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REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

PLAINTIFF'S LITIGATION AND REVENUE MATTER RECOVERIES
BY THE CIVIL DIVISION OF THE CITY ATTORNEY'S OFFICE

INTRODUCTION

The purpose of this report is to provide an update on the significant recoveries and ongoing plaintiff's litigation and revenue matters by the City Attorney's Office Civil Division during Fiscal Year 2006, from July 2005 through March 2006.

Plaintiff's litigation and revenue matters prosecuted by the City Attorney's Office Civil Division have resulted in judgments, settlements, or other recoveries for the City in the amount of \$4,242,530 from July 2005 through March 2006. This amount includes litigation settlements or judgments of approximately \$1,892,530, the recovery of a \$1,800,000 federal grant, and the recovery of \$550,000 in delinquent debts.

Further, there is approximately \$2,558,000 in immediately pending judgments, settlements, or other recoveries attributable to the City Attorney's Office. These additional recoveries should be finalized within 30-60 days.

DISCUSSION

Plaintiff's litigation by the City Attorney's Office from July 2005 through March 2006 has resulted in overall settlements or judgments of approximately \$1,892,530 of which \$663,468 goes directly to the General Fund. These matters include:

- settlement with a City contractor for \$750,000 in a breach of contract action involving a ruptured water main;
- summary judgment granted in the City's favor for \$326,000 plus attorney's fees of \$191,475 in a dispute with SDG&E over relocation of power lines in the Ball Park District; and
- settlements or judgments for approximately \$625,055 in various matters including recovery for unpaid rent, unpaid utility fees, and damage to City property.

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

Actions instituted by the City Attorney's Office resulted in the reinstatement of a \$1,800,000 federal grant for Brown Field and will provide approximately \$1,130,000 in new revenue from the airport property. In August 2005, the FAA withdrew the federal grant for Brown Field due to City property management issues which included allowing City tenants to occupy areas affecting the safety of airport operations and allowing non aeronautic uses of the airport property. The City Attorney's Office undertook numerous eviction actions to remove tenants from those areas deemed unsafe by the FAA, and negotiated with the FAA to allow short term non aeronautic uses on other areas of the property. These actions resulted in the reinstatement of the federal grant in October of 2005.

The City Attorney's Office also undertook eviction actions at Brown Field against tenants for unpaid rent, holding over after expiration of leases, or persons on the property without lease agreements with the City. After these actions regained control of the property, and with the FAA's approval, the City Attorney's Office negotiated new right-of-entry permits with tenants that will provide new revenue to the City of approximately \$1,300,000 over twelve months. These permits are currently being executed by the tenants and should be finalized within approximately 30 days. It is anticipated that similar actions by the City Attorney's Office can be applied to other areas of airport property to further increase revenue.

In addition to the above matters, City Attorney plaintiff's litigation attorneys undertook a campaign with the City Treasurer's Office Collections Division to publicize, through the media and letters to debtors, the thousands of delinquent debts owed to the City. The Collections Division has determined that as a result of these joint efforts, from October 2005 to February 2006, the City has collected \$550,000 in delinquent debts. The City Attorney's Office works closely with the City Treasurer's Collections Division in prosecuting cases against delinquent debtors to recover money owed the City.

Potential million and multi-million dollar plaintiff's revenue and recovery matters currently being handled by the City Attorney's office include:

- four pension related matters for professional negligence;
- a contamination claim for a fuel plume under Qualcomm Stadium;
- an action against internet hotel booking companies for failure to pay Transient Occupancy Tax (TOT);
- two actions for breach of development agreements;
- construction contract claim for liquidated damages for delay;
- unfair business practices action relating to price fixing by natural gas wholesalers;
- an action against a heavy equipment supplier for excessive lease charges;
- action for soil contamination from an underground fuel tank affecting construction of a sewer pump station; and
- false claims action against a manufacturer of water works parts, purchased by the City, for misrepresenting that its products met certain industry standards.

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

Plaintiff's matters being handled by the City Attorney's Office with potential six figure dollar recoveries (\$100,000 to less than \$1,000,000) include:

- four breach of contract actions for defective work, materials, or liquidated damages;
- bankruptcy matter to obtain conservation property and endowment funds from a bankrupt environmental entity;
- bankruptcy matter to recover fines from a car rental agency;
- two actions for back rent owed on City property;
- action for false claims involving procurement of City contracts;
- false claims action relating to collection of TOT;
- action for violation of the Telephone Consumer Protection Act;
- action against the County for failure to pay statutory fees for lab processing in criminal actions involving narcotics; and
- action to recover an administrative penalty.

Resolution of these cases varies from a few months to up to three years depending on the complexity of the litigation and the potential for settlement prior to trial. If desired by the Mayor and or Council, these pending litigation matters may be discussed in more detail in Closed Session.

The number of plaintiff's litigation and revenue matters with a potential recovery in excess of \$50,000 being handled by the City Attorney's Office has significantly increased between July 2005 and March 2006. In July 2005, there were approximately 16 matters in excess of \$50,000 being handled by the City Attorney's Office however, by the end of March 2006, this number has increased to 37 matters. Additional matters with a potential recovery in excess of \$50,000 are currently being evaluated for litigation.

As part of an ongoing effort to increase plaintiff's litigation on behalf of the City, City Attorney plaintiff's litigation attorneys have met with the City Auditor's Office External Audit Division to provide legal information on asserting False Claims Act actions based upon improprieties uncovered by the Auditor's Office during their audits of those paying rent or transient occupancy taxes (TOT) to the City. In a False Claims Act action, the City can recover treble damages and civil penalties. As a result, the Auditor's Office has recently referred for legal action a matter where their audit determined a hotel operator had significantly under paid TOT. The City Attorney's Office has also provided internal training of its attorneys in the area of False Claims, and as a result of this training, additional matters are currently being evaluated for litigation.

From July 2005 through March 2006, the City Attorney's Office has or is handling in excess of 40 revenue and recovery matters with potential recoveries below \$50,000. Although these matters individually have a potential recovery of \$50,000 or less, in the aggregate they can

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

provide significant revenue for the City. Since July 2005, 22 such matters handled by the City Attorney's Office have resulted in settlements or judgments for the City of \$400,979.

The City Attorney's Office itself or in concert with outside counsel is also actively pursuing insurance and or indemnity claims to protect the City from significant financial exposure. Insurance has been identified that will likely cover the City's portion of the multi-million dollar expense for clean-up of San Diego Bay that allegedly resulted from contamination by a City refuse disposal site that ceased operation several decades ago. The City is also pursuing a cross-complaint for indemnity related to alleged claims the City's sewer rate fee structure was unlawful. The City is asserting that if it is found liable, others who received the benefit of the rate structure should reimburse the City.

In addition, the Federal District Court recently ruled that the City's insurance company was required to defend the City in all three of the De La Fuente cases (Border Business Park, National Enterprises, and Otay Acquisitions) and that the amount of coverage for the City's behalf on a particular policy was \$8 million, rather than \$2 million as the insurance company had claimed. The Federal Court also held that upon completion of the De La Fuente cases in state court, the City could seek contract damages and attorney's fees against the insurance company.

CONCLUSION

In summation, the City of San Diego has significantly benefited through plaintiff's litigation and revenue matters prosecuted by the City Attorney's Office Civil Division. From July 2005 through March 2006, \$4,242,529 in judgments, settlements, or other recoveries has been obtained on behalf of the City. In addition, approximately \$2,558,000 in immediately pending judgments, settlements, or other recoveries attributable to the City Attorney's Office are likely to be realized within 30-60 days.

The City Attorney's Office Civil Division is currently prosecuting 13 matters, each with a potential recovery in excess of \$1 million, at least four of which have a potential recovery in the tens of millions. There are 16 additional matters with a potential recovery in excess of \$100,000 each. The time frame for recovery on these matters varies greatly, from a few months up to three years, due to their varying complexity and litigation status.

During Fiscal Year 2006, the emphasis on plaintiff's litigation and recovery matters by the City Attorney's Office has resulted in an increase of more than 100% in the number of matters it is handling with a potential recovery in excess of \$50,000. Review of additional matters is ongoing and further plaintiff's litigation on behalf of the City will be initiated. The

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

continuation and increase of this level of recovery for the benefit of the City of San Diego can only occur through the continuing budgetary support of the City Attorney's Office by the Mayor and Council.

Respectfully submitted,

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