

## Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Richard Doyle  
City Attorney

**SUBJECT:** Fifteenth Amendment to  
Agreement for Legal Services  
related to the Airport with Orrick  
Herrington & Sutcliffe LLP

**DATE:** February 14, 2011

### RECOMMENDATION

Adopt a resolution authorizing the City Attorney to negotiate and execute a Fifteenth Amendment to the agreement with Orrick Herrington & Sutcliffe LLP for legal services related to the financing of improvements at the Norman Y. Mineta San Jose International Airport and the City's outstanding Airport revenue debt, extending the term through June 30, 2012, and increasing compensation by \$60,000 for a total amount not to exceed \$535,000.

### OUTCOME

Approval of the Fifteenth Amendment will allow Orrick Herrington & Sutcliffe LLP to continue to provide legal services related to the financing of improvements at the Norman Y. Mineta San Jose International Airport and the City's outstanding Airport revenue debt.

### BACKGROUND

On September 12, 2001, the City entered into an agreement for legal services with Orrick Herrington & Sutcliffe LLP ("Orrick"), in an amount not to exceed \$50,000, and with an initial term to expire on June 30, 2002. Under this agreement, which has been extended annually since 2001, Orrick has provided legal and technical advice on issues related to financing improvements at the Norman Y. Mineta San Jose International Airport as well as issues involving the City's outstanding Airport revenue debt, as requested by the City Attorney.

This agreement has since been amended to increase total compensation to an amount not to exceed \$475,000, with the current term to expire on June 30, 2011.

## **ANALYSIS**

Orrick has provided services related to the Airport finance issues for a number of years. Since 2001, Orrick has provided legal services regarding methods to finance Airport improvements as well as advice concerning the City's outstanding Airport revenue bonds and the Airport's subordinated commercial paper program (the "CP Program"). These services generally have involved advice regarding federal income tax issues, revisions to the CP Program and the expansion of the CP Program in response to the disruption in the variable rate municipal bond market.

The City Attorney's Office has retained Orrick due to the firm's breadth of experience in the area of municipal finance generally and the City's Airport revenue debt specifically. It would not be in the public interest to conduct a competitive process for these services in light of: (1) Orrick's experience and expertise in municipal finance; and (2) the need for continuity as the Airport's debt portfolio has become more complex due to the financings required to implement the first phase of the Airport Master Plan.

The compensation under the agreement with Orrick needs to be increased due to the extensive negotiations with the four banks that recently issued letters of credit in support of the CP Program. Although these negotiations were anticipated to be complex, they were more time intensive than was originally anticipated due to the need to separately negotiate terms with each of the four banks. Additionally, as a result of the tight credit market, the banks' terms and conditions were more numerous and stringent than in the existing letter of credit agreements. This required both Orrick and this Office to spend significant time in reviewing and providing comments to multiple drafts of the proposed agreements and advising staff.

The amendment entered into last year with Orrick extended the term to June 30, 2011 and increased the compensation by \$50,000. The proposed amendment would extend the term to June 30, 2012 and increase the compensation by \$60,000. This amendment is required to continue the services related to Airport finance issues, including but not limited to, the permissible expenditures of the Airport revenue bonds remaining after the Airport Master Plan projects are completed, and the extension of the letter of credit issued by Lloyds Bank in support of the CP Program.

Orrick will serve as bond counsel for the issuance of Airport Revenue Bonds to refund outstanding commercial paper notes. Those services will be rendered under a separate agreement which will be brought forward for Council approval at a later date. It is anticipated that the compensation to be paid to Orrick for those services will be contingent on issuance of the Airport Revenue Bonds and will be paid from the bond proceeds.

**PUBLIC OUTREACH/INTEREST**

This memo is posted on the City's website for the March 1, 2011 Council Agenda.

**COORDINATION**

This item has been coordinated with the Airport Department.

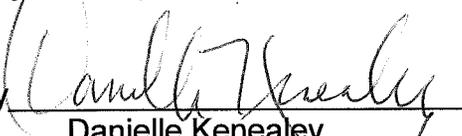
**BUDGET REFERENCE**

Fund #	Appn #	Appn. Name	Total Appn	Amt. for Contract	Adopted Budget Page	Last Action (Date, Ord. No.)	Budget (Date, Ord. No.)
523	0802	Non-personal/Equipment	\$42,053,107	\$60,000	XI-3	10/26/10, Ord. No. 28835	

**CEQA**

Not a Project; PP10-066, services that involve no physical changes to the environment.

RICHARD DOYLE  
City Attorney

By   
Danielle Kenealey  
Chief Deputy City Attorney

cc: Debra Figone

For questions please contact DANIELLE KENEALEY, Chief Deputy City Attorney, at (408) 535-1916