



CITY OF SALINAS COUNCIL STAFF REPORT

DATE: SEPTEMBER 5, 2017

DEPARTMENT: PUBLIC WORKS

FROM: DON REYNOLDS, ASSISTANT PUBLIC WORKS DIRECTOR

TITLE: EXPANSION OF THE EL GABILAN LIBRARY

RECOMMENDED MOTION:

Approve a Resolution to partner with the Public Facilities Group to facilitate the expansion of the El Gabilan Library.

RECOMMENDATION:

It is recommended the City Council approve the proposed Resolution to implement use of the “IRS 63-20” public private partnership delivery system and to partner with Public Facilities Group to facilitate the expansion of the El Gabilan Library.

BACKGROUND:

On December 6, 2016, the City Council approved Resolution No. 21094 and agreed to partner with the Public Facilities Group (“PFG”) to finance, design, and develop a new facility to house the Police Department. The new Police Station facility is the largest project the City has considered in several decades, and to facilitate an efficient and effective development of that facility, the City Council determined to utilize a specific process and to bring in a partner with experience with such projects.

A deal structure commonly used by local governments for projects of this size was proposed to the City Council. Such structure is commonly referred to as a “63-20” process. This name references the original 1963 IRS ruling that enables the process which has increasingly become a common basis for establishing a public private partnership (“P3”) to undertake large-scale public building projects using tax-exempt bonds. The three partners involved in this process consist of a government entity (the City), a not-for-profit entity, and a private developer. The City selects a developer from a public solicitation process, executes a pre-development agreement, and initiates the design of a building. The developer’s team consists of the developer, an architect firm, and a contractor. The design of the project includes extensive community input and input from the contractor to assure practical cost-effective implementation, while at the same time helping to avoid unnecessary cost overruns and change orders.

If the City and the Developer agree on the estimated cost of the core elements of the development, (referred to as a “guaranteed maximum price”) the predevelopment agreement ends. The project financing process begins, tax-exempt bonds are sold, and once sold, a development agreement is then executed between a non-profit entity and the developer to complete the design and build the building. The non-profit manages the financing and the construction of the project. Once the construction is completed and the building is completely furnished and functional, the City then leases back the building from the non-profit. The City’s lease payments become the debt service on the bonds. Once the bonds are retired, the 63-20 ruling requires the non-profit to transfer the ownership of the building to the City. In this deal structure, the non-profit builds the building “on behalf of the City.”

The 63-20 deal structure allows the non-profit to assume the many risks of building large-scale projects and insulates the City from potentially time consuming and expensive delays. The burden of managing the construction contracts and development oversight are the responsibility of the non-profit and developer. Many incentives are built into the process to add protection for the City and financial incentives to resolve issues quickly to avoid potential delays in progress via a guaranteed maximum price.

An experienced development facilitator is required to act as the City’s partner through the process to assist in the sale of the tax exempt bonds, and to manage the non-profit. The City Council approved Resolution No. 21094 based on the unique qualifications of PFG. John Finke is the president of PFG, and he has earned a high-quality reputation the City seeks, having thirty-three years of experience in development and financing, securing more than \$1.83 billion to construct 20 publicly-held projects. For the City of Salinas, PFG has a skilled team in place to secure and sell the bonds necessary to build the Police Department facility.

On June 6, 2016, staff presented the progress made on a second large project, expansion of the El Gabilan Library. The community-based program design resulted in a two-story, 20,000 square foot building estimated to cost between \$15 and \$16 million to build. When the furniture and fixtures, soft costs, and other incidentals are added to the hard costs, the original cost estimates increased to between \$18 and \$20 million. After this presentation, staff began to explore its options and concluded that PFG could facilitate the financing of the El Gabilan Library project using the same delivery system as is being used for the Police Service Headquarters. However, with so much invested in the architecture firm of Anderson Brulè Architects (“ABA”) and after a year of community input, it was clear that ABA had to be a part of the development team. This adds efficiency as the ABA team knows Salinas well and knows what the community expects from this project. The original process used for Police Department facility has been changed for the City’s El Gabilan Library project by retaining ABA as the City’s architect and releasing a Request for Proposals (“RFP”) seeking only a Developer and a Contractor to complete the expansion of the library. At its July 10, 2017 meeting, the City Council’s Finance Subcommittee unanimously supported this delivery model for the El Gabilan Library. Staff has targeted the October 10, 2017, City Council meeting as the date of award for the Pre-Development Agreement.

Time is of the essence as the costs of building materials and construction labor continues to escalate in the greater Bay-Area at a double digit pace. In an effort to get the best price for the City’s investment and to help to reduce the expense of El Gabilan Library, the RFP was released on

August 16, 2017, with a due-date of September 25, 2017. More than fifty prospective bidders and plan rooms were notified through the City's Planet Bids portal. Notice was sent directly to the Salinas Valley Chamber of Commerce which received the RFP on September 16, 2017. Notice was also published in the local newspaper.

Staff is coming to Council now to confirm its continued commitment to use the IRS 63-20 process for the El Gabilan Library expansion project and to confirm the City's partnership with PFG for this project.

CEQA CONSIDERATION:

Not a Project yet. The City of Salinas has determined that the proposed action is not a project as defined by the California Environmental Quality Act (CEQA) (CEQA Guidelines Section 15378).

STRATEGIC PLAN INITIATIVE:

Building a new El Gabilan Library helps to provide effective sustainable delivery of this City service (Council Goal III), will provide excellent infrastructure (Goal IV) and will greatly expand and improve the quality of life to all of Salinas residents (Goal V).

FISCAL AND SUSTAINABILITY IMPACT:

The new El Gabilan Library has been and will be funded through a portion of Measure E (formerly Measure V) sales tax revenues.

ATTACHMENTS:

Resolution
PFG Proposal

RESOLUTION NO. _____ (N.C.S.)

A RESOLUTION OF THE CITY OF SALINAS APPROVING USE OF THE “IRS 63-20” PUBLIC PRIVATE DELIVERY SYSTEM AND SELECTING PUBLIC FACILITIES GROUP AS ITS PARTNER TO FACILITATE THE EL GABILAN LIBRARY EXPANSION PROJECT

WHEREAS, on October 2, 2015, the City completed a Request for Qualifications in search of a uniquely qualified non-profit organization to partner with and facilitate the financing, development and construction of a new Police Department facility; and

WHEREAS, when the top three firms were interviewed, John Finke’s experience starting in 1983 with public-private partnership teams that have put together more than 20-projects valued at more than \$1.8 billion dollars (according to the April 2010 Seattle Business Magazine) was unanimously selected as the most qualified for building large scale public-private partnerships as intended for the Salinas Police Department facility project; and

WHEREAS, on December 16, 2016, the City Council approved Resolution No. 21094, confirming the City’s commitment to using the Public/Private Partnership program described in staff’s report and referred to as the “IRS 63-20” delivery system for large public facility projects, and its commitment to working with John Finke’s newly established organization, Public Facilities Group, (“PFG”), to put in place the best public-private partnerships needed to finance and to develop the Police Service Headquarters; and

WHEREAS, at its June 6, 2017, City Council meeting the City Council received a detailed report from Anderson Brulè Architect (“ABA”) that described their year-long effort of community outreach and program design for expansion of the El Gabilan Library; and

WHEREAS, at its July 10, 2017 meeting the City Council’s Finance Subcommittee unanimously approved using the same “IRS 63-20” process used for the Police Service Headquarters for the El Gabilan Library expansion project; and

NOW, THEREFORE, BE IT RESOLVED that the above recitals and accompanying staff report describing the program delivery system for the new El Gabilan Library are true and correct; and

BE IT FURTHER RESOLVED that the attached letter of interest from the Public Facilities Group describes the inherent worth of more than 20-years’ of experience and the desire to be the City’s partner in this public private development; and

BE IT FURTHER RESOLVED after its consideration of these facts, the Salinas City Council concurs with its Finance Subcommittee’s July 10, 2017 recommendation to use the public private delivery system known as the “IRS 63-20” process and to select PFG as the City’s partner to facilitate completion of the El Gabilan Library expansion project.

PASSED AND APPROVED this 5th day of September 2017 by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

Joe Gunter, MAYOR

ATTEST:

Patricia M. Barajas, CITY CLERK

Attachment: Public Facilities Group Proposal



Public Facilities Group

August 10, 2017

Don Reynolds
City of Salinas Department of Public Works
200 Lincoln Avenue
Salinas, CA 93901
Re: 63-20 Process – El Gabilan Branch Library Improvements Project
Dear Don,

Attached, please Public Facilities Group's proposal for partnering with the City of Salinas to finance and develop the El Gabilan Branch Library Improvements Project. As detailed in the following pages, we propose using the same financing and contracting structure that was approved by the Salinas City Council for the Public Safety Facility Project that is currently underway.

I would be happy to meet with you or other City representatives at any time to discuss this proposal.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Finke", is written over a faint, light blue circular stamp.

John Finke

PFG President
206-618-8864
johnfinke@publicfacilitiesgroup.org

Not-for-Profit Profile and Qualifications: Public Facilities Group

Public Facilities Group (PFG) is a nationally recognized not-for-profit that works to maximize public sector benefits when using Public-Private Partnerships (P3). PFG's principals have structured and delivered more 501(c)(3) and 63-20 projects than any other entity in the western United States. These projects include:

- An office building for Los Angeles County, California
- A law building for Riverside County, California
- Office buildings and data centers for the State of Washington, King County Washington, and the City of Tacoma
- Biomedical research facilities for the University of Washington and Washington State University
- City halls for the cities of Redmond and Bothell, Washington
- Student housing for the University of Washington, Edmonds Community College and Seattle Pacific University

In addition to these completed projects, PFG is in the design and entitlements phase for the development of a 400,000 sq ft office building for the County of Los Angeles, as well as a student housing project for a public college in Washington.

PFG is a firm with great depth of experience. Prior to founding Public Facilities Group in December 2015, PFG President John Finke created and managed the Public-Private Partnership (P3) program at the National Development Council, where he pioneered delivery of public facilities through P3s using tax-exempt debt and private-sector delivery methods. Under this P3 program, John financed 28 projects totaling \$1.8 billion. Every one of these projects was completed on time or ahead of schedule, and each was completed on or under budget. In addition, each was completed at a per square foot or per unit cost that was significantly below the costs experienced by their respective public agencies on projects developed using standard public delivery methods. The principles of how these projects were delivered focus on a concern for an open, honest and fair process that maximizes public benefit. These principles include:

- Repatriation of project savings to the benefit of the public client;
- Private guarantees of price and completion;
- Protection for the public from cost overruns; and
- Public access to the advantages of an integrated project delivery system.

PFG's approach to Public-Private Partnerships blends tax-exempt financing incurred by a single member not-for-profit special purpose entity (SPE) with private project development and delivery. It offers private guarantees of both cost and schedule and includes built-in safeguards which allow the public to secure ultimate project control if desired. Using a private-sector delivery process, we are able to achieve 20 – 30% savings in construction costs while constructing buildings of equal or higher quality. In addition, our approach insulates the governmental client from any construction risk and facilitates long-term facility management and maintenance.

Proposed Team Members

John Finke, President, Public Facilities Group

John Finke has more than 35 years' experience in local government, non-profit management, private sector development, and financing public-private partnerships. Prior to founding PFG, John created and led the Public-Private Partnership (P3) Team at National Development Council, a New York-based economic development not-for-profit. While at NDC, John pioneered the American Model Approach to P3 development, an innovative approach to P3 that blends tax-exempt financing available to the public sector with private delivery methods. He used that model to finance and develop more than 1,600,000 square feet of government and university offices; 750,000 square feet of medical offices; 400,000 square feet of research laboratories; 2,500 spaces of structured parking facilities for public institutions; and 1,100 units of student housing. These award-winning projects total nearly \$2 Billion in direct development costs and include:

- The Gateway at Alhambra, headquarters for the Community Development Commission of the County of Los Angeles
- Riverside County Law Building
- University of Washington School of Medicine South Lake Union Biomedical Research Campus
- Bothell City Hall
- Redmond City Hall
- Harborview Hospital's Ninth and Jefferson Building
- Center for Urban Waters for the City of Tacoma
- 20 additional P3 projects

These projects have received numerous awards and were all completed on-time and on- or under-budget.

In addition to his work in 63-20 P3 financing, John has expertise in the Section 108 loan program, Community Development Float lending, industrial development bonds, SBA lending, and conventional lending financing. He has served as a Community Development Advisor to numerous cities and counties in the western United States and worked with agencies to structure projects using Low Income Housing Tax Credits, Historic Tax Credits, and New Markets Tax Credits.

John's role in the El Gabilan Library project will be to lead the financing team; participate in the selection of a qualified development team; lead negotiation of all contracts, agreements and financing documents; and provide oversight of the development team during construction.

Erin Birkenkopf, Vice President, Public Facilities Group

Erin Birkenkopf's work with public-private partnerships began in 2005 on the public partner side as a housing administrator for the University of Washington. Erin joined John Finke's P3 Team at National Development Council in 2012 with a focus on asset management. She joined John at PFG in 2016. Erin's portfolio of work while at NDC included:

- University of Washington School of Medicine South Lake Union Biomedical Research Campus
- Bothell City Hall
- Washington State Data Center
- Harborview Hospital's Ninth and Jefferson Building
- Center for Urban Waters for the City of Tacoma

Erin's role in the El Gabilan Library project will be to participate in negotiation of all contracts, agreements and financing documents; collaborate with the City and development team during the pre-development and construction phases; oversee project finances and bond compliance during the construction phase; and provide on-going asset management and bond compliance after project completion.

Matt Calcavecchia, Vice President, Public Facilities Group

Matt Calcavecchia joined John's P3 Team at National Development Council in 2004. His work at NDC encompassed a variety of roles including asset management duties, promotion, marketing, project management, and strategic planning. He served as NDC's Communications Director and has experience in a variety of products and services including Low Income Housing Tax Credits, New Markets Tax Credits, small business lending, and public-private partnerships. His work also included outreach and education, as well as creating and implementing strategies to advocate for P3s at the federal level.

Matt will not be involved in the El Gabilan Library project on a daily basis, but will provide support and assistance as necessary.

Steven Rovig and Joel Bodansky, Attorneys, Hillis Clark Martin & Peterson

PFG's legal counsel will be provided by Hillis Clark Martin & Peterson, primarily by Steven Rovig and Joel Bodansky, with other expertise called upon as necessary. HCMP is a Seattle-based law firm with more P3 experience than any other firm on the west coast, having worked with John Finke on 28 projects. Steven and Joel will represent the not-for-profit created by PFG to facilitate this project in negotiation of all contracts, agreements and financing documents, as well as providing general legal guidance and advice.

Harlan Falkin, Construction Inspector, Falkin & Associates

PFG recommends retaining Harlan Falkin of Falkin & Associates to act as independent construction monitor for the project. Services provided by Falkin & Associates would include monthly inspections of the construction site to observe construction activity, plan conformance, and work quality conformance; review and analysis of contractor payment applications; review and analysis of change orders; providing monthly written Construction Site Visit Reports.

Other Team Members To Be Selected

Other members to be included in the final project team include the development team (to be selected through the City's RFP process), the bond underwriter, bond counsel, and trustee. We have experience working with many of the leading firms in each of these fields, including Barclays (underwriter), Pacifica and K&L Gates (bond counsel), and US Bank and BNY Mellon (trustee). We will work collaboratively with the City to select the firms best suited to participate in the El Gabilan Library project.

Proposed Project Structure

PFG proposes the following structure to facilitate development of the new El Gabilan Library:

1. PFG will create a California State single-asset bankruptcy-remote not-for-profit entity. It will then secure from the IRS that entity's designation as a 501(c)(3) not-for-profit. While 501(c)(3) status is not critical in 63-20 financing, it has added benefits to the structure. This process should require no more than 8 weeks and given the nature of the not-for-profit's relationship to the City of Salinas and the likelihood of using 63-20 financing, the federal designation will not be problematic.

2. PFG will assist the City of Salinas to recruit, vet and select a development team through the RFQ/RFP process.
3. Working with the City of Salinas, its legal counsel and financial advisors, PFG will complete the necessary suite of documents to undertake the project. These will include: A ground lease and facilities lease between the City of Salinas and the not-for-profit. The predevelopment agreement between the City of Salinas and the developer. A development agreement between the not-for-profit and the selected project developer. An architecture agreement, a construction agreement and an independent construction inspector's agreement, each between the not-for-profit and the service provider.
4. During pre-development, PFG will work with the City of Salinas' counsel and financial advisor, the project developer, the finance team (and their respective counsels), to produce the necessary financing documents. These include the POS and OS, the indenture of trust and the bond purchase agreement.
5. At bond closing, the not-for-profit established by PFG will enter into these agreements, close on the bonds and issue a notice to proceed.
6. During the course of construction PFG will staff the not-for-profit and will review and process all monthly draws to fund construction.
7. During construction, if so desired by the City of Salinas, PFG (acting on behalf of the single-asset not-for-profit) will engage the services of a private property manager and operator to manage the facility post-construction. The not-for-profit will work with the manager and the City of Salinas to set annual operating budgets and review all aspects of the project's operation.

Fees:

1. The not-for-profit established by PFG for this project will charge a one-time fee of 1% of the project cost to pay for its services in assisting in the RFP process, development of all necessary financing documents, contracts and agreements, and its work during the construction phase, including bond compliance, draw processing and general oversight of the development team during construction. This fee will be included in the project financing and paid to PFG directly from bond proceeds. PFG will carry its third-party expenses (primarily insurance and legal representation for document review) until bond closing, at which time legal expenses and any other third-party expenses related to this project incurred by PFG or the not-for-profit will be paid from bond proceeds. In the event that the project does not proceed to bond closing, we would expect that these third-party expenses will be paid by the City.
2. Once construction is complete, the not-for-profit will charge the project an annual asset management fee of 1% of the project's rental income to oversee the required project management and bond compliance.

Unique Benefits of PFG's Structure

Public Facilities Group's proposed project structure includes two unique features that differentiate it from other similar P3 structures. These features provide additional benefit for the government client and enhanced protection of the public interest.

Free-standing 501(c)3

When PFG undertakes a project using 63-20 or 501(c)(3) bonds, it creates a single-asset bankruptcy-remote 501(c)(3) as is required by all such projects. Under the PFG's model, this 501(c)(3) will be free standing, not dependent on the continuing existence and goodwill of a parent or group entity's 501(c)(3) status. This is an important feature and can affect the protections offered in bankruptcy remote structures.

Ability of the government to easily exercise its right to secure unencumbered fee title to a P3 financed facility

While 63-20 financing includes a federal mandate that requires the ownership of a 63-20 financed facility to transfer to the benefiting government at no cost when the debt is retired, 501(c)(3) bonds do not include this federally mandated right to secure unencumbered fee title from the 501(c)(3) entity at the retirement of the project's debt. This deficiency is commonly addressed in 501(c)(3) financed projects through a contract transfer of fee title at the retirement of the project's debt. Though both the 63-20 federally mandated reversion and the 501(c)(3) contract reversion are important public safeguards, they still leave a potential public risk not addressed in most P3 programs. PFG's P3 approach addresses this risk with its proposed structure.

The standard tax-exempt bond financing does not allow refinancing in the 10 years following the issuance of the debt. Should a community need to retire a project's financing within this 10-year window, it must go through a defeasance process, which is often very costly. If rates have increased after the date of issuance, this can be especially problematic. With the P3 financing structures most commonly used, should the not-for-profit entity financing a public project undergo a significant change or have a Board or tax complication, or should the community desire a change in the structure or use of the project, the community's only available option to take full control of the project is to retire the project's debt.

PFG's approach offers a solution to this potential risk. When PFG establishes a not-for-profit, we will grant the public agency the unrestricted right to replace the not-for-profit's Board of Directors with a new Board of the agency's choosing, should the agency need or desire to do so. This right is a significant improvement in the structure as compared to other 63-20 models. When coupled with the independent federally approved 501(c)(3) standing of the not-for-profit created by PFG, it will deliver a much simpler and more effective means to correct a problem should one occur. Under P3 models where a not-for-profit's 501(c)(3) designation is dependent on a parent's group exemption, there is a risk that the parent may have a continuing compliance or some other problem that could affect the project's not-for-profit status. The approaches that rely on a group exemption or that rely on a single member LLC structure for the creation of a not-for-profit can complicate 501(c)(3) compliance, especially if the parent undertakes both exempt and non-exempt activity.

PFG References

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