

Sent to Council:

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SEP 14 2010

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Memorandum

**TO: HONORABLE MAYOR
AND CITY COUNCIL**

FROM: Nadine Nader

SUBJECT: Early Council Packet

DATE: September 14, 2010

Approved

Date

9/14/10

EARLY DISTRIBUTION COUNCIL PACKET FOR SEPTEMBER 28, 2010

Please find attached the Early Distribution Council Packet for the September 28, 2010 Council Meeting.

3.x Ratification of Final Expenditures in Various Appropriations for FY 2009-2010.

Recommendation:

- (a) Adopt an ordinance ratifying the final 2009-2010 appropriation increases detailed in this report.
- (b) Adopt the following 2009-2010 Appropriation Ordinance and Funding Sources Resolution amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Central Fund:
 - (1) Increase the Earned Revenue estimate by \$1,573,665;
 - (2) Increase the Transfer to Council District 1 by \$95,692;
 - (3) Increase the Transfer to Council District 2 by \$67,110;
 - (4) Increase the Transfer to Council District 3 by \$97,815;
 - (5) Increase the Transfer to Council District 4 by \$65,096;
 - (6) Increase the Transfer to Council District 5 by \$120,497;
 - (7) Increase the Transfer to Council District 6 by \$91,509;
 - (8) Increase the Transfer to Council District 7 by \$115,876;
 - (9) Increase the Transfer to Council District 8 by \$92,071;
 - (10) Increase the Transfer to Council District 9 by \$82,892;
 - (11) Increase the Transfer to Council District 10 by \$61,552;
 - (12) Increase the Transfer to City-Wide by \$444,055; and

- (13) Increase the Transfer to the General Fund – Parks Eligible Maintenance Costs by \$239,500.

CEQA: Not a Project, File No. PP10-067, Appropriation Ordinance. (City Manager's Office)

6.x Grant for Federal Surface Transportation Program Street Maintenance.

Recommendation: Adopt a resolution that:

- (a) Authorizes the City Manager, or designee, to submit a grant application to the Metropolitan Transportation Commission (MTC) in the total amount of \$7,987,000 for Federal Surface Transportation Program (STP) funding for the 2010 STP Resurfacing and Rehabilitation project ("Project");
- (b) Commits the City to provide the required local match funds of \$1,035,000 and to pay for any additional cost to complete the Project;
- (c) Assures the Project will be completed in compliance with the submitted application, MTC Regional Funding Delivery Policy, and the grant program requirements; and
- (d) Authorizes the City Manager, or designee, to accept grant funding from the Metropolitan Transportation Commission and negotiate and execute any documents to accept the grant funds.

CEQA: Exempt, File No. PP06-066. Council Districts: 2, 8, 9 and 10. (Transportation)

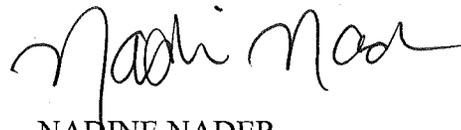
9.x Approval of Citywide Insurance Placement.

Recommendation: Adopt a resolution authorizing the Director of Human Resources to select and purchase certain City and Redevelopment Agency insurance policies (property and liability for the City; property only for the Redevelopment Agency) for the period October 1, 2010 to October 1, 2011, at a cost not to exceed \$1,900,000, with the following insurance carriers:

- (a) Coverage Property including Boiler & Machinery: Insurance Carrier(s) Factory Mutual Insurance Company or Chartis.
- (b) Coverage Airport Owners and Operators Liability including War Risks & Extended Perils Coverage (Primary and Excess); Insurance Carrier Chartis.
- (c) Coverage Secondary Employment Law Enforcement Professional Liability; Insurance Carrier; Indian Harbor Insurance Company.
- (d) Coverage Automobile Liability (Airport fleet vehicles and Shuttle Buses physical damage only/WPCP fleet vehicles); Insurance Carrier Travelers Property Casualty Insurance.

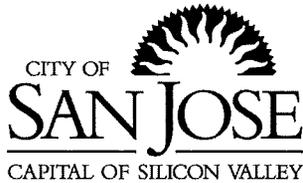
- (e) Coverage Police Aircraft Hull & Liability including War Risks & Extended Perils; Insurance Carrier Chartis
CEQA: Not a Project, File No.PP10-066 (a), Agreements and Contracts for purchase of insurance. (City Manager's Office/Redevelopment Agency)

These items will also be included in the Council Agenda Packet with item numbers.



NADINE NADER

Assistant to the City Manager



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jennifer A. Maguire

SUBJECT: SEE BELOW

DATE: September 10, 2010

Approved

Date

9-14-10

COUNCIL DISTRICT: City-wide

SUBJECT: ADOPTION OF AN ORDINANCE RATIFYING FINAL EXPENDITURES IN VARIOUS APPROPRIATIONS FOR FY 2009-2010 AND ADOPTION OF THE ASSOCIATED APPROPRIATION ORDINANCE AND FUNDING SOURCES RESOLUTION AMENDMENTS IN 2009-2010

RECOMMENDATION

It is recommended that the City Council:

1. Adopt an ordinance ratifying the final 2009-2010 appropriation increases detailed in this report.
2. Adopt the following 2009-2010 Appropriation Ordinance and Funding Sources Resolution amendments in the Construction Tax and Property Conveyance Tax Fund:
Parks Purposes Central Fund:
 - a. Increase the Earned Revenue estimate by \$1,573,665;
 - b. Increase the Transfer to Council District 1 by \$95,692;
 - c. Increase the Transfer to Council District 2 by \$67,110;
 - d. Increase the Transfer to Council District 3 by \$97,815;
 - e. Increase the Transfer to Council District 4 by \$65,096;
 - f. Increase the Transfer to Council District 5 by \$120,497;
 - g. Increase the Transfer to Council District 6 by \$91,509;
 - h. Increase the Transfer to Council District 7 by \$115,876;
 - i. Increase the Transfer to Council District 8 by \$92,071;
 - j. Increase the Transfer to Council District 9 by \$82,892;
 - k. Increase the Transfer to Council District 10 by \$61,552;
 - l. Increase the Transfer to City-Wide by \$444,055; and
 - m. Increase the Transfer to the General Fund – Parks Eligible Maintenance Costs by \$239,500.

3. Adopt the following 2009-2010 Appropriation Ordinance and Funding Sources Resolution amendments in the Convention and Cultural Affairs Fund:
 - a. Increase the Earned Revenue estimate by \$625,000;
 - b. Increase the Non-Personal/Equipment appropriation by \$758,000; and
 - c. Decrease the Ending Fund Balance estimate by \$133,000.

4. Adopt the following 2009-2010 Appropriation Ordinance amendments in the Stores Fund:
 - a. Increase the Workers' Compensation Claims appropriation by \$13,493; and
 - b. Decrease the Ending Fund Balance estimate by \$13,493.

OUTCOME

The recommended actions account for the over-expenditures that occurred at the end of fiscal year 2009-2010 and allow the final financial accounting for 2009-2010 to be completed.

BACKGROUND

As part of the process of completing the 2009-2010 fiscal year-end audit, final expenditures and encumbrances recorded by the Finance Department have been compared to the budget to determine whether the expenditures were within appropriation levels adopted and amended by the City Council. In this report, City Council approval is requested for several appropriation increases necessitated because final 2009-2010 expenditure totals exceeded final modified appropriation levels.

ANALYSIS

As part of the year-end closing process, certain expenses not previously anticipated are recorded and cause appropriations to be exceeded. Under the City's current practice, appropriation increases necessary to fund those expenses require City Council ratification action.

The Administration makes every effort to limit the number of instances where after-the-fact ratification of over-expenditures must occur. As has been the practice in the past, year-end budget adjustments were prepared and brought to City Council by the Budget Office in June 2010 for the 2009-2010 fiscal year. A number of potential overruns were avoided as a result of the actions taken in that document.

The Administration manages over two-thousand appropriations allocated to over 100 City funds. In 2009-2010, appropriations were exceeded in three City funds as described in Attachment A. The total amount for the three funds involved is \$2,345,158 and includes the following: the Transfer appropriations of the Parks Construction and Conveyance Tax Fund - Central Fund

(\$1,573,665); the Non-Personal/Equipment appropriation in the Convention and Cultural Affairs Fund (\$758,000); and the Workers' Compensation Claims appropriation in the Stores Fund (\$13,493). In each of these three funds, additional revenue or Ending Fund Balance is available to offset the exceeded appropriations.

EVALUATION AND FOLLOW-UP

The ratification of exceeded appropriations will be incorporated into the City's Comprehensive Annual Financial Report for fiscal year 2009-2010.

PUBLIC OUTREACH

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 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)**
- Criterion 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 item meets Criterion 1 above, and this memorandum will be posted on the City's Internet website for the September 28, 2010, Council agenda.

COORDINATION

This memorandum was coordinated with the Finance Department and the Office of the City Attorney.

FISCAL/POLICY ALIGNMENT

The recommended budget actions align with the City's budget policy that dictates that the City will maintain the fiscal integrity of its operating, debt service, and capital improvement budgets.

COST SUMMARY/IMPLICATIONS

As discussed in the memorandum, additional revenue or ending fund balance is available to offset the exceeded appropriations for 2009-2010.

HONORABLE MAYOR AND CITY COUNCIL

September 10, 2010

Subject: Adoption of an Ordinance Ratifying Final Expenditures for FY 2009-2010

Page 4

CEQA

Not a project.



JENNIFER A. MAGUIRE

Budget Director

For questions, please contact David Persselin, City Manager's Budget Office, at (408) 535-8141.

I hereby certify that there was available for appropriation in the following funds in fiscal year 2009-2010 moneys in excess of those heretofore appropriated therefrom, said excess being at least the amounts as set forth below:

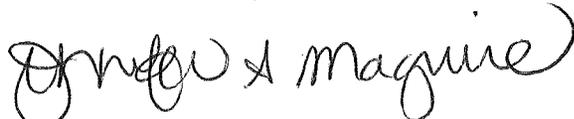
Construction Tax and Property Conveyance Tax Fund:

Parks Purposes Central Fund

\$1,573,665

Convention and Cultural Affairs Fund

\$625,000



JENNIFER A. MAGUIRE

Budget Director

ATTACHMENT A

Construction and Conveyance Tax Funds

\$1,573,665

A technical adjustment is necessary to account for the over-expenditures that occurred in the Transfer appropriations of the Parks Construction and Conveyance Tax Fund - Central Fund as a result of higher than anticipated revenues. The Parks Construction and Conveyance Tax revenue is received in the Parks Construction and Conveyance Tax Fund - Central Fund and then distributed to the various City-Wide and District Construction and Conveyance Tax Funds as well as the General Fund based on the Council-approved distribution formula. Because the Parks Construction and Conveyance Tax Fund revenue ended the year above the budgeted level, the transfer appropriations that were used to distribute this revenue to the other funds were also exceeded. The funding allocated for each of the ratification actions is offset by the additional Parks Construction and Conveyance Tax Fund revenue.

Convention and Cultural Affairs Fund

758,000

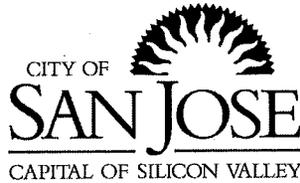
An Appropriation adjustment is necessary to account for over-expenditures that occurred in the Non-Personal/Equipment appropriation in the Convention and Cultural Affairs Fund. This appropriation accounts for operating expenses at the City's Convention and Cultural Facilities under the management of Team San José, including contractual labor, ticketing expenses, parking, Team San José salaries, utilities, and food and beverage service. Approximately \$625,000 of the over-expenditures was offset with unanticipated revenue. In response to these over-expenditures, which were not anticipated by the City, a Notice of Default was issued to Team San José in August 2010, and the City Auditor's Office is conducting an audit to identify the cause of the overage. City staff is working to determine if measures need to be implemented to improve fiscal processes and if any budgetary actions are now required to ensure the long term health of the fund. It is currently anticipated that this work will be presented to the City Council in October 2010.

Stores Fund

13,493

An Appropriation adjustment is necessary to account for over-expenditures that occurred in the Workers' Compensation Claims appropriation in the Stores Fund. This appropriation accounts for positions associated with Workers' Compensation claims costs funded in the Stores Fund. Two awards were approved and expended in connection with two claims from past years in June 2010, which led to the unanticipated overage of \$13,493.

TOTAL \$2,345,158



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Mark Danaj
Janet Kern

SUBJECT: APPROVAL OF CITYWIDE
INSURANCE PLACEMENT

DATE: September 10, 2010

Approved

Date

9-14-10

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Adopt a resolution authorizing the Director of Human Resources to select and purchase certain City and Redevelopment Agency insurance policies (property and liability for the City; property only for the Redevelopment Agency) for the period October 1, 2010 to October 1, 2011, at a cost not to exceed \$1,900,000, with the following insurance carriers:

- a. Coverage Property including Boiler & Machinery: Insurance Carrier(s) Factory Mutual Insurance Company or Chartis
- b. Coverage Airport Owners and Operators Liability including War Risks & Extended Perils Coverage (Primary and Excess); Insurance Carrier Chartis
- c. Coverage Secondary Employment Law Enforcement Professional Liability; Insurance Carrier; Indian Harbor Insurance Company
- d. Coverage Automobile Liability (Airport fleet vehicles and Shuttle Buses physical damage only/WPCP fleet vehicles); Insurance Carrier Travelers Property Casualty Insurance
- e. Coverage Police Aircraft Hull & Liability including War Risks & Extended Perils; Insurance Carrier Chartis

OUTCOME

Support for Effective Council Policy making.

EXECUTIVE SUMMARY

Provide financial protection for catastrophic loss by securing various property and casualty insurance policies on behalf of the City of San José. Annually, Human Resources, on behalf of the City and the Redevelopment Agency, analyze their insurance coverages with their Insurance Broker, Marsh Risk and Insurance Services (Marsh USA.) Marsh receives competitive quotes from insurance market and presents them for consideration to Human Resources. After review of scope of coverage, cost, financial strength to pay claims and resources available to provide services,

Human Resources determines the appropriate insurance coverages for the period of October 1, 2010 until September 30, 2011, as recommended in this memorandum.

BACKGROUND

The City of San José ("City") and the Redevelopment Agency of the City of San José ("Agency") transfer exposures for catastrophic events via insurance policies when the frequency of events cannot be predicted, the severity of potential losses could seriously hamper the operations, and where the cost of coverage is not prohibitive.

The City purchases a number of different insurance policies with annual premiums below \$100,000 and/or with different expiration dates (i.e. Notary Bonds, Airport Customs Bond, Fiduciary Liability, and others.) The insurance policies addressed in this memorandum have an annual renewal date of October 1, 2010. The premiums reflected are as of the October 1, 2010 renewal date. Premiums are subject to change during the course of the year based on additions and/or deletions to the policies as completed construction projects are placed on to the citywide property policy and property values are adjusted based on current replacement values. The results for the October 1, 2010, insurance renewal are a reflection of the ever-changing insurance marketplace conditions. Generally the marketplace today is continuing an unexpected softening phase of the insurance cycle, favorable to purchasers of insurance. This will result in the City continuing terms and conditions as of a year ago, with an upturn predicted prior to next renewal which is anticipated to be completed in a year from now.

ANALYSIS

On an annual basis, the Human Resources Department reviews the City's and Redevelopment Agency's risk exposures with the City's insurance broker. On June 30, 2008, Marsh Risk & Insurance Services ("Marsh") became the City's broker and has been working diligently with the Human Resources Department to obtain cost effective insurance coverage.

The City, through Marsh, solicited major international insurance carriers to provide insurance premium quotes for the policies which expire at midnight on September 30, 2010. Through this effort, the City has been successful in obtaining insurance quotes for all policies recommended for purchase. Proposals have been compared and evaluated with respect to scope of coverage, cost, and insurers' financial strength to pay claims and resources available to provide services such as property inspections and loss control services. Appendix A reflects the best coverages, renewal premiums and insurance carriers available. The quoted renewal premiums are subject to market fluctuation prior to October 1, 2010, additionally, further premiums may be payable based upon the addition of covered properties during the policy term. Appendix B provides a comparison of insurance premiums by fund and type of insurance. This comparison shows that the aggregate insurance quotes received are 1.3% more than the quotes the City and the Redevelopment Agency received last year. This incorporates a 5.2% increase in City insured property values (without the increase in property values, the premium would have stayed the same, given the multi-year rate guarantee we negotiated two years ago, and a 7% decrease in the number of Police officers in the secondary employment program.

Consistent with the City's annual insurance renewal process, Human Resources staff, working with our insurance broker, examined the City's existing insurance program along with alternative coverages that could be considered. Staff also worked with the Agency and the affected departments listed under the coordination section below to determine their insurance needs for City property and facilities. The coverages examined for this renewal period are described below in two categories; (1) insurance coverages recommended and (2) insurance coverages which are not cost effective and therefore not recommended for purchase.

Insurance Coverages Recommended

- **All Risk including Boiler & Machinery Property Insurance** - Provides coverage for City and Agency owned and leased real and personal property (including buildings, contents, business interruption, boiler and machinery, EDP equipment and media, fine arts, mobile and contractors equipment, builders risk, loss of rents, expediting expenses, off premises services interruption, building ordinance coverage, unnamed locations, transit, accounts receivable, valuable papers, and other coverages as detailed in the policy forms subject to sub-limits as defined in the policy). The carrier offers a three-year rate guarantee, subject to terms and conditions of its "Successive Renewal Agreement".

The property insurance limit is \$1 billion with a \$100,000 deductible per occurrence. The City has an opportunity to increase the deductible as shown in the following options:

Deductible	Savings
\$ 250,000	\$ 28,000
\$ 500,000	\$101,400
\$1,000,000	\$147,200

Since each optional increase in deductible exposes the City to greater loss per occurrence than the annual premium savings, this option is not recommended. The annual rate per \$100 of insured value remained the same for the 10/1/2010 renewal at 0.0413 per \$100; based on a multi-year rate guarantee secured by the City last year.

Insurance Carriers: Factory Mutual Insurance Company (present carrier) or Chartis (proposed alternative carrier)

- **Airport Owners and Operators Liability including War Risks & Extended Perils Coverage** – Provides coverage for those sums that the City becomes legally obligated to pay as damages because of bodily injury, property damage and personal injury resulting from airport operations. Additionally, program provides coverage for bodily injury or property damage caused by war and other perils.

Insurance Carriers: Chartis Aviation is the current carrier. Other markets that declined to quote include: Allianz, Starr Aviation and Global Aerospace. Chartis' renewal quote includes an 8.7% rate reduction for same terms and conditions, following their 21.3% rate decrease for the current year effective 10-1-09.

- **Secondary Employment Law Enforcement Professional Liability** – Provides coverage for an actual or alleged error or omission, negligent act, neglect or breach of duty by the City's police officers who have been approved to participate in the Secondary Employment program by the City's Secondary Employment Unit (SEU) while conducting law enforcement activities on behalf of an approved third party secondary employer, which result in bodily injury, property damage or personal injury.

Insurance Carriers: Indian Harbor Insurance Company (present and proposed renewal carrier)

- **Auto Liability** – Provides coverage for bodily injury, property damage and personal injury for claims arising out of the operation of the Airport and Water Pollution Control Plant auto fleets. (present and proposed renewal carrier)

Insurance Carrier: St. Paul/Travelers (present and proposed renewal carrier)

- **Airport Shuttle Bus - Physical Damage** - Provides comprehensive physical damage (i.e. fire, theft, vandalism, malicious mischief) and collision damage subject to a \$25,000 deductible.

Insurance Carrier: St. Paul/Travelers (present and proposed renewal carrier)

- **Police Aircraft Hull and Liability including War Risks & Extended Perils Coverage** – Provides coverage for those sums that the City becomes legally obligated to pay as damages because of bodily injury (including passengers), property damage and hull coverage for the Cessna 182 and American Eurocopter EC120B. Additionally, program provides coverage for bodily injury or property damage caused by war and other perils resulting from aviation operations. Provides coverage for two (2) aircraft, N408DC and N2705 with current hull values of \$1,750,000 and \$275,000 respectively. Limit of Liability = \$50,000,000. Following on the 30.87% rate decrease for the current year effective 10-1-09, the insurer has provided an additional rate decrease of 6.33 for the 10-1-10 renewal term. War coverage was included within this reduction. Insurers who declined to quote this renewal include Starr Aviation, Global Aerospace and Allianz.

Insurance Carrier: Chartis (present and proposed renewal carrier)

Appendix A provides a detailed table comparing the current insurance program by coverage levels, carrier(s) and premiums to the recommended renewal program.

Insurance Coverages Not Cost Effective

While the insurance coverages described below are not cost effective to the City today, Human Resources staff in consultation with our insurance broker will continue to review the cost and make recommendations to purchase insurance coverage to the extent the purchase of any or all of these coverages become cost effective.

Terrorism Risk Insurance Act of 2002 (TRIA) – Provides coverage for insured losses resulting from certified acts of terrorism as defined by TRIA. For those participating, coverage is currently provided through a temporary Federal program. TRIA was extended by Congress on December 31, 2005 for an additional two years to expire on December 31, 2007, and has since been extended again and amended, as explained below.

The Terrorism Risk Insurance Act of 2002, as amended and extended in 2007 to expire on December 31, 2014, requires that insurers advise clients, prior to the renewal date of their current policy of their option to elect or reject terrorism coverage under the act as part of their property renewal policy. It also requires insurers to disclose the cost of such coverage for the policy term. As a brief reminder, the act provides licensed, admitted carriers with a substantial federal reinsurance backstop for terrorism acts that are certified by the Secretary of the Treasury of the United States as covered events (known as certified losses). Generally speaking, the act responds strictly to events that take place within the United States, its protectorates, territories, and possessions. The City first considered purchase of TRIA coverage on January 28, 2003 (item #3.6), after it was first offered following enactment of the legislation and again in June, 2003 and September 2004 in conjunction with the renewal of the City's policies. The City continues to decline to purchase this coverage based on the assessment of the risk and the cost and coverage limitations.

The coverage under TRIA is very specific and somewhat limited. There are several very specific requirements for TRIA coverage to apply, as briefly summarized below:

- The Secretary of the Treasury must certify an event as an "Act of Terrorism". To qualify as an "act of terrorism", the event must be committed by an individual or individuals acting on behalf of any person or interest to coerce the civilian population of the U.S. or influence U.S. policy or conduct by coercion. Originally limited to "foreign" acts of terrorism, note that "domestic terrorism" like the Oklahoma City bombing is now considered an "Act of Terrorism" under the renewed TRIA.
- An "Act of Terrorism" is defined as any violent act or act that is dangerous to life or property that results in damage totaling at least \$5 million in the United States. Acts committed as part of a war declared by Congress are excluded from the scope of the definition.
- The terms and conditions of coverage (limit, deductible, etc.) are governed by the specific policy.
- Under TRIA, there is a \$5 million aggregate requirement. Total damages suffered by all insureds from an "Act of Terrorism" as defined by TRIA must be at least \$5 million. If the \$5 million threshold is met, coverage applies subject to specific policy terms and conditions. In the case of the property insurance program, a \$100,000 per occurrence deductible would apply.

The City has limited terrorism coverage under the All Risk Property Insurance which includes \$5 million in the annual aggregate subject to the City's \$100,000 deductible. The cost of purchasing terrorism insurance through the TRIA program is summarized below:

All Risk and Boiler & Machinery Property Insurance	\$151,265
Airport Owners and Operators Liability	\$9,205
Police Aircraft Hull & Liability	\$434
Total estimated TRIA Premium	\$160,904

See Appendix A for detailed description on costs associated with TRIA.

- **Excess Workers' Compensation** - Indemnifies the City for Workers' Compensation Claims.

In the spring of 2004, the City's previous insurance broker evaluated the benefits and costs of obtaining Excess Workers' Compensation insurance. The cost of purchasing Worker's Compensation insurance was determined to be prohibitive at that time. At that time, the Human Resources Department in conjunction with the City's insurance broker explored several options associated with managing the costs and transferring the risk associated with the City's Worker's Compensation program. These options included:

- Excess Workers' Compensation Coverage
- Guaranteed Cost/First Dollar Workers' Compensation Coverage
- Loss Portfolio Transfer (selling the City's outstanding liabilities associated with Worker's Compensation claims to an insurance company)

In each instance, the cost was determined to be prohibitive. Over the next twelve (12) months, Marsh will continue to explore whether the costs associated with these options have become any more financially viable.

- **Excess Liability** - Indemnifies the City for third-party claims alleging Bodily Injury, Property Damage, and Personal Injury arising from City premises, operations and vehicles.

The City has historically been self-insured for its exposures to third-party liability claims, with the exception of the Airport Owners and Operators Liability Insurance program.

The Human Resources Department in conjunction with Marsh analyzed the excess liability commercial insurance market and concluded with a recommendation that such coverage not be purchased. Principal findings of that exploration are summarized as follows:

- The lowest Self Insured Retention (SIR) the commercial marketplace offered is \$2 million/occurrence
- The City's 10-year loss history included no single liability loss that exceeded \$2 million

- Recap of commercial insurance indications included the following:
 - \$50M limit/\$2M SIR \$723,418 annual premium
 - \$50M limit/\$5M SIR \$542,000 annual premium
 - \$50M limit/\$10M SIR \$240,000 annual premium

- The City also obtained coverage indications from the California State Association of Counties Excess Insurance Authority (CSAC-EIA), a large statewide joint powers authority of California public entities, including cities, summarized as follows:
 - \$15M limit/\$1M SIR \$1,848,473 annual premium
 - \$15M limit/\$2M SIR \$945,072 annual premium
 - \$15M limit/\$3M SIR \$698,834 annual premium
 - \$15M limit/\$5M SIR \$312,640 annual premium

Even at the much lower limit of \$15 million, premiums are higher than the commercial insurance costs of comparable SIRs. Given that very few City losses, if any, exceed the minimum SIR offered by either the commercial insurance market or joint powers authorities, that the commercial insurance marketplace is largely unchanged from last year, and that the City's finances may be more constrained than last year, it is not recommended that commercial excess liability insurance be purchased at this time.

There are available to the City means of financing catastrophic loss other than from current accounts. These means include the issuance of so-called judgment bonds (no greater than 40 year term), as well as court-ordered installment payments (no greater than 10 year period). It should be noted that the use of these means is not entirely within the control of the City; a successful validation action is required for the first, and court approval is required for the second.

- **Earthquake** – Provides coverage for damage caused by the peril of earthquake or volcanic action. The coverage is limited to direct damage caused by an earthquake.

Earthquake insurance is another type of coverage that has become cost prohibitive. During last year's marketing efforts, we found that the cost for \$5 Million in coverage was in excess of \$500,000 annually. The insurance markets that write catastrophic covers (flood, wind, and earthquake) have reduced available capacity along with increasing insurance rates. This pricing level, the minimum deductible of 5% of the values at risk, and the relatively low limits of coverage available, make it uneconomical to purchase coverage citywide.

Appendix B provides a comparison of the allocation of insurance premiums by fund and insurance type between October 2009 renewal and the proposed October 2010 renewal.

EVALUATION AND FOLLOW-UP

The City Council will be informed as to the status of these policies as part of the annual renewal process each September or by Supplemental Memorandum if necessary.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 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)**
- Criterion 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)**

Not applicable.

COORDINATION

This memo has been coordinated with the following departments: Airport, Transportation, Police, City Manager's Budget Office, and the City Attorney's Office.

BUDGET REFERENCE

These policies are funded by appropriations in the 2010-20011 Operating Budget

Fund #	Appn #	Appn. Name	Total Appn.	Amt. for Contract*	2010-2011 Proposed Operating Budget Page**	Last Budget Action (Date, Ord. No.)
001	2001	Insurance Premiums and fee	670,000	640,924	IX - 27	6/29/10, 28765
001	2864	Police Officers Professional Liability Insurance	225,000	172,324	IX - 23	6/29/10, 28765
001	0502	Non-Personal/ Equipment (Police)	18,536,466	36,008	VIII - 208	8/03/10, 28779
523	0802	Non-Personal/ Equipment (Air)	42,078,107	424,475	VIII - 2	6/29/10, 28765
519	0802	Non-Personal/ Equipment (Air)	7,015,187	10,944	VIII - 2	6/29/10, 28765
536	3405	Insurance Expenses	130,000	121,189	XI - 23	6/29/10, 28765
518	0642	Non-Personal/ Equipment (Muni Golf)	40,000	805	XI - 68	6/29/10, 28765
533	0512	Non-Personal/ Equipment (DOT)	5,748,570	54,189	VIII - 258	6/29/10, 28765
513	0762	Non-Personal/ Equipment (ESD)	25,058,118	142,602	VIII - 62	6/29/10, 28765
TOTAL FUNDING AVAILABLE			\$ 99,501,488	\$ 1,603,460		

- * The Amount for Contract is subject to change up until the beginning date of the contract therefore, current estimates are lower than the recommended contract amount not to exceed \$1.9 million. The recommended contract amount not to exceed \$1.9 million accounts for anticipating that the premium will not be higher than the current rate and anticipated property increased values.
- ** The 2010-2011 Proposed Budget was adopted by the City Council on June 29, 2010.

In addition, costs not to exceed \$20,000 will be charged to the Redevelopment Agency to provide insurance coverage for property insurance coverage in the amount of \$38 million total insured value as scheduled. Funding for the proposed insurance policies is included in the Agency's Adopted FY 2010-2011 Capital Budget, Merged Area, Asset Management project line item.

CEQA

Not a Project, File No.PP10-066 (a), Agreements and Contracts for purchase of insurance.

/s/
MARK DANAJ
Director, Human Resources


JANET KERN
Deputy Director, Redevelopment Agency

If you have questions, please contact John Dam, Deputy Director, at 975-1438.

Attachments
Appendix A
Appendix B

APPENDIX A

1.) ALL RISK AND BOILER & MACHINERY PROPERTY INSURANCE

	Current Program 10/1/2009 – 10/1/2010	Renewal Program 10/1/2010 – 10/1/2011
Carrier	Factory Mutual Insurance Company	Factory Mutual Insurance Company (or Chartis). Negotiation with Chartis has not been completed. The final decision will be based on scope of coverage, cost, and insurers' financial strength to pay claims and resources available to provide services such as property inspections and loss control services.
Total Insurable Values	2,485,733,177	\$2,616,163,316 (5.2% increase in values)
Limit of Liability	\$1,000,000,000 subject to a \$100,000 Deductible Per Occurrence	\$1,000,000,000 subject to a \$100,000 Deductible Per Occurrence
Boiler & Machinery	Included	Included
Earthquake	Excluded. Relatively low limits, 5% deductible, high premium – not recommended	Excluded. Relatively low limits, 5% deductible, high premium – not recommended
Flood	\$100,000,000 but not to exceed \$25,000,000 Per Scheduled Locations Specified in the insurance policy on file in Risk Management	\$100,000,000 but not to exceed \$25,000,000 Per Scheduled Locations Specified in the insurance policy on file in Risk Management
Other Sub-limits	Other sub-limits as outlined in the insurance policy on file in Risk Management	Other sub-limits as outlined in the insurance policy on file in Risk Management
Terrorism and Non Certified Act of Terrorism (w/o T.R.I.A) see comments in memo	\$5,000,000 annual aggregate	\$5,000,000 annual aggregate
Average Rate Per \$100 of Values	.0413 (Rate includes Renewal Membership Credit of 5%)	.0413 (account rate per multi-year rate guarantee)
Annual Premium	\$1,026,400 Net Annual Premium \$ 102,640 plus Broker Fee \$1,129,040 Total Annual	\$1,080,475 Net Annual Premium \$ 108,048 plus Broker Fee (10%) \$1,188,523 Total Annual
Engineering Services	Included	Included
Multiyear Agreement	Offers a three year rate guarantee – Refer to "Successive Renewal Agreement" for terms and conditions.	Offers a three year rate guarantee – Refer to "Successive Renewal Agreement" for terms and conditions.
Optional TRIA Premium (not recommended for purchase)	\$150,306 Additional	\$151,265 Additional

2.) AIRPORT OWNERS AND OPERATORS LIABILITY

	Current Program 10/1/2009 – 10/1/2010	Renewal Program 10/1/2009 – 10/1/2010
Carrier	Chartis \$200M Limit	Chartis \$200M Limit
Coverage and Deductible	Airport Liability - \$200,000,000 each occurrence combined single limit for bodily injury and property damage, with a \$50,000,000 each occurrence limit for personal injury and Excess Automobile and Excess Employers Liability. Deductible: \$50,000 each occurrence and aggregate, excluding all loss adjusting and litigation defense costs	Airport Liability - \$200,000,000 each occurrence combined single limit for bodily injury and property damage, with a \$50,000,000 each occurrence limit for personal injury and Excess Automobile and Excess Employers Liability. Deductible: \$50,000 each occurrence and aggregate, excluding all loss adjusting and litigation defense costs
Annual Premium	\$125,021	\$111,577
Current War Risk & Extended Perils, Terrorism	\$12,502	\$13,948
Total (Including Taxes/Fees)	\$137,523	\$125,525
Optional TRIA premium (not recommended for purchase)	\$7,865	\$9,205

3.) SECONDARY EMPLOYMENT LAW ENFORCEMENT PROFESSIONAL LIABILITY

	Current Program 10/1/2009 – 10/1/2010	Renewal Program 10/1/2010 – 10/1/2011
Carrier	Indian Harbor Insurance Company	Indian Harbor Insurance Company
Limits of Insurance and Deductibles	\$2,000,000 Each Occurrence \$2,000,000 Annual Aggregate Subject to a \$100,000 Deductible Each Claim	\$2,000,000 Each Occurrence \$2,000,000 Annual Aggregate Subject to a \$100,000 Deductible Each Claim
Average Rate per Officer	\$175 (per 1,037 officers at policy inception)	\$165 (per 1,010 officers at policy inception)
Annual Premium	\$181,475	\$166,650
Surplus Lines Taxes and Fees	\$5,861	\$5,424
Fees (if any)	\$250	\$250
Total Annual Premium	\$187,586	\$172,324

4.) AUTOMOBILE LIABILITY FOR THE AIRPORT FLEET & AIRPORT SHUTTLE BUS FLEET PHYSICAL DAMAGE

	Current Program 10/1/2009 – 10/1/2010	Renewal Program 10/1/2010 – 10/1/2011
Carrier	St. Paul/Travelers	St. Paul/Travelers
Coverage and Deductibles	Auto Liability – Fleet Only \$1,000,000 Combined Single Limit (Any Auto) \$1,000,000 UM/UIM (Owned Autos) \$5,000 Medical Payments (Any Auto – No Buses) Physical Damage – Buses Only Per Schedule Subject to \$25,000 Comp/Coll Deductible \$500 Comp/Coll Deductible for Hired Physical Damage	Auto Liability – Fleet Only \$1,000,000 Combined Single Limit (Any Auto) \$1,000,000 UM/UIM (Owned Autos) \$5,000 Medical Payments (Any Auto – No Buses) Physical Damage – Buses Only Per Schedule Subject to \$25,000 Comp/Coll Deductible \$500 Comp/Coll Deductible for Hired Physical Damage
Exposure	Number of Units 128	Number of Units 128
Average Rate Per Unit	\$638	\$638
Annual Premium	\$81,664	\$81,664

5.) AUTOMOBILE LIABILITY - WATER POLLUTION CONTROL PLANT FLEET

	Current Program 10/1/2009 – 10/1/2010	Renewal Program 10/1/2010 – 10/1/2011
Carrier	St. Paul/Travelers	St. Paul/Travelers
Coverage	Auto Liability – Fleet Only \$1,000,000 Combined Single Limit (Any Auto) \$1,000,000 UM/UIM (Owned Autos) \$5,000 Medical Payments (Any Auto) \$3,500 Property Damage UM	Auto Liability – Fleet Only \$1,000,000 Combined Single Limit (Any Auto) \$1,000,000 UM/UIM (Owned Autos) \$5,000 Medical Payments (Any Auto) \$3,500 Property Damage UM
Exposure	Number of Units 40	Number of Units 40
Average Rate Per Unit	\$367	\$367
Annual Premium	\$14,680	\$14,680

6.) POLICE AIRCRAFT HULL AND LIABILITY

	Current Program 10/1/2009 – 10/1/2010	Renewal Program 10/1/2010 – 10/1/2011
Carrier	Chartis	Chartis
Coverage	Aircraft Hull and Liability - \$50,000,000 each occurrence for liability. Hull coverage: Cessna \$ 275,000 Eurocopter \$1,750,000 Deductible: Liability – NIL Hull/Cessna - \$500 per occurrence (in-motion) Hull/Cessna - \$100 per occurrence (not in-motion) Hull/Eurocopter – \$43,750 per occurrence (rotors in-motion) Hull/Eurocopter - \$500 per occurrence (rotors not in-motion)	Aircraft Hull and Liability - \$50,000,000 each occurrence for liability. Hull coverage: Cessna \$ 275,000 Eurocopter \$1,750,000 Deductible: Liability – NIL Hull/Cessna - \$500 per occurrence (in-motion) Hull/Cessna - \$100 per occurrence (not in-motion) Hull/Eurocopter – \$25,000 per occurrence (rotors in-motion) Hull/Eurocopter - \$500 per occurrence (rotors not in-motion)
Annual Premium	\$45,229	\$34,534
Surplus Lines Taxes and Fees	N/A	N/A
Current War & Extended Perils (\$50M Limit)	\$1,703	\$1,474
Total	\$46,932	\$36,008
TRIA Purchased By Itself –not recommended	\$1,850	\$1,413
TRIA (if purchased with War) – not recommended	\$568	\$434

Insurance Policies with October 1 Renewal Dates
Premium Allocation of Insurance Premiums by Fund & Type Insurance

	FY 2009-10 Premiums 12 Months	FY 2010-11 Premiums 12 Months	Percentage Increase/ Decrease
General Fund - Fund 001			
Property Insurance	\$625,964	\$752,807	20%
Police Secondary (1)	\$187,586	\$172,324	-8%
Police Air Support (Hull & Liab.)	\$46,932	\$36,008	-23%
Subtotal	\$860,482	\$961,139	12%
Airport Maintenance & Operation - Fund 523			
Customs (2)	\$2,000	\$ 2,000	0%
Property Insurance (3)	\$217,581	\$ 226,250	4%
Liability Insurance	\$137,523	\$ 125,525	-9%
Auto Liability Insurance - Airport Fleet	\$75,780	\$ 67,256	-11%
Parking Shuttle	\$3,444	\$ 3,444	0%
Liability - Fund 519	\$7,500	\$ 7,500	0%
Shuttle Bus Physical Damage - Fund 519	\$3,444	\$ 3,444	0%
Subtotal	\$447,272	\$ 435,419	-3%
Treatment Plant Operating - Fund 513			
Property Insurance	\$137,833	\$127,922	-7%
Auto Insurance	\$14,680	\$14,680	0%
Subtotal	\$152,513	\$142,602	-6%
Convention and Cultural Affairs - Fund 536			
Property Insurance	\$124,842	\$121,189	-3%
Subtotal	\$124,842	\$121,189	-3%
Municipal Golf Course - Fund 518			
Property Insurance	\$867	\$805	-7%
Subtotal	\$867	\$805	-7%
General Purpose Parking - Fund 533			
Property Insurance	\$58,377	\$54,182	-7%
Subtotal	\$58,377	\$54,182	-7%
Redevelopment Agency			
Property Insurance (4)	\$15,518	\$17,369	12%
Subtotal	\$15,548	\$17,369	12%
TOTAL (4)	\$1,659,901	\$1,732,705 (2)	4%

Premiums subject to improve should the insurance market conditions change prior to 10/1/2009

Footnotes:

- (1) Each police officers participating in the secondary employment program pays \$110 towards the premium cost (\$225 per officer)
Renewal Premium is based on 1010 participating officers as of this date
- (2) The FY 2010-2011 total includes the already paid US Customs Bond in the amount of \$2,000, which was renewed in January 2010.
- (3) All airport TAIP projects are estimated to be substantially completed on or before 10/31/10.
Upon completion the projects will be rolled on to the citywide property policy and the associated premium will be charged to the airport.
- (4) Allocated premium for RDA will be invoiced directly to RDA for payment



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Hans F. Larsen

**SUBJECT: FEDERAL SURFACE
TRANSPORTATION GRANT
PROGRAM - STREET MAINTENANCE**

DATE: 09-10-10

Approved

Date

9/10/10

COUNCIL DISTRICTS: 2, 8, 9, 10

RECOMMENDATION

Adoption of a resolution that:

1. Authorizes the City Manager, or designee, to submit a grant application to the Metropolitan Transportation Commission (MTC) in the total amount of \$7,987,000 for Federal Surface Transportation Program (STP) funding for the 2010 STP Resurfacing and Rehabilitation project ("Project"); and
2. Commits the City to provide the required local match funds of \$1,035,000 and to pay for any additional cost to complete the Project; and
3. Assures the Project will be completed in compliance with the submitted application, MTC Regional Funding Delivery Policy, and the grant program requirements; and
4. Authorizes the City Manager, or designee, to accept grant funding from the Metropolitan Transportation Commission and negotiate and execute any documents to accept the grant funds.

OUTCOME

The recommended actions support the Transportation City Service Area goal to *Preserve and Improve Transportation Assets and Facilities* by acquiring newly available Federal funds for pavement maintenance. The additional Federal funds will help to improve the condition and prolong the life of City streets that qualify for the use of STP funds.

BACKGROUND

On March 4, 2010, the VTA Board of Directors adopted a Block Grant Program structure for programming future Federal flexible funds through the Congestion Management Agency. This was pursuant to the MTC Block Grant strategy that delegated program management and project selection to the county Congestion Management Agencies (CMA) for Local Streets and Roads rehabilitation (LSR).

The goal of the LSR program is to assure that Federal Aid Eligible arterials and collectors in Santa Clara County are in good repair. MTC set aside STP funds for local streets and roads pavement rehabilitation and preventive maintenance projects.

ANALYSIS

Following the Board adoption of the Block Grant program structure, VTA staff issued the 2010 CMA Block Grant Program Call-for-Projects on March 15, 2010. Each agency had an amount available per MTC's LSR distribution formula based on four performance factors: population, arterial and collector lane mileage, arterial and collector shortfall, and preventive maintenance performance. Thirteen of the eligible sixteen agencies requested funds. The three remaining agencies will "bank" their shares until the next funding cycle, which will occur in the next 18 months.

For this cycle, the VTA programmed \$18.07 million for the LSR program. The City's share for this cycle of funding totals \$7,987,000. Per Federal guidelines, an additional City funding match of 11.47% (\$1,035,000) is required to secure the STP funds and the grant funding will be received by the City on a "reimbursement" basis. San Jose will submit reimbursement requests quarterly to Caltrans based on Project expenditures and following Caltrans Local Assistance procedures.

To meet grant requirements the following criteria must be met:

- The City has to have an approved Pavement Management System (PMS).
- The selected roadways on the Project must be in need of maintenance (i.e. a PMS condition rating below 70).
- The selected roadways must be federal-aid eligible which are streets with a functional classification of "collector street" or higher on the California Roadway System (CRS) map.
- The Project must extend the life of the roadway for more than five years.
- The City must provide a non-federal local match of 11.47% of the total project cost and adopt a resolution to commit to this local match.
- The City must adhere to the State of California's (Caltrans) Local Assistance Project Delivery Policies and Procedures for Federally funded projects. This includes and is not limited to meeting Federal environmental clearance standards, Disadvantage and Minority Business Enterprise goals, and Federal bid and award procedures.

San Jose has met all requirements and expects to receive the full grant amount allocation of \$7,987,000.

The following is a list of street locations developed and submitted for approval during VTA's "Call-for-Projects" in March 2010. The Project list has been preliminarily accepted by VTA and is pending final approval by CalTrans.

Street	Segment
Los Gatos Almaden Road	Rosswood Drive to Leigh Avenue
Monterey Highway	Bernal Road to off ramp North of Blossom Hill Road
Quimby Road	Tully Road to Capitol Expressway
Redmond Avenue	Almaden Expressway to Camden Avenue
Santa Teresa Boulevard	Bernal Road San Ignacio Avenue

EVALUATION AND FOLLOW-UP

After the acceptance and award of the grant funding by MTC, staff will bring forward recommendations for Council consideration to recognize and appropriate the grant funding as part of the 2011-2012 Proposed Capital Budget process. Staff will return to City Council at a later date in 2011 for construction award.

POLICY ALTERNATIVES

Not applicable.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 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)**
- Criterion 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 item meets the Criterion 1: Requires Council action on the use of public funds equal to \$1 million or greater. To solicit contractors, this project will be listed on the City's Internet Bid Line and advertised in the *San José Post Record*. Bid packages for all Department of Public

Works construction projects are provided to various contractor organizations and builder's exchanges.

This memorandum will be posted on the City's website for the Council agenda.

COORDINATION

This memo has been coordinated with the City Attorney's Office, the City Manager's Budget Office and the Planning Building and Code Enforcement Department.

FISCAL/POLICY ALIGNMENT

This project is consistent with the Council-approved Budget Strategy Economic Recovery section in that it will spur construction spending in our local economy.

COST SUMMARY/IMPLICATIONS

This memorandum would commit \$1,035,000 of local match funds in the Construction Excise Tax Fund in order to secure a total of \$7,987,000 of grant funding from the Federal Surface Transportation Program. Once the application for the STP funds has been filed and approved, staff will return to Council with recommendations to appropriate and recognize the grant funding as part of the 2011-2012 Proposed Capital Budget process.

BUDGET REFERENCE

The table below identifies the fund and appropriation proposed to fund the City's local match for the grant as recommended as part of this memorandum.

Fund #	Appn #	Appn. Name	Total Appn.	Amt. for Contract	2010-2011 Proposed Capital Budget Page	Last Budget Action (Date, Ord. No.)
465	5216	Gas Tax Pavement Maintenance	\$5,600,000	\$1,035,000	V-749	06/29/2010, Ord. No. 28765

HONORABLE MAYOR AND CITY COUNCIL

09-10-10

Subject: Federal Surface Transportation Grant Program Street Maintenance

Page 5

CEQA

Exempt, PP06-066.

/s/

HANS F. LARSEN

Acting Director of Transportation

For questions please contact Rene Cordero, Division Manager for Pavement and Sewer Maintenance Services of Transportation, at 277-8147.