

Memorandum

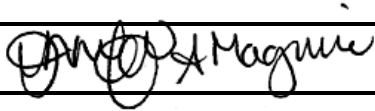
TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Lee Wilcox
Julia H. Cooper
Jim Shannon

**SUBJECT: COVID-19 PANDEMIC RESPONSE
AND COMMUNITY AND ECONOMIC
RECOVERY BUDGET ADJUSTMENTS**

DATE: November 1, 2021

Approved



Date: 11/1/2021

SUPPLEMENTAL

REASON FOR SUPPLEMENTAL

To provide additional context to the items raised in a memorandum from Councilmembers Esparza and Arenas regarding transparency and fiscal accountability in the use of American Rescue Plan Act funds and the awarding of food distribution contracts, this memorandum: 1) provides an overview of the steps the City has taken regarding the tracking of expenses, compliance, and auditing the use of Federal and State of California emergency relief and recovery funding; and 2) provides an overview of the City's role in facilitating food assistance to families in need and steps the Administration will take to allow the City to transition away from its current prominent role in food distribution support.

ANALYSIS

Tracking Expenses, Compliance, and Auditing

Given the March 1, 2020 Federal¹ and March 4, 2020 State of California² emergencies declared in response to the COVID-19 Pandemic, and the City of San José's own emergency declaration issued on March 6, 2020³ and ratified by the City Council at its March 10, 2020 meeting^{4,5}, the Administration entered into an emergency services contract on March 18, 2020 with Witt O'Brien's, LLC, a national firm with acknowledged expertise in emergency management and response, to provide the following services:

¹ Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak Proclamation 9994 of March 13, 2020 (retroactive to March 1, 2020) <https://www.federalregister.gov/documents/2020/03/18/2020-05794/declaring-a-national-emergency-concerning-the-novel-coronavirus-disease-covid-19-outbreak>

² Proclamation of a [California] State of Emergency <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>

³ City of San José Proclamation of Local Emergency <https://www.sanjoseca.gov/Home/ShowDocument?id=54789>

⁴ <https://sanjose.legistar.com/View.ashx?M=F&ID=8187911&GUID=84A84537-2584-46CA-AF63-9034D1D72E38>

⁵ Resolution of the Council of the City of San José ratifying and continuing the Proclamation of Existence of a Local Emergency issued by the Director of Emergency Services <https://records.sanjoseca.gov/Resolutions/RES79425.pdf>

- Consulting support regarding COVID-19 and public health;
- Planning support for continuity of essential services;
- Assistance with the development and/or review of operational implementation plans;
- Crisis communications advice; and
- Assistance obtaining funding from the Federal Emergency Management Agency (“FEMA”) and other federal funding sources.

As the pandemic persisted and significant COVID-19 response funding became available through FEMA, the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”)⁶, the U.S. Department of Housing and Urban Development, and other Federal and State sources, the Administration identified a broader need for disaster cost recovery, accounting, auditing and compliance professional services. Accordingly, the Administration started working in May 2020 with Ernst & Young, LLP, a global auditing/compliance partnership network and one of the international “Big Four” accounting firms.

As a component of the review and auditing process, the Office of the City Auditor has been engaged in the expenditure review process since the commencement of the COVID-19 emergency and, on May 29, 2020, issued a *Preliminary Review of Controls to Document COVID-19 Recovery Costs* report⁷, which was heard and approved by City Council on June 9, 2020⁸.

On June 4, 2020, Councilmembers Esparza, Jimenez and Khamis issued a joint *Coronavirus Relief Fund Accountability* memorandum⁹ for discussion at the June 10, 2020 Joint Meeting of the Rules and Open Government Committee and Committee of the Whole Committee (“Rules Committee”) meeting¹⁰. The joint *Coronavirus Relief Fund Accountability* memorandum included a recommendation to

“Direct the City Manager to enlist an outside, independent auditor to conduct an audit of our dispersal and use of CARES [Coronavirus Aid, Relief, and Economic Security] Act funds to reduce further impacts to staff while ensuring transparency and fiscal accountability in the use of these funds.”

After discussion, the Rules Committee directed the City Manager to report back to the June 24, 2020 Rules Committee meeting on how the dispersal and use of certain CARES Act funds, specifically the allocation of \$178,295,248 in Coronavirus Relief Fund moneys, would comply with the City guiding principles of government transparency and accountability¹¹.

⁶ The CARES Act was passed by Congress on March 25, 2020 and signed into law on March 27, 2020.

⁷ City Auditor Report *Preliminary Review of Controls to Document COVID-19 Recovery Costs*, May 29, 2020

<https://www.sanjoseca.gov/home/showdocument?id=59134>

⁸ City Council Minutes June 9, 2020 <https://sanjose.legistar.com/View.ashx?M=A&ID=712193&GUID=A380D63E-71F6-4C41-BEB4-D7272C96A0AE>

⁹ *Coronavirus Relief Fund Accountability* Memorandum June 10, 2020:

<https://sanjose.legistar.com/View.ashx?M=F&ID=8581293&GUID=FF5B69D7-D4D6-4036-9195-A33D60A41248>

¹⁰ *Coronavirus Relief Fund Accountability* Memorandum June 10, 2020: Video Mark 26:16 – 52:18

http://sanjose.granicus.com/MediaPlayer.php?view_id=2&clip_id=11698

¹¹ <https://www.sanjoseca.gov/home/showpublisheddocument/12911/636670004982730000>

On June 24, 2020, the Administration reported back to the Rules Committee with a *Relief Funds Transparency and Accountability* information memorandum and presentation^{12,13,14}. After further Rules Committee discussion, the information memorandum was accepted with no further referral or action required¹⁵.

The June 24, 2020 information memorandum defined (and continues to inform) both the internal and external activities, roles, and responsibilities of the Finance/Recovery Team, who are overseen by executive leadership within the Finance Department. The information memorandum also described the scope of Ernst & Young's work with the City to date and proposed scope of work including: (1) funding source management, (2) disaster cost accounting, (3) disaster procurement support, (4) disaster cost recovery plan development, and (5) general technical assistance. The City completed negotiations on the full scope necessary to assist the City to comply with Federal and State funding requirements and executed the contract on August 6, 2020.

The City Finance/Recovery Team has engaged in discussions with FEMA, the California Office of Emergency Services ("CalOES"), the U.S. Treasury Department, and various State of California agencies, such as the Business, Consumer Services and Housing, Community Service & Development, and the State Water Board, to review programmatic and reporting requirements to ensure the required eligibility and implementation guidelines are understood and followed by City program and fiscal managers. The City Finance/Recovery Team also collaborated with City Departments, the City Attorney's Office and the City Manager's Office to develop Federally compliant contract language and a City-wide accounting structure to track emergency expenses across all funding sources. Additionally, the City Finance/Recovery Team has submitted the required periodic reporting, planning¹⁶ documents and reimbursement requests for CARES Act, American Rescue Plan Act, Consolidated Appropriations Act (2021) and other COVID-19 related funding which the City has either received and/or was appropriated.

Additional auditing/compliance actions by the Administration for COVID-19 related activities included amendments to the Ernst & Young and Witt O'Brien's contracts, which increased each contract value to \$990,000 and extended both through March 31, 2022; these contract actions were approved by City Council on March 30, 2021^{17, 18}. The City Auditor also issued two (2) monitoring reports and proposed a COVID-19 project as follows:

¹² <https://www.sanjoseca.gov/home/showdocument?id=60973>

¹³ *Relief Funds Transparency and Accountability* Information Memorandum June 24, 2020: Presentation
<https://sanjose.legistar.com/View.ashx?M=F&ID=8633091&GUID=0D61106C-DA47-45F7-BC59-A4FD9DC7F01A>

¹⁴ *Relief Funds Transparency and Accountability* Information Memorandum June 24, 2020: Video (Mark 24:02 – 37:30)
http://sanjose.granicus.com/MediaPlayer.php?view_id=2&clip_id=11724

¹⁵ Joint Meeting of the Rules and Open Government Committee and Committee of the Whole – Minutes: June 24, 2020: Item G.2
Coronavirus Relief Fund Accountability (Esparza, Jimenez, Khamis)
<https://sanjose.legistar.com/View.ashx?M=M&ID=765760&GUID=51FEB6D6-7682-4C24-AEF7-54D5AB2C2B83>

¹⁶ City of San José 2021 Recovery Plan (Coronavirus State and Local Fiscal Recovery Funds)
<https://www.sanjoseca.gov/home/showpublisheddocument/76744/637660904762700000>

¹⁷ Ernst & Young, LLP <https://sanjose.legistar.com/View.ashx?M=F&ID=9268447&GUID=2DA5E219-2607-45FD-8E6D-1D8096EF3CF0>

¹⁸ Witt O'Brien's, LLC <https://sanjose.legistar.com/View.ashx?M=F&ID=9268448&GUID=61C11DA6-5839-42B1-AC72-3785BFB4377D>

- On October 9, 2020, *Preliminary Review of Documentation for Costs Included in the July 2020 Coronavirus Relief Fund Interim Report*¹⁹, which was accepted by City Council on October 20, 2020²⁰;
- On December 4, 2020, *Preliminary Review of the Allocation Process and Monitoring of COVID-19 Related Housing Grants*²¹, which was approved by City Council on December 15, 2020²²; and
- On August 4, 2021, the Rules Committee approved the City Auditor's Fiscal Year 2021-22 Work Plan, which included a *COVID-19 Recovery Expenditures* project²³. The audit scope of this project is to be determined based on a review of risks and controls around COVID-19 related expenditures of the Coronavirus Relief Fund, the American Rescue Plan, or other funding sources.

The City also presented its *Fiscal Year 2019-2020 Comprehensive Annual Financial Report for the City of San José*²⁴ (now known as the *Annual Comprehensive Financial Report*) at the Council December 15, 2020 meeting. At the same Council meeting, the City's external independent auditor, Macias, Gini & O'Connell LLP, presented their *Report to Those Charged with Governance for Fiscal Year Ended June 30, 2020*²⁵. Both reports were considered and accepted at the City Council December 15, 2020 meeting²⁶. Macias, Gini & O'Connell issued the *San José Single Audit – Basic Financial Statements with Federal Compliance Section Year ending June 30, 2020*²⁷ on June 18, 2021, and the Federal Audit Clearinghouse accepted the report on June 21, 2021. An informational memorandum was distributed to the City Council on July 12, 2021²⁸ providing a link to the report and noting no additional audit findings were issued by Macias, Gini & O'Connell upon completion of the Single Audit, including on the use of Federal and State relief funds.

In preparation for the November 2, 2021 City Council meeting, the Administration issued an information memorandum on September 3, 2021²⁹ that summarized and provided links for additional details on the eligible uses of the Coronavirus State and Local Fiscal Recovery Funds ("CSLFRF") authorized by the American Rescue Plan Act – which is received and budgeted within the City's American Rescue Plan Fund – and outlined next steps on recommended funding reallocations. Leveraging the staff expertise developed over the past nineteen (19) months and independent third parties such as Witt O'Brien's, Ernst & Young, and Macias, Gini & O'Connell, the Administration will apply similarly robust levels of oversight of American Rescue Plan expenditures as is currently provided to CRF, FEMA, and other Federal and State relief and recovery expenditures.

¹⁹ <https://www.sanjoseca.gov/home/showdocument?id=65239>

²⁰ <https://sanjose.legistar.com/View.ashx?M=M&ID=790221&GUID=1E371AE6-0C8B-479D-B004-0E3C40A6A550>

²¹ <https://www.sanjoseca.gov/home/showpublisheddocument?id=67667>

²² <https://sanjose.legistar.com/View.ashx?M=M&ID=790229&GUID=2B6ED728-B5EA-43F3-A229-BF61CBA72A02>

²³ <https://sanjose.legistar.com/View.ashx?M=F&ID=9682698&GUID=34A3124C-6D57-43D7-9F6A-7E417AD4B1CC>

²⁴ <https://sanjose.legistar.com/View.ashx?M=F&ID=8979081&GUID=AEBE6D24-B9A1-40A4-BF72-F8C2317584A1>

²⁵ <https://sanjose.legistar.com/View.ashx?M=F&ID=9008291&GUID=DC26A640-0862-4841-BFBE-C6B25C590161>

²⁶ <https://sanjose.legistar.com/View.ashx?M=M&ID=790229&GUID=2B6ED728-B5EA-43F3-A229-BF61CBA72A02>

²⁷ <https://www.sanjoseca.gov/home/showpublisheddocument/75017/637604800011570000>

²⁸ <https://www.sanjoseca.gov/home/showpublisheddocument/75365/637617002285770000>

²⁹ Eligible Uses of the American Rescue Plan Fund and Next Steps on Funding Reallocations Informational Memorandum, September 3, 2021: <https://www.sanjoseca.gov/home/showpublisheddocument/76838/637662763398070000>

Food Distribution Program

The COVID-19 pandemic and economic crisis exacerbated existing inequalities. The City felt an immense responsibility to provide essential needs for our residents. That included feeding our most vulnerable communities – our children, seniors, and the unhoused. The City immediately engaged organizations with the capacity and existing presence in the community to provide distribution services for food and other necessities. When the City assumed food distribution activities at the request of the County of Santa Clara in March 2020, the County proposed several existing foodservice providers who might have a role in rapidly scaling food distribution and provided their associated contact information—including Revolution Foods, Second Harvest Food Bank, Hunger at Home, and World Central Kitchen.

The FEMA Public Assistance Program, U. S. Housing and Urban Development guidelines, and the Municipal Code³⁰ allowed for direct contracting for services to provide immediate relief in the event of an emergency, and to conduct a competitive procurement after the initial emergency response. In less than six weeks, the City ramped up from 800 meals per week for seniors before the pandemic to helping coordinate and fund the provision of three (3) million meals per week, including food services to vulnerable residents countywide during the pandemic. The City focused on contracting with organizations with capacity and presence in the community, and the ability to immediately begin providing service. Since those early direct contracting for services the City has conducted competitive procurements for food distribution in accordance with the Federal guidelines mentioned above.

A recent media article reported a concern expressed by a City employee in March 2021 about inappropriate comments made by a Revolution Foods representative in November 2020 regarding the organization's purported relationship with the Mayor. The City employee's concerns were not about the Mayor, nor did the Mayor introduce Revolution Foods to the City since the City was already utilizing Revolution Foods at the beginning of the COVID-19 pandemic. The comment made by the vendor was handled appropriately and immediately by City staff notifying Revolution Foods that the City does not base decisions on relationships but rather that we follow appropriate City contracting and procurement processes that align with State and Federal law, and best practices. It should be noted that the City's agreement with Revolution Foods is set to expire on December 31, 2021 and the Administration will not be recommending an extension.

Since the issuance of the Administration's recommended American Rescue Plan allocations, the Administration has received many questions from the City Council on the budget associated with the food distribution program. As discussed in the August and September 2021 City Manager's COVID-19 Response 3.1 City Council meeting updates, the City and non-profit partners originally had intended to ramp the food program down with a possible sunset on December 31, 2021. However, with the emergence of the Delta variant, extending contractual agreements with non-profit partners and others to meet the most basic needs for parts of our community continued to be a priority.

³⁰ FEMA Public Assistance Procurement Conducted under Exigent or Emergency Circumstances [2 CFR §§200.32(c)(3)], FEMA March 17, 2020 *Memorandum on Procurement Under Grants Conducted Under Emergency or Exigent Circumstances for COVID-19* and U. S. Housing and Urban Development [44 CFR §13.36(d)(4)], and local guidelines under San José Municipal Code 4.12.220 Emergency Purchases.

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The Administration's recommendation of \$11.2 million in American Rescue Plan funds is a conservative approach that allows the continuation of food distribution into 2022—ensuring stability of food resources, with the intention of ending dependence on the City on or before June 30, 2022. However, more recent factors will likely result in a lower level of actual expenditures. These factors include the downward trend of the Delta variant; the local vaccination rate continuing to trend upwards; vaccine availability for children ages 5-11 starting this week, and the expansion of vaccine booster eligibility. These positive developments require the City to be more intentional about asking our partners to better assess the current and projected needs, develop a plan to transition away from the City's temporary obligation of overseeing food distribution in the response phase of the COVID-19 pandemic, and focus additional attention of the recovery phase and new emerging community needs. The Administration intends to report back to the City Council on November 30th with specific details and recommended extensions for Bateman/TRIO, Catholic Charities, Loaves and Fishes, Off the Grid, San Jose Conservation Corps, SVCN, Team San Jose, and The Health Trust.

COORDINATION

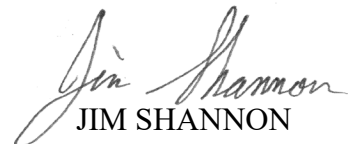
This memorandum has been coordinated with the City Attorney's Office, the City Auditor's Office, and the City Manager's Office of Employee Relations.

/s/

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/s/

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