



Memorandum

TO: THE RULES COMMITTEE

FROM: Gerald A. Silva

SUBJECT: PROCESS AND STATUS FOR
SELECTING AN INDEPENDENT
INVESTIGATOR

DATE: August 8, 2005

BACKGROUND

On June 28, 2005, the City Council directed the City Auditor to 1) select and retain a qualified independent investigator to review issues associated with the Norcal garbage contract and contract amendment, 2) complete a thorough conflict analysis to ensure independence and impartiality and 3) to negotiate and execute a contract with the independent investigator in an amount not to exceed \$100,000.

RECOMMENDATION

Approve the placement of the Independent Investigator's full report or report status on the review of issues associated with the Norcal garbage contract and contract amendment on the City Council Agenda for the August 23, 2005 City Council meeting.

STRATEGIC PROCEDURE FOR SELECTING AN INDEPENDENT INVESTIGATOR

The City Auditor has completed the following:

1. Set up a meeting with the Business Manager of the San Jose Judicial Arbitrations Mediations (JAMS) Office in order to discuss possible candidates to make up an Expert Panel of Neutral Evaluators (EPNE).
2. The JAMS Business Manager provided the City Auditor with a list of nine retired judges of which three were chosen. The City Auditor has selected the members of the EPNE to include Judge Peter Stone, Judge Joseph Biafore and Judge Harry Low. The City Auditor has also designated Judge Peter Stone as the lead member of the EPNE.
3. The three retired judges completed and signed the City of San Jose's conflict of interest form. The City Auditor has completed the conflict of interest analysis on the EPNE and has found the members to be free of bias.

4. The City Auditor with assistance from the City Attorney's Office negotiated a contract agreement between the City Auditor and the JAMS Business Manager and the EPNE. The City Auditor has executed and will administer the contract and make any necessary payments to the JAMS. The contract agreement between the City Auditor, on behalf of the City of San Jose and JAMS, INC., was fully executed on August 3, 2005.
5. The scope of services stated in the contract agreement between the City of San Jose and JAMS, INC., is as follows:
 - 1) JAMS shall perform the following services: Provide the services of three retired judges who will make up an Expert Panel of Neutral Evaluators (EPNE) responsible for 1) selecting an independent investigator to review issues associated with the Norcal garbage agreement and amendment as discussed in the Santa Clara County Civil Grand Jury Report, 2) overseeing the investigator and the investigation process, 3) designating the lead member of the EPNE and the independent investigator to return with a full report, which will include recommended next steps, to the full City Council by the date stated in Exhibit C¹ unless otherwise extended, 4) designating the lead member of the EPNE and the independent investigator to report back on the status of the investigation to the full City Council in the event that the investigation is not complete by the date stated in Exhibit C.
 - 2) Direct the independent investigator to include in the scope, the review of the material and findings of the Grand Jury to determine if the Mayor, Mayor's staff, or other city employees violated the City Charter, Municipal Code, city policies related to ethics of independent judgment, or other law, with the final scope to be determined by the independent investigator with oversight from the EPNE.
 - 3) Require that the members of the EPNE and the Independent Investigator complete the City of San Jose Conflict of Interest Form for JAMS.
 - 4) Oversee the selection of an independent investigator by the EPNE. JAMS shall advise prospective candidates for the Independent Investigator that the Independent Investigator will be required to comply with the City of San Jose contract requirements including indemnity and insurance requirements.
 - 5) Review all invoices submitted by the independent investigator for services rendered as the independent investigator for accuracy and compliance with the scope of services developed by the EPNE.
 - 6) Forward all invoices submitted by the independent investigator to the City of San Jose, in care of the City Auditor for payment. The City Auditor will require compliance with the not to exceed amount of One Hundred Thousand Dollars (\$100,000) for services for the independent investigator and incidental administrative costs incurred by JAMS as stated in Exhibit D.

¹ Exhibit C, Schedule of Performance: Work shall commence immediately upon execution of this AGREEMENT. The estimated earliest time for completion is August 23, 2005.

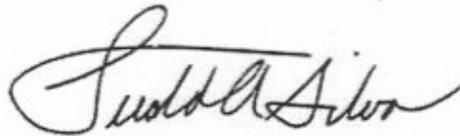
STATUS

Currently, the EPNE on behalf of JAMS, INC. has commenced the RFP process in order to select a qualified independent investigator to review the issues associated with the Norcal garbage contract and contract amendment. The submittal deadline is August 10, 2005. However, JAMS, INC. may allow potential proposers additional time to submit a proposal.

Once the EPNE has selected the independent investigator, the City Auditor, on behalf of the City of San Jose, will negotiate and execute a contract agreement between the City of San Jose and the selected investigator.

COORDINATION

The City Auditor has coordinated the negotiation and execution of the contract agreement between the City of San Jose and JAMS, INC., with the City Attorney, the Chief Deputy City Attorney, the Risk Management Department and the City Clerk's Office.

A handwritten signature in black ink, appearing to read "Gerald A. Silva". The signature is fluid and cursive, with a large initial "G" and "S".

GERALD A. SILVA
CITY AUDITOR

August 23, 2005

PROPOSED ADDITIONS - ADMINISTRATIVE DRAFT AGENDA

MAYOR/COUNCIL MEMBER REQUESTS

COUNCIL APPOINTEE REQUESTS

- 2.x **Independent Investigator's full report or report status on the review of issues associated with the Norcal garbage contract and contract amendment.**

Recommendation: Acceptance of the Independent Investigator's full report or report status on the review of issues associated with the Norcal garbage contract and contract amendment. (City Auditor)