



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nanci Klein
Jim Shannon

**SUBJECT: BERRYESSA FLEA MARKET
CONSULTING AGREEMENTS**

DATE: August 11, 2022

Approved

Date

8/17/2022

COUNCIL DISTRICT: 4

RECOMMENDATION

- (a) Adopt a resolution authorizing the City Manager or designee to negotiate and execute a consultant agreement with Estolano Advisors to conduct economic studies related to the Berryessa Flea Market for a total compensation not-to-exceed \$350,000 for an initial term of 12 months with an option to extend the agreement for one additional year under the same terms and conditions.
- (b) Adopt the following Funding Sources Resolution and Appropriation Ordinance Amendments in the General Fund:
 - (1) Increase the estimate for Beginning Fund Balance by \$475,000;
 - (2) Increase the Berryessa Flea Market Vendor Business Transition Fund City-Wide Expenses appropriation by \$575,000; and
 - (3) Decrease the Berryessa Flea Market Vendor Business Transition Fund Reserve by \$100,000.

OUTCOME

If approved, this action will enable staff to negotiate and execute a consultant agreement with Estolano Advisors to conduct three inter-related economic studies. This action will also enable sufficient funding to provide language access services to the vendor community and other public outreach efforts throughout the course of these parallel workstreams. These consultants will help staff advance City Council's direction related to implementation of the Flea Market Southside Rezoning project, approved in June 2021.

Another agreement will also be executed with Baird + Driskell Community Planning to assist staff in setting up the new Flea Market Advisory Group. The agreement with Baird + Driskell is within the City Manager's contract authority. However, the City Manager's ability to execute the contract is dependent on City Council approval of the recommended budget actions that include the rebudgeting of funds previously appropriated for this purpose last fiscal year.

BACKGROUND

On June 29, 2021, City Council approved the San José Flea Market Southside Rezoning project (Ordinance No. 30646). The project rezoned the site to allow up to 3,450 residential units and up to 3,400,000 square feet for commercial uses, as well as plazas, parks, and open space.

As part of City Council's approval of the rezoning, the City Council found that the Flea Market "provide(s) employment and a livelihood for underrepresented and vulnerable communities in the City of San José." Recognizing the importance of the Flea Market as a critical source of income for vendors and as a decades-old community anchor for thousands, the City Council action also included protections and resources to support the hundreds of small business owners there. For example, the property owner must provide a one-year notice to vendors before removing any stalls for any construction work; they cannot provide this notice before July 2023, meaning the existing Flea Market cannot close until July 2024 at the earliest.

City Council further found that the Flea Market has "economic, social, and cultural importance" and expressed its desire to preserve the Flea Market's future in San José in two ways: by requiring a new, approximately five-acre market to be included in the planning of the future transit-oriented development, as well as exploring the potential to locate vendors elsewhere (such as brick-and-mortar retail locations) and off-site market options.

City Council's approval also created a Flea Market Vendor Business Transition Fund (Transition Fund) to be funded by the property owner, in accordance with the following schedule:

- \$500,000 within 120 calendar days of the effective date of the Planned Development zoning;
- \$2 million on the date that the property owner issues the one-year notice to the vendors; and
- \$2.5 million on the date that the existing Flea Market ceases operation on-site.

The 2020-2021 Annual Report approved by the City Council on October 19, 2021 included the allocation of an additional \$2.5 million in City of San José (City) funding to support vendors, for a total of \$7.5 million. The City's contribution is currently sitting within the Berryessa Flea Market Vendor Business Transition Fund Reserve.

The general purpose of the Transition Fund is to mitigate direct expenses the vendors may experience when moving to any temporary site and/or the Urban Market area on the site, some other market location, or any other retail location in San José because of the redevelopment of the current market site. The Transition Fund may also be spent on consultant services, non-profit partners, communications with vendors, data collection, research on models of public/private markets, and examples of self-sustaining operational methods, or other resources to inform the design and operation of a new market.

The City Council directed staff to use the first \$500,000 of the funding from the property owner to establish a Flea Market Advisory Group (Advisory Group) and conduct an economic impact

study assisted by a consultant and/or community partner. The Advisory Group will consist of representatives of the property owner/developer, the City, and a supermajority of Flea Market vendors including members from any vendors' associations. Pursuant to City Council direction, the role of the Advisory Group will be to make recommendations to the City related to:

- The use of the Vendor Business Transition Fund;
- The design, operation, and associated parking of the Urban Market area; and
- Protocols for determining how Flea Market vendors with a month-to-month rental agreement will be offered the opportunity to relocate to the new Urban Market

City Council also directed staff from the Office of Economic Development and Cultural Affairs (OEDCA) to work with the property owner to assess the existing Flea Market and the vendor community to inform the design of a future market and its potential to generate jobs and other benefits to the city.

In addition, the City Council directed OEDCA staff to support the vendors through access to business resources, programs, and exploring policies to address opportunities and obstacles currently in place.

Implementation to Date

Staff has been meeting regularly with vendor representatives and community leaders since June 2021, including representatives from the Berryessa Flea Market Vendor Association. Staff developed a work plan to implement City Council's direction and has made progress on implementation, including establishing a multilingual website for vendor-focused communications¹; developing a multilingual brochure on business resources; hosting an on-site resource faire and outreach event in February 2022; and surveying vendors on financial and business support needs. Staff is posting quarterly reports from the property owner on the [vendor website](#) and provided an update to City Council's Community and Economic Development Committee [in April 2022](#).

The City received the first \$500,000 contribution from the property owner on December 27, 2021. Staff worked with the vendor representatives to develop the following budget for this funding as shown below.

Figure 1: Budget for initial \$500,000

| Use | Budget |
|------------------------------|------------------|
| Advisory Group Consultant | \$125,000 |
| Economic Studies | \$350,000 |
| Language Access and Outreach | \$25,000 |
| Total | \$500,000 |

¹ <https://www.sjeconomy.com/how-we-help/programs-and-services/san-jose-flea-market-vendor-info>

Consistent with City Council direction, staff is setting aside a portion of the funds for a consultant to assist with the formation of the Advisory Group. In the first phase of work, the consultant will work with stakeholders to draft the Advisory Group charter for City Council approval. With a charter in place, the next step would be to select the specific Advisory Group members. Based on similar experiences and staff's capacity, staff estimated a budget of \$125,000 to get through this step. The next phase of work will be to facilitate Advisory Group meetings. As part of future phases, additional funds will be needed to enable the long-term administration of the Advisory Group, including language access and professional facilitation by a consultant.

Also consistent with City Council direction, staff is allocating funds to identify the economic benefits and cultural impact of the existing Flea Market. This will provide tangible detail on how the market contributes to San José, vendors, families, and the region. In developing this scope, three interrelated priorities emerged: 1) better understanding models for sustainable, equitable operations of various public market scenarios; 2) exploring and evaluating potential alternative sites where significant segments of vendors could relocate; and 3) understanding the market's cultural impact. Staff allocated \$350,000 to these the three inter-related studies in the budget. The three components are collectively referred to as "Economic Studies".

The Economic and Cultural Impact Study will assist project stakeholders in understanding not just the economic value of the Flea Market but the cultural value as well. This information will be important for a future investor or developer or philanthropists who may wish to support the efforts. The public market operations research is intended to inform the stakeholders on potential public market models, including design, ownership, financial, and operational factors. The aim of the alternative site assessment is to provide analysis and due diligence determining if there are potential sites for market alternatives. This includes strengths and weaknesses of potential locations and costs to assess feasibility. This analysis can inform both the design of the on-site market concept and the variables considered as part of the alternative site assessment (e.g., size, parking, location, etc.).

The third element of the budget is funding for language access and direct outreach costs. Many of the vendors speak primarily Spanish or Vietnamese, and engaging them in the process requires translating materials, providing professional interpretation, and utilizing bilingual staff to respond to inquiries and facilitate discussions. Of the \$25,000 previously allocated, staff has expended \$12,598 on language access and outreach costs primarily associated with the large February event.

Staff posted the recommended framework for the initial \$500,000 to the vendor website in January 2022 and shared it at the vendor outreach event in February 2022. A key theme was ensuring that the City understand and address the most urgent needs of vendors related to sustaining their businesses. There was general support for the recommended budget and interest in participating in the process moving forward. Staff then moved forward with developing and posting two requests for proposals (RFPs) to procure consultants; one for the Advisory Group process and one to conduct the economic studies.

ANALYSIS

Vendor Advisory Group

As stated previously, the intent of the Advisory Group is to ensure the Flea Market vendors have a meaningful voice and role in determining the use of the Transition Fund and guiding the development of the urban market concept. The group will consist of representatives of the property owner/developer, the City, and Flea Market vendors with the vendors comprising a supermajority of the Advisory Group.

Staff developed an RFP seeking a consultant to assist staff with the formation of the Advisory Group. The consultant will manage the process of engaging stakeholders in drafting the Advisory Group's charter, leading the related public involvement efforts, presenting the Advisory Group charter to City Council for approval, preparing any associated deliverables, and coordinating with other departments such as the City Clerk and City Attorney's Office. With a charter in place, the next step will be to select the specific Advisory Group members. The consultant will assist with outreach to advise community members and stakeholders about the selection process. The consultant scope includes the option to facilitate the Advisory Group meetings after selection of its members has been completed. The current target for City Council consideration of the Advisory Group charter is end of the calendar year, with selection of its members occurring in early 2023.

Staff posted the RFP on May 31, 2022. Four consultant teams submitted qualified bids by the deadline of June 27, 2022. A review panel consisting of City staff, an outside subject matter expert, and a vendor representative reviewed the proposals, interviewed the top scoring consultant, Baird + Driskell Community Planning, and made the recommendation to award the contract to Baird + Driskell. Baird + Driskell has been designing and facilitating participatory processes for over 25 years, helping to ensure that those who will be affected by decisions are meaningfully engaged in informing and shaping them. They have extensive experience in designing advisory group structures and processes, facilitating stakeholder engagement, and mediating contentious conversations to build understanding and consensus.

In its proposal, Baird + Driskell identified the importance of establishing trust while "designing, managing, and facilitating a multi-stakeholder process to collectively develop the Advisory Group Charter. [This] is to include articulating the Advisory Group's purpose, size, and composition, selection process and decision-making protocols." The selected consultant anticipates a mix of community meetings, targeted equity outreach, focus group sessions, pop-up events, and a community survey as part of its plan.

Staff checked references for Baird + Driskell Community Planning with the City and County of San Francisco, City of San José, and Salt Lake City Community and Neighborhoods. All references provided excellent feedback, particularly regarding Baird + Driskell's extensive experience with complex meeting facilitation/mediation and multi-cultural outreach. For instance, in Salt Lake City, Baird + Driskell developed a gentrification study and displacement mitigation plan, which involved 70 one-on-one, in-language interviews; five focus groups; seven youth workshops; and multiple meetings with a community working group and city steering

committee. In San Francisco, Baird + Driskell was brought in to facilitate discussions between Mission District stakeholders, nonprofits, and residents amid rising concerns over gentrification and displacement. The outcome was the Mission Action Plan, which identified scores of policies and projects ranging from protecting legacy businesses to tenants' rights. Baird + Driskell is currently working with the City of San José's Housing Department on the Community Opportunity to Purchase initiative, facilitating a technical advisory and broader stakeholder group to explore this policy.

Staff posted the Notice of Intended Award on August 1, 2022, and the protest deadline expired on August 12, 2022. Staff is prepared to execute the contract with Baird + Driskell for \$124,500 and begin the work of drafting the Advisory Group charter, upon City Council's approval of the recommended budget actions in this memorandum.

Study Work: Economic and Cultural Impact, Market Operations, and Site Analysis

Staff worked with vendor representatives and community leaders to develop conceptual scopes for an Economic and Cultural Impact Study and two additional studies (market operations and alternative sites) that were incorporated into an RFP. The analysis into each of the inter-related subject areas will help answer key questions, assess feasibility, and guide decisions towards key objectives. For instance, the Economic and Cultural Impact study (Package 1) will shed light on the direct and indirect economic power of the market and its impact on the communities it comprises. It will assist the City, prospective developers, operators, funders or other partners in understanding its value from an economic, social, and cultural standpoint. The public market operations research (Package 2) will identify market operational models appropriate to different site alternatives. The alternative site assessment (Package 3) will explore possible sites that could receive significant segments of market vendors under various scenarios. Importantly, the RFP requested proposers significantly involve the vendor community in the work. Staff will coordinate the economic studies with the Advisory Group process and overall outreach efforts.

Staff posted the RFP on April 25, 2022. Consultants were allowed to propose for one or more of the three packages. Two consultant teams submitted qualified bids by the deadline of May 27, 2022. Estolano Advisors, acting as the prime contractor, proposed for all three of the available packages. BAE Urban Economics, also acting as the prime contractor, proposed on one of the packages (Package 3). A review panel consisting of City staff, outside subject matter experts, and vendor representatives reviewed the proposals and interviewed both vendor teams. Estolano Advisors was the high scorer across all three packages and was invited to submit a Best and Final Offer for each package. Based on this process, staff made the recommendation to award the contract to Estolano Advisors. A Notice of Intended Award was posted on August 1, 2022, and the protest deadline of August 12, 2022, passed with no protest received.

The costs for the proposed studies are in line with staff's budget of \$350,000. This amount is based on the current market for consultants and other economic or feasibility type studies of this scale that include significant community outreach. They are provided below:

Fig. 1: Proposers' Costs for Suite of Flea Market Studies

| Consultant | Package 1: Economic and Cultural Impact Study | Package 2: Public Market Operations | Package 3: Alternative Site Analysis |
|-------------------|---|-------------------------------------|--------------------------------------|
| Estolano Advisors | \$184,387.50 | \$91,816 | \$73,435 |

While the City did not receive multiple proposals for each package by the deadline, the review panel generally felt Estolano Advisors submitted strong packages bringing together qualified and creative subcontractors to assist in economic analysis, real estate/site analysis, and culturally competent community outreach. The team includes Strategic Economics, Mariposa Planning Solutions, Inclusive Action for the City, and Greensfelder Commercial Real Estate. Estolano Advisors' proposal will employ direct interviews, surveys, focus groups, and creative data procurement to accomplish the tasks set forward in the requested scopes. Special focus will be paid to the unique needs and implications for immigrant entrepreneurs.

Staff conducted reference checks for Estolano Advisors with Prosper Portland, the City of Oakland, and Google, Inc. All references provided positive feedback. In Portland, Estolano Advisors provided technical expertise and advice on socially equitable process, tools, and outcomes related to the redevelopment of the Broadway Corridor, a 34-acre redevelopment site in the central city. In Oakland, Estolano Advisors has been assisting with development of a community benefits plan related to the Howard Terminal ballpark project. In San José, Estolano Advisors worked on behalf of Google Inc. to support research and stakeholder outreach to develop an innovative community stabilization fund. All references lauded Estolano Advisors' project management and extensive and effective community engagement, depth of understanding of equity issues, and ability to find creative solutions and navigate diverse viewpoints.

Recommended Budget Actions

The recommended actions will allow staff to rebudget unexpended funds from 2021-2022 to 2022-2023 from the Berryessa Flea Market Vendor Business Transition Fund. The City received \$500,000 from the property owner and it was recognized and appropriated in 2021-2022. It was anticipated that the funds would be fully spent in 2021-2022, but because more time was necessary to develop the RFP scopes and ensure an adequate response for proposals, the funds will now be spent in 2022-2023. Normally this rebudget action would be included as part of the 2021-2022 Annual Report that will be brought forward for City Council approval in October 2022, but given the urgency of starting the consultant work, staff is recommending that City Council approve this early rebudget as part of this memorandum.

Staff is also seeking approval to reallocate \$100,000 from the Berryessa Flea Market Vendor Business Transition Fund Reserve (which currently has \$2.5 million) to the Berryessa Flea Market Vendor Business Transition Fund appropriation to provide adequate coverage for future direct outreach expenses. This will supplement the \$25,000 that was originally allocated for this purpose. Based on outreach and engagement efforts to date, additional in-person and creative outreach/engagement techniques are needed to more effectively reach and engage the Flea Market vendor community. For example, most vendors are first-language-not-English speakers,

which requires dedicating resources to language access. In addition, staff has a better sense of the frequency and amount of in-language and multi-lingual stakeholder engagement meetings that will be required for the Advisory Group process and the economic studies.

CONCLUSION

Over the past year, OEDCA staff has worked closely with the Berryessa Flea Market Vendor Association and wider vendor community to carry out the direction that City Council provided in June 2021. The work and analysis recommended above will provide an understanding of the many benefits of the market and provide alternatives and recommendations on how the market can evolve. Given the potential for closure to occur as early as July 2024, advancing the City Council-directed actions supports the goals and objectives of the City Council and the community.

This includes:

- Establishing and facilitating the Advisory Group;
- Conducting studies on the existing Flea Market, potential operating models, and potential on-site configurations for the five-acre urban market and alternative types of locations; and
- Continuing to inform and engage the vendor community about the status of the development project and business support options.

The Berryessa Flea Market represents a unique cultural and economic engine for the entire region. Approval of the recommended actions will allow staff to continue ramping up efforts to support the vendor community as it faces transition over the coming years.

EVALUATION AND FOLLOW-UP

Per City Council direction, staff will come back to City Council to seek approval for the Advisory Group membership and its charter, as well as any other future allocations from the Transition Fund for other purposes. In addition, City Council directed staff to report back on potential scenarios and locations for the vendors.

In accordance with the rezoning, any planned development permit that includes market-rate dwelling units on the Flea Market site can be approved only after, or at the same time, that a planned development permit that includes the new five-acre urban market space is brought to City Council. This includes completing a reasonable evaluation of the financial feasibility of a denser/multi-level urban market and associated parking.

Staff plans to keep the City Council and community updated in other ways. Staff's work plan includes updates to be provided twice a year to the City Council's Community and Economic Development Committee on the status of the work with vendors at the Berryessa Flea Market, as

well as progress on the redevelopment of the site itself. The next update is expected at the September 26, 2022 Community and Economic Development Committee meeting, which augments quarterly reports that the property owner is required to submit to the City, and which are being posted on www.sjeconomy.com/fleamarketvendors.

CLIMATE SMART SAN JOSE

The recommendations in this memorandum have no direct effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memorandum will be posted on the City’s Council Agenda website for the August 30, 2022 City Council meeting.

Staff worked with vendor representatives and community leaders to develop the framework for the \$500,000 provided by the property owner. Staff also conducted outreach to the Flea Market vendor community at a February 23, 2022 meeting held at the Berryessa Flea Market, during which the framework for the \$500,000 was shared and discussed.

Staff advertised the RFPs to potential proposers through the Biddingo system and social media.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office.

COST SUMMARY/IMPLICATIONS

The recommended actions will appropriate \$575,000 to the Transition Fund to fund the two consultant agreements that will assist staff in setting up the new Advisory Group, to conduct three inter-related studies, and to provide language access services to the vendor community. This increase will be funded in the General Fund by a rebudget of unexpended 2021-2022 funds that were previously allocated to the Transition Fund of \$475,000 into 2022-2023, by a reallocation of \$100,000 from the Berryessa Flea Market Vendor Business Transition Fund Reserve.

BUDGET REFERENCE

The table below identifies the fund and appropriations to fund the contract recommended as part of this memo.

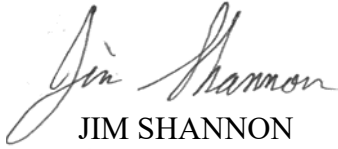
| Fund # | Appn # | Appn Name | Current Total Appn | Rec. Budget Action | 2022-2023 Proposed Operating Budget Page* | Last Budget Action (Date, Ord. No.) |
|--------|--------|---|--------------------|--------------------|---|-------------------------------------|
| 001 | R999 | Beginning Fund Balance | \$507,133,721 | \$475,000 | N/A | 06/21/2022, Ord. No. 80592 |
| 001 | 221R | Berryessa Flea Market Vendor Business Transition Fund | \$10,000 | \$575,000 | N/A | 06/21/2022 Ord. No. 30790 |
| 001 | 8734 | Berryessa Flea Market Vendor Business Transition Fund Reserve | \$2,500,000 | (\$100,000) | N/A | 06/21/2022, Ord. No. 30790 |

* The 2022-2023 Adopted Operating Budget was approved on June 14, 2022 and adopted on June 21, 2022 by the City Council.

CEQA

Not a Project, File No. PP17-003 - Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

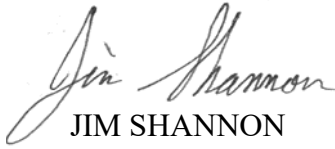
/s/
 NANCI KLEIN
 Director of Economic Development
 and Cultural Affairs



JIM SHANNON
 Budget Director

For questions, please contact Lori Severino, Assistant to the City Manager, 408-535-3537.

I hereby certify that there will be available for appropriation in the General Fund in the Fiscal Year 2022-2023 moneys in excess of those heretofore appropriated therefrom, said excess being at least \$475,000.



JIM SHANNON
 Budget Director