



**Council Meeting: November 20, 2012**

**SUBJECT: Discussion and Possible Action to Award a Contract for Real Estate Consulting Services for the Sale of Raynor Activity Center (F13-23) and Approval of Budget Modification No. 17**

**BACKGROUND**

With the declaration of Raynor Activity Center as surplus property for sale by City Council on May 18, 2012 (RTC 12-113, Attachment A), the required 60-day public agency notification period to affordable housing sponsors, park districts and public school districts pursuant to California Government Code §54222, et. seq. began on October 9 and concludes December 11.

A total of 26 Bay Area housing, park/open space and school agencies were provided notice. Should any public agency submit a letter of interest within the 60-day period, the City is required to enter into good faith negotiations of not less than 60 days concerning mutually satisfactory price and terms of the sale. The City is not required to accept below market offers, but it may do so if the project advances the City's goals. The City Council would retain final authority to establish, accept or reject terms of sale. If acceptable terms cannot be worked out, the City may then offer the property to other interested parties. To date, one public agency has expressed interest in the property but has not submitted a formal offer.

In preparing the Raynor Center for sale to either public or private entities, several concurrent staff actions are underway including the creation of a parcel map to outline accurate property boundaries (only the Activity Center site of approximately 3.7 acres will be sold and not the adjacent Raynor Park/athletic fields), obtaining an appraisal valuation, and soliciting proposals from real estate professionals to market and transfer ownership of the property to private entities should the public agency notification process not produce a viable result.

**DISCUSSION**

To move forward with the process it is necessary to engage the services of a commercial real estate professional with expertise in negotiated sales of public facilities to private entities, consistent with Council goals and the City's Public Facility zoning requirements, and subject to relevant State law regarding the sale of surplus public property.

Staff contacted thirteen commercial real estate companies with a significant presence in the Bay Area to determine if they would forego their usual commission

structure (typically 3-6% percent of the sales price), and propose either a flat fee or an hourly rate with a not-to-exceed amount. The eight firms that expressed an interest were invited to submit proposals. Six proposals were received as follows:

- Marcus & Millichap Real Estate Investment Services, of Palo Alto
- Ritchie Commercial, Inc., of San Jose
- Cornish & Carey Commercial, of Santa Clara
- Kidder Mathews Commercial Real Estate, of Redwood City
- CB Richard Ellis, Inc. (CBRE), of Foster City
- SAGE Realty Group, of West Lake Village in association with Lee & Associates, of Pleasanton

An evaluation team of Public Works staff reviewed and ranked the written proposals based on experience with surplus public property sales; demonstrated understanding of zoning codes and related development processes; marketing and sales approach; proposed schedule; and cost structure. Of the six proposals received, only three presented substantial experience with public agency surplus property sales. Pricing ranged from \$135,000 to \$300,000, with one contingent upon a commission fee of 3.75% and one contingent upon final fee adjustment based on sales price.

CBRE was selected based on their extensive experience with school property sales, overall marketing approach, proposed flat fee of \$135,000 and recommended use of a two-step Request for Qualifications/Proposals (RFQ/RFP) process to pre-qualify potential buyers based on City-approved criteria (see Scope of Services contained in the Draft Consultant Services Agreement, Attachment B). (Use of the two-step RFQ/RFP process would allow maximum flexibility in pre-screening viable candidates and negotiating the most optimal terms of sale based on multiple criteria to be established with CBRE.)

It should be noted that the contract with CBRE would be executed by the City Manager only in the event that no public agencies submit a letter of interest, or if the City cannot come to acceptable terms of sale with an interested public agency, at which time CBRE would begin marketing the property and pre-qualifying prospective buyers. Should the agreement be executed, a retainer in the amount of \$25,000 would be paid to begin the process, followed by semi-annual payments of \$25,000, with the balance of the \$135,000 paid at the close of escrow.

Staff also recommends a 10% contract contingency in the amount of \$13,500. The proposed contingency would be used in the event out-of-scope services are required. Examples of such services include but would not be limited to restructuring current leasing arrangements if necessary or researching/resolving issues related to title of the property. Such services would be billed at \$285 per hour.

**FISCAL IMPACT**

The total cost of the contract is \$148,500, and there is currently no available budget. Project 829210 (Raynor Center Assessment) was established in 2011 to address costs related to the long-term lease of the facility (i.e. environmental testing, parcel map creation, consultant services, etc.). There is \$78,415 currently budgeted in this project, but \$30,700 of this amount is needed for the property appraisal and to finalize the parcel map, leaving a balance of \$47,715 to fund a portion of the contract for the real estate consulting services. The remaining \$100,785 will need to initially be funded by the General Fund; however, the General Fund will be reimbursed for these costs once the property sale is complete. Budget Modification No. 17 has been prepared to appropriate a total of \$148,500 in funding for a new project, Raynor Sale Consulting Services.

**BUDGET MODIFICATION NO. 17**  
**FISCAL YEAR 2012/2013**

	<u>Current</u>	<u>Increase (Decrease)</u>	<u>Revised</u>
<b>General Fund</b>			
<u>Expenditures:</u>			
New Project – Raynor Sale Consulting Services	\$0	\$148,500	\$148,500
Project 829210 – Raynor Center Assessment	\$78,415	(\$47,715)	\$30,700
<u>Reserves:</u>			
Budget Stabilization Fund	\$49,068,397*	(\$100,785)	\$48,967,612

\*This was the expected ending balance for the Budget Stabilization Fund for FY 2012/13 as presented in the FY 2012/13 Adopted Budget. Once FY 2011/12 revenues and expenditures are finalized, this value will be higher to reflect the aforementioned expenditure savings in the General Fund's projects.

**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. Award a contract, in substantially the same form as the attached draft and in an amount not to exceed \$135,000 to CB Richard Ellis, Inc. (CBRE) for consulting services related to the sale of Raynor Activity Center, and authorize the City Manager to execute the contract when all the necessary conditions have been met.
2. Approve a 10% contract contingency in the amount of \$13,500.
3. Approve Budget Modification No. 17 to provide funding for this project.
4. Do not award the contract and reject the proposal(s) pursuant to Sunnyvale Municipal Code Section 2.08.140(b).

**RECOMMENDATION**

Staff recommends approval of Alternatives 1, 2 and 3. Should Council not award the contract and reject the proposal(s) received, staff would re-issue a Request for Proposals to engage the services of a commercial real estate professional to provide the requisite expertise necessary to assist the City with the sale of the Raynor Activity Center.

Reviewed by:

Grace K. Leung, Director of Finance  
Prepared by: Pete Gonda, Purchasing Officer

Reviewed by:

Kent Steffens, Director, Department of Public Works

Approved by:

Gary M. Luebbers  
City Manager

**Attachments**

- A. RTC No. 12-113
- B. Draft Consultant Services Agreement

**Council Meeting: May 8, 2012****SUBJECT: Reject Proposals for the Long-Term Lease of Raynor Activity Center, and Approve a Resolution to Declare Raynor Activity Center Surplus Property****REPORT IN BRIEF**

On December 16, 2012, in response to a Request for Proposals (RFP), the City received two proposals for the long-term lease of Raynor Activity Center. After due consideration, City Council is being asked to reject all proposals. Additionally, staff has prepared a Resolution Declaring Raynor Activity Center Property Surplus and Authorizing the Sale of the Property Pursuant to Government Code Section 54222 (Attachment A) for City Council approval. Approval of the Resolution will allow commencement of a public notification process as detailed further in the report.

The Raynor Activity Center is part of a larger 14.67 acre parcel that encompasses Raynor Park and the adjacent athletic fields. Only the Activity Center (former school buildings) would be offered for sale. As part of the sale process a parcel map will be created to define the precise boundaries of the parcel for sale. The park, athletic fields, and water well site located on the property will be retained under City ownership. Staff estimates that the Raynor Activity Center buildings, adjacent parking lots, and a buffer around the buildings is approximately 3.7 acres. Easements could also be created over a portion of the parking areas for public access to the park on weekends if desired.

The Raynor Activity Center site is currently zoned as Public Facility. This zoning district is reserved for governmental, public utility, educational buildings and other uses compatible with the public character of the district. For uses other than buildings and facilities used by governmental agencies, use permits are required. This allows the City to maintain considerable discretion over future uses of the property. Based on Council direction, Public Facility zoning would be retained and prospective purchasers of the property would be notified that commercial or residential developments would not be considered compatible uses on the site.

**BACKGROUND**

The City of Sunnyvale purchased the former Raynor Elementary School from the Santa Clara Unified School District in June of 1979 for \$1,792,000 from the General Fund. Under the terms of the Agreement for Sale of Real Property

with the District, the City agreed to use the property solely for park, recreational, or open space purposes while owned by the City or for a period of 21 years. Those areas originally purchased from the District and currently used as open space by the City, will continue to be used in this capacity.

The Community Services Department presented Report to Council 08-238 in August 2008 that recommended sale of the property with the proceeds directed towards developing new open space in the City. City Council directed staff not to sell the property, but to look into lease options with a focus on cost-effectiveness and serving the community while also exploring use of the Center as a branch Library. Initial priority was given to a Library branch option and staff presented a Report to Council on December 9, 2008 (RTC 08-349). Council decided not to pursue the construction of a branch Library at that time.

In early 2009, staff determined it would be prudent to await the results of the City's Parks of the Future Study before determining a long term use for the Raynor Center so that any decision would be consistent with the results of the Study. At its July 14, 2009 meeting, Council considered the completed Parks of the Future Study (RTC 09-183). Raynor Center was not identified in the Study as needed for future open space needs in the City.

On June 29, 2010, City Council declared Raynor Activity Center available for long-term lease and instructed staff to begin a public notification process to affordable housing, park and open space, school, and other public agencies as defined by State law (RTC 10-164). At the end of the 60 day notice period, no public agencies had submitted a proposal. On January 25, 2011, City Council approved a list of community uses to consider as potential tenants of Raynor Activity Center (RTC 11-008).

On May 10, 2011, staff recommended a change in the process of obtaining a long-term lease for Raynor Activity Center from a Request for Proposals to a Bid Process (RTC 11-091). After discussion, City Council directed staff to develop a Request for Proposals document and to return to Council for approval. On October 4, 2011, Council approved a Request for Proposals for a long-term lease for the Raynor Activity Center (RTC 11-223).

On December 16, 2011, the City received two proposals: one from the German International School of Silicon Valley; and, the other from AppleSeed Montessori Incorporated. On February 28, 2012, and again on April 3, 2012, the City Council considered the specific lease terms offered in the two proposals. After due consideration, the City Council directed staff to prepare for its consideration an action to reject all proposals and sell the land rather than lease on a long-term basis. Both parties submitting lease proposals have

expressed an interest in purchasing the property if it were offered for sale by the City.

### **EXISTING POLICY**

Fiscal Policy 7.1 *Land Policies* D.1.9

The net proceeds from the disposition of surplus City property owned by the General Fund shall be placed into the General Fund Reserve for Capital Improvements.

General Plan Chapter 4 Community Character

Goal CC-4 *Accessible and Attractive Public Facilities* - Provide public facilities which are accessible, attractive and add to the enjoyment of the physical environmental.

### **DISCUSSION**

The Raynor Activity Center buildings are currently leased to several tenants and two of the buildings are used by the City's Facility Maintenance Division to store surplus office furniture. Although the City has maintained the Center in a usable condition for its tenants, it has done virtually no building improvements since it acquired the property in 1979. Modernization or replacement of the buildings is sorely needed at this point, which would require a multi-million dollar investment by the City. Continuing to lease the property in its current condition is not considered a viable alternative.

Although the City received two proposals for long-term leases of Raynor Activity Center, because of the poor condition of the existing buildings, prospective tenants faced significant renovation costs. This eroded potential rental income to the City resulting in a reconsideration of the alternative previously considered to sell the Activity Center portion of the property. Although potential buyers of the property face similar renovation or replacement costs, owning the property allows them to retain the value of their investments, which should result in greater interest in the property.

The City of Sunnyvale currently owns and maintains 87 buildings. Periodic renovation or replacement of the City's building stock is an ongoing need that has not been fully funded in the City's long-term financial plan. Proceeds from the sale of Raynor should be used to reinvest in improvements to other City buildings. A specific need at this time is addressing aging buildings at the Civic Center. Staff recommends that revenues from the sale of Raynor Activity Center be placed in the Capital Improvements Project Reserve of the General Fund to be used for major renovation or replacement of City buildings, including those at the Civic Center such as the Library, City Hall or Public Safety Building.

### Property Sale Process

In order to sell Raynor Activity Center, a public notification process is first required to offer the property to affordable housing sponsors, park districts and school districts for 60 days before offering the property for sale to other interested parties. If an offeree responds, then the City is required to enter into good-faith negotiations of not less than 60 days concerning mutually satisfactory price and terms of the sale. The City is not required to accept below market offers, but it may do so if the project advances the City's goals. The City Council would retain final decision making authority regarding whether or not to sell the property to a public agency or affordable housing provider. The Council can use its discretion to establish acceptable terms of the sale including the intended use of the property. If the parties reach impasse, the City may then offer the property for sale to other interested parties.

Approval of the Resolution Declaring Raynor Activity Center Property Surplus and Authorizing the Sale of the Property will allow commencement of a public notification process. After complying with the Surplus Land Law as described above, if no public agency submits a letter of interest, then staff will offer the property for sale and solicit proposals for the purchase of Raynor Activity Center on the open market. The services of a real estate professional will be retained through a request for proposal process to assist the City with marketing and property transfer. An appraisal of the property will also be secured prior to sale to guide decision making.

The Raynor Activity Center is currently part of a larger 14.67 acre parcel that includes Raynor Park, athletic fields, and a water well operated by the City. Only the Activity Center (former school buildings) will be offered for sale. A precise boundary of the parcel for sale will need to be created via a parcel map. Staff estimates that the Activity Center, adjacent parking areas, and a buffer around the buildings would be approximately 3.7 acres of the site. In the process of creating a parcel map easements can be established to retain use of the parking areas for park uses on the weekends if desired. Attachment B is an aerial photo of Raynor Activity Center and Park that shows the approximate boundaries of the property for sale.

Public property for sale is frequently sold to the highest bidder through a public auction process. Assuming no public agencies are interested in the property, the City will retain the service of a real estate professional to market the property and assist with the auction. Staff estimates this process will take four to six months. Once a successful bidder is identified a due diligence period would begin to allow the prospective buyer to conduct additional site investigations, obtain financing, and secure City use permits for the desired use. This along with finalizing the terms of a sales contract will take another six to eight months. An estimated date for transferring the property is summer of 2013.

### Future Use of the Site

The existing zoning of Raynor Park and Activity Center is Public Facility. Council direction has been to keep this zoning designation in place for the parcel that will be offered for sale. At past meetings, neighbors to the property had expressed concern over allowing additional housing and preferred either additional open space or educational or recreational uses. Keeping the Public Facility zoning in effect will give the City considerable control over future use of the property, even after it is sold. Potential purchasers of the site could be notified that commercial or residential developments are not uses allowable by right within the Public Facility zoning at the Raynor site and do not meet the goals of the City as determined by City Council.

The Public Facility Zoning District is reserved for governmental, public utility, educational buildings and other uses compatible with the public character of the district. For uses other than buildings and facilities used by governmental agencies, use permits are required. The City has discretion to grant or deny use permit applications based on the desirability of uses within the district. The City's use permit process also requires notifications to adjacent property owners and a public hearing that would allow neighbors to give input before any decisions are made.

### Current Tenants of Raynor Activity Center

There are several groups currently using the Raynor Activity Center. The largest tenant, My Dream Academy (a private preschool) and the four artist suites currently have lease agreements with the City that will expire on June 30, 2012. The City has offered month-to-month leases through September 30, 2012. Should the City Council declare Raynor as surplus property for sale, staff recommends that existing tenants be offered a one year lease extension through June 2013 at current rental rates.

### **FISCAL IMPACT**

Leases currently generate approximately \$140,000 in annual income for the City. However, because of the ongoing uncertainty surrounding the future of the Raynor Activity Center, these revenues were only budgeted one year at a time, as opposed to annually throughout the 20-year plan. Maintenance costs at the Center have averaged approximately \$60,000 per year for the last several years. Although the Center currently results in positive cash flow to the City, the condition of the buildings is poor and major upgrades would be required to continue leasing the facility.

Capital Improvement Project 829210 was created in Fiscal Year 2010-2011 in the amount of \$100,000 to cover various City expenses associated with the long-term lease of Raynor. At present an unspent balance of approximately \$79,000 remains available in the project. These funds are more than sufficient

to pay for appraisals and engineering services to create a parcel map. Additional funds may be needed in the future to pay for marketing and real estate transaction expenses.

### **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.

A seven day advance notice of tonight's meeting was given to the two respondents to the request for proposals, as well as, tenants at Raynor Activity Center and individuals and groups that have expressed interest in developments at the Center.

### **ALTERNATIVES**

1. Reject all proposals for the long-term lease of Raynor Activity.
2. Approve a resolution declaring Raynor Activity Center surplus and available for sale and direct staff to initiate the public agency notification process.
3. Direct staff to notify prospective purchasers of Raynor Activity Center that commercial or residential developments are not uses allowable by right within the Public Facility zoning at the Raynor site and do not meet the goals of the City as determined by City Council.
4. Direct staff to offer current tenants of the site one year lease extensions until June 2013 at existing rental rates.
5. Direct staff to place proceeds from the sale of Raynor Activity Center into an infrastructure reserve fund to be used specifically for the major renovation or replacement of buildings at the Civic Center including the Library, City Hall, or Public Safety Building.
6. Do not reject lease proposals and reconsider entering negotiations with one of the current long-term lease proposers.

### **RECOMMENDATION**

Staff recommends approval of Alternative Nos. 1, 2, 3, 4 and 5 – Reject all proposals for the long-term lease of Raynor Activity Center; approve a resolution declaring Raynor Activity Center surplus and available for sale and direct staff to initiate the public agency notification process; direct staff to notify prospective purchasers of Raynor Activity Center that commercial or residential developments are not uses allowable by right within the Public

Facility zoning at the Raynor site and do not meet the goals of the City as determined by City Council; direct staff to offer current tenants of the site one year lease extensions until June 2013 at existing rental rates; and, direct staff to place proceeds from the sale of Raynor Activity Center into an infrastructure reserve fund to be used specifically for the major renovation or replacement of buildings at the Civic Center including the Library, City Hall, or Public Safety Building.

Sale of this property will allow similar uses to those being proposed, under private ownership, while relieving the City of its responsibilities as a landlord. The proceeds of the sale will be used to fund investments in major facility upgrades or replacements of aging City buildings at the Civic Center.

Reviewed by:

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Kent Steffens, Public Works Director  
Prepared by: Kent Steffens

Reviewed by:

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Grace Leung, Director of Finance

Approved by:

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Gary M. Luebbers  
City Manager

### **Attachments**

- A. Council Resolution Declaring Raynor Activity Center Property Surplus and Authorizing the Sale of the Property Pursuant to Government Code Section 54222
- B. Raynor Activity Center – Approximate Boundaries of Property for Sale

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE DECLARING RAYNOR ACTIVITY CENTER PROPERTY SURPLUS AND AVAILABLE FOR SALE PURSUANT TO GOVERNMENT CODE §54222, et seq.**

WHEREAS, the City of Sunnyvale owns that certain real property commonly known as Raynor Activity Center, located at 1500 Partridge Avenue, Sunnyvale, CA; and

WHEREAS, the Raynor Activity Center property is no longer needed for public purposes and available for sale; and

WHEREAS, staff has recommended that the Raynor Activity Center be offered for sale for a period of sixty (60) days to affordable housing sponsors, park districts and public school districts pursuant to Government Code §54222, et seq.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT:

1. The real property commonly known as the Raynor Activity Center, located at 1500 Partridge Avenue, Sunnyvale, CA, is no longer required for City use and is hereby declared not necessary for the City's needs; and
2. Staff is authorized to offer the Raynor Activity Center property for sale for a period of sixty (60) days to affordable housing sponsors, park districts and public school districts pursuant to Government Code §54222, et seq; and
3. The City Manager or his designee is authorized to negotiate in good faith for the 60-day statutory period on price and terms for purchase of the site. If no offer is received, or no sale price and terms are mutually agreed upon, the City may then offer the property for sale in the open market.
4. This Resolution shall take effect immediately upon its adoption.

Adopted by the City Council at a regular meeting held on \_\_\_\_\_, 2012, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk  
(SEAL)

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
David E. Kahn, City Attorney

Raynor Activity Center - Approximate Boundaries of Property for Sale

Raynor Activity Center 3.7 acres

Raynor Park 11.0 acres

Total Property 14.7 acres



**CONSULTANT SERVICES AGREEMENT BETWEEN THE CITY OF SUNNYVALE  
AND CB RICHARD ELLIS, INC. (CBRE) FOR REAL ESTATE CONSULTING  
SERVICES RELATED TO THE SALE OF THE RAYNOR ACTIVITY CENTER**

THIS AGREEMENT dated \_\_\_\_\_ is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and CB RICHARD ELLIS, INC. (CBRE) ("CONSULTANT").

WHEREAS, CITY is in need of specialized real estate services in relation to the surplus disposal sale of the City owned property at 1500 Partridge Avenue, otherwise known as Raynor Activity Center; and

WHEREAS, CONSULTANT possesses the skill and expertise to provide the required services;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by CONSULTANT

CONSULTANT shall provide services in accordance with Exhibit "A" attached and incorporated by reference. CONSULTANT shall determine the method, details and means of performing the services, subject to approvals by City as identified in Exhibit A.

2. Time for Performance

The term of this Agreement shall be from the date of execution through June 30, 2014, unless otherwise terminated pursuant to Section 16 of this Agreement or subsequent to final payment upon successful property ownership transfer. CONSULTANT shall deliver the agreed upon services to CITY as specified in Exhibit "A". Extensions of time may be granted by the City Manager upon a showing of good cause.

3. Duties of CITY

CITY shall supply any documents or information available to City required by CONSULTANT for performance of its duties. Any materials provided shall be returned to CITY upon completion of the work.

4. Compensation

CITY agrees to pay CONSULTANT an amount not-to-exceed One Hundred Thirty Five Thousand and No/100 Dollars (\$135,000.00) for the services as specified in Exhibit "A". Payments shall be made in the form of a consulting fee retainer in the amount of \$25,000.00 upon execution of this Agreement, followed by semi-annual payments in the amount of \$25,000.00 not to exceed \$135,000.00 up to and until the ownership transfer of the subject property. All requests for payment under this Agreement shall be due within 30 days upon CITY receipt of a valid, detailed invoice which shall be sent to City of Sunnyvale, attention Accounts Payable, P.O. box 3707, Sunnyvale, CA 94088-3707. Travel expenses are not reimbursable.

## 5. Ownership of Documents

CITY shall have full and complete access to CONSULTANT's working papers, drawings and other documents during progress of the work. All documents of any description prepared by CONSULTANT shall become the property of the CITY at the completion of the project and upon payment in full to the CONSULTANT. CONSULTANT may retain a copy of all materials produced pursuant to this Agreement.

## 6. Conflict 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 CONSULTANT shall not accept employment or an obligation which is inconsistent or incompatible with CONSULTANT's obligations under this Agreement.

## 7. Confidential Information

CONSULTANT shall maintain in confidence and at no time use, except to the extent required to perform its obligations hereunder, any and all proprietary or confidential information of CITY of which CONSULTANT may become aware in the performance of its services.

## 8. Compliance with Laws

- (a) CONSULTANT shall not discriminate against, or engage in the harassment of, any City employee or volunteer or any employee of CONSULTANT or applicant for employment because of an individual's race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), ethnic or national origin, ancestry, citizenship status, uniformed service member status, marital status, family relationship, pregnancy, age, cancer or HIV/AIDS-related medical condition, genetic characteristics, and physical or mental disability (whether perceived or actual). This prohibition shall apply to all of CONSULTANT's employment practices and to all of CONSULTANT's activities as a provider of services to the City.
- (b) CONSULTANT shall comply with all federal, state 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 the performance of the Agreement.

## 9. Independent Contractor

CONSULTANT is acting as an independent contractor in furnishing the services or materials and performing the 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 CONSULTANT. CONSULTANT is responsible for paying all required state and federal taxes.

10. Indemnity

CONSULTANT shall indemnify and hold harmless CITY and its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses, including attorney fees, arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of CITY.

11. Insurance

CONSULTANT shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "C" attached and incorporated by reference, and shall provide all certificates or endorsements as specified in Exhibit "B."

12. CITY Representative

Amy Fonseca, as the City Manager's authorized representative, shall represent CITY in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

13. CONSULTANT Representative

Bruce M. Paris, First Vice President shall represent CONSULTANT in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of CONSULTANT pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the CONSULTANT representative.

14. Notices

All notices required by this Agreement, other than invoices for payment which shall be sent directly to Accounts Payable, shall be in writing, and shall be personally delivered, sent by first class with postage prepaid, or sent by commercial courier, addressed as follows:

To CITY: Amy Fonseca, City Property Administrator  
Department of Public Works/Administration Division  
CITY OF SUNNYVALE  
P. O. Box 3707  
Sunnyvale, CA 94088-3707

To CONSULTANT: Bruce M. Paris, First Vice President  
CB RICHARD ELLIS, INC. (CBRE)  
950 Tower Lane, Suite 870  
Foster City, CA 94404

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 of a telephone

conversation or an original of a facsimile transmission must be sent by first class mail or 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 two 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.

15. Assignment

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

16. Termination

If CONSULTANT 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 CONSULTANT. If CITY fails to pay CONSULTANT, CONSULTANT at its option may terminate this Agreement if the failure is not remedied by CITY within thirty (30) after written notification of failure to pay.

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to CONSULTANT. In the event of such termination, CONSULTANT shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONSULTANT shall present CITY with any work product completed at that point in time.

17. 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.

18. 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.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By \_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

CB RICHARD ELLIS, INC. (CBRE)  
("CONSULTANT")

By \_\_\_\_\_  
City Attorney

By \_\_\_\_\_  
\_\_\_\_\_  
Name and Title

By \_\_\_\_\_  
\_\_\_\_\_  
Name and Title

## **Exhibit "A"**

### **Scope of Services**

The services to be performed by CB Richard Ellis, Inc. (CBRE) shall consist of services related to the disposition of the Raynor Activity Center including, but not limited to, the following:

**Task 1 – Project Management:** CBRE is responsible for effective project management and coordination with City to project completion.

- Update and finalize preliminary work plan, key objectives, project schedule, consultant project team, roles and responsibilities.
- Assist with identification of and timing for any supplemental third-party assistance.
- Prepare informational materials and attend scheduled meetings with staff.
- Coordinate efforts of sub-contractors for supplemental third party assistance, such as additional inspections or assessments, as appropriate.

#### **Deliverables:**

**1.1 Develop and present project schedule, work plan, and other organization materials for review by staff.**

**1.2 Provide weekly email progress updates. Provide monthly schedule update.**

**Task 2 –Marketing Plan Development and Pre-Qualification process:** CBRE is responsible to develop the marketing plan and pre-qualification process for City's approval. CBRE shall provide evaluation of all parties interested in being pre-qualified.

- Review existing studies, documentation, preliminary map, appraisal, and other information related to the site sale. Review the Public Facilities zoning restrictions and confirm the City's requirements to be incorporated into the site sale process.
- Prepare for City approval, a marketing strategy outline to solicit purchase/development proposals within the constraints of the Public Facility zoning. This process shall be a two-step process which includes a proposer qualification screening process via Request for Qualifications (RFQ), and Real Estate Request for Proposals (RFP) for City review.
- Prepare and distribute RFQ materials.
- Assist City in evaluation of all responses to the RFQ, and make recommendations for parties to be selected to provide proposals to the City.
- Prepare all materials, including disclosure packet(s) to solicit proposals from the maximum number of potential buyers. This work may include, but is not limited to: preparing and placing advertisements in MLS and/or applicable real estate listings, distributing marketing material, direct outreach, etc. This scope does not include advertisements in local newspapers or trade publications, which shall be handled directly by City.
- Respond to any questions received related to the sale of property from interested parties.

**Deliverables:**

**2.1 Provide written memorandum with requirements to be incorporated into the site sale process. Memorandum should include a listing of all types (schools, religious groups, etc.) of potential buyers to be targeted.**

**2.2 Prepare marketing strategy outline, including anticipated schedule.**

**2.3 Provide RFQ and RFP in final format (MS Word version 2007 or later) for City's approval prior to distribution and provide four (4) sets of hardcopies of all outreach materials to be distributed.**

**2.4 Provide listing of all parties who are receiving direct outreach materials from CBRE.**

**2.5 Provide written evaluation of all responses to the RFQ, including recommendations for parties to be selected to provide proposals to the City.**

**Task 3 – Proposal Review:** CBRE shall distribute to all pre-qualified parties, the RFP materials, and assist City in evaluation of proposal(s) received.

- Prepare and distribute RFP materials to selected list of pre-qualified parties.
- Conduct and coordinate building site tours for potential buyers.
- Respond to any questions received related to the sale of property from interested parties.
  - Analyze proposals received. Identify key due diligence issues based on each proposal.
  - Identify conforming proposal options and present to staff.
  - Provide recommendations as to the “strength” of the financing of the proposer to the best of CBRE's ability based upon the materials provided.
  - Identify any weaknesses in proposals received to the best of CBRE's ability based upon the materials provided.

**Deliverables:**

**3.1 Provide written analysis with ranking if more than one proposal is received. Responses shall be tabulated to be suitable for incorporation into a presentation to City Council. Evaluation shall take into account price, best use, appropriateness for site, benefit to community, etc.**

**3.2 Meet with City staff to discuss the analysis.**

**Task 4 – Negotiations and Transaction Structuring:** CBRE shall recommend the best and most effective negotiation strategy with top ranked proposal(s) to the best of CBRE's ability based upon the materials provided, and facilitate negotiations to determine an option for site sale.

- Develop real estate negotiation strategies and principles for City's review.
- Assist City with negotiation(s), including presenting counter proposal(s).
- Request “best and final” offers if in the best interest of the City and provide recommendation to City of which offer to proceed with.
- Facilitate payment of option money to City.

- Assist City staff in developing the option to purchase contract, including final terms and conditions.
- Assist City staff in preparation of the staff report to City Council to present the Option to Purchase agreement.

**Deliverables:**

**4.1 Meet with City to discuss real estate negotiation strategies and transaction structures. (This may be combined with deliverable 3.2, above)**

**4.2 Provide written recommendation for recommendation of which offer to proceed.**

**4.3 Provide a written memorandum with recommended terms and conditions for property sale.**

**4.4 Attend one City Council meeting as the City's Real Estate Technical Expert.**

**Task 5 – Closing:** CBRE shall ensure that all transactions taking place meet all applicable real estate regulations for close of escrow.

- Assist staff with execution of the transaction documents, agreements, and any amendments.
- Assist with closing process, including but not limited to the preparation, review and execution of closing transaction documents.

**Deliverables:**

**5.1 Closing of Escrow.**

**Out-of-scope Services and Non-reimbursable Expenses**

CBRE shall be compensated at an hourly rate of Two Hundred Eighty-Five Dollars (\$285.00) for any services rendered to the City which are outside the scope of work defined above and which shall be agreed in written form via specific scope of work addendum(s) prior to commencement of any such work. Travel expenses are not reimbursable.

## Exhibit "B"

### INSURANCE REQUIREMENTS FOR CONSULTANTS

Consultant 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 the Consultant, his agents, representatives, or employees.

**Minimum Scope and Limits of Insurance:** Consultant 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. **Automobile Liability:** \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 is required.
3. **Workers' Compensation** and **Employer's Liability:** \$1,000,000 per accident for bodily injury or disease.
4. **Errors and Omissions** Liability Insurance appropriate to the Consultants Profession: \$1,000,000 per occurrence and \$2,000,000 aggregate.

#### **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale. The consultant shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

#### **Other Insurance Provisions**

The **general liability** and **automobile liability** policies are to 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 the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. 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, the Consultant'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 the Consultant'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. The Consultant'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.

### **Claims Made Coverage**

If the General Liability and/or Errors & Omissions coverages are written on a claims-made form:

1. The retroactive date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the contract work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Consultant must purchase an extended period coverage for a minimum of five years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the City of Sunnyvale for review.

### **Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City of Sunnyvale.

### **Verification of Coverage**

Consultant 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. All certificates are to be received and approved by the City of Sunnyvale prior to commencement of work.