



Sent to Council:

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JUN - 7 2011
City Manager's Office

Memorandum

**TO: HONORABLE MAYOR
AND CITY COUNCIL**

FROM: Nadine Nader

SUBJECT: Early Council Packet

DATE: June 7, 2011

Approved /s/ Deanna J. Santana

Date 6/7/11

EARLY DISTRIBUTION COUNCIL PACKET FOR JUNE 21, 2011

Please find attached the Early Distribution Council Packet for the June 21, 2011 Council Meeting.

2.x Agreement for Airport Marketing Communications Consulting Services.

Recommendation:

- (a) Approve consultant master agreements with Hoffman|Lewis, Inc. and with Barnestorming Advertising to provide marketing and communications support services to Mineta San José International Airport for two-year terms beginning July 1, 2011, through June 30, 2013, in a total amount for both agreements not to exceed \$520,000; and
- (b) Adopt a resolution authorizing the City Manager to exercise up to two (2) one-year options to extend the terms of these agreements on a fiscal-year basis to June 30, 2013, in amounts not to exceed a total of \$260,000 per year, for a total four-year contract amount for both not to exceed \$1,040,000.

CEQA: Resolutions No. 67380 and 71451, PP 08-086. (Airport)

TO BE DISTRIBUTED SEPARATELY

2.x Establish Open Purchase Orders for the Purchase of Fuel and Petroleum Products.

Recommendation: Adopt a resolution authorizing the Director of Finance to:

- (a) Establish unencumbered Open Purchase Orders for the purchase of fuel and petroleum products with three fuel vendors for a total aggregate amount not to exceed \$5,800,000, for the period July 1, 2011 to June 30, 2012 as follows:
 - (1) Western States Oil Company (San Jose, CA) not to exceed \$4,060,000.
 - (2) Coast Oil Company (San Jose, CA) not to exceed \$580,000.
 - (3) Valley Oil Company (Mountain View) not to exceed \$1,160,000.

- (b) Increase or decrease the not-to-exceed amount for each purchase order as required due to the volatility in fuel prices; subject to the appropriation of funds.

CEQA: Not a Project, File No. PP10-066(a), agreements and contracts. (Finance)

2.x Agreements for Employee Assistance Program.

Recommendation:

- (a) Adopt a resolution authorizing the City Manager to negotiate and execute amendments to the following three current agreements between the City and MHN Services to extend each agreement for a period of six months, from July 1, 2011 to December 31, 2011:
 - (1) Employee Assistance Program for sworn employees at an added cost not to exceed \$254,500, and a total cost not to exceed \$2,500,000 for the total Agreement term,
 - (2) Employee Assistance Program for non-sworn employees at an added cost not to exceed \$64,000, and a total cost not to exceed \$610,000 for the total Agreement term, and
 - (3) Critical Incident Stress Debriefing for sworn employees at an added cost not to exceed \$7,500, and a total cost not to exceed \$35,000 for the total Agreement term.
- (b) For all three agreements together, extending the term for a period of six additional months will result in total costs not to exceed \$326,000 for the period of July 1, 2011 to December 31, 2011, and for total costs not to exceed \$3,145,000 for the entire four years and three months term, from October 1, 2007 to December 31, 2011.

CEQA: Not a Project, File No. PP10-066 (e). (Human Resources)

2.x Agreements with Standard Insurance Company.

Recommendation: Adopt a resolution authorizing the City Manager to negotiate and execute amendments to extend the two (2) current group life insurance agreements between the City and Standard Insurance Company for a period of six (6) months, from July 1, 2011 to December 31, 2011, to add compensation for a total contract cost not to exceed \$5,620,000, subject to the appropriation of available funds as follows:

- (a) Master Insurance Agreement.
 - (1) Basic Life Insurance. City-paid basic life insurance for employees at a total additional cost not to exceed \$236,000.
 - (2) Basic Life Insurance. Retiree-paid basic life insurance for retirees at a total additional cost not to exceed \$86,000.
 - (3) Additional Life Insurance – Employees. Employee-paid additional life insurance at a total additional cost not to exceed \$193,000.

- (4) Dependent Life Insurance – Employees and Retirees. Employee and retiree-paid dependent life insurance at a total additional cost not to exceed \$13,000.
- (b) Agreement for Additional Life Insurance for Retirees.
 - (1) Retiree-paid, additional life insurance at a total additional cost not to exceed \$20,000.

CEQA: Not a Project, File No. PP10-066 (c). (Human Resources)

2.x Grant Agreement with Santa Clara Valley Water District for the Penitencia Creek Reach 1B Project.

Recommendation: Adopt a resolution authorizing the City Manager to accept, negotiate, and execute a grant agreement with the Santa Clara Valley Water District the amount of \$300,000 for the Penitencia Creek Reach 1B (Dorel Drive to Noble Avenue) Trail project with a City contribution of \$1,200,000 and to make the required commitments and assurances as set forth in the staff memorandum. CEQA: Mitigated Negative Declaration, File No. PP06-111. (Parks, Recreation and Neighborhood Services)

3.x Approval of Various Budget Actions for Fiscal Year 2010-2011.

Recommendation: Adopt amendments to the annual appropriation ordinance and funding sources resolution for various operating and capital funds to reflect estimated 2010-2011 revenue receipts, expenses, and encumbrances. CEQA: Not a Project, File No. PP10-067 (b), Appropriation Ordinance. (City Manager's Office)

TO BE DISTRIBUTED SEPARATELY

3.x Adoption of the Annual Appropriation Ordinance and Annual Funding Sources Resolution for the Fiscal Year 2011-2012 Budget, and Resolution Establishing the Fiscal Year 2011-2012 Appropriation Limit.

Recommendation:

- (a) Adopt the Annual Appropriation Ordinance, including transfers and loans for Fiscal Year 2011-2012 and the Manager's Final Budget Addendum.
- (b) Adopt the Annual Funding Sources Resolution for Fiscal Year 2011-2012 and the Manager's Final Budget Addendum.
- (c) Adopt a resolution in compliance with Article XIII B of the Constitution of the State of California and as modified by Proposition 111 and SB 88 electing the population and inflation factors and establishing the Fiscal Year 2011-2012 Appropriation Limit.

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

TO BE DISTRIBUTED SEPARATELY

3.x Issuance of City of San Jose Airport Revenue Bonds, Series 2011A.

Recommendation:

- (a) Hold a TEFRA (Tax Equity and Fiscal Responsibility Act) hearing with respect to the proposed issuance by the City of tax-exempt airport revenue bonds and subordinated airport commercial paper notes in an aggregate principal amount not to exceed \$320,000,000 pursuant to a plan of financing in order to provide proceeds to finance or refinance all or a portion of the costs of acquisition, construction, equipping, financing, reconstruction, development, and modification of airport facilities that are included in or are consistent with the Airport Master Plan for the Airport.
- (b) Adopt the Sixteenth Supplemental Resolution (the "Resolution") of the City Council authorizing the issuance of City of San José Airport Revenue Bonds, Series 2011A in one or more series (the "2011A Bonds") in a total aggregate principal amount of not to exceed \$300,000,000 to be sold through negotiated sale; approving in substantially final form the Seventh Supplemental Trust Agreement, the Preliminary Official Statement, the Bond Purchase Agreement, the Escrow Agreement and the Continuing Disclosure Certificate; authorizing the distribution of one or more Preliminary Official Statements and the Final Official Statements; and authorizing and approving other related actions in connection with the issuance of the Series 2011A Bonds.
- (c) Adopt a resolution authorizing the City Manager to negotiate and execute an Agreement by and among the City, Public Financial Management and Public Resources Advisory Group for financial advisory services in connection with the issuance of the City of San José Airport Revenue Bonds Series 2011A and Series 2011B in an amount not to exceed \$400,000.
- (d) Adopt a resolution authorizing the City Attorney to negotiate and execute an Agreement with Orrick, Herrington & Sutcliffe LLP for bond and disclosure counsel services in connection with the issuance of the City of San José Airport Revenue Bonds Series 2011A and Series 2011B in an amount not to exceed \$350,000.

CEQA: Resolutions No. 67380 and 71451, File No. PP 07-149. (Finance)

3.x Agreements for Revenue Enhancement Services Relating to Sales and Use Tax, Utility Users Tax and Franchise Fees, and Lodging Taxes and Fees.

Recommendation: Adopt resolutions to:

- (a) Authorize the Director of Finance to negotiate and execute the following agreements with:
 - (1) MuniServices to provide Sales and Use Tax revenue enhancement services and data analysis for the term of July 1, 2011 through June 30, 2014 at a maximum annual compensation not to exceed \$415,000, with two one-year options to extend through June 30, 2016, at the same rate of

- compensation for each additional optional year subject to the City Council's annual appropriation of funds;
- (2) Tax Compliance Services to provide Utility Users Tax and Franchise Fee compliance services for the term of July 1, 2011 through June 30, 2014 at a maximum annual compensation not to exceed \$127,800, with two one-year options to extend through June 30, 2016, at the same rate of compensation for each additional optional year subject to the City Council's annual appropriation of funds; and
 - (3) Tax Compliance Services to provide Lodging Taxes and Fees compliance services for the term of July 1, 2011 through June 30, 2014 at a maximum annual compensation not to exceed \$46,125, with two one-year options to extend through June 30, 2016, at the same rate of compensation for each additional optional year subject to the City Council's annual appropriation of funds.
- (b) Authorize MuniServices to examine all Sales and Use Tax records of the California State Board of Equalization for tax collection purposes and other governmental functions of the City.
- CEQA: Not a Project, File No. PP10-069, City organizational and administrative activities. (Finance)

3.x Tax and Revenue Anticipation Note.

Recommendation:

- (a) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund for Fiscal Year 2011-2012:
 - (1) Increase the estimate for Other Revenue in the amount of \$125,000,000;
 - (2) Increase the estimate for Use of Money and Property in the amount of \$50,000; and
 - (3) Increase the City-wide appropriation to the Finance Department for TRANs Debt Service by the amount of \$125,050,000.
- (b) Adopt a resolution to:
 - (1) Authorize the issuance and sale of the City of San José 2011 Tax and Revenue Anticipation Note ("2011 Note") in the not to exceed aggregate principal amount of \$125,000,000 to be sold through a private placement; and
 - (2) Approve, in substantially final form, the Note Purchase Agreement and authorizing the Director of Finance or other authorized officers to execute the Note Purchase Agreement and other related documents, as necessary, in connection with the issuance of the 2011 Note and authorizing other related actions in connection therewith.
 - (3) Adopt a resolution authorizing the Director of Finance to negotiate and execute a third amendment to the agreement with Public Resources Advisory Group ("PRAG") serving as the City General Financial Advisor

to increase the total not to exceed compensation amount authorized under the agreement from \$350,000 to \$450,000.

CEQA: Not a Project, File No. PP10-069, City organizational and administrative activities. (Finance/City Manager's Office)

TO BE DISTRIBUTED SEPARATELY

3.x Actions Related to the Receipt of Funds for the Early Retiree Reinsurance Program.

Recommendation:

- (a) Approve a resolution to accept funds from Health and Human Services in the amount of \$1,276, 177 for the Early Retirement Reinsurance Program (ERRP)
- (b) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund for 2011-2012:
 - (1) Increase the estimate for Revenue from the Federal Government in the amount of \$1,276,177;
 - (2) Establish an earmarked reserve for Early Retiree Reinsurance Program (ERRP) in the amount of \$1,276,177.

(Human Resources/City Manager's Office)

TO BE DISTRIBUTED SEPARATELY

5.x Implementation of School of Arts & Culture at Mexican Heritage Plaza.

Recommendation:

- (a) Adopt a resolution authorizing the City Manager to negotiate and execute an Interim Incubator Operator Agreement with 1stACT Silicon Valley, for the management and operation of the Plaza based on business terms and conditions described in this memorandum for a term not to exceed 3 years at a maximum total compensation not to exceed \$1,485,000, subject to the City Council's annual appropriation of funds for the operating payments.
- (b) Adopt a resolution to amend the FY 2011-2012 Schedule of Fees and Charges (Resolution No. 72737, as amended) to suspend the use and rental fees for Mexican Heritage Plaza for so long as the City is not operating the facility.

CEQA: Exempt, File No. PP10-097. Council District 5. SNI Area: Mayfair. (Public Works/Office of Economic Development)

5.x Parks, Recreation and Neighborhood Services 2011-2012 Agreements.

Recommendation: Adopt a resolution authorizing the following, subject to the appropriation of funds by the City Council, and on such terms and conditions as deemed appropriate by the City Manager:

- (a) Authorize the City Manager to negotiate and execute all agreements and amendments for the Department of Parks, Recreation and Neighborhood Services identified on Attachment A of the staff memorandum consistent with the 2011-2012 Proposed Budget;

- (b) Authorize the City Manager to negotiate and execute agreements and amendments to accept grant funds identified in Attachment B of the staff memorandum;
- (c) Authorize the City Manager to negotiate and execute a four-month extension of the agreement with the County of Santa Clara for the Senior Nutrition Agreement into the first four months of 2011-2012 and to accept grant funds for that period in amounts consistent with budgeted amount in the 2010-2011 agreement, until a new agreement for 2011-2012 is finalized with the County;
- (d) Authorize the Director of Parks, Recreation and Neighborhood Services to negotiate and execute 2011-2012 contracts and amendments consistent with Adopted Budget amounts for the following grant programs:
 - (1) Bringing Everyone's Strengths Together (B.E.S.T.)
 - (2) Safe Summer Initiative Grant (S.S.I.G.)
 - (3) Mayor's Gang Prevention Task Force Memorandums of Understanding
- (e) Authorize the City Manager or designee to negotiate and execute 2011-2012 contracts and amendments consistent with Adopted Budget amounts for the following:
 - (1) Children's Health Initiative
 - (2) General Fund Grants (formerly known as Healthy Neighborhoods Venture Fund - HNVF)
- (f) Authorize the City Manager to execute the Third Amendment to the Park Maintenance Agreement between the City of San Jose and Hitachi Technologies, Inc. to extend the term of maintenance agreement from June 30, 2011 to June 30, 2012 for the Ramac, Raleigh Linear Green and Charlotte Commons parks at no cost to the City.

CEQA: Grace Baptist Church, Not a Project, File PP10-066(e), Lease of Existing Space; Kids Love Soccer, Not a Project, File PP10-066(e), Consultant Services; Children's Health Initiative, Not a Project, File PP10-066(e), Services that involve no change to the environment; Hitachi Technologies, Mixed Use Transit Village, EIR, Resolution No. 72772; B.E.S.T., Not a Project, File PP10-066(e), Services that involve no change to the environment; General Fund Grants, Not a Project, File PP10-066(e), Services that involve no change to the environment; Alum Rock School District, Not a Project, File PP10-066(e), Services that involve no change to the environment; COPS Urban Violence Grant, Not a Project, File PP10-066(e), Services that involve no change to the environment; County of Santa Clara – Mental Health Services, Not a Project, File PP10-066(e), Services that involve no change to the environment; First 5 of Santa Clara County, Not a Project, File PP10-066(e), Services that involve no change to the environment; County of Santa Clara Agreement for Senior Nutrition Program, Not a Project, File PP10-066(e), Services that involve no change to the environment. (Parks, Recreation and Neighborhood Services)

6.x Monterey Road Resurfacing Rehabilitation Project.

Recommendation:

- (a) Adopt a resolution authorizing the Director of Public Works to:
 - (1) Determine the lowest responsive and responsible bidder and to award a construction contract for the 2010 STP Resurfacing and Rehabilitation Project–Monterey Road to the lowest responsive bidder, in an amount not to exceed the funds appropriated for the project, or to reject all bids and re-bid the project; and
 - (2) Determine whether or not to award the “green” resurfacing process bid alternate as part of the construction contract, provided that awarding this bid alternate would not cause the construction contract to exceed the amount of funds appropriated for the project.
- (b) Approve a contingency equal to five percent of the base contract award amount.
CEQA: Exempt, File No. PP11-035. Council District 2. (Transportation)

7.x Public Hearing on a Commercial Solid Waste and Recyclables Collection Franchise.

Recommendation:

- (a) Read and consider the California Environmental Quality Act Initial Study and Negative Declaration for Commercial Collection System Redesign (Planning File No. PP10-157) and adopt by Resolution.
- (b) Hold a public hearing on the application of Allied Waste Services of Santa Clara County for Commercial Solid Waste and Recyclable Material Collection Franchises for the North and South Service Districts, approval of an ordinance granting the franchises, and approval of a Commercial Solid Waste and Recyclable Material Collection Franchises Agreement with Allied Waste Services of Santa Clara County for a term from September 13, 2011 through June 30, 2027.
- (c) Direct staff to return to Council in 2011-2012 with proposed ordinances or resolutions for adoption needed to implement the new commercial solid waste system, including establishing maximum customer service rates.
CEQA: Negative Declaration, File No. PP10-157. (Environmental Services/Planning, Building and Code Enforcement)

7.x Agreement with Zero Waste Energy Development Company, LLC, for Commercial Organic Waste Processing.

Recommendation: Adopt a resolution authorizing the City Manager to negotiate and execute a Commercial Organic Waste Processing Services Agreement with Zero Waste Energy Development Company, LLC, in substantial compliance with the terms specified in the draft Agreement, for a term from July 1, 2011 through June 30, 2027 with an initial service mobilization period from July 1, 2011 through June 30, 2012, and services to

HONORABLE MAYOR AND CITY COUNCIL

June 7, 2011

Early Distribution Packet

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begin July 1, 2012 at a first year annual cost not to exceed \$6,000,000, subject to appropriation of funds. CEQA: Mitigated Negative Declaration for Special Use Permit for a 270,000 ton per year dry fermentation anaerobic digestion facility to process the organic portion of solid waste, File No. SP09-057. (Environmental Services)

TO BE DISTRIBUTED SEPARATELY

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

/s/

NADINE NADER

Assistant to the City Manager



Subject: ESTABLISH OPEN PURCHASE ORDERS FOR FUEL

**Council Agenda: 6/21/11
Item:**

City Council Action Request

Department: Public Works	CEQA: Not a Project, File No. PP10-066(a) Agreements and Contracts	Coordination: Public Works Department, City Attorney's Office, City Manager's Budget Office	CMO Approval: 
			Dept. Approval: /s/ Scott Johnson

RECOMMENDED ACTION:

Adopt a resolution authorizing the Director of Finance to:

- Establish unencumbered Open Purchase Orders for the purchase of fuel and petroleum products with three fuel vendors for a total aggregate amount not to exceed \$5,800,000, for the period July 1, 2011 to June 30, 2012 as follows:
 - Western States Oil Company (San Jose, CA) not to exceed \$4,060,000
 - Coast Oil Company (San Jose, CA) not to exceed \$580,000
 - Valley Oil Company (Mountain View) not to exceed \$1,160,000
- Increase or decrease the not-to-exceed amount for each purchase order as required due to the volatility in fuel prices; subject to the appropriation of funds.

Desired Outcome: Safe and functional public infrastructure, facilities, materials, and equipment.

BASIS FOR RECOMMENDATION:

In recognition of the fluctuation in prices of petroleum products, Council adopted Resolution No. 67770 authorizing the purchase of petroleum fuel supplies on the open market using open purchase orders issued to multiple vendors.

This purchase has been and will continue to be competitively quoted among the identified vendors and awarded on a weekly basis. The recommended amount for each vendor is based on the City's historical purchase patterns.

Office of Equality Assurance: Prevailing and Living Wage do not apply.

This Council item is consistent with Council approved Budget Strategy General Principle #2: "We must focus on protecting our vital core City services."

COST AND FUNDING SOURCE:

Fund #	Appn #	Appn. Name	Total Appn.	Amt. for Recommendation	2011-2012 Proposed Operating Budget (Pg)	Last Budget Action (Date, Ord. No)
552	0083	Inventory*	\$7,774,814	\$5,800,000	XI - 88	N/A

* The 2011-2012 Operating Budget and the implementing appropriation ordinance are anticipated to be approved by the City Council on June 21, 2011.

FOR QUESTIONS CONTACT: Mark Giovannetti, Purchasing Division Manager at 408-535-7052



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kay Winer

SUBJECT: SEE BELOW

DATE: 05-31-11

Approved: 

Date 6/3/11

SUBJECT: AMENDMENT TO EXTEND AGREEMENTS WITH MHN SERVICES (MHN) FOR EMPLOYEE ASSISTANCE PROGRAM (EAP) AND CRITICAL INCIDENT STRESS DEBRIEFING (CISD) SERVICES FOR EMPLOYEES AND THEIR DEPENDENTS FOR THE PERIOD OF JULY 1, 2011 TO DECEMBER 31, 2011.

RECOMMENDATION

Adoption of a resolution authorizing the City Manager to amend the following three (3) current agreements between the City and MHN Services (MHN) to extend each agreement for a period of six (6) months, from July 1, 2011 to December 31, 2011:

1. Employee Assistance Program (EAP) for sworn employees at an added cost not to exceed \$254,500, and a total cost not to exceed \$2,500,000 for the total Agreement term,
2. Employee Assistance Program (EAP) for non-sworn employees at an added cost not to exceed \$64,000, and a total cost not to exceed \$610,000 for the total Agreement term,
3. Critical Incident Stress Debriefing (CISD) for sworn employees at an added cost not to exceed \$7,500, and a total cost not to exceed \$35,000 for the total Agreement term.

For all three (3) agreements together, extending the term for a period of six (6) additional months will result in total costs not to exceed \$326,000 for the period of July 1, 2011 to December 31, 2011, and for total costs not to exceed \$3,145,000 for the entire four (4) years and three (3) months term, from October 1, 2007 to December 31, 2011.

OUTCOME

Extending the current agreements with MHN will provide the City, its employees, and their dependents with continued EAP and CISD services for six (6) months into the 2011-12 fiscal

year in order to allow Human Resources staff to complete the current Request for Proposals (RFP) process, begun in February, and the resulting new service agreements to be executed.

BACKGROUND

MHN is the current provider of the City's Sworn and Non-Sworn EAP and CISD programs.

The EAP is a 100% City-paid benefit that provides the following confidential services to benefited City employees and their dependents:

- Mental Health Counseling
- Substance Abuse Referrals and Treatment
- Work-Life Support Services (such as legal consultations, tax planning, financial planning, and childcare referrals)
- Individual and Group Management Training (such as conflict resolution and staff performance)

The City maintains a total of three (3) agreements with MHN. Two (2) separate agreements are necessary to provide EAP benefits to sworn and non-sworn employees. Both EAP agreements provide employees and their dependents access to counseling sessions as well as twenty-four (24) hour crisis intervention by telephone. In addition, for public safety employees, which include fire fighters, police officers and police and fire dispatchers, participants are eligible to receive unlimited visits to a mental health provider for each personal incident that prompts treatment. For all other non-public safety employees, this counseling benefit is limited to five (5) provider visits for each incident per calendar year.

Both EAP agreements also include coverage for substance abuse treatment. The City covers 70% of the claims cost for substance abuse treatment and employees pay 30%.

Under a third agreement, the City provides CISD services to public safety employees. CISD is also 100% City-paid and provides licensed on-site mental health professionals to assist public safety employees in coping with the emotional stress that can occur following traumatic events experienced in the line of duty.

The City last conducted a request for proposals (RFP) for EAP and CISD services in 2007. At that time, the City Council approved staff's recommendation to secure MHN as the City's vendor through June 30, 2011.

Another RFP to secure a quality vendor for EAP and CISD services at the most competitive market rate possible is currently underway.

ANALYSIS

Human Resources is currently conducting an RFP to solicit EAP and CISD proposals that best meet the needs of the City, its employees, and their eligible family members. The review and selection process is expected to be completed by the end of June 2011. However, due to delays in developing the RFP for release, the timeline was extended, so staff will not be able to present their recommendation to the City Council for approval before the current agreements with MHN expire on June 30, 2011.

Staff now plans to forward its recommendation for City Council approval in early August, with a contract implementation date of no later than January 1, 2012.

MHN has agreed to extend the term of the current agreements through December 31, 2011 with no change in the current rates or services.

EVALUATION AND FOLLOW-UP

This project addresses the Human Resources' performance measure of the cost of benefits administration and operations per budgeted full-time employee. The Employee Benefits division of Human Resources ensures that the City of San Jose employees and retirees receive high quality and cost effective benefits by subjecting benefit plan providers to regular competitive processes (usually every four years).

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million 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)**

All key stakeholders have been invited to participate in the RFP process currently in progress.

This memorandum is posted on the City's website for the June 14, 2011 Council Agenda.

June 21, 2011

Subject: Approval of Resolution to Amend Agreements with MHN Services

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COORDINATION

This memorandum has been coordinated with the Office of the City Attorney, the City Manager's Budget Office and the Benefits Review Forum.

COST SUMMARY/IMPLICATIONS

Based on current enrollment adjusted for the actions recommended in the 2011-2012 Proposed Operating Budget, as shown in the chart below, the City's cost for extending the current agreements for six months will be approximately \$326,000. This amount is subject to change based on monthly enrollment fluctuation.

	<u>Estimated July 2011 Enrollment</u>	<u>Premium Per Employee</u>	<u>Approximate Monthly Cost</u>	<u>Estimated 6 Month Cost</u>
Non Sworn Employees	3,371	\$2.91	\$9,810	\$59,000
Non Sworn Substance Abuse Treatment				\$5,000
Sworn Employees	1,928	\$21.11	\$40,700	\$244,500
Sworn Substance Abuse Treatment				\$10,000
CISD Retainer			\$1,250	<u>\$7,500</u>
				\$326,000

The current agreement with MHN for CISD services includes an annual retainer of \$6,000. All CISD services which exceed the annual retainer amount are billed to the City by MHN based upon a contractually set hourly rate.

BUDGET REFERENCE

Fund #	Appn #	Appn. Name	Total Appn	Amt. for Contracts	Proposed 2011-2012 Budget Page*	Last Budget Action (Date, Ord. No.)
160	0124	Employee Assistance Program	\$576,000	\$326,000	XI - 8	N/A
001	0482	Non-personal/ Equipment	\$951,554	\$7,500	VIII - 179	N/A

* Funding availability is subject to the adoption of the 2011-2012 Proposed Operating Budget to be considered by the City Council on June 21, 2011.

Substance Abuse Treatment claims estimated at a City-wide cost of \$15,000 would be expended from affected individual department General Fund budgets as appropriate. Expenditures are allocated according to the employees' use and are typically absorbed in personal services savings.

CEQA

Not a project, File No. PP10-066 (e).

/s/
Kay Winer
Acting Director, Human Resources

For questions please contact Jeanne Groen, Benefits Manager at (408) 975-1428.



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kay Winer

SUBJECT: SEE BELOW

DATE: 05-31-11

Approved

Date

6/3/11

SUBJECT: AMENDMENTS TO EXTEND THE GROUP LIFE INSURANCE AGREEMENTS WITH STANDARD INSURANCE COMPANY FOR THE PERIOD OF JULY 1, 2011 TO DECEMBER 31, 2011.

RECOMMENDATION

Adoption of a resolution authorizing the City Manager to negotiate and execute amendments to extend the two (2) current group life insurance agreements between the City and Standard Insurance Company for a period of six (6) months, from July 1, 2011 to December 31, 2011, to add compensation for a total contract cost not to exceed \$5,620,000, subject to the appropriation of available funds as follows:

1. Master Insurance Agreement.
 - a. Basic Life Insurance. City-paid basic life insurance for employees at a total additional cost not to exceed \$236,000.
 - b. Basic Life Insurance. Retiree-paid basic life insurance for retirees at a total additional cost not to exceed \$86,000.
 - c. Additional Life Insurance – Employees. Employee-paid additional life insurance at a total additional cost not to exceed \$193,000.
 - d. Dependent Life Insurance – Employees and Retirees. Employee and retiree-paid dependent life insurance at a total additional cost not to exceed \$13,000.

2. Agreement for Additional Life Insurance for Retirees.

Retiree-paid, additional life insurance at a total additional cost not to exceed \$20,000.

OUTCOME

Extending the current group life insurance agreements with Standard Insurance Company will provide the City, its employees, retirees and their dependents with continued life insurance services for six (6) months into the 2011-12 fiscal year in order to allow Human Resources staff to complete the current Request for Proposals (RFP) process, begun in March, and for the resulting new service agreement to be executed by December 31, 2011.

BACKGROUND

The Standard Insurance Company currently provides life insurance coverage to over 8,100 City employees and retirees at a cost of approximately \$1.12 million in premiums in the 2010-11 fiscal year. Of the 8,100, approximately 5,300 are employees and 2,800 are retirees. The City offers several types of life insurance, including basic, additional, accidental death and dismemberment (AD&D), and dependent coverage.

City-paid Basic Life Insurance

Basic life insurance is City-paid and provided to all full-time benefited employees with guaranteed issue, which means that it is automatically provided by Standard Insurance Company with no medical questions asked. Coverage amounts vary by bargaining group:

- \$10,000 for sworn police officers and firefighters
- \$20,000 for non-management employees
- Two times annual salary for management employees

AD&D coverage is included in the basic life insurance policy. If the participant's death is due to an accident, the AD&D provision doubles the coverage amount.

Employee-paid Additional and Dependent Life Insurance

Additional life insurance is offered to all full-time benefited employees on a voluntary basis and is 100% participant paid. Coverage amounts are based on an employee's annual salary, rounded to the nearest \$1,000. Options for increased coverage amounts vary by whether the employee is a non-management or management employee:

- Non-management employee options include one times, two times, three times, or four times the employee's annual salary in coverage.
- Management coverage options include one times or two times the employee's annual salary.

Coverage of up to two times the employee's annual salary is guaranteed if the employee enrolls within thirty days of the employee's date of hire. The employee may apply for coverage at any time after the thirty day period; however, approval for enrollment is determined by the Standard Insurance Company based on their medical review and underwriting process.

AD&D coverage is included in the additional life insurance policy. If the participant's death is due to an accident, the AD&D provision doubles the coverage amount.

Dependent life insurance is also offered to employees on a voluntary basis and is 100% participant paid. The cost to the employee is the same no matter how many dependents are covered. Employees have the option of electing a coverage amount between \$2,000 and \$10,000, in \$2,000 increments.

Retiree-paid Basic, Additional and Dependent Life Insurance

Life insurance coverage is voluntary for City Retirees and 100% participant paid. Retirees may elect basic life insurance coverage, with guaranteed issue, that is based on their age and former status as a management or non-management employee:

- Non-management retirees:
 - \$5,000 in coverage if under age 65
 - \$2,500 in coverage if age 65 or older
- Management retirees:
 - \$20,000 in coverage if under age 65
 - \$10,000 in coverage if age 65 through 69
 - \$5,000 in coverage if age 70 or older

Retirees may elect additional life insurance coverage in amounts ranging from \$5,000 up to \$25,000. Retirees must apply and be approved by the Standard Insurance Company before they can be enrolled in additional life insurance.

Retirees may also elect dependent life insurance coverage in an amount of \$1,000 with guaranteed issue.

The City last conducted an RFP for life insurance services in 2007. At that time, the City Council approved staff's recommendation to secure Standard Insurance Company as the City's vendor through June 30, 2011. An RFP process was initiated in March 2011 to review new proposals for life insurance services from quality vendors at the most competitive market rate possible.

ANALYSIS

Human Resources is currently conducting an RFP to solicit life insurance proposals that best meet the needs of the City, its employees, retirees and their eligible family members. Although the review and selection process was initiated in March, 2011, the process will not be completed until the end of August due to delays in completing the RFP for release. Consequently, staff recommends a six-month extension beyond the June 30, 2011 expiration date of the current contract.

Standard Insurance has agreed to extend the term of the current agreements through December 31, 2011 with no change in the current premium rates or services.

EVALUATION AND FOLLOW-UP

This project addresses the Human Resources' performance measure of the cost of benefits administration and operations per budgeted full-time employee. The Employee Benefits division of Human Resources ensures that the City of San Jose employees and retirees receive high quality and cost effective benefits by subjecting benefit plan providers to regular competitive processes (usually every four years).

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million 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)**

All key stakeholders have been invited to participate in the RFP process currently in progress.

This memorandum is posted on the City's website for the June 21, 2011 Council Agenda.

COORDINATION

This memorandum has been coordinated with the Office of the City Attorney, the City Manager's Budget Office and the Benefits Review Forum.

COST SUMMARY/IMPLICATIONS

Based on current enrollment, the City's cost for extending the current agreements for six months will be approximately \$236,000. The employee and retiree cost for extending the current agreements for six months will be approximately \$312,000. Costs are subject to change based on actions recommended in the 2011-2012 Proposed Operating Budget and monthly enrollment fluctuation. While costs for employees are expected to decrease, cost for retirees is expected to increase. The not-to-exceed amount of \$550,000 is recommended to ensure the contract is not exceeded.

The following table summarizes the coverage and premiums currently carried by the City, its employees and retirees under the City's group policies with the Standard Insurance Company:

Coverage Type	2010-11 Premium Per \$1,000 in Coverage	Amount of Coverage (As of May 2011)	Approximate Monthly Premium	Estimated 6 Month Cost
City-Paid				
Basic	\$0.156	\$251,564,000	\$39,244	\$236,000
Employee-Paid				
Additional	\$0.22	\$145,515,000	\$32,014	\$193,000
Dependent	\$0.24	\$6,080,000	\$1,460	\$9,000
Retiree-Paid				
Basic	\$1.02	\$14,022,250	\$14,303	\$86,000
Dependent	\$0.48	\$1,261,000	\$606	\$4,000
Additional	varies	\$2,720,000	\$3,200	\$20,000
TOTAL		\$421,162,250	\$90,827	\$548,000

BUDGET REFERENCE

Fund #	Appn #	Appn. Name	Total Appn	Amt. for Contracts	Proposed 2011-2012 Budget Page*	Last Budget Action (Date, Ord. No.)
156	3224	Premiums	\$1,045,000	\$550,000	XI - 11	N/A

* Funding availability is subject to the adoption of the 2011-2012 Proposed Operating Budget to be considered by the City Council on June 21, 2011.

CEQA

Not a project, File No. PP10-066 (e).

/s/
 Kay Winer
 Acting Director, Human Resources

For questions please contact Jeanne Groen, Benefits Manager at (408) 975-1428.



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Norberto Duenas

SUBJECT: SEE BELOW

DATE: 05-31-11

Approved

Date

6/3/11

COUNCIL DISTRICT: 4

SUBJECT: GRANT AGREEMENT WITH SANTA CLARA VALLEY WATER DISTRICT FOR THE PENITENCIA CREEK REACH 1B PROJECT

RECOMMENDATION

Adopt a resolution authorizing the City Manager to accept, negotiate, and execute a grant agreement with the Santa Clara Valley Water District (SCVWD) in the amount of \$300,000 for the Penitencia Creek Reach 1B (Dorel Drive to Noble Avenue) Trail project ("Project") with a City contribution of \$1,200,000 and to make the required commitments and assurances as set forth in this memorandum.

OUTCOME

Approval of the recommendation will allow for the construction of the Penitencia Creek trail segment between Dorel Drive and Noble Avenue that will provide the community with a defined pedestrian and bicycle access along the creek. The 0.5 mile project extends the existing Penitencia Creek trail system.

BACKGROUND

On October 31, 2006, the City Council approved the master plan for the Penitencia Creek Trail from Alum Rock Park to Noble Drive (Reach 1).

On October 30, 2007, the City Council adopted the Green Vision, a 15-year plan to transform San José into a world center of Clean Technology innovation, promote cutting-edge sustainable practices, and demonstrate that the goals of economic growth, environmental stewardship and fiscal responsibility are inextricably linked. Goal 10 of the Vision is to provide a 100-mile network of interconnected trail systems.

On December 8, 2009, the City Council adopted an update to the Greenprint, a 20-Year Strategic Plan for Parks and Community Facilities and Programs. The plan identified a goal of developing a 100-mile trail network. The Penitencia Creek Trail system is identified as one of the 35 trail systems located in the City that will lead to achieving this goal.

On February 23, 2010, the City Council authorized the City Manager to submit a grant application in the amount not to exceed \$300,000 to the SCVWD under the 2010 Trail and Open Space Grant program for the Project with a local contribution of \$100,000.

In June 2010, SCVWD formally notified the City that a \$300,000 grant would be made available for development of the Project.

ANALYSIS

The action recommended in this Council memorandum will allow for the construction of the Penitencia Creek trail segment between Dorel Drive and Noble Avenue. The Project is along Penitencia Creek and is part of an existing trail system that is substantially developed.

The Project is estimated to cost \$1.5 million per the Engineer's estimate. In the Proposed 2011-2012 Capital Budget, \$1.2 million has been recommended to be appropriated from the Sub Division Park Trust Fund (Fund 375) and \$300,000 from the Council District 4 Construction and Conveyance Tax Fund (Fund 381). Once grant funding is received through reimbursements, the grant amount will replenish Fund 381.

The SCVWD grant agreement requires the City to meet the following requirements:

Requirement	Addressed in the following manner:
The City shall complete the Project and submit final documentation within 5 years of Trail Grant Agreement.	Once funded, the Project will be managed by a team of Department of Public Works professionals that develop trail projects in a timely manner on a regular basis.
Where applicable, the City will comply with all applicable laws and regulations affecting development projects, including, but not limited to, legal requirements for construction contracts, building codes, health and safety codes, and disabled access laws.	The Project design is consistent with all known government regulations.
The City shall complete CEQA within one year from the date of grant award.	CEQA was secured as part of the Council-adopted master plan (October 31, 2006).
The City shall operate and maintain the Project for a period of no less than 25 years.	The Greenprint defines the Penitencia Creek Trail alignment as a long-term element of the city's park system. The Water District's current plan for flood control along the creek

Requirement	Addressed in the following manner:
	includes a flood wall structure on the residential side of the roadway. This approach will not impact the trail alignment.
The City must certify adequate control and land tenure for the Project site.	Development of the trail will occur on City or Water District property. The City will process a Joint Trail Agreement as authorized by the Collaborative Action Plan for any required right of way.
The City shall use the property only for the purpose for which the grant was made.	The master planning process determined that the land is ideal for trail development. If awarded grant funds, the City will comply with the grant requirement for use of the property.

As part of the grant execution process, the City is required to adopt a resolution (see attachment) and to make certain commitments, assurances, and certifications described in this memorandum and the attached resolution.

EVALUATION AND FOLLOW UP

Staff will actively pursue reimbursement of grant funds for eligible expenditures in the amount of \$300,000. Staff will update the City Council and community on the status of this and other trail projects through the Trail Program’s Annual Report (released in July) and through an annual Trail Program update to the Parks and Recreation Commission (Winter) and Transportation & Environment Committee (Fall).

POLICY ALTERNATIVES

Alternative #1: Do not execute the grant agreement

Pros: Saves staff time and reduces the impact of new trail development to General Fund

Cons: Inconsistent with City Council’s approach of seeking grant funds to develop projects when feasible

Reason for not recommending: It is inconsistent with City Council policy not to make use of available grant funds and is inconsistent with the development plan outlined by the Greenprint Update (2009), and San José’s Green Vision.

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)**

The proposed Council action meets criterion 1. This memorandum will be posted on the City Council's Agenda website prior to the June 21, 2011 City Council meeting.

COORDINATION

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

The Project is referenced in the Council-adopted Greenprint Update (December 8, 2009, item 5.2). Delivery of the Project supports Goal 10 of the Council-adopted Green Vision (October 30, 2007, item 9.1) to provide a 100-mile Trail Network by 2022.

COST SUMMARY/IMPLICATIONS

Based on the most recent cost estimates, a total of \$1.5 million is anticipated to be required to complete the Project. The grant agreement will provide \$300,000 towards the Project. Construction of the Project will result in a 0.5 mile trail. The annual cost to maintain the trail would be \$4,000. These operating and maintenance costs were included in the 2012-2016 Five-Year Forecast and Revenue Projections for the General Fund, which was released February 2011, as the Forecast includes funding for 3.3 miles of new (unidentified) trails each year.

BUDGET REFERENCE

Fund #	Appn #	Appn Name	Total Appn	2012-16 Proposed Capital Improvement Program
375	NEW	Trail: Penitencia Creek Reach 1B (Noble Avenue to Dorel Drive)	\$1,200,000	V-477
381	NEW	Trail: Penitencia Creek Reach 1B (Noble Avenue to Dorel Drive)	\$300,000	V-341
Total Proposed Appropriation			\$1,500,000	

CEQA

Mitigated Negative Declaration, File No. PP06-111



NORBERTO DUENAS
Deputy City Manager/Acting Director of
Parks, Recreation and Neighborhood Services

For questions please contact Matt Cano, Division Manager, at 408-535-3580.

Attachment

ATTACHMENT

RESOLUTION NO.

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO ACCEPT, NEGOTIATE, AND EXECUTE GRANT AGREEMENT WITH THE SANTA CLARA VALLEY WATER DISTRICT IN AN AMOUNT OF \$300,000, AWARDED UNDER THE TRAILS AND OPEN SPACE GRANT PROGRAM UNDER THE CLEAN, SAFE CREEKS AND NATURAL FLOOD PROTECTION PROGRAM OF 2000 FOR THE PENITENCIA CREEK REACH 1 (DOREL DRIVE TO NOBLE DRIVE) TRAIL PROJECT

WHEREAS, the Santa Clara Valley Water District has enacted the Trails and Open Space Grant Program, which provides funds for the acquisition and development of neighborhood, community, and regional parks and recreation lands and facilities; and

WHEREAS, the Santa Clara Valley Water District's Watershed Planning Unit has been delegated the responsibility for the administration of the grant program, and setting up necessary procedures; and

WHEREAS, said procedures established by the Santa Clara Valley Water District require the San José City Council ("Council") to certify by resolution the approval of the City of San José ("City") to apply for Trails and Open Space Grant Program funds; and

WHEREAS, the City will enter into a Grant Agreement with the Santa Clara Valley Water District for an amount of \$300,000; and

WHEREAS, the City will be required to provide \$1,200,000 and any other necessary funds to complete the Project;

NOW, THEREFORE, BE IT RESOLVED THAT THE COUNCIL OF THE CITY OF SAN JOSE HEREBY:

1. Approves the acceptance for local assistance funds from the Trails and Open Space Grant Program under the Clean, Safe Creeks and Natural Flood Protection Program of 2000; and
2. Certifies that the City of San José has or will have sufficient funds to operate and maintain the Project; and
3. Certifies that the City of San José has reviewed, understands and agrees to the Special Provisions, General Provisions and Financial Provisions contained in the Agreement; and
4. Authorizes the City Manager or Designee to negotiate and execute a grant agreement with the Santa Clara Valley Water District under the 2010 Trail and Open Space Grant program for the Penitencia Creek Reach 1 (Dorel Drive to Noble Drive) Trail project in an amount not to exceed \$300,000; and
5. Appoints the City Manager or Designee as agent to conduct all negotiations, execute and submit all documents including, but not limited to Applications, agreements, payment requests and so on, which may be necessary for the completion of the Project.

ADOPTED this _____ day of _____, 2011, by the following vote:

AYES:

NOES:

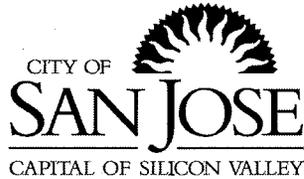
ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

DENNIS HAWKINS, MMC
City Clerk



Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL **FROM:** Julia H. Cooper

SUBJECT: ISSUANCE OF CITY OF SAN JOSE AIRPORT REVENUE BONDS, SERIES 2011A **DATE:** May 31, 2011

Approved

Date

6/7/11

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

It is recommended that the City Council:

- a. Hold a TEFRA (“Tax Equity and Fiscal Responsibility Act”) hearing with respect to the proposed issuance by the City of tax-exempt airport revenue bonds and subordinated airport commercial paper notes in an aggregate principal amount not to exceed \$320 million pursuant to a plan of financing in order to provide proceeds to finance or refinance all or a portion of the costs of acquisition, construction, equipping, financing, reconstruction, development, and modification of airport facilities that are included in or are consistent with the Airport Master Plan for the Airport.
- b. Adopt the Sixteenth Supplemental Resolution (the “Resolution”) of the City Council authorizing the issuance of City of San José Airport Revenue Bonds, Series 2011A in one or more series (the “2011A Bonds”) in a total aggregate principal amount of not to exceed \$300 million to be sold through negotiated sale; approving substantially final forms of Supplemental Trust Agreement, Preliminary Official Statement, Bond Purchase Agreement and Continuing Disclosure Certificate; authorizing the distribution of one or more Preliminary Official Statements and the Final Official Statements; and authorizing and approving other related actions in connection with the issuance of the Series 2011A Bonds.
- c. Adopt a resolution authorizing the City Manager to negotiate and execute an Agreement by and among the City, Public Financial Management and Public Resources Advisory Group for financial advisory services in connection with the issuance of the City of San José Airport Revenue Bonds Series 2011A and Series 2011B in an amount not to exceed \$420,000.

- d. Adopt a resolution authorizing the City Attorney to negotiate and execute an Agreement with Orrick, Herrington & Sutcliffe LLP for bond and disclosure counsel services in connection with the issuance of the City of San José Airport Revenue Bonds Series 2011A and Series 2011B in an amount not to exceed \$350,000.

OUTCOME

Approval of the recommendations will allow the issuance of the Series 2011A Bonds to refund a portion of the outstanding City of San José, San José International Airport Subordinated Commercial Paper Notes ("CP") and to refund certain outstanding City of San José Airport Revenue Bonds to the extent such refunding of Airport Revenue Bonds meets the City's Debt Management Policy savings objectives and the requirements stipulated in the Airport's Master Trust Agreement.

EXECUTIVE SUMMARY

This staff report recommends approving the issuance of airport revenue bonds in an amount not to exceed \$300 million to refund outstanding tax-exempt CP and, where market conditions are favorable, to current refund certain outstanding airport revenue tax-exempt bonds previously issued in 1998 and 2001. The tax-exempt CP refunding is the first step in a larger financing strategy that will also include the refunding of taxable CP primarily used to fund the construction of the Airport's new consolidated rental car facility (the "ConRAC") planned for later this calendar year. Staff also recommends approval of the financial advisory and legal services agreements related to both transactions on a contingent basis.

This refunding meets several objectives. It complies with the Airport's original plan of finance to refund short-term CP debt, which had been identified as an interim financing vehicle during the construction period of the Airport Master Plan, with long term fixed rate bonds. Refunding of CP Notes mitigates future letter of credit renewal risk and allows the Airport to substantially reduce the size of the CP program at a time when market conditions have made it increasingly difficult and expensive to obtain the credit facilities required to support the CP program. Finally, refunding the Airport Revenue Bonds, Series 1998A (the "1998A Bonds") and/or the Airport Revenue Bonds, Series 2001A (the "2001A Bonds") would achieve economic savings for the Airport in the form of lower debt service.

BACKGROUND

The Airport CP Program

The Airport CP program was established in November 1999, pursuant to its Resolution 69200, to provide interim financing for Airport capital needs in anticipation of issuance of Airport revenue

bonds that would replace the short-term notes with permanent long-term financing. Airport commercial paper notes are debt obligations backed by Net General Airport Revenues and are subordinate to Airport senior lien debt, also backed by these revenues. Net General Airport Revenues are the Airport's gross revenues less maintenance and operation expenses.

The Airport CP program has been amended and expanded since its inception in November 1999. In particular, in March 2008¹ City Council approved an expansion of the Airport CP program from \$450 million to \$600 million, primarily to refund the Airport Revenue Bonds, Series 2004A and Series 2004B (the "2004A/B Bonds") that were adversely impacted by disruptions in the financial markets related to auction rate securities. This expansion was accomplished through the creation of three additional series of commercial paper notes: Series D (Non-AMT), Series E (AMT), and Series F (Taxable), secured by a letter of credit issued by Lloyds TSB Bank plc, acting through its New York Branch ("Lloyds"), pursuant to a Letter of Credit and Reimbursement Agreement with a current expiration date of September 7, 2011. A full legislative history of the Airport CP program has been included in Attachment A of this memo.

As discussed in the memorandum dated July 23, 2007 related to the Series 2007 Airport Revenue Bonds², the plan of finance called for the Airport CP program to serve as an interim financing vehicle for construction of Phase 1 of the Airport Development Program ("Phase 1" projects). The memorandum also indicated an expectation that some or all of the commercial paper notes issued to fund Phase 1 projects would be refinanced with long-term bonds on or around the completion date of the Phase I projects, subject to market conditions, the Airport's operations and performance, and other factors.

Phase 1 of the Airport Development Program

Construction of the Phase 1 projects was substantially complete earlier in fiscal year 2010-11. The Phase 1 projects included nine new gates and approximately 366,000 square feet of new terminal space; design and construction of the new Terminal B; improvements to the existing Terminal A, including new ticketing facilities, a new in-line baggage system that serves both Terminals A and B and security checkpoint, lobby concessions and other improvements; the phased demolition of Terminal C; design and construction of the ConRAC; realignment and improvement of existing terminal roadways; parking improvements; airfield projects, including noise mitigation and the reconstruction of Taxiway Y; and other improvements, including construction of a new belly freight facility and an aircraft rescue and fire fighting facility. The Phase 1 projects also include design of certain Phase 2 projects, but under the Airline Lease Agreement the commencement of construction of the Phase 2 projects is contingent upon satisfying specified activity-based triggers. All of these projects have been financed, in part, with bond proceeds and CP note proceeds.

¹ Council Agenda 3/25/2008, Item #6.4

² Council Agenda 8/14/2007, Item #3.9

ANALYSIS

Proposed Financing Strategy

The Airport currently has approximately \$417 million of CP notes outstanding, of which approximately \$130 million were issued on an AMT basis to refund the 2004A/B Bonds and approximately \$233 million were issued on a taxable basis for the construction of the ConRAC. An additional \$54 million of CP notes were issued for other purposes not related to the 2004A/B Bonds and the ConRAC. The proposed financing strategy would refund a large portion of the outstanding CP and refund certain outstanding Airport Revenue Bonds to the extent that economic savings are realized in two or more series of bonds (2011A and 2011B Bonds).

The 2011A Bonds will be issued in summer 2011 and will convert approximately \$130 million of AMT CP notes to long-term fixed rate bonds and refund certain outstanding bonds for economic savings. The AMT CP notes are currently supported by letters of credit with JP Morgan, Bank of America, Citibank and Wells Fargo Bank with termination dates ranging from one to three years. Upon closing of the 2011A Bonds, the CP capacity supported by the aforementioned letters of credit will be released to allow for a reallocation of the CP notes currently secured by the Lloyds letter of credit. This reallocation provides the Airport with the flexibility to terminate the Lloyds letter of credit on or prior to September 7, 2011 without a prepayment penalty.

Staff anticipates that the issuance of the 2011B Bonds will occur later in the 2011 calendar year. The purpose of the 2011B Bonds will be to refinance approximately \$225 million of taxable CP notes issued to fund the construction of the ConRAC. Following the 2011A and 2011B refundings, approximately \$15 million of private activity non-AMT CP, \$19 million of AMT CP and \$20 million of taxable CP not associated with the ConRAC will remain outstanding. Staff is currently evaluating the appropriate size of the CP program after completion of the 2011A and 2011B refundings. Specific recommendations regarding the issuance of the 2011B Bonds and the CP program size will be forthcoming in a separate memorandum dedicated to these topics later in this calendar year.

Plan of Finance

This section provides a description of the 2011A Bonds, including a summary of the estimated sources and uses of funds, and discusses the additional bonds tests that are a prerequisite to the issuance of the 2011A Bonds.

Description of the 2011A Bonds

The 2011A Bonds are being issued to refund CP notes originally issued to refund the 2004A/B Bonds, current refund certain outstanding 1998A and 2001A Bonds to the extent they provide sufficient economic savings, make a cash deposit to the General Account of the Bond Reserve Fund, and pay the costs of issuing the 2011A Bonds.

The 2011A Bonds will be issued pursuant to a Seventh Supplemental Trust Agreement (and potentially an Eighth Supplemental Trust Agreement) to the Master Trust Agreement (which, together with prior Supplemental Trust Agreements, is referred to in this memo as the "Trust Agreement"), as described below.

The 2011A Bonds will be issued in up to three series as the City of San José Airport Revenue Bonds, Series 2011A-1 (the "2011A-1 Bonds"), the Series 2011A-2 (the "2011A-2 Bonds"), and potentially the Series 2011A-3 Bonds (collectively, the "2011A Bonds") in the not to exceed aggregate principal amount of \$300 million. Federal tax law permits the issuance of tax-exempt bonds for either governmental purposes (non-AMT) or for specified private purposes that are "qualified" as tax-exempt subject to the Alternative Minimum Tax ("AMT"). The 2011A-1 Bonds are subject to the AMT, and the 2011A-2 Bonds are non-AMT bonds. In order to comply with IRS regulations, the AMT bonds may need to be issued as two different series with different bond sale dates. In the event such that a separation in bond sale dates is required, the 2011A-1 and 2011A-2 Bonds will be designated as AMT bonds issued pursuant to a Seventh Supplemental Trust Agreement, and the 2011A-3 Bonds will be designated as the non-AMT bonds, and the 2011A-1 Bonds issued pursuant to an Eighth Supplemental Trust Agreement. For simplification purposes of this memo, the 2011A Bonds will be referred to only as the 2011A-1 Bonds (AMT) and the 2011A-2 Bonds (non-AMT) and in aggregate the 2011A Bonds.

The portion of the 2011A Bonds associated with the refunding of the 2004A/B Bonds will have a final maturity date of March 1, 2034. The principal amortization of the 2011A Bonds will be structured to mirror the original amortization of the 2004A/B Bonds.

Security

The principal of and interest on the 2011A Bonds, and all of the City's Airport Revenue Bonds, are secured solely by the General Airport Revenues and certain other funds held or made available under the Master Trust Agreement, after Maintenance and Operation Costs are paid. The City is not obligated to pay debt service on the Bonds except from the General Airport Revenues and such other funds held or made available under the Master Trust Agreement. The General Fund of the City is not liable, and the credit or taxing power of the City is not pledged, for the payment of the principal of, premium, if any, or interest on the 2011A Bonds. The 2011A Bonds are not secured by a legal or equitable pledge of, or charge, lien or encumbrance upon, any of the property of the City or any of its income or receipts, except the General Airport Revenues. The owners of the 2011A Bonds have no right to compel the exercise of any taxing power of the City.

The Master Trust Agreement generally defines General Airport Revenues as meaning all revenues, income, receipts and moneys derived by the City from the operation of the

Airport. General Airport revenues also includes all interest, profits or other income derived from the deposit or investment of any moneys in the General Revenue Fund or any account therein established under the Master Trust Agreement.

In addition to General Airport Revenues, the City also anticipates applying a portion of its PFC revenues to pay a portion of the debt service on the 2011A Bonds.

Potential Refundings of Airport Revenue Bonds

As stated above, the 2011A Bonds may include up to two economic refunding components: a current refunding of all or a portion of the outstanding maturities of the 1998A Bonds and the 2001A Bonds. Incorporating a refunding with a larger, longer-dated bond issuance creates certain efficiencies: it reduces costs of issuance and streamlines the administration of the Airport debt portfolio.

The Council-adopted Debt Management Policy specifies a minimum of 3% net present value savings for a refunding to be considered economically viable and provides for consideration of refundings below the 3% threshold on a case-by-case basis. While at present, all of the 1998A Bonds and a portion of the 2001A Bonds can be refunded to achieve the 3% savings threshold, staff will continue to monitor these bonds for refunding potential up to the anticipated bond pricing during the week of July 11, 2011. The final refunding amount will be determined closer to the pricing date and may deviate from the 3% savings threshold in view of the operational efficiencies of refunding all maturities at the same time as a part of the larger 2011A Bond financing.

Current Refunding of 1998A Bonds - A current refunding is a refunding in which the refunding bonds are issued not more than ninety (90) days before the redemption date upon which the outstanding bonds become due or are callable. The proceeds of the 2011A Bonds used to refund the 1998A Bonds, of which \$6.54 million are outstanding, will be applied to such refunding on the closing date. The current financing schedule calls for the 2011A Bonds to close the week of July 25, 2011.

Current Refunding of 2001A Bonds - The proceeds of the 2011A Bonds used to refund the 2001A Bonds, of which \$131.34 million are outstanding, will be applied to such refunding on the closing date. At present, approximately \$60.4 million of the 2001A Bonds appear to be economic refunding candidates. As with the potential refunding of the 1998A Bonds, staff will continue to monitor the 2001A Bonds for refunding savings through the anticipated bond pricing date.

General Account of the Bond Reserve Fund

The City anticipates that the 2011A Bonds will be secured by the General Account of the Bond Reserve Fund ("General Account") for the City's outstanding Airport Revenue

Bonds. The General Account serves as a “common reserve” for all of the Airport’s outstanding Airport Revenue Bonds except for the Series 2004 Bonds and the Series 2007 Bonds. It is presently projected that the required deposit to the General Account from the proceeds of the 2011A-1 Bonds will be an amount equal to 10% of the proceeds of such bonds, or approximately \$14.6 million.

It should be noted that the Reserve Requirement in the General Account is presently satisfied, in part, by a \$4.25 million surety bond from Ambac Indemnity Corporation and a \$6.6 million surety bond from National Public Finance Guaranty Corporation (“NPF”), as successor to MBIA Insurance Corporation. The ratings of NPF and Ambac were reduced or withdrawn subsequent to the deposit of the respective surety bonds to the General Account. The Master Trust Agreement does not require that the rating of any surety bond held in the General Account be maintained after the date of deposit.

The NPF surety bond expires on March 1, 2016 and the Ambac surety bond expires on March 1, 2018. If no additional Bonds are issued and no additional amounts are deposited in the General Account prior to such dates, on each such date the City would have to make a deposit to the General Account from accumulated Airport surplus funds or provide a Qualified Reserve Surety to replace the amount of each of the expiring surety bonds. The City will also be obligated to replenish the General Account prior to the expiration dates of the surety bonds in the event of a non-payment or cancellation under either surety bond, including upon the liquidation of a surety bond provider. A detailed discussion on the status of the surety bond providers is included in the draft Official Statement for the 2011A Bonds. This document will be posted on the City’s Agenda Services website on or about June 10, 2011.

Estimated Sources and Uses

The estimated sources and uses of funds for the 2011A Bonds are shown in the table below. It should be noted that the total estimated par amount shown below is less than the not to exceed authorization of \$300 million because not all of the Airport Revenue Bonds, Series 1998A and 2001A currently meet the City’s refunding savings criteria. As noted above, staff will continue to monitor the 1998A and 2001A Bonds for refunding savings through the anticipated bond pricing date.

June 2, 2011

Subject: **Issuance of City of San José Airport Revenue Bonds, Series 2011A**

Page 8

City of San José				
Airport Revenue Bonds, Series 2011A				
Estimated Sources and Uses of Funds⁽¹⁾				
	<u>2011A-1</u>	<u>2011A-1</u>	<u>2011A-2</u>	
	<u>(CP Refunding)</u>	<u>(1998A</u>	<u>(2001A</u>	
		<u>Refunding)⁽²⁾</u>	<u>Refunding)⁽²⁾</u>	<u>Total</u>
Sources of Funds:				
Par Amount of Bonds	\$144,315,000	\$6,045,000	\$56,465,000	\$206,825,000
Premium	1,122,000	264,000	4,512,000	5,898,000
Prior Interest Account	-	124,000	-	124,000
Prior Principal Account	-	318,000	-	318,000
Total Sources of Funds	\$145,437,000	\$6,751,000	\$60,977,000	\$213,165,000
Uses of Funds:				
Refund Commercial Paper	\$129,578,000	-	-	\$129,578,000
Deposit to Refunding Escrow	-	6,691,000	60,447,000	67,138,000
Debt Service Reserve Fund	14,432,000	-	-	14,432,000
Underwriters' Discount	794,000	33,000	311,000	1,138,000
Costs of Issuance ⁽³⁾	633,000	26,000	220,000	879,000
Total Uses of Funds	145,437,000	6,750,000	60,978,000	213,165,000

⁽¹⁾Preliminary; subject to change.⁽²⁾ Refunding reflects candidates currently meeting City's savings threshold. Total par amount of refunding bonds issued will depend on interest rates and savings available at the time of sale.⁽³⁾ Includes bond counsel fees and expenses, financial advisor fees and expenses, rating agencies fees, trustee fees and expenses, and printing costs. Does not include municipal bond insurance premium, if any.

Conditions for Issuance of Additional Airport Revenue Bonds

Under the Master Trust Agreement, the City is authorized to issue additional bonds conditioned upon certain tests being met. A summary of the City's outstanding airport revenue bonds, and review of Council's prior approval of Airport bond issuances, may be found in Attachment B of this memorandum.

The 2011A-1 Bonds are proposed to be issued under the prospective additional bonds test, which requires that, for the longer of (i) the next five fiscal years or (ii) the three fiscal years following the fiscal year in which the bond-funded project is estimated to be completed, net General Airport Revenues plus other funds available for the payment of airport revenue bonds are projected to be at least equal 125% of annual debt service on all outstanding airport revenue bonds after the 2011A-1 Bonds are issued.

For the purposes of the 2011A Bonds, this forecast period will be through fiscal year 2017, or the next five fiscal years. In conjunction with the issuance of the 2011A Bonds, the Airport's feasibility consultant, Ricondo & Associates ("Ricondo"), has prepared a report setting forth a projection of estimated net General Airport Revenues and other funds available for the payment of airport revenue bonds, among other matters. The City will deliver to the Trustee a certificate

setting forth the annual debt service on all bonds subject to the lien of the Master Trust Agreement (including the 2011A Bonds), and the projections of net general airport revenues and other available funds provided by Ricondo, which demonstrate that these projected revenues equal at least 125% of the annual debt service for each corresponding fiscal year through fiscal year 2017. Based on the Ricondo report, estimated debt service coverage is expected to range from 155% to 183% within the projection period of fiscal years 2012 through 2017.

Pursuant the Master Trust Agreement, the City is also authorized to issue additional bonds for the purpose of refunding outstanding Airport Revenue Bonds without meeting an additional bonds test, so long as (i) the proceeds are used solely to pay or defease the refunded Airport Revenue Bonds and to pay the costs of issuance, accrued interest, and reserve costs of the refunding Airport Revenue Bonds and (ii) the annual debt service for the refunding Airport Revenue Bonds in each year is less than or equal to the annual debt service for the refunded Airport Revenue Bonds in each year the refunding bonds are to be outstanding. So long as the bonds issued to refund the 1998A Bonds and the 2001A Bonds are delivered simultaneously with the 2011A Bonds issued to refund outstanding CP, the City expects to show compliance with the prospective additional bonds test described in the preceding paragraph for all 2011A Bonds. However, if the bonds issued to refund the 1998A Bonds and/or the 2001A Bonds are delivered on a different date, it is possible that the additional bonds test described in this paragraph that applies only to refunding bonds would be used.

Feasibility Report, Use of Unspent Bond Proceeds

In connection with the issuance of the 2011A Bonds, Ricondo, has prepared a report which sets forth findings, assumptions, and projections of the air traffic and financial analysis for the Airport. This report is included as Appendix B of the Official Statement. Ricondo's projection of debt service coverage discussed above is based on a number of assumptions and projections, including the growth of enplaned passengers, from 4,107,394 in FY 2010 to 4,195,000 in FY 2017.

In preparing the financial projections, Ricondo worked with Airport staff and Bond Counsel to incorporate certain assumptions relating to the allowable uses of unspent bond proceeds associated with Airport Revenue Bonds, Series 2007A and 2007B. Based on Bond Counsel advice and information provided by Airport staff, Ricondo has assumed that a portion of the unspent bond proceeds associated with the 2007A bonds (currently estimated at \$62 million) and certain other Airport funds will be applied towards future principal payments due on the 2007A bonds. Similarly, the unspent bond proceeds associated with the 2007B bonds (currently estimated at \$28 million) are assumed to be applied towards future principal and interest on the 2007B bonds. This represents a conservative assumption for the purpose of calculating certain financial projections, including cost per enplanement and debt service coverage ratios. However, it should be noted that staff is currently working with Bond Counsel to evaluate other legally allowable uses of unspent bond proceeds associated with the 2007A and 2007B bonds and the 2004 Bonds, including the potential of reimbursing various Airport capital expenses that have previously been paid with Airport revenues.

Sale Parameters

Staff recommends that the 2011A Bonds will be sold within certain parameters as described below. The Sixteenth Supplemental Resolution sets forth these parameters.

Principal Amount: The aggregate not-to-exceed principal amount is \$300,000,000, which represents the approximately \$145,000,000 principal amount that will be required to refund the outstanding commercial paper, plus the principal amount needed to refund the approximately \$138,000,000 of 1998A Bonds and 2001A Bonds currently outstanding. While not all of the 1998A and 2001A Bonds currently are refundable within the City's savings parameters, the higher not-to-exceed amount will permit the City to refund any of these bonds that meet its savings criteria at the time of sale.

True Interest Cost: The not-to-exceed true interest cost of the 2011A Bonds is 8.50%, which is approximately 1.70% higher than current market rates.

Underwriters' Discount: The not-to-exceed total compensation to underwriters is 0.6% of the par amount of the 2011A Bonds.

Bond Insurance

The City plans to solicit a quote for municipal bond insurance from Assurance Guaranty Corporation ("AGC"), the only remaining viable provider of municipal bond insurance. Depending on AGC's interest in providing insurance, the premium quoted, and the interest cost differential between insured and uninsured 2011A Bonds and the analysis of the net economic benefit of insurance, the City may elect to insure one or more maturities of the 2011A Bonds. The resolution proposes to delegate this decision and negotiation of terms and conditions with AGC to the Director or Assistant Director of Finance.

Bond Financing Documents

There are a number of bond financing documents that require City Council approval to proceed with the issuance of the 2011A Bonds. All of these documents (except the Escrow Agreement) in substantially final form will be posted to the City's agenda webpage on or about June 10, 2011.

Official Statement: The Official Statement is the public offering statement for the issuance of the 2011A Bonds. City staff has worked with Disclosure Counsel in preparing the Preliminary Official Statement for the 2011A Bonds. This document describes the purpose of the 2011A Bonds, activity information on the Airport, and the financial condition of the Airport. Detailed financial and activity information regarding the Airport is included in Appendix A to the Preliminary Official Statement and information regarding the City's pension plans is included in Appendix C. The Preliminary Official Statement also includes, as Appendix B, Ricondo's full report. Investors use all of this information to evaluate the

credit quality of the 2011A Bonds. Following the sale of the 2011A Bonds and prior to the closing, Disclosure Counsel will prepare the final Official Statement for the 2011A Bonds.

Staff recommends that the Director or Assistant Director of Finance and the Director of Aviation be authorized to sign the final Official Statement for the 2011A Bonds on behalf of the City and to make such modifications to these documents as may be necessary upon consultation with the City Attorney's Office. Prior to the distribution of the Preliminary Official Statement and the Official Statement to investors, staff will update budget or financial information, as well as other topics included in the Preliminary Official Statements and in Appendix A to reflect the most recent information available to the City to the extent that the updates could affect the deliberations of a reasonable investor in making the decision to purchase the 2011A Bonds.

Staff also recommends that the Director or Assistant Director of Finance and the Director of Aviation be authorized to execute certificates regarding these documents as required to comply with securities laws and to authorize the underwriters to distribute these documents for purpose of marketing the 2011A Bonds.

Staff has carefully reviewed the information contained in the Official Statement and believes it to be accurate and complete in all material respects. As part of the process of issuing new debt, it is important that elected officials read through the Preliminary Official Statement, including Appendices A, B and C.

Understanding the following elements of the bond issue is key to Council's review of these documents:

- Purpose of the bond issue
- Sources of repayment of the bonds
- Risks that the sources of repayment may be insufficient to repay the bonds
- Discussion of any other facts or events that could affect the deliberations of a reasonable investor

After such review of the document the following additional elements should be considered:

- Have identified risks, facts and events been brought to the attention of staff, bond counsel and other professionals?
- Have such risks, facts and events been disclosed, and if not, what is the rationale for the non-disclosure?

The information to address these areas in the Preliminary Official Statement can be found in the INTRODUCTION section which describes the purpose of the 2011A Bonds and the source of repayment, among other things. More detailed information on these topics and on the risks related to repayment of the 2011A Bonds is provided in the SECURITY FOR THE BONDS; and CERTAIN FACTORS AFFECTING THE AIRPORT as well as in Appendices

A and B. Appendix C which provides detailed information regarding the pension plans is included in order to give investors an understanding of this cost on Airport operations.

If any Council member has any personal knowledge that any of the material information in the Preliminary Official Statement is false or misleading, or that the Official Statement omits to state a fact that would be material to investors, the Council member must raise these issues prior to approval of the distribution of the document.

City staff, bond counsel, and the financial advisors will be available at the Council meeting on June 21, 2011, to address any questions, issues and/or concerns.

Staff recommends that the Director of Finance, Assistant Director of Finance, or their authorized designees ("Authorized Officials") be authorized to execute each of these agreements described below. As modifications may be required prior to the closing, staff also recommends that the Authorized Officials be authorized to execute the final version of each of these agreements as may be modified upon consultation with the City Attorney's Office.

Supplemental Trust Agreement. The Supplemental Trust Agreement contains the terms of repayment of the 2011A Bonds, as well as the responsibilities and duties of the Trustee and the rights of the bondholders in connection with the 2011A Bonds.

Escrow Agreements. To the extent either or both of the 1998A Bonds and 2001A Bonds are refunded, the City may need to enter into an Escrow Agreement with the Trustee (The Bank of New York Mellon Trust Company, N.A.) for each refunded series. As this document may not be necessary, a draft is not posted to the agenda webpage. The Escrow Agreement(s) sets forth the responsibilities of the Trustee, as Escrow Agent, with respect to the investment and application of funds in the Escrow Fund with respect to each series of refunded bonds. Each Escrow Agreement will direct Trustee to establish a special fund to be known as the "Escrow Fund" and to deposit a portion of the proceeds from the sale of the 2011A Bonds in separate Escrow Funds established for the 1998A Bonds and the 2001A Bonds, respectively. Each Escrow Fund will be used to redeem the corresponding series of outstanding Bonds on their redemption dates. Any amounts deposited into each Escrow Fund will be invested either in cash, State and Local Government Securities ("SLGS") issued by the U.S. Treasury or in other eligible U.S. securities. Effective May 6, 2011, the SLGS window is closed due to Congress' inaction to raise the federal debt ceiling. It is unclear when the ceiling will be raised and the SLGS window reopened. Should SLGS be unavailable at the time of the refunding transaction, the City likely would invest the escrow funds in other eligible U.S. securities.

Bond Purchase Agreement. The Bond Purchase Agreement is a contract between the City and the underwriters as the purchasers of the 2011A Bonds. The Bond Purchase Agreement specifies the representations and warranties of the City, the documents to be executed at closing, and the conditions that allow the purchaser to cancel the purchase of the 2011A

Bonds. The City will be entering into Bond Purchase Agreement with Citigroup Global Markets Inc. as the Senior Manager and representative of the underwriting team, which includes Bank of America Merrill Lynch and Goldman Sachs. The underwriters will be paid a takedown for the 2011A Bonds in a not to exceed amount of \$4.50/\$1,000 of the par amount issued. The City will reimburse the senior managing underwriter for its expenses, including underwriters' counsel.

Continuing Disclosure Certificate. This Certificate is executed by the City for the benefit of the bondholders and in order to assist the participating underwriters to comply with Securities and Exchange Commission Rule 15c2-12(b)(5). In executing this document, the City commits to notify certain parties if certain listed events occur and to file annually an update to certain information contained in the Official Statement.

Financing Team

The financing team participants consist of:

City's Co-Financial Advisors:	Public Financial Management Public Resources Advisory Group
Bond and Disclosure Counsel:	Orrick Herrington & Sutcliffe LLP
Book-Running Senior Manager:	Citigroup
Co-Manager	Bank of America Merrill Lynch
Co-Manager	Goldman Sachs
Airport Consultant:	Ricondo & Associates
Trustee:	The Bank of New York Mellon Trust Company, N.A.

Professional Contracts

Financial Advisory Services Agreement

Staff recommends that the Council adopt a resolution authorizing the City Manager to negotiate and execute the financial advisory services agreement with Public Financial Management ("PFM") and Public Resources Advisory Group ("PRAG") in a not to exceed amount of \$420,000 for all related services performed through June 2012 for the proposed issuance of Airport Revenue Bonds, Series 2011A and 2011B, payable from bond proceeds contingent on the successful closing of the bonds as follows:

- \$150,000 upon the issuance of AMT bonds to refund a portion of the Airport's outstanding AMT CP Notes;
- \$50,000 upon the issuance of economic refunding bonds;

- \$175,000 upon the issuance of taxable bonds to refund a portion of the Airport's outstanding taxable CP Notes associated with the ConRAC;
- An additional \$25,000 if the taxable refunding is completed after December 31, 2011 but on or before June 30, 2012 and requires significant additional work and/or material document redrafting, as agreed to by the parties; and
- Up to \$20,000 for reimbursable expenses actually incurred.

The terms outlined above are consistent with the multi-year Airport general financial advisory services agreement approved by City Council in February 2007 with PFM (as successor to Fullerton & Friar) and PRAG. Both PFM and PRAG have extensive experience working on Airport financial matters, and have acted as financial advisor on previous Airport bond transactions. The retention of these firms will provide a level of continuity that is needed for this transaction given the growing complexity of the Airport's debt portfolio and continued limited City staffing resources.

Bond Counsel Agreement

The City Attorney's Office is recommending that the City Attorney be authorized to negotiate and execute an agreement with Orrick, Herrington & Sutcliffe LLP for bond and disclosure counsel services for the 2011A Bonds and 2011B Bonds in an amount not to exceed \$350,000 with \$250,000 payable upon the closing of the 2011A Bonds and the remaining \$100,000 payable upon the closing of the 2011B Bonds. The firm's compensation is contingent on the successful closing of the applicable series of bonds and is to be paid from bond proceeds. Orrick, Herrington & Sutcliffe LLP has previously provided bond and disclosure counsel services related to the City's issuance of Airport debt. Accordingly, they are familiar with the structure of the City's Airport debt portfolio as well as other issues related to the City's issuance of Airport revenue bonds.

Financing Schedule

The current proposed schedule for the issuance of the 2011A Bonds is outlined below. The schedule may be modified if the sale dates for the different series are required to be separated in order to comply with IRS regulations:

City Council:	June 21, 2011
Bond Pricing:	Early July 2011
Closing	Mid/late July 2011

TEFRA Hearing Requirements

Section 147(f) of the Internal Revenue Code requires that, before private-activity bonds may be issued, the City must approve the issuance of such obligations after conducting a public hearing.

This hearing, known as a Tax Equity and Fiscal Responsibility Act (“TEFRA”) hearing, is scheduled to be held as part of the action items on the June 21, 2011, Council agenda, and is intended to provide an opportunity for all interested persons to express their views both orally and in writing on the proposed issuance of the 2011A-1 Bonds, which are qualified tax-exempt private-activity Airport revenue bonds. The City most recently held TEFRA hearings on August 14, 2007, in connection with the approval of the 2007 Bonds, which provided long-term financing for the Phase I Airport Master Plan projects, and on March 25, 2008, in conjunction with the expansion of the Airport CP Program from a maximum authorized principal amount of \$450 million to \$600 million.

The notice for the public hearing is scheduled to be published on or about June 6, 2011 in the *San Jose Mercury News*, states the City’s non-binding intent to issue up to \$320 million of tax-exempt private activity bonds and commercial paper notes issued to provide proceeds to finance or refinance all or a portion of the costs that are included in or are consistent with the Airport Master Plan.

EVALUATION AND FOLLOW-UP

This memorandum presents a recommendation for the City Council’s approval of various actions related to the issuance of City of San José Airport Revenue Bonds Series 2011A and requires no follow-up to the City Council.

As part of its overall financing strategy described above, staff plans to return to Council in approximately the fall of 2011 to request approval to issue the 2011B bonds, which represents a refunding of taxable commercial paper used to finance the construction of the ConRAC parking garage.

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)**

HONORABLE MAYOR AND CITY COUNCIL

June 2, 2011

Subject: **Issuance of City of San José Airport Revenue Bonds, Series 2011A**

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COORDINATION

This report has been prepared by the Finance Department in coordination with the City Attorney's Office, Airport Department, and financing team participants.

COST IMPLICATIONS

Professional services (bond counsel fees, financial advisor fees, airport consultant fees and rating agency fees) and other related costs are estimated to be approximately \$808,000 and will be paid from costs of issuance of the 2011A Bonds.

CEQA

Resolutions No. 67380 and 71451, PP 07-149.

/s/

JULIA H. COOPER
Assistant Director of Finance

For questions, please contact Julia H. Cooper, Assistant Director of Finance, at (408) 535-7011.

Attachment A

History of the City's Airport Commercial Paper Program

On November 2, 1999, the City Council adopted Resolution No. 69200 approving the implementation of a commercial paper program (the "Airport CP Program") for the Norman Y. Mineta San José International Airport (the "Airport"), which authorized the issuance of up to \$100 million through a combination of three series of commercial paper notes: Series A (Non-AMT), Series B (AMT), and Series C (Taxable). The Airport CP Program was established to provide interim financing for Airport capital needs in anticipation of issuance of Airport revenue bonds that would replace the short-term notes with permanent long-term financing. Airport commercial paper notes are debt obligations backed by Net General Airport Revenues and are subordinate to Airport senior lien debt, also backed by these revenues. Net General Airport Revenues are the Airport's gross revenues less maintenance and operation expenses and are first pledged to repay Airport revenue bonds and then Airport commercial paper notes.

Since 1999, the commercial paper notes have been used to initially fund the Airport's runway projects, consolidated rental car garage project design efforts, costs associated with the 2002 Refunding Bonds, the initial costs associated with the implementation of the requirements under the federal Aviation and Transportation Security Act, the Claims Loss Reserve for the Airport's Owner Controlled Insurance Program for the North Concourse Project, the Terminal Area Improvement Program, and to fund associated interest costs during construction of these projects.

On June 20, 2006, the City Council approved an expansion of the Airport CP Program from \$100 million to \$200 million to ensure that funding would be available for the award of the design and construction contracts related to the amended Airport Master Plan projects and to pay costs related to the Airport's lease of the former FMC property.

On January 9, 2007, the City Council approved an expansion of the Airport CP Program from \$200 million to \$450 million to ensure that funding would be available for the design and construction contracts related to the rephased Airport Master Plan projects. The Series A-C Notes of the Airport CP Program are secured by letters of credit issued on a several, not joint, basis by JPMorgan Chase Bank, N.A. ("JPMorgan"), Bank of America, N.A. ("Bank of America"), and Dexia Credit Local, acting through its New York Branch ("Dexia")³, pursuant to the Second Amended and Restated Letter of Credit and Reimbursement Agreement (the "JPM/BofA/Dexia Agreement").

On March 25, 2008, the City Council approved an expansion of the Airport CP Program from \$450 million to \$600 million primarily to refund the Series 2004A/B Bonds that were adversely impacted by disruptions in the financial markets related to auction rate securities. This expansion was accomplished through a combination of three additional series of commercial paper notes: Series D (Non-AMT), Series E (AMT), and Series F (Taxable), and is secured by a letter of credit issued by Lloyds TSB Bank plc, acting through its New York Branch ("Lloyds"), pursuant to a Letter of Credit and Reimbursement Agreement (the "Agreement").

Attachment A (continued)

On September 1, 2009, the City Council adopted a resolution authorizing the issuance of tax-exempt private activity non-AMT commercial paper notes as provided for in the American Recovery and Reinvestment Act of 2009. At that time, the Series A Notes were redesignated as Series A-1 (Non-AMT) and Series A-2 (Non-AMT/Private Activity) and the Series D Notes were authorized to be redesignated as Series D-1 (Non-AMT) and Series D-2 (Non-AMT/Private Activity).

On November 9, 2010, the City Council authorized an amendment to the JPM/BofA/Dexia Agreement that extended the term of the agreement for two months from December 2, 2010 to February 2, 2011, removed Dexia Credit Local as a party to the agreement, reduced the amount of available credit from \$450 million to approximately \$283 million, and amended other terms of the Agreement. The two-month extension provided additional time to complete negotiations related to the replacement letters of credit approved by the City Council on January 11, 2011.

On January 11, 2011, the City Council approved letter of credit and reimbursement agreements with each of JPMorgan Chase Bank, N.A., Bank of America, N.A., Citibank, N.A. ("Citibank") and Wells Fargo Bank, N.A. ("Wells Fargo"). The terms of the agreements range from one year to three years and the replacement letters of credit provide aggregate credit support of \$383 million to the Airport CP Program.

On April 26, 2011, the City Council approved an amended and restated letter of credit and reimbursement agreement (the "Amended Agreement") with Lloyds, which provided for the extension of the credit facility for the Series D, Series E and Series F Notes to September 7, 2011 from its previous termination date of May 7, 2011. The Amended Agreement provides aggregate credit support of \$140 million to the Airport CP Program.

Attachment B

Summary of Council Approval of Outstanding Airport Revenue Bonds

The City, pursuant to the City Charter and Municipal Code, has the authority to issue Airport Revenue Bonds. Currently, the City has eight outstanding series of Airport Revenue Bonds.

The 1998A Bonds were issued pursuant to Resolution No. 57794, as amended and supplemented, originally adopted by the City Council in 1984 (the "1984 Resolution"). In 2001, the City adopted Supplemental Resolution No. 70532 approving the amendment and restatement of the 1984 Resolution in the form of the Master Trust Agreement dated as of July 1, 2001 (the "Master Trust Agreement") between the City and BNY Western Trust Company, predecessor in interest to The Bank of New York Mellon Trust Company, N.A., as Trustee (the "Trustee").

Under the Master Trust Agreement, the City has issued the 2001A Bonds pursuant to the First Supplemental Trust Agreement, the 2002A Bonds and 2002B Refunding Bonds pursuant to the Second Supplemental Trust Agreement, the 2004C and the 2004D Bonds pursuant to the Fourth Supplemental Trust Agreement, and the 2007A and the 2007B Bonds pursuant to the Fifth Supplemental Trust Agreement. The 2004A and 2004B Bonds which were issued pursuant to the Third Supplemental Trust Agreement were refunded by Airport CP in 2008 as described in the body of the memorandum.



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Scott P. Johnson

SUBJECT: SEE BELOW

DATE: June 3, 2011

Approved

Date

6/6/11

CITY DISTRICT: City-wide

SUBJECT: APPROVAL OF AGREEMENTS FOR REVENUE ENHANCEMENT SERVICES RELATING TO SALES AND USE TAX, UTILITY USERS TAX AND FRANCHISE FEES, AND LODGING TAXES AND FEES.

RECOMMENDATION

Adopt resolutions:

- a) Authorizing the Director of Finance to negotiate and execute the following agreements with:
 - (1) MuniServices to provide Sales and Use Tax revenue enhancement services and data analysis for the term of July 1, 2011 through June 30, 2014 at a maximum annual compensation not to exceed \$415,000, with two one-year options to extend through June 30, 2016, at the same rate of compensation for each additional optional year subject to the City Council's annual appropriation of funds;
 - (2) Tax Compliance Services to provide Utility Users Tax and Franchise Fee compliance services for the term of July 1, 2011 through June 30, 2014 at a maximum annual compensation not to exceed \$127,800, with two one-year options to extend through June 30, 2016, at the same rate of compensation for each additional optional year subject to the City Council's annual appropriation of funds; and
 - (3) Tax Compliance Services to provide Lodging Taxes and Fees compliance services for the term of July 1, 2011 through June 30, 2014 at a maximum annual compensation not to exceed \$46,125, with two one-year options to extend through June 30, 2016, at the same rate of compensation for each additional optional year subject to the City Council's annual appropriation of funds.
- b) Authorizing MuniServices to examine all Sales and Use Tax records of the California State Board of Equalization for tax collection purposes and other governmental functions of the City.

June 3, 2011

Subject: Approval of Agreements for Revenue Enhancement Services Relating to Sales and Use Tax, Utility Users Tax and Franchise Fees, and Lodging Taxes and Fees

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OUTCOME

Approval of this recommendation will allow the consultants to assist staff with Sales and Use Tax revenue enhancement services and data analysis, Utility Users Tax and Franchise Fee compliance services and Lodging Taxes and Fees compliance services to recover monies due the City.

BACKGROUND

Annually, the City receives approximately \$274 million in taxes and fees relating to Sales and Use Tax (\$137 million), Utility Users Tax and Franchise Fees (\$112 million), and Lodging Taxes and Fees (\$25 million). In this challenging budget environment, it is critical that the City performs audits and compliance reviews to ensure that it is receiving all revenues due.

To facilitate compliance, the Finance Department issued a Request for Proposal (“RFP”) to solicit proposals for three specific areas of revenue enhancement and compliance services: Sales and Use Tax, Utility Users Tax and Franchise Fees, and Lodging Taxes and Fees. Proposers had the option to submit a response for one or any multiple combination of services.

ANALYSIS

On April 13, 2011, the Finance Department issued the RFP on the City’s Purchasing website (“BidLine”) for maximum exposure. There were 27 vendors that downloaded the document for review but due to the specialized nature of work requested, only five consultants submitted proposals.

The five firms that submitted proposals were: Bhuiyan and Associates, Crowe Horwath, Jung and Associates, MuniServices, and Tax Compliance Services. Each area of compliance service received a total of four proposals (two proposers submitted a proposal for all three services, two proposers submitted a proposal for two services, and one proposer submitted a proposal for one service). Proposals for each service request were evaluated separately using the following criteria and weighting:

Evaluation Criteria:

Description	Weight
Proposal Responsiveness	Pass/Fail
Experience of Proposer	25%
Technical Capability	25%
Reference/Firm Reputation	20%
Fee Structure	20%
Local Business Enterprise	5%
Small Business Enterprise	5%
	<u>100%</u>

Sales and Use Tax

Rank	Firm	Experience	Technical	Reference	Cost	Local	Small	Total
1	MuniServices	24.67	24.17	20.00	5.98	0.00	0.00	74.81
2	Crowe Horwath	18.50	15.83	10.22	6.38	0.00	0.00	50.93
3	Bhuiyan and Assoc.	7.50	7.22	0.00	20.00	0.00	0.00	34.72
4	Jung and Assoc.	6.67	8.33	0.00	11.77	0.00	0.00	26.77

The table above summarizes the scoring results for the Sales and Use Tax revenue enhancement services portion of the RFP. MuniServices received the highest total points of 74.81 out of 100 points; Crowe Horwath, Bhuiyan and Associates, and Jung and Associates received 50.93, 34.72 and 26.77 points, respectively. Based on the results of the evaluation process, staff recommends MuniServices to provide Sales and Use Tax revenue enhancement services and data analysis for the City.

MuniServices will be paid on a contingency basis for reallocation of Sales and Use Tax to the City at a maximum annual compensation of \$400,000 for the Sales and Use Tax audits and a fixed annual compensation of \$15,000 for data analysis for an aggregate annual total of \$415,000. The agreement will be for three years with two one-year options to extend, subject to the City Council's annual appropriation of funds. The term of the agreement may be extended by the Director of Finance upon written notice to MuniServices. MuniServices fees are based on a percentage of new Sales and Use Tax revenues received by the City resulting from MuniServices' reallocation of Sales and Use Tax to the City and, therefore, are contingent upon MuniServices' performance under the terms and conditions of the agreement. MuniServices currently provides the City with Sales and Use Tax audit services. MuniServices' annual rate of compensation has historically averaged approximately \$225,000. Accordingly, staff is appropriating less than the maximum annual compensation permitted under the agreement, a total of \$281,075 for combined fixed (\$15,000) and contingent fee (\$266,075) services. To the extent MuniServices audit activities produce reallocation of Sales and Use Tax revenue in excess of \$266,075, staff will return to Council with a recommendation to recognize the additional revenue and appropriate the associated contingent fee expenditures.

June 3, 2011

Subject: Approval of Agreements for Revenue Enhancement Services Relating to Sales and Use Tax, Utility Users Tax and Franchise Fees, and Lodging Taxes and Fees

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The total maximum compensation for the Initial Term of the Agreement from July 1, 2011 through June 30, 2014 shall not exceed \$1,245,000, subject to annual appropriation of funds. In addition, the City has two one-year options to extend the MuniServices contract at a maximum annual compensation not to exceed \$415,000 for a total maximum option period compensation of \$830,000, subject to annual appropriation of funds. MuniServices will provide the following services:

- Sales and Use Tax audits;
- Facilitate correction of tax filings with the State Board of Equalization;
- Provide technical and analytical support to City in regards to Sales and Use Tax related legislation and administrative rulings;
- Provide the City with Sales and Use Tax quarterly trend reports and budget analysis; and
- Provide the City with a sales tax data base with quarterly updates of sales tax permit records and distribution reports.

The Sales and Use Tax compliance services portion of the agreement provides that MuniServices will receive 15% of new revenues received by the City resulting from MuniServices' reallocation of Sales and Use Tax to the City, subject to an annual cap of \$400,000. The agreement itself is divided into two phases – the primary services phase and completion services phase. The primary services phase is the first three years of the agreement and any option years exercised by the Director of Finance. The completion services phase begins at the expiration or termination of the primary services phase, whichever is sooner. It is during the completion services phase of the agreement that the consultant resolves any unresolved claims with the Board of Equalization identified during the primary services phase. For each option year, there is a three year completion phase as described above. In this agreement, the completion phase will extend no later than June 30, 2019, and each year of the completion phase is subject to the cap of \$400,000.

In addition to providing services related to the collection of local Sales and Use Taxes, MuniServices will also provide City Departments with services related to other governmental functions, such as budgeting and financial projections. These revenue compliance and data analysis services individually and collectively add value to various City Departments and are essential for additional protection of the City's sales and use tax revenues. Accordingly, to ensure that MuniServices has access to the Sales and Use Tax records of the Board of Equalization, MuniServices must be authorized, by resolution of the City Council, to examine all Sales and Use Tax records of the California State Board of Equalization, consistent with Section 7056 of the California Revenue and Taxation Code.

June 3, 2011

Subject: Approval of Agreements for Revenue Enhancement Services Relating to Sales and Use Tax, Utility Users Tax and Franchise Fees, and Lodging Taxes and Fees

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Utility Users Tax and Franchise Fees

Rank	Firm	Experience	Technical	Reference	Cost	Local	Small	Total
1	Tax Compliance Services	24.00	24.17	20.00	19.01	0.00	0.00	87.18
2	MuniServices	24.50	23.33	20.00	13.50	0.00	0.00	81.33
3	Crowe Horwath	16.33	14.17	10.22	20.00	0.00	0.00	60.72
4	Jung and Assoc	6.67	8.33	0.00	19.57	0.00	0.00	34.57

The table above summarizes the scoring results for Utility Users Tax and Franchise Fee revenue compliance services portion of the RFP. Tax Compliance Services received the highest total points of 87.18 out of 100; MuniServices, Crowe Horwath, and Jung and Associates received 81.33, 60.72 and 34.57 points, respectively. Based on the results of the evaluation process, staff recommends Tax Compliance Services (“TCS”) to provide Utility Users Tax and Franchise Fee revenue enhancement services for the City. TCS will be paid on a fixed rate basis at a maximum annual compensation of \$127,800 for the Utility Users Tax and Franchise Fee audits. The agreement will be for three years with two one-year options to extend, subject to the City Council’s annual appropriation of funds. The term of the agreement may be extended by the Director of Finance upon written notice to TCS.

The total maximum compensation for the Initial Term of the Agreement from July 1, 2011 through June 30, 2014 shall not exceed \$383,400, subject to annual appropriation of funds. In addition, the City has two one-year options to extend the TCS contract at a maximum annual compensation of \$127,800 for a total maximum option period compensation of \$255,600, subject to annual appropriation of funds. TCS will provide the following services:

- Energy transporters Utility Users Tax audits;
- Electric and Gas Franchise Fee audits;
- Water Franchise Fee audits;
- Telecommunication Users Tax audits;
- Revenue trend reports and revenue budget analysis to the City;
- Analysis of state and federal legislation that may threaten utility tax revenues; and
- Utility Users Tax training seminars for City staff.

Lodging Taxes and Fees

Rank	Firm	Experience	Technical	Reference	Cost	Local	Small	Total
1	Tax Compliance Services	23.83	24.17	20.00	18.82	0.00	0.00	86.82
2	MuniServices	24.33	23.33	20.00	14.87	0.00	0.00	82.54
3	Crowe Horwath	15.67	14.44	10.22	20.00	0.00	0.00	60.33
4	Jung and Assoc.	6.67	8.33	0.00	9.37	0.00	0.00	24.37

The table above summarizes the scoring results for the Lodging Taxing and Fees revenue enhancement services portion of the RFP. Tax Compliance Services received the highest total

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Subject: Approval of Agreements for Revenue Enhancement Services Relating to Sales and Use Tax, Utility Users Tax and Franchise Fees, and Lodging Taxes and Fees

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points of 86.82 points out of 100; MuniServices, Crowe Horwath, and Jung and Associates received 82.54, 60.33 and 24.37 points, respectively. Based on the results of the evaluation process, staff recommends Tax Compliance Services ("TCS") to provide Lodging Taxes and Fees revenue enhancement services for the City. TCS will be paid on a fixed rate basis at a maximum annual compensation of \$46,125. The agreement will be for three years with two one-year options to extend, subject to the City Council's annual appropriation of funds. The term of the agreement may be extended by the Director of Finance upon written notice to TCS.

The total maximum compensation for the Initial Term of the Agreement from July 1, 2011 through June 30, 2014 shall not exceed \$138,375, subject to annual appropriation of funds. In addition, the City has two one-year options to extend the TCS contract at a maximum annual compensation of \$46,125 for a total maximum option period compensation of \$92,250, subject to annual appropriation of funds. TCS will provide the following services:

- Transient Occupancy Tax ("TOT") audits;
- On Line Travel Company TOT compliance assistance to the City;
- Convention Center Facilities District ("CCFD") Tax audits;
- Hotel Business Improvement District ("HBID") Fee audits;
- Technical and analytical support to the City in regards to legislation that threatens the revenue source;
- Revenue trend reports and revenue budget analysis to the City; and
- Lodging Taxes and Fees training seminars for City staff.

PUBLIC OUTREACH/INTEREST

The RFP was posted on the City's BidLine and was downloaded by 27 parties potentially interested in providing auditing and compliance services.

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million 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)**

COORDINATION

This report has been coordinated with the City Manager's Budget Office and the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

The revenue enhancement and compliance program agreements with MuniServices to provide Sales and Use Tax revenue enhancement services and with Tax Compliance Services for Utility Users Tax and Franchise Fees and Lodging Taxes and Fees compliance services is consistent with the Council approved *2010-2011 Budget Balancing Strategy Principles* which directed the creation of a balanced budget which mitigated direct service reductions by utilizing a combination of ongoing expenditure reductions or retention of ongoing revenue sources.

COST SUMMARY/IMPLICATIONS

1. **AMOUNT OF RECOMMENDATION/COST OF PROJECT:** For the initial term of July 1, 2011 through June 30, 2014 the total maximum compensation for the contracts will not exceed \$1,766,775, with annual compensation not to exceed \$588,925, with two one-year options to extend through June 30, 2016, at the same rate of compensation for each additional optional year subject to the City Council's annual appropriation of funds.

MuniServices fees are based on a percentage of new Sales and Use Tax revenues received by the City resulting from MuniServices' reallocation of Sales and Use Tax to the City and, therefore, are contingent upon MuniServices' performance under the terms and conditions of the agreement. MuniServices currently provides the City with Sales and Use Tax audit services. MuniServices' annual rate of compensation has historically averaged approximately \$225,000. Accordingly, staff is appropriating less than the maximum annual compensation permitted under the agreement, a total of \$281,075 for a combined fixed (\$15,000) and contingent fee (\$266,075) services. To the extent MuniServices audit activities produce reallocation of Sales and Use Tax revenue in excess of \$266,075, staff will return to Council with a recommendation to recognize the additional revenue and appropriate the associated contingent fee expenditures.

2. **SOURCE OF FUNDING:** City-Wide Appropriations in the Finance Department for Revenue Enhancement Consulting Services.
3. **FISCAL IMPACT:** N/A-One time cost.

June 3, 2011

Subject: Approval of Agreements for Revenue Enhancement Services Relating to Sales and Use Tax, Utility Users Tax and Franchise Fees, and Lodging Taxes and Fees

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BUDGET REFERENCE

Fund #	Appn #	Appn. Name	Total Appn	Amt. for Contract	2011-2012 Proposed Budget Page	Last Budget Action (Date, Ord. No.)
001	2060	Revenue Enhancement Consulting Services	\$455,000	\$588,925*	IX-24	NA

* The Sales and Use Tax portion of the contract is paid on a contingency basis. In the event that the actual contingent fees exceed the appropriation amount, staff will return to Council to request an increase in the appropriation amount which would be offset by recognizing increased Sales and Use Tax revenues.

CEQA

Not a project, File No. PP10-066 (e) Services that involve no physical changes to the environment.

/s/

SCOTT P. JOHNSON
Director, Finance Department

For questions, please contact Wendy J. Sollazzi, Revenue Management Division Manager at (408) 535-7005.





Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: David Sykes
Kim Walesh

SUBJECT: SEE BELOW

DATE: 05-27-11

Approved

Date

6/7/11

COUNCIL DISTRICT: 5

SNI: Mayfair

SUBJECT: ACTION RELATED TO IMPLEMENTATION OF THE SCHOOL OF ARTS & CULTURE AT THE MEXICAN HERITAGE PLAZA

RECOMMENDATION

- a) Adoption of a resolution authorizing the City Manager to negotiate and execute an Interim Incubator Operator Agreement with 1stACT Silicon Valley, for the management and operation of the Plaza based on business terms and conditions described in this memorandum for a term not to exceed 3 years at a maximum total compensation not to exceed \$1,485,000, subject to the City Council's annual appropriation of funds for the operating payments.
- b) Adoption of a resolution to amend the FY 2011-2012 Schedule of Fees and Charges (Resolution No. 72737, as amended) to suspend the use and rental fees for Mexican Heritage Plaza for so long as the City is not operating the facility.

BACKGROUND

On May 24, 2011, the City Council approved the Mexican Heritage Plaza Steering Committee's Business Plan for the School of Arts & Culture at the Mexican Heritage Plaza ("Plaza"). Based on the recommendations submitted by Mayor Reed, Council members Campos, Herrera, Kalra and Liccardo, the Council also authorized the City Manager to negotiate an Interim Incubator Operator (IIO) Agreement with 1stACT Silicon Valley. The recommendation further stated that execution of the agreement should not occur until adoption of the FY 2011-2012 budget. The purpose of this memo is to authorize the City Manager to negotiate and execute the IIO Agreement according to the direction of the Council.

ANALYSIS

Interim Incubator Operator (IIO) Agreement

The key business terms of the IIO Agreement to be negotiated and executed are as follows:

- **Contracting entity** - 1stACT, initially. However, a new organization affiliated with 1stACT, but a mirror of 1stACT in terms of structure, board composition, and officers has been created. This new organization was created so that the operations of the school and Plaza will be separated from other 1stACT activities. In this way, the interim operator will be focused simply on the operation of the school and Plaza, its business activities will be transparent and easily identifiable to the public, financial reporting and monitoring will be focused solely on school and Plaza operations, and lines of accountability will be clear. The interim operator may evolve into the long term operator, or it may give way to another organization as the long term operator after the Agreement expires. Until such time as the new organization receives a determination letter from the IRS that it is exempt from federal taxation, 1stACT will be responsible for all IIO duties.
- **Term** – 3 years, with the ability to terminate sooner, particularly if a long term operator is ready.
- **City investment** – Match, after the first \$300,000 of City investment, the combination of earned and contributed revenue generated by the school, up to a maximum of \$600,000 in 2011-12, \$550,000 in 2012-13, and \$500,000 in 2013-14. In each year, 10% of the total is to be directed to a capital repair and replacement fund to be managed by the operator.
- **Interim Incubator Operator functions** – Provide school programs and services, operate and maintain the Plaza, develop a successor organization that can become the long term operator (either one that develops during the incubation period or an existing organization that becomes ready during the incubation period).
- **Relationship with Cultural Arts Partners** – Negotiate agreements with the existing Cultural Arts Partners (Teatro Visión, Mexican Heritage Corporation, and San Jose Multicultural Artists Guild) to ensure continuing partnerships for programs that support the mission of the school, also consider recruiting new Cultural Arts Partners based on their ability to contribute to the mission.
- **Programming & Rentals** – Develop school programs based on the Guiding Principles described in the Business Plan. Develop a rental structure that balances activation and community use with cost recovery. Ensure that neighborhood associations named in the May 24 Council direction receive limited free use. Create specific methods to make the Plaza available for verified neighborhood associations.

- **Governance** – Follow the May 24 Council direction to convene an advisory committee comprised of 9 members representing the entities specified. The Advisory Committee on Permanent Governance will explore potential public/private opportunities as part of the governance and implementation of the long-term business plan. 1stACT should provide a progress report to the Community and Economic Development Committee no later than December 31, 2012.

EVALUATION AND FOLLOW-UP

Staff will manage the agreement with the new organization, monitoring revenue collections to verify the matching payments, and monitoring performance of the various tasks required of the IIO. City staff will also serve on the advisory committee that will guide the progress toward an eventual recommendation to Council regarding the selection of a permanent operator for the school.

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 and staffing that may have impact 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 does not meet any of the above criteria. However, public outreach related to the Council's earlier direction to staff to negotiate the Interim Incubator Operator agreement was extensive. As was described in the Council memo for that item, the Steering Committee meetings from June 2009 to the present have been publicly noticed and conducted based on the Brown Act. An e-mail list of more than 400 community members has received notices prior to every meeting, a synopsis following every meeting, and special notices of items of unusual interest throughout the process. A website linked from the City's home page has been available throughout the process. For the May 24 Council meeting, additional outreach took place with the e-mail list of stakeholders, and staff has provided recent progress reports to the Community & Economic Development Committee and the Arts Commission, both of which included a final draft of the Business Plan and a detailed discussion of the Interim Incubator Operator. This memorandum will be posted on the City's Internet website for the June 21, 2011 Council agenda.

HONORABLE MAYOR AND CITY COUNCIL

05-27-11

Subject: Implementation of School of Arts & Culture at Mexican Heritage Plaza

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COORDINATION

This memorandum has been coordinated with the City Attorney's Office.

COST SUMMARY/IMPLICATIONS

The total cost of the recommended actions is \$600,000 in the General Fund in 2011-2012, partially offset by a transfer of \$116,442 from the Convention Facilities & Cultural Affairs Fund, as described in Manager's Budget Addendum #19. This compares to the City's 2010-2011 net cost of approximately \$680,000, a 12% reduction. This change is included in the 2011-2012 Proposed Operating Budget that is under consideration by the Council as this memo is written.

The recommended level of City investment is \$550,000 in 2012-2013 and \$500,000 in 2013-2014. The IIO agreement will contain language that conditions these payments upon annual Council approval of appropriations authorizing the expenditures.

CEQA

CEQA: Exempt, File No. PP10-097.

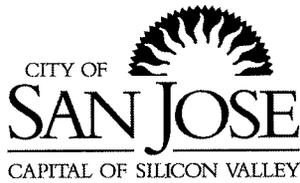
/s/

DAVID SYKES
Acting Director of Public Works

/s/

KIM WALESH
Director of Economic Development and
Chief Strategist

For questions, please contact PETER JENSEN, Acting Assistant Director of Public Works, at 975-7290.



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Norberto Duenas

**SUBJECT: PARKS, RECREATION AND
NEIGHBORHOOD SERVICES
2011-2012 AGREEMENTS**

DATE: 05-31-11

Approved

Date

6/3/11

COUNCIL DISTRICT: Citywide

RECOMMENDATION

Adopt a resolution authorizing the following, subject to the appropriation of funds by the City Council, and on such terms and conditions as deemed appropriate by the City Manager:

(a) Authorize the City Manager to negotiate and execute all agreements and amendments for the Department of Parks, Recreation and Neighborhood Services (PRNS) identified on Attachment A consistent with the 2011-2012 Proposed Budget;

(b) Authorize the City Manager to negotiate and execute agreements and amendments to accept grant funds identified on Attachment B;

(c) Authorize the City Manager to negotiate and execute a four-month extension of the agreement with the County of Santa Clara for the Senior Nutrition Agreement into the first four months of 2011-2012 and to accept grant funds for that period in amounts consistent with budgeted amount in the 2010-2011 agreement, until a new agreement for 2011-2012 is finalized with the County;

(d) Authorize the Director of Parks, Recreation and Neighborhood Services to negotiate and execute 2011-2012 contracts and amendments consistent with Adopted Budget amounts for the following grant programs:

1. Bringing Everyone's Strengths Together (B.E.S.T.)
2. Safe Summer Initiative Grant (S.S.I.G.)
3. Mayor's Gang Prevention Task Force Memorandums of Understanding

(e) Authorize the City Manager or designee to negotiate and execute 2011-2012 contracts and amendments consistent with Adopted Budget amounts for the following:

1. Children's Health Initiative
2. General Fund Grants (formerly known as Healthy Neighborhoods Venture Fund - HN VF)

(f) Authorize the City Manager to approve the Third Amendment to the Park Maintenance Agreement between the City of San Jose and Hitachi Technologies, Inc. to extend the term of maintenance agreement from June 30, 2011 to June 30, 2012 for the Ramac, Raleigh Linear Green and Charlotte Commons parks at no cost to the City.

OUTCOME

By delegating to the City Manager and PRNS Director the authority to negotiate and execute these contracts, the process of making funding available to recipients will be expedited.

BACKGROUND

The City contracts with community-based organizations, school districts, and other parties for various programs. The City also contracts with the County to receive funds for the provision of senior nutrition services and for the Grace Community Center program for mentally disabled adults. These programs provide services that support the livability of neighborhoods, offer opportunities for individuals to enjoy life, and strengthen communities of people within San José.

Additionally as part of the General Plan Amendment application (PDC04-031) for the Hitachi properties approved by Council on June 21, 2005, a maintenance agreement was created followed by two amendments to extend the maintenance at no cost to the City until such time that a Community Facility District can be created for the ongoing maintenance of Ramac, Raleigh Linear Green and Charlotte Commons parks. The current maintenance agreement expires June 30, 2011.

In response to the City Council's request to accelerate the City's administrative processes, including the contract process, PRNS prepares this Council memorandum annually to seek authorization to negotiate and execute agreements. This authorization will allow timely execution of 2011-2012 agreements.

ANALYSIS

PRNS is seeking authority for the City Manager or their designee, to sign and execute agreements and amendments to the agreements covered by this memorandum. In a number of cases, the contract amount to be paid or received by the City exceeds the City Manager's contract authority. By delegating the contract authority to the City Manager or designee to negotiate and execute these agreements, the administrative process of making funding available to recipients will be expedited. Additionally, City Council and administrative staff time generally dedicated to prepare and review individual memos for these agreements will be significantly reduced. The City Manager or designee may only exercise such amendment authority if the contract, as amended, is consistent with the 2011-2012 Adopted Budget and further provided that

City Council has taken all appropriation actions necessary to fulfill the terms of the amended contract.

The proposed contracts (Attachment A) and compensation to be received by the City (Attachment B) for 2011-2012 are contingent on the adoption of the 2011-2012 Operating and Capital Budgets. In the event the amounts specified for these contracts are modified, the contracts shall reflect the amounts approved. In addition, the City Manager shall have the authority to accept any funds exceeding the figures identified in Attachment B for the specified programs and purposes identified as "Compensation Paid to the City" provided that the City Manager determines that the City is able to provide the services and comply with any additional requirements associated with the increased grant funds. The City Manager shall also bring forward for Council approval any required budgetary adjustments and appropriation actions necessary for such programs.

Furthermore, PRNS is seeking authority to designate the Director of PRNS with contracting authority to negotiate and execute contracts and amendments consistent with the 2011-2012 Proposed Budget for the B.E.S.T. and S.S.I.G. grant programs, and the Mayor's Gang Prevention Task Force Memorandums of Understanding.

We are also requesting authority for the City Manager or designee, to negotiate and execute contracts and amendments consistent with the 2011-2012 Proposed Budget for General Fund grants (formerly known as HNMF). The proposed budget recommends that Anti-Tobacco Settlement dollars, previously known as HNMF, would fund the Children's Health Initiative at \$2.1 million to continue support for health premiums for children, and provide General Fund grants for organizations for a total amount of \$400,000. Currently the Housing Department administers the HNMF funds. For 2011-2012, PRNS will administer the grant program. Such authority will apply to any grant amendments related to these programs subject to the 2011-2012 Adopted Budget and with the stipulation that the City Council has taken all appropriation actions necessary to execute the terms of the agreements. Approving these authorities will help reduce processing time that will lead to efficiency gains and the timely delivery of contracts and initial payments.

Consultant agreements that require compliance with Municipal Code Section 4.12.320 and 4.12.33 Local and Small Business Preference have not been included in this memorandum.

EVALUATION AND FOLLOW-UP

Not applicable.

POLICY ALTERNATIVES

Not Applicable.

PUBLIC OUTREACH/INTEREST

- ✓ **Criteria 1:** Requires Council action on the use of public funds equal to \$1 million 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)**

While the majority of the contracts listed on the Attachment A are below the \$1 million threshold, there are two grant programs that meet Criteria 1. The B.E.S.T. and the former HNVF grant applications processes are managed through WebGrants, the City's online grant management system. In addition, all grant opportunities are advertised in the San Jose Mercury News.

Additionally, the grant award to be received from the County of Santa Clara for the City's Senior Nutrition Program and subsequent agreement may exceed \$1.2 million which, by definition of Criteria 1, requires website posting. To meet this requirement, this Council memorandum will be posted to the City's Website City Council Agendas and Synopses for public viewing for the June 21, 2010, City Council Meeting.

COORDINATION

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

FISCAL/POLICY ALIGNMENT

Not applicable.

COST SUMMARY/IMPLICATIONS

Funding for the agreements cited in Attachment A and for the County of Santa Clara Mental Health Services item on Attachment B, is included in the 2011-2012 Proposed Operating Budget. As required for the other items on Attachment B, the City Manager shall also bring forward for Council approval any required budgetary adjustments and appropriation actions necessary for such programs.

BUDGET REFERENCE

Not applicable.

CEQA

Attachment A: Compensation Paid by the City of San José

- Grace Baptist Church, Not a Project, File PP10-066(e) Lease of Existing Space;
- Kids Love Soccer, Not a Project, File PP10-066(e) Consultant Services
- Children's Health Initiative, Not a Project, File PP10-066(e) Services that involve no change to the environment;
- Hitachi Technologies, Mixed Use Transit Village, EIR, Resolution No. 72772;
- B.E.S.T., Not a Project, File PP10-066(e) Services that involve no change to the environment;
- General Fund Grants, Not a Project, File PP10-066(e) Services that involve no change to the environment;

Attachment B: Compensation Paid to the City of San José

- Alum Rock School District, Not a Project, File PP10-066(e) Services that involve no change to the environment;
- COPS Urban Violence Grant, Not a Project, File PP10-066(e) Services that involve no change to the environment;
- County of Santa Clara – Mental Health Services, Not a Project, File PP10-066(e) Services that involve no change to the environment;
- First 5 of Santa Clara County, Not a Project, File PP10-066(e) Services that involve no change to the environment;
- County of Santa Clara Agreement for Senior Nutrition Program, Not a Project, File PP10-066(e) Services that involve no change to the environment;

/s/

NORBERTO DUENAS
Deputy City Manager/Acting Director of
Parks, Recreation and Neighborhood Services

For questions please contact Zulma Maciel, Program Manager, at 408-793-4175.

Attachment A: Compensation Paid by the City of San Jose

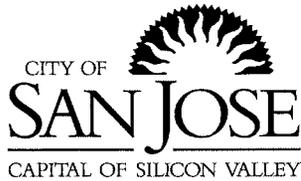
Attachment B: Compensation Paid to the City of San Jose

ATTACHMENT A

Compensation Paid by the City of San José		
AGREEMENT	DESCRIPTION	PROPOSED 2011-2012 BUDGET
Grace Baptist Church	City leases space from Grace Baptist Church providing a therapeutic recreation program for adults with mental disabilities with a one year extension option subject to annual appropriation of funds.	\$136,000
Kids Love Soccer	Approval to execute a two-year (April 2012 – March 2014) vendor agreement to teach soccer classes and conduct soccer camps at various fields throughout San José.	\$500,000
Children's Health Initiative	Funding provides health insurance to approximately 1,700 children whose families have income at or below 300% of the federal poverty level.	\$2,100,000
Hitachi Technologies, Inc.	One year extension of Parks agreement for maintenance of Ramac, Raleigh Linear Green and Charlotte Commons parks	0
B.E.S.T.	Support for the Mayor's Gang Prevention Task Force	\$1,700,000
General Fund Grants (former H.N.V.F.)	Provide for transitional funding to current H.N.V.F. Grantees	\$400,000

ATTACHMENT B

Compensation Paid to the City of San José		
AGREEMENT	DESCRIPTION	PROPOSED 2011-2012 BUDGET
Alum Rock Union School District	City is the service provider for After School Education and Safety (ASES) grant money in the S. J. A. S. program.	City is reimbursed for expense receipt of up to \$530,000
COPS Urban Violence Grant	To apply for a Grant to implement a gang intervention model similar to the Boston Call-Ins, to provide wrap around services to individuals willing to transform, and to provide parenting skills to parents of high-risk youth.	\$500,000 over 2 years
County of Santa Clara – Mental Health Services	Joint provision of mental health services at City’s Grace Community Center.	City estimates receipt of up to \$451,000
First 5 of Santa Clara County	Partnership agreement with the FIRST 5 of Santa Clara County to provide parent and child enrichment programs, services and activities through community centers for families and children ages 0 to 5. This funding is expected to be used over the course of 2 years.	First 5 will provide funding to the City in the amount of \$500,000
County of Santa Clara Agreement for Senior Nutrition Program	Joint provision of a nutrition program for seniors.	City estimates receipt of up to \$1,215,000



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Hans F. Larsen

SUBJECT: MONTEREY ROAD RESURFACING
AND REHABILITATION PROJECT

DATE: 05-31-11

Approved

Date

6/3/11

COUNCIL DISTRICT: 2

RECOMMENDATION

- a) Adoption of a resolution authorizing the Director of Public Works to:
1. Determine the lowest responsive and responsible bidder and to award a construction contract for the 2010 STP Resurfacing and Rehabilitation Project—Monterey Road to the lowest responsive bidder, in an amount not to exceed the funds appropriated for the project, or to reject all bids and re-bid the project; and
 2. Determine whether or not to award the “green” resurfacing process bid alternate as part of the construction contract, provided that awarding this bid alternate would not cause the construction contract to exceed the amount of funds appropriated for the project.
- b) Approve a contingency equal to five percent of the base contract award amount.

OUTCOME

Adoption of this resolution authorizing the Director of Public Works to determine the lowest responsive and responsible bidder and to award a construction contract to the lowest responsive bidder will enable the City to resurface and rehabilitate Monterey Road between Blossom Hill Road and Bernal Road during this summer’s paving season. Resurfacing the street will improve the structural integrity, appearance, and ride quality of the street. Approval of a five percent contingency will provide funding for any unanticipated work necessary for the proper construction and/or completion of the project.

BACKGROUND

The Department of Transportation (DOT) regularly performs street resurfacing projects as funding allows. For the 2011 construction season, DOT will be utilizing available Federal and State funds to resurface Monterey Road between Blossom Hill Road and Bernal Road. This section of Monterey Road was last maintained in 1996 with a preventive maintenance surface seal treatment. The street is now in very poor condition with much of the pavement worn away, failed, and at the end of its useful life.

The project will remove the top layer of asphalt, fix any underlying roadway damage, repair any severe damage to the curb and gutter, install legally required curb ramps, resurface the entire street with two to four inches of new rubberized asphalt concrete, and install new roadway striping and markings.

In addition to using rubberized asphalt concrete for the new road surface, the project specifications will include a bid alternative for utilizing a “green” resurfacing process that recycles the existing roadway materials where feasible into the new street surface. The benefits of this process, if it can be accomplished within available funding, will be less consumption of raw materials, fewer truck trips, and less waste material, and may lead to lower construction costs. Staff will evaluate these benefits along with the bid prices for the alternative process to determine if it will be utilized during construction.

ANALYSIS

Award of the project must occur in FY 2011-2012 due to the timing and availability of funding. However, in order to complete construction in 2011, it is necessary that the project be awarded in July 2011. Therefore, staff is recommending that the City Council delegate authority to the Director of Public Works for the award of this project. This delegation will include authority for the Director of Public Works to hear and decide protests, to make the City’s final determination as to the lowest responsive and responsible bidder, or to reject all bids and re-bid the Project.

The specifications will include the following process regarding bid protests:

1. Bid results and a Notification of Intention to Award Contract to Apparent Low Bidder by the Director of Public Works will be posted on the Bid Hotline.
2. All bidders will be e-mailed or faxed a copy of the Notification of Intention to Award Contract and will have five (5) working days to file a formal written bid protest.
3. The Director of Public Works will then decide any timely bid protests, including issues of bidder responsiveness or responsibility and will award the project.

Bid opening for this project is set for July 7, 2011. Construction is scheduled to begin in September 2011 and will be completed before the end of October 2011.

City Council policy provides for a standard contingency of five percent on public works projects. The funds budgeted for this project are sufficient to provide for the recommended contingency.

EVALUATION AND FOLLOW-UP

No additional follow up actions with the Council are expected at this time.

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 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* and bid packages for this construction project were also provided to various contractor organizations and builders' exchanges.

In addition, when the project commences, the contractor, as stated in the specifications, will provide advance notification regarding working hours, duration of project, and any appropriate schedule and lane closures to affected businesses and residents. To inform traveling motorists of upcoming construction activities and potential traffic delays, changeable message signs may be used on selected streets stating the schedule dates and time for work to occur on the street.

COORDINATION

This memo has been coordinated with the Department of Public Works, City Attorney's Office, and the City Manager's Budget Office.

FISCAL/POLICY ALIGNMENT

This project supports the Transportation and Aviation Services City Service Area goal to *Preserve and Improve Transportation Assets and Facilities* and aligns with the recommended Pavement Maintenance Core Service goal of improving the City's street pavement conditions and Pavement Condition Index (PCI) from a current network condition rating of "fair" (64 PCI) to a network condition of "good" (70 PCI). The project is also consistent with the Council-approved Budget Strategy General Principles section in that it protects vital core City services.

COST IMPLICATIONS

1. AMOUNT OF RECOMMENDATION: (Engineer's Estimate)

Project Delivery/Development	\$537,454
Construction	\$5,374,544
Contingency	<u>\$268,727</u>
TOTAL PROJECT COSTS:	\$6,180,725

2. COST ELEMENTS OF CONSTRUCTION CONTRACT:

Asphalt Paving	\$4,925,715
Concrete Work	\$176,008
Striping/Markings	\$68,385
Electrical Work	\$17,080
Police Traffic Control and Misc. Items	<u>\$187,356</u>
TOTAL CONSTRUCTION CONTRACT COSTS:	\$5,374,544

3. SOURCE OF FUNDING: 465- Construction Excise Tax

4. FISCAL IMPACT: This project will have no net operating and maintenance costs to the General Fund.

BUDGET REFERENCE

The table below identifies the fund and appropriation proposed to fund the contract recommended as part of this memo, including project delivery, construction, and contingency costs.

Fund #	Appn #	RC #	Appn. Name	Total Appn	Amt. for Contract	2010-2011 Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
465	7280	166815	2010 STP Resurfacing and Rehabilitation	* \$700,000	\$ 6,180,725	N/A	02/08/2011, Ord. No. 28888
Total Current Funding Available =				\$700,000	\$ 6,180,725		

* Additional funding of \$5,481,000 will be allocated as part of the year-end budget clean-up process from available Grant Funding dedicated to street resurfacing.

CEQA

Exempt, File No. PP11-035.

/s/

HANS F. LARSEN
Director of Transportation

For questions, please contact Rene Cordero, Division Manager, at 277-8147.



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: John Stufflebean
Joseph Horwedel

SUBJECT: SEE BELOW

DATE: May 31, 2011

Approved

Date

6/3/11

COUNCIL DISTRICT: Citywide

**SUBJECT: COMMERCIAL SOLID WASTE AND RECYCLABLE MATERIAL
COLLECTION FRANCHISE AGREEMENT BETWEEN THE CITY OF
SAN JOSÉ AND ALLIED WASTE SERVICES OF SANTA CLARA
COUNTY**

RECOMMENDATION

It is recommended that Council

1. Read and consider the California Environmental Quality Act Initial Study and Negative Declaration for Commercial Collection System Redesign (Planning File No. PP10-157) and adopt by Resolution.
2. Hold a public hearing on the application of Allied Waste Services of Santa Clara County for Commercial Solid Waste and Recyclable Material Collection Franchises for the North and South Service Districts, approval of an ordinance granting the franchises, and approval of a Commercial Solid Waste and Recyclable Material Collection Franchises Agreement with Allied Waste Services of Santa Clara County for a term from September 13, 2011 through June 30, 2027.
3. Direct staff to return to Council in 2011-2012 with proposed ordinances or resolutions for adoption needed to implement the new commercial solid waste system, including establishing maximum customer service rates.

OUTCOME

The proposed commercial solid waste collection and organics processing services will provide the most comprehensive and innovative commercial solid waste and recycling system in the United States and will further San José's Green Vision goals of economic growth, environmental sustainability, and enhanced quality of life for its community. Benefits of the new system include more options for customer waste recycling and collection, reasonable and equitable service rates, a new "green" fleet of approximately 50 compressed natural gas solid waste collection trucks to replace the existing aging fleet, stable franchise fee revenue for the General Fund, increased waste diversion, progress toward renewable energy goals, and the creation of additional green recycling jobs in San José.

EXECUTIVE SUMMARY

As directed by Council on April 5, 2011, Staff has negotiated with Allied Waste Services (Allied) to include effective performance standards and liquidated damages in the proposed commercial collection franchise agreement, with specific focus on those related to outreach, education, customer service, and waste diversion. The transition from the current nonexclusive system must be started as early as possible in order to be completed on-schedule, allowing Allied sufficient time to make significant capital investment with trucks, equipment, and complete the retrofit of their existing recyclables processing facility and outreach to existing business customers about the new service. The franchise agreement includes transition plans that will facilitate the capital projects which need to be completed before service start, as well as extensive customer outreach and education. City staff will be monitoring these processes carefully.

A California Environmental Quality Act (CEQA) Initial Study has been completed and the Resolution for adoption of the Initial Study / Negative Declaration is included as an attachment to this memorandum.

BACKGROUND

Private haulers are required to obtain a Commercial Solid Waste and Recyclable Material Collection Franchise that allows them to provide solid waste and commingled recyclable material collection services to San Jose businesses.

Allied's response to the City's procurement for commercial solid waste collection franchisee is deemed to be the application for a franchise. On April 5, 2011, staff presented recommendations for the award for commercial solid waste collection. Council accepted the Report on Request for Proposals and adopted a resolution authorizing the City Manger to negotiate agreements with Allied for commercial solid waste and recyclable material collection services. Council directed Staff to return to City Council in June 2011 with a proposed franchise agreement that addressed:

- Effective performance measures
- Liquidated damages pertaining to failure to meet outlined performance measures
- Rate stabilization and rate increase mitigations

ANALYSIS

Chapter 9.10 of the San Jose Municipal Code and the City Charter requires the City Council to grant Commercial Solid Waste and Recyclable Material Collection Franchises through an ordinance. Approval of the proposed ordinance will grant a new Commercial Solid Waste and Recyclable Material Collection Franchise to Allied for a term beginning September 13, 2011 through June 30, 2027.

The proposed collection franchise agreement is substantially the same as the sample agreement that was included in the Commercial Franchise Request for Proposals (RFP), except for the additions and revisions noted below which address additional Council direction and reflect specifics of Allied's proposal. As directed by Council, Staff has negotiated with Allied to include effective performance standards and liquidated damages in the Agreement, with specific focus on those related to outreach, education, customer service, and waste diversion. This section provides a summary of the CEQA review related to this project, an analysis of key outreach and transition activities to be performed by the service provider, an examination of the effectiveness of the liquidated damages, specifically those related to Waste Diversion, and an overview of the Cost Controls and Rates in the Collection Franchise Agreement.

CEQA Review

The Initial Study / Negative Declaration for Commercial Collection System Redesign (Planning File No. PP10-157) analyzes the potential environmental impacts from a system using one solid waste collection Franchisee and one organics processing Contractor as opposed to the current franchising arrangement with more than 20 franchised haulers with overlapping routes. The analysis in the Initial Study solely focuses on the proposed collection system and does not include the receiving facilities and their associated processes. The receiving facilities have the necessary approvals, permits, and CEQA clearance required to receive or process the materials anticipated to be collected via the proposed Commercial Collection System Redesign or will need to have completed such processes prior to approval of being a receiving facility for the proposed Commercial Collection System Redesign project.

The resource areas within which the proposed project may result in some impacts or changes were identified as air quality, greenhouse gas emissions, land use, noise, transportation, and utilities and service systems. The Initial Study analysis determined there will be no significant impacts from the implementation of the new commercial collection system on those or other resource areas. The Resolution for adoption of the Initial Study / Negative Declaration is included as an attachment to this memorandum.

The Initial Study and Negative Declaration may be accessed online:

- Initial Study: http://www.sanjoseca.gov/planning/eir/Nd2/2011/PP10-157_commercial_redesign/PP10-157_IS.pdf
- Negative Declaration: http://www.sanjoseca.gov/planning/eir/Nd2/2011/PP10-157_commercial_redesign/PP10-157_ND.pdf

Outreach and Transition

Education and outreach are essential to the successful transition to the new commercial solid waste system and the achievement of the City's waste diversion goals. City and Allied preparation and transition activities are governed by the Transition and Implementation Work Plan, which includes detailed outreach and education programs for the one-year transition period. Ongoing outreach and technical assistance during the 15-year term of the franchise is governed by the Outreach and Technical Assistance Work Plan. All work plans, including those governing Customer Service, Collection, and Processing, are included as exhibits to the agreement and are enforceable with liquidated damages (\$1,000 for the first incident and \$2,500 for each subsequent incident). The work plans represent Allied's comprehensive response to RFP criteria that Staff developed by researching the solid waste agreements of other cities, coordinating with stakeholders, and consulting with waste industry professionals.

Collection Franchisee Transition and Implementation Work Plan

The Transition and Implementation Work Plan in the collection franchise agreement will facilitate the transition to the new commercial solid waste system. The transition from the current nonexclusive system must be started as early as possible in order to be completed efficiently, on-schedule, on-budget, and with minimum inconvenience to customers, other franchised haulers, and City staff. The work plan provides a detailed description of required outreach and technical assistance activities and a timeline for equipment purchases and infrastructure improvements. Failure to meet transition timeline milestones as specified in the Transition and Implementation Work Plan will result in liquidated damages of \$5,000 per milestone per day.

There are large capital projects which need to be completed before service start and City staff will be monitoring these processes carefully. Allied will provide monthly progress reports during transition and implementation on the following and other activities:

- CNG Fueling Station
- Customer Database Development and Management
- Routing / Mapping
- Driver hiring and Training
- Public Education and Outreach
- Communication Plan
- Truck Procurement
- Newby Island Resource Recovery Park Processing Upgrades
- Building and Site Modifications

Concurrent with the equipment and facility projects, Allied will complete extensive customer outreach to ensure that all businesses have been informed about the new system and have subscribed to an appropriate level of service. Key outreach and education activities include:

- Coordination with City Staff to determine top 3-5 customer messages, define goals for technical assistance, design program services, develop web-based systems, and observe and provide feedback on customer communications.
- Coordination with the City approved organics processor to identify acceptable and unacceptable feedstock materials so that effective outreach and training materials may be developed.
- Develop sales strategies targeting small, medium, and large businesses.
- Research and develop a communications plan at least nine months before service implementation.
- Conduct direct outreach at least three months before service implementation.

Collection Franchisee Outreach and Technical Assistance Work Plan

Once the new commercial system is launched on July 1, 2012 and throughout the term of the Agreement, the Outreach and Technical Assistance work plan will govern the Franchisee's outreach to commercial customers. Allied has agreed to cooperate with the City in the event of a customer complaint or an audit to provide necessary records to determine if Allied is complying with the terms of the franchise agreement. Some of the key activities in the Outreach and Technical Assistance work plan include:

- Customer Service Research (July 2012 – July 2013): Allied will conduct phone surveys of randomly selected customers and six focus groups (two in each language: English, Spanish, Vietnamese) to identify customer needs and assess their satisfaction through the first year of the new system.
- Direct Outreach Services (July 2012 – October 2012): Allied will distribute newsletters, postcards, and bill inserts outlining key messages and service and rate change information and provide a recycling toolkit (to include indoor container decals, posters, and other signage for business recycling). Customer materials will be offered in English, Spanish, and Vietnamese.
- Ongoing Advertising Campaign (Term of Agreement): Allied will use TV, cable, radio, print, online media, and billing services to reach customers and communicate key messages throughout the term of the agreement.
- Provisions to develop an Annual Plan by Allied and the City to address customers or areas not meeting diversion goals, new legislation, or specific interests of the City.

Waste Diversion

The system-wide diversion rate will be achieved through combined requirements on the part of the collection Franchisee and the organics processor. Allied must achieve performance standards for all aspects of the service, many of which directly contribute to waste diversion goals. In addition to the program data and diversion information that Allied must regularly report to the City, the utilization of City environmental inspectors will be critical to ensuring compliance and accountability.

The agreement and work plans represent a comprehensive, holistic approach to waste diversion that includes thorough outreach and education, innovative collection methods, and cutting-edge material sorting technologies. The work plans include provisions for how Allied must:

- collect and process materials,
- meet minimum diversion standards for equipment through-put and material recovery efficiency,
- maintain the high quality of the processed material for marketability,
- market each type of recovered material under current and anticipated markets, and
- ensure availability and capacity of contingency facilities.

As discussed at the April 5, 2011 Council meeting the liquidated damages for failure to meet the minimum annual diversion standards were considered insufficient and Staff was directed to review the amount. Following a thorough review of other recent solid waste agreements and discussions with Allied, Staff has ensured that the liquidated damages presented in the agreement are sufficient.

The liquidated damages that were detailed in the RFP, including those for waste diversion, were developed subsequent to research of waste agreements in other jurisdictions and Staff's previous experience managing large solid waste contracts for residential services. The waste diversion goal is also supported by the activities in the work plans and the performance measures. Cumulative liquidated damages apply not only for failure to meet the minimum annual waste diversion standards but also for failure to comply with the provisions of any of the work plans included with the agreement. As such, the charge for failure to meet minimum annual diversion requirements is not the only penalty for lack of performance nor the only charge an underperforming service provider would likely be required to pay.

Franchise Enforcement

The redesigned commercial solid waste system is dependent on businesses within the City subscribing to solid waste collection services with Allied, as specified in the recommended agreement. Compliance with relevant sections of the Municipal Code and the provisions of this agreement will require two environmental inspectors dedicated to franchise compliance in the field, which includes collection and organics processing. This enforcement function will help ensure that the cost of the new system will be distributed appropriately among all customers required to participate, mitigating risk of rate increases resulting from Allied not meeting their annual minimum revenue requirement defined in the agreement. Two environmental inspectors would also enforce the Code requirement that no providers may conduct commercial solid waste and recyclable material collection in the City without a franchise from the City. Staff will evaluate whether this work can be absorbed by existing staff, or whether additional Environmental Inspectors will be needed, as part of the 2012-2013 budget process. Should additional support be necessary, a proposal will be submitted for City Council consideration as part of the 2012-2013 Proposed Operating Budget.

Cost Controls and Rates

Maximum customer rates for the services provided by Allied will be established by Council before the July 2012 service start date. The City and Allied have developed a rate structure that best achieves their total revenue requirement while encouraging customers to choose cost effective services that help achieve waste diversion and operational goals. Although some businesses will see different effects on their monthly garbage bill in the new system, rates for the majority of businesses should be similar to current rates and cost competitive with rates charged elsewhere in the Bay Area.

Assuring Equitable Rates

Although projections show that most rates should not change dramatically, some individual rates for specific service levels may see a considerable increase. As proposed in the RFP, the Collection Agreement has been modified to include a rate balancing process, whereby Allied will work with City Staff within six months following initial service to make adjustments to those service levels that see the greatest rate increase while ensuring that any new rate maximums reflect an appropriate cost for that specific service level. Through review of customer account information, Allied will identify rate categories most impacted and propose rates for those services. Allied will provide this information to the City to support a request to modify the maximum service rate schedule. Any revised rate schedule will be brought back to the City Council for final approval before implementation.

Rate Increase Limitations

The maximum customer rates may be adjusted annually during the fifteen-year term of the agreement through a Council approval process. The agreement includes a prescribed methodology for annual rate adjustment, with detailed instructions and limitations. Allied will be limited to only those adjustments allowed per the agreement and cannot charge customers more than the maximum rates established by Council. In the third year of the agreement (and twice thereafter), a "true-up" will occur where necessary. True-up adjustments are made to ensure that Allied is able to charge a service rate that will adequately compensate them for changes in operating or capital expenses, as defined in the Agreement. The true-up adjustments are limited to those impacts that Allied could not have reasonably foreseen and to certain elements that are not under their control, such as the number of possible customer accounts. Allied has agreed to a cap in the total annual increase to maximum service rates in any given year which may not exceed six percent (6%).

EVALUATION AND FOLLOW-UP

Staff will return with recommended revisions to the Municipal Code to reflect the redesigned commercial solid waste system and a Maximum Rate Schedule for Council approval in 2012. Staff will provide regular updates to Council during the one-year transition period to the new system.

PUBLIC OUTREACH/INTEREST

- ✓ **Criteria 1:** Requires Council action on the use of public funds equal to \$1 million 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)**

Staff conducted an extensive stakeholder engagement process starting in January 2008. These efforts included in-person interviews, presentations, media outreach, and an on-line survey. The outreach was conducted in partnership with the Office of Economic Development, the Department of Planning, Building and Code Enforcement, the San José Redevelopment Agency, existing commercial haulers, individual businesses, and business associations. Staff engaged business districts and associations, chambers of commerce, business and non-profit leadership groups, and others during the process.

On-going efforts to inform the business community of the commercial system redesign have included updates mailed to the 20,000 commercial businesses in the City's business tax database, on-going meetings with current commercial haulers, a presentation at the Chamber of Commerce, and contacts with each of the neighborhood business districts, Silicon Valley Leadership Group, and Sustainable Silicon Valley.

The policy decision to redesign the commercial solid waste system and issue an RFP was a Public Outreach Criteria 3-level decision that Council made on March 24, 2009. The recommendation in this memorandum implements the policy decision made in 2009.

COORDINATION

This memorandum was coordinated with the City Attorney's Office, the Office of Economic Development, and the City Manager's Budget Office.

COST SUMMARY/IMPLICATIONS

The on-going cost of two new environmental inspector positions that may be needed to ensure compliance for the new franchised system beginning in 2012-2013 would be approximately \$215,000 and would be completely offset by the AB939 fees paid by the Commercial

HONORABLE MAYOR AND CITY COUNCIL

May 31, 2011

Subject: Agreement with Allied Waste for Commercial Solid Waste Services

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Franchisee. Due to the restrictions of this funding source, these inspectors must be dedicated to enforcement of this franchise agreement. It is anticipated that the City will need up to \$150,000 in consultant support services for the transition which will be funded from ESD's Non-Personal/Equipment appropriation, as presented in the Proposed 2011-2012 Operating Budget in the Integrated Waste Management Fund, subject to City Council approval of that document.

CEQA

CEQA: Negative Declaration, File No. PP10-157. (Environmental Services)

/s/

JOHN STUFFLEBEAN
Director, Environmental Services

/s/

JOSEPH HORWEDEL, Director
Planning, Building and Code Enforcement

Attachment

For questions regarding the Commercial Solid Waste Program, please contact Jo Zientek, Deputy Director, Integrated Waste Management Division, at 408/535-8557 and for questions regarding CEQA review, please contact John Davidson, Senior Planner, Planning Division, at 408/535-7895.

Attachment

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE
ADOPTING THE COMMERCIAL COLLECTION REDESIGN NEGATIVE
DECLARATION, FOR WHICH AN INITIAL STUDY WAS PREPARED,
ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL
QUALITY ACT**

WHEREAS, prior to the adoption of this Resolution, the Planning Director of the City of San José prepared an Initial Study and approved for circulation a Negative Declaration for the Commercial Collection Redesign Project under Planning File No. PP10-157 (the "Initial Study/ Negative Declaration"), all in accordance with the requirements of the California Environmental Quality Act of 1970, together with state and local guidelines implementing said Act, all as amended to date (collectively, "CEQA"); and

WHEREAS, the City-initiated Commercial Collection Redesign project ("Project") analyzed under the Initial Study/ Negative Declaration consisted of the potential environmental impacts from a system using one solid waste collection franchisee and one organics processing contractor, as opposed to the current franchising arrangement with more than 20 franchised haulers with overlapping routes; and

WHEREAS, the Initial Study/ Negative Declaration concluded that implementation of the Project would result in a no new significant effects on the environment; and

WHEREAS, the City of San José is the lead agency on the Project, and the City Council is the decision-making body for the proposed approval to construct the Project; and

WHEREAS, the City Council has reviewed and considered the Initial Study/ Negative Declaration and intends to take actions on the Project in compliance with CEQA; and

WHEREAS, the Initial Study/ Negative Declaration for the Project are, by this reference, incorporated into this Resolution as if fully set forth herein.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE AS FOLLOWS:

THAT THE CITY COUNCIL does hereby make the following findings: (1) it has independently reviewed and analyzed the Initial Study/ Negative Declaration and other information in the record and has considered the information contained therein, prior to acting upon or approving the Project; (2) the Initial Study/ Negative Declaration prepared for the Project has been completed in compliance with CEQA; and (3) the Initial Study/ Negative Declaration represents the independent judgment and analysis of the City as lead agency for the Project. The City Council designates the Director of Planning at the Director's Office at 200 East Santa Clara Street, 3rd Floor Tower, San José, California 95113, as the custodian of documents and records of proceedings on which this decision is based.

