



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Kim Welsh  
Matt Cano

**SUBJECT: CONSULTANT FOR  
INFEASIBILITY ASSESSMENT**

**DATE:** June 20, 2019

Approved

Date

6-20-19

## SUPPLEMENTAL

### REASON FOR SUPPLEMENTAL

This supplemental memorandum states why City staff recommends using the Office of Economic Development's (OED) existing real estate and financial analysis consultant, Keyser Marston, to determine if extending the high rise incentive program to encourage housing production would not trigger the imposition of prevailing wages under the proposed ordinance being considered by Council (Item 4.5) on June 25, 2019 because such projects would be financially infeasible in the absence of an incentive program.

### BACKGROUND

On June 25, 2019 the City Council will consider an ordinance amending the San Jose Municipal Code to add a new Chapter 14.10 to Title 14 to set forth additional prevailing wage requirements for certain private construction projects. The proposed ordinance requires a private construction project receiving a City subsidy to pay all workers employed on the construction the prevailing wage rate. The proposed ordinance contains some exceptions to the definition of subsidy.

One of the significant exceptions is when a fee or tax reduction is applied uniformly across all private construction projects within a specific subcategory of use (such as 'high-rise residential'), and Council determines, following a public hearing, that construction of the projects is not financially feasible absent the reduction.

Council's determination must be supported by evidence presented at the public hearing, including a financial infeasibility assessment performed by a third-party consultant. The idea is that the study would provide objective evidence that Council could consider in making its findings.

## ANALYSIS

The opportunity to capture highrise development in the Downtown is rapidly closing as the current market cycle cools and the economic outlook for the future becomes more uncertain. During the recent update on the Housing Crisis Workplan on March 19, 2019, Council directed staff to update the High-Rise Residential Incentive Analysis completed in September 2018 by Keyser Marston, consistent with the City Council's April 3, 2018 direction regarding a private development workforce standards ordinance and return with recommendations based on the findings.

Regarding the use of a third-party consultant to perform the financial infeasibility assessment, the Council's April 3, 2018 direction referenced, "Objective evidence must include a study by an independent third party, such as Keyser Marston or EPS. The parties will agree to a list of potential consultants as part of this negotiation, but City staff will be responsible for selecting and retaining a consultant from the list."

OED has traditionally retained professional consultant services to provide on-call support for economic analysis, including real-estate analytic services such as pro forma review and feasibility analysis as well as cost-benefit analysis on potential programs and policies. OED currently has a consultant contract with Keyser Marston, who was selected in 2016 through a competitive RFP process to provide comprehensive services related to economic and financial analysis of real estate and development projects, including financial feasibility analysis.

Keyser Marston is one of several firms in the Bay Area that regularly perform real estate-related financial analyses for local governments. They have performed responsively and professionally providing a range of on-call expertise to support OED recommendations and Council decision-making the last few years. For example, the firm conducted the "Cost of Residential Development" study shared with Council at the April 26, 2018 study session.

Staff believes it is prudent and timely to use existing consultant resources to conduct the necessary infeasibility assessment so that Council can consider extension of the key milestone dates included in the Downtown Highrise Incentive (as it applies to the reduction in construction taxes) and the Inclusionary Housing Guidelines (as it applies to the Affordable Housing Impact Fee Transition for Downtown projects) when it returns from recess on August 6.

Staff has received concerns from labor representatives regarding the use of an existing contract for this first infeasibility assessment, rather than pre-qualifying a list of agreed on consultants.

Undertaking a new RFP process, securing a new contract, and completing an infeasibility assessment could take 6-9 months, based on prior experience. Moreover, 6 - 9 months of delay in considering extension of high-rise incentives for pipeline projects that have already received planning approvals but are not yet under construction will create uncertainty and undermine efforts to implement the Council's Housing Crisis Action Plan and start construction while the economy is still strong.

Staff is working with Keyser Marston to ensure that they have the appropriate expertise available, either through their own experience or through a partnership with another real-estate analytic services firm, to provide the necessary analysis. There should be no question about Keyser Marston's objectivity, since they were selected through an official request for proposals process and they were mentioned as a possible firm for this analysis in the draft April 2018 agreement.

### **EVALUATION AND FOLLOW-UP**

OED anticipates managing an RFP for comprehensive financial services in 2020. As part of this process, OED will separate out a master agreement for services related to this ordinance and will coordinate that process with labor representatives.

As referenced in the memo for this item, staff anticipates completing the infeasibility assessment and bringing a recommendation on August 6 for extension of expired and expiring high-rise incentives for pipeline projects.

/s/  
KIM WALES  
Deputy City Manager  
Director of Economic Development

/s/  
MATT CANO  
Director  
Department of Public Works

For questions please contact Chris Burton, Deputy Director, at (408) 535-8114.