

Special Meeting
October 26, 2009

CLOSED SESSION	238
1. CONFERENCE WITH LABOR NEGOTIATORS	238
SPECIAL ORDERS OF THE DAY	238
2. Proclamation National Domestic Violence Awareness Month	238
3. Appointments for the Architectural Review Board for Three Three-Year Terms Ending on September 30, 2012.	239
4. Appointment for the Public Art Commission for One Unexpired Three- Year Term Ending on April 30, 2012	239
CITY MANAGER COMMENTS.....	240
ORAL COMMUNICATIONS	240
CONSENT CALENDAR.....	241
5. Approval of a Conditional Use Permit and a Record of Land Use Action to Allow After School Enrichment Activities, Homework Assistance, and Tutoring for Up to 10 Children at a Time at the Sunday School Class Rooms of the Existing Trinity Lutheran Church at 1295 Middlefield Road.	241
7. Resolution 8993 entitled "Resolution of the Council of the City of Palo Alto Approving the Form of and Authorizing the Execution and Delivery of a Purchase and Sale Agreement and Related Documents with Respect to the Sale of the Seller's Proposition 1A Receivable from the State; and Directing and Authorizing Certain Other Actions in Connection Therewith."	241

7A. (Former No. 6.) Approval of a One Percent for Art in City Capital Improvement Projects Contract with Artist Bruce Beasley in the Amount of \$270,000 for the Creation and Installation of an Artwork (Sculpture) for the Mitchell Park Library and Community Center (CIP Project PE-09006). . .	241
ACTION ITEMS.....	243
8. Resolution 8994 entitled "Resolution of the Council of the City of Palo Alto Imposing the City's Last, Best and Final Offer to Service Employees' International Union (SEIU) Local 521 Pursuant to Government Code Section 3505.4."	243
UNFINISHED BUSINESS	250
9. Colleague's Memo from Council Members Kishimoto, Klein, and Yeh Regarding Directing the City Manager to Explore Ways to Reduce Potable Water Use in Palo Alto by 20 Percent by 2020.....	250
10. Review of Community Supported Agriculture (CSA) Pilot Program at Palo Alto City Hall King Plaza and Make Recommendations for Continuation of the Program.....	251
ACTION ITEMS.....	255
11. Parks & Recreation Commission Recommendation to Adopt a Mitigated Negative Declaration and the Foothills Fire Management Plan.....	255
12. Approval of Amendment No. 2 to Contract No. C08121737 with Axon Solutions, Inc. in the Amount of \$395,120 for a Total Not to Exceed Amount of \$8,774,579 for Software System Support Services for SAP Industry-Specific Solution for Utilities; and Adoption of an Enterprise Funds Budget Amendment Ordinance 5063 for Fiscal Year 2010 to Increase Appropriations of \$445,120 to CIP TE-07006, SAP Continuous Improvement Project.....	259
COUNCIL MEMBER QUESTIONS, COMMENTS, AND ANNOUNCEMENTS	268
ADJOURNMENT: The meeting adjourned at 12:48 a.m.....	268

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:05 p.m.

Present: Barton, Burt, Drekmeier, Kishimoto arrived at 6:35 p.m., Klein, Morton, Schmid arrived at 6:07 p.m., Yeh arrived at 6:15 p.m.

Absent: Espinosa

CLOSED SESSION

1. CONFERENCE WITH LABOR NEGOTIATORS
Agency Negotiator: City Manager and his designees pursuant to Merit System Rules and Regulations (James Keene, Kelly Morariu, Russ Carlsen, Sandra Blanch, Darrell Murray, Marcie Scott, Lalo Perez, Joe Saccio)
Employee Organization: Local 521 Service Employees International Union
Authority: Government Code Section 54957.6(a)

Jennifer Cutler, requested the City Council vote no on the Service Employees' International Union (SEIU) Local 521 contract on the table at this time.

The City Council reconvened to regular session at 6:57 p.m. and Mayor Drekmeier advised no reportable action.

SPECIAL ORDERS OF THE DAY

2. Proclamation National Domestic Violence Awareness Month.

Council Member Kishimoto read the Proclamation acknowledging National Domestic Violence Awareness Month.

President and CEO of Asian Americans for Community Involvement (AACI), Michele Lew thanked the City Council for recognizing the Month of October as National Domestic Violence Awareness Month.

Council Member Kishimoto thanked AACI for its involvement with domestic violence programs.

3. Appointments for the Architectural Review Board for Three Three-Year Terms Ending on September 30, 2012.

First Round of Voting for Architectural Review Board for Three Three-Year Terms Ending on September 30, 2012:

Voting For Kaori Abiko:

Voting For Alexander Lew: Barton, Burt, Drekmeier, Kishimoto,
Klein, Morton, Schmid, Yeh

Voting For Gordano Pavlovic : Drekmeier, Morton

Voting For Stephen Sowa: Klein, Morton

Voting For Judith Wasserman: Barton, Burt, Drekmeier, Kishimoto,
Klein, Schmid, Yeh

Voting For Betsy Webster:

Voting For Heather Young: Barton, Burt, Kishimoto, Schmid, Yeh

City Clerk, Donna Grider announced that Alexander Lew with eight votes, Judith Wasserman with seven votes, and Heather Young with five votes were each appointed to the Architectural Review Board for a three-year term ending September 30, 2012.

4. Appointment for the Public Art Commission for One Unexpired Three-Year Term Ending on April 30, 2012.

First Round of Voting for Public Art Commission for One Unexpired Three-Year Term Ending on April 30, 2012:

Voting For Susan Kraft-Yorke: Barton, Morton

Voting For Michael Smit: Burt, Drekmeier, Kishimoto, Klein,
Schmid, Yeh

City Clerk, Donna Grider announced that Michael Smit with six votes was appointed to the Public Art Commission for one unexpired term ending April 30, 2012.

CITY MANAGER COMMENTS

City Manager, James Keene spoke on the following topics: 1) lobby of City Hall served as a drop-off location for Vote by Mail ballots for the November 3 General Municipal Election; 2) the Midpeninsula Community Media Center would host a live show in the City Council Chambers on election night hosted by Santa Clara County Board of Supervisors President Liz Kniss, Gary Fazzino, and Mayor Peter Drekmeier; 3) recruitment of Storm Drain Oversight Committee, Library Advisory Commission, and Parks and Recreation Commission, with a filing deadline of November 20; 4) November 9 would serve as the activation date for the Valley Transportation Authority's (VTA) evening commute ramp metering on the southbound ramps of Highway 101 on Embarcadero Road and Oregon Expressway in Palo Alto; 5) Palo Alto Art Center Curator, Signe Mayfield, received an award from Artshift, and City of Palo Alto's Project LOOK! Staff member, Ariel Feinberg Berson, gave a presentation at the Nation Docent Symposium in Toronto, Canada.

Council Member Klein inquired on the status of the report on the responsibility for the California Avenue Streetscape Project removal of trees.

Mr. Keene stated a date had not been set due to internal personnel processes.

Council Member Burt inquired whether there was a mechanism in place for the City Council to address greater than anticipated impacts on local streets due to VTA's ramp metering at Embarcadero Road and Oregon Expressway.

Mr. Keene stated he would meet with Staff and report to the City Council at a later date.

ORAL COMMUNICATIONS

Paul Pitlick, 2139 High Street, spoke on his disapproval of the tree removal within the California Avenue Streetscape Project, and the fountain located near the Caltrain-California Avenue Plaza.

Joseph Mallon, 800 High Street, spoke on the proposed affordable housing project at 801 Alma Street, and his concern with the current process in accordance with proper City procedures under the State's Bonus Density Law SB 1818.

Enid Pearson, spoke on her letter responding to the Informational Item on proposed office space in the Downtown Library and Main Branch Library.

Jeff Levinsky, 1682 Hamilton Avenue, spoke on the recent Agenda Item regarding improving the proposed Downtown Library renovation plans.

Aram James, spoke on the training procedures for safely utilizing tasers by the Police Department.

Claire Elliott, 271 Chestnut Avenue, spoke on the AT&T Switching Station in her neighborhood.

Tim Gray, spoke on California's Fair Political Practices Commission Conflict of Interest, and labor negotiations.

CONSENT CALENDAR

MOTION: Council Member Klein moved, seconded by Council Member Schmid to pull Consent Calendar Item Number 6 to become Agenda Item Number 7A.

MOTION: Vice Mayor Morton moved, seconded by Council Member Barton to approve Consent Calendar Item Numbers 5 and 7.

5. Approval of a Conditional Use Permit and a Record of Land Use Action to Allow After School Enrichment Activities, Homework Assistance, and Tutoring for Up to 10 Children at a Time at the Sunday School Class Rooms of the Existing Trinity Lutheran Church at 1295 Middlefield Road.
7. Resolution 8993 entitled "Resolution of the Council of the City of Palo Alto Approving the Form of and Authorizing the Execution and Delivery of a Purchase and Sale Agreement and Related Documents with Respect to the Sale of the Seller's Proposition 1A Receivable from the State; and Directing and Authorizing Certain Other Actions in Connection Therewith."

MOTION PASSED: 8-0 Espinosa absent

- 7A. (Former No. 6.) Approval of a One Percent for Art in City Capital Improvement Projects Contract with Artist Bruce Beasley in the Amount of \$270,000 for the Creation and Installation of an Artwork (Sculpture) for the Mitchell Park Library and Community Center (CIP Project PE-09006).

Council Member Klein inquired how the price of the contract was agreed upon with Artist Bruce Beasley. He spoke on his concern on the City Council's direction of artwork at the new Mitchell Park Library and Community Center. He inquired where the funds would be allocated from,

and whether the three additional public art pieces were regarded as adequate. He inquired on plans for additional artwork within the new Mitchell Park Library and Community Center.

Assistant to the City Manager, Kelly Morariu stated the One Percent for Art Program in City Capital Improvement Projects for the Mitchell Park Library and Community Center was approved at a prior City Council Meeting specifically for Mr. Beasley's artwork (sculpture).

City Manager, James Keene stated Staff could return to the City Council on whether the City Council had additional flexibility on decisions relating to artwork at the Mitchell Park Library and Community Center beyond the One Percent of Art Program.

Council Member Klein inquired on the value of Mr. Beasley's proposed sculpture.

Ms. Morariu stated the amount agreed upon for Mr. Beasley's sculpture was a good deal for the City.

Chair of the Public Art Commission, Elise DeMarzo, spoke on the value of the sculpture that Mr. Beasley proposed for the City.

Council Member Klein inquired whether extra bond funds could be used for artwork at the Mitchell Park Library and Community Center.

City Attorney, Gary Baum stated yes because artwork was considered a capital cost.

Mr. Keene stated it was his belief there would be flexibility for the purchasing of art for the Mitchell Park Library and Community Center.

Ms. Morariu stated the \$120,000 identified within the Agenda Item had been allocated from the Public Art Commission's (PAC) budget. She spoke on the additional three artwork pieces included in the Agenda Item. She indicated Staff had been working with architects to create a temporary hanging system within the Mitchell Park Library and Community Center to create rotating two-dimensional artwork displays.

Ms. DeMarzo stated the PAC was constructing built-in platforms to house rotating sculptures to display two-dimensional and three-dimensional artwork on a temporary basis. She indicated borrowed artwork from various Bay Area artists and organizations would be placed on these platforms.

Council Member Klein inquired on the proposed plans to build permanent artwork within the Mitchell Park Library and Community Center.

Ms. DeMarzo stated funds have been approved. There are three main projects that would act as a starting point for permanent artwork within the Project b.

Mr. Keene stated it was anticipated that significant savings could be seen on the actual project cost of the Mitchell Park Library and Community Center and the original bond proposal. He spoke on the limitations of how the extra bond money could be allocated.

Ms. DeMarzo stated Mr. Beasley's sculpture was the largest purchase of artwork in recent years. She spoke in support of the Agenda Item as a gateway sculpture to the new Mitchell Park Library and Community Center.

MOTION: Council Member Klein moved , seconded by Vice Mayor Morton to authorize the City Manager or his designee to execute the contract in the amount of \$270,000 with Bruce Beasley for the creation and installation of an artwork (sculpture) for the Mitchell Park Library and Community Center. The total amount of the one percent for art for the library bond measure project is \$280,000. Consistent with prior Council direction, a design contract for \$10,000 dated April 27, 2009 has been separately applied to bring the total project to one percent.

MOTION PASSED: 8-0 Espinosa absent

ACTION ITEMS

8. Resolution 8994 entitled "Resolution of the Council of the City of Palo Alto Imposing the City's Last, Best and Final Offer to Service Employees' International Union (SEIU) Local 521 Pursuant to Government Code Section 3505.4."

City Manager, James Keene gave a PowerPoint presentation that overviewed the City's current financial and budget situation. He overviewed the three-pronged approach to address the current \$10 million deficit for Fiscal Year 2010 General Fund Budget, which included service reductions, employee salary and benefit reductions, and revenue enhancements. He spoke on the City's long-term systemic financial challenges, which included rising pension costs, rising healthcare costs, slowing revenue growth, increasing infrastructure needs, growing retiree and medical liability, and maintaining current service levels. He spoke on the CalPERS (PERS) pension history, and the medical benefit premium history for City employees.

Director of Administrative Services, Lalo Perez gave a PowerPoint presentation that overviewed the City's General Fund long-range financial forecast. He spoke on activities which contributed to the challenges of the General Fund, which consisted of additional retirement contribution increases, retiree medical cost increases, library operating cost increases, infrastructure contribution increases, and the property tax loan imposed by the State.

Mr. Keene spoke on Service Employees' International Union (SEIU) Local 521 employees SEIU negotiation process. The City held 26 negotiating sessions, and SEIU rejected the City's proposed last, best and final offer on October 20, 2009. He indicated the City declared impasse at that time. He summarized the key changes contained within the proposed last, best and final offer, which included the following: 1) employee retirement contributions; 2) healthcare premiums; 3) future employee pension formula; 4) tuition reimbursement; and 5) floating holidays. He stated the terms of the proposed last, best and final offer would be restricted to the remainder of the current Fiscal Year, and the City would enter into negotiations with SEIU before the adoption of the Fiscal Year 2011 Budget. He stated the terms of the proposed last, best and final offer would remain in effect until a new agreement with SEIU was reached.

Council Member Burt requested clarification that the term of the proposed last, best and final offer indicated the City would continue to pay 19.25 percent of annualized retirement costs.

Mr. Keene stated the proposed last, best and final offer stated twenty-five percent of an employee's salary, on an annual basis, would be paid to PERS as pension cost. On an annualized basis, the proposed last, best and final offer stated the City would contribute 19.25 percent, and the employee would pay 5.75 percent of their salary to PERS. The City would be responsible for growing PERS cost increases.

Mr. Perez spoke on the rising costs imposed by PERS, and the proposed percentage distribution to be paid by the City and City employees.

Mr. Keene stated the terms within the proposed last, best and final offer would apply to SEIU employees and Management and Professional Employees in regards to healthcare premium contributions. City employees currently paid zero percent of healthcare premium costs. The proposed last, best and final offer stated employees would not contribute to healthcare premium costs until January 2011. Employees would pay half of their annual premium cost increase, capped at five percent in any year, until employee contribution reached ten percent of the total premium cost. Employee share would be deposited in the Retiree Medical Trust Fund for

employees. He spoke on the proposed future employee pension formula of two percent at age sixty, proposed change to tuition reimbursement, and the proposed elimination of two floating holidays. He spoke on the opportunities that existed to reorganize vacant positions within the City. He spoke on the necessity to save money and continue to research cost savings and restructuring, in addition to imposing the proposed last, best and final offer.

Assistant City Attorney, Melissa Tronquet reviewed the negotiation process that lead up to the proposed last, best and final offer to SEIU. She stated an impasse was declared after an agreement was not resolved with SEIU.

City Attorney, Gary Baum stated, in the event that the City Council adopted the Resolution imposing the proposed last, best and final offer, the negotiating period for the current SEIU Memorandum of Agreement (MOA) would terminate. He indicated there would be informal dialog with SEIU until the negotiating period for a new agreement was reached.

Mr. Keene stated supporting documents could be found on the City's website which outlined the proposed last, best and final offer.

Council Member Klein stated his understanding was that the City Council could not make any amendments to the proposed Resolution imposing the last, best and final offer.

Mr. Baum stated that was correct.

Council Member Burt requested a clarification to the language written in the Staff report that stated the parties must maintain the status quo and continue to observe the terms and conditions of the expired agreement until a new agreement. He felt this statement was inconsistent with the statement contained within Section 3505.4 which gives the City the ability to unilaterally implement terms that change the status quo following good faith negotiations and the declaration of impasse. It was his belief that the two statements contradicted one another, and the first statement should be modified.

Ms. Tronquet stated the Government Code and the adoption of the proposed Resolution authorized the City to make unilateral changes to the terms currently in effect.

Council Member Kishimoto inquired what the process would be to open interest-based negotiations with SEIU ahead of schedule.

Mr. Baum stated opening interest-based negotiations would be a long process; however, the City Manager had full authority to initiate informal negotiations with SEIU.

Vice Mayor Morton asked for confirmation that the proposed employee healthcare contribution cost increase would not go into effect until January 2011.

Mr. Keene stated yes.

Vice Mayor Morton spoke on the proposed employee retirement contributions to PERS. He stated the six percent employee pension contribution increase was a result for the need to close the Fiscal Year 2010 Budget. Effective with the pay period, including June 19, 2010, employees would be responsible for paying 3.75 annualized PERS contribution increase, for a total contribution of 5.75 percent.

Mr. Keene stated that was correct.

Scott Yahme spoke on the proposed Resolution imposing the City's proposed last, best and final offer to SEIU, and urged the City Council to reconsider the Staff recommendation.

Lynn Krug spoke on the proposed Resolution imposing the City's proposed last, best and final offer to SEIU, and urged the City Council to reconsider the Staff recommendation.

Ron Long spoke on the proposed Resolution imposing the City's proposed last, best and final offer to SEIU, and urged the City Council to reconsider the Staff recommendation.

Peggy Quillman spoke on the proposed Resolution imposing the City's proposed last, best and final offer to SEIU, and urged the City Council to reconsider the Staff recommendation.

Margaret Adkins spoke on the proposed Resolution imposing the City's proposed last, best and final offer to SEIU, and urged the City Council to reconsider the Staff recommendation.

Nick Steinmeier spoke on the proposed Resolution imposing the City's proposed last, best and final offer to SEIU, and urged the City Council to reconsider the Staff recommendation.

Harry Adams spoke on the proposed Resolution imposing the City's proposed last, best and final offer to SEIU, and urged the City Council to reconsider the Staff recommendation.

Christi Sermersheim spoke on the proposed Resolution imposing the City's proposed last, best and final offer to SEIU, and urged the City Council to reconsider the Staff recommendation.

Josh Wallace stated there were 23 transitioned employees from Management and Professional employees to SEIU not addressed in the proposed Resolution imposing the City's proposed last, best and final offer to SEIU, and urged the City Council to reconsider the Staff recommendation.

William Leslie spoke on the proposed Resolution imposing the City's proposed last, best and final offer to SEIU, and urged the City Council to reconsider the Staff recommendation.

Tony Spitaleri, spoke on the proposed Resolution imposing the City's proposed last, best and final offer to SEIU, and urged the City Council to reconsider the Staff recommendation.

Alan Davis, 3370 Saint Michael Drive, spoke on the proposed Resolution imposing the City's proposed last, best and final offer to SEIU, and urged the City Council to reconsider the Staff recommendation.

Tony Alexander spoke on the proposed Resolution imposing the City's proposed last, best and final offer to SEIU, and urged the City Council to reconsider the Staff recommendation.

David Chu spoke on the proposed Resolution imposing the City's proposed last, best and final offer to SEIU, and urged the City Council to reconsider the Staff recommendation.

Judy Glaes spoke on the proposed Resolution imposing the City's proposed last, best and final offer to SEIU, and urged the City Council to reconsider the Staff recommendation.

Robert Moss, 4010 Orme Street, spoke on the current economic state of the City, and the approval of the proposed Resolution imposing the City's proposed last, best and final offer to SEIU.

Cindy Chavez spoke on the proposed Resolution imposing the City's proposed last, best and final offer to SEIU, and urged the City Council to consider mediation.

Mayor Drekmeier spoke on his appreciation for the City's workforce.

Council Member Yeh inquired on an appropriate mediation timeline.

Ms. Chavez recommended ten days for SEIU and the City to develop a resolution and then return to the City Council for consideration.

MOTION: Council Member Yeh moved, seconded by Council Member Kishimoto to consider mediation with a time limit of ten days.

Council Member Kishimoto stated ten days would be a worthwhile undertaking to mediate with SEIU.

Council Member Klein spoke on his disapproval of the Motion due to the need to move forward.

Council Member Burt spoke on his disapproval for a small minority of the public using the current economic state of the City to attack the commitment of the City's workforce. The City had serious long-term structural problems, and SEIU leadership had not conveyed the reality of the City's challenges. He acknowledged that changes to SEIU compensation benefits were hardships but were necessary. He spoke on his belief that mediation would not serve a useful purpose. The SEIU leadership had not shown indication for a willingness to move toward helping the City's structural problems. He stated his support to move forward.

Vice Mayor Morton spoke on the State's financial problems which contributed to public employees working without contracts because agreements could not be made. It was his understanding SEIU leadership had not modified its position. The proposed Resolution was the best deal for SEIU employees, as significant downward adjustments to revenues were expected in the future.

SUBSTITUTE MOTION: Council Member Schmid moved, seconded by Vice Mayor Morton to approve the Resolution imposing the City's proposed last, best and final offer to Service Employees' International Union (SEIU) 521 pursuant to Government Code Section 3505.4.

Council Member Schmid spoke on the difficulty of approving the Substitute Motion; however, the health of the City was dependent on controlling the deficit. The City's deficit would continue to grow until at least 2012, and retirement contributions contributed to 70 percent of the structural deficit. PERS made a promise pensions would be available; however, PERS has made poor investments over the last year. He felt the last, best and final offer dealt with the City's structural issues and guaranteed that pensions and healthcare would be available in the future.

Vice Mayor Morton spoke on the necessity to approve the Substitute Motion. He stated an affluent community did not convert into a large revenue stream due to revenue restrictions.

Council Member Kishimoto stated the City possessed serious structural problems; however, she favored working with SEIU in mediation. She requested information on countywide trends on how cities were dealing with budget deficits.

Mr. Keene stated different actions have been taken by cities throughout the county. He spoke on the City's limited revenue streams and revenue restrictions. It was his belief the City's revenue streams were likely to worsen. He indicated the City Council made a choice this Fiscal Year to avoid layoffs.

Council Member Klein stated the Motion to consider mediation with a time limit of ten days should be voted upon, and the Substitute Motion be withdrawn.

SUBSTITUTE MOTION WITHDRAWN

Mayor Drekmeier acknowledged that SEIU had come forth with alternative proposals to lessen the financial strain on the City, which the City had not supported. He stated his gratitude for City Manager Keene for representing the City and the City Council's direction in a fair way. He stated the \$10 million deficit the City faced this Fiscal Year was expected to grow, and spoke on the three sources for filling this deficit gap. He stated reductions to employee compensations were the most difficult.

Council Member Barton acknowledged the commitment of SEIU employees. It was his belief that SEIU and the City were bargaining in good faith. He stated the impasse was due to a communal problem.

MOTION FAILED: 2-6 Kishimoto, Yeh yes, Espinosa absent

MOTION: Council Member Schmid moved, seconded by Vice Mayor Morton to approve the Resolution imposing the City's proposed last, best and final offer to Service Employees' International Union (SEIU) 521 pursuant to Government Code Section 3505.4.

Council Member Yeh spoke on the negotiations process with SEIU. He spoke on the City's long-term budget sustainability issues regarding rising pension costs. Employee contributions to medical insurance should not be imposed until the federal policy debate on healthcare had been resolved. He spoke

on the uncertainty on whether there would be a need for fewer cuts or more contribution costs to healthcare insurance.

Council Member Burt spoke on the City's short-term economic impacts and long-term structural impacts. He spoke on the hardships of many organizations cutting back on employee benefits. The terms of the proposed last, best and final offer to SEIU were reasonable given the current economic conditions, and long-term financial challenges the City would face. He overviewed the benefits that were in the proposed last, best and final offer. He stated that if the Business License Tax was not approved by voters, the City's deficit would increase moving forward.

Council Member Kishimoto spoke on her experience hearing the opinions on labor negotiations, and the frustrations present throughout the process. She spoke on a negotiation strategy called context-sensitive solutions she had used on High Speed Rail issues. She looked forward to using an interest-based negotiation approach in the future.

MOTION PASSED: 7-1 Yeh no, Espinosa absent

UNFINISHED BUSINESS

9. Colleague's Memo from Council Members Kishimoto, Klein, and Yeh Regarding Directing the City Manager to Explore Ways to Reduce Potable Water Use in Palo Alto by 20 Percent by 2020.

(Continued by Council Motion on October 5, 2009)

Mayor Drekmeier advised he would not be participating in this item due to his job with the Tuolumne River Trust.

Council Member Klein provided a background on the water shortage supply in the State of California. He spoke on the Hetch Hetchy Water System Improvement Program that was currently underway. He stated the Colleague's Memo was in response to the San Francisco Public Utilities Commission's (SFPUC) environmentally sensitive regulation to cap water from the Tuolumne River at 184 million gallons of water per day (mgd) until at least 2018, and the Governor's proposed Comprehensive Plan for water conservation.

MOTION: Council Member Klein moved, seconded by Council Member Kishimoto to direct the City Manager to explore and recommend ways the City can reduce our community-wide use of potable water by 20 percent by 2020 in conformation with the Governor's water conservation directive.

Council Member Kishimoto stated conserving water now would protect the future of Palo Alto. There was much room for improvement, as Palo Alto had one of the highest water rate usages in the region.

Council Member Yeh spoke on the City's potential to sell excess water allocations to other agencies which may push more water conservation policies and help fund water recycling programs.

Council Member Burt stated the ability to reduce water usage would be easier than reducing energy usage. He spoke on the cost savings to residential customers and return on investment from water conservation efforts, and possibly selling excess water allocations. He spoke on the latitude provided to the City Manager to enact measures on water conservation.

Vice Mayor Morton inquired on issues of salinity in graywater.

Utilities Director, Valerie Fong, stated salinity in graywater was contained within the Department's workplan.

Vice Mayor Morton spoke on World Water Day 2010.

MOTION PASSED: 7-0 Drekmeier not participating, Espinosa absent

10. Review of Community Supported Agriculture (CSA) Pilot Program at Palo Alto City Hall King Plaza and Make Recommendations for Continuation of the Program.

(Continued by Council Motion on October 19, 2009)

Assistant to the City Manager, Kelly Morariu, provided a background and spoke on the intent of the Community Supported Agriculture (CSA) Program and Farmshop. She spoke on the positive feedback received from CSA Program participants conducted by IDEO. She spoke on the three options presented within the Staff report, overviewed Staff's recommendation, and the resource impacts. It was Staff's goal that the Farmshop become self-sustaining with little to no financial support from the City. She spoke on the possibility of opening the Farmshop to other growers besides Capay Valley Growers that may off-set Farmshop costs.

Robert Moss, 4010 Orme Street, spoke on his concerns for creating a Farmshop on dedicated parkland and requesting financial support from IDEO. He felt setting financial parameters with conditions and setting a termination date was necessary if financial obligations become too costly.

Council Member Barton inquired on the percentage of time that would be spent on the CSA Pilot Program by the Assistant to the City Manager.

Assistant to the City Manager, Debra van Duynhoven stated three to eight hours per week would be spent on managing the proposed CSA Pilot Program.

MOTION: Council Member Barton moved, seconded by Council Member Yeh to continue the Farmshop at Lytton Plaza and/ or King Plaza for six months with zero cash subsidy and move it to Lytton Plaza at the appropriate time.

Council Member Barton felt the Farmshop was worthwhile and would encourage sustainable goals within the community; however, he thought it should be self-sustaining. He felt a six month trial period, with zero cash subsidy, was an appropriate amount of time to see whether the Farmshop should continue.

Council Member Kishimoto inquired how much produce the Farmshop would be required to sell to breakeven and become self-sustaining.

Ms. Morariu stated a meeting could be held with Capay Valley Growers to discuss their projections on how much produce they would need to sell to be self-sufficient.

Mr. Keene stated Capay Valley Growers would be required to formulate ideas to eliminate the need for the City to pay a subsidy. He spoke on Ms. van Duynhoven's time spent as the project coordinator for the Farmshop. He stated her role would most likely be reduced, and a volunteer may be able to take over her responsibilities. He recommended that Ms. van Duynhoven work on the Farmshop project for a maximum of six months.

Council Member Kishimoto stated promoting Palo Alto's three farmers markets in one advertisement would be a wise decision. She felt the Farmshop would become self-sustaining.

Council Member Schmid spoke on his disappointment that the King Plaza location was unsuccessful. He spoke on the positives of moving the Farmshop to Lytton Plaza. He felt subsidizing the Farmshop would be necessary at the beginning to provide the Farmshop will a fair chance of success.

Council Member Burt spoke on his concern that Staff did not research Lytton Plaza as a legally viable location for the Farmshop ahead of time. He spoke on his concern of time spent on the Farmshop from the Assistant to the City Manager.

SUBSTITUTE MOTION: Council Member Burt moved, seconded by Council Member Barton that if Lytton Plaza is a legally viable location that Staff is to return to Council with an alternative proposal that would include putting this project on hold for six months until May 2010; and if it were to start again it must be self-sustaining.

Council Member Klein stated the Farmshop should be terminated due to the unsuccessful involvement from City employees, and the Staff time from the Assistant to the City Manager. It was unclear whether the Farmshop at Lytton Plaza site would be self-sustaining.

Vice Mayor Morton spoke on why organic produce was costly, and felt the Farmshop was a worthwhile project. He stated his concern for placing the Farmshop on hold for six months, as the Farmshop may lose its base supporters.

Council Member Yeh inquired what the City's responsibility was to the existing subscribers if the Farmshop were to be put on hold or discontinued.

Mr. Keene stated Capay Valley Growers would have a break in providing services during the winter months, and may have some carryover impacts on restarting the Farmshop. It was his recommendation to gather initial data to assist in creating a self-sufficient Farmshop, or terminate the project. If Capay Valley Growers felt continuing the Farmshop in the winter months without the City's financial support would be beneficial, the Motion should not preclude this action. He spoke on the possibility of working with private and non-profit partners to assist the Farmshop to continue on a self-sustaining basis.

Mayor Drekmeier inquired whether Mr. Keene's recommendation was to put the responsibility on Capay Valley Grower, and not subsidize the Farmshop.

Mr. Keene stated yes. He spoke on creating a contract with specific wording to transition the Farmshop to self-sufficiency, and minimize the impact on Staff workload.

Council Member Kishimoto inquired whether Capay Valley Growers was planning on operating throughout the winter.

Ms. Morariu stated yes.

Council Member Kishimoto inquired whether Capay Valley Growers had produce to support the Farmshop throughout the winter season.

Ms. Morariu stated yes.

Council Member Burt stated the Substitute Motion would allow the Farmshop to be placed on hold until the Spring, and gradually transfer the responsibilities away from City Staff. He stated the Business Improvement District supported the Farmshop, and there may be other non-profit organizations that were also interested in participating.

Council Member Barton inquired on the importance of placing the Farmshop on hold for six months.

Council Member Burt stated placing the Farmshop on hold was not important. If Capay Valley Growers was able to subsidize the Farmshop on their own, within one to six months, that would be acceptable.

SUBSTITUTE MOTION RESTATED: Council Member Burt moved, seconded by Council Member Barton to direct Staff to work with private and non-profit partners (on a limited basis) to explore the possibility that the Farmshop can continue on a self-sustaining basis at either King Plaza or Lytton Plaza; and only return to Council with a self-sustaining proposal.

Council Member Klein felt the Farmshop should be a private effort, and have no City involvement.

Council Member Schmid inquired whether five percent of the Assistant to the City Manager's time would achieve the City Council's goals for the Farmshop.

Ms. van Duynhoven felt there were benefits to the Farmshop, and the Farmshop achieving sustainability would be ideal to lessen time needed by Staff to oversee the program. She stated a volunteer position overseeing the Farmshop may be beneficial.

Council Member Schmid stated the Downtown Farmers Market received support from Avenidas, and would not have been successful without Avenidas initial support.

Mayor Drekmeier inquired whether there was a Farmshop steering committee.

Ms. Morariu stated there was a Board of Directors for the Farmshop which included members from the Downtown Business Improvement District, Capay Valley Growers, and City Staff.

Mayor Drekmeier stated expanding the Board of Directors for the Farmshop may be beneficial. He indicated a steering committee consisting of community groups, such as Green Fork, Collective Roots, Common Group, and Avenidas could be formed. He stated a bill insert and posters may be effective in promoting the Farmshop. He spoke on contracts between local restaurants and Capay Valley Growers to provide fresh produce, and inviting additional farmers to participate in the Farmshop.

Council Member Kishimoto thanked IDEO for their role in starting the Farmshop. She felt the City may have played too large of a role in the launch of the Farmshop, and it could have been more successful if a community-based group led its launch.

Mayor Drekmeier thanked Kathleen Pradraski for bringing entertainment and special activities to the Farmshop.

SUBSTITUTE MOTION PASSED: 6-2 Klein, Schmid no, Espinosa absent

ACTION ITEMS

11. Parks & Recreation Commission Recommendation to Adopt a Mitigated Negative Declaration and the Foothills Fire Management Plan.

Assistant to the City Manager, Kelly Morariu gave a PowerPoint presentation that consisted of the following: 1) background information on the Foothills Fire Management Plan; 2) Parks and Recreation Commission proceedings; and 3) funding considerations.

Palo Alto Reserve Police Officer and Management Specialist, Ken Dueker gave a PowerPoint presentation on the five-year plan cost comparison based on Plan recommendations.

Ms. Morariu spoke on Staff's recommendations, which included the following: 1) approve the Foothills Fire Management Plan and Mitigated Negative Declaration to provide the City with an adopted update to the original 1982 Plan for fire mitigation in the Foothills; 2) allocate \$5,000 from the Council Contingency Fund to fund a survey by Wildland Resource Management to identify grants and other funding opportunities; and 3) Endorse the concept of developing a Midpeninsula Foothills Emergency Forum MFEF as part of the newly-reconstituted Citizen Corps Council CCC, and direct Staff to pursue funding opportunities as part of this forum. She spoke on the recommendation to return to the City Council for funding for high priority treatments.

Mayor Drekmeier inquired on the current amount contained within the Council Contingency Fund.

Ms. Morariu stated there was \$178,500 in the Council Contingency Fund.

City Manager, James Keene stated the adoption of the Foothills Fire Management Plan and its recommendations would act as a guide for implementing priorities. He stated reappropriating funds in next Fiscal Year's Budget would not be necessary. He indicated leveraging outside funding would put the City at an advantage.

Claire Elliott, 271 Chestnut Avenue, spoke on the additional cost associated with the Foothills Fire Management Plan. She recommended a conservation plan to provide measures to protect and enhance the ecological value of the area. She spoke on opening Foothills Park to the public.

Jean Olmsted, 240 West Charleston Road, spoke on her support of an annual Adaptive Management Assessment of the Foothills Fire Management Plan. She recommended a land-use steward to represent the three preserves in Palo Alto.

Gordon Baillie, Midpeninsula Regional Open Space District (MPROSD), spoke on his support of the Foothills Fire Management Plan, and thanked the City for its participation with the MPROSD controlled fire burns.

MOTION: Council Member Barton moved, seconded by Vice Mayor Morton to: 1) Adopt the Mitigated Negative Declaration ("MND"), dated February 9, 2009 and the Foothills Management Plan ("Plan"), dated January 15, 2009, including the Errata to the Plan, dated October 12, 2009, 2) Allocate \$5,000 from the City Council Contingency Fund to fund a survey by Wildland Resource Management (Plan consultant) to identify grants and other funding opportunities, and 3) Endorse the concept of developing a Midpeninsula Foothills Emergency Plan (MFEF) as part of the newly-reconstituted Citizen Corp Council (CCC), and 4) Direct Staff to pursue funding opportunities as part of this forum.

Council Member Barton spoke on the future funding challenges of the Foothills Fire Management Plan.

Vice Mayor Morton stated the Motion would put a guideline in place; however, there was a lack of funding.

Council Member Kishimoto inquired whether the Motion would approve Priority One which included the two PARC recommendations.

Ms. Morariu stated if the Motion was approved, Staff would move forward with the implementation of the Foothills Fire Management Plan, and reallocate existing funds as part of the budget process to support the Priority One recommendation.

Council Member Kishimoto inquired whether there was funding allocated for Priority One.

Ms. Morariu stated no.

Council Member Kishimoto requested clarification on the two recommendations from the Parks and Recreation Commission (PARC).

Ms. Morariu stated the two PARC recommendations were part of Priority One. The Adaptive Management recommendation would evaluate the Foothills Fire Management Plan to determine efficiency and address unanticipated results. Allocation of funding toward a biologist, to review proposed work prior to the initiation of any treatment, was the second recommendation.

Council Member Kishimoto stated road clearance would be limited to 10-30 feet.

Mr. Deuker stated road clearance would be reviewed on a base-by-base basis.

Council Member Schmid inquired whether the base proposal was to clear-cut 330 acres.

Mr. Deuker stated the initial proposal did not include clear-cutting. There were a variety of treatment methods including mowing, grazing, and weeding.

Council Member Schmid stated the proposed treatment methods could potentially change the environment. It was his belief that adopting the Motion would send a message that may change the experience of Foothills Park. He inquired whether the protection of Foothills Park was discussed by the PARC.

Interim Director of Community Services, Greg Betts stated discussions on open space reserves were the primary element of Foothills Park stakeholders. He clarified there was no suggestion of clear-cutting. He spoke on a treatment method of mulching using specialized equipment that proved to be beneficial.

Ms. Morariu stated a prescription sheet was prepared to identify sensitive habitat areas to be avoided as treatments were being executed. She stated this additive piece was important in maintaining the natural habitat of Foothills Park.

Council Member Schmid inquired whether grazing and mowing treatments would increase.

Mr. Deuker stated a lot of the treatment area would be outside the Foothills Parks.

Wildland Resource Management Representative, Carol Rice stated the area treated would reduce due to not treating the entirety of Trappers Ridge annually. She indicated the proposal was for Trappers Ridge to go on a rotational basis once every 3-5 years.

Council Member Burt spoke on his concern for adopting an important program with no identified funding mechanism. He inquired on the odds of receiving grant funding.

Ms. Rice spoke on the elements that work in the City's favor in receiving grant funding.

Council Member Burt inquired on the timeline for receiving initial funding.

Ms. Rice stated the funding proposal was due in June 2010; however, there were other funding possibilities. She stated funding was forecasted to stay high.

Council Member Burt spoke on his concern of not receiving funding this upcoming fire season, and whether Staff should plan for highest priority actions.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER that Staff is to return to Council within three months with an update on funding or how to address highest priority actions for the upcoming fire season.

Vice Mayor Morton inquired whether three months was enough time.

Mr. Keene stated three months was a reasonable amount of time to formulate an update and report back to the City Council.

Council Member Burt stated the Motion was for Staff to return in three months time for an update. He stated more time may be needed to formulate a plan to address highest priority actions for the upcoming fire season.

Council Member Kishimoto inquired where the largest visual impacts would be due to the treatments.

Ms. Rice stated Page Mill Road would have the largest visual and environmental impacts.

Wildland Resource Management consultant, Tay Petersen stated trimming along Page Mill Road may be noticed. There would not be a dramatic difference, and fire prevention was necessary.

Vice Mayor Morton stated projects with experienced scout troop volunteers may be looked into in the future.

Council Member Schmid stated initial treatments could be conducted on Page Mill Road or Arastradero Road to allow residents to view the treatments in advance.

MOTION PASSED: 7-1 Schmid no, Espinosa absent

12. Approval of Amendment No. 2 to Contract No. C08121737 with Axon Solutions, Inc. in the Amount of \$395,120 for a Total Not to Exceed Amount of \$8,774,579 for Software System Support Services for SAP Industry-Specific Solution for Utilities; and Adoption of an Enterprise Funds Budget Amendment Ordinance 5063 for Fiscal Year 2010 to Increase Appropriations of \$445,120 to CIP TE-07006, SAP Continuous Improvement Project.

Assistant Director of Administrative Services, David Ramberg spoke on the proposed Amendment No. 2 (Amendment) to the professional services agreement with Axon Solutions Inc. for SAP support services. He provided a background on the Utilities System Upgrade Project (Project). Staff successfully met the implementation goal date and the Project was signed off in June 2009. After system implementation, the City entered into the post-implementation period. In working through the post-implementation period it became evident the implemented configurations of the business processes were causing inefficiencies in customer service. To resolve the issues and streamline processes Staff recommended expediting system enhancements. He stated the trial phase of the online bill pay system has been executed and was ready for City-wide rollout. He spoke on the proposed Amendment which would address a core list of critical and high

post-implementation issues until January 2010, and ongoing support on the maintenance and operation side of SAP through June 2010. He stated Staff would conduct a Request for Proposal (RFP) and award a contract by July 2010 for ongoing SAP system support services.

Utilities Director, Valerie Fong spoke on post-implementation issues and the City's need to address them in order to improve customer service levels. She spoke on short-term actions to determine where more efficiency could be gained. She spoke on SAP system goals such as providing customers with information on energy and water usage, rewarding customers for using utilities efficiently, preparing for changes to metering regulations and initiatives, and integrating smart grid technology.

City Manager, James Keene acknowledged the need to anticipate and develop long-term goals that were not factored into the SAP system's spending plan.

Administrative Services Director, Lalo Perez stated the SAP system would generate approximately 360,000 bills annually and invoice an estimated \$198,500,000 in revenue. Staff planned for modifications given the complexity of the system, and requests by the community for additional functionalities. Staff recommended extending the existing contract with Axon Solutions Inc. due to their level of engagement on current issues and expertise with the SAP system. However, a full RFP process will be conducted as part of a competitive process.

Council Member Barton inquired why there was \$50,000 set aside for additional and unforeseen labor from the \$223,725, as defined in the Agenda Item.

Mr. Ramberg stated \$50,000 would be set aside for unforeseen issues that were not on the existing list of maintenance and enhancement items. It was a contingency fund, and the City Manager would have the authority to implement a change order if necessary.

Council Member Barton inquired why the lack of performance from Axon Solutions Inc. was identified in the Staff report as a post-implementation problem. He inquired on legal action the City could partake in.

Mr. Perez stated Axon Solutions Inc. configured the SAP system as the City requested and the need for system enhancements was to reduce the amount of screen navigations to assist customers more efficiently.

Council Member Barton stated certain bills needed to be manually modified and felt all bills should be compatible with SAP.

Mr. Perez stated the City was not able to test every scenario for exception rules.

City Attorney, Gary Baum stated the City accepted the work that Axon Solutions Inc. performed and it was built to the City's specifications. There was no breach of contract. The post-implementation issues related to the complexity of the system that the City did not know would occur when the specifications were written.

Council Member Barton inquired on the amount of time and money that would be lost if the City went to another vendor to resolve post-implementation issues.

Mr. Perez stated the time needed for another vendor to familiarize themselves with the City's SAP system would be lengthy. Staff believed extending Axon Solutions Inc.'s contract provided the best solution for post-implementation issues.

Council Member Klein inquired on the increased number of customer calls regarding the new SAP system.

Mr. Ramberg stated that when the online portion of the SAP system went active, bill amounts were different between the pay stub and statement. He stated investigating billing inquiries consumed time and created longer call wait times.

Ms. Fong spoke on post-implementation issues such as a small percentage of bills not being sent to customers and incorrect migrated data. She stated parameters and thresholds needed to be set.

Council Member Klein inquired on the call volume rate compared to last year.

Ms. Fong stated there have been delays in the handling of billing and non-billing functions. These issues have resulted in increased call wait times for customers and additional temporary staffing in the Customer Service Center. She stated efficiency with SAP was needed.

Council Member Klein inquired on a provision within the proposed Amendment regarding a performance-based clause. He inquired why the RFP on the maintenance contract was written so Axon Solutions Inc. would be awarded the contract so effortlessly.

Mr. Perez requested continuity that would be present with Axon Solutions, Inc.

Council Member Klein requested whether the City had an evaluation of Axon Solutions Inc.'s work and whether they consulted the City on problems that may transpire.

Mr. Perez stated problems were expected in the initial implementation of any complex project. He indicated an independent review of Axon Solutions Inc. would be the best approach if the City Council felt it was needed.

Vice Mayor Morton inquired whether Staff felt once migration and unforeseen issues were resolved would customer service improve.

Ms. Fong stated the SAP customer service management software was complex and cumbersome. It was her hope that customer service would improve after post-implementation issues were resolved.

Vice Mayor Morton stated telephone calls would raise online support due to the need to train customers on the new online SAP software.

Council Member Burt inquired when the RFP originally was generated.

Mr. Perez stated the RFP was originally generated in 2007.

Council Member Burt stated that utility bill amount did not match between the bill stub and inside the detail of the body.

Mr. Ramberg stated that was correct in some utility bill statements.

Council Member Burt inquired how unmatching bill amounts would be in conformance with the contract with Axon Solutions Inc.

Mr. Perez stated the above issue was rectified, and Axon Solutions Inc. provided the City with a credit of approximately \$20,000.

Council Member Burt asked whether the \$20,000 fully covered the billing error.

Mr. Ramberg stated the discovery of the billing issue was within the time period that Axon Solutions Inc. was contractually bound to fix the issue.

Council Member Burt stated more performance-based elements were needed. He inquired whether the proposed Amendment had moved in that direction.

Mr. Ramberg stated steps had been taken in the direction toward performance-based measures. He spoke on the current list of critical and high issues which Axon Solutions Inc. was responsible for resolving.

Council Member Burt inquired whether the contract needed to be revised to include more performance-based measures.

Mr. Ramberg stated the proposed Amendment contained a good list of outstanding SAP system issues, a timeframe for resolving said issues, and a commitment from Axon Solutions Inc.

Council Member Schmid stated the Agenda Item was the conclusion to a project that totaled approximately \$8.8 million. He inquired whether there would be an enhancement seen in the new SAP system compared to what was previously seen in the old utility billing system.

Mr. Perez spoke of efficiencies seen in the new SAP system. He stated the launching of the online feature would have an impact on the dedicated resources in processing utilities bills.

Council Member Schmid inquired on any reduction in personnel hours that was seen in maintaining the SAP system.

Mr. Perez stated there were one and a half positions dedicated to payment processing, and one of those positions was eliminated this Fiscal Year. He stated other positions may be eliminated if a majority of users pay bills online. He stated the launching of the online utility billing component would see a further reduction in Staff resources.

Council Member Schmid asked how many personnel hours would be allocated to payment processing.

Mr. Perez stated there were one and a half positions dedicated to the payment process.

Mr. Ramberg stated a goal of the online SAP utility billing system was for utility bills to work harmoniously with the general ledger. He indicated efficiencies with the SAP system were planned because manually inputting data would be streamlined.

Council Member Yeh inquired on the level of success between invoices sent out manually versus online.

Ms. Fong stated the level of successful billing had been similar between bills sent online and manually.

Council Member Yeh inquired on efficiencies for collections from automated bill pay. He indicated his understanding was that this system had allowed some manual processes to be shifted to electronic processes.

Mr. Perez stated there were efficiencies seen from an accounting perspective. He stated payments received in the mail were still processed manually, and this process would change once the SAP system was fully deployed.

Council Member Yeh inquired whether billing efficiencies built into the SAP system were intended to converse seamlessly with the collections portion.

Mr. Perez stated a streamline effect would be seen only when customers registered for the online bill pay.

Council Member Yeh inquired whether Axon Solutions Inc. had laid the groundwork for seamlessness to occur with the various components of the SAP system.

Mr. Perez stated the online components had been configured to the City's specifications. The major concern for launching the entire system was the impact to the customer service representatives.

Council Member Yeh inquired whether there were performance-based measures that could be built into the Amendment. He inquired how different vendors could replace Axon Solutions Inc. when they had the expertise on the City's system.

Mr. Perez spoke on a changeover of vendors that had been made previously. He indicated performance-based incentives could be included within the scope of service.

Council Member Yeh stated Axon Solutions Inc. had customized approximately 2,000 problematic utility accounts. He expressed his concern that problematic accounts may not be easily dealt with by another vendor.

Mr. Perez stated qualified vendors could speak the language of the SAP software and should be able to deal with problematic accounts.

Council Member Yeh inquired whether Axon Solutions Inc. was laying the foundation to be the City's sole source provider of SAP services.

Mr. Perez stated no. He indicated there were several experts and consultants that the City may choose from.

Council Member Barton stated the proposed Amended contract defined a scope of work that appeared to be straightforward implementation work. He inquired why these items were not covered in the standard contract. He stated Staff may not be able to provide information at this time.

MOTION: Council Member Barton moved, seconded by Council Member Burt to return the item to Staff for clarification on the scope and with a clear timetable, budget and scope for what really needs to happen in this next stage with an eye on pushing back on Axon Solutions Inc. re-examining some of the items in the new scope of work that should not be covered under the original scope of work.

Council Member Burt requested clarification on the theory of pushing back on scope of work items that were not reasonably in the original contract.

Council Member Barton felt some items in the new scope of work should have belonged in the original contract.

Council Member Burt inquired whether the intention of the Motion was to reexamine whether some of the items should not have been covered under the original scope of work.

Council Member Barton stated that was correct.

Council Member Barton stated Staff's request for unexpected funding should expect pushback by the City Council, in light of the current budget challenges.

Mr. Keene stated he believed that a consultant may assure the City Council on the validation of the investment with the SAP system.

City Attorney, Gary Baum stated an outside consultant may be helpful; however, Staff accepted Axon Solutions Inc.'s product and the ability to push back would be a challenge.

Mr. Keene suggested a consultant may offer learning opportunities.

Vice Mayor Morton stated the ability for the City to return and hold Axon Solutions Inc. accountable for some of the issues with SAP was slim.

SUBSTITUTE MOTION: Vice Mayor Morton moved, seconded by Council Member Schmid to: 1) Approve and authorize the City Manager or his designee to execute Amendment Number 2 to the professional services agreement with Axon Solutions Inc. in the amount of \$395,120 for a total not to exceed of \$8,774,579, 2) Approve and authorize the City Manager or his designee to negotiate and execute one or more change orders to the contract with Axon Solutions Inc. for related, additional, but unforeseen work, which may develop during the remainder of the Project, the total value of which shall not exceed \$50,000, and 3) Adopt the Budget Amendment Ordinance for fiscal year 2009 in the amount of \$445,120, that amends the 2009-10 budget to increase appropriation to Capital Improvement Program TE-07006 SAP Continuous Improvement Project.

Council Member Schmid stated there would be a substantial delay in training customers on the SAP system if the Substitute Motion was not passed.

Council Member Klein stated he favored the City Manager's idea to include the retention of an outside consultant to provide review and oversight of the contract.

Council Member Morton stated he would be in favor of including it in the Motion if it stated that if the cost exceeds the City Manager's financial authority that it would be brought back to Council for approval.

INCORPORATED INTO THE SUBSTITUTE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to concurrently direct the City Manager to retain an outside consultant to evaluate the SAP system installation.

Council Member Klein inquired whether the City Attorney could contract with an outside attorney to provide legal review on computer software to insure that the City was protected, and whether legal action could be taken if problems were seen.

Mr. Baum asked for clarification on what was being requested.

Council Member Klein spoke on his concern regarding the City's protection with the legality of the contract with Axon Solutions Inc. He inquired on the possibility of retaining outside legal counsel to advise the City on processing a claim against the contractor in the event of shortcomings with any of the performance measures within the contract being discussed.

Mr. Keene stated in addition to having an oversight consultant look at the technical software, Council Member Klein was asking if the City Attorney would be able to bring in a legal expert to review the legality of performance standards within the contract being discussed tonight.

Mr. Baum stated this action would require an outside consultant, and additional time to rewrite the contract.

Council Member Klein stated that was what he had in mind.

Mayor Drekmeier inquired whether the Substitute Motion directed the City Manager to retain an outside consultant to evaluate the SAP system installation.

Council Member Klein stated yes.

Vice Mayor Morton stated it would take over \$100,000 for legal review of the contract from outside counsel. It was his belief that the Substitute Motion stated to hire a software engineer to concurrently evaluate the system as developed with the current problems, it did not include hiring an attorney to provide legal review of the contract.

Mr. Keene answered yes.

Council Member Klein stated he wanted to include in the Substitute Motion to direct the City Attorney to contract with an outside attorney to provide legal review of the contract.

Vice Mayor Morton stated he would not accept that due to the prohibitive cost involved.

INCORPORATED INTO THE SUBSTITUTE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to direct the City Attorney to contract with an outside attorney to provide legal review of the contract, the cost of which is not to exceed \$10,000.

Vice Mayor Morton stated he would accept the legal review of the contract if it was less than \$10,000.

Mr. Baum stated \$10,000 would not be a large enough amount to provide a competent performance-based analysis legal review of the SAP contract. He indicated \$50,000 may be feasible.

Council Member Klein stated \$50,000 was too much money.

Mr. Keene inquired whether there would be an advantage to legal review before approving the acceptance of the SAP contract.

Mr. Baum stated a review of the SAP contract could not be performed for \$10,000.

Mayor Drekmeier asked whether the contract could be reviewed for \$10,000.

Mr. Baum stated he could have someone look at it.

Council Member Yeh spoke of his support for the intent of the legal review. Moving forward, he felt the Request for Proposal should have a legal review built in as it would be the next big expenditure on the SAP system. He stated the biggest impact for legal resources should be tied into the RFP development building.

Mr. Perez stated SAP system long-term goals, such as Smart Grid, were not anticipated to have large expenditures.

SUBSTITUTE MOTION PASSED: 6-2, Barton, Burt no, Espinosa absent

Council Member Morton left the meeting at 12:40 a.m.

COUNCIL MEMBER QUESTIONS, COMMENTS, AND ANNOUNCEMENTS

Council Member Yeh thanked Director of Utilities, Valerie Fong for hosting the Northern California Power Agency meeting.

Council Member Burt attended the Association of Bay Area Government (ABAG) conference.

Council Member Kishimoto advised that on November 4, 2009 there will be a Contact Sensitive Solutions symposium.

Council Member Klein stated the Santa Clara County Cities Association will be selecting a new ABAG representative at its meeting on November 12, 2009. He stated he will be out of the area on this date and was looking for someone else to attend the meeting.

Mayor Drekmeier stated on October 20, 2009 we were the host speaker at the China-Green Energy Forum.

ADJOURNMENT: The meeting adjourned at 12:48 a.m.

ATTEST:

APPROVED:

City Clerk

Mayor

NOTE: Sense minutes (synopsis) are prepared in accordance with Palo Alto Municipal Code Sections 2.04.180(a) and (b). The City Council and Standing Committee meeting tapes are made solely for the purpose of facilitating the preparation of the minutes of the meetings. City Council and Standing Committee meeting tapes are recycled 90 days from the date of the meeting. The tapes are available for members of the public to listen to during regular office hours.