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Civic Center Complex

OVERVIEW

On Wednesday, June 10, 2009 the Rules Committee will hold a second hearing on the Civic Center Complex and possible occupancy alternatives for City staff located in the Downtown area. This discussion on the future of the Civic Center Complex transcends multiple administrations and has resulted in numerous studies with little action to address known deficiencies with the current facilities.

The purpose of this report is to provide background on the City's efforts related to the Civic Center redevelopment; review the information on non-redevelopment options provided by the consultants hired by CCDC; and provide additional information to augment what has already been provided to the City Council. In addition we review one of the Redevelopment proposals presented by Gerding Edlen (GED). For our analysis we have relied on the numbers presented by Jones Lang LaSalle (JLL) and peer reviewed by Ernst & Young. We believe the processes used by both firms were thorough. However, we would note that all of the scenarios are based on future assumptions and that these alternatives could significantly change depending on market conditions and the timing of the final decision by the City Council on what course of action to take.

Background

In 1991, Gruen & Gruen Associates produced a report entitled "Asset Management Strategies for the City of San Diego Concourse Properties and Obtaining Municipal Space." The report recommended a short term strategy of leasing or purchasing existing office space to capitalize on the favorable market conditions at the time. The strategy was intended to mitigate costs during the period necessary to develop a long-term strategy for a permanent civic center. The City adopted and implemented this strategy by negotiating lease terms for downtown occupancy through 2014.

In 1996, Gruen & Gruen completed a "Phase II – Master Plan Report: Alternatives and Occupancy Costs." The report recommended that the City build a new City Hall to replace the current City Administration Building and acquire an existing building to house City staff in the future. In 2000, the Civic Center Master Plan Phase II was completed and then revised in 2001 to incorporate the market conditions at the time, space requirements, growth projections, and occupancy costs into an analysis of six alternatives. An economic model was created that analyzed the relationship between total occupancy costs for 25 years for the six alternatives. The model determined that based on the existing market conditions at the time (2001-2002) and projected market conditions, the rehabilitation and continued leasing of large amounts of space was not the most cost-effective option.

In July 2003, a task force consisting of the Downtown Partnership, Centre City Development Corporation (CCDC), and the Real Estate Assets Department was created at the direction of the Rules Committee to review the Gruen & Gruen reports and to develop guiding principles for a long-term strategy for a new Civic Center Complex. After review of the reports the task force determined that the condition of the City Administration Building (CAB) was substandard but due to the favorable lease rates in the near term, the cost to provide new City-owned buildings would exceed the occupancy and leasing costs.

In addition to the discussion on the future of the Civic Center Complex, for years the City has also grappled with a course of action to address the deficiencies of CAB. An example is the decision to install a fire sprinkler system in CAB. In 1986, the Mayor and City Council passed an ordinance requiring fire sprinkler retrofitting for high rise buildings with exemptions for government buildings except those owned by the City of San Diego. Since that time, fire sprinklers have been installed and are operational on five of the CAB's fifteen floors. However, full compliance with this public safety requirement has been delayed several times over the years to avoid this expenditure given the prospect of a new City Hall. On March 10, 2009 the City Council approved extending the compliance date for sprinkler retrofitting of high rise buildings to February 1, 2010. As part of the motion, the City Council directed the Mayor to issue a request for proposal (RFP) by June 1, 2009 to install fire sprinklers in the remaining floors of CAB.

As illustrated by the information provided above, the City has continued to make short term decisions concerning the future of the Civic Center Plaza without a long-term plan. Simply put, the question that needs to be answered and has not been in the last twenty years is whether the City should continue to remain in the existing facilities and expend funding to bring them up to an acceptable level or move forward with a new City Hall. Either option will require the City to expend capital resources that are currently not projected in the City's long-term financial plans but are ultimately unavoidable.

FISCAL/POLICY DISCUSSION

The following sections provide our review of two Non-Redevelopment Scenarios, the "Hold Steady" and "Full Renovation", and Gerding Edlen's (GED) Alternative "D" for the redevelopment of a New City Hall. We have chosen to review these alternatives based on the discussion and questions at the May 27 Rules Committee meeting, and in the case of GED's Alternative "D," it was selected as it discretely reflects only a new City Hall, with no other development elements.

Non-Redevelopment Scenarios

"Hold Steady" Option (Alternative 5)

Jones Lang LaSalle (JLL) hired the architectural, planning and engineering firm of DMJN H&N / AECOM Design (DMJN) to conduct a comprehensive condition assessment of the four City-owned structures located within the Civic Center. These include CAB, the Concourse, the City Operations Building (COB), and the Evan Jones Parkade. Based on their analysis, it will cost the City approximately $19.5 million ($12.1 million City Administration Building, $3.4 million Concourse, $3.2 million, City Operations Building, $800K Evan Jones Parkade) to complete the minimum required repairs and replacements to maintain building safety and functionality for the next five years. If the City were to pursue the 10 year "Hold Steady" option, minimum maintenance repair costs will increase from $19.5 million to $40.1 million ($16.4 million City Administration Building, $13.3 million Concourse, $7.4 million City Operations Building, $3.0 million Evan Jones Parkade). These estimated expenses reflect the minimum required repairs and replacements to maintain building safety and functionality until the possible delivery of a new City hall within five to ten years.

The cost estimates assume that the facilities will be at the end of their useful lives in either five or ten years based on the level of repairs. In addition, consideration should be given to the risks associated with employees being housed in substandard facilities. A significant part of the $40.1 million is related to fire and life-safety needs. The $40.1 million does not include costs associated with seismic retrofit so it is unclear if even after the City expended the $40.1 million, the buildings could be occupied following a significant natural disaster. In addition, it is unclear what the City's liability would be if only the minimum required repairs are addressed. In a February 19, 2009 City Attorney response to a City Council question on the potential liability from extending compliance with fire sprinkler requirements, the City Attorney responded that:

> "Generally, a City – like all governments – is immune from tort liability except as provided by statue under the state Government Claims Act. However, there are certain statutory exceptions to immunity such that a city may be held liable for failure to discharge a mandatory duty, for maintaining a hazardous condition on city property, and/or public nuisance."

Additionally, if one or more of the Civic Center structures were to experience a major failure of electrical, mechanical, or power plant facilities, the City would likely have to evacuate the structures for an extended period of time. This would result in significant costs and public inconvenience. It is unclear if the City has a business continuation plan in place and an estimate of expenses to address a catastrophic event.

With the possibility of unanticipated facility failures and the potential liability tied to public or employee risks, the estimated $40.1 million in minimum repair costs could increase dramatically over ten years of continued utilization. In addition, the City would still be required to expend $17.2 million annually in lease and operating expenses due to the lack of office space in CAB, COB, and the Concourse to house City employees located in the Downtown area. Finally, even if the $40.1 million in repairs were completed, the City will still need to develop an alternative to the existing facilities in ten years at possibly increased costs. Under this assumption, JLL estimates development costs of the new City Hall in ten years to be $393.1 million for a 720,000 sq. ft. facility. However, this figure does not include costs associated with minimal repairs on the current facilities, continuing leases until the new City Hall is built, and debt service payments if construction is to be financed. The 50-Year total Gross Obligation for the "Hold Steady" option is estimated at $2.3 billion.

Full Renovation of Existing Facilities & Continue to Lease (Alternative 3)

The complete renovation and upgrade of existing City facilities located in the Civic Center Plaza to house the maximum number of employees has been studied and rejected by JLL and CCDC as a recommended option. Total renovation costs for CAB, COB and the Concourse (if rehabilitated as an Exhibit Hall) are estimated to range from $119.0 to $138.0 million including seismic retrofit. Theoretically this renovation would extend the life of these buildings an additional 30 years. While the renovation would not change the total amount of usable office space (368,000 square feet), a major reconfiguration could result in more efficient use of the space and the ability to house significantly more employees. Currently 1,000 employees occupy the two large office buildings (CAB and COB) which equates to roughly 368 square feet per person, double the 180 square feet that is considered today's standard in newer facilities. It is neither feasible nor desirable, due to constricted floor plates and other existing conditions, to achieve today's lower space standards in these poorly designed facilities. However, the alternatives considered by JLL do offer that reconfiguration could achieve a space standard of 225 square feet per person. Applying this standard, after renovation CAB and COB could house 1,635 employees, 635 more employees than they house today as shown in the chart below:

Facility	Occupied Sq. Ft.	FTE (Average 368 sq. ft. per staff member)	FTE (Average 225 sq. ft. per staff member)
CAB	174,000	600	773
COB	194,000	400	862
Total:	**368,000**	**1,000**	**1,635**

However, it is important to note that after expending the estimated $119.0 - $138.0 million to renovate CAB, COB and the Concourse, this option falls far short of the City's total space needs. An additional 250,000 square feet of usable office space would still be needed to house 1,405 employees. Two highly desirable goals of the new Civic Center project would not be accomplished including: 1) eliminating the need for leased office space in the short term as well as the long-term; and 2) maximizing consolidation of City functions to eliminate duplicate functions, achieve operational efficiencies and increase convenience for our residents. To address the shortfall in space under the full renovation option, JLL considered combining renovation with the following options or variations thereof:

Option	Additional Space Provided	30 Year Cost (millions)	Meets Space Needs
Continue to lease Civic Center Plaza	243,000	$365.5	Maybe
Acquire and renovate Civic Center Plaza	243,176	$109.3[(1)]	Maybe
Convert Concourse from Exhibit Hall to Office Space	136,000	$18.0[(2)]	No
Lease Suburban Office Space	250,000	TBD	Yes

[(1)]Assumes purchase price of $250 per sq. ft and additional $48.5 million of additional costs to renovate building to new building codes, including seismic retrofit, security upgrades and conversion of the space to the new workspace standards. (JLL Alternative Scenarios to Redevelopment, December 15, 2008, Page 26)
[(2)]JLL Alternative Scenario to Redevelopment, December 15, 2008, Page 25

While numerous and realistic shortcomings have been articulated in CCDC and JLL reports along with those cited above, the Renovation Option is a 30 year solution at best as compared to new construction which is expected to last up to 50 years. Under the Renovation Option, at the end of 30 years, the City will be in the same position it is in today- owning three buildings that have no more useful life and tethered to the leasing of office space to house core businesses of the City.

JLL estimates development costs of the new City Hall in 30 years to be $445.0 million for a 849,000 sq. ft. facility. However, this figure does not include costs associated with minimal repairs on the current facilities, continuing leases until the new City Hall is built, and debt service payments. The 50-Year total Gross Obligation for the Full Renovation of Existing Facilities alternative is estimated to be $3.9 billion.

Currently, the City is addressing other deferred maintenance needs using a combination of Lease Revenue Bond financing, Land Sales, State Funds, and cash. The current deferred maintenance plans do not include funding for the $19.5 to $40.1 million in minimum required repairs. As we reported in our review of the Mayor’s Fiscal Year 2010 Proposed Budget (IBA Report # 09-37) $189.2 million in funding from Bond financing, Land Sales, State Funds, and cash has been budgeted for deferred maintenance since Fiscal Year 2008 but this funding is for other pressing needs.

In March 2009 the City issued $102.7 million of Lease Revenue bonds for Deferred Maintenance projects. Additionally, the Mayor’s Five-Year Financial Outlook for Fiscal Years 2010-2014 anticipates an additional $204.6 million in bond financing for deferred maintenance. The Five-Year Financial Outlook includes $32.4 million in debt service payments for the bonds. It is unclear if projects have already been identified for the $204.6 million in additional bond funds over five years. However, given the $800 - $900 million backlog in deferred maintenance projects, it is not realistic to expect that the repairs to the existing Civic Center Plaza facilities would take priority over critical community infrastructure projects.

Another funding alternative for the Renovation option is leveraging the savings from not having to pay annual lease payments for some of the Downtown facilities that City employees are currently housed in. Under this option it may be possible to eliminate leasing of 600 B Street and the Executive Complex at an annual savings of $6.80 million.

Redevelopment Scenarios

The GED proposal includes redevelopment of the four City-owned buildings within the Civic Center Complex in three phases. The GED proposal is a "multiphase development consisting of a new, modern and efficient City Hall, with flexible and high quality public spaces, vibrant mixed-use private development, subterranean parking, public art, affordable housing, a new fire station, and a phasing plan that minimizes disruption to City employees and operations."

Phase I of construction includes the development of a 964,756 sq. ft. City Hall, 1,576 space parking structure, separate Council Chambers/Customer Service Center, a public plaza, and 19,060 sq. ft. of retail space. The estimated development costs for phase one development (Gerding Alternative "D") is $439.8 million. This figure does not include costs associated with minimal repairs to the current facilities, continuing leases until the new City Hall is built, and debt service payments. The 50-Year total Gross Obligation for GED Alternative "D" is estimated to be $2.1 billion.

With a new 964,756 sq. ft. City Hall the City would be able to move staff currently located in all three leased facilities into the new building. Currently, the City occupies over one million square feet of office space between City owned and leased facilities. In a Facilities Needs Assessment review of the City's future office space needs, Gensler Architects estimated that 706,440 gross space would be needed for 3,140 Projected Downtown Staff Positions in 2013. This estimate is based on 180 sq. ft. per FTE. Based on information provided by Gensler, the City's current average rate for all Downtown facilities is 315 sq. ft. per FTE. Gensler estimated that in the year 2063 the space requirements would grow to 898,316 sq. ft. However, as noted in CCDC's May 20, 2009 report to the Rules Committee, this estimate does not take into consideration the possibility of future staff reductions. Under the GED proposal the City would not need to use the full 964,756 of office space until after 2063. GED proposes to rent out the excess space on behalf of the City until the additional office space is needed.

Phase II and III of the GED proposal includes the development of three additional buildings that would include two million square feet of additional private development including private office space, residential units, retail space, and additional parking. If the City's office space needs exceed the 964,756 sq. ft. in the proposed new City Hall, the City could access additional space in one of the other buildings proposed to be built as part of Phase III. In addition, Phase III proposes locating Fire Station #1 in the mixed-use tower. Additional information on Fire Station #1 is included below.

In our review of the GED proposals the IBA focused on the Phase I development (Alternative "D"). Our office did discuss with CCDC staff the possibility of not including the underground parking in the Phase I development and continuing to rely on the Parkade for parking needs. The Phase I development includes $44.0 million in expenses related to the underground parking. CCDC staff pointed out that the Parkade currently provides parking for 1,100 cars and due to the number staff located in the new City Hall, 1,519 spaces with GED proposing 1,576 spaces. This option could be reconsidered if the size of the proposed new City Hall is reduced.

In addition to the financial consequences of the GED proposal there are positive impacts of redevelopment that should be considered. These include impacts on the environment, convenience for the public, operational efficiencies, and quality of life improvements for employees. Many of these benefits would not be able to be achieved with the non-redevelopment alternatives.

Financing option for GED Proposal

The GED proposal includes three different financing options, two of which include the issuance of debt under Internal Revenue Service Ruling 63-20. The City of San Diego has not previously utilized a 63-20 financing mechanism. The GED proposal offered this tool as the preferred option, although their proposal also describes the use of Certificates of Participation, a financing tool the City of San Diego has used a number of times in the past. CCDC's report indicates that other financing instruments and structures exist and were not evaluated, and they recommend consideration of all possible alternatives during any potential negotiations.

The California Debt and Investment Advisory Commission's California Debt Issuance Primer (CDIAC) describes the structure of 63-20 financings using a nonprofit corporation, as follows:

> **Nonprofit Corporations.** In the event public lease revenue bonds are issued by a single purpose nonprofit corporation on behalf of a public entity, the nonprofit corporation's purposes and activities must comply with IRS Revenue Ruling 63-20. In addition, IRS Revenue Procedure 82-26 identifies specific circumstances and fact situations in which the tests outlined in Revenue Ruling 63-20 will be deemed met. In general, the following conditions must be met by the nonprofit corporation for interest on its bonds to be tax-exempt:
>
> - The nonprofit corporation must engage in activities that are essentially public in nature
> - The corporate income may not benefit any private person
> - The governmental unit must have a beneficial interest in the corporation while the indebtedness remains outstanding

- The governmental unit must obtain full legal title to the property with respect to which the indebtedness was incurred upon retirement of the indebtedness

Furthermore, a number of special, detailed limitations and requirements are set forth in Revenue Procedure 82-26 and apply to these types of financings. These limitations and requirements do not apply to the other lease revenue bonds structures and can make this structure quite cumbersome and limiting.

In addition, CDIAC's guidelines for leases and Certificates of Participation, which are to be used by California state and local agencies, states that public officials enjoy broad latitude over tax-exempt leasing decisions which can engender suspicion on the part of the public, and they recommend implementing procedures for soliciting public review and comment on tax-exempt leasing proposals. In a 2006 State of Washington Report on 63-20 Capital Projects Financing, it was noted that much transparency is lost with this method of financing, and it also discusses that this financing mechanism is used to free agencies (in Washington) from the constraints of public works laws. 63-20 financings are also described as incurring higher financing and issuance costs than are found with other financing mechanisms.

The IBA recommends that the proposed financing mechanism and alternative methods be carefully evaluated and compared by the City's Debt Management Department, with consideration given to concerns that have been identified, should this proposal move forward.

The table on the following page compares the two non-redevelopment options and the GED proposal (Alternate "D") discussed in this report:

Cost Comparison	Hold Steady (JLL Alternative #5)	Alternative 3 Full Renovation and Continue to Lease	Gerding Edlen Alternative 'D'
New City Hall Costs (Millions)(1)	$393.1	$445.0	$439.8
50-Year Total Gross Obligations (Billions)(2)	$2.3	$3.9	$2.1
Square Feet Comparison			
Proposed Square Feet (New City Hall)	720,000	849,000	964,756
Estimated Required square ft FY 2013	706,440	706,440	706,440
Net Difference:	**13,560**	**142,560**	**258,316**
Years facility viable	**60**	**80**	**50**

(1) This figure does not include costs associated with minimal repairs on the current facilities, continuing leases until the new City Hall is built, and debt service payments.

(2) Information based on 50 Year Summary information provided by JLL.

Other Items to Consider

City's Emergency Operations Center

Currently the City's Emergency Operations Center (EOC) is located in COB. During times of disaster, the Emergency Operations Center is the central command and control location for the City's operations. As noted in CCDC's May 20, 2009 report the EOC is in poor physical condition and is located on a site in close proximity to a known active seismic fault. The EOC also requires enhanced infrastructure as mandated by the State of California's Essential Services Building Act. The Act requires that building providing essential services be capable of providing those services to the public after a disaster, and also requires such buildings to be "….designed and constructed to minimize fire hazards and to resist the forces of earthquake, gravity and winds."

The GED Redevelopment proposal does not assume that the EOC will be located in the current location or in the redevelopment footprint. Additionally, it is unclear if the City would be able to continue to operate the EOC in its current location if COB underwent a renovation. Regardless of the decision on the future of the Civic Center Complex, it is likely that the City will need to expend capital resources to either upgrade the current facility or relocate it to another site. For comparison purposes, the City of San Antonio, Texas, completed a new EOC in 2007 at a cost of $24.5 million. In addition, the County of San Diego built their EOC, located in Kearney Mesa, in 1998 for $6.6 million. However, the County already owned the property where the facility is located.

Fire Station #1

Similar to the City's Emergency Operations Center, Fire Station #1 is located in COB. Fire Station #1 is the main fire station for Downtown. As noted in CCDC's May 20, 2009 report to the Rules committee, the fire station is in very poor condition and even if rehabilitation were to occur the facility would not be large enough for long term use. The estimated costs to replace Fire Station #1 are $42 million. This includes $36 million for construction and $8.8 million for land acquisition. In their Fiscal Year 2009 Annual Budget, CCDC included $10.1 million for property acquisition for Fire Station #1. GED's redevelopment proposal includes a new Fire Station #1 in the 30 story mixed-use tower. However, the City/CCDC would be responsible for the $36 million in construction costs. It is important to note that Fire Station #1 would fall under the Essential Services Building Act requiring enhanced infrastructure. It is unclear if the GED proposal takes into consideration the requirement of enhanced infrastructure and any increased costs associated with the more stringent building requirements.

Main Library

Councilmembers Frye and DeMaio, among other stakeholders, have raised the possibility of incorporating a new Main Library into the new Civic Center design. The current design for the new Main Library began in Fiscal Year 2001 and construction was scheduled to begin as soon as private funding was secured. However, the development presently faces obstacles that have delayed the project. The cost of the library development was most recently estimated in 2006 at $185 million and costs have most likely increased since this estimate. Current known funding consists of $80 million from CCDC, $20 million in grant funds from the State of California Library Foundation and $33 million in private funding. As noted in our Review of the Fiscal Year 2010 Budget, the California State Library Foundation has extended its commitment of the $20 million to July 1, 2009, pending satisfactory progress on the project. Recently, the San Diego School District pledged to contribute an additional $20 million to the new main library project, although legal options for including a school in the Library have not been finalized.

The current design for the new East Village location consists of a nine-story, 500,000 sq. ft. facility with 250 underground parking spaces. Approximately 360,000 sq. ft. of this space is dedicated as library space. In addition, the design includes a 350-person auditorium of approximately 5,000 sq. ft., a 4,000 sq. ft. multi-purpose room, gallery space and a small café. The remaining space is slated to be leased out as office space. A discussion regarding the current and future needs of the Main Library would be necessary before evaluating the possibility of combining the two facilities. For example, would the library require an auditorium or a multi-purpose room if one could be shared with the City within the Civic Complex?

Other considerations in addition to savings by consolidating space could include the possible sale of City-owned property currently planned for the New Main Library. The

City owns the 70,000 sq. ft. site on 11th and J Street designated for the new library. Additionally, when the library relocates, the City will have the old 144,000 sq. ft. facility and its 30,000 sq. ft. site on 8th and E Street. Both of these resources could be available for City disposal if the New Main Library was incorporated into a new Civic Center design.

Irving Hughes Concerns with Lease Assumptions

In a May 12, 2009 memorandum to the Mayor and City Council, the commercial real estate firm of Irving Hughes expressed their concern with the lease assumptions used in JLL's financial analysis. On May 19, 2009, JLL responded to Irving Hughes concerns. Due to the magnitude of the project and the financial implications, ***the IBA recommends the City's Real Estate Assets Department provide a third party review of Irving Hughes concerns and JLL's response and render an opinion regarding the two alternative positions.***

Charter Section 90.3

In a May 26, 2009 Memorandum to the Mayor and City Council, Councilmember Carl DeMaio expressed concern that GED's three Phase redevelopment proposal could require a vote of the people for approval. City Charter Section 90.3 states:

> "The City may not enter into the agreements necessary for financing, development, and construction of a major public project that confers a significant private benefit, unless that project is submitted to a vote at a municipal election and a majority of those voting in that election approve the project."

The IBA agrees that the impacts of the GED proposals and the requirement of a vote of the electorate needs to be seriously explored. For example, GED proposes to lease the surplus office space in the new City Hall on behalf of the City. By entering into an agreement with GED, would the City be conferring a private benefit? Additionally, two of GED's proposals assume that the City would lease property to the developer if the residential building and mixed-use tower were to be built. By leasing the property to GED for the two facilities would this be considered "conferring a significant private benefit?" It is important that these questions are fully vetted by the City Attorney before pursuing an exclusive negotiation agreement. The answers to these fundamental questions could change the scope and ultimate viability of the proposed redevelopment alternatives.

Regardless of the legal perspective, it may be desirable to take this project to a vote to garner public support and involve the community in this monumental project. It is of the utmost importance that the financial viability of this project holds up to public scrutiny ensuring a transparent process. This is similar to the process used to develop PETCO Park.

City's Financial Condition

In February 2008, the IBA released a report on the City's structural budget deficit. The report noted that since Fiscal Year 2003 the City has endured significant budget reductions, employed the use of one-time solutions, and sharply scaled back new programs and program enhancements in order to balance the annual budgets. Persistent use of these measures is indicative of a structural imbalance.

In November 2008, the Mayor released the Five-Year Financial Outlook for FY 2010 – FY 2014. The Outlook presented a sobering view of the City's financial situation, with significant General Fund deficits projected for each of the next five years. In the IBA's review of the Five-Year Outlook, several adjustments were made to the baseline revenue and expenditure projections in order to reflect deficit projections that were more accurate and consistent. These adjustments exacerbated the projected General Fund deficits in each year of the Outlook period, as shown in the table below.

Projected General Fund Deficit

PROJECTED DEFICIT	FY 2010 Forecast	FY 2011 Forecast	FY 2012 Forecast	FY 2013 Forecast	FY 2014 Forecast
Outlook	**$ (44.0)**	**$ (68.3)**	**$ (58.1)**	**$ (33.8)**	**$ (20.6)**
IBA Revised	**$ (50.7)**	**$ (117.1)**	**$ (129.9)**	**$ (119.3)**	**$ (115.4)**

The outlook for budget improvement is bleak and no long-term solutions have been identified or are planned for implementation. Looking forward, it is anticipated that the City will face a budget deficit of greater than $100 million in Fiscal Year 2011 in the General Fund.

However, even with a structural budget deficit over the last several years, the City has dedicated significant funding for many priorities, including the eight significant areas. Given the current state of the Civic Center Plaza facilities and the risks associated with continuing to occupy the buildings, it is unrealistic for the City to continue to wait for financial problems to be solved to begin to address these serious deficiencies.

It is also important to point out that an analysis of the fiscal impacts to the City's operating budget has not been completed by the Mayor's financial staff. Although it is difficult to project out the multiple years that this project would encompass, it is important that they weigh in on the impacts to future year budgets and their ideas on how to fund the required repairs/renovation to the existing facilities or a new City Hall.

ENA – Exclusive Negotiating Agreement

An exclusive negotiating agreement would give the City and developer a specified period of time to negotiate further, and during that time, no other developers could work with the City on this proposed project. The exclusive negotiating agreement does not mean that a specific project has been defined or that it has been approved, nor does it commit either party to initiate or complete a project.

Typical terms of an ENA could include:

- Duration of agreement (could include options to extend)
- Schedule of milestones (items to accomplish during agreement period)
    - Pro formas/financial info
    - Project proposals/revisions
- City obligations/responsibilities
- Developer obligations/responsibilities
    - Access to reports/data
- Outcome to work towards (i.e. Development Agreement)
- Financial contributions during period
    - Exclusivity fees or deposit (maybe refundable)
    - Funding for city and/or developer costs
- Transferability or assignment
- May identify specific parties authorized to communicate/negotiate for each entity
- May require no change to principals without written consent
- May require submission of executed agreements of development team
- Lack of good faith negotiations during period could trigger termination
- May require evidence of project financing by both or either entities
- May describe parties responsible for environmental work
- May indicate land sale purchase price

Based on our review, the IBA recommends the City pursue an ENA with Gerding Edlen. However, we would suggest modifying the requested staff action as presented in the CCDC Report 09-083. This report requests that the Rules Committee recommend that Council execute an ENA, which will be presented to them shortly, upon an affirmative vote of the Committee. Instead, the IBA suggests that the Rules Committee, followed by the City Council, begin discussions with the City's negotiating team on parameters to be included in a successful ENA. The full City Council should have the opportunity to provide input and direction on what should be explored and included, in order to most effectively protect the City's interests and efficiently proceed with the process. Given the enormity of this project and the many considerations, providing detailed parameters in advance of an ENA being presented for approval will ultimately save staff time and effort as well as provide more opportunity for the public and the Council to develop the best possible terms for a potential agreement.

Discussions by both bodies should include the timeline/duration of the agreement, financial and legal obligations and the fiscal considerations of the project, among other terms. Specifically, in order to provide strong protections for the City's interests, the IBA suggests that the ENA:

- Preclude any obligation of the City to reimburse expenses of the developer;
- Provide an adequate timeline for negotiation of the project to accommodate a public vote, should the City Attorney's Analysis deem it necessary;
- Provide financial specifications for the project. For example, the Council may wish to specify that the negotiated project provide a certain amount or percent of savings over the Hold Steady Scenario, or another baseline scenario be achieved, in order to move forward.

Other specifications may be included as well and will facilitate the negotiations of the final ENA, which we recommend returning to Council for a separate vote after their initial discussions. At that time, the City Council may choose to approve the draft ENA, or the Council may reject it at their discretion and discontinue further efforts with GED to develop a new Civic Center Plaza.

Other Cities That Have Developed New Public Facilities

To augment this report, our office reviewed recent city hall and/or government developments in other cities and we have provided a brief overview of these projects as an attachment to this report. The projects detailed in the attachment are among the most recently completed and are also closest to the size and type of development that is proposed in San Diego. That being said, as indicated in the table, the proposed GED development is significantly larger than all, but the County project, which has not yet been completed. Two of the projects that we have highlighted are public/private partnerships.

CONCLUSION

Over the last twenty years the City has continued to make short term decisions concerning the future of the Civic Center Plaza without a long-term plan. In that time period multiple studies have been done that have presented similar conclusions to the ones facing the City Council today. It is clear that the facilities encompassing the Civic Center Plaza are at the end of their useful life. The inaction of previous administrations in regard to deferred maintenance has resulted in health and safety risks to employees and citizens that must be addressed now. Due to this, the IBA recommends that the Rules Committee, followed by the City Council, begin discussions with the City's negotiating team on parameters to be included in a successful ENA. Discussions should include the timeline/duration of the agreement, financial and legal obligations and the fiscal considerations of the project, among other terms. Specifically, in order to provide strong protections for the City's interests, the IBA suggests that the ENA:

- Preclude any obligation of the City to reimburse expenses of the developer;
- Provide an adequate timeline for negotiation of the project to accommodate a public vote, should the City Attorney's Analysis deem it necessary;
- Provide financial specifications for the project. For example, the Council may wish to specify that the negotiated project provide a certain amount or percent of savings over the Hold Steady Scenario, or another baseline scenario be achieved, in order to move forward.

The IBA recommends that, if the City Council elects to pursue the negotiation of an ENA, the negotiating team is directed to designate a representative from the team to meet regularly with the IBA throughout the process.

Additionally, the IBA recommends the following:

- ***That the proposed financing mechanism and alternative methods be carefully evaluated and compared by the City's Debt Management Department, with consideration given to concerns that have been identified, should this proposal move forward.***
- ***The City's Real Estate Assets Department provides a third party review of Irving Hughes concerns and JLL's response and render an opinion regarding the two alternative positions.***
- ***That the Mayor's financial staff completes an analysis of the fiscal impacts of the proposals to the City's operating budget and Five-Year Financial Outlook.***
- ***That regardless of the legal perspective, consideration is given to submitting this project to a public vote to garner public support and involve the community in this monumental project. It is of the utmost importance that the financial viability of this project holds up to public scrutiny ensuring a transparent process. This is similar to the process used to develop PETCO Park.***

[SIGNED]

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Attachment