



**BUDGET & MANAGEMENT STUDIES – INTERNAL AUDIT**

DATE: February 9, 2011

TO: CAROLYN HOGG, Director of Information Services

THROUGH: RENENA SMITH, Budget Director *RS*  
Budget and Management Studies

FROM: BOB KOURY, Principal Internal Auditor *Bob Koury*  
MARY VIANCOURT, Internal Auditor *MV*  
Budget and Management Studies - Internal Audit

SUBJECT: FOLLOW-UP AUDIT – INFORMATION SERVICES DEPARTMENT’S (ISD)  
REVENUE CONTRACTS AND PROPERTY LEASE AUDITS

Attached is the Follow-up Audit Report related to the ISD’s Revenue Contracts and Property Leases Audit issued on September 2, 2010 (The complete original audit report can be found on the City’s Internal Audit web site for reference purposes if necessary.) This follow-up audit was performed in accordance with AO 1-12 and Government Auditing Standards.

The ISD Director has provided a response and current status to the 31 original audit recommendations made by Internal Audit. Nine out of the 31 recommendations have been fully implemented. The remaining 22 recommendations have been partially implemented as of this date.

We wish to thank you for your assistance during the course of this follow-up audit. If you have any questions or we can be of any further assistance to your Department, please contact Bob Koury, Principal Internal Auditor, at 621-7072.

**Attachments**

cc: Ashley Swearingin, Mayor  
City Councilmembers  
Mark Scott, City Manager  
Bruce Rudd, Assistant City Manager  
Nicole Zieba, Deputy City Manager  
James Sanchez, City Attorney  
Joe Gray, Finance Director/City Controller  
Dan Turner, Risk Manager, Risk Management Division  
Pedro Rivera, Senior Budget Analyst, BMSD

**INTERNAL AUDIT**



**FINAL FOLLOW-UP AUDIT REPORT**

**Information Services Department's  
Revenue Contracts and Property Leases Audit**

**11-0010**

**Performed by:  
Mary Viancourt, Internal Auditor  
Budget and Management Studies – Internal Audit**

**Issued on February 9, 2011**

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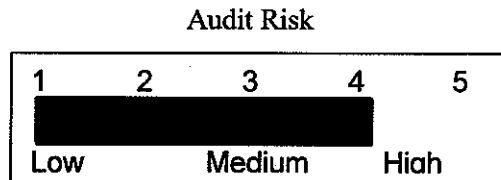
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## EXECUTIVE SUMMARY

Based on the results of this audit from a sample of the Information Services Department's Revenue Contracts and Property Lease Agreements, the more significant audit findings are summarized below. This audit report is intended to assist both ISD Management and other City Departments in the performance of their responsibilities, administration, oversight and contract compliance related to their respective revenue contracts and property leases.

While performing the audit, Internal Audit considered whether improvements could be made to strengthen the existing Contract Process. This report provides some areas for ISD Management to consider for fiscal management and customer service.

Risk is the degree of or the lack of internal controls, management oversight and fiscal responsibility. Based upon Internal Audit's findings, the ISD's Revenue Contracts and Property Leases Process risk is medium to high.



### Issues Identified:

1. There is a lack of consistent and formalized contract administration, compliance monitoring, and recordkeeping related to ISD's contracts/property leases by the designated "Contract Administrator" and Back-Up "Contract Administrator" which has contributed to the audit findings noted throughout this audit report. The lack of Contract Compliance places the City at risk.
2. The City Attorney's Office has not complied fully with AO 6-22 related to their maintenance and monitoring of ISD Revenue Contracts and Property Leases.
3. An employee(s) who may be responsible for performing a portion of the Contract or Lease process does not have a copy of the Contract/Lease document. Further, the ISD employee performing a Contract/Lease process may not interact with the Contracted Party or Lessee and/or have received proper training on their duties as related to the Contract/Lease. The lack of having a complete copy of the current Contract or Lease and Exhibits and training places the employee performing a specific process at a disadvantage and at risk of inadequately performing their assigned duties.
4. ISD does not have current, executed Contract documents for each Party they are receiving revenue from.
5. Current processes from drafting through termination of the Contract/Lease are inefficient. Inefficient processes can and do result in errors in the document language, payment

terms, not recording the receipt date for assessment of late penalties, and/or lack of proper record keeping.

6. Internal Audit noted potential City Revenue not assessed and received; however, Internal Audit was unable to conclude with certainty that all payments or penalties were properly assessed, paid or late penalties assessed and paid per terms of the three Contracts/Leases audited.

## **INTRODUCTION**

### **Background**

As a "Best Practice", the Internal Audit function of an organization periodically conducts a Risk Assessment of the entire organization to determine where the greatest exposure of potential risk/liability is in the organization. Given the changes in the economy and other factors potentially influencing City Services to the Citizens of Fresno since the last Risk Assessment, the Internal Audit Section conducted a Citywide Risk Assessment during 2009 which was used to develop an Annual Audit Plan for Fiscal Years (FY) 2010 and 2011. As part of that Risk Assessment, Internal Audit looked for an area(s) of exposure to the City from potential lost revenue.

One area Internal Audit identified during the Risk Assessment and from a few prior Audits is lost Contract and Lease Revenue. Internal Audit obtained a current listing of all agreements, contracts, grants, and leases from each City Department in August 2009.

### **Audit Objectives**

Internal Audit's primary audit objectives were to:

1. Determine if ISD has a current listing of all Revenue Contracts and Property Leases.
2. Determine if ISD has a "Contract Administrator" and whom the Administrator reports to.
3. Determine if any ISD Contracts/Leases have expired but are still being enforced/utilized.
4. Determine if the Departmental/Divisional "Contract Administrator" is monitoring and enforcing all the terms of the Contracts/Leases.
5. Determine if ISD is collecting, depositing, and reporting all revenue collected from these Contracts/Leases in a timely manner or assessing Late Penalties, as applicable.

### **Audit Scope and Methodology**

Internal Audit performed the ISD Revenue Contract and Property Leases Audit during the period May through July 2010, in accordance with Administrative Order 1-12 and Generally Accepted Government Auditing Standards. Internal Audit used the following documents/ procedures:

- Internal Audit conducted a review of all City Administrative Orders to determine who is responsible for Contract Administration and who is required to receive information related to Contracts and Leases entered into by the City of Fresno.
- Internal Audit conducted interviews with designated ISD Staff Members.
- Internal Audit requested a current list of ISD's Contracts and Leases as of February 2010.
- Internal Audit selected the Contracts and Leases to review and test for compliance.
- Internal Audit obtained a hardcopy of each selected Contract and Lease(s) from the appropriate Department.
- Internal Audit verified monthly/yearly Contract/Lease revenue in the PeopleSoft System.

- Internal Audit tested the ISD's Divisional monitoring and enforcing of Contract/Lease terms.
- Internal Audit conducted some on-site visits.

### **Audit Conclusion**

The ISD Management and staff is a professional group of individuals. Their duties are varied based upon the Division they work in, the regulatory requirements for their environment, and the needs of their customers and/or Citizens of Fresno.

However, Internal Audit noted some areas during the course of this audit that ISD Management should address to strengthen Internal Controls and Work Processes for greater operational effectiveness and efficiencies and a more consistent enforcement of Contract/Lease terms. These areas are addressed throughout this Audit Report.

## REPORT SECTIONS - RESULTS AND RECOMMENDATIONS

### I. Department/Division's "Contract Administrator"

Internal Audit identified a number of Administrative Orders (AO), which require each Department to have a "Contract Administrator" to administer, track, and monitor Contracts/Leases for their respective Department/Division. The AOs are as follows:

- AO 1-1 Grants Administration (Finance) - Issued on December 1, 1998
- AO 4-1 Processing of Contracts to Which the City is Party (City Attorney) - Revised on November 9, 2006
- AO 6-22 Contract Compliance System (City Manager) - Issued on November 9, 2006

The duties and responsibilities of the "Contract Administrator" are not clearly defined in the above noted AOs. As a result of Internal Audit's Citywide Contract Compliance Audit Report issued February 16, 2010, a new AO was drafted to replace AOs 4-1 and 6-22 and to more clearly define the "Contract Administrator's" responsibilities. The newly drafted AO is currently under review for approval and distribution by the City Manager's Office as of our audit date.

Throughout the ISD Contracts/Leases Audit, Internal Audit noted the following:

- On August 5, 2010, Internal Audit was informed ISD's designated "Contract Administrator" is the Management Analyst III and the Staff Assistant is the designated Back-Up "Contract Administrator". As noted throughout this report, these designated employees are not ensuring full compliance with all ISD Contract/Lease Terms (including issuing a Default Notice).
- Multiple employees within a Division are responsible for various contractual obligations of these Contracts/Leases. On August 5, 2010, Internal Audit was informed the Communications Manager negotiates and executes Contracts, the Senior Account Clerk is responsible for receipting payments and the Executive Assistant to ISD's Director is responsible for Policies and Procedures.
- Internal Audit noted that there is insufficient communication regarding Contracts and Contract issues between Management and the various employees' involved with or responsible for ISD's Contract and Contract Compliance process. For example, designated ISD Staff were unaware of:
  - Lack of knowledge of a Contract between the City of Fresno and Jaroth, Inc.;
  - Enforcing a non-executed contract with Jaroth, Inc.;
  - Failure of KJEO to pay its 2009 and 2010 Contractual payments; and
  - Failure of ISD's Staff to issue a Letter of Non-Compliance to KJEO for failure to pay.
- The Department's "Contract Administrator" does not have current, accurate, and complete records for audit and/or verification of all required Contract/Lease terms (e.g.

a current, executed Contract document for each Contract, Amendments, and Exhibits; complete Financial Records; and or Documents for required deliverables from the Contracted Party/Lessee.

- The Department's "Contract Administrator" has not provided an executed copy of all Agreements/Contracts to the City Attorney and the City Clerk. The City Attorney's list dated August 21, 2009 did not include the KEJO 47, Pacific Bell Wireless (T-Mobile) and the Pacific Telemanagement Services (Jaroth) Contracts. The City Clerk's list dated August 28, 2009 only included the Pacific Bell Wireless (T-Mobile) Contract. The City Clerk's list did not include the Jaroth and KJEO Agreements.

#### **Audit Recommendation:**

1. The ISD Director should ensure the Department's "Contract Administrator" is consistently performing their contract responsibilities for all Department/Division contracts for control and accountability purposes.

#### **MANAGEMENT RESPONSE TO RECOMMENDATION – 1**

We concur with this recommendation. The ISD Director will ensure that the Department's "Contract Administrator" is consistently performing her duties for all contracts for control and accountability purposes. Informal procedures are now in place for monitoring provisions of the executed contracts. Division Managers are responsible for negotiating and executing contracts. The Contract Administrator is responsible for monitoring/administering the contracts after execution. Formal written procedures will be in place by February 28, 2011.

#### **STATUS UPDATE – PARTIALLY IMPLEMENTED – DUE DATE FEBRUARY 2011**

There has been a transition of duties regarding contract administration since the initial management response was provided in August 2010. The previous Contract Administrator (Management Analyst III) left city service mid-September; however, this function was transferred shortly thereafter to an Information Services Supervisor. We continue to have informal procedures in place while working toward more formalized procedures. Informal procedures include placing a copy of each contract and associated documents on the department's common K drive and having the Executive Assistant send reminder email notices to division managers anywhere from 90 days to six months in advance of a contract or certificate renewal (depends on nature and complexity of contract). These procedures help ensure that all department members have easy access to contract information that is centrally located and that contract/certificate renewals are started in sufficient time to be complete before expiration. Division managers continue to be responsible for negotiating contracts that are in the best interest of the city, ensuring that the contracts are properly and fully executed, and contract terms are being met.

There was also a change in contract processing, in particular regarding AO 6-22 Contract Compliance System. As of January 1, 2011, the City Attorney's Office no longer has a Contract Compliance Coordinator. Each department is fully responsible for administering, monitoring

and enforcing their own contracts, with some involvement by the City Manager's Office on specific contracts. The Contract Administrator has been continuing to develop formalized internal guidelines which will include checklists to ensure that all contract provisions are completed and flowcharts for processing standardized and non-standardized contracts. In addition, ISD is developing a SharePoint contract management website which will provide greater functionality and ease of use than our common K drive. This website provides "one stop shopping" for not only department employees but others in the city who might have a vested interest. Employees can quickly see a summary view of the contract which includes information such as effective and termination dates and dates that payments are due. Employees can then "drill down" to get additional detail information such as base rent, Certificate of Insurance effective/expiration dates and any added comments. All information currently being stored on the K drive has been transferred to this website. It is anticipated these formal written procedures and the SharePoint website will be in place by February 2011.

**Audit Recommendation:**

2. The Department's "Contract Administrator" should maintain a complete listing of all Department contracts and maintain this listing on an ongoing basis for reference and/or reporting purposes.

**MANAGEMENT RESPONSE TO RECOMMENDATION - 2**

We concur with the recommendation. The Contract Administrator has maintained a complete listing of contracts for ISD Operating and Replacement Funds (135 contracts) as necessary for the budget build process and submitted to the Budget and Management Studies Division on both August 21, 2009 (to Bob Koury) and on February 26, 2010 (as part of formal budget submission), but did not have a complete listing of Communication Division contracts (2 out of 13) due to employee turnover and transfer of Communication Division to ISD. Much of the history and contract files for Communications were not available making it difficult to administer unknown contracts. We have implemented procedures to ensure timely administration of insurance, invoicing, and contract renewal. We will be implementing computer software to assist with tracking ISD's 148+ contracts within the next fiscal year.

**STATUS UPDATE – PARTIALLY IMPLEMENTED – DUE DATE FEBRUARY 2011**

As referenced in Recommendation #1, ISD is developing a SharePoint contract management website which will provide a "cohesive collaboration" for all parties needing to access contract information. This website will not only have a complete listing of all contracts but they will be separated into either revenue or expenditure categories. It will be much easier to share information and manage the contracts from start to finish. It is anticipated the SharePoint website will be in place by February 2011.

**Audit Recommendation:**

3. The Department "Contract Administrator" should establish and maintain a file for each Department contract and include therein, at a minimum, the following:
  - A fully executed original contract, including all Exhibits and any subsequent

- Amendments, change orders, etc. to such contract(s);
- Contract term, i.e. effective and expiration dates;
- All required bonds or other security certificates;
- All required Insurance Certificates and endorsements;
- All disbursement or revenue amounts, terms, conditions and frequency of such contract transactions for monitoring purposes; and
- Any information regarding source(s) of funding and encumbrances specific to the contract.

### **MANAGEMENT RESPONSE TO RECOMMENDATION - 3**

We concur with the recommendation; but do not agree that this should be included as an audit finding. The Contract Administrator has maintained files for each contract including original contract w/amendments, required insurance certificates, payment or billing and other correspondence. The expenditure contracts (mainly for software/hardware maintenance) are kept in binders with the Management Analyst II by fiscal year of payment. The remainder of contract files is maintained by the Executive Assistant. Both sets of contract files/processes are carried out under the supervision of the Contract Administrator. The Contract Administrator has directed that the physical files be centrally located and consolidated; and also directed that the files be scanned and stored electronically for easy access and availability to all ISD staff. This project will be complete by February 28, 2011.

### **STATUS UPDATE – PARTIALLY IMPLEMENTED – DUE DATE FEBRUARY 2011**

Files for each contract including original contract with amendments, required insurance certificates, payment or billing and other correspondence are stored in a central location in the Administration Division. As an interim solution, these documents have also been stored on the department's common K drive. A SharePoint contract management website is under development which will make access to and administration of contracts much easier. It is anticipated that this website will be completed by February 2011.

### **Audit Recommendation:**

4. The Department "Contract Administrator" should establish formalized procedures to ensure complete and consistent contract compliance by all parties to the contract, to specifically include but not be limited to, the following:
  - Monitoring of contract and/or security and insurance policy expiration dates.
  - Monitoring of the satisfactory completion of contract deliverables and reporting requirements and the due dates of such deliverables as stipulated in the contract.
  - Monitoring of all payments due the City (revenue contract) or disbursements due the contractor (expenditure contract), i.e. amounts are accurate as per the contract terms and conditions, supported by adequate documentation, and reportable on a regular basis to City Management or to appropriate outside agencies.
  - Monitoring and review of actual contract revenues or contract expenditures throughout the term of the contract, to include comparisons to Department

Budget and, if applicable, the initiation of budgetary action and/or reporting to City Management, as considered appropriate.

**MANAGEMENT RESPONSE TO RECOMMENDATION – 4**

We concur with this recommendation. The Contract Administrator has formulated and implemented informal procedures for monitoring contract/insurance expiration dates, as well as payment and billing dates. With the exception of the Communication contracts noted above in Response #2 that were not discovered until late, there is consistent monitoring of renewals, disbursements, insurance, etc. to ensure renewal of software/hardware maintenance and upgrades and to compare the estimated (budgeted) renewals to the actual renewal price. The Contract Administrator also sent out a letter to the vendors in November 2009 requesting price concessions due to the economic constraints facing the City.

However, due to the volume of contracts to administer, ISD is in need of computer software to assist with tickler or alerts, work lists, etc to ensure that critical contract dates are not overlooked. Currently, renewal dates are tracked in Microsoft Excel and Outlook, but a more formalized process is required. Written procedures will be in place by February 28, 2011.

**STATUS UPDATE – PARTIALLY IMPLEMENTED – DUE DATE FEBRUARY 2011**

There are informal procedures in place to help ensure contract compliance by all parties; however, as previously mentioned, computer software was needed to provide a more permanent solution to assist with the day-to-day administration of the contracts. In lieu of purchasing contract management software, in-house expertise was used to develop a SharePoint contract management website. Once completed, this website will make access to and administration of contracts much easier. It is anticipated that this website will be completed by February 2011.

**Audit Recommendation:**

5. The Department "Contract Administrator" should provide the City Attorney with a fully executed Contract so the City Attorney's Contract Compliance Coordinator can continue to number and log all such contracts in its "Index of Standard Document" system in compliance with AO 4-4 and AO 6-22 so the City Attorney can reconcile its contract listing with the City Clerk's database of contracts on a quarterly basis for control and accountability purposes.

**MANAGEMENT RESPONSE TO RECOMMENDATION – 5**

We concur with this recommendation; however do not agree that this should be included as an audit finding. In late 2007, ISD's Contract Administrator photocopied all contracts and submitted them to the City Attorney's Office for input into the Pro Law system and for future contract monitoring of expiration of each contract. The contract copies were apparently never entered into Pro Law, and only subsequent infrequent copies were entered after the initial submission was made per Administrative Order 6-22. We were recently discussing the issue with the CAO's office and that the contracts may have been discarded since the contracts were

already expired at time they went to be entered into Pro Law (the majority of ISD's contracts are one year terms for maintenance of software/hardware). Accordingly it is our belief that future tickler email notifications were not sent for contract expiration since the main contract was never entered.

Our current process is to provide the original contract to the City Clerk's Office and a copy to our files and the City Attorney's Office.

It is ISD's recommendation that the City consider one universal citywide contract management software system whereby all contracts would be entered and maintained; and electronic imaging would replace the need for multiple copies to be made for CAO and City Clerk's Office.

#### **STATUS UPDATE – PARTIALLY IMPLEMENTED – DUE DATE FEBRUARY 2011**

As referenced in Recommendation #1, there was a change in contract processing, in particular regarding AO 6-22 Contract Compliance System. As of January 1, 2011, the City Attorney's Office no longer has a Contract Compliance Coordinator. Each department is fully responsible for administering, monitoring and enforcing their own contracts, with some involvement by the City Manager's Office on specific contracts. Due to this change in primary responsibility for contract administration, the Contract Administrator has been developing formalized internal guidelines. In addition, ISD is developing a SharePoint contract management website which will provide greater functionality and ease of use than our common K drive. It is anticipated these formal written procedures and the SharePoint website will be in place by February 2011 as previously advised.

#### **Audit Recommendation:**

6. The Department "Contract Administrator" should provide the City Clerk with a fully executed Contract so the City Clerk can file and maintain such contracts in an organized manner in its Office, with a corresponding listing of all such contracts for reference or public records access purposes.

#### **MANAGEMENT RESPONSE TO RECOMMENDATION – 6**

We concur with this recommendation. As previously noted in our response to Recommendation #2, much of the history and contract files for Communications were not available making it difficult to administer unknown contracts. Our current process is to provide the original contract to the City Clerk's Office for attestation and public records archiving purposes, and to provide a copy of the contract files to the City Attorney's Office. However upon discovery, the KJEO contract was expired and must be renewed immediately. The contracts will be negotiated and originals submitted for attestation to City Clerk's Office within 180 days.

## **STATUS UPDATE – FULLY IMPLEMENTED – SEPTEMBER 2010**

All active original contracts were provided to the City Clerk's Office and copies were provided to the City Attorney's Office. This was completed by September 2010. Procedures are in place to provide original signed contracts to the City Clerk's Office for attestation and public records archiving purposes.

### **II. Jaroth Inc. (Pacific Telemangement Services - PTS)**

Internal Audit requested and received a listing of all ISD Revenue Contracts on May 19, 2010. The Jaroth, Inc. Agreement was not on ISD's list.

The City of Fresno – Department of General Services (hereinafter "Location Provider") entered into an Agreement with Jaroth Inc. dba Pacific Telemangement Services (PTS) for Payphone service at various Payphones locations throughout the City. The Agreement states the effective date is September 6, 2007. Section 1 (Term) of this Agreement states: This Agreement shall be in effect for an initial term of 3 Years beginning on the date written above, and shall automatically renew for additional, successive 1 year terms, unless either party provides written notice of the intent not to renew the Agreement at least thirty (30) days in advance, but not more than ninety (90) days, prior to the end of the initial term or renewal term.

#### **A. Fully Executed Contract**

Section 2. (Authority) states: "The person signing represents and warrants: 1) to have the authority to execute this Agreement; 2) that Location Provider has the legal right to possession of the premises; and 3) that Location Provider has not entered into any other agreement that is inconsistent with this Agreement. Location Provider and person signing the Agreement will hold harmless and indemnify PTS from any claims or liabilities arising from inaccuracy or omission in such warranties."

ISD does not have a signed copy of the Agreement. The City Attorney's Contract List of 8/21/2009 and City Clerk's Agreement List as of 8/28/09 do not show a copy of the Jaroth Agreement on file. Internal Audit has made several attempts to contact Jaroth for a copy of the signed Agreement to no avail.

On August 2, 2010, after the audit fieldwork and distribution of the Preliminary Draft Audit Report, Jaroth contacted Internal Audit and informed Audit that the Service Agreement between the City of Fresno and Jaroth for Payphone Service was submitted to the City of Fresno on September 6, 2007 for signature. Per the Jaroth Sales Representative, the City never signed and returned the Service Agreement to Jaroth. Therefore, Jaroth does not have and cannot provide an executed copy of the September 6, 2007 Service Agreement between the City of Fresno and Jaroth.

**Audit Recommendation:**

7. The ISD Director should immediately determine whether to enter into a new Agreement with Jaroth. If yes, then negotiate and sign the new Agreement and immediately forward a copy of the executed Agreement to the City Attorney and City Clerk for entry into their respective databases.

**MANAGEMENT RESPONSE TO RECOMMENDATION – 7**

We concur with the above recommendation. Since a fully executed original of the contract does not exist, and Jaroth (PTS) has indicated that they will not be renewing said contract under the same revenue provisions, the ISD Director has directed staff to renegotiate this contract within the next 180 days. ISD will execute a new agreement and forward documents to both the City Attorney and City Clerk's Offices for entry into their respective databases.

**STATUS UPDATE – PARTIALLY IMPLEMENTED – DUE DATE FEBRUARY 2011**

A renegotiated contract was signed by Jaroth/PTS representatives on January 14, 2011 and approved by Risk Management staff on January 24, 2011. This contract has been "Approved as to Form" by the City Attorney's Office and forwarded to the City Manager's Office for approval to place on the City Council agenda for the February 17, 2011 meeting.

**B. Record Keeping**

All Payphone Commission payments are not sent directly to ISD at City Hall. Some payments are received at the Communications Center at the Municipal Service Center and then forwarded to ISD whereas other payments are sent directly to ISD. All payments, including Coin Revenue data received at either location, are not Date Stamped with the Receipt Date. ISD informed Internal Audit that the Cashier's Memo Date is considered the Date Received although the Cashier's Memo may not be created the same day the payment is received, i.e. the Cashier's Memo may be created up to three days after the actual payment is received.

Further, a copy of each check and any supporting documentation are not always retained for audit purposes by either the Department or another Auditor. Also, no one is closely monitoring the accuracy and timeliness of the Payphone Commission Payment.

**Audit Recommendation:**

8. The ISD Director should direct all Staff who receives mail (such as correspondence, payments, etc.) to date stamp the item upon receipt at any City Location and forward the correspondence/payment to the appropriate person or Section responsible for timely deposit and retention.

### **MANAGEMENT RESPONSE TO RECOMMENDATION – 8**

We concur with the above recommendation. We have purchased a date stamp machine from the Personnel Services Department and are in the process of having the lower die plate replaced to reflect ISD's designation.

We have also sent a letter dated August 24, 2010 to Jaroth (PTS) to notify them of the correct payment remittance address: 2600 Fresno Street, Room 1059, Fresno, CA 93721-3608, Attention: Administration Division. Deposits will be made on the same business day upon receipt at Fresno City Hall Room 1059.

Duplicate Recommendation as #24

### **STATUS UPDATE – FULLY IMPLEMENTED – SEPTEMBER 2010**

The lower die plate to reflect ISD's designation was installed on September 20, 2010. All correspondence is date stamped before distributed to appropriate staff.

Procedures are in place to distribute correspondence and deposit payments in a timely manner.

#### **Audit Recommendation:**

9. The ISD Director should create and distribute a Policy and Procedure regarding the types of documents required to be retained for audit purposes in compliance with an Agreement/Contract (especially for renewal and/or default).

### **MANAGEMENT RESPONSE TO RECOMMENDATION – 9**

We concur with this recommendation. Currently, renewal dates are tracked in Microsoft Excel and Outlook, but a more formal policy and procedure is required that outlines the types of documents to be retained for audit purposes to be in compliance with the Agreement/Contract. Written Contract Administration Policy and Procedure will be in place within February 28, 2011.

Duplicate Recommendation as #25

### **STATUS UPDATE – PARTIALLY IMPLEMENTED – DUE DATE FEBRUARY 2011**

The Contract Administrator is developing formalized internal guidelines which will include flowcharts for standardized and non-standardized contracts. In addition, ISD is developing a SharePoint contract management website which will provide greater functionality and ease of use than our common K drive. All information currently being stored on the K drive has been transferred to this website. It is anticipated these formal written procedures and the SharePoint website will be in place by February 2011 as previously advised.

## Number of Telephone Locations

Section 5 (Relocation and Removal) of the Agreement states: "Unless mutually agreed upon, no Payphones shall be relocated or removed from their location, provided that PTS reserves the right to move or remove any Payphone which (i) does not produce minimum revenues to support continued operation in accordance with PTS guidelines or (ii) is subjected to repeated acts of vandalism or misuse...."

Attachment A of the September 6, 2007 Agreement indicates there are a total of 27 Payphones. Following are the Payphone locations: Fulton Mall (11); Mariposa Mall (4); Fresno St. - City Hall (3); N. Blackstone Ave. (2); W. Jensen Ave. (2); Van Ness Ave. (2); N. San Pablo (1); W. Kern (1); and G. St. (1).

Internal Audit selected a sample of Payphone locations to verify (Fresno Street-City Hall), Fulton Mall and Mariposa Mall). Internal Audit was not able to locate the Payphones at the Fresno St. (City Hall) address.

Internal Audit has made several attempts to contact Jaroth for a current listing of their Payphone locations in Fresno. Internal Audit did not receive a current list but was told by a Jaroth Representative that there were 26 Payphones. The Jaroth Representative did not identify which Payphone location/number is no longer in service and/or equipment has been removed.

On August 2, 2010, after the audit fieldwork and distribution of the Preliminary Draft Audit Report, Jaroth contacted Internal Audit and informed Audit that originally AT&T previously had the contract for the Payphones in Fresno. Under AT&T, there were 32 Payphone locations but upon transfer to Jaroth-PTS, only 26 Payphones were transferred. Six Payphones were never installed at designated locations.

Internal Audit was able to locate the three Payphones at the Fresno St. (City Hall) address after receiving exact location information from Jaroth and assistance of the Head of Security at City Hall. On August 5, 2010, ISD Management was notified of the City Hall Payphone locations that they were not aware of. ISD Management informed Audit that there might be Americans with Disabilities Act (ADA) issues with some or all of the Payphones per this Contract.

### **Audit Recommendation:**

10. The ISD Director should immediately obtain a current listing of all Jaroth Payphone locations for Fresno and have a Staff member physically verify each location and whether there are compliance issues with the ADA which could put the City at risk.

### **MANAGEMENT RESPONSE TO RECOMMENDATION – 10**

We concur with the recommendation. On July 28, 2010, Bill Weare, Communication Supervisor for the City of Fresno, obtained a listing of Jaroth Payphone locations for Fresno from Joetta Gammage (Jaroth/PTS). On August 12, 2010 Bill Weare also verified and matched all locations provided for on the listing. There is one phone on the listing at Fresno City Hall that does not

meet ADA regulations. The City will purchase a TTY device for this location in order to meet ADA compliance regulations; thus eliminating any risk of liability.

### **STATUS UPDATE – PARTIALLY IMPLEMENTED – DUE DATE MARCH 2011**

In August 2010, the Communications Supervisor verified the physical locations of 26 pay phones identified in the listing provided by Jaroth/PTS staff. (NOTE: The previous contract had a listing of 27 phones; however, the phone on W. Kearney had been disconnected before the contract was fully executed.)

The new Jaroth contract also includes an attachment listing 21 pay phones covered by the contract. These are the phones remaining after five were disconnected (1 - W. Jensen Ave.; 3 - Fulton Mall; 1 - City Hall). It was determined that these five phones did not have sufficient revenue to justify remaining in service and could be removed without impacting customer service.

The City's ADA Coordinator has approved a TTY (teletypewriter) device for use at City Hall. A decision was made to delay installation until the new Jaroth contract was completed. Purchase and installation of this device will cost approximately \$1,200. Once the contract is completed, the device will be purchased and installed on a telephone located on the first floor of City Hall. It is estimated that this device will be installed by mid-March 2011.

#### **C. Category of Payphone**

Per Attachment A Revised Locations and Pay Telephones to the Agreement, seven (7) out of the 27 Payphones are listed as a C-Line. The C-Line Payphones are located at: Fresno St. (City Hall), G. St., W. Jensen Ave. and W. Kearn. The remaining Payphones were listed as Commission Payphones. ISD Staff could not explain what a C-Line Payphone is and whether there is a difference in commission between a C-Line and a Commission Payphone. Internal Audit has made several attempts to contact Jaroth for an explanation of the difference between a C-Line and a Commission Payphone, but to date has not received an answer.

On August 2, 2010, after the audit fieldwork and distribution of the Preliminary Draft Audit Report, Jaroth contacted Internal Audit and informed Audit that a C-Line Payphone is a Payphone for the convenience of the Public that may not have a Cell Telephone or some other Technological device that allows phone calls (especially Emergency Calls).

#### **Audit Recommendation:**

11. The ISD Director should immediately ascertain the difference between a C-Line and Commission Payphone to determine if there is different fiscal and/or liability impact to the City than a Commission Payphone and if C-Line phones are in the most convenient location for public usage.

## **MANAGEMENT RESPONSE TO RECOMMENDATION – 11**

We concur with the above recommendation. On August 11, 2010, Bill Weare, Communication Supervisor for the City of Fresno, contacted Joetta Gammage of Jaroth (PTS) to obtain an understanding of the difference between a C-Line phone and a Commission Payphone. Ms. Gammage responded that a C-Line phone was a convenience line with monthly service fee associated with it. A Commission Payphone does not have a monthly service fee, and is to be paid commission but only if you meet/exceed the determined threshold (\$100/mo).

Upon negotiating a new contract, the City will propose the most optimal financial plan while considering the needs of the Fresno citizens in the new agreement with Jaroth. Tentatively, the City has already identified five phones that will be disconnected and two phones that will be moved to better serve the public.

## **STATUS UPDATE – PARTIALLY IMPLEMENTED – DUE DATE FEBRUARY 2011**

Under the previous contract, the rate structure was the same for both C-line and commission phones. All 26 phones did not have a monthly service charge but rather were designated as “partial commission if threshold met.” This meant that once the threshold of \$100 was met, the city received 25% of the gross revenues received from the operation of the equipment. Twelve of the phones did not generate revenue necessary to allow them to remain in service at no charge. We were notified by Jaroth/PTS that if we wanted to continue service on the low revenue phones, there would be a monthly fee that would go into effect.

The new contract has rate language that differentiates between C-line and commission phones. C-line (or convenience) phones have what is designated as a “flipper agreement.” Five phones were designated as flipper phones. Since these phones will probably never generate sufficient revenue to meet the \$100 threshold but need to remain in service for convenience of the public who might not have access to a cell phone or other technological device that allows phone calls, the city will pay a flat monthly fee of \$65 per month per phone, with the monthly coin revenue, per phone, deducted from the flat rate. With this plan, the monthly fee will vary depending on the usage but will never exceed \$65.

The rate structure for the remaining 16 commission phones is similar to the previous contract; however, once the \$100 threshold is met, the city will receive 20% of the revenue received from the operation of the equipment. These new rates structures will go into effect once the contract is fully executed in mid-February.

Neither the convenience (flipper) or commission phones pose any liability to the City of Fresno. The equipment is owned by Jaroth/PTS and any injuries resulting from the equipment would be covered by their Certificate of Insurance. Jaroth/PTS also determines the location of phones based on their criteria. City approval is required if on City property.

Commission Pay Based on Individual Phone Location

Attachment B of the September 6, 2007 Agreement between the City of Fresno and Jaroth states: "PTS shall pay to Location Provider, throughout the initial term of this Agreement, as long as Location Provider is not in default under this Agreement, a commission (the Commission) based upon the revenues received from the operation of the Equipment. The Commission shall be paid by PTS to Location Provider, by check, on a Quarterly basis within thirty (30) days after the end of each calendar Quarterly. Customer shall qualify to receive commissions on the gross coin revenue per Payphone for that calendar month that exceeds the threshold.

The Commission will be based on the following schedule:

|                |                   |  |
|----------------|-------------------|--|
| Threshold      | \$100.00          |  |
| Revenue Stream | Dollar/Percentage | Based On   |
| CDR – Coin     | 25%               | gross revenues received from the operation of the Equipment for all coin calls |

Internal Audit attempted to review and verify the individual Payphone revenue owed by Jaroth to the City of Fresno from September 2007 to Present. Internal Audit noted the following:

- ISD had no Payphone payment and/or supporting documentation for the period of September 2007 through May 31, 2008 to verify coin revenue received and potential Commission paid.
- ISD had no supporting Payphone documentation from Jaroth to correlate with the City Cashier Memos dated June 2, 2008; September 18, 2008; December 12, 2008 and February 23, 2009 to show coin revenue collected for Commission payment by Jaroth.
- Jaroth does not list each Payphone location/number on the Supporting Payment Documentation for each quarter whether there is or isn't any coin revenue.
- One (1) out of the 27 Payphones had ZERO coin revenue reported. This Payphone is located on W. Kern.
- Eighteen (18) out of the 27 Payphones reported coin revenue for only one to three quarters (out of potentially 12 quarters) which resulted in \$20.45 Commission to the City.
- Eight (8) out of the 27 Payphones reported coin revenue for four to six quarters (out of potentially 12 quarters) which totaled \$1,095.39. These Payphones are located on Blackstone Ave., Fulton Mall, Mariposa Mall, and Van Ness Ave.

Due to ISD's incomplete Jaroth payment documents, Internal Audit contacted Jaroth to obtain additional payment information such as: a) Policies and procedures for collection of Coin Revenue; b) How often and who retrieves the coin revenue at each Payphone location; c) How Individual Payphone revenue is reported to determine the amount of Commission owed for the period of September 2007 to Present. Jaroth did not respond to Internal Audit's request.

Internal Audit cannot conclude whether the City of Fresno has received the proper Commission revenue by Jaroth since inception of this Agreement.

On August 2, 2010, after the audit fieldwork and distribution of the Preliminary Draft Audit Report, Jaroth contacted Internal Audit and informed Audit that Jaroth only reports the Coin Revenue for the individual Payphones that generate a Commission for the City of Fresno. Jaroth does not report all Coin Revenue quarterly for each Payphone listed in Attachment A of the September 6, 2007 Service Agreement.

Further, a Jaroth Representative stated Jaroth obtains Payphone data (e.g. Number of calls made daily; Amount of coins per call; Length of call; etc.) from each Payphone location approximately every three days. A PTS employee is sent a ticket when the amount of coins in a given Payphone reaches a designated amount for removal. The Coin Box is collected from the individual Payphone, an empty Coin Box is inserted into the Payphone and the Payphone is reset to transmit future call/revenue data.

**D. Potential Over Payment of Commissions by Jaroth**

Internal Audit noted potential over payments by Jaroth for Payphone Commissions.

| <b>Cashier's Memo #</b> | <b>Jaroth Check Amt.</b>  | <b>Jaroth Comm. Calc.</b> | <b>Difference</b> |
|-------------------------|---------------------------|---------------------------|-------------------|
| 152597                  | \$222.49                  | \$193.26                  | \$29.23           |
| 174283                  | \$259.06                  | \$132.31                  | \$126.75          |
| 180405                  | \$250.79                  | \$223.01                  | \$27.78           |
|                         | <b>Total Over Payment</b> | <b>By Jaroth</b>          | <b>\$183.76</b>   |

Using the available Payphone documentation provided by Jaroth, Internal Audit recalculated each monthly Commission for a given Quarter. Internal Audit noted the following:

- Internal Audit agreed with the total Quarterly amount of Commission calculated by Jaroth, not the amount paid.
- ISD Staff informed Internal Audit that Jaroth Commission payments are deposited without performing any type of reconciliation/verification process of the Quarterly payment.

Internal Audit cannot conclude that the potential over-payment is a true overpayment due to Audit's Findings in Section E above.

**Audit Recommendations For Sections E & F above:**

12. The ISD Director should contact Jaroth to obtain complete Coin Revenue and Commissions information and supporting documentation for each Payphone location/number from inception of this Agreement.

**MANAGEMENT RESPONSE TO RECOMMENDATION – 12**

We concur with this recommendation. On August 23, 2010, Jeff Stevenson of Jaroth, Inc. provided a detailed commission spreadsheet by phone/address for the entire term of the contract 9/6/07 to current.

Mr. Stevenson will send electronically a commission earned spreadsheet in the future for quarterly reconciliations to be performed by ISD Administration.

**STATUS UPDATE – FULLY IMPLEMENTED – JANUARY 2011**

The detailed spreadsheet previously provided by Jaroth/PTS staff included commission information from the inception of the Agreement through the second quarter of 2010. Since our initial response to the audit recommendations, we have received commission statements for the 3<sup>rd</sup> and 4<sup>th</sup> quarters of 2010. Detailed information provided with the reimbursements indicated that the city received the correct commission amount. We are continuing to work with Jaroth/PTS staff to obtain information for the last two quarters of 2010 in an electronic format.

13. Upon receipt and verification of Jaroth's Coin/Commission information/documentation, the ISD Director should either repay any over payment or invoice Jaroth for any Commissions not received to date.

**MANAGEMENT RESPONSE TO RECOMMENDATION – 13**

We concur with the above recommendation. On August 23, 2010, ISD Administration reconciled the commission spreadsheet received in Response #12 to the amounts remitted and outlined in the contract; therefore no amounts are overpaid or due to PTS.

The auditor was looking at the check stub commission total as compared to the amount of the check; which differed. Mr. Stevenson indicated that since there is not room to list all 26 payphone commissions on the check stub, the computer ceases to list amounts after 15 items and the difference is not indicated to the customer unless specifically requested.

Mr. Stevenson will send a commission earned spreadsheet in the future for quarterly reconciliations to be performed by ISD Administration.

**STATUS UPDATE – FULLY IMPLEMENTED – JANUARY 2011**

Since our initial response to the audit recommendations, we have received commission statements for the 3<sup>rd</sup> and 4<sup>th</sup> quarters of 2010. The information provided with the reimbursements indicated that the city received the correct commission amount. We are continuing to work with Jaroth/PTS staff to obtain information for the last two quarters of 2010 in an electronic format.

**E. Timeliness of Payments**

A Late Payment Penalty provision is not included in the September 6, 2007 Payphone Agreement between the City of Fresno and Jaroth, Inc. Other City Agreements/Contracts audited by Internal Audit have included a Late Payment Penalty of 1.5% to 5% per day or a flat rate on the outstanding balance owed past the Due Date or after a Grace Period.

Attachment B of the Agreement states: "...The Commission shall be paid by PTS to Location Provider, by check, on a Quarterly basis within thirty days after the end of each calendar Quarterly..." Internal Audit noted Jaroth's Check Date was greater than 30 days after the end of the Quarter for three payments, as follows:

| Cashier's Memo # | Quarter Ended | 30 Days Post Qtr. Close | Jaroth's Check Date | Days Over Due |
|------------------|---------------|-------------------------|---------------------|---------------|
| 152597           | 9/30/08       | 10/30/08                | 11/3/08             | 5             |
| 180405           | 12/31/09      | 1/30/10                 | 2/3/10              | 5             |
| 180417           | 3/31/10       | 4/30/10                 | 5/3/10              | 4             |

**Audit Recommendation:**

- The ISD Director should consider amending the Agreement with Jaroth to include a Late Payment Penalty Fee section to encourage and enhance the timely payment to the City and have both Parties sign the Amendment.

**MANAGEMENT RESPONSE TO RECOMMENDATION – 14**

We concur with the above recommendation. The ISD Director has directed staff to incorporate Late Payment Penalty Fee language requirement into all revenue contracts negotiated in the future (after date of this audit response) in an effort to encourage prompt payment to the City.

Duplicate Recommendation as #27.

**STATUS UPDATE – PARTIALLY IMPLEMENTED – DUE DATE FEBRUARY 2011**

The renegotiated contract with Jaroth/PTS scheduled to be on the City Council agenda for approval February 17, 2011 includes the following late payment language: "If any Commission payment owed with respect to any Payphone is made more than thirty (30) days after the original due date, the Location Provider may assess a late fee ("Late Fee") on all amounts due at the rate of ten percent 10% per annum."

**III. KJEO Channel 47**

The City of Fresno (ISD) entered into a License Agreement with KJEO on September 5, 1996 for a period of seven years. The Lease granted KJEO the right to install and operate a remote camera and microwave transmitter at the 180 foot level on the Radio Park Tower.

Internal Audit noted the following audit issues:

**A. Expired and Incomplete Contract**

The License Agreement by and between the City of Fresno and KJEO CHANNEL 47 became effective the 5<sup>th</sup> day of September 1996. Section 7 (Term and Revocation) states: "This Agreement shall be for a term of seven (7) years." The Agreement does not contain any

language that allows extension of the Agreement past the seven years (September 2003). Therefore, this contract has been expired for approximately seven years but is still being enforced.

In addition, the September 1996 KJEO License Agreement with KJEO was incomplete. Section 1 of the Agreement refers to Exhibit A. No Exhibit A was attached to the September 1996 KJEO License Agreement submitted to Internal Audit for audit. Other issues with the September 1996 License Agreement that were not enforced or should have been included in the Agreement are discussed below.

On August 5, 2010, Internal Audit was informed ISD personnel are negotiating a new Contract with KJEO although KJEO has not fully complied with all terms of the expired contract (e.g. Contractual payment).

**Audit Recommendation:**

15. After KJEO becomes fully compliant with the previous Contract, the ISD Director or designated employee should complete the negotiation and execution of a new License Agreement with KJEO. The new License Agreement (including applicable documents) should be reviewed and approved by the City Attorney and Risk Management prior to both parties signing the Agreement and providing a copy of the executed Agreement to the City Attorney and City Clerk.

**MANAGEMENT RESPONSE TO RECOMMENDATION – 15**

We concur with the above recommendation. KJEO must become fully compliant with the previous contract in order to enter into negotiations for a new licensing agreement. On August 23, 2010, Mike Dottai, Regional Communications Manager for the City of Fresno, sent written correspondence to KJEO to inform them that future negotiations need to begin immediately and include increased rents and escalation clauses to bring the City to fair market value. Should KJEO become compliant and wish to enter negotiations, the new agreement will be reviewed and approved by the City Attorney and Risk Management prior to both parties signing the agreement. A new agreement should be executed within the next 180 days.

**STATUS UPDATE – PARTIALLY IMPLEMENTED – DUE DATE MAY 2011**

The ISD Communications Manager has been working with KGPE (formerly KJEO) to formulate a new contract. KGPE has provided a list of equipment proposed to be installed on the radio tower. The new procedures being developed by the Contract Administrator will be followed to ensure that the contract will be executed properly and copies distributed to the appropriate parties. It is estimated that the new contract will be approved by May 2011.

**B. Current Lease Payment**

Section 2 (Grant of License) states: "In consideration of six hundred and eighty dollars (\$680), which shall be due and payable by LICENSEE to City upon execution of this Agreement and on

the first day of each year thereafter...”

Internal Audit received and reviewed the FY 2007 and FY 2008 PeopleSoft Detail Transaction Reports for ISD’s Rental Account. The FY 07 and 08 payments were combined with ISD’s T-Mobile payment in one journal entry, which appeared to be the correct rental payment for each vendor. Internal Audit ran the FY 2009 and 2010 PeopleSoft Rental Account Reports and did not find any payment information for KJEO.

In addition, the annual Lease Payment assessed KJEO is not within the range being assessed to other Cellular Companies by other City Departments.

- ISD’s T-Mobile lease payment initially was \$9,000 annually.
- The Fire Department’s Contel (aka Crown Castle) lease payment is approximately \$9,000 annually.
- The Water Division’s current Cricket Lease Payments range from approximately \$7,250 to \$12,000 annually.

**Audit Recommendation:**

16. If a new Licensing Agreement is entered into between the City of Fresno and KJEO, the ISD Director should determine the applicable annual lease payment based upon some measurable factor or precedent such as: Fair Market Value of the property; Square Footage and Equipment installed on City Property; and/or Other City Cellular Lease Payments.

**MANAGEMENT RESPONSE TO RECOMMENDATION – 16**

We concur with the recommendation. ISD should determine a basis or measure for computing applicable annual lease payments. ISD will survey other cities as to rate methodology with respect to communication leases within the next 180 days or earlier to incorporate this methodology into newly negotiated leases.

**STATUS UPDATE – PARTIALLY IMPLEMENTED – DUE DATE MAY 2011**

We are currently surveying other agencies to determine an appropriate annual lease payment. This information will be used in negotiation of a new contract with KGPE, scheduled to be completed by May 2011.

**C. Late Penalty**

KJEO has not paid the City the \$680 annual lease payment for the years of 2009 and 2010. KJEO was just invoiced by ISD for these payments on June 21, 2010. Therefore, the 2009 payment is 20 months overdue and the 2010 payment is eight months overdue. As of August 5, 2010, KJEO has not paid the City for the 2009 and 2010 Contract payment. The ISD Director and/or the City Attorney have not issued a Non-Compliance Letter for failure to pay and taken steps to collect the overdue payments.

A Late Penalty provision is not included in the September 1996 License Agreement between the City of Fresno and KJEO. Other City Agreements/Contracts audited by Internal Audit have included a Late Penalty of 1.5% to 5% per day or a flat rate on the outstanding balance owed as of the Due Date or after a Grace Period of ten (10) days.

**Audit Recommendation:**

17. The ISD Director should pursue collection of all outstanding and delinquent payments from KJEO. If the payment(s) are not received in a timely manner, the ISD Director with the assistance of the City Attorney's Office should issue a Default Letter to KJEO for failure to pay contractually owed payments.

**MANAGEMENT RESPONSE TO RECOMMENDATION – 17**

We concur with this recommendation. An original invoice for years 2009 and 2010 were mailed to KJEO in June 2010; however KJEO claims that they did not receive the invoice. On August 17, 2010 ISD staff phoned and resent both a collection letter and invoices both by facsimile and mail. We also followed up with a phone call to ensure the invoices had been received by KJEO and inquired as to the timing of payment. KJEO, now referred to as KGPE, remitted payment on August 26, 2010 for full amount due.

**STATUS UPDATE – FULLY IMPLEMENTED – AUGUST 2010**

KGPE has remitted payment for years 2009 and 2010.

**Audit Recommendation:**

18. If a new Licensing Agreement is entered into between the City of Fresno and KJEO, the ISD Director, in conjunction with the City Attorney, should determine whether a Late Penalty provision should be incorporated into the new Agreement.

**MANAGEMENT RESPONSE TO RECOMMENDATION – 18**

We concur with the above recommendation. The ISD Director has directed staff to incorporate Late Payment Penalty Fee language requirement into all revenue contracts negotiated in the future (after date of this audit response) in an effort to encourage prompt payment to the City. ISD will also include language that payment will be made "without invoice".

Duplicate Recommendation as #27.

**STATUS UPDATE – PARTIALLY IMPLEMENTED – DUE DATE MAY 2011**

A contract is currently being prepared. This contract will include Late Payment Penalty Fee language. It is estimated that the new contract will be fully executed by May 2011.

### Payment Escalation Clauses in Cellular Licensing Agreements:

A Payment Escalation Clause was not included in the September 1996 KJEO License Agreement. Other City Cellular Licensing Agreements have a Lease Payment Escalation Clause such as:

- a. ISD's T-Mobile License Agreement contains a 12.5% increase upon renewal of the Agreement.
- b. Fire Department's Contel (aka Crown Castle) Licensing Agreements states: "At the beginning of each five year period of this license, the license fee during each subsequent five year periods shall be increased by the cumulative increases in the Consumer Price Index (CPI) for all urban consumers for the Los Angeles, Anaheim, Long Beach area during the previous five (5) years but in no event shall any such single five year period increase exceed 25% of the immediately preceding fee."
- c. Water Division's Cricket Licensing Agreement states: "Upon the commencement of each new Renewal Term rent shall be increased Ten Percent (10%) above the Rent of the previous Term (or Renewal Term)."

### Audit Recommendation:

19. If a new Licensing Agreement is entered into between the City of Fresno and KJEO, the ISD Director, in conjunction with the City Attorney, should determine if the new KJEO License Agreement should contain a Payment Escalation Clause and include such language in the new License Agreement.

### MANAGEMENT RESPONSE TO RECOMMENDATION – 19

We concur with the above recommendation. ISD will incorporate payment escalation clauses into future License Agreements should they be warranted. Generally, escalation clauses seek to recover any cost increases in specific market indexes over time and are necessary to maintain a fair market value.

### STATUS UPDATE – PARTIALLY IMPLEMENTED – DUE DATE MAY 2011

A contract is currently being prepared. This contract will include escalation clause language. It is estimated that the new contract will be fully executed by May 2011.

### D. Liens and Taxes and Utilities

Section 4 (Liens and Taxes) states: "...LICENSEE shall pay any property taxes, including without limitation, possessory use taxes which may be applicable by LICENSEE'S use of the Property." ISD does not monitor whether KJEO is paying their Taxes. ISD to date has not received notice from the County of Fresno that KJEO has not paid their Taxes.

Section 5 (Utilities) states: LICENSEE shall be responsible for paying all costs and expense incurred by the CITY for providing electrical power supply line to the 180 foot level of the Tower, which shall be due and payable within thirty (30) days of City's Invoice, and paying all costs and expenses for the use of such utilities. ISD does not monitor whether KJEO pays their utility payment within the 30 days of City invoicing.

Since ISD is not monitoring payment of Liens, Taxes, and Utilities, the City of Fresno could potentially be responsible for these payments.

**Audit Recommendation:**

20. If a new Licensing Agreement is entered into between the City of Fresno and KJEO, the ISD Director or designated employee should monitor KJEO's Tax and Utility payments with the Licensing Agreement to ensure timely payment in compliance with the Agreement.

**MANAGEMENT RESPONSE TO RECOMMENDATION – 20**

We concur with this recommendation. In negotiating any new agreement with KJEO within the next 180 days, the new license agreement will include an increase in rent to compensate for the fixed utility payment made by the City of Fresno. ISD needs to calculate how much power is being used on a regular basis and recover said charges through either an increased rent or direct billings.

**STATUS UPDATE – PARTIALLY IMPLEMENTED – DUE DATE MAY 2011**

A contract is currently being prepared. This contract will include language to accommodate any increases in utility payments made by the City and to ensure that KGPE makes timely tax and utility payments. It is estimated that the new contract will be fully executed by May 2011.

**Insurance**

Section 10 (Insurance) states: "Throughout the life of this Agreement, the LICENSEE shall pay for and maintain in full force and effect...

- (ii) COMMERCIAL AUTOMOBILE LIABILITY insurance...with combined single limits of not less than \$1,000,000 per occurrence.
- (iii) WORKERS' COMPENSATION insurance as require under the California Labor Code."

Internal Audit received and reviewed KJEO's Certificates of Insurance for the period of March 14, 2008 through March 14, 2011. None of these Certificates show KJEO has Automobile Insurance or Workers Comp. coverage.

Section 10 also states: "The above described policies of insurance shall be endorsed to provide an unrestricted thirty (30) day written notice in favor of the CITY, of policy cancellation, change or reduction of coverage, except for the Workers' Compensation policy which shall provide a ten (10) day written notice of such cancellation, change or reduction coverage. **In the event any**

**policies are due to expire during the life of this Agreement, the SERVICE PROVIDER shall provide a new certificate evidencing renewal of such policy not less than fifteen (15) days prior to the expiration date or the expiring policy(s)..."**

Internal Audit noted the Insurance Certificate Cancellation box states "...30 days written notice..." There is no mention of the 10 days Workers Compensation Cancellation Notice.

Section 10 also states: "The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name the CITY, its officers, officials, agents, employees and volunteers as an additional insured..." There is no mention of the CITY being an additional insured on the 2008 through 2011 Insurance Certificates.

**Audit Recommendation:**

21. If a new Licensing Agreement is entered into between the City of Fresno and KJEO, the ISD Director, in conjunction with the Risk Management Division, should require KJEO to obtain and maintain the required Insurances and comply with the Insurance Terms of the new Agreement, including the monitoring of the annual Certificates of Insurance by ISD's "Contract Administrator" for compliance with the Agreement.

**MANAGEMENT RESPONSE TO RECOMMENDATION – 21**

We concur with this recommendation. The Contract Administrator has formulated and implemented informal procedures for monitoring contract/insurance expiration dates. Should a new agreement be entered into between the City of Fresno and KJEO, ISD will obtain and maintain the required insurances as outlined in the contract.

**STATUS UPDATE – PARTIALLY IMPLEMENTED – DUE DATE FEBRUARY 2011**

ISD is developing a SharePoint contract management website which will assist in monitoring contract/insurance expiration dates. It is anticipated the SharePoint website will be in place by February 2011. ISD will obtain and maintain the required insurances as outlined in the contract.

**E. Default Clause**

The City's 1996 Licensing Agreement with KJEO does not contain Default Language. Section 4 (Liens and Taxes); Section 7 (Term and Revocation); and Section 10 (Insurance) include revocation language. Section 11 (Notices) states: "Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing ..."

There is no language regarding action to be taken by the City if the Licensee defaults on the payment. Further, there is no language indicating whether the Licensee would be able to cure an omission within a stated time period versus automatic revocation of this agreement.

**Audit Recommendation:**

22. If a new Licensing Agreement is entered into between the City of Fresno and KJEO, the ISD Director, in conjunction with the City Attorney, should determine if the new KJEO License Agreement should contain a Default Section to allow cure of an omission versus immediate revocation (for all applicable Terms of the Contract).

**MANAGEMENT RESPONSE TO RECOMMENDATION – 22**

We concur with this recommendation. ISD Director will seek legal opinion as to appropriate language or necessity for Default provision to allow for cure of an omission versus immediate revocation should a new agreement be executed.

**STATUS UPDATE – PARTIALLY IMPLEMENTED – DUE DATE MAY 2011**

A contract is currently being prepared. It is estimated that the new contract will be fully executed by May 2011. The ISD Director will seek legal opinion as to appropriate language or necessity for Default provision to allow for cure of an omission versus immediate revocation.

**Audit Recommendation:**

23. If the City Attorney and the ISD Director determine a Default Section is not warranted in a new KJEO Licensing Agreement, then language should be included in the Rental Payment Section of the new agreement regarding failure to pay timely (Revocation or Late Payment as previously discussed).

**MANAGEMENT RESPONSE TO RECOMMENDATION – 23**

We concur with this recommendation. If the ISD Director and the City Attorney determine a Default Section is not warranted in a new KJEO Licensing Agreement, then ISD will insert language in the Rental Payment Section of the new agreement regarding failure to pay timely and consequences thereof.

**STATUS UPDATE – PARTIALLY IMPLEMENTED – DUE DATE MAY 2011**

A contract is currently being prepared. It is estimated that the new contract will be fully executed by May 2011. If a Default Section is not warranted, the ISD Director will seek legal opinion as to appropriate language in the Rental Payment Section of the new agreement regarding failure to pay timely.

**IV. Pacific Bell Wireless, LLC (T-Mobile)**

The City of Fresno (ISD) entered into a License Agreement with Pacific Bell Wireless, LLC on December 1, 1999. The Agreement allowed the Licensee the right to extend the Agreement for three additional five year terms (for a total of 20 years). The Agreement was to allow Pacific Bell to build a communications facility at Radio Park and mount communications equipment on

the tower. On January 5, 2005, a sale between Pacific Bell Wireless (PBW) and T-Mobile closed. T-Mobile became sole owner of PBW and its assets including the wireless network.

Internal Audit noted the following:

**A. Record Keeping**

All License Agreement payments are not sent directly to ISD at City Hall. Some payments are received at the Communications Center at the Municipal Service Center and then forwarded to ISD whereas other payments are sent directly to ISD. All payments including invoices data received at either location are not Date Stamped with the Receipt Date. ISD informed Internal Audit that the Cashier's Memo Date is considered the Date Received although the Cashier's Memo may not be created the same day the payment is received. The Cashier's Memo may be created up to three days after the actual payment is received.

Further, a copy of each check and any supporting documentation (including the Invoice Stub) are not retained for audit purposes by either the Department or another Auditor. Also, no one is closely monitoring whether License payments are received timely.

**Audit Recommendation:**

24. The ISD Director should direct all Staff who receive mail (such as correspondence, payments, etc.) to date stamp the item upon receipt at any City Location and timely forward the correspondence/payment to the appropriate person or Section responsible for deposit and retention.

**MANAGEMENT RESPONSE TO RECOMMENDATION – 24**

We concur with the above recommendation. We have purchased a date stamp machine from the Personnel Services Department and are in the process of having the lower die plate replaced to reflect ISD's designation.

We have also sent a letter dated August 24, 2010 to T-Mobile to notify them of the correct payment remittance address: 2600 Fresno Street, Room 1059, Fresno, CA 93721-3608, Attention: Administration Division. Deposits will be made on the same business day upon receipt at Fresno City Hall Room 1059.

Duplicate Recommendation as #8.

**STATUS UPDATE – FULLY IMPLEMENTED – SEPTEMBER 2010**

The lower die plate to reflect ISD's designation was installed on September 20, 2010. All correspondence is date stamped before distributed to appropriate staff.

Procedures are in place to distribute correspondence and deposit payments in a timely manner.

**Audit Recommendation:**

25. The ISD Director should create and distribute a Policy and Procedure regarding the types of documents required to be retained for audit purposes in compliance with an Agreement/Contract (especially for renewal and/or default).

**MANAGEMENT RESPONSE TO RECOMMENDATION – 25**

We concur with this recommendation. Currently, renewal dates are tracked in Microsoft Excel and Outlook, but a more formal policy and procedure is required that outlines the types of documents to be retained for audit purposes to be in compliance with the Agreement/Contract. Written Contract Administration Policy and Procedure will be in place within February 28, 2011.

Duplicate Recommendation as #9

**STATUS UPDATE – PARTIALLY IMPLEMENTED – DUE DATE FEBRUARY 2011**

The Contract Administrator is developing formalized internal guidelines which will include checklists and flowcharts for standardized and non-standardized contracts. In addition, ISD is developing a SharePoint contract management website which will provide greater functionality and ease of use than our common K drive. All information currently being stored on the K drive has been transferred to this website. It is anticipated these formal written procedures and the SharePoint website will be in place by February 2011.

**B. Lease Payment and Escalation Clause**

Section 5 (a) (Rent) states: "... Licensee shall pay Licensor, as rent, the sum of seven Hundred and Fifty Dollars (\$750) ("Rent") per month. Rent shall be payable on the 1<sup>st</sup> day of each month, in advance, to Licensor... Upon the commencement of each Renewal Term, Rent shall be increased Twelve and One-Half Percent (12.5%) above the Rent for the previous Term (or Renewal Term).

Therefore, per the License Agreement the Rent payment due should have been:

- 11/1999 through 12/2004 = \$750
- 12/2004 through 11/2009 = \$843.75
- 12/2009 through 11/2014 = \$949.22
- 12/2014 through 11/2019 = \$1067.87

ISD submitted FY 2007 through FY 2010 PeopleSoft Detail Transaction Report By Dept. for their Rental Account to show T-Mobile payments. Internal Audit also accessed PeopleSoft Detail Transaction Reports starting with FY 2004 to ensure all rent escalations were assessed and paid properly. Internal Audit noted the following:

- Rent escalations were assessed and paid properly except for:
- T-Mobile underpaid the City of Fresno \$43.37 for rent due for December 2004. T-Mobile paid \$798.38 instead of 843.75.
- T-Mobile underpaid the City of Fresno by \$51.03 for rent due for December 2009. T-Mobile paid \$898.19 instead of \$949.22.
- The City of Fresno did not pursue the underpayment of these amounts.

**Audit Recommendation:**

26. The ISD Director or designated employee should monitor License Payments in accordance with the Agreement to ensure the City receives all money owed.

**MANAGEMENT RESPONSE TO RECOMMENDATION – 26**

We concur with the above recommendation. On August 24, 2010, ISD Administration mailed an invoice for \$51.03 to T-Mobile for rent increase due December 2009. The rent for subsequent months to date was remitted properly. ISD Administration will monitor this invoice for prompt payment.

**STATUS UPDATE – PARTIALLY IMPLEMENTED – FEBRUARY 2011**

It appears that the rent increase differential for the December 1, 2009 rate increase has not been received. We are continuing to follow-up with T-Mobile to ensure that payment is received.

**C. Late Payment Penalty**

A Late Payment Penalty provision is not included in the December 1, 1999 License Agreement between the City of Fresno and Pacific Bell Wireless. Other City Agreements/Contracts audited by Internal Audit have included a Late Payment Penalty of 1.5% to 5% per day or a flat rate on the outstanding balanced owed on the Due Date or after a Grace Period of ten (10) days.

Using the Late Payment Penalty Fee amount assessed in other similar City Contracts, Internal Audit calculated what the City would have been owed if the License Agreement had included a Late Penalty Clause.

- For a Flat 2% Fee approximately \$456
- For a Flat 5% Fee approximately \$1,139
- For a 1.5% per Day approximately \$2,240

**Audit Recommendation:**

27. The ISD Director should consider the addition of a Late Payment Penalty Fee requirement to the License Agreement with T-Mobile and amend the License Agreement accordingly to encourage timely payment to the City.

## **MANAGEMENT RESPONSE TO RECOMMENDATION – 27**

We concur with the above recommendation. The ISD Director has directed staff to incorporate Late Payment Penalty Fee language requirement into all revenue contracts negotiated in the future (after date of this audit response) in an effort to encourage prompt payment to the City.

Duplicate Recommendation as #14.

## **STATUS UPDATE – PARTIALLY IMPLEMENTED – DUE DATE FEBRUARY 2011**

We are continuing to review the T-Mobile contract to determine if we are able to amend it mid-term. The terms of the agreement state that the licensee has the right to extend the term of the license agreement for three additional three year terms under the same terms and conditions as the original agreement except for the rent. The license agreement also states that it may be terminated by the licensor only upon a default of any covenant, condition or term. Since T-Mobile has made timely monthly payments for the last year, we currently do not have a situation of default. We will continue to monitor T-Mobile payments and proceed with amending the license agreement to include Late Payment Penalty Fee language should late payment occur.

As referenced in the Status Update to Recommendation #14, a renegotiated contract with Jaroth/PTS has been forwarded to the City Manager's Office for approval to place on the City Council agenda. This contract includes Late Penalty Fee language. It is anticipated that the contract will be fully executed by mid-February 2011.

### **D. Default Clause**

The City's 1999 Licensing Agreement with T-Mobile does not contain Default Language. Further, Internal Audit did not find specific Revocation language in Sections of the License Agreement for failure to comply or comply timely.

### **Audit Recommendation:**

28. The ISD Director, in conjunction with the City Attorney, should immediately amend the License Agreement with T-Mobile and include either a Default Clause or Revocation Language.

## **MANAGEMENT RESPONSE TO RECOMMENDATION – 28**

We concur with the above recommendation. ISD will move forward immediately with amending the License Agreement with T-Mobile to include either a Default Clause or Revocation Language.

## **STATUS UPDATE – FULLY IMPLEMENTED – JANUARY 2011**

We are continuing to review the T-Mobile contract to determine if we are able to amend it mid-term. The terms of the agreement state that the licensee has the right to extend the term of the

license agreement for three additional three year terms under the same terms and conditions as the original agreement except for the rent. The license agreement also states that it may be terminated by the licensor only upon a default of any covenant, condition or term. Since T-Mobile has made timely monthly payments for the last year, we currently do not have a situation of default. We will continue to monitor T-Mobile payments and proceed with amending the license agreement to include Late Payment Penalty Fee language at that time.

#### E. Insurance

Section 12 (a) states: "...Further, Licensee shall indemnify, hold harmless and defend the Licensor and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort, strict liability, including but not limited to personal injury, death at any time and property damage incurred by the Licensor,..."

Section 12 (b) states: ""Throughout the life of this License, the LICENSEE shall pay for and maintain in full force and effect..."

- (i) COMMERCIAL GENERAL LIABILITY insurance... with combined single limits of not less than \$1,000,000 per occurrence.
- (ii) COMMERCIAL AUTOMOBILE LIABILITY insurance...with combined single limits of not less than \$1,000,000 per occurrence.
- (iv) WORKERS' COMPENSATION insurance as require under the California Labor Code.

The above described policies or insurance shall be endorsed to provide an unrestricted 30-day written notice in favor of the Licensor, of policy cancellation, change or reduction of coverage, except for Workers' Compensation policy which shall provide a 10-day written notice of such cancellation, change or reduction of coverage."

Internal Audit requested ISD to provide T-Mobile's Certificates of Insurance for FY 2007 through FY 2010 to ensure continuous and proper coverage per the terms of the Agreement. ISD does not have any Certificates of Liability Insurance for T-Mobile. Internal Audit was informed ISD is in the process of obtaining a current Certificate of Insurance from T-Mobile.

Subsequent to the audit fieldwork, ISD provide Internal Audit with T-Mobile's FY 2010/2011 Certificate of Insurance Coverage. Internal Audit noted the following:

- T-Mobile has the required Insurance coverage amounts.
- T-Mobile's Certificate of Insurance does not include the City of Fresno, California as an Additional Insured.
- T-Mobile's Certificate of Insurance list the Cancellation Period of all insurances as 30-Days.

Therefore, T-Mobile's Certificate of Insurance is not in full compliance with the Terms of this Agreement.

**Audit Recommendation:**

29. The Director of ISD should immediately notify T-Mobile of their failure to comply with all Insurance Terms of the Agreement and that T-Mobile must provide an updated Certificate of Insurance showing compliance with all Insurance Terms of the Agreement or be in Breach/Default of the Agreement.

**MANAGEMENT RESPONSE TO RECOMMENDATION – 29**

We concur with this recommendation. On August 24, 2010, ISD notified T-Mobile in writing of their failure to comply with all insurance terms and that they must provide an updated Certificate of Insurance showing compliance with all insurance terms of the agreement or be in breach/default of the agreement. Should T-Mobile not provide an updated certificate of insurance within 30 days, a letter of default will be issued by the ISD Director.

**STATUS UPDATE – FULLY IMPLEMENTED – JANUARY 2011**

An updated Certificate of Insurance from T-Mobile was approved by Risk Management staff on January 5, 2011.

**Audit Recommendation:**

30. The Department's "Contract Administrator" should annually monitor T-Mobile's Insurance coverage for compliance with the License Agreement.

**MANAGEMENT RESPONSE TO RECOMMENDATION – 30**

We concur with this recommendation. The Contract Administrator has formulated and implemented informal procedures for monitoring insurance expiration dates. Currently, renewal dates are tracked in Microsoft Excel and Outlook, but a formalized process is needed. Written procedures will be in place by February 28, 2011.

Duplicate Recommendation as #4.

**STATUS UPDATE – PARTIALLY IMPLEMENTED – DUE DATE FEBRUARY 2011**

A SharePoint contract management website is under development which will make access to and administration of contracts much easier. It is anticipated that this website will be completed by February 2011.

**F. Liens, Taxes, and Utilities**

Section 6 (f) (Improvements, Access) states: "Licensee shall fully and promptly pay for all utilities furnished to the Premises for the use, operation and maintenance of Licensee's Facilities."

Section 8 (Taxes) states: "Licensee agrees to pay, before delinquency, as and when due, any and all lawful taxes, assessments or charges which, during the life hereof, may be levied by the State, County, City, or other tax levying body..."

ISD does not monitor Tax and Utility payments required of Licensee to ensure timelines of payment to prevent ultimate assessment to the City. ISD's Management Analyst III was not aware of any Tax and/or Utility Late Payment obligations in the License Agreement.

**Audit Recommendation:**

31. The Department's "Contract Administrator" should monitor T-Mobile's timeliness of Tax and Utility payments to prevent any liability to the City of Fresno for non-payment or failure to pay timely.

**MANAGEMENT RESPONSE TO RECOMMENDATION – 31**

We concur with the above recommendation. On August 24, 2010, ISD Administration sent written correspondence to T-Mobile requesting verification of payment for both utility and tax payments to date. ISD will follow up and ensure verification is received within 60 days.

**STATUS UPDATE – FULLY IMPLEMENTED – JANUARY 2011**

Administration staff contacted the Utility Billing & Collection Division and was advised that the only utilities billed for that location are for sewer and irrigation which are paid by the PARCS Department for the recreational portion of Radio Park. Since no business is conducted at the site, there are no business taxes due.

Administration staff also contacted PG&E and was advised that there is a second meter box at Radio Park but the representative could not release the name on the account. It is our understanding that T-Mobile had this meter box installed and so pays for this utility directly. We were also advised that in the event T-Mobile does not pay this utility timely, PG&E will make attempts to collect from the person or business under whose name the account is open including sending to collections or turning off the power if needed but will not attempt to collect from another agency. e.g. a landlord. So, if T-Mobile does default on payment to PG&E, there would be no liability to the City.