TO: HONORABLE CITY COUNCIL
FROM: CITY MANAGER DEPARTMENT: PUBLIC WORKS
DATE: APRIL 19, 2004 CMR: 218:04

SUBJECT: APPROVAL OF RESTATEMENT AND AMENDMENT OF A FOUR YEAR CONTRACT WITH BAY SPAN INC. FOR TEMPORARY SKILLED FACILITIES STAFF IN THE AMOUNT OF $82,000 FOR FISCAL YEAR 2003-04; AND $73,000 FOR EACH OF THE TWO ADDITIONAL YEAR TERMS

RECOMMENDATION
Staff recommends that Council approve and authorize the Mayor to execute the attached Restatement and Amendment to contract with Bay Span, Inc. in the amount of $82,000 for temporary skilled facilities staff for fiscal year 2003-04; and $73,000 for each of two remaining contract years.

DISCUSSION
The Public Works Facilities Management Division maintains over one million square feet of space in various City facilities with five Facilities Mechanic positions providing all mechanical and general service work. A Facilities Mechanic position was removed last fiscal year from this division due to required budget reductions. The Facilities Management Division has had a Facilities Mechanic on disability with a work-related injury since March 2002. There is no estimated return date at this time.

When an injured employee suffers an actual work-related injury, the treating doctor has complete medical control and is the only one who determines what is the appropriate length and course of treatment. The City’s experience has been that determining the appropriate treatment for serious injuries can be difficult and drawn out. While it would seem reasonable that an employer should have the ability to terminate an employee who has not been on the job for over a year, California Labor Code section 132a prohibits this as discriminatory treatment of an employee for pursuing worker’s compensation claim. Also, termination on this sole basis would violate State (Fair Employment and Housing Act, etc.) and Federal (Americans with Disabilities Act, etc.) laws prohibiting disability discrimination. The City could only legally terminate such an employee following full compliance with these laws, including the FEHA/ADA required reasonable accommodation analysis.

A temporary Facilities Mechanic was retained in 2002 through Bay Span, Inc. to fill in for the injured worker. The Facilities Mechanic position provides preventative maintenance and repair
for heating and ventilating equipment, plumbing, minor electrical, and general maintenance on City facilities. The agreement with Bay Span, Inc. was set up under a blanket order but will exceed the $65,000 limit in April 2004 due to carry over costs from FY 2002-03. If backfill of this position with contract services is not continued, repair services to City facilities will be reduced and some service types will be eliminated.

**RESOURCE IMPACT**
Funds are available in FY 2003-2004 adjusted Public Works Department operating budget. Future contract years funding is subject to budget appropriation.

**ENVIRONMENTAL REVIEW**
This is not a project under the California Environmental Quality Act (CEQA).

**ATTACHMENTS**
Attachment A: Contract

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