

RESOLUTION NUMBER R-287502

ADOPTED ON JUNE 11, 1996

RESOLUTION BY WHICH THE CITY COUNCIL OF THE CITY OF SAN DIEGO DECLARES ITS INTENTION TO ORDER IMPROVEMENTS IN THE PROPOSED ARROYO SORRENTO ASSESSMENT DISTRICT NO. 4077 AND APPROVES CERTAIN OTHER MATTERS AS FOLLOWS:

- 1) APPROVES THE PROPOSED BOUNDARY MAP;
- 2) APPOINTS ENGINEER OF WORK;
- 3) APPOINTS BOND COUNSEL;
- 4) APPOINTS DESIGN ENGINEER;
- 5) AUTHORIZES EXPENDITURE OF FUNDS FOR AN APPRAISER;
AND
- 6) AUTHORIZES PUBLICATION OF NOTICE OF PUBLIC MEETING
AND PUBLIC HEARING.

WHEREAS, the Council of The City of San Diego, California (the "Council"), was presented a petition (the "Roadway Improvement Petition") executed by certain property owners requesting special assessment proceedings to finance the acquisition of certain roadway improvements (the "Roadway Improvements") to Arroyo Sorrento Road, Via Del Mar, Tierra Del Sur and Arroyo Sorrento Place (collectively, the Streets"), together with appurtenances and appurtenant work in connection therewith, pursuant to the terms and provisions of the Municipal Improvement Act of 1913 (the "Municipal Improvement Act"), constituting Division 12 of the Streets and Highways Code of the State of California; and

WHEREAS, this Council by its Resolution No. R-278136 adopted June 24, 1991 determined that the Roadway Improvement Petition contained the signatures of more than sixty percent (60%) of the property owners of the assessable area of the property to be subject to assessment for the proposed works of improvement and

that said Roadway Improvement Petition met the requirements of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (the "Majority Protest Act"), constituting Division 4 of the Streets and Highways Code of the State of California, and in particular, Section 2804 (a) (3) thereof; and

WHEREAS, there has been presented to this Council a petition (the "Utility Undergrounding Petition") executed by certain property owners requesting special assessment proceedings to finance the conversion of existing electrical and communication facilities to underground locations (the "Utility Undergrounding") along the Streets, together with appurtenances and appurtenant work in connection therewith, pursuant to the terms and provisions of the Municipal Improvement Act; and

WHEREAS, it has been reported that the Utility Undergrounding Petition contains the signatures of more than sixty percent (60%) of the property owners of the assessable area of the property to be subject to assessment for the proposed works of improvement and has been signed by more than five (5) such owners and this Council desires to determine that said Utility Undergrounding Petition meets the requirements of the Majority Protest Act and Section 5896.6 of the Streets and Highways Code of the State of California, as incorporated into the Municipal Improvement Act; and

WHEREAS, the City will be required to incur certain costs in connection with the special assessment proceeding and the Council desires to provide for payment of such costs and for the reimbursement of such costs from proceeds of bonds to be issued

to provide funds for the roadway improvements and utility undergrounding; and

WHEREAS, the costs of the assessment proceedings and the issuance of such bonds will be reduced if the special assessment proceedings for the roadway improvements and the utility undergrounding are combined; and

WHEREAS, pursuant to said Roadway Improvement Petitions and Utility Undergrounding Petitions, the property owners waive investigation proceedings and all other proceedings pursuant to the Majority Protest Act; and

WHEREAS, the Municipal Improvement Act and the Improvement Bond Act of 1915, constituting Division 10 of the Streets and Highways Code of the State of California (the "Improvement Bond Act") provide a financing procedure for public improvements by which the landowners of the property which will be benefitted bear the costs of the public improvements through an assessment process and process of issuing tax-exempt bonds, and no costs of improvements will be borne by the General Fund of the City of San Diego, except for the \$34,054 for water main replacement; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. That all of the above recitals are true and correct.
2. That it is hereby found that the Utility Undergrounding Petition has been signed by the owners owning land constituting more than sixty percent (60%) of all assessable land within the boundaries of the proposed assessment district, in accordance with section 2804 (a) (3) of the Majority Protest Act and further

that such petition has been signed by not less than five (5) owners of assessable land, in accordance with Section 5896.6 of the Streets and Highways Code of the State of California.

3. That the Utility Undergrounding costs contemplated by this district would pose a burden upon the property owners, some of whom will already have to bear substantial costs for the improvements to Arroyo Sorrento Road. The Council therefore does not desire to go forward with the Utility Undergrounding part of this district at this time and it is abandoned. There will be no further proceedings on the Utility Undergrounding at this time.

4. That the conduct of one combined special assessment proceeding for both the Roadway Improvements and for the Utility Undergrounding would have been in the public interest and in the interest of the owners of the property proposed to be assessed and that therefore the special assessment proceedings requested respectively by the Roadway Improvement Petition and the Utility Undergrounding Petition will be undertaken as special assessment proceedings under the Municipal Improvement Act of 1913 for the acquisition of both such public improvements, however the abandonment of the undergrounding activities makes this moot.

5. That the Roadway Improvement Petition meets the requirements of Section 2804 of Division 4 of the Streets and Highways Code of the State of California, and that there shall be no postponement or abandonment, or both, of the proceedings contemplated hereby, in whole or in part, upon majority protest in accordance with the "Special Assessment Investigation, Limitation and Majority Protest Act of 1931," and such Act shall not be applicable to these proceedings.

6. That this Council intends to make, order or acquire the following improvements (the "Improvements") under the authority of the Municipal Improvement Act:

The design, acquisition and construction of the following improvements:

grading, excavation, slope planting, retaining walls, curb and gutter, street pavement, street lights, water mains, fire hydrants, storm drains, curb inlets, and appurtenances.

This description of the Improvements is intended to be general in nature and the plans and specifications of the Improvements contained in the report of the Engineer of Work (as hereinafter defined) shall be controlling as the correct and detailed description thereof.

7. That this Council finds that the land specially benefitted by the above-described improvements is shown within the boundaries of the map entitled, "Proposed Boundaries of Arroyo Sorrento Assessment District No. 4077, San Diego County, State of California". This map is hereby approved by the Board and is now on file with the City Clerk. The land within the exterior boundaries shown on the map shall be designated "Arroyo Sorrento Assessment District No. 4077" (the "District"). Reference is hereby made to said map for a full and complete description of the proposed District and said map shall govern for all details as to the extent of the District.

A certificate shall be endorsed on the original and on at least one copy of the map of the District, evidencing the date and adoption of this Resolution, and within 15 days after the

adoption of this Resolution, the City Clerk shall file a copy of said map, with the correct and proper endorsements thereon, with the County Recorder of the County of San Diego, all in the manner and form provided for in Section 3111 of the Streets and Highways Code.

This Council intends to levy a special assessment upon the land within the District in accordance with the special benefit to be received by each parcel of land, respectively, from the improvements. There shall be omitted from the special assessment all public streets, alleys and places and all land belonging to the United States, the State of California and the County of San Diego now in use in the performance of a public function.

8. That where any disparity occurs in level or size between the improvement and private property, this Council determines that it is in the public interest and more economical to eliminate the disparity by doing work on the private property instead of adjusting the work on public property. Accordingly, work may be done on private property for this purpose with the written consent of the landowner.

9. That this Council does not intend to provide for a contribution toward the total cost and expense of the proposed improvements, except for the \$34,054 for water main replacement.

10. That the Improvements are hereby referred to The City of San Diego Engineering Department and said Department is hereby appointed as Engineer of Work for the District. Said Engineer of Work is hereby directed to file a written report pursuant to Section 10204 of the Municipal Improvement Act of 1913.

11. That notice is hereby given that a series of serial Bonds will be issued in the manner provided by the Improvement Bond Act. The bonds shall be issued to finance the Improvements described in the report of the Engineer of Work.

Serial bonds representing unpaid assessments, and bearing interest at a rate not to exceed twelve percent (12%) per annum, will be issued in the manner provided by the Improvement Bond Act, and the last installment of the bonds shall mature not more than 20 years from the second day of September next succeeding 12 months from their date. The principal amount of the bonds maturing each year shall be other than an amount equal to an even annual proportion of the aggregate principal of the bonds, and the amount of principal maturing or becoming subject to mandatory prior redemption in each year plus the amount of interest payable in that year will be an aggregate amount that is substantially equal each year, except for the moneys falling due on the first maturity or mandatory redemption date which shall be adjusted to reflect the amount of interest earned from the dated date of the bonds to the date when the first interest is payable on the bonds.

Pursuant to Part 16 (commencing with Section 8880) of the Improvement Bond Act, there shall be included as an incidental expense of the proceedings an amount not to exceed ten percent (10%) of the amount of the bonds to be issued to create a special reserve fund for the bonds. Said special reserve fund shall be identified as the "Arroyo Sorrento Assessment District No. 4077 Special Reserve Fund," and upon receipt of the bond sale proceeds, said amount shall be transferred to said special

reserve fund. Said special reserve fund shall constitute a trust fund for the benefit of the bondholders, and shall be maintained, used, transferred, reimbursed and liquidated as provided in said Part 16. Any amount contained in such reserve fund in excess of the amount required to be maintained therein shall be used to offset assessment payments.

The procedure for the collection of assessments and advance retirement of bonds issued under the Improvement Bond Act shall be as provided in Part 11.1, Division 10, of the Streets and Highways Code of the State of California.

The City of San Diego will not obligate itself to advance available funds from the City treasury to cure any deficiency which may occur in the bond redemption fund. A determination not to obligate itself shall not prevent the City from, in its sole discretion, so advancing funds.

12. That this City Council determines that the bonds to be issued pursuant to Section 10 hereof may be refunded pursuant to Division 11.5 (commencing with Section 9500) of the Streets and Highways Code on the following conditions:

(a) The maximum interest rate on the refunding bonds shall not exceed the maximum rate permitted by law at the time of the refunding;

(b) The maximum number of years to maturity of the refunding bonds shall not exceed the number of years to maturity of the bonds to be refunded; and

(c) Any adjustment to assessments resulting from the refunding will be done on a pro rata basis.

If such conditions are not satisfied, the refunding must proceed after a properly noticed public hearing, as provided for in Division 11.5 of the Streets and Highways Code.

13. That in the opinion of this Council, the public interest will not be served by allowing owners of assessable lands to enter into a contract for the work of improvement as otherwise permitted in Section 20485 of the Public Contract Code.

14. That the amount of any surplus remaining in the improvement fund after completion of the Improvement and payment of all claims shall be distributed in accordance with the provisions of Section 10427 of the Streets and Highways Code..

15. That this City Council hereby determines to levy and collect an annual assessment upon each assessed parcel of land in the District to cover the expenses of the City not otherwise reimbursed in collecting the assessment or administering or registering any associated bonds and reserve or other funds. The maximum annual assessment on each parcel within the District for such purposes shall be three percent (3%) of the annual installment of principal and interest payable with respect to such parcel.

16. That the Council hereby appoints Lofton, De Lancie & Nelson as Bond Counsel for the special assessment proceedings, for the purpose of supervising the proceedings and issuing opinions attesting to the validity of the proceedings and the enforceability of the bonds, said bonds to be issued pursuant to the terms and provisions of the Improvement Bond Act. The City Attorney of the City is hereby authorized to execute an agreement on behalf of the City for compensation of said Bond Counsel.

17. That the Council hereby appoints Cooper Engineering Associates as design engineer for the proposed assessment district for the purpose of providing design engineering, including preparation of plans and specifications with respect to the proposed roadway and utility undergrounding improvements. The City's Superintendent of Streets is hereby authorized to execute an agreement on behalf of the City for compensation of said firm.

18. That subject to Section 79 of the City Charter of the City, this Council hereby authorizes the expenditure of funds for an appraiser for the Arroyo Sorrento Assessment District for the purpose of preparing an appraisal report with respect to the valuation of the assessable property in the proposed assessment district. The City's Superintendent of Streets is hereby authorized to execute an agreement on behalf of the City for compensation of said firm.

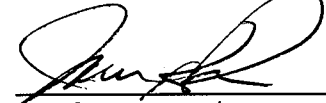
19. That for purposes of Treasury Regulation 1.150-2 promulgated under the Internal Revenue Code of 1986, as amended, this Council hereby declares its intention that all costs incurred by the City from its general fund in connection with the proposed assessment district will be reimbursed to the City from proceeds of the special assessment bonds to be issued, which bonds are anticipated to be issued in an amount not to exceed \$4,000,000.

20. That this Council hereby authorizes and directs the City Clerk and other appropriate officers of the City to cause to be published notice of a public meeting and a public hearing in

accordance with Section 54954.6 of the Government Code of the State of California.

APPROVED: JOHN W. WITT, City Attorney

By



John K. Riess
Senior Deputy City Attorney

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**The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER**

CERTIFICATE OF UNALLOTTED BALANCE AC 9601229

ORIGINATING
DEPT. NO.: 065

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount \$ 99,054.00 Fund 30245 & 41500

Purpose Authorizing the expenditure of funds for Arroyo Sorrento Assessment District Number 4077

and to expend funds for an independent appraiser for the proposed assessment district.

Date May 28, 1996

By: *Janet McClane*

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
1		41500	700	382	4226	730830				\$34,054.00
2			3245	102	4226	137005				65,000.00
TOTAL AMOUNT										\$99,054.00

FUND OVERRIDE

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed \$ _____

Vendor _____

Purpose _____

Date _____

By: _____

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT										

FUND OVERRIDE

AC 9601229

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JUN 11 1996