



COUNCIL AGENDA: 9/15/09  
ITEM: 6.2

# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** William F. Sherry, A.A.E.

**SUBJECT:** SEE BELOW

**DATE:** August 3, 2009

Approved 

Date 8/31/09

**COUNCIL DISTRICT:** Citywide

**SUBJECT: APPROVAL OF AGREEMENT WITH CHEVRON U.S.A. INC. FOR COORDINATED CORRECTIVE ACTION AT THE SAN JOSE INTERNATIONAL AIRPORT JET FUEL FACILITY COMMINGLED PLUME SITE**

## RECOMMENDATION

Adopt a resolution authorizing the City Manager to negotiate and execute an Agreement with Chevron U.S.A. Inc. (Chevron) for coordinated corrective actions at the existing Norman Y. Mineta San José International Airport (Airport) Jet Fuel Facility commingled plume site at a cost to the City not to exceed (NTE) one million eight hundred thousand dollars (\$1,800,000) and authorizing the Director of Aviation to approve additional expenditures in excess of one million eight hundred thousand dollars (\$1,800,000), subject to appropriation of funds by Council.

## OUTCOME

Approval of the proposed recommendation will allow a cost sharing Agreement with Chevron to be negotiated and executed, thereby enabling investigation and remedial action activities to proceed as required at the existing Airport Jet Fuel Facility and will facilitate potential cost reimbursement from the State Water Resources Control Board (SWRCB) Underground Storage Tank Commingled Plume fund .

## BACKGROUND

The existing Airport Jet Fuel Facility consists of the current, active Chevron Terminal, and the closed City Terminal located immediately adjacent. Groundwater contamination was discovered in approximately 1986 at the facility, which was determined to be the joint responsibility of Chevron and the City. On March 29, 1990, the City entered into a cost sharing Agreement with Chevron for the implementation, operation, and maintenance of an interim remediation system

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for the commingled plume of groundwater contamination. This Agreement expired on June 30, 1998.

After expiration of the prior cost sharing Agreement, Chevron has continued operating and maintaining the interim remediation system in conformance with regulatory requirements. An Airline Consortium is currently constructing a new Jet Fuel Farm in a new location, which will allow the existing facility to be permanently closed and for investigation and remediation activities to proceed. The new Jet Fuel Farm is anticipated to be operational in March 2010.

### ANALYSIS

Subsequent to the expiration of the original cost sharing Agreement between Chevron and the City on June 30, 1998, Chevron has continued to operate and maintain the interim remedial measures at the existing Airport Jet Fuel Facility in accordance with regulatory requirements. The regulatory agency currently providing oversight is the County of Santa Clara Department of Environmental Health. At their sole expense, Chevron has continued to conduct and provide quarterly ground water monitoring reports to the regulators, and to make system modifications in accordance with regulator requirements. The City has joint responsibility for the commingled plume related costs; however, a contract mechanism to enable cost sharing payments was not in place. Discussions to put a new Agreement in place were initiated at the expiration of the original Agreement; however, these were not successful until recently due to City budgetary limitations, staff turnover for both parties and delays in the implementation of a new Jet Fuel Farm, which was a critical factor necessary in order to proceed.

Upon successful activation of the new Jet Fuel Farm in the March 2010 timeframe, the existing Airport Jet Fuel Facility will be closed. This will allow the removal of all Chevron tanks and associated equipment, as well as removal of previously abandoned-in-place City tanks. Complete site investigation and remediation activities can then proceed at the site.

This Agreement will provide for a 50%-50% cost sharing responsibility for future costs accrued until successful closure of the site with the regulatory agencies, and will provide the mechanism for the City to pay its 50% share of the past costs that Chevron has solely accrued since expiration of the original Agreement. A current estimate of the City's share of the past costs is on the order of eight hundred thousand dollars (\$800,000). Future costs will not exceed one million dollars (\$1,000,000) unless approved in writing by the City's Director of Aviation.

Under the proposed Agreement, Chevron will be the lead in coordinating and reporting to the regulators, conducting investigations, and performing remedial activities. Administrative costs associated with the work will be paid by Chevron and will not be subject to any cost sharing. A technical committee consisting of a Chevron and a City representative will review and approve all work actions to be conducted.

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This Agreement is also being structured to facilitate potential reimbursement from the State Water Resources Control Board (SWRCB) Underground Storage Tank Commingled Plume fund. This fund provides for reimbursement of eligible expenses associated with petroleum contaminated groundwater commingled plumes with multiple responsible parties. Reimbursement from the fund is potentially available up to \$1.5M for each party. Chevron and the City originally submitted a joint application in January 1997, however, the application will need to be updated, and a copy of this executed Agreement will be required to be submitted to the SWRCB as part of the application and approval process.

### **POLICY ALTERNATIVES**

***Alternative:** Do not proceed with a new cost sharing agreement for coordinated corrective actions at the existing Airport Jet Fuel Facility.*

**Pros:** None

**Cons:** Potentially delays remedial actions at the site, and puts the City at risk of being issued regulatory compliance orders. Potentially puts the City at risk of legal action from Chevron due to the joint responsibility of the commingled plume. The City may also lose the opportunity to collect reimbursement funds from the State Commingled Plume Fund.

**Reason for not recommending:** Not proceeding with the agreement puts the City potentially at risk, and may negatively impact the schedule and scope of remediation of the environmental contamination. In addition, an agreement between responsible parties is a key requirement to potentially enable the City to collect reimbursement of up to one million five hundred thousand (\$1,500,000) from the State Commingled Plume Fund.

### **PUBLIC OUTREACH**

- Criteria 1:** Requires Council action on the use of public funds equal to \$1million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This memo will be posted on the City's website, for the August 25, 2009 City Council meeting.

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**COORDINATION**

This memorandum has been coordinated with the City Attorney’s Office and the City Manager’s Budget Office.

**FISCAL/POLICY ALIGNMENT**

This Agreement supports the cleanup and restoration of groundwater and soil at the Airport, thereby protecting the environment and providing the opportunity for future re-development of the site consistent with the Airport’s Master Plan.

**COST SUMMARY/IMPLICATIONS**

- 1. AMOUNT OF RECOMMENDATION: \$1,800,000
- 2. COST ELEMENTS OF AGREEMENT:
  - City share of past costs \$800,000
  - City share of future costs \$1,000,000
  - TOTAL AGREEMENT AMOUNT: \$1,800,000
- 3. SOURCE OF FUNDING: 526 – Airport Revenue Bond Improvement Fund
- 4. FISCAL IMPACT: The amended agreement will have no adverse impact on the General Fund operating budget.

**BUDGET REFERENCE**

Fund #	Appn. #	Appn. Name	Total Appn. 2009-2010	Amt. for Agreement	2009-2010 Proposed Budget Page	Last Budget Action (Date, Ord. No.)
526 (528)	6014	Clean-up Existing Fuel Farm	\$5,538,000	\$1,800,000	Page V - 675	n/a
		<b>Total</b>	<b>\$5,538,000</b>	<b>\$1,800,000</b>		

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**CEQA**

Resolution Nos. 67380 and 71451, PP 09-145.

/S/

WILLIAM F. SHERRY, A.A.E.

Director of Aviation

Airport Department

Please direct questions to William Sherry, Director of Aviation, at 501-7669.