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ITEM: 6.1

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Julia H. Cooper
John Aitken

SUBJECT: **AIRPORT COMMERCIAL PAPER PROGRAM LETTER OF CREDIT SUBSTITUTION**

DATE: August 16, 2018

Approved D.DSyC   Date 8/16/18

RECOMMENDATION

It is recommended that the City Council:

(a) Hold a TEFRA ("Tax Equity and Fiscal Responsibility Act") hearing with respect to the proposed issuance by the City of one or more issues of Series B subordinated commercial paper notes in an aggregate principal amount not to exceed $600,000,000 pursuant to a plan of finance in order to provide proceeds to finance or refinance all or a portion of the costs of acquisition, construction, equipping, financing, reconstruction, development, and modification of airport terminal and ancillary facilities that are included in or are consistent with the Airport Master Plan for the Norman Y. Mineta San José International Airport (the "Airport").

(b) Adopt a resolution authorizing the City's designated officers to negotiate, execute and deliver the following agreements related to the City of San José, Norman Y. Mineta San José International Airport Subordinated Commercial Paper Notes, Series A-1 (Non-AMT), Series A-2 (Non-AMT/Private Activity), Series B (AMT) and Series C (Taxable):

1. Letter of Credit and Reimbursement Agreement between the City and Bank of America N.A., and the associated Fee Letter;
2. First Amendment to the Third Amended and Restated Issuing and Paying Agent Agreement between the City and U.S. Bank National Association;
3. Fourth Amended and Restated Dealer Agreements between the City and each of Barclays Capital Inc., and Citigroup Global Markets Inc.; and authorizing the City's designated officers to take other necessary actions in connection therewith.

OUTCOME

Approval of the recommendation will result in the issuance of a substitute letter of credit (the "LOC") for the San José International Airport Commercial Paper Program. The LOC will secure up to $75 million in aggregate principal amount of subordinated commercial paper notes ("CP Notes") to be issued from time to time by the City, an increase from the aggregate principal amount of $38 million secured under the current letter of credit, and will continue to provide capacity to finance the proposed terminal area projects at the Airport, for a three-year term.

BACKGROUND

History of the City's Airport Commercial Paper Program

On November 2, 1999, the City Council adopted Resolution No. 69200 approving the implementation of a commercial paper program (the "Airport CP Program") for the Airport, which authorized the issuance of CP Notes in an aggregate principal amount of up to $100 million through a combination of three series of commercial paper notes: Series A (Non-AMT), Series B (AMT), and Series C (Taxable). The Airport CP Program currently is governed by Resolution No. 75693, which was adopted by the City Council on January 11, 2011 in conjunction with the City Council's authorization of letter of credit and reimbursement agreements for the issuance of LOCs issued by four banks.

The Airport CP Program was established to provide interim financing for Airport capital needs in anticipation of issuance of Airport revenue bonds that would replace the short-term notes with permanent long-term financing. Airport commercial paper notes are debt obligations secured by a lien and pledge of advances pursuant to a letter of credit, proceeds from the sale of such notes, and Surplus Revenues on a basis subordinate to Airport senior lien debt, which are secured by General Airport Revenues. Surplus Revenues are the Airport's General Airport Revenues less maintenance and operation expenses, debt service on the Airport senior lien bonds and the funding of any reserves established with respect to such senior lien bonds. The technical aspects of how commercial paper works are described in the attached Appendix A.

Since 1999, the commercial paper notes have been used to initially fund the Airport's runway projects, consolidated rental car garage project design efforts, costs associated with the 2002 Refunding Bonds, the initial costs associated with the implementation of the requirements under the Federal Aviation and Transportation Security Act, the Claims Loss Reserve for the Airport's Owner Controlled Insurance Program for the North Concourse Project, the Terminal Area Improvement Program, the refunding of the Airport Auction Rate Securities, and to fund associated interest costs during construction of these projects.

Since June 20, 2006, the City Council has taken several actions with respect to the Airport CP Program, as summarized in the table below. Although Resolution No. 75693 authorizes issuance of commercial paper up to a maximum amount of $600 million outstanding at one time, the City may only issue commercial paper notes up to the amount of credit support provided by banks or other financial institutions. Historical Council actions with respect to the Airport CP Program are as follows:

Council Approval Date	CP Program Size	Description
June 20, 2006	$200 million	Program expanded to award the design and construction contracts for Airport Master Plan projects and to pay costs related to lease of the former FMC property.
January 9, 2007	$450 million	Program expanded to ensure funding for the rephased Airport Master Plan; program secured by LOCs provided by JP Morgan, Bank of America, and Dexia Credit Local.
March 25, 2008	$600 million	Program expanded to facilitate refunding of Airport Auction Rate Securities with commercial paper notes; an additional LOC with Lloyds Bank TSB PLC was approved to provide letter of credit support in the amount of $140 million.
September 1, 2009	$600 million	Authorized issuance of Private Activity Non-AMT CP Notes provided for in the American Recovery and Reinvestment Act.
January 11, 2011	$600 million	Approved new LOCs totaling $383 million provided by JP Morgan, Bank of America, Citibank, N.A., and Wells Fargo Bank, N.A. [1]
February 4, 2014	$600 million	New Letter of Credit and Reimbursement Agreement for the issuance of letter of credit in the principal amount not to exceed $60 million for a three-year period with Barclays Bank PLC
September 8, 2015	$600 million	The City directed U.S. Bank N.A, as Issuing & Paying Agent, to decrease the stated amount of the letter of credit established by Barclays Bank PLC (the "Bank") from $60 million in capacity to $38 million in capacity. The Barclays LOC was subsequently extended to February 8, 2019.

Subsequent to the issuance of the LOC by Barclays Bank PLC, the City has been paying down the outstanding CP Notes; as of July 24, 2018, the total outstanding principal amount of CP Notes was $4.5 million.

[1] On July 13, 2011 and December 2, 2011, Airport Revenue Bonds, Series 2011A-1 and Series 2011B were issued, respectively, to refund a significant portion of the outstanding commercial paper notes. As a result of these bond issuances, the total outstanding Airport CP was reduced from $410 million, as of July 1, 2011, to $52 million, as of December 31, 2011.

ANALYSIS

Request for Proposals Process

The current Letter of Credit and Reimbursement Agreement with Barclays Bank PLC is scheduled to expire on February 8, 2019, as discussed in the "BACKGROUND" section. On May 17, 2018, the Finance Department issued a request for proposal requesting banks and/or financial institutions to submit proposals to provide an approximately $82 million ($75 million plus interest at the maximum rate for 270 days) LOC to support the Norman Y. Mineta San José International Airport Subordinate Commercial Paper Notes, Series A-C to facilitate the issuance of CP Notes to finance the Interim Gate Facility project. Responses were due on June 13, 2018. The City received 8 responses for LOC support of the Airport CP Program.

Based on the analyses and evaluations of the proposals including financing costs and the City's preferred terms, the City staff recommends that Bank of America, N.A. ("BofA") be selected to provide the LOC.

Summary of Bank Proposals – Letter of Credit

Bank	**3 Year Term – Bank Fee**
Bank of America N.A.	0.35%
Barclays Bank PLC	0.40%
Wells Fargo Bank, N. A	0.49%
Sumitomo Mitsui Bank	0.55%
PNC Bank	0.57%
JP Morgan Chase Bank	0.625%
State Street Bank	0.63%
Mitsubishi UFJ (MUFG)	0.70%
Citibank	0.89%

Plan of Finance

Although the CP Notes are short-term obligations, the Airport's intent is to roll the outstanding balance over a longer-term, based on the expectation that the outstanding CP Notes will be paid down on an 8-year amortization period with the first principal payments paid in fiscal year 2019. The LOC of $75 million will provide additional financing capacity for funding the Phase II of the Terminal Area Improvement Program. The current gate total of Terminals A and B is 30. Phase II would expand Terminal B up to 40 gates or more at the Airport and would include a parking facility to address parking displacement and other precursor projects related to the land needed for Phase II.

Financing Documents

This section contains a general description of the documents that require the City Council's approval. Staff recommends that the City Manager, the Director of Finance, the Assistant Director of Finance or their designees (the "Designated Officers") each be authorized to execute the agreements described below. As modifications may be required prior to the closing, staff also recommends that the Designated Officers each be authorized to execute the final version of these agreements as may be modified upon consultation with the City Attorney's Office and the Airport Department.

Letter of Credit and Reimbursement Agreement and the associated Fee Letter. The Letter of Credit and Reimbursement Agreement is an agreement between the City and BofA. According to the terms of the agreement, BofA agrees to advance funds to the Issuing and Paying Agent in an amount sufficient to pay the principal and interest due on maturing commercial paper notes in an amount not to exceed the stated amount of the LOC. In the event that the commercial paper dealer is unable to find investors to purchase CP Notes to repay the advance from BofA, the City must repay such advances, plus interest, to BofA based on a formula specified in the reimbursement agreement. Additionally, BofA has proposed a separate Fee Letter to specify the commitment fee payable by the City and the other fees and charges imposed by BofA related to the issuance of the LOC.

The BofA Reimbursement Agreement will provide support for the Airport CP Program for three years, effective on or about September 12, 2018, with a total commitment of $82 million. A summary of key business terms with BofA are provided in Appendix B.

Delegation of Authority for Extensions of the Letter of Credit and Reimbursement Agreement and the associated Fee Letter. Staff recommends that the Designated Officers each be authorized to enter into one or more future extensions of the Letter of Credit and Reimbursement Agreement and associated Fee Letter, with no fees contemplated to be charged by BofA for such extensions other than potentially a $2,500 amendment fee plus the reimbursable expenses of bank counsel as provided for in the Reimbursement Agreement.

The Authorized Officers may execute and deliver future amendments to the Reimbursement Agreement and/or the Fee Letter without further authorization of Council as follows: (1) to substitute for the Bank currently providing credit support pursuant to the Reimbursement Agreement and the Letter of Credit other commercial banks having at the time of the substitution short-term ratings in at least the "A-2", "P-2" and/or "F2" rating categories, taking into account any numerical modifier, but not any plus or minus sign or other modifier, from each rating agency then rating the outstanding Notes (each a "Qualified Bank"); or (2) to approve one or more extensions of the Letter of Credit Expiration Date (as such term is defined in the Reimbursement Agreement) on substantially the same terms and conditions in the Reimbursement Agreement approved hereby, provided that the total compensation payable by the City under the

Reimbursement Agreement does not exceed 1.00% per annum of the Stated Amount (as defined in the Reimbursement Agreement).

Dealer Agreements. The Commercial Paper Dealer Agreement ("Dealer Agreement") is between the City with each of Barclays Capital Inc and Citigroup Global Markets Inc., as non-exclusive dealers for the CP Notes. Each Dealer Agreement sets forth the procedures and compensation for serving as a commercial paper dealer. Each Fourth Amended and Restated Dealer Agreement will reflect conforming changes necessitated by the execution of the new Letter of Credit and Reimbursement Agreement. The compensation payable to the commercial paper dealers and the other material terms and conditions of the existing agreements with the commercial paper dealers will remain the same.

Delegation of Authority related to Substitute Commercial Paper Dealers. Staff recommends that the Designated Officers, each acting alone, be authorized to select substitute commercial paper dealers and to enter into agreements with such substitute dealers on substantially the same terms as contained in the Dealer Agreements described above with such additions, changes and corrections therein as necessary and desirable, as the Designated Officer approves upon consultation with the City Attorney's Office and the Airport Department; provided that the compensation paid to the commercial paper dealer does not increase.

Issuing and Paying Agent Agreement. The current Issuing and Paying Agent Agreement is the Third Amended and Restated Issuing and Paying Agent Agreement between the City and U.S. Bank National Association. This agreement sets forth the procedures for issuing CP Notes, payment of the matured CP Notes and the application of the funds received from the sale of CP Notes. The proposed First Amendment to the current agreement includes conforming changes necessitated by the execution of the Letter of Credit and Reimbursement Agreement with BofA.

Financing Team

The financing team participants consist of:

• City's Co-Financial Advisors:	Public Financial Management Public Resources Advisory Group
• Bond Counsel:	Orrick Herrington & Sutcliffe LLP
• Letter of Credit Bank:	Bank of America N.A.
• Bank Counsel:	Chapman and Cutler LLP
• Commercial Paper Dealers:	Barclays Capital Inc. Citigroup Global Markets Inc.
• Commercial Paper Dealers' Counsel:	Kutak Rock LLP
• Issuing and Paying Agent:	U.S. Bank National Association

Financing Schedule

The current proposed schedule for the letter of credit replacement is as follows:

City Council:	August 28, 2018
Document closing:	On or about September 11, 2018

EVALUATION AND FOLLOW-UP

This memorandum recommends the City Council's approval of the letter of credit substitution related to the City of San José Airport Commercial Paper Program and requires no follow-up to the City Council.

PUBLIC OUTREACH

The City Council will hold a public hearing on August 28, 2018, as required by Section 147(f)(2) of the Internal Revenue Code of 1986, to consider public input concerning the approval of issuance of the Series B Notes for the projects at the Airport consistent with the Airport Master Plan. The Notice of Public Hearing was published in the San José Post-Record on August 8, 2018 announcing the time and location of the public hearing.

The form of the proposed agreements, in substantially final form, will be posted to the City's agenda webpage on or about August 17, 2018.

COORDINATION

This report has been prepared by the Finance Department in coordination with the City Attorney's Office, Airport Department, and financing team participants.

COMMISSION RECOMMENDATION/INPUT

There is no commission recommendation or input associated with this action.

FISCAL/POLICY ALIGNMENT

The proposed financing plan is also consistent with the City's Debt Management Policy which establishes objectives in order to obtain cost-effective access to the capital markets, which includes minimizing debt service and issuance costs; maintaining access to cost-effective borrowing; and ensuring compliance with applicable State and Federal laws.

COST IMPLICATIONS

Professional services (bank expenses, bank counsel fees, dealer counsel fees, and rating agency fees) and other related costs are estimated to be approximately $203,500 and will be paid from Airport operating funds. As discussed in the "ANALYSIS" section, the facility fee rate per the BofA Agreement will be 0.075% lower than the existing Barclays LOC.

BUDGET REFERENCE

The table below identifies the fund and appropriation to fund the actions recommended as part of this memorandum.

Fund #	Appn #	Appn. Name	Total Appn.	Amt. for Contract	2018-2019 Proposed Operating Budget Page	Last Budget Action (Date, Ord. No.)
523	0802	Airport Non-Personal/ Equipment	$41,215,297	$203,500	X-3	06/19/18 Ord. No. 30124
Total Current Funding Available			**$41,215,297**	**$203,500**		

CEQA

Resolution Nos. 67380 and 71451, with Revised Addendum, PP18-070

/s/
JOHN AITKEN
Director of Aviation

/s/
JULIA H. COOPER
Director of Finance

For questions, please contact Lisa C. Taitano, Assistant Director of Finance, at (408) 535-7041.

APPENDIX A

TECHNICAL ASPECTS OF COMMERCIAL PAPER

The Mechanics of Commercial Paper

Commercial paper is debt that is sold with a maturity of between 1 and 270 days. The maturity of an individual commercial paper note is determined by the commercial paper dealer and the issuer at the time it is sold. Each commercial paper note bears interest at a fixed rate for the 1-270-day period of time it is outstanding; or is sold at a discount, and such interest or discount is payable when the note matures. (The procedures for the payment of interest on the commercial paper are described below under "Payment of Principal and Interest on Commercial Paper".)

Municipal commercial paper programs typically require the issuer to obtain credit support through one of more letters of credit provided by a commercial bank. Upon each note maturity, the paying agent is authorized and required to draw on the supporting letter of credit in the amount of principal and interest due on that date. The issuer may then "roll over" the commercial paper notes by issuing renewal notes and using the proceeds of the renewal notes to reimburse the draw on the letter of credit. To the extent that the commercial paper dealer is unable to find an investor for the renewal notes, the draw on the letter of credit remains unreimbursed and the issuer is responsible for repaying the bank or banks that provided the letter of credit. The terms and conditions governing the letter(s) of credit and the reimbursement process are memorialized in a reimbursement agreement entered into by and between the issuer and the bank or bank(s) that provided the letter of credit.

The renewal notes may be sold through a commercial paper dealer either to a new investor or to the investor who held the maturing note. The process of rolling over commercial paper is not considered to be the issuance of additional debt as long as the amount of commercial paper outstanding is not increased as a result of the "roll over." Through the "roll over" mechanism, commercial paper can be kept outstanding indefinitely, as individual commercial paper notes continually mature and new commercial paper notes are issued.

Commercial paper is considered a form of variable-rate debt. Even though the interest rate on each commercial paper note is fixed at the time such note is issued, the rate on each commercial paper note will be based on market conditions at that time. The rates on new commercial paper notes will thus vary from one week or month to another. The actual cost of the program to the issuer will be the average rate on all of its outstanding commercial paper notes over time. Most issuers calculate such average rates on a quarterly or annual basis. Overall, commercial paper rates tend to be among the lowest available in the tax-exempt and taxable markets for municipal debt.

The buyers of commercial paper are considered short-term investors, because their investments in commercial paper mature in 270 days or less. One of the attractive features commercial paper offers to an investor is that the maturities can be matched to the specific timing needs of an investor (such as 27 days, or 112 days). This helps an investor invest amounts for a very precise period of time until such funds are needed for a specific known payment obligation in the future. Buyers of commercial paper include major corporations and money market funds. Commercial paper is attractive to money market funds because it complies with the maturity limitations imposed on such funds, and the flexibility in setting the maturity of commercial paper may help the fund achieve or maintain the average maturity it is seeking. Money market funds are likely to continue to buy a given issue of commercial paper as it rolls over, and thus may own an issue for an extended period of time.

Payment of Principal and Interest on Commercial Paper

Commercial paper is not sold with a fixed principal repayment schedule. Instead, the issuer maintains almost complete flexibility with respect to the timing and amounts in which the principal amount of commercial paper will be repaid. Basically, the issuer can repay commercial paper on any date on which a commercial paper note is scheduled to mature by providing the funds to reimburse the credit bank for the principal amount of such note. The paying agent uses such funds to reimburse the credit bank for its payment to the holder of such note. At the same time, the issuer instructs its commercial paper dealer not to attempt to sell new commercial paper to roll over the paper, which is maturing. Hence, if such steps were taken, the amount of commercial paper outstanding is reduced.

The individual commercial paper notes are likely to have different maturities, so an issuer repaying a commercial paper program would do so in a series of steps as the individual notes mature. However, since each note would have a maximum maturity of 270 days, an entire program could be repaid at the option of the issuer in not more than 270 days from the time the issuer decided to commence such repayment. It is likely that an issuer planning to pay a program off in the near future would instruct its commercial paper dealer to issue the paper with short maturities as it rolls over, so that the issuer could retire the commercial paper quickly when it begins the repayment process.

As noted above under "The Mechanics of Commercial Paper" interest or discount is payable on each commercial paper note as it matures. During the construction period for a project, the interest payable can in some instances be "capitalized" by adding the amount of interest due on the maturing commercial paper to the amount of new paper being sold. If this approach is used, the principal amount of paper outstanding over time will increase as additional interest is capitalized (subject to the maximum authorized amount of notes permitted to be outstanding at any one time under the program).

Interest on tax-exempt debt generally cannot be capitalized following completion of the projects financed with commercial paper. At that point, the issuer must provide to the paying agent the interest due at the time each note matures. The paying agent then reimburses the credit bank for its payment of such interest to the investor, together with the proceeds received from rolling over the principal amount of the commercial paper. Since the interest at that point is being reimbursed by the issuer, and not by increasing the amount of paper being rolled over, the principal amount of commercial paper outstanding will stay constant after the projects are completed. That principal amount outstanding could either be reduced in the future if the issuer decides to repay some, or all, of the program, or increased if the issuer decides to undertake additional projects (which may require an increase in the authorized amount of the program).

APPENDIX B

SUMMARY OF BUSINESS TERMS WITH BANK OF AMERICA

Bank of America, N.A. is offering a letter of credit in the amount up to $75,000,000 of principal plus $6,657,534.25 to cover interest at the maximum rate of 12% for the maximum CP note maturity of 270 days to support the Airport CP Program. The Facility Fee is charged on the amount of the letter of credit at the Facility Fee Rate in effect at any given time, which generally corresponds with the long-term unenhanced credit ratings on the Airport's bonds. As set forth in the following table, the "Facility Fee Rate" at any given time, is determined based on the level at which two of three ratings appear or, in the case where no two ratings are at the same level, the level at which the middle rating appears. As of the date of this memorandum, the ratings of the Airport's Revenue Bonds assigned by Moody's, S&P, and Fitch are A2/A/A-, respectively, and the initial Facility Fee Rate is 0.35%.

Level	Moody's Rating	S&P Rating	Fitch Rating	Facility Fee Rate
1	A3 or above	A- or above	A- or above	0.35%
2	Baa1	BBB+	BBB+	0.60%
3	Baa2	BBB	BBB	1.00%
4	Baa3 or lower	BBB- or lower	BBB- or lower	Default Rate%

The Facility Fee Rate will increase by an additional 1.50% from the Facility Fee Rate in effect upon the occurrence of an event of default or suspension or withdrawal of ratings on the Airport Revenue Bonds so that the Airport Revenue Bonds are not rated by at least two rating agencies. All such increases in the Facility Fee Rate are cumulative.

Each draw under the letter of credit is subject to a $250 draw fee.

The Stated Termination Date is 3 years after effective date of agreement.

Term Loan: When a commercial paper dealer is unable to find buyers for the outstanding commercial paper notes and the City is unable to repay a draw on the letter of credit (the "Unreimbursed Drawing") that was made to pay the holder(s) of the commercial paper notes, the portion of each Unreimbursed Drawing remaining due and payable on the draw date shall be converted to a Term Loan if there is no event of default and the representations and warranties made by the City in the Reimbursement Agreement remain true. Interest on the unpaid principal balance of each Term Loan will be equal to the Bank Rate (see below). The City is required to repay the Term Loan no later than 3 years of the date of the Unreimbursed Drawing.

Base Rate: Highest of (i) the Prime Rate + 1.00%, (ii) the Federal Funds Rate + 2.00%, and (iii) 7.00%. In the current interest rate environment, the Base Rate would be 7%.

Bank Rate:	Days 1-90: Days 91+:	Base Rate Term Loan Rate
Term Loan Rate	Base Rate + 1.00%	
Default Rate:	Base Rate + 4.00%. This is the interest rate charged to the City if certain Events of Default occur and are uncured.	

Additional terms and covenants:

Fee for Early Termination of LOC:	In the event the City elects to terminate or permanently reduce the LOC prior to the twelve (12) month anniversary of the date of issuance, the City shall pay to the Bank a fee (the "Termination Fee") in an amount equal to (i) the amount of Facility Fees that would have been charged on the stated amount of the full stated amount of the LOC for the remaining portion of such twelve (12) months. The City will not be required to pay a Termination Fee if the LOC is terminated or the stated amount is permanently reduced, as applicable, (i) due to a downgrade of any of the short term ratings of the Bank below P-1, A-1 or F1, by any of Moody's, S&P or Fitch, respectively, (ii) if the Bank seeks compensation from the City for the payment of increased costs under the Facility or (iii) if the CP Notes are redeemed, refunded or the rate of interest on the CP Notes is converted to a fixed rate or another interest rate mode that does not involve a credit facility or liquidity facility.
Rate Maintenance Covenant:	The City is obligated to set rates and charges at the Airport at a level sufficient to meet the financial tests specified within the Reimbursement Agreement.
Increased Costs:	The City is required to reimburse the Bank should certain increased costs and changes in capital or reserve adequacy requirements occur, potentially including changes resulting from the Dodd-Frank Act and Basel III, regardless of the date of enactment. The look-back period is generally limited to six months prior to the date of written demand given to the City (the "Cut-Off Date"), except when the Bank had no actual knowledge of such action as of the Cut-Off Date or such action applies retroactively to a date prior to the Cut-Off Date.
Governing Law:	As is common in many banking agreements, the law governing the agreements and the Bank's obligations is New York law. The law governing the ability of the City to enter into the agreement is

	California law.
Waiver of Jury Trial:	The City and the Bank each waives its right to jury trial to the maximum extent permitted by law.
Indemnification and Bank Liability:	The City generally is responsible for indemnifying the Bank for claims arising from these transactions and increased costs that the Banks may incur, however, the City is not obligated to indemnify the Bank for liability arising from the Bank's gross negligence or willful misconduct. The Bank limits its obligation to direct damages as opposed to special, indirect, consequential or punitive damages. Consequential damages are one kind of two types of damages (the other being direct damages) that may be awarded to a plaintiff in a civil action, where plaintiff claims the terms of an agreement were not honored. Consequential damages include loss of profit or revenues and may be recovered if it is determined that such damages were reasonably foreseeable at the time of the making of the contract.