

- \* 15. On recommendation of Kim Roberts, Acting Executive Director, Santa Clara Valley Health and Hospital System, as noted in memorandum dated August 29, 2006, and on motion of Supervisor Kniss, seconded by Supervisor Alvarado, it is unanimously ordered on roll call vote that Request for Appropriation Modification No. 23 be approved in the amount of \$1,500,000, increasing revenue and expenditures in the Children's Health Initiative Trust Fund budget.

Further, on motion of Supervisor Kniss, seconded by Supervisor Alvarado, it is unanimously ordered on roll call vote that transferring administration of the Children's Health Initiative Trust Fund from the Office of the County Executive to the Health and Hospital System, be approved.

- \* 16. Deleted.

17. The Board considers a memorandum from Peter Kutras, County Executive, Office of the County Executive, dated August 29, 2006, recommending that \$15 million be transferred from the General Fund to the Silicon Valley Theater Financing Corporation (Corporation) to partially offset the increase in development costs caused by delays from the City of San Jose lawsuit; the County Executive be authorized to set aside such funds from the General Fund for the contribution to the Corporation; Resolution be adopted, if agenda Item Nos. 17a and 17b are approved, approving financing for a theater at the County Fairgrounds, approving the form of and delegating authority to the County Executive to complete, execute and deliver a Ground Lease for the theater site and other Agreements relating to the financing, development and operation of the Project; Financial Pro Forma Analysis prepared by Citigroup Global Markets, Inc., and Feasibility Analysis prepared by Economics Research Associates, be accepted; the County Executive be authorized to approve necessary revisions to plans and specifications of the Fairgrounds Infrastructure Project and re-issue the plans and specifications for bidding, accept the bids, and subsequently recommend award of the contract to the Board; Sixth Amendment to Professional Services Agreement be approved for the Fairgrounds Revitalization Project; and, authority be delegated to the County Executive, or designee, to negotiate, approve, execute, amend, and terminate, if necessary, documents relating to the Fairgrounds Revitalization Project and Fairgrounds Infrastructure Project.

Mr. Kutras comments regarding impacts of the construction delays caused by the City of San Jose lawsuit. He speaks of the significance of the Fairgrounds Theater Project and expresses support for timely development of the venue, noting that the Project remains economically viable.

Mr. Kutras directs attention to his memorandum dated August 28, 2006, and advises of an alternative recommendation relating to a \$15 million line of credit to augment bond funding for the Fairgrounds Theater Development Project. He indicates that the proposed line of credit provides for a three-year repayment period, and clarifies that the alternative recommendation requires a majority vote as opposed to a fourth-fifths vote. Mr. Kutras clarifies that the City of San Jose settlement funds will be applied to public projects that benefit the residents of the City and County, for example, to construction of the Crime Lab and seismic upgrades to the County hospital buildings. He further clarifies that the settlement funds will not be used to pay for construction of the Fairgrounds Theater Project, noting, however, that General Fund dollars that have already been allocated to projects like the Crime Lab and seismic upgrades may be re-directed.

John VanZeebroeck, Senior Vice President, House of Blues Concerts, Inc. (HOB), updates the Board on the Fairgrounds Theater Project, stating that the proposed venue fills a void in the marketplace by adding a unique entertainment option to the Bay Area and surrounding areas. Mr. VanZeebroeck advises of the possibility of a merger between HOB and Live Nation, noting the attributes of each of the organizations. He highlights promotional and operational functions proposed for the Fairgrounds Theater Project, and states that the design process includes an emphasis on acoustics, comfort, sidelines and flexibility.

Steve Spickard, Vice President, Economics Research Associates, provides an overview of the feasibility study prepared by Economics Research Associates entitled, "Feasibility Analysis for a Proposed House of Blues Concert Venue, Santa Clara County Fairgrounds," dated August 17, 2006. Mr. Spickard advises that, in addition to demographic and socio-economic characteristics for a strong concert market, the Bay Area has the highest propensity in the Country for attendance at rock concerts. He comments regarding the demand for mid-sized venues and comments regarding the increase in ticket prices, noting that the average ticket price in 2009, the anticipated opening date, is projected to be \$67.50. In addition, Mr. Spickard briefly outlines the business model and physical design of the proposed Fairgrounds Theater Project, including the promotional and operational functions. He comments regarding

potentials for ancillary revenue, including the generation of income from parking, and the sale of food and beverages. Mr. Spickard advises that average paid attendance in 2009 is projected to be 4,620 per event. Patrick Love, Director, Special Projects, Office of the County Executive, clarifies that Economics Research Associates is an independent company that operates nationally and engages clients on a contract basis.

Christopher Mukai, Director, Citigroup Global Markets, Inc., comments regarding financing of the Fairgrounds Theater Project, indicating that conditions in the bond market, as well as interest rates, are optimal. He continues by advising that the financial situation, despite the passage of time, is better now than it was when the Board approved the Fairgrounds Theater Project in 2004. Mr. Mukai also comments regarding fiscal projections, noting that the Project is expected to generate revenue for the County in the sixth year of operation. The Chair requests public comment.

Kevin Kittila, concerned citizen; and, Charles Faas, Chief Financial Officer, Silicon Valley Sports and Entertainment, express opposition to the Fairgrounds Theater Project. Mr. Faas raises questions concerning a report by the Harvey Rose Accountancy Corporation (HRAC) relating to the financial integrity of the Fairgrounds Theater Project, noting a 20-percent deviation from a most-likely scenario. Mr. Faas also expresses concerns regarding revenue projections relating to average ticket price, future demand, and naming rights.

Gary Naillon, concerned citizen, and Thomas Miserendino, Chief Operating Officer, AEG Live, request that the County designate AEG Live to manage the Fairgrounds Theater Project. Mr. Miserendino states that AEG Live is prepared to fund \$15 million to ensure timely completion of the Project, noting the merits of retaining an organization with a financial interest. Mr. Miserendino expresses concerns regarding the proposed merger between HOB and Live Nation, including conflict-of-interest issues regarding the operation of Shoreline Amphitheater by Live Nation.

Ed Voss, Linda Combs, Louis Mendoza, George Shirakawa, Jr., and Ellen Foley, concerned citizens; and, Hung Lai, General Secretary, Coalition of Nationalist Vietnamese Organizations of Northern California, express support for the financing and timely development of the Fairgrounds Theater Project and the Fairgrounds Revitalization and Infrastructure Project. Mr. Voss speaks of community benefits associated with the proposed Fairgrounds Revitalization and Infrastructure Project, including expanded convention and facility use and land development along the Monterey corridor. Ms Combs expresses appreciation to Supervisor Alvarado; Mr.

Kutras; Mr. Love; Kristina Cunningham, Chief of Staff, Supervisorial District 2; and, Office of the County Counsel, for time and effort devoted to the Fairgrounds Theater Project. Ms Combs, Mr. Shirakawa, and Ellen Foley, concerned citizens, advise of the need to renovate the Fairgrounds site as the deferred maintenance issues have caused an increase in building and infrastructure deterioration, including building repairs, and failed electrical and plumbing systems. Mr. Mendoza speaks in favor of the benefits of the Fairgrounds Theater Project, including the parking revenue that will be used for improvements at Franklin-McKinley School. Mr. Lai comments regarding the value of multi-cultural community events at the Fairgrounds, noting that the Vietnamese New Year TET Festival was first held at the County Fairgrounds in 1983. Mr. Shirakawa reminds the Board that the community has always considered the Fairgrounds Revitalization and Infrastructure Project a long-term investment that provides community benefits.

In response to an inquiry by Supervisor Alvarado, Roger Mialocq, Manager, Management Audit Division, HRAC, advises of erroneous information that was recently published by the San Jose Mercury News regarding the financial viability of the Fairgrounds Theater Project. He clarifies that the April 2004 HRAC financial assessment of the theater venue at the Fairgrounds concludes that in 2011, when no one-time costs are incurred and ongoing costs are at their highest, the proposed Theater will generate sufficient revenue to pay the debt service. Mr. Mialocq further clarifies that projected revenues and expenditures would have to drop to 74.79 percent before the break-even point is reached. In addition, Mr. Mialocq comments regarding the \$8.3 million financial reserve dedicated to the Theater Project to ensure reasonable financial protection for the County.

Supervisor Alvarado expresses appreciation to the Offices of the County Executive and County Counsel for due diligence, professionalism and leadership regarding the Fairgrounds Theater Project. She comments regarding the budget-deficit situation, including future State and Federal funding uncertainties, and advises of the need to create the new revenue source that the Fairgrounds Theater will provide. Supervisor Alvarado reminds the Board of their pledge to be entrepreneurial in developing County-owned property and of maintaining the best use of property in the public domain. She further reminds the Board that plans for the Fairgrounds Revitalization and Infrastructure Project were initiated in 1998, when the County collaborated with various community partners to develop the Fairgrounds Revitalization Plan. Supervisor Alvarado comments regarding impacts and construction delays caused by the lawsuit filed by the City of San Jose. She advises of the need to generate income in

an effective way in order to continue to provide quality services to all of the 15 cities situated in the County. Supervisor Alvarado comments regarding the projects that have already been implemented in the Fairgrounds Revitalization and Infrastructure Project, including the health clinic on Tully Road, affordable housing commitments, and relocation of the Little League sports fields. She also notes the significance of continuing to endeavor to create future financial sustainability for the County. Supervisor Alvarado expresses support for the Fairgrounds Theater Project, advising that a premier theater venue on County-owned property will have local as well as regional appeal. Supervisor Alvarado speaks of the necessity to repair the facilities and infrastructure systems at the Fairgrounds, and states that the deferred maintenance issues require immediate attention.

Supervisor McHugh expresses appreciation to Mr. Kutras for efforts regarding the Fairgrounds Revitalization and Infrastructure Project, and to Mr. Mialocq and staff at the HRAC for review and validation of the financial projections for the Fairgrounds Theater Project. Supervisor McHugh states that the Fairgrounds Theater Project has merit, however, expresses concern regarding the the budget deficit reflected in the Fiscal Year (FY) 2008 Financial Projection. He comments regarding budget strategies and potential impacts of the FY 2008 Mandate Study. He also comments regarding the need to sustain the financial integrity of the County, suggesting that under-utilized assets, such as the Fairgrounds and County Airports, be sold or leased on a long-term basis for residential and commercial use. He states that the Elmwood Correctional Center in Milpitas is an example of a project that sustains financial integrity, as the facility yields a predictable source of revenue for the County. Supervisor McHugh concludes by advising of his decision to refrain from supporting the Fairgrounds Theater Project at this time.

Supervisor Gage provides a brief historical chronology of County development relating to the Fairgrounds Revitalization and Infrastructure Project, including completion of the new Expo Center and Tully Road Health Clinic. Supervisor Gage comments regarding opportunities at the Fairgrounds for cultural events. He continues by stating that the concert venue is a critical part of the Fairgrounds Revitalization and Infrastructure Project. Supervisor Gage advises that the County has embarked upon numerous projects in downturn economies, including the Coyote Lake-Harvey Bear Ranch County Park Project. He expresses support for the Fairgrounds Theater Project, and states that the Board should continue to strive to revitalize the County in ways that are both economically viable and meaningful to the members of the community.

Supervisor Kniss expresses concern regarding the fiscal deficit experienced by the County subsequent to the initial Board approval of the Fairgrounds Theater Project. She comments regarding impacts of the budget deficit on the County, including job layoffs and reduction in services. Supervisor Kniss advises that land-use decisions are complex and difficult to make. Supervisor Kniss states that she cannot support the Fairgrounds Theater Project at the present time, and suggests that other alternatives be pursued. Supervisor Kniss also suggests that the City of San Jose settlement funds be used for renovations that are required at the Fairgrounds. She concludes her comments by stating that although the Fairgrounds Theater Project adds value to the community, the endeavor poses too great a financial risk to the County.

Chair Beall expresses concern regarding prior budget impacts and future consequences relating to the budget deficit reflected in the FY 2008 Financial Projection. He states that it is important to recognize the economic changes subsequent to initial Board approval of the Fairgrounds Theater Project, particularly the new financial parameters impacting the Project. He raises questions concerning the basis for the request to allocate \$15 million to the Project for construction costs, noting the decline in interest rates and improvement in the bond market in recent years. Chair Beall concurs with Supervisor Kniss regarding the need to consider additional options for the Fairgrounds property. He also reminds the Board of his previous desires to refrain from funding a theater venue with General Fund dollars, and concludes his comments by expressing opposition to the proposal to finance and develop a theater venue at the present time.

On motion of Supervisor Alvarado, seconded by Supervisor Gage, it is ordered on roll call vote of three to two, with Chair Beall and Supervisors McHugh and Kniss voting no on authorizing the County Executive and County Counsel, that authorization be denied to the County Executive to negotiate and execute a line of credit or other credit facility in the principal amount of \$15 million from Citigroup Global Markets, Inc. to augment bond funding by the Financing Authority, or otherwise assist in credit support to the Financing Authority, for Theater Development, to be repaid by the County from available resources within three years, and that authorization be denied to the County Counsel to draft the necessary agreements for execution by the County Executive to reflect this action.

Further, on motion of Supervisor Alvarado, seconded by Supervisor Gage, it is ordered on roll call vote of three to two, with Chair Beall and Supervisors McHugh and Kniss voting no on adopting the Resolution, that adoption of Resolution be denied

to approve a financing for a theater at the County Fairgrounds, form of and delegation of authority to the County Executive to complete, execute and deliver a Ground Lease for the theater site and other Agreements relating to the financing, development and operation of the Project; necessary findings; and, to authorize the taking of all necessary related actions.

In addition, on motion of Supervisor Alvarado, seconded by Supervisor Gage, it is ordered on roll call vote of three to two, with Chair Beall and Supervisors McHugh and Kniss voting no on accepting analyses, that Financial Pro Forma Analysis prepared by Theater Project and County's underwriter, Citigroup Global Markets, Inc., not be accepted, and that Feasibility Analysis prepared by County's independent financial feasibility consultant, Economics Research Associates, not be accepted relating to financial feasibility of Theater Project under assumption of recommended transfer of funding.

Also, on motion of Supervisor Alvarado, seconded by Supervisor Gage, it is ordered on roll call vote of three to two, with Chair Beall and Supervisors McHugh and Kniss voting no on authorizing the County Executive, that authorization be denied to the County Executive to approve the necessary revisions to the plans and specifications of the Fairgrounds Infrastructure Project, approved by the Board in 2004 and that are on file with the Clerk of the Board; and, that authority be denied to the County Executive to approve the necessary revisions and re-issue the plans and specifications for bidding, acceptance of bids, and to subsequently recommend award of the contract to the Board for approval.

Further, on motion of Supervisor Alvarado, seconded by Supervisor Gage, it is ordered on roll call vote of three to two, with Chair Beall and Supervisors McHugh and Kniss voting no on approving Sixth Amendment to Agreement, that Sixth Amendment to Professional Services Agreement with MacKay and Soms, Civil Engineers for the Fairgrounds Revitalization Project, be denied for specific services relating to the Fairgrounds Infrastructure Project, increasing compensation from \$1,273,000 to \$1,510,757, and extending the time for completion of services from December 31, 2006 to December 31, 2008.

Lastly, on motion of Supervisor Alvarado, seconded by Supervisor Gage, it is ordered on roll call vote of three to two, with Chair Beall and Supervisors McHugh and Kniss voting no on delegating authority, that delegation of authority be denied to the County Executive, or designee, to negotiate, approve, execute, amend, and terminate, if

necessary, documents relating to the Fairgrounds Revitalization Project and the Fairgrounds Infrastructure Project, including all necessary public utility construction agreements with PG&E, San Jose Water Company, SBC, City of San Jose, or other public utilities, agencies, or entities, for directed performance of infrastructure work by such entities, such as joint trench work for underground utilities, installation and connection of public utilities, necessary street and related improvements, and all such work relating to the Infrastructure Project; and, including, as may be necessary, any escrow instructions, parcel maps, public street dedications required by the City of San Jose, grants of easements for utilities and access, ground leases, memoranda of lease, consents, estoppel certificates, subordination agreements, subdivision maps, lot line adjustments, quit claims, reciprocal easement agreements, rights of entry, licenses, related documents, and authority to grant related approvals, consents or extensions to time periods in any agreements relating to the Revitalization Project or Infrastructure Project, for a three-year period ending September 1, 2009, following approval by County Counsel as to form and legality.

(Supervisor Alvarado leaves her seat at 11:33 a.m.)

- \* 18. The Board considers a memorandum from Luke Leung, Deputy County Executive, Employee Services Agency, dated August 29, 2006, recommending that Tentative Agreement with the County Employees' Management Association (CEMA) be approved and Urgency Salary Ordinance amendment be adopted relating to the compensation of employees relating to realignments and other salary adjustments for members represented by CEMA and Administrative Confidential Employees (ACE).

On motion of Supervisor Kniss, seconded by Supervisor Alvarado, it is unanimously ordered on roll call vote that the Tentative Agreement be ratified with the County Employees' Management Association (CEMA).

The Deputy Clerk of the Board reads the full title of Salary Ordinance No. NS-5.07.13. On motion of Supervisor Kniss, seconded by Supervisor Alvarado, it is unanimously ordered on roll call vote that the reading in full of this Ordinance be waived. On motion of Supervisor Kniss, seconded by Supervisor Alvarado, it is unanimously ordered on roll call vote that Urgency Salary Ordinance Amendment No. NS-5.07.13 be adopted amending Santa Clara County Salary Ordinance No. NS-5.07 providing for salary realignments and other salary adjustments for specific classifications represented by CEMA, amending certain ordinance footnotes, and