



Council Meeting: June 28, 2011

SUBJECT: Agreement to Provide “Seed” Funding for Habitat for Humanity Silicon Valley “ReStore”

BACKGROUND

Habitat for Humanity Silicon Valley (HFHSV), has asked the City to consider granting to Habitat one-time “seed” funding of \$5,000-10,000. The funding would assist HFHSV in opening one of its “ReStores” in the South Bay, a startup effort that the organization estimates will cost about \$260,000.

HFHSV is a 501(c)3 non-profit headquartered in Milpitas that was incorporated in 1986. It is affiliated with Habitat for Humanity International. It states its core mission as “partnering with volunteers, the community and qualified families with low incomes in order to build decent, affordable housing for long-term home ownership.”

ReStores are retail building supply stores that sell second-hand and surplus building materials. The ReStores are used by Habitat organizations to generate funds and provide affordable homes for low income families. Another benefit of interest to the City is that a ReStore would encourage reuse of items and materials that might otherwise be landfilled.

HFHSV anticipates opening a ReStore of 10,000-20,000 square feet in a South Bay location and is working with the City of San Jose on a possible site. HFHSV anticipates that the first three years of operation will divert about 2,300 tons of material from disposal, of which 12% would have a Sunnyvale origin.

HFHSV is approaching many local government funding sources in Alameda and Santa Clara Counties. A December 20, 2010 letter from HFHSV regarding the request is attached.

EXISTING POLICY

Solid Waste Sub-element Action Statement 3.2B.1b - Encourage and facilitate private source reduction programs, services and facilities.

Council Policy 3.2.4, Zero Waste Policy

Council Policy 7.2.4, Relationships with Outside Groups – Identify the various types of support the City will provide to outside groups and/or independent organizations, as well as the circumstances under which support will be provided.

DISCUSSION

There are precedents for using Solid Waste Fund monies to provide seed funds for an organization that provides and promotes reuse in the local area. In 1994, Resource Area for Teaching (RAFT) located its first facility in Sunnyvale. RAFT takes donations of industrial materials that would otherwise be landfilled and uses volunteer labor to convert them in ways that support classroom teachers. The City gave RAFT about \$9,000 in special project funds from the Solid Waste Fund as startup capital. The City continues to work closely with RAFT to direct materials away from disposal.

Another precedent is that, through its participation in the Countywide Household Hazardous Waste (HHW) Program, the City helps to pay for disposal of HHW that is illegally disposed at non-profit donation sites. A portion of the revenues generated by the Countywide HHW Fee on landfill disposal pays this HHW cost that would otherwise be a major burden for organizations such as Goodwill and Salvation Army.

Solid Waste Sub-element Action Statement 3.2B.1b calls for the City to "Encourage and facilitate private source reduction programs, services and facilities." Source reduction means reducing disposal by means of reuse and waste reduction, which are included in Habitat's goals for their ReStores. Thus, the ReStore concept matches up well with the City's Council-adopted solid waste management policy.

A funding agreement agreed to and signed by HFHSV is attached (Attachment B). It provides for the City to provide \$5,000 to HFHSV when it signs a lease for a ReStore site and an additional \$5,000 when the ReStore opens for business.

FISCAL IMPACT

Funding would be provided by the Solid Waste Fund. Having a ReStore in the local area would provide local residents and businesses with an opportunity to donate reusable construction supplies and materials and make use of items made available at the ReStore. These reuse practices would assist the City to an unknown degree in diverting additional materials from landfill disposal and in achieving its Zero Waste goals. The recommended action would have no significant impact on refuse collection rates.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

ALTERNATIVES

1. Authorize the City Manager to execute the agreement shown as Attachment B, which provides HFHSV with up to \$10,000 in funding from the Solid Waste Fund.
2. Do not authorize startup funding for HFHSV.
3. Take other action as directed by Council.

RECOMMENDATION

Staff recommends Alternative No. 1: Authorize the City Manager to execute the agreement shown as Attachment B, which provides HFHSV with up to \$10,000 in funding from the Solid Waste Fund.

The establishment and successful operation of a ReStore in Santa Clara County would support the goals of the Zero Waste Policy adopted by Council in 2009. It could also provide some modest, although difficult to document, financial benefits to the City by diverting from disposal materials that would otherwise be handled through City-funded collection, transfer and disposal contracts.

Reviewed by:

Marvin Rose, Director, Public Works

Prepared by: Mark Bowers, Solid Waste Program Manager

Approved by:

Gary M. Luebbbers

City Manager

Attachments

- A. Letter from Habitat for Humanity Silicon Valley
- B. Agreement for ReStore Funding

Dear Mr. Rose,

Hello. Thank you for inviting me to present more information about our proposed ReStore. We are very enthusiastic about this endeavor and with the partnership of the City of Sunnyvale we will no doubt be speeded towards our goal.

This letter is a summary of some of the data you suggested you would need to determine the worthiness of this proposed project and the funds of \$5-\$10 thousand requested. The highlights below cover those items, but more detail can be found in our longer document attached. I thought you might desire that file for your reference and so that you can see the preparation that we have completed to this point.

Highlights:

- a) **Pre-eminence and experience of Habitat for Humanity.** There are 700 ReStores in the US and Canada today. The 518 who participated in Habitat's 2010 survey produced \$242,620,200 in sales in 2009. 89 stores opened in 2009 and the first half of 2010. Habitat for Humanity International has a staff that supports this effort, providing training, accounting services, insurance, etc.
- b) **Local funding precedence.** Many ReStores receive start-up funding from their local IWM departments. The Santa Rosa Habitat affiliate received \$165,000 from their local IWM and the East Bay Habitat ReStore received \$120,000 from its county's IWM department. RAFT was funded with \$90,000 from Alameda County two years ago. Clearly this is a function that other counties support. Since Santa Clara County has no funds, we are respectfully asking the local cities to help out. Since the City of Sunnyvale is a leader in innovative public works projects we wanted to invite you to be the ground-breaker.
- c) **Cost Effectiveness.** Restores return more the local government jurisdictions than they will cost in start-up needs. Once established, ReStores provide a free public service since these materials never enter the waste stream. StopWaste has estimated that the cost of diverting a ton of building materials from the waste stream is about \$140. Mark Bowers, (City of Sunnyvale), estimated that this number is currently at least \$100 (and an older estimate was \$130, very close to Stop Waste's figure). We will divert 2,284 tons within our first three years of operation given that a desirable store location is found. A calculation by population within the county indicates that about 12% of that will come from Sunnyvale or 268 tons. The cost of disposing of 268 ton is about \$37,520 (268 x 140). We are asking for \$5-\$10 thousand, a very cost effective investment for the city.
- d) **Cost estimates are at market rates.** Our detailed and thoughtful cost estimates assume we will be paying market rates for services to run the Restore. In reality, this is not likely. We will look for 'better deals'. However, not knowing where we will or will not find them, the costs were left as presented at market costs. I anticipate that Habitat will do a little better than this.

- e) **Site Potentials.** We are currently searching for a property in the populous areas of Santa Clara County and have one possible site in the City of San Jose's EIC site. The 2008 Habitat for Humanity ReStore Survey indicates that persons will travel up to thirty minutes to drop off materials so almost any location in the county would suit a Sunnyvale resident. Additionally, our ReStore will have a truck and offer pick-up service. (Almost all ReStores use a truck for pick-ups.)
- f) **Visibility and desirability.** It is clear that members of the public desire a used building supply store. A focus group conducted in November concluded that persons overwhelmingly would shop and donate to a ReStore. Only three cities larger than San Jose in the U.S. do not have a ReStore. The **State's IWM Department has asked me to come and speak in Sacramento on January 26th** to help promote the growth of ReStores.
- g) **Public Good.** In addition to affecting waste reduction, the ReStore also supports public service in that it provides low cost building supplies to low income people and the proceeds help Habitat build more affordable homes.
- h) **Risk is low.** Since we are not asking for funds until all monies are raised and a lease is signed, there is no risk to public funds should the project sadly not go forward.

Thank you for the opportunity to submit this application for funds from Sunnyvale's Public Works Department. We feel this would be a cost effective use of the community's funds.

Sincerely,

Holly Lofgren

Habitat for Humanity Silicon Valley

(408) 737-0875

Agreement between City of Sunnyvale
and Habitat for Humanity Silicon Valley
for South Bay ReStore Center Funding

THIS AGREEMENT dated _____, 2011 is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and Habitat for Humanity Silicon Valley ("Habitat").

WHEREAS the CITY desires to support independent organizations providing services beneficial to the Community; and

WHEREAS the CITY has adopted a Zero Waste Policy; and

WHEREAS the CITY has adopted Solid Waste Sub-element Action Statement 3.2B.1b, which calls for the CITY to, "Encourage and facilitate private source reduction programs, services and policies; and

WHEREAS HABITAT's stated mission is to enable good stewardship of sustainable resources in the community, expand opportunities to serve a broader base of the low income community by providing low cost building materials and provide a revenue stream to build more affordable houses; and

WHEREAS HABITAT wishes to operate a ReStore center to collect donated and surplus building supplies and resell them to the public; and

WHEREAS HABITAT has asked CITY for a financial contribution toward the estimated \$260,000 cost to develop and start up a ReStore in Santa Clara County; and

WHEREAS HABITAT is also diligently seeking ReStore start up funding from other sources, including other governmental agencies in the South Bay region; and

WHEREAS, the goals and objectives of both parties will be furthered by location in Santa Clara County of a ReStore, under the terms and conditions specified in this Agreement,

NOW THEREFORE, the CITY and HABITAT enter into this Agreement.

1. Obligations of HABITAT

HABITAT shall provide proof of non-profit status and shall remain nonprofit during the life of this Agreement.

HABITAT shall site a ReStore of 10,000 to 20,000 square feet in a South Bay location.

HABITAT shall open and operate the ReStore as described in the proposal it submitted to CITY on December 20, 2010, which proposal is incorporated into this agreement by reference.

HABITAT shall comply with all Federal, State and local laws.

HABITAT shall maintain insurance in accordance with Section 7 below.

2. Obligations of CITY

CITY shall pay to HABITAT \$5,000 upon receiving a properly prepared invoice and evidence that HABITAT has signed a lease for a ReStore site in the South San Francisco Bay Area that is located within 30 minutes non-commute driving time of Sunnyvale City Hall.

CITY shall pay to HABITAT an additional \$5,000, to a total of \$10,000, upon receiving a properly prepared invoice and evidence that HABITAT has opened said ReStore site to the public for business.

3. Conflicts of Interest

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement HABITAT shall not accept employment or an obligation which is inconsistent or incompatible with HABITAT's obligations under this Agreement.

4. Compliance with Laws

HABITAT shall not discriminate against any employee or applicant for employment because of race, religion, creed, color, gender, age (persons 40 years of age or older), disability, national origin or any other basis to the extent prohibited by federal, state or local law.

HABITAT shall comply with all federal, state, county and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting performance of the Agreement.

5. Independent CONTRACTOR

HABITAT is acting as an independent contractor in furnishing any services or materials and performing work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and HABITAT. HABITAT is responsible for paying all required state and federal taxes.

6. Indemnity

HABITAT agrees to indemnify and hold harmless CITY, its officers and employees from any and all claims, demands, actions, causes of action, losses, damages, liabilities, known or unknown, and all costs and expenses, including reasonable attorneys' fees in connection with any injury or damage to persons or property arising out of or in any way connected with the act, omission or negligence of HABITAT, its officers, employees, agents, HABITAT, subHabitats or any officer, agent or employee thereof in relation to HABITAT's performance under this Agreement.

7. Insurance

HABITAT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by HABITAT, his agents, representatives, or employees.

Minimum Scope and Limits of Insurance HABITAT shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form CG 0001 is required.
2. Workers' Compensation with statutory limits and Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

Other Insurance Provisions

The general liability policy must contain, or be endorsed to contain, the following provisions:

1. The City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of HABITAT; products and completed operations of HABITAT; premises owned, occupied or used by HABITAT; or automobiles owned, leased, hired or borrowed by HABITAT. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, employees, agents or volunteers.
2. For any claims related to this project, HABITAT's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of HABITAT's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.
4. HABITAT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Sunnyvale.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII, unless otherwise acceptable to the City of Sunnyvale.

Verification of Coverage

HABITAT shall furnish the City of Sunnyvale with original a Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf.

8. CITY Representative

The Solid Waste Program Manager or such other person as may be designated by the City Manager, shall represent CITY as the City Manager's authorized representative in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services to be rendered under this Agreement shall be coordinated through the CITY representative.

9. HABITAT Representative

The Executive Director of HABITAT shall represent HABITAT in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of HABITAT pertaining to the services or materials to be rendered under this Agreement shall be coordinated through HABITAT representative.

10. Notices

All notices required by this Agreement shall be in writing and shall be personally delivered, sent by first class mail with postage prepaid, or by commercial courier, addressed as follows:

To CITY:
City Manager
CITY OF SUNNYVALE
PO Box 3707
Sunnyvale, CA 94088-3707
(408) 730-7480

To HABITAT:
Jennifer Simmons
Executive Director, Habitat for Humanity Silicon Valley
513 Valley Way
Milpitas, CA 95035

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation or a telephone conversation or an original of a facsimile transmission must be sent by first class mail, by commercial carrier or hand delivered.

Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three days after mailing, unless such date is a date on which there is no mail service. In that event, communication is deemed to occur on the next mail service day.

11. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

12. Termination

If HABITAT defaults in the performance of this Agreement or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to HABITAT. HABITAT may be required to repay any CITY contributions that were not utilized in accordance with the terms of this Agreement.

Without limitation to such rights or remedies as CITY shall otherwise have by law, either party shall have the right to terminate this Agreement for any reason upon ninety (90) days' written notice before the event to the other party.

13. Entire Agreement; Amendment

This writing constitutes the entire Agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

14. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate.

ATTEST:
CITY CLERK
("CITY")

CITY OF SUNNYVALE

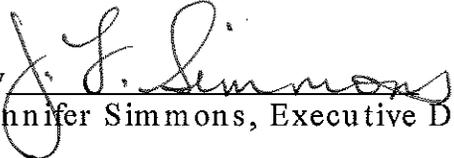
Deputy City Clerk

By _____
City Manager

APPROVED AS TO FORM:

City Attorney

HABITAT FOR HUMANITY SILICON VALLEY

By 
Jennifer Simmons, Executive Director