

## **SPECIAL MINUTES OF THE CITY COUNCIL**

**SAN JOSE, CALIFORNIA**

**TUESDAY, MAY 31, 2011**

The Council of the City of San José convened in Special Session at 10:01 a.m. in the Council Chambers at City Hall.

Present: Council Members - Campos, Chu, Constant, Liccardo, Nguyen, Pyle, Rocha; Reed.

Absent: Council Members - Herrera, Kalra, Oliverio. (Excused)

### **ORDERS OF THE DAY**

Upon motion by Council Member Constant, seconded by Vice Mayor Nguyen and carried unanimously, the Orders of the Day and the Amended Agenda were approved. (8-0-3. Absent: Herrera, Kalra, Oliverio.)

### **CLOSED SESSION**

Upon motion unanimously adopted, Council recessed at 10:03 a.m. to a Closed Session in Room W133 (A) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI. (2) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA. (3) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP. (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP. (5) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working

## **CLOSED SESSION (Cont'd.)**

Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO. (6) International Association of Firefighters, Local 230 (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters. (7) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW. (8) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (9) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3. (10) San José Police Officers' Association (SJPOA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (11) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc. Web: <http://www.sanjoseca.gov/employeerelations/moa.asp>; Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 10:45 a.m. and reconvened to Regular Session at 11:00 a.m. in the Council Chambers.

Present: Council Members - Campos, Chu, Constant, Herrera, Kalra, Liccardo, Nguyen, Oliverio, Pyle, Rocha; Reed.

Absent: Council Members - All Present.

## **PLEDGE OF ALLEGIANCE**

Mayor Reed led the Pledge of Allegiance.

## **CONSENT CALENDAR**

- 2.1 As recommended by the Rules and Open Government Committee on May 25, 2011, approve a support position for ACA 4 (Blumenfield) – Local Government Financing: Voter Approval. (Transportation)**

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, CMC, dated May 25, 2011, transmitting the recommendations of the Rules and Open Government Committee.

## 2.1 (Cont'd.)

Action: Upon motion by Council Member Pyle, seconded by Vice Mayor Nguyen and carried, a support position for ACA 4 (Blumenfield) – Local Government Financing: Voter Approval, was approved. (10-0-1. Noes: Constant.)

## 2.2 **As recommended by the Rules and Open Government Committee on May 25, 2011, approve an oppose position for AB 506 (Wieckowski) – Local Government: Bankruptcy: Mediation. (Finance/City Manager’s Office)**

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, CMC, dated May 25, 2011, transmitting the recommendations of the Rules and Open Government Committee.

Director of Intergovernmental Relations Betsy Shotwell responded to questions from Council Member Campos.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Herrera and carried, an oppose position for AB 506 (Wieckowski) – Local Government: Bankruptcy: Mediation was accepted. (9-2. Noes: Campos, Kalra.)

## STRATEGIC SUPPORT SERVICES

### 3.2 **Adopt a resolution approving the terms of a collective bargaining agreement for the period of July 1, 2011, through June 30, 2013, between the City and the Association of Building, Mechanical, and Electrical Inspectors (ABMEI). CEQA: Not a Project, File No. PP10-069(b), Personnel Related Decisions. (City Manager’s Office)**

Documents Filed: Memorandum from Director of Employee Relations Alex Gurza, dated May 17, 2011, recommending adoption of a resolution.

City Manager Debra Figone presented introductory remarks. Office of Employee Relations Manager Gina Donnelly presented the staff report.

Action: Upon motion by Council Member Constant, seconded by Council Member Herrera and carried, Resolution No. 75810, entitled: “A Resolution of the Council of the City of San José Approving an Agreement Between the City of San José and the Association of Building, Mechanical and Electrical Inspections (ABMEI) with a Term of July 1, 2011 through June 30, 2013”, was adopted. (10-1. Noes: Liccardo.)

### 3.5 **Adopt a resolution approving the terms of an agreement with, or approving the implementation of terms contained in the City’s Last, Best and Final Offer to the Association of Legal Professionals of San Jose (ALP). CEQA: Not a Project, File No. PP10-069(b), personnel-related decisions. (City Manager’s Office)**

### 3.5 (Cont'd.)

Documents Filed: (1) Memorandum from Office of Employee Relations Manager Gina Donnelly, dated May 17, 2011, recommending adoption of a resolution. (2) Supplemental memorandum dated May 27, 2011, transmitting the information that a mediated tentative agreement was reached with ALP on May 27, 2011. (3) Letter from William Clark, President, Association of Legal Professionals, dated May 26, 2011, rejecting the City's Last, Best and Final Offer to the Association of Legal Professionals.

Office of Employee Relations Manager Gina Donnelly presented the report.

Action: Upon motion by Council Member Constant, seconded by Council Member Herrera and carried, Resolution No. 75813, entitled: "A Resolution of the Council of the City of San José Approving an Agreement Between the City of San José and the Association of Legal Professionals of San José (ALP) with a Term of July 1, 2011 through June 30, 2012", was adopted. (10-1. Noes: Liccardo.)

### 3.3 **Adopt a resolution approving the terms of an agreement with, or approving the implementation of terms contained in the City's Last, Best and Final Offer to the International Brotherhood of Electrical Workers, Local No. 332 (IBEW). CEQA: Not a Project, File No. PP10-069(b), personnel-related decisions. (City Manager's Office)**

*Items 3.3, 3.4, 3.6 and 3.7 were heard together.*

Documents Filed: Memorandum from Director of Employee Relations Alex Gurza, dated May 17, 2011, recommending adoption of a resolution.

Office of Employee Relations Manager Gina Donnelly presented the report on the negotiations.

Public Comments: Speaking in opposition to the implementation of terms contained in the City's Last, Best and Final Offer to the International Brotherhood of Electrical Workers, Local No. 332 (IBEW), the International Union of Operating Engineers, Local No. 3 (OE3), the Municipal Employees' Federation, AFSCME, Local No. 101 (MEF) and the Confidential Employees' Organization, AFSCME, Local No. 101 (CEO) were Dan Rodriguez, (IBEW), Bob Brownstein, Ben Field, South Bay Labor Council, John Freeseaman, Holy Redeemer Lutheran Church, Jon Max Reger, Bill Pope, Local 3, Yolanda Cruz, Paul Prange, Gerry Chappuis, AFSCME MEF, LaVerne Washington, Mike Enderby and Cheri Good.

City Manager Debra Figone presented closing comments.

Motion: Council Member Constant moved approval of the implementation of terms contained in the City's Last, Best and Final Offer for Items 3.3, 2.4, 3.6 and 3.7. Council Member Oliverio seconded the motion.

### **Items 3.3, 3.4, 3.6, 3.7 (Cont'd.)**

Director of Employee Relations Alex Gurza and Office of Employee Relations Senior Executive Analyst Aracely Rodriquez responded to Council questions.

Mayor Reed, Vice Mayor Nguyen and Council Member Herrera expressed support to the motion.

Council Members Campos and Kalra expressed opposition to the motion on the floor.

Mayor Reed adjourned the morning Council session at 12:32 p.m.

### **RECESS/RECONVENE**

The City Council recessed at 12:32 p.m. from the afternoon Council Session and reconvened at 1:04 p.m. in the Council Chambers, City Hall.

Present: Council Members - Campos, Chu, Constant, Herrera, Nguyen, Kalra, Liccardo, Oliverio, Pyle, Rocha; Reed.

Absent: Council Members - All Present.

### **STRATEGIC SUPPORT SERVICES**

#### **Items 3.3, 3.4, 3.6, 3.7 from the morning Council Session (Cont'd.)**

City Attorney Richard Doyle responded to Council questions.

Council Member Chu expressed opposition to the motion and stated that he did not support the timing and that Staff should continue with good faith bargaining.

Action: On a call for the question, the motion carried, Resolution No. 75811, entitled: "A Resolution of the Council of the City of San José Approving Implementation of the Terms Contained in the City's Last, Best and Final Offer to the International Brotherhood of Electrical Workers, Local No. 332 (IBEW), Effective June 25, 2011", was adopted. (8-3. Noes: Campos, Chu, Kalra.)

- 3.4 Adopt a resolution approving the terms of an agreement with, or approving the implementation of terms contained in the City's Last, Best and Final Offer to the International Union of Operating Engineers, Local No. 3 (OE3). CEQA: Not a Project, File No. PP10-069(b), personnel-related decisions. (City Manager's Office)**

Documents Filed: Memorandum from Director of Employee Relations Alex Gurza, dated May 17, 2011, recommending adoption of a resolution.

### 3.4 (Cont'd.)

Action: Upon motion by Council Member Constant, seconded by Council Member Oliverio and carried, Resolution No. 75812, entitled: “A Resolution of the Council of the City of San José Approving Implementation of the Terms Contained in the City’s Last, Best and Final Offer to the International Union of Operating Engineers, Local No. 3 (OE3), Effective June 25, 2011”, was adopted. (8-3. Noes: Campos, Chu, Kalra.)

### 3.6 **Adopt a resolution approving the terms of an agreement with, or approving the implementation of terms contained in the City’s Last, Best and Final Offer to the Municipal Employees’ Federation, AFSCME, Local No. 101 (MEF). CEQA: Not a Project, File No. PP10-069(b), personnel-related decisions. (City Manager’s Office)**

Documents Filed: (1) Memorandum from Council Member Pyle, dated May 31, 2011, recommending approval of the Staff recommendations. (2) Memorandum from Director of Employee Relations Alex Gurza, dated May 17, 2011, recommending adoption of a resolution. (3) Memorandum from AFSCME/MEF to the Mayor and the City Council, dated April 18, 2011, strongly objecting to the City’s request to roll back the 2010 MOA wage increase and transmitting a petition of approximately one thousand employees (MEF) signatures in objection.

Action: Upon motion by Council Member Constant, seconded by Council Member Oliverio and carried, Resolution No. 75814, entitled: “A Resolution of the Council of the City of San José Approving Implementation of the Terms Contained in the City’s Last, Best and Final Offer to the Municipal Employees Federation (MEF), Effective June 25, 2011”, was adopted. (8-3. Noes: Campos, Chu, Kalra.)

### 3.7 **Adopt a resolution approving the terms of an agreement with, or approving the implementation of terms contained in the City’s Last, Best and Final Offer to the Confidential Employees’ Organization, AFSCME, Local No. 101 (CEO). CEQA: Not a Project, File No. PP10-069(b), personnel-related decisions. (City Manager’s Office)**

Documents Filed: (1) Memorandum from Council Member Pyle, dated May 31, 2011, recommending approval of the Staff recommendations. (2) Memorandum from Director of Employee Relations Alex Gurza, dated May 17, 2011, recommending adoption of a resolution.

Action: Upon motion by Council Member Constant, seconded by Council Member Oliverio and carried, Resolution No. 75815, entitled: “A Resolution of the Council of the City of San José Approving Implementation of the Terms Contained in the City’s Last, Best and Final Offer to the Confidential Employees Organization, AFSCME, Local 101 (CEO), Effective September 18, 2011”, was adopted. (8-3. Noes: Campos, Chu, Kalra.)

## **ENVIRONMENTAL & UTILITY SERVICES**

- 7.1**
- (a)** Accept the report on bids and, subject to staff's evaluation of any protests and further report to City Council, award of contract for the San José Environmental Innovation Center (Project) ReBid to the lowest bidder, Applegate Johnston, Inc., to include the base bid of \$10,624,000 and Add Alternates #1 and 2 in the amount of \$470,935.
  - (b)** Adopt a resolution authorizing the Director of Public Works to approve a contingency amount of \$1,330,000 for the Project, conditioned upon the necessary appropriation actions by City Council.
  - (c)** Approve the third amendment to the master agreement for consultant services with Group 4 Architecture Research + Planning, Inc. (Group 4) for the Project, to modify the scope of services and increase the amount of compensation by \$187,000 for a total agreement amount not to exceed \$2,980,000.
  - (d)** Adopt the following 2010-2011 Appropriation Ordinance and Funding Source Resolution amendments in the Integrated Waste Management Fund:
    - (1)** Increase the Estimate for Earned Revenue by \$2,209,000.
    - (2)** Establish a Transfer from the Sewer Service and Use Charge Fund in the amount of \$1,539,454.
    - (3)** Establish a Transfer from the Storm Sewer Operating Fund in the amount of \$200,000.
    - (4)** Increase the appropriation for Household Hazardous Waste Las Plumas Facility by \$10,708,454.
    - (5)** Decrease the appropriation to the Environmental Services Department for Non-Personal/Equipment by \$125,000.
    - (6)** Decrease the Reserve for the Environmental Innovation Center by \$6,635,000.
  - (e)** Adopt the following 2010-2011 Appropriation Ordinance amendments in the Sewer Service and Use Charge Fund:
    - (1)** Establish a transfer to the Integrated Waste Management Fund in the amount of \$1,539,454.
    - (2)** Decrease the Ending Fund Balance by \$1,539,454.
  - (f)** Adopt the following 2010-2011 Appropriation Ordinance amendments in the Storm Sewer Operating Fund:
    - (1)** Establish a transfer to the Integrated Waste Management Fund in the amount of \$200,000.
    - (2)** Decrease the Ending Fund Balance by \$100,000.
    - (3)** Decrease the Non-Personal/Equipment appropriation to the Environmental Services Department by \$100,000.

**CEQA: Negative Declaration for the renovation for the EIC was adopted on December 1, 2009, File No. PP09-138. Council District 3. (Environmental Services/ Public Works/City Manager's Office)**

## 7.1 (Cont'd.)

Documents Filed: (1) Memorandum from Acting Director of Public Works David Sykes, Director of Environmental Services John Stufflebean and Budget Director Jennifer A. Maguire, dated May 12, 2011, recommending acceptance of the award of the contract to the lowest bidder, adoption of a resolution, approval of the third amendment to the master agreement, appropriation ordinance and funding sources resolution amendments and appropriation ordinance amendments. (2) Supplemental memorandum from Acting Director of Public Works David Sykes and Director of Environmental Services John Stufflebean, dated May 23, 2011, providing additional information on the rebid, including a bid protest and clarification on the alternative funding strategy for the remaining project costs if the City is unable to execute a New Markets Tax Credit financing transaction. (3) Memorandum from Acting Director of Public Works David Sykes, dated May 26, 2011, providing additional information on the rebid project in reference to the Advisory letter from California Arizona Nevada District Organization Contract Compliance (CANDO) sent to the City of May 23, 2011. (4) Staff presentation dated May 31, 2011 summarizing the Award of the Contract for the Environmental Innovation Center. (5) Letter from Weinberg, Roger and Rosenfeld, dated May 31, 2011, regarding the award of the contract for Construction of the San José Environmental Innovation Center Project Rebid.

Acting Director of Public Works David Sykes presented the report.

Council Member Liccardo expressed concern about issues of compliance.

Motion: Council Member Liccardo moved approval of the Staff recommendations. Council Member Herrera seconded the motion.

Public Comments: Speaking to the award of contract for the San José Environmental Innovation Center Project in opposition and in favor were Dan Prince and Patty Gates, Ironworkers Location 377, Nina Fendel, California Arizona Nevada District Organization Contract Compliance (CANDO), Neil Struthers, Building Trades Council, John Ralls, Applegate Johnston Inc. and James Daniels, J.R. Daniels.

City Attorney Richard Doyle offered clarification and comments.

Council Member Liccardo requested to amend his motion to include the requirement that the substitution be in writing (not waived). Council Member Herrera accepted the amendment.

Action: On a call for the question, the motion carried unanimously, the report on bids and, subject to staff's evaluation of any protests and further report to City Council was accepted, the award of contract for the San José Environmental Innovation Center (Project) ReBid to the lowest bidder, Applegate Johnston, Inc., to include the base bid of \$10,624,000 and Add Alternates #1 and 2 in the amount of \$470,935, including the requirement that the substitution be in writing (not waived), and the third amendment to



## 7.1 (Action Cont'd.)

the master agreement for consultant services with Group 4 Architecture Research + Planning, Inc. (Group 4) for the Project, to modify the scope of services and increase the amount of compensation by \$187,000 for a total agreement amount not to exceed \$2,980,000, were approved; Resolution No. 75816, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Public Works to Approve a Contingency Amount of \$1,330,000 for the San José Environmental Innovation Center Project Rebid, Conditioned Upon the Necessary Appropriation Actions by Council"; Ordinance No. 28920, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28765 to Appropriate Monies in the Integrated Waste Management Fund for the Household Hazardous Waste Las Plumas Facility; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; Resolution No. 75817, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 75447 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2010-2011 to Adjust Revenues in the Integrated Waste Management Fund"; Ordinance No. 28921, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28765 to Appropriate Monies in the Sewer Service and Use Charge Fund for the Integrated Waste Management Fund; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption" and Ordinance No. 28922, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28765 to Appropriate Monies in the Storm Sewer Operating Fund for the Integrated Waste Management Fund; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption" were adopted. (11-0.)

## ADJOURNMENT

Upon motion unanimously adopted, Council recessed at 1:59 p.m. to reconvene in Closed Session in Room W133.

The Council of the City of San José was adjourned at 2:00 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis D. Hawkins, CMC  
City Clerk

smd/05-31-11 SPEC MIN

Access the video, the agenda and related reports for this meeting by visiting the City's website at <http://www.sanjoseca.gov/clerk/agenda.asp> or <http://www.sanjoseca.gov/clerk/MeetingArchive.asp>. For information on any ordinance that is not hyperlinked to this document, please contact the Office of the City Clerk at (408) 535-1266.