



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Gerald A. Silva

SUBJECT: STATUS REPORT ON THE
SELECTION OF AN INDEPENDENT
INVESTIGATOR TO REVIEW THE
ISSUES ASSOCIATED WITH THE NORCAL
CONTRACT AND CONTRACT AMENDMENT

DATE: September 1, 2005

BACKGROUND

On June 28, 2005, the City Council directed the City Auditor to 1) select and retain a qualified independent investigator to review issues associated with the Norcal garbage contract and contract amendment, 2) complete a thorough conflict analysis to ensure independence and impartiality and 3) to negotiate and execute a contract with the independent investigator in an amount not to exceed \$100,000.

RECOMMENDATION

Accept the City Auditor's status report on the selection of an independent investigator to review the issues regarding the Norcal garbage contract and contract amendment.

STRATEGIC PROCEDURE FOR SELECTING AN INDEPENDENT INVESTIGATOR

The City Auditor has completed the following:

1. Set up a meeting with the Business Manager of the San Jose Judicial Arbitrations Mediations (JAMS) Office in order to discuss possible candidates to make up an Expert Panel of Neutral Evaluators (EPNE).
2. The JAMS Business Manager provided the City Auditor with a list of nine retired judges of which three were chosen. The City Auditor has selected the members of the EPNE to include Judge Peter Stone, Judge Joseph Biafore and Judge Harry Low. The City Auditor has also designated Judge Peter Stone as the lead member of the EPNE.

3. The three retired judges completed and signed the City of San Jose's conflict of interest form. The City Auditor has completed the conflict of interest analysis on the EPNE and has found the members to be free of bias.
4. The City Auditor with assistance from the City Attorney's Office negotiated a contract agreement and contract amendment between the City Auditor and the JAMS Business Manager and the EPNE. The City Auditor has executed and will administer the contract and make any necessary payments to the JAMS. The contract and contract amendment between the City Auditor, on behalf of the City of San Jose and JAMS, INC., were fully executed on August 3, 2005 and August 29, 2005 respectively. (See attachments A and B).
5. The scope of services stated in the contract amendment¹ between the City of San Jose and JAMS, INC., provides that JAMS shall perform the following services:
 - 1) Provide the services of three retired judges who will make up an Expert Panel of Neutral Evaluators (EPNE) responsible for 1) selecting an independent investigator to review issues associated with the Norcal garbage agreement and amendment as discussed in the Santa Clara County Civil Grand Jury Report, 2) overseeing the investigator and the investigation process, 3) designating the lead member of the EPNE and the independent investigator to return with a full report, which will include recommended next steps, to the full City Council by the date stated in Exhibit C unless otherwise extended, 4) designating the lead member of the EPNE and the independent investigator to report back on the status of the investigation to the full City Council in the event that the investigation is not complete by the date stated in Exhibit C.
 - 2) Direct the Independent Investigator to include in the scope, the review of the material and findings of the Grand Jury to determine if the Mayor, Mayor's staff, or other CITY officials, officers or employees violated the City Charter, Municipal Code, CITY policies related to ethics of independent judgment, or other law, with the final scope to be determined by the Independent Investigator with oversight from the EPNE.
 - 3) Require the Independent Investigator to complete the City of San Jose Conflict of Interest Form for JAMS review.
 - 4) Advise prospective candidates for the Independent Investigator that the Independent Investigator will be required to comply with the City of San Jose contract requirements including indemnity and insurance requirements.

¹ SECTION 2, TERM OF AGREEMENT; EXHIBIT B, SCOPE OF SERVICES; and EXHIBIT C, SCHEDULE OF PERFORMANCE were amended. See attachment B.

- 5) Review independent investigator invoices for services rendered for accuracy and compliance with the scope of services the EPNE developed.
- 6) Forward independent investigator invoices to the City of San Jose, in care of the City Auditor for payment. The City Auditor will require compliance with the not to exceed amount of One Hundred Thousand Dollars (\$100,000) for services for the independent investigator and incidental JAMS administrative costs as stated in Exhibit D.

STATUS

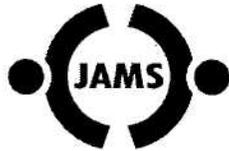
The EPNE on behalf of JAMS, INC. has selected Chris Scott Graham of Dechert, LLP as the independent investigator to examine the issues associated with the Norcal garbage contract and contract amendment. (See attached press release dated September 1, 2005)

Once the City Auditor has completed the conflict of interest analysis on the selected investigator, the negotiation and execution of a contract agreement between the City of San Jose and the investigator will commence.

COORDINATION

The City Auditor has coordinated the negotiation and execution of the contract and contract amendment between the City of San Jose and JAMS, INC., with the City Attorney, the Chief Deputy City Attorney, the Risk Management Department and the City Clerk's Office.


GERALD A. SILVA
CITY AUDITOR



THE RESOLUTION EXPERTS

For Immediate Release

Contact:

Michele Apostolos
Director of Marketing and Communications
JAMS, The Resolution Experts
949-224-4662 (direct); 310-422-2163 (cell)
mapostolos@jamsadr.com

**JAMS NEUTRAL PANEL SELECTS DECHERT LLP AS INVESTIGATIVE FIRM
IN SAN JOSE/NORCAL MATTER**

San Jose, September 1, 2005 – *The following statement is from retired Santa Clara County Superior Court Judge Peter G. Stone, who is leading the pro bono panel of JAMS neutrals who have agreed to select and supervise an investigator in the San Jose/Norcal Waste Services contract matter. The other JAMS neutrals who serve on the panel are former California State Insurance Commissioner and retired California Court of Appeal Justice Harry W. Low, and retired Santa Clara County Superior Court Judge Joseph F. Biafore, Jr.*

“After extensive consideration of qualified firms that met the requirements provided to the neutral panel, we are pleased to announce that Dechert LLP (www.dechert.com) with lead attorney Chris Scott Graham in Palo Alto has been selected as the independent investigator to look into the San Jose/Norcal Waste Services contract matter.

The panel reviewed several RFPs and the selection process involved eliminating firms with internal conflicts of interest as well as those firms unable to meet the budget and deadline parameters of this assignment.

Dechert LLP was selected because it is well qualified and has the appropriate resources. We are confident that Dechert has the capability to conduct the investigation as required. As apparent by the firm selection process, the investigation will take longer than initially anticipated by the City Council. We estimate that it will take at least 90 days to complete the investigative report. Our panel will continue to oversee the investigation in order to ensure accuracy and balance.”

About JAMS, The Resolution Experts

Founded in 1979, JAMS, The Resolution Experts, is the nation's largest private provider of alternative dispute resolution services. With 23 Resolution Centers nationwide, JAMS and its more than 200 full-time, exclusive neutrals are responsible for resolving thousands of the nation's most important cases. JAMS may be reached at 800-352-5267 or on the web at www.jamsadr.com.

ATTACHMENT A

AGREEMENT FOR JAMS SERVICES
BETWEEN
THE CITY OF SAN JOSE
AND
JAMS, INC. – THE RESOLUTION EXPERTS

**AGREEMENT FOR JAMS SERVICES
BETWEEN
THE CITY OF SAN JOSE
AND
JAMS, INC. – THE RESOLUTION EXPERTS**

THIS AGREEMENT is made and entered into this 3rd day of August 2005, by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY"), and, JAMS, INC. – THE RESOLUTION EXPERTS (hereinafter "JAMS").

RECITALS

The purpose for which this AGREEMENT is made, and all pertinent recitals, are listed on EXHIBIT A, entitled "RECITALS," which is attached hereto and incorporated herein.

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. SCOPE OF SERVICES.

JAMS shall perform those services specified in detail in EXHIBIT B, entitled "SCOPE OF SERVICES," which is attached hereto and incorporated herein.

SECTION 2. TERM OF AGREEMENT.

The term of this AGREEMENT shall be from August 1, 2005 to September 30, 2005, inclusive, subject to the provisions of SECTION 11 of this AGREEMENT.

SECTION 3. SCHEDULE OF PERFORMANCE.

The services of JAMS are to be completed according to the schedule set out in EXHIBIT C, entitled "SCHEDULE OF PERFORMANCE," which is attached hereto and incorporated herein.

SECTION 4. COMPENSATION.

Services performed by JAMS shall be at no cost to CITY.

SECTION 5. METHOD OF PAYMENT.

CITY shall pay for the services of the Independent Investigator in accordance with the terms in this AGREEMENT.

SECTION 6. INDEPENDENT CONTRACTOR.

It is understood and agreed that JAMS, in the performance of the work and services agreed to be performed by JAMS, shall act as and be an independent contractor and not an agent or employee of CITY; and as an independent contractor, JAMS shall obtain no rights to retirement benefits or other benefits which accrue to CITY's employees, and JAMS hereby expressly waives any claim it may have to any such rights.

SECTION 7. ASSIGNABILITY.

The parties agree that the expertise and experience of JAMS are material considerations for this AGREEMENT. JAMS shall not assign or transfer any interest in this AGREEMENT nor the performance of any of JAMS' obligations hereunder, without the prior written consent of CITY, and any attempt by JAMS to so assign this

AGREEMENT or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 8. INSURANCE REQUIREMENTS.

JAMS agrees to have and maintain the policies set forth in EXHIBIT E, entitled "INSURANCE," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Finance or the Director's authorized designee ("Risk Manager") of the City of San Jose as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. JAMS agrees to provide CITY with a copy of said policies, certificates and/or endorsements before work commences under this AGREEMENT.

SECTION 9. NONDISCRIMINATION.

JAMS shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

SECTION 10. TERMINATION.

- A. CITY shall have the right to terminate this AGREEMENT, without cause, by giving not less than seven (7) days' written notice of termination.
- B. If JAMS fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, CITY may terminate this AGREEMENT immediately upon written notice.

- C. CITY's City Auditor is empowered to terminate this AGREEMENT on behalf of CITY.
- D. In the event of termination, JAMS shall deliver to CITY copies of all reports, documents, and other work performed by JAMS and the independent investigator hired by JAMS under this AGREEMENT, and upon receipt thereof, CITY shall pay JAMS for incidental administrative costs as stated in Exhibit D and CITY shall pay independent investigator for services performed and reimbursable expenses incurred to the date of termination.

SECTION 11. GOVERNING LAW.

CITY and JAMS agree that the law governing this AGREEMENT shall be that of the State of California.

SECTION 12. COMPLIANCE WITH LAWS.

JAMS shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

SECTION 13. CONFIDENTIAL INFORMATION.

All data, documents, discussions or other information developed or received by or for JAMS in performance of this AGREEMENT are confidential and not to be disclosed to any person except as authorized by CITY, or as required by law.

SECTION 14. OWNERSHIP OF MATERIALS.

All reports, documents or other materials developed or discovered by JAMS or any other person engaged directly or indirectly by JAMS to perform the services required hereunder shall be and remain the property of CITY without restriction or limitation upon their use.

SECTION 15. WAIVER.

JAMS agrees that waiver by CITY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by JAMS shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

SECTION 16. JAMS' BOOKS AND RECORDS.

- A. JAMS shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to JAMS pursuant to this AGREEMENT.
- B. JAMS shall maintain all documents and records which demonstrate performance under this AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.

- C. Any records or documents required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit at no cost to CITY, at any time during regular business hours, upon written request by the City Auditor. Copies of such documents shall be provided to CITY for inspection at New City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at JAMS' address indicated for receipt of notices in this AGREEMENT.
- D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of JAMS' business, CITY may, by written request by any of the above-named officers, require that custody of the records be given to CITY and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by JAMS, JAMS' representatives, or JAMS' successor-in-interest.

SECTION 17. CONFLICT OF INTEREST.

JAMS shall avoid all conflict of interest or appearance of conflict of interest in performance of this AGREEMENT

SECTION 18. GIFTS.

- A. JAMS is familiar with CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San Jose Municipal Code.

- B. JAMS agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter.
- C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this AGREEMENT by JAMS. In addition to any other remedies CITY may have in law or equity, CITY may terminate this AGREEMENT for such breach as provided in SECTION 11 of this AGREEMENT.

SECTION 19. DISQUALIFICATION OF FORMER EMPLOYEES.

JAMS is familiar with the provisions relating to the disqualification of former officers and employees of CITY in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San Jose Municipal Code ("Revolving Door Ordinance"). JAMS shall not utilize either directly or indirectly any officer, employee, or agent of JAMS to perform services under this AGREEMENT, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

SECTION 20. SPECIAL PROVISIONS.

Special provisions, if any, to this AGREEMENT are specified in EXHIBIT G entitled, "SPECIAL PROVISIONS," which is attached hereto and incorporated herein.

SECTION 21. NOTICES.

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY: Gerald Silva
City Auditor
City of San Jose
200 East Santa Clara St.
San Jose, CA 95113-1905

To JAMS: Derek Ryan
Business Manager
JAMS
160 W. Santa Clara St.
Suite 1150
San Jose, CA 95113

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

SECTION 22. VENUE.

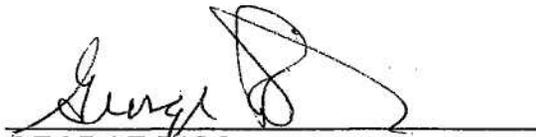
In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

SECTION 23. PRIOR AGREEMENTS AND AMENDMENTS.

This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may be modified only by a written amendment duly executed by the parties to this AGREEMENT.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

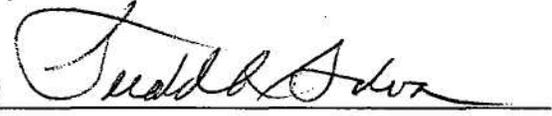
APPROVED AS TO FORM:



GEORGE RIOS
Assistant City Attorney

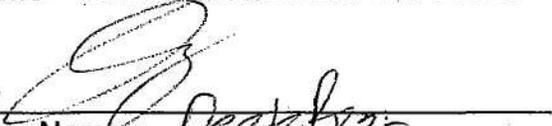
"CITY"

CITY OF SAN JOSE, a municipal corporation

By 

"JAMS"

JAMS – THE RESOLUTION EXPERTS

By 

Name: *Peretyn*
Title: *Business Manager*

EXHIBIT A

RECITALS

WHEREAS, the CITY OF SAN JOSE desires to obtain JAMS' services to select a qualified independent investigator to review and conduct an investigation of issues associated with the Norcal garbage contract and contract amendment ; and

WHEREAS, JAMS offers services for judicial arbitrations and mediations and has the ability to establish an expert panel of neutral evaluators to select a qualified independent investigator to be hired by CITY, and oversee the investigator and the investigation process; and

WHEREAS, JAMS has the necessary professional expertise and skill among its membership of retired judges and attorneys to perform such services; and

WHEREAS, JAMS desires to offer its services at no cost to the City of San Jose in the interest of supporting and benefiting the City of San Jose and its citizens.

NOW, THEREFORE, the purpose of this AGREEMENT is to retain as JAMS to CITY to perform those services specified in SECTION 1 of this AGREEMENT.

EXHIBIT B
SCOPE OF SERVICES

1. JAMS shall perform the following services: Provide the services of three retired judges who will make up an Expert Panel of Neutral Evaluators (EPNE) responsible for 1) selecting an independent investigator to review issues associated with the Norcal garbage agreement and amendment as discussed in the Santa Clara County Civil Grand Jury Report, 2) overseeing the investigator and the investigation process, 3) designating the lead member of the EPNE and the independent investigator to return with a full report, which will include recommended next steps, to the full City Council by the date stated in Exhibit C unless otherwise extended, 4) designating the lead member of the EPNE and the independent investigator to report back on the status of the investigation to the full City Council in the event that the investigation is not complete by the date stated in Exhibit C.

2. Direct the independent investigator to include in the scope, the review of the material and findings of the Grand Jury to determine if the Mayor, Mayor's staff, or other city employees violated the City Charter, Municipal Code, city policies related to ethics of independent judgment, or other law, with the final scope to be determined by the independent investigator with oversight from the EPNE.

3. Require that the members of the EPNE and the Independent Investigator complete the City of San Jose Conflict of Interest Form for JAMS.

4. Oversee the selection of an independent investigator by the EPNE. JAMS shall advise prospective candidates for the Independent Investigator that the Independent Investigator will be required to comply with the City of San Jose contract requirements including indemnity and insurance requirements.

5. Review all invoices submitted by the independent investigator for services rendered as the independent investigator for accuracy and compliance with the scope of services developed by the EPNE.

6. Forward all invoices submitted by the independent investigator to the City of San Jose, in care of the City Auditor for payment. The City Auditor will require compliance with the not to exceed amount of One Hundred Thousand Dollars (\$100,000) for services for the independent investigator and incidental administrative costs incurred by JAMS as stated in Exhibit D.

EXHIBIT C
SCHEDULE OF PERFORMANCE

Work shall commence immediately upon execution of this AGREEMENT. The estimated earliest time for completion is August 23, 2005. If the investigation is not complete by August 23, 2005, the lead member of the EPNE and the independent investigator will report back on the status of the investigation to the full City Council.

EXHIBIT D
COMPENSATION

JAMS agrees to provide its services and the services of the members of the EPNE at no cost to CITY. CITY agrees to pay for services rendered by the Independent Investigator after review of the Independent Investigator's invoices by JAMS.

CITY agrees to reimburse JAMS for incidental administrative costs such as costs of duplication of materials or mailing of materials and/or documents.

EXHIBIT E
INSURANCE

JAMS, at JAMS' sole cost and expense for the full term of this contract or any renewal thereof, shall require at least all of the following minimum insurance requirements for its employees who may perform services under this AGREEMENT prior to commencing any work or receiving payments therefore under this contract:

A. Automobile Policy.

JAMS agrees to keep in good standing a valid California driver's license at all times during the term of this AGREEMENT. JAMS shall also obtain, and keep in force during the term hereof, a policy of motor vehicle public liability insurance which shall afford not less than the following amounts of coverage: bodily injury liability \$100,000 each person, \$300,000 each occurrence; property damage liability, \$50,000 each occurrence.

B. Workers' Compensation and Employers' Liability Policy.

1. This policy shall be written in accordance with the laws of the State of California and providing coverage for any and all employees of JAMS:
2. This policy shall provide coverage for Workers' Compensation (Coverage A).
3. This policy shall also provide coverage for \$1,000,000 Employers' Liability (Coverage B).

C. Endorsements.

The following endorsement is required to be made a part of the above required policy:

1. "Thirty (30) days prior written notice of cancellation shall be given to the City of San Jose in the event of cancellation and/or reduction in coverage of any nature."

D. Proof of Coverage.

A copy of the required Endorsement shall be attached to the Certificate of Insurance which shall be provided by the JAMS' insurance company as evidence of the

stipulated coverages. This Proof of Insurance shall then be mailed to:

Risk Management
Finance
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113-1905

E. Exception.

If, however, JAMS does not have any employees and does not wish to cover himself/herself for Workers' Compensation, JAMS shall sign the following statement as well as the contract itself to effect a fully initiated contract:

I, as the herein designated JAMS, do not have, nor intend to have for the full term of this AGREEMENT, any employees. Furthermore, I do not wish to obtain or be covered under any Workers' Compensation insurance coverage and, therefore, am signing this statement in lieu of providing the above required Workers' Compensation Coverage.

Signature of JAMS

Date

(Please print or type name of company/JAMS)

EXHIBIT F

DISCLOSURE STATEMENT

A disclosure statement (Form 700) is not required of JAMS.

EXHIBIT G

SPECIAL PROVISIONS

There are no Special Provisions.

ATTACHMENT B

**FIRST AMENDMENT TO SERVICES AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
JAMS, INC. – THE RESOLUTION EXPERTS**

FULLY-EXECUTED

Auditor
DEPT. FILE COPY

FIRST AMENDMENT TO SERVICES AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
JAMS, INC. – THE RESOLUTION EXPERTS

This FIRST AMENDMENT TO AGREEMENT is entered into this 29th day of August 2005, by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY"), and, JAMS, INC. (hereinafter "JAMS").

RECITALS

WHEREAS, on August 3, 2005, CITY and JAMS entered into an agreement entitled "AGREEMENT FOR JAMS SERVICES BETWEEN THE CITY OF SAN JOSE AND JAMS, INC. – THE RESOLUTION EXPERTS" ("AGREEMENT"); and

WHEREAS, CITY and JAMS desire to amend the AGREEMENT to extend the term and to modify the scope of services;

NOW, THEREFORE, the parties agree to amend the AGREEMENT as follows:

SECTION 1. SECTION 2, "TERM OF AGREEMENT," is amended to read as follows:
The term of this AGREEMENT shall be from August 1, 2005 to December 31, 2005, inclusive, subject to the provisions of SECTION 11 of this AGREEMENT.

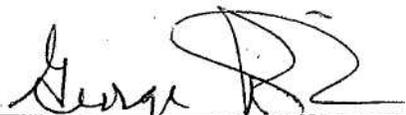
SECTION 2. EXHIBIT B "SCOPE OF SERVICES" is amended to read as shown in REVISED EXHIBIT B, attached and incorporated into this First Amendment.

SECTION 3. EXHIBIT C "SCHEDULE OF PERFORMANCE" is amended to read as shown in REVISED EXHIBIT C, attached and incorporated into this First Amendment.

SECTION 4. All of the terms and conditions of the original AGREEMENT not modified by this First Amendment shall remain in full force and effect.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

APPROVED AS TO FORM:



GEORGE RIOS
Assistant City Attorney

"CITY"

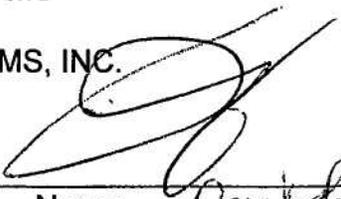
CITY OF SAN JOSE, a municipal corporation

By 

GERALD SILVA
City Auditor

"JAMS"

JAMS, INC.

By 

Name: Derik Brown
Title: Business Manager

REVISED EXHIBIT B
SCOPE OF SERVICES

1. JAMS shall perform the following services: Provide the services of three retired judges who will make up an Expert Panel of Neutral Evaluators (EPNE) responsible for 1) selecting an Independent Investigator to review issues associated with the Norcal garbage agreement and amendment as discussed in the Santa Clara County Civil Grand Jury Report, 2) overseeing the Independent Investigator and the investigation process, 3) designating the lead member of the EPNE and the Independent Investigator to return with a full report, which will include recommended next steps, to the full City Council by the date stated in Exhibit C unless otherwise extended, 4) designating the lead member of the EPNE and the Independent Investigator to report back on the status of the investigation to the full City Council in the event that the investigation is not complete by the date stated in EXHIBIT C.

2. Direct the Independent Investigator to include in the scope, the review of the material and findings of the Grand Jury to determine if the Mayor, Mayor's staff, or other CITY officials, officers or employees violated the City Charter, Municipal Code, CITY policies related to ethics of independent judgment, or other law, with the final scope to be determined by the Independent Investigator with oversight from the EPNE.

3. Require that the members of the EPNE and the Independent Investigator complete the City of San Jose Conflict of Interest Form for JAMS.

4. Oversee the selection of an Independent Investigator by the EPNE. JAMS shall advise prospective candidates for the Independent Investigator that the Independent Investigator will be required to comply with the City of San Jose contract requirements including indemnity and insurance requirements.

5. Review all invoices submitted by the Independent Investigator for services rendered as the independent investigator for accuracy and compliance with the scope of services developed by the EPNE.

6. Forward all invoices submitted by the Independent Investigator to the City of San Jose, in care of the City Auditor for payment. The City Auditor will require compliance with the not to exceed amount of One Hundred Thousand Dollars (\$100,000) for services for the independent investigator and incidental administrative costs incurred by JAMS as stated in Exhibit D.

REVISED EXHIBIT C
SCHEDULE OF PERFORMANCE

Work shall commence immediately upon execution of this AGREEMENT. The lead member of the EPNE and the Independent Investigator will report back on the status of the investigation to the full City Council on Tuesday, September 13, 2005. The Independent Investigator and the lead member of the EPNE will present the completed report to the entire City Council at the earliest available City Council Meeting succeeding the completion of the report. In the event the Rules Committee elects to defer the status report and/or the completed report presentation date further, the lead member of the EPNE and the Independent Investigator will report back on the status of the investigation to the full City Council on the date specified by the Rules Committee.