



Memorandum

Chuck Reed

TO: Mayor and City Council

FROM: Chuck Reed

SUBJECT: Recovery of Funds from Norcal

DATE: June 23, 2006

RECOMMENDATION:

That the San Jose City Council direct the City Attorney take legal action to require Norcal to pay back \$11.25 million which Norcal received under an Amendment to the Recycle Plus Contract, which was approved by the Council Majority on September 21, 2004.

BACKGROUND:

The Indictment of Mayor Gonzales, Joe Guerra and Norcal Waste Systems, Inc. allege that Norcal was part of a "conspiracy to cheat and defraud" the city. Such actions would be grounds for rescission of the contract amendment, even though it was approved by the Council Majority.

Even though the City Council was informed by the City Attorney at the September 21, 2004 hearing that there was no legal obligation to amend the Recycle Plus Contract, it is clear from the City's Independent Investigator's Initial Report and the Indictment that material facts were withheld from the Council when the amendment was being considered. Norcal's failure to disclose material facts would also be grounds for recovery of the \$11 million paid to Norcal under the Amendment.