



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Amendment to Agreement with
Orrick, Herrington & Sutcliffe LLP
for Bond and Disclosure Counsel
Services in Connection with the
Issuance of Airport Revenue
Bonds

DATE: November 4, 2011

RECOMMENDATION

Adopt a resolution authorizing the City Attorney to negotiate and execute an amendment to the Agreement with Orrick, Herrington & Sutcliffe LLP for bond and disclosure counsel services in connection with the issuance of the City of San Jose Airport Revenue Bonds Series 2011A, Series 2011B and Series 2011C in order to increase the compensation by \$50,000 for a total compensation not to exceed \$400,000.

OUTCOME

Approval of the amendment will increase the compensation payable to Orrick, Herrington & Sutcliffe LLP contingent on the successful closing of the remaining series of the Series 2011 Bonds.

BACKGROUND

The City previously entered into an agreement with Orrick, Herrington & Sutcliffe LLP (Orrick) for bond counsel and disclosure counsel services in connection with the issuance of Airport Revenue Bonds (Series 2011) in an amount not to exceed \$350,000 with \$250,000 payable upon the closing of the Series 2011A Bonds and the remaining \$100,000 payable upon the closing of the Series 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. The term of the Agreement was retroactive from January 31, 2011 and extends through the completion of the services to be performed by Orrick. Orrick was paid \$250,000 following the successful closing of the Series 2011A Bonds in July.

ANALYSIS

Orrick's agreement to provide bond counsel and disclosure counsel services for the issuance of the Series 2011 Bonds for the flat fee of \$350,000 contemplated that the City would issue two series of bonds, the Series 2011A and the Series 2011B Bonds. However, as interest rates have become favorable and there is the possibility that the City may be

HONORABLE MAYOR AND CITY COUNCIL

November 4, 2011

Subject: Amendment to Agreement with Orrick, Herrington & Sutcliffe LLP

Page 2

able to refund all or a portion of the remaining Series 2001A Bonds, there will likely be an additional series of bonds, the Series 2011C Bonds. The proposed issuance of the Series 2011C Bonds requires additional services in preparation of the necessary documents and the tax analysis for the sale of these bonds.

Additionally, the preparation of the documents for the Series 2011A Bonds involved a greater number of drafts and conference calls to review documents than was originally estimated and extended over a longer period of time.

To compensate Orrick for the additional services in connection with both the Series 2011C Bonds and the Series 2011A Bonds, this Office recommends that Orrick's compensation be increased by an amount not to exceed \$50,000. It is our understanding that Orrick's increased costs for the Series 2011 Bonds is approximately \$100,000 and the increased compensation of \$50,000 will offset half of their increased costs.

PUBLIC OUTREACH/INTEREST

This memo is posted on the City's website for the November 15, 2011 Council Agenda.

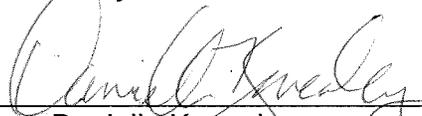
COORDINATION

This item has been coordinated with the Airport Department.

CEQA

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

RICHARD DOYLE
City Attorney

By 
Danielle Kenealey
Chief Deputy City Attorney

cc: Debra Figone

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