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April 27, 2006

REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL

REPEAL OF RESOLUTION R-297335 REGARDING INDEMNIFICATION OF  
SDCERS BOARD MEMBERS FOR FUTURE ACTS AND OMISSIONS

On April 18, 2006, the City Council considered the rescission of resolution R-297335 that provided indemnification to board members of the San Diego City Employees' Retirement System [SDCERS] in connection with any claim or lawsuit arising from any act or omission in the scope of the performance of their duties as board members. *See*, City Att'y Report No. 06-14 (Apr. 13, 2006).

At the meeting, the City Attorney advised that the procedures and provisions of Government Code section 995 would apply if the City Council rescinded the resolution. However, some Council members expressed concern about the rights of current board members if the resolution were to be completely rescinded. After further discussion, the Council directed the City Attorney to prepare a resolution that would repeal resolution R-297335 on a "going forward" basis that would apply to future acts by any SDCERS board member occurring after April 18, 2006. Accordingly, the proposed resolution states:

BE IT RESOLVED, by the Council of the City of San Diego, that Resolution R-297335, passed on November 18, 2002, is hereby repealed effective April 18, 2006.

BE IT FURTHER RESOLVED, that Resolution R-297335 is inapplicable to any act taken or omission made by any SDCERS board member in the scope of the performance of his or her duties after April 18, 2006.

The Council also requested that the City Attorney advise the SDCERS board members of the Council's intention to consider such action at a future meeting. On April 20, 2006, the City delivered the letter to the SDCERS board members, a copy of which is attached for reference.

As noted in our previous report, the City Council approved the resolution indemnifying SDCERS board members when it needed SDCERS' agreement to the City continuing to underfund its retirement contributions. The indemnity resolution did not include reasonable protections for the City similar to those authorized under California Government Code section 995. Repeal of the resolution for acts or omissions occurring after April 18, 2006, will put

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SDCERS board members on the same level as employees of the City, instead of providing them greater protection. Accordingly, for future acts and omissions by SDCERS board members, the City Council will determine whether to provide a defense and indemnification under the provisions of Government Code 825 and 995.

Respectfully submitted,

MICHAEL J. AGUIRRE  
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MJA:CB:jb  
RC-2006-18  
Attachment