



Council Meeting: February 12, 2013

SUBJECT: Approve Budget Modification No. 30 to Appropriate Housing Mitigation Funds for Legal Expenses Related to the Onizuka Base Realignment and Closure Process

DISCUSSION

The Sunnyvale City Council, in its role as the Local Redevelopment Authority (LRA) has explored several reuse options for Onizuka Air Force Station and ultimately identified an education center as a primary preferred use. As part of the closure process, two affordable housing providers submitted Notice of Interest (NOI) claims for 4.6 acres at Onizuka, situated at the southern portion of the site. A Legally Binding Agreement (LBA) between the LRA and both affordable housing providers was approved by the U.S. Department of Housing and Urban Development (HUD) in December 2012.

Further legal services are still needed to conclude the Base Realignment and Closure (BRAC) process and to implement the LBA. The following legal documents still need to be negotiated and drafted between the LRA, the Air Force and both affordable housing providers:

- A no-cost conveyance between the LRA and the Air Force to acquire title to the Onizuka parcels set aside for homeless purposes. This agreement will include a quitclaim deed with various restrictions and covenants mandated by the condition of the property under the Comprehensive Environmental Response, Compensation and Liability Act.
- If the LRA approves an off-site option to allow the affordable housing providers to implement their homeless program at the Armory site, then preparation of the Election Notice from the LRA to each provider.
- Assistance with the long-term ground lease and regulatory agreement with both affordable housing providers to implement their housing programs at the Armory site.
- Following the development of the projects on the Armory site, preparation of a release document for the Onizuka parcels earmarked for homeless housing. The document would release the homeless covenants and restrictions placed on Onizuka by the Air Force so that the City may determine the proper disposition of the parcels.

Throughout this process, staff received grant funds from the Office of Economic Adjustment (OEA) to cover expenses associated with the BRAC planning process. These funds covered expenses for outside legal counsel. The firm of Kutak Rock has been the LRA's legal counsel since the beginning of the process. They

specialize in military base closures and are highly recommended by various jurisdictions undergoing base closures.

Throughout the BRAC process, Kutak Rock has assisted the Office of the City Manager, the City's LRA staff and the Office of the City Attorney with various legal and procedural matters, as well as being an effective advocate for the LRA with the various federal agencies involved in this complicated process. All legal fees to Kutak Rock, with the exception of \$25,000, have been covered under grants awarded by OEA.

With the completion of the BRAC planning process, staff must continue to rely on the expertise of Kutak Rock for implementation of the adopted Onizuka Redevelopment Plan. OEA funds are not available for the implementation phase. At the request of City staff, Kutak Rock has provided an estimate to complete the follow-up items scheduled to occur within the next three years. Since this legal assistance will result in the production of new homeless and affordable housing, staff recommends allocating \$15,625 in Housing Mitigation Funds, which includes a 25% contingency amount, to cover anticipated legal expenses.

EXISTING POLICY

City Council Policy, Goal 7.3C: Participate in intergovernmental activities, including national, state and regional groups, as a means to represent the City's interests, influence policy and legislation, and enhance awareness.

FISCAL IMPACT

Budget Modification No. 30 has been prepared to appropriate \$15,625 from the Housing Mitigation Fund Reserve to existing project, Onizuka/BRAC Project - Final Planning Phase, for legal expenses to support the Onizuka BRAC process. This fund's reserve has the capacity to absorb this additional appropriation without impacting planned expenditures over the next 20 years.

Budget Modification No. 30 FY 2012/2013

	Current	Increase/ (Decrease)	Revised
General Fund			
<u>Expenditures:</u>			
Existing Project (826554)- Onizuka/BRAC Project - Final Planning Phase	\$ 2,020	\$15,625	\$17,645
Housing Mitigation Fund			
<u>Reserves:</u>			
Housing Mitigation Reserve	\$4,502,625	(\$15,625)	\$4,487,000

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. Approve Budget Modification No. 30 to appropriate \$15,625 from the Housing Mitigation Fund Reserve to existing project, Onizuka/BRAC Project - Final Planning Phase, for legal expenses to support the Onizuka BRAC process.
2. Approve Budget Modification No. 30 with a modified amount.
3. Do not approve Budget Modification No. 30

RECOMMENDATION

Staff recommends Alternative 1: Approve Budget Modification No. 30 to appropriate \$15,625 from the Housing Mitigation Fund Reserve to existing project, Onizuka/BRAC Project - Final Planning Phase, for legal expenses to support the Onizuka BRAC process.

Reviewed by:

Hanson Hom, Director, Community Development
Prepared by: Ernie DeFrenchi, Affordable Housing Manager

Reviewed by:

Grace Leung, Director, Finance

Approved by:

Gary M. Luebbers
City Manager

Attachments

- A. Memo from Kutak Rock to City of Sunnyvale

Attachment A – Memo from Kutak Rock to City of Sunnyvale

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MEMORANDUM

TO: MR. HANSON HOM, DIRECTOR OF COMMUNITY DEVELOPMENT
ROBERT BOCO, ESQ.

FROM: GEORGE SCHLOSSBERG

DATE: OCTOBER 17, 2012

RE: KUTAK ROCK LLP PROPOSAL TO COMPLETE BASE CLOSURE WORK
AT ONIZUKA AFS

This Memorandum is in response to your request for a budget estimate for Kutak Rock LLP to assist the City of Sunnyvale as it completes the steps necessary to close and reuse Onizuka Air Force Station. As we discussed, I contemplate four (4) items remain for the City of Sunnyvale to undertake, as the federally-recognized Local Reuse Authority for Onizuka Air Force Station (“LRA”), to fulfill the LRA’s obligations as they relate to the closure and reuse of Onizuka Air Force Station.

1. Now that Ms. Lynn Morgan (HUD program counsel) has indicated her approval of the draft Legally Binding Agreement dated October 10, 2012 with the two (2) homeless housing providers (“LBA”), the City must complete the Exhibits to the LBA, finalize and execute the LBA and prosecute HUD’s approval of the LRA’s reuse plan and homeless assistance submission.
2. Following HUD approval of the LRA’s reuse plan and homeless assistance submission, the LRA must acquire title to the parcel of land at Onizuka AFS set aside for homeless purposes pursuant to the reuse plan, the homeless assistance submission and the LBA. To accomplish that effort, we must draft and negotiate final language for a no-cost conveyance agreement between the LRA and the Air Force. This conveyance agreement will include as an exhibit, a draft quitclaim deed that includes those various restrictions and covenants mandated by the condition of the property under CERCLA, and required by the Air Force in a no-cost homeless housing transaction.

**KUTAK ROCK PROPOSAL TO COMPLETE BASE CLOSURE WORK AT
ONIZUKA AFS**

OCTOBER 17, 2012

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3. Following the successful execution of a conveyance agreement with the Air Force, the LRA must close and acquire title to the Onizuka AFS property, and execute leases and Redevelopment Agreements with the two (2) Homeless Providers.
4. Following the successful development of the Armory property for homeless purposes (approximately two years from conveyance), the LRA must prosecute a release of all of the homeless covenants and restrictions placed on the Onizuka AFS property by the Air Force, such that the City may sell the Onizuka AFS property to recover the value of the Armory property and the City's costs of the homeless programs established on the Armory property.

As in the past, we propose to assist the City of Sunnyvale on an hourly basis at our standard discounted rates for State and Local governments with the LRA guiding the pace and intensity of our effort. We will provide and seek payment only for those services requested by the LRA and for those provided to the LRA. It is our estimate that our fees and costs for completing the items listed above over a two (2) year period should not exceed \$12,500.00. Nevertheless, for budgetary purposes, and given our belief that it will take approximately two (2) years to reach the point in time when the Air Force will release the homeless covenants and restrictions on the Onizuka AFS property, we suggest for budgetary purposes adding a 25% contingency amount over and above our estimate of fees and costs. Accordingly, we suggest for budgetary purposes setting aside \$15,625.00 to complete our efforts.

We thank you for your confidence and I trust the scope of work contained in this proposal is responsive to your expectations. If you have any questions, please call me directly at 202-828-2418 or contact me by email at george.schlossberg@kutakrock.com.

G.R.S.