

SACRAMENTO LOCAL AGENCY FORMATION COMMISSION
1112 I Street Suite 100
Sacramento, California 95814
(916) 874-6458

June 4, 2008

TO: Sacramento Local Agency Formation Commission
FROM: Peter Brundage, Executive Officer
RE: Report Back: Arden Arcade Incorporation Transition Plan

RECOMMENDATIONS

The Commission may consider the following recommendations based on Commission direction from the May 7, 2008 Public Hearing. The following recommendations assume that the proponents will make the required payments by August 1, 2008 and November 1, 2008 to resume work and complete the required studies by Spring of 2009. *In the event payment is not made by August 1, 2008, it will not be possible to complete 1) the Environmental Impact Report, 2) Comprehensive Fiscal Analysis, and 3) the Public Hearings prior to June 30, 2009. Furthermore, in the event the November 1, 2008 payment is not made on time, work may stop resulting in delays and potential cost increases, possibly impacting the ability to complete the studies for hearings to commence in the Spring of 2009.*

COMMISSION OPTIONS

1. Staff has provided several funding payment plan options for the Commission's consideration. However, as stated during May 7, 2008 Public Hearing, the Executive Officer's recommendation is to require the Proponents to pay the entire remaining balance due no later than August 1, 2008.
2. Approve the attached Scope of Work and contract with MuniFinancial to complete the Comprehensive Fiscal Analysis and supplemental studies for the Arden Arcade Incorporation in an amount not to exceed \$90,000 based on work commencing on July 1, 2008.

The Scope of Work will examine and evaluate the following governance structure options:

- a. Project Description: The proposed city would be a contract city as based on the petition submitted by the incorporation proponents.

- b. Supplemental Information: The Comprehensive Fiscal Analysis will also evaluate whether or not there are any financial benefits to create a city parks and recreation department by reorganizing the parks and recreation districts located within the proposed boundary of Arden Arcade. In addition, the CFA will evaluate the benefits and costs related to regional municipal service providers and enterprise districts, i.e. water, wastewater, and fire to determine if there may be financial benefits to the proposed city General Fund pursuant to Government Code Sections 56301 and 56886.5.
 - c. Supplemental Information: The Comprehensive Fiscal Analysis will also evaluate the financial benefits and costs if the subject territory were to be annexed to the City of Sacramento pursuant to Government Code Sections 56301 and 56886.5.
- 3. Approve the proposed contract amendment with Michael Brandman Associates, the consultant preparing the Environment Impact Report on the proposed Arden Arcade Incorporation. This contract amendment includes an increase in the total contract amount to cover any contingencies, as requested by the consultant. The work schedule has also been revised, as explained below. Staff requests that the Commission authorize the Executive Officer to execute the proposed contract amendment subject to minor modifications to the work schedule, if necessary.
 - 4. Consider the Proponents request that the work performed by Burr Consulting be provided to MuniFinancial, or that the \$10,328 be refunded to Proponents. Burr Consulting did return its work to LAFCo, and that information and data has been provided to MuniFinancial. However, based on the fact that MuniFinancial must use data from a new fiscal year, it is unlikely that Burr Consulting's work will offset any of the work required by MuniFinancial. For these reasons and as further explained below, staff recommends that the Commission decline to "refund" the \$10,328 to the Proponents.
 - 5. The Commission will need to determine the fair share of funding to be contributed by the incorporation proponents to complete the baseline CFA and EIR studies. The Commission may consider or modify the following options:

Staff Recommendation: \$141,811 includes \$29,762 for other/contingencies. This amount is currently past due and payable,

Commission Alternatives

- a. \$112,049 does not include \$29,762 for other/contingencies, and/or
 - b. Adjust the required proponent funding based on the Commission's decision related to Recommendation No. 3, resolution of \$10,328 payment to Burr Consulting.
6. Based on Commission direction from May 7, 2008, the following payment options may be considered by the Commission. (Note: the Commission may amend or modify these options):

a. **Staff Recommendation – Single Payment**

<u>Payment Due Date</u>	<u>Percentage</u>	<u>Amount Due</u>
August 1, 2008	100%	\$141,811

b. **Option No. 1 Payment Plan**

Proponents Share of Funds based on current Project Budget: \$141,811

<u>Payment Due Date</u>	<u>Percentage</u>	<u>Amount Due</u>
August 1, 2008	75%	\$106,358
November 1, 2008	<u>25%</u>	<u>35,453</u>
Estimated Total	100%	\$141,811

c. **Option No. 2 Payment Plan**

Proponents Share of Funds based on current Project Budget, less \$29,762 for other/contingencies: \$112,049. Contingency/other would be added on to November 1, 2008 payment.

<u>Payment Due Date</u>	<u>Percentage</u>	<u>Amount Due</u>
August 1, 2008	75%	\$84,037
November 1, 2008	<u>25%</u>	<u>57,774</u>
Estimated Total	100%	\$141,811

d. **Option No. 3 Payment Plan:**

Proponents Share of Funds on August 1, 2008, when combined with remaining funds and LAFCo match, will cover \$45,000 for CFA, \$56,285

for EIR, and \$4,000 for Legal through October 31, 2008. Additional detail on consultant funding requirements are in the Addendum.

<u>Payment Due Date</u>	<u>Percentage</u>	<u>Amount Due</u>
August 1, 2008	38%	\$53,888
November 1, 2008	<u>62%</u>	<u>87,923</u>
Estimated Total	100%	\$141,861

In the event that contingency funds are not required, the proponents will be refunded \$29,762.

Other Payment Plan Options

The Commission may choose to further amend or modify any of these options, by eliminating the contingencies or refunding \$10,328 to Proponents based on Burr Consulting’s contract.

e. Eliminate Contingencies.

Proponent funding requirement without contingencies/other:

Total Estimated Project Costs	\$193,883
Less: Contingencies	29,762
LAFCo Match	36,811
Funds and Match	<u>15,261</u>
Estimated Proponent Share of Cost	\$112,049

f. Refund for Burr Consulting

Proponents proposed funding requirement assuming reimbursement from Burr Consulting:

Proponent Estimated Share of Cost	\$112,049
Burr reimbursement	<u>10,328</u>
Net Proponent Contribution	\$101,721

Partial Refund for Burr Consulting

Proponent Estimated Share of Cost	\$112,049
½ Burr reimbursement	<u>5,164</u>
Net proponent Contribution	\$106,885

- Review the information gathered by staff regarding other LAFCo Fee Reimbursement policies. As this data demonstrates, contrary to the Proponent’s assertion, most LAFCo policies require incorporation

proponents to pay the full costs associated with an EIR, CFA, legal fees, and staff time in advance of the incorporation. The LAFCo's surveyed do not provide subsidy or deferral of fees.

8. In the event that the Proponents cannot make the required payment on August 1, 2008, direct staff to report back to the Commission for further directions and possible action to delay studies and hearings on the proposed incorporation until FY 2009-2010, thereby allowing proponents sufficient time to raise the necessary funds.

SUMMARY OF PROPOSED TRANSITION PLAN

- No increase in cost to proponents-potential savings in the amount of \$29,762
- Assumes that no adjustment will be made for payment to Burr Consulting-see addendum for additional information
- Extended time for the proponents to raise the necessary funds by 6 months from March, 2008 to August, 2008
- Provides an additional 3 months for proponents to raise the final payment (August 1, 2008 to November 1, 2008)
- Provides adequate funding for consultants to resume work on the required studies in order to conduct hearings in the statutory timeframe
- LAFCo has paid for legal costs incurred to develop the transition plan resulting in an additional savings to the proponent
- LAFCo does not have control over proponent funding issues
- LAFCo has made and continues to make every good faith effort to process this application in a timely manner
- LAFCo consultants are committed to this project provided adequate funding is available by the due dates. If payments are not received on time, they may not be able to complete their respective reports in the required time frame
- LAFCo Fee Policies are fair and reasonable compared to all LAFCo's surveyed-See Addendum for additional information
- LAFCo analysis is based on legal and statutory requirements-see Addendum for additional information
- The transition plan assumes a start date of August 1, 2008. Letters requesting information and data from affected agencies would be sent out in July
- LAFCo cannot guarantee completion of the required studies unless adequate funding is deposited by August 1, 2008 and November 1, 2008
- Provides a number of different options for Commission consideration
- However, the transition plan does not provide assurance that funds will be available when they are needed

INTRODUCTION

In summary, at the Commission's May 7 2008 Public Hearing, staff made the following recommendations for the proposed transition plan to complete the Arden Arcade Incorporation studies:

- Approve the revised project cost in the amount of \$193,883.
- Require that the proponents pay in full their remaining share of cost in the amount of \$141,811 no later than August 1, 2008, prior to commencing any further work.
- Approve the Scope of Work and Contract with MuniFinancial to complete the Comprehensive Fiscal Analysis and supplemental studies.
- Direct staff to report back to the Commission for further direction and termination of the incorporation application in August if payment has not been received from the proponents by the August 1, 2008 deadline.

The following issues were among those discussed during the May 7, 2008 Public Hearing; the Commission directed staff as follows:

- Clarify the MuniFinancial Scope of Work and Schedule for completing the Comprehensive Fiscal Analysis and supplemental studies,
- Review the proponents proposed payment schedule (May 9, 2008 proponent letter) and meet with the proponents and consultants to discuss other funding options that were suggested by the Commission during the May 7, 2008 Commission meeting,
- Report back on whether or not work performed by Burr Consulting could be used by MuniFinancial or if \$10,328 could be reimbursed, and
- Review and report back on LAFCo Incorporation Fee Policies.

BACKGROUND AND DISCUSSION

This report addresses follow-up issues from the May 7, 2008 Commission meeting pertaining to the transition plan to complete the Environmental Impact Report and Comprehensive Fiscal Analysis including the supplemental information related to alternative governance structure for the proposed Arden Arcade Incorporation.

The following revised project cost estimate to complete the baseline CFA and EIR was discussed on May 7, 2008. The total estimated cost has not increased over the original August 15, 2007 project cost estimate. In fact, there may be a cost savings to the proponents if Other/Contingency funding is not needed.

Revised Arden Arcade Incorporation Cost Estimate

Draft EIR	\$56,285*
Draft CFA New contract	90,000
Estimated Legal Costs	17,836
Estimated Other/Contingencies	<u>29,762</u>
Total Estimated Remaining Costs	\$193,883

Staff recommends that the proponent's estimated share of cost to complete the studies is \$141,811 which is summarized as follows:

- * Potential need for \$14,400 contingency based on a number of factors including previous delay. We are making every effort to complete Final EIR at original cost. Based on the delay caused by Proponent's failure to deposit funds according to the original funding agreement, the EIR consultant has requested a contingency fund of \$14,400. Based on the prior delay, the EIR consultant is concerned that additional delay may necessitate additional time and money to complete the EIR.

Estimated Proponent Funding Requirements or Share of Cost Based on Revised Project Budget as of May, 2008

Total Unexpended Contract Amounts	
EIR	\$56,285
CFA	90,000
Legal	17,836
Contingencies	29,762
Deposit including LAFCo Match (50/50)	(15,261)
Available LAFCo Uncommitted Match	<u>(36,811)</u>
Current Amount Due and Payable	\$141,811

The amount set forth above includes \$29,762 for contingencies and assumes that the proponents will not be given a credit of \$10,328 related to the amount previously expended on the Burr contract.

Approved Funding Schedule

Based on the Funding Agreement entered into between the Commission and the Proponents, the Proponents currently owe LAFCo \$141,811 to complete the baseline CFA and EIR studies including estimated legal costs. This entire amount has been due and payable since March, 2008.

The Commission, however, requested that staff meet with the Proponents and LAFCo's consultants to determine a revised funding schedule to complete the baseline CFA and

EIR studies in order to try and accommodate LAFCo concerns and proponent's ability to raise funds.

Staff Recommendation: As stated above, staff recommends that Proponents be required to pay \$141,811 prior to August 1, 2008. (Amount past due and payable).

Funding Options That May Be Considered By the Commission

However, based on Commission direction, staff has developed the following payment options. The payment options range from the proponent's proposed payment schedule to a more aggressive payment schedules. *Based on the recent experience, the current situation and the fact that payments have not been previously been made on time, I continue to recommend that the Commission consider Staff Recommendation for a single payment or Option No. 1 that provides a more aggressive payment schedule.*

The Commission may consider the following payment options or the Commission may amend or modify these options. The following analysis sets forth the estimated amount of funding required from the proponents. The analysis does not factor in any reimbursement or credit related to funds (\$10,328) expended on the Burr contract and it includes \$29,762 for other costs and contingencies.

Based on discussions with Commission Counsel and our consultants, we believe it is prudent to require that the proponents' remaining share of funds be deposited no later than November 1, 2008, including \$29,762 for Other/Contingency. We believe it is prudent that adequate funding be available to complete the baseline CFA and EIR. As a result, staff has developed the following funding options that may be considered by the Commission. In addition, the proponents would be required to pay additional costs for legal, EIR and CFA upon demand if and when such funds are needed.

a. Staff Recommendation – Single Payment

<u>Payment Due Date</u>	<u>Percentage</u>	<u>Amount Due</u>
August 1, 2008	100%	\$141,811

b. Option No. 1 Payment Plan

Proponents Share of Funds based on current Project Budget: \$141,811

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Estimated Total	100%	\$141,811

c. Option No. 2 Payment Plan

Proponent's Share of Funds based on current Project Budget, less \$29,762 for other/contingencies: \$112,049. Contingency/other would be added on to November 1, 2008 payment.

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Estimated Total		\$141,811

d. Option No. 3 Payment Plan:

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Estimated Total		\$141,861

In the event that contingency funds are not required, the proponents will be refunded \$29,762.

Other Payment Plan Options

The Commission may choose to further amend or modify any of these options, by eliminating the contingencies or refunding all of a part of \$10,328 to Proponents based on Burr Consulting's contract.

f. Eliminate Contingencies.

Proponent funding requirement without contingencies/other:

Total Estimated Project Costs	\$193,883
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Estimated Proponent Share of Cost	\$112,049

e. Refund for Burr Consulting.

Proponents proposed funding requirement assuming reimbursement from Burr Consulting (excludes other/contingency):

Proponent Estimated Share of Cost	\$112,049
Burr reimbursement	<u>10,328</u>
Net Proponent Contribution	\$101,721

f. Partial Refund for Burr Consulting

Proponent Estimated Share of Cost	\$112,049
½ Burr reimbursement	<u>5,164</u>
Net proponent Contribution	\$106,885

Staff does not, however, recommend that the Commission modify the total balance due from Proponents based on either of these considerations (full or partial Burr reimbursement and removal of other/contingency funds).

By utilizing MuniFinancial to perform the CFA, the Proponents have realized a cost savings of at least \$15,362, despite the funds paid to Burr Consulting. Should LAFCo now absorb the cost of Burr Consulting's services, it would result in a windfall to the Proponents, and would ignore any role that the delay in funding from the Proponents played in the termination of the contract with Burr Consulting.

Furthermore, Burr Consulting was under contract and expended funds as required under the contract. Based on the insufficient funding by Proponents, Burr would not have been able to complete the CFA and related studies, for the original contract price. Since the Comprehensive Fiscal Analysis must use the most current financial data, it would have likely been necessary to update the CFA and supplemental fiscal analysis resulting in additional costs to the proponents rather than a cost savings.

EXECUTIVE OFFICER'S OPTIONAL RECOMMENDATION

Defer Processing Incorporation Application until 2009-2010

On May 28, 2008, staff and legal counsel met with the incorporation proponents to discuss payment options and other issues related to the Arden Arcade Incorporation transition plan proposed in their letter dated May 9, 2008. During this meeting it became evident that the proponents are having difficulty in raising funds, notwithstanding the payment schedule they proposed in their letter.

The proponents stressed that in light of the climate of legislative uncertainty with the status and timing of SB 301, several potential funding sources are hesitant to commit resources. Staff suggested that the proponents contact the office of the bill's sponsor, Senator Romero, to express support for the bill, and explore the status of the bill.

The Arden Arcade Incorporation Committee then orally requested that the August 1, 2008 payment date be delayed to October 1, 2008. They reiterated that they are having a difficult time raising money because of the uncertainty regarding the timing of SB 301.

In light of this discussion with the Arden Arcade Incorporation proponents, I recommend that the Arden Arcade Incorporation Application be placed on hold until the proponents are able to provide their share of the remaining funding in the amount of \$141,811.

Based on recent discussion with LAFCo consultants, work must commence in July and fully resume by August 1, 2008 in order to complete 1) the Environmental Impact Report, 2) the Comprehensive Fiscal Analysis and 3) the Public Hearings prior to June 30, 2009.

It is possible to halt work on this project until July 1, 2009; however, this could result in increased costs for the Environmental Impact Report and Comprehensive Fiscal Analysis. Assuming a re-start date of July 1, 2009, the timeline would still allow for LAFCo hearings to make a November 2010 election. (There is no General Election scheduled for 2009).

In the event payment is not made by August 1, 2008, it will not be possible to complete 1) the Environmental Impact Report, 2) the Comprehensive Fiscal Analysis and 3) the Public Hearings prior to June 30, 2009. In the event the November 1, 2008 payment is not made on time, work may stop resulting in delays and possibly impacting the ability to complete the studies for hearings to commence in the Spring of 2009.

Therefore, if Proponents are unable to deposit the required funds on August 1, 2008, I recommend that all work be suspended and the Arden Arcade application be placed on hold. There is no urgency to complete Public Hearings by June 30, 2009, since the next General Election will not be held until November, 2010. In the event that Proponents cannot fulfill their funding obligations, staff will report back to the Commission and recommend that the Arden Arcade Incorporation application be held in abeyance, without prejudice. (Note: This time-out would 1) provide the

proponents additional time to raise their share of the required funding, and 2) clarify the outcome of SB 301. The extra time would still provide adequate time for the required studies to be completed without impacting a November 2010 election.

LAFCo has made extraordinary efforts to accommodate the incorporation proponents to complete the required studies in a timely fashion since August 2007. Every time the schedule has slipped, it was based on the fact that proponent funding was not forthcoming in a timely manner. The project is in the exact same situation as it was in last year.

Your Commission and staff have expended considerable time and effort in working with the Incorporation Committee regarding their funding uncertainties. It is understandable that their fund raising efforts may be difficult; however, Sacramento LAFCo Incorporation Fee Policy for the Arden Arcade Incorporation is more supportive than any other LAFCo as outlined in Exhibit "E".

Therefore, I believe it would be best for LAFCo to place the Arden Arcade Incorporation application on hold until the proponents' share of funding is deposited with LAFCo and before any further work is commenced or resumed. LAFCo could deem the application incomplete until the proponents deposited the necessary funds to complete the studies.

Simply, it is not prudent to spend any more time or money until adequate funding is made available.

EXECUTIVE OFFICER'S SUMMARY AND RECOMMENDATION

I am still recommending that the proponents pay their full share of cost in the amount of \$141,811 prior to August 1, 2008 to avoid delays and work stoppages due to lack of funding. This amount is currently due and payable and has not increased. In addition, the revised budget estimate includes \$29,762 which I have called contingencies, however, a portion of contingencies would be used to prepare a legal description and pay for Board of Equalization filing fees that will be needed in the event the Commission approves the project.

Also, additional funds may be needed for additional analysis that may be required based on public and agency comments. I do not believe that this amount is over-inflated or padded considering the complexity and controversy associated with this proposal. Finally, the proposed incorporation would create a multimillion dollar municipal corporation; the proposed cost of the analysis is minor considering the effort that is required and the value or worth of the new city.

The Burr payment issue is a sunk cost. The proponents have not been penalized and this does not represent an increased cost because the total project cost has not increased over the initial budget from August 15, 2007. In fact, if other/contingency funds are not needed the overall project cost will be lower. Finally, LAFCo is paying for the legal

costs during this transition period. Additional legal work and effort has been required because the proponents still do not have adequate funding not including staff time.

Based on recent discussions with the Arden Arcade Incorporation proponents, I am recommending that the Commission place the application on hold until the proponents have deposited their share of funds with LAFCo unless funds are deposited by August 1, 2008.


I have identified a number of options that may be considered by the Commission to finalize the transition plan.

The proponents are required to pay the actual costs related to the CFA, EIR, legal costs and other LAFCo out-of-pocket project costs. LAFCo staff time will only be reimbursed if the city is successfully incorporated. In addition, LAFCo is contributing \$100,000 of the project costs related to the Arden Arcade Incorporation proposal. Based on other LAFCo incorporation fee policies, the proposed payment requirements are consistent with other LAFCo's throughout the State. In addition, other LAFCo's do not defer payment for staff time or provide a subsidy to the proponents.

**SEE ATTACHED ADDENDUM TO STAFF REPORT FOR ADDITIONAL
DETAILS AND BACKGROUND INFORMATION**

SACRAMENTO LOCAL AGENCY FORMATION COMMISSION

Respectfully Submitted,



**Peter Brundage
Executive Officer**

ADDENDUM

COMMISSION RESPONSIBILITY

Statutory Guidelines

Cortese Knox Hertzberg requires the Commission to determine if existing single purpose agencies can provide efficient and cost-effective municipal services.

- 56301:** Among the purposes of a commission are discouraging urban sprawl, preserving open space and prime agricultural lands, efficiently providing government services, and encouraging the orderly formation and development of local agencies based upon local conditions and circumstances. One of the objects of the Commission is to make studies and to obtain and furnish information which will contribute to the logical and reasonable development of local agencies in each county and to shape the development of local agencies so as to advantageously provide for the present and future needs of each county and its communities. **When the formation of a new government entity is proposed, a Commission shall make a determination as to whether existing agencies can feasibly provide the needed service or services in a more efficient and accountable manner.** If a new single purpose agency is deemed necessary, the Commission shall consider reorganization with other single-purpose agencies that provide related services.
- 56886.5 (a)** If a proposal includes . . . the incorporation of a city, the Commission shall determine whether or not existing agencies can feasibly provide the needed services in a more efficient and accountable manner. If a single-purpose agency is deemed necessary, the Commission shall consider reorganization with other single purpose local agencies that provide related services.

Therefore, the proposed CFA analysis will address these statutory policies by examining governance structure options in addition to evaluating the viability of a “contract” city.

SUMMARY OF MUNIFINANCIAL AMENDED SCOPE OF WORK

During the May 7, 2008 Commission meeting, the Commission requested staff to clarify the proposed Scope of Work submitted by MuniFinancial. Staff has met with MuniFinancial to address the Commissions concerns and provide clarification.

The Scope of Work is difficult and complicated and it will be necessary to make several assumptions. It is based on a limited budget and very tight time line. Given these constraints, I am recommending that the Commission approve the revised Scope of Work submitted by MuniFinancial described in their proposal.

Revised Arden Arcade Incorporation Project Description

The following revised Scope of Work is proposed to be the basis of analysis for the Comprehensive Fiscal Analysis and Environmental Impact Report for the proposed Arden Arcade Incorporation in order for the Commission to determinations pursuant to Government Code Sections 56301 and 56886.5. Attachment "A" contains the revised Scope of Work Dated May 30, 2008.

Project Description:

Evaluate the environmental impacts and financial impacts of the proposed Arden Arcade Incorporation based on the petition submitted by the proponents.

Supplemental Information

The CFA analysis will also examine and evaluate whether or not the Arden Arcade area proposed for incorporation should be incorporated as a full service city or annexed to the City of Sacramento. These are not considered to be project alternatives. *The analysis and information is solely intended to provide the Commission with sufficient information to make determinations pursuant to Government Code Sections 56301 and 56885.5 (a) discussed above. In addition, the environmental analysis will not evaluate the formation of a full service city or annexation to the City of Sacramento as project alternatives. The EIR will examine boundary alternatives and evaluate the environmental impacts of forming a new "contract" city as described in the petition submitted by the incorporation proponents.*

The purpose of the additional information is limited and intended only to provide adequate information for the Commission to approve or deny the incorporation of a "contract" city pursuant to government Code Sections 56301 and 56885.5.

The additional information will not be sufficient to allow the commission to approve these alternatives. For example, in the event the Commission determines that annexation appears to be more efficient and cost-effective, the City of Sacramento would have to initiate a separate application or the residents would have to submit a new petition and

application. (Note: the affected territory is not within the City of Sacramento Sphere of Influence). In the case of a full service city, more detailed studies and analysis would be required prior to Commission approval.

The amended Scope of Work for the CFA and related studies is summarized as follows:

Proposed Change of Organization	Analysis
<p>Incorporation as a Contract City</p>	<p>Analysis Objective:</p> <p>Standard CFA Analysis-based on applicant petition</p> <p>Determine if there is a funding surplus</p> <p>Determine if the new city is sustainable and viable during the statutory timeframe.</p> <p>If yes, subject to funding, negotiate a proposed revenue neutrality agreement</p>
<p>Incorporation as a Full Service City</p>	<p>Analysis Objective:</p> <p>Determine if a full service city would be more economical or cost-effective than a contract city.</p> <p>Are there any economic benefits or advantages to the proposed city General Fund by creating a full service city?</p> <p>Assumptions:</p> <p>City would become a full service city</p> <p>Special districts would be detached, reorganized or dissolved-the new city would provide those services.</p>

<p>Annexation</p>	<p>Analysis Objective:</p> <p>Compare service levels, costs, and Revenues to the proposed incorporation as a contract city and full service city.</p> <p>Is the City of Sacramento a more efficient and cost-effective service provider than either a contract or full service city.</p> <p>Assumptions:</p> <p>Special Districts would be detached and/or reorganized</p> <p>City of Sacramento would be sole be the sole service provider under the City's current delivery model.</p>
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SUMMARY OF PROJECT COSTS AND FUNDING REQUIREMENTS

COMMISSION PAYMENT OPTIONS

Arden Arcade Estimated Project Costs and Funding Requirements

Total Estimated Costs to Complete Studies	193,883.00
Less Proponent funds on Deposit	(7,630.50)
Less LAFCo match for funds on deposit	(7,630.50)
Less LAFCo match not yet encumbered by Deposit	<u>(36,811.00)</u>
Proponents Funding Requirement Share of Cost (SOC)	141,811.00

Proposed Payment Schedule Based on Consultant Funding Requirements

Expense	August	November	Total
CFA	45,000	45,000	90,000
EIR	56,285		56,285
Legal	4,000	13,836	17,836
Other/Contingency		29,762	29,762
Estimated Total Costs	<u>105,285</u>	<u>88,598</u>	<u>193,883</u>
Less: Deposit/Match	(15,261)		(15,261)
Less LAFCo Match	<u>(36,811)</u>		<u>(36,811)</u>
Total Proponent SOC	53,213	88,598	141,811

Potential Adjustments to Proponents' Funding Requirement

LAFCo-Burr Adj		(5,164)	(5,164)
Proponents Net SOC	<u>53,213</u>	<u>83,434</u>	<u>136,647</u>
Less Other/Contingency		<u>(29,762)</u>	<u>(29,762)</u>
Proponent SOC w/o Other/Contingency	53,213	53,672	106,885

The Commission provided staff with some direction and suggestions to modify staff's May 7, 2008 recommendations. As a result, I have developed the payment options set forth in the preceding table. Based on the current situation and the fact that payments have not been previously been made on time, I continue to recommend that the Commission consider a more aggressive payment schedule.

Staff is recommending that the proponents' share of funding should be \$141,811 as previously discussed in this staff report. The Commission has the discretion to amend this amount. The table provides two adjustments: defer funding for Other/Contingency

Funding in the amount of \$29,762 and provide a partial or full credit offset for funds expended on the Burr contract. These issues are discussed in other sections of this report.

Staff is also recommending that the proponents' pay the entire amount as determined by the Commission by August 1, 2008. However, the Commission has the discretion to allow any number of payments subject to approval by LAFCo consultants. LAFCo Consultants' have requested that payments be limited to August 1, 2008 and November 1, 2008 in order to ensure completion of the required studies in the statutory time line. In the event payments are not made as set forth above LAFCo or its' consultants cannot guarantee completion of the required studies to commence Public Hearings in the Spring of 2009. Further delays in completing the required studies may result in additional costs.

Based on discussions with Commission Counsel and our consultants, therefore, it is prudent to require that the proponents' remaining share of funds be deposited no later than November 1, 2008 including \$29,762 for Other/Contingency. We believe it is prudent that adequate funding be available to complete the baseline CFA and EIR. Therefore, in the event the Commission considers allowing the proponents to make payments, staff recommends that the payments be limited to two payments on August 1, 2008 and November 1, 2008.

The Commission should not consider reducing the August 1, 2008 payment in the amount of \$53,213. This amount is required for work to be completed during August through November. This is the minimum amount that is required by LAFCo consultants. The Commission may consider increasing the initial August payment

**ANALYSIS OF PROPONENT PAYMENT PROPOSAL PER MAY 9, 2008
LETTER**

On May 9, 2008, the Arden Arcade Incorporation proponents submitted a letter to LAFCo proposing a payment schedule consisting of three payments; August 1, 2008, November 1, 2008, and February 1, 2009. Staff was directed to review this proposal with LAFCo consultants, the proponents, and pursuant to direction and suggestions given by the Commission during the May 7, 2008 Commission meeting.

The following summarizes the proponents' payment proposal as discussed in their letter dated May 9, 2008.

Summary of Proponent Funding Schedule

August 1, 2008	
Proponents' cash payment	\$50,000
Funds and match on deposit	15,261
Remaining LAFCo match	36,811
Amount Expended on Burr	<u>10,328</u> (assumes reimbursement)
Total Funds	\$112,400
November 1, 2008	
Proponents' Payment	\$25,000
February 1, 2008	
Proponents' Payment	<u>\$17,049</u>
Total Funds Available	\$154,449

The proponents' May 9, 2008 proposal is not accurate because they have assumed reimbursement from Burr Consulting as both revenue and as a cost offset on the MuniFinancial proposal. The estimated total project cost without contingency/other expenses is summarized as follows:

Summary of Estimated Project Costs without Contingency/Other

CFA	\$90,000
EIR	56,285
Legal	<u>17,836</u>
Total	\$164,121

Proponent Estimated Funding Shortfall

Based on the proponent's funding schedule they are short \$9,762 assuming that there is no need for contingencies and reimbursement is received from Burr Consulting.

Total Funds	\$154,449
Total Costs	<u>164,121</u>
Shortfall	\$ 9,672

I have discussed this issue with the proponents and they have acknowledged that their proposal was short by \$9,672.

Staff and the proponents have not reached agreement regarding the amount paid to Burr Consulting in the amount of \$10,328.

WORK PERFORMED BY BURR

Requested Refund of \$10,328

The proponents have requested that work performed by Burr Consulting be transferred to MuniFinancial which would result in cost savings to MuniFinancial and in the event this material and information does not result in cost savings to MuniFinancial, the amount of \$10,328 should be reimbursed by Burr Consulting. Additional detail on the letter submitted by Proponents is attached hereto.

Burr Consulting has provided all working files and material to LAFCo. Burr Consulting expended the funds in good faith, but unfortunately it may not be valuable to another consultant. At this point, it does not appear that work performed by Burr Consulting will result in any cost reductions for the MuniFinancial CFA.

Staff, however, does not recommend that LAFCo credit the Proponents for the amount paid to Burr Consulting. By utilizing MuniFinancial to perform the CFA, the Proponents have realized a cost savings of at least \$19,434, despite the funds paid to Burr Consulting. Should LAFCo now absorb the cost of Burr Consulting's services, it would result in a windfall to the Proponents, and would ignore any role that the delay in funding from the Proponents played in the termination of the contract with Burr Consulting.

Furthermore, Burr Consulting was under contract and expended funds as required under the contract. Based on the insufficient funding by Proponents, Burr would not have been able to complete the CFA and related studies, for the original contract price. Since the Comprehensive Fiscal Analysis must use the most current financial data, it would have likely been necessary to update the CFA and supplemental fiscal analysis resulting in additional costs to the proponents rather than a cost savings.

The Commission does, however, have the following options in responding to the Proponents' request for that LAFCo contribute an additional \$10,328 to cover the funds paid to Burr Consulting:

1. Do not provide a credit or offset, \$10,328 is already included in the project cost budget \$141,811.
2. Increase LAFCo's contribution to make up this difference \$10,328.
3. Split the amount to be paid 50/50 between LAFCo (\$5,174) and the Applicants (\$5,174).
4. Attempt to recover \$10,328 from Burr Consulting.
5. Defer decision until August 1, 2008, payment deadline.

As stated above, I do not believe that LAFCo should be required to fund this amount given the fact that Proponent funding was not available to complete the studies during FY 2007-08. I also do not recommend pursuing legal action against Burr Consulting. Based on the small amount paid to Burr Consulting under the contract, it would not be cost effective to attempt to recover that amount at this time.

CONSULTANT FUNDING REQUIREMENTS

Staff has had discussions with both the EIR and CFA consultants to determine payment schedules and timing.

The CFA work must commence on August 1, 2008 in order for a Draft CFA to be available by April, 2009.

There must be coordination between the CFA and EIR consultant on a number of issues. Therefore, I believe that it is best to try and coordinate these reports and that both the Draft CFA and Draft EIR should be released during the same public review time period.

The Consultants will be paid based on performance bench marks as various tasks are completed.

MuniFinancial has requested that \$45,000 be deposited prior to August 1, 2008 and that the second installment be deposited with LAFCo by November 1, 2008. This will allow MuniFinancial to process the CFA in a timely and efficient manner.

MBA, the EIR consultant has requested that the remaining balance of \$56,285 be deposited in advance of resuming any further work.

The consultants are ready, willing and able to begin work as soon as funding is made available. However, they need assurance that they will be paid as they complete their various tasks. Based on their concerns, and to keep the project on schedule, they are requesting that the payment schedule be limited to only two payments: August 1, 2008 and the final payment is deposited on November 1, 2008 to cover their contracts.

Summary of Consultant's payment schedule necessary to complete studies and conduct hearings by the end of June 30, 2009 as required by statute:

<u>Date</u>	<u>CFA</u>	<u>EIR</u>	<u>Legal</u>	<u>Total</u>
August 1	\$45,000	\$56,285	\$4,000	\$105,285*
November 1	<u>\$45,000</u>	<u> </u>	<u>\$13,786</u>	<u>\$ 58,786</u>
Total	\$90,000	\$56,285	\$17,786	\$164,071

*August 1, 2008 \$105,285-52,072=\$53,213 Proponent Share

Other/Contingency funds in the amount of \$29,762 have not been included in the preceding table.

Michael Brandman Associates

Based on the delay in funding from the proponents, staff must amend the Consultant contract with Michael Brandman Associates (MBA) to address the revised work schedule and to reflect the inclusion of a \$14,400 contingency fund, as requested by MBA.

According to the revised work schedule, MBA will produce a Draft EIR for public review by December by mid-December, 2008. After providing sufficient time for public comment and responses to public comment, the Final EIR will be ready for adoption prior to the end of the fiscal year.

SUMMARY OF LAFCO INCORPORATION FEE POLICIES

The proponents stated the following in their letter dated May 9, 2008:

“As has been previously noted, no previous incorporation effort throughout the state of California has been required by any LAFCo to pay the costs associated with the EIR, CFA, or legal costs in advance of incorporation.”

I have surveyed several LAFCo incorporation fee policies. Sacramento LAFCo incorporation fee policy appears to be very fair and reasonable. In fact, it appears to be the most generous for proponents. All LAFCo's require full cost recovery for legal, consultant costs as well as staff time. LAFCo staff time is either based on actual costs or a fixed amount. Payment is required in advance of performing work and in the event the costs exceed the deposit, payment is generally due from the proponents within 15 days of billing. The following table summarizes several current LAFCo incorporation fee policies:

LAFCo	Incorporation Fee Policy
Sacramento	LAFCo contributes up to \$100,000 Proponents responsible for balance of CFA, EIR, and Legal Costs LAFCo staff time is reimbursed if new city created
Santa Clara	<u>Full Cost Recovery</u> is required from proponents including LAFCo Staff Time prior to incurring costs. If processing costs begin to exceed the deposit, additional fees are required. LAFCo approval will be conditioned upon final payment within 35 days of LAFCo hearing.
San Bernardino	<u>Full Cost Recovery</u> EIR \$20,000 deposit, balance due prior to issuance of Certificate of Completion CFA: \$50,000 deposit, Balance due prior to scheduling Commission Meeting Legal: Actual Costs Staff time: \$8,200

Monterey	<p><u>Full Cost Recovery</u></p> <p>\$5,000 deposit, LAFCo bills proponents actual costs in excess of deposit. 15% administrative fee on top of actual CEQA costs.</p>
Los Angeles	<p><u>Full Cost Recovery</u></p> <p>Applicant shall deposit 1/3 of the estimated cost of the work and may be required to make progress payments during the proceedings. LAFCo staff costs are capped at \$7,500.</p>
Nevada	<p><u>Full Cost Recovery</u></p> <p>Deposit of estimated costs, when the Executive Officer determines that the actual cost of processing an application is likely to exceed the deposited amount, additional deposits will be required. (\$30,000 initial deposit).</p>
Orange	<p><u>Full Cost Recovery</u></p> <p>Deposit in the amount of estimate costs, proponents will be billed when costs exceed deposit and payment is due within 15 days of LAFCo billing</p>
Contra Costa	<p><u>Full Cost Recovery</u></p> <p>Payment is due when application is submitted. LAFCo Staff Costs capped at \$8,000.</p>
Ventura	<p><u>Full Cost Recovery</u></p> <p>Deposit of estimated costs, initial deposit of \$30,000. LAFCo will bill applicant for costs in excess of deposit Payment due within 15 days of billing</p>

San Diego	<u>Full Cost Recovery</u> Initial Deposit of \$13,750 + 60% of actual LAFCo review costs Fees are due when proposals are submitted to LAFCo. A supplemental fee may be charged and collected prior to the LAFCo hearing if necessary.
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