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July 14, 2003

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ADJOURNMENT: The meeting adjourned at 1:05 a.m.

Special Meeting
July 14, 2003

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:06 p.m.

PRESENT: Beecham, Burch, Freeman, Kishimoto, Kleinberg, Lytle, Morton, Mossar, Ojakian

CLOSED SESSION

1. Conference with Labor Negotiator
Agency Negotiator: City Manager and his designee pursuant to Compensation for Unrepresented Employees (Frank Benest, Leslie Loomis)
Unrepresented Employee Groups: Management and Confidential
Authority: Government Code section 54957.6
2. Conference with City Attorney -- Existing Litigation
Subject: Joanne D. Matthew v. City of Palo Alto, et al; SCC CV776323
Authority: Government Code section 54956.9(a)
3. Conference with City Attorney - Existing Litigation
Subject: In re Pacific Gas and Electric Company, a California Corporation, Debtor, U.S. Bankruptcy Court case No.: 01-30923DM
Authority: Government Code Section 54956.9(a)

The City Council met in Closed Session to discuss matters involving labor negotiation, and existing litigation, as described in Agenda Item Nos. 1, 2, and 3.

Mayor Mossar announced that no reportable action was taken on Agenda Item Nos. 1, 2, and 3.

ADJOURNMENT: The meeting adjourned at 6:42 p.m.

Special Meeting
July 14, 2003

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:45 p.m.

PRESENT: Beecham, Burch, Freeman, Kishimoto, Kleinberg, Lytle, Morton, Mossar, Ojakian,

SPECIAL MEETING

1. Presentation from Santa Clara County Housing Action Coalition

Sally Probst, Housing Action Coalition, reported that the Housing Action Coalition celebrated its 10th Anniversary.

Patricia Soffir, Housing Action Coalition, 2719 Bryant Street, said the Housing Action Coalition consisted of representatives from the home building industry, trades council, Santa Clara County Association of Realtors, Tri-County Apartment Association, and varied citizen and community groups, including the Sierra Club, Greenbelt Alliance, League of Women Voters, and Interfaith Council.

Ms. Probst said the Coalition supported housing that was well constructed, well situated, had adequate density, and met the needs of the communities. Housing was important to the quality of life and the economic vitality of the community.

Council Member Kleinberg said she was a member of the Housing Action Coalition and reiterated that the Coalition was a productive mix of stakeholders.

No action required.

2. Bicycle Friendly Community Proclamation/Presentation

Mayor Mossar read the proclamation into the record and presented the proclamation to Chief Transportation Official Joe Kott.

Chief Transportation Official Joe Kott acknowledged Stanford University, which was the community partner in the Bicycle-Friendly Community award.

Director of State and Local Advocacy Andy Clarke, League of American Bicyclists, said the League of American Bicyclists designated Palo Alto a recipient of its Bicycle-Friendly Community award.

Mayor Mossar invited everyone to attend the street sign unveiling of the Bicycle Friendly Community Sign at 10:30 a.m. on July 15, 2003, at El Camino Real and Sand Hill Road.

No action required.

ADJOURNMENT: The meeting adjourned at 7:07 p.m.

July 14, 2003

The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:08 p.m.

PRESENT: Beecham, Burch, Freeman, Kishimoto, Kleinberg, Lytle, Morton, Mossar, Ojakian

ORAL COMMUNICATIONS

Karen Ewart, 120 Churchill Avenue, spoke regarding "ChurchHell."

Kerry Yarkin, 135 Churchill Avenue, spoke regarding Churchill noise.

Ed Glazier, 255 Everett, spoke regarding traffic calming in Downtown North.

Mike Liveright, 260 Byron Street, spoke regarding library and traffic.

Joe Carroll, 15811 Cherry Blossom Road, Los Gatos, spoke regarding the Mayfield site.

Liz Rehrmann, 11035 Eastbrook Avenue, Los Altos Hills, spoke regarding the Mayfield site.

Ed Power, 2254 Dartmouth Street, spoke regarding honesty in government.

APPROVAL OF MINUTES

MOTION: Council Member Ojakian moved, seconded by Morton, to approve the minutes of May 12 and 19, 2003, as submitted.

MOTION PASSED 9-0.

CONSENT CALENDAR

Council Member Lytle requested that Item Nos. 2 and 14 be removed to become Item No. 15a and 15c.

Council Member Freeman requested that Item No. 1 be removed to become Item No. 15d.

MOTION: Council Member Morton moved, seconded by Ojakian, to approve Consent Calendar Item Nos. 3, 6-13, and 15.

Council Member Freeman registered a "no" vote on Item No. 7.

Council Member Lytle registered a "no" vote on Item Nos. 7 and 8.

07/14/03

LEGISLATIVE

3. Resolution of Intent to Establish Underground Utility District No. 39 Sherman/El Camino Real/Page Mill/ Park Blvd

Resolution 8316 entitled "Resolution of the Council of the City of Palo Alto Declaring its Intention to Amend Section 12.16.020 of Chapter 12.16 of Title 12 of the Palo Alto Municipal Code by Establishing Underground Utility District Number 39"

4. Item has been changed to Item No. 18A, under Reports of Officials
5. Item has been changed to Item No. 18B, under Reports of Officials

6. Recommendation to the City Council to Adopt the United Way of Silicon Valley's 2-1-1 Information and Referral Program Resolution

Resolution 8317 entitled "Resolution of the Council of the City of Palo Alto in Support of Creating a 2-1-1 Information and Referral Phone Number to Serve Santa Clara County Residents and Visitors"

7. Adoption of a Resolution Authorizing the Approval of Amendment No. 3 to the Agreement for Funding of Operation and Maintenance for the Central Valley Project Power Facilities and Authorization to the City Manager to Execute Amendment No. 3 to the Agreement

Resolution 8318 entitled "Resolution of the Council of the City of Palo Alto Approving Amendment No. 3 to the Agreement for Funding of Operation and Maintenance for the Central Valley Project Power Facilities and Authorizing the City Manager to Execute the Amendment"

8. Adoption of a Resolution Approving Increases in Palo Alto's Contribution Commitment Levels for FY 2004, 2005 and 2006 to the Funding of Operation and Maintenance (O&M) for the Central Valley Project Power Facilities and Authorizing the City Manager to Execute Exhibit C, Revision 6 to the Agreement

Resolution 8319 entitled "Resolution of the Council of the City of Palo Alto Approving Increases in the Funding of Operation and Maintenance for the Central Valley Project Power Facilities and Authorizing the City Manager to Execute Exhibit C, Revision 6 to the Agreement"

ADMINISTRATIVE

9. Resolution 8320 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation of the Palo Alto Police Reserve Officers for their Outstanding Service"
10. Professional Services Agreement Between the City of Palo Alto and Geodesy in the Amount of \$100,000 for Development Support of New Computer Applications Linked to the Geographic Information System (GIS)
-  11. Contract Between the City of Palo Alto and Rosendin Electric, Inc. in the Amount of \$102,853 for Construction of Site Lighting Improvements at Palo Alto Main Library and Art Center
-  12. Contract Between the City of Palo Alto and the KPA Group in the Amount of \$99,861 to Outsource for Design Services for Fire Station One and Two Renovation Project - Capital Improvement Program Project PF01-01004/10104
-  13. Rejection of Bids for Installation of Irrigation System and Maxicom Controller at Jordan Middle School Athletic Field (School Site Irrigation Improvements, Capital Improvement Project No. 19801)
15. Request to Implement Golf Course Senior Fee Changes Effective July 14, 2003

MOTION PASSED 9-0 for Item Nos. 3 and 6, 9-13, and 15.

MOTION PASSED 7-2 for Item No. 7, Freeman, Lytle "no."

MOTION PASSED 8-1 for Item No. 8, Lytle "no."

AGENDA CHANGES, ADDITIONS, AND DELETIONS

MOTION: Council Member Ojakian moved, seconded by Morton, to combine Item Nos. 2 and 19 to be heard concurrently.

MOTION PASSED 9-0.

MOTION: Council Member Kleinberg moved, seconded by Freeman, to hear Item No. 14 (to become Item No. 15c) after Item Nos. 2 and 19 (to become 15a and 15b).

MOTION PASSED 9-0.

Item No. 1 would become Item No. 15d.

MOTION: Council Member Kleinberg moved, seconded by Burch, to continue Item No. 18 to a date uncertain.

MOTION PASSED 9-0.

15a. (Old Item No. 2) Ordinance Approving and Adopting a Plan for Improvements to Terman Park" *(1st Reading 06/16/03, Passed 9-0)*

15b. (Old Item No. 19) Colleagues Memo regarding Security Issue and Basketball and Tennis Courts at Terman Middle School

Mayor Mossar announced that speakers would be heard for both Item Nos. 2 and 19.

Council Member Kishimoto said she and Council Member Burch had the honor of serving on the City/School Liaison Committee and co-authored the Colleague's Memo. One-month prior, the Liaison Committee discussed Terman Middle School for the first time. Discussions at the meetings included park dedication versus closed campuses, basketball versus tennis, school children's needs versus needs for neighborhood facilities. Palo Alto celebrated the opening of Terman Middle School, which was a wonderful addition to the community, and the Terman Park dedicated parkland. Dedicated parkland was incompatible with a totally closed campus. A long-term solution needed to be worked out. The Colleague's Memo included proposed short-term solutions: (1) to work with the Palo Alto Unified School District (PAUSD) on a project to construct additional basketball courts at Terman School; (2) if the new courts were not completed by the beginning of school, interim solutions would be asked for, such as allowing use of the tennis courts between 7:30 a.m. and 3:30 p.m. or building temporary basketball courts in the bus turn around area; and (3) work with the PAUSD on a temporary sign in and signage system, with the assistance of community service offices to help the students, teachers and community. The Liaison Committee worked within the parameters of a number of documents, including the Terman Agreement, the Terman Specific Plan, the Park Ordinance, and California Environmental Quality Act (CEQA) procedures.

City Attorney Ariel Calonne said the Terman Agreement (Agreement) attempted to explain to the Council, PAUSD Board, and the public how Terman School would be used, given the dedicated parkland constraint. In the mid-60's, the Palo Alto voters amended the Charter to say that parkland could not be changed from parkland without a vote of the people. Prior to

any improvements to the parklands with basketball or tennis courts, an ordinance was required which was subject to referendum. The City dedicated the Terman site when the City bought the site from the PAUSD. The grass playing fields remained parkland. The Agreement included an appendix that tried to lay out the ground rules. The City routinely gave field use permits to organized soccer, baseball, and other sports. The Agreement stated the PAUSD required a similar type of permit to have first call on the playing fields during 7:30 a.m. to 3:30 p.m. The Agreement indicated the PAUSD could not routinely exclude the public from the playfields, but that the PAUSD could take reasonable steps to protect the safety of students. The Agreement also provided that the PAUSD could not fence the fields.

Council Member Kishimoto said she was open to suggestions to improve upon the short-term solutions.

Council Member Burch said the City/School Liaison Committee had a common problem to address, which was that the new Terman School was scheduled to open on August 26 and had to be ready for the students to occupy the school. The Liaison Committee knew, from history, there was a requirement that the school be a closed campus, and there was no way for that to be achieved by August 26. The Liaison Committee continued to ask for cooperation between the parties to provide a safe and secure situation for the students.

Palo Alto Unified School District Board Member John Barton said there appeared to be a conflict between the PAUSD and Palo Alto's agreement and the Park Ordinance. The challenge for the PAUSD was that the school was opening in 45 days, and the PAUSD needed to know that on August 26, 2003, the students were safe and there was a reasonable agreement about how to act should a non-teacher, student, or parent be on the site. The PAUSD asked for a use permit that granted the PAUSD use of the parkland playing fields from 7:30 a.m. to 3:30 p.m. The PAUSD would pick up half the cost of maintaining the fields.

Council Member Kleinberg said on the first reading of the Park Ordinance, there was a segment of property that she did not realize was in the park dedication that currently was a gate across the bus turnaround area. She was unclear that public use and access to that area would be restricted through the ordinance.

Mr. Calonne replied the Council could govern parking as an onsite improvement. The fencing of a roadway or parking area was not inconsistent with the park use because there was other access to the site.

Council Member Kleinberg asked about the situation with people with handicaps.

Mr. Calonne said that was not addressed, but he assumed there was alternative access.

Tom Jordan, 474 Churchill Avenue, said through history, parks were found to be more susceptible to abuse. When vehicular access to a park was blocked, public access was denied to the park. Forty-five parking spaces within the park were not available when the gate went down. No other middle school had a gated entry. Terman School should not be gated. The Charter specified the Council could not give up possession and control in anything that excluded people or discouraged their use of the parks.

Enid Pearson, Forest Court, said Palo Alto was fortunate to have parks owned by the public and, by ordinance, controlled by the public. Change of use control and any construction thereon could not be done without the public's consent. The PAUSD was pressured to protect children at all cost and had no choice but to deny public use of the park. The City tried to make the PAUSD's needs work, while ignoring the legal ramifications. The Council, PAUSD, and staff needed to stop trying to circumvent the law and the wishes of the citizens. The Colleague's Memo from Council Members Burch and Kishimoto was a valiant effort to try to resolve the problem.

Tom Ashton, 2747 Bryant Street, said he distributed his comments, along with two color-coded maps, at the June 21, 2003, School/Liaison Committee meeting. His continuing concern was that the ordinance included Section 1.C.9, which said " proposed new security gate to restrict vehicular access during school hours." That was in direct conflict with attachment 2 of the Joint Use Agreement for Terman School, which said, "No permanent fence or other barrier to public access will be constructed." He asked that Section 1.C.9 be removed from the ordinance.

Betsy Allyn, 4186 Wellmar Drive, expressed concern about making children afraid by talking about closed campuses, strangers on the school sites, and putting fences around the school. A well organized, specifically assigned, and alert staff at a school, well versed in the concerns of where students were allowed and expected to be, could maintain control of school grounds and school activities. Student rules strictly enforced and student education as to safety problems on campus provided safeguards. Other options were available, including a fair exchange of land between the City and the PAUSD, the PAUSD purchasing Terman Park, and the City undedicating the Park.

Phil Smaller, 4155 Wilkie Way, Save Terman Courts Committee, said the Committee was in agreement with the majority of the recommendations made but disagreed with the suggestion that temporary basketball hoops be placed on the tennis courts. A better solution was to use the bus turnaround area, which was vacant during the day. With regard to signage in for

security, the Committee would follow any procedures deemed advisable. In the spirit of cooperation, the Committee members would wear bright, orange tennis caps and advise other tennis players who used the facilities on a regular basis to do the same. The Committee would donate 50 of the orange tennis caps to the school, to be distributed to regular users of the courts, and the cap, when autographed by the principal, would serve to designate the bearer as a member of the Tennis community in good standing.

Jack Koch, 1466 Dana Avenue, said during the school day, playing fields and tennis courts were an integral part of the Terman School campus and curriculum. During school, field and courts were reserved for students. After school, on weekends, and during holidays and the summer, the fields and courts were open to the public. The City managed the City-owned tennis courts and playing fields through a sanctioned reservation system: an open process that had been around for a long time. Terman School would not own the property, but would be a sanctioned user displaying a valid City permit reserving playing fields during limited time frames. City Code 27.04.040, referring to City parks, provided the mechanism for "exclusive use by persons and groups consistent with City Code and regulation requirements, subject to the simple issuance of a permit." Terman School would have the permit because the Joint Use Agreement clearly stated, "School Districts shall be entitled to the issuance of a City permit under Chapter 22 of the Palo Alto Municipal Code for use of portions of Terman Park during certain hours." Section 2, paragraph A, clearly stated that the PAUSD had the right to take reasonable actions to protect both its first call on the playing fields and the safety of the students. The draft Environmental Impact Report (EIR) referred to the priority rights of Terman students to the sports fields during and after school: "Terman Middle School students would use the sports fields during and after school" and "They would displace other users currently using these facilities." The Joint Use Agreement, the Palo Alto Municipal Code (PAMC), the State Education Code, the EIR, and the Comprehensive Plan (Comp Plan) supported the common sense position. The tennis courts and playing fields should be protected for student use during the day, as was the case with other schools in Palo Alto.

Mandy Lowell, 1423 Hamilton, PAUSD School Board, said the PAUSD Board had not addressed the referendum and park dedication issue. Protecting the parklands was important. The ordinance did not say that uses could not be changed. The wording was, "No land heretofore or hereafter dedicated for such purposes shall be sold or otherwise disposed of or its use be abandoned or discontinued except pursuant to majority vote." The use by the students was for less than half the days. People who worked primarily used parks on weekends, during the summer, and in the evenings. The vehicular gate was used only during school hours and not a permanent barrier to entry.

Ann Pianetta, 3815 La Donna, said her son attended Hoover School, and one of the biggest issues was the parking and the people who used the dog run. The safety issue on the Terman School campus was important and superseded any other concerns. The children needed a basketball court and facilities equal to the other schools for physical education. There were many parks in Palo Alto, and there were 30 tennis courts available. The Council should allow the schools to have the use of the park.

Teri Lyn Blackburn, 408 Grant Avenue, #308, said there were approximately 525 young community members who had no choice where they played. They needed a safe, appropriate and accessible place to have their physical education, as well as a place to have free, creative play during lunch and brunch. Putting basketball courts in the turnaround area was unsafe. The cement in the area was too rough and could cause serious injuries. The temporary access gate was important.

Rita Giles, 27800 Saddle Court, Los Altos Hills, expressed admiration and respect for the park advocates who had the foresight four decades ago to put the ordinance before the voters. Terman School would have more visitor parking spaces on school property than any other school in the district by a wide margin. In addition, there was parking along Terman Drive under the jurisdiction of the City. On January 29, 2001, a special joint meeting of the City Council and PAUSD Board of Education was held where both groups voted for an agreement in concept regarding what was known as the Joint Agreement. The Joint Agreement said, "regarding the fields, the School District will have use comparable to the other middle schools during the day."

Monica McHenney, 769 Los Robles, said she often used the parks and open spaces in Barron Park. Her impression was that there was much cooperation between the City and the PAUSD in terms of use of parklands. Palo Alto had a large amount of accessible open space, which was actually under utilized. Terman Park was a ten-minute walk from Briones Park, which was a perfectly adequate park for most activities. Palo Alto had 30 tennis courts. The courts at Terman did not need to be used exclusively by the public.

Martha Bowden, 27833 Saddle Court, Los Altos Hills, appreciated Council Members Burch and Kishimoto's recognition of the fact that a long-term solution was necessary for Terman School. The campus needed to be closed. Recreation was nice to have, but safety was a basic need. In the short term, children needed physical education and recreation. Some neighbors complained about potential noise level, with basketballs being bounced. The noise level from voices during lunch and brunch far exceeded any noise from a basketball being bounced.

Jack Birnbaum, 3520 Greer Road, said the Terman tennis courts were the jewels of the City. A tennis playing schedule was developed whereby the seven-hour school day could be dedicated to the general playing public for the first three hours of the school day, with the last four hours dedicated to the students of Terman. The schedule allowed as many as 640 doubles playing students to play tennis at least one half hour per week. If group tennis instruction were offered to the students, much more than one half hour per student per week could be devoted to students playing tennis.

Robert Moss, 4010 Orme Street, said there were things that could be done without violating the Terman Specific Plan or the Park Ordinance. The City could agree to limit organized play to certain times and certain groups and could pass a park ordinance amendment putting basketball courts in the park areas. The City was not able to put the courts in area 5, which meant removing the sound wall in the front and putting basketball courts near people's back yards. That was a violation of the EIR and CEQA. The City could not require people to voluntarily sign in before using a public park. Public parks were open to the public on a nondiscriminatory basis. Placing temporary basketball courts on tennis courts was a violation of the Terman Specific Plan, which said "tennis courts will be maintained and operated at Terman, precisely the same as they are everywhere else in the City." Parks were important, and the number of acres of park required was based on the number of residents.

Eddie Keating, 3553 Alma Street, #5, commented that the PAUSD and City of Palo Alto were in tight budget times. A beautiful tennis court was an asset. Adding basketball courts and keeping tennis courts was a "have it all solution" that should be pursued. Pathways on the edge of a campus could be consistent with a closed campus. JLS School had a pedestrian/bicycle pathway, which was used by many people. A pathway at the edge of the Terman School campus could be consistent with a safe, closed campus. The Council was urged to preserve the pathway.

Ellie Gioumouisis, 992 Loma Verde Avenue, said pathways that cut between blocks were one of the nicest things in neighborhoods. The pathway should be kept as a safe route, and citizens should be allowed to use it. People made the area safe and cared about public welfare and the children.

Rebecca Rea, 230 Wilton Avenue, served on the Middle School Athletic Board and was interested in safe athletic facilities. In terms of physical education with 500 students at Terman School, there would be approximately 90 students at physical education at any given time. If the tennis courts were dedicated to public use for the first three hours of a day, half the school students would not have access to the tennis courts at any point during the school year. Approximately 80 handicapped students would be attending

Terman School and needed safe routes and hard court surfaces to get around.

Keith Wu, President, Palo Alto Tennis Club, said the Club was a public club, with 497 members. Members and other local tennis players heavily used the tennis courts at Terman School. Loss of the courts placed a burden on the tennis courts at Cubberley Community Center, Mitchell Park, and Rinconada Park, which were all heavily used. Marking the tennis courts for basketball or putting temporary backboards on the courts made the courts unusable for tennis. The Council was urged to preserve Terman School as a tennis facility.

Herb Borock, P.O. Box 632, said one suggestion made by a speaker was for a land trade. Trades for playing fields or buildings were not equal acreage because under the Naylor Act. A trade involved a vote of the people to discontinue land from parkland.

Elizabeth Rea, 230 Wilton Avenue, said courts for basketball practice were important in order to compete with other teams. Outside courts were needed when the inside courts were used for basketball games.

MOTION: Council Member Burch moved, seconded by Morton, to adopt the Resolution approving and adopting a Plan for improvements to Terman Park

Ordinance 4796 entitled "Ordinance of the Council of the City of Palo Alto Approving and Adopting a Plan for Improvements to Terman Park"
(1st Reading 06/16/03, Passed 9-0)

Council Member Lytle asked that the Council seek a different solution than what was being adopted. The Council needed to undedicate sufficient acreage for the schools in order for the schools to have the security control to meet the school's demands. The schools needed to have control of their school sites, and Terman School had to function as a legitimate middle school. The City needed to replace what was lost in terms of parkland or recreation facilities as a result of the undedication. Action required a vote of the people. The Council should take steps to seek a measure that would undedicate sufficient acreage in order for Terman School to operate in a safe manner.

MOTION PASSED 9-0.

MOTION: Council Member Burch moved, seconded by Kishimoto, to approve the following regarding Security Issue and Basketball and Tennis Courts at Terman Middle School:

- 1) Initiate discussions with District representatives on the long-term options for providing a closed-campus at Terman for the District.

- 2) Work with the District staff on project to construct additional basketball courts at Terman. Since the public will use the courts in non-school hours, direct staff to explore sharing equally in the costs of court construction and in developing a design that is acceptable to both the City and the District.
- 3) If new courts cannot be built in time for the August school opening, direct staff to work with District staff on a short-term (maximum 12-month) solution, such as those discussed above.
- 4) Work with the District on a temporary (maximum 12 month) sign-in system and signage that will provide the optimal level of security access for the Terman Park facilities during the school day, within the parameters of the Joint Use Agreement and Park Ordinance. We would ask staff to bring the proposed wording for the signs back to the Council prior to implementation.
- 5) In all of these potential changes, ensure that the Terman Specific Plan, Park Ordinance and CEQA requirements are taken into account, and brought to Council for direction, as necessary.

Vice Mayor Beecham said the proposal was an excellent approach to a difficult problem for the community. Referring to item 3, he asked whether that was incompatible with the Terman Specific Plan.

City Attorney Ariel Calonne said item 3 was incompatible.

Vice Mayor Beecham asked whether there was a manner in which Action item 3 could be accomplished.

Mr. Calonne responded that the Terman Specific Plan had to be amended.

Council Member Burch said temporary signs could be placed on the streets during the school day and taken down after school.

Mr. Calonne said there were temporary park improvements for short periods of time. The City had a trial with basketball hoops coming out of Johnson Park at one point. Six months to one year made sense.

Council Member Burch clarified the action was legal.

Mr. Calonne said a constrained time period was legal.

Council Member Freeman said although Jordan tennis/basketball courts were used co-existingly, they were not good tennis courts. The City ran a big risk of ruining tennis courts by adding basketball features. One temporary solution that was presented was to use the bus turnaround area for basketball during the day. The architect said the asphalt that was used for driveways was a little coarser than typical asphalt used for basketball courts,

but the difference was not that great from what was on other school properties.

Council Member Kleinberg referred to the proposal that the City enter into an agreement to build other basketball courts on the same site and asked whether that would use up existing park space and what it would do to the area. The use of open space as parkland was important to kids and adults.

Palo Alto Unified School District Deputy Superintendent Bob Golton said a number of plans were presented at the Liaison Committee meeting. The Colleagues Memorandum, dated July 14, 2003, did not recommend a specific plan, but recommended that City staff work with the PAUSD staff to review the potential solutions. One of the options involved adding three and one-half basketball courts and reorienting the soccer field. The PAUSD looked for an interim solution and allowed students the ability to play basketball. The preferred solution involved making temporary use of the tennis courts for basketball. The surface on the bus turnaround was rougher in order to support busses and injuries to children would be more severe.

Council Member Kleinberg expressed concern about the basketball courts using up the last of the greenland.

Council Member Kishimoto said some new hardscape was planned to be added. One proposal was to move the baseball diamond closer to the creek and put the basketball courts next to the tennis court. Some grassland would be lost.

Council Member Kleinberg favored the short-term solution. The best use of the property was for recreation for the children. The City needed to be mindful of the fact that the population demographics were there was more demand in south Palo Alto in terms of youth and older people for park usage and needed to be careful about how it accommodated the increasing needs.

Council Member Morton did not want to see the pathway restricted because it was a crucial asset to the community. Dedicated access by the Terman Termites during the day was not possible because the students needed all available surfaces during the school days. The school population needed to find a way in which the courts did not get denigrated.

Council Member Ojakian asked about the past use of the fields.

Superintendent of Parks and Golf Paul Dias responded there was some use by the Jewish Community Center (JCC) and others on a permit basis during the weekdays.

Council Member Ojakian said Councils since 1964 did things to improve the parkland including the 1969 policy that used school site lands as part of the overall park mix. The PAUSD was extremely cooperative to help the City with its needs after hours. The after school basketball program was a City program, and the City needed to take care of its own programs. The notion of adding basketball courts was good. The idea of the basketball program was to cover all children in the middle schools.

AMENDMENT: Council Member Lytle moved, seconded by Freeman, to add language to a ballot measure to “undedicate a portion of acreage at Terman to allow a use agreement after hours.”

Council Member Lytle said she did not want the City to be involved in how the PAUSD controlled their campus security. The PAUSD needed to have jurisdiction over the lands that constituted its middle school. Where the shared use worked was when the PAUSD allowed public access to its property after hours. The City’s Charter did not envision that the City give up jurisdiction of park space to the schools. The City needed to explore the possibility of getting a ballot amendment that would undedicate acreage. The City needed to allow the schools a minimum amount of hardscape and recreation facility and a minimum amount of circulation, and the City needed to preserve the tennis courts or build courts elsewhere as part of the undedication.

Council Member Freeman expressed concern that the Council addressed the topic at the eleventh hour, noting that the use of playing fields, tennis courts, basketball, and hardscape should have been part of the original documentation for the schools. The Council heard two types of legal advice, and the amendment was to get a final reading on the information so that the Council did not set itself up for future legal entanglements.

Council Member Lytle said she did not want the City to attract a liability as a result of the action taken.

Council Member Freeman said the PAUSD was open enough to let the City use its facilities after hours. The question was asked why there would be a legal challenge if the action were reversed.

Mr. Calonne responded that the Courts said exclusive school use was not an appropriate park use.

Council Member Freeman clarified the Council said the school use was not exclusive.

Mr. Calonne said that was correct.

Council Member Freeman clarified that permitted use was not exclusive use.

Mr. Calonne said that was correct and did not include the right to routinely exclude others.

Council Member Freeman clarified there was no legal issue if the school owned property and let the City use it, but there could be a challenge if the City owned property and let the school use it.

Mr. Calonne said that was correct.

Council Member Freeman said the amendment needed to be clear so the Council was sure what it did would not have further challenges.

Council Member Burch said the PAUSD preferred to put the temporary basketball courts on the tennis courts because that was the ideal solution, with the understanding that action was detrimental to the tennis courts.

AMENDMENT FAILED 3-6, Freeman, Kishimoto, Lytle, "yes."

Vice Mayor Beecham said the PAUSD and City served many of the same members but were different bodies with different objectives, goals, and restrictions on what could be done. Council Member Ojakian pointed out that the school fields, in many cases, were used as an extension to or enhancement of the City's parklands. One of the City's constraints was the Terman Specific Plan, which had to be honored. The City did not have the ability to make a contract that violated its own rules. The intent of the Terman Specific Plan was to keep the tennis courts as they were. The recommendations from Council Members Burch and Kishimoto was that the City and PAUSD look for other options. The City needed to find a way to provide the activities that students needed.

Council Member Freeman said basketball was a crucial part of the physical education program. People had a fear of the issue of "temporary" and what happened after "temporary." The City constantly tackled the issue of growth, and there was not enough land for the population unless people learned to share. The City was trying to share parkland with the PAUSD. She agreed with the open pathways around the perimeter and hoped the PAUSD would compromise with the City. The dual use of tennis courts was not supported. The City and PAUSD needed to figure out a creative use of existing hardscape. Preserving as much of the permeable grassland as possible was favored. The City Manager was asked where the funding came from for the basketball court.

Assistant City Manager Emily Harrison replied that the funding had not been identified.

City Manager Frank Benest said staff would return to the Council for a discussion about funding.

Council Member Freeman clarified the motion called for paying 50 percent.

Mayor Mossar said there was no option identified, further discussion was needed, and the amount was unclear.

Council Member Freeman said, based on the budget, the 50 percent might need to go down.

Council Member Lytle supported the motion but expressed concern about the City Charter consistency issue. The Council needed to address the competing interest of the City's security and isolated recreation needs.

Council Member Kishimoto understood the Terman Specific Plan did not need to be changed if the changes were restricted to 12 months or less. Policies would sunset automatically after 12 months. The new location of the basketball courts would not necessarily go to the voters, but the Park Improvement ordinance was referendable.

Mr. Calonne preferred to clean up the agreement to reflect what the Council intended.

Council Member Kishimoto understood there would be an amendment to the Joint Agreement, which outlined the temporary, less than 12-month steps.

Mr. Calonne said if the Council knew its direction from the temporary improvements that should be in writing.

Council Member Kishimoto clarified staff would work with the PAUSD to draft an amendment to the Joint Agreement, which would return to the Council as a 12-month solution.

Ms. Harrison envisioned staff returning by August 4, 2003, with recommendations for a temporary solution that would allow the Terman School to open.

Council Member Kishimoto understood the California Environmental Quality Act (CEQA) process would be followed for the basketball courts. The final design of the basketball courts would return to the Council as part of the Park Improvement Ordinance. A temporary solution might not go back to the Council. The PAUSD should be asked to keep the pathway open.

Mayor Mossar agreed that cost was an issue and should be a serious consideration during discussions by the City/School Liaison Committee.

MOTION PASSED 9-0.

15c. (Old Item No. 14) 3114 David (03-AP-06): Appeal by Lois H. McLeod of the Director of Planning and Community Environment's Approval of the Application (02-IR-95) for a new two-story single family residence, owned by Kamran and Parissa Najmabadi under the single family individual review program

Annette Ashton, R-1 Future Single Family Advisory Group Co-Chair, 2747 Bryant Street, urged the Council to (1) deny the appeal and support the applicant as recommended in the staff report (CMR:340:03); (2) hold a study session for Council, members of the public, and media on the intent and details of the individual review and implement a public education program; and (3) fine tune the Individual Review (IR) process. The Advisory Group was committed to working with the Council and staff to refine the process so that future applicants would not suffer extended lengths of time for project approval with potential resulting financial hardships. Staff needed to be key in setting the stage as well as expectations. The applicants wanted a larger home for their growing family. During the many individual reviews, seven major suggestions were made, which the applicants willingly incorporated into the design. The application obeyed all the current zoning. The roof height was 27.5 feet, which was less than the 33 feet allowed in the flood zone. The setbacks were eight feet, which was greater than the required six feet. Individual review was not meant to prevent two-story homes from being built. Guidelines and a process were created to enable residents to have a new home fit in sensitively with the neighborhood. One objection was the proposed plan would shade the neighbor's home. The applicant's house was shaded by the neighbor's house. The staff report (CME:340:03) showed how the house was carefully designed to lessen the impacts. The second objection was the proposed plan blocked neighbor's sky views. In the built-out and heavily forested Palo Alto residential community, there was no zoning code regarding sky views. The third objection was the two-story house was not in character with the neighborhood. The process extracted a severe emotional and financial toll on families to defend their rights when plans were submitted that conformed to City zoning. A toll was extracted on the neighbors as well, since they were led to believe they could appeal to prevent any two-story home or addition.

John Northway, R-1 Future Single Family Advisory Group Co-Chair, 437 Lytton Avenue, said to date there were approximately 168 applications with one appeal denied, one appeal approved, and three potential appeals waiting to be heard. The appeal process needed fine-tuning. The Advisory Group did not anticipate many appeals. A mediation element was added to handle

appeals. The appeal process became an ad hoc process because it was not thought through. Granting appeals should be a high standard to reach, which was the intent of the Advisory Group. Clearly stated reasons were necessary as to why a project did not comply with guidelines. The shadow guidelines should be rewritten or eliminated because it was confusing. The appeal did not meet the standard.

Carroll Harrington, R-1 Future Single Family Advisory Group Co-Chair, 830 Melville Avenue, expressed concern with the Individual Review (IR) guidelines process. The Advisory Group was careful to choose members who represented diverse points of view. The Advisory Group met for 17 months to develop the guidelines. The goal was to have a process that was clear, predictable, and economical. A critical component for the success of the IR program was the public awareness or education program for Council, Planning Department staff, applicants, possible appellants, and the general public. A successful public awareness program included program description, goals and objectives, strengths and weaknesses, opportunities and threats of challenges analysis, and audience identification. Strategies and tactics were followed by a timeline, budget, and evaluation. Examples of organizing a public awareness program included presenting Architecture 101, producing a video that applicants and neighbors could check out from the Development Department, creating a website, and preparing complete, concise written materials. Members of the Advisory Group were willing to serve as mentors and to meet with staff on a regular basis to get the process back on track. The Council was urged to seriously consider the suggestions and decline to hear the appeal.

Owen Byrd, representing the applicants, 418 Florence Street, agreed the program worked. The application did not deserve to be called up for a Council appeal. The amount of expense, delay, and emotional upset that accompanied the application was out of scale to what was proposed to be built. The Council was urged to not vote to hear the appeal.

Cindy Samos, 346 Colorado Avenue, supported the applicants. The process for the applicants was frustrating, painful, and expensive. The IR process was difficult because it pitted neighbor against neighbor. The applicants painstakingly followed the guidelines and responded to their neighbor's concerns by completely redoing their plans. The applicants did a solar study because one neighbor was concerned about shadowing. At the Director's hearing, when the study was brought up and the conclusion showed that shadows were not an issue, the neighbor stated his concern about the view of the second story rather than shadows. Neighbors had to accept the fact that second story homes could be built next door. The applicant's plans had undergone intense scrutiny by the Planning Department, and the plans were within the guidelines.

Mary Haverstock, 2350 Byron Street, explained she was in the IR process, having completed a second Director's hearing. The process was grueling. She and the applicants were asking for the rights of every Palo Alto resident. Proposals within the guidelines should not have to go through the IR process.

Don Mullen, 618 Tennyson Avenue, said the major objection he heard in most cases had to do with massing. Massing was not possible to visualize for people who were not professionals. Story poles were a solution to the outline of the proposed building and should be added to the process.

Bret Kerrins, 3280 Clifton Court, supported the proposed application. There was no reason for the Council to hear the appeal. The application was heard and approved by the City three times and met all the guidelines.

Herb Borock, P.O. Box 632, said the IR process worked. Changes to the process were not necessary. The Council should let the process work rather than over react to the fact that the majority of the Council on one case out of 168 cases was appealed and denied.

MOTION: Council Member Ojakian moved, seconded by Burch, to uphold the staff approval of the project and decline to hear the appeal of the Director of Planning and Community Environment's approval of the Single Family Individual Review application (02-IR-95) for a new two-story single family residence, thereby upholding the Director of Planning and Community Environment's approval.

Council Member Ojakian said he would have preferred to leave the item on Consent Calendar. The Council needed to thank the three co-chairs who were part of the process. The process worked well, and there were few appeals. The applicants were forthright in following the process and made changes to the betterment of everyone involved. Second stories were allowable.

Council Member Burch expressed concern about the amount of times the applicant responded to the questions asked and the fact that one or two individuals were able to delay action through the appeal process. There should be some way to make retribution to the people who had no investment in the project.

Council Member Morton took exception to the comment that the neighbors had no investment in the decision. Had the neighbors gotten together and passed a single-story overlay, a two-story home would not be allowed. The struggle was often the change of the neighborhood. People moving into a neighborhood did not have the absolute right to change the character of the homes in the neighborhood. The process allowed the neighbors to try to

mitigate the massing. The family made efforts to accommodate the objections of the neighbors. The appeal was not supported because the neighborhood did not have a single-story overlay.

Council Member Kishimoto said on the side of upholding the appeal, the criteria that concerned her most was the streetscape. The definition of streetscape said, "overall impression made by the design, arrangement and relationship of structures, landscaping, and open space on a block or in a neighborhood." The neighborhood did not choose to go for a single-story overlay. A better design might have been made to fit more harmoniously into an Eichler neighborhood.

Council Member Lytle pulled the item to have a conversation as a Council and to hear from the public. Her test for whether the process was worth the additional expense to the community and to the applicants was whether or not the City got better privacy streetscape, and neighborhood compatibility. All ideas presented by the co-chairs were supported, and it was suggested that the Advisory Group look at whether or not the process could be made ministerial without appeal.

Council Member Kleinberg expressed concern about the process because it reminded her of the torment the Council heard during the single-story overlay in some neighborhoods.

Vice Mayor Beecham said single-story overlays were the only way to identify a process to preserve single-story neighborhoods. The IR process helped design two-story homes that fit into existing neighborhoods.

MOTION PASSED 9-0.

15d. (Old Item No. 1) Ordinance Amending Chapter 16.20 (Sign Ordinance) of the Palo Alto Municipal Code to Provide for Bus Shelter Advertising *(1st Reading 06/16/03, Passed 5-4, Freeman, Kishimoto, Kleinberg, Lytle "no.")*

Council Member Freeman said advertising on bus shelters to a major constituency in Palo Alto equated to eye noise. One value many residents held dear in the community was the natural serenity experienced upon entering the City's tree-lined natural setting. Bus shelters were necessary and in demand. The Council had the obligation, at a minimum, to review financially viable alternatives prior to succumbing to changing the charm of Palo Alto. One example was to have the Public Art Commission (PAC) oversee some community service groups who would fund and build unique bus shelters. Another solution was to approach service clubs, such as Rotary and Kiwanis, to see if they would promote building bus shelters but not those with advertising. The Council received a letter from a corporate entity willing to place and clean shelters without ads for some other type of kiosk

advertisement. One location for a bus shelter was at Colorado Avenue and Middlefield Road, which was considered an arterial. Prior to making a rash jump into changing the sign ordinance that allowed more bus shelters in the community, staff should be given an opportunity to provide the Council with alternatives that were financially viable. The Council was urged to vote "no" on the second reading of the sign ordinance put in place as a spot solution to allow advertising on bus shelters.

Lynn Chiapella, 631 Colorado Avenue, did not believe bus shelter ads enhanced the community. Bus shelters with ads at Colorado Avenue and Middlefield Road added to the clutter. Adding advertisement to bus shelters where trees were removed was an unattractive solution to Midtown's attempt to raise its aesthetic level.

Joy Ogawa, Yale Street, said one of the bus shelters scheduled for advertising was located across from single-family residences on California Avenue. The Valley Transportation Authority (VTA) planned to shut down the bus line, which meant advertising would be placed on a bus shelter that did not serve the community.

MOTION: Vice Mayor Beecham moved, seconded by Ojakian, to adopt the Ordinance amending Chapter 16.20 (Sign Ordinance) of the Palo Alto Municipal Code to provide for Bus Shelter advertising.

Ordinance 4797 entitled "Ordinance of the Council of the City of Palo Alto Amending Chapter 16.20 (Sign Ordinance) of the Palo Alto Municipal Code to Provide for Bus Shelter Advertising" (1st Reading 06/16/03, Passed 5-4, Freeman, Kishimoto, Kleinberg, Lytle "no.")

MOTION TO CALL THE QUESTION: Vice Mayor Beecham moved, seconded by Burch, to call the question.

MOTION TO CALL THE QUESTION PASSED 6-3, Freeman, Lytle, Kleinberg "no."

MOTION PASSED 5-4, Freeman, Kishimoto, Kleinberg, Lytle "no."

ORDINANCES AND RESOLUTIONS

16. Approval of Ordinance Establishing Storm Water Quality Pollution Prevention Measures for Land Development Projects

MOTION: Council Member Ojakian moved, seconded by Morton, to approve the staff recommendation to approve the ordinance (Attachment A of CMR:255:03) establishing storm water pollution prevention requirements for land development projects.

Ordinance 1st Reading entitled "Ordinance of the Council of the City of Palo Alto Amending Title 16 [Building Regulations] of the Palo Alto Municipal Code by Adding Chapter 16.11 Relating to Stormwater Pollution Prevention Measures"

MOTION PASSED 9-0.



17. Approval of a Budget Amendment Ordinance to Commit Funds for Remaining Reimbursable Grant Funding in the Amount of \$2,556,510; \$3,011,500 Loan from the General Fund Infrastructure Reserve to be Reimbursed by Grant Funding

Director of Public Works Glenn Roberts said the Council was requested to take specific actions to enable staff to move forward with the award of construction contract for the Homer Avenue Pedestrian/Bicycle Tunnel. The actions included approving a Budget Amendment Ordinance (BAO) to commit the remaining reimbursable grant funding for the project, approve a loan for the Budget Reserve in anticipation of receipt of Federal funding for the project, awarding a construction contract to Anderson Pacific Engineering for the job, approving a deduct change order for the project to conform the project to the budget, approve a funding transfer agreement with the Valley Transportation Authority, and approve Amendment No. 2 to the contract with Nolte Associates for continuing engineering support during construction. Since January 2002, staff proceeded with the project. Issues were raised at the time, and the Council directed staff to proceed with the project and bring it forward to fruition. Since that time, staff made major accomplishments on the project. Staff received permission from the Joint Powers Board (JPB) for the project design, approval from all City boards and commissions on multiple plan reviews, project approval from the State Public Utilities Commission, and \$502,000 of additional Federal funding. In September 2002, the State signed off on the project, and in the spring of 2003, the project was advertised for bid.

Assistant Director of Public Works Mike Sartar said during the fall of 2002, staff learned Caltrans had over obligated Federal funds regionally, and funds for the Homer Avenue Undercrossing were being suspended. The VTA, Metropolitan Transportation Commission (MTC), and Caltrans recommended Palo Alto request advance construction authorization to allow the project to proceed, using City funds until Federal funds were made available for reimbursement. Staff was assured all projects receiving advanced construction authorization had received their funding eventually, and that the Homer Project was at the top of the list for the next round of funding. During the winter of 2002, staff learned the \$293,000 in State matching funds were in jeopardy due to the State budget crisis. The MTC did not agree to reinstate the Homer State Transportation Improvement Program (STIP)

funds, but the VTA reprogrammed the \$293,000 in Transportation Development Funds to replace the lost STIP funds. Three bids from qualified contractors were received in June 2003. The lowest bid from Anderson Pacific was approximately \$900,000 over the Engineer's Estimate for construction, due primarily to added architectural features to the design and higher, unanticipated labor costs due to weekend and night work. Staff evaluated three alternatives to address the \$900,000 shortfall. One alternative was to reject all bids, forfeiting State and Federal grants and not be reimbursed for \$700,000 in design costs already spent. Rebidding the project without redesign was not an option due to the project's tie to the Caltrans' weekend closures ending in March 2004. Another alternative was to proceed with the full project and fund the shortfall from Budget Stabilization Reserves. The last alternative was to seek solutions to bring the project back within the current budget. In pursuing the third alternative, staff worked with the VTA to reprogram \$300,000 from the Bicycle Expenditure program funds from the Embarcadero Bike Path Bridge project cost savings. The Homer Project shortfall was reduced to \$600,000. Staff met with the Project Design Consultants and City Attorney to identify items that could be taken out of the construction contract to save costs. Staff recommended the Council authorize a \$622,000 deduct change order simultaneous with the possible construction contract award to bring the project back within budget. The proposed cost reductions were thoroughly evaluated, and staff believed them to be fair and reasonable. The staff report (CMR:218:03) included five recommendations.

Mr. Roberts said staff believed it proposed a viable way of proceeding with the project. Timing was critical. The items recommended for deletion in the deduct change order would not affect the project functionality or maintainability. They were amenities that could be added back in the future, should money become available. The loan was an issue that required a fair amount of consideration, debate, and deliberation.

Mike Liveright, 260 Byron Street, questioned \$3 million for a project that appeared to save up to six blocks. There is an underpass at University Avenue three blocks over.

Cedric de La Beaujardiere, 3153 Stelling Drive, encouraged the Council to follow the staff's recommendation with the construction of the undercrossing. There was a small risk with the \$3 million, but if the Council did not take the risk, \$3 million was lost for future projects.

Bunny Good, P.O. Box 824, said the City Attorney indicated the City should not go into debt for more than one year. She asked the City Attorney's staff for the legal citations with respect to the City Attorney's presentation because she wanted to research the relevancy of what the Council was asked to consider at the present meeting but was unable to obtain the

information. The Council had no right to ask for money when the State took away the Cost of Living Allowance (COLA) of the Social Security (SSI) for the disabled and elderly.

Ellen Fletcher, 777-108 San Antonio Road, said staff worked hard and skillfully to put together the grants and obtain approvals. The object was to encourage people to get out of cars and walk and bike. The Council needed to take advantage of the one-time opportunity.

Paul Goldstein, Chair of Palo Alto Bicycle Advisory Commission, 1024 Emerson, said Palo Alto Bicycle Advisory Commission (PABAC) supported the project. The Council had a great opportunity to improve the City for pedestrians and bicyclists. The project connected the Palo Alto Medical Foundation (PAMF) campus with the Downtown area. Staff met deadlines that seemed daunting earlier in the year and was able to convince the County and regional transportation agencies that the project was deserving of additional grant funding. Committed external funding for the project covered nearly the entire project budget. The City needed to front the money to award the contract, which created a risk, but the City had advance construction authorization. The Council was urged to support the project.

Council Member Freeman asked what documentation or guarantees did the Council have that guaranteed reimbursement.

Marcella Rensi, Santa Clara Valley Transportation Authority (VTA), 3331 N. First Street, San Jose, said the agreement on the advanced construction noted there were no guarantees, but stated if the obligation authority became available, the City had permission to spend its own money up front and could be reimbursed.

Bob Moss, 4010 Orme Street, said he found that the City was being asked to lend \$3 million with the hope of reimbursement by three government agencies that were bankrupt. The State would not have money for several years. The Feds were over \$400 billion in debt the current year, and the VTA did not have enough money to keep its busses running. The Council was urged to defer taking action until after the State budget was passed.

Elaine Meyer, 609 Kingsley Avenue, expressed concern about expenses related to hiring an extra consultant to manage the project. Other smaller projects needed funding, such as the Downtown Library and the South of Forest Area (SOFA) Park. The proposed project primarily benefited the PAMF, Stanford University, the Westin Hotel, and the Sheraton Hotel. The suggestion was made that those entities contribute to the short-term loan.

Joy Ogawa, 2305 Yale Street, said the traffic circulation situation at Homer and Alma Avenues was seen as a problem with no solution. The issue

needed to be reevaluated since funding was not a sure thing. The Council was urged to support alternative 1, which was to not proceed with the project and reject the bids.

Mayor Mossar said she worked on the project for approximately ten years. The Council agreed to pursue the project and made requirements that developments including the PAMF and Westin Hotel contribute money for the project. The VTA stood behind the Council's repeated decision to move forward with the project. Transportation funding came from sources that were for transportation. When a prior Council approved the project that moved the PAMF to the El Camino Real site, a promise was made to the Downtown merchants that the tunnel would be built.

MOTION: Mayor Mossar moved, seconded by Morton, to approve the staff recommendation as follows, with a modification that the \$3,011,500 loan from the General Fund Infrastructure Reserve be changed to the Budget Stabilization Reserve:

- 1) Approve a Budget Amendment Ordinance (BAO) in the amount of \$2,556,510 for the Homer Avenue Caltrain Undercrossing Project; and a loan in the amount of \$3,011,500 from the General Fund Infrastructure Reserve to be reimbursed upon receipt of grant funding (Attachment A of CMR:218:03);
- 2) Approve and authorize the City Manager or his designee to execute the attached Santa Clara Valley Transportation Authority 1996 Measure B Bicycle Program Fund Transfer Agreement allocating Measure B, Tier 1 bicycle project funds in the amount of \$1,000,000 to Homer Avenue Caltrain Undercrossing (Attachment C);
- 3) Approve and authorize the Mayor to execute the contract with Anderson Pacific Engineering Construction, Inc. in the amount of \$3,985,000 for construction of the Homer Avenue Caltrain Undercrossing Project (Attachment D), subject to execution of a simultaneous contract change order to deduct certain contract items totaling \$622,346 for a total contract amount of \$3,362,654 (Attachment F);
- 4) Authorize the City Manager or his designee to negotiate and execute one or more change orders to the contract with Anderson Pacific Engineering Construction, Inc. for related, additional but unforeseen work which may develop during the construction of the project, the total value of which shall not exceed \$400,000; 5) Approve and authorize the Mayor to execute Amendment No. 2 to Contract C2134182 with Nolte Associates, Inc., increasing the contract amount by \$133,087 for outsource of additional design and design support during construction (Attachment G of CMR:218:03).

Ordinance 4798 entitled "Ordinance of the Council of the City of Palo Alto Amending the Budget for the Fiscal Year 2003-04 to Accept and Expend Grant Funds in the Total Amount of \$2,556,510 and a \$3,011,500 Loan from the General Fund Infrastructure Budget Stabilization Reserve to be Reimbursed by Grant Funding for the Construction of a Bicyclist and Pedestrian Tunnel Under the Caltrain Tracks Connecting the South of Forest Area and Downtown Palo Alto to the Palo Alto Medical Foundation (PAMF), Sheraton Hotel and Surrounding Area (CIP 10121, Homer Avenue Caltrain Undercrossing Project)"

Award of Construction Contract to Anderson Pacific Engineering Construction, Inc. in the Amount of \$3,985,000, Subject to Simultaneous Approval of a Deduct Change Order to the Construction Contract in the Amount of \$622,346 for a Total Contract Amount of \$3,362,654;

Approval of Santa Clara Valley Transportation Authority 1996 Measure B Bicycle Program Fund Transfer Agreement; and

Approval of Amendment No. 2 to Contract C2134182 with Nolte Associates, Inc. in the Amount of \$133,087 for Outsourcing Additional Design and Design and Design Support Services during Construction for the Homer Avenue Caltrain Undercrossing Project, (Capital Improvement Program Project No. PE01021/10121)

Council Member Morton said if the Council walked away from the project, \$725,000 was absorbed and not reimbursed. The wording of the advanced construction approval indicated the project was a priority. The project did not depend on State funding. The funding was available only for the proposed project. The project would tie the City's bike routes together.

Council Member Kishimoto understood the history was 100 percent of all advance construction authorizations had been repaid.

Mr. Roberts said for staff to believe the City would not get reimbursed the next year for the \$3 million worth of Federal money, the Council had to believe there would be zero Federal dollars for transportation improvements in the Bay Area in the next year.

Ms. Rensi responded the longest theoretical period was six years because that was the period of an entire Federal reauthorization. The biggest user of advance construction was the State.

Council Member Kishimoto clarified 100 percent of advance construction authorizations had been reimbursed.

Ms. Rensi said that was correct.

Council Member Kishimoto referred to the list of proposed changes and asked what impact the reduction in skylights had and whether the skylights could be added later.

Mr. Roberts replied the skylights would not be easily added back in the future. The skylights were intended to be temporary until such time as JPB added the additional tracks in the area.

Council Member Kishimoto supported going forward with the project. The tunnel would make a significant difference in terms of the number of people who rode bicycles in the future.

Council Member Burch said the project offered tremendous opportunities to tie together what appeared to be separate.

Council Member Freeman asked the City Manager if the City could live without \$3 million without cutting other services to the residents if the City did not get reimbursed for six years.

Mr. Benest said timing on other projects might be impacted. Staff believed the project was an acceptable risk.

Council Member Freeman clarified some current capital improvement projects (CIP) had to be moved out if the City were not reimbursed within six years.

Mr. Benest said that was correct.

Council Member Freeman asked whether the Council discussed in detail that the Infrastructure Reserve should be for existing projects.

Mr. Benest said the money would be borrowed to be repaid to the Infrastructure Reserve. The Council and staff had mixed and matched projects in the Infrastructure Reserve in terms of existing versus new because of the changing priorities of the community.

Council Member Freeman asked whether the funding could be delayed.

Mr. Roberts responded the project could not be delayed for any substantial amount of time. Staff needed to proceed immediately in order to fit within the window of time when the Caltrain JPB work went on.

Council Member Freeman did not understand what the City had that would ensure reimbursement.

Mr. Roberts said the City had the approved grant process through VTA and MTC and had the advanced funding status, which entitled the City to the next money that became available.

Mayor Mossar explained cities received money from a regional decision-making process, and the MTC was responsible for prioritizing projects and funding the projects. The fact that the proposed project was at the top of the list meant the region agreed that Federal dollars went to Palo Alto prior to going to anyone else.

Council Member Ojakian said he did not want to use the Infrastructure Reserve and suggested going into the Budget Stabilization Reserve (BSR).

Council Member Lytle concurred and said she was concerned about taking \$3 million from the City Infrastructure Reserve for new regional infrastructure when the City was unable to maintain and upgrade current local infrastructure. Also, Secretary of Transportation Norm Mineta reported a couple of weeks prior that the Federal Government was investing in rebuilding infrastructure in the Middle East and diverting Federal transportation funding to highway-related funding. That would create additional risk when reimbursement was contingent on State and Federal funding.

Council Member Ojakian asked whether the maker and seconder would accept the fact that the funds come out of the BSR versus the Infrastructure Reserve.

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that the funds would come out of the Budget Stabilization Reserve versus the Infrastructure Reserve.

Council Member Kleinberg said the Council was informed that the \$3 million in Federal grant money was suspended and the STIP money was in jeopardy. There was a high possibility the City would not get the funds needed. One option was for the Council to cut its losses and to know exactly what the losses were. The public would question where the City suddenly came up with \$3 million.

Vice Mayor Beecham said if the City decided not to go forward with the project, the \$722,000 was lost from the reserves. The City had two options with the \$3 million: (1) go forward and take a risk; or (2) lose money from future grants. The staff report (CMR:218:03) indicated "any project sponsor

who loses federal funds will be ineligible for the same amount from the next guarantee disbursement of federal funds.” The smart decision was to go forward with the project.

Mr. Benest said his concern with using the BSR was the City had a policy that with any money in the fund balance at the end of the year, the money went immediately to the BSR. The City tried to free up \$1 million to \$2 million in the current year through continued restructuring to go into the Infrastructure Reserve.

Council Member Morton understood the money could be taken out of the BSR, but that meant that any future moneys that were transferred back to the Infrastructure Reserve would not be transferred until the money was made up.

MOTION PASSED 6-3, Freeman, Kleinberg, Lytle “no.”

PUBLIC HEARINGS

18. ~~Public Hearing: The City Council will consider an application by Santa Clara Valley Water District for Site and Design approval for the downstream portion of the Matadero Creek Long Term Remediation Project, the construction of an overflow flood control channel downstream of East Bayshore Road and adjacent to the City Municipal Service Center, to increase flood protection and convey a 100-year (1%) flood event flow. The project address is 3201 East Bayshore Road. Council actions on this item include: approval of site and design and architectural review for the project based on findings and conditions of approval, adoption of findings for the environmental review, adoption of a Park Improvement Ordinance for the portion of the project within Byxbee Park, direction to staff to include project in text and maps of the Baylands Master Plan when updated, and authorization for the City Manager to grant easements necessary for the construction of the project~~

Item continued to a date uncertain.

REPORTS OF OFFICIALS

- 18a. Adoption of a Resolution Calling for a Special Election for the Purposes of the Referendum on Ordinance No. 4779 to change the classification of property known as 800 High Street from CD-S(P) to PC Planned Community and Approving a Variance from a height requirement, Requesting the Services of the Registrar of Voters, and Ordering the Consolidation of said election and Setting Ballot Arguments Procedures

MOTION: Council Member Ojakian moved, seconded by Morton, to adopt the following action:

1. If the Council as a body wishes to exercise its rights to author and sign ballot arguments, action should be taken to appoint members of the Council to write the arguments on behalf of the Council. - **YES**
2. If the Council does not wish to author and sign ballot arguments, the Council should take the following action: By a majority of the Council, determine whether any member or members of the City Council who may wish to author and sign a written ballot argument for or against the measures will be authorized to use their titles as City Council Members - **NOT APPLICABLE**
3. The Council may direct the City Attorney to prepare an impartial analysis. - **YES**
4. If the Council chooses, it may allow individual board and commission members to sign ballot arguments for or against the measures and use their respective titles - **NO**

Council Member Freeman said she would not want her name associated with the argument for 800 High Street.

Council Member Ojakian replied that item 1 indicated, "action should be taken to appoint members of the Council to write the arguments on behalf of the Council," which meant not all Council Members would have their name on the argument.

Council Member Freeman expressed concern with the wording, "on behalf of the Council."

Council Member Burch noted the Council approved the project.

Council Member Freeman took issue with being represented as agreeing with something she did not agree with.

Joy Ogawa objected to the wording of the ordinance, which included language, "with ten affordable units." The accurate language should be "ten Below Market Rate Units." The characterization of the units as affordable was not an accurate description.

MOTION FAILED 4-5, Burch, Kleinberg, Morton, Ojakian "yes."

SUBSTITUTE MOTION: Vice Mayor Beecham moved, seconded by Mossar, to adopt the following action:

1. If the Council as a body wishes to exercise its rights to author and sign ballot arguments, action should be taken to appoint members of the Council to write the arguments on behalf of the Council. – **YES**
2. If the Council does not wish to author and sign ballot arguments, the Council should take the following action: By a majority of the Council, determine whether any member or members of the City Council who may wish to author and sign a written ballot argument for or against the measures will be authorized to use their titles as City Council Members - **YES**
3. The Council may direct the City Attorney to prepare an impartial analysis - **YES**
4. If the Council chooses, it may allow individual board and commission members to sign ballot arguments for or against the measures and use their respective titles - **NO**

Vice Mayor Beecham said the Council as a majority voted on the development, and the Council as a majority deserved the right to talk as a majority on behalf of the ballot measure. Council Members had the right to oppose.

Council Member Kleinberg clarified the ballot statement was from the majority of the Council who voted for it, and there would be ballot statements by the minority who voted against it.

Council Member Beecham said in item 1, the ballot arguments “in favor of” would be signed by the City Council. Item 2 allowed people who were opposed to write arguments and use their names and titles as a Council Member to oppose.

City Clerk Donna Rogers said the Election Code spelled out the procedures if more than one argument was received. The Council took precedence if a “pro” was received from Council and a “pro” from the developer, the Council argument would be used.

Council Member Lytle said she would not want to write a ballot argument against the majority position of the Council.

Council Member Freeman favored item 2 because those Council Members who wanted to write something that said they were in favor of 800 High Street, could do so.

SUBSTITUTE MOTION WITHDRAWN

SUBSTITUTE MOTION: Council Member Freeman moved, seconded by Lytle, to adopt the following action:

1. If the Council as a body wishes to exercise its rights to author and sign ballot arguments, action should be taken to appoint members of the Council to write the arguments on behalf of the Council. - **NO**
2. If the Council does not wish to author and sign ballot arguments, the Council should take the following action: By a majority of the Council, determine whether any member or members of the City Council who may wish to author and sign a written ballot argument for or against the measures will be authorized to use their titles as City Council Members - **YES**
3. The Council may direct the City Attorney to prepare an impartial analysis - **YES**
4. If the Council chooses, it may allow individual board and commission members to sign ballot arguments for or against the measures and use their respective titles - **NO**

SUBSTITUTE MOTION FAILED 3-6, Freeman, Kishimoto, Lytle "yes."

MOTION: Council Member Ojakian moved, seconded by Morton, to adopt the following action:

1. If the Council as a body wishes to exercise its rights to author and sign ballot arguments, action should be taken to appoint members of the Council to write the arguments on behalf of the Council - **YES**
2. If the Council does not wish to author and sign ballot arguments, the Council should take the following action: By a majority of the Council, determine whether any member or members of the City Council who may wish to author and sign a written ballot argument for or against the measures will be authorized to use their titles as City Council Members - **NOT APPLICABLE**
3. The Council may direct the City Attorney to prepare an impartial analysis - **YES**
4. If the Council chooses, it may allow individual board and commission members to sign ballot arguments for or against the measures and use their respective titles - **NO**

MOTION PASSED 6-3, Freeman, Kishimoto, Lytle, "no."

Council Member Kleinberg asked whether it was possible to sign the argument as "the majority of the Council."

Council Member Freeman felt the spirit of compromise with colleagues was not accomplished on the vote because there was an opportunity for people to be allowed to express their opinions in the public on the ballot.

Council Member Morton said the majority position in the Council was clear.

MOTION: Council Member Beecham moved, seconded by Morton, to approve the resolution calling for a special election for the purposes of the referendum on the 800 High Street, Ordinance No. 4779, requesting the services of the Registrar of Voters, and ordering the consolidation of said election.

Resolution 8321 entitled "Resolution of the Council of the City of Palo Alto Calling a Special Election for November 4, 2003, for Submittal of a Referendum Measure to the Electorate and Ordering Consolidation of Said Election "

Council Member Morton asked whether the City Attorney's opinion was that the wording was "Below Market Rate" instead of "Affordable Housing." He understood "Affordable Housing" to include Below Market Rate.

Mr. Calonne said he thought "Affordable" was clearer than "Below Market Rate."

AMENDMENT: Council Member Kishimoto moved, seconded by Freeman, on line 5, page 1 of the ordinance, change the ballot question from "Affordable" to Below Market Rate."

AMENDMENT FAILED 4-5, Burch, Freeman, Kishimoto, Lytle "yes."

MOTION PASSED 6-3, Freeman, Kishimoto, Lytle "no."

Council Member Ojakian asked whether it was acceptable for the Mayor to appoint authors.

Mr. Calonne responded the Mayor could be authorized to appoint members.

MOTION: Council Member Ojakian moved, seconded by Morton, to allow the Mayor to appoint members of the Council to write arguments on behalf of the City Council.

MOTION PASSED 9-0.

18b. Adoption of a Resolution Calling for a Special Election for the Purposes of the Initiative Regarding Establishing Conditions for Fluoridating Palo Alto Public Drinking Water; Immediate Cessation, Requesting the Services of the Registrar of Voters, and Ordering the Consolidation of said election and Setting Ballot Arguments Procedures

City Attorney Ariel Calonne reported that several words were changed in the resolution at the request of some proponents.

Ken Horowitz, Foothill College Professor of Dentistry, 525 Homer Avenue, said Palo Alto was fortunate to have fluoride in the water, which resulted in fewer cavities in Palo Alto children. The Council was urged to oppose the referendum.

Bob Moss, 4010 Orme Street, said components of fluoride were closely controlled by standards. Fluoridation was controlled by State agencies. Each water district was required to analyze its water and report to the State. The initiative asked the Council to approve something that was illegal. The ordinance indicated the U.S. Food and Drug Administration must approve fluoridation. The Federal government decided the pertinent agency competent to control water supplies was not the U.S. Food and Drug Administration, but was the Environmental Protection Agency (EPA). The initiative said the voters of Palo Alto and the City Council could override Federal law. The EPA and other government agencies that had competence in authority over water and fluoridation said fluoridation was safe and effective.

MOTION: Council Member Morton moved, seconded by Burch, to take the following action:

1. If the Council as a body wishes to exercise its rights to author and sign ballot arguments, action should be taken to appoint members of the Council to write the arguments on behalf of the Council - **NO**
2. If the Council does not wish to author and sign ballot arguments, the Council should take the following action: By a majority of the Council, determine whether any member or members of the City Council who may wish to author and sign a written ballot argument for or against the measures will be authorized to use their titles as City Council Members - **YES**
3. The Council may direct the City Attorney to prepare an impartial analysis - **YES**
4. If the Council chooses, it may allow individual board and commission members to sign ballot arguments for or against the measures and use their respective titles - **NO**

MOTION PASSED 9-0.

MOTION: Council Member Morton moved, seconded by Ojakian, to adopt the revised Resolution Calling a Special Election for November 4, 2003, for Submittal of an Initiative Measure to the Electorate and Ordering Consolidation of Said Election

Resolution 8322 entitled "Resolution of the Council of the City of Palo Alto Calling a Special Election for November 4, 2003, for Submittal of an Initiative Measure to the Electorate and Ordering Consolidation of Said Election"

MOTION PASSED 9-0.

COUNCIL COMMENTS, QUESTIONS, AND ANNOUNCEMENTS

Mayor Mossar noted she had attended a meeting with the Mayors of East Palo Alto and Menlo Park regarding IKEA.

Council Member Lytle referred to the bus shelter advertising item discussed earlier in the agenda and pointed out that the maintenance of the shelters by Valley Transportation Authority (VTA) was inadequate, as shown in Joy Ogawa's slide. The slide indicated peeling paint, b-b shots in the graffiti-proof glass, gum on the glass, etc.

Council Member Freeman spoke about a letter from the Mayor of Palo Alto to the Mayor of Niihari, Japan extending an offer for them to become a new sister city with the City of Palo Alto.

Council Member Burch requested that the meeting be adjourned in memory of Attorney Guy Blase.

ADJOURNMENT: The meeting adjourned at 1:05 a.m. in memory of Guy Blase, a long-time Palo Alto Attorney, graduate of Stanford Law School, co-founder of the Santa Clara County Bar Association, civic volunteer, and board member of the Children's Health Council at Stanford University.

ATTEST:

APPROVED:

City Clerk

Mayor

NOTE: Sense minutes (synopsis) are prepared in accordance with Palo Alto Municipal Code Sections 2.04.180(a) and (b). The City Council and Standing Committee meeting tapes are made solely for the purpose of facilitating the preparation of the minutes of the meetings. City Council and Standing Committee meeting tapes are recycled 90 days from the date of the 07/14/03

meeting. The tapes are available for members of the public to listen to during regular office hours.