



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: William F. Sherry, A.A.E.
Julia H. Cooper

**SUBJECT: SECOND AMENDMENT TO THE
OWNER CONTROLLED
INSURANCE PROGRAM BROKER
AGREEMENT**

DATE: November 21, 2011

Approved

Date

11/30/11

RECOMMENDATION

Adopt a resolution authorizing the City Manager to:

- (a) Negotiate and execute the Second Amendment and Continuation Agreement between the City of San José and Lamberson Koster & Company, a Wholly Owned Subsidiary of Arthur J. Gallagher & Company DBA Gallagher Construction Services to provide insurance broker services for an Owner Controlled Insurance Program (OCIP) for the Airport Master Plan Projects, to include the administration of the close out phase of the OCIP for the Airport Terminal Area Improvement Program (TAIP), to extend the term of the agreement from October 27, 2011 to October 26, 2012, reduce the broker fee for the one-year extension term by 50% to \$50,000, and reduce the total compensation to an amount not to exceed \$1,300,000.
- (b) Exercise an option to extend the Agreement, if required, for an additional one-year period from October 27, 2012 to October 26, 2013, at an annual broker fee of \$50,000, with no increase in the total not to exceed compensation of \$1,300,000.

OUTCOME

Approval of the Second Amendment will permit the City to close out the Owner Controlled Insurance Program (OCIP) to accurately reflect the final cost of claim expenditure and insurance premiums, and to close out the loss reserve fund.

BACKGROUND

On October 17, 2006, Council authorized the City Manager to negotiate and execute a first amendment to the agreement with Gallagher Construction Services, to provide insurance broker services for the owner controlled insurance program, including two one-year options to extend the Agreement. However, the Council Resolution inadvertently omitted the options. As a result, Council approval for a subsequent amendment is required.

The existing agreement provides for insurance broker services for an Owner Controlled Insurance Program for the Airport Master Plan projects through October 26, 2011, at a not to exceed amount of \$3,075,000.

ANALYSIS

The second amendment extending the term for one year and the option to extend the term for an additional one-year term to October 26, 2013, if necessary, will allow the City to successfully complete the OCIP by having the Insurance Broker to complete various close-out tasks including but not limited to the following:

- Close out of Terminal Area Improvement Projects (TAIP) with insurance carriers by working with contractors to obtain all payroll figures used in the calculation of premiums.
- Conduct Final Audit reconciliation on TAIP between payroll figures submitted by contractors and figures used by insurance carriers. This process has begun and will continue for a year at least due to the process of getting the insurance carriers to complete the payroll audits.
- Continued claims and/or litigation management for both North Concourse and TAIP - especially on large general liability and workers' compensation claims. This includes close monitoring and push for settlement
- Complete Final report back on TAIP OCIP performance on estimated losses versus actual losses, safety records, estimated premiums versus final premiums, upon completion of audit process.
- Conduct retroactive adjustments to loss reserve fund on both North Concourse and TAIP based on claim loss experience, until the City is ready to request early close-out.
- Monitor Collateral (loss reserve fund) and manage adjustments to Collateral held.
- Provide oversight with Chartis on reporting of workers' compensation claims of larger subcontractors as the claims results directly affect the subcontractors' experience for a minimum of three years.

To date, the broker has been compensated approximately \$1,119,000. Given the level of work still remaining, the annual fee has been negotiated to a flat fee of \$50,000 for the period from October 27, 2011 to October 26, 2012, and an additional flat fee of \$50,000 for the one-year

option period. With the reduced annual fee and savings to date, the total compensation will be \$1,690,000 or 38% of the original maximum compensation of \$3,075,000.

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 does not meet the above criteria requiring additional notification; however, it will be posted on the City’s Council Agenda Website for the December 6, 2011 Council Meeting.

The Table Below identifies the fund and appropriation proposed to fund the agreement recommended as part of this memorandum.

BUDGET REFERENCE

Fund #	Appn #	Appn. Name	Total Appn	Amt. for Contract	Adopted Budget Page	Last Budget Action (Date, Ord. No.)
526 (528)	4164	Consolidated Rental Car Facility	\$18,953,000	\$23,650	V-676	06/21/2011 Ord. 28928
526 (555)	5246	Public Parking Garage	\$ 930,000	\$1,350	V-650	06/21/2011 Ord. 28928
526 (554/580)	5253	Terminal Area Improvement, Ph 1	\$66,222,000	\$25,000	V-680	06/21/2011 Ord. 28928

COORDINATION

This item has been coordinated with the Finance Department – Risk & Insurance Program, the City Attorney’s Office, and the City Manager’s Budget Office.

HONORABLE MAYOR AND CITY COUNCIL

November 21, 2011

Subject: Second Amendment to the OCIP Insurance Broker Contract

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CEQA

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

/s/
WILLIAM F. SHERRY, A.A.E.
Director of Aviation, Airport Department

/s/
JULIA H. COOPER
Acting Director of Finance

For questions please contact John Dam, Risk & Insurance Manager at (408) 975-1438.