria, because I think Councilmember Nguyen did bring up a good point, we're talking about agencies that have areas of expertise that service particular segments of our community that are is -- that other agencies are not culturally competent in maybe. I'm not sure what the criteria is. But it would be helpful to understand if there are any holes or any holes or gaps in the current recommendations that we're hopefully moving forward with, so that we as a committee can have that information and we don't have to direct you to bring that information back, so that the process can move quickly and we're not wasting precious time and resources to be able to serve as the residents of the City of San José in this area. Thank you.

>> Mayor Reed: Let me just add that I'm going to support the motion. But I would like to have staff do some analysis and get back at least an informational memo as we go into the next budget cycle, I know when we change processes sometimes we can leave gaps and I'm concerned that maybe we're leaving a gap with regard

to some of our Vietnamese residents, and maybe they're not going to have access to services, on questions that some people have raised. So I'd like for staff to just take a look at that. We did a gap analysis several years ago when we were switching from one kind of funding to another, and I'd like to see at least a mini analysis on that, because I know that today, we're talking about Healthy Neighborhood Venture Fund but we also fund in the General Fund, community development block grants, mayor's gang prevention task force and we just announced the safe summer initiative program with nearly 50 CBOs that are getting funded of that. And there are a lot of groups in all types of applications and I'm not sure who is getting funded when we look across the entire list of funding and I think it would be useful for staff to do a little bit of a gap analysis on that to make sure we haven't left a gap unintentionally that we somehow need to do something about in the next cycle or between now and then. I would like to suggest that and I will support the motion. Because as I look at this list, there's more organizations on this list that we're not funding than we are funding. And I personally have experience with many of the organizations that we're not funding and a lot of them do great programs, and so I want to thank Vice Mayor Chirco and Councilmember Campos for serving on the HNVF leadership committee because it's really tough making decisions among these organizations, many of whom do great services for our community. And these are tough times for them, as well as for us. Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor Reed. I wanted to express my thanks to Vice Mayor Chirco for her leadership on HNVF because it was a mess and it was a very political process on how we funded nonprofits and you know, due to the meetings at individual councilpeople and we needed a process. And I think you brought the stability to that and I'm thankful that did you that and sorry you had to go through all the pain of getting it together in one way or another, and I'm very thankful for all you did and having that process put forward. And I wanted to mention that all of the nonprofits, I wanted to acknowledge their good works, whether you're partially funded by the city or not funded by the city, I think the nonprofits do good work and as Vice Mayor said, it does touch on the human elements of the heart strings in all the good things they do. And the City of San José is a very generous city. The City Auditor's report in June of 2008 said we gave $29 million to nonprofits last year. That's the same as our library budget citywide. So as you know, our city is having very difficult budgets and we've asked cuts from each department, including Public Safety we've had salary freezes, some of us have taken pay cuts and even with our balanced budget where we drain much of our reserve funding we will be laying off city employees that provide services to residents. Therefore, I feel that we should reduce our funding to nonprofits to at least the same amount as we do to our own city departments. I would also say that nonprofits should not continue to rely on the City of San José indefinitely. As far as any individual nonprofits, and how good as they might be, I sit on and organ in the City of San José and I have a city charter that tells me what services I'm responsible for providing. So in section 807 of the city charter, it lays out those services. It says I'm to provide police, fire, Public Works, libraries, parks and an airport. So many other cities have put this tobacco settlement money in their General Fund to pay for their core services. San José made the choice not to put this tobacco money in the General Fund back during the dot-com boom when we had a large surplus in our budget. So I believe a portion of the tobacco money should go into the General Fund to pay for core services. A cut in HNVF funding does not mean we do not support nonprofits, but rather, everyone has to share in the pain of balancing the budget.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. I will start off, I wanted to thank Vice Mayor Chirco and also Councilmember Campos as well as the staff member for your hard work in the last two years, and also, I want to thank the public members for writing and calling our and talk to us directly. I also want to thank Madison Nguyen, Councilmember Nguyen for the friendly motion, and I seconded it because I want to give an enhanced emphasis on our cultural and linguistically competent, when we consider going into the next cycle of considering for the HNVF funding. I understand that many organization provide translation services. But it is different if we have the person that actually speak the language, and understand the cultural, to work with this inclined. And then that's 80 supported if friendly amendment. I also understand we're very far into the process at this time, so I will definitely ask the staff to take into the consideration, and with the strong capital culturally capital C cultural and linguistic component, and also with public disclosure, I serve on VIVO board that Councilmember Madison mentioned, Vietnamese voluntary association for many years before I was elected to the council. And with that, I have one question, on this item E that you increased administrative appropriation by $210,000, during this tight budget time, why -- I'm cures what is your total administration appropriation and in total was what is the percentage increase?

>> The total of administration amount is $900,000 to administer the Healthy Neighborhood Venture Fund. This $210,000 includes the administration of the San José after school or the homework center programs. As you know, one of the established priorities is the San José after school programs and there's some administration that takes place there. That's a portion of that's been included.

>> Councilmember Chu: Thank you for the clarification. Is that a new program that we didn't have this year and we just, because we pick up this additional program, that's why we wanted to increase the administration cost?

>> It's not a new program.

>> Councilmember Chu: Not a new program.

>> We've separated the grant portion of it will go back to the school districts and the administration of it.

>> Councilmember Chu: I see, great, thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I want to thank Vice Mayor Judy Chirco for all of the work, all the fabulous work she's done and also Councilmember Campos and the HNVF leadership committee, the community, and all of our nonprofits. I wasn't here two years ago so I didn't get to see what happened before, and so I will -- I believe what everyone's saying here that it was a difficult situation, and we needed to, you know, to do something to make a change in how we evaluate these. I do want to talk about my concern about a couple of the -- the programs that haven't been funded, and actually one is a category of program. I'm concerned that there's no Vietnamese nonprofit I think on the list here, Vietnamese serving organization, and there were two on the list, ICAN and VIVO and they're not being funded. And one of them happens to be in my district but I would be concerned even if they weren't in my district. Because I think it's very important, the Vietnamese population which I think is about 10% of our city's population has some unique needs and as has already been stated, I think it's very important that we have native Vietnamese speakers being able to support these organizations, these folks in our community some of whom are seniors and really do have some unique needs. So I'm just very, very concerned that this is -- that these are not being funded. The other organization that I've had personal -- had the chance to actually go out and look at what they do personally is CCPY. This is a really critical service that the need that this organization fills. I graduated from Overfelt high school in East San José and I've worked with youth that have gone astray and tried to bring them back. And this organization does a fantastic job of reaching you're youth in a way that I don't think there's other organizations or there's not very many that do this kind of work. They've actually been rated very high with the gang prevention task force and the work that they do out there. So I'm concerned and I'm not going to oppose the motion that's on the floor. I'm just speaking from my heart right now how concerned I am about these type ever programs and the asks that they were making were reasonable. So what I want to ask staff is, in terms of after this motion, I'm assuming this is passed and you're looking at the funding, are you going to do any scrutiny of the programs that are being funded? Because I'm hearing here that there's substantial requests being made, and you can tell me, are you going to scrutinize those and how would you scrutinize those?

>> Albert Balagso: Councilmember Herrera, the process for negotiating the contracts is to first validate the program of the budget and to validate what they are requesting is indeed what is needed. If we find that the numbers don't match, then we negotiate to the point of what that budget actually supports. I believe what Councilmember Chirco -- or Vice Mayor Chirco was referring to is if anything is left over in that that we find that say an agency requests $100,000 and we validate $90,000, there's $10,000 remaining. That would go to the ending fund balance and when all is completed we would take that back to the HNVF leadership committee for reconsideration and reallocation.

>> Councilmember Herrera: So I would just ask in terms of how you scrutinize, I think that our economic situation that we face today should be taken into account. I think that agencies are asking for more really should demonstrate that need and what they're going to do with that money. And I think if there is leftover funding that we should take a look at giving that money out to some of these other organizations like the ones we've talked about, you know, who really have a track record and I understand track record was not considered in this whole

process. But I really do think that we circulate do that. I have one other question. Do we have any stats on previous awards of how much money is left over when we do go through this evaluation process? Is there any idea about what we can hope to see at the end of this?

>> Albert Balagso: The -- all the funding -- I don't have the stats that say what was left over and what was reallocated. In each cycle we've allocated the full amount that was available for competitive funds.

>> Councilmember Herrera: Okay, thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I had a couple of questions, one as a follow-up on Councilmember Nguyen's question, regarding the cultural competency, that can apply to as many of the programs going to folks on the senior blind community you know there may be senior services that are being funded or otherwise that can serve the blind community of seniors but they have cultural competency in the best way to do it as possible. and the cultural competency was incorporated into the specific point or just incorporated under an umbrella of one of the categories?

>> Good question. The cultural competency is one of the values that's identified in the strategic work plan. And there were questions about staff capacities, staff experience, cultural competency, linguistic experience as well as of the staff. so when rating these areas we rated on the proposals' ability to demonstrate that they have a diverse staff with cultural competency and linguistic experience. And what we found is of the proposal, that we recommended proposals 44% of them if you accept this recommendation, 44% of them do have the capacity to serve the Asian American population in San José. Their name may staff capacity and they've demonstrated that in their proposal.

>> Councilmember Kalra: And the -- just by way ever background, the evaluation was done initially by PRNS staff and then also there was also community panel or community group that also evaluated the ratings as well?

>> There were -- rated? Yes, there were, an external review panel and city staff.

>> Councilmember Kalra: And Vice Mayor Chirco, as part of your motion, you indicated that after the recommended allocations are made, there will be an evaluation of any excess funds or if you could just elaborate on that.

>> Councilmember Chirco: It's after the contracts are issued and after director Albert was talking about, if they find that one of the contracts has requested $100,000, when they go through the contract and they find that there's only $90,000 and that $10,000 is available, this is not an evaluation, it is just part of the process with all of of agencies, are there any funds that are returned to the ending fund, those are the funds will come back to the leadership committees or having a discussion of how those will be allocated .

>> Councilmember Kalra: Okay, thank you. And Albert, in your estimation, particularly because of the tiering system that was created to help create a bigger umbrella of funding, funded organizations, is -- would you anticipate there would be a lot of fund as opposed to one year when you were giving 100% of the funds, if you could actually needed, given the fact that now it's a tiered system and they're getting less than they requested, would you anticipate much funds aft after the contracts are watered?

>> Albert Balagso: It is hard to estimate that. I do anticipate there would be some available but I couldn't quantify a number for you.

>> Councilmember Kalra: In the past and I know the Vice Mayor has alluded to all the work that has been done to create a better system is that helpful at all looking at the past at how the process has gone through, because the new system is not relevant?

>> Albert Balagso: To the finding we have in place, it's not relevant. The reference you have to the past, the funding was not specific to any strategy. It was just funded in a lot of different places and this was orchestrated to hone in on the areas that we have identified and council approved .

>> Councilmember Kalra: Thank you. I really want to thank Vice Mayor Chirco and PRNS staff and community organizations that participated in this process and I know, I think of all discussions we can have, I think any discussion in which you know, we have the nonprofits in some form or another pitted against each other over a pie that is for them much more important. Councilmember Oliverio had indicated that nonprofits shouldn't rely on city money and the experience I've had in the past when I've sat on boards or so on or have had the opportunity to rely on councilmembers they don't. I think it's an additional hit on top of all the other hits that are occurring to the nonprofit community because of the fiscal situation that we're in. And so it does equate to jobs it does equate to people being served in our community when they can't get any additional funding from the city. I don't know know of any of the organizations that fully rely on city money but they certainly do add services and improve the quality of life of residents here in San José, I certainty agree with the comments and concerns of Councilmember Nguyen, that particularly with the amendment not being accepted going forward, if we can certainly try our best to and again for a couple of years, the work that was put in apparently is a room for improvement there's always room for more improvement and there is -- especially when it comes to issue of cultural competency which I think has a broad decision but there's always a human element and there's always that subjectivity that we all have whether we like it or not. So that sometimes make it reflect that maybe larger organizations there's a bias towards them because we know more about them or organizations have been around longer and so open and I know some of that is valuable in the rating most, whether someone has experience that should be considered as much as possible. not only allowing for as much objectivity. The incredible diversity and incredible needs we have in the community. So I not I think it was a letter that was received from one of the organization disperse, the blind community, that -- and I believe they're correct in saying there wasn't one on one of the evaluating boards, on the PRNS or community boards that was blind. And the reality is that we're not going to be able to have every single group necessarily as we go through this evaluation process it's just really hard, in this economic climate. And as the marry was saying, you know, even there are more not being funded than are being funded. I think we all know those organizations, both being funded or not funded. Those that do focus on targeted populations that otherwise wouldn't be served, I think that trying to find a way to better I've that I think might be helpful if it is the case that we're not able to identify that in the current system, and frankly, you know, I know that that's something important to Vice Mayor Chirco and Councilmember Campos so I would imagine that they've done everything they can to try to make sure that's been incorporated. Thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks, mayor. I echo both the thanks and the gratitude to staff from Councilmember Campos and Chirco as well as like to echo the concerns, I think we all highly regard many of the nonprofits like CCPY and ICAN that did not receive funds this year, we regard them very highly. We're grateful for their services, critical services of many members of our community. In my own district, many if not all provide services. I'm particularly confident in situations like this. I wanted to say, last thing we want is council meddling in picking winners and losers. I think that's really the direction we're trying to get away from. What I'm concerned about is some of the implementation of the process. And specifically on page 3, the staff memo. There's a reflection under numeric rating. The paragraph that describes how the applications were rated, there were eight PRNS staff that rated the applications, and each application was scored by three staff members. So to me that raises a natural concern about the factor that two people are going to observe the same application, differently, and if they don't have the same panel, you have some significant probability of there being some disorganization, because maybe two equivalent programs, review. In this case we actually have some evidence of that. Because own the following page regard reading the sacred heart school for boys the same organization essentially, and providing school servicing at the assume site, one for girls, and one for boys, they submitted identical milks and got very different scores. And it says on page 4, that each application was ratted by three different raters. In this case, the sacred heart Nativity School for boys application was adjusted by six points to account for what appeared to be a discrepancy to the review panel. And I appreciate the fact in this case we caught it, which was great. The problem is, is that sort of a test case, we're never going to have another situation out there I would imagine where you are going to have the same organization submit two applications and really be able to determine what the variance is. We've got 112 applications in this case, and not really knowing exactly what the impact was of having different raters reviewing each. And so what I'd hope is, as we learn -- we're going to

continue to learn through this process, I'm sure but I'm hoping that we'll actually keep the same raters so we have some amount of objectivity, or at least we're comparing apples to apples as we're looking at scores. I hope you'll consider that Albert as we look about how -- what tweaks we might make in this process, because I think inherently as human beings we are always going to look at things somewhat subjectively and that seems to happen in this case. Albert do you have any sense about whether or not that is feasible that we can rely on the same person to do the rating in each case?

>> Albert Balagso: Have to absence this carefully in that it's dependent on the staff that I still have, as we work through the budget process. If they're still there and it all vets out appropriately, then we can work on some consistencies. We've done various grant programs that we had the same people that have been working there for years. In that case they become familiar with the agencies and they're familiar with the proposals as they come forward. To the extent that I have that same staff, those options are feasible.

>> Councilmember Liccardo: I'm mindful of the very serious constraints that you have in your budget. I know I heard some, criteria by which they could assess these applications, and I guess my next question ask, is there some likelihood that we're going to be able to address that concern in some substantial way, that is, that the external panel would be given greater guidance with more objective criteria?

>> Albert Balagso: This was the first run-through that we did do. And I believe as we go along, the process will be refined as we move forward. The system that I had mentioned further with the San José B.E.S.T. which is utilized, the similar process and we've had consistencies from the various agencies, such as police, D. A. with protection and school systems, so having that consistent voice has created a consistent process. And this was the first run and the first year that we applied this influence model and it's a different service delivery area as opposed to the more intervention components that were part of the gang task force .

>> Councilmember Liccardo: Thanks Albert. I raise these implementation questions knowing full well that it's never going to come out right to everyone. I get that. I'm just hopeful that we'll continue to think about improvements in our approach as we go forward. I'm also mindful in terms of the consequences more broadly, the fact that there were winners and losers in this process. I was part of a council vote that voted really to try to concentrate resources in a more deliberate way, knowing full well that there would be nonprofits that would be left out, if we followed that approach, and that's clearly what happened. So I think we all had our eyes open, that this would be a realistic consequence. As we talk about gaps that there might be, among nonprofit providers, in the money that we're providing, I know there's been a lot of concern about particularly cultural competency and dealings with communities of color. And I wonder if maybe -- I know we've got federal restrictions on how we can target federal money or not. But how we could target it by linguistic competency, being able to deliver services in a foreign language is very important. Anyway, again that's just another suggestion as we move forward. But anyway, thank you for all your hard work. I prevent this is very, very difficult work, and it never comes out with the result that everyone's happy with.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I too had the pleasure of working with Judy Chirco for two years, or was it three? Time flies. And I know the seriousness and the deliberations that she approach the task. it's like a relay race. You're not going to have everybody win, there's no way to put it. However, are there alternative places that it can be looked at, for example, there is a lot of corporations immediately around us. Do we have any information where we could refer people to their human services division or wherever one would go to consider some kind of a grant? Have we ever done that?

>> Albert Balagso: The -- over the years, what has started to occur is, to start directing to agencies to appropriate grant components that exist. There are still some agencies that are in the ongoing base budget, and we review those ongoing of the value that they should be continued through each budget cycle. I believe a lot of agencies are here today, or those that have been speaking very strongly, because there aren't many other funding sources out there. So these are -- as Patricia Gardner has stated, these are difficult times. And we are one of the constant funding sources that has been available.

>> Councilmember Pyle: But I wouldn't, because we don't know. I mean I would keep knocking on doors if I were heading up one of those organizations. And I do admire the passions with which the leaders of the organizations speak and they're such advocates for their group. I don't think it would hurt to keep going, keep knocking on doors, keep trying to find that money. Thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you. My last question, Albert. Regarding the funding that we're giving to the after school programs in the City of San José as well as I think item E, Councilmember Chu brought that up. In the past has there ever been money that has been not used in those particular funds? And I guess I want to apply the same philosophy that we're directing you to move forward with the nonprofits, with these particular fundings as well to the city?

>> Albert Balagso: Well, what we have done with after school, we have rolled that back into the ending balance. There have been school districts that have not completed the spending of all their moneys that were allocated to them. But we don't find that owl until the end of the year because it's on a reimbursement basis. To the extent that funding is available for rollover, versus all the other budgetary challenges we may have, that's something that we could consider.

>> Councilmember Campos: I would hope that you could consider that as well, thank you.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, Mayor, I just heard from Ada that there's a 40% capacity among all those agencies to be able to provide linguistically and culturally competent services to the Vietnam east Americans, do he I hear that right?

>> Specific for the youth service providers, 44% that we're proposing to fund have the capacity to serve Asian American community in San José.

>> Councilmember Chu: Asian American in general. Is it possible that we can require them to do an extensive outreach? I mean the fact that you have the capacity, but if you don't advertise, you don't do aggressive outreach, you're really not be able to get those clients from the Asian American community? So can we put a kind of a criteria in their evaluation, or is it possible for the staff to come back with a report of, you know, how many -- what's the percentage of those 44 are developmentally being utilized?

>> Maybe the mid year evaluation report will demonstrate and have ethnic breakdown of all the clients that are being served and it will --

>> Councilmember Chu: Before that I would very well appreciate if you could ask them to go actively, go out there proactively outreach to the Asia American community.

>> Thank you.

>> Councilmember Chu: Thank you .

>> Mayor Reed: I believe this concludes the council debate on this matter. We have a motion on the floor made by Vice Mayor Chirco. All those in favor? [ayes]

>> Mayor Reed: Opposed? We have two opposed, Oliverio and constant. That motion carries.

>> Albert Balagso: Mayor could we have clarification, for 5.2 A and B?

>> Mayor Reed: Yes, A and B, Vice Mayor Chirco, I believe that's what I thought. That concludes all of 5.2. 5.3, missing hearing for substitution of subcontractor for Seven Trees community center and branch library. Have our staff get into position and start with comments which our Public Works staff.

>> Katy Allen: Thank you mayor. Katy Allen, Public Works director, and David Sykes, our assistant director. We don't have a formal presentation. I wanted to mention in the almost over seven years I've been in San José this is I think the very first time I brought a substitution request before council because typically we resolve them, and the need is not -- the need doesn't exist to bring it to council. So today, we do have an opportunity for the two entities, our general contractor Gonzalves and Stronk, and whether or not to approve the substitution. before turning it over to that, I was going to ask Dave Sykes do conch in a very brief process, and the substitution. .

>> Thanks Katy. Just to remind the council and the public, contractors are required to list all of their subs when they submit a bid for the city. This is to prevent bid shopping. If the contractor is awarded the contract they're obligated to use those subs that they have on the list. They can't switch out those subs unless they have justification and unless they get permission. Our seven reasons for justifying switching out a subcontractor. With regard to Seven Trees, Gonsalves and Stronck, a payment dispute arose between the two. At that time, or sometime around then, GDI, general development industries suspended work because of the payment issue at the same time they requested a stop payment notice. Gonsalves and Stronck went on to perform the work in other ways and requested a substitution of the subcontractor. Our recommendation is that the stoppage of work that was done by this subcontractor basically amounts to a failure to perform. And that is one of the reasons that a substitution can be granted. So that's an overview of our recommendation, and we can take questions and comments perhaps after the contractors make their statements.

>> Mayor Reed: I would like for the City Attorney to just help us understand what it is we are here to decide today, as this hearing.

>> City Attorney Doyle: To reiterate, and Katy and Dave both covered it very well, the first issue is, that the city has to consent to any substitution, and if a subcontractor contests the proposed substitution, then a hearing is required. And our process requires that hearing before the city council. That's why it's here today. On this specific item, 5.3, the issue is whether the subcontractor failed to or refused to perform as provided, and staff is recommending to approve the substitution because it has -- it again has found that there is -- it's grounds. I should let you know that the city can not consent unless it determines that one of the reasons exists. But that being said I need to caution that you not to get involved or interfere with the contract. It's not your job to be a judge and determine if somebody's in breach or not in breach. So with that, I think the hearing can proceed.

>> Mayor Reed: Before we do that, now what are the reasons that we need to find exist? Failed to perform or refused to perform?

>> The finding that we were making or the recommendation that we were making is that the subcontractor since they walked off the job there was a failure to continue working under the contract. There was a dispute with the payment and there is other ways for them to resolve the dispute than just walking off the job.

>> City Attorney Doyle: And the other way, stop issue stop notices to the extent that stop notices are filed and we honor those stop notices and withhold those signs.

>> Mayor Reed: Since this is an administrative hearing we'll do it a little bit differently. We'll hear from the contractor first and then the subcontractor who is opposed to this action. We'll allow five minutes for each side. And nature of an administrative hearing so represent being the contractor I believe we have Chris hersey .

>> Thank you Mr. Mayor, councilmembers, my name is Chris Hersey. I'm in the law firm of Miller Morton Callet and Neves, here in San José. We represent Gonsalves and Stronck, the general contractor. For the Seven Trees library and community center. We permit Gonsalves and Stronck to substitute out the listed concrete subcontractor, general development industries for a refusal and failure to perform. Before I go any further I do want to thank city staff in this case as they mentioned it isn't often that a hearing like this is actually conducted in front of the city council. But you have before you, I believe, a detailed memorandum, and a supplemental memorandum, dated June 8th, 2009, which, when printed, if you were to do so, would actually fill a small binder with all of the documents and correspondence that has gone back and forth between the contractor, the subcontractor, and city staff on this issue. And we're confident that city staff has gone through this mass of documentation and has come up with the right recommendation at this point. Without going through and

reiterating everything that's in city staff's detailed memorandum, we do want to reemphasize just two points. The first one is that although Gonsalves & Stronck is ultimately confident, we're convinced that when this situation plays out probably some months from now that there will be a conclusion that at the point that general development industries, the subcontractor, decided to stop performing, that they had been paid everything that they were due up to that time. Staff mentioned at the time that they decided to stop performing, which was actually back in March, mid March of this -- excuse me, mid March of this year, that they had been paid 70% of their subcontract amount. The specific numbers being, they have a subcontract for $1.3 million, they were paid upwards of $900,000 at that point. So the status of the project in terms of their completion and did amount of money they had been paid were congruent. Despite that issue, however, and I think the City Attorney has pointed out really my first point, which is this form perhaps is not the appropriate place for the council to determine the winner or loser of that actual payment dispute. Right now, the question is under the law has the subcontractor, general development industries failed or refused to continue performing in light of that dispute? And the answer is, undoubtedly and unqualifiedly, yes. They simply have not been out at the project at all since mid March of this year. Included in these materials, if you wanted to confirm that for yourself, are numerous letters from general development dated March 12th, March 19th, May 27th, all included as exhibits to staff memorandum, indicating that the subcontractor no longer wanted to be out on the project performing. Now, this is despite repeated representations that they were ready, willing and able to perform if they were paid everything they thought they were due. Again, as both staff and City Attorney point out, there are mechanisms for dealing with payment disputes, including stop notices. The subcontractor has availed themselves of that in this case, and at this point, we are here asking for action by the city council in order to move the project forward. Because the important thing not to lose sight of, is that without a ruling by the council at this point, that Gonsalves & Stronck can move forward with a substitute concrete contractor, this project is stalled. they will not come out without advance payments and in order to move the project forward we need to have a ruling by the city council. The first step is to then allow Gonsalves & Stron-ck to substitute a new subcontractor. In this case they propose to do the work themselves and with Joseph J. Albanese who is already out on the project performing other concrete work.

>> Mayor Reed: Sorry, your time is up.

>> Thank you.

>> Mayor Reed: We'll now hear from Robert Ring.

>> Thank you, ladies and gentlemen and councilmembers. Anyway, my name is Robert Ring, I'm the president of general development industries, and we are the listed subcontractor and entered into a subcontract with Gonsalves and Stronck company dated approximately the 8th of September of '08. Before mentioning some facts in this, I just wanted to read to you a memorandum of a previous substitution request of Gonsalves & Stronck, amount I want you to bear this in mind. It was written by Katy Allen, despite this public Works had some concerns about the way G & S has handled this matter. Public Works is concerned that G & S has made no attempts to modify its subcontract agreement, Public Works is also concerned that G & S never commute communicated there is no evidence that G & S ever made any attempt to resolve the differences between the parties. And as it's already been discussed, the -- you know, there are seven mechanisms to where a contractor can be -- or subcontractor can be substituted. The one that seems to be focused in on is whether -- is when a listed subcontractor fails to -- fails or refuses to perform on its subcontract. Just to address staff's recommendation, I have a -- you know, I have a letter from staff regarding some inquiries I made with them. Number of issues regarding payment dispute between you and Gonsalves & Stronck. Staff helped facilitate a meeting on April 20th in the hopes of getting you and Gonsalves & Stronck to resolve the dispute. Staff's help with this was in the best interest of facilitating the project however the city is not in a position to interfere with or otherwise take any position on a payment dispute between the general contractor and its subcontractor. Lack of payment to the subcontractor is not a valid reason for granting a subcontractor substitution. This will only compound the current payment problem and is a subversion of subcontractor listing law. Specifically, regarding the subject of GDI has nod failed or has -- whether GDI has failed to or refused to perform its subcontract, GDI has not famed to perform its subcontract. GDI suspended further performance under its subcontract with Gonsalves on in which 13th, 2009 when after repeated efforts to collect the past due balance of its January payment Gonsalves refused to pay the outstanding amounts and produce joint checks to GDI and its subs and suppliers, as had been offered by Gonsalves on March 11th as a possible solution to our payment dispute. GDI has not refused to perform the balance of its subcontract. GDI has remained ready, willing and able to complete the work under its subcontract

when and if all outstanding payments are brought current or mutually agreed upon provisions have been made for such payment. GDI monthly progress payments under the subcontract payments was and is a material breach of the contract and allowed G ID to suspend its performance by Gonsalves. Again, and as of the end of January, the total outstanding balance due to general development industries was $205,288.05. Just as a quick background, there were a total of seven previous invoices that had been made. The first one was paid in full, yet it was 47 days late. The second invoice was paid in full and it was the only invoice paid within the terms of the agreement, which are net ten days. The third invoice was paid and it was broken into multiple payments and short-paid $14,850, with no reason, no written reason, no verbal reason, and that -- those payments again were 44 days late. The next payment, again, was broken into multiple payments against the invoice.

>> Mayor Reed: I'm sorry, your time is up.

>> All right.

>> Mayor Reed: That concludes the administrative hearing. There are any other people from the public that want to speak on this item? I don't have any other cards so that completes the public testimony on this item, as well as the administrative hearing. Thank you, sir, might as well have a seat while we have the council figure out what the council wants to do on this item. Okay, Councilmember Nguyen.

>> Councilmember Nguyen: Thank you of thank you. I think we're caught in an unfortunate situation, since this is definitely a very vibrant project in my council district. And kind of heartbreaking to see this is happening between the two parties. I have two quick questions, Katy. One is, to what extent can city staff help to facilitate what's going on, in regards to the conversations and the claim that the subcontractor has not been paid for the work that has been completed? When do we step in, when do we help out so we don't get ourselves into situations like this in the future?

>> Katy Allen: Councilmember Nguyen, Katy Allen, Public Works director. I wanted to mention that we have what I'll call a very strategic approach to what we call partnering. And it is very clear that we want the subcontractor and the general contractor to resolve their differences. We will not step in and drive a decision necessarily but certainly we want to open the door to facilitating their ultimate agreement. And the other thing that we do offer whether we get into situations such as this is to remedy the situation through the plans and specifications that we have. There is a process when there is a dispute, it's called the stop work notice process, funds are withheld. When we receive notice that there is a question or a dispute, we then hold back those funds and not disburse them to the general contractor and that allows the two parties to work through the differences that they have. Having said all of this I would say that we are not in a position to resolve it but we do take a very I think strategic approach to facilitating the discussion. And it's proven well on all of our projects. Again rarely have we ever brought a matter such as this to council.

>> Councilmember Nguyen: And so I guess my understanding is that staff have tried everything they could within their authority and power to help facilitate what happened, and we just -- the two parties couldn't come to -- couldn't reach a conclusion that it's agreeable by both parties, is that correct?

>> Katy Allen: That's correct.

>> Councilmember Nguyen: And then my final question. How is this going to affect the time line of the project as of now because of budgetary constraints, if we are moving I think about three, four months behind in regards to opening -- having the grand opening of the community center, in situations like this is it going to help to delay the project?

>> Katy Allen: It is on the critical path. It is important that we get the concrete subcontractor out there .

>> Councilmember Nguyen: Thank you.

>> Mayor Reed: Staff, how much money are we holding pursuant to stop notice from GDI?

>> Actually, I don't know for certain, I just tried to do the math that went here. It sounded like the payments have been done up to about 70% of the amount of work, probably less than 3 to $400,000 I would assume, probably much less.

>> Mayor Reed: So if they get into a dispute, this is typical of any of our contracts, right, subcontractor, contractor get in a dispute, the subcontractor has the right to give us a stop payment notice in other words, we don't have to get into the middle of it, we just hold the money to make sure its gets resolved later. It is our what we don't want to have ham is everybody stops working because there's a contract dispute. And if I'm reading our terms and conditions right, we're not to decide the contract dispute. We're just deciding whether or not these guys are on the job doing the work they're supposed to be doing. I think that's the question in front of us today and it's pretty clear they're not on the job, they're not doing their work and how they work out their contract dispute would be decided through them or through courts or whatever provisions they have. But we're holding the money and whenever a judge tells what you to do with the money, the party that should get it gets it is that how it works?

>> Katy Allen: Absolutely.

>> Councilmember Liccardo: I just wanted to ask a question of GDI -- whoever --

>> Mayor Reed: Mr. Ring?

>> Councilmember Liccardo: Thank you. My apologies for dragging you down here. Whatever remedies you have?

>> Because it's a cash flow issue. I already extended you know the amount of work that I had not been paid for several months, beyond when it was due. And you know, there's no -- it's a lot to be asked to continue to work with no payment at all.

>> Councilmember Liccardo: Okay, thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. Would I be correct in assuming that the crux of the issue is that GMS took the action before obtaining the city's consent to the substitute request? I mean, had they gone ahead and gotten the okay, for the substitution from you, would we be sitting here today discussing this?

>> Katy Allen: I believe so. When there was a -- a walk-off of the job by GDI, then the project was at risk, if you will.

>> Councilmember Pyle: Okay.

>> Katy Allen: And though we were unable to work through all the differences, they did not return to the job. So --

>> Councilmember Pyle: And I just wanted to ask Mr. Chris Hersey, at about what time did you get involved in alt of this? I'm not clear on the time line here.

>> Councilwoman, I was approached about 60, 90 days ago, when Gonsalves & Stronck first made the request for the substitution back in March .

>> Councilmember Pyle: Thank you.

>> Mayor Reed: I think that concludes the discussion of council. Is there a motion that somebody would like to make?

>> Councilmember Nguyen: I would like to make a motion to accept the staff recommendation.

>> Second.

>> Mayor Reed: I'm going to support the motion subcontractor who wanted to be put back on the job who refuses to work until he gets paid and he is not going to get paid until the dispute is i'm going to support the motion. Anything else? Councilmember Pyle? Were you done? Okay, motion is to approve the staff recommendation, all in favor? Opposed? None opposed, that's approved. That concludes 5.3. Next item is 5.4, regarding the award of the construction contract for the educational park branch library. We have a staff report on that, Public Works.

>> Katy Allen: Yes, we do, mayor, we don't have a formal presentation but just some comments. The educational park library is our 18th library to be constructed using our bond financing program. We opened bids on April 7th, and 22 bids were received. This reflects a very, very competitive bidding environment that we appreciate, but certainly it's a reflection of the amount of work that's going on in our community. In the past, 17 libraries that preceded this, we were in the order of miked seven -- or excuse me, four to six bidders. So this certainly was a very competitively bid project. After we opened the bids, we then review them for completeness and we execute what's called an intent to award. That notice then gives all the bidders and everyone a five-day window to issue protest. And then we receive those protests and respond, respond to them accordingly. We did receive four protests in that window. They primarily focused on the low bidder Barry Swenson's use of a steel contractor. The question was whether or not they had three years of experience. The completeness of their bid, the signing of antidiscrimination statements and then also, questioning the form used to list some of the subcontractors. So we responded to all of those issues, and then, agendized the award for last week. Since last week, though, there's been a number of correspondence that have been going back, and we appreciated the opportunity to review those, and give you the supplemental memo that was executed on Monday addressing the questions that were raised. And if I could just very quickly provide you just a very quick overview of some of the issues that were raised, they're little bit technical. I will do my best to put them into context. When a subcontractor, let me go back for just a minute. There are two issues that we are looking for with some of the subcontractors. Specifically, on the structural steel, Elmer's welding, we were looking for a.

>> Councilmember Constant: Contractor, a subcontractor that had experience and had a license and we're looking for three years' experience. That is not required of every single library project or every single project. We actually customize the project to the years performed we look to whether or not they have a license. We found in our review that yes they have three years of experience and yes, they have a license. We then also were asked if there was a means by which that they could gain experience before they got their license. And I want to emphasize that yes, there is a way that a contractor can work prior to actually receiving their license. That is generally done under another contractor, and we really defer to the state to make decisions and advise us whether or not there are outstanding issues related to the state licensing issue. So with that, that concludes my comments. Mr. Mayor, I know there's a number of speakers and we, Dave and I are able to answer any questions.

>> Mayor Reed: Okay, this is not an administrative hearing, even though it is a construction contract. This is an award of a bid. I've got about a half a dozen speakers, I'd like to take the public testimony now so please come on down when I call your name. Allow two minutes for each speaker. James Chidlowsky, Rick Solis, Dennis Menkin.

>> Good afternoon. Name is Jim Chidlowsky. I'm Sr. project supervisor for Barry Swenson builders low bidder on this project which was ourselves. As Katy Allen stated the bid process was 22 bidders, it was highly contested, there was a protest period. Which allowed protests to be stated. There was numerous protests, which staff reviewed, and found without merit. A second period was allowed, and protest again, the same protest was reiterated and again, staff reviewed that, took the extra week, deferred the decision on this project so that they could review it properly and again, found that there was no merit in the case. As far as Barry Swenson builder we are asking you to confirm staff and award the project as we have earned through the process set before the city in doing so, and we ask that the library project can move forward so that the community can benefit. Thank you.

>> Mayor Reed: Rick Solis, Dennis menken, Edwardo Leiss.

>> Good afternoon, honorable mayor and city council members. My name is Rick Solis i'd like to express my concerns about the problem of your recommendation ever awarding this bid to Barry Swenson builders. The

problem being the subcontractor for the structural steel that Barry Swenson has chosen to perform open this project. But the city has set qualifications as needing three years experience to perform on this project. Now, Elmer's welding who is the structural steal contractor, obtained their license in September of 2006 which doesn't quite meet the three-year requirement. Now, Barry Swenson's attorneys have brought up the fact that it takes four years to even be considered to -- four years experience to even be considered to take the exam for a contractor's license. And since they've gotten their contractor's license obtained in September of '06, I mean like I said it doesn't work out to be three years. Also Barry Swenson's attorneys have brought up a list of jobs where this contractor has performed dating back to October 2005. And if he's only had his contractor's license for two and a half years how does it go back to 2005? Apparently this guy has been doing work without a license which is illegal. So ultimately, if you guys decide to proceed, with your recommendation of awarding this bid to Barry Swenson I'd be seriously concerned about what kind of message that you guys are conveying to the construction community and would ask that I rethink your recommendation and consider Barry Swenson's bid as nonresponsive, thank you.

>> Mayor Reed: Dennis Menkin Eduardo Reyes, and then Neil Struthers.

>> Good afternoon, I'm Dennis menkin, central problem in this proposed award and the problem that will not disappear is the structural steel contractor, Elmer's portable welding had not had the C-51 license for three years. The apparent low bidder had never demonstrated experience gained under the proper license. The experience cited by Elmer's welding in the bid documents and in the responses to bid protest refers to several projects completed by Elmer's portable welding without any evidence that they were licensed to perform under California law approximates there is no scope of work more critical to the building process than the erection of a building structure. In particular the structures such as retail outlets which have a high volume of customer Trask, comparable to projects, those are comparable to projects provided by Elmer's in a list. Structural steel work is important to the strength, durable on corner should not be cut on structural steel requirements. Swenson's builders council sites in their letters many ways in which Elmer's welding could have gained required experience but curiously stopped short of stating that in fact Elmer's used one of these ways to gain experience. Because of an apparent problem with Elmer's level and in light of the failure despite opportunities of either Swenson builders, or Elmer's welding to site experience gained under a license, respectfully request that the bid be denied .

>> Mayor Reed: (saying names).

>> My name is Edwardo Reyes, I'm an organization for be San Francisco, Santa Clara. The problem for the award, he does not have the C-51 license for three years. Although the bid specs do not specifically state that the required three years experience relates to having the required license, the contractor community has always interpreted it that way. And common logic supports that. In order to get a C-51 license in the state of California you must have four years' experience so in theory the argument put forth by Elmer's and Swenson would allow a contractor who can't even qualify for this license to do this work, to meet the City's experience requirement. Clearly, that is not the intent. And that is not how all other contractors who bid this project and other City of San José work interpret it, either. In fact, no one interprets it this way, until today. Because today, you have a contractor who is clearly grasping at straws to hold on to a contract that they clearly did not meet the minimum threshold for being responsive. We urge this council not to award this contract to Barry Swenson contractors as they do not mead the definition of a responsive bidder. Thank you .

>> Mayor Reed: Neil Struthers, last speaker.

>> Honorable mayor, city council members, Barry Struthers, your task not only considering what is right in this particular issue what message you send to the public bodies in this case to the local construction industry. Awarding this contractor -- this contract to a general contractor who is listed as subcontractor who by their own documents has leads everyone to believe that they have violated state law by performing work without a contractor's license should give you pause at a minimum. But when you add to the fact that they have not met the required license -- that they have not had the required license to perform structural steel erection for the required three years, you are in danger of end sending the following message to the contracting community and that message is, as long as your price is right we the City of San José will overlook our own bid specification and any other issues including performing work without the required license as long as it was not on our project. This is not a message you want to send today or ever to the contract community and particularly not in this economy where

we see 22 contractors trying to find the lowest contractor they can and going as far as Sacramento and elsewhere to bring in people that are not qualified. If this is a message you would send, I would suspect three years experience was clearly meant for a license. Because if it takes four years to get a license why would the city require three years? That's one year less than it takes to get a license. So clearly, that was intended and that's the way it's been interpreted by this entire industry until today that that's the requirement to have a license to prepare structural steel. That's why there's a three year requirement so I think as much respect as I have for city staff and particularly Katy Allen, we agree to disagree on this one and it's clear to that the motivation is to get this done and not get litigated by Barry Swenson. I don't think that is either good public policy. I urge you to find this contractor nonresponsive today, thank you.

>> Mayor Reed: Thank you, that concludes the public testimony. Councilmember Liccardo.

>> Councilmember Liccardo: Just had a couple of questions, Katy. Is it-d pardon my ignorance in this area, I just don't know much about the rules. Is it lawful for the subcontractor to be performing work in this area, prior to the thyme they obtain the C-51 license?

>> Katy Allen: Councilmember Liccardo, let me try to phrase it there way and hopefully this will be level. When a contractor is the responsible contractor overseeing a specific work effort such as structural steel they are required to have a license. However, contractors that don't have licenses are provided the opportunity to work under contractors that do. That's the way you get the experience to take the -- to go through the rigor of getting a license in Sacramento.

>> Councilmember Liccardo: So the state license requires that you take the test to get a license, is that correct?

>> Katy Allen: That is correct.

>> Councilmember Liccardo: So the only way someone could do that lawfully is if they're working under a contractor or subcontractor that already has a license and that person takes responsibility, is that right?

>> Katy Allen: That's correct. The only thing I would point out is as employees move around, employees with experience will leave one of contractor and go to another. In some degree that is not counted towards that firm's experience.

>> Councilmember Liccardo: So just so I understand what the city's requirement here is, we have a three-year experience requirement. Is it the case that those three years have to be satisfied with three years of experience while having a license, or they can maybe satisfied with experience of a subcontractor who's working under another contractor's license?

>> Katy Allen: In our specifications what we are looking for are experience. Obviously we want contractors that perform in San José to have the experience of having done the work somewhere else. So when we look at the experience needed to do the job we were looking at three years of structural steel experience, three years of erection experience, et cetera. What we don't -- and then we say and you have to have a license. We don't look at those as one, and then the other. We look at them as separate. Or do they have a valid license, a current license, that is not under review, and that the license is in good standing? And then on the other hand, we say how much experience do they have? So I understand the confusion that it creates. I don't know that there's an industry standard per se. I know what we do and we're looking at experience here and then the validity of their contractor's license here.

>> Councilmember Liccardo: I don't know, is it typically the case that we consider unlicensed experience as well as licensed experience in assessing the amount of experience that someone has had?

>> Katy Allen: No, we don't. We do not look at that time experience they had with a contractor's license as the relevant experience.

>> Councilmember Liccardo: Okay. So if we only look at licensed experience as being relevant for satisfying this three year period, why did the staff recommend as it did?

>> I think we have to go back to exactly and precisely what we put in our specifications. We require three years of experience. And that's the standard we had to hold to if we would have said three years post licensing then I think we would have come forward with a different recommendation. But that's not what we said in the specifications. We said three years of experience and separately we said license. And we have to stick what we said in those job specifications as requirements. We can't change them after the fact.

>> Councilmember Liccardo: Fair to say you're stuck with the language you have got but the custom and practice has been you only consider relevant experience to be the licensed is that right?

>> I'm not sure that is accurate, actually. This is in my experience working here 20 years or so this is the first time this issue has come up as a protest issue where someone has questioned the experience language that we've put in and use that as an issue to protest the project. So I don't think we as far as I know have gone as far as to say that experience should be post, the language that we've had in there has been used obviously that's been interpreted in different ways but at this point in time we have to look at the language and interpret it the way it is written.

>> Councilmember Liccardo: Okay. Last question I'll ask, I'm a little bit confused, but the -- the -- I was looking at the readout from the contractor's state license board and I think this is attached from a letter from Barry Swenson to the city, and that letter is dated April 20th. And it provides a printout that just seems to be a legitimate printout from the state of California describing licensing dates and so forth. And it contains a single issue date of April 4th, 2006, for two different licenses. Now, we know today that's incorrect, right? Because we know that C-51 license is actually submitted later. But under the issue date that's listed here on the state printout, it would appear that it would satisfy the three-year requirement. If we believe for the moment that the requirement is three years of license service, is that right? That is April 4th --

>> Katy Allen: That's right. The document you are referring to, I don't have my book open to that page, Councilmember Liccardo, is exactly right. Their license was obtained, their C-51 was obtained in September of 2006 so less than three years. From the time they bid.

>> Councilmember Liccardo: Okay. So it would appear as though to a person who is trying to check up on this license to see whether or not it was valid they would check the state database I would assume, they would see this date and they would say, looks okay to me. Now, it's possible Elmer's misrepresented to Barry Swenson. I don't know if they did or didn't. It's possible, I presume, since Barry Swenson submitted this, this is what they were relying on. When we had these disputes in the past and it appears as though the contractor has what appears to be legitimate information from the state of California, erroneous or not, typically how do we interpret that? And maybe this is really a question for Rick. Do we hold Barry Swenson the contractor to whatever they could have known regardless of what -- you know some governmental entity told them or is this reasonable reliance of when the state record of when the license was obtained ?

>> City Attorney Doyle: We typically review any and all documentation. On the face of it you look at a printout from a governmental agency. You rely on it, I think it's reasonable to rely on it, we do our own due diligence the short answer is yes we do rely on it and I think it's reasonable to rely on it. And the practice within Public Works, though, I don't know.

>> Katy Allen: This might help, Councilmember Liccardo. When we award the contract, to the general contractor, he or she is required to have the correct license. We will not award a contract, they are not responsive if they don't. There are a number of contractor licensing that the subs carry and sometimes we do get questions of is it a current license, is it a license in good standing. That we have never found as a basis of the general contractor was nonresponsive. So we're always looking at the subcontract with, in this case, below -- our recommendation is with Barry Swenson he is required to have the appropriate license. And then in the course of performing the work in all the subtrade categories the subcontractors can carry the license for the work that they see. I apologize for any confusion that I created. But maybe this would help related to the experience. When we ask for experience we are specifically asking for relevant experience. We're not the state contracting licensing board. We are saying, a structural steel contractor is here, we want them to have the experience, having done this before, structural steel is very important in some of the contract -- or some of these spokes -- folks -- spokespeople talk to

that. What I wanted to mention is that we do have specialty inspections for all of our structural steel, all the welds have specialty inspections so that happens in the field. It is an important element of the project.

>> Councilmember Liccardo: Okay, thanks Katy. The -- I guess the gist of my question was really just to what extent do we require contractors that use diligence beyond say checking a state database and --

>> City Attorney Doyle: I don't know if we do anything more than that. I mean, that's -- you know and to the issue the earlier issue, I just perhaps this isn't a parallel analogy but you can be an attorney, licensed in another state. Not having -- or not having a California license, not authorized to practice law in California and yet have experience ten years' experience come into California pick up your license. At the time you contract that's when the date of the license is important, it's not the -- so you have to separate the years of experience with the actual certificate authorizing you to do the work in the state of California.

>> Councilmember Liccardo: Thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. There seems to be some difference here between implicit and explicit language and I think that's sometimes when we get hung up. With no disrespect to either you or Dave, Katy, I'd gist like to say that we as councilmembers have a fiduciary responsibility to the public. And in this particular situation, I believe that there is not enough sunshine, in fact there's a huge cloud over the project. We are not stuck with any language. In fact, this is just not up to our standards. I think it's not our job to decipher the legitimacy of our subcontractors. We are not a judicial body. We are simply here to come up with what we think is the best project and the best carry-through for the city. So with all of those reasons in mind, I would like to make a motion for a nonresponsive bid on this project. Do I have a second?

>> Second.

>> Mayor Reed: We have a second to make a finding for nonresponsive bid. City Attorney.

>> City Attorney Doyle: Can I -- let me chime in here. The issue before you is whether or not to award the bid, or to reject all bids, if you don't choose to award it. The issue of whether Swenson is responsive or not, I don't think you can make that finding. And the concern that I have is that staff is making a recommendation based on its analysis, there doesn't appear to be a reasonable basis to reject the Swenson bid. And if that's the case, you're going to draw a lawsuit from Swenson. And you're at greater risk from that. So my recommendation, that if you want to reject bids is to reject all bids and direct staff to go out and rebid the project, understanding there's time delays but it's still a good market, still a good bidding market and you can reject bids for any reason or no reason and that would be my recommendation.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor.

>> Mayor Reed: I'm sorry, before we go, let's just clarify what the motion is based on what City Attorney has said. I'm not sure -- do you wants to restate your motion?

>> Councilmember Pyle: I think that we need to have a little more robust discussion then.

>> Mayor Reed: You just want to withdraw your motion until we're finished with the discussion?

>> Councilmember Pyle: Until we're finished with the discussion.

>> Mayor Reed: Motion is withdrawn. Councilmember Chu.

>> Councilmember Chu: First of all I want too thank Katy and also the 22 general contractors that actually put forward a bid. I understand the lowest bidder is 13% lower than the engineers estimate, so I thought that the

lowest bidder would actually be able to make some money out of this project. The question to Katy is the scheduling impact. If we reject all bids or take Councilmember Pyle's proposal, can we go to the second lowest bidder, then there will be no scheduling impact. But if we reject the bid and we have to start the process over again how long does it take?

>> Katy Allen: Ruffle 60 days to come back to council to award on whoever the low bidder is on the second round. But the challenge that we're going to have is that we're not starting the project in the summer, we're starting it in the fall. So there could be some potential weather delays. And I think the other thing to note is that the construction window for projects of this order of magnitude is 18 to 20 months. So roughly you would see this project done in this time in 2011. If we started in our winter, it could extend the completion of the project by up to six months.

>> Councilmember Chu: So it would be ends of 2011?

>> Katy Allen: Correct. Now we are looking at opening in July of 2011 and if we were to delay the award it might be towards the end of the year 2011, December, 2011, 2012. It is a very good bidding market, there is still a lot of interest, certainly on the -- there is no guarantees if we rebid, I don't know who the low bidder would be if we were to rebid. But certainly the prices that we got in the last go-round are reflective of the prices that we were getting in 2005, 2006.

>> Councilmember Chu: If I may, I can ask Rick to clarify Nancy's motion. Why can't we go to just the second lowest bidder?

>> City Attorney Doyle: Because you'd need evidence in the record, substantial evidence in the record that the first bid is nonresponsive and I think based on the information and the facts and the staff presentation I don't think you can make that finding.

>> Councilmember Chu: I see.

>> City Attorney Doyle: And I think you run the serious risk of a lawsuit from Mr. Swenson firm and you had reject the bids and rebid again.

>> Councilmember Chu: I do see the confusion in our language when we asked the subcontractor do you have a license, that's one question, and then the next question is, do you have three years' experience? To me, you -- you know when you have the list of requirements, in the logical, this is double you speaking now, you end it altogether. You end a license and you have to have three years of experience if the fact that it takes three years to get your license and the second condition of three-year experience is a no condition, it's redundant. You know, when you get your license, it is already implied, you have four years experience. So the fact that we put in the language, and ask them if you have three years of the requirement, I believe it really creates a lot of confusion and that confusion is where we have so many protests today and also, I'm concerned about the missed opportunity of other subcontractors. They misinterpretation or misread or they read the contract requirement the same as the way I did it. I thought it was like a license, yes, three years, plus three years experience, so -- so I know this is not a compliance issue, but I will have a hard time to support the motion.

>> Mayor Reed: Thank you. I'd just like to say if we wanted somebody to have three years of licensing, or three years of experience after they got a license, we'd have to say that. Now, I understand the ambiguity that people are saying, but in terms of the bid, it's pretty clear. Do you have a license, yes or no? Do you have three years of experience? Yes or no. So I think if we are going to do anything we need to reject all bids. To say to the lowest bidder you don't meet the terms of the bidding document which is ultimately how we get judged, in litigation, and on the timing, if we get into litigation how long might it be before we can have a project? City Attorney.

>> City Attorney Doyle: Well, you can take the risk and the down side is that if the plaintiff prevails, you end up paying double for the project.

>> Mayor Reed: Two for one's not always a good deal. Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I have a few questions, one is regarding the language that we've been discussing. Its appears that there is two separately requirements, that a few of the folks up here have discussed requiring licensing and requiring the three years' experience. And there was also, Katy early on you mentioned as would be expected, every project would have different complexities, every project is not the same, you can't make it cookie cutter, you have to make it for project itself. Ordinarily is that separate, or is it ordinarily, I think you might have mentioned that you don't necessarily ask for license experience but ordinarily is this different from the norm, in other words, the contract language usually has in regards to years' experience and licensing issues?

>> Katy Allen: No, it's not. So what we have are standard specs and we supplement those with specifications specific to every project in this case, it is the language we always use. The experience varies depending on the complexity. And this is the first time that this issue has come up. Certainly I appreciate the need for us to be clear and not ambiguous, so we will take council's comments related to that in the future and be very clear. It is important that all contractors understand exactly what our intent is and that we don't have this confusion.

>> Councilmember Kalra: And it is, any subcontractor does have to be licensed and that's parts of ordinary contracts that are put out for bid?

>> Katy Allen: Councilmember Kalra, what I would say related to the subcontractor's licensing is that it comes up very frequently. And sometimes, numerous times we get protests and we consistently rule them protests without merit. What tends to happen is they challenge a subcontractor's license at the time of the award. I'll go back to the fact that we look at the general contractor's license at the time of the award and that at the time of performance a subcontractor must have the appropriate license.

>> Councilmember Kalra: And the -- and I may have -- I'm not sure if I heard correctly, I just want to ask a question about a comment you may have made about a bidder, the bidder is nonresponsiveness that, had there been occasions where you found a bidder nonresponsive due to a contractor's nonresponsiveness, in other words if a subdidn't qualify for whatever requirements you're requesting of the subto have ?

>> Katy Allen: There was one case, it was in I think 2003, where we stride to prequalify our north concourse project out at the airport, there was some confusion between which subcontractors were going to perform which work and we ended up rebidding that project so that we could ensure that there was no confusion. But in my recollection it was only that time where there was concern over a subcontractor's qualification and it was found that it was our first effort to prequalify subcontractors as well.

>> Councilmember Kalra: Thank you. In listening to the speakers and listening to what rec has to say, as well as Katy, I don't think there's anything here that was intentionally done, but I do think that's been some confusion raised and I agree with Councilmember Chu in regards to the logic argument. The logic is that if you know that the subcontractor has to be licensed and you ask for three years experience, it takes four years to get a license, logically it doesn't make sense. Clearly it's less than four so I don't think that it doesn't appear that -- or does appear as Councilmember Liccardo, there's been seasonal reliance in terms of data that was provided or obtained by Barry Swenson, I do agree with the mayor's comments that the proof issues, doesn't seem that anything is amounting necessarily to unresponsiveness here, but just that there's enough ambiguity in the language that would allow for a reasonable person to belief, it would require, certainly that a reasonable person would belief that three years of experience as a reasonable option rather than finding nonresponsiveness, motion to rebid it, I think that's the only fair thing to do. Again, I don't think that there's any as Councilmember Pyle is saying it's not because of any unintentional conduct or misconduct but just in fairness, and I do think that we will have an opportunity possibly to get even a better bid because of the economic climate. But that's reality not the main issue either, it's more of a clarity, issue not only define nonresponsive I think would not be an appropriate response and fair to Barry Swenson, and to just go forward, not be fair to the other contractors, so I think that the middle ground here is to allow for a rebid, allow for Barry Swenson builders, as well as the other 21 and maybe other contractors put in their bids. To clarify the language on that point, any other points that may have confusion and go from there.

>> Mayor Reed: Okay, that was a motion to reject all bids and rebid. On the motion, Councilmember Nguyen.

>> Councilmember Nguyen: Thank you, just wanted to support the motion. I think everything's been said has been said by Councilmember Kalra already. There's still a lot of confusion looming and leads us to a lot of different interpretations. Councilmember Liccardo asked a lot of questions and we still couldn't come to terms with agreeing the language in the RFP so I'm honing that as we move forward the language is a lot more clear so that potential contractors applying for this RFP process can understand what sit exactly that we're looking for. But I think all that stuff has been stated both by Mayor Reed and my council colleagues. So I will be supporting the motion, thank you.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. If the gentleman from Barry Swenson would come down. Do you mind, how long that is Barry Swenson been in operation as a construction company? Good Barry Swenson has been in operation for over 30 years here in San José.

>> Councilmember Oliverio: And then approximately how many structures has Barry Swenson built?

>> Hundreds.

>> Councilmember Oliverio: Hundreds?

>> Yes.

>> Councilmember Oliverio: And how many do you think with steel?

>> With steel, I would say -- I'd garner a guess of about 50. With steel in it or steel frame --

>> Councilmember Oliverio: Whatever your terminology.

>> With steel in it obviously hundreds. But with the steel frame probably at least 50.

>> Councilmember Oliverio: And then any other -- I mean if you were describing the variety and types of construction Barry Swenson company does, what would those be if you can just lay out the portfolio for example?

>> Well, we do a wide variety of work. Everything from small TIs medical buildings to larger buildings, multistory, residential buildings up to 20 stories. And Barry Swenson is a third generation builder here in this city with his father and grandfather having built here with a long tradition. And --

>> Mayor Reed: I'm sorry, I think you answered the question. I don't want to get into further presentation. Did you get your question answered?

>> Councilmember Oliverio: I believe so, I appreciate that,.

>> Can I make one statement?

>> Mayor Reed: No, that's public testimony, we've got it figured out by ourselves.

>> Councilmember Oliverio: And Katy Allen, and how does Barry Swenson rank as far as years of experience or portfolio, versus you know and this is anecdotal I guess, how do they rank as opposed to other people that bid on city projects, do they rank very little experience, medium, high?

>> Katy Allen: Barry Swenson really we haven't had many contracts with them. In fact I don't know of one. They typically do private sector development, not public sector. Certainly 30 years of experience is right up there with the higher end of the contractors that we're dealing with. I will say of the 22 bidders, folks that have worked with us on all of our bond programs, they were all there and many of them are excellent contractors as well.

>> Councilmember Oliverio: And then back for the time line. So you would imagine if this motion is supported that you would come back to council approximately end of August, mid September with a new bid?

>> Katy Allen: That's approximately correct, yeah, we would come back, in the August-September, probably closer to the September time frame, to have the results of the second rebid.

>> Councilmember Oliverio: Okay, thank you very much.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you. I will be supporting the motion. Rick, I wanted to ask you a question because I'm not -- it's not clear to me whether the direction that my colleagues have given to Katy or suggested to her on how we go out and how we have clarity, is that a policy thing that we need to do? And what I'm alluded to is, they said you have to have three years' experience and a license. And the way I look at it is from one listening to the dialogue if you want to be very clear you say, experience with a license of three years or four years, however long it takes at the state. I'm just trying to understand that we make sure that when Katy is putting something out that it's very clear and there's not this either/or.

>> City Attorney Doyle: I think staff is going to have to make sure and we're going to work with them to make sure we don't have this problem again. If the requirement is that you want tremendous years valid license in the state of California, that's one thing. If you want to say three years or more experience that's something separate. But I don't know, Katy, how you're taking this, if you're going to say three years required to have a license.

>> Katy Allen: If we were going to be consistent with all of our other Public Works contracts, we will be experience that three years is relevant experience. We want someone who has done this before on another project and we are very clear that that is not related to the duration you've held a contractor's license. So we will be very clear that the experience has got to be relevant and it is going to be separate from the duration for which you've held a contractor's license.

>> Councilmember Campos: Thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you. I'm very grateful for Neil Struthers and the others for bringing this forward. We learned a lot. I don't believe any aspersions were intended towards Barry Swenson, and no -- well, the mistake was on our side but that mistake I'm sure was not intended. It just happened to have happened. So I'm assured and I'm -- if we could include that as part of your proposal that the corrections will be made and we will encourage language to be as clear as possible per Councilmember Campos' suggestion. And the project at this point can go forward, we're not going to encourage a lawsuit, and the time line can be met, is that correct, if we proceed to reject all bids?

>> Katy Allen: Yeah, so we will probably have a two to six-month impact on the completion of the project.

>> Councilmember Pyle: Okay. With that I am very much in support of the motion.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks, mayor. I just wanted to go back to something Rick said a little while ago. The litigation risk to the city, if we're still exposed potentially to litigation as a result of this action. Or not?

>> City Attorney Doyle: You have absolute discretion to reject all bids for any reason or no reason.

>> Councilmember Liccardo: Okay.

>> City Attorney Doyle: That's to be distinguished between if somebody said that's a bid which is deemed responsive, then you get into an argument with the judge as to whether or not it was responsive or not. That's my concern. If the council wants to reject all bids, it can reject all bids.

>> Mayor Reed: Okay. Thank you. That's helpful, Rick. My Ken is this, and frankly I've changed my mind about five times in the past 20 minutes. I appreciate this is a close call. I'm not going to support the motion and that is why. First of all the bid does appear to be responsive, that's a pretty close call and the next bid going forward it would still be responsive. And even if you take the most adverse interpretation and don't interpret it literally as is suggested by our staff, you'd say that the subcontractor was four months short of having enough licensed experience, about 120 days, it seems to me that it's a bit -- a bit nitpicky, given the fact that we know there seems to be reasonable reliance on state records of some kind about whether or not this person had the requisite license and the duration which they had it. And we know that in this case going back out to bid is going to delay the project by somewhere on the order of six months. It just seems to me that you know, we're going to see a lot of bid protests these days because it's tough times and a lot of contractors are going to be chasing these bids and we know that. I think we need to get used to it. It just doesn't seem to be all that fair, knowing that this particular respondent or this particular contractor did respond to the bid language that we offered and the same language or a different language that we're going to off in the future they would still be responsive to that. So for that reason I can't support the motion.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: I just wanted to pretty much echo what Sam just said. Because I feel that when I read this, multiple times, I feel like they were responsive and they do meet the requirements and I really don't see the reason to put this significant delay on this project.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. I'll be supporting the motion and there's no reflection of Barry Swenson, what a great job that he has contributed to the valley over the last 30 years. The reason that I'll be supporting the motion is I don't want to send the wrong message to the contracting community. But again, as I stated earlier, I don't want to -- to miss opportunity for other subcontractors or contractor, if the language confuse them as well as confuse me. Again, back to you Katy, if you don't think that three years contracting experience is important, maybe don't put into the requirement. All right? Because now we know that the person that get the licensing already have four years of experience. So why do you put another statement which really means nothing, to the people you just -- that are trying to interpret it?

>> Katy Allen: That's a good point, Councilmember Chu.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I just had one question, Katy, and it's about the requirements. It seems like we would want to go back in and make some clear, and it sounded like I was he hearing they were going to be the same. And the only question I had was about the licensing requirement. It sounded like from the testimony we heard here is that the licensing is important as a measure of whether someone last the skill set or the requisite training and has passed certain tests in order to work in this type of a project. So I guess my question is, should we have licensing requirement in, you know, as a part of that, as a part of our RFP?

>> Katy Allen: Councilmember Herrera, that's an excellent point to raise. Because we look to the licensing issue as, is this contractor in good standing, are they authorized by the state to perform this work. We really don't look at the state licensing issue as a criteria related to experience. When there is fraudulent activity going on or there is a contractor who is not a responsible contractor, the contract -- excuse me, really, the state oversees the licensing program. They do the certification. We defer to them as an analogy would be your medical doctor. but we defer to the state credentials with a contractor who is licensed with the state to perform that work. On a separate note we look at the experienced not to be learning have a learning curve on our project and we want their experience to be relevant. So that's kind of the way that I think we would continue to look at this, but we will

ensure the clarity. So there's no confusion that the experience that we're looking for is additive to the construction contract that the state issues. The contractor's license that the state issues.

>> Councilmember Herrera: I'm not sure I'm totally clear on it. I guess just from my own experience and I certainly have no particular experience in this kind of contractor, having, I looked for somebody who was licensed, is that an important criteria. Would you say, you are kind of looking at their licensing rift, though as an indication of whether they you know are following rules or if they've been in trouble or if they've been cited for problems, that would alt come under a report like that, right?

>> Katy Allen: Absolutely. Did I mislead you there? Contracting licensing, is a crediting having the front type of license is very, very important. Good I -- I'm not sure how I can understand how I'm confused.

>> Councilmember Herrera: Why aren't we requiring this as part of this process if that is somehow not important? I'm somehow repliesing it somewhere.

>> Mayor Reed: Two requirements, licensing and experience. My doctor is licensed to cut me open but I'm not going to let him, because he don't doesn't have the experience. I want to go to a doctor who has done it a few times. The question is, do they have good experience and we're back and forth between the two. The question is do you want him to be experienced enough that he has three years rather than seven years .

>> Councilmember Herrera: So we are saying lined and experienced as someone who is licensed, is that right ?

>> Katy Allen: No, let me try it again. Very seriously. So we want a contractor that is experienced, that they have done this work before, and that that experience is relevant, okay? So we will determine the amount of experience that this contractor needs-this subcontractor, all subcontractors have to have in order to perform the work at educational park library. That is ooh April experience criteria and it is separate from the contractor's lining criteria. On the other hand, we want our state contractor and general contractor to have contractor licenses for the work that they are going to be performing on our job.

>> Mayor Reed: All right. Let's see if we can beat this a little bit more. We don't want to get done early today. Councilmember Kalra.

>> Councilmember Kalra: Just going to be a little bit more. I tell you I can explain, in your last explanation to Councilmember Herrera I think I got what you're saying. And it is essentially you're saying you're looking for experience for the particular project. Like you're saying you build an application that is customized for the project. One requirement is to be to have a bar license. So similarly here, to have a license to perform a contractor's license for the state which does require four years to get. But in addition to that you're looking for specific experience to the type of project that might exist. So if you are talking about law, you may have a law firm that does criminal practice and you say you want to have a person that can practice in California and has three years of criminal experience. Something along that line. You are saying we want someone who is licensed and has three years of relevant experience so they can build this type of project. Is that somewhat of what you're going for experience versus license?

>> Katy Allen: That is an excellent analogy.

>> Councilmember Kalra: Maybe as we go forward Councilmember Pyle had asked as part of the motion or add clarity, that that clarity is when you say experience, to add specificity to the relevant experience, and so essentially you say what is relevant experience mean? It could mean project type, I could mean whatever you want to mean since you're the one -- you'll know better than I will, to make that clarity or specificity. But to make it distinct that you have to have the license as well and so if that is the case, then that will add clarity to everybody that's applying because it seems like there's a general sentiment out there that well, it's just hard to believe that you have to have three years after being licensed. If that's not the case make that very, very clear but make it clear exactly what type of experience you're asking as well.

>> Katy Allen: Councilmember Kalra I just need to respond. In our specifications we were clear that we wanted three years of structural steel erection and three years of fabrication. Very clear. That was the experience we

were looking for. And we will double ensure that it's very clear, that the experience is here, and that the state licensing requirement is separate.

>> Councilmember Kalra: Okay, well, yes, thank you very much for that and again as Councilmember Chu indicated it's not -- I think part of the reason we backed away from any amount of responsiveness that it didn't appear that that case can be fully made at all because we want to make sure that Barry Swenson builders has an opportunity to bid as well, and the opportunity to go forward as we add clarifications there .

>> Mayor Reed: I think we're done with the debate. We have a motion to reject the bid and all bids. All in favor? Opposed, Oliverio, constant read and Pyle were opposed that passed on a 6-4 vote because Vice Mayor Chirco has gone home. She's reached her limit so she's absent. That concludes that, rejecting the bids, and moving on to item 5.5. Happy hollow park and zoo and attraction substitution of contractor. Good, more contracting work. This is so much fun. This is another administrative hearing. On the substitution of contractor. Public Works.

>> Yes, player, David Sykes, assistant director of Public Works. I'll be very brief. West bay builders is the general contractor on happy hollow, they had listed green growth industries as the subcontractor to perform landscaping on the contract. In early May, they could not get subcontractor green growth industries under contract. Green growth is disputing the substitution request. In our analysis the dispute boils down to three issues. One, a lack of agreement over bonding requirements, go, lack of agreement over the insurance, and three, lack of agreement over compensation. In a nutshell, our analysis indicates and our recommendation is on two of those, the insurance and the compensation issues, there is grounds to grant the substitution, because it amounts to a failure of the subcontractor to execute the contract. We can take questions at your convenience.

>> Mayor Reed: All right, this is an administrative hearing so we'll first have the general contractor and then green growth industries. So on behalf of West bay builders who is the general contractor we'll allow them five minutes and then we'll go to the other. Okay. West bay builders, Tim McInerney.

>> My name is Tim McInerney. I represent west bay builders who is the general contractor on the happy hollow park and zoo project. This is another substitution hearing like the one before, different grounds, one was failure to perform during the job but at this time, we have while the job is almost done, we have a failure to execute the contract. And according to the city specs as staff has notified you what the reason is, if we tender, if the general contractor tenders a subcontract, that conforms with the city specifications, and the sub has a reasonable opportunity to do oso and fails to sign, that is grounds for substitution. The city staff had mentioned three issues, I want to briefly just address, I'll just address the two that the city staff had agreed to. The first one deals with payment. And you need a little bit of history with regard to one of the prongs, the reasonable opportunity. This job bid in 2007. In December of 2007, West Bay immediately tendered a subcontract to green growth to perform the landscaping. It was a significant portion of this project. It was a $1.6 million subcontract. The contract was tendered in '07. west bay noted that the insurance limits that were required for the city, the $5 million excess policy was not delineated. They immediately sent out a change order notifying all of the subcontractors including green growth that the insurance was matching the city specifications that was done in the spring of '08. West Bay goes through numerous e-mails, phone calls, letters, you have those before you that we provided to staff trying to get green growth, one, to get a bond, but more importantly, sign the contract. Bring up any changes. The cover letter importantly in the subcontract that was tendered in December said if you had changes, call us up, let us discuss them right away. After numerous e-mails and letters in April of this year, now, the project is almost 80% done at this point in time, the landscaping is now critical to completing this project. We finally get the contract back marked up from green growth. They mark up the bond they mark up insurance and they mark up payment. Here are the reasons that pavement are important. The payment provisions that they marked up changed between what the payment and the city has. In other words final payment is not going to be made until after the job is substantially completed. There is a whole process that could string out almost 60 days before the city is obligated to make West bay's final payment, there's good reason oto do that, make sure the subs are paid, same thing for west bay, they want to hold back some money to make sure even if the work is done. Green growth says no, they want payment after the work is completed. They other contracts we seem to have worked it out. This contract for happy hollow is six to ten times larger than any other job we've had with the green growth. It's a significant project. It's a $40 million contract to west bay and there's significant liquidated damages involved if this job is not finished on time. We gave green growth 16 months to get the contract signed and done

and they failed to do that. Now, in May, early beginning of May we asked the city to allow substitution of another subcontractor, Jensen, to get this work done. About two years ago I was here when the job was awarded. And what was interesting is, there was a few protests, not quite like you just had, but there was more people talking about how important this job is to the city and the history of the city, this park and the attractions and people came in and talked about the Danny and the dragon ride. If every job went like this one, I would be out of business. This job's gone quite smoothly as staff will tell you. There's no problems. But we are at the very end. We want to get this job open this summer. The last big piece of this thing is, the landscaping. We have given them 16 months. They've brought up sites in the bond, they've brought up insurance and payment, are critical issues, obviously we know in this day and age. They won't sign the contract and we request that the city adopt the staff recommendation and allow the substitution. Thank you.

>> Mayor Reed: Thank you. Next we'll hear from green growth industries, Paul Bryant. Five minutes.

>> Thank you. My name is Paul Bryant, I'm an attorney. I'm here representing green growth industries. Lisa and Roger are here in the audience. I want to state that this might take as much as seven minutes. I know the time is of the essence --

>> Mayor Reed: Five minutes.

>> I think due process requires that I be able to present all of the arguments. This is a quasijudicial hearing and I would like to remind the councilmembers, you are sitting as judges on this not just best for San José. You have the obligation to enforce the law, just as your duties as a councilmember. In this particular instance there are some things that mischaracteristic what happened. The big number one issue is the bond. For 16 months west bay builders said to green growth industries, sign a contract that has a bond. Every single contract that was given to green growth had a provision regarding a bond. This bond, as the department has confirmed, cannot be required. In order to require that a subcontractor provide a bond, it has to be advertised. So every time west bay builders says, sign our contract, that has a bond, our client is not obligated to sign it. They weren't given a reasonable opportunity to sign a contract which is lawful, because every contract that they received had that provision. Now, this goes to the reality of what this case is about, and I ask you as judges, to go to the real issue. And that is, on May 4th, 2009, the letter that was sent to green growth by west bay builders says, you know we've sent you a contract. Unfortunately you have crossed off the bonding section C in the subcontract and that is not acceptable to west bay builders. There is no mention as to any other clauses. The only clause that is objected to in this letter is the failure to sign a contract that included the bond. Those other arguments that were raised by counsel were only raised after the request to substitute was made. So that my client was never given an opportunity to even address those issues. Because it never was told that it was an issue. It was an issue that was created. Interestingly, on May fifth, and this should be in the record west bay builders sent a letter, and this is the basis for the request, and I'll read to you exactly word for word. In accordance with public contract codes west bay builders hereby requests the substitution of the lifted green growth industries with Jensen corporation for the landscaping irrigation and green roof work. Green growth industries has refused to procure a requested bond at our expense and enter into a written contract with the aformentioned language. So even in the request for replacement they're saying the basis is they didn't sign a bond and didn't sign a contract that has bonding language in it. Well interesting enough and this is what is going to put the City of San José in a lawsuit, is on May 7th, the City of San José after receiving this letter, sent out a letter expanding the scope of the request. I mean, on their own, the scope is expanded. Instead of what was written, in west bay builders request, the City of San José says, oh, it has been brought to our attention that the basis for the substitution is due to a refusal to procure a requested bond, and enter into a written contract. And that is the basis upon which the city now would grant the replacement, basically the city's suggestion that maybe there's some other reasons other than a bond. But the reality of it is, is that this request is made solely because my client refused to sign agreement that had a bond. Now, why is that a significant issue? There is a code section that says, unless you publicize the requirement for a bond, you can't tell a subcontractor to do it. By -- if the city council, if as judges, you know that the real reason that this subcontract is being replaced is because there was a failure to sign a bond, and you know that, and you say, well, we're going to allow these afterthoughts come in, we're going to allow these excuses work, even though they weren't even raised until after the request for substitution was made, what kind of judging is that? You're looking beyond the real reason. Now, what's going on here and you're going to have a lot more of these administrative hearings because what's going on in reality is work has dried up. So people are

wanting to keep their contracts, general contractors are going to be looking for nice, little technical reasons to kick off their subs, because they can find somebody who will come along and provide a bond and --

>> Mayor Reed: I'm sorry, your time is up. We do have your written materials that are part of our record that we've had a chance to look at before the hearing.

>> I would just protest that this is not sufficient time.

>> Mayor Reed: Thank you. Okay. That concludes the administrative hearing part of this. I have no cards from anybody else in the public wishing to speak on this so that concludes the public testimony at this time. We'll need to have some council discussion and see what council wants to do with this. Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. On page 3, of the documentation, in our notebooks, it does say that the staff agrees, this is the end of the first paragraph, staff agrees that one of the changes to the payment provision justifies the substitution request. Is that any one or a particular one?

>> Let me start off by saying what a difficult process this is for staff to try to go in and analyze the differences between the contractors. I think we quickly came to the conclusion that on the bonding requirement, there was no basis for granting a substitution. And we've been on formal record of that since our first memo came out for supplemental memo back I think on June 12th. So the bond issue and our recommendations on that regard have been out since that date. Our expectation is, once that we went on record with our recommendations on the bond issue, that they had the opportunity to come together and get under contract on the remaining issues. That did not happen. So our final recommendation was, they weren't able to get together on the insurance, and the payment issues, and that's the basis of our recommendation. We didn't spend further time trying to work out the issue between the contractors beyond that.

>> Councilmember Pyle: Thank you.

>> City Attorney Doyle: And Councilmember Pyle, I'll just note again, we've looked at this, because it's in the record, but exhibit D, on pages 2 and 3, showed the interlineations by the subcontractor that were not acceptable to the general. It is the payment schedule and you see the handwritten about payments to be every 30 days, et cetera and the same in the insurance language, that you have the interdelineation and it wasn't acceptable to the general. So you don't have a meeting of the minds. And as Katy pointed out or Dave pointed out in the beginning, the test here is whether the subcontractor had a reasonable opportunity to sign a subcontract, here you have 16 months go by without a signed contract and the general specifications of the City's requirements as well as the subcontractor's written proposal at the time of the bid.

>> Councilmember Pyle: You know, you have to -- I have to worry about this young lady over here. She could get a complex. I mean two of the projects in her district are having difficulties.

>> Mayor Reed: Through no fault of the councilmember, I'm sure. Councilmember Nguyen.

>> Councilmember Nguyen: Thank you. I hope it's not my fault. [Laughter]

>> Councilmember Nguyen: I had a question. Mr. Bryant alluded to some potential legal issues as it relates to a letter that he pointed out which I think it's in here somewhere in my binder. I know I read it, I just don't have it here. But he alluded to the fact that staff I guess extended beyond the bonding issue as to why they wanted to proceed with the substitution request. So I was wondering if you could just kind of clarify that.

>> City Attorney Doyle: Well, there's no question that the bonding issue is one of the three issues that was raised. Staff looked at it, staff rejected it. Staff's conclusion is that the bonding issue is not sufficient reason to allow substitution however the other two issues are.

>> Councilmember Nguyen: And again, another unfortunate situation because this is definitely a project that is not just vibrant for council district 7 but really it's for the entire City of San José and I'd really like to see it move forward. I think it's sad that we come into the situation again and there are disagreements between the general

contractor and the subcontractor. But I'd like to see this project move forward, the landscaping is definitely very critical to having a beautiful renovation of happy hollow park and zoo. So at this time I'd like to make a motion to accept staff recommendation.

>> Second.

>> Mayor Reed: All right, we have a motion to accept the staff recommendation. Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. If I could just ask a couple of questions regarding the contract or regarding the staff recommendation and some of the comments made by both of the speakers. If -- early on there was a conclusion I think it was referred to the June 12th letter, that indicated a bonding can't be required. So the recommendation for from staff is based on the fact that a contract wasn't signed but there were other provisions, the other provisions as well -- there were other provisions besides the bonding provisions so therefore because the contract wasn't signed, that's the nonresponsive -- that's the nonresponsive actions of the subcontractor?

>> Ultimately that is the bottom line. We are looking for the contract to be executed. At the same time, though, we're looking to ensure that the general's behaving properly. So when the bonding issue came up we looked at that and that -- our determination on that was, that was an unreasonable request at that particular time. They had not advertised it in that manner. On the other two conditions we were looking for the two of them to come into agreement on the terms of the contract.

>> Councilmember Kalra: Now, this wasn't, this was a week and a half ago, in that time are you aware of whether the general contractor provided a contract that did not have the bonding requirement for the subcontractor to sign, and at that time, the subcontractor did still not sign it?

>> I'm not aware of that.

>> Councilmember Kalra: So I guess the catch 22 that I'm seeing here is that if there's a contract from the general contractor that has a bonding requirement as well as other elements that are legitimate elements to negotiate, and the subcontractor is asked to sign it but it has the bonding requirement, which the city staff has already indicated to both parties cannot be required, unfair ground for substitution I hope I'm making some sense --

>> You are. Although once we made our recommendation public I was in contact with both entities and I did not hear that the subcontractor was willing to make any adjustments on the conditions on the other two remaining conditions.

>> Councilmember Kalra: Well, the original earlier -- I guess the first contract back and forth was when the subcontractor crossed off the conditions and returned it back is this the same original contract just with the bonding -- were there items on there that were added subsequent to the indication that bonding can't be required?

>> I'm not sure I know that. The -- in general the issues hadn't changed over the long duration. We came to the conclusion that the bonding requirements were unreasonable. The insurance and payment conditions were. That's the condition -- that's the ultimate recommendation or ultimate finding that we made.

>> Councilmember Kalra: And again, I mean, I don't see any, you know, it seems like you're doing your due diligence. But at this point, we just don't know for a fact whether there's been a contract provided that solely had the insurance and payment and had had deleted the bonding requirement, and at that point, the subcontractor failed to sign?

>> That's correct, we don't know that.

>> Councilmember Kalra: And the insurance and payment requirements, were they there in other words the first request for substitution, when you first respond back and saying bonding cannot be required, was that an added element or something that was there prior to that or do you know?

>> As far as I know, the whole issues were throughout, as far as I know oops.

>> Councilmember Kalra: We don't know, if they were there all the whole time, all three of these elements, 1, 2 and 3, the city makes it clear, 1 can't be an issue, 1 can't be required and 2 and 3 are still there and the subcontractor is given the opportunity to sign, then certainly they can substitute it, then if we don't have that information, then it's difficult, I mean they're a position where they're being asked to sign something that still has the bonding requirement or not. And so I just don't seem to have enough of the facts to determine that they've -- were acting in such a manner that would require a substitution. And so I don't know legally if we could ask more questions or --

>> City Attorney Doyle: It's your hearing, you can ask more questions. The -- you know if the bonding issue was -- if the person didn't -- if the contractor didn't sigh or the sub didn't sign because of the bonding requirements the city would be denying the request for a substitution. The fact is that you have other issues, that are presented and that the -- the fact of the insurance issue as well as the compensation issue, that give rise for the fact that a contract wasn't signed, it has been said earlier in the prior hearing there are seven areas of where -- and respects where we can grant consent to a substitution, one of those is failure to enter into a contract. And the problem is, if the city doesn't want to be in the middle of the dispute, the city has a contract with the general contractor to construct the project. And we don't get in the middle of fights between generals and their subs. We just want to get that project done and we don't want to get in the middle of determining breach or who's at fault. We just look at the facts as we see them and make the recommendations so -- and staff is in that tough position.

>> Councilmember Kalra: I agree with everything you said and staff said and being put in that tough position but we're also making a decision that has ramifications that can expose us legally as well. And so the question then becomes, if -- the question becomes, if the -- if the subcontract had an opportunity to sign a contract that we deem to be a legal contract or not, and the second question was, were there any changes or additions made to this contract after June 12th when it was determined bonding can't be required or whether there were other additions, and that seems to be questions that staff reasonably can't answer because they just don't have that answer. Mayor, I don't know if you'd allow me to ask those very specific questions as to what was presented opposed June 12th and how if at all it differed prior to that in terms of the contract.

>> Mayor Reed: I think you're welcome to ask whatever questions you need to ask to get the facts that you want to. Who do you want to ask them of?

>> Councilmember Kalra: I can ask each attorney and ask those very specific questions.

>> Mayor Reed: Which one first, general contractor first?

>> Councilmember Kalra: General contractor's representative.

>> Mayor Reed: Okay, answer is one minute.

>> Okay, sure I think I can. I'll give you the facts I think it will answer. There was only one contract that was tendered. On December 7th. The only little change to that was made when west bay sent out to say hey, your limits are $5 million on the insurance, not the million we had. That contract just sits and sits, call sits and sits, until April of this year, and then we get all the delineations, the cross-out of the bonding section, the changing of the payment section and the refusal to take the limits of insurance the city required on us. It all came at one time. Green growth sent one marked up contract which is typical of the industry. You call and you mark it up. But it was just once. There was no back and forth. Once we got any contract back in April it had the bond just crossed out, it had the payment section delineated and it had the insurance back to the old limits.

>> Mayor Reed: Okay, that was good, one minute. Same question, your microphone's off.

>> Councilmember Kalra: Sorry, so essentially the same contract they vote concerns about those three different areas, you submitted a substitution request based upon bonding, staff indicated that that was insufficient and so you also added the insurance and payment components to the contract.

>> That was all part of the flow of paperwork. Bonding came first, then a more formal letter came out that talked about payment and insurance and then attached ought the letters.

>> Councilmember Kalra: Okay, thank you.

>> Mayor Reed: All right, and same question to the subcontractor.

>> Councilmember Kalra: Same question.

>> One minute, there was only one document that was proposed, GGI didn't even know that there was a dispute regarding the contract terms they are the contractor that's been out there that's doing the work, did the work without the contractor because they don't want to hold up the project. They are ready to start immediately. I will tell you if they were sent a contract that had the bond provision deleted they would sign it with the insurance clause and the payment clause as-is. They've never been given that opportunity. We --

>> Councilmember Kalra: That's the question even post June 12th have you been given a contract that deletes the bonding?

>> No. And if we were given it we would sign it in a day.

>> Councilmember Kalra: Thank you.

>> Mayor Reed: Good, one minute answer, that was great. Councilmember Kalra, all yours. Are those the questions you wanted?

>> Councilmember Kalra: Let me ask staff, you know, if they're given an opportunity to do that, I am concerned as we all are about any delays, especially to this project. Any sense of that, if they're given an opportunity to sign a contract that simply deletes the bonding?

>> Well, I think the difficulty we have right now is how long this has taken. As I'd mentioned O&M willing to sign the contract is difficult to react to, given the long length of time that we've been working at this.

>> Councilmember Kalra: Is there any -- is there any like if this, then that, kind of proposal, we could legally make, Rick, where that -- we would approve a substitution if subcontractor does not agree to sign a contract absent the bonding requirement within ten business days, is that something that's allowable?

>> City Attorney Doyle: No I think what I would recommend is, and the problem is you have a hiatus now. I would normally say defer the item for a week and come back in a week. But we don't have that luxury. And I don't know what a month's delay does to this project. Again, the thing I need to caution is, you really -- you need a meeting of the minds between the general and the sub, and if they're not working this stuff out, you know, we just want the project done. And you know, to the extent there are -- you know, we can't get into their minds as to what's going on.

>> Councilmember Kalra: And that's part of the reason why I'm exploring the options because it's difficult for us to -- I don't want to jump in there and say okay, well, this person's a bad actor or this one, I think if the subcontract is truly saying if they remove the bonding we'll sign it, then it may appear that may not have gotten the opportunity to do that, without penalizing the general may we go along that line of opportunity without further damaging the progress of the project? I guess that's what the question is, if we had council next week we could do it, okay acknowledge next week, bring in a contract and if not we're substituting, that would be fair. But katy, if you have thoughts of of what that delay means? I certainly don't want to delay it, I'm sure nobody here wants that either.

>> Katy Allen: Councilmember Kalra, yes, this is this was on the agenda last week. Both parties knew exactly what our recommendation was and the basis of it, there was a whole week to work it out and we didn't execute this supplemental I think until just a few days ago. We have been very patient and diligent in trying to get this matter resolved and not be before you today. You know, the last council meeting of the fiscal year, there's been a

tremendous amount of our staff time, and we're at this point right now where we are strongly recommending a substitution be approved.

>> Mayor Reed: Let me suggest something the City Attorney just suggested he's seen judges do and so have I. We're going to be here for another 15 minutes at least, why don't we defer this for 15 minutes, go out in the hallway and work it out.

>> Councilmember Liccardo: So moved.

>> Mayor Reed: Maybe we'll get lucky, maybe not. But we have some other things we have to deal with in 15 minutes, in 15 minutes work it out and if not so be it. Table this and take up the next item, sometimes we get lucky. So we'll table this item and that we have three more items on the agenda. Or four. So we'll put this, take this up at the end of the other items. 6.two is the next item, federal recovery act tier 1 resurfacing project. We have a motion to approve the staff recommendations on that. We have one, I have no cards from the public on it. All in favor, opposed, none opposed, that's approved. 7.1 is agreement for disposal of solid waste and related services. I have no cards on that. Is there a motion? Motion is to approve the staff recommendation on 7.1. All in favor? [ayes]

>> Mayor Reed: Opposed? None opposed, that's approved. 7.2 is is our green building ordinance for new private sector construction.

>> Thank you, Mr. Mayor. Rich Bucuma. Department of Planning, Building, and Code Enforcement. In view of the hour, staff will refrain from making a presentation description of the green building ordinance and how it implements the green building policy that the council adopted back in October. Also call your attention to the staff report confident extensive public outreach that the staff did as well as staff's responses to comments that we received during that outreach and staff is recommending adoption of the green building ordinance. Thank you.

>> Mayor Reed: We have a motion to approve the staff recommendations. I do have some requests from the public to speak on this item. I also just received some correspondence that's being passed out here on the dais, a letter from the Silicon Valley leadership group in support, a letter from integrated design associates Inc. in support. Okay. Come on down. Phillip Williams.

>> Joe Horwedel: Mr. Mayor, Phil had to leave, he is speak with myself at 6::30 on green building policy.

>> Mayor Reed: Okay, he was in favor. Marty Keller.

>> Good evening, my name's marty Keller. I'm director of construction management for first community housing. First community housing is a nonprofit multifamily affordable housing developer based here in San José. As far as our green pedigree is concerned, we built the first green multifamily project, LEED gold, in California, it's located here in San José, that's our Gish project. It was also selected as the AIA top 10 award winner for the committee on the environment and it achieved 145 green points. It's also home for 35 families. And our villa Montgomery project is LEED gold home for 68 families. We also recently completed a Casa Feliz Project lead Gold home for 60 residents. Not only have we been involved in building green developments, but we've participated in developing the standards for LEED multifamily and Build It Green points I'm also past president of the board of Northern California chapter of the U.S. green building county. In regards to the ordinance, I think the need for us to conduct our business in healthier more energy efficient ways is clear and while I personally believe the ordinance could be stronger because I know from personal experience, what it takes to actually do a green building, and what the benefits that can be derived from it are, I support the ordinance as proposed as being a more than reasonable first step in a greening process. I particularly support the escalator provisions that raise the I would say bar now I think threshold because they're pretty low, consumers but also for the vendors including architects and contractors. Considering the compelling benefits that a triple bottom line, financial social and environmental green building just makes sense and I appreciate the leadership of San José in this area. Point of clarification, I can tell you what the issue is around the four years or three years and the --

>> Mayor Reed: Sorry your time is up. Somebody else will undoubtedly enlighten us on some of those topics. Ron Weidel, Steve Stenton and then Mary fullen Weiter.

>> Hi, good evening, my name is Ron Mitchell, I represent Bay Area smackna, which in turn we represent 250 sheet metal contractors in the Bay Area. I just want to let you know we support this measure and feel like it could even be stronger. Thank you.

>> Mayor Reed: Steve Stenton and Mary fullen Weiter and Carol La Pierre.

>> Good evening, Mr. Mayor and councilmembers. My name is Steve Stenton and I am a volunteer leader with the United States green building council and I'm an advocacy chair for Silicon Valley. I'm also an architect and a resident in San José. I'm here this evening in support of the proposed green building ordinance and the amendment of title 17 to establish green building regulations for private development in San José. On behalf of the United States green building council of Northern California, I am here to applaud the efforts this city has taken to develop sustainable policy that will help transform the way buildings are designed and constructed. Buildings account for 72% of electricity consumption in the United States, and about 40% of our CO2 emissions. Green buildings and sustainable development practices will have a direct and positive impact on reducing energy use, reducing CO2 emissions, reducing waste, and providing a healthier environment. By passing this green building ordinance today, you are taking a concrete step toward improving the health of our homes, the health of our workplaces, and the health of our environment. I understand that there's some concerns have been raised about whether third party verification is really necessary. I can tell you that as a LEED AP myself, I would not be comfortable certifying a project that meets the LEED standard. Thank you again, to all that have been instrumental in bringing this vote today next phase thank you .

>> Mayor Reed: Mary fullenweiter, Carol La Pierre, Jody Hanson.

>> Good evening, council by name is Mary fullenWeiter, I'm the vice president of the American institute of architects for Santa Clara County. I had a letter that I presented to you yesterday. I'm hoping you got it in your mailbox, and I'm going to read it so that it can be entered into the record. Dear Mayor Reed, the American institute of architects for Santa Clara Valley, commends city staff's investment in the development of the green ordinance. Staff met with AIA, SCV and our members intended the general stakeholder meetings to provide input as expressed in our letter to the council in October of 2008, AIA K SCV strongly supports provisions for alternative means and methods to reflect broader view of sustainablability and environmental design. Which values the spirit of sustainability as much as the specific grading system. AIA, Santa Clara Valley, requested staff -- excuse me, request that council ask staff when it returns in 2011 with the program assessment that includes and amendment to the ordinance that supports alternative certification measures. AIA Santa Clara Valley believes that this will alleviate exemption requests, minimize city reviews, inspections and permit processing time. Accommodate the adoption of the 2010 California green building standards code, maximize the potential of residential, commercial, carbon neutral footprint, and life cycle analysis, foster innovation in the Silicon Valley, and catapult the City of San José into the sustainable and environmentalist design front line.

>> Mayor Reed: Sorry, your time is up.

>> The thank you very much.

>> Mayor Reed: Carol La Pierre and Jody Hanson.

>> Good evening, Mayor Reed, members of the council, my name is Carol La Pierre and I'm a Vice President of joint venture Silicon Valley, proposed green building ordinance in June of 2008, the joint venture board adopted a set of recommendations for green building policies and I'm pleased to say that this ordinance is very consistent with those recommendations. We believe that the U.S. green building council's LEED system and Build It Green's green point rating system are the appropriate mechanisms for achieving the city's goals for Green Vision assuring that those goals are met at this time. We are committed to reducing greenhouse gases here in Silicon Valley greener buildings are an important part of that strategy. They're going to lower long term operating costs for businesses and provide a healthier and more attractive environment for tenants and employees. We know that Silicon Valley's retain here. So we think this is the right policy at the right time and we support your adoption of the ordinance. Thank you.

>> Mayor Reed: Jody Hanson is our last speaker on this item.

>> Mayor Reed and city council members my name is Jody Hanson, I'm representing the San José Silicon Valley chamber of commerce and I just wanted to let you know that we did have a number of our members who had planned to attend but they were not available to be here this late in the day. I did want to mention that we did have a little confusion about whether or not we could defer this agenda item and some of the confusion was because of our development community did not have the complete information about the ordinance. They had attended some of the meetings and basically, didn't realize that there was a staff memo that addressed a lot of their concerns. And we did make them aware of that and I think we can move ahead at this point and talk to you a little bit about what we see in the ordinance. We really do support the Green Vision that is brought forward by the mayor at this time. We support the Build It Green and also the U.S. GBC's LEED standards. I think those are all very important. With this said, we do want to thank Joe Horwedel and his staff for their outreach because they did a good job of outreaching to our building community. This is a very complex and evolving policy, and.

>> This policy, even some of the experts don't know all the answers. And I think we need to keep this in mind. In looking back to October 7th when this policy was adopted, it preceded the financial melt down which we've heard about all day. And since then, San José has lost 10,000 construction jobs. I think one of our concerns is that right now, many of our builders don't know how they're going to may their payrolls, and therefore we would recommend some of the following directions to the policy: We appreciate the recommendation --

>> Mayor Reed: Sorry your time is up but we did get the letter you submitted with the specific recommendation.

>> Okay, thank you.

>> Mayor Reed: That concludes the public testimony on this item. We have the motion on the floor to approve the recommended ordinance. Councilmember Chu.

>> Councilmember Chu: Thank you, mayor, I want to thank the staff for putting this policy forward. In November, sometime in November, 2007, I issued a memo asking for this green building ordinance to increase the predictability of the development community. Also, to avoid that, my council fellow constant here north San José development and at that time I had a request and every one of the north San José development to go with the LEED silver or equivalent. And I'm looking at this pipeline provision here, I know that there -- would that have a significant impact to our San José Green Vision goal forward if we pretty much eliminate that pipeline provision? That would be my first question.

>> Joe Horwedel: Thank you, Councilmember Chu. I was just asking Rich the question of how much development have we seen submitted this year and he says it's about a half million feet that has come in through the planning process.

>> Councilmember Chu: Half a million?

>> Joe Horwedel: Half a million feet.

>> To elaborate on that, the green building san José projects would still be in effect regardless of this particular ordinance because those provisions are included as conditions of approval of those specific projects.

>> Councilmember Chu: Oh, boy, with that I move to approve.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Joe, I had a question for you, regarding the deposits. When we got the original memo, and I thought I tagged the page, but it looks like I didn't, we had the specific deposit. And then when we got the supplemental on June 11th, the last bullet on page 1, remove the establishment of the amount of the green building deposit rate, and then including it in a separate fee resolution. So what is that going to look like?

>> Joe Horwedel: The fee amount is 30 cents a square foot. That was established through the budget process this year. So when we did fees and charges we included it there. And it is the same 30 cents a square foot amount.

>> Councilmember Constant: Okay. I just wanted to make sure where that was because there seemed to be some confusion in some of the questions that I got via e-mail from constituents and builders. I had another question but I can't remember, so I'll turn my light back on when I have it.

>> Mayor Reed: All right, we will return in a minute. Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. I want to thank Councilmember Chu for all of his leadership on this issue and staff for the extraordinary amount of work that went into this product. I know that there's an awful lot of outreach and I can tell you a lot of folks have been looking at San José. I've been sitting with the mayors on the cities association board, and they're all looking to see what we're going to do. And there's a lot of interest in seeing how quickly we'll move because everybody knows that San José is the 100 pound elephant in this county so I just wanted to thank you Joe and those folks who had some involvement in all this. The one question I had that related to commercial versus residential. For the larger residential development we require LEED sophistication. For the larger commercial developments we require LEED silver. That seems counterintuitive to me based on what we all expect we're going to be building in the next couple decades. We know there's going to be more housing built than commercial and we also know that we're in a situation where we want to encourage jobs in the city as much as possible. So commercial, industrial development is the last thing we'd want to put any additional burden on relative to residential. I'm wondering why we wouldn't want to require them to at least be LEED silver.

>> Joe Horwedel: Councilmember Liccardo, commercial industrial is at least LEED silver but a high rise commercial building we still left that with LEED silver. Away we found was that the market for that type of office building before the melt down here last year, the developers, before the city even started talking about requiring LEED silver were already doing it because their tenants were requiring it as a part of the lease negotiation. So the property owners like legacy, Boston properties, Tishman Speir, they were all doing LEED silver or LEED gold for their designs without the city asking them for that so we left that in there.

>> Councilmember Liccardo: I appreciate that, I just wonder why we wouldn't want to go LEED silver on residential tier 2. We had a gentleman from first community housing, they have two developments in my district alone that are LEED gold, at least they're going to be building first.

>> Joe Horwedel: On residential tier 2 those are less than 10 unit projects --

>> Councilmember Liccardo: Those are greater.

>> Joe Horwedel: I'm sorry I did read that wrong. Larger than 10. The intent was they would be using the green point rated system the system that is really designed for residential. LEED for residential is really catching up, the Build It Green starts were developed here in the Bay Area to recognize how residential development buildings are developed how they are built and operated. And that's a standard that the HBA has adopted, that the city counties association had adopted. We have included LEED in here as an alternative. But of the equivalent piece, the LEED certified, we thought was the right balance point, because LEED silver, we really didn't think where it is today works with typical condominium or town house development, the standards really aren't set for that.

>> Councilmember Liccardo: Okay so --

>> Joe Horwedel: That is right now why we put it at LEED silver. You may remember when we came to the council late last year we also had talked about a second phase of implementing the standards for LEED, that we would come back and up -- or kind of ratchet up the standards. And that is still something that we plan on looking at and coming back with. We took it out of the policy, and at this point the specificity, but it's one that we know with the title 24 standards that are ratcheting up that the LEED standards are going through some rewriting right now, that we think will come back with something that kind of fixes that, but right now, we felt that that was -- it matches where everybody else was going.

>> Councilmember Liccardo: We expect everybody else is following GPR anyway-

>> Joe Horwedel: We're not expecting anybody to come in for LEED for residential.

>> Councilmember Liccardo: Got it.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you mayor. I wanted to talk about in reference to the affordability issue. Would I think logically speaking, once more people and more people and more people begin to ask for the LEED certified material that those costs would go down. Is that a logical way to think?

>> Joe Horwedel: Yes, that is the business model that everybody is looking at, just as you are seeing with solar and photovoltaics, that before it was really a hobbyist niche type thing and now it's pretty mainstream. Now you're seeing Lowe's, Home Depot, ace hardware, carrying the green products that before were very hard to find, you know, paints that were low VOC, sustainably harvested forest materials, all this recycled content for countertops, you're seeing that material advertised for its green value. The marketplace, the consumer is looking for it, the marketplace is now providing it. As that happens you see the price per square foot or unit is dropping.

>> Councilmember Pyle: Exactly. Now when the Tesla gets down to the point where that happens, I'll think about buying one, thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I want to thank Councilmember Chu for his leadership on this very important issue and staff for their hard work and staff just point out in the staff report it does mention, it looks like five different Green Vision goals that are really affected, by this policy, and I would just add another, which is the synergy of the goal of adding clean tech jobs. In addition to other cities and developers and builders and environmentalists that are looking to see what San José will do, there are a lot of entrepreneurs in these startups that are looking at this and are really excited because the building and retrofitting 50 million square feet, green building someone has got do retrofit and build, someone has got to build solar panels and other technologies for weatherization and so on and really achieving other goals than are stated in the report, and so I'm excited about that. Thank you.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: I've still lost it, so go on.

>> Mayor Reed: We're at the end of the road here. It looks like the end of the council discussion.

>> Councilmember Constant: I'll ask it in August, don't worry about it.

>> Mayor Reed: We have a motion on the floor to approve staff recommendations by Councilmember Liccardo I believe. Any further discuss on that? All in favor? [ayes]

>> Mayor Reed: Opposed? None opposed, that's approved. Now we're going to go back to construction, item 5.5. I have a question for the general contractor's lawyer. Is the general contractor going to withdraw their request for a substitution?

>> We have not.

>> Mayor Reed: Then we're going to continue our hearings. We have one question for the City Attorney, the city's risk if we deny the general contractor a substitution and the contract is delayed what does that do to our delay claims, we try to enforce our contract?

>> City Attorney Doyle: Well, I think the general might assert if it is -- if they link it to the fact that there was some blame on the sub and the fact that the city didn't consent to a substitution as a cause, there maybe some possible liability there. I will point out there was a case that the city was involved in involving substitution of a contractor at the airport, about -- it might have been before you were here, about nine years ago, and that's the only other case I'm aware of and that issue was raised but didn't go anywhere.

>> Mayor Reed: Okay, Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. You know, I really am hesitant to delay the project, I know as I mentioned a couple times before, at the same time, I know there was 15 minutes or 20 minutes or so there was an opportunity for dialogue, when Councilmember Liccardo and I were involved in criminal court we could have solved several cases in that time. But I know this is civil. Rick, is there any other option other than allowing for the substitution, but if at a certain date you know, in ten business days and giving an opportunity for both parties to sit down with someone from Public Works, say here is the contract, crossing outs bonded, sign it, if they don't sign it then staff will clearly say you're being nonresponsive --

>> Mayor Reed: I think the City Attorney has the answer.

>> City Attorney Doyle: I think your question is really you say consent to a substitution if the contract is not furnished by a specific date, a very short time frame. You could probably do that. I don't know if it's going to make the project any more delayed. It's you know, again, the fact that the parties have been fighting this more months, it causes concern.

>> Councilmember Kalra: And that's part of the reason why --

>> City Attorney Doyle: You could probably do that.

>> Councilmember Kalra: That's the reason why I don't want to delay it until August. If we just say within ten business days --

>> Mayor Reed: How about three days?

>> Councilmember Kalra: By the end of the week, by Friday of this week. But one other element of it and this is something that I want to ask staff before I put it forward, is, is, because right now, if we just say that as a motion, the general contractor say fine, wait three days then the substitution will occur. But at least there is an opportunity for staff, or for the subcontractor to be presented with that application, without the bonding requirement, and then that staff can see, okay, this is what was provided and they didn't sign it, so now we have enough, we were fully informed to know that we can go forward with the substitution.

>> City Attorney Doyle: Well, again the finding has to be made that the sub has had a reasonable opportunity to sign the contract and that the subcontractor actually presented by the general is based on the general terms and conditions of both the contract specs as well as the proposal by the subcontractor.

>> Councilmember Kalra: So what I would ask as an amendment is I would agree with the motion and just add an amendment that it not be enforced until -- until Friday, however, until Friday, staff has the opportunity -- leave it to the discretion of staff, and if staff -- staff would have to -- just ask that staff would have to be comfortable in knowing that the subcontractor was given an opportunity to sign a contract that did not have the bonding requirement, simple, just that one element because that seems to be the element.

>> City Attorney Doyle: And otherwise met the terms and conditions of the project specs and --

>> Councilmember Kalra: As determined by staff. I want to see Katy if you have any thoughts on that.

>> Katy Allen: I have a thought we can have an administrative hearing and we could have it Friday and we could identify someone and I haven't talked to Rick about this but not someone in my department, someone that's completely independent and knowledgeable to have an administrative hearing and council could delegate that

authority for that administrative hearing to be held and then the results of that hearing would be binding. And if we could do that in short order, it would be something that could, I think, maybe address the issues that you're raising yet give one last shot at reconciliation.

>> Councilmember Kalra: I want to give a shot at reconciliation. So if I can make an amendment that --

>> Mayor Reed: We don't have a motion yet I don't think.

>> Councilmember Kalra: I think Councilmember Nguyen already put a motion for it.

>> Mayor Reed: That was so long ago I forgot.

>> Councilmember Kalra: Few items ago. If would I put forward an amendment that would allow just that, that would allow staff to put together by Friday an administrative hearing and for staff to have full authority and binding authority at that time to make a determination as to whether there was a legitimate opportunity to sign a contract without the bonding requirement, and essentially to give staff the authority to do that and to hold that hearing and to have it be binding .

>> Councilmember Nguyen: I'm not sure Rick if you have an opinion about that. I mean that's delegating full council authority for one person --

>> City Attorney Doyle: You're making a delegation to make the finding. And just by way of background we're in the process of revising our plans and specifications citywide that will address a lot of issues some of which came up today and we plan to come forward with a recommendation that these are held by administrative hearing and not by city council. You may appreciate that after tonight. The fact, I think you can delegate that to a third party, to make that finding. It at least provides due process. The whole issue here is due process.

>> Councilmember Nguyen: Right.

>> City Attorney Doyle: So if in fact you have made a direction that you want that findings to be made by Friday, you can do that because I think the concern is there, and I think you know there's no contract and you know it doesn't meet the terms and conditions but you're willing to give in terms of reasonable time at least another three days.

>> Councilmember Nguyen: Amendment is accepted.

>> Mayor Reed: So we have a friendly amendment to the motion to approve the staff recommendations to by 5:00 on Friday.

>> Councilmember Nguyen: That's correct.

>> Mayor Reed: 5:00 on Friday, staff will have an administrative hearing to delegate the authority of the staff to make the decision of whether or not the -- they've had an opportunity to sign the contract. And the seconder agrees. So that's the revised motion. On the motion, Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. I actually had my light on many questions before, but I appreciate your thorough deliberation on asking a lot of the questions. I know that my chief of staff met with green growth industries and was able to explain to me their concerns. I will be supporting the motion and I'm hoping that we can resolve this.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks, mayor. I apologize if I wasn't clear in following the action here, but why weren't we able to resolve that out in the hallway?

>> Mayor Reed: We don't know. I don't think we want to know.

>> Councilmember Liccardo: Okay.

>> Mayor Reed: All we know is it didn't get resolved.

>> Mayor Reed: I won't go there. I think for the record, Ash and I have settled cases faster than that. And I guess I'll just conclude by noting I'm glad that the Bermuda triangle of legal shipwrecks have moved out of district 3 South for today at least .

>> Mayor Reed: I think that concludes Council discussion. The motion is to giving staff the authority to make the decision if not done by 5:00 p.m. on Friday. All in favor? Opposed? None opposed, that's approved. That was easy. Open forum, is the last item on our agenda unless I've skipped something along the way. Clerk will tell me if I missed something. I did not. Open forum, we have some requests here to speak. Please come on down. S beacorro McCord, Betsy Wolf Graves, Ruben de La Rosa, Frank Consuelo, come on down, last person standing gets to speak. Been a long meeting. Come on down Betsy. Think you're closest to the microphone.

>> Good evening. I really regret not having been here this morning. When you discussed item 3.8 and made your decision. I had called the clerk's office to find out about what time it would be and she gave me her best guesstimate which was 1:50. And I came in then, and it had already been acted upon. So in light of that kind of situation, I'd like to make a couple requests. One is, to clarify the process if you're calling in, to determine when an agenda item is actually going to be discussed, when an issue of community interest and concern is scheduled, that it be done in the evening, not in the afternoon. There's scarcely anybody here now, and those who were here earlier left because they couldn't stay this late. So I would ask for consideration in that respect. And in the agenda, I note where sometimes you say it's going to be morning, and other cases it's not. It would be very helpful for community to get more of that information. The -- sorry. Okay. Yesterday, you got my very lengthy e-mail in which I reflected concerns, and council inaction, which I believe, and a number of community members believe, has caused community to question the sincerity of city leadership. The over-50 community members and organizations that sent you a letter on May 29th --

>> Mayor Reed: I'm sorry your time is up.

>> Excuse me?

>> Mayor Reed: I'm sorry, your time is up. Two minutes.

>> How many minutes?

>> Mayor Reed: Two minutes. Betsy wolf-graves is our next speaker.

>> Thank you.

>> Mayor Reed: Ruben de La Rosa and Frank.

>> Hi, I'm Betsy wolf Graves, Debug ACLU and a lot of IPA should have been on the agenda this afternoon. But somehow, or other, it was punted to the morning. I have no idea why, I can only guess. But I'm going to put away my paranoid fantasies and say, you have selected a responsible, reputable group to do the search. I think you're going to find a responsible, reputable individual to cover IPA. But let me ask you: Please don't let them be just cosmetic. We respect the San José police department. And if the San José police department is respectable, they should have an oversight like an IPA. So do not tie that person's hands -- I'm sorry, as this administration has in the past, with all good, due respect. There's a wonderful thing put out by the international association of the qualifications for an independent policing auditor. If the police auditor has those qualifications they should be very competent in doing an excellent job and doing some police oversight. We all need oversight. Even the city council.

>> Mayor Reed: Ruben de La Rosa, Frank Valenzuela. I don't think they're here. I just wanted to say we started at 8:00 this morning. I appreciate the fact that everyone hung in there. It's been a very long day. But it's not yet tomorrow thank you very much and enjoy the nonmeeting, of next week.