

EXHIBIT LIST TO SUPPLEMENTAL SUBMISSION

- Exhibit A - PGC Request for One Week Extension pending Receipt of Documents Request From City relating to committee notes, scoring calculations, minutes, transcripts, audio, video, and other evidence relating to RFP
- Exhibit B - Request for Documents from City relating to committee notes, scoring calculations, minutes, transcripts, audio, video, and other evidence relating to RFP
- Exhibit C - Letter from City Attorney re: Notice of Consideration of Appeal
- Exhibit D - Proposed Questions for City Staff
- Exhibit E - Declaration of PGC President Javier Vega
- Exhibit F - Letter Dated November 17, 2006 re: Amy Shaw's Letter of Recommendation for the Hudson Group
- Exhibit G - Notice of Intended Award of Airport Concessions Contract - dated April 4, 2008
- Exhibit H - City Ethics Policy 0-35
- Exhibit I - RFP Excerpts relating to ethical duties
- Exhibit J - RFP Section 1.12.5 Regarding Grounds for Disqualification
- Exhibit K - RFP Section 1.12.8 Regarding Objections to RFP
- Exhibit L - PGC Letter Dated November 6, 2007 re: PGC Objections to RFP
- Exhibit M - Letter Dated December 18, 2007, re: City Response to PGC Objections to RFP
- Exhibit N - PGC Protest Letter re: Notice of Intention to Award Contract dated April 16, 2008
- Exhibit O - City Letter re: Rejection of PGC Protest dated April 28, 2008
- Exhibit P - Minutes of Airport Commission Meeting dated May 12, 2008 re: Decision to Award Accept Recommendations of Evaluation Committee re: Airport Concessions Contract

Exhibit Q - Working Partnerships USA Report on Mineta International and Campaign for Living Wage by Phaedra Ellis-Lamkins

Exhibit R - Website of South Bay AFL-CIO Labor Council: Executive Director Phaedra Ellis-Lamkins

Exhibit S - Website of Team San Jose, Inc. - Executive Committee: Phaedra Ellis-Lamkins, Daniel Fenton and Marriot General Manager Clifton Clark

Exhibit T - Website of Working Partnerships USA: re: Executive Director Phaedra Ellis-Lamkins

Exhibit U - Civil Grand Jury Reports - 2004-2005, 2006-2007

EXHIBIT A

Pacific Gateway Concessions
1150 North First Street Suite 220
San Jose, CA 95112
Telephone: (408) 924-0911 Fax: (408) 924-0918

Via Fax (408) 998-3131 & U.S. Mail

May 29, 2008

Richard Doyle
Office of the City Attorney
City of San Jose,
200 E. Santa Clara Street, 16th Floor
San Jose, CA 95113

Dear Mr. Doyle:

Further to your letter of May 27, 2008, we will be submitting a supplemental letter in support of our appeal by the time frame proscribed in your letter, tomorrow 5 p.m. In addition, we have made an additional follow up request for documents from the Airport Commission and Mr. Rossman. We have been advised by Maxe Cendana that it will take at least ten days to produce the information we have requested. Accordingly, we respectfully request that the City Council postpone the vote on the recommendation until the requested documents are received, so that the Council and PGC have the entire record before it, and a competent and fair hearing.

Please advise at your earliest convenience. Thank you for your consideration in this matter.

Javier Vega

TRANSMISSION VERIFICATION REPORT

TIME : 05/29/2008 15:51
NAME : DELAVE INC
FAX : 4084529710
TEL : 4084529710
SER.# : BROG3J577328

DATE, TIME	05/29 15:50
FAX NO./NAME	9983131
DURATION	00:00:27
PAGE(S)	01
RESULT	OK
MODE	STANDARD

EXHIBIT B

**Pacific Gateway Concessions, LLC
1150 North First Street Suite 220
San Jose, CA 95112**

May 28, 2008

Via email & fax-delivery 408-573-1675

City of San Jose Airport Administration
Attention: William Sherry
200 East Santa Clara Street, 16th Floor
San Jose, CA 95113

Dear Mr. Sherry:

As a follow up to our previous verbal requests Pacific Gateway Concessions would like to request copies of the following:

1. All other Competitor Bids/proposals in response to the RFP
2. Minutes/Transcripts of All Evaluation Committee meetings regarding the relevant RFP
3. Minutes/Transcripts of All Airport Commission meetings regarding the relevant RFP
4. Request of all documents from Rossman (the investigator) regarding his investigation of PGC's protest
5. All committee member backup/detail to the scores of all of the competitors bids
6. All emails and similar correspondence between committee members re the relevant RFP
7. All emails and similar correspondence between Commission members re the relevant RFP
8. All minutes/transcripts of meetings between PGC personnel and evaluation committee members, commission members, the Airport Director, and the April 28, 2008, meeting with Rossman.

Sincerely,

Javier Vega
Pacific Gateway Concessions, LLC

CC: Kevin Fisher, Sr. Deputy City Attorney
William Sherry, AAE, Director of Aviation
Walter C. Rossman, Chief Purchasing Officer

Pacific Gateway Concessions, LLC
1150 North First Street Suite 220
San Jose, CA 95112

May 28, 2008

Via email & fax-delivery 408-292-6480

City of San Jose Airport Administration
Attention: Walter C. Rossman, CPM
200 East Santa Clara Street, 13th Floor
San Jose, CA 95113

Dear Mr. Rossman:

As a follow up to our previous verbal requests Pacific Gateway Concessions would like to request copies of the following:

1. All other Competitor Bids/proposals in response to the RFP
2. Minutes/Transcripts of All Evaluation Committee meetings regarding the relevant RFP
3. Minutes/Transcripts of All Airport Commission meetings regarding the relevant RFP
4. Request of all documents from Rossman (the investigator) regarding his investigation of PGC's protest
5. All committee member backup/detail to the scores of all of the competitors bids
6. All emails and similar correspondence between committee members re the relevant RFP
7. All emails and similar correspondence between Commission members re the relevant RFP
8. All minutes/transcripts of meetings between PGC personnel and evaluation committee members, commission members, the Airport Director, and the April 28, 2008, meeting with Rossman.

Sincerely,

Javier Vega
Pacific Gateway Concessions, LLC

CC: Kevin Fisher, Sr. Deputy City Attorney
William Sherry, AAE, Director of Aviation
Walter C. Rossman, Chief Purchasing Officer

EXHIBIT C

EXHIBIT D

PROPOSED QUESTIONS FOR CITY STAFF

1. As part of protest and PGC allegations of bias and conflicts of interest did you do the following:

a. did you have a face to face interview with Javier Vega before reaching your decision on the protest by PGC ?

b. did you have a face to face interview with Phaedra Ellis-Lamkins, Daniel Fenton, Amy Shaw, Sherry before reaching your decision on the protest by PGC ?

c. did you have review the calculations and related notes on how evaluation scores of HMS Host and PGC ?

2. Prior to the appointment of Phaedra Ellis-Lamkins did she disclose the potential conflict of interest as Executive Director of South Bay AFL-CIO Labor Council and as Executive Director of Partnerships USA and their joint building a better airport campaign to bring 6,000 employees at the airport under the living wage standard, as required by City Council Policy 0-35 (page 4 of 5: 2. b.) to "determine if the persons's participation would create a conflict of interest.with paid and unpaid evaluators ?

3. Were you, Walter Rossman, aware that Phaedra Ellis-Lamkins is leading a major campaign to bring "living wages" to all 6,000 individuals working at the Mineta International Airport location ?

4. Did you (Phaedra Ellis-Lamkin) speak with fellow Team San Jose, Inc. Executive Committee members Daniel Fenton (also a evaluation committee member) and Clifton Clark (San Jose Marriott General Manager) about any conversations they may have had regarding the Airport Concessions Contract between October 11, 2007 (Date of Issuance of RFP) and May 30, 2008 ? (Communication Protocol of City Council Policy #0-35 prohibits such contact until expiration of Protest Period).

5. Did you ask Ellis-Lamkins the following:

1) did she meet with Javier Vega at the Union Office on June 7, 2007 ?

2) did she tell him she had a relationship with HMS Host and would be supporting them ?

3) do you have a relationship with HMS Host; if so, what is the nature of that relationship ?

4) how many union members of marriott and hms host marriott are covered by any of the unions under the South Bay AFL-CIO Labor Council ?

a) what are the average dues of the marriott/hms host employees ?

b) is her salary paid by union dues and fees charged to the affiliated

unions ?

6. Did you, Walter Rossman, participate in the appointment of the 9-member Evaluation Committee of the Airport Commission ? If so, to what degree ?

7. Why did you, Walter Rossman, include a letter of recommendation letter from Amy Shaw (who sits on the evaluation committee) insert the recommendation letter into the RFP for consideration by the evaluation committee ?

8. Did you, Walter Rossman, interview Amy Shaw, at any time, regarding her relationship with the Hudson Group ?

9. Did you, Walter Rossman, ask Airport Director Sherry whether he stated to Areas USA representative that "DeLaVe and Javier Vega were undesirable partners" ?

10. Did you, Walter Rossman, ask any representatives of Areas USA whether Airport Director Sherry stated that "DeLaVe and Javier Vega were undesireable partners" ?

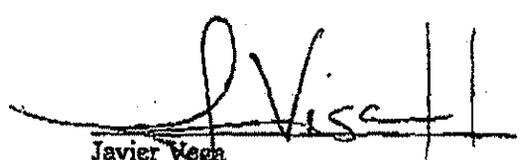
EXHIBIT E

DECLARATION OF JAVIER VEGA

I, Javier Vega, hereby declare the following:

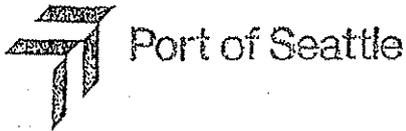
1. I have personal knowledge of the facts set forth herein and could competently testify thereto if called to testify as a witness before a court of law.
2. I am founding member of Pacific Gateway Concessions, LLC (PGC).
3. The week of June 4 – 8th, 2007, I met with Phaedra Ellis-Lamkins at her office located at 2102 Almaden Road, Suite 107, San Jose, CA 95125.
4. I went to visit her and introduce myself and PGC to her as a potential proposer on the anticipated Airport Concessions RFP.
5. On this date Phaedra Ellis-Lamkins stated to me that "she did not know who we were but that she already had a relationship with HMS Host and that is who she would be supporting".
6. Upon hearing this, the meeting abruptly ended.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed this 30th day of May 2008, at San Jose, California.


 Javier Vega
 Pacific Gateway Concessions, LLC

05/30/08
 Date

EXHIBIT F



November 17, 2006

To Whom It May Concern:

Please accept this correspondence as a letter of recommendation for

Airport Management Services LLC dba Hudson Group

Airport Management Services LLC dba Hudson Group (Hudson) successfully operates fifteen newsstands, two newsstand/coffee shops, three bookstores, three specialty shops and one unit which successfully incorporates three concepts – newsstand, bookstore and Radio Shack.

Hudson began its operations at Seattle-Tacoma International Airport on April 1, 2004 with the award of four newsstands on a newly constructed Concourse A. Hudson took over operations on the other units throughout the airport when the Master Agreement with HMS Host expired on December 31, 2004.

During the design/construction of both the new and renovated units, Hudson spared no expense in creating first-class units through the use of unique designs and quality material. They successfully incorporated a "sense of place" for the Pacific Northwest theme in their storefronts and interior space.

Throughout this period of operation, Hudson's corporate and local staff has consistently exhibited reliability, professionalism, and the commitment necessary for successful airport operations. Hudson's units are always well-stocked and clean. Hudson's staff is well-trained, consistently provides excellent customer services, and is responsive to the needs and wants of the traveling public as well as the airport.

We are extremely pleased with the quality of service, management ability and store operations provided by Hudson. Please do not hesitate to contact us if you would like additional information.

Sincerely,

Handwritten signature of Amy Shaw in black ink.

Amy Shaw
Manager, Aviation Commercial Business

Handwritten signature of Elaine Lincoln in black ink.

Elaine Lincoln
Concession Manager
206-433-4606

Seattle-Tacoma
International Airport
P.O. Box 68727
Seattle, WA 98168 U.S.A.
TELEX 703433
FAX (206) 431-5912



EXHIBIT G



NORMAN Y. MINETA
SAN JOSE
 INTERNATIONAL
 AIRPORT

April 4, 2008

Dominic Lowe
 Westfield Concession Management, LLC
 11601 Wilshire Blvd. 11th Floor
 Los Angeles CA 90025

Subject: Notice of Intended Award for the Norman Y. Mineta San Jose International Airport Food, Beverage and Retail RFP

Dominic:

The City of San Jose has concluded its evaluation of the subject RFP. The proposals were evaluated based on evaluation and weighting criteria as per Section 4 of the RFP. One Proposer, Host International, Inc., received the highest scores for each of the four individual packages. Consistent with Section 4.1 of the RFP, staff is therefore recommending that Packages 2 and 3 be awarded to the second highest scoring Proposers for those two packages. Staff intends to recommend to City Council the award of the resulting concession agreements as detailed below:

- Package 1 - Host International, Inc.
- Package 2 - AMS-SJC JV
- Package 3 - Areas USA SJC, LLC
- Package 4 - Host International, Inc.

The table below provides a summary of the scores and Total Point Standings by Company and Package:

Package	Westfield Concession Management, LLC	AMS-SJC JV	Host International, Inc.	Areas USA SJC, LLC	Host International, Inc.	Total
Package 1	6,739	7,546	9,484			
Package 2	6,678	8,188	9,334			
Package 3			9,563	8,446	8,606	
Package 4			9,635	7,937	8,424	
Package 5						7,393



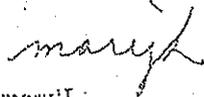
For a breakdown of evaluation scores by company and evaluation criteria see Attachment A.

In accordance with the protest procedure outlined in the subject RFP, any protest regarding this decision is required to be filed in writing to the protest hearing officer referenced in the subject RFP within ten calendar days of the date of this notice. The protest shall state the grounds for the protest as well as all the facts relevant to the protest. In the event that you do not desire to protest the award, but would like feedback on the City's process, we are available to provide an informal debriefing.

We appreciate your interest in doing business with the City of San José.

Please contact me if you have any questions.

Sincerely,

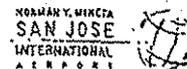


Mary L.
Procurement Contact

cc: William F. Sherry, Director of Aviation



1752 N. First Street, Suite 600 • San Jose, CA 95122 • Tel: 408.501.7600 • Fax: 408.512.1475 • www.sjca19



ATTACHMENT A
Food Beverage and Retail RFP
Points by Evaluation Criteria

EVALUATION CRITERIA	AMERICAN JV		Pacific Gateway Retail Pkg		Habitat Retail Pkg											
	Total Points Possible	2,017	2,659	2,102	2,301	2,583	2,464	2,879	2,724	2,127	1,530	2,277	2,263	2,328		
Financial	2,925	2,017	2,659	2,102	2,301	2,583	2,464	2,879	2,724	2,127	1,530	2,277	2,263	2,328		
Tenant Mix and Overall Concession Points	2,825	1,506	1,538	1,490	1,337	2,250	2,303	2,317	2,637	2,140	2,204	2,101	2,451	1,602		
Customer Service	1,755	1,189	1,189	970	973	1,306	1,387	1,413	1,414	1,212	1,219	1,205	1,203	968		
Design & Proposed Capital Investment	1,170	682	683	715	728	841	854	890	853	850	858	837	855	568		
Experience and Qualifications	1,755	1,378	1,355	884	903	1,470	1,470	1,495	1,468	1,279	1,264	1,271	1,221	1,197		
Marketing and Operations	1,170	814	814	846	845	954	956	949	948	822	821	850	856	795		
Grand Total Points	11,700	7,576	8,188	6,739	6,670	9,464	9,334	9,583	9,633	6,416	7,437	8,468	8,424	7,393		

*Points shown are total points for oral and written evaluations.

EXHIBIT H

City of San José, California

COUNCIL POLICY

TITLE: PROCUREMENT AND CONTRACT PROCESS INTEGRITY AND CONFLICT OF INTEREST	PAGE 1 of 5	POLICY NUMBER 0-35
	EFFECTIVE DATE 2/6/07	REVISED DATE
APPROVED BY COUNCIL ACTION ON 2/6/07		

Background

On December 13, 2005, Council directed the City Manager and City Attorney as part of the Mayor's Biennial Ethics Review to develop this Council Policy which includes all elements of the Procurement Process Integrity Guidelines adopted by Council on November 9, 2004 and apply this policy to all competitive processes.

Purpose

The purpose of this policy is:

1. to ensure integrity in the procurement and contract processes;
2. to educate City employees, consultants, uncompensated outside parties, and any person involved in the decision to award a contract about potential Conflicts of Interests; and
3. to establish guidelines for procedural screening of Conflicts of Interests.

Policy

It is the policy of the City of San Jose to provide a fair opportunity to participants in competitive processes for the award of City contracts by promulgating integrity and removal of Conflicts of Interests through the inclusion of the following components in all competitive solicitations. Procurement and contract activities are defined as but not limited to specification development, preparation and issuance of solicitations, evaluation of solicitations and submissions, and other evaluations which lead to an award of a City contract.

City of San José, California

COUNCIL POLICY

TITLE: PROCUREMENT AND CONTRACT PROCESS INTEGRITY AND CONFLICT OF INTEREST	PAGE 2 of 5	POLICY NUMBER 0-35
	EFFECTIVE DATE 2/6/07	REVISED DATE
APPROVED BY COUNCIL ACTION ON 2/6/07		

I. Communication Protocol:

This section describes the characteristics of appropriate communication between respondents and the City during various phases of a solicitation.

A. Prior to Issuance of Solcitations

Prior to the issuance of solicitations, contact between prospective respondents and City staff, elected officials, or consultants is permissible.

B. After Issuance of Solicitations and prior to Submission deadline for Solicitations:

After issuance of solicitations, all contact between prospective respondents and the City must be directed to the Procurement Contact designated in the solicitation. City staff, elected officials, and consultants will refer all inquiries to the Procurement Contact.

All requests for clarification, objections to the structure, content, or distribution of a solicitation, or other inquiries must be made in writing and the City shall answer to these clarifications, objections, and inquiries in writing via addenda to the solicitation.

C. After Submission Deadline of Solicitations and prior to Issuance of a Notice of Intended Award:

After the submission deadline of solicitations, all contact regarding the procurement between respondents and the City and participants in the evaluation process, who are not City employees, must be directed to the Procurement Contact designated in the solicitation. City staff, elected officials, and consultants will refer all inquiries to the Procurement Contact.

D. After Issuance of a Notice of Intended Award:

The City will issue a Notice of Intended Award to all respondents including the basis for selection and instructions for filing a protest. All respondents shall follow the procedures for protest as indicated in the solicitation document. During the protest period, City staff, elected officials, and consultants will refer all inquiries to the Protest Hearing Officer identified in the solicitation document.

E. After Completion of Protest Period:

After completion of the protest period, contact between prospective respondents and City staff, elected officials, or consultants is permissible.

City of San José, California

COUNCIL POLICY

TITLE: PROCUREMENT AND CONTRACT PROCESS INTEGRITY AND CONFLICT OF INTEREST	PAGE 3 of 5	POLICY NUMBER 0-35
	EFFECTIVE DATE 2/6/07	REVISED DATE

APPROVED BY COUNCIL ACTION ON 2/6/07

II. Respondent's Code of Conduct

By submitting a response to a City solicitation, respondents agree to adhere to this Policy and are individually and solely responsible for ensuring compliance with this policy on behalf of the respondent's employees, agents, consultants, lobbyists, or other parties or individuals engaged for purposes of developing or supporting a response.

In addition to adhering to the various sections of the policy, respondents may not

- collude, directly or indirectly, among themselves in regard to the amount, terms or conditions of a solicitation;
- influence any City staff member or evaluation team member throughout the solicitation process, including the development of specifications; and
- submit incorrect information in the response to a solicitation or misrepresent or fail to disclose material facts during the evaluation process.

Any evidence that indicates that a Respondent has failed to adhere with any section of this policy may result in the respondent's disqualification from the procurement as well as possible debarment.

III. Confidentiality during Evaluation Process

City staff, consultants, and outside evaluators, who are participants in the evaluation process are required to sign a Confidentiality Agreement, which binds the participants not to share any information about responses received and the evaluation process until the City issues a Notice of Intended Award.

IV. Conflict of Interest

Per the General Rule with Respect to Conflicts of Interest, as outlined in the City Policy 2.01, "Code of Ethics", City elected officials, appointed officials, their staffs, and City employees are expected to avoid any conflicts of interest. Further, employees should avoid the appearance of conflicts of interest in order to ensure that City decisions are made in an independent and impartial manner.

City of San José, California

COUNCIL POLICY

TITLE: PROCUREMENT AND CONTRACT PROCESS INTEGRITY AND CONFLICT OF INTEREST	PAGE 4 of 5	POLICY NUMBER 0-35
	EFFECTIVE DATE 2/6/07	REVISED DATE

APPROVED BY COUNCIL ACTION ON 2/6/07

In general, Council Appointees shall take measures to ensure that the City avoid any conflict of interests in procurement processes of City contracts. Specifically, these measures include that

1. professional procurement and contracting staff, including buyers, managers, department heads, members of the City Attorneys office and others who regularly participate in the making of contracts on behalf of the City to disclose relevant financial interest as required by State Law and by City Policy and to annually review those statements in conjunction with this Policy and other ethical standards.
2. persons who may not be regularly involved in City procurements to review this Policy and other ethical standards and to elicit such information from them to enable the City to determine if the person's participation would create a conflict of interest. Such persons shall include, but are not limited to:
 - a. authors of specifications
 - b. paid and unpaid evaluators
 - c. paid and unpaid consultants who assist in the procurement process
3. the person managing the procurement shall discuss any potential conflict of interest identified with the City Attorney's Office and document the resulting determination, and take appropriate action including, but not limited to, removal of an employee, consultant, or outside uncompensated party from the procurement activity or cancellation of a solicitation.
4. the City Manager, in consultation with the City Auditor and City Attorney, publish an administrative policy outlining the procedural elements of this Council policy.

This Policy is intended to set a balance between careful adherence to good procurement and contracting principles together with thorough examination of potential conflicts of interest against an undue burden on the participants in procurement and contracting processes. By establishing the following exceptions to the procedures to be administered by the City Manager, it is not intended to suggest that there is a lesser requirement with regard to ethical standards, but rather a need to have a less burdensome process with regard to certain procurements and contracting activities. The following competitive processes are not subject to procedural requirements as administered by the City Manager:

1. Any contracting activity with an estimated value less than \$100,000.
2. Disposition of goods as described in the Municipal Code Section 4.16.

City of San José, California

COUNCIL POLICY

TITLE: PROCUREMENT AND CONTRACT PROCESS INTEGRITY AND CONFLICT OF INTEREST	PAGE 5 of 5	POLICY NUMBER 0-35
	EFFECTIVE DATE 2/6/07	REVISED DATE

APPROVED BY COUNCIL ACTION ON 2/6/07

3. Award of grants by the City with a value below \$10,000.

V. Allegations of Conflict of Interest

Prior to the solicitation release up to award of contract, any allegations of Conflict of Interest by a City employee, consultant, or other participant in the pre-solicitation and solicitation process shall be reported to the Procurement Contact. The Procurement Contact shall investigate the alleged conflict of interest in consultation with the City Attorney's Office and document the resulting determination.

VI. Allegations of Misconduct

At any time during a solicitation process, any misconduct by a City employee, consultant, or other participant in the pre-solicitation and solicitation process, shall be reported to the City's Chief Purchasing Officer. The Chief Purchasing Officer shall investigate the alleged misconduct, in consultation with the City Attorney's Office and others as appropriate. Nothing in this Policy is intended to prohibit anyone from communicating with the City Manager's Office, the City Attorney's Office, the City Auditor's Office, or the Mayor or any City Council Member about any alleged misconduct.

EXHIBIT I

ALL REQUESTS FOR CLARIFICATION, OBJECTIONS TO THE STRUCTURE, CONTENT, OR DISTRIBUTION OF A SOLICITATION OR OTHER INQUIRIES MUST BE MADE IN WRITING AND THE CITY SHALL ANSWER TO THESE CLARIFICATIONS, OBJECTIONS, AND INQUIRIES IN WRITING VIA ADDENDA TO THE SOLICITATION.

AFTER SUBMISSION DEADLINE OF RFP AND PRIOR TO ISSUANCE OF A NOTICE OF INTENDED AWARD:

AFTER THE SUBMISSION DEADLINE OF RFP, ALL CONTACT REGARDING THE PROCUREMENT BETWEEN PROPOSERS AND THE CITY AND PARTICIPANTS IN THE EVALUATION PROCESS, WHO ARE NOT CITY EMPLOYEES, MUST BE DIRECTED TO THE PROCUREMENT CONTACT DESIGNATED IN THE SOLICITATION. CITY STAFF, ELECTED OFFICIALS AND CONSULTANTS WILL REFER ALL INQUIRIES TO THE PROCUREMENT CONTACT.

AFTER ISSUANCE OF A NOTICE OF INTENDED AWARD:

THE CITY WILL ISSUE A NOTICE OF INTENDED AWARD TO ALL RESPONDENTS INCLUDING THE BASIS FOR SELECTION AND INSTRUCTIONS FOR FILING A PROTEST. ALL RESPONDENTS SHALL FOLLOW THE PROCEDURES FOR PROTEST AS INDICATED IN THE SOLICITATION DOCUMENT. DURING THE PROTEST PERIOD, CITY STAFF, ELECTED OFFICIALS AND CONSULTANTS WILL REFER ALL INQUIRIES TO THE PROTEST HEARING OFFICER IDENTIFIED IN THE RFP.

AFTER COMPLETION OF PROTEST PERIOD:

AFTER COMPLETION OF THE PROTEST PERIOD, CONTACT BETWEEN PROSPECTIVE RESPONDENTS AND CITY STAFF, ELECTED OFFICIALS OR CONSULTANTS IS PERMISSIBLE.

PROCESS INTEGRITY GUIDELINES

EVIDENCE OF COLLUSION, DIRECTLY OR INDIRECTLY, AMONG PROPOSERS IN REGARD TO THE AMOUNT, TERMS, OR CONDITIONS OF THIS PROPOSAL;

FAILURE TO DIRECT ALL QUESTIONS/INQUIRIES THROUGH THE PURCHASING CONTACT;

ANY ATTEMPT TO IMPROPERLY INFLUENCE ANY MEMBER OF THE SELECTION STAFF;

EXISTENCE OF ANY LAWSUIT, UNRESOLVED CONTRACTUAL CLAIM OR DISPUTE BETWEEN PROPOSER AND THE CITY AND/OR ITS RELATED ENTITIES;

EVIDENCE OF INCORRECT INFORMATION SUBMITTED AS PART OF THE PROPOSAL;

EVIDENCE OF PROPOSER'S INABILITY TO SUCCESSFULLY COMPLETE THE RESPONSIBILITIES AND OBLIGATIONS OF THE PROPOSAL; AND

PROPOSER'S DEFAULT UNDER ANY AGREEMENT, WHICH RESULTS IN TERMINATION OF SUCH AGREEMENT.

PROPOSERS OR ANY PERSONS WORKING FOR OR REPRESENTING POTENTIAL PROPOSERS OR PROPOSERS MAY ADDRESS COMMENTS OR QUESTIONS REGARDING THIS RFP TO CITY EMPLOYEES ACTING AS A PRESENTER AT THE PRE-PROPOSAL CONFERENCE ON OCTOBER 30, 2007.

AMERICANS WITH DISABILITIES ACT NOTICE:

TO REQUEST AN ACCOMMODATION OR ALTERNATIVE FORMAT FOR CITY-SPONSORED MEETINGS, EVENTS OR PRINTED MATERIALS, PLEASE CALL MARY'L AT 408-501-7661 OR 408-294-9337 (TTY) AS SOON AS POSSIBLE, BUT AT LEAST THREE BUSINESS DAYS BEFORE THE MEETING/EVENT.

EXHIBIT J

- Irregularities of any kind exist that tend to make the proposal incomplete, indefinite or ambiguous.
- Exceptions or modifications are made by the Proposer to the terms of this RFP and/or any terms or conditions of the Exemplar Concession Agreement.

1.12.3 Examination of Proposal Materials

The submission of a proposal shall be deemed a representation and certification by the Proposer that it has investigated all relevant conditions, facts, circumstances, procedures, requirements and aspects associated with this RFP, and that Proposer has read and understood the RFP and the included Exemplar Concession Agreement, and has toured the Airport Terminals and other passenger facilities.

Each Proposer is responsible for review of the RFP upon receipt to ensure possession of all necessary documents. All RFP documents may be downloaded from the Airport's website at www.sjc.org.

Upon submittal of a proposal, it will be presumed that the Proposer has read and is familiar with all the RFP documents. **Therefore, after receipt of a proposal by City, no request for modification of the proposal and no claim for adjustment of any provisions of the RFP shall be honored, regardless of any claim by a Proposer that it was not fully informed as to any fact or condition. Prior to the submission due date, proposals may be withdrawn.**

1.12.4 RFP vs Exemplar Agreement

If any language in this RFP conflicts or is inconsistent with the language of the Exemplar Concession Agreement, the terms of the Exemplar Concession Agreement will govern.

1.12.5 Disqualification

Factors such as, but not limited to, the following, may disqualify a Proposer without further consideration:

- Evidence of collusion among Proposers;
- Any attempt to exert undue influence with members of the Evaluation Panel and/or City staff;
- A Proposer's default in the operation of a food, beverage and/or retail concession which resulted in the termination of the Proposer;
- Existence of any unresolved litigation between Proposer and City;

EXHIBIT K

See Appendix for Section 12.08 of the San José Municipal Code.

1.12.8 Objections to This RFP

Any objections as to the structure, content or distribution of this RFP must be submitted in writing to the City's Protest Hearing Officer prior to the submission deadline for Questions and Answers. Objections must be as specific as possible and identify the RFP section number and title, as well as a description and rationale for the objection.

The address for submitting objections is:

Attention: Walter C. Rossmann, C.P.M.,
20 East Santa Clara Street, 13th Floor
San Jose, CA 95113

1.12.9 Protest Procedure

If an unsuccessful Proposer wants to dispute the award recommendation, the Protest must be submitted in writing to the City's Protest Hearing Authority no later than ten calendar days after announcement of the successful Proposer, detailing the grounds, factual basis and providing all supporting information. Protests will not be considered for disputes of proposal requirements and specifications, which must be addressed in accordance with **Section 1.12.8** (Objections to this RFP). Failure to submit a timely written Protest to the City's Protest Hearing Officer will bar consideration of the Protest.

The address for submitting protests is:

Attention: Walter C. Rossmann, C.P.M.
200 East Santa Clara Street, 13th Floor
San Jose, CA 95113

1.12.10 Special Conditions

1.12.10.1 Airport Environment

It is important for Proposers to note that the SJC operating environment presents a set of unique challenges that do not exist in a typical shopping center setting.

- The SJC customer has a limited amount of time to spend in restaurants and shops and must be served quickly.
- Facilities must be open three hundred sixty five (365) days a year with operating hours and staffing levels adequate for both the hourly and seasonal peaks in passenger traffic.
- Major flight delays, generally weather related, are not uncommon. An airport is affected not only by local weather, but by weather in other parts of

EXHIBIT L

Attachment #1
To Addendum #3
for a Food, Beverage and Retail
RFP at the Norman Y. Mineta
San Jose International Airport

Pacific Gateway Concessions, LLC
1150 North First Street Suite 220
San Jose, CA 95112
Phone: 408-924-0911 Fax: 408-924-0918

November 6, 2007

Via hand-delivery

Attention: Walter C. Rossman, C.P.M.,
20 East Santa Clara Street, 15th Floor
San Jose, CA 95113

Re: Objections to the Food, Beverage and Retail Concessions RFP

Dear Mr Rossman:

We respectfully submit the following objections to the Request For Proposals for Food Beverage and Retail Concessions issued by the City of San Jose ("City") for Concessions at the Norman Y. Mineta San Jose International Airport on October 11, 2007 (the "RFP"), pursuant to Section 1.12.8, Objections to this RFP.

1. Our first objection relates to Section 1.12.8, Objections to this RFP, as read in conjunction with Section 1.12.9, Protest Procedures. We object to having to submit objections or risk losing our right to a future protest to a document that is not in final form, and will not be in its final form until November 20, 2007. If the City, through the RFP question and answer process, makes changes to the RFP to accommodate the raising of similar issues, the objections contained herein could be rendered moot by such actions.

Furthermore, any party raising objections at this point must be concerned about any negative bias during the evaluation process resulting from an objection to the City's RFP vision, but as previously stated, if we fail to raise these objections we will purportedly forfeit our right to make them to the final RFP document or following the selection of a Proposer.

We therefore request: 1. that any objections to the RFP be considered without disclosure to the City of the party raising the objection; and 2. that the City be required to amend the RFP to delete the requirement that objections must be filed prior to the conclusion of the selection process.

2. Our second objection relates to RFP Section 4.1, Evaluation, regarding the manner in which the individual packages I, II, III and IV (the "Individual Packages") are to be

compared to Package V. We believe that the condition of only awarding a single Individual Package per category to any single respondent is arbitrary if that same respondent has the highest evaluated score in more than one Individual Package of the same category. Furthermore, under the proposed evaluation method, if the same respondent were to have the highest evaluated score in more than one Individual Package of the same category, they would per se be disadvantaged over a Package V respondent owing to the reliance by the City on the score of the next highest ranked proposer to determine the calculated average score (thereby lowering the average for Individual Packages) for comparison to Package V. We raised similar concerns in a letter to Kevin Fisher, Senior Deputy City Attorney, dated August 17, 2007 and received a response on September 7, 2007, both attached. However, we were not satisfied with the City's rationale that competition is fostered by prohibiting the same Proposer to be awarded more than one Individual Package within the same category. Nor were we reassured by the stated expectation that the Airport will not see wide variations in the scores of the top proposals for the Individual Packages.

If the goal of the RFP is to foster competition, the potential of awarding all concessions to a single concessionaire under Package V runs directly counter to that goal. We understand the principle of comparing the relative merits of a single concession operator's Proposal to Proposals for Individual Packages, but we contend that such comparisons should be performed in a manner that does not put any Proposal at an unfair competitive disadvantage. We do not believe that the subcontracting requirement placed on Package V Proposals of 75% of the square footage fosters competition sufficiently to overcome the competitive disadvantage placed on Proposers of Individual Packages. This is particularly true because the RFP does not require the existence of irrevocable binding agreements between Package V Proposers and their subconcessionaires. The absence of this requirement would permit a selected Package V Proposer to impose whatever terms it chooses on its subconcessionaires, who at that point would have little choice but to agree if they wanted to operate at the Airport.

Therefore, we respectfully request that the City reconsider its restriction on awarding only one Individual Package per category, or in the alternative, that the City use the highest evaluated scores to determine the calculated average score, even if the City is allowed to select the next highest ranked proposer in the scenario described above in which the same Proposer has the highest evaluated score in more than one Individual Package of the same category. We also request that the RFP be amended to require Package V Proposers to submit, in addition to its list of suggested subconcessionaires required by Section 2.11 and the letters of intent required by Section 5.12, signed contingent agreements with its subconcessionaires setting forth the terms to which the parties will be bound should the Package V Proposer be selected.

3. Our third objection, also to RFP Section 4.1, Evaluation, is to the weight given to subjective criteria versus objective data which could easily result in an arbitrary and unfair selection process. Currently only 250 points out of a total of 1300 points (1000 for written proposals and 300 for oral presentations) or 19.23% of the maximum

Attachment #1
To Addendum #3
for a Food, Beverage and Retail
RFP at the Norman Y. Mineta
San Jose International Airport

points are for financial evaluation criteria. We believe that the financial evaluation criteria should be far more important and more heavily weighted in evaluating a long-term successful concessionaire as it is the only true indicator of whether the airport will be as self-sustaining as possible, as is required under the airport's federal grant assurances, 49 U.S.C. § 47107 (l)(3). Furthermore, we object to the award of up to 300 points for oral presentations. It is our view that the oral presentations should serve to corroborate or clarify items in proposers' written presentations, but should not be (at least without further explanation of how oral presentations will be evaluated) arbitrarily granted based simply on presentation style.

4. Our fourth objection relates to an item to which the RFP is silent. The RFP fails to address the scenario in which no proposal is made or accepted for one or more of the Individual Package(s) and how in such a circumstance a comparison would be made between the Individual Packages for which there are proposals and package V. We are concerned about the possibility of the City automatically awarding the concessions under Package V in such a scenario. Proposers to Individual Packages cannot control what other Proposers to Individual Packages will do or not do, nor can Proposers be responsible for the quality of other Proposers' proposals and are thus unfairly disadvantaged under the current method of comparison of the Individual Packages to Package V. If there is no proposal for one or more of the Individual Packages (or if the City rejects all Proposals for one or more Individual Packages), we contend that the City should be required to reissue the RFP so that the remaining Proposers to Individual Packages are not automatically excluded from the selection process. Failure to do so could preclude a high scoring Proposal for an Individual Package from competing at all against the highest evaluated scoring Package V.

We appreciate your consideration of the issues we have raised. Please advise us of the steps related to the adjudication of this protest and objection to the RFP documents it currently attends.

Very Truly Yours,

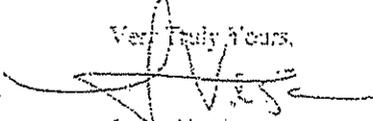

Javier Vega

EXHIBIT M



Attachment #2
To Addendum #3
for a Food, Beverage and Retail RFP
at the Norman Y. Mineta San Jose International Airport

Finance Department
PURCHASING DIVISION

December 18, 2007

Mr. Javier Vega
Pacific Gateway Concessions, LLC
1150 North First Street
Suite 220
San Jose, CA 95112

Re: Objections to the Food, Beverage and Retail RFP

Dear Mr. Vega:

This is in response to your letter dated November 6, 2007 setting forth objections to the Request for Proposal for Food, Beverage and Retail Concessions ("RFP") issued on October 12, 2007 by the City of San José ("City") at the Norman Y. Mineta San Jose International Airport, submitted pursuant to Section 1.12.8 of the RFP.

1. Your first objection is that the timeframe for submission of objections to the structure, content or distribution of this RFP; specifically, the requirement that such objections be made by the deadline for questions related to the RFP. The City's response is that this cutoff date enables staff to consider and respond to objections and modify the RFP through an addendum, as determined by the City.

Regarding your concern about any negative bias during the evaluation process resulting from your letter dated November 6, 2007 or any other correspondence, I request that you refer to my email dated November 9, 2007 (see Attachment 1 to this letter)

2. Your second objection is the manner in which the individual Packages I, II, III and IV are to be compared to Package V. You state that only awarding one individual package per category (food and beverage or retail) to a single respondent is arbitrary if that respondent has the highest evaluated scores for both individual packages in the category.

The City's response is that the structuring of the RFP in this respect represents a reasonable effort to meet the goal of maintaining a high level of customer service in the concession program by fostering competition between vendors. Limiting the number of packages a concessionaire can be awarded inherently creates a competitive atmosphere between vendors, which in turn is expected to result in better customer service, product assortments and concessions.

- a. In the second objection of your letter, you also contend that the Package V score should be compared against the highest scores for the two individual packages in each category even if those scores belonged to one respondent who could only be awarded one individual package in a category.

The City's response is that comparing the scores of the proposals for Packages I through IV that are recommended for award against Package V is a fair and reasonable scoring methodology because these are the packages that would actually be chosen and later implemented.

- b. In the second objection of your letter, you state that awarding all concessions to a single concessionaire under Package V runs counter to the goal of fostering competition.

The City's response is that the maximum amount of concession area square feet that the winning proposer in Package V can operate is 25%, while a minimum of 75% of the square footage will be sub-contracted to third parties. The presence of at least 75% of concessions run by third parties will generate a high degree of competition between concessionaires.

- c. In the second objection of your letter, you further request that in addition to the requirement that proposers submit letters of intent and a list of suggested subconcessionaires as required by "section 2.11" (we were not able to locate section 2.11 in the RFP or the Exhibit B/Exemplar which references a list of suggested subconcessionaires), that proposers of Package V submit signed subconcessionaire contingent agreements.

The City's response is that in order to maintain a level playing field it would not be equitable to add an additional requirement to the Package V proposers that would not be required by all potential proposers across all packages. Further, the City does not want to interfere with the contractual relationship between the City's concessionaires and their respective subconcessionaires.

3. Your third objection is that in the section 4.1 of the RFP, 250 evaluation points are possible for "subjective" criteria versus objective data. It is your contention that "the financial evaluation criteria should be far more important and more heavily weighted in evaluating the concessionaire."

The City's response is that by assigning 25% of the score of the written proposals to the financial aspect of the RFP gives significant weight to fiscal evaluation. In addition to the financial aspects of the City's concession program, the City has other goals to achieve through the RFP process, such as tenant mix, customer satisfaction and the overall concession plan. The evaluative criteria are reflective of all RFP objectives.

4. Your fourth objection relates to the RFP being silent on the scenario in which no proposal is made or accepted for one or more of Packages I through IV and how in such circumstances a comparison would be made between the individual packages for which there are proposals and Package V.

The goal of the City is to recommend the package(s) that best meet the evaluation criteria outlined in the RFP. No one can be certain of the quality of the proposals the City will receive; however, the October 30, 2007 RFP pre-proposal conference, was attended by 107 stakeholders representing a wide variety of companies that traditionally propose on airport concession opportunities. We are confident that the strong interest displayed at the pre-proposal conference will translate into a highly competitive bid process for the concession RFP opportunities. To address the potential scenario, as outlined in your letter, the City has amended Section 4.1, "Evaluation of Packages I, II, III and IV vs. V" of the RFP in Addendum number 3 of the RFP.

I appreciate your interest in the Retail, Food and Beverage RFP and submission of your concerns regarding the various aspects of the RFP. For the City to achieve its operational objectives, the majority of issues raised in your letter will not result in the City amending the RFP document.

The City is looking forward to your company's response to this RFP.

Sincerely,



Walter C. Rossmann, C.P.M.
Chief Purchasing Officer

Attachment I - City Response to letter from Mr. Vega, dated November 6, 2007

Dear Mr. Vega:

I am in receipt of the letter dated November 6, 2007, in which you raised objections to the form and content of the City's Food, Beverage, and Retail Concessions RFP.

Please note that any letter received by the City is considered a public record. Additionally, any substantive information received as part of the procurement process is published to all potential proposers of the RFP process. Therefore, the City will respond to your letter in writing via an addendum to the RFP and attach your letter to the RFP.

Regarding your concern that the objections raised may result in a negative bias towards a proposal submitted by your firm, please note that the evaluation committee will consist of impartial members. These members are charged to evaluate all proposals according to the process outlined in the RFP or as amended throughout the procurement process.

Sincerely,

Walter C. Rossmann, C.P.M.
Chief Purchasing Officer/Deputy Director
Finance
City of San Jose
200 E. Santa Clara Street, 13th Floor
San Jose, CA 95113
Ph: 408-535-7051
Fax: 408-292-6480
walter.rossmann@sanjoseca.gov

EXHIBIT N

Pacific Gateway Concessions, LLC
1150 North First Street Suite 220
San Jose, CA 95112

APR 16 PM 2:06

April 16, 2008

Via hand-delivery

City of San Jose
Attention: Walter C. Rossman, CPM
200 East Santa Clara Street, 13th Floor
San Jose, CA 95113

Re: Protest of the award recommendation by Pacific Gateway Concessions, LLC (PGC)
(DeLaVe, Inc. 50% Ownership Interest in PGC)

Dear Mr. Rossman:

We respectfully submit the following Protest of the award recommendation made on April 4, 2008 for the Norman Y. Mineta San Jose International Airport Food, Beverage and Retail RFP (the "RFP"), pursuant to Section 1.12.9, Protest Procedure.

MEMBERS OF THE COMMITTEE HAD CONFLICTS OF INTEREST, FAILED TO ENGAGE IN DUE PROCESS, AND VIOLATED RULES OF FUNDAMENTAL FAIRNESS IN THE PROCUREMENT PROCESS

1. PGC has reason to believe that certain members of the Evaluation Committee appear to have engaged in conflicts of interest and ethical misconduct which is either violative of city proscribed rules, or at a minimum gives an appearance of improper or illegal conduct. Specifically, I was informed by Committee member Phaedra Ellis that she was going to support Host/Marriot proposal because she has a union relationship with them. Not because they presented a financial package that was better for the City of San Jose, not because the Marriot was more experienced in the Airport retail business, but because it was better for her union relationship. This was communicated by Ms. Ellis to me BEFORE the RFP was even out, and before the presentations and proposals were submitted by all competitors. How can such a process be fair and equitable when committee members like Ellis are predisposed, irrespective of the benefits to the City? Is the goal of the Committee to protect the self serving interest of one member, or is it to protect the interest of the citizens of San Jose? Redundantly, Ms. Ellis, and anyone else with such a predisposition, without properly weighing the merits of other competitors, should be summarily disqualified from the Committee, or at least in voting on the contract award.

2. In addition, Hudson News RFP package 2 pages 140 and 146 included a letter of reference from Amy Shaw, who was serving as one of the Committee Members. PGC believes this to be a conflict of interest, therefore disqualifying Ms. Shaw from the award process or otherwise requiring that she recuse herself from the evaluation committee.

In this connection, further to paragraphs V (Allegation of Conflict of Interest) and VI (Allegations of Misconduct) of the Procurement and Contract Process Council Policy; PGC request an investigation of Ms. Ellis, Ms. Shaw and all members of the committee where appropriate.¹

3. There is also evidence that lobbyists were used by three of the competing bidders to procure an award of this contract. Though hiring of lobbyists in and of itself does not necessarily rise to the level of wrongdoing, it definitely clouds the climate of integrity sought by the City Council/The Mayor and iterated by the City of San Jose's own Council Policies relating to the Procurement and Contract Process, Integrity and Conflict of Interest. Said Policy reads as follows:

It is the policy of the City of San Jose to provide a fair opportunity to participants in competitive processes for the award of City Contracts by promulgating integrity and removal of Conflicts of Interests through the inclusion of the following components in all competitive solicitation.

City of San Jose, Council Policy, Page 1, Policy Number 0-35, Effective 2/6/07.²

4. In addition to the above, there are other factors which raise suspicion that PGC was not provided an "equal and level playing field" in the Procurement Process. First, Airport Director Bill Sherry refused PGC's initial request to meet with PGC prior to the release of the RFP.³ Though we were eventually granted an audience with Director Sherry, the balance of the meeting with Sherry involved him telling PGC members how unhappy he was with our efforts to force this meeting upon him. Moreover, PGC has learned from its competitors that Director Sherry did in fact meet with PGC competitors on several occasions without having to make multiple efforts (like PGC) to meet with Sherry. This begs the question, was Director Sherry playing favorites, stacking the deck against PGC and otherwise predisposed, irrespective of City Interest, to vote against PGC. Was this a case of a selective process of procurement? These are questions that must be answered prior to the final disposition and awarding of the contract. In addition, one of the bidders, Areas USA told PGC that their lobbyist was informed by Director Sherry that DeLaVe was an undesirable partner, but offered no explanation. Competitor Westfield also told DeLaVe, Inc. that the Airport Director did not want to do business

¹ Council Policy, 0-35, para. V: *Prior to the solicitation release up to award of contract, any allegations of Conflict of Interest by a City employee, consultant, or other participant in the pre-solicitation and solicitation process shall be reported to the Procurement Contact. The Procurement Contact shall investigate the alleged conflict of interest in consultation with the City Attorney's Office and document the resulting determination.*

Allegations of Misconduct: At any time during a solicitation process, any misconduct by a C or other participant in the pre-solicitation and solicitation process, shall be reported to the C Officer. The Chief Purchasing Officer shall investigate the alleged misconduct, in consultat Office and others as appropriate...

² Can one harbor any doubt that the conduct of Ms. Ellis, Ms. Shaw and perhaps others, v policy?

³ City Policy permits said contact prior to the issuance of Solicitations. See City Policy (Communication Protocol)

with DeLaVe, Inc, again without explanation and without any factual or legal basis. This bias must be investigated.

5. Another point of protest relates to a concern previously stated in our objection to the RFP, in an objection letter as amendment to the RFP dated November 6, 2007. In that letter we stated our concern that any objections made to the RFP would create a negative bias toward the party raising the objection during the evaluation process. We had requested that any objections to the RFP be considered without disclosure of the party raising the objection as a way to prevent such bias from impacting the evaluation process. In spite of your assurance that the evaluation committee would consist of impartial members, we are concerned that the fact of our having raised objections to the RFP may have nonetheless resulted in a negative bias against our proposal. As the result of our objection letter having nothing to do with the evaluation criteria it should have not been provided to the selection panel for their review as we requested. It is likely that the improper dissemination of this objection letter clouded the judgment of the committee members. We believe this is indicated by the fact of our significantly lower scores on the six evaluation criteria: Tenant Mix, experience & operations, customer service, design, financials, and marketing plan as compared to overall Concession Plans contained in the proposals of the other proposers. All evaluation criteria being equal, despite having the best Minimum Annual Guarantee (MAG), PGC's proposal was not adopted.

TENANT MIX

Our contention is further supported by comments of the Evaluation Committee members during our debriefing that suggested our concepts, such as the San Jose Mercury News store, included declining brands as compared to our competitors submitted as an example, SJC News, a non brand. Such statements indicate that the Committee was biased against PGC and its concepts, or simply had an intrinsic lack of understanding of basic concepts in the retail business. Additional concerns regarding our concepts were misjudged, as PGC's concepts were equal if not better than our competition, and our local and national brand concepts were as strong (or stronger) than that of our competitors. In this connection, we are able to provide additional detail upon request.

FINANCIALS

PGC was further informed in our debriefing meeting on Wednesday, April 9, 2008, that there was significant concern regarding whether our Minimum Annual Guarantee was realistic based on the sales projections and that this concern resulted in lower scoring than we might have earned otherwise. First, as everyone is aware, all MAG's were supported by bond. Second, this concern was not raised at any point during our oral presentation by the Committee, therefore we never had the opportunity to respond or provide the necessary support or assurances that our financial projections were accurate. Had the Committee raised these concerns during our presentation, we would have been able to discuss these concerns and allay these concerns in detail during the presentation, as our projections are supportable. In addition, in reviewing our competitor's packages we have found numerous discrepancies regarding their financial projections, yet our competitors still were given scores higher than PGC.

QUALIFICATIONS

With respect to the evaluation scores related to experience and qualifications, we believe that the evaluation of our Proposal should not have been adversely affected because of the relative number of stores we have overseen. While we have opted to focus our experience and growth within the local community, we believe that as a locally owned and operated business and because of our extensive familiarity with this community and the customers who make their lives here we have a superior quality of experience and qualifications which cannot be underestimated and certainly should not result in a lower evaluation score simply because we do not operate on the same scale nationwide. Our experience as a locally owned and operated business and our long-term presence and commitment to the region is a substantial asset that makes us uniquely capable of serving the community and the San Jose International Airport. Indeed, PGC is more than qualified to prevail on this bid given PGC's prior successful experiences at other International Airports. Specifically, our experience at San Francisco International Airport is a prime example of our success – over Thirty Three Million dollars in sales last year from twenty two (22) stores, generating financial performance ratios (sales per square foot and sales per enplanement) within the “top of national airport concession industry standards”. As an earlier example, in 1999, PGC won an eight (8) store RFP over Host Marriott International, the then incumbent in San Francisco – since winning this contract, PGC has shown “greater sales growth” over Host Marriot since the inception of the contract. Further examples of our experience and success have been and are available upon request.

CUSTOMER SERVICE & EXPERIENCE

As indicated above, the Committee failed to undertake reasonable due diligence in evaluation of PGC's experience. Specifically, we were informed by committee member Terri Gomes on April 9th at the post briefing meeting that “we [The Committee] do not make field trips”. That's like a vintner bottling wine without ever tasting it. That type of thinking does not make business or economic sense, is not in the best interest of the city, and suggests that the Committee makes decisions in a vacuum. Does the magnitude of this contract justify an investment of time and effort to “make a field trip”? The answer is unequivocally yes, and had the committee made the effort, it would have been in a much better position to make a fully informed decision, and to genuinely evaluate PGC's experience and customer service. Moreover, PGC is particularly at a disadvantage when its business operations are successful, but it purportedly lack the “name”, but not experience, of its competitors.

CONCLUSION

Given all of the above, it is unassailable that the Committee failed to employ fundamental fairness in its review of PGC's proposal, and in awarding of the contract. PGC submits that the process and procedures employed by the Committee were intrinsically unfair, and thus did not provide the requisite due process mandated by standards of law, and standards proscribed by the City. The aforementioned conflicts of interest, the predispositions of at least two, if not more, Committee members, and the “lack of a level playing field”, all contribute to a grossly inadequate procedure and

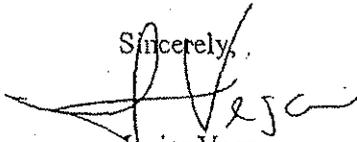
process that reeks of misconduct, and constitutes a failure of integrity in the Procurement process. At a minimum, such conduct must be investigated.

Moreover, PGC presented a cogent proposal package for retail packages 1 and 2 of the RFP. With its vast and successful experience in other International Airports, its innovative concepts, and its financial commitment to the City that was equal if not superior to its competitors, it is difficult to conceive a better package that would benefit the City. Moreover, PGC connections to the local community are underscored by owners who were born and raised in San Jose, and who attended and graduated from San Jose State University's School of Business. Given the City's purported interest in hiring home bred talent, so long as they are qualified, PGC fits that bill better than the competition.

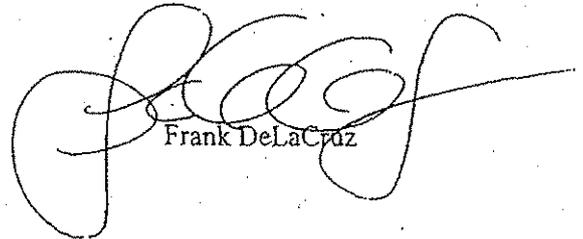
We appreciate your consideration of the issues we have raised in this Protest. Indeed, we submit that as a result of our experience, and PGC's financial guarantee for package 1 (the highest of all competitors) we submit that Package 1 should be summarily awarded to PGC. In the alternative, we submit that as a result of the flawed process iterated above, that the Committee 1) launch a full scale investigation of all issues raised in this Protest letter; 2) reevaluate the RFP Procurement process with an entirely new committee, and/or 3) conduct a second vote on the PGC's proposal after recusal of those members who are shown to have a conflict of interest, a predisposition on the award, or have otherwise engaged in misconduct. Please advise us of the steps related to the adjudication of this Protest to the award recommendation.

Thank you for your anticipated cooperation in this matter. Nothing in this letter shall be deemed a waiver of our legal rights and privileges, and we specifically reserve the right to continue our independent review of the process and pursue any and all legal remedies through the Courts after all administrative efforts have been exhausted.

Sincerely,



Javier Vega



Frank DeLaCruz

CC: City of San Jose Attorney, Brown & Ramirez, LLP, Lauren MacDonald, Pugh, Jones, Johnson & Quandt, P.C.

EXHIBIT O

April 28, 2008

Mr. Javier Vega
Mr. Frank DeLaCruz
Pacific Gateway Concessions, LLC
1150 North First Street, Suite 220
San Jose, CA 95112

Dear Messrs. Vega and DeLaCruz:

Subject: Protest letter from Pacific Gateway Concessions, LLC to City of San Jose, dated 4/16/08
Reference: Request for Proposal (RFP) for Norman Y. Mineta San Jose International Airport Food, Beverage, and Retail RFP

This letter is in response to the subject letter alleging that evaluation Committee Members had a Conflict of Interest; issues with compliance of the City's Lobbying Ordinance; lack of fairness regarding meeting requests with the City's Director of Aviation; concerns about the objections process of the RFP; and concerns about the evaluation of your company's proposal.

Allegations of Conflict of Interest

The subject letter makes certain allegations about two members of the evaluation committee that you characterize as a conflict of interest or ethical misconduct. Specifically, your letter discusses the following:

1. **Conversation with Evaluation Panel Member.** You state that Committee member Phaedra Ellis-Lamkins told PGC representatives that "she was going to support a Host/Mariott proposal because she has a union relationship with Host/Mariott." According to Ms. Ellis-Lamkins, that is not something that she said. There is no way to now determine what may or may not have been said, nor would it serve any real purpose to determine what was said, because based upon my examination of the evaluation, there is no evidence that Ms. Ellis-Lamkins either engaged in an actually biased evaluation or exerted an influence over the evaluation process that would have changed the outcome based upon any bias.
2. **Letter of Reference.** Your letter also mentions a letter of reference from Amy Shaw, Manager for Aviation Commercial Business at the Seattle-Tacoma International Airport, that was included in the Hudson News proposal (see Attachment A). The generic reference letter dated November 17, 2006, is addressed with "To Whom It May Concern." The letter was dated nearly a year prior to Ms. Shaw receiving an invitation and accepting to serve on the City's evaluation committee. The City concluded that the submission of this reference letter does not constitute a conflict of interest or a violation of Council Policy 0-35, titled "Procurement and Process Integrity and Conflict of Interest."

Indeed it is not uncommon for evaluators and staff to be familiar with the work of a particular proposer or proposers. This is almost always true when there are incumbent companies participating in a competitive process in order to continue to provide service. There is nothing inappropriate in using as evaluators people who are familiar with a particular industry. You should also note that the City selected an evaluation committee consisting of nine members to ensure a broad, independent and

impartial review and evaluation of proposals by various technical experts and members of the community representative of organizations as it relates to the Airport's Concession business. The scores from all members were averaged to arrive at a final score with no one or two of them having an overriding influence over the others.

Use of Lobbyists

The subject letter suggests that lobbyists were used by three of the competing proposers but does not provide any detail regarding the engagement of lobbyists or any violation of either the City's Lobbyist Ordinance or Council Policy 0-35, titled "Procurement and Contract Process Integrity and Conflict of Interest." Specifically, Council Policy 0-35 states that "companies which respond to a City solicitation agree to adhere to this Policy and are individually and solely responsible for ensuring compliance with this policy on behalf of the respondent's employees, agents, consultants, lobbyists, or other parties or individuals engaged for purposes of developing or supporting a response." The City Clerk's Office confirmed that lobbyists representing AMS-SJC and Westfield were registered with the City in 2007 and 2008. In my investigation, I found no evidence of impropriety or violation of Council Policy 0-35.

Equal and Level Playing Field regarding Meeting Requests

In the protest letter, your company expresses concern that PGC was not provided an "equal and level playing field" regarding meeting requests with Mr. William F. Sherry, Aviation Director.

At PGC's request, Mr. Sherry met with representatives of PGC twice in 2007. During these meetings, Mr. Sherry did not express a reluctance to meet with PGC. However, after PGC representatives broached the subject of the upcoming subject RFP, Mr. Sherry asked them to use established lines of communication, such as stakeholder outreach meetings, to convey PGC's thoughts, concerns, and comments about the planned RFP. Mr. Sherry directed the conversation towards the established lines of communication to ensure that City staff could appropriately capture any input regarding the subject RFP.

In 2006, Mr. Sherry met twice with HMS Host and once with Paradies, a concessionaire that did not bid on the RFP. Conversations at both HMS Host meetings were limited to issues related to the existing operations at the airport. The meeting with Paradies was a cordial visit discussing operations at Ft. Lauderdale-Hollywood Intl Airport (FLL) in Florida. Prior to serving as Aviation Director for the City of San José, Mr. Sherry worked at FLL.

In accordance with Council Policy 0-35, Mr. Sherry did not have any meetings with any prospective company potentially responding to the subject RFP after its release.

Objections to subject RFP

Your letter includes a discussion of PGC's letter objecting various aspects of the RFP on November 6, 2007 in accordance with the RFP document (see Attachment B), in which Mr. Vega expressed concern about a potential negative bias due to the submission of objections regarding the form and content of the RFP and requested that the City not release the identity of the objecting party. The City invites and welcomes objections to any aspects of the RFP for the purpose of ensuring that it considers the views of potential proposers on the RFP's content. Because the City values this input, the City in no way put any objecting participant in a negative light as part of considering objections.

As I stated in an email after receipt of the objection letter, any document received as part of the RFP process is a public record and will be released as part of the RFP process as an attachment to an addendum in accordance with Council Policy 0-35, which states that, "All requests for clarification, objections to the structure, content, or distribution of a solicitation, or other inquiries must be made in

writing and the City shall answer to these clarifications, objections, and inquiries in writing via addenda to the solicitation. The objection letter was released as part of Addendum #3 on December 18, 2007 (see Attachment C). In accordance with standard City procurement practice, the entire RFP including all addenda were made available to the evaluation committee.

You have offered no factual basis for the proposition that the inclusion of your objection letter as part of the RFP materials reviewed by the evaluation panel was perceived by anyone as negative or any other way resulted in any lower scoring of your company's proposal on the six evaluation criteria.

Tenant Mix

In the subject letter, your company contends that the evaluation committee had an intrinsic lack of understanding of basic concepts in the retail business and that PGC's concepts were misjudged. As stated previously, the nine member evaluation committee consisted of various technical experts and members of the community representative of organizations as it relates to the Airport's Concession business. The scores reflect the Committee's evaluation of the written material submitted and PGC's oral presentation.

Financials

The evaluation of proposers' financial condition and guarantee of revenue for the Airport was weighted at 250 points out of a total of 1,000 possible points for the written proposal. The table below provides specific detail regarding the make-up of the criteria for the financial evaluation.

Criteria for Financial Evaluation	Maximum Points for each Criterion
Minimum Annual Guarantee	150 Points
Total Percentage Fee	35 Points
Sales Projections and Financials	35 Points
Financial Capacity and References	30 Points
Total	250 Points

All proposers, including PGC that submitted the highest proposal for the Minimum Annual Guarantee (MAG) received the maximum points in this category.

For the other financial criteria, the evaluation committee's rating of PGC's proposal resulted in a lower score because of the following main reasons: inconsistencies between various types of financial information provided, low annual sales projections, and underestimated enplanement projections. Additionally, during the oral interview, PGC representatives stated that they did not expect to break even on this contract until 2015 – during the seventh year of the contract.

In response to the reference of a performance bond, the protest letter states correctly that the RFP required that the winning proposer is required to submit to the City a faithful performance guarantee equal to six months of the MAG. This security deposit provides some protection to the City and is considered a last resort. It is important to the City that companies who do business at the Airport remain financially sound in order to pay their employees and suppliers and to offer outstanding service to the traveling public. Therefore, in order to assure the City of these capabilities, the evaluation criteria included a review of each proposer's financial projections and capacity.

Messrs. Vega and DeLaCruz
April 28, 2008

Experience and Qualifications

The Experience and Qualifications Section of the RFP was weighted at 15% of the overall points allocated for the evaluation of written proposals and consisted of criteria as outlined in the table below.

Criteria for Experience and Qualifications	Maximum Points for each Criterion
Demonstrate Retail Management Experience/Expertise	50 Points
Concession Program Operation Performance Standards	35 Points
Years in Business and Corresponding Receipts	25 Points
Marketing and Concession Promotion Programs	20 Points
Photos/Videos that Demonstrate Merchandise Expertise	20 Points
Total	150 Points

To ensure fairness in the evaluation process, the members of the evaluation committee were charged with evaluating proposals in accordance with the evaluation criteria. If PGC believed that the City should have assigned more points to other criteria, PGC could have objected to the process by the due date for objections on November 6, 2007. It would be inherently unfair for the City to now change the selection criteria after all proposals had been submitted. Therefore, I cannot consider your objection to evaluation criteria at this stage.

Customer Service and Experience

In the subject letter, your company raised a concern that the City's evaluation process did not include a site visit as part of the evaluation process. Again, it is inappropriate to chose to object to the evaluation process after submission of proposals or after issuance of the Notice of Intended Award.

Protest Determination

After careful review of the subject letter, for the reasons stated above, I find no basis to determine that any impropriety or conflict of interest was present in the evaluation process. I also have determined that the evaluation and resulting recommendation was reasonable and consistent with the stated criteria.

Therefore, I deny the protest and am recommending award of contract to the companies as outlined in the Notice of Intended Award, dated April 4, 2008 (see Attachment D). Your company may appeal my decision to the City Council by filing an appeal, in writing, to the City Clerk within ten calendar days of this letter:

I appreciate your interest in doing business with the City of San José. For questions regarding this correspondence, please contact me at walter.rossmann@sanjoseca.gov or at (408) 535-7051.

Sincerely,



Walter C. Rossmann, C.P.M.
Chief Purchasing Officer

EXHIBIT P

NORMAN Y. MINETA
SAN JOSE INTERNATIONAL AIRPORT
COMMISSION MEETING

Minutes of May 12, 2008

1. CALL TO ORDER AND ROLL CALL

Commission Chair Tompkison-Graham called the meeting to order at 6:12 PM in the Large Conference Room on the 4th floor of the Norman Y. Mineta San José International Airport Office, 1732 North First Street, San José, California. Commissioners Catherine Tompkison-Graham, Daniel Biesterveld, Rolayne Edwards, Don Simpson, John Salah and Frank Sweeney were in attendance. Commissioner Sukhdev Singh Bainiwal was absent.

2. ORDERS OF THE DAY

Commission Chair Tompkison-Graham moved Standing Items 6A-6E to be heard after the Consent Calendar.

Action: A motion to amend the agenda was made by Commissioner Simpson and seconded by Commissioner Biesterveld. The motion was approved. (6-0,1 absent)

3. CEREMONIAL ITEMS

There were no Ceremonial Items

4. CONSENT CALENDAR

NOTICE TO THE PUBLIC: The Consent Calendar is acted upon at this point in the agenda. There will be no separate discussion of items listed under this Section as these items are considered to be routine and will be adopted by one motion. If a member of the Airport Commission, staff, or public requests discussion on a particular item, that item will be removed from the Consent Calendar and considered separately.

- a. Minutes for approval:
 - April 7, 2008 Regular Meeting
- b. Items filed for public record and correspondence
- c. Noise Complaint and Curfew Summary:
- d. Future Airport Commission Meetings:
 - May 15, 2008 Rules
 - June 2, 2008 Regular Meeting
 - June 19, 2008 Rules
 - July 7, 2008 Regular Meeting
 - July 17, 2008 Rules
 - August 4, 2008 Regular Meeting
 - August 21, 2008 Rules

A motion to approve the Consent Calendar was made by Commissioner Sweeney and seconded by Commissioner Biesterveld. The Consent Calendar was approved. (6-0, 1 absent)
End of Consent

5. GENERAL BUSINESS

- a. Discussion and possible action on the Airport Public Art Workplan. **Barbara Goldstein, Public Art Director, gave a brief presentation on the Public Art Workplan for the next 2 years as well as the possible locations for American History Wall honoring Jim Nissen, Ernie Renzel and Norman Mineta.**
Action: No action was taken on the workplan. A motion to accept Terminal A as the location site for the American History Wall was made by Commissioner Simpson and seconded by Commissioner Biesterveld. The motion was approved. (6-0, 1 absent)

- b. Discussion and possible action on the follow up to items/presentations made at the Santa Clara BART Station Area Plan workshop of April 1.
Public Comment: Robert Williams spoke in favor of this item. Mr. Williams thinks this a wonderful opportunity for the "Silicon Valley" Airport. Noel Tebo spoke against this item. Mr. Tebo feels this item has gone "wildly wrong" needs to be completely revisited. He is asking the Commission to insist that this project be completely reworked. He also handed out a "History of a "Botched" Airport Project". The Commissioners expressed their concerns about the APM, whether it is the technology, design or route.
Action: A motion was made by Commissioner Sweeney for Personal Rapid Transit (PRT) technology to be included as one of the alternative technologies that are looked into, it was seconded by Commissioner Biesterveld. The motion was approved. (6-0, 1 absent)

- c. Discussion and possible action on identifying solutions to the City's General Fund Budget Shortfall and the Transient Occupancy Tax. **Sheila Tucker from the City Manager's Office gave a brief update. This process is still in the information gathering stage. The City Manager has asked that there be more analysis, research and polling on the issues.**
Action: No Action Taken, to be revisited in June 2008.

- d. Discussion and possible action on the proposed Memorandum of Understanding (MOU) concerning business terms for the purchase and sale of the Airport West Property and for the development of a Major League Soccer Stadium. **Nanci Klein from the Office of Economic Development gave an overview regarding this item. This item is scheduled to go to council on Tuesday, May 20, 2008. The Commissioners expressed their concerns and opinions about this item.**
Public Comment: Carl Honaker asked for clarification that none of the property actually belonged to the Airport and that there are no FAA restrictions, also he asked if this was still linked to the Edenvale Project.

June 2, 2008.

Action: A motion was made by Commissioner Biesterveld to convey that the commission is not in favor of the MOU. The motion was seconded by Commissioner Simpson. The motion was approved. (6-0, 1 absent)

- e. Discussion and possible action on the Award of Contract for Airport Food and Beverage and Retail Concessions. Patrick McCue gave an informative presentation on the Request for Proposal and Evaluation process for the Bidders.

Public Comment: The following speakers spoke in favor of the recommendation: Eduardo Uribe of Areas, Tom Muller of San Jose Rocks & on behalf of Paolos, John Conway of Britannia Arms, Dan Brunello of Le Boulanger, Pat Banducci of Host, Louis Chiaramonte, Jr. of Chiaramontes Italian Market, Peter Favre of Mojo Burger, Brian Mundy of Schurra's Candies. Dennis King of the Hispanic Chamber of Commerce, Valerie Lewis of Hicklebees and Joe Davis of Hudson. The following speakers spoke against the recommendation: Javier Vega of Pacific Gateway Concessions and Frank De La Cruz of Pacific Gateway Concessions.

Action: A motion was made by Commissioner Simpson and seconded by Commissioner Biesterveld to accept staff's recommendation of award. The motion was approved. (5-0-1, 1 absent) (Ayes - Tompkinson-Graham, Biesterveld, Simpson, Edwards, Sweeney. Abstention - Salah)

6. STANDING ITEMS – Under Orders of the Day, these items were moved to be heard after the Consent Calendar.

- a. Security
Security Item for March 2008 was included in the Commission Packet.
- b. Airport Incidents
John Aitken reported one airport incident – a hose came off and created a leak at the CNG facility. The facility was secured quickly and traffic rerouted. Operations were back to normal within 2 hours. Also Runway 30L Closure is schedule May 19th for 14 days. Airport Operations does not anticipate any impacts.
- c. Capital Projects
John Aitken gave the Capital Projects update for Dave Maas. Most were roadway issues. There were traffic concerns on terminal drive due to shutting down of old lanes in order to install new pavement. By Tuesday the road will be back to 3 lanes and the transition point will shift to Terminal C. Ops anticipates slow traffic but not to the same extent. It will remain this way for the next 30 days. From June to October a 7 phase roadway project will begin at Terminal A. Prep work will commence in June, in early July the entire roadway in front of the departure area of Terminal A will be torn up. The project will be at its worst in mid-July and early August, wrapping up in late August and early September. Lastly, the north bridge, the over crossing towards the north end of the North Concourse, will be opening allowing traffic to get up and over the future Terminal B bypass road.

June 2, 2008

- d. Regional Aviation Issues
None
- e. Commission Liaison Reports
Deferred to June Meeting

As indicated below, Airport Commissioners may give status reports of their activities and meetings as assigned liaisons under Item 1 below but may not engage in discussions of specific matters unless a specific topic is agendized under Item 2 below.

1. *Liaison Reports on activities and meetings with community and private organizations, public entities and officials, and other interested parties assigned.*
2. *Specific Reports and Topics for Discussion*

7. ANNOUNCEMENTS

There were no announcements

8. PUBLIC COMMENT

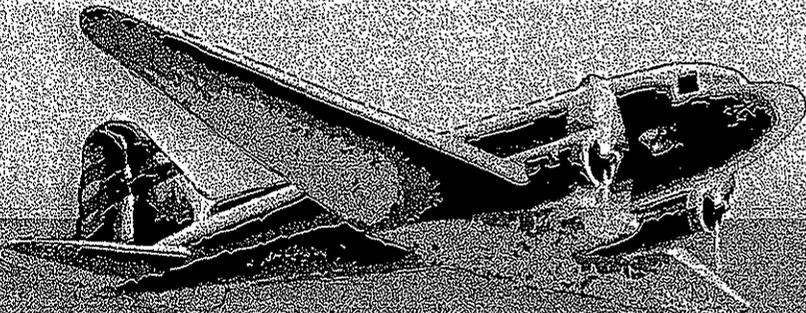
(NOTE: Individuals wishing to address the Commission on items which are not listed on the printed agenda will be heard after all matters on the printed agenda have been considered. If a matter is not listed on the printed agenda, the Commission may listen to the matter, and refer it to the Director or place it on a future agenda, but will not be able to discuss or take any action on this matter. Persons wishing to address the Commission are requested to fill out a "Citizen's Request to Speak" card, which are available on the table by the entrance. The Commission Chair may limit your time to speak.)

Penny Blake asked that the GA Safety Committee be discussed at the June Commission Meeting.

9. ADJOURNMENT

Commissioner Tompkison Graham adjourned the meeting 8:38 p.m.

EXHIBIT Q



Building a Better Airport:

Expanding a Living Wage and Job Training
to Workers at San Jose International Airport

RESEARCH BY WORKING PARTNERSHIPS USA

CONTENTS

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- 12 **San Jose International Airport: Critical Roles, Emerging Challenges**
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- 19 **San Jose's High Cost of Living**
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- 21 **Applying Living Wage and Public Oversight to SJC: A Policy with Multiple Benefits**
 - Improving Job Quality
 - Improving Oversight and Accountability for Contractors at SJC
 - Maintaining Competitive Standards at San Jose International
- 24 **Policy Recommendations**
- 26 **Conclusion**

EXECUTIVE SUMMARY

Expanding living wage, public oversight and job training opportunities to the Norman Y. Mineta San Jose International Airport (SJC) will produce numerous benefits to workers, the airport and the City of San Jose. A comprehensive policy for all airport employees will improve SJC's competitiveness among other major California airports, strengthen security and overall airport operations, and provide livable wages and fairness to all staff.

Currently, San Jose lags behind San Francisco, Oakland and Los Angeles airports whose employees are already covered by living wage and job training policies.

Surveys conducted in San Francisco following the implementation of airport wage and training standards found substantial benefits to employers and overall airport operations. Results included dramatic decreases in employee turnover

resulting in cost savings to employers, tighter security, improved customer service and strengthened airport operations. The decline in employee turnover alone, which was 80% among some occupations prior to the living wage expansion, amounted to a cost savings equal to 11% of employers' costs. The combination of higher wages and job-training opportunities provided benefits to both employers and employees, and in turn strengthened business at the San Francisco airport.

When San Francisco implemented a living wage, the decline in employee turnover alone amounted to a cost savings equal to 11% of employers' costs.

San Jose's airport experiences many of the same challenges that were observed at SFO before a comprehensive job quality program was implemented,

which include staggering high turnover rates and an overall lack of awareness of basic security procedures. The deregulation of the airport industry in 1978 resulted in airlines contracting out numerous services to

low-cost subcontractors that paid workers sub-standards wages and offered minimal training or career development opportunities. Despite San Francisco's effort to correct these inequities, SJC largely operates with contractors that pay low wages and have grossly high job turnover. A December 2007/

January 2008 survey of passenger service employees at SJC found more than one third of the below-living-wage workers have been employed at SJC for less than

12 months and received no job training. Of those employees who perform security related duties, 80% were not trained on how to evacuate a terminal and 64% never received formal training on how to identify suspicious behavior. The consequences of poor job quality standards have subsequently limited SJC's effectiveness in maintaining security, ensuring safety, and maximizing customer service at the airport.

Although the City of San Jose has taken steps to expand living wage to some workers at the SJC, a comprehensive policy

establishing living wage and training standards has not yet been implemented. Thus far, living wage has been expanded on a contract by contract basis but the lack of consistency has left more than 500 workers uncovered and earning sub-standard wages. Results from the employee survey at SJC

found that, despite the vital role they play in successful airport operations, many workers earn no more than the state's minimum wage (\$8/hr), do not have access to employer-

sponsored health insurance, and have few incentives to stay in their jobs long term. Consequently, one of the chief economic engines of Silicon Valley relies on a workforce that can't afford local rents and is denied basic benefits such as healthcare and time off.

POLICY RECOMMENDATIONS

To improve job standards at the airport, the City of San Jose should expand living wage to all workers and increase oversight and accountability to employers that operate at SJC. The deregulation of the airport industry

One of the chief economic engines of Silicon Valley relies on a workforce that can't afford local rents and is denied basic benefits such as healthcare and time off.

has produced an environment that if not carefully monitored can generate significant lapses in security and customer service. The San Jose airport can correct this trend by implementing job quality standards that both increase wages and allow the City of San Jose to play a more active role in selecting airport contractors to ensure maximum safety and security at SJC. Specifically, the City of San Jose should:

- **Apply living wage to all workers at the airport**
- **Increase oversight of sub-contractors at SJC**
- **Explore additional opportunities to improve security and airport operations**

Applying a comprehensive living wage with public oversight to the San Jose airport will augment SJC's competitiveness among all other major bay area airports, improve security and create a minimum wage level that is needed for all employees.

INTRODUCTION

The gateway to Silicon Valley, Norman Y. Mineta San Jose International Airport (SJC) is essential to the economy of the San Jose metro region. The Airport serves 10.3 million passengers annually and generated \$95.2 million in revenues in 2007. SJC is currently the third-largest passenger airport in the Bay Area and fifth-largest in California, and expansion plans are underway.¹ When the current \$1.5 billion terminal improvement program is completed, the expanded San Jose Airport is slated fully accommodate projected commercial aviation demand through 2017.

Despite the efforts to physically improve the Airport, San Jose has not shown a similar commitment to elevate conditions for those who provide Airport services. Although their job functions are vital to successful operations, too many SJC staff are struggling to make ends meet. Although San Jose has in place a living wage policy which applies to some airport workers, its coverage is uneven

and not consistent across contractors, with the result that more than 500 passenger service workers out of 6,000 total employees are excluded from living wage coverage. Furthermore, there is no job training program in place at SJC that adequately prepares all employees on how identify suspicious behavior or how to respond in an emergency.

These risky conditions of work at San Jose Airport have developed in the context of a national trend in the airline industry towards cost-cutting and contracting out without adequate oversight, leading to major issues in areas ranging from security to aircraft maintenance. Compared to competing airports SFO and OAK, San Jose is falling behind in its efforts to address the problems associated with lack of standards for contracted work.

This report provides an overview of industry trends and recent challenges that have contributed to current conditions at SJC. Analyzing a new survey of Airport workers, it focuses on the current working conditions

1. Gomez, Terri A. *Comprehensive 2007 Annual Financial Report*, Norman Y Mineta San Jose International Airport, FY2007

for over 500 employees at the San Jose airport. Finally, it describes the improvements that could be made through a comprehensive, consistently applied living wage policy tailored to the needs of the Airport, and offers recommendations on how to implement a San Jose Airport Living Wage.

EMPLOYEE HIGHLIGHT: DWAYNE GREEN

Dwayne Green has worked for Aviation Safeguards at the San Jose International Airport as a wheelchair ambassador for two years and has worked for the California Airport Industry for more than 30 years.



A few of Dwayne's co-workers who are contracted by the City earn a living wage, but most of them earn only eight dollars an hour. The only raises he receives are when the state decides to increase the minimum wage. Consequently, making ends meet at this wage level is nearly unattainable.

For almost a year even while working full time at the airport, Mr. Green was homeless, sometimes living in local shelters and sometimes on the street. Unfortunately, the wages he received made it impossible to pay the rent and provide food for his family.

CONTEXT: SAFETY, SECURITY AND SERVICE IN THE U.S. AIRLINE INDUSTRY

The present-day shape of the U.S. airline industry is a relatively recent phenomenon. Prior to 1978, U.S. airlines were subject to regulation by the federal government in the public interest, similar to electric utilities or telephone companies.

The Airline Deregulation Act of 1978 eliminated the Civil Aeronautics Board, the agency which since 1936 had overseen and regulated the commercial airlines. It phased out regulation of fares and routes, and transferred responsibility for safety standards to the Department of Transportation and the Federal Aviation Administration (FAA).

The new system has brought considerable benefits to passengers in the form of lower fares; with inflation subtracted, the median round-trip fare fell by nearly forty percent between 1980 and 2005.² Airlines developed their current practice of routing most flights through certain "hub" cities in order to increase passenger volume per flight.

² U.S. Government Accountability Office, *Airline Deregulation: Reregulating the Airline Industry Would Likely Reverse Consumer Benefits and Not Save Airline Pensions*. Report to Congressional Committees, June 2006. GAO-06-630.

At the same time, deregulation fostered a race-to-the bottom atmosphere which has led to periodic waves of financial crisis in the industry. Airlines experienced major losses and bankruptcies throughout much of the 1980s and early 1990s. From 1978 through 2005, 162 airlines filed for bankruptcy.³

THE SHIFT TO LOW-BID CONTRACTING

As the airline industry restructured itself following deregulation, airlines attempted to cut costs by contracting out services they had previously performed in-house, including skycap and porter services, baggage handling, security screening, passenger assistance, and cabin cleaning. Repeated fiscal crises combined with lax regulation and a "race to the bottom" mentality transformed these functions into low-wage, high-turnover, and poorly-trained jobs.

A UC Berkeley industry analysis found

³ U.S. Government Accountability Office, *Commercial Aviation: Bankruptcy and Pension Problems are Symptoms of Underlying Structural Issues*. Report to Congressional Committees, Sept. 2005. GAO-05-945.

that, in the two decades after deregulation, pay growth in air transportation lagged behind pay in other transportation sectors. For the 1990s, pay growth even fell behind the notoriously low-wage retail sector. The UC Berkeley researchers concluded that "intense competition, consolidation, and cost cutting generated sector-wide downward pressure on wages."⁴

Outsourcing can lead to more efficient operations if it is carried out with clear goals and processes to maintain quality of service while improving productivity. However, when minimum standards and adequate oversight are not present or are not enforced, contracting out often encourages subcontractors to underbid their costs and then cut corners, resulting in a lower quality of work. When carried into the context of an airport, this type of low-bid contracting not only impacts passengers' comfort and quality of service, but may pose risks to security and safety.

The case of airport security screening provides a clear warning of the problems that can develop from the practice of low-

bid subcontracting. Until the advent of the Transportation Security Administration (TSA), baggage and security screening was the responsibility of the airlines, which usually auctioned this function too off to the lowest bidder. To compete for and win these contracts, private security companies paid poverty-level wages, offered few if any benefits, and often cut corners on training. In 2001, airport screeners nationally earned an average of \$6 per hour. Turnover for airport screeners was above 125%, meaning that the average screener had been on the jobs for just four and a half months.

Airports and the FAA had expressed concerns around the low quality of screening services, but nothing was done. A UC Berkeley study found that "The regulatory relationship was effectively broken when airlines began sub-contracting security services."⁵ In the wake of the September 11th tragedy, the problems with subcontracted security services received national attention, resulting in the 2002 federalization of security screening through the TSA.

⁴ Michael Reich, Peter Hall and Ken Jacobs, "Living Wages and Economic Performance: the San Francisco Airport Model" Institute of Industrial Relations, UC Berkeley, March 2003. http://www.irle.berkeley.edu/research/livingwage/sfo_mar03.pdf

⁵ Michael Reich, Peter Hall and Ken Jacobs, "Living Wages and Airport Security" Institute for Labor and Employment, UC Berkeley, Sept. 20, 2001. http://www.irle.berkeley.edu/research/livingwage/air_sep01.pdf

DECLINES IN QUALITY OF SERVICE FOR AIRLINE PASSENGERS

As airlines have focused on cutting costs through contracting out and other changes to operations, quality of service has noticeably declined, with problems ranging from overbooked flights to mistreatment of passengers, or even (as in the well-publicized incidents during the winters of 2006 and 2007) being forced to remain in a grounded aircraft for 8 hours or more with inadequate food, water or toilet facilities.

The Airline Quality Rating, an objective measure developed in 1991 at the University of Nebraska to rate the performance of airlines on multiple quality-of-service criteria, shows that service quality has been declining in recent years. In 2007, the industry as a whole scored the worst Airline Quality Rating ever recorded since rating began.⁶

A snapshot of complaints filed with the federal Department of Transportation further illustrates problems with customer service and operations:

- In February 2008, 6.39 out of every 1,000 passengers on domestic flights filed a mishandled baggage complaint with the Department of Transportation, up from 4.39 per 1,000 in October 1998.⁷
- In addition, February 2008 alone saw 128 complaints filed regarding customer service (not including baggage, flight delays, or related issues) and 35 complaints regarding treatment of people with disabilities.⁸
- These do not include the far more common complaints made directly to the airlines.

One area of particular concern is service for people with disabilities. It is the airlines' responsibility to provide wheelchairs or other assistance to disabled passengers upon request. However, wheelchair service is another area which most airlines have contracted out at the lowest cost possible. This frequently leads to difficulty for disabled passengers in obtaining the assistance they need to board, disembark or reach their

⁶ Brent D. Bowen and Dean E. Headley, *2008 Air Quality Rating*, April 2008. <http://aqr.aero/>

⁷ *Air Travel Consumer Report*, Office of Aviation Enforcement and Proceedings, U.S. Dept. of Transportation. <http://airconsumer.ost.dot.gov/reports/index.htm>

⁸ *Ibid.*

gate, as reported last month in a *USA Today* investigation. In the past three years, they found, more than 34,000 disabled fliers have filed complaints with federal agencies; over half those complaints were related to wheelchair assistance.⁹

If the assistant they requested does not arrive, disabled passengers may be stuck, unable to reach their connecting gate or even to get off the plane. *USA Today* describes an incident last Christmas when lack of coordination and inadequate coverage by wheelchair attendants left a wheelchair-bound, 70-year-old woman stranded at Chicago O'Hare airport for 24 hours.

Personal safety is also an issue. The contract workers often receive no training on wheelchair operation or proper methods for transferring disabled customers from seat to chair. The result can be incidents like that which occurred at LAX, when, according to passenger service worker Tim Maddox, a wheelchair passenger being transferred off of a bus "got dropped and was hurt pretty badly." "The attendant felt terrible," said Maddox, "but he had no training on how to do this

correctly."¹⁰

POTENTIAL THREATS TO SAFETY AND SECURITY

Beyond customer service, outsourcing without adequate standards or controls may also pose a threat to airport security and aircraft safety. Among staff working at the airport, problems may arise when contracted employees are assigned to security-related duties such as checking IDs or searching planes without being given any training on what to look for.

In another sphere, the industry's large-scale shift to outsourced maintenance work has contributed to foregone maintenance and improperly done work, sometimes with tragic consequences:

- In the ValuJet crash of 1996, which killed all 110 people on board, the source of the fire that caused the crash was determined to be mishandled oxygen generators that were packed by a subcontractor of ValuJet's contractor

⁹ Barbara De Lollis, "Airlines tackle wheelchair need" *USA Today*, March 2007.

¹⁰ Carolina Briones and Aiha Nguyen, *Under the Radar*. Los Angeles Alliance for a New Economy, July 2007.

Sabretech. An investigation found that two-thirds of the subcontracted workers were unlicensed.¹¹

- The Air France Concorde crash in 2000 occurred during takeoff when the accelerating plane ran over a plane part on the runway that had been lost by another aircraft. The plane that lost the part belonged to Continental, and the part has been replaced by an overseas contractor in Tel Aviv. 113 people were killed in the crash.¹²
- A commuter plane operated by US Airways Express crashed in 2003, killing two crew and 19 passengers. The primary cause was incorrect rigging of the craft's elevator control system. Maintenance of the craft had been contracted out to Raytheon Aerospace, which in turn subcontracted the work to another company.¹³

In March 2007, *Consumer Reports* magazine issued a special report on outsourcing of aircraft maintenance, entitled "An accident

11 Matthew L. Wald, "Safety Board Faults Airline and F.A.A. in ValuJet Crash," *New York Times*, Aug. 20, 1997.; and "Five years after ValuJet crash, Sabretech settles," *CNN.com*, May 22, 2001.

12 "An accident waiting to happen? Outsourcing raises air-safety concerns," *Consumer Reports*, March 2007.

13 Jerry Siebenmark, "NTSB issues final report on Air Midwest crash," *Wichita Business Journal*, Feb. 26, 2004.

waiting to happen?" Noting that, as of 2005, major air carriers were outsourcing more than half their maintenance, often to contractors whose staff were not licensed mechanics nor screened for security, the Consumers Union called for "the [certification] standards [to] be made uniform, to equally apply whether the work is performed by an airline or an outside company."¹⁴

The issues of outsourcing and cost-cutting in maintenance have come to a head in the past two months, as the FAA has directed airlines to ground hundreds of planes upon discovering gaps in inspections or maintenance. With at least 64% of maintenance work now being performed by outside contractors – many of them not certificated by the FAA – concerns about safety are growing¹⁵.

Among the recent groundings and related problems:

- On March 6th, The FAA hit Southwest Airlines with a proposed fine of \$10.2 million – the largest in history – for deliberated avoiding maintenance and

14 "An accident waiting to happen? Outsourcing raises air-safety concerns," *Consumer Reports*, March 2007.

15 Joe Sharkey, "Airplane Maintenance: Maybe Not a Place to Skimp," *New York Times*, April 1, 2008.

flying a total of 145,000 passengers on uninspected aircraft. Selected checks found six Southwest aircraft with cracks in the fuselage, prompting the FAA to begin a broader audit of airline maintenance.

- On March 22nd, passengers flying at 27,000 feet on US Airways Flight 1250 watched as a piece of the wing was torn off, hit the fuselage, and cracked a window. US Airways then inspected its planes of similar design and found seven with wing problems.
- On March 20th, seven United Airlines planes were grounded after the FAA found that a subcontractor had improperly checked the cockpit altimeters.
- Beginning April 8th, the FAA directed American Airlines to ground nearly 300 planes for inspections. American cancelled over 3,000 flights.
- The same week, Delta grounded 117 planes for inspection. Alaska and other carriers also grounded planes.¹⁶

¹⁶ Ibid; and Melanie Trotman. Et al, "In FAA Crackdown, American Expects More Cancellations." *Wall Street Journal*, April 10, 2008; and Michael L. Wald and Micheline Maynard, "Behind Air Chaos, An FAA Pendulum Swing." *New York Times*, April 13, 2008.

SAN JOSE INTERNATIONAL AIRPORT: CRITICAL ROLES, EMERGING CHALLENGES

Norman Y. Mineta San Jose International Airport is a keystone of Silicon Valley's economy. Six thousand workers are employed at San Jose International Airport. If the Airport were a single private employer, it would rank as the 3rd largest in the city, with more workers than any company except Cisco and IBM.

Its indirect impacts on the region's economy are larger still. In addition to providing services for local travelers, the Airport anchors the region's hospitality industry, helping to attract conferences and business travelers who stay in hotels, rent space for events, eat at local restaurants and shop in local stores. The City of San Jose estimates that the airport and the passengers it brings support some 70,000 jobs in the region and bring in \$4 billion per year in revenues for businesses in the local area.¹⁷

¹⁷ "Airport Facts and Figures", Norman Y. Mineta San Jose International Airport. <http://www.sjc.org/newsroom/AirportStats.pdf>

COMPETITIVE CHALLENGES: KEEPING UP WITH SFO AND OAK

San Jose is one of three major airports serving the immediate Bay Area, along with San Francisco International Airport (SFO) on the Peninsula and Oakland International Airport (OAK) in the East Bay. With all three airports within an hour's drive of one another, San Jose faces heavy competition for airlines, routes and passengers.

San Jose Airport holds several advantages in this competition, especially for business travelers. It is located in the heart of Silicon Valley, near the headquarters of many major high-tech companies. San Jose's clear and mild weather make it nearly ideal for airport operations. With 83% of flights departing on time as of February 2007, SJC has one of the highest on-time departure rates in the country, well above the on-time rates of OAK (79%) or foggy SFO (74%). SJC is also situated with easy access to three of the Bay Area's major highways.

But despite these natural and geographic advantages, of the region's three major airports, San Jose has the smallest market share. In the past twelve months, SJC served 10.3 million scheduled passengers, compared to 14.0 million served by Oakland International and 26.1 million at SFO.

While these two competing airports have both increased their passengers served by more than 19% since 2002, SJC has lagged behind with growth of just 2.8%. San Jose International Airport is losing market share (see Figure 1).

The major renovations currently under way should help SJC to recapture some of this lost business. However, in order to attract passengers, it is essential that San Jose Airport provide top quality service with well-trained staff.

In a before-and-after study evaluating the effects of the living wage policies and associated training standards enacted at San Francisco Airport, UC Berkeley researchers found that employers reported an increase in customer service, as well as improvements in overall work performance and employee morale. The researches concluded that these findings "suggest[ed] that improvements in worker performance were widespread across the airport."¹⁸

San Francisco and Oakland Airports both enjoy comprehensive Living Wage policies that apply to virtually all workers, including contractors. San Jose does not.

18 Michael Reich, Peter Hall and Ken Jacobs, "Living Wages and Economic Performance: the San Francisco Airport Model." Institute of Industrial Relations, UC Berkeley, March 2003. http://www.irlc.berkeley.edu/research/livingwage/sfo_mar03.pdf

FIG 1 San Jose Airport's Share of the Bay Area Air Passenger Market is Small And Declining

Bay Area Airports	Passengers served (millions), Jan. 2007 to Jan. 2008	Departing flights, Jan. 2007 to Jan. 2008	Passenger growth since 2002	Living Wage applied airport-wide
SJC	10,325	64,131	+2.8%	No
SFO	26,086	141,928	+19.4%	Yes
OAK	14,038	88,608	+19.3%	Yes

Source: U.S. Dept. of Transportation, Bureau of Transportation Statistics

ROLES OF CONTRACTED PASSENGER SERVICE WORKERS AT SAN JOSE AIRPORT

Passenger service workers are the face of San Jose Airport. They are the skycap who first greet a passenger and takes his/her bags at the curb, and the shuttle driver who brings his/her back to her car. They are also the wheelchair assistants that provide support to passengers with disabilities, the baggage handlers who are responsible for getting luggage safely to the right place, and the janitors who must work quickly to ensure a clean cabin before the next flight begins boarding.

Currently, San Jose Airport is served by approximately 500 passenger service workers who are employed by contractors hired by the airlines, and whose duties may impact safety or security. Of the employees who are also engaged in security-related activities, many provide critical services including searching airplane cabins for dangerous items, guarding planes, staffing security checkpoints and providing support for the baggage screening process.

These 500 workers fall into two broad

categories, with several job classifications in each category:

1. Contracted service workers who are directly involved in passenger and facility security.

Job classifications and functions include:

- Janitors
- Passenger check-in
- Wheelchair Assistants
- Baggage check-in and handlers
- Skycaps
- Guards (door, line control, etc.)
- Bus drivers or other operating vehicles

2. Workers who are directly engaged in activities impacting safety within the Airport Operations Area (AOA), and who require an airport badge with AOA access.

Job classifications and functions include:

- Ground handling (cabin cleaning, lavatory service, fueling, baggage handling, operating ground servicing equipments, etc.)
- Cargo facility (cargo handling, warehousing, etc.)

- Security (airport premises, warehouses, aircrafts)

The major contractors used by the airlines are Aviation Safeguards and G2 Secure Staff.

EMPLOYEE HIGHLIGHT: EVERLISTO QUEBRAL

Everlisto Quebral, a wheelchair ambassador for Aviation Safeguards, has worked at the San Jose International Airport for 14 years.

Everlisto is 72 and is forced to work past retirement to provide for his family.

When Everlisto started working at the airport over 14 years ago he was paid the minimum wage and 14 years later he's still getting paid the minimum wage, without health care benefits.

Without employer-sponsored health care, Everlisto cannot afford to go to the doctor and routinely puts off receiving medical care.



CURRENT WORKING CONDITIONS AT SAN JOSE AIRPORT

Hundreds of workers at SJC play a vital role in airport operations, yet earn low wages with no prospect for improvement. Results from a December 2007/January 2008 survey of 48 passenger service workers found most SJC workers not covered by the city's Living Wage Policy are paid no more than the California *minimum wage* – \$8 per hour in 2008. With fewer than 40 hours of work available per week, surveyed workers earned an average annual salary of less than \$16,640. This salary is far below what's needed to achieve self-sufficiency in San Jose; the average cost of rent for a one bedroom apartment would alone consume 80% of an employee's income.

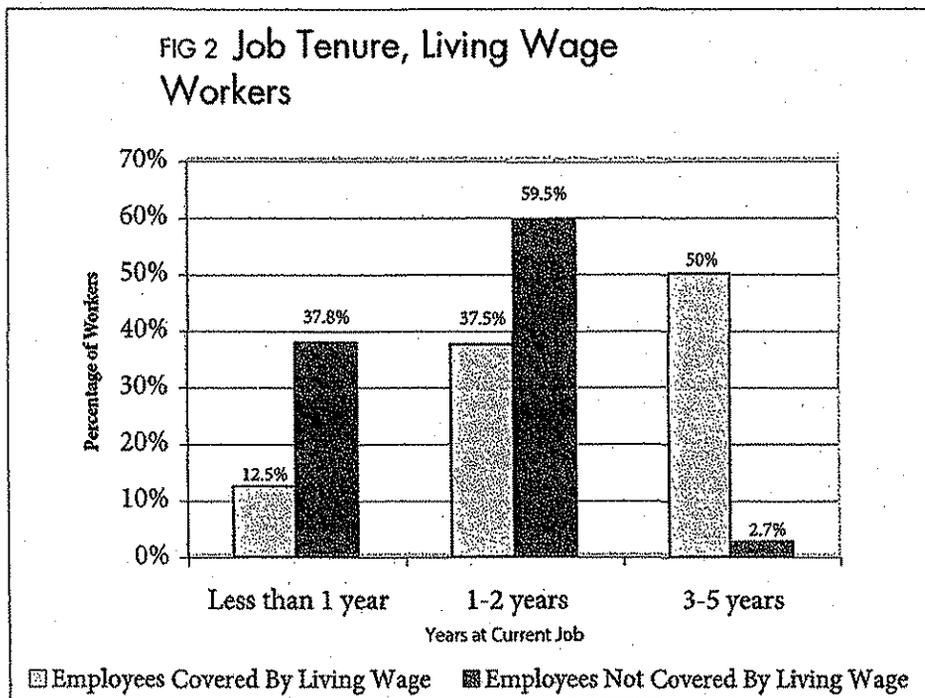
In addition to low wages, not one of the workers surveyed had access to employer-paid healthcare. For low-wage workers struggling to afford basic necessities in one of the most expensive regions in the country, the cost of health insurance for themselves and their families is nearly unattainable. Furthermore, 96% of the survey respondents received no sick days, vacation, holidays, or even unpaid

time off.

The negative effects of low wages, lack of employer-based health insurance, and no time off produce instability in job tenure between living wage and minimum wage workers.

Among the few workers in the survey currently paid a living wage, 50% have worked at the airport for more than 3 years, compared to 6% of security workers, 4% of wheelchair attendants, and 0% of baggage handlers: all job classes not covered by living wage (see Figure 2). Overall, 38% of the below-living-wage workers surveyed have been employed at SJC for less than 12 months. Respondents indicated that lower wages significantly contributed to the minimal length of job tenure.

Applying a living wage ordinance to the airport could deal with the current working conditions at SJC, but thus far living wage has only been expanded on a contract by contract basis. Currently, the city's Living Wage Policy only covers workers who are employed directly by the city or through



Source: 2007/2008 SJC Worker Survey

a city contract. Consequently, at least 500 employees contracted or sub-contracted by the airlines are not provided with this vital protection. Uncovered workers earn wages far below their living wage counterparts, do not have access to health insurance, and lack basic job training.

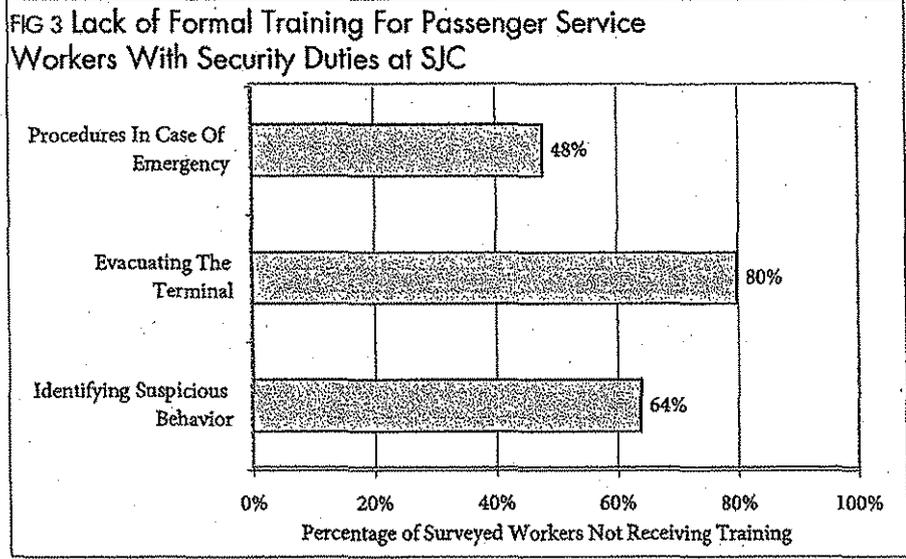
LACK OF TRAINING

In addition to experiencing poor job quality, many employees at SJC have not been provided with adequate training, decreasing their effectiveness in airport operations. A particular concern is the lack

of training regarding security-related tasks and procedures. Approximately 60% of the workers surveyed at SJC reported having security-related duties including conducting airplane searches for suspicious items, staffing access to secure areas of the airport and the airplanes, and crowd control. Of the workers who perform security-related roles, survey results indicated:

- 80% were not trained on how to evacuate the terminal
- 64% did not receive formal trainings on identifying suspicious behavior

- 48% were not trained on procedures in case of emergency



Source: 2007/2008 SJC Worker Survey

This lack of training generates lower worker productivity and limited effectiveness in maintaining airport-wide security standards. Other major airports have recognized the importance of training employees at all levels in an effort to maintain airport security. Both Miami International Airport and Boston's Logan International Airport have adopted a security training program for *all* airport staff.¹⁹

¹⁹ "Miami Airport Trains All Employees to Look for Suspicious Behavior" The Miami Herald, September 8, 2006, Business and Financial News Section.

SAN JOSE'S HIGH COST OF LIVING

The challenges low wage workers experience at the airport is compounded by the high cost of living in San Jose. In the past year, prices for basic necessities used by working families including housing, gas and child care have continued to balloon upward. Average rents in Silicon Valley are tied with Los Angeles as the highest in the state (see Figure 4), and gas prices have shot up 70% over last year. The average cost of childcare for one preschooler in the Santa Clara County is \$10,597 per year, a 45 percent increase since 2001.

Evidence increasingly suggests that Silicon Valley is moving in a disturbing direction typified by inadequate household incomes,

increasing inequality, and heightened economic insecurity for the middle class. When these circumstances are combined with the highest rents in the state, stagnant wages and escalating prices for food and gas, it is becoming increasingly difficult for lower and middle income families to make ends meet.

The current economic conditions for many San Jose airport workers illustrate the impossible balance that thousands of San Jose families confront between securing basic necessities and paying bills without increasing debt.

FIG 4 Santa Clara County: Cost to Rent

	Fair Market Rent	Hourly Wage Needed to Afford
Studio Unit	\$928	\$17.85
One-Bedroom Unit	\$1,076	\$20.69
Two-Bedroom Unit	\$1,293	\$24.87
Three-Bedroom Unit	\$1,859	\$35.75

Source: National Low Income Housing Coalition, *Out of Reach 2007-2008*, April 7, 2008.

ECONOMIC AND COMMUNITY IMPACTS OF SUBSTANDARD WAGES

The failure to apply living wage to all workers at the airport not only has impacts on workers but the overall community. At \$8.00/hour, minimum wage is barely enough to cover rent (currently at \$15,516 for a two-bedroom apartment), never mind food, electricity, transportation, healthcare or childcare.

To support their families and stay off the streets, low-wage workers thus must turn to public assistance programs. In Santa Clara County, a minimum wage worker with one child is eligible for food stamps and CalWORKs (welfare), as well as low-cost children's health coverage and free school lunch – even though he or she has a full-time job.

In total, the worker in question qualifies for public assistance worth \$10,675 annually, not including housing assistance. Paid for with taxpayer money, this assistance amounts to a hidden subsidy for businesses that do not pay a livable wage. Responsible businesses that do pay enough for workers to live on are placed at a competitive disadvantage.

Moreover, when full-time workers are forced to turn to public assistance, an enormous strain is placed on city, county and state budgets and on the entire social safety net. Emergency rooms, Valley Medical Center, and community health clinics are all hard pressed to maintain adequate health care services in the face of growing numbers of uninsured residents. The Second Harvest Food Bank has seen demand soar in the past year; even with more volunteers and food donations coming in, as much as half of the food need goes unmet.

Finally, paying wages that are inadequate to afford housing has major impacts not just on workers and families, but also on neighborhoods and the regional transportation infrastructure. Low-wage workers usually must choose between living in overcrowded, substandard housing, which negatively impacts neighborhoods, or else moving out to a lower-cost region and commuting four hours or more every day, adding to traffic congestion and pollution and robbing them of time to spend with their families.

APPLYING LIVING WAGE AND PUBLIC OVERSIGHT TO SJC: A POLICY WITH MULTIPLE BENEFITS

IMPROVING JOB QUALITY

Implementing a comprehensive living wage ordinance at SJC would establish a consistent wage standard for all employees and strengthen airport operations. This ordinance would generate wage increases for non-living wage employees by an average of 50%, from \$8/hr to \$12.66/ hr (see Figure 5). For the first time, workers would also have the opportunity to access job-based health care coverage, thereby decreasing the number of uninsured in our community, improving productivity, and increasing job tenure. In an October 2007 Gallup Poll of business owners nationwide, over 80% responded that providing adequate health insurance to workers would help employers attract

more qualified employees and would reduce employee turnover. Two-thirds of employers also believed that health coverage would boost employee productivity.

Furthermore, establishing job training requirements for all employees at SJC will ensure that all staff receive basic education on how to prepare for an emergency or security breach, and can learn new strategies to augment employee performance and customer service.

IMPROVING OVERSIGHT AND ACCOUNTABILITY FOR CONTRACTORS AT SJC

In addition to job quality standards, the City of San Jose should also play a more

FIG 5 San Jose Airport Workers

	Hourly	Monthly*	Annually*
Current (min. wage)	\$8.00	\$1,386.67	\$16,640
Living wage (with healthcare)	\$12.66	\$2,194.40	\$26,332.80
Living wage (without healthcare)	\$13.91	\$2,411.07	\$28,932.80

* Assuming a 40-hour work week.

active role in the selection of contractors at the airport. Increased public oversight and accountability for all employers at SJC will ensure that contractors provide a minimum wage rate and meet basic security requirements. Establishing these benchmarks will improve customer service, enhance productivity throughout the airport.

MAINTAINING COMPETITIVE STANDARDS AT SAN JOSE INTERNATIONAL

California airports are leading the country to find innovative solutions that enhance competitiveness by raising job standards for airport workers. Applying living wage job training requirements and public oversight to all staff at SJC would end unacceptable discrepancies between SJC and the Bay Area's two other international airports as well as Los Angeles International, California's largest airline gateway.

Both Oakland and San Francisco have already passed measures that expand living wage to all airport workers. Contractors at Oakland International have been bound by the city's Living Wage Ordinance since 2002 when voters amended the city's charter.

San Francisco International (SFO), the Bay Area's largest airport, goes beyond living wage. Its Quality Standards Program (QSP), implemented in 2000, is a certification program affecting employees who work in security areas (such as San Jose's passenger service workers) and those with security functions (most San Jose workers such as janitors and aircraft cleaners also have security functions). Under QSP, contractors must prove they meet defined standards for hiring, training and compensation that are higher than those called for under the city's Living Wage Ordinance.

Los Angeles International has operated under that city's Living Wage Ordinance for more than 10 years. LAX's operator, Los Angeles World Airports, is preparing to implement a new policy for oversight under which contractors will be evaluated against specified criteria, including a commitment to compensate workers above the standard of the city's Living Wage Ordinance as well as benchmarks for staffing, training, equipment maintenance and service quality.

Applying job quality standards at SJC in line with practices at San Francisco, Oakland and LAX would also augment the

airport's competitive position. A survey of San Francisco airport workers following the implementation of the QSP program found that the higher standards improved operations. Survey results reported a dramatic decrease in employee turnover, an increase in employee performance, tighter security and improved customer service at the airport. Survey data from San Francisco also suggested that implementation of living wage at SFO didn't negatively impact airport activity, but in fact generated some cost savings to employers. The decline in employee turnover alone, which was 80% among some occupations, amounted to a cost savings equal to 11% of employers' costs. The combination of higher wages and job-training opportunities provided benefits to both employers and employees, and in turn strengthened business at the San Francisco airport.²⁰

²⁰ Michael Reich, Peter Hall and Ken Jacobs, "Living Wages and Economic Performance: the San Francisco Airport Model." Institute of Industrial Relations, UC Berkeley, March 2003. http://www.irle.berkeley.edu/research/livingwage/sfo_mar03.pdf

POLICY RECOMMENDATIONS

The deregulation of the airport industry has produced an environment that if not carefully monitored can generate significant lapses in security and customer service. To counteract this trend, San Jose International Airport should implement quality standards that ensure adequate compensation, City oversight of contractors, to ensure maximum safety and security at SJC.

1. The City of San Jose should establish a comprehensive living wage policy to all workers at the airport.

The failure to supply adequate wages for many contracted employees has resulted in excessively high turnover rates at SJC and has impacted airport efficiency. Currently, at least 500 employees at SJC are earning inadequate wages and do not have access to employer-based health coverage or paid time off. The sub-standard wages provided to SJC workers not only decrease employee productivity, but also adversely impact the San Jose community at large.

In an effort to retain valuable and skilled employees committed to public safety at the airport, the City of San Jose should apply a comprehensive living wage policy to ensure that all workers are guaranteed a livable salary.

2. The City of San Jose should increase oversight of sub-contractors at the San Jose airport.

Although the City of San Jose owns the Airport and sets the terms of the airlines' operations, the airlines contract out many of their responsibilities, and the City of San Jose does not currently exercise sufficient oversight over these subcontractors. Fundamental standards of safety, security and service are threatened by excessively high turnover in many vital occupations and inadequate training for employees who are engaged in security related duties.

To strengthen airport operations and security at SJC, the City should play a larger role in ensuring that employers at the airport are selected to not only ensure efficiency but

CONCLUSION

With a \$1.5 billion terminal improvement program underway, San Jose is in a unique position to improve job quality standards at the airport. Research has shown that living wage and training standards for airport workers improve service quality and airport security. The City of San Jose should act immediately to create a comprehensive employment policy that incorporates living wage and additional oversight for airport employers in an effort to stem job turnover, strengthen security, boost productivity and overall operations at Norman Mineta San Jose International Airport.

EXHIBIT R



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WHAT IS THE LABOR COUNCIL?

The South Bay AFL-CIO Labor Council is currently celebrating over a half-century as a chartered organization. The Labor Council represents over a hundred unions in Santa Clara and San Benito counties and over 110,000 union members.

The Labor Council is involved in many programs that are directly intended to improve the lives of working families in the Bay Area.

HOT ISSUES: [Support Striking Janitors!](#) [Key Election Information](#)

LABOR COUNCIL NEWS

Janitors Strike Nears End Of First Week

Striking janitors with SEIU Local 1877 have been out of work most of this week, and need your support. [Learn more about how you can help.](#)

The strike is getting a lot of attention from the media, which is good news for the strikers. [ABC 7 did a story about the strike yesterday](#), and the [Mercury News is covering it regularly](#).

Be sure to continue to check our calendar (by choosing it in the box at right), for upcoming actions.

Added May 22nd, 2008. [Link to this article.](#)

Get involved! Sign up for updates!

The South Bay Labor Council **Rapid Response** program is your opportunity to get involved with every aspect of labor activism - rallies, advocacy, working on campaigns and more!

Your e-mail

Sign up!

Councilmembers, Community Come Together for Airport Workers, Security

San Jose's minimum-wage airport workers are a step closer to wages they can actually live on - and passengers are a step closer to improved service and security - after the City Council Rules Committee advanced the issue in their meeting Wednesday.

After hearing from workers, who won representation by SEIU last year, community supporters, the South Bay Labor Council and Working Partnerships USA, the committee voted unanimously to send a proposal extending San Jose's Living Wage policy to all airport workers directly to the Transportation and Environment Committee, which meets June 2.

The campaign to Build a Better Airport, which launched last month, aims to improve security at San Jose International by increasing training standards and reducing staff turnover - in part by assuring that all employees receive a living wage. Speakers at the Rules meeting reinforced the urgent need for such action.

Those who wish to attend the June 2 meeting are encouraged to do so. The meeting will be at 1:30 p.m. in room W118. More information about the campaign is available at www.buildabetterairport.org.

Added May 19th, 2008. [Link to this article.](#)

SJ Catholic Diocese Supports Janitors, Strike Vote Approved

The Human Concerns Commission of the Roman Catholic Diocese of San Jose has endorsed the Justice for Janitors campaign just days before 6,000 Bay Area janitors - 20,000 statewide - voted Saturday to authorize a strike if necessary. The commission has called on local parishes to open up service programs to them in their time of need and to consider attending public events.

RESOURCES

View: [Calendar](#)

Calendar

May 31, 2008

9:00 am
GOTV: Precinct Walk
2102 ALMADEN RD, SAN JOSE
Related: [GOTV Flyer.pdf \(98 kb\)](#)

June 1, 2008

9:00 am
GOTV: Precinct Walk
2102 ALMADEN RD, SAN JOSE
Related: [GOTV Flyer.pdf \(98 kb\)](#)

5:30 pm
GOTV: Phone Banking
2102 ALMADEN RD, SAN JOSE
Related: [GOTV Flyer.pdf \(98 kb\)](#)

June 2, 2008

11:00 am
GOTV: Door Hangers
2102 ALMADEN RD, SAN JOSE

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About Team San Jose

Mission

Our mission is to ensure that San Jose's Convention Center and Cultural Facilities are effectively managed to reduce costs, improve the local economy, and add value for our customers, residents, workers, and businesses within the city of San Jose.

Who We Are

Team San Jose, Inc., a public benefit corporation, was formed in December 2003 in response to the City of San Jose's Request for Proposals (RFP) for the management and operations of the San Jose McEnery Convention Center and other cultural facilities in downtown San Jose. The facilities included in the five year contract are the San Jose McEnery Convention Center, the Civic Auditorium, Parkside Hall, South Hall, the Center for Performing Arts, California Theatre and the Montgomery Theatre.

Innovative Public-Private Model

This integration of key community stakeholders created a public-private partnership model that is both progressive and innovative. Agreements with affiliated labor groups allows Team San Jose to develop flexible work scheduling policies that better meets customer needs, while still maintaining civil service employee's jobs. Right from the start, organized labor becomes acquainted with the client's distinct programming needs. Having the arts community play a role within Team San Jose's governance has stimulated innovative ideas and solutions for the maintenance and renovation of our cultural facilities and theatres. Involving local hoteliers in the booking process provides an opportunity to collaborate and create mutually beneficial bids. This integrated, cooperative environment has allowed San Jose to offer a flexible and tailored meeting and event environment.

How It Works

Team San Jose streamlines Customer Service from sales through execution by providing a single point of contact for new and returning customers. Once the event is booked, Team San Jose offers a unique "One Stop Shopping" experience to customers for all of their event service needs. By combining the Event Coordinators with the Catering staff into one team, Team San Jose's event staff creates a seamless and flexible service environment to better meet the needs of meeting and event planners.

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- Daniel Fenton, Chairman of the Board – President and CEO, San Jose Convention and Visitors Bureau
- Phaedra Ellis-Lamkins, Vice Chair – Executive Director, South Bay AFL-CIO Labor Council
- Clifton Clark, General Manager, San Jose Marriott
- Michael Miller, CEO and Executive Producer, American Musical Theatre San Jose
- John Southwell, General Manager, San Jose Hilton and Towers

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- Bob Blanchet, Business Agent/Organizer, Teamsters Local 287
- Don Ricker, Business Agent, IATSE Local 34
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- Irene Dalis, General Director, Opera San Jose
- Rosemary Heath, Managing Director, Children's Musical Theater
- Raul Lozano, Executive Director, First Voice

. Greg Mauldin, General Manager, Hotel Montgomery
. Alison Hartman, General Manager, Hotel De Anza
. Manou Mobedshahi, General Manager, Hyatt San Jose
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Staff

To contact a staff member, please call (408) 269-7872, or see below for email addresses. General inquiries should be directed to info@wpusa.org.

Staff Biographies

Phaedra Ellis-Lamkins, Executive Director

Phaedra Ellis-Lamkins is the Executive Director of [Working Partnerships USA](#), named by *San Jose Magazine* as one of the 100 most powerful people in Silicon Valley and one of "40 to watch under 40" by the *Silicon Valley Business Journal*.

[Full biography for Phaedra Ellis-Lamkins](#)



Bob Brownstein, Policy Director

Bob Brownstein joined Working Partnerships USA in February 1999. Since then he has directed research culminating in strategic issue briefs that provide timely analysis of problems and present a range of possible and serious solutions. With his support, many of these policies have been adopted and enacted by the South Bay Labor Council, the San Jose City Council, the County Board of Supervisors, and the Santa Clara Valley Water District. Previously, Mr. Brownstein served as the Budget and Policy Director of the City of San Jose for eight years under Mayor Susan Hammer. He was responsible for drafting the [Living Wage](#) ordinance, Greenline policies, and crafting the annual city budget. He previously served as the Chief of Staff to Santa Clara County Supervisor Suzanne Wilson. He has an undergraduate degree from Princeton, a Masters in Political Science from Stanford, and a Masters in Environmental Studies from San Jose State University.

Publications include:

- [An Historical Analysis of Tax and Fiscal Propositions in California, 1978-2004](#)
- [Declining Job-Based Health Coverage In The United States And California: A Crisis for Working Families](#)
- [Kids at Risk](#)
- [Squeezing the Middle Class](#)
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Executive Director

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Phaedra Ellis-Lamkins is the Executive Director of [Working Partnerships USA](#), named by *San Jose Magazine* as one of the 100 most powerful people in Silicon Valley and one of "40 to watch under 40" by the *Silicon Valley Business Journal*. As a woman of color, she has distinguished herself as an innovative leader in the Silicon Valley and led the way for emerging leaders in the American progressive movement, directing campaigns to win policy victories on local, regional, and state levels. She has been featured in the *Wall Street Journal* online, *San Francisco Chronicle*, *San Jose Mercury News*, *America at Work*, *NBC News* and *ABC News*.

After graduating from California State University-Northridge in 1998, Ms. Ellis-Lamkins joined the staff of Working Partnerships USA as the group's education coordinator. She led the Labor/Community Leadership Institute and created its first senior fellows program. In this capacity Ms. Ellis-Lamkins also created the Faith in Action training program for area clergy and lay leaders.

Under her leadership, the nation's first county-based [universal children's health insurance program](#) has expanded its coverage to more than 125,000 children and has been replicated in 20 other counties statewide. Ms. Ellis-Lamkins led the fight to create one of the first community benefits agreements in the country, which provided community standards for a large scale economic development project in San Jose. As a founder of [Team San José](#), she pioneered a new model for public/private management of convention center and cultural venues. She led the launch of the [Partnership for Working Families](#), a national coalition to bring the principles of good jobs and community benefits to local economic development. And she gained the support of private developers and environmentalists to include privately-financed community health care clinics as part of the infrastructure for [Coyote Valley](#), a mega-urban reserve in San Jose slated to house 70,000 new residents.

Ms. Ellis-Lamkins also serves as the Executive Officer of the [South Bay AFL-CIO Labor Council](#), representing more than 110,000 working families in Santa Clara and San Benito counties. An alumna of [American Leadership Forum](#) and has served on the boards of the [Progressive Technology Project](#), [New World Foundation](#), and the [Women's Fund of Silicon Valley](#) and serves on the [City of San Jose General Plan Update Task Force](#), [Coyote Valley Specific Plan Task Force](#), and the [Central Labor Council Advisory Committee](#).

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EXHIBIT U



2004-2005 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

CITY OF SAN JOSE PROCUREMENT POLICIES, PROCEDURES, AND PRACTICES

Summary

Following the disclosure of problems in several recent City of San Jose (City) technology projects, the 2004-2005 Santa Clara County Civil Grand Jury (Grand Jury) inquired into City procurement policies, procedures and practices. This inquiry, conducted over several months, included interviews with the City Manager and with key management personnel of the City Finance Department (Finance) and of the City General Services Department, Purchasing Division (GS Purchasing). It also included a review of procurement policies and procedures, and the evaluation of files for eight major procurements.

This report addresses procurement of supplies, materials, equipment and general services by GS Purchasing, and procurement of professional services by authorized City departments. It does not address procurement of construction activities by the City Department of Public Works, which, by state law, operates under a different set of requirements, policies and procedures.

In this report, the Grand Jury uses the term "procurement" for the full range of processes involved in acquiring goods and services for an enterprise. Similar terms include "purchasing", "provisioning", "sourcing", and "supply management".

The Grand Jury investigation resulted in five findings and four recommendations. The findings are summarized as follows:

- GS Purchasing has developed procurement policy and procedures manuals, but the manuals appear to be maintained and revised in an informal manner. Further, the manuals do not appear to fully address all relevant areas of the procurement process nor all requirements mandated by the San Jose Municipal Code and by state and federal law.
- The City has both centralized and decentralized procurement processes. GS Purchasing is responsible for procuring supplies, materials, equipment and general services. However, individual City departments handle procurement of professional services, without any required participation of GS Purchasing personnel or compliance with current GS Purchasing procedures. Substantial risks may be incurred by not having professional procurement personnel involvement or oversight in all procurement processes.
- GS Purchasing personnel appear to focus primarily on processing purchase orders and do not fully function as procurement professionals who are actively involved throughout the process from identification of a need to final delivery of,

and payment for, a product or service. They appear to become involved in the contract management phase of procurement only when they become aware of a problem. The current geographic remoteness of the GS Purchasing group may deter its routine involvement in many procurement processes.

- Procurement files maintained by individual City departments for professional services contracts appear to be poorly documented and maintained. Files maintained by GS Purchasing for procurement of supplies, materials, equipment and general services are more complete, but there appear to be inadequate standards for the contents and organization of procurement files.
- The San Jose Municipal Code limits the contracting authority of the City Manager, City Council (Council) appointees and certain City department heads to \$100,000 with contracts above that limit requiring approval by the Council. This threshold for Council approval is low in comparison with other large cities and counties in California. Requiring Council approval of relatively small contracts increases costs and adds delays to the procurement process, with little discernible benefit. Routine approval of such contracts is typically granted as part of a single motion to approve, without discussion, the "Consent Calendar" on the Council agenda.

Background

City GS Purchasing and other City departments authorized to procure professional services collectively spend over \$200 million each year for products and services, excluding construction activities. The Department of Public Works is responsible for the procurement of construction activities, and operates under its own set of state-mandated requirements, policies and procedures.

Some key objectives of a typical municipal government procurement organization are to:

- Make certain that the city receives the best value, in terms of quality and price, obtainable for each tax dollar spent;
- Promote free, open competition and equal opportunity for all vendors who seek to conduct business with the city;
- Ensure prudent and open accountability for procurement actions taken;
- Guarantee that small businesses, and those that are disadvantaged, female, and/or minority-owned have equal opportunity to participate in city contracts;
- Monitor vendor performance to ensure reliability and financial viability;
- Ensure compliance with city, state and federal laws; and
- Keep abreast of current developments in the field of purchasing, prices, market conditions, and new products.

Several recent, high-visibility, multi-million-dollar City technology projects have encountered significant problems, resulting in unanticipated costs, project delays, adverse personnel actions and a public perception that the City government is unable to successfully execute technology projects.

A memorandum dated January 21, 2005 from the Mayor and two council members to City Council stated, "As we depend more and more on advancing technology to deliver quality and efficient services to our residents, we must have strong confidence in the process and results of our purchases of technology. Recently, however, the City has experienced significant difficulties in several recent high profile technology projects, including CUSP [an integrated utility billing, Customer Service and Performance management system], converged network [integrated communications services for the New Civic Center], and the police computer assisted dispatch system. These difficulties point to the need for checks and balances, standard procedures and guidelines, and effective management and policy oversight that will ensure that appropriate due diligence has occurred before City Council considers a major purchase of technology."

During an initial interview with the City Manager, Director of Finance and other selected department heads, the Grand Jury was told that several steps were already being taken to strengthen and improve the procurement process. Specifically, the City Manager indicated that: (1) GS Purchasing was being reassigned to Finance; (2) a search was underway to fill the newly created position of Deputy Director/Chief Purchasing Officer reporting to the Director of Finance; and (3) GS Purchasing personnel would be moving from their current, remote location on Senter Road to the New Civic Center, allowing them easier access to other city departments, and facilitating more direct oversight by Finance.

Discussion

PROCUREMENT POLICIES AND PROCEDURES

Procurement policy and procedures manuals are necessary to facilitate the consistent and orderly implementation and use of applicable procedures by all members of an organization involved in procurement activities. A detailed and comprehensive procurement manual defines how the organization complies with applicable legal requirements and best business practices during the entire procurement process, and specifies the responsibilities of procurement personnel. Responsibility for City procurement of supplies, materials, equipment and general services (excluding construction activities) is centralized under GS Purchasing, which has developed a series of policies and procedures to comply with the San Jose Municipal Code. However, responsibility for procurement of professional services is decentralized, with each City department procuring professional services to address its own needs. Procedures for the procurement of professional services are not specifically set forth by GS Purchasing, and City Departments are not required by the San Jose Municipal Code to have formal written procedures or guidelines for the procurement of professional services.

During the initial interview with the City Manager and Director of Finance, the Grand Jury requested copies of current procurement policy and procedures manuals used by GS Purchasing. Difficulties encountered by the Grand Jury in obtaining copies of current

manuals suggest a lack of an adequate process for the control and distribution of GS Purchasing manuals.

The Grand Jury ultimately reviewed the following manuals: (1) The City of San Jose Purchasing Administrative Manual; (2) the City of San Jose Purchasing Guide; and (3) the City of San Jose Request for Proposal Procedures Manual. Before reviewing these documents, the Grand Jury was told by the manager of GS Purchasing that both the Purchasing Administrative Manual and the Request for Proposal Procedures Manual were "undergoing substantial updating and revisions". The Grand Jury noted that these manuals were being revised in an informal manner, and not in accordance with any formal change control process.

The Grand Jury met with management of Finance and GS Purchasing on several occasions to discuss concerns related to GS Purchasing manuals. It is not the intent or purpose of the Grand Jury to perform a detailed technical review of these documents. However, it was noted that the three procurement manuals reviewed did not appear to address all relevant areas of the procurement process uniformly, nor did the manuals address all applicable requirements mandated by the San Jose Municipal Code and by state and federal law. It was not uncommon to note that policies were found for which there were no associated implementing procedures. Two examples are the management of possible vendor conflict in supplying information for Requests for Proposals and the procurement of recycled products. Deficiencies related to the Purchasing Administrative Manual were previously identified by the City Auditor who, in 1986, recommended that GS Purchasing should "develop a comprehensive written procedures manual on the purchasing process". It appears that, to some degree, a problem still exists nearly twenty years later.

PROCUREMENT PRACTICES

The Grand Jury reviewed eight major procurements, each of which had a value exceeding \$1 million and involved complex technology, professional services, or commodities. Five of the eight procurements were for professional services and were performed by user departments, specifically the Environmental Services, Finance, and Information Technology Departments. The remaining three procurements were performed by GS Purchasing. The procurement files provided to the Grand Jury were evaluated as a minimum standard for completeness according to the following criteria:

- Purchase Requisition (or authorization to purchase);
- Specification or Scope of Work to be performed;
- Vendor/Contractor List (if competitive) or sole source justification if not;
- Buyer's worksheet for determining lowest responsive bidder;
- Department recommendation for award;
- City Council authorization memorandum;
- Review and approval by GS Purchasing Manager and Director of General Services;

- City Attorney approval;
- Copy of purchase order/contract;
- Type of purchase order or contract identified, e.g., Firm Fixed Price, Time & Materials, Cost plus Fixed Fee, etc.;
- Evidence of invoice(s) payment;
- Request For Proposal/Quote/Qualification; and
- Winning bidder's proposal.

The five procurement files for professional services were found by the Grand Jury to be incomplete, inconsistent and in disarray. Most of these files consisted of sets of documents assembled in no specific or logical order and were bound by paper clips or rubber bands. The absence of key procurement documents and vendor correspondence in these major procurement files also raised significant concerns.

The three procurement files prepared by GS Purchasing tended to be more complete and better organized than those prepared by user organizations for professional services. However, there still appeared to be no uniform standards for the contents and organization of the files.

All eight procurement files were inconsistent in the information they contained. The Grand Jury found it very difficult to determine what service or product was being procured, who was bidding, what service or product was being delivered, what the acceptance testing criteria and procedures were, and how payment was to be made to the vendor(s).

The Grand Jury found limited participation in the procurement process by personnel in GS Purchasing. Even for those procurements performed by GS Purchasing, personnel appeared to focus primarily on processing purchase orders, with little evidence of overall procurement management and follow-up. During discussions with the Grand Jury, Finance and GS Purchasing management asserted that, due to the limited resources available, GS Purchasing personnel could not perform day-to-day procurement management of major contracts. Rather, they performed procurement management on an "exception" basis as problems arose or were identified. Substantial risks (e.g. costly litigation, inadequate technical standards, higher costs, delays in delivery and installation, and the product or services not meeting the business user's requirements) may be incurred by not having professional procurement personnel involvement or oversight in all procurement processes.

In addition to this evaluation of eight sample procurement files, the Grand Jury has issued a separate report on the problematic procurement and implementation of the San Jose Police Department Computer Aided Dispatch System, entitled "Problems Implementing the San Jose Police Computer Aided Dispatch System".

PROCUREMENT APPROVAL AUTHORIZATION AND ACCOUNTABILITY

The Grand Jury also observed that the San Jose Municipal Code limits the contracting authority of the City Manager, Council appointees, and certain City Department heads to \$100,000, with contracts above that limit requiring approval by the Council. Requiring

Council approval of relatively small contracts increases costs and adds delays (e.g., preparation, review and approval of Council Memos) to the procurement process, with little discernible benefit. Routine approval of such contracts is typically granted as part of a single motion to adopt, without discussion, all items listed on the "Consent Calendar" of the Council agenda.

The \$100,000 procurement approval authority is low in comparison with other major cities. A survey of cities and counties in California and Arizona by the California Association of Public Purchasing Officers found that major cities and counties generally had a much higher threshold for council or board approval, particularly for procurement of equipment and materials when normal procedures had been followed and budget had been appropriated. Some of the cities and counties that require either no council or board approval or a threshold of at least \$1 million before approval is required under these circumstances include: Santa Clara County, Sacramento County, City and County of San Francisco, San Diego County, City of Los Angeles, City of Merced, City of Oxnard, City of San Diego and City of Ventura. While ranked as the eleventh largest municipality in the United States, San Jose's threshold for Council approval ranks with those of smaller California cities.

The Grand Jury believes that strict adherence to City policies and procedures is central to accountability and all personnel involved in procurement actions must be trained to understand and comply with governing policies and procedures. Full documentation of procurement actions taken must be created and preserved for subsequent financial and performance audits. And finally, full disclosure of all conflicts of interest relevant to any procurement must be made and considered by appropriate management and legal authorities.

Conclusions

The importance of the procurement function to the overall financial and operational success of the City of San Jose cannot be overemphasized. Obtaining goods and services through prudent procurement practices adds to the success of an organization by ensuring that correct, quality products are received at competitive prices. The following Findings and Recommendations do not address procurement of construction activities by the City Department of Public Works.

Finding 1

GS Purchasing has developed procurement policy and procedures manuals, but the manuals appear to be maintained and revised in an informal manner. Further, the manuals do not appear to fully address all relevant areas of the procurement process nor all applicable requirements mandated by the San Jose Municipal Code and by state and federal law.

Recommendation 1

GS Purchasing should ensure that all relevant City, state and/or federal requirements are adequately addressed in procurement policies and procedures, and should implement a formal configuration control or change control process for the maintenance and revision of procurement manuals. Consideration should be given to using the services of a professional consultant to assist in updating and revising the procurement manuals. Once policies and procedures are in place, all personnel involved in any procurement process should receive mandatory training on these policies and procedures, including periodic refresher training.

Finding 2A

The San Jose Municipal Code authorizes both centralized and decentralized processes for procurement. GS Purchasing is responsible for procuring supplies, materials, equipment and general services. However, individual City departments handle procurement of professional services, without any required participation of GS Purchasing personnel or compliance with current GS Purchasing procedures. Substantial risks (e.g. costly litigation, inadequate technical standards, higher costs, delays in delivery and installation, and the product or services not meeting the business user's requirements) may be incurred by not having professional procurement personnel involvement or oversight in all procurement processes.

Finding 2B

GS Purchasing personnel appear to focus primarily on processing purchase orders, and do not fully function as procurement professionals who are actively involved throughout the procurement process from identification of a need to final delivery of, and payment for, a product or service. They appear to become involved in the contract management phase of procurement only when they become aware of a problem. The current geographic remoteness of the GS Purchasing group may deter its routine involvement in many procurement processes.

Recommendation 2

The San Jose City Council should: (a) revise the Municipal Code to specify that, excluding construction activities, GS Purchasing is *fully* responsible for procurement of *all* supplies, materials, equipment, and general and professional services; and (b) assure that sufficient staffing, training, financial resources and information technology systems are provided to enable GS Purchasing to carry out this expanded role. GS Purchasing should be located closer to the City user departments to facilitate involvement in the day-to-day development and management of major contracts.

Finding 3

The Grand Jury evaluated a sample of eight procurement cases. Procurement files for five of these cases were managed by individual City departments for procurement of professional services. They appear to be poorly documented and maintained. Files for the other three cases were managed by GS Purchasing for procurement of supplies, materials, equipment and general services. These are more complete, but there appear to be inadequate standards for the contents and organization of procurement files.

Recommendation 3

Documentation standards in Procurement procedures should be strengthened. A checklist of key procurement records could be a useful way of identifying and organizing documents to be accumulated and included in a procurement file. It may be appropriate for the City Auditor to conduct a more complete assessment of the quality of existing procurement documentation in order to fully address deficiencies.

Finding 4

The San Jose Municipal Code limits the contracting authority of the City Manager, City Council appointees and certain City department heads to \$100,000, with contracts above \$100,000 requiring approval by the Council. This threshold for Council approval is low in comparison with other large cities and counties in California. Requiring Council approval of relatively small contracts increases costs and adds delays (e.g., preparation, review and approval of Council Memos) to the procurement process, with little discernible benefit. Routine approval of such contracts is typically granted as part of a single motion to adopt, without discussion, the "Consent Calendar" on the Council agenda.

Recommendation 4

Once appropriate steps are taken, the San Jose City Council should revise the San Jose Municipal Code to significantly increase the \$100,000 threshold for requiring Council approval. These steps would include revision of procurement policy and procedures manuals (Recommendation 1), provision of sufficient procurement staffing, training, financial resources and information technology systems (Recommendation 2), and institution of measures to manage conflict of interest and ensure prudent accountability. In the interim, consideration should be given to increasing the limit on contracting authority for procurement of equipment and materials when normal procedures are followed and the procurement budget has been appropriated.

PASSED and ADOPTED by the Santa Clara County Civil Grand Jury on this 9th day of June, 2005.

Michael A. Smith
Foreperson

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17. City of San Jose Memorandum: Request for Proposals & Conflict of Interest, 14 Oct. 2004.
18. City of San Jose Memorandum: Procurement Strategy for the New City Hall Converged Network, 12 Nov. 2004.
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2006-2007 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

SAN JOSE'S RESTRUCTURED PROCUREMENT PROCESS APPLAUDED

Background

On December 6, 2005, partly in response to recommendations by both the City's Auditor and the 2004-2005 Santa Clara County Civil Grand Jury, the San Jose City Council directed its City Attorney to amend provisions of the Municipal Code governing San Jose's procurement process.

Audit reports issued in June and October 2004 recommended San Jose draft procurement policies to ensure that the goods and services contracted for were those provided by the suppliers, and that stated dollar amounts are documented accurately throughout the process. Then, in a report released in June 2005, after an examination instigated due to several mismanaged technology contracts, the 2004-2005 Santa Clara County Civil Grand Jury recommended that San Jose draft formal procurement policies; adopt a conflicts disclosure policy; compel training for all personnel expected to be involved in purchasing; assign responsibility for procurement to a single department; and increase the threshold dollar amount that would trigger the need for City Council approval.

Since several of the recommendations concerning the procurement process required multi-year efforts, the 2006-2007 Santa Clara County Civil Grand Jury reviewed the City's attention to those over the past two years. By May 2007, San Jose had completely restructured its procurement process, and by doing so satisfied the recommendations stated by its auditor and the 2004-2005 Grand Jury. Specifically, the Municipal Code provisions governing procurement have been revised; comprehensive procurement policies have been adopted; training has been provided for all city employees involved with purchasing; responsibility for the entire procurement process has been assigned to the Chief Purchasing Officer in the Purchasing Division of the Finance Department; and the dollar amount of contracts requiring Council approval has been increased from \$100,000 to \$1 million for supplies, equipment, material, and delivery, and from \$100,000 to \$250,000 for services, training, and information technology support.

A host of regulations governs the means by which public agencies contract with outside suppliers for: (1) supplies, equipment, material, and delivery (collectively, goods); (2) professional services (e.g., consulting agreements), nonprofessional services (e.g., landscape, janitorial, security, installation, repair and maintenance), training, and information technology support (collectively, services); and (3) Public Works projects (which were exempted from review of the 2004-2005 Grand Jury and this Grand Jury). In general, the regulations provide an efficient and fair process for bidding public contracts

which allow local agencies to obtain goods and services at the lowest cost commensurate with quality while maintaining administrative control of the projects. This Report uses the term "procurement process" to refer to the entirety of the laws, procedures, and policies which regulate the City's bidding and contracting for goods and services.

Discussion

California municipalities are required to "adopt policies and procedures, including bidding regulations, governing purchases of supplies and equipment by the local agency" [California Government Code §§ 54201-54205]. Generally, cities must provide public notice seeking competitive bids for city contracts which exceed a threshold estimated cost to perform, and award those contracts to the lowest responsible bidder. A "competitive bid" is the price at which a responding party offers to provide the goods or services the city is seeking. To qualify as a "responsible bidder," the responding party must demonstrate the quality, fitness, capacity, and experience to satisfactorily perform the services being solicited. The City of San Jose's solicitation and award of contracts for the purchases of goods and services is governed under Title 4 of the San Jose Municipal Code.

In a report filed June 22, 2005, the 2004-2005 Santa Clara County Civil Grand Jury found:

Several recent, high-visibility, multi-million-dollar City technology projects have encountered significant problems, resulting in unanticipated costs, project delays, adverse personnel actions and a public perception that the City government is unable to successfully execute technology projects [Santa Clara County Civil Grand Jury Report, "City of San Jose Procurement Policies, Procedures, and Practices," June 22, 2005].

As a result of its findings, the 2004-2005 Grand Jury recommended the City draft formal procurement policies, including procedures to manage conflict of interests and ensure prudent accountability; compel training on the procurement process for all personnel expected to handle purchasing of goods and services; assign the responsibility for the entire procurement process to a single department; and significantly increase the then One Hundred Thousand Dollar (\$100,000) threshold for requiring City Council approval.

On December 6, 2005, the City Council directed the City Attorney to amend provisions of the Municipal Code governing the City's procurement process to, among other revisions, centralize responsibility for purchasing, and to increase the dollar amount of contracts requiring Council approval [November 6, 2006 Memorandum].

After two years of coordinated effort by the City Council, City Attorney's and City Manager's Offices, the Finance Department, various staff members and outside suppliers, San Jose has drafted policies and procedures to create a more efficient, transparent and resourceful procurement process. Notably, since April 2005, San Jose

has had as its Chief Purchasing Officer a person who demonstrates business integrity and effective leadership skills and, as of January 2007, an administration committed to government accountability and the openness of its dealings.

The following are among the significant improvements San Jose has made to its procurement process:

- Under the San Jose Municipal Code, adopted February 27, 2007, the City's Manager, Attorney, Auditor, and Clerk are authorized to enter into specified contracts without Council approval that have a maximum value of \$250,000. The City Manager is further authorized, without first seeking Council approval, to enter into contracts for goods with an estimated cost to provide of \$1,000,000; services with an estimated cost to perform of \$250,000; and all other purchases with a maximum value of \$100,000.
- On a quarterly basis, the City Council shall receive a report describing all contracts entered into by the City's Manager, Attorney, Auditor, and Clerk which were valued at \$100,000 or more.
- To centralize purchasing, responsibility for managing the procurement of goods is now limited to a Council appointee, the City Manager, and the Finance Director. However, since contracts for services need to be administered by the Department requiring the service, a Certified Contract Specialist (CCS) position has been created in each Department expected to procure services. The CCS will liaise with the Finance Department and be required to attend specialized training and regularly scheduled meetings.
- On April 23, 2007, more than one hundred employees attended procurement training conducted by the Purchasing Division, and, in or about July 2007, more particularized training will be given to the Certified Contract Specialists.
- To ensure integrity throughout the procurement process, San Jose enacted a policy requiring, among other safeguards, that all persons involved in the process disclose in writing any potential conflict of interests, maintain confidentiality, and report any perceived misconduct to the Chief Purchasing Officer.
- An online *Request for Proposal* manual, scheduled for publication in May 2007, will provide guidance for staff, suppliers, and the public on the procurement process.

Conclusion

The method by which San Jose accomplished the restructuring of its procurement process illustrates how a unified, interdepartmental strategy, implemented by dedicated city officials and staff, can have a positive influence on public policy. This project also indicates those in decision-making positions at San Jose are genuine when they promise to conduct their business under public purview.

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City of San Jose Policy 5.1.1. *Procurement and Contract Process Integrity and Conflict of Interest – Administrative Procedures*, April 18, 2007.

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Interviews

August 14, 2006	City of San Jose official
February 12, 2007	City of San Jose official
May 7, 2007	City of San Jose official

PASSED and ADOPTED by the Santa Clara County Civil Grand Jury on this 22nd day of May 2007.

Ronald R. Layman
Foreperson

David M. Burnham
Foreperson Pro tem

Kathryn C. Philp
Secretary

EXHIBIT U



2004-2005 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

CITY OF SAN JOSE PROCUREMENT POLICIES, PROCEDURES, AND PRACTICES

Summary

Following the disclosure of problems in several recent City of San Jose (City) technology projects, the 2004-2005 Santa Clara County Civil Grand Jury (Grand Jury) inquired into City procurement policies, procedures and practices. This inquiry, conducted over several months, included interviews with the City Manager and with key management personnel of the City Finance Department (Finance) and of the City General Services Department, Purchasing Division (GS Purchasing). It also included a review of procurement policies and procedures, and the evaluation of files for eight major procurements.

This report addresses procurement of supplies, materials, equipment and general services by GS Purchasing, and procurement of professional services by authorized City departments. It does not address procurement of construction activities by the City Department of Public Works, which, by state law, operates under a different set of requirements, policies and procedures.

In this report, the Grand Jury uses the term "procurement" for the full range of processes involved in acquiring goods and services for an enterprise. Similar terms include "purchasing", "provisioning", "sourcing", and "supply management".

The Grand Jury investigation resulted in five findings and four recommendations. The findings are summarized as follows:

- GS Purchasing has developed procurement policy and procedures manuals, but the manuals appear to be maintained and revised in an informal manner. Further, the manuals do not appear to fully address all relevant areas of the procurement process nor all requirements mandated by the San Jose Municipal Code and by state and federal law.
- The City has both centralized and decentralized procurement processes. GS Purchasing is responsible for procuring supplies, materials, equipment and general services. However, individual City departments handle procurement of professional services, without any required participation of GS Purchasing personnel or compliance with current GS Purchasing procedures. Substantial risks may be incurred by not having professional procurement personnel involvement or oversight in all procurement processes.
- GS Purchasing personnel appear to focus primarily on processing purchase orders and do not fully function as procurement professionals who are actively involved throughout the process from identification of a need to final delivery of,

and payment for, a product or service. They appear to become involved in the contract management phase of procurement only when they become aware of a problem. The current geographic remoteness of the GS Purchasing group may deter its routine involvement in many procurement processes.

- Procurement files maintained by individual City departments for professional services contracts appear to be poorly documented and maintained. Files maintained by GS Purchasing for procurement of supplies, materials, equipment and general services are more complete, but there appear to be inadequate standards for the contents and organization of procurement files.
- The San Jose Municipal Code limits the contracting authority of the City Manager, City Council (Council) appointees and certain City department heads to \$100,000 with contracts above that limit requiring approval by the Council. This threshold for Council approval is low in comparison with other large cities and counties in California. Requiring Council approval of relatively small contracts increases costs and adds delays to the procurement process, with little discernible benefit. Routine approval of such contracts is typically granted as part of a single motion to approve, without discussion, the "Consent Calendar" on the Council agenda.

Background

City GS Purchasing and other City departments authorized to procure professional services collectively spend over \$200 million each year for products and services, excluding construction activities. The Department of Public Works is responsible for the procurement of construction activities, and operates under its own set of state-mandated requirements, policies and procedures.

Some key objectives of a typical municipal government procurement organization are to:

- Make certain that the city receives the best value, in terms of quality and price, obtainable for each tax dollar spent;
- Promote free, open competition and equal opportunity for all vendors who seek to conduct business with the city;
- Ensure prudent and open accountability for procurement actions taken;
- Guarantee that small businesses, and those that are disadvantaged, female, and/or minority-owned have equal opportunity to participate in city contracts;
- Monitor vendor performance to ensure reliability and financial viability;
- Ensure compliance with city, state and federal laws; and
- Keep abreast of current developments in the field of purchasing, prices, market conditions, and new products.

Several recent, high-visibility, multi-million-dollar City technology projects have encountered significant problems, resulting in unanticipated costs, project delays, adverse personnel actions and a public perception that the City government is unable to successfully execute technology projects.

A memorandum dated January 21, 2005 from the Mayor and two council members to City Council stated, "As we depend more and more on advancing technology to deliver quality and efficient services to our residents, we must have strong confidence in the process and results of our purchases of technology. Recently, however, the City has experienced significant difficulties in several recent high profile technology projects, including CUSP [an integrated utility billing, Customer Service and Performance management system], converged network [integrated communications services for the New Civic Center], and the police computer assisted dispatch system. These difficulties point to the need for checks and balances, standard procedures and guidelines, and effective management and policy oversight that will ensure that appropriate due diligence has occurred before City Council considers a major purchase of technology."

During an initial interview with the City Manager, Director of Finance and other selected department heads, the Grand Jury was told that several steps were already being taken to strengthen and improve the procurement process. Specifically, the City Manager indicated that: (1) GS Purchasing was being reassigned to Finance; (2) a search was underway to fill the newly created position of Deputy Director/Chief Purchasing Officer reporting to the Director of Finance; and (3) GS Purchasing personnel would be moving from their current, remote location on Senter Road to the New Civic Center, allowing them easier access to other city departments, and facilitating more direct oversight by Finance.

Discussion

PROCUREMENT POLICIES AND PROCEDURES

Procurement policy and procedures manuals are necessary to facilitate the consistent and orderly implementation and use of applicable procedures by all members of an organization involved in procurement activities. A detailed and comprehensive procurement manual defines how the organization complies with applicable legal requirements and best business practices during the entire procurement process, and specifies the responsibilities of procurement personnel. Responsibility for City procurement of supplies, materials, equipment and general services (excluding construction activities) is centralized under GS Purchasing, which has developed a series of policies and procedures to comply with the San Jose Municipal Code. However, responsibility for procurement of professional services is decentralized, with each City department procuring professional services to address its own needs. Procedures for the procurement of professional services are not specifically set forth by GS Purchasing, and City Departments are not required by the San Jose Municipal Code to have formal written procedures or guidelines for the procurement of professional services.

During the initial interview with the City Manager and Director of Finance, the Grand Jury requested copies of current procurement policy and procedures manuals used by GS Purchasing. Difficulties encountered by the Grand Jury in obtaining copies of current

manuals suggest a lack of an adequate process for the control and distribution of GS Purchasing manuals.

The Grand Jury ultimately reviewed the following manuals: (1) The City of San Jose Purchasing Administrative Manual; (2) the City of San Jose Purchasing Guide; and (3) the City of San Jose Request for Proposal Procedures Manual. Before reviewing these documents, the Grand Jury was told by the manager of GS Purchasing that both the Purchasing Administrative Manual and the Request for Proposal Procedures Manual were "undergoing substantial updating and revisions". The Grand Jury noted that these manuals were being revised in an informal manner, and not in accordance with any formal change control process.

The Grand Jury met with management of Finance and GS Purchasing on several occasions to discuss concerns related to GS Purchasing manuals. It is not the intent or purpose of the Grand Jury to perform a detailed technical review of these documents. However, it was noted that the three procurement manuals reviewed did not appear to address all relevant areas of the procurement process uniformly, nor did the manuals address all applicable requirements mandated by the San Jose Municipal Code and by state and federal law. It was not uncommon to note that policies were found for which there were no associated implementing procedures. Two examples are the management of possible vendor conflict in supplying information for Requests for Proposals and the procurement of recycled products. Deficiencies related to the Purchasing Administrative Manual were previously identified by the City Auditor who, in 1986, recommended that GS Purchasing should "develop a comprehensive written procedures manual on the purchasing process". It appears that, to some degree, a problem still exists nearly twenty years later.

PROCUREMENT PRACTICES

The Grand Jury reviewed eight major procurements, each of which had a value exceeding \$1 million and involved complex technology, professional services, or commodities. Five of the eight procurements were for professional services and were performed by user departments, specifically the Environmental Services, Finance, and Information Technology Departments. The remaining three procurements were performed by GS Purchasing. The procurement files provided to the Grand Jury were evaluated as a minimum standard for completeness according to the following criteria:

- Purchase Requisition (or authorization to purchase);
- Specification or Scope of Work to be performed;
- Vendor/Contractor List (if competitive) or sole source justification if not;
- Buyer's worksheet for determining lowest responsive bidder;
- Department recommendation for award;
- City Council authorization memorandum;
- Review and approval by GS Purchasing Manager and Director of General Services;

- City Attorney approval;
- Copy of purchase order/contract;
- Type of purchase order or contract identified, e.g., Firm Fixed Price, Time & Materials, Cost plus Fixed Fee, etc.;
- Evidence of invoice(s) payment;
- Request For Proposal/Quote/Qualification; and
- Winning bidder's proposal.

The five procurement files for professional services were found by the Grand Jury to be incomplete, inconsistent and in disarray. Most of these files consisted of sets of documents assembled in no specific or logical order and were bound by paper clips or rubber bands. The absence of key procurement documents and vendor correspondence in these major procurement files also raised significant concerns.

The three procurement files prepared by GS Purchasing tended to be more complete and better organized than those prepared by user organizations for professional services. However, there still appeared to be no uniform standards for the contents and organization of the files.

All eight procurement files were inconsistent in the information they contained. The Grand Jury found it very difficult to determine what service or product was being procured, who was bidding, what service or product was being delivered, what the acceptance testing criteria and procedures were, and how payment was to be made to the vendor(s).

The Grand Jury found limited participation in the procurement process by personnel in GS Purchasing. Even for those procurements performed by GS Purchasing, personnel appeared to focus primarily on processing purchase orders, with little evidence of overall procurement management and follow-up. During discussions with the Grand Jury, Finance and GS Purchasing management asserted that, due to the limited resources available, GS Purchasing personnel could not perform day-to-day procurement management of major contracts. Rather, they performed procurement management on an "exception" basis as problems arose or were identified. Substantial risks (e.g. costly litigation, inadequate technical standards, higher costs, delays in delivery and installation, and the product or services not meeting the business user's requirements) may be incurred by not having professional procurement personnel involvement or oversight in all procurement processes.

In addition to this evaluation of eight sample procurement files, the Grand Jury has issued a separate report on the problematic procurement and implementation of the San Jose Police Department Computer Aided Dispatch System, entitled "Problems Implementing the San Jose Police Computer Aided Dispatch System".

PROCUREMENT APPROVAL AUTHORIZATION AND ACCOUNTABILITY

The Grand Jury also observed that the San Jose Municipal Code limits the contracting authority of the City Manager, Council appointees, and certain City Department heads to \$100,000, with contracts above that limit requiring approval by the Council. Requiring

Council approval of relatively small contracts increases costs and adds delays (e.g., preparation, review and approval of Council Memos) to the procurement process, with little discernible benefit. Routine approval of such contracts is typically granted as part of a single motion to adopt, without discussion, all items listed on the "Consent Calendar" of the Council agenda.

The \$100,000 procurement approval authority is low in comparison with other major cities. A survey of cities and counties in California and Arizona by the California Association of Public Purchasing Officers found that major cities and counties generally had a much higher threshold for council or board approval, particularly for procurement of equipment and materials when normal procedures had been followed and budget had been appropriated. Some of the cities and counties that require either no council or board approval or a threshold of at least \$1 million before approval is required under these circumstances include: Santa Clara County, Sacramento County, City and County of San Francisco, San Diego County, City of Los Angeles, City of Merced, City of Oxnard, City of San Diego and City of Ventura. While ranked as the eleventh largest municipality in the United States, San Jose's threshold for Council approval ranks with those of smaller California cities.

The Grand Jury believes that strict adherence to City policies and procedures is central to accountability and all personnel involved in procurement actions must be trained to understand and comply with governing policies and procedures. Full documentation of procurement actions taken must be created and preserved for subsequent financial and performance audits. And finally, full disclosure of all conflicts of interest relevant to any procurement must be made and considered by appropriate management and legal authorities.

Conclusions

The importance of the procurement function to the overall financial and operational success of the City of San Jose cannot be overemphasized. Obtaining goods and services through prudent procurement practices adds to the success of an organization by ensuring that correct, quality products are received at competitive prices. The following Findings and Recommendations do not address procurement of construction activities by the City Department of Public Works.

Finding 1

GS Purchasing has developed procurement policy and procedures manuals, but the manuals appear to be maintained and revised in an informal manner. Further, the manuals do not appear to fully address all relevant areas of the procurement process nor all applicable requirements mandated by the San Jose Municipal Code and by state and federal law.

Recommendation 1

GS Purchasing should ensure that all relevant City, state and/or federal requirements are adequately addressed in procurement policies and procedures, and should implement a formal configuration control or change control process for the maintenance and revision of procurement manuals. Consideration should be given to using the services of a professional consultant to assist in updating and revising the procurement manuals. Once policies and procedures are in place, all personnel involved in any procurement process should receive mandatory training on these policies and procedures, including periodic refresher training.

Finding 2A

The San Jose Municipal Code authorizes both centralized and decentralized processes for procurement. GS Purchasing is responsible for procuring supplies, materials, equipment and general services. However, individual City departments handle procurement of professional services, without any required participation of GS Purchasing personnel or compliance with current GS Purchasing procedures. Substantial risks (e.g. costly litigation, inadequate technical standards, higher costs, delays in delivery and installation, and the product or services not meeting the business user's requirements) may be incurred by not having professional procurement personnel involvement or oversight in all procurement processes.

Finding 2B

GS Purchasing personnel appear to focus primarily on processing purchase orders, and do not fully function as procurement professionals who are actively involved throughout the procurement process from identification of a need to final delivery of, and payment for, a product or service. They appear to become involved in the contract management phase of procurement only when they become aware of a problem. The current geographic remoteness of the GS Purchasing group may deter its routine involvement in many procurement processes.

Recommendation 2

The San Jose City Council should: (a) revise the Municipal Code to specify that, excluding construction activities, GS Purchasing is *fully* responsible for procurement of *all* supplies, materials, equipment, and general and professional services; and (b) assure that sufficient staffing, training, financial resources and information technology systems are provided to enable GS Purchasing to carry out this expanded role. GS Purchasing should be located closer to the City user departments to facilitate involvement in the day-to-day development and management of major contracts.

Finding 3

The Grand Jury evaluated a sample of eight procurement cases. Procurement files for five of these cases were managed by individual City departments for procurement of professional services. They appear to be poorly documented and maintained. Files for the other three cases were managed by GS Purchasing for procurement of supplies, materials, equipment and general services. These are more complete, but there appear to be inadequate standards for the contents and organization of procurement files.

Recommendation 3

Documentation standards in Procurement procedures should be strengthened. A checklist of key procurement records could be a useful way of identifying and organizing documents to be accumulated and included in a procurement file. It may be appropriate for the City Auditor to conduct a more complete assessment of the quality of existing procurement documentation in order to fully address deficiencies.

Finding 4

The San Jose Municipal Code limits the contracting authority of the City Manager, City Council appointees and certain City department heads to \$100,000, with contracts above \$100,000 requiring approval by the Council. This threshold for Council approval is low in comparison with other large cities and counties in California. Requiring Council approval of relatively small contracts increases costs and adds delays (e.g., preparation, review and approval of Council Memos) to the procurement process, with little discernible benefit. Routine approval of such contracts is typically granted as part of a single motion to adopt, without discussion, the "Consent Calendar" on the Council agenda.

Recommendation 4

Once appropriate steps are taken, the San Jose City Council should revise the San Jose Municipal Code to significantly increase the \$100,000 threshold for requiring Council approval. These steps would include revision of procurement policy and procedures manuals (Recommendation 1), provision of sufficient procurement staffing, training, financial resources and information technology systems (Recommendation 2), and institution of measures to manage conflict of interest and ensure prudent accountability. In the interim, consideration should be given to increasing the limit on contracting authority for procurement of equipment and materials when normal procedures are followed and the procurement budget has been appropriated.

PASSED and ADOPTED by the Santa Clara County Civil Grand Jury on this 9th day of June, 2005.

Michael A. Smith
Foreperson

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Documents

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2. City of San Jose City Auditor's Report 91-10 – An Audit of the City's Formal Bidding Process Administered by the General Services Department/Purchasing Division, 15 Oct. 1991.
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5. City of San Jose Memorandum: Municipal Code Amendments Regarding Contract Authority, 3 May 2001.
6. City of San Jose, Office of the City Attorney/Office of the City Auditor, Report 04-06, A Review of the Request for Proposal for the New Civic Center Converged Network System, Aug. 2004.
7. City of San Jose Meeting Agenda: "Procurement Meeting...", 26 Aug. 2004 – with the following documents as attachments:
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 - "General Services – Purchasing "The Purchasing Puzzle", PowerPoint Presentation of 26 Aug. 2004.
 - City of San Jose Purchasing Guide (Nov. 1997, Revised Dec. 2002).
 - Contract Administration and Management Guidelines.
 - Specifications Writing Handbook – Department of General Services, Revised 1 April 2003.
8. City of San Jose Memorandum: Contract for New Civic Center Communications/Data Technology, 3 Aug. 2004.
9. City of San Jose Memorandum: Converged Network RFP, 20 Aug. 2004.
10. City of San Jose Memorandum: Cisco "Standardization", 20 Aug. 2004.
11. City of San Jose Memorandum: Investigation Summary Converged Network RFP, 3 Sept. 2004.
12. City of San Jose Memorandum: Investigation Summary into Alleged Misconduct of City Staff Regarding the Converged Network for the New Civic Center Request for Proposals, 3 Sept. 2004.
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14. City of San Jose Memorandum: Report on Technical and Procurement Services for the New City Hall Converged Network Request for Proposals (RFP), 7 Oct. 2004.
15. City of San Jose Memorandum: Request for Proposals & Conflict of Interest, 14 Oct. 2004.
16. Letter: City of San Jose Procurement Process, Director of Finance, 19 Oct. 2004 – with the following documents as attachments:
 - City of San Jose Request for Proposal Procedures Manual, 25 July 1995.
 - City of San Jose Purchasing Administrative Manual, 15 Sept. 2001.
 - City of San Jose Department of Public Works Bid Documents, 23 Sept. 2003 & various dates.
17. City of San Jose Memorandum: Request for Proposals & Conflict of Interest, 14 Oct. 2004.
18. City of San Jose Memorandum: Procurement Strategy for the New City Hall Converged Network, 12 Nov. 2004.
19. Supplemental Report: Independent Investigation Regarding the Request for Proposals Related to the Converged Network for the New San Jose Civic Center, Hanson Bridgett/Marcos Vlahos Budy LLP, 11 Jan. 2005.
20. City of San Jose Memorandum: Converged Network and RFP process, 21 Jan. 2005.
21. City of San Jose Memorandum: Status Report on Request for Proposal Procedures, 9 Feb. 2005.
22. City of San Jose Fiscal/Budget Contacts, Revised 8 Feb. 2005.
23. City of San Jose Procurement Files for Eight Purchase Orders Greater than \$1 Million, 1 July 2000 through 19 April 2005.
24. Email: Purchasing Documentation, Purchasing Manager, 30 Nov. 2004, 5:04PM – with the following documents as attachments:
 - City of San Jose Purchasing Administrative Manual – GS Purchasing Manager, Revised Feb. 2003.
 - City of San Jose Purchasing Guide (Nov. 1997, Revised Dec. 2002).
 - City of San Jose Request for Proposal Procedures Manual, (undated).
25. Email: RE: Procurement Data, Deputy Director of Finance, 11 Feb. 2005, 9:20AM – with the following document as an attachment:
 - Computer-Generated Report of Purchase Orders Greater than \$1Million, 1 July 2000 through 30 June 2004.

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26. Email: Information Request, Deputy Director of Finance, 13 April 2005, 4:47PM – with the following documents as attachments:
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 - City of San Jose Retention Schedule – General Services, 5 April 2005.
27. Email: FW: Increasing Approval Authority for Procurement Contracts, Chief Purchasing Officer, 4 May 2005, 8:00AM.
28. Email: RE: Increasing Approval Authority for Procurement Contracts, Chief Purchasing Officer, 11 May 2005, 12:34PM – with the following document as an attachment:
 - Council Board Approval Limits by Agency –Thresholds Survey for CAPPO, 6 Feb. 2004.
29. Report by the 2004-2005 Santa Clara County Civil Grand Jury, "Problems Implementing the San Jose Police Computer Aided Dispatch System," June 2005.

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1. GS Purchasing Manager, 26 Aug. 2004.
2. City Manager, Finance Director, Interim General Services Director, and Personnel Director, 7 Oct. 2004.
3. Finance Director and GS Purchasing Manager, 29 Nov. 2004.
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5. Deputy Director of GS Purchasing, Consultant to Deputy Director of GS Purchasing, and Senior Purchasing Agent, 19 April 2005.

Meetings

1. City of San Jose City Council Meeting, 14 Sept. 2004.



2006-2007 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

SAN JOSE'S RESTRUCTURED PROCUREMENT PROCESS APPLAUDED

Background

On December 6, 2005, partly in response to recommendations by both the City's Auditor and the 2004-2005 Santa Clara County Civil Grand Jury, the San Jose City Council directed its City Attorney to amend provisions of the Municipal Code governing San Jose's procurement process.

Audit reports issued in June and October 2004 recommended San Jose draft procurement policies to ensure that the goods and services contracted for were those provided by the suppliers, and that stated dollar amounts are documented accurately throughout the process. Then, in a report released in June 2005, after an examination instigated due to several mismanaged technology contracts, the 2004-2005 Santa Clara County Civil Grand Jury recommended that San Jose draft formal procurement policies; adopt a conflicts disclosure policy; compel training for all personnel expected to be involved in purchasing; assign responsibility for procurement to a single department; and increase the threshold dollar amount that would trigger the need for City Council approval.

Since several of the recommendations concerning the procurement process required multi-year efforts, the 2006-2007 Santa Clara County Civil Grand Jury reviewed the City's attention to those over the past two years. By May 2007, San Jose had completely restructured its procurement process, and by doing so satisfied the recommendations stated by its auditor and the 2004-2005 Grand Jury. Specifically, the Municipal Code provisions governing procurement have been revised; comprehensive procurement policies have been adopted; training has been provided for all city employees involved with purchasing; responsibility for the entire procurement process has been assigned to the Chief Purchasing Officer in the Purchasing Division of the Finance Department; and the dollar amount of contracts requiring Council approval has been increased from \$100,000 to \$1 million for supplies, equipment, material, and delivery, and from \$100,000 to \$250,000 for services, training, and information technology support.

A host of regulations governs the means by which public agencies contract with outside suppliers for: (1) supplies, equipment, material, and delivery (collectively, goods); (2) professional services (e.g., consulting agreements), nonprofessional services (e.g., landscape, janitorial, security, installation, repair and maintenance), training, and information technology support (collectively, services); and (3) Public Works projects (which were exempted from review of the 2004-2005 Grand Jury and this Grand Jury). In general, the regulations provide an efficient and fair process for bidding public contracts

which allow local agencies to obtain goods and services at the lowest cost commensurate with quality while maintaining administrative control of the projects. This Report uses the term "procurement process" to refer to the entirety of the laws, procedures, and policies which regulate the City's bidding and contracting for goods and services.

Discussion

California municipalities are required to "adopt policies and procedures, including bidding regulations, governing purchases of supplies and equipment by the local agency" [California Government Code §§ 54201-54205]. Generally, cities must provide public notice seeking competitive bids for city contracts which exceed a threshold estimated cost to perform, and award those contracts to the lowest responsible bidder. A "competitive bid" is the price at which a responding party offers to provide the goods or services the city is seeking. To qualify as a "responsible bidder," the responding party must demonstrate the quality, fitness, capacity, and experience to satisfactorily perform the services being solicited. The City of San Jose's solicitation and award of contracts for the purchases of goods and services is governed under Title 4 of the San Jose Municipal Code.

In a report filed June 22, 2005, the 2004-2005 Santa Clara County Civil Grand Jury found:

Several recent, high-visibility, multi-million-dollar City technology projects have encountered significant problems, resulting in unanticipated costs, project delays, adverse personnel actions and a public perception that the City government is unable to successfully execute technology projects [Santa Clara County Civil Grand Jury Report, "City of San Jose Procurement Policies, Procedures, and Practices," June 22, 2005].

As a result of its findings, the 2004-2005 Grand Jury recommended the City draft formal procurement policies, including procedures to manage conflict of interests and ensure prudent accountability; compel training on the procurement process for all personnel expected to handle purchasing of goods and services; assign the responsibility for the entire procurement process to a single department; and significantly increase the then One Hundred Thousand Dollar (\$100,000) threshold for requiring City Council approval.

On December 6, 2005, the City Council directed the City Attorney to amend provisions of the Municipal Code governing the City's procurement process to, among other revisions, centralize responsibility for purchasing, and to increase the dollar amount of contracts requiring Council approval [November 6, 2006 Memorandum].

After two years of coordinated effort by the City Council, City Attorney's and City Manager's Offices, the Finance Department, various staff members and outside suppliers, San Jose has drafted policies and procedures to create a more efficient, transparent and resourceful procurement process. Notably, since April 2005, San Jose

has had as its Chief Purchasing Officer a person who demonstrates business integrity and effective leadership skills and, as of January 2007, an administration committed to government accountability and the openness of its dealings.

The following are among the significant improvements San Jose has made to its procurement process:

- Under the San Jose Municipal Code, adopted February 27, 2007, the City's Manager, Attorney, Auditor, and Clerk are authorized to enter into specified contracts without Council approval that have a maximum value of \$250,000. The City Manager is further authorized, without first seeking Council approval, to enter into contracts for goods with an estimated cost to provide of \$1,000,000; services with an estimated cost to perform of \$250,000; and all other purchases with a maximum value of \$100,000.
- On a quarterly basis, the City Council shall receive a report describing all contracts entered into by the City's Manager, Attorney, Auditor, and Clerk which were valued at \$100,000 or more.
- To centralize purchasing, responsibility for managing the procurement of goods is now limited to a Council appointee, the City Manager, and the Finance Director. However, since contracts for services need to be administered by the Department requiring the service, a Certified Contract Specialist (CCS) position has been created in each Department expected to procure services. The CCS will liaise with the Finance Department and be required to attend specialized training and regularly scheduled meetings.
- On April 23, 2007, more than one hundred employees attended procurement training conducted by the Purchasing Division, and, in or about July 2007, more particularized training will be given to the Certified Contract Specialists.
- To ensure integrity throughout the procurement process, San Jose enacted a policy requiring, among other safeguards, that all persons involved in the process disclose in writing any potential conflict of interests, maintain confidentiality, and report any perceived misconduct to the Chief Purchasing Officer.
- An online *Request for Proposal* manual, scheduled for publication in May 2007, will provide guidance for staff, suppliers, and the public on the procurement process.

Conclusion

The method by which San Jose accomplished the restructuring of its procurement process illustrates how a unified, interdepartmental strategy, implemented by dedicated city officials and staff, can have a positive influence on public policy. This project also indicates those in decision-making positions at San Jose are genuine when they promise to conduct their business under public purview.

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City of San Jose Ordinance Amending Chapters 4.04 and 4.12, and Repealing Chapters 4.06 and 4.13 of Title 4 of the San Jose Municipal Code to Increase Administrative Contract Authority for Purchase of Supplies, Materials, Equipment to \$1,000,000 and Services to \$250,000, to Enact a Protest Procedure for Purchases, and to Amend, Reorganize and Consolidate Various Purchasing Procedures, passed February 27, 2007.

City of San Jose Policy 5.1.4. *Brand Name and Sole Source Procurements*, April 3, 2006.

City of San Jose Policy 5.1.1. *Procurement and Contract Process Integrity and Conflict of Interest – Administrative Procedures*, April 18, 2007.

City of San Jose Policy. *Procurement of Information Technology*, adoption pending.

City of San Jose Policy. *Procurement of Non-Professional Services*, adoption pending.

City of San Jose Policy. *Procurement of Supplies, Material, and Equipment*, adoption pending.

City of San Jose Policy 5.1.6. *Procurements with Grant Funds*, September 19, 2006.

City of San Jose Policy 5.1.3. *Source Selection Plan*, February 10, 2006.

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Interviews

August 14, 2006	City of San Jose official
February 12, 2007	City of San Jose official
May 7, 2007	City of San Jose official

PASSED and ADOPTED by the Santa Clara County Civil Grand Jury on this 22nd day of May 2007.

Ronald R. Layman
Foreperson

David M. Burnham
Foreperson Pro tem

Kathryn C. Philp
Secretary